

IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

CIV-2017-485-000265

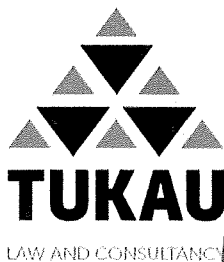
UNDER THE Marine and Coastal Area (Takutai Moana)
Act 2011 sections 51, 58, 98, 100, and 107

AND

IN THE MATTER OF an application by Dr Mary-Anne Baker on
behalf of nga uri o Tareha Kaiteke Te
Kemara I, Ngati Kawa and Ngati Rahiri for
orders recognising Customary Marine
Title and Protected Customary Rights
over Pouerua ki Waitangi extending to
Rakaumangamanga

APPLICATION FOR RECOGNITION ORDERS UNDER THE
MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011

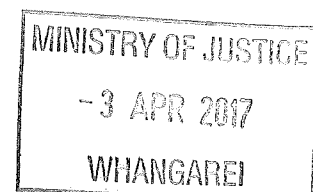
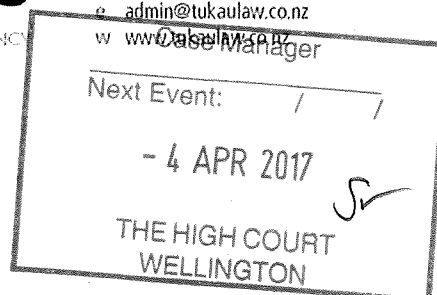
Dated this 3rd day of April 2017



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Solicitors acting

Season-Mary Downs
Heather Jamieson



To: The Registrar of the High Court at Whangarei

and

To: The Attorney-General;
The Northland Regional Council;
The Far North District Council; and
Interested parties.

Customary Marine Title and Protected Customary Rights

1. Application to the High Court is hereby made by Dr Mary-Anne Baker ("the Applicant"), pursuant to s 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 ("the Act"), for orders recognising that Ngati Kawa and Ngati Rahiri hold, in accordance with their tikanga:
 - (a) **Customary Marine Title** pursuant to s 58 of the Act to the common marine and coastal areas of **Pouerua ki Waitangi** (as defined in paragraph 6 below); and
 - (b) **Protected Customary Rights** pursuant to s 51 of the Act, namely:
 - (i) The right to exercise the tikanga of rangatiratanga (authority), mana i te whenua/mana i te moana (authority over land and sea) and responsibility to act as kaitiaki (guardian) of the wahi tapu (sacred places) and taonga tuku iho (ancestral treasures) within the area of Pouerua ki Waitangi, including protecting the physical and spiritual sanctity of sites through karakia (prayer), and the ability to declare rahui

(prohibition) if required for the protection of the site or resource.

- (ii) The right to moor, launch and land boats at customary tauranga waka (moorings, landing places) around Pouerua ki Waitangi;
- (iii) The right to collect customary resources from the common marine and coastal areas of Pouerua ki Waitangi, such as:
 - (A) Stones, used for a variety of cultural purposes, including slate for building and tunutunu (cooking), hangi stones, and obsidian, quartz and other stones for traditional tools;
 - (B) Shingle and sand, for fishing, kumara pits, and building purposes;
 - (C) Shells, for ornamentation, jewellery, and fishing lures;
 - (D) Bones, which are used for carving;
 - (E) The feathers of seabirds, which are taonga cultural materials; and
 - (F) Any other customary resources required for physical, mental, whanau and spiritual wellbeing.

UPON THE GROUNDS THAT:

The Applicant

2. The Applicant, Dr Mary-Anne Baker, is a direct uri (descendant) of Tareha Kaiteke Te Kemara I, who is a rangatira and tohunga tupuna for Ngati Kawa and Ngati Rahiri.
3. Ngati Kawa and Ngati Rahiri are the hapu who are tangata whenua of, and hold mana whenua and mana moana over, Pouerua ki Waitangi.
4. Pursuant to section 58(1) of the Act, the Applicant can demonstrate that Ngati Kawa and Ngati Rahiri hold the specified area in accordance with tikanga, and has, in relation to the specified area, exclusively used and occupied it from 1840 to the present day without substantial interruption.

Area to which the application relates

5. The Applicant seeks recognition of Customary Marine Title in respect of the common marine and coastal area (as defined in s 9 of the Act) of **Pouerua ki Waitangi and extending to Rakaumangamanga**, being the area set out in the map annexed as **Appendix A**.
6. Pouerua ki Waitangi includes the areas from Pouerua/Pakaraka and surrounding lands across to Puketona sweeping down to Waitangi and the surrounding areas taking in Haruru, Kaipatiki and the surrounding islands and then out to Rakaumangamanga.
7. The Applicant also seeks recognition of Protected Customary Rights in respect of the common marine and coastal area referred to above.

Ngati Kawa and Ngati Rahiri

8. Ngati Kawa and Ngati Rahiri have exercised mana i te whenua (authority over land) and mana i te moana (authority over sea) at Pouerua ki Waitangi for many generations prior to their tupuna (ancestors) signing of Te Tiriti o Waitangi in 1840, through to today.
9. Ngati Kawa and Ngati Rahiri's marae are Te Tii, Oromahoe and Rawhiti.
10. Pouerua ki Waitangi (extending to Rakaumangamanga) is a taonga and is of the highest cultural and spiritual significance for Ngati Kawa and Ngati Rahiri.
11. According to Ngati Kawa and Ngati Rahiri, hapu rangatiratanga is the mana, authority, chieftainship, governance and control over hapu whenua and takutai moana.
12. Ngati Kawa and Ngati Rahiri have never knowingly or willingly relinquished their right to exercise rangatiratanga (chiefly authority) over the land and foreshore and seabed within their area.

AND UPON FURTHER GROUNDS contained in the affidavit of Dr Mary-Anne Baker

13. The grounds on which these orders are sought are that:
 - (a) Ngati Kawa and Ngati Rahiri hold Customary Marine Title and Protected Customary Rights over Pouerua ki Waitangi in accordance with their tikanga in that:
 - (i) They are tangata whenua and tangata moana of Pouerua ki Waitangi, having occupied the area for many generations;


- (ii) They have always, and continue to, exercise mana tuku iho, tino rangatiratanga and kaitiakitanga (guardianship) over Pouerua ki Waitangi;
- (iii) Under the tikanga of Ngati Kawa and Ngati Rahiri, rangatiratanga, mana i te whenua/mana i te moana is derived from the atua (gods), Ngati Kawa, Ngati Rahiri tupuna and their continual use of mana i te moana and mana i te whenua over their traditional areas, their exclusive occupation, pa (fortified village) sites and wahi tapu (sacred areas/places) and extensive oral histories as well as close whakapapa (genealogy) connections with neighbouring hapu;
- (iv) Mana i te whenua and mana i te moana is evidenced by whakapapa, mana rangatira, ahi ka (continuous occupation), ringa kaha (maintenance of stronghold), pepeha (tribal sayings), whakatauki (proverbs), waiata (songs), pa, kainga (settlements), wahi tapu, tauranga waka (landing places), mahinga kai (gardens/cultivations), traditional fishing grounds, place names, kaitiakitanga and so on;
- (v) Ngati Kawa and Ngati Rahiri have exclusively used and occupied the common marine coastal area within Pouerua ki Waitangi from pre 1840 to the present day without substantial interruption;

- (vi) The members of Ngati Kawa and Ngati Rahiri continue to own land on Pouerua ki Waitangi abutting part of the specified area;
 - (vii) Ngati Kawa and Ngati Rahiri have always, and continue to exercise customary fishing rights in Pouerua ki Waitangi;
 - (viii) The Customary Marine Title and Customary Protected Rights have never been extinguished as a matter of law; and
 - (ix) As set out in further evidence to be filed on behalf of the applicants.
14. The application is made in reliance on ss 51(1), 58, 98, 100, 101, and 107 of the Marine and Coastal Area (Takutai Moana) Act 2011.
15. The Applicant seeks leave to amend this application if necessary.

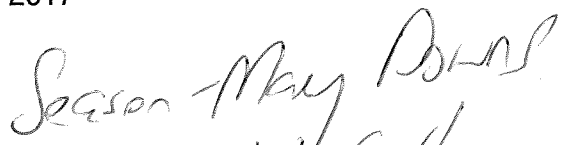

The orders

16. The orders should be made in the name of Ngati Kawa and Ngati Rahiri.
17. The holder of the orders is proposed to be Dr Mary-Anne Baker.

DATED at Cable Bay this 3rd day of April 2017



Dr Mary-Anne Baker
Applicant


Jason Mary Powell
Solicitor High Court


This document is filed by Season-Mary Downs. Documents for service on the applicant may be:

- (a) Posted to: 91 Hupara Road, Kaikohe, Northland 0472;
or
- (b) Emailed to: seasonmarydowns@tukaulaw.co.nz

APPENDIX A

