

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

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

**CIV-2017-485-167
CIV-2017-485-171
CIV-2017-485-172
CIV-2017-485-182
CIV-2017-485-218
CIV-2017-485-251
CIV-2017-485-266
CIV-2017-485-280
CIV-2017-485-365**

IN THE MATTER OF an application for recognition orders under the
Marine and Coastal Area (Takutai Moana) Act 2011

BY Te Rūnanga o Rangitane o Kaituna
Tahuaroa Riwaka Houra Whānau
Tahuaroa-Watson Whānau
Henare Tahuaroa-Watson Whānau
Ngāti Koata
Te Rūnanga a Rangitāne o Wairau Trust
Ngāi Tu-ahu-riri Hapū
Te Rūnanga o Ngāi Tahu
Te Ātiawa o Te Waka-a-Maui Trust

On the papers:

Counsel: T Castle for CIV-2017-485-167
L Black for CIV-2017-485-17, CIV-2017-485-172 and CIV-2017-485-182
A K Irwin for CIV-2017-485-218
M Radich for CIV-2017-485-251
J Appleyard and R Robilliard for CIV-2017-485-218
R E Brown and F Dawson for CIV-2017-485-280
M Houra for CIV-2017-485-365
G Melvin for Attorney-General

Minute: 26 May 2023

MINUTE OF CHURCHMAN J
[Case Management Conferences 2023 – Nelson]

Introduction

[1] Seven separate memoranda have been received from counsel for all nine applicants whose cases are to be called at the case management conference (CMC) scheduled to take place in Nelson on 8 June 2023.

[2] No applicant seeks specific timetabling orders from the Court and all request dispensation from the attendance of counsel at the CMC.

[3] It is an appropriate case for all counsels' attendance to be excused, and for the CMC to be vacated. I make those orders and now address each of the applicants' memoranda individually.

CIV-2017-485-157 – Te Rūnanga o Rangitane o Kaituna

[4] This applicant has been significantly adversely affected by the unexpected death of its rangatira, Michael Bradley, in June of last year. Mr Bradley was the nominated applicant. The applicant seeks the substitution of Lynette Bradley for the late Michael Bradley, and this application is approved.

[5] The memorandum notes that this application overlaps with the claim of Te Rūnanga o Rangitane o Wairau Trust (CIV-2017-485-251) and possibly other Te Tau Ihu applicant groups. Counsel records that there will be an opportunity for all Te Tau Ihu applicants to confer. A number of these applicants have already conferred but it seems that this applicant is not one of them. They are encouraged to enter into kōrero with all applicants whose claims overlap with theirs and to seize the initiative rather than wait for other applicants to contact them. One of the matters that the applicants clearly need to discuss is any overlap particularly in the area extending seaward in the takutai moana from Havelock.

[6] The memorandum recorded that a professional historian had been engaged but counsel was unaware what progress had been made. Counsel will need to clarify that issue with the applicant and report promptly.

[7] The application is clearly not ready for hearing. Counsel suggests it would be appropriate for all Te Tau Ihu applications to be heard at the same time. As a general proposition, that is correct. However, if any applicant has not taken reasonable steps to progress their claim, they run the risk that the applicants who are ready will be allocated a fixture that they may not be able to fully participate in.

[8] This application is adjourned until the 2024 Nelson CMC.

CIV-2017-485-171 – Tahuaroa-Riwaka Houra Whānau;
CIV-2017-485-172 – Tahuaroa-Watson Whānau; and
CIV-2017-485-182 – Henare Tahuaroa-Watson Whānau

[9] Counsel's memorandum records that all applicants are in communication with overlapping applicants. The CIV-2017-485-171 (Waikawa) applicants are progressing their historical report but completion is some time away.

[10] The CIV-2017-485-172 (Arapaoa Island) applicants are seeking direct engagement with the Crown and have initiated discussions. The CIV-2017-485-182 (Whanganui Inlet) applicants are progressing their historical research but completion is still some time away. These applicants appreciate the need to engage more directly with Ngāti Rarua to whom they are closely related as that group is now actively progressing its application for Crown engagement. It is not clear what, if any, discussions with this applicant have occurred. As with the case of all overlapping claims, engagement between the parties is likely to be of considerable benefit and should occur as soon as possible.

[11] The application is adjourned until the 2024 Nelson CMC and the applicants are directed to specifically report on not just state of their evidence gathering but the extent of their interaction with all overlapping applicants.

CIV-2017-485-218 – H T Elkington (Ngāti Koata)

[12] This application is brought on behalf of Ngāti Koata's customary interests in the area between Pelorus Sound and Farewell Spit. Included in that claim area, Ngāti Koata claims exclusive customary marine title (CMT) for the area surrounding Rangitoto ki-te-Tonga (D'Urville Island) and protected customary rights (PCR).

[13] Ngāti Koata claim shared customary interests in other parts of the rohe.

[14] The memorandum records that Ngāti Koata is in active direct engagement with the Crown. It has engaged with all other Te Tau Ihu iwi, most of which do not have applications before the High Court. Dialogue is ongoing.

[15] Ngāti Koata anticipates that the process of direct engagement with the Crown in relation to Rangitoto ki-te-Tonga may be concluded by the middle of this year. Counsel has undertaken to advise the Court and parties directly as, and when, any s 95 agreement with the Crown is entered into.

[16] This application is adjourned until the 2024 Nelson CMC.

CIV-2017-485-251 – Te Rūnanga a Rangitāne o Wairau Trust

[17] This applicant has been advancing its application through the Crown engagement pathway. The applicant anticipates such engagement might conclude by the end of 2024. There have been some preliminary discussions with overlapping interests including Ngāti Koata (in relation to Rangitoto ki-te-Tonga). No agreements have been reached yet but Rangitāne are hopeful an agreement is possible.

[18] The memorandum referred to the need to amend the application in respect of the application area for PCR orders to remedy what are said to be some apparent inconsistencies between the High Court and Crown Engagement applications. An amended application is to be filed by 30 June 2023.

[19] The application is adjourned until the 2024 Nelson CMC. Should any s 95 direct engagement agreement be reached prior to that date, Rangitāne is to advise the Court.

CIV-2017-485-2666 – Ngāi Tu-ahu-riri Hapū

[20] The memorandum records that a historian has been engaged and other evidence has also been prepared. Preliminary discussions have been held with Te Rūnanga o Ngāi Tahu in relation to overlapping claims.

[21] The case is not yet ready for hearing and is adjourned until the 2024 Nelson CMC. As requested, leave is reserved to the applicant to seek timetabling toward a hearing should a final position be reached in relation to its discussion with the overlapping claimant, Ngāi Tahu.

CIV-2017-485-280 – Te Rūnanga o Ngāi Tahu

[22] The memorandum records that this applicant is giving consideration to whether it should split its claim amongst its 18 Papatipu Rūnanga for practical and funding reasons.

[23] Some two-thirds of the Papatipu Rūnanga have accessed funding for the purposes of evidence gathering, including that of professional historians. Some of the Papatipu Rūnanga are much closer to being prepared for a hearing than others. Counsel's memorandum reports that funding remains an issue and there are ongoing engagements with Te Arawhiti. The lack of availability of historians to conduct professional research is also hampering progress.

[24] There are overlapping applications not only with members of Ngāi Tahu Whānui but other non-Ngāi Tahu applicants.

[25] Ngāi Tahu supports the Ruapuke Island applicant groups who are seeking a hearing towards the beginning of 2025.

[26] Ngāi Tahu seek a further 12-month adjournment but want an indication as to when a hearing might actually be set down for those Papatipu Rūnanga in the Ngāi Tahu Takiwā who are close to being ready for hearing.

[27] The Court cannot give such an indication in the abstract as, when a particular applicant might be allocated a hearing, will depend on a number of matters presently unknown including the area and extent of the application for which a hearing sought, the number and nature of any overlapping claims, and the readiness for hearing of surrounding applicants.

[28] All that can be said with certainty is that the Court is looking to set down applications, or groups of applications, for hearing and has committed to a number of hearings in the latter half of 2023 and 2024. It is unlikely that a hearing in relation to the Ngāi Tahu Takiwā will be able to be set down before 2025 unless it was for a confined area with limited overlaps.

[29] This matter is adjourned until the 2024 Nelson CMC.

CIV-2017-485-365 – Te Ātiawa o Te Waka-a-Maui Trust

[30] Some limited discussions with five overlapping applicants have occurred. The applicant has not yet appointed a project manager to further their application and engage in Te Arawhiti. The applicant is encouraged to prioritise this without further delay so that it does not risk being left behind by other applicants who have completed preparation for a hearing and are ready to proceed.

[31] This application is adjourned until the 2024 Nelson CMC.

[32] Ngāti Rarua, a Te Tau Ihu applicant who has followed the direct engagement pathway and has not pursued a High Court claim, has filed applications to participate as an interested party in the High Court hearings of five overlapping claimants. I will issue a separate decision addressing those applications.

Churchman J