

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2017-404-481  
[2023] NZHC 1109**

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

In the matter of an application by George Matthews on behalf of Te Hika o Pāpāuma for orders recognising Customary Marine Title and Protected Customary Rights

On the Papers

Counsel: C Hirschfeld , B Tūpara and T A Thompson for the Applicant

Judgment: 10 May 2023

---

**JUDGMENT OF GWYN J  
(Te Hika o Pāpāuma further amended application)**

---

**Introduction**

[1] Te Hika o Pāpāuma seek recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) in the area of the lower East Coast of the North Island. That application and a number of overlapping and adjacent applications have been timetabled toward hearing. The Te Hika o Pāpāuma application is due to be heard as part of Stage 1(a), in respect of the Whareama River mouth, and Stage 1 (b) in respect of the balance of the application.

[2] Mr George Matthews has filed a further amended application on behalf of Te Hika o Pāpāuma. The question is whether, to the extent the further amended application varies the original application, the PCRs now sought are sufficiently proximate to the purposes under the original application and should be allowed.

## **Background**

[3] In his minute of 28 February 2023, Churchman J directed that any further amended application for recognition orders be filed by Mr Hirschfeld, on behalf of George Ngatiamu Matthews, within 21 days of the date of that minute.<sup>1</sup>

[4] The stated purpose of the further amended application was to “refine” the list of the PCRs sought.

[5] A further amended application, dated 21 March 2023, was filed, together with an affidavit from Mr Matthews.

[6] In his minute of 25 August 2022, Churchman J granted leave for the substitution of Mr George Matthews for Ms Broughton in this application.<sup>2</sup> Counsel’s memorandum in support of the further amended application confirms that Mr Matthews now takes the place of the former applicant, Ms Anita Broughton, who resigned her position as applicant in 2019. I confirm that Mr Matthews is the substituted applicant.

[7] In the Court’s minute of 25 August 2022, Churchman J had directed that an application amending the claims explain “how the application has been amended, file details of exactly what order is sought by way of PCR, and file a map detailing the scope of the CMT claim.”<sup>3</sup>

## **Further amended application**

[8] Counsel’s memorandum in support of the further amended application notes that:

- (a) The original map appended to the application filed in March 2017 remains unchanged.

---

<sup>1</sup> Minute of Churchman J dated 28 February 2023 at [5].

<sup>2</sup> Minute of Churchman J dated 25 August 2022 at [5].

<sup>3</sup> At [14].

- (b) Appendix A to the further amended application includes refinement of the list of PCRs sought. The refinements are “an amplification of the original list in the sense of finer detail setting out the character and quality of those PCRs. Some of those refinements such as wānanga indicate the scope of the right as being multital in better explanation of the functionality of the rights in question.”

[9] In the body of the further amended application there is a list of activities Te Hika o Pāpāuma ancestors carried out in the common marine and coastal area, some of which may be the subject of a PCR order. It also sets out the grounds on which the orders for PCRs are sought and lists a number of the same activities, together with a number of additional activities that may be the subject of a PCR order.

[10] Counsel for the Attorney-General have filed a memorandum, dated 24 March 2023, regarding the further amended application. Counsel’s memorandum usefully analyses the descriptions in the originating application and the further amended application and notes that:

- (a) “Communicating hapū mātauranga” is a new activity sought to be recognised in a PCR order; and
- (b) “Resource extraction” for fossils and “recreational use” are no longer being sought as PCRs.

[11] In addition, as Crown counsel also note, there are two “Appendix As” to the amended application, which were not included in the originating application. The tables in the appendices provide further detail on some of the PCR activities sought in the originating application and also add further PCRs not sought in the originating application, or the text in the body of the further amended application.

[12] Counsel identify from the tables the following changes to the activities being sought to be recognised in a PCR order:

- (a) There is a row for the customary activity, use and/or practice of “recreational use”, indicating this is an activity in respect of which a PCR order is sought, despite being removed from the body of the amended application.
- (b) The customary activity, use and/or practice of resource extraction of fossils is included, indicating this is an activity in respect of which a PCR order is sought, again despite being removed from the body of the amended application.
- (c) There are two further activities sought to be recognised in a PCR order, not included in the body of the amended application:
  - (i) “Exercising Mana Motuhake & Rangatiratanga”; and
  - (ii) “Wānanga”.

[13] It therefore appears that the further amended application and the attached Appendices A seek recognition of three PCRs not included in the originating application:

- (a) “Communicating hapū mātauranga”.
- (b) “Exercising Mana Motuhake and Rangatiratanga”.
- (c) “Wānanga”.

## **Discussion**

[14] Te Hika o Pāpāuma has been granted leave to participate in Stage 1(a) of the Group M hearing, to the extent of its overlap in respect of the Whareama River.<sup>4</sup> The further amended application therefore has an impact on the Stage 1(a) proceeding.

---

<sup>4</sup> The Marine and Coastal Area (Takutai Moana) Act 2011, *Minute of Gwyn J, Group M Stage 1(a) Northern Boundary*, 3 May 2023.

[15] The originating application was filed on 21 March 2017, before the statutory deadline for applications under the Act.<sup>5</sup> Public notification of the application was given after it was filed. That provided those affected an opportunity to be an interested party in respect of the application. It is for that reason that any amendments should therefore be refinements and not amount to a new application, not foreshadowed in the originating application.

[16] As the decisions to date in relation to applications for amendments to applications demonstrate, the question of whether any amendment sought is permissible is a question of degree. Relevant considerations include:

- (a) whether the amendment is likely to require substantial additional evidence from the applicant or any other party;
- (b) whether evidence filed to date remains relevant to the amended application;
- (c) whether any significant new issues of fact or law will be raised in relation to the amended application; and
- (d) whether the amendment is “materially different” from the original application or instead is “sufficiently linked” to the recognition orders originally sought.

[17] It may be that the discrepancies between the body of the further amended application and the tables at Appendix A, in respect of “recreational use” and “resource extraction” for fossils (referred to at [10(b)] above) are inadvertent. Counsel are to confirm whether it is the intention of the further amended application that “recreational use” and “resource extraction” for fossils are no longer being sought as PCRs.

[18] As identified above, the further amended application also seeks three new PCRs, in addition to “refinement” in respect of some other of the PCRs sought.

---

<sup>5</sup> The statutory deadline was 3 April 2017: see ss 95(2) and 100(2) of the Act.

[19] I acknowledge the importance of ensuring that the rights over which recognition orders are sought are not unduly expanded well beyond the expiry date for any applications. I also have regard to the advanced stage of the timetable leading up to the Stage 1(a) hearing.

[20] While the amendments might be seen as similar to those granted in earlier decisions,<sup>6</sup> I need to be satisfied that an amendment to the application at this late stage does not prejudice the parties' ability to prepare evidence for the hearing (given Te Hika o Pāpāuma's participation in Stage 1(a) in respect of the Whareama river mouth).

[21] All three new PCRs sought are of an overarching general nature. "Exercising Mana Motuhake and Rangatiratanga" is characterised by Mr Matthews as the overarching exercise of responsibility. "Communicating hapū mātauranga" relates to the passing on of tikanga and mātauranga in relation to fishing practices, the wider moana and river mouths, which are part of the existing application.

[22] The three additional PCRs do not seek to extend the boundaries of the application area and to that extent do not directly impact on the other applicants.<sup>7</sup>

[23] The additions sought are more akin to the amendments sought to originating applications in relation to PCRs at the end of the substantive hearing in *Ngāti Pāhauwera*.<sup>8</sup> Similarly, in *Ngāi Tūmapūhia-ā-rangi Hapū*.<sup>9</sup>

[24] All applicants consent, or do not oppose, or abide the decision of the Court on the further amended application. The Attorney-General abides the decision of the Court.

[25] I am satisfied that the essence of the application has not changed. The three new PCRs sought are sufficiently proximate to the purposes under the original

---

<sup>6</sup> *Re Ngāti Pāhauwera* [2021] NZHC 3599 at [18]-[20]; *Ngāi Tūmapūhia-ā-Rangi Hapū* [2023] NZHC 470; and *Te Koko and Ngāti Moe* [2023] NZHC 473.

<sup>7</sup> In contrast to, e.g. *Re Ngāti Pāhauwera* [2020] NZHC 1139, where Churchman J struck out part of an amended application which proposed an extension to the applicant's application area.

<sup>8</sup> *Re Ngāti Pāhauwera* [2021] NZHC 3599 at [571]-[573].

<sup>9</sup> *Ngāi Tūmapūhia-ā-Rangi Hapū* [2023] NZHC 470.

application and should be allowed, consistent with not taking an unduly narrow approach to permissible amendments.<sup>10</sup>

---

**Gwyn J**

*Solicitors:*  
Foster & Milroy, Hamilton

---

<sup>10</sup> *Re Tipene* [2015] NZHC 169 at [21].