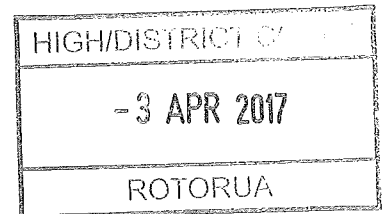


IN THE HIGH COURTS OF NEW ZEALAND  
AUCKLAND REGISTRY



CIV-2017-485-377

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  
APPLICANT\_CITY for an  
order recognising  
Customary Marine Title  
and Protected Customary  
Rights

Applicant

AND

The Attorney General in  
right of the Crown

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

DATED 2<sup>ND</sup> of April 2017

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Foster Milroy  
Solicitors  
Principal: Mark Milroy  
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P.O. Box 207  
Hamilton Central  
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3204  
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Counsel Acting:  
C Hirschfeld/T Sinclair/B Tūpara  
Ranfurly Chambers  
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10 Kaihu Street  
Northcote  
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0627  
Mobile: 021-2289757  
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**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 Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama;

**Protected Customary Rights**

2. Te Hapu O Titoko Ngai Tama ancestors utilised the common marine and coastal area for non commercial fishing utilizing nets, hinaki, hand-line fishing, to catch kanae (mullet, kahawai, pioke (shark), araara (flounder) patiki, tamure (snapper) mango (shark) aihe (dolphin) whai (stingray) and other ika (fish) killer whale, spade tooth whale, frost fish, hunting for eels, birds; gathering shellfish, edible and aquatic plants.

Non commercial seeding and harvesting of shellfish pipi, cockles, tio (oysters), kuku (mussels) scallops karahu, toheroa, tuatua, tuangi, pupu, paapaka;

Activities related to spiritual practices of rahui, aukati, wahi tapu;

Planting and cultivating plant species harakeke, pingao, toitoi, ti kouka;

Gathering edible and aquatic plants;

Extracting non nationalized minerals;

Collecting driftwood and other natural resources;

Temporary campsites for ceremonial activities;

Tauranga waka.

**The Applicant Group:**

3. Te Hapu O Titoko Ngai Tama whakapapa to tipuna MURIWAI; TARAWA; RUAMOKO; KAHUKI; PUNAHAMOA; TAMAHUA; who all relate to identifiable boundaries and link to the application area of Te Hapu O Titoko Ngai Tama. TRACY FRANCIS HILLIER makes this application for and on behalf of Te Hapu O Titoko Ngai Tama and their descendants listed below at a hui on this matter held on 29<sup>th</sup> March in 2017;

(a) Tangimoe Clay, Tracy Francis Hillier, Pita Tori Biddle Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama

**Area to which the application relates:**

4. 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 from Te Horo to Maraetotara (between Ohope and Whakatane) to Tawhitinui, Akeake, Pakowhai, Opotiki Harbour Mouth, Waioweka, Otara, Tirohanga, Opape to Te Rangi in the East (between Opape and Torere) ward side 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
  - b. on the Maraetotara (between Ohope and Whakatane) to Te Rangi in the West (between Opape and Torere) 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.
5. The area 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.
6. The area of all the 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, Waiua River

**Grounds on which the protected customary rights order is sought:**

7. The grounds on which this order is sought are that :
  - a. Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama being a coastal group has relied heavily on the activities, uses 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 Tamahaua Hapu and the Uri Mokopuna O Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama according to our Tikanga recognizing Mana Atua, Mana Whenua, Mana Moana, Mana Tangata;

- b. Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama rights are protected with the signing of the Declaration of Independence 1835, and the signing of the covenant Te Tiriti of Waitangi signed in Opotiki on the 27<sup>th</sup> and 28<sup>th</sup> May 1840 by Whakatohea Hapu Rangatira Tauatoro, TutakahiAo, Rangihaerepo, Whakiia, AkeAke, Aporotanga and Rangimatanuku; and
- c. These Rights were recognized and protected by Ngai Tama being active participants and signatories to 1) The Mataatua Declaration 2) Te Tawharautia O Nga Hapu O Whakatohea Resource Management 3) The United League Of Nations Declaration on the Rights of Indigenous Peoples 4) Recognise as the First Human Rights Marae Marae Tikanga Tangata 5) Establishment of the Customary Fisheries Forum mai Nga Kuri a Whareki Tikirau
- d. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama and the Uri of Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama and the Uri of Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama;
- e. Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama has undertaken these activities since prior to 1840 and continues to undertake these activities in the application area, the sustenance, physical, spiritual, and cultural

wellbeing of Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama and the Uri of Te Hapu O Titoko Ngai Tama and Uri (descendants) of Te Hapu O Titoko Ngai Tama;

- f. Te Hapu O Titoko Ngai Tama 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 (as per the attached schedule).
- g. Te Hapu O Titoko Ngai Tama and the Uri of Te Hapu O Titoko Ngai Tama 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.
- h. Te Hapu O Titoko Ngai Tama and the Uri of Te Hapu O Titoko Ngai Tama 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 :

- i. Te Hapu O Titoko Ngai Tama has held the application area in accordance with tikanga since 1840
- j. Te Hapu O Titoko Ngai Tama has exclusively used and occupied the application area from 1840 to the present day without substantial interruption.

- 8 Te Hapu O Titoko Ngai Tama will deliver more information once funding for research and legal representation is secured.

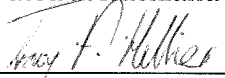
**Contact Details:**

- 9 TRACY FRANCIS HILLIER for Te Hapu O Titoko Ngai Tama is:

c/- Charl Hirschfeld  
10 Kaihu Street  
Northcote  
Auckland 0627

10. This application relies on s51(1), s58, s98-113 of the Act and the affidavit of TRACY FRANCIS HILLIER, kaumātua.

Dated at <sup>OPORI</sup> Auckland on the <sup>2nd</sup> day of <sup>April</sup> 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  
4 Knox Street  
P.O. Box 207  
Hamilton Central  
Hamilton  
3204  
Phone: 07-8388020  
Email: [mark@fmlawyers.co.nz](mailto:mark@fmlawyers.co.nz)**

**Counsel Acting:  
C Hirschfeld/T Sinclair/B Tūpara  
Ranfurly Chambers  
Barristers-at-Law  
10 Kaihu Street  
Northcote  
Auckland  
0627  
Mobile: 021-2289757  
Email: [charl@ranfurlychambers.co.nz](mailto:charl@ranfurlychambers.co.nz)**

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 Miller  
Email: shinningstarspreeschool@xtra.co.nz  
Phone: 027 955 9734  
Address: 1 Batts Ave, DPOTKI 3122  
Signed: Kacy F. Miller  
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.





# Application for waiver (or refund) of fees for an organisation

PREVIOUS WAIVER

## When to use this form

Use this form if the organisation has previously been given a waiver in this proceeding and nothing has happened to affect their eligibility.

## Step 1 Give us the court case details

File no.

Name of proceeding

Originating Application for the Marine and Coastal Area Act 2011

Please tick the court that the application is for.

Supreme Court  Court of Appeal  High Court  District Court  Family Court

## Step 2 Give us your details

Who are you filling in this form for?

I am authorised to complete this form for TE HARA O-TIKO Ngai Tama  
Director of Land

Give us your details

Full name TRACY FRANCIS MILLER

Occupation PRESCHOOL MANAGER

Address 1 POTTS AVE, OPOKI

Contact phone numbers day 027 955 9734 other

Court use only

Refer to proceedings file no.

### Step 3 Tell us about the fee

The fee is \$ 540 —

Is the organisation applying for the fee to be waived or refunded?

The organisation is applying to the court to:

Waive this fee or  Refund the fee paid on

What is the fee for?

The fee is for filing the following documents: for filing of the originating Application for the Marine and Coastal Area Act 2011

The fee is another type of fee (not a filing fee). (Name the fee type - for example, setting down or hearing fee.)

N/A

Tell us about the previous waiver and why you want the current fee waived or refunded?

Date of previous waiver or refund

Reason for previous waiver or refund

- The organisation was previously given a waiver or refund in this proceeding because it would suffer undue financial hardship if the fee was paid (or not refunded). The financial circumstances haven't changed.
- The organisation was previously given a waiver or refund in this proceeding because the case was a matter of genuine public interest. It is still a matter of genuine public interest.

### Step 4 Ask for processes to continue while this form is being processed

Complete this step if you need to file documents or start/continue a proceeding immediately (or within a prescribed time)

Tell us what the organisation wants

The organisation asks that the fee be put on hold until this form is processed. The organisation also asks that:

the proceeding that this application relates to is allowed to start or continue

or

the document(s) that this application relates to is accepted for filing.

**Tell us why the proceeding needs to move forward before this form is processed?**

It would be unreasonable if the proceeding did not move forward (or the document was not filed), before this form is processed for the following reasons. (If required, attach an affidavit in support.)

The applicant makes this application on behalf of Whakatohea whānau and hapū. The applicant is a ~~retiree~~ hapū representative who are unable to fund this application at this point in time.

**Confirm that the organisation understands what will happen if this application is declined**

If this application is declined then the organisation understands that it must pay the fee immediately.

If the organisation doesn't pay the fee immediately, the proceeding will stop and the court may recover the fee as a 'debt'. However, the organisation can apply to have the 'declined' decision reviewed. (See the notes on the back page.)

**Step 5 Sign and date this form**

I certify that the contents of this application are true.





**Step 6 Do a quick check**

Before sending in your application, check that you've filled in **steps 1 to 5?**

If you have any questions, please call your local court.

See [justice.govt.nz/services/finding-your-local-court](http://justice.govt.nz/services/finding-your-local-court) or the blue pages of your phonebook for contact details.

## Step 7 **Submit your application**

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Send this application to your local court.

See [justice.govt.nz/services/finding-your-local-court](http://justice.govt.nz/services/finding-your-local-court) or the blue pages of your phonebook for contact details.

### **What happens next?**

A registrar will look at your application and we will let you know their decision.  
It may take several weeks for your application to be processed.

### **If your application is declined, you can apply to have the decision reviewed**

Please fill out the 'application for review' form. There is no fee.

The 'application for review' form is available at your nearest court or from [justice.govt.nz/services/court-fees](http://justice.govt.nz/services/court-fees)

Your 'application for review' needs to be made within 20 working days of receiving the declined decision.

You can apply to a judge if you need more than 20 working days.

### **Where can I go for more information?**

Check our website at [justice.govt.nz/services/court-fees](http://justice.govt.nz/services/court-fees)

Call your local court. Details can be found in:

- [justice.govt.nz/services/finding-your-local-court](http://justice.govt.nz/services/finding-your-local-court)
- blue pages of your phonebook.

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### **Note**

The court may refer to your information on this form in any future applications for waiver (or refund) of fees for the same proceeding.

The information on this form is collected in line with:

- the Senior Courts Act 2016 and Supreme Court Fees Regulations 2003
- the Senior Courts Act 2016 and Court of Appeal Fees Regulations 2001
- the Senior Courts Act 2016 and High Court Fees Regulations 2013
- the District Court Act 2016 and District Courts Fees Regulations 2009.