



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

8 July 2020

MEDIA RELEASE

Aotearoa Water Action Inc v Canterbury Regional Council [2020] NZHC 1625

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.

Result

[1] In a judgment released today the High Court at Christchurch has dismissed the judicial review challenge brought by Aotearoa Water Action Incorporated. The Court approved Environment Canterbury’s process for granting resource consents for commercial water bottling at Belfast.

Background

[2] Aotearoa Water Action Incorporated (the Group) challenged the process by which two companies, Rapaki and Cloud Ocean, acquired resource consents giving them the right to take and use water for commercial water bottling.

[3] Through the acquisition of property Rapaki and Cloud Ocean acquired the rights to both take and use water via consents originally granted for a wool scour and freezing works. The transfer of those rights was not under challenge. In 2017 the companies applied to Environment Canterbury (ECan) for consent to change the use of the water they could take under the wool scour and freezing work consents. Those applications were granted.

[4] The effect of those decisions is that water, which could originally be taken for a meat processing facility and a wool scour, can now be used for commercial water bottling.

The issues

[5] For reasons explained in the judgement, ECan approached both companies' applications as applications for a change of use for water. In considering whether to grant the application for a change in use ECan considered the environmental effects of the change of use against the effects on the environment of the existing consents. Based on this assessment ECan considered the effects of the change would be no more than minor. Once it had decided to grant the change of use, for administrative efficiency ECan amalgamated the existing take and use consents into one new consent.

[6] At issue was whether the consenting authority, ECan, was correct in this approach or whether it was required:

- a) to consider the change in use application as an application for a new take as the take and use of water cannot be separated. This approach would have required ECan to deny the consent as new take consents were prohibited;
- b) to consider the environmental effects of the change of use against the current environment, not what was allowed under the previous consent. This may have prevented the granting of the consents, or at least would have required notification of the application to relevant parties; and
- c) not to amalgamate the take and use consents.

[7] Ngāi Tūāhuriri Rūnanga also informed the Court it was opposed to the taking of water for commercial bottling, while not a party to the proceedings the Court heard evidence from the Rūnanga.

The role of the High Court in judicial review proceedings

[8] In these proceedings the Court was not being asked to determine, and could not determine, whether it is right for New Zealand water to be bottled and sold overseas. Nor was the Court asked to consider what rights, if any, local iwi might have to water as tangata whenua.

[9] The role of the Court was to determine whether the way ECan processed the various applications was lawful in terms of the Resource Management Act, not to consider the merits of ECan's decision.

The Court's findings

The Court held in accordance with relevant provisions of the RMA, ECan could lawfully deal with the applications as they did. There was accordingly no reviewable error in the way the Council dealt with the resource consent applications.

In determining the Council's decision was lawful and that it was entitled to adopt the approach, the Court held the following:

- ECan was able to process the application as an application for a change in the use of water without the companies also having to obtain consent for the taking of water. Through the transfer of the initial consents the water had already been allocated to those consents, the use of the water for bottling did not require any extraction from the acquirer beyond that already permitted.

- In considering the effects on the environment ECan was required to accept that the extraction of water from the relevant aquifer, to the full extent permitted by the previously granted consents, was already part of that environment.
- ECan had appropriately considered whether the effects on the environment of the proposed water bottling activity would be no more than minor in deciding whether public notification of the applications was required. The environmental effects of using water for bottling were no worse than the effects of earlier consents. There was an improvement with a reduction in contaminated water. Potential pollution from discarded plastic was too remote an effect to be taken into account under the RMA.
- The amalgamation of the change of use consent and the original take consent to create one new consent was lawful. The Council's officers honestly made an assessment as to how to process the applications in accordance with the RMA. ECan did not adopt a contrived procedure to avoid dealing with the application as for a take of water. The amalgamation achieved administrative efficiency and did not alter the rights of the companies.
- Ngāi Tūāhuriri Rūnanga provided evidence to the Court. The Rūnanga did not explain why it was culturally offensive to use water for commercial bottling but not for a wool scour or freezing works. There was no error in the way ECan had considered and dealt with the interests of tangata whenua, namely the Ngāi Tūāhuriri Rūnanga's interest in the issues ECan had to consider. Neither ECan nor the Court had to consider potential Iwi claims to water in their decision.

The Court refused to quash ECan's decisions and has refused to make declarations that ECan could not proceed in the manner they did.

Contact: Cate Brett - Chief Advisor Judicial Development and Communications
Phone (04) 466 3437
cell phone or 021 557 874 email cate.brett@courts.govt.nz