

**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

Hearing: On the papers at Rotorua

Date of Minute: 10 June 2021

**MINUTE (No. 9) OF POWELL J
[Ngā Pōtiki Minute No. 18]**

[1] As agreed at the telephone conference on 26 May 2021 Mr Warren has helpfully coordinated with counsel involved in the Stage 2 hearings with a view to amending the existing timetables through to the commencement of the hearings on 13 September 2021.

[2] To this end Mr Warren has filed a memorandum proposing an amended timetable which is broadly supported by all parties other than Te Rūnanga o Ngāti Awa and Ngā Hapū o te Moutere Motītī. The opposition is on the basis that the additional time for filing applicant and interested party evidence (proposed to be 16 July 2021 and 13 August 2021 respectively) gives insufficient time for the filing of reply evidence by 1 September 2021, a date constrained by the need to produce the electronic common bundle prior to the commencement of the hearings.

[3] Having considered the proposed amended timetable and the position of both Te Rūnanga o Ngāti Awa and Ngā Hapū o te Moutere Motītī, I am satisfied that the proposed timetable should be adopted. While I accept that there is limited time available for the filing of reply evidence, I consider this is less significant than it appears and note that there was in fact no reply evidence filed in the Stage 1 hearings. On the contrary, in civil litigation generally specific reply evidence is not considered to be particularly helpful, particularly when as is normal it is presented out of context and in advance of the evidence it is purporting to reply to. As a result, in most cases, the preferred approach will be what is already required for contrary evidence to be put to a witness in questioning, whether in examination in chief or cross-examination, so as to enable the appropriate witness to comment on that evidence. With this in mind, the proposed timetable will allow witnesses at least a full month to consider their response to any contrary evidence filed.

[4] As a result, I confirm the following timetable will now apply:

- (a) any further applicant evidence is to be filed by **5 pm on 16 July 2021**;
- (b) any further interested parties' evidence is to be filed by **5 pm on 13 August 2021**; and

- (c) if necessary, any specific reply evidence is to be filed by **5 pm on 1 September 2021**.

[5] Mr Warren's memorandum also updated the Court on discussions between counsel as to the appointment of pūkenga for the Stage 2 hearings. It appears that nine candidates are currently being considered with no indication as yet of any preference. A further telephone conference between counsel has been proposed and Mr Warren has then proposed a process to enable appointments to be made. I am happy with the process set out (subject to slightly extending that timetable) and accordingly direct that on the pūkenga issue a joint memorandum (or separate memoranda in the event that there is no agreement between the parties), be filed no later than **12 noon on 18 June 2021** addressing:

- (a) pūkenga agreed/nominated;
- (b) the proposed role/process for the pūkenga in the Stage 2 hearings; and
- (c) a draft hearing schedule.

Powell J