IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA **SC 55/2024**

BETWEEN	**STUDENTS FOR CLIMATE SOLUTIONS INCORPORATED**
	Appellant
AND	**MINISTER OF ENERGY AND RESOURCES**
	Respondent

RESPONDENT'S SUBMISSIONS ON APPEAL

17 April 2025

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COUNSEL FOR THE RESPONDENT CERTIFIES THAT, TO THE BEST OF THEIR KNOWLEDGE, THESE SUBMISSIONS CONTAIN NO SUPPRESSED INFORMATION AND ARE SUITABLE FOR PUBLICATION.

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INTRODUCTION AND SUMMARY OF ARGUMENT

1. The issues for determination in this appeal concern the lawfulness of the respondent's 29 June 2021 decisions under s 25 of the Crown Minerals Act 1991 (**CMA**) to grant petroleum exploration permits (**PEPs**) to Greymouth Turangi Limited (**Greymouth**) and Riverside Energy Limited (**Riverside**).

2. In summary, the respondent submits the Court of Appeal was correct to dismiss the appellant's appeal. Climate change considerations, including but not confined to the specific matters referred to in s 5ZN of the Climate Change Response Act 2002 (**CCRA**), are not mandatory relevant considerations in relation to the decisions to grant the PEPs. The over-arching objective of the CMA is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand (s 1A(1), CMA). To that end the CMA provides for the efficient allocation and management of economic rights to prospect, explore and mine the Crown's mineral resources for a fair financial return to the Crown (s 1A(2)). As expressed in the Minerals Programme for Petroleum 2013 (**MPP**) the underlying premise of the CMA is that the government wants other parties to undertake prospecting for, exploring for and mining Crown owned minerals (MPP clause 1.3(4)). Mandatory consideration by the s 25 decision-maker of whether to facilitate further fossil fuel extraction at all would be negate the CMA's legislative purpose. Furthermore:

   2.1 The phrase "for the benefit of New Zealand" in the CMA's purpose statement does not require consideration of whether a PEP is for the benefit of New Zealand including on account of the climate implications.[1] Contrary to the appellant's arguments:

      2.1.1 There is no support for this interpretation in the CMA itself or in the legislative history and this interpretation would negate the CMA's purpose set out at [2] above.

      2.1.2 The continued promotion of fossil fuel extraction for economic benefit is not inconsistent with New Zealand's international obligations, and therefore cannot justify a

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1 Appellant's submissions at [1.7(b)], [4.1], [4.13].

strained interpretation requiring the s 25 decision-maker to assess advantages and disadvantages, from a climate perspective, of granting a PEP at all. The phase down of dependence on fossil fuels is reflected in Parliament's decision to reduce, via amendment, the available acreage for permitting, leaving the CMA's purpose of promoting exploration permitting within the available acreage undisturbed.

2.2 The climate change considerations expressed in s 5ZN CCRA are permissive considerations when granting a PEP under s 25 of the CMA. On its plain wording s 5ZN is an invitation or prompt to decision-makers to turn their minds to whether they wish to consider such matters. Whether the permissive s 5ZN matters become irrelevant or mandatory instead, will depend on the decision-making context. They are not mandatory in the context of the CMA because of the CMA's strong purpose promoting prospecting, exploration and mining. They are permissive relevant considerations in this context. However, the need for consistency with the purpose of the CMA means substantive consideration of s 5ZN is likely to be significantly limited.

2.3 The decision-maker gave due consideration to matters in s 5ZN CCRA, only one of which existed at the time. The climate impact information reasonably capable of being ascertained at the time, was limited. The decision-maker gave s 5ZN weight procedurally but was entitled to make a decision based on the express mandatory factors which had to be given weight. To consider whether to grant a PEP at all because of s 5ZN, would negate the CMA's purpose and be improper.

2.4 The decision-maker did not take into account "Climate change implications in a broader sense" but was not required to do so as they are not mandatory relevant considerations. The CMA does not require or give the s 25 decision-maker the power to do this.

2.5 The decision-maker had proper regard to the Treaty of Waitangi in deciding to grant the PEPs in accordance with the requirements of

s 4 of the CMA which must be read in the context of the overall scheme and purpose of the CMA as a permitting regime.

3. As a result, the decisions to grant two PEPs were lawful, being: consistent with the CMA's purpose, and with the MPP, which the CMA required.

4. The courts below dismissed the appellant's application for judicial review and appeal.[2] The Court of Appeal correctly held s 5ZN CCRA was not a mandatory consideration when issuing PEPs under the CMA and there had been no breach of s 4 CMA.[3] Mallon J considered s 5ZN was a permissive consideration and the decision-maker correctly turned her mind to it.[4] This Court should similarly dismiss the appeal.

FACTS

Context for the decisions to issue the PEPs

5. The 2018 amendment to the CMA to ban new off-shore petroleum exploration was a key policy initiative to support New Zealand's transition away from petroleum dependence.[5] The ban, and Cabinet's related decision to limit Block Offers 2018, 2019 and 2020 to onshore Taranaki, substantially reduced the acreage available for new exploration.[6]

6. After consultation with iwi and hapū as provided for in the Minerals Programme for Petroleum 2013,[7] a decision was made, under s 24 of the CMA, to open the public tender for Block Offer 2019, for acreage in onshore Taranaki, on 27 June 2020.[8]

The decisions to grant the PEPs

7. Greymouth and Riverside each made bids in response to Block Offer 2019.

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2 *Students for Climate Solutions Inc v Minister of Energy and Resources* [2022] NZHC 2116, [2022] NZRMA 612 [**HC Judgment**] at [87] and [113] **[[101.0064]]**; *Students for Climate Solutions Inc v Minister of Energy and Resources* [2024] NZCA 152 [**CA Judgment**] at [110] and at [112] per Mallon J **[[101.0121]]**.

3 CA Judgment at [88] **[[101.0117]]**.

4 CA Judgment at [139] **[[101.0133]]** (writing separately).

5 Affidavit of Justine Elizabeth Cannon (**JC Affidavit**) [31]-[36] **[[201.0081]];** [101]-[117]; and JS-1 p 37-38 (Cabinet Minute: CAB-18-MIN-0217, 3 Sept 2018) **[[301.0223]]**. See also Affidavit of Phillippa Jane Fox (**PF Affidavit**) at [25] **[[201.0176]]**. See also HC Judgment at [29]-[33] (regarding these amendments).

6 JC Affidavit at JC-1 p 3 **[[301.0167]]**. See in particular at [41] **[[201.0083]]** and [73] **[[201.0093]]**.

7 Affidavit of John Edwin Decker (**JD Affidavit**) at [108] **[[201.0134]]**; and PF Affidavit at PF-1 pp 61-140 (Briefing: opening Block Offer 2019 tender) **[[302.0541]]** and 141-149 (Briefing: iwi engagement) **[[302.0621]]**.

8 PF Affidavit at PF-1 p 150 (Record of Decision) **[[302.0631]]**. The decision to open Block Offer 2019 is not challenged in this proceeding.

There were no competing bids for their respective bid areas.[9] The decisions to issue the PEPs followed Block Offer 2019 and took into account detailed recommendations on a range of matters.[10]

8. Relevant to s 5ZN CCRA, the recommendations:

8.1 Informed the decision-maker that s 5ZN CCRA made the 2050 target, an emissions budget or emissions reduction plan permissive considerations but, apart from the 2050 target, the matters listed were still in development; described the 2050 target, noting it was a net GHG emissions domestic target and petroleum produced in New Zealand is processed domestically and offshore, and for a variety of purposes; and noted the 2050 target did not prohibit the use of petroleum as an energy source or as industrial feedstock and did not require an immediate cessation of non-renewable energy use.

8.2 Drew attention to the 2021 advice of the Climate Change Commission (**the Commission**)[11] including its advice as to the need for a National Energy Strategy, the purpose of which would include ensuring a smooth and sequenced phase down of fossil fuel use and a fair, inclusive and equitable transition.

8.3 Described the effect of the 2018 amendments to the CMA as substantially reducing the amount of acreage available for new permitting. This began the process of phasing down fossil fuel use in a smooth, sequenced and equitable way, and, since then, the number of permits granted has been in general decline.[12]

8.4 Weighed against the 2050 target the fact that all mandatory requirements of the CMA were met and the grant of a permit was consistent with the purpose of the CMA, adding that a PEP did not provide resource consent for activities that might result in emissions or confer a right to produce petroleum commercially.

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9 JD Affidavit at [127] **[[201.0138]]**.

10 Recommendation to grant PEP 60742 (Riverside) **[[305.1837]]**; Recommendation to grant PEP 60479 (Greymouth) **[[305.1891]]**; and **PF Affidavit** at [57]-[67] **[[201.0189]]**.

11 Affidavit of Melody Rachel Guy (**Guy Affidavit**) at [51] **[[201.0208]]**; and the Climate Change Commission's advice - *Ināia tonu nei*: a low emissions future for Aotearoa **[[304.1377]]**.

12 See also JD Affidavit at [139] **[[201.0140]]**.

8.5 Noted a PEP holder could apply for a subsequent Petroleum Mining Permit (**PMP**), at which stage s 5ZN could also be considered, and noted the uncertain nature of the petroleum resource potential of each Bid Area and the general probability of low commercial success for petroleum exploration.

9. Relevant to s 4 CMA which provides "All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)", the recommendations identified tangata whenua as a key stakeholder within the oil and gas sector (having a unique status confirmed by the Treaty and their ancestral relationship with the environment within which petroleum exploration occurs) and identified as relevant the Treaty principles of partnership; active protection; and redress for past wrongs. The recommendations then provided an overview of the iwi engagement process undertaken ahead of Block Offer 2019.[13]

Riverside Energy – Treaty principles

10. The Riverside Bid was in respect of a 52.872 km^2 area. The recommendation identified Te Rūnanga o Ngāti Ruanui as representing the iwi and hapū most affected by the bid due to their rohe location. Submissions by iwi in the consultation process for Block Offer 2019, and the response to these, were summarised. It was noted that in subsequent engagement with iwi as to whether consultation on Block Offer 2019 had been appropriate, feedback from Ngāti Ruanui included an interest in learning more about, and contributing to, pending changes to the CMA including in relation to permit allocation and iwi engagement processes.[14]

11. The recommendation noted officials had not involved iwi further in the evaluation of bids received, consistent with cl 2.4(6) of the MPP. It acknowledged the Crown's Treaty obligations are broader than described in cl 2.4 but as no competing bids for the same acreage requiring ranking were received, the request to be involved in further evaluation was moot.

Greymouth – Treaty principles

12. The Greymouth Bid was in respect of a 52.050 km2 area. The

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13 See PF Affidavit at [38]-[42] **[[201.0180]]**.

14 Recommendation to grant PEP 60742 (Riverside) **[[305.1837]]**; Recommendation to grant PEP 60479 (Greymouth) **[[305.1891]]**; and **PF Affidavit** at [57]-[67] **[[201.0189]]**.

recommendation identified Te Kotahitanga o Te Ātiawa Trust and Te Kāhui o Taranaki as representing the iwi and hapū most affected by the bid due to their respective rohe locations. The recommendation noted MBIE has relationship agreements with these iwi, provided links to the agreements and added that officials considered the explicit requirements of the agreements had been met but there was opportunity to improve overall working relationships consistent with the agreements.

13. Submissions by iwi in the consultation on Block Offer 2019 were summarised. This included requests from Te Kotahitanga o Te Ātiawa Trust and Te Kāhui o Taranaki to exclude various sites across the bid area, and for conditions that both the Crown and permit holders allow iwi to have more engagement in the decision-making process. They also requested that an Annual Forum and Annual Block Offer round meeting continue to take place. Te Kāhui o Taranaki requested that permit holders give iwi, marae, pā and hapū notice before undertaking specific activities; and that an applicant's ability and willingness to meaningfully engage with iwi be part of evaluating a permit application.

14. The response to submissions was described in terms similar to the Riverside Bid[15] noting officials were raising the concerns of iwi directly with Greymouth.

Matters taken into account by the decision-maker

15. The decision-maker took Treaty principles into account as mandatory considerations, and addressed the climate change matters summarised at [8.1] – [8.5] above pursuant to s 5ZN CCRA.[16] The decisions granted permit 60742 to Riverside[17] and permit 60749 to Greymouth,[18] providing the exclusive right to explore for petroleum in the described area for a term of 10 years, commencing 1 July 2021. The PEPs were subject to conditions including work programme and iwi engagement requirements.

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15 Recommendation to grant PEP 60742 (Riverside) **[[305.1837]]**; Recommendation to grant PEP 60479 (Greymouth) **[[305.1891]]**; and **PF Affidavit** at [57]-[67] **[[201.0189]]**.

16 PF Affidavit at [59]–[69.2] and [73]**[[201.0189]]**. The decision-maker was also independently aware of the Climate Change Commission's 2021 advice, the Government's plans to respond to that advice and progress towards aligning the CMA with a smooth and equitable phase-out of fossil fuels in (at [50] **[[201.0186]]**, [54.3] **[[201.0188]]**).

17 Petroleum exploration permit 60742 **[[305.2229]]**.

18 Petroleum exploration permit 60749 **[[305.2245]]**.

SUBSTANTIVE SUBMISSIONS PART 1: LEGISLATIVE SCHEME

The Climate Change Response Act 2002

16. The CCRA was enacted to enable New Zealand to meet its obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.[19] It expressly provides for the Crown's responsibility to give effect to its Treaty obligations.[20] The purpose of the CCRA includes to:[21]

> *enable New Zealand to meet its international obligations under the Convention, the Protocol, and the Paris Agreement….*

17. The Explanatory Note to the Zero Carbon Amendment Bill states:[22]

> *The Bill seeks to strike a balance between flexibility and prescription in New Zealand's long-term transition, as well as building in considerations of how impacts are distributed.*

18. The 2050 target for greenhouse gas emissions reduction requires that:[23]

> *net accounting emissions of greenhouse gases in a calendar year, other than biogenic methane, are zero by the calendar year beginning on 1 January 2050 and for each subsequent calendar year…*

19. The CCRA establishes a policy and decision-making framework for the mitigation of emissions and adaptation to climate change. The Minister of Climate Change and the Commission are required to balance the CCRA's competing social, economic, scientific, technical, and distributive justice considerations.[24] The CCRA framework requires the measures to enable New Zealand to meet its international obligations to be informed by expert scientific advice, extensive consultation, and consideration of the particular impacts of climate change mitigation on society, with specific focus on iwi and Māori. This includes:

    19.1 The creation of an independent Commission[25] that is informed by a broad range of public feedback before finalising its advice.[26]

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19 Climate Change Response Bill 2002 (212-1) (explanatory note) at 1 **[[Respondent's Bundle of Authorities (RBOA), Tab 4]]**.

20 Climate Change Response Act 2002 (**CCRA**), s 3A **[[Appellants' Bundle of Authorities (ABOA), Tab 1]]**.

21 CCRA, s 3(1). Section 3(2) makes clear a person who exercises a power or discretion, or carries out a duty, under the CCRA must do so in a manner consistent with this purpose **[ABOA, Tab 1]**.

22 Climate Change Response (Zero Carbon) Amendment Bill 2019 (136-1) (explanatory note).

23 CCRA, s 5Q **[[ABOA, Tab 1]]**.

24 See, for example: CCRA, ss 3A(ad), (ae), 5ZC(2), 5ZG, 5ZQ(3), and 5ZS(4).

25 Part 1A.

26 Section 5N. The Commission is required to consider, among other matters, the distribution of benefits, costs and risks between generations, the Crown-Māori relationship, te ao Māori and specific effects on iwi and

19.2 Requirements to set emissions budgets[27] that include consideration of public consultation feedback and the distribution of the likely impacts of actions to achieve the budgets;[28] and to prepare emissions reduction plans[29] following consultation, including with iwi and Māori[30] with a strategy to mitigate impacts on iwi and Māori.[31].

19.3 Requirements that the process for preparing National Climate Change Risk Assessments (**NCCRA**)[32] and National Adaptation Plan (**NAP**) in response include consideration of, among other matters, the economic, social, health, environmental, ecological and cultural effects of climate change, and the distribution of those effects across society including a wide range of effects on iwi and Māori.[33]

20. Section 5ZN specifies that, if they deem fit, a person or body in exercising or performing a public function, power, or duty may take into account the 2050 target, emissions budgets, and emissions reductions plans. Section 5ZO allows the Minister to issue guidance for departments on how to do this.

Crown Minerals Act 1991

21. The CMA declares all petroleum, gold, silver and uranium existing in its natural condition in land to be the property of the Crown.[34] When the decisions to grant the PEPs were made, the CMA's purpose was expressed in s 1A as:[35]

> (1) The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand.
>
> (2) To this end, this Act provides for—
>
> (a) the efficient allocation of rights to prospect for, explore for, and mine

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Māori (s 5M).

27 CCRA, ss 5W-5Z **[[RBOA, Tab 3]]**. See, explanatory note at 3: "A system of emissions budgets will help to manage the transition to a low-emissions New Zealand and avoid any abrupt changes in policy." **[[RBOA, Tab 5]]**.

28 CCRA, ss 5ZA and 5ZC **[[RBOA, Tab 3]]**.

29 The Minister must make a plan publicly available and present it to Parliament 12 months before the commencement of each budget period: CCRA, s 5ZI(2). Climate Change Response (Zero Amendment) Bill (136-2) (select committee report): "...provide businesses, investors, Government agencies, and households with a better forward view of upcoming policies, so that they could have certainty and plan accordingly".

30 CCRA, s ZI(b).

31 CCRA, s 5ZG(3).

32 CCRA, ss 5ZP 5ZQ.

33 CCRA, ss 5ZQ(3) and 5ZS.

34 CMA, s 10 **[[RBOA, Tab 1]]**.

35 The word "promote" was amended to "manage" on 31 August 2023, by s 4 of the Crown Minerals Amendment Act 2023 (2023 No 53). See CMA, s 1A (as at August 2020) **[[RBOA, Tab 2]]**.

> Crown owned minerals; and
>
> (b) the effective management and regulation of the exercise of those rights; and
>
> (c) the carrying out, in accordance with good industry practice, of activities in respect of those rights; and
>
> (d) a fair financial return to the Crown for its minerals.

22. Section 4 provides that all persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

23. The functions of the Minister described in s 5 relevantly include to attract permit applications (s 5(a)), grant permits, grant changes to permits and revoke permits (s 5(b), prepare minerals programmes (s 5(c)), and to collect and disclose information in connection with mineral resources and production in order to promote informed investment decisions about mineral exploration and production (s 5(e)(i)).[36]

24. Section 8 restricts prospecting, exploring[37] for or mining[38] Crown owned minerals to the holder of the appropriate permit[39] granted under the CMA. The Minister is empowered to require payment in return for a permit and the minerals obtained under it by the permit holder.[40]

25. Sections 17-18 CMA provide for publication and the opportunity to make submissions on a draft Minerals Programme, including notice being given to all iwi. The Minister is required to act in accordance with minerals programmes (s 22).

26. A PEP authorises the permit holder to explore for minerals as specified in the

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36 CMA, s 5(a) (as at August 2020) **[RBOA, Tab 2]**. Section 5(ca) the function to: *make decisions on decommissioning petroleum infrastructure and wells, requirements for financial securities, payments for post-decommissioning work, and related matters* was added in December 2021 by s 7 of the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 (2021 No 53).

37 "exploration" is defined in s 2 as" any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of 1 or more minerals; and includes any drilling, dredging, or excavations (whether surface or subsurface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence" **[[RBOA, Tab 1]]**.

38 "mining" is defined in s 2 CMA includes "to take win or extract by whatever means…(i)a mineral existing in its natural state in land…and (b)(i) includes the injection of petroleum into an underground gas storage facility…" "Underground gas storage facility" is defined as "a natural reservoir into which petroleum is injected in a gaseous state for subsequent extraction" **[[RBOA, Tab 1]]**.

39 CMA, s 92 provides that Permits are neither real nor personal property. The duration of permits is set out in s 35 **[[RBOA, Tab 1]]**.

40 CMA, s 34.

permit (s 23(2)). Permits may be allocated by public tender pursuant to a notice issued by the Minister under s 24(1). Section 24(5A) provides *inter alia* that offers pursuant to s 24(1) may only be made in respect of land in the onshore Taranaki region and notes that subsection applies despite anything to the contrary in the Act, including section 1A.[41]

27. Section 25 relevantly provides:

> (1) The Minister may grant a prospecting permit, an exploration permit, or a mining permit under this Act in respect of minerals in land—
>
> (a) to any person or persons; and
>
> (b) in either of the following ways:
>
> (i) as the result of an application initiated by a person under section 23A:
>
> (ii) as the result of a public tender process under section 24; and
>
> (c) subject to any conditions that the Minister may impose, as the Minister thinks fit, including authorising the prospecting or exploration for, or mining of, a mineral only—
>
> (i) in particular circumstances; or
>
> (ii) by means of a particular method; or
>
> (iii) if the mineral occurs in a particular state, place, phase, or stratum.
>
> (2) However, the Minister is not obliged to grant a permit to any person or persons unless expressly required to do so under section 32.
>
> (2A) The Minister must not grant a permit for petroleum in respect of any land outside the onshore Taranaki region (despite anything to the contrary in this Act (including section 1A)).
>
> …

28. Before granting a permit the Minister must be satisfied of the matters listed in s 29A. In the case of a petroleum exploration permit, this includes that the proposed permit operator has, or is likely to have, by the time the relevant work in any granted permit is undertaken, the capability and systems likely to be required to meet the health and safety and environmental requirements of all specified Acts for the types of activities proposed under the permit. The Minister is only required to undertake a high-level preliminary assessment of

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41 CMA, s 24(5A) (as at August 2020) **[[RBOA, Tab 2]]**. Subsection 5A(d) was subsequently amended on 31 August 2023 by s 8 of the Crown Minerals Amendment Act 2023 (2023 No 53) to remove the express reference to s 1A.

this; must seek the views of the health and safety regulator and may, but is not required to, obtain the views of any other regulatory agency. But this assessment does not limit, have any effect on, or have any bearing on whether the permit holder or permit operator is required to obtain any permit, consent, or other permission under any health and safety or environmental legislation; or the granting to the permit holder or permit operator of any such permit, consent, or other permission.[42]

SUBSTANTIVE SUBMISSIONS PART 2: CLIMATE CHANGE WAS NOT A MANDATORY RELEVANT CONSIDERATION FOR THE SECTION 25 DECISIONS

Mandatory consideration of climate change is inconsistent with objective of CMA

29. Mandatory relevant considerations are those expressly or impliedly identified by the statute to which regard must be had;[43] or considerations which are "so obviously material" to a decision that anything less than direct consideration would be an error.[44] The appellant relies on the latter category.[45]

30. Whether something is "so obviously material" must be determined against Parliament's intention.[46] Reasoning from the general importance of climate change[47] the appellant argues the words "benefit of New Zealand" in s 1A demonstrate a requirement for a decision-maker to assess the impact of climate change. For the following reasons, the respondent submits the text of s 1A read in light of the purpose of the CMA, show Parliament did not intend this phrase to require a decision-maker to undertake the complex multi-factorial exercise of considering the impact of climate change.

31. An enactment's meaning must be ascertained "from its text and *in the light of its purpose"*.[48] Even if the meaning of the text may appear plain in isolation

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42 CMA, s 29A(4). See also s 9 which provides that compliance with the Act or the regulations does not remove the need to comply with all other applicable Acts, regulations, bylaws, and rules of law **[[RBOA, Tab 1]]**.

43 *CREEDNZ Inc v Governor General* [1981] NZLR 172 at 183 [***CREEDNZ***] **[[ABOA, Tab 10]]**; and *R. (on the application of Friends of the Earth Ltd) v Secretary of State for Transport (Heathrow Airport Ltd)* [2020] UKSC 52; [2021] 2 All ER 967 at [117]. This law is well settled.

44 Ibid.

45 Appellant's submissions at [1.7](d). Framed as "so obviously relevant".

46 *CREEDNZ*, above n 43, at 183 **[[ABOA, Tab 10]]**: Articulated also as "the more general and the more obviously important the consideration, the readier the Court must be to hold **that Parliament must have meant it to be taken into account**." (emphasis added).

47 Appellant's submissions at [4.40]

48 *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 [***Fonterra***] at [22], referring to s 5 of the Interpretation Act 1999 (now repealed but substantively replicated in s 10 of the Legislation Act 2019) **[[RBOA, Tab 9]]**.

of purpose, that meaning should always be *cross-checked against purpose*.[49] To determine purpose the Court must have regard to both the "*immediate and the general legislative context*".[50] Also of relevance may be the social, commercial or other "*objective of the enactment*".[51]

32. The legislative history of the CMA shows a clear objective to limit its purpose to allocation and management of economic rights: to prospect, explore, or mine Crown minerals, to the exclusion of other issues that may conflict with that purpose.[52] As the High Court observed in *Greenpeace*, "successive governments have enacted the legislation and MPP [2005] on the basis that, as matters of policy, there will be permits issue[d] under the regime."[53]

33. Parliament made a deliberate choice to separate the allocation of economic rights under the CMA, from regulation of the activities (such as environmental regulation or health and safety) associated with the exercise of those rights by their holders.[54] This resulted in the Resource Management Bill being split and the provisions for allocation of Crown-owned minerals rights proceeding as separate legislation.[55]

34. This objective of the CMA regime was endorsed again when the s 1A purpose section was debated in 2012, as demonstrated in Hansard:[56]

> *The Crown Minerals Act is not primarily about health and safety or environmental regulation. This maintains the independence of health and safety and environmental regulation, to completely avoid possible conflicts between the Government's dual roles of promoting resource exploration and production and also regulating the effects of those activities. This fundamental premise was introduced in 1991, when the permitting regime was separated from environmental consenting. This is being retained in the current amendments.*

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49 *Fonterra* at [22]. In particular, if the meaning "is not clear on the face of the legislation, the Court will regard context and purpose as essential guides to meaning." *Fonterra* at [24].

50 At [22].

51 At [22].

52 *Greenpeace of New Zealand Inc v Minister of Energy and Resources* [***Greenpeace***] [2012] NZHC 1422 at [101]-[104] (setting out relevant legislative materials) **[[ABOA, Tab 13]]**.

53 At [115] –[116].

54 To avoid the Minister having conflicting roles as regulator (on behalf of the community's interests in sustainable management), and as agent for the Crown's commercial interest. "Separating such conflicting roles and giving them to different people has been a fundamental part of the recent reform in the State sector." *Greenpeace*, above n 52, at [101], citing the Report of the Review Group on the Resource Management Bill (11 February 1991) at 56.

55 At [103]–[104], as per (4 July 1991) 516 NZPD 3040-3041 and 3048 (quoting the then-Minister of Energy and then-Minster for the Environment.

56 (25 September 2012) 684 NZPD 5642 (per Hon, Phil Heatley, then Minster of Energy and Resources, moving the bill which enacted s 1A be read a first time) **[[RBOA, Tab 20]]**.

35. The meaning of s 1A is clear in the context of the section as a whole and the immediate and general legislative context. There is simply no ambiguity or evident parliamentary intent leaving room to read in a mandatory requirement to consider climate change. Nor can international obligations or the common law or other fundamental principles support a "reading in" of such matters against the clear purpose of the CMA, even if there is an inconsistency with such matters (which there is not – as set out at [46]-[47]). This phrase can be interpreted as doing no more than confirming that what the Act does is of benefit. The comments of Hon Simon Bridges (then Minister of Energy and Resources) during the In Committee Stage of the 2013 bill to amend the CMA confirm this policy objective:[57]

> … ***this bill is fundamentally about development and promoting development.*** *To refer to the purpose in new section 1A(1) set out in clause 6: "The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand."* ***This bill is for the benefit of New Zealand. The benefits from petroleum are immense in this country****: royalties and taxes are 42c in every dollar of profit, billions of dollars to the Crown over the years that go to pay for the schools and the hospitals and the roads….*

36. The underlying premise of the CMA is that the government wants other parties to prospect for, explore for and mine Crown owned minerals.[58] The appellant's approach would negate the achievement of this objective.

37. The appellant characterises the s 25 decisions as, variously, "decisions about whether to facilitate further fossil fuel extraction",[59] and "administrative decisions that directly affect Aotearoa's ability to comply with [international obligations] such as whether to promote and facilitate further long-term petroleum mining operations".[60] The respondent disagrees with this characterisation.

38. Looking at the scheme of the CMA as a whole (and in light of the purpose section discussed above) ss 25 and 29A do not involve decisions about

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57 (10 April 2013) 689 NZPD 9257 (emphasis added) **[[RBOA, Tab 22]]**. See further comments from Hon Simon Bridges during the bill's second reading "The purpose statement neatly encapsulated the Government's desires for the sector. It intentionally promotes "prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand," but recognises that any activity must be undertaken in accordance with "good industry practice". Embedding such a balance into the purpose statement makes it clear that permitting decisions will consider health and safety as well as the potential economic return to the Crown.": (21 March 2013) 688 NZPD 8844 **[[RBOA, Tab 21]]**.

58 Minerals Programme for Petroleum 2013 at cl 1.3(4) **[[301.0022]]**.

59 Appellant's submissions at [1.7](d).

60 At [4.23].

whether to "facilitate" further fossil fuel extraction. That decision was made by Parliament when it enacted the CMA to promote the prospecting of, exploration of, and mining of Crown minerals for the benefit of New Zealand.

39. As observed in *Greenpeace*, "successive governments have enacted the legislation and MPP [2005] on the basis that, as matters of policy, there will be permits issue[d] under the regime."[61] The s 25 decision-maker must make decisions about individual permit applications within the CMA's existing promotional framework and in line with ss 1A(2) and 29A. This also supports the government's stated objective in the MPP to seek to minimise sovereign risk for investors by providing for a stable and coherent regulatory regime.[62]

40. The respondent submits the High Court and Court of Appeal's interpretation of s 1A and the phrase "for the benefit of New Zealand" are correct:

40.1 Section 1A(1)'s clear intention "to promote" prospecting, exploration and mining of Crown owned minerals for the benefit of New Zealand, coupled with s 1A(2)'s proviso explaining how the CMA seeks to achieve that purpose,[63] and the legislative materials support this.[64]

40.2 There is no machinery to support the assessment the appellant says is required, in contrast to other provisions of the CMA.[65]

40.3 Section 22 requires the Minister to act in accordance with the MPP, unless inconsistent with the CMA or regulations. The MPP remains in force and relevant, and the Minister *must* (under s 22) still make decisions on PEPs in furtherance of the purpose of the CMA. The MPP defines "for the benefit of New Zealand" as being "**best achieved by increasing New Zealand's economic wealth through maximising the economic recovery of New Zealand's Crown-owned mineral**

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61 *Greenpeace*, above n 52, at [116]. See also s 5 CMA for the Minister's functions under the Act which include to grant permits. Incidentally 5 does not include as the Minister's function any wider balancing of environmental or other public interest matters.

62 Minerals Programme for Petroleum 2013 at cl 1.3(4) **[[301.0022]]**.

63 As Cooke J observed in the HC Judgment at [65] "It seems to me that a key word in s 1A(1) is "promote" — the Act seeks to encourage mining to take place. This is then reiterated by subs (2) which explains that "to this end" a number of other matters are provided for, including the "efficient allocation of rights" to prospect, explore and mine" **[[101.0057]]**.

64 At [32]-[36] above. See also HC Judgment at [[66]-[68] regarding prior cases on the CMA's purpose/scheme.

65 For example, see CMA, ss 61B(2) and 61C(2) **[[RBOA, Tab 1]]**.

resources,"[66] and recognises that other components of the benefit of New Zealand, including environmental consideration are covered in other legislation.[67]

"Benefit of New Zealand" – consistency with public interest Acts not required

41. The appellant says the Court of Appeal's decision in *Movement* supports their reading of "for the benefit of New Zealand".[68] The respondent disagrees. *Movement* concerns the Land Transport Management Act 2003 (**LTMA**). Section 3 LTMA states "The purpose of this Act is to contribute to an effective, efficient, and safe land transport system in the public interest." This purpose section does not use the language of "promote"; nor does it set out what will be done to achieve that end.[69] There is nothing to suggest "for the benefit of New Zealand" is intended by Parliament to be the same as other legislative uses of the phrase "in the public interest."[70] These differences mean the Court's comments on s 3 of the LTMA do not clearly map onto the CMA.

42. In any event, despite the Court of Appeal finding the purpose section of the LTMA was not simply to contribute to an effective, efficient and safe transport system", but to do so "in the public interest",[71] the Court did not state this *required* the consideration of climate change issues. Rather, the Court held s 3 does not *exclude* "climate change as a potentially relevant consideration for

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66 MPP at cl 1.3 **[[301.0022]]**. This reflects the Minister's interpretation. CA Judgment at [121], Mallon J stated that "the Minister's interpretation of "for the benefit of New Zealand" in the s 1A of the Crown Minerals Act, as set out in the minerals programme for petroleum, correctly reflects Parliament's intention in s 1A." Noting (at fn 99) s 1A was introduced on the same day as the MPP came into force and authority for the proposition that cautious use of secondary legislation to guide interpretation of primary legislation is permitted particularly where the meaning of the Act is ambiguous and "the Act provides a framework built on by contemporaneously prepared regulations."

67 MPP, cl 1.3(8) **[[301.0022]]**. This cross refers to cl 1.4 which lists other legislation that affects or relates to prospecting for, exploring for, and mining petroleum. This includes "the [CCRA], which sets out how New Zealand's greenhouse gas emissions are to be managed". Cl 1.4(3) further notes that "The Minister and the Chief Executive, in administering the Act, do not have powers and functions (except where and to the extent specifically provided for in the Act) relating to matters covered by other legislation **[[301.0025]]**. And finally, cl 1.4(5) recognises that "The clear separation in the statutory framework between powers and functions (and rights and obligations) under the Act on the one hand and under other legislation on the other is designed to ensure clear accountability and avoid conflicting interests and objectives on the part of ministers and departments responsible for administering relevant legislation." **[[301.0026]]**.

68 Appellant's submissions at [4.18].

69 Compare with CMA, s 1A(2) **[[ABOA, Tab 4]]**. Section 16A Overseas Investment Act 2005 is an example of Parliament describing how to meet its "Benefit to New Zealand" test.

70 *Movement v Waka Kotahi New Zealand Transport Agency* [2025] NZCA 86 [***Movement***] at [82]: "The concept of "public interest" is inevitably a wide one and logically captures the multiple, and potentially competing, interests that may need to be balanced in making decisions about how to achieve an effective, efficient, and safe transport system." There is no support for the contention that "for the benefit of New Zealand" is the same **[[ABOA, Tab 18]]**.

71 At [82]. It is also notable that this "more flexible view" was in the Court's view supported by the legislative history materials canvased at [83] –[92] **[[ABOA, Tab 18]]**.

decision-making under the LTMA."[72] At a high level, this is consistent with the respondent's argument that the CMA does not exclude s 5ZN matters, but they are not required to be considered. Even if a similar interpretation were given to "for the benefit of New Zealand", it does not mean climate considerations are mandatory.

Not required for consistency with the common law, tikanga and NZBORA

43. The appellant says their interpretation is consistent with the common law principles of *jus publici* and the public trust doctrine. They rely on this Court's comments in *Fitzgerald v R* to submit clear language would be required to supersede these and there is no such wording in the CMA;[73] and that "the CMA uses the language of guardianship" thus recognising the exploitation of resources is not political matter but should be for the benefit of New Zealand.[74] However, in *Fitzgerald*, this Court recognised that "unrestricted general words" were not sufficient to displace presumptions reflecting core legal values.[75] Examples of fundamental values this Court gave included individual freedom, property rights, the right of access to the courts and the solicitor/client privilege.[76] *Jus publici* and the public trust doctrine are not fundamental values in New Zealand law.[77] Nor does the CMA use the language of guardianship – that term does not appear in the legislation.

44. The appellant also says the Court of Appeal's interpretation is inconsistent with the s 20 right under the New Zealand Bill of Rights Act 1990.[78] This argument was not pleaded, or raised at first instance so no evidence has been adduced by the respondent to address it. The appellant should not be permitted to raise it now. In any event, the appellant has not articulated how

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72 At [81] **[[ABOA, Tab 18]]**.

73 Appellant's submissions at [4.21].

74 Ibid.

75 *Fitzgerald v R* [2021] NZSC 131, [2021] 1 NZLR 551 At [215] **[[ABOA, Tab 12]]**.

76 At [209] **[[ABOA, Tab 12]]**.

77 As the Court of Appeal correctly held at [69]: "The only authorities cited [in support of the public trust doctrine] are two academic writings, neither of which supports the appellant's assertion that it is one of New Zealand's three sources of law." **[[101.0111]]**. The Court of Appeal also commented in *Smith v Attorney-General* [2024] NZCA 692 at [185], that a further problem with the doctrine is that "the doctrine could only operate to the extent that it is not displaced by legislation." In that case, the comprehensive framework that the CCRA provides does not leave room for the public trust doctrine to operate (There is also no real case law on *jus publici* in New Zealand (apart from some a few passing references to jus publicum as a right of passage) **[[RBOA, Tab 15]]**.

78 Appellant's submissions at [4.22].

s 20 is engaged, nor how the CMA is inconsistent with it.[79]

Not required for consistency with international obligations

45. The appellant argues that "deeming" activities which facilitate the extraction and combustion of fossil fuels to be for the benefit of New Zealand runs counter to New Zealand's international commitments to address climate change.[80] To be clear, the respondent does not contend the CMA "deems" such activities to be for the benefit of New Zealand. Benefit of New Zealand refers to the objective of allocation of economic rights via the powers in the CMA. The phrase "for the benefit of New Zealand" reinforces why the Act's purpose is to promote exploration and mining, and this simply reflects the fact that Parliament considered the Act itself to be of benefit for New Zealand. Nor is it correct that the CMA deems mining to be of benefit whether or not it is in fact of benefit.[81] The ways in which Parliament intended the CMA's benefits to accrue is clear through s 1A(2). Further, the requirement for the Minister to be satisfied of certain matters under s 29A when granting a permit would tend to prevent cases where the activity is not likely to lead to the benefits the CMA seeks to produce.[82]

46. In any event New Zealand's international obligations do not require an immediate stop to oil and gas exploration. The Paris Agreement gives complete discretion as to the targets Parties set and the measures Parties pursue with the aim of achieving the objectives of their Nationally Determined Contributions (**NDCs**). It also envisages that individual Parties' emissions should gradually decrease over time via successive NDCs with increasing ambition, recognising that global peaking of GHGs was a future aim, and targeting the achievement of global carbon neutrality in the second half of this century. The concept of a just transition is also recognised in the Paris

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79 The same can be said for the allegation the Court of Appeal's interpretation is inconsistent with tikanga. There are passing reference to this in the appellant's submissions, although it is not actually addressed in terms of why the alleged inconsistency is. As a result, there is nothing the respondent can respond to.

80 Appellant's submissions at [4.23]. See also references to the so-called "deeming approach" at [4.24] and [4.25] of the Appellant's submissions.

81 Appellant's submissions at [4.17], suggesting for example that a proposed work programme could never be inconsistent with the purpose of the CMA if the purpose is simply to promote mining.

82 For example, CMA, s 29A(2)(c) the Minister must be satisfied "that the applicant is highly likely to comply with the relevant obligations under the Act or the regulations in respect of reporting and the payment of fees and royalties:". This is just one obvious way s 29A seeks to ensure that the intended economic benefits are highly likely to accrue.

Agreement and in other international instruments,[83] and is a key reason why climate issues were not mandatory considerations in this case. Managing climate change risk requires high policy decisions on a range of options that balance speed of change with the need for equity and economic stability.[84] Parliament has created the machinery for this in the CCRA. This wider legislative context and the absence of machinery in the CMA to enable such an assessment confirms Parliament did not intend it to be the s 25 decision-maker's role.

47. While it is correct courts will on occasion interpret legislation to be consistent with international obligations (where the text allows it),[85] the need is not animated here because the continued operation of the CMA is not inconsistent with New Zealand's international obligations.[86] Nor is there evidence granting PEPs (or even PMPs in due course) will impact compliance with New Zealand's international obligations to reduce GHG emissions. There is no inconsistency here. Even if there were some perceived inconsistency (present or future), international obligations cannot be used to thwart the obvious purposes of an Act.[87]

48. The respondent submits the following "mandatory relevant considerations" identified by the appellants also do not meet the threshold for becoming mandatory through the obvious materiality route.

49. First, the climate change consequences of continuing to explore for and combust fossil fuel and/or the conflict between needing maximum reduction

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83 Paris Agreement, Preamble. COP 2021 declaration on Supporting the Conditions for a Just Transition Internationally. It also features in the International Energy Agency, Net Zero by 2050 Report **[[303.1105]]**.

84 As acknowledged in *Smith v Attorney-General* [2022] NZHC 1693 at [153] **[[RBOA, Tab 15]]**. See also at [158], where the High Court endorses the following quote from Winkelman, Glazebrook and France JJ writing extra-judicially: "This is an area of high policy; where the need for a speedy response is balanced in policy terms with preserving economic stability and legitimate policy choices as to how reduction targets may best be met."

85 *Ortmann v United States of America* [2020] NZSC 120, [2020] 1 NZLR 475 at [313] "…there is a presumption that Parliament does not intend to legislate contrary to international obligations and statutes are interpreted accordingly. **That of course is subject to the words of an Act allowing such a construction**." (emphasis added).

86 The recommendation noted "the continuing production of energy from non-renewable resources in the near and medium term during the 10 year term of the proposed permit and thereafter is not inconsistent with the CCC's advice or the 2050 target." See above at [46] regarding the obligation for a just transition.

87 *Helu v Immigration and Protection Tribunal* [2015] NZSC 28, [2016] 1 NZLR 298 at [143] **[[ABOA, Tab 15]]**: "the international text may not be used to contradict or avoid applying the terms of the domestic legislation." (Per McGrath J).

in GHG to meet 2050 Target and ongoing exploration:[88]

49.1 This is in effect saying the s 25 decision-maker was required to consider the validity of the CMA's entire premise. Mandatory relevant considerations seek to ensure decision-making powers are exercised lawfully, not to call into question the validity of the power's existence or the empowering Act's fundamental premises.[89] Parliament cannot have intended that a decision-making power could *only* be exercised after taking this kind of issue into account.[90]

50. Second, the climate change implications of the PEPs in this case. This includes: the implications of extraction and burning in respect of emissions from products extracted in New Zealand but burned in other jurisdictions, and: the potential volume of GHGs under each permit and commercial operations that might ensue over the duration of those operations:[91]

50.1 It would be a purely speculative exercise for the decision-maker to assess a PEP's impact on climate change. The undisputed evidence is that the vast majority of PEPs granted do not result in grant of a related PMP[92] and petroleum produced from PMPs in New Zealand is processed both in New Zealand and offshore for various purposes. The appellant effectively contends a PEP should be assessed based on a series of assumptions contrary to these undisputed facts. This would be a radical departure from the current regime, contrary to the MPP's stated objective of reducing sovereign risk. Therefore, the effect of unknown future activities could not properly, or in practical terms, be taken into account by the decision-maker. This is not to deny that the CMA's regime is intended to lead to an end use for resources, but it does mean consideration of such matters could not

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88 Appellant's submissions at [1.1].

89 A mandatory relevancy of this kind would bring the mandatory relevancies doctrine into impossible conflict with other doctrines such as proper purpose doctrine the principles set out by this Court in *Unison Networks Limited v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [53]. "The exercise of the power will be invalid if the decision maker 'so uses his discretion as to thwart or run counter to the policy and objects of the Act.'".

90 See also the comments of Cooke J in the HC Judgment regarding the decision-maker's role not involving managing the conflict between mining and climate change (at [73]– [74]) **[[101.0060]]**.

91 Appellant's submissions at [1.5], [4.54], and [4.33].

92 JD Affidavit at [51]-[52] **[[201.0122]]**.

be mandatory in the way the appellant contends.[93]

50.2 This is consistent with any obligation on the decision-maker to take such steps to inform himself as are reasonable when exercising a statutory power of decision.[94] What is reasonable will "depend on the circumstances prevailing at the time – matters such as time available, resources to hand, existing knowledge and expertise, and reliability or apparent reliability of sources all can have a bearing, along with all else".[95] Subject to a *Wednesbury* challenge, it is for the public body and not the court to decide upon the manner and intensity or degree of inquiry to be undertaken.[96] If these considerations were mandatory, there would be little the decision-maker could reasonably do in terms of determining the impacts of the PEPs. This tells against these factors being so obviously material Parliament must have intended they be considered.

51. Third, the 2050 target and New Zealand's international obligations relating to meeting that target:[97]

51.1 As explained below at [52], Parliament has made it clear taking account of the 2050 target is permissive. It cannot be elevated to mandatory in the context of this case. In any event, there is no inconsistency with the 2050 target (as set out above at [46]-[47]) since it is not based on cessation of all gas and oil exploration.

Certain climate matters become "permissive" considerations under s 5ZN

52. The respondent's position is that s 5ZN empowers decision-makers exercising powers, functions and duties under other legislation to take the s 5ZN matters into account across the statute book. It acts as an invitation or prompt to

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93 The fact there would be impacts (including environmental) must be impliedly accounted for, weighted and accepted under the settings Parliament has chosen. This includes Parliament's intention (above at [33]-[34]_that other regulatory matters would be dealt with elsewhere.

94 *R (on the application of Friends of the Earth) v Secretary of State for International Trade* [2022] EWHC 568 at [98], referring to *R (Balajigari)* [2019] EWCA Civ 673, [2019] 1 WLR 4647 at [70] (per Stuart-Smith LJ) **[[RBOA, Tab 13]]**.

95 *CRA3 Association Industry Association Inc v The Minister of Fisheries* HC Wellington CP317/99, 24 May 2000 at [60], affirmed on appeal: [2001] 2 NZLR 345 **[[RBOA, Tab 9]]** (cited in *Winton Property Investments Ltd v Minister of Finance* [2023] NZCA 368 at [95]) **[[RBOA, Tab 18]]**.

96 *R (on the application of Friends of the Earth) v Secretary of State for International Trade* [2022] EWHC 568 at [98] **[[RBOA, Tab 13]]**.

97 Appellant's submissions at [4.44], [4.60], and [4.60](a).

decision-makers to turn their minds to whether they wish to consider such matters. It does no more than create permissive considerations. The Parliamentary material makes this clear,[98] as does the inclusion of the wording "if they see fit". The language of "may" would have been sufficient to indicate discretion.

53. Whether beyond s 5ZN the listed matters become irrelevant/forbidden, or mandatory, will depend on the decision-making context at hand. Section 5ZN is also silent on what impact those considerations may appropriately have, or what consideration might actually look like. There is a difference between being lawfully *able* to consider a matter, and what weight is appropriately able to be given to a matter.[99]

54. It is submitted that s 5ZN remains permissive under the CMA. It is not expressly excluded under the legislation,[100] but the CMA's strong promotion of permitting purpose, pre-identified benefits and the nature of permitting decisions mean substantive consideration of s 5ZN may be very limited, particularly at stages of decision-making where climate impacts are not certain, not knowable, and do not involve policy decisions about the future of mining.[101] As a result it cannot become mandatory.

55. Section 5ZN may have potential impact in other scenarios:

    55.1 For example, the current CMA includes a decommissioning regime under subpart 2 of Part 1B in respect of petroleum infrastructure no longer in use. There may be scope under this regime for considering emissions reduction uses, such as CO2 sequestration, H2 or biogas storage and transmission.

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98 See for example: Climate Change Response (Zero Carbon) Amendment Bill 136-1 (2019) explanatory note and 14-15 **[[RBOA, Tab 5]]**; and (5 November 2019) 742 NZPD 14719 (Hon James Shaw, moving the second reading of the Climate Change Response (Zero Carbon Amendment Bill)) **[[RBOA, Tab 23]]**; and (5 November 2019) 742 NZPD 14723 **[[RBOA, Tab 23]]**.

99 For example, see *Unison Networks Limited v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [53]. "A power granted for a particular purpose must be used for that purpose but the pursuit of other purposes does not necessarily invalidate the exercise of public power. There will not be invalidity if the statutory purpose is being pursued and the statutory policy is not compromised by the other purpose."

100 C.f. s 59(5)(b) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012: "the [decision-maker] must not have regard to… the effects on climate change of discharging greenhouse gases into the air." **[[RBOA, Tab 6]]**.

101 CA Judgment at [117]: "significant issues about climate change were accordingly not for this decision-maker to address." **[[101.0124]]**.

55.2 Further, this case only involves one Act of many on the statute book, and one with a particularly focussed purpose. Section 5ZN's application is broad,[102] and it may have more obvious relevance in other contexts. Examples would include decisions under other Acts in regards to concessions, or decisions under s 104(1)(c) of the Resource Management Act.[103]

Consideration of s 5ZN in this case was appropriate and sufficient

56. While mandatory considerations must be considered for a decision to be lawful,[104] truly permissive considerations do not.[105] Permissive considerations are those to which the decision-maker may have regard if in their judgment and discretion it is right to do so. Overlooking a permissive consideration does not result in invalidity. Decision-makers retain an unimpeachable discretion whether or not to have regard to permissible considerations.[106]

57. The respondent's position is that the consideration of s 5ZN was appropriate and sufficient in all the circumstances of the case. The below analysis applies whether or not the factors were mandatory, noting the respondent's position is, as above, they were permissive factors only:

57.1 As the emissions budget and ERP (s 5ZN(b)-(c)) were not in existence at the relevant time no consideration was required.

57.2 As to the 2050 Target (s 5ZN(a)), no further information would contradict the conclusion that the 2050 target does not prohibit the use of petroleum as an energy source or as industrial feedstock and did not require immediate cessation of exploration.

57.3 The PEPs' impact on the target (if any) would have been speculative

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102 It applies to a person or body "*exercising or performing a public function, power, or duty conferred on that person or body by or under law*."

103 The respondent also notes that Parliament is able to expressly make a s 5ZN matter mandatory. An example is s 74(2)(d)–(e) of the Resource Management Act 1991 which requires territorial authorities "to have regard to **any emissions reduction plan** or adaptation plan" when preparing or making changes to district plans.

104 Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th Edition, Thomson Reuters, online ed) at [23.2.3]: "It is only when a decision-maker fails to have regard to a *mandatory consideration* that the decision-maker makes a reviewable error of law." (emphasis added) **[[RBOA, Tab 19]]**.

105 *Ashby v Minister of Immigration* [1981] 1 NZLR 222 (CA) at 224 per Cooke J (as he then was) discussing the "difference between obligatory considerations (ie those which the Act expressly or impliedly requires the Minister to take into account) and permissible considerations (ie those which can properly be taken into account but do not have to be)."

106 *Joseph*, above n 104, at [23.2.3](2), citing *CREEDNZ*, above n 43 **[[RBOA, Tab 19]]**.

and assessing impacts based on assumptions would be contrary to the scheme of the CMA and therefore not required. Any duty to enquire or duty to have sufficient information would only involve what is reasonable in the circumstances.[107]

57.4 The consideration of s 5ZN in the decision documents was correct. It was not a tick box analysis. Substantive thought went into what could be said about the 2050 target. Mallon J in the Court of Appeal found the consideration was appropriate.[108] Just because the analysis did not consider the matters the appellant identifies does not mean it was "tokenistic". The decision-maker gave s 5ZN *some* weight (procedurally) but she was entitled not to give it substantive weight, or make a decision on its basis.[109] In the context of this case, specific barriers to challenging weight would be the CMA's strong purpose section, the actual mandatory factors which clearly needed to be given weight, and the need to avoid pursuing an improper purpose.[110]

SUBSTANTIVE SUBMISSIONS PART 3: TE TIRITI

Section 4 of the CMA

58. Section 4 requires the Minister or delegated decision-maker to "have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)".[111] What s 4 requires may change depending on a range of economic, environmental, social and policy conditions which the decision-maker is entitled to weigh.[112] The yardstick is what is reasonable in the circumstances.[113] Section 4 must be

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107 See for example: *Winton Property Investments Ltd v Minister of Finance* [2023] NZCA 368 at [95] **[[RBOA, Tab 18]]**, citing and endorsing the position set out by McGechan J in *CRA3 Industry Association Inc v Minister of Fisheries* HC Wellington CP317/99, 24 May 2000.

108 CA Judgment at [130] **[[101.0128]]**.

109 See *Winton Property Investments Ltd v Minister of Finance* [2023] NZCA 368 at [108] (a challenge to the weight given to mandatory factors is beyond the scope of judicial review) **[[RBOA, Tab 18]]**.

110 Under *Unison Networks Ltd v Commerce Commission*, above n 99 **[[RBOA, Tab 17]]** or *Padfield v Minister of Agriculture, Fisheries and Food* [1968] UKHL 1, [1968] AC 997 **[[RBOA, Tab 12]]** principles.

111 CMA, ss 4 and 14. This contrasts with different formulations like "give effect to" in s 4 of the Conservation Act 1987, the subject of *Ngāi Tai ki Tāmaki Tribunal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368 **[[ABOA, Tab 20]]** and *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 **[[RBOA, Tab 19]]**. See also, *Ngāti Whātua Ōrākei v Attorney-General (No. 4)* [2022] NZHC 843, [2022] 3 NZLR 601 at [584], [586], and [588] which summarises the case law on the three key Treaty principles.

112 See *Ngāi Tai ki Tāmaki Tribunal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368 at [92] **[[ABOA, Tab 20]]**. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC) [***Broadcasting Assets***] at 517, 520 **[[RBOA, Tab 11]]**.

113 At 517 **[[RBOA, Tab 11]]**; *New Zealand Māori Council v Attorney General* [2013] 3 NZLR 31, [2013] NZSC 6

read in the context of the permitting regime established by the CMA.[114] Accordingly, the work to be done by s 4 is in taking account of the iwi views relevant to the particular permit determinations, not the broader climate change impact which might be related to iwi Māori generally.[115] That latter approach would be to substitute a policy approach contrary to the purpose of the legislation. When wider climate change policy (which responds to intergenerational damage) is addressed elsewhere.

59. The material before the decision-maker was sufficient to support a decision consistent with s 4. The decision-maker properly understood that the Treaty principles were partnership, active protection, and redress for past wrongs and had regard to them as they applied to her decision.[116] The Court of Appeal noted partnership is dealing with each other reasonably and in good faith.[117] Consultation with iwi occurred in accordance with the MPP.[118] Section 14 CMA requires the MPP to set out or describe how the Minister and the Chief Executive will have regard to the principles of the Treaty.[119]

60. The Courts below found there was no breach of s 4.[120] Those courts accepted climate change matters could become indirectly relevant to decisions under s 4 if raised by directly affected iwi and hapū whose traditional lands were in the permit area.[121] If that did occur, the decision-maker would need to consider that, but no outcome is mandated.[122]

61. The appellant seeks to use the s 25 decision as a vehicle to address the effects of climate change on Māori interests protected by the Treaty. This would

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at [89] **[[RBOA, Tab 10]]**.

114 CA judgment at [108] –[109] **[[101.0122]]**. *Ngāi Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553, where the stronger section 4 Conservation Act 1987 provision ("give effect to Treaty principles") still had to be read in the context of the primacy of the conservation purpose in the Act (cited in *Ngāi Tai ki Tāmaki Tribunal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368) **[[ABOA, Tab 20]]**.

115 CA judgment at [98]– [99] **[[101.0119]]**.

116 In *Greenpeace of New Zealand v Minister of Energy and Resources* [2012] NZHC 1422 at [130]: when considering s 4 of the CMA, the High Court held it was necessary to look at what happened and when to determine on an objective basis whether there has been meaningful good faith consultation and compliance with Treaty obligations by the Crown.

117 See CA Judgment at [92] – [94] **[[101.0118]]**.

118 Minerals Programme for Petroleum 2013 **[[301.0028]]**.

119 Crown Minerals Act 1991, s 14 **[[ABOA, Tab 4]]**.

120 HC Judgment at [111] – [113] **[[101.0071]]**; CA Judgment at [108] **[[101.0123]]** per French and Gilbert JJ.

121 HC Judgment at [99]-[100] **[[101.0068]]**; CA Judgment at [108] **[[101.0123]]** per French and Gilbert JJ; [118] per Mallon J **[[101.0125]]**.

122 HC Judgment at [99] – [100] **[[101.0068]]**; CA Judgment at [96] **[[101.0119]]**.

necessitate an informed system-wide response across government agencies. The Treaty consistency of a decision needs to be assessed in the round of what is reasonable in the circumstances at the time.[123]

Section 4 was sufficiently considered

62. The decision-maker's assessment of the Treaty principles under s 25 did not include an assessment as to whether petroleum exploration should cease in New Zealand because of the wider impacts of climate change on Māori.[124] Instead, it focused on the submissions made by iwi directly affected by the proposed bids. For the Riverside bid, this was Ngāti Ruanui, and for the Greymouth bid this was Te Ātiawa and Taranaki Iwi.

63. The recommendations summarised the submissions that were received from Te Rūnanga o Ngāti Ruanui, Te Kotahitanga o Te Ātiawa Trust and Te Kāhui o Taranaki and explained what actions MBIE had taken in response to these submissions:[125]

    63.1 With regard to the active protection of sites of cultural and historical significance, where these overlapped with the permit areas, permits were granted with a condition that created an explicit obligation to engage with iwi for activities near such sites.[126] While officials had not involved iwi in the evaluation of the bids from Riverside and Greymouth, as part of their evaluation they considered whether or not the relevant bidders were likely to comply with the iwi engagement condition,[127] and were satisfied that they would comply with them and the reporting obligations under s 33 of the CMA.[128]

    63.2 In accordance with the principle of partnership and recognising that the Crown's obligations are ongoing, officials engaged with iwi in relation to whether the involvement and consultation had been appropriate.[129] Future improvement and development was also

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123 *New Zealand Māori Council v Attorney General* [2013] 3 NZLR 31, [2013] NZSC 6 at [89] **[[RBOA, Tab 10]]**.

124 CA Judgment at [95] **[[101.0118]]**.

125 PF affidavit at [42] **[[201.0181]]**.

126 PF affidavit at [42.1] **[[201.0181]]**.

127 Noting that this is now a statutory requirement under Crown Minerals Act 1991, s 29C (inserted, on 1 April 2024, by s 11 of the Crown Minerals Amendment Act 2023 (2023 No 53)) and would apply to any subsequent mining permit applied for by Riverside and Greymouth **[[RBOA, Tab 1]]**.

128 PF affidavit at [42.1] **[[201.0181]]**.

129 PF affidavit at PF-1 p 141 (Briefing paper following iwi consultation) **[[302.0627]]**.

discussed.[130]

64. The recommendation also alerted the decision-maker to the Crown Minerals Protocol between MBIE and Te Rūnanga o Ngāti Ruanui,[131] and relationship agreements between MBIE and Te Kotahitanga o Te Ātiawa Trust and Te Kāhui o Taranaki.[132]

It was reasonable for the decision-maker to focus on localised issues and engagement with directly affected iwi

65. The decision-maker's regard for the Treaty principles was appropriately limited in the context of the CMA to the localised issues associated with the particular bids of the proposed PEPs.[133]

66. The impact of climate change on Māori is generally relevant to the Crown's Treaty obligations. However, the s 25 decision-maker was not required to engage in a wide-ranging inquiry into in the effects of climate change for Māori, or to use the s 25 decision as a climate change mitigation measure, in a way akin to what the appellant says was required.[134]

67. Climate change considerations were not raised by iwi and hapū whose rohe overlapped with the proposed permit areas. During consultation undertaken before Block Offer 2019 was opened, Te Korowai o Ngā Ruahine Trust, in their submission, referred to the ongoing allocation of Block Offers for minerals exploration as going against the commitment to move towards a low-emissions economy, that is low impact and renewable.[135] The submission recognised that transitioning to a low-emissions economy requires leadership and commitment, and in doing so hard decisions need to be made.[136] This is consistent with the policy of a just transition.

68. The High Court concluded there was no error in the decision-maker not addressing this point for the s 25 decision as the permits at issue did not relate to the ancestral lands of Ngā Ruahine, and there has been no allegation of a

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130 PF affidavit at [42.1] **[[201.0181]]**.

131 Recommendation to grant PEP 60742 (Riverside) **[[305.1862]]**. See Ngāti Ruanui engagement protocol **[[307.2637]]** and email regarding the request update to this protocol **[[305.2203]]**.

132 Recommendation to grant PEP 60479 (Greymouth) **[[305.1910]]**.

133 Minerals Programme for Petroleum 2013, cl 2.4 **[[301.0028]]**.

134 Appellant's submissions at [5.5], [5.8], and [5.14].

135 PF Affidavit at PF-1 p 61 (Briefing Paper on opening Block Offer 2019): **[[302.0561]]**.

136 PF Affidavit at PF-1 p 61 **[[302.0561]]**.

Treaty breach by the iwi directly affected.[137] Higher-level assessments relevant to all Māori as to whether there had been compliance with the principles of the Treaty were not for the s 25 decision-maker.[138] The High Court also cautioned against reaching decisions based on the views expressed by iwi without having them formally before it as doing so might mean the Court acts inconsistently with rangatiratanga and tikanga.[139]

69. The Court of Appeal agreed higher-level climate assessments were not for the s 25 decision-maker,[140] and the wide-ranging inquiry advocated for by the appellants would involve balancing considerations that have and are being addressed elsewhere.[141] The decision-maker was entitled to focus on localised issues and did so in a meaningful way.[142] The appellant challenges the effect of this finding, that wider climate change issues will only be relevant if raised by directly affected iwi.[143]

70. The decision to issue the PEPs was not inconsistent with the principles of the Treaty simply because climate change issues that affect Māori exist.[144] Climate change mitigation measures also affect Māori and the approach to addressing these is multi-factorial and developed with Māori involvement.[145] Declining the permits in the absence of a policy to cease petroleum exploration permitting as part of a just transition would arguably have run counter to the principle of partnership.

71. The analysis of Treaty principles involves questions of evaluation, and judgement.[146] The Crown's Treaty obligations provide for Māori interests alongside other legitimate government imperatives. As the High Court recognised, this "may involve an apparent contest between rangatiratanga

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137 HC Judgment [106] **[[101.0070]]**.

138 HC Judgment at [107]-[108] **[[101.0070]]**.

139 HC Judgment at [103] **[[101.0069]]**.

140 CA Judgment at [108] **[[101.0122]]**.

141 CA Judgement at [108] **[[101.0122]]**.

142 CA Judgement at [108] **[[101.0122]]**.

143 Appellant's submissions at [5.8].

144 HC Judgment at [111] **[[101.0071]]**.

145 HC Judgment at [111] **[[101.0071]]**; CA Judgment at [99] **[[101.0119]]**. Further, the necessary assessments have taken place in other ways, including under other statutory provisions. Iwi have been consulted as part of these processes and there was nothing before the Court to indicate that the consultation has been inadequate, or that the principles have not been properly addressed.

146 HC Judgment at [93] **[[101.0066]]**.

and kāwanatanga".[147] Where climate change issues are raised by iwi and hapū during consultation, these issues must be considered in respect of rangatiratanga of those with interests in the permit area.

The wider impacts of climate change for Māori are addressed in the CCRA

72. The wider impacts of climate change and the policy work related to the addressing climate change mitigation and adaptation measures which will affect Māori are governed more broadly under the CCRA. Section 3A CCRA sets out how the Crown will give effect to the principles of the Treaty. Section 3A includes the requirements that:

72.1 Emissions reduction plans include a strategy to recognise and mitigate impacts on iwi and Māori of reducing emissions and ensure that iwi and Māori have been adequately consulted on the plan.[148]

72.2 In preparing the National Adaptation Plan, the Minister for Climate Change must take into account the economic, social, health, environmental, ecological, and cultural effects of climate change on iwi and Māori.[149]

72.3 When the Minister for Climate Change is recommending secondary legislation under the CCRA in relation to various sections under the CCRA, the Minister must consult representatives of iwi and Māori that appear to have an interest in the secondary legislation.[150]

73. Under the CCRA framework, the Crown's Treaty obligations are also given effect through representation of persons with relevant experience, expertise, and innovative approaches, relevant to the Treaty, in recommendations for appointment to the Commission. Particular attention must be given to seeking nominations from iwi and Māori representative organisations.[151]

74. The purpose of the Commission is to provide independent expert advice to the Government on mitigating and adapting to the effects of climate change, and to monitor and review the Government's progress towards its emissions

147 HC Judgment at [93] **[[101.0066]]**.

148 CCRA, s 3A(ad) **[[RBOA, Tab 3]]**.

149 Section 3A(ae).

150 Section 3A(b).

151 Section 3A (ab) and (ac); 5H.

reduction and adaptation goals.[152]

75. At the time of the decisions, other system wide climate change work programmes include: hui and consultation on climate change and energy policies;[153] consultation during a review of the emissions trading scheme;[154] the Just Transition Unit coordinating cross-government work and leading engagement with Māori/iwi and social partners;[155] consultation on the proposed CMA amendments and proposals for Māori engagement/involvement in Crown minerals;[156] the Commission's consultation with Māori to develop its recommendations on the policy direction for an equitable transition;[157] and consultation on the New Zealand's Emissions Reduction Plan and National Adaptation Plan on climate change.[158]

The decision-maker was not required to consider a potential failure to keep global warming under 1.5°C

76. The appellant submits the decision-maker was required to consider the effects that a failure to keep global warning under 1.5°C and avoid catastrophic climate change will have on the ability of tangata whenua to exercise the rights conferred under Article 2 of Te Tiriti. [159] This broad consideration was not required by s 4 of the CMA.

77. The Commission's advice, which the decision-maker had knowledge of and was referred to in the recommendations stated that it was necessary to have a smooth and appropriately sequenced phase down of fossil fuel use.[160] An immediate cessation was not required, nor was one suggested by the Commission. Consistent with Treaty principles, New Zealand's just transition work includes specific engagement between the Crown and Māori. The High Court observed the evidence filed by the respondent demonstrates Māori views on climate change, and the measures taken to address its adverse

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152 Section 5C.

153 MG Affidavit at [113]-[116] **[[201.0223]]**.

154 MG Affidavit at [35]-[38] **[[201.0204]]**.

155 MG Affidavit at [108] **[[201.0222]]**; and Affidavit of James Paul Soligo at [19]-[20] **[[201.0153]]**.

156 See Briefing paper: CMA 1991 review tranche 2 iwi engagement **[[301.0357]];** and Briefing paper: CMA review updating offshore petroleum management settings **[[301.0367]]**.

157 Climate Change Commission's Advice, Ch 19, p 325 **[[304.1717]]**.

158 MG Affidavit at [68]-[68.4] and [72]-[73.4] **[[201.0212]]**.

159 Appellant's submissions at [5.14].

160 CA Judgment at [129]-[130] per Mallon J **[[101.0128]]**.

effects, have been taken into account in a number of ways, and through a number of overlapping procedures.[161] This evidence is not disputed.

78. An immediate cessation of petroleum exploration was also not suggested from the consultation with Taranaki iwi and hapū, or the analysis of the 2050 Target (as the only s 5ZN matter in existence at the time). The decision-maker also did not consider that granting the two PEPs in this case would lead to a failure to keep global warming under 1.5°C. In these circumstances, the decisions cannot be impugned on the basis of an alleged breach of s 4.

RELIEF

79. The respondent says the appeal should be dismissed.

17 April 2025

A Boadita-Cormican | E Dowse | D Ranchhod
Counsel for the respondent

TO: The Registrar of the Supreme Court of New Zealand.

AND TO: The appellant, intervener and interested parties.

[161] HC Judgment at [116] **[[101.0072]]**.

LIST OF AUTHORITIES

Legislation

1. Crown Minerals Act 1991, ss 2 definition of "exploration" and "mining", 8, 9, 10, 17, 18, 22, 23, 24, 29C, 34, 35, 61B, 61C, and 92
2. Crown Minerals Act 1991 (as at 7 August 2020), ss 1A, 5 and 24
3. Climate Change Response Act 2002, s 3A and pts 1A – 1C
4. Climate Change Response Bill 2002 (212-1), explanatory note
5. Climate Change Response (Zero Carbon) Amendment Bill 2019 (136-1), explanatory note, and pp 14 - 15
6. Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 59
7. Resource Management Act 1991, ss 74 and 104

Cases

8. *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767
9. *CRA3 Association Industry Association Inc v The Minister of Fisheries* HC Wellington CP317/99, 24 May 2000
10. *New Zealand Maori Council v Attorney-General* [2013] NZSC 6, [2013] 3 NZLR 31
11. *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC)
12. *Padfield v Minister of Agriculture, Fisheries and Food* [1968] UKHL 1, [1968] AC 997
13. *R (on the application of Friends of the Earth Ltd) v The Secretary of State for International Trade* [2022] EWHC 568
14. *R (on the application of Friends of the Earth Ltd) v Secretary of State for Transport (Heathrow Airport Ltd)* [2020] UKSC 52, [2021] 2 All ER 967
15. *Smith v Attorney-General* [2022] NZHC 1693
16. *Smith v Attorney-General* [2024] NZCA 692
17. *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42
18. *Winton Property Investments Ltd v Minister of Finance* [2023] NZCA 368

Texts

19. Phillip A Joseph *Joseph on Constitutional and Administrative Law* (5th Edition, Thomson Reuters, online ed) at [23.2.3]

Other

20. (25 September 2012) 684 NZPD 5642

21. (21 March 2013) 688 NZPD 8844

22. (10 April 2013) 689 NZPD 9257

23. (5 November 2019) 742 NZPD 14719 and 14723