

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

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

CIV-2017-404-305

Continued .../3

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

IN THE MATTER of an application for an order recognising Customary Marine Title and Protected Customary Rights

BY TAMIHANA PAKI on behalf of TE PARAWHAU
First Named Applicant

AND KOROKOTA MARAE on behalf of TE PARAWHAU HAPŪ
Second Named Applicant

Continued .../3

Telephone Conference: 1 August 2024

Counsel: C Hockly for Te Parawhau (CIV-2017-485-000305)
R and M Enright for Korokota Marae on behalf Te Parawhau Hapū (CIV-2017-485-799)
K Dixon, L Tohill and T Talamaivao for Patuharakeke Te Iwi Trust Board (CIV-2017-485-281)
B Lyall and H Swedlund for Te Rae Ahu Whenua Trust (CIV-2017-485-239)
M Chen and C Saunders for Te Rūnanga o Ngāti Whātua (CIV-2017-404-563)
J P Kahukiwa for Te Waiariki, Ngāti Korora, Ngai Takapari (CIV-2017-404-566)
J Inns and K van Wijngaarden for Ngāti Wai (CIV-2017-485-283; CIV-2017-404-554)
J Mason, U Kuddus and P Corbett for Ngāti Kawau (CIV-2017-485-398); Ngā-Puhi-nui-tonu (CIV-2017-404-537); Reti Whānau (CIV-2017-485-515)
T Bennion and O Ford Brierley for Ngāti Pūkenga (CIV-2017-485-250)
C Terei-Tipene for Ngāti Hine (CIV-2017-485-231)

T Afeaki and G Erskine for Ngā Hapū O Tangaroa aki Te Ihu o
Manaia tae atu ki Mangawhai (CIV-2017-404-579)
J Golightly for North Port Limited
J Golightly for Marsden Cove Management Ltd
C Simmons, E Ellis for Channel Infrastructure NZ Ltd
R Roff and Y Moinfar-Yong for Attorney-General

Minute: 7 August 2024

MINUTE OF HARVEY J

Continued ...

CIV-2017-485-799
CIV-2017-485-2841
CIV-2017-485-239
CIV-2017-404-563
CIV-2017-404-566
CIV-2017-485-283
CIV-2017-404-554
CIV-2017-485-398
CIV-2017-485-250
CIV-2017-485-231
CIV-2017-485-515
CIV-2017-404-573
CIV-2017-404-579
CIV-2017-404-537

AND

PATUHARAKEKE TE IWI TRUST
BOARD
Third Named Applicant

STEPHEN PANOHO on behalf of TE RAE
AHU WHENUA TRUST
Fourth Named Applicant

ALAN RIWAKA, Chief Executive of TE
RŪNANGA O NGĀTI WHĀTUA
Fifth Named Applicant

PERERI MAHANGA on behalf of TE
WAIARIKI NGĀTI KORORA, NGĀTI
TAKAPARI
Sixth Named Applicant

NGATIWAI TRUST BOARD on behalf of
NGATIWAI
Seventh Named Applicant

KARE RATA on behalf of NGĀ HAPŪ O
NGĀTI WAI
Eighth Named Applicant

LOUISE COLLEYR on behalf of NGĀTI
KAWAU and TE WAIARIKI KORORA
Ninth Named Applicant

TE TAWHARU O NGĀTI PŪKENGA on
behalf of NGĀTI PUKENGA

Tenth Named Applicant

TE RŪNANGA O NGĀTI HINE on behalf
of NGĀTI HINE

Eleventh Named Applicant

ELVIS RETI on behalf of the RETI
WHĀNAU

Twelfth Named Applicant

MAIA HONETANA on behalf of NGĀ
TAHUHU NGĀATI TU KI NGĀTI
KUKUKEA

Thirteenth Named Applicant

WAIMARIE KINGI on behalf of NGĀ
HAPŪ O TANGAROA AKI TE IHU O
MANAIA TAE ATU KI MANGAWHAI

Fourteenth Named Applicant

JOEPH KINGI on behalf of NGĀPUHI NUI
TONU, NGĀTI RAHIRI, NGĀ TAHUHU
and NGAITAWAKE

AND

NORTH PORT LIMITED,
MARSDEN COVE CANALS
MANAGEMENT LIMITED,
CHANNEL INFRASTRUCTURE NZ
LIMITED,
ATTORNEY-GENERAL,
NGĀPUHI HAPŪ and NGĀPUHI-NUI-
TONU (MAC-10-10-50)
Interested Parties

[1] I thank counsel for their memoranda and submissions. Counsel for the interested parties, Mr Golightly, Ms Ellis and Mr Mathias for the Langs Beach Association, made submissions on the appropriateness of an adjournment of the Whangarei 1(b) proceedings scheduled to commence on 19 August 2024. Counsel underscored that given the recent announcement by the Government to amend the legislation, it would be a waste of the parties and the Court's time and resources to embark upon a hearing that would then be subject to a significant law change clarifying the tests set out in s 58. Instead, counsel submitted that while there was no formal application for adjournment before the Court, an adjournment could still be ordered.

[2] Counsel for the applicants were unanimous in their support for the hearings to proceed as planned. They argued that the Court has a duty to proceed with the hearings according to the existing law. While Ms Mason filed a memorandum indicating endorsement for an adjournment, in her oral submissions, she confirmed that her clients supported the submissions of other parties.

[3] I acknowledge the arguments that Court time is valuable and should not be wasted. Similarly, the costs to the taxpayer and the parties, including the interested parties, are substantial. I appreciate the point that once the hearings had concluded, and there was a change to the legislation altering the tests set out in s 58, inevitably this would require the matter to be re-heard, wholly or in part. Even so, the authorities cited by counsel on any announcements by the executive as to proposed law changes are reasonably clear.¹ The Court must deal with the legislation enacted by Parliament.² It cannot take account of announcements and must apply the existing statutory provisions.³ If and when that changes, then the parties will have the opportunity to make submissions on the effect of those changes. In summary, the Whangarei 1(b) hearings will proceed as scheduled commencing at 10 am on 19 August 2024.

¹ For example, see *Danone Asia Pacific Holdings Pte Ltd v Fonterra Co-Op Group Ltd* [2014] NZHC 1681; *Reihana v Rakiura Titi Committee* [2016] NZAR 1491; *Kidd (Trustees Of The Whenuanui Trust) v Registrar-General Of Land* [2021] NZHC 1747; *Pascoe v Environment Court* [2024] NZHC 876

² *Fitzgerald v Muldoon* [1976] 2 NZLR 615 at 622-623; *Ngāti Whātua Ōrākei Trust v Attorney General* [2019] 1 NZLR 116.

³ See *R v Morgan* [2021] NZHC 3352 at [27]; *Re Ngāti Pāhauwera* [2022] NZHC 394 (8 March 2022) at [27] and [28]; *Hata v Attorney-General* [2023] NZHC 2919 (18 October 2023).

[4] As to the interested parties' application for a stay, that matter can be dealt with on the first day of the hearing as requested. Given that substantial submissions have already been filed and some have been presented by counsel, I am unconvinced that a whole day will be necessary. That said, as the first day of the hearing would otherwise be devoted to opening submissions by counsel, I anticipate that there will be an element of flexibility with the first two days of the hearing in any event.

[5] I also accept the submissions of counsel that, in the circumstances, the hearings can be streamlined by the making of brief oral opening submissions without the requirement to file written submissions; that affidavit evidence is filed and be taken as read, save for a brief introductory summary in exceptional cases; that cross-examination notices can be dispensed with along with other related procedural efficiencies being explored.⁴

[6] As to the filing of submissions for the hearing of the stay application, submissions should have been filed. However, due to recent events, if any counsel considers it necessary to seek leave to file further or amended submissions, they should file a memorandum urgently with the Registrar seeking that leave.

[7] Finally, as to the draft proposed timetable filed by Mr Hockley, there are two adjustments that will need to be made and one that may be a possibility. First, the Court will not sit on Friday 30 August 2024. Secondly, the Court will not sit during the first week of September and an additional week of hearing time will be added if necessary. Counsel should accordingly adjust their schedules. Thirdly, if the hearing is still in progress by the week starting 14 October 2024, that too will need to be vacated and the hearings resume the week after. I will also consider the proposal that on Fridays the Court sit until 3.30pm and not 1pm.

Harvey J

⁴ Noting the Marine and Coastal Area (Takutai Moana) Act 2011, s 105 and rr 7.27 and 19.10 of the High Court Rules 2016.