

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

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

CIV-2017-485-260

Group M & N

UNDER

the Marine and Coastal Area
(Takutai Moana) Act 2011

IN THE MATTER OF

an application by Te Ātiawa ki Te
Upoko o Te Ika a Maui Potiki Trust, a
duly registered charitable trust under the
Charitable Trusts Act 1957, for the
benefit of the people of the iwi of
Te Ātiawa, for an order recognising
Customary Marine Title and Protected
Customary Rights

On the papers:

Counsel: M Houra for Applicant

Minute: 29 May 2023

MINUTE (NO 8) OF CHURCHMAN J

[1] On 10 May 2023, counsel filed what was stated to be an amended originating application for recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011.

[2] There are three problems with this application. Firstly, consistently with the original application, it specifies in the application an eastern boundary of Turakirae but the accompanying maps show the boundary as being some seven kilometres further east along the coastline at Windy Point (Mukamukaiti).

Incorrect eastern boundary description in the original application

[3] It appears from the memorandum of former counsel, Mr Knowsley, filed on 13 April 2017, that the mistake in the original application was to refer to Turakirae Head rather than Windy Point. However, although the mistake was acknowledged as long ago as 2017, the latest description in the amended application perpetuates it. The amended application will need to be altered to reflect the correct eastern boundary of the application in accordance with the maps filed.

Angle of lateral seaward boundary

[4] The second point is that the amended application specifies coordinates on the coastline but not the angle at which the lateral boundary extends into the takutai moana. No seaward boundary is specified. The amended application specifies waypoints for the seaward boundary but it does not specify what the waypoints correspond to. This matter will also need to be attended to. Many of the waypoints marked extend beyond 12 nautical miles with waypoint “H” appearing to be more than 20 nautical seaward from Windy Point.

“Shared areas”

[5] The map attached as Appendix A to the amended originating application has a hatched area at its northern end between the landward boundary points of Pipinui Point and Ohau Point described as “Proposed shared area”. It has a similar hatched area shown at the south-eastern end of the application between Turakirae Head and Mukamukaiti Point, although this one is marked “Current shared area”. The amended application does not explain who these areas are shared with or the basis on which a shared application is being advanced. In [5(b)], the amended application alleges that the entire specified area has been exclusively used and occupied by the applicant group since 1840. That claim is inconsistent with a map showing “shared areas”.

[6] A further amendment to the application addressing these issues should be filed prior to the upcoming Wellington CMC on 6 June 2023. The application cannot be granted in its present form.

Churchman J