



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

06 NOVEMBER 2023

MEDIA RELEASE

SUSTAINABLE OTAKIRI INCORPORATED v WHAKATĀNE DISTRICT COUNCIL

(SC 1/2023)

TE RŪNANGA O NGĀTI AWA v BAY OF PLENTY REGIONAL COUNCIL

(SC 2/2023)

Hearing in the Supreme Court [Wednesday 22 November – Friday 24 November]

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

Introduction

This case relates to a dispute around the proposed expansion of a water bottling plant in the Bay of Plenty. It raises important questions about the relevance of the “end use” effects of an activity (in this case the relevance of the use of plastic bottles) when considering a resource consent under the Resource Management Act 1991 (RMA).

Background

In 2016, Creswell NZ Ltd entered into an agreement to buy a water extraction/bottling business, Otakiri Springs Ltd, and the land where it was located. Creswell then sought various resource consents from the Bay of Plenty Regional Council (BOP Regional Council) and Whakatāne District Council (Whakatāne DC) relating to water take and land use for the operation and expansion of the water bottling plant. The consents were granted.

Environmental group Sustainable Otakiri Incorporated (Sustainable Otakiri) appealed against the decision of the Whakatāne DC, and iwi trust Te Rūnanga o Ngāti Awa (Ngāti Awa) appealed against the decision of the BOP Regional Council. The Environment Court dismissed the appeals and upheld the consents (subject to additional conditions). Sustainable Otakiri and Ngāti Awa then appealed to the High Court.

The High Court upheld the Environment Court’s decision, including that the “end use” of plastic water bottles should not be taken into account; the activity was a discretionary “rural processing activity” rather than a non-complying “industrial activity”; and the proposed operation was the expansion of an existing activity rather than a new activity. The High Court also rejected arguments that the resource consents would negatively affect te mauri o te wai and the ability of Ngāti Awa to exercise kaitiakitanga (collectively, the negative tikanga effects).¹

The Court of Appeal granted leave to appeal on all issues, apart from that relating to negative tikanga effects. The Court of Appeal dismissed the appeal, upholding the High Court’s decision, except for the ruling that the proposal was simply the expansion of an existing activity (although this did not affect the final outcome).

This appeal

Sustainable Otakiri and Ngāti Awa applied for leave to appeal against the decision of the Court of Appeal to the Supreme Court. Ngāti Awa further applied for leave to appeal directly from the High Court decision on the negative tikanga effects.

In April 2023, the Supreme Court granted leave to both applicants. The approved questions are:

1. Whether the Court of Appeal was correct to dismiss the appeals; and
2. Whether the High Court was wrong to uphold the Environment Court’s decision in relation to the negative tikanga effects.

Viewing of hearing

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Williams	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Ellen France	The Hon Justice Stephen Kós
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Judges as seen from the public gallery

Counsel

- Sustainable Otakiri Incorporated (Appellant SC 1/2023): *D M Salmon KC, D A C Bullock and E J Mills*
- Te Rūnanga o Ngāti Awa (Appellant SC 2/2023): *H K Irwin-Easthope, K J Tarawhiti and R K Douglas*
- Whakatāne District Council (First Respondent SC 1/2023): *A M B Green and R H Ashton*
- Otakiri Springs Limited (Second Respondent SC 1/2023 and SC 2/2023):² *J B M Smith KC and D G Randal*
- Bay of Plenty Regional Council (First Respondent SC 2/2023): *M H Hill*

¹ Submissions for Ngāti Awa describe “te mauri o te wai” as living essence and character of water, and “kaitiakitanga” as the concept of guardianship.

² Note that Otakiri Springs Ltd has substituted Creswell NZ Ltd as the second respondent as the former now holds the rights and interests in the resource consents in question.

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [[2022 NZCA 598](#)] (2 December 2022)

Supreme Court leave decision: [[2023 NZSC 35](#)] (17 April 2023)

