

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

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

CIV-2017-485-247, 255, 302

BETWEEN	NGĀ HAPŪ O TOKOMARU ĀKAU Applicant
AND	TE WHĀNAU A RUATAUPARE KI TOKOMARU Applicant
AND	NGĀ WHANAŪ O HAUITI Interested Party
AND	SEAFOOD INDUSTRY REPRESENTATIVES Interested Party
AND	ATTORNEY-GENERAL Interested Party

Hearing: 11 June 2024 by Teleconference

Appearances: M Sreen and H Fletcher for Ngā Hapū
R Siciliano for Te Whānau
D Ward for Attorney-General
B Scott for Seafood Industry
F Wedde for Gisborne District Council

Minute No.9: 12 June 2024

**MINUTE NO.9 OF CULL J
[Timetable for Stage 2 Hearing]**

[1] In my substantive judgment in this proceeding,¹ I directed that the orders in my judgment could be finalised at a Stage 2 hearing to take place on 15 July 2024.

¹ *Ngā Hapū o Tokomaru Ākau v Te Whānau A Ruataupare ki Tokomaru* [Reissued Redacted Version] [2024] NZHC 682 [1 May 2024]

[2] Counsel for the applicants filed a joint memorandum, seeking to address the Court on the following matters:

- (a) funding from Te Arawhiti for the Stage Two hearing;
- (b) surveyor map;
- (c) entity to hold orders; and
- (d) timetabling directions.

[3] In response, the Crown and the Seafood Industry Representatives filed submissions expressing concern about the viability of the Stage Two hearing for three reasons:

- (i) The short time frame in which evidence in reply to the applicants' evidence is to be filed prior to the Stage Two hearing;
- (ii) The extent of the proposed wāhi tapu boundaries, prohibitions and restrictions that will impact on the public and commercial fishing;
- (iii) The likely impact of the appeals filed by the applicants on the proposed Stage 2 hearing.

[4] I convened a telephone conference with all Counsel, including the interested party, the Gisborne District Council. During this conference, Counsel each addressed the issues raised in their respective memoranda.

[5] Importantly, Counsel for the applicants confirmed that they were in preparation and anticipated their evidence would be filed by 17 June 2024, addressing the PCR and wāhi tapu issues identified in my judgment. They foreshadowed that a meeting with both applicant groups was taking place this forthcoming weekend, during which they hoped to finalise the details of the entity to hold the orders, and finalise the applicants' evidence. In addition, despite the funding difficulties, they confirmed that a cartographer has been briefed to define boundaries but the limits on funding did not allow a cadastral survey plan to be provided. They indicated, subject to final

instructions from the applicants, that the wāhi tapu sites were within the three to four nautical miles identified in the judgment. Ms Sreen also confirmed that the applicants were preparing draft CMT orders, which are to include the trust entity to hold them.

[6] Mr Scott raised his concerns about the wāhi tapu evidence extending beyond three to four nautical miles, the potential effect of the appeal hearing on the Stage 2 hearing, the preference that the Stage 2 hearing be adjourned until the appeal's outcome, and the restricted time in which to respond to the applicants' evidence.

[7] Dr Ward also expressed his concern that any wāhi tapu orders would have to be within the three to four nautical miles stipulated in the judgment, as he doubted the Court's jurisdiction to deal with evidence beyond that limit. He also reported on the Te Arawhiti funding outcome that there is no availability of funds for 2024, although changes to the scheme are being looked at, to enable some 2024 matters to proceed. Those are matters which will need to be addressed by Counsel, as this Court cannot be engaged in the financial or policy decisions of Te Arawhiti.

[8] Ms Wedde for the Gisborne District Council shared the same concerns as the Crown and the Seafood Industry. Common to all three is the request that the applicants file a memorandum and draft orders, stating the specific wāhi tapu protection orders sought, with their boundaries, prohibitions and the reasons for their protection.

[9] I indicated to all Counsel that adjourning the Stage 2 hearing was neither appropriate nor practical. The substantive judgment needs to be perfected and the time to do that must occur before 19 December 2024. The Stage 2 hearing would therefore proceed. The parties agreed to the proposed timetabling orders, subject to leave being granted to the Seafood Industry, the Crown and Gisborne District Council for further time to file replies, if the interested parties' evidence could not be completed by 8 July 2024.

[10] Accordingly, I make the following directions:

- (a) The Stage 2 hearing will proceed on 15 July 2024;

- (b) The timetabling directions for the Stage 2 hearing are as follows:
- (i) Applicant groups' evidence to be filed by 17 June 2024;
 - (ii) Interested parties' evidence to be filed by 8 July 2024;
 - (iii) Parties to file opening submissions to be filed by 12 July 2024;
 - (iv) Pūkenga report to be filed two weeks post Stage Two Hearing (subject to suitability of the pūkenga);
 - (v) Cross-examination of pūkenga to be conducted by AVL one week after supplementary report; and
 - (vi) Closing submissions to be presented four weeks post Stage Two Hearing. It is anticipated that a 2-day fixture will be required.

[11] The Registry is to advise the pūkenga, Dr Joseph of these directions and provide him with this Minute.

[12] The dates for the cross-examination of the pūkenga, the closing submissions, and the two-day fixture will be confirmed in a further Minute.

Cull J