

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV - 2017 - 485 - 242

UNDER THE Marine and Coastal Area (Tatukai Moana) Act 2011

IN THE MATTER OF Recognition of customary interests

BETWEEN Te Whanau a Rakairoa ki Waipiro and Te Whanau
a Iritekura

(Applicant)

AND The Crown

(Respondent)

INTERLOCUTORY APPLICATION ON NOTICE ON BEHALF OF TE WHANAU A
RAKAIROA KI WAIPIRO AND TE WHANAU A IRITEKURA SEEKING ORDER FOR
RECOGNITION OF CUSTOMARY INTERESTS

Dated 31 MARCH 2017

Te Haā Legal

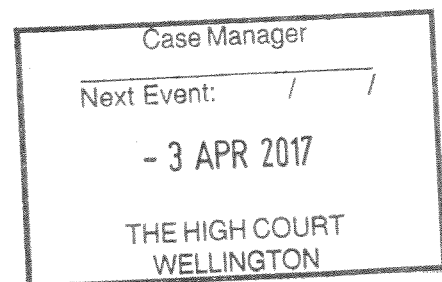
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INTERLOCUTORY APPLICATION ON NOTICE

To the Registrar of the High Court at Wellington

And

To the Crown

This document notifies you that—

1. The applicants, Te Whanau a Rakairoa ('TWAR') and Te Whanau a Iritekura ('TWA'), will on _____ apply to the court for orders:
 - (a) Recognising a protected customary right applicable to TWAR and TWA;
 - (b) Recognising a customary marine title applicable to TWAR and TWA;
 - (c) That an injunction be granted halting the current negotiations between the Iwi Authority, Te Runanganui o Ngati Porou ('TRONPnui'), and the Crown pending the outcome of this proceeding and including the appeals process;
2. The Applicant group, TWAR and TWA, appoint Haro Te Moana Eden McIlroy of 127 McIlroy Road, RD1, Waipiro Bay, New Zealand as a representative of the applicant group to be the holder of the order and first point of contact.
3. The grounds on which each order is sought are as follows:
 - (a) The Applicant group, TWAR and TWA are two whanau who hold mana takutai over their fisheries, fishing grounds and mineral wealth in the Waipiro Bay and have exercised this right since 1840.
 - (b) The Applicant group, TWAR and TWA have protected customary title as TWAR and TWA have exercised mana takutai in the Waipiro Bay since 1840. The Applicant group continues to exercise mana takutai in the

Waipiro Bay and the protected customary title is not and has not been extinguished as a matter of law.

Brief description of the Applicant group, TWAR and TWAI

(i) TWAR

TWAR descend from Rakairoa, commonly referred to as Rakairoa II to distinguish her from her Tipuna (ancestor) of the same name and those descendants based in Horoera and Te Araroa Area. The whakapapa of TWAR is attached as an exhibit to the attached Affidavit of Mr. Hal McIlroy.

(ii) TWAI

TWAI descend from Iritekura, a niece of the war chief Tuwhakairoa. Iritekura was granted occupation rights in Waipiro by her cousin Pakanui. After Pakanui's death, Iritekura was left to maintain mana whenua and mana takutaí. The whakapapa of TWAI is attached as an exhibit to the attached Affidavit of Mr. McIlroy.

(c) The particular area of common marine and coastal area in the Waipiro Bay to which this application applies are as follows:

(i) TWAR

The northern boundary is Paritutata on the shoreline extending to Waimahana at Taiharakiekie in the South. The northern boundary extends from the south at Taiharakiekie (Te Waimahana) north along the shore to Paritutata in the north. This area includes the Mataahu reef system and the fishing grounds around the Mataahu area and extends out to the twelve-nautical mile New Zealand sovereign boundary directly. The fishing grounds include Mataahu and the Toko Reef. The southern boundary from the southern edge of waimahana awa at Taiharakiekie, East to the twelve-nautical mile New Zealand Sovereign boundary. The southern boundary with TWAI is the waimahana stream. A map of the boundary is

attached as an exhibit to the attached Affidavit of Mr. McIlroy, the representative of the applicant group, TWAR and TWAI.

(ii) TWAI

The northern shoreline boundary of TWAI is the Waimahana awa at Taiharakiekie. The southern boundary is the shoreline adjacent to the Okahu fishing ground between Ko Utunui Head and Ko Utunui Point. The southern seaward boundary is from the Okahu fishing ground east to Kapua rangi and then to the Toko Reef and directly east to the twelve-nautical mile New Zealand Sovereign boundary. A map of the boundary is attached as an exhibit to the attached Affidavit of Mr. McIlroy, the representative of the applicant group, TWAR and TWAI.

- (d) The Applicant group, TWAR and TWAI have customary marine title over the common marine and coastal area. TWAR and TWAI have held and continue to hold Waipiro Bay in accordance with tikanga. Both have exclusively used and occupied it from 1840 to the present day without substantial interruption and the customary marine title has not been extinguished as a matter of law.
- (e) The Iwi Authority TRONPnui, acts against the customary interests of TWAR and TWAI. The Iwi Authority, TRONPnui are mandated representatives who holds the commercial fishing quota. It has not and has never allocated commercial fishing quota to TWAR and TWAI in accordance with the mandate to which the commercial fishing quota was given.
- (f) Of the ten percent, Total Allowable Catch ('TAC') allocated for customary use, only a fraction is harvested for that purpose. A large portion of the customary allocated TAC were re allocated for commercial purposes without consulting TWAR and TWAI who hold mana takutai.

- (g) When entering into discussions with the Crown, the Iwi Authority does not fully disclose information discussed and controls information shared to TWAR and TWAI who hold mana takutai.

- (h) In accordance of the High Court Rules 2008, the Affidavit of Mr. McIlroy, the representative of the applicant group, TWAR and TWAI is annexed and attached. The Affidavit will elaborate on the above grounds for recognition of protected customary right and recognition of marine title.

- 4. This application is made in reliance on section 51, 58, 98, 100 and 101 of the Marine and Coastal (Takutai Moana) Act 2011.

DATED this 31st day of March 2017



Chris Beaumont
Counsel for the Applicant