

**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: B Cunningham for Applicant
M Mahuika for Te Whānau-a-Apanui
B Lyall for Te Upokorehe
A Sykes for Ngāti Ira o Waioweka Rohe

Minute: 31 July 2020

**MINUTE (NO. 20) OF CHURCHMAN J
[Request for variation to timetable order]**

Background

[1] The application by the late Claude Augustin Edwards on behalf of Whakatōhea is a priority application. It has been set down for an eight-week hearing to commence in Rotorua on 17 August 2020. A number of overlapping applications are to be heard with it.

[2] This matter has been the subject of a number of timetable directions. At the request of the parties these have been varied. The issue of the timetable was also addressed by the Court at the recent Rotorua case management conference (CMC).

[3] By email sent to the Court at 3:18 pm on 31 July 2020, Mr Cunningham, on behalf of the priority applicant, sent an email to the Registrar which said:

The Edwards and WKW applicants seek an extension of time to Wednesday, 5 August 2020 in which to file reply submissions. The applicants are attending a hui this Sunday to formulate their instructions.

[4] That request for a variation has been opposed by other parties. Mr Lyall, on behalf of Te Upokorehe submits:

The deadline has been known for some time, and any extension effectively allows a reply to reply evidence that is filed on time. Any extension would have downstream effects on the timetable to follow.

[5] Mr Mahuika, on behalf of Te Whānau-a-Apanui submits:

The hui being held on Sunday must also have been known about well in advance of 3:18 pm today when the extension was sought.

Granting the extension sought effectively provides an opportunity for replies to be made to replies. We are preparing to file reply evidence today. However, if an extension is to be granted then we respectfully submit that it be granted to all parties.

Discussion

[6] The Court has endeavoured, wherever possible, to accommodate requests for variation of the directions given in this matter. Where something genuinely unforeseen has occurred and no significant prejudice would occur to another party, such requests have usually been granted.

[7] However, in relation to this request, there does not appear to be anything unforeseen about the scheduling of a hui. Any amendment to the time for filing reply evidence will inevitably be met by applications from other parties for a variation in respect of their reply evidence if it has not already been filed.

[8] If granted, the variation would effectively allow the priority applicants to reply to other reply evidence.

[9] The Court has extended considerable leniency to the priority applicants in respect of a number of recent applications for extension of time. However, in this case, the Court is not satisfied that the request is the result of something unforeseen or out of the control of the priority applicants.

[10] It is also a request which, if granted, would cause prejudice to other parties and disruption to the timetable. Accordingly, it is declined.

Application by Ngāti Ira o Waioweka

[11] By memorandum of counsel dated 31 July 2020, Ms Sykes, on behalf of Ngāti Ira o Waioweka, filed the reply evidence of one witness, Carlo Hemoana Gage, but sought an extension of time until Monday 3 August 2020 to file their reply evidence of Amber Rakuraku-Rosieur. The memorandum advised that Mrs Rakuraku-Rosieur was presently caring for her husband who recently underwent surgery at Rotorua Hospital.

[12] Given that one of the two briefs of evidence in reply has been filed on time and the circumstances surrounding the filing of the brief of evidence of Mrs Rakauraku-Rosieur one day late are explained. The Court grants the application for an extension of one day to file and serve Mrs Rakauraku-Rosieur's reply evidence.

Churchman J