

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

CIV-2015-485-767

IN THE MATTER OF

an application under the **Marine and Coastal Area (Takutai Moana) Act 2011** for orders recognising Customary Marine Title and Protected Customary Rights

AND IN THE MATTER OF

NGĀI TE HAPŪ, NGĀTI MAKEREWAI, NGĀTI TAKAHANGA, NGĀTI KAUAEWERA/ TE URU, NGĀTI PAU and TE PATUWAI KI MOTITI ("Ngā Hapū o Te Moutere o Motiti"), hapū of Motiti Island

First applicants

KATARAINA PUTIPUTI KEEPA, kuia, **UMUHURI MATEHAERE, GRAHAM HOETE**, and **NEPIA RANAPIA**, kaumātua, acting on behalf of Ngā Hapū o Te Moutere o Motiti

Second applicants

UMUHURI MATEHAERE, KATARAINA PUTIPUTI KEEPA, and GRAHAM HOETE, acting as trustees of the **MOTITI ROHE MOANA TRUST**, on behalf of Ngā Hapū o Te Moutere o Motiti

Third applicants

AMENDED APPLICATION FOR RECOGNITION ORDERS PURSUANT TO THE MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011
Dated 30th November 2016

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THE HIGH COURT
WELLINGTON

**APPLICATION FOR RECOGNITION ORDERS PURSUANT TO THE
MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011**

- To:** The Registrar of the High Court at Wellington
- And to:**
- (a) The Attorney-General
 - (b) The Bay of Plenty Regional Council
 - (c) The Minister of Local Government, as the Territorial Authority for Motiti Island
 - (d) The interested parties in the proceeding

Customary Marine Title and Protected Customary Rights

1 The applicants apply to the High Court for orders, pursuant to s98 of the Marine and Coastal Area (Takutai Moana) Act 2011 ("the Act"), recognising that Ngāi Te Hapū, Ngāti Makerewai, Ngāti Takahanga, Ngāti Kauaewera/ Te Uru, Ngāti Pau and Te Patuwai ki Motiti ("**Ngā Hapū o Te Moutere o Motiti**") hold, in accordance with their tikanga:

1.1 **Customary Marine Title** pursuant to s58 of the Act to the common marine and coastal areas of the **Motiti Rohe Moana** (as defined in paragraph [6] below); and/or

1.2 **Protected Customary Rights** pursuant to s51 of the Act, namely:

1.2.1 The right and responsibility to act as kaitiaki (guardian) of the wāhi tapu (sacred places) and taonga tuku iho (ancestral treasures) within the common coastal marine area of the Motiti Rohe Moana, including protecting the physical and spiritual sanctity of sites through karakia (prayer), and the ability to declare rāhui (prohibition) if required for the protection of the site or resource. The wāhi tapu and taonga are:

- (a) The reefs or toka tipua (revered rocks) within Te Paepaeroa o te Moutere o Motiti (as defined in paragraph [7]), including Te

Tau o Taiti (Otaiti, or Astrolabe Reef), Okarapu, Porotiti, Okani, Omaroa, Otawahao, Ru o Tane and Tokoroa;

- (b) The motu (islets) within Te Paepaeroa o te Moutere o Motiti (as defined in paragraph [7]), including Motu Haku, Motu Nau, Motu Puta, Motu Kahakaha, Motu a Rua, Motu Patiki, Motu o Turita, and Motu Tapu;
- (c) The wāhi tapu and taonga tuku iho around the coastal marine area of Motiti Island that are listed in Appendix B;

1.2.2 The right to collect customary resources from the common marine and coastal areas of the Motiti Rohe Moana:

- (a) Rimurimu (seaweed), including edible types (karengo and parengo), and seaweed used for cultural purposes (such as piupiu);
- (b) Stones, used for a variety of cultural purposes, including slate for building and tunutunu (cooking), hāngi stones, and obsidian, quartz and other stones for traditional tools;
- (c) Shingle and sand, for fishing, kūmara pits, and building purposes;
- (d) Shells, for ornamentation, jewellery, and fishing lures;
- (e) Bones, teeth or ivory of whales, which are used for carving;
- (f) The feathers of seabirds, including toroa (albatross), which are taonga cultural materials;

1.2.3 The right to moor, launch and land boats at customary tauranga waka (moorings, landing places) around Motiti Island:

- (a) Wairere Bay;
- (b) Wairanaki Bay;
- (c) Tumu Bay;
- (d) Orongongatea Bay.

The applicants

- 2 The first applicants, Ngā Hapū o Te Moutere o Motiti, are the hapū who are tangata whenua of, and hold mana whenua and mana moana over, Te Moutere o Motiti ("Motiti Island") and the Motiti Rohe Moana (sea territory).
- 3 The second applicants are kaumātua and kuia who are customary representatives of, and are acting on behalf of, Ngā Hapū o Te Moutere o Motiti:
 - 3.1 Kataraina Putiputi Keepa, of Tauranga, and of Ngāti Takahanga, Ngāi Te Hapū, Ngāti Pūkeko and Waitaha descent, is a kuia morehu, who was born in 1931 and brought up on Motiti Island;
 - 3.2 Umuhuri Matehaere, of Tauranga, and of Ngāi Te Hapū, Te Patuwai, Ngāti Makerewai, Ngāti Takahanga, Ngāi Tauwhao and Ngāti Whakahemo descent, is a kaumātua tōrangapū (political elder), who was born in 1943 and brought up on Motiti Island;
 - 3.3 Graham Hoete, of Motiti Island, is a rangatira of Ngāti Takahanga and Ngāi Te Hapū e pumau te mauri o te marae o Ngāti Takahanga (who holds the mauri of the Ngāti Takahanga marae on Motiti Island, Tamatea ki te Huatahi). Mr Hoete was born in 1944 and brought up on Motiti Island, and lives there today;

3.4 Nepia Ranapia, of Motiti Island, is a pūkenga (an expert in tikanga, whakapapa and history) of Ngāi Te Hapū, Ngāti Pau, Ngāti Kauaewera, Ngāti Takahanga, Ngāti Te Patuwai, Ngā Maihi, Ngāti Maumoana and Ngāti Pūkeko descent. Mr Ranapia lives on Motiti Island.

4 The third applicants are Umuhuri Matehaere, Graham Hoete and Kataraina Keepa, acting as trustees of the Motiti Rohe Moana Trust, a purpose trust established by the Motiti Marae Committee in 2009 to represent the tangata whenua of Motiti Island.

Area to which the application relates

5 Motiti Island is approximately 720ha in size and located off the Papamoa Coast in the Bay of Plenty.

6 The applicant seeks Customary Marine Title in respect of the common marine and coastal area (as defined in s9 of the Act) of the "**Motiti Rohe Moana**", being the area set out in the map annexed as **Appendix A** lying within Te Paepaeroa o te Moutere o Motiti (the customary sea boundary shown as a brown line on Appendix A). The Motiti Rohe Moana encompasses the coastal area of Motiti Island, the surrounding marine area, and all toka (reefs) and motu (islets) within Te Paepaeroa o te Moutere o Motiti.

7 Te Paepaeroa o te Moutere o Motiti is identified by the outermost points of ngā tauranga tai kukume o te hukarere o ngā Aturere (the reefs connected by the tides), with a buffer zone to the seaward side. Those traditional sea areas are:

7.1 Te Maamangi, within which lies Te Tau o Taiti (Otaiti, or Astrolabe Reef), a toka tipua (revered rock);

7.2 Okarapu, within which lie the reefs of Okarapu and Te Porotiti, which are toka tipua;

7.3 Okani, within which lies the reefs of Okani, Omaroa and Otawhao, which are taonga tuku iho (ancestral treasure);

7.4 Matarehu, within which lies the reef of Ru o Tane, a taonga tuku iho;

- 7.5 Matarakiitia, which is tino tapu (highly sacred);
- 7.6 Tokoroa, within which lies Motu Nau (Plate Island), a taonga tuku iho;
- 7.7 Motu Haku (Schooner Rocks), a toka tipua.

Ngā Hapū o Te Moutere o Motiti

- 8 Motiti Island has been continuously occupied since Ngātoroirangi, the tohunga of Te Arawa waka, established his pā there.
- 9 Te Hapū is the principal tupuna (ancestor) of Motiti Island.
- 10 Te Hapū is a direct descendant of Toroa, the captain of the Mataatua waka, through Toroa's grandson Tamatea ki te Huatahi. Tamatea's eldest son was Ueimua, the grandfather of Te Hapū.
- 11 Te Hapū migrated west along the Bay of Plenty Coast from Ohiwa Harbour with his people Ngāti Ruaroa, at the request of his mother's people, Waitaha, an iwi of Te Arawa. Te Hapū travelled to Motiti Island and lifted the tapu placed on it by Waitaha.
- 12 Te Hapū permanently settled on Motiti Island with his people, who became known as Ngāi Te Hapū.
- 13 From Te Hapū's descendants came the hapū born upon the island through two primary lines (the "karanga hapū"):
 - 13.1 The descendants of Te Hapū's first son, Manu, gave rise to the hapū Ngāti Pau;
 - 13.2 The descendants of Te Hapū's second son Roropukai gave rise to the hapū Ngāti Tutonu, Ngāti Kauaewera, Ngāti Makerewai, and Ngāti Takahanga.
- 14 Te Patuwai is a hapū name commemorating an event, a battle on the water. A war party led by Tawhiwhi from Ngāti Te Ikapuku of Whakatane, and Ngāi Te Hapū were intercepted out at sea by Whakatohea and killed. This event resulted in an alliance known as Te Korowai o Te Patuwai. The hapū involved in this event became known as Te Patuwai. However, those hapū nonetheless retained

their mana whenua/ mana moana based on their distinct whakapapa and tūrangawaewae.

- 15 Over many generations, Ngāi Te Hapū and the karanga hapū have maintained mana tuku iho (ancestral mana) on Motiti Island and the surrounding Motiti Rohe Moana.

Grounds on which the orders are sought

- 16 The grounds on which these orders are sought are that:

16.1 Ngā Hapū o Te Moutere o Motiti hold Customary Marine Title and Customary Protected Rights over the Motiti Rohe Moana in accordance with their tikanga in that:

16.1.1 They are tangata whenua of Motiti Island, and tangata moana of the Motiti Rohe Moana, having occupied Motiti Island for many generations;

16.1.2 They have always, and continue to, exercise mana tuku iho, tino rangatiratanga (absolute chieftainship or authority) and kaitiakitanga (guardianship) over the Motiti Rohe Moana. Under the tikanga of Ngā Hapū o Te Moutere o Motiti, mana whenua/ mana moana is derived from the take (customary rights) of hiki te tapu (lifting of the tapu), whakapapa (ancestry), nohoanga (settlement) and tūrangawaewae (place where the hapū have rights of residence and belonging through ancestral connection);

16.1.3 Their customary association with the Motiti Rohe Moana is expressed in this karakia:¹

¹ A translation will be provided in evidence.

*Ko te Rā whakatau whakatā whakaiti
Ko Mamangi hia ngā puke wharuarua ki te
potaka o te upoko o kāraru ki te moana o
Tuhua
Ko te raparapa ki te whenua o te kōpū
whakairi ki to pito te Ao
Ko te tokoroa kua hāngai tatai arorangi ko
Motunau hia
Ko te raparapa kua hāngai ki te tapatoru o te
Puwerewere ki Maketu
Ko te arawharerenga e whai atu nei
Ko te kupenga o ngā hutu o te rangi*

- 16.2 Ngā Hapū o Te Moutere o Motiti have exclusively used and occupied the common marine coastal area within the Motiti Rohe Moana from 1840 to the present day without substantial interruption;
 - 16.3 The members of Ngā Hapū o Te Moutere o Motiti continue to own land on Motiti Island abutting part of the specified area;
 - 16.4 Ngā Hapū o Te Moutere o Motiti have always, and continue to, exercise customary fishing rights in the Motiti Rohe Moana;
 - 16.5 The Customary Marine Title and Customary Protected Rights have never been extinguished as a matter of law;
 - 16.6 As set out in the affidavit of Umuhuri Matehaere sworn on 6 October 2015 and the further evidence to be filed on behalf of the applicants.
- 17 This application relies on s51(1), s58, s98, s100, s101, s107 of the Marine and Coastal Area (Takutai Moana) Act 2011.

Orders

- 18 The orders should be made in the names of Ngāi Te Hapū, Ngāti Makerewai, Ngāti Takahanga, Ngāti Kauaewera/ Te Uru, Ngāti Pau and Te Patuwai ki Motiti.
- 19 The holder of the orders is proposed to be Umuhuri Matehaere, kaumātua and Chair, Motiti Rohe Moana Trust.

Dated this 30th day of November 2016



Karen Feint

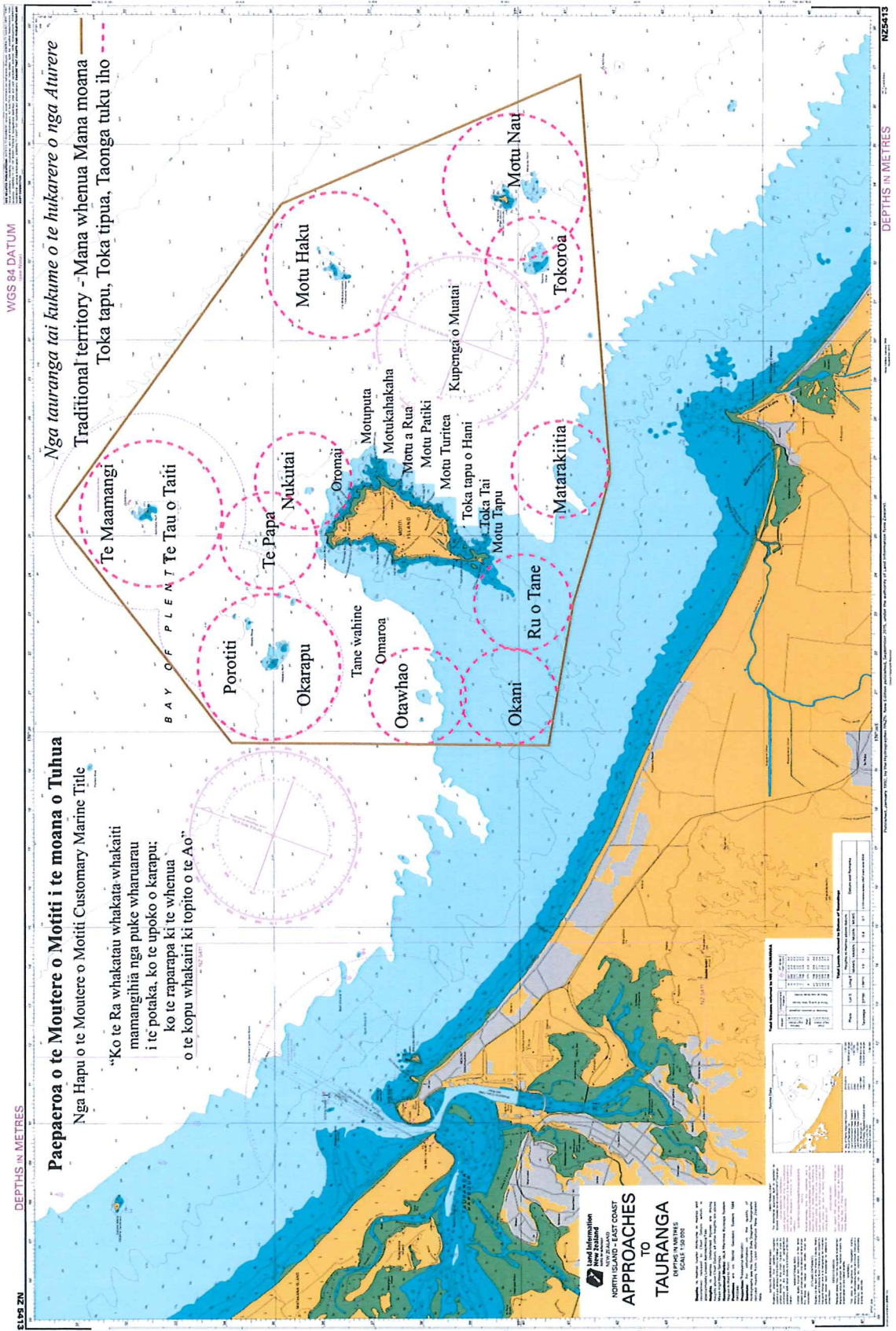
Counsel for the applicants

This document is filed by Harry Edward, solicitor for the applicants, of the firm Harry Edward Law. The address for service of the applicants is 1119 Pukaki Street, Rotorua 3010.

Documents for service on the filing party may be left at that address for service or may be—

- (a) posted to the solicitor at PO Box 738, Rotorua, and to counsel at Thorndon Chambers, PO Box 1530, Wellington; or
- (b) emailed to the solicitor at helaw.reception@xtra.co.nz and to counsel at karen.feint@chambers.co.nz

APPENDIX A



APPENDIX B – WĀHI TAPU AND TAONGA TUKU IHO

	Traditional name	Location	Significance
1.	Mahere o Mairoa	Otungahoro Bay	An ancient carved rock (taonga tuku iho)
2.	Ahurewa o Marumaru	Marumaru Bay	A tūāhu (sacred place for ritual practices)(toka tipua)
3.	Oromai Tangata	Te Umukuri Bay	A rock carving (toka tipua)
4.	Moropu	Tumu Bay	A rock indicator for determining the change of season (taonga tuku iho)
5.	Puwatawhata	Tumu Bay	A rock indicator that measures the winter equinox (taonga tuku iho)
6.	Motu Puta	Matahau Bay	An island indicator to measure the equinox (taonga tuku iho).
7.	Motu Kahakaha	Wharikipanarangara Bay	A monument to ancient ancestors (toka tipua)
8.	Ngamea	Orongongatea Bay	An ancient rock carved with koru patterns (tino tapu)
9.	Taputapu	Orongongatea Bay	An ancient rock carved to extract spiritual energy (tino tapu)
10.	Puwhero	Orongongatea Bay	An ancient rock carved to extract spiritual energy (tino tapu)
11.	Ngarara	Orongongatea Bay	An ancient rock carved to extract spiritual energy (tino tapu)
12.	Haruharu o Nukukino	Rotoharekeke Point	An ancient rock carved for spiritual worshipping (toka tipua)
13.	Ongatoro	Ongatoro Point	A spiritual pathway (tino tapu)
14.	Hani	Wairere Bay	A rock that is an atua guardian (deity) (toka tipua)
15.	Matarehu	Wairere Bay	Significant spiritual caves (tino tapu)
16.	Toka Tapu	Otuhoka Bay	A rock/reef used by tohunga to perform spiritual rituals (toka

	Traditional name	Location	Significance
			tipua)
17.	Toka Tai	Otuhoka Bay	A rock indicator measuring solstice, and taunga waka (taonga tuku iho)
18.	Muritai	Wairanaki Bay	Rock that is guardian protector of the island (toka tipua)
19.	Tahau	Wairanaki Bay	A rock indicator measuring winter/ summer solstice (taonga tuku iho)
20.	Muriwai	Wairanaki Bay	A rock indicator to determine afternoon equinox
21.	Kiripahaka	Wairanaki Bay	A rock indicator to measure winter morning solstice (taonga tuku iho)
22.	Takahuri	Wairanaki Bay	A rock pointer to determine summer solstice (taonga tuku iho)
23.	Motu Kahakaha	Wharikipanarangara Bay	Historical site and memorial monument to ancient tūpuna; refers to land destroyed and fragmented (toka tipua)
24.	Turitea	Ongateko Bay	Island is highly significant historical site; refers to an object that fell from the sky and destroyed the land and people (taonga tuku iho)
25.	Motu Patiki	Ongateko Bay	An island that is highly significant historical site. An indicator to determine winter solstice and an indicator to determine morning summer solstice (taonga tuku iho)
26.	Toka Arua	Huruhi Bay	A rock indicator that links to land marker to measure equinox (taonga tuku iho)
27.	Manukakawhati	Okorora Bay	A rock pointer to determine summer solstice (taonga tuku iho)