

Further submission to IPC with regard to the United Wambo Super Pit proposal

Commissioners, you will recall my presentation to you yesterday which I can summarise in saying that this mine should not be approved because of the accumulative deleterious effect it will have on global warming i.e. climate change. Many other people submitted on similar grounds.

Today we have a judgement from the NSW Land and Environment court disallowing the Rocky Hill coal mine on exactly those grounds.

Judge Preston's decision makes interesting reading for those who are involved in determining whether such projects should go ahead in light of commitments to the reduction in emissions made in Paris.

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

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An open-cut mine in the Hunter Valley near Newcastle. A proposal for another mine in the upper Hunter has been rejected. Photograph: Dean Lewins/AAP

The controversial Rocky Hill coalmine in the Hunter Valley will not go ahead after a landmark ruling in the land and environment court on Friday that cited the impact it would have had on climate change.

Chief judge Brian Preston dismissed an appeal by Gloucester Resources, which was seeking to overturn a [New South Wales](#) government decision to reject an open-cut mine because of its impact on the town of Gloucester, north of Newcastle.

Last April the Environmental Defenders Office of NSW joined the case, arguing on behalf of its client, Groundswell Gloucester, that the mine's detrimental impact on climate change and on the social fabric of the town should be considered as part of the merit appeal.

In his judgment, Preston explicitly cited the project's potential impact on climate change, writing that an open-cut coalmine in 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," he wrote.

"Wrong time because the GHG [greenhouse gas] 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."

In a "first of its kind" hearing, the EDO had argued that the mine should be refused in part because of its impact on Australia's commitments to the Paris climate agreement.

In his judgment, Preston noted that while there was "no proscription" on the approval of new emissions sources such as coalmines under the agreement, approval of the project "cannot assist in achieving the rapid and deep reductions in GHG emissions that are necessary" to meet the goals of the agreement.

"It matters not that the aggregate of the project's greenhouse gas emissions may represent a small fraction of the global total", he said.

"The global problem of climate change needs to be addressed by multiple local actions to mitigate emissions by sources and remove greenhouse gases by sinks."

He rejected GRL's argument that the project should be allowed because emissions from the mine would be abated by other emissions reductions schemes as "speculative and hypothetical".

"There is no evidence before the court of any specific and certain action to 'net out' the GHG emissions of the project," he wrote in his judgment.

"A consent authority cannot rationally approve a development that is likely to have some identified environmental impact on the theoretical possibility that the environmental impact will be mitigated or offset by some unspecified and uncertain action at some unspecified and uncertain time in the future."

The judgment also rejected the mine on the grounds of its visual impact and the social impact of factors such as dust and noise on the surrounding community.

The chief executive of EDO NSW, David Morris, said the findings were historic for Australian communities that had been trying to fight new fossil fuel projects because of climate change.

“It’s very difficult to see how any future coal project avoids the judge’s finding about this being the wrong time for it,” he said.

He said the ramifications would be felt by state and federal ministers and other decision makers who assess fossil fuel projects.

“This is necessarily a case-specific judgment. It relates to this coalmine proposed in the Gloucester Valley,” Morris said. “It is persuasive, influential but it is not binding on any future decision.

“But it will weigh heavily on the minds of decision makers.”

Morris said Australia was increasingly approaching a moment when approval of a fossil fuel project could be considered “unreasonable”.

“And unreasonableness is a ground of legal challenge,” he said.