

THE NGĀTI MĀKINO HERITAGE TRUST

and

HER MAJESTY THE QUEEN

in right of New Zealand

**Agreement in Principle
for the Settlement of the Historical Claims of
Ngāti Mākino**

16 October 2008

WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE

Auēauē kau au ki te kiri o te hoa

I cry, do nothing but cry for the body of my friend

E whakakīa ana e te anu mātao ē!

Which is filled with bitter cold ee!

Kātahi au, e te hoa! Nāu i uta mai

Alas, friend! It was you who burdened

Ki te ūkaipō hai hurihuri iho

The breast from which you fed in the night, with turning about

Tō mata raunui, tō kiri ahoaho ē!

Your broad face, your shining skin ee!

Me whakamoe koe ki runga i te waka tōtara,

Sleep on in the totara canoe!

Kia noho mai koe i runga o Pukerimu –

Rest yonder on Pukerimu

Ngā rua whakakī kai ō koroua ē!

Among the full graves of your ancestors ee!

Me whakaruku koe ngā ia whakaripo o Waitahanui!

Dive into the swirling currents of Waitahanui

Ka puta ki waho rā, whakaea tō mata,

And when you come out yonder, lift your face above the water

Whakarongo te taringa ngā tai e haruru i waho
Te Raupare –

And let your ears listen to the sounding tides beyond Te Raupare –

Tangi kotokoto ai te tai o te ākau, he tai mihi tangata!

The tides on the shore are sobbing, greeting mankind!

E hopu tō ringa ngā rimu rapa nui, hai whakatau ringa!

Grasp the kelp with your hand, to steady yourself!

E tae koe ki Moehau, titiro tō kanohi ngā motu whakatere –

When you come to Moehau, let your eyes gaze at the floating islands –

Ko Rangitoto pea nge! Whakaoho tō reo!

Rangitoto is there! Lift up your voice!

Tēnā tō matua te whakamoe mai nā

Your elder sleeps yonder in his stone house!

Kai roto i te whare kōhatu! E tae ki Te Rerenga,

When you come to the Leaping-Place,

Tahuri mai ki muri, mihi mai i konā

turn back and greet

Te riu ki te whenua, e! Tēnei, e te hoa,

The vale of the land! Friend, these are our treasures,

Ā tāua kura i waiho i muri i tō tua!

Which you are leaving behind your back!

Ma wai hoki rā e pupuri ringa rua?

Who can hold them forever in his hands?

E here ana mai te taura o te pō hai kukume ki raro rā ē!

The rope of night binds us, and will drag us below ee!

Negotiations to Date

- 1 In June 1995 Ngāti Mākino presented their claims within the Eastern Bay of Plenty District Inquiry of the Waitangi Tribunal.
- 2 Subsequently, in 1997, the Ngāti Mākino claimant community mandated the Ngāti Mākino Heritage Trust to negotiate a settlement of Ngāti Mākino's historical Treaty of Waitangi claims.
- 3 This mandate was recognised by the Crown, and on 8 October 1998 the Parties entered into Terms of Negotiation (the **Terms**).
- 4 The Crown subsequently disengaged from negotiations with Ngāti Mākino. Negotiations were not resumed until 21 February 2008, following Ngāti Mākino's participation in five further separate inquiries of the Waitangi Tribunal, namely:
 - a the Foreshore and Seabed Inquiry;
 - b Stage One of the Central North Island Inquiry;
 - c two inquiries into the Crown's recognition of the mandate of the affiliate Te Arawa iwi/hapū to settle claims in relation to Te Arawa; and
 - d the inquiry into Crown Settlement Policy and its impact upon Te Arawa Waka.
- 5 On 21 February 2008 the Crown entered into Joint Terms of Negotiation (the **Joint Terms**) with Ngāti Mākino and Waitaha. The Joint Terms incorporate those Terms that were signed in 1998 and set out the scope, objectives and general procedure for negotiations.
- 6 On 7 April 2008 the Crown reconfirmed the mandate of the Ngāti Mākino Heritage Trust to negotiate, on behalf of Ngāti Mākino, the settlement of the Historical Claims.
- 7 Negotiations have been conducted in condensed timeframes, but have now reached a stage where the Parties wish to enter into this Agreement in Principle (the **Agreement in Principle**) recording that they are willing to settle the Historical Claims by entering into a Deed of Settlement (the **Deed of Settlement**) on the basis set out in this Agreement in Principle.

General

- 8 The Agreement in Principle contains the nature and scope of the Crown's offer to settle the Historical Claims.
- 9 The redress offered to Ngāti Mākino to settle the Historical Claims comprises three main components. These are:
 - a an Historical Account, Crown acknowledgements, and a Crown apology;

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- b Cultural Redress; and
 - c Financial and Commercial Redress.
- 10 Following the signing of this Agreement in Principle, the Parties will work together in good faith to expedite and accord priority to developing, as soon as reasonably practicable, a Deed of Settlement. The Deed of Settlement will include the full details of the redress the Crown is to offer to settle the Historical Claims and all other necessary matters. The Deed of Settlement will be conditional on the matters set out in paragraph 65 of this Agreement in Principle.
- 11 The Crown and the Ngāti Mākino Heritage Trust each reserve the right to withdraw from this Agreement in Principle by giving written notice to the other Party. To avoid doubt, the Parties may mutually agree, in writing, to amend the Agreement in Principle.
- 12 This Agreement in Principle:
- a is entered into on a without prejudice basis;
 - b is non-binding and does not create legal relations; and
 - c cannot be used as evidence in any proceedings before, or be presented to, the Courts, the Waitangi Tribunal and any other judicial body or tribunal; but nevertheless
 - d reflects the co-operative negotiations and discussions between the Crown and Ngāti Mākino to date.
- 13 Key terms used in this document are defined in paragraph 72.

Historical Account and Crown Acknowledgements

- 14 The Deed of Settlement will contain an agreed Historical Account that outlines the historical relationship between the Crown and Ngāti Mākino.
- 15 On the basis of the Historical Account, the Crown will acknowledge in the Deed of Settlement that certain actions or omissions of the Crown were in breach of the Treaty of Waitangi/Te Tiriti o Waitangi, and that these breaches caused prejudice to Ngāti Mākino.
- 16 The Crown intends to offer an apology to Ngāti Mākino in the Deed of Settlement for the acknowledged Crown breaches of the Treaty of Waitangi/Te Tiriti o Waitangi and its principles.
- 17 A draft Historical Account is attached as **Attachment A**. The draft has been agreed in substance by the Parties, but may be subject to further editing and amendment as the Parties agree is necessary.

Cultural Redress

- 18 The Cultural Redress package is based upon a number of factors such as the nature and extent of the claims of Ngāti Mākino, the redress sought by the Ngāti Mākino Heritage Trust, and the redress items and instruments available to the Crown. The package has been developed to recognise the Parties' desire to develop an ongoing and robust relationship with each other.
- 19 The Crown's offer of Cultural Redress is intended to recognise the traditional, historical, cultural and spiritual associations of Ngāti Mākino with places and sites owned by the Crown within Ngāti Mākino's Area of Interest (as shown in **Attachment B**), and to allow Ngāti Mākino, together with the Crown and other interested parties, to protect and enhance the conservation values associated with these areas and sites.
- 20 All items of Cultural Redress are subject to the following being resolved before a Deed of Settlement is signed:
 - a the Crown confirming that any overlapping claims issues have been addressed to the satisfaction of the Crown; and
 - b any other conditions set out below relating to specific items of Cultural Redress.
- 21 Unless otherwise specified, the value of the Cultural Redress is not off-set against the Financial and Commercial Redress Amount.

Public Conservation Lands

- 22 The Crown recognises the intrinsic significance of the scenic reserve lands that sit within the Ngāti Mākino Area of Interest. The Crown acknowledges that Ngāti Mākino and a number of other hapū/iwi have interests within this area.
- 23 Ngāti Mākino, in turn, recognise the importance of these lands to the nation as a whole and the important role that the Crown and its agencies currently play in the conservation of these lands.
- 24 Accordingly, the Parties agree to explore the following redress:
 - a the transfer and transfer-back to the Crown of scenic reserve lands;
 - b creation of a "Lakes Reserves Partnership Forum";
 - c co-management of scenic reserve lands, which could include lands owned by Ngāti Mākino as well as public conservation lands;
 - d overlay classifications over key sites;
 - e a relationship instrument with the Department of Conservation; and
 - f vesting the fee simple estate in certain wāhi tapu sites in the Governance Entity.

- 25 The Crown offers to write, following the signing of the Agreement in Principle, to the Lake Rotoiti Scenic Reserves Board noting Ngāti Mākino's interests in areas controlled by that Board.

Place Name Changes, River and Coastal Statutory Acknowledgements

- 26 In addition, the Crown agrees to explore:
- a amending or assigning an agreed list of place names of significance to Ngāti Mākino for inclusion in the Deed of Settlement and Settlement Legislation, in consultation with the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa, in accordance with the requirements of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008, and consistent with the orthographic conventions of Te Taura Whiri i te Reo Māori (the Māori Language Commission);
 - b statutory acknowledgements to be made in relation to certain rivers within the Area of Interest, to reflect Ngāti Mākino's cultural, spiritual, historical, and traditional association with those rivers (with any such statutory acknowledgements to be non-exclusive, in relation only to those Crown-owned portions of the riverbeds, and on similar terms, in substance, to those provided in previous Treaty settlements); and
 - c statutory acknowledgements over the coastal areas, yet to be defined, within the Area of Interest, to reflect Ngāti Mākino's cultural, spiritual, historical, and traditional association with those areas (with any such statutory acknowledgements to be non-exclusive and on similar terms, in substance, to those provided in previous Treaty settlements).

Matawhaura and Otari Pā

- 27 In its negotiations with the Affiliate Te Arawa Iwi/Hapū, the Crown acknowledged the significance of Matawhaura Maunga and Otari Pā (also known as Te Manawa o Hei) (as shown on **Maps 2 and 3 in Attachment C**) to Ngāti Mākino. The Crown has also acknowledged that Ngāti Pikiao (an overlapping Te Arawa group who are related to Ngāti Mākino through marriage) have interests in these sites.
- 28 The Parties acknowledge that the Deed of Settlement of the Historical Claims of the Affiliate Te Arawa Iwi/Hapū signed on 11 June 2008 (the **Te Pumautanga Deed**) and the Affiliate Te Arawa Iwi and Hapū Claims Settlement Act 2008 provide, in broad terms, for the future joint vesting of 33.5402 hectares of land. These 33.5402 hectares comprise:
- a Matawhaura (part of the Lake Rotoiti Scenic Reserve), 32.5266 hectares approximately, being Part Rotoiti 6 & 7A. Subject to survey. The site will be a scenic reserve for the purposes specified in section 19(1)(a) of the Reserves Act 1977; and
 - b Otari Pā, 1.0136 hectares approximately, being Part Sections 1 and 4 Block X Waihi South Survey District. Subject to survey.

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- 29 In the event that certain conditions are met by the date 2 years after the Te Pumautanga Deed becomes unconditional, these sites are to be vested in a body corporate or trust approved in writing, established jointly and named by the trustees of the Te Pumautanga o Te Arawa Trust and the Governance Entity. Such vesting is to be given effect by the Settlement Legislation.
- 30 The Parties agree that the vesting of Matawhaura and Otari Pā will be in accordance with the Te Pumautanga Deed and the Affiliate Te Arawa Iwi and Hapū Claims Settlement Act 2008.

Wāhi Tapu within Ngāti Awa Crown Forest Land

- 31 The Crown agrees to continue its efforts to facilitate an outcome in relation to certain wāhi tapu that lie within the Rotoehu West Crown Forest Licensed Land transferred to Te Rūnanga o Ngāti Awa under the Ngāti Awa Claims Settlement Act 2005.

Conditions for vesting of properties forming part of the Cultural Redress

- 32 The vesting of any property forming part of the Cultural Redress (apart from Matawhaura and Otari Pā) is subject to (where relevant):
- a further identification and survey of sites;
 - b confirmation that no prior offer back or other third party rights and obligations, such as those under the Public Works Act 1981, exist in relation to the property, and confirmation that any other statutory provisions which must be complied with before the property can be transferred have been duly considered and are able to be complied with;
 - c any specific conditions or encumbrances or terms of transfer applicable to the property;
 - d any rights or encumbrances (such as a tenancy, lease, licence, easement, covenant or other right or interest, whether registered or unregistered), in respect of the property, either existing at the date the Deed of Settlement is signed or which are advised in the disclosure information as requiring to be created;
 - e the rights or obligations at the Settlement Date of third parties in relation to fixtures, structures or improvements;
 - f the creation of marginal strips where Part 4A of the Conservation Act 1987 so requires;
 - g sections 10 and 11 of the Crown Minerals Act 1991;
 - h the preservation of existing public access rights; and
 - i any other specific provisions relating to the property that are included in the Deed of Settlement.

Marae Restoration and Revitalisation

- 33 The Crown agrees to settle upon the Ngāti Mākino Heritage Trust, following the Ngāti Mākino Heritage Trust obtaining registration on the Charities Commission register, the sum of \$1 million to be held on separate specific trust (but otherwise in accordance with the terms of the Ngāti Mākino Heritage Trust) and applied (together with any income derived thereon) for the purpose of restoring and revitalising six marae in the Ngāti Mākino rohe (for the benefit of all Ngāti Mākino), they being:
- a Otamarakau;
 - b Tapuaeharuru;
 - c Pukehina;
 - d Houmaitawhiti;
 - e Hinekura; and
 - f Te Awhe.

Whole of Government facilitator / Ngāti Mākino Link to Development Initiatives

- 34 A key grievance expressed by Ngāti Mākino has been the sense of being left behind other Māori as well as wider New Zealand communities in terms of social and cultural development.
- 35 The Crown agrees to settle upon the Ngāti Mākino Heritage Trust, following the Ngāti Mākino Heritage Trust obtaining registration on the Charities Commission register, the sum of \$500,000 to be held on separate specific trust (but otherwise in accordance with the terms of the Ngāti Mākino Heritage Trust) and applied (together with any income derived thereon) for the purpose of identifying and remedying the social service needs of Ngāti Mākino. To achieve that purpose the Ngāti Mākino Heritage Trust shall apply those funds to employ a Whole of Government Facilitator, to:
- a co-ordinate Ngāti Mākino's participation in any assessment of the priorities and strengths and gaps in the delivery of social services to Ngāti Mākino;
 - b facilitate Ngāti Mākino's interactions with government agencies generally; and
 - c seek targeted funding assistance for priority social service needs on behalf of Ngāti Mākino.

Promotion of relationships with local authorities

- 36 The Deed of Settlement will provide for the Minister in Charge of Treaty of Waitangi Negotiations to write letters of introduction to Environment Bay of Plenty, Whakatane District Council, and Rotorua District Council encouraging

them to enter into a formal relationship with Ngāti Mākino, for example through a memorandum of understanding or similar document.

Taonga Tūturu Protocol

- 37 A protocol is a statement issued by a Minister of the Crown setting out how a particular government agency intends to:
- a exercise its functions, powers and duties in relation to specified matters within its control in a claimant group's protocol area; and
 - b consult and interact with the claimant group on a continuing basis and enable that group to have input into its decision-making processes.
- 38 The Deed of Settlement and the Settlement Legislation will provide for the Minister for Arts, Culture and Heritage to issue a protocol, known as the Taonga Tūturu Protocol, to the Governance Entity.
- 39 The Taonga Tūturu Protocol may cover matters such as:
- a newly found taonga tūturu;
 - b the export of taonga tūturu;
 - c the Protected Objects Act 1975 and any amendment or substitution thereof;
 - d policy, legislative development and operational activities which specifically affect the interests of the Governance Entity;
 - e board appointments;
 - f national monuments, war graves or historical graves, managed or administered by the Ministry, which specifically relate to the interests of the Governance Entity;
 - g an inventory of taonga tūturu, which are of Ngāti Mākino origin, held by Te Papa;
 - h history publications relating substantially or specifically to Ngāti Mākino; and
 - i provision of cultural and/or spiritual practices and tendering.

Parallel processes

- 40 The Crown agrees, outside but in parallel to the Treaty settlement process, to explore the following:

Institute of Philosophy

- a a Ngāti Mākino proposal for the Crown to provide funding for an institute of philosophy/cultural centre for all Te Arawa iwi at Maketu; and

Papakainga Housing

- b how the Crown can provide support for housing developments for the benefit of Ngāti Mākino.

Financial and Commercial Redress

Financial and Commercial Redress Payments

- 41 The financial and commercial redress amount is \$9.6 million, comprising:
 - a \$6.5 million (the **Principal Financial Redress Amount**); and
 - b an additional payment of \$3.1 million, in recognition of the delay in settling Ngāti Mākino's Historical Claims.
- 42 The Deed of Settlement will provide for the Crown to transfer to the Governance Entity on Settlement Date:
 - a the Cash Settlement Amount, being the Principal Financial Redress Amount less the transfer value of any Commercial Redress Properties transferred to the Governance Entity on Settlement Date; and
 - b the additional payment of \$3.1 million referred to in paragraph 41b above.

Crown Forest Licensed Land – Rotoehu Forest

- 43 The Deed of Settlement will provide for the Ngāti Mākino Heritage Trust to have the opportunity to select for transfer to the Governance Entity on Settlement Date up to 3,450 hectares of land, being the balance of Rotoehu CFL Land (being part of the land identified in **Attachment D**). The land selected for transfer to the Governance Entity shall be the **Crown Forest Licensed Land**.
- 44 The transfer value of the Crown Forest Licensed Land will be offset against Principal Financial Redress Amount.
- 45 The transfer to the Governance Entity of the Crown Forest Licensed Land will be subject to:
 - a survey;
 - b determination or agreement of a transfer value based upon a fair valuation process in a similar form to that set out at **Attachment E**;

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- c further definition of and agreement concerning appropriate legal access and other rights required between the Crown Forest Licensed Land and the balance of the Rotoehu CFL Land;
- d the preservation of any existing third party rights of access to the Crown Forest Licensed Land;
- e ongoing protection of public access;
- f provision for access to, and preservation of, wāhi tapu of other iwi/hapū; and
- g the resolution of overlapping claims.

New Zealand Units Associated with Crown Forest Licensed Land

- 46 The Deed of Settlement and the Settlement Legislation will provide for the Governance Entity to receive New Zealand Units (**NZUs**), as defined in section 4 of the Climate Change Response Act 2002, in respect of the Crown Forest Licensed Land.
- 47 The Crown offers to provide to the Governance Entity on Settlement Date 18 NZUs per hectare of the Crown Forest Licensed Land.

Accumulated Rentals Associated with Crown Forest Licensed Land

- 48 The Deed of Settlement and the Settlement Legislation will provide for the accumulated rentals (held by the Crown Forestry Rental Trust) associated with the Crown Forest Licensed Land to be paid to the Governance Entity in accordance with the Trust Deed of the Crown Forestry Rental Trust dated 30 April 1990 (as if the Waitangi Tribunal had made a final recommendation for the return of that land to the Governance Entity). The accumulated rentals are in addition and separate to the financial and commercial redress amount specified in paragraph 41.

Potential Commercial Redress Properties

- 49 The Crown agrees to explore the possibility of offering Ngāti Mākino redress in the form of a right of first refusal and/or a sale and leaseback (both on similar terms as in recent Treaty settlements) in relation to the properties administered by the Ministry of Education described in **Attachment F**.
- 50 The Crown agrees to explore with Landcorp Farming Limited (**Landcorp**) and the New Zealand Railways Corporation (**ONTRACK**) the possibility of offering Ngāti Mākino redress in the form of an option to purchase, a deferred option to purchase, or a joint venture mechanism, in respect of the farm owned by Landcorp at Pukehina and the railway land owned by ONTRACK at Otamarakau, described in **Attachment F**. Any redress in respect of those properties will be subject to the consent of Landcorp or ONTRACK, as appropriate.

- 51 Following the signing of this Agreement in Principle, the Minister in Charge of Treaty of Waitangi Negotiations will write to the Minister of State Owned Enterprises inviting him to support meetings between Landcorp, ONTRACK, and Ngāti Mākino in relation to the matters set out at paragraph 50.

Conditions for transfer of Commercial Redress Properties

- 52 The transfer of any Commercial Redress Property to the Governance Entity will be subject to (where relevant):
- a the consent of the relevant Crown agency;
 - b further identification and survey of sites;
 - c confirmation that no prior offer back or other third party rights and obligations, such as those under the Public Works Act 1981, exist in relation to the property; and confirmation that any other statutory provisions which must be complied with before the property can be transferred are able to be complied with;
 - d any express provisions relating to property that are included in the Deed of Settlement;
 - e standard terms of transfer and specific terms of transfer applicable to the property;
 - f any rights or encumbrances (such as a tenancy, lease, licence, easement, covenant or other right or interest whether registered or unregistered) in respect of the property or asset to be transferred, either existing at the date the Deed of Settlement is signed, or which are advised in the disclosure information to be provided to the Ngāti Mākino Heritage Trust as being required;
 - g Part 4A of the Conservation Act 1987 and the creation of marginal strips except as expressly provided;
 - h sections 10 and 11 of the Crown Minerals Act 1991;
 - i the preservation of any existing third party rights of access to the property; and
 - j the Crown confirming that any overlapping claim issues in relation to the property have been addressed to the satisfaction of the Crown.
- 53 Following the signing of this Agreement in Principle, the Crown will prepare disclosure information in relation to each Commercial Redress Property, and will provide such information to the Ngāti Mākino Heritage Trust.

Substitution of Redress

- 54 If any Commercial Redress Property offered for transfer to the Governance Entity becomes unavailable for transfer for any reason, the Crown will in good faith explore substituting another property.

Reserved Issues

- 55 The Parties acknowledge that the following matters have not yet been discussed in the negotiations and agree to discuss the matters in the period between signing the Agreement in Principle and initialling the Deed of Settlement:
- a water;
 - b geothermal;
 - c foreshore and seabed;
 - d continental shelf; and
 - e minerals.

Other Issues

Claimant Definition

- 56 The Deed of Settlement will specify who is covered by the settlement, that is, whose claims are being settled and who will benefit from the settlement.
- 57 The definition of Ngāti Mākino will be, or be similar to, the following:
- a the collective group composed of individuals, whānau and/or hapū who descend from:
 - i the eponymous ancestor Mākino; or
 - ii any other recognised ancestor of Ngāti Mākino who exercised customary rights predominantly within the Ngāti Mākino Area of Interest on or after 6 February 1840; and
 - b every whānau, hapū, or group composed of individuals, to the extent that those whānau, hapū, or groups of individuals are referred to in paragraph 57a.
- 58 The format for the definition of Ngāti Mākino will be discussed in the process of finalising a draft Deed of Settlement and will use a format similar to that used for recent settlements.

Scope of Settlement

59 The Deed of Settlement will settle all the Historical Claims of Ngāti Mākino. "Historical Claims" means every claim made by Ngāti Mākino (as defined by paragraph 57 above) or by a representative entity of Ngāti Mākino:

- wherever the claim occurs, including any claims relating to matters outside the Area of Interest;
- whether or not the claim has arisen or been considered, researched, registered, or notified; and
- whenever the claim is made (either before, on, or after Settlement Date):

that:

- a is founded on a right arising from Te Tiriti o Waitangi/the Treaty of Waitangi or the principles of the Treaty of Waitangi; under legislation, at common law (including aboriginal title or customary law), from a fiduciary duty, or 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 any legislation;
- c accordingly includes (without limiting the general wording of paragraphs 59a and b) every claim to the Waitangi Tribunal that relates specifically to Ngāti Mākino, including:
 - i Wai 275;
 - ii Wai 334; and
 - iii Wai 1372;

to the extent that paragraphs 59a and 59b apply to those claims.

Proposed Terms of the Deed of Settlement

Acknowledgements concerning the settlement and the redress

60 The Crown and Ngāti Mākino will acknowledge in the Deed of Settlement that:

- a the settlement represents the result of intensive negotiations conducted in good faith and in the spirit of co-operation and compromise;
- b it is not possible to compensate Ngāti Mākino fully for all the loss and prejudice suffered;

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- c this foregoing of full compensation is intended by Ngāti Mākino to contribute to the development of New Zealand, over and above the contribution already made by Ngāti Mākino; and
- d taking all matters into consideration the settlement is fair in the circumstances.

Acknowledgements concerning the settlement and its finality

- 61 The Crown and Ngāti Mākino will acknowledge (amongst other things) in the Deed of Settlement that the settlement of the Historical Claims:
- a is intended to enhance the ongoing and developing relationship between the Crown and Ngāti Mākino (both in terms of Te Tiriti o Waitangi/the Treaty of Waitangi and otherwise);
 - b except as expressly provided in the Deed of Settlement, will not limit any rights or powers the Crown or Ngāti Mākino might have arising from Te Tiriti o Waitangi/the Treaty of Waitangi or the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, legislation, common law (including aboriginal title and customary law), fiduciary duty or otherwise;
 - c does not extinguish any aboriginal title, or customary rights, that Ngāti Mākino may have;
 - d does not imply an acknowledgement by the Crown that aboriginal title, or any customary rights, exist; and
 - e except as expressly provided in the Deed of Settlement, is not intended to affect any actions or decisions under:
 - i the Deed of Settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims;
 - ii the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
 - iii the Māori Fisheries Act 2004;
 - iv the Māori Commercial Aquaculture Claims Settlement Act 2004;
 - v the Fisheries Act 1996;
 - vi the Foreshore and Seabed Act 2004;
 - vii the Resource Management Act 1991; or
 - viii the Marine Reserves Act 1971.
- 62 Ngāti Mākino will acknowledge and agree in the Deed of Settlement, and the Settlement Legislation will provide that, with effect from the Settlement Date:
- a the Historical Claims are settled;
 - b the settlement of the Historical Claims is final;

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- c the Crown is released and discharged from any obligations, liabilities and duties in respect of the Historical Claims;
 - d the Courts, the Waitangi Tribunal and any other judicial body or tribunal do not have jurisdiction (including the jurisdiction to inquire into or to make a finding or recommendation) in respect of:
 - i the Historical Claims;
 - ii the Deed of Settlement;
 - iii the redress provided to Ngāti Mākino and the Governance Entity in the settlement; and
 - iv the Settlement Legislation;(except in respect of the interpretation and enforcement of the Deed of Settlement and the Settlement Legislation); and
 - e any proceedings in relation to the Historical Claims will be discontinued.
- 63 The Deed of Settlement will provide for Ngāti Mākino acknowledging and agreeing the following:
- a the Crown has acted honourably and reasonably in respect of the settlement;
 - b it is intended that the settlement is for the benefit of Ngāti Mākino and may be for the benefit of particular individuals or any particular iwi, hapū, or group of individuals as is determined appropriate between the Ngāti Mākino Heritage Trust and the Crown; and
 - c the settlement will be binding on Ngāti Mākino, the Governance Entity (and any representative entity of Ngāti Mākino).

Removal of statutory protections and termination of landbanking arrangements

- 64 The Deed of Settlement will provide for Ngāti Mākino acknowledging and agreeing the following:
- a the Settlement Legislation will provide that:
 - i nothing in the enactments listed in paragraph 64a(ii) applies:
 - A to any property vested in the Governance Entity as cultural redress or a Commercial Redress Property; or
 - B for the benefit of Ngāti Mākino or a representative entity;
 - ii the enactments are:
 - A Sections 8A-8HJ of the Treaty of Waitangi Act 1975;

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- B Sections 27A to 27C of the State Owned Enterprises Act 1986;
 - C Sections 211 to 213 of the Education Act 1989;
 - D Part 3 of the Crown Forests Assets Act 1989; and
 - E Part 3 of the New Zealand Railways Corporation Restructuring Act 1990;
- b neither Ngāti Mākino nor any representative entity of Ngāti Mākino may, from Settlement Date, object to the removal by legislation of the application of the enactments referred to in paragraph 64a(ii) above, or to the removal of resumptive memorials, in relation to any land; and
 - c the Crown may, on and after Settlement Date, cease to operate a landbank arrangement in relation to Ngāti Mākino or a representative entity.

Conditions

65 The Deed of Settlement will be subject to the following conditions:

Overlapping Interests

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

Cabinet agreement

- b Cabinet agreeing to the settlement and the redress to be provided to Ngāti Mākino;

Ratification

- c The Ngāti Mākino Heritage Trust obtaining a mandate from the members of Ngāti Mākino (through a process agreed by the Ngāti Mākino Heritage Trust and the Crown) authorising it to:
 - i enter into the Deed of Settlement on behalf of Ngāti Mākino; and
 - ii in particular, settle the Historical Claims on the terms provided in the Deed of Settlement;

Governance Entity

- d the establishment of an entity (the **Governance Entity**) prior to the introduction of Settlement Legislation that the Crown is satisfied:

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- i is an appropriate entity to which the Crown will provide the settlement redress;
- ii has a structure that provides for:
 - A representation of Ngāti Mākino;
 - B transparent decision-making and dispute resolution processes; and
 - C full accountability to Ngāti Mākino; and
- iii has been ratified by the members of Ngāti Mākino (through a process agreed by the Ngāti Mākino Heritage Trust and the Crown) as an appropriate entity to receive the settlement redress;
- e the Governance Entity signing a Deed of Covenant to provide for it, among other things, to be bound by the terms of the Deed of Settlement.

Settlement Legislation

- 66 This Agreement in Principle and the Deed of Settlement will be subject to:
 - a the passing of Settlement Legislation to give effect to parts of the settlement; and
 - b Ngāti Mākino supporting the passage of Settlement Legislation.
- 67 The Crown will propose Settlement Legislation for introduction into the House of Representatives only after the Governance Entity has been established and ratified and has signed a Deed of Covenant.
- 68 The Crown will ensure that the Ngāti Mākino Heritage Trust or the Governance Entity has appropriate participation in the process of drafting the Settlement Legislation and such drafting will commence once the Deed of Settlement has been signed.

Taxation

- 69 The Deed of Settlement will also include the following taxation matters:
 - a subject to obtaining the consent of the Minister of Finance, the Governance Entity will be indemnified against income tax and Goods and Services Tax (**GST**) arising from the transferring, crediting or payment of Financial and Commercial Redress by the Crown to the Governance Entity;
 - b this indemnity does not extend to any tax liability arising in connection with the acquisition of property by the Governance Entity outside of this settlement, whether it uses its own funds or uses the Financial and Commercial Redress for such acquisition;

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- c subject to obtaining the consent of the Minister of Finance, the Governance Entity will also be indemnified against income tax, GST and gift duty arising from the transfer of Cultural Redress by the Crown to the Governance Entity; and
- d neither the Governance Entity nor any other person shall claim a GST input credit or tax deduction in respect of any Cultural Redress or Financial and Commercial Redress provided by the Crown to the Governance Entity.

Interest

- 70 The Deed of Settlement will provide for the Crown to pay the interest on the Principal Financial Redress Amount for the period from (and including) the date of the Agreement in Principle to (but excluding) Settlement Date.
- 71 Interest under paragraph 70 will:
 - a be at the Official Cash Rate calculated on a daily basis;
 - b not compound;
 - c be paid to the Governance Entity on Settlement Date; and
 - d be subject to normal taxation law.

Definitions

- 72 Key terms used in this document are defined as follows:

Agreement In Principle means this Agreement in Principle between the Ngāti Mākino Heritage Trust and the Crown.

Area of Interest means the area shown in **Attachment B**.

Commercial Redress Properties means those properties referred to in paragraphs 49, 50 and 54 (if any).

Crown means:

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

Crown Forest Licensed Land means that land referred to in paragraph 43.

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

Cultural Redress means the redress offered for the settlement of the Historical Claims as set out in paragraphs 18 to 39.

Financial and Commercial Redress means the redress offered for the settlement of the Historical Claims as set out in paragraphs 41 to 54.

Governance Entity means an entity established in accordance with paragraph 65d.

Historical Account means the historical account referred to in paragraph 14.

Historical Claims has the meaning set out in paragraph 59.

Ngāti Mākino means the collective group, and groups and individuals, to be defined in the Deed of Settlement in accordance with paragraphs 57 and 58.

Parties means the Ngāti Mākino Heritage Trust and the Crown.

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

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

The Ngāti Mākino Heritage Trust means the mandated body recognised to represent Ngāti Mākino in negotiations with the Crown.

Transfer Value means the amount referred to as such, and determined by, the process set out in **Attachment E**.

WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE

SIGNED this 16 day of October 2008

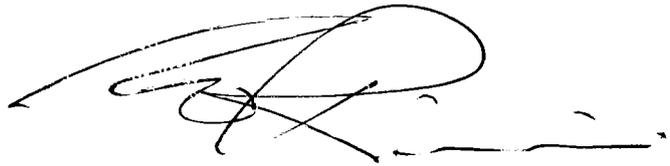
For and on behalf of the Crown:



Hon Dr Michael Cullen
Minister in Charge of Treaty of Waitangi Negotiations



Hon Parekura Horomia
Minister of Māori Affairs



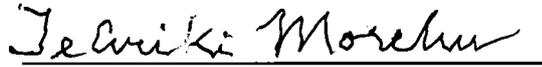
Hon Mita Ririnui
Associate Minister in Charge of Treaty of
Waitangi Negotiations

WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE

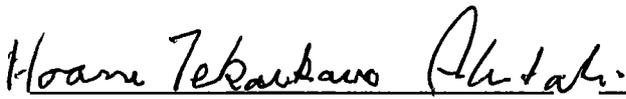
For and on behalf of Ngāti Mākino:



Awhi Awhimate
Chairman, Ngāti Mākino Heritage Trust



Te Ariki Morehu



Hoani Atutahi



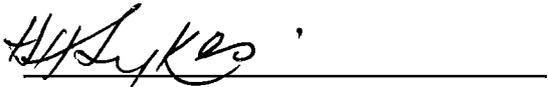
~~XXXXXXXXXX~~ Henere Ngatai



Whakarewa Hunuhunu



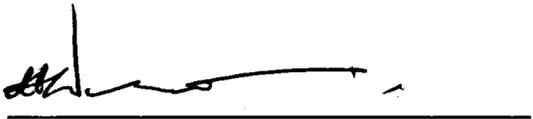
Laurence Tamati



Hilda Sykes



Tohu Rīpeka Te Whata



Hare Wiremu

WITNESSES:

Shirley Bousland.

A. Hyatt
W. Sturtel.

Jim Bower

M. Tison
Nimica Mason

James R.

G. K. Tawa

Mc Marshall

Don Stafford

Alvinia Ngatai

J. K. Ngatai

L. M. Rautava

Ainepo Tubb
Haveri Atutau

WITNESSES:

Purini Ngatai

Louisa Hawea Tawa Holia; Davies

Orini Smith

Rosie Cothead

Meg Anderson

2 Kapano

TWMA tūhaki

GA Oranga

Elizabeth Moana Oranga

Ngawarua Luma

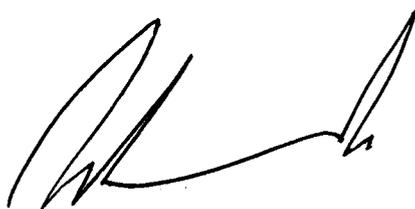
Ainetia Mikiere

Parehama Kingi Paota

Laine Mualapa

Ida Le Pan

Therese



P. A. ...

WITNESSES:

Vervies Purohu McAnstand

Connie Mason

Angela Kepo

Maru Hauerepo Poutiapa Japsell

~~W. J. J.~~

A. Rangie

J.

Attachment A

Historical Account

Introduction

1. Ngāti Mākino traditionally operated as an independent entity, sometimes joining neighbouring iwi for mutual defence and cooperation when confronted by external threats or when prompted by common interests. Ngāti Mākino held its land and resources under a customary form of tenure where tribal and hapū collective ownership was paramount. Ngāti Mākino traditionally occupied the area between the Rotorua lakes and the Bay of Plenty coast. They also used the name Waitaha as a tribal name after their ancestor Waitaha-a-Hei.
2. Ngāti Mākino are part of the Te Arawa 'confederation' of tribes. Ngāti Mākino have close relationships with other iwi in the Te Arawa confederation particularly Waitaha who they descend from and whakapapa to, and Ngāti Pīkiao to whom they are related to through marriage. They also have strong relationships with Ngāti Awa.
3. Raids from outside tribes in the 1830s forced Ngāti Mākino and others inland from their coastal settlements. Maketu was rich in resources and a key area in traditional trading routes. Pākehā traders and missionaries arrived in the Maketu and Rotorua regions in the early 1830s. In the mid to late 1830s the Ngāti Mākino chief, Te Puehu took the initiative in planning the reoccupation of Maketu and the coast at Otamarakau. During the 1830s and early 1840s, Māori in the Maketu region, including Ngāti Mākino, engaged with a small number of Europeans, trading flax for muskets and other goods. After 1840, new opportunities for trade were created with the growing Auckland market.
4. Relationships between Ngāti Mākino and other iwi continued to evolve after this time, with Ngāti Mākino always aiming to reassert and maintain their interests over their lands and resources.

Ngāti Mākino-Crown Relationship, 1840-1863

5. The first opportunity for engagement between Ngāti Mākino and the Crown was in 1840 when two missionaries brought the Treaty of Waitangi to Rotorua. The purpose of the Treaty was to negotiate for the cession of sovereignty by Māori to the Crown. Ngāti Mākino did not sign the Treaty.
6. Even though Ngāti Mākino did not sign the Treaty in 1840, during the following decades they were required to find some accommodation with the Crown and settlers. A major issue for them was the relationship between the authority of the Crown and the exercise of their own rangatiratanga.
7. Between 1840 and 1860 the Crown had a limited presence in the region between the Rotorua lakes and the coast. Māori customary law and practice continued to largely prevail. The first official Crown presence came in 1842 when a Police Magistrate and sub-protector of Aborigines was placed at Maketu at the invitation of local iwi. Governor Grey visited the region in 1849 seeking to

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

increase the Crown's influence and promising various forms of material assistance to local Māori. A consequence of Grey's visit was the stationing of a Resident Magistrate at Maketu in 1852, whose main role was to mediate in disputes between Māori, and between Māori and Pākehā traders. Later a number of Māori 'Assessors' were elected by the tribes to assist the Magistrate. The Ngāti Mākino chief Rota Rangihoro was one of the elected Assessors from 1859.

8. Between 1840 and the mid 1860s European settlement in the Bay of Plenty remained minimal and there was little pressure on Bay of Plenty Māori from the Crown to sell their lands. According to two Crown land purchase agents, writing in 1876, by the mid-1850s:

The Arawa tribes came to the unanimous decision that no lands should be alienated to either Government or private individuals; but that their country would be opened for lease, a determination they seem to have adhered to, with little or no variation, up to the year 1872.

9. From the 1840s Bay of Plenty Māori were engaging with the new trading economy. Vessels were purchased to transport goods and mills constructed to produce flour. The Government provided financial assistance for some of this enterprise.
10. Within this context of Crown cooperation, expressions of friendship and support for the Governor by Te Arawa became more common in the mid-1850s. However, they also continued to assert their own independence and autonomy.
11. At this time Ngāti Mākino and others were also independently developing peaceful means of engagement and resolving disputes. They had largely abandoned war and adopted non-violent dispute resolution by the mid-1850s in their dealings with both Europeans and with each other. Their tikanga and tribal authority was flexible and generally compatible with the developing colonial economy. They were sometimes assisted by the Magistrate or missionaries.
12. By the late 1850s disputes between Māori and the Crown over land sales in other parts of the country were causing tension. This gave rise to what was known as the King movement or Kingitanga. Māori who supported the movement placed themselves and their lands under the protection of a Māori King. Most Ngāti Mākino preferred to manage their engagement with the new Pākehā world themselves.
13. In 1860, partly in response to the King movement, the Crown convened the Kohimarama Conference, a large hui for Crown and iwi representatives to discuss issues relating to the Treaty of Waitangi, land sales, and law and order. At the hui, the Governor spoke on the protective and beneficial elements of the Treaty. Rirituku Te Puehu, a chief who identified himself as Ngāti Pīkiao and is associated with Ngāti Mākino, rejected the Māori King and instead spoke in support of the Queen "who is the source of our wealth". Te Puehu, however, cautioned that this relationship was "newly grafted" and that it would have to be handled carefully "lest it become displaced".
14. There was some talk at the hui of possible means of ascertaining ownership of Māori land. Several chiefs were in favour of the broad concept, seeing a need to provide a more secure form of land tenure in the new economic environment for

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

themselves and Pākehā who wished to lease some of their lands. Crown officials suggested that Māori Runanga operating under the supervision of a Pākehā official could be established to investigate land disputes. No decision was reached on this matter, however, as the chiefs needed to return home and consult their iwi. The Crown agreed to reconvene the conference the following year but the new Governor adopted a different approach.

15. In 1861 the Governor promoted a system for the administration of 'Native Districts' which came to be known as the Runanga system, or 'new institutions'. Māori districts were to be under the control of Village and a District Runanga, made up of rangatira with a Pākehā chair, which would propose by-laws on a range of matters. The intention was that these bodies would also undertake the role of defining tribal land interests. This promised a level of Māori self-government and some Ngāti Mākino were supportive of the 'new institutions'. They were involved in the Maketu Runanga and the Rotoiti Runanga where the Ngāti Mākino chief Te Mapu Te Amotu was appointed President. Ultimately the 'new institutions' proved a short-lived experiment. The Crown later decided to take a different approach and shifted the authority for determining the owners of Māori land to the Native Land Court under the new native land laws.

War

16. In July 1863 war broke out between the Crown and Kingitanga Māori in the Waikato. As a result of this conflict, an extended period of tension began in the Bay of Plenty. Ngāti Mākino were split by the need to choose between support for the Crown, degrees of armed neutrality and support for the Kingitanga.
17. In early 1864 the Ngāti Mākino chief, Te Puehu Taihorangi, sought permission for a force of Tai Rawhiti and other Māori (which was said to include some Ngāti Mākino) to pass through Te Arawa lands to join Māori forces fighting in the Waikato. Te Arawa iwi, however, put a prohibition on armed parties moving through its territory and were supported by the Crown who dispatched troops to the Tauranga area, including a force at Maketu. The Ngāti Mākino chiefs Te Puehu Taihorangi, Te Mapu Te Amotu and Rota Rangihoro were among those Ngāti Mākino who blocked and fought off the East Coast force in battles at Rotoiti, Maketu and Kaokaoroa between March and April 1864. There were severe losses on both sides of these battles.
18. A further engagement involving Ngāti Mākino took place at Te Ranga, near Gate Pa, in June 1864. At Te Ranga, Māori were surprised by a British reconnaissance force before they had completed their rifle pits and defensive works but declined to withdraw when they had the chance to do so. The British immediately opened fire on the Māori position and when reinforcements arrived, they charged. Much of the resulting combat was hand to hand. While many of the Māori eventually broke and fled, a small group including some Ngāti Mākino stood firm. Ngāti Mākino state that Te Ahoaho was among those 'rebel' Māori who were killed at Te Ranga.

Raupatu

19. A new round of conflict began in August 1865 when the Crown sought to apprehend those responsible for the murder of Crown official James Te Mautaranui Fulloon and others at Whakatane. Ngāti Mākino played no part in the killings.

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

20. In September 1865, the Crown issued a nationwide Proclamation of Peace declaring that the war, which had begun in the Waikato in 1863, was at an end. The Proclamation stated that the Crown would not pursue those who had taken up arms against the Crown since 1863, including those at Tauranga and other places. However, it excluded those guilty of certain murders, including that of Fulloon, adding that if those responsible for Fulloon's killing were not given up to the Governor then the Crown would take parts of the lands of those tribes who concealed the murderers.
21. While some Ngāti Mākino fought as allies of the Crown, other Ngāti Mākino allied with those fighting against the Crown due to kinship links. Te Puehu Taihorangi is thought to have remained neutral.
22. As a consequence of the military conflict between Māori and the Crown forces sent to apprehend the murderers of Fulloon, the Crown deemed that certain Bay of Plenty tribes, and sections of tribes, had been in rebellion. By an Order in Council on 17 January 1866 (subsequently amended on 1 September 1866), the Crown confiscated approximately 448,000 acres of land in the Eastern Bay of Plenty between the Waitahanui and Araparapara Rivers under the New Zealand Settlements Act 1863. While the confiscation was not directed specifically at them, Ngāti Mākino were affected. The western boundary of the confiscation district, which was not a tribal boundary, included land in which Ngāti Mākino had interests. The confiscation affected all Ngāti Mākino, including those who had been 'friendly' or neutral towards the Crown.
23. The indiscriminate nature of the confiscation was demonstrated in August 1866 when a Parliamentary Select Committee estimated that approximately half the owners in the confiscated territory had been 'friendly' or neutral towards the Crown.
24. The Crown, under the New Zealand Settlements Act 1863, established a Compensation Court to compensate anyone who had suffered land confiscation when they had not been in "rebellion". The Act did not provide a definition of "rebel". The awards made by the Compensation Court did not reflect customary forms of land tenure. Ngāti Mākino asserted interests in a block of 36,000 acres within the western part of the confiscation district, being the balance of the land remaining to the west of Te Awa o Te Atua after a series of earlier awards had been made. Following an incorrect application to the Native Land Court, Crown official HT Clarke lodged a claim to the Compensation Court in the names of three Ngāti Mākino chiefs on behalf of 'Ngatipikiao katoa' (all of Ngāti Pikiao) in October 1867.
25. The Ngāti Mākino claim relied upon whanaungatanga links with Ngāti Pikiao because some Ngāti Mākino had been identified as fighting against the Crown. The Ngāti Mākino chief Rota Rangihoro told the Compensation Court that "some of the people concerned in the claim have been in rebellion" and that of Te Arawa "we are the only hapu who have had land taken for the rebellion".
26. Their claim was contested by other iwi (who had been involved in fighting against the Crown) who also asserted interest in these lands. In 1867 the Compensation Court awarded the land, known as Whakarewa or Lot 63 Parish of Matata, to Ngāti Pikiao. A Crown grant was issued to seven chiefs who were to act as trustees of the land. Three of these chiefs, Te Puehu Taihorangi, Rota

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

Rangihoro and Te Mapu, were Ngāti Mākino. The beneficial owners of the Whakarewa block were not determined until 1872 when a list of 153 names was submitted by Ngāti Pikiao to a Crown agent at Maketu. Tension later arose over the list of owners and whether it was meant to include just those with customary associations with the land, or a wider community.

27. Te Rirituku Te Puehu, son of Te Puehu Taihorangi, was one Ngāti Mākino chief not included on the Whakarewa ownership list. In 1893, Ereatarā Roto told a Native Land Court hearing in regard to the ownership list that:

None of N'Makino [sic] – not one – who joined the rebellion were put in, only those who remained loyal. Rota and Te Mapu wished to put in Rirituku and some others, but the officers of the Crown would not allow it.

When the block was sold in 1883 a 112 acre reserve, which Rirituku Te Puehu had requested be put aside, was excluded from the sale.

28. While those Ngāti Mākino considered to be 'rebels' lost their land, those Ngāti Mākino deemed to be 'loyal' received an individual title.

Introduction of the Native Land Laws

29. The Treaty of Waitangi gave the Crown a monopoly on purchasing land from Māori. The Crown's concern that the existing system of purchasing and dealing with Māori land prompted the Crown to introduce a new system in the early 1860s. The Crown established the Native Land Court under the Native Land Acts of 1862 and 1865, to determine the owners of Māori land "according to native custom" and to convert customary title into individual title derived from the Crown. The Crown's pre-emptive right of purchase was also set aside allowing Māori to sell and lease their lands with few restrictions.
30. The Crown aimed, with these measures, to provide a means by which disputes over the ownership of lands could be settled and facilitate the opening up of Māori customary lands to Pākehā settlement. It was expected that land title reform would eventually lead Māori to abandon the tribal and communal structures of their traditional land holdings.
31. Ngāti Mākino had been involved in discussions about methods of land title determination and tenure reform at Kohimarama in 1860, and were involved in Grey's runanga set up in 1861. The native land laws adopted a different approach, which did not fully reflect earlier proposals. Ngāti Mākino were not specifically consulted about the new native land laws and nor were they informed of the full implications of applications to the Court. In an 1871 letter to the Native Minister "all of the Arawa" complained that they had never seen translations of the Native Lands Acts. Māori committees had no standing in the Native Land Court.
32. The native land laws introduced a significant change to the Māori land tenure system. Customary tenure was able to accommodate multiple and overlapping interests to the same land, but effective participation in the post 1840 economy required clear land boundaries and certainty of ownership. The Native Land Court was not designed to accommodate the complex and fluid customary land usages of Māori within its processes, because it assigned permanent ownership. In addition, land rights under customary tenure were generally

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

communal but the new land laws gave rights to individuals, instead of hapū and iwi.

33. Ngāti Mākino had no alternative but to use the Court if they wished to secure legal title to their lands. A freehold title from the Court was necessary if they wanted to legally lease or sell their land, or for security to enable the development of land.

Ngāti Mākino Attempts to Lease Land

34. In the two decades after the introduction of the native land laws, most of Ngāti Mākino lands were surveyed and had their ownership determined by either the Compensation Court or the Native Land Court. Ngāti Mākino had preferred to lease their lands to private parties but through a series of circumstances, by the mid-1880s the majority of their lands had instead been sold to the Crown and private parties.
35. In 1868 leading Ngāti Mākino chiefs and other Ngāti Pīkiao arranged to lease a block known as Otamarakau, situated between the coast and lakes Rotoiti and Rotoehu to a private individual. At the time of the lease, part of this block had already been dealt with by the Compensation Court as the Whakarewa block but the balance had not passed through the Land Court, so the legal owners had not been determined. The lessee paid six months rent (£100) in advance, but would not take possession of the land, or pay further rent, until the Native Land Court had determined the title to the land. To enable application for title to the balance to be made to the Court, Ngāti Mākino and Ngāti Pīkiao arranged to have the necessary survey plan of the whole block carried out at their own cost. The survey of Otamarakau lands cost £750, which became a debt and a burden on Ngāti Mākino.
36. In July 1870 the Ngāti Mākino chief Rota Rangihoro 'and others' filed a claim under the names Ngāti Pīkiao and Waitaha in the Native Land Court to the Otamarakau lands. The Court sat at Tauranga in January 1871 but was forced to adjourn before reaching its Otamarakau decision, because of disturbance in Maketu as a consequence of other Court rulings. As a result Ngāti Mākino were unable to gain any benefit from their lease arrangement over Otamarakau, and their survey debt remained outstanding.
37. In June 1873 the Crown employed two land purchase agents who had been working for private parties to begin negotiations over land in the central North Island. The Crown preferred to purchase land but there was widespread opposition amongst Māori to land sales. As a result the Crown purchase agents reported that they were cautious of raising the sale of land with Te Arawa and mainly confined their proposals to leasing land. One of the land purchase agents employed by the Crown had assisted the private party in the 1868 negotiations to lease the Otamarakau block.

Crown Purchase and Lease Negotiations for Waitahanui and Whakarewa Blocks, 1873

38. In August 1873 the two agents met with Māori at Maketu to discuss purchasing land in the district. At this time Ngāti Mākino had a survey debt on the Otamarakau land, but there had been little progress in bringing the lease of those lands into effect. Some Ngāti Mākino and others agreed to sell

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

approximately 30,000 acres of land in the Otamarakau area, later known as the Waitahanui block, to the Crown for £2,500. A transaction was initiated but was not completed.

39. By September 1873 the operation of the Court in the Bay of Plenty was creating tensions between tribes. The Crown suspended the operation of the Native Land Acts over the Bay of Plenty district, including the Waitahanui block. While this was to avert conflict between tribes it was also according to one Crown land purchase agent to "discourage the interference of private individuals with Government negotiations".
40. The Crown land purchase agents used the outstanding survey charge on the Otamarakau block in their negotiations to persuade some Ngāti Mākino and others to sell that land. One of the agents later told the Land Court that he had "mentioned to them that they were hard pressed on account of survey charges". He also stated that interest was accumulating on their survey debt but this was a misrepresentation. In October 1873 the Crown's purchase agents sought authority to pay off the survey debts from the funds owed to Māori for purchases. The Crown agents reported that "the immediate liquidation of these costs is the main inducement to sell to the Government."
41. While agreeing to sell Waitahanui, Ngāti Mākino's preference for leasing re-emerged with the agreement of the Whakarewa owners to lease that 36,000 acre block to the Crown in 1873. Title to this block had already been determined by the Compensation Court. However, there were disagreements among the owners, and the Government did not consider that it had an effective deed until after one was signed in 1876. Even then, the Trust Commissioner initially refused to affirm the lease because of doubts whether the trustees who signed it had the authority to do so. Eventually he approved the lease in 1878 after the Government threatened to validate it by legislation if he did not. A new deed was signed in 1879. The Crown had paid a £100 advance of rent in 1873, but did not pay further rent until 1878. At this time it only agreed to pay back rent to 1876, as opposed to 1873 when the agreement was made.

Completion of the Waitahanui Purchase

42. With the Court suspended, ownership of the Otamarakau block could not be determined and the Crown's purchase of the Waitahanui part of that block could not be completed. Despite this, in 1875 the Crown entered into a second sale agreement with Ngāti Mākino for the 27,700 acre Waitahanui block for the higher price of £4,000. The boundaries of Waitahanui, being only a part of the Otamarakau block, had to be defined by a further survey. This was carried out in 1875 at a cost of £230. The survey costs were to be deducted from the purchase money paid to the Māori owners.
43. The suspension of the Court's operation in the Bay of Plenty district was lifted in February 1877. In order to protect its uncompleted land purchases with Māori, such as Waitahanui, the Crown passed the Government Native Land Purchases Act 1877 which restricted the ability of private purchasers to interfere with Government negotiations provided that purchase negotiations had been entered into and/or money had been advanced for the purchase of land. In March 1878 the Crown publicly notified that money had been paid for the purchase of the Waitahanui lands within Otamarakau. This excluded any other party from negotiating the purchase or lease of the block.

44. The Native Land Court investigation of title into Otamarakau, which had been adjourned in 1871, resumed in 1878. The block was awarded to those 'hapus descended from Waitaha', which included Ngāti Mākino. The Otamarakau block was then divided into three portions, Waitahanui, (the area in the Crown's 1875 deed of purchase and survey), Tahunaroa, and a portion to be added to the adjoining Pukehina block.
45. When drawing up the lists of names to be inserted in the titles of Waitahanui and Tahunaroa the Ngāti Mākino chiefs who arranged the sale of Waitahanui to the Crown in 1875 did not include their own names in the 76 owners listed for Waitahanui, and instead placed their names in the ownership list for Tahunaroa. The Crown alleged that this action was an attempt by Ngāti Mākino to defraud the Crown, but a Royal Commission of Inquiry in 1881 into the Otamarakau case rejected the allegations. The naming of owners other than those who had signed the 1875 purchase deed meant, however, that the purchase of Waitahanui could not be completed.
46. However, having already advanced a substantial sum for the purchase of Waitahanui, the Crown was anxious to complete its purchase. It drew up a fresh deed to provide for the 76 owners to sell their interests to the Crown. After 1877, the native land laws provided that the Native Land Court could award the Crown any individual interests that it had acquired regardless of whether all the owners consented. By 1883, 73 of the 76 owners had signed the purchase deed.
47. The Crown applied to the Court to have its interests in the land partitioned out and in March 1883 the Court awarded it the Waitahanui 1 block, believed to contain 25, 566 acres. The partitioning out of the Crown's interests left a block of 1,050 acres (Waitahanui 2) in the hands of the three non-sellers.
48. In 1883 the Crown reconciled all the payments it had made for survey costs and in advances to sellers since 1873 to determine what money was still owing to those selling their interests in Waitahanui. Although Ngāti Mākino had intended that the sale of Waitahanui would pay the whole of the survey debt for Otamarakau, the Crown offset only part of the debt against Waitahanui and transferred the remainder as a debt against Tahunaroa and Pukehina. This meant that the owners of the other blocks became liable for a portion of the Otamarakau survey charges.
49. The 1,050 acre Waitahanui 2 block was landlocked within the Crown's Waitahanui 1 block. The Crown purchased it four years later.

Purchases in the Tahunaroa Block

50. When the title to Tahunaroa was determined by the Court in 1878, the private party who had arranged to lease Otamarakau lands in 1868 applied to the Court for confirmation of the lease. The Court stated that it would not recognise the lease, because the period for appeal against its award of the Otamarakau lands had not yet expired.
51. Immediately afterwards the Crown prohibited any private dealings over the block by declaring, under the Native Land Purchases Act 1877, that it was in negotiations over the Tahunaroa block. This was because the Crown was

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

seeking to protect advances that it had made in the context of its Waitahanui negotiations to Ngāti Mākino chiefs who were now listed on the title of Tahunaroa but not Waitahanui. There is no evidence that at the date of the notice the Crown had paid any money on Tahunaroa or was in negotiation with any of the owners for its sale thereby allowing the Crown to place the block under the provisions of this Act.

52. The Crown ultimately acquired the interests of three of the ten owners of Tahunaroa, and in March 1883, the Court partitioned out the Crown's 6,590 acres interest in the block. At the same time another 3,000 acres of Tahunaroa was designated for sale to a private party, leaving 12,217 acres intended to remain in Ngāti Mākino ownership.
53. When the Crown surveyed its blocks (Waitahanui 1 and Tahunaroa 1), errors in the earlier surveys were revealed and an amendment to the boundary between Waitahanui and Tahunaroa was made. This resulted in the surveyed areas of Waitahanui 1 and Tahunaroa 1 being over 4,000 acres larger than was estimated at the time of the Court awards. Rather than resurvey the awards, the Crown in 1885 purchased the additional acreage.
54. The area remaining in Tahunaroa in Ngāti Mākino ownership was reduced to 8,590 acres (Tahunaroa 3). This area was landlocked. In 1895-96, 8,290 acres (Tahunaroa 3B) was purchased by the Crown.

Conclusion of Lease and Purchase of Whakarewa Block

55. In January 1879 a new lease for the Whakarewa block was drawn up and the Crown made a further payment of £329 to the trustees. Ever since the list of owners and trustees had been drawn up in 1872, there had been internal disputes, both as to the breadth of the ownership and the actions of the trustees. These were manifested in the report of an offer by the trustees to sell the block in September 1879, and in a petition to the House of Representatives by Rota Rangihoro and four others of Ngāti Mākino in July 1880 claiming that persons not entitled were receiving rental payments. In August 1880 the Crown decided to withhold any further rent payments until the owners and trustees had sorted out their internal differences.
56. In 1881 the Crown offered to buy the Whakarewa block in order to resolve the ongoing dispute over rent and because it had no policy for making use of leased land. It warned the owners that if the lease was cancelled the rent paid to date would have to be refunded. Ngāti Mākino initially refused the offer to purchase and demanded that the Crown pay back-rent. Robust negotiations followed before the Crown purchased the block in 1882 for £6,000.

Reserves Retained by Ngāti Mākino

57. Between 1873 and 1900 almost 82,000 acres of Ngāti Mākino lands were alienated to the Crown or settlers. Crown purchases accounted for approximately 94 per cent of the land alienation in this period. By 1900 Ngāti Mākino retained only 3.6% of the 85,093 acres of the Waitahanui, Tahunaroa and Whakarewa blocks.
58. When purchasing Waitahanui 1, Tahunaroa 1 and Whakarewa, the Crown agreed to provide a reserve of 1,550 acres at Otamarakau, five kainga and wahi

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

tapu sites on the northern side of Lakes Rotoehu and Rotoma, 1,000 acres in the north-west corner of Whakarewa, and 112 acres at Mimiha (for Rirituku Te Puehu's family). In addition a 76 acre portion of the northern tip of Tahunaroa, known as Waewaehikitia, was intended to be reserved. This was not provided for, however, in the Court's partition of Tahunaroa in 1883 (and amended in 1885). It was not recorded in Native Land Court records until 1921 when it was awarded to the original 10 owners of Tahunaroa.

Ngāti Mākino Claims for Land around Lakes Rotoiti and Rotoehu

59. Up until at least the late 1860s Ngāti Mākino had engaged in a traditional seasonal occupation of their coastal and inland rohe. Their traditional pattern was to occupy the coast in the summer months and the areas around Lakes Rotoiti and Rotoehu in winter.
60. In 1899 the Native Land Court heard claims to the 24,000 acre Rotoiti block on the northern shores of Lake Rotoiti. Many hapū including Ngāti Mākino contested the lengthy title determination hearings held between July 1899 and December 1900.
61. Out of the Rotoiti block Ngāti Mākino were awarded 180 acres (the Rotoiti 9 or Okahu Block), although some Ngāti Mākino were admitted to other lands through different whakapapa (Rotoiti 3 and 7).

Loss of Reserves

62. By 1900 Ngāti Mākino were virtually landless. The 1909 Native Land Act removed all restrictions preventing the alienation of land titles, including reserves, awarded by the Native Land Court. It also introduced a range of checks to ensure that any sales would not result in impoverishment or landlessness. Nonetheless, in the twentieth century, private parties continued to purchase what land remained.
63. During the first half of the twentieth century the majority of Ngāti Mākino's two largest reserves, the 1,550 acre Otamarakau reserve and the 1,000 acre Whakarewa reserve, both of which were originally awarded with inalienable titles, were sold to private parties.
64. By 1992, largely as a result of private purchasing, the area of the nineteenth century reserves still in Ngāti Mākino ownership had been reduced to 514 acres in a series of small fractured partition blocks, representing 18% of the reserves' original combined area of 2,822 acres, or 0.6% of the combined area of the Waitahanui, Tahunaroa and Whakarewa blocks.

- ***Scenic Reserve Text to be included here***

Public Works Taking and Land Development Schemes

65. Further Ngāti Mākino land was acquired for roads and railways under public works legislation during the twentieth century. Compensation was generally paid for land taken for public works. In 1916 and 1923 land was taken from the Otamarakau reserve for a railway line, thus creating an effective barrier between the reserve and the coastline.

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

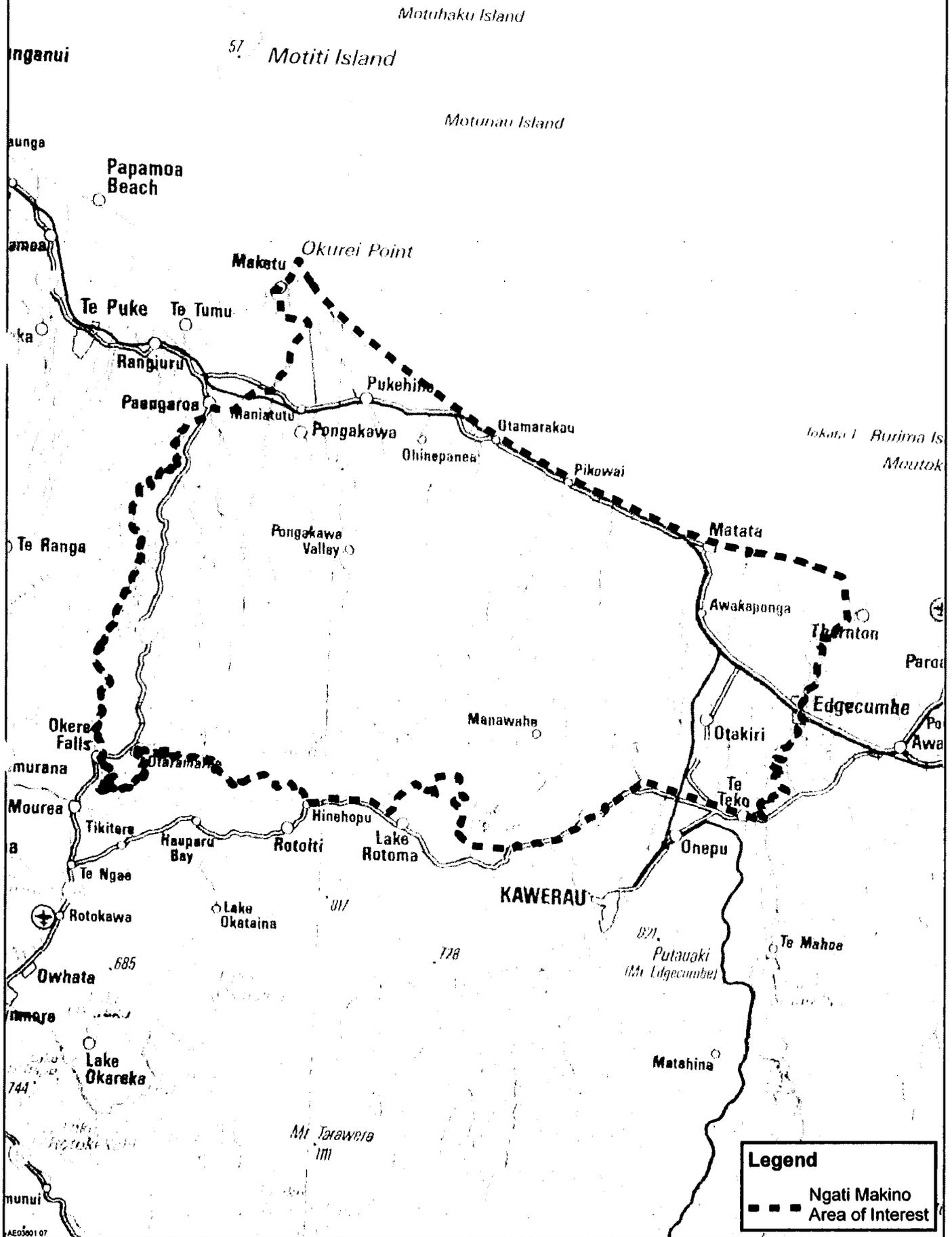
66. From the late 1920s the Crown attempted to resolve the issue of Māori being left with fragmented and often uneconomic land holdings by introducing consolidation and land development schemes. Several of these schemes were located around the Rotorua lakes, but Ngāti Mākino, without adequate land, were unable to participate or benefit from them as Ngāti Mākino.

Forestry

67. From the 1940s many Ngāti Mākino moved to Lake Rotoehu and other forestry settlements to take up employment in the exotic forest industry. The Crown encouraged this migration as a means of helping Ngāti Mākino escape poverty and develop new skills. The forest industry became an important part of the economic well being of Ngāti Mākino.
68. The forestry industry was administered by the Forest Service but was restructured in the 1980s. The Government was advised that these changes would have a severe impact on forest towns in the central North Island. The Government established a five million dollar fund to assist communities to adapt to the changes. Notwithstanding this, the restructuring resulted in extensive unemployment and dislocation amongst communities who relied on the forest industry, including Ngāti Mākino.

**Ngāti Makino
Area of Interest**

**ATTACHMENT B
Map 1**
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Attachment C

Cultural Redress Maps

Map A	Overview map
Map 2	Matawhaura Maunga
Map 3	Otari Pā

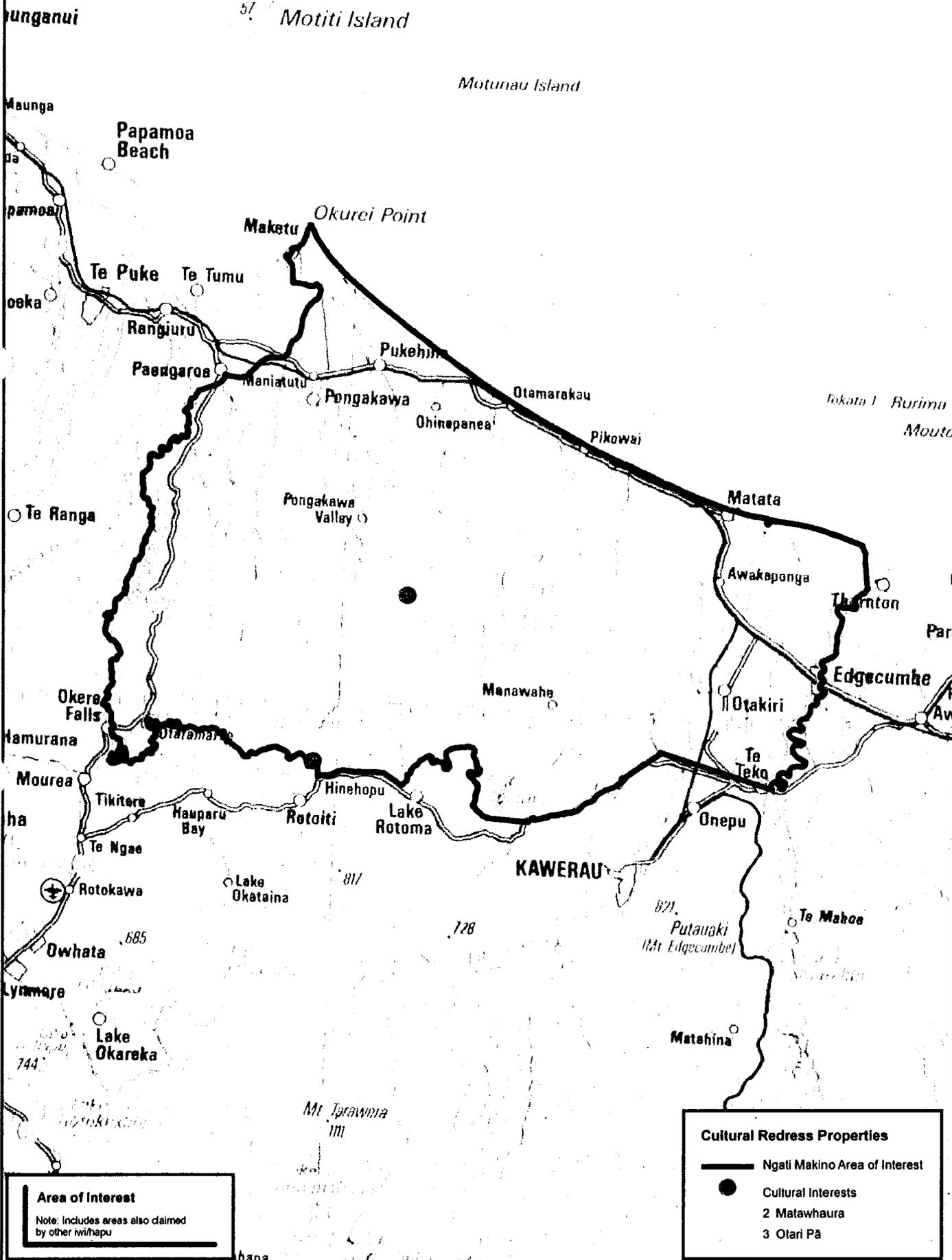
Ngāti Makino Historical Claims Settlement

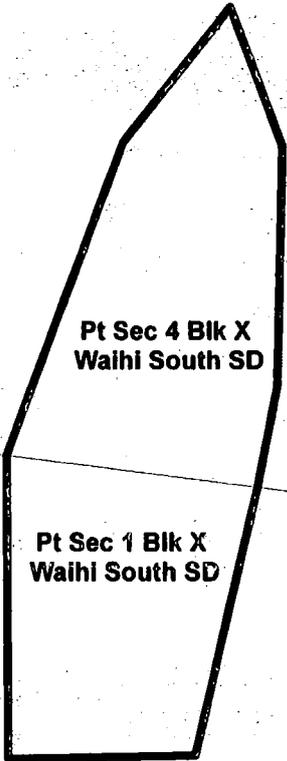
Motuhaku Island

ATTACHMENT C Overview Map A

Agreement in Principle
Cultural Redress Properties

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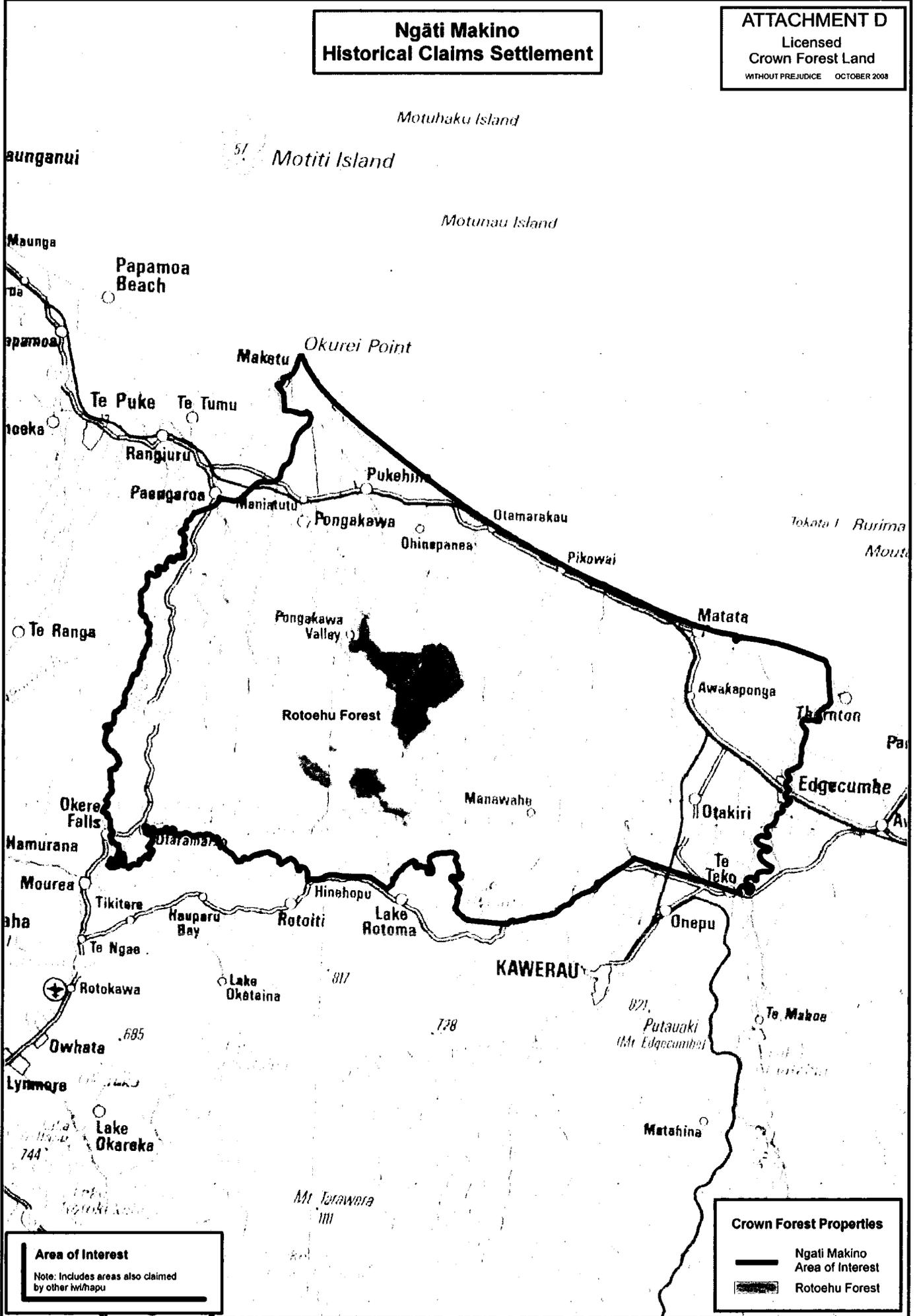




South Auckland Land District
1.0136 hectares, approximately, being
Part Sections 1 and 4 Block X
Waihi South Survey District.
Subject to survey.

**Ngāti Makino
Historical Claims Settlement**

ATTACHMENT D
Licensed
Crown Forest Land
WITHOUT PREJUDICE OCTOBER 2008



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

Crown Forest Properties
 — Ngāti Makino Area of Interest
 ■ Rotoehu Forest

Attachment E

Valuation Process –Licensed Crown Forest Land

Definitions and interpretation

1 In this valuation process, unless the context otherwise requires:

Arbitration Commencement Date means the date the Crown makes the referral referred to in paragraph 14;

Arbitrator means a person appointed under paragraph 5;

Business Day means the period of 9am to 5pm on any day other than:

- a Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- b a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and
- c the days observed as the anniversaries of the provinces of Wellington and Auckland.

Crown Forest Land means the Licensed Crown forest land to which this valuation process applies;

Crown's Valuer means any Registered Valuer appointed by the Crown under paragraph 3 to take part in this valuation process set out in this Appendix;

Market Value is the amount, exclusive of GST, for which the Crown Forest Land might be expected to exchange on the Valuation Date, between a willing buyer and a willing seller, in an arms' length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion;

Ngāti Mākino Heritage Trust's Valuer means any Registered Valuer appointed by the Ngāti Mākino Heritage Trust group under paragraph 3 to take part in this valuation process set out in this Appendix;

Principals means the Crown (acting through Land Information New Zealand in respect to this process) and the Ngāti Mākino Heritage Trust;

Registered Valuer means a valuer registered with the Valuers Registration Board of New Zealand and with experience in the valuation of commercial forest land in New Zealand;

Transfer Value means the amount determined by this valuation process;

Valuation Commencement Date means the date by which both valuers have been appointed under paragraph 3;

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

Valuation Date means the business day being the expiration of a period of 135 business days commencing on the Valuation Commencement Date; and

Valuation Exchange Date means the next Business Day after the date of expiration of the period of 135 Business Days commencing on the Valuation Commencement Date; and

Valuation Reports means the valuation reports prepared for the Crown and the Ngāti Mākino Heritage Trust in accordance with this valuation process.

Preliminary steps: disclosure, appointment of valuers and arbitrator

- 2 The Crown will within 10 Business Days of the date when this valuation process is agreed give the Ngāti Mākino Heritage Trust all material information that relates to the Crown Forest Land, of which Land Information New Zealand is aware including all information able to be obtained by the Crown under the provisions of the licence, having inspected its records but not having undertaken a physical inspection of the Crown Forest Land or made enquiries beyond Land Information New Zealand records.
- 3 No later than the next Business Day after the date of expiration of the period of 30 Business Days commencing on the date when this valuation process is agreed the Crown and the Ngāti Mākino Heritage Trust shall each:
 - a appoint a Registered Valuer and instruct him or her to assess the Market Value of the Crown Forest Land, in accordance with this valuation process and the annexed document entitled "Instructions to Valuers for Licensed Crown Forest Land"; and
 - b give notice to the other of the identity of the Registered Valuer.
- 4 The Crown and the Ngāti Mākino Heritage Trust shall ensure that the terms of appointment of their respective Valuers require them to participate in the process set out in this valuation process in accordance with the terms of this valuation process.
- 5 The Crown and the Ngāti Mākino Heritage Trust shall attempt to agree and appoint as Arbitrator a person who is suitably qualified and experienced in determining disputes about values of assets similar to the Crown Forest Land no later than the next Business Day after the date of expiration of the period of 35 Business Days commencing on the date when this valuation process is agreed. If no agreement and appointment has been made by that date, the Crown shall within 5 Business Days request that the President of the New Zealand Institute of Valuers make such an appointment.
- 6 An appointment under paragraph 5 is made once the appointee has confirmed that he or she shall conduct an arbitration, if requested by the Crown, in accordance with this valuation process.

Agreement on inputs to valuation assessments

- 7 Both Valuers must undertake a joint inspection of the Crown Forest Land in sufficient time to enable compliance with paragraph 8.
- 8 The Crown and the Ngāti Mākino Heritage Trust are resolved to minimise the points of difference between their respective Valuers' final reports by requiring them to compare and agree on base parameters and input assumptions within 30 Business Days of the Valuation Commencement Date. The Crown and the Ngāti Mākino Heritage Trust will agree on the base parameters and input assumptions for inclusion in a joint instruction to Valuers.
- 9 Should the Crown's Valuer and the Ngāti Mākino Heritage Trust's Valuer be unable to agree on specified base parameters and input assumptions, the Crown and the Ngāti Mākino Heritage Trust will request the Arbitrator to examine each Valuer's evidence on the points of disagreement and provide a ruling to which both valuers will be bound.

Exchange of valuation reports

- 10 Both the Crown's Valuer and the Ngāti Mākino Heritage Trust's Valuer shall prepare a Valuation Report which includes their respective assessments of Market Value and each party shall deliver a copy of its Valuation Report to the other party no later than the Valuation Exchange Date.
- 11 If one party (*Defaulting Party*) fails to deliver its Valuation Report to the other party (who has provided a Valuation Report to the Defaulting Party within the prescribed time) by the Valuation Exchange Date, then the assessment of the Market Value contained in the Valuation Report provided by that other party will be the Transfer Value.

Negotiations to agree market values

- 12 If each party has provided a Valuation Report at the Valuation Exchange Date, the Crown and the Ngāti Mākino Heritage Trust shall attempt to agree to the Market Value. Where agreement is reached both parties shall sign a statement identifying the amount which the parties have agreed is the Market Value.
- 13 The amount agreed as the Market Value shall be the Transfer Value for the Crown Forest Land.
- 14 Where agreement is not reached under paragraph 12 by the next Business Day after the date of expiration of the period of 30 Business Days commencing on the Valuation Exchange Date, the determination of the Transfer Value for the Crown Forest Land shall be referred to the Arbitrator in accordance with paragraph 15.

Determination of disputed values

- 15 Within 2 Business Days of paragraph 14 applying, the Crown shall refer the dispute to the Arbitrator.
- 16 The Arbitrator shall promptly give notice of a meeting to be attended by the Crown and the Ngāti Mākino Heritage Trust and their respective Registered Valuers, at a venue and time to be decided by the Arbitrator after consultation with the parties and having regard to their obligation under paragraph 17 but not later than the next Business Day after the date of expiration of the period of 30 Business Days commencing on the Arbitration Commencement Date.
- 17 The Crown and the Ngāti Mākino Heritage Trust shall by no later than 5.00 pm on the day which is 5 Business Days prior to the date of the meeting give to the Arbitrator (and to each other), the Crown's Valuation Report, the Ngāti Mākino Heritage Trust's Valuation Report and any submission or expert evidence based on that information which the Crown or the Ngāti Mākino Heritage Trust intend to present at the meeting.
- 18 At the meeting, the Arbitrator shall establish a procedure and give each party to the arbitration the right to examine, cross examine and re-examine the Registered Valuers and other experts appointed by the parties in relation to the information provided to the Arbitrator and otherwise have regard to the requirements of natural justice in the conduct of the meeting.
- 19 The Arbitrator shall hold the meeting and give his or her determination of the Market Value no later than the next Business Day after the date of expiration of the period of 45 Business Days commencing on the Arbitration Commencement Date. That determination shall be no higher than the higher, and no lower than the lower, of the assessments of Market Value contained in the Crown's Valuation Report and in the Ngāti Mākino Heritage Trust's Valuation Report.
- 20 The Transfer Value for the Crown Forest Land shall be the Arbitrator's determination of the Market Value.
- 21 The determination of the Arbitrator shall be final and binding on the Crown and the Ngāti Mākino Heritage Trust.

General provisions

- 22 The Crown and the Ngāti Mākino Heritage Trust shall each bear their own costs in connection with the processes set out in this valuation process. The costs of the Arbitrator and the costs of the hire of a venue for the meeting referred to in paragraph 16 shall be borne by the Crown and the Ngāti Mākino Heritage Trust equally. However, in appropriate cases, the Arbitrator may award costs against the Crown or the Ngāti Mākino Heritage Trust where the Arbitrator considers that it would be just to do so on account of unreasonable conduct.
- 23 The Crown and the Ngāti Mākino Heritage Trust each acknowledge that they are required to use reasonable endeavours to ensure the processes set out in

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NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

this valuation process operate in the manner, and within the timeframes, specified in this valuation process.

- 24 If the processes set out in this valuation process are delayed through any event (such as the death or incapacity or unwillingness or inability to act of any Registered Valuer or the Arbitrator), the Crown and the Ngāti Mākino Heritage Trust shall use reasonable endeavours and co-operate with each other to minimise the delay.

Instructions to Valuers for Licensed Crown Forest Land

1. The Agreement in Principle for the Settlement of the Historical Claims of Ngāti Mākino dated [] (the "AIP") provides the opportunity for the Governance Entity to acquire the licensor's interest in the Crown Forest Land that is subject to the [] Crown forestry licence (the "Crown Forest Land").
2. The valuation of the licensor's interest in the Crown Forest Land is to be undertaken in the context of the AIP.
3. The licensor's interest is the interest as proprietor of that land and is to be assessed on the basis that the Crown Forest Land will transfer as a result of a deemed recommendation from the Waitangi Tribunal and that the restrictions of the Crown Forest Assets Act 1989 such as prohibition on sale no longer apply (i.e the licensor is assumed to be the Governance Entity, not the Crown, for the purpose of the valuation).
4. The principals, being the Crown (acting through Land Information New Zealand in respect to valuations) and the Ngāti Mākino Heritage Trust, wish to obtain market valuations for specified part of the Crown Forest Land available for selection.

Requirements

5. The principals have agreed the following requirements for these valuations:
 - c Any transfer of the Crown Forest Land to the Governance Entity would be deemed to be the result of a recommendation from the Waitangi Tribunal under section 8HB of the Treaty of Waitangi Act 1975. This would trigger the relevant sections of Part II of the Crown forestry licences.
 - d The Crown Forest Land is to be valued as though:
 - i that part will transfer subject to the Crown forestry licence; and
 - ii the termination period of the licence will begin on 30 September following the giving of the termination notice (assumed to be 30 September 2009); and
 - iii the provision for public access for recreation purposes in Section 6.2 of the Crown forestry licence will continue despite a change of licensor and despite termination of the Crown forestry licence; and
 - iv the provisions of Section 14.3 and Part IIC (Section 17) of the licence will apply to the land; and
 - v the Crown will be responsible for carrying out and completing the survey necessary to define the boundaries between the part selected and the balance of the licensed land; and
 - vi a computer freehold register has been issued for the part be valued and is subject to and together with the encumbrances identified in

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

the disclosure data together with any subject and appurtenant easements arising from consultation under Section 17.4.1 of Part IIC of the Crown forestry licence.

6. Each valuer is required:
 - a to provide a valuation report as at [] (the "Valuation Date");
 - b to provide the market value of the licensor's interest (as described in paragraph 7 below) clearly setting out how this was determined.
7. The value required is the market value being the amount, exclusive of GST, at which the licensor's interest in the Crown Forest Land might be expected to exchange, on the Valuation Date, between a willing buyer and a willing seller, in an arm's length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion.
8. Both valuers are to jointly, at times to be agreed between them and the licence holders:
 - a inspect the properties; and
 - b inspect the sales information and its supporting evidence.
9. Before the valuation reports are prepared, both valuers are to agree on:
 - a a list of comparable sales to be used in determining the value of the Crown Forest Land;
 - b the geographic extent and relevant matters concerning the licensor's interest in the Crown Forest Land; and
 - c the base information or inputs into a formula for assessing future rentals to take account of the return provisions in the Crown forestry licence.

Should the valuers not reach agreement on any issue, each valuer will advise his or her principal and the principals will jointly instruct the arbitrator to rule on the disagreement.
10. Each valuation report provided by a valuer shall:
 - a include an assessment of the market value as at [XXX 2008], identifying the key issues affecting value, if any;
 - b meet the requirements of:
 - i The Property Institute of New Zealand's Valuation Standards, including the minimum requirement set out in Section 5 of the "New Zealand Institute of Valuers Valuation Standard 1: Market Value Basis of Valuation"; and
 - ii other relevant standards, insofar as those requirements are relevant;
 - c include an executive summary containing:

**WITHOUT PREJUDICE
NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- i a summary of the valuation along with key valuation parameters;
 - ii a summary of key issues affecting value, if any;
 - iii the name of the valuer and his or her firm; and
 - iv the signature of the valuer and lead valuer if applicable; and
- d attach appendices setting out:
- i a statement of valuation policies;
 - ii a statement of valuation methodology; and
 - iii relevant market and sales information.
11. Each valuer must submit to his or her principal a draft valuation report prior to submission of the final reports, so that the principal can provide comment.
12. Each valuer will provide the final report to his or her principal once the draft has been reviewed and comments received.

Timing

- i Principals appoint respective valuers
- ii Valuers agree on specified issues (30 business days from the appointment of valuers)
- iii Valuers submit draft reports to respective principals (70 Business Days from the appointment of valuers incl arbitration if required)
- iv Principals provide comments to respective valuers (80 Business Days from the appointment of valuers)
- v Valuers finalise reports and deliver to their respective principals (95 Business Days from the appointment of valuers)
- vi The final reports are shared and negotiations by the Principals over valuation differences commence (96 Business Days from the appointment of the valuers)

Definition

13. In these valuation instructions, Business Day means the period of 9am to 5pm on any day other than:
- a Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
 - b a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and

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NGĀTI MĀKINO AGREEMENT IN PRINCIPLE**

- c the days observed as the anniversaries of the provinces of Wellington and Auckland.

Appendix F

Potential Commercial Redress Properties

Map Ref	Administering Agency	Legal Description (all properties in South Auckland Land District)	Property
4 and 5	Ministry of Education	2.0234 hectares, more or less, being Section 3 Block III Waihi South Survey District; and 0.8094 hectares, approximately, being Part Pukehina L2B. Subject to survey.	Pukehina School
6	Ministry of Education	1.6187 hectares, more or less, being Lot 1 DP 29907	Otamarakau School
7	Landcorp	404.0200 hectares, more or less, being Section 1 SO 58885	Whairere Dairy Unit
8	ONTRACK	Portion of railway land situated adjacent to Lot 3 DPS 74149. Subject to survey.	Otamarakau Railway Land

**Ngāti Makino
Historical Claims Settlement**

ATTACHMENT F
Agreement in Principle
Potential Commercial Redress Properties
WITHOUT PREJUDICE OCTOBER 2008

