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

CIV-2017- 419-84

IN THE MATTER OF

the Marine and Coastal Area (Takutai Moana)

Act 2011

AND

IN THE MATTER OF

an application by STANLEY RAHUI PAPA for and on behalf of ngaa hapuu me ngaa marae o te takutai moana o Waikato-Tainui for orders recognising Customary Marine Title and

Protected Customary Rights

Applicant

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

3 March 2017

KAHUI

PO Box 1654

Telephone: 04 495 9999 Facsimile: 04 495 9990

Counsel:

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WELLINGTON

HIGH/DISTRICT COURT

-3 APR 2017 4.45pm \$540

HAMILTON

TO: The Registrar of the High Court at Hamilton

AND TO: Waikato Regional Council

Auckland Council

Waikato District Council

Otorohanga District Council

Waitomo District Council

Hauraki District Council

The Solicitor-General on behalf of the Attorney-General

THIS DOCUMENT NOTIFIES YOU THAT:

- A. The applicant, Stanley Rahui Papa, on behalf of ngaa hapuu me ngaa marae o te takutai moana o Waikato-Tainui, will on 3 April 2017 apply to the High Court for orders pursuant to sections 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the **Act**):
 - a. recognising customary marine title in the common marine and coastal area that is the subject of this application; and
 - b. recognising protected customary rights in the common marine and coastal area that is the subject of this application.
- B. The grounds on which the orders are sought are as follows:

The Applicant

- This application is made by Stanley Rahui Papa on behalf of ngaa hapuu me ngaa marae o te takutai moana o Waikato-Tainui, being the hapuu and marae of Waikato-Tainui who hold customary interests in the common marine and coastal area that is the subject of this application.
- 2. The applicant is the Chairperson of Te Arataura, which is the executive board of Te Whakakitenga o Waikato Incorporated (**Te Whakakitenga**). Te Whakakitenga is the representative tribal organisation for the iwi of Waikato-Tainui and is:



- (a) the trustee of the Waikato Raupatu Lands Trust, the post-settlement governance entity for the iwi of Waikato-Tainui for the purposes of the Waikato Raupatu Claims Settlement Act 1995; and
- (b) the trustee of the Waikato Raupatu River Trust, the post-settlement governance entity for the iwi of Waikato-Tainui for the purposes of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.
- 3. The 33 hapuu and 68 marae affiliated to Waikato-Tainui are identified in **Appendix A** to this application.

Area to which application relates

- 4. The Applicant seeks recognition of customary marine title and protected customary rights in respect of:
 - (a) the common marine and coastal area of the west coast of the North Island from Motunau Rock at Harihari (south of Kaawhia Harbour) in the south to Whatipuu (north of the Manukau Heads) in the north and from the landward boundary of the mean high water springs to the seaward boundary of the outer limits of the territorial sea (12 nautical miles from shore); including, but not limited to:
 - (i) the harbours of Kaawhia, Aotea, Whaingaroa (Raglan) and Te Maanukanuka a Hoturoa (Manukau);
 - (ii) Te Puuaha o Waikato (Port Waikato and the Port Waikato deltas); and
 - (iii) those parts of the Waikato River and other waterways that form part of the coastal marine area; and

(collectively, the West Coast Takutai Moana Area)

(b) the common marine and coastal area on the western coast of Tikapa Moana (Hauraki Gulf) adjacent to Waharau from the

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landward boundary of the mean high water springs to the seaward boundary of the outer limits of the territorial sea (12 nautical miles from shore) (the **East Coast Takutai Moana Area**)

5. A map showing the areas subject to this application is annexed as Appendix B to this application.

Applicant Group

- 6. The Applicant Group comprises the hapuu and marae of Waikato-Tainui who hold customary interests in the common marine and coastal area that is the subject of this application.
- 7. Particular hapuu and marae of Waikato-Tainui hold mana i te whenua (authority over land) and mana i te moana (authority over the ocean) in respect of different parts of the common marine and coastal area that is the subject of this application (as further set out in paragraphs 18 and 19 below):

Orders sought

Customary Marine Title

8. The Applicant seeks an order recognising customary marine title over the West Coast Takutai Moana Area and East Coast Takutai Moana Area.

Protected Customary Rights

- 9. The Applicant seeks an order recognising protected customary rights within the West Coast Takutai Moana Area and East Coast Takutai Moana Area, including, but not limited to, rights to:
 - (a) the exercise of kaitiakitanga;
 - (b) rāhui;

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- (c) the use of tauranga waka (landing, launching, anchoring, mooring vessels);
- (d) the use of tauranga ika (specific areas for the catching and harvesting of fish within the reef systems and anchoring and mooring of vessels for fishing purposes);
- (e) wharewaka/boat sheds;
- (f) the extraction and use of: sand, peat, shingle, aggregate, rocks, stone, driftwood, ochre, saltwater, seaweed, pingao and harakeke;
- (g) maara mataitai/non-commercial aquaculture; and
- (h) using the specified area for ceremonies associated with burial, blessings and rongoa.

Grounds

- 10. Sections 94 and 98 of the Act confer on the High Court the jurisdiction to make orders recognising customary marine title and protected customary rights, provided that the Applicant Group meets the tests for customary marine title set out under section 58 of the Act and protected customary rights set out under section 51(1) of the Act.
- 11. Prior to 1840, the hapuu and marae of Waikato-Tainui were owners, in accordance with tikanga, of all of the coastal lands, waters and natural resources within the rohe (territory) of Waikato-Tainui, including what is now referred to as the common marine and coastal area.
- 12. Since 1840, the hapuu and marae of Waikato-Tainui have retained legal ownership of certain of those coastal lands, but they have never relinquished their customary rights as tangata whenua in relation to what is now known as the common marine and coastal area.
- 13. The hapuu and marae of Waikato-Tainui assert ownership and use of ngaa rohe moana o Waikato-Tainui, without substantial interruption, based on the

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tikanga, customary law, common law and statute and rely on unbroken occupation and use and the continued exercise of mana and rangatiratanga since 1840.

- 14. The hapuu and marae of Waikato-Tainui assert that the continued ownership of ngaa rohe moana o Waikato-Tainui is a fundamental and integral expression of the mana and rangatiratanga of those hapuu and marae.
- 15. The hapuu and marae of Waikato-Tainui assert that they have continued to exercise customary rights, in accordance with tikanga, in relation to the lands, waters, fisheries and other natural resources of the marine and coastal environment.
- 16. This continued ownership and use is evidenced in:
 - (a) the records of the native and Maaori Land Court and other historical records;
 - (b) the extensive traditional history, including oral histories, whakapapa, pepeha, whakataukii, waiata and mooteatea of the hapuu and marae of Waikato-Tainui;
 - (c) the affidavits of Stanley Rahui Papa and Wiremu Hira Ricky Muru filed in support of this application; and
 - (d) the further affidavits to be filed in support of this application following the completion of research, including in relation to:
 - (i) the whakapapa connections of relevant Waikato-Tainui hapuu;
 - (ii) occupation and use of the relevant coastal and marine areas and resources from the time of the arrival of the Tainui waka to the present day;
 - (iii) continued occupation and use of the relevant coastal and marine areas and resources by Waikato-Tainui hapuu throughout the Crown's land and resource alienation processes;

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(iv) customary practices and associated tikanga including the use of natural resources.

Holder of the recognition orders

- 17. The holders of the recognition order within particular areas of the West Coast Takutai Moana Area and East Coast Takutai Moana Area will be the hapuu and marae (one or more) with relevant interests in the areas in which customary marine title and/or protected customary rights are recognised.
- 18. Within the West Coast Takutai Moana Area, the relevant hapuu and marae with reference to particular areas include:
 - (a) Ngaati Mahuta (Aaruka, Te Koraha and Maketu marae): interests from Motunau Rock (Harihari) to Kaawhia Moana and north to Aotea Moana;
 - (b) Ngaati Apakura (Mookai Kaainga marae): interests within Kaawhia Moana;
 - (c) Ngaati Hikairo (Waipapa marae): interests within Kaawhia Moana and north to Aotea Moana;
 - (d) Ngaati Ngutu (Raakaunui marae): interests within Kaawhia Moana;
 - (e) Ngaati Te Wehi (Okapu and Te Tihi o Moerangi marae): interests within Aotea Moana and north to Whaingaroa Moana;
 - (f) Ngaati Mahanga (Te Papatapu marae): interests within Aotea Moana;
 - (g) Ngaati Tuirirangi (Mootakotako marae): interests within Aotea Moana and north to Whaingaroa Moana;
 - (h) Tainuiaawhiro/Tainui (Poihakena marae): interests within Whaingaroa Moana;

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- (i) Ngaati Mahanga (Te Papaorotu, Omaero, Aramiro marae): interests within Whaingaroa Moana;
- (j) Ngaati Tamainupoo (Waingaro marae): interests within Whaingaroa Moana;
- (k) Ngaati Taahinga (Te Aakau marae): interests within Whaingaroa Moana;
- (I) Ngaati Taahinga (Te Aakau, Pukerewa, Waikaretu/Weraroa, and Ooraeroa marae): interests within Whaingaroa Moana and north to Te Puuaha o Waikato;
- (m) Ngaati Taahinga (Ooraeroa, Tikirahi and Te Poho o Tanikeha marae): interests within Te Puuaha o Waikato to Te Awa o Mangataawhiri;
- (n) Ngaati Tipa (Tauranganui marae): interests within Te Puuaha oWaikato to Te Awa o Mangataawhiri;
- (o) Ngaati Tipa (Ngaa Tai e Rua marae): interests within Te Puuaha oWaikato to Te Awa o Mangataawhiri;
- (p) Ngaati Aamaru (Te Awamaarahi and Te Kotahitanga marae): interests within Te Puuaha o Waikato to Te Awa o Mangataawhiri;
- (q) Ngaati Tamaoho (Mangatangi marae) interests within Te Puuahao Waikato to Te Awa o Mangataawhiri MHWS;
- (r) Ngaati Te Ata (Rereteewhioi marae): interests within Te Puaha o Waikato to Te Awa o Manukau Moana; and
- (s) Te Aakitai interests from Te Puuaha o Waikato to Otakanini Paa (South Kaipara).



- 19. Within the East Coast Takutai Moana Area, the relevant hapuu and marae are Ngaati Mahuta and Waahi Paa, who in turn safeguard the interests of the Kiingatinga in relation to this area.
- 20. The Applicant, on behalf of the hapuu and marae of Waikato-Tainui, seeks leave to amend this aspect of the application at a later date, noting the principle that customary marine title is a collectively-held right of each of the hapuu and marae of Waikato-Tainui.

Contact

21. In addition to the solicitors for the Applicant, the contact details for the Applicant are:

Te Whakakitenga o Waikato Incorporated
Private Bag 3344
Waikato Mail Centre
HAMILTON 4240

Attn: Donna Flavell, Chief Executive

Adjournment

- 22. The Act provides two pathways for the recognition of customary marine title and protected customary rights namely through:
 - (a) an agreement made in accordance with section 95 and brought into effect under section 96; and
 - an order of the High Court made on an application under section 100.
- 23. In parallel with this application, the Applicant has also filed an application with the responsible Minister on behalf of the Crown to enter into a recognition agreement.
- 24. On that basis, the Applicant advises that he is likely to seek leave from the Court to adjourn the present application for a six (6) month period to enable

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discussions to be progressed with the responsible Minister regarding a recognition agreement.

25. This application is made on reliance on on sections 51(1), 58 and 98 to 113 of the Act, the affidavits noted in paragraph 16, and *Re Tipene* [2016] NZHC 3199.

DATED at Hamilton this 3rd day of April 2017

Stanley Rahui Papa Applicant

THIS application is filed by **JAMES PHILIP FERGUSON**, of the firm Kahui Legal. The address for service of the Applicant is at the office of Kahui Legal, Solicitors, Level 11, Intilecta Centre, 15 Murphy Street, Wellington.

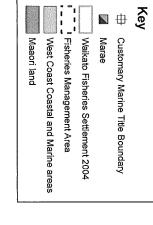
Documents for service on the Applicant may be left at that address for service or may be:

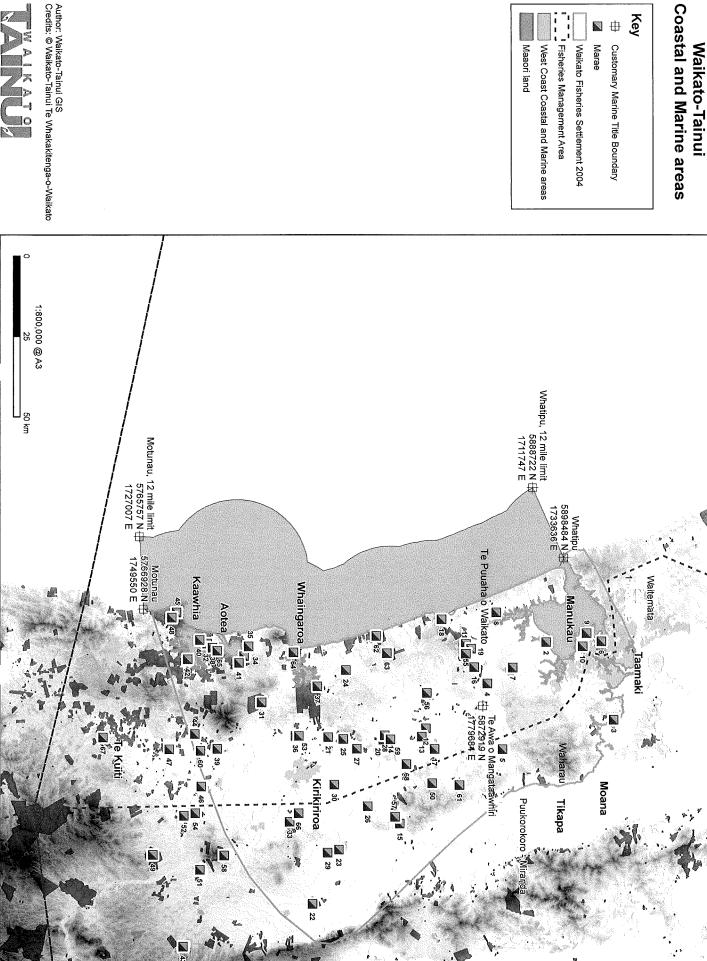
- (a) posted to the solicitor at PO Box 1654, Wellington; or
- (b) emailed to the solicitor at jamie@kahuilegal.co.nz and natalie@kahuilegal.co.nz.

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Coastal and Marine areas Waikato-Tainui





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