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Alpha Bravo as Rinehart wins coal battle

Efforts to establish a new legal bridgehead in the war on Australian coal have again fallen at the final legal hurdle with a Queensland Supreme Court resisting efforts to overturn approvals for a new mine because its product would inevitably result in an increase in global carbon dioxide emissions.

This is but the latest in a progress of legal challenges – most of which have been afforded in part by various taxpayer-funded state environmental defenders' offices – that aims to create a firm legal precedent that would be essentially lethal for the future of the Australian coal industry.

Alpha is one of the serious horizon projects in Queensland coal. It is owned in joint venture by Gina Rinehart's Hancock Prospecting and Indian conglomerate GVK. The project has been eight years in the planning but recent progress could be described as stuttering at best, as a result of a combination of eroding economics, tension within the joint venture and environmental lawfare.

But while the timelines may have moved, the plan apparently remains the same. Alpha could sustain one of a new breed of mega-coal production hubs in Queensland's currently untapped Galilee Basin.

GVK Hancock has long flagged the potential for a 30 million tonnes a year thermal coal project. Add that to the 25-40mtpa project planned by Indian conglomerate Adani, and you start to get a feel for the scale of mining that might be supported by the Galilee resource. And that is why the anti-coal lobby is working so hard to at least delay and, at best, permanently end Queensland coal mining's progress westwards.

The proposition repeated to a full bench of the Queensland Supreme

Court last June was that state approvals offered to the Alpha coal project should be overturned because the global impact of burning the mine's product had been ignored in the approval process.

Successive courts have found that the tests of relevant Queensland mining and environmental factors do

not stretch beyond the boundaries of the mining lease. In effect, the anti-coal lobby is asking the courts to protect the world but the courts have consistently found that the law restricts them to the limits of the leases that will be directly affected by mining.

More importantly, even when there has been a scintilla of opportunity to reflect on the greater effect on climate change, the courts have also consistently found that stopping Alpha or Carmichael or any other coal mine would make zero difference to the global carbon outcome.

As was observed in Tuesday's judgment, rejection of the original appeal by the Coast and Country Association of Queensland was, in part, based on the utterly logical conclusion that blocking Alpha would do nothing to change global or regional CO2 outcomes.

"Upon the expert evidence," Tuesday's judgment concluded, "the power stations would burn the same amount of thermal coal and produce the same amount of greenhouse gases whether or not the proposed Alpha Mine proceeded."

"That was so because thermal coal was plentiful and cheaply available to the power stations from many sources. It was the designed power generating capacity of the power stations, rather than the availability of coal, which determined the amount of coal which would be burned in the power stations.

Accordingly, global scope 3 emissions would not fall if the mine did not proceed."

In this case, scope 3 emissions is taken to refer to the CO2 that will be produced from moving the coal and then its use in distant power stations.

Coast and Country argued that approvals of Alpha should be struck out because the Queensland Land Court and the state's environment minister erred in giving "zero weight to the environmental harm" caused by scope 3 emissions.

Both appellant courts were asked to put maximum weighting behind the meaning of the word impact within the context of its use in the legislation. The full bench found otherwise.

"The relevant limitation ... is not found in the word 'impact' alone," the judgment noted. The court found that

the relevant environmental legislation "allows consideration only of impacts caused by 'operations to be carried out under the authority of the proposed mining lease'. The relevant operations in this case are confined to mining coal within the boundaries of the proposed mining lease."

With that observation and a repeated endorsement of past conclusions that delivering Alpha coal to the world would not change environmental outcomes, the full bench dismissed the appeal and ordered Town and Country to pay the costs of Hancock Coal and the state environment minister.

The Coast and Country's case was led by the Environmental Defenders Office Queensland. Speaking after the judgment its CEO, Jo-Anne Bragg, bluntly rejected the court's logic.

"The argument that coal from other mines would replace the environmental damage of Alpha coal if it did not go ahead is known as the

'substitution argument'. It is used by coal mines to avoid responsibility for the consequences of their actions. We said, as a matter of law, they are responsible for the consequences of their actions, regardless of what others may do," she said in a statement.

"Our clients were disappointed in the decision. They are here to clarify the law regarding the protection of the Great Barrier Reef and environment through the legal system. We will carefully read the judgment to see the reasoning of the Court of Appeal.

"We all know that burning fossil fuels is contributing to global warming, extreme weather events and severe damage to our Great Barrier Reef. Every further approval locks in those impacts."

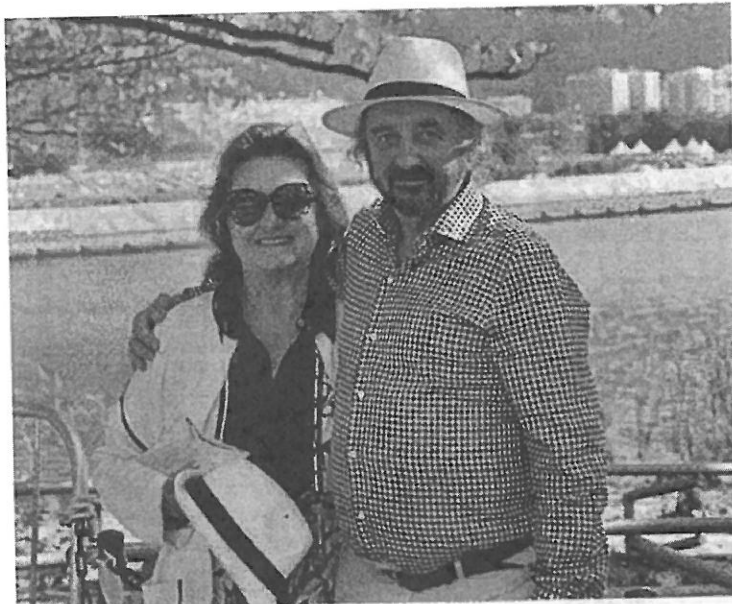
What the court found, of course, is that whatever damage is being caused to the Reef by thermal power stations in India or Vietnam or China is going to happen regardless of whether it is Alpha coal that they are burning.

The court's affirmation of Alpha's right to dig is made all the more relevant because of the now very obvious shift in the state of global coal markets. For the past three years or so

it has been accepted wisdom that coal's big bust has semi-permanently unwound the economics of the progress into the Galilee. But the worm made have turned.

China's efforts to contain the worst of its own coal industry in preference for cheaper and routinely higher quality imported coals has contributed much to the 40 per cent rise in thermal coal pricing over the past three months and to the 130 per cent spike in coking coal prices.

"The sharp price rise is welcome news for coal producers in Australia and Indonesia and could have a significant impact on boosting nominal GDP in these economies," HSBC reported yesterday. "Some relaxing of the supply constraints by Chinese policymakers in the past week or so could see prices start to level out or fall back a bit. But it seems likely that coal prices are past the trough."



Gina Rinehart and Tad Watroba of Hancock have had a significant court victory.