

**Response to Planning Assessment Commission
Review Report**

**Drayton South Coal Project
May 2016**

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SUMMARY

The Planning Assessment Commission (PAC) Review Report dated November 2015 (Review Report) contains material errors. Consequently, the determining authority for the Drayton South Coal Project application (Project) should place little if any weight on the Review Report. The Secretary's Environmental Assessment Report dated August 2015 (Secretary's Report) should be preferred for its robust assessment of the Project impacts and reliance on cogent, independent evidence in recommending that consent be granted for the Project.

Anglo American commissioned Dr Greg Houston (who has significant experience of the equine industry) to undertake an independent expert assessment of Coolmore and Darley's claims that the Project would cause them to leave the Hunter Valley and the PAC Review Report finding that this would cause a terminal decline in the Upper Hunter Equine critical industry cluster (CIC). Dr Houston considers that:

- it is extremely unlikely that the Project would cause Darley to leave the Upper Hunter because it is in Darley's strategic, operational and financial interest to maintain its operation in the Upper Hunter;
- similarly, it would not be in Coolmore's interest to leave the Upper Hunter; and
- even in the unlikely event that Coolmore and/or Darley did leave the Upper Hunter, the equine CIC would not be under threat.

To the contrary, the Upper Hunter Equine CIC will still thrive and be the largest thoroughbred breeding region in Australia and New Zealand.

This report corrects a number of misleading statements and errors in the information that the PAC relied on in making its findings and provides Anglo American's comments on other PAC Review Report findings.

There are a number of factors that the determining authority should take into account in determining the Project DA. However, in doing so, little weight should be put on the PAC Review Report for the following reasons:

- robust, independent, economic expert evidence prepared by Dr Greg Houston found that the Upper Hunter Equine CIC will not collapse or decline if Coolmore Australia (Coolmore) and Darley Australia (Darley) left the Hunter Valley;
- the PAC's findings that Coolmore and Darley would leave the Upper Hunter are premised on self-interested claims made by Coolmore and Darley that have not been appropriately interrogated and which, in turn, have resulted in the PAC forming incorrect views concerning the relative impacts and merits of the Project. Had the PAC properly interrogated the evidence before it, it would have been evident to the PAC that the claimed reputational impacts on Coolmore and Darley were unfounded and the PAC would have concurred with the Secretary's Report which placed appropriate weight on the most probative evidence before it and drew logical and reasoned conclusions;
- the Project is consistent with applicable development standards and will have no demonstrable impact on the equine operations at Coolmore or Darley Woodlands including on equine health or performance. Image, reputation and branding impacts have been grossly overstated;
- perceived reputational impacts are insufficient to cause either or both of Coolmore and Darley to leave the Hunter Valley;
- it is clearly in both Coolmore and Darley's economic interests to stay in the Hunter Valley. Even if one party did leave the other would benefit substantially from their departure. The independent

economic expert report of Dr Greg Houston, which Anglo American provides with this report and to which the determining authority should have regard, is unequivocal about these matters;

- because it would not be in their interest to do so neither Coolmore nor Darley (and certainly not both of them) will leave the Upper Hunter Valley as a result of the Project and consequently there is "no real risk" of them leaving;
- the PAC has mischaracterised the Project as a new mine where, in fact, it is a continuation of the existing Drayton Mine which has provided employment stability and significant economic and community value to the region for over 32 years;
- the PAC went beyond its terms of reference in criticising NSW Government policy. If the PAC had applied existing policy, it would have found that the Project is in accordance with those policies;
- if the PAC had verified the accuracy and completeness of all the information they relied upon and undertaken an appropriate risk assessment of the probability and consequence of any risks (which they identified) occurring and the resultant consequences, they would have reached a different conclusion; and
- contrary to the PAC's findings, any potential impacts can be appropriately managed through appropriate conditions of consent as demonstrated by Anglo American's performance record at Drayton.

Anglo American request this response to the PAC Review Report be considered and that the determining authority:

1. places very little weight on the PAC Report because the PAC has not reviewed the merits and impacts of the Project appropriately; and
2. gives significant weight to the full and proper assessment made in the Secretary's Report and Dr Houston's report and the other matters raised in section 6 of this report in determining whether or not to grant consent to the Project.

1. INTRODUCTION

1.1 The Project

The Drayton South Coal Project (Project) is a 15 year mine life extension of the existing Drayton open cut coal mine. Drayton Mine has been operating in the Muswellbrook community for over 32 years delivering employment stability and significant economic and community value to the region and more broadly to the State of NSW.

The Project will provide access to 73.5 Million tonnes (Mt) of coal resources to produce a standard Newcastle export thermal coal product. It is expected to employ 500 people and have a total direct expenditure of \$131 million per annum, over its 15 year life. The total net production benefit, as acknowledged in the PAC Review Report, in present value terms, is estimated to be \$464 million. This includes \$93 million in company taxes payable to the Commonwealth Government and \$233 million in royalties to the NSW Government. The existing Drayton Mine assets and infrastructure will be used to operate the mine and process the coal.

The Project is the second application by Anglo American for an open cut coal mine in this location. The mine footprint is significantly reduced and designed specifically to meet the recommendations of the Planning Assessment Commission (PAC) Review Report in December 2013 and PAC Determination in October 2014 in relation to the first project application submitted in 2012.

1.2 Report purpose

The purpose of this report is to:

1. set out the key findings of new independent expert evidence which responds squarely to the PAC Review Report's findings that there was a "real" risk that Coolmore and Darley would leave the Hunter Valley leading to a terminal decline of the Upper Hunter Equine CIC;
2. correct a number of misleading statements and factual errors in the information which are referred to in the PAC Review Report's findings;
3. provide Anglo American's comments on the other PAC Review Report findings; and
4. summarise significant factors for the determining authority to consider in determining whether or not to approve the Project.

1.3 Assessment

The Project Environmental Impact Statement was submitted in May 2015 (Project EIS). Anglo American relied on peer reviewed independent expert reports and extensive quantitative investigations to demonstrate there will be no significant impacts on Coolmore or Darley Woodlands' operations as a result of the Project.

The Secretary's Environmental Assessment Report was issued in August 2015 (Secretary's Report) which concluded that the Project was in the public interest and recommended that it be approved.

The PAC was requested by the Minister to review the Project on 13 August 2015, specifically to:

1. consider the Project EIS, issues raised in submissions, the formal response to those submissions, and any other information provided during the course of the review;

2. assess the merits of the project as a whole having regard to all relevant NSW Government Policies, paying particular attention to the potential impacts on the operations of Coolmore and Darley Woodlands; and
3. recommend further measures to avoid, minimise or manage potential impacts of the Project.

The PAC held a Public Hearing on 10 and 11 September 2015.

The PAC issued the Review Report on 26 November 2015 recommending that consent for the Project be refused on the basis that the perceived impacts of the Project would affect the reputation of Coolmore and Darley and there was a real risk of them leaving the Hunter Valley triggering a "terminal decline" of the Equine CIC. In other words, even though the PAC found there were no significant impacts from the Project, the PAC concluded that perception risks were sufficient to recommend refusal because of the potential consequences of Coolmore and Darley Woodlands leaving.

Anglo American had previously not engaged any expert to specifically look at the risks to the Equine CIC because its independent peer reviewed expert evidence demonstrated that there were no impacts on Coolmore and Darley Woodlands. Consequently, there was no credible reason for either operation to leave the Hunter.

Even though the risk of Coolmore and/or Darley leaving the Upper Hunter is extremely unlikely, in order to ensure that there is robust objective evidence on every matter (regardless of how plausible it is) before the determining authority, Anglo American has engaged an independent expert economist, Dr Greg Houston to provide an expert opinion. That report is presented at **Appendix A**.

1.4 Report structure

Chapter 2 presents a thorough and rational economic analysis of the Upper Hunter Equine CIC by Dr Houston and his analysis of the impact on the Equine CIC if either or both of Coolmore and/or Darley left.

Chapter 3 considers the PAC Review Report's conclusions regarding the perceived impacts of the Project on Coolmore's and Darley's reputation, image and branding.

Chapter 4 analyses Coolmore's and Darley's claims that they would leave the Upper Hunter if the Project went ahead and presents Dr Houston's findings that this would not be in either party's interests.

Chapter 5 deals with various factual errors and misleading statements referred to in the PAC Review Report.

Chapter 6 addresses significant factors that the determining authority must have regard to in determining the Project DA.

2. THE EQUINE CIC WILL NOT DECLINE

2.1 PAC recommendation to refuse

The PAC's reason for refusal of the Project distils down to one key issue – the "*potentially catastrophic consequences for the wider Equine CIC*" and the "*terminal decline of the Equine CIC*" if Coolmore and Darley decide to leave the Hunter Valley because the revised Project (which met the previous PAC's minimum requirements) goes ahead¹.

Anglo American cannot prevent Coolmore and/or Darley choosing to leave (even though independent and peer reviewed expert evidence demonstrates there is no impact on their businesses).

However, in order to address the PAC's key concern, it has commissioned Dr Greg Houston (who previously acted for the thoroughbred racing industry and has substantial experience of the equine industry) to undertake a robust quantitative analysis of the Equine CIC and whether its viability would be impacted by Coolmore and/or Darley leaving the Hunter Valley.

Dr Houston demonstrates through an objective analysis of existing data that the risk of Coolmore and Darley relocating out of the Upper Hunter is remote (assuming that they are rationale economic decision-makers) and, even if they did leave, the Equine CIC is robust and able to withstand the relocation either or both of Coolmore and Darley without any significant impact. Indeed, the Equine CIC will still be the largest thoroughbred breeding region in Australia and New Zealand. His report is presented at **Appendix A**.

The PAC's key reason for recommending refusal of the Project is invalid because: (a) no credible threat to leave exists and, (b) even if the threat eventuated, there would be no significant impact on the Equine CIC.

Anglo American notes that the PAC did not have the benefit of Dr Houston's report when it was considering whether or not there was any credible risk of either Coolmore and/or Darley leaving and any resulting impact to the Equine CIC. Instead, the PAC relied on submissions from Coolmore, Darley and the Hunter Thoroughbred Breeder's Association (**HTBA**) which are not independent and do not rely on any objective analysis of all the available data for the Equine CIC. Anglo American requests that the determining authority carefully considers the independent report prepared by Dr Houston and disregards the PAC's recommendation in the Review Report that the Project be rejected.

The remainder of section 2 summarises Dr Houston's findings that even if either or both of Coolmore and Darley relocated, the Equine CIC is robust and will not terminally decline. Section 3 analyses whether or not there is any reputation or branding issue for Coolmore or Darley to leave the Hunter. Section 4 examines the horse operations' economic interests to remain in the Hunter.

2.2 Dr Houston's analysis

Dr Houston concluded that: "*even in the unlikely event that Coolmore left the Upper Hunter, the equine CIC would not be under threat because:*

¹ PAC Review Report, page iii, para 3 and section 6.1.10

- *the equine CIC would continue to be successful if Coolmore and its stallions left the Upper Hunter because:*
 - *the many attractive features and reputation of the Upper Hunter would remain;*
 - *new stud farms and stallions are likely to enter the equine CIC, and existing stud farms and stallions would expand their services; and*
 - *the equine CIC would still be the largest thoroughbred breeding region in Australia and New Zealand;*
- *the thoroughbred industry in the equine CIC is dynamic with ownership of stallions and studs changing hands without affecting the underlying economics of the cluster, or its success; and*
- *at least some of the stallions that currently stand at Coolmore would remain in the Upper Hunter because it would be in the interest of stallion owners to continue to stand their thoroughbreds in the location where they could earn the greatest revenue.*

It is extremely unlikely that Darley would leave the Upper Hunter [see section 4 of this report for further explanation]... However, even if Darley did leave the Upper Hunter:

- *the equine CIC would still have the greatest number of covers of any thoroughbred region in Australia and New Zealand; and*
- *only around six per cent of covers would be lost in the Upper Hunter, once the ability of other stud farms to undertake additional covers is taken into account.*

It is even less likely that both Coolmore and Darley would leave the Upper Hunter (as distinct from either one of them leaving), because each stud farm would stand to benefit materially from the other leaving by expanding to fill the gap left by any stallions that may also leave. However, the equine CIC would not collapse if they both left the Upper Hunter because it would still be approximately double the current size of the next largest thoroughbred breeding areas in Australia and New Zealand before the likely expansion by other, competing stud farms is taken into account."²

² Dr Greg Houston, Expert Report, 29 March 2016, pp 5-6.

3. NO REPUTATIONAL IMPACTS OR PERCEIVED IMPACTS

3.1 No credible reputational risks

The PAC Review Report cited "*potential reputational risks*" posed by the Project as a "*real threat*" to Coolmore and Darley and that they "*may leave the Hunter Valley*" should the Project proceed.³

The reputational risks commented on in section 6 of the Review Report include direct and indirect visual impacts, dynamic views, blasting, air quality and noise all of which impact the carefully crafted presentation of Coolmore's stud and Darley's broodmare farm.

This section assesses the available evidence as to why the Project would damage the reputation of Coolmore and Darley to an extent that would cause them to leave the Upper Hunter. An objective analysis of the evidence demonstrates that:

- the Project poses no risk to the stallions, the premium asset of a stud and primary element in the image, branding and operational performance of the stud;
- the Project poses very low risk to the landscape factors that support Coolmore and Darley's image, branding and operational performance;
- Edinglassie provides a good comparison to Darley Woodland's broodmare operation and it is highly successful despite being in much closer proximity to mining activity; and
- even if any risk did occur during the operation of the Project it could be avoided and/or minimised through adaptive management such as pre-agreed times for blasting during any particularly sensitive period for Coolmore's stud operation.

3.2 No actual impacts

The Secretary's Report found that the Project complies with relevant criteria at Coolmore and Darley Woodlands:

"The Department's detailed assessment has found that the project would be able to comply with the relevant air, noise and blasting criteria at the Coolmore and Woodlands studs:

- *Noise levels would remain well below the intrusive and amenity criteria*
- *Blasting impacts could be controlled to ensure compliance with the relevant overburden pressure and ground vibration criteria*
- *Air quality levels would remain well below the relevant cumulative annual average ambient quality criteria*
- *While the modelling indicates there could be up to 5 additional days in a year where the short term PM10 criteria may be exceeded when mining is closest to the studs, Anglo is likely to be able to avoid such exceedances occurring by implementing best practice*

Consequently, the Department has concluded that the project is unlikely to have any significant physical impacts on the studs, and would certainly not affect the physical capability or suitability of the site to be used for horse breeding."

³ PAC Review Report, p iii, last two paras

In relation to visual amenity, and broader reputation of the Coolmore and Woodlands operations, the Secretary's Report stated:

"It [the Department] also does not consider these impacts to be significant enough to cause the thoroughbred operations to leave the Hunter Valley."

The Secretary's Report concluded:

"that the benefits of the project would outweigh its costs, and believes that the proposed mine plan strikes an appropriate balance between protecting the interests of the horse studs and realising the significant economic benefits that would flow to the region and the State if the project is allowed to proceed. Consequently, the Department considers the project to be in the public interest, and recommends that it be approved subject to strict conditions".

The Department of Planning and Environment's (**Department**) assessment of the Project is made after extensive evaluation by experts assessing potential issues, particularly in relation to the Coolmore and Darley Woodlands operations, and is consistent with current planning policy and legislation.

3.3 No equine health risk

To date the key reputational risk raised by Coolmore and Darley in their opposition to the Project (and identified by the previous PAC in relation to the previous Part 3A Drayton South application) was the potential impact on equine health. The PAC agreed that there was "*no conclusive evidence of horse health impacts*"⁴, following further pre-eminent peer review reports on equine health which concluded that there is no risk of horse health impacts from the Project.

However, the Review Report goes on to state:

*"Instead particulate emissions from the Project may represent a risk to the studs' business reputation rather than just potentially to specific horses...the particulate emissions impacts are inconsistent with the studs' business image and branding and represent a real risk to the ongoing operations of the studs and the broader Equine Critical Industry Cluster as a whole."*⁵

The reputational risks identified and addressed in the PAC Review Report are all about potential impact to image and branding arising from amenity factors such as visual, noise and landscape value (which are discussed further below), not equine health.

However, as equine health was previously identified as an important reputational risk posed by the Project, for completeness, Anglo American reiterates its experts' views on this risk. Equine health is an area thoroughly addressed in the Project EIS. It includes an extensive and exhaustive literature review to identify the potential for mine generated dust, blasting, and general mine noise to impact on equine health. A renowned specialist in equine respiratory diseases, Assoc. Professor Nicholas Kannegieter, conducted the review and provided a comprehensive independent assessment which was based on the various environmental assessments produced as part of the EIS, the broad ranging literature review, and his expertise in equine health, which demonstrated there is **no risk to equine health**.

⁴PAC Review Report, p 46, para 5

⁵PAC Review Report, p 46, last para

Assoc. Professor Nicholas Kannegieter's assessment was peer reviewed by two other independent eminent experts in this field: Assoc. Professor Kristopher Hughes and Dr Deborah Racklyeft. Both peer reviewers concurred with Assoc. Professor Kannegieter's assessment.

The PAC acknowledge this in the statement:

"it has not found any conclusive evidence of horse health impacts."

This is because there is none. All independent assessments, based on objective evidence, demonstrate that there is no risk to equine health should the Project proceed. The evidence is conclusive and as such equine health cannot be considered a factor contributing to the *"combined reputational risks posed by the mine"*.

It is notable that Coolmore's and Darley's opposition to this Project has shifted and no longer centres on factual evidence of equine health but rather on the perception of possible risk to equine health due to *"reputational risks"* like proximity or air quality. It is unfortunate that representatives from the equine industry continue to make misleading and incorrect statements about the impacts of the Project, particularly in the media, by claiming a risk of impact from air quality and noise on their livestock far above any potential impact identified in any expert report.

Anglo American respectfully submits that the PAC has failed to differentiate between the broad sweeping claims being made by Coolmore, Darley and HTBA and the objective independent assessments made concerning the potential impacts of the Project.

Coolmore and Darley are doing more potential damage to their image and brand by talking up these misleading and incorrect perceptions rather than acknowledging that there is no evidence of any impact, and where there is any potential impact, it has been identified and appropriate avoidance or mitigation strategies have been included in the conditions of consent drafted by the Department.

The asset value of a stud operation is based in the stallions they own or manage on behalf of other persons or syndicates and the success and performance of those stallions is the most important part of any brand or reputation. Coolmore's and Darley's submissions confirm this is the case as do a variety of stud websites. A large amount of independent objective evidence has been provided which all demonstrates that the Project will have no impact on equine health and performance.

3.3.1 Bloodstock, and not visual amenity, is the most valuable factor in stallion assets and most important factor in stallion performance

Mr Darryl Guihot, a breeder and investor, submitted a document in objection to the Project which is extensively quoted in the PAC Review Report. He states that:

*"The Hunter Valley, Kentucky and Newmarket provide wonderful environments for raising young horses, but the same could be said of several other locations in Australia and the rest of the world. What sets the horses produced in these locations apart from horses produced elsewhere is that they are the three locations in the world where the elite stallions and breeding mares are located in deep concentrations, and result in a critical mass of premium product that compels the attention of international buyers and their agents."*⁶

⁶ Darryl Guihot, *Submission to the Planning Assessment Commission*, September 2015, p 11.

Mr Guihot's statement is consistent with the industry view that the bloodstock assets are the primary basis of image and brand and the quality of stallion assets is the most important factor for successful operational performance. He differentiates the value of the stallions to the value of the property and confirms that the surrounding landscape, climate, and prepared farm environment, is a secondary supporting consideration for the presentation of the equine assets.

"What makes the Hunter Valley special at present is not the land or the infrastructure, but the quality of the stallions and the mares that reside there" and

"The business model of a horse stud requires a large property in a tranquil environment but the specifics of one property over another are not particularly relevant. The character of the property carries a certain cache that is of use in branding, but is of zero direct relevance to the service activity that takes place there. Breeders choose stallions for their individual attributes, not the quality of the scenery they enjoy."

No active stallions reside at Darley Woodlands, they are stabled at Darley Kelvinside near Aberdeen. The Project cannot have any actual or perceived impact on the performance of Darley stallions which is half an hour's drive away from the Project.

Any perceived reputational risk to stallion assets can therefore only apply to Coolmore and the consequent operational performance of their stud farm.

These reputational risks are landscape value impacts from direct and indirect visual; dynamic views, blasting, air quality, and noise as discussed by the PAC in section 6 of their Report.

3.4 Amenity factors - visual, blasting, air quality, noise

Anglo American considers that reputational damage is not an "impact" that has any proper standing in environmental planning assessment under the Environmental Planning and Assessment Act. Nevertheless, it appears from the PAC Review Report that there was some errors and inaccuracies in relation to how these amenity factors were considered. Anglo American responds briefly to these matters below and considers them in further in section 4.

3.4.1 Risk to landscape value

The PAC review and determination in 2013/14 for the first project application considered the issue of landscape value. In that instance the PAC employed the expert opinion of Dr Richard Lamb to provide advice on the potential impacts of the mine proposal. The project application was ultimately refused, however, the PAC review report recommendation provided guidance for any future project application based on the advice from Dr Lamb's report. The PAC at the time nominated a minimum southern extent line (often referred to as the 'yellow line' or 'second ridge line') to constrain mine disturbance and to establish a more substantial visual and proximity buffer to reduce the risk of these factors to the image and brand of Coolmore and Darley Woodlands. Coolmore and Darley agreed with the Dr Lamb report, the PAC review report, and the final PAC determination.

Anglo American adopted the minimum southern extent line nominated by the PAC and the other recommendations made in Dr Lamb's report as constraints and as the basis for this Project application. Constraining the mine operations behind the 'yellow line' results in a significant mitigation of potential visual and proximity perception impacts and is the primary component of risk mitigation and management for landscape value.

The Project:

- contains all parts of the mine behind natural ridgelines;
- ensures the most southern sections of the mine are behind an additional, second ridgeline where the mine is closest to the Coolmore front paddocks; and
- establishes a minimum buffer distance that is double that of the first application between the most southern mine operations and the stud boundary fencelines.

The Project EIS assessments provide the quantitative evidence that the increased buffer significantly reduces the risk of visual, air quality, noise and blasting impacts.

3.4.2 Landscape value and the Hunter Valley equine industry and brand

The HTBA nominate the Hunter Valley as one of only three significant breeding clusters in the world (alongside Kentucky in the US and Newmarket in the UK). It is the only cluster that exists in the southern hemisphere. This is a crucial feature of the Coolmore and Darley operating model as well as other premium studs built around the shuttle stallion approach.

The PAC Review Report identifies that:

- Coolmore has 12 stallions standing at its Jerrys Plain stud, 8 of which are also listed to stand in Ireland or Kentucky.
- Darley has 15 stallions (at Kelvinside, none at Woodlands) standing in the Upper Hunter, 10 of which are also listed as standing in the northern hemisphere.

In terms of image and branding both Coolmore and Darley describe the Hunter Valley to be the ideal location for their southern hemisphere operations because of the rolling landscape, climate, access to clean water, beneficial soil characteristics, and the hundreds of supporting broodmare farms throughout the valley.

The HTBA submission to the PAC on 2 Oct 2015 states the attraction of the Hunter Valley in these terms:

"The industry is vertically integrated, interdependent and concentrated in a critical mass in the Upper Hunter Valley"

"The production of elite equine athletes requires a unique operating environment combining scenic landscape, plentiful clean water, rich soils and a varied undulating terrain. Where Coolmore and Darley's Woodlands studs are situated in the Upper Hunter Valley, all of these characteristics are present."

There is good reason why the Hunter Valley is the only southern hemisphere critical equine cluster and one of three significant breeding clusters in the world. The geographical and topographical landscape, and concentration of world class broodmare farms establishes the significance of the Hunter Valley to thoroughbred horse breeding.

This is the reason Coolmore and Darley directly invested in Hunter Valley property over the past 25 years.

It is not co-incidental that the Hunter Valley, as well as being known as a significant thoroughbred breeding area, is also one of the premium coal producing regions in the world. Historically both industries have developed since European settlement in New South Wales as

the search for appropriate agricultural land and coal resources extended beyond Sydney. Globally the most valuable coal deposits are typically found in proximity to ancient river basins like the Hunter Valley. The Hunter coal fields represent a world class fully integrated and developed industry supported by an integrated rail system, regional support centres, and the world's largest export coal port in Newcastle.

Kentucky and Newmarket, the other two globally significant thoroughbred breeding areas are not located in ancient river basins that contain world class coal deposits like the Hunter Valley, and as such, are not in proximity to any coal mining operations. The ongoing comparison of these three significant regions in relation to relevant government planning policy and legislation without acknowledging this obvious difference is simplistic and unhelpful. The Hunter Valley is not Kentucky nor Newmarket. It is distinct in the way that multiple critical industries have developed and flourished in proximity to one another.

3.4.3 The Project meets relevant standards

The NSW Government has a policy framework to resolve potentially unacceptable land use conflicts between mining, equine uses and agricultural uses in SEPP Mining. For example, clause 12AB of SEPP Mining provides non-discretionary development standards for noise, air quality, airblast overpressure and ground vibration. The Secretary's Report and the PAC Review Report agree with the Project EIS that the Project will comply with all standards in clause 12AB which are directed at protecting the most sensitive land use – a private dwelling.

Perceived impacts of the Project on air quality and noise are discussed further in section 4.

4. COOLMORE AND DARLEY WILL NOT LEAVE

4.1 It is in Darley's strategic, operational and financial interest to remain

Dr Houston concluded that "on the presumption that Darley is a rational economic decision-maker, it is extremely unlikely that the proposed mine expansion would cause it to leave the Upper Hunter, because:

- any change in the perception of Darley's Woodlands broodmare farm would not induce it to relocate since:
 - the perception of Darley's Kelvinside stud (a 30 minute drive from the proposed mine) will not be substantially affected by the proposed mine expansion; and/or
 - other broodmare farms operate successfully in close proximity to coal mines;
- if Darley was to relocate its Woodlands broodmare farm, it would be better off moving to a new location in the Upper Hunter rather than to a different state or country since:
 - the Upper Hunter is the best location for breeding thoroughbreds in the southern hemisphere and moving away from the region is likely to reduce Darley's profits; and
 - moving out of the Upper Hunter would involve a significant risk to Darley's most important source of revenue (stallion fees), and the substantial cost of moving a stud farm and a broodmare farm, and possibly some of its training operations; whilst
 - staying in the Upper Hunter would not involve any risk to Darley's revenue and would involve a much lower relocation cost.

*It follows that it is highly likely to be in Darley's strategic, operational and financial interest to maintain its operation in the Upper Hunter.*⁷

4.2 Coolmore will not leave

Dr Houston concluded that many of the considerations noted above in relation to Darley, "also apply to Coolmore (although it has only one property), such that it would also not be in its interest to leave the Upper Hunter".⁸ He goes on to state:

"The substantial benefits of locating in the Upper Hunter that I set out in section 3.2.1 [of Dr Houston's report] also apply to Coolmore and similarly, for the reasons I explain in section 3.2.2, staying in the Upper Hunter would maximise Coolmore's revenue, ie:

- *leaving the Upper Hunter would involve the significant risk that:*
 - *some of the stallions' owners would keep their thoroughbreds in the Upper Hunter when Coolmore left;*
 - *Coolmore would lose key members of staff;*
 - *Coolmore would require new suppliers; and*

⁷ Dr Greg Houston, Expert Report, 29 March 2016, p 5.

⁸ Dr Greg Houston, Expert Report, 29 March 2016, p 5.

- Coolmore would lose customers, many of which are likely to remain in the Upper Hunter; whilst
 - staying in the Upper Hunter at another high quality property would not involve the same risks.

*The difference between Darley and Coolmore leaving is that Coolmore must move one farm, whether it moves within the Upper Hunter or moves out of the region altogether. It follows that the cost of moving out of the Upper Hunter is not so much greater than moving to another Upper Hunter property for Coolmore.*⁹

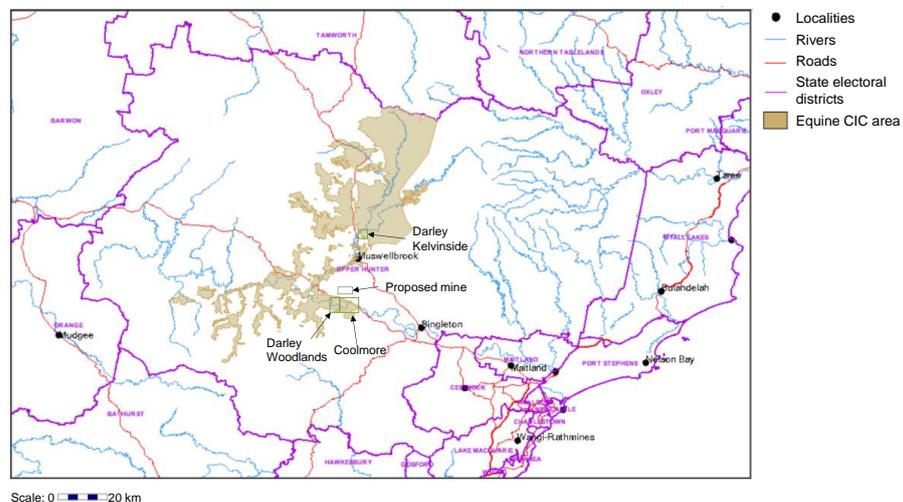
4.2.1 Coolmore and Darley's reasons for operating in the Hunter Valley apply whether or not the Project proceeds

Coolmore and Darley acquired property in the Hunter Valley because it made very good business sense for them to do so. In particular it supports their shuttle stallion model to have a southern hemisphere operation. The Hunter Valley is the most recognised and established premium horse breeding region in Australia.

Dr Houston has assessed the relative benefits of the Equine CIC and comments as follows:¹⁰

"The Upper Hunter equine cluster is one of the largest and most import thoroughbred breeding clusters in the world, along with Newmarket in the United Kingdom and Kentucky in the United States of America.¹¹ The Upper Hunter equine CIC has been defined as comprising 254,900 hectares,¹² and encompasses various businesses located in the area including thoroughbred studs, 150 broodmare farms, breeders, trainers, farriers, fodder producers, saddlers, equine transport companies and the Scone Equine Hospital.¹³ I show a map of the equine CIC and the approximate location of Darley Woodlands, Coolmore and the proposed mine at Figure 2.2 below.

Figure 2.2: Map of equine CIC and approximate location of Darley, Coolmore and the proposed mine



⁹ Dr Greg Houston, Expert Report, 29 March 2016, pp 32-33.

¹⁰ Dr Greg Houston, Expert Report, 29 March 2016, pp 14-15 and 16.

¹¹ PAC Review Report, pp 26-27.

¹² NSW Government, *Frequently Asked Questions Critical Industry Clusters Upper Hunter*, January 2014, p 2.

¹³ PAC Review Report, p 29.

Source: MinView, provided by the NSW Department of Industry. See <http://www.dpi.nsw.gov.au/oasfs/resource-planning/cic-minview>, accessed 17 February 2016. Notes: The indicated locations of Darley, Coolmore and the proposed mine are my own additions to the map and are approximate only.

The Upper Hunter provides an ideal environment to raise horses, since it contains businesses that support thoroughbred breeding and a large amount of high quality bloodstock that sets the region apart as a leading centre for thoroughbred breeding."

...

"The Upper Hunter region has a number of economic characteristics that make it a particularly attractive location for breeding thoroughbred horses, including:

- *it is close to major ports and markets (in particular Sydney);¹⁴*
- *it has the best reputation of any thoroughbred breeding area in the southern hemisphere;¹⁵*
- *it has a large number of high quality service providers that are required by the thoroughbred breeding industry; and*
- *it has an ideal environment for breeding thoroughbreds, including a temperate climate, protected aspect and varied terrain combined with a lack of tropical diseases.¹⁶ The resultant moderate climate, low risk of pests and diseases, topography, and reliable irrigation options are ideal for producing premium quality horses.^{17¹⁸}*

The high concentration of broodmares together with other advantages that Dr Houston identifies were the draw for the Coolmore stallions and it also made good economic sense for Darley to expand its operations.

The operating open cut coal mines were already well developed in the region and the prospect of the Drayton South coal mine was already confirmed.

The HTBA submission to the PAC quotes Dr Lance Bell;

"perception and reputation is everything in this industry....Willingly choosing to locate an international stud farm in close proximity to an open cut coal mine, in Dr Bell's opinion would be 'completely out of touch with the market'".

Yet this is exactly what Coolmore and Darley chose to do with their respective property acquisitions of Arrowfield and Woodlands.

Whilst image and brand is clearly an important marketing feature for thoroughbred horse breeders, both businesses chose to locate all (for Coolmore) or part (for Darley) of their operations adjacent to a property identified for future mine development and within 3-5 kilometers of existing approved mine developments. The Drayton South property was known to have had a fully approved mine development consent, was covered by an active exploration licence, and was being actively explored for development.

¹⁴ NSW Government Department of Primary Industries, *Upper Hunter Region Equine Profile*, June 2013, p 2.

¹⁵ The Upper Hunter is ranked second only to Kentucky, USA in terms of the concentration of thoroughbred stud properties, the quality and number of bloodlines. NSW Government Department of Primary Industries, *Upper Hunter Region Equine Profile*, June 2013, p 1.

¹⁶ Department of Planning and Infrastructure, *Strategic Regional Land Use Plan*, September 2012, p 22.

¹⁷ NSW Government Department of Primary Industries, *Upper Hunter Region Equine Profile*, June 2013, p 2.

¹⁸ Dr Greg Houston, Expert Report, 29 March 2016, p 16.

Presumably the reputational risk from a landscape value perspective was considered acceptable at the time by Coolmore and Darley.

4.2.2 The Relationship of Perception and Reputation to Image and Brand

Dr Bell provides a view on the importance of perception of landscape and reputation in the context of risk mitigation stating:

"the maintenance of fields, fences, and flowers, are a window into how well a farm is paying attention to all the other vital details that impact the perception of breeding and raising a Champion racehorse".

Dr Bell continues by listing the various risks that may impact reputation, image and brand:

"fertility with their stallions, if they have foal pneumonia, if their breeding records are flawed or the follow through overall is lacking....reputation is paramount in the horse business because of the inherent risks. Those risks include but are not limited to risk of a mare not getting pregnant, risk of a mare aborting, risk of a foal getting hurt, risk of developmental problems relating to lung and bone development, and the list goes on."

Again, these statements by Mr Bell put the relative risk of landscape value impacts into the right perspective. By far the greatest risks directly relate to the bloodstock. The inherent uncertainties and risks are in the breeding process and the production of a final winning product in the foal. The fields, fences, and flowers are "a window" in the perception of image and brand but they are clearly not the primary factor. It is unfortunate that Dr Bell grossly misrepresents the Project proximity and potential visual impacts by way of "computer-generated simulated montage images" of blasting (page 8) which are alarmist and nothing like a realistic representation of any potential impact.

Anglo American acknowledges the importance of the "brandscape" developed by the Coolmore and Darley consistent with their place in the equine industry cluster, and the perception and reputation derived from it. This is why the Project EIS addresses this issue and the sensory awareness factors associated with perception as well as addressing the advice of Dr Lamb provided to the 2013/14 PAC.

Whilst extensively quoting from Dr Lamb's report (which relates to a different project), the PAC does not mention the recommendations made in his report nor assess the degree of risk mitigation achieved by the changes to the Project design. The Project EIS information relates to the revised Project and should have been analysed in more detail by the PAC.

4.2.3 Perception in relation to Direct and Indirect Visual Impacts

Dr Lamb's report addressed the relationship between the surrounding landscape and the image and brand of the studs. The predominant focus of Dr Lamb's report was on the Houston Pit (and associated visual bund) and the Redbank pit which represented the most direct visual impact and closest proximity mining area respectively in the first project application. Importantly Dr Lamb included several recommendations to avoid or mitigate impacts. These were:

1 st Project Recommendation	2 nd Project Application
1. Consider removing the Houston Pit and Bund from the Project	Done. The Houston Pit is removed

1 st Project Recommendation	2 nd Project Application
2. Consider re-aligning the SE margin of the Whynot Pit	Done. SE margin of Whynot Pit is removed
3. Design of tree screens should be the subject of specific conditions of consent	Done. DPE draft conditions specifically address extensive tree screening
4. Consider wider setbacks of the Redbank and part of the Blakefield Pit in the order of 1-2km	Done. Mine setback to second ridgeline. <ul style="list-style-type: none"> • Redbank pit removed. • Part of Blakefield Pit removed. • Closest point mine ever gets to stud fence line is 1km and for only a short period.

In short, every recommendation proposed by Dr Lamb was adopted for this Project application. Houston Pit and Redbank Pit are removed from the mine plan resulting in the mine set further back, with guaranteed buffer distances, a smaller mine footprint hidden behind ridgelines, and a 40% reduction of the coal resource to be mined.

It is however acknowledged that the Project retains three areas of direct visual impact. The PAC also acknowledges that the visual impact at each of the three areas is debatable.

4.2.3.1 Direct Visuals from Trig Hill and Coolmore Hill

Dr Lamb made the following comments regarding Woodlands for the first project application:

"Most of Darley Woodlands has no fixed views of the proposed mine site. The exception is the high land that includes the trig station, Trig Hill and the hilly grazing land in the vicinity in the north east part of the property, as well as the frontage of the property to part of the Golden Highway."

In relation to Coolmore, Dr Lamb also made the following comments:

"Most of the more intensively used part of Coolmore also has no view of the proposed mine site (first project application). However, the north west and eastern parts of the property are exposed to varying extents to views towards the south and south east sectors of the proposed mine site, which primarily includes land proposed to be extracted in the operations associated with the Redbank and Houston Pits."

The "north west" part of Coolmore refers to the same ridgeline as Darley's Trig Hill. The eastern part refers to the Houston Pit which has been removed from the mine plan.

Views of the Project cannot easily be mitigated from these locations because these are the highest and most inaccessible parts of the properties. Indeed views to Mt Arthur, the Mt Arthur Mine, and the Bayswater Power Station can be seen along with the Drayton South mine. The relative significance of these locations to reputational impacts has been wholly overstated and needs to be placed into context:

- Dr Lamb correctly identifies the actual use of the surrounding area as "hilly grazing land".
- The location is not used for important clients to view the property. Anglo's early meetings with Darley and Coolmore confirmed this to be the case and any claims otherwise are misleading.

- The photograph on the next page taken from Trig Hill shows the poor quality of the lookout construction and maintenance, clearly not to the standard noted in Dr Bell's submission that states every aspect of the stud farm is '*designed to represent dedication to detail*' to ensure the appropriate visual perception is realised.
- Mr Michael Wright's submission on scenic and visual impacts to the PAC includes photos taken from Trig Hill and he misleadingly infers this location to be highly sensitive "*This high level of impact could exclude Trig Hill and any land within this 200ha area from visitation by clients or visitors to the studs for the life of the mine*". In the submission he identifies Mount Arthur, Barrington Tops and Bayswater Power Station, but not the existing Mount Arthur mine clearly in the foreground.
- Coolmore is already close to the HVO mining operation, approximately 3.3 km away.
- Trig Hill and Coolmore Hill represent a small area of the respective stud properties:
 - 3.8% of Woodlands and
 - 3.0% of Coolmore.

Dr Lamb's report establishes the appropriate context for Trig Hill to the overall visual impact of the mine. However, this assessment of Dr Lamb's report is not referred to by the PAC in its commentary on visual impacts, rather the view adopted is the claim by Coolmore and Darley that it is a highly sensitive location. This is clearly not correct.



4.2.3.2 Direct Visuals from the Golden Highway

A 600m section of the Golden Highway is identified in both the Project EIS and by Mr Wright as a second area of direct visual impact.

The three photos below provide the context for the sensitivity of views from the Golden Highway.

- Photo #1 was taken 5 years ago as part of the visual assessment showing the Mount Arthur mine is background.
- Photo #2 shows the area of visual impact compared to the surrounding landscape with the existing Mount Arthur mine visible in the background.

- Photo #3 shows the progress of Anglo's tree screening to ameliorate any visual impact with currently 3-4 years growth tree growth. The trees are already reaching a height that will effectively screen the mine by the time it commences in that area in year 4 of the Project.



1. Anglo photo (2011) from Golden Hwy prior to tree planting



2. M. Wright photo from Golden Hwy plus red shaded area showing Drayton South exposure



3. Anglo photo (2015) showing tree plantation growth in same location

The level of potential visual impact as represented in Mr Wright's depiction is minor, especially considering the ongoing tree growth that will occur over the next 4 years prior to any mining occurring in this area. The assessment of reputational risk afforded from this location should have been assessed as very low and adequately mitigated by Anglo American's proposed screening and the significant concession of pulling the mine behind the natural ridgeline.

4.2.3.3 Direct Views from Edderton Road

In relation to Edderton Road the PAC notes that the visual impacts will be apparent for travellers in the first four years of the Project prior to relocation of the road. The PAC acknowledges there are already existing direct views of Mount Arthur Coal along Edderton Road but also note that proximity is the differentiating factor.

Anglo American has committed to establish hydro-mulched earth bunds to screen the mine from travellers along the sections of Edderton Road that are Anglo owned land. Anglo land covers the first 4km of land from the Golden Highway to Mount Arthur Coal owned land. 4km of screening is significant in minimising visual impact perceptions.

4.2.3.4 Dynamic Views

The PAC notes that dynamic views are generally assessed as those from a moving vehicle, or other travel through a landscape. The table below provides a comparative context for a visitor or client travelling the Golden Highway from the east to Woodlands, a trip length of 40km.

Visible Mine / Power Station	Km's	% of trip
Warkworth mine	5.6	9.6
Redbank Power Station	1.6	4.0
Wambo mine	0.4	1.0
HVO mine	8.1	17.9
Drayton South (proposed) / Mount Arthur Coal (existing)	0.6	1.6
Total Mine Views	15.3	38.6

The landscape approaching Coolmore and Darley Woodlands is already dominated by visual impacts of open cut mines and power stations. The 600m section of the Golden Highway with potential dynamic views of the Project represents only 1.6% of a journey to the Upper Hunter. Travellers heading to Woodlands may possibly see some views of Drayton South through the tree screen if they turn their head whilst driving at 100kph. The views may be evident for up to 20 seconds.

Travellers heading up the valley to Coolmore will have no direct or dynamic visual impact of the Project.

Travellers heading east down the valley to Woodlands will have no direct or dynamic visual impact as the 600m section of the Golden Highway in question is further on from the Woodlands entry gate. Travellers heading east to Coolmore may possibly have views through the tree screen for up to 20 seconds.

The PAC Review Report includes comments on digital content under their assessment of dynamic views. No doubt anyone viewing the area on online showing aerial or satellite image will see the mine. However, the PAC assess this risk as significant which is not justified considering the existence of three other mines and Bayswater Power Station in proximity to Coolmore and Darley.

The PAC link direct and indirect visual impact to a perception of whether it is 'safe to raise a valuable equine athlete so close to a coal mine'. Stallion health has previously been addressed and demonstrated as no risk from the Project. Broodmare and foal health is dealt with extensively in the Project EIS citing Edinglassie as a clear example of a premium broodmare farm operating successfully in very close proximity and direct views of operating mines with no impact on equine health nor on operational performance. The PAC's view is therefore perplexing when they include the statements below:

"The perceived risk to the health of a horse is a 'clear and present danger to the commercial viability' to the horse studs' reputation, brand and operation in the Hunter Valley, especially given the close knit nature of the industry" and

"The PAC finds that indirect and dynamic visual impacts of the project represent a risk to the image and reputation of the studs and would increase the cumulative erosion of the clean green image..."

This finding of the PAC appears to be based on claims by Coolmore and Darley rather than any probative analysis of the evidence. The fact is that Coolmore and Darley both currently successfully co-exist in proximity to mining with a range of views to other mines and a power station approach their properties. This is not a pristine green landscape and it is artificial and incorrect to speak about it in that way.

4.2.3.5 Blasting

In relation to blasting the PAC excludes Woodlands in their consideration of impacts. This is appropriate given there are no impacts of any significance. The evidence at the Edinglassie broodmare farm also supports this conclusion. The same conclusion should be reached with respect to Coolmore and the issue of handling mares and foals. The same low level of risk applies in all cases.

The main objection raised by Coolmore regarding blasting is the covering of mares and the impact on timing and staff safety. However the PAC Review Report does not note that the Coolmore cover sheds are actually **4.6km** away from the southern extent of the Project. Any potential blasting impacts for the relatively short period of time when mining operations are on the southern boundary will be barely discernible at this distance. For the vast majority of the mine operational life blasting events will be well over 5km distant from the Coolmore cover sheds.

The evidence demonstrates that there is no safety risk to staff handling horses anywhere on the farm as a consequence of blasting. Certainly any possible risk from blasting would be assessed as very low compared to the other factors presenting hazards to staff at Coolmore.

The PAC Review report states that:

"blasting could represent a risk to Coolmore's operations" and that

"this is significantly compounded by the reputational, image and branding impacts that could occur with the perception of risk to valuable stock – with the evidence of blasting apparent to any visitors to the site, or travelling in the vicinity of the site".

The significant compounding of impacts from blasting is an extreme assessment that should carry little or no weight. The PAC have accepted the claim offered by Coolmore with no depth of assessment.

As with the PAC's assessment of equine health and direct visual impact, the PAC moves the basis of their assessment and conclusion almost entirely away from any direct impact, which is negligible, to one of perception by visitors or travellers. The context for blasting is a window less than 10 seconds in time possibly up to 5 times per week, which will sound like a distant rumble of thunder. In risk assessment likelihood this is very low, particularly given the other noise impacts that the horses must accustom to, such as helicopters, storms and so on. In terms of consequence the PAC's ranking of *"significant compounding of impacts"* is not supported by the evidence.

The blasting assessment included in the Project EIS is comprehensive and includes several risk management approaches from reducing charge size as the mine moves closer to the southern

boundary, communications protocols around blast timing (so that operations can be coordinated to avoid covering and blasting at the same time), and all the other blast management constraints around time and meteorological conditions that are currently practiced to minimise potential impacts. It is worth noting that in the last 15 years Drayton has had 7 reportable blast incidents of which only 3 related to off-site amenity limits, representing 1 blast in 1000 over the 15 years. This demonstration of blasting performance over half the life of the existing Drayton mine cannot possibly transfer to the extreme assessment of perceived impact nominated by the PAC.

4.2.3.6 Air Quality

The PAC's assessment of air quality impacts follows a similar approach to that of equine health, direct visual, and blasting by generally acknowledging low direct impacts but then focusing on potential risks to the reputation of Coolmore and Darley Woodlands. Again the risk assessed by the PAC as significant is one of perception.

Air quality modelling presented in the Project EIS is done using the approved method for modelling the assessment of air pollutants in NSW. The input assumptions are acknowledged by the EPA as being "*achievable and potentially even conservative*". The PAC however take the view that "*the Department's belief that significant short term cumulative impacts can be avoided may be somewhat optimistic*". How the PAC have reached this view given the facts presented in the Project EIS and the assessment of the EPA and the Department is unclear.

The independent expert findings are:

- That the Project may contribute up to an additional 2 $\mu\text{g}/\text{m}^3$ increase in cumulative annual average particulate matter over a small section at the front of Coolmore's property. However, the annual average cumulative air quality remains well under the amenity limit of 30 $\mu\text{g}/\text{m}^3$.
- Daily PM10 24hr exceedances ($>50 \mu\text{g}/\text{m}^3$) already exist at Coolmore on 3 days per year without the presence of the Project.
- One of these days without the presence of the Project was measured at 74.1 $\mu\text{g}/\text{m}^3$, well over the criteria.
- The Project modelling did identify under worst case conditions that there could be some additional days that exceed the criteria due to the Project. These are:
 - Yr 4: one to two days when background level are already at 47 $\mu\text{g}/\text{m}^3$
 - Yr 6: three to four days when background level are already at 44 -50 $\mu\text{g}/\text{m}^3$
 - Yr 12: two days when background level are already at 44 and 48 $\mu\text{g}/\text{m}^3$.

In summary, there may be a few additional days which exceed the criteria but they are on days where there is already a higher than normal dust load and close to the criteria limit of 50 $\mu\text{g}/\text{m}^3$.

The PAC acknowledged that the Project is consistent with applicable air quality standards and said that "*In most rural locations, the approach proposed by the Applicant would generally be accepted. In this location however, the interdependence of the onsite dwellings to the studs' business pose risks and challenges not contemplated in the standard mitigation and acquisition policy framework. While it is entirely possible that dust impacts would be able to be managed within accepted criteria, given the EPA cannot verify this with certainty, detailed consideration of*

the potential contingency options available would need to be explored in any further consideration of open cut mining in this location."¹⁹

It should be noted that Drayton's past performance in this area has been excellent. Of the 41 air quality related incidents reported over the past 15 years, **none** have been exceedances of off-site amenity limits. This demonstrates the pro-active approach by the mine to manage operations on 'dusty' days to reduce dust contribution and impact, a management approach considered 'optimistic' by the PAC.

Rather than the Department being "*optimistic*" any reasonable assessment of the facts bears out the Department's assessment as realistic.

The EPA's advice that "*cumulative dust impacts are difficult to manage*" is an entirely appropriate comment given the diverse sources of dust on any given day. It would be unreasonable to expect the EPA to state categorically and with certainty "*that dust impacts would be able to be managed within accepted criteria*" as this is currently not the case without the Project.

The PAC's assessment that:

"any visible dust emissions and deposition from the mine, along with residual uncertainties about the mine's capacity to ensure no exceedance of the relevant air quality criteria at the nearest dwellings, pose potential risks to the reputation and operations of the studs" and

"The PAC finds that the particulate emissions impacts are inconsistent with the studs' business image and branding and represent a real risk to the ongoing operations of the studs and the broader Equine Critical Industry Cluster as a whole."

is not borne out by the facts:

- The current air quality exceedances without the Project do not affect the reputation or operation of the Coolmore or Darley Woodlands.
- The mine has a strong track record ensuring no exceedance as demonstrated by 15 years of no off-site amenity exceedance.

The PAC Review Report's finding that particulate emissions risk and consequence was significant is not borne out from the facts and is exaggerated and without any factual basis.

4.2.3.7 Noise

The PAC's approach fails to take into account the actual noise impacts of the Project; the potential for mitigation; and operational solutions (such as timing blasting to avoid critical covering times at the Coolmore stud). The PAC has effectively concluded that horse studs are a more sensitive receptor than residential receptors. The PAC's assessment of noise generally acknowledges the low level of impact from the Project. The Project EIS demonstrates the worst case 30 and 35 dBA noise contours for all modelled years crosses over the Golden Highway into the Trig Hill and Coolmore Hill area. It is only in the latter part of the mine life that the 30 dBA contour may extend onto the south eastern section of Coolmore at night time. A 30 dBA noise is likened to a whisper.

There are no daytime noise impacts on Coolmore or Darley Woodlands from the Project. Daytime background noise is derived from farm activity or highway traffic. Night time impacts

¹⁹ PAC Review Report, p 43, para 7.

are minimal and largely below 30 dBA other than as already noted in the latter part of the mine where the highest predicted noise level could be 32 dBA. The Department noted;

"that these predicated impacts comfortably comply with the applicable intrusive noise criteria at all receivers to the south of the project."

The risk identified by the PAC is that:

"the noise impacts of the project are likely to be relatively low, however due to the current low noise environment experienced by the studs it is likely that at times, especially at night, and as the mine pit moves closer to the studs, the project would be audible and may draw the attention of visiting clients, adding a further reminder of the relative close proximity of the mine."²⁰

The facts are:

- the audibility of the mine is confined to night time and only in the latter years of the mine life; and
- the audibility at night time under worst case conditions would be analogous to a whisper.

The PAC's conclusion that this level of noise impact would contribute to "*combined reputational risks*" that leads to the rejection of a mine of significant benefit to the region is not justifiable based on an objective review of the evidence.

4.3 Coolmore and Darley will not leave

The PAC Review Report found that there was a real risk of Coolmore and Darley leaving the Hunter. For the reasons specified in Dr Houston's report (summarised in section 4.1 above) there is no rationale reason for Darley to locate all of its operations from the Hunter Valley when only its broodmare operation is located in the vicinity of the Project.

Dr Houston further concludes that:

"It is even less likely that both Coolmore and Darley would leave the Upper Hunter (as distinct from either one of them leaving), because each stud farm would stand to benefit materially from the other leaving by expanding to fill the gap left by any stallions that may also leave. However, the equine CIC would not collapse if they both left the Upper Hunter because it would still be approximately double the current size of the next largest thoroughbred breeding areas in Australia and New Zealand before the likely expansion by other, competing stud farms is taken into account."²¹

The approach taken by the PAC in analysing the risk of Coolmore and Darley leaving was simplistic and did not take into account the factors identified by Dr Houston including:

- the competitive tension between the two largest stud operators in the region;
- the likelihood that Darley leaving was remote since its stud operation was located a 30 minute drive away from the Project;
- the fact that other stud operators (such as the former owner of the Coolmore property) have successfully relocated to other parts of the Equine CIC;
- the large amount of available CIC land in the Upper Hunter;

²⁰ PAC Review Report, p 44, para 16.

²¹ Dr Greg Houston, Expert Report, 29 March 2016, p 34.

- the concentration of high quality broodmares in the Upper Hunter and the likelihood that stallion owners would choose to keep their stallions in the Hunter; and
- the competition by other stud operators in the Equine CIC.

4.4 Mining and elite horse studs can and do co-exist

Both Coolmore and Darley are relatively recent investors in the Hunter Valley. Both businesses made their respective property investment decisions in clear awareness of the co-existent coal producing operations of the Hunter Valley, and the development potential for open cut mining on the Drayton South site in particular.

The assessment of landscape value and risk to image and branding at the time of acquisition was presumably considered acceptable.

Coolmore has had a Hunter Valley presence for 25 years, acquiring the Arrowfield stud property from John Messara. Following the acquisition by Coolmore, Mr Messara successfully relocated the Arrowfield stud closer to Scone. Notably, at the time of Coolmore's acquisition, an existing development approval and mining lease was active for the construction of a much larger and more proximate open cut coal mine than that proposed in the present application. Since the initial acquisition of Arrowfield, Coolmore has continued to acquire adjoining farms to increase its landholdings in the area.

In 2013 Coolmore also acquired the Arrowfield winery property. That property had previously been on the market for an extended period of time. Presumably this investment decision included a risk assessment of the potential for the Drayton South project proceeding and any potential impact to image and brand.

Darley has had a presence in the Hunter Valley for 15 years since acquiring the Kelvinside stud property near Aberdeen in 2001 as the centre of its operations. Darley acquired its Woodlands broodmare farm, including the associated stock, from Inghams Enterprises Ltd in 2008.

By 2008 Anglo American had already completed a major development study and was actively exploring Drayton South (EL5460) with the clear intent of developing the site to continue the Drayton Mine. EL5460 covers some of the front paddocks of the Darley Woodlands property. Anglo American directly engaged with Darley on their acquisition of Woodlands ensuring Darley was well aware of the intended development of the Drayton South site for future coal mining.

5. ERRORS AND MISREPRESENTATIONS

5.1 Characterisation of the Project

5.1.1 The Project is not in respect of a "new" mine

The PAC Review Report's description of the Project as a "*new open cut coal mine*" with "*a relatively short 15 year lifespan*" is incorrect and appears to have materially impacted the conclusions drawn by the PAC.

The State significant development application No. SSD 6875 (DA) is not for new coal mining development. The Project is an application for the continuation of the existing Drayton Mine which has operated for some 32 years and has the potential to continue its mining operations for a further 40 years within its existing mining authorities. Natural resource extraction must occur in a methodical and very strategic manner.²² The development of the Drayton South extraction area is the third significant stage of the progression of the Drayton Coal Mine.

All infrastructure and elements of the existing Drayton Mine will continue to operate. New development is only an extension of the recovery of coal from an adjoining area owned by Anglo American and over which it has held a mining tenure (EL5460) for 18 years. Since Coolmore and Darley Woodlands' establishments at their current locations, Anglo American has engaged with those operations regarding the proposed mine.

5.1.2 The Project addresses concerns raised by the PAC in relation to the previous Part 3A Drayton South application and proposes a reduced mine scale

The DA for the Project proposes a reduced scale of mining when compared to the previous Drayton South project application refused under the now repealed Part 3A of the EP&A Act in October 2014. The Project DA directly and comprehensively addresses the concerns raised by the PAC in its review and determination of the Part 3A application including by providing the minimum natural buffer recommended by that PAC.

The PAC Review Report appears to largely ignore the significant concessions made by Anglo American in the revised DA.

5.2 Comparison of the "Equine Industry" and the "Project benefits"

HTBA presents statistics to support the size and importance of the equine industry compared to the mining industry. The PAC adopt this same comparative assessment placing the mining industry against the thoroughbred breeding and racing industry. This is not a direct industry to industry comparison of like with like. The inclusion of racing value and expenditure inflates and biases the comparative assessment. On the mining industry side one could mount an argument that the end users of the product should be included as has been done by including racing value. Power stations, steel mills, and support industries are excluded from the value of the mining side of the equation. The economic comparison is convenient for Coolmore and Darley but totally unequal in breadth and misleading regarding the relative cost/benefit of the Project.

In many ways the Hunter Equine CIC is similar to the Hunter coal mining industry. On one hand both industries include companies of varying size and capacity competing with one another for

²² See clause 15 of SEPP Mining.

market share and potential growth opportunities. On the other hand competitors within each industry gain benefit from one another through the synergy of critical infrastructure and support industries that enable effective and efficient operations and cost structures to compete on the global stage. In both industries companies come and go over time but the fundamentals of the industry remain - high quality assets and resources, topography and geology that marks out the region as unique and beneficial, and well developed access to infrastructure and markets.

The relative assessment of the Project benefits against the entire Equine CIC is flawed in that it uses the wrong premise and basis of assessment. The risks are not real and the risks definitely do not outweigh the benefits of the Project.

5.3 Uncertainty in relation to Project benefits

The PAC identified two areas of "*uncertainty*":

1. Whether the economic assessment presented in the EIS (and additional material submitted in response to submissions) can be relied upon; and
2. A framing of the Drayton South benefits against those of the whole the thoroughbred and racing industry...with the underlying premise that this one mine will potentially cause the collapse of the whole equine CIC.

The second part is dealt with above in section 5.2.

In relation to the first part, the PAC Review Report commits considerable attention to assessing various economic factors relating to the Project both in terms of whether Anglo American has represented the benefits appropriately as well as the comparison of the Project against the thoroughbred breeding and racing industry. Ultimately the PAC Review Report acknowledges that the Project would "*deliver substantial economic benefits to NSW*".

5.3.1 Comparative Statistics

The PAC presents the Project in a manner which downplays the significance of the benefits. In Table 1 of the PAC Review Report, the estimated recoverable coal reserves for NSW of 15,311mt is compared to the Project at just 0.48%. This belies the fact that much of the NSW recoverable coal reserves are unlikely to ever be recovered, either because projects will never be approved by the Government, or because projects will not be economically viable. For example, the total recoverable resource for NSW includes all of the Drayton South open cut and underground resources. Drayton South has far more recoverable resources than the 73.5mt cited in the table and proposed for this Project. The Drayton South open cut resources have been constrained progressively by the adjustment of proposals required as part of the planning assessment process.

Table 1 in the PAC Review Report gives the impression that the Project is insignificant and a minor part of the NSW coal industry yet the Department nominates the Project as being the 13th largest coal producer of the 59 active coal mines in NSW. This is not insignificant.

The Project is a life extension of the existing Drayton mining operation that has operated successfully for 32 years. The Project is a relatively straight forward extension of the Drayton Mine, using existing infrastructure and with lower mining costs.

5.3.2 Export Thermal Coal Price

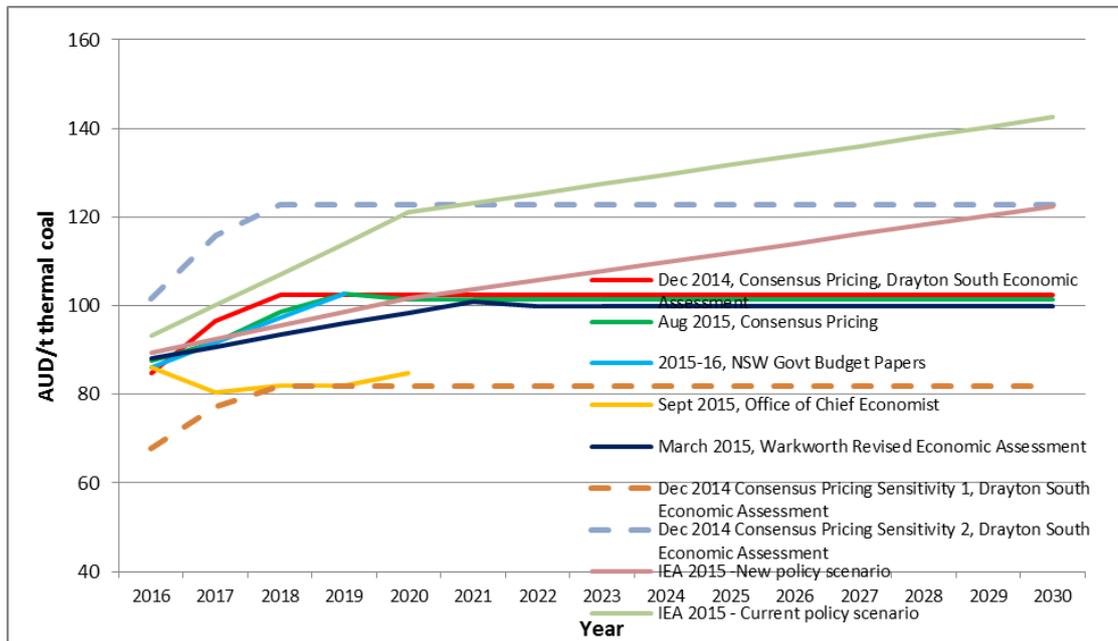
The PAC acknowledges that:

"it appears that substantial fluctuations in the coal price and exchange rate have been adequately captured in sensitivity testing undertaken as part of the BCA."

This is correct as demonstrated in the chart below. It is perplexing then that the PAC go on to state that:

"it is evident from a review of a number of credible forecasts of coal prices that the Applicant's assumptions are at the upper end of the spectrum."

The PAC does not supply the source of the credible sources but the ones listed on the chart below are: Consensus Pricing from a range of over 20 global financial institutions; the NSW Government Budget Papers; the assumptions used in the Warkworth revised economic assessment which were not questioned by the PAC; IEA policy scenario. The outlier is the Office of the Chief Economist. The point is that whilst many people have opinions, proponents need to use the best information available to them at the time the project application is submitted. This was the case with Drayton South and far from being "at the upper end of the spectrum" the assumptions were in the middle (see graph below).



5.3.3 Employment Assessment

Equally, employment data is downplayed and questioned by the PAC (although not considered material to the PACs conclusions) claiming that mining employment is significantly less than that stated in the EIS. Mining employment includes all related industries that directly support the industry.

REGION	GRP	JOBS
North Western Region	4.2%	9.2%
Illawarra Region	8.3%	6.6%
Northern Region	8.2%	4.3%
Central West Region	10.6%	13.9%
Hunter Region	22.9%	20.9%
Far West Region	32.4%	32.3%

Source: NSW Minerals Council Economic Impact Survey 2014-15

The latest economic survey by the NSW Minerals Council places direct employment related to the mining industry in the Hunter Region at 20.9%, not 10% proposed by the PAC.

5.3.4 Commissioner Carmody's Contribution to Economic Assessment

The value of Commissioner Geoff Carmody's comments included in the Review Report should be given little or no weight. He comments that:

"the benefits cited in favour of the Drayton South proposal are better described as coal mining economic losses avoided, rather than incremental net new benefits".

This comment is entirely inaccurate given the peer reviewed economic assessment provided in the EIS, the Division of Resources and Energy assessment of the Project, and the Department's own economic review by Deloitte. The Project demonstrates ongoing generation of value to the region, NSW, and Australia for 15 years. The Drayton Mine has long been a generator of value. It is hard to see how another 15 years of similar value is viewed by the Commissioner as *"economic losses avoided"*. This approach would mean that every modification to any mine proposed for approval would have to be considered as *"economic losses avoided"* rather than of any value to the region of the state. Clearly not a position taken by the Department considering applications for modifications for mine life extension.

Dr Carmody's proposal that Anglo American could consider shouldering some of the risk related cost associated with the possibility of the Coolmore and Darley Woodlands is unhelpful and ignores the large amount of objective scientific evidence before the PAC. Resource companies could well ask the reverse considering the risk and cost of exploration and assessment associated with any potential project. All businesses assess risk and uncertainty during the normal course of business. Coolmore and Darley did this on acquiring properties across the road from a previously approved mine development and one with an active exploration licence in place.

Anglo American has made significant concessions to its mine plan and obtained independent evidence (much of which was peer reviewed). As Dr Houston's report demonstrates, it would not make any rationale economic sense for either Coolmore or Darley to relocate.

5.4 Misleading and inaccurate comments by the HTBA regarding "Anglo American's track record"

Anglo American's ability to manage the impacts of mining operations on the environment and amenity perceptions is questioned by the HTBA. To the contrary however, Anglo American's

track record on amenity issues tells a story of excellent performance and management. The HTBA submission is an example of misleading and uninformed claims which the PAC has unfortunately relied on in making their assessment without verifying the accuracy of the allegations. The HTBA claim that:

"Over the past 15 years of operation of the Drayton mine, Anglo has breached its licence conditions for 12 of those years including 40 air quality breaches, over 30 blasting and noise exceedance breaches, water related breaches (including a penalty of over \$100,000 for pumping diesel contaminated water into a dam) and other operating breaches (including operating a dragline in an area affected by spontaneous combustion)....The risks are very real and will not be able to be avoided. Once they occur the damage to the studs, our industry and the community will be done and cannot be undone."

There have been 71 non-compliance incidents at Drayton Mine in the past 15 years. Drayton reports all non-compliances to the government regulator in accordance with its project approvals.

It is important to understand each non-compliance in their correct context and, more importantly, the actual associated risk. The non-compliances are categorised below. Importantly, none of the non-compliances have been significant enough to warrant prosecution and the only penalty infringement notice issued was in relation to the on-site diesel spill.

Non-compliances in past 15 years	#	Exceedance of off-site amenity limits
air quality	41	0
noise	16	8
blast	7	3
spou-com	3	0
dragline in spon-com area	1	0
water discharge during flood	1	0
fuel spill into operational dam	1	0
ROM tonnes exceed licence	1	0

Contrary to the HTBA describing Drayton's performance as "*alarming*", the facts are set out in **Appendix B**.

Anglo American voluntarily reports and acknowledges the non-compliances. However when examined over the 15 year period the overwhelming majority of the 71 non-compliances have been administrative or technical in nature. The contention by HTBA that scrutiny of the past 15 years demonstrates "*significant issues*" which it describes as "*particularly alarming*" is clearly misleading and disingenuous. Anglo American has demonstrated over the 32 year life of the Drayton Mine that it takes its obligations to manage environmental performance seriously. It moves quickly to address issues and is committed to working with the EPA to improve performance. None of these issues represent any pattern or lack of compliance that presents any real risk to Coolmore or Darley or the community generally.

5.5 Risk assessment

The conclusion reached by the PAC is framed in terms of risk assessment:

"The combined reputational risks posed by the mine, are sufficient to convince the PAC that the threat to the studs and the broader Equine Critical Industry Cluster is real and that the studs may leave the Hunter Valley should the mine proceed. The PAC concludes there are a range of uncertainties in relation to the project benefits, that the risks to the Equine Critical Industry Cluster are real and that the risks are likely to outweigh the relatively short term benefits of the mine."²³

The language used by the PAC is one of risk identification and assessment which typically involves:

- identification of a possible circumstance or set of circumstances, generally of an unexpected or unwanted nature, that would have a negative impact on a business or project; and
- assessment of that circumstance (event) occurring by evaluating both the likelihood and the consequence of the circumstance.

All businesses deal with risk and uncertainty to some degree and generally over the full range of activities in which they are engaged. Sound investment decisions are made in the light of risk assessment spanning from the initial investment opportunity to operational design and practice, and to the financial and operational controls (e.g. governance and insurance) that need to be established to protect the business from loss or damage.

The Project EIS employed a risk assessment and management approach in respect of the key success factors for the Project:

- The business case
- Risk to Coolmore and Darley and other stakeholders
- Risk to the environment

The Project EIS includes assessments covering the full range of issues and factors pertinent to the proposal. A range of experts and peer reviewers were engaged to conduct these assessments and review the efficacy of the work. The assessments address the proposed mine plan using approved modelling techniques and evaluation of the potential impacts under a range of circumstances, including worst case conditions. The results are presented in the Project EIS with additional clarification provided in the various subsequent responses to submissions. In relation to Coolmore and Darley Woodlands, the EIS assessments identify a very low risk derived from a very low likelihood of an unwanted event (predominately equine health, particulate emissions, visual amenity, noise, or blasting events) occurring, combined with a very low consequence should an event occur.

If the PAC had verified the accuracy and completeness of all the information they relied upon and undertaken an appropriate risk assessment of the probability and consequence of any risks (which they identified) occurring and the resultant consequences, they would have reached a different conclusion.

²³ PAC Review Report, p iii, last para

6. FACTORS FOR DETERMINING AUTHORITY TO CONSIDER

6.1 Little weight to be given to PAC Review Report

The Secretary's Report and the PAC Review Report are in irreconcilable conflict. The PAC Review Report should be given little, if any, weight by the ultimate determining authority because:

- it is premised on an unfounded claim that Coolmore and Darley will leave the Upper Hunter and this will cause a terminal decline in the equine CIC (see sections 2-4);
- it goes beyond the review process requested by the Minister under section 23D of the Environmental Planning & Assessment Act 1979 (Planning Act), including by drawing conclusions and making recommendations in relation to how Government policy should be changed, rather than applying existing policy (see section 6.1.1);
- the PAC failed to properly interrogate the submissions before it in terms of quality of evidence, relevance and factual accuracy and made no attempt to consider further management options to deal with any perceived impacts of the Project (a requirement under the Terms of Reference) (see sections 2-5); and
- the Secretary's Report correctly applies environmental planning principles in assessing the Project, identifies essential determination considerations including all relevant NSW Government policies, the objects of the Planning Act and all applicable environmental planning instruments, and objectively evaluates the evidence.

The determining authority is required to consider the findings and recommendations of the PAC. However, the PAC Review Report is not binding and, given these factors, for the determining authority to base any ultimate decision on the Review Report would constitute a failure by the determining authority to carry out a proper assessment and reach a logical, evidence-based decision.

6.1.1 PAC Review Report beyond power

In relation to the delivery of conclusions beyond the powers granted to the PAC, the Minister's request to the PAC to review the Project is stated as follows:²⁴

- "1. to carry out a review of the Drayton South Coal Project, and:*
- a) consider the EIS for the project, the issues raised in submissions, the formal response to submissions, and any other information provided during the course of the review;*
 - b) assess the merits of the project as a whole having regard to all relevant NSW Government Policies, and paying particular attention to the potential impacts on the operations of the Coolmore and Woodlands horse studs; and if necessary,*
 - c) recommend further measures to avoid, minimise, and/or manage the potential impacts of the project."*

Despite the fact that the Minister did not seek any view from the PAC about the appropriateness of the planning policy regime, the PAC provided a critique of the existing regime along with suggestions about what actions should be taken by the Government to rectify the current (in the

²⁴ Minister's request, PAC Terms of Reference, 13 August 2015.

opinion of the PAC) defective regime. The PAC has no power to make planning policy. It was constituted for a specific purpose. It is evident that the conclusion of the PAC Review Report is driven by an aspirational policy regime rather than applying the existing policy regime which it was required to do. For this reason the findings of the PAC Review Report should be given little, if any, weight in the determination process.

The PAC's discussion of aspirational policies on page 53-54 of the PAC Review Report including suggested amendments to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP), installation of buffer zones by reference to completely different types of development such as coal seam gas and windfarms and a comparison to legislation in other wine growing areas in South Australia and Western Australia are beyond the PAC's terms of reference and inappropriate. These findings should be given no weight in the determination of the DA.

6.1.2 Planning Regime - relevant considerations

The significant weight the PAC has given to the subjective concerns of Coolmore and Darley is contrary to the statutory planning regime that applies, as reflected in the aims of the Mining SEPP, as well as the legal principles that apply to consideration of objections under the Planning Act.

The Mining SEPP does not operate to prevent development that might be, to some extent, incompatible with adjoining land uses. It requires the consent authority to identify the ways the proposed development is incompatible with adjoining land uses and then consider the respective public benefits of each of the land uses concerned and to evaluate the measures proposed by the applicant to avoid or minimise any incompatibility.

Reputational damage has no proper standing in environmental planning assessment under the Planning Act or any environmental planning instruments made under it. Damage to reputation is not a relevant impact requiring assessment under the Planning Act. Rather the determining authority must weigh up a range of social, economic and environmental factors and consider what is in the overriding public interest.

The PAC recognises that the "*Applicant has made its best effort to minimise impacts on the neighbouring studs, and that the impacts would generally be considered acceptable*". There is nothing in the PAC Review Report to suggest that the public benefits that flow from Coolmore and Darley Woodlands outweigh the public benefits that will flow from the Project. Rather than analysing the public benefits of Coolmore and Darley Woodlands against the public benefits of the Project, the PAC Review Report broadly discusses the economic benefits of the thoroughbred industry as a whole and the Coolmore and Darley businesses.

The PAC Review Report concluded that there are no significant actual impacts of the Project on Coolmore or Darley Woodlands but nevertheless stated that perceived and unquantified reputational impacts together with a threat that Coolmore and Darley might leave (even though Darley's stud is located 30 minutes drive away) was sufficient to recommend Project refusal as the whole of the Equine CIC was under threat.

This approach is fundamentally flawed (see sections 2 - 4, 5.2, 6.1.1 above) and places undue weight on perceived impacts (which are subjective and/or have not been verified) rather than actual impacts. The determining authority should focus on:

- (1) the quantified independent evidence (not subjective information); and

(2) applying existing planning policy,
in weighing up the relevant considerations under the Planning Act.

6.2 Secretary's Report to be preferred

A broad range of government agencies and independent peer reviewers were engaged by the Department in assessing the Project EIS. The assessment process followed is comprehensive and supported by relevant experts in their respective field of expertise resulting in the Secretary's Report.

Section 6 of the Secretary's Report sets out the correct approach to the assessment of the Project in the opening sentence which states that *"In accordance with s 79C of the EP&A Act, the Department has considered the following in its assessment of the project ..."*. At page 43 there is a consideration of the existing and applicable "Policy Framework" that applies to "Coolmore and Woodlands".

The Secretary's Report assesses the merits of the Project as a whole having regard to all relevant NSW Government Policies, and paying particular attention to the potential impacts on the operations of the Coolmore and Woodlands operations. At pages 107 and 108, the Secretary's Report to the Minister concludes:

"Overall, the Department is satisfied that the benefits of the project would outweigh its costs, and believes that the proposed mine plan strikes an appropriate balance between protecting the interests of the horse studs and realising the significant economic benefits that would flow to the region and the State if the project is allowed to proceed."

"Consequently, the Department considers the project to be in the public interest, and recommends that it be approved subject to conditions."

6.3 Assessment of key matters

This section summaries some matters of critical importance which the determining authority must have regard to. These matters are discussed more extensively in Dr Houston's report in Appendix 1, the Secretary's Report, the Project EIS and the above sections of this report.

6.3.1 The equine CIC is sustainable with or without Coolmore and Darley

Dr Houston has undertaken an independent quantitative assessment of the Equine CIC and concluded that it will not be materially impacted and remain the largest thoroughbred breeding region in Australia and New Zealand even if Coolmore and Darley left.

6.3.2 It is in Coolmore and Darley's overwhelming best interest to stay in the Hunter

According to Dr Houston, there is no rationale economic reason for Coolmore or Darley to leave the Hunter Valley and relocate to either Victoria or New Zealand. The Upper Hunter has a number of key economic characteristics that make it particularly attractive for breeding thorough bred horses (see section 4.2.1) which will remain even if the Project goes ahead. It is highly likely that suitable alternative sites could be found within the Upper Hunter CIC which covers an area of 254,900 hectares. Darley's stud operation is located a 30 minute drive away from the Project so if it decided to vacate Woodlands it would be economic sense to move its broodmare operation closer to its stud operation. Similarly Coolmore would wish to avoid significant risks of losing

stallions, customers and key staff if it relocated out of the Hunter Valley and capitalise on the benefits of remaining in the Hunter. Further, Coolmore and Darley are competitors and, if one of them was to relocate to Victoria or New Zealand, the other party would benefit significantly from their departure. A quantitative analysis of these matters is set out in Dr Houston's report.

6.3.3 No evidence to support reputational impacts causing Coolmore and Darley to leave the Upper Hunter

The Project EIS assessments provide quantitative evidence that the increased buffer significantly reduces the risk of visual, air quality, noise and blasting impacts.

The PAC Review Report concluded that the "*reputational damage*" allegedly to be caused to Coolmore and Darley from the Project going ahead would not be actual physical effects but would be perception or reputational related impacts.

The appropriate approach to this kind of subjective evidence is set out by Preston CJ in the *Telstra Corporation v Hornsby Shire Council*²⁵. While Anglo American accepts that subjective views need not necessarily be disregarded, in forming a view about the likely effect of a proposed development the determining authority should prefer views which find justification in specific, concrete, likely effects of the proposed development.

The highest the PAC puts the threat Coolmore and Darley make to leave the Hunter Valley is that it is being contemplated and is a risk. This is well short of a specific, concrete, likely effect of the proposed development. The claimed effects are unsubstantiated and without any reasonable or objective foundation in fact or evidence. In those circumstances the legal principles that apply to consideration of such issues as part of the public interest require the determining authority to give very little, if any, weight to a subjective threat made by Coolmore and Darley that they might leave the region based on perceived reputational impacts.

6.3.4 Project is consistent with land use planning policy

The NSW Government has a policy framework to resolve potentially unacceptable land use conflicts between mining, equine uses and agricultural uses. The Strategic Regional Landuse Plan was implemented to identify, map and protect Upper Hunter equine and viticulture critical industry clusters. The maps were revised in late 2013 and do not include any area covered by the Project. The Project was also subject to the gateway process. The Gateway Panel assessed the impact of the Project on biophysical strategy agricultural land pursuant to the relevant criteria set out in clause 17H of the Mining SEPP. A conditional gateway certificate was granted by the Gateway Panel.

The Mining SEPP provides non-discretionary development standards for noise, air quality, airblast overpressure and ground vibration. The Secretary's Report and the PAC Review Report agree with the Project EIS that the Project will comply with all standards in clause 12AB which are directed at protecting the most sensitive land use – a private dwelling.

Coolmore and Darley Woodlands currently co-exist with multiple existing mining operations in the area and even though the Project will mean that mining will be slightly closer to their operations, the independent evidence demonstrates that there are no significant actual impacts from the Project. The PAC Review Report agrees with this overall conclusion.

²⁵ *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133 at [189] to [208]

The determining authority must apply the existing planning policy in determining whether or not to approve the Project.

6.3.5 The Project is viable and its benefits are real and measurable

The peer reviewed independent economic evidence demonstrates that the Project will "*deliver substantial economic benefits to NSW*". The PAC Review Report acknowledges this.

6.3.6 Blasting impacts are minimal and can be appropriately managed

The blasting assessment included in the Project EIS is comprehensive and includes several risk management approaches from reducing charge size as the mine moves closer to the southern boundary, communications protocols around blast timing (so that operations can be coordinated to avoid covering and blasting at the same time), and all the other blast management constraints around time and meteorological conditions that are currently practiced to minimise potential impacts. Anglo American's track record at Drayton demonstrates that any potential blasting impacts can be effectively managed and it is willing to agree additional protocols with Coolmore to minimise blasting during any particularly sensitive time period even though the sound equates to a distant rumble.

6.3.7 The Project meets relevant air quality standards

Air quality modelling presented in the Project EIS is acknowledged by the EPA as being '*achievable and potentially even conservative*'. The PAC acknowledged that the Project is consistent with applicable air quality standards. Drayton's past performance in relation to dust management is excellent with no exceedances of off-site amenity limits over the last 15 years. This demonstrates the pro-active approach by the mine to manage operations on 'dusty' days to reduce dust contribution and impact.

6.3.8 The Project meets relevant noise standards

The Project EIS demonstrates that there are no daytime noise impacts on Coolmore or Darley Woodlands from the Project. Night time impacts are minimal and largely below 30 dBA other than in the latter part of the mine life where the highest predicted worst case noise level on the south eastern section of Coolmore could be 32 dBA. For reference, a 30dBA noise is likened to a whisper.

6.3.9 There are no impacts on horse health

Equine health is an area thoroughly addressed in the Project EIS. It includes an extensive and exhaustive literature review to identify the potential for mine generated dust, blasting, and general mine noise to impact on equine health. A renowned specialist in equine respiratory diseases, Assoc. Professor Nicholas Kannegieter, conducted the review and provided a comprehensive independent assessment which was based on the various environmental assessments produced as part of the EIS, the broad ranging literature review, and his expertise in equine health, which demonstrated there is no risk to equine health.

Assoc. Professor Nicholas Kannegieter's assessment was peer reviewed by two other independent eminent experts in this field: Assoc. Professor Kristopher Hughes and Dr Deborah Racklyeft. Both peer reviewers concurred with Assoc. Professor Kannegieter's assessment.

6.3.10 Risks to landscape value are minimal and have been appropriately mitigated

The Project contains all parts of the mine behind natural ridgelines and ensures the most southern sections of the mine are behind an additional, second ridgeline where the mine is closest to the Coolmore front paddocks in accordance with a previous PAC expert's recommendation.

In addition, Anglo American has committed to a range of mitigation measures to minimise direct and indirect views (see section 4.2.3). The only direct views of the Project will be from the highest and most inaccessible parts of Coolmore and Darley Woodlands which are not used for thoroughbred activities. This is not a pristine view and Mount Arthur Mine and Bayswater Power Station are currently clearly visible from those locations.

6.3.11 Open cut mine exclusion zone

Anglo American acknowledges Coolmore's and Darley's concerns about the potential for future cumulative impacts and mine creep and any potential impact on amenity. In that regard, a significant concession has been offered by Anglo American who are prepared to forego any future right to open cut mine the area between the natural ridgeline and Coolmore and Darley creating a permanent buffer or mine exclusion zone between the properties. This concession is the equivalent of giving up 50 million tonnes of coal and demonstrates that Anglo American has seriously considered and responded to previous PAC assessments.

6.3.12 The public interest and overwhelming support of the local community

Over 17,000 submissions were received by the PAC on the Project with the vast majority in support of the application. The Project will bring significant benefits to the region and will not impact the viability of the Equine CIC.

In forming the opinion that the Project was in the public interest and should proceed, the Department stated the following:

"Overall, the Department is satisfied that the benefits of the project would outweigh its costs, and believes that the proposed mine plan strikes an appropriate balance between protecting the interests of the horse studs and realising the significant economic benefits that would flow to the region and the State if the project is allowed to proceed."²⁶

Anglo American supports the Department's view and while it does not necessarily agree with all of the Department's comments it notes that the Department has undertaken a balanced assessment of all potential impacts of the Project compared to the benefits.

Anglo American requests that the determining authority undertakes a detailed and objective analysis of all of the evidence before it including all of the matters raised in this section of the report (taking further steps to verify any unsubstantiated claim, if necessary) in weighing up the Project benefits and impacts.

²⁶ Secretary's Report, p. 107-108

7. Conclusion

The PAC Review Report should be given little, if any, weight by the determining authority.

Anglo American has provided new independent expert evidence responding to the key finding of the PAC Review Report that the Upper Hunter Equine CIC would be under threat and would terminally decline if Coolmore and Darley left. Dr Houston's report is clear that:

- it is extremely unlikely that the Project would cause Darley to leave the Upper Hunter because it is in Darley's strategic, operational and financial interest to maintain its operation in the Upper Hunter;
- similarly, it would not be in Coolmore's interest to leave the Upper Hunter; and
- even in the unlikely event that Coolmore and/or Darley did leave the Upper Hunter, the Equine CIC would not be under threat. The Upper Hunter Equine CIC will still thrive and be the largest thoroughbred breeding region in Australia and New Zealand.

This report corrects a number of misleading statements and factual errors in the information that the PAC relied on in making its findings and provides Anglo American's comments on other matters raised in the PAC Review Report.

Finally, this report summarises the significant factors for the determining authority to consider in determining whether or not to approve the Project including:

- the Secretary's Report;
- Dr Houston's evidence;
- the reduced mining footprint which complies with previous buffer distance recommendations specified in a PAC review for a different Part 3A project;
- existing landuse policies and the fact that the Project complies with applicable standards and guidelines in relation to air quality, noise and blasting;
- the significant body of peer reviewed evidence demonstrating that the Project will not have any impact on horse health;
- the unsubstantiated nature of any reputational, image or branding concerns, which Anglo American contends are unfounded and grossly overstated;
- Anglo American's offer to create a mine exclusion zone to address any residual concerns of Coolmore and Darley;
- the overwhelming support from the local community for the Project; and
- the peer reviewed evidence demonstrating that the Project is viable and its benefits are real and measurable.

Considering these factors, there is no logical reason and no probative evidence to support a conclusion that Coolmore and Darley will leave the Upper Hunter as a result of the Project or that their departure would cause a terminal decline in the equine CIC.

The Project is in the public interest and any reputation or perceived impacts to two international horse studs (which have not been verified by independent peer reviewed evidence) do not outweigh the significant benefits the Project will bring to the locality and NSW.

Appendix A

Expert Report of Dr Greg Houston

Appendix B

Drayton Mine Non-Compliances

B.1 Air quality breaches (41)

There were 41 non-conformances for air quality related incidents. These incidents are, without exception, related to non-compliances for air quality sampling procedures and practice:

- 15 due to Ausgrid power outages which are beyond the control of the site.
- 11 due to the failure of monitoring equipment.
- 7 due to sample bottles being broken, either in transit or by vandals.
- 2 human error with samples not taken.
- 2 due to sample points being inaccessible during flood event.
- 4 because the mine had already mined through the sample point.

Drayton Mine took approximately 9000 air quality samples over the 15 year period. Sampling non-compliances represent 0.46% of total samples over this time.

None of the 41 non-compliance incidents were associated with an exceedance of air quality licence condition limits. No environmental harm was caused, or had the potential to be caused, as the incidents were procedural in nature. Contrary to HTBA's claims there is absolutely no risk to the operation of the horse studs, the health of their workers or their livestock.

B.2 Noise and blasting exceedance breaches...(23)

There have been 16 noise and 7 blasting non-compliances:

- 7 noise non-compliances occurred in 2009 where 3 out of the 31 monitoring locations were not monitored. Once identified this oversight was rectified immediately.
- 1 noise non-compliance also occurred in 2009 when the LA1 (1 minute) noise levels were not included in the report to the Department. This was corrected once identified.
- 8 noise limit exceedances were reported by Drayton to the Department in the 12 month period ending 30 April 2010. All of these exceedances occurred at 4 residences in the Antiene area north of the train load out facility. The issues were identified and rectified. At no other time over the 15 years has Drayton actually exceeded noise limits. To suggest that Drayton has had '*regular noise exceedances*' is untrue, misleading and disingenuous. The incidents occurred during a 12 month period 5 years ago.
- 4 blasts have been fired outside of permitted times:
 - 1 blast was pre-arranged with the Department due to safety concerns should the loaded holes be left overnight.
 - 3 blasts were fired between 8 and 15 minutes after the cut off time of 5pm.
 - Drayton conducts in the order of 200 blasts per year or approximately 3000 over 15 years. These incidents represent 0.13% of total blasts. None of these incidents caused, or had the potential to cause, any environmental harm.
- 3 blasts exceeded the overpressure limit of 120dbL over the 15 year period. This represents 1 blast in every 1000 or 0.10%. Exceedances were 121; 122; 124dbL against the limit of 120dbL on the three occasions. Every blast design is modelled before the blast plan is approved using state of the art software to test and manage the overpressure level.

B.3 Spontaneous combustion incidents (4)

- 3 incidents occurred in 2008 due to 'odour from spontaneous combustion'. All three incidents arose from reports to the Department by one member of the public living approximately 13km to the north of Drayton. The investigation by Drayton, and accepted by the Department, demonstrated that any odour did not emanate from Drayton. To cite these as an example of an 'air quality breach' is deliberately misleading.
- Again on 28th August 2008 the dragline was operating in an area that was affected by spontaneous combustion. In itself this is not an issue however a smoke plume was produced raising concerns with some stakeholders. This was rectified and discussions held with stakeholders. There have been no further occurrences.
- Drayton South coal measures (Whittingham) are different to the ones currently mined at Drayton (Greta) and have a very low propensity for spontaneously combustion.

B.4 Water related breaches (2)

- 1 incident in 2011 occurred when water overflowed from an approved dam via the designed overflow system due to heavy rainfall beyond the capacity of the dam equipment. The dam capacity was subsequently increased. No environmental impact.
- 1 incident in January 2014 when a pump on the diesel facility leaked. The fuel containment bund failed to contain the diesel which flowed into an operational mine dam, from where it was recovered. HTBA is being deliberately misleading stating that *'the company received an administrative penalty of \$103 700'*. Drayton Mine pays an annual administrative fee to the EPA of \$103 000. The penalty for this incident was \$1,500. At no time was there any off-site environmental impact.

B.5 Other operational breaches (1)

- In 2010 the total Run-Of-Mine coal extracted for NSW power generation exceeded the licence limit by 0.05%. Drayton applied for, and was granted, an application to increase scale. No environmental impact.