

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

CIV: 2017-485-252 G

UNDER THE

**Marine and Coastal Area  
(Takutai Moana) Act 2011,**  
Section 98 and 100

AND

IN THE MATTER

of an application by **James  
Henare Te Tuhi QSM** and  
**Esmeralda Te Tuhi**, on behalf  
of Te Popoto ki Oturei, for  
orders recognising Customary  
Marine Title and Protected  
Customary Rights

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**Second Amended Originating Application on Notice  
for Recognition Orders Pursuant to the Marine and Coastal Area (Takutai  
Moana) Act 2011  
Date: 18 December 2017**

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**TamakiLegal**  
Barristers & Solicitors

Level 2, 15 Osterley Way, Manukau, Auckland 2104  
PO Box 75517, Manurewa, Auckland 2243  
P. 09 263 5240  
E. [darrell@tamakilegal.com](mailto:darrell@tamakilegal.com)

To the Registrar of the **High Court** at **Wellington**; and

To

- the **Kaipara District Council**;
- the **Solicitor-General** on behalf of the Attorney General; and

**This document notifies you that —**

1. The applicants **James Henare Te Tuhi** and **Esmeralda Te Tuhi** (“the Applicants”) did, on 3 April 2017, apply to the Court for Recognition Orders under s 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”).
2. The Applicants seek a Recognition Order for Customary Marine Title (“CMT Order”) under the requirements of s 58 of the Act.
3. The Applicants seek to include the recognition of wāhi tapu and wāhi tapu areas in any CMT Order made pursuant to s 78 of the Act.
4. The Applicants seek a Recognition Order for Protected Customary Rights (“PCR Order”) under the requirements of s 51(1) of the Act.

#### **The Applicant Group**

5. The Applicant Group is Te Popoto ki Oturei and the descendants of Aperahama Taonui (“the Applicant Group”). They are a hapū of Nga Puhi.
6. The Applicant Group is located in Utakura and in Oturei on the west coast of the North Island of New Zealand.

#### **Representative of Applicant Group**

7. The person who will be the representative of the Applicant Group and the holder of any Court Order is James Te Tuhi.

## Contact Details

8. The contact details for the Applicants are as follows:
  - a. James Henare Te Tuhi:
    - i. Telephone number: 09 439 1545;
    - ii. Mailing Address: 27 Clean Street, Te Kopuru 0341;
    - iii. Email: [t2e@xtra.co.nz](mailto:t2e@xtra.co.nz)
  - b. Esmeralda Te Tuhi:
    - i. Telephone number: 09 439 1814;
    - ii. Mailing Address: Hospital Road, Te Kopuru 0341.
9. Contact details for Te Popoto ki Oturei are as follows:
  - i. Telephone Number: c/o Mrs W Mrkusich, 09 439 5913;
  - ii. Mailing Address: Oturei Settlement Road, Aoroa.

## Affidavit in Support of Application

10. An affidavit by James Henare Te Tuhi in support of this application was filed on 3 April 2017 with the original Originating Application and has not been amended in any way.

## Specific Area to which Application Relates

11. The common marine and coastal area to which this application relates is situated on the west coast of the North Island starting at Ouepu in the north, then down to the Waitetaha Stream in the south, and extending 12 nautical miles seaward ("the Specified Area").
12. A Map of the specified area was attached to the original Originating Application, filed on 3 April, 2017. The Specified Area has not changed or been amended in any way.

## **Grounds for CMT Application**

13. Prior to 1873, the Specified Area was held by Te Uri o Hau in accordance with their tikanga.
14. In 1873 the Specified Area was gifted by rangatira of Te Uri o Hau to Aperahama Taonui, a Te Popoto rangatira, in accordance with tikanga.
15. Te Popoto has since held the Specified Area in accordance with tikanga and have exclusively used and occupied the area from the time of the gifting to the present day without substantial interruption.
16. Title to the Specified Area has not been extinguished as a matter of law.
17. Further grounds in support of the CMT application are contained in the Affidavit and include that:
  - a. Te Popoto members own lands abutting the Specified Area and have done so, without substantial interruption, from 1873 to the present day; and
  - b. Te Popoto and its members exercise non-commercial customary fishing rights in the Specified Area, and have done so from 1873 to the present day.

## **Wāhi Tapu**

18. Various wāhi tapu and wāhi tapu areas of importance to the Applicant Group are located within the Specified Area.
19. If this application for a CMT recognition Order is successful, the Applicant Group will seek to include recognition of these wāhi tapu as part of the Order under s 78 of the Act.
20. For the purposes of this application, the Applicant Group reserves the right to apply for the inclusion of additional wāhi tapu with any CMT Order that may be granted where knowledge of the additional wāhi tapu is gained by the Applicant Group as a result of consultation with any Pūkenga appointed by the Court, or as a result of any historical research

that is commissioned in relation to the making of the application for a CMT Order.

### **Protected Customary Rights**

#### *Kaitiakitanga*

1. The Applicant Group have practiced kaitiaki responsibilities in and around the Specified Area.
2. The kaitiaki role involves, in part, the passing on of Maori lore and ecological wisdom to the younger generations
3. The kaitiaki role of the Applicant Group also involves conservation, protection and supervision of the Specified Area.

#### *Toheroa Gathering and Protection*

21. Toheroa is a triangular shaped, edible mollusc found only in New Zealand.
22. The Applicant Group gathers Toheroa as a food source for non-commercial purposes and as a rongoa (medicine).
23. The Applicant Group also protect and manage the toheroa in the Specified Area.

#### *Pīngao Gathering and Protection*


24. A customary right practiced by Te Popoto involves the gathering of pīngao from in and around the Specified Area for weaving.
25. The Applicant Group preserve the pīngao because it assists with the incubation of toheroa spats.

### **Grounds for Protected Customary Rights Application**

26. The Protected Customary Rights described above:

- a. have been exercised since the time of the gifting of the land in 1873;
- b. continue to be exercised by members of Te Popoto in accordance with tikanga; and
- c. have not been extinguished as a matter of law.

Dated: 18 December 2017



**Darrell Naden**  
**Solicitor for the Applicant**

#### **Memorandum**

This document is filed by **Darrell Naden**, Solicitor for the Applicant Group, of the firm Tamaki Legal Limited. The address for service of the Applicant Group is at the offices of Tamaki Legal Limited, AMI Building, 15 Osterley Way, Auckland, 2104, New Zealand. Documents for service on the Applicant Group may be left at that address for service or may be –

- posted to the Solicitor at PO Box 75-517, Manurewa, Auckland, 2243, New Zealand; or
- emailed to the Solicitor at [darrell@tamakilegal.com](mailto:darrell@tamakilegal.com)