

**MACA CASE MANAGEMENT CONFERENCE
WELLINGTON
28 MAY 2018 at 10.00 am**

COURT:

Good morning everyone,

In a few moments, I am going to invite counsel to announce their presence and to identify which of the parties they are representing and during the course of that process I would also invite counsel to explain whether or not the parties that they are representing have an overlapping claim with the priority claim that is to be referred to today. That is the claim by Ms Clarkson against the Crown.

This is the first round of case management conferences for the 202 claims under the Marine and Coastal (Takutai Moana) Act.

Because of the logistical challenges in trying to manage 202 claims, I have limited the first round of case management conferences to the parties. I am aware of course that there are a number of interested parties and I propose to engage with them after the first round of case management conferences has been completed.

The purpose of the case management conference is to assist the parties in advancing their proceeding to a hearing. It may be possible in rare situations to resolve a dispute at a case management conference, but the primary objective of the case management conference is to facilitate the advancement of the cases to a substantive hearing.

At this stage, I have two broad objectives:

- (i) one is to put in place timetables for the eight applications that are entitled to priority under s 125 of the Act, and that includes Ms Clarkson's case; and
- (ii) secondly, to work out which applicants' cases should be heard in conjunction with the eight priority cases.

After I have concluded the first round of case management conferences in about three to four weeks' time, I will issue a minute or minutes setting out the steps which I expect the parties to take before I conduct the second round of case management conferences.

So, I will now invite counsel to announce their presence and to identify who they are acting for, and whether or not their claim is an overlapping claim in relation to Ms Clarkson's priority claim.

I have a list in front of me that has been prepared by the registry. I don't know if there is any logic to the order but I will start with you Mr Irwin.

MR IRWIN:

May it please the Court, counsel's name is Irwin. I am here today for Mr Elkington (CIV-2017-485-000218). I think that might be the first at the top of your list. Mr Elkington is also here today. The application is for Ngāti Koata, an iwi at the top of the South Island. It does not overlap with any of the priority applications.

COURT:

Thank you very much Mr Irwin.

Mr Lyall

MR LYALL:

Tēnā koe Sir. May it please the Court, counsel's name is Lyall. Here today on behalf of Mr Patrick Seymour, who has brought this application on behalf of Te Whānau Tima. That's CIV-2017-485-273 and it does not overlap.

COURT:

Thank you very much Mr Lyall.

Mr Hirschfeld

MR HIRSCHFELD:

May it please your Honour sir. I appear for CIV-2017-404-479 that's the Chatham Islands in particular. Mr Jack Daymond of Waitangi, Chatham Islands. He tenders his apology on the basis of his absence today sir and also I appear for 2017-404-481 George Matthews of Masterton for Te Hika o Papaūma, who is present today in court.

COURT:

Good morning.

MR HIRSCHFELD:

Thank you sir.

COURT:

And no overlapping claims?

MR HIRSCHFELD:

No overlapping claims sir.

COURT:

Right, thank you very much Mr Hirschfeld.

Ms Houra

MS HOURA:

May it please your Honour, counsel's name is Ms Houra. I appear as counsel for Te Ātiawa o Te Waka a Māui Trust (CIV-2017-485-000365). Your Honour I've only just recently taken instructions from Te Ātiawa on this matter and I'm asking if I can seek leave for three days to take further instructions regarding overlapping matters. I believe there may well be sir. But I need to take further instructions.

COURT:

Alright. Do you propose to file a memorandum in three days?

MS HOURA:

Yes sir.

COURT:

Thank you.

Mr Naden, good morning

MR NADEN:

Counsel's name is Naden and I appear in relation to four matters. The first is 2017-485-160 an application by Williams James Taueki on behalf of Muaūpoko and sir there is no overlapping issue with that application. The other three are on the other side of the island sir, down in the Wairarapa. There's 2017-485-226 an application by Rebecca Harper on behalf of Te Hika o Papaūma; 2017-485-267 an application by Kahura Watene on behalf of Tukōkō and Ngāti Moe; and 2017-485-232 an application by Ngāi Tūmapūhia-ā-Rangi Māori Marae Committee Incorporated. Sir, none of those are overlapping with any of the prioritised

applications apart from the possibility that they may have cascading – there's a cascading overlap with Ms Clarkson's claim.

COURT:

Now which one may be a cascading overlap?

MR NADEN:

The three of them sir, with the Clarkson application sir. Thank you sir.

COURT:

Thank you very much Mr Naden.

Ms Brown

MS BROWN:

Good morning, may it please your Honour counsel's name is Ms Brown. Today I am appearing on behalf of the applicant to the Williams claim, CIV-2017-485-258. We have a representative here today for the applicant, Sir Mātiu Rei, who's in the back and I confirm that there's no overlapping with the priority case.

COURT:

Thank you very much Ms Brown.

Ms Tarawhiti

MS TARAWHITI

Counsel's name is Ms Tarawhiti. I appear jointly with Mr Ferguson. I appear on behalf of three applications here today. First, the Papauma Marae Trustees with the CIV-2017-485-220. In relation to that application we do not overlap with the Clarkson application but like my friend Mr Naden this claim may have cascading or a domino effect in relation to the materially overlapping application.

COURT:

In relation to Ms Clarkson's application?

MS TARAWHITI:

Yes. The other two applications that I represent here today are the trustees of Tūpoki Takarangi Trust CIV-2017-485-211 and Rachel Anne Selby, which CIV number ends in 229 and neither of those applications overlap with the priority application.

COURT:

Sorry, I'm just finding that one 229.

MS TARAWHITI:

It's Rachel Anne Selby on behalf of Ngāti Raukawa ki te Tonga.

COURT:

Can you just pause for a moment, I don't seem to have a reference to that one.

MS TARAWHITI:

It will be under Mr Stone, apologies your Honour. Mr Stone puts his apologies in.

COURT:

So is that one also a possible cascading claim?

MS TARAWHITI:

No your Honour. But Tūpoki may be?

MS TARAWHITI:

No your Honour. The only cascading our claim here today is the Papauma Marae Trustees with Clarkson itself.

COURT:

Alright. Thank you very much for that. I'm very grateful.

Yes Mr Ferguson

MR FERGUSON:

If I can just tag onto the end of that sir because the reason I am here is because I received late instructions in the course of the weekend sir for the unrepresented case 2017-485-229 (Ngāti Raukawa ki te Tonga), which has no counsel listed on your form probably.

COURT:

There is a handwritten note recording your name.

MR FERGUSON:

So I have received some instructions to appear today sir. I can't clarify entirely whether that is instructions on behalf of the current solicitors and counsel, Ms Braithwaite or whether its instructions to proceed to act in the proceeding but in any event I'm here. That application sir I understand does overlap with Clarkson in that regard. So it's not cascading. It's a direct overlap albeit a small one.

COURT:

Thank you very much for that Mr Ferguson.

Mr Watson

MR WATSON:

Sir may it please the Court, counsel's name is Watson. I'm here in two capacities sir. Firstly, in relation to CIV-2017-485-316, that's Te Imi Moriori on the Chatham Islands. There is no overlap. The second appearance is in relation to the Ngāti Kere application, that's CIV-2017-485-193 and that is an overlap sir with the Clarkson application.

COURT:

Mr McGhie

MR McGHIE

May it please your Honour, counsel's name is McGhie. I appear for Mrs Margaret Morgan-Allen and she's made a claim on behalf of the David Morgan Whānau. The last three numbers sir are 214 and there's no overlap with the priority claims.

COURT:

Thank you very much for that Mr McGhie.

Ms Siciliano

MS SICILIANO:

May it please the Court, counsel's name is Ms Siciliano. I appear on behalf of the Trustees of Te Rangitāne Tū Mai Ra Trust, CIV number ending 224 and we do overlap with the Clarkson priority application.

COURT:

Ms Zwaan

MS ZWAAN:

No appearance.

Ms Williams

MS WILLIAMS:

Counsel's name is Ms Williams and I appear on behalf of Te Ātiawa Ki Whakarongotai Charitable Trust, CIV ending 248. The Chairman of the Trust Mr Andre Baker is here today to represent the Trust and I confirm that there are no overlapping issues with Ms Clarkson's claim.

COURT:

Thank you very much Ms Williams.

Mr Castle

MR CASTLE:

May it please your Honour. I have four matters on which I am counsel on the record your Honour. I deal with one of them which may not be on your Honour's list. I'll just deal with that first if I may. That's 2011-485-817. It's under the name of "Edwards" your Honour and it is a priority claim. But in the memorandum that I filed on 7 May I seek leave to withdraw and as a courtesy I tell your Honour that of course immediately but I note that it is a priority claim. There are other counsel who have been involved with me but issues of representation apparently still require some clarification from the applicant. I'll pursue some clarification and file a memorandum or ensure that new counsel files a memorandum so that the position is clear your Honour.

COURT:

Right, thank you for that.

MR CASTLE:

So that's the first one. From a brief look at your Honour's list this morning it didn't appear to be on the list but it is before the Court and has been obviously for some time.

The three other claims in which I am counsel on the record, the first of them is 185 your Honour of 2017, that's with a new applicant, Ngāi Taiwhakaea Hapū and that does conflict or collide with one of the priority claims, namely the Edwards matter I just referred to. The other two your Honour are 187 and 188, the same applicant Veronica Bouchier but in respect of two different areas of the Takutai Moana. Neither of them conflict with any of the priority claims.

COURT:

Mr Bennion

MR BENNION:

Sir, in total we have some 16 applications nationwide but for these Wellington ones sir we are here for 217, which is the Maui Solomon and others in the Chatham Islands and Solomon Hunau 259 which is Ngāti Hinewaka on the lower Wairarapa Coast and then 261 which is the Muaūpoko Tribal Authority. Those three should be on the list sir. In terms of the overlap with Clarkson we don't have any overlap. I'm cautious about this question of cascading applications. That Clarkson application is within the Wairarapa district and I'm just – perhaps when I understand more from my friends for the Crown how they understand cascading matters

– I can be more firm on saying that we’re in or out but at the moment I’d say provisionally we don’t seem to be affected. Sir, we are overlapping with other priority applications. I’m unsure here whether you’re seeking to hear to briefly understand those now or whether when you go to other parts of the country. I won’t be able to go to all of the other conferences obviously.

COURT:

Which priority claims do you indicate you’re overlapping with?

MR BENNION:

Sir, the Crown’s correctly identified them in relation to the Brooks’ application in Taranaki we represent – the number is 210 and that’s the Araukuuku Hapū and then also 213 which is Ngāti Tū which is a neighbouring group. In relation to the Reeder matter, a priority in the Tauranga district, we represent 257 which is Ngai Te Hapū at Mōtītī Island and 250 which there’s Ngāti Pūkenga based essentially on the coast immediately adjoining the island. Then in relation to the Edwards priority we represent Ngāti Patu Moana and that’s 253.

COURT:

Thank you very much for that Mr Bennion.

Ms Clarkson

MS CLARKSON:

Yes, may it please your Honour. Ms Katherine Clarkson, Ms Kaylene Clarkson

COURT:

Thank you very much Ms Clarkson.

Now, are there any other parties or persons present who I have not called upon? Yes Mr Hirschfeld.

MR HIRSCHFELD:

Sir, if I could be just be heard once more sir.

COURT:

Yes Mr Hirschfeld.

MR HIRSCHFELD:

I have made an error and it is in terms of the Matthews’ claim CIV ending 481. There is an overlap with the Clarkson matter.

COURT:

There is.

MR HIRSCHFELD:

Yes sir. Thank you sir.

MR McGHIE:

Sir, in my memo of 13 April I said the applicant Mrs Margaret Morgan-Allen was going to be here but she can't attend and she'd like to tender her apologies sir. I'm here with Mrs Jenny Tamakehu, who's an interested party at the back of the court sir.

COURT:

Thank you very much.

Are there any other entities whose names have not been called so far?

Good morning, come forward.

MR PUKETAPU AND MR LOVIE:

We represent the Te Ātiawa ki te Ūpoko o te Ika a Maui Trust, CIV-2017-485-260. My name is Te Rira Puketapu and my friend is with us also.

COURT:

Could you just pause for a moment while I just ascertain where your files are and why I don't have a note of them in front of me at the moment.

REGISTRAR:

We didn't have any material.

COURT:

But they have definitely filed and they are claimants?

Sorry, we just didn't have a record of your intention to appear this morning, which is why your names were not on the list when it was prepared late last week. Do your claims overlap in any way with Ms Clarkson's claim, or those of any other of the other seven priority claims?

MR PUKETAPU:

We believe there are overlapping claims your Honour.

COURT:

Thank you Mr Puketapu. Do you know which one, which priority claims they overlap with? Which areas?

MR PUKETAPU:

Well we expect Wairarapa and Ngāti Toa and Muaūpoko.

COURT:

What would be of assistance Mr Puketapu and Mr Lovie is if you could file what we call a memorandum or a document with the Court just explaining where you think your claims might overlap with one of the priority claims. That's the raw information that we're trying to get at the moment. Is that okay?

MR PUKETAPU:

Yes.

COURT:

I would be very grateful if you could do that as soon as you possibly can.

MR LYALL:

My apologies sir, I've just been contacted by Ms Zwaan and I believe she is going to be attending the Tauranga case management conference for that file.

COURT:

Thank you very much for that information.

Ms Clarkson, as you appreciate your case is afforded priority under the legislation and I wish to speak to you now about the management of your case and I wonder if you could assist me in the following ways. Have you got an indication at this stage about how many witnesses you are likely to be relying upon in support of your claim?

MS CLARKSON:

Most probably four witnesses your Honour.

COURT:

And when do you think you will be able to present briefs of evidence from those witnesses.

MS CLARKSON:

I could do that within three months your Honour.

COURT:

And how much time do you think from your perspective your case will require in court?

MS CLARKSON:

From our side of the fence your Honour I think that that evidence would most probably take three days.

COURT:

That's very helpful. Thank you very much Ms Clarkson.

I'll now just ask counsel who have indicated that their clients' claims may overlap with that of Ms Clarkson how many witnesses they anticipate, how long it will take for them to compile their evidence and how much hearing time they anticipate at this stage they require. So can I start with you Mr Hirschfeld.

MR HIRSCHFELD:

Sir, at least three witnesses. Three months.

COURT:

And hearing time from your perspective?

MR HIRSCHFELD:

Half a day sir.

COURT:

Thank you.

MR HIRSCHFELD:

As your Honour pleases.

COURT:

Mr Watson

MR WATSON:

Thank you sir. Sir I'm grateful to Mr Clarkson for that indication. The situation with my client is that the Clarkson application fits geographically right within my client's application in terms of Ngāti Kere. Can I put it this way, there are strong whanaungatanga or whakapapa links between Ms Clarkson's whanau and the group that they represent. There is absolute acknowledgement and appreciation of her priority status and I've got instructions to work as constructively as possible within a timeframe. That said, it is difficult sir at this stage because of the nature of my client's application is geographically considerably larger, Ngāti Kere would want to present their case to you in a comprehensive way and if your invitation your Honour was that you would prefer to have the Ngāti Kere evidence only as it relates specifically to the area demarcated by the Clarkson application, then that would be a rather artificial way of approaching the Ngāti Kere relationship with its host if you follow me. Nevertheless, if that indication was given and it wouldn't be my client's preference to hear the matter in that way,

then we could accommodate a timetable that has been broadly indicated. Can I say though that the research that was being undertaken on behalf of my client and I would say this is probably the case for others too, really has just started to commence because of the way in which these applications have to be filed within a certain deadline and I am uncomfortable, I just have to register that on behalf of my client about the balance that has to be struck between ensuring that Ms Clarkson's application is afforded the priority she deserves on the one hand and on the other hand not meaning that those other claims that are affected by her priority application are rushed by way of the preparation of the evidence.

My primary submission would be that there be a more extended period of time, to allow evidence to be brought to court in relation to those applications that are affected by the priority application and I would submit there, six months to be appropriate. I think it's important also to transparently indicate that although I don't have final instructions on this, Ngāti Kere are wishing to seek various engagements with the Minister. Now that's a quite separate process as you well know and there's a number of hoops to go through there too. But I'm signalling it now as a transparency because that process by itself will require me and my client to engage with Ms Clarkson to see whether she would wish to be part of that journey as well. That has only occurred as at Sunday when I met with the client in Porangahau, a lovely part of the coast, so I'm signalling it without firm instructions around that but I think it's important to note that the desire on the part of my client is to work collaboratively with Ms Clarkson where possible and then to see whether there can be a joint approach to the Minister, a direct engagement.

Now the impact of timetabling – I'm not suggesting at all that by this submission there should be a slowing down of the priority but I think it's fair that I table that with you sir because there is going to be quite an impact on that if, indeed, direct engagement is pursued and if Ms Clarkson and my client wish to work together on that matter. In the relevance of that for a claiming point of view is that with the Minister's current workload on this matter and that of the Office of Treaty Settlements – we've had indications for instance of six to 12 to 18 months in terms of those sort of processes to work themselves through. I would prefer sir if I may, seek leave to file with the Court within three weeks a memorandum which clarifies this matter and within that time I will have sought engagement with Ms Clarkson on the basis of the instructions I received yesterday and either by way of a joint memorandum or separately, we can indicate to the Court whether the timetable that she's indicated is indeed the appropriate one and based on that, if there is a divergence of opinion I would indicate to you sir where the

Ngāti Kere clients would consider an appropriate timetable for the filing of their evidence. As I say the key issue for them is that their area of association with the coast is much broader than that as demarcated in the drafted application and they would rather present their whole case to you than in a piecemeal fashion.

COURT:

I understand. Alright, so you'll file a memorandum within three weeks which explains the likely timeframe that your clients would need if the totality of their claim was to be heard in conjunction with Ms Clarkson's claim.

MR WATSON:

Yes and that will have an impact on the number of witnesses because there will be a number of witnesses but there may be a limited number of witnesses if your Honour indicates that you are treating these other claims and the relevance of them as only specific to the area that's demarcated by the priority application. I think that's an important procedural matter.

COURT:

It also goes to the substance as well. It's more than just procedural. My provisional view Mr Watson is that I would prefer to have the totality of your client's claim heard in the one hearing rather than to approach it on the segmented basis that might otherwise occur but that's my provisional view if that's of any assistance to you.

MR WATSON:

Thank you sir.

COURT:

Mr Ferguson, you've got an overlap.

MR FERGUSON:

Thank you sir. Yes the application by the Trustees of Ngāti Kahungunu ki Wairarapa Tamaki nui-ā-Rua Settlement Trust does overlap the Clarkson application but only to a very small degree relative to the totality of that application.

COURT:

You're in the same position as Mr Watson?

MR FERGUSON:

It's the same position sir, the preference obviously is always to present a cohesive complete case. That said given the small nature of it if your Honour was to direct that the Clarkson

application be heard and properly seek leave in that regard to perhaps file evidence in relation to that small overlap which would also be evidence in the substantive application if there's a desire to because the overlap is so minor in that regard. I think if you tried to bring everybody into the Settlement Trust's application in total like my friend Mr Watson's application heard and tabled with the Clarkson then again that cascading effect might just bring more and more in as a result so I think there are difficulties in relation to that. I'm not sure of an easy answer to this. The other observation I just had as a general matter is due to the, there obviously are a large number of overlaps and this applies right around the country and we've seen that quite simply with the priority claims but also I think we've seen issues more generally in the Treaty Settlement process with overlapping interests and difficulties in terms of the processes that are provided certainly by the Crown in that case to try and resolve those but I certainly wouldn't like counsel and the Court in relation to these proceedings to consider what type of facilitated engagement might be possible between overlapping applicants which could be by way of settlement conference or at a fora to try and work those through rather than doing them all on an adversarial process where the applications are being heard because inevitably there will be overlaps that actually are complimentary to one another rather than conflicting as they appear on their face. It's just thinking about what other processes might be possible and might be of value and then of ultimate assistance to the Court in terms of case management.

COURT:

Just before you resume your seat Mr Ferguson, I wonder if what you're suggesting ought not to be recorded in some form of memorandum first so that I can reflect upon it as a mechanism to try and advance the hearing of the priority claims.

MR FERGUSON:

As I say sir I am more than happy to do that and it's really re-reflecting on it having come out of the end of some of the other pre-settlement litigation and obviously the Supreme Court will have something to say about that in a jurisdictional sense but I think you know the actions of a forum for that general challenge would be of an advantage here so I will give some more thought to that and perhaps file a memorandum generally about that possibility.

COURT:

I'm grateful to you. Thank you very much Mr Ferguson.

Now Ms Tarawhiti, you have indicated a possibility of cascading claims in relation to 220. Do you align yourself basically with Mr Ferguson or do you wish to take a different stance from

him? I'm not inviting you to take a different stance from him even though it would be interesting from my perspective.

MS TARAWHITI:

I would concur with my senior counsel on this point.

COURT:

Very wise.

COURT:

Mr Naden, you've also indicated a possibility of what the Crown has referred to as "cascading" or possible overlapping claims.

MR NADEN:

Yes your Honour. It's good to hear from my learned friend Mr Ferguson about the proposed approach in relation to the limits on it and that there's evidence only in relation to the overlap and also the area is a relatively small area of the Ngāti Puhī Moana. So, sir in those circumstances it may be possible that we're not a cascading overlap. But there would be some reservation still sir. There would be an interest in the evidence that is actually applied your Honour. When it comes to mana whenua sir often there are not too many battles that are discussed by iwi in mana whenua's claim. There's just some hesitation about whether a particular area cannot be subject to conquests or other acts of that brought about mana whenua. They are just otherwise limited to that area that is the subject of the overlap. So there's just that concern sir. In a nutshell, there may well not be a cascade overlap for our client but we'd need to continue to see how matters unfolded there your Honour.

COURT:

Well, can I make it as clear as possible that I certainly don't want to manage cases only to find at a substantive hearing that there is a potential claim from another iwi or hapū or any other entity that's not been given the opportunity to be heard. The last thing I want is to get a long way down a process of case management only to find that at the 11th hour that there's somebody who has an interest and for whatever reason they haven't been afforded the opportunity to be heard. That would be the worst outcome from my perspective.

MR NADEN:

Yes and for ours. So we've filed our notices of appearance in relation to the various applications involved with the overlapping. With that there would be we would expect involving at least at that level and then an analysis of value and a valuation of the evidence as it's applied. We've indicated that it will be limited to this overlap area and the area is a relatively

small part of the entire area so on its face that's agreeable and it would mean that there may well not be a cascading overlap interest and it's just our reservation your Honour.

COURT:

Well Mr Naden in order to advance matters, would you like to wait until you see what Mr Watson and Mr Ferguson say in their memoranda and then if say three weeks after they file theirs you file a memorandum just advancing as best you can the issues that I need to consider in relation to case managing your clients' claims.

MR NADEN:

Yes, thank you sir that would be agreeable.

COURT:

Thank you very much Mr Naden.

Mr Bennion, I'm conscious of the fact that you have overlapping claims in relation to other priority claims but not those that relate to Ms Clarkson's claim.

MR BENNION:

Yes sir. I made a comment about caution that I would have even on the Clarkson claim but I've just been thinking it through if I can express it this way, looking at the cascading idea and taking it to its most largest extent there might be, for example, in a particular claim the Ngāti Kere discussion, discussion about a tupuna who has conquered an area or not and then that may have implications down the coast for other claims. So from the widest net possible that kind of concern that arises and I'm not sure, well I really haven't looked at that closely in detail.

COURT:

Thank you very much Mr Bennion.

Ms Siciliano, you've indicated that your client does have a overlap with Ms Clarkson's claim.

MS SICILIANO:

Yes sir. The Rangitāne Tū Mai Rā covers Rangitāne o Wairarapa and Rangitāne Tamaki nui-a-Rua. It essentially covers the same area that the Ngāti Kahungunu claim does which Mr Ferguson appears for and in that regard I would echo the comments of my learned friend in terms of the request or the preference to hear evidence solely in relation to the overlapping claims matter in order to deal with it more swiftly and efficiently I would submit. The Rangitāne Tū Mai Rā Trust also have an application for Crown engagement in place so if the Court was minded to hear overlapping claims just in relation to the overlapped area sir my instructions are that we would have I suspect two to three witnesses and would need no more

than half a day. Of course, your Honour for the number of witnesses required may depend on the nature of the evidence from the whanau.

COURT:

I appreciate that it's very hard to lock these things down at this juncture.

MS SICILIANO:

In terms of who has that knowledge that can be prepared in three months following if pleaded. Of course, if the Court was minded to hear the whole of the Rangitāne application then I would need to take instructions as that would require sufficiently more.

COURT:

Thank you Ms Siciliano.

Now I think unless I have a mistake that covers all of the indicated overlaps is that correct with Ms Clarkson's claim.

Right, Mr Ward.

MR WARD:

May it please the Court. Your Honour will be conscious that the Attorney is a party to all of the applications that are before the Court and the Attorney is interested in establishing some precedent to help guide future cases. In relation to points about overlaps I think it is a balance to be struck between the desire to avoid failing to hear a case in its appropriate context and part of the reason for the memorandum on Friday was to highlight a number of factors that may be relevant to those overlapping applications that cannot be judged simply by referring to the maps and the approximate depiction on the maps. If there is the possibility for my learned friends and their clients to engage in a way that may resolve or may clarify overlapping applications that would be a favourable outcome in my submission.

COURT:

And what mechanisms do you think, a judicial conference or some other –

MR WARD:

It may be well be a matter which could be explored through a judicial conference but it may well be a matter which my learned friends will have other thoughts on and it would be useful from the Attorney's perspective if we were to have some time to reflect on any suggestions that Mr Watson and Mr Ferguson make. We have suggested sir in the memorandum on Friday that the Ngāti Kere application because Ms Clarkson's application was geographically fully within

that application that there seemed good reason to hear that claim in full and then there was the question of what that might mean for other related applications for adjoining applications and to some extent that does require clarification from the applicants. The applicants are best placed to say how their interests are engaged. In terms of striking the balance the Attorney's tentative preference at the moment is for those immediate overlaps, application for overlap with the priority application are to be heard in full at the same time and then an assessment to be made it will be on a case by case basis about how other applications that overlap, overlapping applications are managed. Sir there's a wider point that I think that relates to – but if I can make submissions on. My learned friends in some of their written submissions suggest that there are points relating to applications and particulars that can be addressed through evidence and the filing of evidence. I think there is a need for caution about submissions of that sort. In my submission, the applications should set out the material facts in which the application rests and the Attorney as the potential contradictor ought to be able to identify the material facts in advance of evidence being filed. The evidence is the attempt to prove the things which are set out in the application. That has a practical importance sir because the Attorney wants to keep his position on each application under review and the particularity of the applications exactly where the rights sought are framed very broadly. It makes a difference to how the Office of Treaty Settlements assesses its position on each application and so in my submission any timetabling needs to allow some time not simply for engagement between it but also sufficient time for applications to be clarified for the Attorney to be able to consider those further particulars without further amendment. Sir, unless there were particular points I could assist your Honour our position is set out in the memorandum on Friday.

COURT:

Yes and I am very grateful for the memoranda that you have filed and to Mr Melvin as well. Thank you very much Mr Ward.

Mr Irwin, you look as if you wish to say something.

MR IRWIN:

I did have something I wish to say in respect of the one application that I appear for today. Is it worth addressing that?

COURT:

By all means.

MR IRWIN:

So, in the Ngāti Koata application, the application by Mr Elkington the applicant seeks an adjournment sine die of the area to which that application relates and the request for that adjournment sine die is set out in my memorandum of 12 April and there are certain reasons for that. It's not a simple case of adjourning just the application. Rather what is sought is an adjournment of the area to which that application relates and so therefore there are other applications –

COURT:

– that are affected?

MR IRWIN:

The Ngāti Koata group is in engagement with the Crown, it's one of those few groups that is and so there's a separate process under the Act that its pursuing directly with the Crown and in the big picture it's difficult for that engagement to proceed while there are applications in this Court that are also proceeding at the same time that draws Ngāti Koata necessarily into the Court to actively pursue its claims and to potentially contest other groups' claims and so for that separate engagement process to proceed accordingly what's requested is an adjournment sine die of the area for the Ngāti Koata.

Now my learned friends for the Crown in their memorandum of Friday have said that the Attorney-General does not object to that request. In the schedule to the memorandum something slightly different is said. It says in the table, which is the schedule I to the Attorney's memorandum filed on Friday that the Attorney-General submits that it should be adjourned sine die so at the very least I take it there's no objection from the Crown to that request and I've identified in my memorandum those other applications that are affected by that request.

COURT:

I'm still reflecting on the concept of an adjournment sine die. I understand precisely what you're trying to achieve. My provisional preference would be to adjourn for a review in for argument's sake 24 months' time rather than just a never-ending adjournment sine die. As a matter of principle or concept how would you respond to that?

MR IRWIN:

That sounds acceptable and it's going to be I think a broader issue for other applications. I represent others and will appear in some of the other case management conferences, but in the big picture if the Court wishes to proceed as it must with the priority applications and put down some firm timetabling directions for those applications the question becomes what do we do

with all the other applications. I don't think they can just be left dangling and the Court you know should be sending the message that whilst these priority applications are proceeding, all the other groups need to get on particularly with their evidence and an indication of that kind is appropriate. But an adjournment for a review in 24 months is entirely acceptable in respect of this one application.

Just briefly, just in respect of the issue raised by my learned friend Mr Ward about the particularity that the Attorney seeks in respect of the applications. The Crown's chosen to be a party to each application and so it's addressing the hundreds of applications before the Court and there's a great deal of variance of the standard of which applications have been filed, some by lay litigants and some not. Some groups have taken real care in preparing their applications. All my groups have very carefully worded the rights that they seek recognition of. In particular, the protected customary rights that are sought. Some real care was taken to comply with the Act and not seek the right that cannot be sought. The Attorney-General has filed memoranda stating that applications do not comply with s 51 in particular and it said that in respect of the Ngāti Koata application as with other applications and I don't agree with that. I accept that there may well be applications where parties have sought rights that expressly they cannot seek such as fishing. That's not a right that can be sought through this process and no doubt there are some applications that have done that. Simply where applications have sought broad rights and have characterised their rights as comprehensively as possible sought things such as kaitiakitanga for example. It appears to me that the Attorney-General has taken issue with that and is seeking further particulars. What I say is that the full intention is to provide evidence and further particulars at the relevant time. There can be timetabled a good amount of time after that evidence is filed and an amended application gives full particulars and the hearing of the case and that can give the Attorney-General the time that's needed to engage and reflect as my learned friends have quite appropriately said because as I understand it the Crown in these applications is not necessarily going to object to every single application at the end of the day as they did not in the one application that's proceeded to trial.

So, I take issue with the submission that the applications do not comply with s 51 by seeking broadly constructive rights and I've set that in my memorandum as well and I think the answer is "yes" further particulars are required that's accepted, that is to come. I don't know that that's going to be timetabled in the other applications. I don't necessarily think it needs to be. The Court can send a signal to all parties, all applicants, that it is expected that there should be full

particulars at a point in the proceeding and that there should be sufficient time for the Crown to engage with that before we get to hearing.

Those are the matters sir.

MR WARD:

Your Honour, if I may, just a couple of points arising from my learned friend's submissions in relation to the Ngāti Koata adjournment. Obviously, the other parties that my friend refers to and who will be affected by his adjournment will need to be heard. Just to avoid any misunderstanding my learned friend referred to the Tipene case and the Crown's position in that case. In that case the Crown did object at the outset. It was a quite substantial reduction of the application on the first day of the hearing so that the application area was altered from an area that went from miles to an area that was measured in hundreds of metres. Ideally that sort of significant alteration to an application should be avoided, at least should not occur once a hearing was under way so in my previous submissions at least in part in trying to ensure that the Crown has sufficient notice and there is a pleadings process consistent with High Court practice that and to some degree for the setting but nonetheless the para suggestion that evidence and amended applications were going to be closely tied together I think will not help any party or in my submission the Court. I'm conscious that my friend has some concerns about the language of non-compliance again. It's a matter of material facts being set out in a way that the Attorney is able to identify.

May it please the Court those are my submissions.

COURT:

Thank you Mr Ward.

Are there any other submissions or comments that any counsel or you Ms Clarkson would like to make?

MS CLARKSON:

There is no need to delay proceedings your Honour. We want to have our claim heard so that we know exactly what we are doing going forward and that we're not just loitering in the background.

COURT:

I hope you've got some reassurance from today that I'm intent on moving matters forward but there is a balance that needs to be struck as I'm sure you fully appreciate about ensuring that nobody misses out on being heard in circumstances where they ought to be heard.

MS CLARKSON:

Yes, I'm very conscious of that your Honour in what you've already said and we do not want to be three quarters of the way through the hearing and find there is someone else who needs to be heard.

COURT:

Thank you very much Ms Clarkson.

No other comments or submissions?

MR WATSON:

If I may sir, I'll just check with Mr Melvin for the Crown. This is given your focus on priority applications I think it's just appropriate just to make this submission. I represent Pauline Tangiora priority application up in the Mahia Peninsula and you've said that that's the Gisborne case management conference. A memorandum has just been filed this morning you won't have seen it yet, a joint memorandum between the Crown and myself. That matter had been adjourned sine die because of direct engagement processes on behalf of Rongomaiwahine, who is the iwi concerned there and we sought leave sir to be excused from that case management conference. There is an overlapping claim there and I'm certainly going to be in touch with that party to indicate that. But sir it may be useful just for our claim and especially with the clients that you can indicate whether that matter which has been adjourned and this will be a rollover of the application for an adjournment could be granted and then leave for the parties to be granted to be excused from that hearing that would help considerably once you've had a chance to consider that memorandum and respond to us.

COURT:

Yes, I'll do my best to have a response to you during the next few days.

MR WATSON:

The other matter and it's slightly unusual but I think it's worth noting. I just want to, as the teenagers say, give a shout out to the –

COURT:

I don't understand you.

MR WATSON:

No, no. I had to look it up sir – to pay an acknowledgement to the Court staff. I know that Lizzie and others have been swamped by the process as we all have and I'm just really appreciative of her and the staff in processing these matters sir but I just wanted to give that acknowledgement.

COURT:

Thank you very very much.

Alright. Thank you all very very much for coming to Court and for the very constructive way in which you've approached this matter and I will, after I've heard all of the first round of case management conferences issue minutes and directions as best I can possibly can and then we will conduct a second round of case management conferences which will be focused more on the issues that need to be addressed before matters are set down for hearing and it's at that stage that I intend to engage with interested parties.

Thank you very very much.