

IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY
I TE KŌTI MATUA O AOTEAROA
TAURANGA MOANA ROHE

CIV-2017-485-222 E, F, H

IN THE MATTER OF of the Marine and Coastal Area (Takutai Moana) Act 2011

AND

IN THE MATTER of an application by **NICHOLAS HIWI SINGH, RUSSELL CHARLES KARU, KERRY KARU, PHYLLIS MOTT, BESSIE GAGE** and **AMELIA AMY TUIHANA WILLIAMS** as trustees of **NGĀTI TARA TOKANUI TRUST**, on behalf of Ngāti Tara Tokanui, for orders recognising customary marine title and protected customary rights

**FIRST AMENDED NOTICE OF ORIGINATING APPLICATION FOR ORDERS RECOGNISING
CUSTOMARY MARINE TITLE AND PROTECTED CUSTOMARY RIGHTS**

Dated 18 December 2017

Director
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To the Registrar, High Court, Tauranga

And to Bay of Plenty Regional Council, Waikato Regional Council, Thames-Coromandel District Council, Hauraki District Council, Western Bay of Plenty District Council, Whakatane District Council

And to the Solicitor-General on behalf of the Attorney-General

This application is made by Nicholas Hiwi Singh, Russell Charles Karu, Kerry Karu, Phyllis Mott, Bessie Gage and Amelia Amy Tuihana Williams as trustees of Ngāti Tara Tokanui Trust (“the applicants”). Ngāti Tara Tokanui Trust is the post settlement governance entity for Ngāti Tara Tokanui (“the Trust”).

This document notifies you that:

1. As soon as they may be heard, the applicants will apply for orders recognising that Ngāti Tara Tokanui has Customary Marine Title and/or Protected Customary Rights in the common marine and coastal area (“takutai moana”) depicted in the map attached as **Schedule A**, as well as Tūhua (Mayor) Island and Aotea (Great Barrier) Island.

Applicant Group

2. Ngāti Tara Tokanui whakapapa to the eponymous ancestor, Tara. Noted Chiefs who succeeded Tara include Taewhakea, Matarehua, Tiki Te Aroha and Te Whakamaro Maioro, all of whom worked to maintain and expand the rohe Tara established.
3. Ngāti Tara Tokanui refers to those who descended from Tokanui, who was of Ngāmārama.
4. The iwi name Ngāti Tara Tokanui signifies the compact which was formed through the inter-marriage between Te Awapū of Ngāti Tara (Te Awapū was the great grandson of Tara) and Te Rae of Ngāmārama. This marriage consolidated peace between the groups from which Ngāti Tara Tokanui was formed.
5. It is important to note that Ngāti Kōi and Tara are two names used historically and interchangeably to describe the same group of people who descend from the tupuna, Tara.
6. Ngāti Tara Tokanui are aware from marae and hui-a-iwi discussions that the applicants are making this application on their behalf and they are supportive of this.

Application Area

7. As noted, the area to which this application relates is depicted in the map attached as **Schedule A**, as well as Tūhua (Mayor) Island and Aotea (Great Barrier) Island, that is, the takutai moana that is bounded:
 - (a) On the landward side by the line of mean high-water springs;
 - (b) On the seaward side by the outer limits of the territorial sea;

- (c) On the northward side by a line that extends from the coast abutting Ohui Point (at the north end of Opoutere Beach) to the outer limits of the territorial sea; and
- (d) On the southward side by a line that extends from the coast abutting the southern bank of the Aongatete River to the outer limits of the territorial sea (excluding Matakana Island).

Application for Customary Marine Title

8. The applicants seek orders recognising that they have Customary Marine Title in the takutai moana along their coastal takiwā, as depicted in **Schedule A**, as well as Tūhua (Mayor) Island, and including the takutai moana near/abutting the following specific areas:
- (a) Opoutere/Wharekawa;
 - (b) Whangamata;
 - (c) Whiritoa;
 - (d) Matāora;
 - (e) Ohinemuri Blocks and Ohinemuri River;
 - (f) Waihi;
 - (g) Bowentown (“Te Hō”); and
 - (h) Southern areas, including Kauri Point, the Taingahue Stream, Waimatā, Te Ure Tara Stream and the Aongatete River.
9. The grounds on which Customary Marine Title is sought are:
- (a) Ngāti Tara Tokanui hapū holds the takutai moana in their area of interest (takiwā), including in the specific areas noted above, in accordance with tikanga; and
 - (b) Ngāti Tara Tokanui hapū has exclusively used and occupied the takutai moana in their takiwā from at least 1840 to the present day without substantial interruption; and
 - (c) Customary marine title has not been extinguished as a matter of law.

Application for Protected Customary Rights

10. The applicants seek orders recognising that Ngāti Tara Tokanui have customary rights, including the rights below, throughout the Ngāti Tara Tokanui coastal takiwā and, in particular, the takutai moana abutting/near the areas depicted in **Schedule A**, as well as Tūhua (Mayor) Island and Aotea (Great Barrier) Island:
- (a) Customary fishing - Traditional fishing methodologies were handed down from Ngāti Tara Tokanui tūpuna and continue to be practised today. Based on those teachings, Ngāti Tara Tokanui are able to locate the

migration routes and feeding grounds of the mako shark between Aotea WhakaTaraTara – Tuhua, the Aldermans (Ruamahuanui) and Whiritoa Rock. This has assisted Ngāti Tara Tokanui over time with locating other schools of fish in the Opoutere, Whiritoa, Matāora and Waihi areas. Ngāti Tara Tokanui tūpuna also fashioned obsidian, rocks and branches as fishing implements and flax nets were fashioned and used particularly to catch schools of Mako sharks;

- (b) Collecting kaimoana – Ngāti Tara Tokanui have collected kaimoana from various places along their coastal takiwā for centuries, including Opoutere, Matāora, Whangamata, Waihi, Te Hō and Tūhua;
 - (c) Rāhui – Since at least 1840 Ngāti Tara Tokanui have regularly placed rāhui in various areas of their takiwā. For example, if someone drowns in an area/loses their life they place rāhui over the area for approximately 60 days. If kai does not replenish itself, rāhui is also placed for replenishing kai, including kaimoana;
 - (d) Total immersion in the Ohinemuri River – This is in line with precepts of the Ringatu faith whereby Ngāti Tara Tokanui rigidly observed the 12th of each month, including total immersion in the Ohinemuri River before sunrise on the 12th. Many Ngāti Tara Tokanui uri still practise this today;
 - (e) Launching waka – There are a number of launching sites that Ngāti Tara Tokanui still recognise and use today. They include a site that is now known as Moana Point (Whangamata Marina), Te Homonga (just below Matāora), a site just below Tawhitiaraia, Te Kura a Maia at Te Hō (accessed via Matakana Heads), Whakataratara Point on Tūhua Island and the mouth of Te Ure Tara Stream.
11. In addition to the particular areas noted, there are also a number of sites of significance in which Ngāti Tara Tokanui have practised and continue to practise these and other customary rights and accordingly seek to have their right to continue to do so protected. Waka would be launched from various sites on the eastern seaboard to take advantage of the migrations of the Mako and Tawatawa sharks. The excursions by Ngāti Tara Tokanui have been noted by their tūpuna within the Native Land Court and, up to quite recently, these traditional fishing methodologies continue to be utilised.
12. The grounds on which the Protected Customary Rights recognition order is sought are:
- (a) The relevant rights have been exercised by Ngāti Tara Tokanui since at least 1840;
 - (b) Ngāti Tara Tokanui continue to exercise those rights in accordance with Ngāti Tara Tokanui tikanga; and
 - (c) The rights are not extinguished as a matter of law.

Protection of Wāhi Tapu

13. Ngāti Tara Tokanui Trust also seeks to include the recognition and protection of wāhi tapu in the customary marine title recognition order.

Holder of the Orders

14. The holder of the customary marine title and protected customary rights recognition orders will be Ngāti Tara Tokanui Trust, for and on behalf of Ngāti Tara Tokanui.

Contact Details for Ngāti Tara Tokanui Trust

15. The contact details for Ngāti Tara Tokanui and Ngāti Tara Tokanui Trust are:

Contact person: Amelia Williams
Executive Chairperson, Ngāti Tara Tokanui Trust

Postal address: C/- Aidan Warren
McCaw Lewis Lawyers
PO Box 9348, DX GP 20020
Hamilton 3240

Phone number: 021 501 312

Email: amelia.w@vodafone.co.nz

This application is made in reliance on sections 51(1), 58, 78 and 98-113 of the Marine and Coastal Area (Takutai Moana) Act 2011, Rule 19.2(NA) of the High Court Rules 2016 and the Affidavit of Amelia Amy Tuihana Williams sworn 29 March 2017.

The applicants reserve their right to amend this application if required.

Date: 18 December 2017



A H C Warren/L M S Farquhar
Solicitors for the Applicants

This application is filed by **Aidan Warren**, solicitor for the applicants, (solicitor acting is **Leone Farquhar**). The address for service of the applicants is at the offices of McCaw Lewis Limited, Solicitors, Level 1, One on London, 1 London Street, (PO Box 9348, DX GP20020), Hamilton 3240.

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

1. Posted to the solicitor at PO Box 9348; or
2. Left for the solicitor at a document exchange for direction to DX GP20020; or
3. Transmitted to the solicitor by facsimile to (07) 839 4652; or
4. Transmitted to the solicitor by email at aidan.warren@mccawlewis.co.nz and leone.farquhar@mccawlewis.co.nz

Schedule A

