

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU 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

Continues overleaf
Applicants

Hearing: On the papers at Auckland

Date of Minute: 26 September 2024

**MINUTE OF POWELL J
[Application to enlarge timetable]**

MANUKORIHĪ TARAU on behalf of
NGĀI TAIWHAKAEĀ 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 joint memorandum of counsel for the applicants on timetabling dated 22 August 2024 has been referred to me (copy annexed). The applicants have noted that previously observed issues with funding together with the proposed substantive changes to the Marine and Coastal Area (Takutai Moana) Act 2011 having follow-on effects with regard to the ability of the applicants to prepare for the Central Bay of Plenty hearing currently set down for 10 weeks in May 2025.

[2] As a result, although noting some applicants are already contemplating seeking an adjournment, at the present time only an enlargement of the timetable is sought. The proposed enlargement has been referred to the interested parties (including the Crown) that have given notice and no comment has been received. I take it from that that no party considers that the proposed enlargement is not workable, and therefore make the orders as sought.

Powell J

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UNDER THE Marine and Coastal Area (Takutai Moana)
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BY **TE RŪNANGA O NGĀTI AWA** for and on
behalf of **NGĀTI AWA**

TE TAWHARAU O NGĀTI PŪKENGĀ on
behalf of **NGĀTI PŪKENGĀ**

MANUKORIHI TARAU on behalf of **NGĀI
TAIWHAKAEA HAPŪ**

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

Applicants

[cont. ...]

**JOINT MEMORANDUM OF COUNSEL FOR THE APPLICANTS ON
TIMETABLING**

22 AUGUST 2024

Judicial officer: Powell J



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TANGIHIA HAPŪ

**THE TRUSTEES OF RURIMA ISLAND
MĀORI RESERVATION**

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

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PAORA WHANAU**

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

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

Applicants

TĒNĀ, E TE KŌTI

1. This memorandum of counsel is filed on behalf of the Crown and the following applicants under the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA**) (the **Applicants**):
 - (a) Te Rūnanga o Ngāti Awa (CIV-2017-485-196);
 - (b) Te Tawharau o Ngāti Pūkenga on behalf of Ngāti Pūkenga (CIV-2017-485-250);
 - (c) Manukorihi Tarau on behalf of Ngāi Taiwhakaea Hapū (CIV-2017-485-185);
 - (d) Mita Ririnui for and on behalf of Te Rūnanga o Ngāti Whakahemo (CIV-2017-485-223);
 - (e) Tangihia hapū (CIV-2017-485-514);
 - (f) The trustees of Rurima Island Māori Reservation (CIV-2017-485-317);
 - (g) Enid Ratahi-Pryor, Stanley Ratahi and Pouroto Ngaropo on behalf of Ngāti Hikakino, Ngāi Te Rangihouhiri II and Te Tāwera (CIV-2017-485-227);
 - (h) Mr Laurie Porima on behalf of Manu Paora Whanau (CIV-2017-485-513);
 - (i) Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (CIV-2017-485-318);
 - (j) Ngāti Makino Heritage Trust and Ngāti Pikiāo Iwi Trust on behalf of Ngāti Makino and Ngāti Pikiāo (CIV-2017-485-291);
 - (k) Hokimatemaī Kahukiwa on behalf of Koromatua Hapū of Ngāti Whakaue of Te Arawa Waka (CIV-2017-404-568);
 - (l) Te Rūnanga o Ngāti Whakaue ki Maketū Inc on behalf of Ngāti Whakaue ki Maketū Hapū (CIV-2017-485-770); and

(m) Ngāti Hōkōpū and Te Wharepaia (MAC-01-07-014).

2. The Applicants to this memorandum represent all of the applications scheduled to participate in the Central Bay of Plenty hearing currently set down for 10 weeks in May 2025.

Issues with the MACA scheme – funding and proposed substantive changes to the MACA Act

3. Your Honour is no doubt aware of the issues that have arisen this year in the context of the MACA funding scheme and, more recently, in relation to the proposed changes to the MACA Act.

Funding

4. Following the funding CMC, due to the manner in which the funding limitations were described by the Crown at that time (essentially that there would not be enough funding for the Central BOP hearing to proceed), the Applicants, in consultation with counsel for the Attorney-General, had been discussing an adjournment of the May 2025 hearing.
5. However, on Friday 5 July counsel for the Attorney-General relayed the revised position that funding for the Central Bay of Plenty hearing would be available, albeit at significantly reduced rates (particularly for the Court costs workstream). All costs associated with the Court workstream, including disbursements, are now capped at \$140,000 (+GST) for the 10-week Central Bay of Plenty hearing.
6. The Applicants put on record, again, that the Crown has acted in bad faith in amending the MACA funding scheme as it has done over the past months. It has placed the Applicants, and their counsel, in a very difficult position. However, concerns with funding have now been, at least partially, superseded by upcoming amendments to the MACA Act announced on 25 July 2024.

Proposed substantive changes to the MACA Act

- 7. The proposed amendments to the MACA Act are expected to amend section 58 and the test for CMT, who carries the burden of proof, and the contextual provisions.
- 8. These announcements have created a context of enhanced uncertainty for the Applicants. Until such time as the proposed amendment bill can be reviewed, Counsel will not be able to properly consider the implications of these changes on the proposed May 2025 hearing. Applicants are aware that they risk expending their funding on work that will be made redundant without further funding necessary to revise their legal positions. Counsel for the Applicants propose to further update the Court when they have had an opportunity to review the amendment bill. Current Crown timelines suggest introduction to the House in mid-September. In the interim, an amendment to the current timetable is sought to allow for the delays already occasioned by funding issues, and for Applicants to assess their positions in light of the legislative amendments.
- 9. Counsel note that, at this stage, some applicant parties are of the view now that an application for an adjournment will be necessary. Some would prefer to review the proposed amendment bill first. Counsel thought it appropriate to signal this to your Honour as early as possible but no application for adjournment is being made at this time.

Amendments to the current timetable sought by consent

- 10. The Applicants have conferred with Crown counsel and seek the following amendments to the current timetable by consent:

Step	Current date	Amended date
Applicants file their evidence.	21 October 2024	18 December 2024

Step	Current date	Amended date
Interested parties other than the Attorney-General file their evidence.	20 December 2024	3 March 2025
Submissions on pūkenga appointment (if required).	5 February 2025	28 March 2025
Attorney-General files evidence.	5 February 2025	24 March 2025
Applicants' evidence in reply to be filed.	5 March 2025	14 April 2025
Close of pleadings date.	5 March 2025	14 April 2025
All parties file open submissions and bundles of authorities.	17 April 2025	28 April 2025
Applicants file any statement of agreed facts.	17 April 2025	28 April 2025
Draft joint hearing timetable to be filed.	17 April 2025	28 April 2025
Final JC before hearing (if required).	-	30 April 2025
Hearing date	5 May 2025	

11. The Applicants reserve the right to seek further timetabling directions from the Court (noting that some Applicants have put experts on hold due to the funding issues and are currently seeking to re-engage those experts to meet a revised timetable, but may need to seek further revisions).

Conclusion

12. Counsel respectfully seek an order amending the timetable as set out at paragraph [10] above.
13. Counsel are available for a judicial conference if your Honour would benefit from a discussion with counsel on these matters.

DATED this 22nd day of August 2024

H K Irwin-Easthope | R K Douglas

Counsel for Te Rūnanga o Ngāti Awa

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Counsel for Te Tāwharau o Ngāti Pūkenga

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Counsel for Manukorihi Tarau on behalf of Ngāi
Taiwhakaea Hapū

J P Koning

Counsel for Mita Ririnui for and on behalf of Te Rūnanga
o Ngāti Whakahemo

J Mason

Counsel for Tangihia hapū, Mr Laurie Porima on behalf
of Manu Paora Whanau, and Te Rūnanga o Ngāti
Whakaue ki Maketū Inc on behalf of Ngāti Whakaue ki
Maketū Hapū

T N Hauraki

Counsel for the trustees of Rurima Island Māori
Reservation

L H Watson

Counsel for Ngāti Hikakino, Ngāi Te Rangihouhiri II and
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J M Pou

Counsel for Ngāti Makino Heritage Trust and Ngāti
Pikiao Iwi Trust on behalf of Ngāti Makino and Ngāti
Pikiao

M K Mahuika | N R Coates

Counsel for Te Rūnanga o Te Whānau on behalf of Te
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