

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

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

CIV-2017-419-000081

CIV-2017-419-000084

UNDER Marine and Coastal Area (Takutai Moana)
Act 2011

IN THE MATTER OF An application by STANLEY RAHUI PAPA
for and on behalf of NGAA HAPUU ME
NGAA MARAE O TE TAKUTAI MOANA
O WAIKATO-TAINUI seeking orders
recognising customary marine title and
protected customary rights
Plaintiff

IN THE MATTER OF An application by RONALD MIKI APITI,
DIANE BRADSHAW and PHILLIP
MAHARA on behalf of NGĀTI TE WEHI
seeking orders recognising customary
marine title and protected customary rights
Plaintiff

Hearing: On the papers

Counsel: R A Siciliano and C Ratapu for Ngāti Whakamaruarangi-Tainui
D M Stone and H C Clatworthy for Ngāti Te Wehi
J P Ferguson for Ngaa Hapuu Me Ngaa Marae o Te Takutai
Moana o Waikato-Tainui
G L Melvin for Crown

Date of minute: 30 May 2024

MINUTE OF ANDREW J

Solicitors:
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Counsel:
J P Ferguson – jamie@kokirichambers.nz

[1] The Court has received a joint memorandum of counsel regarding the Pūkenga approach, dated 29 May 2024, and a memorandum from the Crown addressing the same issue.¹

[2] Pursuant to s 99(1)(a) of the Marine and Coastal Area (Takutai Moana) Act 2011, I appoint Mr Professor Tom Roa and Mr Paroane Gloyne as Pūkenga for these proceedings.

[3] The questions the Pūkenga are to address are contained at [17] of the joint memorandum of counsel dated 10 April 2024. I record them here as follows:

- (a) What tikanga does the evidence establish or support in the application area?
- (b) What aspects of tikanga should influence the assessment of whether or not:
 - (i) the area in question, or any part of, is held in accordance with tikanga;
 - (ii) there is a distinction between holding an area in question or any part of it, in accordance with tikanga, and using that area or its resources in accordance with tikanga.
- (c) In respect of the application areas:
 - (i) which applicant group or groups hold the relevant areas in accordance with tikanga?
 - (ii) does it accord with relevant tikanga for the area to be held on a shared basis by the relevant groups?

¹ The Attorney-General abides the decision of the Court on the appointment of the Pūkenga. She notes that as a matter of principle she considers it desirable that court-appointed Pūkenga attend the entirety of the proceedings, so they are present to hear all of the evidence that is presented and tested in court.

- (d) In respect of the application areas, what aspect of tikanga are relevant to:
- (i) the assessment of whether or not an area in question, or any part of it, has been exclusively used and occupied by the relevant applicant group or groups;
 - (ii) the consideration of any third-party activities, including ownership of abutting land, access to the takutai moana, and fishing.
- (e) Having regard to the evidence, what tikanga is relevant to the protected customary rights claimed by the applicants?

[4] I note that Professor Tom Roa will be absent for the first week of the hearing. I have taken that factor into account in making my decision.

[5] I direct that the Pūkenga are to prepare a comprehensive report by 1 July 2024 and once evidence and cross-examination has concluded. If necessary, and following consultation with counsel, this date may need to be re-visited.



Andrew J