Court overturns massive coal mine approval on climate grounds

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A court has overturned the 2022 approval of a massive Hunter Valley coal mine in a landmark ruling that sets a clear precedent that planning authorities must consider the local impact of global climate change.

The decision by the full bench of the NSW Court of Appeal invalidates the permission for Indonesian company MACH Energy to extend the Mount Pleasant coal mine near Muswellbrook for another 22 years after its current approval expires in 2026.

The project would generate emissions equivalent to 876 megatonnes of carbon dioxide, planning documents say, and about 98 per cent of that would be from customers burning the coal overseas.

Elaine Johnson, the environmental lawyer for Denman, Aberdeen, Muswellbrook and Scone Healthy Environment Group, said it was a “significant decision for climate change considerations on new and expanded fossil fuel projects in NSW”.

“The fact that the emissions will be generated overseas does not make any difference to the mandatory duty of the NSW Independent Planning Commission to look at what the likely impacts of this coal mine expansion will be on the local community and the people in the environment of NSW,” Johnson said.

“This covers all projects, not just this particular mine – it is, of course, highly relevant to any applications for fossil fuel projects in NSW.”

Anti-fossil fuels group Lock the Gate says there are 18 coal proposals at various stages in the NSW planning system.

The court found that the Independent Planning Commission must consider the causal link between the project’s scope-three emissions and climate change, and the effect that would have on the locality of the Mount Pleasant mine.

In its approval, the planning commission acknowledged scope-three emissions, which are outside the miner’s direct control, noting that these greenhouse gases would be “accounted for” in the consumer countries’ obligations under the Paris Agreement. It stated that the impact of climate change was “still felt globally” but did not impose any conditions to reduce scope-three emissions.

The judgment came within 12 hours of the International Court of Justice ruling that countries have obligations under international law to curb emissions beyond specific climate treaties such as the Paris Agreement.

The Mount Pleasant project will be sent back to the NSW Land and Environment Court to consider whether any conditions can be imposed to revalidate the approval.

NSW Planning Minister Paul Scully acknowledged the decision but said the government had no further comment, given the matter had been referred back to the lower court.

MACH Energy did not respond to a request for comment. A spokesperson for the NSW Minerals Council said: "We're examining the decision but we do not believe it has implications beyond this particular judgment."

NSW Greens MP Sue Higginson, an environmental lawyer, said the decision set a "very significant precedent" that would require coal companies and planning authorities to grapple with attribution science and outline the increased risk of bushfires, floods and sea-level rises near mine sites.

"It's going to make a difference because once you undertake that assessment … you're literally opening your eyes to the harm you're causing in your backyard," Higginson said. "Proponents will now have to go away and undertake those assessments … it's a massive task."

Dr Chris McGrath, an environmental lawyer experienced in climate litigation, said it was an important decision about a big mine, but cautioned that it was a judicial review about whether the commission followed the correct process rather than a merits-based judgment.

He said planning authorities already had the power to refuse coal mines because of climate change but wanted to approve them for political and economic reasons.

"We're very good at finding excuses for not taking action on climate change," McGrath said. "They'll just basically write their reasons better, to comply with what the law required them to consider."

Greg Bourne, a former president of BP Australasia and energy adviser to Margaret Thatcher who is now a director of the Climate Council, said the decision could turn out to be critical in cutting Australia's contribution to global warming.

He likened the effort to restrict emissions from fossil fuels to those to restrict the drug trade, which tackle both sellers and users.

"If you want to stop the trade, both ends have to work together," he said. "We have to cut scope-one and -two emissions at home but we also have to help the buyer cut down scope three where fossil fuels are used."

Tim Buckley, director of Climate Energy Finance, a pro-renewables energy analysis group, said the Albanese government had been ignoring its responsibility for the emissions caused by the fossil fuel it sells overseas.

“The Albanese government has acted on scope one through the safeguard mechanism [which forces industry emission cuts],” Buckley said. “They’re acting on scope two by decarbonising our electricity system. But they’re failing to act on scope three – that’s what the Woodside decision highlighted.

“Our environment minister thinks emissions stop at the border, which is a legal fallacy.”

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