Barrister & Solicitor

Memo

To: , Northland Planning & Development

From:

Date: 26 July 2021

Subject Kingfish Lodge - Ngati Kahu ki Whangaroa

Introduction / Background

1. In this note I summarise the investigation I undertook to try to better understand Ngati Kahu ki Whangaroa's claimed interest in the concession Kingfish Lodge is seeking from the Department of Conservation (**DoC**).

2. The concession relates to both existing and proposed infrastructure and amenities (including a new jetty for public access) located (including partly) on a marginal strip adjacent to Kingfish Lodge. The application is presently on hold following feedback received from Ngati Kahu ki Whangaroa in January this year. I have not seen that application. Both regional and district consents will also be needed alongside the concession to fully authorise those uses and activities.

3. In the meantime, however, an amended resource consent application to the Far North District Council (**FNDC**) has been granted. Consents relating to activities within the marginal strip were specifically excluded from the application. Ngati Kahu ki Whangaroa is understood to have confirmed they are only interested in the parts of the development that relate to the marginal strip and coastal marine area. This makes some sense given the landward extent of Ngati Kahu ki Whangaroa's tribal area is only on the western side of the Whangaroa Harbour (refer map below). However, given this limitation, the basis for its interest in the marginal strip is unclear.

4. Ngati Kahu ki Whangaroa were not initially identified for tangata whenua consultation for either of the FNDC or DoC applications.

5. Instead, only Te Ukaipo – Iwi Environmental Management Unit for Te Runanga o Whaingaroa were consulted about the development and are supportive. Te Runanga o Whaingaroa was established in 1991, presumably under the short-lived Runanga Iwi Act 1990. Its Board comprises one representative from 15 marae. In addition to being a 'mandated iwi organisation' in the Māori Fisheries Act 2004 and an 'iwi aquaculture organisation' in the Māori Commercial Aquaculture Claims Settlement Act 2004 it also represents Ngāpuhi / Ngāti Kahu ki Whaingaroa as an 'iwi authority' for the purposes of the Resource Management Act 1991".[1]

[1] I note i was signatory to the replacement Trust Deed in 2005 in his capacity as trustee, however he is not listed as a current trustee on the runanga's website. The 15 marae represented are: Taupo, Mangawhero,

6. Ngāpuhi / Ngāti Kahu ki Whaingaroa is a separate iwi to Ngati Kahu ki Whangaroa.[2]

7. On lodgment of the concession application, DoC advised of other hapu groups with interests in the area and helped facilitate the meeting held in January 2021. [redacted] attended that meeting and is identified as representing Kaitangata, who are a hapu of Ngati Kahu ki Whangaroa and associated with the north-western side of Whangaroa Harbour. Reference in the meeting notes is also made to another iwi or hapu – Ngati Kawau which you understand to affiliate to Te Ukaipo – Iwi Environmental Management Unit for Te Runanga o Whaingaroa. The Te Puni Kokori website confirms the same.

8. You have said that DoC defer to [redacted] as the main representative and/or contact for Ngati Kahu ki Whangaroa. [redacted] is evidently a key figure in the area for Ngati Kahu ki Whangaroa, being a trustee of its representative organisation, Kahukuraariki Trust[3]. [redacted] has also previously been a trustee of Te Runanga o Whaingaroa who, as noted above, is the recognised representative of Ngāpuhi / Ngāti Kahu ki Whaingaroa.

9. Two of the key points raised at the January 2021 meeting were (as summarised in the meeting notes prepared by Lara McDonald of DoC):

   (a) "3. …[redacted] also highlighted his concerns regarding the history of the site, and the associated maori reserve that encompassed the foreshore and adjacent stream, and gave tangata whenua access to the kaimoana, and fresh water supply. This information is not represented in the application, nor is it on the property title, or in any other information seen to date. [redacted] to track down any information on this reserve, with the potential to reinstate this classification if possible."

   (b) "6. This area may be subject to settlement, and may not always be crown land. Fleur raised a question of whether marginal strip was subject to treaty claims. Hapu mindful that any agreement/plan for this area needs to be appropriate, given the pre-settlement environment in this area."

Waihapa, Te Tahaawai, Te Huia, Te Patunga, Mangaiti, Karangahape, Ngati Ruamahue, Ngaitupango, Takou, Mangatowai, Waitaruke, Taemaro and Te Tangata.

[2] The Te Puni Kokori website (https://www.tkm.govt.nz/region/te-tai-tokerau/) contains some useful information about the two iwi including details of their respective tribal areas, associated hapu and marae and who the representative organisations of each are.

Links to the Trust Deeds of each representative body are also included here - https://whaingaroa.iwi.nz/wp-content/uploads/2017/10/Trust-Deed.pdf and https://sites.google.com/view/kahukuraariki-trust/settlement/trust-deed.

[3] Refer link to Trust's website (https://sites.google.com/view/kahukuraariki-trust/Trustees/trustees) and bio which reads:

> [redacted] has a background as a builder, is Chair of Karangahape Marae (Whangaroa), and Regional Coordinator for Te Whare Wānanga o Awanuiārangi. Roger was one of the initial trustees of Kahukuraariki Trust and before that the Ngātikahu ki Whangaroa Trust. [redacted] lives in the rohe, at Waihapa, and represents Te Kōmanga Marae."

10. In relation to the alleged 'maori reserve', Lara later advised that "We have been unable to trace any documents where the fishing reserve in the bay is highlighted".

Ngati Kahu ki Whangaroa

11. Ngati Kahu ki Whangaroa is a settled iwi. A link to the Treaty settlement documents follows https://www.govt.nz/browse/history-culture-and-heritage/treaty-settlements/find-a-treaty-settlement/ngatikahu-ki-whangaroa/ngatikahu-ki-whangaroa-deed-of-settlement-documents/.

12. In summary, mandate was recognised in 2004. An Agreed in Principle was reached in 2007 and a Deed of Settlement entered with the Crown on 18 December 2015. The settlement legislation (Ngatikahu ki Whangaroa Claims Settlement Act 2017) came into force on 21 August 2017.

13. The Area of Interest for the settlement is shown below and excludes land on the eastern side of Whangaroa Harbour:

14. While the Area of Interest for the settlement excludes land on the eastern side of Whangaroa Harbour, a statutory acknowledgement applies to a coastal marine area and includes the entire Whangaroa Harbour as shown below:

15. The Far North District Plan includes as Appendix 7F this relevant statutory acknowledgment. Ngati Kahu ki Whangaroa's association with the Harbour cannot be ignored.

Maori or fishing reserves

16. There is little discussion in the Deed of Settlement concerning fishing reserves, although the fishing (and other food gathering) interests of Ngati Kaitangata are specifically recorded.

17. The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*[4] (released in 1988) is however a good reference for the purpose of understanding more about the fishing rights of the Muriwhenua tribes of the Far North – which included Ngati Kahu.

    (a) There is discussion about Maori oyster reserves being established in the Whangaroa Harbour between 1913 and 1933.

    (b) Reference is also made to 'Maori fishing reserves' however none were ever created in the 62 years the law providing for them was in existence (repealed in 1962).

18. To understand more about the Maori oyster reserves reference should also be made to the *Report of the Waitangi Tribunal on the Manukau Claim* (released in 1985).[5] For context, in the early Auckland days, Maori from Manukau were harvesting and selling oyster in town and were making a fortune. Pakeha wanted to do the same, which the Crown allowed, and over time the oyster beds became depleted. Maori oyster reserves were created to exclude commercial harvesting.

19. Through a search of various fishery regulations including as recently as 2013, it does appear that two Maori oyster fisheries (from which a person who is not a Maori must not take oysters) may still exist as follows:[6]

    (a) all that part of the foreshore surrounding the area of land known as Jones Peninsula in Whangaroa Harbour; and

    (b) all that part of the foreshore of Whangaroa Harbour commencing at a point approximately 0.8 km from the easternmost point of Middle Head; then following the coastline in a northerly and westerly direction for approximately 1.6 km; then in an easterly direction for approximately 0.8 km.

20. I'm afraid I am not sufficiently familiar with the area to know where these geographic reference points are in relation to Kingfish Lodge. I suggest that before any significant reliance is placed on this result, a more comprehensive search of fisheries regulations (and other sources such as Archives NZ and Fisheries New Zealand) should be undertaken.

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[4] Link to report follows https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68478237/Muriwhenua%20Fishing%20Report%201988.compressed.pdf

[5] Link to report follows https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68495207/The%20Manukau%20Report%201985.pdf

[6] Regulation 66 of the Fisheries (Amateur Fishing) Regulations 2013.

21. Given though the apparent nature of the right / restriction, and that Government department responsibility appears to rest with the Ministry for Primary Industries - DoC's interest in the matter (and the coastal marine area) is questionable.

22. In terms of any potential claim for customary marine title and/or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011, my review of publicly available information did not reveal that Ngati Kahu ki Whangaroa has made any kind of application under that Act.[7] Of interest though:

    (a) A High Court application lodged by Ngā Hapu o Ngāti Kahu (CIV-2017-485-000268) does not include Ngati Kahu ki Whangaroa with their claim area located further north.

    (b) Ngati Kahu ki Whangaroa and Ngapuhi ki Whangaroa are listed as an applicant group (MAC-01-01-067) with Te Runanga o Whaingaroa Incorporated (Deborah.Edmunds@xtra.co.nz) listed as their representative. A copy of the application was not available but could be requested.

    (c) Several other iwi and hapu groups appear to have also made applications (including to the High Court) that relate to the Whangaroa Harbour.

    (d) Although these applications were lodged around 2017, I generally understand that very little progress has been made towards resolution either through direct Crown engagement or High Court proceedings.[8]

23. For completeness I also contacted the Maori Land Court registry to confirm that they do not have any record of any reserve-type status associated with the land on which Kingfish Lodge is located or the adjacent marginal strip and coastal marine area.

Marginal strip subject to Wai claim / future settlement

24. You also asked me to find out whether Ngati Kahu ki Whangaroa has any Wai claims registered on the marginal strip outside of Kingfish Lodge.

25. I am not aware that the Waitangi Tribunal have a searchable register of this nature and note also that the Ngati Kahu ki Whangaroa associated Wai claims are not easily identifiable or accessible. Given however that Ngati Kahu ki Whangaroa has settled its historic claims it is likely a moot point.[9]

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[7] You may recall that this Act replaced the Foreshore and Seabed Act 2004.

[8] Links to both the High Court and Te Arawhiti websites follow - https://www.courtsofnz.govt.nz/the-courts/high-court/high-court-lists/marine-and-coastal-area-takutai-moana-act-2011-applications-for-recognition-orders/ and https://www.tearawhiti.govt.nz/te-kahui-takutai-moana-marine-and-coastal-area/

[9] See particularly s14(2) & (3) of the Ngatikahu ki Whangaroa Claims Settlement Act 2017 which lists the Wai claims that have been settled. They include:

Wai 116 (Taemaro Land claim)
Wai 912 (Ngatikahu ki Whangaroa Lands and Resources claim); Wai 45 (Muriwhenua Lands claim)
Wai 58 (Whangaroa Lands and Fisheries claim)
Wai 230 (Matauri and Putataua Bays claim)
Wai 258 (Whangaroa Lands claim)
Wai 262 (Indigenous Flora and Fauna and Cultural Intellectual Property claim)

26. In terms of the marginal strip being used in any future Nga Puhi-related settlement, this remains possible, but that can be said for any Crown-owned land. Without further information of a specific claimed interest in the land, I cannot assess this issue further.

Wai 1144 (Constitution Act 1986 claim)
Wai 1487 (Florence Bishop and Don Bishop (Ngāitupango, Ngāti Ruamahoe, Ngāti Kura, Ngati Kahu ki Whangaroa) claim)
Wai 1661 (Ngāti Rua (Wood, Smith, and Wood) claim)
Wai 1666 (Ngāti Hine, Ngāti Kawau, Ngāti Kawhiti, and Ngā Uri o Te Pona (Taniwha) claim)
Wai 1684 (Puru, Torckler, and Katene Whanau claim)
Wai 1832 (Hapu o Te Rohe Potae o Whangaroa (Kingi) claim)
Wai 1845 (Allen, Pawa, Travers, and Undin Whanau claim)
Wai 1846 (Ngāti Ruamahoe and Ngati Kahu ki Whangaroa (Sailor Morgan) claim)
Wai 1848 (Ngāti Miro and Ngāti Kura (Paki Whanau) claim)
Wai 1849 (Ngāti Kura and Ngati Kahu ki Whangaroa (Wiremu Samuels) claim)
Wai 1850 (Ngāti Kura and Ngati Kahu ki Whangaroa (Hera Epiha) claim)
Wai 1851 (Ngāti Miro, Ngāti Kura, and Ngati Kahu ki Whangaroa (John Terewi) claim)
Wai 1852 (Ngāti Kura and Ngati Kahu ki Whangaroa (Epiha Whanau) claim)
Wai 1853 (Ngāti Miro, Ngāti Kura, and Ngati Kahu ki Whangaroa (Wiremu Hone Paki) claim)
Wai 1854 (Ngāti Miro, Ngāti Kura, and Ngati Kahu ki Whangaroa (Tamaiparea) claim)
Wai 1855 (Ngāti Miro, Ngāti Kura, and Ngati Kahu ki Whangaroa (Dawn Davies) claim)
Wai 2004 (Ngāti Kura, Ngati Kahu ki Whangaroa, and Whakarara Tribal Committee (Tamaiparea) Lands claim)
Wai 2023 (Te Pahi Islands (Thorne) claim)
Wai 2115 (Ngati Kahu ki Whangaroa Natural Resources (Paki) claim)
Wai 2149 (Ngā Uri o Te Pona Waahi Tapu (Taniwha) claim)
Wai 2151 (Ngāti Kahu Lands and Other Issues (Stewart) claim)
Wai 2170 (Ngati Kahu ki Whangaroa and Ngāpuhi Lands (Pine) claim).