

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

**CIV-2017-404-575
CIV-2017-419-084
CIV-2017-419-085
CIV-2017-485-202
CIV-2017-419-083
CIV-2017-485-207
CIV-2017-419-081**

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

IN THE MATTER OF an application for orders recognising
Customary Marine Title and Protected
Customary Rights

Hearing: 12 December 2022

Counsel: C Ratapu for Te Rūnanga o Ngaati Mahuta ki te Hauaauro
(CIV-2017-404-575)
J Ferguson for Waikato-Tainui (CIV-2017-419-084)
J Pou for Te Tokanganui-a-Noho Regional Management
Committee (CIV-2017-419-085) – written correspondence only
V Morrison-Shaw for Te Runanganui o Ngāti Hikairo (CIV-2017-485-202)
A Sykes and C Houia for Tainui Hapū o Tainui Waka (CIV-2017-419-083)
T Bennion for Ngāti Apakura (CIV-2017-485-207)
N Clatworthy for Ngāti Te Wehi (CIV-2017-419-081)
G Melvin and D Ward for Attorney-General
S Cvitanovich for Seafood Industry Representatives

Minute: 13 December 2022

**MINUTE (NO. 14) OF CHURCHMAN J
[CMC – 12 December 2022]**

CIV-2017-404-575 – Ngaati Mahuta

[1] Mr Ratapu confirmed that his client still wish to pursue the direct engagement pathway for its substantive application but, in relation to the Inner Aotea Harbour hearing, intended to participate as an interested party.

[2] Mr Ratapu reported that his client wished to engage in hui with Ngāti Te Wehi but had been unsuccessful in contacting them. He was encouraged to communicate with their counsel, Mr Clatworthy. Leave is granted for Ngāti Mahuta to participate as an interested party in the Inner Aotea Harbour hearing.

CIV-2017-419-084 – Waikato-Tainui

[3] A joint memorandum was filed on behalf of counsel for Waikato-Tainui and Ngāti Whakamarurangi (MAC01-04-010) regarding the Inner Aotea Harbour hearing.

[4] Ngāti Whakamarurangi had a direct engagement only application but was a hapū of Waikato-Tainui. They wished to be involved in the Inner Aotea Harbour hearing. Waikato-Tainui is an applicant in that hearing and, as their application included all their hapū, Ngāti Whakamarurangi was able to advance its interests in the Inner Aotea Harbour through them.

[5] The memorandum recorded that, under the Korowai of the Waikato-Tainui application, Ms Siciliano would represent Ngāti Whakamarurangi at the Inner Aotea Harbour hearing. Waikato-Tainui and Ngāti Whakamarurangi supported the timetable set out in the Court's minute of 4 October 2022. However, counsel thought an additional four days of hearing time would be required to accommodate Ngāti Whakamarurangi's involvement in the proceedings. Whether that is achievable depends on the availability of judicial resources.

CIV-2017-485-202 – Te Runanganui o Ngāti Hikairo

[6] Ms Morrison-Shaw reported that the historical evidence was close to being finalised and that discussions were ongoing with overlapping claimants (Ngāti Mahuta, Ngāti Maniapoto, Waikato-Tainui, and Ngāti Te Wehi).

[7] While Ngāti Hikairo had preferred to follow the direct engagement pathway, it sees pursuing the High Court litigation as the best option. Ngāti Hikairo wish to explore with other applicants the feasibility of a timetable order working backwards from a hearing in late 2024. Counsel are encouraged to pursue that and report prior to the June/July 2023 CMCs.

CIV-2017-419-083 – Tainui Hapū o Tainui Waka

[8] Ms Sykes reported that arrangements for historical research were in hand and that tangata whenua evidence was being gathered. Overlapping claimants were meeting on a fortnightly basis to advance a collective position in respect of claims in the Whāingaroa Harbour. Ms Sykes queried when the Crown would have a draft historical report available. The applicants had engaged a professional mapper with a view to producing an agreed map. That is to be encouraged.

[9] Ms Sykes raised the query of whether the Crown wish to raise a “substantial interruption” argument. Ms Sykes raised a possibility of a judicial resettlement conference.

CIV-2017-485-207 – Ngāti Apakura

[10] Mr Bennion reported that historical research was likely to be concluded mid-2023, and that Te Apakura have had preliminary engagement with some overlapping applicant groups. They intend participating as interested parties in the Inner Aotea Harbour hearing.

Attorney-General

[11] Mr Melvin reported that historical research was underway and the research in relation to Whāingaroa Harbour was nearly complete. Until the completed research was available, he was not in a position to indicate whether or not substantial interruption would be an issue. He agreed that once it is finalised, the historical evidence would be circulated to all interested parties.

Discussion

[12] Good progress is clearly being made with kōrero between the applicant groups and interested parties. That is to be encouraged. It is premature to fix a timetable. A judicial settlement conference may be a useful initiative. It is likely to be focused on resolving individual issues rather than the complete claims themselves. The overlapping applicants are to file a memorandum detailing progress towards a judicial settlement conference prior to the June/July 2023 CMCs.

[13] Once its historical research is available, the Crown are to circulate that to the applicant parties and, if feasible, indicate whether the Crown intends raising the issue of substantial interruption.

[14] All applications will be called again in the June/July 2023 CMCs.

Churchman J