

Submissions

Subject **Hume Coal Project SSD 15_7172**

Date 27 February 2019

Introduction

1. I act for the Crookes family.
2. I have been instructed today to as to why the Hume Coal Project (**Project**) should be refused, on behalf of Richard and Lynn Crookes.
3. They own on of the adjoining properties at 180-182 Belanglo Road, Sutton Forest. It is zoned E3 environmental management. It comprises 335 acres, orients towards the mine, and has a Red Angus stud with significant infrastructure supporting that activity.
4. I have with me today available to speak to any questions that the Commission may have:
 - (a) Lynne Crookes who will speak about the proposal's impact on her and her husband's property; and
 - (b) Larry Cook who will speak about water.
5. The "elephant in the room" - from a legal perspective - is the controversial decision by the Chief Judge of the Land and Environment Court a few weeks ago in *Gloucester Resources Limited v Minister for Planning & Groundswell Gloucester Inc* [2019] NSWLEC 7 (**Rocky Hill Decision**).
6. That decision obviously arose after the initial submission we lodged on behalf of the Crookes', and so nothing was said in writing about it. But it cannot be ignored in determining this application.
7. The judgment is bookended by comments that cut through the noise that has arisen since the judgment and explain why the mine was refused.
8. At paragraph 8 the Court states:

"The mine will have significant adverse impacts on the visual amenity and rural and scenic character of the valley, significant adverse social impacts on the community and particular demographic groups in the area, and significant impacts on the existing, approved and likely preferred uses of land in the vicinity of the mine. The construction and operation of the mine, and the transportation and combustion of the coal from the mine, will result in the emission of greenhouse gases, which will contribute to climate change. These are direct and indirect impacts of the mine. The costs of this open cut coal mine, exploiting the coal resource at this location in a scenic valley close to town, exceed the benefits of the mine, which are primarily economic and social."
9. In the last paragraph of the judgment, the Court states:

"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."

10. My reference to this decision is not to be trite, as it is acknowledged each new application needs to be considered on its own terms. A refusal is not to be taken for granted because of it, and we expect this matter to be considered on its own terms.
11. However, that being the case, this project should be refused also since this project is a more acute example of being proposed in the "wrong place and wrong time".

Rocky Hill Decision should be considered by the IPC

12. There are a number of preliminary issues to draw the Commissions attention to about that decision.
13. Firstly, the merit appeal of the Rocky Hill coal mine only even reached the Land and Environment Court because there was no public hearing conducted by the then Planning and Assessment Commission (**PAC**). Here, a public hearing is occurring, which turns off the merit appeal rights that existed in that case. With that in mind, this highlights the importance of even-handedness in decision making, and that the decision making by the consent authority here take into account the case law.
14. This provides a segue to my second preliminary point, and that is that the then PAC for Rocky Hill did not raise climate change as a reason for refusal, whereas the Land and Environment Court did. Whilst the three grounds for refusal given by the PAC for the Rocky Hill mine draw analogies to the present application before you (namely inconsistency of the proposal with the objectives of the zoning of the land, the significant visual impacts of the mine and that the project was not in the public interest), so to do the more expansive reasons of the Court, which broadened the reasons for refusal to include climate change.
15. In respect of climate change, the Court held that an environmental assessment framework existed under the statute that required the consent authority to consider the impacts of greenhouse gas emissions. That also applies here. Those aspects of the judgment need close consideration.
16. The emissions needing to be considered include the more controversial downstream emissions along with direct and indirect emissions.
17. Further, the "public interest" which incorporates the principles of ESD, also means that Scope 3 emissions should be included in the consideration of this mine's impacts.
18. With those comments out of the way, I turn now to provide some comparisons between the two applications which indicate that if Rocky Hill warranted refusal, then so too does Hume Coal's proposal.

Where it is proposed

19. The Rocky Hill mine was proposed in the vicinity of the Gloucester township, nearby rural-residential estates and smaller agricultural and agri-tourism properties, some of which were within 1-2km of the boundary of the proposed mine, and other land uses including those associated with the township such as commercial, recreational, social infrastructure.
20. This Project is proposed in the vicinity of Berrima, and is similarly in very close proximity to a number of rural-residential properties and agriculture, and other land uses associated with the nearby town. In the case of our client, the proposed mine adjoins their property sharing a 1.8km boundary.

Not in the public interest

21. The Planning Assessment Commission and the Land and Environment Court held that the Rocky Hill project was not in the public interest.
22. The Department has also reached that conclusion in relation to this Project in its Assessment Report and the extraordinary number of objections reinforce this point - 2000 or so objections for Rocky Hill and 12,000 or so for this project submissions received.
23. Turning to the specifics of the project itself:

Factor	Rocky Hill	Hume Coal
Type of coal	100% coking	55% coking; 45% thermal
Life of the project	16 years of mining operations	23 years including construction, mining operations and rehabilitation. 19 years of mining operations.
Amount of coal proposed to be extracted over the life of the project	21M tonnes	50M tonnes

24. In relation to emissions, the Court's most recent comments were that:

"All anthropogenic greenhouse gas emissions contribute to climate change"

and

*"It matters not that this aggregate of the Project's GHG emissions may represent a small fraction of the global total of GHG emissions. The global problem of climate change needs to be addressed by **multiple local actions** to mitigate emissions by sources and remove GHGs by sinks." [Emphasis added]*

25. All the above factors weigh in favour of this application being refused.
26. However, even if this is not compared with the Rock Hill mine, there are a litany of individual problems this project will create which my clients do not believe to be outweighed by the alleged benefits.
27. In this regard, the later submissions of Lynn Crookes and Larry Cook, as well as many others, address why the Project is in the "wrong place". The significant adverse impact that the Project is predicted to have on groundwater is just one reason for that, as it will change the nature of my client's property and its agricultural activity. My client cannot rely on bespoke, untested, mining engineering to address these risks, and it is unfair for my clients to underwrite that risk.
28. Useful analogies were drawn by the Chief Judge in the Rocky Hill Decision in support of the "wrong place" argument, which also ring true for this project. It is not enough that the Project is located where coal is located.

"A dam can only be located on a river, but not every river needs to be dammed. The environmental and social impacts of a particular dam may be sufficiently serious as to justify refusal of the dam. The proposed hydroelectric dam on the Gordon River in south western Tasmania (later inscribed on the World Heritage List) is an example of a dam with unacceptable environmental and social impacts (considered in the Tasmanian Dams Case, Commonwealth v Tasmania (1983) 158 CLR 1.)

Seaside residential development can only be built at the seaside, but not every seaside development is acceptable to be approved. For example, the likely impact of coastal processes and coastal hazards on coastal development, including with climate change, may be sufficiently serious as to justify refusal of the coastal development, as the various courts and tribunals decided in Northcape Properties

Pty Ltd v District Council of Yorke Peninsula[2007] SAERDC 50, upheld on appeal [2008] SASC 57; *Gippsland Coastal Board v South Gippsland Shire Council (No 2)* [2008] VCAT 1545; *Myers v South Gippsland Shire Council (No 1)* [2009] VCAT 1022; *Myers v South Gippsland Shire Council (No 2)* [2009] VCAT 2414; and *Rainbow Shores Pty Ltd v Gympie Regional Council* [2013] QPELR 557; [2013] QPEC 26."

29. Applied here, a coal mine can only occur where there is coal, but not every coal mine will be acceptable to be approved. Whilst there may be coal deposits available, this mine will have unacceptable impacts on the place surrounding the mine, including importantly my clients who share a long 1.8km common boundary.
30. My client supports the comments made by the Department in its assessment report that:

*"The Department considers that the **economic benefits cannot be realised without significant adverse impacts on the environment and the local community, particularly in relation to groundwater impacts.** [Emphasis added]."*

Conclusion

31. In conclusion this Project, provides an even better example the Rocky Hill project of being in the "wrong place and at the wrong time".
32. This project has no social licence as evidenced by the significant community opposition involving an unprecedented 12,000 objections.
33. There will be social change within the community, and of course environmental change. Lynne Crookes will speak personally about the impacts this mine will have on her property which shares a 1.8km boundary.
34. Finally, the recent judgment of the Court is now clear authority for the position that greenhouse gases require analysis in terms of their impacts direct and indirect, phase 1, 2 and 3. From what we could see the applicant's EIS does not deal adequately with the impact of those greenhouse gas emissions and the link to climate change. Even if they did, it is difficult to see how it can get around many of the other comments in the Court's decision, which by parity of reasoning indicate that this project should also be refused.