

WAITAHA RAUPATU TRUST

and

HER MAJESTY THE QUEEN

in right of New Zealand

**Agreement in Principle
for the Settlement of the Historical Claims of
Waitaha**

16 October 2008

*Ko Otawa te Maunga
Ko Hei te Tupuna
Ko Te Raparapaahoe te Awa
Ko Takakopiri te Tangata
Ko te Putaratara o te Tuunui
Tahuhu whakairinga korero
Ka tu te ihiihi ka tu te Wanawana
Tai tu te wehi o te moana
O punga ee e mauri
Ko Waitaha te Iwi

Ko Te Arawa te Waka*

Negotiations to Date

1. In February 2008 the Crown confirmed it would enter into joint negotiations with Waitaha and Ngati Makino over their historical Treaty of Waitangi claims.
2. On 21 February 2008, the Crown, Waitaha and Ngati Makino entered into Joint Terms of Negotiation (the **Joint Terms**). The Joint Terms set out the scope, objectives and general procedure for negotiations.
3. In respect of Waitaha, the Joint Terms were subject to the Waitaha Raupatu Trust satisfying the Crown that it had a mandate from the iwi of Waitaha to negotiate the settlement of Waitaha Historical Claims. This condition was fulfilled on 7 April 2008 when the Crown recognised the mandate of the Waitaha Raupatu Trust to negotiate, on behalf of Waitaha, an offer for the settlement of their Historical Claims.
4. Negotiations have been conducted in condensed timeframes, but have now reached a stage where the Waitaha Raupatu Trust and the Crown wish to enter this 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

5. This Agreement in Principle contains the nature and scope of the Crown's offer to settle the Historical Claims of Waitaha (whose Area of Interest is attached as **Attachment 1**).
6. The redress offered to Waitaha to settle the Historical Claims comprises three main components. These are:
 - a an Historical Account, Crown Acknowledgements and a Crown Apology;
 - b Cultural Redress, the central component of which is Recognition of Hakaraia; and
 - c Financial and Commercial Redress.

The Crown also commits, outside but in parallel to the Treaty settlement process, to explore how Waitaha's aspirations may be met in relation to Maranga Waitaha, a philosophy developed by Waitaha to promote cultural revitalisation, social cohesion and revitalisation, and economic participation and development.

7. Following the signing of this Agreement in Principle, the Waitaha Raupatu Trust and the Crown 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 81 of this Agreement in Principle.

8. The Waitaha Raupatu Trust and the Crown each reserve the right to withdraw from this Agreement in Principle by giving written notice to the other party.
9. This Agreement in Principle is entered into on a without prejudice basis. It:
 - a is non-binding and does not create legal relations; and
 - b 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 nonetheless is an important document that reflects the co-operative negotiations and discussions between the Crown and Waitaha to date.

10. Except to the extent affected by this Agreement in Principle, the Joint Terms continue to apply to the negotiations, including in particular clause 2.22 which notes that the Joint Terms encapsulate the intentions of Waitaha and the Crown to *“enter into a joint negotiation process that proceeds contemporaneously with the CNI Iwi Collective process”*.
11. Key terms used in this document are defined in paragraph 88.

Historical Account, Crown Acknowledgements, and Crown Apology

12. The Historical Account, Crown Acknowledgements and Crown Apology are the cornerstone of the Crown’s settlement offer. The Deed of Settlement will contain an agreed Historical Account that outlines the historical relationship between the Crown and Waitaha.
13. On the basis of the Historical Account, the Crown will acknowledge in the Deed of Settlement that certain actions or omissions of the Crown were a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown will then offer an apology to Waitaha in the Deed of Settlement for the acknowledged Crown breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown Acknowledgements and Crown Apology will be developed following the signing of this Agreement in Principle.
14. A draft Historical Account of the matters concerning the New Zealand Wars and the Tauranga Confiscation is attached as **Attachment 2**. The draft has been agreed in substance by the Waitaha Raupatu Trust and the Crown, but may be subject to further editing and amendment as the Waitaha Raupatu Trust and the Crown agree is necessary. The remaining matters to be covered in the Historical Account are as follows:
 - a introduction and operation of the native land laws;

- b Crown purchasing techniques of Waitaha land (including Te Puke and Otawa-Waitaha 1);
- c insufficiency of land and resources left to Waitaha;
- d petitioning the Crown over the Raupatu;
- e 20th century issues; and
- f conclusion.

Recognition of Nga Tikanga o Waitaha

15. Following the signing of this Agreement in Principle the Waitaha Raupatu Trust and the Crown will discuss the inclusion in the background section of the Deed of Settlement of text along the following lines:

- a The Crown acknowledges the statements by Waitaha that:
 - i) Waitaha are an ancient tribe who descend from the waka Te Arawa and whose traditional rohe extended from Hikurangi in Katikati to Otumatawhero along the Papamoa coast; and
 - ii) Waitaha have held steadfast to the tikanga that constitutes being Waitaha, including:
 - Whakakaha – strengthening;
 - Whakanui – to elevate;
 - Manaaki/awhina – to care, to nurture, to support;
 - Te Tihi – the pinnacle of all things;
 - Nga Tetekura – descendants; as one tree falls another rises;
 - Wairua – spiritual wellbeing;
 - Te Reo me ona ahuatanga katoa o Waitaha – the language of Waitaha, and the disciplines;
 - Whakapapa – genealogy;
 - Whanaungatanga – relationships; kinship/blood ties;
 - Whakapapa ki te whenua – relationships to the land;
 - Kaitiaki – stewardship/guardianship;
 - Waiora – health;
 - Hauoranga – holistic wellbeing;
 - Matauranga – knowledge and understanding; and

- Nga mea Tapu katoa – all things sacred.
- b The Crown acknowledges that, in its dealings with the Crown, Waitaha are guided by these values and that Waitaha seek outcomes that enable Waitaha to be Waitaha.

*I heke iho i te rangi
te whakairinga o nga korero me nga taonga
heke iho i nga heke
ki nga poupou
kia pouhia ki te whenua
kia kore ai e taka ki te taha ki te he*

(All knowledge and understanding are the treasures that descended from the heavens and were established within the tahuhu (main beam) of the meeting house. It is from there that these treasures descend again to the heke (beams connecting the roof to the walls). From the heke they descend again to the poupou (mainstays of the meeting house) where they were firmly implanted at the base, to the land.)

- c In order to enhance the ongoing relationship between Waitaha and the Crown in terms of Te Tiriti o Waitangi/the Treaty of Waitangi, this settlement includes redress instruments that assist the Crown to recognise and respect Waitaha and the desire of Waitaha to be Waitaha.
16. Following the signing of this Agreement in Principle, the Waitaha Raupatu Trust and the Crown will discuss the extent to which each item of redress agreed to between Waitaha and the Crown may reflect or give effect to nga tikanga o Waitaha.

Cultural Redress

Overview

17. The Cultural Redress package is based on factors such as the nature and extent of Waitaha's Historical Claims, the redress sought by the Waitaha Raupatu Trust and the redress items and instruments available to the Crown.
18. Some key components being provided in this offer are unique to this claim and have arisen from the aspirations of Waitaha.
19. The principles underlying the Cultural Redress package are as follows:
- a Recognition of Hakaraia;
 - b Equity of Outcome;

- c Recognition of the Mana of Waitaha; and
 - d Maranga Waitaha.
20. All items of Cultural Redress except for those that are listed in paragraphs 24, 25, and 28 to 31 are subject to the following being resolved before a Deed of Settlement is signed:
- a the Crown confirming that any overlapping claim issues in relation to any item of Cultural Redress 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. Except as provided in paragraph 38b, the value of the Cultural Redress is not off-set against the Financial Redress.
22. Maps for each of the sites forming part of the Cultural Redress are included in **Attachment 3**.

Recognition of Hakaraia

23. Hakaraia Mahika was a poropiti and rangatira of Waitaha. Hakaraia fought against the Crown in the New Zealand Wars and played a leading role in the Maori resistance against the Tauranga confiscation. Between 1867 and 1870 Hakaraia was targeted for special punishment and hunted by the Crown for having taken up arms against the Crown. Hakaraia was killed by Crown troops in the Waioeka Gorge in 1870. The recognition of Hakaraia goes to the core of the Waitaha claim and the following redress offered by the Crown is targeted specifically to address this:
- a an educational endowment fund;
 - b the vesting of Ohineangaanga;
 - c funding for a history of Waitaha;
 - d an apology for or pardon of Hakaraia; and
 - e funding for the restoration of Hei Marae.

Educational Endowment Fund

24. The Deed of Settlement will provide for the Crown to pay on Settlement Date the sum of \$3 million, to be used for an educational endowment fund in the name of Hakaraia.
25. Following the signing of this Agreement in Principle the Waitaha Raupatu Trust and the Crown will discuss the specific terms on which the fund will be held.

Ohineangaanga

26. The Deed of Settlement and the Settlement Legislation will provide for the fee simple estate in the property at Ohineangaanga, Te Puke (0.5140 hectares, more or less, being Lots 1 and 2 DPS 7913) as shown in **Attachment 3, Map 2** ("**Ohineangaanga**"), to be vested for nil consideration in the Governance Entity on Settlement Date.
27. This vesting will be subject to the specific conditions and encumbrances noted in paragraph 50.

Funding for a history of Waitaha

28. The Deed of Settlement will provide for the Crown to pay to the Governance Entity on Settlement Date the sum of \$300,000 which the Governance Entity may, in its sole discretion, determine to apply to commission a history to document fully the story of Waitaha and of Hakaraia.

An apology or pardon

29. The Crown agrees to provide a specific apology or a pardon, as appropriate, in recognition of the Crown's treatment of Hakaraia. This apology or pardon will be developed following the signing of this Agreement in Principle for inclusion in the Deed of Settlement and Settlement Legislation.

Funding for Hei Marae

30. The Crown agrees to settle upon the Waitaha Raupatu Trust, following Waitaha Raupatu Trust obtaining registration on the Charities Commission register, the sum of \$500,000 to be held on a separate, specific trust (but otherwise in accordance with the terms of the Waitaha Raupatu Trust) and applied (together with the income thereon) for the purpose of restoring and revitalising Hei Marae (for the benefit of all Waitaha).
31. Settlement of this funding is made on the further condition that the Waitaha Raupatu Trust hold this funding on trust until such time as it is satisfied that the appropriate entity to oversee the restoration of Hei Marae has been identified.

Equity of Outcome

32. The principle of the Equity of Outcome package is to ensure equity of outcome between Waitaha and its neighbours in the Central North Island.

Properties to be vested

33. The Crown offers to vest the properties listed in Table 1 in the Governance Entity on the Settlement Date for nil consideration. Such vesting will be conditional upon:
 - a the conditions/encumbrances specified in Table 1 below; and
 - b where relevant, the terms and conditions listed in paragraph 50.

*Table 1 – Equity of outcome properties (maps of properties in **Attachment 3**)*

Site	Description (All South Auckland District)	Specific conditions or encumbrances known at the time of the Agreement in Principle
Kaumatua Flats, Manoeka Road, Te Puke (LINZ administered) Map 3	4 buildings on Te Puke 1E	No land involved
Hine Poto, Te Puke (Office of Treaty Settlements landbank administered) Map 4	The fee simple estate in the site, comprising 2.8044 hectares, more or less, being Lots 1 and 2 DP 27157	
Bell Road property, Papamoa (Office of Treaty Settlements landbank administered) Map 5	The fee simple estate in the site, comprising 2.2385 hectares, more or less, being Lot 1 DPS 68227	

Te Houhou

34. The Te Houhou block in Papamoa (as shown in **Attachment 3, Map 6**) comprises 53.8160 hectares, more or less, being Lot 2 DPS 24826.
35. The Crown acknowledges the importance of the Te Houhou block to Waitaha in relation to:
 - a the cultural and spiritual significance of the two pa and associated sites in an area of approximately 21 hectares (the “**Pa Complex**”), and Waitaha’s interest in protecting the pa;
 - b the remaining area of approximately 32 hectares for potential development for cultural and/or commercial purposes (the “**Remaining Area**”).
36. The areas given in paragraph 35a and b are approximate and unverified, and further investigation is required to identify and agree upon the extent of the areas.

37. The Crown has invited Waitaha to develop and submit a joint proposal for the transfer of the Te Houhou block, in conjunction with the other iwi/hapu with strong cultural associations with Te Houhou.
38. To assist in the development of the proposal, and in recognition of the uncertainty for Waitaha in entering into this Agreement in Principle without having confirmed redress in relation to the Te Houhou block, the Crown commits to exploring:
- a the gifting of the fee simple estate in the Pa Complex jointly to Waitaha and other iwi/hapu with strong cultural associations, subject to any Historic Places Trust designations in respect of the Pa Complex; and
 - b the transfer of the fee simple estate in the Remaining Area jointly to Waitaha and other iwi/hapu with cultural associations with the block through a combination of gifting and purchase, with a limit set (yet to be agreed) on the amount to be gifted. If any part of the Remaining Area is purchased by Waitaha in accordance with this paragraph 38b the value of that part will be off-set against the Financial Redress accordingly.
39. Any proposal for redress in respect of the Te Houhou block is subject to the interests of iwi/hapu that have cultural associations with the property being addressed to the satisfaction of the Crown.
40. The Crown agrees to explore substituting other forms of redress to an equivalent value, should:
- a the development potential of the Remaining Area prove on investigation to be limited by its cultural significance and archaeological sites; or
 - b iwi fail to reach agreement on the submission of a collective proposal, or overlapping interests cannot be resolved to the satisfaction of the Crown.

Recognition of the Mana of Waitaha

Public conservation land

41. The Waitaha Raupatu Trust and the Crown acknowledge that:
- a Waitaha seek to have their mana recognised in relation to the maunga Otawa and Otanewainuku;
 - b Waitaha seek meaningful input as kaitiaki into the management of Otawa and Otanewainuku; and
 - c Otawa and Otanewainuku are of importance to the nation, and both the Crown and Waitaha acknowledge the importance of preserving and protecting the areas, and allowing public access, for the benefit of all New Zealanders.

**WITHOUT PREJUDICE
WAITAHA AGREEMENT IN PRINCIPLE**

42. The Waitaha Raupatu Trust and the Crown agree that more work is required to develop the proposals for redress relating to public conservation land and accordingly agree in good faith to explore mechanisms that can meet Waitaha's aspirations, including:
- a the transfer of areas to Waitaha and the transfer back to the Crown; and/or
 - b co-management of specified areas.
43. Waitaha and the Crown acknowledge that other iwi/hapu have interests, alongside Waitaha, in the public conservation lands within the Area of Interest.

Public conservation land to be vested

44. The Deed of Settlement and the Settlement Legislation will provide for the fee simple estate in the properties listed in Table 2 (below) to be vested for nil consideration in the Governance Entity on Settlement Date.

*Table 2 – Public conservation lands (maps of properties in **Attachment 3**)*

Site	Description (All South Auckland District)	Specific conditions or encumbrances known at the time of the Agreement in Principle
Maungaruahine Pa Historic Reserve Map 7	17.3200 hectares, more or less, being Section 51 Block V Maketu Survey District	Subject to retention of existing historic reserve status under Reserves Act 1977
Otara Map 8	5.0000 hectares, approximately, being Part Section 14 Block I Maketu Survey District. Subject to survey	Subject to retention of existing scenic reserve status under Reserves Act 1977

Overlay classifications

45. The Deed of Settlement and the Settlement Legislation will provide for the declaration of two overlay classifications over the following maunga, as shown in **Maps 9 and 10, Attachment 3**:
- a Otawa (covering an area of up to 20 hectares); and
 - b Otanewainuku (covering an area of up to 20 hectares centred around Otanewainuku peak).
46. The declaration of these overlay classifications over the above maunga provides for the Crown to acknowledge Waitaha values in relation to these

maunga. The overlay classifications also provide, in relation to each maunga, for:

- a the Governance Entity and the Crown to agree on protection principles to avoid harm to, or any diminishment of, Waitaha values, and for the Director-General of Conservation to take action in relation to the protection principles; and
 - b the New Zealand Conservation Authority and the Bay of Plenty Conservation Board to have particular regard to Waitaha values and the protection principles.
47. The Waitaha Raupatu Trust and the Crown agree that the overlay classifications offered to Waitaha will be, in substance, on the same terms as overlay classifications provided in previous Treaty settlements.

Promotion of relationship between Waitaha and local authorities

48. 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, Tauranga City Council, and Western Bay of Plenty District Council encouraging them to enter into a formal relationship with Waitaha, for example through a memorandum of understanding or similar document.

Additional Cultural Redress to be further explored

49. In the timeframe within which this Agreement in Principle has been reached, it has not proved possible to finalise the Cultural Redress package. The Waitaha Raupatu Trust and the Crown therefore agree that following the signing of this Agreement in Principle, the Minister in Charge of Treaty of Waitangi Negotiations will:
- a explore redress in respect of the Waitaha wahi tapu within Otanewainuku Forest;
 - b explore the possibility of amending or assigning an agreed list of place names of significance within the Waitaha Area of Interest, in consultation with the New Zealand Geographic Board Nga Pou Taunaha o Aotearoa, in accordance with the requirements of the New Zealand Geographic Board (Nga Pou Taunaha o Aotearoa) Act 2008, and consistent with the orthographic conventions of Te Taura Whiri i Te Reo Maori (the Maori Language Commission);
 - c explore the renaming of conservation areas south of and adjoining Otawa Scenic Reserve, having regard to paragraph 49b above;
 - d explore providing for statutory acknowledgements over the rivers of importance to Waitaha, which will provide for the Crown to acknowledge in the Settlement Legislation statements by Waitaha of their cultural, spiritual, historical, and traditional association with those rivers, which will be non-exclusive and relate only to those Crown-

**WITHOUT PREJUDICE
WAITAHA AGREEMENT IN PRINCIPLE**

owned portions of the riverbeds, and which will be on similar terms, in substance, to those provided in previous Treaty settlements;

- e explore providing for statutory acknowledgements to be made in relation to the coastal areas, yet to be defined, within the Waitaha Area of Interest, which will provide for the Crown to acknowledge in the Settlement Legislation statements by Waitaha of their cultural, spiritual, historical, and traditional association with those areas, which will be non-exclusive, and which will be on similar terms, in substance, to those provided in previous Treaty settlements;
- f explore protocols to be issued by the Minister of Conservation and the Minister for Arts, Culture and Heritage, which will set out how each Minister's particular government agency intends to:
 - i) exercise its powers and perform its functions and duties, in relation to specified matters within its control in the area covered by each protocol; and
 - ii) consult and interact with the Governance Entity on a continuing basis and enable that group to have input into its decision-making processes;

and which the Waitaha Raupatu Trust and the Crown agree will be on similar terms, in substance, to those provided in previous Treaty settlements;

- g explore building relationships with other government agencies;
- h further explore with Waitaha and with the Tauranga City Council maintaining or enhancing Waitaha's level of involvement in the management of Mauao; and
- i further discuss with Waitaha and with Environment Bay of Plenty aspirations of Waitaha in respect of Papamoa Hills Regional Park.

Conditions for vesting of properties forming part of the Cultural Redress

50. The vesting of any property forming part of the Cultural Redress 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 (including those listed in Tables 1 and 2), 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.
51. Following the signing of this Agreement in Principle, the Crown will prepare disclosure information in relation to each property, and will provide such information to the Waitaha Raupatu Trust.

Maranga Waitaha

52. **Maranga Waitaha** is about the Waitaha people – nga wawata, nga moemoea a o tatou Tupuna. It is a philosophy developed by Waitaha to promote:
- a the cultural revitalisation of Waitaha;
 - b the social cohesion and revitalisation of Waitaha, including addressing the health, education, employment and housing needs of Waitaha; and
 - c the economic participation and development of Waitaha.
53. A key grievance expressed by Waitaha has been a sense of being left behind other Maori as well as wider New Zealand communities in terms of social, cultural, and economic development. The Waitaha Raupatu Trust and the Crown wish for the settlement of the Historical Claims to contribute to Waitaha being able to achieve some aspects of Maranga Waitaha. The Crown also offers to explore, outside but in parallel to the Treaty settlement process, how Waitaha's aspirations for Maranga Waitaha may be addressed.
54. The Crown agrees to settle upon the Waitaha Raupatu Trust, following the Waitaha Raupatu Trust obtaining registration on the Charities Commission register, the sum of \$500,000 to be held separately on trust and applied (together with any income derived thereon) for the principal purpose of identifying and remedying the health, education, employment, housing, and socio-economic needs of Waitaha, and the ancillary purpose of advancing the culture of Waitaha through educational endeavours. To achieve those purposes, the Waitaha Raupatu Trust will apply those funds to employ a Whole of Government Facilitator(s), and to:

- a begin implementing Maranga Waitaha;
 - b co-ordinate Waitaha's participation in any assessment of the priorities and strengths and gaps in the delivery of social services to Waitaha, and any scoping proposal for the development of Maranga Waitaha; and
 - c facilitate Waitaha's interactions with government agencies generally.
55. The Crown agrees that, as soon as practicable after signing the Agreement in Principle, the Minister in Charge of Treaty of Waitangi Negotiations will write to appropriate Ministers encouraging their officials to support Maranga Waitaha (in addition to the letters already written by the Minister in Charge of Treaty of Waitangi Negotiations to the Minister of Maori Affairs and the Minister of Social Development, prior to the signing of the Agreement in Principle, inviting them actively to support and commit to Maranga Waitaha).
56. The Crown further agrees to explore, outside but in parallel to the Treaty settlement process, how Waitaha's aspirations for Maranga Waitaha may be met through supporting an assessment of the economic, social, and cultural needs of Waitaha and a scoping proposal for the development of Maranga Waitaha.

Financial and Commercial Redress

Overview

57. The Financial Redress offered by the Crown is \$7.5 million.
58. The Deed of Settlement and Settlement Legislation will provide for the Crown to transfer to the Governance Entity on Settlement Date:
- a selected Commercial Redress Properties;
 - b the Cash Settlement Amount, being the total value of the Financial Redress less the transfer value of any selected Commercial Redress Properties; and
 - c interest in accordance with paragraphs 86 and 87.

Commercial Redress Properties

Crown Properties

59. Recognising the significance of Te Pohue (Te Puke) to Waitaha, following the signing of this Agreement in Principle the Crown will explore the possibility of offering the Waitaha Raupatu Trust an option to purchase the Crown Properties set out in Table 3 (below), for transfer to the Governance Entity on Settlement Date. The Crown will only consider making such an offer if it has confirmed that any overlapping claim issues in relation to the Crown Properties have been addressed to its satisfaction.

Table 3 - Crown Properties

Crown Properties	Legal Description
Jellicoe Street, Te Puke	0.0996 hectares, more or less, being Lot 1 DPS 68789
Jellicoe Street, Te Puke	0.1852 hectares, more or less, being Lot 2 DPS 68789
Jellicoe Street, Te Puke	0.0910 hectares, more or less, being Lot 3 DPS 68789
Jellicoe Street, Te Puke	0.1371 hectares, more or less, being Lot 4 DPS 68789
Jellicoe Street, Te Puke	1.2250 hectares, more or less, being Lot 5 DPS 68789
14 Norrie Street, Te Puke	0.0832 hectares, more or less, being Lot 9 DPS 33508
6 Barnett Place, Te Puke	0.0989 hectares, more or less, being Lot 18 DPS 20009
Station Road, Te Puke	0.1362 hectares, more or less, being Lot 2 DP 307255
Station Road, Te Puke	0.2571 hectares, more or less, being Lot 3 DP 307255

Sale and Leaseback Properties

60. Following the signing of this Agreement in Principle, the Crown will explore the possibility of offering the Waitaha Raupatu Trust an option to purchase the Sale and Leaseback Properties set out in Table 4 (below) and shown in **Attachment 4**, for transfer to the Governance Entity on terms (to be agreed) similar to those used for recent Treaty settlements. Any such offer will be subject to:
- a the sale to Waitaha of the Sale and Leaseback Properties being a sale of land only, and not any improvements on the land;
 - b the Sale and Leaseback Properties being leased back to the Crown on similar terms as other New Zealand Police and Ministry of Education properties in recent Treaty settlements, including terms that the lease:
 - i) will relate to the land only, and not any improvements on the land;
 - ii) will contain a perpetual right of renewal;

**WITHOUT PREJUDICE
WAITAHA AGREEMENT IN PRINCIPLE**

- iii) will be set at market rent and contain standard rent review procedures; and
 - iv) will otherwise essentially mirror the current rights of the Crown as freehold owner;
- c the transfer value for the Sale and Leaseback Properties being determined in accordance with an agreed valuation process.

Table 4 – Sale and Leaseback Properties

Property	Legal Description (all properties held within the South Auckland Land District)	Administering Agency
Te Puke High School	3.0222 hectares, approximately, being Part Sections 50 and 54 Block II Maketu Survey District. Subject to survey	Ministry of Education
Proposed secondary school site in Te Puke (next to Te Puke Intermediate School)	4.2163 hectares, more or less, being Part Lots 1 and 2 DP 17893, Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 and Part Lot 16 DPS 3871, Lot 2 DPS 6042, Lot 2 DPS 47941 and Section 140 Block II Maketu Survey District.	Ministry of Education
Te Puke Intermediate	4.1973 hectares, more or less, being Part Lot 2 DPS 8540	Ministry of Education
Te Puke Primary	2.4434 hectares, more or less, being Section 48 Block II Maketu Survey District and Lots 4, 5, 6, and 7 DP 14390	Ministry of Education
Fairhaven Primary	3.1907 hectares, approximately, being Lots 3 and 4 DP 26554, and Part Section 25 Block II Maketu Survey District. Subject to survey	Ministry of Education
Police Station, Te Puke	0.2268 hectares, more or less, being Lot 1 DP 307255	New Zealand Police

Conditions for Commercial Redress Properties

61. The transfer of the Commercial Redress Properties 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 have been duly considered and are able to be complied with;
- d any express provisions relating to the 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, either existing at the date the Deed of Settlement is signed or which are advised in the disclosure information as requiring to be created;
- 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; and
- i the Crown confirming that any overlapping claim issues in relation to the Sale and Leaseback Properties have been addressed to the satisfaction of the Crown.

Further commercial redress

62. The Waitaha Raupatu Trust and the Crown agree that, following the signing of this Agreement in Principle, the Minister in Charge of Treaty of Waitangi Negotiations will explore the Crown facilitating discussions between government agencies and third parties in relation to meeting the commercial aspirations of Waitaha and assisting Waitaha in building a sound economic base.

Substitution of Redress

63. The Crown recognises that the Agreement in Principle has been negotiated within a truncated timeframe. As a result, there remains considerable uncertainty for Waitaha with respect to the redress it will receive through the Deed of Settlement, as the Agreement in Principle is subject to various factors, including overlapping claims issues which need to be addressed to the satisfaction of the Crown.
64. The Crown is committed to assisting Waitaha in its endeavours to resolve overlapping claims issues. This may include facilitating meetings or providing an independent third party to assist.

65. The Crown undertakes not to dispose of, or transfer to third parties, any of the properties it has offered to vest in or transfer to Waitaha, except for the reasons set out in paragraphs 20a, 50 or 61 or any other reasons identified in preparing the disclosure documents.
66. The Crown acknowledges that a failure to secure for Waitaha any of the properties in the Cultural Redress package will affect the overall value of the package, and that a failure to secure for Waitaha any of the properties in the Financial and Commercial Redress package may also disadvantage Waitaha. Should that occur, the Crown will in good faith explore the substitution of other forms of redress to an equivalent value.

Reserved Issues

67. The Waitaha Raupatu Trust and the Crown 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

68. The Deed of Settlement will specify who is covered by the settlement, that is, whose claims are being settled and therefore who can benefit from the settlement.
69. The definition of Waitaha will be, or will be similar to, the following:
- a the collective group composed of individuals:
 - i) who descend from:
 - A one or more of the following Waitaha tupuna:
 - 1. Te Iwikoroke;
 - 2. Kumaramaoa;
 - 3. Te Puku o Hakoma; and
 - 4. Rehu; and

- B a recognised ancestor of Waitaha who exercised customary rights predominantly within the Waitaha Area of Interest on or after 6 February 1840; and
 - ii) who belong to a hapu of Waitaha, namely:
 - A Ngati Haraki;
 - B Ngati Te Moemiti;
 - C Ngati Ngauru;
 - D Ngati Kapo;
 - E Ngati Rereamanu;
 - F Ngati Kahu;
 - G Ngati Nga Pareparenga;
 - H Ngati Te Puku o Hakoma;
 - I Kumaramaoa;
 - J Ngati Tama;
 - K Ngati Rehu;
 - L Ngati Rakei; and
 - M Ngati Te Awhai; and
 - b every whanau, hapu, or group composed of individuals, to the extent that the whanau, hapu, or group composed of individuals is referred to in paragraph 69a.
70. The detail of the definition of Waitaha will be developed further over the course of negotiations for inclusion in the Deed of Settlement and will use a format similar to that used for recent Treaty settlements.

Scope of Settlement

71. The Deed of Settlement will settle all the Historical Claims of Waitaha.
72. “**Historical Claims**” means every claim made by Waitaha (in accordance with the definition in paragraph 69 above) or by a representative entity of Waitaha:
- a wherever the claim occurs, including any claims relating to matters outside the Area of Interest;
 - b whether or not the claim has arisen or been considered, researched, registered, or notified;
 - c whenever the claim is made (either before, on, or after Settlement Date):
- that:

- i) is founded on a right arising from 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
 - ii) arises from or relates to acts or omissions before 21 September 1992:
 - A by or on behalf of the Crown; or
 - B by or under any legislation; and
 - iii) accordingly includes (without limiting the general wording of paragraphs 72(i) and 72(ii)) every claim to the Waitangi Tribunal that relates specifically to Waitaha, including:
 - Wai 664;
 - Wai 702; and
 - Wai 1178.
73. The term Historical Claims does not include any claim that a Member of Waitaha, or a representative entity of Waitaha, may have that is, or is founded on, a right arising as a result of being descended from an ancestor of a tribal group other than Waitaha.
74. The format for the definition of Historical Claims will be discussed in the process of finalising the Deed of Settlement and will use a format similar to that used for recent Treaty settlements.

Proposed Terms of the Deed of Settlement

Acknowledgements concerning the settlement and the redress

75. The Crown and Waitaha 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 Waitaha fully for all the loss and prejudice suffered;
 - c this foregoing of full compensation is intended by Waitaha to contribute to the development of New Zealand, over and above the contribution already made by Waitaha through the use of land and resources in the Waitaha Area of Interest; and
 - d taking all matters into consideration (some of which are specified in this paragraph) the settlement is fair in the circumstances.

Acknowledgements concerning the settlement and its finality

76. The Crown and Waitaha will acknowledge (amongst other things) in the Deed of Settlement that the settlement of the Historical Claims:
- a is intended to enhance the ongoing relationship between the Crown and Waitaha (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 Waitaha 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 Waitaha may have;
 - d does not imply an acknowledgement by the Crown that aboriginal title, or any customary rights, exist; and
 - e is not intended to affect any actions or decisions under:
 - i) the deed of settlement between Maori and the Crown dated 23 September 1992 in relation to Maori fishing claims;
 - ii) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
 - iii) the Maori Fisheries Act 2004;
 - iv) the Maori 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.
77. Waitaha will acknowledge and agree (amongst other things) in the Deed of Settlement, and the Settlement Legislation will provide that, with effect from the Settlement Date:
- a the Historical Claims are settled;
 - b the settlement of the Historical Claims is final;
 - 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 Waitaha 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.
78. The Deed of Settlement will provide for Waitaha acknowledging and agreeing the following:
- a the Crown has acted honourably and reasonably in respect to the settlement;
 - b it is intended that the settlement is for the benefit of Waitaha and may be for the benefit of particular individuals or any particular iwi, hapu, or group of individuals as is determined appropriate between the Waitaha Raupatu Trust and the Crown;
 - c the settlement is binding on Waitaha and the Governance Entity (and any representative entity of Waitaha); and
79. The Deed of Settlement will provide for the Crown acknowledging and agreeing that Waitaha have acted with mana, honour and in the spirit of cooperation with respect to the settlement.

Removal of statutory protections and termination of landbanking arrangements

80. The Deed of Settlement will provide for Waitaha acknowledging and agreeing the following:
- a the Settlement Legislation will provide that:
 - i) nothing in the enactments listed in paragraph 80a(ii) applies:
 - A to any site being vested in the Governance Entity as Cultural Redress, or a Commercial Redress Property; or
 - B for the benefit of Waitaha or a representative entity;
 - ii) the enactments are:
 - A sections 8A-8HJ of the Treaty of Waitangi Act 1975;
 - 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 Waitaha nor any representative entity of Waitaha may, from Settlement Date, object to the removal by legislation of the application of the enactments referred to in paragraph 80a(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 Waitaha or a representative entity.

Conditions

81. 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 Waitaha;

Ratification

- c the Waitaha Raupatu Trust obtaining a mandate from the members of Waitaha (through a process agreed by the Waitaha Raupatu Trust and the Crown) authorising it to:
 - i) enter into the Deed of Settlement on behalf of Waitaha; 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:
 - i) is an appropriate entity to which the Crown will provide the settlement redress;
 - ii) has a structure that provides for:

- A representation of Waitaha;
 - B transparent decision-making and dispute resolution processes; and
 - C full accountability to Waitaha; and
- iii) has been ratified by the members of Waitaha (through a process agreed by the Waitaha Raupatu Trust and the Crown) as an appropriate entity to receive the settlement redress; and
- 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

82. 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 Waitaha supporting the passage of Settlement Legislation.
83. 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.
84. The Crown will ensure that the Waitaha Raupatu 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

85. 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 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 after Settlement Date, whether it uses its own funds or uses the Financial and Commercial Redress for such acquisition;
 - 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

- 86. The Deed of Settlement will provide for the Crown to pay the Governance Entity interest on the principal amount of \$7.5 million from (and including) the date the Waitaha Raupatu Trust and the Crown sign this Agreement in Principle to (but excluding) the Settlement Date.
- 87. Interest under paragraph 86 will:
 - a be at the Official Cash Rate calculated on a daily basis;
 - b not compound;
 - c be paid to the Governance Entity on the Settlement Date; and
 - d be subject to normal taxation law.

Definitions

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

Agreement in Principle means this Agreement in Principle between the Waitaha Raupatu Trust and the Crown.

Area of Interest means the area shown in **Attachment 1**.

Cash Settlement Amount means the amount determined in accordance with paragraph 58b.

Commercial Redress Properties means the Crown Properties and the Sale and Leaseback Properties.

Crown means:

- a Her Majesty 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 Acknowledgements means the acknowledgements by the Crown referred to in paragraph 13.

Crown Apology means the apology by the Crown referred to in paragraph 13.

Crown Properties means the properties listed in Table 3.

Cultural Redress means the redress offered for the settlement of the Historical Claims as set out in paragraphs 17 to 55.

Financial and Commercial Redress means the redress offered for the settlement of the Historical Claims as set out in paragraphs 57 to 62.

Financial Redress means the total dollar value of the Financial and Commercial Redress offered for the settlement of the Historical Claims as set out in paragraph 57.

Governance Entity means an entity established in accordance with paragraphs 81d and e.

Historical Account means the historical account referred to in paragraph 12.

Historical Claims has the meaning set out in paragraphs 72 and 73.

Joint Terms means the Joint Terms of Negotiation between the Ngati Makino Heritage Trust, the Waitaha Raupatu Trust and the Crown dated 21 February 2008, and the Terms of Negotiation between the Waitaha Raupatu Trust and the Crown dated 21 February 2008.

Recognition of Hakaraia means the Cultural Redress described at paragraphs 23 to 31.

Recognition of the Mana of Waitaha means the Cultural Redress described at paragraphs 41 to 51.

Sale and Leaseback Properties means the properties listed in Table 4.

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.

Waitaha means the collective group, and groups and individuals, to be defined in the Deed of Settlement in accordance with paragraphs 69 and 70.

Waitaha Raupatu Trust means the Waitaha Raupatu Trust, the mandated body recognised to represent Waitaha in negotiations with the Crown.

Tapua Te Amo

WITNESSES:

WITNESSES:

WITNESSES:

Attachment 1 – Area of Interest



Attachment 2

Historical Account

Waitaha

1. Waitaha are an ancient tribe who descend from the waka Te Arawa. According to Waitaha tradition, *Ka huri mai a Te Arawa i te Rae o Papamoa*, Hei stood and claimed the land for his son Waitaha, *Te Takapū o tāku tama, Waitahanui a Hei*. In time, some of the sons of Waitaha settled along the coast extending from Katikati to Otamarakau and the island of Tuhua. Waitaha had close whakapapa links with other iwi of Tauranga, Waikato, Ngāi Tahu, Ngāti Porou, Kahungunu and Te Arawa. By the 1840s, Waitaha primarily occupied the land between Tauranga harbour in the west, and the Waiari River in the east, as well as staying inland. Waitaha also stayed for periods of time with their Te Arawa kin.
2. Waitaha never agreed to cede their mana to the Crown. Most Waitaha rangatira did not sign the Treaty of Waitangi. Only Te Kou o Rehua of Ngāti Te Puku o Hakoma signed the Treaty when it was brought to Tauranga. In October 1840 the Crown asserted sovereignty over the whole of New Zealand. In the period prior to 1864, the Crown's presence in the Tauranga district was limited, and tikanga Māori (customary law) largely prevailed.

Hakaraia

3. Waitaha adopted Christianity as a result of the influence of their rangatira Hakaraia (Hakaraia Mahika, or Tipene Kura), who had converted during a period in Northland. On his return, Hakaraia stayed at the Church Missionary Society station at Te Ngae (near Rotorua) before establishing a Christian community of Waitaha and others at Kenana (Canaan) near Tauranga. Hakaraia became influential as a poropiti or prophet. The poropiti leaders tried to adapt to the new world order by incorporating Christian principles into their tikanga. During the 1840s and 1850s, Hakaraia preached peaceful engagement with Pākehā.

Kingitanga

4. The King movement or Kingitanga was founded in 1858 to create a Māori political authority that could engage with the Crown and respond to the growing tension caused by land sales. Hakaraia supported the kaupapa of the Kingitanga to halt the sale of land. The New Zealand Government perceived the Kingitanga as a challenge to the Queen's sovereignty.
5. In July 1863, Crown forces attacked Kingitanga territory in the Waikato. Waitaha had whakapapa connections to those iwi, and Hakaraia decided to support the King. By September 1863, Hakaraia was actively involved in co-ordinating the movement of Kingitanga reinforcements through Arawa territory.
6. Waitaha were divided in their response to the Waikato war. While a number of Waitaha fought for the Kingitanga, others did not become involved. Some

Waitaha joined the Māori forces who fought for the Crown. In August 1863, some Waitaha attended a meeting of 400 Te Arawa at Tarawera held to consider their response to the war in the Waikato. The hui decided to oppose the Kingitanga, and resolved to close the Arawa districts to Kingitanga supporters and send the name of any man joining the King to the Governor.

7. This split in political allegiances within Waitaha created enmity amongst their people and also with neighbouring iwi. By April 1864, kawanatanga Arawa disowned those who supported the King, including Waitaha, stating that they cast their names out of the tribes of the Arawa, and that they should have no claim to Arawa land thereafter.

Tauranga War

8. In January 1864, the Crown deployed troops to Tauranga to halt the flow of supplies and reinforcements to Kingitanga forces on the Waikato front. Some Tauranga Māori felt that the presence of troops was a continuation of the Waikato war and a threat to their land. They endeavoured to provoke the Crown to attack.
9. In March 1864, Hakaraia was leading a party of Kingitanga reinforcements through Arawa territory to the Waikato, when some Te Arawa sought to block their path at Lake Rotoiti. The Kingitanga force was defeated, but Hakaraia escaped unharmed from the battle.
10. The last battle in the Waikato occurred on 2 April 1864. On 29 April 1864, Crown troops attacked Pukehinahina (Gate Pā). The Crown forces, numbering some 1,700 troops, hoped to achieve a decisive victory but were routed by a defending force of around 200 Māori warriors. Hori Ngatai, of Ngāi Te Rangi, later recounted that Hakaraia fought at Gate Pā, and was regarded as a spiritual leader of the defending forces. Waitaha kōrero is that some Waitaha warriors fought with him.
11. The severity of the defeat led the Crown to reconsider its approach to the war. Governor Grey arrived in Tauranga in May 1864 to meet certain Tauranga chiefs who were favourably disposed to negotiating peace. However many Kingitanga Māori in Tauranga continued to distrust the Government, and a peace agreement was not concluded.
12. Waitaha were not involved in the negotiations. Hakaraia rallied for new recruits from other Te Arawa iwi who had close whakapapa ties to Waitaha. Hakaraia prophesied that the next battle with the British would be decisive in determining the future of Tauranga, and that peace would follow.
13. On 21 June 1864, a reconnaissance force of around 600 Crown troops surprised a group of some 500 Kingitanga Māori constructing a new pā at Te Ranga. The Crown troops attacked immediately. The Māori forces were ill prepared to engage in battle but Waitaha state that they fought the Crown troops so as to allow the women and children a chance to escape. The Māori defenders suffered a resounding defeat with heavy loss of life, including many of those that had come at the behest of Hakaraia. At least two Waitaha men, Rota Te Mimiti and Hopa Tamakuri, were killed. Hakaraia, however, survived.

New Zealand Settlements Act 1863

14. In 1863, the Crown enacted legislation, the New Zealand Settlements Act, which provided for the confiscation of land from Māori the Crown assessed to have been engaged in rebellion against the authority of the Queen. The preamble stated that the North Island had been subject to “insurrections amongst the evil-disposed persons of the Native race”. There was no mention of the Crown’s role in initiating the wars. Where the Governor in Council was satisfied that an iwi or a “considerable number” of an iwi had, since 1 January 1863, been engaged in rebellion, described in the preamble as taking up arms “with the object of attempting the extermination or expulsion of the European settlers”, he could declare the district available for confiscation.
15. The Act did not provide a definition of “rebel”. It did provide that no compensation would be given to those who had been “engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty’s Forces in New Zealand”, or those who had “aided assisted or comforted such persons”, or those who refused to surrender. The New Zealand Settlements Act 1863 did not mention punishment, but was punitive in nature.
16. The British Colonial Office had ‘very grave objections’ about the scope and application of the Act, considering it “capable of great abuse” but allowed the legislation to proceed because the final authority for any confiscation remained with the Governor. The Colonial Office instructed the New Zealand Government that the ‘appropriation of land’ from ‘rebel’ Māori could only take place once Māori had surrendered and agreed to cede their land. The Governor was directed to withhold his consent to any confiscation that was not “just and moderate”.

Confiscation

17. The Crown regarded those Tauranga Māori that fought in the battles of Gate Pā and Te Ranga as having been in “rebellion”. In May 1864, Governor Grey, in accordance with the British Colonial Office’s instructions, conducted negotiations with ‘rebel’ Māori in Tauranga to secure peace and attempt to reach agreement on a cession of land. Grey’s Ministers, however, favoured the large-scale confiscation of land.
18. Throughout June and July 1864, Crown officials conducted negotiations with certain Tauranga chiefs over the terms of peace. The ‘rebels’ were given to understand that if they surrendered, the Crown would control the disposal of their lands, but in doing so, would be generous with them and would require little, if any, land to be forfeited.
19. On 25 July 1864, a large hui was held at Te Papa at which most of the Tauranga Māori still in arms surrendered to the Crown. Four unarmed Waitaha surrendered, including a boy. Six more did so in late August. Hakaraia and some of those who had supported him did not surrender.
20. On 5 and 6 August 1864, Governor George Grey held a “Pacification Hui” with Tauranga Māori. Many Tauranga Māori agreed to surrender the mana of the land to the Crown, on the understanding that the Crown would extend generous treatment to them. Governor Grey promised that:

“...to mark our sense of the honourable manner in which you conducted hostilities, neither robbing nor murdering, but respecting the wounded, I promise you that in the ultimate settlement of your lands the amount taken shall not exceed one-fourth part of the whole lands.”

21. It is possible that Tauranga Maori understood Grey's promise to mean that only one-fourth of the lands of the 'rebels' would be taken. The Crown believed that all the lands of the 'rebels' based in Tauranga had been placed at the disposal of the Governor, but it had not identified those lands, or which iwi and hapū had interests in them.
22. It is not known whether any Waitaha attended the Pacification Hui. Hakaraia was not a party to any agreement reached.
23. Over subsequent months, there was debate within the Government over whether to pursue a cession or confiscation of land. The Crown decided to use the New Zealand Settlements Act to confiscate the land. In May 1865, the Crown issued an Order in Council declaring that the entire Tauranga district, covering an area of 214,000 acres and described as “all the lands of the tribe ‘Ngaiterangi’”, would become a district and be set apart “for settlements and colonization”. Three-fourths of that land would be set apart “for such persons of the tribe Ngaiterangi as shall be determined by the Governor”. The order did not provide for a Compensation Court, as was contemplated by the Settlements Act, to determine who land would be returned to.
24. Doubts were raised by the Chief Judge of the Native Land Court over whether the Order in Council, as it intended, extinguished Māori papatupu (customary) title in the entire district. The Tauranga District Lands Act 1867 was passed to validate retrospectively the Order in Council. The Act provided that the whole district was “duly and effectually set apart reserved and taken under the [New Zealand Settlements] Act as sites for settlements for colonization”. This Act ensured that papatupu title was extinguished in all 214,000 acres of the district, including the lands east of Tauranga Harbour extending to Wairakei in which Waitaha had customary interests.

Bush Campaign

25. After the war, many Tauranga Māori were dispirited and converted to the Pai Mārire or Hauhau religion. The Hauhau movement was founded by Te Ua Haumene in 1862. Based on the Christian bible, it promised the achievement of Māori autonomy and the protection of their land through divine intervention. In Tauranga, the Hauhau and Kingitanga movements were closely connected. Adherents of the Hauhau faith were active in opposing the confiscation.
26. Hakaraia rose to prominence as a leader of the Māori resistance to the confiscation in Tauranga. Although Hakaraia was not an adherent to the Hauhau religion he sought support from the Hauhau. Some Waitaha hapū such as Ngāti Te Moemiti and Ngāti Te Pukuohakoma did not support either the Hauhau movement or Hakaraia. Ihaka Te Hiwi, a chief of the hapū Ngāti Te Pukuohakoma, left to join the native militia that fought for the Crown.

27. The land to be retained by the Crown from the Tauranga Confiscation District was defined in March 1866. Between July and September 1866, Government surveying of this 50,000 acre block increased tension in the district. Tensions escalated when Hauhau converts threatened to kill the surveyors, and the Government protected them with soldiers.
28. Waitaha were staying at Te Puke at this time. Although Hakaraia had given no indication of any aggressive intent, the Crown had identified Hakaraia as a potential source of danger to the peace. The Crown suspected Hakaraia of gathering a Kingitanga force at Te Puke and closely observed his movements.
29. Hakaraia resisted calls to take up arms until December 1866, when King Tawhiao wrote to him stating that “This sick man has recovered, he will soon move his feet, the sword is unsheathed”. Hakaraia became the leader of a party of 150 people resisting surveys. In January 1867, Hakaraia declared an aukati (a customary prohibitive measure) placing the Waimapu River area under the mana of King Tawhiao. As a result of the increased tension, the surveys were discontinued until an armed force could accompany the surveyors.
30. The confiscation and Hakaraia’s decision to take up arms to oppose its implementation caused further fragmentation within Waitaha as the tribe became split between support of Hakaraia and the Kingitanga, the Crown and neutrality. Those who supported Hakaraia largely dispersed from their lands. This was either to support him or out of fear of attack by the government. Others joined the Crown effort to capture Hakaraia because they opposed his stance.
31. Hostilities in the ‘Bush Campaign’ started in January 1867 when a government patrol crossed the Wairoa River and was fired upon by the Māori defenders of Te Irihanga pā. On 30 January 1867, Government forces and their allies assaulted Waitaha’s settlements at Te Puke, Te Pōhue, and Ohineangaanga, destroying houses, crops and livestock. Defence Minister Haultain reported that: “I directed his place to be destroyed as a special punishment to [Hakaraia]”. The government feared that Hakaraia was “resolved to drive the Pakeha into the sea”. The Crown’s official accounts stated that there were no people present when the assault took place, but Waitaha kōrero is that both the Crown and Waitaha suffered fatalities in a battle at Ohineangaanga. Hakaraia and his supporters, however, had withdrawn. Some of the Te Arawa troops ordered to take part in the assault objected to the order to arrest Hakaraia, and refused to participate. The Arawa hapū that took a leading role in the assault continued to occupy Te Puke under military orders for some years.
32. The Crown troops pursued Hakaraia and his party in the bush-covered hills behind Tauranga. The Crown’s aim was to apprehend those who had disrupted surveys and threatened surveyors of the confiscated block. They attacked settlements at Akeake, Maenene, Taumata, Oropi and Paengaroa during February 1867 burning the houses and destroying cultivations and livestock. The Crown pursued a policy of “scorched earth” to reduce the ability of those who opposed the confiscation to resist.
33. Hakaraia and most of his people evaded capture, and made a retaliatory raid against kawanatanga Arawa in March 1867. They then dispersed into the bush and retired to the Kaimai ranges.

1868 extension of confiscation boundary

34. The Tauranga District Lands Act 1868 extended the boundary of the confiscation district south and eastwards, increasing the amount of land confiscated by 75,000 acres. The Crown said that Ngāi Te Rangi had requested the confiscation district be extended to fully encompass the whole of their lands. Patoromu of Waitaha stated in 1897 that he believed that the Crown extended the boundary line to punish Waitaha for their participation in the Bush Campaign.
35. The extension of the confiscation district included much land claimed by Waitaha, including their sacred maunga Otawa. The new boundary sliced in half their maunga Otara and Otanewainuku. Waitaha were not consulted about the extension.

Death of Hakaraia

36. Hakaraia protested the confiscation for the rest of his life. In July 1869, he formed an association with Te Kooti Arikirangi Te Turuki. Hakaraia was impressed by Te Kooti's political and religious beliefs, and he led many raids in aid of Te Kooti's cause. Crown forces attacked their settlement at Tapapa on 24 January 1870. After the attack on Tapapa, Hakaraia sent some Waitaha people home under his son Hakaraia Tipene in 1870 while he continued his fight against the Crown.
37. Hakaraia continued to fight until he was killed by Crown troops at Waipuna pā in the Waioeka Gorge on 23 March 1870. On his body was found the Kingitanga flag that was given to him by King Tawhiao and which had flown at Gate Pā.

Return of Tauranga confiscation lands

38. Although the confiscation of the Tauranga district took place in 1865, the process of returning land to Māori did not commence until 1873, and was not completed until 1883. The Crown retained outright a block of 50,000 acres between the Waimapu and Wairoa Rivers. The remainder of the 289,000 acre confiscation district was awarded to Tauranga Māori.
39. Under the Tauranga District Lands Act 1867, Commissioners were appointed to award lands to Māori. The Act contained no guidelines governing the basis on which land was to be awarded, and no detailed rules were formulated to guide the Commissioners. Hapū of Waitaha made claims to the 'Commissioner's Court' at Tauranga for the Otawa, Waoku and Oropi lands. These claims were for the land between the Waimapu River and the eastern confiscation boundary at Wairakei.
40. The Commissioner accepted Waitaha's ancestral claims to the Otawa lands, comprising approximately 25,000 acres. However, the Crown, through the New Zealand Settlements Act, had determined that land should not be returned to unsundered rebels. In making his judgement of 4 March 1878 on the Otawa lands the Commissioner decided not to return all of Waitaha's ancestral land. He stated:

“It has been clearly established that Hakaraia was a rebel and fought against the Crown it is also right [that a] portion of the land of his hapu should be taken in payment for his sin...”

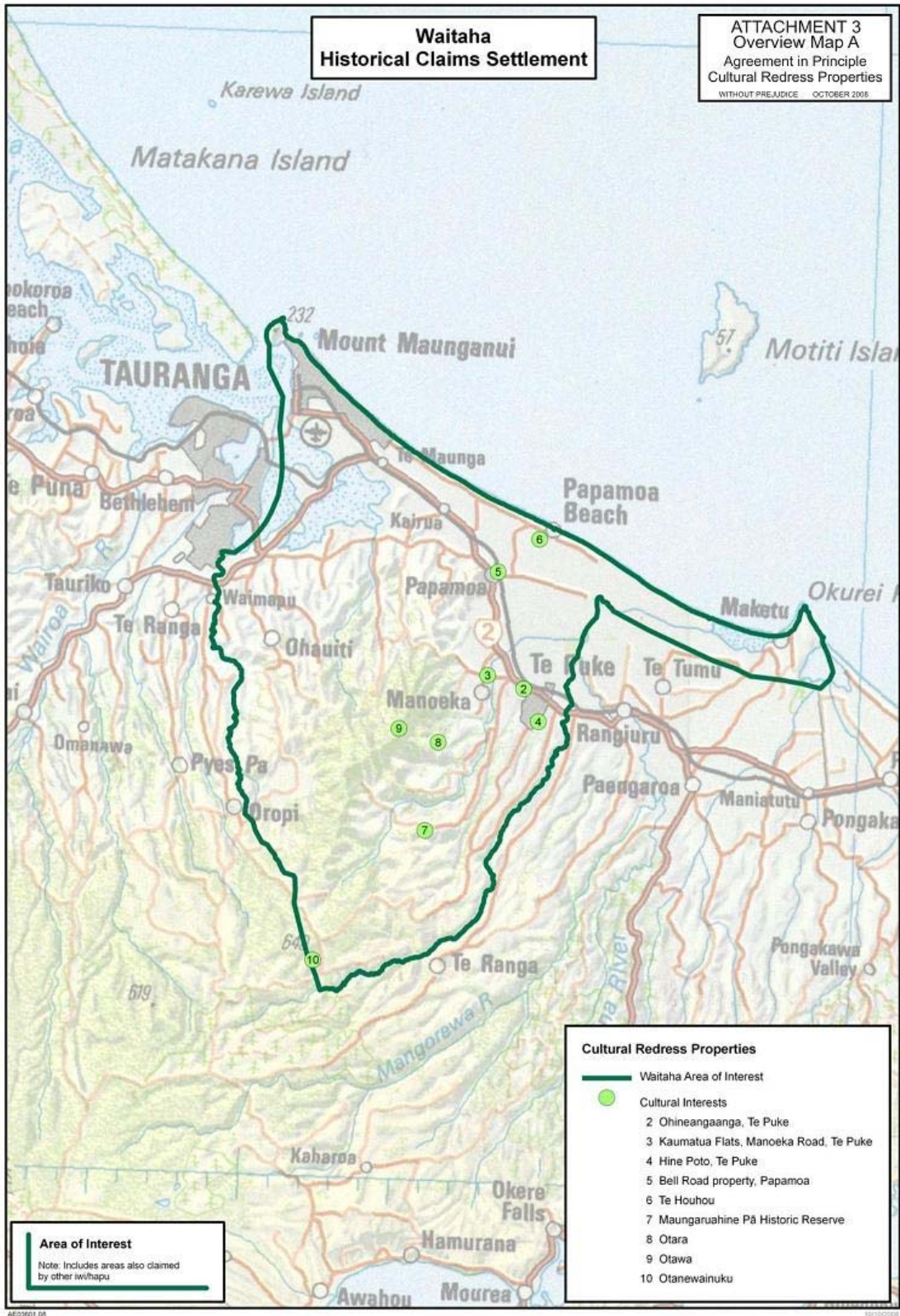
41. The Commissioner acknowledged that some Waitaha had not taken part in the rebellion and were entitled to compensation. The Commissioner awarded the 4,947 acre Otawa Waitaha 1 block to “those persons of the hapu who fought for the Government during the wars”. Waitaha were also awarded shares in the 1656-acre Waoku 2 block, which secured to them the western slopes of their sacred mountain, Otanewainuku, but the claims of Waitaha hapū to Oropi were denied.
42. All land returned to Waitaha was returned as individualised title. This overrode customary forms of land tenure and provided no protection against future alienation. Tauranga Māori did not consent to the individualisation of title in the Tauranga confiscation district.
43. The confiscation of land affected all of Waitaha – whether ‘rebel’ or ‘loyal’. The share of the Otawa lands returned to Waitaha was significantly reduced on account of those Waitaha who had taken up arms against the Crown. This also had a prejudicial effect on those members of Waitaha who had not fought against the Crown. Waitaha petitioners to the Sim Commission in 1923 estimated that this represented a loss to Waitaha of about 20,000 acres.

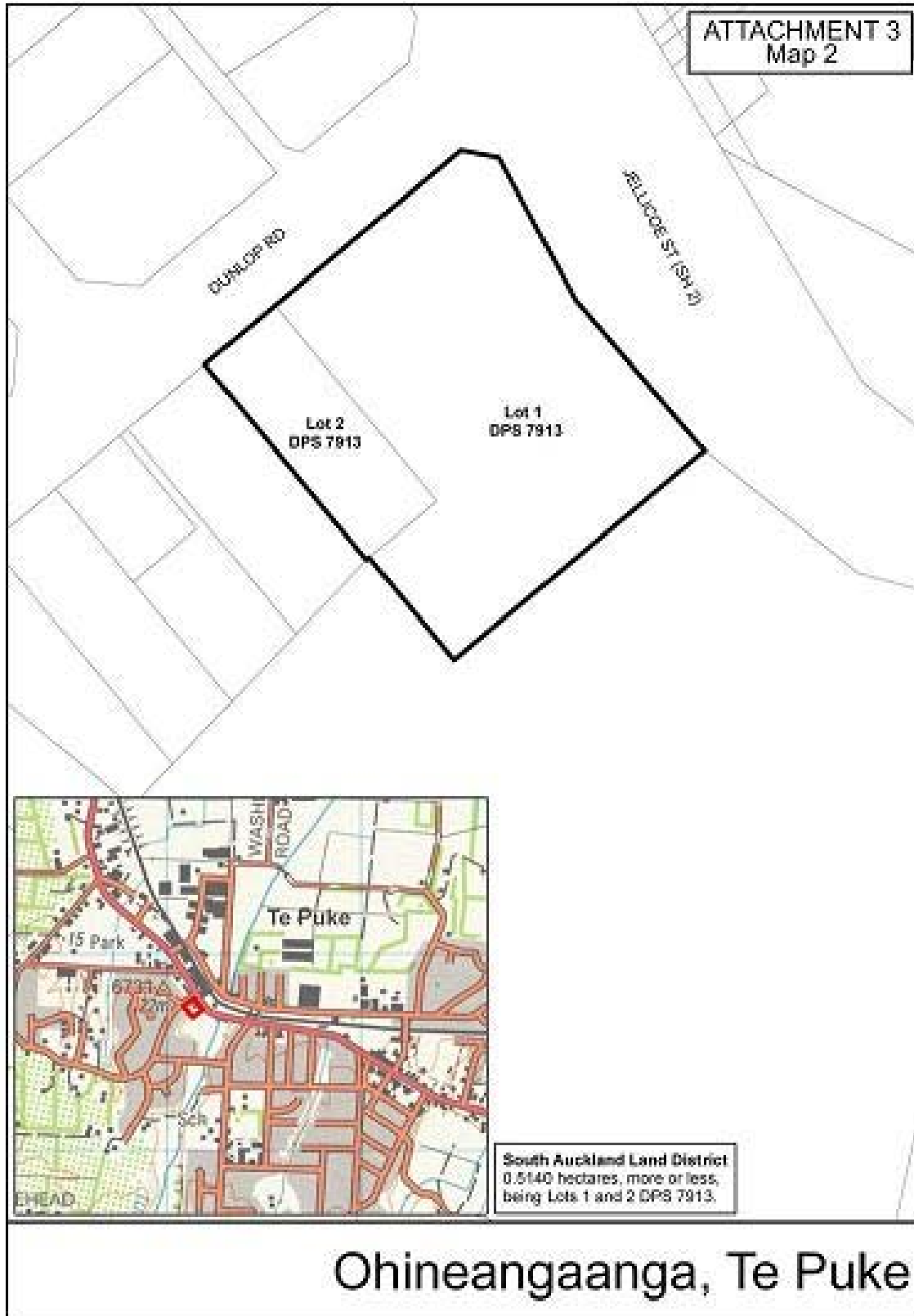
Attachment 3

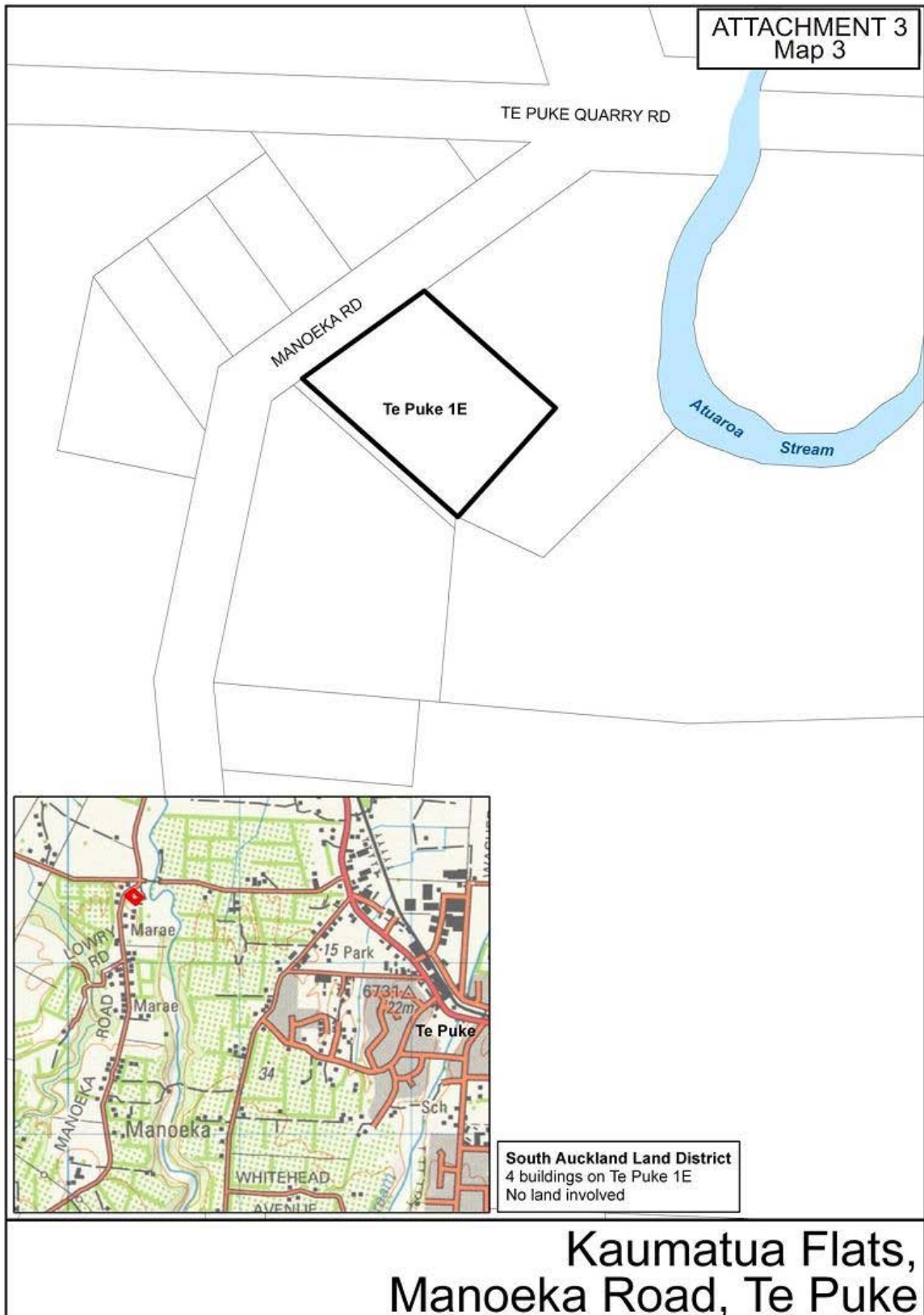
Cultural Redress Maps

Map A	Overview map
Map 2	Ohineangaanga
Map 3	Kaumatua Flats
Map 4	Hine Poto
Map 5	Bell Road Property
Map 6	Te Houhou
Map 7	Maungaruahine Pa
Map 8	Otara
Map 9	Otawa
Map 10	Otanewainuku

WITHOUT PREJUDICE
 WAITAHA AGREEMENT IN PRINCIPLE

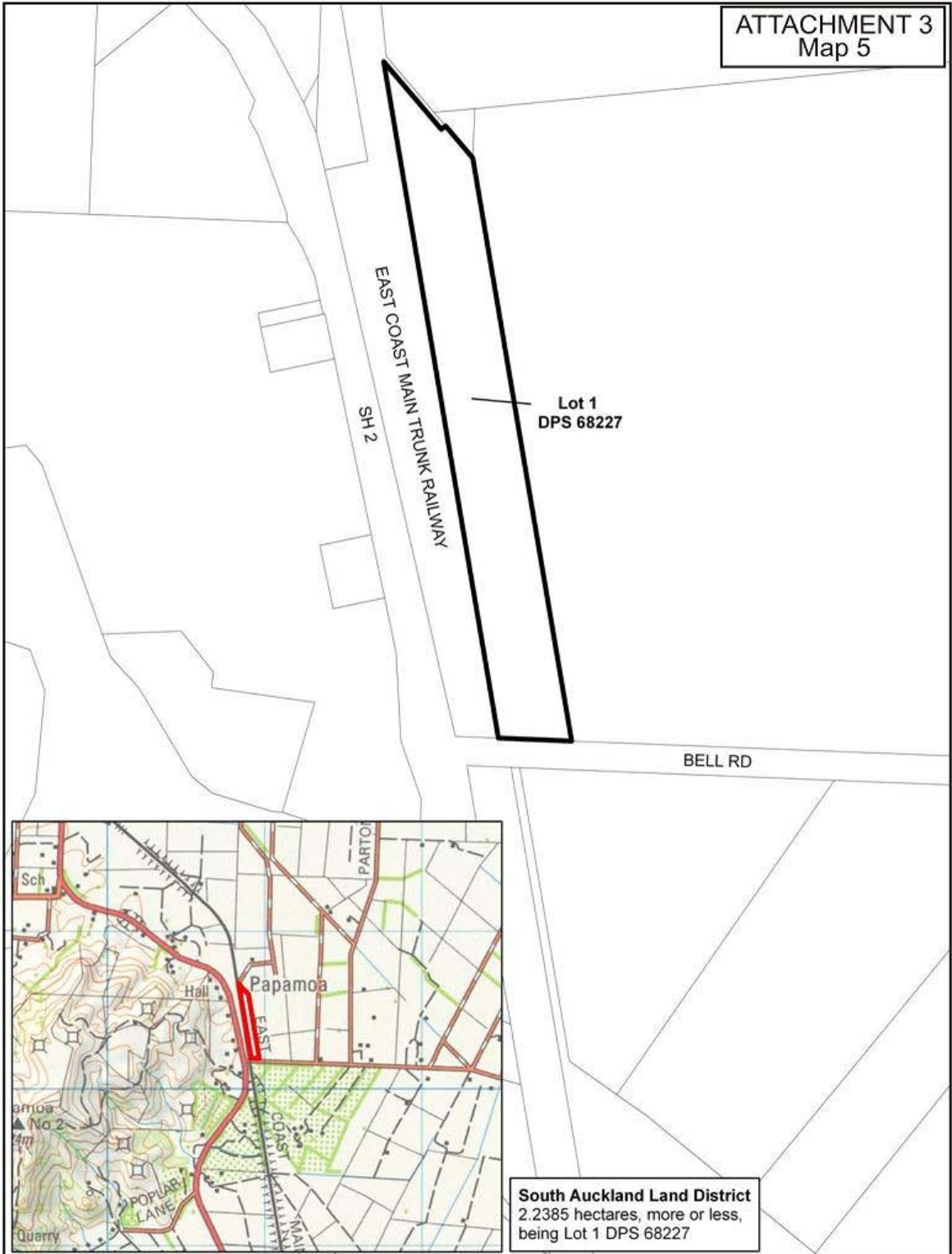








ATTACHMENT 3
Map 5

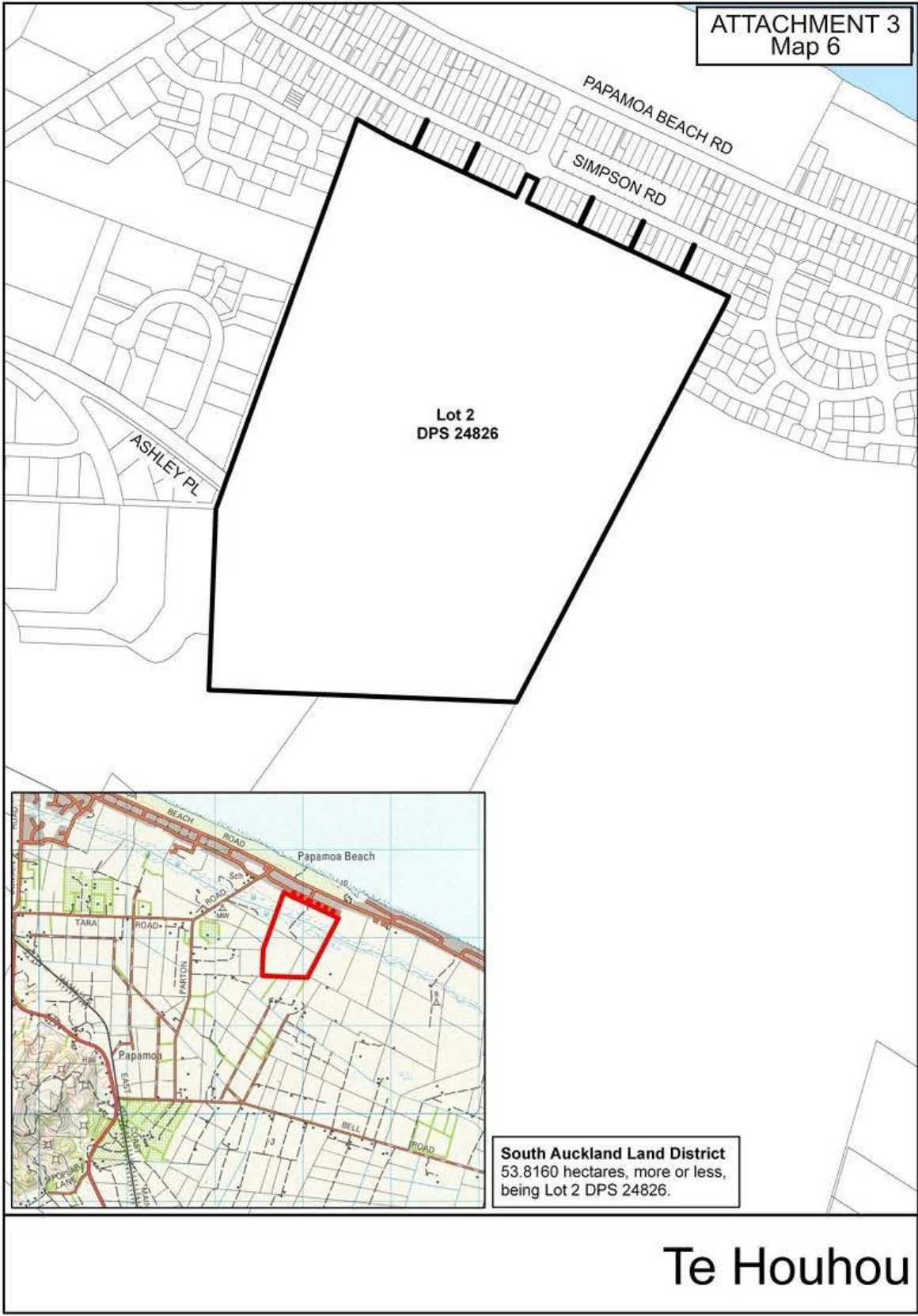


South Auckland Land District
2.2385 hectares, more or less,
being Lot 1 DPS 68227

Bell Road Property, Papamoa

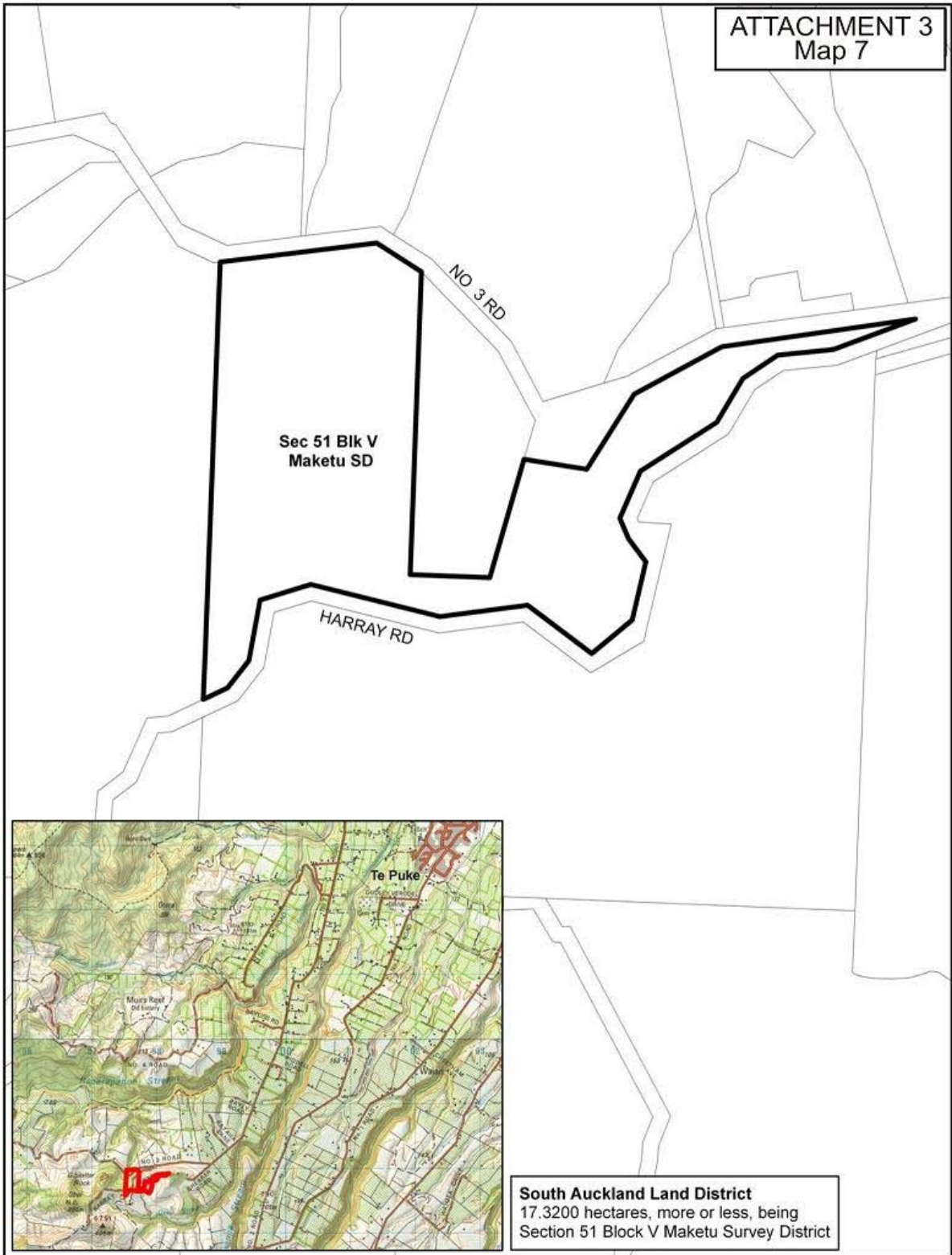
WITHOUT PREJUDICE
WAITAHA AGREEMENT IN PRINCIPLE

ATTACHMENT 3
Map 6



Te Houhou

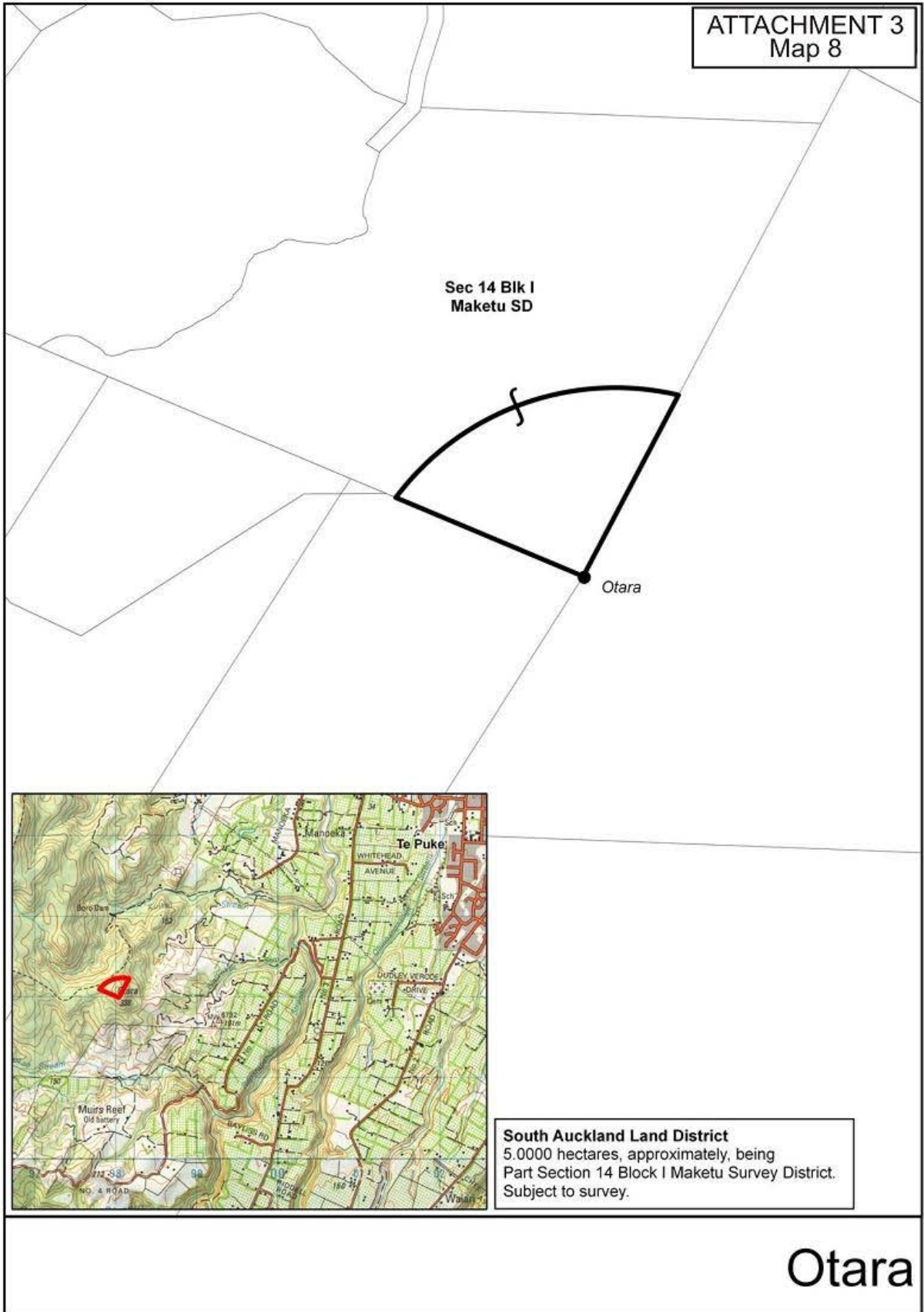
ATTACHMENT 3
Map 7



South Auckland Land District
17.3200 hectares, more or less, being
Section 51 Block V Maketu Survey District

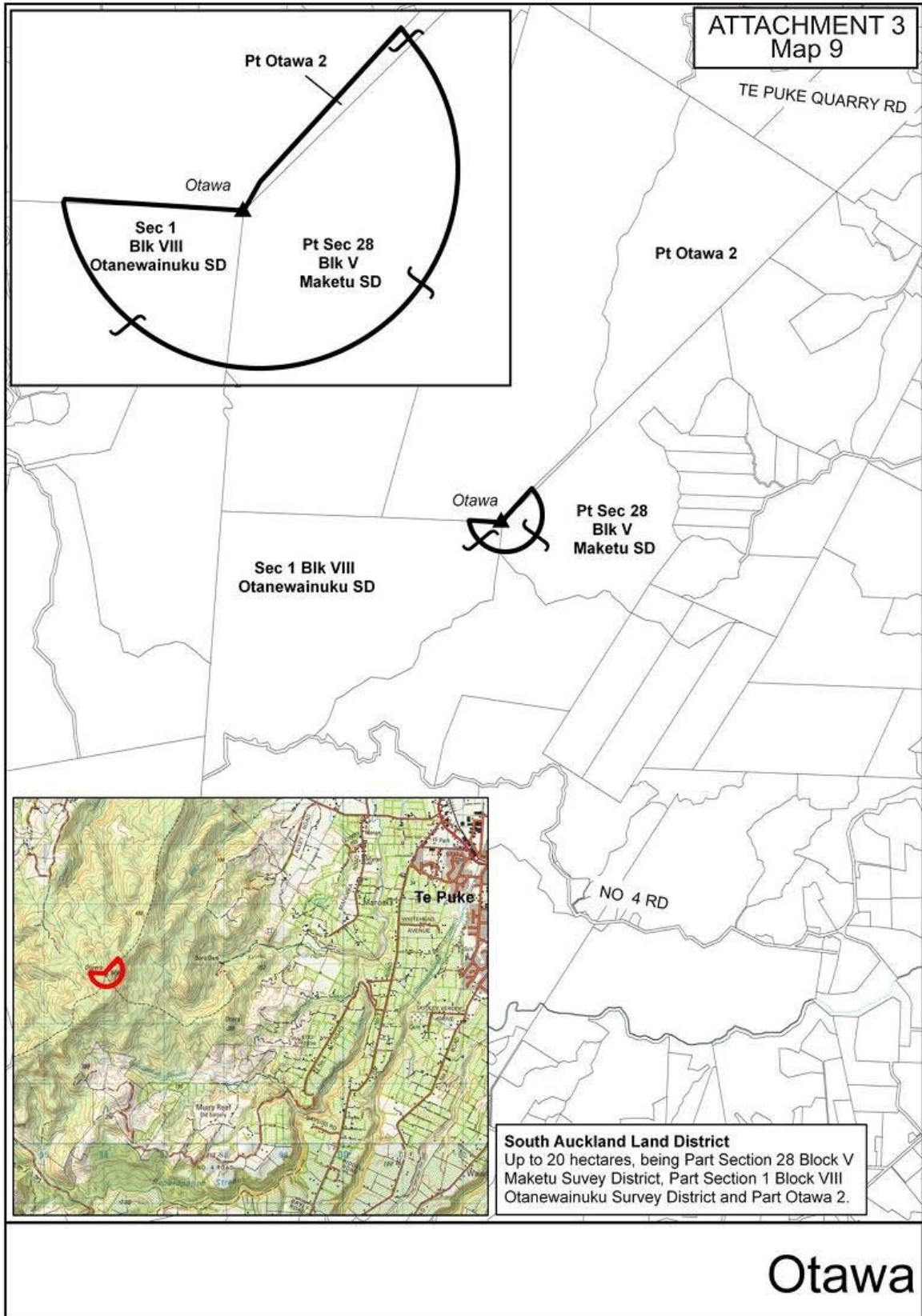
Maungaruahine Pā Historic Reserve

ATTACHMENT 3
Map 8

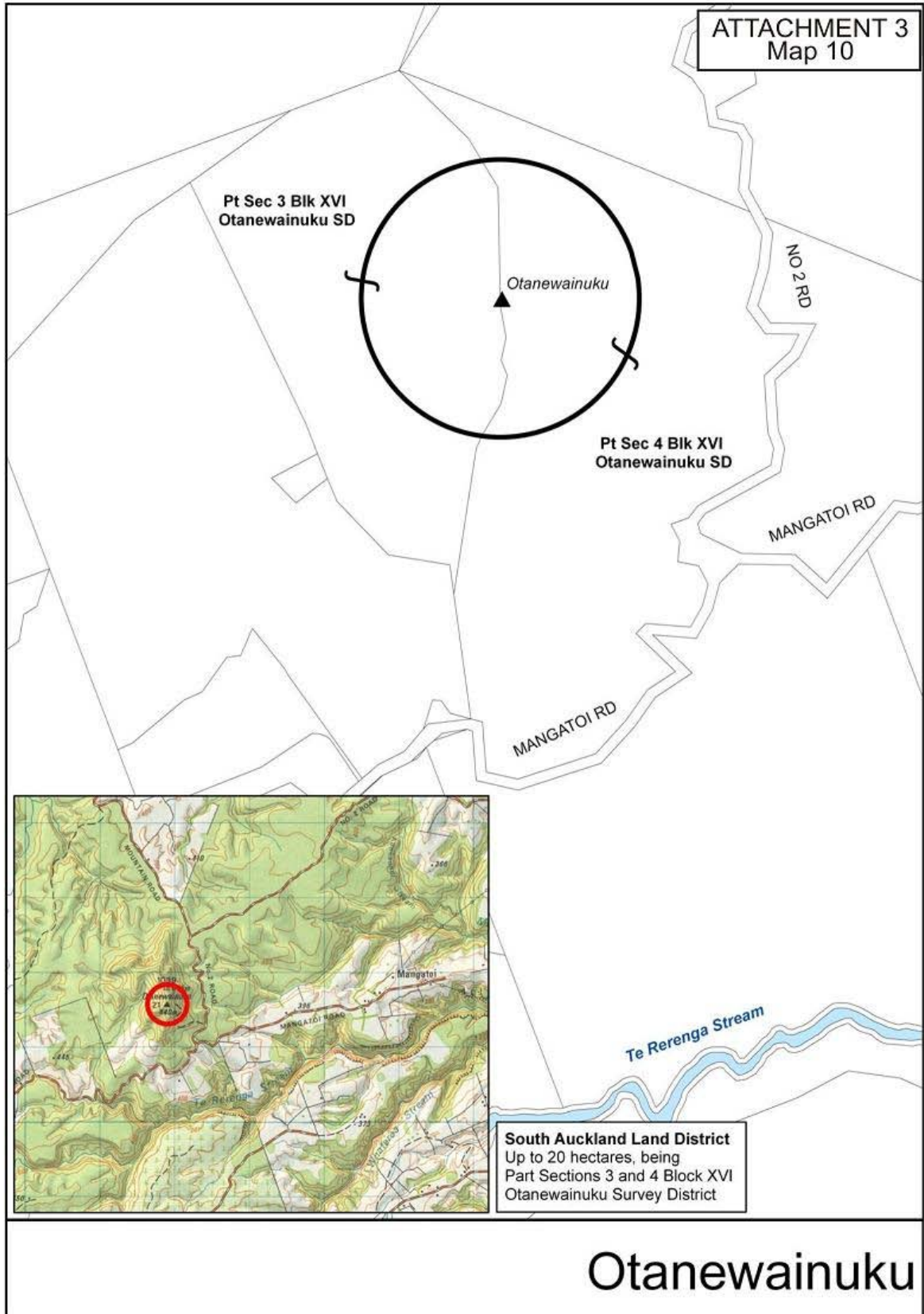


Otara

WITHOUT PREJUDICE
WAITAHA AGREEMENT IN PRINCIPLE



WITHOUT PREJUDICE
WAITAHA AGREEMENT IN PRINCIPLE



WITHOUT PREJUDICE
 WAITAHA AGREEMENT IN PRINCIPLE

