

IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON 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 Angeline  
Greensill for and on behalf of  
Tainui hapū o Tainui waka  
represented by Tainui Hapū  
Environmental Management  
Committee for an order  
recognising customary marine  
title and protected customary  
rights under the Act

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**APPLICATION FOR RECOGNITION ORDERS**

Dated this 3<sup>rd</sup> day of April 2017

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<b>RECEIVED</b> Waitangi Tribunal
<b>14 Mar 18</b>
Ministry of Justice WELLINGTON

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**To:** the Registrar of the High Court at Hamilton

**And to:** Waikato Regional Council

**And to:** Waikato District Council

**And to:** Ngā Hapū o te Uru Customary Fisheries Forum

**And to:** the Solicitor-General on behalf of the Attorney-General

**THIS DOCUMENT NOTIFIES YOU THAT:**

1. Angeline Greensill (“the applicant”), for and on behalf of Tainui hapū o Tainui waka represented by the Tainui hapū by the Tainui Environmental Management Committee (“the applicant group”) will, on 3 April 2017 apply to the Court for orders relating to the particular area of the common marine and coastal area (rohe moana o Tainui hapū o Tainui waka hapū o Tainui waka) that is between:
  - a) Waipohutukawa in the north (37°43.34'S 174°49.30'E);
  - b) Papanui Point in the south (37°43.34'S 174°49.30'E);
  - c) the landward boundary in the east extends from mean high water springs mark at Omowai, moves west to the Oporuru river then follows the Takapaunui River to Papanui Point; and
  - d) the seaward boundary has been determined by the Marine and Coastal Area (Takutai Moana) Act 2011 to be the outer limits of the territorial sea.
2. This area is marked approximately in the gazetted rohe moana map attached as **Appendix “A”**.
3. The orders sought are protected customary rights and customary marine title within the rohe moana o Tainui hapū o Tainui waka arising from:
  - a) ancestry, permanent occupation and use of its coastline, the adjoining foreshore, rivers, streams, and marine area since 1840

without substantial interruption;

- b) whānau and hapū customarily fishing (using feet, hand-line, net, long-line, spear, and diving), to catch koura, tamure (snapper), hapū (kingfish), gurnard (kumukumu), shark (mangō), flounder (pātiki), bait fish, eels (tuna), whitebait and other fish found in the takutai moana and river estuaries;
- c) the gathering of shellfish such as paua, kina, tio, kutai, tupa, kokota, oysters, snails (pūpū), and koura (crayfish);
- d) the taking of seabirds;
- e) the taking of aquatic plants (including karengo);
- f) the cultivating, planting, maintenance, and use of plants in CMCA wet margins and adjacent land (including flax, tī kouka, wiwi, kahikatea, kowharatanga, ngaio, pingao, manuka, pohutukawa, koromiko, kawakawa);
- g) the protection of trees that are indicators for seasonal fishing and locators of boundaries;
- h) extracting non-nationalised minerals for non-commercial and purposes (including red ochre, clays, ironsand and rocks);
- i) collecting traditional materials that enhance, preserve and protect the applicant groups cultural practices, including collecting mud, paru, plants, perished mammals, seabirds, rocks, shells, and other materials from its wetlands, estuarine margins and the sea;
- j) reintering kōiwi in dunes, whenua and crevices in the limestone outcrops;
- k) capturing sand to restore eroded beaches at Te Kopua and Te Whaanga;
- l) allowing others to undertake activities; and

- m) all customs and cultural practices associated with the above takings and uses including cultural practices founded in spiritual beliefs such as *karakia tawhito*, imposition of *rāhui*, imposition of *wāhi tapu*, exercise of *kaitiakitanga* and *mana*, transfer of knowledge of *hapū* marine culture, launching *waka*, trade, seasonal *kaimoana* exchange, access to gardens on land, *tangihanga*, *manaakitanga*, naming of places in the sea and foreshore to specify fishing areas, reefs and people who had authority over them.

#### THE APPLICANT GROUP

4. The applicant is mandated to speak for the applicant group on Environmental, Coastal and Fisheries matters. This is further outlined in the affidavit of Angeline Greensill in support of this application.
5. Tainui, the applicant group, whakapapa to the original people of the Whaingaroa, Aotea and Kawhia area. Notable ancestors who link *whānau* and *hapū* together are: Hoturoa, Rakatāura and Kahukeke, Tāwhao, Punuiatekore and Marutehiakina, Kakati, Tuirirangi, Koata, Kawharu, Te Ikaunahi, Hounuku, and others.
6. Tainui is made up of 12 *hapū* with lands on the north and south side of Whaingaroa Harbour to Papanui Point Those *hapū* are: Ngāti Koata (ki Whāingaroa), Ngāti Te Ika/Ikaunahi, Ngāti Pūkoro, Ngāti Kahu, Ngāti Te Kore, Ngāti Hounuku, Te Paetoka and Ngāti Te Karu, Ngāti Tira, Ngāti Ruaruhe, Ngāti Tahau, and Ngāti Heke/Haki. Ngāti Tutuira is also a Tainui *hapū* connecting us to Ngāti Tahinga in the north. Ngāti Whakamarurangi whose lands are north of the Aotea harbour are also closely related.
7. Tainui *whānau* and *hapū* have continually occupied Te Whaanga, Te Kopua and Rakaunui. Te Horea at Te Akau (north of Whaingaroa Harbour) was occupied until 1941 when the Native Land Court gave it to a *Pākehā* leaving us with a small *urupā* on that land. Our meeting house

Miria te Kakara and papakainga at Te Kopua, were destroyed by the government in the same year to make way for an emergency aerodrome. However, whānau remained on the lands south of the confiscation and are still there today.

#### **GROUNDS ON WHICH THE PROTECTED CUSTOMARY RIGHTS RECOGNITION ORDER IS SOUGHT**

8. Tainui hapū o Tainui waka, through the applicant, seek a protected customary rights recognition order on the grounds that its protected customary rights relating to the rohe moana o Tainui hapū o Tainui waka hapū may be recognised by an order of the Court made on an application under section 100 of the Act.
9. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for protected customary rights meets the requirements of s 51(1) of the Act.
10. The applicant group meets the requirements in s 51(1) of the Act because it:
  - a) has exercised their rights before and since 1840;
  - b) continues to exercise those rights in rohe moana o Tainui hapū o Tainui waka in accordance with tikanga in either exactly the same or a similar way, or in a way that has evolved over time; and
  - c) is applying for rights that have not been extinguished as a matter of law.

#### **GROUNDS ON WHICH THE CUSTOMARY MARINE TITLE RECOGNITION ORDER IS SOUGHT**

11. Tainui hapū o Tainui waka, through the applicant, Angeline Greensill, seek a customary marine title recognition order on the grounds that its customary marine title relating to rohe moana o Tainui hapū o Tainui waka hapū may be recognised by an order of the Court made on an application under s 100 of the Act.

12. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for customary marine title meets the requirements of s 58 of the Act.
13. This meets the requirements in s 58 of the Act because it:
  - a) holds the rohe moana o Tainui hapū o Tainui waka in accordance with tikanga;
  - b) has, in relation to rohe moana o Tainui hapū o Tainui waka exclusively used and occupied it from before 1840 to the present without substantial interruption to its exclusive use and occupation; and
  - c) the customary marine title has not been extinguished as a matter of law.
14. In terms of matters that may be taken into account in determining whether the applicant group's customary marine title exists in the rohe moana o Tainui hapū o Tainui waka:
  - a) the applicant group have owned and occupied land abutting the rohe moana o Tainui hapū o Tainui waka and have done so, without substantial interruption, from before 1840 to the present day; and
  - b) the applicant group have exercised non-commercial customary fishing rights in rohe moana o Tainui hapū o Tainui waka and have done so from prior to 1840 to the present day.

#### **APPLICATION MADE IN RELIANCE**

15. This application is made in reliance on sections 51(1), 58, 59, 94, 98, 100, and 101 of the Marine and Coastal Area (Takutai Moana) Act 2011 and the affidavit of Angeline Greensill which sets out in full the basis on which the applicant group are entitled to the recognition orders sought.

**CONTACT DETAILS OF THE APPLICANT AND PERSON NAMED  
TO HOLD THE ORDER**

16. The contact address of the applicant and person named to hold the order is:

Angeline Greensill  
142 Riria Kereopa  
Memorial Drive  
Whaingaroa/Raglan

17. The contact telephone number is 027 8943361
18. The contact email is [angeline.greensill@gmail.com](mailto:angeline.greensill@gmail.com).

**ORDERS SOUGHT**

19. The applicant respectfully seeks the following orders:
- a) recognising that Tainui hapū o Tainui waka have protected customary rights and customary marine title over rohe moana o Tainui hapū o Tainui waka area;
  - b) setting out Tainui hapū o Tainui waka, is named as the holder of the protected customary rights and customary marine title orders;  
and

- c) costs in the event that this application is opposed by any party.

**DATED** at Rotorua this 3<sup>rd</sup> day of April 2017



Annette Sykes



Jordan Bartlett

Counsel for the Applicant

This **APPLICATION** is filed by **ANNETTE SYKES** and **JORDAN BARTLETT**, counsel for the Applicant, of the firm Annette Sykes & Co.

The address for service on the abovenamed Applicant is the offices of Annette Sykes & Co. 8 – Unit 1 Marguerita Street, Rotorua 3010.

Documents for service on the abovenamed Claimant may be left at the address for service or may be:-

- a) posted to the solicitor at Annette Sykes & Co., PO Box 734, Rotorua 2010; or
- b) transmitted to the solicitor by fax on (07) 460 0434.