

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

**I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE**

CIV-2021-412-089

UNDER the Declaratory Judgments Act 1908

IN THE MATTER of an application under the Declaratory Judgments Act 1908

BETWEEN **OTAGO REGIONAL COUNCIL**
Plaintiff

AND **ROYAL FOREST AND BIRD PROTECTION SOCIETY INC**
Defendant

**MEMORANDUM OF COUNSEL OF NGĀ RŪNANGA SEEKING LEAVE IN
ACCORDANCE WITH HIGH COURT RULE 5.51(3)**

Dated 17 December 2021

Next event date: 8 February 2022

Solicitor acting:

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Te Rūnanga o Ngāi Tahu
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MAY IT PLEASE THE COURT:

Application for leave in accordance with High Court Rule 5.51(3)

1. On 26 October 2021 Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**) filed a Notice of Appearance in the High Court under Rule 5.51 of the High Court Rules 2016. Ngā Rūnanga did not oppose the Plaintiff's claim but filed a notice of appearance in order to reserve its rights in the event that:
 - a. any other person became a party to the proceeding; or
 - b. any person, already a party, took steps in the proceeding adverse to Ngā Rūnanga interests.
2. In accordance with High Court Rule 5.51(3), Ngā Rūnanga now respectfully seek leave from the Court to:
 - a. file and serve a statement of defence and affidavits by 22 December 2021; and
 - b. file written legal submissions and participate in the hearing of this matter on 8 and 9 February 2022.
3. Upon review of the affidavits filed by the third parties to this proceeding, Ngā Rūnanga have identified that the positions of some of the other third parties have the potential to be adverse to Ngā Rūnanga interests. Ngā Rūnanga wish to have the opportunity to file affidavits and make legal submissions in order to:
 - a. provide further information on integrated management from the perspective of mana whenua;
 - b. respond to issues raised in parties' affidavits which affect mana whenua interests; and
 - c. preserve rights of appeal, as noted in the High Court's Minute dated 29 October 2021.
4. Counsel for Ngā Rūnanga have informed all other parties by way of email that Ngā Rūnanga intended to seek leave from the Court as set out in paragraph 2 above. However, given the time of the year, counsel have not prepared this memorandum jointly with the other parties. No party has responded to Counsel's email indicating that they would object to the request for leave.
5. In their joint memorandum dated 3 September 2021 the Plaintiff and Defendant recorded that "*Neither the plaintiff nor the defendant will oppose leniency being afforded to any person who wishes to join the proceedings out of time so long as*

the hearing dates are not affected." Ngā Rūnanga confirm that they will abide by the timetabling directions made to date.

6. It is further understood that, in accordance with the joint memorandum of counsel dated 22 November 2021, the Plaintiff is to file affidavits in response to matters raised in the affidavits of the other parties on 24 December 2021. Counsel for Ngā Rūnanga has liaised with the Plaintiff with respect to this timing and understands that there is no objection from the Plaintiff to Ngā Rūnanga filing their affidavits on 22 December 2021.
7. Ngā Rūnanga consider that there is no prejudice to any party because:
 - a. Ngā Rūnanga have already, through their notice of appearance, indicated their interest in the declaration proceedings and sought to reserve their rights;
 - b. Ngā Rūnanga acknowledge that the late filing is close to when the plaintiff's submissions are due, but the plaintiff has indicated it is comfortable with this timing; and
 - c. Ngā Rūnanga agree to abide by the timetabling directions that have already been set and the filing of the statement of defence will not delay the hearing of this matter.
8. Accordingly, Ngā Rūnanga respectfully seek leave from the Court to file a statement of defence and affidavits in these proceedings and to file legal submissions and participate in the hearing on 8 and 9 February 2021.

Counsel acting and address for service

9. Ngā Rūnanga further notifies the Court as to a change of representation.
10. The solicitor acting for Ngā Rūnanga remains Jessica Riddell of Te Rūnanga o Ngāi Tahu. However, counsel acting is now Joshua Leckie and Katharine Hockly of the firm Lane Neave.
11. The address for service of Ngā Rūnanga remains Jessica Riddell, 15 Show Place, Addington, Christchurch, 8024. Documents for service may be left at the address for service or may be:
 - a. posted to the solicitor at PO Box 13-046, Christchurch 8141; or
 - b. emailed to the solicitor at Jessica.riddell@ngaitahi.iwi

DATED this 17th day of December 2021



Joshua Leckie / Jessica Riddell
Counsel for Ngā Runanga