

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

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

CIV-2011-485-793

IN THE MATTER OF The Marine and Coastal Area (Takutai
Moana) Act 2011

IN THE MATTER OF Application by Colin Francis Reeder and Ors
on behalf of Ngā Pōtiki a Tamapāhore Trust
for an order recognising Customary Marine
Title and Protected Customary Rights

Hearing On the papers

Appearances: Renika Siciliano for Ngā Pōtiki ā Tamapāhore Trust
Joshua Gear for Ngāi Te Rangi Settlement Trust
Michael Sharp for Ngāti Hē Hapū Trust
Tom Bennion for Te Tāwharau oNgāti Pūkenga
Geoffrey Melvin for the Attorney-General
Rachel Boyte for BOP Regional Council
Ellie Taffs for Transpower
Frances Wedde for Tauranga City Council

Date of Minute: 24 November 2022

MINUTE (No. 28) OF POWELL J
[Ngā Pōtiki – Minute No. 38 – Covid protocols and hearing times
Ngā Pōtiki Stage 1 (Part 2)]

[1] Further to the telephone conference I confirm the outcome of the conference with regard to the following issues:

- (a) covid protocols at the hearing; and
- (b) sitting times.

Covid protocol

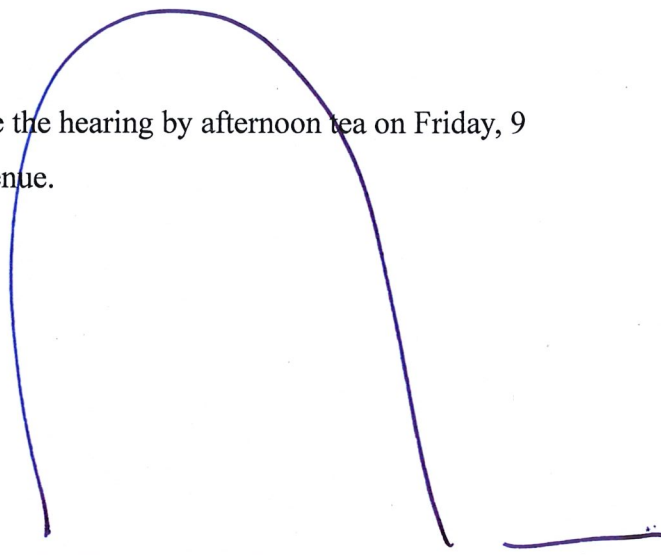
[2] As previously advised, I have reviewed the current Court protocol for Covid which was as promulgated on 13 September 2022. Most of the requirements are self-explanatory but judges are given a discretion as to how the protocol is to be applied including to what extent masks are to be worn in Court. Given the recent rise in cases and the well documented vulnerability of applicant communities I consider it prudent to require all those not directly speaking at any point whether ceremonial, giving evidence, questioning witnesses, or presenting submissions are to wear masks while present in the courtroom. Other consequential changes to the protocol have been made to reflect the specific nature of the hearing and the remote venue. The applicable protocol is annexed to this minute as Appendix A.

Sitting times

[3] Due to work to rule as a result of ongoing industrial action by the PSA the normal sitting times will be adjusted as follows (subject to any further changes that may be required and subsequently advised):

- (a) *1000* – Hearing to commence each day;
- (b) *1030-1050* – Morning tea;
- (c) *1230-1330* – Lunch adjournment;
- (d) *1500-1520* – Afternoon tea;
- (e) *1645* – hearing concludes for day.

[4] If possible, it is intended to conclude the hearing by afternoon tea on Friday, 9 December 2022 in order to dismantle the venue.



Powell J

APPENDIX A

Covid Protocol - Ngā Pōtiki Stage 1 Part 2 Hearing

5-9 December 2022

ENTRY TO COURT BUILDINGS

[1] The following requirements apply to entry into court buildings:

- (a) A person may not enter the court building if they are showing signs of illness;
- (b) A person who has tested positive for COVID-19 within the last 7 days may not enter the court building.
- (c) The Courts remain open to the public, but for health and safety reasons there may be limits on the number of people who are not directly involved in proceedings who are permitted to be physically present in courtrooms and court buildings.

MASKS

[2] All persons entering the Bay Park complex may wear a surgical mask or a KN95 mask and are encouraged to do so. Masks will be provided at the entry to the courtroom for all those who do not have their own mask.

[3] A surgical mask or KN95 mask must be worn by all persons present in a courtroom unless addressing the Court for ceremonial purposes, giving evidence, questioning witnesses, presenting submissions or otherwise addressing the judge.

CONDUCT OF HEARINGS

[4] The hearing will be conducted in person, but VMR facilities will be available and can be used by counsel where counsel are not directly involved in a particular hearing and/or there are other reasons that make an appearance in person inappropriate

(i.e Covid). Counsel not appearing in person on any given day are to advise the Registrar prior to the commencement of the particular hearing day so that there are no inadvertent delays caused.

RAPID ANTIGEN TESTS (RATS)

[5] A court participant who has any symptoms of COVID-19, however minor, must take a RAT before attending court:

- (a) If they test negative, and the symptoms are very minor (e.g., a scratchy throat), they may attend court but must wear a mask at all times.
- (b) If they test negative and the symptoms are more severe (e.g., runny nose, coughing) they must not attend court unless a judge so directs. If they are permitted to attend court, they must wear a mask at all times.
- (c) If they test positive, they must not attend court: see [8] below.

[6] The presiding judge may at any point require that some or all participants in a hearing longer than one day take a RAT in the morning before attending court, on such days as the judge directs, if the judge is satisfied that it is reasonably necessary to do so in the interests of justice and to protect health and safety in the courts.

[7] The Registry will advise counsel and any party who is not legally represented of the arrangements for obtaining RATs from the court.

[8] If a court participant receives a positive COVID-19 test result, they must not attend court (and if present at court, must promptly leave). Whether and how the hearing may be able to continue will be a matter for the presiding Judge to determine on a case-by-case basis.

[9] If a court participant is required to take a RAT, and declines to do so, the presiding Judge will determine whether and how the hearing will proceed.

HEALTH AND SAFETY

[10] The following health and safety measures can be expected in the court building:

- (a) Cleaning products will be available on site to enable Court staff and lawyers to keep their immediate areas clean;
- (b) Hand sanitiser will be readily available within the courtroom;
- (c) Face masks will be readily available outside the courtroom;
- (d) RAT kits will be available in court buildings.

[11] Any concerns about health and safety at the venue including the courtroom should be raised with the Court Security in the first instance.

EXPECTATIONS OF COUNSEL

[12] Counsel are expected to assist the Court by briefing clients and witnesses on the entry requirements and RAT testing requirements set out above;

[13] Counsel should consider and endeavour to agree whether it is appropriate for any witness to participate remotely and advise the Court of any such proposals well in advance of the hearing date.