

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

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

CIV-2017-404-000305

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 (CIV-2017-485-799)

BY Korokota Marae on behalf of Te Parawhau Hapū (CIV-2017-485-799)

Patuharakeke Te Iwi Trust Board (CIV-2017-485-281)

Stephen Panoho on behalf of Te Rae Ahu Whenua Trust (CIV-2017-485-239)

Alan Riwaka, Chief Executive of Te Rūnanga o Ngāti Whātua (CIV-2017-404-563)

Perei Mahanga on behalf of Te Waiariki, Ngāti Korora, Ngāti Takapari (CIV-2017-404-566)

Ngatiwai Trust Board on behalf of Ngatiwai (CIV-2017-485-283)

Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554)

Louise Collier on behalf of Ngāti Kawau and Te Waiariki Korora (CIV-2017-485-398)

Te Tawharau o Ngāti Pūkenga on behalf of Ngāti Pūkenga (CIV-2017-485-250)

Continued: .../2

Te Rūnanga o Ngāti Hine on behalf of Ngāti Hine (CIV-2017-485-231)

Elvis Reti on behalf of the Reti Whānau (CIV-2017-485-515)

Maia Honetana on behalf of Ngāti Tu ki Ngāpuhi (CIV-2017-404-573)

Waimarie Kingi on behalf of Ngā Hapū o Tangaroa aki Te Ihu o Manaia tae atu ki Mangawhai (CIV-2017-404-579)

Joseph Kingi on behalf of Ngāpuhi Nui Tonu, Ngāti Rahiri, Ngā Tahu and Ngaitawake (CIV-2017-404-537)

INTERESTED PARTIES North Port Ltd
Marsden Cove Canals Management Ltd
Channel Infrastructure NZ Ltd
Attorney-General
Ngāpuhi hapū and Ngāpuhi-nui-tonu (MAC-01-01-50)

Hearing: 11 June 2024

Appearances: C Hockly for Te Parawhau (CIV-2017-485-000305)
R and M Enright for Korokota Marae on behalf of Te Parawhau Hapū (CIV-2017-485-799)
L Tothill and T Talamaivao for Patuharakeke Te Iwi Trust Board (CIV-2017-485-281)
B Lyall for Te Rae Ahu Whenua Trust (CIV-2017-485-239)
M Chen for Te Rūnanga o Ngāti Whātua (CIV-2017-404-563)
J P Kahukiwa for Te Waiariki, Ngāti Korora, Ngāi Takapari (CIV-2017-404-566)
J Inns and K van Wijngaarden for Ngāti Wai (CIV-2017-485-283; CIV-2017-404-554)
M Sharp for Ngā Hapū o Ngāti Wai Iwi (CIV-2017-404-554)
J Mason for Ngāti Kawau Te Waiariki (CIV-2017-485-398); Ngā-Puhi-nui-tonu (CIV-2017-404-537); Reti Whānau (CIV-2017-485-515)
B Loader for Ngāti Tu ki Ngāpuhi (CIV-2017-404-573)
No appearance for Ngāti Pūkenga (CIV-2017-485-250)
H Jamieson 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)

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J Golightly for North Port Limited
J Golightly for Marsden Cove Management Limited, Golden Bay
C Simmons, E Ellis for Channel Infrastructure NZ Limited, Port
Nikau
R Roff, Y Moinfar-Yong for Attorney-General
G Mathias for Langs Beach Society and Langs Cove Residents
Association

Date: 13 June 2024

MINUTE OF HARVEY J

Introduction

[1] A case management conference was convened with counsel on 11 June 2024 in accordance with my minute of 27 May 2024 concerning the matters set out therein.

Evidential issues

[2] Mr Afeaki reported that a hui had been held with representatives of his client and Mr Kahukiwa's group. From that meeting it was determined that a further hui between the principals involved in the issue should occur shortly for the purpose of identifying areas of agreement. Should any matter remain unresolved in this context then counsel would advise the Court. The parties and their counsel are to be commended for the progress that has been made. I look forward to their next update.

[3] Regarding Mr Bloomfield's affidavit and the concerns arising from that matter, I will consider counsels' submissions further and issue another minute in due course.

[4] Mr Mathias expressed concerns over applicants and their counsel seeking to rely on evidence heard during the Whangārei Harbour 1(b) fixture. Mr Hockley is directed to liaise with his colleagues over filing an indicative list of evidence intended to be relied on and referred to by applicants and their counsel during the Whangārei 1(b) hearings. As I underscored during the conference, historical matters including whakapapa, tribal identities, their customs and traditions pre colonisation will be of

little if any relevance to Mr Mathias' clients. Any evidence of a more contemporary nature that may affect those interests should be properly identified by applicant counsel.

Fixture for Whangārei 1(b)

Funding

[5] Claimant counsel were almost unanimous that the hearings should proceed if at all possible, while recognising the significant difficulty that would arise if funding were not approved. Mr Kahukiwa also raised the prospect of litigants in person, harking back to the title investigation hearings of the Native Land Court during the century before last. While this idea could not be dismissed out of hand and might theoretically be assisted by the appointment of counsel to assist the Court or McKenzie friends, difficulties will likely arise where some claimant groups, let alone interested parties, have counsel while others do not. This will be particularly problematic in the context of examination in chief, cross examination and re-examination as an example.

[6] Ms Chen also underscored that, while the scheduling challenges for the Court were serious, so too were the claims of Māori under the MACA legislation. She submitted that securing hearing dates was no mean feat and that as other counsel had highlighted, claimant evidence was being compromised by the passage of time as witnesses died. In addition, Ms Chen contended that the applicants and the communities they represented had been seeking justice effectively for generations and were entitled to have their claims heard. Counsel implored the Court to do what it could to facilitate progress toward a hearing. Mr Erskine also made submissions in support. Conversely, Ms Mason filed a memorandum on 10 June 2024, seeking an adjournment of the hearing given the lack of funding. Further, other counsel made arguments in support of the hearings proceeding.

[7] Having heard from counsel regarding funding, as intimated at the conference, I will await the proposed update from Ms Roff by 5 July 2024. By that time, it is intended that a definitive answer will be provided on whether funding will be approved

for the Whangārei 1 (b) hearings to proceed. To avoid doubt, if funding is not approved then, reluctantly, the proceedings will need to be adjourned sine die.

[8] I also record that all claimant counsel are agreed that an eight week rather than 12 week hearing will suffice for the purposes of the Whangārei 1(b) hearings. Counsel confirmed that these need not commence, should funding be confirmed, until **Monday 19 August 2024**. This means that the four week period 22 July to 16 August 2024 that had originally been set aside for the hearing can now be vacated.

Adjusted filing dates

[9] Given what transpired at the conference, Mr Hockley is invited to liaise with all counsel and file an updating memorandum within the next two weeks on proposed filing date changes in view of the intended hearing start date of 19 August next.

Consolidation application

[10] This issue will be determined on the papers, counsel being content to proceed in that fashion. Mrs Golightly has until **4 pm 5 July 2024** to file her submissions in opposition. Counsel for the affected parties will have until **4 pm 12 July 2024** to file any response.



Harvey J