IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA **SC 1/2023**

BETWEEN	**SUSTAINABLE OTAKIRI INCORPORATED**,
	Appellant
AND	**WHAKATANE DISTRICT COUNCIL,**
	First Respondent
AND	**CRESWELL NZ LIMITED,**
	Second Respondent

WRITTEN SUBMISSIONS OF THE FIRST RESPONDENT

DATED THE 8th DAY OF SEPTEMBER 2023

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MAY IT PLEASE THE COURT

1. INTRODUCTION

1.1 The First Respondent, the Whakatāne District Council ("**WDC**"), submits that Sustainable Otakiri Incorporated ("**SOI**") has not demonstrated that the Court of Appeal erred in law in dismissing SOI's appeal.

1.2 WDC submits that the Court of Appeal was correct in:

(a) finding that the effects on the environment of end use were beyond the scope of consideration in relation to Creswell's application for land use activities. To find otherwise is contrary to settled case law and would have significant negative policy implications for Territorial Authorities ("**TAs**");

(b) finding that the Environment Court did not need to seek further evidence of end use effects, or decline Creswell's application when the majority did not find that those effects were within the scope of consideration;

(c) finding the Environment Court was correct in determining that "rural processing activity" was the correct activity status. The activity has a functional need for a rural location because of its dependence on the artesian water resource at the site, which affords the activity its status as a rural land use; and

(d) not allowing the appeal, despite finding in favour of SOI that an application should have been made under s 88, rather than under s 127 of the Resource Management Act 1991 ("the **RMA**"). To have remitted the decision to the Environment Court would have not impacted the outcome.

1.3 WDC submits SOI has failed to demonstrate that the Court of Appeal was incorrect in its decision.

2. FIRST GROUND OF APPEAL – END USE EFFECTS

2.1 SOI submits that the effects of plastic pollution arising from the production of plastic water bottles were effects that were required to be considered under s 104(1)(a) of the RMA. SOI's submission that a TA must consider the effects of plastic pollution under s 104(1)(a) is contrary to settled case law. There are strong policy reasons against such a submission.

Relevant Authorities

2.2 In *Beadle v Minister of Corrections*, the Environment Court found that regard must be had to the consequential effects of granting resource consents, particularly if they are environmental effects for which there are no other fora, subject to nexus and remoteness.[1] The Court can have regard to the intended end-use of activities, and any consequential effects on the environment, if those effects are not too uncertain or remote.[2]

2.3 In *Cayford*, the Court found that regard is not to be had to effects which are independent of the activity authorised by the consent.[3]

2.4 The *Buller Coal* cases concerned a challenge to a resource consent decision on the basis that end use effects of burning the coal were not properly accounted for in the assessment of effects under s 104(1)(a)of land use activities for a coal mining proposal. . Amendments in 2004 to the RMA had removed the ability of consent authorities to consider the effects of the discharge of greenhouse gas emissions on climate change. In *Buller Coal*, the High Court accepted that the effects on the environment of overseas discharges of greenhouse gasses from the use of coal extracted in New Zealand may have been too remote, but found more fundamentally, they were out of the scope of jurisdiction of the local authority.[4] Without a primary

[1] *Beadle v Minister of Corrections* EnvC Auckland A074/2002, 8 April 2002 at [88].
[2] At [91].
[3] *Cayford v Waikato Regional Council* EnvC Auckland A127/98, 23 October 1998 at 10.
[4] *Royal Forest and Bird Protection Society of New Zealand Inc v Buller Coal Ltd* [2012] NZHC 2156, [2012] NZRMA 552 at [51].

jurisdiction to regulate the extraterritorial discharges, there could be no collateral jurisdiction to do so. The Court found any endeavour to regulate those activities "by the side route of 104(1)(a) could not have been within the contemplation of the legislators" and, in the Court's view, impermissible.[5]

2.5 The Supreme Court majority discussed but did not answer the question of whether the issue would have been answered differently prior to the 2004 amendment to the Act.[6] It noted that the climate change effects were not to be taken into account for the application to mine coal, only the consent for the ancillary and discretionary road.[7] The Court stated that there would have been scope for argument regarding remoteness,[8] cited passages from *Beadle*, and considered that questions of fact and degree would arise.[9] It noted the remarks of Whata J in the High Court regarding the burning of coal overseas, finding those remarks would have been applicable to the situation before the 2004 amendment.

Previous Decisions

The Environment Court's Decision

2.6 The decision in the Environment Court was by majority. Commissioner Kernohan dissented.

2.7 The Environment Court found that the end uses were foreseeable, and may have adverse effects on the environment, but that refusing consent would not have an effect on other instances where plastic bottles are used or where water is exported.[10]

2.8 The Environment Court found that the end uses of putting the water in plastic bottles and exporting the bottled water are matters which go

[5] *Royal Forest and Bird Protection Society of New Zealand Inc v Buller Coal Ltd*, above n 4, at [52].
[6] *West Coast ENT Inc v Buller Coal Ltd* [2013] NZSC 87, [2014] 1 NZLR 32 at [115].
[7] At [118].
[8] At [117].
[9] At [119].
[10] *Te Runanga o Ngāti Awa v Bay of Plenty RC* [2019] NZEnvC 196, (2019) 21 ELRNZ 539 (EnvC) at [64] [[05.0037]].

beyond the scope of consideration of an application for resource consent to take water from the aquifer.[11] The Court stated:[12]

> "[…] we do not think that on an appeal in relation to a particular proposal to take water we can, by our decision, effectively prohibit either using plastic bottles or exporting bottled water. Such controls would require direct legislative intervention at a national level."

The High Court's Decision

2.9 The High Court found that the Environment Court was considering end use effects in relation to both the District and Regional consents.[13]

2.10 The Court found that remoteness is an issue of fact and degree, and therefore, it was not able to make a decision that exporting water was too remote, or otherwise beyond the scope of any application, in the abstract.[14] The Court found that the Environment Court's conclusion to this effect went too far.

2.11 In assessing whether or not the disposal of bottles was too remote, or insufficiently causative or tangible, the Court found:

(a) use of plastic bottles is lawful and not subject to specific regulatory control under the RMA or otherwise.[15]

(b) in so far as the bottles are exported, the effects of discarding them which occur overseas are too remote and outside the scope of the RMA, just as overseas discharges were considered too remote in *Buller Coal.*[16]

(c) it was not inevitable that every bottle will be discarded. Recycling may reduce relevant consequential effects and the effects of the proper disposal at facilities in New Zealand would be considered separately under the RMA.[17]

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[11] *TRONA v BOPRC* (EnvC), above n 10, at [66] [[05.0038]].
[12] At [65] [[05.0037]].
[13] At [54] [[05.0034]].
[14] *Te Runanga o Ngāti Awa v Bay of Plenty RC* [2020] NZHC 3388, (2020) 22 ELRNZ 323 at [142] [[05.0112]].
[15] At [148] [[05.0112]].
[16] At [149] [[05.0113]].
[17] At [150] [[05.0113]].

(d) the fact that something is unlawful and primarily the responsibility of another person does not necessarily preclude nexus.[18]

(e) the linkage is less direct than in *Buller Coal*, where coal was mined to be burned. Here water is not taken in order for bottles to be discarded. But it is not necessarily too remote just because the consumer has acted unlawfully.[19]

(f) regarding tangibility, the evidence did not enable the effects to be ignored on the basis that restricting the water take using plastic bottles would make no appreciable difference to the overall use of plastic bottles and have no perceptible adverse effect on the environment.[20]

2.12 In relation to the Regional consents, the High Court concluded that:

> "[156] Taking into account all these factors, I consider that it is reasonably foreseeable (if not inevitable) that some plastic bottles will be discarded, distinguishing *Cayford*. The adverse effects of discarding plastic bottles are not necessarily intangible. [...] There was evidence of the scale of the bottling operation (involving both plastic and glass) but no evidence as to the scale or adverse effects of plastic bottles from the operation being discarded in the (regional) environment. Overall, I consider that, as a matter of fact and degree, the adverse effects of consumers discarding plastic bottles were too indirect or remote to require further consideration in Creswell's application for resource consent to take water from the aquifer. […]"

2.13 In relation to the District consents, the High Court found:[21]

> "I consider that in relation to the adverse effects of using/discarding plastic bottles in this case, the nexus and remoteness analysis of the effects of allowing the water take and the blow moulding/bottling operation are essentially the same. My reasons in relation to the Regional appeals have similar application. Littering of plastic bottles is a downstream effect which is prohibited. Indeed, the contaminant effects in relation to water have more regional relevance. Despite the regulation of land

[18] *TRONA v BOPRC* (HC), above n 14, at [151] [[05.0113]].
[19] At [154] [[05.0113]].
[20] At [155] [[05.0114]].
[21] At [217] [[05.0128-05.0129]].

> uses that involve production and use of plastic packaging, I was not referred to any District consent case — supermarket, drink bottling or otherwise — that had considered the effects of discarding plastic bottles. For these and essentially the same reasons as in the Regional appeals, I consider that, as a matter of fact and degree, the adverse effects of consumers discarding plastic bottles were too indirect or remote to require further consideration in Creswell's application in relation to the land use activities."

The Court of Appeal's Decision

2.14 Following *Buller Coal*, the Court of Appeal found it is important to define what can be appropriately said to be the relevant effects of granting consent to take water, and whether subjecting those effects to controls under the RMA would have a tangible effect.[22]

2.15 The Court considered *Buller Coal*, *Beadle*, and looked at cases regarding the power of the legitimate scope to impose conditions with reference *to Newbury District Council v Secretary of State for the Environment*.[23]

2.16 The Court found there were five main conceptual difficulties with bringing plastic bottle disposal into the range of relevant consequential effects. The Court found that:

(a) the disposal is not something that would be authorised by the resource consent or for which any permission is needed under the RMA.[24] The placing of water into plastic bottles of itself requires no consent, neither does the export of the bottles. Plastic bottles are pervasively used and sold wholesale or retail. Manufacture and sale typically occur at premises where manufacture or sale is permitted. The Court found it inconceivable that the RMA can properly be applied to require consideration of the disposal of plastic bottles in respect of every product placed and sold in a plastic bottle or other plastic

[22] *Te Rūnanga o Ngāti Awa v Bay of Plenty RC* [2022] NZCA 598 at [50] [[05.0174]].
[23] At [54] [[05.0176]]. *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 (HL).
[24] At [56] [[05.0176]].

container. To take a different approach in this case would be to use the occasion of a resource consent application to impose obligations in respect of a single proposal that would not be applied to numerous other commercial and industrial activities using plastic bottles.

(b) disposal is the action of the purchaser without control of the manufacturer.[25] It would not be right to hold the manufacturer responsible for unlawful or problematic disposal of bottles.

(c) disposal in New Zealand would occur lawfully, typically.[26] Lawful disposal occurs subject to necessary consents. Unlawful disposal is illegal per the Litter Act 1979, tending against suggestion that the issue should be controlled under the RMA.

(d) foreign disposal is too remote to be taken into account by a consenting authority.[27]

(e) if it could be, it would be impossible to quantify the effects.[28] And a condition that attempts to control the disposal of plastic overseas could not be justified as fairly and reasonably related to a consent to take water.

2.17 The Court found arguments regarding tangibility supported that conclusion.[29] Here, it would need to be said that the plastic bottles produced by the proposed activities that are discarded in the environment would produce a deleterious effect in combination with the discarding of plastic that already occurs in New Zealand and elsewhere arising from other activities. The widespread and worldwide use of plastic means that any attempt to control its use in the setting of an individual application for resource consent needs to be justified

[25] *TRONA v BOPRC* (CA), above n 22, at [57] [[05.0177]].
[26] At [58] [[05.0177]].
[27] At [59] [[05.0178]].
[28] At [60] [[05.0179]].
[29] At [62] [[05.0178]].

by evidence tending to establish that there would be a tangible impact of doing so. That impact could not be inferred in its absence.[30]

WDC Submits No Error in the Court of Appeal's Judgment

2.18 WDC submits that the Court of Appeal was correct to determine that plastic bottle disposal is outside of the range of relevant consequential effects, and in applying the criteria of indirectness or remoteness and tangibility as set out in *Buller Coal* for the reasons set out in the Court's judgment. SOI submits that the Court of Appeal adopted the wrong starting point for consideration of effects, namely the disposal of the plastic bottles arises from the creation of the bottles.[31] WDC submits that no plastic is created from raw materials on site. As discussed further below, plastic is brought on site in a "test tube" form, and blow moulded into a plastic bottle. While the plastic is moulded into its final useable form on site, any inevitability of the plastic becoming waste is pre-determined prior to the plastic's arrival on site. Therefore, on this analysis the issues of the effects of disposal are engaged earlier in the supply chain, further undermining any direct connection between the effect of the land use and any adverse effects.

2.19 If the Court were minded to distinguish this case from *Buller Coal*, to do so would result in *ad hoc* restrictions on the use of plastic bottles (where the land use is discretionary under a district plan). This would have an intangible effect on plastic pollution globally. Plainly a comprehensive policy response is required.

Policy Considerations Support the Court of Appeal's Decision

2.20 Counsel submits that there are strong policy arguments which support the Court of Appeal's decision and the Supreme Court's decision in *Buller Coal.*

2.21 SOI submits that there is no way to ultimately dispose of plastic that does not have an actual or potential effect on the environment. It is

[30] *TRONA v BOPRC* (CA), above n 22, at [64] [[05.0179]].
[31] Synopsis of Submissions for Sustainable Otakiri Incorporated (26 July 2023), at [16].

impossible to limit this consideration to plastic products, and it could equally apply to any number of products produced, manufactured or sold in New Zealand. While plastic is at issue in this instance, counsel do not see how the principle contended for in SOI's submissions could be limited to plastic. Creation of any product or good has an actual or potential effect on the environment if it is improperly disposed of.

2.22 If the Court were to accept that lawful production of plastic bottles has a negative effect on the environment, bringing it within the scope of consequential effects, the Court could severely restrict the creation of plastic where the land use is discretionary.[32] This is despite creation of plastic not requiring permission under the RMA, or otherwise being contrary to law. The effects of plastic products in New Zealand would also have to be considered at each step in the product's life cycle in consenting decisions under the RMA. The effect of plastic, if not too remote, would have to be considered for discretionary land use consents at the points of production, warehousing/distribution, retail, and disposal. To adopt SOI's example of the consenting decision for a mall or a supermarket, were the Court to accept SOI's submissions, a TA could conceivably be asked to make assessments of environmental effects up and down a supply chain of a large range of products and packaging sold at a supermarket or mall, provided the land use activity is discretionary.

2.23 If the land use is permitted, controlled, or restricted discretionary (with discretion restricted to matters which are unrelated to the environmental effects of plastic), the Council would not be able to take into consideration the end use environmental effects of plastic. Counsel submits that if effects up and down the supply chain are required to be considered for an activity requiring a discretionary consent, but a permitted activity would not be subject to the same scrutiny, TAs would be incentivised to provide significantly more

32 And the environmental matters able to be considered and not confined in the relevant planning instruments (c.f. controlled activity or restricted discretionary activity status where relevant matters are limited).

permissive plans to allow for the same level of productive or industrial activities in their district.

2.24 Widening the effects which would require consideration by removing or reading down remoteness or tangibility tests would dramatically change the system of consenting. A decision in favour of the appellants would require an assessment of effects beyond those which a TA could reasonably conduct. These effects are international and well beyond the scope or ability of a Council to deal with. Even plastic disposal within New Zealand would be well outside of an effect which a TA could assess or control. There would be a lack of capacity and capability in most Councils to assess these broadened effects. To require a TA to make such assessments would increase cost and slow down consenting processes significantly.

2.25 It would also potentially change the decision-making process around notification. Public notification would likely be required more often, resulting in decreased efficiency.

2.26 The changes to the current system of consenting sought by SOI are beyond the scope of local planning legislation and are properly managed through specific legislation and regulation. The issues of plastic waste are national and global, and not appropriately managed through consent decisions applying district plan provisions. Limitations of plastic bottle waste would best be managed via national regulations on retail sale under the Waste Minimisation Act 2008.[33] Similar regulations have been recently created for similar products, such as the Waste Minimisation (Plastic Shopping Bags) Regulations 2018 and Waste Minimisation (Plastic and Related Products) Regulations 2022. National regulation would mean the measures were targeted appropriately, not just to new activities that happened to require a discretionary activity resource consent. This would be a legislative

[33] Waste Minimisation Act 2008, s 23.

intervention which is nationally consistent, as envisaged by the Environment Court.[34]

3. SECOND GROUND OF APPEAL – FURTHER EVIDENCE

3.1 SOI submits that evidence should have been sought by the Environment Court on the effects of plastic waste.

3.2 WDC submits that the Court of Appeal correctly found:

(a) the fact that an issue was raised by one member of the Court cannot be said to give rise to a duty on the part of other members to require the issue to be the subject of evidence.[35] Where evidence of this type has not been called, often the most appropriate course for the Court to follow would be to decide the case on the basis that the evidence was not available, with appropriate consequences for the disposition of the proceeding before it.

(b) although the Environment Court is able to adopt an inquisitorial approach, the Court of Appeal considered that its primary duty in an appeal concerning whether a resource consent should have been granted or declined is to consider the issues raised by the parties and the evidence they have called, and apply the relevant statutory provisions in the RMA. The Court stated:[36]

> "[A] party to proceedings before the Environment Court should ensure it calls relevant evidence to support the issues it wishes to raise. An approach that relies on the Court itself to seek the evidence is not to be encouraged and is unlikely to succeed."

3.3 WDC also submits in response that:

(a) the issues before the Environment Court were agreed between the parties and limited to issues pertaining solely to planning matters and alleged effects on rural character and amenity;

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[34] *TRONA v BOPRC* (EnvC), above n 10, at [66] [[05.0038]].
[35] *TRONA v BOPRC* (CA), above n 22, at [76] [[05.0180]].
[36] At [78] [[05.0181]].

(b) counsel for SOI conceded at the Environment Court hearing that declining the consent simply on the basis that it is producing quantities of plastic bottles would "*require a lot more evidence clearly as to the adverse impacts of that on wellbeing*" and agreed with the Principal Environment Court Judge that "*there's some force in the answer that Mr Batchelar gave which was that those matters require national intervention*";[37] and

(c) Creswell is not applying to operate a disposal facility at the Site in which case information in relation to the methods of disposal would be relevant and necessary in order to inform the consent authority's decision.

4. THIRD GROUND OF APPEAL – ACTIVITY STATUS

4.1 A "rural processing activity", as defined in the WDP, is an operation that processes, assembles, packs and stores products from a "primary productive use",[38] namely rural land use activities that rely on the productive capacity of land or have a functional need for a rural location.[39] This definition is sufficiently wide to include the planned activity of extracting and bottling water. Three Courts have found so.

4.2 WDC submits that SOI has failed to demonstrate an error in the Court of Appeal's decision.

4.3 This section sets out the relevant definitions, the decisions on appeal, WDC's submissions supporting a finding that the activity is a "rural processing activity", and responds to SOI's submissions of alleged errors in the Court of Appeal's judgment.

Definitions in the WDP

4.4 Planning documents are a form of delegated legislation.[40] District plans are subject to the usual rules of statutory interpretation.[41] The

[37] [[201.0526]] and [[201.0527]].
[38] Whakatāne District Plan, Chapter 21 – Definitions, "Rural Processing Activity" [[301.0296]].
[39] Chapter 21 – Definitions, "Primary Productive Use" [[301.0293]].
[40] Resource Management Act 1991, s 76(2).
[41] *Spackman v Queenstown Lakes DC* [2007] NZRMA 327 (HC).

meaning of plans must be ascertained from their text and in the light of their purpose and context.[42]

4.5 "Rural processing activity" is defined to mean:[43]

> "an **operation** that processes, assembles, packs and stores products from **primary productive use**. This includes wastewater treatment facilities associated with and within proximity of the Edgewater Dairy Manufacturing Site."

4.6 In turn, "Primary productive use" is defined to mean:[44]

> "rural land use activities that rely on the productive capacity of land or have a functional need for a rural location such as agriculture, pastoral farming, dairying, poultry farming, pig farming, horticulture, forestry, quarrying and mining."

4.7 Also relevant, "Rural production activity" means:[45]

> "Rural production activity means rural land use activities that rely on the productive capacity of land or have a functional need for a rural location such as agriculture, pastoral farming, dairying, poultry farming, pig farming, horticulture, forestry, quarrying and mining. Also included in this definition are processing and research facilities that directly service or support those rural land use activities."

4.8 "Industrial activity" is defined to mean:[46]

> "a. the production of goods by manufacturing, processing (including the milling or processing of timber), assembling or packaging;
>
> b. dismantling, servicing, testing, repairing, cleaning, painting, storage and/or warehousing of any materials, goods or products (whether natural or man-made), vehicles or equipment, and
>
> c. depots (excluding rural processing activities and rural contractor depots), engineering"

4.9 Examples listed in the Activity Table for industrial activities (panel beating, vehicle servicing and painting) indicate the kinds of activities

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[42] Legislation Act 2019, s 10.
[43] Chapter 21 – Definitions, "Rural Processing Activity" [[301.0296]].
[44] Chapter 21 – Definitions, "Primary Productive Use" [[301.0293]].
[45] Whakatāne District Plan, Chapter 21 – Definitions, "Rural Production Activity" [[301.0297]].
[46] Chapter 21 – Definitions, "Industrial Activity" [[301.0286]].

that fall under this category.[47] The effects of these activities are of a different nature to water bottling and other rural resource based uses. The listed examples are not associated with the rural environment, nor would they have a reason to be in the rural environment, and are therefore non-complying.

Rural processing activities are a subset of industrial activities. The WDP treats “rural processing activity” differently to the broader category of “industrial” activity. This is a policy decision to clarify that rural processing is a legitimate activity in a rural zone based on its functional need to be near to the source of a natural resource. An activity that falls within the definition of “rural processing activity” could also operate in an industrial zone.[48]

Previous Decisions

4.10 Three Courts below have found that the activity is a "rural processing activity” under the WDP.

The Environment Court’s Decision

4.11 The Court set out the definitions of "industrial activity” and “rural processing activity”, finding:[49]

> “The essential difference between the definitions of the two activities is that an industrial activity can involve any type of material, good or product but a rural processing activity must have as its starting point a product from a *primary productive use*.”

4.12 The Environment Court’s majority observed that the use of broad terms such as ‘industry’ and ‘primary production’ can obscure the overlap of the two and so be unhelpful to detailed analysis.[50]

4.13 The Court found the extraction of water from an aquifer is a form of primary production which is akin to mining or quarrying.[51] The Court

[47] Chapter 03 – Zone Descriptions, Activity Status, Information Requirements and Criteria for Resource Consents, 3.4.1, item 25 [[301.0090]].
[48] Statement of Evidence of Craig Barry Batchelar on Behalf of the Whakatāne District Council (Planning Evidence), dated 12 April 2019 at [10.16] [[205.1467]].
[49] *TRONA v BOPRC* (EnvC), above n 10, at [219] [[05.0061]].
[50] At [221] [[05.0061]].
[51] At [225] [[05.0062]].

found the applicant had demonstrated a functional need for the activity to occur on the site.[52]

4.14 The Court then found that the principal activity is the extraction of the water, but activities within the bottling plant are industrial activities which are ancillary to the principal activity, including blow-moulding.[53] Packing of the water into bottles and transport from the site were within the scope of the rural processing activity.[54] On that basis, the activity was assessed as a rural processing activity.[55]

The High Court's Decision

4.15 The High Court agreed that water extraction has a functional need for a rural location.[56] The Court considered that water extraction fits within the definition of a rural processing activity.[57] It also found water bottling fits within the definition of a rural processing activity.[58] It found that the extraction of water was the principal activity, and the primary resource was the water.[59]

4.16 The High Court noted blow-moulding involves a basic form of manufacturing. Despite the term "manufacturing" only occurring in the definition of industrial activities and not in the definition of "rural processing activities",[60] the Court found that manufacturing was part of the packaging process.[61]

4.17 The Court found the majority had not erred when concluding that blow-moulding is "ancillary" in terms of the District Plan.[62] The Court found the blow moulding is a small part of the principal activity, extraction of water, serving a subordinate but supportive function as part of the

[52] *TRONA v BOPRC* (EnvC), above n 10, at [225] [[05.0062]].
[53] At [226] [[05.0062]].
[54] At [227] [[05.0062]].
[55] At [228] [[05.0062]].
[56] *TRONA v BOPRC* (HC), above n 14, at [235] [[05.0132]].
[57] At [235] [[05.0132]].
[58] At [236] [[05.0132]].
[59] At [244] [[05.0133]].
[60] At [238] [[05.0132]].
[61] At [244] [[05.0133]].
[62] At [239] [[05.0132]].

packaging process. That did not make the principal activity an industrial activity.[63]

4.18 The Court found the definition of rural processing activity captures the whole proposal. The Court found that the majority had not erred in concluding that the proposal is for a single planning unit which primarily involves the taking of water with an ancillary bottling and packaging operation, and that overall that activity is a rural processing activity.[64] The Court found:[65]

> "Acknowledging the overlap between the two activity definitions, I agree with the majority that the principal activity should be assessed as a rural processing activity. The ancillary activities do not take away from the single overall activity."

The Court of Appeal's Decision

4.19 The Court of Appeal set out its understanding of the term "operation" in the definition of "rural processing activity", finding:[66]

> 'A preliminary observation that may be made is the definition contemplates an "operation" that embraces different activities, provided it involves "products from primary productive use". The products may be processed, assembled, packed and stored. It is clear that an "operation" may involve one or more of those activities. We also consider that the word "operation" is sufficiently broad to embrace activities other than those specifically listed in the definition, as part of the overall activity, provided they are carried out in relation to the "product".'

4.20 The Court explained its view that the single main purpose of the land use is the extraction and bottling of water, finding that it would be artificial to separate the two uses.[67] It found the use of the word "operation" is apt to cover an activity that embraces a number of elements.[68]

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[63] *TRONA v BOPRC* (HC), above n 14, at [244] [[05.0134]].
[64] At [244]-[247] [[05.0134]].
[65] At [244] [[05.0133]].
[66] *TRONA v BOPRC* (CA), above n 22, at [146] [[05.0206]].
[67] At [147] [[05.0206]].
[68] At [147] [[05.0206]].

4.21 The Court considered that the land use activities necessary for the extraction, may properly be regarded as part of the "operation" or properly described as "ancillary" to the operation.[69] The Court of Appeal did not consider it material that ancillary activities are not specifically referred to in the definition of "rural processing activity" because of the breadth of the definition and in particular the word "operation". The Court of Appeal found:[70]

> 'We think [the definition of "rural processing activity"] must cover everything that is involved in processing, assembling, packing and storing products, including forming up the packaging used to contain the product. This is all part of the "operation".'

It upheld the decision of the High Court to consider blow-moulding as ancillary.[71] The Court held:[72]

> "An activity will be within the definition if it is a "rural land use activity" that relies on the productive capacity of land or has a functional need for a rural location."

4.22 The Court found that as the proposal fell within the definition of "rural processing activity" it did not matter that some aspects of it might also fall within the definition of "industrial activity" (but for the requirement that a "rural processing activity" must involve a product from a "primary productive use").[73] The Court stated:[74]

> "We think it clear that the District Plan does not intend to exclude activities in the nature of industrial activities from the ambit of rural processing activities, provided they take place as part of an operation that qualifies as a "rural processing activity". Both industrial and rural processing activities (through the definition of "primary productive use") can include, for example, processing, assembling and packaging."

[69] *TRONA v BOPRC* (CA), above n 22, at [148]-[149] [[05.0207]].
[70] At [150] [[05.0207]].
[71] At [150] [[05.0207]].
[72] At [151] [[05.0207]].
[73] At [153] [[05.0208]].
[74] At [154] [[05.0208]].

No Error of Law in the Court of Appeal's Judgment

4.23 WDC submits that, as the Court of Appeal found, the definition of "rural processing activity" in the WDP should be read to include the entirety of the proposed operation.

4.24 The extraction of water from the aquifer is a "rural processing activity" on the basis that it produces bottled water from a "primary productive use". As such, it relies on the productive capacity of the land and has a functional need to be on the site. The bottling activity is part of the "rural processing activity", and can either be seen as:

(a) part of an "operation" which has the purpose of processing, assembling, packing or storing a product from a primary productive use; or

(b) ancillary to the primary land use of water extraction. As set out by the Court of Appeal in *Centrepoint Community Growth Trust v Takapuna City Council,* a decision maker may be able to identify a single main purpose of the use of land, to which all other activities are incidental or ancillary.[75] Alternatively, a decision maker may decide that no activity is incidental or ancillary to another. As the Court of Appeal in this case decided, the single main purpose of the land use is the extraction and bottling of water and the blow-moulding is incidental to that single main purpose.

4.25 The following section responds to SOI's submissions.

The Planning Framework

4.26 SOI submits the WDP contains a clear focus on protecting versatile land and soils to protect the use of rural land for rural production, to the extent that "rural processing activity" must not be read as broadly to include associated manufacturing or industrial activities.[76]

[75] *Centrepoint Community Growth Trust v Takapuna City Council* [1985] 1 NZLR 702 (CA) at 706.
[76] Synopsis of Submissions for Sustainable Otakiri Incorporated (26 July 2023), at [90].

4.27 Counsel submits it is clear that the planning framework balances protection of rural land with, but not to the exclusion of, rural processing activities which have a functional need to be in a rural location.

(a) SOI refers to Policy UG 18B of the RPS which places an emphasis on the protection of productive rural land resources by ensuring that to the extent practicable, subdivision, use and development (urban activities) in rural areas does not result in versatile land being used for non-productive purposes. Policy UG 18B further explains that with respect to planned rural development as well as to the legitimate establishment of rural servicing activities in rural areas, it is inevitable that some versatile land will be lost to productive use.[77] The issue then becomes one of ensuring that the extent of such loss is minimised through the efficient use and development of the finite land resource.

(b) Policy UG 18B is a general policy that should also be read alongside Policy UG 23B of the RPS which is a specific policy that provides for the operation and growth of rural processing activities and refers to all types of natural resources (land, minerals, soil and water), not only versatile soils as a natural resource of value:[78]

> "In providing for the operation and growth of rural production activities, regard should be had to:
>
> (a) Appropriate plan provisions, including zoning of land;
>
> (b) access to and use of resources;
>
> (c) transportation and infrastructure requirements; and
>
> (d) protection from reverse sensitivity effects."
>
> Explanation
>
> The operation and growth of rural production activities in the Bay of Plenty is important to the region's economy. The

[77] Bay of Plenty Regional Policy Statement - Part 3 (Policies and Methods), 3.1 (Policies), Topic UG (Urban and Rural Growth Management) [[302.0390]].
[78] [[302.0392]].

use of and access to natural resources (such as land, minerals, soil and water), or physical resources (such as transportation infrastructure) are important factors in providing for the operation and growth of these activities.

Rural production activities often have particular locational and functional requirements in terms of access to resources, relationship to support facilities and the management of environmental effects. It is therefore important that resource use is managed in a manner which recognises and provides for those locational and functional requirements."

(c) The policy framework of the District Plan recognises that productive land values are not limited to the soil versatility and that the exploitation of other natural resource values, including artesian groundwater resources, may be appropriate in Rural Areas.[79]

(d) The background statement in the WDP on the economy recognises that Council and agencies must promote activities aimed at increasing employment, income, and investment.[80]

(e) Policy 2 to Objective Rur1 supports growth of rural production activities, and reads:[81]

"To provide for the growth and efficient operation of primary productive use and rural production activities in the Rural Zones."

(f) Similarly, Policy 1 to Objective Rur3 allows for rural activities to continue and prosper:[82]

"To enable rural activities such as farming, intensive farming, production forestry and mining to continue and prosper as part of the rural environment and provide for directly related rural service activities and rural processing, whilst avoiding significant adverse and/or cumulative effects on the surrounding environment."

[79] Statement of Evidence of Craig Barry Batchelar, above n 45, at [10.13] [[205.1480]]. [12.36] [[205.1488]].
[80] At [10.13] [[205.1480]], [13.3] [[205.1489]].
[81] Chapter 07 – Rural: (Rural Coastal, Rural Plains, Rural Foothills, Rural Ohiwa and Deferred Residential Zones) at 7.1 [[301.0142]].
[82] At 7.1 [[301.0142]].

4.28 Counsel submits that the WDP supports a range of rural processing activities occurring in the rural zones. As the Environment Court found:[83]

> "This [rural plains] zone has a primary production focus with emphasis in Chapters 2, 3 and 7 of the District Plan on the promotion of activities aimed at increasing employment, income and investment. Chapters 2 and 7 also provide relevant objectives related to minimising environmental effects, retaining rural characteristics and amenity values, and providing for activities that have a functional need to be located in the zone."

4.29 The goals of the plan are multifaceted and balanced, and do not support a classification of this activity as an "industrial activity".

4.30 Two other water bottling activities have been consented in the Rural Plains Zone within 2km of the site. These activities were consented as "rural industry" or "business activity in a rural zone". These zones were conceptually the same as a "rural processing activity".[84] The planning evidence of Mr Batchelar for WDC stated that these zones allowed for activities to be established in the rural area that are not "footloose" in nature, having a functional in-place resource use need.[85]

"Manufacturing"

4.31 SOI largely centres its argument on the categorisation of the blow-moulding activity as "manufacturing".[86] SOI submits that manufacturing is excluded from the definition of the rural processing activity which is deliberate and meaningful.[87]

4.32 Counsel submits that blow-moulding is not manufacturing. An alternative view is that the bottles are "flat packed" and are simply "unpacked". Bottles arrive on site in the form of "test tubes".[88] The bottles are inflated by the process of blow-moulding.[89] They are then

[83] *TRONA v BOPRC* (EnvC), above n 10, at [30] [[05.0030]].
[84] Statement of Evidence of Craig Barry Batchelar, above n 45, at [10.13] [[205.1480]].
[85] At [10.13] [[205.1480]].
[86] Synopsis of Submissions for Sustainable Otakiri Incorporated (26 July 2023), at [78].
[87] At [84].
[88] Statement of Evidence of Hamish Joyce (Operational and Construction Overview) on behalf of the Applicant (29 March 2019) at [28] [[203.0839]].
[89] At [28] [[203.0839]].

filled onsite with water. No raw plastics for blow-moulding are brought on to the site. This is analogous to a flat pack cardboard box for fruit packing. Fruit packing boxes arrive on a rural processing plant as flat packs and are subsequently assembled at a packing plant by additional machinery.

4.33 SOI submits that the ordinary meaning of manufacture is to "make (something) on a large scale using machinery."[90] Counsel bring to the Court's attention that an alternative definition from the Collins New Zealand dictionary is "to process or make (a product) from a raw material, esp. as a large-scale operation using machinery".[91] On that definition, it is clear that the bottles are not manufactured as they have previously been semi-formed and are not blow moulded from raw material.

4.34 If, contrary to these submissions, the Court considers blow-moulding is manufacturing, counsel submits that the blow-moulding is basic and rudimentary manufacturing as part of, or alternatively ancillary to the operation. . The High Court found:[92]

> "The blow moulding is a small part of the primary activity serving a subordinate but supportive function – part of the packaging process. As it was explained, the blow moulding involves inflating (expanding) pre-made plastic moulds."

4.35 Blow-moulding is part of the packaging process and exists in the overlap between manufacturing and processing.

4.36 If, as SOI submits, manufacturing activities cannot occur as part of rural processing activities, then assembly of fruit packing boxes would be unable to occur on site, as is normal practice.

4.37 Finally, Counsel submits that the decision-maker must assess the land use activity, rather than a contravention of the rule, against the statutory requirements when making a decision on a consent application under s 104.[93] The land use activity is the extraction and

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[90] Synopsis of Submissions for Sustainable Otakiri Incorporated, at [70].
[91] *Collins English Dictionary: New Zealand Edition* (9th ed, HarperCollins, Glasgow, 2007) at 993.
[92] *TRONA v BOPRC* (HC), above n 14, at [244] [[05.0133]].
[93] *Arapata Trust Ltd v Auckland Council* [2016] NZEnvC 236 at [32].

bottling of water. Any aspect which may be considered as manufacturing therefore must be seen as part of the larger "rural processing activity". It would be artificial to view the manufacturing of bottles as separate from the extraction and bottling of water.

"Good" v "Processing"

4.38 SOI submits that the distinction between the definitions of rural processing activity and industrial activity is fundamentally that "industrial activities" are producing "goods" whereas a "rural processing activity' concerns the narrower activity of processing primary products that have already been produced.[94] SOI find support for this in the definition industrial activity, which includes milling of timber.

4.39 The District Plan defines a "Rural processing activity" as an operation that processes, assembles, packs and stores products from a "Primary productive use". Therefore, the key distinction for rural processing activities, in comparison to industrial ones, is that the product must come from a rural land use that has a functional need for a rural location.

4.40 Once felled, timber is transported for processing. There is no functional need to be located at the forest or in a rural location. Any functional location need will end once the timber is felled. A water bottling plant is operationally different to timber milling, as a water bottling plant may, as in this instance, have a functional need to be processed on site. This inclusion of the milling of timber in the meaning of "industrial activities" does not have a bearing on the interpretation of what is a "rural processing activity".

"Operation"

4.41 SOI submits that the Court of Appeal's interpretation of "operation" in the definition of 'rural processing activity' is wrong.[95] SOI submits that

[94] Synopsis of Submissions for Sustainable Otakiri Incorporated, at [85].
[95] At [86].

this is a strained interpretation of "operation", requiring it to do far more work than the drafters of the WDP could have intended, rendering specific activities set out in the provision superfluous.[96] SOI submits that the Court of Appeal's reading of the definition might well have been drafted "Rural processing activity means an operation involving products from primary productive use." SOI submits that the use of "operation" is introductory and is not an overriding category.[97] This is an overly broad interpretation of the Court of Appeal's decision.

4.42 On another reading of the Court of Appeal's decision, the operation is the thing "that processes, assembles, packs and stores". Operation is defined to mean "a process, method, or series of acts, esp. of a practical or mechanical nature".[98] "Operation" encompasses land uses which are required to allow for processing, assembly, packing, storage. Even if a constituent part is not directly processing, assembling, packing and storing, but is contributing to the purpose of the series of acts (which is for the purpose of processing, assembling, packing and storing products from a primary productive use), the whole of the operation must be processing, assembling, packing, and/or storing.

4.43 The corollary of SOI's submissions is that part of the process that is not directly processing, assembling, packing or storing is not part of a "rural processing activity". WDC submits that this view is removed from the practical realities and workings of the WDP. To exclude ancillary activities would unintentionally limit what can be considered a rural processing activity functionally required to occur on a site. Were SOI's interpretation correct, part of an operation that assembles fruit packing boxes on site would not be allowed, for example.

4.44 To accept SOI's interpretation of the provision would exclude "operation" from the provision.

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[96] Synopsis of Submissions for Sustainable Otakiri Incorporated, at [87].
[97] At [88].
[98] *Collins English Dictionary: New Zealand Edition* (9th ed, HarperCollins, Glasgow, 2007) at 1143.

Other Textual Indicators

4.45 Similarly, SOI views the District Plan's definition of "rural processing activity" inclusion of the wastewater treatment facilities associated with and within proximity of the Edgecumbe Dairy Manufacturing Site as supporting its argument.[99]

4.46 The approach taken to the Edgecumbe Dairy Factory wastewater facility is another example of an activity, that would normally be considered under another part of the plan, being considered as something not immediately obvious by way of the activity definition.

4.47 The fact that the WDP includes the wastewater treatment at Edgecumbe Dairy Factory, which could otherwise correctly be considered under chapter 20 of the WDP has no bearing on considering under what activity water bottling falls. This example simply reflects the significance of both timber milling and milk processing within the district.

A "Single Main Purpose"

4.48 SOI takes issue with the Court of Appeal identifying "a single main purpose", and submits the reasoning neglects the manufacture of bottles as part of the planned activity.[100]

4.49 As the Court of Appeal set out, the single main purpose analysis can be found in the decision in *Centrepoint Community Growth Trust v Takapuna City Council*.[101] A court may identify:

(a) an overall proposed activity of which all the individual elements form part of; or alternatively

(b) a variety of activities of which it is impossible to find any activity which is incidental or ancillary to another.

[99] Synopsis of Submissions for Sustainable Otakiri Incorporated, at [89].
[100] At [93].
[101] *Centrepoint*, above n 75, cited in *TRONA v BOPRC* (CA), above n 22, at [147] [[05.0204]].

4.50 The Court of Appeal correctly found that no issues of bundling arise in this instance.[102] Once it has been determined that there is one activity, SOI's bundling approach is redundant. Bundling considers the effects of multiple consents and land uses together.[103] If the Court concluded that all activities are part of an operation and qualify as a "rural processing activity", bundling would not be required as there is only one relevant activity.

Water is a "Product"

4.51 SOI submits that water is not a product from a primary productive use and on the Court of Appeal's reading, the primary product cannot be bottled water because the bottling aspect is the rural processing activity.[104]

4.52 It is accepted that throughout this operation, the water will remain largely unchanged by any process or other form of manufacture (other than filtration) in reaching the final bottled product, however, water is the product. The water extraction and bottling activity is a primary productive use because it relies on the productive capacity of land, in the same way that other extractive uses do.

4.53 SOI submits there is nothing about water extraction which involves a functional need for a rural location as there is nothing intrinsic in the activity that means it needs to be done rurally.[105] As the Court of Appeal found, the extraction and bottling must occur on the site as that is where the water is found.[106] The location of the water and the capacity of the land to provide water is clearly a functional need for that location as set out in the definition.

4.54 SOI also submits that the relevant land use must be rural in nature as well as relying on the productive capacity of the land or having a functional need for a rural location.[107] SOI submits, that there is no

[102] At [155] [[05.0209]].
[103] At [155] [[05.0209]].
[104] Synopsis of Submissions for Sustainable Otakiri Incorporated, at [105].
[105] At [107].
[106] *TRONA v BOPRC* (CA), above n 22, at [152] [[05.0208]].
[107] Synopsis of Submissions for Sustainable Otakiri Incorporated, at [107].

land use activity that can be characterised as “rural”. On SOI’s reading of the plan, the “rural processing activity” land use must be:

(a) Rural in nature; and

(b) Rely on the productive capacity of the land; or

(c) Have a functional need for a rural location.

The requirement for the land use to be rural in nature is not found in the plan. While the definition of primary productive use means “*rural land use* activities that rely on the productive capacity of land or have a functional need for a rural location”, the use of “rural land use” goes to the location of the land use, not its nature.

4.55 The proposed water bottling activity is also a primary productive use because it has a functional need for a rural location. It requires water to be extracted (produced) from an aquifer (land). The definition of primary productive use in the WDP does not, on its face, limit “productive capacity of land” solely to a consideration of soil resources for growing food and fibre. The productive capacity of other land resources, such as an aquifer, could also be considered resulting in a functional need for a rural location.

4.56 As the High Court observed, while it may be possible to take groundwater from many locations, finding suitable supplies of this standard of artesian mineral water is not a certainty in all areas.[108]

4.57 The definition of primary productive use should not be read so as to sever the use from its functional location. To do so would, for example, mean that the wastewater treatment facility associated with the Edgecumbe Dairy Manufacturing Site is not a rural land use when that activity is squarely included in the definition of a Rural Processing Activity.

Conclusion on Third Ground of Appeal

4.58 A “rural processing activity”, as defined in the WDP, is an operation, that processes, assembles, packs and stores products from rural land

[108] *TRONA v BOPRC* (HC), above n 14, at [223] [[05.0130]].

use activities that rely on the productive capacity of land or have a functional need for a rural location.

4.59 The proposed activity is an operation, extracting and bottling water that relies on the productive capacity of land and has a functional need for a rural location. The blow-moulding of bottles is a minor part of that "operation".

4.60 Counsel submit that SOI has not demonstrated any errors in the Court of Appeal's judgment.

5. FOURTH GROUND OF APPEAL – S 127 APPLICATION

5.1 For the Court of Appeal to have remitted the decision to the Environment Court because the application should have been processed under s 88 would have been unnecessary.

5.2 The process under s 127 is substantially the same as a discretionary activity consent under s 88.[109] Reporting was done on the basis that this proposal should be reviewed as a s 88 application. This recommendation was not followed by WDC's delegates. Commissioners undertook a full review and considered the effects of the expansion under s 127. The Environment Court found that an application under s 127 was an appropriate pathway consistent with s 127 and case law.[110] The High Court agreed.[111] The Court of Appeal did not.

5.3 The Environment Court found that a full Assessment of Environmental Effect [AEE] had been completed in applying under s 127, stating:[112]

> "[183] Responding to questions from the Court, Mr Frentz as the co-ordinating author of the AEE confirmed that nothing had been put aside in preparing the AEE on the basis it was an application under s 127 as opposed to under s 88. He said that the AEE was an evaluation of the application as a whole, notwithstanding that consideration of the effects of the existing consented activity was not required. This full evaluation of effects had been done due

[109] Resource Management Act 1991, s 127.
[110] *TRONA v BOPRC* (EnvC), above n 10, at [252] [[05.0066]].
[111] *TRONA v BOPRC* (HC), above n 14, at [261] [[05.0138]].
[112] At [184-183] [05.0055].

> to the substantial nature of the expansion proposed and the age of the existing consent, which was granted in 1991.
>
> [184] We are satisfied by the evidence of Mr Frentz that, as a discretionary activity, a full evaluation of all the adverse effects of the proposed new bottling plant, including the consented existing plant, has been prepared."

5.4 The Environment Court found that even if the bottling plant required a new consent, this would have also been a discretionary activity.[113] It found no advantage was gained by Creswell in pursuing a s 127 application rather than a s 88 application and that all the information necessary for an assessment under either pathway had been provided.[114] SOI argues that the Court of Appeal erred by failing to allow the appeal. In contrast, counsel submits that the Court of Appeal was correct in not allowing the appeal after the finding that the consent was properly a discretionary activity for the reasons set out in its judgment.[115]

5.5 In *Body Corporate 97010 v Auckland City Council,* the Court of Appeal was asked to consider whether a change to the scope of an activity should have been processed as a new consent or a variation. The Court held:[116]

> "The exact form of an application is not determinative although it must suffice to put before the consent authority the matters which it is required to consider and decisions must be made on them. An application can include incidental matters which may technically require separate consents. The consents given will be valid notwithstanding deficiencies in the form of the application, provided that appropriate procedures are followed, including notification where necessary, and the substance of the matter is properly considered. It is undesirable that the law relating to resource consent applications should descend unnecessarily into procedural technicalities. Substance is to be preferred to form (Sutton v Moule (1992) 2 NZRMA 41, 47)."

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[113] *TRONA v BOPRC* (EnvC), above n 10, at [256] [[05.0067]].
[114] At [254] and [256] [[05.0067]].
[115] *TRONA v BOPRC* (CA), above n 22, at [192] [[05.0220]].
[116] [2000] 3 NZLR 513 at [50].

5.6 The Environment Court found that all matters that are required to be considered under a s 104 assessment had been put before the Court in the s 127 assessment, and that the Court was fully able to consider the substance of the application.[117]

5.7 Therefore, to allow the appeal on this ground would prioritise form over substance. It would not have had any impact on any future substantive decision as the application would have been subject to the same decision-making process and evidence under s 88 if remitted back to the Environment Court.

6. RESULT

6.1 WDC respectfully seeks orders that the appeal should be dismissed.

6.2 WDC seeks orders as to costs.

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Andrew Green
Counsel for the First Respondent / Whakatāne District Council

Counsel certify they have made appropriate inquiries to ascertain whether these submissions contain any suppressed information, and certify that, to the best of their knowledge, the submissions are suitable for publication (that is, it does not contain any suppressed information).

[117] *TRONA v BOPRC* (EnvC), above n 10, at [258] [[05.0067]].

SCHEDULE: LIST OF AUTHORITIES CITED

Statues

Legislation Act 2019, s 10.

Resource Management Act 1991.

Waste Minimisation Act 2008.

Waste Minimisation (Plastic and Related Products) Regulations 2022.

Waste Minimisation (Plastic Shopping Bags) Regulations 2018.

Cases

Arapata Trust Ltd v Auckland Council [2016] NZEnvC 236.

Beadle v Minister of Corrections EnvC Auckland A074/2002, 8 April 2002.

Body Corporate 97010 v Auckland City Council [2000] 3 NZLR 513.

Cayford v Waikato Regional Council EnvC Auckland A127/98, 23 October 1998.

Centrepoint Community Growth Trust v Takapuna City Council [1985] 1 NZLR 702 (CA).

Newbury District Council v Secretary of State for the Environment [1981] AC 578 (HL).

Royal Forest and Bird Protection Society of New Zealand Inc v Buller Coal Ltd [2012] NZHC 2156, [2012] NZRMA 552.

Spackman v Queenstown Lakes DC [2007] NZRMA 327 (HC).

Te Runanga o Ngāti Awa v Bay of Plenty RC [2019] NZEnvC 196, (2019) 21 ELRNZ 539 (EnvC).

Te Runanga o Ngāti Awa v Bay of Plenty RC [2020] NZHC 3388, (2020) 22 ELRNZ 323.

Te Rūnanga o Ngāti Awa v Bay of Plenty RC [2022] NZCA 598.

West Coast ENT Inc v Buller Coal Ltd [2013] NZSC 87, [2014] 1 NZLR 32.

Other

Collins English Dictionary: New Zealand Edition (9th ed, HarperCollins, Glasgow, 2007) at 993 (Definition of Manufacture).

Collins English Dictionary: New Zealand Edition (9th ed, HarperCollins, Glasgow, 2007) at 1143 (definition of Operation).