

IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY

No: 2017-483-310

IN THE MATTER OF

an application under the Marine and Coastal Area
(Takutai Moana) Act 2011

AND

IN THE MATTER OF

an application by Liana Huia Poutu, Chairperson, Te
Kotahitanga o Te Atiawa Trust

Applicant

An application by Liana Huia Poutu, Chairperson, Te Kotahitanga o Te Atiawa Trust for
recognition orders pursuant to the Marine and Coastal Area (Takutai Moana) Act 2011

3 April 2017

KAHUI
LEGAL

PO Box 1654, Wellington 6140

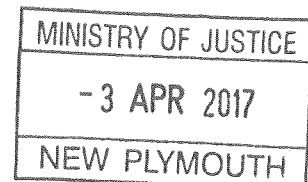
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WELLINGTON

NRM-101860-1-2-V2



TO The Registrar of the High Court at Wellington
AND TO The Solicitor-General on behalf of the Attorney-General
The New Plymouth District Council
The Taranaki Regional Council

THIS DOCUMENT NOTIFIES YOU THAT:

- A. The applicant, Liana Huia Poutu, Chairperson, Te Kotahitanga o Te Atiawa Trust (the **Trust**), on behalf of Te Atiawa (Taranaki), will on 3 April 2017, apply to the High Court for orders recognising customary marine title and protected customary rights pursuant to sections 98 and 100 of the Marine and Coastal Area (Takutai Moana) Act 2011 (**Act**).
- B. For the purposes of this application, Te Atiawa (Taranaki) has the meaning set out in the Te Atiawa Claims Settlement Act 2016, s13(1).
- C. The grounds on which the orders are sought are as follows:

Background

- 1. Te Atiawa (Taranaki) is an iwi based in Taranaki.
- 2. Te Atiawa (Taranaki) descend from the eponymous tupuna/ancestor, Awanui-ā-Rangi.
- 3. The Te Atiawa (Taranaki) rohe extends from the Herekawe Stream to Te Rau o Te Huia and inland to Maunga Taranaki. Te Atiawa (Taranaki) has occupied this rohe since time immemorial.
- 4. Prior to colonisation, there were many distinct Te Atiawa hapū, each with their own defined whenua and rohe. However, the number of hapū has condensed over time through the combined effect of interaction and warfare with other iwi, migrations to other areas of Aotearoa, the arrival of British settlers in the 1840s, Crown land purchases, the Taranaki Wars of the 1860s and the Taranaki Raupatu. Today, the hapū of Te Atiawa are recognised as Ngāti Rāhiri, Otaraua, Manukōrihi, Pukerangiora, Puketapu, Ngāti Tāwhirikura, Ngāti Tūparikino and Ngāti Te Whiti.
- 5. Sections 94 and 98 of the Act confer on the High Court the jurisdiction to make an order recognising customary marine title and protected customary rights, provided

that the applicant group meets the tests for customary marine title and protected customary rights set out under section 58 and 51 of the Act.

Orders sought (section 101(a))

6. The applicant seeks recognition orders from the High Court under section 98 of the Act for customary marine title, as follows:
 - (a) the customary marine title of Te Atiawa (Taranaki) in the exclusive area marked from Paritūtū in the south to Waiaiu Stream in the north shown on the map attached and marked as Appendix 1;
 - (b) the customary marine title of Te Atiawa (Taranaki) shared with Ngāti Mutunga in the area marked from Waiaiu Stream in the south to Te Rau o Te Huia in the north shown on Appendix 1, where the Te Atiawa (Taranaki) and Ngāti Mutunga areas overlap;
 - (c) the customary marine title of Te Atiawa (Taranaki) shared with Taranaki iwi in the area marked from Herekawe Stream in the south to Paritūtū in the north shown on Appendix 1, where the Te Atiawa (Taranaki) and Taranaki iwi areas overlap; and
 - (d) the protected customary rights of Te Atiawa (Taranaki) in the areas above.
7. The applicant considers the tests for customary marine title set out under section 58 of the Act are satisfied.
8. The applicant seeks recognition orders under section 98 of the Act for protected customary rights in respect of the following rights or activities:
 - (a) the exercise of kaitiakitanga;
 - (b) rāhui;
 - (c) the use of tauranga waka (landing, launching, anchoring, mooring vessels);
 - (d) the use of tauranga ika (specific areas for the catching (makamaka ika) and harvesting of fish within the reef systems and anchoring and mooring of vessels for fishing purposes);

- (e) wharewaka/boat sheds;
 - (f) the extraction and use of: sand, peat, shingle, aggregate, rocks, stone, driftwood, ochre, saltwater, seaweed, pingao and harakeke;
 - (g) maara mataitai/non-commercial aquaculture; and
 - (h) using the specified area for ceremonies associated with burial, blessings and rongoa.
9. The applicant considers the tests for protected customary rights under section 51 of the Act are satisfied.

The applicant group (section 101(c))

10. The applicant group is Te Atiawa (Taranaki) (as described in the Te Atiawa Claims Settlement Act 2016, s13(1)).

Te Kotahitanga o Te Atiawa Trust

11. The Trust is the post-settlement governance entity of the iwi of Te Atiawa (Taranaki). The Trust holds the mandate to represent Te Atiawa (Taranaki) on matters relating to the recognition of the rights of Te Atiawa (Taranaki) in the common marine and coastal area.

The application area (section 101(d))

12. The particular area of the common marine and coastal area to which this application relates is the common marine and coastal area within the rohe of Te Atiawa (Taranaki) which extends from Herekawe Stream in the south to Te Rau o Te Huia in the north, from a landward boundary of the mean high water springs and extending to 12 nautical miles in a seaward direction, further described by reference to:

- (a) the exclusive and shared areas shown on **Appendix 1**;
- (b) South landward point 174.018108, -39.069113; south seaward point 173.8183, -38.933424; north landward point 174.34132, -38.993695; north seaward bend point 174.340138, -38.930637; north seaward point 174.137944, -38.794022;

13. In respect of the application area between the landward points of Herekawe Stream and Paritūtū the Trust acknowledges that this is an area shared by Te Atiawa (Taranaki) and the iwi of Taranaki (as described as "iwi shared" on the map attached as **Appendix 1**). Any customary marine title recognised by the High Court in this shared area is to be shared between Te Atiawa (Taranaki) and Taranaki.
14. In respect of the application area between the landward points of Te Rau o Te Huia and Walau Stream the Trust acknowledges that this is an area shared by Te Atiawa (Taranaki) and the iwi of Ngāti Mutunga (as described as "iwi shared" on the map attached as **Appendix 1**). Any customary marine title recognised by the High Court in this shared area is to be shared between Te Atiawa (Taranaki) and Ngāti Mutunga.
15. For the avoidance of doubt the Trust considers the tests for customary marine title set out under section 58 of the Act are satisfied for these shared areas.

Grounds on which the application is made (section 101(e))

16. The grounds on which the requirements for customary marine title are satisfied under section 58 of the Act are as follows:
 - (a) Te Atiawa (Taranaki) holds the application area in accordance with tikanga (section 58(1)(a));
 - (b) Te Atiawa (Taranaki) has, in relation to the application area exclusively used and occupied this area from 1840 to the present day without substantial interruption (section 58(1)(b));
 - (c) Te Atiawa (Taranaki) own a significant amount or all or part of the land abutting the application area and have done so without substantial interruption from 1840 to the present day (section 59(1)(a)(i));
 - (d) Te Atiawa (Taranaki) exercises non-commercial customary fishing rights in the application area and have done so from 1840 to the present day (section 59(1)(a)(ii)); and
 - (e) as further set out in the affidavit of Ms Liana Huia Poutu, sworn 3 April 2017, in support of this application.

17. The grounds on which the requirements for protected customary rights are satisfied under section 58 of the Act are as follows:
- (a) Te Atiawa (Taranaki) has exercised the rights or activities described in paragraph 8 above since 1840 (section 51(1)(a));
 - (b) Te Atiawa (Taranaki) continues to exercise the rights or activities described in paragraph 8 above in a part of the common marine and coastal area in accordance with tikanga (section 51(1)(b));
 - (c) The rights or activities described in paragraph 8 above have not been extinguished as a matter of law (section 51(1)(c)).

The holder of the recognition orders (section 101(f)-(g))

18. For the purposes of this application, the holders of the recognition orders, within the application, will be the trustees of the Trust and the named appointees on behalf of the hapu of Te Atiawa (Taranaki) for the relevant area.
19. The contact details for the Trust is

Te Kotahitanga o Te Atiawa Trust
35 Leach Street, New Plymouth
PO Box 1097 Taranaki Mail Centre, New Plymouth
Telephone: (06) 758 4685
Attention: Hemi Sundgren - Pou Whakahaere / Chief Executive Officer

20. The applicant seeks leave to amend this aspect of the application at a later date.


Affidavit in support (section 101(h))

21. This application is supported by the affidavit of Ms Liana Poutu, the Chairperson of the Trust. The affidavit sets out the basis on which Te Atiawa (Taranaki) claim to be entitled to recognition orders for customary marine title and protected customary rights in respect of the application area.
22. This application is made in reliance on sections 58 and 59 of the Act and *Re Tipene* [2016] NZHC 3199.

Adjournment

23. 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 Court made on an application under section 100.
24. In parallel with this application, the Trust has also filed an application with the responsible Minister on behalf of the Crown to enter into a recognition agreement.
25. On that basis, the applicant seeks a six (6) month adjournment from the High Court to undertake discussions with the responsible Minister on behalf of the Crown to enter into a recognition agreement. Should the applicant require another adjournment following the initial 6 month period, the applicant will seek the leave of the High Court.

DATED at Wellington this 3 April 2017



M K Mahuika / N R Milner
Counsel for the Applicant

THIS application is filed by **Matanuku Kihirini Mahuika**, barrister and solicitor. The address for service of the applicant is Kahui Legal, Level 11, Intilecta Centre, 15 Murphy Street, Wellington 6011, attention: M K Mahuika/N R Milner. Documents for service on the applicant may be left at that address for service or may be:

- (a) posted to the solicitor at Kahui Legal, PO Box 1654, Wellington 6140, attention: M K Mahuika/N R Milner;
- (b) transmitted to the solicitor by facsimile 04 495 9990, attention: M K Mahuika/N R Milner; or
- (c) emailed to the solicitor at matanuku@kahuilegal.co.nz and nathan@kahuilegal.co.nz.

