

MEDIA RELEASE

CLAIMS OF JUDICIAL OVERREACH CONCERNING



NEW SOUTH WALES
BAR ASSOCIATION

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The New South Wales Bar Association has the highest regard for the integrity of the judiciary and has concerns about recent claims in the media of judicial overreach with respect to the judgment of Preston CJ in Gloucester Resources Ltd v Minister for Planning.

The applicant Gloucester Resources Ltd brought the matter before the Land and Environment Court, having been refused development consent for a coal mine by the Minister for Planning. In assessing the application, amongst other matters, his Honour took into account the impact the mine would have on climate change. This has been reported in the media as ‘a worrying example of judicial overreach’ and ‘against the national interest’.

The President of the NSW Bar Association Tim Game SC said, ‘In assessing such a development application the court is required to take into account many factors including environmental impact. The Chief Judge, referring to relevant legislative provisions, planning instruments and case law, gave detailed reasons as to why he was obliged to consider climate change in that environmental assessment. He would have been in error had he failed to do so’.

‘Expert scientific evidence of the impact the mine would have on climate change was before the court and both sides made submissions as to its relevance and weight. In a 700 paragraph judgment, climate change was one factor (albeit a significant one) amongst many factors the Chief Judge considered’, Mr Game SC said.

Mr Game SC said: ‘Further in the long and detailed judgment, his Honour refused the application for its significant and unacceptable planning, visual and social impacts. The green-house gas emissions provided a further reason for refusal’.

Whilst appropriately eschewing an assertion of bias, one newspaper nevertheless referred to the Chief Judge as having co-founded the Environmental Defenders Office (which represented one of the parties in proceedings) and made reference to extra-judicial papers the Chief Judge has given extracting parts of his speeches that might give the impression that his Honour was biased in relation to the subject of climate change.

‘That is an attack on the character of the Chief Judge and it is troubling,’ Mr Game SC said. He also said, ‘The Chief Judge’s remarkable and extensive career within the land and environment jurisdiction highlights his commitment, expertise and suitability as a judicial officer of the Court. It is to be applauded. If there was any concern about judicial bias, it was open to the parties to raise that and ask the judge to recuse himself as the Attorney General Mark Speakman SC has already noted’.

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