

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 28/2020
[2020] NZSC 67

BETWEEN TRANS-TASMAN RESOURCES LIMITED
Applicant

AND TARANAKI-WHANGANUI
CONSERVATION BOARD,
CLOUDY BAY CLAMS LIMITED,
FISHERIES INSHORE NEW ZEALAND
LIMITED,
GREENPEACE OF NEW ZEALAND
INCORPORATED,
KIWIS AGAINST SEABED MINING
INCORPORATED,
NEW ZEALAND FEDERATION OF
COMMERCIAL FISHERMEN
INCORPORATED,
SOUTHERN INSHORE FISHERIES
MANAGEMENT COMPANY LIMITED,
TALLEY'S GROUP LIMITED,
TE OHU KAI MOANA TRUSTEE
LIMITED,
TE RŪNANGA O NGĀTI RUANUI
TRUST,
ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED AND
THE TRUSTEES OF TE KĀHUI O
RAURU TRUST
First Respondents

AND ENVIRONMENTAL PROTECTION
AUTHORITY
Second Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: J B M Smith QC and V N Morrison-Shaw for Applicant
J D K Gardner-Hopkins for Taranaki-Whanganui Conservation
Board
R A Makgill and P D M Tancock for Cloudy Bay Clams Ltd,
Fisheries Inshore New Zealand Ltd, New Zealand Federation of
Commercial Fishermen Inc, Southern Inshore Fisheries
Management Co Ltd and Talley's Group Ltd

D M Salmon, D A C Bullock and D E J Currie for Greenpeace of New Zealand Inc and Kiwis Against Seabed Mining Inc
R J B Fowler QC, J Inns, N R Coates and H K Irwin-Easthope for Te Rūnanga o Ngāti Ruanui Trust, the Trustees of Te Kāhui o Rauru Trust and Te Ohu Kai Moana Trustee Ltd
M C Smith, H E McQueen and P D Anderson for Royal Forest and Bird Protection Society of New Zealand Inc
V E Casey QC and C J Haden for Second Respondent

Judgment: 17 July 2020

JUDGMENT OF THE COURT

- A** Leave to appeal is granted (*Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2020] NZCA 86).
- B** The approved question is whether the Court of Appeal was correct to dismiss the appeal.
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REASONS

[1] In part, this appeal raises issues in relation to the Treaty of Waitangi, Māori customary interests and the applicability of tikanga to marine and marine discharge consent applications. We consider that we may be assisted by submissions from the Crown in relation to these matters. Accordingly, we invite the Attorney-General to intervene if he wishes to do so. We direct the Registrar to bring the appeal to the attention of the Solicitor-General and to provide her with a copy of this judgment.

[2] We note the Environmental Protection Authority's reservation of its position with respect to "systemic" issues raised in or affected by the appeal which may affect its future work. We agree this is appropriate. Should the Authority wish to provide written submissions and/or appear, leave is reserved for it to make the necessary application.

[3] Finally, the Registrar is directed to arrange a judicial teleconference with counsel so that arrangements can be made in relation to the hearing of this appeal. In light of the number of parties and issues, we propose to set the appeal down for two

days. It would assist the Court to ensure the available time is used efficiently if counsel conferred prior to that teleconference to discuss the division of hearing time between them and the possibility of allocating to particular parties the carriage of oral submissions in relation to particular issues. Since we will have written submissions from all parties on the matters they each wish to address, we would prefer to avoid repetitive oral submissions. If counsel agree on some or all of these matters prior to the teleconference, a memorandum may be filed.

Solicitors:

Atkins Holm Majurey Ltd, Auckland for Applicant

Holland Beckett Law, Tauranga for Taranaki-Whanganui Conservation Board

Dawson & Associates Ltd, Nelson for Cloudy Bay Clams Ltd, Fisheries Inshore New Zealand Ltd, New Zealand Federation of Commercial Fishermen Inc, Southern Inshore Fisheries Management Co Ltd and Talley's Group Ltd

Lee Salmon Long, Auckland for Greenpeace of New Zealand Inc and Kiwis Against Seabed Mining Inc

Whāia Legal, Wellington for Te Ohu Kai Moana Trustee Ltd

Oceanlaw New Zealand, Nelson for Te Rūnanga o Ngāti Ruanui Trust

P D Anderson, Royal Forest and Bird Protection Society of New Zealand Inc, Christchurch for the Royal Forest and Bird Society of New Zealand Inc

Kāhui Legal, Wellington for the Trustees of Te Kāhui o Rauru Trust

C J Haden, Environmental Protection Authority, Wellington for Second Respondent