

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

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

CIV-2011-485-817

UNDER the Marine and Coastal Area
(Takutai Moana) Act 2011

IN THE MATTER of an application by the late CLAUDE
AUGUSTIN EDWARDS (deceased).
ADRIANA EDWARDS and others on
behalf of Te Whakatōhea for a recognition
order of protected customary rights and/or
customary marine title under the Marine
and Coastal Area (Takutai Moana) Act
2011 (“the Act”)

Hearing: 19 June 2019

Counsel: A J Sinclair and B Gilling for C A Edwards and others on behalf of
Te Whakatōhea
A J Sinclair for Te Uri a Tehapū, Whakatōhea Pakowhai,
Ngāti Muriwai and Te Whānau-a-Apanui
A T Sykes and J Bartlett for Ngāti Ira o Waioweka Rohe
C Linstead-Panoho and H Clark for Te Hapū o Titoko Ngāi
Tama, Ngāi Tamahaua, Ngāi Tai and Ririwhenua Hapū
T Thompson (acting on instructions on behalf of Mr C B
Hirschfeld) for Ngāti Huarere ki Whangapoua and Hiwarau,
Turangapikitoi and Ōhiwa of Whakatōhea
S T Webster for Ngāti Awa
T H Bennion for Ngāti Patumoana
S Collinson for Manu Paora Whānau
K Ketu for Te Uri O Whakatōhea Rangatira Mokomoko
R N Zwaan for Kahukore Baker (Te Ūpokorehe)
J Pou for Whakatōhea Māori Trust Board
T Castle for Ngāi Taiwhakaea Hapū (non-attendance)
G Melvin for Attorney-General

Minute: 25 June 2019

MINUTE (NO. 1) OF CHURCHMAN J

[1] In a minute dated 21 November 2018, Collins J made a timetabling direction in relation to the filing of evidence in this matter. The minute noted that a hearing in this matter, which is anticipated to last eight weeks, had been allocated to commence on 17 August 2020.

[2] The minute required the evidence in support of this application to be filed and served by 5 July 2019, the evidence of applicants with cross-claims to be filed by 6 September 2019, and the evidence from interested parties who are not applicants to be filed and served by 2 December 2019. Crown evidence in response was to be filed and served by 2 March 2020.

[3] A number of parties to the case management conference held at Rotorua on 19 June 2019 made submissions about the timetable orders and sought variations of certain parts of the timetable orders.

[4] A number of justifications were advanced as to why the various modifications were needed. Mr Sinclair, on behalf of the Edwards' applicants, submitted that there was no need for the evidence of his clients to be filed earlier than the evidence on behalf of other Whakatōhea applicants, and explained that his clients were currently in discussions with other Whakatōhea applicants on a "kotahitanga" approach. He indicated that five such applicants had agreed to this approach. He proposed the following timetable:

- 28 October 2019: applicants' evidence (including that of other Whakatōhea applicants);
- 20 December 2019: cross-claimant (neighbouring iwi) evidence;
- 28 February 2020: interested parties' evidence;
- 28 February 2020: Crown evidence; and
- 28 May 2020: reply evidence.

[5] A proposal advanced by Ms Sykes, on behalf of the parties that she represented (and supported by a number of the other parties), was for the evidence of her clients and other cross-applicants to be filed two months after the applicants' evidence was filed. She suggested the date of 30 November 2019 for the filing of the cross-applicants' evidence. She proposed that

interested parties file any evidence by 20 February 2020, with Crown evidence by 30 May 2020, and any applicants' evidence in reply by 1 July 2020.

[6] Ms Zwaan, counsel for Kahukore Baker and others on behalf of Te Ūpokorehe, submitted that her clients regarded themselves as a separate iwi and should be required to file their evidence at the same time as the other cross-applicants.

Analysis

[7] It is clear that since Collins J issued his minute of 21 November 2018, the rate of progress toward hearing has not been as great as was anticipated. There have been issues relating to the obtaining of documentation from the Crown and other third parties, and some funding issues. The net result is that it would be unfair to the Edwards' applicant to be required to file and serve their evidence by 5 July 2019. That date is amended to 27 September 2019.

[8] Mr Sinclair's submission that there should be a kotahitanga approach to the filing of evidence by all Whakatōhea claimants, is potentially a helpful one but in the situation where not all of the Whakatōhea claimants have agreed to it, the Court is not going to impose such an approach on them. Accordingly, those Whakatōhea claimants who have agreed to the approach put forward by Mr Sinclair, shall file their evidence by 27 September 2019, and those other Whakatōhea claimants will file their evidence at the same time as the other cross-applicants.

[9] The cross-applicants are to file their evidence no later than 20 December 2019; any interested parties, other than cross-applicants, who wish to file evidence, shall do so no later than 28 February 2020.

[10] Subject to any ruling that the Court may make as to the correct status of the Crown in these proceedings, it is clearly an interested party. However, it is possible that it may wish to file evidence addressing any evidential issues raised by interested parties such as the Territorial Authorities. It is appropriate that it file its evidence by 13 March 2020.

[11] It is appropriate that the applicants and cross-applicants have a right of reply. However, the July 2020 date suggested by Ms Sykes is too close to the start of the hearing, and 26 June 2020 would be a more realistic date.

[12] Accordingly, the timetable directions made by Collins J are varied as follows:

- the applicant and such other Whakatōhea claimants, as have agreed with the applicant to follow a joint evidential approach will file and serve their evidence no later than **27 September 2019**;
- other Whakatōhea applicants, and all cross-applicants, will file and serve their evidence no later than **20 December 2019**;
- all interested parties who wish to file evidence will file and serve it no later than **28 February 2020**;
- the Crown will file and serve its evidence by **13 March 2020**; and
- the applicants and any cross-applicants who wish to file evidence in reply will file and serve it no later than **26 June 2020**.

Churchman J