

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

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

**CIV-2017-485-160; CIV-2017-485-214
CIV-2017-485-229; CIV-2017-485-248
CIV-2017-485-261; CIV-2017-485-273
CIV-2017-485-511**

GROUP N, STAGE 1(a)

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

IN THE MATTER OF applications for orders recognising
Customary Marine Title and Protected
Customary rights

Continued...

Hearing 23 & 24 September 2026

Counsel: (Listed below)

Minute: 25 September 2026

**MINUTE OF GRICE J
(Re evidence and cross-examination)**

[1] Mr Majurey for Muaūpoko Tribal Authority, supported by the other applicants as well as the Horowhenua 11 Part (Lake) Reservation Trust and Ngāti Toa (all referred to as the aligned parties), raised a number of issues as to process. These related to the following matters:

- (a) the evidence included on the record;
- (b) the extent of cross-examination, bearing in mind s 92 of the Evidence Act 2006; and

(c) the order of cross-examination of the applicants' evidence.

[2] The evidence on the record includes all the evidence from the previous hearing and the current hearing including evidence-in-chief, cross-examination, evidence-in-reply, expert reports, supplementary evidence, the notes of evidence and the exhibits.¹

[3] The 2025 CMT judgment in the matter,² by virtue of the 2025 amendments to the Marine and Coastal Area (Takutai Moana) Act 2011, is no longer of any legal effect.³ That of course does not mean that the evidence upon which it is based cannot be relied on in the rehearing. Much of the evidence will be relevant to the rehearing and subsequent decision, and it may well be ordered in same manner as 2025 CMT judgment. However, the key consideration is that the evidence and reasoning must be directed to the legislation in its amended 2025 form, rather than to the law as it stood before those amendments took effect and the "old law".⁴

[4] The second matter relates to the extent of cross-examination. The cross-examination that occurred in the first hearing is part of the record which will be before the Court. It is up to the parties to decide whether they need to cross-examine witnesses on any matters that are relevant due to the amended legislation, which may not have been an issue before or should otherwise be put to a party. In relation to matters of tikanga in particular, where cross-examination has been carried out, I suggest that the applicants confer on the main areas of disagreement, and it may be that they will be able to reach an agreement inter se as to those matters. For instance, there may be some matters on which they agree to disagree on.

[5] Also relevant are the directions in my Minute of 5 June 2026 concerning the treatment of evidence and the issues which counsel will need to address in submissions.⁵ In that Minute, the parties were directed to give notices of cross-examination in relation to witnesses giving supplementary or new evidence

¹ *Re Taueki (Ngāti Tamarangi) & Ors* HC Wellington CIV-2017-485-160, 5 June 2026 (minute of Grice J) — CMT hearing timetable and directions.

² *Re Taueki (Ngāti Tamarangi) & Ors* [2025] NZHC 4188 [2025 CMT judgment].

³ *Re Taueki (Ngāti Tamarangi) & Ors* [2025] NZHC 4140 at [21].

⁴ Marine and Coastal Area (Takutai Moana) Act 2011 [Takutai Moana Act] current version since October 2025, sch 1 AA, pt 1, definition of "old law".

⁵ CMT hearing timetable and directions Minute, above n 1, at [6]–[13].

before 14 September 2026. Due to timetable slippage, it now appears that reply evidence was filed after the date. Therefore, the parties, including the Attorney-General, have leave to give notices of cross-examination in relation to that reply evidence.

[6] In relation to the third matter, Mr Majurey submitted that, as a matter of fairness, the Attorney-General and the Seafood Industry Representatives (SIR) (subject to objections) should be the first parties to cross-examine a witness. They would then be followed by the applicant and aligned parties. He said this was unlike the first hearing as the Attorney-General was taking a more adversarial approach here. Mr Majurey also pointed out that “aligned parties” had significant differences inter se. For example, Muaūpoko and Ngāti Raukawa contest each other’s claims, in a large part. Mr Irwin, supporting Mr Majurey, noted that efficiency considerations may support the “aligned parties” being the last to cross-examine. He said this was illustrated in the process followed with the first witness, Mr Taueki. Mr Taueki had been led by Mr Irwin and the witness interpolated some evidence beyond his written brief. No aligned parties sought to cross-examine. However, the Attorney-General did cross examine, after some clarification about whether notice had been appropriately given. This was followed by cross-examination by Mr Scott for SIR. Mr Bennion for Muaūpoko then indicated that as a result of that cross-examination he had further questions, which I allowed. In the event, the Crown did not seek to cross-examine further.

[7] Also relevant to cross-examination is the case management conference Minute of 11 September 2026 recording the parties’ agreement concerning the cross-examination. It was recorded that, where common a point was made across a number of briefs, that point may be put to a single witness, and:⁶

[17] If a later witness gives a different answer to the same question, that evidence can be lead in-chief, or if an earlier witness gives a different answer, they can be re-called with leave of the Court.

⁶ As set out in memorandum of the Attorney-General dated 9 September 2026 following conferral with the other parties at [28.2], adopting the process used in the 2024 CMT hearings as recorded in joint memorandum of counsel re cross-examination, dated 21 May 2024 at [4]–[5].

[8] There are reasons of efficiency and fairness that weigh both for and against retaining the usual order of cross-examination. The issues which arose in relation to Mr Taueki's cross-examination largely arose due to the interpolations added to his evidence and now should be largely avoidable if some notice is given of interpolations.

[9] As Mr Hodder KC pointed out, an important factor in considering order of cross-examination is that the applicants are required to make their cases under the amended law. The applicants (and those adopting the joint submissions) are aligned as to their view on the effect of the 2025 amendments to the Act. The Attorney-General and SIR have different views on the effect and those "contradictors" are entitled to test the cases of the applicants.⁷ The interpretation of the amendments and their application to the evidence is a significant issue in the proceedings and in my view is the determining factor in relation to the order of cross-examination.

[10] Accordingly, there is no reason to depart from the process that was adopted in the first CMT hearing.

[11] If there are to be interpolations, it would be useful for the party giving evidence to provide an addendum so that all parties can see what the nature of the extra evidence is and so leave can be sought to cross-examine in a timely manner, if notice has not been previously given.

[12] The Attorney-General on 23 September sought leave to cross-examine those historians who deal with late 19th and 20th century developments, which are relevant to the Court's application of the test for CMT according s 58 of the Act. These developments are addressed in part by Dr Green's historical narrative in his report of 28 March 2024. The Attorney-General notes that propositions confirmatory of Dr Green's narrative have not previously been put to the applicants' historian witnesses who addressed Dr Green's narrative or addressed the 20th century developments in the hearing area. The Attorney-General seeks to put such propositions to those witnesses including Mr Armstrong, unless the parties accept the

⁷ I describe the Attorney-General as a "contradictor" by way of analogy insofar as the Attorney-General intends to test the evidence adduced, rather than making a case itself.

general accuracy of Dr Green's narrative, acknowledging the applicants may wish to make submissions on it.⁸

[13] The applicant and aligned parties did not oppose leave being granted for the Attorney-General to cross-examine in the terms set out at [8]. The issues raised by the Attorney-General directly bear on the application of the amended Act and the applicants' historian witness should be given the opportunity to comment on Dr Green's narrative. Those experts include Messrs Armstrong, Sterling and Walzl, as well as Drs Belgrave, Husbands and O'Malley. Mr Cameron and the Crown will discuss further the timing of Mr Walzl's evidence. It would be preferable if the witnesses were to give evidence/be cross-examined in the same block of time and were in a position comment on each other's evidence. Leave is accordingly granted.

Rulings

[14] Accordingly:

- (a) Leave is granted to the Attorney-General to cross examine the historian witnesses in the terms set out at [8]. If any party considers it necessary for leave to recall their historian witness they may make application at the time.
- (b) The general rule will be that the applicant party calls their evidence and the aligned parties then have the opportunity to cross-examine (in such order as they agree). Then Crown and SIR may then cross-examine (subject to any objections). The person calling the evidence will then re-examine according to the usual rules.

Grice J

⁸ As set out in an email dated 24 September 2026 from Daniel Kleinsman to all parties filed on the court file on 24 September 2026.

Counsel

T H Bennion, Kudrat and P F Majurey for Muaūpoko Tribal Authority Incorporated (Bennion Law, Wellington)

A K Irwin and O T H Neas for Ngāti Tamarangi hapū of Muaūpoko iwi (Te Aro Law Ltd, Wellington)

T P Talamaivao and S J Gordon for Te Rūnanga o Ngā Wairiki Ngāti Apa (Dixon & Co Lawyers, Auckland)

C F Finlayson KC for Rangitāne o Manawatū Settlement Trust (Innes Dean Lawyers, Palmerston North)

C M Hockly for Horowhenua 11 Part (Lake) Reservation Trust (Hockly Legal, Auckland)

N R Coates, P Walker and T I M Hautapu for Ngāti Raukawa ki te Tonga (Kāhui Legal, Wellington)

B R Lyall for Patrick Seymour on behalf of Te Whānau Tima (Seymour) and Te Ahikā o Te Hapū Mateawa (Tu Pono Legal Limited, Rotorua)

A Cameron and W I Gucake for Te Āti Awa ki Whakarongotai Charitable Trust (Whāia Legal, Wellington)

E K Rongo and C K Ford for Te Rūnanga o Toa Rangatira Incorporated (Oranganui Legal Limited, Paraparaumu)

J E Hodder KC, D A Ward, D O Kleinsman, C R Downey for Attorney-General (Crown Law, Wellington)

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