

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

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

**CIV-2017-485-305  
[2023] NZHC 804**

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

IN THE MATTER OF an application by Tamihana Paki on behalf  
of Te Parawhau for orders recognising  
Customary Marine Title and Protected  
Customary Rights

On the papers:

Counsel: C Hockly for Applicant (CIV-2017-485-305)  
G S G Erskine for Ngā Hapū o Tangaroa ki Te Ihu o Manaia  
tae atu ki Mangawhai (CIV-2017-404-579)  
M Chen and C Saunders for Te Rūnanga o Ngāti Whātua  
(CIV-2017-404-563)  
S de Groot and O Manning for the Trustees of the Te Uri o Hau  
Settlement Trust (CIV-2009-488-205)  
G Melvin for Attorney-General

Judgment: 18 April 2023

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**JUDGMENT OF CHURCHMAN J  
[Re Whangārei Coast Southern Boundary]**

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**Introduction**

[1] The applicant, Tamihana Te Akitai Paki on behalf of Te Parawhau, has filed a memorandum with the Court providing an update and outcome of further discussions regarding the proposed boundaries for the hearings being planned for the Whangārei Coast hearing area.

[2] I have also received memoranda in response from three affected applicants in the Whangārei Coast hearing area, namely Ngā Hapū o Tangaroa ki Te Ihu o Manaia

tae atu ki Mangawhai (NHOT), Te Rūnanga o Ngāti Whātua (TRONW), and Trustees of the Te Uri o Hau Settlement Trust on behalf of the Hapū of Te Uri o Hau (Te Uri o Hau).

[3] The key issue for determination here concerns the southern boundary of the Whangārei Coast hearings, in particular whether the southern boundary should be confirmed as Bream Tail.

### **Positions of the parties**

[4] The applicant says it was proposed in memoranda and at the case management conferences that the northern boundary of the Ngāti Manuhiri application be the southern boundary of the Whangārei Coast hearing area.

[5] The northern boundary of the Ngāti Manuhiri application is Bream Tail.

[6] The applicant in its memorandum has now advised the Court that its preferred southern boundary of the Whangārei hearing area remains Bream Tail, the northern boundary of the Ngāti Manuhiri application area, as proposed.

[7] The applicant has indicated that Ngāti Manuhiri was advised of this position and supports the update now being provided to the Court.

[8] However, the proposal is opposed by NHOT and Te Uri o Hau. TRONW supports Te Uri o Hau and abides the decision of the Court.

[9] NHOT proposes that the southern boundary of the Whangārei Coast area for hearing be at the Mangawhai River rather than at Bream Tail. This is because the Mangawhai River is at the southern boundary of NHOT's application area.<sup>1</sup> It is some five kilometres to the south of Bream Tail. NHOT's application area currently lies within both the Whangārei Harbour and Whangārei Coast areas. Both areas have been set down for substantive hearings in 2024 for 10-12 weeks each. If the southern boundary for the Whangārei Coast hearing area is situated at Bream Tail, NHOT says

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<sup>1</sup> As described in NHOT's originating application, "[t]he southern coastal boundary is the northern bank at the mouth of the Mangawhai River."

it will need to participate in a third substantive hearing just for the area from Bream Tail to the Mangawhai River five kilometres to the south. That hearing would likely be the proposed “Central East Coast” hearing area, which may involve 18 other applicants. Alternatively, if the southern boundary of the Whangārei Coast area is at the Mangawhai River, NHOT says it would avoid the time, costs and delay of participation in a large third substantive hearing.

[10] Te Uri o Hau opposes the southern boundary for the Whangārei Coast hearing area aligning with Bream Tail. Te Uri o Hau is pursuing coastal marine title in respect of its claim area through direct engagement with the Crown and says it wishes to see these negotiations through to resolution. Te Uri o Hau advises that as a result it does not wish to participate in the High Court hearing of the Whangārei Coast area.

[11] Te Uri o Hau says it commenced its discussions with the Crown many years ago, and the Crown has indicated its desire to resolve Te Uri o Hau’s claim as a priority, given the advanced status of its research and claim. It says it has regular kōrero and hui with the Crown to discuss progress, and wants to progress its negotiations with the Crown as quickly as possible. Nevertheless, Te Uri o Hau says it is possible its negotiations with the Crown will still be continuing when preparation and involvement in the Whangārei Coast hearing is required as per the timetable directions. Te Uri o Hau is concerned the hearing process will require it to duplicate its efforts in two different fora and undermine both its direct engagement process with the Crown as well as its process of resolving conflicts concerning overlapping interests through kōrero with overlapping complainants consistent with tikanga. Te Uri o Hau therefore does not support confirmation of the southern boundary area aligning with Bream Tail, and requests an adjustment to the southern boundary to exclude its claim area, moving the boundary to be in line with Waipu Cove extending seaward.

[12] TRONW supports Te Uri o Hau and expresses that it has no desire to hinder or slow the progress of Te Uri o Hau in direct engagement with the Crown. On the matter of the southern boundary of the Whangārei Coast hearing area, TRONW advises it abides the decision of the Court.

## Discussion

[13] By way of background, on 23 May 2022, TRONW filed a memorandum requesting that the southern boundary of the Whangārei Coast area be adjusted to exclude the application area of Te Uri o Hau on the basis that Te Uri o Hau was in direct engagement with the Crown in relation to its claim and making good progress. The proposed southern boundary was in line with Te Uri o Hau’s northern east coast boundary, at approximately Waipu Cove.

[14] On 16 June 2022, the applicant and Ngātiwai filed a joint memorandum seeking to move the southern boundary further south, from Waipu Cove down to Bream Tail. This boundary overlaps with the top of Te Uri o Hau’s claim area.

[15] Following a case management conference held on 21 June 2022, in my minute of 1 July 2022, I said: “[a]ccepting that wherever the boundary is drawn, one or more applicants will be adversely affected”, I confirmed that the boundary should be drawn in accordance with the joint memorandum, that is at Bream Tail.<sup>2</sup> I noted I was satisfied drawing the boundaries of the Whangārei Coast hearing area in this way represented a reasonable compromise in balancing the interests of the affected parties, and confirmed this would be the boundary.<sup>3</sup>

[16] Later in that minute, I noted that counsel for Ngāti Manuhiri supported the proposal to refine the boundaries of the hearings to avoid any overlap with the Ngāti Manuhiri application area. I directed counsel for the applicant to file a memorandum “within 60 days updating the Court as to the outcome of any further discussions regarding proposed hearing boundaries.”<sup>4</sup> It appears that counsel has conferred with Ngāti Manuhiri regarding the boundary adjustment. Ngāti Manuhiri are supportive of the boundary proposed. I am unclear as to why Te Uri o Hau was not also included in these discussions, as it is directly affected by the boundary adjustment. It is apparent that Te Uri o Hau opposes the boundary being situated at this location. Counsel ought to have engaged in discussions with Te Uri o Hau and it is regrettable that they did not do so.

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<sup>2</sup> Minute of Churchman J [Case Management Conferences (CMCs) 2022], 1 July 2022 at [145].

<sup>3</sup> At [147].

<sup>4</sup> At [182].

[17] Nevertheless, ultimately I consider the correct outcome here is that the southern boundary be confirmed as outlined in my minute of 1 July 2022, that is at Bream Tail. This will mean that the hearing area will exclude the Ngāti Manuhiri application area, as suggested in my minute of 1 July 2022 following the case management conference held on 21 June 2022.

[18] In reaching this conclusion, I am fully aware of the adverse effects on NHOT and Te Uri o Hau. It is of course undesirable that NHOT will be required to participate in a third substantive hearing. However, it is unavoidable that, in some instances where there are overlapping claims that it is impossible to devise a system for the hearing of these claims that does not involve on or more parties in having to participate in more than one hearing. This is a consequence of the nature of overlapping claims over large application areas.

[19] Any boundary drawn in relation to the areas that will be the subject of this hearing is inevitably going to have adverse effects on one or other applicant. I am satisfied, as I was in my minute of 1 July 2022, the drawing of the boundary at Bream Tail represents the best compromise in this situation, and NHOT's participation in a third hearing is an unfortunate but necessary consequence of that.

[20] The same applies in respect of Te Uri o Hau. Although it is imperative that, in the dual pathway process for recognition of customary title, the application process through the Courts does not unduly interfere with direct negotiations between an iwi group and the Crown, the participation of Te Uri o Hau is similarly a necessary consequence of what I considered in my earlier minute, and continue to consider, is the best compromise in the situation. In saying this, I emphasise to counsel for the applicant the importance of engaging in discussions with Te Uri o Hau as an affected party.

## **Conclusion**

[21] The southern boundary of the Whangārei Coast hearing area is confirmed as being at Bream Tail, as provisionally outlined in my minute of 1 July 2022.

## **Churchman J**

Solicitors:

Hockly Legal, Auckland for Applicant CIV-2017-485-305)

Kemps Weir Lawyers, Auckland for CIV-2017-404-563

Minter Ellison Rudd Watts, Auckland for CIV-2009-488-205

Crown Law, Wellington for Attorney-General

cc: Afeaki Chambers, Auckland for CIV-2017-404-579