

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

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

CIV-2011-485-817

IN THE MATTER OF	the Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	an application for an order recognising Customary Marine Title and Protected Customary Rights
BY	the late Claude Augustin Edwards (deceased), Adriana Edwards and others on behalf of Te Whakatōhea

On the papers:

Counsel: T Sinclair for Te Whakatōhea (CIV-2011-485-817)
L Delamere for Pakowhai (CIV-2017-485-264)
C Davis for Ngāti Muriwai (CIV-2017-485-269)
L Delamere for Te Whānau a Apanui (CIV-2017-485-278)
D Flavell for Hiwarau C (CIV-2007-485-375)
L A Underhill-Sem for Te Whānau a Apanui (CIV-2017-485-318)
R Siciliano for Te Whānau a Mokomoko (CIV-2017-485-253)
E Whiley for Ngāti Patumoana (CIV-2017-485-253)
C Linstead-Panoho for Ngāi Tamahaua Hapū (CIV-2017-485-262),
and Te Hapū Titoko o Ngāi Tama (CIV 2017-485-377)
A Sykes for Ngāti Ira o Waioweka Rohe (CIV-2017-485-299)

Minute: 31 January 2020

MINUTE (NO 6) OF CHURCHMAN J

[1] This minute addresses three issues:

- (a) a request for an extension for time for the filing of evidence by Te Whānau a Apanui contained in a memorandum dated 17 January 2020. The extension of time is sought from 30 January 2020 to 31 March 2020;

(b) the request set out in the memorandum dated 29 January 2020 filed on behalf of:

- (i) CIV-2017-485-264: Pakowhai – Larry Delamere
- (ii) CIV-2017-485-269: Ngāti Muriwai – Christina Davis
- (iii) CIV-2017-485-278: Te Whānau a Apanui – Larry Delamere
- (iv) CIV-2017-485-375: Hiwarau C – Dean Flavell

seeking a two-week extension from 30 January 2020 for the filing of their evidence;

(c) what should happen to the 7 February 2020 case management conference (CMC) scheduled in this matter?

Te Whānau a Apanui application

[2] The memorandum filed in support of this application notes that the timetabling direction made by the Court on 29 November 2019 required applicants whose claims overlapped with Te Whakatōhea to file their evidence no later than 5 pm, 30 January 2020, and that interested parties who wish to file evidence were required to file and serve that no later than 5 pm, 31 March 2020, with the Crown to file its evidence by 26 May 2020.

[3] It is claimed that counsel did not receive a copy of the minute of the Court dated 29 November 2019 and were not served with the evidence filed by Te Whakatōhea dated 29 November 2019. The memorandum stated counsel only became aware of the minute and the evidence that had been filed when they made enquiries to the Court on 15 January 2020.

[4] Investigations by the Registrar have revealed that the reason that counsel did not receive the minute or Te Whakatōhea's evidence is because both documents were sent to the current address for service as per the Court files. It appears that when the current solicitors representing Te Whānau a Apanui took over the file from the previous solicitors,

they did not file and serve an updated address for service. They will need to do that forthwith.

[5] It also appears that counsel for Te Whānau a Apanui did not attend the CMC held in Rotorua in this matter in July 2019. The minutes of that CMC, and indeed all of the Court's minutes in relation to this matter including the minute of 29 November 2019, are posted on the Courts of New Zealand website under the section relation to applications under the Marine and Coastal Area (Takutai Moana) Act. It appears that counsel has not referred to that website either.

[6] I also observe that counsel cannot have been unaware that Te Whakatōhea's application was one with statutory priority and was proceeding toward a hearing. In those circumstances, it is inconceivable that the preparation of evidence on behalf of Te Whānau a Apanui would not have been commenced some time ago.

[7] The application for a two-month extension is opposed by the cross-applicants listed in the memorandum of 17 August 2019. They submit that all that should be granted is an extension until 14 February 2020 with those cross-applicants also being granted the same indulgence.

[8] It appears, from the memorandum filed that all parties are anxious that the August 2020 substantive hearing not be jeopardised.

[9] At the very least, since mid-January 2020, counsel for Te Whānau a Apanui have been aware of the timetable directions. As mentioned, they would have been aware of the need to prepare evidence for the August 2020 substantive hearing some long time before that, and almost certainly will have embarked on that process. Altering the dates for the filing of evidence by two months will inevitably disrupt the timetable and potentially adversely affect other applicants.

[10] Attempting to balance the interest of all parties, I am prepared to extend the time for Te Whānau a Apanui to file and serve its evidence until 5 pm, Friday 21 February 2020. In the circumstances, the four cross-applicants referred to in [7] above will also be granted the same indulgence.

Cross-claimants extension application

[11] The four cross-claimants referred to in [7] of this minute sought an extension until 14 February 2020 in relation to the filing of their evidence on the basis that:

- (a) the Whakaari Island tragedy had diverted the attention of their witnesses; and
- (b) a computer malfunction had resulted in part of a historian's report being lost.

[12] These are matters which support some extension being granted. Instead of the 14 February 2020 extension date sought, as explained above, because I have granted Te Whānau a Apanui an extension until 21 February 2020, it is appropriate that these cross-applicants are required to file their evidence by the same date. Obviously, if their evidence is able to be filed earlier, that can be done.

[13] A memorandum dated 29 January 2020 was filed by counsel for cross-applicants in the following proceedings:

- (a) CIV-2017-485-253: Te Whānau a Mekomoko;
- (b) CIV-2017-485-299: Ngāti Ira o Waioweka Rohe;
- (c) CIV-2017-485-262: Ngāi Tamahau Hapū;
- (d) CIV-2017-485-377: Te Hapū Titoko o Ngāi Tama; and
- (e) CIV-2017-485-253: Ngāti Patumoana.

They did not oppose the two-week extension sought by the other four cross-applicants but were concerned that there may be some prejudicial effect on other cross-applicants who have filed their evidence on time. They sought a direction that any extension granted be extended to all overlapping applicants.

[14] In the circumstances, I am prepared to vary the timetable so that all overlapping applicants file and serve their evidence no later than 5 pm, 21 February 2020. I would encourage cross-applicants to file their evidence earlier if they are in a position to do so.

[15] Given that all counsel are anxious that the substantive fixture proceed, it is important that timetable requirements are complied with. It is unhelpful for any counsel to wait until the day before a timetable limit expires to file an application to the Court seeking variation of that timetable direction.

Case management conference

[16] The 7 February 2020 CMC was scheduled in the anticipation that all applicants' evidence would have been filed by 30 January 2020. Counsel advise that inter-tribal hui are underway and it is proposed that the 7 February 2020 CMC will be vacated and replaced with a CMC in early March 2020.

[17] This seems sensible and accordingly I vacate the CMC of 7 February 2020 and request the Registrar to schedule a new CMC on a suitable date in March 2020. That date will be notified to counsel by the Registrar.

[18] All counsel who wish to participate in the substantive hearing in August 2020 are required to file and serve a memorandum setting out any issues requiring the attention of the Court no later than five working days prior to the date fixed for the March 2020 CMC.

Churchman J