

---

**IN THE MATTER** of The Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER** of the Marine and Coastal Area (Takutai Moana) Act 2011

**AND**

**IN THE MATTER** of a Claim by Mira Norris, Marina Fletcher and Tamihana Paki for and on behalf of Te Parawhau concerning the prejudicial effects of the Marine and Coastal Area (Takutai Moana) Act 2011

---

**Statement of Claim for Te Parawhau**

Dated Wednesday the 5<sup>th</sup> of July 2017

---

---

**HOCKLY  
LEGAL**

**Counsel Acting: Cameron Hockly**

hockly.co.nz  
PO Box 59211  
Mangere Bridge  
AUCKLAND 2022

## **MAY IT PLEASE THE TRIBUNAL**

### ***Introduction***

1. This claim is brought by Mira Norris, Marina Fletcher and Tamihana Paki for and on behalf of Te Parawhau, hapū of Ngāpuhi (the Hapū).
2. Te Parawhau have occupied and continue to occupy the whenua and rohe of Whangārei since prior to the signing of Te Tiriti o Waitangi and have never relinquished their mana over the whenua and the rohe, which includes the coastal areas of the Whangārei Harbour and extend out into the ocean.
3. Te Parawhau have been prejudicially affected by the Acts, regulations, policies, practices and omissions of the Crown which were enacted, promulgated, formulated, undertaken, done or omitted in breach of the principles of Te Tiriti o Waitangi, specifically the Marine and Coastal Area (Takutai Moana) Act 2011(the Act).

### ***Te Rohe of Te Parawhau - Claim Area***

4. Te Parawhau is an autonomous hapū that has managed its coastal resources independently and continuously since 1840.
5. Maori Land Court records confirm that the traditional Te Parawhau boundary extends from inland Whangārei to the Whangārei Harbour.
6. Te Parawhau whakapapa to Tahuhunuiorangi, Tahuhu Potiki, and later Te Ponaharakeke, Tiakariri, Motutara, and Te Tirarau the 3<sup>rd</sup> all of whom are key ancestors of Te Parawhau identity who held mana in and around the Whangārei Harbour and coastal area.
7. An Application to the High Court for recognition of Te Parawhau customary interests was lodged by one of the named claimants; Tamihana Te Akitai Paki, with the support of Te Parawhau.
8. The rohe of Te Parawhau includes the whole of Whangārei Harbour and the islands of Matakōhe, Rabbit Island and the Hen and Chicken Islands.
9. In this rohe Te Parawhau have always exercised their customary rights according to their tikanga.

### ***The Claim***

10. The Claimants are Māori for the purposes of section 6(1) of The Treaty of Waitangi Act 1975.
11. The Claimants have been and continue to be prejudicially affected by

the various actions and omissions of the Crown in breach of Te Tiriti o Waitangi and its principles.

**Breaches**

12. The Crown has breached the duties which it owes to Māori and to Te Parawhau.
13. The Crown has the duty to recognise the significance of taonga Māori, owed by article 2 of Te Tiriti o Waitangi, in this case the rohe of takutai moana of Te Parawhau.
14. The Crown has the duty to obtain consent to a regime which seeks to manage and decide upon the customary rights still existing over their taonga, owed by Article One of Te Tiriti o Waitangi. This has been breached by the imposition of the Marine and Coastal Area (Takutai Moana) Act 2011 over Te Parawhau and their rohe.
15. The Crown has the duty to leave to Māori their authority over their taonga owed by Article Two of Te Tiriti o Waitangi. This has been breached by the passing of legislation; the Act, which requires Māori to certify their customary interests in the takutai moana through the High Court or direct negotiation with the Crown, and after a deadline which has now passed on the 1<sup>st</sup> of April 2017, the right to certify these rights is extinguished. This legislation was passed without the consent of Māori, and of Te Parawhau.
16. The Crown has the duty to honour the partnership envisaged by Te Tiriti o Waitangi. The Crown has breached this duty by acting without consulting with Māori, with Te Parawhau and establishing the regime contained within the Act.
17. At common law the Claimants hold their land and property (including land covered by water) through customary title or aboriginal title. These rights were guaranteed through the signing of Te Tiriti o Waitangi.
18. The Crown and the Courts have recognised these rights.
19. These customary rights, protected by the common law and Te Tiriti o Waitangi, recognise the customary activities, uses and practices of Maori, and of Te Parawhau.
20. Customary rights survive the change of status of land and property (including land covered by water) into title issued under the Torrens system; into freehold title and Crown issued grants, and the Crown has a duty to preserve them as required by Article Two of Te Tiriti o Waitangi.

### ***Particulars of the Claim***

21. The Crown passed the Act in 2011.
22. The Claimants, Te Parawhau were not consulted on the proposed Act.
23. Part 1 sets out the purpose of the Act and defines key terms, including the new category of common marine and coastal areas (CMCA)
24. Section 9(1) of the Act defines the meaning of a “marine and coastal area” for the purpose of the Act.

“marine and coast area-

- (a) means the area that is bounded-
  - (i) on the landward side, by the line of mean high-water springs; and
  - (ii) on the seaward side, by the outer limits of the territorial sea; and
- (b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
- (c) includes the airspace above, and the water space (but not the water) above, the areas described in paragraphs (a) and (b); and
- (d) includes the subsoil, bedrock, and other matter under the areas described in paragraphs (a) and (b).”

25. The definition sets out at section 9(1) that the marine and coastal area excludes

- “(a) specified freehold land located in that area; and
- (b) any area that is owned by the Crown and has the status of the following kinds:
  - (i) a conservation area within the meaning of section 2(1) of the Conservation Act 1987;
  - (ii) a national park within the meaning of section 2 of the National Parks Act 1980;
  - (iii) a reserve within the meaning of section 2(1) of the Reserves Act 1977; and
  - (iv) the bed of Te Whaanga Lagoon in the Chatham Island.”

26. The Act continues at Section 11(2) to state that “neither the Crown nor any other person owns, or is capable of owning, the common marine and coastal area, as in existence from time to time after the commencement of this Act.”
27. Through this Act the Crown is replacing the common law regarding customary rights with the statutory rights of the Act.
28. Regardless of the engagement by Te Parawhau, their customary rights are extinguished by this Act. What is offered by the Act are a pale reflection of those true customary rights, should Te Parawhau be able to satisfy the difficult thresholds set out by the Act.
29. The Act does not provide compensation for the extinguishment of customary rights. This is a breach of Te Tiriti o Waitangi Article Three where Māori were guaranteed the same rights as British citizens; the Crown is not able to take property rights without compensation, and this part of the Act breaches this aspect of Te Tiriti.
30. The Act allows applications to the High Court for recognition of their customary rights. The common law jurisdiction of the High Court is replaced by the regime set out by Act.
31. The Act required applications to the High Court, or engagement with the Crown for direct negotiation, to be made within six years of the passing of the Act, a deadline which passed on the 1<sup>st</sup> of April this year.
32. While there is supposed to be a system to obtain funding from the Office of Treaty Settlements for proceeding through both forms of application, it remains unclear when this funding will become available, and whether it will cover the cost of engagement. The funding is currently capped regardless of the total cost of the applications. The Hapū are yet to receive funding or confirmation that funding will become available, in the meantime costs accrue to them for their own work and giving instructions to me as their counsel.

### ***Relief Sought***

33. The Claimants seek a finding that their claim is well founded, and that the statutory regime that the Crown has put in place prejudices the Claimants.
34. The Claimants seek a recommendation that the statute be repealed and if replaced at all, replaced with legislation which recognises the Claimants' rights, and is produced following meaningful consultation with Māori.

35. The Claimants further seek a recommendation that the funding for engaging in either the High Court or direct negotiation not be capped, but that all reasonable costs of completing the process be covered, and that no debt should accrue to the Hapū or other Māori applicants.
36. The Claimants seek a recommendation that the policy for the funding be amended to allow applicants to maintain their tikanga whilst undertaking the applications .

**Conclusion**

37. The Claimants are ready to proceed to hearing.
38. The Claimants reserve the right to amend or further particularise this statement of claim.

Dated at Auckland this 5<sup>th</sup> day of July 2018



---

**Cameron Hockly**  
Counsel for the Claimants