

IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY

CIV-2017-419-85

IN THE MATTER OF an application under the **MARINE AND  
COASTAL AREA (TAKUTAI MOANA) ACT  
2011**

AND

IN THE MATTER an application by **TE TOKANGANUI-A-NOHO  
REGIONAL MANAGEMENT COMMITTEE**

**Applicant**

---

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

**3 April 2017**

---

HIGH/DISTRICT COURT  
03 APR 2017  
HAMILTON

---

Te Tokanganui-a-noho Regional Management Committee  
PO Box 36  
**Te Kuiti 3910**

**TO: The Registrar of the High Court in Hamilton**  
**AND TO: The Solicitor-General on behalf of the Attorney-General**  
**Waitomo District Council**  
**Waikato Regional Council**

**THIS DOCUMENT NOTIFIES YOU THAT:**

- A. The Applicant, Te Tokanganui-a-noho Regional Management Committee (TTRMC), on behalf of the marae of Te Kumi, Oparure, Te Tokanganui-a-noho, Motiti, Tomotuki, Mangarama, Te Ahoroa, Te Piruru and Tane Hopuwai (the **Applicant Group**), will on 3 April 2017 apply to the High Court for orders recognising customary marine title and protected customary rights pursuant to sections 98 and 100 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the **Act**).
- B. The grounds on which the orders are sought are as follows:

**Background**

1. The Applicant Group has significant interests along the West Coast of the North Island and inland. It has continued to exercise mana whenua, mana moana and kaitiakitanga over its marine and coastal area.
2. Sections 94 and 98 of the Act confer on the High Court the jurisdiction to make an order recognising a protected customary right and customary marine title, 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 in section 51(1) of the Act.

**Order Sought**

3. The Applicant seeks recognition orders from the High Court under section 98 of the Act for:
  - (a) customary marine title over the Applicant Group's marine and coastal area (the Applicant considers the Applicant Group meets

the tests for customary marine title under section 58 of the Act);  
and

- (b) protected customary rights within the Applicant Group's marine and coastal area (the Applicant considers the Applicant Group meets the tests for protected customary rights set out under section 51 of the Act).

**Protected customary rights – section 101(b)**

4. The Applicant seeks recognition orders for the exercise of kaitiakitanga as a protected customary right, which includes, but is not limited to:

- (a) practices in relation to tohora;
- (b) collection of:
  - (i) bones;
  - (ii) stones;
  - (iii) sand;
  - (iv) plants;
  - (v) seaweed;
  - (vi) freshwater;
  - (vii) seawater;
  - (viii) kaimoana;
  - (ix) driftwood; and
- (c) rahui.

**The Applicant Group – section 101(c)**

***Applicant Group***

5. The Applicant Group are the hapū who affiliate to the following marae:

Te Kumi

Oparure  
Te Tokanganui a noho  
Motiti  
Tomotuki  
Mangarama  
Te Ahoroa  
Te Piruru  
Tane Hopuwai

*Te Tokanganui-a-noho Regional Management Committee*

6. TTRMC is making this claim on behalf of the Applicant Group.
7. TTRMC is a regional management committee in accordance with section 8 of the Maniapoto Māori Trust Board Act 1988, and is a collective of nine marae comprising: Te Kumi, Oparure, Te Tokanganui a noho, Motiti, Tomotuku, Mangarama, Te Ahoroa, Te Piruru and Tane Hopuwai.

**The Specified Area – section 101(d)**

*Applicant Group Coastal Marine Area*

8. The area to which this application relates is the common marine and coastal area from Waihekuri Stream in the north to Tirua Point in the south (the **Application Area**).

**Grounds on which the Application is made – section 101(e)**

*Customary marine title*

9. On behalf of the Applicant Group, the TTRMC submits that the necessary requirements for customary marine title (section 58 of the Act) and protected customary rights (section 51 of the Act) are satisfied, in particular:

- (a) in relation to customary marine title:

- (i) the Applicant Group holds the Application Area in accordance with tikanga (section 58(1)(a));
  - (ii) the Applicant Group has, in relation to the Application Area exclusively used and occupied the Application Area from 1840 to the present day without substantial interruption (section 58(1)(b));
  - (iii) the Applicant Group owns part of the land abutting the Application Area and have done so without substantial interruption, from 1840 to the present day (section 59(1)(a)(i)); and
  - (iv) the Applicant Group exercises non-commercial customary fishing rights in the Application Area and have done so from 1840 to the present day (section 59(1)(a)(ii)), and
- (b) in relation to protected customary rights:
- (i) the protected customary rights have been exercised since 1840 (section 51(1)(a));
  - (ii) the protected customary rights continue to be exercised in the Application Area in accordance with tikanga by the Applicant Group, whether it continues to be exercised in exactly the same or a similar way, or evolves over time (section 51(1)(b)); and
  - (iii) the protected customary rights are not extinguished as a matter of law (section 51(1)(c)), and
- (c) as set out in the affidavit in support of this application.

**The holder of the recognition orders – section 101(f)-(g)**

10. Although TTRMC (or, in the event that the holders must be a natural person, the members of TTRMC in their capacity as members of

TTRMC), currently proposes to be the holder of the order, it intends to hold hui with marae, hapū and whanau within the Application Area after the deadline has passed, and to discuss who is the appropriate holder of the order. Accordingly, TTRMC seeks leave to amend this aspect of the application at a later date.

11. The contact details of TTRMC are:

TTRMC  
PO Box 36  
Te Kuiti 3910

**Affidavit in Support – section 101(h)**

12. This application is supported by the affidavit of Vicky Ailsa Helen Smith. The affidavit in support of this application sets out the basis on which the Applicant Group claims to be entitled to the recognition order for protected customary rights and customary marine title over the Application Area. TTRMC will provide more information once funding for research and legal representation is secured. The TTRMC, on behalf of the Applicant Group, seeks leave to file further evidence to support this application at a later date if necessary.

**Adjournment**

13. The Act provides two pathways for the recognition of customary marine title and protected customary rights; namely through:
- (a) a recognition agreement with the responsible Minister on behalf of the Crown made in accordance with section 95 and brought into effect under section 96; and
  - (b) an order of the Court made on an application under section 100.
14. In parallel with this application, TTRMC has also filed an application with the responsible Minister on behalf of the Crown to enter into a recognition agreement.
15. On that basis, TTRMC seeks a six (6) month adjournment from the High Court to undertake discussions with the responsible Minister on behalf of

the Crown to enter into a recognition agreement. Should the TTRMC require a further adjournment following the initial 6 month period to continue discussions with the Crown to reach an agreement, TTRMC will seek the leave of the High Court.

16. This application is made on reliance on section 58 and 59 of the Act, the affidavit noted in paragraph 12 and *Re Tipene* [2016] NZHC 3199.

**DATED** at Hamilton this 3<sup>rd</sup> day of April 2017.



**Vicky Ailsa Helen Smith**

Representative of the Applicant

**THIS** application is filed by **Vicky Ailsa Helen Smith**. The address for service of the Applicant is PO Box 36, Te Kuiti 3910.

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

- (a) posted to PO Box 36, Te Kuiti 3910;
- (b) emailed to the Applicant at [office@maniapoto.co.nz](mailto:office@maniapoto.co.nz)

Documents served on the Applicant should be marked for the attention of **Vicky Ailsa Helen Smith**.