

I TE KŌTI MATUA O AOTEAROA  
TAMAKI MAKAUROA ROHE

UNDER THE

Marine and Coastal Area  
(Takutai Moana) Act 2011,

AND

IN THE MATTER

of an application by **Rihari Dargaville** for an order recognising Customary Marine Title and Protected Customary Rights of **Ngati Kauwau, Ngati awa** at Whangaroa and adjacent coastline including that adjacent to the whenua of Matangirau

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**Amended Originating Application for Recognition Orders Pursuant to the  
Marine and Coastal Area (Takutai Moana) Act 2011**

**Dated: 3 April 2024**

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*As the amended application does not expand on the original application but refines the area claimed, I grant approval for its filing.  
Churchman J 2/8/2024*

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**TamakiLegal**  
Barristers & Solicitors

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Counsel Acting: D C F Naden / M Sreen

- To:** The Registrar of the High Court at Auckland
- and to:** Local Authorities (Regional and/or District Councils) with statutory functions in the application area) *Far North District Council, Northland regional Council*
- and to:** Local Authorities with statutory functions relating to land adjacent to the application area) *Department of Conservation, Transit,*
- and to:** The Solicitor General on behalf of the Attorney-General.

**This document notifies you that —**

1. Rihari Dargaville apply to the High Court for an order pursuant to s 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”) to recognise the customary marine title and protected customary rights of Ngati Kauwau, Ngati awa in Whangaroa and adjacent coastline including that adjacent to the whenua of Matangirau.

**Protected Customary Rights**

2. Ngati Kauwau, Ngati awa ancestors utilised the common marine and coastal area for fishing, gathering shellfish, seaweed, stones, pumice, semi precious stones, shells, drift wood, whale and whale bones, minerals, flotsam, jetsam, and lagan;

**The Applicant Group**

3. Ngati Kauwau, Ngati awa whakapapa to Whakaki – pununa – Ngati Kauwau tuatua whenua; The hapu incorporate the Ngati Awa who came to this area under Puhi, chief of Mataatua waka in the 1500s. The main lines descend through Tahuu-Nui-O-Rangi, Moengaroa, Haititi Tokotoko and Hongi Hika. Many hapu associated with Ngati Kauwau, being Te Whānau Pani, Kaitangata, Te Aeto, Ngati Kahuiti, Te Uri Putete, Ngati Uru and Ngai Tupango. Rihari Dargaville was appointed to make this application for and on behalf of Ngati Kauwau, Ngati awa on 27<sup>th</sup> March 2017.

### **Area to which the application relates**

4. The area to which this application relates is the common marine and coastal area (as defined in s9 of the Act) that is bounded:
  - a. on the landward side by the line of mean high-water springs;
  - b. on the seaward side by the outer limits of the territorial sea;
  - c. on the northward side starting at Okare Point headed southeast to Taupuke Point, then from Taupaki Point headed northeast to Wainui Bay, including any islands.

### **Grounds on which the protected customary rights order is sought**

5. The grounds on which this order is sought are that:
  - a. Ngati Kauwau, Ngati awa being a coastal group has relied heavily on Blue cod, Moki, hoki, kawhai, trevally, John dory, teraki, blue nose, kingfish, trumpeter, hapuka, snapper, marlin, sailfish, shark, toheroa, scallops, mussels, oysters, pipis, mutton birds, whale, paua, ling sole, flounder, tuna, lobster, crab, tuatua, cockles, clams, eels, hake, groper, mullet, squid and wetland food stocks foraged by whanau in the estuaries and coastal margins; and
  - b. Ngati Kauwau, Ngati awa fishermen sought the deep water fish that were not available around the inner shoreline; and
  - c. Ngati Kauwau, Ngati awa also undertakes the following activities in the common marine and coastal area: gathering shellfish, seaweed, stones, pumice, semi precious stones, shells, drift wood, whale and whale bones, minerals, flotsam, jetsam, and lagan.
  - d. Ngati Kauwau, Ngati awa has undertaken these activities since and before 1840 and continues to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga.

## **Grounds on which the customary marine title application is made**

6. The grounds on which this order is sought are that:
  - a. Ngati Kauwau, Ngati awa has held the application area in accordance with tikanga since before 1840.
  - b. Ngati Kauwau, Ngati awa has exclusively used and occupied the application area from 1840 to the present day without substantial interruption.
7. The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rangatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture – growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.
8. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:
  - a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
  - b. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by descendants of Ngati Kauwau, Ngati awa;
  - c. The sustenance and physical, spiritual and cultural well-being of all Ngati Kauwau, Ngati awa whanau, hapu and Iwi;
  - d. The economic development of Ngati Kauwau, Ngati awa whanau, hapu and Iwi; and

- e. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
9. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The tikanga integral to the descendants of Ngati Kauwau, Ngati awa governing these activities, uses and practices will be provided in the evidence from the Ngati Kauwau, Ngati awa descendants to be given at hearing.
10. The activities, uses and practices for which the descendants or Ngati Kauwau, Ngati awa seek recognition as protected customary rights and/or providing the foundation for customary marine title:
  - a. Have been and continue to be carried on, exercised and followed in accordance with tikanga of the descendants of Ngati Kauwau, Ngati awa in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;
  - b. If interrupted since 1840 then only by unlawful interruption or interference;
  - c. Are not prohibited by any enactment or rule of law; and
  - d. Have not been extinguished as a matter of law.
11. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the descendants of Ngati Kauwau, Ngati awa are included in this application. Whilst the particulars in this schedule are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.

### **Contact Details**

12. The Rihari Dargaville for Ngati Kauwau, Ngati awa is:

C/o D C F Naden

Tamaki Legal

Level 2, 3 Osterley Way, Manukau

13. This application relies on s51(1), s58, s98-113 of the Act and the affidavit of Rihari Dargaville, kaumatua of Ngati Kauwau.

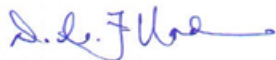
### **Memorandum**

This document is filed by **Darrell Naden**, solicitor for the applicant, of the firm Tamaki Legal Limited. The address for service of the applicant group is at the offices of Tamaki Legal Limited, Cuilam Building, 15 Osterley Way, Auckland, 2104, New Zealand.

Documents for service on the applicant may be left at that address for service or may be –

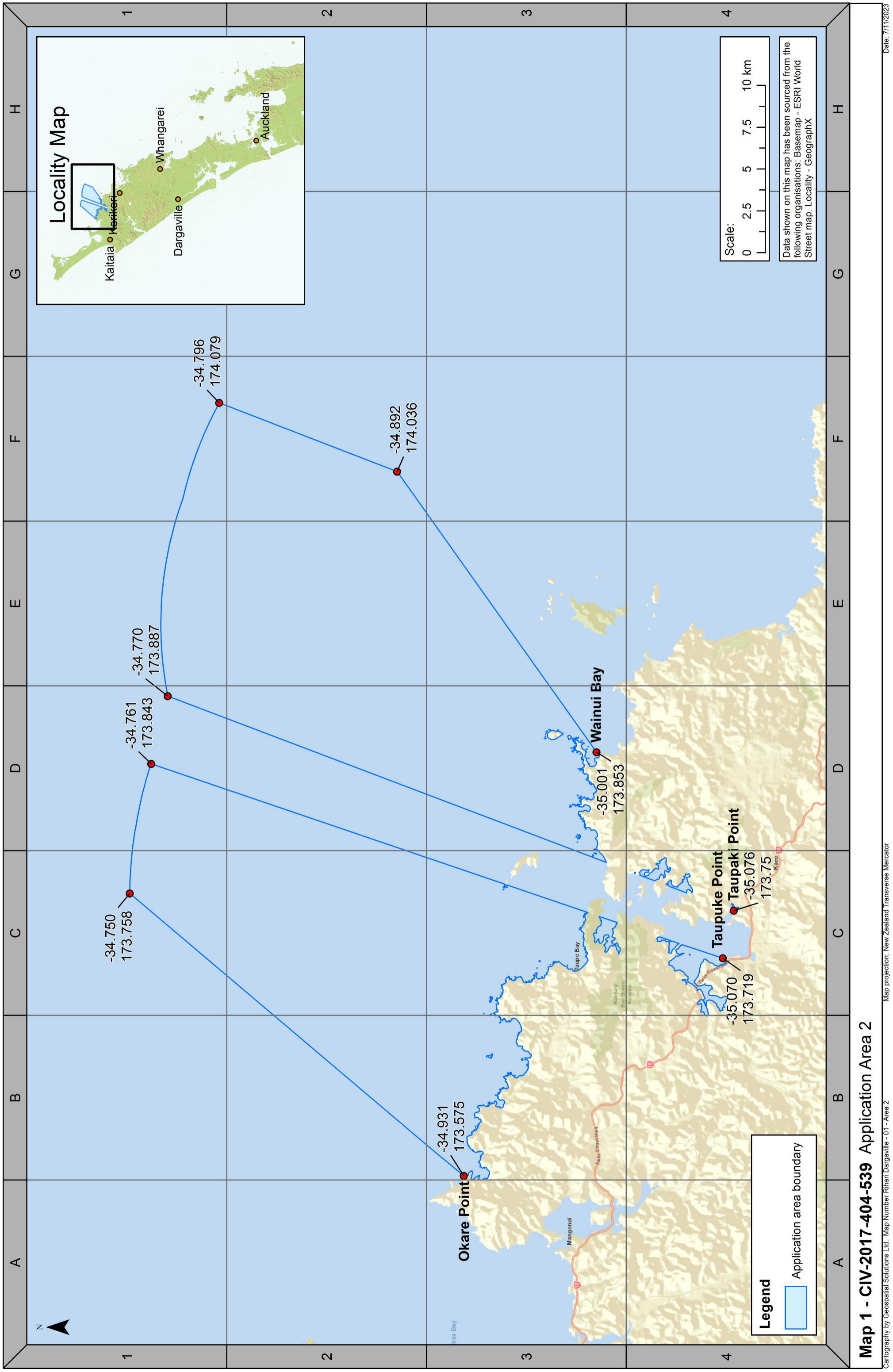
- posted to the solicitors at PO Box 75-517, Manurewa, Auckland, 2243, New Zealand; or
- emailed to the solicitor at [darrell@tamakilegal.com](mailto:darrell@tamakilegal.com)

Date: 3 April 2024



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**Darrell Naden**  
**Solicitor for Applicant**



**Map 1 - CIV-2017-404-539 Application Area 2**

Cartography by Geospatial Solutions Ltd. Map Number Rihari Dargaville - 01 - Area 2

Map projection: New Zealand Transverse Mercator

Date: 7/11/2022