



Department of
Infrastructure, Planning and Natural Resources

**SUBMISSION IN REPLY
TO THE COMMISSION OF INQUIRY
FOR THE MOUNT OWEN OPERATIONS PROJECT**

July 2004

1. INTRODUCTION

On 28 April 2004, the Minister for Infrastructure and Planning directed that a Commission of Inquiry (COI) be held into the environmental aspects of the Hunter Valley Coal Corporation's Mount Owen Operations Project, in accordance with section 119 of the *Environmental Planning & Assessment Act 1979* (EP&A Act).

However, the Minister also directed that this COI should have particular emphasis on the following potential impacts of the proposal:

- Air quality, in particular dust impacts;
- Noise and blasting;
- Surface and ground water; and
- Social and economic, including the acquisition of land either directly or potentially affected by the proposal.

This report is the Department's submission in reply to the COI.

2. OUTSTANDING MATTERS AT THE PRIMARY SESSION OF THE COI

In its primary submission, the Department requested additional assessment of the potential:

- Sleep disturbance impacts of the proposal; and
- Access and waterlogging impacts of the proposal associated with the proposed diversion of Bettys Creek into Main Creek.

The Department has subsequently received and assessed this information.

Sleep Disturbance Assessment

The additional sleep disturbance assessment:

- Argues that the maximum noise sources of the mine, such as excavator horns and bulldozer track clatter, tend to be less pronounced the further they travel from the mine, and are generally masked by the total noise of the mine; and
- Uses historical monitoring data to demonstrate that the project specific noise level of 35dB(A) would generally be exceeded before the $L_{A1, 1 \text{ min}}$ sleep disturbance criteria of 45dB(A) was exceeded.

Notwithstanding this, the assessment acknowledges that the proposal could exceed the sleep disturbance criteria of 45dB(A) on some occasions. To minimise these potential exceedances, the Applicant is proposing to replace existing excavator horns with an alternative system, incorporate smart reversing beepers, and install "the best available proven technology" to reduce bulldozer track clatter, although it does not identify what the best available technology currently is. In addition, it is proposing to investigate any complaints about sleep disturbance, using attended monitoring, and take the necessary remedial measures to comply with the sleep disturbance criteria.

The Department is generally satisfied with this assessment, and the Applicant's proposed mitigation measures.

Access Impacts - Main Creek

Umwelt has carried out further surface water modelling of the potential access impacts of the proposal. This modelling indicates that the proposal would increase the period during which landowners with properties adjoining Main Creek would have restricted vehicle access across the creek (see Table 1).

ARI	Range of increase in the time water depth exceeds 0.6 m in hours
1 in 1 year	0 - 0.87
1 in 2 year	0 - 1.22
1 in 5 year	2.37 - 10.32
1 in 10 year	5.72 - 11.03
1 in 100 year	6.73 - 12.08

Table 1: Summary of Modelling Predictions

While it would be feasible to construct culverts at these crossings to improve access across the creek, the Applicant argues that these works are not warranted due to the relatively short duration and frequency of these extended flows, and the potential construction impacts associated with these works. However, it indicates that it is prepared to work with affected landowners to address any special access arrangements that they may have.

The Department accepts these arguments, and does not believe that the Applicant should be required to carry out any construction works to improve access over Main Creek, particularly since this access is principally to farming land not residences, but also due to fact that all of the affected properties are located in the acquisition zone for the proposal, and may need to be bought by the Applicant during the life of the development.

While the Department supports the Applicant's proposal to work with landowners to address any special access requirements they may have, it believes that this should occur outside the framework imposed by any conditions of consent for the proposal.

Waterlogging Impacts - Main Creek

The Applicant has not carried out any further assessment of the potential waterlogging impacts of the proposal downstream of the proposed diversion of Bettys Creek into Main Creek; it has simply reiterated its assessment of these impacts in its primary submission.

This assessment argues that:

- The area that is prone to waterlogging, approximately 1.2 kilometres upstream of the Glennies Creek Road bridge, is more likely to be affected by the mining operations that are currently being carried out under this land by the Glennies Creek Colliery, than it is by the proposed diversion of Bettys Creek into Main Creek; and that
- The subsidence caused by this mining and associated mitigation works are likely to reduce the potential for waterlogging in this area.

The Department has noted the Applicant's response, and believes that the Applicant should be required to:

- Monitor the waterlogging impacts of the proposal, and the effects that any remedial works carried out by the Glennies Creek Colliery associated with its underground mining operations may have on waterlogging upstream of the Glennies Creek Road bridge; and
- If the waterlogging impacts are greater than predicted on any privately-owned land, carry out a remedial works to mitigate these impacts in consultation with landowners, and to the satisfaction of the Department.

3. RESPONSE TO QUESTIONS FOLLOWING THE PRIMARY SESSION

The Department received questions from several people, including the Commissioner, following the primary session of the COI. The Department's response to these questions is included in Attachment A.

4. ASSESSMENT OF KEY ISSUES

The Department has completed its assessment of the proposal, and is generally satisfied with the assessment of the potential impacts of the proposal in the EIS, and the additional information provided to the Department by the Applicant.

The Department's assessment of the key issues associated with the proposal is summarised below. This assessment focuses on the key issues identified in the Minister's terms of reference for the COI, with the exception of the potential flora and fauna impacts of the proposal.

4.1 Noise

The Department is satisfied with the noise impact assessment in the EIS and the additional sleep disturbance assessment.

Intrusive noise impacts

Even with best practice mitigation, the proposal is likely to exceed the project specific noise levels at up to 32 properties, and the Department's acquisition criteria at 16 properties¹.

To address these potential impacts, the Department believes the Applicant should be required to:

- Acquire the following properties up front at the request of the landowner: 31, 64, 66, 67, 68, 69, 70, 72, 73, 83, 84, 85, 107, 108, 109, 110;
- Comply with the predictions in the EIS for the properties in the acquisition zone while they remain privately-owned;
- Comply with the specified noise limits at the remaining properties;
- Investigate ways to further reduce the noise generated by the mine;

¹ This assessment includes properties where the noise impacts are predicted to exceed the criteria over at least 25% of the property, and excludes properties 71a, 71b, and 86 which have subsequently been purchased by the Hunter Valley Coal Corporation.

- Implement further management measures at properties with noise limits or impacts greater than or equal to 37dB(A)² in consultation with the landowners;
- Monitor the noise impacts of the proposal using a combination of real-time and attended noise monitoring; and
- If the noise generated by future operations is greater than 40dB(A) at any privately-owned property outside the acquisition zone, either implement further management practices in consultation with the landowner, or acquire the property at the request of the landowner.

Sleep disturbance impacts

The proposal could exceed the sleep disturbance criteria at some properties outside the noise acquisition zone.

Consequently, the Department believes the Applicant should be required to:

- Comply with the sleep disturbance criteria of $L_{A1,1min}$ of 45dB(A) at all properties outside the acquisition zone;
- Monitor the sleep disturbance impacts of the proposal as required; and
- Investigate ways to reduce the maximum noise sources at the mine, or sleep disturbance impacts at any affected receivers.

Cumulative noise impacts

The proposal could cause cumulative noise impacts with surrounding mines.

Consequently, the Department believes the Applicant should be required to:

- Monitor the potential cumulative noise impacts of the proposal;
- If cumulative noise levels exceed the following amenity criteria at any privately-owned properties outside the acquisition zone, implement further management practices to reduce the cumulative noise impacts in consultation with the landowner and surrounding mines: $L_{Aeq(period)}$ 50dB(A) - Day/45 dB(A) - Evening/40dB(A) - Night; and
- If the cumulative noise impacts exceed the following criteria at any privately-owned properties outside the acquisition zone, either implement further management practices to reduce the cumulative noise impacts in consultation with the landowner and surrounding mines, or acquire these properties, on as equitable a basis as possible with the offending mines, at the request of the landowner: $L_{Aeq(period)}$ 53dB(A) - Day/48 dB(A) - Evening/43dB(A) - Night³.

4.2 Blasting & Vibration

The Department is satisfied with the blasting impact assessment in the EIS.

² This is consistent with the Commissioner's recommendations in the Mount Arthur North COI that the properties with noise exceedances between 0 and 2dB(A) above the project specific noise levels require monitoring but no mitigation measures; and that properties with noise exceedances greater than 2dBA to 5dB(A) above the project specific noise levels require monitoring, emission/operational controls, dwelling noise controls or other noise mitigation works and/or amelioration/benefits (see pg 30 of the Commissioner's report).

³ This is consistent with the Commissioner's recommendations in the Mount Arthur North COI that the amenity acquisition zone should be where the noise level is greater than 43dB(A) and the management zone where the noise level is between 40-43dB(A) (see pg 32 of the Commissioner's report).

This assessment concludes that with good blast management, the Applicant would be able to comply with the ANZECC criteria for airblast overpressure and ground vibration.

To minimise the potential blasting impacts of the proposal, the Department believes the Applicant should be required to:

- Comply with the ANZECC criteria for airblast overpressure and ground vibration;
- Co-ordinate its blasting with the blasting at surrounding mines to minimise the potential cumulative blasting impacts of the proposal;
- Monitor the blasting impacts of the proposal;
- Commission an independent property inspection of the buildings and structures on any property within 2 kilometres of the mine at the request of the landowner;
- Provide landowners with up-to-date information about blasting operations at the mine;
- Commission an independent investigation of any property damage that may have been caused by blasting at the mine; and
- Develop a blast management plan with the Glennies Creek Colliery to address the potential interactions between the two mines.

Changes to blasting times

The Applicant is seeking approval to blast from 7 am, instead of 9am, when weather conditions are usually calmer, to reduce the dust emissions from blasting and minimise the disruption to operations.

Based on the results of a recent trial at the Hunter Valley Operations mine, the Department believes that there is some merit in the Applicant's proposal. However, it believes the Applicant should be required to demonstrate the benefits of this proposal before it is allowed permanently.

Consequently, the Department believes the Applicant should be required to prepare a detailed program to trial the blasting proposal.

4.3 Air Quality

Apart from the uncertainties associated with the 24-hour average PM₁₀ predictions, the Department is satisfied with the air quality assessment in the EIS.

Project specific dust impacts

To meet the relevant legislative requirements under the *Protection of the Environment Operations Act 1997*, the Applicant is required to demonstrate that it would meet the relevant air quality criteria, or that best management practices are being used to reduce dust emissions.

While it is not strictly appropriate to apply regional ambient air quality criteria as limits for specific projects, the Department has developed project specific acquisition criteria for dust deposition (greater than 2g/m²/month as an increment) and 24-hour average PM₁₀ (greater than 50µg/m³ as an increment).

The application of the 24-hour average PM₁₀ criterion is based on the philosophy that no project on its own should cause exceedances of the ambient air quality criteria⁴.

Even with best practice mitigation, the proposal is likely to exceed these project specific criteria at up to 7 properties (assuming a calibration factor of 2.6 is applied to the 24-hour average PM₁₀ predictions), and up to 27 properties (without the calibration factor).

While the Department accepts that it is reasonable to apply a calibration factor to the 24-hour average PM₁₀ predictions, given the current shortcomings of existing dispersion models, it has some concerns about adopting the calibration factor derived from studies at the Warkworth mine to this particular proposal.

However, given that the 24-hour average PM₁₀ impacts of the proposal are predicted to increase in the later years of the proposed mine plan, and that it is expected to take at least a year to validate the calibration factor using local monitoring data, the Department believes it would be reasonable to:

- Accept the calibration factor as the best available estimate in the interim;
- Validate the calibration factor as soon as possible; and then
- Review the predicted 24-hour average PM₁₀ impacts of the proposal.

With this approach in mind, the Department believes the Applicant should be required to:

- Acquire the following properties up front at the request of the landowner: 31, 66, 67, 68, 69, 70, 108⁵;
- Develop a detailed program to validate the calibration factor and review the predicted 24-hour average PM₁₀ impacts of the proposal;
- Monitor the dust emissions of the proposal using a combination of real-time monitors, high volume samplers and dust deposition gauges; and
- If the dust generated by the proposal is greater than the project specific acquisition criteria at any property outside the acquisition zone, either implement further management practices in consultation with the landowner or acquire the property at the request of the landowner.

Cumulative dust impacts

The proposal could cause cumulative dust impacts with surrounding mines.

The Department uses several acquisition criteria to regulate the cumulative impacts of mining proposals/operations. The criteria are as follows, and should not be exceeded at any privately-owned property:

- Dust deposition (4g/m²/month);
- Total suspended particulates (90µg/m³);
- 24-hour average PM₁₀ (150µg/m³); and
- Annual average PM₁₀ (30µg/m³).

The 24-hour PM₁₀ criterion is based on the USEPA criterion, and differs from the NEPM standard and DEC's criterion in one important respect: it applies at peak monitoring sites, such as the Hunter Valley coalfield, rather than performance monitoring sites (which must be representative of regional background levels, and cannot be affected by

⁴ This is an interpretation of Section 128 of the *Protection of the Environment Operations Act 1997*.

⁵ These properties are also in the proposed noise acquisition zone.

any individual development). The 24-hour PM₁₀ criterion is based on total emissions (including background levels and the emissions from adjoining mines), and allows up to 4 exceedances a year to accommodate extreme events, such as bushfires or dust storms.

The annual average PM₁₀ criterion is a strict application of the DEC's criterion. The Department believes this application is reasonable because the criterion should be readily achievable in the Hunter Valley coalfield, the annual average PM₁₀ modelling predictions are generally accurate, and the annual average PM₁₀ impacts are generally not influenced by extreme events, such as bushfires or dust storms.

The proposal is predicted to cause exceedances of the:

- Dust deposition acquisition criterion at 3 properties;
- TSP acquisition criterion at 1 property; and
- Annual average PM₁₀ acquisition criteria at 15 properties.

However, only 5 of these properties (99, 105, 106, 111, and 112) are located outside the proposed noise acquisition zone of the proposal.

To address these potential impacts, the Department believes the Applicant should be required to:

- Acquire the following properties up front, on as equitable a basis as possible with the offending mines, at the request of the landowner: 99, 105, 106, 111, and 112;
- Monitor the potential cumulative dust impacts of the proposal;
- Investigate ways to reduce cumulative dust impacts with surrounding mines; and
- If the cumulative dust impacts exceed the Department's acquisition criteria at any properties outside the acquisition zone, either implement further management practices in consultation with the landowner and surrounding mines, or acquire the property, on as equitable a basis as possible with the offending mines, at the request of the landowner.

4.4 Surface and Ground Water

The Department is satisfied with the surface and ground water impact assessment in the EIS, as supplemented by additional information.

The Applicant should be required to:

- Conduct a detailed survey of the condition of Bettys Creek and Main Creek and any buildings or structures adjoining the creek downstream of the proposed diversions prior to carry out any of these proposed diversion works;
- Design, construct, maintain, and rehabilitate the proposed diversion of Bettys Creek around the proposed Eastern Rail Pit to the satisfaction of the Department;
- Design, construct, and maintain the proposed diversion of Bettys Creek into Main Creek to ensure that it does not increase the peak flow or velocity of flows in Main Creek or increase the extent or level of downstream flooding to the satisfaction of the Department;
- Prepare a detailed water balance for the mine, and review it annually;
- Comply with the specified surface water discharge limits;
- Measure the volume of water discharged from the site, water use on the site, and water transfers between the site and surrounding mines;

- Monitor the quality of the surface water discharged under the Hunter River Salinity Trading Scheme and upstream and downstream of the development in Yorks Creek, Swamp Creek, Bettys Creek and Main Creek;
- Monitor surface water flows in Yorks Creek, Swamp Creek, Bettys Creek and Main Creek;
- Monitor regional groundwater levels and quality in the aquifers;
- Periodically assess groundwater pressure response in the coal measures;
- Monitor bank and bed stability in Bettys Creek and Main Creek;
- Prepare and implement a Water Management Plan for the mine, which must include:
 - the detailed plans for the proposed Bettys Creek diversions;
 - an erosion and sediment control plan;
 - surface and ground water monitoring programs; and
 - a surface and ground water response plan to address any potential adverse impacts associated with the development; and
- At the end of year 7 of operations, prepare a Final Void Management Plan for the mine, which considers the potential interaction between the final void and the proposed diversion of Bettys Creek into Main Creek.

4.5 Flora and Fauna

The Department is satisfied with the flora and fauna assessment in the EIS and SIS, which was complemented by a range of additional information provided by the Applicant. This assessment indicates that the proposal would have certain short and long-term impacts on regionally significant vegetation remnants (see Table 2) and at least 5 threatened species listed under the *Threatened Species Conservation Act 1995*.

Disturbance	Total Area	Woodland	Regenerating Woodland	Pasture	Riparian	Dry Rainforest	Bullock
Southern Remnant	35	35					
Other Disturbance	390	59	29	293	8		1
Total	425	94	29	293	8	0	1
Offset Areas	Total Area	Woodland	Regenerating Woodland	Pasture	Riparian	Dry Rainforest	Bullock
Northeast Offset	93	7	2	62	0	22	0
TSR Offset	27	23	0	0	4	0	0
Southeast Offset	61	32	2	23	4	0	0
Northwest Offset	72	18	0	54	0	0	0
Forest East Offset	84	14	0	70	0	0	0
Southeast Offset	78	6	0	63	9	0	0
Total	415	100	4	272	17	22	0

Table 2: Summary of Proposed Disturbance and Offsets

However, the Applicant is proposing to implement a range of strategies to avoid, mitigate and compensate for these impacts. Importantly, it is proposing to implement a comprehensive Biodiversity Offset Strategy that would provide compensatory habitat for displaced species and ensure that the proposal provides real long-term conservation benefits to the region.

The Department is satisfied that the proposed Biodiversity Offset Strategy would adequately balance the residual flora and fauna impacts of the project, and that the proposal is unlikely to affect the long-term viability, or contribute to the extinction of, any threatened species or ecological communities. It is also satisfied that the proposed Biodiversity Offset Strategy complies with the assessment criteria that were jointly developed for the proposal by the Department and the Department of Environment and Conservation (see Attachment B).

Notwithstanding this conclusion, the Department accepts that it is likely to take many years to implement the proposed Biodiversity Offset Strategy, extending well beyond the time required to implement the proposed mine plan, and that the implementation of this strategy will need to be closely monitored and audited over time to ensure that it is implemented successfully. Consequently, the Department believes the Applicant should be required to:

- Implement the Biodiversity Offset Strategy in accordance with flora and fauna management best practice;
- Enter into a Deed of Agreement with the Minister to conserve the land in the offset strategy;

- Prepare a detailed Flora and Fauna Management Plan for the implementation of the Biodiversity Offset Strategy in consultation with the Hunter Coalfield Flora & Fauna Advisory Committee⁶, which builds on existing management plans and includes detailed completion criteria for the offset strategy;
- Monitor the performance of the Biodiversity Offset Strategy;
- Review the performance of the Biodiversity Offset Strategy and the Flora and Fauna Management Plan annually in consultation with the Hunter Coalfield Flora & Fauna Advisory Committee, and if necessary revise the plan;
- Commission an independent audit of the Biodiversity Offset Strategy every three years; and
- Following the independent audit at end of year 15, or prior to the cessation of mining, lodge a conservation bond with the Department to ensure that there are sufficient resources available to fully implement the Biodiversity Offset Strategy;
- Contribute a reasonable amount (up to \$20,000) each year towards the operation of the Hunter Coalfield Flora & Fauna Advisory Committee; and
- Contribute a reasonable amount (up to \$20,000) towards the completion of any strategic study the Department commissions into the regional corridor stretching from the Wollemi National Park to the Barrington Tops National Park.

In addition, the Department has reviewed the recommendations in DEC's primary submission, and is confident that most of these recommendations can be addressed in any conditions of consent that may be imposed on the proposal.

Although the Department agrees with DEC's recommendation that the Applicant should be required to link what remains of the southern remnant with the north-eastern vegetation corridor as quickly as possible, it believes it is important to acknowledge that the concept of the original offset has been changed. Instead of having two remnants of the State Forest linked by a Wildlife Corridor, the proposed offset is now seeking to establish a major vegetation corridor along the eastern boundary of the mine. In addition, the Department accepts that the proposed extension of Pit C would significantly delay any attempts to connect what remains of the southern remnant to the north-eastern vegetation corridor via the former Wildlife Corridor. Consequently, it believes the quickest and best way to link what remains of the southern remnant with the north-eastern corridor would be to rehabilitate the two out-of-pit dumps and Pit B as quickly as possible, rather than concentrating on implementing the proposed Wildlife Corridor.

Finally, the Department accepts DEC's recommendation that the security of the proposed offset should be improved. The Department's preference for increasing the security of this offset would be to require the Applicant to put a caveat on the title of the land under the *Conveyancing Act 1919*, however, it is also considering the feasibility of requiring the Applicant to transfer the land to the Crown.

4.6 Social & Economic

⁶ The Hunter Coalfield Flora & Fauna Advisory Committee is currently being established by the Department to:

- Provide on-going advice on the flora and fauna management in the Hunter coalfield; and
- Monitor and review the performance of the implementation of the various offset strategies in the Hunter coalfield.

The Department is satisfied with the social and economic impact assessment of the proposal, which was complemented by the additional information in the Applicant's primary submission.

Economic impacts

The proposal offers significant benefits to the people of NSW, and is predicted to:

- Earn at least \$2.5 billion in export revenue;
- Provide continued employment for approximately 260 people, who would spend between \$15 to \$20 million dollars a year in the regional economy;
- Provide indirect employment for between 500 and 800 people, due to the flow on effects of its operations;
- Improve the viability of the Ravensworth East mine, which has 50 employees, by allowing coal from Ravensworth East to be processed at the Mount Owen CHPP, and exported rather used for domestic power generation at the Liddell or Bayswater power stations;
- Increase the likelihood of production at Glendell mine, which is expected to employ 120 workers, by allowing coal from Glendell to be processed at Mount Owen and exported, and reducing the upfront capital costs of the mining operations;
- Contribute at least \$50 million to the economy in capital spending on infrastructure;
- Contribute at least \$170 million a year to the regional economy due to spending on goods and services; and
- Provide revenue to the Government through royalties, taxes, and a range of charges.

Impact on community infrastructure and services

Based on its assessment of the additional information provided by the Applicant, the Department is satisfied that the proposal is unlikely to have a significant impact on the Glennies Creek Hall or Rural Bushfire Brigade.

Acquisition associated with the proposal could lead to a reduction in pupil numbers at the Mount Pleasant School, which in turn could lead to a reduction in staff at the school. However, the Department believes there are several considerations and factors that are likely to contribute to the fluctuation of student numbers at the Mount Pleasant School other than the effect of property acquisition associated with this proposal.

The Department notes, for instance, that the Mount Pleasant School serves a fairly large catchment area, extending well beyond the potential acquisition zone of the mine. It also notes that the potential fall in numbers associated with any acquisition as a result of this proposal is likely to be small (5-10%).

The Department supports the mining company's proposal to develop a long-term relationship with the school, and provide funding to support a range of initiatives to increase the attractiveness of the school. It believes that this increased attractiveness, coupled with the company's tenancy policy, could on balance lead to a net increase in student numbers. However, it believes the Applicant should be required to prepare an enhancement program in consultation with the school and to the satisfaction of the Department.

Land acquisition

Notwithstanding the concerns raised by several landowners during the primary session about the likely results of the acquisition process, the Department believes that both the terms of acquisition and the acquisition process set out in the conditions of recent consents for mining proposals are fair and reasonable, and should adequately compensate landowners for the sale of their land.

Several landowners asked the Department why the terms used in development consents differ from the terms used in the *Land Acquisition (Just Terms Compensation) Act 1991*. The *Land Acquisition (Just Terms Compensation) Act 1991* relates only to the compulsory acquisition of land by public authorities for essential services, such as roads, which is slightly different to the current situation where the State would require a private company to acquire land in areas where the impacts of their development cannot be satisfactorily mitigated, but only at the request of the landowner.

In accordance with current practice, however, the Applicant would be required to pay the landowner the following:

- market value for the property at the time of the written request, as if the land is unaffected by the proposal, including all existing and permissible land uses, and the value of any improvements or any improvements physically commenced;
- reasonable costs associated with relocation within the local government area (or to another local government area with the agreement of the Director-General) which should include any financial cost reasonably incurred (or that might reasonably be incurred) as a direct and natural consequence of the acquisition such as :
 - legal costs;
 - valuation fees;
 - moving costs;
 - stamp duty costs in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land acquired);
 - reasonable costs associated with the discharge or execution of a new mortgage resulting from the relocation;
 - economic loss or costs associated with the conduct of a business on the subject land; and
 - cost of other relevant expert advice.
- reasonable compensation for disturbance (over and above the financial costs listed above) as a direct and natural consequence of the land acquisition process. The added compensation is for the predicted and/or actual disturbance to the affected landowners associated with amenity and other extenuating circumstances such as issues of a personal or non-financial nature associated with the relocation. The quantum of what constitutes “reasonable compensation for disturbance” is to be determined by agreement between the landowner and the Applicant on a case by case basis.

Therefore, while the acquisition provisions in development consents do not currently adopt the formal provisions in the *Land Acquisition (Just Terms Compensation) Act 1991*, the Department believes that they are generally in accordance with these terms, and provide fair and reasonable compensation for landowners.

Finally, the Department would like to highlight that none of the landowners that raised concerns about the likely results of the acquisition process have been negotiating with the Applicant under the conditions of the development consent; they have all been conducting private negotiations with the company. However, the Department is confident that some of the problems identified by these landowners could be adequately resolved under the dispute resolution mechanisms that are commonly included in the conditions of consent for mining proposals.

4.7 Other

While the proposal is expected to generate additional impacts (such as heritage, transport, and visual impacts), the Department is satisfied that these impacts can be adequately mitigated, managed, and/or regulated in any conditions of consent that may be imposed on the proposal.

5. RECOMMENDATIONS

The Department is currently preparing its recommendations to the Commissioner on the matters that should be addressed in any conditions of consent for the proposal. While the preparation of these recommendations has been delayed slightly because the Department has only received some of the additional assessment it requested in the last few days, the Department should be able to provide these recommendations to the Commissioner early next week.

Should the Commissioner recommend that the proposal be approved, the Department will prepare a draft instrument of consent for the proposal and distribute this instrument to any interested parties for comment.

These parties will have 14 days to send their comments on the proposal to the Department.

Once the Department has reviewed these comments, it will finalise its assessment of the proposal for the Minister, and the Minister will determine the development application.

6. CONCLUSION

The Department has completed its assessment of the proposal.

This assessment has found that the proposal is likely to have significant economic benefits for NSW, but could also generate a range of adverse impacts. The Department is satisfied that most of these adverse impacts can be mitigated, managed, and adequately regulated through appropriate conditions of consent.

However, even with the implementation of best practice noise and dust mitigation measures, the proposal is likely to cause exceedances of the project specific noise and/or dust acquisition criteria at 16 properties, and of the cumulative dust acquisition criterion at a further 5 properties. In order to mitigate these residual impacts, the Department believes that the landowners of these properties should be given the right to ask the Applicant to acquire these properties at a fair and reasonable price.

In conclusion, the Department is satisfied that there is sufficient information available to determine the application, that the proposal offers significant benefits, and that the

residual impacts of the proposal can be adequately mitigated, managed, offset or compensated for. Consequently, it believes the proposal should be approved subject to strict conditions of consent.