

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

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

**CIV-2017-404-483
CIV-2017-404-528
CIV-2017-485-195
CIV-2017-485-219
CIV-2017-485-222
CIV-2017-485-244
CIV-2017-485-250
CIV-2017-485-294**

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

IN THE MATTER an application by NGĀTI PUKENGA
represented by Te Tawharau o Ngāti
Pukenga for orders that recognise Customary
Marine Title and Protected Customary
Rights under the Act

Continued ...

Hearing: 12 December 2023

Counsel: T Bennion and O Ford Brierley for Ngāti Pukenga
B Tupara for Ngāti Pū in CIV-2017-404-483 and
CIV 2017-404-528
CMR Ratapu and PRB Rawiri for Ngāti Tara Tokanui Trust
in CIV-2017-485-222

Continued ...

Date of Minute 12 December 2023

MINUTE OF CHURCHMAN J

Continued ...

- AND of an application by Edward Shaw on behalf of Ngāti Pū
- AND an application by Kenneth John Linstead on behalf of Te Kupenga o Ngāti Hako
- AND an application by Jennifer Te Ohore Rolleston for and on behalf of Ihakara Tangitu Reserve

Counsel:

M Sharp for Ngāti Hē Hapū Trust in CIV-2017-485-219
J Gear for Ngai Te Rangi Settlement Trust in CIV 2017-485-244
L Murphy for Port of Tauranga Ltd in CIV-20017-485-205, CIV-2017-485-244, CIV-2017-485-294 and CIV 2017-485-219
A Grant for Ngāti Ranginui Settlement Trust in CIV 2017-485-294
R Boyte for Bay of Plenty Regional Council in respect of all applications
P F Majurey and A K Scharting for Ngāti Maru (MAC-01-03-006), Ngāti Tamaterā (MAC-01-03-011) and Hauraki Māori Trust Board (MAC-01-03-001)
M Baker for Ngaati Whānaunga (MAC-01-01-091)
G Melvin for the Attorney-General

[1] Ngāti Pūkenga has sought a hearing for the area of the Takutai Moana between Waihi Beach in the north and Mount Maunganui (including Tauranga Harbour other than Rangataua Bay) in the south. The principal issue of contention is what the geographic limits of such a hearing should be, in particular whether the hearing should encompass the entire area from Waihi Beach to Mount Maunganui or whether it should be split in two with one hearing addressing the claims to Tauranga Harbour and the other hearing addressing the balance claims as far as Waihi Beach.

[2] There are at least seven applicants with High Court proceedings who are affected by this proposal:

- (a) Ngāti Pūkenga – CIV-2017-485-250;
- (b) Ngāti Ranginui – CIV-2017-485-294;
- (c) Ngāti Tara Tokanui Trust – CIV-2017-485-222;
- (d) Ihakara Tangitu – CIV-2017-485-195;
- (e) Ngāti Hako – CIV-2017-404-528;
- (f) Ngāti Hapū o Nai Turangi – CIV-2017-485-244; and
- (g) Ngāti Hē – CIV-2017-485-219.

[3] There are three Crown engagement only applicants affected by this proposal who have participated in the case management conference. They are:

- (a) Ngāti Maru – MAC-01-03-006;
- (b) Hauraki Māori Trust Board – MAC-01-03-001; and
- (c) Ngāti Tamatera – MAC-01-03-011.

[4] There are some six Crown engagement only applicants who are affected but who did not take part in the case management conference.

[5] The Crown engagement only applicants who participated in the case management conference oppose Ngāti Pūkenga's proposal and instead seek two separate hearings with the southern hearing (essentially Tauranga Harbour) proceeding first. Ms Scharing explained that the reason for their opposition was that they saw dividing the area into two separate stages minimised the extent of the contest between the various applicant groups. The direct engagement groups are principally interested in Tauranga Harbour.

[6] A further direct engagement only group, Ngāti Whānaunga (MAC-01-01-091), was represented at the case management conference by Mr Baker. He indicated that his group's preparation for hearing was still in early stages with no historian appointed and no funding yet granted.

[7] Mr Melvin appeared on behalf of the Attorney-General and expressed a view that setting a hearing timetable, whether it was for one or two separate hearings, would not hinder the efforts of the Crown at direct engagement.

[8] One of the applicant groups has both High Court and direct engagement applications (Ngāti Tara Tokanui Trust) and Mr Ratapu expressed a view that although his client's preference was direct engagement, if the High Court proceedings were timetabled to fixture his client would actively advance its claims at the hearing.

[9] Both the Bay of Plenty Regional Council and the Port of Tauranga were represented at the case management conference and indicated that irrespective of whether there were one or two hearings they would wish to play an active part.

[10] Counsel for all of the High Court applicants who appeared at the case management hearing indicated that if a hearing was allocated no earlier than mid 2025 their clients would be in a position to comply with timetable directions in relation to the filing of evidence.

[11] The memorandum of 27 November 2023 filed by Mr Bennion set out a proposed timetable hearing.

Discussion

[12] It is not possible to design a hearing area that will satisfy all applicants. Some of the High Court pathway applicants have already had to participate in two prior hearings where the Court has dealt with different areas of their applications. Splitting the present area into two separate hearings would mean that they would ultimately have participated in four different hearings. That is a significant factor in favour of having one combined hearing. The fact that there is significant support for Ngāti Pūkenga's proposal from the other High Court pathway applicants is also relevant. I appreciate that there will be some inconvenience to the direct engagement applicants, including within the hearing area, parts of the Takutai Moana in which they have no interest. However, on balance, the fairest approach would seem to be to have one hearing area extending from Waihi Beach in the north to Mount Maunganui in the south, including those parts of Tauranga Harbour not already the subject of other hearings.

[13] Counsel estimated that the likely length of such a hearing would be in the order of 12 weeks and, while lengthy, that would appear to be manageable.

[14] The applicants seek a hearing date commencing in late 2025 or early 2026. Given that the estimated time is 12 weeks, it would be preferable not to split the hearing over the period in January when the Court does not sit.

[15] Accordingly, I request the registrar to arrange a 12 week hearing for the first available date after 1 February 2026.

[16] Once the hearing date is set the timetable will be:

- (a) All applicant evidence is to be filed and served six months prior to the hearing date.

- (b) All interested party evidence (other than that of the Attorney-General) are to be filed and served four months prior to the hearing date.
- (c) The Attorney-General's evidence is to be filed and served three months prior to the hearing date.
- (d) Submissions on Pūkenga (if required) are to be filed and served three months prior to the hearing date.
- (e) Any applicant evidence in reply is to be filed and served two months prior to the hearing date.
- (f) Close of pleading date is two months prior to the hearing date.
- (g) Opening submissions of all parties are to be filed and served two weeks prior to the hearing date.
- (h) An indicative hearing timetable is to be filed and served two weeks prior to the hearing date.

Churchman J

Solicitors / Counsel / Parties:

Mr T Bennion and Ms O Ford Brierley, Bennion Law,
Wellington Mr B Tupara, Ranfurly Chambers Ltd, Auckland
Mr CMR Ratapu and Mr PRB Rawiri, McCaw Lewis, Hamilton
Mr M Sharp
Mr J N Gear, Gear Legal Ltd, Tauranga
Ms L Murphy, Holland Beckett Law, Tauranga
Ms A Grant, Kāhui Legal, Wellington
Ms R Boyte
Mr P F Majurey and Ms A J Scharing, Holm Majurey, Auckland
Mr G Melvin, Crown Law, Wellington