

CIV-2017-404-565

IN THE HIGH COURTS OF NEW ZEALAND  
AUCKLAND REGISTRY CIV-  
2017


IN THE MATTER OF

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

AND IN THE MATTER OF

an application by  
HONOURABLE DOVER  
SAMUELS for an order  
recognising Customary  
Marine Title and Protected  
Customary Rights of Ngati  
Kahu at Matauri and adjacent  
coastline.

**HONOURABLE DOVER SAMUELS APPLICATION  
FOR RECOGNITION ORDERS PURSUANT TO THE MARINE AND COASTAL  
AREA (TAKUTAI MOANA) ACT 2011**

Dated <sup>31st</sup> 27th March 2017 

**CHARL HIRSCHFELD**  
Barristers  
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as  
HIGH COURT  
FW:125/17  
03 APR 2017  
AUCKLAND  
CB

**To:** The Registrar of the High Court at AUCKLAND;

**and to:** Local authorities (Regional and/or District Councils) with statutory functions in the application area) *Far North District Council, Northland regional Council*

**and to:** Local authorities with statutory functions relating to land adjacent to the application area) *Department of Conservation, Transit,*

**and to:** The Solicitor General on behalf of the Attorney-General.

**This document notifies you that:**

1. HONOURABLE DOVER SAMUELS apply to the High Court for an order pursuant to s98 of the Marine and Coastal Area (Takutai Moana) Act 2011 ("the Act") to recognise the customary marine title and protected customary rights of Ngati Kahu in Matauri and adjacent coastline.

**Protected Customary Rights**

2. *Ngati Kahu* ancestors utilised the common marine and coastal area for *fishing, gathering shellfish, seaweed, stones, pumice, semi precious stones, shells, drift wood, whale and whale bones, minerals and the taking of flotsam jetsam and lagan, and land reclamation.*;

**The Applicant Group:**

3. The *Ngati Kahu* whakapapa to *NGA TUPUNA* ; *Papatuanuku = Ranginui = Tangaroa, Puhi Moana Ariki, Kupe - Kuramarotini, Nukutawhiti, Ruanui, Hauangiangi, Tahuhu Nui O Rangi, Punateahiahi, Ahuaiti = Rahiri, Uenuku ki te Marangai, Kaharau ki te Hauauru, Auha, Te Hotete, Kauteawha, Hongi Hika, Ururoa, Pomare I, II, Taurapoho, Mahia, Tupoto, Tamati Waka Nene, Patuone, and Te Hotete.* . HONOURABLE DOVER SAMUELS was appointed to make this application for and on behalf of the *Ngati Kahu* on 27th March 2017.

**Area to which the application relates:**

4. The area to which this application relates is the common marine and coastal

area (as defined in s9 of the Act) that is bounded:

- a. on the landward side by the line of mean high-water springs;
  - b. on the seaward side by the outer limits of the territorial sea;
  - c. on the Northward side by a line that extends from the coast abutting Taukou Bay (-35.117504, 173.976939) including any islands] to the outer limits of the territorial sea; and
  - d. on the southward side by a line that extends from the coast abutting from Hihi (-34.912352, 173.558443) including any islands to the outer limits of the territorial sea.
5. The area includes the common marine and coastal area surrounding the following islands: All islands and reefs lying off shore from the coastline to a distance of 12 nautical miles
6. The area is further described in attached map

**Grounds on which the protected customary rights order is sought:**

7. The grounds on which this order is sought are that :
- a. Ngati Kahu being a coastal group has relied heavily on Blue cod, Moki, hoki, kawhai, trevelly. John dory, teraki, blue nose, kingfish, trumpeter, hapuka, snapper, marlin, sailfish, shark, toheroa, scallops, mussels, oysters, pipis, mutton birds, whale, paua, ling sole, flounder, tuna, lobster, crab, tuatua, cockles, clams, eels, hake, groper, mullet, squid and wetland food stocks foraged by whanau in the estuaries and coastal margins; and
  - b. Ngati Kahu fishermen sought the deep water fish that were not available around the inner shoreline; and
  - c. Ngati Kahu also undertakes the following activities in the common marine and coastal area: fishing, gathering shellfish, seaweed, stones, pumice, semi precious stones, shells, drift wood, whale and whale bones, minerals and the taking of flotsam jetsam and lagan, and land reclamation..
  - d. Ngati Kahu has undertaken these activities since and before 1840 and continues to undertake these activities in the application area, albeit in

some instances using modern equipment, and in accordance with tikanga.

8. Ngati Kahu will deliver more information once funding for research and legal representation is secured.

**Grounds on which the customary marine title application is made:**

9. The grounds on which this order is sought are that :
  - a. Ngati Kahu has held the application area in accordance with tikanga since before 1840.
  - b. Ngati Kahu has exclusively used and occupied the application area from 1840 to the present day without substantial interruption.
10. Ngati Kahu will deliver more information once funding for research and legal representation is secured.
11. The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rantatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.
12. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:
  - a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
  - b. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by descendants of Ngati Kahu;
13. The sustenance and physical, spiritual and cultural well-being of all The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rantatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of

native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.

14. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:

a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;

15. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by descendants of The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rantatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.

16. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:

a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;

b. The sustenance and continued observance of customary and traditional practices, integral to *tikanga* carried out by descendants of Ngati Kahu;

c. The sustenance and physical, spiritual and cultural well-being of all Ngati Kahu whanau, hapu and iwi;

d. The economic development of Ngati Kahu whanau, hapu and Iwi; and

e. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.

17. The applicants hold, in accordance with *tikanga* customary rights and customary marine

title over the marine and coastal area (as defined) as particularised herein. The *tikanga* integral to the descendants of Ngati Kahu governing these activities, uses and practices will be provided in the evidence from the Ngati Kahu descendants to be given at hearing.

18. The activities, uses and practices for which the descendants of Ngati Kahu seek recognition as protected customary rights and/or providing the foundation for customary marine title:

- a. Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the descendants of Ngati Kahu in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;
- b. If interrupted since 1840 then only by unlawful interruption or interference;
- c. Are not prohibited by any enactment or rule of law; and
- d. Have not been extinguished as a matter of law.

19. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the descendants of Ngati Kahu are included in this application. Whilst the particulars in this schedule are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.

- a. Ngati Kahu;
- b. The sustenance and physical, spiritual and cultural well-being of all Ngati Kahu whanau, hapu and iwi;
- c. The economic development of Ngati Kahu whanau, hapu and Iwi; and
- d. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.

20. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The *tikanga* integral to the descendants of Ngati Kahu governing these activities, uses and practices will be provided in the evidence from the Ngati Kahu descendants to be given at hearing.

21. The activities, uses and practices for which the descendants of Ngati Kahu seek recognition as protected customary rights and/or providing the foundation for customary marine title:
  - a. Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the descendants of Ngati Kahu in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;
  - b. If interrupted since 1840 then only by unlawful interruption or interference;
  - c. Are not prohibited by any enactment or rule of law; and
  - d. Have not been extinguished as a matter of law.
22. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the descendants of Ngati Kahu are referred to in this application. Whilst the particulars in this application are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.
  - a. Ngati Kahu whanau, hapu and iwi;
  - b. The economic development of Ngati Kahu whanau, hapu and Iwi; and
  - c. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
23. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The *tikanga* integral to the descendants of Ngati Kahu governing these activities, uses and practices will be provided in the evidence from the Ngati Kahu descendants to be given at hearing.
24. The activities, uses and practices for which the descendants of Ngati Kahu seek recognition as protected customary rights and/or providing the foundation for customary marine title:
  - a. Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the descendants of Ngati Kahu in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;

- b. If interrupted since 1840 then only by unlawful interruption or interference;
  - c. Are not prohibited by any enactment or rule of law; and
  - d. Have not been extinguished as a matter of law.
25. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the descendants of Ngati Kahu as mentioned in this application. Whilst the particulars in this schedule are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.

**Contact Details:**

6. The *HONOURABLE DOVER SAMUELS* for *Ngati Kahu* is:  
C/o G Sharrock

Rightlaw Limited

11 Kaihu Street, Northcote Auckland

7. This application relies on s51(1), s58, s98-113 of the Act and the affidavit of Honourable Dover Samuels, kaumatua of Ngati Kahu.

Dated at

*Kerikeri*  
*2nd*

on the

*2nd April 2017*



***HONOURABLE DOVER SAMUELS***



