

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

29 JUNE 2020

Judicial Officer:

The Honourable Justice Churchman

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Counsel:

Robyn Zwaan (on behalf of Bryce Lyall) for CIV-2017-485-273

Mark McGhie for CIV-2017-485-214

Miriama Houra for CIV-2017-485-260

10 Cheyenne Conroy-Mosdell for CIV-2017-485-229

Tom Bennion and Genevieve Davidson for CIV-2017-485-261,
CIV-271-485-254, and CIV-2017-485-259

Jamie Ferguson for CIV-2017-485-221 and CIV-2017-485-301

Grant Erskine for CIV-2017-485-160

15 Leo Watson for CIV-2017-485-193

Māui Solomon for CIV-2017-485-217 and CIV-2017-485-316

Interested Party:

Geoffrey Melvin for Attorney-General

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HEARING COMMENCES ON MONDAY 29 JUNE AT 10:30 AM

JUSTICE CHURCHMAN:

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

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THE COURT ADDRESSES THE REGISTRAR

REGISTRAR:

CIV ending 273 – Te Whānau Tima at Te Hapū o te Mateawa.

10 **ROBYN ZWAAN:**

May it please Your Honour, counsel's name is Ms Zwaan, I appear on instructions from Mr Lyall today.

JUSTICE CHURCHMAN:

Yes, thank you.

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REGISTRAR:

CIV ending 160 – Muaūpoko Iwi.

GRANT ERSKINE:

20 Tēnā koe Sir, Erskine.

JUSTICE CHURCHMAN:

Tēnā koe Mr Erskine.

REGISTRAR:

CIV ending 229 – Ngāti Raukawa ki Te Tonga.

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CHEYENNE CONROY-MOSDELL:

Tēnā koe e Te Kaiwhakawā, counsel is Ms Conroy-Mosdell for Ngāti Raukawa ki te Tonga.

JUSTICE CHURCHMAN ADDRESSES THE REGISTRAR – NOISE

JUSTICE CHURCHMAN:

Sorry, I missed most of what you said.

CHEYENNE CONROY-MOSDELL:

- 5 Ms Conroy-Mosdell on behalf of Ngāti Raukawa ki Te Tonga.

JUSTICE CHURCHMAN:

Tēnā koe Ms Conroy-Mosdell.

REGISTRAR:

CIV ending 214 – David Morgan Whānau.

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MARK MCGHIE:

Sir, counsel's name is McGhie.

JUSTICE CHURCHMAN:

Tēnā koe Mr McGhie.

- 15 **REGISTRAR:**

CIV ending in 260 – Te Atiawa ki te Upoko.

MIRIAMA HOURA:

Tēnā koe Sir, Ms Houra.

- 20 **REGISTRAR:**

CIVs ending 261, 254, and 259 – Muaūpoko Iwi, Te Patutokotoko and Ngāti Hinewaka.

THOMAS BENNION:

- 25 Tēnā koe Sir, here with Ms Davidson on those matters. Sir, there is also a matter that may come up 217 concerning Moriori and I may need to address you on that if Mr Solomon isn't present, just alluding to it, Sir.

JUSTICE CHURCHMAN:

Tēnā kōrua.

THOMAS BENNION:

Thank you, Sir.

5 **REGISTRAR:**

CIV ending 193 – Ngāti Kere Hapū.

LEO WATSON:

Tēnā koe e te Rangatira, Leo Watson appearing by AVL for Ngāti Kere.

10 **JUSTICE CHURCHMAN:**

Tēnā koe Mr Watson.

REGISTRAR:

And the CIVs ending 221 and 301 – Ngāti Kahungunu ki Wairarapa, Tamaki-Nui-a-Rua Settlement Trust and Te Awa Tupua and Ngā Hapū Uri o Te Iwi o

15 Whanganui.

JAMIE FERGUSON:

Te Kaiwhakawā, tēnā koe. Counsel's name is Ferguson appearing for those two applicants, Sir.

JUSTICE CHURCHMAN:

20 Tēnā koe Mr Ferguson. We will deal with that when we get to it thanks.

THE COURT ADDRESSES REGISTRAR

JUSTICE CHURCHMAN:

Yes. Well perhaps Mr Bennion, we are expecting Mr Solomon. I do not know whether you have any instructions? Mr Registrar has tried to contact him –

THOMAS BENNION:

Yes.

JUSTICE CHURCHMAN:

– and you say you are able to assist in that regard?

5 **THOMAS BENNION:**

Well Sir, it is a matter where we were instructed by a group of applicants who appear to have maybe fallen out, that seems to be the case.

JUSTICE CHURCHMAN:

Yes.

10 **THOMAS BENNION:**

We thought it appropriate to step back and let the applicants try and come to you directly. Mr Solomon is a lawyer himself. So he filed a memorandum with you and if –

JUSTICE CHURCHMAN:

15 Yes, I have read that, and Ms King filed a memorandum too.

THOMAS BENNION:

And I haven't seen that, Sir, so...

JUSTICE CHURCHMAN:

20 Well there is a significant disconnect between that and the one Mr Solomon has filed in that she seems to be under the impression that the applicant party is the Manukau Lands Trust of which she is a trustee, but that is clearly not the case. So the memoranda pass like ships in the night.

THOMAS BENNION:

25 So Sir, in this circumstance we considered our options and decided it would be best to let the applicants come forward because we couldn't seek particular

orders against or for any of the applicants. So Mr Solomon was to be here by AVL I understand –

JUSTICE CHURCHMAN:

Yes.

5 **THOMAS BENNION:**

– and I was liaising to your registrar about that, but it may be I think he is still on the Chathams, so that may be the difficulty, and I guess my role today would be really to assist in any way in terms of carrying information backwards and forwards, but we have actually stepped back because of the – we are now no
10 longer having unified instruction from parties.

JUSTICE CHURCHMAN:

I do not think it is a matter we can resolve without Mr Solomon's participation, so what I propose doing is asking Mr Registrar to arrange a further teleconference that just involves him and Ms King too if she wishes to
15 participate.

THOMAS BENNION:

Yes, Sir.

JUSTICE CHURCHMAN:

So thank you, that is what I would – unless, he may yet join us, but that is how
20 I propose dealing with that.

THOMAS BENNION:

Thank you, Sir.

JUSTICE CHURCHMAN:

Now, Mr Ferguson, you have just filed two memoranda now?

JAMIE FERGUSON:

Yes, Sir, my apologies for that, I had a whānau bereavement Sir at the time of filing, so I have just been struggling to get instructions and confirm that, but late at least Sir.

5 **JUSTICE CHURCHMAN:**

All right. Well I have not obviously had time to read them, but if you –

JAMIE FERGUSON:

Would you like me to address those quickly Sir now or allow other claims to go first?

10 **JUSTICE CHURCHMAN:**

Well just looking at the first one, it seems you are making submissions about other proceedings, so it probably is better that I hear what you have to say now so when we get to the other proceedings I know at least what you have said or what suggestions you have made.

15 **JAMIE FERGUSON:**

That seems reasonable Sir. So in relation to that one, which I apprehend is 221 being the application for the trustees of Ngāti Kahungunu ki Wairarapa –

JUSTICE CHURCHMAN:

Yes.

20 **JAMIE FERGUSON:**

Ngāti Kahungunu ki Wairarapa, Tāmaki-Nui-ā-Rua Settlement Trust, that is a matter that overlaps with the Clarkson proceeding Sir, and in which the applicants are an interested party. In relation to that, having reflected very carefully on participation Sir, the position previously outlined to the Court last
25 year I think that they do not intend to want to actively progress their application as part of the Clarkson hearing as confirmed Sir. In terms of being an interested party though Sir, they wish to participate in the hearing on that basis, but limited only to issues of fact or law that may affect future consideration or determination

of their application or matters that are relevant to the determination of the right holder in the event the Court determines that an order should be made, and it is not intended to address evidence Sir, rather just to participate by way of any questions relevant to those two issues and by way of submissions on those two
5 issues, Sir. So it is a very limited role that is apprehended.

JUSTICE CHURCHMAN:

In terms of time allocation, can you indicate what time you need because we have got to try and budget for the judicial resource involved.

JAMIE FERGUSON:

10 I appreciate that, Sir. I would have thought, in terms of any cross-examination, I understand at the moment there is possibly still another report to be filed on behalf of the Clarkson and applicants, but I am not entirely sure about that, Sir. I understand they no longer –

JUSTICE CHURCHMAN:

15 I am not aware of that, Mr Ferguson.

JAMIE FERGUSON:

They are no longer represented. There was originally a timetable and I think when Mr Hope was instructed where he indicated there was still an historical report that they were preparing, but it is not apparent from his final memoranda
20 that that is still coming, and I think people are proceeding.

And I think people are proceeding including the Crown but Sir there is nothing further. So, I think in relation to cross-examination it would probably be no more than half an hour for each witness, Sir, and then submissions I would have
25 thought would be no more than an hour. So, a very limited role.

THE COURT:

So that is about half a day in all, maximum?

JAMIE FERGUSON:

Absolute maximum, Sir. I imagine it probably can even be more like a couple of hours in total but until one sees the lay of the land a bit closer and depending on what my friend files and obviously my friend, Mr Watson, is still to file some evidence from Ngāti Kere and Ngāti Kere is a hapū closely affiliated with my clients and so my clients are looking to hopefully be in a position of simply supporting the Ngāti Kere position as advanced, Sir, but obviously until we have seen that evidence I need to reserve a little bit of leeway but it is hopeful that my friend with taking the bulk of the burden, I don't mean that in a repressive way but as the key hapū with interests relating to Ngāti Kahungunu in that area, Sir.

THE COURT:

All right.

JAMIE FERGUSON:

The only – the other issue just to address in terms of the application is just Crown engagement. There has not been any Crown engagement albeit that is preferred by the applicant, Sir. In relation to the Crown's draft Takutai Moana Engagement Strategy that has been out for consultation, the application falls within area three, so engagement under area three is 2027 onwards which is some considerable way, so it is likely therefore, Sir, that at an appropriate time the 221 application is going to have to be timetabled for evidence and hearing but in the circumstances and given that Clarkson is going to have some potential impact, we sought an adjournment for 12 months, Sir, to refer to a case management conference in mid-2021.

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So, that is that matter, Sir. The second matter is 301 which is the application by Messrs Gerrard Albert and Te Kenehi Mair forming half of Te Awa Tupua being the legal person created under the Te Awa Tupua Whanganui River Claims Settlement Act comprising the Wanganui River from the mountains to the sea and also on behalf of Ngā Hapū me ngā Uri o Te Iwi o Wanganui, so the hapū and tribal members of Wanganui iwi. In relation to that application there has been no Crown engagement yet, Sir, which again is their preferred

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course, however, somewhat more positively in the Crown's draft engagement strategy this is in area one, so those are matters that subject to the Crown's final decision on the strategy will be prioritised for direct engagement commencing this year it was originally intended albeit that was pre possible
5 delays affected by COVID-19, Sir, but starting in 2020 and going into 2023. So, subject to confirmation of that if that is the case that would be the priority point of engagement for those applicants, Sir, and for those reasons again a 12-month adjournment to a case management conference in the mid of next year is sought.

10 **JUSTICE CHURCHMAN:**

Thank you Mr Ferguson. All right, Mr Registrar, if we could go back through the same sequence cases were called at the start please. Thank you Mr Melvin, I acknowledge your presence on behalf of the Attorney-General. I apologise on behalf of the Registrar for not calling the Attorney-General.

15 **GEOFFREY MELVIN:**

Melvin appearing for the Attorney-General.

JUSTICE CHURCHMAN:

Yes, thank you. All right, Mr Registrar.

REGISTAR:

20 CIV ending 273 – Te Whānau Tima and Te Hapū o Te Mateawa.

JUSTICE CHURCHMAN:

Ms Zwaan.

ROBYN ZWAAN:

Thank you, Your Honour. The instructions I have from Mr Lyall are that a Zoom
25 conference was held amongst counsel on Friday and it was agreed amongst counsel, and I understand other counsel will be addressing in more detail, but that this matter can be set down for a hearing in late 2021, early 2022. The applicant, Mr Patrick Seymour would like until mid-next year to file his evidence,

he is in the process of instructing an expert witness and I understand that he is planning on filing one expert report and two tangata whenua-based evidence reports, and as the memorandum of counsel filed by Mr Lyall on 8 June.

- 5 We can update the Court on progress of this by 1 December this year. Unless Your Honour has any questions, basically those are my instructions and I understand McGhie's client is leading the charge on setting down this hearing and he can possibly speak to that further.

JUSTICE CHURCHMAN:

- 10 Yes, well what I do want to do is to, if possible, try and make sure that the overlapping claims are heard together.

ROBYN ZWAAN:

Yes.

JUSTICE CHURCHMAN:

- 15 Because it is going to be very expensive and practically inconvenient for those overlapping claimants whose claims overlap a number of others to have to fund and participate in several different hearings.

ROBYN ZWAAN:

Yes.

- 20 **JUSTICE CHURCHMAN:**

What scope is there for this case to be heard with others?

ROBYN ZWAAN:

- 25 My understanding is that it overlaps with Mr McGhie's clients and Mr Bennion's clients as well as Mr Hana's clients. I'm not sure who is representing him today, and that those clients also overlap with others here today, but not this particular client. So, depending on how it works, they're happy to work in with the other overlapping clients, as is happening in other inquiry areas.

JUSTICE CHURCHMAN:

Yes, well of course, the challenge is not to have it become bigger than Ben Hur and ultimately, there will be some applicants who do end up having to participate in more than one hearing, but what I will be asking counsel to do, if
5 you think there is a natural grouping of cases which will minimise the possibility that there has to be serial hearings for one applicant, to talk amongst yourselves and then to come to the Court with a proposal. And I'd like to keep that on a relatively short leash, so that we can start timetabling this. We have got a timetable that would take us to most of next year, almost 12 months from now
10 I should say, but beyond that, we are ready to start setting some more things down. So, it seems that this area is susceptible of being one of those early hearings, but I do not want to impose on the various applicants, if the applicants talking amongst themselves can come up with a better suggestion as to exactly which cases should be heard.

15 **ROBYN ZWAAN:**

If it is okay with Your Honour, perhaps hearing from the other parties who have more detailed instructions than I do. I can also speak to Mr Lyall while that's occurring, if I can be just be excused to do that, and then come back and update Your Honour, unless if there is anything further I can add at this stage?

20 **JUSTICE CHURCHMAN:**

Yes, that would be helpful.

ROBYN ZWAAN:

Okay thank you.

REGISTRAR:

25 CIV ending 214 – David Morgan Whānau.

MARK MCGHIE:

Well Sir, I am representing the David Morgan Whānau. We filed a memo asking that the matter be timetabled to a hearing on behalf of our client. The area of
30 coastline where her claim is, isn't timetabled for Crown negotiations. I

understand the Crown have not approached any of the claimants in this area to initiate any direct negotiations and that is why we are looking to the High Court. As Ms Zwaan said, we had a meeting on Friday by Zoom. I think there are five claims overlapping with our client's claim, so it is not a large number, and it was
5 a positive meeting. All the overlapping claimants, their representatives seem to agree that we could perhaps look at a hearing later in 2021 or early 2022, that research could be completed by the middle of next year.

And it was agreed that we would have further meetings after this round of
10 judicial conferences and the High Court minute to see what areas we could co-operate on, what could be agreed on, and what issues would be left the Court.

JUSTICE CHURCHMAN:

Yes, well that is likely to be very productive, and as I have – I am not sure whether you attended last year's case management conference – but I have
15 encouraged all counsel for all applicants to attempt to agree because, as you are aware, there is some significant hurdles in the Act in terms of exclusive use and continuous use.

MARK MCGHIE:

Yes, Sir.

20 **JUSTICE CHURCHMAN:**

If applicants are able to cooperate as much as possible and, where possible, present a case on the basis of something like joint exclusivity, it just seems to me the prospects of success are greatly enhanced as opposed to the situation where you have five applicants all saying we exclusively exercise this right or
25 occupied this area.

MARK MCGHIE:

Yes Sir. Well there are going to be some honest discussions about that and hopefully agreement.

JUSTICE CHURCHMAN:

Wonderful.

MARK MCGHIE:

That was basically it, Sir. We would keep the High Court informed about how
5 things were going and hopefully there would be some time towards you in the
next year for a hearing.

JUSTICE CHURCHMAN:

Yes. Well in theory, there is. As I have said to Ms Zwaan, I am very keen for –
you say there are five overlapping applicants in your area – for those who are
10 overlapping, to speak with one another, and what I will, in due course, include
in the minute that arises out of all of these case management conferences, will
be some form of direction as to exactly which cases should be heard, and
obviously that is subject if there is someone in those five overlapping cases who
says, “No, we simply cannot be ready for whatever reasons by the end of next
15 year or the following year,” then they may have to be left out. But I would rather,
if possible, all of those immediately affected by your client’s application are able
to participate.

MARK MCGHIE:

So I think all those applicants are represented here today, so –

20 **JUSTICE CHURCHMAN:**

Yes.

MARK MCGHIE:

– we will be able to get an initial view – their initial viewpoint of that.

JUSTICE CHURCHMAN:

25 Indeed. Thank you, Mr McGhie.

MARK MCGHIE:

Yes.

THE COURT ADDRESSES THE REGISTRAR

REGISTRAR:

CIV ending 160 – Muaūpoko Iwi.

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GRANT ERSKINE:

Thank you, Sir. I will just check that you can hear me okay?

JUSTICE CHURCHMAN:

Yes, thank you.

10 GRANT ERSKINE:

This, what I would say, really fires up my friends (**inaudible 10:32:46**) is that I filed memoranda which listed seven or has seven possible overlapping applications in this area, so not including of course the national claims. So the first question would be who should be heard, and then, once that is determined,
15 is how long. So if we can agree that there is five or seven, then I suppose the next step is to get an indication of witnesses and length of hearing or duration of those witnesses' testimony in order to set down the hearing for however many weeks. That is really what my memorandum addressed.

20 Perhaps I would suggest that the five or seven parties could agree on who should be heard and then come back with an estimate of witnesses in duration of hearing to get it set down, be it late next year or earlier 2020. I'm not too sure of the Court's timetable. That is pretty much all I have got to add Sir.

JUSTICE CHURCHMAN:

25 Yes. Do you propose filing a further memorandum once you have made those inquiries?

GRANT ERSKINE:

Yes Sir, unless that information can be teased out this morning if there is time, given that I understand counsel is present this morning. If so and there is time,

then perhaps it could be stood down so to speak and other matters be dealt with first.

JUSTICE CHURCHMAN:

Yes, well that might be an option.

5 **GRANT ERSKINE:**

Thank you, Sir.

JUSTICE CHURCHMAN:

Thank you. Mr Registrar.

REGISTRAR:

10 CIV ending 229 – Ngāti Raukawa ki te Tonga.

CHEYENNE CONROY-MOSDELL:

Thank you, Your Honour. I am not sure I can add too much more than what has already been spoken. We on behalf of Raukawa ki te Tonga were also a party to the Zoom hui on Friday and we also agreed that we, our client could be
15 ready for a hearing if it was scheduled down for late 2021, early 2022. As to hearing those five parties together we haven't been able to be in contact with our client post that hui on Friday, but we will make further inquiries to confirm that they are happy with that approach and we can let the Court know, whether that is by further memorandum if that is helpful as soon as we make those
20 inquiries.

JUSTICE CHURCHMAN:

Yes, a further memorandum would definitely be ideal.

CHEYENNE CONROY-MOSDELL:

Great. Thank you.

25 **JUSTICE CHURCHMAN:**

All right, thank you. And you have got nothing to add beyond what is in your written memorandum?

CHEYENNE CONROY-MOSDELL:

5 No, Your Honour.

JUSTICE CHURCHMAN:

All right, thank you Ms Conroy-Mosdell.

CHEYENNE CONROY-MOSDELL:

Thank you.

10 **REGISTRAR:**

CIV ending 260 – Te Atiawa ki te Ūpoko.

MIRIAMA HOURA:

May I please Your Honour, Ms Houra. I represent Te Atiawa ki te Ūpoko o te Ika a Maui Pōtiki Trust. Just in reference to the memoranda that was filed on
15 the 8th of June by way of progress, it was intended prior to lockdown that a series of hui would be undertaken with the overlapping interested parties. And added complexity to that timetabling was in late March for an AGM, so the trust were not able to meet, a number of the trustees are elderly. So, we have worked through the COVID break to see if we can meet, Zoom, a lot of them
20 we couldn't you know meet with them. And an added complexity also we had to reengage a new project manager and historian. So, the work quickly and we have been able to wrestle with these matters, so up until this current point we have also updated our maps, we hope to have these filed by the 17th of this month. And until, Sir, we meet with the other interested parties I think the best
25 way forward is to file another memoranda as to the progress.

JUSTICE CHURCHMAN:

Yes, Mr Melvin has filed in his memoranda a number of comments about mapping which I will address once all counsel have addressed me, so I have

got a few ideas about what might be required or how things might progress from here re mapping. But thank you, are those your further submissions?

MIRIAMA HOURA:

Those are my submissions, Sir, I've got nothing else to add but at this present
5 moment we are not looking at hearings at least until late 2021, 2022.

JUSTICE CHURCHMAN:

Yes, thank you Ms Houra.

REGISTRAR:

CIVs ending 261, 254 and 259 – Muaūpoko Iwi, Te Patutokotoko and
10 Ngāti Hinewaka.

THOMAS BENNION:

Thank you, Sir. I have nothing further to add. We support the comments made
on a hearing – filing sometime mid-2021 and a possible hearing late 2021,
15 2022. We were on the Zoom call and we support the direction for a
memorandum, joint memorandum I suppose if possible to be filed perhaps a
month or two hence after parties have spoken.

JUSTICE CHURCHMAN:

Yes, thank you Mr Bennion.

20 **THOMAS BENNION:**

Thank you.

REGISTRAR:

CIV ending 193 – Ngāti Kere Hapū.

LEO WATSON:

25 Tēnā koe, Your Honour. AVL. Mr Watson speaking. Just want to firstly
acknowledge and apologise to the delay in the filings, Sir, I have by way of
memorandum just updated the Court heading into this case management

conference that the evidence on behalf of Ngāti Kere is on fact to be filed this week and I have a meeting which would finalise that on Wednesday afternoon and hence be able to file on Thursday, Sir.

- 5 The evidence is not voluminous but does deal with the issues that are raised by the Clarkson application in terms of what you have already mentioned, the difficulties around the exclusive tests essentially this is a whānau claim within a hapū rohe and so it raises some very testing issues for both parties under the current parameters of the Act.

10

I acknowledge Mr Ferguson's comment about the position of Ngāti Kahungunu, and to use his phrase, my clients are prepared to do the heavy lifting in terms of the representation of the hapū interests in that area. I can indicate, Sir, that as far as involvement of my clients in the hearing itself, if this assists we did not
15 anticipate that there would be further evidence from Ms Clarkson and sorry and proceeding on the basis that what is filed by the applicant is what will be heard. On that basis we would need a day really, Sir, in terms of cross-examination and the testing of that evidence as well as time for submissions.

- 20 And I imagine that that could be reduced if we can continue to as we are at the moment, reach out to the applicant to see if there are areas of mutual concern that do not have to be tested by way of cross-examination, and I can just indicate to the Court that is – that remains my focus as counsel and certainly my clients focus because otherwise this is going to be a very divisive process
25 for the hapū. So, we continue to reach out to the applicant in that regard. But as far as an estimate of time if that isn't possible, if we can't reach agreement on some key matters, I would need that time, Sir, to properly test her evidence.

- So, I seek leave, Sir, to file on Thursday the evidence from Ngāti Kere and then
30 continue to work with the other parties to try and make the hearing as efficient as possible in November.

JUSTICE CHURCHMAN:

Yes, just a few questions for you, Mr Watson. You say you are reaching out to the applicant, have you actually communicated with Ms Clarkson since she and Mr Hope parted ways?

5 **LEO WATSON:**

No. That notice of the change in legal representation came through to us just earlier this month and I haven't reached out to Ms Clarkson in that regard, Sir. I do note her memorandum you might have seen just this morning where she is indicating that she wishes to continue to proceed to hearing and given that
10 memorandum and the instructions that I am taking today and tomorrow I expect that my recommendation to my clients will be taken up, and that is that we should directly make contact with her and raise some of the matters that I have previously.

JUSTICE CHURCHMAN:

15 I haven't seen a memorandum from her that was filed this morning. I have seen other ones and I did organise a teleconference at the point when Mr Hope and his instructing solicitor were seeking leave to withdraw but that really only addressed the issues of her legal representation and she told me that she had had preliminary discussions with Mr Geiringer whom she wished to instruct, but
20 to my understanding he is presently out of the country and that may well be as a result of COVID matters he is not able to get back into the country in the near future. So, that is why I would encourage all counsel who are participating in that matter to attempt to talk to Ms Clarkson personally rather than wait for new legal representation to be confirmed because it is my suspicion that
25 Ms Clarkson herself may end up running a – she is a qualified lawyer as far as I am aware – and I think she may end up running that case on her own without representation.

So, I would encourage you to attempt to talk to her, and I think she filed a
30 change of address for service giving her details, so I think they will include at least an email address and possibly a telephone number.

LEO WATSON:

I hear you, Sir. As the Court pleases.

JUSTICE CHURCHMAN:

Yes, thank you and to the extent you need leave you have got leave to file your
5 evidence on Thursday. All right, thank you.

REGISTRAR:

The interested parties, the Attorney-General.

GEOFFREY MELVIN:

10 May it please Your Honour, the Attorney-General filed a memorandum on
Thursday last week which I apprehend Your Honour has seen and read?

JUSTICE CHURCHMAN:

Yes, I have, thank you Mr Melvin.

GEOFFREY MELVIN:

15 It addresses issues that were made in various applicant's memoranda
regarding Crown engagement. It provides some background information
relating to the Crown draft engagement strategy. There is some further
consultation to take place in respect of that, and a final Crown engagement
strategy is to be prepared by the end of the year.

20 **JUSTICE CHURCHMAN:**

End of this year?

GEOFFREY MELVIN:

End of this year. It also addresses issues that were raised in various
memoranda relating to the Crown's financial assistance scheme and the review
25 that is taking place in relation to that. Again, that's been delayed somewhat by
the COVID-19 pandemic, but there is a plan to get consultation back underway
and the review completed by March of 2021.

JUSTICE CHURCHMAN:

What might be outcome of that review be in practical terms?

GEOFFREY MELVIN:

Possibly Sir, changes to the level of fundings available and possibly changes
5 to aspects of the administration of the scheme.

JUSTICE CHURCHMAN:

Yes, I would have to say I am concerned, just as I expressed those concerns
last year, that the progress towards an orderly disposition of these applications,
which is the applicant's entitlement, does seem to be frustrated in some cases
10 as a result of funding decisions that are not obviously explicable on the face of
things. I know the Crown has to proceed and has obligations in terms of the
funding, the limited funding that is available, but often it can be
counter-productive if applicants are unable to participate, for example, in a
priority hearing because they have not got funding. That means there will have
15 to be another hearing ultimately funded by the Crown. So rather than reducing
the fiscal envelope the Crown has to make available, it is going to ultimately
increase that. The more hearings there are, the more cost and delay and such.

I know it is not your personal fault at all and that much work has been done, but
20 to the extent that I can convey the message that it does seem to me that the
delays are creating issues and not necessarily wasted work but frustrating the
resolution of a number of these matters. I am sure you will convey that to
whoever needs to get that message.

GEOFFREY MELVIN:

25 I shall indeed Sir, and there are some Te Arawhiti representatives in Court today
who are hearing that message as well Sir.

JUSTICE CHURCHMAN:

Thank you.

GEOFFREY MELVIN:

The other matter addressed in the memorandum Sir, relates to mapping.

JUSTICE CHURCHMAN:

Yes.

5 **GEOFFREY MELVIN:**

And I understand Your Honour may have some thoughts about that?

JUSTICE CHURCHMAN:

Indeed, and if I could start by thanking you and also the members of the mapping working group for their efforts. I have taken on board suggestions you made that a practice note may be the best way of progressing matters. I have drafted a practice note essentially based on the draft or the work that you have done. Only the Chief High Court Judge can approve and issue practice notes, and as you know we have just had a change in Chief High Court Judge. As soon as the new Chief High Court Judge gives me the greenlight, what I propose doing is posting on the Marine and Coastal Area (Takutai Moana) Act website a copy of what I propose to be a draft, and I hope the Chief High Court Judge will authorise, at least for discussion purposes, and then I would put those documents on the website for all of the applicants to make submissions on them.

20

So, with a bit of luck, the outcome will be within a couple of months, either the Chief High Court Judge would have issued a practice note, or as an alternative there are some other provisions under the rules relating to the issue of directions, which do not quite have the status of practice notes, but are advisory or recommendatory and that is plan B.

25

So, we are getting closer to having some sort of consistency, but I expect that some parties will have some submissions. I am aware that for the smaller and unfunded applicants even complying with some of the mapping requirements cannot be an easy task for them.

30

GEOFFREY MELVIN:

Yes, well thank you very much Sir for that indication. That sounds very promising. The guidelines were drafted with simplicity in mind with being as inexpensive as possible, but yes, if there is – compliance always come with
5 some costs, so.

JUSTICE CHURCHMAN:

And again, without wanting to overstep my jurisdiction, if I could comment to Te Arawhiti that funding mapping costs for applicants is likely to be money well spent, particularly where there are overlapping claims where it is not entirely
10 clear where one claim starts and finishes. I acknowledge that in tikanga Māori the concept of mapping as this Court might understand it, is not necessarily a matter that is at the heart of these claims. However, it is going to assist the applicants if their maps are consistent, easily relatable one to the other, and one can actually work out if there are really overlaps or not, all right. Are you
15 those your submissions?

GEOFFREY MELVIN:

If I can address Your Honour in relation to the Morgan Allan application which my friend Mr McGhie is indicating a wish to have set down for a hearing. This is an area Sir, the Crown has yet to start any research for the Marine Coastal
20 Area applications.

The amount of time that the Crown will need to undertake, and complete research will depend on the geographical scope of a hearing. If it is a very confined area, I am instructed that a period of six months is the minimum that
25 would be required. If it is a larger area, then a period of around 12-months at a minimum would be needed. So, I would invite other counsel to liaise with the Attorney-General in terms, or at least keeping the Attorney-General informed of their discussions around the scope of the proposed proceeding so that the Attorney-General is up to date with the thinking on that point. That will assist
30 the Crown's preparations, Sir.

JUSTICE CHURCHMAN:

Yes, well that is a sensible suggestion. I would encourage the other applicants to do that, but in terms of the time it is going to take the Crown to complete its research, as I understand it, what has been asked for is a hearing not before
5 the middle of next year, so that would give you 12 months. It does seem to me that potentially, the – in terms of the geographic area, not necessarily the issues involved – the geographic area could be relatively constrained, which hopefully may expedite the research. That is not a matter I can dictate or you can influence.

10 **GEOFFREY MELVIN:**

Certainly, Sir, research can get started. It cannot be finalised until the scope of the proceeding is determined.

JUSTICE CHURCHMAN:

I accept that and that is why I am looking for some agreement between
15 overlapping parties and if there is no agreement, I think I will have to make a ruling on it. And in terms of the work that I have to do, I will try and expedite that.

GEOFFREY MELVIN:

Thank you, Sir. I can comment on my friend, Mr Erskine's memorandum where
20 he has included a list of claims that he submits overlaps with the Morgan-Allen claim, and there was one application that he listed which I thought does not overlap and that is the Williams application which is CIV ending 258, on the information that the Attorney-General has that is a very discrete application to an area well outside of the area that the Morgan-Allen Whānau claim relates to
25 and those that overlap it relate to. So, I just offer that information for the Court and for other parties.

And finally, Sir, just turning to the Clarkson matter, the Crown's – Crown has a filing date of the 20th July I understand for filing evidence. We have already
30 filed evidence for that hearing but we are likely to file some mapping

information, mapping data. And unless Your Honour has any questions, those are my submissions.

JUSTICE CHURCHMAN:

Just on Clarkson, what time do you estimate that Crown's involvement in that
5 might require both cross-examination and submissions?

GEOFFREY MELVIN:

Mainly give a rough estimate –

JUSTICE CHURCHMAN:

I just want a ballpark figure.

10 **GEOFFREY MELVIN:**

- probably a day, Sir, would be the maximum.

JUSTICE CHURCHMAN:

And I have not reviewed the evidence the Crown has filed to date, what sort of evidence is – evidence from an historian or?

15 **GEOFFREY MELVIN:**

Yes, it is by an historian and it relates – it has been quite some time since I have dealt with is, Sir, so my memory of it is fading but it deals with particular usages on the – relating to the application area. So, for example, collection of seaweed –

20 **JUSTICE CHURCHMAN:**

Yes, well, that is all right.

GEOFFREY MELVIN:

- matters like that.

JUSTICE CHURCHMAN:

25 Thank you.

GEOFFREY MELVIN:

As Your Honour pleases.

JUSTICE CHURCHMAN:

Now have we missed out anyone who wanted to address something? No. Now
5 we are obviously going to have to convene another teleconference for
Mr Solomon and the – those other applicants if he – there are two other
applications in relation to Rekohu/Wharekauri that may be interested, I do not
think anyone here in this Court or by AVL is acting in respect of those but I will
just indicate to counsel present I will be – I apologise to Mr Solomon if it is at
10 our end the AVL link has not worked, but we will need to reconvene that.

Well, look, I thank counsel for their submissions and it is good to see that some
progress is being made and we are likely to be able to set down a non-priority
hearing for some stage probably at the end of next year.

15

Nō reirā, tēnā koutou, tēnā koutou, tēnā koutou katoa.

We will adjourn, Mr Registrar.

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JUDICIAL CONFERENCE CONCLUDES: 10.59 AM