

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

CIV-2021-485-306

IN THE MATTER OF

an application under the Nga Rohe Moana o Nga Hapu o Ngati Porou Act 2019

AND

IN THE MATTER OF

an application by the Nga Hapu o Waipiro Takutai Kaitiaki Trust

Applicant

An application by Nga Hapu o Waipiro Takutai Kaitiaki Trust for recognition orders pursuant to the Nga Rohe Moana o Nga Hapu o Ngati Porou Act 2019

28 May 2021

Case Manager
Next Event: / /
28 MAY 2021
THE HIGH COURT WELLINGTON

KĀHUI
LEGAL

Solicitors
PO Box 1654
WELLINGTON 6140
Telephone: (04) 495 9999
Email: matanuku@kahuilegal.co.nz; nathan@kahuilegal.co.nz
Solicitor: M K Mahuika

MAY IT PLEASE THE COURT

Introduction

1. This application is made by Hami (Sam) Te Rapu Awarau, Wikitoria Gilvray, George Martin Jahnke and Sharon Harrison as the trustees of the Nga Hapu o Waipiro Takutai Kaitiaki Trust (the **Management Arrangements Trust**) on behalf the hapu listed in Appendix 1 to this application (**Nga Hapu**).
2. Pursuant to sections 113, 109 and 98 of Nga Rohe Moana o Nga Hapu o Ngati Porou Act 2019 (the **Act**), the Management Arrangements Trust applies to the High Court on behalf of Nga Hapu for recognition orders for customary marine title, wāhi tapu or wāhi tapu areas, and protected customary activities.

Background

3. Prior to 1840, Nga Hapu were the iwi kaenga, and therefore the owners, of all of their coastal lands within their rohe (territory) that are contiguous to the marine and coastal area or rohe moana.
4. Since 1840, Nga Hapu have retained ownership of a significant proportion of those coastal lands.
5. Nga Hapu assert ownership to their rohe moana based on the common law, statute and tikanga and, amongst other things, point to unbroken occupation, the continued exercise of ancestral mana, and the fact that title to rohe moana has never been ceded to the Crown. This ownership predates the signing of te Tiriti o Waitangi/the Treaty of Waitangi.
6. Nga Hapu assert that the continued ownership of their rohe moana is a fundamental and integral expression of their mana.
7. In 2008, Nga Hapu, and others of nga hapu o Ngati Porou (as listed in the Act), and the Crown signed a Deed of Agreement to provide for legal expression, protection and recognition of the mana of nga hapu o Ngati Porou in relation to nga rohe moana o nga hapu o Ngati Porou.

8. A deed to amend the Deed of Agreement (**Deed to Amend**) was signed by Nga Hapu, and others of nga hapu o Ngati Porou, and the Ministers for Māori Development and Treaty of Waitangi Negotiations. The Deed to Amend updated the original Deed of Agreement following the repeal of the Foreshore and Seabed Act 2004 and the enactment of the Marine and Coastal Area (Takutai Moana) Act 2011 (**2011 Act**).
9. In 2019 the Act was passed to provide for certain matters in the Deed to Amend, including providing for a further two-year period, from the commencement date of the Act (under section 113(2) of the Act) for Nga Hapu to make applications for recognition orders under the Act. This two-year period expires 30 May 2021.
10. The Act (section 120) also records that the Management Arrangements Trust represents Nga Hapu.
11. By order in council dated 21 September 2020, customary marine title was recognised in part or parts of the area covered by this application.¹
12. Sections 113, 109 and 98 of the Act confer on the High Court the jurisdiction to make orders recognising customary marine title, wāhi tapu or wāhi tapu area, and protected customary activities provided that the applicant group meets the respective tests or requirements for:
 - (a) customary marine title, as set out in section 58 and 59 of the 2011 Act;
 - (b) wāhi tapu or wāhi tapu area, as set out in section 78 of the 2011 Act; and
 - (c) protected customary activity, as set out in section 98 of the 2011 Act.

¹ Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order 2020.

Application Area and Shared Area

13. This application relates to the following area of Mataahu to Koutunui Head, within the following lines:

- (a) from the starting point at 37°59'08.3"S and 178°22'04.0"E (landward at Mataahu); then
- (b) by a straight line to 37°58'20.1"S and 178°39'09.8"E (seaward of Mataahu); then
- (c) by a line along the outer limit of the territorial sea to 38°02'09.60"S and 178°37'50.80"E (seaward of Koutunui Head); then
- (d) by a straight line to 38°02'54.16"S and 178°22'01.14"E (landward at Koutunui Head); then
- (e) by a line along the landward boundary of the common marine and coastal area to the starting point (landward at Mataahu); and.

(the **Application Area**)

- (f) a contiguous area to south from Koutunui Head, southwards to the area known as "The Pinnacle", in a seaward direction to the outer limit of the territorial sea, which is "shared" by Te Whanau a Iritekura (one of Nga Hapu, as listed in Schedule 1) and Te Whanau a Te Aotawarirangi.

(the **Shared Area**).

Orders sought (required to be recorded in an application in accordance with section 101(a) of the 2011 Act²)

14. The Management Arrangements Trust seeks recognition orders from the High Court:

- (a) under section 113 of the Act for customary marine title over

² In accordance with section 113(4)(a) of the Act, applications under the Act must be made and determined in accordance with sections 99, 101 to 107, 109, 112, and 113 of the 2011 Act.

that part of the Application Area not already recognised as customary marine title, as depicted in the map attached as Appendix 2 to this application;

- (b) under section 109 of the Act for wāhi tapu or wāhi tapu areas within the Application Area and the Shared Area; and
 - (c) under section 98 of the Act for protected customary activities within the Application Area and the Shared Area.
15. The Management Arrangements Trust considers the tests for customary marine title, wāhi tapu or wāhi tapu areas set out under section 58 and 59, 78 and 98 of the 2011 Act respectively are satisfied.

Nature of the protected customary right sought (section 101(b) of the 2011 Act)

16. Protected customary rights orders are sought in respect of the following activities within the Application Area and the Shared Area:
- (a) collecting firewood, driftwood, sand, stones, shells, plants and other materials;
 - (b) fishing for whitebait;
 - (c) gathering mud, rocks, and shells;
 - (d) landing vessels and making passage throughout the Application Area and the Shared Area;
 - (e) collection of rongoā materials within the Application Area and the shared Area, and using Application Area for bathing and healing purposes;
 - (f) using the Application Area and the Shared Area for transport and purposes of navigation;
 - (g) travelling within the Application Area and the Shared Area for wānanga to pass down mātauranga to future generations;
 - (h) traditional practices such as wānanga, hui, tangihanga and burying of whenua;

- (i) planting of pohutukawa, harakeke, pingao, spinifex, toitoi and other plants within the Application Area and Shared Area as an exercise of kaitiakitanga;
- (j) exercising kaitiakitanga activities in the Application Area and the Shared Area including the monitoring of the activities of users of the takutai moana and environmental projects;
- (k) gathering flora and fauna that is not otherwise excluded from being the subject of an order for protected customary rights within the Application Area and the Shared Area;
- (l) performing baptisms and customary rituals and practices within the Application Area and the Shared Area;
- (m) conservation activities; and
- (n) customary rituals, as well as tangihanga, within the Application Area and the Shared Area.

The applicant group (section 101(c) of the 2011 Act)

- 17. The applicant group is the Management Arrangements Trust on behalf of Nga Hapu.
- 18. Under section 120 of the Act the Management Arrangements Trust represents Nga Hapu and any rights or responsibilities of Nga Hapu under the Act are to be exercised or performed on behalf of the Nga Hapu by the Management Arrangements Trust.

The application area (section 101(d) of the 2011 Act)

- 19. As set out in paragraph [13] above, the particular area of the common marine and coastal area to which this application relates is the Application Area and the Shared Area, noting that customary marine title has already been recognised in part or part of the Application Area.

Grounds on which the application is made (section 101(e) of the 2011 Act)

Customary marine title

20. On behalf of Nga Hapu, the Management Arrangements Trust submits that the necessary requirements for customary marine title (section 58 of the 2011 Act) are satisfied, in particular:

- (a) Nga Hapu hold the Application Area and the Shared Area in accordance with tikanga (section 58(1)(a) of the 2011 Act);
- (b) Nga Hapu have exclusively used and occupied the Application Area and the Shared Area from 1840 to the present day without substantial interruption (section 58(1)(b) of the 2011 Act);
- (c) Nga Hapu own all or part of the land abutting the Application Area and the Shared Area and have done so without substantial interruption, from 1840 to the present day (section 59(1)(a)(i) of the 2011 Act);
- (d) Nga Hapu exercise non-commercial customary fishing rights in the Application Area and the Shared Area and have done so from 1840 to the present day (section 59(1)(a)(ii) of the 2011 Act); and
- (e) as set out in the affidavit(s) in support of this application.

Protected customary rights

21. As required by section 51(1) of the 2011 Act, the activities in paragraph [16] (a)-(n) above:

- (a) have been exercised in the Application Area and the Shared Area by Nga Hapu since 1840; and
- (b) continue to be exercised by Nga Hapu in the Application Area and the Shared Area in accordance with tikanga.

The holder of the recognition orders (section 101(f)-(g) of the 2011 Act)

22. For the purposes of this application, the holders of the recognition

orders will be the Management Arrangements Trust.

23. The contact details for the Management Arrangement Trust, for the purposes of this application are counsel for the applicant, as listed below.

Affidavit in support (section 101(h) of the 2011 Act)

24. This application is supported by the affidavit of Elder Te Naiti Te Reo. This affidavit in support of this application set out the basis on which the Management Arrangements Trust claims to be entitled to the recognition orders for customary marine title, wāhi tapu or wāhi tapu areas and protected customary rights on behalf of Nga Hapu.
25. The applicants seek leave to amend this application at a later date.

DATED at Wellington this 28th day of May 2021



M K Mahuika / N R Milner
Counsel for the Applicant

TO: The Registrar, High Court, Wellington
AND TO: The Gisborne District Council
AND TO: Environment Bay of Plenty
AND TO: The Hawke's Bay Regional Council
AND TO: The Solicitor-General on behalf of the Attorney-General

This application is filed by **MATANUKU KIHIRINI MAHUIKA**, solicitor for the applicant, of the firm of Kahui Legal.

The address for service of the applicant is at the offices of Kahui Legal, level 11, 15 Murphy Street, Wellington 6011.

Documents for service on the appellant may be left at the address for service or may be:

- (a) posted to the solicitor at Kahui Legal, PO Box 1654, Wellington;

(b) emailed to the solicitor at matanuku@kahuilegal.co.nz, provided that the documents are also emailed to nathan@kahuilegal.co.nz.

APPENDIX 1

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

Ngāi Taharora

Te Whānau a Iritekura

Te Whānau a Rakairoa

Te Whānau a Te Haemata

APPENDIX 2: Application area

