MACA CASE MANAGEMENT CONFERENCE
ROTORUA
19 JUNE 2019 at 10.00 am

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

Thank you all for attending. For many of you it's not your first CMC. For some of the interested parties, it's undoubtedly your first CMC. If so, welcome.

I'll just start by explaining the purpose of the conference and the order that we're going to proceed in.

These conferences which are addressing all 202 claims in this Marine and Coastal Area Act (Takutai Moana) list are being held throughout the country. It's been a busy week for the registry staff. We started in Gisborne, we were in Tauranga yesterday, we're in Hamilton tomorrow. Some of you have been at all of those destinations and we'll no doubt see you next week in other places.

For those of you who might not be familiar with these sorts of proceedings, what we're trying to do is to maintain progress so that the Court can control and make sure that things are being done which will ultimately result in matters being set down for hearing at a time that suits the parties, and to make sure that things are progressed rather than languish and get forgotten about.

There are also a number of legal issues that will need to be determined. In Whangarei next week we're having an interlocutory hearing about one of them and undoubtedly there will be others that we will have to hearings about on various other occasions.

So, Mr Registrar if we could start with simply calling the matter through so I can work out exactly who is here and who they represent.

REGISTRAR:
CIV-2011-485-817 – Edwards, on behalf of Te Whakatōhea.

MR SINCLAIR:
Tēnā koe sir. Te tutahi he mihi ki to rōpu, te rōpu o te Takutai Moana e te wharetaitai. Tēnā koutou. Whakatōhea, whānau, hapū, Rangatira katoa, tēnā koutou. [Mihi]

Sir, my name is Sinclair with my learned colleague. I'm appearing for the applicant, Edwards, Whakatōhea application, 816.

Sir, we are also appearing for applicants Hiwarau – 375; Pākōwhai – 264; Whānau a Apanui Hapū – 278; Ngāti Muriwai – 269.

Tēnā koe sir.

COURT:
Tēnā kōrua, Mr Sinclair and Mr Gilling.

Do you have anything to address me on Mr Gilling?

MR GILLING:
Not at the moment sir, except one small matter Mr Sinclair said that this matter that we're appearing for is 816, it's actually 817.

COURT:
Thank you.

REGISTRAR:
CIV-2017-485-299 – Ngāti Ira o Waioweka Rohe.

MS SYKES:
Kia ora te whare. Kia ora tātou e huihui mai nei te rangi te maru o tenei na turei o te Pākehā. E te Whakawā e whakamihi mai kia tātou – tēnā koe. Kare ano i tutaki e mu a koe e ngaro i runga i tēnā honore. Nau mai, haere mai ki te rohe o Te Arawa.

Maua ko Annette Sykes and Jordan Bartlett for Ngāti Ira o Waioweka Rohe. [Mihi]

Sir, in English, it's an honour to be before you today on my Treaty lands of Te Arawa representing an important hapū of the people of Te Whakatōhea and they have travelled from

Opotiki today and we're honoured to have amongst us a leader of the Ringatu Church, who is the main and principal claimant for his peoples of Ngāti Ira o Waioweka, and he is available to address any tikanga issues that may arise.

Our final thoughts today are with a special claimant of Mr Bennion's, who passed away suddenly on the weekend. He was a treasured kaumātua. He's one of the reasons why we've been trying to bring these matters to a fruition quickly because he's been waiting for a long time for his matters. He's presently in a funeral home waiting for his family to return and our thoughts are with Ngāti Patu and Russell's family at this sad time. Kia ora.

COURT:
Tēnā kōrua Ms Sykes and Ms Bartlett.

REGISTRAR:
CIV-2017-485-377, 262, 270, 272:
Te Hapū o Titoko Ngāi Tama, Ngāi Tamahaua, Ngāi Tai, and Ririwhenua Hapū

MS LINSTEAD-PANOHO:
Tēnā koe te Kaiwhakawā. Sir, may it please the Court, counsel is Ms Linstead-Panoho. I am here today with my learned friend, Ms Clark, on behalf of Ms Tracey Hillier for her two applications which are 377 and 262. And, also Ms Muruwai Jones and her applications are 270 and 272. Ms Hillier is a representative of the hapū o Ngāi Tamahaua and Ms Jones is a kaumātua of Ngāi Tai iwi.

COURT:
Tēnā kōrua.

REGISTRAR:
CIV-2017-404-482 – Ngāti Haurere ki Whangapoua
CIV-2017-485-375 – Hiwarau, Turangapikitoi and Ōhiwa of Whakatōhea

MS THOMPSON:
E te Kaiwhakawā, tēnā koe. Counsel's name is Thompson and I appear on behalf of Mr Hirschfeld for Ngāti Huarere ki Whangapoua – that's 482. I note that 375 has also been presented. However, we are no longer counsel for that case.

COURT:
Tēnā koe Ms Thompson.

REGISTRAR:
CIV-2017-485-196 – Ngāti Awa

MR WEBSTER:
Sir, Webster appearing for Te Rūnanga o Ngāti Awa.

COURT:
Tēnā koe Mr Webster.

REGISTRAR:
CIV-2017-485-253 – Ngāti Patumoana

MR BENNION:
Te Kaiwhakawā, tēnā koe. Mr Bennion for the Patumoana claim. And if I could add to what Ms Sykes said. We visited Mr Hollis yesterday at the funeral home. He's a respected kaumātua. E te Rangatira, haere atu ki tua o aria. We had an application here to actually formally add him to this application but we'll be withdrawing that, obviously.

COURT:
Tēnā koe Mr Bennion.

REGISTRAR:
CIV-2017-485-513 – Manu Paora Whānau

MS COLLINSON:
Tēnā koe your Honour. Counsel's name is Ms Collinson and I appear for Mr Cletus Maanu Paul on behalf of Manu Paora Whānau.

COURT:
Tēnā koe Ms Collinson.

REGISTRAR:
CIV-2017-485-355 – Te Uri o Whakatōhea Rangatira Mokomoko

MR KETU:
Tēnā koe te Kaiwhakawā. Counsel's name is Ketu. I appear for Te Whānau a Mokomoko.

COURT:
Tēnā koe Mr Ketu.

REGISTRAR:
CIV-2017-485-201 – Kahukore Baker (Te Ūpokorehe)

MS ZWAAN:
Tēnā koe te Kaiwhakawā. Counsel's name is Ms Zwaan and I appear on behalf of Ms Baker for the iwi of Te Ūpokorehe.

COURT:
Tēnā koe Ms Zwaan.

REGISTRAR:
CIV-2017-485-292 – Whakatōhea Māori Trust Board

MR POU:
Kia ora ano sir. Jason Pou for the Whakatōhea Māori Trust Board.

COURT:
Tēnā koe Mr Pou.

REGISTRAR:
CIV-2017-485-185 – Ngāi Taiwhakaea Hapū

COURT:
No-one has instructions? A matter Mr Castle was appearing – no.

Alright, if that's all the applicants, Mr Registrar, if you could invite the interested parties to indicate their presence please.

REGISTRAR:
Seafood Industries – Ms Kate Rouch
Property Owners at Whanarua Bay – Mr Mark Stringfellow
Great Mercury Island – Ms Drought

BOP Regional Council and Opotiki District Council – Ms Tania Waikato
Ngāti Ruatakena – Ms Mereaira Hata

COURT:
Tēnā koutou.

Mr Registrar if you call the first matter and we'll simply work through things.

REGISTRAR:
CIV-2017-485-817.

MR SINCLAIR:
Tēnā koe ano. Sir, before I proceed through the submissions, I understand the filing was quite late last night. Sir, I do have copies of the submission for any counsel that do not have copies.

COURT:
It probably would be useful for you to share those around because there are some matters in them that I suspect other counsel may wish to address me on.

MR SINCLAIR:
Thank you sir. In regard to that matter of filing, the maps submitted for the applicant were filed as well. However, we did not copy numerous numbers of map. What we have done is reproduce one large map for the benefit of the Court, and if it pleases your Honour, if we could present this and talk to it through our submission, it would be very helpful.

COURT:
Does it have the same material on it that the small maps …?

MR SINCLAIR:
Exactly the same material sir.

It's simply for the benefit of the other counsel who may not have a version.

The importance of the map goes to the heart of this submission and it's simply or counsel have made the determination to produce these maps, as your Honour previously requested. In

addressing the extra time sought for the filing of the maps, or maps there took some time and were the work of a number of applicants. Those maps, there's three of them in total, they depict the traditional Takutai Moana areas of Whakatōhea.

The importance of submitting correct maps is not lost on Whakatōhea applicants sir. There have been maps submitted in their name in other inquiries, and it has prejudiced them moving forward. So, the importance of spending a significant amount of time putting these maps together so that the tribal area that is claimed by the applicants does not reduce in size. But actually reflects the period from 1840 onwards to 1865.

COURT:
Yes, I can confirm Mr Sinclair, I've read your submissions and the ones I got this morning.

MR SINCLAIR:
Thank you sir. In that regard, I'll move on to [15].

COURT:
Perhaps if you could just talk me through [10].

MR SINCLAIR:
[10] is simply an acknowledgement by the applicants that there are some applicants, represented, who are prepared and willing to engage in whanaungatanga discussions for the purposes of supporting the Takutai Moana applications for Whakatōhea. I understand that to mean that there are internal matters within Whakatōhea, and there are external matters. When I mean external matters, external to the Whakatōhea traditional boundaries.

So, I understand that in relation to the Whakatōhea Māori Trust Board's support of various applicants, I understand that as certainly not opposing the applicants.

COURT:
The particular concept I was wanting to make sure I understood are your words "Whakatōhea whanaunga tautoko Whakatōhea whanaunga", and I understand that simply to mean that you support the various hapū of your iwi.

One of the difficulties of course is that it doesn't seem that all the hapū particularly want to be represented by your client. And, while it makes perfect sense in the situation where there

are many hapū and many layered claims as you point out in your submissions, really for that to work effectively, everybody has to agree to that and to the extent that there ultimately is disagreement, and it may well be that there are some hapū who you are not in a position to represent because they want to advance their own case.

MR SINCLAIR:
Certainly sir, that's always the case. And every tribe in this country would no doubt be aware of it. The applications are not based on whether applicants today agree or disagree. To a large extent these applications are based on the historical, political and legal rights of each one of those applicants within Whakatōhea to claim their customary protected rights and customary marine title, are still in existence, still remain.

The whakawhanaungatanga issues are not whether one particular group disagrees with another particular group, the issue is whether those groups combined, have the actual right to that particular area. The answer is either yes or no, based on the evidence put forward.

It's simply sir, and we'll move into the casebook, research report, it is simply open discussion at the moment whether there's merit in proceeding in the whakawhanaungatanga or tahitanga method or not.

COURT:
You've indicated that there does seem, at least to some extent, support for that?

MR SINCLAIR:
The clients who we're representing before this Court have agreed to combine and work together. The purpose of that map indicates those groups who have agreed to work together. They're on the map. That map is used, in our hui, to identify those groups' first and foremost areas, and identify those groups that wish to work together. Of course it's early days, and those discussions will continue.

The test for our clients is not a test against each other and unfortunately that's been in the pipeline's view, a process of the 1865 confiscation. It's not a test against internal hapū, it's a test against the Act, and it's a test against those external groups that are not part of the Whakatōhea. That's what the test is for our applicants sir.

COURT:
Yes, and I've just had note from my Associate who's typing things up. She asks if you could just speak more directly into the microphone.

MR SINCLAIR:
Thank you sir. Are there any more questions on that matter sir?

COURT:
You were wanting to take me to [15] and that's where I'd like to hear some more from you.

MR SINCLAIR:
I'm just moving straight to [15], to indicate that our applicants are proposing to hold a Whakatōhea-wide hui. We've held several wānanga hui. They're simply open discussions. My applicants are wishing to move into more formal discussions progressing this matter. As you pointed out sir, there are some applicants who do not wish to work collectively and we need to identify who they are and what is their overall purpose, what is the objective of that, for the good of Whakatōhea as a whole.

There's four dates that we've indicated for ongoing hui.

Unless your Honour has any matters regarding that?

COURT:
No, that's fine.

MR SINCLAIR:
Thank you. The traditional map sir, which as you can see is Exhibit A, will no doubt be congratulated in some areas and condemned in others. Simply, because of the extent that our applicants believe that Whakatōhea Takutai Moana Area traditionally reached.

Our applicants do not believe that nearly every single map that's been filed to this Court reflects their traditional boundaries. They believe it reflects a colonial construct as a result of the 1865 Crown invasion of Whakatōhea lands.

Sir, you've no doubt seen submissions I've made previously on this matter and counsel really wish to address the 1865 issue. That map goes to the heart of it.

COURT:
Yes, well you've covered that in your memorandum and I do have some questions for you on some of the points you raise. But, you just take your time, work through your memorandum and we'll get to that in due course.

MR SINCLAIR:
In that regard sir, Mr Gilling is invited to engage at any opportunity in regard to this matter sir. Thank you.

Sir, I'll move along to the more administrative matters, map funding policy. I understand the Court is not the place to deal with funding matters. However, Crown funding and the administration of such funding for project managers is difficult to say the least. And is causing a great deal of discomfort and pressure for project managers and for our applicants.

I won't go through the paragraphs; from [27] to [32] outlines the issues quite well.

COURT:
There is one matter in [29] that was a particular concern for me. That's the suggestion that the hearing, which you're right, it has been set down for eight weeks is only funded for two weeks. And is there a reason for that?

MR SINCLAIR:
I've had discussions with MACA funders and I would have thought the Crown would've appraised your Honour of this fact. Essentially, as I understand it, the funding matrix followed the Tipene case in the South Island in which the High Court hearing for two weeks was held. They understand quite clearly now that that's not possible. So, as I understand it, Crown funders are reviewing their policy.

COURT:
Well, given there is a confirmed fixture for eight weeks, the Crown should be in no doubt as to what level of funding is required.

MR SINCLAIR:
The problem with that is that every applicant has filed funding matrixes to the MACA funding policy unit, and that fund is locked in. There is no wiggle room, so to speak.

COURT:
Well you're right, funding is not directly a matter the Court has responsibility for, or should get involved in, but if decisions made in relation to funding impact on the ability of the Court to effectively address these matters then it does become a matter of concern, so, are you engaged in dialogue with either the Crown or Te Arawhiti?

MR SINCLAIR:
Almost daily sir.

COURT:
Alright. I'll leave that to you, but I think it is appropriate for me to express some concern that there may be a situation, and it may be I've misunderstood what's in your memo, where possibly six weeks of an eight-week hearing could be unfunded.

MR SINCLAIR:
I have no issue with filing your Honour a submission on this matter.

COURT:
No, you don't need to, you've made your point, but the solution is to engage directly with either Te Arawhiti or whoever it is you've been addressing these issues with in the past.

MR SINCLAIR:
Thank you sir. Just to add, they are snowed under, they're deeply under pressure and it's a matter that they're addressing at the moment. But, I've got no idea. The process is quite uncertain.

Moving down to [33], I've raised this matter before sir. I want to put to the Court again that the issue of Raupatu has not been dealt with in any other forum. It hasn't been dealt with before the Waitangi Tribunal in a Whakatōhea historical inquiry.

For the purposes of the 2011 Act, the question is quite simple. Did the colonial invasion in 1865 substantially interrupt Whakatōhea and their relationship with Takutai Moana?

Sir, my applicants, and I've asked many of them, without a doubt, say there couldn't be anything more clearer. One of the reasons for that, if you look at the traditional map, the western boundary, Hiwarau C, it's a reservation. That reservation was created to shift tribal

groups from one area of Whakatōhea, a confiscated area, onto reservations in another area of Whakatōhea.

You go to the eastern end of the traditional Whakatōhea rohe, and you have Opape reservation. These are reservations, in my view, that are not too dissimilar from American Indian reservations. The distinguishing difference is sir, these are nothing more than the size of life-style blocks, where at least for the American Indians, there was enough land to subsist in.

Sir, if that's not substantial interruption of a tribal area, it's hard to understand what is.

COURT:
The more relevant point though, is that, in terms of the statutory test of exclusivity, is interruption caused by something like confiscation a matter which disentitles the claim. And although you haven't used those words to describe the legal issue, it does seem to me that, consistent with what you've said in your submissions, that that is a matter that the Crown will have to address head-on, and direct express submissions to. Because I had anticipated that your client, and probably a number of others, will ultimately make a submission to the Court that, where the exclusivity could not, or might not, have been able to be maintained as a result of actions such as confiscation, that doesn't disentitle them from advancing a claim under the Act. So, it is a valid point and I think your point is well made that it is something that the Crown will need to address, and indeed may well have been preparing to address in any event.

MR SINCLAIR:
In addition, quite simply was the 1865 Crown Raupatu lawful or unlawful, and it shouldn't be the task of our applicants to prove that sir.

COURT:
Well, it's likely to be a part of your case. I don't think we can start with a presumption that: (a) it was unlawful; and (b) that doesn't automatically disentitle you from alleging exclusivity. So, I would expect at least some evidence and some submissions on it. But it is a live issue. It's a matter that I think you've appropriately pointed out, the Crown will need to address.

MR SINCLAIR:
If I can just remain on that point for a moment. The issue is not whether the applicants have a live issue or not. The issue is whether the applicants should have to produce evidence post-1865?

COURT:
Yes, you've flagged an argument in [40] and other paragraphs, that effectively the critical date for your clients should be 1865. And that's an argument that you're at liberty to pursue should you wish to do so. And I think, Mr Melvin, having read your memorandum, will understand the points you're making. And if he takes a different view, I'm sure he will tell me about when it becomes his time to address me.

MR SINCLAIR:
Thank you sir. I think if the critical date is found to be 1865, we will have that two-week hearing.

I'm going to leave it there now and invite my learned colleague, Mr Gilling to make comment. Thank you sir.

COURT:
Thank you Mr Sinclair.

MR GILLING:
Thank you sir. The issue was of course raised before Justice Collins at the last CMC and I'd like to tautoko the submissions that my friend Mr Webster made where he was raising the nature of the interruption and the extent of the interruption, and also the complexity of the processes that surround it all. It's not simply a case of a bit of confiscation. There's an Act, then there's a proclamation under the Act, a couple of years later, and then the reserves such as Opape and Hiwarau C handed back, but who were they handed back to? All of Whakatōhea just about was lumped altogether on Opape and, so as Mr Sinclair has mentioned, what does that then do to Whakatōhea more generally, or the other hapū, because it's all one hapū's land. And then there are sir, other questions which are, as far as I'm aware, have not been considered by anybody which are such matters as raised by Mr Webster, as to where exactly the confiscation ran and the maps of the confiscation are all

about going inland, and they are described as going inland, 12 miles from the mouth of the Ohiwa Harbour and so on.

And then joining the two end points, I think Puketapu or thereabouts and then running right back past Matata, but where did it run? And we're going to, I think, either have to find some evidence which I'm fairly confident won't actually be there, or make submissions about, whether it includes in fact the foreshore area that's included in consideration for this Court. Which then raises other issues about access versus ownership as well, if the confiscation only went to mean high streams, and not further down the beach. And then was the foreshore confiscated, included in the confiscation at all?

There are very significant issues and a hugely complex factual matrix that need to be incorporated in this, and some of the matters have been addressed, a lot of the legalities as was put to Justice Collins, the evidence given in other tribunal inquiries, unfortunately we haven't had one for Whakatōhea. But, the legal side of it, the legality of the confiscation and so on, but a lot of these other complexities, I'm pretty positive have not been dealt with and so the research that's going to need to be done in this matter will be intricate and complex sir.

COURT:
Yes. I understand all of that. What I would be keen to hear a little further from you on is the timetable set out in [41], and if I could just preface that by saying, I assume Justice Collins didn't set a specific timetable at the corresponding CMC last year, or at least if he did, I haven't been able to find it.

MR GILLING:
I wasn't involved at that stage so I'll hand it back to Mr Sinclair at this point.

COURT:
I'm sure one of the other counsel will be able to clarify that. But you've essentially raised an issue in the second bulletpoint in [41] as to the contemporaneous exchange of evidence or the sequential exchange of evidence. And my understanding what is set out there correctly that you are suggesting that all of the Whakatōhea hapū evidence be filed at one point. In other words, at the same time. And other iwi who are asserting cross-claims file subsequently. Have I correctly understood your memorandum?

MR GILLING:
That would be of course dependent on the discussions which Mr Sinclair has already indicated are to take place, and how well those go. Because there are deep rooted issues within the iwi between the hapū, so, it may work, it may not.

COURT:
No, but from today one of the things that I will try to do if I'm able to, is fix a form of timetable and so far all I've got to go on as far as, as I understand your clients' position to be, is what you've set out in [41]. So, it may well be that some of the other counsel may wish to make submissions on that given that they will not have seen that previously. So, I'm just wanting to make sure I understand what it is you're submitting to me should be the timetable direction I make. I won't make it immediately after the end of this hearing but I will make one broad ruling when I've finished all nine CMCs.

MR GILLING:
Yes sir. Just referring to your first point. My friend has just provided me with Justice Collins minute No. 2 dated 21 November. That's where he set out the current timetable at [8].

COURT:
That would explain why I haven't been able to find it. It would be on the file relating to those October CMCs rather than the June ones.

MR GILLING:
Now as far as your other points sir. Again, Mr Sinclair can speak more to the, dealing with the historians and so on, but my understanding is that the applicants' evidence will be ready in October and will be available for filing by the 28th. The historians are well advanced and have submitted progress reports and such like. Some of the work is completed but there are three historians working away and they're not at the same level.

The other issue is there is a large quantity of the existing material that was collected earlier when the applications filed under the 2004 Act, and that is having to be transcribed. They're affidavits from kaumatua kuia, from, I guess 15 or so years ago.

COURT:
When you say transcribed, what does that mean?

MR GILLING:
It means, as I understand it, that these were either taped or videoed and they are having to be updated in terms, but I also understand sir, that those are well advanced. And so there will be a mixed body of material available for other groups to interact with, and the first group is the availability of the maps filed at this point.

MR SINCLAIR:
Sir, if I can make some additional comments on [41] regarding timetabling.

The 28 October has been a date set by applicants and speaking with historians. There are three historians engaged and have been engaged for some time. One of the historians has had a recent eye operation. That particular historian is very important. That historian will work on the ground locally among several of the hapū that are named in this application.

The applicants' evidence is in an advanced stage as my learned colleague stated. There is one report is going to take the time period from 1840 to 1865. We've taken it upon ourselves to have that report done. We've requested something similar and raised the matter previously. There didn't appear to be a lot of support for it. So, our applicants have collectively determined to produce that report.

Of course we're not relying on a 1865 confiscation period. So, the other two historians are carrying out reports post-1865 to the present day. They are in a well advanced state as well sir.

The matter of cross-claimant evidence. Our applicants, and many others we've spoken to, can't understand why in this type of application, their evidence should be filed first and, all other Whakatōhea hapū evidence, which should be gathered simultaneously at the same time, are filed two, three months later. We certainly understand it in regard to neighbouring iwi. It's just a matter for discussion and as my learned colleague stated, no doubt, those matters will be raised in meetings to be held.

The timetable that we've set down there has been discussed among applicants and some hapū.

That ends my submission on this matter.

COURT:
Thank you Mr Sinclair.

MS SYKES:
May it please the Court.

I have a copy of the minute, if that will assist you, of 2 November, as I intend to build on that minute in my opening address.

And the other matter that I'd like to raise is a preliminary point. We got late submissions both from the Crown and my friends, and I would seek leave if I could in the next seven days to respond in writing to the matters I now wish to address viva voce, just in case I have missed any matters that I haven't actually discussed with my claimants or my applicants, in particular some of these mapping issues sir.

COURT:
Yes, you're granted that leave and I think, I can't remember whether I've said it today but I've said it at every other CMC, it's not helpful for the Court or the applicants to get these sorts of memoranda half an hour before the hearing starts. But, yes you've got that leave.

MR SYKES:
I don't wish it as a criticism sir, I have to agree with my friend that the questions of resourcing.

COURT:
Yes, look I understand fully why it happens. It just doesn't make it any easier for running an efficient hearing.

MS SYKES:
If I can commence with a proposed change to Justice Collins' timetable, and I'm not addressing you on this point, my friend Ms Linstead is going to do this. But, there needs to be, in my view, some timetabling provisions made for the questions of discovery or disclosure. I'm not quite sure how to frame it at this moment given the unknown status of the Crown in these proceedings.

COURT:
Well, there's a more fundamental issue Ms Sykes, and that's given the originating application nature of these proceedings is discovery even available.

MR SYKES:
And that's the point that we're, I think it will largely be determined once we know, and this may need to be an interlocutory issue, what is the status of the Crown in these proceedings.

COURT:
Well, that's another issue too. There's two separate issues. Normally, as you will be aware on originating applications, you don't go through a discovery process. But, at the moment, there's no live application to determine that the role of the Crown has been raised as an issue, but obviously if the party seeks a preliminary determination on that, we will have to have it.

MS SYKES:
I believe the approach that's been taken in this rohe and the region, it has been raised as a live issue elsewhere, and it was dependent on the outcome of that application rather than repeating it, as to how that was going to be disposed of. It doesn't seem logical as a matter of law that they should have different status in different rohe and their status, I believe in all of these proceedings needs to be determined at an early stage.

So, that's just a matter that I was content to rely on that argument elsewhere. I understood that it was a live issue, certainly in the [inaudible] proceedings and those various rohe there.

COURT:
It could be and maybe next week when I'm Auckland I will hear more about that. But, just coming back to your discovery point, that is a separate issue. I mean the Crown are interested parties. Whether they wear more than one hat will ultimately be what the Court decides when it addresses that issue.

I really need to hear from Mr Melvin, but as I understand the Crown's position, it is that, because of the nature of these proceedings, in other words, how they started, discovery isn't something, at least discovery in the way that I understand you're suggesting it needs to be done, isn't something that's available.

MS SYKES:
And I'm saying, I'm adopting the position that Mr Williams has made, for and on behalf of his clients, Ngāi Tamahaua, that there's a public interest in a tikanga Māori view, and I agree with him, it doesn't just extend to the status of the Crown, and the need for disclosure from them, it also applies to my friend from the local and regional councils as well. And it becomes relevant when we look at the mapping which I'm going to also address because of course the mapping has drawn significantly on data, both the Councils hold and that the Crown has held, that they've done in a number of other contexts. So, they're using that data to present, and I'm very grateful for this, a mapping data bank that can be utilised. It becomes important though, if we're going to rely on the veracity of that data, that the disclosure of those base documents that have informed that, be made available, if requested. And that's one of the matters that I'm exploring.

It becomes important when we look at things like blue reserve sir, in this area. My friend, Mr Gilling, talked about the Matatā area. There's a blue reserve there sir. Waitahanui is actually a confiscation line. It's actually very clear. Mr Webster took the Court through these last year. There are significant findings in a number of Tribunal reports on the confiscations that occurred in this area. Although Whakatōhea has not had a hearing.

The Te Urewera report, the Eastern Bay of Plenty report which was one where Ngāti Awa, Tuwharetoa ki Kawerau, Ngāti Makino and other Te Arawa interests were involved. They have all commented in great detail on what was the Raupatu, how it was impacted and what were the actual areas impacted upon.

There's also been significant submissions in the Foreshore and Seabed inquiry of the Waitangi Tribunal, is the impact of confiscation on whether or not those lands form part of the Foreshore and Seabed. So, I'm saying that there is material and it has been argued, not in this forum, but that could be of assistance to this forum. And if we wanted to avoid lengthy evidence if my friends from the Crown would accept the veracity of those findings. For example, that the Raupatu was unlawful and illegal, then that may assist us in coming to a quick conclusion about whether in fact the substantial interruption that is alleged to have occurred by virtue of Raupatu and war and invasion actually had any impact at all on the questions of continuous occupation.

Our argument for Ngāti Ira which has been very clear, is that notwithstanding the war that has impacted on us, because the battle of Te Tarata is very important for us, not just the Raupatu. It's the largest cavalry charge in history of this country where our people were killed and murdered sir.

All I'm trying to say sir, is that that information will show, notwithstanding that occurred, there was a bit of disruption but people returned to their lands and have remained there ever since.

COURT:
Yes, we have got some distance away from discovery which is really what I'd like to focus on.

MS SYKES:
OK, in disclosure, there's a parallel process happening to this. It doesn't involve any of the applicants here. It's a Whakatōhea settlement process that's been initiated by the Crown with a group that many of our people oppose, the Whakatōhea Pre-Settlement Trust. And if you look at their agreement in principle, at pages 29 and 30 which I will provide, they are actually looking at decisions about the Ohiwa Harbour, for example, which is part of the claimed area by many of us before you, that are going to be utilised as part of that settlement processes. So, it seems trite to me to come in and say that, when negotiating a Treaty settlement that's about restoring those rights, will then there be a legal argument to say that those rights have been so interfered with, such as not to meet the test in this Act. So, in terms of the questions of discovery, I would like to know what's informing them in that parallel process, which is opposed by many of the applicants here, and whether that information is actually informing the Crown as to what kind of position they're going to adopt in these proceedings.

It seems that they're wearing many hats without the advantage of consistency for those of us that are watching it, and it becomes very important sir, in analysing the submissions that they made earlier this week about the engagement processes that they're looking at for Whakatōhea.

We have no reports on engagement, the only material that is made available to all of us, is the documents filed on the public record here on this whiteboard. Much of the information that is currently the subject of that parallel process of negotiation, is only made available to the

negotiators and to those that are instructing them and that information may also be relevant in assessing the strength of the arguments that are being promoted, if they are to be promoted on these questions.

COURT:
That raises quite another issue and that's the fact the Act has two parallel, not mutually exclusive, but parallel processes, and we must move within the confines of the Act, what the Act says you can and can't do.

MS SYKES:
The problem I raise sir, is that the process I'm talking is the third process that's not contemplated by the Act, and that's the Treaty settlement process.

COURT:
That's a separate issue altogether.

MS SYKES:
It's a separate issue and it's that disclosure that we are seeking sir.

COURT:
Yes, thinking out loud, is something like the Official Information Act (OIA) likely to be a useful mechanism?

MS SYKES:
Sir, I have been using that and I can say that we have made progress since the last CMC, but it has been a delayed process. But the material has flowed and you need to be aware of another process, there's an urgency before the Waitangi Tribunal challenging the administration of this Act, and as a result of that early preliminary hearings there, there has been a greater participatory co-operation from Te Arawhiti officials certainly, in providing this kind of information. But it comes back to my cogent point, we really want to keep the 17 August date. To achieve that, we need to find a practical and reasonable way to get information so that we can file, for the Court's benefit, appropriate evidence to facilitate the findings that we seek, that there is ability in this Court to provide us both with customary title and customary rights recognition.

Can I say I have been making progress but I still believe we would be assisted in this front-face by either, as your Honour has described, a formal date for the provision of information under the OIA request that we've made, or under the unusual, but I think, practical, proposition that has been made by my friend, for a formal discovery order, so that all of that information is available for all of us to craft our evidence upon.

So, I was going to seek an adaptation that that information be made available by 31 July. At the moment Justice Collins had contemplated the filing of the primary applicant's evidence on 5 July. But I'm going to be seeking for either an OIA discovery or a disclosure order directing 31 July with the applicant's evidence coming on 3 September 2019 sir. And, my friend and I have been looking at nomenclature. My clients oppose the fact that they're interested parties. They are applicants in their own right.

COURT:
Some are, and some aren't.

MS SYKES:
But they aren't, my clients are sir. They have an originating application. And so we're calling them cross-applicants. If they could file their evidence on 30 November, which is two months after the applicants' evidence, and interested parties evidence on 20 February 2020, and this is where I'm unclear whether that should be the Crown as well as other interested parties like the Local Government and Regional Council. I need clarification on that point.

COURT:
As I understand it, the Regional Authority don't anticipate at the moment filing any evidence.

MS SYKES:
And that would be great sir, but they should be afforded the opportunity in case something arises, particularly in light of the … there's information in OIA requests about resource consents and the role of local and regional councils for those resource consents, that I think become relevant.

COURT:
Yes, it just seems to me that pursuing the OIA path is probably going to be the most effective and efficient for you. So, I'd encourage you to do that.

MS SYKES:
My difficulty is the timing of that is causing us frustration, and it is frustrating our efforts. And I can say on a teleconference that I convened with my other colleagues, I believe I am one of the few that have actually had material provided to us, despite other requests having been made.

COURT:
And those requests have been directed to what bodies?

MS SYKES:
Te Arawhiti in the main sir. And I think we've made one other request to another department. I think it was Department of Conservation about reserves sir. And we've been working diligently on it since we got resourced sir, I can say that.

If your Honour is minded for our proposition that they be afforded the opportunity that the interested party give evidence in February 2020 and the Crown evidence on May 2020, and reply evidence if there is to be reply evidence, on 31 July, which is three weeks roughly before the proposed hearing.

COURT:
We're getting pretty close to hearing.

MS SYKES:
So, that date may need to change, maybe 1 July sir. I was working these out after having received my friend's late memorandum. And I'm just trying to accommodate some of their desires as well.

Can I say I'm very grateful to the Crown on my second submission which is about the mapping proposal and their most recent memo.

I discussed with my friend, Mr Melvin, this morning, a slight adaptation to his proposal. He's talking about a national body for mapping comprising counsel. I'm asking if we could because of the priority applications we could do it for each of the priority applications, we could have a separate committee. Because there's not necessarily the same counsel in each of those proceedings and there will need to be some urgent work done. I haven't discussed this, but there are some very competent counsel here on the questions of mapping. Mr Bennion is

hiding away as he always does but I was going to propose that he might be our proposed rep on mapping, he does it very well for us in other contexts.

COURT:
Just on that, this initiative has come from the Crown not as a result of the Court telling them they must do it. The Court is encouraging of it so it's probably a matter that you are going to make better traction on by continuing to engage directly with Mr Melvin.

MS SYKES:
But we would be, as the Crown and myself have identified in my submission, there needs to be some universal approach to the mapping, once this committee is sorted.

COURT:
Justice Collins has made a number of comments to that effect in that past and I don't think I need to add anything to those.

MS SYKES:
And again, if your Honour is mindful, one of the key questions is resourcing. Under the template of resourcing which my friend talked about in terms of what's available for hearing time, it's very unclear what's to be allocated for mapping, that's an ongoing discussion. But, in terms of the, what may frustrate our ability to meet certain timelines, that mapping becomes quite crucial upfront in the early phases of any development. And I'm trying to continue the efforts that has happened, and we've had very positive meetings with Mrs Johnston and other members of Te Arawhiti, and we're proposing that that continue.

The second to last point, you must have seen from our submissions, we do not accept there are three parties here that claim to represent us. One is of course is Wai 87, another is Te Whakatōhea Māori Trust Board and the others is Ngāti Ruatakena's submissions. Ngāti Ira do not accept that they have a mandate to represent our claims.

In the past, where this dispute has not been able to be agreed amongst the parties themselves, we have gone to the MLC if required to get a s 30 order, under the Te Ture Whenua Māori Act. I'm only raising that at this moment because I'm not anticipating that this will be a problem because I'm hoping that they will take the course that Mr Pou has done for the Whakatōhea Māori Trust Board, and agreed, that they do not represent Ngāti Ira. And I'm

hoping that Wai 87 and the claims for Ruatakena will also have the same approach, so we do not have to go down that disputed approach. But at the moment those are the only three applicants that are claiming to have some right of representation over our hapū, which is strongly resisted. And, we say that that representation issue will need to be resolved.

We have two proposals for that. We will not participate in the consultation that's being controlled by Wai 87. Our preference is for an independent facilitation process with an independent facilitator to work those matters out, so that we can identify matters of agreement and draft a memorandum of understanding. But we will not be part of a consultation process which suggests that other people have an umbrella over us and have the ability to seek resources on our behalf which is what has been happening without our consent and have no right of representation.

So, it's a difficult issue sir, but it's one that I think has come to be balanced on a pin head very finely at this stage. In light of timetabling that we're seeking, is an issue that we want to be dealt with early, the mandate.

COURT:
Well, it's not a matter that the Court can deal with on an interlocutory basis. Ultimately the Court on the substantive hearing will have to make some findings, but all I can say is that I would encourage you to continue the kōrero, because it makes the Court's task ultimately an awful lot easier, and it seems to me that prospects of success, for the various applicants, are enhanced, if there is a unified approach.

The Court is not going to compel any party to partake of any particular consultation but all I can do is to encourage you on whatever terms are appropriate to you, to do that rather than leave the matter ultimately for the Court to have to impose an outcome which may be nobody's preference in terms of what they've said to you.

MR SYKES:
The matter of the role of the Attorney-General is the last point. We're actually quite friendly at the moment in the way we're progressing matters and I don't want to upset that relationship. But I think to the matters that I've signalled, I have to be very cautious to protect my applicants because I'm not too sure what they're doing in this other process which may be undermining what we see as the gravamen of our case. I had to raise that at this

stage. I think these matters are of such moment that we might need to have an interlocutory hearing. So, in the timetabling I was going to propose it. We haven't resolved any of these issues. In February, we could possibly have a special hearing for that sir. So that would give us a few months to try and work it out. It might be a bit late, I don't know, but I'm very conscious that that is an issue for my applicants and we're trying to find an appropriate way forward.

I'm hopeful that the other groups that have raised this as a live issue may have resolved that legal argument, so we could perhaps consider that judgment to inform us of any pathway that we may take as well.

COURT:
You will be aware that the Crown has clarified its perception of its position and that does seem to be a significant move on its part. So, again, it may be, if you keep up the dialogue, that ultimately you are able to get to a position vis-à-vis your clients that you are comfortable with, but if not, someone is going to have formally apply to the Court, make an interlocutory application and get a hearing date.

MS SYKES:
And that's where I'm saying sir. So, that application may come earlier, although we're anticipating a hearing date in February. So, if we can try and find some solutions focused outcomes.

The other matter that we have to endorse is the funding matrix at the moment is very difficult. It doesn't provide for hearing time. It doesn't provide for Court fees. It doesn't provide for a practical approach in terms of solicitors' appearance time. So, that could be a problem if we proceed in this level of uncertainty that we are in at the moment. And yes, there are discussions progressing, but at the moment the response has been, we are only partially assisting groups, and that is the policy and if that partial assistance does not cover that, then you will have to look to other means. And, we are saying that that's a practical way to address these matters.

Unless there's anything else, I would seek leave. I would like time to look at the maps that have been put in and to make any further submissions after listening to my friend sir.

COURT:
In terms of time, will 14 days be sufficient?

MS SYKES:
Thank you sir.

COURT:
Alright. I'll record that I grant you leave to file and serve such additional submissions within 14 days from today's date.

MS SYKES:
Thank you sir.

REGISTRAR:
CIV-2017-485-377 – Te Hapū o Titoko Ngāi Tama
CIV-2017-485-262 – Ngāi Tamahaua
CIV-2017-485-270 – Ngāi Tai
CIV-2017-485-272 – Ririwhenua Hapū

MS LINSTEAD-PANOHO:
Tēnā koe sir. I've filed two memoranda, one on 16 May which I don't really propose to go through. The only issue I wish to address your Honour on was the issue of discovery which you've had some discussions about with Ms Sykes.

It's our position sir, that historical documentation and data held by the Crown and also relevant local authorities is vital information for the Court to properly exercise its jurisdiction under the Marine and Coastal Area Act.

While we appreciate discovery orders could apply to all parties in a proceeding, inevitably the Crown and local authority will have most durable and accessible archival material. It's inherent in their Government functions.

The issue is first raised in our memorandum of 16 May but reflecting further on the issue, the original framing of the categories might have been too narrowly drawn. And so, what we're proposing is what is needed from the Crown and local authorities is to disclose firstly the

archival material they hold regarding the use and occupation of the lands as in the application area from 1840 onwards.

And secondly, any information regarding customary interests from 1840 onwards relevant to the application area.

COURT:
Have you made a specific request to Mr Melvin or Mr Ward or Te Arawhiti?

MS LINSTEAD-PANOHO:
No, we haven't sir. The approach we've taken is we did canvass the issues with the priority applicants, and the applicants, and there were differing views as to whether or not the discovery orders were appropriate in the circumstances. And the Crown has filed a memorandum outlining their views on the issues as well.

From our perspective, there are two conceivable means by which that information can be obtained and you've already mentioned the OIA request. In that regard your Honour, our preference would be a discovery order because, with an OIA request process, the Court doesn't have any control over the timing of the content of those requests.

So, in my submission, relying on an alternative approach such as that at this stage, when the filing of evidence is imminent, puts the applicants in a situation where they are beholden to the Crown to provide the information and if there's any dispute over that, the Court really doesn't have any control over how to deal with that, and so will be fixing a time.

COURT:
Well, other than by applying for another one of these CMCs where I can hear that the Crown have not responded in an appropriate way to an OIA request, that could then become a matter that could well have impacts on things like costs.

So, there are some measures by which the Court can get control of these things. If I can just flag my preliminary thinking, obviously I've not even yet heard from all the counsel, is that there are some legal issues with the availability of discovery, given the nature of these proceedings. So, what I wouldn't want to do is encourage parties to think that, yes you can get discovery in these proceedings just like you can in ordinary civil proceedings. There is a

real issue there. What I'm looking for is effective alternatives that provide your clients with the information to the extent it isn't publicly available. Some of it will be publicly available, and it does seem to me that the OIA has been used successfully and probably can be further, to the extent that the Crown or Te Arawhiti might need encouragement to do that, I'm very happy to. I don't know that I can direct them because it is a different statutory process, but I can make it quite clear that I expect them to co-operate to the extent that they're able to and provide that information. It just seems to me that's a shortcutting of what otherwise will have to be formal legal process which has no guarantee of an outcome that your clients want, where at least you are making some progress under the OIA.

MS LINSTEAD-PANOHO:
Yes, I take your point and perhaps one other point I raise in response to that is that most of the applicants in this situation, if they were all to file the same OIA request, largely for the same information I would anticipate, then you'd have the Crown having to provide that to multiple parties and each of those parties will be funding costs of having to make those applications. So, the alternative if a discovery order is made, is for the Crown to produce all that information in one go. So, I suppose there's a balance to be struck there.

The only other point is really a response to my friend from the Crown raising the issue of originating applications. There is the case of *Commissioner of IRD v Elementary Solutions Ltd* which does set out the principles for when discovery can apply in relation to these sorts of proceedings. And there is a discretion for the Court to gather and make discovery orders in that situation, providing the documents sought are capable of supporting applicants' case which in this situation they are likely to do, or they will do. Also, the proportionality element which I think I made that point in terms of one provision by the Crown of discovery versus various numbers of applicants applying for OIA requests for the same information, and the costs and the practicalities involved in that is also another factor.

It is acknowledged that the approach to discovery in originating applications would be a conservative one and I take the comment on that, your Honour. But, also, the final point is about where the Court encounters genuine difficulty in determining without documentary evidence, which is likely to assist whether the threshold test is satisfied or not and we say that that information in that archival material which the Crown and local authorities are the most

likely institutions to hold that information that would assist the Court in determining, without the information the Court won't be assisted in determining. Those are the tests.

So, those are the only submissions I have sir. It may be that anticipating a further issue potentially is the issue of co-operation and the fact that we haven't actually contacted the Crown about this issue, so in terms of a practical way forward, it may be a case that we timetable a near future date, perhaps two weeks or so, to file a joint memorandum to see if we can come to an agreed position on it. That's just a proposal, I'm sure my friends will have their views on that.

COURT:
Well, you're at liberty at any stage to file a memorandum recording agreement that has been reached. All I can do is encourage you to engage directly with Mr Melvin if he's the person you've been engaging with, and who knows you may well find that's a much more productive and less costly avenue than a formal application, particularly if it's contested.

MS LINSTEAD-PANOHO:
Thank you your Honour.

COURT:
Thank you Ms Linstead-Panoho.

REGISTRAR:
CIV-2017-404-482 – Ngāti Huarere ki Whangapoua
CIV-2017-485-375 – Hiwarau, Turangapikitoi and Ōhiwa of Whakatōhea

MS THOMPSON:
May it please the Court. Counsel's directions are to seek leave to have the case adjourned to mid-year 2020. Evidence gathering is at hand and a historian has been engaged. There's no direction sought from the Court at this point.

COURT:
And that's 482?

MS THOMPSON:
Yes your Honour.

COURT:
Yes thank you.

REGISTRAR:
CIV-2017-485-196 – Ngāti Awa.

MR WEBSTER:
Sir, possibly a repeat of yesterday. Ngāti Awa is a confederation of some 22 hapū and so they extend over groups H and I.

Now, there are five groups who we would say are Ngāti Awa affiliated applications. They are 185 which is Ngāi Taiwhakaea; 227 Ngāti Hekekino, Ngāi Te Rangihouhiri No. 2 and Te Tauwera, so that an application that's 227.

There's also the Urima Island Māori Reservation application by the trustees of that reservation – that's 317. And there's an application by Mr Maanu Paul on behalf of his whanau, application no. 513.

Now, I know that's four. There are other applications where there is some dispute as to whether or not they're within the iwi or not, so I'll leave those for another time.

Now I see that the Urima Island Māori Reservation trustees have sought a 12-month adjournment. They've sought, like my clients, direct engagement with the Crown and I think that probably sums up where Ngāti Awa are at the moment. There is a general preference to engage with the Crown if that's available, and also the Ngāti Awa groups are discussing how they can progress their applications, whether it be to the Crown or to this Court, and so those discussions are ongoing.

So, I think a 12 months adjournment probably is the best way forward in relation to at least the application I represent, I can't speak for the others. I was expecting them to attend or to have filed a memo but I couldn't find any so I'm not sure where they currently sit at the minute.

In terms of the current matters that you're dealing with when obviously we do overlap with the various Whakatōhea applications, and will need to be heard, so if we're not advancing our

application in full, that would mean we're effectively in a position of something akin to, I suppose a respondent, where we're presenting evidence to protect the Ngāti Awa interest in the application areas that are being heard by the Court at that time, so I assume that's how we are going to progress here. And on that basis then, obviously we'll participate to that, at the least to that extent. But we'll see what the evidence unfolds and how that progresses.

My friend for the Edwards' application indicated that they are open to engagement. My clients are open to engagement also, and although the timing between now and filing of evidence does seem limited to reaching any agreements and having that impact on the shape of the evidence, but nonetheless they're open to engagement.

In fact, during the recent Whakatōhea negotiations with the Crown in relation to the Treaty Settlement matters, Whakatōhea and Ngāti Awa did engage and so there were no issues in relation to the overlapping matters between them, as I understand it, or any issues that did exist were dealt with by agreements being reached between the parties. So, I think there is a history of that. I know my friend, Ms Sykes, will say that, you know, who we're dealing with is a factor. But, that's not so much my issue as it is theirs. But the point being, I think that there is a willingness to engage and attempt to deal with issues as much as we can.

In terms of the timetable, I did wonder whether the one or two months I think I've heard suggested for the filing of evidence after the applicants is sufficient, given that we're not quite sure what the scope of it is as of yet. So, I'll just flag that as an issue at the moment. I think it needs more thought. And I did wonder, too, about the impact of these preliminary issues that are being raised, whether they have an impact on the timetable, whether you need those issues to be determined before you actually finalise the shape of your evidence.

Now, I don't have a view either way at this stage, but it just seems to me an issue that needs to be considered.

Lastly, around the confiscation, although my friends have half presented my submissions from last time about Raupatu, I merely said I think last time that the confiscation proclamations as I understand them, apply to dry land up to a certain point. So, I don't think they necessarily interrupt the title to anything below that, but factually they do change the nature of your engagement with those areas, and they did displace or relocate different groups

into different areas. So, that's an issue that needs to be considered. But I don't think certainly a confiscation necessarily is automatically an interrupting event. So, I'll leave it there for the moment sir. Thank you.

COURT:
Thank you Mr Webster.

REGISTRAR:
CIV-2017-485-253 – Ngāti Patumoana

MR BENNION:
Thank you sir. I'll just address a small number of issues. Sir, you should have a memorandum from us on 11 June. It's in substantially the form that you saw, the one that I presented yesterday for Ngāi Te Hapū and Ngāti Pūkenga.

Just to say that Patumoana is a small hapū in this area and one of the hapū of Whakatōhea, and our clients are happy with the timetable that has evidence being presented later this year, or being filed later this year, setting for a hearing next year, which is somewhat in accord with Justice Collins' formal directions.

At this stage they do wish to, they stand out from my friend Mr Sinclair's Edwards' application. But, obviously co-operating as we can, and particularly I think on issues such as that issue that Mr Sinclair raised about substantial interruption and how we're going to approach evidence about confiscation and its effects in this area. Because it is complicated. One of the things that happens here is that the confiscation occurs and then the Crown takes Whakatōhea people and puts them in a coastal reserve, by the coast, and mixes them with other groups as well. So, it's a complex issue and I think one of the points in the discussions we've already had, it's come up, is that the historians talking together is going to be important as we progress towards filing evidence. But at this stage, we want to file our own evidence and happy to do that later this year.

In terms of the order in which evidence is filed, I did want to make this observation that the previous orders from Justice Collins talked about the Edwards application being filed first, evidence first, cross-claimants, that is other Whakatōhea, filing second, and then I think what we might call interested parties, third. And my submission, I'd follow something that

Ms Feint said at yesterday's conference in Tauranga which is, in my submission, all Whakatōhea applicants should file together, at the same time.

Then, in my submission, it would be appropriate for neighbouring iwi to file, as a sort of second tranche because that sets the full customary scene. And then interested parties after that, and that would include the Crown, if the Crown's participating as well as regional councils if they're wishing to file evidence.

And I suggest also, partly because there's a certain fairness, well if all of Whakatōhea are filing together, that sets up a situation of some co-operation because otherwise the first application and then people might be fitted, well they're having to co-operate because they know it's going in together. Neighbouring iwi, I think, are important in their own right because the question that Mr Spencer raised about boundaries with neighbouring iwi. And it does raise an issue about, you might come to a situation where you find that Whakatōhea as a whole have exclusive use of an area, even though between them there's some disagreement, but between Whakatōhea and Ngāti Awa, for example, there might be a clear demarcation.

There's an area that's Whakatōhea exclusive for themselves and against the world, and it's exclusive against other iwi, but among and within Whakatōhea, it may not be exclusive.

COURT:
Yes, there's a concept of joint exclusivity.

MR BENNION:
Yes.

COURT:
Which is an interesting thought and one that the Court is going to have to grapple with.

MR BENNION:
And the order that I suggest there sir, also, I think, somewhat follows the sort of order that you might see in a Waitangi Tribunal proceedings or MLC settlements sir. I'm not sure if it's always followed like that but it does seem to make a certain logical sense, certainly in setting the customary stage, in a fair way, and then having other parties come in.

On the issue about costs for hearings. Just one question that I think we all have that the Court may be able to assist with, is that under the High Court Fees Regulations, the Registrar requires a fee of $1,600 per day in advance of any hearing. So, for an 8-week hearing that amounts to $64,000 in advance. Now, there's a provision for the Registrar to waive that fee if it's an obvious public interest case. There has been some waiver of fees in some preliminary matters here, but I think we're all a little nervous about how generous, or how far the public interest is going to extend under those fees regulations, and whether, indeed, yourself as a Judge is able to influence that in any way, or whether the Registrar stands separate on that issue. But that's possibly one of the bigger costs matters that's exercising people as they think about the forthcoming hearings. A substantial amount that needed to be paid, who would pay it, and we understand the Crown's funding so far hadn't even thought of that fee.

COURT:
Could I suggest Mr Bennion, that you do raise that in the first instance with the Crown.

MR BENNION:
Yes, it has been in some context raised with Crown, yes.

COURT:
And then, clearly if you're wanting, as far as your own clients' application is concerned, a waiver of that, you have to formally initiate that with the Registrar in the first instance.

MR BENNION:
Yes, and I know there has been a lot of waivers sought in other matters.

COURT:
I suspect every applicant will seek such a waiver.

MR BENNION:
Yes. And then finally sir, just to repeat again the mention of passing of Mr Hollis and we will, the intention was to bring his name formally forward because of Mr Hata's, so we will be bringing forward another application to add a name of one or more other Patumoana applicants, but we're just having those discussions now.

COURT:
Yes, well you can do that at any stage. You don't have to wait until the next CMC.

MR BENNION:
Thank you sir.

COURT:
Thank you Mr Bennion.

REGISTRAR:
CIV-2018-485-513 – Manu Paora Whānau

MS COLLINSON:
Thank your Honour. We filed a memorandum on 17 May and hopefully you have that before you. It's extremely brief and I just want to speak extremely briefly about a couple of things in here.

Firstly, I haven't had the opportunity to look in any detail at the memorandum filed by Mr Sinclar and Mr Gilling, but in principle we support the timetabling that they propose. And, the August 2020 hearing date still being in place.

But, and it is a big but, we have filed an interlocutory application for a hearing in relation to the role and status of the Attorney-General, so we do have a live application.

COURT:
Yes, is that in relation to this matter or one of the other matters?

MS COLLINSON:
It is in relation to this matter. So, we filed on behalf of a number of applicants that we represent and that included Mr Paul's proceedings. And so it was filed on 4 September 2018, and the question that it wanted determination from the Court about was the appropriate status and the role of the Attorney-General.

I do note the Crown's memorandum dated 11 September which sets out the interested party role that the Crown appears to envisage for itself, but the applicant is not reassured, particularly by this. And this is in the context of these wider issues with the funding and

which, I think, our applicants feel as if they have suggested helpful ways of moving forward and these have been objected to by the Crown, and the idea that they are merely undertaking an interested party role, the applicants do not feel remotely reassured by that, given the wider context.

So, my instructions are to seek urgent timetabling for an interlocutory hearing into the role and status of the Attorney-General.

COURT:
Yes, is there a formal application before the Court?

MS COLLINSON:
Under r 10.5.

COURT:
Well alright, you then need to file a specific memorandum seeking a timetabling order in respect of that application.

MS COLLINSON:
Sir, I believe we have done that. Justice Collins did raise it with counsel to advise if they still wanted to pursue the interlocutory applications once the Crown had filed its memorandum and we advised that we did, and as part of that, I believe we set out a proposed timetabling and it was in a memo dated 13 December 2018. And we proposed that the Attorney-General would file a memorandum outlining the legal basis for his role and function, the proceedings within 10 working days of directions, and we proposed some filing timetabling beyond that for applicants and interested parties, but it was just a proposal really to notify the Court that we'd considered timeframes really.

COURT:
Did Justice Collins deal with that at all?

MS COLLINSON:
No, not to date.

So, here I am before you, reiterating that it is urgent, and that it is most important to the applicant and to other applicants, I understand, because it seems difficult to know how to

move forward constructively if there is a suspicion that hostility might come from the Crown at any given time, and I do note the Crown's recent memorandum around mapping and guidelines and funding and an attempt to be constructive and to help move forward, but for our applicants, it's most important that this formally be resolved for them to feel as if they can trust going forward.

COURT:
What outcome do you seek?

MS COLLINSON:
Well, that's a very good question. The applicants would like it to be, for there to be an explanation of what the Attorney-General views the public interest as being, because and I do not wish to lead from the Bar, but in the MACA Tribunal hearing it was communicated from a Crown witness that it was a non-Māori interest, and that is something that we would like to be discussed in this Court.

COURT:
Sorry, I'm not familiar with the particular application, but what does it seek? Does it seek to have the role of the Attorney-General narrowed or struck-out, or categorised? What actually are you after?

MS COLLINSON:
Well, not struck-out. Categorised I think could be the most appropriate word, to be more defined, so that applicants are sure of how, for example, the test under the Act is possibly going to be considered by the Crown, and what submissions are going to be made, and so how many submissions and the size of the submissions are going to be filing in future because if the Crown is going to take a narrow view of the test which is not what is shared by the applicants, then it's going to be, they're going to be bigger submissions and lengthier submissions and more work which not necessarily is going to be funded.

The only final point that I'm going to make is that Mr Paul is in support, and I think this was discussed at the Wellington CMC by my senior, Ms Mason, he's in support of the referral of the tikanga questions to the Māori Appellate Court and that going ahead, but I assume that's going to be discussed at the Whangarei CMC. So, I won't raise it.

If your Honour has any other questions, that's my submissions.

COURT:
No, thank you Ms Collinson.

REGISTRAR:
CIV-2017-485-355 – Te Uri O Whakatōhea Rangatira Mokomoko

MR KETU:
Tēnā koe sir. I don't have much to say today. I just thought I'd address our memorandum we filed on 16 May. A couple matters raised today of relevance is the proposed timetable by Ms Sykes. That's something the applicants, we represent, support. For practical reasons, that allows for a time to have, and continue to have, discussions with other overlapping cross-claims, and we think that's an efficient use of funding as well.

In regard to mapping, I think that's a live issue and through those discussions and through discussions with the Crown, mapping will become more efficient, I think, and clearer, and allow for overlaps to be resolved.

Other than that sir, I have nothing else to add.

COURT:
Thank you Mr Ketu.

REGISTRAR:
CIV-2017-485-201 – Kahukore Baker for Te Ūpokorehe

MS ZWAAN:
Good afternoon your Honour.

There is just one issue that I would really like to address your Honour on today and which relates to timetabling. As you will now be aware as of this morning, the current timetable is that the applicants are meant to file evidence on 5 July based on Justice Collins' minute, and you indicated that you were going to release a minute after the final CMC which will be after at least 25 June, and that is quite a narrow window to have a timetable confirmed given that the applicants are meant to be filing evidence on 5 July and I would just seek that an order, as

to timetabling, be made prior to that so that we can certainty of when evidence is due and who is to file on what date.

One of the concerns my clients have is this proposal about applicants and cross-applicants filing at the same time does create some, you know there is risk in that given that technically it is the applicants' case being heard and we are in some sort of sense, respondents to that case, and having to defend it in some way.

And also the issue about whether or not other iwi such as Ngāti Awa are to file at a later date, our clients sees themselves, and have been confirmed in some Crown institutions, as a separate iwi to Whakatōhea and they would like to, if that's to be taken up by your Honour, to file at that later date, along with Ngāti Awa and Te Whānau-a-Apanui and any of the other iwi that are crossing over the Whakatōhea claims. Obviously, these are complicated matters that need some certainty for all parties involved.

The other issue around timetabling is it ties into this whether or not the Attorney-General is an interested party or not. And currently the timetable proposals have separate filing dates for interested parties and then the Crown which does create a question of what is the Crown, if not an interested party, and one that filing should, maybe with a separate filing date, if they are just an interested party.

I would submit that the Crown should file their evidence at the same time as interested parties if that is the role that they are saying that they are taking, and that a timetabling date for reply evidence should also be given for the applicants.

The suggested timetable of Ms Sykes and similarly, I don't have a preference, my clients don't have a preference between that one or the ones suggested by their counsel, by the applicants except for the combining of the filing date for the Crown and interested parties, to be the same date.

The one other matter I would like to raise just briefly, not for your Honour to make any directions on but just so that the Court and the parties here are alert to the issue. One suggestion is to have a combined OIA put into the Crown from all of the applicants and cross-applicants so that there's one OIA similar to discovery and that can cut down on costs

and everyone is getting the same information. And it may allow for the Crown to provide all of it in a much smoother process and I think that is a sensible way to deal with this matter and I will raise it with other counsel following this CMC.

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

COURT:
Thank you Ms Zwaan, and I would endorse your proposal. I think it's very sensible and it's likely to be much more efficient than a raft of other separate applications.

MS ZWAAN:
Thank you your Honour.

REGISTRAR:
CIV-2017-485-292 – Whakatōhea Māori Trust Board.

MR POU:
Kia ora sir. Whakatōhea Māori Trust Board is a representative group and it's constituted by representatives that are put there by their hapū. The Whakatōhea Māori Trust Board in terms of the Whakatōhea applications that have been made therefore supports the applications that have been made by those hapū individually. They don't come here to say that they represent those claims instead, rather to support those claims. However, where some of those hapū haven't made claims, their intention is to fill the breach.

And I think I need to make that clear in terms of some of the discussion that have occurred this morning.

You were having a discussion with counsel for the Edwards case so that's not an application that's made by the constituent hapū. That's made, that has a whakapapa where the Wai 87 Whakatōhea claim came to be negotiated with the Crown in the 90s and then it wasn't ratified.

Since then the negotiating committee has been the subject of a s 30 application before the MLC and was deemed to not be representative of those interests any more. The position of the Whakatōhea Māori Trust Board is that the hapū, where they are able to represent their own interests, should do so.

That, in terms of some of the discussions that you've had this morning, especially in terms of those statutory tests of exclusivity, and shared exclusivity, creates the lattice that might make this inquiry a little bit difficult. As Mr Bennion talked about, there might be interests that are held by all of Whakatōhea, the Trust Board's position would be those interests would be held by all of the Whakatōhea hapū but then there might be some, for instance, a fishing ground, that might be shared by two of the hapū or those things. And those issues, so you might have a layering of exclusivity, so the issues aren't just about the extent of the applications, but also where any title that might be granted might end up residing, in terms of shared exclusivity for two hapū, three hapū. And once you get to the border lands of Whakatōhea, you might find the hapū for Ngai Tai, for instance, might share something with Ngāti Rua.

For my clients, that's up to the kaumatua and those hapū to reconcile in amongst themselves. So, for that reason, the application that has been filed by the Whakatōhea Māori Trust Board is very bare. There are two hapū that have approached it to say that they want to have their particular interests pursued through this process and the Whakatōhea Māori Trust Board will support that. And the only reason that they've come to the Trust Board is because they missed the statutory deadline. So, this opportunity exists.

Another issue that was discussed was the impact of disruption, and I'm going to suggest that this might actually form the basis of an interlocutory application because it's probably not just here that this will exist. Where there has been a particular disruption by law or by fact, for instance, whether or not that disruption is such that no title can be claimed. We might have a disruption by law and I support the submissions that were made by Ms Sykes, I thought the definition of the Raupatu area, the 448,000 acres that was taken went from the Waitahanui to the Motu River and I thought we were really clear about that. We've had two Tribunal inquiries that have discussed the legitimacy of whether or not that Raupatu even followed the Crown's own rules.

So, in my submission, if we're going to re-ferret out those issues, we aren't going to make any of the timetables that have suggested today. And I am enamoured by the submission that Ms Sykes made, as whether or not the Crown would accept those recommendations and those findings that were made by the Waitangi Tribunal in the Eastern Bay of Plenty District Inquiry and the Te Urewera District Inquiry around the legitimacy of those taking

mechanisms for the purposes of an inquiry within this process as to the legitimacy of a disruption.

When I talk about a disruption by fact, we have a railway line that goes along this coast, around areas which create, within the Raupatu area, which creates a disconnection just because people can't get over those sorts of things.

So, whether or not those satisfy what is a disruption for the purposes of curtailing what is a continuous exercise of a right, I am aware that there were two positions that were pushed when the Foreshore and Seabed Act was being inquired into by the Waitangi Tribunal, and there were two approaches that were discussed within that inquiry – a Canadian approach and an Australian approach, which discussed the impacts of those disruptions and whether those created a disconnect.

I just say this because this might assist, in terms of progressing the multiple applications that are being made in this proceeding.

I'm not going to oppose the applications that have been made for discovery, but I'm going to suggest that they might be misplaced sir. A discovery application by its very nature needs to be focused and can't be a fishing expedition, where applications under the OIA and the Local Government OIM Act can be wide in their breadth.

I'm not going to commend such an application which would ask the Council to provide all those documents, and perhaps where the prejudice might exist is the Council will pass on the costs of fulfilling those applications in terms of providing all of the information.

But, again, if we're going to get the 20,000 pages that might be produced out of an OIA request, I'm not sure how that can be refined down in time to meet the timetables that are being set even though they seem long, they might, like an urgent Waitangi Tribunal inquiry, be subject to delays because of the availability of information, not because people aren't trying, just because it's not available.

In terms of the parallel processes that have been discussed, we've got two parallel processes here, a High Court process and a potential engagement process with the Crown. Ms Sykes

mentioned the Whakatōhea negotiations, the Whakatōhea agreement in principle, and of course she provided you the documentation sir, and no doubt provided cl 1.4 which says that nothing in that settlement will impact upon claims to customary title or applications before the High Court for marine and coastal titles.

So, there's a particular exclusion within there which needs to be mentioned within the context of the discussions that Mr Webster discussed. While there might have been engagements around boundaries, there have been no discussions between Whakatōhea and Ngāti Awa as to where the delimitation of any MACA application might be. And I think that's an important issue to mention.

In terms of the information that could be provided as a result of the engagement that has occurred between Whakatōhea Pre-Settlement Trust and the Crown, again, that's been subject to an urgent inquiry by the Waitangi Tribunal and significant OIA requests have been made, right down to people's salaries and those sorts of things. Perhaps it might be of assistance if those five (or how many thousand pages) could be gone through, and the documents that people think aren't there could be requested to enable some focus to be given, within this proceeding, so we can get to those germane issues that people are wanting to have traversed.

Those are the only issues that I see that have arisen that I feel able to comment on. I must say sir, looking at the map there in terms of a Whakatōhea boundary, as I've said, it's for the hapū on the fringes to determine the extent or where those boundaries should be placed. I do feel a little bit uncomfortable looking at where I know Ngai Tai's marae and Torere to be, and seeing that it sits within a title application that is made for, and on behalf, and exclusively to Whakatōhea, and in terms of your suggestion sir, for everybody to talk to each other, I'm not sure those sorts of things help.

COURT:
It might not resolve that particular issue Mr Pou. There are certainly issues where I think it's capable of producing a result that is better for the parties concerned and the Court. The Court produces largely binary outcomes when it's faced with a conflict between two parties – one party wins, one party loses, generally, although not always.

MR POU:
With an understanding of the binary nature of a title application, to the extent that it signals to those who might have a marae adjacent to the foreshore, that they are excluded from that area that is probably an issue for counsel to consider, and I say this because those hapū on the fringes are the ones that will still have to maintain those relationships, and they will still have to talk to their relations who operate those marae that they live next to.

Other than that sir, unless you have any questions.

COURT:
I do have some questions Mr Pou.

Now, this is really a fundamental issue that's going to affect much more than your client. It will, for example, affect the two national applications, one by Mr Paul and one by Mr Dargarville. And that's, the structure under the Act is that applications are made in respect of particular rights on behalf of particular entities. And while I understand the concept that certain entities, it sounds like your client falls within this category, have made what I could describe as protective applications to ensure no-one falls between the cracks and ends up statute-barred, for time reasons or other reasons, ultimately you are going to have to identify who it is that you're advancing the claim on behalf of.

I heard you say that two hapū have approached you and it may well be that those hapū are who you are entitled to represent, but you're going to have to say who they are. And, it's not going to be viable to attend and participate in the hearing without identifying that, and I know we're going to hear from Ms Hata, on behalf of Ngāti Rua, and it does seem to me on the basis of the memorandum that she's filed, which I've read, that maybe, in terms of the legal process, her iwi, her hapū may have fallen between the cracks.

So, it might be, although I certainly understand it won't be her preference, that you might be wanting to talk to her to ensure that there isn't a situation of one hapū not being represented through inadvertence or the way in which the Act works. But, at some stage, the Court is going to say to you, you must identify who the actual claimants are that you're representing. It's not going to be tenable for you to attempt to participate in any actual hearing without having made that clear to the Court.

MR POU:
We're fully aware of that sir. Ms Hata, being who she is, has raised these issues in particular. And as I've noted, there are two hapū that have come. The idea was, as was signalled in the original application, that it would be refined to allow that to occur. But it also enabled, and I'm not sure if you have read the first memorandum that was filed by Whakatōhea Māori Trust Board, when the Crown was saying, where there is an overlap, there can be no title. We were discussing this where a confluence could be held and that's a shared exclusivity.

But, I take your point sir, in terms of refining the application so that this Court is fully aware of whose interests are being represented when the application is being made.

COURT:
And ultimately, just on the other point you've raised, it's for the Court eventually, to decide if there are overlapping or shared interests whether there is such a concept as joint title or a joint protected right. While the Crown are entitled to adopt a position, that's not the last word on it. So, ultimately, it's the Court that is going to have to determine whether such an arrangement is lawful under the Act.

MR POU:
And that's why sir, at the start of my submission, I was commending the potential for an interlocutory application prior to these ones being brought along.

Sir, there is an application that is being brought around having cases stated to the Māori Appellate Court on areas of tikanga. I understand that is going to be heard on the 26th in Whangarei. For such an inquiry, I can't see it being any smaller than, any matter that would be referred to the Māori Appellate Court, I can't see it being smaller than these applications themselves in terms of a determination of tikanga to be applied, in terms of a boundary determination and those sorts of things. And just the one issue I would raise within that context is whether or not the Māori Appellate Court actually has the resources for a timely, for the ability to have a timely turnaround on those applications. And whether or not that would actually defeat the timetables as well, that are being set or that are being sought to be set within the context of this proceeding.

And I'll leave that there sir.

COURT:
Well, depending on the outcome of that, there may have to be wholesale changes to all sorts of things, but I can't anticipate what that outcome might be.

Thank you Mr Pou.

REGISTRAR:
CIV-2017-404-562 – Te Uri a Tehapū
CIV-2017-485-264 – Whakatōhea Pākowhai
CIV-2017-485-269 – Ngāti Muriwai
CIV-2017-485-278 – Whānau a Apanui Hapū

MR SINCLAIR:
Tēnā koe sir.

Briefly, brief submissions on behalf of these applicants. Sir, as previously stated, these applicants are working collectively together with the Edwards' application. And the map there is identifiable of their areas. And they've been working on that for quite some time.

Just on in regard to a matter that Mr Pou has raised regarding maps and the areas there that are, as yet, unidentifiable by other hapū.

Sir, I wrote in my submissions quite a substantial piece about that and I deleted it, it was too long. It simply said that drawing of lines across territories is an inflammatory action. And it has the potential to cause tension when there was no intention to cause such tension. This type of mapping, this type of processing, does exactly that.

It is a preliminary map sir. From the applicants who are supporting the Edwards' application. It is not a definitive final map. The invitation is open for others to participate. Obviously sir, there are some who will not participate in that map.

Sir, our applicants do not seek to engage further in requesting a generic mapping. Our claimants have it. We have a professional. They're engaged, and they are working on it now sir, on their own map. Others are invited to participate. However, no applicants will produce their own mapping sir.

If you look at some of those areas, they're on that map, you won't find them on any other mapping. That comes from traditional knowledge, hence, is why there's a copyright symbol on that particular map.

Anyway, all I'd finish with that matter is that the Hirwau C, Pākowhai, Te Whānau a Apanui, Ngāti Muriwai and Koturere, also. Koturere is an application put through the Crown pathway. That applicant has approached his whanaunga and wishes to engage with them, noted on the map there, and collectively move forward with that application as well sir, as an interested party.

Sir, just one point for Te Whānau a Apanui application. The person has dual whakapapa, dual hapū. It crosses borders and crosses lines sir. When I say lines, they are a very obscure way to dissect whakapapa.

In the Eastern reaches of Puketapu, Mr Pou is correct, there are hapū in there who are unidentifiable. But there are also interested whakapapa that cross that line and move up into Te Whānau a Apanui. One of those applicants has an application here.

The issue which the applicants wish to engage in with Whānau a Apanui is Whānau a Apanui are going into direct negotiation regarding that coastal area.

Before we make any submission on that matter, we at least are going to engage with Whānau a Apanui in regard to the applicants' matter before this Court.

Sir, that ends my submission for these claims.

COURT:
Thank you Mr Sinclair.

What we are now going to do, I'll invite the interested parties who have appeared today to address me on matters that they need to. I don't need to hear a repetition of matters that I've heard at other CMCs. You can take those as read that I've understood what's been said and then I'll invite Mr Melvin, for the Crown, to respond to the various matters. And I have a few questions for him, too.

So, Mr Registrar, if you could call the interested parties please.

REGISTRAR:
Property Owners at Whanarua Bay:

MR STRINGFELLOW:
Thank you sir. I'll be brief. We just wanted to basically raise our hand and say who we are and why we're here. In my submission, I just said that, if I was to understand, what timetable there may be and that has been raised. It was really interesting to hear the comments about problems getting information and using the OIA because we've had the same problems when it comes to, in the case of Te Whānau a Apanui who are in direct negotiations with the Crown, and therefore that information is not being provided to us and so we're really looking forward to when Te Whānaui a Apanui decides which forum they're going to enter into.

Finally, the comment about the maps. Any improvement in the policy of the maps is gratefully appreciated and one thing that leaves us a little bit confused at times is when you have two points, a point A and a point B and perhaps 30kms between them, the assumption is made that the claim is for every piece between the two and it would be helpful if there are ever instances where there are gaps between point A and point B that it's made quite clear that it excludes those.

Thank you very much.

COURT:
Thank you Mr Stringfellow.

REGISTRAR:
Coromandel District Council.

My name is Ms Tapuriki , counsel's other name is Ms Jones for the Whakatane District Council. Also, although I haven't been formally instructed to appear on its behalf today, I also represent the Thames/Coromandel District Council.

Just quickly on the matter of discovery, I just would like to record that we do not object to disclosure of documents and are happy to enter into discussions with any applicant groups about producing any relevant information, we did ask that it was done, in line with a lot of the

comments that have been made today, that it's done with some specificity, that the requests are narrowed to the extent, and that time is allowed for that work to be completed. And there's also, as Mr Pou raised, there are funding issues as well. If certain requests does take several days or hours to do such work, those things need to be discussed.

So, in the first instance, I think, on behalf of Coromandel District Council and Thames, we're happy to have those discussions with the applicant groups and invite them to do so.

COURT:
There are a couple of points that I'd like to raise with you. It does seem to me that if there is a co-operative or joint application to you, that may be the most efficient in actually generating the documentation in the shortest amount of time, and for the least amount of cost.

Some counsel have the raised the issue of what charges the District Council might levy in response to that, and as you've heard from most of the counsel today, and as I've heard around the country from the majority of counsel, there are huge funding constraints within which the applicants are working, and which may end up ultimately derailing some of the projected hearings. So, if the Council could just bear that in mind. Obviously, I can't direct the Council what to do in respect of charges, but it's clearly a major issue and arguably a significant impediment to achieving just outcomes under this Act. So, if the Council could just bear that in mind, that would be helpful.

Thank you Ms Jones.

REGISTRAR:
Bay of Plenty Regional Council and Opotiki District Council

MS WAIKATO:
Tēnā koe te Kaiwhakawā. Sir, I will just briefly go over the particular interest of these two clients.

COURT:
Yes, you certainly don't need to repeat your memorandum or anything you said yesterday in Tauranga.

MS WAIKATO:
Yes sir. Essentially all I wanted to say in respect of that is that the Bay of Plenty Regional Council is the regulatory authority for the coastal and marine area end in the wider Bay of Plenty area and that their particular participation in these proceedings is a neutral one that doesn't either support or oppose any of the particular applications, but rather wishes to monitor the progress of them and remain informed, and it's just become quite apparent today, as a result of discussions in relation to discovery, that the role of the Councils in this process is going to be a little bit larger than initially anticipated, as it is the holder of quite a volume of data in relation to the coastal marine area.

Sir, if I might just turn to that issue which has been the subject of some discussions this morning. We've only just been made aware yesterday with respect to the memorandum filed by my learned friend that discovery orders were being sought with respect to the local authorities, as well as the Crown. And as a result of that, we haven't yet had the opportunity to have any discussions with my learned friend about that particular proposal.

So, I would also, along with my learned friend, Ms Sykes, seek leave to file a memorandum in response to those requests, if required. However, given the conversations this morning, I think that we may be able to address them along the lines of what's already been put forward.

Essentially sir, there are some alternatives, as you raised earlier, to the making of any formal applications to discovery. And I note that both of my clients, the Regional Council and the Opotiki District Council, have already received, [inaudible] requests from a researcher engaged by the applicants and have responded to those requests. And what has become apparent in that alternative process, is that the extremely broad scope of the request for all information held, regarding the use and occupation of the lands within the area from 1840 onweards, is presenting a significant barrier for Councils to be able to provide any type of useful information in response because of the extremely broad nature of that request.

Just to give you some contextualised information, the Regional Council has already provided for different items and information in response to that. And one of the items was a list of over a thousand consents that exists within the CMA area from the Ohiwa Harbour and [inaudible] Point, up to Whakarae. So, to give you some idea of what type of information

you're talking about, that's just for that area and that's just a list, that's not the actual consents themselves.

So, for the Councils to be able to respond in a timely manner to the types of requests that we're talking about, serious consideration needs to be given to the scope of those requests, and great specificity as to what is actually required.

And I want to emphasise that the Councils are definitely not saying that they don't want to give this information, that they don't want to help, that they've already, the Regional Council has already put in eight hours of time into this request. The Opotiki DC offered to give the researcher a free rein in their file room to go through the files if she wanted to, and the researcher declined on the basis that it would be too time consuming.

So, this is a barrier, and we've acknowledged that it's a barrier, but what we're saying is that we need to have discussions with the counsel who are making these requests, and we need to narrow the focus and narrow the scope for what's been asked for, so that we can usefully provide the information that we hold, and so that everyone can try and comply with these timeframes that we're trying to put in place here.

Sir, for those reasons, my submissions is that the most useful way forward would be to allow the process to continue uninterrupted as it is proceeding now, and there are arrangements being made for certain matters that the researcher next week with my clients and, that in the meantime counsel for the parties who are seeking these orders should also enter into discussions on these issues with a view to potentially filing a joint memorandum, if there is any further alternative discovery process by agreement required, outside that process, and addressing issues that have been made, such as costs and how we might most usefully make use of the time that we have before evidence is filed.

Finally, I'll just highlight the issue of costs. It is one that has been brought up, I've heard all that the applicants are saying about the difficulties that they are having with that. And the Regional Council has given some indication as to the researcher, who's already made the appointment cost around that. And I think, again, that is something that can usefully be discussed between counsel with a view to coming to an agreement on what can be provided.

Finally, I'd just like to note that the Regional Councils support the approach being proposed by the Crown and my learned friend Ms Sykes on the mapping approach. And I would also note that if there is specific mapping data that is held by my clients which the applicants need access to in order to further clarify their own maps, then again, this would most usefully be put to our clients as a specific request for that information with as much detail as possible, so that the Councils are able to quickly, and accurately, respond to those requests sir.

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

COURT:
Thank you Ms Waikato. And no doubt counsel have heard what you've said and will attempt to engage in as constructive fashion with your clients as they can.

REGISTRAR:
Ngāti Ruatekena:

MS HATA:
Kia ora your Honour.

I am greatly satisfied to hear you say that you have read my memorandum.

COURT:
I have, yes.

MS HATA:
I do ask that, I wonder if my learned friends within the room have received a copy too.

COURT:
I don't know. Did you serve them?

MS HATA:
I served yourself. It was a late application on Monday. I do apologise for the lateness, but I have copies here.

COURT:
Yes, well it's not the Registrar's job normally to serve those things, so if you have copies, it might be useful for you to distribute them.

MS HATA:
Thank you your Honour. I just want to raise some points that I've heard raised from our learned friends within the court room, and I'll go straight to point No. 2. It's the copy of my application was sent directly to the Minister back on 3 April 2017. So, I certainly got in on time.

COURT:
No, no. I think you don't quite understand in that there are proceedings in the Court which are initiated by filing an application with the Court, rather than sending something to the Minister, that's the technical legal issue.

MS HATA:
OK, I understand that. But, why I raised this point is that there was a mention by Mr Pou with regards to the reason why Whakatōhea Māori Trust Board have lodged, was specifically for those hapū and iwi that either filed, and missed the gate, the deadline, and that was the reason that he posed there. So, I do draw attention to point No. 2 that they were advised back in 2017 as the Whakatōhea Māori Trust Board and gave notice. I gave notice to them directly of my application – two years ago.

COURT:
Yes, now just listen again to what I was saying to Mr Pou. It was that, while it's appropriate for him to have filed a so-called protective application, he has to actually tell the Court at some stage which hapū or iwi or whānau he is acting for. And that is what he hasn't done yet.

MS HATA:
I understand. Thank you, your Honour for clarifying that. And that is raised in [6] of my memorandum, so I just want to be clear with that. That Ngāti Rua Hapū had not granted Whakatōhea Māori Trust Board to submit on our behalf.

COURT:
Yes, I do understand that, yes.

MS HATA:
And I'm quite happy to engage in conversations with them after this, but that was point No. 6.

In terms of an issue that was raised by Ms Sykes with regards to speaking for Ngāti Rua only and Ngāti Ira to speak for Ngāti Ira, that is a point that I raised with regards to [4]. So, it was at the time that it was the last day of closing. I lodged an application not knowing, and it was later on that I learned other hapū had lodged their own claims. So, with respect, I am intending on speaking on behalf of Ngāti Rua only.

COURT:
Yes, but the point I think perhaps you need to talk to either Mr Pou or one of the other counsel on is that you only get an opportunity to do that when you have filed a claim within the time limits and although I know you think you've filed a claim, it hasn't been a claim with the Court. It may be possible, and I can't speak for Mr Pou, that he is prepared to take up your claims through the Court process. It's something you are going to have engage with him on.

MS HATA:
And if I may be permitted, if I can have that time to discuss and consider legal counsel and make that choice ourselves that would be what we're hoping for.

COURT:
Yes, you can do that.

MS HATA:
It sounds like all the learned counsel here in the room are already taken. But, I certainly want to have the opportunity to discuss this and make that choice on behalf of Ngāti Rua.

The other one I want to go to was, and that was [13] I asked for, was to have some time to discuss.

I also want to draw attention to the no communication area. I do feel aggrieved that we were left out and there was no discussion, despite having applied back in 2017. There was no communication with the Office of Treaty Settlements and the Takutai Moana rōpu at all, to me. I rang on Monday to the office. I got a sincere apology, and I am going to be discussing this with one of the staff at the back of the room later on, with regards to that matter.

No. 14 is the other point I'd like to raise. No, we'll go back to the mandate in terms of the Edwards' claim. They certainly don't have, Ngāti Rua have not granted consent for AVR Edwards or the Whakatōhea Māori Trust Board to represent our interest as Ngāti Rua.

So, I want to be very clear about that one, your Honour, which is why I filed in the first place two years ago.

In the point No. 14 was two years ago I started to, I am a researcher, and I did research a traditional map that shows and highlights customary boundary that it highlight our Takutai Moana. It highlights our customary fishing rocks, the longitude and latitude in all areas within that area. I was grateful with the start of the Office of Treaty Settlements two years ago, for them to create and generate a map so that my historical map remained private and that it wasn't going to go out within a public forum. So, I appreciate the staff's help on that. So, I do have a historical map there but, as I say, the Edwards' claim and Whakatōhea claim do not represent our interests. I don't want them to represent our interests.

COURT:
I have understood that.

MS HATA:
I want to leave it there in terms of, I certainly don't want to come under anybody or be subordinate to anybody with regards to lodging our claim. It is very, Ngāti Ruatakena are wanting to speak for Ngāti Rua and only Ngāti Rua, and we'll respect everybody else who chooses to be the same.

That's all I have say your Honour, unless you have any questions.

COURT:
Yes, I do have a few questions Ms Hata.

Do you understand the structure of the Act that has really set out two different pathways to achieving the same result? One of those pathways is called direct engagement with the Crown which involves you engaging with either Mr Melvin or with Te Arawhiti, and negotiating directly and that's a course that a number of the applicants in this room may well

have undertaken themselves, and it's not a process that I'm involved in as the High Court Judge responsible for running the list.

And the alternative is issuing proceedings in the High Court seeking certain declarations from the Court as to either customary marine title or a protected customary interest.

Do you understand those two concepts are different?

MS HATA:
I do understand your Honour. They are different. And whilst we have not pursued that track yet as Ngāti Ruatakena, it's not to say that we have not yet considered. Things have happened in the last recent two years that has made Ngāti Rua consider where we're currently sitting may not be in the best interest of Ngāti Rua. So, when it comes to direct negotiations with the Crown versus Whakatōhea Pre-Settlement Claims Trust, or the Whakatōhea Trust Board speaking on our behalf, it is for Ngāti Rua. And I need time to go back to the hapū to get a clear message there.

At this stage today, I don't have that answer for you.

COURT:
All I can encourage you to do is to obtain some legal advice, and if I could simply flag for you that because of the time limits that the Act imposed in relation to the filing of proceedings in this Court, there are some major obstacles for you to do what I think you want to do. It's not the Court's role to give individual parties advice but if I could just flag for you, I think it would be very much in your interest or the interests of your hapū to do that.

Thank you for your contribution.

MS HATA:
Thank you your Honour.

COURT:
That's everybody. Thank you counsel and applicants for your submissions today. We are now going to hear from Mr Melvin who may not be able to respond to everything but I'm sure will do his best.

Mr Registrar has just pointed out to me that it's nearly 1 o'clock. Mr Melvin, as I did yesterday, I am happy to extend a little bit over time. I'm conscious of the fact we have so many counsel, some of whom have come from out of town. I don't want to put you under any pressure. If you think you might be able to have said what you need to say in perhaps 10 minutes, I might allow you to do that now, otherwise we'll take the luncheon adjournment and come back perhaps at 2 pm or even 1.30, if that's not going to be too inconvenient.

MR MELVIN:
I'm in your Honour's hands really. I would probably take a bit longer than I did yesterday just because of the number of issues.

COURT:
Alright I think it might be appropriate and I know this will inconvenience some counsel and perhaps some parties that we do take the lunch adjournment now. And is there anybody for whom resuming at 2 pm would not be doable?

MS SYKES:
Sir, can I just seek leave to excuse myself. We've arranged a meeting in a meeting room for a number of the hapū. And they've travelled for that meeting. I think if we left some people here I'd like to facilitate that meeting. We've only got the room available for two hours this afternoon and I'll leave my junior here so I seek leave to withdraw on that basis so that I can take a lot of the people to start having the meeting discussions that your Honour has intimated this morning we should be having, around mapping and the other matters now raised by my friend from the Councils.

COURT:
Yes, alright yes, by all means, no counsel has to stay. You are welcome and the parties in the back of the Court are also welcome to stay should they wish to do so, but, by all means, if you have other obligations I don't expect any of you to stay. Obviously, if you want to hear what Mr Melvin has to stay, you will stay or send someone along.

MS SYKES:
With no disrespect to him, I just think that might be a better use of my time sir.

COURT:
Indeed, I think that's entirely correct. Hopefully, I've made my position clear – 2 pm. Mr Melvin, is that suitable for you?

MR MELVIN:
Certainly sir.

COURT:
Mr Registrar, we'll adjourn until 2 pm.

COURT:
Mr Melvin.

MR MELVIN:
Thank you sir.

Your Honour will be aware that the Attorney-General filed a memorandum for this CMC on Monday, and it addresses a number of matters that were raised in counsel's memoranda filed for the CMC.

I wasn't intending to take you through that in any particular detail. The focus of my oral submissions today is primarily to address matters that have arisen today or in memoranda filed yesterday, although I am of course happy to respond to any questions your Honour might have.

COURT:
And I'm likely to have a few.

MR MELVIN:
Perhaps if I could start with timetabling issues sir. It does, and I'd like to make this first point or observation that, in respect of the Edwards Priority application, we don't have, unlike we do with the Ngā Potiki Priority application, a formal identification of the applications that are going to be heard with the Edwards application. And, similarly, no formal identification of the extent to which those other applications will be heard.

So, in the minute that his Honour Justice Collins issued following last year's CMCs, he sets out there the particular applications that are going to be heard, whether in full or in part. And in my submission, it would be helpful to everyone, the Court and to applicants and interested parties, to have that same identification, in this case. It, of course, goes to timetabling issues because unless one knows exactly who is going to turn up to the hearing and be involved, it's more difficult to assess what the appropriate timetable should be for the hearing. So, that's a preliminary point sir.

COURT:
Just before you leave that Mr Melvin, have you discussed that with the other counsel who have been here this morning?

MR MELVIN:
No, I haven't. With the Ngā Potiki application, it was a matter that was addressed in Court with his Honour Justice Collins, and maybe that it could be addressed sir, by way of a direction from your Honour that counsel file a memorandum.

COURT:
Well, if it hasn't been done, I assume it would have followed the same format at Ngā Potiki.

MR MELVIN:
Yes, that's probably, with respect, a correct assumption to make. But, at the moment anyway, there's no record of who actually intends to appear and take part in the Edwards application.

COURT:
Presumably, in allocating eight weeks, the registry staff at least had some idea of how that might have been broken down as per party.

MR MELVIN:
I don't think so sir. I don't recall any particular.

COURT:
Where did the concept of eight weeks come from?

MR MELVIN:
Well, maybe I should be a bit more careful with my recollection. Possibly, there was at last year's CMC some indication of timeframes.

COURT:
So, you want a direction?

MR MELVIN:
I suggest that would be helpful for everybody.

COURT:
Well, if it hasn't happened, it's undoubtedly helpful and what the Court needs as well as what the other parties will need, and indeed the applicant.

MR MELVIN:
Yes. In terms of the existing timetable for the Edwards application, it does seem apparent that it needs some adjustment because the evidence in support of the Edwards' application was to be filed on 5 July, followed by the evidence of applicants with cross-claims to be filed on 6 September, then evidence from interested parties to be filed on 2 December, and any evidence from the Crown to be filed on 2 March.

COURT:
What do you say to the submission that, effectively, the Crown shouldn't be in a separate or different position to other interested parties, and should file its evidence contemporaneously with them?

MR MELVIN:
My submission sir, is that it would be appropriate to have the Attorney-General file any evidence after other interested parties because there may be matters that the Attorney-General would wish to correct or dispute that those interested parties raise in their evidence.

COURT:
Could that outcome also be achieved by giving the Attorney-General leave to file such reply matters as required attention?

MR MELVIN:
That would be a way to address it sir. My submission, however, is that it would be appropriate to maintain the relative timeframes for the filing of any evidence the Attorney-General wishes to file, as set out in the original timeframe.

COURT:
Yes, I understand that to be your submission. I'm trying to work out exactly the mischief that's designed to address and, so far, you've identified simply the need to reply to matters, and I can understand that, but it does seem to me, if I reserved leave for the Attorney-General to do that, that's another way that mischief could be met. What I'm trying to understand is are there other matters behind that submission?

MR MELVIN:
The other issue is that the task of giving consideration to a large number of, well firstly, the primary applicants' evidence, plus the large number of overlapping applicants' evidence is a sizeable task, and needs to be given, in my respectful submission, adequate time to be completed.

COURT:
Yes, but aren't all interested parties in the same boat?

MR MELVIN:
Not all interested parties sir, are likely to have the same interests that the Attorney-General does across all applications.

So, in my submission, there would be a clear distinction between the Attorney-General and other interested parties.

My friend, Ms Sykes, in her submissions this morning where she indicated a potential timetable suggested that the Crown file its evidence in May 2020 after having set out dates for the other groups, and in my submission sir, that would be an appropriate timeframe to set down.

Unless your Honour has any further questions on timetabling issues, I'll move onto the issue of discovery.

COURT:
Yes, please.

MR MELVIN:
I make the first point that, to date, there has been no approach to counsel for the Attorney-General by any other party in relation to discovery.

COURT:
No approach at all?

MR MELVIN:
No approach at all. It's been raised for the first time in the memoranda filed for this conference. In making that observation, I have regard to r 8.2 of the HCR which requires parties to co-operate to ensure the processes of discovery and inspection are facilitated by agreement on practical arrangements, amongst other things. So, it is somewhat disappointing that, from counsel's point of view, that there hasn't been that approach.

The Crown maintains its position that it views formal discovery orders in these proceedings under the Takutai Moana Act not to be appropriate.

COURT:
Yes, it would be unusual, but I think, as at least one of the parties has adverted to, the Court has a residual discretion at the end of the day what it does.

MR MELVIN:
Yes, and this may be an issue that I seek leave to make further submissions on following this CMC. But in any case sir, the preferred option would be for counsel to discuss the matter with counsel for the Attorney-General to reach an agreed position as to what documents the Crown is able to provide.

COURT:
Yes, in an ideal world that would happen. My sense is that, given the imperatives of time and that we have a date for our hearing, that may be an optimistic view of the world, and it may be the Court has actually got to, at some stage, address formal discovery applications. And I commend you, if that's what you're anticipating doing, let's hope it does work. I'm not presently overly optimistic it will.

MR MELVIN:
The key aspect, in my submission, is that any request either for discovery orders or a request for the production of information by agreement, needs to be focused. And it needs to be focused on what is relevant to an application. And with respect, in my submission, the applicants' proposition that, in [4] of my friend's, Ms Linstead-Panoho's, memorandum filed yesterday, where it sought that there be disclosure of the archival material the Crown and local authorities hold regarding the use and occupation of the lands within the application from 1840 onwards, together with any information regarding customary interests from 1840 onwards, is just woefully too broad and unspecific and would, responding to that, put in jeopardy an orderly approach to hearings in August 2020.

COURT:
And it goes well beyond the sort of discovery orders that are made under the HCR.

MR MELVIN:
Yes, and any encouragement your Honour can give to applicants approaching request for information or discovery orders with the specificity that they require in this forum would be appreciated.

COURT:
That's one of the reasons … My concerns about the breadth of what was sought by way of discovery was one of the reasons I've encouraged the parties to consider alternatives, particularly under the OIA or the Local Government OIM Act, because it just seems to me ultimately, they are far more likely to produce the information that the applicants want. Whereas there are significant limitations as to discovery pursuant to the HCR.

MR MELVIN:
Yes, however sir, and I respectfully agree with that, however, requests under the OIA and Local Government equivalent, also need to be focused.

COURT:
Indeed, and that point has been made by the representatives of the local authorities.

MR MELVIN:
And counsel for the Attorney-General supports that sir.

Before I move on from that point, and for clarity, the Crown proposes that there be discussions with applicant counsel who seek information from the Crown and would endeavour to resolve those issues within perhaps four to six weeks, and endeavour to file a joint memorandum if agreement is reached, or otherwise file a memorandum with the Court.

If I move on to the issue of mapping sir. I can deal with this briefly. Just responding to my friend's, Ms Sykes', comment this morning that she thought there was merit in a regional approach to mapping guidelines, if I've understood her correctly, I believe I do. Counsel for the Attorney-General doubts that regional variations would be appropriate but it's something that we'll discuss with Ms Sykes.

COURT:
As I understood her submission, she thought that it might be useful to have a regional committee. I don't think she was going so far as to say, there should be regional variations in the types of map.

MR MELVIN:
Yes, but my difficulty then is just understanding the need for regional committees rather than one committee that would draft guidelines that would have universal application. In any case, sir, it's a matter that I will follow up with her.

COURT:
It's not a matter the Court is going to direct you to do, a particular course or another, but it is a useful initiative.

MR MELVIN:
Yes. Moving onto funding issues sir.

The written memorandum for this CMC addresses some of the funding issues that were raised by counsel in their memoranda. Two matters have been raised today which I'd like to address.

The first relates to hearing time. The current matrices for High Court funding do allocate, or do refer to, two weeks of hearing time. It's now acknowledged by the Crown that there will be hearings that will exceed well beyond two weeks. Where that is the case, the Crown will

fund the hearing time required. That was made clear during the Waitangi Tribunal inquiry through the evidence of Ms Johnston, and Ms Johnston, in her evidence, invited counsel for the Edwards' application to approach Te Arawhiti to discuss the matter further.

So, there is no issue there, in my submission.

COURT:
Thank you, that's helpful.

MR MELVIN:
On the issue of Court fees. If they are not waived, they will be paid by the Crown. Crown policy is to pay for all Court fees.

COURT:
Is that fact something that has been communicated to the various applicants?

MR MELVIN:
I believe it is.

COURT:
I mean, it seems there must be at least one or two who didn't understand that because otherwise they wouldn't have raised it with me.

MR MELVIN:
Well I am surprised sir, because it was, again, it was a matter that was raised in the Waitangi Tribunal inquiry and it was addressed there.

COURT:
Yes, I think it may have been Mr Pou who raised that, I can't be sure. But, perhaps he wasn't involved in the Waitangi Tribunal inquiry.

MR MELVIN:
So, the current matrices are probably not best worded in this respect. It does indicate legal advice and Court fees will be paid. It has a ceiling but there will not be a ceiling for Court fees.

COURT:
Thank you, that's sensible.

MR MELVIN:
Moving onto briefly the role of the Attorney-General sir. It was helpful to hear your Honour's exchange with my friend, Ms Collinson, on their application for a hearing on the role and status of the Attorney-General and to have a clearer understanding of what is sought and perhaps the issues to be considered in that interlocutory hearing. In my submission, it would be helpful, before the matter actually comes to an interlocutory hearing, for there to be perhaps a judicial conference in which the particular issues to be addressed are clearly identified so that the parties turn up to the interlocutory hearing, particularly the Attorney-General, knowing what the particular concerns are that the applicants have.

COURT:
The principal concerns seem to be one of potential conflict of interest, and obviously there was some, I don't know what the right word is, some disquiet that the Attorney-General saw his role, essentially, as contradictor against the Māori applicants. In other words, if the role could be described in a word as a non-Māori position rather than as supportive of Māori position, at least that's as I understand what the parties were saying.

MR MELVIN:
Yes, I'm simply submitting sir, that it would be helpful to get as much clarity in advance of the hearing on what the issues are.

COURT:
Yes, well it may be that's done by an exchange of memorandum, given the parties are obviously having funding issues. And if there's a further judicial conference like this, all the parties will have come from near and far.

MR MELVIN:
Not all parties have lodged an application sir. If the matter was confined to the applicants who have filed an application, it could be addressed by way of a telephone conference.

COURT:
There are also a number of parties who, while not having filed their own application, have indicated support for it. So, we're talking multiple rather than a handful, I would've thought. Anyhow, that's something for me to reflect on. I've heard your submission.

MR MELVIN:
And just to close that point off sir, and as you indicated earlier today, the Crown has filed further memoranda in which the Attorney-General has made it clear that he is not there to act as a contradictor to applications under the Act.

COURT:
Yes, but as I made the point, that's clearly not satisfied all of the parties who were initially concerned about this and if, ultimately, the Court has been asked to deal with this as a preliminary view, I don't think the Court has got much option but to set it down. Unless, there's a further discussion between all parties and a consent memorandum, I think absent that, it has to be set down for argument.

MR MELVIN:
Yes, I don't dispute that sir.

Last, perhaps, is the issue of Raupatu that's been raised in this CMC. In my submission sir, that's an issue for the substantive hearing of the applications. There's been some suggestion that it could be dealt with in some way by an interlocutory hearing. In my submission, an interlocutory hearing would not be an appropriate forum to address a matter that is very fact heavy and to address it in the abstract would be the wrong way to approach it.

COURT:
Yes, I didn't understand the submission to me to be that there should be some general abstract hearing covering all of this. It's really Whakatōhea in relation to these proceedings that raise that as an issue.

In counsel's submissions, there were a number of questions set out as to matters that they wished to have an indication of the Crown's view on. It seemed to me that none of those questions were unreasonable per se, and again, looking at ways that we can make things as efficient as possible, so the hearing doesn't end up running over eight weeks, it may well be appropriate for the Crown to give some indication in response to those questions. I mean

even if it's no, we don't agree with that and we're going to oppose that. The applicant knows exactly where the Crown stands. So, I'm not attempting to push the Crown to make any concessions at all, but I am saying, if the Crown could make its view known on matters which certainly I know the Court is going to be confronted with in this case, and possibly in other cases as well, prior to us finally getting to the substantive hearing, that's likely to clarify things and probably focus all parties' attentions more productively.

MR MELVIN:
And the first step in that process sir, would be the applicants filing a memorandum where they set out their position on particular matters and seek the Attorney-General's response to those.

COURT:
To some extent, and the questions that were posed in the memorandum before us today, they've done that. I mean you don't have to be a rocket scientist to work out what the issue is that they're raising and in terms of the oral submissions that was, to clarify a little as to why they are.

MR MELVIN:
But, it would be fair to say, in my submission, that they're not well-developed arguments by the applicant at this stage. It's very much headline issues without understanding the particular legal or factual basis upon which they're based.

COURT:
And it may be your response might have to be a headline response of the same level.

Look, I'll reflect on that and if I feel it's going to advance matters and assist in the smooth running of it, it may well be I make some directions, both as far as the applicant is concerned and as far as the Crown is concerned. It just does seem to me those are issues that are not going to go away, and it would be helpful if we knew, sooner rather than later, what the various parties' positions were.

MR MELVIN:
Unless your Honour has any questions, those are my submissions. I would just ask that leave be extended to the Crown to file any further written submissions as leave has been granted to other parties.

COURT:
Yes, although in respect of Ms Sykes, that was in relation to a specific matter. Can you identify the matters now you might want to file further submissions on?

MR MELVIN:
My thinking was perhaps in respect of the discovery issue my friend raised, mentioned a case reference which wasn't included in her written submissions. I haven't had an opportunity to review that.

COURT:
That was the *Elementary Solutions* case I think, which is in an entirely different world and context to this one.

But, by all means, if there's something in relation to the issue of discovery, that's been raised that you've been caught short on, and want the opportunity to look at the case, by all means. That case, as I recall it, is simply authority for the proposition that the Court does have a residual discretion which in suitable cases, and it's not every case by any manner of means, it may order discovery. But I don't think it's particularly helpful in the sense that the discovery would have to be a targeted or tailored discovery. At least that's my preliminary view at the moment.

MR MELVIN:
Thank you sir.

COURT:
Alright. Thank you Mr Melvin.

Well hopefully now everybody who came along wanting to say something has had the opportunity of addressing the Court. I'm not hearing any opposition.

Thank you all for attending and for your helpful submissions. And for those who have been sitting in the public gallery, thank you for your attendance and interest in these matters.

No reirā, tēnā koutou katoa.

CMC CONCLUDES – 2:32PM