



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

ON APPEAL FROM THE COURT OF APPEAL OF THE SUPREME COURT OF
NEW SOUTH WALES

No S174/2025

BETWEEN:

MACH ENERGY AUSTRALIA PTY LTD
ABN 34608495441
Appellant

and

DENMAN ABERDEEN MUSWELLBROOK SCONE HEALTHY
ENVIRONMENT GROUP INC
First Respondent

INDEPENDENT PLANNING COMMISSION OF NSW
Second Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE APPELLANT

PART I INTERNET PUBLICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

2. Section 4.15(1)(b) of the EPA Act requires a consent authority to take into consideration, in so far as they are relevant to the development the subject of a development application, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.
3. The IPC identified GHG emissions as a likely impact of the Project: IPC (AFM 188) at [70]-[72], [125]-[161], [293]; AS [16]-[19]. It found that the Project's Scope 3 emissions would contribute to anthropogenic climate change and that the cumulative impact of GHG emissions was felt globally, but that those emissions were appropriately regulated by attributing them to the country in which they were emitted: IPC [150]-[153]; AS [17].
4. The Court of Appeal held that s 4.15(1)(b) required the IPC to consider, as a mandatory consideration, the impacts of the Project on the built and natural environment in the locality. It held that this requirement was not met by the IPC's finding that the impacts of climate change were felt globally: CA [87], [106]-[109], [236]; AS [32].
5. The argument that s 4.15(1)(b) required the IPC to consider the impacts of climate change in the locality was first made in written submissions in reply in the Court of Appeal: RFM 245 at [16]. It had not been made before the IPC (RFM 117-118, esp [372]-[373]), the trial judge (PJ [90]-[95]) or, initially, on appeal (AFM 244 at [45], [60]-[66]): ARS [12].

Appeal Ground 1

6. The Court of Appeal misconstrued s 4.15(1)(b). The sentence structure and punctuation indicate that "in the locality" attaches to the words "social and economic impacts" alone: AS [34]-[36], [43]; *Gloucester Resources Ltd v Minister for Planning* (2019) 234 LGERA 257 (Vol 5, Tab 20) at [494], [513]-[515], and esp [525]; contra CA [107].
7. That construction is consistent with the statutory objects. The "environment" in s 1.3 is defined broadly. It is commonplace for the impacts of a development on the environment to include impacts outside the locality: e.g. *Bell v Minister for Urban Affairs* (1997) 95 LGERA 86 (Vol 4, Tab 14) at 95-96; cf *Minister for the Environment v Queensland Conservation Council* (2004) 139 FCR 24 (Vol 6, Tab 27) at [22]: AS [39]-[40].
8. The legislative history supports this reading. Compare former s 90(1)(b) and (d) (Vol 2,

Tab 6, p 438), and its successor, s 79C(1)(b) (Vol 2, Tab 7, p 473): AS [41]-[42].

Appeal Ground 2 and Proposed Amended Notice of Contention Ground 2

9. Section 4.15(1) requires a matter to be taken into account only in so far as it is relevant. It is for the consent authority to determine whether a matter is relevant, and how it is engaged, in relation to a particular application: *Ross v Lane* (2022) 255 LGERA 136 (Vol 7, Tab 34) at [94], [102]; AS [30]; ARS [4]. The IPC did not consider the local impacts of climate change to be separately relevant, given the key issues which emerged from the submissions (AFM 207 at [69]-[70]) and having regard to its reasoning as set out in Proposition 3. It is not said that the IPC acted irrationally in adopting that approach: AS [17], [46]; cf *LPDT v Minister for Immigration* (2024) 280 CLR 321 at [33]-[34].
10. The Respondent contends that the IPC was required by s 4.15(1)(b) to consider the impacts of climate change in NSW and the Hunter Valley, because the Appellant's EIS identified that the Project's Scope 3 emissions would contribute to climate change; and the EIS identified the effects of climate change in NSW and its disproportionate effects in the Hunter Valley: RS [33], [39] and [40], referring to RS [14].
11. That contention mischaracterises the portions of the EIS relied on. Those sections (sections 7.21.5 and Appendix S, section 5.5) do not suggest that climate change will have a disproportionate effect in the Hunter Valley; further, they are concerned with potential impacts of climate change on the Project. The sections dealing with potential impacts of the Project on climate change do not specifically address impacts in NSW or the Hunter Valley (sections 7.21.3 and Appendix S, section 5.4): ARS [6].
12. Further, the mere fact that a topic is addressed in the EIS does not make it a mandatory consideration: cf *Plaintiff M1 v Min for Home Affairs* (2022) 275 CLR 582 at [23]-[24].

Appeal Ground 3

13. This ground arises only if Ground 1 fails: AS [57]. The Court of Appeal reasoned that the IPC, having accepted that Scope 3 emissions would make up 98% of the Project's GHG emissions, and that those emissions would contribute to global climate change, was required by s 4.15(1)(b) to go on and consider the impacts of climate change in the locality: CA [108]; see also CA [210], [238].
14. This finding was in error because, on the material before the IPC, the impacts of climate change in the locality could not be characterised as impacts of the Project. It was common ground that the impact of combustion emissions cannot be isolated to a particular location; the effect of climate change is global: PJ [46(2)]; [90]; [131]; RFM 83D; ASFM 4 [178].

In light of that common ground, climate change impacts in the locality were the local manifestation of a global problem attributable to the accumulation of GHG emissions worldwide; they could not be said to be impacts of the Project: AS [57]-[62]; ARS [11].

15. The position is not affected by attribution science. Attribution science, as explained by UCS, is said to permit a conclusion that the intensity of climate events in a particular area is worse because of global climate change; not that those events are worse because of emissions attributable to a particular project: UCS [13], [19], [21]; AAS [13]-[16].
16. Ground 3 does not raise any matter that might have been met by evidence at first instance. Evidence about attribution science would have been irrelevant given the common ground before the IPC: see Proposition 14; ARS [12]. Further, in so far as it is said that attribution science can draw a link between a project's Scope 3 emissions and global climate change, which increases the likelihood of climate impacts in a locality (UCS [21]), the Appellant contends that that reasoning cannot supply the connection which s 4.15(1)(b) requires: AAS [14]-[15]; *Hoxton Park RAG v Liverpool CC* (2011) 81 NSWLR 638 (Vol 5, Tab 22) at [46]. Whether that contention is correct is a question of law, not of fact.
17. Ground 3 does not raise a new argument. It responds to an argument made, and accepted, for the first time in the Court of Appeal: see Propositions 4, 5; ARS [12].

Notice of Contention Ground 1

18. The IPC did consider whether development consent should be issued subject to conditions aimed at ensuring GHG emissions were minimised to the greatest extent practicable, as required by cl 2.20(1) of the Resources SEPP. That appears from:
 - a. IPC [137] (AFM 216), which sets out the requirements of cl 2.20(1);
 - b. IPC [150]-[153] (AFM 219), which finds that the Project's Scope 3 emissions are appropriately regulated by attributing them to the country within which they are emitted (referring to IPC [127] (AFM 215));
 - c. IPC [154]-[160] (AFM 219-221), which addresses cl 2.20 and identifies conditions aimed at minimising Scope 1 and 2 emissions (being B36, B32, B31);
 - d. IPC [161] (AFM 221), which finds that GHG emissions have been adequately assessed and refers to the requirements of the Resources SEPP: AS [18]-[20].

Dated: 13 May 2026



Michael Izzo



Joanna Davidson



Sebastian Hartford-Davis



Olivia Ronan