

## Climate Change

# GLOUCESTER RESOURCES LIMITED V. MINISTER FOR PLANNING

Land and Environment Court, New South Wales, decided 8 February 2019

A mining company loses its challenge to a minister's refusal to grant a coal mining permit.

## Parties

**Applicant:** Gloucester Resources Limited (a mining company)

**First Respondent:** Minister for Planning

**Second Respondent:** Groundswell Gloucester Inc. (a local community action group)

## Key Facts

- Gloucester Resources Limited proposed an open cut coal mine to produce 21 million tonnes of coal over a period of 16 years in the Gloucester Valley, a rural-residential area.
- The project was estimated to result in 38 million tonnes of carbon emissions.
- Increased greenhouse gas concentrations in the atmosphere have already affected, and will continue to affect, the climate system. Achieving the goals of the Paris Agreement and ensuring that the increase in global average temperatures remains between 1.5°C and 2°C requires phasing out fossil fuel use globally.
- Section 4.15(1) of Australia's Environmental Planning and Assessment Act requires the government to consider the public's interest when deciding on development applications.
- Gloucester Resources Limited unsuccessfully applied to the Minister of Planning for consent to develop the mine. The refusal was based primarily on the incompatibility of the mine with other land uses in the vicinity.

## The Court's Decision

- The court upheld the Minister's denial of the application, arguing that the project is not in the public's interest as its negative impacts, including climate change impacts, outweigh economic and other benefits.
- The court established that the Environmental Planning and Assessment Act requires consideration of the principles of ecologically sustainable development. As part of this consideration, it finds that **climate change impacts should be taken into account**, as follows from the precautionary principle and the principle of intergenerational equity, in particular.
- The court held that the project's greenhouse gas (GHG) emissions will contribute to climate change and run counter to the actions that are required to achieve rapid reductions in GHG emissions in order to meet generally-agreed climate targets.
- It found the argument that the aggregate of the project's emissions only represents a small fraction of the global total GHG emissions irrelevant; finding that **the global problem of climate change needs to be addressed by multiple local actions**. It stated that all emissions are important because, cumulatively, they constitute the global total of GHG emissions, which are destabilising the global climate system.
- The court emphasised that its ruling **does not imply a foreclosure of all mining projects**, but that the positive and negative impacts of a project need to be weighed on a case-by-case basis.

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## The Court's Order

The Court dismissed the appeal and ordered that the application for the coal project be refused.

## What now?

The ruling stands as the applicant announced it would not file an appeal.

## International Impact

The decision is considered a ground-breaking ruling as it is the first ruling in Australia since the Paris Agreement that denies an application for a coal mine on the basis of its climate change impacts. Building on a specific legal context, the decision's international impact could be considered limited. However, **D. Adler** states that the decision itself draws on several international judgments and thereby, "**demonstrates how cases around the world can inform one another and incrementally advance progress in tackling climate change**". The ruling could, therefore, boost climate litigation as it holds important take-aways: it recognises and applies current science on climate change; it recognises climate change impacts as grounds for the refusal of a development project and importantly, it finds downstream emissions a relevant factor in a public interest evaluation. Relying on the **Urgenda** case, it dismisses the argument that a project's greenhouse gas emissions become negligible due to the fact that they only make up a small portion of the global total of greenhouse gas emissions.

## Key Issues

Climate Change Mitigation, Coal Mining, Climate Change Impacts As a Relevant Factor in Decision-Making, Relevance of Downstream Emissions.

## Key Principles

Principle of Sustainable Use, Intergenerational Equity, Precautionary Principle.

## International Agreements Cited

United Nations Framework Convention on Climate Change, Paris Agreement, Kyoto Protocol.

## References & Further Reading

Judgment: [Download PDF](#)

Additional Information:

Baker McKenzie ["No More New Coal Mines in NSW?"](#)

Dena Adler, ["Big Climate Win Down Under: Australian Court Blocks Coal Mine Citing Negative Impacts of Greenhouse Gas Emissions"](#)

Environmental Defender's Office Western Australia ["Case Note: Gloucester Resources Limited v Minister for Planning.\[2019\] NSWLEC 7"](#)