

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

8 JULY 2020

Judicial Officer:

The Honourable Justice Churchman

Counsel:

J Lewis for CIV-2017-485-793 and CIV-2017-485-222

S Webster for CIV-2017-485-219, CIV-2017-485-250, CIV-2017-485-195, and
CIV-2017-485-257

J Gear for CIV-2017-485-244

J Koning for CIV-2017-485-223

B Lyall for CIV-2017-404-556

H Berger for CIV-2017-485-514 and CIV-2017-485-770

H Irwin-Easthope for CIV-2017-485-196

Interested Parties:

T Waikato for Bay of Plenty Regional Council

G Melvin for Attorney-General

HEARING COMMENCES ON WEDNESDAY 8 JULY 2020 AT 10:10 AM**JUSTICE CHURCHMAN:**

Tēnā koutou katoa, nau mai haere mai ki Te Kooti Matua o Aotearoa.

5

Mr Registrar, if you could call the cases so that I can record appearances.

REGISTRAR:

CIV-2011-485-793 – Ngā Potiki.

JAMES LEWIS:

10 Tēnā koe Sir. Ko Lewis ahau appearing on behalf of Ngā Potiki, CIV ending 793.

JUSTICE CHURCHMAN:

Tēnā koe Mr Lewis.

REGISTRAR:

15 CIV-2017-485-244 – Ngā Hapū o Ngāi Te Rangi.

JOSHUA GEAR:

Tēnā koe Sir, Joshua Gear appearing on behalf of the Ngā Te Rangi Settlement Trust.

JUSTICE CHURCHMAN:

20 Tēnā koe Mr Gear.

REGISTRAR:

CIV-2017-485-250 – Ngāti Pūkenga.

SPENCER WEBSTER:

25 Tēnā koe Your Honour, Webster. I'm not normally appearing for this application, but Mr Bennion is having some technical difficulties in Wellington

and he has called me and asked me to enter an appearance in his absence, so I register that now Sir.

I also am appearing, if I can while I'm standing in relation to Mr Bennion, it is also his application for Ngāti Hapū Incorporated which is 257.

5 JUSTICE CHURCHMAN:

Tēnā koe Mr Webster.

REGISTRAR:

CIV-2017-485-222 – Ngāti Tara Tokanui.

JAMES LEWIS:

- 10 Tēnā koe Sir, Mr Lewis again. I'll be stepping in for Ms Siliciano for the Ngāti Tara Tokanui Trust.

JUSTICE CHURCHMAN:

Tēnā koe ano Mr Lewis.

REGISTAR:

- 15 CIV-2017-485-195 – Ihakara Tangitū Reserve.

SPENCER WEBSTER:

Tēnā koe ano Sir, Webster appearing for that application.

JUSTICE CHURCHMAN:

Thank you.

20 REGISTRAR:

CIV-2017-404-556 – Ngāti Porou ki Hauraki.

BRYCE LYALL:

Morena Sir, Lyall for that applicant.

JUSTICE CHURCHMAN:

Morena Mr Lyall.

REGISTAR:

CIV-2017-485-196 – Te Rūnanga o Ngāti Awa.

5 HORIANA IRWIN-EASTHOPE:

Tēnā koe Sir, Irwin-Easthope for Te Rūnanga o Ngāti Awa.

JUSTICE CHURCHMAN:

Tēnā koe Ms Irwin-Easthope.

REGISTAR:

10 For the interested parties: Bay of Plenty Regional Council.

TANIA WAIKATO:

Tēnā koe Te Kaiwhakawā, kia hoki koe e te Rihita. Counsel's name is Ms Waikato appearing for the Bay of Plenty Regional Council.

JUSTICE CHURCHMAN:

15 Tēnā koe Ms Waikato.

REGISTRAR:

And for the Attorney-General.

GEOFFREY MELVIN:

20 Tēnā koe Sir, Melvin for the Attorney-General and with me Sir is Mr Agnew from Te Arawhiti.

JUSTICE CHURCHMAN:

Tēnā koe Mr Melvin.

REGISTRAR:

Apologies Sir there's one more. CIV-2017-485-514 – Tangihia Hapū.

HARRY BERGER:

Counsel's name is Berger. We appear on behalf of David Potter, on behalf of
5 Tangihia Hapū.

JUSTICE CHURCHMAN:

Tēnā koe Mr Berger.

REGISTRAR:

CIV-2017-485-223 – Ngāti Whakahemo.

10 **JOHN KONING:**

Sir, I think it's 238, but Koning for that application.

JUSTICE CHURCHMAN:

Tēnā koe Mr Koning.

Mr Registrar if you could just check that CIV number please.

15 **SPENCER WEBSTER:**

Sir, if I may, I also appear for Ngāti He in relation to application no. 219.

JUSTICE CHURCHMAN:

Yes, I have that noted, thank you Mr Webster.

20 All right now is anybody in attendance either by AVL or in person in respect of
a party whose application has not been called?

HARRY BERGER:

Sir, 770 for Ngāti Whakaue.

JUSTICE CHURCHMAN:

Yes, thank you. Mr Berger, have you filed a memorandum in respect of 770?

HARRY BERGER:

No, we have not filed any memoranda in respect to 770.

5 **JUSTICE CHURCHMAN:**

Is there any reason for that?

HARRY BERGER:

We do not have any updates to provide for 770 so the memorandum would be relatively short.

10 **JUSTICE CHURCHMAN:**

Yes, that's the same position as many other applicants Mr Berger. The Court was quite specific in its minute of 18 May. The purpose of these CMCs is for the Court to know what progress each of the applicants is making so whether or not counsel think there's any utility in filing a memorandum is neither here
15 nor there. The Court needs each applicant to indicate where they're at otherwise we simply lose control of these proceedings. So, I ask that for the next series of CMCs you do file a memorandum as directed by the Court.

HARRY BERGER:

Thank you, Your Honour.

20 **JUSTICE CHURCHMAN:**

Now, there are a number of issues that I wish counsel to focus on. I have already indicated what in general they are in the minute that I issued on 24 June. The most significant of those issues is the fact that Ngāti Porou ki Hauraki have applied for a timetabling direction and the Court is now in the
25 position where it can consider making timetabling orders and starting to set down non-priority hearings.

The approach that I've indicated in the other CMCs is that there are likely to be natural groupings of claims and it's the Court's preference that applicants who overlap with a number of claims aren't subjected to a serial number of different hearings. That's likely to be very expensive, and also an inefficient use of both
5 the parties and counsel's time.

So, I am aware, given Ngāti Porou ki Hauraki are now seeking a timetable, I will address that, but it obviously has implications for a number of other parties who are participating, particularly Ngāti Tara Tokonui. So, I do want to have those
10 counsel whose applications overlap, either in whole or in part, with Ngāti Porou ki Hauraki's application, to let me have their views as to what part or parts of their application should proceed, should the Court get to the stage of being able to set a hearing down. And those hearings are likely to be from the middle of next year. There are already priority applications timetabled between now and
15 then.

There's one other and somewhat related issue. Ngāti He Hapū has applied for variation of a minute made by Justice Collins in 2018 directing that the whole of their application be heard with the Ngā Potiki application ...
20

[10:20:05-10:20:11 unrecorded]

... to the minute that Justice Collins made, and it records that it was by agreement that between five or six different cross-applicants that the Ngāti He
25 application was to be set down to be heard in full. So, it seems to me there is an appropriate basis for the request that it now be heard in part rather than full. But, given that the original order was made by consent, I would wish to hear from those counsel whose clients were party to that original consent, what their views are in relation to the application now to vary that direction Justice Collins
30 made.

Once again, the issue of funding of some of these applications is a matter of some moment, so I alert Mr Melvin to the fact that I would wish to hear from him on this topic. Particularly I note Ngāti Porou ki Hauraki saying that they have had no funding as yet. Given that they're applying for a timetable towards
5 fixture, the current situation in respect of funding would seem to be a major impediment in respect of that.

Finally, in terms of the general issues that it would be helpful for counsel to comment on, is the issue of mapping. And those of you who have been looking
10 at the Marine and Coastal Area (Takutai Moana) Act 2011 website will see a draft practice note has been posted there that represents the fruit of the work of the mapping group of which Mr Melvin has been a significant part, but there were also three counsel representing applicants who also have contributed significantly to that work.

15

The minute on the website attaching the draft practice note invites comment from counsel. It is important that all counsel familiarise themselves with that minute and, particularly with what is proposed in terms of the draft practice note. It's not set in stone. There is an opportunity to influence it, so I hope if counsel
20 haven't read it already and are not able to make submissions on it today, that they do read it and promptly make submissions. It is designed to achieve consistency and to avoid the situation where we've got overlapping claims where the maps prepared by the parties are completely different one from the other, contain different information and are very difficult to reconcile.
25 Particularly where there are lots of overlapping claims, having a wide variety of maps which range from the most basic hand-drawn maps to some quite sophisticated ones, it's inefficient and it doesn't really allow justice to be done to all of the applicants. So, while that's not a matter that need be the subject of extensive submissions today, I simply draw that to all counsel's attention in the
30 hope that we would have some positive and constructive feedback which will produce a final result.

Now Mr Registrar, if you could now proceed to call the cases one by one.

REGISTRAR:

CIV-2011-485-793 – Ngā Potiki.

LEWIS:

- 5 Tēnā koe Sir. We filed a joint memorandum on the 8th with the Rangataua Working Party and which includes the Ngā Potiki priority applicants, that includes Ngā Potiki a Tamapahore Trust, Ngāi Te Rangi Settlement Trust, Ngāti He Hapū Trust, and Te Tawharau o Ngāti Pukenga applicants. Mr Webster will be speaking to that memorandum Sir.

10 **JUSTICE CHURCHMAN:**

- Yes, I do have one question for you in respect of the content of that memorandum. You say that you're considering the possibility of convening a judicial settlement conference (JSC) and/or alternative dispute resolution processes, I applaud that as an initiative, it's helpful. Counsel in respect of
- 15 other matters, have at times underestimated how easy it is for the Court to convene a JSC. The Court probably needs about three months, certainly if it's going to be a JSC that involves a large number of parties, firstly to arrange for the judicial resource; to get a suitable venue if it's going to be too big for a standard Court room and to set matters down. The most critical is being the
- 20 suitable judicial resource. It's likely to be an Associate Judge rather than a Judge, and there are some Associate Judges who have some knowledge of, and an affinity for work under the Act, and others that don't. So, it's not as straightforward as simply saying to the Court, we want one, can we have it next week please.

25

Is that all you wish to address the Court on this morning Mr Lewis?

LEWIS:

In terms of the JSC, I think I'll wait for Mr Webster to comment on that. We do have a collaborative approach. But I'd say at the first instance before we

consider that further, the first thing we need to do is consider all the evidence that's just been filed on behalf of the applicants and then go forward from there. Mr Webster might have something to add to that Sir.

JUSTICE CHURCHMAN:

- 5 All right, thank you. And if there's anything that Mr Webster doesn't cover that is relevant to your client, I'll reserve you leave to address me at the end of the hearing, and if I forget to give you that opportunity, just remind me.

LEWIS:

Thank you Sir, as Your Honour pleases.

10 **REGISTRAR:**

CIV-2017-485-219 – Ngāti He Hapū Trust.

WEBSTER:

- Yes, thank you Sir. Perhaps it might be most efficient if I deal with the issue that Your Honour was just engaging with my friend on, being the idea of
15 alternative dispute resolution or a JSC.

- It seems to me probably the, what we were suggesting was that the timetabling for it be considered now. The most appropriate time seems to be after the interested parties and the Crown have filed their evidence. That's our current
20 assessment. So, on that basis the Crown is due to file at the end of October so something in-between that and Christmas seems to me to be the most appropriate time to timetable in some kind of either a JSC or some other process. Where we go from there is that we will need to engage with counsel for the interested parties and the Crown in particular and start assessing
25 whether or not there's support from them for that move. But, that seems to us to be the best time to timetable so I think we'll flag that now because we're not far off being in the three-month period where the Court will need the time to prepare for it.

JUSTICE CHURCHMAN:

Yes, there's one other critical component of a request for a JSC and that is the Court needs some confidence that there is significant buy-in from enough of the relevant parties for the allocation of the judicial resource concerned. And you
5 may or may not have been involved in the Whakatōhea case where there have been two requests for a JSC and they have foundered because it's not evident that the parties who are critical to resolution of the issues, see any value in that. So, by all means consider it and pursue it as an option but just be aware that, unless the Court has some confidence that at least some issues relevant to the
10 case are likely to be resolved, it's difficult for me to be able to sell the concept to the Chief High Court Judge who has to approve these things.

WEBSTER:

Understood Your Honour. I think really, we thought it best just to flag that we are interested in pursuing it, but of course there's a lot of water to go under the
15 bridge yet.

JUSTICE CHURCHMAN:

Yes, the other option your memorandum or the memorandum that I talked to Mr Lewis about, referred to alternative dispute resolution processes and there are many such processes that are able to be followed in accordance with
20 tikanga and don't feel in any way inhibited from pursuing those.

WEBSTER:

Yes, thank you Your Honour.

The next issue for, perhaps if I deal with the Rangataua Working Party and
25 actually the idea of the JSC is related to Rangataua only, so while it did relate to the balance of the Ngā Potiki application, it really was just involving the groups that are part of that working party, and the Crown of course. Obviously, the evidence has been filed over the last couple of days and just dealing with Your Honour's point about the maps. The intention from the Rangataua
30 Working Party is to have one map book so that there is the consistency that the
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Court is seeking, and we also have a professional mapper engaged for that purpose. So, we're intending to file as the joint memoranda indicates on 24 July, a combined map book that should be uniform and consistent, that provides all the information from those groups within the Rangataua Working Party. Other than that Sir, we're continuing to prepare for the later filing in respect of the balance of the Ngā Potiki application.

Coming to the Ngāti He specific issue, it probably is well understood by the Court but just so Your Honour understands the basis for the application, having advanced in the Rangataua Working Party and the evidence for that, and then of course preparing to deal with the balance of the Ngā Potiki application, it became clear that if Ngāti He were going to be heard in full, that would force a cascade effect right down through the rest of the Tauranga Harbour, I suspect. And it seemed to us that the more efficient way for Ngāti He and Ngāi Te Rangi, and indeed probably the Court and other parties, is for Ngāti He to align with Ngāi Te Rangi in the pursuit of the balance of the Ngāi Te Rangi application when it is heard. Because otherwise they would then have to be probably heard in full because most hapū would touch on the Ngāti He rohe, so we felt that was probably the most efficient use of everyone's resources.

20

I raised the matter with, certainly the members of the Rangataua Working Party, and I think I included in that the counsel for Ngāti Ranginui. Ngāi Te Rangi Settlement Trust have indicated that they support the application and I haven't received any responses from the others. I certainly flag to the Crown that we're intending to seek, limit the scope of the Ngāti He application in terms of its overlap with the Ngā Potiki application.

25

So, that's where matters stand today Sir. And as Your Honour has indicated we'll hear from other parties in relation to that.

JUSTICE CHURCHMAN:

Yes, I do understand, and your reasons seem perfectly acceptable to me. But, what I didn't want to do was to surprise the other parties who agreed to one course, without them having the opportunity at least to comment. But it does
5 seem a sensible and efficient option, at the moment.

WEBSTER:

Thank you Sir.

JUSTICE CHURCHMAN:

Thank you Mr Webster.

10 **REGISTRAR:**

CIV-2017-485-244 – Ngā Hapū o Ngāi Te Rangi.

GEAR:

Tēnā koe Sir. I support the comments made by Mr Webster in regard to the Ngāti He application aligning with the Ngāi Te Rangi balance application. It just
15 seems a natural fit and it definitely would be more efficient if they were to align with the balance of our application outside of Ngā Potiki's.

In terms of the Ngāi Te Rangi application itself, so we're part of the Ngā Potiki Rangataua Working Group, so there will be the first stage hearing and then
20 there will also be the second stage hearing which deals the coast. But then the balance part of our application which pretty much covers the Tauranga Harbour all the way up to the Alderman Islands further north. It has a number of other overlapping applicants that we need to engage with, and I've mentioned that in the memorandum that I filed on 8 June just highlighting that there has been
25 some engagement with counsel for the other applicants. There's definitely a willingness for us to engage but we haven't had that face-to-face meeting with the other groups yet, but there's definitely a willingness.

In terms of that, I've asked in my memorandum Sir that we adjourn that balance part for at least another year so that we can have that space to be able to talk. Apart from that, that's where things lie with the balance part Sir.

- 5 In regards to the Ngāti Porou ki Hauraki application, our application doesn't overlap with that part, so we have no comments to make in relation to that too.

In regards to the mapping, again, support the comments that Mr Webster has made in regards to the Rangataua part of the application. And, as part of the
10 preparation of our evidence, we did use that practice note just as a guide for us and, in terms of the experience working with it, it was helpful. The information required for the maps is practical and so we found it helpful to provide our maps without evidence.

- 15 Apart from that, I have no further comments to make Sir.

JUSTICE CHURCHMAN:

Thank you Mr Gear, and thank you for your helpful and full memorandum. I do know that issues to do with COVID have impacted on many applicants and their ability for their kaumatua to engage one with the other about these issues but
20 it is important that you do attempt to narrow the overlapping issues. That's going to improve the prospects of success of all of the applications concerned, if there is substantial agreement, even perhaps leading to a joint application or one seeking that various orders be made on a joint basis. So, thank you.

REGISTRAR:

- 25 CIV-2017-485-250 – Ngāti Pukenga.

WEBSTER:

Sir, for Mr Bennion. He indicated to me that Ngāti Pukenga supported the matters that are in the joint memoranda of counsel for the Rangataua Working Party and he will abide to, his client will abide any decisions that were made.

JUSTICE CHURCHMAN:

Yes, thank you Mr Webster.

REGISTRAR:

CIV-2017-485-223 – Ngāti Whakahemo.

5 **KONING:**

Yes, thank you Sir. As you noted in your minute, the main issue that my client requires clarification on is the issue raised by Mr Webster which is this. It goes back to the original directions of Justice Collins as whether or not my clients, if they overlap with Ngā Potiki and/or the Motiti Rohe Moana Trust; whether Ngāti
10 Whakahemo would then have to present their case in full, or just to the extent of the overlap.

The situation with Ngāti Whakahemo is slightly different from Ngāti He who Mr Webster has spoken for, but effectively the same principles Sir, is that if they
15 are brought in, either through Ngā Potiki's claims which do overlap to a certain extent but just simply Motunau Island which is next to Motiti. And the other overlap with the Motiti Rohe Moana Trust is also Motunau.

So, if they have to present their case in full, that would mean that Ngāti
20 Whakahemo would then have to prepare evidence for a mainland claim along Pukehina and also at Maketu.

So, it does raise issues in terms of logistics in the evidence in terms of what my clients need to prepare for the forthcoming deadline. In that sense, my clients
25 would like to be able to present that part of their claim that overlaps as opposed to having to present in full, should there be an overlap.

To that extent Sir, support what my friend Mr Webster has said in terms of being able to present to the extent of the overlaps, but not having to present in full.

30

Those are my comments Sir.

JUSTICE CHURCHMAN:

Now, can you remind me whether the application on behalf of Ngāti Whakahemo was covered specifically by Justice Collins in his directions?

5 **KONING:**

Yes, it was. It was, I think, there were a group of five or six claims Sir and it was included in one of those.

JUSTICE CHURCHMAN:

And did he direct that it be heard in full or only in part?

10 **KONING:**

I understood that, from that original JSC, it was some time ago now, but my understanding was that if Ngā Potiki obviously went both Stage 1 and Stage 2 and all those groups that were listed would be heard in full. They would have to present their substantive – that's my understanding from it. And since that
15 time Sir, I think as parties have started to present evidence and look at how these applications would be managed both by way of evidence and in terms of case management, I think, perhaps counsel have realised that that was going to be a difficult exercise in hearing all of them, and in full, together, and that a more efficient approach might be to, certainly from my clients' perspective,
20 given that my clients have three sort of separate quite distinct geographical areas, that counsel have perhaps reflected on that and may see that His Honour's original directions perhaps could be unyielding both from the parties' perspective and the Court's, and maybe a slightly more nimble approach may be necessary to be able to efficiently deal with them by the Court and the
25 parties.

JUSTICE CHURCHMAN:

Yes, I don't think it was just His Honour, given that the orders were made by consent. Everybody must have been of that view.

All right, my preliminary view is unless there is opposition from some other party, it seems sensible to grant your request. We'll wait and see what the others have to say. Thank you Mr Koning.

5 **KONING:**

Thank you Sir.

REGISTRAR:

CIV-2017-485-222 – Ngāti Tara Tokanui.

LEWIS:

10 Tēnā koe Sir, Mr Lewis again.

In the minute Sir, Your Honour raised the matter concerning discussions with Ngāti Porou ki Hauraki and whether we'd entered into discussions with them about the readiness for hearing timetabling. So, we've started those
15 discussions with Mr Lyall, counsel for Ngāti Porou ki Hauraki. It just reiterates our memorandum as it concerns evidence preparation. We've engaged Ms Bassett as our historian. However, she won't be ready to turn her mind to this application until later on in the year, and at the same time our plan is to prepare traditional evidence in tandem for efficiencies. So, in terms of hearing
20 timetabling we wouldn't be ready to look at that substantially until later next year.

JUSTICE CHURCHMAN:

Yes, if the Court were to make a timetable order, the hearing ultimately would be, I think, likely to be in the second half of next year. It seems to me what
25 you're saying is you in fact would be able to meet and comply with a timetable of that nature.

LEWIS:

If it was later next year Sir, yes that seems to be the case at the moment.

JUSTICE CHURCHMAN:

All right. If I could just focus on some of the comments in your memorandum. You say in [8], "Counsel has endeavoured to make contact with other overlapping applicants ahead of preparing this memorandum. Counsel has not
5 been able to properly engage with counsel for all overlapping applicants." Now, I do appreciate the limits and the difficulties and all the issues with funding, but there are other relatively inexpensive means of communication such as telephone or email. I would certainly encourage you to be as active as possible in dialogue with other counsel because it's frustrating and disappointing for me
10 as the Judge responsible for the list, to come back for the second year to find that, in many cases, and I'm not picking on you, but it's a matter of general observation, since I last made some reasonably directive comments about mutual engagement 12 months ago, there are a number of incidents where there doesn't seem to have been any communication at all. Now, having said
15 that, I know COVID played a part in that, but it can't solely be put down to that, so it is really important for the parties to engage in that dialogue by any means possible.

LEWIS:

Yes Sir, we'll take that on board.

20 **JUSTICE CHURCHMAN:**

The other matter that you raised which is a matter of concern to me is your comments in [10]. You say the Crown has failed to respond or engage with Ngāti Tara Tokanui despite numerous attempts. When did you last communicate with, I assume it's Te Arawhiti?

25 **LEWIS:**

Yes Sir, from what I understand, our last communication with them was prior to filing this memorandum, and on various other occasions before that.

JUSTICE CHURCHMAN:

Your memorandum refers to receiving advice of the draft Crown engagement strategy and to you that's bad news because it doesn't look like you're going to be the subject of direct engagement, if at all, until 2045, which is long after I will
5 have retired, and hopefully while you're still here. It does concern me that there hasn't been any response and I'll certainly be giving Mr Melvin the opportunity of talking to me about that, but Mr Melvin has been a helpful conduit in other cases and I don't know whether or not you've been communicating directly with him but I would have confidence, were you to do so, you would at least get the
10 courtesy of prompt response.

LEWIS:

Yes Sir.

JUSTICE CHURCHMAN:

Do you have anything else to add by way of submission?

15 **LEWIS:**

No Sir, that's my submissions. As Your Honour pleases. Thank you.

JUSTICE CHURCHMAN:

Thank you Mr Lewis.

REGISTRAR:

20 CIV-2017-485-195 – Ihakara Tangitū Reserve.

WEBSTER:

Me again your Honour. I indicated in my updating memorandum that I have been instructed to apply to alter both the applicant and the area of the application and we were grateful to receive Your Honour's indication of the
25 *Pahauwera* decision. Reflecting on that, it's no longer the position of the applicants that they'll seek to amend their application either as to the party or the application areas, so we can leave that matter there Your Honour.

JUSTICE CHURCHMAN:

That's helpful.

WEBSTER:

In terms of the, we are interested obviously in terms of the timetabling. In large
5 part, the evidence because this is such a discrete area. The evidence for my
clients is readily available and could be produced in short order. I mean
obviously we're aware though that there are other applications that are much
broader and have a lot more overlap that would take time, so this application
would merely fall into line with the broader applications, and in particular the
10 application advanced for Ngā Hapū o Ngāi Te Rangi Settlement Trust.

JUSTICE CHURCHMAN:

Just before you take your seat, in terms of the identity of the applicant, as I think
I've made clear in some of the recent minutes, the applicant itself is different to
the person who is the nominal claimant. The nominal claimant can, and we
15 expect will, particularly with a lot of elderly people passing on, change without
the involvement of the Court in the sense that the leave of the Court is not
needed to change the person who's the representative. However, under the
High Court Rules, where someone is an applicant, there would need to be a
formal application and just to draw to your attention the obvious, the Act
20 specifies who can be applicants and they're three pretty distinct groups,
whānau, hapū or iwi. So, some people seem to assume that something like a
trust board can be an applicant and that isn't the case. Just so you're aware of
that.

WEBSTER:

25 Yes, thank you Your Honour.

JUSTICE CHURCHMAN:

Thank you Mr Webster.

REGISTRAR:

CIV-2017-404-556 – Ngāti Porou ki Hauraki.

LYALL:

5 Good morning Sir. I guess the first thing to address is the issue of timetabling orders. Mr Lewis is correct. We've had some helpful discussions over the last few days. So, what we're proposing to do, if it's acceptable to you, is to continue those discussions and seek to file a joint response which would include a timetable to a potential hearing in the later half of next year, I would hope within the next two weeks, if that's acceptable.

10 **JUSTICE CHURCHMAN:**

Two weeks is lightning speed for most of the things that happen in this jurisdiction, so yes, if you can do that, but don't feel constrained if it's three or four.

LYALL:

15 My clients are keen to see some movements, so I will be cracking the whip with my co-counsel there.

The issue of funding is a real one for Ngāti Porou ki Hauraki and the progress that they're able to make. The issue appears to be that the Crown has a policy
20 of not funding both negotiations and the High Court pathway at the same time. And they consider that Ngāti Porou ki Hauraki is still within that negotiations pathway that obviously our issue is, it's been over a year since the Crown made any move towards progressing that pathway, so we're compelled to attend and seek a hearing. So, we're hoping that will be resolved particularly in light of the
25 recent Waitangi Tribunal Report which should provide them some guidance there.

JUSTICE CHURCHMAN:

Yes, in terms of the draft engagement strategy, is your client in the 2045 category or not?

LYALL:

My client has been involved in the negotiations pathway already and we're at the stage where pretty much all of the boxes for Ngāti Porou ki Hauraki have been ticked, we've filed final submissions in fact. Now the ball is in the Crown's court as to appointing an independent assessor and having a decision arrived at. But, as I say, it's been over a year and in conversations with Te Arawhiti, they can give me no date when that might occur beyond, hopefully towards the start or middle of next year. Given that the High Court is ready to make progress I think is unacceptable from Te Arawhiti in that space. But, nevertheless it's in the Crown's hands.

JUSTICE CHURCHMAN:

I do understand the Crown's position that they don't at the same time fund both direct engagement and litigation, and part of the reason for that is that the same type of research and preparation that's required are for each of those avenues would effectively be funded twice because the research has to be done whether you're direct engaging or not. Again, I can't resolve that for you. Mr Melvin knows the concerns I've expressed.

LYALL:

Sir, the evidence that was developed was the High Court pathway so there shouldn't be any issue of duplication of efforts there.

The only other thing that I would address is the mapping protocol. I was in contact with Mr Bennion as he was participating in the process and we're very comfortable with where it's arrived at.

Unless you have any questions, that would be me for the day Sir.

JUSTICE CHURCHMAN:

No thank you, that's helpful.

REGISTRAR:

CIV-2017-485-514 – Tangihia Hapū, and CIV-2017-485-770 – Te Rūnanga o Ngāti Whakaue ki Maketu Inc.

BERGER:

- 5 Tēnā koe Sir. In relation to Mr Potter, we filed a memorandum on 23 June and that memorandum sought a stay. I understand that Ms Mason addressed this matter at the Gisborne CMC yesterday. We have no further submissions to make on that matter and we wait His Honour's directions in that regard.
- 10 For Ngāti Whakaue, there are no directions sought and we adhere to the timetable proposed.

JUSTICE CHURCHMAN:

Just remind me, what timetable is that for Ngāti Whakaue?

BERGER:

- 15 No timetable proposed by Ngāti Whakaue. The timetable that's currently under discussion, it has been proposed by others.

JUSTICE CHURCHMAN:

If you can give me a little bit more detail. What does that actually mean for Ngāti Whakaue?

20 **BERGER:**

It means regarding timetabling, what you set down, we will abide.

JUSTICE CHURCHMAN:

- All right, thank you. Now, in terms of Mr Potter's application and the request made, I did address that with counsel yesterday. I also addressed that in the
- 25 minute that I issued in relation to these proceedings, so I don't think there's need to further cover that.

Are there any other issues that you wish to place before the Court?

BERGER:

No Your Honour.

JUSTICE CHURCHMAN:

5 Thank you Mr Berger.

REGISTRAR:

CIV-2017-485-257 – Ngāi Te Hapū.

WEBSTER:

Sir, this is Mr Bennion's client. He wanted me to raise with Your Honour one
10 issue and it's an issue he has raised previously around the fact that the
applicant is now defunct and has been wound up or been deregistered, that the
Ngāi Te Hapū Incorporated Society. He wanted me to pass on his apologies.
He's still working on that issue and it's going to take, he tells me, a visit to Motiti
to meet with his client, Ms Butler, to discuss that with her. He has indicated that
15 he will have it resolved by or before the Stage 2 filing deadline and he indicated
that there were two possibilities that there will be a replacement applicant
possibly Ms Butler, or alternatively Ms Butler will align with another party and
give evidence through them and therefore her application could be withdrawn.
So, those are the options he's discussing with her, he just needs to get over to
20 Motiti to have that meeting with her and the rest of the members of that Society,
so he can inform the Court as to what the situation is going to be.

JUSTICE CHURCHMAN:

All right. I'll be grateful if you could bring his attention the comments that I've
made already in respect of that applicant.

25 **WEBSTER:**

Yes, thank you Sir.

JUSTICE CHURCHMAN:

Thank you Mr Webster.

REGISTRAR:

CIV-2017-485-196 – Te Rūnanga o Ngāti Awa.

5 **IRWIN-EASTHOPE (VIA AVL):**

[No sound – technical fault]

JUSTICE CHURCHMAN:

We can't hear you Ms Irwin-Easthope, are you talking to us? I'm sorry we still can't hear you.

10 **REGISTRAR:**

Sorry Ms Irwin-Easthope, you joined us successfully by telephone yesterday if you just want to try that again and I will proceed with the other interested parties and then hopefully you will join us by telephone and be able to speak to issues for Te Rūnanga o Ngāti Awa.

15 **JUSTICE CHURCHMAN:**

If you could call the next interested party please.

REGISTRAR:

Bay of Plenty Regional Council.

WAIKATO:

20 Good morning Sir, just a few matters on behalf of the Regional Council this morning.

Firstly, we have no issues with the proposals made by my learned friend Mr Webster for alternative dispute resolution, we just ask that we're kept
25 informed of any developments with respect to those matters as we have been to date Sir.

Secondly, in relation to the issues relating to mapping. I just wanted to note that we filed a memorandum on 29 May updating the Court as to the availability of a further resource which is provided by Council to enable the mapping of coastal resource consents, and just noted that that was included in the draft practice note and there was also some additional direct feedback from counsel that was included in relation to the inclusion of the Mean High Water Springs which had popped up as an issue in the Whakatōhea application Sir, and both of those issues have been included in that draft practice note. So, we don't have any further submissions to make on that Sir.

Those are the only issues that I have to address, unless Your Honour has any questions.

JUSTICE CHURCHMAN:

No, thank you Ms Waikato.

WAIKATO:

Thank you Sir.

REGISTRAR:

For the Attorney-General.

MELVIN (VIA AVL):

Thank you Sir, in terms of the proposal that there will be JSC or some other alternative dispute resolution process for the Rangataua Stage 1 application, the Attorney-General has no opposition to that and give its support on any such initiative and would just like to be kept up-to-date in relation to that. I'm conscious that will happen, there's been good dialogue to date.

In relation to the applications by Ngāti He and Ngāti Whakahemo to alter or vary the directions that His Honour Justice Collins made in 2018 as to whether those applications should be heard in full or in part, the Attorney-General has no

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opposition to what has been proposed today, namely that they be heard, the balance of those applications be heard subsequently with the, I think, the Ngāi Te Rangi application.

- 5 And then turning Sir to matters raised by counsel for Ngāti Porou ki Hauraki, my instructions are that Te Arawhiti acknowledges that it hasn't been in contact with the Ngāti Porou ki Hauraki applicants in respect of their Crown engagement application for the last year and that's regretted. But, I'm instructed that there will be contact very shortly with them to assess whether there will be prospects
10 of continuing Crown engagement or whether the applicants wish to make a firm decision to pursue with the High Court pathway.

- In terms of funding Sir, the applicants have been receiving funding in terms of their Crown engagement application as instructed since at least 2014. In terms
15 of High Court funding, the applicant received an upper funding limit in September 2019 so that's essentially approval for funding for the High Court application. My friend is correct though that it is the policy under the Crown's funding scheme that it won't fund applicants to proceed contemporaneously in both pathways and that may explain why there might be an issue with High
20 Court funding, at the moment, if requests for the investment have been made. But, I am instructed that Te Arawhiti has received a reimbursement record in relation to the High Court application and that is being processed. But there may be a hurdle because of that policy in relation to not funding applications in both pathways at the same time. That's a matter I can take up with Te Arawhiti
25 and also discuss with Mr Lyaal in due course.

I've covered the matters that I needed to, but happy to answer any questions Your Honour has.

JUSTICE CHURCHMAN:

- 30 Yes, thank you for those comments Mr Melvin. Again, I don't want to sound like a broken record, but if there is no contact between Te Arawhiti and an applicant

for over a year, and there has previously been direct engagement, it's understandable to the Court why the applicant would feel a sense of frustration if not hopelessness and despair. So, I don't think there can be any criticism of the applicant in that case for perhaps reaching the conclusion that things are
5 just not going anywhere and they may have to pursue matters through the Court. So, I am conscious that you're the meat in the sandwich, but, again if you would pass my very real concerns, and it's not so much about funding policy, that's obviously a matter for the Crown, it's about basic courtesy and respect for applicants and responding, even if it's simply to say we can't deal
10 with X and Y now, we anticipate to be in a position to do that and then it may well be that some of the issues that are cropping up in these CMCs don't pop up. So, for what's it's worth, I ask you to pass those observations onto your client.

MELVIN:

15 Yes, thank you Sir. Counsel certainly understands your concerns and shall pass on those concerns to Te Arawhiti.

JUSTICE CHURCHMAN:

All right, thank you.

20 Now, Mr Registrar can we go back and see whether Ms Irwin-Easthope has managed to connect by way of video link only.

REGISTRAR:

CIV-2017-485-196 – Te Rūnanga o Ngāti Awa.

IRWIN-EASTHOPE:

25 Tēnā koe Sir. Am I able to be heard now?

JUSTICE CHURCHMAN:

Yes, loud and clear, thank you Ms Irwin-Easthope.

IRWIN-EASTHOPE:

Excellent, thank you Sir, and apologies for that. I'm hoping that you have the memorandum of counsel dated 8 June before you that sets out Te Rūnanga o Ngāti Awa's position, and in particular the direction that it seeks.

5

Sir, perhaps if before I get into that direction because it's relatively straightforward, I just flag with Your Honour that I will be attending the Rotorua CMC in person next week to more fully address the status of Te Rūnanga o Ngāti Awa's application and in particular comment on its involvement in the Edwards priority application. My attendance today is simply to note that Te Rūnanga o Ngāti Awa's participation in the Ngā Potiki application in respect of that area to which it overlaps will occur in, what I understand is being called as Stage 2 of that proceeding. I'm aware of the timetable and have talked to Mr Warren about that previously.

15

I have one question of clarification for Your Honour, and it may be simply because I'm not on top of the historical minutes and I apologise Sir if that's the case. The timetable that I have records that applicants' evidence for Stage 2 of the Ngā Potiki hearing is due on 30 October this year; interested parties' evidence is due on 15 February next year. Now, as Your Honour is aware Te Rūnanga o Ngāti Awa's position in the Edwards' application is simply to not seek for its application to be heard with respect to the extent of the overlap, but rather participate to the extent that its interests need to be defended, if you will.

20

If Te Rūnanga o Ngāti Awa takes that approach for Stage 2 of the Ngā Potiki application, is Your Honour still deeming Te Rūnanga o Ngāti Awa an applicant in that respect or an interested party? Obviously, that has implications for preparation that my client needs to focus on.

25

JUSTICE CHURCHMAN:

30

I can't answer that question comprehensively now because, like you, I don't have in front of me or at the forefront of my mind, the specific directions that

have been made in the past. Where, either myself or Justice Collins or another Judge has made a direction on the basis that an entity was either an applicant or an interested party, before I would vary that, and I'm not sure whether that applies in your case or not, but I would want to hear from other parties who are potentially affected. So, I don't think this morning I'm going to be able to make any direction or ruling to your satisfaction on that. But, if in the past your client has been treated as it were an applicant then it would need to comply with whatever time limits are imposed on applicants. If it's an interested party or has been treated as such in the past, again, it will be the interested party matter.

10

One thing that the Court would be concerned about, would be any attempt to effectively game the system by trying to change status and then ambushing the other parties with the late filing of evidence which really, in fairness to the other parties, is basically cross-applicant evidence. So, I know that's an unsatisfactory response and could I ask that once you've had the opportunity of checking as to whether there are any prior rulings and they're likely to be rulings from Justice Collins rather than me, as to the status of your client, if you wish to have that status formally changed, if you simply file a brief application with the relevant supporting history, and serve it on those other parties that are likely to be potentially affected, and then if there is no objection from those other parties or no objection which I find to be well-founded, I will amend whatever order has been made. So, that I think is as good an answer as I can give this morning to that question.

15

20

IRWIN-EASTHOPE:

Thank you Sir, and I apologise it wasn't a question that I raised in my email. It was something that I discovered, if you will, over the past week, and certainly I can't see anything that makes that clear from Justice Collins' previous minutes, but what I will do Sir is engage with other counsel about that just to make sure that my understanding is correct, and as Your Honour says if I need to file an application, I will do that.

25

30

Otherwise Sir, the only direction that Te Rūnanga o Ngāti Awa seeks is that its application be adjourned until the next round of CMC subject to of course that participation in the Edwards and Ngā Potiki priority application to the extent it overlaps with those applications.

5 **JUSTICE CHURCHMAN:**

Yes, thank you Ms Irwin-Easthope.

Mr Registrar, were there any other interested parties yet to be called?

REGISTRAR:

10 No Sir.

JUSTICE CHURCHMAN:

All right. Now, I know I reserved leave for counsel whose clients might have been affected by any of the submissions made on behalf of other applicants, are there any counsel in that category who wish to further address me?

15

All right. Well we'll take that as being a definite no.

I take this opportunity to thank counsel, particularly those who filed their memoranda on time. What counsel might not appreciate is that in the couple
20 of weeks leading up to this series of CMCs we get over 200 memoranda, often we will get more than one memoranda from an applicant. If counsel are able to meet the time limit that is set for those, it simply makes the Court's task of understanding what the issues are going to be and planning to address them in a comprehensive and efficient way much easier than if counsel wait until the
25 last minute or simply come along without having filed a memorandum.

So, I would commend to all of you to do what you can to firstly talk to other counsel affected by your client's application in advance and then to file your memoranda, in full and on time, even if it's simply to say we need more time,
30 we need another 12 months, here's the reasons why.

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So, thank you counsel. No reirā, tēnā koutou, tēnā koutou, tēnā huihui mai tātou katoa.

- 5 We will now adjourn Mr Registrar.

HEARING CONCLUDES: 11:15 AM