

CIV-2017-404

IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

CIV

UNDER THE

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

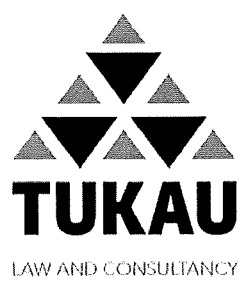
AND

IN THE MATTER OF

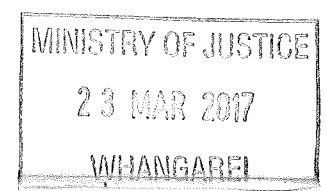
an application by the Waikare Maori Committee on behalf of Te Kapotai for orders recognising Customary Marine Title and Protected Customary Rights over the Waikare Inlet

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

Dated this 23rd day of March 2017



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CB

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 the Waikare Maori Committee (“the Applicant”), pursuant to s 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”), for orders recognising that Te Kapotai 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 the **Waikare Inlet** (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 the Waikare Inlet, 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 the Waikare Inlet.
- (iii) The right to collect customary resources from the common marine and coastal areas of the Waikare Inlet, such as:
 - (A) Rimurimu (seaweed), including edible types (karengo and parengo), and seaweed used for cultural purposes (such as piupiu);
 - (B) 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;
 - (C) Shingle and sand, for fishing, kumara pits, and building purposes;
 - (D) Shells, for ornamentation, jewellery, and fishing lures;
 - (E) Bones, which are used for carving; and
 - (F) The feathers of seabirds, which are taonga cultural materials.

UPON THE GROUNDS THAT:

The Applicant

2. The Applicant, Waikare Maori Committee, is a committee established pursuant to the Maori Community Development Act 1962 and represents the interests of Te Kapotai hapu.
3. Te Kapotai are the hapu who are tangata whenua of, and hold mana whenua and mana moana over, the Waikare Inlet.
4. Pursuant to section 58(1) of the Act, the Applicant can demonstrate that Te Kapotai holds 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 the **Waikare Inlet**, being the area set out in the map annexed as **Appendix A**.
6. The Waikare Inlet includes all that area of New Zealand fisheries waters enclosed by a line commencing at Tapu Point (at 35°18.62'S, 174°7.43'E), then proceeding in a south-easterly direction along a line to Motutokape Island (at 35°18.97'S, 174°7.95'E), then to a point on the mainland (at 35°19.0'S, 174°07.7'E), then proceeding along the line of the mean high water mark including Kaurinui and Waikino Creeks and the Waikare Inlet back to the point of commencement.
7. The Applicant seeks recognition of Protected Customary Rights in respect of the common marine and coastal area set out in the map annexed as **Appendix B**.

Te Kapotai

Ko Mahuhukiterangi te waka
Ko Whiti te tupuna
Ko Kapowai te maunga
Titiro iho ana ki tona pa tu moana, ko Motukura
Ko Waikare te awa
Ko Te Turuki te marae
Ko Te Kapotai te hapu

8. Te Kapotai is a coastal hapu located at Waikare in the southern Bay of Islands in Northland.
9. Te Kapotai has exercised mana i te whenua and mana i te moana at Waikare for many generations prior to their tupuna (ancestors) signing of Te Tiriti o Waitangi in 1840, through to today.
10. Te Kapotai's marae, Te Turuki, also known as Waikare Marae, is based at the head of the Inlet.
11. The Waikare Inlet is a taonga and is of the highest cultural and spiritual significance for Te Kapotai.
12. According to Te Kapotai, hapu rangatiratanga is the mana, authority, chieftainship, governance and control over hapu whenua and takutai moana.
13. The mana of Te Kapotai is centred on the rivers, valleys, ridges, lands of Waikare, and the water that flows through the Waikare Inlet.
14. Te Kapotai have never knowingly or willingly relinquished their right to exercise rangatiratanga over the land and foreshore and seabed within their area.

AND UPON FURTHER GROUNDS contained in the affidavits of Karen Herbert, Edward Cook, and Willow-Jean Prime.

15. The grounds on which these orders are sought are that:
- (a) Te Kapotai hold Customary Marine Title and Protected Customary Rights over the Waikare Inlet in accordance with their tikanga in that:
 - (i) They are tangata whenua and tangata moana of the Waikare Inlet, having occupied the area for many generations;
 - (ii) They have always, and continue to, exercise mana tuku iho, tino rangatiratanga (authority) and kaitiakitanga (guardianship) over the Waikare Inlet; Under the tikanga of Te Kapotai rangatiratanga, mana i te whenua/mana i te moana is derived from the atua, Te Kapotai tupuna and their continual use of mana i te moana and mana i te whenua over their traditional areas, their exclusive occupation, pa sites and wahi tapu and extensive oral histories as well as close whakapapa connections with neighbouring hapu;
 - (iii) Mana i te whenua and mana i te moana is evidenced by whakapapa, mana rangatira, ahi ka, ringa kaha, pepeha, whakatauki, waiata, pa, kainga, wahi tapu, tauranga waka, mahinga kai, traditional fishing grounds, place names, kaitiakitanga and so on;
 - (iv) Te Kapotai have exclusively used and occupied the common marine coastal area within the Waikare Inlet from 1840 to the present day without substantial interruption;

- (v) The members of Te Kapotai continue to own land on the Waikare Inlet abutting part of the specified area;
- (vi) Te Kapotai have always, and continue to exercise customary fishing rights in the Waikare Inlet;
- (vii) The Customary Marine Title and Customary Protected Rights have never been extinguished as a matter of law; and
- (viii) As set out in further evidence to be filed on behalf of the applicants.

- 16. 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.
- 17. The Applicant seeks leave to amend this application if necessary.

The orders


- 18. The orders should be made in the name of the Waikare Maori Committee on behalf of Te Kapotai.
- 19. The holder of the orders is proposed to be Willow-Jean Prime.

Additional matters

- 20. Te Kapotai have made an urgent claim to the Waitangi Tribunal that the Act is prejudicial to their customary rights and inconsistent with Te Tiriti o Waitangi.

21. Te Kapotai note for the record that this application under the Act is not acceptance of the statutory regime for the recognition of their customary rights.
22. Te Kapotai will continue to seek a full Waitangi Tribunal inquiry into the prejudicial nature of the legislation.

DATED at Pakaraka this 23rd day of March 2017



Season-Mary Downs/Heather Jamieson
Solicitors for the Applicant

This document is filed by Season-Mary Downs and Heather Jamieson, solicitors for the Applicant, of Tukai Law. Documents for service on the applicant may be:

- (a) Posted to: 91 Hupara Road, RD2, Kaikohe, Northland 0472; or
- (b) Emailed to: heatherjamieson@tukaulaw.co.nz
seasonmarydowns@tukaulaw.co.nz

APPENDIX A

Waikare Inlet Taiapure



All that area of New Zealand fisheries waters enclosed by a line commencing at Tapu Point (at 35°18.62'S, 174°7.43'E), then proceeding in a south-easterly direction along a line to Motutokape Island (at 35°18.97'S, 174°7.95'E), then to a point on the mainland (at 35°19.0'S, 174°07.7'E), then proceeding along the line of the mean high water mark including Kaurinui and Waikino Creeks and the Waikare Inlet back to the point of commencement.

APPENDIX B

