

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

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

**CIV-2017-485-277
CIV-2017-485-239
CIV-2017-404-523
CIV-2017-485-288
CIV-2017-485-352
CIV-2017-485-305
CIV-2017-404-442
CIV-2017-404-540
CIV-2017-404-522
CIV-2017-404-522
CIV-2017-404-577
CIV-2017-404-578
CIV-2017-485-245
CIV-2017-485-233
CIV-2017-485-252
CIV-2017-404-529
CIV-2017-404-537
CIV-2017-404-539
CIV-2017-404-565
CIV-2017-404-570
CIV-2017-404-558
CIV-2017-404-573
CIV-2017-404-566
CIV-2017-404-572
CIV-2017-485-283
CIV-2017-485-279
CIV-2017-485-281
CIV-2017-485-286
CIV-2017-485-438
CIV-2017-485-307
CIV-2017-485-510
CIV-2017-485-308
CIV-2017-485-249
CIV-2017-485-256
CIV-2017-485-236
CIV-2017-485-290
CIV-2017-485-271
CIV-2017-485-321
CIV-2017-485-237
CIV-2017-485-208
CIV-2017-485-231
CIV-2017-485-265
CIV-2017-488-26**

CIV-2017-485-240
CIV-2017-485-306
CIV-2017-488-029
CIV-2017-485-408
CIV-2017-485-409
CIV-2017-485-515
CIV-2017-485-398
CIV-2017-485-250
CIV-2017-485-298
CIV-2017-404-579
CIV-2017-485-268
CIV-2017-485-420
CIV-2017-404-525
CIV-2017-404-535
CIV-2017-404-554
CIV-2017-404-555
CIV-2017-404-559
CIV-2017-485-298
CIV-2017-485-799
CIV-2017-485-320

IN THE MATTER OF the Marine and Coastal Area
 (Takutai Moana) Act 2011

AND

IN THE MATTER OF applications by **Ngāti Manu, Te Uri
Karaka and Te Uri o Raewera, Te Rae
Ahu Whenua Trust, O Ngā Hapū o
Taiaimai ki te Marangai, Te Whakapiko
Hapū of Ngāti Manaia, Rewi and Rewha
Whānau, Te Parawhau, Ropu o
Rangitiri, Ngāti Torehina ki Mataure o
Hau, Te Ihutai ki Oria, Ngāti Rahiri and
Ngāti Kawa, Ngāti Tara, Te Iwi o te
Rarawa ki Ahipara, Ngāi Tupango, Te
Popoto ki Ōturei, Te Whānau-o-
Rataroa, Ngapuhi nui tonu, Ngāti Awa,
Ngā Tahuhu, and Ngaitawake, Ngāti
Kauwau, Ngāti Awa Whangaroa, Ngāti
Kahu, Te Hikutu Hapū, Te Waiariki,
Ngāti Korora, Ngāti Torehina ki Tataka,
Ngātiwai, Ngāti Takapari, Patuharakeke
Te Iwi, Henare Waata Whānau, Ngāti
Korokoro Trust, Ngāti Mokokohi, Te
Tahawai, Te Uri-o-te-Aho, Ngāti
Ruamahu and Ngāti Torehina, Te Tao
Maui and Te Hokoheha, Ngāti Kawau,
Ngāti Kawhiti, Ngāti Haiti and Ngāi**

Tupango, McGee Whānau, Ngāpuhi/Ngāti Kahu ki Whaingaroa, Te Rarawa, Te Whānau Moana me te Rorohuri & Anor, Ngāti Kuta and Patukeha ki te Rawhiti, Parengarenga A Incorporation and Iwi, Ngāti Kuri Trust Board, Ngāti Hine, Te Kapotai, Te Aupouri, Ngātiwai, Walker, Ngā Uri o Hairama Pita Kino Davies, Whangaroa Ngaiotonga Trust, Reti Whānau, Ngāti Kawau and Te Waiariki Korora, Te Tawharau o Ngāti Pukenga, Whakarara Māori Committee, Sheena Ross, Langs Beach Society Incorporated, Ngā Hapū o Tangaroa ki te Ihu o Manaia Tae Atu ki Mangawhai, Ngā Hapū o Ngāti Kahu, Te Whānau Whero, Ngāti Manu and Ngāti Rangi, Ngāti Rahiri Hapū, Ngā Hapū o Ngatiwai Iwi, Te Whānau o Hone Papita Rāua Ko Rewa Ataria Paama, Ngāti Kahu, Te Rawara and Te Uriohina, Whakarara Māori Committee, Te Parawhau Hapū, and Ngai Tokoto Iwi
for orders recognising customary marine title and protected customary rights

Counsel:

A Sykes and J Bartlett for CIV-2017-485-277
B Lyall for CIV-2017-485-239 and CIV-2017-404-523
C Hockly for CIV-2017-485-228, CIV-2017-485-352, and CIV-2017-485-305
C Hirschfeld for CIV-2017-404-442, CIV-2017-404-540, and CIV-2017-404-522
G Erskine for CIV-2017-404-577, CIV-2017-404-578, CIV-2017-485-245, CIV-2017-485-245, CIV-2017-485-233, CIV-2017-485-252, and CIV-2017-404-529
G Sharrock for CIV-2017-404-537, CIV-2017-404-539, CIV-2017-404-565, CIV-2017-404-570, CIV-2017-404-558, and CIV-2017-404-573
J Kahukiwa and J Harper-Hinton for CIV-2017-404-566 and CIV-2017-404-572
J Inns for CIV-2017-485-283
K Dixon and A Herewini for CIV-2017-485-279, CIV-2017-485-281, CIV-2017-485-286, CIV-2017-485-438, and CIV-2017-485-307
K Tahana and L Underhill-Sem for CIV-2017-485-510 and CIV-2017-485-308
L Thornton for CIV-2017-485-249
M Piripi for CIV-2017-485-236
D Edmunds for CIV-2017-485-290

R Jones for CIV-2017-485-271 and CIV-2017-485-321
R Siciliano and A Anderson for CIV-2017-485-237
S Wroe for CIV-2017-485-208
S-M Downs, C Terei and H Jamieson for CIV-2017-485-231,
CIV-2017-485-265, CIV-2017-488-26, and CIV-2017-485-240
W McCarthy and A McCarthy for CIV-2017-485-306,
CIV-2017-488-029, CIV-2017-485-408, CIV-2017-485-409
J Mason and H Berger for CIV-2017-485-515, CIV-2017-485-398
T Bennion for CIV-2017-485-250
R Zwaan for CIV-2017-485-298
D Stone and C Leauga for CIV-2017-485-307 and CIV-2017-485-308
G Mathias for Langs Beach
T Afeaki for CIV-2017-404-579 and CIV-2017-485-268
R Harrision for CIV-2017-485-420
Self represented for CIV-2017-404-525, CIV-2017-404-535,
CIV-2017-404-554, CIV-2017-404-555, and CIV-2017-404-559
Self represented for CIV-2017-485-799
Self represented for CIV-2017-485-320
G Melvin for Attorney-General

Minute: 10 July 2020

MINUTE (NO. 26) OF CHURCHMAN J

[1] Of the 62 applicants whose cases are being called at the Whangarei case management conference (CMC) on 21 July 2020, some 51 applicants have filed updating memoranda in accordance with the Court's minute dated 22 May 2020.

[2] This minute addresses those applications where the memoranda filed by counsel requested a preliminary ruling prior to the CMC on matters such as attendance by way of AVL or excusal from attendance in those cases where counsel had filed an adequate memorandum updating the Court on progress in the preparation of the claims since last year's CMCs.

[3] As has been the case in prior years, the number of applicants and counsel whose cases are being called is such that it is not possible to accommodate the CMC in the Whangarei Court building. The CMC will therefore take place at the Forum North Conference Centre.

[4] Unfortunately, the Forum North Conference Centre does not have the facilities to accommodate the attendance of parties by way of AVL. Therefore, it is not possible for the Court to grant the requests of those counsel who have sought to participate by AVL.

[5] I make the following orders in relation to requests for adjournments and excusal of counsel from attendance:

- (a) Ngāti Manu and its hapū, Te Uri Karaka and Te Uri o Raewera (CIV-2017-485-277) (counsel A Sykes/J Bartlett). An adjournment of 12 months is granted and counsel's appearance is excused.
- (b) A J Nathan (CIV-2017-404-442); Ngāti Torehina ki Mataure o Hau; Te Ihutai ki Oria (counsel C Hirschfeld, B Tūpara and Te A Thompson). These matters are adjourned for 12 months and counsel's attendance at the CMC excused. However, in relation to CIV-2017-404-522, the issue of whether or not there are overlaps between this claim and any others is still outstanding. At last year's CMC, counsel submitted that there were no overlaps. Counsel for the Attorney-General submitted that 12 notices of appearance had been filed in respect of this application. Counsel's memorandum for this CMC said: "This matter is yet to be sorted however, counsel does note that the Crown offer discussion on the matter." It is unsatisfactory that no substantive progress has been made by counsel in addressing this important issue over the period of 12 months. Counsel is directed to clarify the issue, which may well involve counsel in accepting the offer of counsel for the Attorney-General to discuss the matter, and, within four weeks of the date of this minute, to file a memorandum clarifying the number and identity of any overlapping claims.
- (c) Ngā Puhi nui tonu, Ngāti Rahiri, Ngāti Awa, Ngā Tahuu and Ngaitawake (CIV-2017-404-537); Ngāti Kauwau, Ngāti Awa o Whangaroa (CIV-2017-404-539); Ngāti Kahu (CIV-2017-404-563); Te Hikutu Hapū (CIV-2017-404-570); Ngāitewake (CIV-2017-404-558); and Ngā Hapū o Taiamai ki te Marangi (CIV-2017-404-523) (counsel G Sharrock). Counsel indicated that he was retiring from practice for health reasons and was in the process of arranging replacement counsel. If that process is complete prior to the CMC, counsel can file a memorandum detailing which new counsel have been briefed in respect of each of these matters and, if there is a change in address for service, what the new address is. If such a memorandum is able to be filed, counsel's attendance at the CMC can be excused.

- (d) Te Waiariki, Ngāti Korora (CIV-2017-404-566); and Ngāti Torehina ki Matakā (CIV-2017-404-572) (counsel J Kahukiwa and J Harper-Hinton). Counsel have sought an adjournment of these proceedings until after the release of the Waitangi Tribunal inquiry into the the Marine and Coastal Area (Takutai Moana) Act. Stage one of the report is now available having been issued on 29 June 2020. Although counsel's memoranda sought a 12-month adjournment in respect of each matter, the submissions referred at length to the stay provisions in relation to an appeal. The cases decided in respect of stays relating to the enforcement of judgments pending appeal, are not relevant. These cases involve originating applications rather than appeals. While the Court is prepared to grant an adjournment for 12 months in respect of each matter on the basis of the progress outlined in the memoranda, it is not prepared to stay these proceedings. Counsel's attendance is excused.
- (e) Ngāti Wai (CIV-2017-485-283) (counsel J Inns). The memorandum notes the applicant's preference for direct engagement. Should the other applications being called not seek timetabling directions toward hearing, counsel seeks to have her appearance excused. To date no memoranda have sought directions for timetabling towards a hearing. Counsel's attendance is therefore excused. Should any participant in the CMC seek such directions, counsel will have the opportunity of filing a memorandum before the Court timetables any matter toward hearing.
- (f) Ngāti Mokokohi, Te Tahawai, Te Uri-o-Te-Aho, Ngāti Ruamahu and Ngāti Torehina (CIV-2017-485-510); and Te Tao Maui and Te Hokoheha (CIV-2017-485-308) (counsel K Tahana and L Underhill-Sem). Both matters are adjourned for 12 months and counsel's appearance excused. It is premature for the Court to make directions about the filing of evidence.
- (g) Ngāpuhi/Ngāti Kahu ki Whaingaroa (CIV-2017-485-236) (counsel M Piripi). The matter is adjourned for 12 months and counsel's appearance excused.
- (h) Te Rarawa (CIV-2017-485-290) (counsel D Edmunds). The matter is adjourned for 12 months and counsel's appearance excused.

- (i) Pārengarenga A Incorporation and Iwi (CIV-2017-485-237) (counsel R Siciliano and A Anderson). The application is adjourned for 12 months and counsel's appearance is excused.
- (j) Ngāti Kuri Trust Board (CIV-2017-485-208) (S Wroe). The application is adjourned for 12 months and counsel's appearance excused.
- (k) Ngātiwai (Whānau of Ohawini) (CIV-2017-485-306); Walker (CIV-2017-488-029); Ngā Uri o Hairama Pita Kino Davies (CIV-2017-485-408); and Whangaroa Ngaiotonga Trust (CIV-2017-495-409) (counsel W McCarthy and A McCarthy). The matter is adjourned for 12 months and counsel's appearance excused.
- (l) Reti Whānau (CIV-2017-485-409); and Ngāti Kawau and Te Waiariki Korora (CIV-2017-485-398) (counsel J Mason and H Berger). Counsel's memorandum repeats submissions made at earlier CMCs and already dealt with by the Court. These matters are adjourned for 12 months and in the absence of AVL or telephone link facilities at the hearing venue, counsel's appearance is excused.
- (m) Te Tawharau o Ngāti Pukenga (CIV-2017-485-250) (counsel T Bennion). The matter is adjourned for 12 months and counsel's appearance excused.
- (n) Whakarara Māori Committee (CIV-2017-485-298) (counsel R Zwaan). The matter is adjourned for 12 months and counsel's appearance excused.
- (o) Langs Beach Society Incorporated and Langs Cove Residents Association (Interested Party) (counsel G Mathias). Last year counsel filed a memorandum dated 4 December 2019 in support of its application to be heard as an interested party in relation to those applications involving Langs Beach. Counsel submits that it is still not clear what applications fall into that category. Counsel notes no objection has been received in respect of its interested party status in the applications referred to in [1] of the memorandum of 8 June 2020. The interested party status of Langs Beach Incorporated Society is therefore confirmed in respect of those matters and Langs Cove Residents Association

Incorporated interested party status is confirmed in respect of CIV-2017-404-554. It is not entirely clear whether counsel wish to have his appearance excused. Counsel may attend the CMC if he wishes to do so but his attendance is not required.

[6] Those applicants who have not filed memoranda are requested to do so immediately.

A handwritten signature in black ink, reading "P.B. Churchman J". The signature is written in a cursive, flowing style. The "P.B." is written in a smaller, more compact script, followed by "Churchman" in a larger, more legible cursive, and "J" at the end.

Churchman J