
IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2017-485-283
GROUPS C, D, E

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE

UNDER THE

Marine and Coastal Area (Takutai Moana)
Act 2011

AND

IN THE MATTER OF

an application by the Ngātiwai Trust Board
for an order recognising Customary Marine
Title and Protected Customary Rights

ATTORNEY-GENERAL'S AMENDED NOTICE OF APPEARANCE

7 March 2018

Judicial Officer: Collins J
Next Event Date: To be confirmed

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MAY IT PLEASE THE COURT:

1. The Attorney-General has previously given notice he wishes to appear as an interested party in these proceedings.
2. The Attorney-General seeks to be heard on the evidence and law relating to this application and in relation to the public interest. He reserves his ability to amend the position set out in this notice. In particular, he may review his position further once any additional evidence has been filed.
3. In response to the Court's minute dated 27 September 2017, this amended notice of appearance sets out the Attorney-General's position in further detail.

BACKGROUND

4. The applicant, the Ngātiwai Trust Board, has served on the Attorney-General:
 - 4.1 an application dated 31 March 2017 for an order recognising customary marine title and protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (the "Act"); and
 - 4.2 an affidavit of Hori Temoanaroa Parata affirmed 30 March 2017.
5. The application is in proposed Case Management Groups C, D and E.

PARTICULAR GROUNDS

Statutory criteria for recognition orders are not met

6. The evidence does not establish the statutory criteria for protected customary rights or for customary marine title are met.
7. The evidence filed does not allow the Court to be satisfied:
 - 7.1 in relation to the application for protected customary rights, that the rights:
 - 7.1.1 have been exercised since 1840; and

- 7.1.2 continue to be exercised in a particular part of the common marine and coastal area in accordance with tikanga by the applicant group; or
- 7.2 in relation to the application for customary marine title, that the applicant group:
 - 7.2.1 holds the application area in accordance with tikanga; and
 - 7.2.2 has, in relation to the application area, exclusively used and occupied it from 1840 to the present day without substantial interruption; or
 - 7.2.3 has received it at any time since 1840 through a customary transfer in accordance with the Act; or
- 7.3 that customary marine title, if established, would extend across the entire application area.
- 8. The applicant claims that in part of the application area the rights and interests of Ngātiwai's hapū and whānau comprise a form of "joint exclusivity" with the rights and interests of other iwi, hapū and whānau (paragraph 9). The Attorney-General's objection at paragraph 7 applies equally to any such areas.
- 9. The Attorney-General understands the application for customary marine title overlaps with other applications listed in the schedule to this notice. To the extent that there is any overlap with other applications, the Attorney-General says such overlap is inconsistent with the applicant's claim to exclusive use and occupation of the application area without substantial interruption since 1840.

Protected customary rights: compliance with section 51

- 10. The application does not comply with section 51 of the Act in the following respects:
 - 10.1 in relation to paragraphs 11 and 12 of the application, to the extent the applicant seeks a protected customary right for an activity that is:
 - 10.1.1 regulated under the Fisheries Act 1996; or

- 10.1.2 a commercial aquaculture activity (within the meaning of section 4 of the Māori Commercial Aquaculture Claims Settlement Act 2004); and
- 10.2 in relation to paragraphs 11 and 12 of the application, to the extent the applicant seeks a protected customary right for an activity that involves the exercise of—
 - 10.2.1 a commercial Māori fishing right or interest, being a right or interest declared by section 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 to be settled; or
 - 10.2.2 a non-commercial Māori fishing right or interest, being a right or interest subject to the declarations in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and
- 10.3 to the extent the applicant seeks a protected customary right for an activity that relates to—
 - 10.3.1 in paragraphs 11(b) and 12 of the application, wildlife within the meaning of the Wildlife Act 1953, or any animals specified in Schedule 6 of that Act; or
 - 10.3.2 in paragraphs 11(c) and 12 of the application, marine mammals within the meaning of the Marine Mammals Protection Act 1978; and
- 10.4 the application does not sufficiently particularise how cultural or spiritual associations and activities for which recognition is sought, including kaitiakitanga (paragraphs 11 and 12) and “activities related to spiritual practices such as caring for water burial sites and other wāhi tapu, and imposing rāhui” (paragraph 11(d)), are manifested by the applicant group in physical activities or uses relating to natural or physical resources.
- 11. Contrary to section 101, the application does not sufficiently describe the customary rights for which recognition is sought including any limitations on

the scale, extent, or frequency of the exercise of the rights described at paragraphs 11 and 12.

Contents of the application: compliance with section 101

12. The application does not comply with section 101 of the Act as it does not:
- 12.1 name a person to be the holder of the order as the representative of the applicant group; and
 - 12.2 specify contact details for the group and for the person named to hold the order.
13. Contrary to s 101(h), the application is not supported by an affidavit or affidavits that set out in full the basis on which the applicant group claims to be entitled to the recognition order.

Attorney-General may file evidence

14. The Attorney-General reserves his ability to:
- 14.1 file evidence in relation to this application; and
 - 14.2 amend this notice.

7 March 2018



D A Ward
Counsel for the Attorney-General

TO: The Registrar of the High Court of New Zealand.

AND TO: The applicant, interested parties and overlapping applicants for Groups C, D and E.

SCHEDULE OF APPLICATIONS OVERLAPPING IN

CIV-2017-485-283

1. CIV-2017-485-298 A Kira for Whakarara Māori Committee - UNMAPPED
2. CIV-2017-485-398 L Collier & Ors for Ngāti Kawau and Te Waiariki Kororā - Groups A-G
3. CIV-2017-404-537 J Kingi for Ngā Puhī nui tonu - Groups A-G & U
4. CIV-2017-404-538 Rihari Dargaville for NZ Māori Council - Groups A-S
5. CIV-2017-485-512 Cletus Maanu Paul - Groups A-U
6. CIV-2017-404-523 J Tiatoa for Ngā Hapū ō Taiaimai ki te Marangi - Groups B & C
7. CIV-2017-404-558 R Dargaville for Ngaitawake - Groups B-G
8. CIV-2017-404-570 J Hotere & ors for Te Hikutu Hapū - Groups B-G
9. CIV-2017-404-535 M Taurua for Ngāti Rāhiri hapū tangata whenua I Te Tii Waitangi ki Te Pēwhairangi - Group C
10. CIV-2017-404-572 H Rihari for Ngāti Torehina ki Mataka - Group C
11. CIV-2017-485-349 Waikare Māori Committee for Te Kapotai - Group C
12. CIV-2017-404-577 Ngatokimatawharua Waka Te Tii-i-Waitangi Māori Inc for Ngāti Rāhiri & Ngāti Kawa - Group C
13. CIV-2017-485-265 Dr M Baker for ngā uri ō Tareha Kaiteke Te Kemara I, Ngāti Kawa & Ngāti Rāhiri - Group C
14. CIV-2017-485-277 A Hamilton for Ngāti Manu and hapū - Group C
15. CIV-2017-485-408 H Lyndon for Ngā Uri ō Hairama Pita Kino Davies whānau - Group C
16. CIV-2017-485-409 H Lyndon for Whangaroa Ngaio tonga Trust - UNMAPPED

17. CIV-2017-485-352 B Thompson for Rewha and Reweti whānau - Group C
18. CIV-2017-485-256 N McGee for McGee whānau - Group C
19. CIV-2017-485-306 S George for whānau of Ohawini - Group C
20. CIV-2017-488-29 P Leuluai-Walker for Haika, Hetaraka, Leuluai & other whānau - UNMAPPED
21. CIV-2017-485-231 Te Rūnanga o Ngāti Hine - Groups C & D
22. CIV-2017-485-515 E Reti for the Reti whānau of Whangaruru, Whangarei and Whangaroa - Groups C-F
23. CIV-2017-404-573 M Nova for Ngāi Tāhuhu, Ngāti Tuu & Ngāti Kukukea - Groups C-F
24. CIV-2017-485-228 D Peters & ors for Te Whakapiko hapū of Ngāti Manaia - Group D
25. CIV-2017-404-566 P Mahanga for Te Waiariki, Ngāti Kororā, Ngāti Takapari Hapū/Iwi of Niu Tirenī - Group D
26. CIV-2017-485-279 Ngunguru Marae Trust - Group D
27. CIV-2017-485-281 Patuharakeke Te Iwi Trust Board (PCR) - Group D
28. CIV-2017-485-286 Patuharakeke Te Iwi Trust Board (CMT) – Group D
29. CIV-2017-485-239 S Panoho for Te Rae Ahu Whenua Trust - Group D
30. CIV-2017-485-438 M Hughes for Henare Waata whānau - Group D
31. CIV-2017-404-554 K Rata for Ngā Hapū o Ngāti Wai - Groups D & E
32. CIV-2017-404-555 N MacDonald for Te Whānau o Hone Pipita Raua ko Rewa Ataria Paama - Groups D & E
33. CIV-2017-404-579 W Kingi for Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai - Groups D & E
34. CIV-2017-404-546 Ngāti Rehua-Ngātiwai ki Aotea Trust - Groups D, E & F

35. CIV-2017-404-563 Te Rūnanga o Ngāti Whātua - Groups D, E, F & G
36. CIV-2017-404-442 R Nathan for Rōpū o Rangitiri - Groups D, E & G
37. CIV-2017-485-250 Te Tāwharau o Ngāti Pūkenga - Groups D, F & H
38. CIV-2017-404-574 M Beazley for Ngāti Rehua and Ngātiwai ki Aotea - Group E
39. CIV-2017-485-188 V Bouchier for Pakiri G-Block 308, Ōmaha 1 & 2, Hauturu, Mahuki Island, Motairehe 2B1 & 4B1, Motutaiko Island - Group E
40. CIV-2017-485-378 M Beazley for Ngāti Maraeariki and Ngāti Rongo - Group E
41. CIV-2017-404-545 Ngāti Manuhiri Settlement Trust - Groups E & F
42. CIV-2017-485-276 A Hamilton for Ngāti Rongo o Mahurangi - Groups E & F
43. CIV-2017-404-524 K Parker for Mahurangi, Ngāti Awa, Ngāpuhi - Groups E & F
44. CIV-2017-404-564 Ngāi Tai ki Tāmaki Trust - Groups E, F & G
45. CIV-2017-404-569 R Minninnick for Ngāti Te Ata - Groups E, F & G
46. CIV-2009-488-205 Te Uri o Hau Settlement Trust - Groups E & G
47. CIV-2017-485-222 N Singh for Ngāti Tara Tokanui Trust - Groups E, F & H