



Supreme Court of New Zealand

19 September 2013

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**WEST COAST ENT INC V BULLER COAL LTD
(SC 75/2012) [2013] NZSC 87**

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

Buller Coal Ltd applied to the West Coast Regional Council and the Buller District Council for resource consents under the Resource Management Act 1991 for an open-cast coal mine on the Denniston Plateau on the West Coast of the South Island. The coal from the mine is to be exported to China and India for use in the steel manufacturing industry. Its use will result in the emission of the greenhouse gas, CO₂. Solid Energy Ltd has also applied to the same two councils for resource consents to mine at the Mt William North mining area. The coal mined there will be exported to India, China, Japan, Brazil and South Africa for use in the steel manufacturing industry, use that will also result in the emission of CO₂.

Both consent applications are subject to appeals to the Environment Court. Because one of the contentious issues in both appeals is whether the effect of the proposed use on climate change is a consideration to be taken into account in granting the resource consents needed for the mines, Buller Coal

and Solid Energy applied to the Environment Court for declarations under s 310 of the Resource Management Act that, in considering the consents, it was not permissible to have regard to the effects on climate change of the discharge of gases from the end use of the coal. West Coast ENT and the Royal Forest and Bird Protection Society opposed the declarations. West Coast ENT applied for a declaration that the effects on climate change of the use of coal were required to be taken into account in considering the consents.

Buller Coal and Solid Energy were successful in obtaining the declarations they had sought in the Environment Court. The declarations were upheld by the High Court on an appeal brought by West Coast ENT and Royal Forest and Bird Protection Society. They obtained leave to appeal further directly to this Court. The question for determination turns on the correct interpretation of the Resource Management Act 1991.

Consents to the activities proposed by Buller Coal and Solid Energy were required because they were otherwise prevented by ss 9, 13, 14 and 15 of the Resource Management Act. Mining itself is a “restricted discretionary activity” under the Buller District Plan and the proposals also involve land and water disturbance and discharges of contaminants which are discretionary, controlled, or non-complying under the District Plan and regional planning documents. The consents applied for fell to be determined under s 104(1)(a) of the Resource Management Act by which the decision-maker must consider “any actual and potential effects on the environment of allowing the activity”.

The Supreme Court has dismissed the appeal by a majority (Elias CJ dissenting).

It has held that a purposive interpretation of s 104(1)(a), read in the context of the statute as a whole (including especially the amendments made in 2004 to remove climate change as a concern of regional councils when in planning for or in consenting to discharges of greenhouse gases) precluded consent authorities from taking into account the climate change effects resulting from

the end use of the coal mined when considering applications for resource consents for the mining activities. The majority was influenced in this conclusion by the purpose of the 2004 Amendment Act in removing consideration of climate change effects in respect of consents for discharges to air of greenhouse gases and considered such purpose would be subverted if climate change considerations were relevant to resource consents because the end use of the mineral obtained under the consents would result in the release of greenhouse gases. The majority was also influenced in its conclusion by the fact that climate change was not an effect in respect of which the Council had reserved controls in the District Plan over the restricted discretionary consent required for mining itself. The declarations made in the Environment Court and upheld by the High Court were properly made.

Accordingly, the appeal has been dismissed.

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