

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

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

**CIV-2017-485-185  
CIV-2017-485-196  
CIV-2017-485-513  
CIV-2017-485-817  
CIV-2017-485-264  
CIV-2017-485-375  
CIV-2017-485-269  
CIV-2017-485-253  
CIV-2017-485-318  
CIV-2017-485-270  
CIV-2017-485-272  
CIV-2017-485-377  
CIV-2017-485-262  
CIV-2017-485-355  
CIV-2017-485-292  
CIV-2017-404-482  
CIV-2017-485-238**

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

BY      Ngāi Taiwhakaea Hapū CIV-2017-485-185  
Te Rūnanga o Ngāti Awa CIV-2017-485-196  
Manu Paora Whānau CIV-2017-485-513  
Whakatōhea CIV-2017-485-817  
Whakatōhea Pākowhai CIV-2017-485-264  
Hiwarau, Turangapikitoi and  
Ōhiwa of Whakatōhea CIV-2017-485-375  
Ngāti Muriwai CIV-2017-485-269  
Ngāti Patumoana CIV-2017-485-253  
Te Rūnanga o Te Whānau a Apanui  
CIV-2017-485-318  
Ngāi Tai CIV-2017-485-270  
Ririwhenua Hapū CIV-2017-485-272  
Te Hapū Titoko o Ngāi Tama  
CIV-2017-485-377  
Ngāi Tamahaua CIV-2017-485-262  
Te Whakatōhea Rangatira Mekomoko  
CIV-2017-485-355  
Whakatōhea Māori Trust Board  
CIV-2017-485-292

Ngāti Huarere ki Whangapoua  
CIV-2017-404-482  
Te Whānau a Te Harāwaka  
CIV-2017-485-238

On the papers:

Counsel: T J Castle for CIV-2017-485-185  
H K Irwin-Easthope and K J Tarawhiti for CIV-2017-485-196  
J Mason for CIV-2017-485-513  
T Sinclair and B Cunningham for CIV-2017-485-817,  
CIV-2017-485-264, and CIV-2017-485-375  
M Sharp for CIV-2017-485-269  
T Bennion for CIV-2017-485-253  
M Mahuika, N Coates, L Underhill-Sem for CIV-2017-485-318  
E Rongo for CIV-2017-485-270 and CIV-2017-485-272  
C Panoho-Navaja for CIV-2017-485-262 and CIV-2017-485-377  
K Ketu for CIV-2017-485-355  
J Pou for CIV-2017-485-292  
C Hirschfeld for CIV-2017-404-482  
D Lafaele for CIV-2017-485-238

Minute: 30 May 2022

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**MINUTE (NO. 4) OF CHURCHMAN J**  
**[Case Management Conferences 2022 – Rotorua]**

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*CIV-2017-485-185*

[1] Mr Castle’s memorandum confirmed that Ngāi Taiwhakaea Hapū intended to pursue their application for recognition orders in the High Court rather than by way of direct engagement. The memorandum confirmed that the application will not be ready for hearing until, at the earliest, late 2023.

[2] Counsel’s request that the application be adjourned and that counsel’s attendance at the case management conference (CMC) scheduled for Rotorua on 10 June 2022 be excused, are granted.

[3] This matter will be called next at the 2023 Rotorua CMC.

*CIV-2017-485-196*

[4] A memorandum confirmed that this applicant had participated as an interested party in the *Edwards Whakatōhea Stage 2* proceedings and the *Re Reeder – Ngā Pōtiki* proceedings, and is awaiting judgment in respect of both matters.

[5] The memorandum confirmed that, as a result of lack of progress with the Crown in respect of direct engagement, this applicant now intended to pursue the High Court litigation. A historian has been engaged and preliminary steps taken in respect of tangata whenua evidence.

[6] Little progress appears to have been made in relation to engagement with overlapping applicants (other than Ngāti Awa applicants).

[7] As noted in the Court's minute of 26 May 2022 in relation to the Tauranga 2022 CMC, counsel's request to attend the Rotorua CMC on 10 June 2022 by AVL is granted.

*CIV-2017-485-513*

[8] Counsel filed a memorandum dated 13 May 2022 indicating that the applicant was seeking to commence historical research. It indicated that no engagement with overlapping applicants had occurred.

[9] It is the Court's understanding that the area of Mr Paul's application overlapped with the various applications heard in the *Edwards (Whakatōhea)* hearing.<sup>1</sup> For that reason, counsel had indicated that Mr Paul intended to participate in that hearing. However, at the eleventh hour, Mr Paul changed his mind and did not participate.

[10] In the *Edwards (Whakatōhea)* decision, the Court awarded customary marine title (CMT) on the basis of joint exclusivity to a number of applicant groups.

[11] To the extent that the Court has held that those applicant groups met the test in s 58 of the Act, for exclusive use and occupation, it would not now seem possible for

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<sup>1</sup> *Re Edwards (Whakatōhea) No. 2* [2021] NZHC 1025.

any other applicant to seek CMT in the same area as the Court has already found that another group of applicants exclusively held that area.

[12] The detail provided in Mr Paul's application indicates that he intended to advance a claim for CMT in respect of Ōhiwa Harbour. That area was clearly covered by the *Edwards (Whakatōhea)* decision and CMT was awarded to other applicants on the basis that they had jointly exclusively used and occupied the area. To that extent, there would appear to be no basis for Mr Paul being able to advance a claim for CMT over any area where the Court has already awarded CMT to another applicant.

[13] Mr Paul will be able to continue to advance a claim for CMT in respect of areas where no other applicant has already been awarded CMT, but that will entail amending the application for CMT.

[14] Mr Paul's application also sought orders for protected customary rights (PCR). Because those rights are non-exclusive, and can be awarded to more than one party (provided the tests set out in s 51 of the Act are met), there is no need for amendment of the application for PCR.

[15] Counsel has requested to be excused from attendance at the Rotorua 2022 CMC, or to attend by AVL.

[16] The request to attend by AVL is granted. One of the matters that the Court will need to hear from counsel on is the amendment of the application for CMT so that it now covers only those areas where the Court has not already granted CMT to another applicant.

*CIV-2017-485-817, CIV-2017-485-264 and CIV-2017-485-375*

[17] A memorandum in respect of these three applications was filed on 20 May 2022. These three applicants were all unsuccessful in advancing claims in the *Edwards Whakatōhea* hearing.

[18] Accordingly, there are no live issues before the High Court in respect of any aspect of their applications. Counsel are therefore not required to participate at the

Rotorua CMC on 10 June 2022, or any further CMC that may be held at any stage in the future.

*CIV-2017-485-269*

[19] Counsel's memorandum of 12 May 2022 noted that the applicant had been granted an order for PCR at the Stage One *Edwards (Whakatōhea)* hearing and had also participated in the Stage Two hearing. Survey maps had not yet been filed as directed in the Stage Two hearing.

[20] Counsel's request to participate at the Rotorua CMC by AVL is granted.

*CIV-2017-485-253*

[21] Counsel's memorandum of 12 May 2022 provided an update of interactions between this applicant and the other successful applicants for recognition orders. It also referred to correspondence with counsel for the Attorney-General and Surveyor-General in relation to surveying matters that need to be resolved prior to the filing of survey maps.

[22] Mr Bennion's request to attend the Rotorua 2022 CMC by AVL is granted.

*CIV-2017-485-318*

[23] Counsel's memorandum confirmed that, following participation in the Stage Two *Re Edwards (Whakatōhea)* hearing the applicant continued to engage with overlapping applicant groups. Direct engagement remained this applicant's preferred pathway.

[24] The memorandum asked that the application accordingly be adjourned sine die while direct engagement negotiations were progressing.

[25] The Court has been reluctant to adjourn any applications under the Act sine die for the reason that the Court then loses control and oversight over the application. This matter is adjourned until the 2023 Rotorua CMC and counsel's attendance on 10 June 2022 is excused.

*CIV-2017-485-270 and CIV-2017-485-272*

[26] Ms Rongo's memorandum confirmed that following participation in the *Edwards Whakatōhea Stage Two* hearings, engagement with successful parties continued. These applicants have applications for CMT and PCR that go beyond the area dealt with in the *Edwards Whakatōhea* hearing. It appears that the applicants had yet to engage with the overlapping applicant, Te Whānau a Apanui.

[27] Counsel sought a 12-month adjournment and leave to attend the Rotorua CMC 2022 by AVL. Those applications are granted.

*CIV-2017-485-377 and CIV-2017-485-262*

[28] These applicants successfully obtained recognition orders and participated in the Stage Two *Edwards Whakatōhea* hearing. No further directions are required. The matter is adjourned until the 2023 Rotorua CMC, and counsel's attendance at the 10 June 2022 CMC is excused.

*CIV-2017-485-355*

[29] Mr Ketu's client had participated in the *Edwards Whakatōhea Stage Two* hearing and was awaiting the Court's decision. Counsel's request to be excused from attendance at the 10 June 2022 CMC is granted. The application is adjourned until the 2023 Rotorua CMC.

*CIV-2017-485-292*

[30] This matter is also adjourned until the 2023 CMC and counsel's attendance at the 10 June 2022 CMC is granted.

*CIV-2017-404-482*

[31] No memorandum has been received from Mr Hirschfeld on behalf of Ngāti Huarere ki Whangapoua. Unless a memorandum is promptly filed in accordance with the Court's minute of 5 July 2021, Mr Hirschfeld is required to attend the 2022 Rotorua CMC by way of AVL.

[32] No memorandum has been filed by Mr Lafaele on behalf of Te Whānau a Te Harāwaka. Unless Mr Lafaele files a memorandum in accordance with the Court's minute of 5 July 2021, he is required to attend the 2022 Rotorua CMC by VMR.

*Other matters*

[33] Those counsel who represent applicants who sought recognition orders at the *Edwards Whakatōhea* hearing and were unsuccessful, are not required to attend any further CMCs unless the applicants they represent have outstanding applications for recognition orders other than those that were dealt with by the Court in the *Edwards Whakatōhea* decision.

[34] Those counsel who participated in the *Edwards No. 2* hearing and are simply awaiting the Stage Two hearing decision are not required to attend the CMC or file any further memoranda. Those cases are automatically adjourned until the 2023 Rotorua CMC.

**Churchman J**