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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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<b>UNDER THE</b>	<b>The Judicial Review Procedure Act 2016 and the Declaratory Judgments Act 1908</b>
<b>BETWEEN</b>	<b>TE RŪNUNGA O NGĀI TAHU  Plaintiff</b>
<b>AND</b>	<b>TE OHU KAI MOANA TRUSTEE LTD  First Defendant</b>
<b>AND</b>	<b>MINISTER FOR OCEANS AND FISHERIES  Second Defendant</b>

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**STATEMENT OF DEFENCE FOR THE SECOND DEFENDANT**

**2 December 2022**

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**CROWN LAW  
TE TARI TURE O TE KARAUNA  
PO Box 2858  
Wellington 6140  
Tel: 04 472 1719**

Contact Person:

Nicholai Anderson / James Watson

[Nicholai.Anderson@crownlaw.govt.nz](mailto:Nicholai.Anderson@crownlaw.govt.nz) / [James.Watson@crownlaw.govt.nz](mailto:James.Watson@crownlaw.govt.nz)

The second defendant by his solicitor says in response to the statement of claim dated 1 November 2022 that he:

**Parties**

1. Admits paragraph 1.
2. In respect of paragraph 2:
  - 2.1 admits the first defendant:
    - 2.1.1 is a company with its registered office at 158 The Terrace, Wellington; and
    - 2.1.2 is the corporate trustee of a trust called Te Ohu Kai Moana;
  - 2.2 otherwise denies paragraph 2; and
  - 2.3 says further that:
    - 2.3.1 TOKM Trust was established by trust deed 24 November 2004 as required by s 31 of the Māori Fisheries Act 2004;
    - 2.3.2 the purpose of TOKM Trust is as set out in s 32 of the Māori Fisheries Act 2004 and clause 3 of the TOKM Trust Deed; and
    - 2.3.3 the first defendant was incorporated under the Companies Act 1993 as required by s 33(2) of the Māori Fisheries Act 2004.
3. Admits paragraph 3.

**Ngāi Tahu**

4. Admits paragraph 4.
5. Admits paragraph 5.
6. Admits paragraph 6.

### **Fisheries Settlement**

7. Apprehends paragraph 7 contains matters of law to which he is not required to plead, but says further that in accordance with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (1992 Settlement Act):

7.1 all obligations of the Crown to Māori in respect of commercial fishing have been fulfilled, satisfied, and discharged and the Court has no jurisdiction to inquire into the validity of claims by Māori in respect of commercial fishing; and

7.2 the Crown acknowledges that certain non-commercial rights or interests held by Māori in fisheries resources may continue to give rise to Treaty obligations on the Crown, in accordance with the principles of the Treaty of Waitangi; however, any such customary rights have no relevance to this proceeding.

8. Admits paragraph 8.

### *Interim settlement*

9. Admits paragraph 9.

10. Admits paragraph 10.

11. Admits paragraph 11 but says further that the Māori Fisheries Commission progressively received 10 per cent of total allowable (commercial) catches for species then subject to the QMS, and relies on the Māori Fisheries Act 1989 for its terms and meaning.

### *Final Settlement*

12. Admits paragraph 12 and relies on the 1992 Deed of Settlement for its terms and meaning.

13. Admits paragraph 13 and relies on the 1992 Deed of Settlement and the 1992 Settlement Act for their terms and meaning.

14. Admits paragraph 14 and relies on the 1992 Deed of Settlement and the 1992 Settlement Act for their terms and meaning.

15. In respect of paragraph 15:

- 15.1 denies that the Commission was given ownership of settlement assets;
  - 15.2 says further the Commission received and held settlement benefits on behalf of Māori and for their benefit; and
  - 15.3 relies on the 1992 Deed of Settlement, the 1992 Settlement Act, and the Māori Fisheries Act 1989 for their terms and meaning.
16. Denies paragraph 16, says further that as recorded in the 1992 Deed of Settlement, the Treaty of Waitangi Fisheries Commission was required to, *inter alia*, consider how best to give effect to the resolutions taken at the annual general meeting of the Māori Fisheries Commission in July 1992, and to allocate settlement assets following full consultation with Māori, and relies on the 1992 Deed of Settlement, the 1992 Settlement Act and the Māori Fisheries Act 1989 for their terms and meaning.
  17. Denies paragraph 17, insofar as it pleads that the allocation model was agreed to by all Māori, and otherwise admits the allegations in this paragraph.
  18. Admits paragraph 18 but says further the Treaty of Waitangi Fisheries Commission achieved the support of 96.7 per cent of iwi-affiliated Māori.
  19. Admits paragraph 19 and relies on the Māori Fisheries Act 2004 for its terms and meaning.
  20. Apprehends paragraph 20 contains matters of law to which he is not required to plead.

**Allocation under the MFA**

21. In respect of paragraph 21:
  - 21.1 apprehends paragraph 21 contains matters of law to which he is not required to plead;
  - 21.2 says further that the 1992 Deed of Settlement records that the intention of that Settlement was that the Crown and Māori wished to resolve their disputes in relation to the fishing rights

and interests and the Quota Management System and that those parties sought a just and honourable solution in conformity with the principles of the Treaty of Waitangi; and

- 21.3 relies on the 1992 Deed of Settlement and 1992 Settlement Act for their terms and meaning.
22. Apprehends paragraph 22 contains matters of law to which he is not required to plead.

**Independent review of Te Ohu Kai Moana Trustee Ltd**

23. Admits paragraph 23 but says further that the independent review was not limited to the matters pleaded in paragraph 23 and relies on the report of the independent reviewer (Tim Castle, Barrister) for its terms and meaning.
24. Admits paragraph 24 and relies on that report for its terms and meaning.
25. Admits paragraph 25 but says further that the conclusions reached in the February 2015 Report were not limited to the matters pleaded and relies on that report for its terms and meaning.
26. Admits paragraph 26.
27. Admits paragraph 27.
28. Admits paragraph 28 and relies on the July 2016 Report for its terms and meaning.
29. Admits paragraph 29 and relies on the July 2016 Report for its terms and meaning.
30. Admits paragraph 30 but says further this recommendation was one of two credible funding options identified in the July 2016 Report and relies on the July 2016 Report for its terms and meaning.
31. In respect of paragraph 31:
- 31.1 admits that TOKM Trustee Ltd holds funds in accordance with the Māori Fisheries Act 2004 and its Deed of Trust and that there are currently 56 iwi with registered mandated iwi organisations

(MIOs), and a further two iwi with recognised iwi organisation (RIO) status; and

- 31.2 otherwise denies paragraph 31.
- 32. Admits paragraph 32.
- 33. Admits paragraph 33.
- 34. Admits paragraph 34.
- 35. Admits paragraph 35.
- 36. Does not know and therefore denies paragraph 36.
- 37. Admits paragraph 37.

**Proposed amendments to the Māori Fisheries Act**

- 38. Admits paragraph 38 and relies on the Māori Fisheries Report for its terms and meaning.
- 39. Admits paragraph 39.
- 40. Admits paragraph 40 but says further that the paragraph is not exhaustive of the matters referred to in the August 2017 Report and relies on that report for its terms and meaning.
- 41. In respect of paragraph 41, admits that the August 2017 Report put forward two options, one of which was an amendment option which would have given effect to the Amended Surplus Funds Resolution and otherwise denies paragraph 41.
- 42. In respect of paragraph 42:
  - 42.1 admits the August 2017 Report recommended the Minister promote legislation to give effect to certain resolutions passed at the SGM;
  - 42.2 denies paragraph 42 to the extent it relates to the Amended Surplus Funds Resolution; and
  - 42.3 relies on the August 2017 Report for its terms and meaning.

43. In respect of paragraph 43, admits that in 2022 the Exposure Draft was released to the plaintiff and says further that the exposure draft had been released to the first defendant in December 2021.
44. Denies paragraph 44, and says further:
- 44.1 The exposure draft was released to facilitate consultation on the Māori Fisheries Amendment Bill.
- 44.2 The exposure draft was explicitly not a finished product.
- 44.3 Given the level of contention associated with the Amended Surplus Funds Resolution, the clause in the Exposure Draft which reflected that Resolution was highlighted by Cabinet as being included in the Exposure Draft to provide iwi the opportunity express views on this clause before a final decision was made by the Minister and Cabinet as to whether to include that clause in the Māori Fisheries Amendment Bill.
- 44.4 Following the release of the Exposure Draft and in light of feedback received in the consultation process, including from the plaintiff, the Minister has formally agreed that the Māori Fisheries Amendment Bill will be introduced to the House of Representatives in a form which does not include a clause reflecting the Amended Surplus Funds Resolution, and which instead contains a clause to the effect that the surplus assets of the first defendant are to be distributed to iwi in accordance with the population formula set out in Schedule 3 to the Māori Fisheries Act 2004.
- 44.5 On 26 October 2022 the second defendant met with representatives of the plaintiff and explained that he would not be supporting the inclusion of a clause in the Māori Fisheries Amendment Bill which reflected the Amended Surplus Funds Resolution.

44.6 The second defendant's decision set out at 44.4 above was relayed to the plaintiff again, and to all other MIOs, in a letter dated 16 November 2022.

### **Ngāi Tahu rights**

- 45. Apprehends paragraph 45 contains allegations of law to which he is not required to plead.
- 46. Apprehends paragraph 46 contains allegations of law to which he is not required to plead but repeats his pleading at paragraph 7 above.
- 47. Apprehends that paragraph 47 contains allegations of law to which he is not required to plead.
- 48. Apprehends that paragraph 48 contains allegations of law to which he is not required to plead.

### **FIRST CAUSE OF ACTION – JUDICIAL REVIEW OF TE OHU KAI MOANA TRUSTEE LTD**

#### **First ground of review – alleged procedural unfairness**

- 49. Apprehends that paragraph 49 contains allegations that do not affect him and to which he is not required to plead.
- 50. Apprehends that paragraph 50 contains allegations that do not affect him and to which he is not required to plead.
- 51. Apprehends that paragraph 51 contains allegations that do not affect him and to which he is not required to plead.

#### **Second ground of review – alleged error of law**

- 52. Apprehends that paragraph 52 contains allegations that do not affect him and to which he is not required to plead.
- 53. Apprehends that paragraph 53 contains allegations that do not affect him and to which he is not required to plead.
- 54. Apprehends that paragraph 54 contains allegations that do not affect him and to which he is not required to plead.



55. Apprehends that paragraph 55 contains allegations that do not affect him and to which he is not required to plead.

**Third ground of review – alleged failure to consider relevant considerations**

56. Apprehends that paragraph 56 contains allegations that do not affect him and to which he is not required to plead.

**Fourth ground of review – alleged frustration of legitimate expectations**

57. Apprehends that paragraph 57 contains allegations that do not affect him and to which he is not required to plead.

**Fifth ground of review – alleged unreasonableness**

58. Apprehends that paragraph 58 contains allegations that do not affect him and to which he is not required to plead.

**SECOND CAUSE OF ACTION – DECLARATORY RELIEF AGAINST FIRST DEFENDANT**

59. Is not required to plead to paragraph 59.
60. Apprehends that paragraph 60 contains allegations that do not affect him and to which he is not required to plead. He is not required to plead to the prayer for relief.

**THIRD CAUSE OF ACTION – DECLARATORY RELIEF AGAINST SECOND DEFENDANT**

61. Is not required to plead to paragraph 61.
62. Apprehends that paragraph 62 contains allegations of law to which he is not required to plead and repeats his pleadings at paragraphs 44.1 to 44.6 above.
63. Apprehends that paragraph 63 contains allegations of law to which he is not required to plead but repeats his pleadings at paragraphs 44.1 to 44.6 above. He is not required to plead to the prayer for relief but says that given the matters pleaded at paragraphs 44.1 to 44.6 this claim is moot.

**AND BY WAY OF AFFIRMATIVE DEFENCE**

64. Repeats paragraphs 1 to 63 above and says by way of affirmative defence.

**Principle of non-interference of the courts in the legislative process and parliamentary privilege**

65. To the extent this proceeding impugns or relates to decisions made in the course of or in connection with the legislative process or otherwise relates to reasonably apprehended business of the House of Representatives and/or seeks relief directed at the same it contravenes the principle of non-interference of the courts in the legislative process and/or s 11 of the Parliamentary Privilege Act 2014.