

The case of Rocky Hill:

Merits considerations in the NSW Land and Environment Court

29 October 2019

'We won': Landmark climate ruling as NSW court rejects coal mine

By Peter Hannam Updated February 8, 2019 - 10.10am, first published at 7.56am

HERALD News

BEEAKING FEBRUARY 8 2019 - 9-30AM

F SHURE TWEET IN COMMENT

Internel / Nature / Local Nature

appeal

Matthew Kelly

Environmental groups are cheering a decision in NSW's Land and Environment Court that found the emissions of greenhouse gases and resulting climate change from a proposed coal mine were among the reasons to reject the project.

Land and Environment Court reject Rocky Hill coal mine

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NEWS - 11 FEBRUARY 2019

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Landmark Australian ruling rejects coal mine over global warming

The case is the first time a mine has been refused in the country because of climate change.

Rocky Hill mine plans guashed in Land a Court



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o tell when climate cha-





Court rules out Hunter Valley coalmine on climate change grounds

Judge rejects Rocky Hill mine near Gloucester, NSW, because of its impact on the town and 'dire consequences' of increasing emissions



- Opinion

Miners must appeal anti-coal landmark court decision

Matthew Stevens Columnist



THE AUSTRALIAN

MEDIA RELEASE

CLAIMS OF RUDICIAL OVERREACH CONCERNING

13 February 2015

The New South Webs But Association has the highest segred for the integrity of the judiciary and has remover about more chienes in the modia of judicial restmath with response to the judgment of Premois C2 in Glosumer Research 164 - Makiner for Panelog.

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- HOD / MIN Hill coal mine near Gloucester will not be

A landmark decision in the NSW Land and RELATED STORE We can be at the Could free be told Environment Court to knock back a new openut coalmine in the Hunter Valley based on its RELATED STORY CONTROL contribution to climate change is looming over they projects around the stat



By Meredin Collins I Participant But & Back 2013 1-10





A new coal mine near Gloucester on the NSW mid-north coast has been as area areasy AG, mata decision to put out of refused by the Chief Justice of the Land and Environment Court, who ruled the development would increase greenhouse gas emissions at RELATED STORY. Uttigos community nervous about future of local cost mine time when they urgently need to be cut.

RELATED STORY POCKY HIL Open-out coal mine Gioucester Resources Limited took the NSW Planning Minister to court over causes sitess for local residents the matter after his delegate, the Independent Planning Commission





· The company behind the Rocky Hill mine clamed it would create 170 jobr

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The case of Rocky Hill

- New South Wales Land and Environment Court
- Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7
- https://www.caselaw.nsw.gov.au/decision/5c59012ce4b02a5a800be47f
- Class 1 merits jurisdiction Appeal
- Preston CJ
- 8 February 2019



There is a valley



near Rocky Hill, that a coal mine proposes to cut and fill.

Where?





Merit Appeals

- Statutory rights
- Court's role
- Based on the facts and law applying at the time
- Not setting precedent



Rocky Hill coal mine proposal

- Rocky Hill Coal Mine open cut
- State Significant Development 5156

























Groundswell Gloucester Inc.

- Joinder application
- · Represented by Environmental Defenders Office NSW
- Section 8.15(2):
 - (2) On an appeal under this Division, the Court may, at any time on the application of a person or of its own motion, order the joinder of a person as a party to the appeal if the Court is of the opinion:
 - (a) that the person is able to raise an issue that should be considered in relation to the appeal but would not be likely to be sufficiently addressed if the person were not joined as a party, or
 - (b) that:
 - (i) it is in the interests of justice, or
 - (ii) it is in the public interest,
 - that the person be joined as a party to the appeal.





Experts Briefed by Parties

Gloucester Resources Limited	Minister	Groundswell Gloucester
Town Planning	Town Planning	
Visual Impact	Visual Impact	
Economic Impact	Economic Impact	
Social Impact	Social Impact	Social Impact
Coal and Energy Economics		Coal and Energy Economics
Climate Change Impact		Climate Change Impact
Noise Impact		Noise Impact



Objectors

- Public exhibition 2,581 submissions
- Letters to objectors notification of appeal and rights
- EOI to give evidence at hearing
- Court Site inspection policy



Figure 6: Concerns raised in objections to the amended project



Decision

- Appeal dismissed
- · impacts on existing, approved and likely preferred uses of land in the vicinity
- high visual impact
- negative social impacts
- impacts of the mine on climate change
- · economic and public benefits of the mine and other land uses
- · impacts and costs of mine outweigh benefits of mine
- development consent refused



Findings on Climate Change – 1

Already required to consider downstream greenhouse gas emissions under the Mining SEPP.

There has been a line of cases which have considered greenhouse gas emissions in a planning context.

The Court did not have sufficient evidence to rule on many of GRL's submissions



Findings on Climate Change – 2

The consent authority is required to consider greenhouse gas impacts under the Mining SEPP. Further, section 4.15 of the *Environmental Planning and Assessment Act 1979* (EPA Act) requires a consent authority to take into consideration the likely impacts of the development and the public interest. The public interest has been held to include the principles of ecologically sustainable development (ESD). In turn, the principles of ESD, particularly the precautionary principle and principle of inter-generational equity, require consideration of the impact of a development on climate change and the impact of climate change on a development.

Both the direct and indirect emissions emitted by the Project are relevant considerations.



Findings on Climate Change – 3

In considering the merits of this Project the Court found that:

1. direct and indirect GHG emissions of the Project will impact on the environment (despite their relative minimal contribution to global climate change).

2. there was no evidence before the Court that GRL was going to take any specific action to mitigate and offset the environmental impact of the development by removing GHGs in the atmosphere.

3. the fact that greater emissions reductions could be achieved at lower cost through other sources (that are not related to the development) is not a "rational" reason for approval.

4. there was no evidence before the Court that GHG emissions will occur regardless of whether the project was approved, due to market substitution and carbon leakage.

5. the GHG emissions cannot be justified on the basis that the project is needed to supply the demand for coking coal (as opposed to thermal coal).



Decision

- In short, an open cut coal mine in this part of the Gloucester valley would be in the wrong place at the wrong time.
 Wrong place because an open cut coal mine in this scenic and cultural landscape, proximate to many people's homes and farms, will cause significant planning, amenity, visual and social impacts. Wrong time because the GHG emissions of the coal mine and its coal product will increase global total concentrations of GHGs at a time when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions. These dire consequences should be avoided. The Project should be refused. [699]
- No Appeal decision stands



Subsequent matters

- <u>United Wambo Open Cut Coal Mine Project</u> (SSD 7142) and associated modifications (DA 305-7-2003 MOD 16 and DA 177-8-2004 MOD 3)
 - Approved by the NSW Independent Planning Commission
 - Subject to conditions including a condition requiring the sale of extracted product coal for export to countries that are parties to the Paris Agreement or that otherwise have equivalent domestic policies for reducing greenhouse gas emissions at the date of sale.
- Bylong Coal <u>Project</u>
 - Consent refused by the NSW Independent Planning Commission on grounds including (at 6.14.9):
 - Failure to minimise GHGE to greatest extent practicable (required by Mining SEPP)
 - No proposed offset measures
 - Cumulative environmental impact, citing Preston CJ in Rocky Hill.





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