

in the matter of: an application for recognition of customary marine title
and for protected customary rights under the Marine
and Coastal Area (Takutai Moana) Act 2011

between: **Ngāti Kuta and Patukeha ki Te Rawhiti**
Applicants

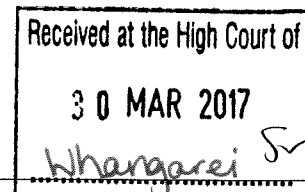
and: **Motu Kōkako Ahu Whenua Trust**
First supporting party

and: **3B2 Ahu Whenua Trust**
Second supporting party

and: **Whangaoreore Ahu Whenua Trust**
Third supporting party

Originating application for order of recognition of customary
marine title and for protected customary rights

Dated: 29 March 2017



REFERENCE: J W J Graham (justin.graham@chapmantripp.com)

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**CHAPMAN
TRIPP** 

**ORIGINATING APPLICATION FOR ORDER OF RECOGNITION OF
CUSTOMARY MARINE TITLE AND FOR PROTECTED CUSTOMARY
RIGHTS**

To the Registrar of the High Court at Whangarei

This document notifies you that—

- 1 The applicants, Ngāti Kuta and Te Patukeha, will on apply to the court for orders that:
 - 1.1 recognising that the applicants hold customary marine title in respect of the customary marine title area (**CMT Area**) set out in the **Schedule** to this application;
 - 1.2 in addition to, or as an alternative to, the order at [1.1], a protected customary rights order in respect of the following rights exercisable in respect of the CMT Area:
 - (a) management and control of access and entry to all wāhi tapu and wāhi tapu area;
 - (b) imposition and relief of rāhui;
 - (c) customary fishing rights, including the gathering of kaimoana and manu;
 - (d) right to derive commercial benefit; and
 - (e) the protection of all other customary activities exercised by the applicants in accordance with tikanga within the CMT Area;
 - 1.3 in addition to, or as an alternative to, the orders at [1.1] and [1.2], in respect of the following areas within the CMT Area, an order:
 - (a) recognising the wāhi tapu in respect of Motu Kōkako (Piercy Island) and Waipātoto (Cathedral Cave);
 - (b) protecting the wāhi tapu in respect of Motu Kōkako (Piercy Island) and Waipātoto (Cathedral Cave);
 - (c) containing restrictions on navigation of commercial craft in relation to the moana surrounding, and underneath, Motu Kōkako (Piercy Island) and Waipātoto (Cathedral Cave); and

- (d) containing any other conditions the Court deems fit in respect of the wāhi tapu at Motu Kōkako (Piercy Island) and Waipātoto (Cathedral Cave);
- 1.4 the applicants may have leave to file further evidence in support of this claim following the determination of their application to engage with the Minister of Treaty of Waitangi Negotiations pursuant to section 95 of the Marine and Coastal Area (Takutai Moana) Act 2011;
 - 1.5 for such further and other relief as the Court may grant; and
 - 1.1 the costs of this application be awarded to the applicants.
- 2 The grounds on which each order is sought are as follows:
- (a) The applicants are the hapū
 - (b) The applicants and supporting parties are mandated to make this application;
 - (c) The applicants have mandated Jamie Hurikino Hakaraia to be the holder of the order as the representative of Ngāti Kuta and Te Patukeha ki te Rawhiti and his details are set out in the accompanying affidavit;
 - (d) The CMT Area is the area to which this application relates;
 - (e) As at the signing of the Treaty of Waitangi on 6 February 1840, Ngāti Kuta and Te Patukeha ki Te Rawhiti were the established hapū located in the Rawhiti and Ipipiri regions of the Bay of Islands (the CMT Area being within those regions);
 - (f) The whānau and hapū of Ngāti Kuta and Te Patukeha ki Te Rawhiti have resided in the CMT Area, and have used the waters and land abutting the CMT Area in accordance with tikanga Māori, or customary practices, since at least 1840;
 - (g) Ngāti Kuta and Te Patukeha ki Te Rawhiti have been the primary holders of mana whenua and mana moana within the CMT Area, since at least 1840;
 - (h) The whānau and hapū of Ngāti Kuta and Te Patukeha ki Te Rawhiti have held, used and occupied the CMT Area exclusively from 1840 to the present day without substantial interruption;
 - (i) Ngāti Kuta and Te Patukeha ki Te Rawhiti have applied under the Marine and Coastal Area (Takutai Moana) Act 2011 to engage with the Minister for Treaty of Waitangi Negotiations.

The engagement process with the Minister is ongoing and iterative. If Ngāti Kuta and Te Patukeha ki Te Rawhiti's application to the Minister is successful, it will not pursue this application.

3 The application is made in reliance on:

- Sections 58, 59, 78, 94 100, 101, 105, 107 and 109 of the Marine and Coastal Area (Takutai Moana) Act 2011;
- Rule 19.2 of the High Court Rules; and
- The affidavits of Robert Sydney Willoughby, Moses Richard Witehira, Matutaera Te Nana Clendon, Moka Kainga Maata Puru, Rau Hoskins and Jamie Hurikino Hakaraia, filed in support of this application.

Date: 29 March 2017

Signature:



J W J Graham
Solicitor for Applicants

This document is filed by Justin Walter John Graham, solicitor for the Applicant, of the firm Chapman Tripp. The address for service of the Applicant is at the offices of Chapman Tripp, Level 38, 23 Albert St, Auckland.

Documents for service on the Applicant may be delivered to that address or may be served by email provided the documents are sent simultaneously to both justin.graham@chapmantripp.com & rachael.jones@chapmantripp.com

SCHEDULE: CMT AREA

