

**Australian Conservation Foundation v Minister for Planning [2004]
VCAT 2029 – greenhouse issues relevant to scheme amendment**

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In one of the first decisions of its kind, *Australian Conservation Foundation v Minister for Planning* [2004] VCAT 2029, the Victorian Civil and Administrative Tribunal (“VCAT”) has ordered that the planning panel considering submissions in relation to a planning scheme amendment under the *Planning and Environment Act* 1987 (Vic) to expand a coal mine to extend the operation of a major coal-fired power station by 20 years cannot exclude submissions about the greenhouse gas implications of the project.

International Power Hazelwood wants to use a new coal deposit to supply Hazelwood Power Station beyond 2009, when the current coal deposits will be exhausted.

Four conservation groups, WWF Australia, Environment Victoria, The Climate Action Network Australia, and the Australian Conservation Foundation, objected to the planning scheme amendment on the basis of greenhouse gas emission. The groups then sought judicial review of the exclusion of the impacts of the emissions from the assessment of the impacts of the expansion of the coal mine.

VCAT said that the Victorian Minister for Planning does not have the power to direct the panel to exclude considerations about greenhouse gas impacts. VCAT also said that greenhouse gas considerations are relevant for a planning scheme amendment which would facilitate mining of coal for use in the power station.

The President of VCAT, Justice Morris, confirmed that the *Planning and Environment Act* 1987 (Vic) seeks to achieve ecologically sustainable development:

“Many would accept that, in present circumstances, the use of energy that results in the generation of some greenhouse gases is in the present interests of Victorians; but at what cost to the future interest of Victorians? Further the generation of greenhouse gases from a brown coal power station clearly has the potential to give rise to “significant” environmental effects.”

This decision is important because it sets the scene for a more integrated approach to environmental impact assessments at both State and Federal level. In his decision, Justice Morris clearly acknowledged the similarity of the environmental impact assessment approaches required under both the *Commonwealth Environment Protection and Biodiversity Conservation Act* 1999 (Cth) and the *Victorian Planning and Environment Act*.

This decision also reinforces the environmental goals and processes built into the Victorian Planning system as being all about robust, independent assessment of environmental impacts. It also clearly underscores the legal right of community members to have a say about how their environment is treated by the planning system.

Access the full decision at: <http://www.austlii.edu.au/au/cases/vic/VCAT/2004/2029.html>