

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

**CIV-2017-404-582**

**UNDER**

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

**IN THE MATTER**

of an application by Te  
Whānau-a-Haunui (Royal  
family) for recognition orders  
under section 98 of the Act  
for customary marine title  
and protected customary  
rights in relation to  
Waimangō and the  
Wharekawa coast, Auckland

**ON BEHALF OF**

**Te Whānau-a-Haunui  
(Royal family)**  
of Waimangō, Auckland

Applicant

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**APPLICATION ON BEHALF OF TE WHĀNAU-A-HAUNUI (ROYAL FAMILY)**  
**Dated 3 April 2017**

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HIGH COURT  
03 APR 2017  
1600  
AUCKLAND

as

SPW

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**BERRY SIMONS**

**S J Berry**

Telephone: (09) 969 2300  
Facsimile: (09) 969 2304  
Email: simon@berrysimons.co.nz  
Postal: PO Box 3144  
Shortland Street  
AUCKLAND 1140

## 1. INTRODUCTION

1.1 **TE WHĀNAU-A-HAUNUI HEREBY APPLIES** pursuant to section 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 ("the Act") seeking orders recognising:

- (a) Customary marine title in relation to the common marine and coastal area at what is currently known as 400 Ōrere-Matengārahi Road ("Waimangō") which is the address since survey title issue; and
- (b) Protected customary rights in relation to the Wharekawa coast between Tāpapakanga in the north and Waimoho, just south of the Pūwhenua Stream, in the south.

### **Evidence supporting the application**

- 1.2 This application is supported by the affidavit of Antony Tūroa Hukehuke Royal dated 3 April 2017, which provides full details in relation to Te Whānau-a-Haunui, their customary practices, and use and occupation of the application area by Te Whānau-a-Haunui and their ancestors since 1840.
- 1.3 With leave of the Court, Te Whānau-a-Haunui intends to file further affidavit evidence in support of its application in future.

### **Scope of application**

- 1.4 This application sets out the following matters:
- (a) The Applicant Group (Section 2);
  - (b) The Application Area (Section 3);
  - (c) The recognition orders sought (Section 4);
  - (d) Grounds for the application (Section 5); and
  - (e) Procedural matters (Section 6).

## 2. APPLICANT GROUP

- 2.1 Te Whānau-a-Haunui comprises between 350 and 500 members who are decedents of Haunui Tukumana Royal. They are a constituent whānau of Ngāti Whanaunga ki Wharekawa ("Ngāti Whanaunga").
- 2.2 Te Whānau-a-Haunui are the tangata whenua and ahi kā of Waimangō, which lies within the rohe of Ngāti Whanaunga known as Wharekawa. Te Whānau-a-Haunui's mana was first established during the arrival of Tainui waka to Hauraki dating back to approximately 1350 AD. This mana whenua has been maintained continuously, reinforced and expressed in the unbroken ownership of property at Waimangō.
- 2.3 Te Whānau-a-Haunui is associated with Waimangō Papakāinga, Waimangō Urupā, and Wharekawa Marae.

### 3. APPLICATION AREA

- 3.1 The application area includes the common marine and coastal area along the western side of Tikapa Moana ō Hauraki (the Firth of Thames) between and around Tāpapakanga in the north and Waimoho, just south of the Pūwhenua Stream, in the south, out to 4.8 nautical miles ("the Application Area").
- 3.2 The application for protected customary rights applies to the entire Application Area. Te Whānau-a-Haunui's customary interests are shared and overlap with the wider whānau and hapū of Ngāti Whanaunga for the area beyond Te Whānau-a-Haunui's landholdings.
- 3.3 Customary marine title is sought only in relation to the common marine and coastal area at Waimangō. Te Whānau-a-Haunui are the primary kaitiaki of the mana whenua and mana moana at Waimangō.

### 4. RECOGNITION ORDERS SOUGHT

- 4.1 Te Whānau-a-Haunui seeks:

- (a) Customary marine title in relation to the common marine and coastal area at Waimangō; and
- (b) Protected customary rights in relation to the Wharekawa coast between Tāpapakanga in the north and Waimoho, just south of the Pūwhenua Stream, in the south.

#### **Customary marine title sought to be recognised**

- 4.2 Te Whānau-a-Haunui holds customary marine title within the Application Area in accordance with section 58 of the Act. Specifically:
- (a) Te Whānau-a-Haunui and their ancestors have exclusively used and occupied this area from 1840 to the present day without substantial interruption; and
  - (b) Te Whānau-a-Haunui hold land at Waimangō in accordance with tikanga.
- 4.3 These interests are set out in Mr Royal's affidavit which accompanies this application and are summarised below.

#### **Protected customary rights sought to be recognised**

- 4.4 Te Whānau-a-Haunui seeks a recognition order in relation to protected customary rights, in that they and their ancestors have exercised since 1840, and continue to exercise, customary rights in the Wharekawa area that have not been extinguished by law.
- 4.5 These customary rights include but are not limited to the following, as more specifically outlined in Mr Royal's affidavit:
- (a) **Kaitiakitanga:** As kaitiaki, Te Whānau-a-Haunui have exercised customary rights to protect the Application Area and its resources from:
    - (i) Exploitation and other inappropriate use and development within the Application Area; and

- (ii) Effects arising from development within the catchment that drains to the Application Area.
- (b) **Kohi Mātaitai:** This activity is one of the two primary resource activities practiced by Te Whānau-a-Haunui and its ancestors since prior to 1840. This activity has provided a significant source of food for feeding the local Ngāti Whanaunga and Te Whānau-a-Haunui community over a long period of time.
- (c) **Fishing:** This activity is the other of the two primary customary activities practiced by Te Whānau-a-Haunui and its ancestors since prior to 1840. This activity has also provided a significant source of food for feeding the local Ngāti Whanaunga and Te Whānau-a-Haunui community over a long period of time.
- (d) **Recreational Use:** Since before 1840, the waterways of the Application Area including the streams and the inner coastal waters have been used for entertainment and travel. The coastal communities used the waters as an integral part of their lives and daily activities. The coast was the easiest transport route up until only relatively modern times. Using a waka through to a modern rowboat and small motor boat was the transport of choice to attend school, shopping and attend gatherings. In modern times, Te Whānau-a-Haunui utilise the Application Area regularly over the summer period for swimming, washing, boating, a wide range of recreational water activities and of course bathing.

#### **Holder of orders**

- 4.6 Should the Court make orders recognising Te Whānau-a-Haunui's protected customary rights and / or customary marine title at Waimangō, it asks that these orders be held by:

Te Whānau-a-Haunui Ahuwhenua Trust  
10 Skip Lane Dannemora  
Auckland

Antony Royal (Chair)  
021 431 848  
[antony@tupu.co.nz](mailto:antony@tupu.co.nz)

Sheri-Ann Atuahiva (Secretary)  
021 224 3213  
[twah438@gmail.com](mailto:twah438@gmail.com)

Irene Kereama-Royal (Trustee)  
021 025 021 86  
[anewa.royal@gmail.com](mailto:anewa.royal@gmail.com)

#### **5. GROUNDS FOR APPLICATION**

- 5.1 The basis of the application is that:

- (a) Te Whānau-a-Haunui and its ancestors have enjoyed uninterrupted exclusive use and occupation of Waimangō dating back to the arrival of the Tainui canoe in 1350 AD, and have continued to exercise their customary rights and practices at Waimangō and the wider Wharekawa coast in accordance with tikanga since that time.

(b) Te Whānau-a-Haunui exercises customary rights and customary marine title in the Application Area as defined in section 51(1) and 58 of the Act respectively.

5.2 Details of the nature of this tikanga, its evolution and continued practice is set out further in Mr Royal's affidavit and is briefly summarised below for ease of reference.

#### **Exclusive use and occupation of Waimangō since 1840**

5.3 Te Whānau-a-Haunui and their ancestors have lived at Waimangō without interruption for more than two centuries. They are the last hapū with land title on a coastal block on the western coast of Tikapa Moana o Hauraki.

5.4 Te Whānau-a-Haunui and their ancestors have had use and occupation within the Application Area since the arrival of the Tainui waka in approximately 1350 AD. Te Whānau-a-Haunui ancestors who were on the Tainui waka, Hotunui and his son Marutahu, settled in Wharekawa and maintained customary rights in the area despite challenges from other Iwi. Ngāti Whanaunga Iwi, including Te Whānau-a-Haunui are direct descendants of these ancestors.

5.5 Te Whānau-a-Haunui continue to maintain customary relationships with other Ngāti Whanaunga whānau through hui, tangi, celebrations and other Wānanga events where customary rights and activities are often discussed and maintained as has been done since 1840.

#### **Land held in accordance with tikanga**

5.6 Te Whānau-a-Haunui and their ancestors have resided at Waimangō for more than two centuries. Their uninterrupted exclusive use and occupation of Waimangō, mana whenua and mana moana is recognised by local Iwi.

5.7 Te Whānau-a-Haunui has located its Pāpakainga and Uruapā adjacent to the sea and oriented them towards the water to maintain the connection between them and the adjacent moana, in accordance with tikanga.

5.8 Te Whānau-a-Haunui has a deep spiritual connection with Waimangō and its moana. They have kept strong hold of their traditions and ancestral knowledge, and have passed it down to the younger generation to enable their tikanga to continue into the future. Descendants regularly return to Waimangō to preserve these ties and connect to the land and surrounding moana.

5.9 Mr Royal's affidavit contains a full description of Te Whānau-a-Haunui's tikanga within the Waimangō common marine and coastal area, which includes:

(a) Whanaungatanga obligations – Undertaking whānau related activities, events and responsibilities, including tangi, whānau celebrations, wānanga, school camps and annual gatherings.

(b) Kaitiakitanga – Participation in activities associated with management of natural resources within the rohe, including monitoring; participation in policy and plan making processes; undertaking conservation initiatives and involvement in resource consent processes within the Wharekawa area.

(c) Papakāinga – Establishment of a central meeting place for Te Whānau-a-Haunui members, which is the preparation area for all

cultural, social, educational and environmental activities within the common marine and coastal area at Waimangō.

- (d) Whakatipu kai – Teaching younger members traditional practices of diving, fishing and gathering kaimoana according to tikanga, and collecting hangī stones.
- (e) Hanga Whare – Constructing a whare uku / rammed earth building on the Papakāinga overlooking the coast, built in conjunction with the Auckland University School of Engineering.
- (f) Mātauranga Māori – Wānanga are carried out at the Waimangō Papakāinga including waiata, traditional knowledge of land and sea traditions and whanaungatanga connections with the various Hauraki tribes, including research projects with national and international research institutes using Western Science and Mātauranga Māori to better understand and inform the use of the marine environment for sustainable development and the preservation of customary fisheries.
- (g) Manaakitanga – Relationships and responsibilities with Ngati Pāoa, and the Pāoa Whanaunga marae at Kaiaua.
- (h) Mahi Tauhokohoko – Exchange and trade of food and textiles, building resources to enact customary values of reciprocity and manaaki to other parts of wider Whanaunga ties.
- (i) Kaimoana - Gathering, harvesting, reseeding, preserving, breeding fish, plant and other seafood sources.

#### **Protected customary rights**

- 5.10 Te Whānau-a-Haunui seeks recognition orders in respect of the customary rights outlined in paragraph 4.5 above and more specifically set out in Mr Royal's affidavit on the grounds that they and their ancestors have exercised since 1840, and continue to exercise, customary rights in the Wharekawa area that have not been extinguished by law.

#### **6. PROCEDURAL MATTERS**

##### **Service on other parties**

- 6.1 This application will be served forthwith on the following parties in accordance with section 102 of the Act:
- (a) Auckland Council; and
  - (b) The Solicitor-General on behalf of the Attorney-General

This document is filed by **Simon John Berry**, solicitor for the Applicant.

The address for service of the Applicant is at the offices of Berry Simons at Old South British Building, Level 1, 3-13 Shortland Street, Auckland 1010. Documents for service may be left at that address for service or may be:

- (a) Posted to PO Box 3144, Auckland 1140.
- (b) Emailed to [simon@berrysimons.co.nz](mailto:simon@berrysimons.co.nz).