

In the High Court of New Zealand  
Wellington Registry

CIV-2017-485-261

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**In the matter of**

the Marine and Coastal Area (Takutai  
Moana) Act 2011

**And in the matter of**

an application by Muaupoko  
represented by the Muaupoko Tribal  
Authority Incorporated for orders that  
recognise their customary marine title  
and protected customary rights under  
that Act

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**APPLICATION FOR RECOGNITION ORDERS**

Dated 31 March 2017

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**Counsel: Tom Bennion / Emma Whiley**  
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**To:** The Registrar of the High Court at Wellington

**And to:** the Horowhenua District Council

**And to:** the Manawatu District Council

**And to:** the Manawatu–Wanganui Regional Council (Horizons)

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

**THIS DOCUMENT NOTIFIES YOU THAT:**

1. The Muaupoko Tribal Authority Incorporated on behalf of the applicant group, Muaupoko, will on 31 March 2017 apply to the Court for:
  - 1.1. A protected customary rights order under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) relating to a particular area of the common marine and coastal area, as defined in s 9 of the Act, from Turakirae (Sinclair Head) in the south (latitude: -41.362541 and longitude: 174.716671) to the northern side of the Rangitikei River mouth in the north (latitude: -40.293275 and longitude: 175.222406) bounded by on the landward side by the line of mean high-water springs and on the seaward side by the territorial sea and including the common marine and coastal area surrounding Kapiti Island, Motungarara Island, Tahoramaurea Island, Tokomapuna Island and Mana Island (the Muaupoko Shared Rohe Moana). The northern and southern most point of the Muaupoko Shared Rohe Moana are marked in the map attached and labelled **Appendix A**; and
  - 1.2. A customary marine title order under the Act relating to a particular area of the common marine and coastal area from the southern side of the Kukutauaki block in the south (latitude: -40.852254 and longitude: 175.033922) to the northern side of the Manawatū River mouth in the north (latitude: -40.444171 and longitude: 175.217836) bounded by on the landward side by the line of mean high-water springs and on the seaward side by the territorial sea (the Muaupoko Exclusive Rohe Moana). The northern and southern most point of the Muaupoko Exclusive Rohe Moana is approximately marked in the map attached and labelled **Appendix B**.
2. The Muaupoko Shared Rohe Moana is inclusive of the Muaupoko Exclusive Rohe Moana.

3. The orders sought arise from use and occupation of Muaupoko in the Muaupoko Shared Rohe Moana from pre 1840 up until the present day as follows:
  - 3.1. The permanent occupation of the Horowhenua and use of the adjoining foreshore, seabed and seas without substantial interruption;
  - 3.2. The taking of hapuka, kahawai, ararara (trevally), tamure (snapper), hapu (kingfish), hautere (jack mackerel), gurnard (kumukumu), shark (mangō), flounder (pātiki), bait fish (including inanga), stingray (whai), eels (tuna), lamprey (piharau) and other fish found in the Muaupoko Shared Rohe Moana and river estuaries;
  - 3.3. The taking of seabirds;
  - 3.4. The taking of shellfish including tohemanga, paua, kina, crabs and koura (crayfish);
  - 3.5. Taking of aquatic plants;
  - 3.6. Navigation and passage of waka, and the landing of waka;
  - 3.7. Bathing;
  - 3.8. The collection of sand, stones, shingle and detritus;
  - 3.9. Recreation;
  - 3.10. The designation of wāhi tapu areas;
  - 3.11. The imposition of rāhui;
  - 3.12. Allowing others to undertake activities;
  - 3.13. All ways of life and cultural practices associated with the above takings and uses including cultural practices founded in spiritual beliefs including the saying of karakia tawhito, karanga, the exercise of kaitiakitanga and mana, the naming of places in the sea and foreshore to specify fishing areas, reefs and people who had authority over them;
    - and
  - 3.14. All other related customary uses of the Muaupoko Shared Rohe Moana.

#### **DESCRIPTION OF APPLICANT GROUP**

4. Muaupoko are an iwi that has permanently occupied Horowhenua prior to 1840 and up until the present day.

5. Muaupoko are represented today by Muaupoko Tribal Authority Incorporated whose members whakapapa from Whātonga, the eponymous ancestor of Muaūpoko.
6. The Muaupoko Tribal Authority Incorporated is an incorporated society registered on 21 August 1997 under the Incorporated Societies Act 1908.
7. The Muaupoko Tribal Authority Inc:
  - 7.1. Is the Mandated Iwi Organisation for Muaupoko under the Maori Fisheries Act 2004;
  - 7.2. Is the entity mandated to represent Muaūpoko in negotiations with the Crown for a comprehensive and final settlement of all Muaupoko historical Treaty of Waitangi claims; and
  - 7.3. Represents Muaupoko as an "iwi authority" for the purposes of the Resource Management Act 1991.

**GROUND ON WHICH THE PROTECTED CUSTOMARY RIGHTS  
RECOGNITION ORDER IS SOUGHT**

8. Muaupoko, through the Muaupoko Tribal Authority Incorporated seeks a protected customary rights recognition order on the grounds that its protected customary rights relating to the Muaupoko Shared Rohe Moana may be recognised by an order of the Court made on an application under section 100 of the Act.
9. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for protected customary rights meets the requirements of s 51(1) of the Act.
10. The Applicant Group meets the requirements in s 51(1) of the Act because it:
  - 10.1. has exercised the rights before and since 1840;
  - 10.2. continues to exercise those rights in the Muaupoko Shared Rohe Moana in accordance with tikanga in either exactly the same or a similar way, or in a way that has evolved over time; and
  - 10.3. is applying for rights that have not been extinguished as a matter of law.

**GROUNDS ON WHICH THE CUSTOMARY MARINE TITLE RECOGNITION ORDER IS SOUGHT**

11. Muaupoko through the Muaupoko Tribal Authority Incorporated seeks a customary marine title recognition order on the grounds that its customary marine title relating to the Muaupoko Exclusive Rohe Moana may be recognised by an order of the Court made on an application under s 100 of the Act.
12. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for customary marine title meets the requirements of s 58 of the Act.
13. The Applicant Group meets the requirements in s 58 of the Act because it:
  - 13.1. holds the Muaupoko Exclusive Rohe Moana in accordance with tikanga;
  - 13.2. has, in relation to the Muaupoko Exclusive Rohe Moana, exclusively used and occupied it from 1840 to the present without substantial interruption to its exclusive use and occupation; and
  - 13.3. the customary marine title has not been extinguished as a matter of law.
14. In terms of matters that may be taken into account in determining whether the Applicant Group's customary marine title exists in the Muaupoko Exclusive Rohe Moana:
  - 14.1. the Applicant Group have owned land abutting the Muaupoko Exclusive Rohe Moana and have done so, without substantial interruption, from 1840 to the present day; and
  - 14.2. the Applicant Group have exercised non-commercial customary fishing rights in the Muaupoko Exclusive Rohe Moana and have done so from 1840 to the present day.

**PERSON TO HOLD THE ORDERS**

15. The Muaupoko Tribal Authority Incorporated will be the holder of the orders as the representative entity of Muaupoko.

**APPLICATION MADE IN RELIANCE**

16. This application is made in reliance on sections 51(1), 58, 59, 94, 98, 100, and 101 of the Marine and Coastal Area (Takutai Moana) Act 2011 and the affidavit

of Mr Robert Warrington which sets out the basis on which Muaupoko are entitled to the orders sought.

**CONTACT DETAILS OF THE APPLICANT AND PERSON NAMED TO HOLD THE ORDER**

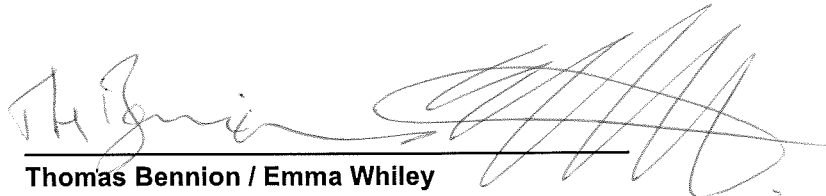
17. The contact address of the Applicant and person named to hold the order is:

Di Rump  
CEO Muaupoko Tribal Authority Incorporated  
306 Oxford St  
LEVIN 5510

18. The contract telephone number is: 06 367 3311 / 02102161043

19. The contract email is: ceo@muaupoko.iwi.nz

**Dated** at Wellington this 31<sup>st</sup> day of March 2017



**Thomas Bennion / Emma Whiley**

Counsel for the Muaupoko Tribal Authority Incorporated

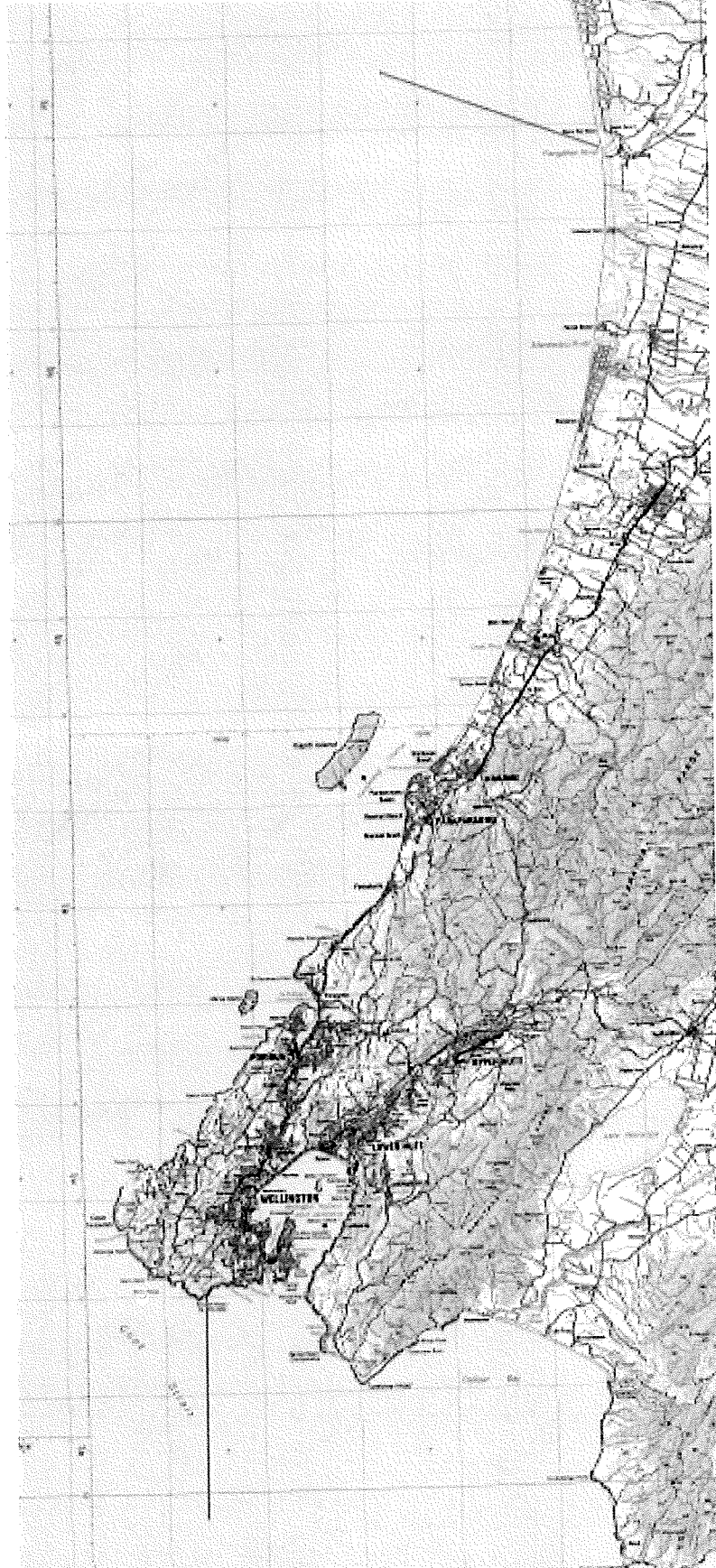
This document is filed by Thomas Bennion, Solicitor for the Muaupoko Tribal Authority Incorporated

The address for service of the Muaupoko Tribal Authority Incorporated is at the offices of Bennion Law, First Floor, 181 Cuba Street, Wellington.

Documents for service on the above-named applicant may be left at that address for service or may be:

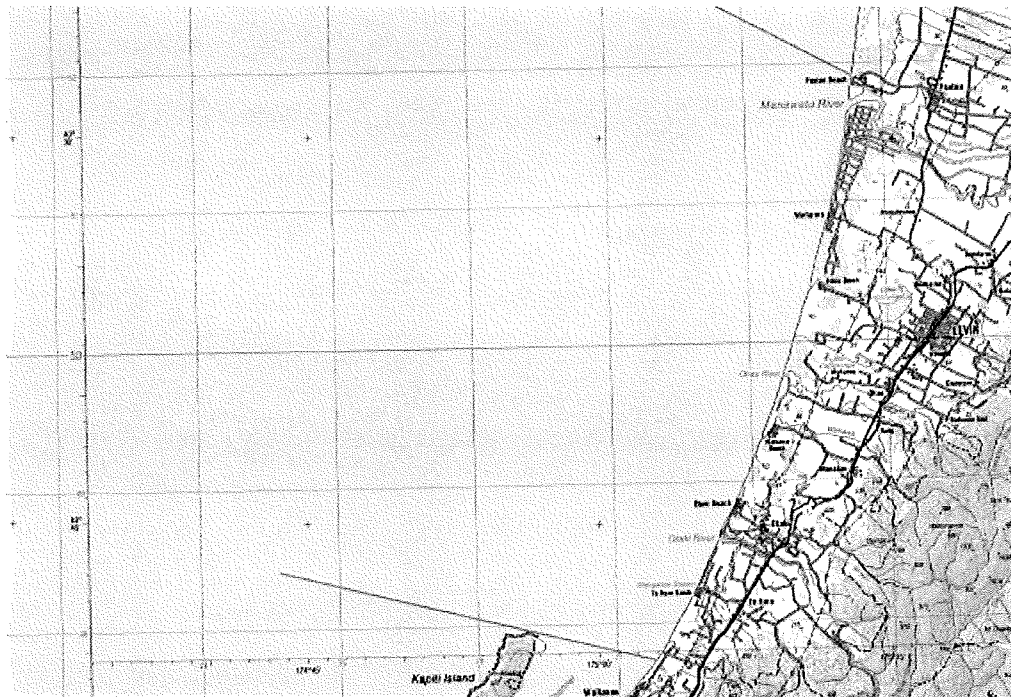
Posted to the solicitor at PO Box 25-433, Featherston Street, Wellington 6146; or Transmitted to the solicitor by email to tom@bennion.co.nz.

**APPENDIX A**  
**The Muaupoko Shared Rohe Moana**



1. The area is bounded
  - 1.1. on the landward side, by the line of mean high-water springs; and
  - 1.2. on the seaward side, by the outer limits of the territorial sea; and
2. includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
3. includes the airspace above, and the water space above, the areas described in paragraphs (1.1) and (1.2); and
4. includes the subsoil, bedrock, and other matter under the areas described in paragraphs 1 and 2.

**APPENDIX B**  
**The Muaupoko Exclusive Rohe Moana**



1. The area is bounded
  - 1.1. on the landward side, by the line of mean high-water springs; and
  - 1.2. on the seaward side, by the outer limits of the territorial sea; and
2. includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and



3. includes the airspace above, and the water space above, the areas described in paragraphs (1.1) and (1.2); and
4. includes the subsoil, bedrock, and other matter under the areas described in paragraphs 1 and 2.