



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

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IN THE HIGH COURT OF AUSTRALIA  
 SYDNEY REGISTRY

BETWEEN:

**MACH ENERGY AUSTRALIA PTY LTD**

**ABN 34608495441**

Appellant

**DENMAN ABERDEEN MUSWELLBROOK SCONE**

**HEALTHY ENVIRONMENT GROUP INC**

First Respondent

and

**INDEPENDENT PLANNING COMMISSION OF NSW**

Second Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE  
 UNION OF CONCERNED SCIENTISTS**

**PART I: Certification**

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

**PART II: Propositions to be advanced in oral argument**

1. Evidence of climate change impacts in the locality of the development was adduced before the IPC, not only by DAMSHEG but also by MACH Energy.

- Professor Sackett's report dated 14 July 2022 at [172]-[182] (**RBFM 148-153**)
- CA [143], [149], [150] (quoting MACH Energy's EIS) and [236]-[237] (**CAB 167, 169, 196-197**)

2. MACH Energy's position below was that the IPC took into account those climate change impacts in the locality, and that the only question for the IPC was whether to approve the development despite the impacts. Its position was not that climate change impacts in the locality were incapable of being characterised as impacts of the development.

- CA [95]-[96], [148] (**CAB 153-154, 169**)

3. MACH Energy went further, acknowledging a causal relationship between the development and local impacts: “all sources of greenhouse gas emissions will contribute in some way towards the potential global, national, state and regional effects of climate change”.

- CA [151] (quoting MACH Energy’s EIS) (**CAB 170**)

4. The proposition, now advanced by Ground 3, that climate change impacts in the locality are “incapable” of being characterised as impacts of the development is a factual proposition that:

- (a) is advanced for the first time in this Court;
- (b) depends on new evidence that cannot be received in the appeal, being an appeal in the strict sense; and

- UCS [24]

- (c) is in fact wrong but, sufficiently for present purposes, would have been contestable by further or different evidence below.

5. In particular, climate attribution science — a field that is “well-established and accepted by the scientific community” and used by the IPCC in its authoritative assessments — could have been drawn upon to establish the following propositions:

- (a) Global temperature rise is approximately linear to the total amount of CO<sub>2</sub> released into the atmosphere from human activities, especially burning fossil fuels.

- IPCC, Climate Change Report, p 83 (**JBA Vol 9, Tab 41 at 2633**)
- UCS [10]-[11]

- (b) Event attribution science (one of three types of attribution science) can study a particular observed event in a locality, such as a heatwave or heavy rainfall, and by counterfactual analysis with and without anthropogenic emissions, can assess and quantify the relative contribution of anthropogenic emissions to that observed event.

- Phillips, Merner, and Otto, “Attribution Science” in *The Cambridge Handbook on Climate Litigation* (2025) 79-102 at 80-83, 87, 101 (**JBA Vol 9, Tab 45 at 2710-13, 2717, 2731**)
- UCS [12]-[13]

(c) A pertinent example of event attribution science demonstrated in 2021 that the bushfire risk in south-eastern Australia increased since 1979 by at least 30 per cent, and “likely much higher”, as a result of anthropogenic climate change.

- van Oldenborgh et al, “Attribution of the Australian Bushfire Risk to Anthropogenic Climate Change” (2021) 21 *Natural Hazards and Earth System Sciences* 941-960 at 956 (**JBA Vol 8, Tab 44 at 2697**)
- Phillips, Merner, and Otto at 92 (**JBA Vol 9, Tab 45 at 2722**)
- UCS [14]

(d) Event attribution science in this way can express a chain of causation which links the Scope 3 emissions of the development, with an incremental effect on global climate change, in turn with particular impacts in the locality of the development, in the sense of increased likelihood or intensity of particular observed events (such as bushfires, which were among the impacts identified to the IPC by Professor Sackett).

- UCS [21]

6. Causation does not require a distinctive or molecularly traceable contribution by emissions from the particular development to a particular impact. A wrongdoer who poisons a well impacts all the localities that use the well, even if others also poison the same well. But in any event, climate attribution science also encompasses “source attribution” studies, which *can* quantify the impact of emissions from specific sources.

- Phillips, Merner, and Otto, p 84-86 (**JBA Vol 9, Tab 45 at 2714-16**)
- UCS [12]

7. The evidence above can be received on the question whether to revoke special leave on Ground 3. Special leave should be revoked because the factual record is inadequate to determine the far-reaching factual proposition on which Ground 3 depends. The Court should not determine an appeal ground, essentially about attribution science, without having the science properly before it.

- UCS [26]

Dated: 13 May 2026



Brendan Lim



Jackson Wherrett