

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

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

**CIV-2017-404-526  
[2023] NZHC 1453**

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

IN THE MATTER OF an application by **Ngā Tini Hapū o  
Maniapoto** for orders recognising  
Customary Marine Title and Protected  
Customary Rights

On the papers:

Counsel: C Hirschfeld, B Tupara and T A Thompson for Applicant

Judgment: 12 June 2023

---

**JUDGMENT OF CHURCHMAN J**

---

**Introduction**

[1] The applicant has filed an amended application, dated 23 May 2023, for orders under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act), with an amended map pursuant to my directions of 1 July 2022 and 4 October 2022. The amendments to the application area result from kōrero between this applicant and a number of cross-applicants. The result of the proposed amendments is a reduction of the area claimed in the northern part of the application and a refinement of the nature of the claim in the southern part of the application.

**Proposed amendments**

[2] The amended map has altered the CMT boundary at both the northern and southern end points.

[3] At the northern end, the proposed amendment is from Toka Moana Anaputa, at 38°12'54.8"S 174°42'50.1"E, to Waihekura Stream, at 38°13'19.6"S 174°42'50.5"E. At the southern end, the amended boundary that is proposed is from Hui Komako, at 38°30'27.4"S 174°37'53.9"E, to Waioroko, at 38°33'21.2"S 174°37'56.2"E.

[4] The change at the northern end represents a reduction in the size of the area over which CMT is claimed. The change to the southern boundary appears to encompass what had been described in the applicant's earlier application as "Area 3", which was an area where the applicant sought CMT and PCR. Effectively the change at the southern end is to encompass within the applicant's delineated CMT and PCR application area the area over which it had already been claiming CMT and PCR, but this is now claimed on the basis of shared exclusivity between Ngāti Rārua and those represented by the Mokau Ki Runga group. In other words, this is not claiming any greater area for CMT (or, for that matter, PCR) than the previous application.

[5] Being, overall, a reduction to the application area over which CMT is claimed, this amendment fits within the category of amended applications that will be allowed as set out in the *Ngāti Pāhauwera (strike-out application)* decision.<sup>1</sup>

[6] The amended application also provides a reduced ledger of hapū and a refined list of tūpuna and tikanga. Again, there is no expansion of the applicant group or application by these amendments and consequently it is permissible.

[7] To the extent that the amended application seeks CMT in part of the application area on a "shared exclusivity" basis, it will be necessary for the applicant group or groups with whom this applicant claims it has shared exclusivity, to also amend their applications to reflect the claim of shared exclusivity. One applicant cannot unilaterally advance a claim of shared exclusivity in the absence of agreement with the applicant group or groups who are claimed to share the same area. Therefore, consent to this aspect of the amendment of the application is conditional upon those groups with whom it is asserted that there was shared exclusivity amending those parts of their application that overlap with the claimed area of shared exclusivity to reflect that.

---

<sup>1</sup> *Re Ngāti Pāhauwera Development Trust (strike-out application)* [2020] NZHC 1139 at [62].

[8] On 29 July 2022, counsel for the applicant filed a memorandum in support of the proposed amended application. That memorandum finished with the words that the applicant wished to register: “recognition of our ancient fishing spots out in the whale trails that pass by our rohe moana at about 20 miles out at sea in the shared moana area.” The Court’s jurisdiction under the Act does not extend beyond 12 nautical miles from the coast. Therefore, the Court has no jurisdiction to grant any recognition order in relation to an area 20 miles out at sea.

### **Conclusion**

[9] Leave is granted to the applicant to file an amended application on the basis set out above. If the amended application and supporting documentation has not already been served on all cross-applicants and interested parties, that is to be done within seven working days of this decision.

### **Churchman J**

Solicitors:  
Foster & Milroy, Hamilton