

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

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

**CIV-2017-485-221
CIV-2017-485-224
CIV-2017-485-226
CIV-2017-485-232
CIV-2017-485-259
CIV-2017-485-267**

UNDER	the Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	an application for orders recognising customary marine title, wāhi tapu protection and protected customary rights
BY	Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a- Rua (CIV-2017-485-221) Rangitāne Tū Mai Rā Trust (CIV-2017-485-224) Rebecca Harper on behalf of Te Hika o Papaūma (CIV-2017-485-226) Ngāi Tumapuhia-a-Rangi Hapū (CIV-2017-485-232) Ngāti Hinewaka (CIV-2017-485-259) Tūkoko and Ngāti Moe (CIV-2017-485-267)

On the papers:

Counsel: J Ferguson for CIV-2017-485-221
C Mataira for CIV-2017-485-224
M Yogakumar for CIV-2017-485-226, CIV-2017-485-232, and
CIV-2017-485-267
G Davidson for CIV-2017-485-259
B Lyall (Interested Party)
G Melvin for Attorney-General

Minute: 1 December 2021

MINUTE (NO. 18) OF CHURCHMAN J
[CMC – East Coast Wairarapa Group]

[1] In the Court's minute of 5 July 2021, following the 2021 case management conferences (CMCs), the Court scheduled a CMC for 1 December 2021 as a result of an indication by counsel for the applicant Ngāi Tumapuhia-a-Rangi Hapū (CIV-2017-485-232) that they wish to proceed to a hearing.

[2] The parties were asked to address a number of issues including the role to be played by the iwi Rangitāne Tū Mai Rā and Ngāti Kahungunu ki Wairarapa. Those two iwi both had hapū who were advancing their own claims and it was not clear the extent to which these claims were opposed or supported by the iwi.

[3] There also appeared to be an issue in relation to three applications:

- (a) Te Hika o Papaūma (CIV-2017-485-226);
- (b) Te Hika o Papaūma (CIV-2017-404-481); and
- (c) Papaūma Marae Trustees (CIV-2017-485-220).

These were three different entities which appear to be advancing a claim on behalf of the same applicant group. The Court requested advice as to what steps have been taken to resolve the mandate issue.

[4] Ahead of the 1 December 2021 CMC, a joint memorandum of counsel was filed on behalf of the following applicant groups:

- (a) Ngāti Hinewaka (CIV-2017-485-259);
- (b) Ngāi Tumapuhia-a-Rangi Hapū (CIV-2017-485-232);
- (c) Te Hika o Papaūma Marae Trustees (CIV-2017-485-226);

- (d) Tūkoko and Ngāti Moe (CIV-2017-485-267);
- (e) Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua (CIV-2017-485-221);
and
- (f) Rangitāne Tū Mai Rā Trust (CIV-2017-485-224).

[5] This memorandum reported on developments in respect of each of the applicants.

[6] Due to factors such as COVID, it appears that a meeting in person between overlapping applicant groups had not been able to occur, and that it was anticipated that such a hui might happen in March 2022.

[7] In respect of Rangitāne Tū Mai Rā and Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua, the memorandum indicated that both applicants were seeking to undertake engagement with their respective hapū with a view to identifying areas of shared interest and the areas of contest.

[8] Again, it appears that no hui in respect of these matters had occurred and it was anticipated that the exercise which the Court had asked the two iwi to undertake might be completed by April/May 2022.

[9] A memorandum dated 30 November 2021 was filed on behalf of Te Hika o Papaūma (CIV-2017-485-226), Te Hika o Papaūma (CIV-2017-404-481), and Trustees of the Papaūma Marae (CIV-2017-485-220).

[10] In the Court's minute of 5 July 2021, counsel for these applicants had been directed to update the Court on steps taken to resolve mandating issues.

[11] The memorandum recorded that a hui had been organised for 20 August 2021 but that on 17 August 2021 New Zealand moved to an Alert Level 4 lockdown rendering it impossible for the parties to meet.

[12] Notwithstanding the fact that the Level 4 lockdown in respect of the area covered by these applications, has long since been lifted, there has been no further attempt at a

hui involving the applicant groups although counsel apparently met on 26 November 2021 to discuss matters.

[13] The issue of mandate needs to be addressed. On the basis of the limited information presently available, it seems to the Court that each of these three applicants are purporting to represent the same applicant group. That is unsatisfactory.

[14] The issue of mandate will need to be resolved prior to any hearing. The Court's preference is for the parties themselves to resolve matters in accordance with tikanga. While the Court understands the concerns the parties have about COVID, the reality is that COVID is likely to be present in the community for the foreseeable future. There will come a point in time where it can no longer be said that fears about COVID justify not taking steps that are necessary in order to proceed towards a hearing.

[15] The Court anticipates that, prior to the 2022 round of CMCs, the three applicant groups will have met and addressed the issue of mandate.

[16] The joint memorandum of counsel referred to a further report to the Court on mandate issues by 18 March 2022. The Court awaits receipt of that report. If no progress has been made towards resolution by that date then the only alternative would appear to be to set the matter down for a mandate hearing, and for the Court to determine which entity is the properly authorised representative of the applicant group(s).

[17] In the joint memorandum dated 24 November 2021, counsel set out a suggested timetable. There were some concerns with that timetable. It proposed tangata whenua evidence being filed in December 2022 and Crown evidence in January 2023. This is unrealistic. That would result in the applicants having a year to prepare and file their evidence and the Crown having a month (interrupted by the Christmas vacation) to prepare and file evidence in reply. It would be appropriate for the Crown to have at least four months within which to prepare and file their reply evidence.

[18] The draft timetable did not specifically advert to when interested parties were to file evidence. There would seem to be two options, either the interested parties (other than the Attorney-General) to file their evidence at the same time as the applicants, and

interested parties each having a right of reply; or for the applicants' evidence to be filed first followed by the interested parties and the Attorney-General having a realistic opportunity to respond.

[19] The other issue of concern is a stipulation in the draft timetable that the pukenga report will be completed by March 2023.

[20] The Court's experience has been that pukenga have, at times, been unable to prepare a meaningful report prior to the hearing and have interacted with the various applicant groups during the course of the hearing and produced a report following that interaction.

[21] As the pukenga follow tikanga, the Court is reluctant to direct them as to how to go about providing answers on tikanga questions. Different pukenga also have different approaches. It is therefore unlikely to be helpful to stipulate a timetable for compliance by the pukenga in advance of even knowing who the pukenga will be, or what issues of tikanga the pukenga will be required to focus on.

[22] The final point in relation to the draft timetable is provision for a judicial settlement conference (JSC) in February 2023.

[23] The Court's experience has been that, in order for a JSC to be useful, all applicants need to agree to such a course. The issues to be discussed at the JSC need to be identified in advance and, while the Court is always willing to attempt to facilitate resolution of issues by way of a JSC (or other means), the Court needs to be satisfied that there is a realistic prospect of a worthwhile outcome arising from a JSC. It is therefore premature to mandate the occurrence of a JSC in the absence of any understanding what issues might be referred to the JSC.

[24] The parties are encouraged to consider the issues discussed at the CMC and submit to the Court a revised version of the timetable directions which takes into account the observations made in this minute.

[25] If no such memorandum is filed by 15 December 2021, the Court will make timetable directions without further input from the parties.

A handwritten signature in black ink, reading "P.B. Churchman J". The signature is written in a cursive, flowing style. The "P.B." is written as a single unit, followed by "Churchman" and then "J" with a long, sweeping tail.

Churchman J