

# Will successful climate change challenge extend to Western Australian applications?

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## Key issues:

- Decision to refuse a coal mine on grounds which included climate change which may apply to other fossil fuel extraction industries
- There may be a greater emphasis by Environmental Protection Authorities on the impact of a proposal on climate change.

## Impact of a mining proposal on climate change

On 8 February 2019, New South Wales Chief Judge Preston delivered a decision to refuse a development application by Gloucester Resources Limited (**GRL**) for the Rocky Hill Coal Project (**Proposed Project**) near Gloucester, Hunter Valley, New South Wales: *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 (**Goulcester**). One of the key reasons for his decision was the proposed mine's contribution to climate change.

The Court found that the scope of the *Environmental Planning and Assessment Act 1979* (NSW) and supporting environmental policies allowed for the consideration of greenhouse gases (**GHG**) and climate change in assessing significant developments such as the Proposed Project. The Court discussed that, in considering the likely impact that the Proposed Project had on the environment and the reasons justifying Proposed Project, regard was to be given to a number of environmental factors including:

- the precautionary principle;
- inter-generational equity; and
- conservation of biological diversity and ecological integrity;

which the Court discussed involved the consideration of climate change.

The Chief Justice acknowledged the importance and necessity of addressing climate change in mitigating the adverse impacts to the environment. He discussed that climate change is a global problem which needs to be addressed by multiple local actions. The Chief Justice acknowledged that while the Proposed Project's cumulative GHG emissions (of approximately 37.8Mt) was a small fraction of the global emissions, it was likely to have an impact on the climate system and indirectly impact the environment.

You can read more about the case in our previous article, [here](#).

## Scope of Western Australia's environmental protection legislation to consider climate change in mining proposals

The *Environmental Protection Act* (1986) (WA) (**EP Act**) is the principal instrument used to protect the environment of Western Australia. As part of the mining approvals process in Western Australia, consideration is to be given to the environmental impacts caused by the proposal.

Under the EP Act, an environmental impact assessment is required where a proposal is likely, if implemented, to have a significant effect on the environment. When considering a 'significant impact' or 'significant effect' of a proposal the Office of the Environmental Protection Authority (**OEPA**) may have regard to various matters including consequences of the likely impact, resilience of the environment to cope with the impacts and extent of the likely impact. The OEPA has a broad discretion as to what it may regard as a 'significant effect' or 'significant impact'. Given the sensitivity of the climate system to the levels of GHG emissions, climate change can fall within the scope of 'significant effect' or 'significant impact'.

In assessing whether a proposal's impact on the environment is acceptable, the OEPA uses environmental principles, factors and associated objectives which are based on the objects and principles of the EP Act. The Western Australian environmental principles are similar to those in New South Wales. They include the precautionary principle, the principle of intergenerational equity and the principle of conservation of biological diversity and ecological integrity. Based on the judgement of CJ Preston, these principles can include climate change.

Pursuant to the *Statement of Environmental Principles, Factors and Objectives, June 2018* the OEPA also considers 13 environmental factors including air quality, which aims to maintain air quality and minimise emissions so environmental values are protected. The express objective to minimise emissions directly correlates to GHG emissions. Therefore, there is scope under the EP Act to consider the contribution of a proposal to climate change.

To some degree, Western Australia does attempt to mitigate the impacts of proposals on climate change through offsets and air quality conditions. However, as a result of the decision in *Gloucester*, we may see the OEPA placing greater significance, for example, on the impact a mining proposal may have on climate change.

For more information or discussion, please contact HopgoodGanim Lawyers' [Planning](#) team.

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