

**CASE MANAGEMENT CONFERENCE
WHANGĀREI
FORUM NORTH CONFERENCE CENTRE
25 JUNE 2018 at 10.00 am**

COURT:

Ata mārie, ko Justice Collins ahau

Thank you all very much for coming. I appreciate that a number of people have travelled some distance to be here today and I am grateful for you all having made the effort to come.

The lawyers sitting in the front row have probably heard what I'm about to say on a number of occasions now. So primarily for those who are first time attendees at one of these case management conferences, I want to give a bit of an overview of the function of today's hearing.

There are 202 claims that have been filed under the Takutai Moana Act and so you can imagine that that presents a very large number of logistical challenges. Because of those challenges, I have confined the first round of these case management conferences just to the parties. I know that there are a lot of interested parties and I propose to engage with them after we have dealt with the first round of case management conferences.

The primary function of a case management conference is to try and assist the parties in advancing their claim to a substantive hearing. Sometimes it may be possible to resolve a dispute at a case management conference, but generally speaking the function of a case management conference is to assist the parties as best the Court can in trying to advance their claim forward.

When it passed the Act, Parliament provided for some priority claims, which had been lodged under the old Act. There are eight of those claims. And although priority has to been given to those claims if possible, I wouldn't want it to be thought for one moment that I'm not interested in also seeing priority claims that don't meet the priority criteria also being advanced. I am also aware that some applicants and interested parties have some challenges with the funding processes. This has been a concern that has been expressed at most of the case management conferences so far. I'm also aware that some steps have been taken in recent times to try and

improve the funding pathway. I know that at the case management conference that was in New Plymouth last week there were some officials who went to New Plymouth primarily to assist applicants in trying to get their funding processes underway.

One of the really big challenges is to try and sort out which claims can proceed the fastest and in conjunction with that, it's absolutely essential that I work out whose overlapping claims also need to be heard in conjunction with those claims that are able to advance faster than others to a hearing. That particular challenge I think is very well illustrated by the claims here in the north. Not only do we have 55 claims. I think it's fair to say that every single claim has quite a number of overlapping claims. I can't think off the top of my head of any claim up here that doesn't have a number of overlapping claims and that's going to be challenging for all concerned. I make a plea right at the beginning that a lot of these issues are best resolved at a local level by whanau talking to whanau, to hapū, to iwi, so that ultimately a lot of the problems should, I hope, be able to be resolved by negotiation between people in the regions. Now I appreciate that that's not going to be possible for every case. I fully understand that for those that do need to progress to a hearing, then we will be putting in place timetables to try and ensure that the hearings can progress and the issues can be resolved as expeditiously as possible.

In addition to the eight priority claims, we have claims which overlap those eight priority claims. Then there's another cluster of claims where the parties are in negotiations with the Crown and that's another pathway which I really urge people to try to explore. There are a number of applicants that are some way down the track of negotiating a resolution with the Crown. Then there is by far the largest group, and that that is people whose claims have not yet been the subject of negotiation with the Crown, are the subject of multiple overlapping claims and who we have to try and manage as best we possibly can in the circumstances with which we have been presented.

So having given you that overview, I will now ask the lawyers to identify themselves, many of whom I know already and then I will go through a process which is designed to get as good an understanding as I can of the key issues that are associated with the claims that are in Whangārei.

Mr Ward, you're appearing for the Attorney-General this morning

MR WARD:

Ko Ward ahau Your Honour māua ko Ms Gillies.

Tēnā koe e te Kooti, ko Ward ahau māua ko Ms Gillies mō te Karauna, Sir.

COURT:

Good morning Ms Gillies

Thank you Mr Ward.

Now Ms Sykes, I have seen you this morning

MS SYKES:

Thank you sir.

COURT:

Look I apologise. Because of the acoustics we have to pass around the microphones.

MS SYKES:

Mōrena, kei te mihi atu au ki te whare, ki te Kaiwhakawā i whakatūwhera tā tātou nei hui, a, kei te mihi atu au ki a koe.

Ko mātou mai te tari Annette Sykes & Co. Ko Annette Sykes, ko Jordan Bartlett Kameta i tae mai ki te tautoko i ngā kerēme Wai 277 mō te rangatira nei, a Arapeta Hamilton mō te hapū, iwi rānei, a Ngāti Manu. Anā, i runga i taua tūmanako, kei te mihi atu au ki a koutou, o Ngāpuhi-nui-tonu e whai ake nei te kaupapa nei. Koutou hoki o Te Rarawa, Ngāti Kahu rātou ko tō Muriwhenua i tae mai nei, a, tēnā koutou katoa. Kia ora.

COURT:

Thank you very much Ms Sykes.

Now Ms Thornton? Good morning, how are you?

MS THORNTON:

Tēnā koe sir, ko Linda Thornton ahau. I'm here on behalf of an application by Ngaio McGee. This is 485-256 in Group C. I'm also here on behalf of an application by Ani Taniwha, which is 485-249 in Group B and I'm appearing this morning for Mr Lyall of my office for an application by Stephen Panoho on behalf of Te Rae Ahu Whenua Trust 485-239 and that's also Group C.

COURT:

Thank you very much Ms Thornton.

Mr Hockly

MR HOCKLY

Tēnā koe Sir, ki Te Whare Matua o Te Kooti o Aotearoa, tēnā koe. Mauri tū, mauri ora, tēnā koe Sir, Hockly, I am appearing for Te Whakapiko, the hapū Te Whakapiko and the Rewha and Reweti Whānau.

COURT:

Thank you. That's 228 and 352.

MR HOCKLY:

That's correct sir. I got some instructions from Mr Bennion to stick my head in for Ngāti Pūkenga, who are also here in the Whangārei Harbour.

COURT:

And that's 250.

MR HOCKLY:

That's 250 sir.

COURT:

Thank you very much Mr Hockly.

Mr Sinclair, good morning

MR SINCLAIR:

Tēnā koe Sir, ki te tangata whenua o Te Taitokerau, Ngāpuhi-nui-tonu, tēnā koutou. Sir, I'm appearing here today for a number of clients. You might have to hold that. Sir, Mr Nathan, Te Rōpū o Rangiriri, 442. Sir his sister is here representing him today and that's Violet Nathan.

COURT:

Good morning

MR SINCLAIR:

Makarita Tito 522; John Leonard Pita Tiatoa 523, Ngā hapū o Taimai ki te Marangai; William Moran for Ngāti Manu, Ngāti Rangi 525. Mr Moran is in the Court today sir and his good lady

COURT:

Good morning.

MR SINCLAIR:

Mr Richard McGrath and Maraina McGrath Ngāti Torehina ki Mataure o Hau 540; Merehora Taurua Ngāti Rāhiri tangata whenua ki Te Tii Waitangi ki Te Pewhairangi 535; Kare Rata Ngātiwai hapū 554; Nicola McDonald for Te Whānau o Paamu 555; Sir, Hector Busby for Ngāti Kahu Te Uri o Hina, Te Rarawa 559.

That completes my presentation sir.

COURT:

Thank you very much Mr Sinclair, I'm very grateful to you.

Mr Naden.

MR NADEN:

Tēnā koe e te Kaiwhakawā. It's Naden sir, and with me is Mr Erskine.

MR ERSKINE:

Good morning sir.

COURT:

Good morning Mr Erskine.

MR NADEN:

Sir, a number applicants that we're here on behalf of. The first is Ngātokimatawhaorua Waka Te Tii-i-Waitangi Māori Incorporation and the CIV, last three numbers are 577; there's Te Iwi o Te Rarawa ki Ahipara that's CIV 245 last three numbers and then Mr Te Tuhi on behalf of Te Popoto ki Oturei, last three numbers 252 your Honour.

And now it's Mr Erskine.

MR ERSKINE:

Sir I'm appearing for three applicants. The first proceeding reference last three digits 578, Mr Robert Gabel on behalf of Ngāti Tara. The second proceeding reference 529, the late Nuki Aldridge and Mrs Violet Walker on behalf of Te Whānau o Rataroa and third proceeding reference 233 Mr Michael Williams on behalf of Ngāi Tupango. Mr Williams has made it here, or perhaps not.

COURT:

Thank you both very much.

Now Mr Sharrock? There was a suggestion that Mr Sharrock was not present? Has any counsel received any instructions on behalf of Mr Sharrock by any chance? We'll come to that.

Ms Mason? I was anticipating Ms Mason tomorrow in Auckland.

Mr Kahukiwa.

MR KAHUKIWA

Tēnā koutou ki ngā maata waka katoa, ngā hapū katoa, tēnā koutou. Ki a koe e te Tiatī, tēnā anō koe. Kahukiwa for Te Waiariki, Ngāti Korora, Ngāti Takapari, Mr Pereri Mahanga is here he's the applicant, that's number 566 on the CIV.

COURT:

Thank you very much.

MR KAHUKIWA:

Our firm also acts for another application and my learned junior Ms Harper-Hinton will enter an appearance for that application.

COURT:

Perhaps we can hear Ms Harper-Hinton now.

MS HARPER-HINTON:

Thank you sir. I'm appearing for Ngāti Torohina ki Mataka application and that's CIV number 404-572 in Group C.

COURT:

Thank you so much.

MS HARPER-HINTON:

Thank you.

COURT:

Ms Inns or Ms Tahana appearing for Ms Inns

MS TAHANA:

Tēnā koe e te kaiwhakahaere, ko Kiri Tahana ahau. Ka tū ake au mō te rōpū Ngā Trustees o Matihetihe Marae Trust proceeding number 308 on behalf of Ngā hapū o Te Tao Maui me Te Hoko Keha. I'm also appearing your Honour as agent in proceeding number 283 on behalf of Ngātiwai Trust Board.

COURT:

Thank you very much Ms Tahana.

Ms Dixon

MS DIXON:

Tēnā koe e te Kaiwhakawā. Counsel's name is Kelly Dixon. I'm appearing today on behalf of the Ngunguru Marae Trust 279 and I understand Mr Keatley Hopkins is here today as well and two applications by Patuharakeke Te Iwi Trust Board 281 and 286 and also the Ngāti Korokoro Trust, that's 307.

COURT:

Thank you very much Ms Dixon.

Mr Piripi

MS PIRIPI:

Tēnā koe e te Kooti, counsel's name Ms Piripi and here for two matters, CIV ending 290 Te Rūnanga o Te Rarawa and we have Bronwyn Bauer-Hunt here from the Rūnanga and also Te Rūnanga o Whaingaroa CIV ending 236.

COURT:

Thank you very much.

Ms Jones

MS JONES:

Tēnei te mihi ki a koe, e te Kaiwhakawā. Ko Rachael Jones ahau, nō Ngāti Kahungunu ahau. I'm appearing with Mr Vasudevan today for two applications, the first one ending 271 that's the Haititaimarangai Marae Trust and Te Whānau Moana me te Rorohuri hapū and by joined by Mr Lawrence and Ms Snowden today.

COURT:

Good morning.

MS JONES:

And the second application ending 321 that's Ngāti Kuta and Patukeha ki te Rāwhiti.

COURT:

Thank you very much Ms Jones.

MS JONES:

Thank you sir.

Ms Bollen.

MS BOLLEN:

Tēnā koe sir, counsel's name is Ms Bollen. I appear today on behalf of Parengarenga A Incorporation, CIV ending in 237.

COURT:

Thank you very much Ms Bollen.

Mr Harrison

MR HARRISON:

Tēnā koe Your Honour. Harrison appearing for Takapari Waata and Joeann Waata. Ms Waata is here in person sir. The number is 420.

COURT:

Thank you very much. Thank you Mr Harrison.

Ms Zwaan.

MS ZWAAN:

Kia ora sir, counsel's name is Ms Zwaan and I'm appearing for one claimant today, a claim on behalf of Anaru Kira, which ends in 298.

COURT:

Thank you very much Ms Zwaan.

MS ZWAAN:

Thank you.

COURT:

Ms Wroe

MS WROE:

Tēnā koe e te Kaiwhakawā. Counsel's name is Sarah Wroe. I appear on matter 208 for the Trustees of Ngāti Kuri Trust Board Incorporated and with me is Mr Wells.

COURT:

Thank you very much Ms Wroe.

Ms Downs

MS DOWNS:

Tēnā koe e te Kaiwhakawā, otirā tēnā koutou katoa. Ko Ms Downs tōku ingoa. Sir, if it's ok my learned junior will do our appearances.

COURT:

Alright, thank you very much.

MS JAMIESON:

Tēnā koe e te Kaiwhakawā. Counsel's name is Ms Jamieson. I appear with my friend Ms Downs from Tūkau Law. We appear for four applicants sir. Firstly, Waikare Māori Committee on behalf of Te Kapotai CIV ending 26, they're in Group C; Te Rūnanga o Ngāti Hine on behalf of Ngāti Hine CIV ending in 231, they're in Group C and D; Ngāti Kawa and Ngāti Rāhiri CIV ending 265, they're in Group C and finally, the Trustees of Te Rūnanga Nui o Te Aupouri CIV ending in 240 and they're in Group E.

COURT:

Thank you both very much.

Mr Afeaki

MR AFEAKI:

Tēnā koe e te Kaiwhakahaere. Ko Afeaki ahau. Ngā mihi ki a koutou mā, e ngā rangatira o Te Nōta o Te Taitokerau, tēnā koutou katoa. Kua tū ahau i te rangi nei mō 268, Your Honour, ko ngā hapū o Ngāti Kahu, ko Pereniki Tauhara kua haere mai Sir, the Rev. Pereniki Tauhara is here today –

COURT:

Good morning

MR AFEAKI:

– on behalf of Ngā Hapū o Ngāti Kahu that's 268. A muri rā ko 259, ko te kerēme ko Waimarie Kingi.

COURT:

Just pause for a second.

MR ERSKINE?

Sir I believe it's 579

COURT:

579

MR ERSKINE:

– if I can assist.

MR AFEAKI:

Aroha mai, I just received instructions on this at about this –

COURT:

Well, you've got me really worried, 579.

MR AFEAKI:

579. Terrible dyslexia. Aroha mai sir. 579 sir. That's Waimarie Kingi for Ngāti Kahu o Torongare, Ngā Hapū o Tangaroa.

COURT:

Yes.

MR AFEAKI:

Koia nei, tēnā koe.

COURT:

Thank you so much.

Mr McCarthy

MR McCARTHY:

Tēnā koe sir. Counsel's name is McCarthy. I'm appearing on behalf of five applications. The first application brought by Samuel George, the last three numbers is 306; two applications brought by Huhana Lyndon so those are ending 408 and 409; an application by Puawai-Leuluai Walker, the last six numbers are 488-029 and finally, Margaret Hughes who is with us today the final three numbers 438.

COURT:

Thank you very much Mr McCarthy.

Ms Houra. No appearance by Ms Houra.

So apart from the application for whom Ms Houra is recorded as acting and about six or seven that Mr Sharrock is recorded as acting for, have all counsel been recorded?

Alright.

Are there any other parties in the Court whose name or claim has not been called out? Any self-represented persons? I don't have any record of self-represented but there might be some.

Alright.

So everyone who has got a claim has had their claim referred to in some way, either through counsel or directly?

That's excellent.

I now propose to ask various counsel to make whatever submissions they would like to make at this juncture in relation to how to best progress their respective clients' claims. Ms Sykes, can I commence with you please.

MS SYKES:

Kia ora, kei te huri atu au ki tērā o ngā reo rangatira o tēnei whenua. Sir, we filed a memorandum and we are pleased to say since my kind of strident submissions in Rotorua and Hamilton, we've made progress for funding for Ngāti Manu in a significant way but there is still some aspects that need, I believe, would still benefit from a judicial conference but I'll leave that in the Court's hands. I don't wish to add anymore to what I've earlier submitted for other applicants who are also claimants in Waitangi Tribunal processes but aren't in negotiations with the Crown because their mandate is not recognised by the Crown. It's quite a select group and as I've repeatedly said they are the Davids becoming before any Court of law against the Goliaths who are fully funded or settled entities and the equality of arms issue is significant in Te Taitokerau. It's significant. But we I think are some of the few groups that have now been funded after a 14 months struggle, including the threat of judicial review. So my claimant has been very vigorously pursuing this because he is not recognised as a mandate for negotiations and Ngāti Manu, who are Pōmare II's descendants, who was a significant figure in the 1860s and prior had their lands confiscated by the Crown. So the issues are intertwined both to mandate and funding and representation in this forum. So I am pleased to say though that we are now funded to a limited extent with some outstanding issues, which I believe would benefit from judicial conference oversight for those that are in the position as this hapū. Some of them are the mighty settled groups, I see a few of them here and they don't need funding and that's a real problem.

The second issue is mapping and I renew my application that I've made elsewhere. Unless we have a single approach to mapping that's sensible where the Crown I'm suggesting funds a single mapper or a group and we give co-ordinates or sit down with that expert to prepare maps. I foresee that as a huge problem in this region, it's region C where we have a principal application. If we don't have a common mapping base then this could become the subject of some cross-examination for months in my submission. So I'd renewed on that application

earlier. I've suggested Moka Apiti everywhere but I think Mr Apiti's just about at the end of his ability –

COURT:

He's not thanking you any longer is he.

MS SYKES:

No, no. But there are individual groups that have assisted us previously in Waitangi Tribunal hearings here in both the Muriwhenua claims that's how old I'm getting people and the recent Taitokerau claims for the Te Raki claims so I believe that is an appropriate response to the mapping. We would prefer that would be directed early because the expense for mapping is significant and we have limited funds so if that was a priority.

The third matter in terms of prioritisation –

COURT:

Could I just interrupt you there, I think the resourcing issue is going to be really hard in terms of having appropriate cartographers. Are there others apart from Mr Apiti that you have referred to.

MS SYKES:

I know several sir, I've been speaking about it with other counsel, Mr Bennion's the mapping cartography, I see Mr Hockly's here, there's a few mapping kind of gurus amongst us sir. I see I'm getting a stare over there so I'm presuming they're very good at it too but I'm not and I just need to know that this needs to be dealt with because you can spend significant sums and still not get what you want is my concern and we have a significant amount of traditional evidence on fishing sites, waahi tapu sites and so whoever would be mapped that would be a significant task for just our claim alone and in the past Mr Apiti has helped our group so we have some maps that were prepared by him. But an overview map to inculcate all of the co-ordinates for the cross-claimants even for my group, which I am going to move to next, it would be a significant task which would take months if not a year sir in my submission. By the time he's met with the knowledge keepers, mapped it, tried to co-ordinate maps from neighbouring overlaps or encroachments as we call them, that process is a significant process and I'm asking Dr Ward and his colleagues to fund that process.

COURT:

I interrupted you so the third point –

MS SYKES:

Sir overlapping claims. Crown and ourselves have filed memoranda and we have suggested that there are 15 overlapping claims and they have suggested that there are more than that and we've looked at the nine different ones and seven of them don't overlap with us so there's two that we have to do further research on. So, for our hapū which if you look at our map it's a significant seaward peoples located as it is in Opuā on the isthmus of the Taumārere and the Karetu Rivers and seeking an extension right out to Kororāreka and beyond, there are significant other groups who are claiming interests within that area but we've looked at what the Crown is suggesting overlaps to us and we think that we have neighbouring agreements or tatau pounamu that don't make us in conflict so therefore they don't overlap in how we consider it. But it may be a question of definition as opposed to a question of language. What is clear to us though is that there are significant cross-claims issues. I heard your Honour this morning suggest that we try and meet with our neighbours. We have and they haven't been resolved. So I don't wish to promote that as a suggested way of resolution. Even with the best skilled facilitators we have not been able to resolve those issues and they are long disputes. They aren't of recent times. They go back some of them to prior to the signing of te Tiriti of Waitangi and then decisions of the Crown made for instance regarding the Girls War at Kororāreka and that's a disputed territorial zone very much for Ngāti Manu, Ngāti Patukeha, who's in the group. So I just raise those issues because we want to get on with it. We want an order, we want to then negotiate those matters as part of a full and final comprehensive settlement for the descendants of Ngāti Manu and we are of the firm belief that we need judicial oversight for that because the Crown mistreats us. That's the best language I can use.

I'm not too sure if you want a further memorandum from us around the 15 and the seven different ones.

COURT:

Look it might help me if you do provide that memorandum Ms Sykes, together with the identification of as many cartographers as you can.

MS SYKES:

And the last submission, can I say sir I'm actually in favour of forums like this for the process. I found the courtroom in Rotorua and Hamilton are too small, I'm not being ungrateful. But if we did start to go into some more serious processes, even mediation which may be an option of judicial oversight, so we're not countenancing no engagement it's just we need independent facilitation. The Crown has too much control. I'm suggesting fora like this would be quite appropriate. We turned a lot of people away from these matters. You know it's not unusual for us to bring 20 or 30 people with us so for it to be a fair and open transparent process we would ask the Court, and I know it's unusual, to look at other fora than just the Court buildings.

COURT:

I'm open to doing so Ms Sykes. As you and I'm sure most people would instantly appreciate, this is the first round of a case management conference process where I am trying to get my head around the big issues, I realise there are lots of other issues but I'm really just trying to get my head around the big overarching issues to see how we can best move these various claims forward. So I'm going to keep a very open mind about venues and other things and I appreciate that because of the logistical challenges we have really had to reduce the number of people who can come today. I'm very sorry about that but other than hiring out a rugby field I just don't know what the alternatives are.

PERSON FROM BACK OF THE COURT:

Your Honour, sorry we can't hear you. It's not going. We can't hear a thing.

COURT:

You can't hear a thing?

PEOPLE FROM BACK OF COURT:

No.

COURT:

Now there's a problem.

MS SYKES:

I just raise that particularly for this rohe. It's a significant rohe in terms of the claims because of course this is where the He Whakaputanga and te Tiriti were promulgated and so we recognise that and the expense sir that's the last point of forum. I know Wellington's a long way or even Rotorua but for people travelling five hours in the morning that come from Kaitaia and I really think we need to look a bit better about how we accommodate the needs of the applicants and you know this is just the applicants so if we go into the next phase I'm hoping we look at fora that we've used in the Waitangi Tribunal. But even in criminal cases I have had cases where there's multi-accused beyond the scope of a courthouse so that was what I was going to suggest just out of respect to try and having the matters dealt within a tidy and respectful way sir.

COURT:

Now, are there still difficulties in hearing us?

PEOPLE IN BACK OF COURT:

Yes

MS SYKES:

Do you want me to come up there and I'll talk to them

COURT:

We need speakers at the back too.

MS SYKES:

May be a better way, I was going to suggest it this morning the lectern may be better for counsel to address and then the echo may, if that may help te whanau, kei te pai? Sorry, aroha mai mōu taku tuarā

COURT:

Alright. So is it the case that you can only if somebody is talking toward you, is that the issue?

PERSON IN BACK OF COURT:

May be we don't know yet.

COURT:

Sorry.

PERSON IN BACK OF COURT:

We're not sure until it's in place sir.

COURT:

You can hear me okay.

PERSON IN BACK OF COURT:

There's a loud ringing noise back here as well.

COURT:

Okay.

MS SYKES:

Sir I have more thing. Should I go to the mic –

COURT:

Ms Sykes, why don't you come up the front.

MS SYKES:

Kia ora te Whare. Sir my last point is we are interested parties – can you hear me now? Is that better? Shall I scream and use my rugby voice, my outside voice?

So my last point whānau is we are interested parties as well as applicants and we are interested parties that are unfunded in some applications and we are unsure of the funding regime for interested parties so we've gone through the first phase for applicants. The other is an unknown to us and so when you say it's difficult sir well it's even more difficult for us because in your next round we are likely to be having to come as interested parties but unfunded ones and so that makes it very difficult again and in the interested parties I think we're 26 as opposed to the 15 for cross-claimants for this and that arises largely because of the question of dealing with settled iwi and unsettled iwi and priorities that are occurring we need to note our interest but I

don't think I have anything other to raise at this stage but can I say thank you to my friends from the Crown after our meeting in Rotorua they certainly have taken my concerns for the applicants' funding issues on board and are trying to help us sir.

COURT:

Thank you very much Ms Sykes.

Ms Thornton

MS THORNTON:

Tēnā koe anō, I would have to agree with Ms Sykes on the funding issues, the Crown has more or less come to the party. I can't say they've made a completely fair funding regime but at least we're getting help in how to get through it and how that's happening so it's not just this leviathan of impermeability that we can't deal to. So that's an improvement and we appreciate that.

I think I'll start with very briefly and I also agree with the mapping issues, that's critical. Of course, how can we know where we are if we don't have a good mapping arrangement and to rely on us whether we're funded or not without a consistency it's just going to be a hodge podge of crazy quilt but will not really be reliable in terms of what we're really looking for.

Two of the claims I'm here on behalf of today are final claims. Mr Panoho's claim 239 is for a really small discrete area. They own the adjacent land, have always owned the adjacent land except for possibly the 10 minutes when it was taken from them before they could buy it back. So there may or may not be claims people have made, there are about 11 claims have been filed as overlapping but some of them don't even mention that particular area and no one's been mandated to represent them other than the whanau. So that's pretty straightforward, pretty simple, pretty small.

The claim of Ms McGee is similar and with the added component of the fact that before these claims were filed this and the claims that Mr McCarthy has identified all work together to work out which whānau had which interests in which location. Now whether those have held up or not I can't say. So that could be a wrinkle or it might not be but if it is then that's the wrinkle. Otherwise a simple straightforward problem, again another final claim that is a lot for a

contiguous area that has been more or less divided up and we'll see what Mr McCarthy says about that. It may not be. It may not have sustained itself because their alliance may have disintegrated unfortunately. We aren't really certain. But underneath all of these or beyond all of these is the issue that I think is probably one of the more compelling and problematic issues and that's the question of mandate. You've got hapū, who's mandated for the hapū? It may or may not make a difference because if I'm mapping for somebody like Ms Taniwha who is speaking on behalf of one of the hapū such as Ngāi Tupango and Mr Naden's client is also speaking on that same it may be and I think it is that those two claimants have spoken together and are fine with the fact that they are each proceeding down their path to give evidence and ultimately the outcome is that an order if it's given is going to be given on behalf of the hapū. So really, who brings it or how you get there is not as exciting as the fact that it ends up happening and you've got as much as evidence as you can marshal from as many as sources as you can marshal it.

On the other hand, you've got a Rūnanga in the location in the area but we would have to question whether they have a mandate to bring any claims on behalf of anybody or certainly on behalf of the people that my clients are speaking for. So on one level it may be a simple and smart way to proceed in that is to resolve some of these mandate questions. You don't need a lot of cultural evidence about that. You know did you have your hui, who raised the notice, what happened, did everybody vote to do this, did you claim it from other basis and that might just sort out some of the other things that follow. That would also apply for the Ngātiwai Trust Board for the claims in probably Area C as well as of the Whangaroa Trust Board in Group B.

My clients have got their evidence pretty well. It's not resolved at this point but they know what they're going to do to develop it and we've had the benefit in this area of having tribunal processes. So we've had some research done and we don't foresee ourselves being stalled by research issues as much as we do just amassing it and getting it together.

COURT:

Thank you very much Ms Thornton.

Mr Hockly

MR HOCKLY:

Kia ora ano sir, kia tatou ma, firstly I do want to acknowledge Rowan and Marie Tautari, who are here for Te Whakapiko and also Bella Thompson who's here for the Rewha and Reweti whānau.

Sir, the things that I wanted to prioritise is build on what Ms Sykes has already addressed and I've filed a memo late on Friday and have some hard copies here.

COURT:

I read it this morning.

MR HOCKLY:

I'm sorry to spoil your breakfast sir. The key issue there, and this has already been raised, comes down to this representation mandating element and the funding and for Te Whakapiko and I understand and also for the Rewha and Reweti whanau the issue of mandating is an ongoing role, it's an ongoing job and so Te Whakapiko held a hapū hui to file the application and then as they continue through the steps identifying who's going to give evidence, gathering that evidence, engaging a historian to do some research, these are all steps that hapū wants to be engaged on and the Office of Treaty Settlements has said "no, you can just sort this out right at the end". For my clients that's just not an option. That would be a potentially very divisive thing to do. To undertake all of this to be successful as we anticipate and then to have to go back and say "Oh, here's what we've got, can we please confirm our mandate" and I think a number of other counsel will identify with that scenario being really, really both contrary to tikanga and potentially divisive amongst the hapū. So sir that's something that I have addressed at length in that memo and we are still working with OTS and I have to credit my clients' doggedness in trying to resolve that but I'm going to speak to Crown counsel as well and see where we can get on that. I guess the context there is this is an access to justice issue. It seems like an obscure tikanga issue but it's really about making sure the group has access to justice, can get the funding to undertake the process it needs to complete the applications, it's all part and parcel. In there too you will have seen sir that there's some deep concern about the involvement of the Attorney-General and I understand this is going to be a dynamic engaged in more depth in the future but I guess it was important for us to put that upfront again and say "we have a concern here that the public interest does not seem to be the protection of a

customary right that was never extinguished. That should be a part of the public interest” and so I think I’ve spelt it out in more length there. I’m just scanning back over sir.

For Mr Bennion, for Mr Ngāti Pūkenga they are a part of one of the priority groups in the Bay of Plenty Tauranga Moana and so they’re not wanting to bring evidence and deal with the gifting of some land and some area here in the harbour. At the same time they would rather deal with that in the later stage sir.

Sir that’s all I have from Mr Bennion and unless you have any further questions sir that’s me.

COURT:

Thank you very much Mr Hockly.

MR HOCKLY:

Kia ora sir.

COURT:

Mr Sinclair

MR SINCLAIR:

Tēnā koe Sir, anō.

Sir just briefly. In terms of the claimants that we have overlapping –

COURT:

Can people hear?

MR SINCLAIR:

Can you hear down the back?

PEOPLE IN THE BACK OF THE COURT:

No.

MR SINCLAIR:

Can you hear now?

PEOPLE IN THE BACK OF THE COURT:

Yeah.

MR SINCLAIR:

Ka pai. Just in terms of the claimants that we represent in the overlapping issues, we think they are one of the major issues that need to be dealt with at a local level among the hau kāinga. We have not engaged in that process yet. As was pointed out there's multiple overlapping issues in the North. We have only one claim that would probably avoid all of that and that's the Makarita Tito claim. However sir, until we've taken instructions from that client we are at the moment staying with the High Court process acknowledging what you've mentioned in regard to discussing matters that are reasonably clear-cut with the Office of Treaty Settlements. Sir we hope to, within a month, at least be discussing with a number of our claimants regarding overlapping claims. One of the important issues that has arisen with our claimants, and it's tied in with mandate, is that of coastal hau kāinga that is still on the coast at rua-pepe ahi kā for whatever reason they are still there and they have to begin engagement with entities such as trust boards or rūnangas who, for all intents and purposes, the majority of them are no longer on the coast. So what we're faced with, and it's very much the same as the issues in Treaty settlements, is the issue of mandate where we have democracy, a democratic vote and up against the tikanga, the people on the coast and one of our clients are definitely going to be faced with that issue and that's the Ngātiwai claimant that we have. Now you have a considerable number of people living on the coast who are coastal people and they are going to be asked to go into a mandating process with a rūnanga or trust board and it is basically numbers versus the hau kāinga. So that's a serious issue that some of our people are discussing at the moment.

Sir, just to balance that argument out I have other clients on the east coast who very much make up the rūnanga, it's their rūnanga, they are the whanau, they are the hapū, they are there quite solid and despite the fact that there may be several claims, they are going to work together as best they can and collaborate. That's in another part of the country and this part of the country sir I can't see the same sort of collaboration meandering along happily. So that's a matter for us to contemplate and discuss, trust boards, democratic vote versus tikanga and versus the

people still on the whenua sir and I have a number of claimants who fit that, including myself I might add.

That's all I have for now sir. I hope to put a memorandum in shortly regarding the overlapping issues and some of the matters I have just mentioned.

COURT:

Thank you very much Mr Sinclair.

MR SINCLAIR:

Thank you. If there's any questions sir?

COURT:

No, I'm fine at the moment thanks Mr Sinclair.

Mr Naden

And if Mr Erskine wants to come up at the same time, you're working in tandem

MR ERSKINE:

No your Honour.

MR NADEN:

Sir, thank you for the opportunity to address the Court. I'd like to pick up where Ms Sykes was at and basically there's support for those submissions made around the equality of arms issue, mapping and the funding thereof and forum size.

In relation to OTS funding for interested party applications your Honour, we've approached OTS and it's been a firm "no" from them. They don't have the funding stream for work of that nature sir so that's a real difficulty that needs to be resolved going forward and so I just add that submission to that raised by Ms Sykes.

Sir, in our submissions of 18 December, at the invitation of the Court there was an invitation to file submissions on priority applications and we did so.

COURT:

Yes.

MR NADEN:

And two of those applications are here in the North, sir that's the 245 application and the 252, on behalf of Mr Te Tuhi, who is here now your Honour, he located the venue and the issue there for Mr Te Tuhi, one important issue is his age sir. He's on his way to 90 your Honour and he is the repository of much of the knowledge that would be useful in relation to the application that's been filed and of course there's affidavit evidence already. But we're always proposed to prepare further research once the funding's come through and all those ducks were lined up sir and your Honour to be honest there was a health scare for Mr Te Tuhi earlier this year and in terms of criteria for prioritisation we would posit that sir. In addition, there's a Crown engagement negotiation with another party that is near completion, if not it's been signed off on sir and that Crown engagement area completely encapsulates the application I am discussing sir. And so it may be that when Mr Te Tuhi and a group get to court, that Crown engagement negotiation has been settled and then where is the High Court application sir? So for that reason too priority's been sought and I think the clock's ticking your Honour loudly if I can be that familiar sir. So sir in terms of priority I raise those matters directly with the Court here today. They are set out in earlier memoranda and I raise the age factor your Honour.

With the Porter application, 245, we've counted that there are eight overlapping applications and sir it goes something like this. We think we can talk to a couple of groups and perhaps the overlaps can be resolved that way. We think that in our estimation sir to be honest, some aren't that strong and we put it this way sir they're large applications and so by sorting through some of these apparent overlaps, it's possible to say that that application is a contender for prioritisation even though on its face it may not look to be the case and so sir in relation to this opportunity to address the Court I'd highlight those two applications in particular. In Gisborne sir you may recall I asked the Court to urge parties to or to orchestrate parties to get together in a direction to reach agreement subsequent to these conferences. Sir that's maintained. It would help your Honour if that's endorsement from the Court about parties getting together.

Sir those are counsel's submissions for now.

COURT:

Thank you very much. I'm very grateful to you.

Mr Erskine, did you want to add anything?

MR ERSKINE:

Not immediately sir.

COURT:

Thank you very much.

Mr Kahukiwa

MR KAHUKIWA:

Thank you your Honour. Tēnā anō tātou.

I have a very simple submission to make your Honour. The purpose of this hui is as you said in the beginning to assist with bringing these cases on for substantive hearing. In my submission, we should be seeking directions of this Court in two respects. I think broadly we need leadership from the bar in terms of co-ordinating applications. I think what works very well in that regard in the Waitangi Tribunal we seem to and particularly the North the Wai 1040 inquiry is a great example of that where we have a co-ordinating sub-committee of counsel and much of the logistical matters that the Court is grappling with is funnelled through a co-ordinating counsel committee. Equally, the Court designates a couple of Registrars or Deputy Registrars to lead from the Court's point of view and those appointees are directed to advance the logistical matters leading up to hearing. So when is the date for filing of evidence, are there any applications that ought to be made to oppose or object to any of that evidence, any sort of interlocutory type things. I'm not sure how the Crown is going to approach evidence but that all gets factored into the discussion between these two groups of appointees.

In my submission, the subdivision or loose subdivision of the applications around these zones has been very helpful and in my submission that ought to be the starting point for putting some timeframes around these applications. So for Te Waiariki, Ngāti Kororā, Ngāti Takapari it's Zone D. There may well be other groups who are on the face of it outside of that zone but may

wish to come in. That could be dealt with in terms of that co-ordination little interface that I'm talking about. I don't think it's as – lawyers meant to get hung up on substantive issues, we need to keep focused on how's the procedure being advanced and in my submission as I say, the notional zones are quite helpful. Extending that further in my submission your Honour, I think it would be useful for the Court to decentralise from Wellington and appoint some persons who are local so that the co-ordinating committee of counsel/applicants know who they can deal with and can progress applications within each of the zones. It seems to me that some zones may advance faster or slower than others. It's okay. The legislation doesn't appear to put an expiry date on these applications but I think the common ground is that we are all wanting these to advance and to the substantive hearing that you're talking about. So I will go away and put something together to that effect.

My final submission is, and this is really just a thought at this stage, there's quite a lot going on in this space. As you've mentioned your Honour there's also the parallel Crown negotiation process. In the Tribunal in more recent times when that has happened, the Crown has been quite good at, quite good, quite good at keeping claimants in that forum advised as to what's happening, to ensure there's plenty of notice given to anyone that if there is an issue that they can make a submission or a case before the Tribunal. In my submission, a direction loose as it may be would be helpful as well because the risk of course is that with these private negotiations with the Minister there may well be decisions made that do have an impact on what hasn't happened in this process and so rather than rendering any applications nugatory by virtue of that other process, in my submission the Crown ought to be directed to keep parties apprised of what's going on, where steps are at in terms of those discussions.

That's my submission your Honour.

COURT:

Thank you very, very much. I'm very grateful to you.

Ms Harper-Hinton, did you want to?

MS HARPER-HINTON:

No thank you your Honour.

COURT:

Ms Tahana

MS TAHANA:

Tēnā koe Your Honour

I'll start first with proceeding 308, this is the Trustees of Matihetihe Marae Trust. Just in relation to that application your Honour, I think it's important to understand the nature of the overlaps and they're not all overlaps so there are parties who are claiming large areas like the whole of Aotearoa or the whole of Northland. There are also issues around whether the holder should be the iwi or the hapū so they're mandating issues. There are also shared interest issues. So it may be that more than one party has an interest in a particular area. Then there are also true overlaps and I think it's really important that those two distinctions are understood because when you look at the nature of the group, you see that the extent of the true overlap is actually quite small. So often these issues are not really overlapping issues, they're other types of issues. Now our client has already started discussions with the rūnanga with Te Rarawa. They haven't yet resolved those issues but they are open to a negotiated solution. However, not at the expense of delays in dragging out the hearing of the issues. So in my submission any timetable should factor in a process to enable those internal discussions to take place but not at the expense of delaying the hearing of the application.

The second issue is Crown engagement. Our clients have sought to engage with the Crown but have not yet had a response as to whether that's been accepted or not. It would be useful to have an indication from the Crown as to when they can expect to have an answer on that.

The third issue is around funding. Our clients have had their funding application accepted but I just tautoko the submissions of other counsel around the issue of where you are an interested party because much of our time is having to be spent dealing with overlapping issues and there is no funding where you are an interested party and the process going forward is not clear so we would really urge the Crown to provide clarity around funding for overlapping issues and where you're acting as an interested party and not an applicant.

So those are my submissions in relation to 308.

Then, in relation to 283, Ngātiwai Trust Board. The Trust Board your Honour has applied or filed a memorandum seeking an adjournment because they have sought direct engagement with the Crown. They've sought an adjournment sine die. If that's not accepted then they would request that the adjournment be of a sufficient duration so that these issues can be progressed. In terms of overlapping applications for Ngātiwai, now the Ngātiwai Trust Board does in principle support applications by various whānau, hapū and marae. The Board sees that it does have an important role because there may be areas within the rohe where whanau, hapū have not sought or not made an application and they would like to make sure that none of their rohe is excluded. So they are open to a process where may be those applications go first and there's also the issue of who the appropriate title holder should be in relation to the applications. So mandating issues.

Then your Honour, just one further point. The Trust Board has sought to file an application to withdraw its notice of appearance in relation to proceeding 510. So they'd like to just request that that be granted and those are the submissions in relation to Ngātiwai.

COURT:

I grant that one now.

MS TAHANA:

Thank you your Honour.

COURT:

Thank you very much Ms Tahana.

Ms Dixon

MS DIXON:

Tēnā koe Your Honour. I will be very quick. Most of the issues have already been traversed by my learned friends, in particular we support and adopt the submissions that have been made by Ms Sykes and also just picking up on the submissions made by Mr Kahukiwa just now in relation to zoning, zones or whatever the most appropriate word would be, in relation to the Patuharakeke application, I'd submit that the synergy that Patuharakeke has within the Whangārei rohe would benefit this process in terms of being able to talk further with many of

its whānau and hapū relations and also just noting again in relation to the Patuharakeke application the comments that have been made by Mr Naden in terms of the settlement pressures within this area. Patuharakeke are a hapū that are included in three mandates within this area, all putting quite a lot of pressure on relationships and this issue.

So those are my brief submissions sir.

COURT:

Thank you very much Ms Dixon.

Ms Piripi

MS PIRIPI:

Tēnā koutou. If I could just make two general points. The first is in relation to some submissions that have already been made in relation to some mediation with judicial oversight which is something that we would support and is consistent with the local approach your Honour that you alluded to in your opening comments. The only issue with that is that we would consider that the funding guidelines would need to be amended to reflect that approach because at the moment there is no funding available for mediation as part of the High Court pathway and interestingly sir this is –

COURT:

Can I just interrupt you? Would the guidelines not permit funding for a judicial settlement conference, which is part of the High Court process?

MS PIRIPI:

There is a very small amount of funding available for an interlocutory hearing but this is a very, very small amount that does not really reflect the amount of work that would need to occur. There is also a pre-hearing/evidence gathering category but again we would see that that would be used for pre-hearing as opposed to any form of mediation.

COURT:

Okay.

MS PIRIPI:

Interestingly your Honour, that approach I submit would be similar to the approach taken in Australia in native title cases there where there's often mediation to judicial oversights which result in consent determinations. That model may well work in relation to these applications.

The second submission is just that we support the use of a single mapper.

Just specifically in relation to the two applications that I appear on today so Te Rūnanga o Te Rarawa the CIV ending 290, they unfortunately fall into two geographical groupings and so we make a submission that there is an amendment of that boundary. For example, they are also to appear in Auckland on Wednesday so to avoid a duplication of costs for our client but also it makes sense from a Te Hiku concept found that they don't fall into the Auckland case management conference so we've made that submission in our 13 April memorandum, just that shifting of that boundary. At this stage, the Rūnanga have both the High Court application obviously and also a Crown engagement application. Their preferred approach at this stage is the High Court process. They certainly wish to work collaboratively with the overlapping and I just support the submissions made by my learned friend Ms Tahana in relation to the nature of the overlaps so it would certainly wish to work collaboratively both for the internal overlaps but also the external neighbouring iwi overlaps.

Just in relation to that application they have made an application for funding, they have appointed a project manager. They are in the initial stages of collating what evidence they have and engaging the likes of historians and they will likely be ready in the second half of 2019.

Then in relation to Te Rūnanga O Whaingaroa Incorporated CIV ending 236, they have a very large number of overlapping applications. They are probably more preliminary than the CIV ending 290. They are unsure what their preferred approach is and unfortunately I'm unable to give any timeframes as to when they may be ready for hearing.

COURT:

Thank you very much Ms Piripi.

Ms Jones

MS JONES:

Tēnā koutou katoa, koutou mā.

I don't have much to add to the general submissions that have been made primarily by Ms Sykes except to suggest that perhaps the Court in collaboration with a mapper could produce a protocol or a practice note that could be distributed to other mappers just in case it's not feasible to have one or two mappers doing the mapping for all of the applications both up here and nationwide.

The second submission is just to underscore the difficulties again with mandating issues for smaller applicants. Both of the applications that I am here representing today would much prefer a negotiated solution but they are smaller groups and this particular coastal marine kaupapa don't wish to be a part of the large natural grouping in this kind of arena. Just echoing Ms Piripi's submission my clients the Haititaimarangai Trust are in two groups but they're both in Taitokerau. We've been thinking hard about a solution to that. We don't have one yet except to I think that will be shared by some other counsel probably in this forum if not the Auckland one but right now we're just filing our documents in both of those groupings the risk of hitting the reply all button on MACA emails yet again.

The third general point is we're having a few difficulties with paper work on overlapping claimants. We too have some inconsistency between overlapping claimants identified by the Crown and identified by counsel and our clients and I wonder if we could submit a supplementary memorandum to your Honour asking for directions for service for some of those applications.

COURT:

Yes.

MS JONES:

Thank you sir. The fourth is funding. This is something I raised on behalf of our clients at the OTS funding roadshow. Given that the Crown's notice of appearance indicate that the Crown will be filing evidence in each application the funding guidelines don't contemplate reply evidence or a separate offering for that and I understand that's an issue for the office but I suspect that that will be something that will have to be tackled.

Application specific submissions, both clients have submitted applications to directly engage and the application ending 321 that's Ngāti Kuta, Patukeha. That was over 18 months ago and that's a dynamic that will affect the progression I think of our clients' application but of course in the absence of news then we are abiding the Court's directions on progression of the claims.

COURT:

Thank you very much Ms Jones.

Ms Bollen

MS BOLLEN:

Tēnā koe Sir.

I shall also be very brief. Just to say that we do tautoko in principle Ms Sykes' proposal with regard to mapping subject to the details of any of that proposal. In terms of funding we are in the process of applying for that so I can't actually comment on that much further. The Parengarenga Incorporation has lodged four notices of appearance with applications which overlap the entire interest area. The main focus for Parengarenga is that land the Takutai Moana directly abutting the land they own so they're very open discussions with the overlapping claims with the wider area of interest so I suppose that could be factored into timetabling. I have been told by our clients that in terms of evidence they are in the process of gathering this and a few months behind schedule but should be ready to proceed shortly.

My final point is just on Crown engagement, that the Parengarenga application has been registered with OTS but they are awaiting further engagement.

That is all I have today.

COURT:

Thank you very much Ms Bollen.

Mr Harrison.

MR HARRISON:

Your Honour I will just talk to this claim 420 and other than just to say that the applicants who are representing Te Whānau Whero would be comfortable with everything that's been submitted in the proposals that have been made to you. For these claimants, we are very much at the early stage. The entire claim has been run voluntary to now. We went to that helpful roadshow I think in May in Auckland and at that point we are starting the process of the funding, so we are not even at a stage yet of having a researcher and an historian appointed but that's pretty close. I can indicate that that's the steps that were pointed out to us in that quite helpful session are now underway. I would imagine and it's only that and in talking with my clients we're probably looking at about a year to get that complete and I suspect that might be frustrating when hearing some of these submissions for those with overlapping claims and so there is going to be a problem there I can foresee. I don't know how that sits with other claimants of how we're at the tail end or not I'm not too sure but certainly I would have thought a year will be required just to get us to the point of having that research and so on completed and documented. There is a lot of work in that and then I would imagine logically you would move to the overlapping in trying to resolve that in the way that your Honour's indicated and trying to do that in the next stage.

So I just give that actual timeframe. There will be some that will be a lot further advanced and if they're overlapping claims there might be a problem as to how we try and resolve that if we are only you know half way through the gathering of our information. I highlight that but I've got no solution and I will leave that with you your Honour.

Those are my submissions.

COURT:

Thank you very much Mr Harrison.

Ms Zwaan

MS ZWAAN:

Thank you your Honour. I also don't have much more to add at this stage. I support Ms Sykes and other counsel have said in terms of mapping issues and funding issues so I can indicate that we have yet to apply for funding so I can't comment but in other cases I have similar

concerns about the delay in getting funding approved. Mr Kira has also applied to have Crown engagement but has yet to hear back from the Office of Treaty Settlements about where that application is so we're not sure what's happening there. Also, we have filed 17 notices of intention to appear of overlapping claims. Currently those claims are on a fairly amicable basis and they're all kind of working together to try and resolve some of these issues. My understanding is that at least for Mr Kira he's working with the Whangaroa Papa Hapū to try and take a co-ordinated approach to deal with his overlapping claims and those conversations to date have been going well and at this stage we don't really have anything further to add.

Thank you.

COURT:

Thank you very much Ms Zwaan.

Ms Wroe

MS WROE:

Your Honour Ngāti Kuri are also waiting for progress on engagement application and the funding application. We are in the process of gathering evidence. We do not realistically expect to be able to report much to the Court in relation to that for probably a year from here. The only procedural matter that I raised in my memorandum of 21 March related to filing notices of intention to appear. Ngāti Kuri has filed three such notices so far but we would wish to be heard on all proceedings in Group A, some in Group U and Group S. I asked your Honour in the memorandum whether the memorandum would suffice as notice of that or whether there would need to be formal applications and also if there is a need for formal applications whether the fees in relation to that can be waived because it is quite an onerous cost that add up for all of the applicants I'm sure.

So those are the only matters for Ngāti Kuri your Honour.

COURT:

Thank you very much Ms Wroe.

Ms Downs

MS DOWNS:

Tēnā anō koe Sir, tēnā koutou katoa. Sir, our submissions have been filed on a number of occasions over earlier memoranda and they relate primarily to the Tribunal proceeding, which was filed by our applicants also. It's an urgency application which was originally declined and it then became a kaupapa priority inquiry so it's a nationwide inquiry which you might have read some information on and it's currently in its design phase so they are currently scheduling and timetabling when hearings will take place. My understanding is that a memorandum is due in August and then from there we'll have clearer ideas as to timeframe. I raise this because our applicants have sought an adjournment to their applications because they have real issues with a number of process and substantive issues with the Act in terms of their rights. However, it's unclear how quickly these proceedings are going to go and I note some people have sought up to a year for preliminary phases so it is likely that a Tribunal proceeding and hearing could take place within that timeframe. I note that we have sought an adjournment but I'm not sure as to whether it's actually necessary and whether we can monitor how quickly things progress but we are concerned about taking substantive steps in this process which will entrench issues which the claimants say are going to cause them prejudice issues which they would like addressed by the Tribunal.

Do you have any questions on –

COURT:

No, no thank you Ms Downs.

MS DOWNS:

In terms of overlapping that's a real concern, it is also a concern that has been raised in the Tribunal process. We've had a recent instruction for Te Aupouri in the Far North but we've also got three applicants in the Bay of Islands and you will have noted from the number of applications that there are a really high number of claims in that areas so we were required to file 52 notices and that was particularly cumbersome and stressful not only in the notification phase but in terms of how do we actually participate as an interested party in those applications going forward. We have a number of concerns particularly in relation to as a firm how we manage that caseload? How do we manage the conflict and tension that is probably going to arise? I know that everyone's saying collaborative at this phase but as we know as things

progress and as it's getting closer towards dealing with the substantive issues it's going to take a lot of work and so on that point I support Mr Kahukiwa's submission around having claimant counsel to assist the Court and having special regional appointments who are familiar with the areas and familiar with the claimant groups to provide advice as to how we can best navigate what is likely to be a pretty contentious issue as we get closer towards hearing in terms of those applications which overlap.

So just to conclude on overlap I think like Mr Kahukiwa said a dynamic and new approach is going to be required and we would be supportive of participating perhaps in the development of what that might look like to assist the Court.

In terms of funding I acknowledge a number of counsel who have said that funding is an issue at the outset. Some haven't yet got funding. We're not one of those ones. Our funding has been granted. But our concern as to funding is the durability and sustainability of the funding. It was indicated in Crown policy that the funding was intended to cover 85 per cent of costs. I'm not sure when that policy was devised. If they knew that we were going to have to file 52 notices of appearance on interested parties and the types of anomalies that are coming up as we proceed with the high number of applications so I'm wondering how the Crown is considering addressing funding issues in terms of sustainability and durability because I think it will be a real issue as the proceedings become protracted and we're required to engage in such a high number of applications.

Those complete my submissions sir.

COURT:

Thank you very much Ms Downs.

Mr Afeaki

MR AFEAKI:

Tēnā anō koe e te Kaiwhakahaere, otirā ki a koutou o Te Taitokerau. Sir, it's a complex area up here as you may have found and I know you've been around the country and what we do face in one way in the North and I've worked up here and I married a woman from the North and our four kids are from the North, what we do find is it's not a very large area. There are

some very significant populations of ancient tribal nations up here in a small area so it compresses the competition for resources which I think is going to manifest. I didn't wish this to be a doom and gloom korero and some of my friends have alluded to processes we've been involved in up here in Waitangi Tribunal inquiries and Māori Land Court inquiries and the like. Where this compression has created some real tension amongst the communities and that's been very challenging to deal with as counsel for different whānau and hapū and whakaminenga, you know like groupings of, they're like confederacies up here. So while on the one hand it's lovely to hear about collaboration and I do support the korero from Ms Sykes and from Mr Kahukiwa and others about showing leadership and a level of collaboration amongst counsel to assist yourself and the claimants to engage. One of the challenges in there as you will no doubt be aware sir is conflicts of interest about who makes calls, about allocation of resources, of time, prioritisation, even of who gets allocated which hearing slots and the like. And then it's complicated by the parallel processes of the direct engagement of the Crown and the litigation process in your Court sir. So I'm interested in that discussion and I'm open to the suggestion to assist as able of course subject to my not being in conflict with my clients' instructions and they are strong minded people but bless them.

We filed a memo for 268, that's Ngā hapū o Ngāti Kahu application. I don't really have anything to add to that save to say that in respect of the overlapping claims I've only recently been instructed on that matter and the other matter for and I'm getting the number right here, 579. They are both at the current stage engaged in the High Court process. They are considering what their options are about the direct negotiations engagement process. They are concerned about funding. Neither have funding at all at this stage. While we have tangata whenua who are experts in mapping of their own particular areas I think there is going to definitely be the need for some mapping assistance and poor Mr Apiti. Unfortunately there's only one of him and we can't clone him but we would definitely need some assistance in that regard sir. The mandate issue and the notice of intention to appear as an interested party, as counsel for these claims I haven't done anything about that yet sir because I need instructions on that but we need some gas in the tank so we understand that the funding and resourcing processes have been reviewed. But one thing that I have to agree with Ms Downs in particular about is when the complexity and the rubber really hits the road in these labyrinth of claims in the North, let alone elsewhere sir, that's where the resourcing is going to be very much needed to ensure that people aren't left behind bereaved and bereft and without process.

Those are my submissions sir. Thank you for the opportunity to meet. Huri noa, tō tātou whare, te papa nei, me koutou katoa, tēnā koutou.

COURT:

Thank you very much Mr Afeaki.

Mr McCarthy

MR McCARTHY:

Tēnā koe Sir.

I have the benefit of going last so I heard a lot of submissions to rely on.

Firstly, Ms Sykes obviously I support her submission about mapping, about logistics. In regard to OTS funding, our clients are currently engaged with OTS, we still haven't received funding but I believe from meeting with him next month so once funding comes through we'll have an opportunity to provide evidence. I can't give a timetable when they will be ready.

I take your point sir about collaboration even though there's been some scepticism conveyed by the counsel. Our applicants will endeavour to try and sort it out before the applications were put in. There's been some dynamics since then. But I do think it's worthwhile to at least try and work together and try and avoid any arguments so perpetuating further the processes.

Those are my submissions sir.

COURT:

Thank you very much Mr McCarthy.

Now are there any other submissions from applicants before I call upon the Crown?

Thanks Mr Ward

MR WARD:

Thank you sir. Your Honour I'm obliged to my friends for raising the various issues that have been raised today about funding. There's been a number of matters raised that I need to seek instructions on. Perhaps to bring to notice for the Court that the points that have been raised will be transmitted back to Wellington and the instructions will be sought and further consideration be given to the matters that have been raised.

In terms of the current engagements that the Crown is involved in –

COURT:

Speak louder.

MR WARD:

I beg your pardon. So the Crown's filed a memorandum on 7 March and on 16 March that set out who the Crown is engaging with at present. There are no imminent agreements in relation to those engagements that are underway. The Crown is still considering which of the recent applications for engagement it may decide to take up. My instructions that OTS won't make a decision on that, well OTS will make a decision on that at some point in the next 12-18 months.

Sir there's been some points that have been raised about the role of the Attorney in these proceedings. The Act provides for other parties to be parties of the proceedings and the Attorney has or the Crown has an interest in the broader regulatory integration between this Act and other Acts that regulate uses and activities in the coastal marine areas and it's entirely appropriate that the Crown is a party to these sorts of proceedings given the broad interests that the Crown has, both as a Treaty partner and as the government more generally. I don't accept the assertions that have been made that the Crown has failed to take into account issues regarding and obligations regarding customary rights. The statute provides a mechanism for the recognition of existing customary interests and rights and it's appropriate that the Attorney is a party to those proceedings and the Attorney wishes to put all applicants to proof so that claims can be tested and the Court can be satisfied on a proper evidential basis of the applications that are made and I think some care sir is needed in some of the submissions that you've heard today and at other case management conferences are essentially my learned friends on behalf of their clients disagreeing with the Crown on the substantive position the Crown's taken in the proceedings so far and that is often the nature of litigation, often the nature

of an application to the Court. It's not of itself, if I understand the positions correctly, they're not arguments that the Crown ought not to be part of the proceedings or that there's some particular legal issue that ought to be addressed at an interlocutory stage, they are simply parties to the application disagreeing with another party. However regrettable that might be, sir at one level it's unremarkable.

What the Attorney has said consistently through these case management conferences sir is that there are applications where some further clarity about the nature of the customary rights that are sought is required. Part of the reason that we've made that submission is because the Attorney is entirely open to changing his position across time. We are at the beginning of what is likely to be a long process sir and the position the Crown takes on a particular application today may or may not be the position it's taking further down the line, particularly once evidence becomes clear, particularly once the landscape of interests and parties develops in the way that some of my learned friends have suggested may occur.

Sir on various points that my friends have raised, I am happy to take instructions in relation to mapping, I have no instructions at present. The suggestion I think from Ms Jones that a protocol of some kind would be useful I agree with that and am happy to engage with Ms Sykes about possible sources of experts who might be available to be used.

In relation to the application ending 283, the Ngātiwai application, sir there's an application for adjournment there that was referred to. The Attorney-General's memo of 25 May refers to that application. The Crown doesn't object to the adjournment sought.

Some of my friends have raised issues about the recording of overlaps and an inconsistency between their understanding of where the overlaps are and the Crown mapping and lists. I am happy to engage with my learned friends to try and clarify that if the Crown is able to. Some of those issues though where people were questioning the numbers appeared to be on assessment of local relationships and whether or not there was actually a dispute about overlaps. We've generated the lists of overlaps in the statements of appearance simply by comparing application areas as best as we can. But I am happy to engage with my friends to assist the Court further on that.

Sir, unless you have any questions those are my submissions.

COURT:

Ms Piripi has raised the issue which is not the first time this has happened about the lines between regions and I have previously said that the lines had been drawn for convenience, that they're not set in stone and that where it's logical and appropriate then some boundary changes may need to be made between regions.

MR WARD:

Yes sir. We'd always presumed that that would be the case. It was simply we were faced with a very large number of applications and it was for convenience sir.

COURT:

Thank you very much Mr Ward.

MR WARD:

Thank you sir.

COURT:

Now, does any counsel wish to make any submission in response to that of Mr Ward?

If not, can I say that the next phase is this. Some of you will be aware there will be the final of the first round of case management conferences in Auckland on Wednesday and then I am going to be preparing a very lengthy minute which covers all of the case management conferences and sets out as best I can at this stage ways forward and address to the best I can a number of the issues that have been raised not only today but at the other case management conferences. I then hope to engage with interested parties but I am sure I will be also engaging with the parties in the not too distant future. So can I simply say it's been a very constructive hearing today. I've been really impressed by the way in which the parties are trying to move forward and I'm certainly not oblivious to the magnitude of the problems that are before all of us. I will do my best to try and assist you in navigating the way forward.

So I will adjourn and thank you all very, very much.