

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

CIV 2017 485 799

I TE TAKE O of the Marine and Coastal Area (Takutai Moana) Act
2011 (the Act)

Ā I TE TAKE O an application by Korokota Marae and Finnisha
Tuhiwai-Birchall on behalf of Te Parawhau Hapū for
orders recognising Customary Marine Title and
Protected Customary Rights

Korokota Marae and Finnisha Tuhiwai-Birchall on
behalf of Te Parawhau Hapū

Applicant

AFFIDAVIT OF PARI WALKER ON BEHALF OF TE PARAWHAU HAPŪ

CIV 2017 485 799

Dated this August 2023

Judicial Officer: Harvey J

Solicitors acting
Richard Allen Law Associates Ltd
Unit 1, 26 Putiki Street
Auckland 1245
richard@ralaw.co.nz

Counsel instructed
Rob Enright / Marti Enright
www.magdalenechambers.nz
Tāmaki Makaurau & Wānaka
021 276 5787
rob@publiclaw9.com
memarte00@gmail.com

**AFFIDAVIT OF PARI WALKER ON BEHALF OF TE PARAWHAU
HAPŪ**

**Ka tukua te tira Mate ki tua o Paerau
Ka noho te tira ora ki te Ao Turoa
Ka tut e tira o Te Parawhau**

**We farewell the tides of the departed to Paerau, to the other
side of the spiritual divide
While the living communities of the material world remain
perpetual
Within which the genealogy of Te Parawhau proudly stands**

**I, Pari Walker, of Te Parawhau and Ngāti Ruamahue Hapū,
affirm:**

- 1 My name is Pari Walker. I am of Te Parawhau and Ngāti Ruamahue Hapū. I will expand on the points of my korero when I present this evidence and in conjunction with the mapping work commissioned by Finnisha and her team of experts.
- 2 I am one of many who descend from the uri of Kukupa, whose son Tirarau, signed He Whakaputanga o Ngā Rangatira 1835 and Te Tiriti o Waitangi 1840. Who succeeded his father as the paramount chief of Te Parawhau hapu, during the period of 1840.
- 3 I live in Whangārei at Otaika surrounded by the many pā sites of our illustrious ancestors including Tiakariri, also a son of Kukupa. I was born in the Whangārei hospital, once a pā site of Ruangaio, tūpuna Pona Harakeke called Pukauakaua. The whenua I live on was handed down through the generations and is situated near the tuku whenua gifted by our tūpuna for Otaika school.

- 4 At the request and invitation of Te Parawhau hapū, I have provided this evidence and affidavit, which includes my personal experiences as a child growing up, along with the experiences of my whānau, and whanaunga describing how we continued to exercise our way of living on and with Te Waahapu o Whangārei Terenga Paraoa. Te Waahapu o Whangarei Te Renga Paraoa and the outer reaches to Te Whara, Te Paepae Atua and Te Pae o Tu were and still are some of our traditional hunting and gathering grounds. It also served as our recreational playground.
- 5 All of those experiences confirm to me that Whangārei Terenga Paraoa was a living breathing entity in its own right. It provided us with the source of our sustenance for countless generations. It has enabled us to provide manaakitanga to both our whanaunga and sometimes other hapū in times of need. Therefore, I stand by our whakataukī used to introduce the affidavit.
- 6 I wish to signal my strong misgivings about the MACA process, which risks taking more than it gives, by asserting Pakeha ture over what is rightfully Te Parawhau under our customary law.
- 7 My concerns include the process of mapping and naming of sites in the Harbour and its surrounds. I have participated in the mapping exercise that is being produced by Finnisha Tuhiwai, and I tautoko that information. However, I have also signalled my concerns about naming all of our sites and places, and releasing this information to the Court and the many participants and onlookers to this process. For this reason, the mapping does not name all the sites that I know and have been taught about. I will expand on the mapping and the continuous exercise of our rangatiratanga from 1840 as I give my evidence.

Individual and Collective experiences

- 8 My first experiences of the Harbour involved whanaungatanga. I can recall in the 1960s, we would travel collectively to gather kai

moana for all the families that lived there, both Te Parawhau and Pākeha. Someone from each family would grab a loaf of bread and water bottle, we would walk past the orchard, often we would take fruit from the orchard. In exchange for fruit, we would return fish or oysters to the owner of the orchard on our journey home (refer map).

- 9 At this time, we did not usually meet or congregate at a marae. We stayed on the land, close to our harbour. This was our kainga. Our tangi were held at people's homes. If there was a tangi, or a gathering of any kind, then we would go and get what was needed to feed the people.
- 10 Our dad would send us out to the Harbour, plus the garden as well. We did not take more than was needed to ensure the Harbour's resources remained in place for future generations. We already knew our responsibilities to nature and the environment. No marine reserves or fisheries permits were needed.
- 11 We learned as children that whanaungatanga embraces us all of the time. This harbour wasn't just about our hapū, it was about all of us that harbour.
- 12 As a child, we would gather kai moana and often sleep anywhere along the shore line. The best spots for fishing were not in the Harbour, but among the mangroves. There was no need to go past the mangroves to catch tāmure. All other collections of kina, pipi, mussels and scallops happened in the Harbour or in Te Pae o Tu.
- 13 There was a soft shelled pipi that we would collect below Toetoe. You had to collect it in tins, not a kete. A good spot for Kina was at Reotahi, which is now a Council reserve with a boat ramp. It was used by our (Te Parawhau) people from Tangiteroria. This was a Whenua Rangatira. There were other areas that I will identify as I present my evidence (refer map).

- 14 Between Friday to Sunday, we would gather kai to sustain ourselves, our family and all the families in the valley. That's how we survived in a family of 6 kids. Dad showed us how to live off the sea and land, and mum did the baking, gardens, and other home-necessities. We soon learned that the Harbour was our fridge and our cupboard.
- 15 We did not say karakia prior to gathering food, our dad taught us to practise the tikanga and the kawa that is associated with our Atua. Like we would never scale or gut fish on the boat. We would never eat on the water. We had our own imposed rāhui, and we were never allowed to take certain foods. If we did wrong that was against tikanga, we would suffer the consequences. We would acknowledge the atua prior to partaking in food.
- 16 When we were children, we were taught the names and locations of wāhi tapu in the Harbour and elsewhere. There are quite a few. There were some places you did not go or did not gather kai. We were taught the significance of these places. We left them alone to protect them. (refer to map).
- 17 These places were often named in such a way that tauiwī and others could not know their significance, and would not be tempted to visit them. For example, Motukiwi was named because that part of the land is in the shape of a Kiwi. Someone, I don't know who, named it "Tapū Point". This happened when I was away (in the Army). It is now common knowledge that Motukiwi is an urupa. We were taught not to call it that, deliberately to keep others away unfortunately it is named. The good thing at least is that its proper name is with-held.

Mapping

- 18 There are many landmarks. Some of these are shown on our mapping produced by Di and Glenys for Finnisha. Our traditional Tauranga Waka was a pre-European Pā site, where the quarry is

now located at Loop Road. This was the start of the traditional footpath across the Otaika valley providing a pathway to the plateau (Maungatapere) beyond and the hinterland.

- 19 Where the new State Highway bridge is currently being constructed, south of State Highway 15 is a roundabout (which is called the Loop Road project), this is where sailing ships would come into the lagoon to unload their cargo. Their cargo would be unloaded for transport to Tangiteroria and hinterland beyond. This area of Otaika Valley, was where my great-grandfather, Te Ihi Wati Tito, ran a commercial fish-mongering business as well as the local taxi. He would sell fish caught from the Harbour, and elsewhere. It was also the place on the river we would catch our bait for fishing and where we would take our pet penguin Rusty to feed.
- 20 Te Parawhau controlled these waypoints into the Harbour and across to Kaipara Moana and other points of our rohe. We were told by our elders that Tiakiriri Kukupa had status as the kaitiaki of the Whangārei area, from Maunu through to Ruakaka. On his death, this was transferred to Taurau and Tito, then in later years to Te Ihi Wati Tito and then to Mohi Tito and Te Rata Rimi.

Rangatiratanga Authority

- 21 Kukupa had many pā sites where he stayed at certain seasonal times. One of these pā sites was at Onemama (refer map).
- 22 This was all "white sand", before it was invaded by mangroves. We collected tio and flounder in this area but nowadays we don't have access to these areas which impedes on our continuous use. Now many of these waypoints have been privately owned. We see trig stations on top of our maunga. These are the epitome of a marker. They use our maunga as a point of reference. They don't even need or use trig stations anymore. But they remain as an affront to Te Parawhau. These are our maunga, that we are

referencing in our whaikorero. There is even a trig station on our Motu Matakohe.

- 23 The same comparison applies to the infrastructure in our Harbour. Portland Cement, the Port, Channel Infrastructure, Boat Marina, all of these structures are not subject to the MACA because they are pre-existing infrastructure. They have more rights than our hapū to that foreshore and seabed. It seems to me that their commercial interests and special permissions under MACA have more power than our tikanga.
- 24 The Crown already knows all of this. It is not clear why it should make our people go through the same thing to create a marine title that does not correspond to our expansive rights and obligations under Te Parawhau tikanga.
- 25 I have had the honour of holding the tohu of Kai Arataki for the Whakaminenga o Ngā Hapū o Nu Tireni and provide this evidence for the Hapū of Te Parawhau to provide some clarity to the Court around the concerns of our hapū as to the operation of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA), as it affects our customary title and interests in Whangārei Terenga Paraoa. This evidence reflects my personal perspective, given on behalf of Te Parawhau hapū.
- 26 In providing this evidence, I adopt and produce as an **Attachment marked "A"**, the evidence provided by me to the Waitangi Tribunal in 2010 in the Te Paparahi o te Raki, WAI1040 Inquiry. This evidence remains as relevant now as it was to the Tribunal Inquiry.
- 27 As I said in that evidence, from the time we take our first breath, we apply the Kaupapa of He Whakaputanga o Ngā Rangatira. We individually and collectively assert that our sovereignty, authority and autonomy was not ceded or given up in any way by our Tūpuna, Te Tirarau Kukupa.

- 28 It is sometimes said that Te Parawhau is a borderlands area, between Ngāpuhi and Ngāti Whātua. We do not accept this kōrero. Te Parawhau occupied our rohe, under our customs and tikanga.
- 29 Be assured however that Te Parawhau has always been inclusive and sharing towards other hapū and iwi. We have exercised manaakitanga and whanaungatanga towards others, under our authority.
- 30 Te Parawhau would allow other hapū entry and use of our Harbour and its resources, but only at particular and defined places. Our whanaunga from other tribes would be allowed access to the Harbour and its resources through our Whenua Rangatira (refer map). They included Ngāti Wai, Ngāti Kahu, Ngāti Whātua, Ngāti Hine, Ngāti Hau to name a few of the smaller dependant tribes. There were pathways that were to be followed.
- 31 These were places where kai moana could be taken under our custom. Lord help you, if you strayed. Visitors from other hapū, other kāinga, would drop-off pigeons or other goods in exchange. At all times, Te Parawhau had the authority, and still does, to impose rāhui when appropriate.
- 32 These places have been lost to so-called "reclamation" and development (refer map). They included Opau, Tauranga Kotuku Haha Awa and many other places on the Waahapu o Whangārei Terenga paraoa . They included Te Hihiaua, which was a gathering place for visitors, tribal kōrero took place there, and of course the gathering of kai moana under Te Parawhau tikanga. These places have been lost to so-called "reclamation development" (refer map) and sadly however they have all succumbed to pollution.

- 33 When our whanaunga came to the Whenua Rangatira, they were protected under our customs. This was enough to recognise our authority as Te Parawhau Hapu.
- 34 It is different to the Crown's approach. Under MACA, you say to everyone "this is my title". This is in direct conflict with our culture. Te Parawhau does not require a Crown title for recognition.
- 35 The "principles of the Treaty" are a fallacy. There are Articles of Te Tiriti that speak to what was agreed to. Article 2 speaks to protecting our rangatiratanga, whilst also giving us unimpeded access to our ancestral lands, waters, wāhi tapu, and taonga. This includes Te Waahapu o Whangārei Terenga Paraoa.
- 36 It is for this reason that we challenge the onus placed on us by the MACA legislation to prove our customary interests in the Whangārei Harbour. Our interests derive from our ancestral authority and whakapapa, and our continued occupation from time immemorial of our rohe moana, which includes the Waahapu. Te Parawhau relies on the first law of our rohe, which is the tikanga of our tupuna, as it is now applied.
- 37 I consider the MACA legislation is the most recent example where the Crown has overstepped its authority, by requiring Te Parawhau to establish a legitimate ownership under the Takutai Moana Act. In turn, making our Rangatiratanga subservient to the Act. This is unacceptable.
- 38 We do not accept that we should bear this onus in a Court of law. Our authority is established by He Whakaputanga o Ngā Rangatira. Te Tiriti o Waitangi affirmed our rangatiratanga, and therefore our mana i te moana.

- 39 The Article 2 guarantee of rangatiratanga includes our right to retain our customary laws and practices over our taonga katoa.
- 40 Even the Waitangi Tribunal has now confirmed that there has been no cession of sovereignty in Te Paparahi o Te Raki hearings. But MACA does not recognise this basic fact. It supports my argument that this legislation is too harsh, unfair and unjust for all the reasons stated in my evidence given in 2010 to the WAI1040 inquiry (see **Attachment "A"**). It forces us to abandon our customs and beliefs. It says to all our uri that "this is mine, according to someone else's legislation and system".
- 41 My fear is that this system will give us less than we had before. This is not right. We already have customary title and always will. Along with this, that title is one of allodial recognition. The Crown is trying to smother our rights and our tikanga with this ture.

The Harbour has changed

- 42 When I left Whangārei after school I went to Auckland and around 1974, I served in the Military. I served 5 years as a territorial, followed by 20 years in the regular force. During that time, we established the Marae at Waiouru. This was to help Māori in the forces to reconnect. My way to reconnect was to return home, talk to my father, download, get perspective.
- 43 Although I was away with the Army, my brothers and other members of my family continued to exercise our customary rights, such as fishing and gathering kai moana in and around the Waahapu.
- 44 On my return to Whangārei in the late 1990s, I was devastated to see the condition of the Harbour, sediment, pollution, expansion of the port, refinery and other industry. There had been an explosion of mangroves. We lost our white sand

beaches. Between Matakohē and Motukiwi, the river entry and channels had dramatically changed. There were mangroves, and the degradation of our harbour was 100-fold. I would not go out there to sustain myself because of the pollution. You don't see as many sea-birds now, as in the past.

- 45 We have also lost a significant amount of our Harbour to so-called "reclaimed" land. I don't wish to refer to this land as "reclaimed" because it has always been our land and sea. It was our allodial title. It is fishing camp areas (whenua Rangatira) that have been filled in.
- 46 At this time, I was going to move to my grandparent's land on my father's side. My dad told me, I had to move back to Whangārei, to look after my mother's whenua. I have been here at Otaika for approximately 23 years. Ever since then, we have observed the depletion of the Harbour and its resources.

The future reflects the past

- 47 I have given this evidence because I feel a duty to speak on behalf of Te Parāwhau, and to protect what is already rightfully ours. It is past time to restore what has been lost for the future. We are doing this as part of our role as kaitiakitanga. The process has been hard under the RMA.
- 48 For Te Waahapu o Whangārei Terenga Parāoa, this must be done under tikanga and Mātauranga Māori. Our tikanga must be recognised and exercised with the same status of the Crown's ture as the Courts continuously assert. Should we practice what we preach, then restoring our Waahapu to its pristine state through the enhancement of its mauri would be a breeze.
- 49 To enable the restoration of the mauri of the Harbour and to allow it to return to its pristine condition (or natural state). It is my recommendation Te Parāwhau must be allowed to exercise

their ritenga in regards to their tikanga and Maturanga Maori as provided by Ngā Atua.

- 50 The introduction of the Takutai Moana Act, created by a system not of Māori is not likely to achieve the outcomes that are required to satisfy Te Parawhau for the management of the restoration of the Harbour. As it is seen to smother tikanga obligations that are rightfully Te Parawhau.
- 51 Therefore, I re-iterate that the MACA Act is unjust, unfair and too harsh and should be removed. All of the seabed should be returned to the hapū under customary title with allodial recognition. Concurrently tikanga, as the original common law of this country, should be given the same status or better than the ture as regards customary title to our marine and coastal areas.

Attachment

- 52 I wish to produce as an attachment to this affidavit the evidence provided by me to the Waitangi Tribunal in 2010 in the Te Paparahi o te Raki, WAI1040 Inquiry that I have marked as **Attachment "A"**.

Affirmed at Whangārei)
This day of August 2023) _____
Before me) Pari Walker

Justice of the Peace / Solicitor of the High Court of New Zealand