

- » the Dual Gas project will not stifle opportunities for renewable energy to play a greater role in future energy supply.
- » the Dual Gas project is not inconsistent with the principles of environmental protection in the SEP(AQM).

The decision discusses the application of the precautionary principle, the principle of intergenerational equity, and the integration of economic, social and environmental considerations (the integration principle). The decision also discusses the application of the decision-making requirements under s 14 of the *Climate Change Act 2010*.

VCAT allowed the application for review, but only in part, and has endorsed an increase in capacity of the Dual Gas project to 600 MW subject to conditions. Of particular note, the Tribunal imposed a condition requiring the retirement of an equivalent amount of conventional brown coal generation capacity under the Contracts for Closure program.

Amongst other things, VCAT found that:

- whilst the likelihood of the Dual Gas project being used in conjunction with future carbon capture and storage (CCS) is speculative, this is not a reason for not allowing the additional capacity. CCS capacity was seen as a potential benefit of the project. The Tribunal found that the unique gasification technology lends itself well to CCS and imposed a condition requiring that the project be CCS-ready;
- although opposed by Dual Gas, a condition requiring the works to be designed to operate at a greenhouse emissions intensity of 0.8 t CO₂-e/MWh should remain, with the GEI to be measured 'as generated'.

MyEnvironment Inc v VicForests **[2012] VSC 91**

Supreme Court rules against Toolangi

Editor note: This case note first appeared in Nick Croggon's blog on the EDO Victoria website: www.edovic.org.au)

The Supreme Court, in the case of ***MyEnvironment Inc v VicForests*** [2012] VSC 91 has found that the law did not protect an area of the endangered Leadbeater's possum habitat in Toolangi from logging by VicForests.

The case was launched in August 2011 by Central Highlands-based environment group MyEnvironment, who were represented by Bleyer Lawyers. MyEnvironment argued that the logging of three coupes in Toolangi was unlawful, because it was contrary to the environmental protection measures that applied to the site.

MyEnvironment also argued that the logging would breach the precautionary principle. Both arguments hinged on the interpretation of laws that define protected habitat for the Leadbeater's possum, which is listed as threatened under State and Federal legislation, and was in 1960 believed to be extinct.

Following a reduction in the area planned for logging in one of the three coupes after the commencement of the case, the Court found that the remaining area planned for logging in that coupe did not include protected habitat for the Leadbeater's possum, as it was defined in the environmental protections that applied to the coupe. The Court also held that VicForests' plans to log the other 2 coupes were not yet detailed enough to rule that logging would necessarily be unlawful in those further coupes, and that the proposed logging did not breach the precautionary principle.

However, Osborn JA (who delivered the 2010 decision on logging in Brown Mountain) also said that the evidence showed an urgent need to review the applicable environmental protections, particularly in light of the impact of the 2009 bushfires (which destroyed around 45% of the possum's habitat).

This disappointing decision demonstrates a failure of the law – a failure of Victoria's environmental controls, and the Department that is responsible for them, to adequately protect the species they were enacted to protect. We should however be very thankful that groups like MyEnvironment have the courage to bring such legal proceedings. One of the gravest problems with our environmental laws is that battles to save protected species, and clarify our environmental laws, must be fought in the Supreme Court, with the huge accompanying costs and risks. While the results might be disappointing, the willingness of MyEnvironment to bear these costs and risks on the environment's behalf should give us some hope!