

MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011
GISBORNE CASE MANAGEMENT CONFERENCE

7 JULY 2020

Judicial Officer:

The Honourable Justice Churchman

Counsel:

B Lyall for CIV-2017-485-255 and CIV-2017-485-288

C Hirschfeld for CIV-2017-485-571

C Beaumont for CIV-2017-485-242

G Erskine for CIV-2017-485-247 and CIV-2017-485-235

H Irwin-Easthope for CIV-2017-485-314

M Mahuika and L Underhill-Sem for CIV-2017-485-230 and CIV-2017-485-302

R Smail for CIV-2017-485-289

T Johnson for CIV-2017-485-284

T Sinclair for CIV-2017-485-225

L Thornton for CIV-2017-485-263

C Hockly for CIV-2017-485-794

J Mason for CIV-2017-485-512

B Tupara for CIV-2017-404-571

Interested Party:

G Melvin for Attorney-General

HEARING HELD ON TUESDAY 7 JULY 2020 AT 10.00 AM**JUSTICE CHURCHMAN:**

Tēnā koutou katoa. Nau mai haere mai ki te Kōoti Matua o Aotearoa.

- 5 If you could proceed Mr Registrar to record appearances.

REGISTRAR:

CIV-2017-485-255 and 288.

BRYCE LYALL:

Kia ora, good morning Sir. Lyall appearing for both of those applications.

- 10 **JUSTICE CHURCHMAN:**

Good morning Mr Lyall.

REGISTRAR:

CIV ending 571 – Ngāti Oneone.

BARNEY TUPARA:

- 15 Ata mārie e te Kaiwhakawā. Kei te mihi ki a koe me ēnei ngā rau rangatira mā kua tae mai i tēnei wā ki te tautoko tēnei kaupapa mō tēnei wā, kei te mihi ki a koutou, aku rangatira, kei te mihi. Tātou katoa, tēnā tātou katoa.

- 20 Sir, if the record could be noted Tupara spelt T-U-P-A-R-A, appearing by way of watching brief in respect of Ngāti Oneone on behalf of Mr Hirschfeld today. An appearance by Mr Hirschfeld was dispensed with by Your Honour by way of minute issued. Having said that, in courtesy to the Court and Ngāti Oneone being a key applicant particularly in the Tūranga area, it was deemed appropriate that at least counsel on behalf of Mr Hirschfeld would appear today,
25 albeit by way of watching brief Sir. If that could be noted, thank you.

JUSTICE CHURCHMAN:

Tēnā koe Mr Tupara. Tēnā koutou ki te mana whenua.

REGISTRAR:

CIV ending 247 – Ngā Hapū o Tokomaru Akau.

GRANT ERSKINE:

Tēnā koe Sir. Erskine appearing and also here today is Mr Tichborne and
5 Mr Whakataka on behalf of **[inaudible]** Pebble.

JUSTICE CHURCHMAN:

Tēnā koe Mr Erskine. Tēnā kōrua Mr Tichborne and Mr Whakataka.

REGISTRAR:

CIV ending 314 – Ngāi Tāmanuhiri iwi.

10 **HORIANA IRWIN-EASTHOPE:**

Tēnā koe Your Honour. Ms Irwin-Easthope appearing by phone for
Ngāi Tāmanuhiri.

JUSTICE CHURCHMAN:

Tēnā koe Ms Irwin-Easthope.

15 **REGISTRAR:**

CIV ending 284 – Ngā Hapū o Ngāti Porou.

TIRA JOHNSON:

Tēnā koe Sir. Ms Tira Johnson appearing for Ngā Hapū o Ngāti Porou,
Te Rūnanganui o Ngāti Porou.

20 **JUSTICE CHURCHMAN:**

Tēnā koe Ms Johnson.

REGISTRAR:

CIV ending 263 – Te Whānau a Umuariki.

LINDA THORNTON:

Tēnā koe Sir. Ms Thornton for Te Whānau a Umuariki.

JUSTICE CHURCHMAN:

Tēnā koe Ms Thornton.

5 **REGISTRAR:**

CIV ending 512 – Maanu Paul.

JANET MASON:

10 Tēnā koe Sir. It is Ms Mason appearing for Mr Paul, and in particular in this Gisborne area for Mr Kereopa Ratapu and Mr Lewis Ratapu who are the second applicants.

JUSTICE CHURCHMAN:

Tēnā koe Ms Mason.

REGISTRAR:

For the Attorney-General.

15 **GEOFFREY MELVIN:**

Tēnā koe Sir. Melvin for the Attorney-General. Sorry, I had my microphone off.

JUSTICE CHURCHMAN:

Tēnā koe Mr Melvin.

REGISTRAR:

20 And CIV ending 794, Rongomaiwahine Iwi Trust.

JUSTICE CHURCHMAN:

Do we have Mr Hockly by way of AVL link? We know that there is one person who has dialled in but is unfortunately not showing up on our screens. If that is

you Mr Hockly and you are unable to communicate with us, I am sorry about that but sometimes these glitches happen.

5 All right. Thank you Mr Registrar, we will now proceed and work through the cases in that order.

REGISTRAR:

CIV-2017-485-255 and CIV-2017-284-288.

LYALL:

10 Good morning Sir. If I may, I will deal with the 288 application by Mr Heta Kaukau first. Essentially, what is sought is another adjournment until next year. Research continues and as it's a fairly discrete area with only one overlapping application. We are attempting to have initial discussions with Te Arawhiti about the possibility of direct negotiations which would get rid of the need for this application to continue to proceed.

15 **JUSTICE CHURCHMAN:**

Can you remind me what the overlapping application is? I have got the CIV number but I cannot recall the name of the applicant.

LYALL:

Sure. It is the Peta Mihaere application for Ngāti Kuripakiaka, that is 230.

20 **JUSTICE CHURCHMAN:**

All right. What steps has your client taken to interact with the overlapping application and do you see that there are matters of joint agreement that might focus the application of both parties?

LYALL:

25 I understand that some discussions took place in the latter part of last year, but Mr Kaukau suffered a bereavement and really is only just in a position now to

begin to bring things back into focus on this application. We expect some discussions in the coming weeks and months on that.

JUSTICE CHURCHMAN:

I would certainly encourage that. Because in circumstances where there are
5 only two overlapping parties it would seem to me that there is the prospect of agreement which could well either achieve something that can be made by consent or, if not, shorten the hearing significantly.

LYALL:

Yes, absolutely, Sir. The other matter today is Ms Lant's matter, the 255
10 application.

JUSTICE CHURCHMAN:

Just pause.

LYALL:

Certainly, Sir.

15 **JUSTICE CHURCHMAN:**

Yes.

LYALL:

Ms Lant is here today and I was remiss not to point that out in my appearance. What I may suggest, given that Mr Erskine is seeking timetabling for his
20 application, perhaps I would be better to follow after Mr Erskine for this application and respond to that. But I can broadly indicate that we are comfortable with the position that he is to layout and have a meeting with Mr Erskine and his clients following the CMC today.

JUSTICE CHURCHMAN:

25 Yes, you indicate in your memorandum that this applicant is not currently ready to proceed. We are now at a stage where hearings have been set down for the

balance of this year and into the first part of 2021. What I am anticipating is that we will have more capacity to hear matters from about April or May of next year.

- 5 It is most efficient for the parties and most economical if hearings, non-priority hearings, could be in respect of discrete areas where there are overlapping claims. Obviously, you cannot eliminate where there are so-called cascading claims out each side, you cannot eliminate the possibility that some claimants are going to ultimately have to participate in two or more hearings, but it seems
10 to me the best approach is to try, where we can, to set down a group or a block, a natural entity as it were.

So, what I am looking at, and would like assistance from counsel on is, those matters where there are a number of overlapping claimants in a particular area
15 where counsel think it would be suitable to have a combined hearing.

LYALL:

Yes, and I can indicate I do think it would be suitable to have a combined hearing along with Mr Erskine's and perhaps one of the applicants that I'm sure that Mr Erskine can take you to. At the moment, we're not ready for hearing,
20 but given those timeframes, I anticipate that we could be.

JUSTICE CHURCHMAN:

Yes. Well I would encourage you to talk to Mr Erskine or such other counsel as may be involved and then if your discussions bear fruit, for there to be a joint memorandum alerting the Court because there will be a scramble for available
25 fixture dates and counsel, if they want a prompt fixture, need to be proactive so that we can start to assign dates according to judicial availability.

LYALL:

Thank you, Sir.

REGISTRAR:

CIV-2017-485-247 – Ngā Hapū o Tokomaru Akau.

ERSKINE:

5 Tēnā koe anō Sir. I have been in discussions with a number of counsel for
overlapping and neighbouring and regional applications and I apologise that I
haven't been able to be in a position to form a joint memorandum and get
consensus from everyone, but it has been good progress. And so what I
attached in my late email yesterday is my memorandum from last year which I
would like to talk to in terms of the overlapping applications and other
10 applications, including my friend's application that he just talked to then.

Ngā Hapū o Tokomaru Akau's application is shown on the Attorney-General's
map which I hope is before Your Honour, annexed as A to that memorandum,
and I think it's helpful to look at that in terms of a possible group or a likely group
15 of a hearing of a number of applications.

On that map 3, my client's application is numbered 109, and it sits in the middle
so to speak and overlaps or is overlapped by the application to the north
numbered 108 and to the south 110, and that is the extent of the overlapping
20 applications for Ngā Hapū o Tokomaru Akau's application area. I have checked
with Te Rūnanganui's application which is that by Ngāti Porou, represented by
Ms Johnson, and she has confirmed to me, and that is represented by the
number 105 on that map. And as I understand from my learned friend, there is
no overlap by Te Rūnanga, and that sort of is reflected or indicated by the
25 map B which is the schedule in the Ngāti Porou Act. Our client's application
area is the area addressed or covered by the Act, it actually, it's like a question
mark, and our application area is not covered by the Act and Ms Johnson has
confirmed that. So there is a tick there if you like where that's signed off. I have
been in discussions or in communications with the application to the north.

JUSTICE CHURCHMAN:

If I could just ask you to pause there. I am looking at map B now, and perhaps if I could just hold it up to make sure we are both looking at the same thing. Is that your applicant's area there?

5 **ERSKINE:**

Yes, Sir. I've in fact provided, there is a better copy which has reproduced well.

JUSTICE CHURCHMAN:

Yes, that is more helpful, thank you.

ERSKINE:

10 Yes.

JUSTICE CHURCHMAN:

But if I could also just clarify, application 105 seems to be quite some distance to the north almost around past Te Araroa. It is shown on your exhibit A to your synopsis.

15 **ERSKINE:**

I see, right 105 is Te Rūnanga. All that my client is interested in is its area. In respect of that area there is no overlap by 105 or Te Rūnanga.

JUSTICE CHURCHMAN:

No.

20 **ERSKINE:**

So, it's a tick in the sense that it is not an issue, and Ms Johnson can perhaps clarify that if need be, but it's not an issue for our client's area which is to the north as shown on that map, schedule 3, which is in my annexure marked B is Pohatunui Head and then it's shown as Tokomaru Bay, and then to the south
25 is Matai Point. I also annexed as C a copy of our client's application area which reflects the same area.

So, the first point being is that there is only two relevant overlapping applications and then I can address the neighbouring application, whether that's a possibility a little later.

5

Turning to the overlapping applications, the one to the north which I have listed at paragraph 6 of my memorandum last year has a CIV reference 242 is an application by Mr Haro Milroy on behalf of Te Whānau-a-Rākaioira ki Waipiro and Te Whānau Iritekura. I have been in communications with Mr Beaumont who is counsel for that application and in terms of estimate of number of witnesses, he has given me the authority on his behalf to advise the Court that, first, his clients have no objection to the application being heard with our clients and nor with the overlapping application to the south. So, that's the three applications.

15

In terms of number of witnesses, and I will just find his email, he would expect in terms of duration of hearing or getting towards that, he submits three or four days to present their evidence based on somewhere between two and six witnesses but is not able to give a more specific estimate at this stage. He, and I note that his application was adjourned for 12 months, but he provided that information to me and as I say, I'm authorised to advise the Court of that specific information.

20

As yet, so that leaves the application to the south which is listed as 6(b) in my memorandum and that has the CIV reference, the last three digits is 302 and that is an application by Tait Pewhairangi on behalf of Te Whānau-a-Ruataupare ki Tokomaru. Although I've been in communications with counsel from Kāhui Legal, they were not in a position, and it is no criticism of them at all, to give the number of witnesses, their application having also been adjourned for 12 months. That said, and I do hope to, well, be in further communications to be able to advise an estimate of witnesses and to help the Court in having the matter set down. And although they cannot confirm their

25

30

agreement, whether the application should be heard or who it should be heard with, it seems to me whatever their response might be, it would be hard to argue against the fact that this is a small cluster focussed on Tokomaru Bay. It is a discrete area and it involves, as a minimum, three applications with the possibility of Mr Lyall's clients represented by Marise Lant.

So, what I've been hoping to achieve today is who should be heard and then hopefully how long it would take. Although I still don't have the information or the position from the application to the south. Well, I guess I shouldn't even speculate on how many witnesses they've had, but I'm guessing there might be about a month of hearing time – it's just a rough off the top – for all those applications. It also depends whether the neighbouring application which isn't an overlapping application by Mr Lyall's clients becomes part of this area.

And so the problem, I understand, that Mr Lyall's clients have is that the Ngāti Porou Act, if I can say this correctly, excludes part of their area being heard, which is reflected in this map with what looks like a question mark. So it's only part of the application that would be heard due to the effect of the Ngāti Porou Act on their application.

So from my client's point of view, of course it's simpler just to have the three applications heard, but my understanding is that if easy to manage and the Court would need to make a direction that this also should be heard, then I understand that. So be it.

In trying to set it down, I've assumed that, or have assumed that, there would be no hearing time at least for four weeks or so, at least for a year or so, which would give enough time despite the two applications at least who have sought an adjournment to prepare and file their evidence within that time and for Mr Melvin or for the Attorney-General to have enough time to do the research and file their evidence.

So, it is predicated on the assumption that there would be, whatever the hearing date in approximately a year's time at least would allow enough time for parties to prepare. Our clients are substantially completed, the historian report is imminent by Mr David Armstrong and in terms of an update of the number of witnesses, I think last year, yes, there's an estimate of eight witnesses and I would now put eight to 10 witnesses which I don't think would change the estimate of the duration of hearing of 10 days because I imagine that some of, or a part of, the hearing of that would be in respect of the evidence of Mr Armstrong, and I suppose it depends on how many parties there are in terms of cross-examination, how long he would be giving evidence for and questioned for.

So that, I think, is probably about all I can usefully assist the Court with this morning, although it would be useful perhaps to hear from Mr Lyall and Mr Melvin in terms of, or even the Court's view, in terms of the who should be heard, whether it should be just the three overlapping applications or the neighbouring one – or possibly the neighbouring application by Mr Lyall's clients to the south.

JUSTICE CHURCHMAN:

My preliminary view is that the natural grouping would seem to be the three overlapping applications. However, I suspect we could probably accommodate the neighbouring but not overlapping application as well, and if the parties thought that was useful, I would certainly be open to having a hearing which looked at those four as a discrete group. It's really up to counsel to talk amongst yourselves and to come back to the Court with a proposal and hopefully that will also give an indication of timing to the extent you can. So we can say, well look, we can set aside a month or six weeks or however long it is going to be.

As an administrative role, it's my challenge to try and get those long blocks of time allocated to these hearings and I am in a much better position to do that if

counsel have given me a reasonably scientifically calculated estimate of number of witnesses, length of time, length of cross-examination.

ERSKINE:

5 Yes. I am hopeful that I can be able to connect to hear back from Kāhui Legal on behalf of Mr Pewhairangi's application, but it's possible that a joint memorandum which reflect Mr Lyall's client's position could be filed, I hope, very shortly.

JUSTICE CHURCHMAN:

Thank you for that.

10 **ERSKINE:**

Thank you Sir.

JUSTICE CHURCHMAN:

Do you want to respond to anything immediately?

LYALL:

15 Not immediately, Sir. I will engage with Mr Erskine and be a party to that joint memorandum.

JUSTICE CHURCHMAN:

All right. Thank you Mr Lyall. Mr Registrar call the next case please.

ERSKINE:

20 I'm sorry Sir, I'm just wondering if whether we should hear from Mr Melvin in terms of how much time the Attorney-General or is that something you prefer that I –

JUSTICE CHURCHMAN:

Yes, well that may be helpful. Mr Melvin, can you hear us?

MELVIN:

Yes, Your Honour. Although, Your Honour is particularly faint, but I have followed the discussions Sir. I can't give an indication today as to how much time the Attorney-General might need in terms of hearing time, but I can convey
5 to Te Arawhiti that these applications look like they may be ready to be heard in about a year's time and Te Arawhiti will put this grouping of claims, although the final grouping is yet to be determined, but it will go on to its work programme if the Court is moving towards hearing these claims.

JUSTICE CHURCHMAN:

10 Yes. Well it seems to me sensible we look at that and I note that in terms of the draft engagement strategy that the Crown has circulated, these parts of the country would appear to come right at the start of that. So, I do not know the extent to which you may already have either commissioned or scheduled your research or other matters, but it seems likely this area was going to be pretty
15 much first cab off the rank in terms of the Crown's thinking itself. So, to me it makes sense if that is indeed the case, that we do try and start to schedule these non-priority hearings.

MELVIN:

Yes Sir. I support that observation. This looks like it is a sensible and
20 appropriate cluster of applications to proceed with.

JUSTICE CHURCHMAN:

All right. Well look, as you have heard me say to Mr Lyall and Mr Erskine, I would appreciate it if counsel concerned could liaise one with the other and then file a memorandum which gives me some confidence to be able to go to the
25 Chief High Court Judge and say, "Well I need a month or six weeks or two months," or something else.

MELVIN:

Yes Sir, very happy to work with applicant counsel in that respect.

JUSTICE CHURCHMAN:

Yes, thank you Mr Melvin.

Thank you Mr Registrar, if you could call the next case please.

5 **REGISTRAR:**

CIV-2017-285-314 – Ngā Tāmanuhiri Iwi.

IRWIN-EASTHOPE:

Tēnā koe Your Honour, Ms Irwin-Easthope here. Can you hear me okay?

JUSTICE CHURCHMAN:

10 Yes, I can hear you clearly. Unfortunately, I cannot see you, but that may change if you keep talking.

IRWIN-EASTHOPE:

Yes Sir. No, I dialled in. I tried to video link in earlier but it wasn't quite loud enough for the Registrar so I dialled in instead, so I'm hoping that that's not an
15 issue at your end.

JUSTICE CHURCHMAN:

No, that is fine. Thank you. If you could continue.

IRWIN-EASTHOPE:

Sure. So, you should have a memorandum from my client Ngāi Tāmanuhiri in
20 front of you dated 8 June 2020. Sir, the directions sought are that it may be adjourned to another year, but just for completeness, counsel is here if there are any questions or concerns from Your Honour about that. One that I would like to draw Your Honour's attention to just acknowledging the discussion earlier with Mr Melvin for the Attorney is at paragraph 5, just again confirming that the
25 Tāmanuhiri applicants have agreed their respective boundaries with the Rongowhakaata Iwi Trust which is to the north and the priority application of the Rongomaiwahine Iwi applicants to the south. Now, the Rongomaiwahine Iwi

applicants, their boundaries have been agreed, there is no overlap. The Rongowhakaata boundary, there are discussions around how those interests may be best reflected between the parties where this is an overlap but there is also an agreement there.

5

So, what we've asked for Your Honour is another adjournment until the next round of CMCs, but certainly we'll be seeking to engage this year with the Crown to determine what scope there is for direct negotiations, particularly as the Crown is currently in direct negotiations with the Rongomaiwahine applicants directly to the south of my client's application.

10

JUSTICE CHURCHMAN:

Yes, thank you Ms Irwin-Easthope. One of the topics that I intended to discuss at this CMC is the issue of mapping, and I assume counsel have been looking at the website, the Takutai Moana website, and you will see that the mapping group which was convened following last year's CMC with Mr Melvin and a number of applicant representatives have prepared the basis for a draft practice note, and I have modified that slightly. It is posted on the website and I have set a time limit for response.

15

20 Depending on the responses that the various applicants make to that, it is likely that that draft practice note will become a formal practice note or some version of it will become a formal practice note and will relate to and clarify what is required on all future maps to be filed.

25 It seems to me from what you have told me that your client's case may well be an appropriate case for the filing of a new map just clarifying where you have agreed in terms of your boundaries and I would encourage you to have a look at that draft practice note. If you have got any comments you want to address to the Court, to file a memorandum, otherwise to talk to the overlapping parties and see if you can't file between you a map or set of maps which comply with

30

the draft practice note and explain clearly where the boundaries have now been agreed as between the various applicants to be.

IRWIN-EASTHOPE:

5 Yes, Sir, thank you. We're happy to do that Sir, and conscious of the practice note. What I would say about the southern boundary is that it seems to be a miscommunication between not necessarily boundary points, but there was never any disagreement or intention for that to be an overlap at the southern boundary, and so I will again talk to my friend Mr Melvin and liaise with counsel for Rongomaiwahine and Rongowhakaata in line with your practice note, Sir.

10 **JUSTICE CHURCHMAN:**

All right. No, it is not mine. That would be above my pay scale. It is the Chief High Court Judge's practice note. I may have had a hand in it but that's as far as it goes. All right, thank you Ms Irwin-Easthope.

IRWIN-EASTHOPE:

15 Thank you Your Honour.

REGISTRAR:

CIV-2017-485-284 – Ngā Hapū o Ngāti Porou.

JOHNSON:

20 Tēnā koe Sir, again. I have filed a memorandum dated 8 June 2020 which gives you an update on Te Rūnanganui's position in respect of this application. I had actually, when I appeared before you last year, signalled to you that I had hoped that the Rūnanganui's application would be withdrawn within a few months. I was, alas, quite mistaken.

JUSTICE CHURCHMAN:

25 Too optimistic I think.

JOHNSON:

Too optimistic, fair enough. It has taken this past year to transition the Rūnanganui's work from itself to the Management Arrangement Trusts, but it has progressed, and so the Rūnanganui now has really reduced its role down to an administrative one only, still supporting the Management Arrangement Trusts as they build their capacity to undertake their duties under the Ngāti Porou Act. I am using shorthand Ngāti Porou Act for Ngā Rohe Moana o Ngā Hapū o Ngāti Porou.

So the Rūnanganui has taken this past year to work with a Management Arrangement Trust to build their capacity and it has reduced its role down to an administrative one only. It is now turning to this application and I have a signal from the CEO and the Board that the Rūnanganui's intention is to withdraw it, but it feels it has one obligation to at least call or ask a small group of hapū who did not ever receive a ratification hui back in 2017 to at least ask them if they want to have a final information hui with the Rūnanganui, and if they do, it will hold that and gather their views or advice and then determine what it will do with this application, and my strong sense is that it will be withdrawn within the next six months.

JUSTICE CHURCHMAN:

Yes, my recollection is at this time last year there were still some issues with ratification. Are there still outstanding ratification issues or have they all been resolved?

JOHNSON:

There are issues in the sense that some hapū but not all, ratified the deed to amend. Actually, I wouldn't describe it as an issue because there were some hapū who chose not to ratify. For example, Mr Erskine's clients' Te Whānau-a-Ruataupare and Te Whānau-a-Te Aotawarirangi in the Tokomaru Bay region did not ratify. They received the ratification hui, the ratification questions were put to them and they said no. So, they are not

covered by the deed or the Act, hence, I can confirm Mr Erskine is correct when he says there is no overlap. The application I filed on behalf of Te Rūnanganui specifically excluded the rohe of those hapū.

JUSTICE CHURCHMAN:

5 Tokomaru Bay, yes.

JOHNSON:

They had had the ratification hui in January 2017. I filed the application in early April 2017.

- 10 So, that's not an issue. Those hui at least had the ratification hui and confirmed their decision. There are a group of eight hapū, or iwi. I use that word advisedly because I was growled last year for using the word 'hapū' – hapū or iwi, depending on your nomenclature, in the Tolaga Bay Uawa region who have not had a ratification hui, and indeed may not want to receive one. It's not an issue
- 15 if they choose not to hold a ratification hui or receive a ratification hui, that is their decision. But what the Rūnanganui has done just in the last few weeks is to ask its representatives from that area to go out and speak to the various leaders of those hapū and the marae committee and the marae people and to say to them, "Look, the Rūnanganui is intending to withdraw this application. It
- 20 was only intended as a backstop, never as a substantive application, but because your hapū/iwi did not receive a ratification hui back in 2017, we feel obliged to at least let you know that that's the Rūnanganui's intention and give you the opportunity to comment on that if you wish to."
- 25 So, my instructions are that it is hoped there could be a hui in the next month or so. These things always slip so it had been hoped that there would be one by the end of July. I suspect it would have been perhaps August.

JUSTICE CHURCHMAN:

Yes. Well, that is fine and all you need to do, if you are able to conclude the Rūnanganui's involvement is simply to file a memorandum saying, "All outstanding matters have now been addressed. We withdraw the application."

5 **JOHNSON:**

Yes, Sir.

JUSTICE CHURCHMAN:

All right. Thank you for that.

JOHNSON:

10 Thank you.

REGISTRAR:

CIV-2017-485-263 – Te Whānau-a-Umuariki.

THORNTON:

15 Tēnā koe anō Sir. Our situation has evolved somewhat since I have filed the memorandum giving an update. So I have a further update if you can bear with me, Sir.

It is timely to follow on Ms Johnson's submissions because my client has just received maybe less than two weeks ago, a notification from Te Arawhiti that
20 his previously granted funding has been withdrawn because apparently the Management Arrangement Trust that operates in his area has ratified and he's not authorised, or he doesn't have the authority to represent that group under their operational situations. So, we're in a place where we have three alternatives: one of them is to go back and see if we can somehow work with
25 this Arrangement Trust and get him authorised to bring his application or continue his application on behalf of his hapū; the other alternative is that if they deny that, then he, with the Court's leave of course, amends his application to be a whānau application and he proceeds on that basis which apparently is not

governed directly by the Ngāti Porou Act; or the third alternative, which would be the least preferable of course, would be to withdraw the application and just be done with it.

- 5 So, I am going to ask Your Honour if we could adjourn this for six months until all these matters be resolved. I have no problem going to hearing within a reasonable time once we understand that we are funded to do that.

- 10 He knows we've got the evidence, we have a bit of research to be done but the vast majority of it is prepared. He has written literally a thesis on customary uses in that area.

- We can be ready to go. It's just a different kind of a logistical and administrative type of problem that the Act has brought up and we just need to resolve it. It's
15 only recently come to our attention, so I apologise for coming here and giving you this blow by blow but that's where we're at.

JUSTICE CHURCHMAN:

All right. Thank you for that. I do not pretend to understand the intricacies of Te Arawhiti funding or the reasons for their decisions, but clearly it is –

- 20 **THORNTON:**

Sir, neither do we.

JUSTICE CHURCHMAN:

Well, Mr Melvin may be able to assist you on that, after this CMC, if you want to liaise direct with him that would possibly be useful.

- 25 **THORNTON:**

I'm happy to liaise with just about anybody that can help us get this resolved, Sir.

JUSTICE CHURCHMAN:

Yes. Well, Mr Melvin has been quite helpful in the past, so I anticipate that will continue.

THORNTON:

5 Thank you Sir.

JUSTICE CHURCHMAN:

All right. Now you have asked for a six-month adjournment. That would probably mean we would do a CMC by way of AVL link rather than me come back to Gisborne just for one case.

10 **THORNTON:**

No, right. No, I agree with that Sir. I'm happy to do an AVL conference, or if I can make a complete enough report perhaps we can even dispense with a personal appearance. Whatever Your Honour desires is fine with me.

JUSTICE CHURCHMAN:

15 Well look, I will adjourn it for six months. Again, as I told Ms Johnson, if you, within that period, are able to resolve these issues, filing a memorandum simply saying, "Here is where we are at now. We have got to go forward. We are looking at this", and I might be able to deal with it on the papers and then we will get back in sync with next year's CMC.

20 **THORNTON:**

That would be great Sir. Thank you very much.

JUSTICE CHURCHMAN:

Thank you Ms Thornton.

REGISTRAR:

25 CIV-2017-485-512 – Maanu Paul.

MASON:

Tēnā koe Sir. A memorandum was filed on the 12th of June seeking that their application be stayed until such time as the application for appeal for the referral of tikanga issues to the Māori Appellate Court was resolved, and so counsel
5 hasn't had a response to that application for a stay, other than a direction which counsel thought His Honour was asking that a formal application for a stay be filed rather than the application for a stay be done by way of memorandum.

So, just to continue on from where Ms Thornton's submissions about Te
10 Arawhiti funding, that the Waitangi Tribunal has recently released a report on a number of claims from parties or applicants in these proceedings are concluding that they are very prejudiced because there has not been funding for them. So, in my client's case, many of their matters are tied up in interlocutory issues and there's been no funding for two years for these issues,
15 and their participation in these proceedings is severely prejudiced and so is their claim. So, my instruction is just to file a copy of that Tribunal decision with this Court, so His Honour has the benefit of seeing what problems they are encountering.

JUSTICE CHURCHMAN:

20 Yes, thank you Ms Mason. What is it you want the Court to do?

MASON:

So, Sir, as per a memorandum I filed on the 12th of June, so one matter was that their application be stayed until such time as the case stayed application has been determined.

25 **JUSTICE CHURCHMAN:**

Yes, you have had that question answered for you a number of times Ms Mason. I have explained as clearly as I can why the Court cannot stay applications and, in particular, the information that you have set out as justifying a stay application, does not do so. It is very difficult to see how much more
30 clearly the Court can explain to you that that is not an appropriate application.

MASON:

Sir, could I just clarify, is the application denied or is the direction that a formal application should be filed?

JUSTICE CHURCHMAN:

5 Again, all of this has been explained a number of times to you, Ms Mason. The Court is not going to indefinitely stay any application because that means that the Court loses oversight of it, and the whole purpose of having these CMCs on an annual or more frequent basis is to ensure that the applications are in fact, to the extent that they are able to, proceeding, and if there are road blocks
10 and issues which the Court can assist the applicants in navigating which may achieve some progress, then the Court is willing and able to do that. But as I have explained to you, saying that you do not want your client's applications to proceed until the outcome of some application for leave to appeal to the Court of Appeal is not a valid and appropriate position to take. All applicants, whether
15 they agree with decisions of –

(INTERRUPTION – MS MASON'S PHONE RINGS 10:51:39)

MASON:

Sorry, Sir.

20 **JUSTICE CHURCHMAN:**

All applicants whether they agree with decisions of the Court or not are obliged to comply with those decisions, unless and until, a Court of higher jurisdiction overturns or amends that. So you do your client's a disservice by refusing to engage in any of these proceedings on the basis that you want to do something
25 else. The Court has made that quite clear to you. Now, if you are saying that funding issues are inhibiting your progress on a claim, the Court, as it has done in many other cases, is prepared to adjourn it for 12 months.

The Court periodically makes references about funding issues. Mr Melvin,
30 where he appears for the Crown, takes those issues on board. There has been
Marine and Coastal Area (Takutai Moana) Act 2011, Gisborne CMC, 7 July 2020

some, albeit I accept for the parties limited, progress but there is some progress. But it is not and isn't going to be a situation where the Court simply allows any application to be shunted into a siding and sit there forever, that is not the purpose of the Act and that is not assisting any of the parties to achieve
5 the outcomes that they want.

So that is the situation. I am prepared to adjourn this application for 12 months. I do not have any power to control what Te Arawhiti or the Crown does with funding. I can indicate to them my views and over the past 18 months or so
10 they have been prepared to listen to that, but beyond that, funding is not a matter that I can control.

So, are there any other issues that you want the Court to deal with today?

MASON:

15 Yes, Sir. If I could just clarify, Your Honour has stated that applications for a stay indefinitely are not appropriate, but the application for a stay in this situation was tied to a Court of Appeal proceeding. Does Your Honour think that that Court of Appeal proceeding is itself indefinite? So that's really what counsel couldn't understand. It wasn't an application for an adjournment sine die, it was
20 tied to an event, and there is no direction in His Honour's minutes that say that the scope or application for a stay is declined.

JUSTICE CHURCHMAN:

Yes. Well again, I believe I have made that quite clear in my minutes. I will record again in this minute so you can read it in black and white. Thank you for
25 your submissions, Ms Mason.

MASON:

Sir, if I may, my question I still don't have an answer to, is Your Honour saying that an application for a stay based on the outcome of the Court of Appeal application was indeterminate?

JUSTICE CHURCHMAN:

That is what I have said to you in the various minutes I have issued when you have raised this matter on previous occasions. We have no control over what the Court of Appeal might or might not do, or how long that might take, but most
5 importantly, if there is no change as a result of any Court of Appeal decision, then your clients have lost one, two, perhaps more years in terms of the opportunity to progress their claims. As you have heard me indicate to counsel, I am now looking at setting down groupings of claims, some in areas where your client's claim is potentially relevant, and what I would not like to see is for
10 them to miss out on the opportunity to have their claims considered along with the corresponding claims of other applicants, cross-applicants or neighbouring applicants simply because of some misunderstanding or apprehension that perhaps the Court of Appeal might make a change to the ruling. So that is what I have explained and what I will again repeat when I issue my minute in relation
15 to this matter.

MASON:

Thank you Sir that will be very helpful.

JUSTICE CHURCHMAN:

Yes. Mr Registrar, I think Mr Melvin is the only other person.

20 **REGISTRAR:**

CIV-2017-404-571 – Ngāti Oneone.

JUSTICE CHURCHMAN:

Yes. Now, Mr Tupara.

BARNEY TUPARA:

25 Yes, Sir, just here by way of watching brief. Nothing to contribute to today's discussion. Thank you Sir.

JUSTICE CHURCHMAN:

Nothing further to add? Thank you Mr Tupara.

REGISTRAR:

Interested party, the Attorney-General.

5 **JUSTICE CHURCHMAN:**

Yes, Mr Melvin.

MELVIN:

Thank you Sir. Perhaps two brief matters. Firstly, I do not have instructions in respect of the circumstances that my friend Ms Thornton has outlined, but I can
10 take instructions and I am happy to liaise with Ms Thornton if that will be helpful in respect of those issues.

Secondly, Sir, just in terms of Te Arawhiti funding generally. Te Arawhiti is conducting a review of the Crown's funding scheme for Takutai Moana
15 applications. It announced that review last year. It has been held up somewhat by the COVID-19 pandemic but it is continuing. The release of the Waitangi Tribunal's report last week and its findings in respect of the funding scheme will be very carefully studied and taken into account as part of that review. At this stage the review is scheduled to be complete in March of next year.

20 **JUSTICE CHURCHMAN:**

Well I have made the point I think to you previously, obviously the Court is anxious to ensure as efficient and expeditious disposition of these matters as can be arranged. It is clear that funding issues have been a matter of some moment for a great number of the applicants and all of that means is that if there
25 are logjams or blocks by way of funding, the Court cannot deal with these things in an orderly way, timetable them and have them resolved which is my principal objective in running these CMCs. So, I know you take that on board and I am grateful if you would pass those sentiments onto Te Arawhiti or whoever it is that's controlling the purse strings.

MELVIN:

Yes, I certainly shall, Sir. That is entirely understood.

JUSTICE CHURCHMAN:

Yes, thank you. Now in relation to the various submissions that have been
5 made this morning on behalf of the applicants, do you have any other specific
response that you want to make?

MELVIN:

No, Sir, I have covered the matters that I wish to address, thank you.

JUSTICE CHURCHMAN:

10 All right. Well again, as I have indicated to the other counsel, I will be looking
for a memorandum from you in the hope that I may well be able to timetable at
least the three matters around Tokomaru Bay towards a hearing, probably
second half of next year, although it may be that we get some more judicial
resource and are able to run something like that a little earlier.

15 **MELVIN:**

Yes, Sir.

JUSTICE CHURCHMAN:

All right, thank you.

MELVIN:

20 As Your Honour pleases.

JUSTICE CHURCHMAN:

Now, is there anybody that I have missed out or who wants to have one final comment before we conclude? No.

5 Tēnā koutou, tēnā koutou, tēnā huihui mai tātou katoa.

Mr Registrar, we will now adjourn.

10 **HEARING CONCLUDES: 11:00 AM**