

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-2017-485-510

IN THE MATTER OF

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

AND

IN THE MATTER OF

an application by **Te Ururoa Trust** for orders recognising Customary Marine Title and Protected Customary Rights.

Applicant

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

14 AUGUST 2017

KAHUI
LEGAL

PO Box 1654
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Counsel: K Tahana / M Tukapua
WELLINGTON

Case Manager
Next Event: / /
21 AUG 2017
THE HIGH COURT
WELLINGTON

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MAY IT PLEASE THE COURT

THIS DOCUMENT NOTIFIES YOU THAT:

1. The applicant, Te Ururoa Trust (**the Trust**) will apply to the High Court for an order pursuant to section 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (**the Act**) to recognise the customary marine title and protected customary rights of the descendants of Te Ururoa (**the Applicant Group**).
2. The grounds on which the orders are sought are as follows:

Introduction

3. The Applicant Group whakapapa to the tupuna as set out in the affidavit of Tarewa Rota filed in support of this application and link to the coastal area as specified at paragraph 12 below (**Coastal Marine Area**).
4. Pursuant to section 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (**the Act**), the Applicant Group applies to the High Court for recognition orders for customary marine title and protected customary rights.
5. The Applicant Group has continued to exercise mana whenua, mana moana and kaitiakitanga over the Coastal Marine Area.
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 of the Act.

Order Sought

7. The Trust seeks recognition orders from the High Court under section 98 of the Act for:
 - (a) customary marine title over the Coastal Marine Area (the Trust considers it meets the tests for customary marine title set out under section 58 of the Act); and
 - (b) protected customary rights within the Coastal Marine Area (the Trust considers it meets the tests for protected customary rights set out under section 51 of the Act).
8. The Trust seeks recognition orders for the exercise of kaitiakitanga and rangatiratanga as a protected customary right which includes, but is not limited to:

(a) Commercial and non-commercial fishing, including fishing for:

- (i) Blue cod;
- (ii) Moki;
- (iii) Hoki;
- (iv) Kahawai;
- (v) Trevally;
- (vi) John dory;
- (vii) Tarakihi;
- (viii) Blue nose;
- (ix) King fish
- (x) Trumpeter;
- (xi) Hapuka;
- (xii) Snapper;
- (xiii) Marlin;
- (xiv) Sailfish;
- (xv) Shark;
- (xvi) Toheroa;
- (xvii) Whale;
- (xviii) Ling sole;
- (xix) Flounder;
- (xx) Tuna;
- (xxi) Eels;
- (xxii) Hake;
- (xxiii) Groper;
- (xxiv) Mullet; and
- (xxv) Squid

(b) Commercial and non-commercial harvesting of shellfish or kaimoana, including:

- (i) Scallops;
 - (ii) Mussels;
 - (iii) Oysters;
 - (iv) Paua;
 - (v) Lobster;
 - (vi) Crab;
 - (vii) Tuatua;
 - (viii) Cockles; and
 - (ix) Clams.
- (c) Activities related to spiritual practices;
- (d) Tauranga waka;
- (e) Gathering edible and aquatic plants, including:
- (i) Flax;
 - (ii) Ti kouka;
 - (iii) Pingao; and
 - (iv) Seaweed.
- (f) Extraction of fossils, rocks and minerals, including:
- (i) Stones;
 - (ii) Shingle;
 - (iii) Sand;
 - (iv) Pumice;
 - (v) Semi-precious stones; and
 - (vi) Other minerals.
- (g) Kauta or temporary camp-sites;
- (h) Toka ika or protected fishing grounds;
- (i) Associated practices, including:
- (i) Protecting kawau and other sea creatures;
 - (ii) Collecting shells;

- (iii) Collecting drift wood;
- (iv) Collecting whale and whale bones; and
- (v) Taking flotsam, jetsam and langam;
- (j) Further uses and practices to be the subject of evidence on once funding for research and legal representation is secured.

The Applicant Group – section 101(c)

Applicant Group

9. The Applicant Group are the descendants of Te Ururoa.

Trusts

10. The Trust is the Te Ururoa Trust.
11. The Trust has been appointed by the Applicant Group to be the representatives of the Applicant Group and to apply for, and hold, a recognition order on behalf of the Applicant Group.

The Specified Area – section 101(d)

Coastal Marine Area

12. The specified area to which this application relates is the area that is bounded:

Mai te puwaha o te awa o Taipa, ka whakatetonga ki te whanga o Kerikeri, ka huri whakaturu, ma tuawhenua ki Te Mawhekairangi, kei roto, kei Omapere, ka hoki ki Taipa, mai i te tahatai, ka marere ki te moana puta atua kia 200 maero te tawhiti, ka hoki mai.

(From the mouth of Taipa river, south to the harbour of Kerikeri, turning westward, inland to Lake Omapere, returning to Taipa, from the adjacent coastline, out to sea to the extent of the economic exclusion zone) (200 miles)

(the **Specified Area**).

13. The Specified Area is identified on the map which is annexed and marked “A”.

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

14. On behalf of the Applicant Group, the Trust submits 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)); and
 - (iii) 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)); and
 - (iii) the protected customary rights are not extinguished as a matter of law (section 51(1)(c)); and
- (c) as set out in the affidavit in support of this application.

The Holder of the Order – section 101(f)-(g)

15. The Trust has been appointed by the Applicant Group to be the holder of the order as the representative of the Applicant Group.
16. The contact details of the Trust are:

Tarewa Rota
c/- 42 Froude Street
Whakarewarewa
Rotorua

Affidavit in Support – section 101(h)

17. This application is supported by the affidavit of Tarewa Rota.
18. The Trust will provide more information once funding for research and legal representation is secured. This includes, the tikanga governing the protected customary rights described in this application.
19. The Trust respectfully seek leave to reserve the right to amend this Application.

DATED at Rotorua this 14th day of August 2017.


Counsel for the Applicant

- To:** The Registrar of the High Court at Wellington
- and to:** Far North District Council
Northland Regional Council
- and to:** Department of Conservation and the Ministry for the Environment;
- and to:** The Solicitor General on behalf of the Attorney-General.

THIS amended application is filed by **KIRI TAHANA**, 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 kiri@kahuilegal.co.nz.

Documents served on the Applicant should be marked for the attention of Kiri Tahana.

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