

IN THE HIGH COURT OF NEW ZEALAND CIV
AUCKLAND REGISTRY

UNDER

The Marine and
Coastal Area Act
2011

CONCERNING

An application by
MICHAEL JOHN
BEAZLEY, on behalf
of Ngati
Rehua/Ngatiwai ki
Aotea and related
hapū, including
Urewhakatiko, Ngati
Kahueru, and Te
Uri Papa of Aotea
(Great Barrier Island
and Hauturu (Little
Barrier Island) for
recognition of
customary interests
and title under the
Marine and Coastal
Area (Takutai Moana)
Act 2011

WITHOUT NOTICE ORIGINATING APPLICATION FOR
ORDERS UNDER S 100 OF THE MARINE AND COASTAL
AREA ACT 2011

Dated: 3 April 2017

CS
HIGH COURT
FW: 130/17
03 APR 2017
1337
AUCKLAND

CB
Lyll & Thornton
Barristers and Solicitors
118 Park Road
Titirangi
Auckland 0604
Ph: (09) 889 1835

Counsel acting: Bryce Lyall / Linda Thornton
Bryce@lyallthornton.com / Linda@lyallthornton.com

~~HIGH COURT
31 MAR 2017
AUCKLAND~~

To: The Registrar of the High Court at Auckland

And to: Any other party required to be served

This document notifies you that:

1. On behalf of Ngāti Rehua, and its hapū Urewhakatiko, Ngāti Kahueru, and Te Uri Papa of Aotea (Great Barrier island and Hauturu (Little Barrier Island), the applicant, Michael John Beazley 62 Hollyford Drive, Manukau, Auckland, applies for:
 - a) A recognition order of a protected customary right under the Marine and Coastal Area (Takutai Moana) Act (“MACA”); and/or
 - b) Recognition of customary marine title under the MACA.

Reliance

2. This application is made under s100 of the MACA, in reliance on s51 MACA (protected customary rights); and s58 of the MACA (customary marine title).
3. The recent decision in *Re Tipene* is also relied upon, as the only guidance so far provided from the Court on the process under the MACA.¹

The Applicant Group (s101(c) of the MACA)

4. The hapū of Ngati Rehua and Ngati Rehua/Ngatiwai ki Aotea represented are:
 - a) Urewhakatiko;
 - b) Ngāti Kahueru; and

¹ *Re Tipene* [2016] NZHC 3199

c) Uri Papa, all of Aotea and Hauturu.

5. This application is accompanied by the affidavit of Michael John Beazley, which sets out the basis on which the hapū represented are entitled to the recognition order, as required by s101(h) of the MACA. The affidavit also describes the general area of application.

Application Requirements

Timing (s100(2))

6. This application is filed before the deadline of 3 April 2017.

Application for Recognition of Customary Rights, Customary Marine Title, or Both (s101(a))

7. This application is for recognition of both customary rights under s51 of the MACA, and customary marine title under s58 of the MACA.

Description of the Customary Rights (s101(b))

8. The claimants have exercised rantatiratanga over their marine and coastal area² from well before to 1840 to the current day.
9. This is demonstrated through the exercise of kaitiakitanga over the marine and coastal area; use of the area for transport; aquaculture; and the use of rocks, sands and other minerals, and access for care of koiwi in coastal cliff caves.
10. The applicant hapū use the marine and coastal area for gathering kai moana. They collect shellfish, and catch fish both from the beach and out to sea in marked fishing grounds. They also exercise control over the area through

² As defined by s9 MACA

the imposition of rāhui.

11. The applicant hapū also protect waahi tapu, burial sites and other sacred sites in their rohe, many of which are in the marine and coastal area, or just inland. They had kāinga and burial grounds scattered inland from the beach.

The Particular Area (s101(d))

12. The hapū are kaitiaki for the whole shoreline and surrounding moana of Hauturu and Aotea, as more fully described in the affidavit of Michael John Beazley.
13. The applicant hapū exercise customary rights according to their own tikanga on these two islands and surrounding small islands and rocky outcrops, including Mokohinau Islands, and out to sea well past the limits of the territorial sea, to a distance of 200 nautical miles. The area includes the airspace above these points as allowed by legislation.
14. Maps have not yet been generated but will be prepared and submitted as this application is progressed.

Grounds (S101(e))

15. The grounds upon which orders are sought are as follows:
 - a) The hapū represented by the applicant wish to seek a recognition order of a protected customary right under the Marine and Coastal Area (Takutai Moana) Act (“MACA”) ; and/or recognition of customary marine title under the MACA.
 - b) The hapū of this application hold mana whenua over the area of Hauturu and Aotea as described.
 - c) They have lived in this area, and exercised

exclusive customary rights within it, since prior to the arrival of Pākehā in this country.³

- d) The area is held according to their tikanga and they continue the traditions of kaitiakitanga handed down to them. Many of the traditions that will be developed in further evidence are exercised in the same way as they were in 1840. Some have evolved over time.⁴
- e) The protected customary rights in question have not been extinguished as a matter of law.⁵
- f) The applicant hapū hold their rohe in accordance with tikanga.⁶
- g) The applicant hapū have exclusively used and occupied the area since 1840 until the present day without substantial interruption.⁷
- h) In addition, members of the hapū own land abutting part of the specified area, and have done so without substantial interruption from 1840 to the present day.⁸ The hapū have also exercised non-commercial customary fishing rights in the specified area from before 1840 to the present day.⁹
- i) These two matters will be the subject of further hapū evidence as this application is progressed.
- j) All relevant parties will be served

³ S51(1)(a) MACA
⁴ S51(1)(b) MACA
⁵ S51(1)(c) MACA
⁶ S58(1)(a) MACA
⁷ S58(1)(b)(i) MACA
⁸ S59(1)(a)(i) MACA
⁹ S59(1)(a)(ii) MACA

contemporaneously with the filing of this application in satisfaction of the requirements in s102 of the MACA.

- k) Public notice will be given no later than 20 working days following filing of this application.¹⁰

Person to be Holder of the Order (s101(f))

16. The person to be the holder of the order is Michael John Beazley or such other person or persons who may be designated in the course of these proceedings.


Contact Details for the Group (s101(g))

17. The applicant asks that contact be made through contact with counsel, contact details set out at the foot of this application.

Conclusion

18. With the courts leave the applicant hapū will provide further evidence following hapū hui, and seek to further particularise this application as research is received.
19. I certify that this application complies with the High Court Rules.

Dated: 3 April 2017



Linda Thornton
Counsel

The address for service for the applicants is 118 Park Road, Titirangi, Auckland 0604.

¹⁰ S103 MACA

Documents for service on the applicants may be posted to or left at that address for service or may be emailed to the solicitor at: Linda@lyallthornton.com

The solicitor can be contacted on (09) 294 7970