

IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

CIV-2017-485-239

UNDER

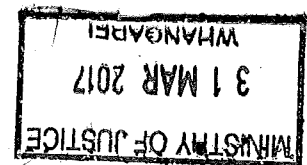
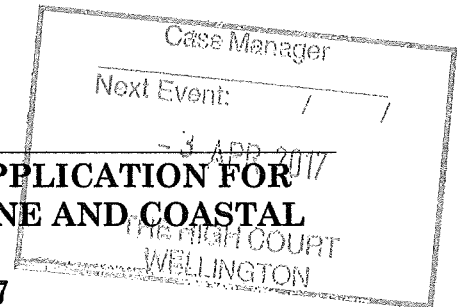
The Marine and
Coastal Area Act
2011

CONCERNING

An application by
STEPHEN PANOHO,
on behalf of Te Rae
Trust and its
beneficiaries for
orders recognising
customary interests
under the Marine
and Coastal Area
(Takutai Moana) Act
2011

WITHOUT NOTICE ORIGINATING APPLICATION FOR
ORDERS UNDER S 100 OF THE MARINE AND COASTAL
AREA ACT 2011

Dated: 31 March 2017



Lyall & Thornton
Barristers and Solicitors
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To: The Registrar of the High Court at Whangarei

And to: Any other party required to be served

This document notifies you that:

1. On behalf of Te Rae Ahu Whenua Trust, the applicant, Stephen Panoho, of 110 Vinegar Hill Road, Whangarei applies for:
 - a) A recognition order of a protected customary right under the Marine and Coastal Area (Takutai Moana) Act (“MACA”) ; and/or
 - b) Recognition of customary marine title under the MACA.

Reliance

2. This application is made under s100 of the MACA, in reliance on s51 MACA (protected customary rights); and s58 of the MACA (customary marine title).
3. The recent decision in *Re Tipene* is also relied upon, as the only guidance so far provided from the Court on the process under the MACA.¹

The Applicant Group (s101(c) of the MACA)

4. The Trust represents the Panoho whanau, of te Parawhau hapū.
5. This application is accompanied by the affidavit of Stephen Panoho, which sets out the basis on which the whanau claim to be entitled to the recognition order, as required by s101(h) of the MACA.

¹ *Re Tipene* [2016] NZHC 3199

Application Requirements

Timing (s100(2))

6. This application is filed before the deadline of 3 April 2017.

Application for Recognition of Customary Rights, Customary Marine Title, or Both (s101(a))

7. This application is for recognition of both customary rights under s51 of the MACA, and customary marine title under s58 of the MACA.

Description of the Customary Rights (s101(b))

8. The claimants have exercised rantatiratanga over their marine and coastal area² from well before to 1840 to the current day.
9. This is demonstrated through the exercise of kaitiakitanga over the marine and coastal area; use of the area for transport of the deceased; aquaculture; and the use of rocks, sands and other minerals.
10. The applicants use the marine and coastal area for gathering kai moana. They collect shellfish, and catch fish both from the beach and out to sea in marked fishing grounds. They also exercise control over the area through the imposition of rāhui.
11. The applicants also protect waahi tapu, burial sites and other sacred sites in their rohe, many of which are in the marine and coastal area, or just inland. They had kāinga and burial grounds scattered inland from the beach, and one urupa on the water's edge.

² As defined by s9 MACA

The Particular Area (s101(d))

12. The area in question is the marine and coastal area surrounding the Maungakaramea Blocks, around 10KM from Whangarei City, at Portland on the slopes of the Mangapai Estuary.
13. The coast that borders these blocks is made up of the area from the Tokitoki stream, down into the Mangapai River. We note that this area may be the subject, with the Court's leave, of amendment.
14. The applicant hapū exercise customary rights according to their own tikanga within this area, which includes the airspace above as allowed by legislation.
15. A map has been generated and is attached as "A" to the affidavit of Stephen Panoho. With the Courts leave further maps may be generated and refined or updated as this application is progressed.

Grounds (S101(e))

16. The grounds upon which orders are sought are as follows:
 - a) The whanau represented by the Trust have resolved to seek a recognition order of a protected customary right under the Marine and Coastal Area (Takutai Moana) Act ("MACA") ; and/or recognition of customary marine title under the MACA.
 - b) The whanau hold mana whenua over the marine and coastal area surrounding the Maungakaramea lands.
 - c) They have lived in this area, and exercised exclusive customary rights within it, since prior to

the arrival of Pākehā in this country.³

- d) The area is held according to their tikanga and they continue the traditions of kaitiakitanga handed down to them. Many of the traditions that will be developed in further evidence are exercised in the same way as they were in 1840. Some have evolved over time.⁴
- e) The protected customary rights in question have not been extinguished as a matter of law.⁵
- f) The applicant whanau hold their rohe in accordance with tikanga.⁶
- g) The applicant whanau have exclusively used and occupied the area since 1840 until the present day without substantial lawful interruption.⁷
- h) In addition, the whanau own the land abutting part of the specified area, and have done so without substantial interruption from 1840 to the present day.⁸ The whanau have also exercised non-commercial customary fishing rights in the specified area from before 1840 to the present day.⁹
- i) These two matters will be the subject of further hapū evidence as this application is progressed.
- j) All relevant parties will be served contemporaneously with the filing of this

³ S51(1)(a) MACA
⁴ S51(1)(b) MACA
⁵ S51(1)(c) MACA
⁶ S58(1)(a) MACA
⁷ S58(1)(b)(i) MACA
⁸ S59(1)(a)(i) MACA
⁹ S59(1)(a)(ii) MACA

application in satisfaction of the requirements in s102 of the MACA.

- k) Public notice will be given no later than 20 working days following filing of this application.¹⁰

Person to be Holder of the Order (s101(f))

17. The person to be the holder of the order is Stephen Panoho.

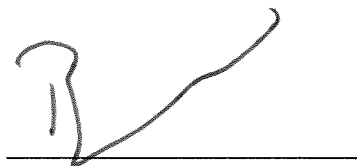
Contact Details for the Group (s101(g))

18. The Trust ask that contact be made through contact with counsel, contact details set out at the foot of this application.

Conclusion

19. With the courts leave the applicants will provide further evidence following hui, and seek to further particularise this application as research is received.
20. I certify that this application complies with the High Court Rules.

Dated: 31 March 2017



Bryce Lyall
Counsel

The address for service for the applicants is 118 Park Road, Titirangi, Auckland 0604.

Documents for service on the applicants may be posted to or left at that address for service or may be emailed to the solicitor at: Bryce@lyallthornton.com

The solicitor can be contacted on (09) 889 1835

¹⁰ S103 MACA