



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

6 March 2023

MEDIA RELEASE

**CLOUD OCEAN WATER LTD v AOTEAROA WATER ACTION INCORPORATED
AND ORS**

(SC 82/2022)

**Hearing of the Supreme Court in the Christchurch High Court
Wednesday 22 March – Thursday 23 March**

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

Background

This case concerns commercial water bottling in Canterbury under the Resource Management Act. Between 2016 and 2017, a number of resource consents to take and use water for a freezing works and a wool scour were transferred, some to Cloud Ocean Water Ltd (Cloud Ocean Water) and others to Rapaki Natural Resources Ltd (Rapaki). These companies sought to use the existing consents to take and use water for commercial bottling for export.

Aotearoa Water Action Incorporated (AWA) is an environmental advocacy group which formed to challenge the Canterbury Regional Council's decision to transfer these consents. In a 2018 High Court decision, AWA successfully argued that water bottling was not within the scope of water use under the existing consents. In other words, the companies were able to "take" water under the existing consents, but not "use" it for water bottling.

Cloud Ocean Water and Rapaki then sought new change of use consents from the Canterbury Regional Council to allow for water bottling. The Council granted the new "use" consents and then amalgamated them with the existing "take" consents to form one consent. The Council did not notify the public of its decision as the effects on people affected were considered "less than minor". AWA sought judicial review of the Council's decision to grant and amalgamate the resource consents.



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In July 2020, the High Court held that the process by which the Council granted and amalgamated the consents was lawful, and that the decision did not need to be notified.

In July 2022, the Court of Appeal overturned the High Court decision and held that the use consents were not lawfully granted and therefore neither was the amalgamation. It held that the wording of the Canterbury Land and Water Regional Plan (LWRP) required “take” and “use” to be considered together, meaning the Council could not grant a separate a resource consent for the use of water for bottling purposes separate to the original consent to take water.

The Court of Appeal did not consider it necessary to discuss the environmental impact of selling water in plastic bottles or the adverse effects on cultural values. It was also not necessary to discuss notification.

This appeal

In August 2022, Cloud Ocean Water applied for leave to appeal the decision of the Court of Appeal. The Supreme Court granted leave on the question of whether the Court of Appeal was correct to allow the appeal.

The issue to be determined is whether Canterbury Regional Council had the ability to grant resource consents for water use separate from the existing consents for water take.

Viewing of hearing

The Supreme Court will hear this case in the Christchurch High Court. The Courtroom is open to the public in accordance with the [COVID 19 Protection Framework Protocol](#).

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Williams	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice O’Regan	The Hon Justice French
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Judges as seen from the public gallery

Counsel

- Cloud Ocean Water Ltd (Appellant): *A C Limmer and S A Chidgey*
- Aotearoa Water Action Inc (First Respondent): *D A C Bullock and S G T Ma Ching*
- Canterbury Regional Council (Second Respondent): *P A C Maw and L F de Latour*



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- Southridge Holdings Ltd (previously Rapaki Natural Resources Ltd) (Third Respondent): *D C Caldwell and J R Pullar*
- Te Ngāi Tūāhuriri Rūnanga Incorporated (Intervener): *J M Appleyard and R E Robilliard*

Court sitting hours

Court will begin at 10.00 am and conclude at 4.00 pm.

- The morning adjournment will be from 11.30 am to 11.45 am.
- The lunch adjournment will be from 1.00 pm until 2.15 pm.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2022\] NZCA 325](#) (20 July 2022)

Supreme Court leave decision: [\[2022\] NZSC 133](#) (17 November 2022)