

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2017 -485-196

IN THE MATTER OF

The Marine and Coastal Area (Takutai Moana) Act 2011

AND IN THE MATTER OF

An application by **TE RUNANGA O NGATI AWA** for and on behalf of **NGATI AWA** for recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011

Applicant

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

Dated: 29 March 2017



KONING WEBSTER LAWYERS

Level 1, 34 Gravatt Road
PO Box 11120
PAPAMOA 3151
Telephone: (07) 547 4283
Facsimile: (07) 572 0220

Case Manager
Solicitor Acting: S T Webster

Next Event: / /

31 MAR 2017

THE HIGH COURT
WELLINGTON

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

- To:** the Registrar of the High Court at Wellington
- And to:** the Attorney General of New Zealand
- And to:** the Minister of Local Government as the territorial authority for Motiti Island
- And to:** Bay of Plenty Regional Council

This document notifies you that:

1. The Applicant applies to the High Court for recognition orders pursuant to s 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (**Act**) recognising that Ngati Awa holds:
 - 1.1 Customary Marine Title pursuant to s 58 of the Act including recognition of waahi tapu pursuant to s 78 of the Act; and
 - 1.2 Protected Customary Rights pursuant to s 51 of the Act.

Applicant

2. Te Runanga o Ngati Awa is a body corporate constituted under Te Runanga o Ngati Awa Act 2005 (**Runanga**).
3. Section 5 of Te Runanga o Ngati Awa Act 2005 provides that the Runanga is a representative of Ngati Awa.
4. The Runanga is governed by persons appointed by the 22 existing hapu of Ngati Awa namely:
 - 4.1 Ngati Pukeko;
 - 4.2 Te Patuwai;
 - 4.3 Ngati Maumoana;
 - 4.4 Ngai Taiwhakaea;
 - 4.5 Ngai Tamaoki;
 - 4.6 Ngati Hokopu ki Hokowhitu;
 - 4.7 Te Kahupāke;
 - 4.8 Ngai Te Rangihouhiri;
 - 4.9 Warahoe;
 - 4.10 Wharepaia;

- 4.11 Ngati Hokopu ki Wairaka;
 - 4.12 Te Pahipoto;
 - 4.13 Tuariki;
 - 4.14 Nga Maihi;
 - 4.15 Ngai Tamapare;
 - 4.16 Ngai Tamawera;
 - 4.17 Ngati Hāmua;
 - 4.18 Te Tawera;
 - 4.19 Ngati Hikakino;
 - 4.20 Ngati Rangataua;
 - 4.21 Ngati Awa ki Tamaki makau rau; and
 - 4.22 Ngati Awa ki Poneke.
5. On 24 February 2017, the Runanga resolved to and approved the filing of a claim to the High Court under the Marine and Coastal Area (Takutai Moana) Act 2011 for and on behalf of Ngati Awa.

Ngati Awa

- 6. Ngati Awa is an iwi of the Mataatua waka.
- 7. Section 13 of the Ngati Awa Claims Settlement Act 2005 defines Ngati Awa as follows:

13 Meaning of Ngati Awa

(1) Ngati Awa—

- (a) means nga uri o nga hapu o Ngati Awa (the descendants of hapu of Ngati Awa); and
- (b) includes—
 - (i) the collective group composed of individuals referred to in subparagraph (ii); and
 - (ii) every individual who is—
 - (A) descended from a Ngati Awa tipuna:
 - (B) a member of a hapu, group, family, or whanau referred to in subparagraph (iii) and (iv); and
 - (iii) the hapu of Ngati Awa; and
 - (iv) any hapu, group, family, or whanau composed of individuals referred to in subparagraph (ii).

(2) In this section and section 14, Ngati Awa tipuna means a person who exercised customary rights—

- (a) by virtue of being descended from—
 - (i) Awanuiarangi II:
 - (ii) a recognised ancestor of any of the hapu of Ngati Awa; and

(b) at any time after 6 February 1840 predominantly in relation to the Ngati Awa area of interest.

(3) In this section,—

customary rights means rights according to tikanga Maori (Maori customary values and practices), including the following

- (a) rights to occupy land:
- (b) rights in relation to the use of:
 - (i) land:
 - (ii) natural or physical resources

hapu of Ngati Awa means—

(a) the following 22 hapu being:

- (i) Ngati Hokopu—Te Whare o Toroa:
- (ii) Ngati Hokopu—Te Hokowhitu a Tu Ki Te Rahui:
- (iii) Ngati Wharepaia:
- (iv) Ngati Pukeko:
- (v) Ngati Rangataua:
- (vi) Ngai Tamapare:
- (vii) Te Patuwai:
- (viii) Ngati Maumoana:
- (ix) Ngai Taiwhakaea II:
- (x) Ngati Hikakino:
- (xi) Ngai Te Rangihouhiri II:
- (xii) Te Tawera:
- (xiii) Nga Maihi:
- (xiv) Te Pahipoto:
- (xv) Ngai Tamaoki:
- (xvi) Ngai Tamawera:
- (xvii) Tuariki:
- (xviii) Warahoe:
- (xix) Ngati Hamua:
- (xx) Ngati Awa ki Tamaki Makaurau:
- (xxi) Ngati Awa ki Poneke:
- (xxii) Te Kahupake; and

(b) the following tribal identities, which are incorporated into the hapu listed in paragraph (a):

- (i) Ngati Ahi:
- (ii) Ngati Hinanoa:
- (iii) Ngati Irawharo:
- (iv) Kahurere:
- (v) Ngati Nuku:
- (vi) Te Patutatahi:
- (vii) Te Patutahora:
- (viii) Ngati Tapatahi

Ngati Awa area of interest means the area identified in attachment 1.1 of the Ngati Awa deed of settlement as the area that Ngati Awa identifies as its area of interest together with the adjacent waters and offshore islands.

- (4) For the purposes of the definitions of Ngati Awa and Ngati Awa tipuna, a person is descended from another person if the person is descended from the other person by—
- (a) birth; or
 - (b) legal adoption; or
 - (c) Maori customary adoption in accordance with the custom of Ngati Awa.

Application Area

8. The area to which this application relates is the common marine and coastal area (as defined in s 9 of the Act) as depicted in the in the map annexed to the affidavit of Dr Hohepa Mason and marked DHM1 (**Application Area**).
9. The Application Area includes the marine and coastal area around the following islands, islets and rocky outcrops:
- 9.1 the Motiti group including Motiti, Motupatiki, Motukahakaha, Motuputa, Motunau, Motuhaku and Taumaihi;
 - 9.2 the Rurima group including Rurima, Tokata and Moutoki;
 - 9.3 Moutohorā;
 - 9.4 Te Paepae o Aotea;
 - 9.5 Whakaari (White Island);
 - 9.6 the Koohi Point Rocks including Rukupō, Whakaari, Te toka o te rua o te ika, Areiawa, Toka Kuku pōnania, Hingarāe, Toka roa, Rangaia, Turuturu, Toka māuku, Te Toka Kaokaoroa, Toka tapu, Hinetūahoanga, Hī moka; and
 - 9.7 Ohakana and Ureatar Islands in Ohiwa Harbour.
10. The Application Area also includes the portions of the following harbours and awa within the common marine and coastal area:
- 10.1 Ohiwa Harbour;
 - 10.2 Whakatane River;
 - 10.3 Orini Stream;
 - 10.4 Rangitaiki River;
 - 10.5 Tarawera River;
 - 10.6 Herepuru Stream;
 - 10.7 Pikowai Stream;
 - 10.8 Waitahanui Stream; and
 - 10.9 Waihi Estuary.

Grounds

11. Ngati Awa source their mana and tino rangatiratanga from the earliest ancestors known to have inhabited their rohe including Maui and Tiwakawaka.
12. From those early ancestors came Toi Te Huatahi who established Te Tini o Toi in the Bay of Plenty prior to the arrival of the Mataatua waka. The tupuna of Ngati Awa were Te Tini o Toi including Awanuiārangi I.
13. Ngati Awa also trace their descent from Toroa the captain of the Mataatua waka. The occupants of the Mataatua waka sailed throughout the north island before arriving and settling in the Bay of Plenty. The occupants of the Mataatua waka merged with Te Tini o Toi.
14. The eponymous ancestor of Ngati Awa is Awanuiārangi II, the great grandson of Toroa. The various hapu of Ngati Awa principally trace their whakapapa through Awanuiārangi II.
15. Ngati Awa has an extensive history of exercising mana, tino rangatiratanga, kaitiakitanga and customary rights over the common marine and coastal area from the time of Maui, Toi Te Huatahi, Toroa and Awanuiārangi II to the present day.
16. The common marine and coastal area and the resources therein are integral to the identity, mana and customs of Ngati Awa.
17. Ngati Awa retains a significant presence in the common marine and coastal area as evidenced by the following examples:
 - 17.1 Te Paepae o Aotea is vested in the Applicant as trustee;
 - 17.2 the Rurima group is owned by Ngati Awa individuals and is set aside as a fishing and flora and fauna reserve;
 - 17.3 the Koohi Point rocks in the mouth of the Whakatane River are vested in Ngati Awa as Maori customary land (being land held in accordance with tikanga Maori);
 - 17.4 Ngati Awa individuals own land on Motiti Island;
 - 17.5 Ngati Awa individuals own lands adjacent to or over the common marine and coastal area throughout the Ngati Awa rohe;
 - 17.6 the enduring relationship of Ngati Awa to Moutohorā is statutorily acknowledged and described in schedule 7 of the Ngati Awa Claims Settlement Act 2005;
 - 17.7 the enduring relationship of Ngati Awa to Uretara Island in the Ohiwa Harbour is statutorily acknowledged and described in schedule 9 of the Ngati Awa Claims Settlement Act 2005;
 - 17.8 the maintenance of waahi tapu by Ngati Awa within the common marine and coastal area.

Recognition order for Customary Marine Title order

18. The Applicant repeats paragraphs 11-17 and seeks a recognition order for

Customary Marine Title for the Application Area on the grounds that the Application Area:

- 18.1 is held in accordance with the tikanga o Ngati Awa; and
 - 18.2 has been exclusively used and occupied by Ngati Awa from 1840 to the present day without substantial interruption.
19. The order for customary marine title should be in the name of the Applicant as representative of Ngati Awa.

Recognition order for Protected Customary Rights

20. The Applicant repeats paragraphs 11-17 and seeks a recognition order for the following Protected Customary Rights in the Application Area:
- 20.1 exercise of kaitiakitanga over the moana, awa, islands, islets, rocks and waters of Ngati Awa;
 - 20.2 exercise of kaitiakitanga over waahi tapu, sites of significance, customary resource gathering areas and generally within the common marine and coastal area;
 - 20.3 collecting customary resources from the common marine and coastal area;
 - 20.4 seeding or gathering fish and seafood;
 - 20.5 the mooring, launching and landing of waka;
 - 20.6 planting, cultivating or gathering plants and aquatic flora;
 - 20.7 extracting minerals;
 - 20.8 collecting stone, wood and other natural resources; and
 - 20.9 nohoanga.
21. The Applicant seeks a recognition order on the following grounds:
- 21.1 Ngati Awa has exercised the Protected Customary Rights in the Application Area since 1840;
 - 21.2 Ngati Awa continues to exercise the Protected Customary Rights in accordance with tikanga in the Application Area; and
 - 21.3 the Protected Customary Rights have not been extinguished by law.
22. The recognition order for the Protected Customary Rights should be in the name of the Applicant.

Affidavit and legal principles

23. This application is made in reliance on:
- 23.1 the affidavit of Dr Hohepa Mason sworn on 29 March 2017; and
 - 23.2 *Re Tipene* [2016] NZHC 3199.

Contact details

24. The contact details for the Applicant are:

Te Runanga o Ngati Awa

Ngati Awa House

4 Louvain St, Whakatane

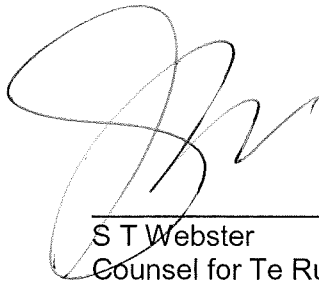
PO Box 76, Whakatane 3158

Telephone: 07 307 0760

Fax: 07 307 0762

Email: runanga@ngatiawa.iwi.nz

Date: 29 March 2017



S T Webster
Counsel for Te Runanga o Ngati Awa

This application is filed by **KONING WEBSTER LAWYERS**, solicitors for the applicant. The address for service of the applicant is at the offices of Koning Webster Lawyers, Level 1, 34 Gravatt Road, Papamoa.

Documents for service on the applicant may be delivered to that address or may be:

- (a) posted to PO Box 11120, Papamoa 3151;
- (b) transmitted by facsimile on (07) 572 0220; or
- (c) emailed to spencer@kwlaw.co.nz