

**IN THE HIGH COURT OF NEW ZEALAND CIV-2017-
ROTORUA REGISTRY**

IN THE MATTER OF

the Marine and Coastal
Area (Takutai Moana) Act
2011 (“the Act”)

AND IN THE MATTER OF

an application by **David
Potter** for orders
recognising Customary
Marine Title and Protected
Customary Rights.

**APPLICATION BY DAVID POTTER
FOR RECOGNITION ORDERS PURSUANT TO THE MARINE
AND COASTAL AREA (TAKUTAI MOANA) ACT 2011**

Dated: 3 April 2017

Phoenix Law Limited
Barristers and Solicitors
200 Willis Street
PO Box 27400
Marion Square
Wellington 6141
Phone: (04) 384 1304
Email: mason@phoenixlaw.expert
Counsel Acting: Janet Mason

- To:** The Registrar of the High Court at Rotorua;
- and to:** Bay of Plenty Regional Council, and Whakatāne District Council;
- and to:** Department of Conservation and the Ministry for the Environment;
- and to:** The Solicitor General on behalf of the Attorney-General.

This document notifies you that:

1. I, DAVID POTTER, apply to the High Court for orders pursuant to s 98 of the Act to recognise the customary marine title (“Title”) and protected customary rights (“PCRs”) of the Tangihia Hapu (“the Applicants”) in the Marine and Coastal Area (“the MCA”) as defined in paragraph 4 below (“the Title Area”) in Whakatane and the adjacent coastline.

The Applicant Group:

2. The Applicants claim ownership of the Title Area based on the whakapapa set out at paragraph 4 of the Affidavit of David Potter.
3. I am authorised to make this application for and on behalf of the Applicants.

Area to which the application relates:

4. The area to which this Application relates is that area of the MCA, as defined in the Act, adjoining the area belonging to the Tangihia Hapu, stretching from the mouth of the Watahanui Stream in the West, 13.5 miles along the coast to Walker Road in the East, and out to sea at least as far as Hawaiki (“the Title

Area”) and as more particularly described in paragraph 6 of the Affidavit of David Potter.

Grounds on which the customary marine title and protected customary rights are sought:

5. The grounds on which these orders are sought are that:
 - a. the Applicants have held and exercised tino rangatiratanga over the Title Area in accordance with tikanga since before 1840; and
 - b. the Applicants have exclusively used and occupied the Title Area from 1840 to the present day without substantial interruption.

6. The purposes for which the activities, uses and practices (“the Practices”) were and are carried on, exercised and followed include:
 - a. the exercise of rangatiratanga;
 - b. the exercise of kaitiakitanga, including:
 - i. protecting flora and fauna;
 - c. commercial and non-commercial fishing, including fishing for:
 - i. blue cod;
 - ii. moki;
 - iii. hoki;
 - iv. kawhai;
 - v. trevally;
 - vi. John dory;
 - vii. Teraki;
 - viii. blue nose;
 - ix. kingfish;
 - x. trumpeter;
 - xi. hapuka;

- xii. snapper;
- xiii. marlin;
- xiv. sailfish;
- xv. shark;
- xvi. toheroa;
- xvii. whale;
- xviii. ling sole;
- xix. flounder;
- xx. tuna;
- xxi. eels;
- xxii. hake;
- xxiii. groper;
- xxiv. mullet; and
- xxv. squid;

d. commercial and non-commercial harvesting of shellfish or kaimoana, including:

- i. scallops;
- ii. mussels;
- iii. oysters;
- iv. pipis;
- v. paua;
- vi. lobster;
- vii. crab;
- viii. tuatua;
- ix. cockles; and
- x. clams;

e. activities related to spiritual practices;

f. the use of the Title Area as tauranga waka;

g. gathering edible and aquatic plants, including:

- i. flax;
- ii. tī kouka;

- iii. pingao; and
- iv. seaweed;
- h. extraction of fossils, rocks and minerals, including:
 - i. stones;
 - ii. shingle;
 - iii. sand;
 - iv. pumice;
 - v. semi-precious stones; and
 - vi. other minerals;
- i. kauta or temporary camp-sites for ceremonial activities;
- j. toka ika or protected fishing grounds;
- k. associated Practices, including:
 - i. protecting kawai and other sea creatures;
 - ii. collecting shells;
 - iii. collecting drift wood;
 - iv. collecting whale and whale bones;
 - v. taking flotsam, jetsam and langam; and
- l. further uses and practices to be the subject of evidence once funding for research and legal representation is secured.

7. The Applicants have undertaken these Practices since time immemorial and before 1840, and continue to undertake these Practices in the Title Area, albeit, in some instances using modern equipment, and in accordance with tikanga.

8. The Applicants will provide more information once funding for research and legal representation is secured.

9. The Applicants hold and exercise, in accordance with tikanga, tino rangatiratanga over the Title Area as particularised herein. The tikanga

integral to the Applicants governing these Practices will be provided in the evidence from the Applicants to be given at a hearing once funding for research and legal representation is secured.

10. The orders for which the Applicants seek recognition are sought relying upon the Practices which:
 - a. have been and continue to be carried on, exercised and followed in accordance with tikanga, in a substantially uninterrupted manner since 1840 in the Title Area;
 - b. if interrupted since 1840, then this has only been by unlawful interruption or interference, and in a substantially uninterrupted manner;
 - c. are not prohibited by any enactment or rule of law; and
 - d. have not been extinguished as a matter of law.

11. The Applicants respectfully seek leave to reserve the right to amend this Application, including; amending its nature and scope; and, by adding additional parties.

Contact Details:

12. The contact details for this Application are:

Janet Mason
Phoenix Law Ltd
PO Box 27400
200 Willis Street
Wellington 6011
Phone: 04 384 1304
Email: mason@phoenixlaw.expert

13. This application relies on s 51(1), s 58, s 98-113 of the Act and the affidavit of DAVID POTTER.

Dated at Rotorua on the 3rd day of April 2017

A handwritten signature in black ink, appearing to read 'Potter', written in a cursive style.

DAVID POTTER