OFFICIAL

Wai 2831, #1.1.1(a)
Wai 3400, #1.1.52

I TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

WAI 3400
WAI 2660
WAI 2831

KEI RARO I TE MANA O te ture o te Tiriti o Waitangi 1975

Ā

I TE TAKE O te pakirehua, Marine and Coastal Area (Takutai Moana) Act Coalition Changes Urgent Inquiry (Wai 3400)

Ā

I TE TAKE O te pakirehua, Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry (Wai 2660)

Ā

I TE TAKE O ngā kerēme nā Te Rūnanga Nui o Te Aupōuri Trust (Wai 2831)

STATEMENT OF CLAIM

I tēnei rā, i te 2 o Ākuhata 2024

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TĒNĀ, E TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

1.0 THE CLAIM

1.1 This claim is made by Te Rūnanga Nui o Te Aupōuri ("the claimants"/ "Te Aupōuri").

1.2 This claim relates to the Coalition Government's proposed changes to the Marine and Coastal Area (Takutai Moana) Act 2011 ("MACA Act") and associated funding scheme.

1.3 Te Aupōuri make this claim because:

(a) The 2024 changes to the Crown funding scheme that funds applicants seeking customary marine title ("CMT") and protected customary rights in the High Court and Crown engagement pathways ("the Scheme") are inconsistent with te Tiriti o Waitangi;

(b) The Crown's proposed amendments to section 58 of the MACA Act, which sets out the test for CMT, are inconsistent with te Tiriti o Waitangi; and

(c) The changes to the Crown funding scheme and proposed changes to section 58 of the MACA Act undermine the rangatiratanga and mana motuhake of Te Aupōuri, and their partnership with the Crown under te Tiriti o Waitangi.

2.0 THE CLAIMANTS

2.1 Te Aupōuri are one of the five iwi of Muriwhenua and are a partner under Te Tiriti o Waitangi.

2.2 Te Aupōuri rangatira signed He Whakaputanga and te Tiriti which means Te Aupōuri have the right to, and do, exercise rangatiratanga in relation to matters which concern their takutai moana, whenua, resources and affairs.

2.3 Te Rūnanga is a post-settlement governance entity for Te Aupōuri. Te Rūnanga was established in 2011 after a lengthy process of engagement with the members of Te Aupōuri which began in 2004 and resulted in a vote of 97% in favour of establishing a single iwi authority entity for Te Aupōuri. Accordingly, Te Rūnanga is mandated to represent hapū and iwi of Te Aupōuri.

2.4 Te Aupōuri are tangata whenua of their rohe, which includes the moana and takutai from Ngāpae to Te Rerenga Wairua, to Manawatāwhi, to Rangitahua.

2.5 Te Aupōuri have submitted an application to the High Court for Orders under the MACA Act. The takutai moana areas included in their application are from Waimimiha in the south-west, north to the mouth of the Rangaunu Harbour, and north to Muri motu (North Cape), west to Te Rerenga Wairua (Cape Reinga, South to Motu-o-Pao (Cape Maria Van Diemen, to Kahokawa (Scotts Point), Matapia, Waka-te-hāua (the Bluff), Hukatere and back to Waimimiha.

2.6 Te Aupōuri have exercised mana i te whenua and mana i te moana over the moana and takutai areas set out above for many generations in accordance with their mana tuku iho, and they continue to do so today.

3.0 TE TIRITI O WAITANGI

3.1 As descendants of signatories to te Tiriti, the claimants hold their own interpretation of te Tiriti based on kōrero tuku iho and their understanding of the application of te Tiriti today. Their understanding of te Tiriti underpins how they govern their tribal affairs, their relationship with the Crown, and their participation in this inquiry.

3.2 Central to the claimants' te Tiriti understanding is that they do not support any treaty interpretation which seeks to limit, balance, or qualify their rangatiratanga based on an incorrect view that sovereignty was ceded under te Tiriti. Further, the passage of time and the assumptions the Crown now holds in relation to the scope of its kāwanatanga today, do not change Te Aupōuri's position.

3.3 **Attached** as **Appendix A** is a Tiriti o Waitangi framework which outlines the claimants' understanding and interpretation of te Tiriti and the principles they consider relevant to their claim. With specific reference to the takutai moana, Te Aupōuri say:

(a) Te Aupōuri retain their rangatiratanga over their takutai moana;[1]

(b) The takutai moana is a taonga and the Crown's duty under te Tiriti is therefore to actively protect and give effect to property rights, management rights, Māori self-regulation, tikanga Māori, and the claimants' rangatiratanga. Active protection can be practically achieved through Māori participation in the decision-making process;[2]

(c) It is imperative for the Crown to engage with Māori on matters of importance to them and where important resources are at stake. When it comes to the takutai moana, Māori are not just another interest group but the Crown's treaty partner;[3]

(d) The principle of partnership imposes a duty not only to consult with Māori but requires full, free, prior, and informed consent from Māori to anything which alters their possession of the land, resources, and taonga guaranteed to them in article 2 of te Tiriti;[4] and

(e) Where the Crown has breached te Tiriti and caused prejudice to Māori it is required to provide redress in a way that is well-informed, culturally appropriate, and timely.

[1] Waitangi Tribunal, *Tino Rangatiratanga me te Kāwanatanga* (Wai 1040, 2022), at 75-76; Waitangi Tribunal, *The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 2 report* (Wai 2660, 4 October 2023), at xvi.
[2] Waitangi Tribunal, *The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 2 report* (Wai 2660, 4 October 2023), at 14.
[3] At 11.
[4] At 11-12.

4.0 FIRST CAUSE OF ACTION: TE ARAWHITI'S APPROACH TO THE TAKUTAI MOANA FINANCIAL ASSISTANCE SCHEME IS INCONSISTENT WITH TE TIRITI O WAITANGI

Crown breach

4.1 Te Aupōuri say that the Crown has breached te Tiriti by taking a unilateral approach to the design and application of the Scheme, and limiting the funding provided by the Scheme, which prejudicially impacts Te Aupōuri.

4.2 The Crown's policies and actions are being developed and implemented in opposition to Te Aupōuri and te iwi Māori generally, causing further prejudice to Te Aupōuri and their treaty partnership with the Crown.

Particulars

4.3 The Crown established the Scheme to provide funding to applicants in the High Court and Crown Engagement pathways seeking to have their customary interests in the takutai moana recognised.

4.4 On 24 May 2024, Te Arawhiti advised that the Scheme had come under significant pressure.[5] Despite this pressure, the Government did not allocate additional funding for MACA Act applications. For example, the recent Whangārei Harbour hearings cost more than the entire appropriation for the financial year.

4.5 Consequently, there is insufficient funding for even one hearing in the financial year and no guarantee that Te Arawhiti would pay for any costs incurred in the progression of applications (including historians, briefing evidence, mapping, legal advice, court appearances etc). At the time of the announcement, there were eight hearings set down for the 2024/2025 financial year. Te Arawhiti advised that it was undertaking further work on the scheme.

[5] Takutai_Moana_Important_Funding_Assistance_Scheme_Update_May2024.pdf (tearawhiti.govt.nz).

4.6 On 1 July 2024, Cabinet approved the following interim changes to the scheme, effective from 1 July 2024:[6]

(a) All applicants will be required to have a budgeted workplan agreed by Te Arawhiti before funding is provided;

(b) The Crown contribution to court costs will be capped for all scheduled hearings in the 2024/2025 financial year at $140,000 per applicant for substantive hearings, $25,000 per applicant for follow-up hearings, and $30,000 per applicant for appeals; and

(c) Funding levels for pre-hearing and hearing costs will be aligned with legal aid rates.

4.7 Te Arawhiti also advised that funding would not be available for counsel to prepare for and/or attend case management conferences.

4.8 The impact on Te Aupōuri and all Māori applicants is that there will be (among other things):

(a) Insufficient funding to progress their applications to gather research and evidence and to then participate in the hearings of those applications in the High Court;

(b) Ongoing access to justice issues caused by the funding constraints; and

(c) A breakdown in the treaty partnership between Te Aupōuri and the Crown as a result of the Crown's unilateral decision-making and an ongoing lack of trust in the Crown where Te Aupōuri's te Tiriti rights are concerned.

[6] Applicant Pānui (tearawhiti.govt.nz).

5.0 SECOND CAUSE OF ACTION: THE CROWN'S INTENTION TO AMEND SECTION 58 OF THE MACA ACT IS INCONSISTENT WITH TE TIRITI O WAITANGI

Crown breach

5.1 Te Aupōuri say that the Crown has breached te Tiriti by:

(a) Proposing to amend section 58 of the MACA Act to "reverse measures taken in recent years which have eroded the principle of equal citizenship". If the proposed amendment to the Act proceeds, applicants maybe denied recognition of their customary rights under the MACA Act;

(b) Disregarding the Wai 2660 Tribunal's recommendation that the Crown make targeted amendments to the MACA Act to give effect to Tiriti principles and alleviate the prejudice to Māori; and

(c) Disregarding the opposition of Te Aupōuri and te iwi Māori to the Crown's proposed amendment to section 58 of the MACA Act. By doing so, the Crown undermines Te Aupōuri's rangatiratanga, mana motuhake and partnership with the Crown under te Tiriti.

Particulars

5.2 On 24 November 2023, the Coalition Government indicated an intention to amend section 58 of the MACA Act to make clear Parliament's original intent, in light of the judgment of the Court of Appeal judgment in *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board.*[7]

5.3 It is not clear how this "original intent" is to be determined, but the rationale for the amendment is described as being required to "reverse measures taken in recent years which have eroded the principle equal citizenship.[8] The Crown's preferred approach seems to be a higher bar to the CMT test, which has the practical effect of reducing the area

[7] Coalition Agreement - New Zealand First (nzfirst.nz), at 10.
[8] At 10.

of coastline that is subject to CMT, and thereby the extinguishment of customary rights.

5.4 The proposed amendments are prejudicial to the claimants in that if enacted, the availability of CMT under the MACA Act would be jeopardised and potentially deny Te Aupōuri recognition of their customary rights.

5.5 On 29 July 2024, Te Aupōuri released a statement in response to the Crown's proposed amendments which outlined the prejudicial nature of the MACA Act as well as their decision not to invest further mana, time or resource into the MACA Act claims process until such time that the MACA Act and process is realigned to the words of te Tiriti o Waitangi. Te Aupōuri's statement is **attached** as **Appendix B.**

6.0 RELIEF

6.1 The claimants seek a finding that the claim is well founded.

6.2 The claimants seek findings that the Crown's failure to implement the Tribunal's recommendations, proposed amendment to section 58 of the MACA Act, and mismanagement of the Scheme is in breach te Tiriti and its principles.

6.3 The claimants seek recommendations that:

(a) The Crown immediately fund all applicants' reasonable and actual costs to progress applications under the MACA Act;

(b) The Crown ensure that applicants' reimbursement requests are paid without unreasonable delay;

(c) The Crown engage with Māori to implement the Wai 2660 Tribunal's recommendations to achieve an appropriate balance between Māori interests and other public and private interests;

(d) The Crown cease all plans to amend section 58 to "reverse measures taken in recent years which have eroded the principle of equal citizenship"; and

(e) The Crown progress any further proposed amendments to legislation consistently with te Tiriti.

7.0 AMENDMENT

7.1 Leave is sought by the claimants to further amend this statement of claim following the determination of the scope of this inquiry, the production of research, and the filing of evidence, submissions or other material that may come to light during the presentation of this claim. This includes the filing of further causes of action, particulars or specific allegations that are not included in this statement of claim.

I TĒNEI RĀ, te rā 2 o Ākuhata 2024, ki Whangārei

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Dr Season-Mary Downs/Chelsea Terei-Tipene/Majka Cherrington/Heather Jamieson
Ngā rōia mō Te Aupōuri

This **STATEMENT OF CLAIM** is filed by Dr Season-Mary Downs, Chelsea Terei-Tipene, Majka Cherrington and Heather Jamieson of Tukau Law, counsel for the claimants. Accordingly, the address for service for all documents for this claim is:

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