

**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-2017-404-539  
CIV-2017-404-559  
CIV-2017-404-570  
CIV-2017-404-578  
CIV-2017-485-208  
CIV-2017-485-236  
CIV-2017-485-237  
CIV-2017-485-240  
CIV-2017-485-268  
CIV-2017-485-271  
CIV-2017-485-320  
CIV-2017-485-398  
CIV-2017-485-510**

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

IN THE MATTER of an application by ROBERT GABEL on  
behalf of NGĀTI TARA for orders  
recognising customary marine title and  
protected customary rights

Continued ...

Hearing: 13 December 2023

Appearances: DCF Naden, M Sreen and R Wihongi for Ngāti Tara in CIV-2017-  
404-578; Ngāti Kauwau and Ngāti Awa in CIV-2017-404-539;

Continued ...

Date of Minute 13 December 2023

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**MINUTE OF CHURCHMAN J**

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Continued ...

- IN THE MATTER of an application by JOSEPH KINGI on behalf of NGĀPUHI NUI TONU, NGĀTI RAHIRI, NGĀ TĀHUHU and NGĀITAWAKE
- AND of an application by RIHARI DARGAVILLE for NGĀTI KAUWAU and NGĀTI AWA
- AND of an application by HECTOR BUSBY for NGĀTI KAHU and TE RARAWA and TE URIOHINA
- AND of an application by HONOURABLE DOVER SAMUELS of Ngāti Kahu at Matauri and adjacent coastline
- AND of an application by JANE HOTERE, ROSARIA HOTERE, ANANIA WIKAIRA for TE HIKUTU HAPŪ
- AND an application by TRUSTEES OF THE NGĀTI KURI TRUST BOARD INCORPORATED representing NGĀ URI O NGĀTI KURI
- AND an application by TE RŪNANGA O WHĀINGAROA TRUST for NGĀPUHI/NGĀTI KAHU KI WHĀINGAROA
- AND an application by THE PROPRIETORS OF PARENGARENGA A INCORPORATION on behalf of the shareholders of PARENGARENGA A INCORPORATION
- AND an application by TE RŪNANGA NUI O TE AUPŌURI TRUST
- AND an application by TREVOR WI KAITAIA, PERENIKI TAUHARA, GLEN LARKIN KAIWAKA and ATIHANA JONES of NGĀ HAPŪ O NGĀTI KAHU
- AND an application by TE WHĀANAU MOANA ME TE ROROHURI and HAITITAIMARANGAI MARAE TRUST

AND an application by RANGITANE MARSDEN  
for NGĀI TAKOTO

AND an application by TAREWA ROTA on behalf  
of the hapū of NGĀTI MOKOKOHI, TE  
TAHAWAI, TE URI-O-TE-AHO, NGĀTI  
RUAMAHUE and NGĀTI TOREHINA

AND an application by LOUISA TE MATEKINO  
COLLIER on behalf of NGĀTI KAWAU &  
WAIARIKI KORORA

AND an application by TAREWA ROTA on behalf  
of the hapū of NGĀTI MOKOKOHI, TE  
TAHAWAI, TE URI-O-TE-AHO, NGĀTI  
RUAMAHUE and NGĀTI TOREHINA

Continued ...

Appearances: L Thompson for Nga Puhi nui tonu, Ngāti Rahiri, Ngāti Awa,  
Nga Tahuhu and Ngaitawake in CIV-2017-404-537;  
E Rongo for Te Hikutu Hapū in CIV-2017-404-570;  
T Ulrich for Te Whānau Moana me Te Rorohuri in  
CIV-2017 404-271;  
T B Afeaki and R Arya for Ngā Hapū o Ngāti in  
CIV-2017-485-268  
N Thrupp for Ngāti Kawau and Te Wairiki Kororā in  
CIV-2017-485-398  
T Sinclair for Ngāti Kahu, Te Rarawa and Te Uriohina in  
CIV-2017-404-559  
M Piripi for Te Rūnanga o Whaingaroa (for Ngāpuhi/Ngāti  
Kahu ki Whangaroa) in CIV-2017-485-236  
C Ratapu for Parengarenga A in CIV-2017-485-237  
C Terei for Te Aupōuri in CIV-2017-485-240  
H Andrews and J Cheong for Ngai Takoto in CIV-2017-485-320  
S Northey for Ngāti Mokokohi in CIV-2017-485-510  
IFF Peters and ALW Herewini for Ngāti Rēhia in MAC-01-01-  
082  
G Melvin for the Attorney-General

[1] Ngāti Tara are seeking to have a hearing set down for their application under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act). In a memorandum dated 3 May 2023 Ngāti Tara proposed a hearing area with the northern boundary being the northern tip of Houhora Harbour and the southern boundary being at Taupō Bay.

[2] Ngāti Tara subsequently facilitated a number of hui between overlapping applicants and have modified their original hearing proposal to amend the proposed northern landward boundary so as to follow the western boundary of the application area of Te Whānau Moana me Te Rorohuri and Haititaimarangai Marae Trust (CIV-2017-485-271) running parallel in a northerly direction out of Rangaunu Harbour before turning to run parallel to the eastern boundary of Ngā Uri o Ngāti Kuri's application area until the 12 nautical mile limit. The southern boundary of the varied area would remain at Taupō Bay.

[3] There are some 13 overlapping High Court applications covered by the proposed hearing area. The effect of the amended proposed hearing area is that Ngāti Kuri would not have to participate in the hearing.

[4] Eight out of the 13 applicants whose applications are either entirely or partially covered by the proposed area support the application. They are:

- (a) Ngāti Tara – CIV-2017-404-578;
- (b) Ngāti Kauwau, Ngāti Awa – CIV-2017-404-539;
- (c) Ngāpuhi Nui Tōnu, Ngāti Rahiri, Ngāti Awa, Ngā Tāhuhu, and Ngāitawake – CIV-2017-404-537;
- (d) Ngāti Kawau and Te Waiariki Korora – CIV-2017-485-398;
- (e) Te Hikutu Hapū – CIV-2017-404-570;
- (f) Te Whānau Moana me Te Rorohuri – CIV-2017-485-271;

(g) Ngā Hapū o Ngāti Kahu – CIV-21017-485-268; and

(h) Ngāti Kahu, Te Rarawa and Te Uriohina – CIV-2017-404-559.

[5] For different reasons, a number of the other applicants affected by the proposal, oppose it.

[6] Te Rūnanga o Whaingaroa notes that some of the Rūnanga members form part of the applicant groups that are seeking or supporting the amended proposed application area but that other of its members have Crown engagement only applications and submit that proceeding to a hearing will adversely impact the ability of the Crown engagement applicants to have CMT granted to them. The Rūnanga therefore does not take a firm position and abides the decision of the Court.

[7] Te Aupōuri (CIV-2017-485-240) have a small overlap with the proposed hearing area at the northern end (set out in appendix C to the joint memorandum of counsel dated 28 November 2023. The memorandum of counsel dated 28 November 2023 on behalf of counsel for Parengarenga A Incorporation (CIV-2017-485-237) and Te Aupōuri indicated that those parties, along with a direct engagement only applicant – Ngā Whānau o Te Aupōuri Te Kao (also known as the Maunganui Bluff Trustees) (MAC-01-01-047) – intend to pursue their applications jointly.

[8] There is a minor overlap between Te Aupōuri's application and the proposed hearing area at the Rorohuri boundary. There is also a small overlap at the northern boundary with the application of Ngāi Takoto (CIV-2017-485-320). Ngāi Takoto's preference is that the northern boundary of the proposed hearing area is amended to exclude Ngāi Takoto's application area completely.

[9] Adjusting the hearing boundary to accommodate the preferences of Te Aupōuri and Ngāi Takoto would reduce the number of applicants participating in the hearing by two. While it would also result in some convenience to other applicants, including Ngāti Tara who would then have to participate in a hearing for that part of their application that will be excluded from the present hearing, on balance, I am satisfied

that it is appropriate to further amend the northern boundary so as to stop short of both the Te Aupōuri and Ngāi Takoto claims.

[10] Ngāti Mokokohi and others (CIV-2017-485-510) have a claim that completely overlaps the proposed hearing area and also extends a substantial distance to the south. They complain that what is proposed will result in them having to participate in three separate hearings. They also submit that they need further time to engage in ongoing discussions with overlapping applicants. Given that the likely hearing will not commence before 2026 it seems that they will have sufficient time to continue in discussions. The fact that their claim covers a relatively large area inevitably means that there is no realistic possibility of it, and all the overlapping claims, being dealt with at the one hearing.

[11] Ngāti Rēhia is a direct engagement only applicant (MAC-01-01-082) but participated in the case management conference and is an interested party in overlapping applications within the proposed hearing area. They reserve their right to file further memoranda and to participate in the hearing as an interested party.

[12] The Whakarara Māori Committee do not support the proposed hearing, boundaries or timetable and submit that a hearing should not proceed until all affected parties are fully prepared.

[13] I will not separately summarise the position of those applicants who support the proposal.

## **Discussion**

[14] It is not appropriate to delay setting the matter down for hearing because of the potential adverse impact that the grant of CMT following such a hearing would have on engagement only applicants. The Court must deal with the legislation as it exists. It is up to the legislature to take whatever action it sees fit to address a potential injustice arising from the fact that if a Court, following a hearing, were to grant CMT to a High Court applicant, that would preclude the Crown by way of direct engagement granting CMT in respect of a direct engagement only applicant.

[15] There is a substantial degree of support amongst overlapping applicants for the amended hearing proposal. I adopt that proposal with the qualification set out above – namely, that the hearing area will stop short of the boundary of the Te Aupōuri and Ngāi Takoto claims.

[16] I request the Registrar to arrange a hearing for these applications of 12 weeks duration to commence no earlier than 1 February 2026. Once the date for the commencement of hearing is fixed, the timetable will be as follows:

- (a) The applicants are to file and serve their evidence 25 weeks prior to the hearing date.
- (b) Interested parties, other than the Attorney-General, are to file and serve their evidence no later than 16 weeks prior to the hearing date.
- (c) If necessary, the applicants are to file submissions as to the appointment of Pūkenga no later than 16 weeks prior to the hearing date.
- (d) The Attorney-General is to file and serve evidence no later than 12 weeks prior to the hearing date.
- (e) Any evidence in reply from the applicant is to be filed and served no later than nine weeks before the hearing date.
- (f) The close of pleadings date will be seven weeks prior to the hearing date.
- (g) The applicant's opening submissions, statement of agreed facts and bundles of authorities are to be filed and served no later than six weeks prior to the hearing date.
- (h) The interested parties' submissions and bundles of authorities are to be filed and served no later than four-and-a-half weeks prior to the hearing date.

- (i) The Attorney-General's submissions and bundles of authorities are to be filed and served no later than three weeks prior to the hearing date.

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Churchman J

Solicitors / Counsel:

Mr DCF Naden, Ms M Sreen and Mr R Wihongi, Tamaki Legal, Auckland  
Ms J Mason, Mr L Thompson and Mr N Thrupp, Phoenix Law Ltd, Wellington  
Ms E K Rongo, Oranganui Legal Ltd, Kapiti Coast  
Ms T M Urlich, T M Urlich Ltd, Hamilton  
Mr T B Afeaki and Ms R Arya, Barristers, Auckland  
Mr T Sinclair, Ngātahi Law, Auckland  
Ms M Piripi, Whaia Ltd, Wellington  
Mr CMR Ratapu, McCaw Lewis Ltd, Hamilton  
Ms C P Terei, Tukau Law Ltd, Kaikohe  
Ms H Andrews and Ms J Cheong, The Environmental Lawyers, Takapuna  
Ms S R Northey, Kahui Legal, Rotorua  
Mr IFF Peters and Ms ALW Herewini, Kaupare Law Ltd, Auckland  
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