

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

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

**CIV-2017-485-232
CIV-2017-485-259
CIV-2017-485-224
CIV-2017-485-221
CIV-2017-485-260
CIV-2017-485-267**

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

AND

IN THE MATTER OF an application by NGĀI TŪMAPŪHIA-A-
RANGI HAPŪ INCORPORATED on behalf
of NGĀ URI O NGĀI TŪMAPŪHIA Ā
RANGI HAPŪ for orders recognising
Customary Marine Title and Protected
Customary Rights

Hearing: 7 March 2025

Appearances: H Fletcher for Ngāi Tūmapūhia-a-Rangi Hapū Incorporated
(CIV-2017-485-232)
T Bennion for Ngāti Hinewaka Me Ōna Hapū Karanga Charitable
Trust (CIV-2017-485-259)
C Mataira for Trustees of Rangitāne Tū Mai Rā Trust
(CIV-2017-485-224)
H Ammunson for trustees of Ngāti Kahungunu Ki Wairarapa
Tamaki-Nui-Ā-Rua Settlement Trust (CIV-2017-485-221)
M Houra for Te Ātiawa ki Te Upoko o Te Ika a Maui Potiki Trust
(CIV-2017-485-260)
H Fletcher for Ngāi Tūkoko and Ngāti Moe (CIV-2017-485-232)
B Lyall for Kawakawa 1D2 Ahu Whenua Trust
J Prebble and D Kleinsman for the Attorney-General
B Scott for the Seafood Industry Representatives
F Wedde for the Greater Wellington Regional Council

Minute: 7 March 2025

**MINUTE OF GWYN J
(Case management conference)**

Introduction

[1] This matter is set down for hearing on 28 April 2025 for three days, to finalise customary marine title (CMT) orders.

[2] At the request of the applicants, I convened a Case Management Conference (CMC) on 7 March 2025. The purpose of the conference was to discuss that hearing date and the timetable leading up to the hearing.

[3] By minute of 16 December 2024 I set in place a timetable for the Stage 2(a) hearing leading up to the 28 April fixture.

[4] Counsel for the parties listed below have advised the timeframes contained in the 16 December minute have imperfectly translated into dates for each step. The parties seek some adjustment to the dates, while noting that they confirm their commitment to the hearing commencing on 28 April 2025, albeit with an amended timetable.

[5] The parties referred to in [4] above are the following applicants and interested parties:

- (a) Ngāi Tūmapūhia-a-Rangi Hapū (CIV-2017-485-232);
- (b) Ngāi Tūkoko and Ngāti Moe (CIV-2017-485-267);
- (c) Ngāti Hinewaka (CIV-2017-485-259);
- (d) Rangitāne Tū Mai Rā Trust (CIV-2017-485-224);
- (e) Te Ātiawa ki Te Upoko o Te Ika a Maui Potiki Trust (CIV-2017-485-260);

(f) Sue Taylor on behalf of Ngāi Tūmapūhia-a-Rangi ki Motuwairaka Incorporated and Sam Morris, Lynall Morris, and Jason Morris on behalf of Ngāi Tūmapūhia-a-Rangi ki Ōkautete Incorporated; and

(g) Kawakawa 1D2 Ahu Whenua Trust.

(the parties)

Adjournment of final orders hearing date?

[6] Since counsel filed their memoranda seeking a CMC, the Attorney-General has filed an appeal against my wāhi tapū judgment.¹ Mr Prebble, counsel for the Attorney-General, submits that on the basis of that appeal, together with the Attorney-General's extant appeal against the substantive judgment in this matter,² the final orders hearing scheduled for 28 April 2025 should be deferred. Mr Scott advised that the Seafood Industry Representatives support that position.

[7] Ms Wedde, for the Greater Wellington Regional Council (GWRC) abides the Court's decision on that question.

[8] Mr Fletcher, for the parties in response, noted that the filing of an appeal in relation to one stage of a case has not prevented the next stage proceeding, either in this particular case, or other cases under the Marine and Coastal Area (Takutai Moana) Act 2011 and nor should it do so here. If necessary, there are matters that could be finalised at that hearing even if the Court is minded not to make the final orders in relation to wāhi tapu.

[9] Mr Lyall for the Kawakawa 1D2 Ahu Whenua Trust, one of the interested parties, confirmed his client's position that they wish to progress to a final orders hearing as soon as possible.

¹ *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2025] NZHC 68.

² *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2024] NZHC 309.

Discussion

[10] Mr Scott points to the *Whakatōhea Kotahitanga Waka (Edwards)* case, and the various appeals to the Court of Appeal and subsequently the Supreme Court in relation to that case,³ as an example of the difficulties that arise where further steps are taken by the High Court, while an appeal is pending.

[11] That case is very different from this one, not least because in that case there were appeals and cross-appeals by the applicants themselves, who did not agree on who should be granted recognition orders. That has led to a great deal of complication in subsequent appeals. Here, by contrast, the applicants reached an agreement (the Mana Moana Agreement) and sought recognition orders consistent with the terms of that agreement and CMTs on the basis of shared exclusivity.

[12] In any event, the Court of Appeal itself in *Whakatōhea* said:⁴

I observe that the High Court has employed staged hearings in other MACA cases. This has been done for good reason. Among other things, staged hearings may better accommodate tikanga processes, as we explain later. However, appellate review is constrained if the case is part-heard at first instance and closely related issues are likely to become the subject of future appeals. It has been sensible to address questions of principle in this case, the first MACA appeal, but this Court will need to consider in future cases, whether to delay setting appeals down until final orders have been made at first instance.

[13] That caution seems to me to support the opposite conclusion from that advanced by Mr Scott. It is apt in this context. The final orders hearing is necessary to finalise who will be the holders of CMT orders and protected customary rights (PCRs), as well as rights in relation to wāhi tapu. I conclude that, consistent with Miller J's observation, it will assist the Court of Appeal when it comes to hear the Attorney-General's appeals, and related cross-appeals, to have final orders in front of it so it can be certain of the identity of the order holders and the ambit and detail of the customary orders rights (including PCRs and wāhi tapu rights) granted by the High Court.

³ *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252; and *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira o Waioweka* [2024] NZSC 164.

⁴ *Whakatōhea Kotahitanga Waka (Edwards)* [2023] NZCA 504, at 7, per Miller J. Footnotes omitted.

[14] In addition, it is desirable that the same Judge who conducted the substantive hearing and the wāhi tapu hearing is available to consider final orders. For that to occur the hearing needs to take place in the first part of 2025.

[15] Having regard to these factors I confirm that the final orders hearing will take place on 28–30 April 2025, as scheduled. It is possible that a fourth day, 1 May 2025, may be made available if required.

Amended timetable

[16] The parties have prepared an amended timetable which provides:

- (a) the applicants to file draft orders, maps and confirmation of the order holders by (the maps of the CMT would not be finalised but would be in near final format at this point) by **14 March 2025**;
- (b) the interested parties' evidence by **4 April 2025**;
- (c) the applicants' submissions (together with finalised CMT maps and an affidavit or affidavits from the surveyor(s)) by **11 April 2025**); and
- (d) the interested parties' submissions and any evidence in response by **24 April 2025**.

[17] Mr Prebble for the Attorney-General, Mr Scott for the Seafood Industry Representatives and Ms Wedde for the GWRC all confirmed that the proposed timetable would be workable. Mr Prebble was concerned however that three days hearing would not be adequate.

[18] I make timetable directions in the terms set out at [16]. As noted above, if necessary, a fourth day of hearing could be added on 1 May 2025.

Gwyn J