BEFORE THE ENVIRONMENT COURT

Decision No. [2012] NZEnvC 80

IN THE MATTER	of two Applications for Declaration under s 311 of the Resource Management Act 1991
BETWEEN	BULLER COAL LIMITED and SOLID ENERGY NEW ZEALAND LIMITED (ENV-2012-AKL-00045) Joint First Applicants
AND	WEST COAST ENT INCORPORATED (ENV-2012-AKL-00047) Second Applicant

Hearing at Christchurch on 27 March 2012

Court:	Acting Principal Environment Judge LJ Newhook sitting alone pursuant to s279 of the Act
Counsel:	JE Hodder SC and B Williams for Buller Coal Limited MRG Christensen for Solid Energy NZ Limited Rt Hon Sir Geoffrey Palmer for West Coast ENT T Bennion and PD Anderson for Royal Forest and Bird Protection Society Inc JM van der Wal for Buller District Council and West Coast Regional Council

---

DECISION OF THE ENVIRONMENT COURT ON APPLICATIONS FOR DECLARATION

A. **Declaration sought by the joint first applicants, granted.**
B. **Declaration sought by the second applicant refused.**
C. **Costs reserved.**

Introduction

[1] The joint first applicants have, at various stages in the system, applications in train seeking Regional and District consents in connection with coal mines they propose on the West Coast of the South Island.

[2] Consent was granted to Buller Coal Limited in August 2011 by independent hearing commissioners appointed by the Councils. West Coast ENT and Forest & Bird appealed that decision, and a hearing before the Court seems in prospect.

[3] Solid Energy currently has its application before the councils.

[4] Buller Coal and Solid Energy applied on 12 March 2012 for the following declaration:

> In considering BCL's applications for consents for coal mining activities at the Escarpment Mine, including applications for land use, and Solid Energy's applications for consents for coal mining activities at the Mt William North mining area, including applications for land use, but neither including any applications to discharge contaminants to air from the combustion of coal to be mined, the decision maker cannot have regard to the effects on climate change of discharges into the air of greenhouse gases arising from the subsequent combustion of the coal extracted in reliance of those consents, either where:
>
> a. any discharge of greenhouse gases associated with the end use of the coal occurs outside New Zealand territorial boundaries;
>
> or
>
> b. any discharge of greenhouse gases associated with the end use of coal occurs in New Zealand.

[5] Contemporaneously, West Coast ENT applied for the following:

> In considering Buller Coal Limited's application for consents for coal mining activities at the Escarpment Mine including applications for land use, the decision maker must:
>
> a. Under section 104(1), consider the contribution that these subsequent discharges into air from the combustion of the coal will have towards climate change;
>
> b. Under section 7(i), have particular regards to the effects of climate change, including the contribution that the subsequent

> discharges into air from the combustion of the coal will have towards the effects of climate change.

[6] The application for Declaration by the second applicant is almost the converse of that made by the joint first applicants.

[7] The second applicant recorded brief grounds in support of its application. The joint first applicants did not.

[8] The issue to be considered was essentially quite confined, albeit that the submissions presented by all parties were extensive. It is essentially as to whether a decision maker under the Act can have regard to effects on climate change of discharges into the air of greenhouse gases arising from the subsequent combustion of the coal extracted in reliance on those consents, whether such discharges occur within New Zealand or elsewhere in the world, it essentially being the proposal of each of the joint first applicants to export the coal to other countries for burning in the manufacture of steel.

[9] The joint first applicants relied strongly on certain findings in a decision of the Supreme Court in 2008, ***Greenpeace New Zealand Incorporated v Genesis Power Ltd.***[1] That decision followed a line of decisions of the Environment Court, the High Court, and the Court of Appeal, commencing with a decision of my own ***Greenpeace New Zealand Inc v Northland Regional Council***,[2] and in which the decisions of the Environment Court and the Court of Appeal were largely upheld by the decision of the majority in the Supreme Court.

[10] The second applicant and Forest & Bird submitted strongly that the present circumstances must be distinguished from the findings in the ***Greenpeace*** line of decisions.

[11] In mid-February I conducted a conference of the parties, and obtained their agreement that they would file a statement of agreed facts and assumptions concerning the declaration applications. They lodged one on 7 March. It is commendably succinct, and I set it out as follows:

[1] (2008) 15 ELRNZ 15 (SC)(also reported as ***Genesis Power Limited v Greenpeace NZ Inc*** – see footnote 4 below).
[2] NZEnvC 094/2006

1. Buller Coal Limited ("BCL"), Solid Energy New Zealand Limited ("Solid Energy"), Buller District Council, West Coast Regional Council, Royal Forest and Bird Protection Society Incorporated (Forest and Bird) and West Coast ENT Incorporated ("West Coast ENT") agree to the following statement of fact and assumptions.

Escarpment Mine

2. On 26 August 2011, independent commissioners appointed by the West Coast Regional Council and the Buller District Council granted consents to BCL associated with the construction and operation of an open cast mine on the Denniston Plateau ("the Escarpment Mine"). The consents granted included a land use consent to mine coal and associated land disturbance activities.
3. West Coast ENT and Forest and Bird appealed[1] that decision on grounds including that the Commissioners erred in not having regard to the effects of the Escarpment Mine applications on climate change.
4. The resource consents, if upheld on appeal, will authorise BCL to remove up to 6.1 million tonnes of coal on the Denniston Plateau over a period of 5-12 years. The coal is intended to be exported to customers in India and China for use in the steel manufacturing industry.
5. BCL's applications are set out in Schedule A and include applications for land use consents for coal mining and associated activities. BCL was not required to and did not apply for a discharge permit relating to the discharge of greenhouse gases.

Mt William North Mine

6. On 12 December 2011, Solid Energy lodged with the West Coast Regional Council and Buller District Council applications for resource consents to carry out mining activities at the Mt William North mining area.
7. The resource consents, if granted, will authorise Solid Energy to mine approximately 5 million tonnes of coal in the Mt William North mine over a period of approximately 12 years. This will provide approximately 4.1 million tonnes of marketable coal, all of which will be exported. This coal is intended to be exported to customers in India, China, Japan, Brazil and South Africa for use in the steel manufacturing industry.
8. Solid Energy's applications are set out in Schedule B and include an application for land use consent for coal mining and associated activities.
9. Solid Energy was not required and did not apply for any discharge permit relating to the discharge of greenhouse gases.
10. Solid Energy's application to the consent authorities was publicly notified on 10 February 2012. Submissions on the applications close on 19 March 2012.
11. BCL, West Coast ENT and Forest and Bird all intend to lodge submissions in relation to the Mt William North applications.

Climate Change

12. The appellants to the Escarpment Mine consents consider that both the Escarpment Mine and Mt William North Mine applications raise the issue of whether the effects on climate change of the subsequent combustion of coal mined at the sites are able to be given regard to by decision makers under the RMA.

13. The parties are all in agreement that the Court can assume, for the purposes of these proceedings:

    a. Climate change is a serious global issue.

    b. The coal mined at the sites will probably result in the subsequent discharge of carbon dioxide from the combustion of that coal.

    c. Carbon dioxide is a known greenhouse gas.

The Mt William North and Escarpment Mine

14. The parties agree that:

    a. Mt William North is expected to produce approximately 4.1 million tonnes of marketable coal;

    b. Of that coal, 100% is expected to be burnt overseas, producing approximately 11.5Mt of CO_2 in total.

    c. The Escarpment Mine is expected to produce approximately 4.3 million tonnes of marketable coal;

    d. Of that coal, 100% is expected to be burnt overseas.

Treatment of greenhouse gas emissions

15. Both Solid Energy (and BCL if the Escarpment Mine is consented) are mandatory participants in the stationary energy sector of the Emissions Tracing Scheme ("ETS") (enacted under the Climate Change Response Act 2002) because they carry out the activity of mining over 2000 tonnes of coal in a year. The ETS requires coal mining participants to monitor and report emissions in New Zealand and to surrender emission units for carbon emissions from coal sold to domestic customers (except larger customers who "opt in" to the ETS and take responsibility for their own carbon emissions.

16. Coal mining participants are not required to surrender units for carbon dioxide emissions from any coal that is exported. Units must, however, be surrendered for any fugitive emissions of methane released to the atmosphere during mining activities (including for coal that is exported).

[12] Put very generally and for introductory purposes only, the decision of the majority in the Supreme Court in ***Greenpeace*** essentially decided that local authorities are generally prohibited from having regard to the discharge of greenhouse gases (the issue instead being a national one), except that they may do so when making rules or considering resource consent applications relating to the use and development of renewable energy.

[13] An important distinction between the circumstances underlying the *Greenpeace* decision and the present proposals is that the former made findings in relation to a proposal brought expressly seeking consent for an air discharge permit for a coal-fired power station. In contrast, the present applications do not include

applications for air discharge permits at all – simply consents to allow, and associated with, removal of coal from the ground and transporting it away from the mine. The joint first applicants submitted that in such circumstances s104E of the Act cannot have application. Section 104E provides:

> When considering an application for a discharge permit ... to do something that would otherwise contravene section 15 or section 15B relating to the discharge into air of greenhouse gases, a consent authority must not have regard to the effects of such discharge on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either:
>
> (a) in absolute terms, or
>
> (b) relative to the use and development of non-renewable energy.

Submissions on behalf of joint first applicants

[14] On behalf of Buller Coal Ltd, Mr Hodder submitted very simply that the determination of the relevant questions of statutory interpretation requires having regard to the two "key drivers," being:

(a) The text enacted by Parliament...

(b) in light of the purpose (or policy) of the enactment.

[15] He logically referred to the provisions of s 5 of the Interpretation Act 1999, and cited ***Commerce Commission v Fonterra Co-operative Group Ltd***,[3] and ***Genesis Power Ltd v Greenpeace New Zealand Inc***.[4]

[16] Mr Hodder noted that the majority in the Supreme Court (4 : 1) held that:

> The underlying policy of the [2004] Amendment Act was to require the negative effects of greenhouse gases causing climate change to be addressed not on a local but on a national basis...[5]

[17] Counsel also noted that the "underlying policy" was further held to prevail over any available interpretation of s 7 RMA (as amended by the 2004 Amendment)

---

[3] [2007] 3 NZLR 767 (SC), at [22]

[4] [2009] 1NZLR 730 (SC), at [51]. This decision is also reported, as I have noted, as ***Greenpeace New Zealand Inc v Genesis Power Limited*** 15 ELRNZ 15 (SC) at paragraph [55]

which was inconsistent with that policy. This was the point on which the Chief Justice dissented.

[18] Mr Hodder submitted that these fundamental features of the ***Genesis Power*** decision govern the declaratory applications now before the Court. He submitted that the applications of the coal mining companies were entirely consistent with those features, and that the alternative application was inconsistent. He was tempted to end his submissions at that point, remarking that the question before the Court was extremely straightforward. He proceeded, however, to anticipate decisions that would be made on behalf of West Coast ENT, and Forest & Bird. For the purposes of this decision, however, it is more logical to consider those submissions as actually advanced and then consider the rebuttal of them by the joint first applicants.

[19] On behalf of Solid Energy New Zealand Limited, Mr Christensen adopted a similar approach in presentation of his submissions. He emphasised the decision of the Supreme Court, noted that section 104E cannot apply in the present circumstances because no air discharge permit for the combustion of coal is necessary or indeed has been applied for; he submitted in effect that it was entirely logical that s 104E should be construed concerning discharges into air of greenhouse gases in New Zealand, and submitted that if discharges were to occur overseas the RMA would not apply. He submitted that it was logically therefore unnecessary to extend the prohibition under the section beyond consideration of air discharge permits, and that it would be an absurd result if a consent authority could not take account of effects on climate change when considering an application for discharge permit to burn coal in New Zealand, but could take the effects of such combustion overseas into account when considering an application for land use consent for coal mining in New Zealand. My view is that the latter observation however begs the very question being placed before the Court.

[20] Bearing in mind that the majority in the Supreme Court upheld the decision of the Court of Appeal, Mr Christensen felt encouraged to cite some further detail concerning the underlying policy reasons, discussed by the latter.[6] The Court of Appeal held:

> There are sound reasons why emission of GHGs should be subject to national, not regional, regulation and control. Regional regulation would put

[6] *Genesis Power Ltd v Greenpeace NZ Inc* [2008] 1 NZLR 803; 14 ELRNZ 1; referring in particular to paragraph [17] of the latter report

> heavier resource demands on regional government but produce results which would not be commensurate with the effort involved. The effects of GHG emissions are not of regional character. If regions adopt different standards, this would encourage selective behaviour, with projects being set up in regions which offered least restrictions and with no net gain to the wider environment to which climate is relevant. Further, given New Zealand's comparatively low contribution to the worldwide GHG emissions and the infinitesimal contribution which any particular project could make, there could be no demonstrable linkage between GHG emissions associated with any particular project on climate change generally.

[21] Mr Christensen turned to the provisions of section 7(i), by which consent authorities are required to have particular regard to "*the effects of climate change.*" He noted that in paragraph [55] of its ***Genesis*** decision, the Supreme Court confirmed that section 7(i) anticipates climate change and requires regional councils to take the effects of climate change into account when exercising their functions. He cited by way of example a decision of the Environment Court, ***Otago Regional Council v Dunedin City Council***[7] where, a consent authority was required to take into account possible sea level rise due to climate change, when assessing the effects of a proposal.

[22] Mr Christensen submitted that the purpose of the Amendment Act (s 3(b)(ii)) which enacted both sections 7(i) and 104E, and the other climate change provisions, included the requirement that local authorities "*plan for the effects of climate change,*" but "*not ... consider the effects on climate change of discharges into air of greenhouse gases.*" He submitted that this purpose would be defeated if s 7(i) was interpreted to include consideration of any incremental effects on climate change of the application under consideration. That is because to do so would be in fact be requiring assessment of the effects of the application on climate change. He submitted once again that the scheme of the Act precludes that.

Submissions on behalf of the Councils

[23] Mr van der Wal essentially supported the cases for the joint first applicants, and advanced submissions designed to focus on the relevant issues from the perspective of consent authorities. Their authority derives, amongst other things, from the Local Government Act 2002, and parts 4, 5, 6 and 12 of the RMA.

[24] Once again, to a degree anticipating submissions on behalf of the opposing parties, and noting the words in s 104(1)(a) imposing the duty to consider "*any actual*

[2010] NZEnvC 120

and potential effects on the environment of allowing the activity," he reminded the Court that it was important to understand precisely what the activities are for which consent is sought. He submitted that the applications do not and cannot seek permission to take coal, that being a matter under the Crown Minerals Act 1991. He noted that s 5(2)(a) RMA specifically excludes minerals from the natural and physical resources that have potential to meet the reasonably foreseeable needs of future generations and require to be sustained.

[25] Mr van der Wal offered submissions concerning s 5 of the Interpretation Act 1999. He offered commentary on practical consequences for the Regional Council if the legislation were to be interpreted in the manner contended by the opposition parties, approximately paralleling the policy discussion from the Court of Appeal noted above.

Submissions on behalf of West Coast ENT Inc

[26] Sir Geoffrey Palmer agreed that s 104E was not engaged on the facts of the cases before the Court. Indeed, it appeared to be common ground amongst the parties, and I have no difficulty with it. The next submission of Sir Geoffrey however raises questions, that is, his submission that the decision of the Supreme Court in ***Greenpeace*** has no application in this case. I will return to that issue.

[27] As a consequence he submitted that section 5 RMA must be applied, and that it must be acknowledged that climate change poses a threat to relevant communities.

[28] Concerning section 7(i) RMA, it was his first submission that the words "*have particular regards to the effects of climate change*" could, if the coal mining parties were correct, pose a risk that the climate change effects that could ultimately be derived from the coal being mined, might never be considered at all. I consider that that is to beg the question of the meaning of the provision.

[29] Sir Geoffrey provided the Court with an elaborate and learned discussion, backed by reference to numerous academic writings, about climate change being a profound environmental threat. However I do not need for present purposes to go beyond the agreed assumptions in paragraph [13] of the Joint Statement filed by all parties, to the same general effect as counsel's submission.

[30] His next submission was based around s 104(1)(a), including citations of decisions of the Environment Court prior to the 2004 Amendment, ***Aquamarine v Southland Regional Council***[8] and ***Cayford v Waikato Regional Council.***[9] Without then referring to the Amendment, Sir Geoffrey submitted about similarities in the present case, expressing a concern that the mining of coal would inevitably result in an "associated" discharge of greenhouse gases. He added that, wherever the coal is burned, greenhouse gas effects will be the same, so s 104(1)(a) and s 5 RMA (the latter in relation to health and safety) "are engaged."

[31] Despite having conceded that s 104E was not engaged in the present proceedings, Sir Geoffrey then offered a submission that the words "*not to consider the effects on climate changes of discharges into air of greenhouse gases*," required to be approached with consistency and common sense. Furthermore, he acknowledged that there had been a concern on the part of policy-makers that differing approaches by regional councils to greenhouse gas emissions could create confusion, but he submitted that it was also the intention to encourage renewable energy. He then made reference to speeches of certain ministers at the time of the introduction of the 2004 Amendment. The difficulty with these submissions is first, that counsel had already conceded that s 104E was not engaged in the present proceedings; secondly the discussion of speeches at the time of the introduction of the measure referred to wording that did not ultimately find its way into the provision when it became law. For instance a reference to "*<u>some</u> discharges of greenhouse gases are best dealt with using national mechanisms.*" (Emphasis supplied by me.)

[32] Counsel then returned to the theme of s 5 RMA being of overarching importance in the legislation. He referred to decisions of the Environment Court where he said, by reference to s 5 and s 104, that greenhouse gas emissions were considered in connection with land use activities that did not engage s 104E. These cases were ***AMI Ltd v Christchurch City Council,***[10] and ***Merton v Rodney District Council.***[11] The decisions considered the potential for increased vehicle movements arising from developments in given locations comparative to other locations, resulting potentially in increased exhaust emissions. Having considered those decisions, I have note that they do not concern themselves with s 7(i) of the Act; also that they pre-date the decision of the Supreme Court in ***Greenpeace.***

[8] Decision number C79/96
[9] Decision number A127/98
[10] Decision number C100/08
[11] Decision number A8/2007

[33] On the subject of s 7(i), Sir Geoffrey argued that there were two competing interpretations, and that he did not accept that which had been put forward by the coal mining interests and the councils. He argued that the provision can include consideration of the contribution that an application may have towards climate change. He argued that the dissenting judgment of Chief Justice Elias in ***Greenpeace*** found that the provision required an evaluation of how the discharge would contribute to the effects of climate change, and submitted that the majority in the Supreme Court did not express a view.

[34] Two things emerged. First, I consider that the majority did indeed consider the issue - in paragraph [55] of their decision they said:

> ... the legislation amended s 7 of the principal Act to require all those exercising powers and functions under it to have "particular regard" to the "benefits to be derived from the use and development of renewable energy." The underlying policy of the Amendment Act was to require the negative effects of greenhouse gases causing climate change to be addressed not only a local but on a national basis while enabling the positive effects of the use of renewable energy to be assessed locally or regionally.

[35] Secondly, the discussion of Chief Justice Elias in paragraphs [19] and [20] of her decision was bound up with a discussion about interaction with s 70A RMA, which has no relevance in these proceedings.

[36] Sir Geoffrey proceeded to discuss another decision of the Environment Court, ***Upland Protection Society Inc v Clutha District Council,***[12] where interestingly it was held that s 7(i) is aimed at considering the effects of climate change <u>on</u> the subject matter of an application. It was entirely right that counsel drew to my attention this decision running somewhat counter to the argument he was advancing. He endeavoured to argue that the decision involved adding a restriction on the interpretation of the provision that was not apparent from its words. I shall return to that.

[37] Sir Geoffrey reiterated that if the consent process lacked an opportunity to consider the climate change effects of the coal being mined, those effects risked never being considered at all. As I have said, this begs the question about the meaning of the relevant statutory provisions. He then proceeded to offer an elaborate argument of statutory interpretation that decision-makers are obliged where possible to interpret

[12] Decision number C85/2008

domestic statutes consistently with international obligations.[13] Sir Geoffrey offered a detailed treatise on what he considered New Zealand's international obligations to be, by reference to extensive quotations from international Conventions, and Accords.

[38] It is important to note that a theme central to the decisions cited by counsel, is however that this principle of statutory interpretation will arise where the wording of the legislation allows, or there is ambiguity, or where the Court for one reason or another has a choice of interpretation. It is not my intention to describe here the international obligations mentioned, because for reasons I shall come to, I am not persuaded that there is any discretion concerning interpretation, or any ambiguity or choice.

Submissions on behalf of Royal Forest and Bird Protection Society of NZ Inc

[39] Mr Bennion supported the arguments on behalf of West Coast ENT Inc concerning s 7(i).

[40] Concerning s 104E, he submitted that the provision does no more than prevent consideration of discharges in NZ already covered by the Emissions Trading Scheme ("**the ETS**"). He submitted that the provision was of a "bolt on" character intended to deal with one (admittedly large) aspect of the country's response to climate change issues. Under questioning from me he accepted that this description was "too harsh," from which I inferred that he accepted that the provision should be seen as part of the overall scheme of the Act, even if it was not specifically and expressly engaged on this occasion.

[41] Mr Bennion offered a detailed argument about causation and the global environment. He cited a decision of the High Court upholding the District Court in a prosecution, ***URS New Zealand Limited v District Court at Auckland,***[14] to the effect that we live in a global environment, and when it comes to natural resources of the "global commons" a restrictive approach to causation is not appropriate.

[13] Quoting ***Zaoui v Attorney General,*** (No. 2) [2006] 1NZLR 289; ***Ashby v Minister of Immigration*** [1981] 1 NZLR 222 (CA); ***NZ Pilot's Association v Attorney General*** [1997] 3 NZLR 269 (CA)
[14] HC, 10/06/09

[42] By reference to some pre-2004 decisions,[15] he submitted that the definition of "*effects*" in the Act is deliberately very broad and can include effects from an activity beyond a region or district or even beyond New Zealand. I note that the ***Environmental Defence Society*** decision of the Environment Court particularly concerned (amongst other things) carbon dioxide issues, but I note that once again the cases cited pre-date the 2004 Amendment.

Evaluation

[43] The cases on behalf of West Coast ENT and Forest & Bird were redolent with an emphasis on the serious global issue of climate change. Regrettably, there was no need for that time and emphasis to be taken, because the Joint Memorandum of Counsel confirmed that the Court could assume for the purposes of these proceedings, that climate change is a serious global issue; that coal mined at the sites will probably result in the subsequent discharge of carbon dioxide from the combustion of the coal; and carbon dioxide is a known greenhouse gas. The concern of West Coast ENT and Forest & Bird about these issues is acknowledged, but is not the point of the present declaration proceedings.

[44] What is important to the present case is whether, despite s 104E RMA not being engaged in the present proceedings (in contrast to the circumstances in ***Greenpeace***), the submissions of the conservation parties about s 5, s 7(i) and s 104(1), are correct.

[45] I start with section 3 of the Resource Management (Energy and Climate Change) Amendment Act 2004. The portions relevant to these proceedings are:

> 3. Purpose
> The purpose of this Act is to amend the principal Act
> ...
> (b) to require local authorities –
> (i) to plan for the effects of climate change; but
> (ii) not to consider the effects of climate change of discharges into air of greenhouse gases

[15] *Canterbury Regional Council v Newman* [2002] 1 NZLR 289; (2001) 7 ELRNZ 137 (CA). And *Environmental Defence Society Inc v Auckland Regional Council* [2002] NZRMA 492 (EC)

[46] As Mr Hodder submitted, that provision has, as it records, become part of the principal Act. The quite explicit statement in that section sits in my view comfortably with the continuation of the theme through section 70A (concerning plan making) and section 104E concerning applications for (amongst other things) the discharge into air of greenhouse gases.

[47] I consider that Sir Geoffrey Palmer was wrong to dismiss the applicability of the Supreme Court decision in ***Greenpeace*** on the simple basis that that case engaged s 104E, and the present doesn't. The majority decision contained *ratio* of particular importance concerning s 7(i), as well as *obiter dicta* that must at the least be highly persuasive, coming from New Zealand's highest court.

[48] Paragraph [55] of the Supreme Court decision set out earlier in this decision, provides the *ratio*. It succinctly and eloquently describes the policy underpinning the legislation when read as a whole, which must be understood in light of the purpose of the Amendment Act in its s 3 as just set out.

[49] It has to be acknowledged that s 5 RMA provides the overarching purpose for the legislation, but in the way the Act is constructed, is supplemented, and to a degree explained, by many of its other provisions. On the issue of critical importance in the current debate, s 3 of the 2004 Amendment Act qualifies the high-level, general, and overarching, provisions of section 5 of the principal Act.

[50] I do not accept that there is any ambiguity, uncertainty, or room for discretion or "choice" in the interpretation of the words and policy of the provisions of the Act under consideration in these proceedings. Hence, Sir Geoffrey Palmer's invitation to the Court to consider certain detailed international obligations does not come into play.

[51] I note that the Supreme Court majority decision, and the decision of the Court of Appeal that it upheld, both drew on the history of the 2004 Amendment, for instance the Explanatory Note to the Bill as introduced, to the effect that the amendment explicitly removed the ability of regional councils to control the emissions of greenhouse gases for climate change reasons, but in contrast they would be able to deal with the consequential effects **of** climate change, such as potential increase in flood risk or rises in sea levels; but not the causative effects of particular activities **on** climate change. These statements provide clear confirmation of what I

consider in any event to be the clear meaning of the wording of s 3 of the Amendment Act, and the other provisions that I have discussed.

[52] The Supreme Court also noted further aspects of the history of the Amendment, including the report back by the Select Committee, the Minister's second reading remarks, and other parts of what I might call the "paper trail," to identical effect.

[53] I consider, as I did in ***Greenpeace New Zealand Inc v Northland Regional Council***[16] that the whole of the Amendment Act, but particularly section 3, point strongly to a finding that regulatory activity on the important topic of climate change is taken firmly away from regional government, and made the subject of appropriate attention from time to time by central government by way of activity at a national level.

[54] I find that it is not correct to contend that s 7(i) and s 104(1)(a) can be interpreted to cut down the clear underlying policy of the 2004 Amendment so as to permit or even require local authorities or the Environment Court on appeal to determine applications concerning extraction of coal (with or without associated applications for permits to discharge greenhouse gases) by reference to effects on climate change.

[55] I make the declaration sought by the joint first applicants.

[56] The issue of costs is reserved.

DATED at AUCKLAND this 30th day of April 2012

L J Newhook
Acting Principal Environment Judge

[16] Decision number 095/2006