

**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  
                                 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 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:                  12 October 2020

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**MINUTE (NO. 33) OF CHURCHMAN J**  
**[Additional questions for pukenga]**

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**Introduction**

[1] In an earlier minute,<sup>1</sup> following consultation with counsel, I identified the four questions that the pukenga were to address. The minute referred to the possibility of further supplemental questions being put to the pukenga in relation to issues that might arise during the course of the hearing.

[2] Following the presentation of the pukenga report on 9 October 2020 and the questioning of the pukenga by counsel, two issues emerged where further clarification from the pukenga is necessary.

[3] In paragraph (ii)(b) of their report, the pukenga said:

Our simple solution is to go a tikanga-based poutarāwhare comprising Te Whakatōhea and Ūpokorehe for the rohe from Maraetotara in the west to Tarakeha in the east.

[4] The pukenga's report did not specifically address the area between Maraetotara and the end of the spit at the western entrance to Ōhiwa Harbour or the area between Tarakeha and Te Rangi in the east.

[5] The pukenga report acknowledged that there were overlapping interests with Ngāti Awa to the west and Ngāi Tai to the east.

[6] On page 10 of the report, the areas which the report identified Ngāti Awa as having customary interests were described as being:

- (i) Whakaari, Maraetotara West, Tauwhare Pā, West Ōhiwa Harbour;
- (ii) Ngāti Awa holds the customary interest for Moutōhora (Whale Island), Te Raurima, Turuturu Roimata (Wairaka Rock);

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<sup>1</sup> Minute (No. 21) of Churchman J dated 4 August 2020 at [14].

- (iii) Opihi Whanuankakore (cemetery of the unnamed relatives), Te Anga o Muriwai (Cave of Muriwai), Kapu Te Rangi (Toikairakau Pā).

[7] On the same page, the Ūpokorehe customary interests were described as being:

- (i) Customary interests in Maraetotara East, Cheddar Valley, Ōhiwa Harbour, Waiotahe, Hokianga, Hiwarau C, Waiōweka, Paerata, Opotiki mai Tawhiti.

[8] Although by inference, the reference to Maraetotara East includes all the area along the Ōhope spit to the east of Maraetotara, that is not explicitly stated.

[9] In relation to the area where Ngāi Tai had customary interests on page 11, the report said:

- (e) **Ngāi Tai:** Shared customary interests with Te Kahui o Ngā Hapū o Te Whakatōhea out to the fishing rocks over to Whakaari and Te Paepae Atea. However, and based on tikanga, our view is that Ngāi Tai have mana whenua from Tarakeha in the west to Taumata o Apanui.

[10] Under questioning, the pukenga acknowledged that they had not appreciated that although the priority applicant had amended the eastern limits of their claim to Tarakeha, some of the overlapping Whakatōhea hapū claimants still claimed customary interests as far east as Te Rangi or points close to Te Rangi.<sup>2</sup>

#### *Clarification*

[11] In order to avoid any uncertainty as to the meaning of the pukenga report, the pukenga are asked to answer the following questions:

- (a) Does the reference to “Maraetotara East” referred to in [7] above include the area of the Ōhope spit east of Maraetotara to the entrance to Ōhiwa Harbour?
- (b) Does the knowledge that some of the Whakatōhea hapū applicants are claiming a customary interest in the coastline to the east of Tarakeha as far as Te Rangi or points in the immediate vicinity of Te Rangi, alter the

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<sup>2</sup> The detail of the claimants and the particular points involved is set out in the Court’s minute (No. 32) dated 9 October 2020 re Eastern boundary of claims.

pukenga's conclusion that Ngāi Tai have mana whenua from Tarakeha in the west extending eastwards?

[12] These questions will be put to the pukenga in writing on 12 October 2020 and their written answers circulated to all counsel as soon as they are available.

**Churchman J**