

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 15/2008  
[2009] NZSC 24**

|         |                                                  |
|---------|--------------------------------------------------|
| BETWEEN | NGAI TAHU PROPERTY LIMITED<br>Plaintiff          |
| AND     | CENTRAL PLAINS WATER TRUST<br>First Respondent   |
| AND     | CANTERBURY REGIONAL COUNCIL<br>Second Respondent |

Hearing: 13 and 14 October 2008

Court: Elias CJ, Blanchard, Tipping, McGrath and Wilson JJ

Counsel: D J Goddard QC, J M Crawford and S Mony for Appellant  
A R Galbraith QC, M E Casey QC and R M Dunningham for  
First Respondent  
M C Dysart for Second Respondent  
C N Whata and D J Minhinnick for Trustpower Ltd, Rangitata  
Diversion Race Management Ltd and MacKenzie Irrigation  
Company Ltd as Interveners  
J S Kós QC, J M Appleyard and B G Williams for Meridian  
Energy Ltd as Intervener

Interim Judgment: 26 March 2009

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**INTERIM JUDGMENT OF THE COURT**

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[1] At the hearing of this appeal, all counsel took the position that priority as between competing applications under the Resource Management Act 1991 for a finite resource should be determined by a rule. Their submissions were directed to the question of what that rule should be. The Court now wishes to hear argument on the prior question of whether priority should be decided by a rule or through the exercise by consent authorities of a discretion and, if the latter, on what principles should the discretion be exercised.

[2] The position of counsel that there should be a rule was consistent with the judgments of the Court of Appeal in *Fleetwing Farms Ltd v Marlborough District Council*<sup>1</sup> and the High Court in *Geotherm Group Ltd v Waikato Regional Council*<sup>2</sup>, and of both those Courts in the present litigation.<sup>3</sup> However these authorities are not binding on this Court.

[3] To ensure that all the available arguments are before it, the Court proposes to appoint an *amicus curiae*.

[4] The Registrar is directed to send a copy of this Interim Judgment to the Attorney-General, and to arrange a one day hearing as soon as possible. If sought, leave will be granted to the Attorney-General to intervene.

Solicitors:

Anderson Lloyd, Christchurch for Appellant

Buddle Findlay, Christchurch for First Respondent

M C Dysart, Christchurch for Second Respondent

Russell McVeagh, Auckland for Trustpower Ltd, Rangitata Diversion Race Management Ltd and

Mackenzie Irrigation Co Ltd

Chapman Tripp, Christchurch for Meridian Energy Ltd

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<sup>1</sup> [1997] 3 NZLR 257.

<sup>2</sup> [2004] NZRMA 1.

<sup>3</sup> (2006) 13 ELRNZ 63 (HC) and [2008] NZRMA 200 (CA).