QUEENSLAND – WINCHESTER SOUTH MINE RECOMMENDED FOR APPROVAL DESPITE "WICKED PROBLEM OF CLIMATE CHANGE"

WHITEHAVEN WS PTY LTD V AUSTRALIAN CONSERVATION FOUNDATION INC

Date: 18 November 2026

Australia Real Estate Alert

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EXECUTIVE SUMMARY

The Land Court of Queensland (Court) has recommended that mining leases and an environmental authority be granted to Whitehaven WS Pty Ltd (Whitehaven) for its Winchester South open-cut coal mine (Project) despite environmental objections in the recent decision of *Whitehaven WS Pty Ltd v Australian Conservation Foundation Inc & Ors (No 4)* [2026] QLC 24.

The Court accepted evidence that 557 million tonnes of emissions projected to arise from the Project would be "a massive amount". However, as one of likely thousands of similarly impactful projects worldwide, the Project was held not to cause, although it would contribute to, the degradation of the entire Queensland environment. Climate considerations did not overwhelm or extinguish the other factors to be considered in the Court's assessment.

Describing this as the "wicked problem of addressing climate change", the Court indicated that cumulative climate action would be a matter for policymakers rather than the courts.

BACKGROUND

The Project land is located about 30 kilometres southeast of Moranbah, Queensland. Though itself a greenfield site hosting a substantial list of species including koala, squatter pigeon, ornamental snake and greater glider, the land is surrounded by large operating coal mines. The open cut mine is projected to have a disturbance footprint of 6,950 hectares, including six pits and a mine infrastructure area, running over a total mine life of 35 years. It is estimated that 17 million tonnes of run-of-mine metallurgical (60%) and thermal (40%) coal would be extracted each year, 11 million tonnes of which would be exported to East and Southeast Asian countries.

Following the approval of the Project by the Queensland Coordinator-General, the Australian Conservation Foundation Inc and the Mackay Conservation Group Inc raised objections under the *Mineral Resources Act 1989 (Qld)* and *the Environmental Protection Act 1994* (Qld) (EP Act), concerning:

1. Unacceptable impacts of the Project on local flora and fauna;

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2. Harmful contributions of the Project to carbon emissions and global warming; and
3. Unviability of the Project as the world transitions to green energy.

IMPACT ON CLIMATE CHANGE

Cumulative climate harm

The objectors raise an examination of the harmful cumulative effects of the Project on climate pursuant to s 14(2)(b) of the EP Act, which provides that environmental harm may be caused by an activity "whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors".

Over its entire mine life, the Project would generate:

4. Scope 1 (direct) and Scope 2 (indirect) emissions of 17,387,609 tonnes of CO_2 equivalent;
5. Scope 3 (broader supply chain) emissions of 539,859,005 tonnes of CO_2 equivalent; and
6. Total emissions of 557,246,614 tonnes of CO_2 equivalent.

The Court accepted evidence that the total emissions arising from the Project would contribute to an increase in the Earth's temperature of 0.0003°C. This figure included Scope 3 combustion emissions, which were considered relevant under the EP Act. The requirement to consider Scope 3 emissions in New South Wales was recently considered by the High Court in *MACH Energy Australia Pty Ltd v Denman Aberdeen Muswellbrook Scone Healthy Environment Group Inc* [2026] HCA 35, which we discuss further in our article: New South Wales–No Shortcuts on Scope 3: High Court Puts Scope 3 Emissions Back on the Table for Resource Projects | HUB | K&L Gates.

Contrary to Whitehaven's submission that the carbon impacts of the Project would be "very small", the Court characterised 557 million tonnes of CO_2 as a "massive amount" and a "noticeable, measurable, component of the total carbon emissions that can be expected over the next few decades".

Nevertheless, the Court recognised that the consequences of climate change would eventuate with or without the Project. It was held that there was a disconnect between the degradation of the Queensland environment and the Project, in light of the "hundred or even thousands of projects proposed, around the world, that will each have the consequence of a 0.0003°C temperature increase". As a result, the consideration of cumulative impacts did not overwhelm or extinguish the other factors to be considered in the assessment.

The Court commented that refusal of the coal mine would not have any practical effect and would be symbolic at best, leaving any future climate action policy with policymakers.

Role of the Advisory Opinion of the International Court of Justice

The objectors relied upon a 2025 advisory opinion of the International Court of Justice (ICJ) entitled *Obligations of States in Respect of Climate Change* (Advisory Opinion), of which Australia had been a party. In the Advisory Opinion, the 14-member court unanimously imposed obligations upon states party to treaties such as the United Nations Framework Convention on Climate Change and the Paris Agreement to adopt measures and act with due diligence in mitigating climate change.

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The Court commented that whilst the Advisory Opinion was not binding, it was to be consulted with “discrimination and care”. Nevertheless, given the generality of the ICJ's findings, the Advisory Opinion could not be applied specifically in the Queensland context and therefore did not meaningfully weigh against the Project.

The Court accepted Whitehaven's submission that international treaties, conventions and protocols do not affect Australian municipal law or give rise to a “legitimate expectation” that an administrative decision maker will act in accordance with them.

ECONOMIC VIABILITY OF THE PROJECT

The objectors further challenged the financial viability of the Project and the economic benefit to Queensland of the Project.

In considering expert evidence on the future market for coal, the Court accepted that predicting demand, supply and prices was an inherently uncertain exercise. However, the possibility of technological or policy developments did not establish that coal demand would fall sufficiently to make the mine unviable before commencement. In any event, the Court regarded the risk of declining coal demand as a commercial matter for Whitehaven and did not treat it as weighing against the Project.

The Court was further satisfied that the Project would generate economic and social benefits by way of royalties, jobs and economic confidence in the region. Though the Court accepted the high cost of combustion emissions, it was unable to find a link between the emissions and harm to Queensland specifically on a population-based apportionment calculation.

HUMAN RIGHTS ACT

The Court also considered the possible impact of the Project on human rights as part of its decision-making under s 58 of the *Human Rights Act 2019* (Qld).

In assessing whether the Project would arbitrarily limit the rights to life, privacy and property, the Court examined “whether the interference extends beyond what is reasonably necessary to achieve the statutory, lawful purpose”. Although the Project was found to limit several rights through climate-driven destruction of property and harm to human health, those limitations were considered justified under a proportionality test. The Court additionally found no implied right to a clean and healthy environment.

CONCLUSION

The Court recommended the approval of the mining leases and the draft environmental authority subject to “comprehensive and strict conditions”. Though warning that climate change impacts would be serious, the Court reiterated the difficulty of attributing a diffuse and global climate harm specifically to Queensland.

For businesses, the decision highlights the importance of identifying and managing both project-specific environmental impacts and broader climate-related risks. Although the Court did not treat uncertainty about future coal demand as a reason to recommend refusal, proponents and investors should continue to assess demand, pricing, policy and rehabilitation risks throughout a project's life when seeking statutory approvals.

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