MACA CASE MANAGEMENT CONFERENCE
TAURANGA
18 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.

Welcome everybody. For many of you this will be your second or third or more CMC. For the interested parties, it may well be your first CMC, but you will all get an opportunity to express what you have to say in due course.

What I will ask Mr Registrar to do first of all is to move through and record the appearances, so I know who is here, both for the parties and for the interested parties.

Thank you Mr Registrar.

REGISTRAR:
CIV-2017-485-238 – Te Whānau a Te Harawaka

MR MCCARTHY:
Counsel is McCarthy appearing on behalf of the group sir.

COURT:
Yes thank you.

REGISTRAR:
CIV-2017-485-294 – Ngāti Ranginui

MS TAHANA:
May it please your Honour, Ms Tahana for Na Hapū o Ngāti Ranginui Settlement Trust.

COURT:
Tēnā koe Ms Tahana.

REGISTRAR:
CIV-2017-404-480 – Ngāti Hei

MR HIRSCHFELD:
May it please your Honour, Hirschfeld, I appear with my learned counsel, Ms Thomson for Ngāti Hei. May I put in my other appearances?

COURT:
Yes, thank you.

MR HIRSCHFELD:
CIV-2017-404-483 – Ngāti Pū and
CIV-2017-404-528 – Ngāti Hako

COURT:
Tēnā kōrua Mr Hirschfeld and Ms Thomson.

REGISTRAR:
CIV-2017-485-223 – Ngāti Whakahemo

MR WEBSTER:
Tēnā koe sir, may it please the Court, Webster. I appear today for my friend Mr Koning who is unable to attend, and he represents this particular application which is filed on behalf of Ngāti Whakahemo.

COURT:
Tēnā koe Mr Webster.

REGISTRAR:
CIV-2017-485-244 – Ngā Hapū o Ngāi Te Rangi

MR GEAR:
Tēnā koe your Honour. Counsel's name is Gear, and I appear for Ngāi Te Rangi Settlement Trust on behalf of Ngā Hapū o Ngāi Te Rangi.

COURT:
Tēnā koe Mr Gear.

REGISTRAR:
CIV-2017-485-767 – Ngā Hapū o Te Mōutere o Motītī

MS FEINT:
Tēnā koe te Kaiwhakawā. Ko Feint ahau he roia ahau mo Ngā Hapū o Te Mōutere o Motītī.

COURT:
Tēnā koe Ms Feint.

REGISTRAR:
CIV-2017-408-568 – Ngāti Whakaue

MS MASON:
Tēnā koe sir. Counsel's name is Mason and I appear for Ngāti Whakaue ki Maketū, and sir if I may, I also appear for Mr David Potter on behalf of Tangihia Hapū, and that is CIV-2017-485-514.

COURT:
Tēnā koe Ms Mason.

MS MASON:
Sir, there's some confusion with the number for Te Rūnanga o Ngāti Whakaue ki Maketū and perhaps if I could look it up and then liaise with the Registrar about the actual number. I've got 770 here but it might be…

REGISTRAR:
I have two applications with the name, one is 568 and one 770.

MS MASON:
It's the 770 one, I've got the 770.

REGISTRAR:
CIV-2017-485-568, which is the other Ngāti Whakaue matter we have.

MR WARREN:
Te Kaiwhakawā, tēnā koe. Counsel's name is Warren, appearing on instructions for Mr Kahukiwa for that particular application this morning.

COURT:
Tēnā koe Mr Warren.

REGISTRAR:
CIV-2017-485-222 – Ngāti Tara Tokanui

CIV-2017-485-793 – Ngā Potiki

MR WARREN:
Mihi ano te Kaiwhakawā. Warren appearing on those two applications.

COURT:
Thank you Mr Warren.

REGISTRAR:
CIV-2017-485-291 – Ngāti Mākino and Ngāti Pikiao

MR POU:
Jason Pou for Ngāti Mākino and Ngāti Pikiao sir.

COURT:
Tēnā koe Mr Pou.

REGISTRAR:
CIV-2017-485-195 – Ihakara Tangitū Reserve

CIV-2017-485-219 – Ngāti He Hapū Trust

MR WEBSTER:
Webster sir. I appear on those as well, and if I may, with your leave, also lodge an appearance for Te Rūnanga o Ngāti Awa. Their application does actually overlap with the applications that are being considered in this conference. Their number is CIV-2017-485-196.

COURT:
Thank you Mr Webster.

REGISTRAR:
CIV-2017-485-250 – Ngāti Pūkenga

CIV-2017-485-257 – Ngāi Te Hapū

MR BENNION:
Te Kaiwhakawā, tēnā koe. Mr Bennion appearing on both those matters sir.

COURT:
Tēnā koe Mr Bennion.

REGISTRAR:
CIV-2017-404-556 – Ngāti Porou ki Hauraki

MR LYALL:
Tēnā koe sir. Lyall for the applicants.

COURT:
Tēnā koe Mr Lyall.

REGISTRAR:
CIV-2017-485-317 – Raurima Island Māori Reservation

COURT:
No-one from Kahui Legal? Alright just proceed to the next one.

REGISTRAR:
CIV-2017-485-514 – Tangihia Hapū

COURT:
That's you Ms Mason?

MS MASON:
Yes, sir that's me and I made an appearance earlier for that number, thank you.

COURT:
Thank you.

REGISTRAR:
CIV-2017-485-227 – Ngāti Hikakino, Ngāti Te Rangihouhiri II, Te Tāwera

COURT:
No appearance. Thank you Mr Registrar.

We have the normal procedure, just to explain for those of you who are new to this, the purpose of these CMCs is for the Court to try and keep some semblance of control and order in relation to these proceedings, and as I've said to those of you who have been at the prior CMCs, I'm well aware that many of your clients would prefer direct engagement. A number have either started that process, or have attempted to start that process, and obviously if that's the preference of the parties that you represent, that will be what you're able to pursue, but to the extent that these matters need some form of order, hopefully the output of these CMCs will be directions where directions are sought. And also the identification of roadblocks and hopefully the resolution of those probably by way of interlocutory hearings on some of the issues.

I realised I haven't acknowledged the Crown, you appear Mr Melvin.

MR MELVIN:
Tēnā koe sir.

COURT:
Tēnā koe.

I know we also have a number of interested parties who have taken up the invitation to appear and it might be appropriate at this stage if we record appearances either of counsel or of interested parties who are here representing themselves if they just confirm who they are and who they represent.

Mr Registrar, are you aware of the list of the interested parties?

REGISTRAR:
Bay of Plenty Regional Council: Tēnā koe sir. Counsel's name is Ms T C Waikato, and I appear on behalf of BPRC.

Great Mercury Island Ltd: Your Honour, counsel's name is Ms Drought. I represent GMIL.

Hauraki District Council and Whakatane District Council: Tēnā koe. May it please the Court. Counsel name is Ms Jones appearing on behalf of HDC and WDC.

COURT:
Tēnā koutou.

Do we have any other interested parties who are appearing for themselves, in other words who haven't instructed lawyers today?

No. Thank you.

Alright. We'll follow the same format that we normally do in these and that's to move through each of the memoranda that have been filed. There are some issues that will be common to you all. I assume that you've all had an opportunity to review the memorandum filed on behalf of the Crown in relation to mapping because that's likely to be relevant to issues for all of the applicants that are here. I will be asking Mr Melvin at the end of this CMC just to talk through that memorandum and some of you may wish at the conclusion of the hearing to take the opportunity to speak further to Mr Melvin to the extent you want to clarify and progress issues of mapping.

So, if we could start Mr Registrar simply by working through the memoranda.

REGISTRAR:
CIV-2017-485-238.

MR MCARTHY:
Kia ora sir. I've indicated in the memorandum that has been filed that we're looking to be ready around mid-2020. The maps remain unchanged. Just by way of update, Ms Savage is participating in the Waitangi Tribunal inquiry and obviously she's hopeful from that, and she put in her engagement application but hasn't heard anything back yet. She's contracted, I believe, a historian and they'll be working diligently towards that. Given that we've indicated that they'll be ready around mid-2020, we seek an adjournment until the next round of CMCs. I think that would probably be the best way of dealing with it.

COURT:
In terms of overlapping claims, are you engaging in discussion with counsel before overlapping claimants?

MR MCCARTHY:
I've recently been instructed on this matter sir, and I understand that Ms Savage, Te Whānau a Te Harawaka is a hapū of Te Whānau o Apanui, and they've had an informal meeting with Office of Treaty Settlements but that's in regards to their historical settlement. And they've brought it up in that context but there's no formal correspondence has been reached in regard to the MACA matter. So, it's sort of an awkward time at the moment because Te Whānau a Te Harawaka is sort of deciding whether they support the historical settlement that Te Whanau o Apanui is, negotiations are going through.

So, they've haven't actually reached a position whether they support it or not. And I guess they would inform the MACA strength.

COURT:
Yes, I would have to say, again as I've said at other conferences, that 12 months ago the parties were encouraged where there were overlapping claims, to talk to one another on the basis that, by far the most satisfactory outcome is likely to be one where the parties agree, one with the other, on overlapping issues if there are boundaries in dispute, if there are other issues, as compared to the Court simply imposing an outcome and, it doesn't seem to me, it's not personally your fault, but it doesn't seem to me over the past 12 months that there's been a lot of progress. So, I would certainly encourage, not only your clients but everyone here. I will be saying the same thing.

It really is important that counsel, for overlapping claims, talk to one another and endeavour to resolve those matters as can be resolved, and I know inevitably there will be some that the Court has to address, so I would encourage that. And I would be disappointed if in 12 months' time we come back, and I have counsel saying the same thing to me that despite their best endeavours nothing has happened, and they haven't spoken to other counsel.

MR MCCARTHY:
Understood sir.

COURT:
So, as far as your client's concerned, given that you anticipate having all your evidence ready by the middle of next year, it's simply to be a 12 months adjournment to the CMC that will take place in about a year's time?

MR MCCARTHY:
Thank you sir.

COURT:
Thank you.

CIV-2017-485-294 – Ngāti Ranginui.

MS TAHANA:
May it please your Honour.

In terms of evidence and preparation for Ngāti Ranginui, I can indicate that it's likely to be sort of March to mid next year that that would be ready, so I'd also be seeking an adjournment.

In terms of overlapping interests, and in particular the Ngā Potiki urgency claim, Ngāti Ranginui are very keen to engage, and continue, discussions with… There haven't been any substantive discussions to date, but are very keen to meet with other applicants that have overlapping interests and progress those discussions.

COURT:
What has been the hold up or the impediments to those sorts of discussions taking place over the last 12 months or so?

MS TAHANA:
In terms of Ngā Potiki, one of the issues has been the change in legal counsel.

COURT:
That's relatively recent, as I understand it.

MS TAHANA:
Yes. And I think there hasn't been any progress in their discussions and Mr Warren can speak to this with the Crown, which will inform, to some extent, the discussions.

COURT:
Yes, do you know whether that's because the Crown is simply not engaging or not responding, or are there other reasons?

MS TAHANA:
Sir I'm not really in a position to answer that but Mr Warren could assist.

COURT:
Is there anything that you particularly want from the Court by way of a direction or comment that's likely to advance your client's position?

MS TAHANA:
Ngāti Ranginui is mindful of, in terms of the overlapping interest with Ngā Potiki, that is only to consider part of the application, they are keen to see the remainder of the application progress. So, we'll be seeking a hearing date soon after Ngā Potiki, or certainly as can be set down.

COURT:
And in terms of length of hearing your client's case, might take how long do you think?

MS TAHANA:
I would have thought a day sir.

COURT:
A day in total. How many witnesses are you contemplating?

MS TAHANA:
At this stage we have four but there's potential, Ranginui has engaged a researcher and out of that may fall other evidence. So, to be safe, let's say one to two days.

COURT:
Let's say two days. These things always take longer than you expect for it.

I guess we'll have to wait until I've heard from counsel for Ngā Potiki but I understand what your client wants. Thank you Ms Tahana.

REGISTRAR:
CIV-2017-404-480, 483, 528.

MR HIRSCHFELD:
It may please you sir. If I could record accordingly. All of these applications are on track as far as counsel are concerned. A large part of that has been in the organisation of research being done, professional historians. They're all on board, as it were sir.

Ngāti Hei leads in that set. They will be ready for trial, certainly by mid next year. Certainly no later than the end of next year.

Just picking up on some of your Honour's points. I hear your Honour loud and clear on talking to the neighbours and overlaps and so on, that has been borne in mind. One of the things that needs to be remembered is that the evidence needs to be sorted before you can talk to the neighbours very often. And that means that there's a great uncertainty. So, part of the time elapse has been around getting the evidence to a reasonable state. In the case of Ngāti Hei, at least part of that is likely to go to trial, the rest might be negotiated, or some arrangement arrived at with the Crown eventually, but I apprehend at this point, that that's a fairly major contender.

As to the other two, I can't report any more definitive comment than I have. But at this stage everything can go off from, everybody's point of view until next year.

COURT:
So, essentially a 12 months' adjournment, and you're anticipating having your evidence completed by that, so we're probably looking at.

MR HIRSCHFELD:
Yes sir. If I could just give you an order there. Ngāti Hei has indicated we should be finished that by the end of this year and ready for trial mid-next year to late next year.

Ngāti Pū will be next. That would be early 2021, and Ngāti Hako could be ready late that year as well, later in 2021.

COURT:
So far as Ngāti Hei is concerned you probably don't want a 12-month adjournment if you think you'll be ready, have assembled everything by the end of this year, it may be appropriate to schedule another CMC.

MR HIRSCHFELD:
Yes your Honour. I thought that was the only option but now that your Honour has mentioned that, yes of course.

COURT:
There are in other parts of the country some CMCs being set down for February, and it's also possible I will have a month-long hearing in February, and obviously if that happens, then we'll have to jiggle around with the date, it may be that Ngāti Hei is a candidate for February.

MR HIRSCHFELD:
Yes I can say that it would be sir. So, February next year.

COURT:
Thank you Mr Hirschfeld.

REGISTRAR:
CIV-2017-485-223, 195 and 219.

MR WEBSTER:
Yes sir. Dealing with Ngāti Whakahemo first. It's an application represented by my friend, Mr Koning and he's forwarded me his memorandum which merely indicates that they're at application to be heard in full with the Ngā Potiki Priority application. And they support the proposed engagement that has been suggested by Ngā Potiki between the overlapping claimants. His memorandum doesn't deal with any matters beyond that in terms of readiness for hearing. So, I can't take that any further, but the applicant is supportive of the view being proposed by Ngā Potiki.

COURT:
Well that obviously involves all of the cross-applicants talking to one another, and you've heard the comments I've made. I won't repeat them but I would encourage that.

So, a 12-month, simply adjourned until the CMCs that will be convened in about a year's time.

MR WEBSTER:
I suggest sir, it may well be that my friend Mr Warren is going to update the Court on where things have moved to since discussions have been held between counsel. So, in fact perhaps he probably might go before in terms of the next review because they may well determine how this grouping that surrounds the Ngā Potiki application might be dealt with and when the next check-in date might be.

COURT:
Well look, rather than break into things and have you come back, I'll give you the right of reply to anything that Mr Warren says that effects your client, but if you can just perhaps move through your other matters that you're acting in respect of.

MR WEBSTER:
Yes. In relation to the Ihakara Tangitū Reserve, they do have a preference for direct engagement with the Crown on the basis that it is a rather discreet area. It's a small part of an estuary off the Te Puna Peninsula, so it seems to me to be amenable to that kind of engagement, and at the current date we haven't had a response from the Crown to the application for engagement. Well, certainly I haven't been advised of any response to it. So, I think that's something that needs to be followed up.

In terms of if it was to go to hearing, I expect that you're looking at maybe two or three witnesses, and it will be into that one to two days' worth of hearings just because it is a discrete area.

Whether or not there would be any overlappers, I'm not so sure. But, I certainly think we'll probably liaise with Ngāti Ranginui who are main applicant that probably surrounds or has interest in and around the application area. So, we would have to liaise with them about perhaps co-ordinating and, but it also could be heard separately I would have thought as well.

COURT:
Yes, from my recollection from looking at the map it was a very confined geographic area.

MR WEBSTER:
Yes sir, it is.

So, that's where matters currently stand. I think there needs to be some discussions with Ngāti Ranginui and others. And it does fall into that category of being put off for next year for a further call up.

COURT:
Alright. I just commend you to get those discussions under way.

MR WEBSTER:
Yes, thank you sir.

In relation to the Ngāti He Hapū Trust, first thing I have to say is, we have struck some issues with the mapping, so I'm grateful to see the Crown is now offering some assistance in that regard and we'll more than likely take them up on that. So, we still have yet to file a map that accurately depicts the application area and we will do that. I will be having a discussion with my friend Mr Melvin after this.

But the general position for the Ngāti He Hapū Trust is they're working in with the Ngai Te Rangi Settlement Trust and the Ngā Potiki claimants, and so they agree with the overlapping claimants/applicants discussion process. They haven't advanced necessarily yet in terms of preparing for hearing. I think they've really just been focused on, awaiting these discussions with their whanaunga in the first instance. So, certainly they'd be a next year applicant group sir.

COURT:
Yes, my notes here indicated that the Ngāti He Hapū Trust haven't yet filed a map delineating their claim. Do you have any instructions on that?

MR WEBSTER:
Yes, I do sir. Well, that's where I think some assistance is going to be required in terms of preparing that. At the moment, as I understand matters, they're not currently in receipt of any funding so haven't been able to engage anyone to help them prepare that map. I suppose we could draw some lines over the top of a map in the interim, but I'm working to try and resolve that issue.

COURT:
Alright as long as you're onto the issue and know that the Court really needs a map in respect of each claim.

MR WEBSTER:
Sure, yes.

The last application if I can deal with it now sir, was the Te Runanga o Ngāti Awa.

They're in an interesting position in that they have this area that they overlap into and they extend all the way over to the Edwards Priority application as well. And so they're still doing some work on how it is they're going to address their application when it's heard and how they're going to participate in these other applications that are going on around their area. So, I know that's not a particularly detailed way of giving you an indication of where they are but there's still a lot of thinking going on about how they're going to advance their own application while at the same time dealing with the Priority applications that are going to be heard in advance of theirs.

COURT:
What is the CIV number, the last three digits?

MR WEBSTER:
196 sir.

COURT:
Are they scheduled to, I've got 195 but I don't seem to have 196 listed here. Are they cross-applicants or interested parties, or claimants?

MR WEBSTER:
They're cross-applicants sir. So, their interests extend out to Motītī Island and around. And so, certain of their hapū extend into this district, and they extend down as far as Ohiwa and out to White Island. So, they've got a more extensive application area. Principally though, I'll be attending tomorrow sir to deal with their application areas in the east. So, they overlap here, so they'll need to be heard in part, either in a respondent type of fashion or having heard part of their application. And then of course their core area will be heard in some other

manner, but then, as I say, there's also the Edwards' application on the other side of their border and so they'll need to be heard on that.

So, there's still a lot of thinking going on about how it is that groups that are caught with overlapping interests in relation to more than one Priority application are going to be dealt with while at the same time advancing their application.

COURT:
I don't seem to have a memorandum in respect of that matter, is that something that would be for the Rotorua CMC?

MR WEBSTER:
Yes sir.

COURT:
We'll deal with that tomorrow then.

MR WEBSTER:
Thank you sir.

REGISTRAR:
CIV-2017-485-244 – Ngā Hapū o Ngāi Te Rangi

MR GEAR:
Thank you sir. So, our application partly overlaps what the Ngā Potiki Priority application. And we've supported the memorandum that was filed by Mr Warren last Friday, so we support re-engaging with all of the other overlapping claimants and trying to reach an agreement amongst us to advance the application sir.

In terms of the Ngāti Te Rangi application, it also overlaps to a large extent with the Ngāti Ranginui application, so I would like to line up with that application as well and adjourn until the next conference next year.

COURT:
Yes I hear you when you say you'd like to engage. What efforts have you made to date to engage with the cross-applicants?

MR GEAR:
There has only been one real effort that was made, and that was made last year and at that time Ngā Potiki was leading discussions. Nothing has been advanced since then sir. From our own perspective we were looking to the Ngā Potiki application as the one to focus on as it has priority, but other than that, I have had discussions with members within Ngā Potiki to discuss ways forward, but apart from that, we haven't had any kind of global discussion with all of the other overlapping claimants.

COURT:
Are there any concrete proposals to have such discussions?

MR GEAR:
Apart from what's outlined in the memorandum from Mr Warren, no sir.

COURT:
Well again, it would be really helpful if you made it your absolute priority to have those so that when we do come back next time you can say yes we've had discussions, we've refined these issues, these are the matters the Court is going to have to determine.

MR GEAR:
Yes sir.

COURT:
So, essentially, adjournment to the next annual CMC?

MR GEAR:
Yes sir.

COURT:
Thank you.

REGISTRAR:
CIV-2017-485-767 – Ngā Hapū o Te Mōutere o Motītī.

MS FEINT:
Tēnā koe ano sir.

My clients are the hapū of Motītī Island and they're in the group that are grouped within Ngā Potiki Priority application. Their application is to be heard in full with the Ngā Potiki Priority one.

What I'm instructed to start by saying is that my client has come to the Court today in a state of extreme frustration. They filed their application in 2015. They had timetable orders before Justice Mallon. They were due to be heard last year so they would've been done and dusted by now and then they got derailed by being grouped in with the Ngā Potiki Priority application, so, somewhat ironically, they're being held up by the Priority application which has come to a complete stop.

So, at the conference this time last year, there had been one meeting between Ngā Potiki and the other applicants that are grouped in with that application, and it was agreed, in principle, that everyone would talk together about how to service the applications ready for hearing and see whether agreement could be reached on matters of overlap and so on. And absolutely nothing has happened in the 12 months since.

It seems that Ngā Potiki are now seeking much the same directions this year that they sought last year. And my clients are adamant that they don't want to wait another 12 months for nothing much to happen. They're all in their 70s and 80s so they just want to get the matter set down and get to hearing.

So, the way I have approached matters in my memorandum is to suggest that, first of all to make clear, my clients are happy to engage with Ngā Potiki and the other applicants who are grouped together as part of that Priority application. But, to their way of thinking, if we had timetable orders that would focus everyone's minds and make sure that the discussions happen and happen promptly. And I can't see any real reason why we can't have a timetable set down today with a fairly long lead-in time to give everyone time to get ready.

My clients already have their technical evidence done and they've done some of their customary evidence as well. We could be ready in three months. I accept that not everyone else will be.

I have proposed a timetable in my memorandum suggesting that we file, all the applicants file evidence by the end of November, apprehending from what I've heard today that it may be that everyone else will be ready by the end of November, but I can't see any real reason why they can't be ready by either the end of this year or early next year. And it seems to me that all applicants will have to file evidence concurrently to make it fair. So, it would be very helpful, in my submission, if we had timetable orders requiring all applicants to file evidence, say six months hence, or at least by early next year.

COURT:
Are your clients also engaging directly with the Crown or seeking to?

MS FEINT:
The Crown is declining to engage with them.

COURT:
That's a complete decline, not just a 'we'll get back to you in the future'?

MS FEINT:
No, it was the customary interests are too complex, we'll bat it off to the High Court instead.

COURT:
I see from looking at your memorandum you propose, what you describe as a further judicial conference in four months, that's presumably a CMC you are referring to?

MS FEINT:
Yes, that's right. So, I based this timetable on the timetable we had originally and tried to identify the issues that we have identified at that point. So, one of them is the appointment of a pukenga to assist the Court. And the way that Justice Mallon had proposed that work is: so, the applicants would file evidence first; then the Crown and interested parties 12 weeks later; then we had evidence-in-reply; and then the pukenga would provide their report to the Court a month after the receipt of the final evidence.

COURT:
Did Justice Mallon issue a direction or a minute to that effect so that I can go back and have a look at it? I'm not aware that she did.

MS FEINT:
Yes she did. So, it was dated 26 August 2016.

COURT:
Effectively you want a reinstatement of the type of regime that Justice Mallon had proposed? Can you explain to me why, was it Justice Mallon or Justice Collins, departed or changed from that regime? Is there a minute recording any reasons?

MS FEINT:
It was at the point, when this statutory deadline resulted in that avalanche of applications being filed, everything was placed on hold while the Court determined how to deal with matters and Justice Mallon then asked the Crown to think about how applications should be grouped because it became obvious by then that there were overlapping applications and there'd need to be some system of hearing the applications concurrently. So, that timetable was vacated and then the Crown proposed, I'm not sure how we ended up here exactly, but we've got directions that those dozen applications that are grouped with the Reeder Priority application will be heard either in full or in part, together. And I think that's the only way that can work.

COURT:
So, you're not wanting this application to be heard prior to the Reeder application?

MS FEINT:
Well, it may come to that if the other applicants can't get ready. But it's problematic in terms of the statutory test because one of the issues is whether areas are used exclusively or not.

COURT:
Yes, indeed. And it just seems to me the only practical way of determining that is to hear all competing applications at the same time.

MS FEINT:
And that's certainly the experience at the Waitangi Tribunal follows for exactly that reason. But it's the only way to really get to the bottom of it, by hearing everyone together.

So, I think there is a great deal of merit in following that approach, but I'd like to see the other applicants perhaps adopting a greater sense of urgency than we've seen to date.

COURT:
Alright, I understand that, and whether we can achieve that, that would depend on me listening to the other applicants and hearing their response to the suggestions that you've made, particularly in relation to the timing of the timetable order.

MS FEINT:
Thank you sir, and if I might, I may wish to respond to what Mr Warren has to say for Ngā Potiki but let's just see how we go.

COURT:
Look, I'll reserve you the right to do that, so you put your hand up and remind me if there's something further you want to say.

MS FEINT:
Thank you your Honour.

COURT:
Thank you Ms Feint.

REGISTRAR:
CIV-2017-404-568 – Ngāti Whakaue

MS MASON:
The only instruction I have from Mr Kahukiwa is to support the two memoranda that our offices filed in regard to the Ngā Potiki application, so, perhaps I could deal with that, or if you want me to deal with the Ngā Potiki matters now?

COURT:
Is the Ngā Potiki matter the next one to be called Mr Registrar?

Look, we'll hear from you in the proper order then, thank you.

REGISTRAR:
CIV-2017-485-770 – Ngāti Whakaue ki Maketū

MS MASON:
Sir, memoranda were filed on 27 May and 18 June, a new map was filed. So, this morning a new map was filed. Counsel has only recently been instructed. However, these applicants are well on their way. They have obtained a historical report already.

The position of my friend, Ms Feint, is adopted, and that is that, while they continue to work with overlapping claimants, there should be timetabling directions set down and that would focus the other parties to gather their evidence in a more hurried way sir.

Just in relation to working with the overlapping claimants, part of the problem is that the funding regime doesn't provide additional funding for the applicants to work through the overlapping issues in the High Court process. Funding is provided for those people who are in Crown engagement to discuss with their neighbours.

So, I wondered perhaps a direction along the lines of that discussions with and hui with overlapping applicants is a necessary or desirable part of these proceedings because that would help with the Crown's decisions to fund.

COURT:
Yes, I think perhaps you overestimate my powers of influence over the Crown when it comes to loosening the purse strings. I understand what you're saying in that regard and as you may have heard me in prior CMCs, encourage both Mr Melvin and Mr Ward, when he's appeared, but I don't think the Court can go as far as to direct the Crown where they spend money. All they can say is that there seem to be some issues; the Court is concerned to make some progress on these claims; that clearly seems to be an impediment, and it may be something that the Crown would like to look at further. I think that's, in a constitutional sense, as far as the Court can go.

MS MASON:
Yes sir. The request, respectfully, it's not to direct the Crown to fund. However, what happens is that the Crown says, and not the Attorney-General, it's a different department, so there might not be the same views about funding with Te Arawhiti, they say that's not part of your case, the Judge hasn't directed that. So, what's been submitted is that it may be helpful, in this regard, for a direction that says that a hui between overlapping claimants or applicants

would assist with the proceedings. So, they tend to want something from the Judge before they'll say a yes or no, or even entertain the idea of funding outside of their current matrix.

COURT:
Alright well I'll give Mr Melvin the opportunity of responding to that suggestion.

MS MASON:
Sir, thank you. In relation to the Te Runanga o Ngāti Whakaue applicants, they are well on the way and would be ready to file their evidence by the end of May. Ms Feint has suggested directions filing evidence by the end of November. That would be too early for them. But, perhaps earlier than May would also be suitable.

COURT:
Can you fine that up and give me a suggested date? There are a lot of months earlier than May.

MS MASON:
Sir, I would say end of March. And they would be calling in the vicinity of 25 witnesses.

COURT:
Those 25 witnesses, how many of them are likely to be historians that could expect to be subject to significant cross-examination?

MS MASON:
Sir they expecting to call about five non-tangata whenua witnesses.

COURT:
And all five of those likely to be subject to cross-examination you think?

MS MASON:
Sir, I'm really not sure. It depends on whether these applications are heard contemporaneously. Presumably, if there are a lot of applicants heard together, even maybe the tangata whenua witnesses would be subject to a lot of cross-examination.

COURT:
Yes, that may be something that you can refine through discussions and you can expect I'm likely to make a comment in my minute about the utility of such discussions.

MS MASON:
The other issue identified is that, and counsel has only recently been engaged by this applicant, if they decide, and they're currently looking at this, decide to refer some of their tikanga matters to the Māori Appellate Court instead of using the option of the pukenga, there would have to be some timetabling problems because part of the case would be referred to the Māori Appellate Court and one would have to wait for that opinion before proceeding with the second part of their case.

COURT:
Yes, well of course that's a direction the Court can make. It's not something the parties can unilaterally determine that they will do off their own bat. So, if there is to be such an application, the Court will deal with it. I'm not aware that there has been such an application yet.

MS MASON:
No sir. They're still in the process of deciding and then once they have decided, if they do decide to do that, they will await the outcome of the Whangarei application presumably.

Sir, those are the submissions for that applicant. Would you like me to go through the submissions for the other applicant I act for?

COURT:
Yes, what's the CIV number?

MS MASON:
514 – Mr Potter, the Tangihia Hapū matter.

COURT:
Has there been a memorandum filed?

MS MASON:
Filed on 17 May.

Just confirming the map that was filed, there was no need for a separate map and then the matters that Mr Potter wanted to discuss were similar to the matters that I've just spoken to in relation to the Ngāti Whakaue ki Maketū applicant.

So, in terms of timetabling, Mr Potter would want directions set down and not an adjournment. His application, he says will require 10 witnesses. His evidence will be ready by the end of March as well. And Mr Potter is awaiting the outcome of the Whangarei application to state a case to the Māori Appellate Court before putting in his application to state a case to the Māori Appellate Court.

In terms of overlapping issues, again, he is happy to engage with others but not at the expense of delayed timetabling.

Mr Potter also requests timetabling in relation to the application for an interlocutory hearing on the role of the Attorney-General in these proceedings.

COURT:
Has he filed any application in respect of that, or submissions or memorandum?

MS MASON:
Yes sir. He supported the application that was made last year by a number of the other clients that I represent, that counsel spoke to at the Wellington CMC.

COURT:
Yes, I didn't recall that in any memorandum from him in relation to the Wellington CMC?

MS MASON:
He indicates that in the 17 May memorandum that was filed, that this would be one of the things, that memorandum sets out that one of the things that he would request is timetabling for the interlocutory application into the Attorney-General's role and status in these proceedings.

So those are the submissions from these two applicants.

COURT:
Thank you Ms Mason.

REGISTRAR:
CIV-2017-485-222 – Ngāti Tara Tokanui
CIV-2017-485-793 – Ngā Potiki

MR WARREN:
Sir, perhaps if I deal with the Ngā Potiki matter first.

COURT:
Yes.

MR WARREN:
Sir, two memoranda have been filed. The first one dated 16 May 2019 seeks an indulgence of the Court to allow the parties who are interested in this Priority application to engage. And it is acknowledged and accepted the points made by Ms Feint that those engagements ought to have occurred following the last CMC. And I've been quite careful in the words that I've used in the initial memoranda of 16 May as to the reasons for that. These are quite sensitive internal matters involving counsel and our new clients, in terms of that relationship. But, certainly other than that there are no excuses sir, in terms of progressing the engagements that Justice Collins expected to occur.

So, we're at this point in time with new counsel involved, and hopefully following the filing of the initial memorandum on 16 May, counsel interested in this application have hopefully received the sense that there is a real commitment from our clients to engage.

To that end, we have contacted most counsel individually to start those discussions. We've convened a counsel conference for late last week to discuss the memoranda that have been filed and the potential game plan to engage, and for the most part, and I think all counsel have confirmed that they are willing to engage, albeit there are some who want the Court to set down a timetable basically now.

We reflected on that and we spoke to our clients and their preference, given that we have this renewed commitment, and we're only asking for a four months' adjournment to engage, that it would be premature despite the fact that there has been this delay sir, to set down a timetable now. And principally, there are too many ifs and buts in terms of the discussions that we propose to have with the various parties. Will our application remain the same? Will it be reduced? Will we deal with certain areas first? Which parties then may be interested in those areas? What are the issues that will need to be put before the Court, if there is an agreement on refining the area?

That, in my submission, would then form a proper timetable. And we are only in that respect only talking about four months. And obviously if we can get to it earlier, then we will, and we can update the Court.

A suggestion in the latest memorandum sir, is to hold a CMC, if your Honour is available shortly after 4 October, whereby we can determine, if there is agreement on the timetable, whether that can be rubberstamped by the Court. If there isn't, then the Court can determine a timetable based on the submissions that will no doubt be made by respective parties.

That's principally where we got to sir. As I say, the steps that have been taken since we've been engaged hopefully will give the parties confidence that the commitments made in the memorandum will be maintained.

COURT:
It does not appear to be your personal fault at all, but if I could simply say the Court is disappointed to hear that what the Court expected to happen 12 months ago, it seems really there's only been progress on in the last week or two. That's not helpful in terms of progressing these cases.

You've heard the various observations from the other counsel and from where I sit, there seems to be some basis for the degree of frustration that they are expressing. I'll have to reflect on whether I accede to counsel's request to basically impose a timetable or whether a more orderly way of dealing with this might be to accede to your request for a further CMC in four months, but I'm sure you will convey to your clients the degree of frustration that the other parties who are ready to proceed, and indeed the Court who were given some indications a year ago as to what might happen, sensible indications, and it simply doesn't seem to have happened.

MR WARREN:
Sorry, I accept that sir.

I'm not sure if you have any further questions in regards to that matter.

COURT:
No, I don't thank you.

MR WARREN:
Just to confirm Mr Kahukiwa's instructions are to support the four-month adjournment for his client sir.

COURT:
Right.

MR WARREN:
Sir, in respect of the Ngāti Tara Tokanui matter which is 222, I don't propose to go through that. Our client's preference is to engage with the Crown. That is not occurring, as I understand it. And a 12-month adjournment to allow the overlapping discussions, as well as research and evidence to be prepared would be appropriate in the circumstances sir.

COURT:
Did I understand you to say that there had been no discussions with the Crown?

MR WARREN:
That is their preference, but as I understand it, the Crown will not fund groups in both the High Court process, as well as direct engagement. And that is one of the difficulties where a small group has limited resources.

COURT:
But am I to understand they haven't funded either approach in this case?

MR WARREN:
No, there is funding in place sir.

COURT:
Funding for the litigation but not funding for direct engagement?

MR WARREN:
As I understand it sir, yes.

COURT:
In terms of that, much of the material that you would be assembling for the purposes of litigation, your expert evidence, your tikanga evidence and the evidence from the tangata whenua, would also be equally as relevant for engagement with the Crown. Are there

discrete areas where there is a difference between the two processes so far as the sorts of things that need funding are concerned?

MR WARREN:
I wouldn't have thought so in principle sir. I would've thought it would be same rather than the costs of having the right people in the room when you're in negotiation as opposed to a witness in a litigation process.

COURT:
But generally, you have your evidence which you make available to the Crown and I wouldn't have thought you needed to have all your witnesses in the room. It just seems to me that, if the Crown have funded your preparation of evidence for the Court, I'm struggling to see how that effectively precludes you from direct engagement because it's pretty much the same material. I accept that there may be some additional costs in terms of meeting with the Crown. I don't know whether the engagements are held on the location of an applicant or whether you have to come to Wellington, but obviously if you have to come to Wellington, yes I can understand there will be costs in that. But, if you're saying to me the Crown would really much rather prefer to directly engage, rather than go to litigation, my first response would be, again subject to understanding the detail of your client's position, get on with it. Because you may find that you're actually able to use the material that you are otherwise going to have to prepare to the Court for a direct engagement process.

MR WARREN:
Absolutely from an evidence point of view. But, it's probably a question for Mr Melvin as to why that, I guess we call it, policy position, has been taken in regards to, you can't be funded in both processes, as I understand it.

COURT:
Alright, either Mr Melvin will tell me that when I ask him to speak, or you can directly engage with him if I forget to raise that with him.

Thank you Mr Warren.

REGISTRAR:
CIV-2017-485-291 – Ngāti Mākino and Ngāti Pikiao

MR POU:
Kia ora sir.

COURT:
Kia ora Mr Pou.

MR POU:
The memorandum I filed basically just set out the Ngāti Makino and Ngāti Pikiao position. They sit on the fringe of the application that has been made by Ngā Potiki. They engaged in the discussions that occurred at an earlier time, and they were looking forward to those discussions. They crystallised the possibility that they might not necessarily need to participate in that urgent application and the one that was accorded priority.

I guess that's, you had a discussion with Mr Hirschfeld, that's the chicken and the egg sort of thing. You want evidence to support your application, and the application is sometimes amended by the discussions that you have.

So, that's essentially where the Ngāti Makino and Ngāti Pikiao sit. They still support the Priority application and the memorandum that was put by Mr Warren.

And I say this sir, in terms of the two approaches that have been suggested. Ngāti Makino and Ngāti Pikiao are disappointed that discussions haven't progressed to where we can be setting a timetable at this point. But there is a concern that the setting of a timetable at this point would create, especially if the timetable is being set out of frustration, would create a disharmony that might not necessarily be conducive to the ongoing discussions being as constructive as they were at that early stage.

There has been a bit of a litigation storm along this coast. And there are a number of extremely complex interests that will need to be reconciled, probably illustrated most by the fact that when Mr Webster stood up and talked to Ngāti Awa, he claimed all the way across the Te Arawa coastline and those sorts of things.

COURT:
I don't hold him personally responsible for that.

MR POU:
No, it's Ngāti Awa sir.

And so, that's the context that needs to be reconciled. There have been a number of fairly complex cases that have extended along the coastline of this area including the rewriting of the coastal plan, the Rena, and those sorts of things, where these interests have been put at loggerheads. The discussion that Ngā Potiki facilitated and initiated at the start was an attempt to get past those. And I'm not sure that, it might be a case of if we force it too fast, we elongate the process, we'd have more witnesses and we have more cross-examination.

I understand where you're coming from in terms of the cross-examination of tangata whenua witnesses in particular. But, my experience in the number of cases that I've been involved in around this area, particularly in the resource management area, that's just ended up how things have occurred.

So, in my submission, that tends to favour the four month hiatus that Mr Warren is requesting, I certainly wouldn't be wanting to stand here and say let's reconvene in a year's time to see where Mr Warren had gotten to, only to find that he'd been replaced or something like that.

So, in terms of those, that's the position for Ngāti Makino and Ngāti Pikiao.

In terms of the research and preparing for a hearing, half of the application, because this is a joint application by two closely connected iwi of Te Arawa. Part of the application has had the benefit of an expert historian. We found it really difficult trying to find another historian to do the other side. Most of the historians, the ones that I know, seem to be conflicted out within this particular region, or are really busy. We are trying to get that addressed. But that is a bit of a stoppage for at least for the Ngāti Makino part of the application at the moment.

COURT:
You may have to look at a historian who isn't conflicted from some other part of the country.

MR POU:
We have been looking sir. We're not just looking for historians from here. It's just that when you look at the people around here, there are a number of historians, there are only that

many historians in New Zealand. That's the case. I've been contacting the Waitangi Tribunal to see who, and they've been recommending. It's seems to be the golden weather to be a historian at this time, so Mr Bennion may want to go back.

COURT:
Yes he may want to go and retrain.

I suppose it's premature for you to tell me what sort of length of hearing you might want, when ultimately, we get to set things down. Can you make any sensible comments?

MR POU:
Sir, I would envisage that there would only be two historians and possibly two tangata whenua witnesses for each of the applications. Depending on where we get to with the Ngā Potiki application and depending on the level of harmony within the relationships, I would say, at the shortest, it would be a three-day hearing.

COURT:
For your respective part of the it?

MR POU:
On my respective part, it would be a two-day hearing. And I would hope that any hearing wouldn't take any longer than a week.

COURT:
Thank you Mr Pou.

REGISTRAR:
CIV-2017-485-250- Ngāti Pūkenga
CIV-2017-485-257 – Ngāi Te Hapū

MR BENNION:
Sir, there was a memorandum filed originally on 16 May for that Wellington conference. Following your direction there we've filed two subsequently on 18 June and two separate memos in both of these matters. They're largely repetitive and they attach the map. But certainly, a couple of specific matters.

The first is on the 257, the Ngāi Te Hapū application. That application is by Ngāi Te Hapū Incorporated and Mr Pou referred to a litigation storm along this coast, and the Ngāi Te Hapū Incorporated was wrecked in that storm sir, is my understanding, the Rena Storm in particular.

So, it is, I'm advised, in liquidation, and I'm just going to have to with your leave sir, ask for you to adjourn this matter unless, and until, a substitution application is filed. Looking at the HCR and it seems that the, as long as the group concerned is still in existence, in terms of the applicants, substitution is a possibility but I'm going to put paperwork together to file that with you sir.

COURT:
Alright, well obviously that's something the Court would want attended to in the immediate future.

MR BENNION:
Yes, as soon as I can sir.

We're just combing the wreckage. Sir, if you want to set a date, can I say perhaps within two months if I can push that far?

COURT:
Look, I won't direct that, but I will make a note that I can expect to have that within the next two months and if I don't get it, you can expect I will follow up.

MR BENNION:
Yes, thank you sir.

While we're on this matter, just to say the background on this application is that there was a request made for engagement with the Crown and I think the response was definitive and similar as others have received, I think the Crown does not want to engage with applications where there are a number of groups. So, I think that needs to be understood that the Crown is simply, seems to have a policy that it's not, it wants simple applications with perhaps one or two parties. And that's something that I understand that we're all being advised.

If I turn to the Ngāti Pūkenga application – that's 250, we were part of the discussion with Mr Warren and the slow progress on negotiations. My instructions are that we would support the four-month hiatus that Mr Pou mentioned. The litigation issues on this coast, as I understand it, there's relationships still being mended from some of the things that have occurred. I understand Ms Feint's frustration. We're caught up in the Ngā Potiki application if, and when, it proceeds. But we would support a four-month hiatus.

I think we perhaps abide, if you were minded to make some sort of directions about hearing and evidence. We do have evidence under preparation and could meet timetable orders, but would seek that sort of, perhaps try and engage a period of about four months in which to really see if we can get some engagement, and some refining of the matters that are in dispute.

Lastly, on mapping issues. In this memorandum for Ngāti Pūkenga, I'll just raise another matter around the Crown mapping. And I've seen the Crown memorandum. We're pleased to see the Crown explaining some more of the mapping that it intends to undertake. We remain concerned about the mapping of third party interests and the matter which we raised in the memorandum, [8], just simply to make this comment. That there's a lot of caselaw out of the Environment Court where, particularly in the South Island, Māori groups were told that RMA resource consents would not in any way impinge on any subsequent efforts to obtain customary title.

COURT:
When you say they were told that by the Court, this Court?

MR BENNION:
No, by the Environment Court.

COURT:
Yes, well I'm not sure it falls within their jurisdiction.

MR BENNION:
So, it goes to the question, in this Court, around what is substantial interruption in coastal marine areas that are claimed. And whether or not consents since 1991 in the RMA can be,

can it amount to, substantial interruption. We know they can't since 2011 because the MACA itself says, it doesn't say they are not, but it says, it may be that they are not.

But, our concern is whether there is a preliminary question about substantial interruption on any consent since 1991 amounting to that.

Now, I appreciate that's a matter that the Environment Court discussed and dealt with, but, there is perhaps an aspect of how we interpret this legislation, and whether it brings some aspect perhaps of something akin to estoppel to how we interpret the substantial interruption provisions of this legislation.

I'm aware that your concern about the preliminary issue of the role of the Attorney-General. It may be that this amounts to another preliminary matter that may need investigation or perhaps it comes up with the first application that occurs. But whether it comes up in that first application that's heard, I don't know.

COURT:
But it has potential ramifications for, if not all, then almost all, applications. So, off the top of my head, because there hasn't been any formal application so far to determine that as a preliminary issue, it's exactly the sort of thing that would properly be the subject of a discrete hearing to give some guidance to all of the parties. Because it could well significantly shape the nature of applications that are to be pursued.

So, I see it as a potentially very important issue.

MR BENNION:
Thank you for that indication sir. And if I can leave it on the basis that I'll perhaps discuss it with other counsel and, if we wish to take that further, then we bring that to you in a formal application.

COURT:
Alright. Just before you leave the topic of maps, my notes here indicate that Ngāti Pūkenga have not filed a map.

MR BENNION:
Sir, the application that, the memorandum of counsel of 18 June does attach the three maps.

COURT:
There will be undoubtedly be sitting in the Registry.

MR BENNION:
Sir, can I just say, it's an unusual application because, while the main part of the application concerns here in Bay of Plenty, there are also Ngāti Pūkenga interests in Manaia and the Whangarei Harbour. And they will come up to Whangarei, I think Mr Lyall will be appearing on my behalf there to mention those matters. But it is unusual because we go across the three areas sir.

COURT:
Well at some stage you will need file a map for those parts of Ngāti Pūkenga's claim that relate to this area. If you haven't done that recently.

And just on that, I remind all counsel that filing memoranda a day before a hearing, particularly when the Court is on circuit as I am, the chances of your memorandum getting to me are not great. So, don't leave it until the day before.

MR BENNION:
Thank you sir.

COURT:
Right, is that everything Mr Bennion?

MR BENNION:
Yes sir.

COURT:
Thank you.

REGISTRAR:
CIV-2017-404-556 – Ngāti Porou ki Hauraki

MR LYALL:
Tēnā koe ano sir.

I think I can be relatively brief today. On mapping, I'm pretty interested in the Attorney-General's proposition. As set out in the memorandum, we'll be following up with counsel for the Crown on that. And that's probably as far as I can take that matter today.

As far as this application goes, it concerns two discrete areas within the Coromandel Peninsula where Ngāti Porou ki Hauraki hold mana whenua.

This is a fairly unique application in that, I would submit, that the overlapping applications have been explored to the extent that they can be, and that they would now require a decision from the Court.

Ngāti Porou ki Hauraki is being involved in the Hauraki collective negotiations towards a Treaty settlement where overlapping interests were, I would say, at least strenuously debated. And they have been involved in the Crown engagement pathway where again, I think, 'bitter' would be a word to describe the discussions on the overlapping interests.

Because of that participation, evidence is substantially complete for this pathway and we would be seeking timetabling orders rather than an adjournment for a year.

I've had brief discussions with the Registrar on this and I understand that there are some procedural issues involved with setting down a firm timetable moving ahead. And the indication there is that the earliest that this could be set down for would likely be towards the latter part of 2021. If that's the case, then we would certainly accept that sort of timeframe, but if that could be expedited, then I'm sure that we could work towards an earlier timetable.

COURT:
Right, thank you Mr Lyall.

MR LYALL:
Those are my submissions for today unless your Honour has any questions.

COURT:
No, thank you.

Alright. That's all of the applicants. Now, are any of the interested parties, before I ask the Crown to respond, wish to make any submissions arising out of matters that have been raised this morning?

MS WAIKATO:
Yes sir. Tēnā koe ano. Ms Waikato for the Bay of Plenty Regional Council.

Sir, I won't hold you up too long. I just wanted to, I guess make the Court aware of the Regional Council's role in relation to these proceedings.

Essentially the Council is the registry authority for the coastal marine area within the wider Bay of Plenty region. And its essential interest in the proceedings at this stage sir, is that it has a particular statutory role in relation to applications that have already been filed. Essentially s 62 requires that the Council acts as a bit of a gateway for persons who are lodging resource consent applications now, in that they are required to notify any of the applicants who have made their applications and to get their views on any resource consents before those can be lodged sir.

So, because of this, the Regional Council has a particular interest in the maps and also in the changing boundaries that may result from the discussions between the neighbours to those maps, in particular with ensuring that Regional Council can provide the correct information to those applicants as resource consents are processed.

I'd just like also, arising from Mr Bennion's conversation with you and your indication regarding potential around an interlocutory hearing on substantial interruption via existing resource consents, and I just wanted to note that if there was an interlocutory application made by any of the applicants, that Regional Council is likely to want to participate in such application given its role as the registry authority sir. And I think it would be of assistance to the Court if the Regional Council were allowed to participate in any such application that might be made.

Sir, the Regional Council does not propose, at this stage, to file any evidence and will maintain essentially a watching brief in a neutral position in relation to the applications. As I said, I would like to reserve the right to file any legal submissions that may arise once evidence has been filed, and the nature of those submissions would be along the lines of any

interaction between the existing resource consents and potential future consents that may be of concern to the Regional Council.

Sir, unless you have any questions for me, those are the only submissions that I wish to make on behalf of the Regional Council.

COURT:
No, thank you Ms Waikato.

Any other interested parties? No.

Are you likely to be long Mr Melvin, I don't want to put you under any pressure if you'd rather have a moment to gather your thoughts, we can have a brief morning adjournment. But, if you're not going to be long at all then I'm happy to hear you now.

MR MELVIN:
I don't intend to be long sir. But I'm in your hands if you Honour would like a short break.

COURT:
Well if you're not going to be long, lets proceed and that way all counsel can get away rather than wait.

MR MELVIN:
Thank you sir.

Perhaps if I address mapping first.

COURT:
Yes, and I've read your memorandum this morning.

MR MELVIN:
So that memorandum sir really sets out in writing the oral submission that I made yesterday at the Gisborne CMC. So, the Crown is cognisant of a wish amongst applicant counsel and the Court that it takes some lead here. And it's proposing to establish a working group comprising representatives of applicant counsel, Crown counsel and appropriate officials to

develop some mapping guidelines. A draft of those guidelines would be circulated amongst all counsel for input and then it is proposed that working group finalise them.

And, we've picked up on Ms Sykes' suggestion in her memorandum filed for tomorrow's CMC that they could be the subject of an order under r 7.43A(1)(e) of the HCR. It's in effect an order of the Court that maps adhere to those mapping guidelines.

So, that's the proposal. I'm very happy to discuss that with my friends after this CMC and indeed, at any other time.

COURT:
I would encourage you to do that.

The other matter that I would like you to respond to. You've heard counsel this morning say that the issue of funding where they've been funded to progress matters through litigation, but their client's preference is direct engagement. Again, I can't direct the Crown to do anything but it does seem to me, in terms of dealing with these matters expeditiously that it would be appropriate for these parties, firstly to talk to one another, and if the Crown is not funding that, that is something that seems to me, is remiss of the Crown, and to the extent there may be a separate set of costings incurred if, for example, the applicants have to travel to Wellington to engage with the Crown, and I'm speculating on that, I don't know, but it's likely to be ultimately in the Crown's interests, as it is in the parties and in the Court's in ensuring progress, if some thought is given to funding the parties engaging with one another, particularly in relation to areas of overlapping claims because it's likely to make the resolution of these matters much more straightforward than it's going to otherwise be.

MR MELVIN:
Yes sir, and the Crown is very aware of the need for applicants to discuss matters of overlaps and other issues amongst themselves. It's very encouraging of that to occur. And the funding policy does allow for that. It is intended to meet the cost of that sir.

So, from the Crown's point of view, those kinds of discussions are an appropriate cost that will be met out of funding available to applicants.

COURT:
Alright, thank you.

MR MELVIN:
In terms of my friend, Mr Warren's comment about there not being funding available to pursue the two pathways concurrently, that is correct. That is the Crown policy that it won't, it's essentially a policy to avoid duplication of funding. Applicants will be funded in the High Court if that is the pathway they pursue. If the Crown agrees to engage with a group, then funding will be available for Crown engagement. But, if that group also has a High Court application, then it would not be funded to pursue a High Court application at the same time as it's pursuing Crown engagement.

COURT:
I have to say some aspects of that policy do seem a little short sighted and I wouldn't want the Crown to shoot itself in the foot and essentially force parties to litigation with the huge attendant costs and time commitment that will impose on the Crown when it seems there may be some compromise in terms of an outcome that doesn't incur that level of costs. So, it may be, I think the old saying is "penny wise but pound foolish".

MR MELVIN:
Yes sir. I'm grateful for that comment. I'll pass that onto my client.

In terms of the timetabling issues raised in respect of the Ngā Potiki application and my friend Ms Feint's pressing the Court for timetabling orders for her application, and indeed consequently other applications, my submission would be to support a four-month adjournment to allow discussions to take place. I submit, agree with the submission that there are a number of uncertainties at this stage and putting down a timetable simply may be premature and too difficult, and will likely need ongoing adjustment, and a four-month adjournment for parties to undertake with a degree of urgency discussions that need to take place, in my submission, would be the appropriate course to take.

Sir, I think I've probably covered the matters I wanted to. Unless your Honour has any questions?

COURT:
No, thank you, and thank you for your helpful memorandum on the mapping.

Now, were there people I had promised a right of reply to that I've missed out? I think there was something you wanted to say to me Ms Feint?

MS FEINT:
Yes I did. I just wanted to say to draw attention to the fact that I too, had sought a judicial conference in four months in my memorandum. And it seems to me there's no reason at all why we can't both adjourn the matter for four months, but also get some firm directions set down now.

The best offer made in terms of filing of evidence was Ms Mason's by the end of March 2020. And it seems to me, so that's nine months hence, if that was pencilled in by the Court, then that would give all parties, in my submission, ample time to start preparing their evidence. The directions can be recalibrated, if necessary, at the judicial conference in four months' time, but it would at least sharpen everyone's focus, and, as I said, my concern is that things just slide and we return in October and people say they'll have another year to prepare their evidence, and my clients don't want to see that happen.

COURT:
No, the Court would be extremely disappointed were we to be in the same position in 12 months' time. So, you're not alone in that.

MS FEINT:
And can I say that, I'm not blind to the litigation storm that Mr Pou raised, because I've been right in the middle of the maelstrom as well, but when the parties did meet last year, there was a spirit of engagement and a willingness to continue with the discussions. So, I don't see that pressing timetable orders will jeopardise that. It seems to me it's the reality that everyone knows that they need to prepare for the case sooner or later. The Ngā Potiki application was filed in 2011.

That's all I wanted to say in reply sir. Thank you.

COURT:
Thank you Ms Feint.

MR MELVIN:
Sir, sorry I perhaps should indicate that if timetabling orders are set down, Ms Feint's timetable in her memorandum has just three months for the Crown to present any evidence it wished to present following applicants' evidence. I'm not sure if your Honour is minded to set a timetable that includes, goes that far, to include that step. But, the Crown will be seeking a longer period of time.

COURT:
Yes, it just occurs to me that there's a more fundamental issue and that's the proper role to be played by the Crown. It occurred to me we may well have to resolve that because, as you're aware, there is some support for a separate hearing to deal with that. And we may well have to resolve that before the Crown starts filing anything.

So, that's something I think I may end up dealing with in Whangarei.

MR MELVIN:
Yes. Happy to address it further sir.

COURT:
Yes, just note that down that at some stage in these conferences, I'm likely to want you to specifically to respond on that. But it may be best that we deal with it as a separate interlocutory matter.

MR MELVIN:
Yes, Mr Ward did address it at the Wellington CMC.

COURT:
Yes, he did, yes.

MR MELVIN:
So, he outlined the Crown's basic position there. Is your Honour minded that at the Whangarei conference, for example, there might be a discussion about timetabling an interlocutory hearing?

COURT:
Well, I'm also acutely aware of the huge amount of work we've got to get through in Whangarei but it may be that we have some time to address that further.

MR MELVIN:
As your Honour pleases.

COURT:
Alright. Nō reirā. Tēnā koutou katoa.

Mr Registrar, we will now adjourn.

CMC CONCLUDES – 11:46AM