IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 1/2023
[2026] NZSC 85

BETWEEN	SUSTAINABLE OTAKIRI INCORPORATED Appellant
AND	WHAKATĀNE DISTRICT COUNCIL First Respondent
	OTAKIRI SPRINGS LIMITED Second Respondent

SC 2/2023

BETWEEN	TE RŪNANGA O NGĀTI AWA Appellant
AND	BAY OF PLENTY REGIONAL COUNCIL First Respondent
	OTAKIRI SPRINGS LIMITED Second Respondent

Court:	Winkelmann CJ, Glazebrook, Ellen France, Williams and Kós JJ
Counsel:	M Salmon KC and D A C Bullock for Appellant in SC 1/2023 H K Irwin-Easthope and B C K Murfitt for Appellant in SC 2/2023 A M B Green and M Hooper for First Respondent in SC 1/2023 M H Hill for First Respondent in SC 2/2023 W N Fotherby and A N Dawson for Second Respondent in SC 1/2023 and SC 2/2023 J B M Smith KC, D G Randal and E L Bennett for Creswell NZ Limited as Interested Party in SC 1/2023 and SC 2/2023
Judgment:	29 June 2026

JUDGMENT OF THE COURT

A **The appellant in SC 1/2023 must pay the first respondent in SC 1/2023 costs of $12,750 plus disbursements determined by the Registrar. We allow for second counsel.**

B **The appellant in SC 1/2023 must pay the second respondent in SC 1/2023 costs of $12,750 plus disbursements determined by the Registrar. We allow for second counsel.**

C **The appellant in SC 2/2023 must pay the second respondent in SC 2/2023 costs of $12,750 plus disbursements determined by the Registrar. We allow for second counsel.**

D **Security for costs paid into Court by both appellants in their appeals is to be released in part-satisfaction of their respective costs obligations. In respect of SC 1/2023, security is to be apportioned in equal shares between the two respondents in that appeal.**

E **We remit the matter of costs in the Environment Court, High Court and Court of Appeal to those Courts for them to consider whether their costs awards ought to be modified.**

REASONS

ELLEN FRANCE, WILLIAMS AND KÓS JJ
(Given by Williams J)

[1] In a judgment delivered on 12 November 2025, the appeals by Sustainable Ōtākiri Inc (SOI), the appellant in SC 1/2023, and Te Rūnanga o Ngāti Awa (TRONA), the appellant in SC 2/2023, were dismissed.[1] Ōtākiri Springs Ltd (OSL), the second respondent in both appeals, seeks costs. So does Whakatāne District Council (WDC), the first respondent in SC 1/2023. Bay of Plenty Regional Council, the first respondent in SC 2/2023, does not seek costs.

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1 *Sustainable Ōtākiri Inc v Whakatāne District Council* [2025] NZSC 158, [2025] 1 NZLR 644 (Winkelmann CJ, Glazebrook, Ellen France, Williams and Kós JJ) [SC judgment].

[2] SOI and TRONA respond that costs should lie where they fall and that the Courts below should be directed to reconsider their costs awards in light of this Court's substantive judgment. Creswell NZ Ltd (Creswell) (which obtained costs awards in the Courts below and for which OSL was substituted in this Court) seeks to protect its awards in those Courts.

[3] In the Courts below, costs followed the event. However, the Environment Court bore in mind that SOI was a community group with limited resources when setting costs against that party,[2] and in the High Court all awards were discounted by 20 per cent as the appeals raised public interest issues.[3]

Submissions

OSL

[4] OSL submits that costs should follow the event in the usual way and be awarded against the appellants jointly and severally. It seeks to distinguish the decisions of this Court in *West Coast ENT Inc v Buller Coal Ltd* and *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* in which unsuccessful public interest appellants were not subjected to costs awards.[4] The public interests involved in *King Salmon* and *Buller Coal*, it is argued, were both of "special significance." In contrast, here, the majority in this Court's substantive judgment described the relevance of the environmental effects of plastic bottle disposal (plastic effects) to production-related resource consent decisions as a "fact and degree" issue.[5] The tikanga effects point was determined on standard appellate review principles and the issue related to the type of activity was a standard matter of interpretation. OSL also emphasises that the issue on appeal was "localised", and "[t]he principal interest of the appellants was … narrow and local."

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2 *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2021] NZEnvC 116 (Chief Judge Kirkpatrick) at [30].

3 *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2021] NZHC 1095 (Gault J) at [6]–[8] and [15].

4 *West Coast ENT Inc v Buller Coal Ltd* [2013] NZSC 133 at [4]–[5]; and *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 167, (2014) 25 PRNZ 637.

5 SC judgment, above n 1, at [99] per Ellen France, Williams and Kós JJ.

[5] Further, *King Salmon* and *Buller Coal* were both leapfrog appeals (direct appeals from the High Court to this Court), whereas SOI's appeal was "in effect the fourth successive unsuccessful appeal of the consents being granted", such that "any public interest in the case … must be viewed in proportion to the appellants having lost the case at every possible stage of the proceedings". Additionally, a public interest discount is already provided by the fact that the Bay of Plenty Regional Council does not seek costs against TRONA in relation to SC 2/2023. Finally, reductions for partial success largely result when that success is reflected in the outcome, which is not the case here.

WDC

[6] WDC adopts OSL's submissions to the extent they apply. It also refers to the "well-established principle that costs of enforcement proceedings should not fall on ratepayers … if the local authority has acted reasonably".[6] It submits that this principle could apply in this (non-enforcement) context, given the appeal arose due to SOI's failure to seek leave to call evidence in the Environment Court and WDC has acted reasonably. "[A] public authority (and its ratepayers) should not bear the financial consequence" of the appellants' failure to raise issues at the proper stage of proceedings, leading to appeals. WDC also requests that security for costs be released towards any costs award made.

SOI

[7] SOI submits its appeal raised "essentially the same legal questions as *Buller Coal*, just in a different setting". It says it succeeded on the key legal question and would have succeeded substantively but for a "pleadings point", and therefore had "mixed success". Had the proceeding come to this Court by way of judicial review, a declaration would have issued even if, on the majority view, the consents would not have been set aside. SOI also emphasises that it brought the proceeding in the public interest (and counsel appeared pro bono). While some of its members might live (or once lived) in the vicinity of the bottling plant, SOI submits that it cannot be said "in

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6 WDC cites in this respect *Tasman District Council v Hogarty* [2025] NZEnvC 235, [2025] NZRMA 413 at [28].

any real sense" that private interests were at stake in the proceeding, certainly by the time the appeal reached this Court.

[8] As to costs in the Courts below, SOI notes that the minority would have remitted costs,[7] and that the majority did not rule on the issue.[8] SOI says it faced significant adverse costs awards in the courts below, including by having public interest deductions reduced on the basis that its arguments were unduly technical, despite those arguments being upheld by the minority in this Court. SOI adds that the delay and cost factors relied on by the majority to refuse remitting the appeal to the Environment Court would have had less potency if an appeal to the Supreme Court had not been required to vindicate its position on plastic effects. SOI also says that if it had taken this issue at the Environment Court, it would likely have faced an adverse costs award for doing so, given the then-prevailing understanding of *Buller Coal*.

[9] SOI explains that plastic effects was not raised on the advice of its (then) counsel. This advice was apparently based on an assessment of the approach to indirect effects after *Buller Coal*, an assessment that was essentially shared by a majority of the Environment Court, and by the High Court and Court of Appeal. SOI submits that it should not face adverse costs for acting on the prevailing understanding of a Supreme Court decision.

TRONA

[10] TRONA adopts SOI's submissions in respect of remitting costs in the Courts below for reconsideration. It makes its own submissions in advancing the argument that costs in this Court should lie where they fall.

[11] TRONA submits that as Ngāti Awa's post-settlement governance entity, its mandated iwi organisation for the purpose of the Māori Fisheries Act 2004, and its relevant iwi authority for the purposes of the Resource Management Act 1991, it acts in a representative capacity, including in this proceeding. In this context, TRONA says it has "obligations and responsibilities" to act in the best interests of its

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7 SC judgment, above n 1, at [308] per Winkelmann CJ and Glazebrook J dissenting.
8 At [214] per Ellen France, Williams and Kós JJ.

beneficiaries and to advance issues of importance to its iwi. TRONA notes that the Environment Court has acknowledged the force in these considerations by refusing on occasion to award costs against iwi authorities.[9]

[12] TRONA emphasises that its case on appeal was conducted reasonably: it did not advance arguments without substance or evidentiary support; its appeal was clarified and narrowed prior to the hearing; it was neither technical nor unmeritorious; it did not unduly delay the proceeding; and it collaborated with SOI on common grounds of appeal.

[13] As to public interest, TRONA notes that the tikanga-based relationship of iwi and hapū with their ancestral waters and taonga is a "matter of national importance", as recognised by s 6(e) of the Resource Management Act and the National Policy Statement for Freshwater Management.[10] TRONA submits that it brought the appeal in the public interest.

Creswell

[14] Creswell seeks leave to reply to SOI's and TRONA's costs submissions. We accept that Creswell is an interested party given the appellants' submissions challenge costs awards made in Creswell's favour in the Courts below. We grant leave accordingly.

[15] Creswell submits that the majority's acceptance that plastic effects could be considered does not constitute mixed success. It submits SOI is attempting to "rewrite the procedural history of these proceedings". It emphasises that plastic effects were not in issue in the Environment Court and that SOI did not seek leave to call evidence in relation to the issue. Creswell says that while plastic effects were discussed in the Environment Court, SOI's counsel accepted that declining resource consents on the

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9 The authorities cited are: *Te Kupenga O Ngāti Hako Inc v Hauraki District Council* EnvC Auckland A95/2002, 2 May 2002 (where costs were awarded against an iwi authority in favour of a local authority but not the applicant); *St Lukes Group Ltd v The Auckland City Council* EnvC Auckland A123/2001, 3 December 2001; *St Lukes Group Ltd v The Auckland City Council* EnvC Auckland A90/2002, 16 April 2002; and *Mahuta v The Waikato Regional Council* EnvC Auckland A36/99, 23 March 1999.

10 Ministry for the Environment | Manatū Mō Te Taiao *National Policy Statement for Freshwater Management 2020* (18 December 2025).

basis of the plastics issue would require "a lot more evidence" and acknowledged in an exchange with the bench that declining consent on this basis "would be disproportionate".

[16] Creswell submits that it would be unjust to depart from the usual approach to costs on the basis of public interest in this case. It notes that, in relation to SOI's appeal, the Environment Court refused to dispense with security for costs, considering that the issues on appeal appeared to be personal to SOI's members rather than of general societal or environmental benefit. Further, Creswell submits it is doubtful that TRONA was acting in the public interest either—it notes the Environment Court heard evidence that TRONA had not ruled out involvement in commercial water bottling at that time. Creswell also notes that Ngāti Awa entities held consents for a greater overall water take volume than that proposed by Creswell and operate businesses in industries that also exploit natural resources.

Assessment

[17] Costs in this Court will usually follow the event. This is likely to be the "just" outcome in terms of r 44(1) of the Supreme Court Rules 2004. Since almost all civil appeals in this Court involve questions of wider significance than the interests of the parties, something more than an element of public interest or importance will be required to depart from this principle.[11] But where a litigant advances a genuine aspect of the public interest and in so doing offers important perspectives that might not otherwise be heard, this can be of real assistance in decision-making processes. In such circumstances, this Court may be prepared to consider whether costs should be ordered, and if so, in what quantum.[12] This will be particularly so if the relevant party has no prospect of obtaining any personal advantage from participating in the proceeding.

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11 *FMV v TZB* [2021] NZSC 145 at [10]; and *Preston v Preston* [2021] NZSC 154, [2021] 1 NZLR 651 at [84].

12 *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd*, above n 4, at [12] and [24] per Elias CJ and William Young J, and at [45] per McGrath, Glazebrook and Arnold JJ; and see also *Mahuta v Waikato Regional Council*, above n 9, at [17].

Costs against SOI

[18] We agree that the plastic effects issue raised by SOI—albeit by a procedurally problematic route—is an important public interest issue. This Court unanimously accepted that, as a matter of principle, plastic effects may be relevant to applications for resource consent.[13] Thus, SOI achieved a measure of success despite the dismissal of its appeal.

[19] On the other hand, there were also private interests involved. The rural amenity values enjoyed by those members of SOI who lived near the proposal site were at stake. This was plainly a motivation in bringing the appeal. That factor combined with the fact that Creswell (later OSL) and WDC successfully defended appeals by SOI at four levels suggests a contribution to their costs is appropriate.

[20] We would, however, discount that award by 50 per cent to mark the public interest element of the appeal and SOI's modest success on plastic effects.

Costs against TRONA

[21] TRONA represented Ngāti Awa in these proceedings, subject to the dissenting voice of Mr Eruera of Te Pāhipoto, one of Ngāti Awa's constituent hapū. TRONA had no commercial or private interest at stake. Rather it acted in a traditional kaitiaki role to speak for and to protect the wai according to the tikanga that its leading pūkenga felt applied to the case. It thus represented an important public interest; not one on a national scale as was the case in *Buller Coal* and *King Salmon*, but a regional public interest. Dr Mason was clear that he spoke only for Ngāti Awa—he did not presume to speak for other iwi. Although ultimately TRONA did not prevail, its case was presented responsibly and efficiently. It was of real assistance in the decision-making process at all levels.

[22] However, we are not satisfied that TRONA's circumstances are such that it is appropriate to let costs lie where they fall. Like SOI, TRONA failed at four levels of appeal. OSL can fairly expect to recoup at least some of its costs. Again, a discount

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[13] See SC judgment, above n 1, at [97]–[98] per Ellen France, Williams and Kós JJ and [245] per Winkelmann CJ and Glazebrook J dissenting.

is appropriate which we also set at 50 per cent. In this, we have taken into account that, while TRONA also pleaded the plastic effects issue, its primary focus was tikanga-based effects, with plastics assuming a less prominent profile in its appeal compared to that of SOI. On the other hand, unlike SOI's, TRONA's was a pure public interest appeal. These factors balance each other out, such that TRONA should benefit from the same discount as SOI.

Costs on a joint and several basis?

[23] As noted, OSL seeks costs on a joint and several basis. Whether costs in this Court are imposed on multiple parties jointly and severally or separately will depend on the circumstances of the case and the requirements of justice.[14] In this case, SOI's appeal focused on the scope of "effects" and the planning status of OSL's bottling plant. TRONA's appeal related (in broad terms) to the effects of the proposal on te mauri o te wai in its rohe. It addressed plastics and the scope of effects in that context. Thus, while there was some overlap, the two appeals were distinct in their focus. Further, SOI and TRONA cooperated to avoid repetition in the hearing before this Court with TRONA carrying the burden of argument on the tikanga-related issues and SOI having carriage of all other matters. In these circumstances it is appropriate to apportion costs in favour of OSL separately between the appellants. The issue does not arise in respect of WDC because it only seeks costs against SOI.

Quantum

[24] Applying the recent approach of this Court to the quantum of costs, OSL's costs on a two-and-a-half-day hearing are $51,000. Applying a 50 per cent discount to that figure results in $25,500. This becomes $12,750 as against the two appellants.

[25] On the basis that WDC was party to only one of the appeals, its costs are $25,500—half that of OSL. Discounted by 50 per cent, that figure becomes $12,750, payable by SOI only.

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[14] See Supreme Court Rules 2004, r 44. As to apportionment of costs in the High Court and Court of Appeal, see Jessica Gorman and others *McGechan on Procedure* (online ed, Thomson Reuters) at [HR14.14.01].

Costs in the Courts below

[26] The issue of costs in the Courts below is now a matter for those Courts to consider in light of our substantive judgment.[15] We therefore remit the matter of costs in the Environment Court, High Court and Court of Appeal to those Courts for them to consider whether their costs awards ought to be modified.

Result

[27] The appellant in SC 1/2023 must pay the first respondent in SC 1/2023 costs of $12,750 plus disbursements determined by the Registrar. We allow for second counsel.

[28] The appellant in SC 1/2023 must pay the second respondent in SC 1/2023 costs of $12,750 plus disbursements determined by the Registrar. We allow for second counsel.

[29] The appellant in SC 2/2023 must pay the second respondent in SC 2/2023 costs of $12,750 plus disbursements determined by the Registrar. We allow for second counsel.

[30] Security for costs paid into Court by both appellants in their appeals is to be released in part-satisfaction of their respective costs obligations. In respect of SC 1/2023, security is to be apportioned in equal shares between the two respondents in that appeal.

[31] We remit the matter of costs in the Environment Court, High Court and Court of Appeal to those Courts for them to consider whether their costs awards ought to be modified.

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[15] We note that SOI and TRONA were refused leave to appeal the costs award made in the Court of Appeal: see *Sustainable Ōtākiri Inc v Whakatāne District Council* [2023] NZSC 35 (Glazebrook and O'Regan JJ). That refusal does not apply insofar as this Court departed from the reasoning of the Court of Appeal in relation to the plastic effects issue. It is for the Court of Appeal to determine whether our conclusions about plastic effects necessitate a different approach to costs in that Court.

WINKELMANN CJ AND GLAZEBROOK J
(Given by Glazebrook J)

[32] The Court was unanimous on the most significant issue raised by the appeal: that the potential environmental effects of plastic bottle disposal were relevant effects within the meaning of s 104(1)(a) of the Resource Management Act 1991.[16]

[33] Although the appellants were ultimately unsuccessful in their appeals (but by a three–two majority), this does not diminish the very real public interest for future cases of this unanimous finding. In these circumstances, we would have let costs lie where they fall for both appellants.

[34] We accept the submission made by Sustainable Ōtākiri Inc that, at least by the time the case reached this Court, the fact that some members lived (or once lived) in the vicinity of the bottling plant did not constitute in any real sense a relevant private interest. We also accept the submission of Te Rūnanga o Ngāti Awa that it was acting in its role as kaitiaki.

[35] It is important that the prospect of adverse costs awards does not discourage the raising of significant environmental issues by those acting in the general public interest.

Solicitors:
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Whāia Ltd, Wellington for Appellant in SC 2/2023
Brookfields Lawyers, Auckland for First Respondent in SC 1/2023
Meredith Connell, Auckland for Second Respondent in SC 1/2023 and SC 2/2023
Buddle Findlay, Wellington for Interested Party in SC 1/2023 and SC 2/2023

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[16] *Sustainable Ōtākiri Inc v Whakatāne District Council* [2025] NZSC 158, [2025] 1 NZLR 644 (Winkelmann CJ, Glazebrook, Ellen France, Williams and Kós JJ) at [97]–[98] per Ellen France, Williams and Kós JJ and [245] per Winkelmann CJ and Glazebrook J dissenting.