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Marine & Coastal Area Team  
Office of Treaty Settlements, Ministry of Justice  
Head Office, Wellington  
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Dear MACA Team

**Submission: Ngati Porou Application for Customary Marine Title  
Including Appendix 2 - Road Maps**

This submission is made by the Council of Outdoor Recreation Associations of New Zealand Inc. We wish to be heard in support of this submission, because of its length, and to enlarge on the issues that it addresses. For details of our membership and purpose see the end of this submission.

**Summary:**

- 1) **Transport focuses on the coast:** The East Coast and Ngati Porou's rohe is a long-settled area of New Zealand. Before 1930, most transport of goods and people was around the coast, with landings at any suitable beach. Even the main through road, now called The Old Coach Road, went along the beaches wherever it could, and kept close to the coast. Only after the 1930s did SH35 get built further inland. But access to the coast continued especially for recreation and fishing.
- 2) **Result: Very good legal public access to the East Coast coasts and MACA**
- 3) **Hence our analysis shows that probably no area of the coast has been exclusively occupied,** as required for Customary Marine Title (CMT) under the 2011 Marine and Coastal Area (MACA) Act. We have not found any areas where locals have ordered people off the Foreshore or seabed.
- 4) **Also de-population has resulted** as local people have been attracted away to large cities, or overseas, over the last 40 years. So less Ngati Porou now live permanently in the area.
- 5) **No coasts qualify:** From our analysis of the whole coast (Appendices 1 and 2), no places on the East Coast meet the requirements of CMT, as set out in S 58 of the 2011 MACA Act. That is '**exclusively used and occupied – from 1840 to the present day, without substantial interruption.**'
- 6) **Ngati Porou's 2008 Application:** This includes **the seven small remote areas that Ngati**

**Porou consulted with its hapu on prior to getting Michael Cullen's agreement** under the 2004 Foreshore and Seabed Act, that these areas would be awarded recognition as territorial customary rights under the 2004 Act.

- 7) **The 2004 Act is very different from the 2011 Act:** The 2004 Act takes away possible tribal rights and gives the iwi only "recognition". The 2011 Act takes away public rights (including other Maori's recreational fishing rights), and gives them to the applicant (Ngati Porou). So it should require much more rigorous checking, and is probably harder to meet. Michael Cullen, by accepting, may simply have been trying to look good before the 2008 election.
- 8) **Ngati Porou intend to claim wahi tapu sites** in their CMT areas. These are areas of foreshore and seabed that lock out the public. Should wahi tapu be proposed by Ngati Porou, then **there must be a further public consultation, to let the public including other iwi, comment on them.**
- 9) **The "process" for granting this application is secretive and biased:** The so called "third party" interests are not being consulted. Presentation of submissions is not allowed, but should be, so submitters can clarify and enlarge on their evidence. The Minister's intention is not to allow hearings, and to take only a "summary" of the submissions prepared by the advocate for the applicant, OTS. This is a major undermining of New Zealand's democracy. Also only part of the Applicant's application has been released eg nothing on wahi tapu, or on why they think that their seven areas qualify. The public are being treated as 4<sup>th</sup> class citizens.
- 10) At least two major boating and fishing clubs fish the seabed on the East Coast – Gisborne-Tatapouri Sport Fishing Club and the Lottin Point Mariners Association. They would fish throughout the Territorial sea along these coasts.
- 11) **Denis McLean's book – "The Long Pathway: Te Ara Roa:** Recounts his family of five's experiences walking from Te Araroa to Gisborne in the early 1980s, primarily along the coast. Should be considered a submission. Nowhere were they ordered off the coast.

## **Details:**

### **Conditions to be met for Customary Marine Title:**

The Marine & Coastal Area (MACA) Act, in Sections 58 and 59 defines the requirements for Customary Marine Title (CMT). The most important consideration for the Ngati Porou Application is S 58 (1) (a) and (b) (i), and S 59(1).

*Determination of whether customary marine title exists*

#### **S 58 Customary Marine Title**

**(1) Customary marine title exists in a specified area of the common marine and coastal area if the applicant group—**

**(a) holds the specified area in accordance with tikanga; and**

**(b) has, in relation to the specified area,—**

**(i) exclusively used and occupied it from 1840 to the present day without substantial interruption; or**

#### **S 59 Matters relevant to whether customary marine title exists**

**(1) Matters that may be taken into account in determining whether customary marine title exists in a specified area of the common marine and coastal area include—**

**(a) whether the applicant group or any of its members—**

**(i) own land abutting all or part of the specified area and have done so, without substantial interruption, from 1840 to the present day:**

**(ii) exercise non-commercial customary fishing rights in the specified area, and have done so from 1840 to the present day; and**

*(b) if paragraph (a) applies, the extent to which there has been such ownership or exercise of fishing rights in the specified area.*

### **1 Areas that have not been “exclusively used and occupied”:**

If the area of foreshore and seabed in the Common Marine and Coastal Area (MACA) has not been “exclusively used and occupied” by hapu members “from 1840 to the present day, without substantial interruption”, then it should not be awarded CMT, on this ground alone.

Any area of the coast where there is regular road or sea access, cannot be said to be exclusively occupied or used, unless the public have been refused access and use of a coastal area by the hapu. Generally, where a road, walkway, unformed public road, or landing exists, we have not heard any area where the public has not had access and use. So such areas, with legal public land access, to the foreshore, or to the beach (if from the sea), cannot be said to have been “exclusively occupied and used”.

### **2 Occupation different from ownership:**

It is not sufficient to have owned land along the foreshore, as land ownership alone does not imply “exclusive occupation and use”. Ownership does not even imply occupation of land. Owners may not live on the property (absentee landlords), or, as in the case of some land on the East Coast, owners may have leased the land to European farmers, as they did around Port Awanui, and possibly elsewhere on the East Coast. Nor does occupation of land adjacent to the foreshore imply use of the foreshore, or exclusive use of the foreshore.

### **3 The Crown owned the territorial sea from 1840 to 2003, and no-one has owned it so far:**

Until 2003 New Zealand’s foreshore and seabed was recognised as owned by the Crown, as it is under the British laws that New Zealand has been governed by since 1840, and under British law, the foreshore and seabed is owned by the Crown. Hence there would have been no grounds for hapu ordering anyone off their MACA, even if they had wanted to do so. And by and large Ngati Porou welcomed both inland Maori tribes and European settlers to their coasts.

The East Coast was readily accessible from the sea, and the main coastal shipping services were around the East Coast. The lack of a good harbour meant longboats were usually used to transfer cargo to and from the ships. Tolaga Bay’s 600 metre concrete wharf, built in 1932, was an endeavour to address this lack of a harbour.

Coastal land travel prior to 1930 was slow, and usually by horse, as there were few motor vehicles capable of getting over the steep muddy gravel roads. The Old Coach Road ran mainly along the coast, especially along the beaches, and was used by walkers, coaches and horses from early settlement days. Though parts of it are now unformed, these roads are still exist and are marked on cadastral maps. Getting over promontories was a problem. The missionaries used coastal tracks to travel along the east Coast eg Colenso, Williams, before 1840.

### **4 Public roads are public right-of-ways**

The public has the legal right to use (pass and re-pass) on any formed or unformed public road, at any time of the day or night. (except in emergencies when roads may be closed because of flood, landslip, fire etc danger, or because of police or military operations). Such closures are rare.

Public formed and unformed roads can be walked, run, cycled, or driven by a motor vehicle (provided it does not unduly damage the road’s surface), or ridden on by a horse or horse-drawn coach, etc. Formed and unformed public roads are the basis for travel, commerce and public access to land in New Zealand, and so have been around since 1840 in some instances.

They are owned by the Crown and managed by district and city councils, and as such are shown on LINZ cadastral maps, e.g. Land-on-line. Small deviations from the road alignment do not invalidate public use, as, if Council money has been spent on a non-public part of a road it then becomes a public road, by legislation.

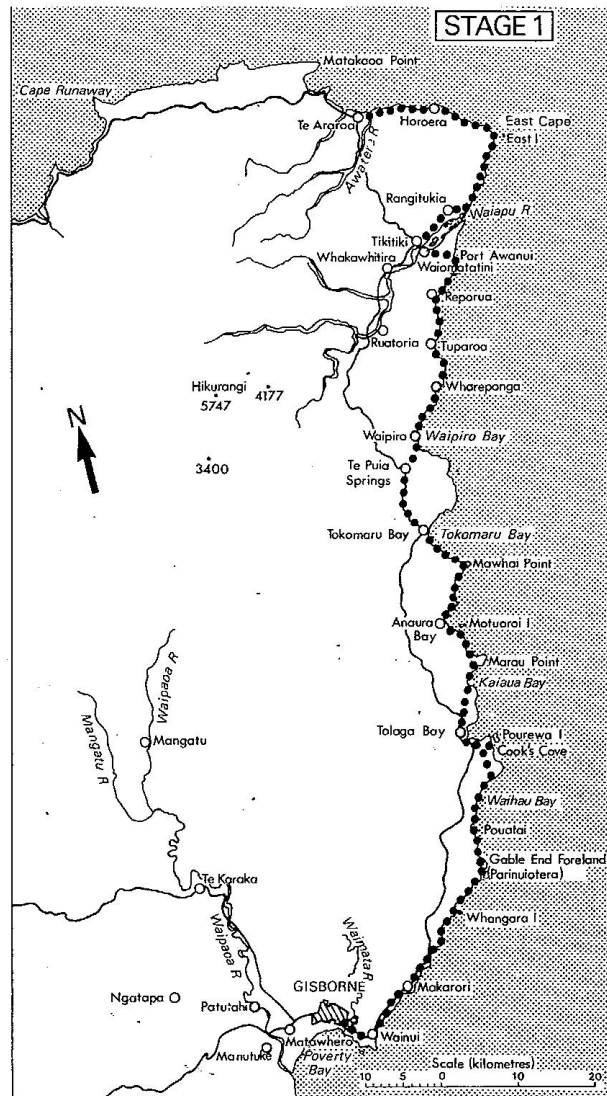
Where a public formed or unformed road runs to the foreshore, then the public have unimpeded right to go to that foreshore. So that area of foreshore cannot meet the Customary Marine Title (CMT) condition of S 58 (1) (b) of exclusive occupation and use.

Hence where and if these public formed and unformed roads meet the foreshore that is part of the MACA, is very important as to whether CMT exists. Where the roads meet the Foreshore, and for the significant area that the public can walk to, from that road access along the foreshore and seabed, cannot be granted CMT as it is will not have been exclusively occupied and used.

## 5 Public road access to the East Coast coast (See Appendix 2):

**Appendix 2** lists all formed and unformed public roads that access the foreshore in Ngati Porou's tribal area, for 28 foreshore areas. Cadastral maps of them are available from Land Information New Zealand. A web version of the maps is available at [www.wams.govt.nz](http://www.wams.govt.nz). Appendix 2 of this submission shows the thirteen WAMS combined cadastral and topo maps of the Ngati Porou coast, identifying where the public roads are. They are marked in purple.

The LINZ Topo 50 maps of the coast, namely Potaka (BD44), East Cape (BD45), Waipiro Bay (BE45), Tolaga Bay (BE44), Whangara (BG44) are also helpful for formed road names, topo features etc.



**Map: Denis McLean's family trip down the East Coast – early 1980s**

## **7 The Long Pathway: Te Ara Roa**

The book, "**The Long Pathway: Te Ara Roa**" (1986, William Collins, Auckland, 263 pages) by the late Denis McLean, former Washington Ambassador and Defence Department head, tells the story of his family's tramp along the coast from Te Araroa, down the East Coast of the North Island, and to Wellington, over a number of Christmas holidays in the early 1980s.

The family, Denis, his wife Anne, sons Gavin and James and daughter Margot tramped in their first year from Te Araroa to Gisborne i.e. across much of Ngati Porou's coast, discussed in this submission. They did not find any areas of coast where they were asked not to go, or where Maori asked them to keep out. So the book's Stage 1 is an important submission itself on this Ngati Porou Inquiry, that should be considered as a submission in its own right. See also the map of their route above.

## **8 Settlement History, beaches, Wharves, boat-launching places and Sport-fishing clubs –:**

Sheep farming for wool began on the East Coast in the 1860's. Most supplies for the major stations came ashore by wagon via long boats, from schooners and scows anchored beyond the breakers, wherever there were flat sandy beaches, generating settlements. Later, when the refrigerated meat trade to Europe began (1872), freezing works were established at Hicks Bay and Tokomaru Bay.

Hick's Bay, Waipiro Bay, Tokomaru Bay, Anaura Bay, Tolaga Bay; all developed into coastal towns off the beach and its immediate surrounds. Roads were built to the beaches from the stations, to give access for exports and imports.

Wharves still exist on the East Coast at Hicks Bay (serviced the freezing works), Tokomaru Bay (also serving their freezing works), and Tolaga Bay. There were a number of other places where beach landings are possible. Boat launching ramps and road-ends exist at many beaches eg Lottin Point, Hicks Bay, Tolaga Bay. So the foreshore and seabed at these places was not held or used exclusively by Ngati Porou hapu, but were used by the whole community of the Coast.

**Gisborne-Tatapouri Sport Fishing Club** is an active recreational fishing club that has operated out of Gisborne since the 1950s. Many of their fishing boats are large launches, having capability well beyond the three nautical mile limit. It's members would fish much of the East Coast coast, to 12 nautical miles and beyond. They target marlin, swordfish, kingfish, snapper, etc. among other recreational species. These boats show that much of the East Coast is fished recreationally by this Club. See <http://www.gtsfc.co.nz/Aboutus.aspx>

The **Lottin Point Mariners Association**, has a slipway at Lottin Point, and has fished the northern and northeast coasts for over 30 years. There are other recreational clubs, and an army of individuals with boats who also fish and collect shellfish, crayfish etc from these coasts.

## **9 Our Conclusions:**

Almost all beaches in the Ngati Porou tribal area have been shown not to have been exclusively occupied, simply by having public formed or (now) unformed road access to them for significant times in the past, and which can still be used by the public today.

In terms of foreshore and seabed access, the Lottin Point Mariners Assn is active from Lottin Point. As do members of the Gisborne-Tatapouri Sportfishing Club.all over the East Coast MACA. So exclusive occupation and use of the foreshore and seabed by Ngati Porou hapu has not occurred.

There are also two New Zealand Walkways accessing Cook's Cove and Anaura beach. The existence of many tourist accommodation options show the East Coast encourages people to visit, and this also reduces any exclusivity of coastal occupation and use.

## **10 Ngati Porou's proposals for Customary Marine Title (CMT):**

Ngati Porou's 2008 Foreshore and Seabed Deed of Agreement contains seven maps of areas that

they consider meet the terms of Labour's 2004 Foreshore and Seabed Act, and which, presumably, was the basis of their 31 October 2008 Deed of Acknowledgement, and subsequent Parliamentary Bill that was tabled.

#### **10.1 "Exclusively used and occupied – without substantial interruption"**

From S 58, the main issue is **"exclusively used and occupied – from 1840 to the present day, without substantial interruption"**

What a **"substantial interruption"** is is not quantified. However, usually no interruption would be expected. So any interruption would be expected to be small, but allow a bit of leeway. Hence a **ten-year gap would be "substantial" in this situation**. To go beyond ten years **would be unfair on those that had no interruption, and had comprehensively met the "exclusively used and occupied" condition**. It would be akin to cheating. Any interruption clearly weakens the claim to meeting the condition, and it becomes a second-class award, and becomes questionable whether the applicant qualifies.

#### **10.2 Ownership of the adjacent coastal land and/or exercised customary fishing rights: S 59**

(1) (a) makes clear that this is only a matter that may be taken into account, and is not essential. Neither is S 59 (1) (ii) have exercised non-commercial customary fishing rights and have done so (uninterrupted) from 1840. So, again, S59 is a second-class way to meet the requirements.

**10.3 Holds the specified area in accordance with tikanga:** At first sight, this looks a very weak requirement to meet, as generally "tikanga" is whatever the tribe/hapu says it is. However, there are some expectations.

First on land, occupation required at least three things. First patrolling of the boundaries of the land, to mark those boundaries, and to keep other tribal groups out. As well, there were *ahi kaa*, fires of occupation, which needed to be lit, to identify occupation to other tribal groups. Finally there was the need to be alert and be prepared to fight and repel those coming to take the land away by force. Or at least a fortified pa, to retreat to and defend until the opposing group withdrew.

How the tikanga of occupation applies to the sea is unclear. Fires of occupation don't work, a sign that tribes did not look at the sea as being like the land. But going there regularly would seem to be required by tikanga. The only places the tribe would go to regularly would be reefs or good fishing areas.

As well, one would expect the tribal group to fish exclusively there, and keep other tribal groups, that were not related, out. So too, if the tribal group had changed its food source from mainly seafood to potatoes, vegetables and pork, lamb, mutton and/or beef, then this could be argued to be against tikanga, as they would have stopped visiting their seafood gathering spots, and so no longer occupied them. However, other applicant groups beside the applicant hapu have likely taken seafood there, recreationally or commercially, as where public access exists the public also has a right to harvest.

Another tikanga requirement would be that any land considered is held as Maori Customary or Maori freehold land.

As well, tikanga should have required sustainable practices (*kaitiakitanga*), so the applicant should have something to say on that. And fishing would presumably be either along the foreshore, or by canoe, if offshore

So, the tribal group has quite a lot to show to meet the requirement of tikanga. As Ngati Porou has not produced any evidence that it had held the areas it claims according to tikanga, we are not in a position to critique whether they have actually met this requirement. Just as in the case of wahi tapu, that are not stated, we cannot assess whether that claim is adequate.

#### **10.4 How far out did the fishers go?**

The East Coast is a difficult coast to go out a long way from by canoe. And a lot of effort would be required to paddle out and back. So, it is unlikely that tikanga fishers would go any further than

they had to. The coast is rugged, and the winds often onshore. So, if Ngati Porou is arguing for going out to the 3 nautical mile limit, then they need to provide proof as to why the hapu went out that far, and for what reason. Why did they not harvest from the foreshore and adjacent reefs? Ngati Porou has not released any information, as far as we are aware, as to why they consider the seven areas they propose meet the requirements of the 2011 MACA Act.

This information, assuming it exists, has not been released to the public. So this whole "Third-party consultation" is a fiasco, all about leaving the public in the dark. Contemptuous of the third parties (Maori and non-Maori), in fact.

International practice as to how far out a nation's territorial sea went, in 1840, was that it stretched out only as far as the nation could protect it. This was usually assumed to be 3 nautical miles for European nations, considered how far out to sea a coast could be defended by cannon fire.

This **3 nautical mile limit to a European nation's territorial sea** dates back to 1702.

*"In Mare clausum (1635) John Selden endeavoured to prove that the sea was in practice virtually as capable of appropriation as terrestrial territory. As conflicting claims grew out of the controversy, maritime states came to modulate their demands and base their maritime claims on the principle that it extended seawards from land. A workable formula was found by Cornelius Bynkershoek in his De dominio maris (1702), restricting maritime dominion to the actual distance within which cannon range could effectively protect it. Most maritime nations adopted this principle, which developed into a limit of three nautical miles"*

[1] Kent, H. S. K. (1954). "The Historical Origins of the Three-Mile Limit". *The American Journal of International Law (American Society of International Law)* 48 (4): 537–553. Retrieved September 13, 2011.[Quoted from Wikipedia]

However, prior to 1840, New Zealand was a place of musket wielding territorial tribes, often at war with each other. Land was only "theirs" to the extent they could defend it. A musket's likely range was only 100 metres or so. Rifles (with rifling to spin the bullet, and allow accurate shooting over much longer distances), were not invented until the mid 1850s. So there was no New Zealand territorial sea in 1840, as New Zealand was not a nation. Or under the European standard of defensibility, it was only 100 metres out to sea.

There were several reasons why tribes did not settle along the shoreline. First the risk of tsunamis, common to all Pacific people was real, and understood, after some bad New Zealand experiences. Second because of the continuous warfare between tribes, they built defensible fortified pas, for example on the tops of hills, to which they withdrew and defended at times of invasion. Many of these pa-sites are known on the East Coast. The sea was readily used by invading tribes with their big warrior-carrying war canoes. So any coast settlements were vulnerable to surprise attacks. See also Denis McLean's book

Thirdly, as agriculture developed, the better sites for gardens were on alluvial soils away from beaches, more sheltered from the wind. Their predominant shellfish and fish diet did need access to rivers and the coast. But these had to be balanced by the ability to move quickly to defensible pa sites.

From 1840, when New Zealand became a British colony, and adopted British law, where the Crown owned the foreshore and seabed, the territorial sea limit was 3 nautical miles. This held up to 1977, when the (New Zealand) Territorial Sea, contiguous Zone and Exclusive Economic Zone Act, extended the NZ Territorial sea out to 12 nautical miles as agreed to through New Zealand's significant participation in the UN Conferences on the Law of the Sea (the UNCLOS Convention). This Act was passed to protect New Zealand's foreshore and seabed, and EEZ from foreign trawling pirates etc, for the benefit of all New Zealanders, until the UNCLOS Convention came into effect much later, in 1994. UN Conventions are slow-moving things.

The 12 nautical mile limit was achieved through the United Nations to benefit all New Zealanders, and obviously has nothing to do with the Treaty of Waitangi. (See *Chapter 9, Stealing the Beaches in Twisting the Treaty*, 2013, Tross Publishing.)



## **11 Ngati Porou Customary Marine Title (CMT) proposed Areas:**

The seven maps from the Ngati Porou 2008 Consultation with their hapu showed the following areas:

Map 1: Matakaoa (Topo BD45 East Cape)

Map 2: NW of Horoera (Topo BD45 East Cape)

Map 3: Pakihi to the northern mouth of the Waiapu River (Topo BD45 East Cape)

Map 4: Southern mouth of the Waiapu River to Te Wharau Beach (Topo BD45 East Cape)

Map 5: Whareponga Stream mouth and significant areas of foreshore to the North and South (Topo BE45, Waipiro Bay)

Map 6: Marau Beach (Topo BF45, Tolaga Bay)

Map 7: Paerau Point (Topo BF45, Tolaga Bay)

These seven areas are not any of the highly used beaches eg Lottin Point, Hicks Bay, Te Araroa beach, Waipiro Bay, Tokomaru Bay, Anaura Bay, Kaiaua Bay, Tolaga Bay, Waihou Bay, which have public roads or the Old Coach Road running to or along them, so obviously do not qualify.

**11.1 Matakaoa Coast – from the Lottin Point property boundary including Wharekahika A27 and Matakaoa C (See Ngati Porou Map 1):** The Lottin Point Mariners Association has been fishing this coast for over 30 years, and probably many recreational fishers in boats have too. So it has Matakaoa C: District: Tairāwhiti Area : 1456.8683 Title Order Type : Amalgamation Order Title Order Ref : 134 Wp 20  
Title Order Date : 14/10/1966 Land Status : Maori Freehold Land Plan : ML 6210  
LINZ Ref : GS3D/58 Shares : 1 Owners : 0

**11.2 NW of Horoera (See Ngati Porou Map 2, Appendix 2, Map 2):** This small area has the Te Araroa-East Cape Road running along that coast. There are a number of places where public access from the road to the beach is readily available, eg the area of the public road meets the foreshore eg about a km west of the bridge across the Orutua River. See the cadastral maps. From where the public can access the beach and walk along the foreshore. So the foreshore cannot be claimed to be exclusively occupied or used.

Access is also possible from the road to the beach to the east, and then along the beach. The coast is readily accessed by fishers and recreational boats from Hicks Bay and Te Araroa. Land areas are: Maragairoa B31, Marangairoa B32 (9.1654 Ha, Maori freehold land, 10 owners) etc. But there is only one homestead there, so de-population has taken its toll. With only one house, the adjacent foreshore and seabed cannot be said to be exclusively occupied and used.

In January 1924, the UK-NZ liner, *Port Elliott* grounded and broke up there. Shades of the Rena. See Denis McLean, *The Long Pathway – Te Ara Roa*, Stage I.

**11.3 Pakihi to northern mouth of Waiapu River (See Ngati Porou Map 3 and Appendix 2 Maps 3 and 4):** Titles from Marangairoa C12, Maigaroa D47, Pt Marangairoa 1D, etc to Part Hahau 2B. This coast has been an important trail since at least 1838. Colenso and Williams walked this way, among others.

It is straightforward to walk along as the beaches are mainly sandy. A detour is made up what has been a farm track around the cliffs of Waikori Bluff. Denis McLean, in his book *“The Long Pathway – Te Ara Roa”*, Stage I, describes his family’s “expedition” in the early 1980s.

The farm track that bypasses the cliff, and meets Rangitukia Road – presumably the old pack track round the coast. It is visible on Google. So many people would have used this coastal route for the 70 or so years before SH35 was put in, and some, like the McLeans, still do today. There are no houses either on the foreshore, or on the bluffs. So the area is not occupied. So cannot be said to have been exclusively occupied, probably at any time since 1840. So it cannot qualify for CMT.



A public road runs across the NE corner of Marangairoa C12. This road would have been formed at one stage, and shows on Google as being used. Hence that part has not been occupied exclusively, as the public have had a right to use this area for the many years that the public road has existed.

It also means that the foreshore around this public road access to the foreshore, would have been a beach that the public could readily walk or ride along. So this part of foreshore and seabed would not have been exclusively occupied and used by the hapu. Hence the coastal area was publicly accessible, and probably the main track down the coast. It is sandy/gravelly for a significant way, at least to Te Pito Stream mouth, where the farm track deviation begins.

Similarly, at the bottom end of this coast, Beach Road, a public road, gives access the sandy beach. It is straightforward for the public to walk up the sandy beach to Waione Stream mouth. So both the top and bottom beaches have not been exclusively occupied.

#### **11.4 Southern mouth of the Waiapu River to Te Wharau Beach (Ngati Porou Map 4, Appendix 2, Maps 5):**

Maori land block Pt **Pohautea**, Area : 124.9466, Maori Freehold Land; **Tikapa A1**

Area: 12.0193; Maori Freehold Land

Tikapa Road is a public road that goes to Te Wharau Beach See Appendix 2, Map 5. Also Google. So public access to Te Wharau Beach via has existed in the past, although now it is said that there is a locked gate across it at times. Te Wharau Beach is also easily accessed via the Awanui Road to Port Awanui Beach, and by walking up the foreshore. Port Awanui was the site of a significant settlement, servicing Ruatoria etc. Settlers had title to land on the coast, and lived there for many years.

A jetty existed at Port Awanui. For photos of Port Awanui and Te Wharau Beach see:

[http://www.naturespic.com/newzealand/result\\_location.asp?search=Port%20Awanui](http://www.naturespic.com/newzealand/result_location.asp?search=Port%20Awanui)

The availability of these photos shows public access exists and walking the beach is straightforward.

Hence there cannot have been exclusive occupation and use of the adjacent MACA by the hapu.

#### **11.5 Whareponga and coast on either side (See Ngati Porou Map 5, and Appendix 2 Map 7):**

Adjacent land blocks **Kaimoho A2** (northern) Area : 100.0585 Maori Freehold Land (includes Kaimoho Point); to **Akuaku East No.1** Area : 4.9571 Ha; Maori Freehold Land.

As seen previously, Whareponga Beach is publicly accessed by the Whareponga (public, formed) road. Hence the local hapu has not had exclusive occupation and use since 1840. The beach is sandy on either side, 1 km north and 2 km south. There are no houses along the shoreline. Given the road, exclusive occupation and use has not been possible. That this MACA has been exclusively occupied and used is unlikely. Certainly commercial fishers would have used it, accessing it by boat.

#### **11.6 Marau Beach, north of Marau Point (See Ngati Porou Map 6 and Appendix 2, Map 10):**

The adjacent land holding is **Kaiaua 1**; Area : 182.1085 Ha; Maori Freehold Land.

Map 10 shows that the Old Coach Road ran along Marau Beach. This was the major access road prior to the 1930s. Hence the beach area has not been exclusively occupied and used. The Anaura Bay Esplanade strip runs to the northern end of Marau Beach. There are no dwellings shown near the beach. The area is accessible by sea from nearby Anaura Bay, and Tokomaru Bay. Hence the area of coast has not been exclusively occupied or used.

#### **11.7 Paerau Point, north end of Karaka Bay out to Paerau Point, almost to Kaiaua Bay (Ngati Porou Map 7, and Appendix 2, Map 10):**

Blocks **Kourateuwhi 2G4B3** (south); Area : 25.8341 Ha; Maori Freehold Land;

**Te Kopuni B2**; Area : 135.7883; **Kourateuwhi 2G4C**; Area : 1.613 Ha.

No sign of any buildings along foreshore. MACA is fished by commercial (John Laurie's submission) and recreational fishers in boats from Tolaga Bay, 4-5 km away by sea. No information provided by Ngati Porou as to why they think they have met the conditions for CMT.

**11.8 Conclusion: Ngati Porou claim to CMT does not meet the MACA Act's requirements:**

The analysis above, of the seven Ngati Porou maps, and the cadastral location of public formed roads, including the location of the Old Coast Road, the foreshore of all seven of these proposed areas do not meet the S 58 requirement for Customary Marine Title (CMT) under S 58 of the MACA Act. There is also need to assess the sea access to these areas, which is likely to be significant, by both recreational and commercial fishers.

Just because former Foreshore and Seabed Minister Michael Cullen, decided these areas met the conditions of the 2004 Act does not mean that they met the conditions of the 2011 MACA Act. The two Acts had quite different purposes, and the 2011 Act has far more significant adverse effects on the public than the 2004 Act has. The 2004 Act largely guaranteed public rights. The 2011 Act largely guarantees tribal rights.

But, as these tribal rights will be at the expense of public rights, it is far more important that the conditions for those tribal rights are proven to comply with the requirements of the 2011 Act. Given too that the Labour Government did not expect to be re-elected in November 2008, the fact that Cullen may have been remiss in gaining proof that Ngati Porou met the conditions, did not matter much. The Ngati Porou Bill may have been a ploy to show Labour in a good light to Maori voters for the Election. So, little should be read into Cullen's acceptance of the Ngati Porou claim.

We urge you to decline the Ngati Porou Application.  
CORANZ wishes to be heard in support of this submission.

Yours truly

Tony Orman  
Co-Chairman  
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The **Council of Outdoor Recreation Associations of NZ (CORANZ)** is an umbrella council of national and regional outdoor recreation organisations promoting awareness of outdoor recreation and advocating for it. Our members include NZ Federation of Freshwater Anglers (NZFFA), NZ Salmon Anglers Assn, Public Access New Zealand, Option 4 (a NZ recreational seafishers Trust, Jetboating New Zealand, Marlborough Recreational Fishers Association, Wellington Deerstalkers Assn, Wellington Family 4WD Assn,

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## Appendix 1: Public road access to the East Coast coast:

The following listing lists all formed and unformed public roads that access the foreshore in Ngati Porou's tribal area. Cadastral maps of these roads are available from Land Information New Zealand. A web version of the maps is available at [www.wams.govt.nz](http://www.wams.govt.nz). Appendix 2 of this submission shows the thirteen WAMS combined cadastral and topo maps of the Ngati Porou coast, showing where the public roads are.

The LINZ Topo 50 maps of the coast, namely Potaka (BD44), East Cape (BD45), Waipiro Bay (BE45), Tolaga Bay (BE44), Whangara (BG44) are also helpful for formed road names topo features etc.

Because of the long-settled history of the area, and the importance of the coastal beaches for public access and trade, there are a lot of these. Ngati Porou's tribal area starts at Potikirua west of Lottin Point and ends at Pouawa Stream, before Wainui Beach. For each of the 28 headings see the relevant map in Appendix 2. and discussion in Appendix 1.

**1) Lottin Point, Pataka and Omaruparoa (See Maps 1 and 2 of Appendix 2, Topo 50 Map Potaka BD44):** The Lottin Point Road is a public road, which goes from Potaka to Otanga. It then branches east to the Lottin Point farm. This is not Maori land, apart from a small Maori Reserve (Lot A26) near the middle of the north pointing coast. This small enclave of Maori land does not stop public walking access around this coast to the East.

Boat access for fishing etc exists via the Lottin Point Mariners Assn, who have a clubhouse (DP 8115, 9.8 Ha) and boat launching ramp etc there. The Club has existed for 30 years, and obviously recreationally fished this coast for a significant time. Being near the Bay of Plenty, Lottin Point has always attracted fishers from the Bay of Plenty and beyond, and still does, as well as Club members. The subdivision of the Club's land from the Lottin Point farm led to esplanade strips being set aside on both properties. **So gives public access to a significant coastline of this MACA.**

See photographer Rob Suisted's Lottin Point photos:  
<http://www.naturespic.com/newzealand/image.asp?id=13409>

**2) Potikirua Road (See Appendix 2 Map 1, Topo 50 map Potaka BD44):** A formed public road, goes along the coast westwards from Otanga to Omaruparoa. Potikirua Road has a substantial locked gate a few hundred meters in from the Lottin Point Road junction; supported by both the farmer and Carter Holt Harvey. The road is very close to the beach in places and easy access to good fishing and swimming. The gate has only turned up since the forestry started, a few years ago. Many of the locals are very annoyed and unhappy.

**3) Northeast of Hicks Bay (See Appendix 2 Map 2, Topo 50 East Cape BD45) – Wharf Rd** is a formed public road generally on the legal alignment. It runs next to the sea, and to the wharf and foreshore there. There is an esplanade strip from the wharf to Matakaoa Point. So there is public access to this part of the MACA.

**4) Hicks Bay (See Appendix 2 Map 2, Topo 50 East Cape BD45) – Hicks Bay** has an esplanade reserve of 6.5 ha. at the Wharekahika River mouth. There is a Conservation Area of 20.13 ha fronting the beach in the middle of the bay. Onepoto Road is formed and services numerous homes and holiday batches in Onepoto Bay which has a Recreation Reserve around its foreshore.

This gives public access to the MACA and the beach at a number of places, and allowing easy public access along the beach, and boat access to the MACA. Commercial fishing boats are launched and retrieved off Onepoto beach.

**5) Te Araroa Beach (See Appendix 2 map 3, Topo 50 East Cape BD45)** – Te Araroa Beach has a camping ground fronting the shore line at the Eastern edge of the Hicks Bay hill; Lot 1 DP 9445. There used to be landing strip for light aircraft along side the road in front of the hotel for many years.

Coastal triangle from North-South legal road bisecting the beach, along the edge of the beach to the bridge across the Awatere River, provides public access to the MACA, and also boat access. There are holiday parks (motels, cabins, camper vans, camping etc) at both Hicks Bay and Te Araroa, showing that a significant number of visitors come along especially in the summer holidays, to fish, walk, boat etc.

**6) East Cape Road (See Appendix 2 Maps 3 and 4, Topo 50 East Cape BD45):** This formed public road runs next to the rocky and sandy coast, almost to the Orutua River, past Horoera. Large stretches of road from Horoera Point to Wharenaona Point are back off the beach with private land in between. Then the road runs briefly along the beach, then inland of the lighthouse. Beach accessible below the lighthouse. One part of the legal road ends at the beach, south of the lighthouse, at the Tuanui Stream mouth. Where against the foreshore, this road gives ready access to the coast (MACA) for walking, fishing, swimming, snorkelling, diving, and for boat launching.

**7) Ohinewaiapu Marae, Waiapu River North mouth (See Appendix 2 Maps 4 and 5, Topo 50 East Cape BD45):** Beach Road accesses the beach, north of the Maraehara River at Waiapu River mouth. This road provides public access and boat access to the MACA in this area. Walking up or down the sandy beach to Waione Stream is straightforward.

**8) On Waiapu South Head – north Port Awanui (See Maps 5 and 6, Appendix 2, Topo 50 Waipiro Bay BE45),** the Tikapa formed road used to accesses Te Wharau Beach, but may not always now. Though Google shows it does. It has been a public road probably since before 1900. So has permitted public access to Te Wharau Beach for many decades.

**9) Port Awanui (See Map 5, Appendix 2, Topo 50 Waipiro Bay BE45):** The Awanui formed public road accesses the Port Awanui coast. The road gives public access to the beach and hence to Whakariki Point and north along sand to Te Wharau Beach, and the Waiapu river mouth. Port Awanui started as a whaling station in the 1840s. Any locked gate is an infringement against roading regulations. In any case, the road has been an unimpeded public road to Port Awanui for most of the last 173 years.

**10) Reporua Road (See Map 6, Appendix 2, Topo 50 Waipiro Bay BE45)** gives public access from Ruatoria, to the beach at Reporua, on the south side of the Reporua Stream mouth. Reporua beach has the Ahikouka Conservation Area of 10.52 ha fronting the beach North of the road end. Reporua Road from the South West shows up as "Roadway ML 3363" on the cadastral; the legal road is shown as coming in from the North West.

**11) Tuparoa Road (See Map 6, Appendix 2, Topo 50 Waipiro Bay BE45):** accesses the beach at Tuparoa at the mouth of the Waitekaha Stream. The unformed road runs along the edge of the beach to Tuparoa settlement, then along the beach giving beach access to the reefs around Kaimoho Point. Tuparoa has two small sections of the Ruataupare Conservation Area (1.002 ha ) fronting the beach South of the settlement.

**12) The Whareponga formed road (See Map 7, Appendix 2, Topo 50 Waipiro Bay BE45)** gives access to the beach at Whareponga. There are two small sections of road reserve abutting the coast on the south side of the Pipiwharaua and one at Otamarauri Point.

**13) Waipiro Bay (See Appendix 2 Maps 7 and 8, Topo 50 Waipiro Bay BE45)** is accessed by Waipiro Road from Te Puia, and through Kopuaroa Road back to SH 35. The beach gives ready walking access to either end – six km of beach.

**14) Mcllroy Rd (See Appendix 2 Map 7 and Waipiro Bay Topo 50 LINZ map)** runs north along the beach to **Ohineakai**. There are a number of unformed roads in the Waipiro Bay settlement area, some running along the beach at Waipiro Bay, so the foreshore and seabed is very publicly accessible.

**15) The Waikawa public road (See Appendix 2 Maps 7 and 8 and Waipiro Bay topo)** runs from Waipiro Settlement beside Waipiro South Beach to Waikawa settlement (before Waikawa Stream). It then becomes what is now an unformed public road along the coast, past Pokurakura Point, and then runs through rough and steep country past Tawhiti Hill, 520 (m) and then down to Waima settlement, at the top of Tokomaru Bay, west of Koutunui Point.

It is the line of the Old Coach Road, which would have been the primary land access road prior to say 1930. Waikawa road gives access to Wamahuru Bay Conservation Stewardship Area (S25 Conservation Act. 1987 (49.68 ha)). It used to be a Defence Dpt. Reserve, probably dating back to the Russian Panic in the early 1900s. Also gives access to a more recent Scenic Reserve of the same name (215.00 ha). These two areas stretch from Koutunui Head to just West of Te Waipuna in the South.

This coastal "peninsula" is very steep and cliffed. No one now lives on the coastal area from Waipiro Village to Waima. It would have been more than likely in times gone by.

The coastal reefs and their seafood are of course best accessed by boat from the sea.

**16) Tokomaru Bay (See Appendix 2 Maps 8 and 9, Topo 50 Tolaga Bay BF44):** This was on the Old Coach Road, and is also on SH 35, so the town and the beach are very publicly accessible, and always have been since 1840. The formed public road (tarsealed, called Beach Road) runs round the bay, next to the beach, allowing easy access for swimming and fishing. There are also public reserves in the Tokomaru Bay settlement near the beach.

There are many accommodation houses offered at Tokomaru Bay township and environs, showing it has been part of the East Coast tourism industry for a long time. Some 10 km of beach is readily accessible.

Tokomaru Bay has the harbour and wharf reserve at the Northern end of the bay and surrounding this and the rest of the entire bay all the way South to Mawhai Point is a Harbour Board Purposes Reserve. There was a shore based whaling station just on the South side of Mawhai point from 1838?

**17) Waiotu Road is a formed road running south beside South Tokomaru Beach (See Appendix 2 Map 9, Topo 50 Tolaga Bay BF44).** After about 2 km, and before Waikari Stream, the road becomes unformed, and follows the seashore. It is the Old Coach Road. It gives public access to the end of Tokomaru Bay.

**18) At Waihoa (See Appendix 2 Map 9 and Tolaga Bay Topo)** this part of the Old Coach Road branches inland over the Mawhai Point peninsula, and climbs past point 232 m. It then descends to the coast a few hundred metres before Karorotau Stream mouth.

Where the old coach road coming South from Waihoa first touches the coast there is a Local Purposes Esplanade Reserve all the way up the coast to the South side of Mawhai Point and stretching South to beyond the Waioue Stream, at which point the old coach road heads inland through Nuhiti Stn. and becomes the Anaura Road.

The formed and travelled section of road through Nuhiti down to the beach is controlled by a locked gate as it leaves the Anaura Road alignment, so is private. The legal public road beyond the Nuhiti Stn front gate and the beach is not formed at all.

**19) Anaura Bay (See Appendix 2 Maps 9 and 10, Topo 50 Tolaga Bay BF44):** Anauru Road then drops to the coast at Karoronui Stream mouth, and then climbs through a public reserve that drops to the coastline. Anaura Road then drops to the coastal flat of Anaura Bay. There are a

number of accommodation options, showing this attractive beach has been hosting tourists for many years. There is also a NZ Walkway going round Waipare Stream.

**20) Public campsite and Esplanade Reserve (See Appendix 2 Map 9 and Tolaga Bay topo):**

There is a public campsite in the Reserve, beside the lagoon at Waipare Stream mouth. Further along the beach is Captain Cook's landing place in 1769. This has an unformed public road giving public access to the MACA, and so to the whole of the Anaura Bay beach.

The Esplanade Reserve starts at the Scenic Reserve, and runs along the foreshore for seven km to the North end of Marau Beach. It therefore provides public access along the coast to Marau Beech.

This whole of Anaura Bay is scenic and is very popular with locals and tourists. Obviously the roads and esplanade reserve allow public access to this MACA (Anaura Bay and Marau Beach), including boat access.

**21 Anaura Road (See Appendix 2 Map 10 and Tolaga Bay topo):** This well-used road gives access from SH35 (Waipapu Road) at the lower Hikuwai River. There is a short road south along the line of the Old Coach Road to just south of Anaura Marae. Then the coastal cliffs start.

Hence Anaura Bay and its beach is readily accessible by a formed public road, that was formerly the Old Coach Road. It has therefore been providing public access to the beach and the MACA for more than a century.

**22) Road round Marau Point accesses Marau Beach MACA (See Appendix 2 Map 10 and Tolaga Bay topo):** The Old Coach road, unformed, rises from the end of the formed road below Anaura Marae, and skirts the top of the cliffs, then drops to Marau Beech. It then zig-zags up the cliffs and drops down to Kaiaua Bay via Kaiaua Stream, meeting the Kaiaua Road before the beach. Consequently Marau Beach has an unformed public road access, that was the Old Coach Road, the main highway up to about 1930, or longer. Hence it has had public access to its MACA, for a significant time, up to at least 1930, before the main road, now SH35, was put inland. Hence public access to the foreshore means it has not been exclusively occupied.

**23) Kaiaua Bay (See Appendix 2 Map 10, Topo 50 Tolaga Bay BF44):** This is accessed by the well-used Kaiaua Road from SH35, 2 km north of Tolaga Bay. This road runs almost the length of Kaiaua Bay along the foreshore, guaranteeing public access to the Kaiaua Bay beach and its MACA, since the Old Coach Road was put in in New Zealand's early days. This includes the public being able to walk along the foreshore to the south end of Kaiaua Bay, to swim, recreationally fish etc.

**24) Paerau Point and Karaka Bay (See Appendix 2 Maps 10 and 11, Topo 50 Tolaga Bay BF44):** Paerau Point is very rugged and cliffed, as is Te Karaka Point. It is questionable whether such rugged parts of the coast can be occupied, except possibly by regular daily or weekly fishing. In between is Karaka Bay, which has no public road access. However being only four km by boat from the large settlement of Tolaga Bay, its MACA and foreshore is obviously readily visitable by boat. So again there appears to be no exclusive occupancy and use by hapu of this MACA.

**25) Tolaga Bay beach, Wharf and Cook's Cove (See Appendix 2 Map 11, Topo 50 Tolaga Bay BF44):** North-east of Tolaga Bay beach, are 3 km of esplanade reserve. The beach is reserve. Tolaga Bay Surf Lifesaving Club operates on the beach. Recreational canoeing and kayaking are popular in summer.

On the south side of the Uawa River there is a motor camp, with an area of Esplanade reserve, and the 600m long Tolaga Bay wharf, built of concrete in 1932, and recently restored for tourism purposes. The availability of this wharf and the trade and visitors it attracted means that this area of coast was not occupied exclusively, and so there can be no valid claim to CMT on any MACA around here. The coastal cliffs are extremely steep, and the reefs very rugged from Cook's Cove south to the start of Waihou Beach.



There is much accommodation available. An hotel and holiday parks, camp-grounds, backpackers, houses for hire etc. There appears to be more tourist accommodation, of all types here than in any of the other East Coast towns. The oldest, the Tolaga Bay Inn claims to have been active since 1890.

There has also been a public New Zealand Walkway since the mid-1970s, across the farm to the east of the wharf, going to both the Hole in the Wall, and to Cook's landing place (Cook's Cove) in 1769, where he refitted and re-provisioned his ship, with the help of local Maori.

This walkway is very popular with New Zealanders, probably attracting thousands annually because of its interest concerning Captain James Cook, the re-discoverer and circum-navigator of New Zealand. The farm is marked as being Maori-owned. Good on them for allowing public access to this important historic site. There has been no exclusive iwi occupation and use of any MACA in this area, as a consequence, in the last 50 years – almost two generations. There are no claims to CMT here.

**26) Waihau Beach, Waihau Bay Puatai Beach, Waiharehare Bay (See Appendix 2 Maps 11 and 12, Topo 50 Tolaga Bay BF44):** The Old Coast Road accesses these beaches from Tolaga Bay by what is now called Shelton Road. Though this is unformed from Waihau farm, the track is still visible and is used as a farm track, going onto the beach at the mouth of Hapenui Stream. The road runs along Waihau Beach and Bay, and merges with the formed Waihau Road at the south end of Waihau Road. Hence public access has been provided for over a century, and still exists today. So there has been no exclusive occupation by hapu.

The Old Coach road continues along Putai Beach and Waiharehare Bay. Here it goes inland to avoid Gable End Foreland. An unformed public road gives access to Te Ikaarongamai Bay at the mouth of the Pakarae River.

Hence these beaches have had public access as of right from when the Old Coach Road etc was put in in the mid-19<sup>th</sup> century. Consequently there can be no exclusive CMT in their MACA. These unformed roads can still provide public access today.

**27) Whangara Beach and Whangara Village (See Appendix 2 Maps 12 and 13, Topo 50 Whangara BG44):** The formed Pa Road leads from SH 35 to Whangara Village. It has an unformed 200 m offshoot to the beach to the mouth of the Waiomoko River, and its beach. It is an easy walk from this mouth round to Whangara Beach, and back to the Pakarae river mouth. There is also a walk from the public road at the back of the beach, for the 20 metres to the beach. Public access is being discussed.

**28) Whangara – Pouawa rivermouth (See Appendix 2 Map 13, Topo 50 Whangara BG44):** There is a short public road (500m) from SH35 to the Pouawa rivermouth, beach and Pariokonohi Point, and a picnic area. There is straightforward access from the road to the beach. It is also straightforward to walk back round the Point and along the beach to Whangara Beach.

The DOC **Te Tapuwae o Rongokako Marine Reserve** stretches up the coast from the Pouawa rivermouth to the Waiomoko Rivermouth. It was established in 1999, and stretches 2 nautical miles offshore, and is 8 km long. This is an area that would have attracted tourist and recreational interest, as it is the only marine reserve on the East Coast.

This section of shoreline fronts the Te Tapuwae o Rongokako Marine Reserve and was part of the East Coast Coach Road with evidence of concrete pavement around the rocky headlands. There is also a public road, heading inland, half way along this section of beach that used to service the surrounding area and the Tarewarewa Valley as far back inland as Pukeakura Trig from the beach.

## Appendix 2: Combined cadastral and topo maps of the East Coast coasts, showing public roads etc

### Key:

Unformed public roads are shown in purple. Esplanade strips on coast – turquoise. Formed public roads are shown in orange, broken with white if metalled, rather than tar-sealed. The formed road overlays the road alignment. Public reserves are green.



Map 1: Potikirua to Otanga

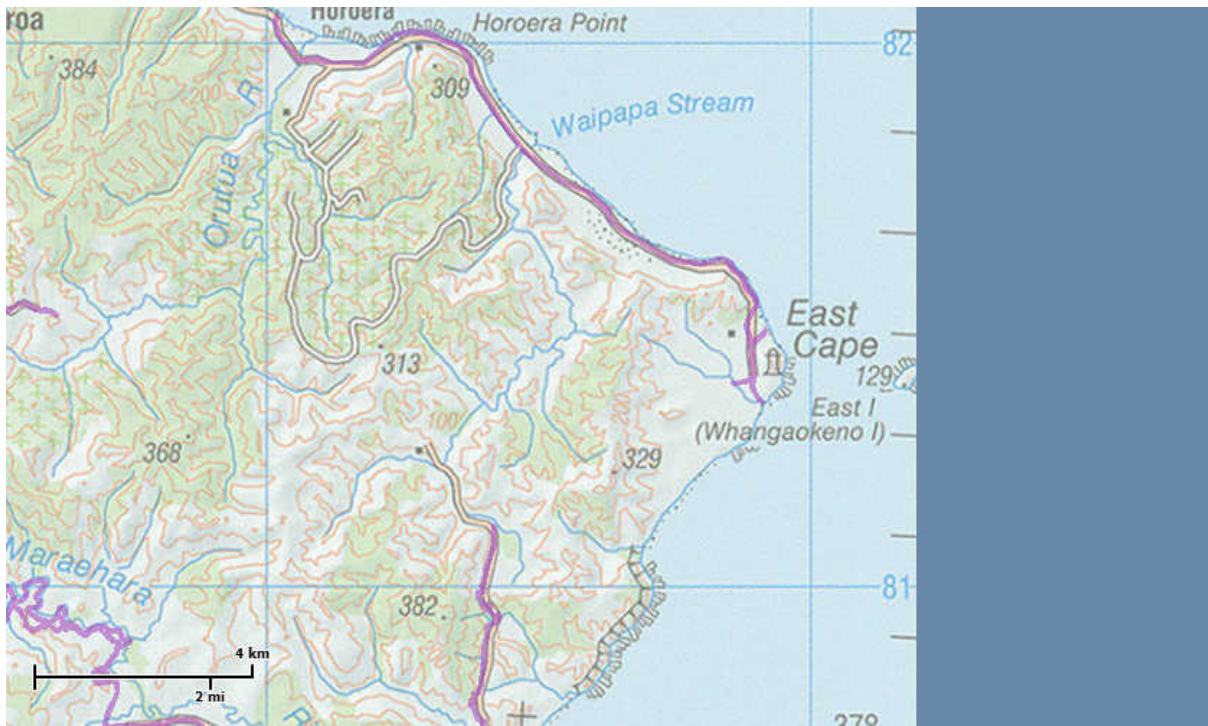


Map 2: Lottin Point to Hicks Bay



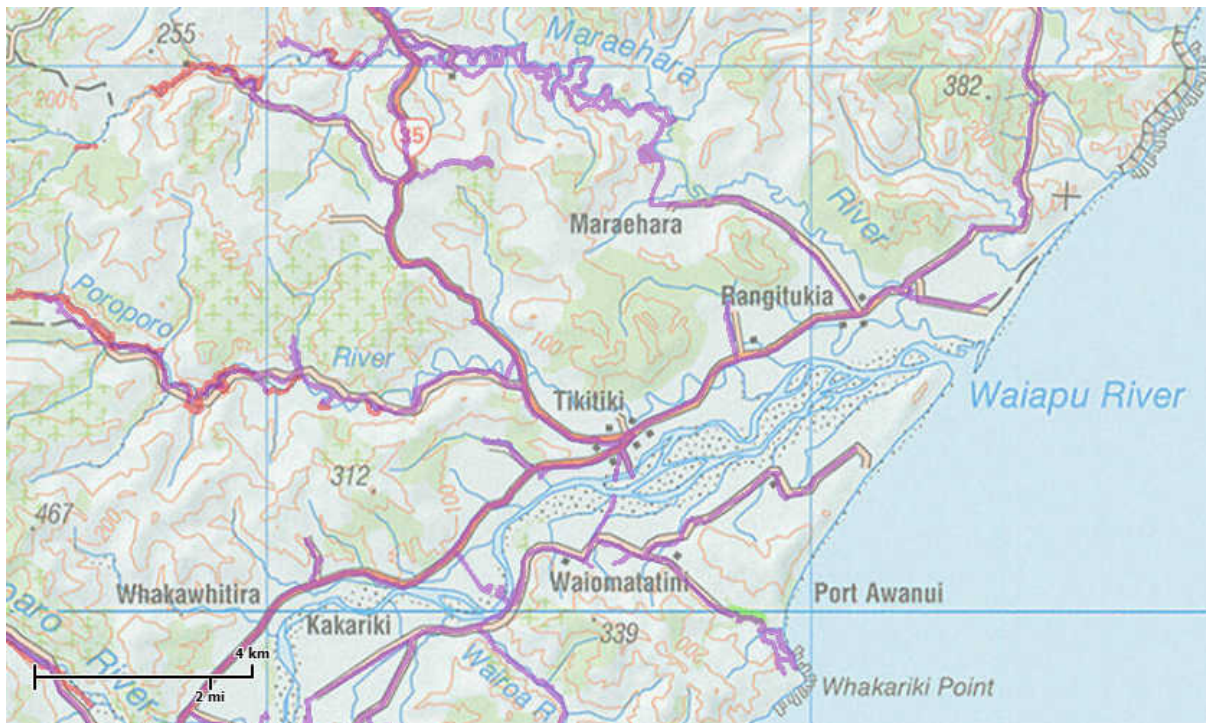


**Map 3: Te Araroa Beach to Horoera Point**

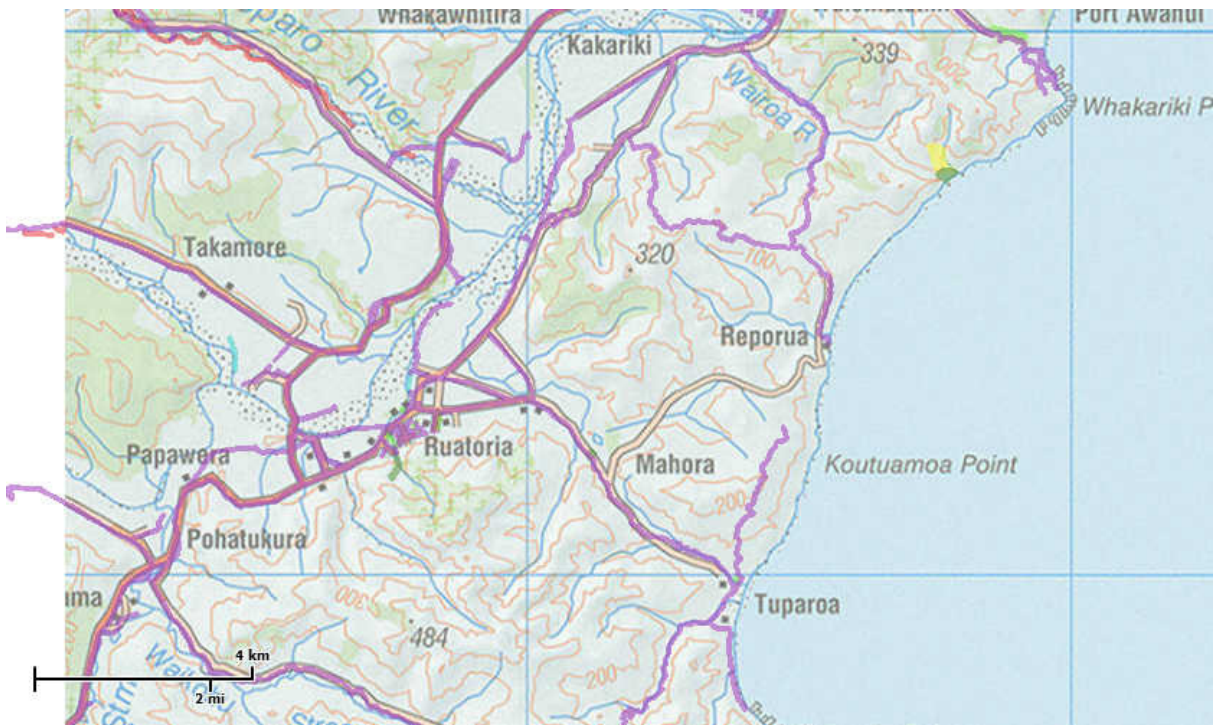


**Map 4: Horoera Point to almost Waiapu River north head**





**Map 5: Waiapu River mouth to Port Awanui**

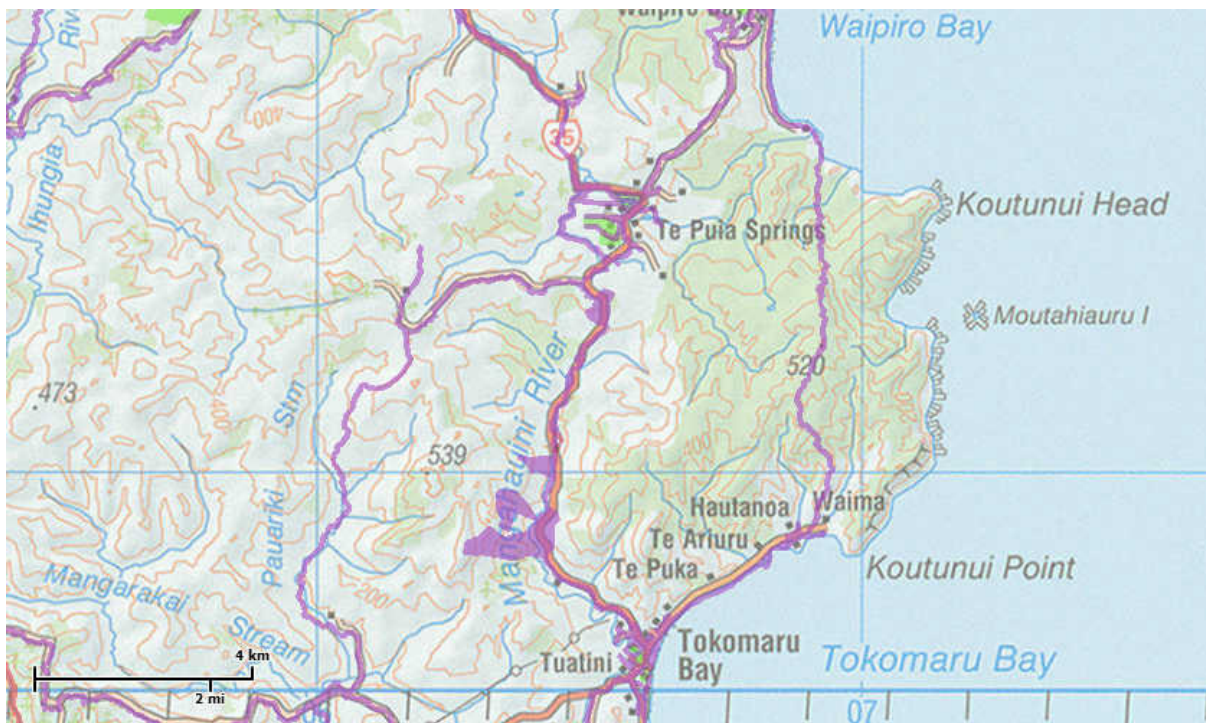


**Map 6: Port Awanui to Tuparoa**



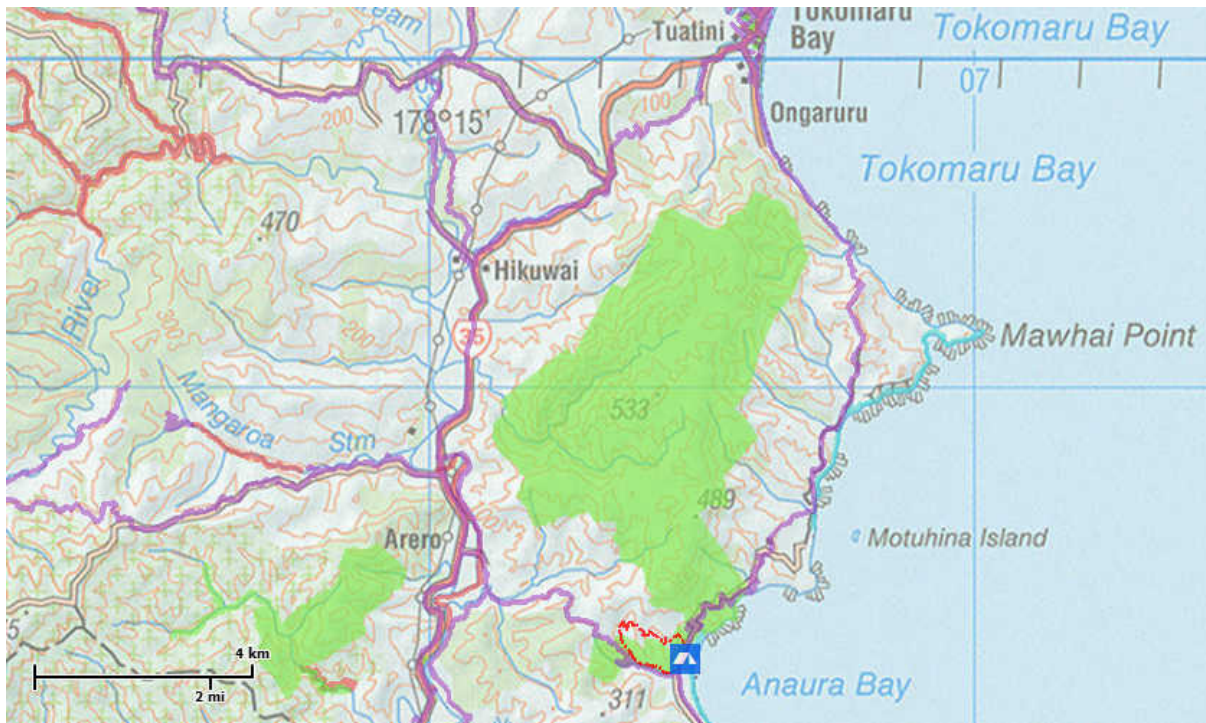


**Map 7: Tuparoa to Waipiro Bay**

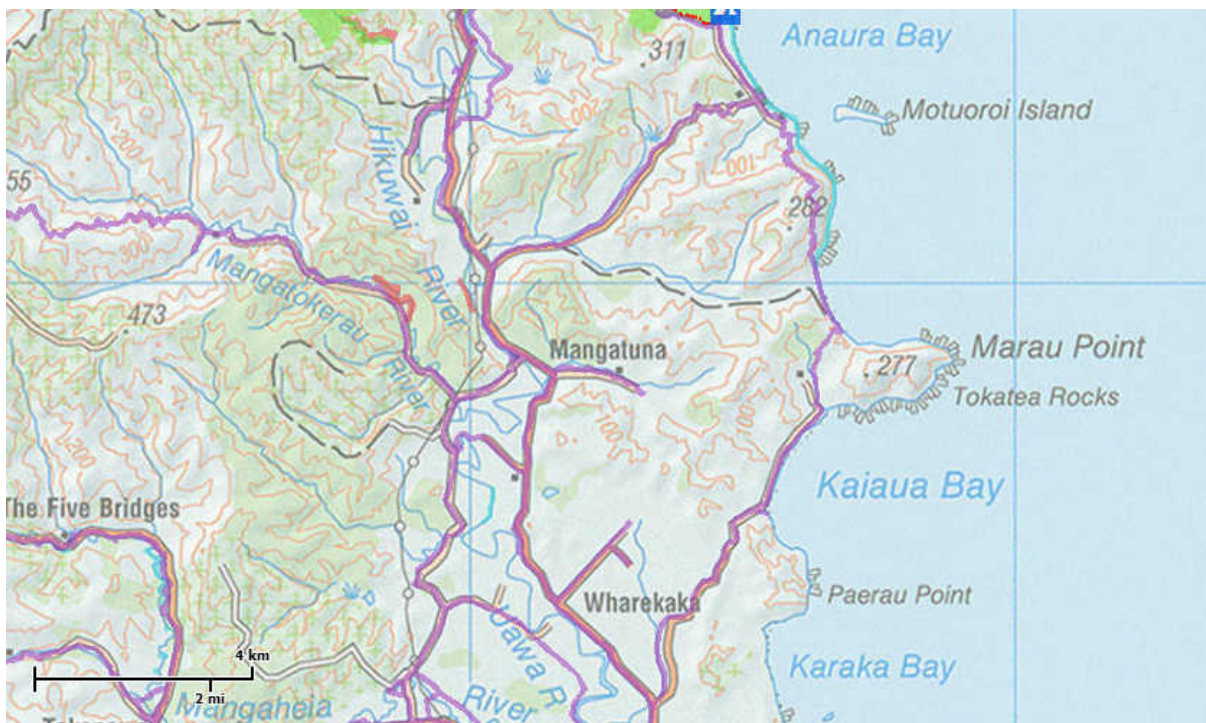


**Map 8: Waipiro Bay to Tokomaru Bay**



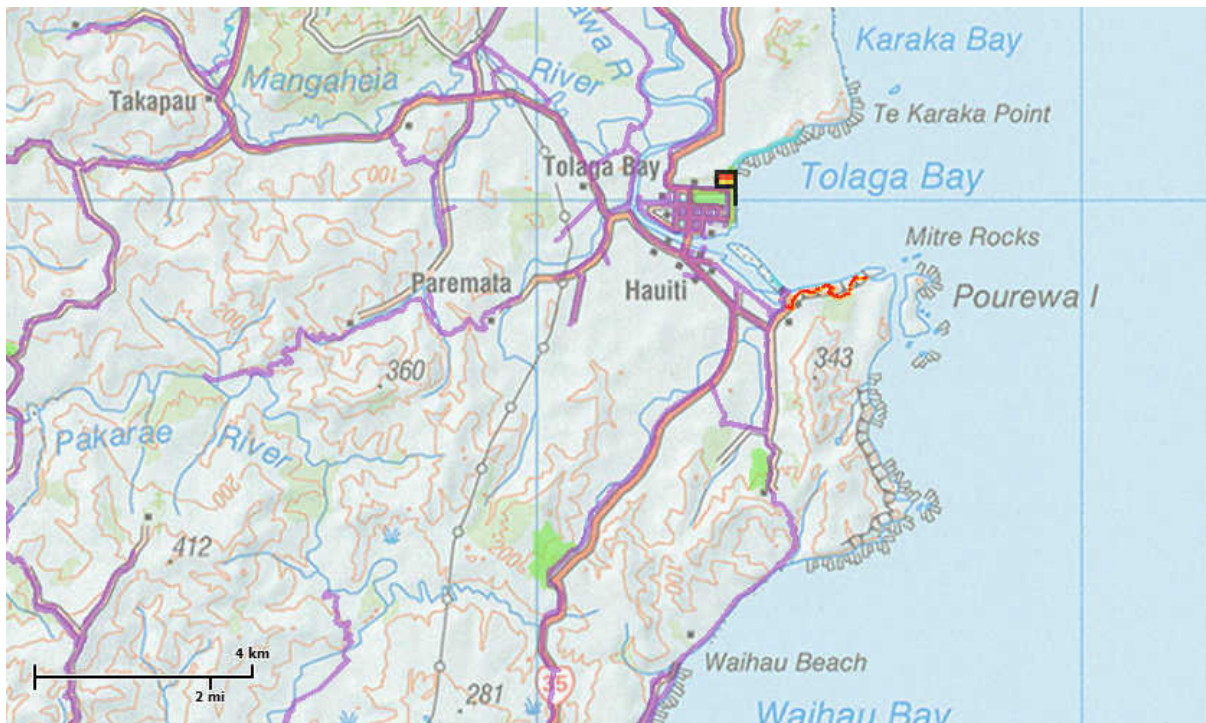


**Map 9: Tokomaru Bay to Anaura Bay**



**Map 10: Anaura Bay to Karaka Bay**

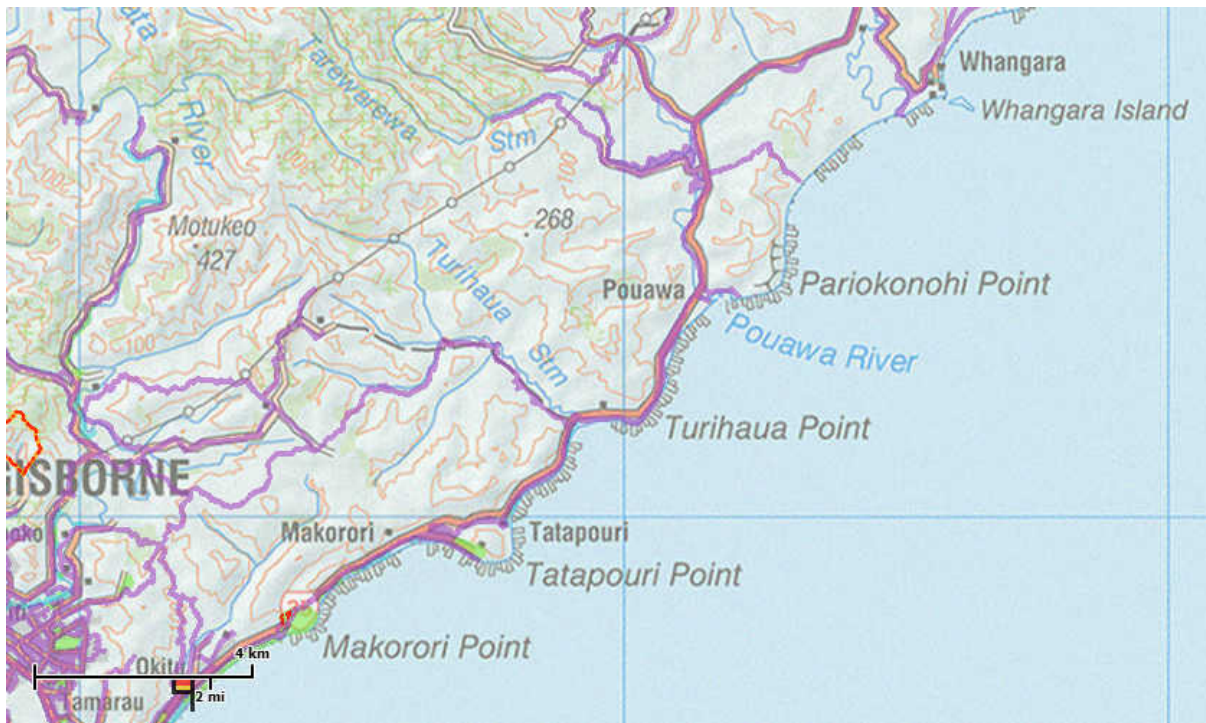




**Map 11: Karaka Bay, Tolaga Bay to Waihou Beach**



**Map 12: Waihou Bay to Whangara**



**Map 13: Whangara to Pouawa River boundary**