



**Supreme Court of New Zealand
Te Kōti Mana Nui**

26 July 2019

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**RANGITIRA DEVELOPMENTS LIMITED V ROYAL FOREST AND
BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

(SC 105/2018) [2019] NZSC 81

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

The appellant (Rangitira) wishes to develop an open cast coal mine on forest land near Westport. Of the 116 hectares it proposes to excavate, 104 hectares are reserve land administered by the Buller District Council (the Council). Rangitira has a mining permit for the project and applied to the Council for an access arrangement under s 60 of the Crown Minerals Act 1991. Rangitira then applied to the High Court for various declarations in relation to s 23 of the Reserves Act 1977 and s 60(2) of the Crown Minerals Act 1991.

The High Court made declarations that, in summary, provided that the Council is not required to give effect to s 23 of the Reserves Act. That section is merely a relevant consideration and other factors, such as economic benefit, can be taken into account in deciding the access issue. On appeal, the Court of Appeal set aside the declarations and held that the Council is required to give effect to s 23 of the Reserves Act.

Rangitira was granted leave to appeal to the Supreme Court against the Court of Appeal judgment. The approved leave question was whether the Court of Appeal erred in setting aside declarations made by the High Court.

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The proceedings in the High Court had proceeded on the basis of an agreed statement of facts, namely that the land at issue was a local purpose water conservation reserve. Counsel for Rangitira informed the Supreme Court that he had discovered, while preparing for the appeal, that the reserve at issue does not appear to have been classified as a local purpose reserve. Submissions were sought as to the legal and factual implications of this.

Rangitira submitted that the principal issue in the appeal (the effect of s 23 of the Reserves Act) remains of general and public importance. Further, it submitted that the specific question of the relationship between s 23 of the Reserves Act and s 60(2) of the Crown Minerals Act remains of importance to the parties: for example, if the reserve is later classified or it is found that it had already been classified. The principal issue would remain live if it is found that s 23 applies to non-classified reserves or Rangitira is held unable to resile from the position in the agreed statement of facts.

The respondent (Forest and Bird) submitted that the appeal is moot and that Rangitira should not be able to argue the appeal on a hypothetical basis (that the reserve is subject to s 23, which Rangitira now says is not the correct position).

The Supreme Court accepted that the relationship between s 23 of the Reserves Act and s 60(2) of the Crown Minerals Act is of general and public importance. The Supreme Court also accepted that the appeal would not be moot if the reserve has been classified or becomes classified. Nor would it be moot if s 23 applies to unclassified reserves or Rangitira was estopped from asserting the reserve was unclassified. Those last two issues would not, however, be before the Supreme Court and any appeal would not therefore resolve the issues between the parties.

In these circumstances, the Supreme Court revoked leave to appeal but reserved leave for Rangitira to apply again if the proposed appeal is no longer moot.

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