



# COURT OF APPEAL OF NEW ZEALAND

## TE KŌTI PĪRA O AOTEAROA

11 December 2018

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**BROOK VALLEY COMMUNITY GROUP INC v BROOK WAIMARAMA  
SANCTUARY TRUST [2018] NZCA 573**

PRESS SUMMARY

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

1. The Court of Appeal today released a judgment dismissing the appeal of the Brook Valley Community Group Inc (the Community Group), which challenged the lawfulness of the aerial discharge of the toxin brodifacoum in the Brook Valley in Nelson.

### **Background**

2. The Brook Waimarama Sanctuary Trust (the Trust) is a charitable trust which operates a fenced wildlife sanctuary in the Brook Valley. In 2017, it intended to carry out three aerial applications of baits containing brodifacoum in the sanctuary in order to achieve pest eradication. The Trust relied on the Resource Management (Exemption) Regulations 2017 (the Regulations), which exempts the discharge of brodifacoum from s 15 of the Resource Management Act 1991 (the RMA) under certain conditions. Section 15 generally proscribes the discharge of contaminants. The Regulations were made under s 360(1)(h) of the RMA.

3. The Community Group in the High Court challenged the validity of the Regulations, and also argued that an additional resource consent was required under s 13 of the RMA as it was a deposit of a substance. The Community Group sought declarations that the Regulations were unlawful and that the aerial discharge of brodifacoum was prohibited under s 13(1)(d) of the RMA. The High Court held that s 13 was not applicable, and that the decision to promulgate the Regulations was properly authorised and made in accordance with all required considerations.
4. Following the delivery of the High Court judgment, the Community Group applied unsuccessfully to the High Court and to the Court of Appeal for a stay and interim relief. Following the Court of Appeal's refusal of interim relief the Trust conducted the three drops of brodifacoum in September and October 2017.

### **The Judgment**

5. The Community Group argued that the regulation making power in s 360(1)(h) of the RMA should be read down to achieve the purpose of the Act, and that the Regulations were repugnant to the Act and made for an improper purpose. The Community Group further argued that even if the Regulations were valid, resource consent is required under s 13 of the RMA.
6. The Court has decided that the Regulations fall within the power conferred by s 360(1)(h) of the RMA, and they are consistent with the Act's purpose of sustainable management and with the provisions in ss 6–7, as the purpose of the exemption from s 15 was to provide an effective means of protecting New Zealand's native species, forests and fauna.
7. The Court has also decided that s 13(1)(d) of the RMA would require consent for deposits only where those deposits do not occur as part of a discharge for which consent may be granted under s 15. In this case the only relevant deposit is as a consequent of discharges, and the exemption from obtaining resource consent under s 15 means that no consent under s 13 is required.

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