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Dear Ms McNally

4 July 2016

Submission: Anglo American Response to Planning Assessment Commission Review Report

The Hunter Thoroughbred Breeders Association appreciates the opportunity to make this submission to the Department of Planning and Environment on Anglo American's Response to the Planning Assessment Commission Review Report.

Since the commencement of the assessment of Anglo American's proposal for a new open cut coal mine at Drayton South we have made no less than 8 submissions, appeared before three Planning Assessment Commissions and provided information to the Gateway Panel.

Our position, and the supporting evidence from economic, environmental and other experts, has been consistent. The Anglo American proposal for a new mine at Drayton South is unacceptably risky, uneconomic, non-compliant with Government policies and standards, and not in the public interest. We have tendered economic and scientific evidence demonstrating a new mine at Drayton South will:

- Result in a net economic loss to the NSW economy (due to the understatement of costs and overstatement of benefits by Anglo American by at least 1.5 billion);
- Result in a net economic loss to the regional economy of \$120 million every year;
- Place at least 640 jobs in our industry at risk;
- Damage the operations and reputation of Coolmore and Darley their future viability and in turn the future viability of the entire Equine Critical Industry Cluster in the Hunter Valley;
- Irreparably sully the reputation of the Hunter Valley as Australia's Horse Capital and a Centre of Thoroughbred Breeding Excellence;
- Impose unacceptable health and environmental risks on our community, strategic agricultural land and water systems;
- Cause irreversible damage to the landscape, history and heritage of the region; and
- Is not in the public interest and should not be approved.

The resolute findings throughout a five-years plus assessment process (since Anglo American lodged its first application for a new open cut coal mine at Drayton South¹) and the findings of at least 18 independent NSW Government experts and their advisers are:

- coal mining and international thoroughbred breeding enterprises are incompatible land uses in close proximity;
- Coolmore and Darley are **THE critical central players** and **epicenter** of the Equine Critical Industry Cluster and should be afforded the highest protection;
- the Hunter Valley's Equine Critical Industry is important, should be protected to ensure long term-sustainability and a diverse economy, and that a buffer [to protect from mining] is necessary;^{2, 3, 4, 5}
- this project is not in the public interest and should not proceed.

Anglo American's Response to the PAC Review does not present any new credible information to change those findings.

In our submission to you dated August 2015, which we understand your Department did not have the opportunity to consider before completing the Secretary's Preliminary Report on this matter, we argued that there were substantial and significant grounds for refusal of this project. A copy of this submission is attached.

In our submission to the Planning Assessment Commission dated 2 October 2015, we re-submitted evidence of the importance of the Hunter Valley's Thoroughbred Breeding Industry and the critical importance of Coolmore and Darley as the central actors of both the industry and its future sustainability. We also tendered scientific evidence (socio-economic, environmental and equine) commissioned following the EIS report and therefore previously not seen by your Department. This scientific evidence demonstrated that the Drayton South project has unacceptable environmental impacts – including exceedances in noise and air quality (contrary to NSW and national standards and unacceptable risks to human and equine health) and posed unacceptable risks to surface and groundwater systems, landscape and brandscape. This submission is also attached to inform your deliberation.

In this submission we focus on Anglo American's May 2016 response to the Planning Assessment Commission Review report which was released in November 2015 and key considerations the Department now needs to take into account in forming its recommendation on this matter.

We trust that the Department will execute its responsibilities as an impartial arbiter, subject the project to the highest level of rigorous scientific and socio-economic scrutiny, and recommend against this project.

Anglo American Response

1. In its response to the Planning Assessment Commission (PAC) Review Report Anglo American, and their consultant Houston Kemp, presents incorrect and flawed arguments to support their position that the Hunter Equine Critical Industry Cluster (CIC) will not be threatened or decline if Coolmore and Darley left the Hunter Valley.
2. In doing so they chose to either misconstrue the structure and nature of our industry and the critical importance of Coolmore and Darley to the Hunter's thoroughbred breeding industry, or entirely misunderstand the industry which in itself is a grave blunder given the serious issues at stake.
3. They chose to ignore the strong body of evidence presented by domestic and international industry leaders and 18 Independent Government experts who have demonstrated beyond a doubt that Coolmore and Darley are **"central players"**⁶ and **"pivotal"**⁷ to the Hunter Valley's Equine CIC.
4. They chose to downplay the fact that Coolmore and Darley are **THE pre-eminent players** in, and the **"epicenter of"**⁸ the Australian Thoroughbred Breeding Industry – representing over 40% of the stallion market in Australia, commanding 50% - 60% of the top ranked sires in Australia, and representing over 50% of progeny selling at auction houses or competing on the racetrack.
5. And, by downplaying the importance of Coolmore and Darley, they seek to downplay the devastating impact that any damage to Australia's two leading players will have on the remainder of the Equine CIC, to NSW's breeding and racing industry, to Australia's (and NSW's) reputation as an international centre of thoroughbred breeding excellence, and to investor's perceptions of Australia (and the Hunter Valley).
6. In this submission we demonstrate why Anglo American's Response and the Houston Kemp analysis is fundamentally flawed, why it cannot be relied upon and why it should be given no weight by your Department.
7. For the record, we have little knowledge of Anglo American's consultant, Mr Greg Houston or his background in the industry. While we note his economic credentials from his CV, we also note that credible economic analysis must be accompanied by a sound understanding of the market (structures, forces and drivers) to which it is applied. Given the fundamental errors of knowledge,



and assumption indicated by the Houston Kemp report, we question Mr Houston's "substantial experience of the equine industry".

Anglo Response Based on False Premises

8. Despite the overwhelming weight of evidence to the contrary, Anglo American's Response is predicated on the assumptions that:
 - despite situating an open cut coal mine within 1km of the world's two largest thoroughbred breeding studs in the Hunter Valley ⁹, it would be in Coolmore's and Darley's strategic, operational and financial interests to maintain their operations in the Upper Hunter;
 - if Coolmore and Darley did not wish to remain within 1km of an operating open cut coal mine they could move elsewhere in the Upper Hunter;
 - in the event they did leave the Hunter, the Equine CIC would not be under threat;
 - new entrants would enter the market or existing players would expand to fill the gap; and
 - the Upper Hunter Equine CIC will still thrive and be the largest thoroughbred breeding region in Australia and New Zealand.
9. These are heroic assumptions with no basis in reality, premised on misguided analysis and ignore the facts.
10. **Nowhere** in the world does an international scale thoroughbred breeding stud operate within 1km of an open cut coal mine.
11. It would **not** be in the studs' commercial, financial or strategic interest - nor that of any of the studs /participants in the Equine critical industry cluster serious about maintaining its competitive edge, reputation and investment attractiveness – to risk its operations and reputation by being in such close proximity to an open cut coal mine.
12. It makes **no business or financial sense and is certainly not strategic**. There is no stud in the world of the caliber of Coolmore and Darley that would chose to locate next door to an open cut coal mine and consider that a good and strategic business decision. This is not just our opinion, based on experience and industry knowledge, but that of 18 Independent Government experts, and their advisers and the expert view of international investors.
13. The thoroughbred breeding industry is in the business of producing elite athletes whose lung capacity, bone strength and stamina is fundamentally critical to their athletic performance.
14. This is an industry that is predicated on a clean, green, serene environment. The incongruity and incompatibility of operating international scale thoroughbred stud farms within 1km of a noisy, smelly, dirty, blasting, night light glow operation has been recognised by 3 Independent PACs and the Gateway Panel and should be self-evident to any reasonable person.
15. Anglo American and their consultant Houston Kemp suggest that should Darley and Coolmore not wish to be next door to an open cut coal mine they can simply relocate somewhere else in the Upper Hunter. A simple statement that betrays the sense of entitlement and ignores market realities in the Upper Hunter and the fundamental objects of the EP&A Act.
16. Coolmore and Darley are international scale thoroughbred stud operations and equivalent land masses - should they even contemplate moving – are not readily available in the Upper Hunter. Further significant investments and time (up to a decade) would be required to improve pastures to the standard that these two international scale studs operate. Finally, and importantly, why would anyone risk moving somewhere else in the Upper Hunter where there is **no protection and no guarantee from future mining encroachment?**



Demise of Hunter Equine CIC

17. Anglo and its advisers falsely assume that the Equine CIC will continue to thrive and remain the largest thoroughbred breeding region in Australia without the presence of Coolmore. He claims that the Upper Hunter would remain the best place to stand stallions if Coolmore and or Darley were forced to leave.
18. This assumption demonstrates complete lack of understanding of the industry, its interconnectedness, its reliance on Darley and Coolmore - both of whom are pivotal to not only the future sustainability of the industry, but its critical mass and its investment attractiveness. As the world's two largest global players they are of a size and value that is larger than the rest of the Hunter Valley operations put together and larger than all the other states put together. To suggest that the Hunter would remain unchanged if either or both of these players were forced to move is simply wrong.
19. The assumption also reflects a failure to understand that premier stallions are highly mobile. Their services are highly valued and in high demand. Broodmare owners intrinsically seek out and follow the best stallions. It is a symbiotic relationship premised on good commercial sense and a common objective – to produce champion thoroughbreds. And where stallion farms go broodmare farms and equine services will follow.
20. If Darley and Coolmore were forced to leave and if they relocated their operations to Victoria, Victoria would become the critical mass and centre of thoroughbred breeding in the Hunter Valley. Coolmore and Darley's clients would move with them, the Hunter's equine CIC would enter into decline, equine support services in the Hunter would either wither or follow the exodus to Victoria.
21. Research on critical industry clusters presented by the 2013 PAC demonstrated that "every cluster is at risk of decline and possible demise" particularly "without constant attention and support" and "there are a variety of potential reasons for this decline" including:
 - "the emergence of competing clusters elsewhere;
 - the diminishment, degradation, or transition to other uses of the land resources that support a land-based cluster
 - Government regulations that restrict the adaptability and flexibility of the businesses in the cluster or intervene in the internal competition among firms;
 - The failure to implement public policies that nurture and sustain the viability of the cluster."¹⁰
22. All three PAC's that have assessed the Drayton South proposal have concluded that the impact of this one mine on the Equine CIC could cause the immediate decline and possible demise of the Hunter Valley's CIC.
23. Analysis by Marsden Jacob Associates throughout the assessment process for this project has also demonstrated that if this mine were to proceed and Coolmore and Darley were forced to leave the Hunter Valley this would "fragment the Hunter Valley's Equine CIC, destabilise the concentration of interconnected broodmare farms and equine support industries, negatively impact NSW's world famous breeding and racing reputation" and cause "material and irreversible repercussions that would be felt throughout the NSW breeding, racing and service industries."¹¹
24. These findings are reinforced in Marsden Jacob Associates most recent June 2016 report along with analysis demonstrating that should the market leaders, Coolmore and Darley, be forced to leave and relocate to Victoria, the Hunter Valley would no longer remain the geographical hub of premier thoroughbred breeding in Australia – which would transfer to Victoria with the consequent dismantling of the Hunter Valley's Equine CIC.
25. Anglo American's consultant, Houston Kemp, makes many unsupportable assumptions to support his claim that the Equine CIC would not be threatened in the case if either or both Coolmore or Darley were forced to move.



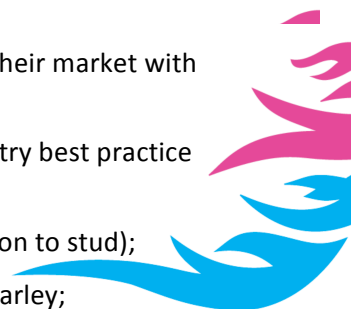
26. Mr Houston's report makes the flawed assumption that the Upper Hunter will be essentially unchanged if the Drayton South mine goes ahead¹².
27. Our position remains steadfast and is supported by many qualified and experienced domestic and international industry leaders and 18 NSW Government experts. Should the Drayton South mine proceed, the thoroughbred breeding industry and cluster in the Hunter Valley and the investment attractiveness of the Hunter for thoroughbred breeding will change forever.

New Entrants Cannot Fill the Gap

28. Houston Kemp attempts to apply theoretical economic assumptions, which are incompatible with the industry's structure, operations and business model, to suggest that open cut coal mining in close proximity would pose no reputational or business threat to the industry's largest players; that the potential withdrawal for the market leaders would have no impact on the Equine CIC as either new entrants would fill the gap; or that broodmare farms could switch to become stallion farms or that existing players would extract more output from existing stallions.
29. These theoretical assumptions are fundamentally implausible when applied to the thoroughbred breeding industry because they:
 1. Ignore recent decisions of global investors who have chosen not to invest in the Hunter Valley because of the threat of mining and the risk that would pose to their investments and business operations¹³ (For example, Spendthrift, one of the US's largest thoroughbred stud farms recently decided to invest in Victoria due to the threats posed by mining in the Hunter Valley and bloodstock adviser to Sheikh Fahad Al Thani, Mr David Redvers ruled out the Hunter Valley as an investment location due to mining encroachment following his visit in 2014);
 2. Reveal a complete lack of knowledge of the industry and the fundamental differences between stallion and broodmare farms (including investment, services, infrastructure, horse handling and management);
 3. Demonstrate a total lack of understanding regarding the performance of premium stallions – who are currently fully booked and have little, if any, room to expand their services to fill a gap of servicing 3,000 mares - and the impossibility (both physical and financial) of remaining domestic players simply acquiring premium stallions to fill the gap.
30. We also note that Mr Houston's views are contrary to the opinions attributed to him in the judgment of the McHugh vs Australian Jockey Club Limited (2012) that the thoroughbred breeding market "is a very unusual market"¹⁴ and that "a feature of stallion breeding services is a small number of larger studs and popular stallions."¹⁵

Stallion Substitutability is not possible

31. Anglo American's Response, and the analysis conducted by Houston Kemp, are premised on the assumption that premium stallions can either increase their services to service 3,000 mares or that premium stallions can be found to cover the gap left in the event Coolmore and Darley were forced to leave.
32. This assumption ignores simple market realities that:
 - Should Coolmore and Darley be forced out of the Hunter Valley they will take their market with them;
 - Premium stallions are already operating at optimum capacity in line with industry best practice and best practice horse husbandry;
 - Premium stallions take at least a decade to "prove" themselves (from conception to stud);
 - Some 12 new stallions would be required to fill the gap left by Coolmore and Darley;



- New premium stallions do not exist to fill this gap – and in the event that they did – very few industry players, outside Coolmore and Darley, would have the investment wherewithal to purchase them.
33. HTBA President, Dr Cameron Collins is an expert in equine reproduction with a particular focus on stallion fertility. In his professional opinion, Dr Collins notes that Mr Houston's assertion that much of the excess mare capacity which would be generated by Coolmore's exit with their stallions from the Hunter Valley could be taken up by increasing the workload of existing stallions is simplistic and demonstrates a lack of understanding of the biological limitations involved in horse breeding.
34. Dr Collins has confirmed that there are physical, behavioural and physiological factors which would influence and constrain stallions' servicing performance including:
- The physical demands of regular mating with mares in a commercial stallion operation – which are significant, require careful management of the fitness, conditioning, strength and nutrition and the tailoring of requirements of each stallion based on body type and physical characteristics;
 - The behavioural responses of thoroughbred stallions (including varying levels of libido) required to cover large populations of mares on a regular basis and for a longer period of time compared to stallions "in the wild";
 - The ability of stallions to achieve conception in a mare, which is dependent on sperm capacity and age.
35. The Hunter's thoroughbred commercial breeding industry operates at the highest levels of animal husbandry. Premium stallions are already fully booked. It would not be possible to simply assume that the withdrawal of Coolmore's and Darley's elite stallion strength could be substituted by increasing the capacity of existing stallions or somehow discovering 12 new stallions of equivalent standing and lineage to fill the gap.

Marsden Jacob Analysis of Houston Kemp

36. Coolmore and Darley commissioned Marsden Jacob Associates to review the Houston Kemp analysis. The Marsden Jacob analysis confirms that Houston Kemp's findings are based on flawed assumptions that result from a misinformed analysis of data which:
- Is at odds with previous reports by Mr Houston which recognise that the thoroughbred breeding industry is diverse, heterogeneous and unique;
 - Incorrectly assumes that stallion and mare fertility is homogeneous;
 - Incorrectly assumes stallion libido is homogeneous;
 - Underestimates the number of stallions that would be required to fill the gap should Coolmore and Darley relocate outside the Hunter Valley;
 - Fails to recognise that the market for premium stallions is constrained;
 - Falsely assumes that Coolmore and Darley could simply relocate and stay in the Hunter Valley;
 - Misunderstands the breeding market – particularly that mares follow stallions so if Coolmore and Darley were forced to relocate to Victoria they would take their market with them;
 - Ignores the fact that the market for premium stallions is constrained;
 - Miscalculates the Victorian market;
 - Fails to recognise that if Coolmore and Darley were to relocate to Victoria, the Victorian market would become larger than NSW; NSW would no longer be the largest thoroughbred breeding market in Australia and the net economic impact on NSW would not be mitigated.



37. In its July 2016 review, Marsden Jacob found that Anglo American's Response:

- Confirms a thermal coal price of AUD \$102 per tonne which is unrealistically high and **artificially inflates the proposed benefits of this mine by some \$400 million**;
- Does not address many of the issues with their economic analysis that have been previously identified – including **miscalculating the costs and benefits by at least \$1.5 billion** (present value); the consequent social loss that would result from this project; and the non-compliance with government requirements;
- Draws into question key assumptions underpinning its economic analysis and increases the risks and uncertainties associated with the project as a result of recent (disinvestment) announcements by Anglo American;
- Highlights the significant flaws of comparing Edinglassie to Coolmore and Darley.

38. Marsden Jacob again re-emphasised that:

- The Hunter Valley thoroughbred breeding industry is important and interconnected;
- Coolmore and Darley are **critical and core businesses** to the sustainability of the Upper Hunter Equine CIC;
- Drayton South mine is not economically beneficial, and continues to overstate the benefits and understate the costs of the project;
- The size of the coal resource has also been overestimated and if appropriate sensitivity analysis were applied **this could reduce the value of the coal resource estimate by 35% or over \$910 million (present value)**;
- Anglo's analysis over-estimates the benefits by avoiding rehabilitation and decommissioning costs and, incorrectly, including non-market employment benefits, under-estimating capital costs; and under-estimating the externality impacts of the Drayton South coal project and the impact on NSW if Coolmore and Darley were forced to leave the Hunter Valley.

39. MJA conclude that in light of Anglo American's announcements that coal assets are being sold and operations are ceasing at Drayton North, the obvious presumption is that Anglo American is only seeking this approval so that the land can be sold with a development approval. Their conclusions also point to systemic optimism bias in Anglo's Response that necessitates careful consideration and robust sensitivity testing.

Signals to Investment Community – NSW Not Open for Agricultural Business

40. In our submission to you on 4 June 2014 we presented evidence from international leaders of the thoroughbred breeding industry attesting to the critical importance of the landscape and the environment which influence and determine domestic and international investor decisions to invest in this industry.
41. We outlined that over the past two or three decades, Australia has worked hard and has achieved great success in global breeding and racing markets. This timing coincides with Coolmore's and Darley's entry into the Australian market and the attention and influence their investment decisions, world scale operations and access to premier breeding and stallion bloodstock has had on:
- attracting international attention and investment, broodmare operations, a sophisticated network of equine support industries; and
 - the Hunter Valley's emergence as one of three respected and world renown centres of Thoroughbred Breeding Excellence.
42. The global market for the thoroughbred investment dollar is fiercely competitive. Image and reputation are paramount foundations for the industry. Any risks to image and reputation will place breeding operations in the Hunter Valley at a competitive disadvantage.



43. For prospective domestic and international investors perception is reality. NSW and the Hunter Valley is already losing opportunities for significant investment (see Endnote 13), industry growth and the creation of additional sustainable long term jobs due to the uncertainties created by the proximity of mining to key breeding operations.
44. The HTBA, prominent industry leaders (both domestic and international) and many other experts have attested that the approval of an open cut coal mine within 1 km of international scale studs would:
- Be unprecedented in the world;
 - Signal to the entire domestic and international thoroughbred breeding industry that our industry is not valued and is expendable, that economy diversity is not important, that the Hunter Valley is not a safe or sensible investment location, and that NSW is closed for any future investment in agriculture because **nowhere is safe from coal mining**;
 - Trigger the demise of the Equine Critical Cluster that has taken many decades to build;
 - Irreparably damage the Hunter's Equine CIC and NSW's and Australia's reputation as a premier breeding location;
 - Risk the health of the community, sustainable agricultural industries, water systems, long term jobs;
 - Irreversibly alter the landscape and the region's heritage and history; and
 - Make a mockery of NSW Government policies, the NSW planning system and the findings and decisions of 18 Independent NSW Planning Commissioners and the NSW Gateway Panel.
45. A decision to approve one marginal coal mine that:
- its own parent company has publicly described as "non-core asset";
 - is being divested as Anglo American publicly exits the Australian thermal coal market;
 - is insignificant in terms of production in the context of the Upper Hunter (a fact recognised by Houston Kemp)¹⁶
 - whose ultimate owner and future is not known; and
 - put at risk the future viability of Australia's and the world's two largest thoroughbred breeding operators and signal that they are not valued or wanted in Australia;
- would send shock waves not only across our industry but across global thoroughbred investment community.
46. It would be a very public and devastating blow made worse by the fact that such a recommendation would favour an approval of a mine in an industry that by its own admission is in structural decline, exiting, dismantling its operations and dismissing its employees.

Risks – Unacceptable and cannot be managed

47. In direct denial of the weight of evidence proffered by industry and Government experts and the conclusive findings of 3 PACs, Anglo American continue to suggest that the project poses no risk to stallions, low risks to landscape, image, branding and operating performance of the studs, no risk to human and equine health and the Hunter Valley's reputation.
48. Respected and highly credentialed domestic and international equine respiratory and behavioural specialists fundamentally disagree with the claims made by Anglo American. Evidence tendered by Drs Tennent Brown (University of Melbourne Equine Centre), Andrew van Epps (University of Queensland Equine Hospital) and Andrew Maclean (Australian Equine Behaviour Centre) attest to the **serious risks to equine health** posed by coal mining related dust and blasting – including



behavioural responses, chronic stress, deterioration of learning abilities, miscarriages and reproductive disorders.

49. Anglo American has consistently failed to provide any conclusive evidence to guarantee no impacts on thoroughbreds as a result of this proposed open cut mine. Their continued claims that the project poses no risk to stallions or equine health is not credible and cannot be relied upon.
50. Anglo American state that “even if any risk did occur during the operation of the project, it could be avoided and/or minimized through adaptive management ...”¹⁷
51. This statement entirely disregards the fact that once the damage is done it is too late.
52. In our previous submissions, and those of Coolmore and Darley, expert evidence has been tendered to demonstrate the potential irreversible and irreparable damage this project could have on the studs’ operations and reputation, the unacceptable environmental impacts- including air quality, noise, water and the irreversible impacts on landscape non-aboriginal and aboriginal heritage.
53. In rejecting Anglo American’s first application for a similar new open cut coal mine at Drayton South in October 2014, the PAC determined, inter alia “The approach of monitoring the responses of thoroughbred horses to the mine’s operation to address uncertainty is not acceptable because once the damage to the operations of the studs occurs, it is irreversible.”¹⁸
54. In its 2015 Review Report, the PAC once again found that:
 - a. “the impacts of the project have been minimized and mitigated as far as is feasibly possible for an open cut mine on this site.”¹⁹
 - b. “The information provided throughout the application and review process has been unable to satisfy the Commission that the impacts, real and perceived, to the studs could be tolerated by their clients and investors and consequently that the risk to the Equine Critical Industry Cluster is acceptable and manageable. The Commission finds that the Department’s assessment and recommended conditions leave residual uncertainties and the potential for a number of risks to be unmitigated.”²⁰
 - c. “In this case, the Commission does not consider that the land use conflict can be resolved or mitigated if the project were to proceed as proposed. Nor are there any clear mitigation strategies that the Commission could recommend that would allow for the coexistence of the proposed mine and the Equine Critical Industry Cluster to be assured with certainty.”²¹

Unacceptable Impacts

55. Anglo American claims that the project complies with relevant (air, noise and blasting) criteria at Coolmore and Darley Woodlands. Air quality, noise and blasting expert reports commissioned by Coolmore and Darley Australia to the PAC in October 2015 demonstrate that this is not the case.
56. In our submission to the PAC (appended) we noted the findings of noise and air quality experts (Arap Acoustics and Stephenson Environmental) that it is **unacceptable for the Drayton South mine plan to commence from the premise that it will result in exceedances in noise and air quality, contrary to the NSW and national standards.**
57. Dr Stephenson found **serious deficiencies in Anglo American’s air dispersion modeling.** The background ambient air quality assessment does not provide an adequate basis for a proper assessment of the project impacts in Darley and Coolmore studs and that if the nominated dust control is not achieved, dust emissions may be up to three times greater and the “project alone” impacts on air quality will exceed the relevant air quality limits from Year 4. Dr Stephenson concluded that “the cumulative impacts of the project will cause dangerously dusty conditions”.
58. In its assessment of air quality, the PAC Review noted that exceedances of applicable dust criteria are predicted by the Applicant.²² The PAC consulted the EPA on this issue and in its Review Report



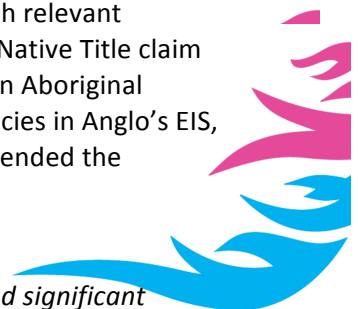
concluded that “the Department’s belief that significant short term cumulative impacts can be avoided may be somewhat optimistic.”

59. The PAC concluded that “Ultimately amenity impacts from 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 respectively.”²³
60. In his analysis of **noise and blasting** Mr Butera of Arap Acoustic found that Anglo American’s noise assessment has not been undertaken in a proper or adequate manner and may not be representative of the predicted noise from the project. Mr Butera found that the ground vibration and over-pressure assessment had been undertaken based on criteria for “control of damage” to structures, that there was no assessment of the impact on human or animal comfort and that there was a high risk that compliance with the adopter ANZECC is likely to adversely impact on human or equine comfort at nearby sensitive locations.
61. Mr Butera also found that Anglo American’s EIS demonstrates that the Industrial Noise Policy noise limits may be exceeded, the Kannegieter report failed to adequately address the impact of ground vibration or overpressure noise on horses and given the importance of noise and vibration impacts of human and equine health and the viability of the studs, no confidence can be placed on Anglo American’s noise and blasting analysis.
62. In its November 2015 Review Report the PAC found that “it is expected that there will be some noise impacts due to the project”. “Notwithstanding the concessions of the Applicant ... the Commission has found that these impacts —mitigated to a reasonable extent—are still in relatively close proximity to the studs. At this proximity, the impacts represent a real risk to the brand and image of the studs, and more importantly to the studs’ reputation, and consequent viability in this location.”²⁴
63. To argue that there are no actual impacts on the studs (or to equine or human health) as a result of Anglo’s own admissions of exceedances, contrary to NSW standards, and lack of proper analysis is incomprehensible.

Omissions

64. We note that Anglo American has not responded to key issues raised in our submission and by the PAC.
65. Evidence tendered by heritage experts (GML Heritage) have conclusively demonstrated that after five years Anglo American’s **non-aboriginal heritage** assessment remains incomplete, is contrary to the ICOMOS Burra Charter 2013 and that once damage is done to the Upper Hunter’s historic landscape it is irreversible and irreparable. It cannot be established that all impacts can be satisfactorily managed or mitigated and the requirement to prepare a Heritage Management Plan following approval does not reflect accepted process or practice in accordance with Article 6 of the Australian ICOMOS Burra Charter.
66. Contrary to the Department’s Preliminary Assessment Report, these experts also conclude that ignoring these serious deficiencies and seeking to defer the assessment of cultural heritage to future unspecific management plans is both unconscionable and unacceptable.
67. GML also found that Anglo’s **Aboriginal Heritage** assessment does not conform with relevant Government guidelines, the project application area is entirely within a registered Native Title claim area, the Native Title claimants have not been consulted, the cumulative impacts on Aboriginal heritage values have not been recognised or assessed. Given the manifest deficiencies in Anglo’s EIS, which were not identified in the Secretary’s Preliminary Assessment, GML recommended the application of the precautionary principle and the refusal of this mine.
68. These concerns were echoed in the PAC’s Review Report²⁵:

“... The Commission acknowledges that open cut mining in the Hunter Valley has had significant



impacts on the wider landscape and associated Aboriginal cultural heritage values of the valley. In this regard, strategic consideration of cultural landscapes and places within areas of significant mining would help to identify priority areas for protection and provide scope for the consideration of cumulative landscape changes and impacts. This in turn might provide a more sophisticated Aboriginal cultural heritage assessment process, giving greater attention to existing OEH guidelines and Burra Charter requirements for consideration of the significance of Aboriginal cultural heritage values of an area, to properly examine not only the physical artefacts but also the wider cultural landscape connections and the interplay between these elements."

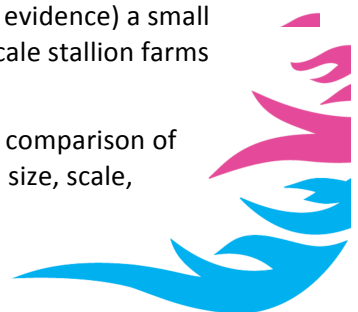
69. Inadequacies in Anglo's EIS were also found with respect to landscape where the **direct visual impacts, and indirect visual impacts** (such as dust, gas, lighting, blasting, blast plumes) will be audible and visible to all visitors, clients and staff at the studs and no amount of conditions can protect the studs from the highly intrusive and visually impactful nature of open cut coal mining in such close proximity.
70. In its Review Report the Commission found *"that the indirect and dynamic visual impacts of the project represent a risk to the image and reputation of the studs. Potential reputational impacts should evidence of blasting become apparent to clients during visits, or via media and the internet, are of particular concern. Aside from any actual impact to the horses, blast impacts, and other evidence of mining in close proximity, are inconsistent with the image so carefully cultivated by the studs."*²⁶
71. We submit that the risks this project poses to the operations of Coolmore and Darley and the Hunter's Equine CIC are unacceptable, unmanageable, and cannot be mitigated or conditioned. Once the damage is done it will be irreversible.

Impacts on Coolmore and Darley

72. No rationale economic or business decision-maker would choose to operate any business less than 1 km from an open cut coal mine if that business was vulnerable to threats to its image or reputation or predicated on a clean, green, serene image.
73. Four (4) Independent PACs have attested to the incompatibility of international scale thoroughbred breeding enterprises and coal mining in close proximity. 3 Independent PACs and the NSW Gateway Panel have outlined the unacceptable risks to the operation, viability and reputation of international scale studs that this project poses.
74. **To suggest that in reaching its conclusions and recommendations the PAC has taken a simplistic view, ignores the constancy of analysis and strong body of evidence from 12 individual and independent Commissioners, plus their independently appointed experts, all of whom have reached similar conclusions - that this project poses unacceptable risks to the studs, the Equine CIC, to the viticulture and tourism industries in the region, to regional economic diversity. That is why all 3 PACs on Drayton South to date have recognised that this project is not in the public interest and have either recommended or determined that it should not proceed.**

Edinglassie

75. Anglo American has sought to misrepresent and mis-compare (and without cogent evidence) a small broodmare farm on land owned by BHP with independently owned international scale stallion farms to extoll a version of co-existence which is not viable and driven by self-interest.
76. This comparison has been discredited by industry experts and numerous PACs²⁷. A comparison of Edinglassie to Coolmore and Darley is not valid on any variable – type of operation, size, scale, independence, cost drivers, business models, domestic and international prestige.



77. Importantly **what Anglo American is proposing, and what is not feasible, acceptable or commercially credible, is that Australia's two largest stud farms should place their commercial interests and global reputations in the hands of a mining company.**
78. As the 2015 Review PAC recognised "The feasibility of the stud farm and the mine both being able to coordinate activities around the other's programs is questionable. The Commission is not aware of any example of such cooperative systems successfully operating between two entirely differing neighbouring land uses."
79. "In this instance one neighbour would need to be nominated as having priority to veto the other's activities. For example, Coolmore would need to be able to have the power to prevent a scheduled blast from occurring at a certain time, while an extended covering was completed. It also seems likely the Applicant would need to have the ability to extend its scheduled blast period in the event of a misfire that requires refiring or some other problem occurring during preparation or detonation of the blast, including changing weather conditions. The potential intrusion each land use could have on the other's operations could be significant, making successful coexistence difficult."
80. In the words of the 2015 Review PAC "espousing coexistence does not make it so."²⁸

Errors and Misdescriptions

81. In its report Anglo American takes exception to the characterisation of Drayton South as a new mine.
82. The proposal for an open cut coal mine at Drayton South is on a new title, in a different location over 5km away from Anglo American's existing Drayton coal mine operations with new neighbours and new environmental and socio-economic impacts.
83. The Secretary's Environmental Assessment Requirements recognise that Anglo American's application has two components:
- The continuation of operations at Drayton Mine (which was recommended for approval by the PAC); and
 - "developing a new open cut mining area to extract up to 75 million tonnes of run-of-mine coal over a period of 15 years.
84. Further given both Drayton and Drayton South are being divested by Anglo American, and therefore the future owner and future mine plan are not known (including whether any infrastructure elements of the current Drayton site will be relevant to a new owner) it is entirely appropriate to characterise and assess Drayton South as a new mine.
85. Anglo American incorrectly states that the PAC Review Report appears to largely ignore the significant concessions made by Anglo American in the revised DA. Far from ignoring this point, the PAC in its Review Report stated:
- "The Commission acknowledges the significant concessions the Applicant has proposed ... In most locations these measures would be considered adequate to minimise the impacts on visual amenity in a rural landscape. In this location however, the neighbouring land uses are highly sensitive to amenity impacts, critically important to the Upper Hunter thoroughbred breeding industry and consequently require a very high level of protection. Concerns about the damage any visual evidence of mining in such close proximity to the studs would have on the reputation, image and brand of the studs are real and cannot be readily dismissed."²⁹
86. Anglo American also challenges the uncertainties identified by the PAC Review report regarding the potential benefits of this project. We submit that, given Anglo American's announcements (including announcements earlier this year) regarding the divestment of Drayton and Drayton South, the PAC's and our concerns regarding the benefits and costs of this project are validated.



87. We stand by the comments in our submission of October 2015 to the PAC (appended) regarding **Anglo American's compliance track record** at Drayton North over the past 15 years as an indicator of future compliance.
88. Anglo's record of non-compliance in 12 of 15 years – particularly with respect to air quality breaches, blast and noise exceedances, water related breaches (including a penalty of \$103,700 for pumping contaminated water into a dam) and operational breaches such as operating draglines in areas affected by spontaneous combustion) - is proof that risks posed by mining in such close proximity to thoroughbred operations and where communities of people live and raise their children, are unacceptable and cannot be avoided, managed or mitigated.

Legal Advice

89. Anglo American's Response claims that the PAC exceeded its powers in delivering its conclusions. On the basis of our legal advice (attached) we respectfully submit that this claim is founded on a misconstruction of the terms of the Ministerial instruction and mischaracterizes the comments made by the PAC.
90. We note that Anglo American does not agree with the PAC's findings and chooses to attack the validity of their findings. This is consistent with the approach Anglo took to the findings of the Review PAC on its first Drayton South application.
91. The terms of the PAC's brief were plainly sufficiently wide for it to comment as it did. Those comments could not, on any fair reading, be said to amount to the making of "planning policy".
92. We also submit that Anglo's assertion that "damage to reputation is not a relevant impact requiring assessment to the Planning Act" ignores s 79 C (1) (b), (d) and in particular (e) of the Environmental Planning and Assessment Act.
93. Anglo American's reference to the *Telstra* decision is not contextual. That case concerned, inter alia, the anxiety of certain members of the public to possible electromagnetic radiation from a proposed mobile phone tower (for which there was no proven scientific basis), not the legitimate concerns about damage to the commercial reputation of established businesses where perceptions of harm have a real and immediate adverse financial impact.

Considerations for Decision Makers

94. In reaching your recommendations we note that you must take into account the requirements of the EP&A Act, the PAC's findings, Government policies, the Secretary's Environmental Assessment Requirements as well as submissions made to you by stakeholders.
95. By any measure, whether it is the:
- Government's Strategic Regional Land Use Policy for the Upper Hunter which advocates for the protection of the industry;
 - Consistent and unwavering findings of 3 Independent PACs recommending against the proposed open cut mine at Drayton South;
 - Requirements of the objects of the EP&A Act which call for the proper management, development and conservation of agricultural lands and water; the promotion of social and economic welfare; orderly and economic use and development of land, and the protection of the environment that result in ecologically sustainable development;
 - Requirements of section 79C of the EP&A Act – particularly consideration of the suitability of this site for the proposed development, the environmental and socio-economic impacts and the public interest;



the Anglo American proposal for an open cut coal mine at Drayton South does not stack up, will result in a net economic loss to NSW, will threaten the viability of sustainable long term industries and jobs and is not in the public interest.

96. Given the many flaws in Anglo's Response we submit that you place no weight on this report, take into account the significant uncertainties associated with an application for a mine that is being divested by its owner, and the unacceptable risks to sustainable long term industries, jobs, the environment, and the diversity of the regional economy, and recommend against the Drayton South open cut coal mine.

Yours sincerely



Dr Cameron Collins
President

Enclosures:

1. *HTBA Submission – Drayton South Coal Project – Response to Submissions, August 2015*
2. *HTBA Submission to the Planning Assessment Commission Review of the Drayton South Project, 2 October 2015*
3. *Anglo American's "Response to Planning Assessment Commission Review Report, May 2016" for the Drayton South Coal Project - Beatty Legal, 1 July 2016*



¹ 4 March 2011 – on the eve of the NSW 2011 election

² The Commission found that the Coolmore and Darley operations are critical to the broader Equine Critical Industry Cluster and should be protected and that a buffer is necessary. (Planning Assessment Commission Review Report December 2013, p 1)

³ The Commission is of the opinion that the Equine Critical Industry Cluster needs to be valued and actively protected by Government to ensure the long-term sustainability of the thoroughbred breeding industry in NSW and that a diverse economy is encouraged and maintained in the Upper Hunter. (Planning Assessment Commission Review Report December 2013, p 50)

⁴ The importance of the Equine Critical Industry Cluster, its sensitivities to intensive development and the landscape character of its central operators, including the Coolmore and Woodlands studs, needs to be acknowledged with the development and enforcement of appropriate buffers, exclusionary zones or preservation measures to safeguard this important industry. (Planning Assessment Commission Review Report November 2015, Recommendation 5, p v)

⁵ A considerable buffer should be provided to shield the studs from the mine; The project does not provide sufficient buffer to protect Coolmore and Darley from the impacts of mining as recommended in the PAC Review Report and the Gateway Panel Report. (Planning Assessment Commission Determination Report October 2014, p 2, 20)

⁶ Planning Assessment Commission Review Report, November 2015, pi, Planning Assessment Commission Determination Report, October 2014, p1; Planning Assessment Commission Review Report, December 2013, p 11

⁷ Planning Assessment Commission Review Report, November 2015, p iii; Planning Assessment Commission Determination Report, October 2014, p11; Planning Assessment Commission, Review Report, December 2013, p11

⁸ Planning Assessment Commission, Review Report November 2015, p iv; Planning Assessment Commission Determination Report, October 2014, p11

⁹ Anglo American, Response to Planning Assessment Commission Review Report, Drayton South Coal Project, May 2016, p 4

¹⁰ Planning Assessment Commission Review Report, December 2013, La Tierra Pty Ltd, p 23 of 42

¹¹ Marsden Jacob Associates, Economic impact of the proposed Drayton South Open-Cut Coal Mine development on the Hunter Valley Thoroughbred Industry, October 2013, p ES ii-iii

¹² Houston Kemp, p26

¹³ <http://www.smh.com.au/sport/horseracing/kentuckybased-spendthrift-farms-satellite-site-in-victoria-highlights-concern-over-nsws-hunter-valley-breeding-future-20150730-ginp2i.html>; *No Hunter Valley for Sheikh Fahad* (Breednet 16 April 2014; *Hunter coal crushes horse stud investment*, The Land 16 April 2014.

¹⁴ *Mc Hugh vs Australian Jockey Club Limited* ([No 13] [20120] FCA 1441 (19 December 2012) para 1190

¹⁵ *Ibid*, Para 1107

¹⁶ “Similarly the Drayton South mine will not have a significant effect on the total amount of coal produced in the Upper Hunter, increasing it by around seven per cent per year” Houston Kemp, 29 March 2016, p 26

¹⁷ Anglo American, Response to Planning Assessment Commission Review Report, Drayton South Coal Project, May 2016, p10

¹⁸ Planning Assessment Commission Determination Report October 2014, p 20

¹⁹ Planning Assessment Commission Review Report November 2015 p ii

²⁰ Planning Assessment Commission Review Report November 2015 p iii

²¹ Planning Assessment Commission Review Report November 2015 p 66

²² Planning Assessment Commission Review Report November 2015 p 43

²³ *Ibid*, p 44

²⁴ *Ibid* p 47

²⁵ Planning Assessment Commission Review Report November 2015 p 60

²⁶ *Ibid* p iii

²⁷ For example the 2013 PAC Review Report found “BHP Billiton’s Edinglassie Stud near Muswellbrook is neither a useful example of co- existence between the thoroughbred breeding and coal mining industries nor any benchmark of co-existence because: The case study (NSW Minerals Council, 2012) contains false information ... The mine purchased the stud “*as it was considered to be within an area which would be impacted by the mine*” and these actual impacts have never been independently assessed or published; The scale and nature of operations at Edinglassie is significantly less than that at Coolmore or Woodlands” Planning Assessment Commission Review Report, December 2013, p 35/42

²⁸ *Ibid* p iv

²⁹ Planning Assessment Commission Review Report November 2015 p 39

