

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

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

**CIV-2017-485-273
CIV-2017-485-254
CIV-2017-485-229
CIV-2017-485-261
CIV-2017-485-241
CIV-2017-485-160**

IN THE MATTER OF an application for recognition orders under the
Marine and Coastal Area (Takutai Moana) Act 2011

BY Te Whānau Tima and Te Hapū o Te Mateawa
 (CIV-2017-485-273)
 Te Pautokotoko (CIV-2017-485-254)
 Ngāti Raukawa ki te Tonga (CIV-2017-485-229)
 David Morgan Whānau (CIV-2017-485-214)
 Muaūpoko Iwi (CIV-2017-485-160)
 Te Atianga o Ngā Uri o Wharekauri
 (CIV-2017-404-479)
 Te Hika o Papaūma (CIV-2017-404-481)
 Tukōkō and Ngāti Moe (CIV-2017-485-267)
 Williams (CIV-2017-485-258)
 Tupoki Takarangi Trust (CIV-2017-485-211)
 Rangitāne Tū Mai Rā Trust (CIV-2017-485-224)
 Te Atiawa Iwi (CIV-2017-485-260)
 Ātiawa ki Whakarongotai (CIV-2017-485-248)
 Ngāti Kere Hapū (CIV-2017-485-193)
 Ngāti Kahungunu ki Wairarapa Tamaki-Nui-Ā-Rua
 (CIV-2017-485-221)
 Te Awa Tupua and Ngā Hapū me Ngā Uri o Te Iwi
 o Whanganui (CIV-2017-485-301)
 Ngāti Mutunga o Wharekauri Iwi Hapū
 (CIV-2017-485-309)
 Hunau of Tame Horomona Rehe
 (CIV-2017-485-217)
 Moriōri Imi Iwi (CIV-2017-485-316)

On the papers:

Counsel: B Lyall for CIV-2017-485-273
 L Black for CIV-2017-485-254
 N Coates and C Conroy-Mosdell for CIV-2017-485-229
 C Beaumont for CIV-2017-485-214

G Erskine for CIV-2017-485-160
C Hirschfeld for CIV-2017-404-479 and CIV-2017-404-481
D Williams for CIV-2017-485-258
K Tahana for CIV-2017-485-211
R Siciliano for CIV-2017-485-224
H Irwin-Easthope for CIV-2017-485-248
L Watson for CIV-2017-485-193
J Ferguson for CIV-2017-485-221 and CIV-2017-485-301
T Castle for CIV-2017-485-309
T Bennion for CIV-2017-485-217
C Griggs for CIV-2017-485-316
G Melvin for Attorney-General

Minute: 31 May 2021

MINUTE (NO. 4) OF CHURCHMAN J
[Case Management Conferences 2021]

CIV-2017-485-273, CIV-2017-485-254, CIV-2017-485-229, CIV-2017-485-261, CIV-2017-485-241, and CIV-2017-485-160

[1] Counsel in these six applications have filed a joint memorandum. The memorandum indicates that counsel have held hui on the issue of overlapping applications and refers to the possibility of amendment of applications. Counsel believe that these six applications should be heard together.

[2] The estimated hearing time is three to four weeks and it is indicated that the applications are likely to be ready to proceed by late 2022. The directions sought are adjournment until the next round of case management conferences (CMCs) in 2022, that the parties update the Court with further memoranda on or before 1 December 2021, and that all counsel be excused from the CMC set down for 8 June 2021.

[3] As it appears that the parties are well on track towards hearing, the directions sought are appropriate. Accordingly:

- (a) these six applications are adjourned until the 2022 CMCs;

- (b) the parties are directed to file an updating memorandum with the Court on or before 1 December 2021 advising on progress towards hearing;
- (c) the appearance of all counsel at the CMC of 8 June 2021 is excused.

CIV-2017-404-479, CIV-2017-485-309, CIV-2017-485-217, and CIV-2017-485-316

[4] Counsel in these proceedings have all filed memoranda. Mr Hirschfeld, counsel in CIV-2017-404-479, indicates that his client's application could be ready for hearing in the latter half of 2022 and seeks a 12-month adjournment and excusal from attendance.

[5] Mr Castle, counsel in CIV-2017-485-309, indicates that lack of funding means that his client is not ready to proceed to hearing. He seeks a 12-month adjournment and excusal from attendance.

[6] Mr Bennion, counsel in CIV-2017-485-217 also indicates funding is an issue and that evidence gathering will recommence with a view to a hearing in 2022.

[7] Mr Griggs, counsel in CIV-2017-485-316 refers to uncertainties arising from the Moriori Claims Settlement Bill presently before the House and seeks a 12-month adjournment.

[8] These four applications should logically be dealt with at the one hearing. There are significant overlaps in relation to each of the claimed areas.

[9] The Court is in a position to allocate a firm hearing date and timetable matters towards that hearing date. It appears that the principal impediment to that happening is difficulties in relation to funding.

[10] It would be unfortunate if the lack of appropriate funding meant that the Court was unable to make the most efficient use of its resources and hear these four matters together.

[11] Counsel for the Attorney-General is asked to liaise with Te Arawhiti to see whether any current obstacles to finalising funding can be overcome with the object of permitting these three applications to be set down for hearing in early 2023.

Directions

[12] The directions are as follows:

- (a) these applications are adjourned until the 2022 round of CMCs;
- (b) these matters are to be allocated a teleconference on 1 December 2021 for counsel to update the Court with progress;
- (c) counsel are to file memoranda detailing progress and other issues no later than five working days prior to 1 December 2021; and
- (d) the appearance of counsel in all four applications is excused at the CMC scheduled for 8 June 2021.

CIV-2017-404-481

[13] Mr Hirschfeld advises that historical research is underway and expected to be completed by the middle of this year, and further tangata whenua evidence is being prepared. Discussions are also underway with the various overlapping applicants.

[14] In accordance with the request of counsel, the following directions are made:

- (a) this application is adjourned for 12 months to the 2022 CMCs;
- (b) counsel is excused from attending at the 8 June 2021 CMC.

CIV-2017-485-226, CIV-2017-485-267, CIV-2017-232

[15] Ms Sreen, counsel in these three matters, indicates these applications will have all evidence completed by mid-2022 and seeks a timetable towards a hearing in the last quarter of 2022. She submits that this should allow sufficient time for the evidence to be completed by other parties who are to be heard with the application. As at the present date, the Court is not aware exactly which other parties wish to be heard. It seems likely that there may be five or

more such overlapping parties. Counsel indicates a further memorandum is likely to be filed in CIV-2017-485-232.

[16] The most efficient use of the Court and the parties' resources is likely to involve a joint hearing with all overlapping applications being heard at once.

[17] The Court would wish to hear from all overlapping parties on the proposal for a hearing at some date after the last quarter of 2022, and Ms Sreen is directed to liaise with the overlapping parties. This matter will be allocated a teleconference on 1 December 2021. No later than five working days prior to that date, Ms Sreen and counsel for all overlapping parties will either file a joint memorandum setting out their position in relation to timetabling towards a hearing, or if no joint memorandum is possible, separate memoranda addressing these issues.

[18] The appearance of counsel on 8 June 2021 in respect of CIV-2017-485-226 and CIV-2017-485-267 is excused. The position in relation to CIV-2017-485-232 is reserved pending the filing of the anticipated further memorandum.

CIV-2017-485-258

[19] Counsel, Ms Edmunds, advises that evidence gathering is likely to be complete by the middle of next year. The applicant seeks leave to add an additional or alternative person as applicant due to the applicant's age and health. Such leave is granted.

[20] This matter is adjourned for 12 months to the 2022 CMCs and counsel's attendance at the 8 June 2021 CMC is excused.

CIV-2017-485-211

[21] Counsel, Ms Tahana, advises that the applicant's preference is direct negotiation but that in accordance with the draft Crown Engagement Strategy, such engagement is unlikely to begin prior to 2027. The applicant's evidence preparation is underway and they are engaged in discussions with another applicant whose application area completely overlaps that of this applicant.

[22] As sought, this application is adjourned until the 2022 CMCs and counsel is excused from attendance at the CMC scheduled for 8 June 2021.

CIV-2017-485-220

[23] Counsel, Ms Coates, advises that preparation of evidence has been delayed because the applicant is awaiting approval of its funding application made in December 2020. It is anticipated that the applicant might be in a position to proceed to a hearing at the end of 2022.

[24] The application for an adjournment until the 2022 CMCs is granted and counsel is excused from attendance at the 8 June 2021 CMC.

[25] This matter is to be allocated a teleconference on 1 December 2021 with counsel to file a memorandum no later than five working days prior to that, to report on progress and to identify what overlapping matters should be considered for inclusion in a joint hearing with this matter.

[26] At the CMC on 8 June 2021, Mr Melvin, counsel for the Attorney-General, is requested to report on the reasons for the delay in the funding for this application.

CIV-2017-485-224

[27] Counsel, Ms Siciliano, advises that direct engagement is the applicant's preference, but evidence preparation is underway. This matter overlaps with a number of other matters, some of which may be ready for hearing.

[28] Notwithstanding her client's preference for direct engagement, Ms Siciliano indicates that prior to a hearing being timetabled, her client would wish to engage with overlapping applicants to discuss their respective interests and narrow relevant issues. It appears her client anticipates participating in any hearing allocated, although it is not clear whether this is to be as an interested party or an applicant. It is also not clear exactly which overlapping parties this applicant is in discussions with.

[29] This application is adjourned for 12 months until the 2022 CMCs. It will be allocated a teleconference date on 1 December 2021 for the purpose of clarifying progress and identifying

whether it is one of a number of overlapping matters that can be timetabled towards a hearing date. At least five working days prior to 1 December 2021, counsel is to file a memorandum updating the Court on progress. The applicant is encouraged to continue with the process of liaising with other overlapping applicants.

[30] Counsel is excused from attendance at the CMC on 8 June 2021.

CIV-2017-485-248

[31] The memorandum filed by Ms Irwin-Easthope recorded that the applicant had been distracted from progressing this matter as a result of its involvement in Waitangi Tribunal claims. It appears that a project co-ordinator and historian had not yet been engaged. It also recorded the applicant was in discussion with overlapping applicants. The applicant is encouraged to pursue that discussion.

[32] This application is adjourned until the 2022 CMCs. It will be allocated a telephone conference with those applications which it overlaps on 1 December 2021.

[33] Counsel will file a memorandum updating the Court on progress no later than five working days prior to 1 December 2021.

[34] Counsel's attendance at the 8 June 2021 CMC is excused.

CIV-2017-485-193

[35] The memorandum filed by Mr Watson confirms this is another case where funding has not yet been approved. The applicant participated as an interested party in the *Clarkson* hearing and is awaiting release of the decision in that matter. Evidence preparation is underway. The applicant's preference remains for direct engagement.

[36] The matter is adjourned until the 2022 CMCs. Counsel's appearance at the CMC on 8 June 2021 is excused.

CIV-2017-485-221 and CIV-2017-485-301

[37] Mr Ferguson, counsel in both of these matters confirms that the applicant in CIV-2017-485-221 is also awaiting the result of the decision in the *Clarkson* hearing; is still gathering evidence and has a preference for direct engagement. The applicant accepts that a joint hearing of overlapping or adjacent applications is sensible but expresses the view that further negotiations between the overlapping applicants and the Crown are required.

[38] This matter is adjourned for 12 months until the 2022 CMCs. Counsel's appearance at the 8 June 2021 CMC is excused.

[39] In relation to CIV-2017-485-301, the memorandum records the applicant's preference for direct engagement and notes that the Crown's draft Engagement Strategy proposed direct engagement for the area relevant to these proceedings in the period 2020-2023. It recorded that to date, the Crown had not communicated directly with the applicants in relation to their request for direct engagement.

[40] This is another application where funding issues have impacted upon progress although historical material is being compiled. An adjournment for 12 months is sought on the basis that if the Crown has not initiated direct engagement by then, a timetable towards hearing can be put in place.

[41] This application is adjourned until the 2022 CMCs.

[42] The matter will be allocated a telephone conference on 1 December 2021 likely to be with other overlapping claims.

[43] Counsel is directed to file an updating memorandum no later than five working days prior to the teleconference. That memorandum should identify the overlapping claims that would be suitable for hearing along with this application.

[44] Counsel's appearance at the CMC on 8 June 2021 is dispensed with.

[45] At the 8 June 2021 CMC, counsel for Attorney-General, Mr Melvin, is requested to provide the Court with an update on funding in relation to this application, and also, if possible,

an indication as to whether or not the Crown intends to engage directly with this applicant and, if so, when.

CIV-2017-485-260

[46] Counsel, Ms Houra, indicates that discussions with overlapping applicants are ongoing but there has been minimal progress. A project manager and historian have been engaged. The memorandum also indicates that counsel is happy to address timetable issues at the 8 June 2021 CMC and wishes to engage with other counsel ahead of that CMC. However, counsel also seeks excusal from attendance at the CMC.

[47] This matter overlaps a number of other applications. It would appear sensible to have any hearing address as many as possible of the overlapping applications. The complexity and length of any such hearing is likely to be significantly affected by the extent to which parties with overlapping applications can agree as between themselves on the contentious issues that arise.

[48] The Court is now in a position to allocate fixture dates although for matters of substantial length, those fixtures are unlikely to occur prior to 2023.

[49] By the time of next year's CMCs, counsel will be expected to have identified all overlapping claims suitable for hearing with this one, and to have liaised with counsel for the overlapping applicants as to such issues as may be agreed between them and to have given consideration to a suitable hearing date and a timetable towards hearing.

[50] Counsel's attendance at the CMC on 8 June 2021 is excused.

[51] Other memoranda have been filed ahead of the 8 June 2021 CMC but as counsel do not seek excusal from attendance, I will not make the orders in this minute.

Churchman J