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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	<b>Te Rūnanga o Ngāi Tahu</b> Plaintiff
AND	<b>Te Ohu Kai Moana Trustee Ltd</b> First Defendant
AND	<b>Minister for Oceans and Fisheries</b> Second Defendant

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APPLICATION BY THE FIRST DEFENDANT UNDER RULE 7.49 TO VARY OR RESCIND  
DIRECTIONS VACATING FIXTURE, SUSPENDING TIMETABLE AND STAYING  
PROCEEDINGS

1 February 2023

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**To** the Registrar of the High Court at Wellington

**And to** the plaintiff, the second defendant, the interested party and counsel assisting

**This document notifies you that -**

1. The first defendant, Te Ohu Kai Moana Trustee Ltd, will on a date to be advised by the Court apply to the Court for orders:
  - 1.1 Rescinding the directions of Gwyn J recorded in her Honour's Minute of 27 January granting the plaintiff's application for a stay and vacating the fixture scheduled for 6 – 8 March;
  - 1.2 Convening an teleconference for all parties to be heard on the plaintiff's application and/or on the terms of any stay;
  - 1.3 Such other orders as the Court deems just.
2. The grounds on which these orders are sought are that the directions are wrong and ought to be revisited, due to the following:
  - 2.1 The parties had reasonably anticipated being heard by way of oral argument prior to determination of the plaintiff's application for a stay, rather than for the application to be determined on the papers.
  - 2.2 The parties had not addressed the Court on the correct approach under Rule 10.2 of the High Court Rules to an application to vacate a fixture, and her Honour did not assess the application on the basis of whether an adjournment was necessary in order to do justice between the parties, and was in the interests of justice overall.
  - 2.3 Her Honour erred assessing the level of prejudice to the first defendant in assuming that a stay would be only for a period of six months but not setting a fixture date, and in leaving it to the plaintiff's choice as to whether the proceeding would be brought on for hearing.

- 2.4 Her Honour erred in the implied suggestion that the defendants should have in practical terms treated the plaintiff's application for a stay as effective to vacate the fixture and revoke the timetable.
3. This application is made in reliance on Rules 7.49 and 10.2 of the High Court Rules; *Body Corporate 348047 v Auckland Council* [2019] NZHC 1738, (2019) 20 NZCPR 499 at [6]; *McKay Builders Ltd (in liq) v McKay* [2017] NZHC 934 at [25]; *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 628 at [38] – [39]; *Graebar Holdings Ltd v Taylor* [1989] 2 NZLR 10 (CA); *Henry v Minister of Justice (No3)* [2019] NZHC 1234, [2019] NZAR 1071.

Dated: 1 February 2023



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Victoria Casey KC  
Counsel for the first defendant