

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

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-Ā-TARA ROHE**

**CIV-2017-404-563**

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**UNDER** The Marine and Coastal Area (Takutai Moana)  
Act 2011 (the Act)

**IN THE MATTER OF** an application by Te Rūnanga o Ngāti Whātua for  
an order recognising Customary Marine Title and  
Protected Customary Rights

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**THIRD AMENDED ORIGINATING APPLICATION FOR  
ORDERS RECOGNISING CUSTOMARY MARINE TITLE AND  
PROTECTED CUSTOMARY RIGHTS**

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- TO:** The Registrar of the High Court at Wellington
- AND TO:** The Solicitor-General on behalf of the Attorney-General
- AND TO:** The Auckland District Council, the Whangarei District Council, the Kaipara District Council, the Northland Regional Council, and other Interested parties

**This document notifies you that:**

- 1 Te Rūnanga o Ngāti Whātua has applied to the High Court for orders pursuant to section 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”) recognising the customary marine title and protected customary rights of the iwi of Ngāti Whātua.

**The Applicant Group**

- 2 Te Rūnanga o Ngāti Whātua is constituted as a body corporate by the Te Rūnanga o Ngāti Whātua Act 1988 to represent and speak on/deal with issues affecting the whole iwi of Ngāti Whātua.
- 3 Ngāti Whātua whakapapa to Haumoewārangi and are tangata whenua of the application area. The iwi of Ngāti Whātua includes all groups, hapū and whanau associated by tātai (ancestry). There are 14,784 people<sup>1</sup> who identify as Ngāti Whātua. This includes:
- (a) The following post settlement governance entities (PSGEs): Te Uri o Hau, Te Roroa,<sup>2</sup> Ngāti Whātua Ōrākei, Ngā Maunga Whakahii o Kaipara.
- (b) The following Ngāti Whātua hapū and groups: Nga Oho, Ngai Tāhuhu, Ngāti Hinga, Ngāti Mauku, Ngāti Rongo (sometimes referred to as Ngāti Rango), Ngāti Ruinga, Ngāti Weka, Ngāti Whiti, Te Kuihi, Te Taoū, Te Uri o Hau, Te Uri Ngutu, Ngāti Torehina, Patuharakeke, Te Parawhau, Te Pōpoto, Te Roroa, Te Uriroi.
- (c) The following marae: Ōrākei, Rēweti, Haranui, Kākānui, Te Aroha Pa, Puatahi, Ōmaha, Ōruawharo, Te Pounga, Ōtamatea, Waihaua, Ngā Tai Whakarongorua, Waiotea, Parirau, Te Kōwhai, Naumai, Kāpehu, Te Houhanga, Ōturei, Rīpia, Waikāretū, Taitā, Ahikiwi, Tama Te Uaua, Waikaraka, Waikarā, Pahinui, Tangiterōria, Korokota, Takahiwai.

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<sup>1</sup> Statistics New Zealand 2013 Census (<http://www.stats.govt.nz/individual.aspx?requestvalue=24536&tabname=Kevfacts>). 2018 Census data remains unavailable.

<sup>2</sup> Te Roroa is an iwi, and while not necessarily entirely part of Ngāti Whātua, its rohe contains 5 Ngāti Whātua marae, and many of its people whakapapa to Ngāti Whātua ancestors, among others.

- 4 Te Rūnanga o Ngāti Whātua makes this application for and on behalf of the iwi of Ngāti Whātua. Te Rūnanga o Ngāti Whātua holds a Deed of Mandate (dated 1 July 2008), recognised by the Crown, to negotiate the remaining historical claims of Ngāti Whātua. It signed an Agreement in Principle with the Crown on 18 August 2017. Te Rūnanga is the only body that is able to represent the entire iwi of Ngāti Whātua.
- 5 Te Rūnanga o Ngāti Whātua recognises that certain of its constituent hapū, groupings and whānau have made applications to the Court for recognition orders on their own behalf. Te Rūnanga supports, and will continue to support, the applications and claims of all of its constituent groups, including those under the Marine and Coastal Area (Takutai Moana) Act 2011. It files this application to ensure all its people, of the iwi of Ngāti Whātua, who have customary marine title and protected customary rights are represented, and able to benefit especially those who have not made their own separate applications. Te Rūnanga will continue to hold hui with all its constituent groups, to ensure it retains the support of the iwi of Ngāti Whātua to make this application and to provide support to those constituent groups with their own applications.
- 6 Te Rūnanga recognises that Ngāti Whātua o Ōrākei Trust has made its own application for CMT and PCR on behalf of the hapū of Ngāti Whātua Ōrākei and is satisfied that the Ngāti Whātua Ōrākei Trust will represent Ngāti Whātua-whānui through whanaungatanga and on behalf of Ngāti Whātua mai Tamaki ki Maunganui. Te Rūnanga therefore is not applying for CMT and PCR within the Ngāti Whātua Ōrākei Trust application area.

**Area to which the application relates**

- 7 A map setting out the area to which this application relates (**“the application area”**) is included in the attached **Schedule** to this application.
- 8 The application area includes the common marine and coastal area of:
- (a) The Kaipara Harbour shoreline including the harbour mouth. The Kaihū, Wairoa, Arapaoa, Ōtamatea, Ōruawharo, Tōpuni, Hōteo, Makarau, and Kaukapakapa river systems;
  - (b) Coastline within the traditional and well established rohe of Ngāti Whātua, expressed as Tamaki ki Maunganui i te Tai Hauāuru and Tamaki ki Manaia i te Rāwhiti. The northern boundary is expressed as Manaia titiro ki Whatitiri, Whatitiri titiro ki Tutamoe, Tutamoe titiro ki Maunganui. The southern boundary is Te Awa o Okura on the east coast and Tirikohua Point on the west coast;
  - (c) Certain harbours within the rohe of Ngāti Whātua, being the harbours of Mangawhai, Whangateau, and Mahurangi.

### **Grounds on which the customary marine title application is made**

- 9 The grounds on which this order is sought are that:
- (a) Ngāti Whātua has held the application area in accordance with tikanga since the landing of Māhuhu-ki-te-rangi Waka in the 14th century, and at least since 1840;
  - (b) Ngāti Whātua has exclusively used and occupied the application area from the landing of Māhuhu-ki-te-rangi Waka in the 14th century to the present day without substantial interruption;
  - (c) As at the signing of the Treaty of Waitangi on 6 February 1840, Ngāti Whātua was an established iwi located in the Auckland and Northland region;
  - (d) Ngāti Whātua hold mana whenua and mana moana within the application area, and have done so since at least 1840; and
  - (e) As set out in the affidavit of Russell Rata Kemp, filed with this application

### **Protected Customary Rights**

- 10 Ngāti Whātua ancestors utilised the common marine and coastal area for:
- (a) Gathering flax to make kupenga (fishing nets), whariki (mats) for whare, Korowai (cloaks), piupiu, maro (war belt), tatua or whītiki (belt), strainers for making scented body oils from Tītoki, kete for gathering Kaimoana, and transporting goods;
  - (b) Gathering Tī Kouka (Cabbage tree) leaves for making fishing nets;
  - (c) Gathering Pīngao to make tukutuku panels for Wharehui;
  - (d) Using fine nets to catch Kuaka;
  - (e) Managing Ngāti Whātua tio (oyster) reserves;
  - (f) Reseeding pipi, tuangi (cockles), tio (oysters) and kūtai (mussel) beds;
  - (g) Using hīnaki or punga (traps) to catch eels;
  - (h) Netting kanae (mullet), kahawai, pioke (dogfish), pātiki (flounder), tāmure (snapper), and other fish;
  - (i) Using hand lines to catch kahawai, tāmure, mangō (shark) and other fish;
  - (j) Gathering shellfish (kutai, tio, tuatua, tipa, karahu (mudsnail), toheroa, tuatua, pipi, tuangi, pūpū and pāpaka (crabs));
  - (k) Temporary campsites (nohoanga) the iwi set up and occupied around the coast when gathering food and resources;

- (l) Rāhui put in place over coastal areas and stretches of moana by tohunga to protect the mauri of mahinga mātaītai (seafood gathering sites), tauranga ika (fishing areas), pā harakeke (flax bushes), ngahere (bush), wāhi tapu and other valuable sites and resources which asserted the mana of the iwi over the resources within the rohe;
- (m) Whakawhanaungatanga - coming together by the transport routes provided by the harbours and coastline for hui to address all business, decisions and practices of the iwi;
- (n) Manaakitanga - providing hospitality to manuhiri, feeding them with resources of ika, kai mātaītai, manu (bird), hua rākau (tree fruit) and hua whenua (vegetables) from the rohe;
- (o) Takoha - giving gifts to manuhiri of the valued resources within the rohe which developed and maintained relationships with other iwi, which were utilised when conflict arose with other iwi;
- (p) Rangatiratanga, mana tuku iho from atua to tupuna endorsed by the iwi. Mana over resources held by the Rangatira.

#### **Grounds on which the protected customary right order is sought**

- 11 The grounds on which this order is sought are that:
- (a) Ngāti Whātua being a coastal group has relied heavily on inshore fish and shellfish food sources, and wetland food stocks foraged by whānau in the estuaries and coastal margins as set out at paragraph 9 above;
  - (b) Ngāti Whātua fishermen sought deep water fish such as hāpuka that were not available around the inner shoreline;
  - (c) Ngāti Whātua also carried out other coastline activities at paragraph 9 above in the marine and coastal areas throughout its rohe; and
  - (d) Ngāti Whātua has undertaken the activities listed above since the landing of Mahuhu-ki-te-rangi Waka in the 14th century and continues to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga.

#### **Engagement under section 95 of the Act**

- 12 Te Rūnanga o Ngāti Whātua has applied under the Act to engage directly with the Minister for Treaty of Waitangi Negotiations. The engagement process with the Minister is ongoing. If Te Rūnanga o Ngāti Whātua is successful in its application to the Minister, it will not pursue this application.

- 13 Te Rūnanga o Ngāti Whātua seeks leave to file further evidence in support of its claim following the determination of its application to engage with the Minister of Treaty of Waitangi Negotiations pursuant to section 95 of the Act.

**Contact details**

- 14 The appointed representative for Te Rūnanga o Ngāti Whātua is:  
Dame Naida Glavish  
Te Rūnanga o Ngāti Whātua  
193 Lower Dent Street  
PO Box 1784  
Whangarei 0140
- 15 This application relied on s 51, s 58, s 59, ss 98 – 113 of the Act, Rule 19.2 of the High Court Rules, the affidavit of the late Chairperson of Te Rūnanga o Ngāti Whātua, Russell Kemp, and *Re Tipene* [2016] NZHC 3199, and the affidavit of Alan Riwaka of 7 March 2022.

Date 7 March 2022



Mai Chen / Caleb Saunders

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This document is filed by **Mai Chen**, solicitor for the **applicant**, of the firm **Chen Palmer** whose address for service is **Level 10, Albert Street, Auckland** and whose telephone number is **09 557 0350**; whose fax number for service is **09 915 0003**; whose document exchange is **DX CX 10073**, whose email address for service is [mai.chen@chenpalmer.com](mailto:mai.chen@chenpalmer.com)

**Schedule One**

**Map of Amended Application Area**

