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**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-2011-485-793

IN THE MATTER of the Marine and Coastal Area (Takutai Moana) Act 2011 (**Act**)

AND

IN THE MATTER OF applications by Colin Reeder and Ors for orders recognising Protected Customary Rights and Customary Marine Title under the Act

**AMENDED APPLICATION FOR RECOGNITION ORDER FOR PROTECTED
CUSTOMARY RIGHTS AND CUSTOMARY MARINE TITLE UNDER THE
MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011**

3 APRIL 2017

ATKINS | HOLM | MAJUREY

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- TO:** The Registrar of the High Court;
- AND TO:** Bay of Plenty Regional Council;
- And to:** Western Bay of Plenty Regional Council;
- And to:** Tauranga City Council;
- And to:** the Minister of Local Government, as the territorial authority for Motiti and Mauhaihi Islands;
- And to:** the Solicitor-General on behalf of the Attorney-General;
- And to:** other interested parties.

THIS DOCUMENT NOTIFIES YOU THAT –

1. The applicant, Colin Francis Reeder, on behalf of the applicant group, Nga Potiki a Tamapahore Trust, will on 3 April 2017 apply to the Court for orders:
 - (a) recognising the Applicant's protected customary rights for hapū net fishing, line fishing, hunting for eels and birds, gathering shellfish, edible and aquatic plants, accessing marine areas that have a cultural connection to the Applicant and its members, landing vessels, and making sea passage to fishing grounds, collecting traditional materials that enhance, preserve and protect the Applicant's and its members' cultural practices, including collecting mud, sand, plants, perished mammals, seabirds, rocks, shells and other materials from the sea and coastal marine area, and other customary rights in accordance with customary hapū knowledge and tikanga, in the particular area of the common marine and coastal area; and
 - (b) recognising the Applicant's customary marine title in the same area.

THE APPLICANT

2. The applicant is Colin Francis Reeder, the chair of Nga Potiki a Tamahahore Trust.
3. Nga Potiki is a hapū group that occupies the land around Te Tahuna a Rangataua and the Papamoa coast.

4. Nga Potiki a Tamapahore Trust is proposed to be the holder of the orders as the representative entity of Nga Potiki.

NGA POTIKI MARINE AREA

5. Colin Reeder, on behalf of Nga Potiki, is applying for protected customary rights and customary marine title for the particular area of the common marine and coastal area, as defined in s 9 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 western seaward side by a line that extends generally north north-west from the coast abutting Parakiri, including shared interests in the fishing grounds and reefs;
 - (d) on the eastern seaward side by a line extending generally north north-east from the coast abutting Te Tumu, including shared interests in the fishing grounds and reefs; and
 - (e) the traditional fishing grounds; and
 - (f) the part of Te Tahuna o Rangataua (Rangataua Harbour) shown in the attached maps.
6. The particular area of common marine and coastal area that is the subject of this application is shown under the affidavit of Colin Francis Reeder in the Maps at **Exhibit "C"**.
7. The application areas are separated into Areas A, B, C and D, being:
 - (a) Te Tahuna a Rangataua;
 - (b) Papamoa coast extending from Omanu (Parakiri) to Wairakei;
 - (c) Papamoa coast extending from Wairakei to Te Tumu;
 - (d) Te Moana Nui a Toi.

NGA POTIKI PROTECTED CUSTOMARY RIGHTS

8. Nga Potiki has continued to exercise customary rights in the Marine Area in accordance with tikanga for generations prior to and since 1840.
9. Nga Potiki ancestors utilised the Marine Area for hapū net fishing, line fishing, hunting; and gathering shellfish, edible and aquatic plants. They sailed vessels across the waters to the fishing grounds and launched and landed vessels in the coastal marine area.
10. Nga Potiki relied heavily on pipi, tuangi, pupu, tuatua, foraged by whanau in the harbour and on the coast and continue to rely on those food stocks and resources.
11. Nga Potiki weavers and artists relied on the coastal area for gathering traditional materials such as mud for dying, harakeke, and raupo. Nga Potiki collected traditional materials that enhance, preserve and protect the Applicant's and its members' cultural practices, including collecting perished mammals, seabirds, rocks, and shells and other materials from the coastal area.
12. The protected customary rights for which Nga Potiki seeks recognition include:
 - (a) the exercise of mana;
 - (b) rahui;
 - (c) exercise of customs in relation to wāhi tapu areas;
 - (d) the extraction and use of sand, shingle, aggregate, rocks, stones, driftwood, saltwater, pingao and wai tapu;
 - (e) mara mataitai (non-commercial aquaculture);
 - (f) kohi mahinga kai (gathering of shellfish);
 - (g) using the specified area for ceremonies associated with burial, tohi, and rongoa; and
 - (h) tauranga waka;
 - (i) Activities in Area A include harvesting of titiko, papaka, inanga, kokopu, parera, tuna, flounder, tamure, kohi paru, raupo, whakahaere karakia, wananga, kohi mataitai, hi ika, ruku, mau rakau, tua

tamariki, kauhoe, whakatere waka, nohoanga, and recreation;

- (j) Activities in Areas B-D include harvesting of tuatua, pipi, kokota, seaweed, pingao, hi ika, nehu tohora, driftwood for carving and fuel, wananga, wāhi tohi, whakahaere karakia, wananga, kōhi mataitāai, hi ika, ruku, mau rakau, tua tamariki, kauhoe, whakatere waka, nohoanga, and recreation.

CUSTOMARY MARINE TITLE

- 13. Nga Potiki has occupied its rohe for many generations to today without substantial interruption. Nga Potiki are the tangata whenua and hold mana whenua and mana moana over the application area, either exclusively, or shared exclusivity along with other hapu and iwi.
- 14. Nga Potiki whanau own land and homes, many of which still adjoin the common marine and coastal area.

GROUND ON WHICH THE PROTECTED CUSTOMARY RIGHTS RECOGNITION ORDER IS SOUGHT

- 15. Colin Reeder, on behalf of Nga Potiki, seeks a protected customary rights recognition order on the grounds that its protected customary rights relating to a particular area of the common marine and coastal area may be recognised by an order of the Court made on an application under s 100 of the Act.
- 16. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for protected customary rights meets the requirements of s 51(1) of the Act.
- 17. The Applicant meets the requirements in s 51(1) of the Act because it:
 - (a) has exercised the rights since 1840;
 - (b) continues to exercise those rights in Nga Potiki Marine Area in accordance with tikanga in either exactly the same or a similar way, or in a way that has evolved over time; and
 - (c) is applying for rights that have not been extinguished as a matter of law.

GROUNDS ON WHICH THE CUSTOMARY MARINE TITLE RECOGNITION ORDER IS SOUGHT

18. Colin Reeder, on behalf of Nga Potiki, seeks a customary marine title recognition order on the grounds that its customary marine title relating to a particular area of the common marine and coastal area may be recognised by an order of the Court made on an application under s 100 of the Act.
19. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for customary marine title meets the requirements of s 58 of the Act.
20. The Applicant meets the requirements in s 58 of the Act because:
 - (a) they hold Nga Potiki Marine Area in accordance with tikanga;
 - (b) they exclusively used and occupied Nga Potiki Marine Area from 1840 to the present without substantial interruption to their exclusive use and occupation; and
 - (c) the customary marine title has not been extinguished as a matter of law.
21. In terms of matters that may be taken into account in determining whether the Applicant's customary marine title exists in Nga Potiki Marine Area:
 - (a) the Applicant and Nga Potiki members have owned land abutting the Marine Area and have done so, without substantial interruption, from 1840 to the present day; and
 - (b) the Applicant and Nga Potiki members have exercised non-commercial customary fishing rights in the Marine Area and have done so from 1840 to the present day.

 APPLICATION MADE IN RELIANCE

22. This application is made in reliance on:
 - (a) sections 51(1), 58, 59, 94, 98, 100, 101 and 107 of the Marine and Coastal Area (Takutai Moana) Act 2011;

- (b) the affidavit of Colin Reeder; and
- (c) further evidence to be filed on behalf of the Applicant.

CONTACT DETAILS OF THE APPLICANT AND PERSON NAMED TO HOLD THE ORDER

23. The contact address of the group named to hold the order is:

Nga Potiki a Tamapahore Trust

Unit 6-34 Gravatt Road

Papamoa

Tauranga

Phone: 07 572 3344

Email: kiaora@ngapotiki.org.nz

ORDERS SOUGHT

24. The Applicant respectfully seeks orders:

- (a) recognising that Nga Potiki has protected customary rights and customary marine title over Nga Potiki Marine Area;
- (b) setting out that recognition be made in the name of Nga Potiki a Tamapahore Trust;
- (c) that Nga Potiki a Tamapahore Trust is named as the holder of the protected customary rights and customary marine title orders; and
- (d) costs in the event that this application is opposed by any other party.

DATE: 3 April 2017



Tama Hovell

Counsel for Colin Reeder and Ors

This application for review is filed by Tama Hovell, solicitor for the Applicant, of the firm Atkins Holm Majurey Ltd.

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