MACA CASE MANAGEMENT CONFERENCE
AUCKLAND
27 JUNE 2019 at 10.00 am

COURT:
Tēnā koutou katoa. Nau mai, haere mai ki te Kōti Matua o Aotearoa. Ko Justice Churchman taku ingoa.

Welcome to counsel, most of whom I've see a lot of over the last three weeks. Welcome also to the whānau who have attended and also for those interested parties who may not previously have been to a CMC. I know there are some of you here, welcome also.

I'll just explain to you briefly what the purpose is for those people who are not so familiar with what we're doing today.

This CMC is called for the purpose of assisting the parties to prepare their applications for hearing. And it's the last of some 10 such CMCs around the country.

What we're trying to do is to identify the impediments to getting matters ready for hearing. There have been a number which are common to many applications. They include issues of funding. The Court cannot direct the Crown as to what funding it makes available, but it can, and has, raised both with counsel appearing for the Crown and also with the representatives of Te Arawhiti who have attended a number of these CMCs, its concerns that lack of funding appears to be hampering progress.

So, to the extent that there are any orders that any of your clients want that will assist in bringing the matters forward, and with the objective of getting matters set down, now is the time to raise those with the Court.

There are a number of issues which transcend the individual applications which are going to be heard this morning. In Whangarei on Tuesday we heard an interlocutory hearing in relation to the test case referral to the Māori Appellate Court application. I will issue a decision on that as soon as I am able to. I won't be within the next month because I'm sitting in other places.

There are also other discrete matters which will require determination by the Court on interlocutory applications. They include the role of the Attorney-General which is going to have to be set down for a contested hearing in the same manner that the hearing was held in Whangarei on Tuesday afternoon.

There are also issues in relation to discovery and while they mainly were raised at the Rotorua hearing, a number of you were there, I encouraged counsel there to pursue the alternative which is applications under the OIA, particularly Local Government OI&M Act, to try and get the information that they seek rather than issues of discovery for many of the reasons which mean those sorts of applications are likely to be more productive, and certainly much less expensive, than having to come and argue discrete discovery applications.

The other issue which looms over all of these matters is the question of mandate. There are two nationwide applications. They appear, on the basis of the information that I have received to date, to be too broad. I have indicated to the counsel involved what the Court expects will happen there and the Court is hopeful, optimistic that those applications will be reviewed and will focus on the particular specific areas where those two applicants do have a mandate from iwi or hapū or whānau to pursue a specific application.

I'm aware that there are also a number of other applications on behalf of broader bodies where they are contested in the sense that in some cases there is perhaps a hapū, in some cases whānau, who have advanced their own applications and they indicate that they don't wish to be represented by those broader bodies. It's up to the counsel concerned and their clients to attempt to refine, and identify, those matters so the Court isn't faced with the situation of a competing number of applicants saying that they represent the same interests in relation to the same claims.

I am very conscious that the lack of funding means that there are real difficulties for parties in pursuing discussions as between competing claimants. I would simply urge you, in your own way, in accordance with tikanga, to try and have those discussions, because if you're able to present a united position to the Court, your client's chances and your chances, of achieving the objectives you want, would appear to me to be greatly enhanced.

So, many of you have heard those observations before, but for those that haven't been involved in other CMCs, I would urge you to take them on board.

Now, a number of you have filed memoranda including a number that seemed to have come in this morning. That's why we were a little late starting. As I've mentioned before, it's not helpful for the Court to get memoranda at the 11th hour. It just means the Court isn't as prepared as it might otherwise be. So, I urge counsel to try and comply with the time directions that are given.

What I propose doing Mr Registrar if you could simply call matters through as per the order in the list so we can confirm who actually is here and who is representing who, and then I'll ask individual counsel who wish to speak to their memorandum, and I suspect most of you will wish to say at least something, in that same sequence to make submissions to me.

REGISTRAR:
CIV-2017-404-563 – The Rūnanga o Ngāti Whātua.

MS CHEN:
May it please your Honour. Counsel's name is Chen and I appear together with my junior, Rosie Judd. Thank you sir.

COURT:
Tēnā kōrua, Ms Chen and Ms Judd.

REGISTRAR:
CIV-2017-485-276 – Ngāti Rongo o Mahurangi

MS SYKES:
Tēnā koe te Kaiwhakawā. [Mihi]

May it please the Court, counsel's name is Sykes. I appear this morning with my learned junior, Ms Bartlett who is also going to making appearances today for other matters we've been instructed on.

So, I'll ask if she could be seated while I just describe who Ngāti Rongo o Mahurangi is. They're present today. They are a very small hapū in an area that has overlapping interests

with Hauraki, [inaudible]. They have close relationships with Ngāti Whātua Ngāpuhi. They have a special relationship also with Pōmare II, who was a signatory to the Treaty of Waitangi and who obtained lands in the Mahurangi area. Their particular claim is focused on [inaudible], and they aren't seeking customary title sir. They are seeking customary rights orders. Kia ora.

COURT:
Tēnā koe Ms Sykes. Tēnā koe ano Ms Bartlett.

Could I remind counsel that my Associate is recording every word that's spoken and it's really important when you address the Court to have your microphone in front of you and to speak into it otherwise she gets very grumpy with me at morning tea.

REGISTRAR:
CIV-2017-404-518 – Ngāti Taimanawaiti
CIV-2017-404-580 – Ngāti Rehua-Ngāti Wai ki Aotea

MR ERSKINE:
Tēnā koe sir. Erskine with Mr Hill.

COURT:
Tēnā kōrua Mr Erskine and Mr Hill.

REGISTRAR:
CIV-2017-404-574 – Ngāti Rehua-Ngāti Wai ki Aotea
CIV-2017-485-378 – Ngāti Maraeariki and Ngāti Rongo

MS THORNTON:
Tēnā koe sir. Counsel is Ms Thornton. I'm appearing on behalf of both of those applications by Mr Beazley.

COURT:
Tēnā koe Ms Thornton.

REGISTRAR:
CIV-2017-485-188 – Bouchier
CIV-2017-485-187 – Taumata B Block Whānau

MS BARTLETT:
Tēnā koe te Kaiwhakawā. Hurinoa ki tātou nei te whare. Tēnā koutou katoa.

Counsel's name is Ms Bartlett sir, and I appear as agent for those two applications being made by Veronica Bouchier on behalf of Taumata B Block and a number of blocks for land owners sir. Kia ora.

I also have the application for Ngāti Te Ata, appearing as agent for CIV-2017-404-569. Kia ora.

COURT:
Tēnā koe ano Ms Bartlett.

REGISTRAR:
CIV-2017-404-542 – Te Taoū
CIV-2017-404-567 – Te Taoū

MR SHARROCK:
Tēnā koe sir. Counsel's name is Sharrock. I'm appearing on both these matters.

COURT:
Tēnā koe Mr Sharrock.

REGISTRAR:
CIV-2017-404-564 – Ngāi Tai ki Tāmaki

MR KETU:
Tēnā koe te Kaiwhakawā. Counsel's name is Ketu and I appear for Ngāi Tai ki Tāmaki Trust.

COURT:
Tēnā koe Mr Ketu.

REGISTRAR:
CIV-2017-404-581 – Ōtakanini Tōpū Māori Incorporation

MR HOVELL:
Tēnā koe te Kaiwhakawā. Counsel is Hovell on behalf of Ōtakanini Tōpū Māori Incorporation.

COURT:
Tēnā koe Mr Hovell.

REGISTRAR:
CIV-2017-404-520 – Ngāti Whātua Ōrākei

MR DENTON:
Tēnā koe your Honour. Counsel's name is Denton, I appear on behalf of Graham for Ngāti Whātua Ōrākei.

COURT:
Tēnā koe Mr Denton.

REGISTRAR:
CIV-2017-404-545 – Ngāti Manuhiri.

MR POU:
Jason Pou here sir, for Ngāti Manuhiri.

COURT:
Tēnā koe Mr Pou.

REGISTRAR:
CIV-2017-404-582 – Te Whānau-a-Haunui

MS ATUHIVA:
Tēnā koe sir. My name is Sheri-Ann Atuahiva representing Te Whānau-a-Haunui today.

COURT:
Tēnā koe Ms Atuahiva.

REGISTRAR:
Interested Parties:

Hauraki, Kaipara, and Thames/Coromandel District Councils

MS JONES:
Tēnā koe te Kaiwhakawā. Counsel's name is Ms Jones appearing for Hauraki, Kaipara, and Thames/Coromandel District Councils.

COURT:
Tēnā koe Ms Jones.

REGISTRAR:
Mr George Hill, as an objector to CIV-2017-404-581, an application on behalf of Ōtakanini Tōpū Māori Incorporation.

MR HILL:
Your Honour, my name is George Hill. I'm here to object the application by Ōtakanini Tōpū for their rights of seabed and foreshore. I represent at the present time, tikanga Māori compared to an organisation that is a [inaudible], conflicted organisation that are voted on by shares. So, I have no qualms in standing and saying that, while I'm standing, I have underneath the Treaty of Waitangi to ensure that my great-grandchildren will never be diluted to this land and seabed foreshore that we're talking about. Why I'm saying, the people that are wanting to claim this seabed and foreshore, they are a big corporate body, voted on by shares. And they're diluted [inaudible] shareholder. So, it's a Pākehā concept sir.

So, I'm here to ensure that when I go back, I am messenger for my whānau, for the people who I represent from the South Kaipara. Kia ora.

COURT:
Tēnā koe Mr Hill.

You will get a chance to say anything further that you wish to later on. What happens now is the various lawyers and other parties will address me one by one on their specific applications. So, if you have anything further you want to say, there will be the opportunity.

Are there any other parties who are interested parties in these proceedings whose name has not been called?

MR WARD:
Tēnā koe sir. Ward and Ms Moinfar Yong for the Crown sir.

COURT:
Tēnā kōrua Mr Ward and Ms Moinfar Yong.

Alright, I think that's everything now. Mr Registrar if we could call the first substantive matter.

REGISTRAR:
CIV-2017-404-563.

MS CHEN:
Tēnā koe sir. I said in my prior memorandum to you that I am counsel acting for Te Rūnanga o Ngāti Whātua in this proceeding, and that I would use this opportunity to update you on what we have done to overcome the obstacles to getting the matter set down for trial.

Now, sir I'm instructed by what you said this morning about handing up further documents at this stage, but I have been, I'm able to report something that will be pleasing to you. Te Rūnanga o Ngāti Whātua has made contact, or attempted to contact every overlapping claimant within its area of interests. And so, I do have paper sir that will just help you track which ones we're talking about because there are 42 of them, and we've only been able to track 40. And if you don't mind sir, I will just hand up, essentially what is a progress report of the details of what we have done.

So, I've got a memorandum here, and of course my junior will ensure that everybody else has one.

Sir, can I just say at the start that I want to describe the strategic approach that Te Rūnanga o Ngāti Whātua is taking to overcoming the barriers to complying with Justice Collins' minute, which was that we were to substantially complete the task of gathering evidence. And I do that through a tikanga lens. And I think that a tikanga lens is very important. Because of course, the customary marine title and protected customary rights are in accordance with tikanga defined as Māori customary values and practices. And I'm particularly instructed in talking about the context, to the approach that Te Rūnanga o Ngāti Whātua is taking, by looking at preamble 4 of the MACA Act.

That says sir, that this Act translates, that's the key word, this Act translates those inherited rights into legal rights and interests. And so, the strategic approach that Te Rūnanga o Ngāti Whātua is taking is to assist with that translation because, to be frank your Honour, the translation is not a fortuitous one. It is a difficult one. And even with respect to a concept under tikanga, a fundamental concept such as whakapapa.

You will see that legal fictions have had to be used for the translation from one system to the legal system of New Zealand. So, for example, if you look at Te Rūnanga o Ngāti Whātua, and you look at some of the hapū and groupings that have settled with the Crown, you'll see that the settlement legislation refers to an ancestor, a tupuna, and that is Haumoewarangi. But of course, if you were to sit down and actually talk to kaumatua and kuia about the whakapapa of Te Rūnanga o Ngāti Whātua, they would say it not just Haumoewarangi, there's a range of things that connect us to one another. There's a range of tupuna here who are relevant. And I simply say this because this is very relevant then. Because if we are to show customary marine title and protected customary rights, in accordance with tikanga, it requires us to work through those legal fictions as to what the tikanga means in our particular iwi, and with respect to our particular hapū and groupings.

I mean, I see my friend here today on behalf of Ngāti Whātua Ōrākei, they're one of the hapū of Te Rūnanga o Ngāti Whātua. But, once again, they have a fiction with respect to whakapapa. They've had to select the tupuna of Tupariri, and that is in their settlement legislation. But, of course this has to be done because we're trying to fit a concept that doesn't "translate" under preamble 4 of the MACA legislation so that we can get this translation into legal rights and interests. So, they, once again, have had to select one tupuna. And this is relevant, it's relevant to what you've talked about, about united positions. It's relevant sir to what you've talked about with respect to mandate. Because you'll see that that is why a four-pronged approach has been adopted by Te Rūnanga o Ngāti Whātua.

The question today is, how can the Court best assist. Well, when we work through this process, that is the best time because, as you'll see from 3A sir, we have to sit down with our own hapū and groupings, and there are 13 of them, of Te Rūnanga o Ngāti Whātua.

The good news is that Te Rūnanga o Ngāti Whātua has done the work. It's had the wānanga. It's having hui. And the wānanga has led to the hui and it has been agreed that Te Rūnanga o Ngāti Whātua has an over-arching role.

And sir, I will go into detail about that role because that role is important for your Honour to understand, because of course a lot of those hapū and groupings are also here, directly representing themselves in these applications.

So, that has been agreed but they will have an over-arching role. But that is not all sir. It is also important, with respect to our own hapū and groupings that we agree to the commissioning of traditional history to support the MACA Act claim over the entire area of interests sir.

It isn't going to assist if all the different hapū and groupings of Te Rūnanga o Ngāti Whātua come with different traditional history accounts. So, it is better that there is one commissioned, and it has been commissioned. Professor Margaret Kawharu has been approached and she has also been instrumental in helping us to amass, what I would call the putea at the moment. We have a substantial bank of documentary evidence already gathered.

And of course, we also have traditional evidence gathering. So, these are 50 kaumatua and kuia who will assist in determining what is in accordance with tikanga. Because tikanga is iwi, it's hapū specific, it's specific to the rohe. This particular area of interest is a very busy area of interest. It's very very different from the area that was the subject of analysis in *Re Tipene*.

So, that's the first stage and we are well embarked on that and I'm happy to report that on Monday the groupings and hapū of Te Rūnanga o Ngāti Whātua will be getting together again to further have a discussion about their shared interests which is very important to getting a united position.

Secondly, you'll see in B that we have also contacted, or attempted to contact all other overlapping claimants, and there are 27 others. Now, if you add up 27 and 13, you get 40. So, I've just made contact with my friend who has been rather busy, on behalf of the Attorney-General, just to figure out where the extra two overlapping claimants are, and we

will run that to ground. But, at the moment, I only have 40 and those are the ones in my Appendix B and C which I will take your Honour through.

With respect to those other overlapping claimants, it's critical that we wānanga, now we're not at the hui stage, we're at the wānanga stage – why? Because sir, we're discovering that we're actually not overlapping claimants with some of these applicants. So, we are told they're overlapping claimants. But actually when you call counsel, when you wānanga, when you get them together, when you compare your map with their map, when you figure out that both your maps are not as good as they can be, and when you actually do the writing down, what you discover is that actually what they've written has been refined and that your map might have appeared to overlap with their area and it doesn't. So, that's been a very helpful process to determine who we actually really have an overlap with.

But more importantly then sir, to move once we've figured out who really are overlapping claimants, to whether there is probative basis in whakapapa, in tikanga, for their title or rights applications in the Te Rūnanga o Ngāti Whātua area of interests. We're open sir.

Because of all of these fictions to properly exploring their whakapapa and tikanga basis for their title and rights applications.

Because of course as the Court of Appeal said in *Ngāti Apa* at [54], the important thing are the facts as to native property, but also the nature of customary interests is either known to lawyers or discoverable by them by evidence. We're looking at their evidence. They've asked to look at our evidence.

There is a discussion at our client level which is important. Because they need to talk about tikanga and whakapapa.

And then of course after that process sir, in C, we are trying to agree collective evidence. Ultimately, it's not going to help us to come here and say, well sir, we have a problem. Here are 42 overlapping claimants and you sort it. With all due respect, if tikanga is hapū and iwi-specific, we need to be instrumental in refining in sorting that out between ourselves. We're trying to figure out whether there is collective, or as you said, a united position, collective evidence where there's a whakapapa and tikanga basis for the overlapping claimants' interest

and determine whether any parts of the applications can be advanced on the basis of joint interest and then out of the above process, we then determine whether there are any tikanga questions that the parties can't resolve. That they just can't agree on. And therefore, it might be appropriate for us to come to you, at that late stage, once we've been through that process.

I'm saying this sir because obviously there's a tortoise and the hare analogy which applies here. We could race in here and ask for orders now but why would we do when we need to go through this process ourselves in this very busy area of interest with lots of overlapping claimants. Of course, we may find that there are lots of people that we exclusively hold the area of interest in common with. And I know that my friend, for the Attorney-General, has said that if there's any overlapping claimants, then that necessarily means that we can't satisfy the test. We can't satisfy the test for title and we might have difficulty satisfying the test for rights.

COURT:
Well that's a matter ultimately for the Court, not for the Attorney-General.

MS CHEN:
Absolutely sir. But, our job is to make sure that we can assist you as much as possible before we get to the stage of requesting that the Court consider a reference to the Māori Appellate Court for its opinion or obtaining the advice of a pukenga under s 99.

So, in terms of the application itself sir on page 2, I've put up another map because the map that we had previously handed up was very difficult in terms of understanding where the boundaries lay. I say that in particular because of the exercise we've been through with overlapping claimants, where people have said, well gosh is that the northern part of Whangarei Harbour, do you really mean the northern part or do you just mean the southern part, to which we said, no it's really the southern part to which the response was, by Mr Bennion, well then my client does not overlap with yours.

So, this is a more legible map. You'll see it in Appendix A, and of course, Te Rūnanga o Ngāti Whātua is currently spending a lot of time with Te Arawhiti and the reason is because we have signed an agreement in principle, and we are currently working hard to sign a deed of settlement.

The deed of settlement is projected to be signed in March 2020 and the only reason why I raised that is because that has also provided opportunities to get better maps. For example, yesterday when we met with Te Arawhiti, on behalf of the Crown, because we're negotiating the Kaipara Moana which is part of the Wai 303 claim, the direct Treaty Settlement, that we're doing on behalf of Te Rūnanga o Ngāti Whātua, we simply said to them, we need a better map of all of the overlapping claimants.

Invariably, the Crown of course agreed. And invariably, the result of that will be that once we get those maps, that will also assist us to sharpen up the boundaries of the areas of interest for the MACA application.

Sir, in terms of direct engagement, can I say that Te Rūnanga o Ngāti Whātua has made an application for direct engagement with the Crown. I'm on [9] under s 95, which is of course their preference. It would be cheaper. We would hope it was faster. We have approached Te Arawhiti for an update. We approached them in March 2019, we were told that the Crown would not be in a position to engage with Te Rūnanga o Ngāti Whātua until 2021 at the earliest, which is when we shot in our applications to the High Court.

In terms of the role sir, I thought it might be helpful to address the role given that we're the iwi, and that we have hapū and groupings underneath us. As I said before, there are 13 of them and they are currently set out in Schedule B, just to assist you.

So, we are the mandated authority to negotiate with the Crown for the comprehensive and final settlement of all of the remaining historical claims by Te Rūnanga o Ngāti Whātua, for breaches of Te Tiriti o Waitangi by the Crown, that is the Wai 303 matter that I'm talking about.

So, in its capacity as a sole representative body and authorised voice to deal with issues affecting the whole of Ngāti Whātua, the Te Rūnanga o Ngāti Whātua application under the MACA Act is made in support of hapū securing the interests of Ngāti Whātua, to customary marine title and protected customary title as tangata whenua, throughout its area of interest. And this role has been confirmed by the trustees of Te Rūnanga o Ngāti Whātua and at beneficiary hui, and then of course at additional wānanga and hui with the PSGEs of the four hapū and groupings.

So, the intention of Te Rūnanga o Ngāti Whātua is that any recognition of the customary marine title and protected customary rights of Ngāti Whātua throughout its interested area will be held by relevant Ngāti Whātua groups, hapū and whānau. So, this does engage ss 63(a) and 54(4)(a) of the MACA Act which concern the delegation of any rights conferred according to tikanga.

Now, just explaining what that specifically means with respect to the Ngāti Whātua groups hapū and whānau, I'm talking about 14,784 people, in [14], who identify as Ngāti Whātua. So, the iwi of Ngāti Whātua includes all groups, hapū and whānau. I have to stress all three because there are groups that don't see themselves as whānau but they're nevertheless groups under Te Rūnanga o Ngāti Whātua. And they're associated by taetae, I've talked a little bit about whakapapa, but it is simply ancestry.

And the fiction with respect to Haumoewarangi is important because of course some people who have ancestry, and are associated with Ngāti Whātua, don't have the tupuna Haumoewarangi. So, one of the applicants that I believe you heard in Whangarei, are Patuharakeke, have 275 beneficiaries on the Ngāti Whātua beneficiary register. But of course, they will say that they're a composite hapū and so that's Ngapuhi and Ngāti Wai and Ngāti Whātua, and they have different tupuna to whom they whakapapa. Which is why I needed to explain the legal fiction issue, and why we need to sort this out between ourselves.

So, many of these groups have made their own applications and Te Rūnanga has been granted leave to participate in these applications as an interested party in each case.

So, we've obviously made contact with a large majority and we've wānangaed and hui with a large majority.

The clarification here is that Te Rūnanga o Ngāti Whātua will have an over-arching role in relation to these Ngāti Whātua claims. It is very important for me to say to you sir, that the hui has directed that Te Rūnanga o Ngāti Whātua is not to drive or co-ordinate, but to support their claims, to the extent that those applicants wish Te Rūnanga o Ngāti Whātua to do so. Te Rūnanga o Ngāti Whātua, and this is from the tumuaki, the CEO of Te Rūnanga o Ngāti Whātua. He says that we will respond if any of our hapū or groupings are challenged or compromised and act to protect the MACA Act interests of its hapū groupings.

For example, I understand that issues arose concerning Te Uri o Hau at the Whangarei hearing as I was briefed by my junior. And so, if there had been any issues there, and Te Uri o Hau is currently in direct negotiations with the Crown but it might have undermined their applications which are currently adjourned. If for some reason the direct negotiations don't work, then my instructions would have been to go in and protect their interests.

So, of course, for completeness, Te Uri o Hau are not the only people. They have instructed us because we are in contact with their counsel. So, they instructed us that under the MACA Act, their application has been adjourned in the High Court pending the outcome of their direct negotiations.

There are of course, for completeness, two further post-settlement governance entities who fall under Te Rūnanga o Ngāti Whātua who have not made applications to the High Court under the MACA Act, but they've made applications for direct engagement with the Crown, under s 95 of the MACA Act. And that is Ngā Maunga Whakahii o Kaipara and Te Roroa. Te Roroa would see itself, not as a hapū, it sees itself as a grouping.

So, the role is not altogether straightforward, but I have sought to describe it because it is important for our own sakes that we are clear about what our instructions are, and what it is we are seeking to do.

So, then of course we then have the other 27 overlapping claimants sir. I'm on [20]. So, we've applied to be an interested party in several other applications, a schedule of those overlapping applications is attached as Appendix C. There are many different Ngapuhi groups in particular. And we are engaging with all of them. Because that's all we can do at the present point in time.

We've already had wānanga with many and I will, when we get to that part, just quickly take you through what we have done.

Obviously, those discussions will continue. Some of those discussions are wānanga, some of them are hui, but of course the Wai 303 settlement process has also resulted in us having many wānanga and hui with overlapping claimants to that settlement of that claim. We are seeking to leverage off that because resource is always constrained. We're trying to get a two

for here. We're going in to discuss the Wai 303 claim and its settlement, and we are also of course discussing Kaipara Moana as a part of that. And it's important sir, I've just set out in Schedule D, a schedule of the overlapping claimants whose claim area is in the vicinity of the Kaipara Harbour. So that we understand there's another overlap there.

Sir, I'm now up to the evidence gathered to date. It's important to understand the dog has not eaten our homework. We have been trying very hard to bring together the documentary evidence and what testimony we can get from kaumatua and kuia to date.

As you can see, we are continuing to gather evidence for Mangawhai, Whangateau, Mahurangi Harbours, as well as Whangarei, and of course we're gathering relevant evidence on fisheries to the applications.

We've also gathered a substantial amount of evidence with respect to protected customary rights and you can see there, flax, cabbage trees, punga, mullet, it's all down there including whānaungatanga and manaakitanga.

We have spoken to many overlapping claimant counsel and we've said to them, look this is the progress we are making, and they have not opposed. They have indicated that they would not oppose us seeking further time to complete the evidence gathering. And as I've said, Professor Margaret Kawharu has been approached to complete our historical research.

So, that overlap with the settlement by Te Rūnanga of its Wai 303 claim has had its benefit sir. And I've talked about them. It's made us wānanga and hui with overlapping claimants in a fast manner because we need to do all of that to get our settlement, deed of settlement initialled by Q1 in 2020. But it has also eaten resource and we don't doubt that once those negotiations are completed, and the deed is initialled, then we will have more resource after that time.

So, sir the result of all of this is that we are hoping, and if I could take you then to Appendix B, you can see the amount of work that is going on. You'll see this is us talking to the Ngāti Whātua groups, the hapū and whānau. This is the engagement to date. You'll see there's been contacts by counsel. Some of it has been direct. There's been a meeting with

the chief negotiator for Te Rūnanga o Ngāti Whātua, Mr Tama Itirangi, he's sitting in the Court today. Also with Mr Alan Riwaka, the CEO of Te Rūnanga o Ngāti Whātua.

Some of the overlap has been with the Trust Board. I do also need to stress that we do have groupings that are currently under Te Rūnanga o Ngāti Whātua that are seeking to withdraw from the mandate and so I've identified that at [5] and [6], Patuharakeke Te Iwi Trust Board. They filed in the Waitangi Tribunal and they've currently put in an urgency application to withdraw. Of course, we have put forward a process to try and agree their withdrawal and so discussions are ongoing, but no doubt Judge Savage will have something to say about that.

And it goes over the page sir, you'll see that this is what we are doing with each one of them. So, there's been ongoing engagement including with some of my friends who are here today, Mr Erskine etc, and obviously also Ngāti Manuhiri's counsel, Jason Pou, our clients met last week to talk.

Once you get to Appendix C sir, this is all the other overlapping claimants. We've made contact with most of them. Some we simply cannot contact. We can't get a response. But once again, this process is critical because we need to figure out who really are overlapping claimants, who are not, and then we really need to understand whether we have things in common such that we have collective or joint interests.

And that of course, as I said, Appendix D is just the overlapping claimants in the Kaipara Moana area.

So, all of that is really with a view to me saying to you sir, in response to the question – how can the Court provide most assistance? I submit, on behalf of Te Rūnanga o Ngāti Whātua, that it is the tortoise and the hare. We could just say, right we're ready to be set down, but to be honest sir, we have to get our own backyard in order. We have a lot of overlapping claimants and we need to go through that process because I think that once we are through that process, we will be able to agree a pretty fast timetable of steps to progress our applications to a substantive hearing.

But sir, given the work that needs to be done and the pace at which it's going, some of the meetings have been quite friction-filled. It's been important for people to be able to say on a

without prejudice basis, what they needed to say to each other. It's been important for people to be able to go away. It's been important for the Crown to be involved in some of those discussions. Some allegations have been made in those discussions. It has required us to go away and do some further research and come back. Because the wānanga needs to really precede the hui, most of these meetings have not been able to go straight to hui. A lot of them have just been meeting each other just to understand the nature of the claims. And of course, some of them are perfectly amicable. They simply say, well look ours is very particular, and we don't have any issues with what you've claimed. Which is good, and we give that a tick and we say, right well that's not going to require much more of a further, we don't need another wānanga, we can go straight to the hui. In fact, sometimes counsel have just said, well look if you send us what you're going say, we can support it. We can say we don't have any issues with that, and equally if we send you ours, would you have any issues with that.

Anyway, that is a long way of saying something relatively short sir, but I hope that you have found the update on our progress helpful. It is really by way of saying that, if we were to work all of that through, so that we don't lump the Court with the problems which really are our own issues, that we need to sort out, because this is about our tikanga, then we will probably be completed this four-step approach by May 2020. Whereupon, it would be fantastic to have another CMC with a timetable setting this matter to a substantive hearing.

Sir, I'm very happy to take any questions if that will assist.

COURT:
Thank you Ms Chen. I do have a number of observations and some questions. So, I could start at the very end. It's abundantly clear to me that your client is an awful long way from ready to have the matter set down. So, it's not appropriate to seek a hearing. I suspect even May 2020 may be optimistic.

You had mentioned the mandated authority to negotiate Wai 303. While I accept there will be some overlap and there will be some material that is prepared for that, that is potentially of relevance to this, we are dealing with two fundamentally different statutory processes here. And, if your client was of the view that the fact that you are the mandated authority in respect of that claim and that automatically made your client the mandated authority in respect of any

claims under this Act, then I think you need to disabuse them of that. It doesn't translate in that way.

And that brings us to the issue of the overlapping claims. You say that your client needs to sort those out amongst themselves. That's one of your observations that I would absolutely agree with and I'd also express some regret that in the past two years there doesn't seem to have been much progress. I acknowledge what you've told me this morning about the various wānanga and hui and that's what I would expect, but two years into this Act to have those issues still outstanding, they are real fundamental and formidable issues that have potentially a major impact on the possibility of success. Not only of your clients' applications but of its constituent hapū and whānau.

In relation to your comments that you say some of your claims are not really overlapping, while that may be so, for example, in relation to the marginal areas such as Whangarei Harbour, given the map that you've filed which shows a solid block, it's incontrovertible that there must be many overlapping claims. And while absolutely the Court supports the efforts of the parties to resolve that matter and accept absolutely that resolving them in accordance with tikanga is the ideal way to do that, I think you perhaps underestimate the magnitude of that task ahead of you.

As I have indicated to counsel in other CMCs, you may wish to consider concepts such as joint exclusive interests because, to me, and I accept that all of you counsel will have had a far longer involvement with this process than I do, but as someone who has come to it late and been tasked with trying to put some order around it, if the overlapping claims are not resolved, the Court is going to have to make some difficult decisions and one of those decisions may simply be there are so many parties claiming exclusive interests that it is simply not possible to make any order. That would be a great disappointment to the Court. So, as one of the bodies that I talked about in my opening comments, your client really has an obligation to sit down, and it may be if some of your constituent hapū, for example, Te Uri o Hau, but it could be many others, wish to paddle their own waka, you may have no option but to acknowledge that, and to allow them to do that.

You submitted to me that your client is supporting the claims of your constituent whānau and hapū, I'm not sure that the Act specifically provides that as a role. The Act permits

applicants to advance claims on their own behalf and an applicant may become an interested party in respect of others' claims. There is clearly some scope for that. But, I would need to be convinced, and maybe I will be, as this process goes further, that an applicant can maintain a claim but say, it's merely a supportive role, particularly when the party said to being supported, doesn't wish that to happen. So, I think your client does have some hard work to do and all power to you if you can achieve that by May 2020, but based on the progress to date, I'll be delighted to hear that that's so, but, I'm certainly not optimistic. But, thank you for your submissions.

MS CHEN:
Thank you sir. If I could perhaps respond. I have found your observations extremely helpful.

With respect to Wai 303, it is important for me to say that that is why the hui are taking place. I don't think there's a presumption at all that there's an overlap, that Wai 303 is on all fours with the MACA Act. Clearly it is different. There is some overlap, the Kaipara Moana is part of that Wai 303 settlement but that is why the hui have taken place.

And secondly, that does relate to your point about the supporting claims. Of course, if the hapū and groupings had said no, we don't want you here, the iwi wouldn't be here. Because otherwise it's incurring costs it doesn't need to incur.

But, the agreement was that there was a role and the issue is to make sure that the role that is being put forward properly fits into what the MACA Act allows. I do note also that, apart from Te Uri o Hau, who is currently in direct negotiations, there are two others who have applied for direct negotiations, but have not otherwise made applications in the High Court, and I think they were much keener for the iwi also to be here and pursuing the application directly.

In terms of the overlapping claims, your point is well taken on board. Of course, they should've been doing more over the last two years, and you'll note that there was a very late application to respond to the test case. Once again, it's just a resourcing issue. They found it very difficult to find resource to negotiate the 303, as well as the MACA Act applications.

But in terms of the magnitude of the tasks sir, I think that the process that they're going through at the moment has really assisted Te Rūnanga o Ngāti Whātua to be more realistic

really. It is a very large area of interest and even as late as March of this year, the trustees confirmed again that they did want this area of interest.

But it has very much taken on board what you've said about making sure that we get some united position, because obviously otherwise we are not going to make any progress sir.

COURT:
The only comment that I would say to that is, you've indicated you've reached agreement, what the Court would expect, if in fact there's an agreement between your client and the various hapū or whānau, is to receive a memorandum signed by both parties, both agreeing that that's so. And unless we get that degree of certainty, we're pretty much where we are at now.

MR CHEN:
Thank you sir. That's very helpful. The groupings are meeting again on Monday and I'll make sure that happens.

COURT:
Thank you Ms Chen.

REGISTRAR:
CIV-2017-485-276 – Ngāti Rongo o Mahurangi.

MS SYKES:
May it please the Court.

My memorandum has been overtaken by a number of submissions. So I seek leave, as I did in Rotorua, to respond if I need to once I take some instructions. Particularly, can I say there's been some helpful disclosures from my friend this morning for Te Rūnanga o Ngāti Whātua, and I would like the opportunity to respond. At the outset we have arranged a meeting today. So, I'm hopeful that my claim, which in the grand scheme of, I think, the large scale map that has been proffered by them, is a small part of it, but a significant part, and there is an intimate relationship arising from a tuku by one of the Ngāti Whātua rangatira, Tu Pomare, and that forms the basis of the customary relationships that underpin the claims to the Act.

So, I want to be very clear that we will be seeking an agreement with Ngāti Whātua that looks at joint exclusivity and relationships that reflect in translating it to this Act the tikanga Māori pre-set of tuku that was undertaken, in a sacred way, to recognise the relationships but also the ongoing relationship we have to protect the two papaku that are buried in those lands that were given to us.

So, ours is a small, but, I think, significant matter to highlight the macro issues that this Court confronts.

I'm grateful for your Honour's intimation that a memorandum of counsel, if we can get to that point of agreement, would be sufficient to perhaps persuade the Court that these orders that we're seeking may be available to us. I would be interested in the Crown's position on this because of course that in some way requires third parties to recognise that the joint relationship or joint exclusivity that we're propounding, is acceptable as the basis for the rights that we're seeking under this Act.

COURT:
Well, just as I said to Ms Chen, while the Crown is perfectly entitled to hold a view and advance that as vigorously as it wishes, ultimately that will be a decision for the Court as to the existence of that type of right and whatever scope it is, and it may well be the Court comes to that decision with the assistance of either the Māori Appellate Court or a pukenga. So, while I don't want, in any way, to undermine the Crown, I don't want counsel to think that the Crown's view, one way or the other, will be determinative.

MS SYKES:
No, it's more expense for me sir. It's anticipating, and I'm not well heeled. We are not the well-heeled in this case as my friends from Te Rūnanga o Ngāti Whātua. We rely on legal aid or the resources that are now being available. So, we are mindful of the public obligations we have there to ensure that what process we do, is not going to be elongated or prolonged by an anticipatory participation at an inappropriate stage, and I raise it in that context alone.

Sir, can I also say, and I belaboured this in the Waikato conference, that my friend comes at an advantage. She's a large natural group. For whatever reasons the Crown's policy in that forum, has determined that some of us are not so large or are unnatural, can I use that term.

So, that makes it difficult for us when we come here to seek affirmation of tikanga-based rights that are clearly tikanga-based rights. So, there's a policy framework in the Treaty negotiations space that we would say is in conflict with the tikanga space, and that is a square matter that I've put for my iwi claimants before you. But can I say that we also recognise we are intimately in relationships with Ngāti Whātua. We are in intimate relationships with Ngā Uri o Hau, and we are in intimate relationships with Ngāti Manuhiri who are our neighbours, so, it's a matrix of interest that needs to be respected and that's what we're trying to achieve outside the Court.

We agree with her proposition that 20 May will be an appropriate adjournment process. I want to say in public again sir, our participation, in part, is very much dependent on what is available to us from Te Arawhiti and their funding processes. And, in that regard, we're very grateful that since our last submission, and indeed since our memo, they have this national database that is being developed. The mapping apparently is now going to be available, and there is an opportunity for further mapping opportunities so that we can assist, what I say the facilitated external process, the confinement of issues to real matters, and the siphoning off of areas that can actually form the basis of the cascade of rights that we want.

So, unless there's anything further sir, I don't wish to labour the point, I have my claimants here, my applicants are here. They've come here before they travel to a tangi for a matriarch of the North, Marara Hook, she was the former secretary of the Mana Motuhake Party but this is so important to them, they've come today and will travel to the tangi after that, to try and find agreement with their whānaunga from Ngāti Whātua, and just to place their pleas before the Court sir, that they be given time to do that. Thank you.

COURT:
Thank you Ms Sykes, and I acknowledge the whānau who have travelled to Court today. There's been mention of May 2020. It's likely that the next major round of these CMCs will be in about 12 months. I can't guarantee it will be May, it may be June. It depends on matters beyond my control.

MS SYKES:
Hopefully my claimants will still be alive. That's my concern sir. I act for the elderly and justice delayed is justice denied, is a very important whakatauki for them. Because many of them, as I emphasised in Waikato, their claims have been outstanding, in any fora, for over

30 years. And the particular space where these bodies lie, is a treasured space for them and they do wish to have customary rights orders for those, if only to protect those spaces from development sir.

COURT:
You've heard my general observations at prior CMCs Ms Sykes, I'm certainly very alive to the fact that the kaumatua and the kuia are passing, and will no doubt continue to do that, and share the disappointment and frustration, but what I would say is the Court can only do so much to progress these matters. It's attempting to do that. It is frustrating to see from one of these series of CMCs to the next that the degree of progress, and in particular, some of the things that don't require vast sums of money, don't appear to have been addressed with the alacrity that the Court might have hoped.

And I don't put it any higher than that, other than to encourage the parties themselves to do what they can, which I think is substantial, and the Court greatly supports. Rather than this Court attempting, by means of directions or coercions to achieve that result.

MS SYKES:
And we're obliged for that direction. Thank you sir.

COURT:
Thank you.

REGISTRAR:
CIV-2017-404-518 – Ngāti Taimanawaiti
CIV-2017-404-580 – Ngāti Rehua-Ngātiwai ki Aotea

MR ERSKINE:
Tēnā koe sir.

The two matters that I in particular want to address is, first, the national applications, and secondly, the broader applications. And to do so, I'd prefer to hear what Mr Sharrock has to say, who acts for one of the national applications, if that's acceptable to your Honour, and then I can respond as need be.

And Mr Hill will address the particular two applicants to be heard at Auckland this morning, if that's acceptable your Honour?

COURT:
Yes, I'm prepared to allow that, but the caveat would be, you have been at some, I don't think all of the prior CMCs and I've made certain observations both to Mr Sharrock and to Ms Mason about my expectations as to the refinement that will occur. I'd be surprised if Mr Sharrock is in a position to clarify matters greatly today. I may be pleasantly surprised, but, my view remains as it has been expressed at the prior CMCs as to the extent to which that matter needs resolution, ideally by the parties, but ultimately by this Court if it has to.

MR ERSKINE:
Yes sir.

COURT:
Thank you. So, Mr Hill is going to address me now?

MR ERSKINE:
Yes sir.

COURT:
Thank you Mr Erskine.

MR HILL:
Tēnā koe sir.

So, I only intend to briefly address some of the matters in the memorandum dated 21 June. Just for both of those clients, my understanding is that we currently have an estimated four to five witnesses for each of them and we have historians lined up. In other words, the evidence gathering is ongoing and it's picking up.

Just on communication, we remember of course your comments regarding increasing that communication between the overlapping claimants in Whangarei and in other CMCs sir. And we've heard those comments.

I'll just make a few short points. Just on Ms Chen's remarks. We've heard what she has said, and we're encouraged by those attempts to increase communication and we will work with her to do that. In particular, to clarify some of the overlaps, I see on this new map supplied, there may be a way of resolving one of those overlaps, so we will certainly talk to her further on that issue.

So, just for both of those claims, the same issue exists for us in relation to some of the more ambitious claims as existed in Whangarei. And that is just simply with the nature and extent of some of those ambitious claims. This is because we envisage, to put it more frankly, that it will be far easier to talk with neighbouring whānau and hapū, as opposed to some of these larger groups, particularly those extended from all the way up at the top in Northland down to the Bombay Hills.

But, turning to each of those applications sir, for CIV-2017-404-580, our understanding is that in terms of communication, there have been some early indications with these priority overlapping groups that there may be a potential for some arrangements or some sort of understanding to be formulated with one of those applicant groups. But this is still early days at this stage. But we will continue with those efforts over the next few months.

For CIV-2017-404-518, our understanding is there could be some perceived difficulties with resolving issues with at least some of those overlapping applications, and that this could also take a little bit of time, if this is possible. But, notwithstanding those overlaps, we will certainly work to continue facilitating and increasing communication with those groups and with the other remaining groups going forward.

So, I think that's all I have really have to say today. Just, that we are very mindful of your comments with that, and we will certainly make that a priority going forward, keeping in mind of course, our funding constraints that we are working with as well.

So, those are my submissions sir, unless you have any other questions.

COURT:
Are you inviting the Court to adjourn your clients' applications for 12 months until the mid-year CMCs next year?

MR HILL:
Yes your Honour.

COURT:
Thank you Mr Hill.

REGISTRAR:
CIV-2017-404-574 – Ngāti Rehua/Ngātiwai ki Aotea
CIV-2017-485-378 – Ngāti Maraeriki and Ngāti Rongo

MS THORNTON:
Tēnā koe ano sir.

Let me begin with 574 if I may. This claim of Ngāti Rehua/Ngātiwai ki Aotea is one of several as your Honour has noted.

We don't view these claims as being particularly overlapping in the sense of having a conflicting interest but a question of who is acting for whom and mandate kind of an issue. And it is slightly complicated sir by the fact that there is a trust board, the Ngāti Rehua/Ngātiwai ki Aotea Trust Board, that is under the supervision of the High Court at this time.

So, it's not as viable a vehicle at this point, it may get resolved and we certainly hope it will. But, the majority of these people are related to each other and are likely to, I would certainly hope, that under a tikanga process or a practical Pākehā process, we would be in a position to work out a way to jointly apply and take up your Honour's observation about the managers, that kind of an approach.

My client is one of the main keepers of the kōrero so there's been quite a bit of research done and of course he's happy to share it and co-operate, and I think that's an objective that we're all sharing at this point.

So, in that regard I would ask if your Honour would be so kind as to adjourn this for a year.

COURT:
Yes, what timeframe do you understand the parties need to engage in the kōrero as between themselves?

MS THORNTON:
Initially not much. I would say a couple of months to find out whether or not there's a will. If there's a way, it may take the next six months or so to actually work out the co-ordination amongst the clients. Yes, I'd say possibly six months would be a realistic timeframe to know whether or not there's going to be an opportunity to really work any kind of co-ordinated or joint type of application.

I don't foresee this becoming a large conglomerated group that has all of the earmarks of a corporation or a trust board or anything like that. But, I'm thinking of an informal way we could all work together to make an application that has a joint feature to it.

COURT:
You've heard the observations I've made, particularly to Ms Sykes but also to Ms Chen. You really need to get cracking and get that process underway.

MS THORNTON:
We do, and I have a motivation in that my client isn't particularly well. So, we're all on the same page in that regard sir.

COURT:
Good, I'm pleased to hear that. Thank you.

MS THORNTON:
The second issue I would address is the 378 application, and that's the Ngāti Maraeariki and Ngāti Rongo. Ms Sykes and I share a grouping, although she's got a different representative. We have, in the past, our clients have talked about a way of co-ordinating their applications. It hasn't come to fruition yet, but the conversations have begun, and I think we're finding ourselves much more motivated than we might have in the earlier times.

This is an overlapping claim with the Rūnanga o Ngāti Whātua also, and also involves [inaudible], and it's our hope that our discussions with them will produce some kind of an outcome that can allow everybody to go forward as well.

Again, I'm thinking, given the number of people involved in that kind of thing, we're probably looking more like a year at this point, for that one, if I can say that.

COURT:
Yes, thank you Ms Thornton.

MS THORNTON:
Thank you sir.

REGISTRAR:
CIV-2017-485-188 – Bouchier

CIV-2017-485-187 – Taumata B Block Whānau

CIV-2017-404-569 – Ngāti Te Ata

MS BARTLETT:
May it please sir.

If I can deal with the first two applications that have been brought on behalf of Ms Bouchier.

My instructions are sir, in terms of the discussions with overlapping applications, the applicants support the proposition that overlapping applications be encouraged to hui and kōrero. Crown funding remains a huge unresolved issue for these applicants affecting those hui being held, but also with research and evidence gathering.

I do take your Honour's comments. I acknowledge your Honour's comments around funding and that the Court cannot direct the Crown to fund. But, some further encouragement would be greatly appreciated by the Court in that regard.

COURT:
I think Mr Ward is sick of me encouraging that.

MS BARTLETT:
Counsel and applicants are ready to co-ordinate the endeavours to meet the timetabling requirements of the Court. Counsel has sought an adjournment until at least the end of February next year but will abide by the Court's direction if a 12-month adjournment is preferred.

COURT:
Yes, there are some problems with February adjournments. The principal one being I'm sitting in other places so I'm unlikely to be able to come back to Auckland. Such adjournments will probably, if it's critical to parties that they are adjourned to February, it probably have to be by AVL link-up, which I do appreciate is often unsatisfactory, particularly for the whānau, the members of your applicant entities, they would much rather, it seems to me, come along to Court and listen to the arguments.

So, if you particularly want to a February adjournment, I will do my best to accommodate it, but, it's likely to be by way of AVL.

MS BARTLETT:
Thank you sir.

If there has been great progress made in that respect, I imagine Mr Castle would be filing a memo in that respect.

COURT:
Well, if I do adjourn it to February, Mr Castle will have to file a memorandum because I'll follow the same processes I did for these CMCs, and I note he's not been particularly assiduous in complying with that. But, I'll put a suitable direction in it. It's just not acceptable for the Court to come along to these CMCs and get either no memo or a memo filed on the morning. It's just not helpful. So, if you could convey that to Mr Castle.

MS BARTLETT:
Thank you sir. If there are no further questions, those are my submissions for those two applications sir, and I'll move onto the application by Ngāti Te Ata.

COURT:
Thank you.

MS BARTLETT:
No. 569 sir.

Your Honour would have received the memorandum filed by Ms Harper-Hinton and Mr Kahukiwa on 16 May.

COURT:
Yes I have.

MS BARTLETT:
I don't propose to go through that sir, just to say that the applicant has made good progress on their evidence preparation and has completed a number of research reports. They've identified 15 overlapping applications, and while there hasn't been much progress in terms of further discussions, their priority has largely been on preparing their evidence and gathering research.

But, now that that has made good progress, they have the capacity to shift their priority to further engaging with those overlapping applications to see if some resolution can be made in that regard.

They would be seeking an adjournment for 12 months to undertake these efforts as their priority.

Thank you sir, those are my submissions for Ngāti Te Ata.

COURT:
Thank you Ms Bartlett.

REGISTRAR:
CIV-2017-404-542 – Te Taoū
CIV-2017-404-567 – Te Taoū

MR SHARROCK:
Tēnā koe sir.

The applicants have been making local approaches with respect to the issues that they have. I'd have to say on the issue of whakapapa we commend Ms Chen's efforts, and we can say that our clients have over the last 15 years been trying to work to understand the whakapapa of Tamaki, and it is not an easy process.

Needless to say, there are four major quite identifiable iwi groups which from time to time divide and reconnect and redefine themselves.

It may be a rather raw analogy sir, but the Prince of Wales can probably argue to have three whakapapa in Greece, Germany and England. And that is the kind of situation that exists, for many, in the Tamaki area.

We anticipate for both of these applications, we will be looking to have three experts. I am briefing one tomorrow. I am trying to obtain shared arrangements with another at the moment, and I am looking for a prospective third.

I believe the joint exclusivities/recognition approach, is a highly valid one to be advanced in this area because there is substantial delicacy between the parties as to their understandings of the structure. Just by way of example sir, Homai Wharangi is a grandson of Rāhiri, who is considered to be the eponymous ancestor of Ngapuhi. So, that makes an interesting milieu, for the situation.

On the question of the broader claims sir, I can report that on Sunday afternoon, I am driving north for a four-day meeting with Mr Dargaville with the intention of specifying the particular areas of the claims for which he's going to be making protective provision.

That, we hope to file within a month, at least a general indication, and provide full specificity, not later than six months, hopefully in three months sir.

COURT:
Yes, well you've heard my comments as to the sorts of timeframes I anticipate and that's definitely three months rather than six.

MR SHARROCK:
Sir, as you have observed, and as the Court pleases.

On other matters, what I can say is we are seeking, as with others, a 12-month adjournment sir, and those are my submissions.

COURT:
Thank you Mr Sharrock.

REGISTRAR:
CIV-2017-404-564 – Ngāi Tai ki Tāmaki

MR KETU:
Tēnā koe sir.

May it please the Court. Counsel filed a comprehensive memorandum on 16 May. In short sir, the applicants are progressing their application and respectfully request that they have a 12-month adjournment just so they can continue collating evidence and research and actively progress their discussions with other overlapping applicants.

Sir, I note in my memorandum that we sought a response from the Attorney-General in regards to universal mapping. I was present in Rotorua and I am aware of the comments regarding that sir. So, I thank the Attorney-General for those.

In terms of Crown engagement sir, that is the applicant's preference and they will be pursuing that but again I note that they want to continue collating their evidence and having those discussions with other overlapping applicants.

That's everything I have to say today sir, unless you have any questions.

COURT:
I do have some questions Mr Ketu. What actually have your clients done to explore and to try and reach some agreement with the overlapping claimants?

MR KETU:
So, the discussions are very initial sir, and I note the discussions we've had with Ms Chen and her client. In terms of the extent of those discussions, again, they are very initial. They haven't been as in-depth as we would like, but they would like to pursue that more actively in the next 12 months.

COURT:
The Court expects them to be a little more active given they haven't been particularly active to date. And I may be more directive in 12 months' time if counsel come and say we haven't been able to get onto it.

MR KETU:
Yes sir, I appreciate that. Fair enough sir.

COURT:
Thank you Mr Ketu.

REGISTRAR:
CIV-2017-404-581 – Ōtakanini Tōpū Māori Incorporation

MR HOVELL:
Yes, may it please your Honour.

A memorandum was lodged with the Court on 21 June which addressed the CMC matters. I'll just update some of those points.

Just one point on the map your Honour, just to clarify that the map covers two areas, one of the West Coast which is on the Tasman Sea, and one on the Kaipara Harbour, one part on the harbour. Just to clarify the part on the West Coast is intended to extend out to the 12 nautical mile mark. I'm not sure if that's clear on the map that's provided or in the map.

COURT:
It wasn't immediately clear to me and I would encourage you to file an amended map which does delineate exactly. There's no drama about doing that. You simply file it. And as I've explained to the other counsel, the purpose in filing these maps is that they go on the public website. So, the public will use that resource to try and gain an understanding of who's claiming what. So, it is really important we get the best quality material we can.

MR HOVELL:
Yes, I'll do that your Honour.

COURT:
You don't need the leave of the Court, just file it.

MR HOVELL:
Yes, thank you sir.

I guess the only other point is just to give some context to the application, the Ōtakanini Tōpū Māori Incorporation is an entity that manages Māori land blocks. The claim relates to the coastal marine area surrounding those Māori land blocks, and that's what the claim relates to.

It's a relatively discrete claim in that sense. So, it could potentially proceed, I guess the difficulty at this stage is that they're now commencing the gathering of evidence and research and that work now. We don't know how quick or how long that work is going to take. So, can't really give an update at this stage, but they are commencing that now.

And that's the reason, essentially, for seeking the adjournment that was sought, at this stage. Also, they are having discussions with Te Arawhiti to seek funding to support that as well.

COURT:
What in particular are they seeking funding for? What aspect of the claim are they seeking funding for?

MR HOVELL:
They haven't yet made a decision as to proceed down the Crown engagement route or with the High Court, so, they're currently still going through that consideration there and lodging their application with Te Arawhiti to seek funding to support either of those routes.

COURT:
Thank you Mr Hovell.

MR HOVELL:
I guess sir the final point to address is just the point made by the interested party, Mr Hill. And as I understand the point that has been raised, just picking up on the discussion that was made earlier, as I understand it, it might relate to mandate or the appropriate entity to hold customary rights and anticipate that will be a matter that will be dealt with through the evidence collation and research that's yet to come.

COURT:
Indeed, that's the Court's understanding as well. Thank you.

REGISTRAR:
CIV-2017-404-520 – Ngāti Whatua Ōrākei

MR DENTON:
Good morning your Honour.

Counsel's submissions will be brief. First, counsel would like to acknowledge that Ngāti Whatua Ōrākei's primary intention from the application is to negotiate directly with the Crown and is pursuing this on the side. However, we have heard very little from the Crown on this matter, so hence continuing this.

We are in the very early stages of evidence gathering and we acknowledge we have 20 overlapping applications. There has been minimal chat with the other applicants. We acknowledge Ms Chen's submissions that we have interacted with Te Rūnanga o Ngāti Whātua, and counsel is very mindful of the Court's desire for those chats to be ongoing, and aware that those need to be more developed than they have. So, moving forward, there will be far more engagement than what has currently taken place.

Ngāti Whatua Ōrākei acknowledge that Ms Chen has raised some points that directly refer to my client. However, I do not have instructions to engage with some of those points currently. Counsel can file a memo in response to submissions later to respond to some of the points raised earlier, if the Court is satisfactory with that. Otherwise, counsel seeks a 12-month adjournment, and is open to any questions the Court may have.

COURT:
No, thank you Mr Denton. I've got no specific questions for you but just commend to you to relay to your client the general observations that I've made to the other parties.

MR DENTON:
Thank you your Honour.

COURT:
Thank you.

REGISTRAR:
CIV-2017-404-545 – Ngāti Manuhiri

MR POU:
Sir, as I mentioned before, I'm here for Ngāti Manuhiri. Before going into that, just a point because I found it irritating, 'eponymous' means named after the eponymous ancestor of Ngapuhi as Puhi. Rahiri is the person who set the laws but Puhi is the eponymous ancestor, and I say that as a Ngapuhi.

Ngāti Manuhiri sir, the application that has been made is tied to the application that has been made by Ngāti Wai. Ngāti Manuhiri are considered in the water and, from some perspective, is a hapū of Ngāti Wai. The Ngāti Wai application has been adjourned until 2020. It would be appropriate for this application to be adjourned alongside that, so that it could be heard alongside sir.

And, there have been a number of discussions that have occurred between the Ngāti Manuhiri Settlement Trust and the Ngāti Wai Trust Board to that extent.

There have been discussions with Ngāti Whātua as Ms Chen has said. Ngāti Manuhiri are very clear with, they are the only marae within that area, north of Takapuna as we move up, there has to be some discussion around some boundary reorganisation for that application to proceed if it's not going to be opposed. And in terms of the disruption, it's a factual disruption in terms of their marae which sits on the coast at Leigh looking out over Goat Island. There is nobody else's marae there, yet everybody wants to claim it and say that they have an exclusive title to it, which is a concern.

There have been difficulties talking with Ngāti Rehia and Ms Thornton has mentioned that the Trust Board is before the High Court which does make things different.

No application has been made for funding for Ngāti Manuhiri. They want to see where everything sits. They already have their evidence. They would be ready to proceed. However, if they did proceed, it would probably create a bit of an explosion in the area given some of the overlapping claims. The close relationship with the Ngāti Rehia Trust Board that they have, which has actually been through a number of Court-appointed chairs over the last three years, so, I think waiting for a discussion with them and saying that it's going happen in a year's is probably really really optimistic, in terms of what's going on there.

My understanding is that, once those discussions are finished, a body will erupt as the post-settlement governance entity.

Which comes to that issue that everybody has been talking about, as how we discuss the shared interests. What are those shared interests, and how are they reflected? The only thing that is relevant for the purposes of potentially this CMC is, whether or not the views of the

Crown, within that respect, are even relevant where, whatever the relationship is between overlapping Māori groups is a public interest is actually between those Māori groups. It has nothing to do with the Crown or anything like that.

I guess that dovetails into the issue that you've raised at the other two CMCs that I've been at, what role does the Crown play. Is it a partisan role, or is it just to provide particular information? They might have an issue as to whether or not a title is granted, but where that title might rest would seem to be not something that anybody other than the groups holding the title would have an issue.

COURT:
If I could beg to differ. If there's no agreement between the groups holding the title, ultimately the Court, much against its will, may well have to make that finding.

MR POU:
And that's the submission sir. It's the Court's role to do it, as a result of submissions from the Māori groups asserting where that should rest, but, I'm not sure that the Crown has any role within that discussion. I'm not saying that the Court doesn't have a role there.

So, those are all the issues that I have sir. Ultimately, I can't see how we can't be adjourned until 2020. But, I do want the Court to rest assured that given that Ngāti Manuhiri have gone through a settlement, they've defended their interests in various Waitangi Tribunal processes. The body of evidence that they would rely on to assert their interests is already in existence. I think it was delivered pretty much orally at the last Hauraki inquiry. The issue that they are waiting for, and are wanting to be a part of, are the discussions that Ms Chen has raised.

Unless you have any further questions.

COURT:
Well, it's really more encouragement than questions. And, while I applaud the initiatives that Ms Chen's client appears to have undertaken, no one applicant can sit back and wait for other applicants to involve them. So, I would really encourage you to get your client into a position where they are being proactive, and my firm, and hopefully justified anticipation, is that in 12 months' time, I will get a series of memoranda confirming agreement on the nature

of the rights claimed and agreement between the parties as between themselves, what it is they're claiming.

MR POU:
And I guess, perhaps I wasn't clear, the position for Ngāti Manuhiri is they would be ready to go but they're being told that others aren't ready to go when they've discussed matters with Ngāti Wai, for instance, who have already made the application – they don't want to go, given the agreements that they've made with some of those people around, coming in, following and supporting.

If we get to this position in 12 months' time, Ngāti Manuhiri will be saying, let's just go there.

COURT:
And ultimately the Court will have to balance the competing and conflicting interests, it certainly is no part of the Court's wish to force litigants to litigation if they say they're not ready. But, ultimately if you have a group or an individual litigant who says, I'm ready, we've waited long enough, we've done what we can, we can't get engagement with the other parties, we want a hearing, eventually the Court will set that down. There's no option.

MR POU:
And, I mean, we are making progress. We know that there's one witness. We would take half a day, and we would have submissions. That's as far as we are.

COURT:
Thank you Mr Pou.

REGISTRAR:
CIV-2017-404-582 – Te Whānau-a-Haunui

MS ATUAHIVA:
Kia ora ano sir.

Firstly, I would like to bring you up to date with where we are as a whānau. I think you already have noted that we have adjourned our process in this Court due to lack of funding, as we are a small whānau, but we have a big heart and we have our whenua.

So, our claim is discrete. We have within it, based on our land title which is continuous and contiguous. We have a claim for customary title and then to the north and to the south, we are looking for all customary interests.

We haven't been down the path of talking with those applications that come across us. In the first instance, because we were in the Crown process and had been led to believe by OTS, at the time, a letter had been sent to Minister Little that we were ready to go. And so, we thought we were going to be in a direct process with that. Since then, of course Te Arawhiti has come into play. We have had some issues around communications with a churn of staff between one entity to the other, and we've been trying to work through those.

We are happy to be given a direction to work with as our fellow clients here and their counsel, to work with those cross-applicants. We would seek to start that in process.

Our evidence has been submitted to the Crown and was accepted. We have no further work to do in that realm.

COURT:
When you say your evidence, do you mean your evidence in relation to the proceedings in this Court, or evidence in relation to?

MS ATUAHIVA:
Our historical evidence.

COURT:
Yes, but is that in respect of direct engagement with the Crown, or is it in respect of these proceedings?

MS ATUAHIVA:
I believe it's been lodged with both, but I'm unsure of that. I would have to come back.

COURT:
Alright. Obviously if it's in respect of these proceedings, it has to be both lodged and served on all the other interested parties – just to make sure that that's going to happen.

MS ATUAHIVA:
It hasn't been served as far as I know.

COURT:
Alright. It's probably a good thing to serve it on every other entity that has indicated that they are an interested party and whatever cross-claimants there are in respect of your claim area.

MS ATUAHIVA:
Thank you.

COURT:
Do you indicate that you want a 12-month adjournment or some other sorts of adjournment?

MS ATUAHIVA:
We're already in adjournment at the moment.

COURT:
These cases are being adjourned from one date to the next and some people have asked for what's called an adjournment sine die, which is basically putting it off without ever setting a date. And the Court is very reluctant to do that because immediately that happens, the Court loses control of the process. And as you've heard me speak to counsel this morning, it is important that the Court makes such directions or comments by way of encouragement, that achieve actual progress. And of course, if you're not coming along to these meetings, the Court doesn't know which stage you're at, it doesn't know what help you need, and probably more importantly, it doesn't know the state of resolution of these cross-applications which, as far as the Court is concerned, seem to be a major obstacle to a successful outcome for a lot of applicants, not all applicants, but for many. So, that's why the Court is not simply going to adjourn it off into the never-never, but will adjourn it for 12 months, unless you say to me, for other reasons, we'd like an adjournment to this date or that date.

MS ATUAHIVA:
We would prefer an adjournment to February rather than 12 months.

COURT:
Alright. Well, as I've mentioned to some of the other counsel, there are some issues with February, and it may be that if there's to be a CMC for a large number of cases in February, it probably is going to have to be done by audio-visual link ups. So, I'll be beamed in on a television screen and the rest of you will be here or wherever else.

MS ATUAHIVA:
Thank you.

COURT:
Thank you Ms Atuahiva.

REGISTRAR:

Interested Party:
Hauraki, Kaipara, and Thames-Coromandel District Councils

MS JONES:
Thank you sir. Counsel's name is Ms Jones for the District Councils just mentioned.

Sir, you'll be well aware the matters that I'll discuss today you've already heard. But, for the benefit of any new applicants here today, I'll just briefly restate some of those matters and also provide a brief update on other matters.

The District Councils that we represent have an interest in these proceedings that is greater than the general public by a virtue of their powers and responsibilities under the RMA and the LGA.

The District Councils' regulatory functions do not directly involve the control of the marine and coastal area, that being within the jurisdiction of the Regional Councils. The District Councils' functions under the RMA involve the integrated management of the effects of land use and development, and the protection of land and the associated natural and physical resources of the district.

Sir, you mentioned this morning the matter of discovery which was raised last week. We support the comments that you made this morning that an alternative approach to discovery by way of the Local Government OI&M Act is preferred. However, in the first instance, we

do encourage counsel to approach any of the District Councils that we represent to make any request for information, if necessary. And, from there we can assess such requests and then determine whether a formal application is required.

In response to this issue being raised last week, we mentioned that we will be looking at filing a joint memorandum on behalf of all of the District Councils that we represent which include Hauraki, Kaipara, and Thames-Coromandel, but also Waikato and Whakatane District Councils. And we'll set out a consistent approach that should be taken for such requests.

We are still in the process of putting that memorandum together, but we can advise the Court that these requests shall be specified with due particularity and are relevant of course.

We also ask counsel to consider the time it takes to peruse Council archives for information dating back to 1840 which is also relevant to the time it takes to go through that information once it is supplied to applicant groups. So, we're also are still deciding how we'll deal with the costs of undertaking such work if large requests are made.

We do encourage applicant groups to utilise the District Council websites which contain large volumes of public informations such as district plan maps and schedules of areas of significance to Māori.

We also encourage applicants to approach their relevant District Council to make a collective request if possible.

And by way of update sir, we have been engaging in positive discussions with some of the counsel here today and others, and I understand that committees have been formed and so collective requests are being made in that regard, which is a positive step forward.

Alternatively, counsel will be looking at ways of lodging formal requests to obtain such information, possibly by way of the Local Government OI&M Act, but of course, the outcome of such applications, we cannot pre-empt.

Does the Court have any further questions for counsel?

COURT:
No, thank you Ms Jones.

MS JONES:
Thank you sir.

REGISTRAR:
Mr George Hill as an objector to CIV-2017-404-581 – an application on behalf of Ōtakanini Tōpū Māori Incorporation.

MR HILL:
Kia ora tātou. Ka mihi atu kia koe te Rangatira. Ko Tarawera te Maunga, ko Kaipara te Moana, ko Ngāti Whātua tuturu te Hapū, ko Ngāti Whātua te Iwi.

I say that, very important for why I'm standing here. I have two whakapapa. My other whakapapa is why I'm against Ōtakanini Tōpū 1958/59, Corporate Body, 19,000 shares. I have 15 shares. I have 15 mokopuna. How can this body of people, I'm born and bred in the area, how can Ōtakanini Tōpū claim to be mana whenua, or have rights of the marine title?

I may not have the words, but I certainly have, when I look at it like that, simple things. Like, I represent my whānau. I first looked at the application for the hapū. I showed it to my whānau, Ngāti Tama. My whānau – what's this? They're not blaming the Council. But, what I'm saying is such an important, I'm highlighting such an important thing as seabed foreshore when you can't even put my whānaunga, the seven that sit on there, can't even get it right. And the application went in under Ngāti Tama which we knew straightaway, there's no such tie, no such thing in the area. And yet, the seven people that were at the jurisdiction to sit there, you know never even looked to see whether that was right or wrong. And yet, my mokopuna, my great-grandchildren have got a right to this.

Why I'm saying this is that, when you look at it like that, while Takanini get the shares, 60 years ago when they took over the farm, it was a whole different. They pulled their shares in, 60 years later it's a whole different thing. The big shareholders, some of them got 3,000 shares, some, like me, got 15.

So, all the research, and what I'm saying, all the research in New Zealand is not going to come out and say that they're right. They can research everything they like. The whakapapa, I thought that, when we get back to this sort of thing, is that the Crown will look after our whakapapa. Not only me, but the whakapapa of my great-grandchildren and their great-grandchildren.

So, I'm not a legal person but certainly, and I think these should be registered. The Tōpū, once again, has history. Through the Tōpū goes a road, a public road, which we went out in our days to go and get toheroa, we lived on toheroa. It was illegal to get it but we were allowed, that was our marae. That road there, we were allowed to go through that road. The Tōpū now has blocked that road. They lock it. They put a chain on the lock. They've been told at every meeting – open the lock, open the gate, let us through. Because it's a public road, it's up to the Tōpū to fence it. They won't fence it. To this day, they still lock it.

I'm saying now in the Court, standing to say to the Court this is what I told them at the last meeting which was held in November, is that, the next time you lock that gate, I'm going to cut the lock off. The best thing is cut the lock and then let the police have a look.

But I'm saying this because the Council for the Tōpū is here, and to go back, there's no way, when we look at what the Crown owes us, my tupuna, me, my mokopuna, and their mokopuna to come, that they're going to be part of an organisation, a Pākehā organisation that's voted on by shares.

COURT:
If I can just interrupt you there Mr Hill, I can see you feel very deeply about these and that's entirely appropriate for you to have those very strong views. But, this morning, this is a CMC. I'm not today going to make any rulings giving anybody any rights, in particular, but, what I am very interested in, if you have any submissions you want to put to me about orders that I can make in relation to particular applications that you're interested in, or matters that you're seeking help from the Court on, that fall within my ability this morning, in this CMC.

MR HILL:
Your Honour I would say, speed up the process. I mean when they're looking at research into something that's quite simple. But speed up the process and do something like that because I'm not here sir to [inaudible] the Tōpū, but I do feel strongly is that I have to stand

here as a whakapapa to that place with my mokopuna and to talk upon a Pākehā consent of shares. And I say sir, the quicker it's over and done with, the better for all. Kia ora.

COURT:
Thank you Mr Hill and I do acknowledge your whakapapa and your concerns.

REGISTRAR:
Mr Ward for the Crown.

MR WARD:
May it please the Court. Sir, just a very minor point, a small point, in relation to the submissions that Ms Chen's made this morning. Te Arawhiti have stressed, as your Honour noted, that the Treaty Settlement process is a distinct process from the process under this Act, and that the policy settings that the Crown uses to engage with groups, in that process, are not the same policy processes that I used.

COURT:
And I think Ms Chen did ultimately accept that.

MR WARD:
Thank you sir.

In relation to a similar point sir, I think to some extent the language of legal fiction in relation to whakapapa may prove to be inapt. The Attorney has an interest in the durability of Treaty settlements, the definition of settling groups, which is set out in the legislation is entered into in good faith by parties, and the whakapapa in relation to these applications would be a matter for evidence for the Court to consider, when an application actually came to hearing.

And as the Attorney has said in the previous memo sir, the Attorney's position will be informed by the evidence that applicants file.

Your Honour these CMCs have raised a number of issues, but I will seek instructions on. I've had some useful discussions with my friends before the hearing and at the adjournments, and I can assure as Mr Melvin said at the previous CMC that the comments that your Honour has made will be taken back and conveyed to Te Arawhiti.

Unless there's a point on which I can assist your Honour, those are my submissions.

COURT:
No, I don't wish to reiterate the comments that you and Mr Melvin have already heard. It's clear to me you have taken a number of them on board and the Court would encourage you, to the extent you're able, to address the rest of them.

MR WARD:
Thank you sir.

COURT:
Thank you Mr Ward.

Now, I reserved to Mr Erskine the right to respond to Mr Sharrock's submissions.

Mr Erskine, do you wish to address me or has Mr Sharrock allayed whatever your concerns were?

MR ERSKINE:
I would like to address you sir.

COURT:
Yes, thank you.

MR ERSKINE:
It's not just the national applications that I wish to address you sir. It's the other broader applications, particularly at least today, the three which begin, if you like, from the Bombay Hills upwards to Cape Reinga, which is an application by Mr Dargaville, CIV reference 558. The application by Mr Kingi with CIV reference 537, and in addition, the application by Ms Collier which is the subject of the test case application but whose wider area, if you like, also covers the same area.

Two of those applications are also represented by Mr Sharrock. Mr Sharrock will correct me if I've got this wrong, but in acting for across the North Island, 14 applicant groups, and in the Auckland and Whangarei regions, seven applications, those large applications are a concern. And in my original memorandum of May, I indicated that on behalf of our clients,

we would consider a strike-out application if, and only if necessary, of course it is hoped to resolve them.

In respect of the national applications, I understand from Mr Sharrock that he would agree to filing a memorandum in respect of his client, Mr Dargaville, within three months, in respect of at least the 14 applicants I represent, to advise a position as to whether Mr Dargaville wishes to pursue his application for the particular areas.

And I also understand, with the seven applicants who are Auckland and Whangarei area, that his clients there can also file a memorandum within a month as to the position for those larger areas as well.

That's particularly relevant to the application I addressed you in Whangarei sir, which is the application by Mr Tatui, on behalf of Te Popoto ki Ōturei who is seeking to have his and his applicant group's application set down.

I've also had a productive and encouraging discussion with my learned friend Ms Chen for Te Rūnanga of Ngāti Whātua, and I expect to be able to resolve that within the same timeframe, in terms of that application being heard and set down for substantive hearing.

So, what I'm seeking this morning sir, is with, as I understand Mr Sharrock's agreement, is that a direction be made that Mr Sharrock, on behalf of his national applicant client, file a memorandum within three months as to the position in respect of the 14 applicants, and in respect of the other larger applications that he filed a memorandum advising the position within one month, and that he would agree to a direction being made in respect of those two memoranda to be filed sir.

COURT:
Yes, thank you Mr Erskine.

MR SHARROCK:
Sir, just as a point. I'm a little bit of confusion. I'm in a position to actually, with regard to the Te Taoū application, because they are specific, and they're seen as a priority to deal with all of them within a one-month period, but that will be, the applications of Marama Stead, Joseph Kingi and Mr Dunne.

COURT:
Alright. I'll await receipt of your memoranda. Thank you.

If no-one else, I haven't missed anybody that came along wanting to talk to me?

OK, well thank you once again and those whānau, tangata whenua who have attended, thank you for taking the time and interest.

Nō reirā, tēnā koutou katoa.

We'll now adjourn Mr Registrar.

CMC CONCLUDES – 12:26PM