

**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

Teleconference: 13 August 2021

Counsel:                      H Clatworthy for CIV-2017-419-81 (Ngāti Te Wehi)  
                                    H Rauputu for CIV-2017-419-80 (Tootill)  
                                    B Loader for CIV-2017-419-82 (West Coast Iwi and Hapū ki  
    Marokopa Marae)  
                                    A Sykes for CIV-2017-419-83 (Tainui Hapū o Tainui Waka)  
                                    J Ferguson for CIV-2017-419-84 (Waikato-Tainui)  
                                    V Morrison-Shaw for CIV-2017-485-202 (Ngāti Hikairo)  
                                    T Bennion for CIV-2017-485-207 (Ngāti Apakura)  
                                    C Hirschfeld for CIV-2017-404-526 (Ngā Tini Hapū o Maniapoto)  
                                    R Siciliano for CIV-2017-404-575 (Ngaati Mahuta ki te Hauaauru),  
    Ngāti Mahanga (MAC01-03-005), and Ngāti Whakamarurangi-Tainui  
    (MAC01-04-010)  
                                    A Thomas for Ngāti Tamainupō (filed memorandum but unable to connect to  
    conference call)  
                                    G Melvin for Attorney-General

Minute:                      13 August 2021

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**MINUTE (NO. 14) OF CHURCHMAN J**  
**[Case Management Conferences (CMCs) – Hamilton (No. 2) 2021]**

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**Background**

*CIV-2017-419-81 (Ngāti Te Wehi)*

[1]        Following the case management conference (CMC) held in Hamilton, the Court issued a minute dated 18 June 2021 in relation to the application by Ngāti Te Wehi (CIV-2017-419-81) to proceed to a hearing in 2022.

[2] In that minute the Court scheduled a CMC for 13 August 2021 to address issues arising from the request for a hearing. Those issues included the identification of parties with overlapping interests whose applications could conveniently be heard with that of Ngāti Te Wehi.

[3] Ngāti Te Wehi indicated that it proposed amending its claim and subsequently filed a map with an amended claim area which excluded Kawhia Harbour.

[4] That was not the only change to the application. Although the applicant had indicated that the effect of the amendment would be to reduce the area claimed, the amended map also changed the boundaries of the area claimed out to sea. Originally the application area had been roughly triangular in shape with the south western boundary running from Albatross Point to the north west to a point beyond the Karewa/Gannett Island.

[5] The amended map changed the area so that instead of being bounded by a line which ran diagonally from Albatross Point to the north west, the boundary ran due west parallel to the northern boundary. A large triangular shaped area of the sea that had not previously been the subject of an application was now included in it. The additional area claimed was already subject to claims by Ngāti Apakura (CIV-2017-485-207), Ngāti Hikairo (CIV-2017-485-202) and others. It also overlaps with the direct engagement application of Ngāti Uakau (MAC01-04-015).

[6] In accordance with the decision in *Re Ngāti Pāhauwera*,<sup>1</sup> it is not permissible to file an application extending the area subject to a claim so long after the expiry of the statutory deadline.

[7] Ngāti Te Wehi will therefore have to file a further amended map restoring the seaward boundary of its claim to what it was prior to the filing of their amended map.

[8] Ngāti Te Wehi still wish to have their application timetabled towards hearing. The balance of the CMC focused on how that might occur and what other parties should be involved.

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<sup>1</sup> *Re Ngāti Pāhauwera* [2020] NZHC 1139.

## **Other applicants**

### *CIV-2017-485-207 (Ngāti Apakura)*

[9] Although there is no longer an overlap in relation to Kawhia Harbour following the amendment to the Ngāti Te Wehi application, there is still an overlap in the area extending out to sea from the coastline.

[10] In response to a query as to whether it would be possible to hear that part of the Ngāti Apakura application relating to the sea at the same time as the Ngāti Te Wehi application, Mr Bennion, for Ngāti Apakura, was of the view that the tikanga issues relating to the Kawhia Harbour were the same as those relating to the balance of the takutai moana and it would therefore not be possible to hear one without the other.

[11] He did support the possibility of a staged hearing, the first part of which addressed Aotea Harbour and the adjacent takutai moana; and the second stage of which addressed Kawhia Harbour.

### *MAC01-04-015 (Ngāti Uakau)*

[12] Ngāti Uakau have a direct engagement claim but wish to be involved as an interested party in the Ngāti Te Wehi claim. Their claim overlaps with the Ngāti Te Wehi claim both within and outside Aotea Harbour. If there is to be a staged hearing relating to Aotea and Kawhia Harbours and the adjacent takutai moana, Ngāti Uakau would be likely to participate in that stage relating to Aotea Harbour.

### *MAC01-04-010 (Ngāti Whakamarurangi-Tainui)*

[13] This applicant also has only proceeded by way of direct engagement and has overlaps with Ngāti Te Wehi within and outside Aotea Harbour. Their counsel, Ms Siciliano, supported the concept of a staged hearing.

*CIV-2017-404-575 (Ngaati Mahuta ki te Hauaaauru)*

[14] This application overlaps both the Ngāti Te Wehi application and the Tootill application (CIV-2017-419-80) as well as a number of other applications. Should other overlapping applications proceed to a hearing, this applicant would wish to participate and have its application heard at the same time. Its preference remains to have its application dealt with by way of direct engagement. Their historical research will not be complete prior to the end of this year.

[15] Ms Siciliano expressed the view of her client as being that it wished to engage in a tikanga way with overlapping claimants. Such an approach is encouraged and the applicant should be embarking on it now rather than waiting for any further developments in relation to a hearing.

*CIV-2017-485-202 (Ngāti Hikairo)*

[16] Ngāti Hikairo overlap with all of the Ngāti Te Wehi application. Ms Morrison-Shaw indicated her client supported a two-staged approach. Ngāti Hikairo's application presently extends into Kawhia Harbour but only the northern part of the harbour. Ms Morrison-Shaw indicated that her client was contemplating amending the application so as to include the whole of Kawhia Harbour.

[17] For the reasons discussed at [6] above, it is not possible for the application now to be amended to include further areas.

*CIV-2017-419-80 (Tootill – Ngā Tai o Kāwhia)*

[18] This application also overlaps the Ngāti Te Wehi application. An amended application has been filed but a map detailing the nature of the proposed amendments is still outstanding. Ms Rauputu is to file that as soon as possible.

[19] The amended application dated 12 August 2021 does not accurately identify exactly how the amended application differs from the original application. The map should clarify that. The amended application finished with the words "The applicants reserve their right to further amend this application if required."

[20] As discussed above, applicants do not have a right to amend their application as they see fit. There is no difficulty with an application being refined or reduced in scope but it is not possible, so long after the time limit has expired, for applications to be amended by increasing or expanding the claim.

[21] This application would appear to be one that is suitable for hearing along with the Ngāti Te Wehi application.

*CIV-2017-419-84 (Waikato-Tainui)*

[22] Mr Ferguson confirmed that this application was intended to be supportive of the applications of hapū who affiliated to Waikato-Tainui rather than in competition with them. It may be that Ngāti Uakau are able to utilise this application to have the Court determine their application in the same way that Ngāti Ruatakenga were able to use the Whakatōhea Māori Trust Board application in the *Re Edwards (Whakatōhea)* case. Mr Ferguson's client will need to promptly engage with Ngāti Uakau to see whether that is something that they want.

*CIV-2017-404-562 (Ngā Tini Hapū o Maniapoto)*

[23] There would appear to still be some overlap between this application and Ngāti Te Wehi's application although the extent of the overlap will not become clear until the further amended map is filed.

[24] Mr Hirschfeld indicated that if an overlap remained, Ngā Tini Hapū o Maniapoto would wish to participate in any hearing as an interested party.

*CIV-2017-419-82 (West Coast Iwi and Hapū ki Marokopa Marae);*

*CIV-2017-419-83 (Tainui Hapū o Tainui Waka);*

*MAC01-04-010 (Ngāti Whakamarurangi-Tainui)*

[25] Ms Sykes and Ms Siciliano filed a joint memorandum. Tainui Hapū o Tainui Waka seek a timetabling of their application which focuses in and around Whaingaroa Harbour. Ngāti Whakamarurangi-Tainui and Ngāti Māhanga are applicants that have Crown engagement applications but wished to be interested parties in respect of the Tainui Hapū o Tainui Waka application.

[26] These parties are engaged in dialogue with each other and it is possible that an amended application may result. The filing of a map delineating respective interests in the application area was proposed to be filed prior to the 13 August 2021 CMC but that document is still awaited.

[27] If Ngāti Whakamarurangi-Tainui wish to participate in any hearing as an applicant, then they will need to liaise with another applicant such as Waikato-Tainui, so as to be included as part of that application.

[28] Accordingly, counsel will need to liaise with Mr Ferguson in that regard.

*MAC01-03-005 (Ngāti Mahanga)*

[29] This applicant has also proceeded by way of direct engagement. It applies to become an interested party in those applications that it overlaps with. As an overlapping party, it is appropriate that they are entitled to participate as an interested party in the hearing of any application that they overlap. I join them as an interested party accordingly.

[30] All applicants who have, to date, proceeded only by way of direct engagement, but now wish to proceed as interested parties, need to promptly file and serve a map that details the areas to which their application applies, and also to file and serve on all overlapping applicants, a copy of their application for direct engagement so that the overlapping applicants affected by that application are aware of exactly what is being sought.

*Ngāti Tamainupō*

[31] A notice of appearance was filed on behalf of Ngāti Tamainupō. Unfortunately, Ms Thomas was unable to connect with the CMC as a result of technical difficulty. The memorandum indicated that Ngāti Tamainupō had interest in the takutai moana in and around Whaingaroa Harbour. They do not appear to ever have had an application before the Court, or by way of direct engagement. While they may be able to become an interested party should they wish to do so, the only way of advancing an application itself would be if their application fell wholly within another application that had been filed on a protective basis such as the Waikato-Tainui application.

[32] This applicant wishes to be an interested party in such other applications as may overlap. Until all of the amended maps are filed, it is not possible to determine exactly which applications overlap and it is possible that none do. The applicant is granted leave to become an interested party in respect of those applications which overlap any aspect of its application.

[33] This applicant is presently engaging with other applicants about progressing their respective applications in a tikanga compliant manner. They have indicated that if ultimately there is any overlap with another application, they would wish to participate in any hearing and have the Court determine their application only in respect of such overlap.

### **General observations**

[34] The most effective way of hearing these applications appears to be to have a separate hearing in relation to those applications that focus on Whaingaroa Harbour and the adjacent takutai moana, and another hearing for those applications that focus on Aotea and Kawhia Harbours.

[35] It would appear most efficient to divide the hearing that addresses the Aotea and Kawhia Harbours into two separate parts in a similar fashion as was done with the *Ngā Potiki* priority hearing. Until all the amended maps are filed, it is not clear whether the first part of such a split hearing should focus just on the Aotea Harbour; on the Aotea Harbour and adjacent sea; or the Aotea Harbour and all of the takutai moana with the exception of Kawhia Harbour.

[36] However, in the meantime, all parties should proceed on the basis that a hearing will not take place prior to mid-2022 and a further CMC will be scheduled at a time to be advised to address timetable orders.

[37] As requested by Mr Melvin, who appeared for the Attorney-General, any such timetable orders will give the Attorney-General a suitable period within which to prepare and file evidence by way of response to that of the applicants.