

NGĀTI PĀHAUWERA

and

THE CROWN

**DEED OF SETTLEMENT OF
HISTORICAL CLAIMS OF
NGĀTI PĀHAUWERA**

17 December 2010

TABLE OF CONTENTS

KARAKIA 1
MIHI 2
NGA MOEMOEAE..... 3
BACKGROUND 4
1 INTRODUCTION..... 9
2 HISTORICAL ACCOUNT 11
3 ACKNOWLEDGEMENTS AND APOLOGY 34
4 SETTLEMENT 38
5 CULTURAL REDRESS 42
6 FINANCIAL AND COMMERCIAL REDRESS 47
7 SETTLEMENT CONDITIONS AND TERMINATION 50
8 DEFINITIONS, INTERPRETATION, AND GENERAL PROVISIONS..... 51

PROVISIONS SCHEDULE

1 ADDRESSES AND OTHER DETAILS OF THE PARTIES AND THE TRUSTEES
..... 1
2 SETTLEMENT 3
3 CULTURAL REDRESS 4
4 COMMERCIAL REDRESS PROPERTIES 10
5 TAX 25
6 NOTICE 32
7 GENERAL PROVISIONS 34
8 DEFINED TERMS AND INTERPRETATION..... 36

DOCUMENTS SCHEDULE

1 STATEMENT OF ASSOCIATION 1
2 CO-MANAGEMENT CHARTER 2
3 CONSERVATION COVENANTS 26

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

4	MUSEUMS AND OTHER INSTITUTIONS.....	106
5	EASEMENTS.....	108
6	CORE AREA OF INTEREST	116
7	RFR AREA.....	118
8	DEED PLANS	122
9	DRAFT BILL	139

DEED OF SETTLEMENT

THIS DEED is made between

NGĀTI PĀHAUWERA

and

THE CROWN

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

KARAKIA

KARAKIA

*Ka tuhi, ka rarapa, ka uira
Te rangi e tū iho nei e!
Kua tae atu mātou ki te taumata
Whakatau mai ra e!*

It is written, signed and acknowledged by the
lightning far beyond the heavens
It has been accomplished
We are here

*Titiro e ngā uri o Ngāti Pāhauwera
Te kapu tō mātou ringa
Hē taonga ēnei nā, ngā tūpuna
Mana ora, mana tangata, mana whenua
He wā heke mai nei*

Look at what is in your hands
Descendants of Ngāti Pāhauwera
Gifts from your tupuna
Self direction, self esteem, a place to stand, a
future

*Pūrutia mai te taura o te rangi
Whakawātea te ara mō ngā aitanga
Paiheretia mai ko te aroha mē te rangimārie
Tūturu whakamāua kia tīna!*

Tighten the bond
Clear the way for future generations
Bind it all with love and peace

*Tīna!
Haumi e!
Hui e!
Tāiki e!*

Tie it firmly
Bind it tight
Be united
It is done

Hei whakakorōria te Atua i rūnga rawa

Glory to God on high

Na, Reverend Sissiel Henderson

MIHI

MIHI

*Ka tika te whakatauāki o Ngāti Pāhauwera e kī ana
Ko te amorangi ki mua
Ko te hapai o ki muri
Te tūturutanga mahi pono o te Māori mana motuhake
Hei whakakūititanga
Hei whakakitenga
Ngā mihi ki ngā tīpuna kua wehe atu ki te pō uriuri, ki te pō tangotango
Nā rātou ngā taonga i tuku whakarere iho
Te pūtake o mātou rangatiratanga
Na rātou nga tūmanako ki te pupuri ki te whenua mo ngā uri whakatipu
Mo te oranga o Ngāti Pāhauwera
Uhi wero
Tau mai te mauri
Haumi e Hui e Tāiki e*

NGA MOEMOEA

Whakatikatika te Tiriti o Waitangi

*Maungahāruru ki uta
Tangitu ki te moana
Mohaka te awa
Tāwhirirangi te maunga*

*Ngāti Pāhauwera te iwi e
Ngāti Pāhauwera te iwi e*

*Whakarongo ki te tangi
o ngā tūpuna e
Kua ngaro kē te whenua
Kua ngaro kē te ngahere
Kua ngaro kē te mana iwi
Whakatikatika*

*Whakatikatika te Tiriti o Waitangi
Whakatikatika he hōnoretia*

*Maungahāruru ki uta
Tangitu ki te moana
Mohaka te awa
Tāwhirirangi te maunga*

*Ngāti Pāhauwera te iwi e
Ngāti Pāhauwera te iwi e*

*Whakarongo ki te tangi
o ngā tūpuna e
Whakahokia te whenua
Whakahokia te ngahere
Whakahokia te mana iwi
Whakatikatika*

*Whakatikatika te Tiriti o Waitangi
Whakatikatika he hōnoretia*

Na, Tureiti Moxon

BACKGROUND

BACKGROUND

Ngāti Pāhauwera

Ngāti Pāhauwera are a confederation of *hapū* centred on Mohaka in Hawke's Bay. Ngāti Pāhauwera have a large number of traditional *hapū* and ancestors who had customary use rights and long occupation (*take-whenua/noho tūturu/ahikāroa*) of the area within the traditional iwi boundaries (*rohe tawhito*) set by Te Kahu o te Rangi prior to Te Tiriti o Waitangi/the Treaty of Waitangi.

The traditional boundary of Ngāti Pāhauwera, confirmed by Te Kahu o Te Rangi, extended inland from the coast north of the Waihua River across to the Waiau River and followed its course to the headwaters in the Huiarau. From there the boundary extended across to Tātarakina (Te Haroto) and on to Puketītiri and from there across to Te Wai o Hinganga (Esk River) and followed its course to the sea.

Te Tiriti/the Treaty Claims of Ngāti Pāhauwera

In January 1990, as the culmination of protests, petitions and claims beginning in the 1850s, Ariel Aranui on behalf of himself and the Ngāti Pāhauwera people filed a comprehensive claim with the Waitangi Tribunal regarding Ngāti Pāhauwera lands and the claims over the Mohaka River.

Whakatikatika te Tiriti o Waitangi, the *waiata* set out in this Deed was composed by Tureiti Moxon at the time of the filing of the claim to express the frustration of Ngāti Pāhauwera in resolving their longstanding issues in relation to their lands and waters.

In September 1991 Ngāti Pāhauwera applied for the river claim to be severed from the rest of the claim and heard under urgency, as the Planning Tribunal had made a recommendation to the Minister for the Environment that a national water conservation order be placed over the Mohaka River. Urgency was granted.

The Mohaka River claim

The Mohaka River claim was heard by the Waitangi Tribunal between April and June 1992.

Ngāti Pāhauwera claimed that the Crown had failed to recognise and give effect to their *tinō rangatiratanga* over the Mohaka River, inconsistent with the principles of Te Tiriti/the Treaty. In particular Ngāti Pāhauwera argued that making of the proposed water conservation order over the Mohaka River without the consent of Ngāti Pāhauwera would usurp their *rangatiratanga* and would be a breach of the principles of Te Tiriti/the Treaty.

The Tribunal in the Mohaka River Report 1992 found the Crown had breached the principles of Te Tiriti/the Treaty in its dealings with the Mohaka River and with Ngāti Pāhauwera in relation to the river. In particular the Tribunal found that:

- all statutory provisions which assumed that the Crown owned the river bed and waters, or appropriated such ownership to the Crown, or conferred exclusive control over the waters on central and/or local government, were therefore in breach of the letter of Te

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

BACKGROUND

Tiriti/the Treaty and the principle that the Crown must actively protect the property of Māori to the fullest extent reasonably practicable; and

- similarly removal of gravel and hāngi stones without the approval of Ngāti Pāhauwera was in breach of the letter and the principles of Te Tiriti/the Treaty and should not be permitted to continue.

The Tribunal recommended that the Crown enter into discussions with Ngāti Pāhauwera regarding the river and a proposed water conservation order, which Ngāti Pāhauwera opposed.

The Tribunal recommended that Ngāti Pāhauwera be compensated for the past removal of gravel, the Crown should enter into discussions with Ngāti Pāhauwera as a Treaty partner with a view to reaching agreement on the vesting of the bed of the Mohaka River from the Te Hoe junction to the river's mouth in Ngāti Pāhauwera, and on a regime for the future control and management of the river; and the proposed water conservation order should not be made unless and until discussions between Ngāti Pāhauwera and the Crown result in an agreement on a regime for the control and management of the river, in which event the order should incorporate that agreement.

The Crown did not implement the recommendations of the Waitangi Tribunal and periodically took steps to impose the water conservation order. Ngāti Pāhauwera continued to oppose the making of the order in the absence of any attempt to implement the findings of the Tribunal and settle the river claims. In 2004 the Crown made the order, despite the express opposition of Ngāti Pāhauwera.

Section 30 Order

In 1994 George Hawkins applied for, and the Māori Land Court made, an order appointing 8 people to represent Ngāti Pāhauwera pursuant to section 30 of Te Ture Whenua Maori Act 1993 in the prosecution and settlement of the Ngāti Pāhauwera Treaty claims against the Crown. The section 30 representatives appointed were Tom Gemmell, Kuki Green, Guy Taylor, Ruku Wainohu, Charlie Hirini, George Hawkins, Toro Waaka and Reay Paku.

The section 30 representatives were appointed to represent Ngāti Pāhauwera in existing or future claims before the Waitangi Tribunal and to negotiate the settlement of any such claim with the Crown and give a receipt for Ngāti Pāhauwera for any compensation.

At the time the order was made it was binding on the section 30 representatives, on Ngāti Pāhauwera and all others including the Crown. However, as a result of an amendment to Te Ture Whenua Maori Act 1993 in 2002, it was no longer binding on the Crown.

Charlie Hirini and George Hawkins passed away in 1998 and 1999 respectively.

The Ngāti Pāhauwera Land Claims

The Ngāti Pāhauwera land claims were heard by the Waitangi Tribunal as part of the Mohaka ki Ahuriri inquiry between November 1996 and February 2000.

The Waitangi Tribunal found in the Mohaka ki Ahuriri Report 2004 that the Crown had breached Te Tiriti o Waitangi/the Treaty of Waitangi in its dealings with Ngāti Pāhauwera since 1851, including over the Mohaka and Waihua blocks, its failure to protect Ngāti Pāhauwera from the attack by Te Kooti's force, through the impact of native land legislation and ongoing land purchasing, its failure to adequately protect the Ngāti Pāhauwera land

BACKGROUND

base at Mohaka in the twentieth century and its failure to respond to the recommendations in the Mohaka River report.

The Tribunal also found Ngāti Pāhauwera to be a large natural grouping for the purposes of the settlement. The Tribunal concluded that the representatives mandated to negotiate a settlement were the section 30 representatives and that the Crown should hasten to comply with the principle of redress by negotiating a settlement.

Remedies Application

Following unsuccessful attempts by Ngāti Pāhauwera to enter into negotiations, on 12 May 2006 Ngāti Pāhauwera filed a remedies application with the Waitangi Tribunal seeking resumption of all Crown Forest and State-owned Enterprise land in the Ngāti Pāhauwera claim area, including Mohaka Forest and Rawhiti station.

After some preliminary steps in the remedies application, the Crown in January 2008 accepted that Ngāti Pāhauwera is a group of requisite standing with sufficiently distinct claims to be deserving of separate treatment. However the Crown still refused to commence negotiations with the section 30 representatives. The Crown continued to express concerns regarding the strength of the section 30 representatives' mandate and whether or not it was still representative of the wider group and filed an application with the Māori Land Court in February 2008 seeking a review of the section 30 order.

Consultation on Governance Entity

In September 2007, the section 30 representatives began consultation with Ngāti Pāhauwera regarding the establishment of a post settlement governance entity for Ngāti Pāhauwera. The need for a governance entity was brought on by a number of factors including the need to have a body to receive assets if the remedies application was successful, and the inability of section 30 representatives to resign their posts or pass on their responsibilities even 13 years after being appointed.

A discussion booklet on a proposed governance entity was released in September 2007, and consultation took place with Ngāti Pāhauwera around New Zealand in November and December 2007.

Foreshore and Seabed Claim

In parallel to Te Tiriti/the Treaty claims process, Wayne T Taylor on behalf of Ngāti Pāhauwera filed an application for a customary rights order under the Foreshore and Seabed Act 2004.

The application was heard by the Māori Land Court at Mohaka in February 2008. During the hearing, the Crown acknowledged the unbroken, inalienable and enduring mana of Ngāti Pāhauwera in the foreshore and seabed and that this is held and exercised by Ngāti Pāhauwera as a collective right.

Commencement of negotiations

Following the customary rights order hearing, in March 2008, the Crown expressed a desire to meet with Ngāti Pāhauwera to discuss the settlement of the Ngāti Pāhauwera historical river and land claims, as well as foreshore and seabed claims, and then the Crown agreed to enter into negotiations towards a comprehensive settlement in April 2008.

BACKGROUND

The Crown proposed that the remedies, section 30 order review and customary rights order applications be adjourned so that the parties could focus on negotiations and move very quickly towards signing terms of negotiation and shortly after, an Agreement in Principle.

Terms of Negotiation

Draft terms of negotiation, setting out the scope, objectives and general procedure for negotiations with the Crown, which were negotiated between the Crown and active section 30 representatives (Tom Gemmell, Kuki Green and Toro Waaka), were then presented to Ngāti Pāhauwera for approval at consultation hui throughout the motu between April and May 2008.

The Crown and the section 30 representatives signed Terms of Negotiation in Wellington on 8 May 2008. The remedies, section 30 order review and customary rights order applications were adjourned sine die so that Ngāti Pāhauwera and the Crown could try to negotiate a settlement.

Establishment of governance entity

The Terms of Negotiation stated that the section 30 representatives and the Crown agreed that the section 30 representatives would use their best endeavours to establish the new governance entity to take over responsibility from the section 30 representatives before signing an Agreement in Principle.

The new Ngāti Pāhauwera governance entity structure comprises two trusts, the Ngāti Pāhauwera Development Trust (which is the commercial and operational arm) and the Ngāti Pāhauwera Tiaki Trust (which will hold culturally significant lands).

Ngāti Pāhauwera ratified the governance entity structure and confirmed the appointment of the active section 30 representatives as Trustees, by postal ballot closing on 5 July 2008. The remaining four Trustees (Gerald Aranui, Sissiel Henderson, Charlie Lambert and Tureiti Moxon) were elected by postal ballot, which was completed on 18 August 2008. The same seven Trustees sit on both trusts.

The Trustees signed the Ngāti Pāhauwera Development Trust and Ngāti Pāhauwera Tiaki Trust Deeds on 27 September 2008, executing the trusts. The Trustees executed a deed of covenant on 27 September 2008 agreeing to be bound by the obligations of the section 30 representatives, as the representatives for Ngāti Pāhauwera.

Agreement in Principle

Ngāti Pāhauwera and the Crown negotiated intensively between May and September 2008, and after a further set of overwhelmingly supportive consultation hui around the motu on the draft agreement in principle in late September 2008, the Trustees of the Ngāti Pāhauwera Development Trust (as the governance entity) and the Crown signed the Agreement in Principle in Wellington on 30 September 2008.

Over 100 *whānau* attended the signing in Wellington, and many also signed the Agreement in Principle to show their support.

Following the Agreement in Principle, one of the active section 30 representatives, negotiator, and founding trustee of the Ngāti Pāhauwera Development and Tiaki Trusts, Tom Gemmell passed away. In the subsequent by-election Arthur Gemmell was elected as a Trustee in his place.

BACKGROUND

Negotiations to Deed of Settlement

Ngāti Pāhauwera and the Crown again negotiated intensively between October 2008 and October 2010 on the details of the Ngāti Pāhauwera settlement.

In March 2009 the Attorney General began a review of the Foreshore and Seabed Act 2004. Ngāti Pāhauwera and the Crown have deferred negotiating the settlement of claims under that Act until the outcome of this review has been determined, therefore this Deed deals only with the historical claims of Ngāti Pāhauwera.

1 INTRODUCTION

NGĀTI PĀHAUWERA

- 1.1 Ngāti Pāhauwera is defined in clauses 8.1 to 8.3.

HISTORICAL CLAIMS

- 1.2 The historical claims of Ngāti Pāhauwera that are settled in accordance with this Deed are set out in clauses 8.4 and 8.5.

RATIFICATION OF, AND MANDATE TO SIGN, THIS DEED

- 1.3 Ngāti Pāhauwera have conducted, since the finalising of this Deed and before its signing, a ratification process for this Deed consisting of:
- 1.3.1 a series of 12 hui, including a special general meeting, held between 12 to 18 November and on 4 December 2010; and
 - 1.3.2 a postal ballot of eligible members of Ngāti Pāhauwera.
- 1.4 Ngāti Pāhauwera have:
- 1.4.1 ratified this Deed of Settlement by virtue of a majority of 99% of the valid votes cast by eligible members of Ngāti Pāhauwera in the ballot conducted for this purpose; and
 - 1.4.2 approved the Trustees, or, in the case of the cultural redress properties, the trustees of the Ngāti Pāhauwera Tiaki Trust, to receive the cultural, and the financial and commercial, redress by a ballot conducted for this purpose that was completed on 18 August 2008.
- 1.5 The Crown is satisfied:
- 1.5.1 with the ratification and mandate of the Trustees; and
 - 1.5.2 that the Trustees, and the trustees of the Ngāti Pāhauwera Tiaki Trust in respect of the cultural redress properties, are appropriate to receive the redress.

1: INTRODUCTION

ENTRY INTO THIS DEED

- 1.6 Ngāti Pāhauwera and the Crown wish, therefore, in a spirit of co-operation and compromise and with an open and honest intent, to enter into this Deed settling the historical claims (as defined in clauses 8.4 and 8.5).
- 1.7 The parties, therefore, agree as provided in this Deed.

2: HISTORICAL ACCOUNT

2 HISTORICAL ACCOUNT

- 2.1 This historical account describes the relationship between the Crown and Ngāti Pāhauwera since 1840 and identifies Crown actions which have caused grievance to Ngāti Pāhauwera over the generations. It provides the context for the Crown's acknowledgements of its historical Treaty breaches against Ngāti Pāhauwera and for the Crown's offer of an apology to Ngāti Pāhauwera.

Ngāti Pāhauwera

- 2.2 The Ngāti Pāhauwera confederation of *hapū* descend from ancestors who maintained long occupation (*noho tūturu/ahi-kā-roa*) and established the *take whenua* (rights to the land) and exclusive and other customary rights, that have formed the basis of the *Iwi tino rangatiratanga* over the lands. Throughout the generations the *take whenua* to the land was reaffirmed by successive ancestors down to Te Kahu o Te Rangi who in his day walked the boundaries.
- 2.3 The traditional boundary of Ngāti Pāhauwera, confirmed by Te Kahu o Te Rangi, extended inland from the coast north of the Waihua River across to the Waiau River and followed its course to the headwaters in the Huiarau ranges. From there the boundary extended across to Tātarakina (Te Haroto) and on to Puketītiri and from there across to Te Wai o Hinganga (Esk River) and followed its course to the sea.
- 2.4 Traditionally there was, and remains, a distinction between the *hapū* named Ngāti Pāhauwera (who descend from Te Kahu o Te Rangi) and the collective of *hapū* of his extended *whānau* (also described as Ngāti Pāhauwera) who rallied together under the leadership of Te Kahu o Te Rangi and his descendants for common purposes including defence. For two centuries this name has endured as the *karangatanga* for over 75 *hapū* within the *Iwi rohe*.
- 2.5 Ngāti Pāhauwera *hapū* relied on a system of *kaitiakitanga* (wise and sustainable management of the traditional resources) to sustain their needs. This included trade agreements with surrounding *iwi* and obligations of *manākitanga* to *whanaunga* and *manuhiri*. The river valleys were especially important to Ngāti Pāhauwera as fertile areas for agriculture and settlement just as the rivers were important for fisheries, water, stones and arteries for transport inland.
- 2.6 In the 1820s and 1830s many Ngāti Pāhauwera *hapū* temporarily relocated to fortified *pā* in the Māhia peninsula area following a series of raids by musket-armed tribes. By 1840 those Ngāti Pāhauwera who had left were in the process of reoccupying their *rohe*, returning to settlements in the Mohaka, Waikari and Arapaoanui river valleys and elsewhere, and consolidating their alliances as between Ngāti Pāhauwera *hapū* and other *iwi*.

2: HISTORICAL ACCOUNT

Te Tiriti o Waitangi/The Treaty of Waitangi

- 2.7 In the late 1830s, the British Crown was faced with impending uncontrolled Pakeha settlement and a growing French presence in New Zealand and decided to seek agreement from Māori to British authority being established in New Zealand. The British Crown sought to regulate its subjects, provide protection to Māori and secure commercial interests. The resulting Tiriti o Waitangi/Treaty of Waitangi gave the Crown a monopoly on purchasing land from Māori. Those who signed Te Tiriti/the Treaty did so on the basis that their rights, property and privileges would be protected.
- 2.8 There is no record of Ngāti Pāhauwera having entered into any written contracts for the sale or lease of their lands with Europeans before 1840. Ngāti Pāhauwera *rangatira* did not sign Te Tiriti o Waitangi/the Treaty of Waitangi or agree to cede sovereignty to the Crown but over the following decades willingly engaged with the Crown and settlers.

Ngāti Pāhauwera in the 1840s

- 2.9 Notwithstanding the signing of Te Tiriti/the Treaty, little changed for Ngāti Pāhauwera. Ngāti Pāhauwera continued to hold their land and resources under a customary form of tenure where collective ownership was paramount. The seasonal use that Ngāti Pāhauwera made of their resources is recorded in the *pēpeha*:

“Ka pā a Tangitu, ka pūare a Maungaharuru,

Ka pā a Maungaharuru, ka pūare a Tangitu”

which records that *“When the fishing grounds of Tangitu are closed then the bird snaring grounds of Maungaharuru are open. When the bird snaring grounds of Maungaharuru are closed then the fishing grounds of Tangitu are open.”* As this and other *pēpeha* shows, Ngāti Pāhauwera relied on resources through their *rohe*, from the mountains to the sea and needed to use those resources to survive.

- 2.10 Ngāti Pāhauwera had little contact with the Crown in the 1840s but began to have contact with European settlers including a few missionaries. They also began to expand their traditional trade to take advantage of opportunities presented by new arrivals, including traders and whalers based at the whaling station at the mouth of the Mohaka River.

Mohaka Transaction 1851

- 2.11 In the late 1840s and early 1850s some Ngāti Pāhauwera were interested in engaging with the developing cash economy and deriving other benefits from European settlement. By 1851 they were participating in commercial activities such as trading their produce for sale at Ahuriri. Their participation in the new economy was restricted, however, because the Crown did not allow Māori to sell or lease lands to private parties. Since the Crown did not lease land from Māori, Ngāti Pāhauwera could not derive an income from rent.
- 2.12 In return for the Crown monopoly right of land purchase, the British Secretary of State for War and the Colonies, Lord Normanby, had directed in 1839 that the Crown should only acquire land for European settlement that Māori could alienate *“without distress or inconvenience to themselves”*. He also directed that Māori must not be permitted to sell

2: HISTORICAL ACCOUNT

land if retaining it *“would be essential, or highly conducive, to their own comfort, safety or subsistence”*.

2.13 In 1851 growing settler interest in Māori lands in the northern Wairarapa and Hawke’s Bay led the Crown to send its Chief Land Purchase Commissioner, Donald McLean, to those areas to purchase land. Governor Grey hoped to forestall the expansion of informal leasing by settlers, which was already under way in the Wairarapa, into the Hawke’s Bay district, while also undermining the existing leases in the Wairarapa.

2.14 McLean started his land negotiations at Waipukurau and Ahuriri. Some Ngāti Pāhauwera, including a chief, Paora Rerepu, were present and heard McLean make an assurance that selling land to the Crown:

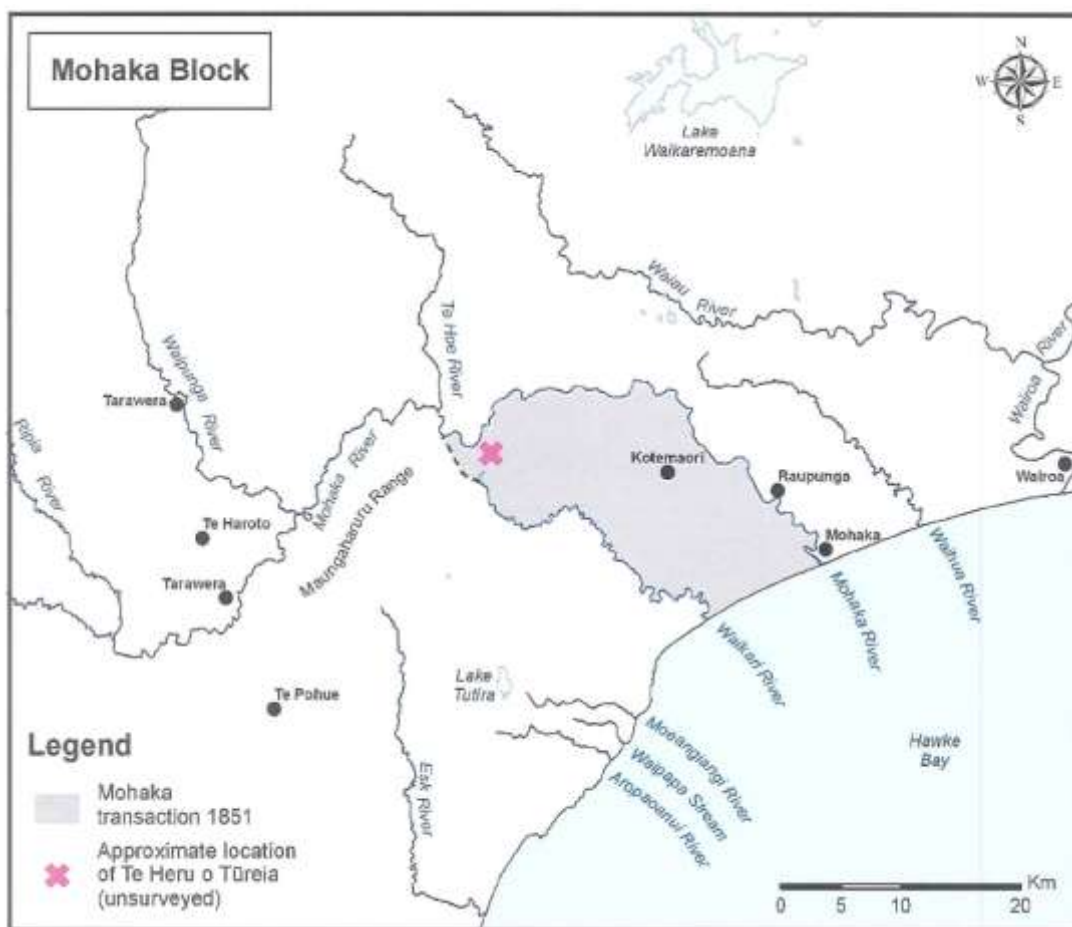
“would be the means of gradually introducing a numerous English population who would diffuse wealth and prosperity among them, and would be restrained by English laws from committing any aggressions on themselves or their permanently reserved properties or estates. “

2.15 In the course of the Ahuriri *hui* Paora Rerepu expressed a willingness to enter negotiations with the Crown over land and McLean went to Mohaka to meet with Māori to begin discussions. McLean did not record how well represented the Mohaka owners were at this meeting. The subsequent purchase negotiations took nearly a year but there is little record of any of the detail of the negotiations.

2.16 The Crown sought to purchase as much land as possible because it considered the Mohaka lands had great potential for pastoral use. At this time Ngāti Pāhauwera had not been exposed to the European pastoral economy. In April 1851, however, Paora Rerepu indicated to McLean that Ngāti Pāhauwera had decided to transfer a smaller area of land than the Crown wanted.

2.17 The resulting Mohaka block was still substantial. Thought to be 87,500 acres it encompassed a significant part of the land held by Ngāti Pāhauwera and included some of the more productive lands for pastoral development in their *rohe*. The block included all the land between the Mohaka and Waikari Rivers and part of the Maungaharuru Range.

2: HISTORICAL ACCOUNT



Purchase Price

- 2.18 The Crown’s policy at this time was to pay low prices for Māori land and on-sell it for high prices, with the profits subsidising immigration and financing infrastructure in the colony. The Crown generally promoted the idea that the principal benefit to Māori from land transactions would arise from the European settlement and the subsequent economic development.
- 2.19 Records indicate an offer from McLean of £800 for the Mohaka block was relayed to Ngāti Pāhauwera by June 1851 but it is unclear who the offer was relayed to or whether any agreement was reached. McLean met with Ngāti Pāhauwera over two days in December 1851 to conclude purchase negotiations. McLean arrived with authority to expend £800 in total (to be paid over four years) and £200 in cash. He called the chiefs together to discuss how the first payment of £200 would be divided between them and recorded that agreement was reached that £100 would be paid to the Waikari people and £100 to the Mohaka people. The purchase deed records the names of 297 Māori and the money distributed. McLean noted that those present then dispersed “*some dissatisfied some quite happy*”. Although the deed was written in Māori it was in a form that would not have been familiar to Ngāti Pāhauwera. There were complaints and petitions from Ngāti Pāhauwera about this transaction in the nineteenth and twentieth centuries.
- 2.20 There was some discontent that the Crown was not paying the whole purchase price at once. The purchase deed provided for the Crown to pay yearly instalments of £200 to

2: HISTORICAL ACCOUNT

complete the purchase in November 1854. But the Crown did not adhere to these terms. The final deed of receipt records that the Crown paid two instalments of £300 and did not complete the purchase until April 1855.

- 2.21 Dissatisfaction among Ngāti Pāhauwera about the adequacy of the purchase price was evident at the time and was ongoing. The day after the Mohaka deed was signed Waikari chiefs offered the Crown more land, reportedly because they were “*vexed at not getting more money for the land at Mohaka*”. When the Crown paid its final instalment on the Mohaka lands in 1855 McLean recorded being challenged by a chief over the “*large country*” being “*swallowed up by such a small compensation*”. McLean noted that the “*chief seemed to feel as if his greatness was diminished to enrich the pakeha*”.
- 2.22 By the time the Crown paid its final instalment to Ngāti Pāhauwera it had already on-sold a couple of small areas within the Mohaka block to settlers for 10 shillings (or 120 pence) per acre. The £800 Ngāti Pāhauwera received for the entire block was approximately 2.25 pence per acre.
- 2.23 The use of the Mohaka and Waikari Rivers for much of the landwards boundary of the Mohaka block was proposed by McLean in order to economise on survey expenses. As far as is known, the rivers did not follow traditional *hapū* boundaries. The purchase transaction created a physical division between Ngāti Pāhauwera communities.
- 2.24 Questions were later raised concerning the boundaries of the Mohaka Block. The exact position of the inland boundary line connecting the Mohaka and Waikari Rivers has been and remains disputed. The exact location of the boundary line in relation to the banks and bed of the Mohaka and Waikari Rivers was not specified in the 1851 deed of purchase which recorded the transaction, or shown on the map attached to the deed. It is not clear that Ngāti Pāhauwera and the Crown had the same understanding of the location of the boundary at the time.

Te Heru o Tūreia (Single 100 Acre Reserve)

- 2.25 Despite the 87,500 acre Mohaka block including *pā*, *kāinga*, cultivation sites and important food gathering areas the Crown reserved only 100 acres for the future use of Ngāti Pāhauwera. Several possible reserves were discussed in the course of the negotiations but were not marked on the map attached to the deed of purchase. The English text of the deed refers to a single 100-acre reserve (Te Heru o Tūreia) which was “*the only place to be reserved for us*”, but the Māori text refers to “*places made sacred for us*”.
- 2.26 The area in which the reserve was located, Te Heru o Tūreia, was of paramount importance as a *kāinga*, *mahinga kai* and the burial place of high-ranking Ngāti Pāhauwera ancestors, including Te Kahu o Te Rangī. Despite this the reserve was never surveyed or fenced and no formal access was provided across the surrounding Crown lands. The Crown’s failure to fence the reserve was particularly important given that the Mohaka deed allowed “*the cattle of the Europeans to roam freely*” on this area if it was not fenced.

2: HISTORICAL ACCOUNT

Impact of Loss of Mohaka Lands on Ngāti Pāhauwera

- 2.27 For some time after the 1851 Mohaka transaction Ngāti Pāhauwera continued to use lands on the northern bank of the Waikari River. Over time, however, the *whānau* and *hapū* who traditionally occupied parts of the Mohaka block had to relocate to lands held by other members of the *iwi*. Many relocated to the northern bank of the Mohaka River and particularly concentrated at the mouth of the river at Waipapa, in a settlement which in recent times has become known as Waipapa ā iwi. This land later became the Waipapa block.
- 2.28 The loss of the Mohaka lands, in the middle of their *rohe*, created a physical gap between the Ngāti Pāhauwera *hapū* based to the north and south. The movement of people also created internal pressures within Ngāti Pāhauwera and later led to disputes about the customary rights to lands which people moved onto north and south of the Mohaka block.

Loss of Te Heru o Tūreia Reserve

- 2.29 In 1859 a settler leased the Crown land surrounding Te Heru o Tūreia reserve and there was a dispute about the settler's horse grazing on the reserve where some Ngāti Pāhauwera still lived. The Crown decided to acquire the reserve "to put an end to the disputes" regardless of the fact that this land had been reserved because it was held sacred to Ngāti Pāhauwera. The Mohaka transaction, from which Te Heru o Tūreia reserve had been set aside, had been signed by 297 Māori. This time the Crown negotiated a purchase deed with 11 Māori, including three leading chiefs, for £100. Another claimant was later paid an additional £10.
- 2.30 Those people living on the reserve at the time continued to plant their crops and stated that they intended to stay on the land. The settler subsequently purchased 40 acres from the Crown and the disputes continued. In 1862 the settler recorded a meeting with local Māori where "an old fellow came forward and delivered a speech with great eloquence to the effect that the Mohaka Block had been sold; they had not seen the colour of the money; there they had lived and there they would die."
- 2.31 The loss of the 100 acre Te Heru o Tūreia reserve in 1859 left Ngāti Pāhauwera with no land between the Mohaka and Waikari Rivers. It concluded Ngāti Pāhauwera's alienation from many of their cultivations and areas they relied on for the collection of food and other resources. It also alienated them from traditional areas of residence, *urupā* and other places of spiritual and cultural significance.

Subsequent Petitions About 1851 Mohaka Transaction

- 2.32 The Mohaka transaction drew numerous petitions and other correspondence from Ngāti Pāhauwera in the late nineteenth and over the twentieth century. The written petitions are still in existence. For example, an 1891 petition claimed that McLean had promised to return certain portions of land in the Mohaka block to Māori, but the Crown responded that all the reserves required by the deed had been made. An 1898 petition claimed some rightholders had been excluded from the 1851 transaction because they had been absent at that time.

2: HISTORICAL ACCOUNT

- 2.33 An 1899 petition asked the Crown to examine the Mohaka deed to determine whether all payments for the block had been made. In 1925 Ngāti Pāhauwera petitioned the Crown requesting that a former injustice be redressed in relation to the adequacy of the purchase price, the lack of reserves and 17 minors being signatories to the deed.
- 2.34 Ngāti Pāhauwera further petitioned the Crown in 1946 stating that numerous people who signed the Mohaka purchase deed did not have rights to the lands. That petition appended an 1891 petition which claimed that when the purchase deed was read to them the price was translated as £8,000. Ngāti Pāhauwera also questioned the way that 'marks' (*tohu*) are recorded on the deed in the same hand.
- 2.35 The 1946 petition stated that the Mohaka transaction was not in accordance with 'equity and good conscience'. The Crown appointed a commission to inquire into whether an injustice had been done in the Mohaka transaction. Although the commission had broad terms of reference it was not directed to consider whether the Crown conformed with its obligations under Te Tiriti o Waitangi/the Treaty of Waitangi and made no inquiry in this regard. The commission did not find in the petitioners' favour. The Commissioners heard from some Ngāti Pāhauwera witnesses but placed heavy reliance on the written documents.

Further Crown Purchasing 1850s

- 2.36 Ngāti Pāhauwera had hoped that prosperity would come with Pakeha settlement following the Mohaka transaction but settlers arrived slowly. Notwithstanding this, in the mid 1850s the Crown began to try to purchase more land, particularly to the south of the Waikari River where Ngāti Pāhauwera had interests. In 1859 the Crown purchased the coastal Moeangiangi block (of at least 10,000 acres) for £300, or seven pence per acre, from 15 people including Ngāti Pāhauwera chief Paora Rerepu. The Crown established one reserve but subsequently acquired most of that land in 1867 from the title holders, who were three of the original 15 vendors of the large block. This transaction was later the subject of a complaint to the Hawke's Bay Native Land Alienation Commission from resident Māori that they knew nothing of the sale.

Lead up to War and Purchase of Waihua Block

- 2.37 In the late 1850s disputes between the Crown and Māori about land and other issues gave rise among some Māori to the King movement or *Kīngitanga* as well as the *Pai Mārire* religious movement (a branch of which became known as *Hauhau*). By 1863 fighting had broken out between the Crown and Māori in the Taranaki and Waikato regions and this soon had an impact on the northern Hawke's Bay.
- 2.38 In 1864 the Crown tried to build up its landholdings in the northern Hawke's Bay and reinforce alliances with local *iwi*, including Ngāti Pāhauwera, against "*Kingite*" Māori. McLean negotiated the purchase of the 21,000 acre Waihua Block in the northern part of the Ngāti Pāhauwera *rohe*. Those selling the land sought to enhance their own security and gain the economic opportunities which came with European settlement. Ngāti Pāhauwera were motivated to sell to confirm their loyalty to the Crown as allies against the spread of the *Hauhau* movement. The transaction was indicative of the nature of the alliance formed between the Crown and Ngāti Pāhauwera at this time.
- 2.39 The Crown paid £1,250 (about one shilling per acre) for the Waihua Block. No reserves were made for Ngāti Pāhauwera as a group. A small grant, which was not described or

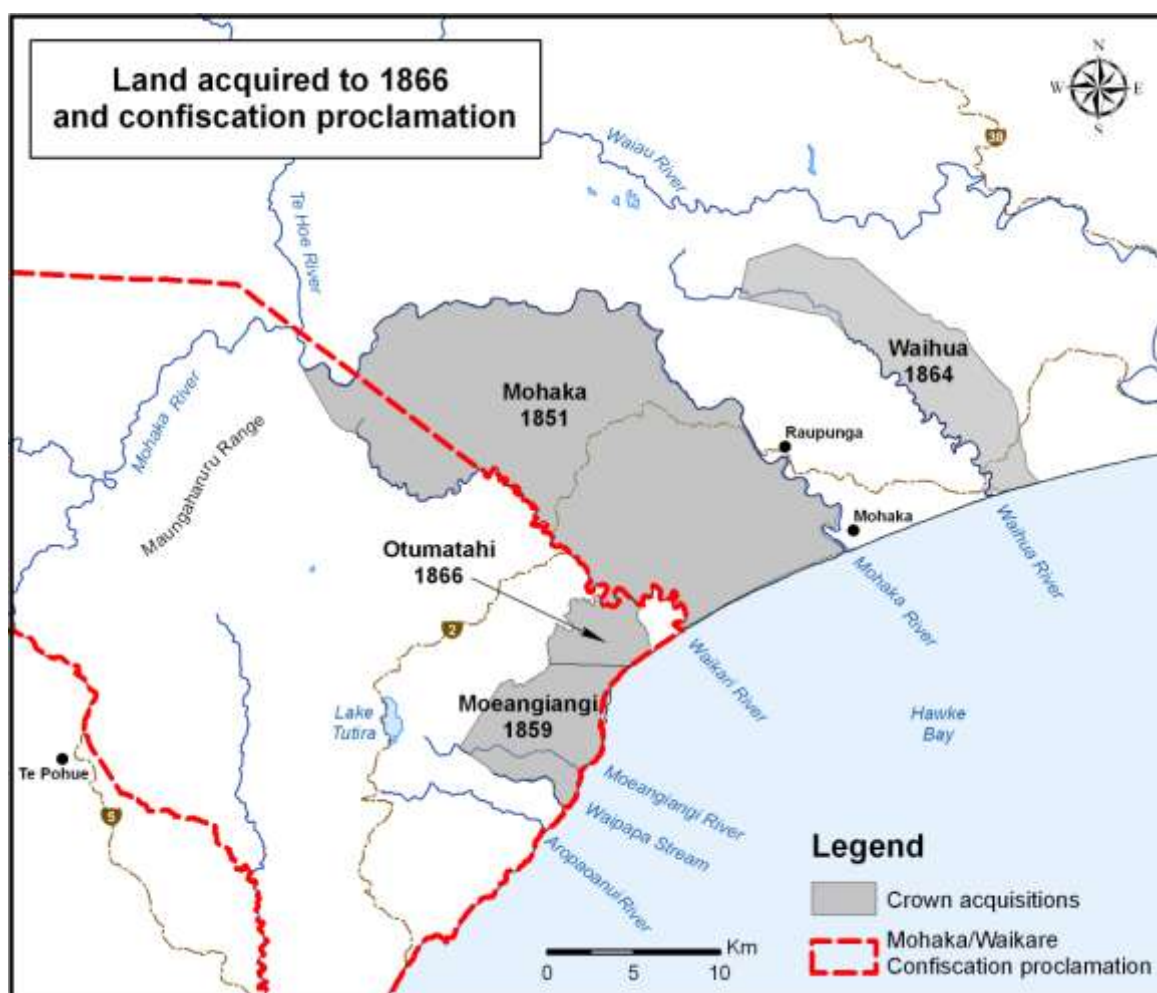
2: HISTORICAL ACCOUNT

mapped on the purchase deed, was made for Toha Rahurahu but was disposed of in 1873.

War

2.40 War broke out on the East Coast in 1865 and from that time Ngāti Pāhauwera gave both political support and substantial military assistance to the Crown against followers of *Pai Mārire*.

2.41 In 1866, the Crown purchased the 4,470 acre Otūmatahi (Otūmatai) Block in two deeds. The Crown paid £400 to the fourteen signatories, including Paora Rerepu, and did not provide Māori with any reserves. By the end of 1866 the Crown had acquired around 100,000 acres of land south of the Mohaka River. No reserves remained in Ngāti Pāhauwera possession in that area.



Confiscation

2.42 In October 1866 there was a limited military conflict between Crown forces and *Pai Mārire* in the Napier area. The Crown responded by confiscating all Māori land between the Waikare and Esk Rivers in January 1867. This included lands in which Ngāti Pāhauwera held interests. The confiscation extinguished all customary Māori title to the area, including that of Ngāti Pāhauwera, even though they were not considered by the

2: HISTORICAL ACCOUNT

Crown to have been ‘rebels’. The confiscated area became Crown land subject to claims for compensation (including the return of land) by the former owners. Nothing happened on the ground in 1867. An agreement between the Crown and some Māori about the return of land was signed in May 1868, but never implemented.

Introduction of Native Land Court

- 2.43 In 1868 Ngāti Pāhauwera sought to secure title to much of their land to the north of the confiscation area. Growing opposition from Māori to selling their lands to the Crown under the pre-emption system had led the Crown to introduce a new system of dealing with Māori land in the 1860s principally in order to speed up the alienation of Māori land to open up lands for settlement. It established the Native Land Court to determine the owners of Māori land “*according to native custom*” and convert customary title into title derived from the Crown. Customary tenure accommodated complex and fluid land uses and relationships with the land but the new land laws required those rights to be defined and fixed, and did not necessarily accommodate all those with an interest in the land. The Crown expected this land title reform would lead Māori to abandon their traditional tribal and communal ways of holding land.
- 2.44 The Crown’s pre-emptive right of purchase was relaxed allowing Māori to sell and lease their lands directly to Pakeha settlers. Māori had no option but to use the Native Land Court if they wished to secure a title to their lands that was recognised by the Crown, and such a title was necessary in order to sell, legally lease, or use land as security to raise capital for development.

Ngāti Pāhauwera and the Native Land Court 1868

- 2.45 In 1868 Paora Rerepu of Ngāti Pāhauwera took the Waihua, Waipapa, Mohaka, Whareraurākau and Pihanui 2 blocks to the Court. Toha Rahurahu applied for a title investigation of the Owio block. At this time around 120,000 acres between the valleys of the Mohaka and Waiau Rivers remained in Ngāti Pāhauwera possession. There is no reliable population information for Ngāti Pāhauwera at this time and it is not known what acreage per person remained.
- 2.46 The Ngāti Pāhauwera claims to those blocks were uncontested in the Court and in September 1868 they were awarded titles under the Native Lands Act 1867. The process of gaining title to the lands was expensive. Ngāti Pāhauwera had to pay Court fees and attend three days of Court hearings in Wairoa. The survey costs for four of the blocks awarded to Ngāti Pāhauwera were £492.
- 2.47 Land rights under customary tenure were generally communal but the new land laws gave rights to individuals with no provision for title to be held by the tribe as a whole. The 1867 Act required that the “*names of all persons interested*” in the land be registered by the Court but the certificate of title was issued in favour of no more than ten named individuals. The land could not be sold until subdivided, except to the Crown, but could be leased for up to 21 years. The Court awarded the Waihua 1 and 2, Waipapa, Mohaka and Whareraurākau blocks to ten owners each. It registered 121 individuals as having interests in the Mohaka block, but for the other three blocks registered the names of *hapū* rather than individuals. This did not fully comply with the Native Lands Act 1867 and caused Ngāti Pāhauwera significant legal difficulties in the late nineteenth century.

2: HISTORICAL ACCOUNT

Attack on Mohaka

- 2.48 In 1868 Te Kooti and others who had been detained without trial by the Crown on the Chatham Islands, after the fighting on the East Coast in 1865, escaped. They landed on the East Coast and Ngāti Pāhauwera were among the first to take up arms alongside the Crown against this perceived new threat.
- 2.49 By the end of 1868 the Crown had engaged a large proportion of Ngāti Pāhauwera to assist it in searching for Te Kooti in the Wairoa/Waikaremoana area. McLean considered that Mohaka was as likely to be the first point of attack as Wairoa because there was a large store of Crown ammunition there. In December 1868 he warned that Mohaka was a weak position and advised against the Crown taking further Ngāti Pāhauwera men on its expeditions in Wairoa and Waikaremoana. Despite this, few men were left at Mohaka to guard the Crown ammunition reserves. In early 1869, the threat of attack was deemed to have lessened and an early warning picket line along the Mohaka River was abandoned.
- 2.50 In April 1869 Te Kooti's forces evaded pursuit and attacked Ngāti Pāhauwera *pā* and *kainga* at Te Arakānihi, Ahirāranga, Mangatūranga, Te Huki and Hiruhārama on the lower part of the Mohaka River valley and European settlers on the southern bank of the river. At least 56 Ngāti Pāhauwera men, women and children were killed, as were seven Europeans. Others were wounded or taken prisoner.
- 2.51 All the crops in the settlement were reportedly destroyed, and large quantities of supplies, livestock and other property were stolen. In the aftermath of the attack a local Crown agent reported Ngāti Pāhauwera had "*literally lost everything*". The Defence Minister agreed to provide some food but warned that the agent should not let Ngāti Pāhauwera expect compensation for all their losses. Six months later another official reported those at Mohaka had "*nothing to eat, and are obliged to borrow seeds from other tribes for this year's planting. I told them I should ask the Government to send them a few potatoes for seed*".
- 2.52 The loss of their men, women and children has been felt for generations by Ngāti Pāhauwera. Some Ngāti Pāhauwera left the Mohaka area following the fighting. Those who stayed suffered from the loss of their *whānau*, of the skills they held, the loss of cultural and traditional knowledge, and the loss of those who could have been future *iwi* leaders and elders, who could have provided evidence for their families to secure interests in land in future Native Land Court hearings and in negotiations over the confiscated Mohaka-Waikari lands.
- 2.53 The economic development of the northern Hawke's Bay region was severely disrupted as many settlers abandoned the area and trade stagnated. Ngāti Pāhauwera received very little assistance from the Crown and like other civilians received no compensation for their losses. In 1870 Ngāti Pāhauwera were still said to be "*disorganised and scattered*". Many of their small settlements were abandoned as Ngāti Pāhauwera grouped together at Waipapa at the mouth of the Mohaka.
- 2.54 In 1870, while Ngāti Pāhauwera were still weakened by the impact of the attack, the Crown decided to try to conclude negotiations with Māori about the confiscated Mohaka-Waikari lands. It wanted to retain part of the land and negotiate to return the remainder to individual Māori. The Crown did not conduct a public investigation as to who had customary rights in the lands which later led to dispute over who had interests in the

2: HISTORICAL ACCOUNT

returned lands. The records of the negotiations are not complete but there is no indication that the Crown identified or specifically protected Ngāti Pāhauwera interests. Ngāti Pāhauwera generally were not in a position to assert their rights as a result of the impact of the Mohaka massacre. Indeed, six months after the attack the Crown's agent reported that they were still working hard to repair the devastation including planting new crops. Most of the land returned to Māori was subsequently acquired by the Crown and then sold to settlers.

- 2.55 By this time the position of Ngāti Pāhauwera had deteriorated significantly and any initial benefits of settlement had largely been lost. The loss of leadership, resources, settlers and infrastructure could not be easily replaced. The economic opportunities available were limited as the Crown had already acquired most of their valuable coastal and valley lands. Much of the land remaining was rough interior land with limited value for agricultural or pastoral purposes. In 1871 Bishop Samuel Williams informed the Crown that the blocks at the mouth of the Mohaka River were the only lands of real value remaining to Māori in the area.

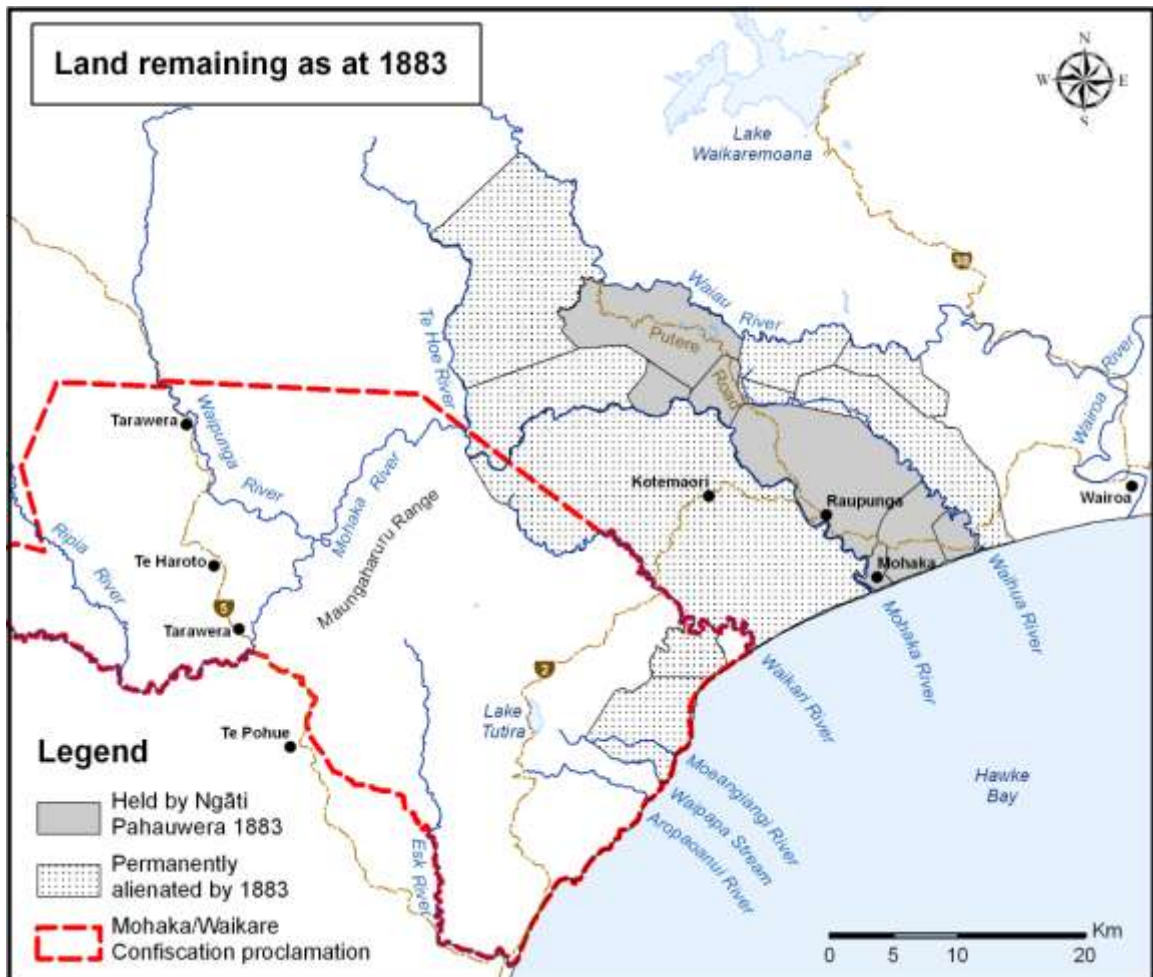
Sale and Leasing of Land 1869-1883

- 2.56 The fighting, confiscation and movement of people to the coastal lands at Waipapa put further pressure on the limited resources of Ngāti Pāhauwera and left them in a vulnerable position. The survey debts from the 1868 Court hearings were also a financial burden. From 1869 Ngāti Pāhauwera generated some income by selling and leasing their remaining lands.
- 2.57 The awarding of land blocks to ten, or fewer, owners simplified the acquisition of land for prospective purchasers. The five owners of the Owhio block sold to a private party in 1869. By January 1870 seven of the owners of Pihanui 2 had signed a deed of sale with a private purchaser. The remaining two owners sold their shares in 1882.
- 2.58 Two of the other blocks Ngāti Pāhauwera gained title to in 1868 (the Waihua 1 and 2 blocks) were subsequently leased to private parties in 1870 for terms of 21 years, generating the movement of more Ngāti Pāhauwera to the settlement at Waipapa. Despite this, the Ngāti Pāhauwera situation did not improve quickly; in 1871 their situation was reported as being "*little removed from that of paupers*". Leasing led to Ngāti Pāhauwera losing access to some customary resources and the further dispersal of Ngāti Pāhauwera from their lands.
- 2.59 In 1872 further hardship was caused when Ngāti Pāhauwera had little option but to lease the Mohaka block to pay £230 of outstanding survey charges. This block had been informally leased for £70 per annum from 1866 but a new lease was not negotiated after the Court awarded Ngāti Pāhauwera title in 1868, possibly because of the disruption caused by the attack on Mohaka.
- 2.60 The returns from these leases were low, giving rise to complaints from some owners that "*the money paid as rent for these lands is ... much too little, it is equivalent to giving land [for] nothing ...*". Others complained that they "*never received sixpence of any of the rent paid to the ten grantees*". The ten owners on the certificate of title did not have any legal responsibility to those individuals or *hapū* registered as having interests in the land. The lack of legal protection for wider community of Ngāti Pāhauwera with interests in the land caused disruption to the social order of the *iwi*.

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

- 2.61 Ngāti Pāhauwera sought title from the Court for three northern blocks in the late 1870s. Most of the land in the Rotokakarangu and Pūtere blocks was sold within a short time, although the Pūtere sale was found to be fraudulent and was cancelled. When the 36,140 acre Maungataniwha block was sold in 1883 over a third of the £2400 payment for the block was paid to the owners' creditors (£841 which included £361 for survey charges).
- 2.62 By 1883 approximately half the land Ngāti Pāhauwera held at 1868 was sold to private parties and the Crown. The prices paid were low (between one and two shillings per acre) as the lands had limited value for agricultural or cultivation purposes. Pre-existing debts and charges for the survey of the blocks (which were necessary to acquire title) further reduced the amount actually received by the vendors.
- 2.63 In 1883 Ngāti Pāhauwera were left with less than a quarter of the land they had held at 1840. All the remaining land, except the 1,290 acre papakainga at Waipapa and sections of the Rotokakarangu block, was leased out to Pakeha runholders.

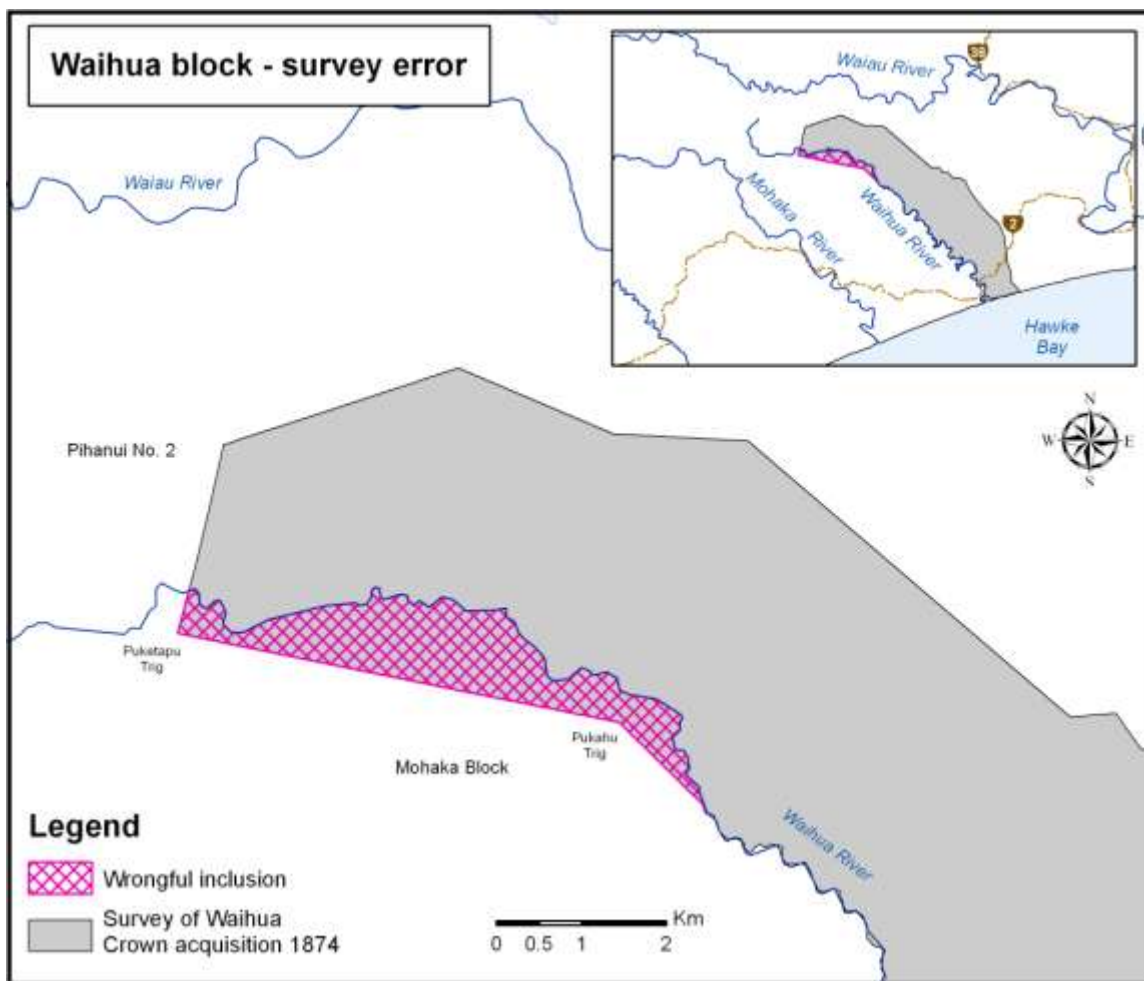


2: HISTORICAL ACCOUNT

Waihua Block - Failure to Remedy Survey Error

- 2.64 In 1888 Ngāti Pāhauwera became aware that the surveyed boundary of the Waihua block, which the Crown had purchased in 1864, was not the same as the boundary agreed in the purchase deed. The block had been surveyed in 1865 and at that time the surveyor informed the Crown the terrain had proved too rough to traverse the final three miles of the Waihua River boundary. Rather than fully survey the river boundary he had fixed it as straight lines on the nearby hills. Even though the Crown knew about this it did not take any steps to ensure the survey was correctly completed or to renegotiate the boundary of the block with Ngāti Pāhauwera.
- 2.65 When Ngāti Pāhauwera complained to the Crown about the incorrect boundary in 1888 the land remained Crown land and was not occupied. The Crown investigated and found the survey had not followed the course of the Waihua River as the deed stated and the deed plan attached to it showed. As a result an additional 1,152 acres (located to the south of the Waihua River) had been incorrectly included in the Waihua block. One of the Crown agents involved in the purchase confirmed that the Crown's purchase had not extended to the south of the Waihua River. Despite this, the Crown decided to conduct further inquiries.
- 2.66 Those inquiries never eventuated, however, and Ngāti Pāhauwera had no other avenue to pursue in order to regain their land. The Crown did not return the 1,152 acres or make any payments to Ngāti Pāhauwera for the land. Instead, the land was sold into private ownership. Some of the land was later re-acquired by the Crown. In 2003 a Ngāti Pāhauwera representative applied to the Māori Land Court to have the Court determine that the status of the land was Māori freehold land. The Court found that the claim must fail for legal reasons, but that the justice and merits of the case appeared perfectly clear and that it was *“a mystery why that land is not immediately returned to the descendants of the original owners.”*

2: HISTORICAL ACCOUNT



Further Native Land Court Hearings

- 2.67 The legal irregularity of the Court registering *hapū* rather than individual interests in the Waihua 1 and 2, Waipapa and Whareraurākau blocks in 1868 meant that those lands could not be sold immediately, but caused significant problems for Ngāti Pāhauwera. In the late nineteenth century numerous and expensive rehearings and appeals had to be held to clarify ownership of these lands. Individuals rather than *hapū* were registered on the title for the Mohaka Block but its owners also experienced serious difficulties with the title based on the 1868 award. This was eventually nullified in 1901 and after a lengthy investigation a new title was issued.
- 2.68 For the majority of Ngāti Pāhauwera, who had effectively been excluded from land titles in 1868 through the application of the native land laws, litigation was the only way of getting effective recognition of their land interests. However litigation through the Māori Land Court was onerous for Ngāti Pāhauwera. Ngāti Pāhauwera found the Court processes to be confusing and stressful. The adversarial nature of the hearings could be destructive among different *whānau*, where one *whānau* might be preferred by the Court over another. There was also great cost to Ngāti Pāhauwera claimants in time and Court fees and they received no compensation for the problems arising from the error made by the Court in 1868. Ngāti Pāhauwera had to travel to hearings for the blocks at Gisborne, Mahia, Wairoa, Napier and Hastings, despite Ngāti Pāhauwera complaints of the hardship caused by hearings being held elsewhere. For example an 1898 petition by Pitiera Wainohu and 30 others stressed the burden of expense caused by hearings

2: HISTORICAL ACCOUNT

being held in Napier, Hastings and Wairoa and the inability of the old people to travel these distances, as well as the inability of the Court to inspect the lands subject of the hearings and requested that the hearings for their lands be held at Mohaka. The hearing was held in Wairoa in 1899. Teka Pakitea also spoke to the Court about the impact at the Waihua hearing in Wairoa in 1890, stating “*I wish the Court to know that 50 of the N’Pāhauwera have been here since the Court opened and have to live at their own expense.*”

- 2.69 By the late nineteenth century Ngāti Pāhauwera retained approximately 56,376 acres of land, all north of the Mohaka River. The Court finally re-determined ownership of the Waipapa, Mohaka, Waihua and Whareraurākau blocks between 1899 and 1910. In some cases rent payments had been held back on the blocks for significant periods because of the lack of clarity about owners. Once the Court had determined who had ownership rights, blocks were surveyed and partitioned into smaller blocks and individual interests were identified and apportioned. This process involved further costs for the owners. The Mohaka block, for example, was partitioned into a total of 55 subdivisions, with the resulting blocks being surveyed in 1910 at a cost of £1300.
- 2.70 The experiences of members of the Kupa *whānau* illustrate the impact and costs of the native land laws on the people of Ngāti Pāhauwera. After participating in the Mohaka and Waihua Crown purchasing transactions, the Kupa *whānau* interests were confined to lands on the north bank of the Mohaka River. When those lands came before the Native Land Court in 1868, the Kupa *whānau* were effectively excluded from all of the titles because of the Court’s erroneous use of *hapū* names on the Certificates of Title. This involved the Kupa *whānau* in protracted and costly litigation over the following decades. Several members were eventually allocated undefined interests (or shares) in the Mohaka, Waipapa, Waihua, Whareraurākau and Pūtere blocks, but did not have clarity about their legal interests in those blocks until the Court’s final determinations were made in 1910. The undefined interests in lands awarded to the Kupa *whānau* were small and spread across a number of blocks so could not be effectively utilised.

Reoccupation of Land by Ngāti Pāhauwera

- 2.71 As the leases on their land blocks began to expire in the late nineteenth century, Ngāti Pāhauwera re-occupied and attempted to farm most of the land themselves, choosing to do so as individuals and families. The amount of good agricultural land was insufficient for their purposes and this problem was compounded by the extensive subdivision (with accompanying surveying costs) required for the transition from collective to more individual property rights.
- 2.72 The costs of stocking, fencing and breaking in farms were also a barrier for Ngāti Pāhauwera land owners. Although the Crown provided some financial assistance to farmers for agricultural development during this period by way of loans under the 1894 Advances to Settlers legislation, Ngāti Pāhauwera farmers received little if any of these funds because their undivided interests in multiply-owned lands were ineligible for such loans. Nor was agricultural instruction available for those in need of it.

2: HISTORICAL ACCOUNT

Stout Ngata Commission

- 2.73 In 1907 the Royal Commission on Native Lands and Native-Land Tenure (known as the Stout-Ngata Commission) investigated the Mohaka and Whareraurākau blocks. The commissioners noted that “[t]he costly and protracted litigation in relation to the successive partitions of the Mohaka, Tutaekuri and Nuhaka Blocks are evidence of the strong desire of the owners to have their individual interests ascertained and allocated, so as to make their occupation effective”. It added that the “uneven quality” of the land in the Mohaka and Whareraurākau blocks made the allocation of fair shares of land to owners difficult and expensive.
- 2.74 The Stout-Ngata Commission considered Ngāti Pāhauwera needed all their remaining land for their occupation and support. Stout and Ngata found the majority of the owners had “only small interests in other lands”, and most of the land was “occupied in a manner by some of the Native owners, who graze sheep and cattle thereon, and have made small improvements”. They did not think that any of the 27,565 acres in the two land blocks could or should be made available for European settlement. Rather, they considered it should be retained as reserves or family farms, with a few thousand acres “leased to Maoris, the majority of whom are owners”.
- 2.75 Stout and Ngata recommended the Mohaka block be brought under the provisions of Part II of the Native Land Settlement Act 1907, which meant that this land could only be leased to Māori. This was done, but there was no legal protection to prevent the Crown from later purchasing the land.
- 2.76 Over the following decade, the economic position of the Ngāti Pāhauwera community on the lower Mohaka further deteriorated. Stock numbers fell sharply after the turn of the century and rabbits, possums, blackberry and other noxious plants, which were introduced as a result of colonisation, became a significant problem. The loss of labour while the men were serving in the First World War exacerbated these problems. In 1919 a Crown Lands Ranger reported that the Mohaka Block had deteriorated “to such an extent that it is practically unimproved country”. Four years later the East Coast Native Trust Lands Commissioner observed this land was “in such a bad state that worse conditions could not be imagined” and that “these farmers have got into a hopeless condition”. The other Ngāti Pāhauwera blocks were in a similar position.
- 2.77 Usually unable to mortgage their lands due to title problems and lacking financial assistance from the Crown most Ngāti Pāhauwera farmers had to rely on credit from stock agents and local merchants to develop their lands. They were struck hard by the economic slump which followed the First World War, when “practically every lessee’s stock was mustered and sold up” and many farms were abandoned.

Land Loss 1911-1930

- 2.78 The 1909 Native Lands Act made private purchasing of Māori lands easier by providing a streamlined standard sale mechanism managed by Māori Land Boards established by the Crown. Between 1911 and 1930 7,507 acres of Ngāti Pāhauwera land was alienated to private purchasers with the consent of the Tairāwhiti Māori Land Board.
- 2.79 Despite the clear warning from the Stout-Ngata Commission that Ngāti Pāhauwera needed to retain their land for their own maintenance and support the Crown resumed purchasing land from Ngāti Pāhauwera in 1914. It acquired 18,631 acres in the Mohaka,

2: HISTORICAL ACCOUNT

Waihua, Pūtere, Whareraurākau, and Rotokakarangu blocks by 1920. It purchased another 5,381 acres over the following decade.

- 2.80 From 1909 land purchasers were required to pay Māori vendors no less than the Government valuation of the land. The Crown adhered to this regulation but the effectiveness of this system depended on the use of accurate and up-to-date valuations. In many cases the latest valuations were not used. In consequence, a portion of the Ngāti Pāhauwera land acquired by the Crown between 1919 and 1926 was purchased at less than its assessed value at the time of sale.
- 2.81 The Crown also reintroduced monopoly conditions by issuing proclamations prohibiting the private alienation of land it was negotiating to purchase for a specified period. This pre-emptive mechanism was applied to the Pūtere and Mohaka Blocks at different times. It barred landowners from raising revenue by leasing their land and, particularly where owners had rate arrears or other debts on their land, left them little option but to sell to the Crown. One owner in the Mohaka block had to accept a Crown offer of 20 shillings per acre when a private purchaser had indicated he would pay 30 shillings.

Consolidation and Development Scheme

- 2.82 The Crown sought to purchase all of the interests in particular partitions where possible, but in general purchased interests wherever and whenever available. The Crown's acquisition of Ngāti Pāhauwera interests in land caused significant problems for non-selling owners. Crown interests were intermingled with Māori ones, so that non-sellers could find themselves restricted when and if they sought to do anything with their own remaining interests. At the same time, the Crown was unable to effectively use the interests it had acquired. The purchase of undivided interests undermined collective authority and the economic potential of the community.
- 2.83 A visit by the local member of Parliament, Apirana Ngata, led to the introduction of a consolidation scheme for the Mohaka, Waipapa, Waihua and Pūtere blocks in the late 1920s. The scheme involved the conversion of all of the interests held by the Crown and the owners within each subdivision into nominal cash values, which were then translated into new subdivisions separating out Crown and Māori lands. This allowed the Crown to consolidate its own scattered undivided individual interests into blocks suitable for Pakeha settlement but also allowed Māori land interests to be consolidated into less fragmented blocks. The Crown continued to acquire land until 1929, while the consolidation scheme was underway, enlarging its eventual award. It targeted the northern part of the Mohaka block, intending to convert the individual interests it acquired into a single large unit for future settlement by Europeans. Not all of the reserves which were meant to be set aside for Ngāti Pāhauwera as part of the consolidation scheme were. While a few sites were reserved, others were not and were subsequently sold.
- 2.84 The Crown negotiated reductions in the rates owing on each subdivision in exchange for a one-off Crown payment. It also wrote off most of the survey liens owed by Ngāti Pāhauwera on the blocks, but credited the remainder and its rates payment, into the calculation of the interests the Crown had acquired in the Mohaka block. When translated into a new survey plan, the Crown emerged with some 13,813 acres in the Mohaka block. Ngāti Pāhauwera owners were left with less than half of that block and all but a few acres of the Waihua and Waipapa blocks. A number of Ngāti Pāhauwera

2: HISTORICAL ACCOUNT

owners were burdened with debt to the Crown of more than £2,000, to pay for Crown interests incorporated into their new land blocks under the consolidation scheme.

- 2.85 In addition to allowing the Crown to convert its interests into useable blocks of land, the consolidation scheme was meant to increase the economic viability of remaining Māori landholdings, but was not always effective. The experience of Henare Taka Kupa is illustrative of some of the experiences of Ngāti Pāhauwera as a result of consolidation. His remaining land holdings were amalgamated, but he did not become the outright or even the majority owner of any particular block. His interests were scattered across a number of blocks, some of which had debts to the Crown. The greatest share-holding he had in any one block was approximately 30%. As a result, he and his *whānau* spent many difficult years trying to get work in the Mohaka area. During this time they squatted in a tent on Crown owned land (part of the 1851 Mohaka block) before finally moving out of Mohaka.
- 2.86 By 1930 approximately 25,000 acres remained in Ngāti Pāhauwera ownership. The Crown decided to implement a land development scheme on the Mohaka and Waipapa land blocks in 1930, with the aim of providing Ngāti Pāhauwera with the capital and agricultural training required to develop and operate dairy units. The Crown provided substantial loans for land development along with supervision by the Native Department. In return, the land owners were required to surrender the right *“to exercise any rights of ownership in connection with the land affected so as to interfere with or obstruct the carrying out of any [development] works”*.
- 2.87 By 1936 the Mohaka scheme had been divided in two and expanded to include Ngāti Pāhauwera lands in adjoining blocks. The development schemes eventually produced about sixty farm units for Ngāti Pāhauwera owners, some of which were located on or included land sold back to them by the Crown.
- 2.88 By the time the development scheme started the amount of land still in Ngāti Pāhauwera ownership was insufficient to accommodate all those who wished to participate and only selected individuals were able to access any benefit. Although the lands were multiply owned, the owners were required to nominate one family to occupy and farm each farm unit. This meant many Ngāti Pāhauwera land owners were excluded from living on the lands. One owner wrote to the Prime Minister in 1936 that he had not been appointed as an occupier in any of the blocks in which he had shares and his family of six children had *“not a single acre to live on, in other words we are landless and homeless”*.
- 2.89 By 1936 the Crown had advanced approximately £52,000 in development capital. This funding formed a loan on each farm and had to be repaid with interest. In return for its investment the Crown exerted significant control in the administration of the lands. Each farmer had to assign control of their milk cheque to the Native Department, and Government officers made all significant purchase and management decisions on behalf of the owners.
- 2.90 The advent of the Board of Māori Affairs in 1935 and the introduction of a more bureaucratic model of administration by the Department of Māori Affairs also resulted in a distancing of owners from a meaningful say in the administration of their lands with occupation of a farm unit being determined by the Crown, or in some cases, the Māori Land Court. For example, in the 1940s Henare Taka Kupa, gained the support of the Board of Māori Affairs for his proposal for his son to farm the land in which he had his

2: HISTORICAL ACCOUNT

largest land interest, but the Māori Land Court appointed the children of the occupying owner to occupy the land.

- 2.91 The Board of Māori Affairs observed in 1950 that when the schemes were being planned “*insufficient regard was given to [the] capability of the land, in that the farm sections were made too small Much of the land was of a sub-marginal nature and events have proved that it never should have been considered for dairying*”. The early focus on the creation of subsistence level family based dairy farms did not allow for the exploration of other, possibly more appropriate, forms of land use to be explored.
- 2.92 Some of these Ngāti Pāhauwera farms proved to be viable over the longer term, while others did not, particularly those encumbered with heavy debts. Farmers were hit hard by the sharp decline in dairy farming profits during the Depression, and the recovery which came during the Second World War was largely offset by a reduction in the amounts of capital made available by the Crown. By 1950 only 30 dairy units remained in operation, with a few others converting to sheep. Many Ngāti Pāhauwera had to find other jobs to survive or walked off their farms as they were uneconomic.

War effort

- 2.93 Ngāti Pāhauwera continued to demonstrate its loyalty to the Crown. Many Ngāti Pāhauwera men served overseas in the First World War as part of the allied war effort. Ngāti Pāhauwera raised funds to help send their young men overseas, some of whom were decorated for their war service, and suffered the loss of significant numbers of their young men and potential leaders. As one of many notable examples, Henare Wepiha Te Wainohu gave distinguished service as padre in the pioneer Māori battalion. His death in 1920 deprived Ngāti Pāhauwera of an exemplary leader but his acts of bravery and encouragement to the Māori contingent to “*remember you have the mana, the honour and the good name of the Māori people in your keeping this night*” continue to be remembered today.
- 2.94 A high proportion of Ngāti Pāhauwera’s men and women gave service during the Second World War, of whom at least five sacrificed their lives in active service. Given the size of the community during both World Wars, the number of men on active service and the high loss of life had a significant impact on the communities they left behind.
- 2.95 After the Second World War a number of farms were allocated to returned servicemen under the Rehabilitation Board’s farming schemes. The Government’s policy was to allow any returned servicemen who met the eligibility criteria (capacity and some personal financial capital) to enter these ballots. However, Māori returned servicemen were generally required to be supervised by the Native Department, which affected their eligibility for the general ballot scheme. Māori rehabilitation committees tried to settle Māori returned servicemen on Māori land development or rehabilitation schemes. However, neither these farms nor those allocated under the general ballot scheme, were allocated on a tribal basis. Ngāti Pāhauwera understand that none of their people received land under these schemes and this remains a grievance for them.

2: HISTORICAL ACCOUNT

Post-War Alienations

- 2.96 The post-war period saw further sales of land and by the end of the twentieth century Māori retained approximately 13,400 acres or less within the Ngāti Pāhauwera blocks. Most of those lands were scattered parcels in multiple ownership, with large numbers of people holding small ownership interests. Fractionated ownership, disputes over titles, lack of access to land locked sections and rising rates greatly restricted the ability of landowners to derive full benefit from their holdings.
- 2.97 During the twentieth century many people left the Mohaka district due to the lack of economic opportunities, the failure of many farms and the difficulty of fully utilising the lands remaining. The Town and Country Planning Act 1953 exacerbated the pressures on the use of Ngāti Pāhauwera land as it restricted the building of homes on Ngāti Pāhauwera owned land. Those whose land interests were held in multiple ownership also did not receive the opportunity to capitalise their Family Benefit payments to enable them to own their own home.
- 2.98 The dispersal of people limited the opportunities for Ngāti Pāhauwera to transfer cultural knowledge from one generation to another through *pakiwaitara* and *pūrākau*, *mahinga kai* activity, *whare wānanga* and social occasions.

Environment

- 2.99 The Crown through legislation assumed regulatory control over resources and the environment. This limited opportunities for Ngāti Pāhauwera to develop and use those resources themselves. Over time the environment suffered from some degree of degradation and there has been a decline in species of importance to Ngāti Pāhauwera. *Mahinga kai* and *rongoa* gathering places of Ngāti Pāhauwera have been polluted or lost. The loss of these resources also led to the loss of knowledge and ritual associated with them, including *rongoa* and crafts.

Protest

- 2.100 Ngāti Pāhauwera have drawn these and other grievances to the attention of the Crown for more than a century. Following the ongoing occupation of Te Heru o Tūreia in the 1850s after the sale of the reserve, several petitions were sent to Parliament during the 1890s raising questions about various aspects of the early Crown purchases, and other matters such as leases and Māori Land Court decisions.
- 2.101 In 1925 a petition was submitted asking “*for an inquiry by a Royal Commission in respect of the sale of the Mohaka Block*”, particularly concerning the low price paid for the land. This petition was heard by the Sim Commission in 1927, which after a limited investigation concluded that the block “*was probably not worth more than what was paid for it*”, and that the claimants had “*not made out any case for relief*”. The Commissioners, however, were under the erroneous impression that no complaints had been made about the purchase prior to 1925. The Crown gave the commission limited time and resources for its purpose and the commission’s terms of reference were also limited.
- 2.102 Further petitions were submitted in 1940 and 1946 concerning the Waihua Purchase of 1864, and in 1946 concerning the 1851 Mohaka purchase. As previously noted, the Mohaka petition was considered by another Royal Commission in 1949. It concluded

2: HISTORICAL ACCOUNT

that the claim had not been proven. Ngāti Pāhauwera nonetheless continued to protest, culminating in the filing of Treaty claims in 1990.

Socio-economic consequences

- 2.103 Only 15,000 acres or about six percent of their former estate remains in Ngāti Pāhauwera ownership. The remaining land is unevenly distributed so that today some families have land when others have none. This has led to tension between Ngāti Pāhauwera families.
- 2.104 The lack of land to provide a socio-economic base contributed to many Ngāti Pāhauwera men having to work away from home. Those who retained farm land often worked elsewhere because their farm could not support their family. The Ngāti Pāhauwera experience was that the absence of so many men led to dysfunction and problems arising from:
- 2.104.1. the mother and children at home having to run the farm by themselves which was difficult and a big responsibility for the children;
 - 2.104.2. the community lacking the influence of many men who would have been Ngāti Pāhauwera *rangatira*;
 - 2.104.3. the men who worked away from home becoming disconnected over time from their community and the local culture; and
 - 2.104.4. the cost of running two households often leading to dependence on welfare to make ends meet.
- 2.105 Those Ngāti Pāhauwera who left their *tūrangawaewae* in the twentieth century and who have sought to return to the Ngāti Pāhauwera *rohe* have faced significant obstacles. These include very limited opportunities for local employment and insufficient capital to develop their remaining land. Out of date and heavily fragmented land titles caused significant problems for those wishing to return and utilise the land remaining in Ngāti Pāhauwera ownership. One Ngāti Pāhauwera landowner stated in the 1990s that “*We are not utilizing the land at the moment...My interests in Mohaka are just too fragmented and the titles too unclear to build a house on any of the family land...So in the end I just have to move away.*”
- 2.106 With much of their remaining land held in multiple ownership and often not utilised, Ngāti Pāhauwera regard the imposition of rates on their remaining lands as a burden and consider that their communities have received little benefit from rates. One Ngāti Pāhauwera landowner stated in the 1990s: “*I sort of own family land, well I pay the rates for it... I have tried to pay the rates... although since the last rate rises, when the rates doubled, I have been falling behind. I now pay a couple of hundred dollars per year which is a lot when there are no footpaths or other services provided by the Council.*”
- 2.107 Many Ngāti Pāhauwera who live away from the *rohe*, but who pay rates on multiple owned land within the *rohe*, have not been able to participate in local body elections because electoral rules provide that only one representative rather than each of the owners may be enrolled as a non-resident elector.

2: HISTORICAL ACCOUNT

- 2.108 The lack of land and resources and the ensuing lack of an economic base have significantly contributed to the impoverishment of Ngāti Pāhauwera. As a group, Ngāti Pāhauwera who stayed in the *rohe* have had very limited employment opportunities, lower than average housing stock, educational outcomes and incomes, a reliance on income support, and high rates of unemployment. In 2001 Māori living in the Mohaka/Raupunga area were assessed to be at the most deprived level on the New Zealand Deprivation Index.
- 2.109 Ngāti Pāhauwera suffered severely from newly-introduced European diseases and epidemics. The health of the resident population of Ngāti Pāhauwera remained very poor in contrast to national levels in the twentieth century. Asthma, diabetes and glue ear have been the most common health problems at Mohaka. Many people continued to live in sub-standard housing. A visit to the nearest doctor involved a 70 km round trip to Wairoa. Smoking, alcohol and other drugs have led to social and health problems and a high number of tragic deaths in the resident community including suicides and alcohol-related motor vehicle accidents.
- 2.110 Ngāti Pāhauwera children regularly attended a primary school in Mohaka from around 1900. The Native Department took over the school in 1926 and administered it as a native school until the 1960s. English was the language of instruction in native schools from the 1860s. Many Māori children were punished for using *Te Reo Māori*. The use of *Te Reo Māori* was strongly discouraged at school because it was believed that Māori children should be fluent in English. By the 1980s *Te Reo Māori* was in danger of disappearing.
- 2.111 Two *kōhanga reo* were established in the 1980s at Raupunga. Although Ngāti Pāhauwera children are still able to attend primary school in the *rohe*, a District High School at Raupunga was closed in the late 1960s. Since then local children have travelled to Wairoa for their secondary education. As compared to the national average fewer Ngāti Pāhauwera children have gained a high school qualification.
- 2.112 In the 1980s the Government decided the New Zealand economy would benefit from a programme of reform which involved restructuring the commercial operations of government along market lines and deregulating the State sector and the labour market. Many Ngāti Pāhauwera worked in sectors such as farming, forestry, railways and public works which were heavily affected by structural changes. Many of these changes resulted in some state services being replaced by private sector agencies operating from outside the *rohe*. Several local services such as a regular rail service, a Ministry of Works depot, and the post office, disappeared. Local job opportunities decreased and local shops closed. Ngāti Pāhauwera who stayed in the *rohe* had to travel to Wairoa for most services.
- 2.113 In addition to the effects of landlessness and social deprivation Ngāti Pāhauwera consider that a number of legislative measures including the 1847 Education Ordinance, the Tohunga Suppression Act 1907, the Native Schools Act 1867, and the Māori Councils Act 1900 helped erode traditional tribal structures including the extended *whānau* and *rangatira*, customary knowledge and practices, and *iwi* leadership. Although enacted in an attempt to remedy various specific issues, such legislation gave authority to non-traditional social structures and institutions and had an ongoing effect in discouraging the acquisition and sharing of customary knowledge. Over time, these and other measures also altered the traditional nature of relationships between Ngāti

2: HISTORICAL ACCOUNT

Pāhauwera men, women and *whānau*, and did not always support cultural practices like *whāngai* that were integral to *whānau* relationships and inter *hapū* relationships.

- 2.114 Ngāti Pāhauwera state that the events set out in the historical account have caused serious psychological issues. Many individuals feel shame that they are unable to speak their own language, are disconnected from the local community, and struggle with their identity as Ngāti Pāhauwera and as New Zealanders, in the face of what they experience as institutional racism. Many are angry about the Crown's interactions with Ngāti Pāhauwera, and say that the socio-economic and cultural consequences of their interactions with the Crown have left them suspicious of the Crown and feeling betrayed by the Crown.
- 2.115 The years of petitions and litigation about Crown actions and the inadequacies of the Crown's response have also taken a toll on Ngāti Pāhauwera, requiring time and resources which could have been directed towards developing Ngāti Pāhauwera. Ngāti Pāhauwera characterise their socio-economic experience as one of bleakness but assert the need for a fresh relationship with the Crown and hope for their future development.

3 ACKNOWLEDGEMENTS AND APOLOGY

ACKNOWLEDGEMENTS

- 3.1 The Crown acknowledges its failure to deal in an appropriate way with grievances raised by successive generations of Ngāti Pāhauwera since 1851 and that recognition of these grievances is long overdue. The Crown also acknowledges the long tradition of Ngāti Pāhauwera loyalty to the Crown.
- 3.2 The Crown acknowledges that in acquiring the Mohaka and Waihua blocks in 1851 and 1864 it breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles by:
- 3.2.1 failing to ensure Ngāti Pāhauwera were able to reserve sites of particular significance and places of residence within the Crown purchase blocks; and
 - 3.2.2 acquiring Te Heru o Tūreia in 1859, the single 100-acre reserve set aside from the Mohaka transaction, despite it being an important wahi tapu and site of paramount significance and the only land remaining to Ngāti Pāhauwera in the Mohaka block.
- 3.3 The Crown further acknowledges that:
- 3.3.1 it did not provide leasing as an alternative to purchase when it acquired the Mohaka block;
 - 3.3.2 there was ambiguity in the 1851 deed about the precise boundaries of the Mohaka transaction;
 - 3.3.3 the boundaries of Te Heru o Tūreia were never surveyed before the Crown purchased it, and the transfer of the title was made by only 11 of the 297 signatories to the Mohaka transaction;
 - 3.3.4 the Crown paid a low price for the Mohaka block and Ngāti Pāhauwera did not receive the full, ongoing benefits from European settlement they were led to expect in accepting a low price.
- 3.4 The Crown acknowledges that its failure to fully investigate and rectify the wrongful inclusion of 1,152 acres of adjacent Ngāti Pāhauwera land in the Waihua block deprived Ngāti Pāhauwera of its valuable land and resources, and breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 3.5 The Crown acknowledges that it failed to provide Ngāti Pāhauwera with protection against the known risk of attack in 1869 and provided only minimal assistance to help Ngāti Pāhauwera recover after the attack on their pā and kāinga in the Mohaka valley. The Crown acknowledges that the combined effect of these failures amounted to a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

3: ACKNOWLEDGEMENTS AND APOLOGY

- 3.6 The Crown acknowledges that its confiscation of land in the Mohaka-Waikare confiscation district compulsorily extinguished any customary interests including those of Ngāti Pāhauwera in that district in breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 3.7 The Crown acknowledges that:
- 3.7.1 the Crown breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles by not providing until 1894 any means in the native land legislation for a form of collective title enabling Ngāti Pāhauwera to administer and utilise their lands;
 - 3.7.2 Ngāti Pāhauwera were unable to effectively utilise the Waipapa, Waihua 1 and 2 and Whareraurākau blocks, awarded in the name of hapū in 1868, until the legal issues arising from the use of hapū rather than individual names in the titles were resolved in the late nineteenth century.
- 3.8 The Crown acknowledges that:
- 3.8.1 by the time a corporate title option had become available, title to all Ngāti Pāhauwera lands, except three blocks, had been awarded to individual Ngāti Pāhauwera;
 - 3.8.2 the operation and impact of the native land laws, in particular the awarding of land to individual Ngāti Pāhauwera rather than to iwi or hapū, made those lands more susceptible to partition, fragmentation, and alienation. This contributed to the further erosion of the traditional tribal structures of Ngāti Pāhauwera which were based on collective tribal and hapū custodianship of land. The Crown failed to take steps to adequately protect those structures. This had a prejudicial effect on Ngāti Pāhauwera and was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
 - 3.8.3 these processes disturbed Ngāti Pāhauwera settlement patterns and contributed to the displacement of their people by the end of the nineteenth century.
- 3.9 The Crown acknowledges that:
- 3.9.1 the Crown's ongoing programme of land purchasing in the nineteenth and early twentieth centuries and private purchasing has left Ngāti Pāhauwera virtually landless;
 - 3.9.2 it failed to monitor the impact of land purchases on Ngāti Pāhauwera and, despite the clear implications of the Stout-Ngata Royal Commission's findings in 1907, proceeded to acquire large quantities of Ngāti Pāhauwera lands over the next two decades;
 - 3.9.3 its failure to ensure Ngāti Pāhauwera retained sufficient land for their present and future needs was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

3: ACKNOWLEDGEMENTS AND APOLOGY

- 3.10 The Crown acknowledges that over time its actions and omissions have seriously impaired the ability of Ngāti Pāhauwera to make appropriate use of their remaining lands and to fully participate in the economic development of the country.
- 3.11 The Crown acknowledges that it used the consolidation scheme to convert its own fragmented purchases of Ngāti Pāhauwera land interests into usable land blocks, and to obtain additional land for survey costs. The Crown further acknowledges that Ngāti Pāhauwera did not receive all the benefits they were led to expect from consolidation and the subsequent development schemes, and many owners effectively lost the opportunity to live on and use their land under the development schemes.
- 3.12 The Crown acknowledges:
- 3.12.1 the significance of the Mohaka, Waikari and Waihua Rivers to Ngāti Pāhauwera as taonga and the mauri of their spiritual and material well-being;
 - 3.12.2 the importance to Ngāti Pāhauwera of these rivers as highways, and providers of mahinga kai and other resources important to Ngāti Pāhauwera for cultural and commercial reasons;
 - 3.12.3 that the environmental degradation of these rivers and the decline in species of importance to Ngāti Pāhauwera has been a source of distress to Ngāti Pāhauwera as is the detrimental impact of gravel extraction activities and access to hāngi stones.
- 3.13 The Crown acknowledges that it has failed to respect, provide for, and protect the special relationship of Ngāti Pāhauwera with their rivers.
- 3.14 The Crown acknowledges that Ngāti Pāhauwera have demonstrated their loyalty to the Crown over the generations and helped to meet the nation's defence obligations including service in two World Wars. The Crown acknowledges the loss to Ngāti Pāhauwera of those who died in the service of their country in New Zealand and overseas.
- 3.15 The Crown acknowledges that:
- 3.15.1 Ngāti Pāhauwera expectations of an ongoing and mutually beneficial relationship with the Crown were not always realised;
 - 3.15.2 the socio-economic impacts of settlement on Ngāti Pāhauwera continue to be felt; and
 - 3.15.3 in part as a result of Crown actions or omissions, Ngāti Pāhauwera have been deprived of opportunities for economic, social, and cultural development for too long and to the detriment of their material, cultural and spiritual well-being.

3: ACKNOWLEDGEMENTS AND APOLOGY

APOLOGY

- 3.16 The Crown offers the following apology to Ngāti Pāhauwera and to their ancestors and descendants:

Ngāti Pāhauwera has a long tradition of providing support to, and seeking a positive relationship with, the Crown. The Crown profoundly regrets that it failed to provide adequate support to Ngāti Pāhauwera including before and after the attack at Mohaka in 1869.

The Crown is deeply sorry for its breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles which left Ngāti Pāhauwera with insufficient landholdings by 1883. The Crown profoundly regrets its ongoing failure to protect the remaining landholdings of Ngāti Pāhauwera which has had devastating consequences for them – socially, economically, physically, culturally and spiritually – that continue to be felt today.

The Crown unreservedly apologises for not having honoured its obligations to Ngāti Pāhauwera under Te Tiriti o Waitangi/the Treaty of Waitangi and through this settlement the Crown seeks to atone for its wrongs and to begin the process of healing. The Crown looks forward to building a relationship with Ngāti Pāhauwera, based on mutual trust and co-operation, founded on Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

ACCEPTANCE OF APOLOGY

- 3.17 Ngāti Pāhauwera acknowledge that the Crown's apology represents its commitment to build a positive relationship with Ngāti Pāhauwera and to honour its obligations under Te Tiriti o Waitangi/the Treaty of Waitangi, for the good of this and future generations. Accordingly, Ngāti Pāhauwera accept the apology offered by the Crown and also look forward to building a positive relationship with the Crown.

4: SETTLEMENT

4 SETTLEMENT

HISTORICAL CLAIMS SETTLED

- 4.1 The parties agree, and the settlement legislation will provide (on the terms provided in clause 14 of the draft bill), that on and from the settlement date:
- 4.1.1 the historical claims (as defined in clauses 8.4 and 8.5) are settled; and
 - 4.1.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and
 - 4.1.3 the settlement is final.

REDRESS

- 4.2 The following redress is to be provided in settlement of the historical claims:
- 4.2.1 the acknowledgements and apology in clauses 3.1 to 3.16; and
 - 4.2.2 the cultural redress under part 5 and the settlement legislation giving effect to that part; and
 - 4.2.3 the financial and commercial redress under part 6 and the settlement legislation giving effect to that part.

BENEFIT OF THE SETTLEMENT

- 4.3 Ngāti Pāhauwera agree that it is intended that the redress, and the rights of Ngāti Pāhauwera, the Trustees and the trustees of the Ngāti Pāhauwera Tiaki Trust under this Deed and the settlement legislation:
- 4.3.1 will be for the benefit of the collective group of Ngāti Pāhauwera; but
 - 4.3.2 may be for the benefit of particular individuals, or a particular group of individuals (including whānau or hapū), who are members of Ngāti Pāhauwera, if the Trustees so decide in accordance with the procedures of the Trust.

LIMITS OF THE SETTLEMENT

- 4.4 The parties agree that nothing in this Deed or the settlement legislation will:
- 4.4.1 limit any aboriginal title, or customary right, that Ngāti Pāhauwera may have; or

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

4: SETTLEMENT

- 4.4.2 constitute, or imply, an acknowledgement by the Crown that any aboriginal title, or customary right, exists; or
- 4.4.3 except as provided in this Deed or the settlement legislation:
- (a) affect a right that Ngāti Pāhauwera or the Crown may have, including a right arising:
 - (i) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or
 - (ii) under legislation; or
 - (iii) at common law, including in relation to aboriginal title or customary law; or
 - (iv) from a fiduciary duty; or
 - (v) otherwise; or
 - (b) be intended to affect any action or decision under the Deed of Settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fisheries claims; or
 - (c) affect any action or decision under any legislation and, in particular, under legislation giving effect to the Deed of Settlement referred to in clause 4.4.3(b), including:
 - (i) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or
 - (ii) the Fisheries Act 1996; or
 - (iii) the Maori Fisheries Act 2004; or
 - (iv) the Maori Commercial Aquaculture Claims Settlement Act 2004.

SETTLEMENT LEGISLATION

- 4.5 The settlement legislation will, on the terms provided in clauses 15 to 18 and 20 of the draft bill:
- 4.5.1 exclude the jurisdiction of the courts, tribunals including the Waitangi Tribunal, and other judicial bodies in relation to the historical claims and the settlement; and
 - 4.5.2 provide that legislation enabling the resumption of land and the creation of resumptive memorials does not apply:

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

4: SETTLEMENT

- (a) to land within the RFR area; or
 - (b) for the benefit of Ngāti Pāhauwera or a representative entity; and
- 4.5.3 require resumptive memorials to be removed from titles to land within the RFR area; and
- 4.5.4 exclude the application of the rule against perpetuities and the Perpetuities Act 1964 to:
- (a) a settlement document; and
 - (b) the Trust and the Ngāti Pāhauwera Tiaki Trust; and
- 4.5.5 require the Secretary of Justice to make copies of this Deed publicly available.

ACKNOWLEDGEMENTS IN RELATION TO THE SETTLEMENT

- 4.6 Ngāti Pāhauwera and the Crown acknowledge that:
- 4.6.1 the settlement represents the results of intensive negotiations conducted in a spirit of co-operation and compromise; and
 - 4.6.2 it is not possible to compensate Ngāti Pāhauwera fully for all loss and prejudice suffered; and
 - 4.6.3 the purpose of the settlement is to enhance the ongoing relationship between Ngāti Pāhauwera and the Crown (in terms of Te Tiriti o Waitangi/the Treaty of Waitangi, its principles, and otherwise); and
 - 4.6.4 in negotiating this settlement, within the context of wider settlement policy including the need by the Crown to consider the rights and interests of others, the parties have acted honourably and reasonably.
- 4.7 Ngāti Pāhauwera acknowledge that, taking all matters into consideration (some of which are specified in clause 4.6), the settlement is fair in the circumstances.

FURTHER SETTLEMENT PROVISIONS

- 4.8 Part 2 of the provisions schedule sets out further provisions concerning the settlement.

THE TRUSTEES

- 4.9 The Trustees, in signing this Deed on behalf of Ngāti Pāhauwera, also sign in their capacity as Trustees of the Trust and as trustees of the Ngāti Pāhauwera Tiaki Trust and:

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

4: SETTLEMENT

- 4.9.1 confirm the agreements and acknowledgements made by Ngāti Pāhauwera;
and
 - 4.9.2 agree to comply with their obligations in this Deed as trustees of both of those trusts.
- 4.10 For the avoidance of doubt, it is confirmed that to the extent that the Trustees enter into this Deed as trustees, they do so not in any personal capacity and that their liability is limited to the assets for the time being of the Trust or, as the case may be, the Ngāti Pāhauwera Tiaki Trust.

5 CULTURAL REDRESS

TE HERU O TŪREIA

- 5.1 The settlement legislation will, on the terms provided by subpart 1 of part 2 of the draft bill, vest Te Heru o Tūreia (as described in part 1 of schedule 2 of the draft bill) in the trustees of the Ngāti Pāhauwera Tiaki Trust.
- 5.2 The settlement legislation will, on the terms provided by subpart 1 of part 2 of the draft bill, immediately vest the estate in fee simple in Te Heru o Tūreia Gift Area (being part of Te Heru o Tūreia and as described in part 2 of schedule 2 of the draft bill) in the Crown:
- 5.2.1 by way of gift from Ngāti Pāhauwera to the people of New Zealand;
 - 5.2.2 as a historic reserve;
 - 5.2.3 on the settlement date; and
 - 5.2.4 confirm that the gift referred to in clause 5.2.1 is exempt from gift duty.
- 5.3 Paragraphs 3.1 to 3.7 of part 3 of the provisions schedule set out further provisions concerning the gift from Ngāti Pāhauwera to the people of New Zealand.

CO-MANAGEMENT CHARTER FOR CONSERVATION LAND

- 5.4 The Crown, through the Minister of Conservation and the Director-General, and the Trustees must, by or on the settlement date, enter into the co-management charter.
- 5.5 The co-management charter sets out how the Department of Conservation and the Trustees will establish and maintain a positive and enduring relationship regarding the co-management of conservation activities within the core area of interest.
- 5.6 Nothing in this Deed affects the ability of Ngāti Pāhauwera to continue to advocate for amendment of conservation legislation that Ngāti Pāhauwera considers adversely affects their cultural interests in wildlife and marine mammals and which in their view does not reflect their kaitiakitanga role over those resources.

CULTURAL REDRESS PROPERTIES

- 5.7 The settlement legislation will, on the terms provided by subparts 1, 2 and 3 of part 2 of the draft bill, vest the following sites (as described in part 3 of schedule 2 and schedule 3 of the draft bill, the general locations of which are shown on the deed plans included in part 8 of the documents schedule) in the trustees of the Ngāti Pāhauwera Tiaki Trust:

5: CULTURAL REDRESS

Sites that vest in fee simple

- 5.7.1 Takauere, being the Pittars Conservation Area;
- 5.7.2 Ononi, being part of the Mangawharangi Scenic Reserve;
- 5.7.3 Te Kuta, being a stock resting place reserve;

Sites that vest in fee simple subject to a conservation covenant or easement

- 5.7.4 Kuwatawata, being part of the Mohaka River Conservation Area;
- 5.7.5 Tauwhareroa, being the Rawhiti Scenic Reserve;
- 5.7.6 Te Heru o Tūreia (Area B), being part of the Te Heru o Tūreia Conservation Area and Limestone Ridge Conservation Area, and being the area vested under clause 5.1 that is not vested in the Crown under clause 5.2 nor vested as a historic reserve under clause 5.7.11;
- 5.7.7 Ngākōauau (Area A), being part of Maulders Conservation Area;
- 5.7.8 Paaka Te Ahu, being the Mohaka River Scenic Reserve;
- 5.7.9 bed of part of Lake Rotoroa, being the Lake Rotoroa Conservation Area;
- 5.7.10 bed of Lake Rotongaio, being the Lake Rotongaio Conservation Area;

Sites that vest in fee simple to be administered as scenic, historic or local purpose reserves

- 5.7.11 Nakunaku, being part of the Te Heru o Tūreia Conservation Area, and part of the area vested under clause 5.1;
 - 5.7.12 Ngākōauau (Area B), being the balance of the Maulders Conservation Area;
 - 5.7.13 Tānga Kākāriki, being part of the Kakariki Scenic Reserve;
 - 5.7.14 Raupunga Reserve, being the Raupunga Scenic Reserve;
 - 5.7.15 Mangawhārangī, being the balance of Mangawharangi Scenic Reserve; and
 - 5.7.16 Pūtere, being the Putere Scenic Reserve.
- 5.8 Paragraphs 3.8 to 3.16 of part 3 of the provisions schedule apply in relation to the vesting of the cultural redress properties.

5: CULTURAL REDRESS

FISHERIES

- 5.9 The Minister of Fisheries will write to the Trustees outlining how Ngāti Pāhauwera will have input and participation into sustainability processes and decisions covering fisheries resources within the core area of interest. The letter will be written in the form agreed to by the Ministry of Fisheries and the Trustees before the date of this Deed and must be sent before the settlement date.
- 5.10 The Minister of Fisheries must, on the terms provided by clause 62 of the draft bill, appoint the Trustees as an advisory committee under section 21 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 for the purposes of advising the Minister on:
- 5.10.1 changes to the current prohibitions relating to the commercial taking of aquatic life from the Mohaka River; and
- 5.10.2 changes to finfish fishing restrictions and prohibitions that may affect the area known as the Wairoa Hard.

MOHAKA RIVER WATER CONSERVATION ORDER

- 5.11 The settlement legislation will provide, on the terms provided by clause 61 of the draft bill, that the Trustees have rights to nominate members of any special tribunal appointed by the Minister of Environment under section 202 of the Resource Management Act 1991 to hear and report on applications to:
- 5.11.1 revoke or amend the Water Conservation (Mohaka River) Order 2004; or
- 5.11.2 make a new water conservation order in respect of the Mohaka River or its tributaries.

HĀNGI STONES

- 5.12 The settlement legislation will provide, on the terms provided by clauses 57 to 60 of the draft bill, that a person may not extract hāngi stones from the bed of the Mohaka and Te Hoe Rivers within the core area of interest, unless the Trustees give their consent.

GRAVEL

- 5.13 As redress, Ngāti Pāhauwera sought to be given a participation role in decision-making over the extraction and allocation of gravel in the bed of the Mohaka River.
- 5.14 The parties agree that clause 5.15, which has been agreed to by the regional council, and the agreement referred to in clause 5.16 give Ngāti Pāhauwera the participation role described in clause 5.13.
- 5.15 The settlement legislation will, on the terms provided by clause 63 of the draft bill, make a minor technical amendment to policy 52 of the operative regional plan to remove uncertainty about its application.

5: CULTURAL REDRESS

- 5.16 The regional council and the Trustees have agreed to enter into an agreement that relates to the extraction of gravel from the Mohaka River.

STATUTORY ACKNOWLEDGEMENT

- 5.17 The settlement legislation will:
- 5.17.1 on the terms provided by subpart 6 of part 2 of the draft bill, provide the Crown's acknowledgement of the statement by Ngāti Pāhauwera of their particular cultural, spiritual, historical, and traditional association with the relevant part of the Earthquake Slip Conservation Area (as described in clause 65 of the draft bill and shown on the deed plan in part 8 of the documents schedule); and
 - 5.17.2 in particular, in the circumstances provided by clauses 68 to 73 of the draft bill:
 - (a) require relevant consent authorities, the Environment Court, and the Historic Places Trust to have regard to the statutory acknowledgement; and
 - (b) require relevant consent authorities to forward summaries of resource consent applications to the Trustees; and
 - (c) enable the Trustees and any member of Ngāti Pāhauwera to cite the statutory acknowledgement as evidence of the association of Ngāti Pāhauwera with the area the statutory acknowledgment relates to.
- 5.18 In clause 5.17.2, **relevant consent authority** means a consent authority of a region or district that contains, or is adjacent to, an area that the statutory acknowledgement relates to.

- 5.19 The statement of association is in part 1 of the documents schedule.

PROMOTION OF RELATIONSHIP WITH LOCAL AUTHORITIES

- 5.20 The settlement legislation will, on the terms provided by clause 64 of the draft bill, provide that each of:

5.20.1 Hawke's Bay Regional Council;

5.20.2 Wairoa District Council; and

5.20.3 Hastings District Council,

must forward to the Trustees copies of all applications for resource consents received in respect of activities within the catchment of the Mohaka, Waikari and Waihua Rivers.

- 5.21 The Minister for Treaty of Waitangi Negotiations will write to the:

5: CULTURAL REDRESS

- 5.21.1 Hawke's Bay Regional Council;
- 5.21.2 Wairoa District Council; and
- 5.21.3 Hastings District Council,

encouraging each Council to enter into a memorandum of understanding (or a similar document) with the Trustees in relation to the interaction between the Council and the Trustees concerning performance of the Council's functions and obligations, and the exercise of its powers, within the core area of interest such as in relation to the development of district plans.

LETTERS OF INTRODUCTION TO CROWN BODIES

- 5.22 The Minister for Treaty of Waitangi Negotiations has written letters of introduction to Ministers responsible for relevant Crown bodies. The purpose of the letters is to encourage co-operative ongoing relationships between particular bodies and Ngāti Pāhauwera in the core area of interest and, in particular, in relation to Ngāti Pāhauwera's reporting of issues concerning lack of drinking water, low prospects of economic development and difficulties accessing safe housing.

REGIONAL PLANNING COMMITTEE

- 5.23 The parties agree to establish a planning committee in conjunction with the regional council, the role of which will relate to planning processes that affect the region of the regional council.
- 5.24 Paragraphs 3.19 to 3.28 of part 3 of the provisions schedule set out the parties' agreement in respect of the planning committee.

PROMOTION OF RELATIONSHIP WITH MUSEUMS AND OTHER INSTITUTIONS

- 5.25 The Minister for Treaty of Waitangi Negotiations has written letters to the museums and other institutions set out in part 4 of the documents schedule, encouraging them to enhance their relationship with Ngāti Pāhauwera, particularly in regard to Ngāti Pāhauwera taonga.

MEETINGS WITH THE MINISTRY FOR THE ENVIRONMENT

- 5.26 The parties agree that representatives of the Ministry for the Environment and the Trustees will meet in accordance with provisions set out in paragraphs 3.17 and 3.18 of part 3 of the provisions schedule.

6 FINANCIAL AND COMMERCIAL REDRESS

FINANCIAL REDRESS

- 6.1 The financial and commercial redress amount is \$20,000,000.
- 6.2 Accordingly, the Crown must pay the Trustees on the settlement date \$7,953,000, being:
- 6.2.1 the financial and commercial redress amount;
 - 6.2.2 less the total redress values of:
 - (a) the valued commercial properties, being \$47,000; and
 - (b) the licensed land, being \$12,000,000.

COMMERCIAL REDRESS PROPERTIES TO BE TRANSFERRED FOR NIL CONSIDERATION

- 6.3 The Crown must transfer the following commercial redress properties (as described in table A of part 4 of the provisions schedule) to the Trustees for nil consideration (the “**nil consideration commercial properties**”) on the settlement date, and on the terms and conditions in subpart D of part 4 of the provisions schedule:
- 6.3.1 Rāwhiti Station Farm, Raupunga;
 - 6.3.2 Vacant Section 3505, State Highway 2, Raupunga;
 - 6.3.3 Residential Section, State Highway 2, Raupunga;
 - 6.3.4 Bare Section, State Highway 2, Raupunga;
 - 6.3.5 Residential Section, State Highway 2, Waihua;
 - 6.3.6 Mohaka Pound Site;
 - 6.3.7 Kotemaori Site;
 - 6.3.8 Raupunga Stock Resting Reserve Site;
 - 6.3.9 Mohaka Coach Road Site; and
 - 6.3.10 Pūtere Road Site.

CROWN FOREST LICENSED LAND

- 6.4 The Crown must transfer the Crown forest licensed land to the Trustees on the settlement date.
- 6.5 The transfer of the Crown forest licensed land is to be on the terms and conditions in subpart D of part 4 of the provisions schedule.
- 6.6 The Crown forest licensed land will be transferred as redress and, subject to clause 6.2, without charge to, or other contribution to be provided or paid by, the Trustees or by any other person.
- 6.7 The settlement legislation will, on the terms provided in subparts 1, 2 and 3 of part 3 of the draft bill:
- 6.7.1 provide for the transfer of the Crown forest licensed land by the Crown to the Trustees; and
 - 6.7.2 in particular, provide that from the settlement date, the Trustees are, in relation to the Crown forest licensed land:
 - (a) the licensor under the Crown forestry licence; and
 - (b) a confirmed beneficiary under clause 11.1 of the Crown Forestry Rental trust deed; and
 - (c) entitled to the rental proceeds that relate to the Crown forest licensed land payable since the commencement of the Crown forestry licence; and
 - 6.7.3 provide for a public right of way easement in gross to be granted on the terms and conditions set out in part 5 of the documents schedule; and
 - 6.7.4 the land ceases to be Crown forest land upon the registration of the transfer of the land to the Trustees.
- 6.8 The parties acknowledge that, to the extent the Crown forest licensed land is eligible land in respect of a pre-1990 forest land allocation plan issued under subpart 2 of part 4 of the Climate Change Response Act 2002, the eligible person in respect of that land will be the person entitled to apply for an allocation of New Zealand units under that subpart.
- 6.9 Any application for an allocation of New Zealand units made by an eligible person in respect of the Crown forest licensed land and any allocation of New Zealand units in respect of the allocation plan shall be subject to the provisions of the Climate Change Response Act 2002, including (but not limited to) the allocation plan.
- 6.10 In clauses 6.8 and 6.9, “allocation plan”, “eligible land”, “eligible person” and “New Zealand units” each has the meaning given to it in the Climate Change Response Act 2002.

VALUED COMMERCIAL PROPERTIES

6.11 The Crown must transfer the following commercial redress properties (as described in table C of part 4 of the provisions schedule) to the Trustees (the “**valued commercial properties**”) on the settlement date, and on the terms and conditions in subpart D of part 4 of the provisions schedule:

6.11.1 Waipapa B3; and

6.11.2 Kotemaori Railway Site.

6.12 Each valued commercial property is to be transferred as redress and, subject to clause 6.2, without charge to, or other contribution to be provided for or paid by, the Trustees or by any other person.

SETTLEMENT LEGISLATION

6.13 The settlement legislation will, on the terms provided by subpart 1 of part 3 of the draft bill enable the transfer of, and the creation of computer freehold registers for, the commercial redress properties.

RIGHT OF FIRST REFUSAL

6.14 The Trustees have a right of first refusal in relation to a disposal by the Crown or Crown bodies of RFR land.

6.15 The right of first refusal is to be on the terms provided by subparts 4 and 5 of part 3 of the draft bill and, in particular, will apply:

6.15.1 for a term of 100 years from the settlement date; and

6.15.2 only if the RFR land –

- (a) is vested in, or the fee simple estate in it is held by, the Crown on the settlement date; or
- (b) is a reserve vested on the settlement date in an administering body that derived title to the reserve from the Crown; and
- (c) is not being disposed of in the circumstances provided by clauses 102 to 112 of the draft bill.

7 SETTLEMENT CONDITIONS AND TERMINATION

SETTLEMENT CONDITIONS

- 7.1 This Deed, and the settlement, are conditional on the settlement legislation coming into force.
- 7.2 Despite clause 7.1, certain provisions specified in paragraph 7.3 of the provisions schedule are binding from the date of this Deed.

INTRODUCTION OF DRAFT BILL

- 7.3 The Crown must propose the draft bill for introduction to the House of Representatives within 6 months of the date of this Deed.
- 7.4 The bill proposed by the Crown for introduction may include any changes agreed in writing by the Crown and the Trustees.
- 7.5 The Crown and the Trustees will use reasonable endeavours to facilitate the orderly enactment of the draft bill.

TERMINATION OF THIS DEED

- 7.6 The Crown or the Trustees may terminate this Deed, by notice to the other, if the settlement legislation has not come into force within 24 months after the date of this Deed.
- 7.7 Before either party may terminate this Deed under clause 7.6, it must have given the other at least 20 business days notice of an intention to terminate this Deed.
- 7.8 If this Deed is terminated:
- 7.8.1 it, and the settlement, will be at an end; and
 - 7.8.2 no person will have any right or obligation under it, except that the rights and obligations under paragraph 7.1 of the provisions schedule continue.

8 DEFINITIONS, INTERPRETATION, AND GENERAL PROVISIONS

DEFINITION OF NGĀTI PĀHAUWERA

- 8.1 In this deed, **Ngāti Pāhauwera** means -
- 8.1.1 the collective group composed of individuals who descend from one or more of the Ngāti Pāhauwera ancestors and who are members of one or more of the Ngāti Pāhauwera hapū referred to in clause 8.2 below; and
 - 8.1.2 every whānau, hapū, or group to the extent that it is composed of individuals referred to in clause 8.1.1; and
 - 8.1.3 every individual referred to in clause 8.1.1.
- 8.2 In this deed, the **Ngāti Pāhauwera hapū** means: Ngā Uri-ō-Māmangu, Ngāi Tāne, Ngāi Tāpui, Ngāi Tauira, Ngāi Taumau, Ngāi Te Awhā, Ngāi Te Huki, Ngāi Te Ngau Pātea, Ngāi Te Rau/Rauiri, Ngāi Te Rongo, Ngāi Tahuāo, Ngāi Tarapāroa, Ngarangiaitu, Ngāti Āo Kino, Ngāti Heki, Ngāti Hēouri, Ngāti Hikapī (Ngāti Mihirau), Ngāti Hine Kete, Ngāti Hine Kū, Ngāti Hine Mura, Ngāti Hine Rākai, Ngāti Hine Tunge, Ngāti Hineiro, Ngāti Hinekino, Ngāti Hinemōkai, Ngāti Hūatu, Ngāti Ira, Ngāti Irirangi, Ngāti Iriwhata, Ngāti Kahu-o-Te-Rangi, Ngāti Kaihāere, Ngāti Kaingaahi, Ngāti Kapekape, Ngāti Kapua Matotoru, Ngāti Kapukapu, Ngāti Katihe, Ngāti Kautata (Ngāti Whakarewa), Ngāti Kawe, Ngāti Kopa, Ngāti Kotihe, Ngāti Kūkura, Ngāti Kura/Kurahikakawa, Ngāti Matengāhuru, Ngāti Matewai, Ngāti Māwete, Ngāti Moe, Ngāti Mouru, Ngāti Paeahi, Ngāti Pāhauwera, Ngāti Paikea, Ngāti Pari, Ngāti Pāroa, Ngāti Patupaku, Ngāti Pēhi, Ngāti Peke, Ngāti Ponga, Ngāti Pōporo, Ngāti Pouanga, Ngāti Poupou, Ngāti Pūraro, Ngāti Pūrua/ Popoia, Ngāti Rāhui, Ngāti Rangi Haere Kau, Ngāti Ririwehi, Ngāti Ruakohatu, Ngāti Tahiroa, Ngāti Tangopū, Ngāti Taponga, Ngāi Tātaku, Ngāi Tātua, Ngāti Taumau, Ngāi Te Māha, Ngāi Te Pānga, Ngāi Te Rangitakūao Ngāti Hinekaraka, Ngāti Tuhemata, Ngāti Wera, Ngāi Tahu, Ngāi Te Ruatai, Ngāti Tauhere, Ngāti Hineterangi/Ngāti Hine Paia, Ngāi Te Ao Kapiti, Ngāi Te Aonui, Ngāti Rangitohumare, Ngāi Te Rūruku.
- 8.3 For the purposes of clause 8.1.1 -
- 8.3.1 a person is **descended** from another person if the first person is descended from the other by -
 - (a) birth; or
 - (b) legal adoption; and
 - 8.3.2 **Ngāti Pāhauwera ancestor** means a recognised ancestor of any of the Ngāti Pāhauwera hapū who exercised customary rights at any time after 6 February 1840 predominantly in relation to the core area of interest; and

8 DEFINITIONS, INTERPRETATION, AND GENERAL PROVISIONS

8.3.3 **customary rights** means rights according to tikanga Māori (Māori customary values and practices), including -

- (a) rights to occupy land; and
- (b) rights in relation to the use of land or other natural or physical resources.

DEFINITION OF HISTORICAL CLAIMS

8.4 Historical claims:

8.4.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that Ngāti Pāhauwera (or a representative entity) had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that:

- (a) is, or is founded on, a right arising:
 - (i) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or
 - (ii) under legislation; or
 - (iii) at common law (including aboriginal title or customary law); or
 - (iv) from fiduciary duty; or
 - (v) otherwise; and
- (b) arises from, or relates to, acts or omissions before 21 September 1992:
 - (i) by, or on behalf of, the Crown; or
 - (ii) by or under legislation; and

8.4.2 includes every claim to the Waitangi Tribunal to which clause 8.4.1 applies and that relates exclusively to Ngāti Pāhauwera (or a representative entity), including:

- (a) Wai 119 (the Mohaka River and land claim);
- (b) Wai 430 (the Rāwhiti station claim);
- (c) Wai 436 (Mohaka Forest claim); and
- (d) Wai 731 (the Kupa whānau claim);

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

8 DEFINITIONS, INTERPRETATION, AND GENERAL PROVISIONS

8.4.3 includes every other claim to the Waitangi Tribunal to which clause 8.4.1 applies so far as it relates to Ngāti Pāhauwera or a representative entity.

8.5 However, **historical claims** does not include the following:

8.5.1 a claim that a member of Ngāti Pāhauwera, or a whānau, hapū, or group referred to in clause 8.1, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not a Ngāti Pāhauwera ancestor;

8.5.2 a claim that a member of Ngāti Kapua Matotoru may have that is, or is founded on, a right arising as a result of being descended other than from Hinetunge;

8.5.3 a claim based on descent from Tahumatua II that a member of Marangatuhetaua (Ngāti Tu), Ngāi Tatarā/Ngāti Kurumokihi or Ngāi Te Ruruku ki Tangoio may have that is, or is founded on, a right arising as a result of being descended from Tukapua I, Whakaari, Tataramoa or Te Ruruku;

8.5.4 a claim that a member of Ngāi Te Ruruku may have based on descent from Whararakau or Te Hiku;

8.5.5 a claim that a representative entity may have to the extent the claim is, or is founded on, a claim referred to in clause 8.5.1; or

8.5.6 for the avoidance of doubt, an application under section 33 or parts 3 and 4 of the Foreshore and Seabed Act 2004, or similar replacement legislation.

ADDITIONAL DEFINED TERMS AND INTERPRETATION

8.6 The definitions in paragraph 8.1 of the provisions schedule apply to this Deed.

8.7 The provisions in paragraph 8.2 of the provisions schedule apply in the interpretation of this Deed.

INTEREST

8.8 The Crown will pay interest on \$20,000,000:

8.8.1 at the interest rate that is set from time to time by the Reserve Bank as the official cash rate, expressed as a percentage per annum; and

8.8.2 calculated on a daily basis but not compounding.

8.9 Interest under clause 8.8 will be:

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

8 DEFINITIONS, INTERPRETATION, AND GENERAL PROVISIONS

- 8.9.1 payable in respect of the period commencing on 30 September 2008 (being the date of the Agreement in Principle) to the settlement date but excluding the settlement date itself; and
- 8.9.2 subject to any tax payable; and
- 8.9.3 paid to the Trustees:
 - (a) on the settlement date; and
 - (b) after withholding any tax that is required by legislation to be withheld.

TAX

- 8.10 Part 5 of the provisions schedule sets out:
 - 8.10.1 provisions concerning taxation of the provision of redress under this Deed; and
 - 8.10.2 in particular, the Crown's indemnities in relation to taxation of the provision of redress under this Deed.

NOTICE PROVISIONS

- 8.11 Part 6 of the provisions schedule applies to notices under this Deed or a settlement document.

GENERAL PROVISIONS

- 8.12 Part 7 of the provisions schedule sets out general provisions applying to this Deed and the settlement.

AMENDMENTS TO THIS DEED

- 8.13 This Deed may be amended only by written agreement signed by the Crown and the Trustees.

SIGNED as a deed on 17 December 2010

SIGNED for and on behalf of **THE CROWN**
by:

the Minister for Treaty of Waitangi
Negotiations in the presence of:

Hon Christopher Finlayson

WITNESS

Name:

Occupation:

Address:

the Minister of Finance
only in relation to the indemnities
given in part 5 of the provisions schedule
in the presence of:

Hon Simon William English

WITNESS

Name:

Occupation:

Address:

the Associate Minister of Māori Affairs
in the presence of:

Hon Georgina Te Heuheu

WITNESS

Name:

Occupation:

Address:

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

SIGNED for and on behalf of **NGĀTI PĀHAUWERA**
by the Trustees of the
Ngāti Pāhauwera Development Trust,
and by those Trustees as
trustees of that Trust in the presence of:

Kuki Green

Toro Waaka

Gerald Aranui

Sissiel Henderson

Charles Lambert

Tureiti Moxon

Tania Hodges

WITNESS

Name:

Occupation:

Address:

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

People of Ngāti Pāhauwera signed below to indicate their support for the Settlement.

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT

NGĀTI PĀHAUWERA DEED OF SETTLEMENT
