

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

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

**CIV-2011-485-793
CIV-2017-485-244
CIV-2017-485-219
CIV-2017-485-250
CIV-2017-485-223
CIV-2017-485-294
CIV-2017-404-480
CIV-2017-404-528
CIV-2017-485-767
CIV-2017-485-222
CIV-2017-485-195
CIV-2017-404-556
CIV-2017-485-317
CIV-2017-485-514
CIV-2017-485-196**

IN THE MATTER OF the Marine and Coastal Area
 (Takutai Moana) Act 2011

AND

IN THE MATTER OF applications by **Ngā Potiki, Ngā Hapū o
Ngāi Te Rangi, Ngāti He Hapū Trust,
Ngāti Pūkenga, Ngāti Whakahemo,
Ngāti Ranginui, Ngāti Hei, Ngāti Pū,
Ngāti Hako, Ngā Hapū o Te Mōutere o
Motītī, Ngāti Tara Tokanui, Ihakara
Tangitū Reserve, Ngāti Porou ki
Hauraki, Raurima Island Māori
Reservation, Tangihia Hapū, and
Te Rūnanga o Ngāti Awa** for orders
recognising customary marine title and
protected customary rights

On the papers:

Counsel: A Warren for CIV-2011-485-793
 J Gear for CIV-2017-485-244
 S Webster for CIV-2017-485-219
 T Bennion for CIV-2017-485-250
 J Koning for CIV-2017-485-223
 K Tahana and A Tapsell for CIV-2017-485-294

C Hirschfeld for CIV-2017-404-480, CIV-2017-404-483 and
CIV-2017-404-528
K Feint QC and S Fletcher for CIV-2017-485-767
R Siciliano for CIV-2017-485-222
S Webster for CIV-2017-485-195
B Lyall for CIV-2017-404-556
J Ferguson for CIV-2017-485-317
J Mason for CIV-2017-485-514
H Irwin-Easthope for CIV-2017-485-196

Minute: 25 June 2020

MINUTE (NO. 22) OF CHURCHMAN J

[1] Some 16 of the 22 applicants whose cases are to be called at the Tauranga case management conference (CMC) on 8 July 2020 have filed memoranda in accordance with the Court's minute of 22 May 2020.

[2] A number of counsel have sought for their appearance to be excused or to be able to participate by way of AVL.

[3] In this minute, I excuse the attendance of those counsel who have filed a memorandum that advises the Court of the progress made since last year's CMC round and also approve attendance by AVL, subject in all cases to that being technically feasible in respect of each such applicant.

[4] I note that one applicant, Ngāti Porou ki Hauraki (CIV-2017-404-556) now asks the Court to make timetable directions towards hearing. This request has implications for other applicants whose applications overlap with that of Ngāti Porou ki Hauraki. Ngāti Tara Tokanui (CIV-2017-485-222) fall into that category and they want their application to be heard in full or in part with the Ngāti Porou ki Hauraki application.

[5] In setting down for hearing the applications of applicants whose claims overlap with those of other applicants, the Court is mindful of the cost to applicants of having to participate in a series of separate hearings.

[6] There are significant economic and logistical benefits to the parties from having hearings in relation to groups of overlapping claims which relate to the same or broadly the same area.

[7] At the Tauranga CMC, the Court will be seeking the views of applicants on such an approach.

[8] Those counsel who have sought to have their appearance dispensed with may therefore want to consider either filing an updating memorandum addressing this issue, attending in person, or briefing another counsel who will be attending to convey to the Court such instructions as they may have received on this point.

[9] The detail of the submissions of each counsel will be summarised in the full minute issued after completion of the 2020 round of CMCs, but I make the directions in relation to attendance as follows:

(a) Stage 1 – Ngā Potiki Priority Application:

Ngā Potiki a Tamapahore Trust (CIV-2011-485-793) (counsel A Warren and J Lewis); Ngāi Te Rangi Settlement Trust (CIV-2017-485-244) (counsel J Gear); Ngāti Hei Hapū Trust (CIV-2017-485-219) (counsel S Webster); and Tāwharau o Ngāti Pūkenga (CIV-2017-485-250) (counsel T Bennion). Counsel filed a joint memorandum detailing progress and indicating that they wished the Court to consider, at the CMC the possibility of convening a judicial settlement conference and/or other alternative dispute resolution processes. Further amendments to the timetable order are also sought. The Court will address these issues at the Tauranga CMC. Mr Bennion is granted leave to appear by AVL.

(b) Ngāti Whakahemo (CIV-2017-485-223) (counsel J Koning) has sought clarification as to whether all of his client's application or only those parts overlapping the Ngā Potiki/Te Mōutere o Motītī claims will be heard together with them. The Court will address this issue at the Tauranga CMC.

(c) Ngāti Ranginui (CIV-2017-485-294) (K Tahana and A Tapsell) other than that part of their claim that overlaps with the Ngā Potiki Priority case, they seek a

12-month adjournment. That is granted as is the request for excusal from attendance at the Tauranga CMC.

- (d) Ngāti Hei (CIV-2017-404-480); Ngāti Pū (CIV-2017-404-483); Ngāti Hako (CIV-2017-404-528) (counsel C Hirschfeld, B Tupara and Te A Thompson). The memoranda filed by counsel in respect of each of these matters detail progress but also say that the applicants are “on stand-by for meaningful discussion with other groups”. This would indicate that the applicants are waiting for the other groups to initiate that discussion. A passive approach of this nature is unlikely to see matters advanced and the applicants are encouraged to seize the initiative by actually approaching the other groups referred to in their memoranda and commencing discussions. The requests for the matters to be dealt with on the papers and counsel’s attendance excused are granted.
- (e) Ngā Hapū o Te Mōutere o Motītī (CIV-2017-485-767) (counsel K Feint QC and S Fletcher). Counsel’s attendance at the Tauranga CMC has already been excused.¹ In their memorandum, counsel noted that two Interested Parties in the Ngā Potiki application had sought and obtained leave to receive transcripts from the Stage 1 hearing and the opportunity to file memoranda. Counsel queried whether the Court considered that parties not involved in Stage 1 should have the opportunity to file legal submissions and sought leave to do so. The Court’s present view is that unlike the Interested Parties who are directly concerned with the subject matter of Stage 1, it is not necessary for those applicants interested only in Stage 2 to receive the transcripts and comment on them. However, leave is reserved to the applicant to make such an application following completion of the Stage 1 hearing.
- (f) Ngāti Tara Tokanui (CIV-2017-485-222) (counsel R Siciliano). Counsel’s memorandum submitted that it was appropriate for the Ngāti Tara Tokanui application to be heard either in full or in part with the Ngāti Porou ki Hauraki application if that matter was to be timetabled for a hearing. This issue will be

¹ Minute No. 15 of Churchman J dated 15 June 2020.

addressed at the Tauranga CMC. Counsel's application for leave to attend via AVL is granted.

- (g) Ihakara Tangitū Reserve (CIV-2017-485-195) (counsel S Webster). Counsel's memorandum indicated an intention to file an amended map. The Court awaits receipt of that document. Counsel's attention is drawn to the Court's decision in *Re an application by Ngāti Pahauwera*² which addresses the limits of what is and is not permissible when amending an application.
- (h) Ngāti Porou ki Hauraki (CIV-2017-404-556) (counsel B Lyall). Counsel seeks timetabling directions towards a hearing. That application and its consequences will be discussed at the Tauranga CMC.
- (i) Raurima Island Māori Reservation (CIV-2017-485-317) (counsel J Ferguson and N Milner). The memorandum refers to discussions with overlapping applicants and says that the majority of these are on behalf of the iwi of Ngāti Apa or Hapū of Ngāti Apa. The applicant is reminded that, under the Act, an application can only be made in respect of an iwi, hapū, or whānau. While a post-settlement entity or trust can conduct an application on behalf of an applicant, they cannot seek orders in their own name. In cases where there are cross-applications involving different hapū or whānau of the same iwi, applicants are strongly encouraged to engage with dialogue with other cross-applicants in order to be able to enhance the prospects of a successful outcome. The request for a 12-month adjournment and dispensation of counsel's appearance at the Tauranga CMC is granted.
- (j) Tangihia Hapū (CIV-2017-485-514) (counsel J Mason and H Berger). The memorandum of counsel repeats (in many cases verbatim) many of the submissions made by counsel in a memorandum dated 12 June 2020 filed in respect of the Ngāti Pahauwera Priority hearing (CIV-2011-485-821). The Court issued a minute (*Re an application by Ngāti Pahauwera*, Minute (No. 8) of Churchman J, 15 June 2020, CIV-2011-485-821, that addressed the issues raised by counsel in the minute of 12 June 2020 and substantially repeated in

² *Re an application by Ngāti Pahauwera* [2020] NZHC 1139.

the memorandum of counsel of 23 June 2020 (CIV-2017-485-514). In advancing virtually the same submissions, counsel appears to have ignored the content of the Court's minute of 15 June 2020. That is unfortunate. The Court has already explained to counsel why it is not appropriate to grant a stay application on the basis sought. It is disrespectful of counsel to ignore the Court's rulings and simply repeat the same submissions that have been dealt with and rejected in earlier proceedings. Counsel's request to attend the Tauranga CMC by way of AVL is granted.

- (k) Te Rūnanga o Ngāti Awa (CIV-2017-485-196) (counsel H Irwin-Easthope). Counsel's application to attend the Tauranga CMC by AVL link is granted.

[10] Those applicants who have not yet filed and served memoranda are encouraged to do so without delay.

Churchman J