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

CIV-2017-404-563

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.

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

Dated: 31 March 2017

Chen Palmer Partners
Barristers and Solicitors
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HIGH COURT
03 APR 2017
AUCKLAND

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To: The Registrar of the High Court at Auckland

and to: The Auckland Council, the Whangarei District Council, and the Northland Regional Council

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

This document notifies you that:

1. Te Rūnanga o Ngāti Whātua will apply 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. It is the sole representative body and authorised voice to deal with issues affecting the whole of Ngāti Whātua. It is the mandated entity to make this application.
3. Ngāti Whātua whakapapa to Haumoewarangi and are tangata whenua of the application area. The iwi of Ngāti Whātua includes all groups, hapū and whānau associated by tātai (ancestry). There are 14,784 people¹ who identify as Ngāti Whātua. This includes
 - a. The following post settlement governance entities (PSGES): Te Uri o Hau, Te Roroa², Ngāti Whātua o Ōrākei, Ngāti Whātua o Kaipara.
 - b. The following Ngāti Whātua hapū and groups: Ngā 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 Urioroi.

¹ Statistics New Zealand 2013 Census (http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/iwi-profiles-individual.aspx?request_value=24536&tabname=Keyfacts)

² 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.

- c. The following marae: Ōrākei, Rēwiti, Haranui, Kākānui, Araparera, Puatahi, Te Kiri, Ōruawharo, Te Pounga, Ōtamatea, Waihaua, Ngā Tai Whakarongorua, Waiotea, Parirau, Te Kōwhai, Naumai, Kāpehu, Te Houhanga, Ōtūrei, Rīpia, Waikāretū, Taitā, Ahikiwi, Tama Te Uaua, Waikaraka, Waikarā, Pahinui, Matatina, Tangiterōria, Korokota, Takahiwai.
4. Te Rūnanga o Ngāti Whātua makes this application for and on behalf 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 has recently carried out a mandate-refresh process, which was approved by the Office of Treaty Settlements, and its beneficiaries continue to support the mandate. Te Rūnanga is the only body that is able to represent the entire iwi of Ngāti Whātua.
5. Te Rūnanga o Ngāti Whātua supports, and will continue to support, the applications and claims of its constituent groups, including those under the Marine and Coastal (Takutai Moana) Act 2011. It files this application to ensure all its people who have customary marine title and protected customary rights are represented, and able to benefit. Te Rūnanga will continue to hold hui with all its constituent groups, and to ensure it retains the mandate and support of the iwi.

Area to which the application relates

6. The area to which this application relates (“**the application area**”) is 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. All coastline within the traditional and well established rohe of Ngāti Whātua, expressed as Tāmaki ki Maunganui i te Tai Hauāuru and Tāmaki ki Manaia i te Rāwhiti. The northern boundary is expressed as Manaia titiro ki Whatitiri, Whatitiri titiro ki Tūtamoe, Tūtamoe titiro ki Maunganui. The southern boundary is expressed as Te Awa o Tāmaki.

- c. The harbours within rohe of Ngāti Whātua, being the harbours of Waitematā, Mangawhai, Whangateau, Mahurangi, and the northern coast of the Manukau.

7. See map contained in the **Schedule** to this application, and maps annexed to the affidavit of Russell Rata Kemp, filed in support of this application.

Grounds on which the customary marine title application is made

8. 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;
 - e. As set out in the affidavit of Russell Rata Kemp, filed with this application.

Protected Customary Rights

9. Ngāti Whātua ancestors utilised the common marine and coastal area for:
 - a. Gathering flax to make kupenga (fishing nets), whāriki (mats) for whare, Korowai (cloaks), piupiu, maro (war belt), tātua or whītiki (belt), strainers for making scented body oils from Tītoki, kete for gathering Kaimoana, and transporting goods;
 - b. Gathering Ti 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), araara (trevally), pātiki (flounder), tāmure (snapper), and other fish;
- i. Using hand lines to catch kahawai, araara, tamure, mango (shark) and other fish;
- j. Gathering shellfish (kūtai, 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 mātaitai (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 mātaitai, manu (bird), hua rākau (tree fruit) and hua whenua (vegetables) from the rohe;
- o. Tākoha – 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 rights order is sought

- 10. 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; and
 - b. Ngāti Whātua fishermen sought deep water fish such as hapuka that were not available around the inner shoreline; and
 - c. Ngāti Whātua also carried out other coastline activities set out at paragraph 9 above in the marine and coastal areas throughout its rohe;

- d. Ngāti Whātua has undertaken the activities listed above since the landing of Māhuhu-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

11. Te Rūnanga o Ngāti Whātua has applied under the Act to engage 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.
12. 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, and once funding for research is secured.

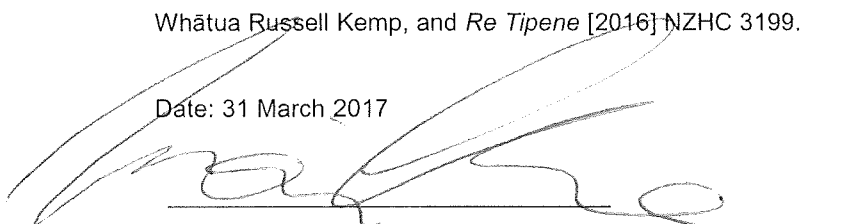
Contact Details

13. The appointed representative for Te Rūnanga o Ngāti Whātua is:

Russell Kemp
Te Rūnanga o Ngāti Whātua
193 Lower Dent Street
PO Box 1784
Whangarei 0140

14. This application relies on s51, s58, 59 s98-113 of the Act, Rule 19.2 of the High Court Rules, the affidavit of Chairperson of Te Rūnanga o Ngāti Whātua Russell Kemp, and *Re Tipene* [2016] NZHC 3199.

Date: 31 March 2017



Mai Chen
Solicitor for the Applicant

This document is filed by Mai Chen, solicitor for the Applicant, of the firm Chen Palmer Partners, The address for service for the Applicant is at the offices of Chan Palmer Partners, Level 14, 52 Swanson Street, Auckland.

Documents for service on the Applicant may be delivered to that address or may be served by email to both mai.chen@chenpalmer.com and alex.cumming@chenpalmer.com

