

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

CIV-2017-404-481

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

IN THE MATTER OF an amended application by
George Matthews on behalf of Te Hika
o Pāpāuma for orders recognising
Customary Marine Title and Protected
Customary Rights

On the papers:

Counsel: C Hirschfeld for Applicant

Minute: 25 August 2022

MINUTE OF CHURCHMAN J

[1] Mr Hirschfeld, for the applicant in this claim under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) has filed a document described as an “Amended Application” for recognition orders dated 1 August 2022. It is not clear from reading the document exactly what the nature of the amended application is, and what is intended to be conveyed to the Court.

[2] There are also a number of typographical errors that need to be corrected. Throughout the memorandum, the applicants in CIV-2017-404-481 and CIV-2017-485-226 are both described as being Te Ika o Pāpāuma. In both applications the correct name of the applicant is Te Hika o Pāpāuma.

[3] The memorandum also, in various places, incorrectly describes the application CIV-2017-404-481 as being CIV-2017-485-481.

[4] At [2], the memorandum refers to “This amended application”. No copy or an amended application or amended map accompanied the memorandum.

[5] The memorandum does refer to the substitution of Mr George Matthews as the named applicant in CIV-2017-404-481 replacing Ms Anita Broughton. Leave is granted for such a substitution.

[6] At [207] of the Court’s minute of 1 July 2022 following the case management conference where the applications on behalf of the two separate Te Hika o Pāpāuma claimant groups were called, Mr Hirschfeld was directed to file an amended application within 30 days. That was needed to address the fact that two different applications appeared to have been filed on behalf of the same applicant group.

[7] At [5] of the memorandum of 1 August 2022, Mr Hirschfeld submits that because he understands that the applicant in CIV-2017-485-226 (incorrectly referred to as CIV-2017-485-266) is intending to withdraw that application, there is no need to amalgamate the two applications.

[8] Enquiries by the Registrar of Ms Yogakumar who is acting for the applicant in CIV-2017-485-226 have only confirmed that counsel is anticipating filing a memorandum “by the end of October”. It is not clear what this memorandum is likely to convey. The Court is therefore left in a state of uncertainty as to what actually is happening.

Amended application

[9] At [6] and following of the 1 August memorandum, what appears to be an application for protected customary rights (PCR) is set out. It is not clear why this is done. If it is intended to be an amended application, it is necessary for the applicant to identify any changes made to the existing application including the filing of an amended map if the area in respect of the claim has been altered.

[10] The memorandum does not identify exactly what PCR the applicant is claiming. At [6] says:

Te Ika [sic] o Pāpāuma ancestors utilised the common marine and coastal area for harvesting kaimoana, fishing, resource extraction (shells/fossils, wood, bones, seaweed, stones and sand), rongoa purposes, recreational use, harvesting plants, shrubs and tree material, bird catching, snaring, tangihana [sic] purposes and transport.

[11] Section 51(1)(b) of the Act requires that a PCR has been exercised since 1840 and continues to be exercised in a particular part of the common marine and coastal area in accordance with tikanga by the applicant group.

[12] At [10](c) of the memorandum lists a slightly different set of activities which are said to have been undertaken since prior to 1840. Any amended PCR application will need to be clear about exactly what rights are being claimed.

[13] [11] of the memorandum also makes an application for customary marine title (CMT). There is no description at all of area in respect of which the CMT is claimed and neither is there an accompanying map.

Directions

[14] Mr Hirschfeld is directed, within 14 days of this minute, to file an application amending the claims in CIV-2017-404-481. The application will explain how the application has been amended, file details of exactly what order is sought by way of PCR, and file a map detailing the scope of the CMT claim.

[15] The attention of counsel is drawn to the decision of the Court in *Ngāti Pāhauwera strike-out application*¹ as to what can and cannot be included in an amended application.



Churchman J

¹ *Ngāti Pāhauwera strike-out application* [2020] NZHC 1139.