

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

CIV-2017-485-220

**IN THE MATTER OF**

an application under the **MARINE AND  
COASTAL AREA (TAKUTAI MOANA) ACT  
2011**

**AND**

**IN THE MATTER OF**

an application by the Trustees of Pāpāuma  
Marae on behalf of the original owners of  
Mataikona 1, 2 and 3 Blocks and their  
descendants

**Applicant**

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**An application for recognition orders pursuant to the Marine and Coastal Area  
(Takutai Moana) Act 2011**

**3 April 2017**

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**KAHUI**  
LEGAL

PO Box 1654

Telephone: 04 495 9999

Facsimile: 04 495 9990

Counsel: D H Stone / K J Tarawhiti

**WELLINGTON**

Case Manager

Next Event: / /

- 3 APR 2017

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THE HIGH COURT  
WELLINGTON

**TO: The Registrar of the High Court in Wellington**  
**AND TO: The Solicitor-General on behalf of the Attorney-General**  
**Tararua District Council**  
**Horizons Regional Council**  
**Masterton District Council**  
**Greater Wellington Regional Council**

**THIS DOCUMENT NOTIFIES YOU THAT:**

- A. The applicant, the Trustees of Pāpāuma Marae (the **Applicants**) on behalf of the original owners of Mataikona 1, 2 and 3 Block and their descendants (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 owners and beneficiaries of the Pāpāuma Marae are the direct descendants of those original owners of Mataikona 1, 2 and 3 Blocks. The Applicants, as trustees of Pāpāuma Marae, represents those original owners and their descendants. The Applicant Group considers that it has continued to exercise mana whenua, mana moana and kaitiakitanga over the Coastal Marine Area associated with the Mataikona 1, 2 and 3 Blocks.
2. 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 in section 51(1) of the Act.

**Orders Sought – section 101(a)**

3. The Applicants seek recognition orders from the High Court under section 98 of the Act for:

- (a) customary marine title over the Mataikona Coastal Marine Area (the Applicant Group considers it meets the tests for customary marine title set out under section 58 of the Act); and
- (b) protected customary rights within the Mataikona Coastal Marine Area (the Applicant Group considers it meets the tests for protected customary rights set out under section 51 of the Act).

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

- 4. The Applicants seek recognition orders for the exercise of kaitiakitanga as a protected customary right which includes, but is not limited to:
  - (a) the gathering, use, planting and cultivating plant species such as flax, tī kouka, karaka, pingao and karengo;
  - (b) the collection and harvesting of rongoa such as kawakawa for illness and general health;
  - (c) the collection of landed Whales as Taonga of Tangaroa;
  - (d) the collection of natural resources such as silicified limestone;
  - (e) activities related to spiritual practices (such as rahui); and
  - (f) the burial of Koiwi.

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

- 5. The Applicant Group is the descendants of the original owners of Mataikona 1, 2 and 3 Blocks. The Applicant Group comprises of individuals who descend from all hapū of Aohanga and Mataikona 1, 2 and 3 Blocks.
- 6. Pāpāuma Marae Trustees are established under the Proprietors of Owahanga Station trading as Aohanga Incorporation 1972. The Directors of the Aohanga Incorporation are also the Trustees of the Pāpāuma Marae. The Trustees of Pāpāuma Marae are responsible for Pāpāuma Tipuna Whare and Te Aroha o Aohanga.

7. The Applicants, in their capacity as trustees of Pāpāuma Marae, have been appointed by the Applicant Group to be the representative of the Applicant Group and to apply for, and hold, recognition orders on behalf of the Applicant Group.

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

8. The particular area of the common coastal marine area to which this application relates is the common marine and coastal area contiguous, adjoining and abutting the Mataikona 1, 2 and 3 Blocks (the **Application Area**).
9. The Application Area means, for the purposes of this Application:
  - (a) the common marine and coastal area contiguous, adjoining and abutting the Mataikona 1, 2 and 3 Blocks, which extends from the landward boundary of the mean high water spring and the seaward boundary being the outer limited of the territorial sea (12 nautical miles from shore); and
  - (b) the area identified on the map annexed and marked “A” to this Application.

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

10. On behalf of the Applicant Group, the trustees of Pāpāuma Marae submits that the necessary requirements for customary marine title (section 58 of the Act) are satisfied, in particular:
  - (a) the Applicant Group holds the Application Area in accordance with tikanga (section 58(1)(a));
  - (b) 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));
  - (c) the Applicant Group owns the land abutting the Application and have done so without substantial interruption, from 1840 to the present day (section 59(1)(a)(i));

- (d) 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
- (e) as set out in the affidavit of Demetrius Te Manakore Tamihana Potangaroa in support of this application.

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

- 11. For the purposes of this application, the holder of the recognition orders will be the Pāpāuma Marae (or in the event that the holders must be a natural person, the Trustees of the Pāpāuma).
- 12. The Applicants, on behalf of the Applicant Group, seeks leave to amend this aspect of the application at a later date
- 13. The contact details for the Applicants are:

Papauma Marae Trustees  
PO box 136  
Masterton 5810

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

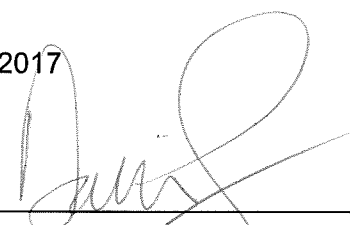
- 14. This application is supported by the affidavit of Demetrius Te Manakore Tamihana Potangaroa.
- 15. The affidavit in support of this application set out the basis on which the Applicant Group claims to be entitled to the recognition orders for customary marine title and protected customary rights over the Application Area.

**Adjournment**

- 16. 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.

17. In parallel with this application, the Trustees have also filed an application with the responsible Minister on behalf of the Crown to enter into a recognition agreement.
  18. On that basis, the Trustees seek 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 Trustees require a further adjournment following the initial 6 month period to continue discussions with the Crown to reach an agreement, the Trustees will seek the leave of the High Court.
- C. This application is made on reliance on section 58 and 59 of the Act, the affidavit of Demetrius Te Manakore Tamihana Potangaroa and *Re Tipene* [2016] NZHC 3199.

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



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D H Stone / K J Tarawhiti  
**Counsel for the Applicant**

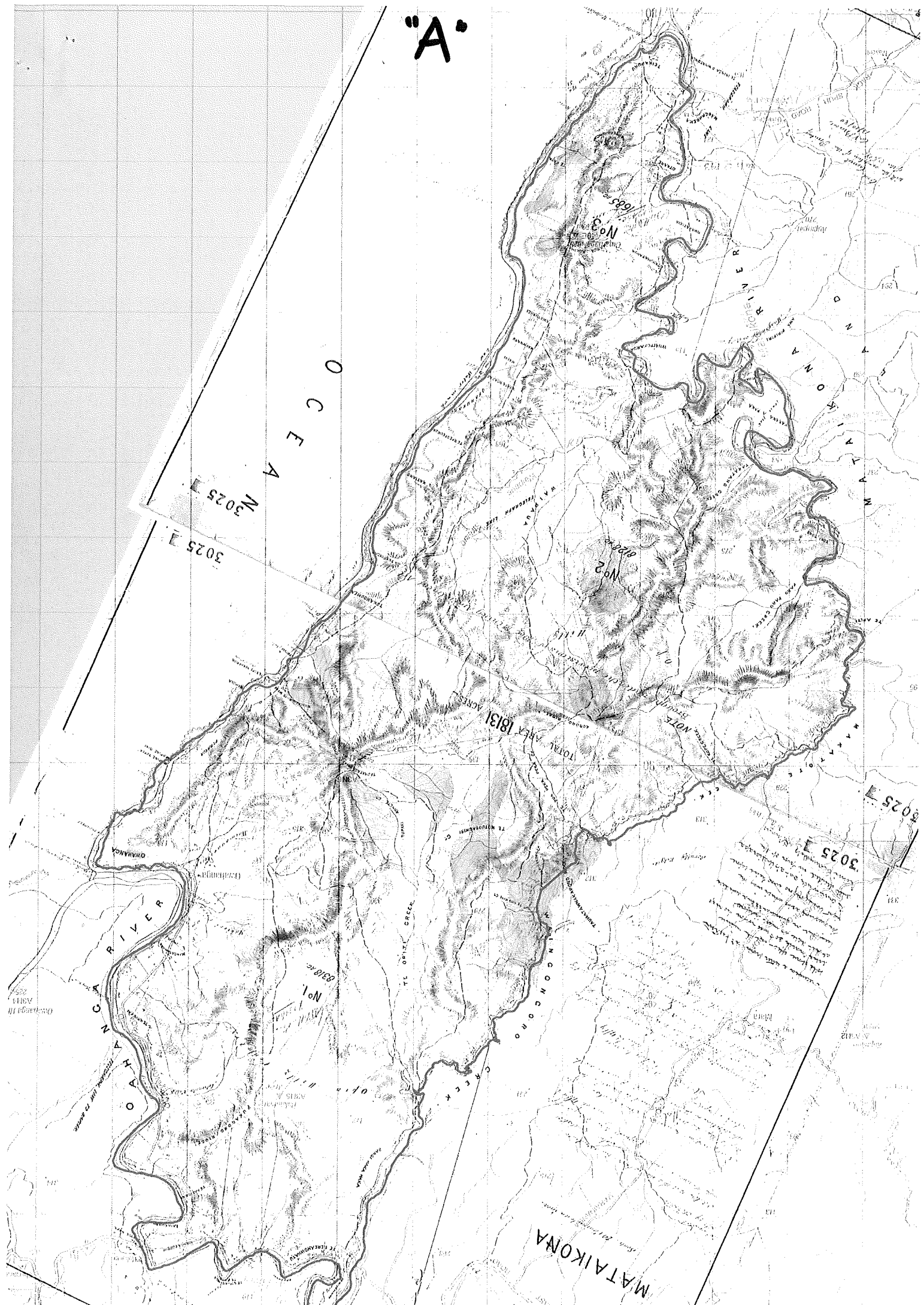
**THIS** application is filed by **DAMIAN HOHEPA STONE** and **KATE JANINE TARAWHITI**, solicitors of the firm Kahui Legal. The address for service of the Applicant is at the office of Kahui Legal, Solicitors, Level 11, Intilecta Centre, 15 Murphy Street, Wellington.

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;
- (b) transmitted to the solicitor by facsimile on 04 495 9990; or
- (c) emailed to the solicitor at [damian@kahuilegal.co.nz](mailto:damian@kahuilegal.co.nz) and [kate@kahuilegal.co.nz](mailto:kate@kahuilegal.co.nz).

Documents served on the Applicant should be marked for the attention of D H Stone and K J Tarawhiti.

"A"



3025 E.

3025 E.

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3025 E.

NOTE: This map was prepared from a series of photographs taken by the U.S. Army during the expedition of 1913. The map shows the general topography of the region, but it is not intended to be used for navigation or other purposes. The map is oriented with North at the top, and the word "OCEAN" is written vertically along the left edge. The map is labeled with "No. 1", "No. 2", and "No. 3" in various locations, likely indicating specific points of interest or peaks. The map is oriented with North at the top, and the word "OCEAN" is written vertically along the left edge.

MATAKONA

KAHONAH RIVER

TE ORTIZ CREEK

MUNGOORO CREEK

No. 1

No. 2

No. 3

OCEAN

4085532

3977837

MATAIKONA 1 2 & 3

