

**SUBMISSION REGARDING THE FORESHORE & SEABED
OF NEW ZEALAND**

1. This submission is made on the behalf of Te Runanga O Kirikiriroa Trust Inc (“TROK”), an urban Maori authority representative of over 23,000 mata waka Maori within the city of Kirikiriroa. TROK is also a member of NUMA, the National Urban Maori Authority which was established this year for the benefit of Maori living in New Zealand urban localities.

Position of Te Runanga O Kirikiriroa regarding Foreshore and Seabed Issues

2. From the outset, Te Runanga O Kirikiriroa Trust Inc states its position on issues regarding the foreshore and seabed of New Zealand as follows:
 - 2.1. We reject the Government’s proposals as outlined in its consultation document.
 - 2.2. We support and agree with such other Maori who have expressed their rejection of the Government’s proposals.
 - 2.3. We contend that due process should continue, unimpeded and without Government legislative intervention, to enable Maori to apply to have their customary rights to the foreshore and seabed determined by the Maori Land Court as decided by the Court of Appeal in its unanimous decision of 19 June 2003¹:
 - 2.3.1. In light of the above contention, we further contend that Government might better assist the rapid achievement of the principles of protection and certainty by way of bolstering the financial and human resource base available to the Maori Land Court to ensure it is not mired because it lacks such resources.
 - 2.4. We reject the notion of a “public domain” as an alternative form of land tenure title to such land areas that are yet to “go through” the New Zealand court process for determination of customary rights and interests held by Maori.

¹ Ngati Apa, Ngati Koata, Ngati Kuia, Ngati Rarua, Ngati Tama, Ngati Toa & Rangitane and Anor v The Attorney-General and Ors, CA CA173/01 [19 June 2003]

2.5. We urge the Government to be guided by the principle of 'co-existence' between the Crown and Maori (and not conquest of Maori). We therefore contend that issues concerning customary rights of Maori to the foreshore and seabed merely highlights the need for Government, in conjunction with Maori, to review the constitutional nature of this country with regard to:

- 2.5.1. the constitutional status of the Treaty of Waitangi;
- 2.5.2. the exercise of rights and responsibilities under the Treaty of Waitangi by Maori, the Crown and Government;
- 2.5.3. the New Zealand Court process, particularly in terms of the proposition of establishing a Supreme Court of New Zealand to replace the Privy Council;
- 2.5.4. the notion of New Zealand becoming a republic; and
- 2.5.5. the protection of customary rights and interests of Maori.

2.6. We abhor the 'scare mongering' tactics of Government and the media which imply that recognition of the customary rights of Maori, by the Maori Land Court, will result in blocking public access to beaches, and Maori commercialising such customary rights. As described by one Party Leader in Parliament, the Government's actions has propagated fear amongst the public and this could cause "immeasurable damage to us as a nation".

2.7. We would remind Government that customary rights have never been extinguished. As a partner to the Treaty of Waitangi, Maori continue to honour their obligations under the Treaty. There is little evidence that Maori would act in the manner as implied in para 2.6 above. Furthermore, the sharing of natural resources is typical of Maori custom as is the practice of endeavouring to prevent the loss of natural resources significant to this country, such as land.

Proposed solutions for a way forward

- 3. In light of the position stated above, we contend that the Government owes an apology to Maori (and the public of Aotearoa as a whole) for reasons outlined in para 7 below.

4. We urge Government to 'step back from' and 'out of the way' of the impending due process Maori were unequivocally entitled to immediately following the Court of Appeal's decision of 19 June 2003. We contend that by allowing due process to occur, many 'fear-filled' issues would be addressed and abated as a natural part of progressing through the Court process.
5. We would welcome the Government's support to boost the financial and human resource base of the Maori Land Court so that it can carry out its role of determining customary rights of Maori in a timely, affordable manner for Maori.
6. We encourage Government to engage in meaningful dialogue with Maori and that it use fair and meaningful processes to do so. Such dialogue and process, we contend, would also address and abate 'fear-filled' issues that have been identified to date.
7. As mentioned above, we therefore respectfully contend that the Government owes an apology to Maori (and the public of Aotearoa as a whole) for the following reasons:
 - 7.1.1. the Government's 'direct intervention' following the Court of Appeal's decision was an affront to the mana of Maori across the country;
 - 7.1.2. Maori are being denied the basic tenures of access to justice and due process, which are commonly available to all members of the public, because of Government's intervention following the Court of Appeal's decision; and
 - 7.1.3. the Government's subsequent ill-conceived consultation process has subjected Maori to an offensively limited timeframe within which to consult with Government about issues critical to maintaining and protecting the remaining vestiges of customary rights of Maori to coastal marine areas.

Background – What gave rise to consultation process on foreshore and seabed issues?

8. Briefly, on 19 June 2003, the Court of Appeal found that the Maori Land Court has jurisdiction to investigate the foreshore and seabed to determine whether it is Maori

customary land.² If Maori claimants are able to prove that areas of the foreshore and seabed are Maori customary land, the Maori Land Court may be able to determine the owners and issue a certificate of title.³

9. In its decision, the Court of Appeal also identified the following key factors, namely:⁴

- Customary rights do not derive from the Crown;
- No legislation put forward by the Crown extinguished customary rights; and
- The assumption that the Crown owns the foreshore and seabed is wrong.

10. Shortly after the Court of Appeal's decision was announced, the Government stated that it would act to clarify issues of ownership by legislating the foreshore and seabed as Crown land.⁵ Such swift reaction was apparently prompted by the public's concern with the prospect of freehold title being issued and therefore their access to the beaches could be affected by such titles.

11. The proposition of new Government legislation is intended to provide clarity and certainty on how various interests, particularly those concerning public access, customary rights and private ownership, can be reconciled.

The Basis of Government's Proposals - Four Principles

12. The Government's approach to resolve public concerns and fulfil its assumed responsibilities to protect public access and the customary rights of Maori to the foreshore and seabed of New Zealand are based on the following four principles:⁶

- **The principle of access** - The foreshore and seabed should be public domain, with open access and use for all New Zealanders.
- **The principle of regulation** - The Crown is responsible for regulating the use of the foreshore and seabed, on behalf of all present and future generations of New Zealanders.

² Ibid.

³ Te Ope Mana A Tai, "Protecting customary rights in the costal marine area", Sept 2003, pg 1.

⁴ Ibid.

⁵ Ibid.

⁶ "The foreshore and seabed of New Zealand, Protecting Public Access and Customary Rights", Government proposals for consultation, August 2003, p14.

- **The principle of protection** - Processes should exist to enable the customary interests of whanau, hapu and iwi in the foreshore and seabed to be acknowledged, and specific rights to be identified and protected.
- **The principle of certainty** - There should be certainty for those who use and administer the foreshore and seabed about the range of rights that are relevant to their actions.

Principle of Access

13. Of critical concern is the principle of access because it addresses the need to ensure that Maori will be able to exercise their customary rights and practices in relation to the foreshore and seabed of Aotearoa.
14. A relationship akin to equal partnership between Maori and the Crown needs to be established for administering access to the foreshore and seabed. Such an approach is required to ensure that neither the Government nor the public thwart the capacity of Maori to exercise their mana and to carry out their customary rights and responsibilities in relation to such rights that they have inherited from their tupuna over coastal marine areas.
15. We reject any accusations implied by the Government, the media and the public that the recognition of customary rights by the Maori Land Court, without the Government's "legislative intervention", will empower Maori to block public access to beaches and also result in the commercialisation of such rights.
16. Furthermore, the blocking of access to the foreshore and seabed is not a key factor or basis for why Maori have sought, and wish to continue to seek, clarification of their customary rights via the New Zealand courts process.
17. It is further contended that the issue of blocking access is a more 'regular and ongoing practice' exercised by private landowners, private companies and / or local government bodies no matter how few in number such parties maybe, or for the latter, no matter how few in square metres such coastal marine areas may cover.
18. At most, one example of customary practice that could be misperceived and / or misinterpreted as Maori 'blocking access to beaches' may be when a *rahui* is

exercised. In brief, a rahui is a customary practice Maori carry out when particular events or circumstances arise (for example, if a person drowns at a beach). A rahui could often be a short-term measure held over a certain time period (for example, a rahui might be declared over a particular coastal marine area to enable the replenishment of a shellfish species). Furthermore, it is a practice carried out on a customary, cultural and spiritual basis and often only such persons who hold the mana to do so will declare a rahui.

Principle of Regulation

19. The Government claims the right to regulate the foreshore and seabed. Following such an assertion, in order to exercise such regulation, it is contended that the Government would need to:
 - 19.1. provide an effective process (for example, the New Zealand court systems' status quo) to identify, fully recognise and protect the customary rights of Maori to coastal marine areas;
 - 19.2. ensure that regulations be formulated, managed and administered in partnership with the appropriate Maori whanau / hapu / iwi entitled to exercise customary rights over particular coastal marine areas; and
 - 19.3. recognise that Maori have staunchly upheld their responsibilities as kaitiaki to protect the foreshore and seabed in their coastal marine areas for generations past, and for generations to come.

Principle of Protection

20. Legal processes for the protection of customary rights of Maori to the foreshore and seabed already exist, and therefore Maori should be allowed to exhaust current processes without any additional limiting legislative interventions from Government.
21. In terms of Government's consultation process with Maori on the foreshore and seabed issues however, we are concerned by the "ill" nature of the consultation platform established by Government with Maori. The hasty consultation timeframe imposed by Government has been proving detrimental to both parties, but particularly for Maori.

22. We are concerned to ensure that the rapid consultation process does not lead to hasty 'negotiations' eventuating between the Government and various representatives of Maori, which may jeopardise, or at worse, cause the loss of the remaining processes available for Maori to protect their customary rights to the coastal marine areas (for example, under the 1992 Sealord Deal rights and interests of Maori to non-commercial fishing (including customary law and aboriginal title) no longer have legal effect).

Principle of Certainty

23. Similar to the principle of protection, with regard to certainty, once again legal processes are presently and readily available to enable the 'certain' determination of customary rights to which Maori are entitled. Such processes need not be altered, particularly at the expense of Maori customary rights being restricted by overriding interests (such as the public interest).

24. Furthermore, Maori are entitled to gain certainty to identify and protect the exercise of their customary rights. Engaging in such a process is crucial for Maori. Equally so however, is ensuring that such a process is not long, drawn-out, subject to undue delay and cost, as has been the 'unjust' experience for many Maori claimants who participate in the Waitangi Tribunal process.

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