

IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

CIV-2017- 485-296

IN THE MATTER OF

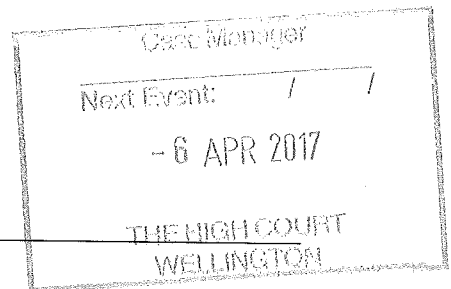
the Marine and Coastal
Area (Takutai Moana) Act
2011 (the Act)

AND IN THE MATTER OF

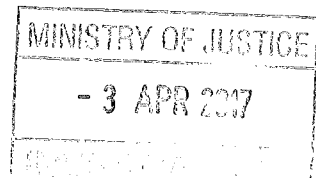
an application by Melvin
Hutchinson Herbert Cain,
Jasmine Kay Whaitiri
Stewart and Christian
Wayne Fife on behalf of the
landowners of the Ruapuke
Island Group for orders
recognising Customary
Marine Title and Protected
Customary Rights

APPLICATION ON BEHALF OF THE LANDOWNERS OF THE
RUAPUKE ISLAND GROUP
FOR RECOGNITION ORDERS PURSUANT TO THE MARINE AND
COASTAL AREA (TAKUTAI MOANA) ACT 2011

Dated 31 March 2017



OCEANLAW NEW ZEALAND
PO Box 921, Nelson
Telephone: 03 548 4136
Solicitor acting: Justine Inns
EMAIL: justine@oceanlaw.co.nz



To: The Registrar of the High Court at Invercargill
and to: Southland Regional Council
and to: Southland District Council
and to: The Solicitor General on behalf of the Attorney-General
and to: Te Rūnanga o Ngāi Tahu
and to: Te Runaka o Awarua

This document notifies you that:

1. Melvin Hutchinson Herbert Cain, Jasmine Kay Whaitiri Stewart and Christian Wayne Fife (“the Applicants”), on behalf of the landowners of the Ruapuke Island Group (will apply to the High Court for orders pursuant to ss98 and 100 of the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”) to recognise the customary marine title and protected customary rights of the landowners of the Ruapuke Island Group in relation to the area described in paragraphs 4 and 5 below.

The Landowners of the Ruapuke Island Group

2. The landowners of the Ruapuke Island Group are manawhenua and have continuously resided on the Islands since 1840 and maintained ahi kā. They whakapapa to Waitaha, Kati Mamoe and Ngāi Tahu. Key tūpuna in relation to Ruapuke are Honekai and Kohuwai, whose son, Te Whakataupuka, and grandson, Tūhawaiki, helped establish Ruapuke Island as a stronghold of the iwi. Tūhawaiki signed the Treaty of Waitangi at Ruapuke on 9 June 1840.
3. The Applicants are from the Kihau, Whaitiri and Topi whānau (descendants of Tūhawaiki, Hinehaka and Topi Patuki respectively) and the application is made on behalf of all of the landowners of the Ruapuke Island Group.

Area to which the application relates

4. The area to which this application relates (“the Application Area”) is the common marine and coastal area (as defined in s9 of the Act) surrounding the Ruapuke Island Group, which lies in Foveaux Strait and consists of:
 - a. Ruapuke Island;
 - b. Green Island/Papatea;
 - c. Lee Island/Te Papa o te Moroiti;
 - d. Seal Rocks;
 - e. Breaksea Islands;
 - f. South Islets;
 - g. Hazelburgh Group;

- h. Bird Island/Motuaro;
 - i. Fife Island;
 - j. Half Passage Rock;
 - k. Topi Island/Te Ihu Kararo;
 - l. White Island;
 - m. Pukepara; and
 - n. Goose Island.
5. The Application Area is bounded:
- a. On the landward side by the line of the mean high-water springs (except that where that line crosses a river, the landward boundary at those points shall be whichever is the lesser of one kilometre upstream from the mouth of the river; or the point upstream that is calculated by multiplying the width of the river mouth by five); and
 - b. On the seaward side by the outer limits of the territorial sea.
6. The Application Area is shown on the map annexed to the affidavit of Ailsa Margaret Cain dated 3 April 2017 and filed herewith.

Grounds on which the customary marine title application is made

7. The grounds on which this order is sought are that:
- a. The landowners of the Ruapuke Island Group have held the Application Area in accordance with tikanga since before 1840;
 - b. The landowners of the Ruapuke Island Group have exclusively used and occupied the Application Area, notwithstanding navigation through the area by others, since before 1840 to the present day without interruption;
 - c. The customary title held by the landowners of the Ruapuke Island Group in the Application Area has not, since 1840 been extinguished as a matter of law; and
 - d. Upon the further grounds set out in the affidavits of Ailsa Margaret Cain and Elizabeth Wright dated 3 April 2017 and filed herewith.

Matters relevant to whether customary marine title exists

8. The Ruapuke Island Group and the Application Area never alienated to the Crown have always remained in the ownership of those who whakapapa to them. Both Ruapuke itself, and its surrounding islands have remained in whānau ownership since 1840.
9. The landowners and whānau of the Ruapuke Island Group exercise non-commercial customary fishing rights, and other customary rights in the Application Area and have done so from 1840 to the present day.
10. The Applicants will provide more information once funding for research and legal representation is secured.

Grounds on which the protected customary rights order is sought:

11. The grounds on which this order is sought are that the landowners and whānau of the Ruapuke Island Group are island-dwelling people who have, since before 1840:
 - a. relied heavily on fish, shellfish, kelps and other resources gathered and harvested from the Application Area;
 - b. exercised the full bundle of customary rights that flow from their mana over the Application Area; and
 - c. Upon the further grounds set out in the affidavits of Ailsa Margaret Cain and Elizabeth Wright dated 3 April 2017 and filed herewith.
12. The Applications will provide more information once funding for research and legal representation is secured.

Holder of the recognition orders

13. The holder of the orders sought will be the Applicants, as representatives of the landowners of the Ruapuke Island Group, or some other person, group or person appointed by those landowners for that purpose.

Contact Details:

14. Contact details (address for service) for the Applicants, on behalf of the landowners of the Ruapuke Island Group, are:

Justine Inns

Solicitor

Oceanlaw New Zealand

PO Box 921

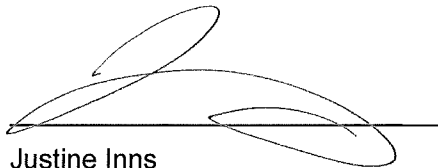
Nelson

Telephone: 03 548 4136

EMAIL: justine@oceanlaw.co.nz

15. This application relies on ss51, 58, 59 and 98-113 of the Act, and upon the affidavits of Ailsa Margaret Cain and Elizabeth Sarah Wright dated 3 April 2017 and filed herewith.

Dated at Nelson on the 3rd day of April 2017



Justine Inns