IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 118/2020
[2021] NZSC 37

BETWEEN	SKP INCORPORATED Applicant
AND	AUCKLAND COUNCIL First Respondent
	KENNEDY POINT BOATHARBOUR LIMITED Second Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: J D K Gardner-Hopkins for Applicant
M C Allan and R K Smith for First Respondent
P F Majurey and V N Morrison-Shaw for Second Respondent

Judgment: 5 May 2021

JUDGMENT OF THE COURT

A The application for recall of this Court's judgment of 27 April 2021 (*SKP Inc v Auckland Council* [2021] NZSC 35) is allowed only to make the correction identified at [5] below.

B The [2021] NZSC 35 judgment is reissued with this correction.

REASONS

[1] On 27 April 2021, this Court dismissed an application for leave to appeal by SKP Inc.[1] The proposed appeal concerned a decision of the High Court,[2] dismissing

1 *SKP Inc v Auckland Council* [2021] NZSC 35.
2 *SKP Inc v Auckland Council* [2020] NZHC 1390, (2020) 21 ELRNZ 879 (Gault J) [HC judgment].

an appeal from a decision of the Environment Court declining SKP's application for a rehearing of its appeal in that Court.[3] The applicant sought leave to appeal directly from the High Court judgment after the Court of Appeal declined leave to appeal to that Court.[4]

[2] The application for a rehearing related to the decision of the first respondent, Auckland Council, confirmed by the Environment Court, to grant a resource consent to the second respondent Kennedy Point Boatharbour Ltd (KPBL) authorising KPBL to build and operate a marina at Kennedy Point.[5] SKP sought a rehearing on the basis that, in terms of s 294(1) of the Resource Management Act 1991, there was both new and important evidence that had become available and a change in circumstances that in either case may have affected the original decision. The change in circumstances concerned the representative body of Ngāti Paoa for the purposes of resource consent applications. In its application for leave, SKP did not challenge the finding of the High Court that the new and important evidence limb was not met.

[3] The applicant has applied for a recall of this Court's judgment. It is said that the Court erred in its judgment in adopting the observation of the Court of Appeal that SKP had not called evidence as to claimed harmful cultural effects of the proposed marina. SKP described this as an error in its initial application and in its submissions for leave to appeal. SKP says that there is a real possibility this Court may have reached a different decision on the application for leave if this error had not been made.

[4] We accept, as the Environment Court recorded in its initial decision, that SKP called evidence from witnesses "from and on behalf of the Piritahi Marae" on, amongst other matters, harmful cultural effects.[6] The judgment will be recalled to make that clear. We also accept that the way in which this point was expressed in our judgment is too broad without that explanation. However, the better reading of the Court of

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3 *SKP Inc v Auckland Council* [2019] NZEnvC 199 (Principal Judge Newhook and Commissioners Leijnen and Buchanan).

4 *SKP Inc v Auckland Council* [2020] NZCA 610, (2020) 22 ELRNZ 268 (Brown and Clifford JJ) [CA leave judgment].

5 *SKP Inc v Auckland Council* [2018] NZEnvC 81 (Principal Judge Newhook and Commissioners Leijnen and Buchanan).

6 At [164].

Appeal judgment in full is that the Court's reference to the absence of "new important evidence as to adverse cultural effects" was directed to the rehearing application.[7] That was the relevant context.[8] It follows that although we have carefully considered the matters raised by SKP in the recall application, apart from the correction just mentioned, there is nothing that requires amendment of the judgment. We add that we consider this matter can be dealt with on the papers and does not require an oral hearing, as SKP sought.

[5] The judgment of this Court is recalled and reissued to make an addition to [15] by inserting before the penultimate sentence the words: "As SKP notes, it did call evidence of harmful cultural effects in the original hearing in the Environment Court. However, the point being made by the Court of Appeal reflected the finding that there was no new important evidence of these concerns in the context of the rehearing application."

Solicitors:
Greenwood Law Ltd, Waiheke Island for Applicant
Brookfields, Auckland for First Respondent
Atkins Holm Majurey Ltd, Auckland for Second Respondent

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7 HC judgment, above n 2, at [74], cited in CA leave judgment, above n 4, at [27].

8 On the evidence as to cultural effects filed in the rehearing application, the High Court upheld the finding of the Environment Court that it had not been offered probative evidence about the reasons for the Trust Board's position as to adverse cultural effects: HC judgment, above n 2, at [65].