



The *real* climate change impact of coal mining:
Environmental Impact Assessment after *Gray v Minister for Planning & Centennial Hunter Pty Ltd*

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Gray v Minister for Planning & Centennial Hunter Pty Ltd



- A case brought by Newcastle environmental activist Pete Gray
- Challenged the release for public comment of the environmental assessment for the proposed Anvil Hill coal mine...
- ...on the basis that it did not assess the climate change impact of the burning of mined coal.

Proposed Anvil Hill Coal Mine

- Near Wybong, west of Muswellbrook;
- The largest intact stand of remnant vegetation on the Central Hunter Valley floor;
- Home to threatened species and indigenous heritage;
- Centennial Coal proposes an open-cut coal mine to produce up to 10.5 million tonnes of coal per year.

- About half the coal would be exported to power stations in Japan;
- Remainder would be sold to Macquarie Generation for the NSW Bayswater and Liddell power stations;
- Bayswater and Liddell power stations supply 15% of the east coast's (and the equivalent of 40% of NSW's) electricity;
- That is, 100% of coal from the mine would be burnt.



Bayswater Power Station, NSW

Photo: Macquarie Generation

Legal requirements

- Mine requires approval under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) ("EP&A Act");
- EP&A Act requires the proponent to undertake an environmental assessment ("EA");
- Contents of EA determined by "Director General's Requirements" ("DGRs") issued to the proponent;
- In this instance the DGRs required the EA to include a "detailed greenhouse gas assessment".

- The DGRs did not specify the model on which a "detailed greenhouse gas assessment" was to be based ->
- What constitutes a "detailed greenhouse gas assessment"?

Greenhouse Gas Emissions

World Business Council for Sustainable Development and World Resources Institutes' *Greenhouse Gas Protocol 2004* :

- **Scope 1:** Direct GHG emissions that *"occur from sources that are owned or controlled by the company"*;
- **Scope 2:** GHG emissions from from the generation of purchased electricity consumed by the company
- **Scope 3:** Other indirect GHG emissions -



- **Scope 3:** emissions that occur *from sources not owned or controlled by the company* (e.g.) extraction and production of purchased materials; transportation of purchased fuels; and *use of sold products and services.*

- Scope 1 + 2 GHG emissions: 167 574 T CO2e/year
- Scope 3 emissions not assessed (though were assessed during court case).

- Is assessment of Scope 3 emissions necessary if the assessment is to include the required “detailed greenhouse gas assessment?”
- *Gray* said “yes!”.
- Why?

Objects of the EP&A Act

- **5 Objects**

The objects of this Act are:

(a) to encourage:

...

(vii) ecologically sustainable development



Ecologically Sustainable Development - ESD

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.



Principles of ESD

- **Precautionary Principle;**
- **Inter- and Intragenerational Equity;**
- **Conservation of Biological Diversity & Ecological Integrity;**
- **Internalisation of Environmental Cost.**



The NPWS photo library

Applying the Precautionary Principle

- **Where there is:**
 1. A threat of serious or irreversible environmental damage; and
 2. Scientific uncertainty as to the environmental damage...
- ...precautionary **measures should be taken to avert the potential environmental damage.**

Effect of the Precautionary Principle

- That is, the decision maker is then required to assume that the potential threat will materialise and take precautions;
- -> the uncertainty as to whether the damage will actually arise is not an excuse for not taking precautionary measures.
- Does not mean a development has to be refused.

Intergenerational Equity

- **Conservation of options**
- **Conservation of quality**
- **Conservation of access**

Legal arguments

- Applicant Argued:

- D-G failed to take into account ESD principles
 - Particularly intergenerational equity and the Precautionary Principle

- Respondent Argued:

- Implied that the D-G did take ESD into account
- No mandatory condition to take ESD into account under Part 3A

CONSIDERING ESD A MUST

- D-G must consider ESD in accepting that an Environmental Assessment under Part 3A is adequate;
- Key purpose of EA under the EPA Act is to provide information about the impact of a proposal on the environment to the decision maker,
- so that s/he can make an informed decision; EA under Part 3A is no exception;
- **The principles of ESD imposed a duty on the DG to require assessment of Scope 3 emissions, particularly the principle of Intergenerational Equity and the Precautionary Principle.**

Justice Pain in *Gray*:

- ***"[The fact that] the use of coal as fuel [may] occur only through voluntary, independent human action... does not break the necessary link to...climate change/global warming"***

and

- ***"...The fact that there are many contributors globally does not mean the contribution from a single large source such as the Anvil Hill Project in the context of NSW should be ignored in the environmental assessment process. The coal intended to be mined is clearly a potential major single contributor to GHG emissions deriving from NSW given the large size of the proposed mine."***

Amendments to EP&A Act post-*Gray*

- DG now certifies whether DGRs have been complied with (i.e.: much more difficult to challenge failure to comply); BUT
- The amendments do not affect the law as a result of *Gray* that compliance with ESD must now be considered with much greater breadth and seriousness than before.

*Taralga Landscape Guardians Inc v Minister for
Planning and RES Southern Cross Pty Ltd*
[2007] NSWLEC 59

- Reducing greenhouse gas emissions is one of the key ways to effect intergenerational equity
- The public interest of achieving intergenerational equity outweighs the visual and noise impacts of the wind farm.

