

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 121/2023
SC 123/2023
SC 124/2023
SC 125/2023
SC 126/2023
SC 127/2023
SC 128/2023
SC 129/2023
[2024] NZSC 77

BETWEEN

WHAKATŌHEA KOTAHITANGA WAKA
(EDWARDS)

NGĀTI MURIWAI HAPŪ

KUTARERE MARAE

TE ŪPOKOREHE TREATY CLAIMS
TRUST ON BEHALF OF TE
ŪPOKOREHE IWI

ATTORNEY-GENERAL

CROWN REGIONAL HOLDINGS
LIMITED

TE KĀHUI TAKUTAI MOANA O NGĀ
WHĀNAU ME NGĀ HAPŪ O TE
WHAKATŌHEA

NGĀTI RUATAKENGĀ
Appellants

AND

TE KĀHUI TAKUTAI MOANA O NGĀ
WHĀNAU ME NGĀ HAPŪ O TE
WHAKATŌHEA

WHAKATŌHEA MĀORI TRUST BOARD

NGĀI TAI AND RIRIWHENUA HAPŪ

TE ŪPOKOREHE TREATY CLAIMS
TRUST ON BEHALF OF TE
ŪPOKOREHE IWI

TE RŪNANGA O NGĀTI AWA

WHAKATŌHEA KOTAHITANGA WAKA
(EDWARDS)

NGĀTI RUATAKENGĀ

LANDOWNERS COALITION
INCORPORATED

NGĀTI MURIWAI HAPŪ

KUTARERE MARAE

TE RŪNANGA O TE WHĀNAU ON
BEHALF OF TE WHĀNAU-Ā-APANUI

BAY OF PLENTY REGIONAL COUNCIL

CROWN REGIONAL HOLDINGS
LIMITED

ŌPŌTIKI DISTRICT COUNCIL

SEAFOOD INDUSTRY
REPRESENTATIVES

WHAKATĀNE DISTRICT COUNCIL
Respondents

AND

ATTORNEY-GENERAL

TE RŪNANGA O TE WHĀNAU ON
BEHALF OF TE WHĀNAU-Ā-APANUI

SEAFOOD INDUSTRY
REPRESENTATIVES

CROWN REGIONAL HOLDINGS
LIMITED

ŌPŌTIKI DISTRICT COUNCIL

BAY OF PLENTY REGIONAL COUNCIL

WHAKATĀNE DISTRICT COUNCIL

LANDOWNERS COALITION
INCORPORATED

TE RŪNANGA O NGĀTI AWA
Interested Parties

Court: Glazebrook, Ellen France, Williams, Kós and French JJ

Counsel: R J B Fowler KC and B M Cunningham for Whakatōhea
Kotahitanga Waka (Edwards)
M J Sharp for Ngāti Muriwai Hapū and Kutarere Marae
J S Cooper KC, B R Lyall and H L B Swedlund for Te Ūpokorehe
Treaty Claims Trust on behalf of Te Ūpokorehe Iwi
G L Melvin, R L Roff and Y Moinfar-Yong for Attorney-General
M H Hill for Crown Regional Holdings Ltd and Ōpōtiki District
Council
K S Feint KC, A T I Sykes, T H Bennion, M S Smith and C M T
Linstead-Panoho for Te Kāhui Takutai Moana o Ngā Whānau me
Ngā Hapū o Te Whakatōhea
K S Feint KC and N A T Udy for Ngāti Ruatakenga
J M Pou for Whakatōhea Māori Trust Board
B R Arapere, A E Gordon and E K Rongo for Ngāi Tai and
Ririwhenua Hapū
J E Hodder KC and B E Morten for Landowners Coalition Inc
D M Salmon KC, H K Irwin-Easthope and R K Douglas for Te
Rūnanga o Ngāti Awa
M K Mahuika and N R Coates for Te Rūnanga o Te Whānau on
behalf of Te Whānau-ā-Apanui
R M Boyte for Bay of Plenty Regional Council
B A Scott, T D Smith and R J J Wales for Seafood Industry
Representatives
A M B Green and E S Greensmith-West for Whakatāne District
Council
M K Mahuika for Ngā Hapū o Ngāti Porou

Judgment: 23 July 2024

JUDGMENT OF THE COURT

- A The application by Ngā Hapū o Ngāti Porou for leave to
intervene is granted.**
- B Costs are reserved on this application and on the
substantive hearing.**
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REASONS

[1] Ngā Hapū o Ngāti Porou Management Arrangement Trusts comprise six trusts established for the purposes of the Act: Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the Ngāti Porou Act). They were settled as part of the Ngāti Porou settlement with the Crown to represent the various hapū groupings located along the Ngāti Porou coastline for the purposes of (among other things) advancing marine and coastal area negotiations with the Crown. We are advised that, to date, 18 separate coastal marine titles have been created by Order in Council pursuant to this arrangement. Negotiations are ongoing.

[2] The applicants, Ngā Hapū o Ngāti Porou, apply to intervene in the current proceeding. They argue that, as the continuing negotiations under the Ngāti Porou Act will be impacted by the tests ultimately found by this Court to apply pursuant to Marine and Coastal Area (Takutai Moana) Act 2011 applications, Ngā Hapū o Ngāti Porou will be directly affected by the outcome in these appeals.¹ In addition, the applicants submit that they bring a unique perspective to the case as they have been engaged with the Crown since late 2003 and have coastal marine titles in place. They will therefore be able to assist the Court in terms of their experience of the practical implications of the regime.

[3] No party opposes the application and the Attorney-General has advised she will abide the Court's decision.

[4] For a number of reasons we are satisfied that the application should be granted.²

[5] First, the issues raised in the present appeals are novel and potentially far-reaching. Further, we accept that Ngā Hapū o Ngāti Porou will bring a distinctive and potentially useful perspective to the issues that must be addressed, a perspective

¹ Ngā Hapū o Ngāti Porou note that they are also applicants under the Marine and Coastal Area (Takutai Moana) Act 2011 (though they see these applications as a back-stop if negotiations fail).

² See *Ngāti Whātua Ōrākei Trust v Attorney-General* [2017] NZCA 183, [2017] NZAR 627 at [11]; *McClintock v Attorney-General of New Zealand* [2015] NZHC 1280 at [44]; *Alpha Dairy NZ Ltd v Auckland Council* [2019] NZHC 2263 at [5]; and *Mohamed v Guardians of New Zealand Superannuation* [2020] NZHC 1324, [2021] 2 NZLR 603 at [7]–[10] and [14]–[19].

unlikely to be replicated by other appellant or cross-appellant parties. We are likely to be assisted by hearing that perspective.

[6] Second, the rights sought to be protected by the applicants are likely to be directly affected by the outcome in the current appeals.

[7] Third, in light of the applicants' engagement with the Crown in a parallel bespoke process, it cannot be assumed that the applicants will be able to rely on one or another of the parties to the appeals to protect their affected rights.

[8] Fourth, there appears to be no risk of prejudice or unfairness to other parties, as reflected in the absence of any objection. That said, there is the potential for the proceeding to be unhelpfully lengthened by allowing the intervention, but whether that can be justified by the additional value of the intervention is a matter that may be addressed once Ngā Hapū o Ngāti Porou's written submissions are filed.

[9] Finally, all matters considered, we do not take the view that granting the application would unnecessarily expand the issues in the appeals, nor does it need to unnecessarily lengthen the hearing or increase costs.

[10] The application is granted. The applicants may file written submissions in accordance with timetabling directions to be provided in due course. Costs are reserved on this application and on the substantive hearing.

Solicitors:

Ngātahi Law, Auckland for Whakatōhea Kotahitanga Waka (Edwards)
Te Aro Law, Wellington for Te Ūpokorehe Treaty Claims Trust on behalf of Te Ūpokorehe Iwi
Whāia Legal, Wellington for Te Rūnanga o Ngāti Awa
Te Haa Legal, Ōtaki for Ngāti Muriwai Hapū and Kutarere Marae
Annette Sykes & Co, Rotorua for Te Kāhui Takutai Moana o Ngā Whānau me Ngā Hapū o Te Whakatōhea and Ngāti Ruatakenga
Tu Pono Legal Ltd, Rotorua for the Whakatōhea Māori Trust Board
Oranganui Legal, Paraparaumu for Ngāi Tai and Ririwhenua Hapū
Franks Ogilvie, Wellington for Landowners Coalition Inc
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Attorney-General
Kāhui Legal, Wellington for Te Rūnanga o Te Whānau on behalf of Te Whānau-ā-Apanui, and Ngā Hapū o Ngāti Porou
Chapman Tripp, Wellington for Seafood Industry Representatives
Cooney Lees Morgan, Tauranga for Crown Regional Holdings Ltd, Ōpōtiki District Council and Bay of Plenty Regional Council
Brookfields Lawyers, Auckland for Whakatāne District Council