

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

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

**CIV-2011-485-793**

IN THE MATTER OF      The Marine and Coastal Area (Takutai  
Moana) Act 2011

IN THE MATTER OF      Application by Colin Francis Reeder and Ors  
on behalf of Ngā Pōtiki a Tamapāhore Trust  
for an order recognising Customary Marine  
Title and Protected Customary Rights

On the papers      At Auckland

Date of Minute:      16 March 2022

---

**MINUTE (No. 24) OF POWELL J**  
**[Ngā Pōtiki Minute No. 33 - Directions regarding completion of remaining**  
**Ngā Pōtiki Stage 1 issues]**

---

[1] This Minute addresses a number of matters arising out of *Re Reeder (Ngā Pōtiki Stage 1 – Te Tāhuna o Rangataua)*<sup>1</sup> (“the Stage 1 judgment”) and specifically:

- (a) the proposed procedure for dealing with the outstanding wāhi tapu issues set out at [152]-[153] of the Stage 1 judgment;
- (b) the application by Transpower New Zealand Limited (“Transpower”) to participate in the resolution of those wāhi tapu issues;
- (c) an issue or clarification raised by the Crown in relation to comments made in [153] of the Stage 1 judgment; and
- (d) whether the Ngāi Te Ahi application for a customary marine title should be treated as an application for a protected customary right as provided for in [157] of the Stage 1 judgment.

### **Procedure for determining wāhi tapu issues identified in Stage 1 judgment**

[2] In response to various directions in relation to the wāhi tapu issues both the Rangataua Working Party applicants and the Crown agree that further evidence and a hearing of 3-5 days will be necessary to determine:

- (a) Whether all or part of Te Tāhuna o Rangataua is a wāhi tapu or wāhi tapu area for the purposes of the MACA; and
- (b) The type of protection and/or restrictions that would be necessary to protect any wāhi tapu thereby identified.

[3] Having read the memoranda of counsel I broadly agree with their approach for determining the issue including that up to five days will be needed for the hearing. Following discussions with the Registry I confirm that the only available five-day fixture before me this year is one commencing 5 December 2022, at a venue to be confirmed in Mt Maunganui/Papamoa and I confirm that date accordingly.

---

<sup>1</sup> *Re Reeder [Ngā Pōtiki Stage 1 – Te Tahuna o Rangataua]* [2021] NZHC 2726.

[4] Counsel had proposed a compressed timetable spanning a 12-week period but given the amount of time available prior to hearing such a tight timeframe is not necessary. Instead, the following timetable is proposed:

- (a) any additional evidence on the wāhi tapu issue as expressed in [2] above on behalf of the Rangataua Working Party applicants is to be filed by **1 August 2022**;
- (b) further evidence on behalf of any interested parties wishing to participate (including the Crown) is to be filed by **29 August 2022**;
- (c) reply evidence on behalf of the Rangataua Working Party applicants (if any) is to be filed by **19 September 2022**;
- (d) a conference is to be convened in the week beginning **3 October 2022** for the principal purpose of refining the issues to be considered at the hearing in the light of the evidence filed as well as confirming the hearing arrangements;
- (e) submissions on behalf of the Rangataua Working Party applicants are to be filed by **28 October 2022**; and
- (f) submissions on behalf of the interested parties are to be filed by **25 November 2022**.

[5] A telephone conference is to be convened in the **week of 4 April 2022** for the purpose of confirming or amending the proposed timetable as well as addressing any other necessary procedural issues to enable the 5 December 2022 hearing to proceed. The issues to be discussed will include confirming the scope of the issues and whether it is likely an interpreter will be required for the December fixture.

#### **Application by Transpower**

[6] There is no opposition to Transpower participating as an interested party when the wāhi tapu issues are addressed. As noted in the Stage 1 judgment Transpower has

a power pylon located to the west of the Maungatapu Bridge in the area that only became part of the Ngā Pōtiki Stage 1 application area shortly before the hearing began.<sup>2</sup> As noted in the judgment this pylon is one of the subjects of another recent decision of this Court<sup>3</sup> which confirms the importance of the area to Transpower and while leave to appeal this decision has now been declined by the Court of Appeal I accept that the consideration of the wāhi tapu issue has the potential to affect Transpower's interests within the Ngā Pōtiki Stage 1 application area and it is therefore appropriate that it be joined as an interested party. The application is accordingly granted. The proposed timetable directions set out above will therefore apply to Transpower as an interested party.

### **Clarification of [153] of the Stage 1 judgment**

[7] In his most recent memorandum counsel for the Attorney-General requested clarification of which Act was being referred to in para [153] of the Stage 1 judgment. This paragraph attempted to summarise the submissions made up to that point on behalf of the Rangataua Working Party applicants and the Crown on the effect of the determination by Heritage New Zealand (“HNZ”) recognising Te Tāhuna o Rangataua as a wāhi tapu. The final sentence of that paragraph recorded:

The Crown submitted that the difference in procedure meant that the decision by HNZ could not be conclusive, but it nevertheless appeared to accept that Te Tāhuna o Rangataua was a wāhi tapu area [a defined area enclosing a number of wāhi tapu] for the purposes of the Act.

[8] Counsel for the Attorney-General has queried which Act was being referred to given a reference to this part of my judgment in a recent decision by Churchman J.<sup>4</sup> It is difficult to see that anything can particularly turn on this paragraph given that it was simply recording the preliminary positions of the parties pending further submissions as to whether Te Tāhuna o Rangataua is a wāhi tapu for the purposes of the MACA, which, as this Minute makes clear, is an issue that has yet to be determined and which is the subject of the hearing scheduled for 5 December 2022. Obviously, as it has not been challenged, my judgment must stand, but it appears clear that the

---

<sup>2</sup> At [94].

<sup>3</sup> See *Tauranga Environmental Protection Society Incorporated v Tauranga City Council* [2021] NZHC 1201.

<sup>4</sup> *Re Ngāti Pāhauwera* [2021] NZHC 3599 at 127.

“it” in the second part of the sentence was a reference to HNZ and that therefore the Act referred to was the Heritage New Zealand Pouhere Taonga Act 2014, an observation reinforced by the fact that the Marine and Coastal Areas Act 2011 had been defined throughout the Stage 1 judgment as “the MACA”.

### **Ngāi Te Ahi**

[9] At [157] of the Stage 1 judgment I directed as follows:

The application of the Ngāti Ranginui Settlement Trust on behalf of Ngāti Ruahine and Ngāi Te Ahi is dismissed except insofar as the Trustees will, on behalf of Ngāi Te Ahi, have two months after the issue of this judgment to confirm whether they wish to have the application on behalf of Ngāi Te Ahi considered as an application for a PCR. If Ngāi Te Ahi seeks to have a PCR determined, a telephone conference will be convened to determine what further steps are necessary to consider the application or whether the application can be determined on the pleadings and evidence already before the Court.

[10] In response counsel on behalf of Ngāi Te Ahi have somewhat confusingly advised:

The Trustees have respectfully determined that they will not exercise the option made available by the Court to have their application be considered as an application for PCRs at this time. Instead, they reserve their right to pursue their application for PCRs in the Stage 1 area (Te Tāhuna o Rangataua) with the remainder of their application, whether that is through their application to the High Court, pursuant to section 100 of the Act, or through their direct engagement with the Crown, pursuant to section 95 of the Act.

[11] Although, therefore the Ngāi Te Ahi response does not deal with the question raised other than to attempt to leave open an application for PCR’s in the future, I acknowledge that the issue with regard to PCRs for each of the other applicants in Te Tāhuna o Rangataua has also yet to be determined. As a result, I agree that any application by Ngāi Te Ahi for PCRs should be dealt with in the same way as all other extant applications for PCR within the Ngā Pōtiki Stage 1 application area: that is to allow a period for direct engagement of the Crown and if that fails to return to this Court for determination of the applications. The Ngāi Te Ahi application in so far as it seeks to have PCRs determined in the Ngā Pōtiki Stage 1 application area is therefore adjourned on three months’ notice.

---

Powell J