

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

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

**CIV-2017-485-273  
CIV-2017-485-214  
CIV-2017-485-261  
CIV-2017-485-254  
CIV-2017-485-260  
CIV-2017-485-211  
CIV-2017-485-248  
CIV-2017-485-229  
CIV-2017-485-183  
CIV-2017-485-301  
CIV-2017-485-511**

**CIV-2017-485-160  
CIV-2017-485-258**

**Group N**

<b>UNDER</b>	the Marine and Coastal Area (Takutai Moana) Act 2011
<b>IN THE MATTER OF</b>	an application for orders recognising Customary Marine Title and Protected Customary Rights
<b>BY</b>	Patrick Seymour on behalf of Te Whānau Tima (Seymour) and Te Hapū o Te Mateawa  Margaret Morgan Allen on behalf of David Morgan Whānau  Muaūpoko Tribal Authority Incorporated on behalf of Muaūpoko  Christopher Henare Tahana, Edward (Fred) Clark, Hayden Tūroa, and Novena McGuckin on behalf of Te Patutokotoko  Trustees of Tupoki Takarangi Trust (1996) on behalf of Parangarahu 2B1 and Parangarahu 2C and their descendants

Te Ātiawa ki Te Ūpoko o Te Ika a Maui  
Potiki Trust

Trustees of the Te Ātiawa ki  
Whakarongotai Charitable Trust on behalf  
of Te Ātiawa ki Whakarongotai

Rachael Ann Selby on behalf of  
Ngāti Raukawa ki te Tonga

Trustees of Te Kaahui o Rauru Trust for  
and on behalf of Ngaa Rauru Kiitahi)

Gerrard Paul Albert and Te Kenehi Robert  
Mair on behalf of Te Awa Tupua and  
Ngā Hapū me ngā uri o te iwi o Whanganui  
(Whanganui Iwi)

Owners of Hongoeka Blocks

Ngā Wairiki Ngāti Apa  
(CIV-2017-485-511)

Muaūpoko Iwi  
(CIV-2017-485-160)

Counsel: B Lyall for CIV-2017-485-273  
C Beaumont for CIV-2017-485-214  
T Bennion for CIV-2017-485-261  
L Black for CIV-2017-485-254  
M Houra for CIV-2017-485-260  
N Coates and L Underhill-Sem for CIV-2017-485-211  
T Ahu for CIV-2017-485-248  
C Conroy-Mosdell and N Coates for CIV-2017-485-229  
M Piripi for CIV-2017-485-183  
J Ferguson for CIV-2017-485-301  
D Edmunds for CIV-2017-485-258

Minute: 14 September 2022

---

### MINUTE OF CHURCHMAN J

---

[1] In my minute of 1 July 2022, I granted the Group N applicants leave for a period of two months to file further memoranda, regarding:

- (a) overlap issues;
- (b) hearing boundaries;
- (c) whether a staged approach was necessary; and
- (d) identification of those applications proceeding by way of direct engagement only, to be invited as interested parties.

[2] Either joint or individual memoranda have now been filed by all affected applicants, with the exception of:

- (a) CIV-2017-485-160 (Muaūpoko Iwi);
- (b) CIV-2017-485-258 (Owners of Hongoeka Blocks); and
- (c) CIV-2017-485-511 (Ngā Wairiki Ngāti Apa).

### **Memoranda filed**

*CIV-2017-485-260 (Te Ātiawa Iwi), CIV-2017-485-261 (Muaūpoko Tribal Authority Inc), CIV-2017-485-273 (Te Whānau Tima and Te Hapū o Te Mateawa), CIV-2017-485-254 (Te Patutokotoko), CIV-2017-485-211 (Tupoki Takarangi Trust), and CIV-2017-485-214 (David Morgan Whānau)*

[3] On 2 September 2022, Mr Lyall filed a joint memorandum on behalf of these six Group N applicants, suggesting an approach to progress their claims towards hearing. Mr Lyall proposes that the hearing is divided into two stages, and filed two indicative maps showing the areas to which each hearing would relate.

[4] For a Stage 1(a) hearing, Mr Lyall proposes an area from the Rangitīkei River, to Whareroa (which is slightly south of Paekakariki), and estimates that a hearing in respect of the applications for recognition orders in that area will take eight weeks. Out of the six applicant groups who are parties to the memorandum, only Te Patutokotoko's application area extends beyond the Rangitīkei River, and the proposed hearing area will necessitate them being involved in two separate hearings. However, they have said that they will abide by the Court's

decision. The proposed southern boundary at Whareroa aligns with the southern boundary of the application advanced by The Trustees of the Te Ātiawa ki Whakarongotai Charitable Trust. Mr Lyall submits that setting the boundary at that point allows them to be heard as a part of Stage 1(a), which is their strong preference.

[5] Mr Lyall then proposes that the Stage 1(b) hearing include applications from Whareroa to Turakirae Head, and estimates that four weeks of hearing time would be sufficient. The parties to the memorandum are agreed that Turakirae Head is to be southern boundary for Stage 1(b). The area of the Te Ātiawa ki Te Ūpoko o Te Ika a Maui Potiki Trust application that extends further east than Turakirae Head will be heard as a part of the Group M hearing beginning 4 September 2023 before Gwyn J. A memorandum filed by counsel for Te Ātiawa ki Te Ūpoko o Te Ika a Maui Potiki Trust filed on 30 August 2022 confirmed that they wish to participate in that hearing as an applicant.

[6] Mr Lyall also submitted that the seaward boundary for Stage 1(b) as shown in the indicative map filed “is likely to be refined to reflect overlapping South Island applications”.

[7] Mr Lyall’s approach would see the two hearings split in the following fashion:

<b>Stage 1(a)</b>	<b>Stage 1(b)</b>
CIV-2017-485-273	CIV-2017-485-261
CIV-2017-485-214	CIV-2017-485-260
CIV-2017-485-254	CIV-2017-485-211
CIV-2017-485-261	
CIV-2017-485-248	

[8] Finally, Mr Lyall proposes an amended timetable on the following terms:<sup>1</sup>

---

<sup>1</sup> Dates for the hearings were left blank in Mr Lyall’s table.

<b>To be filed</b>	<b>Date</b>
<b>Applicants file their evidence</b> (29 weeks before hearing)	16 October 2023
<b>Joint mapping project filed</b> (29 weeks before hearing)	16 October 2023
<b>Interested parties, other than the Attorney-General, file their evidence</b> (16 weeks before hearing)	15 January 2024
<b>Attorney-General files evidence</b> (12 weeks before hearing)	12 February 2024
<b>Close of pleadings date</b> (nine weeks before hearing)	4 March 2024
Applicants' evidence in reply to be filed (eight weeks before hearing)	11 March 2024
<b>Interested parties' file submissions and bundles of authorities</b> (four and a half weeks before hearing)	3 April 2024
<b>Attorney-General files submissions and bundles of authorities</b> (three weeks before hearing)	15 April 2024
<b>Applicants' file opening submissions, statement of agreed facts, and bundles of authorities</b>	Two weeks prior to hearing
<b>Draft joint hearing timetable for Stage 1(a) to be filed</b> (filed by counsel to assist Court, noting that the Court will regulate its own timetable)	Two weeks prior to hearing
<b>Stage 1(a) Hearing Begins</b>	6 May 2024
<b>Draft joint hearing timetable for Stage 1(b) hearing</b> (filed by counsel to assist Court, noting that the Court will regulate its own timetable)	Two weeks prior to hearing
<b>Stage 1(a) Hearing Ends</b>	
<b>Stage 1(b) Hearing Begins</b>	
<b>Stage 2 Hearing Begins</b> (Stage 2 hearing in respect of the two Group N hearings to confirm terms of any orders granted)	

[9] If any case management conferences are required, Mr Lyall requests that these take place by teleconference.

*CIV-2017-485-248 (The Trustees of the Te Ātiawa ki Whakarongotai Charitable Trust on behalf of Te Ātiawa ki Whakarongotai), and CIV-2017-485-229 (Rachael Ann Selby on behalf of Ngāti Raukawa ki te Tonga)*

[10] Te Ātiawa ki Whakarongotai and Ngāti Raukawa ki te Tonga support the proposition that Ngāti Toa Rangatira participate as an interested party in the Group N hearings, within a collective known as the ART Confederation. Ngāti Toa Rangatira do not have an application

in the High Court, but seek to be included as an interested party so that their “customary interests [are] recognised and maintained”. Ngāti Toa are an important presence in the broader area concerned – their kōrero will be necessary to ensure that the Court has a full understanding of the customary interests in that area. Accordingly, I grant leave for Ngāti Toa Rangatira to participate in both hearings as an interested party.

[11] Counsel for Te Ātiawa ki Whakarongotai and Ngāti Raukawa ki te Tonga would prefer all claims from Rangitīkei to Turakirae to be heard in a single hearing. However, if a staged approach is preferred, they support the boundary for Stage 1(a) being located at Whareroa. Te Ātiawa ki Whakarongotai also seeks to participate in Stage 1(b).

*CIV-2017-485-183 (the Trustees of Te Kaahui o Rauru Trust for and on behalf of Ngaa Rauru Kītahi), and CIV-2017-485-301 (Whanganui Iwi)*

[12] Counsel for Te Kaahui and Whanganui Iwi confirm that they support the Stage 1(a) northern boundary being set at the Rangitīkei River and do not intend to participate in the Group N hearings as there is no overlap with their respective application areas.

[13] These applicants have also spoken with the named representative for the application by Ngā Wairiki Ngāti Apa (CIV-2017-485-511) in relation to the proposed Group N hearing and its northern boundary. They have advised the Court that Ngā Wairiki Ngāti Apa:

- (a) remains unrepresented;
- (b) prefers direct engagement over litigation;
- (c) does not oppose the Rangitīkei River being set as the northern boundary, despite its application area extending south of that boundary; and
- (d) will participate in Stage 1(a) of the hearings if the northern boundary is set at the Rangitīkei River, to the extent the Stage 1(a) area overlaps with their application area south of there.

## Discussion

[14] On the basis of the various memoranda filed, it appears that there is consensus between the parties that:

- (a) a staged approach is preferable;
- (b) the boundaries for the Stage 1(a) hearing should be the Rangitikei River in the north, and Whareroa in the south; and
- (c) the boundaries for the Stage 1(b) hearing should be from Whareroa to Turakirae Head.

[15] Those boundaries appear to be workable notwithstanding the inconvenience faced by the applicants who will be required to attend both hearings in order to have their full application determined.

[16] Ngā Wairiki Ngāti Apa, Muaūpoko Iwi, and the Owners of Hongoeka Blocks have not yet made their position clear, although the view of Ngā Wairiki Ngāti Apa has been put before the Court through counsel for Te Kaahui and Whanganui Iwi. It would appear that:

- (a) Ngā Wairiki Ngāti Apa will seek to participate in the Stage 1(a) hearing;
- (b) Muaūpoko Iwi would need to participate in both Stage 1 hearings, as their application extends from the Manawatu River to Plimmerton, thereby crossing the southern boundary at Whareroa; and
- (c) the Owners of Hongoeka Blocks would need to participate only in the Stage 1(b) hearing, given their entire application area is located south of Whareroa.

[17] At this point, the participants in each hearing are therefore likely to be:

Stage 1(a)	Stage 1(b)
CIV-2017-485-273	CIV-2017-485-261
CIV-2017-485-214	CIV-2017-485-260
CIV-2017-485-254	CIV-2017-485-211
CIV-2017-485-261	CIV-2017-485-248
CIV-2017-485-248	CIV-2017-485-160 (no memoranda provided)
CIV-2017-485-229	Ngāti Toa Rangatira (interested party)
CIV-2017-485-511 (no memoranda provided)	
CIV-2017-485-160 (no memoranda provided)	
CIV-2017-485-258 (no memoranda provided)	
Ngāti Toa Rangatira (interested party)	

[18] The remaining issues are timetabling, and the extent to which the seaward boundary of the Stage 1(b) hearing area as depicted in the second indicative map filed by Mr Lyall needs to be amended in order to avoid conflict with applications at the top of the South Island.

[19] Considering the second map filed by Mr Lyall against the relevant South Island applications, it appears that the proposed Stage 1(b) hearing area will overlap to various extents with the following applications:

- (a) CIV-2017-485-365 (Te Atiawa o Te Waka-a-Maui);
- (b) CIV-2017-485-266 (Ngai Tū-āhu-riri);
- (c) CIV-2017-485-251 (Rangitane O Wairau);
- (d) CIV-2017-485-172 (Tahuaroa-Watson Whānau);
- (e) CIV-2017-485-167 (Te Runganga o Rangitane o Kaituna); and
- (f) CIV-2017-485-280 (Ngāi Tahu Whānui).



[20] Notwithstanding Mr Lyall's acceptance of the fact that the indicative map will need to be refined, until that is done, the various South Island applicants with claims in Te Moana-o-Raukawa (Cook Strait) overlapping with the North Island claimants are clearly interested parties and will be entitled to have their overlapping claims heard in the same hearing. That has the potential to significantly extend the time required for the hearing. The applicants listed in [19] above must be notified of the possibility of overlap and given leave to participate as interested parties in the Stage 1(b) hearing if they wish to do so. I direct the Registrar to notify counsel for the applicants accordingly.

[21] An appropriate approach to avoid the need for the participation of South Island based applicants in the Group N hearings may be for the parties to kōrero to identify an agreed seaward boundary for the Stage 1(b) hearing. In the absence of such an agreement, it may be difficult for any of the applicant groups to establish that they have exclusively held the claimed area and result in the Court being unable to grant any recognition orders in Te Moana-o-Raukawa.<sup>2</sup>

[22] As to timetabling, the approach suggested by Mr Lyall was unopposed by any of the other applicants. That approach appears to be workable, and I direct that it is adopted.

[23] The Stage 1(a) hearing is currently scheduled to be heard by Grice J, and to begin on 6 May 2024. Based on Mr Lyall's estimation of eight weeks hearing time for Stage 1(a), an appropriate date for the scheduling of Stage 1(b) would appear to be any time after 4 October 2024. There would be some efficiencies if the presiding Judge were also Grice J, but that cannot be guaranteed.

[24] However, if a seaward boundary in Te Moana-o-Raukawa is unable to be agreed upon, and the affected South Island applicants are to participate as interested parties, a hearing length of four weeks is unlikely to be sufficient for Stage 1(b). Accordingly, I request that the Registrar investigate the possibility of allocating an eight-week hearing for Stage 1(b) on the next available date after 7 October 2024. Should the South Island applicants not seek to participate, the length of the Stage 1(b) hearing will be able to be substantially reduced.

---

<sup>2</sup> See *Re Edwards* [2021] NZHC 1025 at [169]–[170].

[25] Counsel for applicants that are to participate at the Stage 1(b) hearing are to file memoranda updating the Court with progress as to setting a seaward boundary prior to 12 December 2022, and to appear at the CMC scheduled for the same day, if necessary. That CMC is to be conducted by means of VMR. Counsel are to file a joint memorandum, or if that is not possible, individual memoranda addressing the seaward boundary no later than three days prior to the CMC.

A handwritten signature in black ink that reads "P.B. Churchman J". The signature is written in a cursive style with a large, stylized "J" at the end.

**Churchman J**