

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

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

**CIV-2017-485-259
CIV-2017-485-232
CIV-2017-485-267
CIV-2017-485-224
CIV-2017-485-221**

Group M

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

IN THE MATTER OF an application by Gary Griggs on behalf
of Ngāi Tumapuhia-a-Rangi Hapū for
orders recognising Customary Marine
Title and Protected Customary Rights

On the papers:

Counsel: T H Bennion and G M Davidson for Ngāti Hinewaka
S M Yogakumar for Ngāi Tūmāpuhia-ā-Rangi Hapū, Tukōkō and
Ngāti Moe
R Siciliano and C Mataira for Rangitāne Tū Mai Rā Trust
J Ferguson for Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua
B Lyall for Ngai Tūmā-a-Rangi ki Motuwairaka Inc, and
Ngāi Tūmāpuhia-ā-Rangi ki Okautete Inc
G Melvin for Attorney-General

Minute: 8 November 2022

**MINUTE OF CHURCHMAN J
[re appointment of pūkenga]**

[1] In a minute of 29 July 2022, I directed that submissions on the appointment of a pūkenga be filed by 1 August 2022. The Group M hearing is currently scheduled to begin on 4 September 2023.

[2] On 18 October 2022, Ms Siciliano, Ms Mataira and Ms Yogakumar filed a joint memorandum seeking the appointment of Dr Robert Joseph as a pūkenga. Accordingly, Ngāi Tūmāpuhia-ā-Rangi Hapū, Tukōkō and Ngāti Moe, and Rangitāne Tu Mai Rā Trust agree that Dr Joseph should be appointed.

[3] The Attorney-General, Ngāi Tūmāpuhia-ā-Rangi ki Okautete Inc, and Ngāi Tūmāpuhia-ā-Rangi ki Motuwairaka Inc have indicated that they will abide by the Court's decision on the appointment of a pūkenga.

[4] No submissions or memoranda have been filed by Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua or Ngāti Hinewaka. The joint memorandum indicates that counsel have attempted to reach agreement with Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua, Ngāti Hinewaka, and Te Ātiawa ki Whakarongotai Charitable Trust, but that no confirmation has been received. It is unclear why counsel would seek agreement from Te Ātiawa ki Whakarongotai Charitable Trust, given that there is no apparent overlap between their applications. It is also unclear why no agreement or opposition has been filed by the remaining parties, given the delay between the deadline for the filing of submissions and now.

[5] As a result of this delay, I consider that it is now important to finalise the appointment of a pūkenga. Dr Joseph is an Associate Professor at the University of Waikato, and has very recently acted as pūkenga for the Tokumaru Bay hearing. Dr Joseph has appropriate qualifications for appointment, and his recent experience strengthens those qualifications. Given the lack of opposition to Dr Joseph's appointment, and the delay in addressing this issue, I confirm Dr Joseph's appointment as pūkenga for this proceeding, notwithstanding his affiliations to Ngāti Kahungunu and Rangitāne.

[6] As noted by counsel in the joint memorandum, the purpose of the appointment of a pūkenga is so that questions or issues of tikanga can be put to the pūkenga.

[7] Having appointed the pūkenga, it is now appropriate to consider the questions which the pūkenga is to be asked. I set out below suggested questions and invite comment from counsel on what is proposed. Depending on the issues that emerge during the hearing, it is possible that the pūkenga may be asked to answer other questions. It is also possible that,

as a result of agreement between the parties, or other developments at the hearing that the pūkenga may be asked not to address a particular question or questions. Counsel are directed to file and serve any memoranda within 14 days of the date of this minute.

- (a) What tikanga does the evidence establish or support applies in the area that is the subject of the applications before the Court?
- (b) What aspects of tikanga should influence the assessment of whether or not the area in question, or any part of it, is held in accordance with tikanga?
- (c) Which applicant group or groups hold the application area, or any part of it, in accordance with tikanga?
- (d) Who, in fact, are the iwi, hapū or whānau groups that comprise each applicant group or groups?
- (e) Having regard to the evidence, what tikanga is relevant to the protected customary rights claimed by the applicants?

Churchman J

Solicitors:

Bennion Law, Wellington for CIV-2017-485-259

Tamaki Legal, Auckland for CIV-2017-485-232 and CIV-2017-485-267

McCaw Lewis, Hamilton for CIV-2017-485-224

Kahui Legal, Rotorua and Wellington for CIV-2017-485-221

Lyall & Thornton, Auckland for Ngāi Tūmāpuhia-ā-Rangi ki Motuwairaka Inc and

Ngāi Tūmāpuhia-ā-Rangi ki Okautete Inc

Crown Law, Wellington for Attorney-General