

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2017-404 - 564

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

AND

IN THE MATTER of an application by **NGĀI TAI KI TĀMAKI TRUST** an incorporated charitable trust with its offices at 102 Maraetai Drive, Maraetai, Auckland, on behalf of Ngāi Tai ki Tāmaki, for orders recognising customary marine title and protected customary rights

**NOTICE OF ORIGINATING APPLICATION FOR ORDERS RECOGNISING CUSTOMARY
MARINE TITLE AND PROTECTED CUSTOMARY RIGHTS**

Dated 31 March 2017

GM HIGH COURT
03 APR 2017
AUCKLAND GS

Director
Aidan Warren
aidan.warren@mccawlewis.co.nz

Solicitor
Leone Farquhar
leone.farquhar@mccawlewis.co.nz

McCaw Lewis
GOOD PEOPLE. GREAT LAWYERS.

ONE ON LONDON, 1 LONDON STREET, PO BOX 9348
HAMILTON 3240, NEW ZEALAND
DX GP 20020, TEL +64 - 7 - 838 2079
WWW.MCCAWLEWIS.CO.NZ

To the Registrar, High Court, Auckland

And to Auckland Council, Waikato Regional Council, Northland Regional Council, Thames Coromandel District Council, Hauraki District Council, Waikato District Council, Tauranga City Council and Western Bay of Plenty District Council

And to the Solicitor-General on behalf of the Attorney-General

This application is made by **NGĀI TAI KI TĀMAKI TRUST** an incorporated charitable trust, on behalf of Ngāi Tai ki Tāmaki (“the applicant”). Ngāi Tai ki Tāmaki Trust is the post settlement governance entity for Ngāi Tai ki Tāmaki.

This document notifies you that:

1. On _____ at _____ am/pm or as soon after that as it may be heard, the applicant will apply for orders recognising that Ngāi Tai ki Tāmaki has customary marine title and/or protected customary rights in the common marine and coastal area (“takutai moana”) depicted in the map attached as **Schedule A** (and as particularised below).

Applicant Group

2. Ngāi Tai ki Tāmaki whakapapa to the eponymous ancestor, Te Whatataao (Te Whatataau).
3. It is important to note that Ngāi Tai and Ngāti Tai are one in the same iwi as, over time, Ngāti Tai evolved to become Ngāi Tai ki Tāmaki.
4. Ngāi Tai ki Tāmaki are aware from discussions at three hui-a-iwi that the applicant is making this application on their behalf and they are generally supportive of this.

Application for Customary Marine Title

5. The applicant seeks orders recognising that they have customary marine title in the takutai moana in various areas along their coastal takiwā, as depicted in **Schedule A**, including the takutai moana abutting/surrounding the following specific areas/islands:
 - (a) Maraetai 3B and 3B2;
 - (b) Te Naupata (Musick Point);
 - (c) Ōwana Pā (also known as Āwana Pā) on Aotea (Great Barrier) Island;
 - (d) Te Maunga-a-Ūika (North Head Reserve);
 - (e) Te Kawakawa;
 - (f) Waitawa;
 - (g) Mātaitai;
 - (h) Pouto;

- (i) Waiterata;
- (j) Rangitoto Island;
- (k) Motuihe Island;
- (l) Motukaraka Island;
- (m) Motutapu Island;
- (n) Waiheke Island; and
- (o) Motukōrea Island.

6. The grounds on which customary marine title is sought are:

- (a) Ngāi Tai ki Tāmaki holds the takutai moana in their area of interest (takiwā), including in the specific areas noted above, in accordance with tikanga; and
- (b) Ngāi Tai ki Tāmaki has exclusively used and occupied the takutai moana in their takiwā, including in the specific areas noted above, from at least 1840 to the present day without substantial interruption.

Application for Protected Customary Rights

7. The applicant seeks orders recognising that Ngāi Tai ki Tāmaki have customary rights, including the rights below, throughout the Ngāi Tai ki Tāmaki coastal takiwā and, in particular, the takutai moana abutting/surrounding the areas depicted in **Schedule A**, (as particularised above):

- (a) Customary fishing - Ngāi Tai ki Tāmaki tūpuna were great fishermen and were recognised by the early settlers as such. They used traditional fishing methods to gather numerous fish species such as kahawai, snapper, shark, inanga and other species in various areas within the Ngāi Tai ki Tāmaki coastal takiwā. Ngāi Tai ki Tāmaki continue to rely on the old kōrero (narratives) of their tūpuna in continuing those customary fishing practises today;
- (b) Collecting kaimoana – Ngāi Tai ki Tāmaki tūpuna gathered kaimoana frequently at various places within their coastal takiwā, including in and around each of the areas specified above. They would choose those places in consideration of a number of factors, including the weather and the position of the moon and the stars. Ngāi Tai ki Tāmaki continue to do so today. The kaimoana that their tūpuna gathered historically (and that they continue to gather today) included kūtai (mussels), kina, tuangi (cockles), pipi, pāua and kōura (crayfish);
- (c) Rāhui – Ngāi Tai ki Tāmaki tūpuna placed rāhui in various areas of their coastal takiwā for different reasons, including to acknowledge the mauri (essence) and wairua (spirituality) of tragic historical events, to acknowledge the dead during tangihanga (in particular when there were

drownings in the moana), and to preserve the quality and quantity of kaimoana (seafood). This practise continues today in those and other circumstances. A specific example of this is an eight year continuous rāhui that has been placed at Umupuia/Maraetai in order to manage shellfish stocks;

- (d) Launching waka (canoes/boats) – There are also a number of sites from which Ngāi Tai ki Tāmaki tūpuna launched their waka, which we continue to utilise today. They are located both on the islands and in and around the other blocks/areas noted above. Examples include Whakakaiwhara which is located at Umupuia/Maraetai, Turanga Moana at Mangemangeroa near Whitford and Te Pane o Horoiwi at Achilles Point, St Helliers, which are still used by Ngāi Tai ki Tāmaki today. If needed they would also launch their waka from any tauranga waka site along their coastal takiwā which was also a customary practise; and
- (e) Right to control/have a say in the use of the takutai moana – Ngāi Tai ki Tāmaki have always had a customary right to control/have a say in the use of the takutai moana generally, including in relation to kaimoana gathering, in light of the mana whenua (territorial rights) they have in their coastal takiwā and their roles as kaitiaki (caretakers) of the takutai. Currently three Ngāi Tai ki Tāmaki uri (descendants) are certified by the Ministry of Fisheries to issue customary permits, however, Ngāi Tai ki Tāmaki seek to have their customary right to control/have a say in the use of the takutai moana as an iwi recognised formally.

8. The grounds on which the protected customary rights recognition order is sought are:

- (a) The relevant rights have been exercised by Ngāi Tai ki Tāmaki since at least 1840;
- (b) Ngāi Tai ki Tāmaki continue to exercise those rights in accordance with Ngāi Tai ki Tāmaki tikanga; and
- (c) The rights are not extinguished as a matter of law.

Contact Details for Ngāi Tai ki Tāmaki Trust

9. The contact details for Ngāi Tai ki Tāmaki and Ngāi Tai ki Tāmaki Trust are:

Contact person: James Brown
Chair, Ngāi Tai ki Tāmaki Trust

Postal address: 102 Maraetai Drive
Maraetai
Auckland

Phone number: 027 653 3000

Email: james.brown@ngaitai-ki-tamaki.co.nz

This application is made in reliance on sections 51(1), 58 and 98-113 of the Marine and Coastal Area (Takutai Moana) Act 2011, Rule 19.2(NA) of the High Court Rules 2016 and the Affidavit of James Brown filed in support of this application.

The applicant reserves their right to amend this application if required.

Date: 31 March 2017



A H C Warren/L M S Farquhar
Solicitors for the Applicant

This application is filed by **Aidan Warren**, solicitor for the applicant, (solicitor acting is **Leone Farquhar**). The address for service of the applicant is at the offices of McCaw Lewis Limited, Solicitors, Level 1, One on London, 1 London Street, (PO Box 9348, DX GP20020), Hamilton 3240.

Documents for service on the abovenamed applicant may be left at that address for service or may be:

1. Posted to the solicitor at PO Box 9348; or
2. Left for the solicitor at a document exchange for direction to DX GP20020; or
3. Transmitted to the solicitor by facsimile to (07) 839 4652; or
4. Transmitted to the solicitor by email at aidan.warren@mccawlewis.co.nz

