

Drayton South Coal Project—Non-Aboriginal Heritage Preliminary Assessment Review Report

Report prepared for Hunter Thoroughbred Breeders Association

October 2015



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Report Register


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The report has been reviewed and approved for issue in accordance with the GML quality assurance policy and procedures.

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1.0 Executive Summary

The Upper Hunter Valley constitutes a significant cultural landscape (See Appendix A). A comprehensive heritage assessment of the cultural landscape values of the Upper Hunter under the NSW and National criteria is still outstanding and should be required prior to any determination. Significant cultural heritage values will be irrecoverably impacted should the Drayton Mine proceed. If the landscape in the Upper Hunter was subject to a heritage assessment under the NSW assessment criteria it would be likely to be found to satisfy one or more of the NSW assessment criteria and be eligible for listing on the State Heritage Register kept by the Heritage Council under the *Heritage Act 1977 (NSW)*. Furthermore, the cultural landscape may be found to satisfy one or more of the National Heritage List criteria under the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).

There has been no further consultation as required by the SEARs with respect to the known and potential social values, meanings and associations associated with the Upper Hunter cultural landscape.

The Department of Planning and Environment's Preliminary Assessment Report does not consider the potential adverse and irreversible impacts on all aspects of cultural heritage significance.

The proposed management and mitigative measures for the heritage sites and heritage landscapes are focussed almost exclusively on physical impacts rather than impacts on historic, social, spiritual and scientific values, and the setting, meanings and associations, which define 'cultural significance' under the Australia ICOMOS Burra Charter 2013.

Given that a comprehensive assessment of the potential impacts on all heritage values has not been undertaken it does not follow that all impacts can be satisfactorily managed and mitigated through measures that focus exclusively on the physical fabric of the affected heritage items and the landscape.

The requirement to prepare a Heritage Management Plan (HMP) following approval of the DSCP does not reflect accepted process or practice according to Article 6 of the Australia ICOMOS Burra Charter, 'the cultural significance of a place and other issues affecting its future are best understood by a sequence of collecting and analysing information before making decisions. Understanding cultural significance comes first, then development of policy and finally management of the place in accordance with the policy'.

For the DSCP, it appears that the Department is satisfied that the project may proceed subject to the HMP being prepared. This indicates that the Department do not anticipate that the HMP will identify any other cultural values or management requirements to conserve significance other than those already identified by AECOM 2012 and 2015. This assumption fails to account for the fact that the significance assessments are still incomplete and that further assessment has the potential to identify different and/or additional cultural values. It also fails to anticipate that the DSCP has the potential to give rise to any adverse and material impacts on cultural significance.

This project will generate a range of risks and impacts on the cultural heritage significance of the historic landscape that cannot be adequately managed through conditions of consent. Mining activity in the locality will fundamentally impact on the significance of the historic cultural landscape in the Upper Hunter and give rise to other material impacts on its form, character, and qualities.

The scale and magnitude of the proposed development activity is not reversible and a cautious approach in line with Article 3 of the ICOMOS Burra Charter is required

2.0 Introduction

GML Heritage Pty Ltd has been commissioned by the Darley Australia and Coolmore Australia to review the Department of Planning and Environment's Preliminary Assessment Report (PEA) and the Proponents Response to Submissions, (PRS) July 2015 for the Drayton South Coal Project (DSCP).

This report addresses non-Aboriginal heritage issues (historic heritage) in the PEA and the PRS.

2.1 Project Description

Anglo American Metallurgical Coal Pty Ltd the proponent for the Drayton South Coal Project (DSCP) has prepared a project application for a new open cut coal mine. The revised and retracted mine plan in the new application has been prepared in response to the PAC determination in December 2013. The new DSCP mine area differs from the previous project application in that two areas of mining activity, Redbank and Houston, have been removed from the application.

The new application proposes to continue operations at the existing Drayton mine for a further 15 years through commencement of new open cut coal mine to the south. The DSCP is anticipated to yield 73.5 million tonnes of coal over the life of the mine from within a project disturbance footprint of 1441 hectares.

2.2 Documentation Reviewed

The following documentation has been reviewed:

- Non-Aboriginal Heritage Impact Assessment, AECOM, June 2012
- Drayton South Coal Project, Planning Assessment Commission Review Report, December 2013.
- Major Project Assessment Drayton South Coal Project (PA11_0062), Secretary's Environmental Assessment Report, NSW Government Planning and Environment, July 2014,
- NSW Planning Assessment Commission Determination Report, Drayton South Coal Project, Muswellbrook LGA, 17 October 2014.
- Drayton South Coal Project Environmental Impact Statement, Executive Summary, May 2015.
- Drayton South Coal Project, Environmental Impact Statement, Volume 1 Main Report, May 2015.
- Drayton South Coal Project, Environmental Impact Assessment, Volume 5 Appendix P Non-Aboriginal Heritage Impact Assessment, March 2015.
- Drayton South Coal Project, Response to Submissions, Hansen Bailey, July 2015.

- Drayton South Coal Project, State Significance Development Assessment (SSD 6875) Secretary's Environmental Assessment Report, Department of Planning and Environment, August 2015.

The AECOM non-Aboriginal Heritage Impact Assessment report dated March 2015 is a modified version of the previous non-Aboriginal Heritage Assessment report prepared by AECOM that accompanied the earlier project application refused by the PAC in October 2014.

2.3 Previous GML Heritage Reports

GML Heritage Pty Ltd has provided advice to the Hunter Thoroughbred Breeders Association (HTBA) and its members Darley Australia and Coolmore Australia with regard to DSCP and non-Aboriginal heritage on several previous occasions. GML has prepared the following reports and presentations:

- Drayton South Coal Project—Heritage Report, October 2013;
- Drayton South Coal Project—Presentation to the Planning Assessment Commission, Public Hearing, Denman Town Hall, 10 October 2013;
- Drayton South Coal Project—Review of Anglo American Justification Report, March 2014;
- Drayton South Coal Project—Presentation to the Planning Assessment Commission, 21 August 2014.
- Drayton South Coal Project—EIS Review Non-Aboriginal Heritage, May 2015.

2.4 DGRs and SEARS

Non-Aboriginal or historic heritage values must be addressed as part of the DSCP planning and assessment processes. The Director General's Requirements (DGRs) dated August 2011 and the Secretary's Environmental Assessment Requirements (SEARs) dated 19 December 2014 identify non-Aboriginal cultural heritage as a key issue.

The Director-General's Requirements issued for the project on 3 August 2011 state the following with respect to non-Aboriginal heritage:

An assessment of the potential impacts on non-Aboriginal heritage values of the location related to its settlement by Europeans and its pastoral history.

Guidelines applicable to the Non-Aboriginal heritage impact assessment specified in the DGR's include the NSW Heritage Manual (NSW Heritage Office and DUAP) and the ICOMOS Burra Charter.

The SEARs dated 19 December 2014, required:

an assessment of the likely impacts of the development on non-Aboriginal heritage, paying particular attention to its settlement by Europeans and pastoral history; and evidence of consultation, noting that consultation carried out for the original Drayton South Coal Project may be relied upon, but should be augmented with further consultation for this project.

The SEARs note the following guidelines and plans as applicable to non-Aboriginal Heritage:

- NSW Heritage Manual

- Statements of Heritage Impact
- Hunter Regional Environmental Plan 1989 (Heritage)

Accompanying the SEARs at Attachment A was the Office of Environment and Heritage's guidance material:

The EIS must provide a heritage assessment including but not limited to an assessment of impacts to State and local heritage, including conservation areas, natural heritage areas, places of Aboriginal heritage value, buildings, works, relics, gardens, landscapes, views, trees, should be assessed. Where impacts to State or locally significant heritage items are identified, the assessment shall:

- a) Outline the proposed mitigation and management measures (including measures to avoid significant impacts and an evaluation of the effectiveness of the mitigation measures) generally consistent with the NSW Heritage Manual (1996):*
- b) Be undertaken by a suitably qualified heritage consultant (s) (note: where archaeological excavations are proposed the relevant consultant must meet the NSW Heritage Council's Excavation Director criteria);*
- c) Include a statement of heritage impact of all heritage items (including significance assessment);*
- d) Consider impacts including, but not limited to, vibration, demolition, archaeological disturbance, altered historical arrangements and access, landscapes and vistas, and architectural noise treatment (as relevant); and*
- e) Where potential archaeological impacts have been identified develop an appropriate archaeological assessment methodology, including research design, to guide physical archaeological text excavation (terrestrial and marine as relevant) and include the results of these test excavations.*

The DSCP proponent Anglo American Metallurgical Coal Pty Ltd has commissioned Hansen Bailey Environmental Consultants to prepare and coordinate the technical reports required as part of the environmental impact assessment. To date AECOM Australia Pty Ltd (AECOM) has prepared a Non-Aboriginal Heritage Impact Assessment, June 2012, (AECOM 2012) and the Drayton South Coal Project, Environmental Impact Assessment, Volume 5, Appendix P: Non-Aboriginal Heritage Impact Assessment, March 2015 (AECOM 2015).

2.5 Background

The key findings included in the previous reports prepared by GML Heritage related to non-Aboriginal heritage are included in this report to assist the Planning Assessment Commission.

GML Heritage prepared the Drayton South Coal Project—Heritage Report in October 2013. Included below is a summary overview of the findings included in that report.

1. One of the key findings in the Drayton South Coal Project PAC report (10 December 2013) was that the additional value derived from the surrounding cultural landscape setting and the continuity of land uses on the properties has not been recognised to any clear extent nor given any meaningful consideration'. (PAC report p 12) The non-Aboriginal heritage assessments prepared for the Drayton South Coal Project have failed to satisfactorily address this fundamental requirement.
2. A report prepared in April 2013 by Clive Lucas, Stapleton and Partners Pty Ltd, for the Heritage Council, Office of Environment and Heritage, titled, *Hunter Estates: A Comparative Heritage Study of pre 1850s Homestead Complexes in the Hunter Region Volume 1:*

Historical Context and Survey of Sites evidences the NSW Government's understanding, interest and appreciation of the history and heritage values of the Hunter Region.

3. In the Hunter Estates report the assessment of heritage significance identifies characteristics relevant to the consideration of the Drayton South Coal Project. In the assessment the report finds evidence of the cultural significance of the region that is apparent today includes the following:
 - A historic and cultural phenomenon associated with a specific approach to settlement in Australia in the 1820s that demonstrates early surviving evidence of the foundation layer of settlement in the Hunter region.
 - A grid pattern survey that was overlain on the land in the 1820s and still exists today in the State's land title system the minor road systems the early fence signs and the configuration of the surviving Estates
 - The picturesque landscape of the region with the land grants located adjacent to water courses throughout the alluvial and river valleys, delineated by fencelines, roads and pathways, with complexes of agricultural buildings both domestic and agricultural. set in open grazing landscapes.
 - The continuing foundational industries of sheep and cattle grazing, grain crops, vineyards, stock breeding and horse studs many with statewide reputations and some known internationally for their produce and outputs.
4. The cultural values such as those outlined above will be irrecoverably impacted should the Drayton South Mine proceed. Mining activity in the locality will fundamentally alter the form and pattern of the historic landscape. The historical and evolving functional land use relationships and the associated aesthetic, historic and social cultural values of the locality and its wider setting will be significantly and adversely impacted.
5. The DSCP project gives rise to a range of risks and impacts on cultural heritage significance of the cultural landscape that cannot be adequately managed through conditions of consent. The scale and magnitude of the development activity proposed is not reversible and a cautious approach in line with Article 3 of the Australia ICOMOS Burra Charter is required.

In March 2014, the Drayton South Project—Review of Anglo American Justification Report was prepared by GML Heritage. The key findings in that report are as follows:

- The Director General's Requirement for non-Aboriginal heritage requires 'assessment of potential impacts on non-Aboriginal heritage values of the locality related to its settlement by Europeans and its pastoral history'.¹
- Historic properties in the vicinity of the Drayton South Coal Project including Strowan and Arrowfield (now Coolmore Australia) and Woodlands Stud (now Darley Australia) are statutory listed heritage items. Some provisions in the applicable local and regional statutory planning controls as they relate to the listed heritage items have not been adequately addressed or considered in the Anglo American non-Aboriginal heritage assessment work to date.

¹ Director General's Requirements, 3 August 2011.

- Muswellbrook—Jerrys Plains is listed on the Register of the National Trust (NSW) as a Landscape Conservation Area. Whilst this is a non-statutory heritage register it does provide evidence of the significant cultural heritage landscape values identified and assessed within and surrounding the DSCP area.
- Generally, AECOM (Dr Lampard), Dr Richard Lamb (the PAC appointed expert) and GML Heritage, are in agreement regarding the cultural heritage significance of the historic properties. Dr Lampard concurs with GML that the historic properties are of State significance and would be likely to meet the threshold for listing on the State Heritage Register if they were nominated. Further, she contends that the Coolmore cultural landscape is potentially of National significance.²
- The non-Aboriginal heritage assessments prepared for the proponent have repeatedly overlooked the requirement for a comprehensive assessment of heritage values (including the cultural landscape associated with settlement and pastoralism). This is and remains a significant omission in the current body of technical documentation prepared as part of the environmental assessment for the Drayton South Coal Project.
- In the absence of a comprehensive and adequate heritage assessment of the historic cultural landscape associated with settlement, pastoralism and the thoroughbred industry, such a statement fails to address and recognise the potential adverse and enduring impacts on the heritage values of Coolmore and Woodlands specifically.
- Attention has been directed toward assessing the potential visual impact, however, this is only one aspect of heritage impact arising from the Drayton South Coal Project. The project will also fundamentally and irreparably change the nature of the landscape and the historic functional relationships that have been inscribed over successive generations of human modification and use.
- Several other underlying and potentially adverse impacts on other attributes of cultural significance and heritage values such as spiritual and social values have yet to be considered adequately and comprehensively. This is regarded as a significant oversight in the current significance and impact assessment process for non-Aboriginal heritage.
- Without a comprehensive and adequate assessment of the heritage significance and values of cultural landscapes associated with Coolmore and Woodlands under the State and National listing criteria the extent and level of heritage impacts cannot be stated with any certainty.

On 21 August 2014 Sharon Veale, Partner, GML Heritage presented to the Planning Assessment Commission Hearing at the Denman Memorial Hall in Denman. In that presentation the following key points were made:

- The non-Aboriginal assessments for the Drayton South Coal Project have continued to selectively concentrate on individual physical items and direct impacts rather than the historic setting, items in the vicinity, intangible values and the indirect and direct impacts arising. This has resulted in a non-Aboriginal heritage assessment that is deficient as it does not

² Anglo American Justification Report, Appendix 4 Drayton South Historic Heritage Advice-PAC Review, AECOM, Section 4.1.2 Cultural Heritage of the Landscape, p 19 of 40.

adequately assess the heritage significance of the locality and consequently does not enable a fully informed decision to be made regarding the potential heritage impacts should the Drayton South Coal Project proceed.

- One of the key findings in the Drayton South Coal Project PAC report (10 December 2013) was that ‘the additional value derived from the surrounding cultural landscape setting and the continuity of land uses on the properties has not been recognised to any clear extent nor given any meaningful consideration’. (PAC report p 12) Furthermore, the PAC found that the project could have a significant impact on the landscape in this part of the Hunter Valley, which has cultural significance due to its historic and continuing land use patterns with built heritage structures, unique topography, landforms and environment, and may warrant heritage listing at State and National level.³
- The non-Aboriginal heritage assessments prepared for the Drayton South Coal Project have failed to satisfactorily address the potential impacts on non-Aboriginal heritage values of the location related to its settlement by Europeans and its pastoral history. This fundamental requirement of the DGR.
- Non Aboriginal cultural values will be irrecoverably impacted should the Drayton Mine proceed. Mining activity in the locality will fundamentally alter the form and pattern of the historic landscape. The historical and evolving functional land use relationships and the associated aesthetic, historic and social cultural values of the locality and its wider setting will be significantly and adversely impacted.
- The Drayton South Coal project gives rise to a range of risks and impacts on cultural heritage significance of the cultural landscape that cannot be adequately managed through conditions of consent. The scale and magnitude of the development activity proposed is not reversible and a cautious approach in line with Article 3 of the ICOMOS Burra Charter is required.

In May 2015 GML prepared a review of the Drayton South Coal Project Environmental Impact Statement, Non Aboriginal Heritage Impact Assessment, Appendix P, by AECOM, March 2015.

With regard to the DGRs and the more detailed SEARs, the EIS and revised AECOM report dated March 2015 for Non-Aboriginal Heritage it was noted that the following matters remained outstanding:

- a) The AECOM March 2015 report has not comprehensively addressed the SEARs.
- b) The Drayton South Cultural Landscape Assessment has not been subjected to investigation, analysis and assessment under the applicable heritage assessment criteria.
- c) The cultural heritage landscape assessment has not been undertaken in accordance accepted procedure outlined in the NSW Heritage Manual.
- d) The National Trust listing for the Muswellbrook–Jerrys Plains Landscape Conservation Area dates from 1984. At that time, Landscape Conservation Areas were selected on the basis of their ability to demonstrate ‘exceptional natural and cultural values’.⁴ The AECOM

³ *Major Project Assessment Drayton South Coal Project (PA11_0062), Secretary’s Environmental Assessment Report, NSW Government Planning and Environment, July 2014, p28.*

⁴ Drayton South Coal Project Environmental Impact Statement, Non-Aboriginal Heritage Impact Assessment, Appendix P, AECOM, P-36.

report relies on the description and values expressed in the National Trust Register Listing that is over 30 years old. No update to date significance assessment under the applicable NSW heritage assessment criteria has been undertaken by AECOM.

- e) Some items such as Randwick Homestead have not been adequately researched or assessed by the proponent as they claim there is insufficient information.
- f) It is not standard practice to state that an item is of 'low' significance. An item either meets the guidelines for inclusion as significant or not.
- g) It is not standard practice to assess a heritage item to be of 'regional' significance.
- h) There is no methodological statement or evidence that further consultation as required by the SEAR's or that a social values assessment has been undertaken.
- i) An assessment of cultural significance is the accepted basis and necessary prerequisite for good decision making about heritage. Given the omissions in the significance assessments for heritage items including landscapes in the AECOM report it is not possible to make sound well-informed decisions about future management of heritage within or in the vicinity of the Drayton South Coal mine.
- j) Given the level of significance has not been determined and the assessments of significance are incomplete, the degree and level of impact cannot be accurately determined at this time.

3.0 Preliminary Environmental Assessment Review

Historic heritage is referred to in the Preliminary Environmental Assessment Review (PEA) in section 6.6.2.⁵ The PEA notes that two aspects of historic heritage were assessed by AECOM for the DSCP. The two aspects include 'heritage structures' and 'heritage landscapes'.

3.1.1 Heritage Structures

Within the project boundary ten historic heritage sites (see table 1.0 below) have been identified by AECOM. Heritage sites 1, 2, 3, 4, and 6 are within the DSCP area. The other heritage sites are in the vicinity of the DSCP area.

Several of the historic heritage sites identified are currently listed as items of environmental heritage on local and regional statutory planning instruments including the *Muswellbrook Local Environmental Plan 2009*, the *Singleton Local Environmental Plan 2013* and the *Hunter Regional Environmental Plan 1989* (Heritage).

The heritage sites numbered 1,2,3,6 and 10 in the table below are not statutory listed heritage items, however, these sites have been identified as assessed by AECOM as heritage sites. The exception to this is Randwick Homestead which has been identified as a heritage site but has not been assessed by AECOM. The level of significance listed in the table below indicates the level recorded in the planning instruments. In some instances AECOM has assessed the heritage sites under the NSW heritage assessment criteria as being at a different level.

A range of measures have been identified to manage and mitigate the direct and indirect impacts on the heritage sites. The measures include archival recording in accordance with the relevant standards, pre-blasting dilapidation survey and structural assessments to manage vibration and over-pressure from blasting, and rehabilitation of the disturbance area.

Table 1.0: Heritage Sites identified by AECOM

	Heritage Sites	Heritage Listing	Level of Significance
1.	Fence	Not listed	Local
2.	Nissan Hut and Stockyard	Not Listed	Local
3.	Stockyard	Not Listed	Local
4.	Plashett Homestead	Muswellbrook LEP 2009	Local (State AECOM)
5.	Edderton Homestead	Muswellbrook LEP 2009	Local
6.	Bowfield Homestead	Not Listed	Local
7.	Strowan Homestead	Singleton LEP 2013	Local (National AECOM)
8.	Arrowfield Estate/Cottage	Singleton LEP 2013	Local

⁵ *Drayton South Coal Project Assessment Report*, NSW Government Department of Planning and Environment, p 94.

9.	Woodlands Homestead/Stud	Hunter Regional Environmental Plan 1989 (Heritage)	Regional (State AECOM)
		Muswellbrook LEP 2009	State
10.	Randwick Homestead	Not Listed	Not Assessed

3.1.2 Heritage Structures—Comment

The proposed management and mitigative measures for the heritage sites are focussed almost exclusively on impacts to the physical fabric of the heritage structures. The physical fabric or evidence of a heritage site or item is just one aspect of its cultural value. Central to industry best practice is the concept of cultural significance as defined by Article 1.2 in the *Australia ICOMOS Charter for Places of Cultural Significance 2013* (The Burra Charter). The Burra Charter states that ‘cultural significance means aesthetic, historic, scientific, social or spiritual value for past, present or future generations. Cultural significance is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects’.⁶

The assessment of the Department of Planning and Environment PEA does not address the potential adverse and irreversible impacts all aspects of cultural significance. The focus on impacts on the physical fabric of the ‘structures’ has given rise to a bias in the assessment wherein the potential impacts on other heritage values and other aspects of cultural significance have not been accounted for or assessed.

Given a comprehensive assessment of the potential impacts on all heritage values has not been undertaken it does not follow that all impacts can be satisfactorily managed and mitigated through measures that focus exclusively on the physical fabric of the affected heritage items.

The NSW heritage management framework aligns with the Burra Charter. The process in that management framework is designed to guide decision making for heritage places. The steps include investigation, assessment, then policy and management. The premise of this staged process is that only after research and investigation, followed by rigorous objective assessment can the cultural significance of a place be determined. It is only once the significance of a place has been determined that policy and management to conserve that significance can be developed.

The PEA states that the CHIA recommends that a Historic Heritage Management Plan (HMP) for the Drayton Complex be developed and implemented prior to project commencement. Further it states that the plan would assist in the development of a statement of significance for each heritage item and allow for the proactive management and mitigation of any adverse effects of the project on the items and any additional items discovered as the project progresses. The HMP requires the proponent to consult with Muswellbrook Shire Council, the Heritage Branch of OEH and relevant landowners. Also required within the HHMP are the provisions for archival recording and monitoring and assessment of the structural integrity of the seven heritage items impacted by the mine blast activities.

The PEA and the requirements for historic heritage appear to misinterpret accepted heritage conservation principles, processes and practices as defined in the Burra Charter and applied in the NSW heritage management system.

⁶ *The Australia ICOMOS Charter for Places of Cultural Significance, 2013*, Australia ICOMOS Incorporated, 2013, p 2.

The requirement to prepare a HMP following approval of the DSCP does not reflect appropriate or accepted practice in heritage planning. Where actions or activities to statutory listed heritage items are concerned, Heritage Management Plans or Conservation Management Plans (CMP) are typically submitted to the consent authority with a Heritage Impact Statement (HIS) as part of a development application. This enables the consent authority to make an informed decision considering the detailed assessment of the cultural significance of an item as outlined in a CMP or HMP, and the assessment of impacts in the HIS. In this situation, where the consent authority reviews the technical reports submitted as part of the application for heritage and finds them to be incomplete or insufficient a request for further information is issued to assist in the assessment and determination.

For the DSCP, it appears that the Department is satisfied that the project may proceed subject to the HHMP being prepared. This indicates that the Department do not anticipate the HHMP to identify any other cultural values other than those already identified by AECOM. This assumption fails to account for the fact that the significance assessment and the impact assessment are still incomplete and that further assessment has the potential to identify different or additional cultural values. It also fails to anticipate that the DSCP has potential to give rise to any adverse impacts on heritage values.

3.2 Heritage Landscapes

The PEA notes that an assessment of the Drayton South cultural landscape has been undertaken and that the cultural landscape assessment has focussed on the direct and visual impacts associated with the DSCP. The PEA report includes a plan showing location and extent of the Muswellbrook Jerrys Plains Landscape Conservation Area. The Landscape Conservation Area is included on the National Trust of Australia (NSW) Register. The National Trust Register is a non-statutory list of heritage places which are determined by the Trust to have cultural significance. The PEA report notes that the majority of the DSCP area is located outside of National Trust Landscape Conservation Area which was identified and listed in 1984.

The PEA accepts the findings in AECOM's 2015 report wherein no up to date assessment under the NSW heritage assessment criteria has been undertaken with respect to National Trust Landscape Conservation Area. AECOM 2015 merely includes the description and assessment for the National Trust Landscape Conservation Area without any further investigation, analysis or assessment. Given that the National Trust description and assessment is now 31 years old it would have been reasonable to expect a revised and updated assessment would be prepared by AECOM to better inform the project application and assessment process.

AECOM 2015 states that an assessment for the Drayton south cultural landscape has been undertaken for land within the study area. Yet the cultural landscape assessment does not reflect the process or practice outlined NSW Heritage Manual and its guidelines. In 'Table 2: Historical Themes associated with land within the study area' some of the NSW State historic themes have been correlated with landscape elements and features and identified cultural values. Various elements of the cultural landscape are then described, however, there is no assessment of the cultural landscape under the NSW assessment criteria and no indication, except in one instance as to the level of significance of the cultural landscape.

The PEA omits any reference to the cultural significance of the heritage landscape that comprises the project application area, or the cultural landscape associated with the thoroughbred studs in the vicinity of the DSCP. Reference to the aesthetic and social values of the landscape is included in

the National Trust register listing, an excerpt of which is cited in the PEA report. Despite this, the PEA provides no explanation of its assessment or understanding of the impacts on the historic, social or aesthetic cultural landscape values other than related to the scenic and visual values. The Department's view is reductive as it appears to perceive that the significance of the heritage landscape is only vested in its physical form and visual qualities. This perception in turn supports the opinion that the impacts arising can be managed and remediated through revegetation.

Yet the proposed mitigation and management of impacts on heritage landscapes proposed as part of the DSCP, including progressive rehabilitation, establishment of vegetative buffers, and the minimisation of visual and lighting measures, do not recognise or account for the irrecoverable impacts on the significant pastoral and equine land use history and the social, scientific and spiritual values associated with that landscape. This demonstrates a fundamental misunderstanding of cultural heritage significance and the values that comprise it under the Burra Charter and the NSW heritage management system.

3.2.1 Heritage Landscape—Comment

The Department concludes that it is satisfied that impacts on historic heritage values have been minimised. Yet such a conclusion is premature as the cultural significance of the historic cultural landscape has not been fully assessed. The PEA only accounts for physical impacts on historic fabric and the visual aspects of the heritage landscape, it does not provide any reasonable or feasible alternatives for mitigating or managing the potential and known impacts on other cultural values including historic, social, spiritual and scientific values.

3.3 Response to Submissions

In July 2015 Hansen Bailey prepared a Response to Submissions report on behalf of Anglo American Coal Pty Ltd for the DSCP.

The proponent's response to non-Aboriginal heritage is covered in section 5.2.10 of the Response to Submissions report. Table 1 in the report provides the proponent's responses to claims and statements raised by Darley, Coolmore and the HTBA. Non-Aboriginal heritage is covered under (n). The Darley, Coolmore and HTBA response to the EIS is included in table 1, it reads 'the EIS fails to assess the cultural heritage landscape in accordance with the SEARs and the NSW Heritage Assessment Criteria' (Darley Submission, page 7, HTBA Submission page 3).⁷ The proponent's response to the submissions on non-Aboriginal heritage reads:

These assertions are refuted. The Project's Non-Aboriginal Heritage Assessment as prepared by AECOM was prepared by a suitably qualified expert and has been undertaken in accordance with the NSW Heritage Manual (Heritage Office 1996) and with reference to the Burra Charter. The assessment as completed meets the requirements of the SEARs.⁸

The proponent's response to the Darley and HTBA submission does not address the substance of their submissions.

The Darley and HTBA submission does not refer to whether or not a suitably qualified expert has prepared the assessment, but rather states that the assessment fails to address the cultural heritage landscape in accordance with the SEARs and it does not consider the potential significant

⁷ Drayton South Coal Project Response to Submissions, Hansen Bailey for Anglo American Coal Pty Ltd, 24 July 2015, Table One, Appendix G, p10-11.

⁸ Drayton South Coal Project Response to Submissions, Hansen Bailey for Anglo American Coal Pty Ltd, 24 July 2015, Table One, Appendix G, p10-11.

impact on the Hunter Valley 'which has cultural significance due to its historic and continuing land use patterns with the built heritage structures, unique topography, landforms and environment, and may warrant heritage listing at the State and National level'.⁹

Rather the response to submissions report points out the 'Technical Expert's Experience' in Table 8 and confirms that each environmental impact assessment has been undertaken strictly in accordance with government approved methodologies, policies and guidelines.¹⁰ In the Technical Expert's table it is noted that Geordie Oakes (AECOM) Australia has 9 years' experience in Aboriginal and non-Aboriginal heritage.

With respect to the assessment of cultural landscapes, whilst the AECOM report identified two landscape areas that will be partially impacted by the project, the AECOM report did not conduct further research or investigation, nor was an assessment undertaken for the cultural landscapes according to the NSW heritage assessment criteria.

With regard to the National Trust Muswellbrook Jerrys Plains Landscape Conservation Area, listed by the National Trust (NSW), in the Response to Submission report it simply states, that due to the scale and complexity of that listed area that 'the application of a significance level for that area is considered inappropriate'.¹¹

The National Trust Landscape Conservation Area listing dates from 1984. The standards and conventions for significance assessment in 1984 were different to accepted practice today. To illustrate this point, the NSW heritage assessment criteria did not come into force until April 1999 following amendments to the *Heritage Act 1977* (NSW). Given the DSCP proposal, it would be reasonable and appropriate to expect that an updated assessment of the cultural landscape would be undertaken so as to ensure all cultural values were identified and assessed according to the applicable assessment criteria. Instead the proponent states that the technical assessment for the cultural landscape values relied on information in the National Trust's non-statutory listing. It is not accepted professional practice to rely upon a significance assessment undertaken more than thirty years ago. In the Australia ICOMOS Burra Charter it is acknowledged that 'the cultural significance of a place may change as the result of the continuing history of the place. Understanding of cultural significance may also change as a result of new information'. Furthermore, in the *Assessing heritage significance* guideline, 2001, that forms part of the NSW Heritage Manual, the steps for when and how to assess significance are made clear. The guideline states, that the 'assessment of significance, and the statement that it produces, is the basis for all good heritage decisions. It's a process that should be used as part of the management of all heritage items because it clarifies why the item is important'.¹² With regard to the assessment of the historic cultural landscape, the proponent does not satisfactorily address or fulfil this requirement.

⁹ Major Project Assessment, Drayton South Coal Project, Secretary's Environmental Assessment Report, July 2014, p 28

¹⁰ Drayton South Coal Project, Response to Submissions, for Anglo American Coal Pty Ltd, July 2015,

¹¹ Ibid, p 136.

¹² *Assessing Heritage Significance*, NSW Heritage Manual, Crown Copyright 2001, p4.

4.0 Conclusion

Significant cultural heritage values will be irrecoverably impacted should the Drayton Mine proceed. If the landscape in the Upper Hunter was subject to a heritage assessment under the NSW assessment criteria it would be likely to be found to satisfy one or more of the NSW assessment criteria and be eligible for listing on the State Heritage Register kept by the Heritage Council under the *Heritage Act 1977 (NSW)*. Furthermore, the cultural landscape may be found to satisfy one or more of the National Heritage List criteria under the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).

The proposed management and mitigative measures for the heritage sites and heritage landscapes are focussed almost exclusively on physical impacts rather than impacts on historic, social, spiritual and scientific values, and setting, meanings and associations, which define cultural significance under the heritage industry best-practice guideline, the Australia ICOMOS Burra Charter 2013.

For the DSCP, it appears that the Department is satisfied that the project may proceed subject to the Historic Heritage Management Plan being prepared. This indicates that the Department do not anticipate the HHMP to identify any other cultural values other than those already identified by AECOM. This assumption fails to account for the fact that the significance assessment and the impact assessment are still incomplete and that further assessment has the potential to identify different or additional cultural values. It also fails to anticipate that the DSCP has potential to give rise to any adverse or material impacts on heritage values.

This project will generate a range of risks and impacts on the cultural heritage significance of the historic landscape that cannot be adequately managed through conditions of consent. Mining activity in the locality will fundamentally impact on the significance of the historic cultural landscape in the Upper Hunter and give rise to other material impacts on its form, character, and qualities. The scale and magnitude of the proposed development activity is not reversible and a cautious approach in line with Article 3 of the ICOMOS Burra Charter is required

5.0 Appendix A—Cultural Landscapes

5.1 International Cultural Landscapes

The concept of historic cultural landscapes is now well understood in heritage practice and there is an extensive literature. In 1992 the World Heritage Convention was the first international legal instrument that sought to define and protect, 'cultural landscapes'.¹³ Cultural landscapes reflect particular techniques of land use management that have been evolved by humans in relation to the natural environment. Conservation of cultural landscapes may contribute to intergenerational equity and sustainability through support for historical forms of land use that ensure continuing environmental health and ecological life and diversity.

The *Operational Guidelines for the Implementation of the World Heritage Convention* identifies several categories and subcategories of cultural landscapes. The categories range from those deliberately structured, modified and shaped by people, to 'combined works' of people and nature, to those that demonstrate least human modification but nonetheless are culturally valued.¹⁴ The three key categories are as follows:

'Clearly defined landscapes designed and created intentionally by humans' (eg gardens, parklands)

An 'organically evolved landscape' which may result from an initial social, economic, administrative, and/or religious imperatives and has developed in respond to its natural environment. Such landscapes reflect an evolutionary process in their form and component features. Further this landscape type can be a relict or fossil landscape, or continuing and active.

An 'associative cultural landscape', which may be valued because of the religious, artistic or cultural associations of the natural element.¹⁵

The cultural landscape category that best defines the aggregated historic properties now known as Coolmore and Darley would be 'organically evolved landscape'. This entity is developed from an initial governmental, social or economic directive in response to the natural environment. In the Hunter, the historic cultural landscape would be further classified as a continuing landscape that plays an active role in contemporary society whilst still retaining the ability to demonstrate material evidence of its evolution over time.¹⁶

5.2 Australian Cultural Landscapes

In Australia, the concept of cultural landscapes was developed in response to the designed, evolved, and associative categories identified by UNESCO in the World Heritage Convention and its guidelines. A working definition suggested in Australia in 1989 was:

¹³ UNESCO, World Heritage Centre, Cultural Landscape, <<http://whc.unesco.org/en/culturallandscape/>>, accessed 6 October 2013.

Currently there are 82 properties inscribed as cultural landscapes on the World Heritage List examples include Coffee Cultural Landscape, Columbia, Loire Valley between Sully sur Loire and Chalonnes, France, and Tokaj Wine Region, Hungary.

¹⁴ Operational Guidelines 2008, Annex 3.

¹⁵ World Heritage Centre, Cultural Landscape, <<http://whc.unesco.org/en/culturallandscape/>>, accessed 13 October 2013.

¹⁶ Ibid, <<http://whc.unesco.org/en/culturallandscape/>>, accessed 6 October 2013.

*A cultural landscape is a physical area with natural features and elements modified by human activity resulting in a patterns of evidence layered in the landscape, which give a place its particular character, reflecting human relationships with and attachment to that landscape.*¹⁷

Since that time cultural landscapes have become part of heritage identification, assessment and management in Australia. A search of the NSW State Heritage Register by 'Item Group' 'Landscape-Cultural' returned 61 records listed on the State Heritage Register. A further 128 cultural landscape items are locally listed.¹⁸ At State level, examples of listed cultural landscapes include Bondi Beach, Callan Park, Botany Water Reserves, Camden Park, Bella Vista Farm, Goat Island, Vineyard Haven, New Italy Settlement, and Malabar Headland.

The State Heritage Register criteria are:

- a) an item is important in the course, or pattern, of NSW's cultural or natural history;*
- b) an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history;*
- c) an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW;*
- d) an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons;*
- e) an item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history;*
- f) an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history;*
- g) an item is important in demonstrating the principal characteristics of a class of NSW's*
 - cultural or natural places; or*
 - cultural or natural environments.*¹⁹

The National Heritage List was established under the *Environment Protection and Biodiversity Conservation Act 1999* in 2003. The National Heritage List includes places that have outstanding natural, Indigenous or historic heritage value to the nation. There are nine criteria for criteria against which the heritage values of a place are assessed are;

- a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history*

¹⁷ Cultural Landscape Management, Guidelines for identifying, assessing and managing cultural landscape in the Australian Alps National Parks, Jane Lennon & Steve Mathews, March 1996, p4.

¹⁸ Search for NSW Heritage, Office of Environment and Heritage, Heritage Division, <<http://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx>>, accessed 15 September 2015.

¹⁹ Criteria for listing on the State Heritage Register, <<http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/listings/criteria.pdf>>, accessed 15 September 2015.

- b) *the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history*
- c) *the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history*
- d) *the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:*
 - i) *a class of Australia's natural or cultural places; or*
 - ii) *a class of Australia's natural or cultural environments;*
- e) *the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group*
- f) *the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period*
- g) *the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons*
- h) *the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history*
- i) *the place has outstanding heritage value to the nation because of the place's importance as part of Indigenous tradition.*

A number of cultural landscapes are listed on the National Heritage List as places of outstanding heritage significance to Australia. Examples include Bondi Beach, Adelaide Parklands and City Layout, Bonegilla Migrant Camp, Eureka Stockade Gardens and the Kurnell Peninsula Headlands.

5.3 Historic Cultural Landscape

The Hunter Valley was one of the three hinterlands developed for settlement by the colonial government outside of the County of Cumberland. The hinterlands, including New England and the Darling Downs, each developed a distinctive character and the Hunter Valley was the most significant politically and economically.²⁰

The area was identified by the colonial government and promoted through promising descriptions by such people as surveyor, Henry Dangar, (1796-1861) who, commencing in 1822, comprehensively surveyed the area laying down a rectangular grid. Dangar's work led to occupation of the area by settlers desirous of well-watered and fertile soil for grazing and agriculture. Much of geometry and historical pattern of Dangar's 1820s survey remains evident in the landscape today.

The natural landforms including the rivers and creeks, with its rich and fertile soils, combined with climate and land husbandry have supported the continuing history of agriculture, viticulture, pastoralism, and horse breeding in the Hunter Valley.

²⁰ Hunter Estates A Comparative Heritage Study of pre 1850s Homestead Complexes in the Hunter Region, Volume 1: Historical Context and Survey of Sites, Office of Environment and Heritage, prepared by Clive Lucas Stapleton and Partners Pty Ltd, April 2013, p14.

The Upper Hunter Valley and the historical pastoral properties now within the Coolmore and Darley horse studs reflect the historical evolution and change in agriculture and settlement in the Hunter Valley. These properties have significant associations with prominent individuals of historical importance, including James Arndell (son of First Fleet surgeon Thomas Arndell), H C White and George Bowman to name a few. The social history of the Hunter region, reflects government policy of the period which resulted in the area attaching predominately wealthy free men and their families.

5.4 Thoroughbred Cultural Landscape

The Hunter Valley is an historic cultural landscape that is significant in the course and pattern of the history of NSW.

Horse breeding in the Hunter Valley has a long history dating to the earliest European occupation of the area. Woodlands has associations with thoroughbreds dating from around 1868, however, it is from 1911 that Woodlands developed as a horse stud, under Edward Goddard Blume, a notable racing identity.

The landscape has the ability to demonstrate the long evolving traditions of layered land use associated with thoroughbred breeding in a region characterized by fertile river flats, undulating rolling hills, and steeper slopes. The historic land use patterns and characteristics associated with pastoralism and thoroughbreds are visible in views and vistas and intricately inscribed over the landscape. Most typically, this is defined in the region by farms located in close proximity to a watercourse, with homesteads addressing the water, roads and paths, fencelines, cultural plantings, fenced pastures, with outbuildings and ancillary structures.

The properties express the relationship between the unique topography and natural landforms, the environmental and climatic conditions, which combined have established and defined the Hunter Valley as one of the world's premier horse breeding regions with one of the largest concentrations of horse studs in the world alongside Newmarket, United Kingdom and Kentucky, USA.

The aesthetic, scenic and visual qualities of the landscape are exceptional. Juxtaposed against the backdrop of the densely vegetated range within Wollemi National Park, the horse studs are comprised of formally designed functional landscapes inscribed over natural landforms, which include strong geometric patterns, axial vistas, with a patchwork of manicured pastures defined by border plantings and timber fences that typify thoroughbred country.

The Hunter Valley landscape when viewed from within, to and from Coolmore, Woodlands, Kelvinside and Segenhoe, describes and articulates the various functional and operational units of production associated with thoroughbred horse breeding and pastoralism.

The history, environmental qualities, character, attributes and values of the Upper Hunter Valley are significant.

The existing assessments of the homesteads included in the former RNE and the AECOM 2012 report, demonstrate that these items are significant at National, State, 'Regional' and Local levels. By extension, it follows that the cultural landscape setting within which the homesteads and other infrastructure were developed is most likely to be of at least equivalent heritage value.

Given this, and with regard to the site inspection and other documentation, the landscape is deemed to be a significant cultural landscape that evolved in response to specific government policy directives and resulted in a unique land use settlement pattern and distinctive social history.

The Drayton South Coal Project will impact on the historic cultural landscape, its setting and its defining character that distinguishes this area of the Hunter Valley. It will transform the natural landform, historic grant boundaries and existing patterns of use. Views and vistas to and from heritage items will also be impacted through mining activities.

A comprehensive assessment under the criteria for listing on the State Heritage Register or the National List criteria has not been undertaken as part of the Environmental Assessment for the Drayton South Coal Project. Evidence suggests that if assessed according to the criteria for listing on the NSW State Heritage Register the cultural landscape of this area of the Upper Hunter Valley would be likely to satisfy one or more of the seven criteria and be of heritage significance at State level. In addition, the heritage values of the Valley may well be sufficient to satisfy one or more of the National Heritage Criteria and meet the threshold of being of outstanding heritage value to the nation.

5.5 Coexistence of Nature and Culture—Breeding Thoroughbreds

Thoroughbred breeding in the Hunter Valley is an evolving historic tradition that is based on a considered interplay between nature and culture, with heritage values that are both tangible and intangible.

Each historic farm has evolved what is a finely crafted and increasing scientific enterprise in direct response to the landscape. The form, quality and character of the landscape is fundamental to the growth of horse flesh and the developing the athleticism required of champion thoroughbreds. Water quality, soil, air, sheltered valleys, and a benign climate, are the key natural ingredients for breeding and growing champion thoroughbreds.

The movement of horses at various stages of their life cycle is written across the landscape via different functional units at each horse stud. Initially, foals are carefully tended and reared on the fertile river flats, as they mature and they are required to build muscle and increased strength they are moved to the undulating hills. Finally, to ensure optimal fitness, stamina and athleticism, thoroughbreds are moved to the steeper, stiffer slopes.

The natural qualities of the Hunter Valley, combined with the expertise and skill of the thoroughbred industry over 150 years, has seen the industry develop to become internationally significant. Today the area is the largest producer and exporter of Australian thoroughbreds and has the second largest concentration of thoroughbred studs in the world.²¹

There is a strong and special attachment expressed by people who have worked and continue to work in the Hunter Valley thoroughbred industry who regard thoroughbred industry as being an industry of State significance. They express social attachment through their pride in the reputation of the Hunter Valley as a centre of international excellence and through a deep attachment to the natural beauty and abundance of the Valley and the highly crafted and tended stud landscapes. Those in the industry also can readily recount the names of champion horses from the Hunter Valley and derive a strong sense of meaning and identity from their association with elite bloodstock.

²¹Hunter Thoroughbred Breeders Association, <<http://www.htba.com.au/thoroughbred-breeders-release-10-point-plan-of-action-to-restore-balance,-certainty-and-sustainability-to-the-hunter-valley>>, accessed, 6 October 2013.

