

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2011-485-821
CIV-2017-485-241
CIV-2017-485-235
CIV-2017-485-246

UNDER

the Marine and Coastal Area
(Takutai Moana) Act 2011

IN THE MATTER OF

an application by the Trustees of the
Ngāti Pāhauwera Development Trust
Toro Waaka, Tania Hodges, Tureiti Moxon,
Chaans Tumataroa-Clarke, Ngaire Culshaw,
Rex Adsett and Richard Allen on behalf of
Ngāti Pāhauwera for orders recognising
protected customary rights, wāhi tapu and
customary marine title
(CIV-2011-485-821)

an application by the Trustees of the
Maungaharuru-Tangitū Trust for and on
behalf of Ngāti Kurumōkihi,
Ngāti Marangatūhetaua, Ngāti Whakaari,
Ngāi Tauira, Ngāi Te Ruruku ki Tangoio,
and Ngāi Tahu for orders recognising
protected customary rights and customary
marine title (CIV-2017-485-241)

an application by Malcolm J Kingi on
behalf of **Ngāi Tahu ō Mōhaka Waikare**
for orders recognising protected customary
rights and customary marine title
(CIV-2017-485-235)

an application by Rapihana Te Kaha
Hawaikirangi on behalf of **Ngāti Pārau** for
orders recognising protected customary rights
and customary marine title
(CIV-2017-485-246)

On the papers:

Counsel: S Grant, R N Smail, and K Dawson for Ngāti Pāhauwera
Development Trust
K M Anderson and M J Dicken for Maungaharuru-Tangitū Trust
D C F Naden and S M Yogakumar for Ngāi Tahu ō Mōhaka Waikare
M K Mahuika and L A V Underhill-Sem for Ngāti Pārau
B Lyall for Mana Ahuriri Trust
R L Roff for Attorney-General
B Scott for Seafood Industry Representatives

Minute: 5 May 2022

MINUTE (NO. 17) OF CHURCHMAN J

Background

[1] Stage Two of this case is set to proceed in the High Court at Napier commencing 23 May 2022.

[2] There have been a number of recent memoranda filed seeking to vary certain of the timetable directions. It appears that prior to filing the various memoranda, counsel have not consulted with all other parties affected by the proposed amendments. Counsel seeking to vary longstanding timetable orders are encouraged to do that prior to approaching the Court seeking variation.

[3] By joint memorandum dated 3 May 2022, counsel for the four successful applicant parties sought to amend the timetable so that the applicants filed and served draft orders, submissions, and briefs of evidence by 11 May 2022, and interested parties including the Attorney-General file submissions and briefs by 16 May 2022.

[4] The amendments sought effectively amounted to a five-day extension (from Friday 6 May to Wednesday 11 May) for the filing of the applicants' evidence, and what was effectively a one working day extension (from Friday 13 May to Monday 16 May) for the interested parties.

[5] All counsel were advised of the grant of the extension on the afternoon of 3 May 2022.

[6] At 4:59pm on 3 May, counsel for the Mana Ahuriri Trust (an interested party), emailed the Registrar advising that his client did not oppose the extension sought by the applicants but wanted corresponding extension until 18 May rather than 16 May.

[7] At 12:30pm on 4 May, counsel for the Attorney-General filed a memorandum noting that the Attorney-General was to prepare the common bundle for the applicants with all indices and relevant documents to be provided to the Attorney-General by 5:00pm Friday 13 May in order that the common bundle could be filed and served electronically by 5:00pm Thursday 19 May (four working days later).

[8] Counsel noted that it was prejudicial to the Attorney-General and to other interested parties to have only three days in which to respond to the applicants' draft orders, evidence, and submissions. Counsel accepted that the Attorney-General was required to file his evidence by 5:00pm Monday 16 May, but requested that the Attorney-General and other interested parties be granted a five working day extension to file their submissions, i.e. by 5:00pm Wednesday 18 May.

[9] On the morning of 5 May, counsel for the Seafood Industry Representatives (SIR) (an interested party), filed a memorandum. The memorandum did not seek any specific variation but noted that the variation to the timetable left the SIR only three days in which to respond to what was filed by the applicants. The memorandum indicated the possibility of a further application to vary orders.

Analysis

[10] In addressing applications for variation to timetable orders made only a short time prior to the commencement of a hearing, the Court endeavours to balance the interests of applicants who have had to respond to unforeseen developments with the interests of all of the parties in ensuring that preparation for the hearing proceeds in an orderly manner and that variation to meet the interests of one party does not prejudice another party. It is not always possible to achieve perfection in that regard.

[11] The Stage Two hearing in this matter has a relatively narrow focus relating to the precise identification (by way of filing maps) of the boundaries of the areas in respect of which

recognition orders under the Act have been granted and identification of exactly who will hold the orders.

[12] The foundational evidence leading to the grant of the recognition orders was given in the Stage One hearing and, for that reason, the contents of the documentation filed by the successful applicants should not come as a complete surprise to the interested parties, or be matters which require substantial evidence in response. That is perhaps most particularly so in relation to the SIR and their concern about wāhi tapu areas. The decision in Stage One addressed in some detail the various claims for wāhi tapu protection. That would have given guidance to the SIR as to the nature of the matters that they may wish to make submissions or call evidence on.

[13] I accept the submissions by counsel for the Attorney-General that what is proposed by the applicants puts the Attorney-General under unreasonable pressure particularly in relation to preparation of the common bundle.

Outcome

[14] Accordingly, I vary the timetable order to allow the interested parties until 5:00pm Wednesday 18 May to file any evidence and submissions, but would encourage them to file such material by 5:00pm Monday 16 May, if at all possible, to assist in preparation of the common bundle.

Churchman J