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CIV-2017-404-573

**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 MAIA
MARIA NOVA for an order
recognising Customary
Marine Title and Protected
Customary Rights of Ngai
Tahuhu, Ngati Tuu, Ngati
Kukukeaat Whangarei and
adjacent coastline from Cape
Brett to North Head, and
Mangakahia River from Te
Aroha marae to the entry into
the Kaipara.

**MAIA MARIA NOVA APPLICATION
FOR RECOGNITION ORDERS PURSUANT TO THE MARINE AND COASTAL
AREA (TAKUTAI MOANA) ACT 2011**

Dated *April* 2017

RIGHTLAW

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HIGH COURT
FW: 129/17
31 MAR 2017
AUCKLAND

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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, Whangarei Council, Northland regional Council, Auckland City*

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

The Solicitor General on behalf of the Attorney-General.

This document notifies you that:

1. MAI MARIA NOVA 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea in Whangarei and adjacent coastline from Cape Brett to North Head, and Mangakahia River from Te Aroha marae to the entry into the Kaipara.

Protected Customary Rights

2. *Ngai Tahu, Ngati Tuu, Ngati Kukukea 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. As Tohunga they used the sea for spiritual and material guidance including the ha, There are urupā in the immediate vicinity of the foreshore and in a number of instances the only access to the urupā is through the foreshore to the location. - exclusive to whanau, identified from cross references of prominent land marks - . As Tohunga they used the sea for spiritual and material guidance including the harvesting of medicines, whakatauki me nga pepeha. My tupuna was a great tohunga of the tohora (the large white whale) which was important to the economic and cultural identity of Te Waiariki of Ngati Tuu. On return from the Chatham*

Islands my tupuna Horomona Te Atua was guided home by an albatross (toroa).;

The Applicant Group:

3. The *Ngai Tahu*, *Ngati Tuu*, *Ngati Kukukea* whakapapa to *NGA TUPUNA* :, *Papatuanuku* = *Ranginui* = *Tangaroa*, *Puhi Moana Ariki*, *Kupe* - *Kuramarotini*, *Nukutawhiti*, *Ruanui*, *Hauangiangi*, *Tahuhu Nui O Rangī*, *Tuu*, *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*, *Horomona Te Atua* , *Honetane*, *Te Paki*, and *Hongi Hika*. Many hapu associated with *Ngati Tuu*, being *Ngai Tahu*, *Te Whanau Pani*, *Ngati Kukukea*,. *MAI MARIA NOVA* was appointed to make this application for and on behalf of the *Ngai Tahu*, *Ngati Tuu*, *Ngati Kukukea* 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 North Head 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 Cape Brett 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

Grounds on which the protected customary rights order is sought:

6. The grounds on which this order is sought are that :
- a. *Ngai Tahu*, *Ngati Tuu*, *Ngati Kukukea* 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. Ngai Tahu, Ngati Tuu, Ngati Kukukea fishermen sought the deep water fish that were not available around the inner shoreline; and
 - c. Ngai Tahu, Ngati Tuu, Ngati Kukukea 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. As Tohunga they used the sea for spiritual and material guidance including the ha.
 - d. Ngai Tahu, Ngati Tuu, Ngati Kukukea 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.
7. Ngai Tahu, Ngati Tuu, Ngati Kukukea will deliver more information once funding for research and legal representation is secured.

Grounds on which the customary marine title application is made:

8. The grounds on which this order is sought are that :
- a. Ngai Tahu, Ngati Tuu, Ngati Kukukea has held the application area in accordance with tikanga since before 1840.
 - b. Ngai Tahu, Ngati Tuu, Ngati Kukukea has exclusively used and occupied the application area from 1840 to the present day without substantial interruption.
9. Ngai Tahu, Ngati Tuu, Ngati Kukukea will deliver more information once funding for research and legal representation is secured.
10. 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.

11. 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 Ngai Tahu, Ngati Tuu, Ngati Kukea;

12. 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.

13. 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;

14. 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.

15. 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea;
 - c. The sustenance and physical, spiritual and cultural well-being of all Ngai Tahu, Ngati Tuu, Ngati Kukukea whanau, hapu and iwi;
 - d. The economic development of Ngai Tahu, Ngati Tuu, Ngati Kukukea whanau, hapu and Iwi; and
 - e. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
16. 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea governing these activities, uses and practices will be provided in the evidence from the Ngai Tahu, Ngati Tuu, Ngati Kukukea descendants to be given at hearing.
17. The activities, uses and practices for which the descendants of Ngai Tahu, Ngati Tuu, Ngati Kukukea 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea 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.
18. 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea 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. Ngai Tahu, Ngati Tuu, Ngati Kukukea;
 - b. The sustenance and physical, spiritual and cultural well-being of all Ngai Tahu, Ngati Tuu, Ngati Kukukea whanau, hapu and iwi;
 - c. The economic development of Ngai Tahu, Ngati Tuu, Ngati Kukukea whanau, hapu and Iwi; and
 - d. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
19. 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea governing these activities, uses and practices will be provided in the evidence from the Ngai Tahu, Ngati Tuu, Ngati Kukukea descendants to be given at hearing.
20. The activities, uses and practices for which the descendants of Ngai Tahu, Ngati Tuu, Ngati Kukukea 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea 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.
21. 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea 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. Ngai Tahu, Ngati Tuu, Ngati Kukukea whanau, hapu and iwi;
 - b. The economic development of Ngai Tahu, Ngati Tuu, Ngati Kukukea whanau, hapu and Iwi; and
 - c. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
22. 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea governing these activities, uses and practices will be provided in the evidence from the Ngai Tahu, Ngati Tuu, Ngati Kukukea descendants to be given at hearing.
23. The activities, uses and practices for which the descendants of Ngai Tahu, Ngati Tuu, Ngati Kukukea 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea 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.
24. 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 Ngai Tahu, Ngati Tuu, Ngati Kukukea 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 *MAI MARIA NOVA* for *Ngai Tahu, Ngati Tuu, Ngati Kukukea* 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 Mai Maria Nova, kaumatua of Ngai Tahu, Ngati Tuu, Ngati Kukukea.

Dated at *3/4/2017* on the

MAI MARIA NOVA

by: Mai Nova, grantor.