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CIV-2017-404-556

**IN THE HIGH COURTS OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2017-

IN THE MATTER OF

an application for a recognition
order for Customary Marine Title
and Protected Customary Rights

UNDER

Section 100 of the Marine and
Coastal Area (Takutai Moana)
Act 2011 (the Act) and Rule 19.2
(na) of the High Court Rules

BY

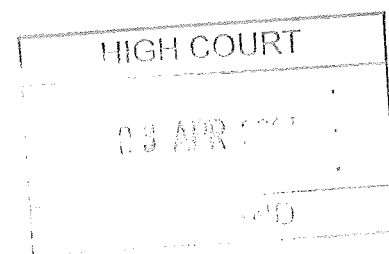
JOHN HENRY TAMIHERE on
behalf of Ngati Porou ki Hauraki.

Applicant

**APPLICATION BY JOHN HENRY TAMIHERE FOR AND ON BEHALF OF
NGATI POROU KI HAURAKI FOR RECOGNITION ORDERS PURSUANT TO
THE MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011**

Dated 3 April 2017

Solicitor
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- 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)
- and to:** Local authorities (Department of Conservation, Department of Internal Affairs, Environment Protection Agency, MBIE, NZ Petroleum and Minerals) with statutory functions relating to land adjacent to the application area)
- and to:** The Solicitor General on behalf of the Attorney-General.

This document notifies you that:

1. The applicant, John Henry Tamihere, applies to the High Court on a date to be fixed by 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/or protected customary rights of Ngati Porou ki Hauraki.

Protected Customary Rights

2. The Applicant pursues this application based on the requirements of the Marine and Coastal Area Act 2011. For and on behalf of Ngati Porou ki Hauraki the Applicant asserts that ancestors utilised the common marine and coastal area in a way that demonstrates the statutory requirements for the recognition of customary marine title, and, in certain circumstances, for the recognition of protected customary rights. Specifically, by way of example, Ngati Porou ki Hauraki have a customary relationship and authority in regards to their coastal marine territory, that enabled, and continues to enable:

- the expression of all aspects of their rangatiratanga;
- the maintenance of their territorial integrity;
- the manifestation of customary territorial jurisdiction;
- non-commercial fishing (utilising nets, hinaki and hand-lines to catch kuaka (snipe), kanae, kahawai, pioke, araara, patiki, tamure, mango, eels and other fish).
- non-commercial seeding and harvesting of shellfish (including pipi, cockles, oysters, mussels, scallops, karahu, toheroa, tuatua, tuangi, pupu, paapaka)
- activities related to spiritual practices (such as rahui);
- planting and cultivating plant species in CMCA wet margins (such as flax, tī kouka, pingao);
- gathering edible and aquatic plants;
- extracting non-nationalised minerals for non-commercial purposes;
- collecting hāngi stones for non-commercial purposes;
- collecting driftwood and other natural resources for non-commercial purposes;
- temporary camp-sites for ceremonial activities in the CMCA;
- tauranga waka.

The Applicant Group:

3. Ngati Porou ki Hauraki whakapapa to, amongst others, their eponymous ancestor Porourangi. John Henry Tamihere was appointed Lead Negotiator, working alongside a negotiation team, and has been authorised to make this application on behalf of was appointed to make this application for and on behalf of the Ngati Porou ki Hauraki by a series of Hui-a-Iwi between 2004 and 2017 where the matter was consistently put, discussed and decided upon.

4. The applicant group are Ngati Porou ki Hauraki. They are represented by a mandated negotiations team; and the claim to customary marine title is made by John Henry Tamihere, for and on behalf of Ngati Porou ki Hauraki.

5. The applicant group assert they are within their rights to self-define and control their membership as they deem proper in accordance with their custom. It may or may not meet others agreement; but it is, with respect, not within the jurisdiction of any other legal person to define for the group their identity. This is, in fact, supported by the Declaration of the Rights of Indigenous Peoples, to which New Zealand is now a signatory. Article 33 of that Declaration states

Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.¹

- a. Therefore, Ngati Porou ki Hauraki reassert their right to determine their own identity, and confirm that the applicant group for the purposes of the sought recognition of customary marine title is Ngati Porou ki Hauraki as a distinct collective, tribal group. This of course includes any reference, contemporary or historical, singularly or plurally, to its constituent hapu.

¹ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at: <http://www.refworld.org/docid/471355a82.html> [accessed 13 November 2016]

b. For the sake of clarity for an external reader the following hapu are hapu of Ngati Porou ki Hauraki insofar as they relate to occupation in Hauraki:

- (i) Te Aitanga a Mate
- (ii) Te Aowera
- (iii) Te Whanau a Rakairoa.²

Area to which the application relates:

6. The formal application area covers two distinct areas; the coastal marine territories extending from Mataora and Harataunga.
7. In regards to Mataora the geographical location known commonly as Mataora Bay in the Hauraki/Coromandel Peninsula. The area is between Otonga Point in the north (Latitude -37.291207 and Longitude 175.913458), southward along the line of MHWS³ approximately 4.46 kilometres to the southern boundary of the Part Mataora 4 Block (Latitude -37.323320 and Longitude 175.926636), bounded on the seaward side to a distance of 3.5 kilometres fixed by a point on Latitude -37.290351 and Longitude 175.947259 in the north and fixed by a point on Latitude -37.322494 and Longitude 175.960531 in the south at Latitude -36.635263 and Longitude 175.880432.
8. In relation to Harataunga "the common marine and coastal area of Harataunga/Kennedy Bay proper, being westward of a straight line between point 1.3 kilometres coastwise north east of Tokangawha Point in the north and Anarake Point in the

² These hapu also have a Ngati Porou (East Coast/Tairawhiti) branch; which has evolved independently from the hapu as they are known within Ngati Porou ki Hauraki. Whilst they have many interconnections, particularly in earlier/ancient times, they are in fact now distinct hapu within their respective geographic locations.

³ Mean High Water Springs; as defined in the Marine and Coastal Area (Takutaimoana) Act 2011.

south, and tracking between these two points around the interior bay at the line of MHWS”.

Grounds on which the protected customary rights order is sought:

9. The grounds on which this order is sought are that:
 - a. Ngati Porou ki Hauraki being a coastal group has relied heavily on inshore kaimoana and wetland food stocks foraged by whānau in the estuaries and coastal margins; and
 - b. Ngati Porou ki Hauraki sought the deep water fish that are considered taonga species that were not available around the inner shoreline; and
 - c. Ngati Porou ki Hauraki also undertakes, amongst other expressions of tikanga, the following activities in the common marine and coastal area:
 - (i) rongoā collecting,
 - (ii) bird snaring,
 - (iii) transport,
 - (iv) transfer of knowledge of hapu marine culture,
 - (v) trade,
 - (vi) communication,
 - (vii) seasonal kaimoana exchange,
 - (viii) access to gardens on land,
 - (ix) tangihana,
 - (x) social interaction,
 - (xi) manaakitanga and ope mara (labour movement) and
 - (xii) extensive sea based trade via vessels moving between Hauraki and Auckland
 - (xiii) tamoko related traditions
 - (xiv) Haahi Ringatu related traditions

d. Ngati Porou ki Hauraki has undertaken these activities listed above since their first occupation, and then throughout and since the permanent reoccupation at Mataora and Harataunga from the 1840-1855 period. and continues to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga.

10. Ngati Porou ki Hauraki will provide more particularised information and customary evidence once funding for research and legal representation is secured.

Grounds on which the customary marine title application is made:

11. The grounds on which this order is sought are that:

- a. As above paragraphs 10 (a – d);
- b. Ngati Porou ki Hauraki has held the application area in accordance with tikanga since prior to 1840, and/or, in the alternative, as reaffirmed by the tuku of Paora Te Putu in 1852.
- c. Ngati Porou ki Hauraki has exclusively used and occupied the application area from 1840 to the present day without substantial interruption.

12. Ngati Porou ki Hauraki will provide more particularised information and customary evidence once funding for research and legal representation is secured.

13. Ngati Porou also inform the High Court that:-

- a. They have been informed by the Crown that it is likely, as per the legislation, that this Application will be transferred to the Wellington Registry of the High Court, and do not oppose that;

- b. They are engaged with the Crown in direct negotiations to recognise their customary rights (including customary marine title) in regards to the Application Areas contained within this Application. Their intention is that those negotiations will result in recognition of their rights and interests, and a implementation agreement will eventuate. This application serves to preserve the rights of the iwi to pursue an application for recognition of those rights and interests in the High Court, should those negotiations break down for any reason.

Contact Details:

14. The appointed contact person for this application for Ngati Porou ki Hauraki is:

John Tamihere
c/ Taunaki Limited
177 Stout Street, Mangapapa
Gisborne
mauatuatrust@gmail.com/john.tamihere@waiwhanau.com

15. This application relies on s51(1), s58, s98-113 of the Act, Part 19 of the High Court Rules and the affidavit of John Henry Tamihere.

Dated: 3rd April 2017



T J G Allan

Solicitor for the applicant

This application is filed by **TIMOTHY JOHN GEOFFREY ALLAN**, solicitor for the above-named plaintiff of the firm Grove Darlow & Partners. The address for service of the plaintiff is at the offices of Grove Darlow & Partners, Level 9, Rabobank Tower, 2 Commerce Street, Auckland.

Documents for service on the above-named plaintiff may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 2882, Auckland 1140; or
- (b) left for the solicitor at a document exchange for direction to DX CP24049; or
- (c) transmitted to the solicitor by facsimile on (09) 309 9875.