

IN THE HIGH COURT OF NEW ZEALAND  
WHANGANUI REGISTRY

CIV-2017- 485-307

IN THE MATTER OF

the Marine and Coastal Area (Takutai Moana)  
Act 2011

AND

IN THE MATTER OF

an application by **GERRARD PAUL ALBERT  
AND TE KENEHI ROBERT MAIR** for and on  
behalf of Te Awa Tupua and Ngā Hapū me Ngā  
Uri o Te Iwi o Whanganui for an order  
recognising Customary Marine Title and  
Protected Customary Rights

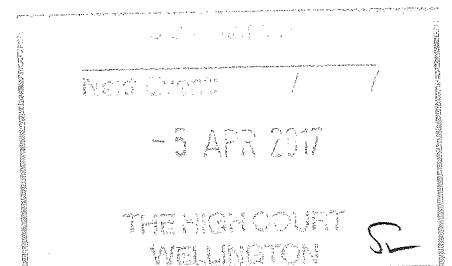
**Applicants**

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**AN ORIGINATING APPLICATION FOR RECOGNITION ORDERS PURSUANT TO  
THE MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011**

**3 April 2017**

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**KAHUI**  
LEGAL

PO Box 1654

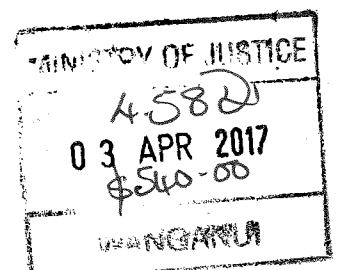
Telephone: 04 495 9999

Facsimile: 04 495 9990

Counsel: J P Ferguson

Email: jamie@kahuilegal.co.nz

**WELLINGTON**



**TO: The Registrar of the High Court at Whanganui**

**AND TO: Whanganui District Council  
Manawatu-Whanganui Regional Council  
The Solicitor-General on behalf of the Attorney-General**

**THIS DOCUMENT NOTIFIES YOU THAT:**

- A. The applicants, Gerrard Paul Albert and Te Kenehi Robert Mair, on behalf of Te Awa Tupua and Ngā Hapū me Ngā Uri o Te Iwi o Whanganui (the **Applicant Group**), will on 3 April 2017 apply to the High Court for orders recognising customary marine title and protected customary rights pursuant to sections 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the **Act**):
- a. recognising customary marine title in the common marine and coastal area that is the subject of this application; and
  - b. recognising protected customary rights in the common marine and coastal area that is the subject of this application.
- B. The grounds on which the orders are sought are as follows:

**The Applicant**

1. This application is made by Gerrard Paul Albert and Te Kenehi Robert Mair, on behalf of Te Awa Tupua and Ngā Hapū me Ngā Uri o Te Iwi o Whanganui.
2. The applicants are, respectively:
  - (a) Gerrard Paul Albert, the Chairperson of Ngā Tāngata Tiaki, the post settlement governance entity for Whanganui Iwi for the purpose of the Whanganui River Settlement; and
  - (b) Te Kenehi Mair, Chairperson, Whanganui Land Settlement Negotiation Trust; and

### **Area to which application relates**

3. The Applicant seeks recognition of customary marine title and protected customary rights in respect of the common marine and coastal area of the west coast of the North Island from the mouth of the Kai Iwi River in the north to the mouth of the Whangaehu River in the south (and inclusive of both those river mouths) having as its landward boundary the mean high water springs and having as its seaward boundary the outer limits of the territorial sea (12 nautical miles from shore).

### **Applicant Group**

4. The Applicant Group comprises the hapū of Whanganui Iwi who hold customary interests in the common marine and coastal area that is the subject of this application.

### **Orders sought**

#### *Customary Marine Title*

5. The Applicants seek an order recognising customary marine title over the common marine and coastal area that is the subject of this application.

#### *Protected Customary Rights*

6. The Applicants seek an order recognising protected customary rights within the common marine and coastal area that is the subject of this application, including, but not limited to, rights to:
  - (a) the exercise of kaitiakitanga;
  - (b) rāhui;
  - (c) the launching and use, in, on, or over the common coastal marine area, of waka and support craft, and the erection and use of temporary and permanent structures, including barges, jetties and

wharewaka, for ceremonial, customary, recreational, educational, and sporting purposes;

- (d) the use of tauranga ika (specific areas for the catching and harvesting of fish and anchoring and mooring of vessels for fishing purposes);
- (e) the installation and use in, on, or over that part of the coastal marine area comprising the Whanganui River of pā tuna (eel weirs), utu piharau (lamprey weirs), and other traditional fishing structures for the purpose of revitalising, maintaining, and carrying out customary fishing practices and applying knowledge;
- (f) the extraction and use of sand, peat, shingle, aggregate, rocks, stone, driftwood, pakohe, saltwater, seaweed, pingao and harakeke; and
- (g) using the specified area and its resources including waters for customary practices relating to the health and well-being of persons, including bathing, cleansing, baptisms, and other customary practices.

## **Grounds**

- 7. Sections 94 and 98 of the Act confer on the High Court the jurisdiction to make orders recognising customary marine title and protected customary rights, provided that the Applicant Group meets the tests for customary marine title set out under section 58 of the Act and protected customary rights set out under section 51(1) of the Act.
- 8. Prior to 1840, the hapū of Whanganui Iwi were owners, in accordance with tikanga, of all of the coastal lands, waters and natural resources within the rohe (territory) of Whanganui Iwi, including what is now referred to as the common marine and coastal area.

9. Since 1840, the hapū of Whanganui Iwi:
  - (a) have retained legal ownership of only some of their coastal lands, but they have never relinquished their customary rights as tangata whenua in relation to what is now known as the common marine and coastal area, including the Whanganui River; and
  - (b) have viewed the Whanganui River as an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements (and without separation from that part of the River that is legally described as forming part of the common coastal marine area under the Act).
10. The hapū of Whanganui Iwi assert authority over and use of the common marine and coastal area, including the Whanganui River, without substantial interruption, based on tikanga, customary law and common law, and rely on unbroken occupation and use and the continued exercise of mana and rangatiratanga since 1840.
11. The hapū of Whanganui Iwi assert that the continued exercise of authority over and use of the common marine and coastal area, including the Whanganui River, is a fundamental and integral expression of the mana and rangatiratanga of those hapū and Whanganui Iwi.
12. The hapū of Whanganui Iwi assert that they have continued to exercise customary rights, in accordance with tikanga, in relation to the lands, waters, fisheries and other natural resources of the marine and coastal environment, including the Whanganui River.
13. This continued ownership and use is evidenced in:
  - (a) the records of the native and Māori Land Court and other historical records;
  - (b) the reports and other documents on the record of inquiry of the Waitangi Tribunal in its Wai 167 Whanganui River and Wai 903 Whanganui District Inquiries;

- (c) the extensive traditional history, including oral histories, whakapapa, pepeha, whakataukī, waiata and mōteatea of the including the Whanganui River;
- (d) the affidavit of Gerrard Paul Albert filed in support of this application; and
- (e) the further affidavits to be filed in support of this application following the completion of research.

#### **Holder of the recognition orders**

14. The holders of the recognition orders within the relevant coastal marine area will be:
- (a) Te Awa Tupua (as recognised under the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017) in relation to any customary marine title that is recognised for that part of the coastal marine area that comprises the Whanganui River;
  - (b) the hapū of Whanganui Iwi with interests in the relevant areas for those other parts of the coastal marine area (ie, other than the Whanganui River) in which customary marine title is recognised; and
  - (c) the hapū of Whanganui Iwi with interests in the relevant areas for those parts of the coastal marine area in which protected customary rights area recognised.
15. The Applicant, on behalf of Te Awa Tupua and the hapū of Whanganui Iwi, seeks leave to amend this aspect of the application at a later date.

#### **Contact**

16. In addition to the solicitors for the Applicants, the contact details for the Applicants are:


Ngā Tāngata Tiaki o Whanganui  
PO Box 544  
**WHANGANUI 4540**

**Attn:** Gerrard Albert, Chairperson

**Adjournment**

17. The Act provides two pathways for the recognition of customary marine title and protected customary rights namely through:
  - (a) an agreement made in accordance with section 95 and brought into effect under section 96; and
  - (b) an order of the High Court made on an application under section 100.
18. In parallel with this application, the Applicants have also filed an application with the responsible Minister on behalf of the Crown to enter into a recognition agreement.
19. On that basis, the Applicants advise that they are likely to seek leave from the Court to adjourn the present application for a six (6) month period to enable discussions to be progressed with the responsible Minister regarding a recognition agreement.
20. This application is made on reliance on sections 51(1), 58 and 98 to 113 of the Act, the affidavits noted in paragraph 13, and *Re Tipene* [2016] NZHC 3199.

**DATED** at Whanganui this 3<sup>rd</sup> day of April 2017

  
\_\_\_\_\_  
**Gerrard Paul Albert**  
**Applicant**

**THIS** application is filed by **JAMES PHILIP FERGUSON**, of the firm Kahui Legal. The address for service of the Applicant is at the office of Kahui Legal, Solicitors, Level 11, Intilecta Centre, 15 Murphy Street, Wellington.

Documents for service on the Applicant may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 1654, Wellington; or
- (b) emailed to the solicitor at [jamie@kahuilegal.co.nz](mailto:jamie@kahuilegal.co.nz).