

CIV-2017-485-223

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

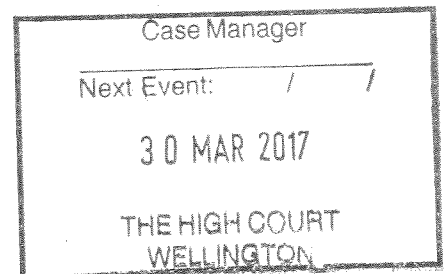
IN THE MATTER OF The Marine and Coastal Area (Takutai Moana) Act 2011

AND IN THE MATTER OF an application by **MITA MICHAEL RIRINUI** for and on behalf of the **TE RUNANGA O NGATI WHAKAHEMO** 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

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Solicitor Acting: JP Koning

- TO:** The Registrar of the High Court at Wellington
- AND TO:** The Attorney General of New Zealand
- AND TO:** Bay of Plenty Regional Council
- AND TO:** Western Bay of Plenty District Council

This document notifies you that:

1. The applicant applies for recognition orders for:
 - 1.1 customary marine title pursuant to s 58 of the Act; and
 - 1.2 protected customary rights pursuant to s 51 of the Act.

Applicant

2. The applicant is the chairman of Te Runanga o Ngati Whakahemo and makes this application for an on behalf of Ngati Whakahemo.
3. Te Runanga o Ngati Whakahemo is an unincorporated body which represents Ngati Whakahemo.
4. Ngati Whakahemo is an iwi based at Pukehina and Maketu in the Western Bay of Plenty and has customary interests and rights in the common marine and coastal area.

Application Area

5. This application relates to the common marine and coastal area shown as **A** on the attached plan (**application area**).
6. The application area comprises:
 - 6.1 Motunau Island and the adjacent waters;
 - 6.2 Pukehina Coast from Ngawhara to Pokare including Poutuia, Oreiwata and Ruahine Reef; and
 - 6.3 Waihi and Maketu Estuaries.

Grounds for application

Ngati Whakahemo

7. Maruahaira, the founding tipuna of Ngati Whakahemo, was descended from the Mataatua and Takitimu waka.
8. Maruahaira led Ngati Whakahemo from Hakuranui between Gisborne and Tologa Bay to Opotiki and Whakatane.
9. Maruahaira and Ngati Whakehemo attacked and defeated Te Arairehe and his men on the beach at Pukehina and conquered pa at Pukehina, Oreiwhata and Poutuia. They then occupied these and the surrounding lands and waters.
10. The rohe established by Maruahaira extends from Ngawhara in the west to Pokare in the east, south to Pongakawa Valley, and then out Motunau Island in the sea to the north and west.

Motunau Island

11. Motunau Island lies approximately 13 km from Maketu and comprises 2.8328 hectares more or less.
12. From approximately 1650 onwards Ngati Whakahemo occupied Motunau Island and used the land and surrounding waters for fishing and birding and gathering other resources.
13. Mita Te Rangituakoha of Ngati Whakahemo applied for title to Motunau Island and the Native Land Court investigated his application at a hearing at Maketu in April 1878. There were no objections or cross claimants.
14. The Native Land Court awarded title to Motunau Island to Mita Te Rangituakoha, Timi Waata Pakihi, Ngawhika Te Otimi, Pene Toetoe and Maihi Hamiora of Ngati Whakahemo.
15. Since 1878 members of Ngati Whakahemo have been the owners of Motunau Island and continued to camp on the land and use the land and surrounding waters for fishing and birding.
16. On 13 August 1969 the Governor-General by *Gazette* notice proclaimed Motunau Island and the surrounding foreshore as a wildlife sanctuary under the Wildlife Act 1969. This notice replaced earlier proclamations in 1964 and 1967.
17. The Wildlife Sanctuary (Motunau Island) Order 1969 expressly allows

members of Ngati Whakahemo as the owners of Motunau Island to enter onto the wildlife sanctuary, and subject to written authority from DOC, harvest muttonbirds, shellfish and other seafood, and camp and light camp fires.

18. The Wildlife Sanctuary (Motunau Island) Order 1969 otherwise prohibits any other person or persons from entering onto and/or undertaking any activity in the wildlife sanctuary.
19. From 1969 to the present day members of Ngati Whakahemo continue to exercise their customary interests and rights on and around Motunau Island including harvesting muttonbirds, shellfish and other seafood, gathering resources and camping.
20. The whanau of Ngati Whakahemo use and occupy Motunau Island in accordance with the tikanga of Ngati Whakahemo.
21. Ngati Whakahemo exercise kaitiakitanga over Motunau Island in accordance with the tikanga of Ngati Whakahemo.

Pukehina Coast from Ngawhara to Pokare

22. From approximately 1650 onwards Ngati Whakahemo used the waters along the Pukehina coast from Ngawhara to Otamarakau for gathering finfish, shell fish and other seafood and resources.
23. Ngati Whakahemo established and continuously occupied pa, kainga and nohonga along this coast.
24. In 1878 the Native Land Court investigated title to the Pukehina block which comprised approximately 3,237 hectares and ran along the coast from Ngawhara to Otamarakau. Mita Te Rangituakoha of Ngati Whakahemo was also the applicant in this case.
25. Ngati Whakahemo were awarded an exclusive title to the Pukehina block as the descendants of Maruahaira.
26. In 1888 the Native Land Court re-investigated the title to the Pukehina block and again the whole of the block as Pukehina A to F was awarded exclusively to Ngati Whakahemo.
27. There was a further re-hearing in 1902 and the Native Land Court awarded title to Pukehina A to F exclusively to Ngati Whakahemo for

- the third time.
28. The Crown subsequently acquired various partitions of the Pukehina including Pukehina A1, A2 and A3 which contain the current settlement at Pukehina and surrounding lands.
 29. Members of Ngati Whakahemo retain ownership of Maori freehold land that adjoins the coast including various partitions of Pukehina M.
 30. The Maori freehold land known as Pukehina K is a Maori reservation set apart as an urupa for the common use and benefit of Ngati Whakahemo.
 31. Pukehina K is on the coast and is located on Oreiwhata pa.
 32. Ngati Whakahemo continue to occupy land along the Pukehina coast from Ngawhara to Pokare and use the surrounding waters to gather fish and seafood and other resources.
 33. Ngati Whakahemo continue to exercise kaitiakitanga over Poutuia, Oreiwhata and Pokare.
 34. There are sites of significance to Ngati Whakahemo along the coast including the areas known as Oreiwhata and Poutuia, and the reef known as Ruahine.
 35. The whanau of Ngati Whakahemo use the waters along the Pukehina coast from Ngawhara and Pokare in accordance with the tikanga of Ngati Whakahemo.

Waihi and Maketu Estuaries

36. From approximately 1650 onwards Ngati Whakahemo occupied Te Awhe and Ngawhara.
37. Ngati Whakehemo used the waters in the Waihi and Maketu Estuaries for gathering fish and seafood and other resources.
38. Ngati Whakahemo established and continuously occupied kainga and nohonga on the banks of the Waihi and Maketu Estuaries.
39. The Native Land Court awarded interests to Ngati Whakahemo in lands at Maketu, and following the Maketu Consolidation Scheme, these blocks are now known as Maketu A150 and Maketu A126.

40. Te Awhe Marae stands on Maketu A150. This block is a Maori reservation set apart as a marae for the common use and benefit of Ngati Whakahemo in particular and Te Arawa in general.
41. The marae is named after Te Awhe who is a tipuna of Ngati Whakahemo.
42. Maketu A126 is located on and above the Waihi estuary and contains approximately 18 hectares. It is a site of special significance for Ngati Whakahemo and contains the site of Ngwhara pa.
43. Ngati Whakahemo continue to occupy land at Maketu and use the surrounding waters to gather fish and seafood and other resources.
44. There are also sites of significance to Ngati Whakahemo at Maketu including Te Awhe and Ngawara.
45. Ngati Whakahemo shares its customary interests and rights in the Waihi and Maketu Estuaries with hapu of Te Arawa.

Recognition order for customary marine title

46. The applicant repeats paragraphs 7 to 45 and seeks a recognition order for customary marine title for the application area on the grounds that the application area:
 - 46.1 is held in accordance with the tikanga of Ngati Whakahemo;
and
 - 46.2 has been used and occupied by Ngati Whakahemo from 1840 to the present day without substantial interruption.
47. The customary marine title should be in the name of Ngati Whakahemo and the holder will be the applicant as chairman of Te Runanga o Ngati Whakahemo.

Recognition order for protected customary rights

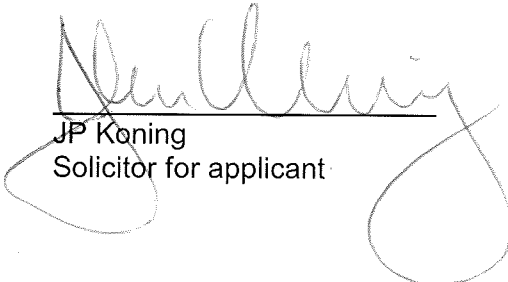
48. The applicant repeats paragraphs 7 to 45 and seeks a recognition order for the following protected customary rights in the application area:
 - 48.1 exercise of kaitiakitanga over the islands, rocks and waters of Ngati Whakahemo;

- 48.2 landing places for waka;
 - 48.3 camping and associated activities;
 - 48.4 gathering of fish and seafood;
 - 48.5 birding and associated activities;
 - 48.6 harvesting marine plants and other aquatic flora;
 - 48.7 gathering of other cultural resources.
49. The applicant seeks a recognition order on the grounds that:
- 49.1 Ngati Whakahemo has exercised the protected customary rights in the application area; and
 - 49.2 Ngati Whakahemo continues to exercise the protected customary rights in the application area.
50. The protected customary rights order should be in the name of Ngati Whakahemo and the holder will be the applicant as chairman of Te Runanga o Ngati Whakahemo.

Affidavit and legal principles

51. This application is made in reliance on:
- 51.1 the affidavit of Mita Michael Ririnui sworn 29 March 2017;
 - 51.2 *Re Tipene* [2016] NZHC 3199.

DATED this 29th day of March 2017


JP Koning
Solicitor for applicant

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 john@kwlaw.co.nz

Motiti Island

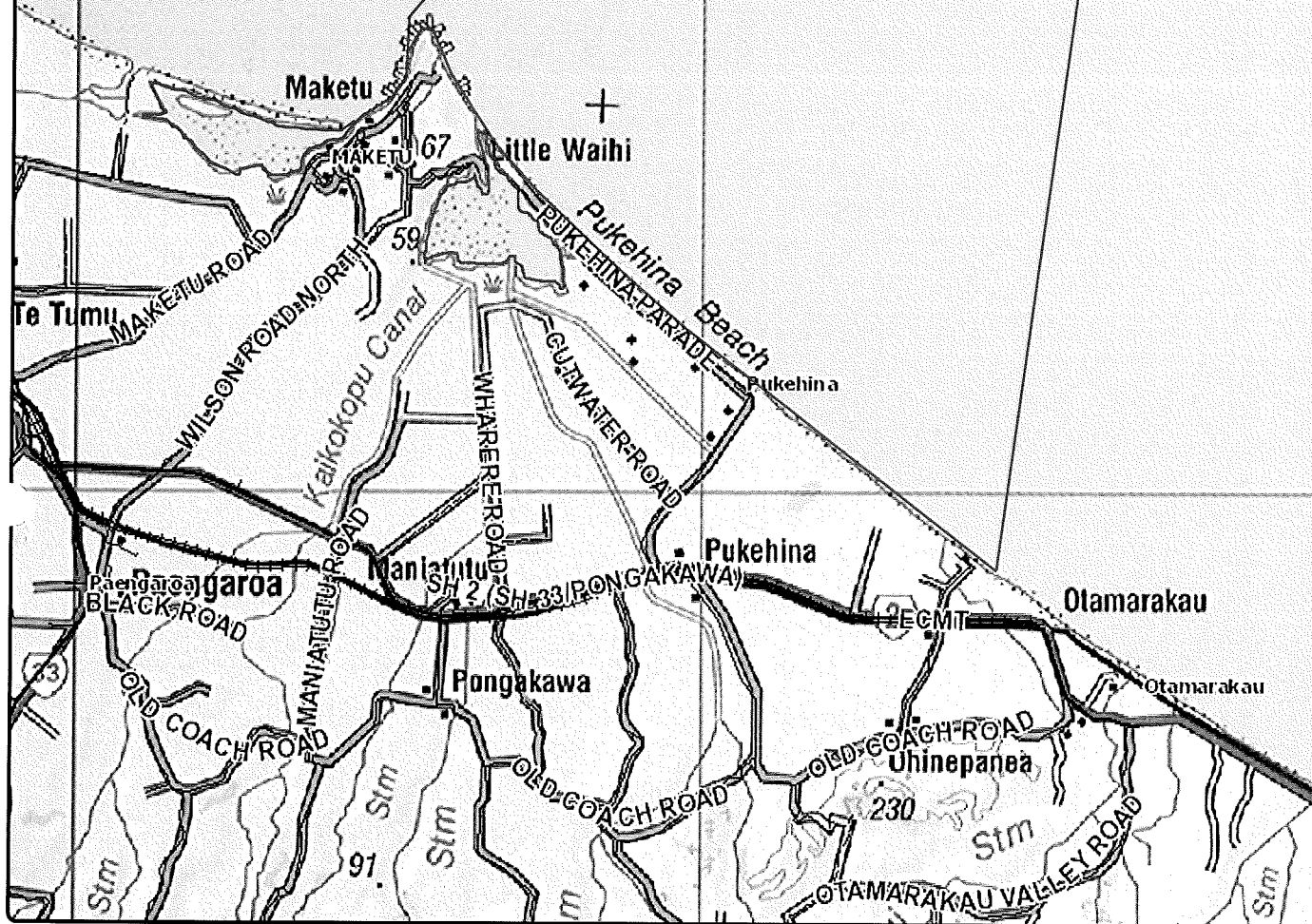
Wairere Bay

Island • Matatapu Island



• Motunau Island (Plate Island)

A



Key: — Ngati Whakahemo - Application Area*

*Indicative area only

A4 Scale 1: 110,000

0 5,500 Meters