MACA CASE MANAGEMENT CONFERENCE
HAMILTON
20 JUNE 2019 at 10.00 am

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

Thank you all for attending. Most of you I've seen recently over the last couple of weeks. There may well be people in the public gallery for whom this is their first CMC, so welcome to you too.

The purpose of the CMC is to try and identify barriers to progress and ensure that each of these matters are progressed as efficiently and expeditiously as possible towards hearing. There are matters that have been set down for next year starting in August so the hearings themselves are still some way off but hopefully we're making progress in an orderly fashion.

Mr Registrar, if you can work through the list and counsel can introduce themselves when their case is called.

REGISTRAR:
CIV-2017-419-83 – Tainui Hapū o Tainui Waka

MS SYKES:
E te Kaiwhakawā o te Kōti Matua, tēnā koutou. [Mihi]

May it please the Court, it's an honour this morning for myself and Ms Bartlett from Annette Sykes & Co, to be here amongst the peoples of Tainui. In my address I recognise Tuheitia and the Kingitanga, their mantle over the guardianship of these lands here, and also the specific mantle that is held by those hapū in the Whaingaroa area that we represent in these applications.

I'm very grateful to say that our principal claimant and her committee are here today, Mrs Angeline Greensill, they've travelled in from Whaingaroa sir, in case any matters arise.

We've filed a few memoranda on these matters and this morning we'd also like to address some matters that have been helpfully raised by counsel, Mr Ferguson, for Te Kauhanganui and others. So, if your Honour permits, we'll deal with that matter first because it may have some bearing on the course of these proceedings.

I wish to concur with his observation, Mr Ferguson, about the national applications.

COURT:
Yes before you start, tēnā korua to you and Ms Bartlett.

MS SYKES:
So, I think we made a very similar application but in the context of a more narrow situation yesterday. But like Mr Ferguson, we are very concerned with national applications that purport to be representative or have mandate and representation capacity over those regions where's it's clear that the mandate and representation of the hapū has been recognised and applications filed in a timely way in accordance with the Act.

Those two particular applications have been filed CIV-2017-404-538 and CIV-2017-485-512. My understanding in various submissions that have been made in the past, counsel for those applications are there for all Māori but principally those Māori that failed to meet the timeframes, your Honour described them yesterday as protective applications.

Well, we say, in this region, those protective applications are unnecessary, and certainly in the context of Tainui hapū or Tainui waka in the Whaingaroa area, they are completely unnecessary. Because those hapū are all represented before your Honour and, I believe we raised earlier, viva voce anyway, they should be recrafted, those applications, to nominate who they actually are supposedly representing in these regions.

We've made some inquiries, we can't be sure, because they've cast their applications so broadly to include whānau, they may be including whānau but to the best of our knowledge, our claimants say they have no right of mandate, or right of representation, even as a protective application of that kind, and would seek some assistance from the Court to clarify that position as a matter of urgency before these matters proceed much further.

COURT:
I share some of those views in the sense that the whole structure of the Act is predicated upon identifying a particular iwi or hapū that you represent, and they haven't done that.

As far as I'm aware at the moment, there is no live application to strike-out either in part or in whole, the two national applications. Given that these issues have been raised previously at prior CMCs and there doesn't appear to have been any particular response on behalf of the two national applicants, the time may have been reached where a party or a series of parties jointly need to move to strike-out the applications, particularly in an area such as this where it does seem that there is no entity in need of a protective application.

So, I'd invite you and perhaps after consulting with other counsel such as Mr Ferguson who has raised this squarely in the memorandum that I got this morning, as an issue. It's a valid issue. The Court, of its own motion, it's probably not appropriate for the Court to initiate that, but where parties say, look these national applications are simply getting in the way or complicating and making it more expensive and time consuming to pursue the applications that are clearly before the Court, the Court would certainly entertain a strike-out application either in whole or in part.

MS SYKES:
We are hopeful that we won't have to go to those lengths and we're inviting counsel to withdraw their application in this, or to amend their maps to exclude this area. I think that may be a better way for us to proceed. Because there are, as I understand it, because I'm involved in four other proceedings, there are other areas where some of the groups are relying on them, for that protective perspective. So, I wouldn't like the application for strike-out to strike out their whole application because of those matters.

COURT:
Well it's up to those iwi and hapū such as those that you represent, and Mr Ferguson represents to decide what they want to do. I accept, and we had an example yesterday in Rotorua, of the hapū that Ms Hata was part of. It may well be that's exactly the sort of entity that the national claim could be useful in respect of. But, I'll leave it to counsel, it's not something the Court is going to direct counsel do, and hopefully you're right. If there is some communication as between the various parties about that, it may cease to be a problem, but I accept that it is potentially a significant problem at the moment.

MS SYKES:
Thank you sir. If I can move to the second point in my memorandum, and it's dated 17 May this year, which is mapping, and it was a matter raised yesterday. I'd also like, in that regard, to refer you Honour to the second of the, or the first, I'm not too sure, in order of time, of 17 June, the Crown memorandum, which addressed a potential way forward on the question of mapping. And I just want to be clear what we're proposing, which is a variation of what the Crown is proposing, and as I repeated yesterday, we are very grateful for the Crown's movement on this important issue. We are grateful that there is a national database. But, in terms of a committee now being established, or ensuring that maps that are going to be utilised are of universal application in any particular collective of applications that are being considered.

As in this group, we believe regional working committees should be working together with members from the Crown, members from Te Arawhiti because there is, in this context, also parallel discussions around direct engagement with the Crown going forward, contemporaneous with our application before this Court, and that regional approach, we believe, is fundamental. We're not suggesting that there should be regional maps. We accept that there has already been a significant amount of work done in the national database. But we do believe that there may need to be adaptations, and I use the example yesterday from local councils' databases, for example, and their collation of Wāhi Tapu which is at a much more acute level than in any national database that I've seen, may be able to be brought in for that region rather than to try and make it a mandatory effort for the whole of the country.

I certainly would not like to be one of the council nominated in the national group if I'm only pursuing applications in four areas which is my personal situation.

COURT:
Yes, that's really something you needed to address in the first instance to Mr Melvin. You heard his response yesterday in Rotorua. It seems he's open to suggestion, that's not the level of detail that I think it's appropriate for this Court to make directions on. I hear what you say, it makes sense, and I simply encourage communication either with Te Arawhiti or with Mr Melvin to try and achieve that as a result.

MS SYKES:
The third matter that I addressed in my memorandum, and it was again addressed in more detail before his Honour Justice Collins at the last hearing, is that there is a set of particular context to the applications before this Court which I'm suggesting give rise not to it being a priority claim, but perhaps being a claim that is deserved of a timetabling approach in the same way that those priority claims are being prioritised.

In my earlier submission, I alerted the Court to the fact that it is now proposed that the direct negotiations process under the Treaty Settlement framework, I want to be really clear, that arises from that framework, is now being pursued with vigour. And that there are draft mandate strategy that is being pursued by Mr Ferguson's clients, and there is also a draft mandate strategy that is being promoted by my clients, for their areas, and there is cross-over sir. That's all I can say.

Our applicants have had mixed messages from the Crown in respect to the nature of this proceeding, in the context of the other. But, we're anxious, if at all possible, to keep this timetable so we don't lose momentum here, in case the other Treaty Settlement process does not provide sufficient certainty of outcome with respect to our extant rights that we're pursuing here.

In that regard, we have sought timetabling orders and one of the biggest concerns between the last hearing and now is resourcing. And I'm pleased to say, as your Honour has said, vigorous lobbying has meant that my applicants are now funded for this process. Their research is advanced in this process, and they are now working, as your Honour urged yesterday, for collaborative discussions with those that might be termed overlapping hui, or whānaungatanga relationships that require a certainty of understanding, in terms of a customary title application that is being pursued with the area in our maps.

So, we were hoping, in the same way that the Edwards' application has been timetabled, that we would get a timetable. And it is linked to resources sir. We have no resources in the other process because we're not recognised there. We've been advised in the Treaty Settlement process, we aren't pursuing yours, so there's no money for you. We are pursuing Tainui, so there's money for them. So, we can't go down that track.

But, in this process, I'm saying there's two ways that we could advance our case here, without necessarily having a hearing and I will put this in writing sir. What I'm proposing is that we perhaps look at an independent facilitated intervention.

COURT:
But this is in respect of what: a Treaty Settlement claim, or this process?

MS SYKES:
No, not this claim. But it could form part of both settlements sir – that's the overlap.

This claim, we could get our research advanced and then we could have a judicial settlement conference with an independent facilitator to facilitate agreement amongst ourselves. That joint agreement, if it is possible by consent, will then be discussed with affected interested parties, like the Crown and the regional councils, and if appropriate, formal proof orders would then be sought in terms of any consensual agreement agreed to, following the judicial settlement conference, and further discussions with affected interested parties.

Now, that's the long range sir, and the steps towards that, I'm suggesting, would be facilitated by directions from this Court. One of them of course we discussed yesterday, was the question of discovery and the question of disclosure. And as I mentioned yesterday, I'm one of the counsel that is using the Official Information Act to try and elicit information that may assist me in meeting the test under this Act, particularly with respect to any suggestion that there's been a substantive interruption by virtue of the fact that the lands that are, our application, were Raupatu land.

COURT:
Yes, well you heard my comments yesterday about that.

MS SYKES:
But I'm saying it for the benefit of these clients, they weren't there yesterday and I'm just making sure that the submission that is made here is squarely before this Court as it was yesterday. I think it's very important because the issues of Raupatu and Whakatōhea and Tainui are fundamental to that test.

So, to advance that there is this need for discovery and disclosure and then ancillary to that matter, is the role of the Crown. Particularly, and the questions of Raupatu, that are extant on my claimants.

And I have to say at this stage, in the Treaty Settlement process, Mr Ferguson's clients have had their Raupatu claims settled and dealt with. They were the first major settlement. Our group has yet to have their Raupatu issues determined. That's the context.

Their applications here for the customary title and customary rights are inextricably linked to the Raupatu. Because, of course the boundaries that they are claiming that they have joint exclusive hapū control over, include areas that were part of the confiscation process in 1865. So, it's a live issue for my claimants here, as a potential argument of substantial interruption.

We don't accept that as I said yesterday. We believe that, while there was interruption and displacement, certainly of our people to places like Te Akau, they returned back to their territories where they have maintained continuous use and occupation, and control, since time in memorial, notwithstanding that disruption of the New Zealand wars era.

In terms of our discovery here, we are quite advanced, much more advanced than the clients yesterday. But, there are still, the questions I believe we heard yesterday, that was all consent, applications and those matters of that like, we still wish to advance with the Regional Council and Local Government bodies, and Department of Conservation.

COURT:
Well all of those matters would indicate to me that it may be premature for the Court to be imposing a timetable towards hearing, and that perhaps instead of the matter being adjourned for 12 months, it may be appropriate for it to be adjourned perhaps until later this year so that you can come back to Court and say, yes we've satisfactorily resolved our discovery or other issues, or if you haven't you can formally make an application to Court, although as I indicated yesterday, there are some issues which may well mean that that's not going to be a productive outcome but obviously you'd be at liberty to raise that with the Court.

So, my suggestion might be, instead of, or as an alternative to, locking in a timetable now when it does seem that there are some preliminary issues that have yet to be resolved. It may

be best if we looked at something perhaps October or November, or whenever the Court can fit us in.

MS SYKES:
I'd be content with that approach sir. There's some steps, and I'll advance this proposition. We're hopeful that these discussions that are beginning are good but we're looking for some judicial settlement conference or some kind of intervention for this independent facilitation this year. There's three legal options, as we see it, where they would be resourced. Because that is the problem. My people come to this Court not funded and resourced. There is an inequality of arms between my people, the Crown and Mr Ferguson's client, of significant proportion.

And that inequality of arms, I believe, is impacting on their potentiality to seek appropriate orders in accordance with custom.

COURT:
Yes, but you know that it's not the Court's function to direct how the Crown spend their money. As I've been saying over these past several conferences, I've made some suggestions to the Crown and I'm sure Mr Melvin and Mr Ward when he's appeared, have taken those on board. That's as far as I can go.

In terms of a judicial settlement conference, obviously that's something that's potentially available. Again, normally that would occur once all the cards are on the table and by that I mean once you've completed your discovery and other investigative processes. So, while the Court is very open to considering that, again, directing it now would seem to be counter-productive because it may risk misfiring if you haven't been able to gather all the relevant evidence.

So, that may also be something that you can bring back to the Court if this can be adjourned for a few months.

MS SYKES:
My concern is, for it to work, all of us have to be lined up together at the same time. And while you may have some people that want to do this in a quick time, and I think most of the

applicants that I've talked to have been driven by the fact that their claimant applicants, their witnesses, are elderly.

So, if there's this agreement that could be assisted by timetabling that we work with best efficiency and best endeavours to a point, then that is something that would assist us to ensure that the best evidence that's available for us could be used in that mediatory facilitative function rather than in the adjudicative function ultimately before this Court. I only raise that in that context sir. And I don't want to labour the point, but I'm trying to turn my mind how to get this moving. I mean I've been arguing these cases now for 30 years without advancement because of priority of other cases.

Now, many of my claimants, in this claim, have passed away, and I don't want to see that happening again. We've already been in this process for three years as we wait for the allocation of resources and the readiness to proceed which is connected to that allocation of resources, being frustrated.

So, I'm trying to work out, independent processes within this framework of the High Court, for that to occur.

The other option which I'm exploring sir is the possibility of applying to the Māori Land Court for the MLC Judges to independently facilitate what I think are critical discussions of agreement, around boundaries and other matters, so that we could have these potential agreements available to minimise Court time. And can I say I am hopeful in this area more than anywhere else that that could be achieved because of the whānaungatanga respect that I have seen between the parties here even though they are contesting boundary areas.

So, I just raise it. I don't wish to take it any more than that sir, but I am very conscious of my elderly applicants passing. And there must be a way that we timetable matters so that these issues are dealt with in a fashion that enables the best evidence we have available to be brought to bear in the arguments sir. So, that's as far as I can take it.

And I'm content with your Honour's response that perhaps a way forward is a later CMC perhaps later in the year. And in that time, I will explore those three options that I'm looking at.

The third option is of course to try and get Te Arawhiti themselves to fund as part of a Treaty Settlement a process of independent facilitation, with independent facilitators being agreed to by the parties that wish to participate in that process.

But I'm just raising those matters sir. My instructions are to try and get this advanced as quickly as we can mainly because we have lost two elderly applicants, one in his 90s and one in the 80s. And they were very important to us in terms of the evidence that we believe would assist us in our goal.

COURT:
Right thank you.

MS SYKES:
Thank you. I don't think these other matters that I've raised can really be advanced. I think, and I'm grateful your Honour for the opportunity to make those submissions.

COURT:
Thank you Ms Sykes.

REGISTRAR:
CIV-2017-419-81 – Ngāti Te Wehi

MR LEWIS:
Tēnā koe te Kaiwhakawā. Counsel's name is Lewis and I appear on behalf of Terewai Awhitu, the applicant for Ngāti Te Wehi.

COURT:
Tēnā koe Mr Lewis.

MR LEWIS:
Sir, we don't have any substantive issues to raise today. However, I can give a brief update on the progress of our claim.

COURT:
Yes, I've read your memorandum but if there's an update, let me have it.

MR LEWIS:
So, currently our research into the technical and the tangata whenua evidence is underway and we anticipate that that should be complete by the middle of next year, and it's at that point that we will be looking to have discussions with the overlapping applicants regarding the shared interests sir.

COURT:
How many overlapping applicants are there in respect of your client's claim, just roughly, are you talking one or a large number?

MR LEWIS:
There are a few your Honour.

COURT:
And you can disregard the two national applications in that respect.

MR LEWIS:
There's about five, and that's all in the area of the Kawhia and Aotea Harbours.

COURT:
Yes it did seem to me there were a number of overlapping claims. So, have you actually engaged or embarked on those discussions with them?

MR LEWIS:
Not yet. We haven't had any discussions yet. Our position is to wait until the evidence is complete and, from my client's perspective, that would give them an idea as to whether they can or can't substantiate the application area that they've applied for. And it's from that point that negotiations can start, or discussions with their neighbours.

COURT:
Right, that does seem rather a long time, but I just encourage you to pursue that because obviously if you can refine the issues and the Court is not asked to adjudicate on so many overlapping boundary-type claims or overlapping interest claims, it makes the Court's task, and probably ultimately the outcome, more satisfactory.

So, you're happy with a 12-month adjournment on the basis that you'll proceed with your preparation and then continue to engage with the cross-claimants?

MR LEWIS:
So that's a 12-month adjournment to the next CMC?

COURT:
Yes, there will be a series of CMCs round about this time next year.

MR LEWIS:
Yes sir, our clients will be happy with that.

COURT:
Right, thank you Mr Lewis.

REGISTRAR:
CIV-2017-419-82 – Iwi and Hapū ki Marokopa Marae

MS LOADER:
Tēnā koe. Counsel's name is Ms Loader and I'm proud to be here and humbled to represent the collective hapū known as Hapū ki Marokopa, inclusive of Ngāti Te Kanawa, Ngāti Peehi, Ngāti Kinohaku, Tuatupahu Me Ngaterehoa ki Marokopa.

COURT:
Can I just interrupt you for a moment. Could you turn the microphone towards you because everything that all counsel say is being transcribed and my Associate gets grumpy with me if I forget to remind counsel to speak into the microphone. She simply can't hear.

MS LOADER:
I filed submissions dated 16 May and I would like to speak briefly to those. On behalf of the applicants, I intend to address matters concerning overlapping applications research, mapping and the treatment of the timetabling moving forward.

Beginning with the treatment of overlapping applications, I've been instructed that the applicants have been engaging in a tikanga manner with other overlapping applicant groups to assist this process.

This has included many hui with the other applicant groups. Counsel supports and will seek further instructions, but supports the submissions by Ms Sykes around this seeking of a judicially supported process of facilitating a mediated settlement, to come to some solution to assist the Court in determining the orders.

Sir, we'll be interested in pursuing that should that be directed by…

COURT:
So, you're contemplating something like a judicial settlement conference or something else?

MS LOADER:
Yes, that's right.

As discussions are already happening with other applicant groups, they see that that would be a way that tikanga could be complimentary to the High Court process.

With regard to research and the progress of the application, we feel that we are quite substantially well in the process of being ready for presenting the application to the Court. Literature overview has been undertaken of all public evidence in support of the application. An oral and traditional evidence report are in its draft stages. There is a technical land and waterways report and is being undertaken by the applicant group. And we're in the process of having discussions with adjacent applicant groups with regard to a gap filling technical evidence report.

This, in particular, there are four other overlapping applicant groups. One in particular that we've been liaising with is under the file number CIV-2017-404-526.

The applicants would like to depart from, the memorandum of counsel filed briefly in that, I've been instructed to extend the area of interest of their mapping, for the map that was filed.

COURT:
So, are you telling me the map that's before me, is that the final map or do you want to amend that?

MS LOADER:
We are seeking leave to amend the map.

COURT:
You don't need the Court's leave to amend, you just file it saying we've amended our claim. And ultimately what the effect of that is will be for the substantive hearing, but you can file it without leave, an amended map, provided you make it clear it is amended. You also need to serve it on all other interested parties.

MS LOADER:
Thank you your Honour.

And because the application is adequately in preparation stages, we seek directions from the Court about timetabling the hearing.

Those are our submissions.

COURT:
Well, you've heard my discussion with Ms Sykes. In terms of a timetabling order, are you proposing that the Court make one now in respect of your client?

MS LOADER:
I've been instructed that the applicants are ready and would like to have some timetabling set down to assist in the preparation of their applications.

COURT:
Your memorandum I don't think sets out a specific timetable, what is it you're inviting the Court to consider?

MS LOADER:
By the way that the application has progressed so far in terms of preparation of the evidence. They say that a further 12 months is fine. They would be ready.

COURT:
Alright. So, we can't set, if your evidence won't be ready for 12 months, there's no point in setting a timetable for things to be filed within that 12 months. It may be best that, on the basis you're going to proceed with your evidence gathering and finalisation, that we're adjourned to 12 months, and we're looking then at setting a hard timetable towards a fixture date.

MS LOADER:
Yes your Honour.

COURT:
Thank you. That's everything?

MS LOADER:
That's my submissions.

COURT:
Thank you Ms Loader.

REGISTRAR:
CIV-2017-404-526 – Ngā Tini Hapū o Maniapoto

MS THOMPSON:
Te Kaiwhakawā, tēnā koe. Ngā mihinui ki te Kingi Tuheitia. Ki te kahuariki whanui, ngā mihinui kia rātou katoa mo tenei wa. Tēnā koutou katoa. Kia ora.

Counsel's name is Ms Thompson and I appear on behalf of Ngā Tini Hapū o Maniapoto.

I'm pleased to say that the principal claimant, Mr Kimara, is also here. And if I may provide a brief update on the progress of the case.

Firstly, also if I may note that I bring to the Court's attention that the record should reflect that Ranfurly Chambers is now counsel for this case, and not my learned friend Mr David Stone.

Research is currently underway. A historian has been engaged, and the case will be ready for trial at the end of 2021. We seek an adjournment until mid-2020.

Those are my submissions.

COURT:
Is the client you represent also seeking direct engagement with the Crown?

MS THOMPSON:
Yes sir that's underway. Our whānaungatanga relations by way of tikanga is currently underway. Those are my instructions.

COURT:
Thank you Ms Thompson.

REGISTRAR:
CIV-2017-419-84 – Waikato-Tainui

MR FERGUSON:
Te Kaiwhakawā o te Kōti Matua, tēnā koe.

Counsel's name is Ferguson appearing for the claimant for applicants Stanley Rahui Papa brought on behalf of Ngā Hapū me Ngā Marae o Te Takutai Moana o Waikato-Tainui.

Sir, firstly apologies for the late memorandum after the conference in Wellington where we identified with the Registrar the absence of a memorandum. I attended to that but Mr Papa has been incapacitated recently so I was only able to confirm instructions and get that filed yesterday.

I've circulated copies to my friends and have had the opportunity to have a constructive discussion with my learned friend Ms Sykes this morning.

I just wanted to highlight a short number of matters consistent with but a little somewhat beyond the memorandum of counsel. Firstly, just repeating and endorsing Ms Sykes' comments in relation to the national applications, the two of them, and the need for those to be amended and greatly redacted to the areas in which there aren't claims and for which they are able to show mandate.

COURT:
What steps have you actually taken to achieve that outcome Mr Ferguson?

MR FERGUSON:
Well, the point I made at the conference in Wellington which you might recollect was suggesting, well I was a little comforted by my friend, Ms Mason's comments on behalf of

one of those applications in Wellington sir that they were going through a process of confirming particular instructions from particular groups who hadn't been able to file by the statutory deadline and, she also accepted that was the primary purpose of the national application, was to provide a vehicle for those who had missed the statutory boat, so to speak. And that gave some heart that, where there were other applications filed by hapū, marae and other groups, in particular areas that they would not be seeking to pursue those national applications in relation to that.

Nobody has filed a strike-out application at this stage, although there has been kind of signals of that concern, I think that's consistent with the point my friends raised this morning, and I know your Honour is leaving that somewhat in the hands of counsel to take that step, as appropriate.

It is a little difficult in terms of responding directly to those applications given that they obviously apply all around the country. And, while your Honour will be making directions in relation to each of the applications, I wonder whether, and this is just proffering a motion that it might be appropriate to direct those two applicants, or counsel for those two applicants, within a period of, I'm trying to be reasonable here sir, but I would have thought 8 to 12 weeks to file and update an amended applications that confirm the areas in which they are going to proceed, or currently intend to proceed, and the nature of the groups whom they represent in those areas. Rather than taking an adversarial approach by counsel here in terms of strike-out applications which would no doubt result in redacted applications in any event. And I think we don't want these matters to be addressed through those types of adversarial contest, in my view. This should be a matter that we can encourage through targeted directions that seek to better particularise and progress applications sir.

So, if you want me to formally seek that, I do seek a direction that those two national applications file a memoranda of counsel, and as appropriate, amended applications confirming the areas of the New Zealand coastline to which the applications are to apply and the groups for whom they have instructions in that respect.

That's my view of at least moving that forward rather than us waiting 12 months or so for progress to be made, and for that continued uncertainty in hangover areas, particularly this area of coastline on the West Coast of the North Island sir.

Second issue that I want to comment on is mapping.

I don't want to make anything, say anything, too substantive in that regard, other than to endorse the pleasing indication from the Crown that there is national work progressing in that regard. I agree with my friend Ms Sykes that I don't think there are many of us that want to be on a national committee, but there should be a regionally-based input available into that national mapping programme. And I will raise this directly with the Crown, separate from this conference. But, I think if that level of resource and product is to be produced from the Crown side, it will be enormously valuable if that is somehow accessible and able to be used by applicants in a way that allows them to add additional layers on for the purposes of their own case.

So, we don't simply have a locked hard copy set of maps and databases, but we have something that can be taken and then built upon in the regions. It seems to me that would hugely valuable, rather than us all operating off different types of maps and scales and degrees and presenting information in multiple different ways within a region. And I think that would be something that we can co-ordinate readily between Crown counsel and claimant counsel, in my view sir.

Just as an aside, in terms of the mapping relating to this particular application, I've appended two maps, Appendix 1 and 2 to the memorandum. Appendix 1 is the map that was attached to the application. Appendix 2 is a new map. It wasn't previously mapped. And that is the area at Waharau on the Hauraki Gulf to which the application extends to address the interest of Waikato-Tainui, and more particularly the Kingitanga in relation to a reserve that was granted on that coastline. So, there wasn't a map for that sir, that's a new map for that particular area.

COURT:
Just looking at the scale of that, it seems to be a relatively confined.

MR FERGUSON:
It's a very discrete area sir, yes. And it's somewhat unique in terms of that sitting on that side on that coast obviously where the predominant claim is that of Parehauraki. But there is a historical Kingitanga connection and ownership of land on that coastline at that one site. Let's hope that's, again, a matter that can be worked through so that we don't need to get to

the point of adjudication on that matter. But, it's easily lost when one looks at the, and the focus is obviously on the West Coast harbours, and the West Coast, that area is also claimed sir, so I just point that out because it doesn't really appear other than a dot on all the national maps that have been produced sir.

The other site mapping issue, and I know that the current division of New Zealand into the various A, B, C, D etc is a Crown construct, and I don't mean that pejoratively sir, I mean for administrative purposes and it has been useful, I think for your Honour and the Court generally in terms of administration, but in the memorandum that my clients filed in advance of the first CMC, it raised the issue that somewhat peculiarly the line between areas F and G with one predominately, one on the West Coast, one on the East Coast of the Tamaki isthmus, peculiarly cups a small portion of the Manukau Harbour and includes it on the East Coast administrative area, and I imagine that was done because the Ngāti Whātua Ōrākei application encroaches just into that small area of the Manukau.

I just want to reiterate the point that I think when one comes to the substantive hearing of applications relating to the Manukau that that should be heard as a contiguous part or area and there shouldn't be parts that are dealt with as part of the Waitematā, I think that's where that administrative division that the Crown has made, doesn't make sense when one is moving forward.

COURT:
Yes, but they are only administrative.

MR FERGUSON:
That's right sir, I just wanted to make the point at an early stage that that's the approach we will be taking.

In relation to matters of priority, and this is a matter that I had the opportunity to have constructive discussions with Ms Sykes before we started today. My clients understand and is sympathetic to the issues that Ms Sykes raises. There obviously are three different processes potentially at play or, will be at play, namely these High Court applications.

Secondly, a direct engagement with the Minister, when we are finally told, if, and when, the Minister wishes to engage with applicants under this piece of legislation. Thirdly, the historical Treaty Settlement process.

Those are discrete processes. This Court doesn't have the Treaty Settlement matters within its purview, but one can't be numb to the inter-relationships that obviously exist in that regard. But, what I can say, and what I indicated to my friend before Court, is that my clients who are engaged in that Treaty Settlement process are firmly committed to tikanga-based engagement and resolution, under the korowhai of the Kingitanga and the principles of Kotahitanga and Mana Motuhake, and it is hoped that processes can be worked through that will be cognisant of all of those different interfaces and will hopefully result in a co-ordinated and collaborative approach moving forward.

I agree with my friend Ms Sykes' comment that external facilitation of that would be valuable and I think we will be approaching the Crown in that regard in a more united way. I think that facilitation applies not only in terms of refining and co-ordinating between counsel, pre any hearings, but also potential resolution with the Crown if we all reach that stage of understanding an agreement between ourselves as to the areas in which we are progressing applications or not.

In that regard, of course I observe, as it should be self-evident, that the application filed by Mr Papa was filed to ensure that all the hapū and marae of Waikato-Tainui do have a claim before the Court and that no-one misses out and obviously there are a number of other claims by specific hapū and marae groupings in relation to areas of coastline in particular harbours like Whaingaroa, for my friend Ms Sykes, that fit within that scope so there is no conflict in that regard sir. They are supportive, and we will work that through and obviously the aim is that my application will ultimately be progressed in relation to those areas where there aren't Waikato-Tainui live applications in terms of particular groups.

So, I just give that indication now upfront and that there is, I want to pursue a process to try and resolve and agree those issues in that regard.

In terms of the issue of priority, I agree with your suggestion sir, which my friend has also agreed with, rather than a 12 month adjournment for these applications, and certainly you can

put CIV-2017-419-84 alongside my friend's CIV-2017-419-83 that an adjournment for September/October, three or four months would be appropriate to another CMC, which would allow us to have those discussions and perhaps come up with, and include discussions with my friend, Mr Melvin, for the Crown, have some better indication at that time of what further timetabling is appropriate or other steps either as part of the Court process or outside that, are appropriate sir.

So, if I could seek an adjournment of this CMC for those two applications and any other applications that wish to also appear at that time sir. Because there obviously are overlaps. As I say, 12 to 16 weeks would be appropriate which will take us to September/October and by that stage there will also be a bit more certainty around what's happening in the Treaty Settlement space sir, which would be of assistance to all, I'm sure.

I think those are the only matters that I wish to raise today sir.

COURT:
If I can just refer to you [3] of your memorandum, you say the applicant considers that a determination by the Crown as to whether the Minister will enter into direct negotiations with the applicant and/or any other groups within the areas that are subject of the 84 application is relevant to the progress and timing of those applications and should be made before any substantive steps are taken in the High Court.

And you'll be aware that I can't direct the Crown. I think all I can say is that I accept that it would be of assistance to your client, and a great many others engaged in these proceedings, or these sorts of proceedings, for the Crown to indicate that. I think Mr Melvin has heard that previously, but that's the extent that I can go there.

MR FERGUSON:
I appreciate that sir and I don't underestimate the tasks that Mr Melvin's clients and the various officials that are dealing with that have working through, all the myriad of requests for direct engagement, but it would certainly, even if it's a no, it would be good to have that clear so that we can focus on what we need to focus on in terms of progressing these proceedings.

COURT:
Yes, and at a more practical level it has some fundamental implications for the resourcing that the Court may need to put into these matters too.

Alright, thank you Mr Ferguson.

REGISTRAR:
CIV-2017-485-202 – Te Rūnanganui o Ngāti Hikairo

MS MILLS:
Good morning your Honour. Counsel's name is Ms Mills, and I appear on behalf of Moka Apiti, on behalf of Ngāti Hikairo.

COURT:
Tēnā koe Ms Mills.

MS MILLS:
My colleague has filed a memorandum with the Court and the memorandum does attach the latest map. I'm simply here today to update you on progress.

COURT:
Yes, I've read the memorandum and reviewed the maps.

MS MILLS:
I'll just briefly take you through. Our client has engaged a historian and we are getting underway with briefing evidence. Progress is also being made with discussions with other overlapping applicants. We do need a bit more time to continue with these. We also have a watching brief today as our client is interested in some of the issues being canvassed by the other applicants.

So, we would also like to seek an adjournment of about 12 months to allow us to continue with briefing evidence, and also with a view to trying to reach agreement with the overlapping applicants.

COURT:
Alright, that's certainly something I would encourage you in your endeavours to achieve. So, just simply 12 months' adjournment as far as your client is concerned?

MS MILLS:
Yes your Honour.

COURT:
Thank you Ms Mills.

REGISTRAR:
CIV-2017-404-575 – Ngaati Mahuta ki te Hauaauru

MS BOLLEN:
Tēnā koe te Kaiwhakawā. Counsel's name is Ms Bollen and I appear for Te Rūnanga o Ngaati Mahuta. Some of the members of Te Rūnanga are here today sitting in the public gallery, so I welcome them.

We filed quite a comprehensive memo on 16 May. Just by way of update on that memorandum we've now engaged a historian and are working through a brief for that historian. And Te Rūnanga has organised a team to pull together for the traditional evidence side of things.

For the overlapping claims discussions, those have started in an informal way and a matter which Ms Sykes and Mr Ferguson have already spoken to with Waikato-Tainui Treaty Settlement negotiations. Ngāti Mahuta do fall under the umbrella of these negotiations so we took the legal point from Ms Sykes' memo around the impact these negotiations could have on applications.

However, while I do need to seek instructions on it, at this stage, do support the adjournment until September, allowing time to work through these discussions.

COURT:
How significant do you think these potential settlement discussions, or ultimately potential settlement may be. A number of counsel have referred to it, all somewhat elliptically, I would like to get a feel for, are we saying if potentially if there's an adverse outcome as far as your client is concerned, we might be back to square one, and whatever timetable orders I might make, might have to be completely rescinded and new orders made? I mean I don't have a feel personally for just what the potential consequences are. Obviously counsel think they're significant because a number of you have mentioned them.

MS BOLLEN:
I take your point your Honour. I don't have full instructions or information I'll need to raise at the moment, but I'm happy to address in a memorandum or in discussions with Mr Ferguson on this point.

The only other things I have to say is that we do also support the suggestion from Ms Sykes and Mr Ferguson on the national applications, and the mapping concerns. I'm happy to speak with counsel on those points.

If there's no questions on the memorandum, I have nothing else to raise.

COURT:
Thank you. I've read your memorandum, it's comprehensive.

Thank you Ms Bollen.

MR FERGUSON:
Sir, I hesitate to stand but I might be able to proffer something in answer to the question you asked regarding inter-relationship.

I think, as my friend has just said, it is difficult to clearly identify, at this stage. One thing that I can observe is that, in terms of the Treaty Settlement negotiation process, the Crown presently, and Crown policy does change from time to time, but presently has a policy decision from Cabinet regarding the parameters for settling [inaudible], which is what the settlement negotiations relate to. And that policy currently says it is critical that there be no inconsistency in the Treaty Settlement negotiations space with processes under the Takutai Moana legislation. And, appears to give some primacy to matters before this Court to the extent that the policy says that, and I quote "no redress will be offered in the Treaty Settlement space that is equal to, or greater than, the various rights granted for customary marine title holders under ss 62(a)-(f) of the Act".

So, what I think it's clearly saying is that they, under their policy direction and no doubt there are always exceptions to this, but as a starting point, are saying they won't give anyone through Treaty Settlements, rights that are the same or greater than the rights. So, it's going to be things of a different nature.

Now, that still leaves a whole lot of potential for overlap and other bits and pieces but it's certainly not going to get, on the face of the current Crown policy as I read it, the aim is not to replicate or duplicate matters that are properly within the confines of this Court.

Mr Melvin may be able to clarify that more greatly but that's as I see the Crown's current policy in this area. So, hopefully it won't be an issue of revisiting matters but certainly I think we need to be cognisant of the relationships as one working through any settlement negotiations wherever they are around the motu that are intersecting into the marine and coastal space.

For example, in relation to the Wanganui River settlement that was concluded post this legislation in 2014, and enacted in 2017, the areas that were subject to that stopped at the mean high-water springs mark in terms of some of the new regime. But there were, and the transfer of title that occurred, but there were other overlays that do apply within the coastal marine area. But, they are not matters of the nature of rights that will be granted under this legislation sir. So, it's a little bit of guidance for your Honour at this stage.

COURT:
That was in accordance with my understanding. I was merely curious as to how the various parties, given that factual background, saw potential for these claims. But, I guess we just have to wait and see.

REGISTRAR:
CIV-2017-485-207 – Ngāti Apakura

MR BENNION:
Tēnā koe te Kaiwhakawā o te Kōti Matua. Mr Bennion appearing on this matter.

Sir, you have a memorandum dated 11 June following from our earlier 16 May memorandum. So, this is Ngāti Apakura Rūnanga Trust. It attaches a map and simply says that Ngāti Apakura will be ready for a hearing in 2021/22. In fact, they're engaging with the Crown on another matter at the moment quite extensively, and that's taking their time at the moment, so we're in a position to state that we're not anticipating an early hearing of this matter.

COURT:
In terms of timetable that you're asking the Court to make, what is it?

MR BENNION:
Just to adjourn for 12 months.

COURT:
So, you want a 12 months' adjournment?

MR BENNION:
Yes, sir.

There are three other matters that I need to quickly address you on. The first is the Ngāti Pūkenga claim application which you dealt with in Tauranga and I mention that it has areas in the Bay of Plenty but also in the Coromandel and up in Whangarei Harbour. And I think, I maybe in the wrong space here, but the Coromandel aspect involves Manaia, the area around Manaia, and I wasn't sure if that was covered by this CMC. It might be coming up in the Auckland one.

COURT:
Yes, I think it will be. But, I'm the same Judge here as I will be in Auckland, so what you tell me now I will remember.

MR BENNION:
Exactly sir. This is very convenient.

So, just to say if the matter on the Manaia Harbour aspect of that application, we will just follow … abide any timetabling orders that might bring in that harbour and claims in that area if there are orders set down for hearing, and we will just have to follow as overlapping claimants, whatever orders might be made.

Then the other final two matters are actually applications for Mokau ki Runga, Ngā Hapū o Mokau ki Runga. Now, they are matters 216 and 209.

COURT:
Yes, they are two of the matters that were going to be called in the New Plymouth Court on Monday. I've just finished before I came into this Court, dictating a minute which will result in the transfer of those matters to this Registry to be dealt with, in the same manner as the other matters in this Registry. That minute may go out today, it may go out tomorrow.

MR BENNION:
Shall I address you briefly on those matters?

COURT:
If you want to.

MR BENNION:
Yes. Just to simply say that, they're both from the same group, that's the Regional Management Committee and they were split into two because the area runs from Tirau Point down to Northern Taranaki, the Mokau River.

COURT:
Yes, I'm familiar with the location.

MR BENNION:
Thank you sir. And the idea was, the split in this, to bring a separate application in the southern end was because we're anticipating an agreement with Ngāti Tama, but that seems to have gone for the moment I think because Ngāti Tama will, I think, be dealing with other Taranaki groups and try to settle there.

So, that's why we're seeking to have them into the Hamilton conference now. And if I can briefly indicate that there is a researcher. The researcher for these matters is actually, I understand, the same researcher whose dealing with the current negotiations with the settlement of the Maniapoto claim as a whole, as I'm speaking with my friend Mr Tootill here, it's very probable that these may be part of a combined Maniapoto effort to consolidate all of the applications for Ngāti Maniapoto and seeing whether or not it might be dealt with in some sort of negotiated arrangement. But that's a very tentative proposal at the moment. I understand there's meetings being established next month to begin that process. I just indicate where those got to sir.

Lastly, I'm available for any assistance with mapping that might be required on any committee, and I understand that, unfortunately I did not come back to Court yesterday afternoon because I was meeting with claimants, but I understand that Mr Melvin clarified where the Crown position is with Court fees. And I'm pleased about that and I will be reading the transcript carefully to see what's been approved by the Crown there.

COURT:
Thank you Mr Bennion. I'd encourage you to speak directly to Mr Melvin if you have some initiatives in relation to mapping that you haven't already put to him.

MR BENNION:
Yes, thank you sir.

COURT:
Thank you Mr Bennion.

REGISTRAR:
CIV-2017-419-80 – Tootill

MR TOOTILL:
Tēnā koe te Kaiwhakawā. Mr Tootill sir. In these proceedings I am currently unrepresented. Sir, the application filed in 2017 was on behalf of those who have interests in the Kawhia, Aotea and Whaingaroa Harbours following a hui that was held at Mokai Kainga in 2016.

I filed a memorandum dated 16 May and just to note there sir that no substantial progress with my application has occurred since the first CMC. I have been declined funding by the Office of Māori Crown Relations, Te Arawhiti, and that issue has been ongoing since the time I filed my application. Essentially the lack of resourcing has delayed instructions for representation in these proceedings and I've also been unable to advance research and evidence gathering to support and progress the application. That's just an update.

I understand in talking with Mr Melvin earlier that there is someone here today who I may be able to speak to in regards to that, and keen to look at progressing those matters sir.

COURT:
Alright. As I understand it, there will be overlapping claimants in relation to the area that your claim relates to. What steps have you taken to talk with those claimants?

MR TOOTILL:
So sir, prior to the filing of the application, there was a hui held at Mokai Kainga to discuss with a number of those claimants, potential to file the application, and I note that, at that time, there was general agreement to submitting the application on behalf of the various groups. Since that time, there were a number of applicants who chose to file their own applications, and so certainly, as from the start, keen to support the various groups. Since that time, there has been some discussions, nothing formal has come from that. Again, keen to continue with those discussions.

COURT:
I would encourage that. All of the other counsel who have appeared at the other CMCs have heard me indicate that the outcome is achievable to direct discussion as between, particularly parties who have conflicting claims, are likely to be much more satisfactory than anything that the Court could ultimately impose.

In terms of an overall timetable order, are you happy for your claims simply to be adjourned for 12 months?

MR TOOTILL:
Yes sir.

COURT:
Thank you Mr Tootill.

REGISTRAR:
CIV-2017-419-85 – Te Tokanganui-a-Noho Regional Management Committee

MR TOOTILL:
Sir, Mr Tootill again. I texted a colleague of mine. He gives his apologies. His name is Weo Maag. He is a representative for Te Tokanganui-a-Noho Regional Management Committee. He wasn't aware of today's CMC sir.

COURT:
Were your communications with him sufficient for you to be able to indicate to the Court what stage that application is at?

MR TOOTILL:
No sir. I simply got a message that he was unaware and asked that I provide his apologies.

COURT:
His apologies are recorded and accepted. Can you indicate to him, and I will be asking the Registrar to communicate, but given that all applicants will have received notice by a number of means, it may well be that we don't have a current address for him. So, if I could ask you to assist by asking him to communicate with the Registrar and confirm what his contact details are. That will then allow the Registrar to communicate and ask him what orders or directions that his client is seeking, and to indicate whether there are any impediments to progress.

MR TOOTILL:
Thank you sir.

REGISTRAR:
[inaudible]

MS JONES:
Tēnā koe. Counsel's name is Ms Jones. I'm appearing today on behalf of the Whakatane, Hauraki and Waikato District Councils.

Sir, without repeating much of what I said yesterday, just on the matter of disclosure, we are happy to engage with applicant groups about an appropriate process of disclosing relevant information.

Perhaps it would be most useful to the Court and to applicant groups if we produce joint memoranda on behalf of all five Councils we act for. Putting a proposed process forward. I think there were alternatives discussed yesterday by way of the Official Information Act or Local Government Official Information and Meetings Act.

So, we seek 10 working days to produce a joint memorandum setting out a proposed process and during that process we'll engage with applicant groups and hopefully the Regional Councils as well to make sure that it's a consistent approach.

COURT:
Yes thank you Ms Jones.

Alright. I'll just make sure there are no other interested parties present who have responded to the memorandum.

No.

Now, Mr Melvin for the Crown.

MR MELVIN:
Tēnā koe te Kaiwhakawā.

I don't think there's too much for counsel to address your Honour on today. Perhaps a couple of matters.

One arises from my friend Ms Sykes' memorandum of 17 May for the application by Ms Greensill. She asked at [16] of her memorandum for a direction from the Court to enquire from counsel for the Attorney-General what is the status of the engagement process and I understand she's there referring to the Treaty Settlement process – this process. And what potential impact that may have for these proceedings.

The position is that which has been outlined in the Attorney-General's memorandum filed on 7 June. That is that the Te Arawhiti is developing a work programme and strategy for Crown engagement matters, and that is to be put up for ministerial approval in the next few months and will be released to applicants and counsel later this year. So, I'm not able to give any further indication than that.

COURT:
Yes, my preliminary view would be, given that the Act has prescribed two quite different procedures for advancing these claims, one of which clearly falls within the jurisdiction of

this Court and subject to the High Court Rules, and the other one doesn't, I'm not sure that I actually have jurisdiction to direct any party that is proceeding by the route that doesn't involve this Court, to do anything.

MR MELVIN:
Yes, and I would share that view your Honour. It's really a matter of just keeping the Court apprised of matters.

COURT:
Obviously if there are relevant developments, it would be very helpful both for the other applicants, cross-applicants and indeed for the Court ultimately. But that's a different issue as to whether or not I can compel either the Crown or anybody else to divulge what's happening in a process that this Court has no involvement with.

MR MELVIN:
Thank you sir. I just want to clarify one matter arising from my friend Ms Sykes' submissions to you. There may have been a possibility of some confusion over funding. Ms Greensill's application to the High Court is funded. Te Arawhiti has approved funding for that so there's no question that funding for her High Court application is available and underway.

Beyond that sir, the Attorney-General would support an adjournment to later this year, perhaps to October for the two applications that have been discussed in that regard, that seems to be a sensible approach to take.

I don't think I have any particular submissions to make, unless your Honour has any questions.

COURT:
No, thank you. I think we've covered all the issues that I wanted to cover with the Crown at the prior CMCs.

Thank you Mr Melvin.

Thank you counsel for your submissions. Thank you to the whānau for attending and playing a part in these hearings.

Mr Registrar, we will now adjourn.

CMC CONCLUDES – 11:22:35