

**IN THE SUPREME COURT OF NEW ZEALAND
I TE KŌTI MANA NUI O AOTEAROA**

UNDER THE

Senior Courts Act 2016

SC 1/2023

BETWEEN

**SUSTAINABLE OTAKIRI
INCORPORATED
Appellant**

AND

**WHAKATĀNE DISTRICT COUNCIL
First Respondent**

AND

**CRESWELL NZ LIMITED
Second Respondent**

SC 2/2023

BETWEEN

**TE RŪNANGA O NGĀTI AWA
Appellant**

AND

**BAY OF PLENTY REGIONAL COUNCIL
First Respondent**

AND

**CRESWELL NZ LIMITED
Second Respondent**

JOINT CHRONOLOGY ON BEHALF OF THE PARTIES

Counsel certify that, to the best of their knowledge, the Joint Chronology is suitable for publication and does not contain any information that is suppressed.

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JOINT CHRONOLOGY

DATE	EVENT	REFERENCE
1979	Bay of Plenty Catchment Commission and Regional Water Board granted Lawrence Robertson (Robertson Farms) the right to take water for kiwifruit irrigation (number 20595).	[[206.1691]]
1991	The water right (number 20595) was modified in 1991 by the Bay of Plenty Regional Council (Regional Council) to allow for a water take for horticultural irrigation (158m ³ /day), frost protection (1580m ³ /day) and commercial bottling of water (1200m ³ /day). The water take was later transferred to James and Donald Robertson (Robertson Farms) in 1992.	[[206.1693 – 1694]]
	Whakatāne District Council (District Council) granted consent to Robertson Farms to establish a mineral bottling plant at Lot 4 DPS 27652 situated at Johnson Road Otakiri (Consent Number 61/4/817).	[[206.1700]]
2016	Creswell NZ Limited (Creswell), a wholly owned subsidiary of Nongfu Spring Company Ltd, entered into a conditional agreement for sale and purchase of the land and water extraction and water bottling operation at 57 Johnson Road, Otakiri; currently operated by Otakiri Springs Limited.	[[204.1075]]
4 August 2017	Creswell lodges an application with the Regional Council for various resource consents for a commercial water bottling operation (Regional Consent Application), including regional consent to take a maximum of 5,000m ³ /day (1.1 million cubic metres (m ³) per year) for commercial water bottling over a term of 25 years.	[[206.1571]]
7 August 2017	District Council appoints Rob van Voorthuysen as Commissioner to make the decisions on Creswell's bottling plant, land use applications, including the decision whether or not to notify.	
25 September 2017	District Council receives Creswell's application for variation to Consent Conditions (Consent Number 61/4/817) and new land use consents for the expansion of the Otakiri Springs Water Bottling Plant (District Consent Application).	[[206.1745]]

DATE	EVENT	REFERENCE
2 October 2017	District Council amends the appointment of independent hearing commissioner, Mr Voorthuysen.	
17 November 2017	The District Council limited notified the District Consent Application, including to persons with property on Johnson Road and Ngāti Awa.	
30 November 2017	The Regional Council grants a resource consent to undertake a controlled activity being to install a bore and related activities at 57 Johnson Road, Otakiri.	[[206.1696]]
15 December 2017	The Regional Council publicly notified the Regional Consent Application. There were 125 submissions received in total; 72 submissions in support or conditional support of the application and 53 in opposition.	
February 2018	Ngāti Awa lodges a submission in opposition to the regional consents based on the effects of the proposal, the Treaty of Waitangi and the Mataatua Declaration on Water.	[[204.1226]]
February 2018	The Regional Council appoints two independent hearing commissions (Rob van Voorthuysen and Antoine Coffin) to hear and decide the regional consent applications.	
16 April 2018	The District Council appoints Antoine Coffin to hear and decide on the district consent applications.	
30 April 2018 – 2 May 2018	Joint hearing held by independent commissioners into the regional and district consent applications.	
11 June 2018	Independent Commissioners for the Regional Council and Whakatāne District Council (District Council) grant the regional and district consents sought by Creswell.	
3 July 2018	Te Rūnanga o Ngāti Awa (Ngāti Awa) files a Notice of Appeal in the Environment Court against the grant of both regional and district consents.	[[101.0031]]
4 July 2018	Sustainable Otakiri files notice of appeal in the Environment Court against the grant of both regional and district consent.	[[101.0045]]
1 November 2018	Joint Statement of Groundwater Experts filed	[[202.0610]]

DATE	EVENT	REFERENCE
18 December 2018	Sustainable Otakiri withdrew its regional consent appeal.	[[101.0064]]
14 March 2019	<p>Expert conferencing commences between planning experts. Topics covered include relevant planning and legislative instruments related to regional matters; weighting to be given to Proposed Plan Change 9; groundwater allocation; planning matters Ngāti Awa agreed are not at issue; and planning matters Ngāti Awa identified as live.</p> <p>Planning experts sign a joint statement.</p>	[[202.0620]]
15 March 2019	Joint Memorandum of Counsel filed on behalf of Ngāti Awa, the Regional Council and Creswell confirming that the parties have agreed revised conditions to the Regional Consent, and on that basis, no outstanding hydrogeology issues remain. Ngāti Awa confirmed no hydrogeology evidence would be called at hearing. Ngāti Awa also confirmed that tikanga effects and planning issues remained live.	[[101.0083]]
22 March 2019	Following expert caucusing, Ngāti Awa confirms the outstanding issues for the Regional Consent Application are in respect of planning and tikanga effects.	[[101.0122]]
14 May 2019	<p>Expert conferencing continues for planning experts. Topics covered include: consideration of the Regional Consent Application against the regional planning instruments (including allocation, efficient and reasonable use, kaitiakitanga, effects on mauri, and the nature of the proposed take); whether recourse to Part 2 of the RMA was required; and conditions.</p> <p>Planning experts sign a joint statement.</p>	[[202.0646]]
20 - 24 May 2019	Environment Court hearing on appeals against the grant of regional and district consents (including the appeals lodged by Ngāti Awa and Sustainable Otakiri)	
10 December 2019	Environment Court issues an interim decision confirming the grant of consents by majority. (<i>Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council</i> (2019) 21 ELRNZ 539) (Environment Court Decision).	[[05.0024]]

DATE	EVENT	REFERENCE
17 January 2020	Ngāti Awa files notice of appeal in the High Court.	[[101.0015]]
20 January 2020	Sustainable Otakiri files notice of appeal in the High Court.	[[101.0023]]
14 February 2020	Ngāti Pikiao Environmental Society Incorporated (Ngāti Pikiao) files a notice of further appeal pursuant to section 305 of the RMA.	
17 December 2020	Te Rūnanga o Ngāi Te Rangi Iwi Trust (Ngāi Te Rangi) files a notice of further appeal pursuant to section 305 of the RMA.	
25 February 2020	Public notice of the withdrawal of Proposed Plan Change 9 by the Regional Council.	[[102.0358]]
26 June 2020	Environment Court issues final decision on conditions (<i>Te Rūnanga o Ngāti Awa & ors v Bay of Plenty & anor</i> [2019] NZEnvC 196).	
27 – 30 July 2020	High Court hearing of appeals against the Environment Court Decision (including appeals by Ngāti Awa and Sustainable Otakiri).	
17 December 2020	High Court issues its decision (<i>Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council</i> (2020) 22 ELRNZ 323) (High Court Decision).	[[05.0080]]
4 February 2021	Ngāti Awa files an application for leave to bring a civil appeal in the Court of Appeal.	
	Sustainable Ōtakiri files an application for leave to bring a civil appeal in the Court of Appeal alongside an affidavit of Nicolette Winona Gladding in support of application.	
9 February 2021	Ngāti Pikiao files an application for leave to bring a civil appeal in the Court of Appeal.	
	Ngāi Te Rangi files an application for leave to bring a civil appeal in the Court of Appeal.	
19 February 2021	Creswell files notice of opposition to leave application and notice to support decision on other grounds	
29 July 2021	Court of Appeal grants leave to four appellants on specified questions of law (<i>Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council</i> [2021] NZCA 354)	[[05.0140]]

DATE	EVENT	REFERENCE
23 August 2021	Appellants file memorandum seeking clarification in respect of the first question of law and the addition of a further question of law.	
25 August 2021	Respondents file memorandum opposing further question of law and agreeing to amendment to first question of law (with caveats).	
	Ngāti Awa files Notice of Appeal in Court of Appeal (subject to further clarification from the Court on the questions of law)	[[101.0001]]
	Sustainable Otakiri files Notice of Appeal in Court of Appeal (subject to further clarification from the Court on the questions of law)	[[101.0007]]
	Ngāti Pikiao files Notice of Appeal	
	Ngāi Te Rangi files Notice of Appeal	
9 September 2021	Court of Appeal issues decision in respect of amendments to the approved questions of law (<i>Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council</i> [2021] NZCA 452).	[[05.0147]]
9 – 10 March 2022	Court of Appeal hearing on appeals against the High Court Decision.	
2 December 2022	Court of Appeal issues decision (<i>Te Rūnanga o Ngāti Awa & Ors v Bay of Plenty Regional Council & Ors</i> [2022] NZCA 598) (CA Decision).	[[05.0156]]
20 January 2023	Ngāti Awa files notice of application for leave to bring a civil appeal against the CA Decision and application to appeal directly from the High Court to the Supreme Court.	[[05.0001]]
	Sustainable Otakiri files notice of application for leave to bring a civil appeal in the Supreme Court against the CA Decision.	[[05.0008]]
17 April 2023	Supreme Court grants leave to Ngāti Awa and Sustainable Otakiri and various grounds (<i>Sustainable Otakiri v Whakatāne District Council</i> [2023] NZSC 35).	[[05.0019]]