

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

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

**CIV-2017-485-196
CIV-2017-485-223
CIV-2017-485-318
CIV-2017-485-185
CIV-2017-485-317
CIV-2017-485-227
CIV-2017-485-513
CIV-2017-485-291
CIV-2017-485-568
CIV-2017-485-250
CIV-2017-485-770
CIV-2017-485-514**

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

IN THE MATTER OF an application for orders recognising
Customary Marine Title and Protected
Customary Rights

On the papers:

Counsel: H Irwin-Easthope for Te Rūnanga o Ngāti Awa (CIV-2017-485-196)
J Koning for Te Rūnanga o Ngāti Whakahemo (CIV-2017-485-223)
M Mahuika and N Coates for Te Whānau a Apanui (CIV-2017-485-318)
T Castle for Ngāti Taiwhakaea Hapū (CIV-2017-485-185)
N Milner for Trustees of Rurima Island Māori Reservation
(CIV-2017-485-317)
L Watson for Ngāti Hikakino, Ngāti Te Rangihouhiri II and Te Tāwera
(CIV-2017-485-227)
J Mason for Ngāti Whakaue ki Maketu Hapū (CIV-2017-485-770), Manu Paora
Whānau (CIV-2017-485-513), and Tangihia Hapū (CIV-2017-485-514)
J Pou for Ngāti Makino and Ngāti Pikiāo (CIV-2017-485-291)
J Kahukiwa for Koromatua Hapū o Ngāti Whakaue o Te Arawa Waka
(CIV-2017-485-568)
T Bennion for Ngāti Pūkenga (CIV-2017-485-250)
G Melvin for Attorney-General

9Minute: 9 June 2023

MINUTE OF CHURCHMAN J
[Case Management Conferences –Tauranga and Rotorua]

CIV-2017-485-196 – Te Rūnanga o Ngāti Awa
CIV-2017-485-223 – Te Rūnanga Ngāti Whakahemo
CIV-2017-485-318 – Te Whānau a Apanui
CIV-2017-485-185 – Ngāi Taiwhakaea Hapū
CIV-2017-485-317 – Trustees of Rurima Island Māori Reservation
CIV-2017-485-227 – Ngāti Hikakino, Ngāi Te Rangihouhiri II and Te Tāwera
CIV-2017-485-513 – Manu Paora Whānau
CIV-2017-485-291 – Ngāti Makino and Ngāti Pūkiao
CIV-2017-485-568 – Koromatua Hapū o Ngāti Whakaue o Te Arawa Waka
CIV-2017-485-250 – Te Tawharau o Ngāti Pūkenga
CIV-2017-485-770 – Ngāti Whakaue ki Maketū
CIV-2017-485-514 – Tangihia Hapū

[1] These applicants are all participating in the fixture which has been set down to commence on Monday 5 May 2025. The memorandum records that a timetable towards hearing had been settled and that the various applicant parties were communicating with each other in relation to other relevant matters that needed to be addressed prior to the hearing. No further directions were sought.

[2] Two counsel made specific requests in relation to attending by VMR. Ms Irwin-Easthope, on behalf of Te Rūnanga o Ngāti Awa, wished to attend the Rotorua CMC by VMR and Mr Bennion, on behalf of Te Tawharau o Ngāti Pūkenga, also wished to attend by VMR.

[3] The requests to attend by VMR are granted. However, the Rotorua CMC is to be vacated and amalgamated with the Tauranga CMC which is to proceed on 15 June 2023. It is that CMC that these applicants will need to make arrangements with the Registrar to attend by VMR.

[4] All other counsel who signed the joint memorandum have their appearance excused.

CIV-2017-485-770 – Ngāti Whakaue ki Maketū
CIV-2017-485-514 – Tangihia Hapū

[5] Counsel's memorandum notes that these two applicants had not been included in the list of applicants who wish to have their applications considered in the 5 May 2025 hearing. The request to participate in that hearing is granted.

CIV-2017-485-250 – Ngāti Pūkenga

[6] There are three parts to this application in three quite separate geographical areas: the Whangarei Harbour; the Coromandel Peninsula; and the Bay of Plenty (from Waihi Beach to Maketu). The memorandum concerned only the Bay of Plenty part of the application.

[7] Of that part of the application, there are also three separate components: Rangitaua Bay in respect of which an interim decision has been issued; Papamoa to Kaituna in respect of which a decision is awaited; and Kaituna to Maketu where a timetable for filing evidence has been set. This is matter covered by the joint memorandum referred to in [2] above.

[8] Counsel's memorandum recorded that there were overlaps with three other applications namely:

- (a) CIV-2017-485-244 – Ngā Hapū o Ngāi Te Rangi;
- (b) CIV-2017-485-294 – Ngāti Ranginui; and
- (c) CIV-2017-485-222 – Ngāti Tara Tokanui Trust.

[9] The applicant seeks orders that these three parties confer and provide a hearing timetable within six months. It proposes that Tauranga Harbour application should be dealt with in one hearing; that a suitable northern point for the hearing (such as Waihi Beach) be agreed upon by the parties and that a timetable be agreed.

[10] At the Tauranga CMC, I expect to hear from counsel for the three overlapping applicants in relation to each of these proposals.

CIV-2017-485-244 – Ngāi Te Rangi Settlement Trust

[11] Counsel's request for leave to attend the CMC by VMR is granted.

CIV-2017-485-195 – Ihakara Tangitū Reserve

[12] Counsel's request to attend the CMC by way of VMR is granted.

CIV-2017-485-294 – Ngāti Ranginui

[13] This applicant is one of the three cross-applicants referred to in the memorandum filed on behalf of Ngāti Pukenga and discussed above at [8] to [10].

[14] Counsel's memorandum recorded that the applicant's resources had been diverted to pursuing its Tiriti o Waitangi Settlement. The memorandum advocates for the proposition that the remainder of the Tauranga Moana applications be heard together but seeks an adjournment for 12 months.

[15] Counsel seeks leave to appear at the Tauranga CMC by way of AVL. That is granted. However, counsel's attention is drawn to the Court's expectation that at the Tauranga CMC there will be a response to the proposal made on behalf of Ngāti Pukenga and discussed above.

CIV-2017-404-480 – Joseph Davis on behalf of Ngāti Hei

[16] Historical research is nearing completion but the preparation of tangata whenua evidence is only "in the early stages". Counsel's memorandum identified six overlapping applications. It appears from the memorandum that, as yet, there has been no engagement with any of the overlapping parties. That is disappointing.

[17] The applicant's request to adjourn this matter for 12 months is granted but the Court expects the applicant to engage with all cross-applicants over that period in an attempt to identify issues that might be resolved by way of agreement.

[18] The Court expects that counsel's memorandum for the 2024 CMC will explain in detail exactly what efforts the applicant has made to engage with all overlapping applicants and to prepare the matter for hearing.

CIV-2017-404-483 – Ngāti Pu

[19] Counsel's memorandum reports that the lead applicant has passed away, and counsel is awaiting a response from the applicant group as to who they intend to appoint to replace the

lead applicant. Counsel needs to be proactive in following this up and providing the Court with the name of the new lead applicant.

[20] Counsel's memorandum indicates that historical research is currently on hold awaiting the appointment of a new lead applicant. No explanation is provided as to why the appointment of a new lead applicant (which should be a pro-forma exercise) should halt the preparation of historical research.

[21] As with the applicant in CIV-2017-404-480, it appears that there has been no engagement with overlapping parties. The Court expects that will occur over the next 12 months and that counsel will be proactive in initiating it.

[22] Counsel applies to either be excused from appearing or to appear by AVL. The application to appear by AVL is granted.

CIV-2017-404-528 – Ngāti Hako

[23] Some progress has been made with historical research. It is not clear exactly what progress has been made in relation to tangata whenua evidence beyond counsel's opinion that the applicant's evidence will be completed by mid to late 2024.

[24] The memorandum identifies some 14 overlapping applications. Once again, the limited information in counsel's memorandum would indicate that, as yet, there has been no interaction by this applicant with the overlapping applicants.

[25] Counsel is directed to be proactive in facilitating that over the next 12 months. Counsel is granted leave to appear at the Tauranga CMC by way of AVL.

CIV-2017-404-482 – Ngāti Huarere ki Whangapoua

[26] Some progress has been made with preparation of the historical report and some limited progress appears to have been made in relation to tangata whenua evidence.

[27] Counsel's memorandum identifies four overlapping applicants and, yet again, it appears that there has not, to date, been discussions by this applicant with those overlapping cross-applicants. Again, counsel is directed to be proactive in facilitating this.

[28] Counsel's request to appear at the CMC by VMR is granted.

Interested parties: Hauraki, Thames-Coromandel, and Whakatāne District Councils

[29] Counsel's request to participate in the Tauranga CMC by way of AVL is granted.

CIV-2017-485-196 – Ngāti Awa

[30] The remaining part of this applicant's application is covered by the hearing scheduled to commence on 5 May 2025.

[31] The notice of date of hearing sent to parties has confirmed the venue as being Bay Park Arena, Mt Maunganui, for the 10-week schedule for the hearing.

[32] Counsel for Ngāti Apa has requested that at least part of the hearing be held either in Whakatāne or a venue closer to Whakatāne than Tauranga. She submits Te Mānuka Tūtahi Marae would be suitable.

[33] It appears that discussions with other overlapping parties in relation to this proposal are ongoing. Following the completion of those discussions, counsel indicates a formal application will be made no later than 30 June 2023. The Court will deal with that application when it is received.

[34] At present, no Judge has been assigned to preside over the 5 May 2025 hearing but once the identity of the presiding Judge is confirmed, all interlocutory applications such as a request for a change of venue will be referred to that Judge for determination.

[35] Counsel's memorandum sought leave for Ms Tarawhiti to attend the Rotorua CMC on 16 June 2023 by AVL/VMR, and to be excused from the Tauranga CMC.

[36] In view of the vacation of the Rotorua CMC and its amalgamation with the Tauranga CMC, counsel is granted leave to attend the Tauranga CMC by VMR.

CIV-2017-485-238 – Te Whānau a Harāwaka

[37] This application was also scheduled to be called in Rotorua on 16 June 2023. Counsel's memorandum records that further discussions with overlapping applicants are required. No timetable and directions were sought. The application is adjourned until the 2024 round of CMCs. It is likely to be called in the 2024 Tauranga CMC rather than the Rotorua CMC.

[38] Counsel is excused from attending the 2023 CMC.

CIV-2011-485-270 – Ngāi Tai and CIV-2017-485-272 – Ririwhenua Hapū

[39] This application was also to be called at the Rotorua CMC. Discussions with the overlapping applicant are taking place, and counsel requests an adjournment for 12 months to allow these to continue. That application is granted and counsel's request to be excused from attending the 2023 CMC is also granted. It is likely that this matter will be called at the Tauranga CMC in 2024 rather than the Rotorua CMC.

Churchman J