

# I TE KŌTI MATUA O AOTEAROA WHANGĀREI TERENGA PARĀOA ROHE

On the papers:

Counsel: C Hirschfeld for CIV-2017-404-442, CIV-2017-404-522, CIV-2017-404-535, and CIV-2017-404-540  
B Lyall for CIV-2017-485-239, and CIV-2017-404-523  
J Kahukiwa and J Harper-Hinton for CIV-2017-404-566, CIV-2017-404-572  
E Rongo for CIV-2017-404-570  
S Wroe for CIV-2017-485-208  
C Hockly for CIV-2017-485-208, CIV-2017-485-305, and CIV-2017-485-352  
R Siciliano for CIV-2017-485-237, CIV-2017-404-537, CIV-2017-485-208, CIV-2017-485-240, and CIV-2017-485-398  
T Bennion for CIV-2017-485-250  
K Dixon and A Castle for CIV-2017-485-286, CIV-2017-485-281, CIV-2017-485-307, CIV-2017-485-279, and CIV-2017-485-438  
T Castle for CIV-2017-404-573  
J Inns for CIV-2017-485-283  
R Zwaan for CIV-2017-485-298  
K Tahana and L Underhill-Sem for CIV-2017-485-308, CIV-2017-485-510  
J Mason for CIV-2017-485-398, CIV-2017-485-515  
R Harrison for CIV-2017-485-426  
M Sreen and M Yogakumar for CIV-2017-404-529, CIV-2017-404-577, CIV-2017-404-578, CIV-2017-485-233, CIV-2017-485-265, and CIV-2017-485-245, CIV-2017-485-252

Interested parties:

A Thomas for Ngāti Rehia  
M Jones for Kaipara District Council  
D Stone and C Leauga for Sheena Ross  
G Melvin and R Budd for Attorney-General

Minute: 22 June 2021

[1] Some 61 cases are to be called at the CMC set down to commence at 10 am on 29 June 2021 in Whangarei.

[2] I thank those counsel who have filed memoranda in accordance with the Court's direction of 11 May 2021.

[3] A large number of the applicants have provided the updating information that the Court sought with the result that the appearance of counsel can be excused and directions made on the papers. A summary of those directions are set out below.

[4] A small number of counsel have applied to participate by way of AVL. Unfortunately, as previously notified by the Court, because the Whangarei CMC is not being held at the Court but in an offsite premises, there is no AVL link available.

[5] Two of the dominant themes that emerged from the memoranda are:

- (a) concern about lack of or inadequacy of funding; and
- (b) concern as to the failure of the Crown to respond requests for direct engagement which is the preference of a number of applicants.

[6] While the Court is aware of the financial difficulties faced by many applicants in relation to attendance at the CMC and has therefore encouraged applicants to provide an update in sufficient detail so that directions can be made on the papers, the Court is not able to facilitate appearance by AVL at this CMC. Counsel who had sought to attend by AVL may wish to give consideration to fully briefing an agent to appear on their behalf.

[7] Where an applicant is seeking to have their case timetabled toward hearing, counsel's attendance is required in person so that the Court can be fully informed about matters such as the proposed timetable directions sought, the number of anticipated witnesses and likely length of hearing, the nature of the overlapping applications and an indication which of the overlapping applications might appropriately be set down for hearing as part of the hearing with the applicant seeking timetable orders.

[8] As the Court has previously indicated, there are now blocks of time available for the Court to set hearings down in the second half of 2022 and in 2023. However, to ensure an efficient use of the Court's and applicants' time, it is likely that where there are groups of overlapping applications, there will be a joint hearing in respect of the overlapping claims. But this will, of course, be subject to the overriding requirement that hearings be of a manageable length and if there are very large numbers of overlapping claims, hearings may have to be held in groups. Where there are multiple applications from hapū or whānau of the same iwi, it is likely to make sense to deal with those applications as a group where possible.

[9] The following applications are adjourned for 12 months to the 2022 Whangarei CMC and the appearance of counsel on 29 June 2021 is excused.

C Hirschfeld for CIV-2017-404-442, CIV-2017-404-522, CIV-2017-404-535,  
and CIV-2017-404-540  
B Lyall for CIV-2017-485-239, and CIV-2017-404-523  
J Kahukiwa and J Harper-Hinton for CIV-2017-404-566, CIV-2017-404-572  
E Rongo for CIV-2017-404-570  
S Wroe for CIV-2017-485-208  
C Hockly for CIV-2017-485-208, CIV-2017-485-305, and CIV-2017-485-352  
R Siciliano for CIV-2017-485-237, CIV-2017-404-537, CIV-2017-485-208,  
CIV-2017-485-240, and CIV-2017-485-398  
T Bennion for CIV-2017-485-250  
K Dixon and A Castle for CIV-2017-485-286, CIV-2017-485-281,  
CIV-2017-485-307, CIV-2017-485-279, and CIV-2017-485-438  
T Castle for CIV-2017-404-573  
J Inns for CIV-2017-485-283  
R Zwaan for CIV-2017-485-298  
K Tahana and L Underhill-Sem for CIV-2017-485-308, CIV-2017-485-510  
J Mason for CIV-2017-485-398, CIV-2017-485-515  
R Harrison for CIV-2017-485-426  
M Sreen and M Yogakumar for CIV-2017-404-529, CIV-2017-404-577,  
CIV-2017-404-578, CIV-2017-485-233, CIV-2017-485-265, and  
CIV-2017-485-245, CIV-2017-485-252  
R Devine and C Woodward for CIV-2009-488-205

*Requests for appearance by AVL*

[10] J Graham and R Jones for CIV-2017-485-271, and CIV-2017-485-321: I am unable to grant the request to attend by AVL but am prepared to excuse counsel's

attendance and make the directions on the papers. Counsel should notify the Registrar if they wish to take that course.

[11] M Piripi for CIV-2017-485-236, and CIV-2017-485-290: Counsel is excused from attendance in respect of both of these matters but the Court notes that a representative of the applicant in CIV-2017-485-290 will be present.

[12] It is noted that timetable directions are to be sought in CIV-2017-485-277. If any applicants whose attendance has been excused or applicants who wish to appear by AVL, overlap with this application and want to be heard on it, they will need to either appear or instruct an agent.

[13] A Sykes and C Houia for CIV-2017-485-272: This applicant wanted to participate by AVL but seeks a timetable order. Any applicant seeking a timetable towards hearing will need to appear in person and to provide the Court with the information set out in [7] above.

[14] D Stone and C Leuga for CIV-2017-485-307: Counsel have sought leave to be excused attendance and to have this matter dealt with on the papers but have also sought to "...be granted leave to respond to any matters of interest to the interested party within 14 days of receipt of the CMC transcript".

[15] A purpose of having a CMC is so that all applicants and interested parties have the opportunity of hearing the position of the other applicants whose applications they may have an interest in. If a cross-applicant or interested party wishes to make submissions on any other application, they get the opportunity to do so. The affected applicant can then reply. The Court can then make directions which are informed by the views of all parties. Granting counsel leave not to attend but leave to make submissions at some later date undermines the effectiveness of the CMC process. If an unexpected matter arises at a CMC that counsel could not have foreseen, counsel can apply for leave to file submissions but that course should not become the alternative to attendance at the CMC.

[16] Counsel also ask that “the Interested Party be included in the CIV-2017-485-307 application.” It is not clear what counsel means by referring to the words “be included in” and, in the absence of further information, the Court is unable to make such an order. Counsel also ask, “That leave be granted for counsel to file a memorandum of counsel to participate as an interested party and any other overlapping applications as they become known.”

[17] It is up to counsel to identify what applications might overlap with the application of the applicant they represent. The mapping database held by Te Arawhiti should be referred to for that purpose.

[18] Counsel also sought “...to reserve the right to respond to any matters that may be of interest to the Interested Party in writing upon receipt of the CMC transcript”. If counsel wish to respond to matters that arise in the CMC, counsel can achieve that by attending the CMC and making submissions on such other matters during the course of the CMC.

[19] Mr Tavake sought leave to have CIV-2017-404-546 called in Whangarei rather than Auckland. That application is granted.

#### *Interested parties*

[20] Ngāti Rehia: Ms Thomas has filed a memorandum indicating that Ngāti Rehia is an interested party in some 10 applications due to be called in the Whangarei CMC. The memorandum indicates that Ngāti Rehia have not had any contact from any of the applicants in the 10 proceedings where it is an interested party. The memorandum asks that:

Should any issues arise ... that affect counsel’s clients and require a response, we respectfully seek leave to file a memorandum out of time, or alternatively, to provide submissions at the CMC scheduled for 29 June 2021 in Whangarei.

[21] If the interested party wishes to appear and make submissions at the Whangarei CMC (or any other CMC), no leave is required. Counsel should simply notify the Registrar of their intention to appear.

[22] Unlike applicants, interested parties are under no obligation to appear at CMCs or to file memoranda in advance. Therefore, if they do not wish to attend a CMC, they are not obliged to obtain leave to be excused.

[23] The memorandum of counsel concludes by stating that notwithstanding an application for funding filed well over a year ago, the interested party has not received any substantive response.

[24] As noted at [5] above, concerns about lack of funding or the lack of any or any adequate response to funding requests is an issue raised in many of counsel's memoranda. It is something that the Court will be raising at the Whangarei CMC with counsel representing the Attorney-General.

#### *Kaipara District Council*

[25] Mr Green, counsel for the interested party Kaipara District Council, seeks leave to be excused from attendance at the Whangarei CMC (and other CMCs). Counsel is thanked for his memorandum advising the Court of the position of the Kaipara District Council (and the District Councils in other areas who are interested parties in other proceedings). As explained above, any interested party is not obliged to apply for leave to excuse an appearance.

#### *Failure to file a memorandum*

[26] There are some five applicants whose cases are scheduled to be called at the Whangarei CMC on 29 June 2021 who have failed to file a memorandum as directed by the Court in its minute of 11 May 2021. They are:

- (a) CIV-2017-404-525 – Ngāti Manu and Ngāti Rangi;
- (b) CIV-2017-404-554 – Ngā Hapū o Ngātiwai Iwi;
- (c) CIV-2017-404-555 – Te Whānau o Hōne Pāpita Rāua Ko Rewa Ataria Paama;

(d) CIV-2017-485-799 – Te Parawhau Hapū; and

(e) CIV-2017-404-559 – Ngāti Kahu, Te Rarawa and Te Uriohina.

[27] The attendance of each of these applicants is required at the Whangarei CMC. Counsel involved are reminded of their obligations, as officers of the Court, to comply with directions of the Court in particular, where timetable directions are made, to comply with the timetable or, prior to the expiry date, to apply for leave to extend or vary the timetable directions.

**Churchman J**