

IN THE DISTRICT COURT AT WHAKATANE

I TE KŌTI-Ā-ROHE KI WHAKATĀNE

CRI-2020-004-009514

[2021] NZDC 11265

WORKSAFE NEW ZEALAND

Prosecutor

v

WHAKAARI MANAGEMENT LIMITED

ANDREW BUTTLE

JAMES BUTTLE

PETER BUTTLE

INSTITUTE OF GEOLOGICAL AND NUCLEAR SCIENCES LIMITED

NATIONAL EMERGENCY MANAGEMENT AGENCY

WHITE ISLAND TOURS LIMITED

VOLCANIC AIR SAFARIS LIMITED

AERIUS LIMITED

KAHU NZ LIMITED

INFLITE CHARTERS LIMITED

I D TOURS NEW ZEALAND LIMITED

TAURANGA TOURISM SERVICES LIMITED

Defendants

Date: 3 June 2021

Appearances: K McDonald QC, S Symon and E Smith for the Prosecutor
D Neutze for the Defendants Whakaari Management Limited,
Buttle and I D Tours New Zealand Limited
G Galloway and J Lill for the Defendant Institute of Geological
and Nuclear Sciences Limited
V Casey QC for the Defendant National Emergency Management
Agency
R Raymond QC and G Nicholson for the Defendant White Island
Tours Limited
A Ross QC and I Rosic for the Defendant Volcanic Air Safaris
Limited
A Darroch for the Defendant Inflite Charters Limited

L Castle and S Lomaloma for the Defendants Aerius Limited and
Kahu NZ Limited
S Wroe for the Defendant Tauranga Tourism Services Limited

MINUTE OF JUDGE E M THOMAS

Media applications

[1] I previously granted applications to cover today's hearing for:

- (a) TVNZ,
- (b) Newshub,
- (c) Radio New Zealand,
- (d) Pencil Productions Limited,
- (e) Stuff Media,
- (f) Reuters Australia,
- (g) Imagine Documentaries,
- (h) Whakatane Beacon, and
- (i) NZME.

[2] I have further applications from:

- (a) Ms Clark for the Australian Broadcasting Corporation (to cover this hearing), and

(b) Mr McKay for Australian Associated Press (to cover all hearings).

[3] No party opposes those two applications. The principle of open justice applies. There being no factors suggesting otherwise, I grant those two applications.

[4] I have also discussed with counsel whether all media agencies now entitled to cover today's proceedings may cover all hearings in these proceedings without the need for any further application. No party opposes that course. I make that order. So, all agencies I have mentioned in paragraphs [1] and [2] are now entitled to cover any hearing in relation to these proceedings. That is subject to:

(a) standard conditions; and

(b) any further order of this court.

Report from counsel to assist the court

[5] Mr Gowing as counsel to assist the Court has provided a thorough report on the attitudes of victims and the wider community to venue. I am very grateful to Mr Gowing for the work that he has put into that. I am also very grateful to all of those who took the time to speak to him and convey their views.

[6] In summary, for those connected to the Whakatane area there appeared to be a strong preference for hearings to be held in Whakatane. For those elsewhere in New Zealand or around the world the position was not as strong, understandably.

[7] Mr Gowing has kindly agreed to retain his assignment as counsel to assist. I will call on him as required to represent those interests, if needs be, in any future discussion.

Pleas

- [8] National Emergency Management Agency has pleaded not guilty by notice.
- [9] All other defendants seek an adjournment. WorkSafe initially opposed that application. Its position softened as argument developed. WorkSafe argues that the Criminal Procedure Act 2011 contemplates a defendant pleading once initial disclosure has been provided. That disclosure has been provided. However, WorkSafe accepts that this is a case where, fairly, rather more than initial disclosure should be available to defendants before they are called upon to plead.
- [10] Instead focus turned to the case review hearing. It will be critical to the timely management of this very large proceeding that the case review hearing is a truly meaningful one. All parties understand that they need to be ready at that case review hearing to identify pre-trial issues for scheduling and hearing purposes.
- [11] The date for that case review hearing is 13 September. The venue will be here, in the Whakatane District Court, for reasons that I have set out in a separate ruling.
- [12] The defendants must enter their pleas by notice no later than 24 August.

Joinder of Defendants

- [13] WorkSafe filed a notice joining all defendants in a single proceeding. Some defendants challenged the validity of that notice based on the appropriate court of filing.
- [14] By separate ruling I have determined:
- (a) the proceedings are valid;

- (b) for the moment they are vested in the Auckland District Court, except for the case review hearing which has been transferred here; and
- (c) the notice of joinder is valid.

Judge EM Thomas
District Court Judge

Date of authentication: 11/06/2021

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.