

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

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

**CIV-2011-485-817**

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| IN THE MATTER OF | the Marine and Coastal Area<br>(Takutai Moana) Act 2011  |
| IN THE MATTER OF | an application for an order recognising<br>Customary Marine Title and Protected<br>Customary Rights      |
| BY               | the late Claude Augustin Edwards<br>(deceased), Adriana Edwards and others on<br>behalf of Te Whakatōhea |

Date: 13 October 2020

Counsel: T Sinclair and B Cunningham for Te Whakatōhea; Hiwarau C,  
Turangapikitoi, Waiotahe, and Ohiwa of Whakatōhea;  
Pakowhai Hapū; and Whānau a Apanui  
C Linstead-Panoho and T K Williams for Ngāi Tamahaua and  
Te Hapū Titoko o Ngāi Tamahaua  
M Mahuika and N Coates for Te Whānau a Apanui  
E Rongo for Ngāti Torere and Ririwhenua Hapū  
C Leauga and D Stone for Whānau a Te Harawaka  
B Lyaill for Te Ūpokorehe Trust  
M Sinclair, M Sharp and J Waaka for Ngāti Muriwai Hapū  
C Hirschfeld for Ngāti Huarere ki Whangpoua  
(watching brief only)  
A Warren and K Ketu for Whānau a Mokomoko  
H Irwin-Easthope for Te Rūnanga o Ngāti Awa  
A Sykes and C Dogherty-Ware for Ngāti Ira o Waiōweka Rohe  
T Bennion for Ngāti Patumoana  
J Pou for Whakatōhea Māori Trust Board  
T Cast for Ngāi Taiwhakaea (watching brief only)

Interested Parties:

K Feint QC for Ngāti Ruatakenga  
R Roff, R Budd and S Gwynn for Attorney-General  
C Finlayson QC, A Dartnall and S Eldridge for Landowners  
Coalition Incorporated  
M Jones for Whakatane District Council  
T Reweti for Bay of Plenty Regional and Ōpōtiki District

Councils  
A Williams for Seafood Industries Representatives

Minute: 13 October 2020

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**MINUTE (NO. 35) OF CHURCHMAN J**  
**[Re: questioning of Pūkenga]**

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[1] On Friday 9 October 2020 counsel for the parties involved in these proceedings questioned the Pūkenga on aspects of their report. One counsel, Ms Irwin-Easthope, representing Ngāti Awa, an interested party, was unable to complete her cross-examination by the time the Court rose. Two other counsel, Mr Mahuika for Te Whānau a Apanui and Ms Roff, for the Crown, had not been able to commence her questioning. All three counsel were given the opportunity of submitting questions in writing to the Pūkenga which would be answered in writing.

[2] If they wished to avail themselves of that opportunity they were directed to file their questions with the Court by noon on Tuesday 13 October with the Pūkenga to provide written answers to the questions the same week.

[3] Ms Irwin-Easthope filed a memorandum dated 13 October 2020 setting out three questions she wished to put to the Pūkenga.

[4] Mr Lyall, on behalf of Te Ūpokorehe Treaty Claims Trust, has filed a memorandum dated 13 October 2020 submitting that Ngāti Awa should not be permitted to put further questions.

[5] Two grounds are advanced in support of this claim. Firstly:

It was not our understanding that this extended to a blanket right for all counsel to pose further questions. Counsel for Ngāti Awa had opportunity to question the Pūkenga on Friday 9 October.

Allowing further written questions invites the same approach from all counsel. We are concerned that this could have the effect of requiring all counsel to reconvene to put questions and may delay release of the final Pūkenga report.

## **Analysis**

[6] For the reasons detailed above, it is not correct to assert that counsel for Ngāti Awa had the opportunity to question the Pūkenga on Friday 9 October. Counsel's questioning was interrupted when the Court had to rise.

[7] Permitting Ms Irwin-Easthope to complete her questioning by way of submitting written questions for the Pūkenga to answer does not "invite the same approach from all counsel". All counsel who preceded Ms Irwin-Easthope had concluded their questioning and the opportunity to put questions in writing was only extended to Ms Irwin-Easthope because she had not completed her questioning and to Mr Mahuika and Ms Roff because they had not commenced their questioning.

## **Outcome**

[8] Accordingly, the request in Mr Lyall's memorandum of 13 October is declined. The questions have been sent to the Pūkenga for their response.

**Churchman J**