

**Statement of Position and Intent:  
Foreshore and Seabed Negotiations between the Crown  
and Te Rūnanga o Ngāti Porou**

### **Introduction**

1. The purpose of this document is to summarise the position that has been reached in the negotiations process as at September 2005 in regards to the outcomes that would result in the event that territorial customary rights are able to be demonstrated.

### **Progress Achieved to Date**

2. Since the signing of the Terms of Negotiation, a substantial amount of work has been undertaken by the Crown and Te Rūnanga o Ngāti Porou (on behalf of the Hapū of Ngāti Porou) and Te Rūnanga o Te Whānau (on behalf of the Hapū of Te Whānau-a-Apanui). In addition to the negotiations themselves, that work has involved the matters listed below.
  - a. Site visits to the rohe of Te Whānau-a-Apanui and Ngāti Porou. The purpose of the visits was to more clearly understand and establish issues associated with the use and occupation, relationship and physical attributes of the locations visited. It also provided an opportunity for the Hapū to put their perspectives directly to the Crown negotiating team. Further site visits are envisaged as the negotiations continue.
  - b. The development of a GIS database showing all land contiguous to the foreshore in the rohe of Ngāti Porou and Te Whānau-a-Apanui. This includes all parcels that adjoin the foreshore, parcels that can be projected to the foreshore (that is, parcels that are situated behind marginal strips, certain types of reserve, roads and railway lines), and the status of those parcels.
  - c. The commencement of investigations on the continuity of ownership of these contiguous parcels, starting with land initially identified to be Māori freehold land.
  - d. An initial study by the Crown of the records of Environment Bay of Plenty, Opotiki District Council and Gisborne District Council. The purpose of the study is to collate information about third party activities, since the passing of the Resource Management Act, in the foreshore and seabed in the rohe of Ngāti Porou and Te Whānau-a-Apanui.

- e. The Crown is undertaking research of relevant written histories, photograph collections, council records and similar sources of information concerning historical use and occupation of the foreshore and seabed in the rohe of Ngāti Porou and Te Whānau-a-Apanui.
- f. Ngāti Porou and Te Whānau-a-Apanui are collating evidence concerning the use, occupation and exercise of mana by the Hapū over the foreshore and seabed in their rohe. This is an extensive process that involves:
  - interviewing of the pakeke (elders) and the pūkōrero (spokespeople) of the various Hapū;
  - reviewing of privately held manuscripts and location specific research papers;
  - reviewing of oral history archives; and
  - researching of land records.
- g. As part of the ongoing discussion on foreshore and seabed interests of the Hapū, Ngāti Porou and Te Whānau-a-Apanui are providing to the Crown, in the form of draft affidavits, information obtained under the process outlined in paragraph (f) above.

### **Proposed Contents of Deeds of Agreement**

3. The Crown and Te Rūnanga o Ngāti Porou (on behalf of the Hapū of Ngāti Porou) and Te Rūnanga o Te Whānau (on behalf of the Hapū of Te Whānau-a-Apanui) have commenced discussions on the contents of proposed Deeds of Agreement.
4. It is proposed that the Deeds of Agreement will be entered into by the Hapū in recognition of the fact that, but for the Foreshore and Seabed Act, the Hapū would have had claims for territorial customary rights over areas of the foreshore and seabed in their respective rohe.
5. The purpose of the Deeds of Agreement will be to record the agreed recognition and redress to be provided by the Crown in respect of the rights that the Hapū would have had as territorial customary rights holders.
6. It is proposed that the Deeds of Agreement include the following:
  - a. Part A: Background / Recitals;
  - b. Part B: Terms and Conditions;

- c. Part C: Recognition of Ownership Interests;
- d. Part D: Redress and Relationships; and
- e. Part E: Savings Provisions.

**Part A: Background/Recitals**

7. There will be a background section to the final Deed of Agreement written in both Māori and English.
8. The background section of the Deed of Agreement for Ngāti Porou will include within it the history of the negotiation process including details of the events that gave rise to the negotiations and details of the negotiation process, as follows:
  - a. Following the decision of the Court of Appeal in **Ngāti Apa & Ors v Attorney-General**, Te Rūnanga o Ngāti Porou made application to the Māori Land Court (A20030004830) for orders declaring the foreshore and seabed in its rohe (territory) to be Māori customary land. Similar applications were made by individual Whānau and Hapū of Ngāti Porou.
  - b. At about the same time the Crown announced that it proposed to remove the Māori Land Court's jurisdiction to declare areas of foreshore and seabed to be Māori customary land. To that end the Crown commenced a process of consultation and policy development towards achieving this objective.
  - c. Te Rūnanga o Ngāti Porou, on behalf of the Hapū of Ngāti Porou, commenced discussions with the Crown in order to ensure that, if the proposed law change occurred, the rights of the Hapū of Ngāti Porou would be recognised and protected.
  - d. On 1 November 2004 the Crown and Te Runanga o Ngāti Porou, on behalf of the Hapū of Ngāti Porou from Pōtikirua to Te Toka a Taiau, entered into Terms of Negotiation, which set out the scope, objectives and procedures for negotiations between the Crown and the Runanga in order to reach an agreement on the foreshore and seabed rights of the Hapū of Ngāti Porou.
  - e. Subsequent to the signing of the Terms of Negotiation the Foreshore and Seabed Act was passed into law.
9. The background section will also include within it:
  - a. the history of occupation by the Hapū of Ngāti Porou of their respective tribal lands both prior to and after 1840; and

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- b. the respective assertions of ownership by the Crown and the Hapū of Ngāti Porou.
  10. Ngāti Porou together with Te Whānau-a-Apanui base their claims to ownership on the common law, statute and tikanga and, amongst other things, point to unbroken occupation, the continued exercise of ancestral mana, and the fact that title to the foreshore and seabed has never been ceded to the Crown, as supporting that ownership.
  11. The Crown assertion of ownership is based on section 13(1) of the Foreshore and Seabed Act.

***Part B: Terms and Conditions***

12. The Deed of Agreement and therefore the recognition and redress provided will be subject to:
  - a. ratification by the Hapū. Those Hapū that choose not to ratify the contents of the Deed of Agreement will not be included in the Deed.
  - b. the making of a High Court order in accordance with sections 96(2) and 96(3) of the Foreshore and Seabed Act confirming that the requirements of sections 32 to 34 of the Foreshore and Seabed Act are satisfied.
  - c. the passing of any legislation to give effect to the contents of the Deed of Agreement.
13. The Deed of Agreement once entered into will fully and finally settle the claims by the Hapū to territorial customary rights within their respective rohe. However, the Hapū will retain the right to enforce the Deed of Agreement against the Crown.

***Part C: Recognition of Ownership Interests***

14. The Deed of Agreement will recognise that, but for the Foreshore and Seabed Act, the Hapū held and exercised territorial customary rights over areas of the foreshore and seabed in their respective rohe.
15. Where the Crown considers that a particular Hapū would have had territorial customary rights but for the Foreshore and Seabed Act, the Deed of Agreement will record the redress to be provided to the Hapū by the Crown.
16. Where the Crown does not consider that a particular Hapū would have had territorial customary rights but for the Foreshore and Seabed Act, that Hapū may still apply to the High Court for an order under section 33 of the Foreshore and Seabed Act.

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**Part D: Redress and Relationships**

17. The Deed of Agreement will outline the redress and relationships to be provided by the Crown.
18. The redress will apply to those areas of the foreshore and seabed where it is recognised that territorial customary rights would have existed.

*Governance/Management Arrangements*

19. The Deed of Agreement will record the arrangements put in place for the Hapū to manage the redress and the relationship instrument(s) to be provided by the Crown. Any such arrangements will need to be ratified by the Hapū and confirmed by the Crown as being satisfactory, to represent the Hapū, and receive the redress and the relationship instruments.
20. The Crown considers that these arrangements must be administratively convenient and must provide certainty to third parties.
21. Ngāti Porou consider that the arrangements should be consistent with and recognise the rangitiratanga of the Hapū in respect of the public foreshore and seabed in their rohe.
22. This matter will require resolution before a Deed of Agreement can be finalised.

*Protection of Tikanga*

23. The Hapū of Ngāti Porou currently take steps, in accordance with their tikanga, to limit or prohibit access or restrict the taking of fish or kaimoana through various means, such as rāhui, ārai and aukati. This, amongst other things, is considered by Ngāti Porou to be evidence of the continued exercise of mana by the Hapū and the existence of territorial customary rights.
24. The Crown recognises that rāhui and similar practices are traditional use and management practices of the Hapū and supports those practices.
25. The Deed of Agreement will provide mechanisms to protect specific areas of importance or undertake measures to sustainably manage fisheries resources by either closing those areas or restricting the right to take fish or kaimoana from specific areas. Any closure or restriction would need to be carried out in a way that reflects the mana of the Hapū and would also be subject to a process of prior notification to both the relevant Minister and the public.

26. It is acknowledged that sections 186 and 186A of the Fisheries Act 1996 already provide legal mechanisms that allow for the closure of areas and the restriction of fishing or certain fishing methods within those areas. These sections will provide the basis for further discussions. The Crown considers matters relevant to sections 186 and 186A of the Fisheries Act as not relating to redress for pre-existing territorial customary rights.
27. Ngāti Porou together with Te Whānau-a-Apanui wish to have legal confirmation of the current practices, exercised in accordance with tikanga, to close areas to public access and restrict access in, on, over and across the foreshore and seabed for general cultural or religious reasons (for example to recognise the tapu associated with a drowning).
28. It is acknowledged that a key objective of the Crown is to ensure that the Deed of Agreement is consistent with the public rights of access and navigation, as set out in sections 7 and 8 of the Foreshore and Seabed Act.
29. This matter will require resolution before a Deed of Agreement can be finalised.

*Ability to approve the occupation of space, the removal of natural materials and discharges*

30. Ngāti Porou and Te Whānau-a-Apanui consider that, having established a level of interest that would have resulted in territorial customary rights but for the Foreshore and Seabed Act, Hapū approval should be obtained for:
- a. the occupation of space;
  - b. the removal of natural materials from; and
  - c. discharges into;

territorial customary rights areas. This would include Hapū approval being obtained before a resource consent could be granted under the Resource Management Act. Ngāti Porou together with Te Whānau-a-Apanui consider that the decision by the Hapū to give approval should be unfettered.

31. It is acknowledged that where a Hapū would have had territorial customary rights but for the Foreshore and Seabed Act, that Hapū should have its interests recognised when resource consents are sought under the Resource Management Act to occupy space in, and remove natural materials from, territorial customary rights areas.

32. It is also acknowledged that any person (including the Hapū) seeking to occupy space in, or remove natural materials from, territorial customary rights areas will need to comply with the environmental standards imposed from time to time under the Resource Management Act.
33. The Crown considers that local and national public interests need to be reflected in any such process as well. The Crown considers that any decisions by the Hapū should in certain circumstances be able to be fettered.
34. This matter will require resolution before a Deed of Agreement can be finalised.

***Protocols and Input to Government***

35. Ngāti Porou wish relationship instruments to be entered into by the:
  - a. Minister for the Environment;
  - b. Minister of Energy in relation to the Crown Minerals Act 1991 and the Minerals Programmes developed under that Act;
  - c. Minister of Fisheries;
  - d. Minister of Conservation; and
  - e. Minister for Arts, Culture and Heritage in relation to the Antiquities Act 1975 (or similar legislation).
36. The Crown and Ngāti Porou are exploring the possibility, with the relevant agencies, of relationship instruments so as to facilitate a more effective relationship between the Hapū and these agencies. The proposed relationship instruments would acknowledge the cultural, historical, spiritual and traditional association of the relevant Hapū with an area of the foreshore and seabed. These relationship instruments may apply both to areas where the Hapū would have had territorial customary rights and also to other areas within the rohe of Ngāti Porou. The nature of the relationship instruments may vary in their application between territorial customary rights areas and their application in other areas.
37. The Crown and Ngāti Porou have discussed that if such relationship instruments are included in any Deed of Agreement it is likely that the Deed will:
  - a. acknowledge that each relationship instrument must comply with the applicable legislation;

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- b. set out how the relevant Department or Ministry will interact with the agreed governance arrangements in relation to the statutory powers, functions and duties that relate to or impact on the foreshore and seabed.
38. The Crown and Ngāti Porou are also exploring the possibility of the Attorney-General and the Minister of Māori Affairs writing to Transit New Zealand encouraging Transit New Zealand to enter into a memorandum of understanding (or similar document) in relation to interaction between Transit and the Hapū.

***Part E: Savings Provision***

39. The Deed of Agreement will provide that it will not impact on the settlement of historical Treaty of Waitangi claims.

**Status of this Document**

40. The parties acknowledge that this document summarises the position reached in the negotiations to date. It is entered into without prejudice to the respective positions of the parties.
41. The parties further acknowledge that because this document is a summary of the position reached in the negotiations, it is not legally binding and does not create enforceable legal relations. The objective of the parties is to reach a final Deed of Agreement that will be binding according to its terms.
42. As a consequence of the acknowledgements recorded in paragraphs 40 and 41 above, this document is not to be used as evidence, or as an interpretative guide in aid of any matter, in any proceedings before, or presented to, the Courts, the Waitangi Tribunal, or any other judicial body or tribunal. However, this document can be produced to prove its existence and to prove any of the matters referred to in clauses 40 to 43.
43. Except insofar as this document amends the Terms of Negotiation dated 1 November 2004, those Terms of Negotiation will continue to apply.

**Next Steps**

*Approval and Mandating*

44. It has been acknowledged, including before the Waitangi Tribunal, that following the conclusion of an Agreement in Principle a process would be undertaken to assess whether there is support amongst the Hapū of Ngāti Porou for both the Agreement in Principle and the role of Te Rūnanga o Ngāti Porou in continuing to facilitate negotiations with the Crown.

45. Ngāti Porou considers that this Statement of Position and Intent represents a similar stage in the negotiation process to an Agreement in Principle and therefore considers that it is now appropriate to undertake a process to assess whether the Hapū support the continuation of the negotiations and the continued facilitation role of Te Rūnanga o Ngāti Porou in those negotiations.
46. Those Hapū that do not approve the continuation of the negotiations based upon this Statement of Position and Intent will not be represented further in the negotiations process.
47. Those Hapū that do not support the continued facilitation of the negotiations by Te Rūnanga o Ngāti Porou may be represented further in negotiations but will not be represented by the Rūnanga.

*Continue Negotiations*

48. Negotiations, informed by the steps set out in paragraphs 44 to 47, will continue with a view to the Crown and Ngāti Porou reaching agreement on outstanding issues and concluding a Deed of Agreement.

*Further Evidence Gathering*

49. In order to facilitate agreement on where territorial customary rights would have existed it is the intention of the Crown and Ngāti Porou that:
  - a. the ongoing research and exchange of information will continue;
  - b. further site visits will occur; and
  - c. work will continue on the GIS database.

*Overlapping Claims*

50. Should any overlapping claims arise during the course of the negotiations, then a process to be agreed between the Crown and Ngāti Porou will address the alleged overlapping claim.

*Consultation and Ratification*

51. Before the Deed of Agreement is finalised, the Crown intends to consult (as appropriate) with agencies, public interest groups, and other third parties with a direct involvement with territorial customary rights areas.

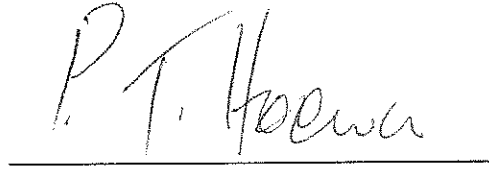
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52. If the role of Te Rūnanga Ngāti Porou in facilitating the negotiations continues to be supported by the Hapū, the Rūnanga will continue to undertake regular internal consultation and communication in a manner consistent with the communications strategy set out Attachment A to the Terms of Negotiation. Ngāti Porou will report, by letter to the Chief Crown Negotiator, at two monthly intervals on the steps taken to consult with and keep the Hapū which they represent informed of the progress of negotiations.
  
  53. Once concluded, the Deed of Agreement will be the subject of an agreed ratification process.

SIGNED THIS 30<sup>th</sup> DAY OF September 2005

For and on behalf of the Crown:



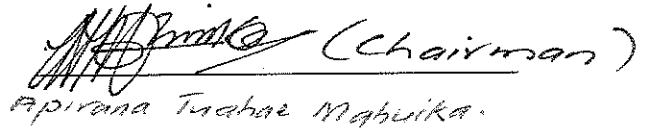
Hon Dr Michael Cullen  
Attorney-General



Hon Parekura Horomia  
Minister of Māori Affairs

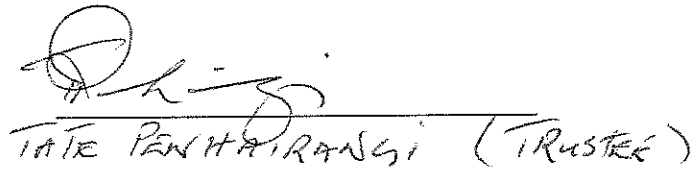
Acknowledged as an accurate statement of position and intent by  
Te Rūnanga o Ngāti Porou:

Authorised Signatory:  
Printed Name



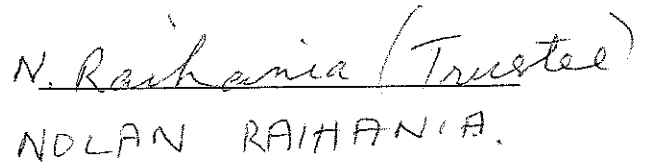
(Chairman)  
Apirana Tūhāre Mahūika.

Authorised Signatory:  
Printed Name



(Trustee)  
TATE PENHARRANGI (TRUSTEE)

Authorised Signatory:  
Printed Name



(Trustee)  
NOLAN RAITANIA.