

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

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 Te Rūnanga o Ngāti Whātua

On the papers:

Counsel: M Chen and C Saunders for CIV-2017-404-563 (Te Rūnanga o Ngāti Whātua)  
A Sykes for CIV-2017-485-276 (Ngāti Rongo o Mahurangi)  
B Lyall and L Thornton for:  
CIV-2017-404-524 (Mahurangi, Ngāti Awa and Ngāpuhi),  
CIV-2017-404-574 (Ngāti Rehua/Ngātiwai ki Aotea),  
CIV-2017-485-378 (Ngāti Maraeariki/Ngāti Rongo); and  
CIV-2017-485-239 (Te Rae Ahu Whenua Trust)  
A Mohamed and M Yogakumar for:  
CIV-2017-404-580 (Ngāti Rehua/Ngātiwai ki Aotea), and  
CIV-2017-404-518 (Ngāti Taimanawaiti)  
J Graham and R Jones for CIV-2017-404-520 (Ngāti Whātua Ōrākei Trust)  
R Siciliano for CIV-2017-404-564 (Ngai Tai ki Tamaki)  
H Andrews and T Gorman for CIV-2017-404-582 (Te Whānau-a-Haunui)  
C Hockly for CIV-2017-485-305 (Te Parawhau)  
K Dixon and A Castle for:  
CIV-2017-485-281 and CIV-2017-485-286 (Patuharakeke Te Iwi Trust Board)  
C Hirschfield for CIV-2017-404-442 (Rōpu o Rangiriri)  
T Castle for:  
CIV-2017-485-187 (Taumata Block B Whanau),  
CIV-2017-485-188 (Pakiri G-Block 308 11 owners, Omaha 1 and Omaha 2 owners, Hauturu owners, Mahuki Island owners, Motairehe 2B1 and 4B1 owners, and Motutaiko Island Owners),  
CIV-2017-404-537 (Joseph Kingi on behalf of Ngā Puhi Nui Tonu, Ngāti Rahiri, Ngāti Awa, Ngā Tahuu and Ngāi Tawake),  
CIV-2017-404-542 and CIV-2017-404-567 (Marama Stead on behalf of Te Taoū),  
CIV-2017-404-542 (Rihari Dargaville on behalf of Ngai Tawake), and  
CIV-2017-404-573 (Mai Maria Nova on behalf of Ngāi Tahuu, Ngāti Tuu, and Ngāti Kukuakea)

T Bennion and G Davidson for CIV-2017-485-250 (Ngāti Pūkenga)

J Mason for:

CIV-2017-485-515 (Louisa Te Matekino Collier on behalf of Ngāti Kawau and Te Waiariki Korora), and

CIV-2017-485-398 (Elvis Shayne Reti on behalf of himself and the Reti Whānau)

R Devine and C Woodward for CIV-2017-488-205 (Te Uri o Hau)

T Afeaki and S Tofi for CIV-2017-404-579 (Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai)

S-M Downs and H Jamieson for CIV-2017-485-231 (Ngāti Hine)

J Kahukiwa and J Harper-Hinton for CIV-2017-404-566 (Te Waiariki, Ngāti Korora, Ngāti Takapri Hapū/Iwi of Niu Tīreni)

T Hovell for CIV-2017-404-581 (Ōtakanini Tōpu Māori Incorporation)

J Ferguson for CIV-2017-419-84 (Ngāa Hapuu me Ngāa Marae o Te Takutai Moana o Waikato-Tainui)

Interested parties:

G Melvin for Attorney-General

H Atkins for Manaia Properties Ltd

Minute: 14 October 2021

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## MINUTE (NO. 2) OF CHURCHMAN J

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[1] On 30 June 2021, a case management conference (CMC) was held in Auckland concerning application under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) within the Auckland High Court registry.

[2] Before that CMC, Te Rūnanga o Ngāti Whātua (TRONW) indicated that they wished to obtain a timetable towards its hearing, but acknowledged that it needed to hold discussions with all of the other applicants affected by its claim and request for a timetable order before that timetable could be specified. I consequently adjourned the matter until 24 September 2021 for a further CMC to take place.

[3] However, on 7 September 2021, I ordered that the CMC be vacated, due to the Level 4 COVID-19 lockdown severely disrupting preparation for that CMC, and directed the Registrar to arrange a new hearing date for October. That date was eventually fixed for 15 October 2021.

[4] A number of memoranda have been filed by counsel for different applicants in the lead up to this 15 October 2021 CMC. On 1 October 2021, counsel for TRONW filed a memorandum detailing:

- (a) the progress TRONW had made in its engagement with overlapping applicants which do and do not affiliate with it;
- (b) listing the applicants whose area only minimally overlaps with, or have no overlap with, TRONW;
- (c) listing the applicants whom TRONW submits have no easily arguable case under the Act;
- (d) addressing the readiness of TRONW to proceed to hearing;
- (e) addressing the TRONW proposal for a staged approach to hearings; and
- (f) setting out timetabling orders sought by TRONW.

[5] Following the 30 June 2021 CMC (where TRONW identified 41 applications appearing to overlap with its application area), TRONW has now reduced this number down to 25 applicants which have a substantial overlap, 11 of which have links to Ngāti Whātua.

[6] Counsel have indicated that TRONW has contacted all of the overlapping claimants and progressed engagement on the relevant issues concerning the overlap, in order to reach an agreed approach before the 15 October 2021 CMC.

[7] TRONW has suggested that in order to deal with the overlap, there should be a four-stage hearing, with each stage focusing on a different area. The stages are separated by the following areas:<sup>1</sup>

- (a) Whangarei;

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<sup>1</sup> The details and boundaries of these four hearing areas are set out at [15]-[28] of the affidavit of Tame Te Rangi (30 September 2021).

- (b) Kaipara;
- (c) Central East Coast; and
- (d) Tāmaki Makaurau.

[8] TRONW has also indicated that it will be able to complete its evidence gathering process and exchange that evidence by the third quarter of 2022, and that through continuing engagement with overlapping applicants, it will be in a position to determine whether it needs to vary its application by the end of 2021.

[9] One of the overlapping parties to TRONW's claim is the Ngāti Whātua Ōrākei Trust (NWOT). NWOT's position is that it does not accept, as a matter of tikanga or law, that TRONW has authority to advance or represent any of the three Ōrākei hapū in its application under the Act.

[10] On 12 October 2021, counsel for NWOT filed a memorandum in response to TRONW. NWOT confirmed that their own application was likely to be ready for hearing in 2023, and indicated that in principle, it was willing to proceed with TRONW's proposed approach of a four-stage hearing with the final area (Tāmaki Makaurau) encompassing the entire claim area for NWOT.

[11] Both NWOT and TRONW have indicated that they have engaged with each other in relation to their overlapping claims and that they continue to have hui with each other, but the issues in relation to their overlapping claims under the Act have not yet been resolved. Both parties are endeavouring to meet remotely but also hope to meet kanohi ki te kanohi.

[12] Counsel for the Attorney-General also filed a memorandum on 12 October 2021. The Attorney-General has signalled that he wishes to participate as an interested party in the hearing of TRONW's application and of the applications that overlap it, and makes the following points:

- (a) further detail as to how it is proposed that the four areas would be sequenced would be helpful, including what order is proposed for the four areas;

- (b) clarification of whether it is proposed that the hearing of one area would be concluded before the hearing of the next area started;
- (c) that the proposal would need to make provision for the participation of non-applicant third parties, such as the Attorney-General, who would need a reasonable period of time following the filing of applicant evidence in order to prepare evidence in reply; and
- (d) that the potential grouping of cases will be a question primarily for the applicants and the Court, but that the Attorney-General may have some constructive comments to contribute in that regard.

[13] Not all of the overlapping applicants have yet been able to express their support or opposition to TRONW's suggestion of a four-stage hearing. However, counsel for four applicants,<sup>2</sup> all based within and around the Whangārei Harbour, do not support their applications being heard in the context of TRONW. Their preference is to utilise the time available to explore the concept of joint exclusivity with other Whangārei-based hapū, and they consider that the proposal advanced by TRONW is not conducive to that approach. They acknowledge however, that if the Court is minded to timetable the full extent of the TRONW application rohe towards staged hearings, their view is that the Whangārei Harbour stage should be the third or fourth of those hearings, and should not be scheduled earlier than 2023.

[14] Similarly, the Trustees of Te Uri o Hau Settlement Trust have indicated via a memorandum of counsel dated 1 October 2021 that complex kōrero between Te Uri o Hau and TRONW is ongoing, and that a timetable associated with evidence preparation leading to a hearing in 2022 or 2023 would not be appropriate, as it did not allow sufficient time for the kōrero between the parties to continue.

[15] Because a number of the parties have not yet signalled their support or opposition to the proposed four-stage hearing, and because some have expressed concern with the approach, I consider that the most appropriate way to proceed is to adjourn the 15 October 2021 CMC. I

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<sup>2</sup> Tamihana Te Akitai Paki on behalf of Te Parawhau (CIV-2017-485-305), Patuharakeke Te Iwi Trust Board (CIV-2017-485-281 and CIV-2017-485-286), Stephen Panoho on behalf of Te Rae Ahu Whenua Trust (CIV-2017-485-239), and Richard John Nathan on behalf of Rōpu o Rangiriri (CIV-2017-485-442).

also acknowledge the challenge faced by counsel in engaging with cross-party kōrero while current COVID-19 restrictions are in place, and consider that an adjournment will allow more time for the parties to continue to hui and kōrero, in order to hopefully come to a more concrete position as to their overlapping claims.

[16] Counsel for the Attorney-General's suggestions for clarifying the four-stage hearing approach to TRONW contained in the 12 October 2021 memorandum are sensible. I direct TRONW to follow the suggestions made at [4] of the Attorney-General's memorandum of 12 October 2021, and file a memorandum by 26 November 2021 updating the Court on the four-stage approach.

[17] Following receipt of this memorandum, the Court can endeavour to issue updated timetabling orders based on those set out at [43] of TRONW's 1 October 2021 memorandum,

[18] The hearing scheduled for 15 October 2021 is vacated. This matter is adjourned for hearing in the High Court in Auckland to commence at 10.00am on 2 February 2022. If, on that date, Auckland is at a COVID lockdown level that does not permit an in-person hearing, the hearing will be held by VMR.

**Churchman J**