

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

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

UNDER	the Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	an application for orders recognising Customary Marine Title and Protected Customary Rights

Minute: 4 August 2022

MINUTE OF CHURCHMAN J

[1] On 1 July 2022, the Court issued a minute following the various case management conferences (CMCs) held around the country.

[2] Since then, progress has been made in either allocating firm fixtures and indicating who the presiding judicial officer is likely to be, or indicating the likely details of hearing date and presiding Judge.

[3] The purpose of this minute is to advise all counsel of these details. The omission of any application or group of applications from this list does not mean that they will not be allocated a hearing until after the last date on this list.

[4] The list simply records details of those applications that are able to be set down at the moment, so that those parties involved and their representatives know what to anticipate.

[5] In respect of some of the hearings, the actual number of applicants has not yet been finalised with the Court waiting for further submissions. Further submissions have been received in respect of the Whangārei Harbour hearings, and these are discussed below.

Whangārei Harbour hearings

[6] In the 1 July CMC minute, I directed that counsel for the applicants in these hearings seek to agree on draft timetables, and to file individual memoranda if they were unable to agree, within 30 days.¹ On 29 July 2022, the Registrar advised the applicants that hearing dates had not yet been finalised and the deadline regarding submissions directed on 1 July had been suspended.

[7] Since then, dates have been allocated. These are for the hearing relating to the:

- (a) Whangarei Harbour, beginning 12 February 2024; and
- (b) area outside Whangarei Harbour, including to Bream Tail and the Hen and Chicken Islands, beginning 22 July 2024.

[8] In response to the Registrar's notification of the suspension of my previous directions, multiple memoranda were filed by various applicants.

Mr Hockly – joint memorandum

[9] Mr Hockly filed a joint memorandum on behalf of eight applicant groups.² He submits in relation to the Whangārei Harbour hearing that the applicants will be unable to file their evidence prior to early 2024. He says that the hearing date should be set for mid-2024.

[10] This assertion was based on estimations made by the historians that the applicants have engaged, and the difficulty they have had in contracting those historians. Mr Hockly also expressed concern in relation to overlap between filing dates for counsel representing applicants in both Whangārei hearings.

[11] Mr Hockly's memorandum contained a framework proposal for the period prior to the hearing on the following terms:

¹ At [155].

² These were: CIV-2017-485-305, CIV-2017-485-283, CIV-2017-485-281, CIV-2017-485-286, CIV-2017-404-442, CIV-2017-404-566, CIV-2017-485-398, and CIV-2017-485-515.

- (a) applicants filing their evidence 25 weeks before hearing;
- (b) interested parties, other than the Attorney-General, filing their evidence 16 weeks before hearing;
- (c) applicants filing submissions as to the appointment of pūkenga by 16 weeks before hearing;
- (d) the Attorney-General filing his evidence 12 weeks before hearing;
- (e) applicants' evidence in reply to be filed nine weeks before hearing;
- (f) close of pleadings' date to be seven weeks before hearing;
- (g) applicants' opening submissions, statement of agreed facts, and bundles of authorities to be filed six weeks before hearing;
- (h) interested parties' submissions and bundles of authorities to be filed four and a half weeks before hearing; and
- (i) the Attorney-General's submissions and bundles of authorities to be filed three weeks before hearing.

Mr Castle on behalf of Te Hikutu Hapū, Joseph Kingi and Rihari Dargaville

[12] Mr Castle's memorandum supports Mr Hockly's.

Mr Erskine on behalf of Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai

[13] Mr Erskine broadly supported the thrust of Mr Hockly's proposals, expressed a similar concern regarding any overlap in filing dates for the two hearings, and also noted concern regarding the potential for a timetable stretching over the Christmas/New Year period.

[14] Ms Chen's memorandum in reply to Mr Hockly referred more to issues as between the applicants than to the process for agreeing a draft timetable for either hearing. However, the draft joint memorandum attached to Ms Chen's substantive memorandum contained the same draft timetable towards hearing as Mr Hockly's memorandum. Ms Chen also shared the same concerns regard overlap in filing dates and the Christmas/New Year period.

Discussion

[15] The parties are in agreement as to the periods of time between the filing of particular documents in the period prior to hearing, as evidenced in their memoranda. On the basis of that proposed timetable and with some slight modification to reflect the Court Christmas shutdown to accommodate the hearing dates of 12 February 2024 and 22 July 2024, the following schedule results:

To be filed:	Whangarei Harbour hearing	Whangarei Coast hearing
Applicants file their evidence (25 weeks before hearing)	21 August 2023	29 January 2024
Interested parties, other than the Attorney-General, file their evidence (16 weeks before hearing)	23 October 2023	1 April 2024
Applicants file submissions as to the appointment of pūkenga (16 weeks before hearing)	23 October 2023	1 April 2024
Attorney-General files evidence (12 weeks before hearing)	20 November 2023	29 April 2024
Applicants' evidence in reply to be filed (10 weeks before hearing)	4 December 2023	20 May 2024
Close of pleadings' date (9 weeks before hearing)	11 December 2023	3 June 2024
Applicants' file opening submissions, statement of agreed facts, and bundles of authorities (7.5 weeks before hearing)	21 December 2024	10 June 2024
Interested parties' file submissions and bundles of authorities (4.5 weeks before hearing)	10 January 2024	19 June 2024
Attorney-General files submissions and bundles of authorities (3 weeks before hearing)	22 January 2024	1 July 2024
Hearing begins	12 February 2024	22 July 2024
Hearing ends	17 May 2024	14 October 2024

[16] For the following reasons, I have come to the conclusion that this schedule provides an appropriate pathway to hearing.

[17] Firstly, all parties have an interest in the just, speedy, and inexpensive determination of their applications, all of which have been active prior to 1 April 2017. Based on the above schedule, the applicants for the Whangarei Harbour hearing have over 12 months to prepare and file their evidence, with the hearing beginning roughly 18 months from now.

[18] I accept that there is some pressure on historians to undertake historical research. However, as these hearings have now been allocated firm fixtures, the historians will need to re-prioritise their research away from cases where there is no fixture allocated. These are also cases where there is likely to be considerable opportunity for collaboration between parties and the use of one historian to provide historical evidence for more than one of the many closely related applicants. The claimed difficulties in evidence preparation are not insurmountable given the 18-month period before the first hearing starts. In my view, that is time enough for the applicants to prepare, as well as to develop co-operative approaches to the remaining overlapping applications. I am not satisfied that there is a justification for delaying the beginning of that hearing to mid-2024 to allow applicants a further four to five months to prepare their evidence.

[19] Secondly, in response to the concerns of counsel as to filing dates over the Christmas/New Year period, it is common practise that when a filing date falls upon a day when the Court registry is closed, the appropriate date to file documents is the next day on which that registry is open.³

[20] Finally, as several of the applicant groups will be appearing at both Whangārei hearings, the concern as to overlap between filing dates for evidence is of lesser importance. A great deal of the evidence filed by the applicants is likely to be relevant to both hearings.

³ High Court Rules 2016, r 1.18.

[21] The following hearing dates are therefore confirmed:

Date	Duration	Area	Stage	HC Venue	Note: the identity of the proposed presiding Judge may change
31 October/ 1 November 2022	2 days	Auckland	Strike out of 3 applications	Auckland	Presiding Judge Harvey J.
4 September 2023	8 weeks	East Coast Wairarapa Group M	Stage 1	Wellington	Presiding Judge Gwyn J.
12 February 2024	10 weeks	East Coast Wairarapa Group M	Stage 1 (Part 2)	Wellington	Presiding Judge Gwyn J. Note that the Court will not sit during the Easter vacation (28 March-5 April) which will mean the 10 weeks allocated will finish on 3 May 2024.
After the substantive judgments in the Stage 1 and Stage 1 (Part 2) East Coast Wairarapa hearings have been delivered.	1-2 weeks	East Coast Wairarapa Group M	Stage 2 hearing in respect of the two East Coast Wairarapa Stage 1 hearings.	Wellington	No date set yet.
6 May 2024	12 weeks	South West (Whanganui/Kāpiti) Group N	Stage 1	Wellington	Presiding Judge Grice J. Boundaries and whether the hearing needs to be split into two stages will be addressed following receipt of memoranda due August 2022.
12 February 2024	10-12 weeks	Whangārei Harbour	Stage 1(a)	Auckland	Presiding Judge provisionally Harvey J. The Court will not sit during the Easter vacation (28 March-5 April) which will mean the 12 weeks allocated will finish on 17 May 2024.
22 July 2024	10-12 weeks	Whangārei Coast	Stage 1 (b)	Auckland	Presiding Judge provisionally Harvey J. Whangārei Harbour entrance to Bream Tail out to and including Hen and Chicken Islands.
17 June 2024	2 weeks	Aotea Harbour	Stage 1	Hamilton	No Judge allocated yet.

[22] The following 2023 CMC dates are also confirmed:

1 June 2023 – Auckland
2 June 2023 – Whangarei
6 June 2023 – Wellington
7 June 2023 – Dunedin
8 June 2023 – Nelson

14 June 2023 – Gisborne
15 June 2023 – Tauranga
16 June 2023 – Rotorua
20 June 2023 – Hamilton
21 June 2023 – New Plymouth

P.B. Churchman J

Churchman J