

In the High Court of New Zealand
Whangārei Registry

CIV-2017-485-228

IN THE MATTER OF

the Marine and Coastal Area
(Takutai Moana) Act 2011

AND IN THE MATTER OF

an application by David Hugh Peters,
Marie Tautari, Allan Peters and Rowan
Tautari on behalf of Te Whakapiko hapū
of Ngāti Manaia seeking recognition
orders under that Act

APPLICATION FOR RECOGNITION ORDERS

Dated Friday the 31st of March 2017

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Case Manager
Next Event: / /
- 4 APR 2017
THE HIGH COURT
WELLINGTON

MINISTRY OF JUSTICE
- 3 APR 2017
WHANGAREI

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To: The Registrar of the High Court at Whangārei
And to: Northland Regional Council
And to: Whangārei District Council
And to: the Solicitor-General on behalf of the Attorney-General

THIS DOCUMENT NOTIFIES YOU THAT:

1. Te Whakapiko is a hapū of Ngāti Manaia and is the name for the descendants of Pita Tunua who have occupied Whananaki without interruption at least 225 years.
2. Pita Tunua (circa 1820-1910) was recognised as the rangatira of whenua at Whananaki by the Whangaruru Runanga of 1864, a regional committee of prominent Northland rangatira chaired by Maihi Paraone Kawiti. This decision was substantiated by the Native Land Court in 1867.
3. These awards of title recognised the customary ownership of the area which Pita Tunua held, and that those customary interests predated both the Native Land Court and the signing of Te Tiriti o Waitangi in 1840.
4. Te Whakapiko are acting as a hapū in bringing this application. At a hapū hui held on the 25th of March 2017, the four named applicants; David Hugh Peters, Marie Tautari, Allan Peters and Rowan Tautari (the Named Applicants), were chosen unanimously to bring this Application and act for the hapū in respect of this Application.
5. Te Whakapiko apply to the Court for recognition orders under the Act relating to a particular area of the common marine and coastal area around Whananaki described generally as the area extending from its northernmost point at Roimata to the southernmost end at Oruaea extending to the outer limits of the territorial sea. This includes Te Waha o te Parata and Te Koko i Whangaroa (the entire estuary), Te Rahuiroa (the sandspit), all islands, rocks and reefs including Motutohe, Huriwaka (Elizabeth Reef), Motukauri and 'Toka Tū' (Flat Rock). Located within the estuary are the entrances to the Wairahi and Taupiri streams. The boundary extends upstream five times the width of both entrances. The area also extends one kilometre upstream of the Oriwa River from the river mouth.
6. The area extends eastward out from this stretch of coastline to the islands of Tawhitirahi and Aorangi (the Poor Knights). This coastal area of the North Island described above, plus the islands of Tawhitirahi and Aorangi and the

waters between those points is the full area being applied for and is known as the Te Whakapiko rohe moana ("Te Whakapiko rohe moana").

7. The coastal extent of Te Whakapiko rohe moana is shown by the northern and southern boundaries, Roimata and Oruaea respectively, with the co-ordinates of those locations on the map attached as "Appendix A".
8. The orders sought are customary marine title and protected customary rights in the Te Whakapiko rohe moana arising from the continued:
 - 8.1. Occupation of Whananaki by Pita Tunua, his antecedents and his descendants, and the use of the surrounding foreshore and seas since the mid to late 17th century to this day without substantial interruption;
 - 8.2. Taking of hapuka, kahawai, ararara (trevally), tamure (snapper), kanae (mullet) hapu (kingfish), maka/manga (barracouta), blue and pink maomao, tuna, patiki (flounder), parore and other fish;
 - 8.3. Taking of bone and other materials from marine mammals;
 - 8.4. Taking of seabirds including mutton bird (titi) and brown teal (pateke);
 - 8.5. Seeding and harvesting of shellfish including kina, kutae, paua, pipi, tuatua and koura (crayfish);
 - 8.6. Taking of aquatic plants and indigenous vegetation including seaweed;
 - 8.7. Passage over these areas in waka and tauranga waka (landing of waka);
 - 8.8. Use of the waters for bathing;
 - 8.9. Use of campsites for seasonal harvesting and ceremonial activities;
 - 8.10. Collection of sand, stones and detritus including ambergris;
 - 8.11. Cultural practices, tikanga, ways of life and kaitiakitanga associated with the above takings and uses founded in spiritual beliefs by people who exercised rangatiratanga and authority over them including korero tuku iho (cultural heritage and knowledge of resources), karakia, karanga, whakatapu (placing of rahui), whakanoa (removal of rahui), taunaha whenua and tapatapa moana (the naming of places on land and sea), mahinga mataitai (maintenance of fishing and shellfish grounds), manaakitanga, non-commercial aquaculture,

whenua ki te whenua (burial of placenta), koiwi tangata (the removal and reburial of human remains), care of wāhi tapu and taonga tuturu; and

8.12. All the other customary uses of the common marine and coastal area around Whananaki and associated islands, rocks and reefs.

DESCRIPTION OF APPLICANT GROUP

9. The Applicant Group is Te Whakapiko of Ngāti Manaia, a hapū located only at Whananaki and the Poor Knights Islands (Te Whakapiko).

10. Te Whakapiko is an autonomous hapū that has managed its coastal resources independently and continuously since 1840.

11. Maori Land Court records confirm that the traditional Te Whakapiko boundary included the following blocks; Opuawhanga 1, 2, 3, Whananaki, Oriwa, Spithills, Matapouri (shaded in red in the attached Appendix A), and the Poor Knights Islands.

12. Te Whakapiko's customary interests are exclusively through Pita Tunua whose customary title to whenua was the basis for the award granted by the Native Land Court in 1867.

13. Pita Tunua inherited his customary rights at Whananaki from the following tupuna who occupied, and are buried at, Whananaki. His whakapapa is;

Whenua

He Ika Whai

Te Pona

Kaitaka

Pita Tunua

14. Te Whakapiko comprises the descendants of Pita Tunua who are owners in Spithills, Oriwa and Opuawhanga No 2 blocks and their descendants. It also includes some descendants who do not have interests in these lands but whakapapa in a direct line to Pita Tunua. This includes an estimated 1000 people.

15. Te Whakapiko of Whananaki is not Te Uri/Ure Whakapiko of Aotea (Great Barrier). Both are separate groups with discrete whakapapa, tribal territories and interests.

16. Individuals or groups claiming descent from tupuna associated with Aotea or Matapouri have no ancestral connection to Te Whakapiko of Whananaki and do not share the same customary interests.
17. Te Whakapiko whakapapa and customary interests are distinct from those hapū who settled at Whananaki after 1840 and after Pita Tunua and his tupuna including Te Whanau Whero (post-1840), Ngāti Rehua (post-1880) and Te Akitai (post-1890).
18. Te Whakapiko has consistently exercised effective leadership within its own rohe moana and beyond, establishing the Ngātiwai Land Retention Committee (1974-1983) when its tribal rohe was threatened by local district scheme planning.
19. Te Whakapiko contemporary identity as a leading hapū exercising kaitiakitanga was reinforced by Marie Tautari who as s 438 trustee of 38 Ngāpuhi, Ngātiwai and Ngāti Manaia (Te Whakapiko) coastal land blocks successfully supported owners to remove all zoning of their coastal land for public purposes.
20. Te Whakapiko has no affiliation with the Ngātiwai Trust Board or the history it espouses.
21. By way of consultation an un-notified hui took place on Thursday the 5th of January 2017 to update interested members on Te Whakapiko's Treaty claims and gauge support for the Named Applicants to lodge this application. This was attended by 20 people and support was unanimous.
22. A notified hui took place on Saturday the 25th of March 2017. This was advertised in the Northern Advocate on Saturday the 18th of March 2017. This was attended by seven people. A resolution was passed that the Named Applicants lodge an application with the High Court. It was agreed that more time was needed to discuss an appropriate legal entity.
23. A kaumatua wananga will take place on Saturday the 15th of April 2017 and these matters will be raised there.

GROUND ON WHICH THE PROTECTED CUSTOMARY RIGHTS RECOGNITION ORDER IS SOUGHT

24. Te Whakapiko, through the Named Applicants, seek a protected customary rights recognition order on the grounds that its protected customary rights relating to Te Whakapiko rohe moana may be recognised by an order of the Court made on an application under s 100 of the Act.

25. 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.
26. Te Whakapiko; the Applicant Group, meet the requirements in s 51 (1) of the Act because it:
- 26.1. Has exercised the rights before and since 1840;
 - 26.2. Continue to exercise those rights in the Te Whakapiko 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
 - 26.3. Is applying for recognition of rights that have not been extinguished as a matter of law.

GROUND ON WHICH THE CUSTOMARY MARINE TITLE RECOGNITION ORDER IS SOUGHT

27. Te Whakapiko, through the Named Applicants, seek a customary marine title recognition order on the grounds that its customary marine title relating to the Te Whakapiko rohe moana may be recognised by an order of the Court made on an application under s 100 of the Act.
28. 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.
29. Te Whakapiko; the Applicant Group, meet the requirements in s 58 of the Act because it:
- 29.1. Holds the Te Whakapiko rohe moana in accordance with tikanga;
 - 29.2. Has, in relation to the Te Whakapiko rohe moana exclusively used and occupied it from 1840 to the present without substantial interruption to its exclusive use and occupation; and
 - 29.3. The customary marine title has not been extinguished as a matter of law.
30. In terms of matters that may be taken into account in determining whether the Applicant Group's customary marine title exists in the Te Whakapiko rohe moana:

- 30.1. the Applicant Group own land abutting the Te Whakapiko rohe moana and have done so, without substantial interruption, from 1840 to the present day; and
- 30.2. the Applicant Group have exercised non-commercial customary fishing rights within the Te Whakapiko rohe moana and have done so from 1840 to the present day.

PERSON TO HOLD THE ORDERS

31. The person to hold the orders will be David Peters, one of the Named Applicants.
32. Te Whakapiko are currently discussing the legal entity to which the orders will be transferred.
33. In the meantime, and for this Application, the person to hold the orders will be David Peters.
34. As moving together with unity and consensus is valuable to Te Whakapiko, now as it has ever been, the Named Applicants, who have brought the Application on behalf of Te Whakapiko, will inform the Court as soon as Te Whakapiko have made a decision in accordance with tikanga on the legal entity to hold the orders.

APPLICATION MADE IN RELIANCE

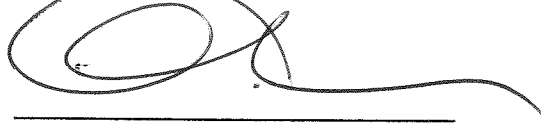
35. This application is made in reliance on sections 51(1), 58, 59, 94, 98, 100, and 101 of the Marine and Coastal Area (Takutai Moana) Act 2011 and the affidavits of David Peters, Marie Tautari and Rowan Tautari which set out in full the basis on which Te Whakapiko is entitled to the recognition orders sought.

CONTACT DETAILS OF THE APPLICANTS

36. The contact details of the Named Applicants and person to hold the order is:
 - 36.1. David Peters
RD1 Hikurangi
Whananaki 0181;
 - 36.2. Cellphone 027 523 2930;
 - 36.3. Home phone 09 433 8277; and

36.4. Email to rtautari@hotmail.com

Dated at Auckland this Friday the 31st of March 2017



Cameron Hockly

Counsel for Te Whakapiko

This document is filed by Cameron Hockly, Solicitor for Te Whakapiko.
The address for service of Te Whakapiko is at the offices of Bennion Law;
First Floor,
181 Cuba Street,
Wellington.

Documents for service on the above-named Applicant 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 cameron@bennion.co.nz.