

IN THE HIGH COURT OF NEW ZEALAND
GISBORNE REGISTRY

CIV-2017-485-314.

IN THE MATTER OF

an application under section 100 of the **Marine
and Coastal Area (Takutai Moana) Act 2011**

AND

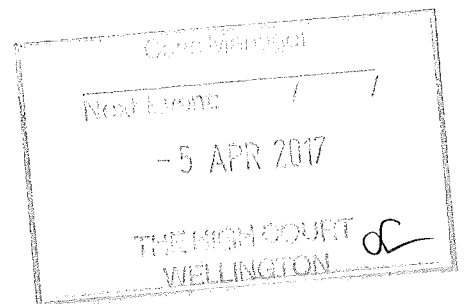
IN THE MATTER OF

an application by the Trustees of the Tāmanuhiri
Tūtū Poroporo Trust on behalf of **NGĀI
TĀMANUHIRI IWI** an unincorporated common
law trust, being the post settlement governance
entity for Ngāi Tāmanuhiri Iwi

Applicant

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

3 April 2017



KAHUI
LEGAL

PO Box 1654

Telephone: 04 495 9999

Facsimile: 04 495 9990

Counsel: H K Irwin-Easthope / A T K Hurihanganui

WELLINGTON

District/High Court

- 3 APR 2017

Gisborne

TO: The Registrar of the High Court at Gisborne
AND TO: Gisborne District Council
Hawke's Bay Regional Council
Wairoa District Council
The Solicitor-General on behalf of the Attorney-General

THIS DOCUMENT NOTIFIES YOU THAT:

- A. The applicant, the Trustees of the Tāmanuhiri Tūtū Poroporo Trust (the **Trustees**) on behalf of Ngāi Tāmanuhiri (the **Applicant Group**), will 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 (the **Act**).
- B. The grounds on which the orders are sought are as follows:

Background

1. Ngāi Tāmanuhiri is a coastal Iwi that has a strong association to the moana. Ngāi Tāmanuhiri considers it has continued to exercise mana whenua, mana moana and kaitiekitanga over the Ngāi Tāmanuhiri Coastal Marine Area.
2. 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.

Orders Sought – section 101(a)

3. The Trustees seek recognition orders from the High Court under section 98 of the Act for:
 - (a) customary marine title over the Ngāi Tāmanuhiri Coastal Marine Area (the Trustees consider the Applicant Group meets the tests for customary marine title set out under section 58 of the Act); and

- (b) protected customary rights within the Ngāi Tāmanuhiri Coastal Marine Area (the Trustees consider the Applicant Group meets the tests for protected customary rights set out under section 51 of the Act).

Protected customary rights – section 101(b)

- 4. The Trustees seek recognition orders for the exercise of kaitiekitanga as a protected customary right which includes, but is not limited to, the use of paru and the collection of karengo.

The Applicant Group – section 101(c)

Ngāi Tāmanuhiri

- 5. The Applicant Group is the Iwi of Ngāi Tāmanuhiri. As described in section 11 of the Ngāi Tāmanuhiri Claims Settlement Act 2012 (the **Settlement Act**), Ngāi Tāmanuhiri includes:

- (a) the collective comprising individuals who descend from –
 - (i) Tāmanuhiri;
 - (ii) any other recognised ancestor of the hapū or descent groups of Ngāti Rangiwaho Matua, Ngāti Rangiwaho, Ngāti Kahutia, Ngāti Rangitauwhiwhia, or Ngāi Tawehi and who exercised customary rights within the Ngāi Tāmanuhiri area of interest after 6 February 1840; and
- (b) members of 1 or more of those hapū or descent groups; and
- (c) every whānau, hapū, or other group of individuals to the extent that that whānau, hapū, or other group includes individuals referred to in paragraph (a); and
- (d) every individual referred to in paragraph (a).

Tāmanuhiri Tūtū Poroporo Trust

6. The Tāmanuhiri Tūtū Poroporo Trust (the **Trust**) is the post-settlement governance entity on behalf of Ngāi Tāmanuhiri in respect of the Settlement Act. The Trustees are Shane Bradbrook, Reweti Ropiha (Deputy Chair), Tutekawa Wyllie, Matene Blandford, Angus Ngarangioe and Waireti Amai.¹
7. The Trust, through the Trustees, has been appointed by the Applicant Group to be the representative of the Applicant Group and to apply for, and hold, recognition orders on behalf of the Applicant Group.²

The Application Area – section 101(d)

8. The particular area of the common coastal marine area to which this application relates is the Ngāi Tāmanuhiri Coastal Marine Area (the **Application Area**).
9. The Application Area means, for the purposes of this Application:³
 - (a) the common marine and coastal area within the Ngāi Tāmanuhiri rohe, which extends from Koputūtea in the North to Paritū in the South, from the landward boundary of the mean high water spring and the seaward boundary being the outer limits of the territorial sea (12 nautical miles from shore); and
 - (b) the area identified on the map **annexed** and marked “**A**” to this Application (noting the area of shared interests with Rongowhakaata as set out further in paragraphs 11-12).
10. The Application Area is located on the east coast of the North Island in the Gisborne District. The Ngāi Tāmanuhiri coastal boundaries begin generally from Koputūtea by the sea, in the north, then south to Pakirikiri,

¹ Shane Kawenata Frederick Bradbrook and Tutekawa Wyllie have sworn affidavits in support of this application.

² As detailed in the affidavit of Robyn Mere Rauna sworn 3 April 2017.

³ Ngāi Tāmanuhiri also have a statutory acknowledgement over their Coastal Marine Areas between the same boundary markers (as detailed in the affidavit of Shane Kawenata Frederick Bradbrook sworn 31 March 2017).

Papatewhai, Rangihoua, Te Matamata, Orongo, Taikawakawa, Whareongaonga and Tikiwhata, then to Paritū, in the south.

Shared Interest with Rongowhakaata within the Application Area

11. There is an area of shared interest in the Application Area between the Applicant Group and Rongowhakaata (the neighbouring iwi to the North).
12. For the purpose of this application, the Trust and the Rongowhakaata Iwi Trust (on behalf of Rongowhakaata) have agreed that:⁴
 - (a) the area specified at Te Kōwhai is shared between the Applicant Group and Rongowhakaata (the **Agreed Shared Area**); and
 - (b) any claim to the Agreed Shared Area will be made jointly or made in a way that explicitly acknowledges the shared interests.

Grounds on which the Application is made – section 101(e)

13. On behalf of the Applicant Group, the Trustees submit that the necessary requirements for customary marine title (section 58 of the Act) and protected customary rights (section 51 of the Act) are satisfied, in particular:
 - (a) in relation to customary marine title:
 - (i) the Applicant Group holds the Application Area in accordance with tikanga (section 58(1)(a));
 - (ii) the Applicant Group has, in relation to the Application Area exclusively used and occupied the Application Area from 1840 to the present day without substantial interruption (section 58(1)(b));

⁴ As detailed in the affidavit of Robyn Mere Rauna sworn 3 April 2017.

- (iii) the Applicant Group owns 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));
 - (iv) the Applicant Group 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
- (b) in relation to protected customary rights:
 - (i) the protected customary rights have been exercised since 1840 (section 51(1)(a));
 - (ii) the protected customary rights continue to be exercised in the Application Area in accordance with tikanga by the Applicant Group, whether it continues to be exercised in exactly the same or a similar way, or evolves over time (section 51(1)(b));
 - (iii) the protected customary rights are not extinguished as a matter of law (section 51(1)(c)), and
- (c) as set out in the affidavits in support of this application.

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

14. For the purposes of this application, the holder of the recognition orders will be the Trust (or, in the event that the holders must be a natural person, the Trustees of the Trust in their capacity as Trustees).
15. The Trustees, on behalf of the Applicant Group, seek leave to amend this aspect of the application at a later date if required.
16. The contact details for the Trust (and the Trustees) are:

Tāmanuhiri Tūtū Poroporo Trust

299 Gladstone Road
Corner of Gladstone Road & Cobden Street
GISBORNE 4010
(06) 863 3560

Affidavits in Support – section 101(h)

17. This application is supported by the affidavits of Temepara Ngarangioue Issacs, Tutekawa Wyllie, Robin Rapihana Wyllie⁵, Noel Tawaputa Whara Pohatu, Alexdrina Hawea, Robyn Mere Rauna (Chief Executive Officer of the Trust) and Shane Kawenata Frederick Bradbrook (Chairman of the Trust).
18. The affidavits in support of this application set out the basis on which the Applicant Group claims to be entitled to the recognition orders for customary marine title and protected customary rights over the Application Area.
19. The Trustees, on behalf of the Applicant Group, seek leave to file further evidence to support this application at a later date if necessary.

Adjournment

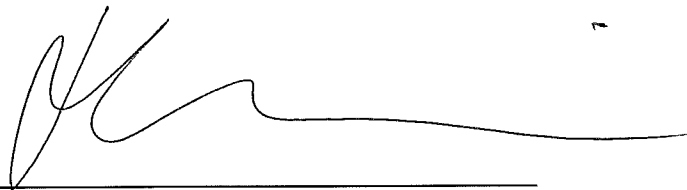
20. The Act provides two pathways for the recognition of customary marine title and protected customary rights; namely through:
 - (a) a recognition agreement with the responsible Minister on behalf of the Crown made in accordance with section 95 and brought into effect under section 96; and
 - (b) an order of the Court made on an application under section 100.
21. In parallel with this application under section 100 of the Act, the Trustees have also filed an application with the responsible Minister on behalf of the Crown to enter into a recognition agreement.
22. On that basis, the Trustees seek a six (6) month adjournment from the High Court to undertake discussions with the responsible Minister on

⁵ Robyn Wyllie's affidavit is filed unsworn at this time. A sworn version will be filed as soon as possible on Mr Wyllie's return from Australia to New Zealand.

behalf of the Crown to enter into a recognition agreement. Should the Trustees require a further adjournment following the initial 6 month period to continue discussions with the Crown to reach an agreement, the Trustees will seek the leave of the High Court.

- C. This application is made on reliance on section 58 and 59 of the Act, the affidavits noted in paragraph 17 and *Re Tipene* [2016] NZHC 3199.

DATED at Wellington this 3rd day of April 2017

A handwritten signature in black ink, consisting of a large, stylized initial 'H' followed by a long, horizontal, wavy line that tapers to the right.

H K Irwin-Easthope / A T K Hurihanganui

Counsel for the Applicant

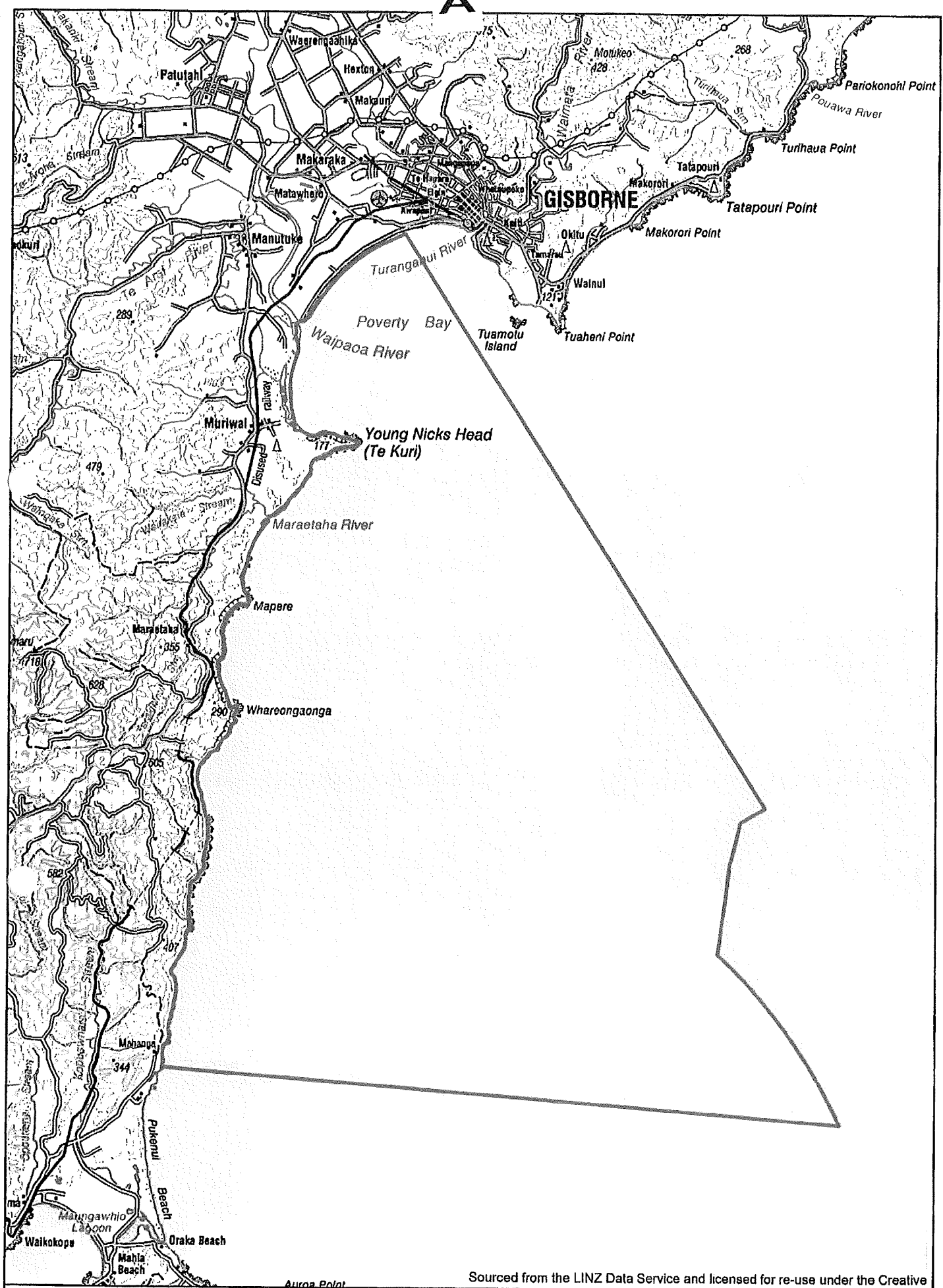
THIS application is filed by **HORIANA IRWIN-EASTHOPE**, of the firm Kahui Legal. The address for service of the Applicant is at the office of Kahui Legal, Solicitors, Level 11, Intilecta Centre, 15 Murphy Street, Wellington.

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;
- (b) transmitted to the solicitor by facsimile on 04 495 9990; or
- (c) emailed to the solicitor at horiana@kahuilegal.co.nz and aperahama@kahuilegal.co.nz.

Documents served on the Applicant should be marked for the attention of H K Irwin-Easthope and A T K Hurihanganui.

A



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Ngāi Tamanuhiri Customary Marine Title and Protected Customary Rights