

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

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

IN THE MATTER OF                      an application for recognition orders  
under the Marine and Coastal Area  
(Takutai Moana) Act 2011

On the papers:

Counsel:        M Robinson (in person) for CIV-2011-485-797 (Ngāti Manuhiakai)  
                     E Rongo for CIV-2011-485-803 (Okahu Inuawai Hapū)  
                     A Webb (in person) for CIV-2011-485-814 (Kanihi-Umutahi Hapū)  
                     M Piripi for CIV-2017-485-183 (Ngaa Rauru Kiitahi)  
                     T Bennion for CIV-2017-485-210 (Araukuuku Hapū) and  
                                 CIV-2017-485-213 (Ngāti Tū Hapū)  
                     A Irwin for CIV-2017-485-212 (Taranaki Iwi), CIV-2017-485-215  
                                 (Ngāti Mutunga)  
                     N Milner for CIV-2017-485-310 (Te Ātiawa (Taranaki))  
                     T Hovell for CIV-2017-404-534 (Ngāti Tama)  
                     D Edmunds for CIV-2017-485-243 (Te Korowai o Ngaruahine Trust)  
                     J Inns for CIV-2017-485-282 (Te Rūnanga o Ngāti Ruanui Trust)  
                     W More (in person) for CIV-2017-485-293 (Ngāti Hāua Hapū)  
                     C Scott (in person) for CIV-2017-485-300 (Ngāti Tamaahuroa and  
                                 Titahu Hapū and Oeo Pa Trustees)  
                     G Melvin for Attorney-General

Minute:            17 June 2021

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**MINUTE (NO. 8) OF CHURCHMAN J**  
**[Case Management Conferences (CMCs) – New Plymouth 2021]**

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*CIV-2011-485-797 (Ngāti Manuhiakai)*

[1]        Ms Robinson, on behalf of this applicant, confirms that positive discussions are continuing with overlapping applicants. It appears that the passing of the named applicant, Daisy Noble, has interrupted progress. It also appears that there has been a proposal by Te Korowai o Ngaruahine Trust, the applicant in CIV-2017-485-243, to

progress this matter as part of its Crown engagement agreement. Such discussions are currently ongoing.

[2] Ms Robinson also suggests there have been some funding difficulties although it is not clear whether Ngāti Manuhiakai have in fact lodged a request for funding that has been declined. If direct engagement as part of Te Korowai o Ngaruahine Trust initiative does not occur then, prior to the next CMC, the Court expects to receive information about what applications have been made for funding and the result of those applications.

[3] This matter is adjourned for 12 months to the 2022 round of CMCs and Ms Robinson's attendance at the CMC on 25 June 2021 is excused.

*CIV-2011-485-803 (Okahu Inuawai Hapū)*

[4] Ms Rongo reports that Okahu Inuawai were previously minded to pursue Crown engagement as part of the Collective Strategy under Te Korowai o Ngaruahine but were now looking to progress their application through the High Court as a result of lack of progress.

[5] Ms Rongo advises that research, mapping and dialogue with overlapping parties is underway but requires further time. She also advises that if there are developments prior to the next round of CMCs, she will file a memorandum seeking further orders.

[6] This matter is adjourned for 12 months until the 2022 round of CMCs. Counsel's appearance at the 25 June 2021 CMC is excused.

*CIV-2011-485-814 (Kanihi-Umutahi Hapū)*

[7] Mr Webb reports that Kanihi-Umutahi are in a similar position to Ngāti Manuhiakai and have received an offer from Te Korowai o Ngaruahine Trust to progress their matter directly as part of Te Korowai's Crown engagement. It is said that funding is an issue but no details are provided as to whether a funding application has been made and declined.

[8] If this application does not proceed as part of the Te Korowai o Ngaruahine Trust direct engagement initiative, Mr Webb will be expected, prior to the next CMC, to provide details to the Court of what funding has been sought and what the outcome of that application is.

[9] Mr Webb refers to a hui being arranged within the next three months to discuss funding and other issues. He is requested to file a memorandum with the Court updating the Court on any positive outcomes from that hui.

[10] This application is adjourned for 12 months to the 2022 round of CMCs and Mr Webb's appearance at the 25 June 2021 CMC is excused.

*CIV-2017-485-183 (Ngaa Rauru Kiitahi)*

[11] Ms Piripi reports that historical research is underway with the report from the historian expected by December 2021, and that 24 of the 32 proposed tangata whenua briefs have been prepared. The memorandum also confirms that the applicant's preference remains direct engagement although no formal engagement has yet occurred.

[12] Counsel sought an adjournment for 12 months so that direct engagement can be further pursued.

[13] Counsel sought leave to attend the 25 June 2021 CMC in Ne Plymouth by AVL and indicated that a representative from the applicant would be present in person.

[14] As the Court has been able to make orders addressing each of the applicants' cases, it is proposed that the CMC that was scheduled for 25 June 2021 will be vacated. Accordingly, there is no need for a representative from Te Kaahui to attend.

*CIV-2017-485-210 (Araukuuku Hapū)*

[15] Mr Bennion has filed a memorandum confirming good progress is being made with historical research and that there are discussions with overlapping applicants occurring.

[16] Accordingly, this matter is adjourned for 12 months until the 2022 CMCs, and counsel's appearance on 25 June 2021 is excused.

*CIV-2017-485-213 (Ngāti Tū Hapū)*

[17] Mr Bennion's memorandum advises that the applicant is in regular contact with overlapping applicants and that it is hoped that the ongoing discussions will lead to this applicant being included as an autonomous applicant in the Crown engagement currently being extended to others in this application area. I infer that this applicant may be hopeful of being part of Te Korowai o Ngaruahine Trust initiative referred to above.

[18] While I am prepared to adjourn this application for 12 months to the 2022 CMC in New Plymouth, I need further information as to what the difficulties are in relation to funding. I therefore direct that within three months of the date of this minute, counsel advise what funding applications have been made, the date of the application and, if the funding applications have been declined, the reason for them having been declined.

[19] I also request that counsel report in the same memorandum as to progress in relation to the hope for Crown engagement participation. Subject to that qualification, counsel's attendance on 25 June 2021 is excused.

*CIV-2017-485-212 (Taranaki Iwi), CIV-2017-485-310 (Te Ātiawa (Taranaki), CIV-2017-485-215 (Ngāti Mutunga), and CIV-2017-485-534 (Ngāti Tama)*

[20] Mr Irwin, Mr Milner and Mr Hovell have filed two joint memoranda in respect of these four matters. They indicate that the four applicants are working co-operatively to pursue their applications and have come to agreement in respect of areas of overlap.

[21] Reference is made to a map indicating the area of agreements having been filed. This appears to be a reference to a map filed in 2019. It is not clear whether in respect of these areas of overlap, the four applications have been amended so as to be a joint application or a series of joint applications. If that has not already been done, it will need to be done so that, when the matter is finally addressed by the Court (or by direct engagement), it is clear what the basis of the application is.

[22] The memoranda confirm that Taranaki Iwi and Ngāti Mutunga each have draft historical reports and that their tangata whenua evidence gathering is well underway. The report notes that Ngāti Tama and Te Ātiawa are less advanced in relation to historical research.

[23] None of the applicants are in a position to seek timetable directions towards hearing. The second memorandum dated 14 June, indicated that if there is no progress with direct engagement within a reasonable period the applicants may seek timetabling directions towards a hearing of their applications in the second half of 2022.

[24] Subject to the applicants completing their historical and tangata whenua evidence, and a consideration of the position of any overlapping applicants whose applications should properly be heard with these four applications, the allocation of a hearing in the second half of 2022 may be feasible, although perhaps more realistic would be an allocation of a hearing in 2023. At the moment the Court does not know exactly what other applications (if any) should properly be heard at the same time as these four applications. Neither does the Court have any idea of how much time might realistically be needed for such a hearing.

[25] As it seems unlikely any progress will be made on these matters prior to 25 June 2021, I adjourn these four applications for 12 months until the 2022 round of CMCs. I dispense with the attendance of counsel on 25 June 2021.

[26] However, I direct that counsel file an updating memorandum no later than 90 days after the date of this minute. That memorandum will report on progress in relation to direct engagement. If there has been no satisfactory progress and counsel wish to have a hearing allocated, then the memorandum should indicate a proposed draft timetable and an estimate of the time required for a hearing.

[27] To the extent that there are other overlapping applications, I expect counsel to have discussed with the legal representatives of the overlapping applicants or, if they are unrepresented, with the overlapping applicants themselves, whether the overlapping applicants wish to participate in any hearing of these four applications and whether that

is in the capacity of interested party, or as active applicants for all, or part, of their overlapping claim.

*CIV-2017-485-218 (Te Korowai o Ngaruahine Trust)*

[28] The memorandum filed by Ms Edmunds confirms that the Crown has signed a Terms of Engagement document for direct engagement with this applicant. The memorandum refers to the three applications (CIV-2011-485-803, CIV-2011-485-814, and CIV-2011-485-797) referred to above, as separate Ngaruahine hapū and says that there are discussions between these applicants and Te Korowai o Ngaruahine Trust as to their potential inclusion in the direct engagement initiative with the Crown.

[29] These three applications are all priority applications. The Court is statutorily required to accord them priority in the allocation of hearing dates. The Court is now in a position to timetable priority applications such as these (and other applications) to hearing dates in the second half of 2022 and in 2023.

[30] If priority applicants wish to pursue the direct engagement pathway and are able to do so, then that means that the hearing time available for priority applications can be reallocated and other cases set down.

[31] The memoranda filed on behalf of a number of the applicants and detailed above, indicate that while those applicants were hopeful of participating in direct engagement as part of the Te Korowai o Ngaruahine Trust direct engagement initiative, no concluded arrangement had yet been reached.

[32] While I am prepared to adjourn this application for 12 months to the 2022 CMC in New Plymouth, I am not prepared to let the question of whether the priority applications need Court hearing time, drift for that long.

[33] Accordingly, while the appearance of counsel at the CMC of 25 June 2021 is dispensed with, counsel is directed to file a memorandum with the Court no later than 90 days from the date of this minute confirming the state of any agreement with the priority applicants (and any other applicants whose applications are being dealt with by

the New Plymouth High Court), and to specifically cover the issue of whether or not these applications have been included within the direct engagement initiative being advanced by Te Korowai.

*CIV-2017-485-282 (Te Rūnanga o Ngāti Ruanui Trust)*

[34] Ms Inns filed a memorandum which noted that although the Crown's Draft Engagement Strategy for direct engagement indicated that applicants in the Taranaki region (Whanganui River to Mokau River) were to proceed in the period 2020-2023, there had, as at 21 May 2021, been no engagement. The policy initiatives announced by the Government on 12 June 2021 would therefore appear to have some implications for this application.

[35] The memorandum filed by Ms Inns does not state what progress has been made in relation to the commissioning of historical or other expert evidence or the gathering of tangata whenua evidence. Such evidence is required whether this matters proceeds by way of litigation or direct engagement. Neither does it address what overlapping applications might usefully be heard with this application.

[36] While the Court is prepared to accede to the request to adjourn this matter for 12 months to the next New Plymouth CMC and dispense with the appearance of counsel on 25 June 2021, Ms Inns is directed to file a memorandum addressing the issues of the state of evidence preparation and providing details as to overlapping claims that could properly be heard with this claim, within 30 days of the date of this minute.

*CIV-2017-485-293 (Ngāti Hāua Hapū, Ngāruahinerangi)*

[37] Mr More, in person, has filed a memorandum on behalf of this applicant. He confirms that ongoing positive discussions with overlapping applicants are continuing. He also refers to the offer extended by Te Korowai o Ngaruahine Trust for this applicant to participate as part of their Crown engagement initiative.

[38] The memorandum confirms that funding remains an issue.

[39] If no agreement is able to be reached with Te Korowai o Ngaruahine Trust, then I would expect Mr More to provide the Court, within 90 days of the date of this minute, a report on the outcome of the hui that he indicates is being arranged to discuss the direct engagement initiative. If no agreement is reached with Te Korowai o Ngaruahine Trust as to the participation of this applicant in their direct engagement, then the memorandum should also explain what funding has been applied for, the date of the application, the outcome of the application and, if it has been declined in whole or in part, the reason for that.

[40] On this basis, this application is adjourned for 12 months to the 2022 New Plymouth CMC and Mr More's appearance on 25 June 2021 is excused.

*CIV-2017-485-300 (Ngāti Tamaahuroa and Titahu Hapū and Oeo Pa Trustees)*

[41] Ms Scott, in person, has filed a memorandum in this matter. It is very similar to the memorandum filed by Mr More. Accordingly, I make similar directions adjourning this application for 12 months until the 2022 New Plymouth CMC.

[42] Within 90 days of the date of this minute, Ms Scott is to file a memorandum addressing the same issues as directed in relation to the memorandum filed by Mr More.

*Vacation of CMC, 25 June 2021*

[43] Because all matters have been able to be dealt with on the papers, the CMC scheduled for the New Plymouth High Court on 25 June 2021 is vacated.

A handwritten signature in black ink, reading "P.B. Churchman J". The signature is written in a cursive, flowing style.

**Churchman J**