

In the High Court of New Zealand  
Wellington Registry  
I Te Kōti Matua o Aotearoa  
Te Whanganui-ā-Tara Rohe

CIV-2022-485-650

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*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 Ltd**  
*First Defendant*

*and:* **Minister for Primary Industries**  
*Second Defendant*

Plaintiff's reply to the first defendant's statement of defence dated  
2 December 2022

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Dated: 9 December 2022

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Reference: J W J Graham (justin.graham@chapmantripp.com)  
X Y Lau (xinyee.lau@chapmantripp.com)  
K C Grant (kayla.grant@chapmantripp.com)  
Counsel: J D Every-Palmer KC (james.everypalmer@stoutstreet.co.nz)

chapmantripp.com  
T +64 9 357 9000  
F +64 9 357 9099

PO Box 2206  
Auckland 1140  
New Zealand

Auckland  
Wellington  
Christchurch



**PLAINTIFF'S REPLY TO THE FIRST DEFENDANT'S STATEMENT OF DEFENCE DATED 2 DECEMBER 2022**

The plaintiff says:

- 12 It admits paragraph 12, but says the Crown provided funds for Māori to assist in buying a 50 per cent stake in Sealord Products Limited (now Sealord Group Limited).
- 14 It admits paragraph 14.
- 15 In respect of paragraph 15, it admits that the Commission held assets on behalf of and for the benefit of iwi and Māori.
- 16 In respect of paragraph 16, it says that the manner by which the Treaty of Waitangi Fisheries Commission would facilitate the allocation of pre-settlement and post-settlement assets to iwi was through the functions at paragraphs 16.1 and 16.2 of the first defendant's statement of defence.
- 17 In respect of paragraph 17, it:
- 17.1 denies paragraph 17, and says that the allocation model achieved the support of 93.1 per cent of iwi, representing 96.7 per cent of iwi-affiliated Māori; but
- 17.2 admits paragraphs 17.1-17.3.17.
- 21 It admits paragraph 21 but says further that:
- 21.1 a key mechanism by which the Fisheries Settlement achieved a just and honourable solution to the disputes in relation to commercial fishing rights and interests was by distributing cash and cash generating assets, and 75 per cent of deep-water quota, on a population basis; and
- 21.2 the Amended Surplus Funds Resolution represents a derogation from the terms of the Fisheries Settlement.
- 26 It admits paragraph 26, but says engagement was undertaken by the Iwi Working Group (IWG) and not TOKM Trustee Ltd.
- 27 It admits paragraph 27.
- 30 In respect of paragraph 30, it:
- 30.1 admits paragraph 30.1
- 30.2 admits paragraph 30.2

- 30.3 denies paragraph 30.3 and says that the recommendation relating to “charitable MIO, non-charitable MIO and other charities” concerned the nature of the entities who might receive funds on a population basis, not an alternative basis of distribution.
- 31 In respect of paragraph 31, it says that:
- 31.1 Ngāi Tahu and 57 other iwi are beneficiaries of the Fisheries Settlement;
- 31.2 Ngāi Tahu and 57 other iwi are beneficiaries of TOKM; and further
- 31.3 by virtue of administering the funds in accordance with the purpose of the MFA, and the purpose of TOKM including performing the duties and functions set out in sections 34 and 35 of the MFA, TOKM Trustee Ltd must administer the funds in a manner which benefits iwi and Māori.
- 32 In respect of paragraph 32, it:
- 32.1 admits paragraph 32.1;
- 32.2 denies paragraph 32.2;
- 32.3 has insufficient knowledge and so denies paragraph 32.3; and
- 32.4 admits paragraphs 32.4–32.7.
- 34 It has insufficient knowledge and so denies paragraph 34.
- 35 In respect of paragraph 35, it:
- 35.1 denies paragraph 35.1; and
- 35.2 admits paragraph 35.2, but says further that the meeting procedure or voting process is now a point of contention.
- 38 In respect of paragraph 38, it says that notwithstanding the matters pleaded at paragraphs 38.1–38.5 of the first defendant’s statement of defence, the Māori Fisheries Report presented the Amended Surplus Funds Resolution to the second defendant and set out a detailed plan on how the Amended Surplus Funds Resolution was to be implemented.
- 40 In respect of paragraph 40 it says that:
- 40.1 in respect of paragraph 40.1, it admits that the August 2017 Report recorded that the resolution passed at the SGM in

August 2016 supported distribution of surplus funds being made to iwi on an equal basis, and this resolution generated the most contention amongst iwi;

- 40.2 in respect of paragraph 40.2, it admits that the August 2017 Report recorded that distribution of surpluses on an equal basis would conflict with the allocation model, including the basis for distributing TOKM Trustee Ltd's assets on winding up;
- 40.3 in respect of paragraph 40.3, it:
- (a) admits that the August 2017 Report recorded that some iwi had made the point that distribution of surpluses on an equal basis is inconsistent with the basis for payment of levies, which they consider unfair; but further says
  - (b) the August 2017 Report also recorded TOKM's view that this argument assumes that the distribution of surpluses and the need for a levy are connected. If funds are truly surplus to TOKM's purpose then a levy should not be required following distribution of surpluses;
- 40.4 in respect of paragraph 40.4, it admits that the August 2017 Report recorded that the August 2016 SGM was conducted in accordance with TOKM Trustee Ltd's constitution;
- 40.5 in respect of paragraph 40.5, it admits that the August 2017 Report recorded that the resolution passed with a majority of 5: 28 for and 23 against;
- 40.6 in respect of paragraph 40.6, it admits that the August 2017 Report recorded feedback from iwi including the opposition to distribution of surpluses on an equal basis and the reasons for that;
- 40.7 in respect of paragraph 40.7, it admits that the August 2017 Report includes a section labelled "comments" following the summary of iwi feedback on the Amended Surplus Funds Resolution but otherwise denies paragraph 40.7;
- 40.8 in respect of paragraph 40.8, it admits that the August 2017 Report included two alternative options for distributing surpluses; and
- 40.9 it denies paragraph 40.9.

- 41 It denies paragraph 41 and says that the draft Bill attached to the August 2017 Report:
- 41.1 included a provision that would give effect to the Amended Surplus Funds Resolution; and
  - 41.2 sets out a detailed plan on how the Amended Surplus Funds Resolution was to be implemented.
- 42 It denies paragraph 42 and repeats paragraph 41.
- 43 In respect of paragraph 43, it:
- 43.1 has insufficient knowledge and so denies paragraph 43.1, but says the plaintiff was first provided with the Exposure Draft on 19 August 2022 from the Ministry for Primary Industries;
  - 43.2 admits paragraph 43.2;
  - 43.3 denies paragraph 43.3, and says further that the hui was due to be held on 4 October 2022, that the plaintiff advised it would attend, but on 30 September 2022 the first defendant advised the hui was cancelled;
  - 43.4 has insufficient knowledge and so denies paragraph 43.4;
  - 43.5 denies paragraph 43.5, and says further that the Ministry for Primary Industries sought feedback from iwi on whether the resolutions were accurately reflected in the Exposure Draft, noting there would be opportunity to provide feedback on the drafting of the Bill including through Select Committee; and
  - 43.6 in respect of paragraph 43.6, it says that the Minister has decided he will not support an amendment giving effect to the Amended Surplus Funds Resolution at this time, but:
    - (a) the Minister has indicated he may reconsider this view; and
    - (b) Cabinet has not yet made a decision as to whether to give effect to the Amended Surplus Funds Resolution;
- 44 In respect of paragraph 44, it says that the Exposure Draft would give effect to the Amended Surplus Funds Resolution by allowing distribution of surplus funds to all iwi on an equal basis.
- 45 In respect of paragraph 45, it admits the matters at paragraphs 45.1–45.5 of the statement of defence and says that these statements support the pleaded rights of Ngāi Tahu at paragraph 45 of its statement of claim.

- 47 It denies paragraph 47.2.
- 49 In respect of paragraph 49:
- 49.1 in addition to the specific requirements in the Trust Deed and Constitution, TOKM Trustee Ltd must also comply with the principles of natural justice and principles set out in s 127(3) of the Māori Fisheries Act 2004; and
- 49.2 alternatively, says that it is an implied term of the TOKM Trust Deed and Constitution that TOKM Trustee Ltd hold general meetings in accordance with natural justice and principles set out in s 127(3) of the Māori Fisheries Act 2004.
- 52 It denies paragraph 52.
- 54 In respect of paragraph 54, it says that where an SGM has been conducted in breach of the principles of natural justice, reporting the outcome of that SGM to the Minister is not consistent with the legal principles and requirements pleaded in the plaintiff's statement of claim at paragraph 54.
- 55 It apprehends that paragraph 55 contains allegations of law to which it is not required to reply, but further says that:
- 55.1 the matters pleaded in the plaintiff's statement of claim at paragraphs 55.1–55.4 are errors of law of the first defendant, not merely substantive matters subject to debate between iwi;
- 55.2 the introduction of a Māori Fisheries Act Amendment Bill to Parliament does not prevent the Court inquiring into the legality of TOKM Trustee Ltd's actions in respect of the SGM and August 2017 Report.

### **Relief**

- a) In respect of the matters titled "Relief" apprehends it is not required to reply to the statement of defence insofar as it concerns the prayer for relief, but for the avoidance of doubt denies the matters at (a)-(e) and repeats paragraphs 52 and 55.