

11

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2017-404-540

IN THE MATTER OF

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

AND IN THE MATTER OF

an application by Richard
McGrath and Maraina
McGrath for an order
recognising Customary
Marine Title and
Protected Customary
Rights.

Applicant

AND

The Attorney General in
right of the Crown

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

Dated 31 MARCH 2017

Foster Milroy
Solicitors
Principal: Mark Milroy
4 Knox Street
P.O. Box 207
Hamilton Central
Hamilton
3204
Phone: 07-8388020
Email: mark@fmlawyers.co.nz

Counsel Acting:
C Hirschfeld/T Sinclair/B Tūpara
Ranfurly Chambers
Barristers-at-Law
10 Kaihu Street
Northcote
Auckland
0627
Mobile: 021-2289757
Email: charl@ranfurlychambers.co.nz

FN 115/17
HIGH COURT
31 MAR 2017
1321
AUCKLAND

CM

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. Richard McGrath and Maraina McGrath 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 Ngāti Torehina Ki Mataure Ō Hau.

Protected Customary Rights

2. Ngāti Torehina Ki Mataure Ō Hau mātua-tūpuna (ancestors) utilised the common marine and coastal area for mahinga kai (gathering food). The marine ecosystem is seen as one with the land and is intertwined with who Ngāti Torehina Ki Mataure Ō Hau are as a people. Customary fishing has been and continues to be part and parcel of everyday life for Ngāti Torehina Ki Mataure Ō Hau and has included mahi hī ika (fishing) for hāpuka, tarakihi, snapper, scallop, and crayfish, and the collecting of kaimoana including pāua and kina. Several tauranga moana (safe anchorages) were also used and Ngāti Torehina Ki Mataure Ō Hau managed their takutai moana according to Ngāti Torehina Ki Mataure Ō Hau tikanga (tribal traditions and customs). This would include the imposition of rāhui (a temporary prohibition) being placed over the area, often used as a conservation measure. Mutton-birding was a customary activity and commercial fishing by Ngāti Torehina Ki Mataure Ō Hau and the trading of kaimoana with inland hapū were also prevalent.
3. Also located within their common marine and coastal area are traditional waahi tapu and settlement pa sites and old kumara gardens

as well as their papakainga, their maunga and other places of historical, cultural and spiritual significance are located;

The Applicant Group:

4. Ngāti Torehina Ō Hau Rangatira Aubrey Taotahi held the mana over (Ngā motu and wahi tapu whenua and Tangaroa's Moana) Ki (at) Mataure Ō Hau. Ngāti Torehina Ki Mataure Ō Hau link to the application area having mana whenua-mana moana along the shoreline from Taiaue Bay to the north to Waiaua Bay to the south, to also include the Motukawa and Cavalli Islands made up of the larger Motukawanui (also known as Motukawa) and Motukawaiti islands and the Cavalli Islands (comprising 28 islands). Richard McGrath and Maraina McGrath were appointed to make this application for and on behalf of Ngāti Torehina Ki Mataure Ō Hau on 14 January 2017.

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 Waiaua Bay (south west point) up to Taiaue Bay (north west point) abounded by the Matauri 1 and Matauri 2 land blocks, across to near to Motutapere Island (north east point) thence to Motukawaiti Island (south east point).
6. The area includes the common marine and coastal areas surrounding the Motukawa and Cavalli Islands made up of the larger Motukawanui (also known as Motukawa) and Motukawaiti islands and the Cavalli Islands (comprising 28 islands).

Grounds on which the protected customary rights order is sought:

7. The grounds on which this order is sought are that :
 - a. Ngāti Torehina Ki Mataure Ō Hau being a coastal group has relied heavily on mahinga kai (gathering food) from in and around their takutai moana for their sustenance, including mahi hī ika (fishing) for hāpuka, tarakihi, snapper, scallop, and crayfish, and the collecting of kaimoana including pāua and kina; and
 - b. Ngāti Torehina Ki Mataure Ō Hau have also used several tauranga moana (safe anchorages) and managed their takutai moana according to Ngāti Torehina Ki Mataure Ō Hau tikanga (tribal traditions and customs). This would include the imposition of rāhui (a temporary prohibition) being placed over the area, often used as a conservation measure; and
 - c. Mutton-birding as a customary activity and commercial fishing by Ngāti Torehina Ki Mataure Ō Hau and the trading of kaimoana with inland hapū were also prevalent; and
 - d. Also located within their common marine and coastal area are traditional waahi tapu and settlement pa sites and old kumara gardens; and
 - e. The Ngāti Torehina Ki Mataure Ō Hau takutai moana is where their papakainga are located, their maunga and other places of historical, cultural and spiritual significance are located; and
 - f. Ngāti Torehina Ki Mataure Ō Hau 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. Ngāti Torehina Ki Mataure Ō Hau 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. Ngāti Torehina Ki Mataure Ō Hau has held the application area in accordance with tikanga mai rā anō (since time immemorial)
 - b. Ngāti Torehina Ki Mataure Ō Hau has exclusively used and occupied the application area mai rā anō (since time immemorial) to the present day without substantial interruption.
10. Ngāti Torehina Ki Mataure Ō Hau will deliver more information once funding for research and legal representation is secured.

Contact Details:

10. The contact details for Richard McGrath and Maraina McGrath, on behalf of Ngāti Torehina Ki Mataure Ō Hau are:

C/- Charl Hirschfeld

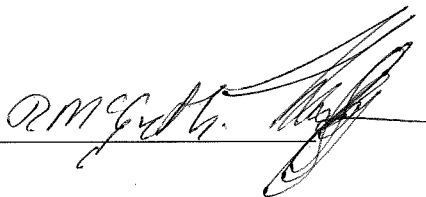
10 Kaihu Street

Northcote

Auckland 0627

11. This application relies on s51(1), s58, s98-113 of the Act and the affidavit of Richard McGrath and Maraina McGrath, kaikawe kōrero (the 'conveyors' of Ngāti Torehina Ki Mataure Ō Hau kōrero).

Dated at Tamaki-makaurau (Auckland) on the 31 day of March 2017.



[Contact Person(s)]