

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

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

**CIV-2017-404-481
CIV-2017-485-193
CIV-2017-485-220
CIV-2017-485-221
CIV-2017-485-224
CIV-2017-485-226
CIV-2017-485-232
CIV-2017-485-259
CIV-2017-485-260
CIV-2017-485-267**

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 Tūmāpuhia-a-Rangi Hapū for orders
recognising Customary Marine Title and
Protected Customary Rights

On the Papers

Counsel: C Hirschfeld for Te Hika o Pāpāuma (CIV-2017-404-481)
L Watson for Ngāti Kere Hapū (CIV-2017-485-193)
N Coates and C Mosdell for Pāpāuma Marae Trustees (CIV-2017-
485-220)
J Ferguson for Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua
(CIV-2017-485-221)
R Siciliano for Rangitāne Tū Mai Rā Trust (CIV-2017-485-224)
S Yogakumar and M Sreen for Te Hika o Papaūma (CIV-2017-
485-226)
D Naden, M Yogakumar and M Sreen for Ngāi Tūmāpuhia-ā-
Rangi Hapū (CIV-2017-485-232)
T Bennion for Ngāti Hinewaka (CIV-2017-485-259)
M Houra for Te Ātiawa ki Te Upoko o Te Ika a Maui Potiki Trust
(CIV-2017-485-260)
D Naden, M Yogakumar and M Sreen for Tukōkō and Ngāti Moe
(CIV-2017-485-267)
Interested parties:
B Lyall for Ngāi Tūmapūhia-A-Rangi Ki Motuwairaka Inc
B Lyall for Ngāi Tūmapūhia-A-Rangi Ki Okautete Inc

Minute: 3 May 2023

MINUTE OF GWYN J
(Northern Boundary for the Stage 1(a) hearing)

[1] The East Coast Wairarapa Group M hearings are split into two parts: Stage 1(a) and Stage 1(b).

[2] In his minute of 1 July 2022, Churchman J identified the Whareama River as the boundary between the East Coast Wairarapa Stage 1(a) and Stage 1(b) hearings.¹

[3] The following applicants participating in the Stage 1(a) hearing include the Whareama River mouth as part of their application area:

- (a) Ngāi Tūmapūhia-a-Rangi Hapū;
- (b) Rangitāne Tu Mai Rā Trust; and
- (c) Ngāti Kahungunu ki Wairarapa Tamaki nui-a-Rua.

[4] The following applicants participating in the Stage 1(b) hearing include the Whareama River mouth as part of their application area:

- (a) Te Hika o Pāpāuma;
- (b) Rangitāne Tu Mai Rā Trust; and
- (c) Ngāti Kahungunu ki Wairarapa Tamaki nui-a-Rua.

¹ Minute of Churchman J [Post the 2022 Case Management Conferences] dated 1 July 2022, at [223].

[5] On 17 February 2023 counsel for the Attorney-General wrote to the Stage 1(a) applicants to identify the exact boundary between the area to be heard in East Coast Wairarapa Group M Stage 1(a) and Stage 1(b) hearings, as it was not clear to the Attorney-General in which hearing the Whareama River mouth would be addressed.

[6] By joint memorandum of 21 March 2023 the following Stage 1(a) applicants set out a proposal for the Court. Those applicants are:

- (a) Ngāi Tūmapūhia-a-Rangi Hapū (CIV-2017-485-232);
- (b) Tukōkō and Ngāti Moe (CIV-2017-485-267);
- (c) Ngāti Hinewaka (CIV-2017-485-259);
- (d) Rangitāne Tu Mai Rā Trust (CIV-2017-485-224);
- (e) Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Trust (CIV-2017-485-221); and
- (f) Te Atiawa ki te Upoko o te Ika a Maui Potiki Trust (CIV-2017-485-260).

(the Stage 1(a) applicants).

[7] What is proposed is that, in order for any customary interests in the Whareama River mouth to be determined in one hearing, the Whareama River mouth be included in the Stage 1(a) hearing. Counsel say this means that the northern boundary of the Stage 1(a) hearing would be the northern bank of the Whareama River and, in turn, the northern bank of the Whareama River will be the southern boundary for the Stage 1(b) in 2024.

[8] The joint memorandum is also supported by:

- (a) Ngai Tūmapūhia-A-Rangi Ki Motuwairaka Incorporated (interested party); and

(b) Ngai Tūmapūhia-A-Rangi Ki Okautete Incorporated (interested party).

[9] Te Hika o Pāpāuma Mandated Iwi Authority (CIV-2017-404-481), who were previously intending to participate in the Stage 1(b) hearing only, have indicated that they are able to participate in the Stage 1(a) hearing and comply with timetabling directions proposed by counsel in their joint memorandum.

[10] On 28 April 2023 counsel filed an affidavit of George Ngatiamu Matthews relating to the specific interests of Te Hika O Pāpāuma within the Whareama River mouth area only. Te Hika O Pāpāuma proposes that it file full evidence regarding the remainder of its specified area in accordance with the timetable for the Stage 1(b) hearing.

[11] Following the joint memorandum counsel for the Attorney-General have filed a memorandum dated 24 March 2023.

[12] The Attorney-General agrees with the applicants that the precise northern boundary of the Stage 1(a) hearing requires clarification, as the identified boundary of the “Whareama River” in respect of both the Stage 1(a) northern boundary and the Stage 1(b) southern boundary is not specific.

[13] The Attorney-General also supports the proposal that any customary interests in the Whareama River mouth be determined in one hearing.

[14] The Attorney-General’s memorandum notes that the location of the boundary between the Stage 1(a) and Stage 1(b) hearings is intended to be informed by the application areas before the Court. Ngai Tūmapūhia-A-Rangi Hapū describes the Whareama River as their northern boundary and Te Hika o Pāpāuma Mandated Iwi Authority describes it as their southern boundary.

[15] However, neither party specifies in the description of their application areas where exactly the respective boundaries would be in relation to any part of the river (including from the river mouth upstream to the boundary of the common marine and

coastal area, in seaward of the river mouth) and the Attorney-General notes that the issue is not clarified by the maps currently before the Court.

[16] Counsel for the Attorney-General also observes that the applicants do provide coordinates for the application areas. The Attorney-General's mapping of the coordinates given in Ngāi Tūmapūhia-a-Rangi Hapū's application puts the northern boundary (at its most generous) at the midpoint of the Whareama River.² However, in communications with counsel for Ngāi Tūmapūhia-a-Rangi Hapū, counsel for the Attorney-General has been informed Ngāi Tūmapūhia-a-Rangi Hapū intended to include the whole of the Whareama River mouth, up to the northern bank, in its application area.³

[17] Counsel for the Attorney-General notes that to the extent that Ngāi Tūmapūhia-a-Rangi Hapū's application area would now go to the northern shore of the Whareama River, this could be seen as an amendment to extend the application area.

[18] Counsel notes that the Attorney-General does not object to the information provided by counsel for Ngāi Tūmapūhia-a-Rangi Hapū and submits that, to the extent there is any extension or alteration of the original application area, which described the northern boundary as "the Whareama River", it may be a minor one which could appropriately be considered a refinement of the application area.

[19] The Attorney-General also notes that his mapping of the coordinates given in Te Hika o Pāpāuma's map filed on 13 April 2018 puts the southern boundary of Te Hika o Pāpāuma's application area on the southern side of the Whareama River (therefore including the whole of the river mouth within its application area, to the extent it is in the common marine and coastal area). Mr Matthews' affidavit of

² The Attorney notes that this appears to be broadly consistent with the rohe moana for Ngāi Tūmapūhiarangi and Ngāti Hamua (as represented by the Ngāi Tūmapūhia a Rangi Māori Marae Committee), which describes the northern boundary of the rohe moana as the "mouth of the Whareama River" and uses the same co-ordinates as in the Originating application on notice for recognition orders pursuant to the Marine and Coastal Area (Takutai Moana) Act 2011 dated 3 April 2017 at [9]: see Fisheries (Kaimoana Customary Fishing) Notice (No 5) 2008 (No F446) and maps.mpi.govt.nz, showing the data later "Customary Areas" and "Rohe Moana". The map depicts the northern boundary of the rohe moana as being on the southern side of the Whareama River.

³ Counsel for the Attorney-General note it may be that the use of different software has contributed to the uncertainty in ascertaining pinpoint references for the co-ordinates used.

26 April 2023 clarifies that the southern boundary for the Te Hika O Pāpāuma application is the southern bank of the Whareama River where it emerges into the moana.

[20] Therefore, if the Whareama River mouth is to be considered in Stage 1(a), the Attorney-General supports the proposition that Te Hika o Pāpāuma participate in the Stage 1(a) hearing to the extent of the overlap.

Discussion

[21] On the basis of the support outlined in the joint memorandum and the subsequent filing by Te Hika o Pāpāuma of their relevant evidence, I accept that it is appropriate that the Whareama River mouth remain part of the Stage 1(a) hearing and that Te Hika o Pāpāuma participate in the Stage 1(a) hearing in relation to the Whareama River mouth.

[22] I have noted the observations of counsel for the Attorney-General in relation to Ngāi Tūmapūhia-a-Rangi Hapū's application area and how it relates to the Whareama River mouth. It is not clear to me whether Ngāi Tūmapūhia-a-Rangi Hapū intends to amend its application area, as the Attorney-General suggests may be the case. If it does so, it may be the case that it is a minor change, or refinement, of the area only. However, in order to clarify the situation for the Court and the other parties I ask that counsel for Ngāi Tūmapūhia-a-Rangi Hapū file a memorandum clarifying its position in respect of the Whareama River mouth and in particular whether it seeks to amend its application area.

Directions

[23] I make the following directions:

- (a) The northern bank of the Whareama River will be the northern boundary of the Stage 1(a) hearing.

- (b) Leave is granted to Te Hika o Pāpāuma Mandated Iwi Authority to participate in the Stage 1(a) hearing in respect of the Whareama River mouth.
- (c) Counsel for Ngāi Tūmapūhia-a-Rangi Hapū is to file a memorandum clarifying its position regarding the application area, as it relates to the Whareama River mouth, by 19 May 2023.

Gwyn J