

## NEW ZEALAND

### USE OF ‘PROHIBITED’ ACTIVITY STATUS\*

*Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development* [2007] NZCA 473

*Resource Management Act 1991 – Territorial authority – District plan – Prohibited activity status – Mining.*

#### Background

Under the *Resource Management Act 1991* (RMA), a resource consent cannot be granted for an activity prohibited in a plan. If such an activity is desired it can only be undertaken if the planning provisions are changed. The Thames-Coromandel District Council’s (TCDC) proposed district plan classified mining as a prohibited activity in a number of zones. TCDC also recognised that a private party might propose a plan change to alter the situation. Coromandel Watchdog appealed against decisions made by TCDC in response to submissions made to it on the proposed district plan in respect of mining and related activities.

#### Environment Court Decision

The Environment Court found that TCDC was wrong to categorise mining as a prohibited activity in circumstances where it contemplated the possibility of mining occurring. It ruled that prohibited activity status should only be used when a local authority is satisfied that an activity could never be allowed in the relevant place.

#### High Court Decision

In an appeal by Coromandel Watchdog, the High Court upheld the Environment Court’s decision.

#### Court of Appeal Decision

However, the Court of Appeal disagreed with the Environment Court’s approach, considering that it unnecessarily elaborated upon the words within the RMA. It also held that the test would unduly limit the circumstances in which the categorisation of an activity as ‘prohibited’ may be the most appropriate option, for example where an authority has insufficient information about the effects of an activity at the time the plan is being formulated.

## NEW ZEALAND ENERGY STRATEGY/ENERGY EFFICIENCY AND CONSERVATION STRATEGY\*

The New Zealand Energy Strategy to 2050 (Energy Strategy) was released on 11 October as part of the Government’s package of sustainability and climate change initiatives. The Energy Strategy aims to set the strategic direction for the energy sector. It intends to ensure there will be security of supply and the ‘right’ conditions for capital investment in coming years, while reducing greenhouse gas emissions. The Energy Strategy aims to take action to produce resilient low

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\* Carolyn van Leuven, MuSB, LLB, LRSM (Dist), and Rachel Devine, LLB (Hons), partners, Minter Ellison Rudd Watts Lawyers, New Zealand.

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carbon transport and low emissions power and heat while simultaneously providing affordable energy and ensuring the wellbeing of the public. It is debatable whether the Energy Strategy itself will achieve these goals, but it is clear that it will be a source of reference for all green energy business proposals in the next few years.

The New Zealand Energy Efficiency and Conservation Strategy (EEC Strategy) has been released as a companion document to the Energy Strategy and will give effect to a number of the objectives in it. It aims to enable:

- ‘energywise’ homes by improving the performance of existing and new homes, better products, better information and increasing the uptake of household renewable energy;
- ‘energywise’ business by improving the energy efficiency of industrial processes and encouraging renewable energy programmes; and
- ‘energywise’ transport by managing demand for travel, encouraging more efficient transport modes, improving the efficiency of the transport fleet and developing and adopting renewable fuels.

Unlike the earlier 2001 Strategy the EEC Strategy targets the primary production sector – providing incentives for a wide range of land-based agricultural, horticultural and forestry enterprises. It also aims to promote an efficient electricity system and promote the uptake of renewable electricity. The Energy Strategy prefers that all future electricity generation be renewable, except to the extent necessary to maintain security of supply: it sets a target of 90 percent by 2025 for renewable electricity generation.

There are many businesses that will delight in the government’s encouragement of renewable energy. However, the Petroleum Exploration and Production Association suggests that such a target is likely to result in more power blackouts and costs associated with constructing back-up generation sources. (The Energy Strategy does contemplate ongoing use of existing fossil fuel generation to maintain security of supply, albeit at a decreased rate.)

For now the Energy Strategy is simply policy, and achieving its objectives will require action by central and local government as well as the relevant industry sectors, but will not necessarily require legislation or further policy development. Two National Policy Statements under the *Resource Management Act* (RMA) are to be developed in 2008 pursuant to the Strategy in relation to National Environmental Standards on electricity transmission and renewable energy. Once created these will require territorial authorities to change their district and regional plans to give effect to the policy. The Government is also considering regulatory options under the Electricity Act to support the objectives for limiting new baseload fossil fuel generation over the next ten years.

In the meantime, the Ministry of Economic Development will report progress on both the Energy Strategy and the EEC Strategy to the Minister of Energy and will publish annual progress reports. This may help increase awareness of these issues.