

IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

CIV-2017-485.249

UNDER

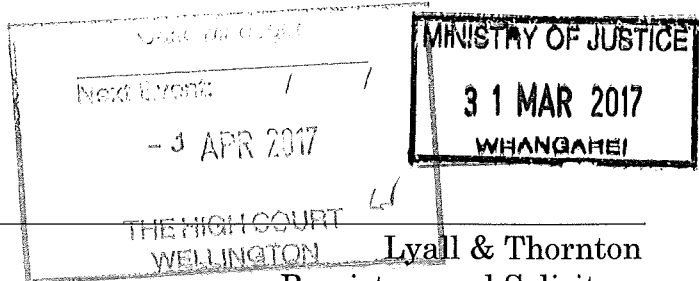
The Marine and
Coastal Area Act
2011

CONCERNING

An application by
ANI TANIWHA, on
behalf of Ngati
Kawau, Ngati
Kawhiti, Ngati Haiti
and Ngaitupango
hapu of Whangaroa
recognising
customary interests
under the Marine
and Coastal Area
(Takutai Moana) Act
2011

WITHOUT NOTICE ORIGINATING APPLICATION FOR
ORDERS UNDER S 100 OF THE MARINE AND COASTAL
AREA ACT 2011

Dated: 29 March 2017



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To: The Registrar of the High Court at Gisborne

And to: Any other party required to be served

This document notifies you that:

1. On behalf of Ngāti Kawau, Ngāti Kawhiti, Ngāti Haiti, and Ngaitupango hapū of Whangaroa, the applicant, Ani Taniwha of 168 Ulster Street, Whitiara, Hamilton, applies for:
 - a) A recognition order of a protected customary right under the Marine and Coastal Area (Takutai Moana) Act (“MACA”); and/or
 - b) Recognition of customary marine title under the MACA.

Reliance

2. This application is made under s100 of the MACA, in reliance on s51 MACA (protected customary rights); and s58 of the MACA (customary marine title).
3. The recent decision in *Re Tipene* is also relied upon, as the only guidance so far provided from the Court on the process under the MACA.¹

The Applicant Group (s101(c) of the MACA)

4. The hapū represented are:
 - a) Ngati Kawau;
 - b) Ngāti Kawhiti;
 - c) Ngāti Haiti; and
 - d) Ngaitupango, all of Whangaroa.

¹ *Re Tipene* [2016] NZHC 3199

5. This application is accompanied by the affidavit of Ani Taniwha, which sets out the basis on which the hapū represented by the Trust claim to be entitled to the recognition order, as required by s101(h) of the MACA. The affidavit also describes the general area of application.

Application Requirements

Timing (s100(2))

6. This application is filed before the deadline of 3 April 2017.

Application for Recognition of Customary Rights, Customary Marine Title, or Both (s101(a))

7. This application is for recognition of both customary rights under s51 of the MACA, and customary marine title under s58 of the MACA.

Description of the Customary Rights (s101(b))

8. The claimants have exercised rantatiratanga over their marine and coastal area² from well before to 1840 to the current day.
9. This is demonstrated through the exercise of kaitiakitanga over the marine and coastal area; use of the area for transport; aquaculture; and the use of rocks, sands and other minerals, and access for care of koiwi in coastal cliff caves.
10. The applicant hapū use the marine and coastal area for gathering kai moana. They collect shellfish, and catch fish both from the beach and out to sea in marked fishing grounds. They also exercise control over the area through the imposition of rāhui.

² As defined by s9 MACA

11. The applicant hapū also protect waahi tapu, burial sites and other sacred sites in their rohe, many of which are in the marine and coastal area, or just inland. They had kāinga and burial grounds scattered inland from the beach.

The Particular Area (s101(d))

12. The hapū are kaitiaki for the whole specified area of the Whangaroa Harbour.
13. The area stretches along the shore line from around Matangirau to Ohauroro (Peach Island) including Ririwha (Stephenson's Island), Motukawanui, Motukawaiti and everything in between, as more fully described in the affidavit of Ani Taniwha.
14. The applicant hapū exercise customary rights according to their own tikanga between those two points, and out to sea well past the limits of the territorial sea, to a distance of 200 nautical miles. The area includes the airspace above these points as allowed by legislation.
15. Maps have not yet been generated but will be prepared and submitted as this application is progressed.

Grounds (S101(e))

16. The grounds upon which orders are sought are as follows:
 - a) The hapū represented by the applicant wish to seek a recognition order of a protected customary right under the Marine and Coastal Area (Takutai Moana) Act ("MACA") ; and/or recognition of customary marine title under the MACA.
 - b) The hapū of this application hold mana whenua over the area of Whangaroa described.

- c) They have lived in this area, and exercised exclusive customary rights within it, since prior to the arrival of Pākehā in this country.³
- d) The area is held according to their tikanga and they continue the traditions of kaitiakitanga handed down to them. Many of the traditions that will be developed in further evidence are exercised in the same way as they were in 1840. Some have evolved over time.⁴
- e) The protected customary rights in question have not been extinguished as a matter of law.⁵
- f) The applicant hapū hold their rohe in accordance with tikanga.⁶
- g) The applicant hapū have exclusively used and occupied the area since 1840 until the present day without substantial interruption.⁷
- h) In addition, members of the hapū own land abutting part of the specified area, and have done so without substantial interruption from 1840 to the present day.⁸ The hapū have also exercised non-commercial customary fishing rights in the specified area from before 1840 to the present day.⁹
- i) These two matters will be the subject of further hapū evidence as this application is progressed.

³ S51(1)(a) MACA
⁴ S51(1)(b) MACA
⁵ S51(1)(c) MACA
⁶ S58(1)(a) MACA
⁷ S58(1)(b)(i) MACA
⁸ S59(1)(a)(i) MACA
⁹ S59(1)(a)(ii) MACA

j) All relevant parties will be served contemporaneously with the filing of this application in satisfaction of the requirements in s102 of the MACA.

k) Public notice will be given no later than 20 working days following filing of this application.¹⁰

Person to be Holder of the Order (s101(f))

17. The person to be the holder of the order is Ani Taniwha or such other person or persons who may be designated in the course of these proceedings.

Contact Details for the Group (s101(g))


18. The Trust ask that contact be made through contact with counsel, contact details set out at the foot of this application.

Conclusion

19. With the courts leave the applicant hapū will provide further evidence following hapū hui, and seek to further particularise this application as research is received.

20. I certify that this application complies with the High Court Rules.

Dated: 29 March 2017



Linda Thornton
Counsel

The address for service for the applicants is 118 Park Road, Titirangi, Auckland 0604.

¹⁰ S103 MACA

Documents for service on the applicants may be posted to or left at that address for service or may be emailed to the solicitor at: Linda@lyallthornton.com

The solicitor can be contacted on (09) 294 7970