I te Kōti Pīra o Aotearoa | In the Court of Appeal of New Zealand

CA

between

GREENPEACE AOTEAROA INCORPORATED
Appellant

and

HIRINGA ENERGY LIMITED AND BALANCE AGRI-NUTRIENTS LIMITED
First Respondents

and

TE KOWOWAI O NGĀRUAHINE TRUST
Second Respondent

and

ŌKAHU-INUAWAI ME ĒTEHI ATU HAPŪ, NGĀTI TU HAPŪ, NGĀTI TAMAAHUROA-TITAHI HAPŪ, NGĀTI HAUA HAPŪ

NOTICE OF APPEAL

28 November 2022

LeeSalmonLong

Barristers and Solicitors

LEVEL 16 VERO CENTRE 48 SHORTLAND STREET

PO BOX 2026 SHORTLAND STREET AUCKLAND NEW ZEALAND

TELEPHONE 64 9 912 7100

EMAIL: david.bullock@lsl.co.nz SOLICITOR ON RECORD: DAVID BULLOCK

EMAIL: kate.hursthouse@lsl.co.nz SOLICITOR ACTING: KATE HURSTHOUSE

AND KANIHI UMUTAHI ME ĒTEHI ATU HAPŪ
Third Respondents

and

TARANAKI MĀORI TRUST BOARD
Fourth Respondent

NOTICE OF APPEAL

The appellant in the proceeding identified above, Greenpeace Aotearoa Incorporated, gives notice that it is appealing to the Court against the judgment of Grice J in the High Court at Wellington in *Te Korowai o Ngāruahine Trust v Hiringa Energy Ltd & Anor* [2022] NZHC 2810 dated 31 October 2022.

Grounds of Appeal

1. The specific grounds of the appeal are:

   (a) The High Court erred in failing to find that the Panel's decision to place no conditions on whether, when and how the project transitioned from fertiliser feedstock production to fuel production, and to instead only provide for review by the local authority under its powers in s 128 of the Resource Management Act 1991 (**RMA**), was a breach of s 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**FTCA**) because:

      (i) the Panel had correctly identified that transition to 100 per cent fuel use with 5 years was a critical reason for its decision to grant the consent, yet the conditions of the consent did not require this to occur and there was nothing requiring the local authority to ensure that critical transition to fuel use (or otherwise providing parameters against which the local authority should assess transition); and

      (ii) in reviewing the conditions of the consent, and in making any decisions about those conditions, under the RMA the local authority is not required to act consistently with Te Tiriti o Waitangi.

   (b) The High Court erred in failing to find that the Panel was wrong to take into account the fact of transition as a critical reason for granting the consent when, due to the lack of conditions requiring transition, there was no guarantee that a transition would ever occur.

   (c) The High Court erred in finding that the Panel, having relied on transition as the critical reason for granting the consent, was not required to include any conditions requiring transition from fertiliser feedstock production to fuel production, or to otherwise include any conditions setting out parameters for when and how that transition needed to occur, or how progress towards transition should be assessed and reviewed.

   (d) The High Court erred in failing to find that the Panel, having decided to not require transition to occur (either within a particular period of time or at all), needed to assess the environmental effects of the project (including the end use of ongoing fertiliser production) on the basis that the project would never transition to fuel production (or that the transition might not occur for decades).

2. The appellant seeks the following judgment from the Court of Appeal:

   (a) Allowing the appeal and quashing the decision to grant a consent to the first respondents;

   (b) As to costs; and

   (c) Such other orders as the Court sees fit.

3. The Appellant is not legally aided.

Dated 28 November 2022

David Bullock / Kate Hursthouse
Counsel for the Appellant

This document is filed by David Bullock solicitor for the Appellant of the firm LeeSalmonLong.

Documents for the Appellant may be served at the offices of LeeSalmonLong situated on Level 16, Vero Centre, 48 Shortland Street, Auckland, or may be posted to P O Box 2026, Shortland Street, Auckland.