

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

**I TE KŌTI MATUA O AOTEAROA
KI WHANGĀREI TERENGA PARĀOA ROHE**

CIV-2017-404-526

UNDER the Marine and Coastal Area
(Takutai Moana) Act 2011

IN THE MATTER OF an application by **Te Rangikaiwhiria
Kemara** for orders recognising
Customary Marine Title and Protected
Customary Rights

On the papers:

Counsel: C Hirschfeld for Applicant

Minute: 4 October 2022

MINUTE OF CHURCHMAN J

[1] In the CMC minute of 1 July 2022, I directed Nga Tini Hapu o Maniapoto to file an amended map incorporating changes to its application.¹ On 29 July 2022, Mr Hirschfeld filed a memorandum and an updating map. He seeks to amend the application area, following negotiations with some of the overlapping applicant groups.

[2] Memoranda in reply have been received from Te Rūnanganui o Ngāti Hikairo (CIV-2017-485-202), and the Apakura Rūnanga Trust (CIV-2017-485-2017).

[3] Ngāti Hikairo and Ngāti Apakura assert that Mr Hirschfeld's amended map goes beyond Nga Tini Hapu o Maniapoto's original application area, and that an impermissible amendment has therefore been made.

¹ At [76].

Nga Tini Hapu o Maniapoto's original application

[4] Nga Tini Hapu o Maniapoto's original application described the application area as the area bounded by:

- (a) on the landward side by the line of mean high-water springs at Te Raukumara;
- (b) on the seaward side by the outer limits of the territorial sea; and
- (c) thus then Te Raukumara (north point) south around the Kawhia Harbour to Urawhitiki Point west to Honipaka Point (north west point) south to Marokopa then south to Kiritehere thence to Nukuhakari, thence to Awakino, thence to Mokau, thence to Parininihi – Wai Pingoa Stream (south point) including the islands Kaiwhai Island, Te Motu Island, Motukaraka Island, Ngatokakairiri Island, to the outer limits of the territorial sea (eastward and westward).

[5] In that area, Nga Tini Hapu o Maniapoto applied for both CMT and PCR.

Updating memorandum and map

[6] The changes that Nga Tini Hapu o Maniapoto seek to make through their memorandum and amended map are the following:

- (a) a reduction in the area in which they are claiming CMT, from the whole application area, to only between Anaputa in the north, and Waioroko in the south;
- (b) a change in the angle of the boundary line at Waipingoa, from an angle pointing due west, to a more north-westerly direction, thereby reducing the total application area;
- (c) an acknowledgment that any CMT awarded between Hui Komako and Waioroko will need to be on a shared exclusivity basis with various hapū of Ngāti Rarua, as well as the Mokau Ki Runga applicant group;

- (d) the addition of a PCR claim in respect of Karewa Island, which is north of Raukumara, the stipulated northernmost point in the original application document; and
- (e) the addition of a PCR claim relating to “ancient fishing spots out in the whale trails that pass by our rohe moana at about 20 miles out at sea in the shared moana area”.

[7] Nga Tini Hapu o Maniapoto seek to maintain their application for PCR in respect of their entire application area, and remain as an interested party in any hearing which addresses any portion of their application area, although their CMT application area has decreased.

Te Rūnanganui o Ngāti Hikairo

[8] Ngāti Hikairo is an overlapping claimant, and was not consulted on the changes to Nga Tini Hapu o Maniapoto’s application. Ngāti Hikairo “understands and is sympathetic to the issue that the process of evidence gathering may support a wider claim footprint than that originally claimed”. However, they request that Nga Tini Hapu o Maniapoto not be permitted to include any areas beyond the footprint of their original application area, and that further consultation with all affected parties occur.

Apakura Rūnanga Trust

[9] Ngāti Apakura request that Nga Tini Hapu o Maniapoto not be permitted to include any areas beyond the footprint of their original application area, unless other Group P applicants have the opportunity to do the same.

Discussion

CMT

[10] Nga Tini Hapu o Maniapoto’s original application sought CMT in respect of their entire application area. A reduction in the area to which they now claim as CMT, labelled as “2” on their amended map, is therefore permissible. I acknowledge that their CMT application area now only relates to the area between Anaputa in the north, and Waioroko in the south, out to 12 nautical miles. Nga Tini Hapu o Maniapoto may also remain an

interested party in respect of other applications for CMT that overlap with their original application area.

[11] In respect of the area labelled “3” on Nga Tini Hapu o Maniapoto’s amended map, it is not for an individual applicant to unilaterally declare that CMT is claimed in an area of the takutai moana on a shared exclusivity basis. In order for shared exclusivity to be recognised by the Court, that must be accepted by all applicant groups whose applications overlap in the claimed area. That is a matter for the Group P hearings when they occur. If the position of an applicant is that they held an area with one or more other applicant groups on the basis of shared exclusivity, then, in order for such an application to succeed, all those applicant groups said to have held the area on a shared basis, must accept that and advance their cases accordingly.

[12] I encourage the applicants to engage in constructive kōrero on such matters, and to seek agreement where possible. Particularly, engagement with all overlapping Group P applicants will be required, before any findings of shared exclusivity can be made by the Court.

PCR

[13] Nga Tini Hapu o Maniapoto’s original application and map both identify Raukumara as the northernmost point of their application area. Karewa Island does not appear in either of those documents.

[14] Karewa Island is noted in an affidavit of Te Rangikaiwhiria Kemara (the named applicant for Nga Tini Hapu o Maniapoto), dated 29 March 2017, as the northernmost ocean point of Te Rohe Moana o Te Rohe o Maniapoto. However, given that it is not included in either the original application or the map that accompanied it, I am satisfied that the addition of a PCR claim in respect of Karewa Island is impermissible. It constitutes an extension of the application area long after the statutory deadline, and should fall to be considered similarly to previous attempts by other applicant groups to extend their application areas after that deadline. As I have previously noted:²

² *Re Ngāti Pāhauwera (strike-out application)* [2020] NZHC 1139 at [72]; all also *Paul v Attorney-General* [2022] NZCA 443 at [74] and [76]-[78].

The durability of this legislation, and this purpose, is weakened if impermissible material changes are allowed to be made to applications under the Act after the limitation period has long since passed, because it may undermine the applications of other whānau, hapū, and iwi. Again, as observed by Mallon J, the Court must not take an unduly narrow approach to permissible amendments, but they must in fact, be permissible.

[15] Accordingly, the northern boundary of Nga Tini Hapu o Maniapoto’s application area is to be Raukumara.

[16] As to the southern boundary of the application area, the apparent amendment of the angle of the boundary at Waipingoa, to a more north-westerly direction has the effect of decreasing the total application area, and is therefore a permissible amendment.

[17] As Mr Hirschfeld will no doubt be aware, the Court has no jurisdiction to award PCR in areas of the takutai moana beyond the 12 nautical miles mark.³ Accordingly, the area labelled “5” on the amended map, and described as ‘ancient fishing spots at about 20 miles out at sea’, falls outside of the jurisdiction of the Court, and is unable to form a part of the application.

[18] In his memorandum of 29 July 2022 at [3], Mr Hirschfeld said:

Counsel acknowledges that the whakamārama herein provided may properly be placed on the Court Record in evidence. In that regard Counsel undertakes to file that evidence if required under direction of the Court.

[19] The application documents and required map delineating the area of the claim are fundamental components of the application. It is for the applicants to file them not for the Court to direct their filing.

[20] Where an application is intended to be varied, a copy of an amended application setting out varied terms including the terms of an amended map needs to be filed and served by the applicant on all overlapping applicants and all interested parties.

[21] For the reasons set out above, in this case, any such amended map and application cannot include areas that are beyond the 12-mile nautical limit as the Court has no

³ Marine and Coastal Area (Takutai Moana) Act 2011, s 9; and Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977, s 3.

jurisdiction under the Act in that area, and also they may not seek to add areas beyond or outside the limit of the original application.

[22] Therefore, any amended application and map will need to comply with these requirements.

Churchman J