

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

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

CIV-2011-485-789

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	CATHERINE MARJORIE CLARKSON AND OTHERS

Hearing: 7 February 2020

Counsel: A J A Hope (for Applicant)
J Ferguson for CIV-2017-485-221
R Siliciano (by AVL) for CIV-2017-485-224
C Hirshfeld (by AVL) for CIV-2017-485-480
F R Wedde for Whanganui/Manawatu Regional Council and
Central Hawkes Bay District Council (Interested Parties)
L Watson (by memorandum) for CIV-2017-485-193
G L Melvin for Attorney-General (Interested Party)

Minute: 10 February 2020

MINUTE (NO. 2) OF CHURCHMAN J

[1] This application is a priority application and a substantive hearing has been scheduled to commence on 2 November 2020 for four weeks before Mallon J.

[2] At a case management conference (CMC) held in this matter on 28 May 2018, a fixture was allocated for two weeks commencing on 15 July 2019. A timetable was set for the filing and exchange of evidence with the applicant's evidence to be filed and served by 17 October 2018, the evidence of overlapping applicants who contested the applicant's application to be

filed and served three months later (16 January 2019) along with any statements of evidence from other interested parties who were not applicants.

[3] The Attorney-General was given three months to file evidence by 19 April 2019 with the date for any pre-trial applications to be filed and served to be two weeks later (3 May 2019).

[4] It appears that the applicant filed some evidence in accordance with that minute, and possibly the Attorney-General, but when the fixture was vacated none of the other parties filed evidence.

[5] In a memorandum dated 4 February 2020, Mr Hope, for the applicant, indicated that he intended filing further evidence and also said that “The Applicant is considering commissioning a professional historian to prepare a report for filing.”

[6] While none of the other parties to this application objected to the filing of further evidence by the applicant, the Court was concerned that it was only at this relatively late stage that consideration was being given to the possibility of a report from a professional historian. The Court is aware that there is a limited pool of such historians and that their services are in considerable demand both in relation to applications under this Act and also in relation to proceedings before the Waitangi Tribunal.

[7] In addition to possible evidence from a historian, Mr Hope indicated that he anticipated filing some evidence arising from his review of the Māori Land Court records relating to the ownership of adjacent land blocks. He indicated that such evidence could be filed and served by 28 February 2020, and I direct that all additional evidence (other than what might be produced by a historian) be filed and served by 28 February. If there is to be evidence from a historian, that is to be filed and served by 31 March 2020.

Overlapping claimants

[8] The overlapping claimants represented by Mr Ferguson, Ms Siciliano and Mr Hirshfeld, all intend limiting their participation in the hearing to responding to the claim made by the applicant. They do not wish to advance the whole of their application or even that part of it that overlaps with the Clarkson application. That is likely to limit the scope of the hearing

considerably. The position of Mr Watson's client is unclear. In a memorandum dated 4 February 2020 he simply said that his client reserved their right to participate in the proceedings. If his client wants to file evidence, they will need to comply with the timetable directions.

[9] The cross-applicants (and interested parties) have now had what I anticipate will be the bulk of the applicant's evidence for a very considerable time. This impacts on what might be their reasonable need for time to respond to that and prepare such evidence as they wish to tender in respect of it. Accordingly, I direct that all the cross-applicants file and serve their evidence by 1 May 2020.

[10] Ms Wedde indicated that the local authority interested parties did intend to call evidence. Obviously, the nature of that evidence will depend on the evidence called by the applicant and the cross-applicants. I direct that such evidence be filed and served by 30 May 2020.

[11] Mr Melvin, on behalf of the Attorney-General, indicated that some evidence had already been filed and that it was proposed that further evidence may also be filed. He indicated that he ideally wanted three months from the filing of other parties' evidence. However, in the circumstances where the Crown would have had the bulk of the applicant's evidence for some considerable time, and the cross-applicants had indicated that they will not be advancing their own claims (as opposed to countering aspects of the applicant's claim), an appropriate time for the Crown to file and serve any remaining evidence will be 20 July 2020.

[12] It is appropriate that the applicant has an opportunity to reply to any evidence filed by the cross-applicants or interested parties and any such evidence shall be filed and served by 15 August 2020. I direct that the close of pleadings date is 1 September 2020.

Miscellaneous matters

[13] Mr Hope raised the possibility of a site visit. As Mallon J is to preside in relation to this hearing, it will be a matter for her to consider whether a site visit is appropriate. However, it is useful to note that in civil proceedings the cost of a site visit is paid for by the party requesting it. Depending on exactly what is involved, that cost could potentially be significant.

If Mr Hope wishes to pursue an application for a site visit, he is to file and serve a formal application with supporting affidavit no later than 1 May 2020. The Court will then set a date for this interlocutory application and any others to be dealt with.

[14] The Court has raised with the parties the possibility of appointment of a pukenga. The parties are encouraged to consult with each other in the expectation that they will agree on the identity of a pukenga. The parties are directed to either file a joint memorandum on this point by 1 May 2020 or if they are unable to agree, individual memoranda. The Court will then consider that issue on the papers.

[15] Should any of the parties' witnesses wish to exercise their right to give their evidence in Māori, notice is to be given no later than 1 May 2020.

[16] Mr Melvin drew to the Court's attention the fact that there may be some parties who have sought direct engagement with the Crown and who have not pursued Court proceedings, and who may be unaware of this priority fixture. He submitted that in fairness, they should have the date of the priority hearing advised to them.

[17] The Court is not aware of any such applicants because the Court is not notified of who has sought direct engagement. There is no reason why Mr Melvin should not notify any such parties that he is aware of, who are in that position. However, given that the time for joining an application as an interested party has expired, it is not clear how they might be able to participate in this hearing.

Churchman J