IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE

CIV-2011-485-817

IN THE MATTER OF	the Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	an application for an order recognising Customary Marine Title and Protected Customary Rights
BY	the late Claude Augustin Edwards (deceased), Adriana Edwards and others on behalf of Te Whakatōhea

On the papers:

Counsel: R Zwaan for Te Upokorehe (CIV-2017-485-201)

Minute: 11 May 2020

MINUTE (NO. 12) OF CHURCHMAN J

---

[1] Pursuant to leave reserved at the case management conference on 19 March 2020 (CMC), Ms Zwaan, counsel for Te Upokorehe, has filed a memorandum dated 30 April 2020 in respect of this matter.

[2] The memorandum covers issues that are specific to Te Upokorehe and some that are of general application to all applicants in this matter.

[3] No memoranda in reply or response to the memorandum has been received.

Addition of counsel

[4] Ms Zwaan notes that she will be on parental leave during the hearing. She has instructed Bryce Lyall to run the hearing supported by Ms Alexander of her firm. Contact details are set

out in [9] of her memorandum. Counsel should ensure that both Mr Lyall and Ms Alexander are copied into any documentation filed with the Court.

Centralised list of evidence

[5] Ms Zwaan has requested that the Court collate a list of evidence that has been filed and provide details of the evidence including the name of the deponent and the claim that they are giving evidence on behalf of, so that all parties can be confident that they have in fact been served with the documentation potentially relevant to their claim.

[6] It is the obligation of counsel filing evidence or memoranda to serve all other counsel involved in the proceeding. Nothing in this minute is intended to replace that obligation. However, as it has been suggested that some counsel or parties have not ensured that all interested parties have received all of their documentation, the Court will request the Registrar to prepare a list of documents filed in respect of each application. The Registrar is to liaise with Crown Law who have already attempted such an exercise.

[7] Ms Zwaan further submits that there is some confusion as to the status of some evidence "and whether it will be presented in full during the hearing, or in part". It is not clear how evidence might be "presented in part". All evidence tendered in the hearing becomes part of the record of the hearing (subject to challenges on grounds such as admissibility).

[8] A more relevant point is for interested parties who are cross-applicants and whose own application extends beyond the boundaries of the application being heard by the Court, indicate whether or not they wish the Court, in relation to the hearing that they have filed evidence in, to adjudicate on that part of their application that falls within the main application being dealt with.

[9] As has previously been made clear, cross-applicants are not compelled, should they not wish to do so, to have the Court determine their application in respect of the overlapping area. They are at liberty to advise the Court that they do not wish that to occur and that their purpose in filing evidence and making submissions is simply to respond to the principal claim being dealt with by the Court. However, they need to clearly indicate whether they wish the Court

to determine the overlapping part of their claim or not. They should do so no later than 30 May 2020.

Claim being heard and determined

[10] Te Upokorehe have confirmed that all of their application falls within the Whakatōhea application and that they wish to have their application heard and determined at the hearing set down for August 2020.

[11] Ms Zwaan submits that the appropriate procedure to follow would be for the Edwards Whakatōhea application and those claims that support it, to be heard in full first, followed by other cross-applicants. This suggestion appears sensible, but the Court wishes to hear the views of the other parties before confirming that this hearing order will be adopted. While this is likely to be the order, the final decision on that will be made at the commencement of the hearing.

Geographical hearings

[12] Ms Zwaan has suggested that geographic hearings may be a more suitable approach than hearing the priority applications and overlapping applications in the manner that the Court has embarked upon.

[13] The Marine and Coastal Area (Takutai Moana) Act 2011 provides for priority for certain applications. The Court cannot amend that. The Act does not provide for "geographical hearings". The order in which hearings are dealt with will depend on the readiness of applicants to proceed to hearing. It is premature for the Court to make definitive rulings about that. Applicants differ greatly in their state of readiness.

[14] If a number of applicants in the same geographical area are ready to proceed to hearing, there is no reason why they cannot jointly approach the Court and request a joint hearing. However, no applicant who is not ready for hearing and does not wish to participate in a joint hearing will be compelled to do so.

[15] Ms Zwaan submits that the principles of natural justice may be breached if applicants are required to appear in various applications at different times to protect their position.

[16] The Court cannot control what areas the various applicant groups wish to pursue a claim over. The Court has previously expressed concern about the difficulties created when there are large numbers of overlapping claims all claiming exclusive rights in respect of the same area. But other than in respect of cases where the claims on their face appear not to comply with the requirements of the Act as to the identity of the applicant, and the nature of the claim (the two "national" claims being advanced by Rihari Dargaville and Maanu Paul are examples), it is not for the Court to interfere with the rights of applicants to lodge claims in respect of an area or areas where other applicants have also lodged claims.

Pukenga

[17] Ms Zwaan has nominated Doug Hauraki as a potential pukenga and filed a copy of his CV. No other party has yet nominated a pukenga. Any party opposed to the appointment of Mr Hauraki as a pukenga in this matter, should file a memorandum outlining the reasons for that opposition, and nominating an alternative pukenga within 15 working days of the date of this minute.

Ability to file reply evidence

[18] Ms Zwaan points out that the timetable does not expressly make provision for the filing of evidence in reply to that of applicants other than the Edwards Whakatōhea application. Counsel seeks the ability to file reply evidence in relation to all overlapping applications on 28 July 2020. This request is sensible. Te Upokorehe and any other cross-applicants have until 28 July 2020 to file reply evidence in response to any issues raised in the evidence of any of the cross-applicants in these proceedings.

Treatment of evidence

[19] Ms Zwaan is concerned that sensitive evidence about matters such as the traditional boundaries of Te Upokorehe may be "appropriated" by other iwi or parties for use in subsequent applications. She submits that the Court should "carefully weigh any further requests to review the Court file or any documents related to these proceedings", and further submits that if "any future evidence that is presented by other parties as reply evidence to the evidence of Te Upokorehe, should be given little weight.

[20] The interests of justice require that all parties to an application have access to the evidence filed by other parties. Where there are issues of confidentiality or sensitivity, any party can apply for orders prohibiting publication or use of such material. Such application should be made at the time the evidence is filed.

[21] Counsel also need to keep in mind the provisions of r 7.32 of the High Court Rules 2016 as to the limits on using evidence in one proceedings, in any other proceedings.

Churchman J