

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

CIV-2016-485-299

IN THE MATTER OF

the Marine and Coastal Area (Takutai
Moana) Act 2011 (the Act)

AND

IN THE MATTER OF

an application by Te Rua Rakuraku for
and on behalf of the hapū of Ngāti Ira o
Waioweka Rohe for an order recognising
Customary Marine Title and Protected
Customary Rights.

APPLICATION FOR RECOGNITION ORDERS

Dated this 29th day of March 2017

Annette Sykes & Co
Barristers & Solicitors
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Received at the High Court of

31 MAR 2017

Rotorua

THE HIGH COURT
WELLINGTON

SV

- To:** the Registrar of the High Court at Rotorua
- And to:** Ōpōtiki District Council
- And to:** Whakatāne District Council
- And to:** Bay of Plenty Regional Council
- And to:** the Solicitor-General on behalf of the Attorney-General

THIS DOCUMENT NOTIFIES YOU THAT:

1. Mr Te Rua Rakuraku, (“the applicant”), for and on behalf of the hapū of Ngāti Ira o Waioweka (“the applicant group”) will, on 30 March 2017 apply to the Court for orders:
 - a) recognising the applicant and applicant group’s protected customary rights for hapū fishing (including hand-line, net, long-line and spear), diving (including free and bottle), gathering shellfish, hunting for eels and birds, edible aquatics and plants accessing marine areas that have a cultural connection to the applicant and applicant group, landing vessels and making sea passage to the islands and fishing grounds, 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 and other customary rights in accordance with customary hapū knowledge and tikanga, relating to the particular area of the common marine and coastal area that is from Maraetōtara outlet at Ōhope to Tarakeha at Ōpape which is approximately 35 kilometres. This area is mapped and 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 yet to be mapped out.

THE APPLICANT GROUP

2. The applicant, Te Rua Rakuraku, is mandated to speak for Ngā Hapū o Ngāti Ira o Waioweka and the peoples of Waioweka Rohe within the greater Te Whakatōhea rohe. This authority was tabled and the motion carried by majority at a hui-ā-hapū at the Whakatōhea Trust Board on 19 June 2016. This is further outlined in the affidavit of Te Rua Rakuraku in support of this application.
3. Ngā Hapū o Ngāti Ira o Waioweka descend from Muriwai and Tamatea Matangi of Mataatua waka. Its marae, Ōpekerau, is located at the mouth of the Waioweka gorge and situated on the bank of a tributary to the Waioweka river that runs 65 kilometres down from Te Urewera out to sea, to Te Moana a Toi.
4. The applicant group has occupied and continued to exercise customary rights in Te Moana a Toi and Te Moana a Tairongo area from the time of their ancestors of the waka Tuwhenua, generations before Mataatua waka.
5. 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 along the banks of the Waioweka and Otara rivers to command and control the river and the passageway into Te Moana a Toi.
6. The applicant wishes to acknowledge other hapū and iwi that have overlapping customary interests in the Te Moana a Toi area. Those hapū include: Te Ūpokorehe, Ngāi Tama, Ngāti Rua, Ngāti Patumoana and Ngāti Ngahere. Other iwi include: Ngāi Tai (Tōrere), Te Whānau a Apanui, Ngāti Awa and Tūhoe.

GROUND ON WHICH THE PROTECTED CUSTOMARY RIGHTS RECOGNITION ORDER IS SOUGHT

7. Ngāti Ira through the applicant, Mr Te Rua Rakuraku, seek a protected customary rights recognition order on the grounds that its protected customary rights relating to te takutai moana o Ngā Hapū o Ngāti Ira o

Waioweka may be recognised by an order of the Court made on an application under section 100 of the Act.

8. 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.
9. The applicant group meets the requirements in s 51(1) of the Act because it:
 - a) has exercised their rights before and since 1840 within Te Moana a Toi;
 - b) continues to exercise those rights in Te Moana a Toi 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

10. Ngā Hapū o Ngāti Ira o Waioweka, through the applicant, Mr Te Rua Rakuraku, seek a customary marine title recognition order on the grounds that its customary marine title relating to Te Moana a Toi may be recognised by an order of the Court made on an application under s 100 of the Act.
11. 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.
12. The meets the requirements in s 58 of the Act because it:
 - a) holds Te Moana a Toi in accordance with tikanga;

- b) has, in relation to Te Moana a Toi 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.
13. In terms of matters that may be taken into account in determining whether the applicant group's customary marine title exists in Te Moana a Toi:
- a) the applicant group have owned and occupied land abutting the Waioweka and Otara rivers that flow in to Te Moana a Toi 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 Moana a Toi and have done so from 1840 to the present day.

APPLICATION MADE IN RELIANCE

14. 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 Te Rua Rakuraku 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

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

Te Rua Rakuraku
92A Wellington Street
Opotiki 3122
Bay of Plenty

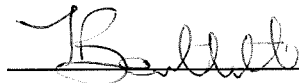
16. The contact telephone number is 027 419 0169

17. The contact email is roger.rakuraku@twoa.ac.nz
18. The applicant respectfully seeks the following orders:
- a) recognising that Ngāti Ira hapū, have protected customary rights and customary marine title over Te Moana a Toi area;
 - b) setting out Ngāti Ira hapū, is named as the holder of the protected customary rights and customary marine title orders under the auspices of Te Whakatōhea iwi; and
 - c) costs in the event that this application is opposed by any party.

DATED at Rotorua this 29th day of March 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 Claimants 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.