

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

**I TE KŌTI MATUA O AOTEAROA  
TŪRANGANUI-A-KIWA ROHE**

Hearing: 8 June 2022  
(via VMR)

Counsel: C Hockly for Tangiora – Rongomaiwahine Iwi Trust CIV-2017-485-794

R Smail for Rongowhakaata Iwi CIV-2017-485-289  
H Irwin-Easthope for Ngāi Tāmanuhiri Iwi CIV-2017-485-314  
C Hirschfeld for Ngāti Oneone CIV-2017-404-571  
M Mahuika and L Underhill-Sem for Ngāti Kurupakiaka & Ors  
CIV-2017-485-230  
C Beaumont for CIV-2017-485-242  
C Hirschfeld, D Naden and M Yogakumar for CIV-2017-485-247

B Lyall for:  
Ngā Hapū o Koronui ki te Toka a Taiau Takutai Kaitiaki Trust  
CIV-2017-485-255  
Te Rauhina Marae and Hapū CIV-2017-485-288

N Milner for:  
Pōtikirua ki Whangaokena Takutai Kaitiaki Trust CIV-2021-485-302  
Whangaokena ki Onepoto Takutai Kaitiaki Trust CIV-2021-485-303  
Te Papatipu o Uepohatu me Te Papatipu o te Ngaere Takutai Kaitiaki  
Trust CIV-2021-485-304  
Whānau Hapū of Te Aitanga A Mate Te Aowera and Te Whānau a  
Hinekehu Takutai Kaitiaki Trust CIV-2021-485-305  
Ngā Hapū o Waipiro Takutai Kaitiaki Trust CIV-2021-485-306  
Ngāti Wakarara – Ngāti Hau Takutai Kaitiaki Trust CIV-2021-485-307

Interested parties:  
G Melvin for Attorney-General  
B Scott for Seafood Industry Representatives

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

**I TE KŌTI MATUA O AOTEAROA  
TAURANGA MOANA ROHE**

Hearing: 9 June 2022

Counsel: J Lewis for Ngāti Tara Tokanui CIV-2017-485-222  
M Sinclair and M Sharp for Ngāti He Hapū Trust CIV-2017-485-219  
J Gear for Ngā Hapū o Ngāi Te Rangi CIV-2017-485-244

J Koning for:  
Ngāti Whakahemo CIV-2017-485-223  
Ihakara Tangitū Reserve CIV-2017-485-195

C Hirschfeld for:  
Ngāti Hei CIV-2017-404-480  
Ngāti Pū CIV-2017-404-483  
Ngāti Hako CIV-2017-404-528

T Bennion for:  
Ngāti Pukenga CIV-2017-485-250;  
Ngāi Te Hapū CIV-2017-485-257

Interested parties:  
M Jones for Hauraki DC, Thames-Coromandel DC, and Whakatāne DC  
G Melvin for Attorney-General

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

**I TE KŌTI MATUA O AOTEAROA  
TE ROTORUA-NUI-Ā-KAHU ROHE**

Hearing: 10 June 2022  
(via VMR)

Counsel: T Castle for Ngāi Taiwhakaea Hapū CIV-2017-485-185  
H Irwin-Easthope and K Tarawhiti for Te Rūnanga o Ngāti Awa  
CIV-2017-485-196  
J Mason for Manu Paora Whānau CIV-2017-485-513  
T Sinclair and B Cunningham for Te Whakatōhea CIV-2011-485-817  
T Bennion and G Davidson for Ngāti Patumoana CIV-2017-4850-253  
M Mahuika, N Coates and L Underhill-Sem for Te Rūnanga o Te  
Whānau a Apanui CIV-2017-485-318  
M Sharp for Ngāti Muriwai CIV-2017-485-269  
K Ketu for Te Whakatōhea Rangatira Mokomoko CIV-2017-485-355  
J Pou for Whakatōhea Māori Trust Board CIV-2017-485-292

E Rongo for:  
Ngāi Tai CIV-2017-485-270  
Ririwhenua Hapū CIV-2017-485-272

C Panoho-Navaja for:  
Ngāi Tamahaua CIV-2017-485-262  
Te Hapū o Titoko Ngāi Tama CIV-2017-485-377

Interested parties:  
M Jones for Hauraki DC and Whakatāne DC  
G Melvin and N Dennis-McCarthy for Attorney-General

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

**I TE KŌTI MATUA O AOTEAROA  
KIRIKIRIROA ROHE**

Hearing: 14 June 2022

Counsel: R Siciliano and C Ratapu for Ngaati Mahuta ki te Hauaaaru  
CIV-2017-404-575  
H Clatworthy for Ngāti Te Wehi CIV-2017-419-81  
B Loader for West Coast Iwi and Hapū ki Marokopa Marae  
CIV-2017-419-82  
A Sykes for Tainui Hapū o Tainui Waka CIV-2017-419-83  
E Whiley for Ngāti Apakura CIV-2017-485-207  
C Hirschfeld for Ngā Tini Hapū o Maniapoto CIV-2017-404-526  
(via VMR)  
J Ferguson for Waikato-Tainui CIV-2017-419-84 (via VMR)

J Lang for:  
Tootill CIV-2017-419-80  
Ngā Hapū o Mokau ki Runga CIV-2017-485-216  
Ngā Hapū o Mokau ki Runga CIV-2017-485-209

Interested Parties:  
M Jones and D Ria for Hauraki DC and Waikato DC  
C Ratapu for Ngaati Whakamarurangi and Ngaati Maahanga me Nga Uri  
o Te Awataia  
G Melvin for Attorney-General

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

**I TE KŌTI MATUA O AOTEAROA  
WHANGĀREI TERENGA PARĀOA ROHE**

Hearing: 21 June 2022

Counsel: C Saunders for Te Rūnanga o Ngāti Whatua CIV-2017-404-563  
B Loader for Ngāi Tahu, Ngāti Tuu, Ngāti Kukukea  
CIV-2017-404-573  
Mr McGrath (in person) for Ngāti Tōrehina ki Mataure ō Hau  
CIV-2017-404-540  
G Erskine and R Arya for Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae  
atu ki Mangawhai CIV-2017-404-579  
C Ratapu for Parengarenga A Incorporation CIV-2017-485-237  
E Whitley for Ngāti Pūkenga CIV-2017-485-250  
T Afeaki for Ngā Hapū o Ngāti Kahu CIV-2017-485-286  
X Y Lau for Te Whānau Moana me te Rorohuri CIV-2017-485-271  
A Sykes for Ngāti Manu CIV-2017-485-277  
J Inns for Ngatiwai Trust Board CIV-2017-485-283  
C Panoho-Navaja for Ngāti Kuta and Patukeha ki te Rawhiti  
CIV-2017-485-321  
J Mason for Reti Whānau CIV-2017-485-515  
L Collier (in person) for Ngāti Kawau & Te Waiariki Korora  
CIV-2017-485-398  
H Andrews for Ngāi Tokoto Iwi CIV-2017-485-320  
P Wilson for Te Whānau Whero CIV-2017-485-420  
N Coates and L Underhill-Sem for Ngāti Mōkokohi, Te Tahawai,  
Te Uri-o-Te-Aho, Ngāti Ruamahu and Ngāti Tōrehina  
CIV-2017-485-510

B Tupara for:  
Ropu a Rangariri CIV-2017-404-442  
Te Ihutai ki Ōririā CIV-2017-404-522  
Ngāti Rahiri Hapū CIV-2017-404-535

G Chan for:  
Ngāti Rahiri and Ngāti Kawa CIV-2017-404-577  
Ngāti Tara CIV-2017-404-578  
Te Iwi o Te Rarawa ki Ahipara CIV-2017-485-245

S Roughton and K Alty for:  
Te Whānau-ō-Rātāroa CIV-2017-404-529  
Ngāi Tupango CIV-2017-485-233  
Te Popoto ki Otūrei CIV-2017-485-252

M Cherrington and C Terei for:  
Te Rūnanga Nui o Te Aupōuri CIV-2017-485-240  
Ngāti Hine CIV-2017-485-231  
Ngai Tū-āhu-riri CIV-2017-485-266  
Te Kapotai CIV-2017-488-026

K Dixon for:  
Ngāti Wakarara – Ngāti Hau Takutai Kaitiaki Trust CIV-2021-485-307  
Ngāti Takapri CIV-2017-485-279  
Henare Waata Whānau CIV-2017-485-438  
Patuharakeke CIV-2017-485-286  
Patuharakeke Te Iwi CIV-2017-485-281

W McCarthy for:  
Ngātiwai (Whānau o Ohawini) CIV-2017-485-306  
Walker CIV-2017-488-29  
Ngā Uri o Hairama Pita Kino Davies CIV-2017-485-408  
Whangaroa Ngaiotonga CIV-2017-485-409

C Hockly for:  
Reweti and Rewha Whānau CIV-2017-485-352  
Te Whakapiko Hapū of Ngāti Manaia CIV-2017-485-228  
Te Parawhau CIV-2017-485-305

L Thornton for:  
Te Rae Ahu Whenua Trust CIV-2017-485-239  
O Ngā Hapū o Taiamai Ki Te Marangai CIV-2017-404-523  
McGee Whānau CIV-2017-485-256  
Ngāti Kawau, Ngāti Kawhiti, Ngāti Haiti, Ngaitupango Hapū of  
Whangaroa CIV-2017-485-249

T Sinclair for:  
Ngāti Manu and Ngāti Rangi CIV-2017-404-525  
Ngā Hapū o Ngātiwai Iwi CIV-2017-404-554  
Ngāti Kahu, Te Rarawa and Te Uriohina CIV-2017-404-559

Interested parties:  
A Thomas for Ngāti Rehia  
J Mason for Sailor Morgan for Ngāti Ruamahue Hapū  
G Mathias for Lang's Beach Society Incorporated  
D Stone for Sheena Ross  
D Ria for Hauraki and Waikato District Councils  
J Golightly for Northport Ltd and Marsden Cove Canals Management Ltd  
K Dawson for Te Roroa  
E Ellis for Channels Infrastructure NZ Ltd (formerly Refining NZ)  
G Melvin and N Dennis-McCarthy for Attorney-General

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

Hearing: 22 June 2022

Counsel: M Chen and C Saunders for Te Rūnanga o Ngāti Whatua  
CIV-2017-404-563  
A Sykes and C Houia for Ngāti Rongo o Mahurangi CIV-2017-485-276  
G Chan for Ngāti Taimanawaiti CIV-2017-404-518  
L Thornton for Ngāti Rehua/Ngātiwai ki Aotea CIV-2017-404-574  
K Grant for Ngāti Whātua Ōrākei Trust CIV-2017-404-520  
L Thornton (for B Lyall) for Mahurangi, Ngāti Awa and Ngāpuhi  
CIV-2017-404-524  
C Hockly for Ngāti Te Ata CIV-2017-404-569  
T Hovell for Otakanini Topu Māori Incorporation CIV-2017-404-581  
T Gorman for Te Whānau-a-Haunui CIV-2017-404-582  
J Pou for Ngāti Manuhiri CIV-2017-404-545  
G Erskine and R Arya for Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae  
atu ki Mangawhai CIV-2017-404-579  
T Thompson for K J Linstead CIV-2017-404-528  
T Sinclair for Ngā Hapū o Ngāti Wai Iwi CIV-2017-404-554  
B Loader for Maia Nova CIV-2017-404-573

M Yogakumar for:  
Ngāti Rehua/Ngātiwai ki Aotea CIV-2017-404-580  
Ngāti Rehua CIV-2017-404-546

T Castle and C Ritchie for:  
Te Taoū CIV-2017-404-567  
Te Taoū CIV-2017-404-542

K Dixon for:  
Patuharakeke Te Iwi CIV-2017-485-281  
Patuharakeke CIV-2017-485-286

No appearances for:  
Taumata B Block Whānau CIV-2017-485-187  
Bouchier CIV-2017-485-188

Interested parties:  
G Melvin and N Dennis-McCarthy for Attorney-General  
R Gardner for Manaia Properties Ltd  
E Ellis for Channels Infrastructure NZ Ltd  
J Inns for Ngatiwai Trust Board  
L Ford for Manaia Properties Ltd  
B Scott for Seafood Industry Representatives  
K Dixon for Te Roroa

S Darroch for Gibbs Foundation Ltd

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

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

Hearings: 28 June 2022

Counsel: T Bennion and G Davidson for:  
Ngāti Hinewaka CIV-2017-485-259  
Hunau of Tame Horomona Rehe CIV-2017-485-217

M Yogakumar for:  
Te Hika o Papaūma Marae Trustees CIV-2017-485-226  
Ngāi Tumapuhia-a-Rangi Hapū CIV-2017-485-232  
Tukōkō and Ngāti Moe CIV-2017-485-267

J Ferguson for:  
Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua CIV-2017-485-221  
Te Awa Tupua and Ngā Hapū me Ngā Uri o Te Iwi o Whanganui  
CIV-2017-485-301  
Papaūma Marae Trustees CIV-2017-485-220

B Lyall for Te Whānau Tima and Te Hapū o Te Mateawa  
CIV-2017-485-273  
C Beaumont for David Morgan Whānau CIV-2017-485-214  
C Conroy-Mosdell for Ngāti Raukawa ki te Tonga CIV-2017-485-229  
G Erskine and E Greensmith-West for Muaūpoko Iwi CIV-2017-485-161  
L Black for Te Pautokotoko CIV-2017-485-254

C Hirschfeld for:  
Te Atianga o Ngā Uri o Wharekauri CIV-2017-404-479  
Te Hika o Papaūma CIV-2017-404-481

D Edmunds for Williams CIV-2017-485-258  
K Tahana for Tupoki Takarangi Trust CIV-2017-485-211  
H Irwin-Easthope for Ātiawa ki Whakarongotai CIV-2017-485-248  
L Watson for Ngāti Kere Hapū CIV-2017-485-193  
T Castle for Ngāti Mutunga o Wharekauri Iwi Hapū  
CIV-2017-485-309  
C Griggs for Moriori Imi Iwi CIV-2017-485-316  
C Mataira for Rangitāne Tu Mai Rā Trust CIV-2017-485-224  
G Melvin for Attorney-General

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

**I TE KŌTI MATUA O AOTEAROA  
WHAKATŪ ROHE**

On the papers:

Counsel: T J Castle for Te Rūnanga a Rangitane o Kaituna Inc CIV-2017-485-167  
J Appleyard and B Williams for Te Ngāi Tūāhuriri Hapū CIV-2017-485-266

Minute: 1 July 2022

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**MINUTE OF CHURCHMAN J  
[Case Management Conferences (CMCs) 2022]**

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**General observations**

*Dialogue between parties*

[1] As the body of decisions in respect of applications for recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) grows, applicants have become aware of the difficulties in obtaining recognition orders for customary marine title (CMT) where there are overlapping claimants who also assert exclusive use and occupation of the same part of the takutai moana since 1840.<sup>1</sup>

[2] This has prompted parties to engage with cross-applicants with the view to reconciling competing claims and has resulted in a number of applications being amended either to reduce the areas of overlap or, in some cases to advance a claim on a joint basis. This will ultimately reduce the number of matters that the Court is required to determine and enhance the prospects of applicants being successful in relation to recognition orders.

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<sup>1</sup> See, for example, the decision in *Re Edwards (Whakatōhea) No. 2* [2021] NZHC 1025; and *Re Ngāti Pāhauwera* [2021] NZHC 3599.

## *COVID*

[3] The effects of COVID continue to impact on case preparation. Meeting kanohi-ki-te-kanohi is important in tikanga where applicant groups have important matters to discuss. For some applicant groups this has meant they have not engaged with overlapping applicants at all but for others it has meant that innovative ways of communicating including Zoom hui have been implemented.

[4] The Court has attempted to reduce the risk to counsel of catching COVID by offering, wherever possible, the option of attendance at case management conferences (CMCs) or hearings by way of VMR or some other virtual means.

[5] Because of COVID level restrictions, some hearings which ideally should have been 'in person' hearings have had to be conducted completely by virtual means. I acknowledge the disappointment of many applicant groups and their counsel when this has had to occur.

## *Late filing of memoranda*

[6] All active cases (i.e. those who have issued High Court proceedings and have not yet had a hearing on their substantive claim in the High Court), are called at least once a year at a CMC in the registry to which the claim has been allocated.

[7] Counsel were directed at last year's round of CMCs to file updating memoranda at least 30 days prior to the various scheduled CMC dates. While many counsel have provided helpful memoranda covering matters such as state of evidence gathering and preparedness for hearing, degree of interaction with overlapping claimants, and assistance required from the Court, there has been a disappointing number of applicants who have filed such memoranda very late, often the day before or even the day of, CMCs, or not at all.

[8] The late or non-filing of memoranda has a significant adverse impact on the effectiveness of CMCs. That is particularly so when one or more applicant group is seeking a timetable order for hearing. Wherever appropriate, the Court will make orders

on the papers and excuse the attendance of counsel at a scheduled CMC or, in some cases, vacate the CMC where all counsel have provided satisfactory updating memoranda.

[9] Resolving matters in that way is made much more difficult if the Registrar has to continually chase up counsel who have ignored the directions of the Court in this matter.

[10] The Court is aware of the demands on counsel's time and the fact that a number of counsel have been temporarily incapacitated by COVID but all counsel must be aware that they will be required to file an updating memorandum ahead of each CMC (unless the Court has specifically made a direction to the contrary, or their case has been heard and a decision issued, or a decision is awaited).

[11] A list of the scheduled dates for 2023's CMCs is attached as an appendix to this minute.

[12] Unless otherwise directed, all applicants are required, no later than 30 days prior to the date of the CMC at which their case will be called, to file and serve a memorandum covering an update on evidence preparation and preparedness for hearing, details of discussions with overlapping applicants, and an indication of the directions or orders the applicant will be seeking from the Court at the CMC.

#### *Direct engagement*

[13] Many applicants are still reporting that their preference is direct engagement with the Crown and that they are only pursuing litigation because they have not been able to engage satisfactorily with the Crown. Notably, a number of applicants reported that the Crown had taken steps to initiate direct engagement although a number of others reported that they have not received a substantive response to their request for such engagement.

[14] There also appears to be some uncertainty among applicants as to what their position is if they have embarked upon the direct engagement process but have unable to reach a satisfactory conclusion with the Crown. Where those applicants also have live Court applications, in those circumstances they are able to pursue those applications.

[15] However, where an applicant with a Court application has had that application heard and determined, they cannot then seek to raise the same issues by way of direct engagement in the hope of getting a better outcome. Obviously, those applicants who have only proceeded down the direct engagement pathway, cannot commence litigation should they be unable to satisfactorily engage with the Crown.

[16] At a number of the CMCs, counsel have raised the prospect of substantial injustice where applicants for a recognition order by way of CMT, have been successful before the High Court in establishing that they have exclusively used and occupied a particular area of the takutai moana since 1840, with the potential consequence that other applicants advancing a similar claim by way of direct engagement may be precluded from continuing with their direct engagement claim given the finding by the Court that another applicant has exclusively held the same area.

[17] As further applications are resolved through the Court process, the potential for injustice is only likely to grow. This may well be a matter which justifies some legislative amendment.

#### *National Archives*

[18] A number of counsel for the applicants, as well as counsel for the Attorney-General, indicated that the undertaking of historical research in respect of claims had been severely impeded by the reduced hours of opening of the National Archives. For reasons that are not entirely clear to the Court, the opening hours during which archive or material can be accessed have been reduced to four hours per day.

[19] The professional historians producing reports for the parties are under significant time pressure with a number of timetable orders now being made towards hearing. The difficulties in accessing the National Archives is now impacting on the ability of parties to comply with the Court's timetable directions.

### *Amending applications*

[20] There are continuing instances of applicants filing amended applications or amended maps which enlarge either the area covered by the application or the nature of the application itself.

[21] As the judgment of this Court in *Ngāti Pāhauwera strike-out application*,<sup>2</sup> makes clear it is not permissible to expand upon an application now that the time limit for filing applications has long since passed. It is, of course, possible to refine an application by reducing its scope or agreeing with one or more cross-applicants to advance an application as a joint application.

### *Mapping*

[22] Section 109(4) of the Act requires that every CMT holder must include a survey plan that sets out the extent of the CMT area, to a standard of survey determined for the purpose by the Surveyor-General. Successful applicants have experienced difficulty in complying with this requirement.

[23] The Surveyor-General appeared and gave evidence at the Stage Two Ngāti Pāhauwera hearing and explained what a number of the issues were. It is understood that over the coming months he is likely to issue a practice direction explaining what is required to meet this statutory obligation.

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<sup>2</sup> *Ngāti Pāhauwera strike-out application* [2020] NZHC 1139.

## **Gisborne CMC**

[24] This minute supplements the minute of the Court of 23 May 2022 relating to the 16 applications being dealt with through the Gisborne registry. The 23 May 2022 minute made timetabling directions in respect of some 12 of those applications.

[25] Subsequent to that minute, Mr Sinclair, counsel for Whānau a Kahu (CIV-2017-485-225), has filed a notice of discontinuance. No further timetable directions were sought at the CMC.

[26] Mr Melvin, appearing on behalf of the Attorney-General, helpfully clarified that the Crown's practice, in respect of claimants that are proceeding by way of direct engagement, is that interested parties who wish to have input into those matters in the same way that interested parties are permitted to appear before the Court in relation to applications under the Act, will be able to do so.

*CIV-2017-404-571 (Ngāti Oneone)*

[27] No memorandum of counsel was received in respect of this matter and, notwithstanding the reminder set out in the Court's minute of 23 May 2022, there was no appearance of counsel by VMR at the CMC. That raises the issue of whether the applicant still intends to pursue this application.

[28] Mr Hirschfeld is directed to, within 14 days of the date of this minute, file a memorandum confirming whether the High Court application is actively being pursued and, if it is, to update the Court on steps taken by way of engagement with overlapping claimants and the process that has been made towards readiness for hearing.

[29] If the applicant no longer wishes to pursue a claim in this Court, a notice of discontinuance should be filed. In the absence of confirmation from counsel that the applicant still wishes to proceed with this application, the Court may allocate a hearing time to consider whether it should be struck out.

[30] All other matters are adjourned for 12 months to the 2023 Gisborne CMC.

[31] Those applicants whose applications are being heard in the Tokomaru Bay hearing scheduled to commence on 5 September 2022, are not required to attend the 2023 Gisborne CMC unless part of their application falls outside the area being considered by the Court at the 5 September hearing.

[32] Counsel in the Tokomaru Bay cases are not required to file a memorandum for the 2023 Gisborne CMC and have their attendance at that CMC excused.

## **Tauranga CMC**

[33] This minute is to be read together with the Court's minute of 26 May 2022 and will not duplicate the directions made in that minute.

### *CIV-2017-485-223 (Ngāti Whakahemo)*

[34] This applicant participated in the Ngā Potiki Stage Two hearings but its application extends to areas that go beyond the areas covered by those hearings including: Maketu Estuary, Waihi Estuary, Pukehina Beach, and an area off the coast.

[35] Historical and traditional research is expected to be concluded by April 2023.

[36] No engagement with the several cross-applicants has occurred. That is unhelpful. Mr Koning acknowledged that in some of the areas the applicant did not contend that it exclusively met the test for recognition orders. In respect of those areas in particular, it is likely to be helpful for discussions between claimants with overlapping applications to have occurred well before hearing and the applicant is encouraged to initiate such engagement.

### *CIV-2017-485-195 (Ihakara Tangitū Reserve)*

[37] This application relates to Waikaraka, an estuary located at Te Puna in Tauranga Harbour. The applicant has not yet engaged with the three cross-applicants and is not in a position to have its claim timetabled to hearing.

### *CIV-2017-485-219 (Ngāti He Hapū Trust)*

[38] This applicant has participated in the two Ngā Potiki hearings but part of its application extends beyond the area covered by those hearings. It is not yet ready for timetabling to a hearing.

*CIV-2017-485-244 (Ngā Hapū o Ngāi Te Rangi)*

[39] This applicant has also been involved in the Ngā Potiki hearings and has part of its application area extending beyond the area covered by those hearings. There are nine other applications that overlap with the balance area.

[40] Mr Gear submitted that the balance of the Tauranga Moana area be heard at one hearing so as to avoid this applicant having to participate in a number of different hearings. This submission was supported by a number of other counsel.

*CIV-2017-404-480 (Ngāti Hei), CIV-2017-404-483 (Ngāti Pu), and CIV-2017-404-528 (Ngāti Hako)*

[41] Mr Hirschfeld represents all three applicants. None had yet engaged in formal discussions with cross-applicants and none were ready to proceed to a hearing although some were well advanced in evidence preparation. The applicants are encouraged to commence dialogue with the overlapping claimants.

*CIV-2017-485-250 (Ngāti Pukenga)*

[42] Ngāti Pukenga's application covered three district areas: Whanganui, Coromandel, and Tauranga. The Tauranga aspects of the application have been split in four parts – Ngā Potiki I and II, Tauranga Harbour and Kaituna to Maketu.

[43] In respect of the Tauranga Harbour, counsel supported the concept of all remaining applications relating to the Tauranga Harbour being heard together and sought an adjournment for 12 months. They also sought an adjournment for 12 months in relation to the Kaituna to Maketu aspect of the application. The adjournment until the 2023 Tauranga CMC on 15 June 2023 is granted. At that time, the Court anticipates timetabling the Tauranga Moana applications to a hearing.

*CIV-2017-485-227 (Ngāti Hikakino, Ngāti Te Rangihouhiri II, Te Tāwera)*

[44] No memorandum was filed by Mr Watson despite reminders. He also did not appear at the hearing. This raises the issue as to whether these applicants intend to

proceed with these applications. Mr Watson is directed to file a memorandum complying with the Court's minute of 5 July 2021. If the memorandum is not filed within 30 days of this minute, the Court will convene a CMC to consider striking out these applications.

*General*

[45] All applications not otherwise dealt with are adjourned to 15 June 2023. Counsel are to file memoranda 30 days prior to that date detailing progress toward hearing and efforts at dialogue with overlapping applicants.

## **Rotorua CMC**

[46] This minute should be read in conjunction with the Court's minute of 30 May 2022. The directions made in that minute will not be repeated here.

### *CIV-2017-485-196 (Te Rūnanga o Ngāti Awa)*

[47] Ms Irwin-Easthope advised that, after initially expressing a preference for direct Crown engagement, Ngāti Awa now wish to advance its High Court application.

[48] Ngāti Awa's application is overlapped by a number of other applications. Some of those are applications by groups affiliated to Ngāti Awa and others are entirely separate applicant groups.

[49] There has been some engagement by the Rūnanga with other Ngāti Awa affiliated applicants but not as yet with the other applicants.

[50] The Rūnanga anticipates being ready to have its application timetabled towards hearing later this year and has sought for it to be adjourned for a CMC to be held in December 2022. There was support from other counsel potentially affected by the timetabling of the Ngāti Awa application for a further CMC in December. This application is therefore adjourned to a date in December to be notified by the Registrar.

### *CIV-2017-485-513 (Manu Paora Whānau)*

[51] Ms Mason indicated that Mr Paul was presently in hospital and she had been unable to obtain instructions from him. She acknowledged that, in terms of the Court's minute of 30 May 2022, some amendment to the CMT application made by this applicant may be required.

[52] Ms Mason confirmed that the applicant was affiliated to Ngāti Awa and was a whānau application. She wished to participate in the proposed December 2022 CMC. The application is therefore adjourned to a date in December to be notified by the Registrar.

*CIV-2017-485-270 (Ngāi Tai) and CIV-2017-485-272 (Ririwhenua Hapū)*

[53] These applicants had participated in the *Edwards (Whakatōhea)* hearing in respect of that part of their application that overlapped with the Priority Edwards application. The remaining part of the application, which has an overlap with the Te Whānau a Apanui application, is yet to be dealt with.

[54] Historical research in respect of this part of the application is underway. Formal discussions with Te Whānau a Apanui are yet to occur. Ideally, such dialogue will occur well before any timetabling towards hearing.

[55] These applications are adjourned to the June 2023 Rotorua CMC.

*Interested parties*

[56] Mr Melvin, on behalf of the Attorney-General, confirmed that the Attorney-General supported a December 2022 CMC for the Ngāti Awa application and all overlapping applications.

[57] Mr Melvin also reported on issues in relation to the work of the Surveyor-General in revising draft practice guidelines. Such revised guidelines may potentially have an impact on the *Edwards (Whakatōhea) Stage Two* decision. However, it seems that it is likely to be several months before any revised guidelines are finalised. This is likely to mean that the decision in respect of the *Edwards (Whakatōhea)* hearing will be an interim one.

*Directions*

[58] The Ngāti Awa application and all overlapping applications are adjourned to a date to be fixed by the Registrar in December 2022. No later than 30 days prior to the date fixed, all affected applicants are to file a memorandum providing details of the engagement the applicants have had with all other overlapping applicants, and indicating what steps have been taken to prepare their case for timetabling towards hearing.

[59] It is likely that the Ngāti Awa application and the applications of all overlapping applicants will be called in December 2022 and then timetabled to hearing but unlikely that the hearing itself will occur prior to 2024.

[60] Unless specified elsewhere, all other applications being managed through the Rotorua High Court are adjourned for 12 months.

## Hamilton CMC

[61] This part of the minute is to be read together with the Court's minute of 7 June 2022 which made various directions in relation to other applications being dealt with by the Hamilton Registry where counsel's attendance was excused.

[62] The principal issue at the CMC was the application by Ngāti Te Wehi to timetable a hearing relating to their application to the Aotea Inner Harbour.

*CIV-2017-404-575 (Ngaati Mahuta ki te Hauaauru)*

[63] Ms Siciliano confirmed that there was no overlap with the Ngāti Te Wehi application in respect of the Aotea Inner Harbour with the only overlap being the area around Tarawa (Gannet Island) well out to sea.

[64] Ngaati Mahuta still preferred a Crown engagement pathway and has had an initial discussion with Te Arawhiti officials. Evidence gathering, including that of a historian, is well underway. The applicant has been engaged in extensive and positive discussions with overlapping applicants particularly Waikato-Tainui, Ngāti Hikairo and Marokopa Marae. Counsel's request for a six-month adjournment is granted. The Registrar will advise of the date in December 2022 when a CMC by way of VMR will be held.

*CIV-2017-419-80 (Tootill), CIV-2017-485-216 (Ngā Hapū o Mokau ki Runga), and CIV-2017-485-209 (Ngā Hapū o Mokau ki Runga)*

[65] Ms Lang confirmed that an amended map had been filed last year which deleted references to Kawhia Harbour. A historian had been instructed and discussions with overlapping claimants were continuing.

*CIV-2017-419-81 (Ngāti Te Wehi)*

[66] Mr Clatworthy confirmed that Ngāti Te Wehi still sought a timetable order in respect of the Inner Aotea Harbour area, that is the area inside the harbour mouth. He sought an adjournment for three months to complete discussions with overlapping applicants to determine what issues as between them may remain outstanding.

[67] The principal overlapping applicant is Ngāti Ruakau. They are presently unrepresented. They have also sought direct engagement rather than a recognition order in the High Court. It is possible that they are a hapū of Waikato-Tainui.

[68] Mr Ferguson, counsel for Waikato-Tainui, is to make contact with them to see whether they wish to participate under the umbrella of the wider Waikato-Tainui application. He is to file a memorandum within four weeks of 15 June 2022 reporting to the Court on Ngāti Ruakau's response to that proposal.

[69] The Ngāti Te Wehi application is adjourned for three months with Mr Clatworthy directed to file a memorandum prior to the expiry of the three-month period confirming that he wishes to have the application timetabled to hearing and confirming what overlapping or interested parties he understands wish to participate in that hearing. The memorandum will also detail an estimate of the time required to hear the applicant's case and a proposed set of timetable directions.

*CIV-2017-419-82 (West Coast Iwi and Hapū ki Marokopa Marae)*

[70] There has been significant engagement with overlapping applicant groups. Evidence gathering, including historical evidence, is well underway.

[71] Ms Loader is to file a memorandum within 30 days of 21 June 2022 in relation to the proposal that this applicant seek interested party status in relation to any hearing of the application in CIV-2017-485-216 (Ngā Hapū o Mokau ki Runga).

*CIV-2017-419-83 (Tainui Hapū o Tainui Waka)*

[72] Ms Sykes reported on discussions which had occurred between the members of the Whaingaroa Moana Collective. This had led to renewed interest in the possibility of direct engagement and an approach to that effect to Te Arawhiti.

[73] Ms Sykes raised a query as to the extent of the Crown's commitment to direct engagement. Mr Melvin, on behalf of the Attorney-General, confirmed that the Crown was committed to a hui in an attempt to further the possibility of direct engagement. He also noted that Te Arawhiti was able to make some funding available for interested parties.

*CIV-2017-485-207 (Ngāti Apakura)*

[74] Ms Whiley noted that Ngāti Apakura had no overlap in respect of the Aotea Inner Harbour but may seek interested party status in that hearing. Both traditional and historical evidence preparation was well underway.

*CIV-2017-404-526 (Ngā Tini Hapū o Maniapoto)*

[75] A preparation of historical and customary evidence is well advanced. There are nine overlapping applicants. Discussions have been held with a number of them. This has resulted in three changes to the applicant's position.

- (a) not to contest the CMT area off the coast from the Waioroko Stream south to Mokau;
- (b) not to contest the CMT area from Mokau to the Waipingao Stream; and
- (c) not to contest the CMT area within the boundary of Ngaati Mahuta from Harihari in the south, north to Kawhia Harbour.

[76] The applicant is directed to file and serve an amended map incorporating these changes to its application. Such amended map to be filed and served within 30 days of the date of this minute.

*CIV-2017-419-84 (Waikato-Tainui)*

[77] The preference for this applicant was of direct engagement. As discussed above, counsel is to liaise with Ngāti Ruakau to see if they wish to be represented under the Waikato-Tainui application in respect of Aotea Inner Harbour.

[78] Mr Ferguson's request for a six-month adjournment is granted. The Registrar will notify the date in December 2022 when a further CMC by way of VMR will be scheduled.

[79] This applicant is self-represented and did not file a memorandum or attend the CMC. Mr Jensen is directed to make contact with the Registrar urgently so that the Registrar can arrange for a CMC by way of a teleconference or VMR for the Court to get an understanding of what progress has been made by this applicant and what assistance the applicant needs from the Court.

[80] Ms Sykes offered to assist in contacting Mr Wayne Jensen to encourage him to communicate with the Registrar.

*Interested parties*

*Ngaati Whakamarurangi and Ngaati Maahanga me Ngaa Uri o Te Awataia*

[81] Mr Ratapu reported that his clients were interested parties in the Tainui Hapū o Tainui Waka proceedings (CIV-2017-419-83). Ngaati Whakamarurangi is potentially an interested party in Aotea Inner Harbour.

[82] These applicants are pursuing Crown engagement as a pathway, and are continuing discussions with counsel for Tainui Hapū o Tainui Waka regarding resolving outstanding issues.

*Attorney-General*

[83] Mr Melvin confirmed that the Crown would wish to participate as an interested party in any Aotea Inner Harbour hearing. He was granted four weeks to file a memorandum setting out the extent of the Attorney-General's likely time requirements for such a hearing.

[84] In respect of the Ngaati Mahuta application (CIV-2017-404-575), Mr Melvin confirmed that the Crown was prepared to work with Ngaati Mahuta in respect of direct engagement, and was intending to meet with them again later in June 2022.

[85] In relation to the matter of Ngāti Porou ki Hauraki, Mr Melvin commented on a memorandum that had been filed by Mr Lyall where Mr Lyall had expressed frustration at the Crown not progressing direct engagement. He indicated that Te Arawhiti was awaiting further correspondence from Mr Lyall and had in fact contacted him seeking to progress matters. Mr Lyall is encouraged to take up the offer and contact Te Arawhiti.

## Whangarei CMC

[86] This part of the minute should be read together with the Court's minute (No. 8) of Churchman J in this matter dated 15 June 2022.

*CIV-2017-404-563 (Te Rūnanga o Ngāti Whatua)*

[87] Te Rūnanga o Ngāti Whatua have been active in attempting to obtain agreement from the many cross-applicants in relation to timetabling applications for hearing. In particular, their focus has been on the Whangarei Harbour and Bream Bay extending south from the mouth of the harbour including some of the offshore islands.

[88] A number of memoranda have proposed various options. Those options were dealt with more fully at the Auckland CMC on 22 June 2022 and are discussed in detail in that part of this minute relating to the Auckland CMC.

*CIV-2017-404-442 (Ropu a Rangiriri), CIV-2017-404-522 (Te Ihutai ki Ōririā), and CIV-2017-404-535 (Ngāti Rahiri Hapū)*

[89] Ropu a Rangiriri supported the proposed hearing timetable set out in the joint memorandum of 8 June 2022. Mr Tupara indicated that this applicant now intended to withdraw its CMT claim and to progress only a PCR claim. He undertook to file an amended application within two months.

[90] He sought an adjournment until 2023 and indicated that a memorandum will be filed in early February 2023 advising the Court of progress.

[91] Te Ihutai ki Ōririā had made good progress in the gathering of evidence. Mr Tupara undertook to file a memorandum early next year advising the Court on progress.

[92] Ngāti Rahiri Hapū has just returned to Mr Tupara as a client after initially being one but more recently seeking legal representation elsewhere. Historical evidence gathering was complete.

*CIV-2017-404-577 (Ngāti Rahiri and Ngāti Kawa), CIV-2017-404-578 (Ngāti Tara), and CIV-2017-485-245 (Te Iwi o Te Rarawa)*

[93] These applicants have made some progress with commissioning historical research and gathering tangata whenua evidence. However, none of the applications are in a position to be timetabled for hearing. It appears that little progress has been made in discussing matters with overlapping applicants. The applicants are encouraged to undertake this exercise.

*CIV-2017-404-529 (Te Whānau o Rātāroa), CIV-2017-485-233 (Ngāi Tupango), and CIV-2017-485-252 (Te Popoto ki Otirei)*

[94] Little progress has yet been made in interacting with overlapping claimants, although in respect of the claim by Te Whānau o Rātāroa, there has been some involvement with the Whangaroa Regional Collective.

[95] Counsel is to file a memorandum within two months advising the Court of progress achieved under this initiative.

*CIV-2017-404-573 (Ngai Tahuhu, Ngāti Tuu, Ngāti Kukukea)*

[96] Ms Loader has only recently received instructions in respect of this matter. The applicant's preference is to pursue the Crown engagement pathway. Ms Loader is to file an updating memorandum (including an updated map) within two months.

*CIV-2017-404-540 (Ngāti Torehina ki Mataure Ō Hau)*

[97] Mr McGrath appeared in person and spoke to a handwritten memorandum he had filed. He clearly has issues with a number of the applicant's prior legal advisors and was encouraged to communicate directly with them. This matter is clearly not ready for hearing.

*CIV-2017-404-579 (Ngā Hapū o Tangaroa ki te Ihu o Manaia tae atu ki Mangawhai)*

[98] This application involves Whangarei Harbour and is therefore impacted by the proposed timetable directions sought by Te Rūnanga o Ngāti Whatua. The applicant has concerns as to the length of the proposed hearing and supported a two-stage investigation.

[99] Counsel estimated that between five and seven days would be required to hear this applicant's case. This application was overlapped by, and therefore had an interest in the three matters that are the subject of strike-out applications (CIV-2017-404-537, CIV-2017-404-558, and CIV-2017-404-573).

[100] Leave was sought and granted to participate as an interested party in the strike-out hearings.

*CIV-2017-485-237 (Parengarenga A Incorporation)*

[101] Historical research is well advanced and traditional evidence gathering is underway. This application overlaps with four others. There has been significant discussion with one of the overlapping applicants but discussion with the other overlapping applicants is yet to gain traction. This needs to be addressed.

*CIV-2017-485-240 (Te Rūnanga Nui o Te Aupōuri), CIV-2017-485-231 (Ngāti Hine), CIV-2017-485-266 (Ngai Tū-āhu-riri), and CIV-2017-488-026 (Te Kapotai)*

[102] Evidence gathering for these applications is underway but has been significantly hampered as a result of the difficulties with historians accessing the National Archives in Auckland which are only open for four hours per day. These matters will not be ready for hearing until historical research is completed.

*CIV-2017-485-250 (Ngāti Pukenga)*

[103] Preparation is well advanced and the applicant is able to accept a timetable towards hearing. The applicant will be involved in the proposed Whangarei hearings.

*CIV-2017-485-268 (Ngā Hapū o Ngāti Kahu)*

[104] Two of the named applicants in this matter have passed away. Two new applicants, Selwyn Reihana and Helen Larkin are to be added as named claimants. Some evidence gathering is underway and this applicant is committed to engagement with overlapping applicants. It is not ready for hearing.

*CIV-2017-285-271 (Te Whānau Moana me te Rorohuri)*

[105] This applicant's preference is the direct engagement pathway. For various reasons, including the passing of one of the named applicants, no progress would seem to have been made. The applicant is encouraged to respond to the communication from Te Arawhiti.

*CIV-2017-485-277 (Ngāti Manu and it's Hapū Te Uri Karaka and Te Uri o Raewere)*

[106] The gathering of tangata whenua evidence is almost complete, and this applicant is engaging with overlapping applicants although had experienced financial constraints which limited the extent of engagement. The matter is not yet ready to be timetabled to hearing.

*CIV-2017-485-307 (Ngāti Korokoro Trust), CIV-2017-485-279 (Ngāti Takapari), and CIV-2017-485-438 (Henare Waata Whānau)*

[107] Preparation of a historical report was underway and traditional research and mapping were also progressing well. As yet, there had been little engagement with overlapping applicants. These matters are not yet ready for hearing.

*CIV-2017-485-283 (Ngatiwai Trust Board)*

[108] This applicant's preferred pathway was direct engagement but no positive response had been received from Te Arawhiti. The preparation of historical evidence was underway but unlikely to be completed before early 2024.

[109] In relation to the proposed schedule for the Whangarei Harbour and adjacent area, these applicants supported the proposal of having the applications relating to the outer islands heard as a separate area.

*CIV-2017-485-286 (Patuharakeke) and CIV-2017-485-281 (Patuharakeke Te Iwi)*

[110] A joint memorandum of counsel was filed together with counsel for the Ngatiwai Trust Board. These applicants are in the similar position to the Ngatiwai Trust Board and are also not yet ready to be timetabled towards hearing.

*CIV-2017-485-306 (Ngātiwai (Whānau of Ohawini), CIV-2017-488-029 (Walker), CIV-2017-485-408 (Ngā Uri o Hairama Pita Kino Davies), and CIV-2017-485-409 (Whangaroa Ngaiotonga Trust)*

[111] Evidence preparation for these applications is well underway with specialist evidence anticipated to be available by the end of 2022/start of 2023. There has been some engagement with overlapping applicants and an initiative towards preparing evidence in a collaborative fashion.

[112] It was also hoped that a unified approach might be able to be achieved in relation to the applications involving Whangaruru Harbour. Such an approach is encouraged. This matter is not ready for hearing.

*CIV-2017-485-321 (Ngāti Kuta and Patukeha ki te Rawhiti)*

[113] Attempts to engage a historian have been frustrated by the lack of availability of historians. These applicants are therefore yet to commence compiling specialist evidence. There are at least 11 overlapping claims. Only preliminary discussions with some of these overlapping claimants have yet been held, although the applicants say they are committed to pursuing them further. This matter is not ready for hearing.

*CIV-2017-485-239 (Te Rae Ahu Whenua Trust), and CIV-2017-404-523 (O Ngā Hapū o Taiamai Ki Te Marangai)*

[114] Te Rae Ahu Whenua Trust have a discrete claim inside Whangarei Harbour. This applicant seeks to be part of the hearing proposed by Te Rūnanga o Ngāti Whatua. The applicant anticipates being ready to file evidence in early 2024.

[115] The claim by O Ngā Hapū o Taiamai Ki Te Marangai is progressing slowly. The applicant would prefer direct engagement but has been unable to achieve that. This application is not ready for hearing.

*CIV-2017-485-256 (McGee Whānau), CIV-2017-485-249 (Ngāti Kawau, Ngāti Kawhiti, Ngāti Haiti and Ngaitupango Hapū of Whangaroa), and CIV-2017-485-378 (Ngāti Maraeariki, Ngāti Rongo)*

[116] These applicants are in the early stages of evidence gathering. The applicants are working collaboratively with other groups. These matters are not ready for hearing.

[117] CIV-2017-485-378 is more properly called with the cases in the Auckland registry and will be transferred to that registry.

*CIV-2017-404-525 (Ngāti Manu and Ngāti Rangī), CIV-2017-404-554 (Ngā Hapū o Ngāti Wai Iwi), and CIV-2017-404-559 (Ngāti Kahu, Te Rarawa and Te Uriohina)*

[118] Very little progress has been made with any of these claims. None are ready for hearing and the applicants have substantial work to do.

*CIV-2017-485-515 (Reti Whānau)*

[119] Historical and tangata whenua evidence are being prepared. No hui with overlapping applicants have yet occurred. Counsel's memorandum stated that, "Should funding be available from Te Arawhiti, it is hoped that hui between the parties will continue to occur". There does not yet appear to have been any hui. This applicant may wish to utilise forms of hui being used by other overlapping groups, such as hui by Zoom,

which require minimal expenditure to undertake. Discussions by telephone or in person also cost nothing to undertake. The applicant is encouraged to pursue such options.

*CIV-2017-485-398 (Ngāti Kawau & Te Waiariki Korora)*

[120] Ms Collier appeared in person and addressed the Court but her concern that the Court ‘recognise’ Ngā Puhi nui Tonu was not a matter able to be addressed at a CMC.

*CIV-2017-485-320 (Ngāi Takoto Iwi)*

[121] Ngāi Takoto’s original application, dated 26 March 2017 described the application area as:

- on the landward side by the line of mean high-water springs;
- on the seaward side by the outer limits of the territorial sea;
- on the west ward side by a line that extends from the coast abutting Wharo, (Ahipara) (including any islands) to the outer limits of the territorial sea; and
- on the northward side by a line that extends from the coast abutting Hukatere (Utea pa) north east, across to Rarawa Beach (including any islands) south, down to Houhora, to Kaimaumau, to the Rangaunu [Harbour] and outer limits of the territorial sea.

[122] Their original application was accompanied by a map (the 2017 map) which aligned with that definition, depicting an area of the coastline from just above Kaitaia, encompassing Ahipara on the west coast, up to Hukatere, and then the Rangaunu Harbour up to Rawara Beach on the east coast.

[123] On 23 August 2021, counsel for Ngāi Takoto filed a ‘revised sea-based map’ (the 2021 map) for the claim area.

[124] This map is not substantially different to the 2017 map; in that it depicts the very same area of coastline. The only difference is that the 2021 map more accurately depicts the nature of Ngāi Takoto’s claim out to 12 nautical miles, whereas the 2017 map only depicted the area of coastline, without including a pictorial depiction of the seaward boundary. The seaward boundary in the original application was described simply as “the outer limits of the territorial sea”.

[125] In a memorandum of 24 May 2022, counsel for Ngāi Takoto stated:

Since [2021], Ngāi Takoto has further amended its claim area to include an alignment of the north cape treaty settlement rohe. This includes an area off the coast of Te Rerenga Wairau (Cape Reinga) as well as Manawatāwhi (Three Kings Islands).

[126] Annexed to the memorandum was a map of “Ngāi Takoto Iwi’s Claim Area”, which depicts an updated claim area with four constituent parts (the 2022 map). These are:

- (a) a portion of the west coast at Ahipara extending towards Hukatere, out to 12 nautical miles;
- (b) a portion of the east coast from and including the Rangaunu Harbour, along to Rarawa Beach, out to 12 nautical miles;
- (c) an area off the tip of Cape Reinga, labelled Te Rerenga Wairau, out to 12 nautical miles; and
- (d) the area surrounding Manawatāwhi (Three Kings Islands), in a circle, to the extent of 12 nautical miles, connecting with the area off the tip of Cape Reinga.

[127] The 2022 map appears to substantially increase the extent of the application area in a manner not encompassed by Ngāi Takoto’s original application, the 2017 map, or the 2021 map. That was the submission of Mr Melvin, counsel for the Attorney General, who raised this as an issue at the Whangarei CMC hearing.

[128] In a strike-out application brought in the context of the *Ngāti Pāhauwera* proceedings, the Court addressed the permissibility of amendments to application areas under the Act that increase the overall claimed area.<sup>3</sup> Any amendment to an application area made after the statutory deadline of 3 April 2017 that increased the overall claimed area is impermissible under the Act. This is because such an amendment constituted a

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<sup>3</sup> *Re Ngāti Pāhauwera* [2020] NZHC 1139.

fresh cause of action sufficiently and clearly statute-barred to the point that it can be dismissed as an abuse of process under s 107(3)(d) of the Act.<sup>4</sup>

[129] As noted above, two aspects of the proposed application area depicted in the 2022 map are inconsistent with the description of the application area in Ngāi Takoto's original application. The original application does not make any reference to Manawatāwhi, or Te Rerenga Wairua either in its description of the applicant group or in the area to which the application relates.

[130] Those two aspects also substantially increase the size of Ngāi Takoto's application area by adding two new portions in a separate area of the takutai moana. Reference in Ngāi Takoto's memo of 24 May 2022 is also made to "[including] an area off the coast of Te Rerenga Wairau (Cape Reinga) as well as Manawatāwhi (Three Kings Islands)". This indicates Ngāi Takoto are aware that they are adding to the extent of their application area.

[131] I direct that counsel file a memorandum within 14 working days addressing this issue. In the absence of a satisfactory explanation, the matter will be set down for a strike-out hearing in relation to those parts of the application set out in the 2022 map that were not included in the original application and map.

#### *Interested parties*

[132] No interested parties other than the Attorney-General made substantive oral submissions. Several indicated that they wish to appear at any hearing that the Court might timetable.

[133] Mr Melvin for the Attorney-General, explained that he passed on to Te Arawhiti copies of all memoranda filed by counsel and that if there were issues between applicants and Te Arawhiti, he was happy to continue to act as a go-between.

[134] In relation to the claim by counsel for Te Aupōuri (CIV-2017-485-240) that there had been no response from Te Arawhiti to communication from them, he indicated that

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<sup>4</sup> At [4].

Te Arawhiti did not have any record of this applicant having made any contact. He also advised that Te Arawhiti would contact the applicant directly.

**Applicants who filed no memorandum and did not appear**

*CIV-2017-404-555 (Te Whānau o Hōne Pāita Rāua Ko Rewa Ataria Paama)*

[135] This applicant filed no memorandum and did not appear at the CMC. The Registrar had been unable to contact the applicant prior to the CMC. Mr Sinclair had some knowledge of this applicant and volunteered to follow up and report to the Court.

[136] In the absence of any indication that the applicant still wishes to continue with the application, it will be listed for a strike-out hearing.

## **Auckland CMC**

*CIV-2017-404-563 (Te Rūnanga o Ngāti Whatua)*

[137] Ms Chen spoke to a number of memoranda that had been filed. The memoranda had addressed the scope of the proposed hearings relating to Whangarei Harbour and the coast located to the south of Whangarei Harbour entrance and including some offshore islands. There had been extensive efforts by many of the cross-applicants in this area to attempt to agree upon a sequence of hearings and the scope of the hearings in relation to these areas.

[138] There are two factors that makes the allocation of applications to any particular hearing challenging. The first is the sheer number of cross-applicants. There are far too many overlapping applicants to make a single hearing encompassing Whangarei Harbour, the coast south from the harbour entrance to Bream Tail and the takutai moana out to, and including, the offshore islands, a viable option.

[139] The second relevant consideration is to avoid, to the extent possible, the necessity for applicants to have to attend multiple hearings because the areas of their application has been divided as between different hearings. The reality is that these interests are ultimately irreconcilable in that the necessity to ensure that hearings are of a manageable size will inevitably result in some applicants, particularly those whose applications cover a wide geographic area, having to participate in multiple hearings.

[140] The first memorandum of counsel dated 23 May 2022 proposed a hearing area including all of the Whangarei Harbour, extending out to, and including, the Hen and Chicken Islands and south to a point just north of Lang's Beach.

[141] This memorandum was replaced by a joint memorandum signed by counsel for eight overlapping applicants dated 8 June 2022. That proposed a Stage One hearing which included all of Whangarei Harbour and a Stage Two hearing from a line drawn between Marsden Point and Busby Head south to beyond Waipu Cove and out into Bream Bay but stopping short of the Hen and Chicken Islands.

[142] Other counsel filed memoranda suggesting that the Hen and Chicken Islands group be included in the Stage Two hearings and that the outer islands have their own hearings. Counsel for Te Rūnanga o Ngāti Whatua submitted that including the Hen and Chicken Islands in a Stage Two hearing and extending that hearing south to Bream Tail would make the hearing unmanageable. That was disputed by other counsel.

[143] Counsel are to be commended for their efforts in trying to achieve a consensus as to the most appropriate scope and sequence of hearings. I have reached the conclusion that it is appropriate to split the proposed hearing into two stages. The first stage will deal with the claims in Whangarei Harbour and the second stage will include claims between the Whangarei Harbour entrance and Bream Tail and out to sea including the Hen and Chicken Islands.

[144] There was some dispute as to where the boundary line as between the two areas should be drawn. Ms Chen submitted that the attraction of the line drawn on the map attached as Schedule 1 to the joint memorandum of counsel dated 8 June 2022, was that it meant that Ngāti Hine would only have to be heard in the Stage One hearing and not the Stage Two hearing.

[145] Accepting that wherever the boundary is drawn, one or more applicants will be adversely affected, I am satisfied that there is a rational basis for drawing the boundary in accordance with the depiction in Schedule 1, and I confirm that is where the boundary will be.

[146] In terms of Stage Two, a memorandum of 17 June 2022 filed by counsel for Tamahana Paki (CIV-2017-485-305) and Ngatiwai Trust Board (CIV-2017-485-283) advocated for the area to include Hen and Chicken Islands and extend south to Bream Tail just north of Mangawhai.

[147] For the reasons advanced in that application, I am satisfied that drawing the boundaries of Stage Two in this way represents a reasonable compromise in balancing the interests of the affected parties, and confirm that this will be Stage Two.

[148] It is my view that the Stage One (Whangarei Harbour) hearing should logically proceed ahead of Stage Two. Both hearings are going to be of substantial length.

[149] There will be some 18 overlapping applications in relation to the Stage One hearing and a similar or slightly smaller number in relation to the proposed Stage Two hearing.

[150] I estimate that the Stage One hearing may take between 10 and 12 weeks of hearing time with the Stage Two hearing occupying only a slightly shorter period. The reality is that it is not going to be possible to set down hearings of this length for hearing in 2023. I therefore propose asking the Registrar to arrange a fixture for the Stage One hearing not before the start of 2024.

[151] Some applicants still have considerable work to do but the consensus seems to be that if the hearing was not allocated before the beginning of 2024, all applicants would be in a position to participate fully.

[152] The Stage Two hearing should also be allocated a fixture but one not to commence before 1 June 2024.

[153] I invite counsel involved in the Stage One and Stage Two hearings to confer in an attempt to jointly agree a proposed timetable. I have in mind a timetable that would commence with:

- (a) applicants filing their evidence by 3 July 2023;
- (b) interested parties, other than the Attorney-General, filing their evidence by 1 September 2023;
- (c) applicants filing submissions as to the appointment of a pukenga by 1 September 2023;
- (d) the Attorney-General filing his evidence by 2 October 2023;
- (e) applicants' evidence in reply to be filed by 16 October 2023;

- (f) close of pleadings' date to be 30 October 2023;
- (g) applicants' opening submissions, statement of agreed facts, and bundles of authorities to be filed by 6 November 2023;
- (h) interested parties' submissions and bundles of authorities to be filed by 15 November 2023; and
- (i) Attorney-General's submissions and bundles of authorities to be filed by 27 November 2023.

[154] A similar timetable, starting six months later, is suggested for the Stage Two hearing.

[155] If, within 30 days of this minute, counsel are unable to agree on a suggested draft timetable, counsel are to file individual memoranda.

#### *Strike-out applications*

[156] Te Rūnanga o Ngāti Whatua has moved to strike out three applications:

- (a) Joseph Kingi (CIV-2017-404-537);
- (b) Rihari Dargaville (CIV-2017-404-539); and
- (c) Maia Nova (CIV-2017-404-573).

[157] The first two applicants are represented by Mr Castle and the third applicant, Ms Nova, has recently instructed Ms Loader as counsel.

[158] All three applicants have expressed an interest in mediation with Te Rūnanga o Ngāti Whatua in respect of the strike-out applications. That is a positive development. I will ask the Registrar not to set down the hearing of the three strike-out applications prior to 23 July 2022 in order to allow the parties the opportunity to explore mediation.

[159] Prior to 23 July 2022, the parties are to file a joint memorandum (or if a joint memorandum is not possible, individual memoranda) indicating the outcome of the mediation with Te Rūnanga o Ngāti Whatua confirming whether or not hearing dates for the three strike-out applications are still required.

*CIV-2017-485-276 (Ngāti Rongo o Mahurangi)*

[160] A joint memorandum was filed by counsel for this applicant and counsel for Ngāti Maraeariki. The applicants have worked collaboratively to make progress towards hearing. There are at least four overlapping parties and discussions have occurred with them.

[161] The matter does not yet seem to be ready to be set down to hearing but it would seem that there is a prospect of it being timetabled to hearing when it is called in next year's Auckland CMC.

*CIV-2017-404-518 (Ngāti Taimanawaiti)*

[162] A collection of traditional evidence is underway but there has been no engagement with counsel for overlapping applicant groups. The applicant intends to participate in hui with overlapping applicant groups to attempt to resolve boundary issues.

*CIV-2017-404-580 (Rewiti), CIV-2017-404-546 (Ngāti Rehua), CIV-2017-404-574 (Ngāti Rehua – Ngātiwai Ki Aotea)*

[163] A joint memorandum was filed by counsel for these three applications which relate to Aotea (Great Barrier Island) and Hauturu (Little Barrier Island).

[164] Evidence preparation is underway but no professional historian has yet been contracted. These applicants are working collaboratively with one overlapping applicant.

[165] The applicants did not seek directions to timetabling but nonetheless submitted that there should be two hearings, one in relation to Aotea and surrounds, and the second Hauturu and surrounds.

[166] It was submitted that the two islands have very different histories and there were few overlaps in respect of Aotea but significantly greater number in respect of Hauturu. This proposal has merit but will not be considered until the applicants are in a position to seek a hearing.

*CIV-2017-404-520 (Ngāti Whatua Ōrākei)*

[167] This applicant's preference remains direct engagement. Significant progress was made in resolving overlapping issues with the filing of an amended claim by Te Rūnanga o Ngāti Whatua on 7 March 2022 effectively removing that applicant's overlapping claim.

[168] Further hui are being scheduled in relation to other overlapping claims. The memorandum of counsel referred to a recent decision of the High Court<sup>5</sup> which counsel said concluded that Ngāti Whatua Ōrākei had mana whenua in Tāmaki Makaurau. Counsel noted that the judgment invited further submissions on amended declarations due in July 2022 and it was said that any further declarations may have an effect on overlapping claims in the foreshore and seabed jurisdiction.

[169] The concepts of mana whenua and the tests required to be met for recognition orders under the Act are different. Whatever declarations the Court may ultimately make in *Ngāti Whatua Ōrākei Trust v Attorney-General* may be relevant to, but will not be determinative of, any entitlement to recognition orders.

[170] Because of its wish to pursue direct engagement, this applicant sought no timetabling orders.

*CIV-2017-404-524 (Mahurangi, Ngāti Awa and Ngāpuhi)*

[171] The gathering of tangata whenua evidence and preparation of maps is underway, and hui with overlapping applicants have been scheduled. No orders are sought.

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<sup>5</sup> *Ngāti Whatua Ōrākei Trust v Attorney-General* [2022] NZHC 843.

*CIV-2017-404-567 (Te Taoū) and CIV-2017-404-542 (Te Taoū)*

[172] Counsel's memorandum referred to what was described as "a lapse of communication between counsel and the applicant for some months". It was said that no funding offer from Te Arawhiti had been made to the applicants but it was not clear whether that was because no application had been lodged. Mr Melvin thought that funding had been allocated. Counsel is to contact Te Arawhiti and clarify the issue and, within 30 days, to file a memorandum explaining the funding situation.

[173] Significant work would seem to need to be done before these applications will be ready for hearing.

*CIV-2017-404-537 (Joseph Kingi), CIV-2017-404-539 (Rihari Dargaville), and CIV-2017-404-573 (Maia Nova)*

[174] These three applications are subject to strike-out applications. Mr Castle continues to appear in the Kingi And Dargaville matters, and Ms Loader has just been briefed in the Nova matter. The matters are dealt with in that part of this minute relating to matters called in the Whangarei registry.

*CIV-2017-485-187 (Taumata B Block Whānau) and CIV-2017-485-188 (Pakiri G Block)*

[175] No memoranda were filed and there was no appearance on behalf of these applicants. Mr Castle was given leave to withdraw as counsel last year and Ms Bouchier now seems to be self-represented. The Registrar has not been able to contact her. Mr Castle undertook to assist by providing the Registrar with such contact details for Ms Bouchier as he had.

*CIV-2017-404-569 (Ngāti Te Ata)*

[176] The memorandum filed by counsel says that this applicant is willing to meet with overlapping applicants but that this has not happened to date. It is not clear what stage evidence preparation is at. The applicant seeks a 12-months adjournment.

[177] The applicant is encouraged to be proactive and initiate engagement with overlapping applicants with a view to attempting to identify and refine the issues of contention between them.

*CIV-2017-404-581 (Otakanini Tōpū Māori Incorporation)*

[178] This applicant has engaged in discussions with overlapping applicants. An issue as to mandate is still unresolved but counsel is optimistic that this can be addressed. The applicant supports a hearing for Kaipara Harbour as a whole. No timetable directions are sought.

*CIV-2017-404-582 (Te Whānau-a-Haunui)*

[179] This applicant's preference is direct engagement and it met with Te Arawhiti on 6 April 2022 in that regard but has not been able to make any substantive progress.

[180] The applicant is continuing to engage in dialogue with overlapping claimants and is supportive of the concept of a facilitated hui involving all cross-claimants. It reported that Te Arawhiti was prepared to provide some assistance to bring cross-claimant groups together in an attempt to narrow or resolve issues. The applicant is encouraged to pursue that option.

*CIV-2017-404-545 (Ngāti Manuhiri)*

[181] Counsel for this applicant had signed the joint memorandum dated 8 June 2022 prepared by Te Rūnanga o Ngāti Whatua. They supported the proposal to refine the boundaries of the Whangarei and South Coast hearing to avoid any overlap with the Ngāti Manuhiri application area.

[182] Mr Hockly is to file a memorandum within 60 days updating the Court as to the outcome of any further discussions regarding proposed hearing boundaries.

*CIV-2017-485-579 (Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai)*

[183] This application includes Whangarei Harbour and is overlapped in part by the application of Te Rūnanga o Ngāti Whatua.

[184] Counsel expressed concern as to the possible length of the proposed Whangarei and South Coast hearings and supported the possibility of staged hearings. This applicant has participated in a number of constructive hui with various overlapping applicants.

[185] The applicant will be ready to proceed to a hearing in 2024. It was estimated that the applicant's case would take between five and seven days of hearing time.

[186] The applicant's application is completely overlapped by two of the applications that are presently the subject of strike-out applications (Kingi – CIV-2017-404-573, and Dargaville – CIV-2017-404-558). The applicant sought and was granted leave to participate as an interested party in the strike-out applications.

[187] The applicant is directed to file and serve any submissions in relation to the strike-out application no later than five working days prior to any fixture date or dates allocated to hear the strike-out applications.

*CIV-2017-404-528 (K J Linstead)*

[188] Counsel anticipated that the report from the contracted historian would be ready at the end of 2023. There are 14 overlapping High Court applications and a similar number of direct Crown engagement applications.

[189] The applicant is encouraged to engage with overlapping applicants to attempt to resolve issues of contention. The request for adjournment until the 2023 Auckland CMC is granted.

*CIV-2017-404-554 (Kare Rata)*

[190] Counsel for this applicant had signed the joint memorandum of counsel dated 8 June 2022. It supported the extension of the seaward boundary for the proposed Stage Two Whangarei hearing to include the Hen and Chicken Islands.

*Interested parties*

*Te Roroa*

[191] This applicant is pursuing only direct engagement but is an interested party in a number of applications before the High Court. Ms Dawson indicated that it was likely to participate in the hearing of those overlapping applications.

*CIV-2017-485-286 (Patuharakeke), CIV-2017-485-281 (Patuharakeke Te Iwi) and CIV-2017-485-283 (Ngatiwai Trust Board)*

[192] These matters were also called in the Whangarei CMC and are addressed in the minute relating to that CMC.

[193] Ms Dixon indicated that the applicants were engaged in further discussions in relation to Whangarei Harbour and undertook to file a memorandum in two months' time updating the Court as to progress. Ms Inns, for Ngatiwai Trust Board, supported this proposal.

*Channels Infrastructure Ltd, Manaia Properties Ltd, Gibbs Foundation Ltd, and Seafood Industry Representatives*

[194] These various interested parties had no issues with the proposed timetable directions sought in respect of Whangarei Harbour and the adjacent coast.

*Attorney-General*

[195] Mr Melvin for the Attorney-General broadly supported the proposals for timetable orders and had no particular view on where the boundaries in relation to the various

proposals should be drawn. The Attorney-General's particular interest was to ensure that it was allocated sufficient time for preparing evidence in response to that of the applicants.

[196] In relation to the concern expressed by a number of counsel as to the lack of ability to access Archives New Zealand, Mr Melvin reported that the Crown had raised similar concerns with Archives New Zealand as it too, had been adversely affected by the limited access.

## Wellington CMC

[197] This minute is to be read together with the Court's minute dated 17 June 2022.

*CIV-2017-485-27 (Te Whānau Tima and Te Hapū o Te Mateawa), CIV-2017-485-214 (David Morgan Whānau), CIV-2017-485-229 (Ngāti Raukawa ki te Tonga), CIV-2017-485-261 (Muaupoko Tribal Authority Inc), CIV-2017-485-160 (Muaupoko Iwi), CIV-2017-485-254 (Te Patutokotoko), CIV-2017-485-260 (Te Atiawa Iwi), and CIV-2017-485-211 (Tupoki Takarangi Trust)*

[198] Counsel for these applicants filed a joint memorandum advising on progress towards hearing. There is significant overlap as between these applications and counsel submitted that, because of this, they should all be heard together. They estimated between nine and 12 weeks would be required by way of hearing times.

[199] The Court potentially has a 12-week block of time starting on 6 May 2024 but before that time is able to be confirmed as being allocated for this hearing, further work has to be done by the applicants. There are significant overlaps both to the north and south of the proposed area including Te Kaahui o Rauru Trust (CIV-2017-485-183), Te Awa Tupua and Ngā Hapū me Ngā Uri o Te Iwi o Whanganui (CIV-2017-485-301), Owners of Hongoeaka Blocks (CIV-2017-485-258), Ngā Wairiki Ngāti Apa (CIV-2017-485-511), and Te Ātiawa Ki Whakarongotai (CIV-2017-485-248).

[200] Following discussion in relation to overlapping issues and the boundaries of any proposed hearings, counsel sought a period of two months within which to file a further joint memorandum or individual memoranda. That request is granted.

[201] Among the issues to be covered in that memorandum will be whether there needs to be a Stage One and Stage Two hearing, where the southern boundary of the hearing would be, and identification of those applicants proceeding by way of direct engagement only who should properly be invited to participate as interested parties.

[202] Following receipt of the further memorandum, I will ask the Registrar to arrange a CMC by way of VMR link with the objective of confirming the boundaries of any

hearing, recording the identities of all parties who wish to participate and finalising the timetable.

[203] The starting point for a likely timetable will be the indicative timetable set out at [7] of the parties' joint memorandum, with the qualification that ultimately, the appointment of the pukenga and the questions asked of the pukenga are a matter for the Court's decision as opposed to being determined by the parties, and a judicial settlement conference will only be directed in circumstances where the Court believes that some progress in narrowing or resolving contentious issues is likely to be made.

*CIV-2017-404-481 (Te Hika o Pāpāuma), CIV-2017-485-226 (Te Hika o Pāpāuma), CIV-2017-485-220 (Pāpāuma Marae Trustees)*

[204] A joint memorandum was filed by counsel for these three applicants. They are all part of the East Coast Wairarapa group and in a minute of the Court,<sup>6</sup> they were directed to meet in an attempt to address the apparent mandate issues as between them.

[205] The joint memorandum claimed that such issues had been resolved. That submission was made on the basis of an acknowledgement by the trustees of Pāpāuma Marae that their application was not brought on behalf of the iwi but on behalf of a whanau group.

[206] In respect of applications CIV-2017-485-266 and 481, the memorandum acknowledged that both applications were brought on behalf of the hapū group, Te Hika o Pāpāuma. It said that counsel for both applicants had agreed "to work together with the finalised goal of amalgamating the claims". It was therefore submitted that, in accordance with tikanga, mandating issues had been resolved.

[207] It is only when amended applications detailing the amalgamation or consolidation of these claims are actually filed, that it can be said that mandating issues have been resolved. Mr Hirschfeld is directed to file an amended application within 30 days. However, the issue as between the trustees and the hapū group would seem to remain. All applicants seek orders for CMT.

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<sup>6</sup> Minute (No. 18) of Churchman J, 1 December 2021.

[208] A threshold question in s 58 of the Act is whether or not the applicant groups have exclusively used and occupied the relevant part of the takutai moana since 1840. As presently framed, the case of the Marae Trustees would appear to be in direct conflict of that of the hapū. The Court will ultimately have to determine which one meets the s 58 test, or whether the evidence is such that neither group can claim exclusivity and therefore neither are able to meet the statutory test.

[209] The parties are encouraged to give further consideration to these issues and I expect to hear from them at next year's CMC on this point.

*CIV-2017-485-267 (Tukōkō and Ngāti Moe)*

[210] Tangata whenua evidence is being prepared and it is anticipated that the historical report is likely to be completed in September 2022. This applicant has been actively engaged in hui with overlapping applicants and significant progress appears to be being made. No specific directions were required.

*CIV-2017-485-232 (Ngāti Tumapuhia a Rangi Hapū)*

[211] This applicant's situation is very similar to that of Tukōkō and Ngāti Moe. No further directions are required.

*CIV-2017-485-259 (Ngāti Hinewaka)*

[212] A joint memorandum dated 22 June 2022 was filed on behalf of this applicant and seven overlapping applicants, as well as two interested parties. Mr Bennion took the lead role in speaking to that memorandum.

[213] Among the issues identified as needing resolution are:

- (a) the southern boundary of the application area where there is a relatively small overlap between the applications of Ngāti Hinewaka, Tukōkō and Ngāti Moe, Rangitane Tu Mai Rā Trust and Ngāti Kahungaunu ki Wairarapa Tamaki nui-a-Rua on the one hand, and Te Atiawa ki te Upoko

o te Ika a Maui Potiki Trust on the other. This arises because Te Atiawa claim an area to the east of Turakirae Head around to Te Humenga Point;

- (b) Ngāti Hinewaka (whose application includes 18 hapū) is considering amending its application to delineate those of its hapū that have interests in the Wairarapa moana, and those that have interests further north around Matakitakiakupe (Cape Palliser) and further north to Flat Point;
- (c) Tukōkō was considering whether it needed to amend its application to reflect the predominantly inland interests of Ngāti Moe, and whether its application area should be reduced;
- (d) there was also an overlapping area at the northern extremity of the proposed hearing boundary. There are overlapping areas of application from Awhea to Te Unuunu (Flat Point). The overlapping area is between Ngāti Hinewaka, Ngai Ngāi Tumapuhia a Rangi Hapū, Rangitane Tu Mai Rā Trust, and Ngāti Kahungaunu ki Wairarapa Tamaki nui-a-Rua. There are divergent views between Ngāti Hinewaka and Ngāi Tumapuhia a Rangi Hapū as to the extent of their respective interests in the application area between Awhea and Te Unuunu. The parties agree that further discussions are required to address this; and
- (e) whether the proposed hearing should be divided into two stages.

[214] The applicants proposed that the southern boundary point for the hearing be Turakirae Head but only that part of the Te Atiawa application to the east of that point be heard. This was to avoid greatly enlarging the hearing to have the entire Te Atiawa application heard at the same time as these matters when there was only a small overlap.

[215] Te Atiawa did not wish to have the hearing of that part of its application to the east of Turakirae heard at a different time to the balance of its application.

[216] My view is that adding all of the Te Atiawa claims to this hearing will result in the hearing becoming unmanageable and I direct that the southern boundary of the proposed

hearing will be Turakirae Head. Te Atiawa will have the option of participating in the hearing as an applicant in respect of that part of its application between Turakirae Head and Windy Point, participating in the hearing as an interested party only, or not participating in the hearing.

[217] Within 60 days of the date of this minute, they should file a memorandum with the Registrar advising what course they wish to follow.

[218] It was proposed that the northern-most boundary of the hearing be extended to Poroporo which was the northern boundary of Te Hika o Pāpāuma's application. This would result in the inclusion of the four Pāpāuma applications:

- (a) Te Hika o Pāpāuma (CIV-2017-485-226);
- (b) Te Hika o Pāpāuma (CIV-2017-485-481);
- (c) Pāpāuma Marae Trustees (CIV-2017-485-220); and
- (d) Ngāti Kere Hapū (CIV-2017-485-193).

[219] Such an extension raises difficulties for Rangitane Tu Mai Rā Trust as the hearing would then take in the Trust's entire application area requiring significant additional evidence.

[220] Counsel for Rangitane Tu Mai Rā Trust and Ngāti Kahungaunu ki Wairarapa Tamaku nui-a-Rua submitted that an additional hearing time of at least two to three weeks would be required.

[221] An alternative proposition put forward by counsel for the Pāpāuma Marae Trustees, Rangitane Tu Mai Rā Trust and Ngāti Kahungaunu ki Wairarapa Tamaku nui-a-Rua was that a staged approach be adopted with the first stage of the hearing involving the area between Turakirae Head in the south and the Whareama River in the north; and the second stage involving a hearing from Whareama River northward to Poroporo with Stage One being first and Stage Two following.

[222] In its minute of 22 December 2021,<sup>7</sup> the Court had already set out timetable directions in relation to the proposed hearing. If the application area is extended north to Poroporo, the applicants included in that would not have sufficient time to meet the 5 August 2022 deadline in relation to the filing of tangata whenua evidence.

[223] This justifies commencing the Stage Two hearing after the completion of the Stage One hearing. I had initially thought that the Stage Two hearing might be able to proceed immediately after the Stage One hearing, however, the revised time estimates would indicate that a Stage One hearing covering applications from Turakirae Head in the south and Whareama River in the north is likely to exhaust most of the available time in September and October 2023, and a fresh date will need to be allocated for Stage Two.

[224] Counsel acting for applicants or interested parties in the proposed Stage Two hearing are directed to file either a joint memorandum or individual memoranda providing an estimate of the time they require with such memoranda to be filed and served within 30 days of the date of this minute. The memoranda should also set out either an agreed draft timetable order or if no agreement can be reached an individual proposed timetable.

[225] The parties have indicated that a joint mapping book has been commissioned and should be available in time for a Stage One hearing.

[226] The parties have suggested that the hearing could be held either on a marae or in the Masterton District Court. There are problems with the number of applicant parties (and counsel) and the anticipated duration of this hearing that are likely to mean that the Masterton District Court is unavailable as accommodating a hearing of this duration may well impose too great a restraint on the Court being able to attend to its normal business.

[227] The Court is open to the possibility of a hearing at a marae. However, any such marae would have to have suitable facilities noting that the Court has experienced difficulties in the past in conducting large hearings under the Act at venues that do not have adequate facilities allowing participation by VMR link. There are also potential sensitivities as between applicant groups in relation to one applicant group's marae as opposed to another applicant group's marae being chosen.

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<sup>7</sup> Minute (No. 19) of Churchman J (CMC – East Coast Wairarapa Group), 22 December 2021.

[228] However, if there was significant consensus amongst the applicant groups, any reasonable proposal would be considered. The default option is for the hearing to take place in the Wellington High Court.

[229] The parties proposed that the timetable directions made on 22 December 2021 be varied as set out in the memorandum in what was described as Option C which contained revised time limits. Those time limits appear realistic and are adopted. However, one matter that the proposed timetable did not address was submissions on the appointment of a pukenga. The parties had previously undertaken to provide such submissions by 11 April 2022 but had not done so.

[230] The parties are directed to file a joint memorandum (or if unable to do so, individual memoranda) within 30 days of the date of this minute, setting out their submissions in respect of the submissions in respect of the identity of any pukenga and the issues that may be appropriate for reference to the pukenga.

*CIV-2017-485-248 (Ātiawa ki Whakarongotai)*

[231] This applicant is in the early stages of evidence gathering but has already engaged in formal discussions with overlapping applicants. No map of the application area had apparently yet been filed, and counsel is to file such a map within 30 days of the date of this minute.

*CIV-2017-485-193 (Ngāti Kere Hapū)*

[232] This applicant is impacted by the Stage Two East Coast Wairarapa proposed hearing. Ngāti Kere's preference is for direct engagement and it sought no timetable order. Counsel wished to seek further instructions in relation to the proposed Stage Two hearing and undertook to file a memorandum within 30 days addressing issues arising in relation to that proposal.

*CIV-2017-485-217 (Hunau of Tame Horomona Rehe), CIV-2017-485-316 (Moriori Imi)*

[233] These applicants are cooperating together on commissioning reports and research and expect these projects to be completed by mid-2023.

*CIV-2017-404-479 (Te Atianga o Ngā Uri o Wharekuri)*

[234] This application overlaps with CIV-2017-485-217, CIV-2017-485-316, and CIV-2017-485-309. Counsel indicated that the historian's report was likely to be available by the end of 2022 and that tangata whenua evidence would be complete by mid-2023.

[235] No discussions had yet taken place with any of the three overlapping applicants although counsel's memorandum said that it was anticipated this would occur once historical research had been completed.

[236] In oral submissions Mr Hirschfeld submitted that this application should be accorded "a degree of priority".

*CIV-2017-485-309 (Ngāti Mutunga o Wharekauri)*

[237] In a memorandum dated 17 June 2022, counsel indicated that this applicant's priority was its negotiations for a Treaty settlement with the Crown rather than advancing its claim under MACA Act.

[238] The written memorandum submitted that a proposed draft acknowledgement in the anticipated Treaty Settlement relating to raupatu would be "highly relevant to the applicant's application under the MACA". It is not immediately obvious why that would be so.

[239] The applicant's submission was that it was reasonable for the applicant to have devoted its resources to its Treaty settlement negotiations and not to advancing any claim under the Act. Effectively, the submission was that because of the choice made by this applicant as to where and how it would deploy its resources, the other three applicants whose claims related to the same area would simply have to wait for a hearing.

[240] It appears that this applicant has chosen to devote resources to advancing its Treaty claim and related High Court litigation instead of advancing its claim under the Act. The two processes are not mutually exclusive and a number of successful applicants for recognition orders in other cases have been simultaneously pursuing Treaty settlements.

[241] If this applicant chooses not to prepare for a hearing of its claims under the Act, there is the potential for the three overlapping applications to be set down and a decision made on them without the benefit of full input from this applicant. That would be unfortunate. The applicant is encouraged to reconsider its decision not to devote any resources to preparation of its claim under the Act.

*CIV-2017-485-301 (Te Awa Tupua and Ngā Hapū me Ngā Uri o Te Iwi o Whanganui)*

[242] The applicants are Whanganui Iwi with a preference for Crown engagement rather than litigation. Counsel's memorandum recorded that no such engagement had been commenced by the Crown.

[243] The applicants' application extends from the Kai Iwi River north of Whanganui to the Whangaehu River south of Whanganui and overlaps on its southern boundary the application by Te Patutokotoko (CIV-2017-485-254). The Patutokotoko application extends from the Kai Iwi River in the north to Lake Papaitonga in Horowhenua in the south.

[244] Counsel submitted that other than for the Patutokotoko application, there was a natural division of applications at the Rangitikei River.

[245] Counsel indicated that a series of hui are scheduled to discuss whether or not an agreed position can be reached in terms of interests between the Whangaehu and Kai Iwi Rivers, as well the nature and extent of any participation by this applicant in any hearing that might be timetabled in relation to applications by the Group N applicants to the south of the area that this applicant was interested in.

[246] In the written memorandum, counsel sought an adjournment for six months to file a memorandum recording progress. That is too long a period for those parties wishing to proceed to a hearing on the West Coast to have to wait.

[247] A memorandum outlining the position is to be filed within 60 days of the date of this minute.

*Interested parties*

*Rangitane Tu Mai Rā Trust*

[248] Ms Mataira, for the Trust, supported the two-stage hearing proposal in respect of the Wairarapa Est Coast matters.

*Attorney-General*

[249] Mr Melvin, for the Attorney-General, indicated that the Attorney-General took a neutral attitude to the various timetable directions proposed provided sufficient time was granted to the Attorney-General to file evidence in response to that of the applicants and other interested parties.

## Nelson CMC

[250] This minute is to be read together with the Court's minute of 17 May 2022.

*CIV-2017-485-266 (Te Ngāi Tūāhuriri Hapū)*

[251] This applicant continues to prepare evidence and to engage with overlapping claimants in an attempt to resolve contentious issues.

[252] Counsel indicated that it was possible that aspects of the claim might be amended. Evidence preparation will not be complete until at least the end of 2022.

[253] Counsel's request to be excused from the CMC and for the matter to be adjourned for 12 months is granted. Leave is also reserved to the applicant to seek a timetabling order should sufficient progress be made in resolving issues with overlapping applicants.

*CIV-2017-485-167 (Te Rūnanga a Rangitane o Kaituna Inc)*

[254] Tangata whenua evidence preparation is well advanced. A historian has been commissioned but is unable to commence work until early 2023.

[255] Counsel's request that the matter be adjourned to the Nelson CMC in 2023 is granted. Counsel's attendance at the 2022 CMC is excused and the CMC is vacated.

A handwritten signature in black ink, reading "P.B. Churchman J". The signature is written in a cursive, flowing style.

**Churchman J**

## **APPENDIX**

### **2023 CASE MANAGEMENT CONFERENCES (CMCs)**

#### Confirmed CMCs:

6 June 2023 – Wellington  
14 June 2023 – Gisborne  
15 June 2023 – Tauranga  
16 June 2023 – Rotorua

#### CMCs yet to be confirmed:

7 June 2023 – Dunedin  
8 June 2023 – Nelson  
20 June 2023 – Hamilton  
21 June 2023 – New Plymouth  
27 June 2023 – Whangārei  
28 June 2023 – Auckland

**Solicitors:****Gisborne:**

Hockly Legal, Auckland for CIV-2011-485-794  
Roimata Smail Ltd, Auckland for CIV-2017-485-289  
Whaia Legal, Wellington for CIV-2017-485-314  
Foster Milroy Solicitors, Hamilton for CIV-2017-404-571  
Kāhui Legal, Wellington for CIV-2017-485-230, CIV-2017-485-302, CIV-2021-485-303,  
CIV-2021-485-304, CIV-2021-485-305, CIV-2021-485-306, and CIV-2021-485-307  
Te Haa Legal, Ōtaki for CIV-2017-485-242  
Tamaki Legal, Auckland for CIV-2017-485-247

**Interested parties:**

B Scott, Barrister for Seafood Industry Representatives  
Crown Law Office, Wellington for Attorney-General

**Tauranga:**

McCaw Lewis, Hamilton for CIV-2011-485-793, CIV-2017-485-222  
Te Haa Legal, Ōtaki for CIV-2017-485-219  
J N Gear, Tauranga for CIV-2017-485-244  
Koning Webster Lawyers, Papamoa for CIV-2017-485-223 and CIV-2017-485-195  
Ranfurly Chambers Ltd, Auckland for CIV-2017-404-480, CIV-2017-404-483, and  
CIV-2017-404-528  
Bennion Law, Wellington for CIV-2017-485-250 and CIV-2017-485-257

**Interested parties:**

Brookfields, Auckland for Hauraki, Thames-Coromandel and Whakatane District Councils  
Crown Law Office, Wellington for Attorney-General

**Rotorua:**

T J Castle, Wellington for CIV-2017-485-185  
Whaia Legal, Wellington for CIV-2017-485-196  
Phoenix Law Limited, Wellington for CIV-2017-485-513  
Legal Hub Lawyers, Auckland for CIV-2011-485-817  
Bennion Law, Wellington for CIV-2017-485-253  
Kāhui Legal, Wellington for CIV-2017-485-318  
Te Haa Legal, Ōtaki for CIV-2017-485-269  
McCaw Lewis Ltd, Hamilton for CIV-2017-485-355  
Tu Pono Legal Ltd, Rotorua for CIV-2017-485-292  
Oranganui Legal Ltd, Paraparaumu for CIV-2017-485-270 and CIV-2017-485-272  
Wackrow Williams & Davies Ltd, Auckland for CIV-2017-485-377 and CIV-2017-485-262

**Interested parties:**

Brookfields, Auckland for Hauraki and Whakatane District Councils  
Crown Law Office, Wellington for Attorney-General

**Hamilton:**

McCaw Lewis, Hamilton for CIV-2017-404-575  
Te Mata Law Limited, Auckland for CIV-2017-419-81  
Loader Legal, Auckland for CIV-2017-419-82  
Annette Sykes & Co, Rotorua for CIV-2017-419-83  
Bennion Law, Wellington for CIV-2017-485-207  
Foster Milroy Solicitors, Hamilton for CIV-2017-404-526  
Kahui Legal, Wellington for CIV-2017-419-84  
Tukau Law Limited, Kaikohe for CIV-2017-419-80, CIV-2017-485-216, and CIV-2017-485-209

**Interested parties:**

Brookfields, Auckland for Hauraki and Waikato District Councils  
McCaw Lewis Ltd for Ngaati Whakamarurangi and Ngaati Maahanga me Ngā Uri o Te Awataia  
Crown Law Office, Wellington for Attorney-General

**Whangarei:**

Chen Palmer, Auckland for CIV-2017-404-563  
Loader Legal Ltd, Auckland for CIV-2017-404-573  
R McGrath for CIV-2017-404-540  
Afeaki Chambers, Auckland for CIV-2017-485-579 and CIV-2017-485-286  
McCaw Lewis, Hamilton for CIV-2017-485-237  
Bennion Law, Wellington for CIV-2017-485-250  
Chapman Tripp, Auckland for CIV-2017-485-271  
Annette Sykes & Co, Rotorua for CIV-2017-485-277  
OceanLaw New Zealand, Nelson for CIV-2017-485-283  
Wackrow Panoho & Associates, Auckland for CIV-2017-485-321  
Phoenix Law Limited, Wellington for CIV-2017-485-515  
L Collier for CIV-2017-485-398  
Berry Simons, Auckland for CIV-2017-485-320  
Henderson Reeves Lawyers, Whangarei for CIV-2017-485-420  
Kahui Legal, Rotorua for CIV-2017-485-510  
Ranfurly Chambers Ltd, Auckland for CIV-2017-404-442, CIV-2017-404-522, and CIV-2017-404-535  
Tamaki Legal, Auckland for CIV-2017-404-577, CIV-2017-404-578, CIV-2017-485-245,  
CIV-2017-404-529, CIV-2017-485-233, and CIV-2017-485-252  
Tukau Law, Auckland for CIV-2017-485-240, CIV-2017-485-231, CIV-2017-485-266, and  
CIV-2017-488-26  
Dixon & Co Lawyers, Auckland for CIV-2017-485-307, CIV-2017-485-279, CIV-2017-485-438,  
CIV-2017-485-286, and CIV-2017-485-281  
Manaia Legal, Auckland for CIV-2017-485-306, CIV-2017-488-029, CIV-2017-485-408, and  
CIV-2017-485-409  
Hockly Legal, Auckland for CIV-2017-485-352, CIV-2017-485-228, and CIV-2017-485-305  
Lyll & Thornton, Auckland for CIV-2017-485-239, CIV-2017-404-523, CIV-2017-485-256, and  
CIV-2017-485-249  
Ngātahi Law Limited, Auckland for CIV-2017-404-525, CIV-2017-404-554, and CIV-2017-404-559

**Interested parties:**

Kaupare Law & Consultancy, Auckland for Ngāti Rehia  
Phoenix Law Limited, Wellington for Ngāti Ruamahue Hapū  
Thomson Wilson, Whangarei for Lang's Beach Society Incorporated  
Te Mata Law Limited, Auckland for Sheena Ross  
Brookfields Lawyers, Auckland for Hauraki and Waikato District Councils  
Marsden Woods Inskip & Smith for Channels Infrastructure NZ Ltd, Northport Ltd and Marsden Cove  
Canals Management Ltd  
Roimata Smail Ltd, Auckland for Te Roroa  
Crown Law Office, Wellington for Attorney-General

**Auckland:**

Chen Palmer, Auckland for CIV-2017-404-563  
Annette Sykes & Co, Rotorua for CIV-2017-485-276  
Tamaki Legal, Auckland for CIV-2017-404-518  
Lyll & Thornton, Auckland for CIV-2017-404-574 and CIV-2017-404-524  
Chapman Tripp, Auckland for CIV-2017-404-520  
Hockly Legal, Auckland for CIV-2017-404-569  
Hesketh Henry, Auckland for CIV-2017-404-581  
Berry Simons, Auckland for CIV-2017-404-582  
Tu Pono Legal Ltd, Rotorua for CIV-2017-404-545  
Afeaki Chambers, Auckland for CIV-2017-485-579  
Ranfurly Chambers Ltd, Auckland for CIV-2017-404-528  
Duncan Cotterill, Queenstown for CIV-2017-404-554  
Loader Legal Ltd, Auckland for CIV-2017-404-573  
Tamaki Legal Ltd, Auckland for CIV-107-404-580 and CIV-2017-404-546  
T J Castle, Barrister, Wellington for CIV-2017-404-567 and CIV-2017-404-542  
Dixon and Co Lawyers, Auckland for CIV-2017-485-281 and CIV-2017-485-286

**Interested parties:**

Marsden Woods Inskip & Smith for Channels Infrastructure New Zealand Ltd  
OceanLaw New Zealand, Nelson for Ngatiwai Trust Board  
Atkins Holms Majurey, Auckland for Manaia Properties Ltd  
B Scott, Barrister, Wellington for Seafood Industry Representatives  
Vulcan Building Chambers, Auckland for The Gibbs Foundation Limited, Auckland  
Crown Law Office, Wellington for Attorney-General

**Wellington:**

Bennion Law, Wellington for CIV-2017-485-217 and CIV-2017-485-259  
Tamaki Legal, Auckland for CIV-2017-485-232, CIV-2017-485-267, and CIV-2017-485-226  
Kahui Legal, Rotorua and Wellington for CIV-2017-485-221, CIV-2017-485-301, CIV-2017-485-220 and CIV-2017-485-229  
Afeaki Chambers, Auckland for 2017-485-161  
Bennion Law, Wellington for CIV-2017-485-254  
Ranfurly Chambers Ltd, Auckland for CIV-2017-404-479 and CIV-2017-404-481  
D Edmunds, Porirua for CIV-2017-485-258  
Kāhui Legal, Rotorua for CIV-2017-485-211  
Whaia Legal, Wellington for CIV-2017-485-248  
L Watson, Napier for CIV-2017-485-193  
T J Castle, Barrister, Wellington for CIV-2017-485-309  
C Griggs, Barrister, Wellington for CIV-2017-485-316  
McCaw Lewis, Hamilton for CIV-2017-485-224  
Crown Law Office, Wellington for Attorney-General

**Nelson:**

Burley Castle Hawkins, Tauranga for CIV-2017-485-167  
Chapman Tripp, Christchurch for CIV-2017-485-266  
Crown Law Office, Wellington for Attorney-General