

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

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

**CIV-2017-404-563  
CIV-2017-404-537  
CIV-2017-404-539  
CIV-2017-404-573**

UNDER

the Marine and Coastal Area  
(Takutai Moana) Act 2011

IN THE MATTER OF

an application by Te Rūnanga o  
Ngāti Whātua for orders recognising  
Customary Marine Title and Protected  
Customary Rights

On the papers

Counsel: M Chen and C J Saunders for Te Rūnanga o Ngāti Whātua  
(CIV-2017-404-563)  
T J Castle for Mr Joseph Kingi (CIV-2017-404-537) and Mr Rihari  
Dargaville (CIV-2017-404-539)  
B J Loader for Ms Maia Nova (CIV-2017-404-573)

Minute: 26 July 2022

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**MINUTE (NO 5) OF CHURCHMAN J**

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[1] Te Rūnanga o Ngāti Whātua have filed three strike out applications in respect of claims that overlap with their application area. In my CMC minute of 1 July 2022, I directed that counsel for the following applicants file memoranda prior to 23 July 2022:

- (a) Joseph Kingi (CIV-2017-404-537);
- (b) Rihari Dargaville (CIV-2017-404-539); and
- (c) Maia Nova (CIV-2017-404-573).

[2] These are the claimants whose claims Te Rūnanga o Ngāti Whatua seeks to strike out. The first two applicants are represented by Mr Castle and the third applicant, Ms Nova, has recently instructed Ms Loader as counsel.

[3] The memoranda were to indicate the outcome of proposed mediation with Te Rūnanga o Ngāti Whatua, and confirm whether or not hearing dates for the three strike out applications are still required.

[4] The mediation has not yet occurred, and therefore the issues as between the parties have not been resolved.

[5] Counsel have filed memoranda. Mediation is scheduled for 7 August 2022 at the Whangārei offices of Te Rūnanga o Ngāti Whatua.

**Joseph Kingi (CIV-2017-404-537); Rihari Dargaville (CIV-2017-404-539)**

[6] Mr Castle filed a memorandum dated 21 July 2022. Mr Castle seeks a further extension of time for the resolution of issues between the parties through mediation, requesting that no date for the hearing of the strike out applications be set until 31 August 2022. He also seeks leave to file a further memorandum as to progress on that date.

**Maia Nova (CIV-2017-404-573)**

[7] Ms Loader filed a memorandum stating that counsel have provided an indication of proposed amendments to the originating application to Te Rūnanga o Ngāti Whatua and that further engagement between the parties is still required. Counsel intends to file a further updating memorandum and map within two months of the July CMC, as was directed. Ms Loader also seeks a further extension to 31 August 2022 on the same terms as Mr Castle.

**Te Rūnanga o Ngāti Whatua**

[8] Te Rūnanga o Ngāti Whatua oppose any extension of time and Ms Chen has requested that a date be set down for the hearing of the strike out applications as soon as possible. Counsel submits that if the applications are not set down for hearing, there will be further cost and delay.

[9] Counsel has also detailed the issues to be addressed in the mediation process which include confirmation of Mr Kingi's and Mr Dargaville's application area and their respective mandates to act for the applicant groups. Te Rūnanga o Ngāti Whatua does not consider that it is currently in a position to determine whether any proposed amendments to Ms Nova's application would address the issues raised by the strike out application.

## **Discussion**

[10] While I remain of the view that resolution through mediation would be preferable, the issues raised by the strike out application have been on foot for a considerable period of time. As noted by counsel for Te Rūnanga o Ngāti Whatua, any additional delay has the potential to cause complication to the broader scheduling process, given that the Stage One and Stage Two hearings are currently awaiting allocation of fixtures. I acknowledge that some of this delay has been unfortunately contributed to by counsel's health issues, however I am of the view that some degree of certainty as to the final resolution of these issues is needed.

[11] That being said, I do not wish to undermine the mediation scheduled for 7 August 2022 and I acknowledge that it may take some time to ratify or implement any outcome reached at mediation. I direct that the Registrar set the strike out applications down for a two-day hearing in the Auckland High Court for the next available date after 31 August 2022.

[12] Counsel are to file an updating memorandum prior to 1 September 2022 advising the Court on the outcome of the mediation process, including amended applications and maps where appropriate.

**Churchman J**