IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2011-485-817

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

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
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 Lyall for Te Ūpokorehe Trust
M Sinclair, M Sharp and J Waaka for Ngāti Muriwai Hapū
C Hirschfeld for Ngāti Huarere ki Whangapoua (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 Dougherty-Ware for Ngāti Ira o Waiōweka Rohe
T Bennion for Ngāti Patumoana
J Pou for Whakatōhea Māori Trust Board
T Castle 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: 9 October 2020

MINUTE (NO. 31) OF CHURCHMAN J

[1] By a document dated 5 October 2020, what was described as a fourth amended originating application for recognition orders, was filed on behalf of the priority applicant.

[2] The document commenced by setting out the text of the original application to the Māori Land Court (MLC) dated 6 January 1999 and 23 February 1999, making claims in respect of what was said to be Māori customary land, including the foreshore and seabed. Also attached was a copy of an application to the MLC dated 17 January 2005 under the Foreshore and Seabed Act 2004. That application was transferred to the High Court as a priority application following the coming into effect of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act). That application has been amended on three occasions, 18 May 2015, 2 June 2020 and 31 July 2020.

[3] There is no need for the filing of a fourth consolidated amended application. The applications made to the MLC do not fall within this Court's jurisdiction. The application under the Foreshore and Seabed Act has been transformed into an application under the Act, and the Court has all the details of that application, as amended.

Marine reserve

[4] The amended application includes Whakaari (White Island) and records the statement that the applicant wishes to exclude "… an area extending to one nautical mile from the mean high water springs on the coast of Whakaari in respect of which it is intended to have declared a marine reserve, as depicted in the maps accompanying this amended application."

[5] This Court has no jurisdiction in these proceedings to declare any area a marine reserve.

[6] If the Court makes any orders in these proceedings in relation to Whakaari, the holders of any orders that the Court may grant would obviously have significant input into any application in relation to a marine reserve that might subsequently be made.

[7] The fourth amended application also contains a paragraph with the statement, "In regard to customary marine title to all of Ōhiwa Harbour, from the east to the west, Whakatōhea iwi applicants prefer in accordance with tikanga to reach an agreement with Ngāti Awa." A similar statement was made in relation to seeking an agreement with Ngāti Awa and Tūhoe regarding protected customary rights in relation to Ōhiwa Harbour.

[8] As explained to counsel, the priority applicants have sought both CMT and PCR orders in respect of Ōhiwa Harbour. The hearing in respect of those applications has largely concluded. It is not open for the priority applicants at this stage to seek to amend their application to vary the nature of the relief they are seeking from the Court.

[9] If the priority applicants wish to continue any negotiations between themselves and other overlapping applicants or interested parties that might lead to an agreement on the issues of boundaries, that is a matter for them. However, once the hearing has been concluded with the presentation of closing submissions, the Court will embark upon preparation of the decision.

[10] Leave is granted to any applicant to file a memorandum recording an agreement between the parties on any issue that is relevant to the decision, and if such an agreement is received by the Court before any decision is finalised, the Court may have regard to it.

Technical amendments

[11] The fourth amended originating application contained some other technical amendments which simply record updating details. It is not necessary for a fourth amended statement of claim to be filed to record these matters.

Outcome

[12] For the reasons set out above, leave to file a fourth amended originating application is declined.

Churchman J