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IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

CIV-2015-485-767

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UNDER

the Marine and Coastal Area (Takutai Moana) Act 2011

IN THE MATTER OF

NGAI TE HAPU, NGATI MAKEREWAI,  
NGATI TAKAHANGA, NGATI  
KAUAEWERA/TE URU, NGATI PAU and  
TE PATUWAI KI MOTITI (Ngā Hapū o  
Te Moutere o Mōtiti)

First applicants

KATARAINA PUTIPUTI KEEPA,  
UMUHURI MATEHAERE, GRAHAM  
HOETE and NEPIA RANAPIA, acting on  
behalf of Ngā Hapū o Te Moutere o Mōtiti

Second applicants

UMUHURI MATEHAERE, KATARAINA  
PUTIPUTI KEEPA, and GRAHAM  
HOETE, acting as trustees of the MOTITI  
ROHE MOANA TRUST, on behalf of Ngā  
Hapū o Te Moutere o Mōtiti

Third applicants

cont.

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MEMORANDUM OF COUNSEL FOR THE ATTORNEY-GENERAL IN  
RESPONSE TO MINUTE OF MALLON J OF 15 MAY 2017

2 June 2017

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Judicial Officer: Mallon J

CROWN LAW  
TE TARI TURE O TE KARAUNA  
PO Box 2858  
WELLINGTON 6140  
Tel: 04 472 1719  
Fax: 04 473 3482

Contact Person:  
J L Cole

[Jacki.Cole@crownlaw.govt.nz](mailto:Jacki.Cole@crownlaw.govt.nz)

CIV-2016-485-770

IN THE MATTER OF

Applications by **TE RŪNANGA O NGĀTI  
WHAKAUE** **KI** **MAKETŪ  
INCORPORATED** for and on behalf of  
Ngāti Whakaue ki Maketū Hapū for orders  
recognising Protected Customary Rights  
and Customary Marine Title under the Act

CIV-2011-485-793

IN THE MATTER OF

An application by **COLIN REEDER &  
OTHERS** for orders recognising Protected  
Customary Rights under the Act

**MAY IT PLEASE THE COURT:**

1. There are a large number of applications for recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011 before the Court.
2. By Minute dated 11 April 2017, Mallon J directed a process for grouping the applications for case management purposes. Under this process, the Attorney-General is to propose groups of applications. Applicants and interested parties will then have an opportunity to respond to the proposal. The Court will then issue minutes setting out next steps in the proceedings.
3. This memorandum is filed in response to the Court's directions. As set out below, the Attorney-General proposes an initial series of 21 application groups.

**Background***Statutory deadline*

4. Section 100(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) required all applications for recognition orders for customary marine title (CMT) and/or protected customary rights (PCR) to be filed no later than 6 years following enactment of the Act. That date was 3 April 2017 (the statutory deadline).
5. Pursuant to section 102(c) of the Act, applicants must serve a copy of their application on, among others, the Solicitor-General on behalf of the Attorney-General.
6. In the days leading up to and including 3 April 2017, the Court received in excess of 180 new applications for recognition orders (new applications).

*Court direction*

7. By Minute dated 11 April 2017, Mallon J directed a process for the grouping, for case management purposes, of all applications before the Court seeking recognition orders under the Act. This included applications already before the Court prior to the statutory deadline (existing applications).
8. The Court directed:
  - 8.1 The Court will provide the Crown with a list of all [new] applications (including details of the name of the applicants and the allocated CIV numbers).

- 8.2 Within 20 working days of receipt of this list, the Crown will advise which, if any, of the applications from the Court's list have not been served on the Crown. The Court will provide the Crown with a copy of any such application.
- 8.3 Also within 20 working days of receipt of the list from the Court, the Crown will by memorandum provide a tentative list of groupings of applications for case management conferencing purposes, as well as potentially for hearing purposes, based on apparent overlapping application areas. The Crown's list will also identify which applications are also subject to an application for engagement with the Crown for a recognition agreement under the Act, also identifying whether the recognition order sought is for customary marine title or for protected customary rights.
- 8.4 The Crown will send its memorandum by email to all applicants and registered interested parties who have provided email addresses for service.
- 8.5 Applicants and current registered interested parties will then have 15 working days from receipt of the Crown memorandum to respond to the proposed groupings in the memorandum.
- 8.6 The Court will then issue minutes as to the way forward for [all extant, both new and existing,] applications.
9. A copy of the Court's minute of 11 April 2017 is annexure 'A' to this memorandum.
10. The Court provided the Crown with a list of new applications on 3 May 2017. Crown counsel identified 81 applications that had not been served on the Solicitor-General. The Registry has supplied copies of those applications to the Crown. The Court's initial list has been revised as documents have been processed by the Court with the most current list being received by the Crown on 15 May 2017.

11. Counsel has identified a total of some 198 applications currently before the Court seeking recognition orders under the Act. This includes new applications and existing applications (together, all applications).

**Crown maps and proposed groupings**

12. The Crown has prepared a series of maps depicting all applications with the exception of:

- 12.1 those applications that purport to be for the entire common marine and coastal area (CMCA) of New Zealand;

- 12.2 those applications over part or all of the CMCA near the Chatham Islands or other off-shore islands (such as the Auckland Islands or the Kermadecs);

- 12.3 those applications which contained insufficient information to be able to identify the application area, or which have not been mapped for some other reason.

13. The Attorney-General proposes 21 application groups, labelled 'A' to 'U' on the maps.

14. The maps depicting the application areas are annexure 'B' to this memorandum.

15. The proposed groups are based on overlapping applications, in light of the pattern of applications across the whole country. The Attorney-General has not produced a detailed analysis of overlaps for each particular application.

16. Not all applications contain maps of the application areas nor identifiable geographic references. It is possible that the boundaries of some map areas will need to be clarified by applicants and consequently amended. This may result in amendments to the proposed groupings.

17. The Attorney-General submits that the groupings may be used for scheduling initial case management conferences. Whether specific applicants in each grouping need to be joined as parties to each of the applications in that grouping (or not) is a matter that may be considered at future case

management conferences, and in light of parties' responses to the proposed groupings.

18. The Attorney-General reserves his rights in relation to all applications, including his ability to make submissions on whether any applicant should be joined to another application where he considers that is appropriate, regardless of the particular grouping of an application as set out in the maps.

### **Spreadsheet**

19. Annexure 'C' to this memorandum is a spreadsheet containing, for each application:
- 19.1 Allocated number of application on the maps (1 to 175);
  - 19.2 CIV number;
  - 19.3 Applicant name (as it appears on each application);
  - 19.4 The district abutting the application area; and
  - 19.5 Proposed grouping ('A' through to 'U').
20. A number of applications appear in multiple groupings. This is because of the scale and nature of overlapping application areas.
21. To further assist the Court, annexure 'D' to this memorandum is a table that lists each of the High Court applications the fall within each proposed grouping.

### **Identification of CMT and PCR applications**

22. The Court's Minute of 11 April 2017 directed the Attorney-General to identify whether the recognition order sought in each application is for CMT or for PCR (or both). In light of the further minute issued by Mallon J on 1 June 2017 (discussed below), the Attorney-General will provide these further details by 30 June 2017.

### **Applications for engagement with the Crown**

23. Further, while the Court's Minute directed the Attorney-General to identify which applications are also subject to an application for engagement with the Crown for a recognition agreement under the Act, this has proven difficult as

applicants for engagement are not necessarily named in the same way on their court applications as in their applications for engagement.

24. Annexure 'E' to this memorandum is a spreadsheet which counsel is instructed lists all applications for engagement received by the Crown. Counsel respectfully suggests that each applicant who has filed an application for recognition orders identify whether they have also made an application for engagement with the Crown for a recognition agreement by identifying their application(s) on annexure E.

**Further Court minute of 1 June 2017**

25. On 1 June 2017, a further Court minute was received by counsel.<sup>1</sup> That minute requested the Crown to prepare a schedule which (in addition to what has already been prepared):
- 25.1 Identifies for each application the relevant local bodies;
  - 25.2 Identifies, where known, the date of public notice of each application;
  - 25.3 Groupings of each application into the following categories:
    - 25.3.1 Applications that may be settled without requiring a hearing;
    - 25.3.2 Applications which may have precedent value and lead to resolution of more than one application;
    - 25.3.3 Applications that may be heard together;
    - 25.3.4 Other case specific applications that will not have precedential values;
  - 25.4 Identifies the proposed venue for the substantive hearing for cases where it is anticipated a hearing may be required.
26. The Court's minute directed the schedule to be filed and served on applicants and interested parties who have entered appearances by 30 June 2017.

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<sup>1</sup> Counsel understands the Court intends to distribute a copy of this minute to all applicants on 2 June 2017.

27. Notwithstanding the Court's minute of 1 June 2017, counsel respectfully suggest the provision of the information annexed to this memorandum of counsel now will be of assistance to both parties and the Court.
28. By 30 June 2017, the Attorney-General will attend to filing further information requested by Mallon J.

**Responses due with the Court on 26 June 2017**

29. The Court's minute of 11 April 2017 directed that applicants and interested parties have 15 working days from service of this memorandum to submit responses to the proposed groupings<sup>2</sup>. Counsel calculates responses are therefore due with the Court by 26 June 2017.
30. Counsel for the Attorney-General respectfully requests that all applicants and interested parties serve copies of their responses on the Solicitor-General by copying to: [damen.ward@crownlaw.govt.nz](mailto:damen.ward@crownlaw.govt.nz), [jacki.cole@crownlaw.govt.nz](mailto:jacki.cole@crownlaw.govt.nz) and [TreatyTeams@crownlaw.govt.nz](mailto:TreatyTeams@crownlaw.govt.nz).
31. This memorandum is to be electronically sent to all applicants who have (as at 31 May 2017) provided email addresses for service together with all interested parties who have served the Solicitor-General with a copy of their notice of appearance.

2 June 2017




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Jacki Lynn Cole  
Counsel for the Attorney-General

**TO:** The Registrar of the High Court of New Zealand  
**AND TO:** The Applicant and interested parties

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<sup>2</sup> Minute, 11 April 2017 at [3](c).