

IN THE HIGH COURT OF NEW ZEALAND  
ROTORUA REGISTRY

No: CIV-2017-483-317

IN THE MATTER OF

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

AND

IN THE MATTER OF

an application by the trustees of the Rurima Island  
Maori Reservation

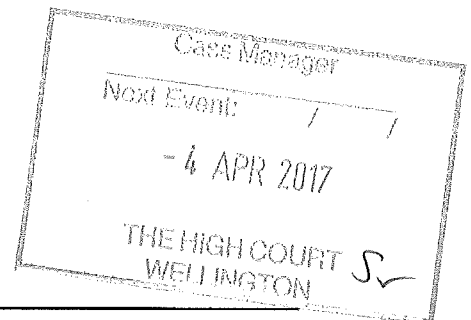
**Applicant**

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An application by the trustees of Rurima Island Maori Reservation 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, Wellington 6140  
Telephone: 04 495 9999  
Facsimile: 04 495 9990  
Counsel: J P Ferguson/N R Milner  
**WELLINGTON**

HIGH/DISTRICT COURT

- 3 APR 2017

ROTORUA

**TO** The Registrar of the High Court at Wellington  
**AND TO** The Solicitor-General on behalf of the Attorney-General  
Bay of Plenty Regional Council  
Whakatane District Council

**THIS DOCUMENT NOTIFIES YOU THAT:**

- A. The applicant, the trustees of Rurima Island Maori Reservation (the **Trust**), on behalf of the owners of Rurima Island and the iwi of Ngati Awa, 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 (the **Act**).
- B. The grounds on which the orders are sought are as follows:

**Background**

1. Rurima consists of four islands Tokata Island, Rurima Island and Moutoki Island located approximately 19km northwest of Whakatane Harbour and 6.5km offshore.
2. The Native Land Court vested Rurima in 488 Maori owners in 1920 following a hearing before the Native Land Court sitting at Te Whare o Toroa Marae, Whakatane (19 Whakatane MB 319).
3. On 26 May 1957 the Native Land Court recommended that Rurima become a Maori reservation for the benefit of the Ngati Awa tribe, Bay of Plenty Section.
4. In 1967 the Ngati Awa Tribal Executive gave its written consent to Rurima becoming a Wildlife Refuge under the Wildlife Act 1953. A Proclamation declaring Rurima a Wildlife Refuge was issued in 1969.
5. In 2004 the Maori Land Court appointed trustees to administer Rurima as a Maori reservation (under the provisions of the Te Ture Whenua Maori Act 1993).
6. Sections 94 and 98 of the Act confer on the High Court the jurisdiction to make an order recognising customary marine title provided that the applicant group meets the tests for customary marine title set out under section 58 and 51 of the Act.

**Orders sought (section 101(a))**

7. The Trust seeks recognition orders from the High Court under section 98 of the Act for customary marine title and protected customary rights in the application area. The Trust considers the tests for customary marine title set out under section 58 of the Act are satisfied.

**The applicant group (section 101(c))**

8. The applicant group is the owners of Rurima and the iwi of Ngati Awa (as described in the Ngati Awa Claims Settlement Act 2005, s13(1)).

*Trustees, Rurima Island Maori Reservation*

9. The trustees are appointed by the Maori Land Court under the provisions of Te Ture Whenua Maori Act 1993.

**The application area (section 101(d))**

10. The area of the common marine and coastal area to which this application relates is area from the mean high water spring of Rurima (meaning, Tokata Island, Rurima Island and Moutoki Island) extending in a seaward direction of 1 nautical mile around the circumference of Rurima, as shown on the indicative sketch map attached to this application as **Appendix A**.

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

11. The grounds on which the requirements for customary marine title are satisfied under section 58 of the Act are as follows:
- (a) The owners of Rurima and Ngati Awa hold the application area in accordance with tikanga (section 58(1)(a));
  - (b) The owners of Rurima and Ngati Awa have, 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) Rurima is an island (or islands) which abuts the application area and has been in the continuous ownership of the trustees, the owners and Ngati Awa from 1840 to the present (section 59(1)(a)(i));

- (d) The owners and Ngati Awa exercise 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 Mr Kei Merito, sworn 3 April 2017, in support of this application.
12. The grounds on which the requirements for protected customary rights are satisfied under section 58 of the Act are as follows:
- (a) The owners and Ngati Awa have exercised protected customary rights since 1840 (section 51(1)(a));
  - (b) The owners and Ngati Awa continue to exercise protected customary rights or activities in a part of the common marine and coastal area in accordance with tikanga (section 51(1)(b));
  - (c) The protected customary rights have not been extinguished as a matter of law (section 51(1)(c)).

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

13. For the purposes of this application, the holders of the recognition orders, within the application, will be the trustees of Rurima Island Maori Reservation.
14. The contact details for the trustees are:
- Dayle Fenton  
Phone: 021 408 463  
Email: [dayle@kotukusystems.com](mailto:dayle@kotukusystems.com)  
c/o Kahui Legal  
PO Box 1654  
Wellington 6140
15. The trustees seek leave to amend this aspect of the application at a later date.

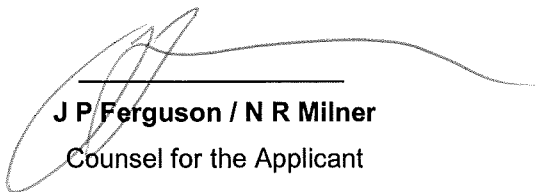
**Affidavit in support (section 101(h))**

16. This application is supported by the affidavit of Te Kei Merito, the Chairperson of the Trust. The affidavit sets out the basis on which the trustees, the owners and Ngati Awa claim to be entitled to recognition orders for customary marine title and protected customary rights in respect of the application area.
17. This application is made in reliance on sections 58 and 59 of the Act and *Re Tipene* [2016] NZHC 3199.

**Adjournment**

18. 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.
19. In parallel with this application, the Trustees have also filed an application with the responsible Minister on behalf of the Crown to enter into a recognition agreement.
20. On that basis, the Trustees seek 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 Trustees require another adjournment following the initial 6 month period, the Trustees will seek the leave of the High Court.

**DATED** at Wellington this 3<sup>rd</sup> April 2017

  
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**J P Ferguson / N R Milner**  
Counsel for the Applicant

**THIS** application is filed by **James Phillip Ferguson**, barrister and solicitor. The address for service of the applicant is Kahui Legal, Level 11, Intilecta Centre, 15 Murphy Street, Wellington 6011, attention: J P Ferguson/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: J P Ferguson/N R Milner;
- (b) transmitted to the solicitor by facsimile 04 495 9990, attention: J P Ferguson/N R Milner; or
- (c) emailed to the solicitor at [jamie@kahuilegal.co.nz](mailto:jamie@kahuilegal.co.nz) and [nathan@kahuilegal.co.nz](mailto:nathan@kahuilegal.co.nz).

## APPENDIX 1

**Paragraph 11: Indicative sketch map showing the area of the common marine and coastal area to which this application relates, an area from the mean high water spring of Rurima (meaning, Tokata Island, Rurima Island and Moutoki Island) extending in a seaward direction of 1 nautical mile around the circumference of Rurima.**

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