



Environmental
Defenders Office

Submissions to the IPC on the Tahmoor South Coal Project

Prepared by the Environmental
Defenders Office acting on behalf of
Undermined Inc





Basis for refusal of consent

1. Climate change impacts
2. Subsidence impacts



The environmental impacts of the Project outweigh its purported social and economic benefits.

The Project is not in the public interest and development consent must be refused.



A sunset over a beach with waves and sandbars. The sun is a large, bright orange circle in the sky, partially obscured by the dark silhouette of a forested hill. The water is a mix of blue and purple, with golden sandbars visible in the foreground and middle ground. The overall mood is serene and natural.

Independent experts:

- Prof James Goodman, UTS – climate change
- Mr Tony Wood, Grattan Institute – green steel
- Assoc Prof John Pye, ANU – green steel
- Dr Philip Pells – groundwater and subsidence



A lush tropical forest scene with a river in the foreground. The forest is dense with various green plants, including palm trees and large-leafed species. A dark, semi-transparent rectangular box is overlaid on the right side of the image, containing the text "Climate Change" in white. The lighting is dappled, suggesting sunlight filtering through the canopy.

Climate Change

Statutory pathways to refusal of consent

1. S 4.15(1)(a) *EP&A Act* – requires the IPC to consider the *Mining SEPP*

1. Clause 14(2) - IPC must "consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions."
2. Assessment of Scope 1, 2 and 3 emissions is mandatory relevant consideration
3. NSW Climate Change Policy Framework is applicable

2. S 4.15(1)(b) *EP&A Act* – consideration of the likely impacts of the development

1. Includes climate change

3. S 4.15(1)(e) *EP&A Act* – consideration of the public interest

1. Includes the principles of ESD
2. ESD requires consideration of climate change impacts, including Scope 3 emissions



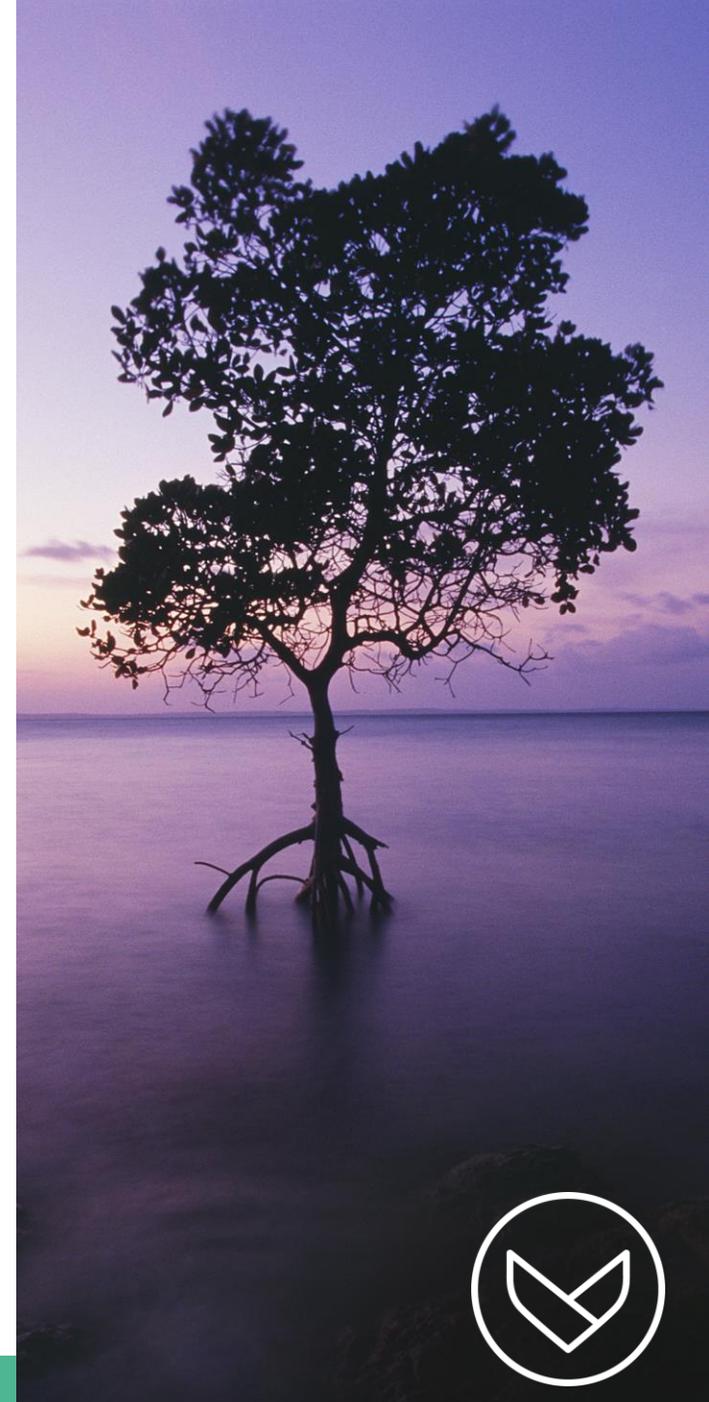
Rocky Hill

Gloucester Resources Ltd v Minister for Planning
[2019] NSWLEC 7



The Rocky Hill case: meaning and application

- IPC should attach substantial weight to Rocky Hill case
- Climate change significant factor in refusal of Rocky Hill coal mine



*"The project will be a **material source** of GHG emissions and **contribute to climate change**. Approval of the project **will not assist** in achieving the **rapid and deep reductions** in GHG emissions that are needed **now** in order to balance emissions by sources with removals by sinks of GHGs in the second half of the century and achieve the generally agreed goal of **limiting the increase** in global average temperature to **well below 2°C above pre-industrial levels**."*

- Chief Judge Preston, Rocky Hill case [697]

Assessing the impact of a fossil fuel development

In absolute terms

- "In absolute terms, a particular fossil fuel development may itself be a sufficiently large source of GHG emissions that refusal of the development could be seen to make a meaningful contribution to remaining within the carbon budget and achieving the long term temperature goal."

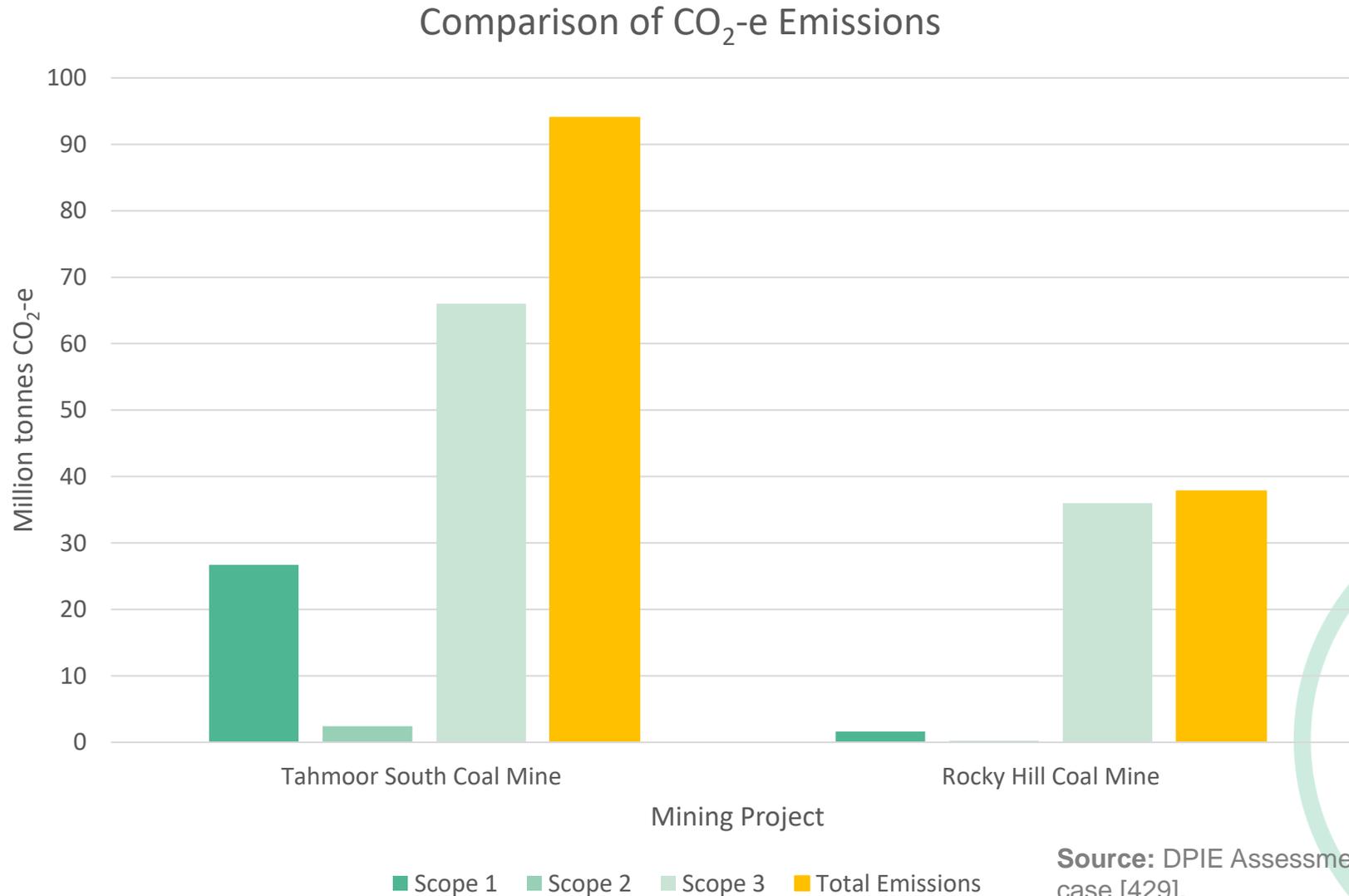
Chief Judge Preston, Rocky Hill case, [553]-[555]

In relative terms

- "Other things being equal, it would be rational to refuse fossil fuel developments with greater environmental, social and economic impacts than fossil fuel developments with lesser environmental, social and economic impacts."

*The environmental impacts of the Project are sufficiently adverse in **both absolute and relative** terms to warrant refusal*

Comparison – Tahmoor South vs Rocky Hill



Source: DPIE Assessment Report 125; Rocky Hill case [429].



*“All emissions are important because **cumulatively** they constitute the **global total** of greenhouse gas emissions, which are **destabilising** the **global climate system** at a **rapid rate**. Just as many emitters are **contributing** to the problem, so many emission reduction activities are required to **solve** the problem.”*

- Professor Will Steffen, Rocky Hill case [450]

Tahmoor South Coal Project:

Wrong time

Wrong place

If the IPC were minded
to grant consent, the
Project must be carbon
neutral.



If the IPC were minded to grant consent

Clause 14(1)(c) Mining SEPP requires consent authority to "consider whether or not consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure... that GHGEs are minimised to the greatest extent practicable"

Consent should be issued subject to conditions that ensure that GHGEs are **minimised to the greatest extent practicable.**

The IPC has the power to impose conditions regarding carbon offsets (CI 14(1), (2)).

*"In the climate change context, for example, an applicant for development consent **could commit to reducing the GHG emissions** of the development by deploying emission reduction technologies, such as **carbon capture and storage**, or **offsetting the GHG emissions** of the development by increasing the removal of GHGs in the atmosphere by **establishing sinks**, such as by reforestation or afforestation of land."*

- Chief Judge Preston, Rocky Hill case [530]

- A condition requiring a project to be fully carbon neutral would be "minimis[ing] GHG emissions to the greatest extent practicable"
- It would be an unreasonable reading of cl 14 of the Mining SEPP for the IPC to conduct a mandated consideration of Scope 3 emissions, yet do nothing about them in any development consent
- Scope 2 and 3 emissions will almost certainly result from the Project
- Scope 1, 2 and 3 emissions will **cumulatively impact on the environment of NSW**





Undermined submits:

- A condition proposing the offset of the equivalent of all GHG emissions resulting from the Project would be consistent with the statutory framework set by the EP&A Act and the Mining SEPP;
- The condition would reasonably be capable of being regarded as related to the purpose of the approval functions being exercised; and
- Importantly, the purpose of the relevant approval functions includes the promotion of the public interest and the principles of ESD

(See the Court's analysis of the general tests for planning condition validity in *Hunter Environment Lobby and Minister for Planning* [2011] NSWLEC 221)



Valid application of the *Newbury* test for planning condition validity

- Such a condition would be consistent with the scope and purpose of the power exercised by the consent authority for the project
- The condition would "reasonably and fairly" relate to the development
- The condition would not be so unreasonable that no reasonable planning authority could have imposed it



Conclusion

The Project is not in the public interest and contrary to the principles of ESD.

The Project must be refused consent.



Thank you.

