

**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 Pōtiki a Tamapahore trust
for an order recognising Customary Marine
Title and Protected Customary Rights

Date of 21 September 2021 (by VMR and telephone)
Conference:

Appearances: A Warren and J Lewis for Ngā Pōtiki
John Kahukiwa and J Harper-Hinton for Ngāti Whakaue
H Irwin-Easthope and K Tarawhiti for Te Rūnanga o Ngāti Awa
J Mason for Ngāti Whakaue ki Maketu
K Feint QC and I Peters for Ngā Hapū o te Moutere Motītī
J Pou for Ngāti Makino and Ngāti Pikiao
J Koning for Ngāti Whakahemo
R Budd A Goosen, and C Barnett for the Attorney General
R Boyte for Western Bay of Plenty Regional Council
M Sharp for Ngāti He Hapū Trust
B Cunningham for Te Uri a Tehapu
T Bennion for Ngāti Pūkenga
J Gear for Ngāi Te Rangī
J Koning for Ngāti Whakahemo
V Hamm for Sunchaser Investment Limited Partnership, Te Tumu
Kaituna 14 Trust, Ford Land Holdings Pty Limited and Carrus
Corporation Ltd
R Boyte for Bay of Plenty Regional Council
C Bulow for Tauranga City Council
C Bidois for Te Kapu o Waitaha Trust

Date of Minute: 21 September 2021

**MINUTE (No. 16) OF POWELL J
[Ngā Pōtiki Minute No. 25]**

[1] This telephone conference was convened to discuss the arrangements for the commencement of the Ngā Potiki Stage 2 hearing now that it has been announced that Auckland is about to move to Covid 19 Alert Level 3.

[2] Counsel were advised that it had been agreed in principle following ongoing discussion within the Ministry of Justice and High Court to commence the hearing on 27 September 2021 or as soon thereafter as practicable. The commencement of the hearing is subject to formal approval for me as the presiding Judge to move from Auckland to Papamoa for the hearing.

[3] The decision to proceed is the result of various factors. First, the hearing has priority and if it not commenced soon it will not be able to be completed this year. In the event that it cannot proceed this year the schedulers at the High Court have indicated that the earliest it will proceed is sometime in 2023.

[4] Because of the nature of the Covid 19 Delta variant, I will be the only person travelling across the border while Auckland remains at Level 3. Arrangements have been put in place to ensure that I remain isolated from members of the public and those at the hearing until Auckland moves to Level 2 or the hearing concludes whichever is the earlier.

[5] As discussed at the conference this will mean that Auckland based counsel will not be able to attend in person for at least the first part of the hearing, with attendance to be by VMR until such time as Auckland moves to Level 2.

[6] To minimise the disruption to Auckland counsel, counsel are requested to discuss modifying the current proposed hearing schedule to enable matters of particular importance to Auckland counsel to be addressed when they are physically present in Court.

[7] Counsel attending the hearing in person will comply with the hearing protocol which was circulated in draft form prior to the conference, with a final version to be issued prior to the commencement of the hearing.

[8] Following discussion with counsel there was overall support for the commencement of the hearing on the basis proposed. The space limitations of the venue were noted and it was agreed it would be sensible to adjourn the commencement of the hearing until 10 a.m on 28 September 2021 to enable the Registry to confirm to counsel in the course of 27 September 2021 the final details of the hearing venue “as fitted”, so as to ensure that the maximum capacity of the venue is understood by all parties and counsel.

[9] The hearing will commence with presentations of opening submissions by counsel, with Auckland based counsel to present opening submissions by VMR.

[10] The following specific matters were also discussed and/or are noted for completeness:

- (a) Draft transcripts are to be circulated as soon as they become available to enable counsel to check the accuracy with a view to finalising transcripts as much as possible before closing submissions.
- (b) All applicants and interested persons wishing to file closing submissions will have to do so at a date to be fixed in the course of the hearing. Leave is refused for any party to delay filing closing submissions until sometime after the transcript has been finalised as this would preclude other counsel from commenting on closing submissions at the time they are presented.
- (c) Counsel at their discretion may attend the hearing by VMR rather than in person.
- (d) The participation in the hearing of the Tauranga City Council and Bay of Plenty Regional Council as set out in the joint memorandum dated 16 September 2021 is noted, subject to closing submissions being filed as set out in (b) above.

- (e) The non-participation of the Western Bay of Plenty District Council and the Ngā Hapū o Ngāti Ranginui Settlement Trust in the Stage 2 hearing is noted.

[11] The Ngā Potiki Stage 2 hearings are formally adjourned to 10 a.m. on 28 September 2021. The final hearing schedule agreed by counsel is to be filed by 1 pm on Friday 24 September 2021 and, in the event there are any further issues arising, Mr Warren is to advise the Registry in which case a further telephone conference will take place at 2.15 pm on 24 September 2021.

Powell J