

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

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

CIV-2017-404-000580

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

IN THE MATTER OF an application by Freda Pene Reweti
Whānau Trust on behalf of Ngāti Rehua-
Ngāti Wai ki Aotea for orders recognising
Customary Marine Title and Protected
Customary Rights

CIV-2017-404-000546

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

IN THE MATTER OF an application by Ngāti Rehua-Ngāti Wai ki
Aotea for orders recognising Customary
Marine Title and Protected Customary
Rights

On the papers

Counsel: S M Yogakumar and H J Fletcher for Applicants

Minute: 31 October 2023

MINUTE OF CHURCHMAN J

Background

[1] Ngāti Rehua-Ngāti Wai ki Aotea and Freda Pene Reweti Whānau Trust have filed separate applications under the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”) for recognition orders as to customary marine title (“CMT”) and protected customary rights (“PCR”).

[2] In a memorandum dated 1 May 2023 ahead of the Auckland case management conference for applications under the Act, counsel indicated that there was a prospect of the two applicants amalgamating their application.

[3] On 27 September 2023, a first amended originating application was filed by Freda Pene Reweti Whānau Trust on behalf of Ngāti Rehua-Ngāti Wai ki Aotea.

[4] That application was served on all overlapping applicants with none having filed a response in the Court.

[5] The effect of the amended application is that it refines the application area so that it no longer includes any part of the area of the Whangārei coast that is presently subject to timetabling directions.

[6] In addition to amalgamating the two applications, the amended application lists as the legal entity who will be the representative of the applicant group as being the Freda Pene Reweti Whānau Trust and the Ngāti Rehua-Ngāti Wai ki Aotea Trust.

[7] In addition to reducing the area claimed, the amended application seeks to specify two islands, Rakitu and Motu Tohora. Although these islands were not identified by name in the original application, they are located within the area covered by the original application. As the islands themselves are not within the marine and coastal area, naming them in the application does not alter the area of the application.

[8] The agreement to the adjustment of the boundaries of the original application reflects the outcome of discussions between the parties to mutually adjust boundaries where there are overlapping applications in an attempt to reduce the area of overlap.

[9] In terms of the eastern boundary of the Freda Pene Reweti Whānau Trust's application, the original application specified a boundary which extended beyond 12 nautical miles. The updated map now brings that seaward eastern boundary back to 12 nautical miles from the coast of Aotea.

[10] I am satisfied that the amendments do not increase the nature or scope of the original application and grant leave for the amended application to be filed.

[11] There are also some minor amendments to the PCR application. However, I am satisfied that there is no change in substance to the application, merely the provision of greater detail. In accordance with my ruling in *Tukōkō v Ngāti Moe*,¹ I am satisfied that it is appropriate to grant leave for this amendment and do so.

[12] However, there is one aspect of the amended application which is impermissible. In [21], the applicants say that they reserve the right to apply for the inclusion of additional wāhi tapu with any CMT order that may be granted. The applicants do not have a legal right to amend any application. They may apply for leave and such a leave application will be dealt with on its merits in accordance with the principles set out in *Re Ngāti Pāhauwera Development Trust (Strike Out Application)*.²

[13] Hence forth the new amalgamated application will have the CIV number 2017-404-000580.



Churchman J

Solicitors:

Tamaki Legal, Auckland for Applicants

¹ *Tukōkō v Ngāti Moe* [2023] NZHC 473.

² *Re Ngāti Pāhauwera Development Trust (Strike Out Application)* [2020] NZHC 1139.