

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

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

**CIV-2011-485-793**

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

IN THE MATTER OF      Application by Colin Francis Reeder and Ors  
on behalf of Ngā Potiki a Tamapahore trust  
for an order recognising Customary Marine  
Title and Protected Customary Rights

Date of Minute      14 December 2020

Appearances:      A Warren for Ngā Potiki a Tamapahore Trust (CIV-2011-485-793)  
J N Gear for Ngai Te Rangi Settlement Trust (CIV-2017-485-244)  
M Sharp for Ngāti He Hapū Trust (CIV-2017-485-219)  
T H Bennion for Te Tāwharau o Ngāti Pūkenga (CIV-2017-485-  
250)  
K Feint QC and I Peters for Ngā Hapū o Te Moutere o Motiti  
J Mason for Ngāti Whakaue ki Maketu Incorporated  
A Tapsell for Ngā Hapū o Ngāti Ranginui Settlement Trust  
K Koning for Ngāti Whakahemo  
H Irwin-Easthope for Te Runanga o Ngāti Awa  
G Melvin for Attorney-General  
F Wedde for Tauranga City Council  
L Neale for Tauranga Port, Sunchaser Investments Ltd, Te Tumu  
Kaituna 14 Trust, Ford Land Holdings, and Carrus Corporation

Date of Minute:      16 December 2020

---

**MINUTE (No. 2) OF POWELL J  
[Ngā Potiki Minute No. 9]**

---

[1] Following receipt of memoranda filed in response to the directions in my Minute of 18 November 2020 the following matters were addressed at the conference on 14 December 2020:

- (a) the proposal for a settlement conference and issues conference in respect of Stage 1;
- (b) appointment of pūkenga;
- (c) translation of evidence in Te Reo Māori;
- (d) scope of hearings; and
- (e) amendments to timetable.

#### **Judicial settlement conference and issues conference**

[2] The majority of the Stage 1 claimants indicated in advance of the conference that given the high degree of cooperation between them a judicial settlement conference (“JSC”) was warranted. In particular, while it was accepted that the proceedings would not be entirely able to be settled through a JSC it may well be possible to reach agreements on a variety of issues, both procedural and substantive. It was then envisaged that once the judicial settlement conference has been completed an issues conference before me would take place with the purpose of setting out clearly the matters at issue in Stage 1.

[3] Following discussion of the proposal I advised the conference that the proposed approach seemed sensible and the schedulers were currently identifying when it could be accommodated. Since the conference the Registry have confirmed that a JSC in respect of the Stage 1 issues will take place on **11 and 12 March 2021** before Associate Judge Andrew. The venue will be advised in due course.

#### **Appointment of pūkenga**

[4] In view of the current level of cooperation in relation to Stage 1 and the proposed judicial settlement conference/issues conference process, it is not currently

envisaged that pūkenga are required for Stage 1, with the position to be reviewed at the first conference in 2021.

[5] Conversely at the present point in time the current consensus appears to be that two pūkenga will need to be appointed for the Stage 2 hearing in September 2021. To this end a draft list of possible appointments has been circulated among the parties, and the parties are to confirm their position as to their preferred appointments at the first conference in 2021.

### **Translation of Te Reo evidence**

[6] The memoranda filed by the parties made it clear that it will be appropriate to have simultaneous translation available at both the Stage 1 and Stage 2 hearings. At this point the preference is to utilise the same process as used by the Waitangi Tribunal that is, simultaneous translation through earpieces so as to avoid interruption of witnesses.

[7] It was noted that at this stage there are issues finding appropriate translators and the Court was currently looking at various options, including approaching the Waitangi Tribunal for assistance.

[8] It is confirmed that the costs of translation will be borne by the Court.

### **Scope of hearing**

[9] In her memorandum filed in anticipation of the conference, Ms Mason on behalf of Te Rūnanga o Ngāti Whakaue Ki Maketū Incorporated, had indicated that an extension of time for the filing of her client's Stage 2 evidence would be required. In particular Ms Mason requested that her clients be given until 15 February 2020 to file that evidence, noting that they may in any event elect to participate as interested parties, with the interested parties' evidence currently due on that same day.

[10] At the conference Ms Mason noted that her client's position was currently in a state of flux but that its overall preference was for its application to be dealt with along with Te Arawa claimants rather than as part of Ngā Potiki.

[11] This submission raised a fundamental issue with the scope of the Stage 2 hearing in particular. As I discussed with counsel at the conference, it is difficult to see on what basis the Court could proceed to hear the Ngā Potiki Stage 2 claims without also determining the interests of any other claimants claiming an interest within that geographical boundary. As a number of the Ngā Potiki claimants noted, such an approach would mean that they would be unable to have their coastal marine interests determined following the Stage 2 hearings but instead would have to repeat their evidence at a subsequent hearing of the overlapping claims.

[12] Given the fundamental importance of the issue I directed those applicants claiming overlapping interests within the Ngā Potiki application boundaries to file memoranda setting out their position on the issue by **18 December 2020**. The Ngā Potiki claimants are then to respond by **23 December 2020**, following which I will determine the issue.

#### **Amendments to timetable**

[13] The amendments to the current timetable discussed at the hearing fell into two categories. First, counsel for Ngāti He Hapū and for Ngā Hapu o Te Moutere o Motiti, Mr Sharp and Ms Feint respectively, sought a further extension for the filing of their applicants' Stage 2 evidence until the end of January 2021. It was also noted that for various reasons the Crown had not addressed in its evidence all of the Stage 1 claim area, and following discussion with the applicants was also intending to complete the filing of this additional evidence by the end of January 2021.

[14] Secondly, and more broadly, depending on the outcome of the scope of hearing issue, it was recognised that adjustments to the timetable may be required to ensure that all overlapping applicants have had an adequate opportunity to appropriately put their case. As noted at the conference the submissions are therefore also to address any proposed consequential adjustments to the timetable that may be sought by any party.

*Discussion*

[15] There was no opposition to Ngāti He Hapū and for Ngā Hapu o Te Moutere o Motiti completing the filing of their respective Stage 2 evidence by 29 January 2021, and I extend the time for filing accordingly. The Crown is to file its additional Stage 1 evidence by the same date.

[16] Further adjustments will be made to the timetable following the receipt of the submissions on the scope of hearing issue which will also determine whether further adjustments to the timetable are necessary, including whether to give the overlapping claimants the opportunity to reply to the Crown's Stage 2 evidence and whether the Crown should be given a longer opportunity to reply to the additional Stage 2 evidence being filed by Ngāti He Hapū and for Ngā Hapu o Te Moutere o Motiti.

**Next conference**

[17] As discussed with counsel it will be important to convene a further conference as soon as possible in the New Year. To this end I direct that a telephone conference is to be convened in the second week of February 2021.



---

Powell J