

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

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

**CIV-2011-485-817  
CIV-2011-485-375  
CIV-2011-485-264  
CIV-2011-485-278  
CIV-2011-485-262  
CIV-2011-485-377  
CIV-2011-485-270  
CIV-2011-485-272  
CIV-2011-485-238  
CIV-2011-485-201  
CIV-2011-485-269  
CIV-2011-485-355  
CIV-2011-485-299  
CIV-2011-485-253  
CIV-2011-485-292  
[2022] NZHC 1160**

UNDER	the Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	an application for an order recognising Customary Marine Title and Protected Customary Rights
BY	the late Claude Augustin Edwards (deceased), Adriana Edwards and others on behalf of Te Whakatōhea

On the papers:

Counsel: T C Waikato for Applicant

Judgment: 24 May 2022

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**JUDGMENT (NO. 6) OF CHURCHMAN J**

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## **Introduction**

[1] By notice dated 31 March 2022, Crown Regional Holdings Limited (CRHL) filed a notice of appearance and application for leave to appear as an interested party in these proceedings. The notice was specifically in relation to participation in any appeals from the decisions of the High Court.

[2] Section 104 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) provides that any person interested in an application filed under the Act for a recognition order may appear and be heard. Such notices of appearance are required to be filed by “the due date”. The due date has long since passed which is why CRHL needs leave.

## **The relevant background**

[3] CRHL is a Crown owned asset holding company, the two shareholding ministers of which are the Minister of Finance and Minister for Economic and Regional Development. It is a sch 4A company under the Public Finance Act 1989. It holds the assets of the Regional Development and Investment Unit of the Ministry of Business Innovation and Employment. Up until January 2021 it was known as Provincial Growth Fund Ltd.

[4] The Ōpōtiki District Council (ODC) is an interested party in these proceedings. It has played an active part in both the Stage One and Stage Two phases of the hearing.

[5] At the time of the Stage One hearing, the ODC was the holder of a suite of resource consents for what is known as the Ōpōtiki Harbour Development Project (Harbour Project).

[6] The Harbour Project is a significant regional infrastructure project relating to the redevelopment of Ōpōtiki Harbour into a fully functional port.

[7] The resource consents held by ODC authorised, among other things, activities such as the construction of 400 m–500 m training walls, part of which are located in

the Coastal Marine Area (CMA), dredging and depositing more than 50,000 m<sup>3</sup> of sand; reclamation of 1.9 hectares of foreshore and seabed close to the Waioeka River mouth; cutting through an existing sand spit to create a new harbour entrance; earthworks associated with the disposal of up to 450,000 m<sup>3</sup> of dredged material, associated discharge of sediment laden water; various activities associated with constructing the new harbour entrance and closing the Waioeka River mouth; dredging 50,000 m<sup>3</sup> per year from the entrance channel to the Waioeka River; erecting temporary structures in the CMA; discharging material to the CMA; disturbing the foreshore and seabed; the taking of coastal water and depositing of material in the CMA; maintaining dredging and earthworks as well as the associated discharge of contaminated water and occupying space in the CMA.

[8] As the holder of consents relating to the CMA and the owner of significant infrastructure assets in the CMA, both already in existence and under construction, ODC had a vital interest in the various application seeking recognition orders in the CMA.

[9] The various consents held by ODC in relation to the Harbour Project were transferred to CRHL on 4 August 2021. CRHL is now responsible for the construction of the Harbour Project and is the legal owner of that infrastructure asset.

[10] In respect of that asset, CRHL is therefore now stands in the same position that ODC did at the time of the Stage One Whakatōhea hearing.

[11] As they were not the holders of the resource consents and did not own the asset as at the due date for filing a notice of appearance as an interested party, they could not have filed a notice within the specified time.

[12] Accordingly, it is appropriate that I grant them leave to apply to appear as an interested party.

### **Procedural issues**

[13] It was appropriate that all parties (including all applicants) potentially affected by CRHL's application to become an interested party had the opportunity to make

submissions on that application. Accordingly, on 12 April 2022, I issued a direction requesting any parties who were opposed to the application to file a notice of opposition no later than 5 May 2022. The direction indicated that if no notices of opposition were received, the application would be dealt with on the papers.

[14] No notices of opposition have been received and accordingly I grant CRHL's application to appear as an interested party in these proceedings including in relation to any appeal.

[15] Nothing in this decision affects ODC's existing status as an interested party which will continue.

## **Churchman J**

### **Solicitors:**

Cooney Lees Morgan, Tauranga for Applicant