

IN THE HIGH COURTS OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2017- 485- 262

IN THE MATTER OF

the Marine and Coastal
Area (Takutai Moana) Act
2011 (the Act)

AND IN THE MATTER OF

an application by TRACY
FRANCIS HILLIER of
OPOTIKI for an order
recognising Customary
Marine Title and Protected
Customary Rights

Applicant

AND

The Attorney General in
right of the Crown

TRACY FRANCIS HILLIER
APPLICATION
FOR RECOGNITION ORDERS PURSUANT TO THE MARINE AND
COASTAL AREA (TAKUTAI MOANA) ACT 2011

DATED 3RD of April 2017

Foster Milroy
Solicitors
Principal: Mark Milroy
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Received at the High Court of
- 3 APR 2017
Rotorua

Case Manager
Next Event: 1 1
- 4 APR 2017
3 Apr 17
THE HIGH COURT
WELLINGTON
Auckland

To: The Registrar of the High Court at Auckland;

and to: The Solicitor General on behalf of the Attorney-General.

This document notifies you that:

1. TRACY FRANCIS HILLIER will apply to the High Court for an order pursuant to s98 of the Marine and Coastal Area (Takutai Moana) Act 2011 ("the Act") to recognise the customary marine title and protected customary rights of **NGAI TAMAHAUA HAPU**;

The Applicant Group:

2. **NGAI TAMAHAUA HAPU** whakapapa to tipuna MURIWAI; TARAWA; RUAMOKO; KAHUKI; TAMAHAUA, PUNAHAMOA; who all relate to identifiable boundaries and link to the application area of TAMAHAUA HAPU. TRACY FRANCIS HILLIER makes this application for and on behalf of **NGAI TAMAHAUA HAPU** and their descendants listed below at a hui on this matter held on 29th March in 2017;

(a) Muriwai Maggie Jones, Raiha Ruwhiu, Pita Tori Biddle, Hetaraka Biddle, Tangimoe Clay, Dawn Te Hereripene Hill, Tracy Francis Hillier, Florence Te Hemanawa Ngatai, Minarapa Ngatai Mitai, Peter Thomas Selwyn, Robert Lawson Selwyn, Timothy Selwyn, Kelvin Retimana Tapuke, Rita Rangitaia Wordsworth.

Area to which the application relates:

3. The area to which this application relates is the common marine and coastal area (as defined in s9 of the Act) that is bounded:
 - a. on the landward side by the line of mean high-water springs of **NGAI TAMAHAUA HAPU**;
 - b. on the seaward side by the outer limits of the territorial sea to the Kermedec Islands;
 - c. from Maraetotara Stream in Ohope (west point) to Tawhitinui, Akeake, Pakowhai, Opotiki Harbour Mouth, Waioweka, Otara, Tirohanga, Puketapu Opape to Ngawaikui Stream (east point) by a line that extends from the coast abutting to the outer limits of the territorial sea; and extends to the 200 nautical miles to the Exclusive Economic Zone;
 - d. on the Maraetotara to Ngawaikui Stream (east point) ward side by a line that extends from the coast abutting the Oceans to Rangitahua to Mauke in the Cook Islands including Moutohora Whale Island, Te Paepae O Aotea, Whakaari White Island, Uretara Island, Hokianga Island within the Ohiwa Harbour to the outer limits of the territorial sea;
 - e. includes the common marine and coastal area surrounding the following islands: Moutohora Whale Island, Te Paepae O Aotea, Whakaari White Island, Uretara Island, Hokianga Island within the Ohiwa Harbour;
 - f. includes all the tidal rivers, waterways, estuarine waters, springs, wetlands, streams, and tributaries Waimana River, Maraetotara Stream, Parau Stream, Oponae Stream, Pakihi Stream, Motu Stream, Te Waiti Stream, Waioweka River, Otara River, Waiaua River.

Grounds on which the protected customary rights order is sought:

4. The grounds on which this order is sought are that :
- a. **NGAI TAMAHUA HAPU** being a coastal group has relied heavily on the activities, cultural and cususes and practices which were carried on, exercised and followed for preservation and maintenance, the fully and undisturbed exercise of the Mana Motuhake, Rangatiratanga, and Kaitiakitanga of **Ngai Tamahau Hapu** and the Uri Mokopuna O Ngai Tamahau according to our Tikanga recognizing Mana Atua, Mana Whenua, Mana Moana, Mana Tangata;
 - b. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by **Ngai Tamahau Hapu** and the **Uri of Ngai Tamahau**.
 - c. **Ngai Tamahau Hapu** has undertaken these activities since prior to 1840 and continues to undertake these activities in the application area, for the sustenance, physical, spiritual, and cultural wellbeing of Ngai Tamahau and the **Uri of Ngai Tamahau**;
 - d. **Ngai Tamahau Hapu** also undertakes the following activities in the common marine and coastal area: Kaimoana, Fishing, Rongoa for Medicinal and healing Purposes, Extraction of Resources shells, wood, bone, stone, sand, seaweed ,sulphur, bones, bird catching, transport, transfer of knowledge of Hapu marine culture, trade, communication, seasonal kaimoana and fish exchange as koha or trade, access to gardens on land, bird snaring, tangihanga, social interactions, manaakitanga, ope maara.
 - e. **Ngai Tamahau Hapu** and the **Uri of Ngai Tamahau** has undertaken these activities since 650AD date prior to 1840 and

continues to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga.

- f. **Ngai Tamahaua Hapu** and the **Uri of Ngai Tamahaua** has undertaken these activities since 650AD date prior to 1840 and continues to undertake these activities and have been substantially uninterrupted manner since 1840.

Grounds on which the customary marine title application is made:


The grounds on which this order is sought are that :

- g. **Ngai Tamahaua Hapu** has held the application area in accordance with tikanga since 1840
- h. **Ngai Tamahaua Hapu** has exclusively used and occupied the application area from 1840 to the present day without substantial interruption.
5. **Ngai Tamahaua Hapu** will deliver more information once funding for research and legal representation is secured.

Contact Details:

6. TRACY FRANCIS HILLIER for **NGAI TAMAHUA HAPU** is:
c/- Charl Hirschfeld
10 Kaihu Street
Northcote
Auckland 0627
7. This application relies on s51(1), s58, s98-113 of the Act and the affidavit of TRACY FRANCIS HILLIER for **NGAI TAMAHUA HAPU**.

Dated at Auckland on the 3rd day of APRIL 2017



TRACY FRANCIS HILLIER

AUTHORITY TO ACT IN RELATION TO THE COASTAL AND MARINE AREA ACT

2011(instructing solicitor and counsel)

Whereas I have signed an authority to act for counsel with then an instructing solicitor to be nominated by me I instruct the following to be respectively my instructing solicitor (Foster Milroy) and Charl Hirschfeld and others of his chambers to be counsel

Foster Milroy
Solicitors
Principal: Mark Milroy
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For the avoidance of doubt Charl Hirschfeld will be leading the case and he will be remunerated by me unless I instruct otherwise. I also instruct that the court proceedings in this case be filed in the Auckland High Court.

My contact details are as follows:

Name: Kacy Francis Hillier
Email: shiningstarspreschool@xtra.co.nz
Phone: 027 955 9734
Address: 1 Potts Ave, DPOTIKI 3122
Signed: Kacy F. Hillier
Date: 2nd April 2017

As the undersigned above I understand that the instructions relate to

- Customary marine title and protected customary rights concerning my iwi, hapū or whānau under legislative recognised relationships in connection with certain parts of the marine and coastal area.