

**IN THE HIGH COURTS OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2017- ~~489-1882~~ 538

IN THE MATTER OF

the Marine and Coastal Area
(Takutai Moana) Act 2011
(the Act)

AND IN THE MATTER OF

an application by RIHARI
DARGAVILLE for an order
recognising Customary
Marine Title and Protected
Customary Rights of NEW
ZEALAND MAORI
COUNCIL MEMBERS.

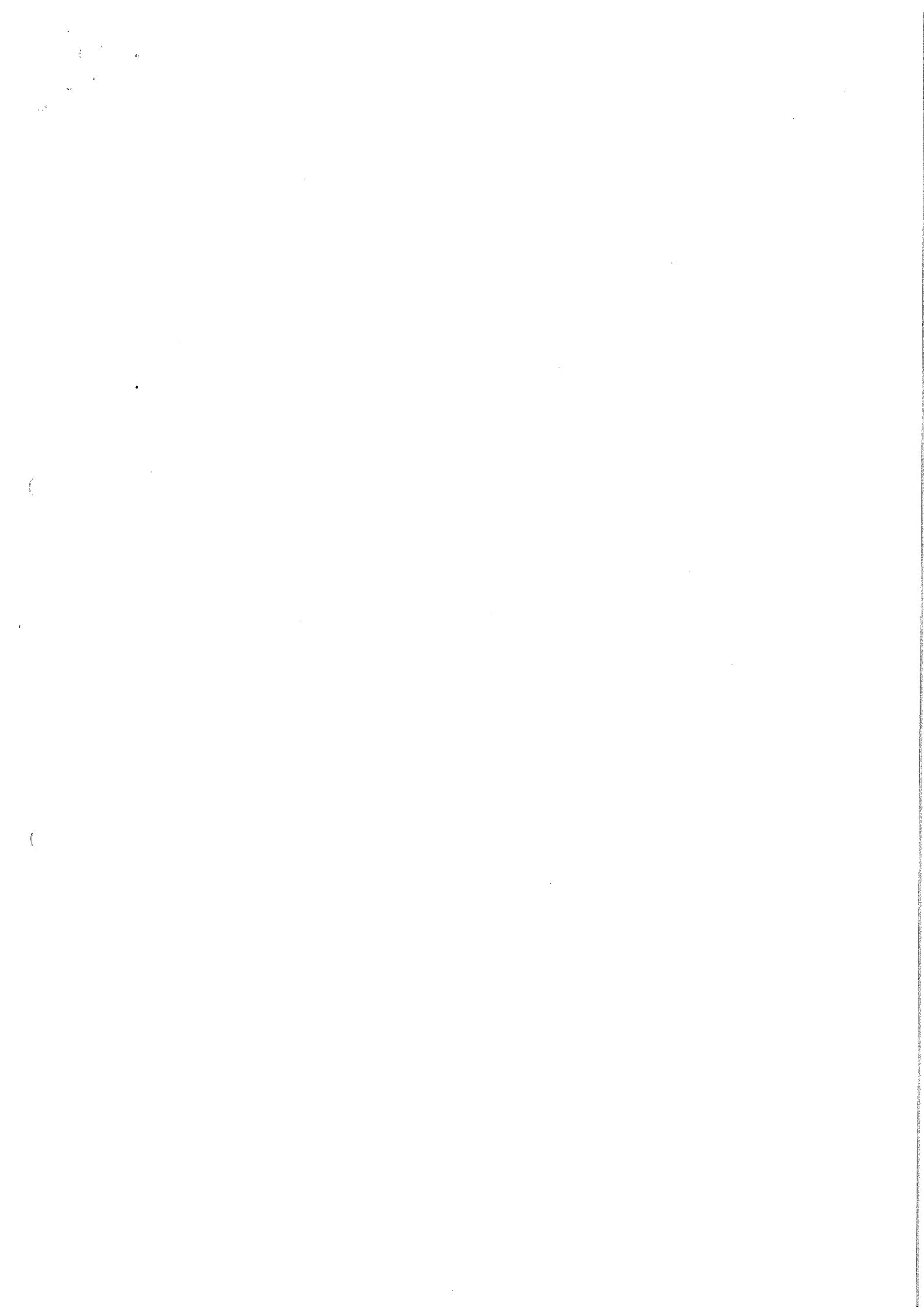
**RIHARI DARGAVILLE APPLICATION
FOR RECOGNITION ORDERS PURSUANT TO THE MARINE AND COASTAL
AREA (TAKUTAI MOANA) ACT 2011**

Dated 27th March 2017

HIGH COURT
30 MAR 2017
1056
AUCKLAND

RIGHTLAW

Barristers and Solicitors
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To: The Registrar of the High Court at AUCKLAND;

and to: Local authorities (Regional and/or District Councils) with statutory functions in the application area) *Ashburton District Council, Auckland Council, Bay of Plenty Regional Council, Buller District Council, Canterbury Regional Council, Carterton District Council, Central Hawke's Bay District Council, Central Otago District Council, Chatham Islands Council, Christchurch City Council, Clutha District Council, Dunedin City Council, Far North District Council, Gisborne District Council, Gore District Council, Grey District Council, Hamilton City Council, Hastings District Council, Hauraki District Council, Hawke's Bay Regional Council, Horowhenua District Council, Hurunui District Council, Hutt City Council, Invercargill City Council, Kaikoura District Council, Kaipara District Council, Kapiti Coast District Council, Kawerau District Council, Mackenzie District Council, Manawatu District Council, Manawatu-Wanganui Regional Council, Marlborough District Council, Masterton District Council, Matamata-Piako District Council, Napier City Council, Nelson City Council, New Plymouth District Council, Northland Regional Council, Opotiki District Council, Otago Regional Council, Otorohanga District Council, Palmerston North City Council, Porirua City Council, Queenstown-Lakes District Council, Rangitikei District Council, Rotorua District Council, Ruapehu District Council, Selwyn District Council, South Taranaki District Council, South Waikato District Council, South Wairarapa District Council, Southland District Council, Southland Regional Council, Stratford District Council, Taranaki Regional Council, Tararua District Council, Tasman District Council, Taupo District Council, Tauranga City Council, Thames-Coromandel District Council, Timaru District Council, Upper Hutt City Council, Waikato District Council, Waikato Regional Council, Waimakariri District Council, Waimate District Council, Waipa*

District Council, Wairoa District Council, Waitaki District Council, Waitomo District Council, Wellington City Council, Wellington Regional Council, West Coast Regional Council, Western Bay of Plenty District Council, Westland District Council, Whakatane District Council, Whanganui District Council, Whangarei District Council, Regional Authorities, Northland Regional Council, Waikato Regional Council, Bay of Plenty Regional Council, Gisborne District Council, Hawke's Bay Regional Council, Taranaki Regional Council, Horizons Regional Council, Greater Wellington Regional Council, Tasman District Council, Marlborough District Council, West Coast Regional Council, Canterbury Regional Council, Otago Regional Council, Southland Regional Council,

and to: Local authorities with statutory functions relating to land adjacent to the application area) *Department of Conservation, Transit, Department of Defence*

and to: The Solicitor General on behalf of the Attorney-General.

This document notifies you that:

1. RIHARI DARGAVILLE 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 New Zealand Maori Council members.

Protected Customary Rights

2. *New Zealand Maori Council members ancestors utilised the common marine and coastal area for fishing: gathering shellfish, seaweed, stones, pumice, semi precious stones, shells, drift wood, whale and whale bones;*

The Applicant Group:

3. *The New Zealand Maori Council members whakapapa to signatories of He*

Whakaputanga and Te Tiriti and signatories of He Whakaputanga and Te Tiriti. The New Zealand Maori council represents all Maori and is elected by a three tier structure going back to potentially in each Marae in the country. This electoral mandate is unique in Maoridom. This guardian and holder of tino rangatiratanga has been recognised by the Waitangi Tribunal in the Maori Development Act inquiry in 2014.. RIHARI DARGAVILLE was appointed to make this application for and on behalf of the New Zealand Maori Council members on 27th March 2017 following consultation with board members.

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 landward side by the line of mean high-water springs;
 - b. on the seaward side by the outer limits of the territorial sea;
 - c. on the All the coastline of every island within New Zealand including the North and South island, including all tidal estuaries, creeks of the sea and saline wetlandsward side by a line that extends from the coast abutting including any islands] to the outer limits of the territorial sea; and
 - d. on the ward side by a line that extends from the coast abutting including any islands to the outer limits of the territorial sea.
5. The area includes the common marine and coastal area surrounding the following islands: All islands and reefs lying off shore from the coastline to a distance of 12 nautical miles

Grounds on which the protected customary rights order is sought:

6. The grounds on which this order is sought are that :
 - a. New Zealand Maori Council members being a coastal group has relied heavily on Blue cod, Moki, hoki, Karati (baby snapper), kawhai, parore (black snapper), araara (trevally), kuparu (john dory), tarakihi, maroro (flying fish), tuere (blind eel), pakirikiri (butterfish), pia (lamprey), kokopu (esturine cockabully), paea (swordfish), kehe (marblefish), tuna

(blue nose), kotare (kingfish), kohikohi (trumpeter), tohora (whale), hapuka (groper), tamure (snapper), takeketonga (marlin), mango (dogfish/shark), mango ururoa (white shark), mango taniwha (white pointer shark), patiki (flounder), tarore (sole), kanae (mullet), warahenga (stingray), porae, kumukumu (gurnard), tikati (gemfish), ngu (squid), wheke (octopus), inanga (esturine whitebait), karawaka wai tote (esturine crayfish), aua (herring/sprat). Toheroa, tuatua, tipatipa, kutai, puruwha, tio, pipi, kokata, oi, titi, paua, koura, papaka, tuatua, tuangi (clam), kina, pupu, karahu, rimurimu and wetland food stocks foraged by whanau in the estuaries and coastal margins; and

- b. New Zealand Maori Council members fishermen sought the deep water fish that were not available around the inner shoreline; and
- c. New Zealand Maori Council members also undertakes the following activities in the common marine and coastal area: fishing, gathering shellfish, seaweed, stones, pumice, semi precious stones, shells, drift wood, whale and whale bones.
- d. New Zealand Maori Council members hapu have undertaken these activities since and before 1840 and continues to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga.

7. New Zealand Maori Council members will deliver more information once funding for research and legal representation is secured.

Grounds on which the customary marine title application is made:

8. The grounds on which this order is sought are that :
 - a. New Zealand Maori Council members hapu has held the application area in accordance with tikanga since before 1840.
 - b. New Zealand Maori Council members hapu have exclusively used and occupied the application area from 1840 to the present day without substantial interruption.
9. New Zealand Maori Council members will deliver more information once funding for research and legal representation is secured.

10. The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rantatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.
11. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:
 - a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
 - b. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by hapu of New Zealand Maori Council members;
12. The sustenance and physical, spiritual and cultural well-being of all the hapu and all Maori. The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rantatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.
13. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:
 - a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
14. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by hapu of The activities, uses or practices which are claimed to be

the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rangatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.

15. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:

- a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
- b. The sustenance and continued observance of customary and traditional practices, integral to *tikanga* carried out by hapu of New Zealand Maori Council members;
- c. The sustenance and physical, spiritual and cultural well-being of all New Zealand Maori Council members whanau, hapu and iwi;
- d. The economic development of New Zealand Maori Council members whanau, hapu and iwi; and
- e. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.

16. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The *tikanga* integral to the hapu of New Zealand Maori Council members governing these activities, uses and practices will be provided in the evidence from the New Zealand Maori Council members hapu to be given at hearing.

17. The activities, uses and practices for which the hapu of New Zealand Maori Council members seek recognition as protected customary rights and/or providing the foundation for customary marine title:

- a. Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the hapu of New Zealand Maori Council members in a

substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;

- b. If interrupted since 1840 then only by unlawful interruption or interference;
- c. Are not prohibited by any enactment or rule of law; and
- d. Have not been extinguished as a matter of law.

18. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the hapu of New Zealand Maori Council members are included in this application. Whilst the particulars in this schedule are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.

- a. New Zealand Maori Council members;
- b. The sustenance and physical, spiritual and cultural well-being of all New Zealand Maori Council members whanau, hapu and iwi;
- c. The economic development of New Zealand Maori Council members whanau, hapu and iwi; and
- d. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.

19. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The *tikanga* integral to the hapu of New Zealand Maori Council members governing these activities, uses and practices will be provided in the evidence from the New Zealand Maori Council members hapu to be given at hearing.

20. The activities, uses and practices for which the hapu of New Zealand Maori Council members seek recognition as protected customary rights and/or providing the foundation for customary marine title:

- a. Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the hapu of New Zealand Maori Council members in a

substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;

- b. If interrupted since 1840 then only by unlawful interruption or interference;
- c. Are not prohibited by any enactment or rule of law; and
- d. Have not been extinguished as a matter of law.

21. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the hapu of New Zealand Maori Council members are referred to in this application. Whilst the particulars in this application are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.

- a. New Zealand Maori Council members whanau, hapu and iwi;
- b. The economic development of New Zealand Maori Council members whanau, hapu and iwi; and
- c. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.

22. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The *tikanga* integral to the hapu of New Zealand Maori Council members governing these activities, uses and practices will be provided in the evidence from the New Zealand Maori Council members hapu to be given at hearing.

23. The activities, uses and practices for which the hapu of New Zealand Maori Council members seek recognition as protected customary rights and/or providing the foundation for *customary marine title*:

- a. Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the hapu of New Zealand Maori Council members in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;

- b. If interrupted since 1840 then only by unlawful interruption or interference;
- c. Are not prohibited by any enactment or rule of law; and
- d. Have not been extinguished as a matter of law.

24. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the hapu of New Zealand Maori Council members as mentioned in this application. Whilst the particulars in this schedule are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.

Contact Details:

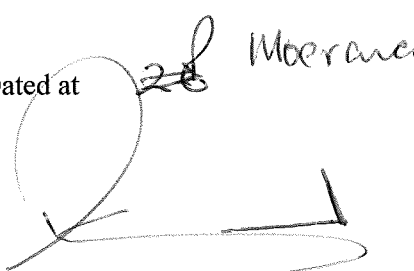
- 6. The *RIHARI DARGAVILLE* for *New Zealand Maori Council members* is:
C/o G Sharrock

Rightlaw Limited

11 Kaihu Street, Northcote Auckland

- 7. This application relies on s51(1), s58, s98-113 of the Act and the affidavit of Rihari Dargaville, kaumatua of New Zealand Maori Council members.

Dated at

 *Moerana*

on the

24/03/2017

RIHARI DARGAVILLE

TE KAUNIHERA MAORI O TE TAI TOKERAU
Schedule of Particulars of Marine Title & Protected Customary Rights

R D Dargaville
Applicant

NGA TUPUNA :

Papatuanuku = Ranginui = Tangaroa
 Ipuhi Moana Ariki
 Kupe - Kuramarotini
 Nukutawhiti
 Ruanui
 Hauangiangi
 Tahuhu Nui O Rangi
 Punateahiahi
 Ahuaiti = Rahiri
 Uenuku ki te Marangai, Kaharau ki te Hauauru
 Auha, Te Hotete, Kautawaha, Hongi Hika, Ururoa, Pomare I, II
 Taurapoho, Mahia, Tupoto, Tamati Waka Nene, Patuone

ROHE POTAE Maps & Boundaries	HOKIANG A Map #1	WHANGARO A Map #2	PEIWHAIRAN GI Map #3	TE RERENGA PARAOA WHANGAR EI Map #4	MAHURAN GI Maps #5, 6	KAIPARA A Map #7
PROOF of OWNERSHIP	Whakapapa tuakana teina mana whenua mana moana – refer to <i>He Whakaputanga me te Tiriti – The Declaration and the Treaty</i> – Waitangi Tribunal Stage One Report Te Paparahi O Te Raki WAI 1040 Inquiry – November 2014.					
ACTIVITIES How it is Carried	Shellfish hand-gathering, hand and rod fishing, netting, free diving, daily and seasonal based on te maramataka. Whale hunting was an annual activity.					

	<p>He Whakaputanga 1835 and Te Tiriti O Waitangi 1840 underpin the legal obligations of the Act.</p> <p>The crown have disrupted and continue to disrupt the rangatiratanga rights and interests of the constituents of Te Kaunihera Maori O Te Tai Tokerau.</p>
<p>NGA TIKANGA Governing the Activity(s)</p>	<p>Te Ao Maori, matariki ki te takutaimoana, mana whenua mana moana, nga toka ki nga whanau hapu ki te moana, whaka whanaungatanga, mana tapu, mana muru, mana tikanga rahui</p>
<p>ROHE POTAE Mahinga kai, mahinga mataitai, taiapure (Maps & Boundaries)</p>	<p>As outlined on the maps attached.</p>



Island Appendix

Adele Island

Aiguilles Island

Alderman Islands

Allports Island

Amerikiwhati Island

Anatakupu Island

Anchor Island

Anchorage Island

Aorangaia Island

Araara Island

Arakaninihi Island

Arapaoa Island

Aroha Island

Awarua Rock

Bare Island

Bauza Island

Bay of Islands

Bells Island

Bench Island

Bests Island

Big South Cape Island

Blumine Island

Breaksea Island, New Zealand

The Brothers

Kapiti Island

Kawau Island

King Billy Island

Kopuahingahinga Island, Manukau Harbour

Little Barrier Island (Hauturu)

Long Island, Marlborough

Long Island, Southland

Mahurangi Island (Goat Island)

Makaro/Ward Island

Mana Island

Matakana Island

Matiu/Somes Island

Maud Island/Te Hoiere

Mauitaha Island, Whangarei Heads

Mayor Island/Tuhua

Mercury Islands

Mokohinau Islands

Mokopuna Island

Motiti Island

Motueka Island (Pigeon Island)

Motuhua Island

Motuihe Island

Motukaroro Island

Motukawao Islands

Motukiore Island, Parua Bay

Rabbit Island

Rakino Island

Rangitoto Island

Rangitoto Islands, Marlborough

Raratoka Island

Resolution Island

Ripapa Island

Rotoroa Island

Rurima Rocks, including Rurima Island

Ruapuke Island

Quarantine Island/Kamau Taurua

Secretary Island

Shark Island, Manukau Harbour

Slipper Island

South Island

Stephens Island/Takapourewa

Stewart Island/Rakiura

Sugar Loaf Islands

Takangaroa Island

Tapu Te Ranga Motu

Tarahiki Island

Tarakanahi Island

Tata Islands

Tikitiki Island, (The Ninepin), Bay of Islands

Tiritiri Matangi Island

Titi/Muttonbird Islands

Tonga Island

Ulva Island

Urupukapuka Island

Waiheke Island

Walker Island, New Zealand

Watchman Island, Waitemata Harbour

Whakaari/White Island

Whale Island

Whanganui Island

White Island, Otago

Wiroa Island, Manukau Harbour