

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

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

CIV-2017-485-218

IN THE MATTER OF An application by HORI TURI ELKINGTON, of
Wellington, trustee of the Ngāti Koata Trust, for
Recognition orders under the Marine and Coastal
Area (Takutai Moana) Act 2011

Hearing: 29 June 2020

Counsel: R Zwaan for Te Whānau Tima and Te Pahu o Te Mateawa
 G Erskine for Muaūpoko iwi
 C Conroy-Mosdell for Ngāti Raukawa ki Te Tonga
 M D McGhie for David Morgan Whānau
 M Houra for Te Atiawa ki te Upoko
 T H Bennion and G Davidson for Muaūpoko iwi, Te Pautokotoko,
 and Ngāti Hinewaka
 L Watson (via AVL) for Ngati Kere Hapū
 J Ferguson for Ngāti Kahungunu ki Wairarapa Tāmaki-nui-ā-Rua
 Settlement Trust, Te Awa Tupua, and Ngā Hapū o Te Iwi o
 Whanganui
 M Solomon for Hunau of Tame Horomona Rehe and Moriori Imi
 G L Melvin for Attorney-General (Interested Party)

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

**I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE**

Hearing: 1 July 2020

Counsel: R E Brown and G F Dawson for Te Rūnanga o Ngāi Tahu
 J Inns for Ruapuke Island Group
 R Fife for Te Whānau o Topi

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

**I TE KŌTI MATUA O AOTEAROA
WHAKATŪ ROHE**

Hearing: 2 July 2020

Counsel: S Wadworth for Rangitane o Wairau in Te Tauranga Ihu o
Te Waka a Maui
T J Castle for Te Rūnanga a Rangitane o Kautuna Incorporated
L Black for Riwaka Houra Whānau, Puketapu Hapū, Puketapu Hapū,
and Whanganui inlet
J Appleyard for Upoko Ngai Tu-ahu-riri Hapū
M Houra for Te Atiawa o Te Waka a Maui Trust
A Kirwin for Hori Turi Elkington and Trustee of the Ngāti Koata Trust
R Fitchett for Pitapisces Enterprises (Interested Party)

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

**I TE KŌTI MATUA O AOTEAROA
TŪRANGANUI-A-KIWA ROHE**

Hearing: 7 July 2020

Counsel: B R Lyall for Ngā Hapū o Kokoronui ki Te Toka a Taiau Takutai
Kaitiaki Trust, and Te Rauhinā Marae and Hapū
B Tupara for Ngāti Oneone (watching brief only)
G Erskine for Ngā Hapū o Tokomaru Akau
C Beaumont for Te Whānau a Umuariki, Te Whānau a Rākairoa ki
Waipiro, and Te Whānau a Iritekura
H K Irwin-Easthope for Ngāi Tāmanuhiri Tūtū Poroporo Trust
T B Johnson for Ngā Hapū o Ngāti Porou and Te Runanganui o
Ngāti Porou
L Thornton for Te Whānau a Umuariki
J Mason for Cletus Maanu Paul
C Hockly for Rongomaiwahine Iwi Trust
G L Melvin for Attorney-General (Interested Party)

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

**I TE KŌTI MATUA O AOTEAROA
TAURANGA MOANA ROHE**

Hearing: 8 July 2020

Counsel: J Lewis for Ngā Pōtiki a Tamapahore Trust and Ngāti Tara
Tokanui Trust
J N Gear for Ngā Hapū o Ngāi Te Rangi
S T Webster for Ngāti Pūkenga, Ngāi Te Hapū Inc,
Ihakara Tangitū Reserve, and Ngāti Hē Hapū Trust
B R Lyall for Ngāti Porou ki Hauraki
H Irwin-Easthope for Te Rūnanga o Ngāti Awa
H Berger for Tangihia Hapū and Ngāti Whakaue
J Koning for Ngāti Whakahemo

Interested Parties:

T Waikato for Bay of Plenty Regional Council
G L Melvin for Attorney-General

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

**I TE KŌTI MATUA O AOTEAROA
KIRIKIROA ROHE**

Hearing: 13 July 2020

Counsel: A T Sykes and J Chaney for Tainui Hapū o Tainui Waka
C Leauga for T Āwhitu on behalf of Ngāti Te Wehi
B J Loader for West Coast Iwi and Hapū ki Marokopa Marae
H Rauputu and H Jamieson for Tootill and Ngā Hapū o Mokau ki Runga
J Ferguson for Waikato-Tainui
G L Melvin for Attorney-General (Interested Party)

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

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-Ā-KAHU ROHE**

Hearing: 14 July 2020

Counsel: T Sinclair for Te Whakatōhea, Whakatōhea Pākowhai, Hiwarau,
Turangapikitoi, Ohiwa of Whakatōhea, Ngāti Muriwai,
Te Whānau-a-Apanui Hapū, and Te Uri o Tehapu
E Rongo for Ngāti Tai and Ririwhenua Hapū
A T Sykes and J Chaney for Ngāti Ira o Waioweka Rohe
T H Bennion for Ngāti Patumoana
R Siciliano for Te Uri o Whakatōhea Rangatira Mekomoko
C M T Linstead-Panoho and T K Williams for Te Hapū o Titoko Ngāi
Tama and Ngāi Tamahaua
H Irwin-Easthope for Te Rūnanga o Ngāti Awa
B Lyall for Kahukore Baker (Te Ūpokorehe)
N Coates for Te Whānau a Apanui
K Feint QC for Ngāti Ruatakenga and Whakatōhea Māori Trust Board
C Leauga for Te Whānau o Harawaka
M Sinclair for Ngāti Muriwai

Interested Parties:

T Reweti for BOP Regional Council and Opotiki District Council
R Roff, G L Melvin, R Budd and S Gwynn for Attorney-General

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

**I TE KŌTI MATUA O AOTEAROA
NGĀMOTU ROHE**

Hearing: 16 July 2020

Counsel: J Inns for Ngāti Ruanui Trust
T Bennion and E Whiley for Araukuuku Hapū
T Castle for Ngāti Mutunga o Wharekauri Iwi Trust
M Piripi for Te Kaahui o Rauru Trust
D Edmunds for Kanihi-Umutahi Hapū, Okahu-Inuawai Hapū,
Ngāti Manuhiakai Hapū, Ngāti Tu Hapū, Ngāti Haua Hapū,
and Ngāti Tamaahuroa-Titahi Hapu
A Kirwin for Te Kahui o Taranaki Iwi and Ngāti Mutunga
N Milner for Te Kotahitanga o Te Ātiawa Trust
T Hovell for Ngāti Tama

Self-represented:

M Brooks for Okahu Inuawai Hapū
D Noble for Kanihi-Umutahi me etahi Hapū
M Robinson for Ngāti Manuhiakai
D More for Ngāti Haua Hapū, Ngaruahinerangi
C Scott for Ngāti Tamaahuroa and Titahi Hapū and Oeo Pa Trustees
H Manuirirangi for Ngāti Tu Hapū Whenua Toopu Trust and
Waiokura Marae and Reserves Trust

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

**I TE KŌTI MATUA O AOTEAROA
WHANGĀREI TERENA PARĀOA ROHE**

Hearing: 21 July 2020

Counsel: L Thornton for Te Rae Ahu Whenua Trust, Ngā Hapū o Taiaimai
ki te Marangai, Ngāti Kawau, Ngāti Kawhiti, Ngāti Haiti,
Ngāi Tupango, and McGee Whānau
C M Hockly for Te Whakapiko Hapū of Ngāti Manaia; Reweti and
Rewha Whānau; and Te Parawhau
S Downs for Ngāti Hine, Ngāti Kawa and Ngāti Rahiri; Te Kapotai,
and Te Aupouri
T Afeaki for Ngā Hapū o Tangaroa ki te Ihu o Manaia tae atu ki
Mangawhai and Ngā Hapū o Ngāti Kahu
T Sinclair for Ngāti Manu and Ngāti Rangī, Ngāti Rāhiri Hapū,
Ngā Hapū o Ngātiwai Iwi and Ngāti Kahu, Te Rarawa and
Te Uriohina

Interested Parties:
A J Golightly for Northport Limited
G L Melvin for Attorney-General

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

Hearing: 22 July 2020

Counsel: B Lyall for Ngāti Rehua-Ngātiwai ki Aotea and Ngāti Maraeariki
T Gorman for Te Whānau-a-Haunui
R Jones for Ngāti Whātua Ōrākei
G L Melvin for Attorney-General (Interested Party)

Minute: 25 August 2020

**MINUTE OF CHURCHMAN J
[Case Management Conferences 2020]**

PART I

Introduction

[1] This minute will be divided into four parts:

- (a) Part I provides a general overview of developments since the last series of national case management conferences (CMCs) in June 2019;
- (b) Part II details the issues that arose at those CMCs;
- (c) Part III records the current situation of the priority applications (other than those that were not scheduled to be called at the CMCs); and
- (d) Part IV summarises the directions made in respect of all other applications.

Overview

[2] The Court has issued a number of judgments over the past 12 months which have given guidance to claimants and interested parties as to the operation of the Act and the rights of various parties to participate in proceedings under the Act. Some of the more significant decisions are:

- (a) *Re Collier & Ors* [2019] NZHC 2096, a small number Ngā Puhi applicants had requested certain questions to be referred by the Court to the Māori Appellate Court under s 99 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act). This decision, declining that request gave guidance on when it might be appropriate for the Court to utilise s 99.
- (b) *Re Ngāti Whakaue ki Maketū Hapū* [2019] NZHC 2360. This decision addressed the entitlement of an interested party to participate in a hearing and the role of the former Attorney-General appearing as counsel for an interested party, along with the circumstances when it may be appropriate

for the Court to hold a preliminary hearing under HCR 10.15 of the High Court Rules 2016 (HCR).

- (c) *Re Ngāti Torehina* [2019] NZHC 2658. This judgment addressed and defined the role and status of the Attorney-General in proceedings under the Act holding:
 - (i) the statute specifically permitted the Attorney-General to become an interested party;
 - (ii) the Court also had inherent jurisdiction to permit the Attorney-General to become an intervenor in the public interest;
 - (iii) the Act did not cast the Attorney-General as a defendant or require him to be a contradictor in all cases, but he was free to oppose aspects of an application where issues of public interest justified that;
 - (iv) cases relating to the inherent jurisdiction of the High Court gave some guidance as to what might be in the public interest;
 - (v) if challenged, the Attorney-General is obliged to satisfy the Court that there is a legitimate public interest which justifies the position being taken;
 - (vi) as an interested party, the Attorney-General does not support any sectional interest, only the interests of the public generally.
- (d) *Re Ngāti Pāhauwera Development Trust* [2020] NZHC 1139. The Court struck out part of an amended application that materially changed the original application. The decision gives some guidance as to what amendments are permissible and what amendments are not.
- (e) *Re Whakatōhea* [2020] NZHC 1549. This case dealt with the question of what sort of preliminary issues are able to be dealt with by the Court

prior to a substantive hearing, and when it will be appropriate for a party to apply for a direction under s 61(1)(b) of the Te Ture Whenua Māori Act 1993.

- (f) *Re Whakatōhea/Ruatakenga* [2020] NZHC 1905. This case gave guidance on the level of specificity required in an application to comply with the provisions of the Act.
- (g) *Re Dargaville* [2020] NZHC 2028 and *Re Paul* [2020] NZHC 2039, the Court struck out the two “national” applications and clarified the consequences of the failure by applicants to comply with the various statutory requirements in notices of application and the consequences of attempting to amend an application so as to advance claims on behalf of applicants who had not been identified in the original application, and whose claims were filed out of time.

COVID-19

[3] The COVID-19 pandemic and extended Level 4 lockdown had a significant impact on the ability of counsel to continue preparation for hearings as a result of the difficulties of counsel communicating with witnesses, especially those who resided in remote areas and/or areas without Internet connection.

[4] As a result, a number of timetable orders needed to be varied. Several hearings were held either by telephone link or AVL/VMR link. The recent re-introduction of COVID-19 Level 2 and 3 restrictions has had a significant impact on some impending fixtures.

Mapping

[5] Following the last series of CMCs, counsel for the Attorney-General took the initiative and a mapping working group was formed consisting of Mr Melvin, on behalf of the Attorney-General, and three counsel for applicants, Ms Sykes, Mr Bennion and Mr Hirschfeld. As a result of their work, a draft set of mapping guidelines and a draft

mapping practice note were able to be prepared and circulated to all counsel in June 2020. The draft practice note which incorporates the guidelines, was favourably received by applicants during the 2020 CMCs.

Funding

[6] Funding continues to be an issue for the applicants. In June 2020 the Waitangi Tribunal issued its Stage 1 report into the Marine and Coastal Area (Takutai Moana) Act 2011. It made a number of critical findings in relation to the funding of litigation which are encapsulated in its conclusion:¹

A Treaty-compliant funding regime would be one in which the Crown covers all reasonable costs that claimants incur in pursuing applications under the Act. It would do so in a timely way. It would treat all applications consistently, regardless of pathway.

[7] Te Arawhiti is currently reviewing funding and the Waitangi Tribunal is working on its Stage 2 report. Some progress has been made in relation to the funding of the litigation before the Courts but there is scope for more to be done.

Direct engagement

[8] Direct engagement with the Crown rather than litigation remains the preferred option of many of the applicants. Little progress has been made in initiating direct engagement. The Crown has issued a draft engagement policy which timetables engagement with various groups commencing as far out as 2045.²

[9] The length of the timeframes for direct engagement has caused dismay to many applicants. A number of applicants had initiated both requests for direct engagement and filed proceedings. Several of those who had indicated an initial preference for direct engagement have now reactivated their litigation proceedings because they perceive that the advantages to be gained from direct engagement are outweighed by the substantial delays likely before they can commence direct negotiations with the Crown.

¹ Waitangi Tribunal Report *The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 1 Report* (Wai 2660, 2020) at 6.1.6(c).

² Takutai Moana Draft Crown Engagement Strategy, February 2020.

[10] The consequence for the Court is that the number of applications now being actively progressed in the Court has increased and is likely to continue to further increase unless there is significant change to the proposed direct engagement timetable.

PART II

Issues

[11] In this part of the minute, I will address the following issues that arose during the course of the CMCs:

- COVID-19 adjustments
- Memoranda
- Overlapping applications
- The hearing of priority applications
- Timetabling towards hearing
- Priority applications proceeding to hearing
- Judicial settlement conferences
- Pūkenga
- Tikanga facilitation

COVID-19 adjustments

[12] At the time the CMCs were being organised, the country was in COVID-19 Level 4 lockdown. This restricted the ability of many counsel to get instructions and also disrupted the many hui and wananga that had been organised to progress issues raised at last year's CMCs.

[13] The Court sought to minimise the need for the attendance of counsel and parties at CMCs by providing AVL links wherever possible. The only venue where that was not technically achievable was Whangarei where the numbers attending meant that the

hearing was too large to be accommodated in the Court and a suitable AVL link was not able to be established at the hearing venue.

[14] The ability to attend by AVL also greatly reduced the cost to some parties of having their legal representatives travel to the CMCs. Funding is still an issue for many applicants. In order to try and minimise the cost to participants of the legal processes, and in acknowledgement of ongoing COVID-related concerns, the Court will continue, where appropriate, to offer AVL links for matters such as CMCs and interlocutory hearings.

Memoranda

[15] By a minute of 22 May 2020, the Court requested all applicants file a brief memorandum outlining progress with their application over the past year. The purpose of this request was so that the Court would understand what specific issues had arisen and what assistance the Court could give by way of directions at the CMCs.

[16] One result of this minute is that in the case of three of the scheduled CMCs (Dunedin, Nelson and New Plymouth) because of the full minutes filed by counsel and the absence of issues that required oral argument, the Court was able to make orders on the papers, dispense with the attendance of counsel, and adjourn the CMCs until next year.

[17] Unfortunately, not all counsel complied with the request to file minutes, even when reminded of the need to do so. Others waited until the day of the hearing to file their minutes. Other counsel attended the CMCs and explained their failure to file memoranda on the basis they had nothing to report. Some counsel filed memoranda seeking indefinite “stays” of their applications, adjournments sine die or an adjournment until an application for leave to appeal to the Court of Appeal, a ruling in an unrelated case had been disposed of.

[18] It is important that the Court retain control of the 200 applications before it under the Act. Particularly in areas where there are many overlapping applications,

progressing those applications in a way that is fair to all parties requires the active involvement of the Court.

[19] It is unlikely that a memorandum which says that no progress has been made with an application, gives no explanation for that, and/or seeks an adjournment sine die will ever be acceptable.

Overlapping applications

[20] The Court was encouraged to hear that progress had been made in many areas with applicants who had overlapping claims engaging in hui and wananga in an attempt to resolve differences. Progress seems to have been made in the Bay of Islands and the East Coast north of Gisborne. However, there were still counsel who reported that their clients had not had any dialogue at all with overlapping claimants. Acknowledging the obstacles created by COVID-19 issues, counsel are encouraged to consider such initiatives where possible.

The hearing of priority applications

[21] Four priority applications have been timetabled towards hearing. The Edwards/Whakatōhea application commenced in Rotorua on 17 August 2020 and is scheduled to last eight weeks. Churchman J is presiding.

[22] The Clarkson application will commence in Wellington on 2 November 2020 with Mallon J presiding. It is scheduled to last four weeks.

[23] The Ngāti Pāhauwera application is scheduled to commence in Napier on 9 February 2021 with Churchman J presiding. It is scheduled to last seven weeks.

[24] Stage 1 of the Ngā Potiki application is anticipated scheduled to commence in Tauranga in April 2021 with Powell J presiding. It is scheduled to last three weeks. Stage 2 is anticipated to commence in September 2021 and last for six weeks. The Ngā Potiki priority hearing has been split into two for efficiency reasons. The first stage will focus on the Rangataua area of Tauranga Moana and the second stage will include Motiti Island and the remaining areas of the priority application.

Timetabling towards hearing

[25] Given the progress that has been made in timetabling the various priority applications towards hearing, it is now appropriate for the Court to consider timetabling non-priority applications. This was canvassed with all parties during the course of the CMCs.

[26] One of the concerns raised by applicants is that where there are significant overlaps between applications, an applicant may be forced into several different hearings, each one involving overlaps with other claimants. In order to try and address this concern, the Court is contemplating holding hearings for large natural groupings which could involve either overlapping claimants or separate claims that relate to neighbouring areas.

[27] In a number of the CMCs, counsel indicated they wished to explore this possibility further.

[28] At the Wellington CMC, counsel representing claimants with claims on the lower west coast of the North Island,³ agreed to prepare a report to the Court to be filed by the end of 2020 outlining the readiness of their clients to proceed to hearing with an anticipated hearing time no earlier than the latter half of 2021. Other applicants may wish to participate in this proposed hearing as well. A similar approach was taken by counsel appearing at the Gisborne CMC in relation to claims in the Tokamaru Bay region north of Gisborne. Again, the relevant counsel are to file a memorandum with the Court by the end of 2020. It is possible that similar memoranda will be filed in respect of claims in the Hauraki and Aotea areas.

[29] Counsel appearing at the Wellington CMC in relation to claims involving Rekohu/Wharekauri/Chatham Islands, also indicated that they supported a combined hearing involving all their claims. However, other than transferring that part of the claim of Ngāti Mutunga o Wharekauri (CIV-2017-485-309) that related to Rekohu, from the

³ CIV-2017-4850-258 Williams, CIV-2017-485-229 Ngāti Raukawa ki te Tonga, CIV-2017-485-261 Muaūpoko Tribal Authority, CIV-2017-485-273 Te Whanau Tima and Te Hapū o te Mateawa, and CIV-2017-485-254 Te Patutokotoko (Maps 131, 133, 134, 134A and 137).

New Plymouth to the Wellington registry, to be managed with the other Rekohu claims, the Court considered it was premature to consider timetabling the matter for hearing given the state of the evidence gathering.

[30] At the Tauranga CMC, counsel for Ngāti Porou ki Hauraki, CIV-2017-404-556, sought timetable directions towards a hearing. There are some difficulties with that as they have apparently not yet received any funding from Te Arawhiti. Some cross-applicants (for example Ngāti Tara Tokanui, CIV-2017-485-222) want their application to be heard in full or in part with the Ngāti Porou ki Hauraki application.

[31] At this stage, it is premature for the Court to attempt to timetable the Ngāti Porou ki Hauraki application toward hearing. Before that could happen, the issue of funding needs to be addressed and the Court needs some confidence as to the timeframe within which evidence preparation can be completed. The Court also needs to understand which overlapping applicants would wish to participate in such a hearing and if the cross-applicants are, in fact, ready to proceed.

[32] Counsel for Ngāti Porou ki Hauraki should discuss the issue of a hearing with the overlapping and adjacent applicants and, if agreement can be reached as to a combined hearing, to file a memorandum recording the identity of the applicants who wish to participate, and their state of preparedness for a hearing. The Court will then either revisit this at next year's CMCs or, at counsel's request, convene an earlier AVL conference to make the necessary directions.

Priority applications proceeding to hearing

[33] In relation to the various priority applications, Collins J had made a number of orders specifying whether all or part of the cross-applications would be heard with the priority application.

[34] By memorandum of counsel dated 8 June 2020, counsel for Ngāti He Hapū Trust (CIV-2017-485-219) sought to vary a minute of Collins J directing that the Ngāti He Hapū Trust be heard in full in conjunction with the Ngā Potiki application.⁴

⁴ Minute (No 5) of Collins J, 18 July 2018 at [60].

[35] In the same minute, Collins J had directed that the Ngāi Te Rangi Settlement Trust (CIV-2017-485-244) only be heard to the extent that its application overlapped with the Ngā Potiki application.⁵

[36] As a result of the splitting of the Ngā Potiki priority application in two, counsel argued that it would be more efficient for the Court to hear the balance of the Ngāti He application in conjunction with the balance of the applications of Ngāi Te Rangi Settlement Trust and Ngā Hapū o Ngāti Ranginui Settlement Trust as this would avoid the domino effect of hearing Ngāti He in full.

[37] As there was no opposition to this proposal at the CMC, I vary the order made by Collins J to the effect that the only part of the Ngāti He Hapū Trust application to be heard in conjunction with Stage 1 of the Ngā Potiki application, is that part which overlaps with that application.

[38] Counsel for Ngāti Whakahemo (CIV-2017-485-223) were in the same position as counsel for Ngāti He in relation to the Ngā Potiki Stage 1 hearing. They wish just to be able to present their case in relation to the overlap with Ngā Potiki.

[39] For the same reasons that the Court has varied the minute of Collins J in relation to Ngāti He, it varies it also in relation to Ngāti Whakahemo to the effect that only those parts of the claim that overlap with the Ngā Potiki priority claim are to be advanced at the Stage 1 Ngā Potiki priority hearing.

[40] Although some progress had been made in various parts of the country with overlapping applicants talking to one another about the extent and nature of their claims, there were still a number of applicants who had not yet commenced that process. They are encouraged to do so between now and next year's CMC.

Judicial settlement conferences

[41] The Ngā Potiki priority applicants (along with Ngāi Te Rangi Settlement Trust, Ngāti He Hapū Trust and Te Tawharau o Ngāti Pūkenga) raised the possibility of having

⁵ At [61].

a judicial settlement conference (JSC) in relation to Stage 1 (Rangataua) of the Ngā Potiki priority application.

[42] The Court is open to the possibility of arranging JSCs. Twice, in relation to the Edwards/Whakatōhea priority application, counsel for the applicants raised the possibility of JSC and the Court looked at scheduling one. However, ultimately, on neither occasion, was a JSC possible because of the unwillingness of some parties to participate in one.

[43] It is the Court's view that a JSC is most likely to prove successful if it is held once all of the evidence has been filed. That has not yet occurred in relation to the Stage 1 of the Ngā Potiki priority application.

[44] If, when that stage is reached, the applicants still wish to participate in a JSC, they will need to file a memorandum confirming which counsel acting for the various cross-applicants are prepared to participate. If there is significant unwillingness on the part of counsel, it is unlikely that the Court would schedule a JSC unless the Court was satisfied that there were issues as between those parties who were prepared to participate in the JSC that could usefully be resolved.

[45] Counsel are also reminded that it takes time to set up a JSC particularly if numerous parties are involved and if a request for one is left until immediately before a substantive hearing, it can often be difficult, if not impossible, to effectively schedule one.

Pūkenga

[46] Issues of tikanga are at the heart of the orders that the Court can make under the Act.⁶

[47] Section 99 of the Act provides that the Court may refer to either the Māori Appellate Court or a pūkenga a question of tikanga for the advice of the Court or pūkenga.

⁶ See s 51(1)(a) and (b) and s 58(1)(a) and (b).

[48] In respect of the various priority applications that have been timetabled for hearing, the Court either has, or is in the process of, appointing pūkenga. The process of appointment of a pūkenga is a consultative one. The Court generally calls for suggestions from the parties as to who they believe might be appropriate to act in that role.

[49] The criteria for the appointment of pūkenga have been discussed in a number of minutes.⁷

[50] By way of summary of the Court's directions, a pūkenga is an expert witness, however, the degree of independence from the parties usually expected of an expert witness in the High Court is neither possible nor desirable in relation to the role of pūkenga in these proceedings. That is because the pūkenga must have knowledge of the relevant tikanga. The relevant tikanga is the tikanga of the applicants. The people most likely to have knowledge of such tikanga will inevitably have some connection with one or more of the applicants. That connect will not, of itself, disqualify a person being appointed as a pūkenga.

[51] If a person being considered for the role of pūkenga has been a member of the Waitangi Tribunal in relation to an inquiry that is directly relevant,⁸ then that may disqualify them from being a pūkenga. Being a witness for a party who was one of the applicants in a proceeding would also disqualify the person in respect of that proceeding or a related one.

[52] The Court endeavours to achieve agreement or substantial agreement among the parties as to whose suitable appointees are. However, in the absence of agreement (or substantial agreement), the Court will appoint the pūkenga who appears most suitable. In large or complicated cases, where the circumstances require, the Court may appoint two pūkenga.⁹

⁷ Most particularly the Court's Minute (No. 18) of Churchman J dated 8 July 2020 in Edwards/Whakatohea CIV-2011-485-817; Minute (No. 21) of Churchman J dated 4 August 2020 in Edwards/Whakatohea CIV-2011-485-817.

⁸ For example, the Marine and Coastal Area (Takutai Moana) Act 2011 Waitangi Tribunal Inquiry.

⁹ As has occurred in relation to the Edwards/Whakatōhea priority application.

[53] When matters are ready to be allocated a hearing date, counsel are encouraged to give thought and to discuss with cross-applicants who might be an appropriate pūkenga for the cases that they are involved in.

Tikanga facilitation

[54] Where there are differences between applicants as to what the relevant issues of tikanga are, the Court has been prepared to engage in a tikanga facilitation process. A tikanga facilitation process can either occur on the initiative of the parties without the involvement of the Court¹⁰ or pursuant to HCR 9.44 of the High Court Rules 2016. The Court has supported such initiatives. However, ideally, they would occur prior to the commencement of the hearing of any application as attempting to undertake such a facilitation process during the course of the hearing may well result in the hearing having to be adjourned and the corresponding time of the adjournment being lost to the parties as Court hearing time.

¹⁰ Such a process occurred prior to the Supreme Court hearing in the recent case of *Ellis v R* [2019] NZSC 83.

PART III

Priority applications

Clarkson – CIV-2011-485-789

[55] This matter is proceeding to hearing commencing 2 November 2020.

Tangiora (Rongomai Waihine Iwi Trust) – CIV-2011-485-794

[56] The applicants and the overlapping applicant (Ngāi Tāmanuhiri Iwi, CIV-2017-485-314) are still engaged in direct negotiation with the Crown and these matters are adjourned until the CMC in Gisborne on 15 June 2021.

Taylor (Pahauwera) – CIV-2011-485-821

[57] This matter will proceed to hearing in Napier commencing 9 February 2021.

Reeder (Ngā Pōtiki) – CIV-2011-485-793

[58] The claim in respect of customary marine title has been divided into two parts. While the exact dates have not yet been confirmed, Part 1 is anticipated to commence in April 2021 and Part 2 in September 2021, both in Tauranga.

Edwards (Te Whakatōhea) – CIV-2011-485-817

[59] The hearing in this matter commenced in Rotorua on 17 August 2020.

Brookes and Hooker (Okahu Inuawai Hapū) – CIV-2011-485-803

Noble (Kanihi Umutahi me Etahi Hapū) – CIV-2011-485-814

Robinson (Ngāti Manuhiakai) – CIV-2011-485-797

[60] These three applicants filed a joint memorandum dated 30 September 2019 which indicated that all three applicants were involved in discussions with the three

other hapū groups of Ngaruahine Iwi (CIV-2017-485-213, CIV-2017-485-293 and CIV-2017-485-300).

[61] The purpose of the discussions was to establish a working group to progress the applications under a collective approach utilising the pathway of direct negotiation with the Crown. Counsel for the overlapping applicants (CIV-2017-485-282 and CIV-2017-485-243) filed supporting memoranda.

[62] These matters are adjourned until the CMC in New Plymouth on 25 June 2021.

PART IV

Other applications

[63] The matter of CIV-2017-485-263, Te Whānau a Umuariki, is adjourned until 7 February 2021 with counsel to file a memorandum no less than seven days prior to that date advising of progress. If required, any hearing will be by way of telephone or AVL link.

[64] Unless matters have been adjourned to a different date or directions given in this minute for the filing of further memoranda, all applications are adjourned to the following CMCs scheduled for 2021:

- 8 June 2021 – Wellington
- 10 June 2021 – Dunedin
- 11 June 2021 – Nelson
- 15 June 2021 – Gisborne
- 16 June 2021 – Tauranga
- 22 June 2021 – Hamilton
- 23 June 2021 – Rotorua
- 25 June 2021 – New Plymouth
- 29 June 2021 – Whangarei
- 30 June 2021 – Auckland

[65] Should there be any changes to these dates, counsel will be advised.

[66] Counsel will be expected, in advance of the CMCs, to file a brief memorandum updating the Court as to progress in relation to their claims and to identify any particular

directions required from the Court. Failure to comply with this obligation means that counsel are unlikely to have their attendance at the scheduled CMCs dispensed with.

Churchman J

Solicitors:

WELLINGTON:

Lovell & Associates Ltd, Upper Hutt for Ngāti Koata

Lyall & Thornton, Auckland for Te Whānau Tima

Foster Milroy Solicitors, Hamilton for Te Aitanga O Ngā Uri O Wharekauri, and Te Hika o Papaūma

Tamaki Legal, Auckland for Muaūpoko Iwi, Te Hika o Papaūma, Tukōkō and Ngāti Moe, and

Ngāi Tūmapūhia-ā-Rangi Hapū

Kahui Legal, Wellington for Papauma Marae Trustees, Tūpoki Takarangi Trust, Ngāti Raukawa ki te

Tonga, Ngāti Kahungunu ki Wairarapa Tāmaki-nui-ā-Rua Settlement Trust, Te Awa Tupua, and

Ngā Hapū o Te Iwi o Whanganui

Kensington Swan, Wellington for T Williams

M McGhie, Te Puke for David Morgan Whānau

McCaw Lewis, Hamilton for the Trustees of Te Rangitāne Tū Mai Rā Trust

Bennion Law, Wellington for Hunau of Tame Horomona Rehe, Te Pautokotoko, and Moriori Imi

Phoenix Law Ltd, Wellington for Cletus Maanu Paul

RightLaw Limited, Auckland for Rihari Dargaville

Chapman Tripp, Auckland for Seafood Industry Representatives

Crown Law Office, Wellington for Attorney-General

NELSON:

Radich Law, Blenheim for Rangitāne o Wairau

Stallard Law, Nelson for Te Rūnanga a Rangitāne Kaituna

Bennion Law, Wellington for Tahuāroa-Riwaka Houra Whānau, Tahuāroa-Watson Whānau, and

Henare Tahuāroa-Watson Whānau

Chapman Tripp, Christchurch for Ngāi Tūāhuriri

Te Pātaka o Te Mana Tangata Chambers, Auckland for Te Ātiawa o Te Waka-a-Māui

Crown Law Office, Wellington for Attorney-General

GISBORNE:

Lyall & Thornton, Auckland for Ngā Hapū o Kokoronui ki te Toka a Taiau Takutai Kaitiaki Trust, and

Te Rauhinā Marae and Hapū

Foster Milroy Solicitors, Hamilton for Ngāti Oneone, Ngā Hapū o Tokomaru Ākau, and

Te Whānau a Kahu

Kahui Legal, Wellington for Ngāi Tāmanuhiri Tūtū Poroporo Trust

T B Johnson, Gisborne for Ngāti Kurupakiaka, Te Aitanga A Puata, Ngāi Tauira, and

Ngā Hapū o Ngāti Porou

Braithwaite & Smail Limited, Auckland for Rongowhakaata Iwi Trust

Te Haa Legal, Ōtaki for Te Whānau a Umuariki, Te Whānau a Rākairoa ki Waipiro, and

Te Whānau a Iritekura

Crown Law Office, Wellington for Attorney-General

TAURANGA:

Manaia Legal, Hastings for Te Whānau ā Te Harāwaka
Kahui Legal, Wellington for Ngāti Ranginui Settlement Trust, and Raurima Island Māori Reservation
Foster Milroy Solicitors, Hamilton for Ngāti Hei, Ngāti Pū and Ngāti Hako
Koning Webster Lawyers, Papamoa for Te Rūnanga o Ngāti Whakahemo, Ihakara Tangitū Reserve, and Ngāti He Hapū Trust
J N Gear, Tauranga for Ngā Hapū o Ngāi Te Rangi
Harry Edward Law, Rotorua for Ngā Hāpu o Te Mōutere O Mōtītī
Corban Revell Lawyers, Auckland for Ngāti Whakaue
Phoenix Law Limited, Wellington for Te Rūnanga o Ngāti Whakaue ki Maketū Inc, and Tangihia Hapū
McCaw Lewis, Hamilton for Ngāti Tara Tokanui Trust, and Ngā Potiki
Tu Pono Legal Limited, Rotorua for Ngāti Mākino and Ngāti Pīkiao
Bennion Law, Wellington for Ngāti Pūkenga, and Ngāi Te Hapū Inc
Lyll & Thornton, Auckland for Ngāti Porou ki Hauraki
Mark Copeland Lawyers, Rotorua for Great Mercury Bay Limited
Crown Law Office, Wellington for Attorney-General

ROTORUA:

Morrison Kent, Wellington and Rotorua for CA & A Edwards on behalf of Te Whakatōhea,
Te Uri a Tehapū, Whakatōhea Pākowhai, Ngāti Muriwai, and Te Whānau -a-Apanui Hapū
Annette Sykes & Co, Rotorua for Ngāti Ira o Waioweka Rohe
Wackrow Williams & Davies Limited, Auckland for Te Hapū Tītoko o Ngāi Tama, Ngāi Tamahaua Hapū, Ngāi Tai Iwi, and Ririwhenua Hapū
Foster Milroy Solicitors, Hamilton for Ngāti Huarere ki Whangapoua, Hiwarau, Turangapikitoi, and Ōhiwa of Whakatōhea
Koning Webster Lawyers, Papamoa for Te Rūnanga o Ngāti Awa
Bennion Law, Wellington for Ngāti Patumoana
Phoenix Law Limited, Wellington for Manu Paora Whānau
McCaw Lewis, Hamilton for Te Uri o Whakatōhea Rangatira Mokomoko
Zwaan Legal, Wellington for Kahukore Baker (Te Ūpokorehe)
Tu Pono Legal Limited, Rotorua for Whakatōhea Māori Trust Board
Chapman Tripp, Wellington for Seafood Industry Representatives
Cooney Lees Morgan, Tauranga for BOP Regional Council and Opotiki District Council
R M Jones for Thames-Coromandel District Council
MJC Legal Limited, Rotorua for Great Mercury Island
Crown Law Office, Wellington for Attorney-General

HAMILTON:

Annette Sykes & Co, Rotorua for Tainui hapū o Tainui waka
Te Mata Law Limited, Auckland for T Āwhitu on behalf of Ngāti Wehi
Loader Legal, Auckland for West Coast Iwi and Hapū ki Marokopa Marae
Foster Milroy Solicitors, Hamilton for Ngā Tini Hapū o Maniapoto
Kahui Legal, Wellington for Waikato-Tainui
Kensington Swan, Wellington for Te Rūnanganui o Ngāti Hikairo
McCaw Lewis, Hamilton for Ngaati Mahuta ki te Hauaauru
Bennion Law, Wellington for Ngāti Apakura
G L Tootill (in person)
Berry Simons, Auckland for Te Whānau-a-Haunui
Crown Law Office, Wellington for Attorney-General

WHANGAREI:

Phoenix Law Limited, Wellington for Reti Whānau and Ngāti Kawau, and Te Waiariki Kororā
Annette Sykes & Co, Rotorua for Ngāti Manu and its hapū Te Uri Karaka, and Te Uri o Raewere
Lyll & Thornton, Auckland for Te Rae Ahu Whenua Trust, Ngāti Kawau, Ngāti Kawhiti, Ngāti Haiti, Ngāi Tupango, McGee Whānau, and Te Tawharau o Ngāti Pūkenga
Hockly Legal, Auckland for Te Whakapiko Hapū of Ngāti Manaia, Reweti and Rewha Whānau, and Te Parawhau
Foster Milroy Solicitors, Hamilton for Te Rōpu o Rangiriri, Te Ihutai ki Orira, and Ngāti Torehina ki Mataure ō Hau
Bennion Law, Wellington for Ngāi Te Hapū, and Ngāti Pūkenga

Tamaki Legal, Auckland for Te Popoto ki Ōturei
Dixon and Co Lawyers, Auckland for Ngāti Takapari, Patuharakeke Te Iwi Trust Board,
Ngāti Korokoro Trust, and Henare Waata Whanau
Corban Revell, Auckland for Te Waiariki, Ngāti Kororā, Ngāti Torehina ki Mataka
Kahui Legal, Wellington for Trustees of Matihetihe Marae Trust and Te Hokoheha
Oceanlaw New Zealand, Nelson for Ngātiwai Trust Board
Kensington Swan, Wellington for Te Rūnanga o Te Rarawa and Ngāpuhi/Ngāti Kahu ki Whaingaroa
Chapman Tripp, Auckland for Te Whānau Moana me Te Rorohuri
McCaw Lewis, Hamilton for Parengarenga A Incorporation and Iwi
Zwaan Legal, Wellington for Whakarara Māori Committee
Tukau Law, Kaikohe for Ngāti Hine, Ngāti Kawa and Ngāti Rāhiri, Te Kapotai, and
Te Rūnanga Nui o Te Aupouri
Harrison Stone, Auckland for Te Whānau Whero
Manaia Legal, Auckland for Ngātiwai (Whānau of Ohawini), Walker, Ngā Uri o Hairama Pita Kino
Davies, and Whangaroa Ngaiotonga Trust
F Newman for Landowners Coalition Inc
Chen Palmer Public and Employment Law Specialists, Auckland for Te Rūnanga o Ngāti Whātua
Berry Simons, Auckland for Te Whānau-a-Hauni
MinterEllisonRuddWatts, Auckland for Te Uri o Hau
Chapman Tripp, Auckland for Seafood Industry Representatives
D Reeves, Northport Ltd and Refining New Zealand
R M Jones for Kaipara, Waikato and Hauraki District Councils
J Mason for Sailor Morgan on behalf of Ngāti Ruamahue
Crown Law Office, Wellington for Attorney-General

AUCKLAND:

Chen Palmer Public and Employment Law Specialists, Auckland for Te Rūnanga o Ngāti Whātua
Annette Sykes & Co, Rotorua for Ngāti Rongo o Mahurangi, Bouchier, Taumata B Block Whānau, and
Ngāti Te Ata
Tamaki Legal Limited, Auckland for Ngāti Taimanawaiti and Ngāti Rehua-Ngātiwai ki Aotea
Grove Darlow & Partners, Auckland for Ngāti Porou ki Hauraki
Lyll & Thornton, Auckland for Ngāti Rehua-Ngātiwai ki Aotea and Ngāti Maraeariki
Rightlaw, Auckland for Te Taoū
McCaw Lewis Limited, Hamilton for Ngāi Tai ki Tāmaki
Foster Milroy Solicitors, Hamilton for Mahurangi, Ngāti Awa, and Ngāpuhi
Tama Hovell Barrister, Auckland for Ōtakanini Tōpu Māori Incorporated
Chapman Tripp, Auckland for Ngāti Whātua Ōrakei Trust
Tu Pono Legal Limited, Rotorua for Ngāti Manuhiri
Berry Simons, Auckland for Te Whānau-a-Haunui
R M Jones for Hauraki, Kaipara and Thames-Coromandel District Councils
G Hill (in person)
Crown Law Office, Wellington for Attorney-General