

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

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

CIV-2011-485-821

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

IN THE MATTER OF an application by the Trustees of the
Ngāti Pāhauwera Development Trust
TORO WAAKA, TUREITI MOXON,
CHAANS TUMATAROA-CLARKE,
REX ADSETT, GERALD ARANUI,
AMIRIA TOMOANA and TOM KEEFE
on behalf of NGĀTI PĀHAUWERA for
Customary Marine Title, Wahi Tapu
Protection and Protected Customary Rights

On the papers:

Counsel: K Anderson for Maungaharuru-Tangitū Trust (CIV-2017-485-241)
 S J Roughton for Ngai Tahu o Mōhaka Waikare (CIV-2017-485-235)

Minute: 12 May 2020

MINUTE (NO. 6) OF CHURCHMAN J

Background

[1] Counsel for Maungaharuru-Tangitū Trust (MTT) filed a memorandum dated 1 May 2020 seeking a variation of the timetable directions made in this matter on 25 February 2020.¹

[2] The memorandum also sought to have a right of reply to matters raised by Ngāti Pāhauwera in reply to MTT's evidence. A third issue raised was clarification as to exactly what cases will proceed to hearing in February 2021.

¹ Minute (No 2) of Churchman J, 25 February 2020 at [9]-[13].

[3] By memorandum dated 4 May 2020, counsel for Ngai Tahu o Mōhaka Waikare (Ngai Tahu) raised similar issues.

Clarification re hearing

[4] The memoranda drew to the Court's attention a minute of Collins J that had been issued on 12 February 2019 directing that in addition to the Ngāti Pāhauwera application, the applications by MTT, Ngai Tahu and Ngāti Pārau would be heard contemporaneously with the Ngāti Pāhauwera application.

[5] The Court having already directed that, the comments in my minute of 25 February 2020 suggesting that only parts of the overlapping application would be heard along with the Ngāti Pāhauwera application, are incorrect. I confirm that all of the applications referred to in the above minute of Collins J will be heard in full.

Amendment to timetable

[6] The Court accepts that, because of the stage that evidence preparation was at for the cross-applicants at the time of the imposition of the COVID-19 lockdown restrictions, that the preparation of evidence would have been significantly affected.

[7] MTT submitted that its witnesses would need approximately six weeks once domestic travel is permitted to complete their evidence.

[8] The minute of 25 February 2020 required the various cross-applicants to file their evidence by 30 June 2020.

[9] At the time the MTT and Ngai Tahu memoranda were filed, it was not clear when New Zealand would return to COVID-19 level 2. It has just been announced that this will occur on 14 May 2020. Depending on the detail around activities allowed under level 2, it is possible that MTT will have the six weeks period that it is seeking and Ngai Tahu the four-week period without the timetable date of 30 June 2020 being amended.

[10] Therefore, I do not propose, in this minute, to formally amend the timetable but will request the Registrar to arrange a teleconference in four weeks' time when progress toward completion of evidence is likely to be known with greater clarity than exists at the moment.

[11] As counsel for MTT acknowledged in their memorandum, any significant alteration to the timetable is likely to jeopardise the hearing scheduled to commence in February 2021. High Court hearings of as long as seven weeks are not easy to come by, particularly in provincial centres such as Napier and, if it becomes necessary to vacate the hearing, there is likely to be significant delay before a replacement fixture can be allocated. None of the parties are likely to welcome that.

Reply evidence

[12] It is appropriate that the cross-applicants have an opportunity to respond to matters raised by Ngāti Pāhauwera in reply to their evidence. Had that issue been raised at the case management conference (CMC) that set the timetable, it would have been incorporated into the timetable.

[13] As the timetable presently stands, the close of pleadings date is 22 December 2020, and all parties' opening submissions are to be filed and served by 26 January 2021.

[14] There is no difficulty in granting the cross-applicants' leave to file evidence strictly in reply after the close of pleadings date, but the practical reality is that such evidence would have to be filed prior to the date upon which submissions are due. That would necessitate a filing date occurring in the period of time normally observed as the Christmas vacation. A workable alternative may be reserve to the cross-applicants, the right to address such evidence on an oral basis at the hearing.

[15] Again, instead of ruling on this point at this stage, this is a matter which will be addressed at the CMC to be scheduled in approximately four weeks' time. All parties will then have the opportunity of expressing their views on it.

Churchman J