

Submission to the NSW Government Independent Planning Commission (NSW IPC)

RE: Glendell Continued Operations – SSD 9349 and SSD 5850 Mod 4

In support of the Plains Clans of the Wonnarua Peoples and in respect to their traditional, historic, and contemporary cultural heritage values in the landscape and fabric of the ‘Ravensthorpe Estate’, Hunter Valley NSW.

Dr Maria Cotter
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28th March 2022

Dear Commissioners,

I provide this submission in follow up to my verbal presentation to you on Day 2 of the NSW IPC Public Hearing for the Glendell Continued Operations SSD 9349 & SSD 5840 Mod 4 on 21 March 2022.

I do so as a geoarchaeologist and Aboriginal cultural heritage management professional with prior experience of survey, assessment and regulation of Aboriginal cultural heritage within the Hunter Valley. In this context, and prior to expanding upon the key points raised in my verbal submission, I wish to briefly highlight an underlying technical concern I have with respect to the framing and composition of the principal Aboriginal Cultural Heritage Assessment Report prepared as part of the Environmental Impact Assessment for this SSD – i.e. *Appendix 22 Glendell Continued Operations Aboriginal Cultural Heritage Assessment Report (22-ACHAR)*

Pre-emption of Native Title Tribunal

In my view the main conclusion drawn in 22-ACHAR in relation to traditional Aboriginal cultural heritage values within the study area was inappropriate and contrary to the lawful National Native Title Tribunal processes that were in play at the time of the preparation and exhibition of the EIS.

Herein I note that at page viii of the executive summary of 22-ACHAR the conclusion is drawn that:

“Alongside a previous ACHAR over the wider Project area (the Mount Owen Continued Operations Project ACHAR), this ACHAR has reaffirmed that there are no traditional cultural values associated with the Project Area (directly and specifically) held by the participants in this ACHAR process. By ‘traditional’ cultural values, we refer to these in the Native Title sense as an inherited

and cohesive body of 'traditional' knowledge, laws and customs that are still observed and maintained by a particular Indigenous group”

At the time that this executive summary was written the PCWP has an active Registered Whole of Country Native Title Claim over a portion of the Hunter Valley that included the Project area.¹ There had not been any determination made by the Native Title Tribunal with regard to the nature and extent - or indeed extinguishment - of Native Title Rights of the PCWP in the Project area and surrounds at the time. Yet the author of this summary concluded that there were no such Native Title values in the Project Area.

That the 22-ACHAR makes the claim that there are no traditional Aboriginal heritage values within the Project area - and indeed that it refers to the PCWP as ‘knowledge holders’ rather than as Registered Native Title Claimants – suggests that the document sought to undermine the rights to Native Title of the PCWP and/or pre-empt any decision of the Native Title Tribunal. By implication, it cannot be concluded that the ACHAR presents a fully impartial and/or comprehensive assessment of the Aboriginal cultural heritage values within the Project Area.

Further to this, in 2013 when employed by Tocomwall Pty Ltd I was involved in all aspects of the preparation of the document titled: *‘Beginning and Belonging: The traditional, historical and contemporary Aboriginal cultural landscape of the Mount Owen Continued Operations area: A plains clans of the Wonnarua Perspective’* (herein, Tocomwall, 2013). With my unique knowledge of this document - and its development as part of the broader Mount Owen Continued Operations Project Area (MOCO) Aboriginal Cultural Heritage Assessment Report (ACHAR) to which the quote from the executive summary of 22 – ACHAR, page viii, above refers - I am aware of the archival research, oral testimony and field interviews that were evidenced in support of the traditional, historic and contemporary values held by the PCWP, as well as my use of the Burra Charter to document these values.

Yet, despite the inclusion of this PCWP cultural values report within the final MOCO ACHAR the executive summary failed to acknowledge the traditional Aboriginal values held by the PCWP in the same landscape. Moreover, this prior EIS was then conveniently summarised and used to ‘reaffirm’ a lack of traditional Aboriginal values within the Glendell Continued Operations Project area. It is bewildering that such an affirmation could be made in either EIS given that the mere title of the document I prepared in 2013 suggests attachments to the Project area that were/are vital to the Plains Clans of the Wonnarua People.

I will now briefly draw upon some of the evidence provided in Tocomwall (2013) to reaffirm some of the key elements of the Aboriginal cultural landscape values held by the PCWP in the Ravensworth Estate and surrounds. I note here, as I stated in my verbal submission, best practice cultural heritage assessment, as is practiced by the New South Wales Government on its National Park Estate is not to consider heritage items or sites in isolation but rather to consider and contextualise them in the context of the broader cultural landscape within which they occur (*cf.* Brown, 2008, Ross et al., 2010). Moreover, and as I will briefly explain below for the Ravensworth Homestead and surrounds it is both its landscape context and the intersectionality of the histories that have transpired in this place that affords it a complex heritage narrative best recognised and preserved *in situ*.

¹ This Whole of Country Native Title Claim (NC2013/006) was Registered on 16/01 2015 and discontinued on 2 March 2020 A new Native Title Claim application (NC2022/001) has recently been lodged by the PCWP over a reduced but substantial area of the Hunter Valley that includes the ‘Ravensworth Estate.’

1826 Ravensworth Estate - Contested Colonial Terrain

In September 1826 eleven men with landholdings in the Upper Hunter, including James Bowman of 'Ravensworth, William Ogilvie of 'Merton' and John Gaggin of 'Sydenham', wrote to Governor Darling highlighting their view of the 'very disturbed state of the Country by the incursions of numerous Tribes of Black Natives'; and seeking the continued protection of the Mounted Police:

"...or by suspending the order of their recall to Newcastle until the threats and murderous designs of the Natives shall have subsided; for, in the event of our losing the protection of the Troops, our property will be exposed to the revenge and depredation of these infuriated and savage people. The Natives lately burnt all the grass on several farms, killed some Men have speared several Cattle and threatened to destroy the Wheat at the ensuing harvest"

Landowners to Governor Darling, Sydney 4 September, 1826. (Historical Records of Australia, Vol. XII, p.576).

It is clear that these landholders perceived that they held contested terrain. Later that same month matters relating to this contested terrain were conveyed to the British Government by Governor Darling. In a letter written from Government House at Parramatta to the British Undersecretary for the Colonies, Robert Hay, Darling commenced by stating that:

"My Dear Sir,

I think it right to apprise you that the Natives have lately Committed some acts of outrage on Hunter's River, and that I have in consequence ordered a detachment of Troops to proceed and punish their aggressions. They have put two Stock keepers of Mr. Lethbridge's to death, and speared two others, and not long since murdered an overseer of Mr. Bowman's, and also speared one or two of his stockmen. The latter event appears to have been occasioned by the circumstance of one of their Tribe, who had been taken up for some offence, having been confined for a day or two on Mr. Bowman's Farm, which it is supposed had induced them to think that Mr. Bowman's People had been concerned in Apprehending their Comrade. Previously to Committing the outrage at Mr. Lethbridge's, they had been at Mr Ogilvie's who lives in that neighbourhood, but was absent from home at the time"

Governor Darling to Under Secretary Hay, 11 September 1826 (Historical Records of Australia, Vol. XII, p.574).

In a report on the 'hostilities' by District Magistrates Robert Scott and Alex Macleod written on October 3 1826 to Colonial Secretary McLeay (cited in Historical Records of Australia. Vol XII, pp.610-612) several incidents relating specifically to Ravensworth and its surrounds were articulated, including:

- a. *"Several petty robberies on single individuals while travelling the long and lonely road from Dr. Bowman's upwards, such as stripping them of clothes and provisions" (Historical Records of Australia, Vol. XII, p610, para 4);*
- b. *"Dr. Bowman's Stockman was attacked, and stript quite naked in the Bush; and a day or two later the same gentleman's watchman was murdered in his hut bout 3 o'clock of the day..." (Historical Records of Australia. Vol. XII, p611, para 9);*
- c. *"Two of Dr. Bowman's Fencer's were attacked, while at work in the bush by a Body of Blacks; and altho' they escaped with their lives, they were severely wounded; (Historical Records of Australia Vol, XII, p. 611, para. 11); and*

- d. *"The party of Mounted Police were reinforced and succeeded in taking one of the Natives, who murdered Dr. Bowman's Watchman, who was shot"* (Historical Records of Australia, Vol. Xii, p611, para 12).

Without question Dr Bowman and his Ravensworth Estate were at the epicentre of this Colonial Frontier. Further to this, in reprisal for the events described at 'c' above at least one 'Black' referred to as 'Cato' was killed and strung up on the Ravensworth Estate. In a sworn statement made at an enquiry to investigate this killing a witness described the incident in the following manner:

"...All this took place, whilst the party were looking over the spot, where the fencers had been speared. The black seemed to be well aware of the spearing and the impression in the Deponent's mind was that he was a part concerned. This Black had been identified as one of the spearkers at Dr. Bowman's.

This Black was a very singularly formed man, and the soldiers had taken him from the description, that was given by the Fencers before he was brought to Dr. Bowman's to be identified. The body of this Black was hung up by the Men on the Farm as a terror to other Blacks."

Deposition of Mr John Larnach sworn before Magistrates Allman, Scott & Close at Glendon 13 September 1826. Historical Records of Australia, Vol X11 p.625-626).

Massacre – a matter of definition only

I featured this deposition in my verbal submission to the IPC, and in particular I did so in the context of the challenge presented to the PCWP by those who have, with or without purposeful intent, attempted to dismiss claims of a massacre having occurred within or about the Ravensworth Estate and its surrounds. Furthermore, I recommended review of the Oxford English Dictionary (OED) definition of massacre for clarity on what actually can be said to constitute a massacre: <https://www-oed-com.ezproxy.une.edu.au/view/Entry/114676>.

In addition to the much-used definition to kill people in numbers, a massacre can also be defined as the brutal or violent murder of a person, especially by a mob; and or to mutilate, mangle or batter. Hence the OED evidences the fact that that the brutal stringing up of a single Aboriginal individual upon killing, as occurred to 'Cato' on Ravensworth Estate, does constitute the definition of a massacre.

Hence, whilst historians at Newcastle University have, in their expansive documentation of sites of Aboriginal massacres across Australia,² placed a minimum on the number of individuals (6) being slaughtered to define a massacre³, this must be recognised as an arbitrary research tool which, when used to support the claim of there being no evidence of a massacre on the Ravensworth Estate diminishes the reality of the brutal slaying of individuals. To that extent, in my personal view/opinion (as it must equally be considered for the current members of the PCWP) to read reports of the brutal slaying of an ancestor- whether one or many - does

² See recent Guardian media report of expansive mapping of Aboriginal massacres: <https://www.theguardian.com/australia-news/2022/mar/16/attempted-aboriginal-massacres-took-place-as-recently-as-1981-historian-says>

³ See recent Guardian media report for statement of research criterion for number of individuals killed for inclusion in massacre map <https://www.theguardian.com/australia-news/2022/mar/16/attempted-aboriginal-massacres-took-place-as-recently-as-1981-historian-says>

not matter... it is still a massacre/murder/death/ loss of life of someone that you recognise to be of your own 'flesh and blood'.

It is of course pertinent to mention here that it is commonly understood by the PCWP - and well documented elsewhere (e.g. Wood, 1972; Gollan, 1993, Millis, 1993) - that the Lethbridge property 'Bridgman' which neighbours the Ravensworth Estate was the focal point of an 1826 attack by Aboriginals that resulted in the death of two white men within a station hut; and led to the raising of a party of Mounted Police that pursued and reportedly massacred up to eighteen Aboriginals in reprisal.⁴ In fact, problematically for the PCWP, the ambiguous nature of the apparent final occurrence of the massacre that followed the Aboriginal attack on the Lethbridge property has had two marked detrimental consequences to their cultural heritage values claims.

The first - almost ubiquitous in the reporting of Aboriginal archaeological assessments within and about the area since the 1990s - is that the vicious reprisal and murder on masse of Aboriginals as noted to occur subsequent to the Lethbridge attack, is overlain with a reported lack of Aboriginal sightings in the c. 1830s by eminent explorers such as Major Mitchell when passing through the Upper Hunter to imply that traditional Aboriginal society in this area was wiped out. This results in the imputation that contemporary Aboriginals who may make claims of value to this place and or its items of Aboriginal archaeology, can only do so on the basis of their 'generic Aboriginality' not on their close ancestral connection to the place.

The second and more obvious detrimental consequence is that without the physical evidence to support its actual occurrence that is to say 'the massacre occurred everywhere and nowhere' the claims of the intangible, spiritual and funereal connections claimed of the area by the PCWP are considered ill-conceived, inaccurate and without validity.

However if it is accepted that Ravensworth Estate and surrounds was the site of the brutal slaying /massacre of one individual, and at the epicentre of other skirmishes which resulted in the reported slaying of numerous individuals (in an as yet undefined location) by a 'mob' of mounted policeman who gathered adjacent to the Ravensworth Estate to pursue the perpetrators of the attack on Lethbridge's Estate, then not one but a least two and perhaps more massacres occurred within the wider locale centred about Ravensworth Estate. In addition to this, the documentary evidence of the marriage of 24-year-old Matilda Hughes to James Smith in 1856 from the 3rd record in the Marriage Register of the nearby Camberwell Anglican Church, - and especially the record of Matilda's mother being 'Mary Aborigine' - coupled with the clear descentance of the current PCWP to Matilda, belies the claim that this Aboriginal society was completely wiped out in colonial times.

Colonial legal precedent, Ravensworth Estate and its immeasurable importance to Aboriginal Australia

Returning to item 'd' in the list of incidents linked to the Bowman Estate cited above, 'Ravensworth' is also shown to be linked to an historical event more infamously known to the PCWP as the murder of the Aboriginal "Jackey Jackey" whilst he was in the custody of the Mounted Police. A more detailed description of the incident was provided by the Reverend Lancelot Threlkeld in an appeal for intervention that he penned to the Attorney General in July 1826. Threlkeld wrote as follows:

⁴ "About eighteen" was the number of 'natives' reported dead after this 'hot conflict' in *'The Australian'*, Saturday September 23, 1826, p.3.

The Black who is supposed to have committed the murder was taken at or near Mr. Bowman's farm and brought down at night to the new jail at Wallis's Plains a distance of upwards of 40 miles. The next morning he was brought out, tied to two saplings and the Officer commanded the Soldiers to shoot him – One fired at him, the ball hit him on the back of the neck the black turned round his head and looked at him, the next fired, and the bullet cut along the jaw, and broke the bone; the black turned his head round again, another soldier stepped up and blew his head to pieces. – They then buried him by the privy belonging to Government House. The officer mounted his horse and went in pursuit of two other Blacks.”

Threlkeld to Bannister, July 25 1826 (cited in Milliss, 1993: 57).

On Friday May 18 1827 after Threlkeld's description of events was finally corroborated, by the constable charged with delivering “Jackey Jackey” to Wallis Plains [Maitland] from Ravensworth, Lieutenant Nathaniel Lowe was charged in the Supreme Court with his willful murder⁵ (Milliss, 1993:66). This was a unique event being the first time in the then 40-year history of the colony that an officer and gentleman had ever been tried for having ‘feloniously slain’ an Aborigine (Milliss (1993:66).

I note also, that the Macquarie University Law School has prepared an online list of documents from State Records NSW file titled: Miscellaneous Correspondence Relating to Aborigines 1797-1840 (SRNSW: NRS 13696, [5/1161] with respect to Colonial Case Law, and specifically on early Aboriginal intersection with colonial Law:

http://www.law.mq.edu.au/research/colonial_case_law/nsw/other_features/correspondence/documents/ .

Significantly, this includes documents that relate specifically to the Hunter Valley conflict associated with the Ravensworth Homestead and neighbouring properties (i.e. see: documents 10-20). The point I make here is that a national University Law school recognises that this frontier conflict has significant historical legal value/importance to Australia today. Moreover, both the legal and social importance of this conflict to wider Aboriginal Australia has not been fully explored or explained.

The area about Ravensworth Estate is a well-documented place of armed resistance and contestation in the early Australian colonial frontier period which led to legal precedent at the time. For the PCWP it is an ennobled landscape mixed with the blood and sacrifice of their warrior antecedents. As Scott Franks has described it...

“I liken it to how we as Australians now understand the Battle of Long Tan in the Vietnam War. It is not one place or piece of ground that is of absolute importance but there was fighting across a whole battlefield. The whole of that area was a battleground.”

Scott Franks, pers comm. August, 2013 (Tocomwall, 2013).

Hence Mr Franks assertion that the homestead, the wider Estate and its surrounds represents a sacred battlefield to the PCWP must be supported. Furthermore, in the context of a battlefield the visual amenity of the place does not require, in fact resists, sanitisation and hence the juxtaposition of the in situ Colonial homestead at Ravensworth, the modified vegetation

⁵Lowe was acquitted of the murder by a jury of his peers (see; Milliss, 1993, pp67-68). As intimated in my verbal submission to the IPC, with the recent Aboriginal disquiet over the recent acquittal of the policeman who shot and killed Kumanyji Walker in the Northern Territory, the importance of the first such acquittal to wider Aboriginal Australia is likely immeasurable, if, as yet, unfathomed.

communities that surround it; and both the pits and raised bunds of the current mining enterprise best enables a true-telling of the complex intersectional and contested story of this place.

World War I Service of Alister and Augusts Lester.

There are several hundred Aboriginal servicemen known to have fought for Australia in World War I. Estimates are that about one third of these soldiers lost their lives. Of this number just 23 are reported to have come from New South Wales. Amongst this small number of men were Private Alister Lester of the 4th Battalion and his uncle Private Augustus Lester of the 34th Battalion. Both men lost their lives in 1918 in the battlefields of France, Alister was killed in action on the 16 April and Augustus was struck by a shell on 23 August near Taille Wood. On Thursday 16 May 1918 the death of Alister was communicated as follows:

‘News has been received of the death in action of Private Alister Lester an aboriginal lad of Mount Olive. He enlisted when 17 years of age, and had been in the firing line for some months. This is the first death from the ranks of the aboriginals in this district who are serving with the AIF’.

Excerpt from *The Maitland Daily Mercury*, Thursday 16 May, 1918, p.4.

Both young men came from Mt Olive, adjacent to Glennies Creek, and within the wider cultural landscape claimed of integral importance to the ‘Beginning and Belonging’ of the PCWP. Their next of kin was registered as Alice Henrietta Lester an antecedent of Mr Robert Lester and Maria Stocks, two Heads of family of the PCWP. Alice a granddaughter of Matilda Hughes was the unmarried mother of Alister and the older sister of Augustus. In sad consolation for her loss on the 30th November 1918 the ‘Mt Olive Patriotic Society’ presented Alice with a medal in honour of her son and brother. Later, the names of these two men were inscribed amongst the names of the ‘honoured dead’ in the central panel of a monument unveiled in November 1925 in Burdekin Park at Singleton. They were thus embraced by the local community and memorialised as patriotic and heroic Australians.

Yet, the WWI service of Alister and Augustus Lester has an Aboriginal cultural importance that is embedded in the land and landscape from within which they were born. Whatever view others might take of the action of these two Aboriginal men fighting on foreign soil for ‘King and Country’, their descendants perceive the WWI service of Alister and Augustus to be a part of a dynamic continuum of ‘warrior’ thought and action that is at the core part of their Aboriginal Identity. For the PCWP the brave actions of Augustus and Alister in World War I are inexorably linked to the actions of their Wonnarua antecedents who offered armed resistance in the earliest days of colonial settlement; and to the contemporary actions of members of the PCWP who have involved themselves in Land and Environmental Court Proceedings in an attempt to prevent their ‘Country’ from being destroyed by coal mining.

Intersectionality and truth-telling in place

Before concluding this submission, I want to point to other aspects of the intersections between the Aboriginal and historic heritage of the Ravensworth Estate and surrounds that are both imperative to its cultural heritage narrative and which remain underappreciated and likely not fully explored. For brevity I provide just two such short instances below:

- The emancipated convict James Franks, the white colonial antecedent of Mr Scott Franks, Native Title Claimant had convict passage to Australia aboard a ship for which Dr James Bowman was the surgeon. Later his son moved from the Hawkesbury region to work on the forme Bowman Estate and purchased land adjoining it.

- Dr James Bowman was financier to the Australian Agricultural company and thereby assisted in the opening up and expansion of colonial ‘settlers’ into the wider interior of New South Wales, some of the consequences of which for Aboriginal Australians include the infamous ‘Myall Creek Massacre’.

In listing these two brief examples, I merely wish to highlight that to date the clear lack of comprehensive interrogation of the cultural landscape of the Ravensworth Estate, and its dynamic intersection with the ‘Beginning and Belonging’ place of the PCWP, has resulted in the development of two separate heritage reports one Aboriginal, one historic. Whereas, it is the complex intersection between both ‘heritages’ in this landscape that warrants *in situ* preservation, interpretation and reconciling of our now shared history for truth telling and understanding.

Finally, I wish to remind the Commissioners that, as I see it, the fundamental challenges for the PCWP in bringing to light/providing evidence for their heritage values in this cultural landscape remain and that these are the result of:

- it has been always confined to an assessment restricted by the compartmentalising of parcel of land bounded by mining lease or other tenures post-dating the traditional and historic values in the places as described of value by the PCWP.
- there has been no attempt to fully contextualise the values of the Ravensworth Estate and adjoining lands to either the PCWP and/or wider Aboriginal Australia in terms of such aspects as:
 - Frontier violence,
 - Early interaction of Aboriginal people with colonial law and lawmakers,
 - The National heritage significance of the sacrifice of life made by Augustus and Alister Lester in World War 1 and their place in the storied history of ‘warrior thought and action’ of the PCWP
 - The continuing ‘fight for Country’ of the PCWP via legal processes afforded under Native Title, State and Federal Aboriginal cultural heritage Laws and the NSW Planning and Environment Court.

Thank you for the opportunity provided me to provide this Submission to the IPC in support of the Plains Clans of the Wonnarua People and their unique Aboriginal cultural heritage values.

Yours Sincerely,

Maria Cotter, BA. PhD.



Annexure 1: References

Annexure 1

References

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