

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

CIV-2017-485-318

IN THE MATTER OF

an application under section 100 of the **Marine and Coastal Area (Takutai Moana) Act 2011**

AND

IN THE MATTER OF

an application by the Trustees of Te Runanga o Te Whanauon behalf of **TE WHANAU A APANUI**

Applicant

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

3 April 2017

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

KAHUI
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Counsel: M K Mahuika / T M Williams

WELLINGTON

HIGH/DISTRICT COURT
APR 3 - MAR 2017
ROTORUA

TO: The Registrar of the High Court in Rotorua
AND TO: The Solicitor-General on behalf of the Attorney-General
Opotiki District Council
Bay of Plenty Regional Council
Gisborne District Council

THIS DOCUMENT NOTIFIES YOU THAT:

- A. The applicant, the Trustees of Te Runanga o Te Whanau (**Te Runanga**) on behalf of Te Whanau a Apanui (the **Applicant Group**), will on 3 April 2017 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. Te Whanau a Apanui is a coastal iwi that has a strong association to the moana (sea). Te Whanau a Apanui considers it has continued to exercise mana whenua, mana moana and kaitiakitanga over the Te Whanau a Apanui Coastal Marine Area.
2. Sections 94 and 98 of the Act confer on the High Court the jurisdiction to make orders recognising customary marine title and protected customary rights, 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. Te Runanga seeks recognition orders from the High Court under section 98 of the Act for:
 - (a) customary marine title over the Te Whanau a Apanui Coastal Marine Area (Te Runanga considers it meets the tests for customary marine title set out under section 58 of the Act); and

- (b) protected customary rights within the Te Whanau a Apanui Coastal Marine Area (Te Runanga considers it meets the tests for protected customary rights set out under section 51 of the Act).

Protected customary rights – section 101(b)

- 4. The Trustees of Te Runanga seek recognition orders for the exercise of kaitiakitanga as a protected customary right which includes, but is not limited to collecting seaweed and kelp.

The Applicant Group – section 101(c)

Te Whanau a Apanui

- 5. The Applicant Group is the iwi of Te Whanau a Apanui. The iwi of Te Whanau a Apanui includes the following hapu:
 - (a) Te Whanau a Te Haraawaka;
 - (b) Te Whanau a Hikarukutai;
 - (c) Te Whanau a Tutawake;
 - (d) Te Whanau a Nuku;
 - (e) Te Whanau a Rutaia;
 - (f) Te Whanau a Hine Te Kahu;
 - (g) Te Whanau a Te Ehutu;
 - (h) Te Whanau a Kaiaio;
 - (i) Te Whanau a Kahurautao;
 - (j) Te Whanau a Kauaetangohia;
 - (k) Te Whanau a Pararaki; and
 - (l) Te Whanau a Maruhaeremuri.

6. For the purposes of this application, Te Runanga also represents Te Whanau a Rongomai who have mana whenua and mana moana from the Haparapara River mouth to the Waitawhiri Stream. We also note that although Te Whānau a Tapaeururangi has a delegate appointed to Te Rūnanga o Te Whānau, the lands of Tapaeururangi are based within the territory of Ngāti Porou and therefore do not fall within the ambit of this application.

Te Runanga o Te Whanau

7. Te Runanga was established on 13 November 1988 as a charitable trust pursuant to the Charitable Trusts Act 1957.
8. Te Runanga makes this application on behalf of the hapu of Te Whanau a Apanui and Te Whanau a Rongomai.

The Application Area – section 101(d)

9. The particular area of the common coastal marine area to which this application relates is the Te Whanau a Apanui Coastal Marine Area (the **Application Area**).
10. The Application Area means, for the purposes of this Application:
 - (a) the common marine and coastal area within the Te Whanau a Apanui rohe, which extends from Te Taumata o Apanui to Potikirua, from the landward boundary of the mean high water spring and the seaward boundary being the outer limits of the territorial sea (12 nautical miles from shore); and
 - (b) the area identified on the map annexed and marked “A” to this Application.
11. The Application Area is located on the east coast of the North Island in the Opotiki District. The Te Whanau a Apanui coastal boundaries begin

generally from Potikirua by the sea, in the north, then south to Te Taumata o Apanui, in the south.

12. The Application Area also includes the motu of Whakaari which is customarily owned by Te Whanau a Te Ehutu. A map of Whakaari can be provided if requested.

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

13. On behalf of the Applicant Group, Te Runanga submits that the necessary requirements for customary marine title (section 58 of the Act) are satisfied, in particular:

- (a) the Applicant Group holds the Application Area in accordance with tikanga (section 58(1)(a));
- (b) 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));
- (c) the Applicant Group owns part of the land abutting the Application and have done so without substantial interruption, from 1840 to the present day (section 59(1)(a)(i));
- (d) 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
- (e) as set out in the affidavit in support of this application.

14. On behalf of the Applicant Group, Te Runanga submits that the necessary requirements for protected customary rights (section 51 of the Act) are satisfied, in particular:

- (a) the Applicant Group has exercised the protected customary rights since 1840 (section 51(1)(a));

- (b) the Applicant Group continues to exercise the protected customary rights in a particular part of the common marine and coastal area in accordance with tikanga (section 51(1)(b));
- (c) the protected customary rights have not been extinguished as a matter of law (section 51(1)(c));
- (d) the protected customary right is not an activity listed under section 51(2) of the Act; and
- (e) as set out in the affidavit in support of this application.

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

- 15. For the purposes of this application, the holder of the recognition orders will be Te Runanga (or, in the event that the holders must be a natural person, the Trustees of Te Runanga in their capacity as Trustees).
- 16. Te Runanga, on behalf of the Applicant Group, seeks leave to amend this aspect of the application at a later date.
- 17. The contact details for Te Runanga are:

Te Runanga o Te Whānau
State Highway 35
RD 3 Te Kaha
Opotiki

Affidavit in Support – section 101(h)

- 18. This application is supported by the affidavit of Te Kou Rikirangi Gage (Chief Executive Officer of Te Runanga).
- 19. The affidavit in support of this application sets 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.

20. Te Runanga, on behalf of the Applicant Group, seeks leave to file further evidence to support this application at a later date if necessary.
21. This application is made on reliance on sections 51, 52, 58 and 59 of the Act, the affidavit of Te Kou Rikirangi Gage and *Re Tipene* [2016] NZHC 3199.

DATED at Wellington this 3rd day of April 2017



M K Mahuika / T M Williams
Counsel for the Applicant

THIS application is filed by **TE RANGIMĀRIE MAY WILLIAMS**, of the firm Kahui Legal. The address for service of the Applicant is at the office of Kahui Legal, Solicitors, Level 1 GHA Centre, 1180 Fenton Street, Rotorua 3040.

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 1712, Rotorua;
- (b) transmitted to the solicitor by facsimile on 04 495 9990; or
- (c) emailed to the solicitor at matanuku@kahuilegal.co.nz and terangimarie@kahuilegal.co.nz.

Documents served on the Applicant should be marked for the attention of M K Mahuika and T M Williams.

