



Environmental Defenders Office

Our Ref: S3052

21 June 2022

Ms Dianne Leeson
Panel Chair
Independent Planning Commission

C/O:
Mr Stephen Barry
Planning Director
Independent Planning Commission

By email only: ipcn@ipcn.nsw.gov.au; [REDACTED]
[REDACTED] [REDACTED]

Dear Chair

Glendell Continued Operations SSD 9349 & SSD 5850 MOD 4 re: response to additional DPE statement

1. We refer to the statement released by the Commission on 14 June 2022, advising of the reopening of public submissions for the Glendell Continued Operations SSD 9349 & SSD 5850 MOD 4 (**Project**) with respect to a letter from the Department of Planning and Environment (**DPE**) dated 10 June 2022 (**DPE Response**) in response to the Commission's request dated 6 April 2022 for an additional assessment of Aboriginal and European heritage impacts (**IPC Request**).
2. On behalf of our clients, we thank the commission for the opportunity to provide further submissions on the above material.
3. We set out the below submissions with respect to the DPE Response on behalf of our clients, Mr Scott Franks and Mr Robert Lester, Wonnarua men and representatives of the Plains Clan of the Wonnarua People (**PCWP**).

Summary of key points

4. DPE has **not** provided the assessment the Commission required of it. The Commission therefore still lacks the information it requires and has insufficient evidence for it to make the findings suggested by DPE on the weighting of relevant factors (particularly economics and heritage).

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5. Heritage NSW (and the Heritage Council) say (including in correspondence obtained under the GIPA Act) that their position has not changed. It is apparent from the position of Heritage NSW and the Heritage Council that DPE have ignored, misrepresented, or misunderstood these bodies' previous evidence. As such, little weight can be placed on DPE's position or the assessment report (and particularly, the extent to which it reflects both the evidence and a whole of government position).
6. Further, the evidence of Heritage NSW and the Heritage Council about the significance of the area and the impact of the project, and especially the evidence of the PCWP Traditional Owners, about the site's significance and project impacts should be preferred to that of DPE.
7. DPE focussed on a narrow list of questions that are not those asked by IPC and has not provided any reasoning as to why those questions were asked. This shows (at best) a complete misunderstanding of Commission's request and the Heritage impacts of concern.
8. Evidence provided on heritage by Heritage NSW, the Heritage Council and the PCWP is clear about significance of cultural heritage and impact the Project will have. The economic evidence on which DPE relies to determine the Project's economic and social benefits outweigh the impact on cultural heritage is not sufficiently certain to make such a finding.
9. For the above reasons, the IPC should find the project not in the public interest and it should be refused.

DPE has not provided the additional assessment as requested by the Commission

10. The IPC Request was explicit that the Commission sought additional assessment from DPE in relation to the Aboriginal and European heritage impacts of the Project:
 - a. Given the matters raised at that meeting, **the Commission Panel requires further assessment** of the anticipated impacts of the Project on matters relating to both Aboriginal and European heritage.¹
 - b. That **further assessment should respond to all matters raised by Heritage NSW and the Heritage Council** in the 28 March 2022 meeting...²
 - c. The Panel requests that the Department **provide further assessment** clarifying how the current position of Heritage NSW affects the recommendations put forward in the Department's Assessment Report and recommended conditions of consent.³
 - d. Does the Department's view, reflective of a whole-of-government assessment, remain that the social and economic benefits of the extraction of the coal resource still outweigh the heritage values of the Ravensworth Homestead complex? **It would assist the Panel if the Department could provide additional assessment** on this point.⁴

¹ Independent Planning Commission, letter to Department of Planning and Environment dated 6 April 2022, page 2 (**IPC Request**).

² IPC Request, page 2.

³ IPC Request, page 3.

⁴ IPC Request, page 3.

11. Assessment requires analysis of evidence, which the DPE response clearly does not do.
12. The DPE Response, being a three-page letter, not only does not provide the assessment requested by the Commission but does not even attempt to answer the questions asked of it in the IPC Request. The DPE contends that it “reviewed and re-assessed the heritage impacts of the project in consideration of the additional information provided by Heritage NSW as well as the information provided by Heritage NSW and the Heritage Council to the Commission during its public hearing”.⁵
13. Instead, it sets out for Heritage NSW a list of five questions which have little relevance to the IPC Request,⁶ and summarises Heritage NSW’s answers to these questions.⁷ This shows (at best) a complete misunderstanding of the Commission’s requests and the heritage impacts of concern.
14. We have been provided documents obtained by a third party under the Government Information Access Act, a copy of which are annexed to these submissions. It appears that despite being asked by the Commission to provide a further assessment with respect to matters raised by Heritage NSW and the Heritage Council, DPE did **not** seek the Heritage Council’s input, and when the Heritage Council nonetheless provided comments, these were ignored and have not been provided to the Commission.⁸
15. Instead, the DPE requested that Heritage NSW clarify statements made by both Heritage NSW and the Heritage Council during the meeting with the Commission but only to the extent of the five questions noted above.⁹ To properly engage in the assessment process arguably required the DPE to consult with the relevant parties to clarify their position on the key issues identified by the Commission in its request.
16. The DPE admits it only considered the “information provided by the Heritage Council to the Commission during its public hearing” and confirms that “the additional information does not affect or alter, the Department’s assessment of the heritage-related impacts of the project, or its conclusions and recommendations in relation to the project.”¹⁰ In our clients’ opinion, the DPE has not substantiated any such a finding. The DPE does not go beyond mere assertions or provide any evidence to support or justify it maintaining its position.
17. Our clients infer that the Commission would not have sought the additional assessment if it was satisfied that it has sufficient evidence before it to enable it to make a decision on the Project’s approval.
18. That the DPE Response did not provide that assessment or otherwise seek to answer the questions raised, means the Commission has no more evidence than it did when it made its request.

⁵ DPE, Response letter to the Commission’s Request dated 10 June 2022, page 2 (**DPE Response**).

⁶ DPE Response, page 1.

⁷ DPE Response, pages 1-2.

⁸ GIPA docs 22, 25, 29.

⁹ DPE Response, page 4.

¹⁰ DPE Response, page 2.

19. In such circumstances, it is our clients' opinion that it is open to the Commission to find that it does not have sufficient evidence to form a view on the heritage or economic impacts of the Project, two critically important impacts, and to refuse the Project on that basis.¹¹
20. Following the Commission's refusal of the proposed KEPCO Bylong coal mine in the Upper Hunter Valley (SSD 6367), in *KEPCO Bylong Australia Pty Ltd v Bylong Valley Protection Alliance Inc*, the New South Wales Court of Appeal found that it was open on the facts before the Commission to reject the Project due to there being no evidence capable of satisfying it on the point in question.¹² In this case, the point in question was whether an alternative source of coal of inferior quality would be secured.¹³ The proponent asserted that there was in fact evidence before the commission on the issue in the form of two letters that either the Commission:
- a Failed to actually consider; or
 - b In the alternative if the letters were considered, such a finding was legally unreasonable because there was only one conclusion open on the evidence.¹⁴
21. In rejecting the proponent's arguments in relation to a failure to consider the letters before it, Preston CJ said the Commission expressly referred to this material with the finding involving:
- an evaluation of the content of the letters, both what they do assert and the terms in which they assert it, as well as what they do not assert. This is actual consideration of the letters, not mere advertence or lip service.*¹⁵
22. In respect of the legal unreasonableness Preston CJ found this ground was not made out.¹⁶ His Honour said that by having regard to the terms in which the letters were expressed such a finding that the letters were insufficient for the Commission to determine the points in contention was open on the facts and therefore it "cannot be said it was legally unreasonable for the IPC to have made the finding."¹⁷ As such, the primary judge did not err when categorising the Proponent's claims being on the merits, rather than a point of law.¹⁸
23. The Commission is empowered, through the EP&A Act and recognised by the LEC and the NSWCA in *Bylong* and other cases, to refuse projects where it does not have enough evidence of the impacts before it. As set out above, the DPE in its response has restated its previous findings without turning its mind to the IPC Request and genuinely engaging in an assessment on several key issues identified by Heritage NSW and the Heritage Council. Nor has the DPE demonstrated that the economic evidence is sufficiently certain to justify the significant and devastating impact the Project will have on cultural heritage.

¹¹ *KEPCO Bylong Australia Pty Ltd v Bylong Valley Protection Alliance Inc* [2021] NSWCA 216 [203] ('**Bylong**').

¹² *Bylong* [78]-[80].

¹³ *Bylong* [80].

¹⁴ *Bylong* [190].

¹⁵ *Bylong* [203].

¹⁶ *Bylong* [204].

¹⁷ *Bylong* [206].

¹⁸ *Bylong* [207].

24. In taking such an approach, the DPE has failed to put evidence before the Commission that satisfies key issues identified that now remain in question with respect of cultural heritage and the economic viability of the Project.
25. Our clients maintain that the DPE, despite being given further opportunity, has failed to adequately consider and assess the heritage values of the Estate and Homestead together as, and as part of, a complex cultural landscape with substantial Aboriginal cultural heritage and other heritage values.
26. The DPE Response or its Assessment Report does not demonstrate the DPE has engaged in an active intellectual process when considering the material before it. It has failed to understand the actual heritage significance of the place, nor the impact the Project will have on cultural heritage values. As such, the DPE has failed to give adequate weight to this relevant factor which is of great importance.¹⁹
27. It is our client's view, the Commission would be justified in any decision it forms to the effect that the DPE has not put evidence before it capable of satisfying it in respect of the issues that remain in contention. As such it would be reasonable for the Commission to find there is insufficient or no evidence before it to make the decision suggested by the DPE being development consent approval subject to conditions.
28. In the circumstances, the evidence of Heritage NSW and the Heritage Council regarding the significance of the area and the impact of the project on cultural heritage values, and especially the evidence of the PCWP Traditional owners, should be preferred to that of DPE.

Evidence of the site's significance is clear and undisputed

29. There is, in fact, broad agreement amongst the registered Aboriginal parties consulted for the Project that the Project area is significant, for both "traditional" cultural values and cultural values associated with the post-colonial/invasion events. We refer the Commission to our clients' previous written submission dated 4 April 2022.
30. Our clients emphasise that it is sufficiently certain that the Project's residual impacts are likely to have a significant incremental or cumulative impact on the Aboriginal values of the region. In relocating the homestead, it takes it out of context of the complex cultural landscape that itself has significant Aboriginal cultural heritage values. The DPE response does not address this issue in any meaningful detail.
31. In Heritage NSW's response to the DPE, it still considers with respect of the homestead's intangible values:

the site has a place in the Aboriginal cultural history of the region as a site of Aboriginal occupation prior to settlement, and subsequently for its involvement in the frontier conflict in the broader region. It is part of the colonial story of land acquisition and settlement/displacement.

A relocation of the homestead would remove it from this setting and its immediate history, altering the context and compromising the authenticity of the place, and the ability to best tell that story.²⁰

¹⁹ *Warkworth Mining Limited v Bulga Milbrodale Progress Association Inc* [2014] NSWCA 105 [196].

²⁰ DPE Response, page 4.

32. In its summary, the DPE omits the above opinion of Heritage NSW. While the DPE acknowledges that “the Ravensworth Homestead and the surrounding core estate lands have local and State heritage significance, with elements of high to exceptional significance”²¹ the DPE does not elaborate on the impact relocating the homestead will have, nor the impacts of the Project on the cultural value of the lands which the homestead is currently located.
33. The Commission should instead be primarily guided by the evidence of our clients, followed by that of the Heritage Council and NSW Heritage. Both the Heritage Council and NSW Heritage agree the site is significant, but that significance extends beyond matters which the DPE appears to have considered.
34. As set out in more detail below, the DPE contends that its assessment is consistent with the position of Heritage NSW which is unfounded on the evidence before the Commission.

Assessment report does not reflect, nor is it consistent with, Heritage NSW’s position

35. The DPE, in purportedly reconciling the views of Heritage NSW in the DPE Response, asserts that for the most part those views are not inconsistent with its own. Such a finding does not sit comfortably with the evidence set out below, the Department’s Assessment nor the DPE response.
36. As with much of the discussion around the heritage significance of the Project area, the DPE has focused on both the physical structure of the homestead and on a particular massacre event. In focusing on these aspects, one is unable to adequately identify the true cultural values of the site leading it to form the view that those values can be offset by simply relocating the homestead. Such an approach not only oversimplifies the Project’s impact on cultural heritage but fails to address key cultural heritage impacts that have been set out in evidence provided to the DPE by Heritage NSW and the Heritage Council.
37. Heritage NSW (and the Heritage Council) say (including in correspondence obtained under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**)) that their position has not changed.
38. The assessment report, contrary to the statement at [274] of that document, does not in fact convey the views of Heritage NSW.
39. This is apparent from internal correspondence obtained under the GIPA Act and provided to our client. We draw the Commission’s attention the following:
 - a. GIPA doc 2: in reference to the Department’s Assessment Report that was submitted in February 2022, states that “*Heritage was not invited to review or comment on this report prior to submission – nor was DPE required to provide its report or recommendations for Heritage comment. It is worth reiterating that at the time of that submission, Heritage NSW was not part of DPE; it is therefore natural the views of DPE and the views of Heritage NSW differed somewhat.*”²² “(emphasis added)”; and

²¹ DPE Response, page 2.

²² GIPA document 2: Correspondence – D Gainsford – Ravensworth Homestead complex heritage value – page 2.

- b. GIPA doc 12: “There are a few areas still needing to be fleshed out in the two attachments – namely comments made in the IPC letter on page 2 onwards relating to the department’s Assessment Report. *I think it is important to continue to reiterate that we weren’t consulted on that report* and Heritage NSW was not part of the department so our views should be considered as separate to the department’s views, should they not (i.e *is it not in Planning’s interest to say the economic benefits outweigh the heritage*)²³ “(emphasis added)”.
40. In the above circumstances, it is therefore evident that the statement made by DPE in the Assessment Report at [274] misrepresents Heritage NSW’s position: ‘The Department *and Heritage NSW* are satisfied that Glencore has explored and identified reasonable and feasible measures to minimise the Project’s impacts on Aboriginal heritage value, and that the Project’s residual impacts are unlikely to have a significant incremental or cumulative impact on the Aboriginal heritage values of the region.’
41. GIPA doc 8a: this is a draft letter from Atticus Fleming that it was not included as part of the official letter, in which Mr Fleming expresses the following:
- “I wish to firstly address the IPC’s view that statements made by Heritage NSW on 28 March represent ‘key developments in their position regarding potential impacts associated with the Project’. *Heritage NSW wishes to clarify that their position in relation to the project and its impacts has not changed. Their views remain consistent in that they are committed to protecting and conserving the heritage values of the site*”²⁴ “(emphasis added)”.
42. From this and from earlier evidence provided by those bodies, it is apparent that DPE have ignored, misrepresented, or misunderstood the previous evidence of Heritage NSW and the Heritage Council. This is further evidence in support of the Commission placing less weight on DPE’s position or the assessment report (and particularly, the extent to which it reflects both the evidence and a whole of government position).
43. We also refer the commission back to the previous evidence given by our client by way of oral evidence at the meeting with the Commission 8 March 2022 and written submissions.

The economic evidence is so uncertain as to be meaningless - the IPC should find the project not in the public interest and it should be refused.

44. The DPE relies on the Applicant’s claimed economic benefits of the Project to justify its view that the Project can proceed on the basis of the Homestead being relocated. As identified above, not only does this fail to appreciate the impact the Project will have on cultural values, in reaching this conclusion the DPE also accepts that the economic evidence is sufficiently certain to justify such a finding. Such a finding is simply not available on the evidence before the Commission.
45. As the IPC Request highlights, the DPE itself admitted that in respect of the Cost Benefit Analysis (**CBA**) there is “quite an extreme sort of sensitivity range when you look at the different methodologies”.²⁵ The DPE response during the Public Hearing suggests that it

²³ GIPA document 12 – Email Correspondence from Samantha Woods to Samantha Kidman dated 28 April 2022.

²⁴ GIPA document 8a – Draft letter of Atticus Fleming to DPE reference IRF22/1155, page 1.

²⁵ IPC Request, page 3.

was also uncertain as to the actual benefits in relation to the Project, despite finding that any cultural heritage impacts resulting from the homestead's relocation do not outweigh the social and economic benefits of the Project.

46. DPE's claims that the cultural heritage impacts are outweighed by the social and economic benefits is unreasonable, illogical or irrationally formed in circumstances where the DPE is uncertain as to the claimed social and economic benefits.
47. The Commission asked the DPE to address the above point, along with the heritage remaining in-situ. The DPE response does not go beyond repeating its initial statement of findings, it has not actively engaged with the evidence as required to form such a view. As such, the Commission now finds itself in the same position prior to it making the request.
48. Where the economic evidence is uncertain, the Commission is justified in making its decision based on evidence that is certain. As outlined above, the evidence of the cultural significance of the site is clear, as are the devastating impacts the Project will have on significant cultural heritage if it is approved.
49. The role of the economic evidence must be understood within the context of the statutory framework which sets out the task the decision-maker is required to undertake in its assessment functions.
50. Our clients' view is the DPE Response does not demonstrate it has properly considered whether the Project is in the public interest. Namely it has not adequately assessed whether the social and economic benefits of extracting the coal resource outweigh the heritage values of the Ravensworth Homestead complex among other social and environmental impacts the Project will have if approved.
51. The intangible cultural values are a matter that cannot be quantified for the purposes of a CBA. While the decision-maker can be informed by a CBA, it cannot and does not replace the DPE or the Commission's statutory task requiring an assessment of whether that the Project is in the public interest by balancing the benefits and impacts of the mine. As Preston CJ set out in *Rocky Hill*:

*Forms of economic assessment such as cost benefit analysis, which quantify, monetise and aggregate different factors, assist but are not a substitute for the intuitive synthesis required of the consent authority in determining the development application.*²⁶

52. While it is not clear from the DPE Response letter if it relied alone on the CBA to make such a finding, balancing the benefits and the costs of the project is a qualitative and not a quantitative exercise.²⁷ The cultural significance of the site is relevant factor of high importance that should be afforded the appropriate weight. In this case, it is not the only factor that indicates this coal resource should not be exploited. Other social and environmental impacts of this proposed mine are unacceptable - it will cause substantial environmental and social harm. In our clients' opinion, the impact on significant cultural heritage alone is sufficiently serious to justify refusal of the Project.

²⁶ *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 [687] ('**Rocky hill**').

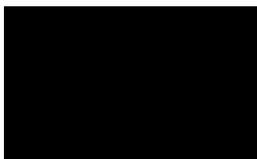
²⁷ *Rocky Hill* [687]

53. Even though an economic lens, the Project should be refused. Our client has previously elaborated in detail that the CBA is not sufficiently certain to justify any such finding that the Project will in fact result in a positive economic benefit. Rather, the social cost of carbon indicates that substantial costs will be borne by the State of NSW and disproportionately so by future generations. Our clients' position is supported by creditable evidence which is before the Commission.
54. Irrespective of the financial viability of the mine, significant cultural heritage will be destroyed as a consequence of the mine proceeding. Our clients reject the DPE's position that such loss can be offset. This response demonstrates that the DPE fundamentally misunderstands the significance of the site. This is also evident in its failure to assess the evidence of the Heritage Council and Heritage NSW which establishes the values of the heritage remaining in-situ.
55. As such, little weight should be afforded to its Assessment Report or the DPE Response. The Commission instead should primarily be guided by the evidence of our clients, followed by that of the Heritage Council and NSW Heritage all of whom are better positioned to assess the site's cultural significance and the devastating impacts the Project's approval will cause.
56. The DPE Response further entrenches its inadequate assessment of the cultural significance of the site, as it had previously demonstrated in the Assessment Report. As such, little weight should be given to the DPE's Assessment Report in respect of what it says is the cultural significance of the site and what the impact will be.
57. If the Commission affords any further opportunity to the DPE to provide further information, an assessment of cultural heritage impacts, or to clarify its position, we respectfully request the Commission re-exhibits the information to receive public submissions on that material.
The Commission is justified in any decision it makes to refuse development consent for the Project based on the evidence before it.
58. We draw the Commission's attention to the words of our client, Scott Franks:
- The essence of our people are of the land, for the land for future generations. We don't sell our heritage and that's what Glencore proposed to do here, a very unique symbolic location that attaches our cultural laws and customs into the next generations that should be an area of reconciliation. **If there was ever a place that needs to be preserved, it's the Ravensworth Estate.** It's a place that attaches to the First Fleet with a surgeon who's very well known and an officer. It's the beginning and the end of what life to us as Wonnarua people means in that area and it still today holds deep dark secrets that are trying to be forgotten.²⁸*
59. Thank you for your consideration of the above. Should you have any further questions, please do not hesitate to contact us.

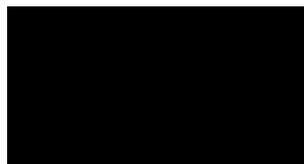
Yours faithfully

²⁸ Transcript of the IPC Public Hearing 21.03.22, p 53.

Environmental Defenders Office



Jayme Cooper
Solicitor



Rana Koroglu
Managing Lawyer, NSW

Encl: Documents 2, 8a, 12, 22, 25, 29 obtained under the *Government Information Public Access Act* (NSW) 2009



Department of Planning and Environment

Correspondence – D Gainsford – Ravensworth Homestead complex heritage value

Purpose	To respond to Mr David Gainsford, Deputy Secretary, Development Assessment, who has written to you seeking clarification on the statements made by Heritage NSW during its meeting with the Independent Planning Commission on the heritage value of the Ravensworth Homestead complex.		
Analysis	If approved, the State Significant Development (SSD) Glendell Continued Operations mining project would impact the historic Ravensworth Homestead. Ravensworth has been nominated for listing on the State Heritage Register (SHR). The Heritage Council has deferred progressing the listing until the Independent Planning Commission (IPC) decision is handed down, which is expected to happen in late May 2022. Heritage NSW representatives met with the IPC on 28 March 2022.		
Recommendation	That you:	Yes	No
	• Sign the response at Tab 1.	<input type="checkbox"/>	<input type="checkbox"/>
Action by	As soon as possible to enable a timely response to Mr Gainsford.		
Signature/ comment	<hr/> Atticus Fleming AM A/Coordinator-General Environment and Heritage Group Date:		

Commented [DL1]: Changed it given Mr Gainsford requested a response by 22 April.

Background

The Project proposes to extend an open cut coal mine into the Ravensworth cultural landscape, destroying a significant homestead, and Aboriginal and post-contact cultural heritage values. The proposal involves dismantling and relocating the historic homestead.

Following the 28 March 2022 IPC hearing, the IPC requested follow-up responses from the Department of Planning and Environment (DPE) on heritage concerns over the mine expansion impacts to Ravensworth, its values, associated Aboriginal massacre connections, context, and archaeology.

The Ravensworth estate has been nominated for listing on the SHR. The Heritage Council of NSW confirmed the place is likely to be of state significance.

A section 10 application has also been made to the Federal Minister for the Environment, the Hon Sussan Ley MP, under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* in relation to the Ravensworth Estate and surrounding areas.

A Section 10 application enables the Federal Minister to make a declaration for the protection and preservation of significant Aboriginal areas and objects from injury or desecration.

The office of the former Minister responsible for Heritage received correspondence from the Federal Minister for the Environment requesting a review of the Section 10 application. The application is in relation to Ravensworth Estate, Bowmans Creek and Glennies Creek near Camberwell, NSW.

The section 10 assessment is under review by the Department of Agriculture, Water and Environment and once finalised will progress to the Federal Minister for the Environment for a decision. There are no statutory timeframes for a decision under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.

Key issues

The *Heritage Act 1977* is 'switched off' for State Significant Development

If an item to which SSD or SSI applies is SHR listed, the *Heritage Act 1977* is switched off and the approvals functions of the Heritage Council do not apply.

Assessed significance of the place

Ravensworth is an exceptionally intact cultural landscape that tells the story of shared Aboriginal and European heritage in the Hunter Valley, including early conflict, the development of pastoralism and the convict labour system.

The Wonnarua landscape, centred on a series of creeks, comprises tangible and intangible Aboriginal cultural heritage values. The site is noted to have the strongest documentary evidence of any conflict site across the Hunter Valley, demonstrating how fiercely the Wonnarua defended and valued the landscape in several violent episodes, including the event known as the Ravensworth massacre.

In 1824, the large pastoral estate was granted to Dr James Bowman, principal surgeon in the colony. He lived there with his wife Mary Macarthur. The complex is largely intact and comprises convict-built homestead buildings, together with the surrounding pastures. It forms a distinctive colonial, rural landscape.

Although surrounding agricultural lands have been subdivided and gradually impacted by open cut mining since the late 1990s, the setting and significant views from the Ravensworth homestead have been largely maintained.

Heritage Council position

Due to its assessed state heritage significance, the Heritage Council of NSW supports Ravensworth Homestead being retained in its original, highly significant location with a curtilage around its equally significant cultural landscape.

On 12 August 2018, the Planning Secretary's Environmental Assessment Requirements (SEARs) for the Glendell Continued Operations Project development application were issued in accordance with section 4.12 (8) of the *Environmental Planning and Assessment Act 1979*.

From 11 December 2019 to 14 February 2020, the Environmental Impact Statement (EIS) was placed on public exhibition. A request for advice on the EIS was referred to the Heritage Council for comment.

At its meeting of 5 February 2020, the Heritage Council considered a report on the EIS and received a presentation from the applicant. The Council provided comments on the EIS to the Department of Planning and Environment (DPE) on 11 February 2020. The Council did not support relocating the Homestead, as this would destroy the cultural values of the place.

On 6 October 2021, DPE presented new information to the Heritage Council regarding the financial viability of the SSD project if Ravensworth were to be kept in situ. The Heritage Council noted the new information but stated that it maintains the view that the importance of Ravensworth Homestead includes its role in frontier conflict and affirmed its previous advice to DPE.

Department's Assessment Report

In February 2022, DPE submitted its assessment report on the project to the IPC. Heritage was not invited to review or comment on this report prior to submission – nor was DPE required to provide its report or recommendations for Heritage comment.

It is worth reiterating to the IPC that at the time of that submission, Heritage NSW was not part of DPE; it is therefore natural the views of DPE and the views of Heritage NSW differed somewhat.

Next steps

IPC decision to be handed down

The IPC is expected to hand down its decision in late May 2022.

Should the IPC approve the Glendell Continued Operations project SSD, the Heritage Council would reconsider its support for listing the place, which would depend on a range of factors arising from the approval and any specific conditions attached, including but not limited to whether the relocating the homestead is pursued.

If the IPC does not approve the Project, the Heritage Council will proceed with a nomination to recommend the SHR listing of Ravensworth to the Minister.

The Minister for Environment and Heritage does not have a formal role in the decision on whether the SSD can proceed. In relation to potential SHR listing, the Minister can, on the recommendation of the Heritage Council of NSW, direct the listing on the SHR of items of state heritage significance.

Supporting analysis

Risks and mitigations

There has been continuing media regarding the significance of Ravensworth estate for its Aboriginal and post-contact values and community opposition, referring to the destruction of Juukan Gorge by Rio Tinto and the uncertain future of coal.

Consultation

Heritage NSW consulted the Chair of the Heritage Council of NSW, Mr Frank Howarth.

Contact and approval

Contact officer	Position	Phone
Mary Ann Hamilton	Manager, North Heritage Programs	
Approving officer	Position	Date
Steve Meredith	Director, Heritage Programs	04/05/2022
Sam Kidman	Executive Director, Heritage NSW	04/05/2022

Attachments

Tab	Title
1	Response



Department of Planning and Environment

Your ref: IRF22/1155
Our ref: ED22/36

Mr David Gainsford
Deputy Secretary, Development Assessment
Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Dear Mr Gainsford

Thank you for your letter seeking clarification on the statements made by Heritage NSW and the Heritage Council of NSW during its meeting with the Independent Planning Commission on the heritage value of the Ravensworth Homestead complex.

I wish to firstly address the IPC's view that statements made by Heritage NSW on 28 March represent 'key developments in their position regarding potential impacts associated with the Project'. Heritage NSW wishes to clarify that their position in relation to the project and its impacts has not changed. Their views remain consistent in that they are committed to protecting and conserving the heritage values of the site.

To address the points raised in your letter:

Heritage NSW's suggestion that the Ravensworth Homestead may be of National significance

The transcript of the 28 March meeting does not contain a reference to the Homestead being of national significance. Heritage NSW representatives instead made comments on Ravensworth's place in the national story of colonial properties such as this and the role they played in aggressive policies of land acquisition and use, settler ownership, assignment of convicts and broadly, the precipitation of these policies and practices into conflict.

There are few homesteads of this nature nationally that remain as intact as Ravensworth, which is a major contributing factor to the property's significance and rarity.

Heritage NSW's suggestion that the Ravensworth Homestead provided a causal link to the Upper Hunter Massacre Site

The abovementioned linkages to aggressive colonial land acquisition provide this causal link to the Upper Hunter Massacre Site. Ravensworth was one of the leading early properties in the Hunter that played a role in dispossessing the Aboriginal people of their land. The hostile displacement of local Aboriginal people by Ravensworth and surrounding properties from the late 1820s escalated tensions and led to the aggressions witnessed in the region. Further, the involvement of Ravensworth staff in hostilities in the area similarly lends itself to the connection between the property and the conflict that took place across the region.

Heritage NSW was, with the Chair of the Heritage Council, reinforcing their separate written submissions that saw the Ravensworth property as an 'actor' in the seminal events that led to local Aboriginal dispossession. Both parties note more recent historical assessment (such as that by historian Dr Mark Dunn) that confirm that the actual 1826 massacre occurred on properties outside of the Ravensworth Estate.

However, both Heritage NSW and the Heritage Council contend that the homestead and its estate cannot be excised from the story of dispossession and displacement (Governor Brisbane and Commissioner Bigge assigned convict policies – c1821-1825), and that its existence in the landscape played a contributing role that cannot be discounted.

Heritage NSW's comments about the authenticity of the Ravensworth Homestead, particularly in relation to other homesteads in the Hunter Valley

Heritage NSW has consistently maintained its views on the authenticity of the homestead. This view aligns with a range of other published assessments of the Ravensworth Homestead, including by heritage practitioners engaged by Glendell Mine owners and the Heritage Council's public Minutes.

In *Ravensworth Estate, Ravensworth, NSW Expanded Analysis of the Ravensworth Homestead Complex*, prepared for Mt Owen Pty Ltd, Glencore, 2020, the authors cite: *"the intactness of the Main House of Ravensworth (that) makes the place relatively rare within the context of the Hunter region and of high significance, however the original "H plan" form of the Main House of Ravensworth makes the place extremely rare and of exceptional significance at a State level. The configuration, construction date, intactness (this is the 'authenticity' Heritage NSW refers to) and design attributes of the Ravensworth Homestead Complex makes the place very rare in the context of the Hunter region and is of State level significance"*.

Further, in Lucas Stapleton Johnson and Partners, *Heritage Analysis and Statement of Significance: Ravensworth Estate, Singleton, NSW* (Sydney: Lucas Stapleton Johnson and Partners 2019, p.349): *"Because of the relatively modest history of development throughout the 19th and 20th century, the place has the potential to provide information, by way of further study and archaeological investigation, into colonial building techniques, 19th century lifestyles, agricultural and horticultural practices and the working lives of convicts in a non-institutional setting, which is considered very rare"*.

The question of the property's very early age, unique design, intact main buildings, key outbuildings, and infrastructure is discussed in many other documents including the formal nomination of the place for State Heritage Register listing. Mr Smith in his evidence was paraphrasing these and other studies such as the Heritage Council's own *Hunter Homesteads Study (2012-13) Hunter Estates – A comparative heritage study of pre 1850s homestead complexes in the Hunter Region* project for the Heritage Council. This report is available publicly on the NSW Heritage Website. That report identified Ravensworth as one of the most unique and intact of the Hunter Homesteads (from a comparative assessment of 200) and worthy in a hierarchical selection for State Heritage Register listing at the time of the report.

Overall, the discussion of authenticity refers to the homestead's retention of much of its original fabric. The building remains principally intact, and this lends to its integrity and heritage significance. This is a major factor in whether to consider a site for listing on the State Heritage Register and contributes to the site's rarity in comparison to other homesteads of a similar era which have been altered over time.

Removal and relocation of the property would threaten this authenticity and pose significant risk to the integrity of its fabric. Heritage NSW is of the opinion that dismantling the buildings would be likely to damage the structure in such a way as to diminish its heritage values, including the impact to its buried archaeological components that tell a key story on its operations and use.

Heritage NSW's reference to 'intangible values' of the Ravensworth Homestead that would be lost should the homestead be relocated

Heritage NSW in making these comments was in part referencing the Burra Charter principles that look beyond the built (tangible) heritage elements of a place in assessing significance. In relation to Ravensworth, the main house and its outbuildings have their own historical, scientific, and social values, but are even more significant when viewed within the historical operating context of the estate with its minor outbuildings, cisterns, wells, sheep dips, fencing, grand carriage way, and elevation. Some of these elements survive as below-ground archaeological features but comprise

equally important in-situ elements to the standing structures that talk to the complexity of these estates and the statement they were making in terms of commercial businesses.

Further, the site has a place in the Aboriginal cultural history of the region, as a site of Aboriginal occupation prior to settlement and subsequently for its involvement in the frontier conflict within the broader region. Further to comments made above, it is part of the colonial story of aggressive land acquisition and settlement.

A relocation of the homestead would remove it from this setting and its immediate history, altering the context and compromising the authenticity of the place when considered in its entirety.

General comments on the perception that Heritage NSW has changed its views on the Project

Heritage NSW respectfully denies the assertion that comments made during the 28 March meeting were inconsistent with previous views on the matter.

DPE has advised Heritage NSW that of its several public submissions to the Major Project assessment (SSD) process, there is inherent conflict in the response by the former Aboriginal Cultural Heritage Assessments Team (30 October 2020) and that of the Delegated Heritage Council EIS response (11 February 2020).

Commented [SW1]: Do we know when and how DPE advised us? Can we refer to a specific piece of correspondence?

Heritage NSW is responsible under the *National Parks and Wildlife Act 1974* (NPW Act) for commenting on Departmental referrals relating to Aboriginal cultural heritage. In the 30 October 2020 response, Heritage NSW (as the Delegate) confirmed that appropriate consultation with Aboriginal communities had occurred.

It also acknowledged that this consultation identified different levels of attachment to Ravensworth by Aboriginal people, and that the proposed measures to protect known Aboriginal sites and objects were appropriate within the controls of the NPW Act. The letter made general observations about broader intangible Aboriginal values, but it is not the role of the team under that legislation to comment on values outside their remit – its focus under the legislation is to assess and manage material impacts to ACH sites and objects where identified.

It is, however, appropriate that the independent Heritage Council of NSW, or the environmental heritage assessment teams within Heritage NSW, make such assessments under their remit to provide advice on Aboriginal and Environmental Heritage under the *Heritage Act 1977*. The Heritage Council in its responses to the SSD project (9 December 2020) and letter (8 October 2021), therefore made broader comment on its perceptions of the linkages of the property to historical events, and to levels of significance, beyond tangible heritage elements only. Rather than being contradictory to previous advice, it is advice from a different functional area.

DPE did not (and is not required to) share its Assessment Report and Recommendations to the IPC with Heritage NSW for comment prior to submission. It may be of benefit to provide these to the IPC.

If you have any further questions about this issue, please contact Tim Smith OAM, Director Heritage Assessments, on [REDACTED] or at [REDACTED]

Yours sincerely

Atticus Fleming

Kylie Broughton

From: Elizabeth Owers
Sent: Thursday, 28 April 2022 4:08 PM
To: Samantha Woods; Sam Kidman
Cc: Tim Smith; Steven Meredith
Subject: RE: Draft Ravensworth correspondence & attachments

Thanks Sam W.

Sam K – I believe the HC attachment is drawing on Frank’s direct feedback (Sam W we didn’t edit this at all?).

We should probably share with Frank asap to get this attachment finalised. We can then focus on addressing the remaining HNSW items.

From: Samantha Woods [REDACTED]
Sent: Thursday, 28 April 2022 3:42 PM
To: Sam Kidman [REDACTED]
Cc: Tim Smith <[REDACTED]>; Steven Meredith [REDACTED]; Elizabeth Owers [REDACTED]
Subject: Draft Ravensworth correspondence & attachments
Importance: High

Hi Sam

Attached is the draft Glendell/Ravensworth letter with two attachments outlining our and the HC’s responses to comments within the IPC letter. Also attached is a timeline document prepared by Nicole Davis outlining the various decision points along the journey.

There are a few areas still needing to be fleshed out in the two attachments – namely comments made in the IPC letter on page 2 onwards relating to the department’s Assessment Report.

I think it is important to continue to reiterate that we weren’t consulted on that report and Heritage NSW was not part of the department so our views should be considered as separate to the department’s views, should they not (i.e is it not in Planning’s interest to say the economic benefits outweigh the heritage benefits, while we logically would think differently?)

MSB still hasn’t granted me permissions to add attachments to certain CM9 file types so these docs aren’t in there yet – I will ask them to attach for me.

I’ll be around for a few more hours so let me know if I can make any changes/additions.

Thank you
Sam.

Samantha Woods
Team Leader Briefings and Coordination
Environment and Heritage
Department of Planning and Environment

M [REDACTED] E [REDACTED]

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I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

Please consider the environment before printing this email.

Kylie Broughton

From: Elizabeth Owers
Sent: Wednesday, 20 April 2022 10:32 PM
To: Samantha Woods
Subject: RE: Ravensworth - correspondence referencing IPC meeting

Agreed – the second paragraph is what is throwing me through as they are calling out the transcript initially, then saying “in particular cover this’.

If it was just the dot points, then I would have written ‘and here is Tab A to provide some additional context when addressing the points above’.

Will see what Steve says. I should have read this more closely initially and clarified then.

From: Samantha Woods [REDACTED]
Sent: Wednesday, 20 April 2022 10:16 PM
To: Elizabeth Owers [REDACTED]
Subject: RE: Ravensworth - correspondence referencing IPC meeting

Yes, it is a bit weird that they sent us the IPC one but haven’t specifically called out any points within it.

I just worry about addressing stuff that isn’t in the Gainsford letter to Atticus.

Samantha Woods
Team Leader Briefings and Coordination
Environment and Heritage
Department of Planning and Environment

M [REDACTED] E [REDACTED]

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Please consider the environment before printing this email.

From: Elizabeth Owers [REDACTED]
Sent: Wednesday, 20 April 2022 10:11 PM
To: Samantha Woods [REDACTED]
Subject: RE: Ravensworth - correspondence referencing IPC meeting

This one is confusing.

I'll contact Stephen O'Donoghue who is referenced in the letter. The letter, whilst it calls out specific dot points, the second paragraph also seems to open the request up to everything in the IPC letter.

From: Samantha Woods [REDACTED]
Sent: Wednesday, 20 April 2022 7:59 PM
To: Elizabeth Owers [REDACTED]
Subject: RE: Ravensworth - correspondence referencing IPC meeting

Hi Elizabeth

I had that and I took note of his comments, but the letter we are replying to from David Gainsford makes no mention of the HC and specifically says “the Department is seeking further clarification on the statements made by Heritage NSW during its meeting with the Commission”, and asks for our response to the following:

- Heritage NSW’s suggestion that the Ravensworth Homestead may be of National significance;
- Heritage NSW’s suggestion that the Ravensworth Homestead provided a causal link to the Upper Hunter Massacre Site;
- Heritage NSW’s comments about the authenticity of the Ravensworth Homestead, particularly in relation to other homesteads in the Hunter Valley; and
- Heritage NSW’s reference to ‘intangible values’ of the Ravensworth Homestead that would be lost should the homestead be relocated.

Should we really be providing responses on behalf of the HC? Would we perhaps be better off maintaining some separation so it is clear the views and positions are separate?

Samantha Woods
Team Leader Briefings and Coordination
Environment and Heritage
Department of Planning and Environment

M [REDACTED] E [REDACTED]

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Please consider the environment before printing this email.

From: Elizabeth Owers [REDACTED]
Sent: Wednesday, 20 April 2022 7:18 PM
To: Samantha Woods [REDACTED]
Subject: Fwd: Ravensworth - correspondence referencing IPC meeting

FYI for Franks feedback

From: Frank Howarth [REDACTED]
Sent: Wednesday, April 13, 2022 11:26 am
To: Elizabeth Owers
Cc: Olgica Lenger; Sam Kidman; Samantha Woods; Tim Smith; Steven Meredith
Subject: Re: Ravensworth - correspondence referencing IPC meeting

Hi Elizabeth,

I've made some notes in the margin of the IPC letter, attached.

Re the DPE assertion that the views expressed by us at the hearing were not consistent with earlier advice, I would argue that what we said was not inconsistent, but rather an amplification of that advice, given the nature of the IPC questioning.

Can I please see what we propose to say to DPE before its sent. We need also to ensure that DPE does not "summarise" our views before they go to IPC.

Best wishes

Frank

On Tue, 12 Apr 2022 at 11:40, Frank Howarth wrote:

Hmmm. Most interesting. I'll do some points to use in the response, this week.

On Tue, 12 Apr 2022 at 10:58, Elizabeth Owers [REDACTED] wrote:

Hi Frank,

As discussed, please find attached the correspondence Atticus Fleming, A/Coordinator General received in respect to the IPC meeting on Ravensworth. It references a number of your comments (as well as Tim & Steve).

We will draft a response for Atticus. Are you happy to provide dot point feedback by email? Or alternatively, let me know how you would like to contribute.

Due date is TBC – but expecting we will need to prepare the response in 1-2 weeks.

Elizabeth

Elizabeth Owers

Director Customer Service, Heritage NSW

Environment & Heritage

Department of Planning and Environment

M [REDACTED] **E** [REDACTED]

dpie.nsw.gov.au

Level 6, 10 Valentine Ave

Parramatta NSW 2150

[Website](#) [Facebook](#) [Instagram](#) [LinkedIn](#)



I acknowledge and pay my respects to the traditional owners and custodians on whose land I walk, work & live.

Kylie Broughton

From: Elizabeth Owers
Sent: Tuesday, 26 April 2022 7:58 AM
To: Frank Howarth
Cc: Samantha Woods; OEH HD Divisional Coordination Mailbox; Sam Kidman
Subject: Re: Tab 1 - Response - Glendell Continued Operations Project (SSD 9349) - D Gainsford - Development Assessment

Hi Frank,

Yes I will speak to Planning today to ask.

Elizabeth

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From: Frank Howarth 3(a)(b)
Sent: Tuesday, April 26, 2022 7:33:07 AM
To: Elizabeth Owers [REDACTED]
Cc: Samantha Woods [REDACTED]; OEH HD Divisional Coordination Mailbox <HeritageDivision.Mailbox@environment.nsw.gov.au>; Sam Kidman [REDACTED]
Subject: Re: Tab 1 - Response - Glendell Continued Operations Project (SSD 9349) - D Gainsford - Development Assessment

Hi Elizabeth,

I hope you are feeling better.

Can the team pls clarify asap how the HC can respond to the IPC? I have to go to Alice Springs for a meeting on thurs morning and want to try and resolve things before I leave.

Best wishes

Frank

On Sat, 23 Apr 2022 at 14:29, Elizabeth Owers [REDACTED] wrote:
Hi Frank,

Of course. It's been a little confusing about what needs to be responded to and by when.

Elizabeth

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From: Frank Howarth 3(a)(b)
Sent: Saturday, April 23, 2022 11:08:01 AM
To: Elizabeth Owers [REDACTED]
Cc: Samantha Woods [REDACTED]; OEH HD Divisional Coordination Mailbox <HeritageDivision.Mailbox@environment.nsw.gov.au>; Sam Kidman [REDACTED]
Subject: Re: Tab 1 - Response - Glendell Continued Operations Project (SSD 9349) - D Gainsford - Development Assessment

Hi Elizabeth,

Thanks for the clarification. I find it a bit surprising, in that the IPC in their letter to DPE said specific things about the HC's position and clearly is expecting a response to those issues from the HC. If Atticus is not going to respond to that then who is? If it comes to it then I will send a letter direct to the IPC (cc DPE) responding to the HC

issues. Otherwise the IPC could quite reasonably criticise the HC for not responding. Can you pls urgently clarify this on Tuesday.

Best wishes

Frank

On Fri, 22 Apr 2022 at 18:08, Elizabeth Owers <[REDACTED]> wrote:

Hi Frank,

Quick update – we have clarified with the Planning team that they only want a response from HNSW on Ravensworth. We will likely cover the dot points in the letter to Atticus and responses to items in the transcript covered by Steve and Tim only.

I have since learnt that the reason the letter came about is because the Planning team contacted Atticus to discuss what HNSW has said, and he has asked them to write to him so he could provide a comprehensive response.

It is my understanding that they wont be seeking comment from the Heritage Council.

Appreciate you invested time in providing feedback – apologies for this.

Let me know if you have any questions.

Elizabeth

From: Frank Howarth 3(a)(b)

Sent: Wednesday, 20 April 2022 7:36 PM

To: Elizabeth Owers <[REDACTED]>

Cc: Samantha Woods <[REDACTED]> OEH HD Divisional Coordination Mailbox
<HeritageDivision.Mailbox@environment.nsw.gov.au>

Subject: Re: Tab 1 - Response - Glendell Continued Operations Project (SSD 9349) - D Gainsford - Development Assessment

Thanks Elizabeth.

Frank Howarth
Howarth Consulting
Adjunct Prof UTS Business School

On Wed, 20 Apr 2022, 7:16 pm Elizabeth Owers, [REDACTED] wrote:

Hi Frank,

Yes all will be covered - we have your feedback.

We will send you an updated version at COB on Friday.

Elizabeth

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From: Frank Howarth 3(a)(b)

Sent: Wednesday, April 20, 2022 6:37:09 PM

To: Samantha Woods [REDACTED]

Cc: OEHD Divisional Coordination Mailbox <HeritageDivision.Mailbox@environment.nsw.gov.au>; Elizabeth Owers [REDACTED]

Subject: Re: Tab 1 - Response - Glendell Continued Operations Project (SSD 9349) - D Gainsford - Development Assessment

Hi Sam.

Thanks for this. I note these responses are only to the questions posed to HNSW. Are you preparing the responses to the questions raise about the HC's position? I provided notes on this a while ago.

Best wishes

Frank

Frank Howarth

On Wed, 20 Apr 2022, 6:29 pm Samantha Woods, [REDACTED] wrote:

Good evening Frank

Please find attached a working draft of our response under the Coordinator General's hand relating to the Ravensworth IPC meeting, for your review and feedback.

We'll continue to work on this and the briefing note.

Thank you

Sam.

Samantha Woods

Team Leader Briefings and Coordination

Environment and Heritage

Department of Planning and Environment

M [REDACTED] E [REDACTED]

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I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

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--
Frank Howarth AM PSM

Chair, NSW Heritage Council
Board member, Sydney Surrounds South Destination Network Ltd; Australian Design Centre; Jervis Bay Maritime Museum
Immediate past Director and Honorary Fellow of the Australian Museum
Member National Aboriginal Art Gallery Reference Group

I acknowledge all Aboriginal and Torres Strait Islander Peoples as the traditional custodians of this land we all call Australia.

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Samantha Woods

Team Leader Briefings and Coordination

Environment and Heritage

Department of Planning and Environment

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