

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

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

CIV 2011-485-789

IN THE MATTER OF an application by CATHERINE
CLARKSON AND OTHERS for a
customary marine title pursuant to section 58
of the Marine and Coastal Area (Takutai
Moana) Act 2011

Teleconference: 21 September 2020 at 3.45 pm

Counsel: Ms Clarkson appearing in person
J Ferguson for Trustees of Ngāti Kahungunu ki Wairarapa
Tamaki-nui-ā-Rua Settlement Trust
L Watson for Ngāti Kere
R Siciliano for Te Rāngitane o tu mai rā Trust
G Melvin for Attorney-General
C Finlayson QC (not connected for teleconference) and A Dartnall
for The Landowner's Coalition Incorporated
F Wedde for Horizons Regional Council and Hawkes Bay District
Council
M Smith for Smith Whānau
M Conway and L Phillips for Hawke's Bay Regional Council

Minute: 22 September 2020

MINUTE OF MALLON J

[1] Ms Clarkson confirmed she is self-representing at the upcoming hearing.

[2] Hearing time: all parties are agreed that the four weeks allocated in this Court for Ms Clarkson's application will not be required. Tentatively, and depending on the number of witnesses required for cross-examination and the extent of that cross-examination, something in the order of two weeks may be required.

[3] Hearing date: Mr Watson requests that the hearing commence a week later, on 9 November 2020, due to an unanticipated clash with a significant Waitangi Tribunal

hearing in the week of 2 November 2020. Ms Clarkson understands Mr Watson's predicament but changing the hearing to a week later will involve financial costs in changing travelling arrangements and cause her sister difficulty with her work arrangements. All other parties have no difficulty with Ms Watson's request. I consider the request is reasonable, it can be accommodated in the court's schedule given that four weeks hearing time was originally allocated, and it should be accommodated. Inconvenience to the applicants is minimised by the fact that what was a four-week hearing allocation will now likely be only around two weeks. Accordingly, the hearing will now commence on 9 November 2020.

[4] The application area boundary points: paras 2 to 5 of the memorandum for the Attorney-General dated 17 September 2020 and para 2 to 3 of Ms Clarkson's memorandum refers. I consider there is sufficient information before the Court about the boundary of the application area for the hearing to proceed. Whether more precision is needed can be left open at this stage.

[5] Attendances/participation:

- (a) Ms Wedde for the Horizons Regional Council and Hawkes Bay District Council advises that these parties are neutral, she has a watching brief and no witness is giving evidence. She seeks leave not to attend the hearing but is available if required and may be present on the first day of the hearing. Leave is granted accordingly.
- (b) Mr Conway and Ms Phillips for Hawke's Bay Regional Council advise the Council is neutral on the application and they seek leave to be excused from attending the hearing other than to enter an appearance at the commencement of the hearing, if the Council's witness is required to answer questions from the Court or other parties, and to address any matters arising during the hearing relevant to the Council's position. Leave is granted accordingly.
- (c) All other parties intend to appear at the hearing, to make submissions and to ask questions of witnesses. With the exception of Mr Ferguson's

client, all the parties have filed evidence from at least one witness (Ms Clarkson has two witnesses and the Attorney has three witnesses) and they will be available for cross-examination if required.

[6] Bundle preparation: Ms Clarkson is responsible for the preparation of the hard copy of the common bundle. Counsel for the Attorney-General has agreed to take the responsibility of preparing an electronic bundle.

[7] Openings: all parties will make their opening submissions at the start of the hearing before any witnesses give evidence.

[8] Witnesses: each witness required for questions/cross-examination will first give evidence in chief. How that evidence in chief is given can be decided on a case-by-case basis. For example, those who have given short affidavits may give their evidence in chief by reading their affidavits (in the same way briefs of evidence are read at trials). Those with longer affidavits may give a summary of their evidence either by presenting a summary or through questions from counsel.

[9] Order of case presentation: the order in which counsel deliver their openings, call witnesses, cross-examine witnesses and deliver closings will be as follows:

- (a) priority applicants;
- (b) cross-applicants;
- (c) interested parties who have applications;
- (d) the Attorney-General; and
- (e) interested parties.

[10] Pūkenga: Mr Ngamane has confirmed his availability following the Court's minute of 14 September 2020. The parties have no issue with the indicative topics for Mr Ngamane set out in that minute. I propose that Mr Ngamane be available to give his evidence (advice) after all the witnesses that are to be called have given their

evidence. This will enable questions to be put to Mr Ngamane in light of the evidence as it has developed.

[11] Timetable:

- (a) the parties are to file and serve an index of documents to be relied upon by **5 October 2020**;
- (b) the priority applicants are to prepare the common bundle, which is to be filed and served by **12 October 2020**;
- (c) the Attorney-General is to file and serve the electronic common bundle by **19 October 2020**;
- (d) the priority applicants are to file and serve a chronology of facts by **14 October 2020**;
- (e) all parties are to file and serve notices of applications to cross-examine witnesses by **16 October 2020**;
- (f) counsel for the other parties are to file and serve any response to the priority applicants' chronology by **19 October 2020**; and
- (g) all parties are to file and serve a synopsis of opening submissions by **23 October 2020**.

[12] Opening and closing the court: As the registrar mentioned during the teleconference, in *Edwards*, which is the application under the Marine and Coastal Area (Takutai Moana) Act 2011 currently being heard at Rotorua (in premises outside of the Court building), the hearing commenced with a pōwhiri. In *Tipene*, the first application under the Act to go to hearing, the sitting of the High Court in Invercargill opened and closed with a karakia. My suggestion is that we open and close the hearing with a karakia if the parties consider that is appropriate. I will leave it to counsel to liaise with the Court about this.

Mallon J