Supreme Court of New Zealand
Te Kōti Mana Nui

9 November 2018

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

NORTHLAND ENVIRONMENTAL PROTECTION SOCIETY v CHIEF EXECUTIVE OF THE MINISTRY FOR PRIMARY INDUSTRIES AND ORS

(SC 10/2018) [2018] NZSC 105

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

In 2015 the appellant, Northland Environmental Protection Society (NEPS), formed the view that swamp kauri was being illegally exported out of New Zealand. NEPS was primarily concerned about alleged exports of slabs of swamp kauri, said to be table tops, and of lightly carved swamp kauri logs, said to be temple poles.

At issue is whether such items come within the definition of finished or manufactured indigenous timber product contained in s 2(1) of the Forests Act 1949. If so, they can be lawfully exported.

NEPS also maintains that swamp kauri is a protected New Zealand object as defined in s 2(1) of the Protected Objects Act 1975 and that its export is limited by the export restrictions in that Act.

The Forests Act appeal

The High Court held that the definition of finished or manufactured indigenous timber product in s 2(1) of the Forests Act requires a practical approach with a case by case assessment of the product's appearance and intended use at the time of export. The Court found that, on this approach, a table top without fixed legs could meet the definition. The

85 Lambton Quay, Wellington
P O Box 61 DX SX 11224
Telephone 64 4 918 8222 Facsimile 64 4 471 6924

same applies to temple poles. NEPS' appeal to the Court of Appeal was dismissed.

The Supreme Court has unanimously allowed the appeal in respect of the Forests Act. Glazebrook J gave reasons for herself, O'Regan, Ellen France and Arnold JJ (the majority). William Young J, while agreeing the appeal should be allowed, gave separate reasons on this issue.

The majority held that the statutory wording and purpose of the Act made it clear that the definition of finished or manufactured indigenous timber product contained in s 2(1) of the Forests Act is intended to ensure that value is added to indigenous timber before it is exported.

The majority held that, to be lawfully exported, an item must be a product in itself and in its final or kitset form. It must be ready either to be used or to be installed into a larger structure (once assembled in the case of a kitset). Under the majority's interpretation a table top, which is not a product in its own right, cannot be exported under the Act. Logs with surface carving are unlikely to meet the definition.

William Young J's interpretative approach was broadly similar save that he considered that timber which has been so processed that its only practical and economic use is as a table top may be exported as a finished or manufactured indigenous timber product, even if not attached to legs.

The Protected Objects Act appeal

Regarding the Protected Objects Act both the High Court and Court of Appeal held that swamp kauri was not a protected New Zealand object for the purposes of the Act.

The Supreme Court was unanimous in dismissing the appeal on this point. It held that swamp kauri, as a category, is not covered by the Protected Objects Act.

Contact person:
Kieron McCarron, Supreme Court Registrar (04) 471 6921