

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

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

**CIV-2017-485-770**

IN THE MATTER OF an application by TE RŪNANGA O  
NGĀTI WHAKAUE KI MAKETŪ  
INCORPORATED, for and on behalf of  
Ngāti Whakaue ki Maketū Hapū, for  
recognition orders under the Marine and  
Coastal Area (Takutai Moana) Act 2011

(AND OTHER PROCEEDINGS LISTED  
IN THE SCHEDULE TO THIS MINUTE)

**CIV-2017-485-218**

IN THE MATTER OF an application by HORI TURI  
ELKINGTON as trustee of the Ngāti Koata  
Trust for recognition orders under the  
Marine and Coastal Area (Takutai Moana)  
Act 2011

(AND OTHER PROCEEDINGS LISTED  
IN THE SCHEDULE TO THIS MINUTE)

Teleconference: 21 August 2019

Counsel: J Mason for Applicants (CIV-2017-485-398, CIV-2017-485-512,  
CIV-2017-485-515, CIV-2017-485-513, CIV-2017-485-514,  
CIV-2017-485-770)  
L Thornton (CIV-2017-404-574, CIV-2017-485-387, CIV-2017-485-249)  
C Hockly (CIV-2017-485-305, CIV-2017-485-352, CIV-2017-485-228)  
A Sykes (CIV-2017-485-299)  
T Bennion (CIV-2017-485-253)  
J Kahukiwa (CIV-2017-404-572, CIV-2017-404-568, CIV-2017-404-566,  
CIV-2017-404-569)  
C Finlayson QC and A Dartnall for Gold Ridge Marine Farm Group  
(an interested party)  
D Ward and Y Moinfar-Young for Crown

Minute: 27 August 2019

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**MINUTE (NO 2) OF CHURCHMAN J**

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[1] Counsel for a number of applicants under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) have applied under r 10.15 of the High Court Rules 2016 for a question to be resolved prior to the hearing of their various applications.

[2] A hearing for these applications under r 10.15 has been allocated for 7 and 8 October 2019. A case management conference was held by way of teleconference on Wednesday 21 August 2019 to set a timetable order for the exchange of submissions and also to try and clarify the particular issues that the various parties wish to raise.

[3] The Court received memoranda from counsel for various of the applicants. Those memoranda outlined the issues which various applicants wished to raise at the October hearing. The Court, after 5 pm on 20 August 2019 received an application from an interested party (Gold Ridge Marine Farm Group) making a similar application pursuant to r 10.15, to those previously made by various applicants.

[4] Accompanying the application was a memorandum seeking leave to participate in the teleconference scheduled for 9 am the next day and summarising the issues that the interested party wished to advance at the October 2019 hearing.

[5] It transpired that the application and memorandum had not been served on the other parties who had made applications under r 10.15 and who were represented on the teleconference. I direct that the application and memorandum be immediately served on these parties.

[6] Ms Mason sought, and was granted, leave to file and serve submissions within seven days on the eligibility of the interested party to participate in the October hearing. Such leave was also granted to any other applicants who wished to make submissions.

[7] Should such submissions be received then the interested party will have seven days after receipt to file any submissions in reply and the Court will then determine this issue on the papers.

## **Inappropriate issues**

[8] Some counsel, in their memoranda, raised issues that were beyond the scope of the hearing to be held in October. These include:

- (a) the request in Mr Bennion's memorandum of 12 August 2019 that the Court make the declarations about the effect of consents granted under the Resource Management Act 1991 in the common marine and coastal area since the commencement of the 1991 Act, and up until the date of the passing of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act);
- (b) Mr Bennion's request that the Court rule on the interpretation of the concept of "substantial interruption" in the Act;
- (c) the invitation by Ms Thornton, in her submissions, that the Attorney-General indicate how he intended to discharge his duties under the two pathways of High Court applications and Crown negotiations. Given that the Court has no jurisdiction over the Crown's statutory right to engage in direct negotiation with applicants, it is not appropriate for the Court, in the October hearing to be invited to give directions as to the basis upon which that may occur; and
- (d) the issue of funding was also raised. However, the Court cannot compel the Crown to allocate particular funding to any applicant, and the role of the Crown as funder of the applications cannot be conflated with the Crown's entitlement to participate in the hearing.

## **Permitted issues**

[9] The most common issue raised in the applicants' various memoranda is the need to identify the concept of "public interest" which the Attorney-General wishes to represent. That is likely to be one of the most important issues for the Court to determine. The other fundamental issues are whether the Attorney-General is entitled to be an interested party under s 104 of the Act or an intervener pursuant to rr 4.27(e) and 7.43A(2) or the inherent jurisdiction of the Court.

[10] The various applicants have raised other points that they wished to pursue, and they are entitled to do so as they see fit. However, it is likely to be most helpful if the parties concentrate on the three issues set out above.

[11] Ms Mason sought leave to file an affidavit in support of her application. It appeared from her oral submissions that she intended to append to such affidavit documents relating to matters such as statements to the House at the time of the passage of the legislation. She also wished to include in the affidavit excerpts from a transcript from a hearing before the Waitangi Tribunal. I note that Ms Mason may need the leave of the Waitangi Tribunal to use material from a hearing in that jurisdiction. To the extent that these matters are documents of public record, there is no need to include them in an affidavit. Documents such as extracts from Hansard can be appended to counsel submissions.

[12] It is difficult to see what material might appropriately be included in an affidavit that is likely to be of assistance to the Court. In particular, the expressions of opinion by people involved in the drafting of the legislation as to what they thought the legislation means, is unlikely to be of any assistance to the Court.

[13] There was broad agreement as to the timetable for submissions, and I make the following orders:

- (a) Ms Mason is granted to leave to file and serve an affidavit containing admissible material no later than **13 September 2019**;
- (b) the applicants are to file and serve written submissions by **16 September 2019**;
- (c) should the interested party survive the challenge to its right to be involved in these proceedings, it will also file and serve written submissions by **16 September 2019**;
- (d) the Attorney-General will file and serve submissions by **23 September 2019**;  
and

- (e) the applicants and interested party shall file and serve any reply by **30 September 2019**.

**Churchman J**