

**IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY**

CIV-2017-419-83

**I TE KŌTI MATUA O AOTEAROA
KIRIKIROA ROHE**

**I TE TAKE Ō
IN THE MATTER OF**

the Marine and Coastal Area
(Takutai Moana) Act 2011

**Ā
AND**

**I TE TAKE Ō
IN THE MATTER OF**

An application by Angeline
Greensill for and on behalf of the
Whāingaroa Moana Collective for
an order recognising customary
marine title and protected
customary rights under the Act

SECOND AMENDED APPLICATION FOR RECOGNITION ORDERS

Dated this 11th day of August 2023

Leave to file this amended application granted by Churchman J 16/8/2023

See [TAINUI HAPŪ O TAINUI WAKA \[2023\] NZHC 2207 \[16 August 2023\]](#)

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To the Registrar of the High Court at Kirikiriroa/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 members of the Whāingaroa Moana Collective specifically Tainui hapū o Tainui waka and Ngāti Tamainupō (together, “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 of the hapū of the Whāingaroa Moana Collective) 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,(“the application area”).
2. The application area is marked approximately in the rohe moana map attached as **Appendix “A”**.
3. The orders sought are customary marine title (CMT) and protected customary rights (PCR) within the application area, being the rohe moana of the hapū of the Whāingaroa Moana Collective.

Basis of Entitlement to Recognition of CMT and PCR

4. The applicant group say their entitlement to recognition of customary marine title and protected customary rights arises from:
 - a) the takutai moana (or common marine and coastal area) within the application area having been held exclusively by the hapū members of the Whāingaroa Moana Collective in accordance with tikanga, since before 1840;
 - b) the hapū members of the Whāingaroa Moana Collective have exclusively used and occupied the common marine and coastal area of the application area continuously since before 1840 to the present day without substantial interruption, through ancestry, permanent occupation and use of its coastline, the adjoining foreshore, rivers, streams, and the marine area;
 - c) 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), piharau, whitebait and other fish found in the takutai moana and river estuaries;
 - d) the gathering of shellfish such as paua, kina (sea urchin) tio (oyster) kutai (mussel), tupa (scallop), kokota (pipi), pūpū (sea snail) and koura (crayfish) .
 - e) the taking of seabirds (Manu Titi)
 - f) the taking of aquatic plants (including karengo);
 - g) the cultivating, planting, maintenance, and use of plants in the common marine and coastal area wet margins and adjacent land (including flax, tī kouka, wiwi, kahikatea, kowharatanga, ngaio, pingao, manuka, pohutukawa, koromiko, kawakawa;
 - h) the protection of trees that are indicators for seasonal fishing and locators of boundaries;

- i) collecting traditional materials that enhance, preserve and protect the applicant group's cultural practices, including collecting mud, paru, plants, perished mammals, seabirds, rocks, shells, and other materials from its wetlands, estuarine margins and the sea;
 - j) reinterring kōiwi in dunes, whenua and crevices in the limestone outcrops;
 - k) capturing sand using traditional methods 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.
5. The applicant group say their customary marine title of the application area has not been extinguished as a matter of law.

Protected Customary Right (PCR)

6. The applicant group seeks orders recognising their protected customary rights to undertake the following activities within 12 nautical miles of the coast within their rohe moana, being the application area:
- a) customary fishing (using feet, hand-line, net, long-line, spear, and diving) to catch all and any forms of kaimoana (the fishing for which is not regulated under the Fisheries Act 1996 nor regulated under the Fisheries (Kaimoana Customary Fishing Regulations) 1998) traditionally caught and used in customary practices (including to provide kai for whānau, kaumātua, hapū, whanaunga, manuhiri and non-commercial (non-pecuniary) trading partners, to provide kai for hui, tangihanga and

marena/weddings or other cultural events, as koha and manaakitanga.

- b) customary gathering of shellfish such as paua, kina, tio, kutai, tupa, kokota, oysters, snails (pūpū), and koura (crayfish) (the gathering of which is not regulated under the Fisheries Act 1996 nor regulated under the Fisheries (Kaimoana Customary Fishing Regulations) 1998) traditionally gathered and used in customary practices (including to provide kai for whānau, kaumātua, hapū, whanaunga, manuhiri and non-commercial (non-pecuniary) trading partners, to provide kai for hui, tangihanga and marena/weddings or other cultural events, and as koha;
- c) the taking of aquatic plants (including karengo) for food and medicine.
- d) the cultivating, planting, maintenance, and use, for customary activities, of plants cultivated, planted or maintained in the common marine and coastal area (kowharatanga, ngaio, pingao, and pohutukawa).
- e) the protection of trees or other pou located in the common marine and coastal area that are indicators for seasonal fishing and locators of boundaries;
- f) collecting traditional materials that enhance, preserve and protect the applicant group's cultural practices, including collecting mud, paru, plants, rocks, shells, and other materials from its wetlands, estuarine margins and the takutai moana;
- g) reinterring kōiwi in dunes, whenua and crevices in the limestone outcrops to the extent that these locations are within the common marine and coastal area;
- h) capturing sand using traditional methods to restore eroded beaches at Te Kopua and Te Whaanga;
- i) launching and landing of vessels and making sea passage to islands and fishing grounds or wāhi tapu sites or other sites of significance in their rohe moana;
- j) performing conservation activities including working with local schools, kohanga reo and other local organisations and community groups in

restoration projects, working with the Department of Conservation and/or the Waikato Regional or District Council on conservation-related projects, planting native plants, promoting recycling, cleaning rubbish, pest control and weed control, and preventing or remediating pollution in the takutai moana.

- k) allowing others to undertake activities in accordance with the tikanga of manaakitanga and whanaungatanga; and
- l) all customs and cultural practices associated with the above takings and uses including cultural practices founded in spiritual beliefs and cultural associations to the extent that those associations manifest in a physical activity or use related to a natural or physical resource, such as:
 - (i) karakia tawhito,
 - (ii) imposition of rāhui,
 - (iii) imposition of wāhi tapu,
 - (iv) exercise of kaitiakitanga, rangatiratanga and mana motuhake,
 - (v) protecting the mauri of, and ancestral beings (taniwha) in, waterways through karakia,
 - (vi) use of the takutai moana in the transfer of knowledge, or mātauranga Māori, of hapū marine culture,
 - (vii) wānanga and hui,
 - (viii) waiata,
 - (ix) karakia,
 - (x) practice of rongoā,
 - (xi) tangihanga,
 - (xii) manaakitanga,
 - (xiii) launching and using waka,

- (xiv) non-commercial (non-pecuniary) trade,
 - (xv) seasonal kaimoana exchange,
 - (xvi) access to gardens and other sites of significance on land,
 - (xvii) naming of places in the sea and foreshore to specify fishing areas, reefs and people who had authority over them.
7. Any limitations on the scale, extent or frequency of the exercise of these protected customary rights by the hapū of the Whāingaroa Moana Collective will be determined in accordance with the tikanga of those hapū, their obligations imposed by way of whakapapa, and the responsibilities of the ahi kā roa as kaitiaki.

THE APPLICANT GROUP

8. The applicant is mandated to speak for the applicant group on Environmental, Coastal and Fisheries matters. This is further outlined in the 3 April 2017 affidavit of Angeline Greensill in support of this application together with further affidavits to be filed in support of the application.
9. The applicant group comprises hapū who whakapapa to the original people of the Whāingaroa, Aotea and Kawhia area. Notable ancestors who link whānau and hapū together include: Hoturoa, Rakatāura and Kahukeke, Tāwhao, Whatihua, Punuiatekore and Marutehiakina, Kakati, Tuirirangi, Tamainupō, Toa Kōtara, Te Huaki, Koata, Kawharu, Te Ikaunahi, Hounuku, and others.

Tainui hapū o Tainui waka

10. Tainui is made up of 12 hapū with lands on the north and south side of Whāingaroa 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, Ngāti Heke/Haki and Ngāti Tutuira (which is a Tainui hapū connecting Tainui to Ngāti Tahinga in the north).
11. Tainui whānau and hapū have continually occupied Te Whaanga, Te Kopua and Rakaunui. Te Horea at Te Akau (north of Whāingaroa 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 papakāinga 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.

Ngāti Tamainupō

12. Ngāti Tamainupō derives its name from principal ancestor, Tamainupō. Tamainupō married Tukotuku, daughter of Mahanga, which is how Ngāti Tamainupō integrated with the Tainui waka. The traditional pouwhenua (tribal boundaries) of Ngāti Tamainupō include Ngāruawāhia and Pukeiāhua Pā, extending west towards Motukōkako in the Whāingaroa Harbour and the surrounding whenua and moana.
13. Ngāti Tamainupō (who represents Ngā Uri of Tamainupō, Toa Kōtara me Te Huaki) have continually occupied Ranui and Waingaro. Our marae are Waingaro and Mai Uenuku ki te Whenua.

GROUNDS ON WHICH THE PROTECTED CUSTOMARY RIGHTS RECOGNITION ORDER IS SOUGHT

14. The applicant, Angeline Greensill, on behalf of the Whāingaroa Moana Collective seeks a protected customary rights recognition order on the grounds that protected customary rights relating to the rohe moana of the hapū of the Whāingaroa Moana Collective may be recognised by an order of the Court made on an application under section 100 of the Act.
15. 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.
16. 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 the rohe moana of the hapū of the Whāingaroa Moana Collective 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**

- 17. The applicant, Angeline Greensill, on behalf of the Whāingaroa Moana Collective seeks a customary marine title recognition order on the grounds that customary marine title relating to the rohe moana of the hapū of the Whāingaroa Moana Collective may be recognised by an order of the Court made on an application under s 100 of the Act.
- 18. 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.
- 19. This application meets the requirements in s 58 of the Act because iwi, hapū and whānau groups that comprise the Whāingaroa Moana Collective:
 - a) hold the rohe moana of the Whāingaroa Moana Collective in accordance with tikanga;
 - b) have, in relation to rohe moana of the Whāingaroa Moana Collective, shared the exclusive use and occupation of it from before 1840 to the present without substantial interruption to its shared exclusivity; and
 - c) the customary marine title has not been extinguished as a matter of law.
- 20. 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 of the hapū of the Whāingaroa Moana Collective:
 - a) the applicant group has owned and occupied land abutting the rohe moana of the Whāingaroa Moana Collective 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 of the hapū of the Whāingaroa Moana Collective

and have done so from prior to 1840 to the present day.

APPLICATION MADE IN RELIANCE

21. 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 together with further affidavits to be filed in support of the application 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

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

Angeline Greensill
142 Riria Kereopa Memorial Drive
Whāingaroa/Raglan

23. The contact telephone number is 027 8943361.

24. The contact email is angeline.greensill@gmail.com.

ORDERS SOUGHT

25. The applicant respectfully seeks the following orders:

- a) recognising that the hapū of the Whāingaroa Moana Collective have protected customary rights and customary marine title over the application area, being within the rohe moana of the hapū of the Whāingaroa Moana Collective area;
- b) setting out Angeline Greensill for and on behalf of the hapū of the Whāingaroa Moana Collective, being 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 11th day of August 2023



Annette Sykes

Solicitor for Tainui hapū o Tainui waka

DATED at Auckland this 11th day of August 2023



Ihipera Peters

Solicitor for Ngāti Tamainupō

This **SECOND AMENDED APPLICATION** is filed by on behalf of Angeline Greensill by **ANNETTE SYKES** of the firm Annette Sykes & Co.

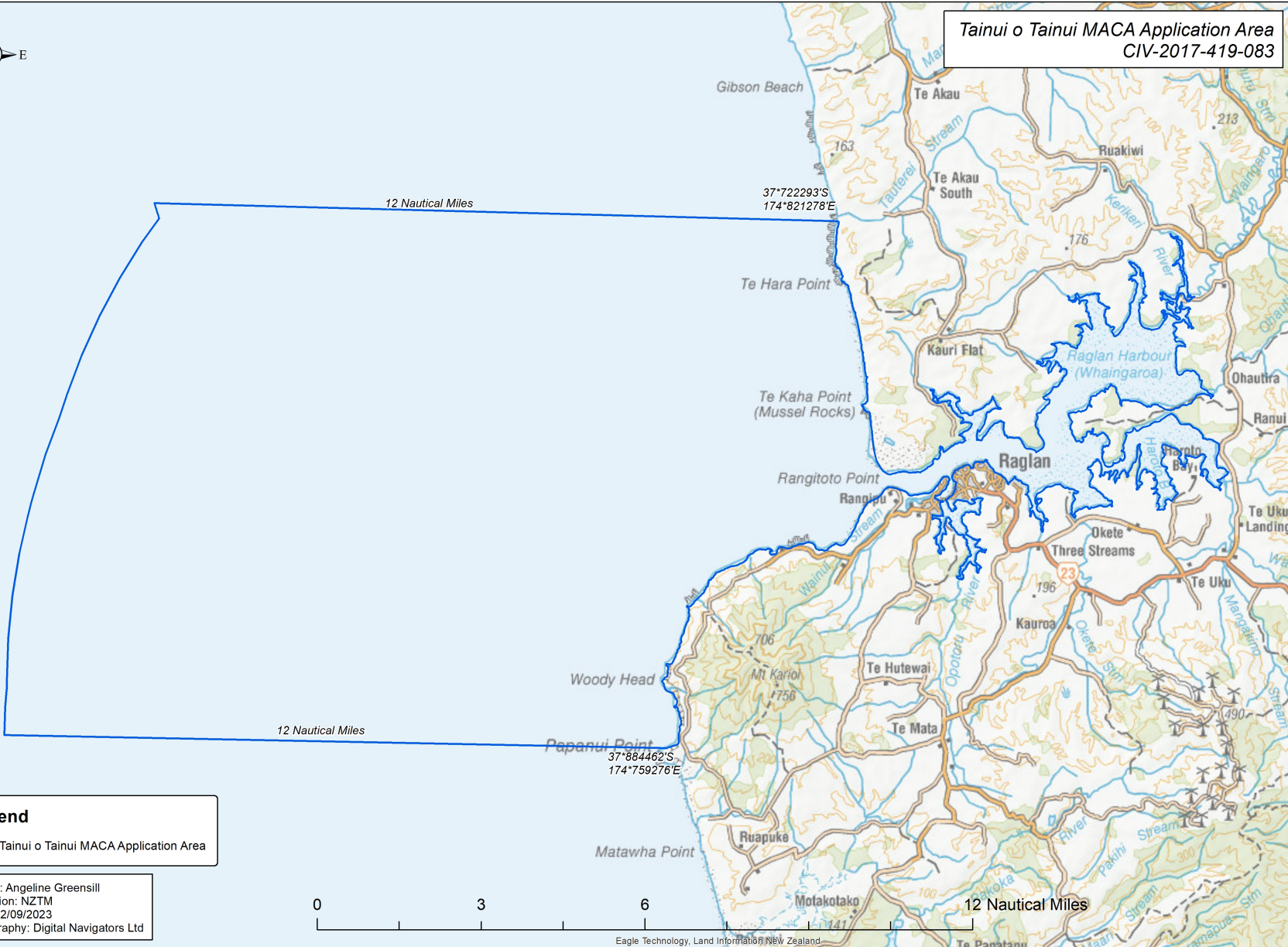
The address for service on the abovenamed applicant is the offices of Annette Sykes & Co. 8 – Unit 1 Marguerita Street, Rotorua 3010.

Documents for service on the abovenamed applicant 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) emailed to: asykes@annettesykes.co.nz; and
jacki@jcolebarrister.com
hipera.peters@kaupare.co.nz



Tainui o Tainui MACA Application Area
CIV-2017-419-083



Legend
— Tainui o Tainui MACA Application Area

Source: Angeline Greensill
Projection: NZTM
Date: 12/09/2023
Cartography: Digital Navigators Ltd

