

**NGA HAPU O NGATI POROU AND THE CROWN**

FORESHORE AND SEABED  
DEED OF AGREEMENT





## LETTER TO HAPU MEMBERS – FROM THE CHIEF NEGOTIATOR

Tena tatau nga whanau/hapu o Ngati Porou i roto i nga take e tumanakohia nei e tatau hei ora mo nga mokopuna, a, mo te iwi whanui hoki.

Kanui te mamae me te pouri mo te iwi kua wehe atu nei ki te po. Kore rawa he whanau i hapa i tenei ahuatanga, a, papatau ana to ratau whakangaro atu ki tua o te arai. E nga mate haere!

E hika ma, korerotia te panui nei ki a marama ai koutou mo nga take o nga Takutai moana o Ngati Porou e kokiritia nei e matau. Ko te kaupapa ia e whaia nei e pa ana ki Te Mana o ia whanau, o ia hapu ki o ratau ake takutai moana, ara, ki nga mana i raupatutia ra e te Karauna i raro i te “Foreshore and Seabed Act 2004”.

Ko wenei korero e tau ake nei hei whakamarama he aha nga huarahi kua kokiritia e matau ki a hoki mai ano ai aua mana i raupatutia ra e te Karauna ki a tatau.

Ma ta koutou tautoko i nga kaupapa nei, ka maunu te waka, a, ka whakahaeretia hoki nga take ma reira nei e whakamana o tatau mana tuku iho.

Kia ora



Dr Apirana Mahuika

CHIEF NEGOTIATOR

# INTRODUCTION

On 7 August in Wellington the Ngati Porou Chief Negotiator, Dr Apirana Mahuika, and the Attorney-General, Dr Michael Cullen, initialled the Foreshore and Seabed Deed of Agreement between nga hapu o Ngati Porou and the Crown.

The Deed sets out:

- » how the mana of our hapu is to be better legally recognised and protected in relation to the foreshore and seabed in our rohe,
- » the way in which we can manage and protect such things as waahi tapu and customary fisheries, and
- » how our mana will be reflected in the wider management of the foreshore and seabed in the future.

The Deed is now subject to ratification by the hapu of Ngati Porou. This means that the hapu will now decide whether we go forward and sign the Deed and have its provisions implemented through legislation.

## BACKGROUND TO OUR NEGOTIATIONS WITH THE CROWN

In 2003 the Court of Appeal in the *Ngati Apa* decision upheld the right of Maori to have their claims to customary title to the foreshore and seabed investigated by the Maori Land Court. This decision was of particular importance to the hapu of Ngati Porou because our hapu have maintained ownership of much of the land right down to the sea along the coast and have continued to exercise their mana along these stretches of coastline. This means that our hapu had very strong claims to having customary title to the foreshore and seabed awarded by the Maori Land Court.

In response to the *Ngati Apa* decision, the Crown announced that it would legislate to prevent the Maori Land Court from investigating customary title claims to the foreshore and seabed. We therefore began discussions with the Crown in August 2003 to make sure that, if the Crown passed the legislation it was proposing, the rights of our hapu would be legally recognised and protected. In early 2003 these discussions were joined by Te Whanau a Apanui. On 1 November 2004 we, along with Te Whanau a Apanui, formally entered into Terms of Negotiation with the Crown.

After our negotiations had begun, and despite objections from many iwi including Ngati Porou, the Government passed the Foreshore and Seabed Act 2004. The Act removed the jurisdiction of the Court to investigate customary title claims to the foreshore and seabed. The Act also lifted the level of proof required to establish Maori ownership in the foreshore and seabed.

## WHAT WERE THE OBJECTIVES OF OUR NEGOTIATIONS WITH THE CROWN?

Despite our opposition to the Foreshore and Seabed Act 2004 we continued negotiations in order to secure better legal recognition and protection for the mana of our hapu in relation to the foreshore and seabed.

Because it is the hapu that have always exercised the mana and associated rights in respect of the foreshore and seabed, all of the rights and instruments contained in the Deed are intended to be exercised by the hapu themselves. The Runanga has been the facilitator in these negotiations, but it is the hapu themselves that will exercise all of the rights and instruments in the Deed.

We entered negotiations with four key objectives:

1. recognition of the ownership interests of the hapu in relation to the foreshore and seabed in their rohe;
2. recognition of exclusive areas for hapu;
3. recognition of the ability of hapu to exclude others from certain areas; and
4. ensuring the appropriate standing for hapu in the processes that have an impact on our use and occupation of the foreshore and seabed, such as processes under the Resource Management Act 1991.

## HAVE WE ACHIEVED OUR OBJECTIVES? RECOMMENDATION OF YOUR NEGOTIATORS

Yes, the Deed achieves our negotiation objectives through:

1. Crown recognition of the unbroken and enduring mana of the hapu of Ngati Porou in relation to the foreshore and seabed throughout our entire rohe;
2. Provision of a range of instruments and mechanisms that provide specific legal recognition and protection for the exercise of the mana of hapu in relation to the foreshore and seabed;
3. Crown agreement that hapu that can show **Territorial Customary Rights** (or TCRs) will receive an additional level of recognition and protection in these areas.

It is recommended that the hapu ratify and support this Deed through voting at the scheduled hapu hui and postal vote processes.

Further details including the background to the negotiations and the process by which Te Runanga o Ngati Porou was mandated to carry out negotiations is set out in the Background section at the front of the Deed and on the Ngati Porou Foreshore and Seabed website [www.fssb.NgatiPorou.iwi.nz](http://www.fssb.NgatiPorou.iwi.nz).

# FORESHORE AND SEABED DEED OF AGREEMENT – SUMMARY

## RECOGNITION OF MANA

In the Deed the Crown has acknowledged that the mana of the hapu of Ngati Porou is unbroken, inalienable and enduring in relation to the foreshore and seabed in our rohe. This acknowledgement of the mana of the hapu underpins the entire Deed and is the basis for the instruments contained in the Deed.

## FOUR PRINCIPLES

Flowing from the recognition of mana the Deed sets out four principles on which the Deed is based and must be interpreted. These principles are:

- » Toitu te mana atua,
- » Toitu te mana whenua me te mana moana,
- » Toitu te mana tangata, and
- » Toitu te Tiriti o Waitangi.

## NINE INSTRUMENTS AND MECHANISMS

The Deed contains nine instruments and mechanisms that provide for the better legal recognition and protection of the mana of the hapu of Ngati Porou in relation to the foreshore and seabed throughout the rohe of the hapu. This is achieved by explicitly providing for the interests of the hapu in situations where those interests might be affected. These instruments and mechanisms will be available to all those hapu that support the Deed, whether or not Territorial Customary Rights are established.

In addition, those hapu that support the Deed and can establish the higher level of interest required to support TCRs will receive the benefit of additional instruments and increased protections in those areas.

Both sets of instruments and mechanisms are described in the next column.

## GENERAL RECOGNITION AND PROTECTION FOR NGA HAPU O NGATI POROU

The nine instruments and mechanisms are:

1. A **Statutory Overlay**: it will be a requirement that the special status of the foreshore and seabed to the hapu of Ngati Porou will be recorded in key public documents such as district and regional plans and statements. The Overlay also requires that this status is taken account of in consent processes under the Resource Management Act and Historic Places Act. Hapu will also be entitled to receive notice of, and participate in, any applications for resource consent or proposals to establish marine reserves.
2. An **Environmental Covenant**: this is a document that will be prepared by hapu of Ngati Porou and will operate in conjunction with the Statutory Overlay. It will set out the issues, objectives, policies and rules or other methods for the sustainable management of the natural and physical resources within their rohe. Gisborne District Council will be required to “*take into account*” the Environmental Covenant in its plans and decisions (a higher standard will apply where TCRs are proven).

3. A **Conservation Mechanism**: provides for recognition of the interests of the hapu in conservation proposals and applications, such as the establishment of marine reserves, conservation protected areas and marine mammal sanctuaries. Where such proposals or applications are being considered, the Minister of Conservation will be required to seek the views of hapu and “*have particular regard to*” these views.

The Minister of Conservation will also be required to seek the views of hapu and “*have particular regard to*” these views in relation to the management of stranded marine mammals and when considering applications for marine mammal watching permits.

The Conservation Mechanism will enable the hapu of Ngati Porou to possess wildlife and marine mammal matter without a permit (as currently required under law). The hapu of Ngati Porou will also have the right of first refusal to possess wildlife and marine mammal matter held by the Director-General of Conservation.

4. **Relationship Instruments:** will set out how hapu and specific Ministers of the Crown and their departments will interact on various issues. The Ministers with whom relationship agreements will be signed are: The Minister of Fisheries, the Minister of Conservation, the Minister for the Environment, the Minister for Arts, Culture and Heritage and the Minister of Energy.

A **Whakamana Accord** will also be signed which provides for yearly meetings between Ngati Porou and these Ministers to discuss matters of mutual concern relating to the coastal marine area.

The Crown will also encourage Gisborne District Council and the New Zealand Transport Agency (formerly Transit NZ) to enter into relationship covenants with the hapu of Ngati Porou.

5. **Fisheries Mechanism:** this will enable hapu Fisheries Management Committees to develop customary fishing regulations (that will be made by the Minister of Fisheries on the recommendation of the Fisheries Management Committees), to implement fisheries management plans and manage customary fisheries.

The hapu Fisheries Management Committees will be able to issue permits for customary fishing through a written *or* oral permitting system. Any person exercising functions under the Fisheries Act will need to “*recognise and provide for*” the customary fisheries management plans.

6. A **Wahi Tapu** protection mechanism: gives hapu the right to restrict or prohibit access to Wahi tapu and Wahi tapu areas within the foreshore and seabed in their rohe. The Deed also provides for hapu to police these restrictions or prohibitions and it will be an offence (with a maximum penalty of a \$5,000.00 fine) if those restrictions or prohibitions are breached.

7. A **Protected Customary Activities** mechanism: allows hapu the right to continue carrying out specified customary activities in or on the foreshore and seabed in their rohe without resource consent. These are activities that would otherwise require a resource consent, even if these activities are currently carried out without one. Hapu will be able to determine who can carry out these activities. Unless the relevant hapu gives its consent, Gisborne District Council will be unable to grant a resource consent to an activity that will, or is likely to, have a significant adverse effect on a protected customary activity.

The Deed does not list any Wahi tapu, Wahi tapu areas or customary activities to be protected under these mechanisms. As part of the ratification process hapu will be able to propose Wahi tapu and Wahi tapu areas and customary activities to be included in the agreement. Wahi tapu, Wahi tapu areas and ongoing customary activities may also be agreed in the future, through processes set out in the Deed.

8. A **Pouwhenua** instrument: gives the hapu of Ngati Porou the right to erect pouwhenua at culturally significant sites and requires the Minister of Fisheries and the Minister of Conservation to obtain the agreement of hapu before erecting other pouwhenua or signage.

9. A **Placenames** instrument: replaces or changes official place names to recognise traditional names or alter the names of culturally significant areas.

The Deed lists two possible name changes. As part of this ratification process hapu will be able to propose further name changes to be included in the Deed.

### ADDITIONAL RECOGNITION AND PROTECTION FOR NGA HAPU O NGATI POROU IN TERRITORIAL CUSTOMARY RIGHTS AREAS

In addition to the general recognition and instruments available to those hapu that support the Deed, the Deed sets out seven areas where the Crown has agreed that the hapu associated with those areas have Territorial Customary Rights (or **TCRs**) because the hapu in these areas have unbroken ownership of the coastal land and exclusive use and occupation of the foreshore and seabed. These areas are:

1. Matakaoa (on behalf of Te Whanau a Tuwhakairiora and Te Whanau a Te Aotaki) – see map 1;
2. An area to the north-west of Horoera (on behalf of Te Whanau a Hunaara) – see map 2;
3. From Pakihi to the northern side of Waiapu River (on behalf of nga hapu o Te Riu o Waiapu) – see map 3;
4. From the southern side of the Waiapu River to Te Wharau (on behalf of nga hapu o Te Riu o Waiapu) – see map 4;
5. Whareponga, from Rahuimanuka in the north to Mataahu in the south (on behalf of Te Aitanga a Mate) – see map 5;
6. Marau Beach, north of Marau Point (on behalf of Te Whanau a Rangipureora and Ngati Kuranui) – see map 6; and

7. Paerau Point, south of Kaiua Bay (on behalf of Te Whanau a Rangipureora and Ngati Kuranui) – see map 7.

Copies of the maps showing these TCR areas are included with this summary of the Deed.

Further details of the TCR areas and associated hapu are available at [www.fssb.Ngatiporou.iwi.nz](http://www.fssb.Ngatiporou.iwi.nz) and at the Runanga offices in Gisborne and Ruatoria.

The hapu associated with the TCR areas will have the following additional protections within those areas:

- » A **Permission Right**: the hapu will have the right to approve or withhold approval for any resource consent for an activity that will or is likely to have a significant adverse effect on the relationship of the hapu with the environment in the TCR area. If the hapu does not give its permission for this activity then the Gisborne District Council will not have jurisdiction to process that consent.

The Deed contains a list of activities that will be deemed to have significant adverse effects and to which the permission right will automatically apply, these activities are:

- » a new structure;
- » an aquaculture activity;
- » a reclamation;
- » a discharge of industrial waste and sewage into the territorial customary rights area;
- » extraction of shingle.

Other activities will be assessed to determine whether they have a significant adverse effect through a process in which the views of the hapu will be an important factor.

The Deed also contains a list of “accommodated matters” to which the permission right will not apply.

These “accommodated activities” focus on existing activities or those activities that the hapu have allowed as a matter of longstanding practice, such as access for normal recreational purposes.

- » An **Extended Fisheries Mechanism**: gives hapu in TCR areas the ability to make by-laws under customary fishing regulations. The bylaws may place restrictions on fishing within TCR areas, either to preserve sustainability or for cultural reasons such as following a death in the area.
- » An **Extended Environmental Covenant**: all statutory plans will be required to “*recognise and provide for*” the Environmental Covenant prepared by the hapu for the TCR area. This is a higher standard than applies to non-TCR areas and ensures that the terms of the Environmental Covenant will be reflected in statutory plans.
- » An **Extended Conservation Mechanism**: hapu in TCR areas will have the right to give or refuse to give their consent to a number of conservation proposals and applications, for example the establishment of marine reserves, marine protected areas and marine mammal sanctuaries.

If the hapu associated with these TCR areas support the Deed then applications will be filed in the High Court to have these TCRs confirmed. Once the TCRs are confirmed these hapu will receive the additional recognition and protection provided for in the Deed.

The TCR areas in the Deed are intended to be the first in a series of applications that hapu will make as part of a staged process over a two-year period starting from when the first set of applications is decided by the High Court.

## FURTHER INFORMATION

More detailed information relating to the Deed and the ratification process can be obtained from [www.fssb.Ngatiporou.iwi.nz](http://www.fssb.Ngatiporou.iwi.nz) or by calling: **0800 N POROU**. The full Deed of Agreement is available on the website and at the Runanga Offices in Gisborne and Ruatoria.

## PARTICIPATION IN THE RATIFICATION PROCESS

The main focus of the ratification process will be a series of hapu hui held within Ngati Porou to determine whether hapu support the Deed being signed:

DATE	VENUE
12pm Sunday 31 August	Hiruharama Marae
5pm Thursday 4 September	Tikapa Marae
11am Saturday 6 September	Pakirikiri Marae
3pm Saturday 6 September	Iritekura Marae
10am Sunday 7 September	Hinemaurea Marae
2pm Sunday 7 September	Whangara Marae
5pm Tuesday 9 September	Hinerupe Marae
5pm Wednesday 10 September	Matahi o te Tau Marae
5pm Thursday 11 September	Hinepare Marae
11am Saturday 13 September	Puketawai Marae
3pm Saturday 13 September	Hauiti Marae
5pm Tuesday 16 September	Te Poho o Rawiri Marae
5pm Wednesday 17 September	Mangahanea Marae

These hapu hui will also consider:

1. Who should sign the Deed on behalf of the hapu if the hapu decide to ratify;
2. The customary activities that hapu would like to see protected under the Deed;
3. Wahi tapu and wahi tapu areas that that hapu would like protected under the Deed; and
4. Any place names that hapu believe need to be replaced or changed.

The method of voting at each hapu hui will be at the discretion of each hapu, in accordance with their own practices.

We encourage you to attend the relevant hui and participate.

In addition to the hapu hui there will be an indicative postal vote to further measure support for the Deed. To participate in the postal ballot you must be 18 years or older, and be a registered member of Ngati Porou. Voting papers are **enclosed** in this information pack and electronic voting (and instructions) are available at [www.fssb.ngatiporou.iwi.nz](http://www.fssb.ngatiporou.iwi.nz). If you require additional voting papers these can be obtained by calling: **0800 N POROU**.

**Please note that the ratification process ends at 5pm 19 September 2008 and for your vote to be considered it must be received by this date.**

## WHAT HAPPENS AFTER RATIFICATION?

If the Deed receives sufficient support it will be signed by representatives of the hapu and the Crown. Legislation will then also be required to implement the Deed.

The appointed representatives of hapu who have TCRs recognised as part of the Deed (and support the Deed), will file applications in the High Court for confirmation that the requirements for establishing TCRs under the Foreshore and Seabed Act have been satisfied.

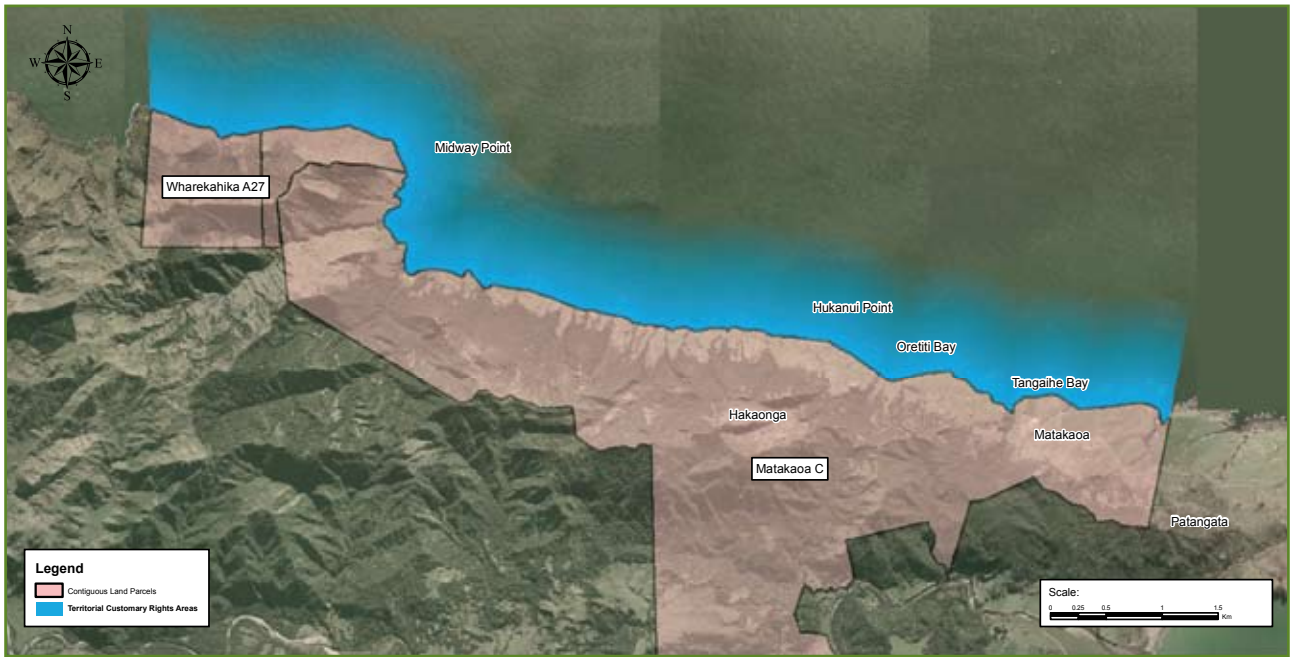
Hapu that ratify the Deed will have a two-year period from the date that these initial TCR applications are decided to file any further TCR applications in the High Court. Other than applications made during that two-year period the hapu that ratify the Deed will withdraw their TCR and Customary Rights Order (**CRO**) claims (including claims to the Waitangi Tribunal) to the extent that those claims relate to TCR and CRO claims.

Only those hapu that choose to support the Deed will benefit from the instruments and mechanisms described above and will have their TCR and CRO claims affected. Those hapu that choose not to ratify the Deed will not benefit from the instruments and mechanisms contained in the Deed and will not have their TCR and CRO claims affected.

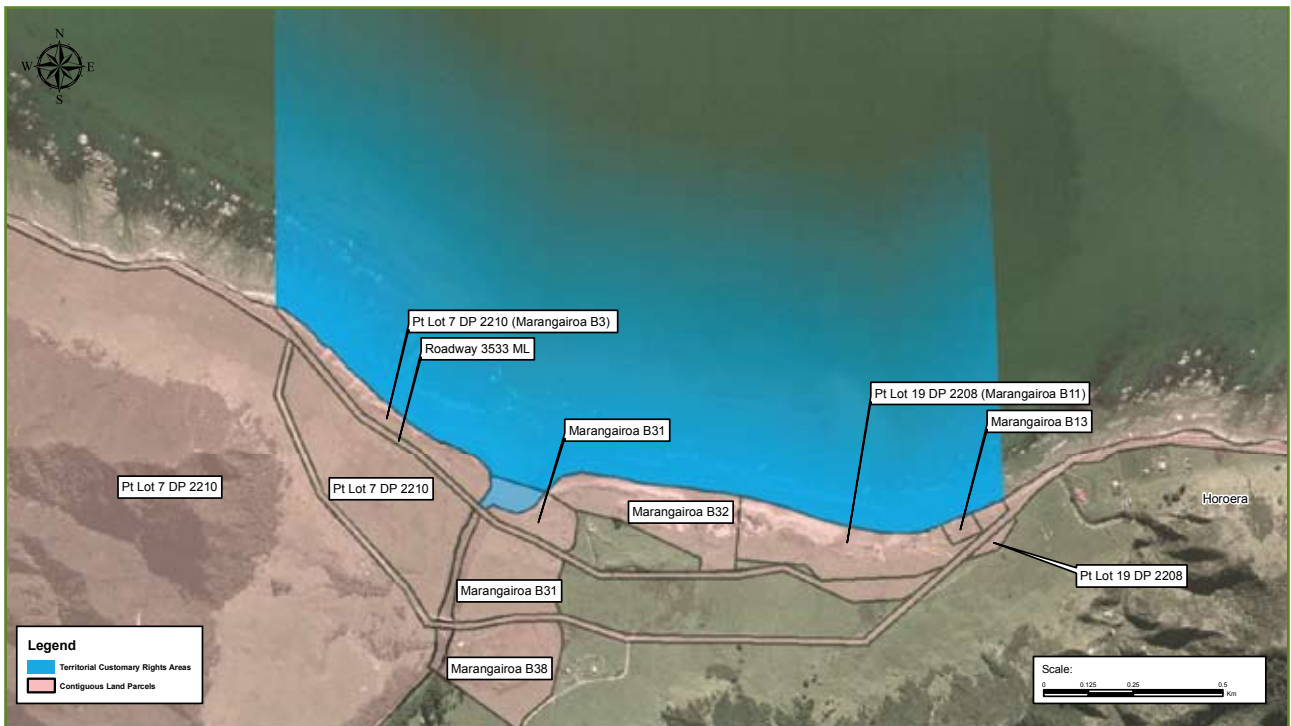
Where a hapu is unable to establish a TCR or CRO, and that TCR or CRO was lost as a result of a Crown breach of the Treaty of Waitangi, it is also acknowledged in the Deed that this loss can be addressed with the Crown as part of any Treaty settlement negotiations.

The hapu who support the Deed of Agreement will need to establish management arrangements to exercise the functions set out in the Deed. If the Deed receives sufficient support, the intention is to work with the hapu to establish the management arrangements. The arrangements will be subject to ratification by the hapu.

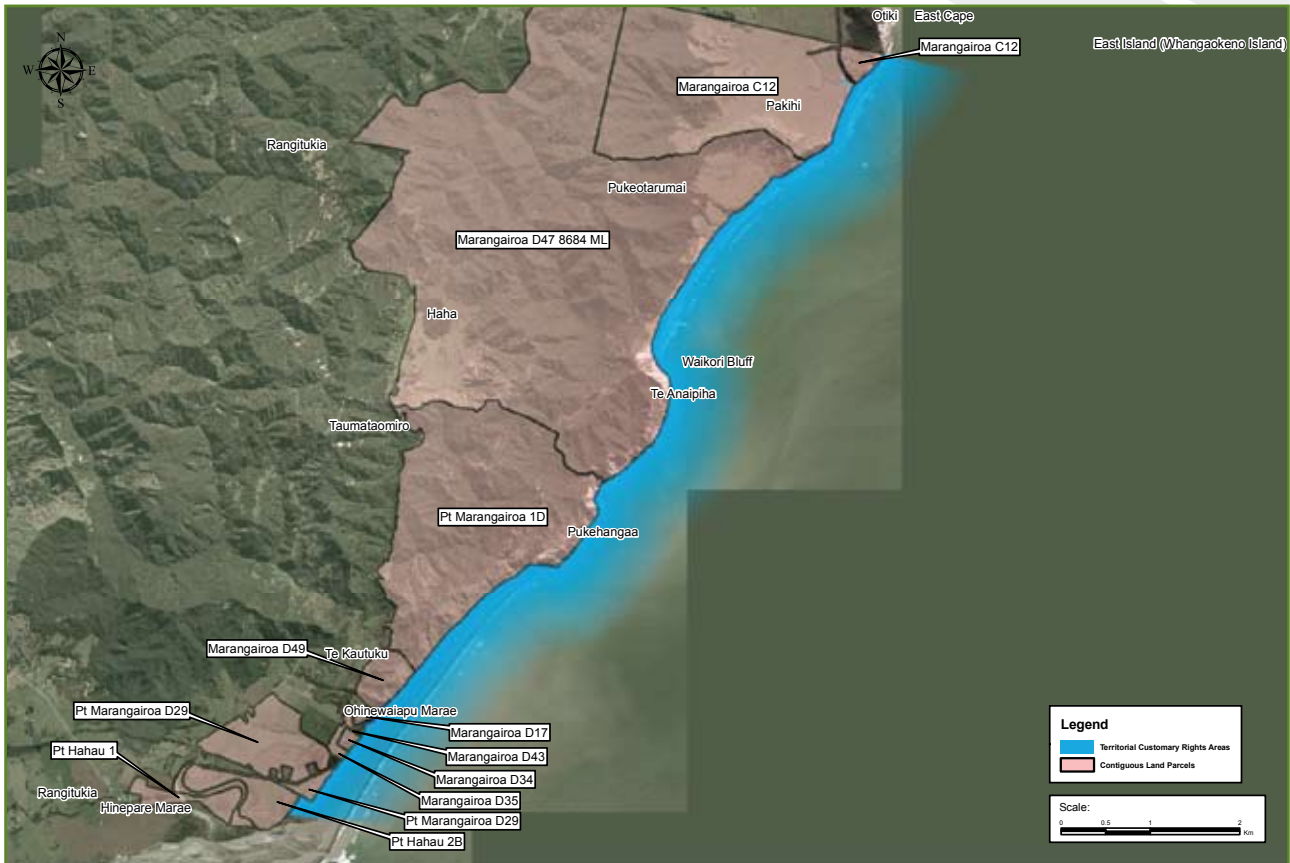
# TERRITORIAL CUSTOMARY RIGHTS AREAS – MAPS



MAP 1 >> MATAKAOA

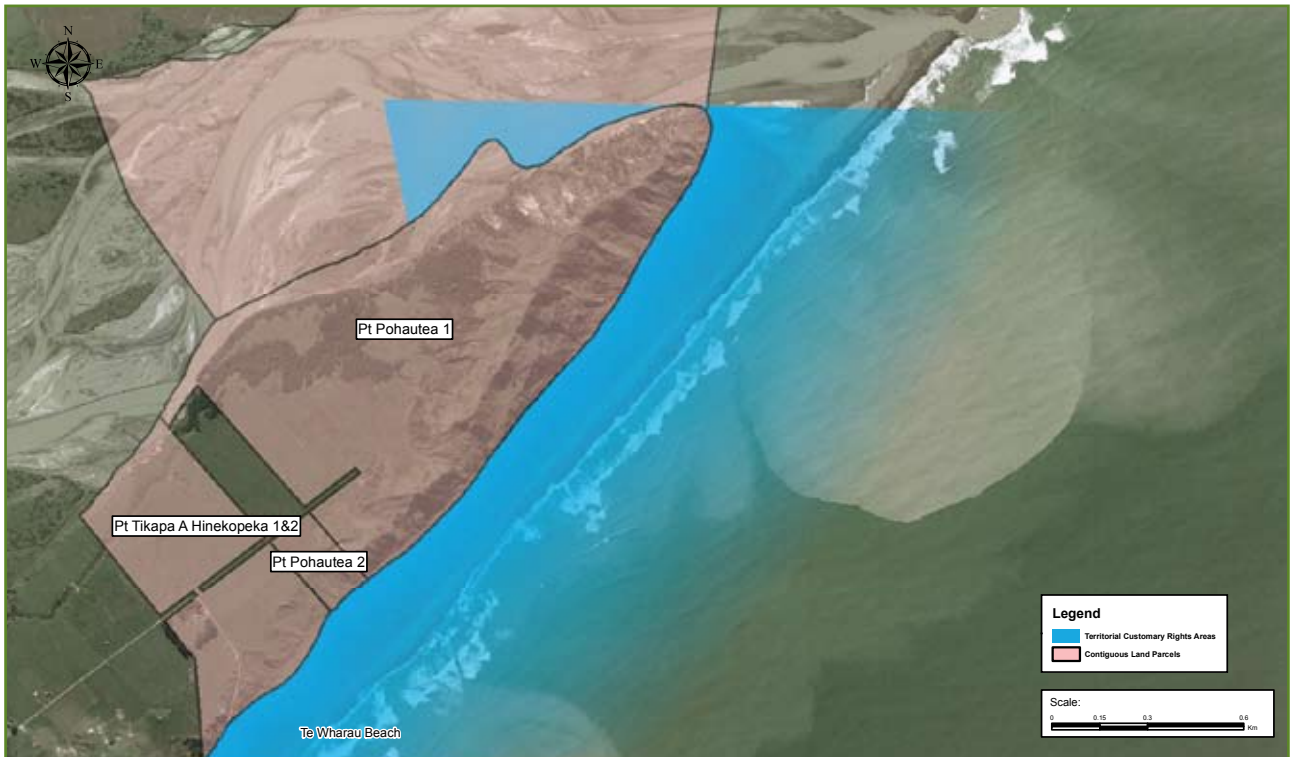


MAP 2 >> NORTH-WEST OF HOROERA



MAP 3 >> PAKIHI TO THE NORTHERN SIDE OF WAIAPU RIVER

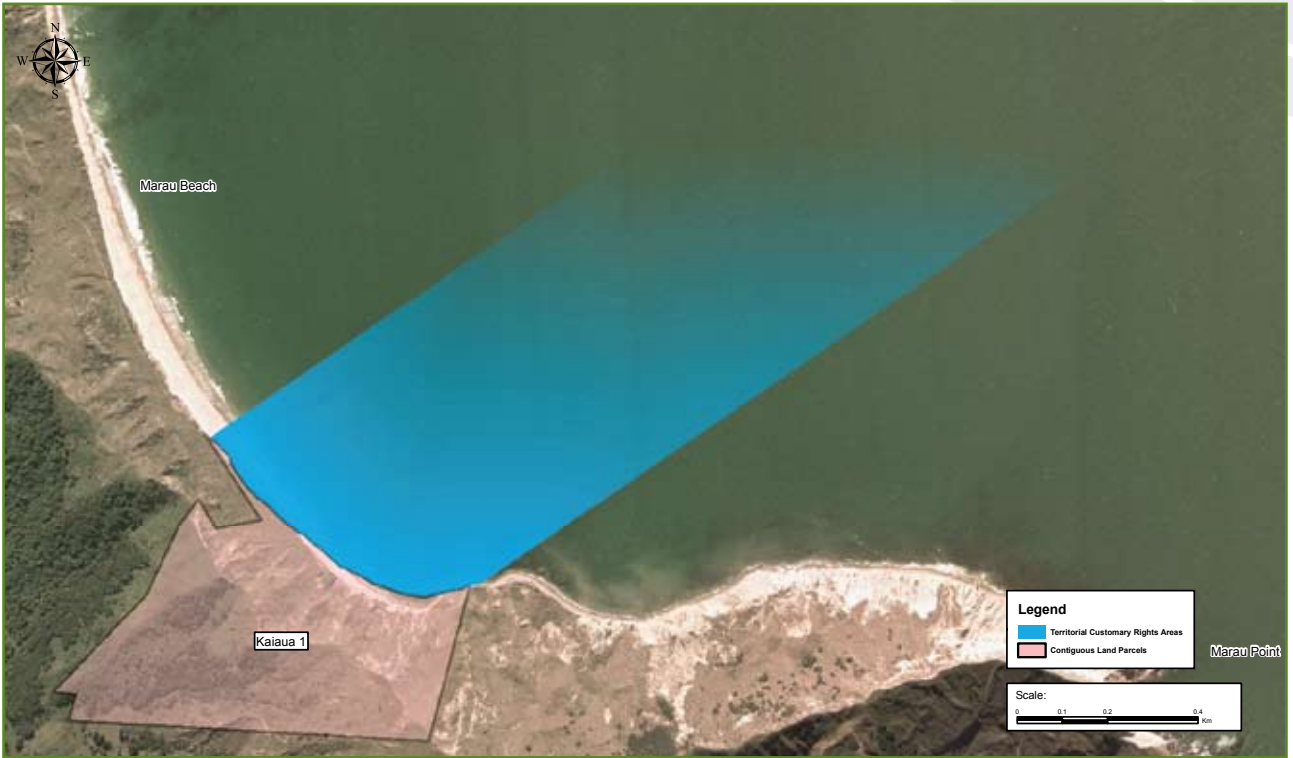
# TERRITORIAL CUSTOMARY RIGHTS AREAS – MAPS



MAP 4 >> SOUTHERN SIDE OF THE WAIPUU RIVER TO TE WHARAU



MAP 5 >> WHAREPONGA



MAP 6 >> MARAU BEACH



MAP 7 >>> PAERAU POINT

