

**MACA CASE MANAGEMENT CONFERENCE**  
**GISBORNE**  
**17 JUNE 2019 at 10.00 am**

**COURT:**

Tēnā koutou katoa. Nau mai, haere mai ki te Kōti Matua. Ko Justice Churchman ahau.

Thank you all for attending this CMC. For most of you it will be the second. I'm not sure whether we have any interested parties for whom this may be your first CMC but welcome to you too.

Probably the first thing for us to do Mr Registrar would be for you to run through the proceedings.

**REGISTRAR:**

CIV-2017-485-255 – Ngā Hapū o Kokoronui ki Te Toka a Taiau Takutai Kaitiaki Trust

CIV-2017-485-288 – Te Rauhinā Marae and Hapū

**MR LYALL:**

Good morning your Honour, Lyall for both of those applicants.

**COURT:**

Thank you Mr Lyall.

**REGISTRAR:**

CIV-2017-485-571 – Ngāti Oneone

CIV-2017-485-247 – Ngā Hapū o Tokomaru Ākau

**MR TUPARA:**

Ata marie kia koe e te Kaiwhakawā. Good morning sir. Ko Tupara i tenei wa. Ka tu he roia mo te tokarua nei.

Your Honour, I appear on behalf of Ngāti Oneone on instructions from Mr Charl Hirschfeld, my colleague of Ranfurly Chambers. I also appear on instructions sir from Mr Erskine of Tamaki Legal in respect of the Ngā Hapū o Tokomaru Ākau matter. Present today is the applicant, Mr Tichborne, supported by others. Kia ora sir.

**COURT:**

Tēnā koe Mr Tupara.

**REGISTRAR:**

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

CIV-2017-485-242 – Te Whānau a Rākairoa, Te Whānau Iritekura

**MR BEAUMONT:**

Tēnā koe sir. Counsel's name is Beaumont and I'm appearing for both of those parties.

**COURT:**

Tēnā koe Mr Beaumont.

**REGISTRAR:**

CIV-2017-485-314 – Ngāi Tāmanuhiri Iwi

**MS IRWIN-EASTHOPE:**

Tēnā koe your Honour. Ko Irwin-Easthope toku ingoa. E tuana ahau hei roia mo ngā kaitiaki o te Ngai Tāmanuhiri Trust.

**COURT:**

Tēnā koe Ms Irwin-Easthope.

**REGISTRAR:**

CIV-2017-485-289 – Rongowhakaata Iwi

**MS SMAIL:**

Tēnā koe sir. Ms Smail.

**COURT:**

Tēnā koe Ms Smail.

**REGISTRAR:**

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

**MS JOHNSON:**

Tēnā koe sir. May it please the Court, counsel's name is Ms Johnson. I appear for Ngā Hapū o Ngāti Porou.

**COURT:**

Tēnā koe Ms Johnson.

That's everyone. And for the Crown?

**MR MELVIN:**

Tēnā koe te Kaiwhakawā. Ko Melvin ahau mo te roia matua o te karangatanga.

**COURT:**

Tēnā koe Mr Melvin.

As most of you will know, the purpose for the CMCs is really for the Court to try and retain some measure of control and to assist these matters to get through to a hearing stage in as orderly a fashion as we can. The Court is well aware that most of your clients, or indeed many of your clients, would prefer direct engagement, most of your clients have probably either started that process or attempted to start that process, so these are really parallel, no-one is going to be put under any particular pressure, but it is important that, given that we've got over 200 of these cases to try and process through the system, that we do so in a way that's efficient and tries to achieve as many of your clients' objectives in terms of getting the matter resolved as speedily as possible.

I've read the various memoranda that have been filed, even bevy of the memorandum that came in on Friday, apart from the very last one, and just for future reference, it isn't wildly helpful to file your memorandum at 4.30 or 5 on Friday. The Court really needs to get them at least 24 hours before to make sure they make their way to us, particularly if we've got to travel.

So, probably if we work through the various cases in the order that the Registrar has called them. I know I have questions for some of you and we can work through that in that manner.

**REGISTRAR:**

CIV-2017-485-255 – Ngā Hapū o Kokoronui Ki Te Toka a Taiau Takutai Kaitiaki Trust and  
CIV-2017-485-288 – Te Rauhina Marae and Hapū

**MR LYALL:**

Tēnā koe sir. One minor point, a clerical error there. It's Ngā Hapū o Kokoronui, not Koronui.

I propose to briefly deal with Te Rauhina Marae and Hapū first. As you will have read in my memorandum dated 12 June, I was recently instructed on this matter. Now funding has been granted for this application and there appears to be only one overlapping claim and that's the applicant represented by Ms Underhill-Sem.

**COURT:**

Who's not here.

**MR LYALL:**

Yes. I will make contact with her and attempt to discuss that overlap.

Given that significant tangata whenua research has been undertaken, it may be appropriate following review of that, that we seek a timetable for setting down this, given that there are only the two applications in the region.

**COURT:**

Can you tell me what the extent of the overlap is, or what the nature of the overlap is? Is it purely a geographic boundary or is it something else?

**MR LYALL:**

Yes sir, it's purely geographic boundaries. The applicant that [inaudible] I don't know if we are able to bring the map up, the applicant that I represent has the area as set out at page 3 of the memorandum that I filed, and that is wholly encompassed within the larger application area of the other application.

**COURT:**

Is it the sort of situation where negotiations as between the two entities may resolve the area of overlap, or is that unlikely to be possible?

**MR LYALL:**

Certainly hopeful, but as far as I'm aware no discussions have taken place to date. So, I need to explore that before I ... to be certain.

**COURT:**

Yes, obviously the area of overlap is troubling for the Court because it does mean we may end up having a lot more litigation than perhaps we might've if the parties were able to sit down and talk to one another. I would encourage that ideally before the next CMC so that we don't have to litigate unnecessarily. I mean there will be some issues where the parties are entitled to say we want the Court to tell us what the answer is and the Court will certainly do that, but it just seems to me, more constructive and probably ultimately, going to produce a better outcome for the parties if they can come to the Court with a joint position or an agreed position.

**MR LYALL:**

Sir, I certainly agree with that and my instructions are that these applicants wish to take an inclusive approach with any overlapping claimants and reach agreement outside the Court, if possible.

**COURT:**

Good, thank you.

**MR LYALL:**

At this stage the applicants are comfortable with an adjournment to that next round of CMCs, but I would reserve leave having been recently instructed to file further memorandum.

**COURT:**

Where are your clients at in relation to mapping?

**MR LYALL:**

I need to seek instructions on that. The report which I believe was submitted at the last round of CMCs, but it doesn't seem to show up on the records that are received from the Registrar for the file, does have a better map than the one that I filed on the 12th. But, I only received that today myself. So, perhaps it would be helpful if I could file that, along with any further submissions following this.

**COURT:**

Yes, I think as I made clear in the memo I sent out in May, the purpose for getting the maps in is to make sure that we've got the current updated claim because they're all going to go

onto the website. So, it would be counter-productive if we put something that was out of date or had to be amended subsequently.

**MR LYALL:**

Yes, and it's certainly helpful for us as counsel to have those available.

Unless your Honour has any questions, those were the submissions for that application.

**COURT:**

No. So, as far as you're concerned, it's simply a matter of adjournment to the next CMC which will be in approximately 12 months' time?

**MR LYALL:**

Yes, with leave to file further submissions having been recently instructed.

**COURT:**

Yes, alright.

**MR LYALL:**

The next matter is the 255 matter.

Now, this is a Trust which is representative of several hapū of Ngāti Porou. The application represented by Ms Johnson has a direct bearing on how this application will proceed.

Ms Johnson has filed a memorandum on behalf of the Runanga seeking to give an update to the Court today, so I wonder whether I would be best to follow that update with my submissions for this claim, because the extent of my submissions will be determined by that update?

**COURT:**

Alright we'll follow that process. So, just remind me if I get carried away and adjourn before giving you the right to reply.

**MR LYALL:**

Thank you sir.

**COURT:**

CIV-2017-485-571 – Ngāti Oneone

CIV-2017-485-247 – Ngā Hapū o Tokomaru Ākau

**MR TUPARA:**

Yes sir, in regards to the Ngāti Oneone application, my instructions are the required research is well advanced for the purposes of the substantive hearing, and fits nicely into, which you've just indicated in terms of being able to provide a more fuller report in that regard within the next 12 months. Perhaps adjourn to the next CMC. What I can indicate though is that there are significant overlapping claims in regard to Ngāti Oneone hapū, and the other claimants are represented by counsel here today.

I'm not aware, at this stage whether there have been any discussions as between those who do overlap, I suspect not at this stage your Honour. Having said that, whilst I'm here on instructions, I have a personal interest because Ngāti Oneone happens to be my hapū. So, I'm fully aware of the dynamic but also the people. And at the end of the day we are whanaunga as I indicated to my learned friends earlier today and formally. And there is potential, an opportunity, for the parties to come together at some stage to address overlapping issues. But, as I indicated, I don't think steps have been taken in that regard to date.

**COURT:**

Is there a reason for that Mr Tupara?

**MR TUPARA:**

I don't think there's a will, or a lack thereof, to do that sir. It's more just the busyness of the iwi and our hapū having to deal with so many things at the same time. There are issues where there has been some conflict, I understand, not that I've been directly involved in, as between the hapū and iwi, but those are matters that can be addressed by way of kanohi ki te kanohi discussions. So, I can't say why that's not occurred today but certainly the opportunity presents itself.

**COURT:**

As I said to Mr Lyall, I would encourage that because I think ultimately the prospect of achieving an outcome which is suitable to the parties is more likely, if those issues that can be

resolved between the cross-claimants are resolved between them, rather than by the Court. Because you can do things that the Court can't in terms of solutions.

Now, in terms of any orders or directions you might need from the Court, your clients have got their funding underway, or are still waiting?

**MR TUPARA:**

They are funded, as I understand. And, as I indicated sir the research has been done, as well as, which involves also an independent researcher, Tony Walzl has made himself available and contracted him to assist with that research.

**COURT:**

So, you're looking for a 12-month adjournment like Mr Lyall was?

**MR TUPARA:**

Yes, along the same lines as my learned friend, which would fit nicely in terms of where things are for this particular hapū and the research they're undertaking as well.

**COURT:**

Finally, in terms of maps, you won't, as far as I'm aware, have been at the prior conferences where the issue of the Crown's preparation of a dataset has been raised. Is that something your clients have engaged with the Crown on to make sure that the ultimate dataset that the Crown produces incorporates what your clients see as being useful or essential?

**MR TUPARA:**

Not at this stage as far as I'm aware, but I'm sure my clients, or our clients, will be receptive to that. Certainly, as far as maps are concerned, when the initial application was filed, a map was filed with that application under cover of an affidavit, but beyond that, it's all I know in terms of mapping. No progress with the Crown's suggestion sir.

**COURT:**

As I understand it, the Crown has engaged in, or about to embark on, a process where some electronic maps which have layers of information which can be brought up as required, and I'm sure Mr Melvin will correct me if I've misunderstood that, and it just seems to me, if there is information your client thinks is essential that they need to communicate with the



Crown so that ultimately whatever form of maps is something that is suitable to your clients' purposes as well as for all of the others.

Again, I would encourage you to have your client contact Crown to try and make some progress on that.

**MR TUPARA:**

Happy to do that sir.

**COURT:**

Thank you Mr Tupara.

**MR TUPARA:**

Unless you have any other questions on the Ngāti Oneone matter sir, I can now go to the second matter in respect of, where I appear on instructions from Mr Erskine, and that's the Ngā Hapū o Tokomaru Ākau application, 247.

**COURT:**

This is the one where I got a memorandum this morning, a second memorandum?

**MR TUPARA:**

Yes, I have a copy of that sir. I'm aware of that.

There are four areas, if I could work through them with you which I'll refer to, not only in that memorandum that you have before you but there was an earlier one.

**COURT:**

Yes, I have that too.

**MR TUPARA:**

And those memoranda deal with key issues. The easy one of course is that in respect of this application, not too dissimilar to Ngāti Oneone's substantial research has been completed, with the assistance of Mr David Armstrong for the purposes of that research, together with obviously the traditional and historical information provided by the applicants themselves, so that's well advanced.

What the, and I understand maps have been filed to support or to provide the information regarding the areas concerned. What the memoranda refer to though, which I found quite interesting when I received these instructions, I'm not sure if you intended to issue directions or orders in that regard today, but there is the issue of confidentiality orders in respect of traditional evidence, hearing of applications with overlapping applications, and lastly possible strike-out of applications against national applications.

In an earlier memorandum, which you're familiar with, my instructing solicitor set out the basis upon which each of those might be addressed by you. And, the case authorities that support, what is actually a live issue, but also, more importantly, I'd submit the practical way in which each of matters might be addressed.

Other than what you have before you sir, in terms of those memoranda, that's all I know at this stage. But I have to say that my colleague, Mr Erskine, was quite thorough in setting out the basis upon which those matters could be addressed by you.

**COURT:**

Yes, and he appeared before me in Wellington and we touched upon some of those issues in terms of the confidentiality of things like the location of fishing sites. Yes, the Court is presently minded to issue confidentiality orders but rather than to do that in a vacuum, not knowing exactly what evidence is going to be filed, it's probably best we wait until the evidence is either about to be filed or is filed, and then the Court can make the sorts of confidentiality orders, and if there's any opposition to those orders, we can hear that and rule on it, or the scope of them. But, yes it seems to me the sort of order that would be appropriate for the Court to make.

**MR TUPARA:**

Thank you sir.

**COURT:**

As far as the strike-out issues, the position of the two national claims which are the ones that are troubling me most, has been modified and it may well be that they are further modified at some of the other hearings, but, if the counsel you appear on instructions for wishes to pursue a strike-out application, then that will simply be set down and argued. But I sincerely hope that the two national applications are modified because I'm still struggling to see the basis

upon which you can have two national overlapping claims on behalf of the one entity, particularly when they don't seem to be supported by a number of the other claimants whose claims are clearly different, too. So, yes, they will need to be dealt with. I don't propose making any directions this morning. We will need some argument in some form of interlocutory hearing.

**MR TUPARA:**

Thank you sir. I don't have any other submissions or comments to make at this stage.

**COURT:**

Just one question arising out of the comments in [9] of the memorandum that was filed on 14 June in respect of the matter 247, that's Ngā Hapū o Tokomaru Ākau.

Now, if I've got the right one, it says, "estimates of witnesses best can be provided are sought for the two overlapping applications in order that the length of trial can be estimated and set down". Have you had any engagement with, or your principal, had any engagement with counsel acting for those other two overlapping applicants?

**MR TUPARA:**

Not that I'm aware of sir, but, I'm not too sure. Certainly, in receiving instructions from Mr Erskine he didn't indicate that to me that that had occurred at this stage sir.

**COURT:**

Well again, it's probably a lot more efficient for you to liaise with them and, if the three parties can agree, the appropriate process would be for you to file a memorandum with the Court just indicating here's the total number of witnesses, here's the estimate of time, and then we can try and shuffle the case into the hearing list, as it were, rather than the Court, at this point, making directions of those other parties.

**MR TUPARA:**

Yes sir, I'll convey that to Mr Erskine if he could action it.

**COURT:**

Thank you Mr Tupara.

**REGISTRAR:**

CIV-2017-485-242 – Te Whānau a Rākairoa, Te Whānau Iritekura

CIV-2017-475-263 – Te Whanau a Umuariki

**MR BEAUMONT:**

Tēnā koe sir. If it is alright, I'd liked to just make some quick submissions on both those applications at the same time.

**COURT:**

Yes, if you can just remind me what the last three digits of the two CIV numbers are.

**MR BEAUMONT:**

So that's 242 and 263.

Now, the first matter is in terms of the direct engagement process. I'll just advise your Honour, counsel have not received any instructions, in terms of direct engagement but we can't rule out that the groups may wish to engage with that.

And the next matter would be the overlapping claims. Now, there are a fair few overlapping claims in terms of geographical overlaps. In particular, with the Te Runanganui o Ngāti Porou. Now counsel have not had any discussions with counsel for those overlapping claims, so we can't confirm the extent to which the groups have engaged with one another.

**COURT:**

Yes, well if I could interrupt you there Mr Beaumont, you've heard what I've said to the other counsel, it's infinitely preferable if the parties do start talking to one another, either directly or through their counsel, to attempt to address this issue. That's going to be a far more productive way, at least in respect of some of the overlapping claims that can be resolved, for that to occur.

**MR BEAUMONT:**

Yes, I agree sir, and the plan is to discuss this with the groups within probably the next 12 months, and with counsel who represent those overlapping claims.

The other matter is the issue of evidence. So, the groups will both be very much in the evidence gathering stage from various hapū and whānau in the areas. And we expect that

evidence to be ready, or we give some kind of update on that before the next CMC in 12 months' time.

**COURT:**

Have your clients engaged an historian yet?

**MR BEAUMONT:**

As far as we're aware, our clients have not. But, counsel have been approached by an historian who has offered to do some work. So, we will be discussing that with clients, and it's very likely that we will have an historian to assist with the evidence preparation.

**COURT:**

Do your clients have funding for that yet?

**MR BEAUMONT:**

In terms of the funding, we are working through the funding applications with the clients but we have not been granted funding yet. So, that's another reason for perhaps adjourning some of these matters to the next CMC.

**COURT:**

When you say you haven't been granted, does that mean you haven't applied, or you have applied?

**MR BEAUMONT:**

The applications haven't been made yet.

**COURT:**

Well, again, I just encourage that with all due haste to happen.

**MR BEAUMONT:**

Yes sir.

The final matter is in terms of mapping. We have, counsel has filed twice during these proceedings the maps for the applications. It has just done the outline of the area, but the maps aren't particularly detailed. So, it may be worth filing an updated map in due course for both of those clients.

**COURT:**

Could I make another suggestion again, as you've heard me, particularly to Mr Lyall, and that's, given that the Crown is engaged in this data gathering exercise for the purpose of incorporating it in a map that you, or your clients liaise directly with them, I'm not sure whether Te Arawhiti is doing this or whether it's being done through Crown, but whoever it is, if you talk to Mr Melvin after this hearing, he should be able to indicate the appropriate person for your clients to make contact with.

**MR BEAUMONT:**

Yes, thank you sir.

That's all of my submissions sir, unless you have any more questions.

**COURT:**

Yes I do. The memorandum of 14 June indicated that Mr Hauro Makaroi had withdrawn certain claims and that had resulted in an amended list of overlapping applications. And then on page 3 of the memo, four applications are listed. Is this the reduced number of overlapping claims or is this, the four that are listed here, are they the ones that are no longer overlapping?

**MR BEAUMONT:**

This is the reduced number of overlapping claims sir.

**COURT:**

Thank you Mr Beaumont.

**REGISTRAR:**

CIV-2017-485-314 – Ngāi Tāmanuhiri Iwi

**MS IRWIN-EASTHOPE:**

Tēnā ano sir.

I'll just check that you have a joint memorandum from myself and Mr Leo Watson for Rongomai Wahine Iwi dated 16 May?

**COURT:**

Yes.

**MS IRWIN-EASTHOPE:**

If I could just firstly take you to [5] to [7], at the last round of CMCs, I confirmed that there was not an overlap in the Group K area between my clients and Mr Watson's clients. I'm not sure whether that's transferred through or had been transferred through to the maps, but certainly it was recorded as an overlap again by Justice Collins following the last CMC. So, to put the matter beyond doubt, the joint memo confirms that there's isn't an overlap between my client and Mr Watson's client. My client's southern boundary and Mr Watson's client's northern boundary, is agreed. So, there isn't an overlap there.

And, Mr Watson has confirmed the map that was attached to the memo dated 16 May, that map can be used, and it has specific co-ordinates, can be used as confirmation of the boundary, at what our clients refer to as Paretu.

So, those discussions have been occurring for some time but were concluded, as I understand it, in March this year. And annexed to the memorandum is also a letter between our clients confirming that.

**COURT:**

I don't have that letter on my copy of the memorandum. It's likely to be on the Registrar's copy. Does it contain material that I need to have regard to now?

**MS IRWIN-EASTHOPE:**

I don't think so sir. It's simply, is evidence of the agreement between our clients.

**COURT:**

Alright. I'm happy to accept they've agreed that, and the revised map is really all we need on that.

**MS IRWIN-EASTHOPE:**

Excellent. And just to note sir that this, as I understand it, was actually the map that was filed with Tāmanuhiri's original application. So, the map hasn't changed, however, the co-ordinates, I think there's more specificity there, and there's now clarity between my clients and Mr Watson's clients that this is the correct boundary.

So, that was the first matter that I wanted to talk to you about sir – just confirming that there was no actually no overlap at the southern end.

Moving now to the northern end of my clients' application area and noting that Ms Smail will talk for her client, Rongowhakaata, about an area at the northern end. Our position sir is that there is a very small overlap and I'm not sure if you have this?

**COURT:**

No, I don't have that before me at the moment.

**MS IRWIN-EASTHOPE:**

There was, and there is a very small area of overlap between Ngāi Tāmanuhiri and Rongowhakaata, at an area that they call Te Kowhai. Both parties are seeking customary marine title in that area, and both parties agree that that's appropriate based on their evidence. There have been discussions that have been occurring about that for some time.

So, in my submission sir, that's something that the parties are actively engaging on. So, that's a very small area of overlap at the northern boundary.

If I can take you sir to the memo at [3] and [4], I've requested, and perhaps taking a step back as your Honour noted at the outset, Ngāi Tāmanuhiri's preference is certainly to directly negotiate with the Crown.

**COURT:**

Just on that, what sort of progress are you making?

**MS IRWIN-EASTHOPE:**

I'm aware sir that shortly after, so there have been letters sent to Te Arawhiti, shortly after I filed the joint memoranda, a further letter was sent to Te Arawhiti. I am not instructed that there's been a substantive response, but what that letter did signal is that there's a large amount of agreement between the groups within Group K. And so from the perspective, the Crown, the letter respectfully submits that actually this could be seen as quite a good area to start really actively engaging with, and certainly from my clients' view that's their preference, particularly given also my client is the post-settlement governance entity and they've done a lot of work since, for a long time, just to get, or have discussions with Māori Land Trusts etc in the area that they're claiming customary marine title.



So, I'm aware that that correspondence has been sent to the Crown but I'm not aware of any response. I would say that my clients are hopeful that they will get a positive response given the amount of agreement in the area. But that's certainly still their preference. And on that basis, that is why we've sought an adjournment sine die.

In conferring with some of my learned friends in relation to the Court's view on that at previous CMCs, if your Honour is inclined to grant a 12-month adjournment to the next CMC, I'm sure that my clients will be comfortable with that. But it's just signalling to your Honour that, certainly their preference is to negotiate directly with the Crown and feel that they should have some traction in that shortly.

**COURT:**

Yes, as I've said in some of the prior conferences, I'm not wildly enthusiastic about sine die adjournments for the simple reason that the Court can potentially just lose contact with what's actually happening. And it is important that the Court monitor it. If the parties are making progress with direct engagement, the Court is extremely happy. But, it's really the worry of a case falling between the cracks and not making any progress that I'm quite reluctant to simply adjourn sine die and would prefer 12-month adjournment.

**MS IRWIN-EASTHOPE:**

Yes sir and I understand that, and I'm sure that my clients will also understand that.

**COURT:**

Are there any other specific matters that you wanted to draw to my attention?

**MS IRWIN-EASTHOPE:**

Not at this stage sir, only to note that with the application that Ngāi Tāmanuhiri filed in 2017, they did file seven affidavits with that application, so in that respect I'd say evidence is quite a way advanced. However, I need to seek instruction on whether they intend to engage an independent historian because no affidavits or no evidence filed was from an independent historian, but I haven't managed to confirm whether that's the preference.

**COURT:**

And in terms of funding for that, are they in a position to actually fund that?

**MS IRWIN-EASTHOPE:**

I haven't had that discussion sir. But, I will seek instruction on that, just given the conversation earlier about the, sort of, historical evidence.

**COURT:**

Alright, and that's everything?

**MS IRWIN-EASTHOPE:**

Yes, it is sir.

**COURT:**

Thank you Ms Irwin-Easthope.

**REGISTRAR:**

CIV-2017-485-289 – Rongowhakaata Iwi.

**MS SMAIL:**

Tēnā koe sir.

As set out in my memorandum, my client's preference like many other groups is to directly engage with the Crown, but as yet, they have not made any progress.

**COURT:**

Can I just ask you to explain what that rather cryptic comment means? Does that mean that the Crown has not responded to correspondence or approaches from your client?

**MS SMAIL:**

Yes sir, a similar position to that set out by my friend. Letters have been sent over the past couple of years. I understand there's been informal discussions but no indication that there's an intention to start discussions from the Crown's side.

**COURT:**

Alright. I will be talking to Mr Melvin about that as I have on the previous CMCs. Obviously that's something that the Court is disappointed to hear.

**MS SMAIL:**

Given that situation sir, my client's preference is still to pursue that avenue, but have the same concern about things not being resolved and that's why we've set out in our memorandum a suggestion that the application does start to proceed towards a hearing, particularly because of the timeframes that it appears on the Priority applications that hearings are still some time in the distance as late as 2021. And my clients feel that by late 2021, so after those Priority applications are heard, we should certainly know whether engagement is proceeding or is going to eventuate. So, we've suggested we would like to move towards hearing and have suggested a timetabling of evidence for a year in advance of whenever that hearing is, anticipating that it still may be a couple of years away.

**COURT:**

How many overlapping claims are there in relation to this particular application?

**MS SMAIL:**

Apart from the two national applications, as my friend has already mentioned, there's a very small overlap at the southern end. It's agreed that it's appropriate that both applications for CMT should be made there.

At the northern end, there are two applications. One is by Ngāti Oneone, and the second is by Ngāti Porou but it has become clearer over time that that is effectively on behalf of the hapū of Ngāti Oneone. So, in effect, there is only one overlap at the other end of the application. And my client's strong preference is to have discussions with Ngāti Oneone as well. And I understand that the lack of progress to date on that, I think it has been partly affected by the confusion in terms of the interaction with the Ngāti Porou Bill and applications.

So, I think over time that's become clearer that it's actually a Ngāti Oneone overlap and hopefully that will give both parties more confidence in terms of coming to a similar agreement to that reached at the southern end.

**COURT:**

Yes, well I strongly encourage that. As far as the national applications are concerned, I hope we'll make a bit of progress on this through this series of CMCs, and if we don't resolve it, I'll be optimistic we will have a hearing that I will give some directions on, certainly well

before next year's CMCs because it is complicating, I think, needlessly, resolving other applications.

Now in [8] of the memorandum, you talk about lack of confirmation of funding from the Crown in relation to maps so that your clients are unable to engage a map maker, is that still the current situation?

**MS SMAIL:**

Sir, they're still unfunded but they are taking steps towards preparing a map. We've seen the last memorandum from the Crown indicating that once funding is confirmed that's something that is expected to be funded. So, on that basis, they're working towards preparing a map, and I apologise it's not ready for today, but we'll file it as soon as possible.

**COURT:**

And you will have heard my comments to other counsel in that there is a process underway, I think being led by Te Arawhiti. Your client should really contact them to communicate what they would like to see in the dataset that the Court is ultimately provided with, so that it is suitable and there isn't information that your client would like to see on the map set that's not there.

**MS SMAIL:**

Thank you sir.

**COURT:**

Alright, is that everything Ms Smail?

**MS SMAIL:**

Yes sir.

**COURT:**

Thank you.

**REGISTRAR:**

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

**MS JOHNSON:**

May it please the Court. I appear for Te Runanganui o Ngāti Porou Trustee Ltd, on behalf of Ngā Hapū on Ngāti Porou.

The last memorandum I filed on this application is dated 15 May 2019.

**COURT:**

Yes, I have that.

**MS JOHNSON:**

Sir, I'm going to jump immediately to what I think will be the end point of this application, and that is it is very likely that in the next perhaps few weeks, perhaps a few months or so, I will receive instructions to withdraw this application from the Court. Having said that, I now need to go back and backfill some of the information for you potentially.

This application was filed by the Runanganui on the basis that it has had for many years the mandate to negotiate a foreshore and seabed agreement with the Crown. That process started with discussions in 2003. It kicked off in earnest in 2004 when terms of negotiation were signed and proceeded through several governments until just recently when the implementation legislation was brought into force. The commencement date of that Act is 30 May 2019, and the full name of the Act is Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

**COURT:**

Yes, I'm familiar with that Act.

**MS JOHNSON:**

The application that the Runanganui filed in 2017 was done on the basis that, as at that point in time, when the deadline under the MACA was about to expire, the hapū that the Runanganui was engaging with, some were still to ratify the amended Deed of Agreement. So, there had been an agreement with the previous Labour Government in 2008. The Government changed in the latter part of that year. There was a process to re-engage with the

new National Government and there was a process to review the then Foreshore and Seabed Act.

And Ngāti Porou and the Crown agreed to put aside the Deed of Agreement that was signed in 2008 and allow the review of the Foreshore and Seabed Act to take place.

The National Government then enacted the MACA legislation and Ngāti Porou and the Crown sat down again to negotiate amendments to the agreement that was done in 2008 to capture some of the more positive things that had been enacted by the MACA legislation.

That amended agreement then had to be re-ratified by the hapū, and that process took place through 2016/2017. The following year a revised Bill had to be prepared and work its way through the new legislative process. And, as I said, that's only just been completed at the end of May 2019.

So that's rather a back story. But the application was filed in 2018 to hold the position for the hapū who were then still engaged in ratification execution of the documents, and then seeing through with the Crown the enactment of the implementation legislation.

So, it is now at a point where the Runanganui's mandate has almost come to an end, and, in indeed my role as solicitor for the Runanga also. The Runanganui is now engaging with the management arrangement trusts that have been set up to represent the hapū, to transition the work and the materials, the evidence and so forth, that has been gathered over the negotiation period, the last 15/16 years.

And when that transition has completed, which I am hoping will be over the next few months, the Runanganui will step aside and the six management arrangement trusts that represent the hapū within the Ngāti Porou regime, will then move forth and undertake the work that needs to be done on behalf of their hapū. It then follows that this application will, the need for it, drops away.

**COURT:**

What I haven't done is cross-check the contents of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act with these claims. To what extent does the content of the Act remove or reduce the claims that the Court is being invited to resolve under these proceedings, MACA?

**MS JOHNSON:**

It doesn't reduce or remove the claims of any hapū who have not ratified, and are not within the Ngāti Porou regime.

**COURT:**

Yes, in terms of the Court understanding who those might be, is there a list of those hapū who have not ratified somewhere accessible to the Court?

**MS JOHNSON:**

Yes. The list of hapū who have ratified and are within the Ngāti Porou Act are in schedules to the Act, and also in the Amended Deed of Agreement between the Crown and the hapū which is publicly available on the Te Arawhiti website. There is a list of, again, the hapū who have ratified, and those who have not.

**COURT:**

Alright, thank you.

**MS JOHNSON:**

So, the Act does not apply to any iwi or hapū who have not ratified and brought themselves within the Ngāti Porou regime.

Now, there is a hui this Friday for those hapū management arrangement trusts, first hui post the enactment of the Act, to start a work plan, a communications plan, and so forth. And it is possible I will receive instructions in respect of this application at that hui. Because they have so much to deal with at that hui, it might not be then, it might be the next hui after that, that I get a firm steer on, what I believe, will be a withdrawal of this application.

**COURT:**

Is there a mechanism in the Act for hapū who have not ratified it to reconsider the issue and become subject to the Act, or is it effectively a closed book as of now?

**MS JOHNSON:**

It's not a closed book. So, hapū who wish to join the Ngāti Porou regime can if they go through a process, can do that. But they don't have to. It's their choice.

**COURT:**

No, indeed.

**MS JOHNSON:**

I should signal to you too sir that, although it is likely that this application will be withdrawn, it does not mean that in the future there will not be other applications that may overlap or conflict with existing ones.

Under the Ngāti Porou Act, the hapū have, as MACA applicants have, the right to seek direct engagement, or an application to the High Court. Now, the Ngāti Porou hapū have been engaged with the Crown for many many years, so they are already pursuing direct engagement. If, however, they get to a point where they don't get an agreement from the Minister that they agree with, they may pursue an application to the High Court.

There is a two-year timeframe on that. So, the Act came into force on 30 May. There is a further two years for the Ngāti Porou hapū within the regime to pursue direct engagement with the Minister and then apply to the High Court. If that occurs, those applications will be under the Ngāti Porou Act, not the MACA Act.

It is speculation though, first of all, we don't know. But I just wanted to let you know that that is a possibility.

**COURT:**

Yes. And it's not even clear whether those applications will become part of this list if they are not under MACA Act.

**MS JOHNSON:**

Agreed. And, it's not clear because there are no detailed rules of procedure to tell us how to deal with these, how that would occur. But, I take on board completely your comments about the parties needing to talk to each other.

**COURT:**

Thank you Ms Johnson.

Now, before I call upon Mr Melvin, for the Crown, do we have any interested parties who has filed notice, as interested parties, in the back of the Court who have come along. I haven't



received any formal applications to appear, but I just want to make sure we don't have someone who was aware that interested parties could attend these CMCs and wished to address the Court. Do we have anybody who is an interested party who has come along and had hoped to address the Court on their application as an interested party?

Just come forward into the body of the Court please and identify yourself.

**MR MCILROY:**

I just need clarification. I have an application on behalf of Te Whānau a Rakairua and Te Whānau a Iritekura, so I'm an applicant, not a third party. Am I able to address the Court?

**COURT:**

Have you had counsel speak on behalf of your application today?

**MR MCILROY:**

Yes.

**COURT:**

Is there something, in particular in addition to that?

**MR MCILROY:**

Yes.

**COURT:**

Alright, if you could just give me your name. Come forward so I can hear you.

**MR MCILROY:**

My name is Haro McIlroy.

**COURT:**

And what is it that you want to tell me?

**MR MCILROY:**

In these discussions, you were talking about hapū who have ratified the legislation or an agreement with the Crown, and those who have not. According to the list, my hapū has ratified this agreement with the Crown and to the Runanga, but we are not happy with how that ratification process has actually transpired.

Are we able to address that?

**COURT:**

Well that's not something that the Court, in this set of proceedings, is able to resolve. I guess, and it's not for the Court to advise you what you should be doing, but, if you think there has been some unlawfulness in the way, then you need to get some legal advice and it may be the answer is an application for judicial review of a decision or something in that nature. But, that's not something that we can deal with in these proceedings today.

**MR MCILROY:**

Thank you for your advice.

**COURT:**

Thank you Mr McIlroy.

**MR TICHBORNE:**

Ko Roger Tichborne ahau. Te Whānau a Tokomaru Ākau, Te Whānau a Tiakitai Waitangi Te Koka and Te Whānau a Ruatoki(?).

**COURT:**

Tēnā koe Mr Tichborne.

**MR TICHBORNE:**

There was something that I heard in here about hapū not ratifying. I want to remind everybody that [inaudible] Ohauti has been an iwi since the year 1500. And to refer to my grandfather's iwi as a hapū, is quite insulting to us as his moko. So, I just want the Court to know that [inaudible11:04:06], recognised by us, and in my 69 years on this earth, that has always been an iwi, by my father, by his father and so forth. And I just want to clarify that Judge.

**COURT:**

Tēnā koe.

**MR TICHBORNE:**

In terms of one overlap you have in Tokomaru Bay, and we had the ratification hui with Te Whanau a Te Aotawarirangi and Te Whanau a Ruataupare took us out of that ratification, process, out of that Deed of Agreement. The numbers were 38 against and 8 in favour.

At a subsequent hui at Pakirikiri Marae, the numbers were even more astonishing because the numbers voting the deed of agreement out again was 54 against and 8 in favour. And prior to the closing date of 3 April, you had another submission coming from an individual group which the collective group didn't know anything about. There was no public hui, no nothing. And therefore, this overlap, the size of our boundaries, on one tipuna instead of both tipuna, made an exclusive separation rather than an inclusive.

So, that's of concern to us and that's all I wanted to say your Honour. That's all I want to bring to the notes of this Court, that the voting process and for a mandate has already been decided at two public hui. And the memorandum and the direction from the Crown was a date to the letter of the law.

**COURT:**

Thank you Mr Tichborne.

Now Mr Lyall.

**MR LYALL:**

I can be brief on application 255. This application is brought by a Trust which is representative of some of the hapū who have not ratified the deed to amend for Ngāti Porou.

I'm instructed that a series of hapū hui will be held soon to determine if the position has changed at all for any of those hapū or whether they wish to proceed. But, for now, my instructions are that these first preference is to negotiate with the Crown in their own right as hapū to reach agreement rather than joining the deed, and failing that, they wish to pursue their rights in this Court rather than acceding to the deed.

**COURT:**

Right, thank you.

Mr Melvin.

**MR MELVIN:**

Tēnā koe sir.

I apprehend there are two main issues for me to address the Court on. First, is the Crown engagement issues, the matters that we've heard today in relation to that; and the second, is mapping issues and the map dataset.

So perhaps if I start first with Crown engagement. The position, I'm not really able to advance any submissions beyond that which were contained in the Attorney-General's memorandum of 7 June. And that is sir, that the Crown has advised all Crown engagement applicants that, for a period of 12-18 months starting from last year's CMCs, it was, would be working on a strategy and work programme for Crown engagement. I appreciate we're now 12 months into that, but the work is still progressing. Officials are anticipating taking the product of their work to the Minister in the next few months to get ministerial approval. And once ministerial approval has been obtained, then Te Arawhiti will be able to communicate that strategy and work programme to applicants.

I'm also disappointed that I can't present better news than that to the Court and to applicants but that is the position.

In terms of mapping sir, Crown counsel met with Te Arawhiti officials on Friday. As a result of that meeting, our proposal is that a working group should be formed comprising representatives from Crown Law, representatives of applicant counsel, some officials from Te Arawhiti and possibly, although this needs to be given some further thought, officials on behalf of the Surveyor-General because the Surveyor-General ultimately will have a role in mapping, certainly at the end point of applications.

So, a working group to consider what guidelines would be appropriate for mapping, and to produce a draft set of guidelines that would then be sent out to all applicants and their counsel for consultation, and then to sift through the comments received through the consultation process and to finalise a set of guidelines.

So, that's the thinking at this stage of Crown counsel and Te Arawhiti proposing to set that out in a more formal way in a memorandum which will be filed shortly.

**COURT:**

And served on all the parties?

**MR MELVIN:**

Yes sir.

**COURT:**

That's some progress. I encourage you to keep making as much progress. You've heard the engagement I've had with counsel on that, and no doubt you heard the criticism, I think from Mr Bennion in particular, at the Wellington CMC. So, you know the sorts of issues that are likely to be sensitive to the applicants.

**MR MELVIN:**

Yes. My other submission is that, it would be appropriate for this working group to consider what additional layers of information might be included in the national dataset.

And respectfully sir, I think that might be a more efficient way to proceed rather than having 202 separate applicants approaching Te Arawhiti with their particular comments. So, if this working group put that on its agenda as well, then that, I think, would be the more efficient and probably the quicker way to proceed.

**COURT:**

Indeed. Alright. So, are they all the issues you want to raise with me?

**MR MELVIN:**

Yes, I think so sir. Just perhaps one final matter in terms of funding for mapping. That was also addressed in the Attorney-General's memorandum of 7 June whereby the Crown's position is that funding to produce maps for applicants, or each particular applicant group, is available within the existing funding regime. So, it's expected that applicants would use that funding available to them for the production of the maps they need to advance their applications.

**COURT:**

Although to some extent that assumption may be overtaken by the work of the Crown and Te Arawhiti.

**MR MELVIN:**

Well certainly sir it's expected that the national dataset will assist applicants with their mapping needs.

**COURT:**

And it's likely to be of great assistance to the Court too, ultimately.

**MR MELVIN:**

Yes. Unless your Honour has any questions, those are my submissions.

**COURT:**

No, thank you Mr Melvin.

Alright. Well, thank you counsel for your attendance and for your helpful memoranda.

Thank you also to those others who have attended and spoken to the Court.

Mr Registrar, we will now adjourn.

**CMC CONCLUDES – 11:14:22**