

In the High Court of New Zealand
Wellington Registry

CIV-2017-485-257

In the matter of

the Marine and Coastal Area (Takutai
Moana) Act 2011

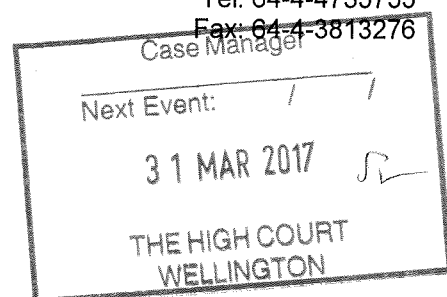
And in the matter of

an application by Ngai te Hapū
represented by Ngai Te Hapu
Incorporated seeking recognition orders
under that Act

APPLICATION FOR RECOGNITION ORDERS

Dated 31 March 2017

Counsel: Tom Bennion
Barristers and Solicitors
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To: The Registrar of the High Court at Wellington
And to: The 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:

1. Ngai Te Hapū Incorporated, on behalf of the applicant group, Ngai Te Hapu, will on 31 March 2017 apply to the Court for recognition orders under the Act relating to a particular area of the common marine and coastal area around Motiti Island described generally as the area bounded by Otaiti reef in the north, east to Motuhaku Island, south east to Motunau island, west to a place in the sea off the southern end of Motiti Island, northwest to Okaparua reef, then returning northeast to Otaiti reef, and on the landward parts by the line of mean high-water springs ("Ngai Te Hapu rohe moana") and marked by a red outline in the attached Appendix A.
2. The orders sought are protected customary rights and customary marine title in the Ngai Te Hapu rohe moana arising from:
 - 2.1. Permanent occupation of Motiti Island by Ngai Te Hapū and use of the surrounding foreshore and seas from around the mid to late 17th century and up until today without substantial interruption;
 - 2.2. The taking of hapuka, kahawai, ararara (tervally), tamure (snapper), hapu (kingfish), hautere (jack mackerel), takeketonga (black marlin), taketonga (striped marlin), maka/manga (barracouta), blue and pink mapmao, demoiselles, matuawhapuku (perch), long finned boar fish, and other fish;
 - 2.3. The taking of kekeno (seals);
 - 2.4. The taking of seabirds;
 - 2.5. The taking of shellfish and kina, paua, and koura (crayfish);
 - 2.6. Taking of aquatic plants;
 - 2.7. Passage over and these areas in waka and landing of waka;
 - 2.8. Bathing;
 - 2.9. Collection of sand and stones and detritus;

2.10. And all ways of life and cultural practices associated with the above takings and uses including cultural practices founded in spiritual beliefs including the saying of karakia tawhito, karanga, imposition of rahui, exercise of kaitiakitanga and mana, naming of places in the sea to specify fishing areas and people who had authority over them.

2.11. And all other customary uses of the common marine and coastal area around Motiti Island and associated islands and reefs.

DESCRIPTION OF APPLICANT GROUP

Ngai te Hapū are an iwi that has occupied Motiti Island from around the mid to late 17th century. They are represented today by Ngati Te Hapū Incorporated whose members whakapapa from the founders of Ngai te Hapū.

GROUND ON WHICH THE PROTECTED CUSTOMARY RIGHTS RECOGNITION ORDER IS SOUGHT

3. Ngai te Hapū through the Incorporation seeks a protected customary rights recognition order on the grounds that its protected customary rights relating to the Ngai Te Hapu rohe moana may be recognised by an order of the Court made on an application under s 100 of the Act.
4. 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.
5. The Applicant Group meets the requirements in s 51 (1) of the Act because it:
 - 5.1. has exercised the rights before and since 1840;
 - 5.2. continues to exercise those rights in the Ngai Te Hapu rohe moana in accordance with tikanga in either exactly the same or a similar way, or in a way that has evolved over time; and
 - 5.3. 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

6. Ngai te Hapū through the Incorporation seeks a customary marine title recognition order on the grounds that its customary marine title relating to the Ngai Te Hapu rohe moana may be recognised by an order of the Court made on an application under s 100 of the Act.

7. 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.
8. The Applicant Group meets the requirements in s 58 of the Act because it:
 - 8.1. holds the Ngai Te Hapu rohe moana in accordance with tikanga;
 - 8.2. has, in relation to the Ngai Te Hapu rohe moana exclusively used and occupied it from 1840 to the present without substantial interruption to its exclusive use and occupation; and
 - 8.3. the customary marine title has not been extinguished as a matter of law.
9. In terms of matters that may be taken into account in determining whether the Applicant Group's customary marine title exists in the Ngai Te Hapu rohe moana:
 - 9.1. the Applicant Group have owned land abutting the Ngai Te Hapu rohe moana and have done so, without substantial interruption, from 1840 to the present day; and
 - 9.2. the Applicant Group have exercised non-commercial customary fishing rights the Ngai Te Hapu rohe moana and have done so from 1840 to the present day.

PERSON TO HOLD THE ORDERS

10. Ngati Te Hapū Incorporated will be the holder of the orders as the representative entity of Ngai Te Hapu.

APPLICATION MADE IN RELIANCE

11. This application is made in reliance on sections 51(1), 58, 59, 94, 98, 100, and 101 of the Marine and Coastal Area (Takutai Moana) Act 2011 and the affidavits of Rangi Butler and Buddy Mikaere which set out in full the basis on which Ngai Te Hapū is entitled to the recognition orders sought.

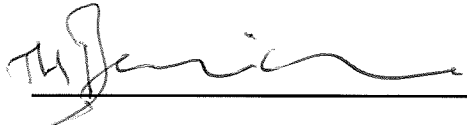
CONTACT DETAILS OF THE APPLICANT AND PERSON NAMED TO HOLD THE ORDER

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

Secretary
Ngai Te Hapū Incorporated

1 De Havilland Way
Mount Maunganui, 3116.
The contact telephone number is 021384620
The contact email: buddy@manataiao.com

Dated at Wellington this 31 March 2017

A handwritten signature in black ink, appearing to read 'TH Bennion', is written over a solid horizontal line.

Thomas H Bennion

Counsel for Ngai Te Hapu Incorporated

This document is filed by Thomas Bennion, Solicitor for Ngai Te Hapu Inc.
The address for service of the Ngai Te Hapu Inc is at the offices of Bennion
Law, First Floor, 181 Cuba Street, Wellington.

Documents for service on the above-named Appellant may be left at that
address for service or may be:

Posted to the solicitor at PO Box 25-433, Featherston Street, Wellington 6146;

or

Transmitted to the solicitor by email to tom@bennion.co.nz.

Appendix A – Ngai Te Hapu rohe moana

