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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

No. CIV: 2017-404 -568

IN THE MATTER OF

Section 100 of the Marine  
and Coastal Area (Takutai  
Moana) Act 2011

AND

IN THE MATTER

of an application by  
**Hokimatemai Kahukiwa** of  
Rotorua, Retired Soldier for  
and on behalf of the  
**Koromatua Hapu of Ngati  
Whakaue of Te Arawa  
Waka** for orders recognising  
certain of it's title and/or  
certain of its rights in  
relation to its territorial  
land known as **Maketu**  
together with its  
appurtenant internal waters  
and the outer limits of its  
territorial appurtenant sea

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**Application**  
Dated: 3 April 2017

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**CORBAN REVELL**

*Lawyers*

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**Counsel: JP Kahukiwa**

JPK-115879-3-25-V2

HIGH COURT  
03 APR 2017  
AUCKLAND

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**To** the Registrar of the High Court at Auckland

And

**To** Bay of Plenty Regional Council

And

**To** Western Bay of Plenty District Council

And

**To** Tauranga City Council

And

**To** the Solicitor General on behalf of the Attorney General

**This document notifies you that —**

*Application*

1. The applicant, Hokimatemai Kahukiwa, on behalf of the Koromatua Hapu of Ngati Whakaue, of Te Arawa Waka (being the applicant group) and in exercise of their inherent Mana and Tino Rangatiratanga, but without limiting, surrendering, or ceding the same, will on

apply to the court under s100 of the Marine and Coastal Area (Takutai Moana) Act 2011 (**the Act**) for orders recognising the following:

1.1 For the one part, the extent to which customary marine title under the Act happens to co-incide with certain of its title, rights and interests held and existing at tikanga under its Mana and Tino

Rangatiratanga since time immemorial in respect of its territorial land at Maketu together with its appurtenant internal waters and the outer limits of its territorial appurtenant sea; and

1.2 For the other part, the extent to which a protected customary right under the Act happens to co-incide with certain of its rights and interests at tikanga and exercised since time immemorial in respect of its territorial land at Maketu together with its appurtenant internal waters and the outer limits of its territorial appurtenant sea, described (without limitation) to include the following:

- (a) The right to pass and re-pass over it without interference;
- (b) The right to launch, land, anchor, and stay on it without interference;
- (c) The right to take anything found on the shore of it without interference;
- (d) The right to take any produce of the sea that is over it without interference;
- (e) The right to take anything attached to the underlying land without interference;
- (f) The right to salvage anything within it without interference;
- (g) The right to conduct and undertake ceremonies there without interference;
- (h) The right to conduct and undertake trading activities there without interference.

*The Applicant Group*

2. The applicant group is the Koromatua Hapu of Ngati Whakaue of Te Arawa Waka, namely:
  - 2.1 Ngati Tunohopu;
  - 2.2 Ngati Te Roroaterangi;
  - 2.3 Ngati Taeotu;
  - 2.4 Ngati Hurungaoterangi;
  - 2.5 Ngati Pukaki; and
  - 2.6 Ngati Te Rangiiwaho.
3. The said Koromatua Hapu are the senior Hapu of Ngati Whakaue and therefore at tikanga the all-encompassing expression of its Mana, Tino Rangatiratanga and state-hood.

*Specified area*

4. The particular area of the common marine and coastal area to which this application relates is specified as that which happens to co-incide with the following:
  - 4.1 Firstly, the applicant groups territorial land described by the Maketu Toa Boundary of 1875 as accepted by the Crown and as set out in the map attached hereto and marked "*Maketu Toa Boundary 1875 with initial land blocks according to McLean*" and over which the applicant group has held and exercised Mana and Tino Rangatiratanga since time immemorial, and

- 4.2 Secondly, the band of internal waters and territorial sea of the applicant group that are reasonably appurtenant to the territorial land firstly described, and over which the applicant group has held and exercised Mana and Tino Rangatiratanga since time immemorial.

*Grounds on which the orders are sought*

5. The grounds on which both orders are sought are as follows:

5.1 In relation to customary marine title-

- (a) As a fact of history the specified area and everyone and everything within it and that is of the applicant group is subject to the Mana and Tino Rangatiratanga of the applicant group and thus possessed by the applicant group in terms of state-hood including by virtue of-
- (i) Take Taunaha;
  - (ii) Take Tipuna;
  - (iii) Take Toa (including victory in the battle of Te Tumu circa 1825);
  - (iv) Take Ahi kaa roa;
  - (v) Take noho tuturu.
- (b) Accordingly the applicant group has enjoyed use and occupancy of the specified area without interference or interruption from before 1840 to the present day; and

- (c) The said Mana and Tino Rangatiratanga of the applicant group over the specified area has not been extinguished with their consent, whether as a matter of law or of tikanga.

5.2 In relation to a protected customary right:

- (a) By virtue of the matters of Mana, Tino Rangatiratanga and of statehood in relation to the specified area and mentioned in the preceding paragraph, the applicant group is able to demonstrate that the said rights that its members enjoy-
  - (i) have been maintained and exercised since before 1840 and up to the present day;
  - (ii) have not been extinguished with their consent, whether as a matter of law or of tikanga.

*Representative of Applicant Group*

- 6. The holder of the orders sought will be Hokimatemai Kahukiwa, a member of the applicant group, for and on behalf of the applicant group.

*Contact Details*

- 7. The contact details for the applicant and the applicant group are care of counsel filing and on the record for this application.

*Affidavits in Support of Application*

- 8. Attached and marked "A" is the affidavit of Hamuera Walker Mitchell, a member of the applicant group, in support of this application.

*Any other information required by regulations made under s118(1)(i) of the Act*

9. At the date of this application, no regulations under s118(1)(i) of the Act have been made.

*Authorities relied on*

10. This application is made in reliance on:

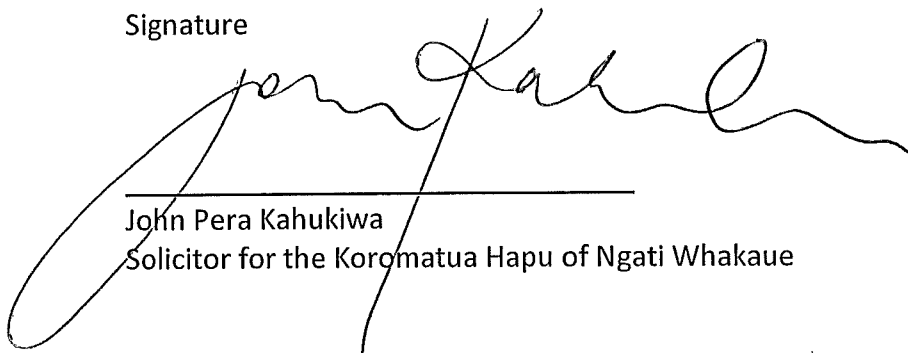
10.1 ss51(1), 58(1), 59, 94, 98, 100, 101 and 107 of the Act; and

10.2 Relevant tikanga, including, take taunaha, take tipuna, take toa, take ahi kaa roa, take noho tuturu; and

10.3 International and domestic common law of the shore and the sea, including *The Grisbadarna Case*, *The Hague Arbitration Cases 1909*, *Lord Advocate v Young (1887) 12 App Cas 544* and *le Strange v Rowe (1866) 4 F & F 1048*.

Dated: 3 April 2017

Signature



John Pera Kahukiwa  
Solicitor for the Koromatua Hapu of Ngati Whakaue

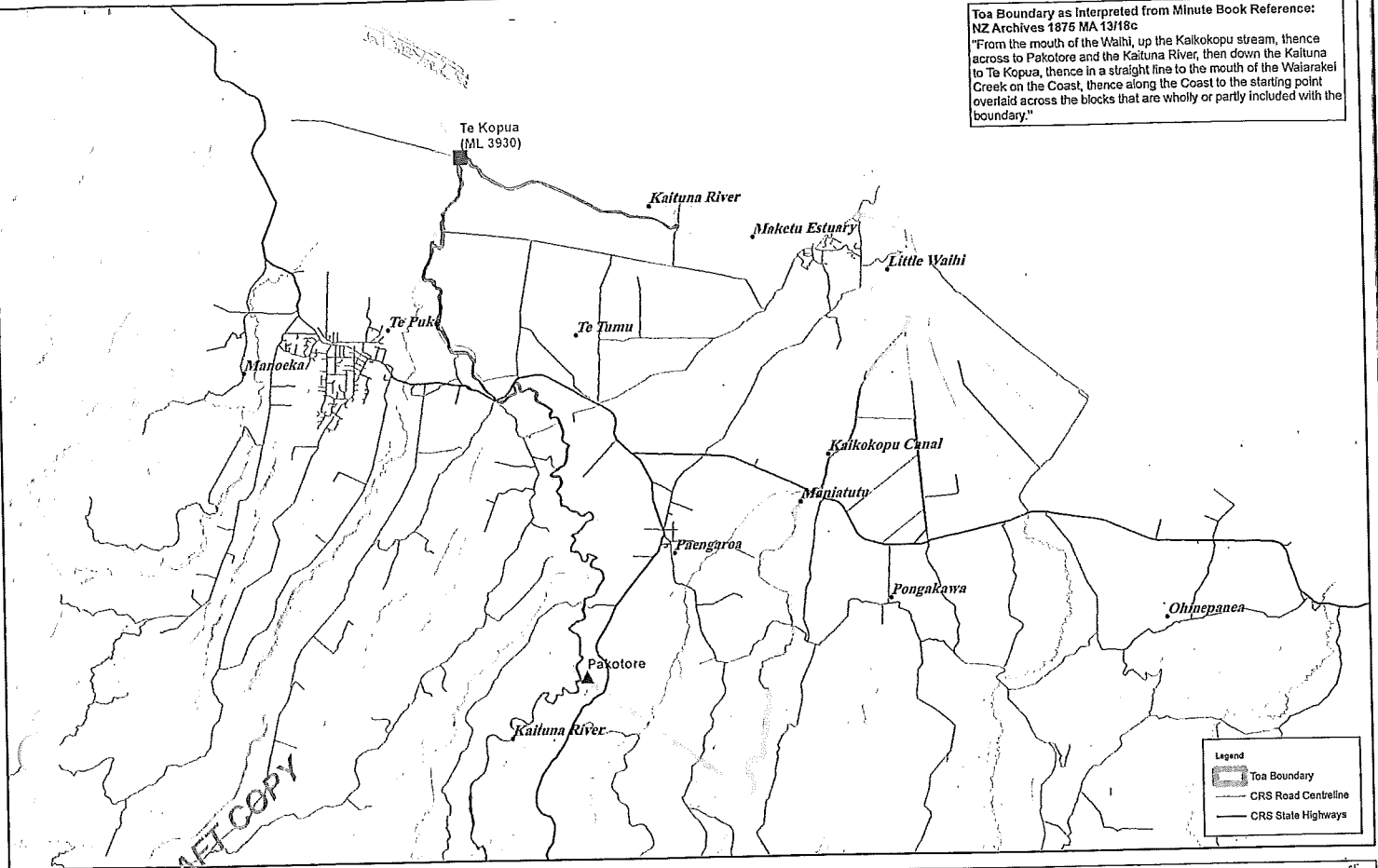
This application is filed by **John Pera Kahukiwa**, solicitor for the Koromatua Hapu of Ngati Whakaue of the firm Corban Revell, Lawyers. The address for service for the Koromatua Hapu of Ngati Whakaue is at the offices of Corban Revell, Lawyers, 133A Central Park Drive, Henderson, Auckland. Telephone: (09) 837-0550.

Documents for service on the Koromatua Hapu of Ngati Whakaue may be left at the address for service or may be:

- (a) Posted to the solicitor at PO Box 21-180, Henderson, Auckland 0650; or
- (b) Transmitted to the solicitor by facsimile to (09) 838-7187; or
- (c) Emailed to the solicitor at his email address [jkahukiwa@corbanrevell.co.nz](mailto:jkahukiwa@corbanrevell.co.nz).



**Toa Boundary as Interpreted from Minute Book Reference:**  
 NZ Archives 1875 MA 13/18c  
 "From the mouth of the Waihi, up the Kalkokopu stream, thence across to Pakotore and the Kaituna River, then down the Kaituna to Te Kopua, thence in a straight line to the mouth of the Waiarakei Creek on the Coast, thence along the Coast to the starting point overlaid across the blocks that are wholly or partly included with the boundary."



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**Map 1**

**Maketu Toa Boundary 1875 according to McLean**

**Data Sources:**  
 Department of Conservation  
 NZ Archives  
 NZ Topographic Database

