

IN THE SUPREME COURT OF NEW ZEALAND

SC 75/2012  
[2012] NZSC 107

BETWEEN	WEST COAST ENT INCORPORATED Appellant
AND	BULLER COAL LIMITED First Respondent
AND	SOLID ENERGY NEW ZEALAND LIMITED Second Respondent
AND	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED Third Respondent

Court: McGrath, William Young and Chambers JJ

Counsel: D M Salmon and K L J Simcock for Appellant  
J E Hodder SC, J M Appleyard and B G Williams for First  
Respondent  
A Limmer and M R Christensen for Second Respondent  
P D Anderson for Third Respondent

Judgment: 28 November 2012

---

**JUDGMENT OF THE COURT**

---

- A Leave to appeal direct to this Court, against the High Court's judgment, is granted.**
- B The approved ground of appeal is whether, under s 104(1)(a) of the Resource Management Act 1991, the decision-makers in the consent proceedings were required or able to have regard to the effects on climate change of discharge of greenhouse gases arising from end use of coal that will be extracted if consent is upheld.**
-

## REASONS

[1] The appellant applies for leave to appeal against a judgment of the High Court,<sup>1</sup> on appeal from the Environment Court,<sup>2</sup> in declaratory proceedings brought by the first and second respondents. The proposed ground of appeal arises in the context of a substantive appeal against granting of consent to the first respondent for coal mining activities at the Escarpment Mine. This appeal is presently being heard in the Environment Court. The judgment turned on a question of interpretation of s 104(1)(a) of the Resource Management Act 1991.

[2] The effect of the High Court judgment is to preclude the appellant from calling evidence at the Environment Court's hearing on potential effects on climate change of discharge of greenhouse gases from the end use of coal at the mine. The hearing is due to conclude in late December 2012. An early final determination whether the High Court's judgment is correct is desirable to avoid disruption to the Environment Court's determination of the substantive appeal. The same legal issue arises in relation to a consent granted to the second respondent for the Mt William North Mine, as that consent is also subject to a substantive appeal.

[3] All parties have also joined in submitting that there are "exceptional circumstances" that justify taking the appeal direct to this Court under s 14 of the Supreme Court Act 2003. They contend that an early final determination of the issue of whether the High Court has correctly decided what is a matter that clearly is of public importance warrants us granting leave to bring a direct appeal.

[4] Acceding to the parties' application will deprive this Court of the benefit of consideration of a judgment of the Court of Appeal on the issue which does concern us. On the other hand, having regard to the great importance of the substantive issues being considered by the Environment Court and the risk of disruption to its

---

<sup>1</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Buller Coal Ltd* [2012] NZHC 2156.

<sup>2</sup> *Buller Coal Ltd* [2012] NZEnvC 80.

decision-making if the regular appellate course is followed, we have decided that the circumstances are exceptional and that the course proposed to us by all parties is justified. Leave to bring a direct appeal is accordingly given in relation to both matters.

Solicitors:

Lee Salmon Long, Auckland for Appellant

Chapman Tripp, Christchurch for First Respondent

Anderson Lloyd, Christchurch for Second Respondent

P D Anderson, Christchurch for Third Respondent