IN THE WAITANGI TRIBUNAL **WAI 898**
WAI 125

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of **Te Rohe Potae Inquiry** (WAI 898)

AND

IN THE MATTER of a claim by **Haami Whakataari Kereopa** and **Vivian Te Urunga Morell Kawharu** on behalf of Ngati Koata (ki Whaingaroa), Ngati Kahu, Ngati Tahau, Ngati Te Kore, Ngati Pukoro, Ngati Te Ikaunahi, Ngati Tira, Ngati Heke, Ngati Rua Aruhe, Ngati Hounuku, Paetoka and Ngati Te Karu

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SECOND BRIEF OF EVIDENCE OF ANGELINE GREENSILL

(Environmental and Planning Issues)

DATED this 30th day of August 2013

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AURERE LAW
Barristers & Solicitors
P.O. Box 1693
DX JP30025
ROTORUA
Tel: 07 348 0034
Fax: 07 346 2933
Counsel Acting: Annette Sykes and Terena Wara

INTRODUCTION

1. My name is Angeline Greensill, and I am of Tainui and Ngati Porou descent.

2. This is my second brief of evidence, and addresses two matters:

   (a) the struggle of Tainui to fulfil our obligations of kaitiakitanga within our rohe; and
   (b) The difficulties that Tainui have faced in our ability to live on our tupuna whenua; and

3. I am the environmental spokesperson for Tainui, a position I have held since 1980. In 1989 I was appointed as the secretary of Tainui Awhiro Ngunguru te Po Ngunguru te Ao Management committee which dealt with fisheries and environmental matters between Pukerewa and Whaingaroa. During that time we successfully appealed decisions made by local councils to the Planning Tribunal and Environment Court. In recent years I have focused on issues affecting Tainui; submitting on bills, plans, policies and practices which had the potential to change Whaingaroa beyond recognition.

4. In 2010 I completed my Thesis in fulfilment of the requirements for the degree of Master of Social Science. This Thesis focused on the Resource Management Act 1991, experiences of Tainui, our hapū in Whaingaroa, and it is my first hand experiences that inform my research. Annexed and marked with the letter **"A"** is a copy of my Thesis.

The struggle of Tainui to fulfil our obligations of kaitiakitanga within our rohe

5. Kaitiakitanga plays a pivotal role in the management and protection of the rohe we have inherited from atua and tupuna. Carrying out the role of a tangata tiaki is a lifelong commitment and to some whanau members who care about the past and future, a natural way of live. If these tangata tiaki live long enough, they get to see history repeat itself again and again.

6. The responsibilities of tangata tiaki who look after our environment vary according to their particular roles. Some monitor the health of kaimoana beds and waterways, some educate whanau about issues like waste, coastal erosion and tree planting, some write submissions while others undertake ceremonies when required. The struggle to fulfil obligations of kaitiakitanga with few resources in a changing world, has been arduous and unrelenting.

7. Tainui remember well the Fisheries Settlement. A modern day confiscation, it transformed the children of Tangaroa and Hinemoana into quota, created digital fishermen and traders who onsold their property to the highest bidder. As well as joining national protests and legal actions, our response locally was to join with other coastal hapū and form Nga Hapū o Te Uru to protect what little was left; the kaimoana that hug our shores.

8. I understand that there are legal restrictions regarding the Waitangi tribunal and its ability to consider the impact of commercial fishing, and in particular the Maori Fisheries Settlement. This being said, an understanding of the claims of Tainui hapū cannot be obtained without an appreciation of this context which drove a new wave of resistance and organisation.

9. After several years and numerous hui the Crown finally recognised what they defined as our customary fishing interests. The loss of boats, of jobs, and of the ability to fish for a livelihood is a wound that has yet to heal in Whaingaroa.

10. The other major act that negatively affects our ability to carry out kaitiakitanga is the Foreshore and Seabed Act which removed our rights and continues to affect how we relate to Papamoana. I have attached my submission to the Waitiangi Tribunal that inquired into this matter because of its relevance to kaitiakitanga on the coast.[1]

11. Other laws that Tainui have been affected by in the exercise of kaitiakitanga arethe Town and Country Planning Act, Fisheries, Conservation, Historic Places, Public Works, Maori Land, Crown Minerals, and the Resource Management Act.

12. Every three years new governments, councils and staff use their plans and policies to regulate Tainui activities. Councils with the support of the Crown and its agents, have attempted to prise the last remnants of Tainui land and water resources from our grasp so that the public, tourists and local communities can benefit at our expense. They have also claimed the rights to manage and make decisions about the future uses of our limited space and taonga. The systematic alienation of our lands and unilateral legalisation of roads through our lands have allowed strangers to wander into our front yards and into our whenua without our consent.

[1] This submission is annexed and marked with the letter **"B".**

13. Tainui, as mana whenua inherited obligations to look after everything that exists within our rohe to ensure that our environment can sustain the needs and cultural practices of our people. Tikanga dictates what the acceptable behaviour is when interacting with the environment. Some examples include:
    (a) Discharging human waste into the moana and awa is not acceptable;
    (b) Discharging untreated stormwater into waterways is not acceptable; and
    (c) Building houses on waahi tapu or where taonga species live is not acceptable.

14. These activities while unacceptable to Tainui can be permitted by a resource consent under the Resource Management Act 1991 (the Act) despite being culturally offensive to Tainui. The same Act has been used to restrict the ability of Tainui to occupy and practice kaitiakitanga on our own lands and reserves that have never been ceded to the Crown e.g. the Karioi Native Reserve.

15. We note that Council decision makers have never implemented section 33 of the Act which would enable Tainui to carry out its tangata tiaki role without restraint.

16. Another impediment to practicing kaitiakitanga in the environment is the cost in time, people's lives and resources spent in submitting documents and challenging decisions which impact on the hapū and its environment.

17. Hundreds of resource consent applications have been received by us, and most approved by council staff. Those that had the potential to impact negatively on Tainui were questioned. Had we not questioned those activities then Pa sites could may have become subdivisions or sites for wind turbines, kaimoana areas could have been covered in marine farms, and our waterways could have been further polluted though thoughtless landuse activities, to support economic growth and development objectives of councils.

18. Where Tainui interests were not recognised and protected, litigation followed.

19. Since 1991 Tainui has appealed Council decisions and appeared before the Planning Tribunal, Environment Court and Boards of Inquiry eight times. In three of the cases below, Ngati Tahinga, Tamainupo and Ngati Mahanga had interests:

1993/2004	Wastewater cases: *Tainui v WDC*	Won 1993WRC Lost 1987 WRC Lost 2004 EC
1994	*Greensill v WRC - Paritata Oyster farm*	Lost WRC Won PT
1995	*Tainui hapū v TV3*	Lost WDC Won PT
2006	Raglan museum and jetty	Won WRC
2007	Hauauru mai Raki wind farm	Awaiting BOI hearing date
2009	*Tainui hapū & Ors v WDC plan provisions*	Mediated outcome 2013
2010	*Hemi v Waikato District Council*	Won ENC
2010	*Tainui Awhiro v HPT*	Mediated outcome

The difficulties that Tainui have faced in our ability to live on our tūpuna whenua

20. In the 1970's when the first Raglan County Council (RCC) Scheme Plan was introduced under the Town and Country Planning Act, Coastal Reserves and Rural Zones were imposed on Maori land at Whaanga for the benefit of the public.

21. Hami Kereopa and his whanau fought the RCC who tried to take Whale Bay, 34 acres of land, where our illustrious tūpuna Tawhao had lived with his two wives. The RCC also increased the rates, making them inequitable to other adjoining properties.

22. The late Piripi Kereopa whose land was adjacent to Manu Bay, also found that his land was designated Scenic Reserve and objected. Like others he applied for the zone to be lifted but RCC was unrelenting. Under duress he agreed to retain the designation provided he could keep a house site on his land.

23. Other Tainui lands were similarly affected.

24. Under the RMA, policies and rules impact upon the ability of Tainui to live on their lands. One of the worst examples was the Hemi case.[2] While Tainui supported his application 18 others opposed the application.

25. The Waikato District Council Hearing committee turned the application down mainly because they considered the house was going to be built in a coastal hazard zone, despite tangata whenua evidence to the contrary. Mr Hemi appealed the decision to the Environment Court who ruled his favour in 2010. While the outcome was successful, the cost on his family both financially and in terms of time was huge. In addition, I believe that the Council took advantage of Mr Hemi and coerced into paying for and carrying out functions of resource management that are more appropriately the responsibility of the Council itself. It is ridiculous that a tangata Whenua should have to pay in excess of $1 million dollars to live on his turangawaewae

26. This case illustrates the barriers one hapū member faced when trying to build on his ancestral land.

27. In 2009, Tainui challenged provisions in a plan change which prevented whanau from building more than one house on multiply-owned Maori land. At the time only one papakainga existed in the Waikato District. In 2013 following mediation in the environment court planning rules were changed to allow whanau to build 8 houses on each of their blocks of multiply-owned lands at Whaanga.

28. What I have traversed here are a few examples of the barriers Tainui faces in trying to live and carry out kaitiakitanga on its own lands. Councils, governments and even mandated Iwi organisations continue to try and control the last remnants of Tainui taonga.

Waikato Tainui Environmental Plan

29. A recent example affecting us is the Waikato Tainui Environmental Plan, which was launched last month. Within this plan, there are several sections, which affect upon our ability to function as kaitiaki without constraints.

[2] *Hemi v Waikato District Council* [2011] NZEnvC 226. A copy of this decision is annexed and marked with the letter **"C"**.

30. Section 24.3.4.2 (d) states, *"Any artefact or koiwi discovery shall be immediately reported to Waikato Tainui".*

31. The following comment was also of concern as it applies to the coastal places we occupy.

> *Waikato-Tainui has mana whakahaere over the coastal area within its rohe and prefers that there are no adverse effects from activities in this area and that, providing there are no adverse effects, Waikato-Tainui people benefit from coastal activity. As taangata whenua, Waikato-Tainui expects to be fully involved, engaged, and consulted in proposedand ongoing activity in the coastal area.*

32. My reason for raising this matter is that it is the Crown who insisted on large natural groupings, and it is through them that Mandated Iwi Organisations have emerged. This type of structure and development does nothing to assist hapū and iwi manage their local environments efficiently or according to tikanga. Instead, it pits hapū and iwi against others creating dissonance rather than harmonious relationships.

33. The impediments to practicing kaitiakitanga costs. Peopls lives are spent protecting the environment but inside and outside of courts. Submissions are made, decisions are challenged submitting documents and challenging decisions, which affect the hapū and its environment.

Conclusion

34. The impact of acts and omissions of the Crown, that were and remain in breach of Te Tiriti o Waitangi, on the cultural, spiritual, social and economic way of life of the descendants of tupuna who signed Te Tiriti o Waitangi continue to prevent Tainui from realising our ambitions to determine our own future in our own land.

35. Tainui have appeared in this Tribunal to present the grievances that have affected Tainui over the last 173 years, and to seek relief. The struggle to retain our mana and uphold our rights guaranteed under Te Tiriti o Waitangi continues.

Dated at Whaingaroa this 30th day of August 2013

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Angeline Greensill