

MACA CASE MANAGEMENT CONFERENCE
GISBORNE
5 JUNE 2018 at 10.00 am

COURT:

Thank you all very much for coming. I appreciate that a number of people will have travelled some distance to be here today and I am grateful for you coming in, particularly anyone from up the coast who has had to struggle through some pretty difficult conditions to get here.

I want to make a few preliminary comments. This is the fourth of the first case management conferences concerning 202 claims that have been filed under the Marine and Coastal (Takutai Moana) Act.

Because of the logistical challenges in trying to manage 202 claims, I have confined the first round of case management conferences to the parties. I am aware that there are a number of interested parties, and I propose to engage with them after we have gone through the first round of case management conferences with the parties.

Can I say primarily for the benefit of people who are sitting in the back of the Court that the purpose of a case management conference is to assist the parties in advancing their proceeding to a substantive hearing. It may be possible in some rare cases to resolve a dispute in a case management conference, but the primary objective of a case management conference is to facilitate the advancement of the case to a substantive hearing.

One of my objectives is to put in place a timetable for eight cases that have been afforded priority by Parliament when it passed the Act. But in tandem with that I also need to work out which applicants' cases should be heard in conjunction with those priority cases. I am aware that there will be other cases that don't meet the criteria for being a priority case under the Act, which may be able to be advanced just as quickly as a priority case. So although the primary focus at this juncture is on trying to identify the priority cases and which claims overlap with the priority cases, I wouldn't want it to be thought for one moment that the Court isn't interested in advancing other cases that are also able to be advanced.

So at this stage we seem to have cases falling into the following categories. First, there are the eight priority cases. Then there are claims which overlap to varying degrees with those eight priority cases. Then there is a third group where active steps have been taken to engage with the Crown to try and negotiate a resolution, and then there are another broader cluster of cases which don't fit very comfortably into any of those particular categories.

So having given you that overview, I will now invite counsel to announce their appearance and then I propose to go through a sequence which I have been trying to work out in my head as to the most logical way to deal with the many, many claims that are before me right at the moment.

For the Crown, good morning Mr Melvin

MR MELVIN:

Tēnā koe, e te Kaiwhakawā. Yes, Mr Melvin and Ms McKay for the Attorney-General.

COURT:

Good morning Mr Lyall

MR LYALL:

Good morning your Honour, I'm here for Marise Lant, an application on behalf of Ngā Hapū o Kokoronui ki te Toka a Taiau Takutai Kaitiaki Trust. That's the matter ending 255.

COURT:

Thank you very much Mr Lyall.

COURT:

Now I understand Mr Tupara is appearing for Mr Hirschfeld

MR TUPARA:

Yes, I appear on instructions from Mr Charl Hirschfeld, Barrister of Auckland, in respect of two applications, an application from Nick Manu Pouwhare Tupara on behalf of the hapū Ngāti Oneone and the second application filed by Robert Sinclair on behalf of Te Whānau a Kahū.

COURT:

Mr Beaumont or somebody representing or appearing on behalf of Mr Beaumont. I might have to come back to that one.

Mr Naden, and I think you have two clients is that right?

MR NADEN:

Yes, mōrena your Honour, two clients. One is sir the last three numbers 235, the applicant is Mr Kingi and he is here today sir on behalf of Ngāi Tahu O Mohaka-Waikare and the other application is by Roger Tichborne on behalf of Ngā Hapū ō Tokomaru Akau CIV numbers last three 247 your Honour.

COURT:

Thank you very much Mr Naden.

Mr Wilson, good morning

MR WILSON:

Good morning sir. I appear for Maungaharuru, which is 241.

COURT:

Thank you very much.

MR WILSON:

Thank you sir.

COURT:

Ms Irwin-Easthope

MS IRWIN-EASTHOPE:

Ms Irwin-Easthope appearing for the Trustees of Tāmanuhiri Tūtū Poroporo Trust, that's CIV ending 314 Group K.

COURT:

Thank you very much Ms Irwin-Easthope.

Ms Johnson

MS JOHNSON:

May it please the court, counsel's name is Ms T Johnson. I appear for Te Rūnanganui o Ngāti Porou on behalf of ngā hapū Ngāti Porou. The last three digits are 284.

COURT:

Are you also appearing on behalf of Ngāti Parau?

MS JOHNSON:

Yes. Sir, I have two agency instructions. The first one is yes, Ngāti Parau from the Napier area and yes 246 the last three digits and also 230 Ngāti Kurupakiaka, Te Aitanga ā Puata and Ngāi Tauira.

COURT:

Thank you very much Ms Johnson.

Mr Milner

MR MILNER:

Your Honour, may it please the Court, I appear today on behalf of an application by Tate Pewhairangi, Te Whānau a Ruataupare ki Tokomaru. The last three numbers of that CIV302. I also appear on behalf of the Trustees of Rurima Island Māori Reservation in the Bay of Plenty, Group H and I and the last three numbers of that CIV is 317.

COURT:

Now that claim was originally in Rotorua and as I understand it you've brought it to this Court for today's conference is that right?

MR MILNER:

Yes your Honour.

Ms Smail

MS SMAIL:

Good morning sir, Ms Smail. I'm appearing on two applications. The first is by the Trustees of the Ngāti Pāhauwera Development Trust and the last three digits are 821 and the second is by the Trustees of the Rongowhakaata Iwi Trust and the last three digits are 289.

COURT:

Thank you very much.

Now there might be a Ms Kaukau present, is that correct? Mr Kaukau is it?

MR KAUKAU:

Yes.

COURT:

Would you like to come forward please? You've filed an application and you are appearing in person on behalf of the application. Would you like to take a seat just in the jury box and I'll come to your case a little later.

As I understand it, there is one priority claim in the bundle that is before me, that's the claim that ends 821 and you're appearing as counsel Ms Smail.

MS SMAIL:

Yes sir.

COURT:

Now as I understand it, apart from the two what I will call global applications by Mr Dargaville and Mr Paul, there are two other claims that definitely overlap and then there is another claim where there are now some question as to whether or not there is an overlap. Is that your understanding?

MS SMAIL:

Yes sir. I can confirm that I'm taking instructions from my clients about the map that we were directed to file and it appears that the three applications will definitely have at least some overlap.

COURT:

So that's the claim ending 241 which you act on Mr Wilson.

MR WILSON:

Yes sir.

COURT:

And so there's overlap there. And then there's the claim ending 235 and that's one of yours Mr Naden.

MR NADEN:

Yes your Honour.

COURT:

And there is overlap there.

MR NADEN:

Yes there is sir.

COURT:

And then there's the 246, the Ngāti Porou –

MS JOHNSON:

Ngāti Parau sir.

COURT:

I'm sorry, Ngāti Parau.

MS JOHNSON:

That's okay. I also appear for Ngāti Porou. I don't want to get them mixed up.

COURT:

As I understood Mr Mahuika's memorandum, he thought that there was no longer any overlap because of the drawing of the boundary to not extend beyond Pānia Reef. Am I understanding of his position?

MS JOHNSON:

Yes. My instructions are that it is in Ngāti Parau's view there is possibly a very, very small overlap out to sea but at the time that Mr Mahuika did his April memorandum he felt on instructions from the clients that actually the boundary was more likely to be a shared one. That was subject however to further discussions between counsel to confirm that position. So his position was as at April that it was a shared boundary but it was subject to that map being finalised and further discussions happening.

COURT:

Alright. For present purposes then I will just mark Ngāti Parau as having a potential overlap and try to manage it as best I can on that basis.

MS JOHNSON:

Yes sir.

COURT:

Thank you very much Ms Johnson.

Now I just need to check with one claim 314 and Ms Irwin-Easthope that's your client.

MS IRWIN-EASTHOPE:

Yes sir.

COURT:

Is there overlap? I was trying to work it out.

MS IRWIN-EASTHOPE:

Yes. So my instructions sir are that the Trustees of my client have reached an agreement with the Trustees of the Rongomaiwahine Iwi Trust, which is the priority application that has now been sought to be adjourned for the next 12 months. So that was a joint memo filed by

Mr Watson for Ms Tangiora and the Crown last week and so when the documentation and the maps were originally filed there was an overlap. There's now an agreed shared boundary to the south which is Paritu. As far as I can gather sir, the map that we have filed and the latest map that's available online for Ms Tangiora, which is the direct negotiations map, there still seems to be this overlap which is why I think the Crown has taken the position that there still is one. So my instructions are that there is an agreed boundary but the maps aren't aligning at this point and so it's a sort of I think more of a matter of aligning those maps and that my clients have joined Ms Tangiora's application simply to confirm that boundary.

COURT:

Thank you very much for that, that's very helpful.

Can I just turn to the claim 247, Mr Naden that's your second one.

MR NADEN:

Yes sir.

COURT:

As I understand it there are overlaps with that claim, the claim ending 242 which is Mr Beaumont; 302 which is Mr Milner; and 284, which is Ms Johnson. Have I misinterpreted the various memoranda that have been filed which is very easy to do?

MR NADEN:

Yes sir there are a number of those but I would agree your Honour that those are the overlaps with the 247.

COURT:

Ms Johnson, would you agree with that?

MS JOHNSON:

Yes sir may be it is. It does come down however to where boundaries are finally determined and that may be subject to further discussions between –

COURT:

Okay. So let's say provisionally an overlap then.

MS JOHNSON:

Yes sir.

COURT:

And Mr Milner?

MR MILNER:

You're in the same position or do you say there's definitely an overlap.

MR MILNER:

Essentially the same position sir.

COURT:

Alright. And unfortunately we don't have anyone appearing on behalf of Mr Beaumont.

MR LYALL:

Sir, I know I did this in Wellington as well and I hate to be the I guess the cloakroom manager. Mr Beaumont's just emailed me. He is unwell today and asked me to seek leave for him to file a memorandum of counsel setting out any position that he may need to set out.

COURT:

Thank you very much for that.

Now, are there any other claims that are overlapping with each other that I have not specifically identified?

MS SMAIL:

Sir, in terms of priority applications?

COURT:

All applications.

MS SMAIL:

Yes, I think that there are a number of other overlaps.

COURT:

Can we just go through those then.

MS SMAIL:

In terms of the Rongowhakaata application, sir that's 289, it overlaps with the applications of Mr Tupara, Ngāti Porou and Ngāi Tāmanuhiri.

COURT:

What was the third one that you said, Ngāi Tāmanuhiri, 314?

MS SMAIL:

Sorry sir I don't have the number in front of me but it's Ngāi Tāmanuhiri.

MS IRWIN-EASTHOPE:

Yes sir that's 314.

COURT:

So it overlaps with Ngāti Porou, Ngāi Tāmanuhiri and what was the third one?

MS SMAIL:

The application of Mr Tupara.

MR TUPARA:

Ngāti Oneone sir.

COURT:

And that's 571.

MR TUPARA:

Yes sir.

MR LYALL:

And I think sir you noted the overlap with 241 earlier on.

MR TUPARA:

Sir, on the issue of Ngāti Oneone if I may sir.

My instructions sir was that there was not an overlap in respect of Ngāti Oneone but my local knowledge of the history of this area tells me that more than likely there is. So based on that sir I am not too sure in the April memorandum in respect of the Ngāti Oneone matter whether the issue of overlapping is referred to. I've not sighted that memorandum filed by Mr Hirschfeld. However, I am assuming that given the discussion today there would have to be an ongoing process to address what appears to now be an overlap which is obvious. Thank you.

MR KAUKAU:

Excuse me your Honour.

COURT:

By all means, yes please.

MR KAUKAU:

Kia ora, I'm Mr Kaukau. I'm representing Te Rua Te Whenua Trustees, application number 288. There is overlap with Peter Mihaere, Kurupakiaka and I think there is one with Phil Beattie, Ngāi Te Apatu and Patiki, which is Willie Parekura or Ngāti Raukawa.

COURT:

Lizzie, can you give Mr Kaukau a list and I just need to get the numbers of those overlaps from him. Mr Kaukau is distributed list.

COURT:

Could you just go through the overlaps with me please Mr Kaukau. Just give me the last three numbers.

MR KAUKAU:

230, sir just one other –

COURT:

Just one other applicant.

MR KAUKAU:

Yes.

COURT:

Thank you very much for that.

MS JOHNSON:

Sir, I can confirm yes, on these agency instructions yes the application by Ngāti Kurupakiaka, 230, there is an overlap with Mr Kaukau's application.

COURT:

Are there any other overlaps with others that I haven't identified? Sorry, Ms Johnson, you got to your feet first.

MS JOHNSON:

Yes sir, apologies if we have actually already mentioned these applications but I do just want to double check. So standing now to speak on behalf of Te Rūnanganui o Ngāti Porou and ngā hapū Ngāti Porou. Sir on my list we understand we have overlaps with an application by Mr Delamere, that is 278; an application by Mr Sinclair, which is 225; application by Mr McClutchie, which is 263; application by Mr McIlroy, which is 242; the application by Mr Tichborne, which is 247 and Mr Naden is here today with that applicant. Mr Pewhairangi's application, 302, Mr Milner is here today for that applicant. Mrs Lant's application, which is 255 and Mr Lyall is here today. As noted the application by Rongowhakaata Iwi Trust, 289 and Mr Nick Tupara's application, 571. Mr Tupara is here today.

COURT:

Thank you very much for that Ms Johnson.

MS JOHNSON:

May I also address you on another matter.

COURT:

Yes, by all means.

MS JOHNSON:

On the agency instruction for Ngāti Kurupakiaka I understand that there may have been mention of a potential overlap with one of the priority applications, Rongomaiwahine, which could be down to be heard at a different case management conference.

COURT:

It doesn't ring any bells with me at the moment.

MS JOHNSON:

Very well. That is fine. I understand from Mr Mahuika that it may have been discussed at one point but the client's view, that is Ngāti Kurupakiaka's view is that there is no overlap. There's a shared boundary, so I just wished to make that clear that client's position.

COURT:

Thank you very much.

MS JOHNSON:

Thank you.

COURT:

Mr Lyall

MR LYALL:

I wasn't quick enough on the draw sir. There are four matters where there are potential overlaps for Ms Lant's claim. Matter 571, Mr Tupara; matter 247 Mr Tichborne; 284 that's the Rūnanga o Ngāti Porou and 289 the Rongowhakaata application.

COURT:

Thank you very much for that.

There is one other matter that I've picked up from the memoranda which is really in memoranda filed by Mr Mahuika and I'm not too sure if you've got instructions on this Ms Johnson, but he raises an issue as to whether or not the Crown should be a defendant as opposed to simply being an interested party. That raises quite an important issue that might impact upon all claims and I wonder if you've got any instructions as to whether or not that's a point that Mr Mahuika or his clients wish to advance.

MS JOHNSON:

I am so sorry sir I don't have instructions on that particular issue so I can't advance that for you.

COURT:

Thank you very much Ms Johnson.

Now, are there any other applications or matters that I have not dealt with or considered or had referred to me?

Yes, Mr Milner.

MR MILNER:

Sir in relation to application ending 317 it's not within Group J, this is the H and I. I just note and I'm afraid I can't list them all for you but there are a number of overlaps with that application.

COURT:

Are they claims that are in this Court or are they in Rotorua or Tauranga?

MR MILNER:

In Rotorua and Tauranga I understand.

COURT:

Tauranga tomorrow, Rotorua on Thursday. Are you going to be there?

MR MILNER:

No your Honour.

COURT:

What I'd like then Mr Milner is if you could just file a memorandum explaining which claims overlap with 317.

MR MILNER:

Yes sir.

COURT:

The spreadsheet in my mind is beginning to get a little frayed.

Mr Melvin for the Crown

MR MELVIN:

Thank you sir. It doesn't appear that any particular issues arise out of today's case management conference. It's probably helpful though if I just for consistency's sake make some points that have been made in previous case management conferences on behalf of the Attorney-General and those are in broad terms sir that respectfully the Court is taking an appropriate focus on the s 125 priority applications and those that overlap and also supports your Honour's statement that the case management conferences are also able to identify non-priority cases that are ready to proceed so certainly the Attorney-General supports that approach as well.

In terms of pleading sir, it's the Attorney-General's position sir that in most cases with respect to most applications greater clarity in the pleadings is required. It's the Attorney-General's

submission that through the pleadings applicants should be able to identify the precise rights, the material facts upon which the applications are based and that is so that the Court and interested parties are able to ascertain exactly what the Court is being asked to do in each proceeding and it's the Attorney-General's submission that an appropriate time for particularisation of pleadings is before further evidence is prepared and compiled and so that the timetabling process should provide for that step to occur.

Those sir are the general points I wish to make. There was one, I think one matter that my friend Ms Irwin-Easthope raised regarding the mapping issue with the boundary and that's in relation to the Rongomaiwahine case application by Ms Tangiora and that's a matter that the Attorney-General will address when he files the updated maps.

COURT:

Thank you very much Mr Melvin.

Ms Smail, can I just come back to you. In relation to the claim by Mr Taylor, which is a priority claim. When I was going through the various memoranda did I note that you had indicated something in the vicinity of 80 plus witnesses?

MS SMAIL:

We have already 80 plus affidavits and briefs which were prepared for the purposes of engagement so written documents that could be filed with the Court and I spoke to Registry staff who said to wait. So there will need to be a process of determining who of those and perhaps others should present in Court at hearing.

COURT:

So you are obviously a long way down the road towards accumulating your evidence, although I also note that you've still to get the evidence of the historian or historians finalised. It may be that I can put in place a timetable that works towards a possible hearing in the second half of next year. Would that be unrealistic from your perspective?

MS SMAIL:

No sir, I think that that would be realistic. Given this is a first appearance it may be helpful to give you a little bit of background about progress in terms of engagement. The Ngāti Pāhauwera application has progressed in engagement primarily in the northern half and that's an area where they don't have any other overlaps and there's no overlaps made in this Court either in that area and in that northern half the Crown has made an offer of customary marine title recognition in a small part of that area. That's currently in the process of confirmation of

ratification so that it can proceed to be given effect through legislation. The southern half of the application area because of the overlaps that we've talked about today has not progressed in the same way. While much of the evidence from the northern half of the application area is also relevant there is a need to take some time to see if there – we've identified there is a need for a historian to provide some evidence, whether there's also some other applicant group members to provide evidence so that's why I indicated that step is still required and the timeframe from the historian is early 2019 so I do think late 2019 is realistic.

COURT:

Now in relation to overlapping claimants with this matter, would a timetable that worked towards a hearing in the second half of next year be unrealistic?

MR MILNER:

No sir. We take a similar view in terms of the availability of expert historian evidence. There's quite some pressure on them so evidence in the first half of 2019 leads to the possibility of a hearing in the second half sir.

Mr Naden

MR NADEN:

Sir, we would be agreeable with that timetable.

COURT:

And Ms Johnson, depending on whether you're in or out.

MS JOHNSON:

We'd be agreeable.

COURT:

Thank you very much.

MR MELVIN:

Sir, if I may the timetable will need to take account of the Crown's research and evidence requirements.

COURT:

Yes indeed. It may be possible for us to put in place a timetable for the eight priority claims that works towards hearings in the second half of next year. That may prove to be aspirational but that's what I am at this stage aiming towards and I'm also hoping to be able to identify non-priority claims that might also be able to be advanced to a hearing but I suspect to be quite candid those are going to have to be cases where there isn't too much dispute in relation to

overlaps. The overlap issue is quite a conundrum and I am at this stage very very uncertain as to how we are going to sort that out.

MR MELVIN:

Yes.

COURT:

Unless somebody's got a very magical bright idea.

MR MELVIN:

Thank you your Honour.

Yes, Mr Kaukau.

MR KAUKAU:

Thank you your Honour. The biggest issue that is current and I advise the Court is just the overlaps and the funding and in front of you there's a copy of evidence research that we've put together.

COURT:

Yes, thank you I will look through that later but thank you for filing that. I should say that I am becoming increasingly aware that there are issues in relation to funding that are going to have to be worked through, and I will do whatever I can to assist but it's very much in the hands of others at the moment I'm afraid.

COURT:

Is there any –

MR NADEN:

Your Honour if I may just in relation to non-priority apps being heard a bit earlier. Sir for a number of our clients around the country we submitted on that very point and we set out own criteria as to what we thought might be prioritised out of that category and of course the less contentious applications were highlighted those with less overlaps and so forth. I think we also submitted sir that perhaps there was some call it inspired Court orchestrated get togethers for some of these groups that may well be prioritised and that there's some progress made through talks had that way your Honour was I think submitted on and so there are just those submissions sir.

COURT:

Thank you very much.

As I said right from the outset this is the fourth of 10 first case management conferences that are being conducted around New Zealand and you will have picked up later this week I'm sitting in Tauranga, Rotorua and Hamilton and then there's a week off and then it's New Plymouth, Whangārei and Auckland. After I've done the first round of case management conferences I will be issuing what is going to be a very lengthy minute putting in place as best I can timetables and addressing each person's claim as best I possibly can in terms of where I see those claims progressing at this stage.

Is there anything else that anyone wishes to –

MS SMAIL:

Sir, just very briefly if I may. I just wanted to ensure that I covered the point appropriately. So the Rongomaiwahine Tangiora application which ends 794 counsel sought an adjournment –

COURT:

794?

MS SMAIL:

Sorry, I'm looking at the Crown's map in their memorandum of 25 May – CIV-2011-485-794, counsel may want to correct –

MR MELVIN:

That's the Tangiora application, Rongomaiwahine sir.

MS SMAIL:

We had a brief discussion about our respective clients clarifying that the boundary is shared at Paritu and that therefore no longer is an overlap but certainly there was a memorandum filed jointly with the Crown last week that requested an adjournment so that the Rongomaiwahine applicants can jointly negotiate with the Crown. Now that adjournment was sought for 12 months. Certainly my clients' focus is also on direct negotiations although they haven't had a timetable set down. I'm just wondering if your Honour had any views about whether there would need to be formal adjournments sought post this case management conference if that was the preference. We've certainly made comments in memoranda and set an adjournment at the outset when the application was filed, but that timeframe's now passed.

COURT:

So a number of claimants are trying to get engagement with the Crown. At the first round of case management conferences there were applications for adjournments sine die. I signalled that I wasn't willing to give adjournments sine die, that I wished to adjourn to specific dates so

that matters just don't drift on indefinitely and get lost. So where there are applications for an adjournment to enable negotiation with the Crown then I am going to be very relaxed about granting those applications, but as I say it will be to a specified date rather than just never-ending.

MS SMAIL:

Thank you sir.

COURT:

MR MELVIN:

Sir, in order for your Honour to put in place timetabling directions for the statutory priority applications but also for other matters, does your Honour need to be informed by applicants what their preference is in terms of Crown engagement pathway or Court pathway?

COURT:

I have been endeavouring to ascertain that as I've been going. I think it's fair to say that most applicants would prefer direct engagement with the Crown, although to my surprise that has not always been the case. There was one in Nelson last week where they were very firm that they didn't want to engage with the Crown and wanted to come to the Court. So I'm proceeding on the assumption that most applicants, unless they tell me otherwise, would prefer to engage in negotiating resolution with the Crown. If I've misunderstood anyone's preference then they should say so.

MS SMAIL:

Sir, I did want to clarify a couple of points. I'm not privy to the discussion at last week's conferences but an issue that the Crown did raise in memoranda was whether applications should have been filed with all the evidence that applicants rely on.

COURT:

I'm not going to be getting into that level of detail at this stage. As you can appreciate I'm really trying to get as good an overview of 202 claims, then about 60 interested parties' position before getting down into the next level of details so you don't have to sweat over that yet.

MS SMAIL:

Just for my clients Rongowhakaata Iwi Trust, I just note that there was timetabling for filing of maps but just to highlight the point that you've already eluded to that in terms of funding, many applicants won't be in a position to take some of those steps.

Thank you sir.

COURT:

Thank you very much Ms Smail. Are there any other comments or submissions that any counsel or party wishes to make?

If not, thank you all again very much for coming and I will adjourn.