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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

CIV-2017-404-522

THE MATTER OF

the Marine and Coastal  
Area (Takutai Moana) Act  
2011 (the Act)

AND IN THE MATTER OF

an application by  
Makarita Tito for an order  
recognising Customary  
Marine Title and  
Protected Customary  
Rights.

Applicant

AND

The Attorney General in  
right of the Crown

*Respondent*

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

Dated 30 MARCH 2017

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*F/W 102/17*  
HIGH COURT  
30 MAR 2017  
1508  
AUCKLAND  
*ca*

**To:** The Registrar of the High Court at Auckland;

**and to:** The Solicitor General on behalf of the Attorney General.

**This document notifies you that:**

1. Makarita Tito will apply to the High Court for an order pursuant to s98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”) to recognise the customary marine title and protected customary rights of Te Ihutai Ki Ōrirā.

**Protected Customary Rights**

2. Te Ihutai Ki Ōrirā mātua-tūpuna (ancestors) utilised the common marine and coastal area for mahinga kai (gathering food), including collecting of pipi (cockles), tio (oysters), karahu (periwinkle) and kuuharu (thin shelled shellfish similar to toheroa), and for catching karati (baby snapper), flounder, kanae (mullet), eels, kahawai and tāmure (adult snapper), including parore (black snapper). Te Ihutai Ki Ōrirā takutai moana is also where their papakainga, waahi tapu, maunga and other places of historical, cultural and spiritual significance are located.

**The Applicant Group:**

3. Te Ihutai Ki Ōrirā whakapapa to Pāngari, a signatory to He Whakaputanga in 1835 and Te Tiriti o Waitangi in 1840. His son Āporo Pāngari, and his grandson Toki Pāngari are buried in the waahi tapu next to the Te Ihutai Ki Ōrirā takutai moana. Te Ihutai Ki Ōrirā link to the application area having mana whenua-mana moana along the western shores of the Ōrirā River from Te Tio in the north to the Waihou River in the south, to include Mōtiti Island, Mangungu and Ruapapaka Island.
4. Makarita Tito, he whaea rangatira makes this application for and on

behalf of Te Ihutai Ki Ōrirā, having instructed counsel to do on 1 February 2017, with continuing and ongoing whānau support to bring this application.

**Area to which the application relates:**

5. 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 north head entrance of the Ōrirā River (south west point) up to Te Tio (north west point) abounded by the Ōtarihau land blocks, across to Ōrirā (north east point) thence to the Waihou River (south east point), extending further south-west to include Mōtiti Island, thence to Mangungu, thence to Ruapapaka Island.
6. The area includes the common marine and coastal area surrounding Mōtiti Island and Ruapapaka Island.

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

7. The grounds on which this order is sought are that :
  - a. Te Ihutai Ki Ōrirā being a coastal group has relied heavily on mahinga kai, (gathering food) for their sustenance, including collecting of pipi (cockles), tio (oysters), karahu (periwinkle) and kuuharu (thin shelled shellfish similar to toheroa) and catching karati (baby snapper), flounder, kanae (mullet), eels, kahawai and tāmure (adult snapper), including parore (black snapper) being kai (food) sought after in and around the mangroves at Ōrirā; and
  - b. Te Ihutai Ki Ōrirā fishermen have also sought the sea-water fish, including karati, flounder, kanae, eels, kahawai and tāmure, including parore that were not available around the inner

shoreline; and

- c. Te Ihutai Ki Ōrirā also undertakes the following activities in the common marine and coastal area, including living in and on their takutai moana where their papakainga are located, maintaining respect for and safe-guarding their waahi tapu, acknowledging their maunga and other places of historical, cultural and spiritual significance are located.
  - d. Te Ihutai Ki Ōrirā has undertaken these activities since before and at 1840 and continue to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga.
8. Te Ihutai Ki Ōrirā will deliver more information once funding for research and legal representation is secured.

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

9. The grounds on which this order is sought are that :
- a. Te Ihutai Ki Ōrirā has held the application area in accordance with tikanga mai rā anō (since time immemorial)
  - b. Te Ihutai Ki Ōrirā has exclusively used and occupied the application area mai rā anō (since time immemorial) to the present day without substantial interruption.
10. Te Ihutai Ki Ōrirā will deliver more information once funding for research and legal representation is secured.

**Contact Details:**

10. The Makarita Tito for Te Ihutai Ki Ōrirā is:  
C/- Charl Hirschfeld  
10 Kaihu Street  
Northcote  
Auckland 0627

11. This application relies on s51(1), s58, s98-113 of the Act and the affidavit of Makarita Tito, whaea rangatira (matriarch).

Dated at Wiri, Tamaki-makaurau (Auckland) on the 30 day of March 2017.



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[Contact Person]