

IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

CIV-2017- 485 - 277

IN THE MATTER OF

the Marine and Coastal
Area (Takutai Moana) Act
2011

AND
IN THE MATTER OF

an application by Arapeta ^{Hamilton}
for and on behalf of Ngāti
Manu and its hapū Te Uri
Karaka and Te Uri o
Raewera seeking orders
recognising protected
customary marine title and
protected customary rights
under that Act

APPLICATION FOR RECOGNITION ORDERS

Dated this 30th day of March 2017

Case Manager
Next Event: / /
- 4 APR 2017
3 April 17 Rotorua
THE HIGH COURT
WELLINGTON

Annette Sykes & Co
Barristers & Solicitors
8 – Unit 1 Marguerita Street
Rotorua, 3010
Phone: 07-460-0433
Fax: 07-460-0434

Counsel Acting: Annette Sykes / Jordan Bartlett
Email: asykes@annettesykes.com / jordan@annettesykes.com

To: the Registrar of the High Court at Whangarei

And to: Whangarei District Council

And to: Far North District Council

And to: Northland Regional Council

And to: Department of Conservation

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

THIS DOCUMENT NOTIFIES YOU THAT:

1. Mr Arapeta Hamilton, (“the applicant”), on behalf ngā uri o Pōmare II for and on behalf of Ngāti Manu and its hapū, Te Uri Karaka and Te Uri o Raewera (“the applicant group”), will on 31 March 2017 apply to the Court for orders:
 - a) recognising the applicant and applicant group’s customary rights relating to the particular area of the common marine and coastal area that is from Taupiri Bay to Motukokako to Tikitiki-o-tu-te-Mahurangi to Ngā Toka Mangu Black rocks to Tapeka, Kororareka, Matauuwhi, Orongo to Te Wahapu from Waitangi to Paihia Te Haumi right up to Matairiri at Taumāreere. This area is mapped and marked approximately in the map attached **Appendix “A”**; and
 - b) recognising the applicant and applicant group’s customary marine title relating to the particular area of the common marine and coastal area that is, from Toretore Island then down in a south-westerly direction to Te Haumi Point, then to Ōpua and along the line from Okiato across to Rangatahi pā, continuing up the Taumāreere River to Matairiri. This area is mapped and marked approximately in the map attached as **Appendix “B”**.
2. The orders sought are protected customary and customary marine title in rohe moana o Ngāti Manu arising from:

- a) permanent occupation of the land and use of the adjoining foreshore before 1840 without substantial interruption;
- b) hapū fishing (including hand-line, net, long-line and spear);
- c) diving (including free and bottle);
- d) the taking of shellfish;
- e) the taking of hapūka, kahawai, ararara (trevally), tamure (snapper), hapū (kingfish), hautere (jack mackerel), gurnard (kumukumu), shark (mangō), flounder (pātiki), bait fish (including inanga), stingray (whai), eels (tuna), lamprey (piharau) and other fish found in the takutai moana and river estuaries;
- f) the taking of seabirds;
- g) the taking of shellfish including oysters, snails (pūpū), kina, paua and koura (crayfish);
- h) the taking of aquatic plants (including karengo and native spinach);
- i) the planting and cultivating plant species in CMCA wet margins (including flax, tī kouka, pingao, wiwi, kowharatanga, Ngaio, manuka, pohutukawa, koromiko);
- j) extracting non-nationalised minerals for non-commercial purposes (including red ochre, clays, ironsand and rocks);
- k) collecting traditional materials that enhance, preserve and protect the applicant and applicant group cultural practices, including collecting mud, plants, perished mammals, seabirds, rocks, shells, and other materials from its wetlands, estuarine margins and the sea;
- l) allowing others to undertake activities; and
- m) all ways of life and cultural practices associated with the above takings and uses including cultural practices founded in spiritual beliefs including the saying of karakia tawhito, imposition of rāhui,

imposition of wāhi tapu, exercise of kaitiakitanga and mana, transfer of knowledge of hapū marine culture, trade, communication, seasonal kaimoana exchange, access to gardens on land, tangihana, manaakitanga and naming of places in the sea and foreshore to specify fishing areas, reefs and people who had authority over them.

THE APPLICANT GROUP

3. The applicant, Arapeta Hamilton, is mandated to speak for Ngāti Manu and its hapū, Te Uri Karaka and Te Uri o Raewera. This authority was tabled and the motion carried by majority at a hui-ā-hapū at Te Kāretu marae on 19 October 2014. This is further outlined in the affidavit of Arapeta Hamilton in support of this application.
4. Ngāti Manu and its hapū, Te Uri Karaka and Te Uri o Raewera descend from Te Huruhuru whose pā was located on the top of Rākaumangamanga. Its marae, Te Kāretu, is located on the banks of a tributary to the Taumāreere River.
5. The applicant group has occupied and continued to exercise customary rights in the Bay of Islands area from the time of their ancestor, Te Huruhuru.
6. The applicant's mana whenua and mana moana to the area is epitomized by the number of pā in the area which were strategically placed to command and control the river and the passageway into the harbour. The main pā is located at Otuihu, the next is at Omata by Te Wahapu, then Rangatahi and up the river is Ngā Mahanga o Te Rarau pā which is located at the junction of Te Kāretu and Taumāreere Rivers.
7. The applicant wishes to acknowledge other hapū that have overlapping customary interests in the Bay of Islands area. Those hapū include: Ngāti Rahiri, Ngāti Torehina, Patu Keha, Ngāti Kuta, Te Kapotai and Ngāti Pare.

**GROUND ON WHICH THE PROTECTED CUSTOMARY RIGHTS
RECOGNITION ORDER IS SOUGHT**

8. Ngāti Manu and its hapū, Te Uri Karaka and Te Uri o Raewera, through the applicant, Mr Arapeta Hamilton, seek a protected customary rights recognition order on the grounds that its protected customary rights relating to te takutai moana o Ngāti Manu 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 the rights before and since 1840 within te rohe moana o Ngāti Manu;
 - b) continues to exercise those rights in te rohe moana o Ngāti Manu 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.

**GROUND ON WHICH THE CUSTOMARY MARINE TITLE
RECOGNITION ORDER IS SOUGHT**

11. Ngāti Manu and its hapū, Te Uri Karaka and Te Uri o Raewera, through the applicant, Mr Arapeta Hamilton, seek a customary marine title recognition order on the grounds that its customary marine title relating to te takutai moana o ngā uri o Pōmare 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. The meets the requirements in s 58 of the Act because it:
- a) holds te takutai moana o Ngāti Manu in accordance with tikanga;
 - b) has, in relation to te takutai moana o Ngāti Manu exclusively used and occupied it from 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 te takutai moana o ngā uri o Pomare:
- a) the applicant group have owned land abutting te takutai moana o Ngāti Manu and have done so, without substantial interruption, from 1840 to the present day; and
 - b) the applicant group have exercised non-commercial customary fishing rights in te takutai moana o Ngāti Manu and have done so from 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 Arapeta Hamilton 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:

Arapeta Hamilton
8 Flaxdale Street, Birkdale
North Shore
Auckland 0626

17. The contact telephone number is 0220128419.

18. The contact email is arapetahamilton@gmail.com.

ORDERS SOUGHT

19. The applicant respectfully seeks the following orders:
- a) recognising that Ngāti Manu and its hapū, Te Uri Karaka and Te Uri o Raewera, has protected customary rights and customary marine title over Bay of Islands area;
 - b) setting out Ngāti Manu and its hapū, Te Uri Karaka and Te Uri o Raewera hapū 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 30th day of March 2017



Annette Sykes



Jordan Bartlett

Counsel for the Applicant

This **STATEMENT OF CLAIM** 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.