

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

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

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

On the papers:

Counsel: C Hirschfeld for CIV-2017-404-526 (Ngā Tini Hapū o Maniapoto)
 R Siciliano for CIV-2017-404-575 (Ngaati Mahuta ki te Hauaaaru)
 D Stone and C Leauga for CIV-2017-419-81 (Ngāti Te Wehi)
 B Loader for CIV-2017-419-82 (West Coast Iwi and Hapū ki
 Marokopa Marae)
 T Bennion for CIV-2017-485-207 (Ngāti Apakura)
 V Morrison-Shaw for CIV-2017-485-202 (Te Tūnanganui o Ngāti Hikairo)
 S Downs and H Rauputu for CIV-2017-419-80 (Tootill), CIV-2017-485-216
 (Ngā Hapū o Mokau ki Runga), and CIV-2017-485-209 (Ngā Hapū
 o Mokau ki Runga)
 A Sykes and C Houia for CIV-2017-419-83 (Tainui hapū o Tainui Waka)
 J Ferguson for CIV-2017-419-84 (Waikato-Tainui)
 W Jenson (in person) and J Pou for CIV-2017-419-85 (Te Tokanganui-a-Noho
 Regional Management Committee)
 G Melvin for Attorney-General

Minute: 18 June 2021

MINUTE (NO. 9) OF CHURCHMAN J
[Case Management Conferences (CMCs) – Hamilton 2021]

CIV-2017-404-562 (Ngā Tini Hapū o Maniapoto)

[1] Mr Hirschfeld filed a memorandum reporting that historical research was underway. The memorandum recorded that there were nine overlapping applications, three of which the applicant had extensive contact with. That resulted in an agreement to amend the application. The applicant had also contacted three other groups to discuss their respective applications.

[2] An updated map was filed with the memorandum. That map indicates that the southern boundary of the application has been moved substantially northward to the mouth of the Waioroko Stream.

[3] The memorandum sought “directions from the Court to amend their application” and set out a list of topics that the applicant wished to amend the application on. Attached to the memorandum was a document dated 20 May 2021 described as an amended application.

[4] It is not for the Court to give directions as to how an application should be amended. Where an amended application reduces the area of the claim then it is likely to be permitted under the Act in accordance with the Court’s decision in *Re Ngāti Pāhauwera*¹ which discusses some of the principles relevant to amendment.

[5] This application is adjourned for 12 months until the 2022 CMC in Hamilton to facilitate the completion of evidence and continued engagement with overlapping applicants. I excuse the attendance of counsel at the CMC scheduled for 22 June 2021.

CIV-2017-404-575 (Ngaati Mahuta ki te Hauaauru)

[6] Ms Siciliano’s memorandum recorded that the applicant’s preference remains for direct engagement. She submitted it was important that all overlapping applications be heard together at the same time. Evidence gathering is underway but the historian’s report is not yet complete.

[7] The request for a 12-month adjournment until the 2022 Hamilton CMC is granted and counsel’s attendance at the 22 June 2021 Hamilton CMC is excused.

CIV-2017-419-81 (Ngāti Te Wehi)

[8] The memorandum filed by Mr Stone confirmed that the historical report, other technical evidence and tangata whenua evidence was complete and that the parties wish to proceed to a hearing in 2022. Although the applicant seeks a hearing “as soon as

¹ *Re Ngāti Pāhauwera* [2020] NZHC 1139.

possible”, the memorandum does not address the question of which overlapping claimants’ application should be heard at the same time. The memorandum alludes to a reduction in the area of the applicant’s CMT claim and continuing discussions with overlapping parties. However, it is not clear whether an amended application has yet been filed. The applicant seeks excusal from attendance at the 22 June 2021 CMC in Hamilton.

[9] I am not prepared to grant the request for excusal from attendance. Given the applicant’s request for a hearing as soon as possible, the Court needs to have information about the identity of all overlapping claimants and their attitude to participation in the hearing. The Court also needs an estimate of the time likely to be taken by the applicant, any cross-applicants, and any interested parties including the Attorney-General.

[10] I am prepared to permit counsel to attend the 22 June 2021 CMC by way of AVL link. Should counsel wish to do that, they will need to contact the Registrar to make appropriate arrangements.

CIV-2017-419-82 (West Coast Iwi and Hapū ki Marokopa Marae)

[11] Mr Loader’s memorandum records that the applicant’s preference is direct engagement but in the absence of any response from the Crown they wish to progress these proceedings. Significant progress has been made with oral and traditional evidence and expert evidence is anticipated to be completed by early 2022. The applicant therefore expects to be in a position to seek timetabling orders by mid-2022.

[12] The applicant is in dialogue with other overlapping applicant groups and the memorandum says that the applicant:

...would like to ensure that the High Court process ensures adequate opportunity for parties to continue this engagement with each other outside the formal Court hearing process, and prior to proceeding to hearing.

[13] Counsel suggests that this may be undertaken through a facilitated process such as engaging a pukenga.

[14] The Court consistently encourages all applicants to communicate with other overlapping applicants in a tikanga-based way to attempt to resolve overlapping issues. The Court will, should all parties agree, arrange for inter-party issues to be addressed at a judicial settlement conference convened by an Associate Judge. If the applicant wants to follow such a course then the first step is to discuss such a proposal with all other cross-applicants and then to file a joint memorandum of counsel.

[15] As far as involving a pukenga is concerned, there is no reason why the parties cannot utilise their own pukenga for a facilitation process.

[16] If the Court chooses to appoint a pukenga, this is normally done once a hearing date is set and the identity is known of all parties who wish to participate in the hearing whether as applicants who want the Court to decide their application or interested parties who do not want the Court to determine their application. It will not always be appropriate for a Court-appointed pukenga to also act as a facilitator.

[17] This application is adjourned for 12 months and counsel's appearance at the Hamilton CMC scheduled for 22 June 2021 is excused.

[18] Prior to the next Hamilton CMC, counsel will be expected to file a memorandum updating the Court on progress and, in particular explaining which overlapping parties should be heard as part of any hearing with this application and providing details as to the engagement between the applicant and these overlapping parties that has occurred.

CIV-2017-419-83 (Tainui Hapū o Tainui Waka)

[19] Ms Sykes' memorandum confirms that as a result of funding being obtained there has been significant progress collating evidence, although some technical matters are still outstanding. Discussions with overlapping applicants have occurred and are said to have been productive and are still ongoing.

[20] An impediment to this process is said to be the fact that overlapping applicants are still awaiting the outcome of funding applications. In the absence of the prospect of

prompt direct engagement with the Crown, the applicant wishes to progress this application.

[21] At the CMC on 22 June 2021 in Hamilton, the Court anticipates counsel being in a position to provide an update on interaction to date with overlapping applicants and an indication of the number of overlapping applications that may properly be heard with this application.

CIV-2017-485-207 (Ngāti Apakura)

[22] The memorandum filed by Mr Bennion reports that the applicant is yet to hear from the Crown in relation to their request for direct engagement. The memorandum identifies six overlapping High Court applications (CIV-2017-404-526 Ngā Tini Hapū o Maniapoto, CIV-2017-485-202 Te Tūnanganui o Ngāti Hikairo, CIV-2017-404-575 Ngāti Mahuta ki te Hauaaauru, CIV-2017-419-80 Tootill, CIV-2017-419-81 Ngāti Te Wehi, and CIV-2017-419-84 Waikato-Tainui.

[23] The memorandum indicates that some engagement with overlapping applications has occurred but that continued engagement should take place before the matter is allocated a hearing. In the absence of direct Crown engagement, the applicant indicates that it will ready to proceed to hearing in 2023.

[24] This application is adjourned for 12 months until the 2022 Hamilton CMC and counsel's attendance on 22 June 2021 is excused.

CIV-2017-485-202 (Te Tūnanganui o Ngāti Hikairo)

[25] A memorandum filed by Ms Morrison-Shaw recorded that two historians were currently undertaking research and preparing a report, a dedicated claims manager had been appointed and a community researcher was gathering tangata whenua evidence. Some initial correspondence with overlapping claimant groups had commenced. Evidence gathering was anticipated to be concluded by February 2022 and ongoing discussions with overlapping applicants were also anticipated to have concluded by that

time as well. The applicant expected to be in a position to seek timetabling orders toward a hearing by mid-2022.

[26] This application is adjourned for 12 months until the 2022 Hamilton CMC and counsel's attendance at the CMC on 22 June 2021 is excused.

[27] Prior to the 2022 Hamilton CMC, counsel is expected to have liaised with applicants with overlapping claims that could appropriately be heard with this one and, in the updating memorandum to be filed prior to the next CMC, to identify which overlapping claims could suitably be heard with this claim.

[28] Any counsel wishing to attend the 22 June 2021 CMC in Hamilton by AVL rather than in person should immediately make contact with the Registrar to arrange that.

Churchman J