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Ms Carolyn McNally
Secretary
Department of Planning and Environment
23-33 Bridge Street
Sydney NSW 2000

4 July 2016

Dear Ms McNally

Re: Department's assessment of Anglo response to PAC review of Drayton South Proposal

Anglo American submitted their response to the November 2015 PAC's Review of the Drayton South Proposal (the 'project') in May 2016. We wish to comment on that response and trust you will take our comments and research into account in formulating your response and recommendations.

EP&A Act

We note that when making decisions the Minister must consider the objects of the Environmental Planning and Assessment Act 1979 (the Act), as outlined in section 5 of the Act. Your Preliminary Assessment of August 2015 reflects that the objects of most relevance to the Minister's decision on whether or not to approve the project include Section 5 (a) (i), (ii), (vi) and (vii). We deal with these in our attached submission, and show that these objectives are not met, as this project will not:

- Result in the proper management, development and conservation of agricultural lands and water;
- Promote the social and economic welfare of the Hunter community;
- Promote a better environment;
- Promote nor coordinate the orderly and economic use and development of the land;
- Protect the environment; and
- Result in ecologically sustainable development.

Section 79C of the Act also requires a consent authority to consider certain matters including those set out in sub sections 79 C (1)(a); 79C (1)(b); 79C(1)(c); 79C (1)(d); and 79C (1)(e).

Our conclusions relating to these sections of the Act are supported by our previous submissions, expert advice (summarised in Section 2 and appended to this submission) and the recommendations/determination of three Independent Planning Assessment Commissions, along with the NSW Government's Independent Gateway Panel.

Planning Assessment Commission

In reaching your recommendations, and indeed in any final determination, we understand that, in addition to the Act, and Government policies, consideration must also be given to the findings and recommendations of the Planning Assessment Commission.

Importantly the recommendations and determinations of three Independent Planning Assessment Commissions provide that:

- Coolmore and Darley Woodlands horse studs should be recognised as essential to the broader Equine Industry Cluster and given the highest level of protection from the impacts of mining (PAC Review Report December 2013);
- the horse studs and the Hunter Valley's equine industry should be protected (PAC Review Report December 2013 and PAC Review Report November 2015);
- the mine plan/application for the Drayton South open cut coal mine should not be approved/proceed (PAC Review Report December 2013; PAC Review Report November 2015);
- the economic benefits of the project do not outweigh the risk of losing Coolmore and Darley and the potential demise of the equine industry in the area and the flow-on impacts on the viticulture and tourism industries (PAC Determination Report October 2014);
- the project is not in the public interest (PAC Determination Report October 2014);
- the importance of the Equine Critical Industry Cluster, its sensitivities to intensive development and the landscape character of its central operators, including the Coolmore and Woodlands studs, needs to be acknowledged with the development and enforcement of appropriate buffers, exclusionary zones or preservation measures to safeguard this important industry (PAC Review Report November 2015).

Departmental Assessment

In reaching its final recommendations on this project, we trust the Department will give careful, independent and rigorous consideration to:

- The objects and matters for consideration in evaluating projects of this nature under the EP&A Act;
- The findings and recommendations of the Planning Assessment Commission – which have been thoroughly consistent in all of their reports and determinations on Drayton South since December 2013;
- The significant and unacceptable uncertainties presented by this proposed mine, both in terms of its own uncertain future and operation, its purported benefits and the risks that it poses to the entire Equine Critical Industry Cluster in the Hunter Valley;
- The conclusive findings of 4 PACs (PAC Report Bickham Coal Project 2010 and 3 Drayton South PACs) that mining and international scale thoroughbred breeding operations are incompatible land uses in close proximity;
- The consistent PAC findings that Darley and Coolmore are “**the** central players in the Equine Critical Industry Cluster” and are “**pivotal, critical and key** to the sustainability of the Equine Critical Industry Cluster in the Upper Hunter and to NSW”;
- The consistent PAC findings that should Coolmore and Darley be forced out “*because of either perceived or actual mining impacts on their operations, it is unlikely any similar caliber operators will be willing to move in given the image conscious nature of the industry and investor's perception of the area*”¹. And that “*the likely effects of the studs relocating would be that the cluster would suffer to a significant extent and enter a potentially terminal decline*”²;
- The consistent PAC findings that “*the mining industry is not heavily reliant on this one mine. The same cannot be said of NSW's thoroughbred breeding industry, the standing of which is integrally connected to the quality of the stallions it stands, a significant*

¹ Planning Assessment Commission Determination Report, December 2014, p12

² Planning Assessment Commission Review Report, November 2015, p iii

portion of which are in the hands of Coolmore and Darley.”³;

- The Hunter Valley’s Equine Critical Industry Cluster contribution to the local, regional, State and National economies (a contribution that generates some \$2.6 billion and over \$5 billion per annum to the state and national economies);
- “*The **risk** of putting an industry of considerable international standing which has a sustainable long term future, into decline and value reduction needs to be weighed against a project with the potentially immediate and tangible employment and community benefits, but arguable overall economic public benefit and a relatively short 15year lifespan*”⁴;
- The fact that despite a previous 2011 application to extend the life of Anglo American’s Drayton mine (subsequently withdrawn), and the recommendation of the 2015 Review PAC in favour of extending the existing Drayton (North) Mine operations, Anglo American has (as early as last year) decided to divest their Hunter Valley, non-core thermal coal assets. More recently it announced the closure of the Drayton mine and the cessation of employment for the majority of their employees as from September 2016⁵;
- The consistent PAC findings that the economic uncertainties associated with this project – including concerns regarding the size, nature and longevity of this mine, questionable economic benefits and concerns regarding the rehabilitation of its final landform. These concerns are now heightened given both Drayton and Drayton South have been put on sale and there is no indication of the intentions or plans of a future buyer of these properties;
- The findings of the 2015 Review PAC, which conclude that “*the land use conflict confronted [by this project] **cannot be overcome**” and “*espousing coexistence does not make it so*”⁶;*
- The independent findings, information and submissions now available to the Department, which were not available to it at the time of its last consideration of the application;
- The conclusion [underpinning all PAC reports] as stated in the 2014 Determination PAC that the precautionary principle should be applied and the application for the Drayton South open cut coal mine should not be approved.

Anglo American Response to the PAC Review

It is with extreme disappointment that we note that after many years of assessment and submissions made by thoroughbred breeding industry leaders, supported by independent Planning Assessment Commissions and experts they have engaged, Anglo American and its consultants continue to misunderstand and misrepresent our industry and the business model under which we operate. This reflects the failure to also acknowledge the fundamental threat presented by a mine in such close proximity to our operations, and the adverse environmental and socio-economic impact this one mine will have on our operations, the entire Equine Critical Industry Cluster concentrated in the Upper Hunter, our community and regional economy.

The May 2016 Anglo American Response to the Planning Assessment Review and the appended report by its consultant Houston Kemp presents no new analysis. Simply restating the Proponent’s (previously independently assessed and rejected) position does not make it true.

Our submission, supported by an independent review of Anglo American’s Response by Marsden Jacob Associates (appended) highlights how Anglo American’s Response is irreparably deficient, demonstrates a total lack of understanding and knowledge of our industry, and presents implausible and entirely incorrect analysis of the thoroughbred breeding industry (in particular as to the substitutability of its premier stallion stock). The Response seeks to perpetuate unrealistic coal price assumptions and continues to underestimate the costs and overestimate the benefits of the project. It presents irrelevant

³ Ibid p ii

⁴ Ibid p iii

⁵ Anglo American’s Drayton mine to cease mining operations by the end of September 2016, AngloAmerican News Release, 17 June 2016

⁶ Planning Assessment Commission Review Report, November 2015, p iv

information in order to obfuscate on matters that are both incorrect and irrelevant to the Department's and consent authority's consideration.

The Response entirely ignores the significant weight of irrefutable evidence presented by industry leaders, 3 PAC's (and their advisers) - all of which have strenuously argued that this mine in this location risks the future of the Equine Critical Industry Cluster, has only "arguable overall economic public benefits" and is "not in the public interest".

We suggest that the assertion of an exercise by the Review PAC of excessive power is founded on a misconstruction of the terms of the Ministerial instruction and a mischaracterisation of the comments made by the Commission. The terms of the Commission's brief were, plainly, sufficiently wide for it to comment as it did. Those comments could not, on any fair reading, be said to amount to the making of "planning policy".

Further, Anglo American's assertion that "damage to reputation is not a relevant impact requiring assessment under the Planning Act" ignores 79C(1)(b), (d) and, in particular, (e) of the Act. We also challenge the reference to the Telstra decision quoted by Anglo American and note that it is not contextual. In its correct context application of the case does not address assessments involving legitimate concerns about damage to the commercial reputation of established businesses, where perceptions of harm have a real and immediate adverse financial impact.

Conclusion

The Department now has the benefit of a large amount of additional material, including independent reviews, expert advice, and submissions. Having regard to all legitimate tests, we submit that the overwhelming position is that the Proposal should be recommended for rejection.

We submit that it is also highly irregular to consider providing approval for a mine to a Proponent who has clearly indicated it wishes to sell, the only benefit of which would accrue to the Proponent and potential buyer, in circumstances where the uncertainty of the benefits to the State and community remain. These circumstances alone, in any event, increase the uncertainty surrounding to the Project and the projected benefits put forward in support of it.

Any approval will accentuate the pressures and land use conflicts in the community; would ignore Government policies and the findings of 3 Drayton South PACs, and exacerbate an already difficult community and industry conflict for an unknown outcome. Surely, given the above, if this project was not in the public interest, as the PAC first Determined in 2014 - it is this is not in the public interest now.

We respectfully suggest that no weight be placed on Anglo's response. In considering the:

- balance of issues and risks:
- questionable future and economic benefits of this mine:
- significant risks it poses to Australia's leading thoroughbred studs:
- Hunter's Equine CIC, the region's diversity and resilience: and
- potential irreversible harm this project poses to the region's environment, health and wellbeing of the community and valuable livestock, landscape, history and heritage,

the Department should apply the precautionary principle and recommend against this mine.

Yours sincerely



Ross Cole
Director of Corporate Services