

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

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

**CIV-2022-485-650**

UNDER	the Judicial Review Procedure Act 2016 and the Declaratory Judgments Act 1908
BETWEEN	TE RŪNANGA O NGĀI TAHU Plaintiff
AND	TE OHU KAI MOANA TRUSTEE LIMITED First Defendant
AND	MINISTER FOR OCEANS AND FISHERIES Second Defendant
AND	TE WHAKAKITENGA O WAIKATO INC Interested Party

Teleconference: 12 December 2022

Appearances: J D Every-Palmer KC and J W J Graham for the Plaintiff  
P J Radich KC for the First Defendant  
N C Anderson and J B Watson for the Second Defendant  
J W S Baigent for Te Whakakitenga o Waikato Inc, Interested  
Party

Minute: 15 December 2022

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**MINUTE OF PALMER J**

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[1] A fixture has been set down for these proceedings for 6 to 8 March 2023.

**Counsel assisting**

[2] Te Ohu Kaimoana Trustee Ltd (Te Ohu) is taking a neutral position on the proceeding and submits that the Court should consider appointing independent counsel to assist the Court by acting as contradictor.

[3] Te Rūnanga o Ngāi Tahu (Ngāi Tahu) considers Te Ohu should take a view of the issues but has no practical way of forcing it to do so, so abides the Court's decision. The Crown also abides the Court's decision and agrees it is not able to represent the interests of iwi beneficiaries.

[4] No mandated iwi organisation has sought to intervene to act as contradictor. No party opposes appointment of independent counsel. Accordingly, I direct the Registry to appoint an independent counsel who can participate in the proceedings by acting as contradictor in accordance with the timetable set out below.

### **Interested parties**

[5] The pleadings and minutes have been served on mandated iwi organisations. The Court has received the following responses:

- (a) Te Rūnanga a Iwi o Ngāpuhi indicates that it supports Ngāi Tahu. It does not formally seek status as an interested party but reserves its position on applying to be heard.
- (b) Te Whakakitenga o Waikato Inc (Waikato-Tainui) also supports Ngāi Tahu. It seeks to be joined as an interested party. There is no objection and I make that order accordingly. Waikato-Tainui reserves its position on submitting evidence and submissions to the extent they are not duplicative of those of Ngāi Tahu.

### **Timetable**

[6] By consent, I vary the existing timetable ordered on the basis of the joint memorandum of 24 November 2022 so that:

- (a) By **4 pm Friday 27 January 2023**, the interested parties, currently Waikato-Tainui, will file and serve any affidavits.
- (b) By **4 pm Friday 3 February 2023**, the defendants and counsel assisting will file and serve their affidavits.

- (c) By **4 pm Friday 10 February 2023**, Ngāi Tahu will file and serve any reply affidavits.
- (d) By **4 pm Friday 17 February 2023**, Ngāi Tahu will file and serve its submissions and the common bundle.
- (e) By **5 pm Wednesday 22 February 2023**, the interested parties, currently Waikato-Tainui, will file and serve their submissions.
- (f) By **5 pm Wednesday 1 March 2023**, the defendants and counsel assisting will file and serve their submissions.
- (g) By **4 pm Friday 3 March 2023**, Ngāi Tahu will file and serve a joint bundle of authorities.

[7] Mr Radich KC, for Te Ohu, noted that affirmative defences are pleaded, on the basis that s 11 of the Parliamentary Privilege Act 2014 prevents the proceedings not only from succeeding but from being heard. There is no application to strike out the proceedings, but this point would dictate whether the proceedings endure beyond its argument. He submits there is no urgency and there is an issue as to whether a preliminary hearing should be scheduled in advance of, or instead of the March 2023 fixture. Mr Anderson, for the Crown, has sympathy for the point but notes the Crown has taken a pragmatic approach to date. He notes that the privilege issue would become live once a Bill is introduced.

[8] Dr Every-Palmer KC submits that there is urgency and the timetable was set on an expedited basis so that if a Bill is introduced into the House of Representatives, Parliament will have the benefit of the Court's views on the issues.

[9] I noted that there is currently no interlocutory application to set down for a fixture. I also noted that, in practice, it is unlikely that the Court will have time available for a hearing and determination of an interlocutory application before the March 2023 fixture. Accordingly, the most practical course is that any such issue should be argued at that fixture along with the rest of the issues.

**Publication of pleadings**

[10] Te Ohu also requests leave to publish the pleadings on its website. There is no objection. I make that order accordingly.



Palmer J

*Counsel/solicitors*  
J D Every-Palmer KC, Wellington  
V E Casey KC, Wellington  
P J Radich KC, Wellington  
Chapman Tripp, Auckland  
Crown Law Office, Wellington  
Simpson Grierson, Auckland