

# The Sydney Morning Herald

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## Courts turn on coal mines over climate impacts



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The NSW courts have cancelled a large coal mine approval on climate grounds for the second time in four months, as pressure grows on Australia to curb fossil fuel exports.

The Land and Environment Court on Friday invalidated the state approval for a two-year extension of the Ulan thermal coal mine near Mudgee to dig up an extra 18.8 million tonnes of coal.



The Ulan coal mine near Mudgee. GLENCORE

It follows the [Court of Appeal overturning the 2022 approval](#) of MACH Energy's massive Mount Pleasant mine in the Hunter Valley in July, which set a precedent that the local impacts of global change must be considered. MACH Energy has applied to appeal to the High Court.

The Ulan mine received state approval in May and the federal tick in September, in [the first coal mine approval](#) under Murray Watt as Commonwealth environment minister.

The court orders on Friday were made by consent between the Mudgee District Environment Group and Ulan Coal Mines after the Glencore subsidiary conceded that the NSW Department of Planning, Housing and Infrastructure had failed to consider climate change as a mandatory consideration.

Anita O'Hart, principal lawyer at Johnson Legal, who acted for the environment group, said the Court of Appeal decision acknowledged the direct causal link between the extraction of coal in NSW and climate harms suffered by locals. Her client had sought for the same harms to be assessed for the Ulan project.



A longwall at the Ulan coal mine near Mudgee. GLENCORE

“Local communities in NSW are suffering from the impacts of extreme bushfires, floods and heatwaves,” O’Hart said. “Consideration of those harms is a mandatory consideration for future fossil fuel projects, including for modifications and applications already in the system.”

A Glencore spokesperson said the Court of Appeal decision created a “legal loophole”, but the company would amend its application and reapply.

“This was calculated lawfare using a legal loophole to delay a project that will provide vital jobs and business opportunities for the local Mudgee community,” the spokesperson said. “We are undeterred.”

Environmental lawyers argue that the Court of Appeal decision means all applications, including modifications in the pipeline, must be amended to include a detailed and up-to-date assessment of the impacts of climate change on the locality as well as community feedback.

This could apply to 18 proposed expansions under active consideration, according to anti-fossil fuels group Lock the Gate. Projects approved more than three months ago cannot be challenged.

The Court of Appeal decision is part of a growing push for Australia to take responsibility for so-called scope 3 emissions, which are mainly fossil fuel exports burnt abroad. They are not counted in the national emissions accounts under the Paris Agreement.

The International Court of Justice made an advisory ruling in July that countries impacted by climate change can [legally pursue their neighbours](#) for reparations if they fail to curb greenhouse emissions, including those caused by fossil fuel exports.

The NSW Net Zero Commission wrote to the state planning department in September.

Highlighting the Mount Pleasant decision, [the letter said](#) it considered scope 3 emissions to be “an important factor in addressing climate change locally and globally, particularly for sectors like coal mining”.

A department spokesman said in a statement it approved Ulan before the Court of Appeal decision and anticipated the outcome on Friday. “The department will continue to make sure that assessment processes satisfy all relevant legal obligations,” he said. “This includes recent Court of Appeal decisions.”

The Independent Planning Commission will continue to be the consent authority for major coal projects under the new planning laws.

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