

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

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

**CIV-2017-404-522
CIV-2017-404-537
CIV-2017-404-558
CIV-2017-404-570
CIV-2017-404-240
CIV-2017-485-245
CIV-2017-485-290
CIV-2017-485-307
CIV-2017-485-308
CIV-2017-485-320
CIV-2017-485-398**

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

IN THE MATTER of an application by JOSEPH ROBERT
KINGI on behalf of NGĀPUHI NUI TONU,
NGĀTI RAHIRI, NGĀ TĀHUHU and
NGĀITAWAKE

Continued ...

Hearing: 14 December 2023

Appearances: B Tupara for Te Ihutai Ki Ōrirā in CIV-2017-404-522
M Sreen and R Wihongi for Te iwi ō Te Rarawa ki Ahipara in
CIV-2017-485-245

Continued ...

Date of Minute 14 December 2023

MINUTE OF CHURCHMAN J

Continued ...

- AND an application by RUEBEN TAIPARI PORTER, JOHN MATIU, CHRISTOPHER TAKANA MURRAY, LINDA WAIMIRIRANGI MATENGA HARRISON and SANDY MURUPAENGA on behalf of TE IWI Ō TE RARAWA KI AHIPARA for orders recognising Customary Marine Title and Protected Customary Rights
- AND an application by RHIARI DARGAVILLE on behalf of NGĀITAWAKE
- AND an application by HECTOR BUSBY for NGĀTI KAHU and TE RARAWA and TE URIOHINA
- AND an application by JANE HOTERE, ROSARIA HOTERE, ANANIA WIKAIRA for TE HIKUTU HAPU
- AND an application by TE RŪNANGA NUI O TE AUPŌURI TRUST
- AND an application by RUEBEN TAIPARI PORTER and others on behalf of TE IWI O TE RARAWA KI AHIPARA
- AND an application by TRUSTEES OF TE RŪNANGA O TE RARAWA
- AND an application by RANGITANE MARSDEN for NGĀI TAKOTO
- AND an application by LOUISA TE MATEKINO COLLIER on behalf of NGĀTI KAWAU and TE WAIARIKI KORORĀ

Continued ...

Appearances:

- M Johnson for Ngāitawake in CIV 2017 404-558
- L Thompson for Nga Puhī nui tonu, Ngati Rahiri, Ngati Awa, Nga Tahuhu and Ngaitawake in CIV-2017-404-537 and for Ngati Kawau and Te Waiariki Korora in CIV-2017-485 398
- E Rongo for Te Hikutu Hapū in CIV-2017-404-570
- M Piripi for Te Rūnanga o Te Rarawa in CIV-2017-485-290
- K Dixon for Nga Hapu o Te Wahapu o Hokianga nui a Kupe in CIV-2017-485-307
- N R Coates for Te Tao Maui and Hokoheha in CIV-2017-485-308
- J Cheong for Te Iwi o Ngai Takoto in CIV-2017-485-320
- C P Terei for Te Aupōuri in CIV-2017-485-240 and for Ngāti Haua ki Te Rarawa in MAC-01-01-063
- B R Lyall and C M Hockly for Te Iwi o Te Roroa in MAC-01-01-129
- J Gear for Nga Uri o Tohua Kākahi in MAC-01-01-0166
- L Thompson for Nga Puhī nui tonu in MAC-01-01-052 MAC-01-01-053, MAC-01-01-056 and MAC-01-01-059
- G Melvin for the Attorney-General

[1] Te Rarawa ki Ahipara (CIV-2017-485-245) wishes to have a hearing set down for its application for recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) in relation to the area of its claim and the claims of overlapping applicants.

[2] The applicants' claim area extends either side of the settlement of Ahipara and the originally proposed hearing area stopped at the southern boundary of their claim (Taitea) and extended north to Hukatere, which was beyond the northern boundary of the applicants' claim but was the northern boundary of three overlapping claims:

- (a) Te Rarawa – CIV-2017-485-290;
- (b) Ngai Takoto – CIV-2017-485-320; and
- (c) Ngāti Kahua, Te Rarawa and Te Uriohina – CIV-2017-485-559.

[3] Te Rarawa's claim extended south beyond Taitea to the southern mouth of Hokianga Harbour and they wish to have the hearing boundary fixed at the southern point of their claim so that they would not have to participate in multiple hearings.

[4] The hearing area proposal was modified to accommodate this request.

[5] A number of hui have been held and there is considerable support for the revised boundary area with counsel for eight applicants signing the joint memorandum in support.

[6] A feature of the claims to Hokianga Harbour are that they do not extend out into the Takutai Moana offshore. To that extent they do not have a commonality of interest with claims such as those of Te Rarawa. However, notwithstanding this, a number of the Hokianga Harbour claimants support the proposed hearing area. The exception is Te Ihutai Ki Ōrirā (CIV-2017-404-522). Mr Tupara, on behalf of this applicant, submitted that a discrete hearing relating only to the Hokianga Harbour was appropriate and that the applicant should not be caught up in those aspects of the claims to the Takutai Moana which were not relevant to its case.

[7] The precise location of the southern boundary of the hearing area will potentially affect Te Rarawa (CIV-2017-485-290) and interested party Te Roroa (MAC-01-01-129). Mr Lyall, for Te Roroa, confirmed that negotiations were ongoing between these two groups in an endeavour to come to an accommodation which meant that Te Roroa was not required to participate in the hearing. It appears that the area of overlap is very small and exists only because of the way the boundary lines of the claim have been drawn out to the 12 mile limit.

[8] It is to be hoped that the parties can reach an accommodation on this points which avoids the necessary for Te Roroa to be drawn into this hearing. Leave is granted to the parties to file a memorandum updating the Court on progress and, if a resolution is reached, to file amended maps showing the co-ordinates of the respective applications: particularly those out on the 12 nautical mile limit.

[9] Nga Uri o Tohua Kākahi is a direct engagement applicant only (MAC-01-01-0166). Mr Gear has filed an application for them to participate in the proposed hearing area as an interested party on the basis that the proposed hearing area overlaps its area of claim. The area of this application is confined to the upper reaches of Hokianga Harbour. There was no opposition by any of the overlapping applicants to the request for leave to participate as an interested party. It is in the interests of justice for this applicant to be able to participate. The applicant understands that, as the legislation current exists, while the applicant can participate as an interested party the Court does not have jurisdiction to make a recognition order in its favour in these proceedings. Leave is granted for it to participate on that basis.

Hearing duration

[10] The parties were agreed that, notwithstanding the adoption of the extended hearing proposal and the inclusion of an additional Crown engagement only applicant as an interested party, the proposed duration for the hearing remained at 10 to 12 weeks. The applicant sought a hearing in the first quarter of 2026. Mr Melvin, on behalf of the Attorney-General, suggested that it would be more appropriate for the hearing not to be before the final quarter of 2026. The basis of this was that several of the counsel who will be involved in this hearing are also likely to be involved in

hearings taking place in the first half of 2026 and that it is preferable for the applicants to be able to utilise counsel of their choice and not have to change counsel because their counsel were committed to other hearings. There is sense in that proposal.

[11] Mr Tupara, on behalf of Te Ihutai Ki Ōririā raised the possibility of a judicial settlement conference. There may well be merit in such a proposal, however, before the Court can commit to it, it needs to be satisfied that meaningful progress can be a possible outcome of a JSC. Normally this involves counsel for all affected applicants filing a joint memorandum confirming that they see benefit in participating in a judicial settlement conference. A JSC need not necessarily resolve all the issues outstanding between the parties but must be at least capable of solving some issues, reducing the extent of the hearing otherwise required. Leave is reserved to Mr Tupara to file such a memoranda, following discussions with the other parties, indicating a joint willingness to participate in such a process.

Outcome

[12] The revised hearing area between Hukatere in the north and the south bank of the Hokianga Harbour is confirmed, subject to clarification of the precise boundaries of the claims of Te Roroa and Te Rarawa. The registrar is requested to set a fixture no earlier than the third quarter of 2026. Once a hearing commencement date has been fixed, the following timetable directions will apply.

- (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.

Churchman J

Solicitors:

Mr B Tupara, Te Mata Law, Auckland
Mr DCF Naden, Ms M Sreen and Ms R Wihongi, Tamaki Legal, Auckland
Ms J Mason, Mr L Thompson and Ms M Johnson, Phoenix Law Ltd, Wellington
Ms E Rongo, Oranganui Legal Ltd, Kapiti Coast
Ms C P Terei, Tukau Law Ltd, Kaikohe
Ms M Piripi, Whaia Ltd, Wellington
Mr T Sinclair, Ngātahi Law, Auckland
Ms K Dixon, Dixon and Co, Auckland
Ms N R Coates, Kahui Legal, Rotorua
Mr J Gear, Gear Legal Ltd, Auckland
B R Lyall, Barrister, Auckland
C M Hockly, Hockly Legal, Auckland
Ms H Andrews and Ms J Cheong, The Environmental Lawyers, Takapuna
Mr G Melvin, Crown Law, Wellington