

CIV 2017 485 284

No:

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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 Runanganui o Ngati Porou
Trustee Limited**, a duly incorporated company having
its registered office at Rainey Collins, Level 19, 113-119
The Terrace, Wellington, acting on behalf of Nga Hapu
o Ngati Porou and in its capacity as trustee of the Te
Runanganui o Ngati Porou Trust

Applicant

An application by Te Runanganui o Ngati Porou Trustee Limited for recognition orders
pursuant to the Marine and Coastal Area (Takutai Moana) Act 2011

31 March 2017

KAHUI
LEGAL

PO Box 1654, Wellington 6140
Telephone: 04 495 9999
Facsimile: 04 495 9990
Counsel: T B Johnson/N R Milner
WELLINGTON

Case Manager
Next Event: / /
- 3 APR 2017
THE HIGH COURT
WELLINGTON

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

THIS DOCUMENT NOTIFIES YOU THAT:

- A. The applicant, Te Runanganui o Ngati Porou Trustee Limited (**TRONPnui**), on behalf of Nga Hapu o Ngati Porou (as described in **Appendix 1** to this application), will on _____ 2017, apply to the High Court for orders recognising customary marine title pursuant to sections 98 and 100 of the Marine and Coastal Area (Takutai Moana) Act 2011 (**Act**).
- B. The grounds on which the orders are sought are as follows:

Background

1. Prior to 1840, Nga Hapu o Ngati Porou were the iwi kaenga, held mana (authority) over, and were therefore the owners, of all of their coastal lands within their rohe (territory) that are contiguous to the marine and coastal area.
2. Nga Hapu o Ngati Porou were also the iwi kaenga, held mana over, and were therefore the owners, of the seaward area adjacent to their coastal lands within their rohe. Nga Hapu o Ngati Porou considered these seaward areas to be a part of their rohe.
3. Since 1840, Nga Hapu o Ngati Porou have retained ownership of a significant proportion of their coastal lands. Nga Hapu o Ngati Porou have also continued to exercise mana over the seaward areas within their rohe.
4. Nga Hapu o Ngati Porou continue to assert ownership to seaward areas within their rohe (described as nga rohe moana o Nga Hapu o Ngati Porou or the seaward territories of Nga Hapu of Ngati Porou). This assertion is based on the common law, statute and tikanga and, amongst other things, Nga Hapu o Ngati Porou point to unbroken occupation, the continued exercise of ancestral mana, and the fact that title to nga rohe moana o Nga Hapu o Ngati Porou has never been ceded to the Crown. This ownership assertion of ownership predates the signing of te Tiriti o Waitangi/the Treaty of Waitangi in 1840.

5. 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.

Orders sought (section 101(a))

6. TRONPnui seeks recognition orders from the High Court under section 98 of the Act for customary marine title over nga rohe moana o Nga Hapu o Ngati Porou. TRONPnui considers the tests for customary marine title set out under section 58 of the Act are satisfied.

The applicant group (section 101(c))

7. The applicant group is Nga Hapu o Ngati Porou (as described in Appendix 1).
8. TRONPnui represents the Ngati Porou iwi, whose members number 71,000+ (as at the 2013 census), drawn from all hapu within the Ngati Porou rohe, mai i Potikirua ki Te Toka a Taiau. It is the post-settlement governance entity of the iwi of Ngati Porou and the mandated iwi organisation for the purposes of the Maori Fisheries Act 2004. It is also the legal successor to Te Runanga o Ngati Porou (**Runanga**), which was a Maori trust board and the pre-settlement representative organisation for Ngati Porou iwi. TRONPnui holds the mandate to represent Nga Hapu o Ngati Porou on matters relating to the recognition of the rights of Nga Hapu o Ngati Porou in the common marine and coastal area.

The application area (section 101(d))

9. The particular area of the common marine and coastal area to which this application relates is nga rohe moana o Nga Hapu o Ngati Porou, which means, for the purposes of this application:
 - (a) the common marine and coastal area within the rohe of Ngati Porou, which extends from Pōtikirua in the north to Te Toka a Taiau in the south, from a landward boundary of the mean high water springs and extending 12 nautical miles in a seaward direction, further described by reference to:
 - (i) the common marine and coastal area between the coordinates
37°32'32.6"S/178°05'07.0"E, 37°20'33.1"S/178°04'27.5"E,
38°53'43.5"S/178°09'29.2"E, 38°40'40.8"S/178°00'59.4"E and
38°40'16.8"S/178°01'41.3"S; and

- (ii) the area shown in **Appendix 2** to this application;
- (b) but excluding from this area, for the purposes of this application, the common marine and coastal area in the vicinity of Tokomaru Bay, comprising nga rohe moana o Te Whanau a Ruataupare and Te Whanau a Te Aotawarirangi.

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

10. The grounds on which the requirements for customary marine title are satisfied under section 58 of the Act are as follows:
- (a) Nga Hapu o Ngati Porou holds nga rohe moana o Nga Hapu o Ngati Porou in accordance with tikanga (section 58(1)(a));
 - (b) Nga Hapu o Ngati Porou has, in relation to nga rohe moana o Nga Hapu o Ngati Porou exclusively used and occupied this area from 1840 to the present day without substantial interruption (section 58(1)(b));
 - (c) Nga Hapu o Ngati Porou own all or part of the land abutting nga rohe moana o Nga Hapu o Ngati Porou and have done so without substantial interruption from 1840 to the present day (section 59(1)(a)(i));
 - (d) Nga Hapu o Ngati Porou exercises non-commercial customary fishing rights in nga rohe moana o Nga Hapu o Ngati Porou 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 Dr Apirana Tuahae Kaukapakapa Mahuika, sworn 9 January 2015, in support of this application.

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

11. For the purposes of this application, the holders of the recognition orders, within the respective areas within nga rohe moana o Nga Hapu o Ngati Porou, will be the named appointees or trustees of the hapu (one or more) of the particular rohe moana where customary marine title is recognised.
12. The contact details for the applicant groups and the holders of the recognition orders, for the time being and pending further notice, is:

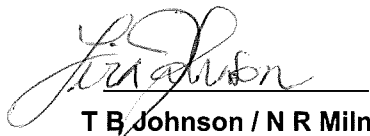
Te Runanganui o Ngati Porou Trustee Limited
Te Toka a Taiiau (Shed 3)
50 The Esplanade, Gisborne 4010
PO Box 394, Gisborne 4040
Telephone: 06 867 9960
Attention: Chief Executive Officer

13. TRONPnui, on behalf of Nga Hapu o Ngati Porou seeks leave to amend this aspect of the application at a later date, noting the principle that customary marine title is a collectively-held right of each of Nga Hapu o Ngati Porou.

Affidavit in support (section 101(h))

14. This application is supported by the affidavit of the late Dr Apirana Tuahae Kaukapakapa Mahuika (immediate-past chairperson of TRONPnui and the Runanga). The affidavit sets out the basis on which Nga Hapu o Ngati Porou claim to be entitled to recognition orders for customary marine title over nga rohe moana o Nga Hapu o Ngati Porou.
- C. This application is made in reliance on sections 58 and 59 of the Act and *Re Tipene* [2016] NZHC 3199.

DATED at Wellington this 31st March 2017



T B Johnson / N R Milner

Solicitor for the Applicant / Counsel for the Applicant

THIS application is filed by **Tirawhanaunga Brigitte Johnson**, solicitor for the applicant, of the firm T B Johnson, whose postal address is PO Box 1276, Gisborne Mail Centre, Gisborne 4040. The address for service of the applicant is c/- Kahui Legal, Level 11, Intilecta Centre, 15 Murphy Street, Wellington 6011, attention: T B Johnson/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 c/- Kahui Legal, PO Box 1654, Wellington 6140, attention: T B Johnson/N R Milner;
- (b) transmitted to the solicitor by facsimile 04 495 9990, attention: T B Johnson/N R Milner; or
- (c) emailed to the solicitor at tira.johnson@xtra.co.nz and nathan@kahuillegal.co.nz.

The solicitor's agent in the proceeding is Kahui Legal, barristers and solicitors, of Wellington.

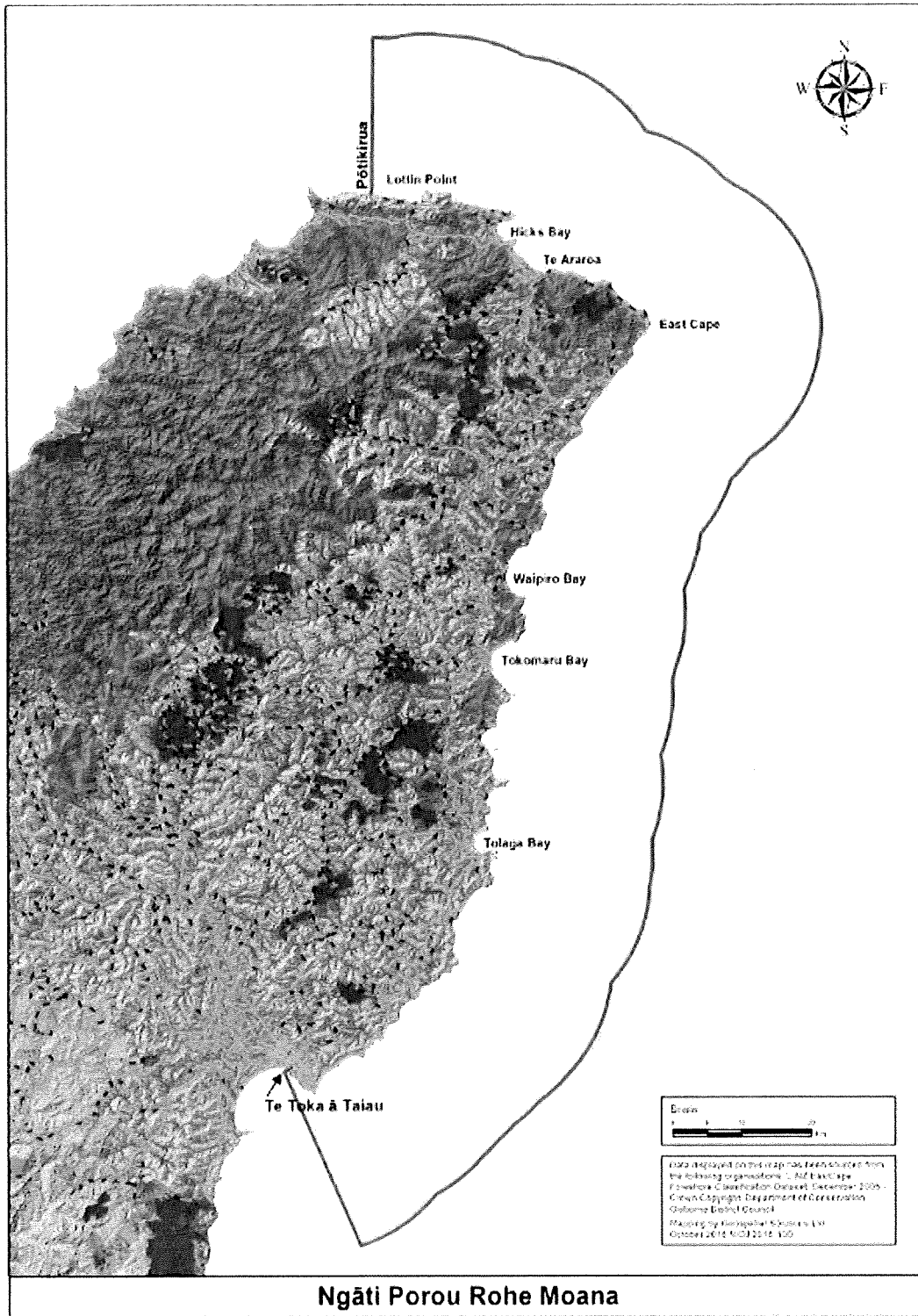
APPENDIX 1

For the purposes of this application **Nga Hapu o Ngati Porou** means the following:

- i. Ngati Kuranui; and
- ii. Ngati Kahukuranui; and
- iii. Ngati Hau; and
- iv. Ngati Wakarara; and
- v. Ngati Ira; and
- vi. Ngati Patuwhare; and
- vii. Te Whanau a Iritekura; and
- viii. Te Whanau a Te Haemata; and
- ix. Te Whanau a Rakairoa; and
- x. Te Aitanga a Mate; and
- xi. Te Aowera; and
- xii. Te Whanau a Hinekehu (Rauru Marae); and
- xiii. Te Whanau a Karuai; and
- xiv. Ngati Horowai; and
- xv. Te Whanau a Pokai; and
- xvi. Te Whanau a Rakaihoea; and
- xvii. Ngai Taharora; and
- xviii. Te Whanau a Mahaki; and
- xix. Te Whanau a Uruhonea; and
- xx. Te Whanau a Hineauta; and
- xxi. Te Whanau a Rakaimataura; and
- xxii. Te Whanau a Te Uruahi; and
- xxiii. Ngati Putaanga; and
- xxiv. Te Whanau a Tapuhi; and
- xxv. Te Whanau a Takimoana; and
- xxvi. Te Whanau a Hinepare; and
- xxvii. Ngati Nua; and
- xxviii. Te Whanau a Ngai Tane; and
- xxix. Te Whanau a Hinerupe; and
- xxx. Ngati Hokopu; and
- xxxi. Te Whanau a Rerewa; and
- xxxii. Te Whanau a Hunaara; and
- xxxiii. Ngai Tuere; and
- xxxiv. Ngai Tamakoro; and
- xxxv. Te Whanau a Kahu; and
- xxxvi. Te Whanau a Tuwhakairiora; and
- xxxvii. Te Whanau a Te Aotaki; and

xxxviii. Te Whanau a Tinatoka; and
xxxix. Te Whanau a Te Rangipureora; and
xl. Ngati Uepohatu; and
xli. Ngai Tangihaere; and
xlii. Ngati Rangī; and
xliii. Te Whanau a Hinetapora; and
xliv. Te Whanau a Ruataupare ki Tuparoa; and
xlv. Te Whanau a Umuariki; and
xlvi. Ngati Konohi; and
xlvii. Te Aitanga a Hauiti; and
xlviii. Te Whanau a Tapaeururangi; and
xlix. Ngati Oneone; and
l. Ngati Tutekohi; and
li: Te Whanau a Tarahauiti; and
lii: Te Whanau a Te Aopare; and
liii. Te Whanau a Te Aotaihi; and
liv. Te Whanau a Hinerupe ki Waiapu.

APPENDIX 2



Nga rohe moana o Nga Hapu o Ngati Porou excluding, however, for the purposes of this application, the common marine and coastal area in the vicinity of Tokomaru Bay, comprising nga rohe moana o Te Whanau a Ruataupare and Te Whanau a Te Aotawarirangi.