

# COOKE REVIEW – WHAT ARE THE MAIN ISSUES?

KCGM believes the Final Report of the Cooke Review is long, complicated and difficult to comprehend. In order to succinctly address the common issues presented in the report, KCGM prepared this overview which groups the recommendations and their potential implications into five main areas.

## FIVE MAIN ISSUES OF COOKE REVIEW

1. KCGM's pending approvals (**Recommendations 20, 21 and 22**)
2. Optimum Resources (**Recommendations 17 and 18**)
3. Williamstown & Section 20(5) Mining Act (**Recommendations 4, 7, 8, 11, 12, and 13**)
4. Investigatory Committee (**Recommendations 19, 23, 24 and 25**)
5. Issues relating to the Department of Industry and Resources (**Recommendations 1, 2, 3, 5, 6, 9, 10, 14, 15 and 16**)

## OVERVIEW

- KCGM welcomed the review as an opportunity for independent and expert investigation into some historical issues – however we have been disappointed with the review process and its results.
- The reviewer's style is emotive and has focussed on only four isolated case studies – at least two of which were not the result of written submissions.
- This brings into question the
  - lack of opportunity for checking or debate
  - reasonableness of recommendations
  - the veracity of the review process
- Despite our disappointment, KCGM will work with the government and relative authorities to make the best of an unacceptable situation.
- KCGM has always operated within our licence conditions, and we are a socially responsible member of our community.

## 1. KCGM APPROVALS (Recommendations 20, 21 and 22)

- Two important, yet routine approvals have been unnecessarily delayed because of the Cooke Review.
  - Raising the level of the Fimiston I Tailings Storage Facility (TSF) from its present height of 30 metres to 40 metres
  - Extension of the Southern Noise Bund and Waste Rock Dump to assist dust and noise management for of the already-approved southern expansion of the Super Pit.
- The approval delays are a reaction to the politics of the review and are unwarranted...
- Any significant delay in the Fimiston I approval process could result in the premature closure of the Mt Charlotte mine.
- There is the potential for approvals gridlock if all industry routine applications are subject to the unnecessary level of scrutiny being proposed by the Cooke report.

RECOMMENDATIONS	RATED	Notes	POSSIBLE EFFECTS IF THIS RECOMMENDATION IS ACCEPTED
<p><b>Recommendation 20:</b> Pending final report by this Committee to the Minister, no further expansion of the Fimiston Mill is considered.</p>	<p>Unacceptable</p>	<p>Although there are no immediate plans to expand, this could impose serious restrictions on KCGM as there is no definitive timeframe.</p> <p>Any modification to the mill could be construed as expansion. This does not take into account improvements in processing which may necessitate the modernisation of the Fimiston Mill and expansion of the footprint, or throughput.</p>	<p>Potential economic impact on Owners and restriction on operations.</p>

<p><b>Recommendation 21:</b> That the decision to increase the wall height of the Fimiston II TSF (<i>read this as Fimiston 1?</i>) be reviewed in the light of this Report.</p>	<p>Unacceptable</p>	<p>The process required under current law and regulations have been followed to the letter.</p> <p>DOIR will review its approval process/decisions and advise Appeals Convenor</p>	<p>If approval is not received by July 2004 this will have significant impacts on KCGM production and could lead to immediate closure of Mount Charlotte and the loss of approx 90 jobs with significant flow on effects.</p> <p>Immediate reduction in capital expenditure in City.</p>
<p><b>Recommendation 22:</b> That this Report be referred to the Environmental Protection Authority for inclusion in process for determination of the current application to extend the Super Pit in a southerly direction.</p>	<p>Manageable</p>	<p>Cooke has apparently incorrectly identified the noise bund extension as an application to extend the pit to the south. This is not correct - KCGM already has approval to extend the pit to the south.</p> <p>The noise bund extension application has already been through a public consultation. Only two queries were received and stakeholders are satisfied with the project plan.</p> <p>The noise bund will improve the amenity of the area which is currently degraded, and will free government of any rehabilitation responsibility.</p>	<p>The extension of the 100m to 300m may have impacts on the southern noise bund extension.</p>

## 2. OPTIMUM RESOURCES (Recommendations 17 and 18)

- The Cooke Review is a non-technical investigation of an issue that has already undergone detailed scientific analysis.
- Optimum Resources is a long-running dispute which in essence, is of a commercial nature.
- KCGM, along with the DoIR, the DoE and the Ombudsman's Office, has spent significant time and effort to resolve the issues with Optimum Resources.
- Optimum Resources has chosen not to accept help from KCGM, nor to negotiate for improved outcomes of these issues, for more than 10 years.

- KCGM wishes to have this historical dispute resolved. This would mean that the claimed, yet unseen evidence described in the Cooke report would need to be made available for expert and independent assessment.
- Cooke assumes fault on the part of KCGM if a resolution is not reached, by forcing closure of the tailings facilities – this is unreasonable and does not follow the principles of natural justice.
- The closing of the tailings facilities would in effect shut down the KCGM operations and cause the loss of more than 750 jobs and significant input into the annual local economy – this is unacceptable.
- The DOIR and DOE are investigating the geotechnical and groundwater conditions around TSF's.

RECOMMENDATIONS	RATED	NOTES	POSSIBLE EFFECTS IF THIS RECOMMENDATION IS ACCEPTED
<p><b>Recommendation 17:</b> That the Department be directed to convene discussions, to be chaired by the Director-General, aimed at seeking resolution between the parties.</p>	Manageable	<p>Issue requires closure and an independent qualified investigation may provide the solution.</p> <p>However, Optimum must agree to be bound by the outcomes of this mediation.</p> <p>Past history indicates that Optimum will stall/withdraw should findings be negative.</p> <p>May require someone other than DG of Department as Optimum may oppose DoIR involvement.</p>	Provides a independent and qualified process to investigate this long standing issue.
<p><b>Recommendation 18:</b> In the absence of agreement within a reasonable period, to be determined by the Minister, a stop work order be placed on the operation of the Fimiston I and Fimiston II TSF's.</p>	Unacceptable	<p>It is an assumption of fault by KCGM, based on the findings of an apparently unqualified person and a limited (one-sided) investigation of the claims.</p> <p>What is a "reasonable period of time"?</p>	<p>Closure of Fimiston TSFs and ultimate closure of KCGM.</p> <p>Huge financial implications for KCGM owners the whole community, future investment, government confidence.</p>

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### 3. WILLIAMSTOWN & SECTION 20(5) OF THE MINING ACT

- Most of the issues surrounding Williamstown are due to the unclear definition of what constitutes mining under the Mining Act. We are keen to see this resolved.
- The existence of Williamstown is a planning anomaly which needs to be addressed by local and State Government.
- A 300m buffer would effectively shut down Mount Charlotte operation. This would mean the loss of approximately 87 jobs and an operation that contributes significantly to the local economy.

RECOMMENDATIONS	RATED	NOTES	POSSIBLE EFFECTS IF THIS RECOMMENDATION IS ACCEPTED
<b>Recommendation 4:</b> That S20 (5) of <i>The Mining Act 1978</i> be urgently amended to stipulate that in cases of open cut mining the minimum distance from an occupied dwelling be no less than 300 metres. The existing provisions of s20 (5) requiring written consent from effected neighbours be retained. The effect of the amendment should be retrospective to the date of its announcement.	Unacceptable	Chamber of Minerals & Energy; other mining companies to be effected.  Again does not take into account improvements in technology.  Significant impact on KCGM and the mining industry.	May reduce life of the mine due to impacts on western development.  Impact on Owners re: reduction of Reserves and resources via Stock Exchange Rules.

<p><b>Recommendation 7:</b> That the current provisions of s20 (5)© be strictly enforced by DoIR in respect of any “interference with Crown Land”, other than in the case of open pit mines. Enforcement to be based upon the application of the law by the Department in 1995 concerning the construction of the Cahill Road conveyor.</p>	<p>Manageable</p>	<p>Could present difficulties with regards to activity on significant sections of the Mt Charlotte lease as written permission may not be forthcoming from some affected residents.</p> <p>Only manageable if a clear definition regarding what constitutes mining activity is adopted ie. As proposed by KCGM, and supported by Cooke in Recommendation 8, is accepted.</p> <p>Has industry-wide implications and should be responded to.</p>	<p>Present possible workable solution to long-running issues.</p> <p>Possible quarantining of lease areas.</p> <p>Deterrent to local and overseas investors.</p>
<p><b>Recommendation 8:</b> That the KCGM submissions on the definition of “mine” for the purposes of s20 (5) be subject to Crown Counsel opinion. In the event that the submissions are determined to have legal merit the matter be remitted, upon advice, to the Minister for a clearer description of the activity intended. The matter then to be progressed by amendment to s20 (5) to reflect the intention of the section, as determined in the Government’s considerations.”</p>	<p>Acceptable</p>	<p>Totally agree.</p> <p>KCGM’s interpretation may not be accepted by the industry at large and may required further legal and technical scrutiny.</p>	<p>Clear up grey areas of interpretation regarding mining activity</p>

<p><b>Recommendation 11:</b> That KCGM be required to indicate whether increase in mining activity, particularly by open cut methods, is likely within the next 5 years, within 300 metres of any occupied residence in Williamstown.</p> <p>If KCGM is unable or unwilling to answer the enquiry then Government should assume that such activity will occur.</p> <p>However, if Recommendation 4 is not taken up the use of 300 metre arch around Williamstown is still justified by history and the local circumstance</p>	<p>Unacceptable</p>	<p>This is totally unacceptable and appears to have no legal basis.</p> <p>To suggest that KCGM has a “hidden agenda” and will mine is a baseless negative assumption. Our current mine plan does not foresee open -cut development near Williamstown. KCGM is already mining in compliance by underground methods.</p> <p>This is not a KCGM issue; this is a State and City planning issue which has allowed residences in an area of prospectivity. Long-term planning solution is required to this planning anomaly.</p> <p>Onus to purchase should not rest with mining companies where historical planning is at fault</p> <p>KCGM struggle to examine the potential of Williamstown because of restrictions on access to exploration. This makes it very difficult to determine its development possibilities.</p>	<p>Will require obtaining written permission from residents to conduct mining activity within 300m of properties. Under present circumstances this permission is unlikely to be forthcoming.</p> <p>This effectively quarantines the Mt Charlotte area with immediate implications for the KCGM underground operations, the Owners, and will have long-term effects on the City of Kalgoorlie-Boulder.</p> <p>Quarantines the area from exploration.</p>
<p><b>Recommendation 12:</b> If Williamstown has a life of 5 years or more then a one off opportunity for grant of freehold title should be made to all occupiers of Crown Land. This offer to be on the usual terms with associated costs.</p>	<p>Unacceptable</p>	<p>Previous governments have declined on the basis of future prospectivity.</p>	<p>Open to abuse from Land speculators.</p> <p>Additional cost to any mining venture or process.</p>
<p><b>Recommendation 13:</b> If Williamstown has, or is assumed to have, a life of less than 5 years, no action other than the immediate adoption of earlier recommendations is warranted.</p>	<p>Unacceptable</p>	<p>Goes to the adoption of a 300m S20 buffer around Williamstown.</p>	

#### 4. COMMITTEE CONCEPT (Recommendations 19, 23, 24 and 25)

- Having a mechanism in place that allows for the expert and independent scrutiny of its own and other operations is a positive step, however it should not be yet another time-based review.
- KCGM proposes the establishment of a permanent KCGM Liaison Committee based on the highly successful Boddington Gold Mine Environmental Liaison Group.

RECOMMENDATIONS	RATED	NOTES	POSSIBLE EFFECTS IF THIS RECOMMENDATION IS ACCEPTED
<p><b>Recommendation 19:</b> That a Committee, Chaired by the Minister’s nominee and involving both DoIR and DOE, be urgently convened to commence review on the consequences and management strategies for the broader environmental and public safety issues associated with the Super Pit operation.</p>	Manageable	<p>Provides a means of having qualified experts investigate the issues raised.</p> <p>To ensure that KCGM is intimately involved in reviews by that committee and that the committee has the necessary expertise and takes account of world’s best practice.</p> <p>Boddington Liaison Committee model would be ideal for this.</p>	
<p><b>Recommendation 23:</b> That the Committee recommended under Recommendation 19 be required to address the above matters.</p>	Manageable		
<p><b>Recommendation 24:</b> That the Committee recommended under Recommendation 18 be required to address the development of a consistent and transparent mechanism to address concerns regarding property damage associated with blasting and other sources of vibration from</p>	Manageable	<p>KCGM is already in the process of developing a more consistent and transparent process for damage assessment and compensation.</p> <p>State Government would have to pay for the management committee.</p>	

<p>the Super Pit and associated operations. Those considerations to include the effects of dust from those operations.</p>		<p>This committee needs to consist of experts in this field.</p>	
<p><b>Recommendation 25:</b> That the Committee recommended under Recommendation 18 be required to address the development of alternative approaches to self-monitoring for environmental effects of their activities. One alternative to be considered should be the engagement of a State-wide tendering process to permit companies independent of the entity being monitored to undertake this activity. The costs of the monitoring activity should correctly be met by the company being monitored and costing models should be an aspect of the Committee's consideration.</p>	<p>Manageable</p>	<p>Industry-wide issue that needs input from all players.</p>	<p>Improved system of monitoring that meets expectations of opponents of self monitoring.</p> <p>Improved environmental performance.</p> <p>Possible significant rise in the cost of environmental monitoring.</p>

## 5. DOIR ISSUES (Recommendations 1, 2, 3, 5, 6, 9, 10, 14, 15 and 16)

- Majority of these issues do not impact on KCGM.
- However a “one-size fits all” legislative approach is not practical to set an appropriate SEZ for open pit mining.
- KCGM proposes a joint industry departmental working group to investigate the feasibility of setting technical and safety parameters that should be considered when setting SEZ for new mining operations.

RECOMMENDATIONS	RATED	NOTES	POSSIBLE EFFECTS IF THIS RECOMMENDATION IS ACCEPTED
<p><b>Recommendation 1:</b> That the concerns of Aboriginal communities, raised with Mr Bob Laing and referred to above, be the subject of separate investigation, by means to be determined by the Minister for State Development.</p>	Acceptable	Improved indigenous relations.	
<p><b>Recommendation 2:</b> That a detailed review of the Mitchell-McCotter Report be undertaken by the Department of Industry and Resources. The report to be submitted to the Minister for State Development and to include a schedule and assessment of proactive measures which can be taken, to address the issues which continue and are identified in that Report.</p>	Manageable	<p>This report was written in 1991 and does not take into account improved technology has reduced impacts of mining on environment.</p> <p>KCGM is commissioning a 2004 Social Impact Assessment and these results could be viewed by government.</p>	
<p><b>Recommendation 3:</b> That this issue be immediately examined by government and appropriate measures developed and implemented by amendment to the Act.</p>	Manageable	<p>This recommendation deals with the closure of a loophole in the legislation regarding S20 of the Act not applying to freehold title</p> <p>This is unlikely to impact on current operations but</p>	

		may have industry implications	
<p><b>Recommendation 5:</b> The Mining Act 1978 be amended to require that any open cut mining operation have assigned a safety exclusion zone no less than 50% of its planned depth. In the event of subsequent Notice of Intention to increase the depth of the mine the SEZ be expanded accordingly. Any application to be evaluated according to specific risk factors and the current and projected size of the population centre both during and beyond the projected life of the mine.</p>	Manageable	<p>This has wide reaching implications industry wide and should be taken up by the Chamber of Minerals &amp; Energy, and other industry associations.</p> <p>This is a geotechnical consideration, and seems to be a dangerous recommendation to be made by a non-technical person. DoIR would need to look closely into the safety implications of this recommendation.</p> <p>'One-size-fits-all' approach to legislation is unsuitable for issue that needs to be applied on a case-by-case basis. This is the specialty area of the DoIR technical experts and every open-cut mine would need unique analysis.</p>	
<p><b>Recommendation 6:</b> That the Act be amended to require any SEZ imposed on an open cut mine to have effect prior to the commencement of any mining development works.</p>	Manageable	<p>The recommendation has planning/development implications for the industry.</p> <p>Implications for Local government planning and impacts on State planning.</p> <p>Of particular implication for KCGM is the "sub" recommendation in the text that the administration of the SEZ be removed from under the Town Planning Amendment Scheme and placed under the Mining Act.</p>	Cost considerations.
<p><b>Recommendation 9:</b> That the Notice of Intent procedure be amended to require the proponent of mining to specifically address considerations under the revised s20 (5).</p>	Acceptable	<p>Has implications for mine planning/expansion.</p> <p>However, if working under the KCMG proposed definition of mining activity this is manageable.</p>	Cost considerations.

		Again implications for the whole industry.	
<p><b>Recommendation 10:</b> That the Mining Act 1978 and Regulations be amended to require the publication of all Notices of Intent to mine in a nominated area of a daily state-wide newspaper. Further, the NOI and all supporting documents, including Project Management Plans and Closure Plans to be available from the nearest offices of DoIR and DOE. Specifically, the Regulations to require that all persons intended under s20 (5) of the Act be advised of the availability of the information.</p>	Acceptable	The industry needs to assess the impact of providing project management plans and closure plans in light of commercial sensitivity issues.	
<p><b>Recommendation 14:</b> That the Minister refer the individual complaints raised out of Williamstown (Sections 6, 9, 10 &amp; 11) and concerning Optimum Resources (Section 12) to the Corruption and Crime Commission for investigation and review. The review to examine the conduct of the Department; make determinations on the merits of each case; and propose improvements for the future. The legal review should have regard for the standards of conduct expected of government officers and consider referral of matters to the Public Sector Standards Commission as appropriate.</p>	Manageable	KCGM would like to see a resolution to this long-standing dispute with Optimum resources and certain Williamstown residents.	An opportunity to have these long standing issues independently assessed through a proper legal analysis of facts.

<b>Recommendation 15:</b> Any cases of Departmental conduct found to have led to misinformation of the Parliament should be referred to the Legislative Council's Privileges Committee.	Acceptable		
<b>Recommendation 16:</b> That the process outlined above be extended to deal with complaints of alleged breach of s20 (5).	Manageable	This has wider industry ramifications	Could provide us with a clear resolution process for future disputes.