

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

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

**CIV-2016-485-770
CIV-2017-485-513
CIV-2017-485-514
CIV-2017-485-398
CIV-2017-485-515
CIV-2017-404-539
CIV-2017-404-558
CIV-2017-404-565
CIV-2017-485-233
CIV-2017-485-236
CIV-2017-404-522
CIV-2017-404-559
CIV-2017-404-570
CIV-2017-485-280
CIV-2017-485-290
CIV-2017-485-307
CIV-2017-485-308**

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

BY Te Rūnanga o Ngāti Whakaue ki Maketu
Incorporated (CIV-2016-485-770)
Manu Paora Whānau (CIV-2017-485-513)
Tangihia Hapū (CIV-2017-485-514)
Ngāti Kawau and Te Waiariki Korora
(CIV-2017-485-398)
Reti Whānau (CIV-2017-485-515)
Ngāti Kauwau and Ngāti Awa (CIV-2017-404-539)
Ngātiawake (CIV-2017-404-558)
Ngāti Kahu (CIV-2017-404-565)
Ngāi Tupango (CIV-2017-485-233)
Ngāpuhi/Ngāti Kahu ki Whaingaroa
(CIV-2017-485-236)
Te Ihutai Ki Ōririā (CIV-2017-404-522)
Te Hikutu Hapū (CIV-2017-404-570)
Te Rarawa (CIV-2017-485-290)
Ngā Hapū o Te Wahapū o Hokianga nui ā Kupe
(CIV-2017-485-307)
Te Tao Maui and Te Hoko Keha
(CIV-2017-485-308)
Waitaha Executive Grandmother Council
(Interested Party)

On the papers:

Counsel: J Mason for Applicants

Minute: 3 June 2021

MINUTE (NO. 2) OF CHURCHMAN J

[1] In accordance with the Court's minute of 27 May 2021, Ms Mason has filed five separate memoranda in respect of the matters where she is counsel. Four of the five memoranda finish with the words:

Due to an absence of funding, Counsel respectfully seeks leave to be excused from attending the [relevant CMC].

[2] The memoranda do not specify whether no funding of any sort has been granted; whether a funding application has been denied in whole or in part, or whether it is just funding to attend a CMC that has been declined.

[3] While the Court has no control over what funding Te Arawhiti provides in respect of claims under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act), it is concerned to avoid a situation where long delays in processing funding applications might impede the timely or efficient disposal of the many applications before the Court.

[4] The Court has, in a number of instances, requested counsel for the Attorney-General to obtain an update from Te Arawhiti as to the reasons for apparent funding delays. In some cases these inquiries have facilitated either the payment of outstanding invoices or their further processing. In other cases, it has been clarified that funding applications have not been made; there has been no response to requests for further necessary information, or the applicant has in fact been paid in full and there is no outstanding funding issue.

[5] In order for the Court to be able to address the cause for the apparent difficulties in funding in these cases, it is necessary for the Court to have further information. I therefore

direct that no later than **5pm, Tuesday 8 June 2021**, Ms Mason file a memorandum outlining, in respect of each application where funding is claimed to be an issue, the following information:

- (a) the date of the relevant funding application or applications;
- (b) the work in respect of which the funding application was made;
- (c) whether the funding application has been responded to; and
- (d) what payments have been made, what requests for payment have been declined and the reason for that.

[6] I direct Ms Mason serve a copy of the memorandum on the Attorney-General (Attn Mr G Melvin at Crown Law) and, if the memorandum discloses any matters which would indicate an unreasonable delay or declining of funding, I request that Mr Melvin make inquiries of Te Arawhiti and provide the Court with an update.

[7] If the information sought in [5] above is filed promptly so that clarification can be obtained prior to the relevant CMCs, counsel's personal appearance at the CMCs can be dispensed with.

[8] Counsel's attention is drawn to the fact that as noted in the 27 May 2021 minute, provided adequate advance notice is given, counsel may apply to attend a CMC by way of AVL link. Most courthouses provide AVL links although in locations such as Whangarei where the CMCs are held at venues other than courthouses, it is usually not possible to offer participation by way of AVL link. Funding issues should therefore not normally be an impediment to attendance at a CMC.

Contents of memoranda

[9] Beyond stating that the several applicants need further time to collect tangata whenua evidence and obtain historical evidence, the memoranda filed do not assist the Court to understand what is actually being achieved, and how close any of the matters are to being ready to be timetabled to hearing.

[10] Counsel is therefore directed to update the Court, in respect of all applications, either by further memoranda or by way of participation by AVL at the various CMCs:

- (a) whether a project co-ordinator has been appointed, and if so, when;
- (b) whether a professional historian has been engaged, and if so, when;
- (c) whether discussions with overlapping claimants have occurred, and if not, why not;
- (d) when the various applications may realistically be considered for hearing; and
- (e) what other overlapping applications could usefully be heard with the various applications.

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[11] The memorandum notes that the applicant is having that part of its application which overlaps the Ngā Potiki Stage II area heard later this year. However, the memorandum also states that the application overlaps the Edwards (on behalf of Whakatōhea) application (CIV-2011-485-817). The map filed in support of this application indicates that the claim is centred on Maketu and the eastern seaward boundary is from the coast abutting the Waihi Estuary.

[12] The Court has now determined the Edwards (Whakatōhea claim),¹ and the western most boundary of the claim has been fixed at the Maraetōtara Stream at Ōhope. That is some 50 kilometres of the east of the Waihi Estuary shown on the map as the eastern extremity of this claim.

[13] In the memorandum to be filed, counsel is directed to explain what part of the Edwards (Whakatōhea claim), this claim is said to overlap.

¹ *Re Edwards (Te Whakatōhea No. 2)* [2021] NZHC 1025.

CIV-2017-404-522, CIV-2017-404-559, CIV-2017-404-570, CIV-2017-485-280, CIV-2017-485-307, and CIV-2017-485-308

[14] Counsel has filed a memorandum on behalf of the Waitaha Executive Grandmother Council as an interested party in the above applications. The Court records show Dr Bryan Gilling as the solicitor on the record for this interested party in respect of all of these matters and the Offices of Morrison Kent Lawyers as the address for service.

[15] All proceedings in the High Court are governed by the High Court Rules 2016. When there has been a change of representation or address for service, HCR 5.40 requires the party concerned to file and serve on every other party to the proceeding a notice of change of representation. Compliance with the requirements of HCR 5.40 is mandatory. It has not yet occurred and will need to if Ms Mason is to become the applicant's representative in these proceedings.

Churchman J