

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

CIV-2016-485-770

IN THE MATTER OF

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

AND

IN THE MATTER OF

applications by Te Rūnanga o Ngāti Whakaue ki Maketū Incorporated for and on behalf of Ngāti Whakaue ki Maketū Hapū for orders recognising Protected Customary Rights and Customary Marine Title under the Act

**AMENDED APPLICATION FOR RECOGNITION ORDERS
FOR PROTECTED CUSTOMARY RIGHTS
AND CUSTOMARY MARINE TITLE**

Dated: 5th December 2016

Case Manager
Next Event: / /
- 6 DEC 2016
**THE HIGH COURT
WELLINGTON**

Counsel

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- To:** the Registrar of the High Court at Wellington;
- And to:** Bay of Plenty Regional Council;
- And to:** Western Bay of Plenty District Council;
- And to:** Tauranga City Council;
- And to:** the Minister of Local Government, as the territorial authority for Motiti and Taumaihi Islands;
- And to:** the Solicitor-General on behalf of the Attorney-General.

THIS DOCUMENT NOTIFIES YOU THAT –

1. The applicant group, Te Rūnanga o Ngāti Whakaue ki Maketū Incorporated (**Applicant** or **Rūnanga**), will on __ December 2016 apply to the Court for orders:
 - (a) recognising the Applicant's protected customary rights for hapū net fishing, hand-line fishing, hunting for eels and birds; gathering shellfish, edible and aquatic plants, accessing marine areas that have a cultural connection to the Applicant and its members, landing vessels, and making sea passage to the islands and fishing grounds, collecting traditional materials that enhance, preserve and protect the Applicant's and its members' cultural practices, including collecting mud, plants, perished mammals, seabirds, rocks, shells and other materials from its wetlands, estuarine margins, and the sea and other customary rights in accordance with customary hapū knowledge and tikanga, in the particular area of the common marine and coastal area that is between Te Tumu in the west and the eastern end of Waihi Estuary at Maketū along the line of mean high-water springs and extending out generally to the outer limits of the territorial sea; and
 - (b) recognising the Applicant's customary marine title in the same area.

THE APPLICANT

2. Ngāti Whakaue ki Maketū Hapū is a hapū group that occupies the land around the Maketū estuary. Its marae, Whakaue Kaipapa, abuts the shores of the Maketū estuary.
3. In 2002, Ngāti Whakaue ki Maketū Hapū incorporated the Rūnanga as its Iwi Authority. The Rūnanga's head office is based in Maketū, Bay of Plenty.
4. On 24 July 2016, at the Hui-A-Hapū, the Rūnanga sought a mandate to lodge applications with the Office of Treaty Settlements and the High Court to recognise Ngāti Whakaue ki Maketū Hapū's protected customary rights and customary marine title.
5. On 24 July 2016, Ngāti Whakaue ki Maketū Hapū passed a resolution for the Rūnanga to lodge an application with the High Court to recognise both Ngāti Whakaue ki Maketū Hapū's protected customary rights and customary marine title.
6. The affidavits of Manu Hughes Pene and Barrie William Wilkinson in support of this application describe what happened at the Hui-A-Hapū.
7. The Rūnanga is proposed to be the holder of the orders as the representative entity of Ngāti Whakaue ki Maketū Hapū.

NGĀTI WHAKAUE'S MARINE AREA

8. The Rūnanga is applying for protected customary rights and customary marine title for the particular area of the common marine and coastal area, as defined in s 9 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 western seaward side by a line that extends generally north north-east from the coast abutting Te Tumu excluding the islands of Taumaihi, Matatapu Rocks, Motukahakaha, Motuputa and Motiti before extending generally north north-west to include Otaiti;

- (d) on the eastern seaward side by a line extending generally north north-east from the coast abutting the eastern end of Waihi estuary; and
 - (e) for the particular area that is the traditional fishing grounds around the island of Taumaihi.
9. This application for part of the common marine and coastal area includes the common marine and coastal area surrounding Taumaihi, Motuhaku, Motunau (Plate) Island and Otaiti (Astrolabe Reef).
10. The particular area of common marine and coastal area that is the subject of Ngāti Whakaue ki Maketū Hapū's application (**Ngāti Whakaue's Marine Area**) is shown under the affidavit of Manu Hughes Pene as Map 1 and Map 2 of **Exhibit "B"**.

NGĀTI WHAKAUE KI MAKETŪ HAPŪ'S PROTECTED CUSTOMARY RIGHTS

11. Ngāti Whakaue ki Maketū Hapū has continued to exercise customary rights in Ngāti Whakaue's Marine Area in accordance with tikanga since the 1830s.
12. Ngāti Whakaue ancestors utilised Ngāti Whakaue's Marine Area for hapū net fishing, hand-line fishing, hunting for eels and birds; and gathering shellfish, edible and aquatic plants. They sailed vessels across the waters to the fishing grounds and launched and landed vessels in the estuaries and on the islands which have a customary and cultural connection to the Applicant and its members.
13. Ngāti Whakaue relied heavily on the pipi, tuangi, pupu, eel and wetland food stocks foraged by whānau in the Maketū and Waihi Estuaries. Ngāti Whakaue continues to rely on those food stocks.
14. Ngāti Whakaue weavers and artists relied on the wetlands and estuarine margins for gathering traditional materials such as mud for dying, harakeke, and raupo. Ngāti Whakaue collected traditional materials that enhance, preserve and protect the Applicant's and its members' cultural practices, including collecting perished mammals, seabirds, rocks, and shells and other materials from its wetlands, estuarine margins and the sea.

15. In Ngāti Whakaue's Marine Area, part of which extends from Maketū northwest to the Astrolabe Reef, Ngāti Whakaue fishermen sought the delicacy fish that were not available around Maketū.
16. Ngāti Whakaue's Marine Area was fished by dedicated marae fisher people, such as Barrie and Aroha Wilkinson, who foraged for kaimoana and fished for tangi and events held at the marae.
17. The affidavits of Barrie William Wilkinson, Aroha Gwenvillan Wilkinson and Manu Hughes Pene, in support of this application, describe aspects of the exercise of Ngāti Whakaue ki Maketū Hapū's customary rights in accordance with customary hapū knowledge and tikanga.

CUSTOMARY MARINE TITLE

18. Ngāti Whakaue ki Maketū Hapū's permanent occupation of Maketū began around 1830. It has occupied Maketū from the 1830s to today without substantial interruption. Ngāti Whakaue ki Maketū Hapū are the tangata whenua and hold mana whenua and mana moana over the Maketū and Waihi Estuaries and the rest of Ngāti Whakaue's Marine Area.
19. Ngāti Whakaue whānau own land and homes in Maketū; some of which still adjoin the common marine and coastal area. The whānau who currently live at Maketū are descendants of the ancestors who have occupied Maketū since the 1830s.
20. Ngāti Whakaue ki Maketū Hapū's marae, Whakaue Kaipapa was built in 1928. The marae abuts the common marine and coastal area in the Maketū estuary.

GROUND ON WHICH THE PROTECTED CUSTOMARY RIGHTS RECOGNITION ORDER IS SOUGHT

21. The Rūnanga seeks a protected customary rights recognition order on the grounds that its protected customary rights relating to a particular area of the common marine and coastal area may be recognised by an order of the Court made on an application under s 100 of the Act.

22. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for protected customary rights meets the requirements of s 51(1) of the Act.
23. The Applicant meets the requirements in s 51(1) of the Act because it:
- (a) has exercised the rights since 1840;
 - (b) continues to exercise those rights in Ngāti Whakaue's Marine Area in accordance with tikanga in either exactly the same or a similar way, or in a way that has evolved over time; and
 - (c) is applying for rights that have not been extinguished as a matter of law.

GROUND ON WHICH THE CUSTOMARY MARINE TITLE RECOGNITION ORDER IS SOUGHT

24. The Rūnanga seeks a customary marine title recognition order on the grounds that its customary marine title relating to a particular area of the common marine and coastal area may be recognised by an order of the Court made on an application under s 100 of the Act.
25. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for customary marine title meets the requirements of s 58 of the Act.
26. The Applicant meets the requirements in s 58 of the Act because:
- (a) they hold Ngāti Whakaue's Marine Area in accordance with tikanga;
 - (b) they exclusively used and occupied Ngāti Whakaue's Marine Area from 1840 to the present without substantial interruption to their exclusive use and occupation; and
 - (c) the customary marine title has not been extinguished as a matter of law.

27. In terms of matters that may be taken into account in determining whether the Applicant's customary marine title exists in Ngāti Whakaue's Marine Area:
- (a) the Applicant and its members have owned land abutting Ngāti Whakaue's Marine Area and have done so, without substantial interruption, from 1840 to the present day; and
 - (b) the Applicant and its members have exercised non-commercial customary fishing rights in Ngāti Whakaue's Marine Area and have done so from 1840 to the present day.

APPLICATION MADE IN RELIANCE

28. This application is made in reliance on:
- (a) sections 51(1), 58, 59, 94, 98, 100, 101 and 107 of the Marine and Coastal Area (Takutai Moana) Act 2011;
 - (b) the affidavits of Manu Hughes Pene, Barrie William Wilkinson, and Aroha Gwenvillan Wilkinson; and
 - (c) further evidence to be filed on behalf of the Applicant.

CONTACT DETAILS OF THE APPLICANT AND PERSON NAMED TO HOLD THE ORDER

29. The contact address of the Applicant and person named to hold the order is:

Te Rūnanga o Ngāti Whakaue
ki Maketū Inc.
15 Little Waihi Road
Maketū, RD9
Te Puke 3189

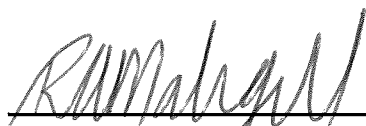
Phone: 07 533 2101

Email: runanga@actrix.co.nz.

ORDERS SOUGHT

30. The Applicant respectfully seeks orders:
- (a) recognising that Te Rūnanga o Ngāti Whakaue ki Maketū Incorporated, for and on behalf of Ngāti Whakaue ki Maketū Hapū, has protected customary rights and customary marine title over Ngāti Whakaue's Marine Area;
 - (b) setting out that recognition be made in the name of Te Rūnanga o Ngāti Whakaue ki Maketū Incorporated;
 - (c) that Te Rūnanga o Ngāti Whakaue ki Maketū Incorporated is named as the holder of the protected customary rights and customary marine title orders; and
 - (d) costs in the event that this application is opposed by any other party.

Dated this 5th day of December 2016



Robert Makgill
Counsel for Te Rūnanga o Ngāti
Whakaue ki Maketū Inc.

This document is filed by Hemi Te Nahu, solicitor on record for Te Rūnanga o Ngāti Whakaue ki Maketū Inc., of the firm Te Nahu Legal Limited. The address for service of Te Rūnanga o Ngāti Whakaue ki Maketū Inc. is at the offices of Te Nahu Legal Ltd, 8 Judith Place, Rotorua.

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

- Posted to the solicitor at PO Box 4104, Rotorua; or
- Transmitted to the solicitor by fax to (07) 354 6598; or
- Emailed to the solicitor at Hemi@tenahulegal.co.nz.

A copy of every document served on the Applicant by email should also be sent to counsel for the Applicant by email addressed to robert@robertmakgill.com.