IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2017-485-196
CIV-2017-485-250
CIV-2017-485-185
CIV-2017-485-223
CIV-2017-485-514
CIV-2017-485-317
CIV-2017-485-227
CIV-2017-485-513
CIV-2017-485-318
CIV-2017-485-291
CIV-2017-404-568
CIV-2017-485-770

UNDER	Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	Applications for recognition orders
BETWEEN	TE RŪNANGA O NGĀTI AWA for and on behalf of NGĀTI AWA TE TAWHARAU O NGĀTI PŪKENGA on behalf of NGĀTI PUKENGA Applicants

intituling cont over

Hearing:	12 December 2024 (by VMR)
Appearances:	HK Irwin-Easthope and RK Douglas for Te Rūnanga O Ngāti Awa J Kahukiwa for Hokimatemai Kahukiwa on behalf of Koromatua Hapū of Ngāti Whakaaue J Pou for Ngāti Makino Heritage Trust and Ngāti Pikiao Iwi Trust U Kuddus for Te Runanga O Ngati Whakaue ki Maketu Inc; Manu Paora Whanau; and David Potter for Tangihia Hapu N Coates for Caroline Takotohiwi on behalf of Ngai Taiwhakaea Hapū; and Te Whanau A Apanui TN Hauraki for Trustees of Rurima Island Maori Reservation LH Watson for Edith Ratahi-Pryor, Stanley Ratahi and Pouroto Ngaropo on behalf of Ngāti Hikakino, Ngāti Te Rangihouhiri II, Te Tawera E Whiley for Te Tawharau O Ngāti Pukenga

JP Koning for Ngāti Whakahemo
G Melvin for Attorney-General (interested party)
T Greensmith-West for Whakatane District Council (interested party)
R Boyte for Bay of Plenty Regional Council (interested party)
L Burkhardt for Western Bay of Plenty District Council (interested party)
F Wedde for Tauranga City Council (interested party)
A Miller for Landowners' Coalition Incorporated (interested party)
L Murphy for Ford Land Holdings Pty Ltd (interested party)
M Tukapua for Ngāti Hokopu and Te Wharepaia (MAC-01-07-014) (interested party)

Date of Minute: 19 December 2024

MINUTE (No 2) OF POWELL J
[Application for adjournment]

MANUKORIHI TARAU on behalf of NGĀI TAIWHAKAEA HAPŪ

MITA RIRINUI for and on behalf of TE RŪNANGA O NGĀTI WHAKAHEMO

TANGIHIA HAPŪ

THE TRUSTEES OF RURIMA ISLAND MĀORI RESERVATION

ENID RATAHI-PRYOR, STANLEY RATAHI an POUROTO NGAROPO on behalf of NGĀTI HIKAKINO, NGĀI TE RANGIHOUHIRI II and TE TĀWERA

MR LAURIE PORIMA on behalf of MANU PAORA WHANAU

TE RŪNANGA O TE WHĀNAU on behalf of TE WHĀNAU A APANUI

NGĀTI MAKINO HERITAGE TRUST and NGĀTI PIKIAO IWI TRUST on behalf of NGĀTI MAKINO and NGĀTI PIKIAO

HOKIMATEMAI KAHUKIWA on behalf of KOROMATUA HAPŪ OF NGATI WHAKAUE OF TE ARAWA WAKA

TE RŪNANGA O NGĀTI WHAKAUE KI MAKETŪ INC on behalf of NGĀTI WHAKAUE KI MAKETŪ HAPŪ

[1] The applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 ("the MACA") in the central Bay of Plenty are set down to be heard in a nine-week hearing commencing 5 May 2025 ("the May 2025 hearing"). There is a comprehensive timetable in place for the filing of evidence and submissions on behalf of both applicants and interested parties. The applicants were due to file evidence on 18 December 2024.

[2] On 3 December 2024, the Ngāti Awa applicants to the Central Bay of Plenty hearing (Ngāti Hokopū and Te Wharepaia, Te Rūnanga o Ngāti Awa, Rurima Island Māori Reservation and Ngāti Hikakino) filed a memorandum seeking the May 2025 hearing be adjourned and existing timetable be vacated as a matter of urgency.

[3] The stated grounds for adjourning the main fixture were that the timing and preparation for the hearing, and in particular the deadline for filing evidence, have been and continue to be seriously affected by the proposed amendments to the MACA which had been envisaged to be enacted in the week of 10 December 2024, but which have not yet been passed. The Ngāti Awa applicants added that the attendant uncertainty has been further compounded by the decision of the Supreme Court in its *Whakatōhea* decision,[1] which was released on 2 December 2024 with the applicants having not yet had time to consider its effect on the legal test necessary to prove customary marine title. In addition, the Ngāti Awa applicants also identified ongoing issues with funding as a result of amendment to the Takutai Moana financial assistance scheme and the resulting impact on the ability of the applicants to prepare for hearing. As a result, the Ngāti Awa applicants sought that the May 2025 hearing be adjourned and timetable vacated, and in its place a case management conference be scheduled for December 2025 with updating memoranda to be filed by the parties 10 working days before the date of that case management conference.

[4] Upon receipt of the application for adjournment I issued timetable directions for parties and interested persons participating in the Central Bay of Plenty proceedings to indicate their position on the adjournment and other directions sought,

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1 *Whakatōhea Kotahitangi Waka (Edwards) v Ngāti Ira O Waioweka, Ngati Patumoana, Ngāti Ruatākenga and Ngāi Tamahaua (Te Kāhui Takutai Moana O Ngā Whānau Me Ngā Hapū O Te Whakatōhea)* [2024] NZSC 164.

and indicated that if necessary, a judicial conference would take place on 12 December 2024.

[5] The parties and interested persons responded as per the directions. In broad terms, the overwhelming majority of applicants supported the adjournment for the reasons given while the interested persons, including the Crown, abided the decision of the Court.

[6] One group of applicants and one interested person diverged from the otherwise uniform position.

[7] With regard to the applicants, Hokimatemai Kahukiwa of Ngāti Whakaue for and on behalf of Koromatua Hapū of Ngāti Whakaue of Te Arawa Waka (the Koromatua Hapū) and Ngāti Makino Heritage Trust and the Ngāti Pikiao Iwi Trust (Ngāti Makino and Ngāti Pikiao") sought leave to explore whether their discrete claims around the Maketu area could be heard toward the end of the scheduled May 2025 hearing, although recognising there were a range of practical issues in relation to boundaries and parties that had not yet been worked through due to time constraints.

[8] Conversely, the Landowners' Coalition Incorporated as an interested party submitted that:

(a) No timetable orders should be made until a case management conference to be held in early February 2025, by which time greater clarity should be available on the uncertainties cited by the Ngāti Awa applicants; and

(b) That simply adjourning all matters until after a case management conference in December 2025, as the Ngāti Awa applicants proposed, was "an extreme response to the current uncertainties and is contrary to the general thrust of the High Court Rules (eg, r 1.2)".

[9] Given these issues, the foreshadowed telephone conference took place on 12 December 2024 at which time the proposal concerning a discrete Maketu hearing was

discussed, as was the position of the Landowners' Coalition. Noting that time was short, leave was given for further discussions and investigations to take place with regard to the Maketu proposal to see whether it was practical to proceed and to otherwise ascertain the position of all affected parties.

[10] In the event it was accepted it was not possible or practical to carve out a discrete application area around Maketu. A memorandum filed on behalf of the Koromatua Hapū, Ngāti Makino and Ngāti Pikiao has confirmed that as a result of overlapping application areas in particular the Maketu proposal is not able to be advanced and instead has been formally withdrawn.

[11] Accordingly, the only matter now before the Court is whether the May 2025 fixture should be vacated and if so what other directions should be made at this time.

Discussion

[12] The application stands to be considered pursuant to r 10.2 of the High Court Rules 2016 which provides:

> The court may, before or at the trial, if it is in the interests of justice, postpone or adjourn the trial for any time, to any place, and upon any terms it thinks just.

[13] The principles informing the application of the discretion in r 10.2 have been previously identified as follows:[2]

> (a) The interests of justice require consideration of not only the interests of the parties before the Court, but also of those awaiting a hearing who will suffer delay to their own cases should an adjournment be granted. This reflects the public interest in the efficient use of court resources.
>
> (b) As between the parties, the decision to grant or decline an adjournment is essentially a balancing exercise. It involves a consideration of the prejudice that will accrue to the applicant as well as the harm to the respondent if an adjournment is granted or denied.
>
> (c) A further relevant factor is whether the applicant has acted reasonably and done everything practical to avoid the need for an adjournment.

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2 *Poutama Kaitiaki Charitable Trust and Pascoe v Taranaki Regional Council* [2022] NZHC 628 at [38]–[39].

(d) The strength of the reasons in support of the application, and the prejudice said to follow from continuing with the trial, is a material factor. …

(e) Also relevant is the right of the parties to a fair trial and the need for resolution of the proceedings, including the likely impact of further delay on the quality of the evidence and the difficulties of reorganising witnesses for a later trial date.

[14] Having considered the positions of the parties, it is clear that the May 2025 fixture cannot proceed. The ongoing level of uncertainty identified by the applicants is unprecedented given the recent change in the legal test for the issue of customary marine title as a result of the *Whakatōhea* decision, while at the same time there has been no confirmation as to the status of the pending amendments to the MACA. In those circumstances, it would be both unjust and inappropriate to require any applicant group to file their evidence when such fundamental uncertainty exists as to the legal test they are required to meet.

[15] While I understand the position of the Landowners' Coalition, the current timetable has already been compressed and should a decision on adjournment of the May 2025 fixture be delayed until after a case management conference in February 2025, there would be not be sufficient time to recast the timetable to ensure that the applicants and interested persons are ready to proceed at the hearing. I take into account the likely scale and complexity of these proceedings, noting that the agreed bundle filed in respect of the group of applications immediately to the west of the Central Bay of Plenty application area initially comprised in excess of 15,000 pages of evidence.

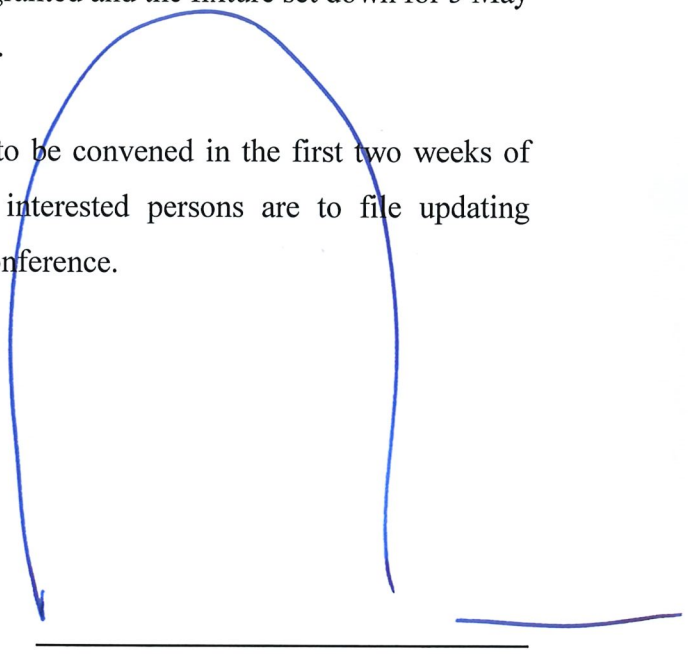
[16] The only remaining issue is when the Court should convene a further case management conference. I understand the position of the Landowners' Coalition, albeit I consider the stated reliance on r 1.2 of the High Court Rules appears to be somewhat misplaced given the history of Māori claims to the foreshore and seabed. However, having vacated the May 2025 hearing, the simple fact is that it will make little or no difference when in the second half of 2025 a case management conference is held. By that time it will not be possible to accommodate a nine-week hearing in 2026 and on the contrary a hearing in 2028 or 2029 at the earliest would be more likely. That said I do not consider that a case management conference in December 2025

would be helpful given the likelihood of other matters at that time of year. I therefore direct an updating case management conference take place in the first half of November 2025. As proposed, parties are to file updating memoranda 10 working days prior to the conference.

Decision

[17] The application for adjournment is granted and the fixture set down for 5 May 2025 is vacated, as is the existing timetable.

[18] A case management conference is to be convened in the first two weeks of November 2025 and the applicants and interested persons are to file updating memoranda 10 working days prior to the conference.



Powell J