

MAY–JULY 2017

TAKUTAI MOANA RATIFICATION

BOOKLET FOR MEMBERS OF NGĀTI PĀHAUWERA

Application under the Marine
and Coastal Area (Takutai Moana)
Act 2011 for Customary Marine
Title, Wāhi Tapu Protection and
Protected Customary Rights.

MINISTER'S
OFFER



www.ngatipahauwera.co.nz



A HISTORY

Ngāti Pāhauwera opposed a water conservation order over the Mohaka River because it ignored that it is our river. The Planning Tribunal supported the order, but this sparked 30 years of sustained efforts to get our rights over Ngāti Pāhauwera moana and awa recognised.

1987

The Ngāti Pāhauwera land claims were heard in the Mohaka ki Ahuriri district inquiry.

1999-2000

The Mohaka River Water Conservation Order was finally imposed. Meanwhile, Ngāti Pāhauwera opposed the Foreshore and Seabed Act through the hīkoi to Parliament and a Waitangi Tribunal hearing.

2004

Hearing at Mohaka:

Ngāti Pāhauwera witnesses all said that we are the owners and caretakers of our moana and awa. The Crown acknowledged the unbroken, inalienable and enduring mana of Ngāti Pāhauwera in the foreshore and seabed.

2008

Straight after the hearing at Mohaka, the Crown wanted to negotiate. We agreed to negotiate on our Treaty claims and foreshore and seabed claims, but because the Foreshore and Seabed Act was reviewed in 2009, our 2010 Deed of Settlement only dealt with Treaty claims.

2012

We gathered evidence: new and stretching back to the 1980's Planning Tribunal hearing. We gave this to the Independent Assessor in December at Mohaka. His job was to give the Minister for Treaty of Waitangi Negotiations, Chris Finlayson, an opinion on our application.

2014

NOW — THE MINISTER HAS MADE HIS OFFER.

It is in the form of a Recognition Agreement made up of three documents: Deed of Agreement, Legal Recognition Agreement and a Bill (which becomes legislation when passed by Parliament).

YOUR VOTE COUNTS →

The Waitangi Tribunal held an urgent hearing and found **Ngāti Pāhauwera had not relinquished te tino rangatiratanga or transferred ownership of the Mohaka River.** It recommended that the Crown negotiate with us on the river. The Crown did not.

In the Mohaka ki Ahuriri Report **the Tribunal again recommended that the Crown negotiate with us,** but it still did not.

After the Foreshore and Seabed Act 2004 became law, Ngāti Pāhauwera was the only group to have a customary rights order hearing.

In the meantime, Ngāti Pāhauwera gave feedback to the Crown on the Foreshore and Seabed Act review. Our focus was on legal recognition that our moana is ours. **The Marine and Coastal Area (Takutai Moana) Act 2011 ("Takutai Moana Act") was passed.** In 2012, we resumed discussions with the Crown on our Takutai Moana claims.

OUR APPLICATION

THE NGĀTI PĀHAUWERA APPLICATION AREA:

- Between Poututu Stream and Pōnui Stream;
- From the high water mark out to 12 nautical miles;
- Including the Mohaka River mouth.

In support of the application Ngāti Pāhauwera members provided more than 80 written briefs and affidavits from today and from other hearings stretching back to the late 1980s. Everyone said the same thing, along the following lines of:

Ngāti Pāhauwera have always known that the application area is ours. We have cared for and used it since well before the arrival of the Crown to New Zealand and we still do today. We have never relinquished our rights or obligations. Outside Ngāti Pāhauwera there is little interest in the application area, but its great importance to us cannot be expressed in words

Based on this evidence the Trustees of the Ngāti Pāhauwera Development Trust on behalf of Ngāti Pāhauwera applied throughout the application area for Customary Marine Title, Wāhi Tapu Protection and Protected Customary Rights. We believe our evidence was compelling and demonstrated that Ngāti Pāhauwera should receive Customary Marine Title, Wāhi Tapu Protection and Protected Customary Rights throughout the application area.

DID YOU KNOW?
Our Takutai Moana application from Poututu to Pōnui is not contested by any other iwi.



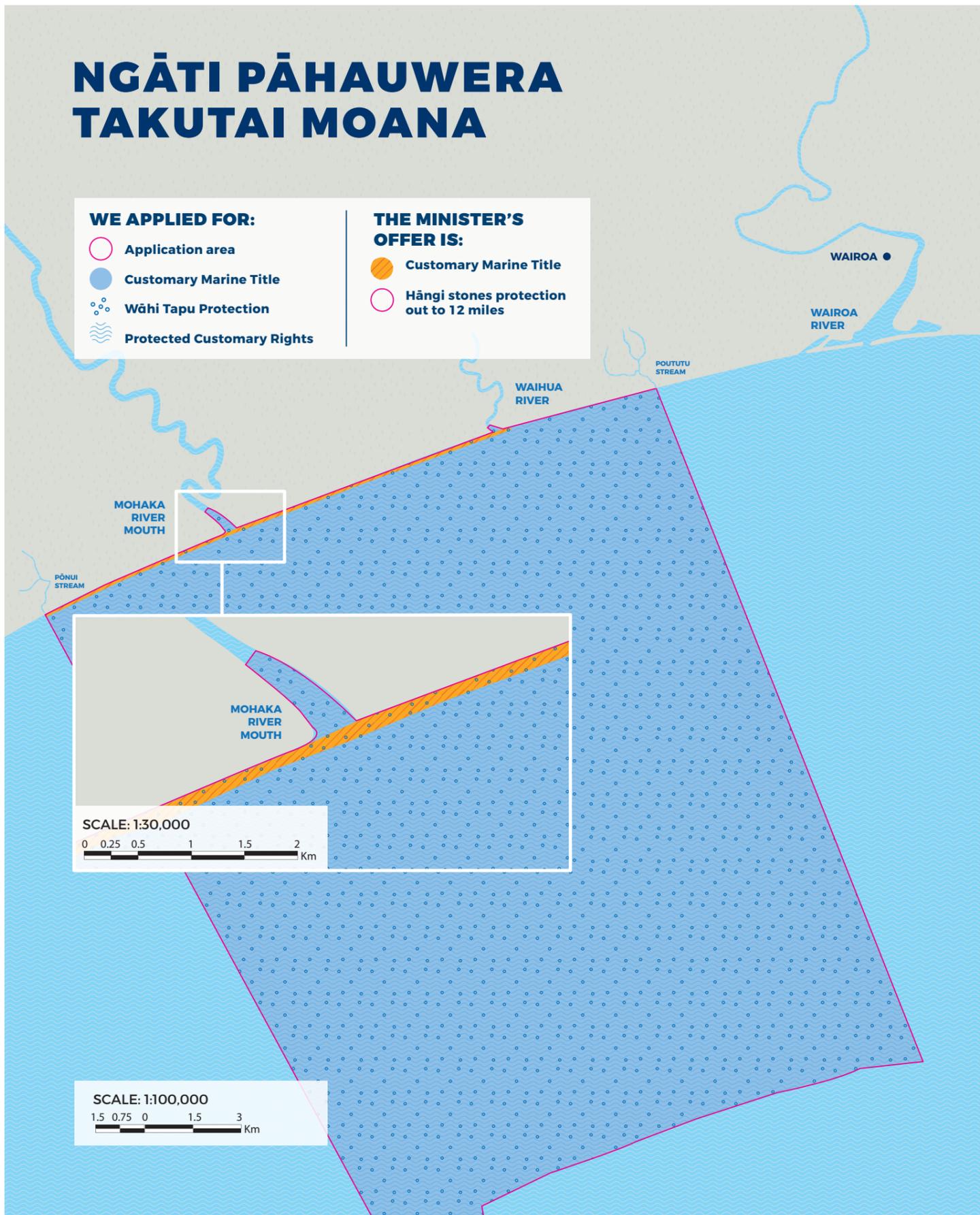
NGĀTI PĀHAUWERA TAKUTAI MOANA

WE APPLIED FOR:

-  Application area
-  Customary Marine Title
-  Wāhi Tapu Protection
-  Protected Customary Rights

THE MINISTER'S OFFER IS:

-  Customary Marine Title
-  Hāngi stones protection out to 12 miles



THE MINISTER HAS MADE HIS OFFER

 Ngāti Pāhauwera needs to decide whether to accept it.

The Minister has recognised Customary Marine Title (demonstrated by the orange area of map):

- Between Waihua River and Pōnui Stream
- From the high water mark out to the low water mark
- Not including the Mohaka River mouth

The Minister has also agreed that if we accept the Customary Marine Title he has offered, he will extend the hāngi stones control that Ngāti Pāhauwera obtained over the Mohaka River in the Treaty Settlement.

DID YOU KNOW?
Rights can't be sold and free public access, fishing and other recreational activities are allowed to continue.

CUSTOMARY MARINE TITLE

Means: Customary Marine Title means the right to say no to resource consents, marine reserves, conservation areas and DoC concessions (with some exceptions) + ownership of minerals (except petroleum, gold, silver and uranium) + interim custody of newly found taonga tūturu + consultation on some government and council decisions.

We applied for Customary Marine Title over the whole application area.

WĀHI TAPU PROTECTION

Means: Legally binding prohibitions/restrictions on access.

We applied for Wāhi Tapu Protection over the whole application area with Ngāti Pāhauwera rāhui after drowning, death or a body or kōiwi found + prohibitions on polluting, littering, gutting fish onto the beach or into the water, and over-exploitation or wasting of resources + prohibition on going to the toilet in the river mouths.

PROTECTED CUSTOMARY RIGHTS

Means: No need for consent, charges or royalties + councils must not give resource consent that adversely affects the right.

We applied for Protected Customary Rights over the whole application area to take, utilise, gather, manage and/or preserve all natural and physical resources including sand, stones, gravel, pumice, driftwood, kokowai, wai tapu, inanga, kokopu and tauranga waka.

TRUSTEES' RESPONSE

The Trustees are very disappointed with the Minister's offer and have told the Minister this in writing. His offer does not reflect the extent of Ngāti Pāhauwera interests and is much less than what we applied for. His evidence is not supported by the vast amount of detailed, in-depth evidence filed by Ngāti Pāhauwera. We also consider that his interpretation of the Takutai Moana Act is wrong.

“Banking the offer gives us something now and we have less to fight for in the High Court.”

We have therefore applied on behalf of Ngāti Pāhauwera to the High Court for full recognition of Customary Marine Title, Wahi Tapu Protection and Protected Customary Rights throughout the application area.

We intend to test the Takutai Moana Act to its limits in the High Court. We will seek the utmost protection that the Takutai Moana Act can provide for Ngāti Pāhauwera.

The Minister has also agreed that if we accept the Customary Marine Title he has offered, he will extend the hāngi stones control that Ngāti Pāhauwera obtained over the Mohaka River in the Treaty Settlement at the same time.

TRUSTEES' RECOMMENDATION

We are able to “bank” the small area of Customary Marine Title offered now. Then we only have to pursue the rest of our interests in the High Court.

Our High Court application also includes our southern area, from Pōnui Stream to the Esk River, which we had been leaving until later because other hapū are claiming rights there. We are talking with the Crown to see if engaging directly will also allow us to bank anything before we fully pursue the High Court application.

We think that banking what the Minister has offered gives us something now and means we have less to fight for in the High Court. We are making it very clear to the Crown that accepting the Minister's offer does not mean that we agree our rights are only in the small area he has recognised.

We have included clear words in the Recognition of Agreement:

“Ngāti Pāhauwera maintain they are the people of their moana and awa and they exercise mana moana, mana whenua and tino rangatiratanga. »

» Ngāti Pāhauwera maintain their moana and awa have always belonged to Ngāti Pāhauwera and they have never conceded ownership to anyone else.”

DID YOU KNOW?

We are the first iwi in Aotearoa to get to this point.

The Trustees have therefore initialled the Recognition Agreement, signifying that we recommend that Ngāti Pāhauwera vote to ratify it.

HĀNGI STONES

During Treaty Settlement negotiations, the Crown committed to extend hāngi stones control to include not just the Mohaka River and Te Hoe Rivers in our core area, but also to between Poututu Stream and Pōnui Stream from the high water mark out to 12 nautical miles, including the Mohaka River mouth.

This change needs legislation and the Minister has agreed to do this through the Bill part of the Recognition Agreement.

In this area, no one will be allowed to take hāngi stones unless they have the permission of Ngāti Pāhauwera (through the Development Trust). This is an important protection of our hāngi stones, which are a taonga of Ngāti Pāhauwera.

If we do not accept the Recognition Agreement there is likely to be considerable delay in agreeing an alternative way for the Crown to meet its commitment.

This is another important reason why the Trustees have therefore initialled the Recognition Agreement, signifying that we recommend that Ngāti Pāhauwera vote to ratify it.

TRUSTEES OF NGĀTI PĀHAUWERA DEVELOPMENT TRUST TO ADMINISTER RIGHTS

Ngāti Pāhauwera will be the holder of Customary Marine Title, but there needs to be someone to administer the rights that come with it. The Trustees of the Ngāti Pāhauwera Development Trust have been the elected representatives of the members of Ngāti Pāhauwera since the trust was established in 2008. The Trustees have been responsible since that time for the Ngāti Pāhauwera applications under the Foreshore and Seabed Act and Takutai Moana Act seeking recognition of Ngāti Pāhauwera rights in our moana and awa. We have been reporting regularly to Ngāti Pāhauwera on progress.

We, the Trustees of the Ngāti Pāhauwera Development Trust, propose to exercise and perform all rights and responsibilities of Ngāti Pāhauwera as the Customary Marine Title group.

YOUR VOTE COUNTS

You – the members of Ngāti Pāhauwera – need to **vote to decide** whether to ratify the Recognition Agreement.

There will be three voting hui, you need to attend one of these hui to vote.

RATIFICATION HUI DATES

Kahuranaki Marae, Te Hauke	20 July 2017 at 6 pm
Waipapa A Iwi Marae, Mohaka	22 July 2017 at 10 am
Te Taiwhenua O Heretaunga, Hastings	30 July 2017 at 10 am

The resolutions to be voted on by adult members (18 or over when voting) are:

- 1 I, as a member of Ngāti Pāhauwera, agree to accept the Ngāti Pāhauwera Recognition Agreement.
- 2 I, as a member of Ngāti Pāhauwera, agree that the Trustees of the Ngāti Pāhauwera Development Trust will be the customary marine title representative group for the Ngāti Pāhauwera Recognition Agreement.

DID YOU KNOW?
Over 40 Pāhauwera kaumatua and members gave new evidence in 2013-14 for this application.

NEXT STEPS

- 1 The results of the ratification process will be announced on the Ngāti Pāhauwera website www.ngatipahauwera.co.nz on 7 August 2017.
- 2 If the Recognition Agreement is ratified, the next step will be the formal signing by both the Crown and Ngāti Pāhauwera.
- 3 Once the Recognition Agreement is signed the government has 12 months to introduce legislation to give effect to the Recognition Agreement. It will then progress through Parliament's legislative process, which can take some months.
- 4 Meanwhile, we will pursue discussions with the Crown to see if engaging directly will also allow us to bank anything there, before we take further substantive steps on the High Court application.

KA WHAWHAI TONU MĀTOU

We continue to fight!

If we vote to accept the Recognition Agreement:



We are able to bank the small area of Customary Marine Title offered.



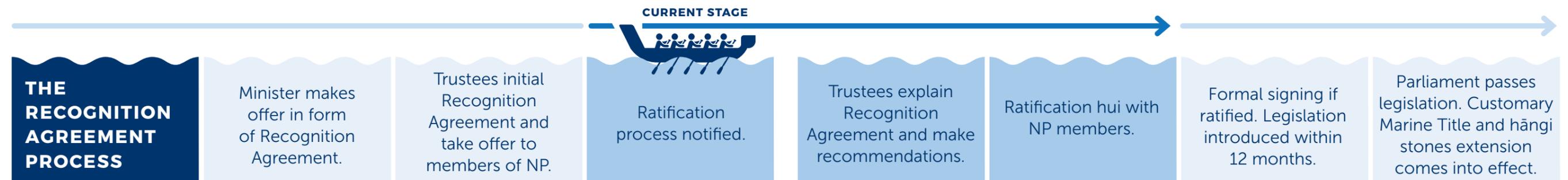
We can extend our hāngi stone protection out to 12 nautical miles (22 km) now.



It makes our High Court case for further out to sea and toward the Esk River easier.



Accepting the Minister's offer does not mean that we agree that our rights are only in the small area he has recognised.





FOR MORE INFORMATION

A full copy of the initialled Deed of Agreement is available at www.ngatipahauwera.co.nz or by contacting the offices:
Wairoa | 06 8386869 | 74 Queen Street, Wairoa
Napier | 06 8343808 | 15 Shakespeare Road, Napier

Make sure you are registered so that you can vote at the voting hui – get registration forms at www.ngatipahauwera.co.nz/rehitatanga/ or from our offices. We will also accept registrations at the voting hui, with your vote counted once your registration has been accepted.

www.ngatipahauwera.co.nz