

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2017-485-294

IN THE MATTER OF

an application under the **MARINE AND COASTAL
AREA (TAKUTAI MOANA) ACT 2011**

AND

IN THE MATTER

an application by the trustees of the Ngā Hapū o Ngāti
Ranginui Settlement Trust on behalf of **NGĀ HAPŪ O
NGĀTI RANGINUI**

Applicant

**AN ORIGINATING APPLICATION FOR RECOGNITION ORDERS PURSUANT TO THE
MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011**

3 April 2017

KAHUI
LEGAL

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Counsel: D H Stone / M C Tukapua

WELLINGTON

Case Manager
Next Event: / /
- 3 APR 2017
THE HIGH COURT WELLINGTON

TO: The Registrar of the High Court in Wellington
AND TO: The Solicitor-General on behalf of the Attorney-General
Western Bay of Plenty District Council
Tauranga City Council

THIS DOCUMENT NOTIFIES YOU THAT:

- A. The applicant, the trustees of the Ngā Hapū o Ngāti Ranginui Settlement Trust (the **Trustees**) on behalf of Ngāti Ranginui (the **Applicant Group** also known as “Ngā Hapū o Ngāti Ranginui”), will apply to the High Court for orders recognising customary marine title and protected customary rights pursuant to sections 98 and 100 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the **Act**).
- B. The grounds on which the orders are sought are as follows:

Background

1. Ngāti Ranginui is a coastal iwi that has a strong association to the moana. Ngāti Ranginui considers it has continued to exercise mana whenua, mana moana and kaitiakitanga over the Ngāti Ranginui Coastal Marine Area.
2. Sections 94 and 98 of the Act confer on the High Court the jurisdiction to make an order recognising a protected customary right and customary marine title, provided that the Applicant Group meets the tests for customary marine title set out under section 58 of the Act and protected customary rights set out in section 51(1) of the Act.

Orders Sought – section 101(a)

3. The Trustees seek recognition orders from the High Court under section 98 of the Act for:
 - (a) customary marine title over the Ngāti Ranginui Coastal Marine Area (the Trustees consider the Applicant Group meets the tests

for customary marine title set out under section 58 of the Act);
and

- (b) protected customary rights within the Ngāti Ranginui Coastal Marine Area (the Trustees consider the Applicant Group meets the tests for protected customary rights set out under section 51 of the Act).

Protected customary rights – section 101(b)

- 4. The Trustees seek recognition orders for the exercise of kaitiakitanga as a protected customary right which includes, but is not limited to:
 - (a) non-commercial fishing (utilising nets, hinaki and hand-lines to catch kuaka (snipe), kanae, kahawai, pioke, araara, patiki, tamure, mango, eels and other fish);
 - (b) non-commercial seeding and harvesting of shellfish (including pipi, cockles, oysters, mussels, scallops, karahu, toheroa, tuatua, tuangi, pupu, paapaka);
 - (c) activities related to spiritual practices (such as rahui);
 - (d) planting and cultivating plant species in the Application Area wet margins (such as flax, tī kouka, pingao);
 - (e) gathering edible and aquatic plants;
 - (f) extracting non-nationalised minerals for non-commercial purposes;
 - (g) collecting hāngi stones for non-commercial purposes;
 - (h) collecting driftwood and other natural resources for non-commercial purposes;
 - (i) temporary camp-sites for ceremonial activities in the Application Area; and

- (j) launching of waka.

The Applicant Group – section 101(c)

Ngāti Ranginui

5. The Applicant Group is the iwi of Ngāti Ranginui. Pursuant to the Deed of Settlement with the Crown dated 21 June 2012 (the **Deed of Settlement**), 'Ngāti Ranginui' includes:

- (a) the collective comprising individuals who descend from one or more of Ngā Hapū o Ngāti Ranginui tūpuna or ancestors; and
- (b) every whanau, hapū or group to the extent that it is composed of individuals referred to in paragraph (a) above, including the following groups:
 - (i) Pirirākau;
 - (ii) Ngāti Taka;
 - (iii) Wairoa hapū;
 - (iv) Ngāti Hangarau;
 - (v) Ngāi Tamarāwaho;
 - (vi) Ngāi Te Ahi;
 - (vii) Ngāti Ruahine;
 - (viii) Ngāi Te Wai; and
- (c) every individual referred to in paragraph (a).

Provisions relating to the Act

6. The Deed of Settlement includes provisions relating to Ngāti Ranginui's claims in respect of the Ngāti Ranginui Coastal and Marine Area (refer clauses 4.5 to 4.11 of the Deed of Settlement). Pages 34 and 35 of the Deed of Settlement (which contain the relevant clauses) are **annexed** and marked "A".
7. Under clause 4.6 the Crown acknowledged Ngāti Ranginui's views in relation to the Ngāti Ranginui Coastal and Marine Area. In that regard, clause 4.6 provides:

"The Crown acknowledges that:

 - 4.6.1 Ngā Hapū o Ngāti Ranginui are of the view that they have exclusively used and occupied the marine and coastal area in their area of interest from 1840 to the present day without substantial interruption and that they continue to hold that area in accordance with tikanga;
 - 4.6.2 Ngā Hapū o Ngāti Ranginui are also of the view that raupatu and the effects of raupatu, as referred to in the Historical Account, do not amount to substantial interruption; and
 - 4.6.3 Ngā Hapū o Ngāti Ranginui consider they have grounds:
 - (a) to seek recognition of protected customary rights and customary marine title through an agreement made in accordance with section 95 of the Marine and Coastal Area (Takutai Moana) Act 2011; or
 - (b) to apply for a recognition order under section 100 of the Marine and Coastal Area (Takutai Moana) Act 2011."
8. Clause 4.8 of the Deed of Settlement provides that:

"The Crown will treat clause 4.6 as an application by Ngā Hapū o Ngāti Ranginui to seek an agreement recognising a protected customary right and customary marine title under section 95 of the Marine and Coastal Area (Takutai Moana) Act 2011."
9. Clause 4.9 provides that the Crown will "discuss the application with Ngā Hapū o Ngāti Ranginui in order to inform its decision about whether to enter terms of engagement in relation to section 95 of the Act".
10. The Crown has yet to advise the Trustees of its decision as to whether to enter such formal terms of engagement.

Ngā Hapū o Ngāti Ranginui Settlement Trust

11. The Ngā Hapū o Ngāti Ranginui Settlement Trust (the **Settlement Trust**) is the post-settlement governance entity on behalf of Ngā Hapū o Ngāti Ranginui. The Trustees are Te Pio Kawe, Rob Urwin, Jason Ake, Stephanie Taiapa, Riki Nelson, Kimiora Rawiri, Phillip Hikairo and Lance Waaka.¹
12. The Settlement Trust was established by Deed of Trust signed on or about June 2012 (the **Trust Deed**). The objects and purposes of the Settlement Trust include:
 - (a) the promotion amongst Ngā Hapū o Ngāti Ranginui of the educational, spiritual, economic, social and cultural advancement or well-being of Ngā Hapū o Ngāti Ranginui (clause 2.4(a) of the Trust Deed); and
 - (b) the maintenance and establishment of places of cultural or spiritual significance to Ngā Hapū o Ngāti Ranginui (clause 2.4(b) of the Trust Deed).

The Application Area – section 101(d)

Ngāti Ranginui Coastal Marine Area

13. The specified area to which this application relates is the Ngāti Ranginui Coastal Area of Interest (the **Application Area**). The Application Area, for the purposes of this Application, means the area identified as the Ngāti Ranginui Coastal Area of Interest in the map contained in Part 1 of the Attachments to the Deed of Settlement. A copy of this map is **annexed** and marked "B".
14. The Application Area is located on the east coast of the North Island in the Tauranga District. The Ngāti Ranginui coastal boundaries begin

¹ Te Pio Kawe and Kimiora Rawiri have sworn affidavits in support of this application.

generally from Ngā Kurī-a-Whareī, northwest of Tauranga to coastal Wairakei.

Grounds on which the Application is made – section 101(e)

15. On behalf of the Applicant Group, the Trustees submit that the necessary requirements for customary marine title (section 58 of the Act) and protected customary rights (section 51 of the Act) are satisfied, in particular:

(a) in relation to customary marine title:

- (i) the Applicant Group holds the Application Area in accordance with tikanga (section 58(1)(a));
- (ii) the Applicant Group has, in relation to the Application Area exclusively used and occupied the Application Area from 1840 to the present day without substantial interruption (section 58(1)(b));
- (iii) the Applicant Group owns land abutting the Application Area and have done so without substantial interruption, from 1840 to the present day (section 59(1)(a)(i)); and
- (iv) the Applicant Group exercises non-commercial customary fishing rights in the Application Area and have done so from 1840 to the present day (section 59(1)(a)(ii)), and

(b) in relation to protected customary rights:

- (i) the protected customary rights have been exercised since 1840 (section 51(1)(a));
- (ii) the protected customary rights continue to be exercised in the Application Area in accordance with tikanga by the Applicant Group, whether it continues to be exercised in

exactly the same or a similar way, or evolves over time (section 51(1)(b)); and

(iii) the protected customary rights are not extinguished as a matter of law (section 51(1)(c)); and

(c) as set out in the affidavits in support of this application.

The holder of the recognition orders – section 101(f)-(g)

16. The Settlement Trust currently proposes to be the holder of the order as the representative of the Applicant Group (or, in the event that the holders must be a natural person, the Trustees of the Settlement Trust in their capacity as Trustees). However, the Trustees intend to hold hui with hapū and whanau within the Application Area after the deadline has passed and to discuss who is the appropriate holder of the order. Accordingly, the Trustees, on behalf of the Applicant Group, seek leave to amend this aspect of the application at a later date, if required.

17. The contact details of the Trust are:

Ngā Hapū o Ngāti Ranginui Settlement Trust
PO Box 2230
TAURANGA 3140

Affidavits in Support – section 101(h)

18. This application is supported by the affidavits of Ronald Te Pio Kawe (Chairperson of the Settlement Trust) and Kimiora Rawiri (Trustee). The affidavits in support of this application set out the basis on which the Applicant Group claims to be entitled to the recognition orders for customary marine title and protected customary rights over the Application Area.

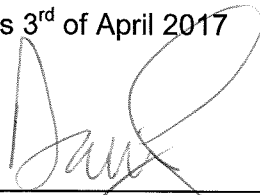
19. The Trustees will provide more information once funding for research and legal representation is secured. The Trustees, on behalf of the

Applicant Group, seek leave to file further evidence to support this application at a later date if necessary.

Adjournment

20. The Act provides two pathways for the recognition of customary marine title and protected customary rights; namely through:
- (a) A recognition agreement with the responsible Minister on behalf of the Crown made in accordance with section 95 and brought into effect under section 96; and
 - (b) an order of the Court made on an application under section 100.
21. By virtue of clause 4.6 of the Deed of Settlement, the Trustees have also filed an application with the responsible Minister on behalf of the Crown to enter into a recognition agreement.
22. On that basis, the Trustees seek a six (6) month adjournment from the High Court to undertake discussions with the responsible Minister on behalf of the Crown to enter into a recognition agreement. Should the Trustees require a further adjournment following the initial 6 month period to continue discussions with the Crown to reach an agreement, the Trustees will seek the leave of the High Court.
23. This application is made on reliance on section 58 and 59 of the Act, the affidavits noted in paragraph 18 and *Re Tipene* [2016] NZHC 3199.

DATED at Wellington this 3rd of April 2017



D H Stone / M C Tukapua
Counsel for the Applicant

TO: The Registrar, High Court, Wellington
AND TO: Western Bay of Plenty District Council
Tauranga City Council
AND TO: The Solicitor-General on behalf of the Attorney-General

THIS application is filed by **DAMIAN STONE**, of the firm Kahui Legal. The address for service of the Applicant is at the office of Kahui Legal, Solicitors, Level 11, Intilecta Centre, 15 Murphy Street, Wellington.

Documents for service on the Applicant may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 1654, Wellington;
- (b) transmitted to the solicitor by facsimile on 04 495 9990; or
- (c) emailed to the solicitor at damian@kahuilegal.co.nz and matewai@kahuilegal.co.nz.

Documents served on the Applicant should be marked for the attention of D H Stone and M C Tukapua.

DEED OF SETTLEMENT

4 SETTLEMENT

ACKNOWLEDGEMENTS

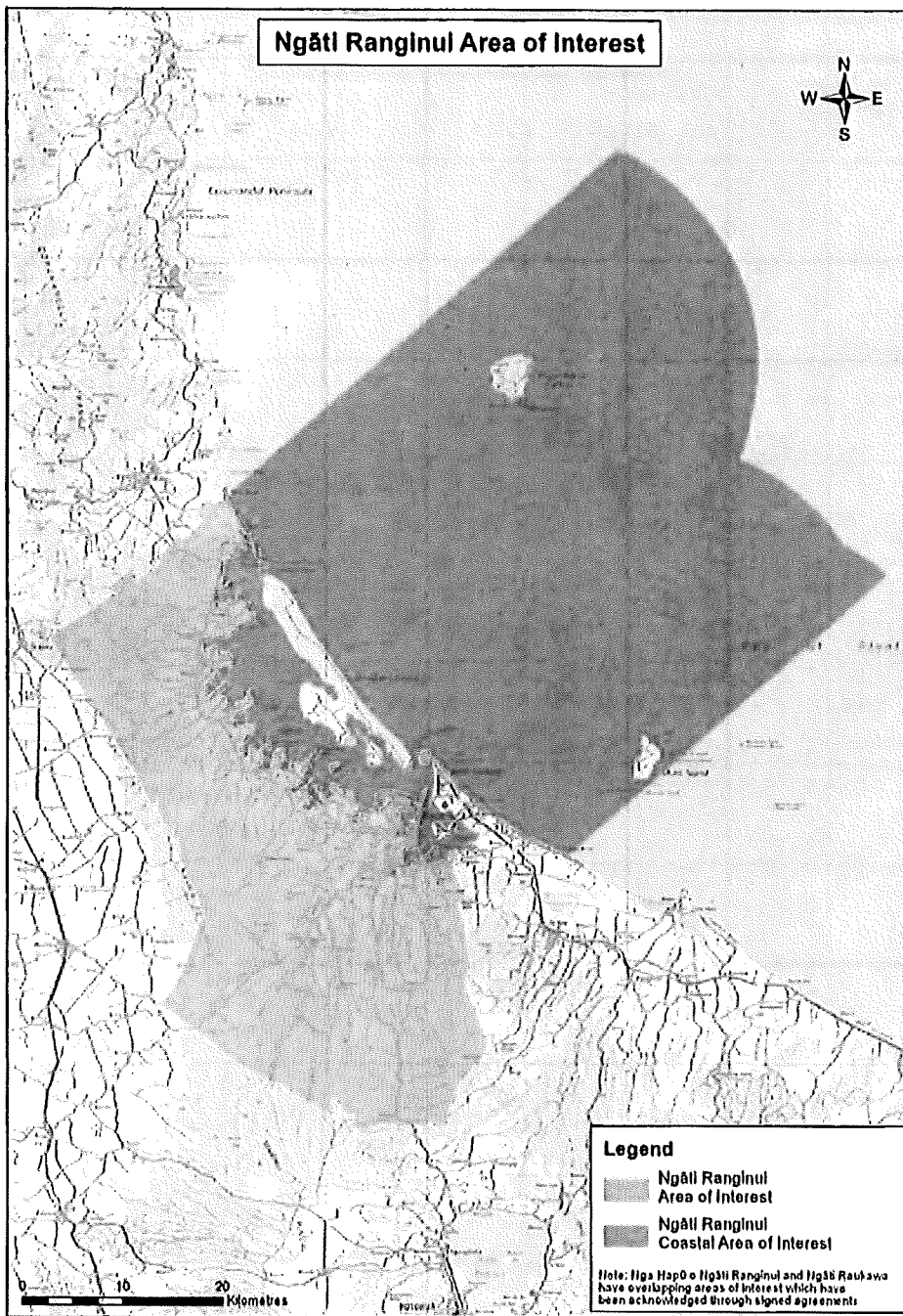
- 4.1 Each party acknowledges that –
- 4.1.1 the other parties have acted honourably and reasonably in relation to the settlement; but
 - 4.1.2 full compensation by the Crown of Ngā Hapū o Ngāti Ranginui is not possible; and
 - 4.1.3 in agreeing to this settlement, which is intended to enhance the ongoing relationship between Ngā Hapū o Ngāti Ranginui and the Crown (in terms of the Treaty of Waitangi, its principles and otherwise), Ngā Hapū o Ngāti Ranginui are foregoing full compensation to contribute to New Zealand's development.
- 4.2 Ngā Hapū o Ngāti Ranginui acknowledge that, taking all matters into consideration (some of which are specified in clause 4.1), the settlement is fair in the circumstances.

SETTLEMENT

- 4.3 Therefore, on and from the settlement date, –
- 4.3.1 the historical claims are settled; and
 - 4.3.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and
 - 4.3.3 the settlement is final.
- 4.4 Except as provided in this deed or the settlement legislation, the parties' rights and obligations remain unaffected.
- 4.5 To avoid doubt, Ngā Hapū o Ngāti Ranginui are not precluded from seeking or obtaining recognition of protected customary rights and customary marine title under sections 95 or 100 of the Marine and Coastal Area (Takutai Moana) Act 2011.
- 4.6 The Crown acknowledges that:
- 4.6.1 Ngā Hapū o Ngāti Ranginui are of the view that they have exclusively used and occupied the marine and coastal area in their area of interest from 1840 to the present day without substantial interruption and that they continue to hold that area in accordance with tikanga;
 - 4.6.2 Ngā Hapū o Ngāti Ranginui are also of the view that raupatu and the effects of raupatu, as referred to in the Historical Account, do not amount to substantial interruption; and

ATTACHMENTS

1 AREA OF INTEREST



AC

20/05/20