

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

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

**CIV-2017-404-537
CIV-2017-404-546
CIV-2017-404-554
CIV-2017-404-558
CIV-2017-404-563
CIV-2017-404-566
CIV-2017-404-573
CIV-2017-404-579
CIV-2017-485-231
CIV-2017-485-239
CIV-2017-485-250
CIV-2017-485-281
CIV-2017-485-283
CIV-2017-485-286
CIV-2017-485-305
CIV-2017-485-398
CIV-2017-485-515
CIV-2017-485-799
GROUP E**

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

IN THE MATTER JOSEPH ROBERT KINGI on behalf of Nga
Puhi nui tonu, Ngati Rahiri, Ngati Awa, Nga
Tahuhu and Ngaitawake

AND continued: .../2

Hearing: 1 December 2023

Counsel: M Chen and C Saunders for Te Rūnanga o Ngāti Whatua CIV-
2017-404-563
C Hockley for
...continued: .../2

Minute: 8 December 2023

MINUTE (No 9) OF HARVEY J

AND Trustees of Ngati Rehua-Ngatiwai ki Aotea Trust on behalf of Ngati Rehua-Ngatiwai Ki Aotea

AND Kare Rata for Nga Hapu o Ngati Wai

AND Rihari Dargaville for Ngaitawake

AND Te Runanga o Ngati Whatua

AND Pereri Mahanga on behalf of Te Waiariki, Ngati Korora, Ngati Takapari Hapū/Iwi of Niu Tireni

AND Maia Maria Nova Honetana for Ngai Tahu, Ngati Tuu (Ngati Tuu to Ngati Tu ki Ngāpuhi), Ngāti Kukukea

AND Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai

AND Te Rūnanga o Ngati Hine

AND Stephen Panoho on behalf of Te Rae Ahu Whenua Trust

AND Te Tawharau o Ngati Pukenga on behalf of Ngati Pukenga

AND Patuharakeke Te Iwi Trust Board

AND Ngatiwai Trust Board

AND Patuharakeke Te Iwi Trust Board

AND Tamihana Akitai Paki on behalf of Te Parawhau Hapu

AND Louisa Te Matekino Collier & Ors on behalf of Ngati Kawau & Te Waiariki Korora

AND Elvis Shayne Reti for Whangaruru, Whangarei and Whangaroa

AND Application by Korokota Marae on behalf of Te Parawhau Hapū

Introduction

[1] A pre-trial conference was held on 1 December 2023 at Auckland. I thank counsel for their various memoranda filed in advance. The purpose of the conference was to finalise any outstanding interlocutory and related matters prior to the hearing proper commencing on 12 February 2024.

Tikanga and te reo Māori

[2] Counsel have requested that a pōhiri at a marae on 11 February 2024. I confirmed that consistent with other MACA hearings, my preliminary view was that any pōhiri or whakatau should take place at the hearing venue. Counsel agreed to confer with their clients to consider this matter further.

[3] Regarding te reo Māori translation, the Registry has advised that simultaneous translation will be available up to **15 March 2024**. Mr Hockly confirmed that there is a draft timetable that has te reo Māori evidence being heard on four days. I noted Mr Erkin's submission that te reo Māori translation should be available in the normal course of events without the need for early notice. I agree with those sentiments but faced with logistical realities that ideal is presently unachievable. In the meantime, I propose that:

- (a) Counsel confirm the allocation of a block of hearing time for evidence in te reo Māori within a two-week window. From the timeline in Mr Hockly's joint memorandum, the third and fourth weeks appear best suited for this.
- (b) If translation is sought outside this window, counsel are to request that by **25 January 2024**.

Boundaries and Mapping

[4] The Attorney-General filed a memorandum appending a map of the hearing areas on 13 July 2023, which was revised in a further memorandum on 31 July. The Crown sought confirmation of this map at the conference.

[5] Mr Enright raised the issue of river mouths. He also raised an issue regarding Stage 1(b) boundaries around affected islands. The issue of river mouths concerns the Marine and Coastal area boundary rather than the hearing boundary. The Crown have specified two coordinates marking a line across the Harbour mouth. I agree with Ms Moinfar-Young that all the marine and coastal area within the harbour is in the hearing area. Further definition is then properly a matter for the hearing.

[6] Mr Erskine also queried the basis of seaward boundaries for the Stage 1(b) coastal hearing. My understanding is that these were set by the minute of Churchman J dated 1 July 2022. This followed the Auckland CMC on 22 June 2022 where Mr Erskine appeared. The question we are addressing now is whether the Attorney-General's map adequately reflects the hearing area set by Churchman J. Counsel have had since 13 July 2023 to query the map and no concerns been notified.

[7] To avoid doubt, the hearing boundaries as set out the Attorney-General's memorandum dated 13 July 2023 are confirmed.

Submissions, evidence and cross examination

[8] On the matter of a global opening submissions week, I confirmed to counsel that they should reconsider that proposal and look to a more orthodox approach where a party's submissions preceded the evidence. Counsel confirmed that they would do so and confer with their clients.

[9] Regarding cross-examination, notices should be filed by **2 February 2024**.

[10] In addition, I note that in several instances accommodation has been reached between parties over overlaps and shared interests. I strongly urge all parties, where appropriate, to explore the prospect of further agreement, even if only on an interim basis, to expedite the hearing process. As I mentioned at the conference, it is unlikely that any further hearing time will be available for these proceedings, notwithstanding the wāhi tapu issue which will be dealt with separately. It is therefore incumbent on all involved in the proceedings, including the Court, to ensure that hearing time is used prudently and that any identifiable time saving opportunities can be explored.

[11] For example, it is the custom that for expert witnesses their evidence is taken as read and that they are to present a brief presentation summary before being made available for cross-examination. On the issue of cross-examination, I emphasised that the repetition of topics or issues which have been already canvassed in detail by other counsel should be avoided. While I acknowledge that all parties are entitled to present their cases in accordance with their trial strategy, which includes the questioning of witnesses, nothing is gained by unnecessary and excessive repetition of topics. Where appropriate, where evidence can be taken as read that too should be encouraged.

Wāhi tapu

[12] Mr Bennion raised the issue of wāhi tapu and was supported by Mr Hockley in the context of the need for subsequent hearings. This matter will also be considered further. I further note the Attorney-General's assumption that the wāhi tapu issues can be dealt with in a Stage 2 process.

[13] In principle I agree that evidence of wāhi tapu or wāhi tapu areas will be relevant in stage 1(a) to the extent that it can be considered in the context of the test for customary marine title under s 58. Evidence going towards wāhi tapu protection rights will likely be heard in a separate stage 2(a) proceeding following any recognition of customary marine title.

Hearing venues

[14] As to hearing location, there was a general consensus that Whangārei is to be preferred with the exception of interested parties and the Attorney-General for whom hearings might be held at an alternative location like Auckland. I also encourage counsel to consider attending by VMR, particularly where their clients have a limited, if any, role in a hearing week.

[15] I also confirmed with counsel that by using the Māori Land Court registry in Whangārei for the hearing, two days in the last and first weeks of each month would usually be taken up by the Māori Land Court for its own list court and special fixtures. I will liaise with the Registrar and Judges of that Court to see if accommodations could

be made on a case-by-case basis where these hearings might remain in situ while alternative arrangements for example, at the Whangārei High Court, could be found for the Māori Land Court so as not to impact these hearings.

[16] Counsel have also asked that Friday afternoon sittings conclude at 3.30 pm due to outward bound flights. Where time can be made up during the week by a combination of slightly earlier starts, shortened lunchbreaks and slightly later finishes during the week, this request could be accommodated.

Filing dates

[17] Regarding filing dates for submissions, several counsel expressed concerns over the timetable and explained their individual difficulties in meeting a December 2023 deadline. Various proposals were canvassed.

[18] Counsel for the Attorney-General submitted that five working days following filing would be required for any response. Counsel for North Port and related parties also sought a five day response period. Mr Enright submitted that the common bundle would not be available until the period 18-21 December 2023 which was why a filing date of 24 January 2024 was sought. Mr Lyall referred to the filing of reply evidence on 4 and 11 December 2023.

[19] My preference is that where possible the 21 December 2023 filing date should be maintained. Only in exceptional circumstances, following the granting of leave, should the late filing of submissions be permitted. That said, I appreciate that all counsel have extensive workloads and that a late but well-crafted submission is preferable to an on time but poorly presented written argument. Even so, those counsel who do file on time should not be disadvantaged or prejudiced for doing so. As for that matter, all I can add is that submissions filed on time will be read first which will expedite the formulation of any questions for counsel in a more considered manner over the January 2024 holiday period. The filing of submissions date remains **21 December 2023**. Requests for extensions should be filed urgently.

Appointment of Pūkenga and Māori Appellate Court referrals

[20] Regarding the appointment of Pūkenga and referrals to the Māori Appellate Court, I will consider counsel's submissions in due course. As intimated at the conference, I do see merit in making a referral on overlapping issues in Stage 2 of these hearings where boundaries overlap into neighbouring districts closer to Tāmaki Makaurau.

Patuharakeke Te Iwi Trust Board consolidation

[21] When making their originating application in 2017, Patuharakeke Trust Board filed separate applications for CMT (CIV-2017-485-281) and PCR (CIV-2017-485-286). In their preconference memorandum, they seek an order consolidating the two applications under CIV-2017-485-281.

[22] All the other applicants before me have a single application covering both CMT and PCR. The order sought will put Patuharakeke on the same footing. I order that both applications are to be consolidated under CIV-2017-485-281.

Ngāpuhi-nui-tonu leave to intervene application

[23] On 24 October 2023, Joseph Kingi and others on behalf of Ngāpuhi hapū and Ngāpuhi-nui-tonu sought leave to intervene in the Whangārei Harbour (stage 1(a)) and Whangārei Coast (stage 1(b)) hearings as an interested party. The applicant is a "dual applicant" in terms of Crown engagement under the Act, as well as a High Court application (CIV-2017-404-537) regarding these areas.

[24] Evidence was filed one day after the due date for interested parties evidence being 23 October 2023. Any opposition needed to be filed by 8 November. None was received. The Attorney-General abides the Court's decision.

[25] That application for leave to intervene as an interested party is granted.

Further conference

[26] It may be appropriate to convene a further pretrial conference at the end of January 2024 to deal with any outstanding issues. To facilitate that process, I would direct counsel to file any updating memoranda that they think are required by **25 January 2024**. If counsel have nothing further to add then they need not respond.

Harvey J

Counsel – continued: G Erskine for Ngā Hapū o Tangaroa ki Te Ihu o Manaia Tae
atu ki Mangawhai CIV-2017-404-579
Y Moinfar-Young for the Attorney-General
B Lyall and H Swedlund for Stephen Panoho on behalf of
Te Rae Ahu Whenua Trust CIV-2017-485-239

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