NEW SOUTH WALES - LEGISLATION PASSED FOR MOUNT PLEASANT MINE FOLLOWING HIGH COURT DECISION IN MACH ENERGY

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The New South Wales (NSW) Government has now passed the *Mount Pleasant Mine Bill 2026* [NSW] (Bill), providing statutory consent to allow the Mount Pleasant Mine to continue operations following the High Court of Australia's decision in *MACH Energy Australia Pty Ltd v Denman Aberdeen Muswellbrook Scone Healthy Environment Group Inc* [2026] HCA 35.

The Bill responds to the unique circumstances arising from the High Court decision and provides operational certainty to nearly 400 workers while the development application is being reconsidered. The Bill is a project-specific response and does not alter the existing requirements for other resource development applications. The Bill is now awaiting assent, having been passed by both Houses of government late last week.

BACKGROUND

As discussed in our previous article, linked here, the High Court of Australia held that the Independent Planning Commission had failed to consider whether conditions should be imposed to minimise Scope 3 greenhouse gas emissions to the greatest extent practicable. The development application originally lodged and approved in 2022 (2022 Application) has been remitted to the Land and Environment Court of NSW for further consideration. The Land and Environment Court of NSW proceedings are expected to recommence later this year. The introduced legislation addresses operational concerns for Mount Pleasant Mine whilst this decision is pending.

PROPOSED STATUTORY CONSENT

The Bill authorises the extraction of up to 16.5 million tonnes of run-of-mine coal each calendar year, until 31 December 2032. This authorisation is taken to be development consent under the *Environmental Planning and Assessment Act 1979* (NSW), with the development being declared as state-significant development. Importantly, the extraction and operational time limits imposed by the Bill cannot be modified under existing planning legislation, as they are not defined as “conditions” of the consent.

The statutory consent granted by the Bill will operate separately from any consent granted to the 2022 Application or any development consent granted after the Bill's commencement. Even if subsequently granted, a new consent would not authorise development of Mount Pleasant Mine before 1 January 2033, unless the statutory consent is surrendered earlier.

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Development remains subject to statutory conditions set out in a separately gazetted document. The Bill clarifies that mining should be carried out in accordance with conditions to minimise harm to the environment, including provisions relating to, among other things, Scope 3 greenhouse gas emissions. According to the second reading speech, these statutory conditions will substantially reflect the consent granted to the 2022 Application and include an export management plan that allows exports only to countries which are aligned with the United Nations Paris Agreement.

EMPLOYMENT GUARANTEE

To address employment uncertainty for Mount Pleasant coal mine workers, the Bill authorises the NSW Minister for Natural Resources (Minister) to enter into a jobs guarantee agreement with MACH Energy on behalf of the state. Once executed, the agreement would provide minimum workforce numbers for carrying out the authorised development, impose reporting requirements and stipulate penalties payable by MACH Energy for contravening the agreement. The Minister is also afforded the power to order the development to stop if it is satisfied that MACH Energy has not entered into a jobs guarantee agreement or has contravened such an agreement.

HENRY VIII CLAUSE

Clause 17 of the Bill is described as a “Henry VIII clause” as it confers broad powers on the Minister to make regulations that modify the application or operation of any act or instrument on the authorised development. Following parliamentary discourse over the Bill's second reading, amendments to clause 17 have been adopted into the legislation passed by both Houses. These amendments prevent regulations being made to disapply or modify the operation of clause 5(3), which enforces extraction and time limitations on the operation of the Mount Pleasant Mine. Other amendments to clause 17 prevent the Minister from recommending regulations to the Governor of New South Wales after the earlier of the surrender or expiry of the statutory consent and prevent the Minister from recommending regulations in relation to the *Independent Commission Against Corruption Act 1988* or an instrument under that act. These amendments provide some reassurance that the Henry VIII clause cannot be used to expand coal production beyond the limits imposed by the Bill.

WHAT THIS MEANS FOR MOUNT PLEASANT COAL MINE

For Mount Pleasant, the Bill offers a pathway forward for continued operation, but this is not an unrestricted operating licence for the project. The practical effect of this will depend on the execution of a jobs guarantee arrangement. The Bill does not amend the assessment requirements contained in the State Environmental Planning Policy (Resources and Energy) 2021 (NSW), as it is specific to the Mount Pleasant Mine. Proponents should continue to ensure their environmental assessment material addresses potential conditions to minimise Scope 3 emissions to the greatest extent practicable and the practical workability of any proposed conditions.

K&L Gates' planning and environment team is following developments surrounding the Bill and is monitoring the release of the statutory conditions referred to in the Bill. We are available to discuss the proposed legislation and evolving approach to the regulation of Scope 3 emissions from resource development projects.

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