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Submission for McPhillamys EIS by the Orange Local Aboriginal Land Council (OLALC)

Introduction

This submission was prepared in response to the EIS prepared for the McPhillamys Gold Project, a State Significant Development. The OLALC objects to the proposed EIS on two grounds:

1. that the proposed project will detrimentally and irreversibly impact the Aboriginal (and shared) cultural heritage significance of the study area, and of Kings Plains and the broader region;
2. that consultation undertaken with the OLALC for the Cultural Heritage Assessment (Cupper 2019; Appendix 9 of the EIS) was inadequate, resulting in an inaccurate characterisation of the Aboriginal cultural heritage significance of the study area. The OLALC considers the study area to be a location of State and National significance, which is not reflected in Appendix 9 of the EIS.

The impacts to the Aboriginal cultural heritage significance of the study area are discussed in more detail below in relation to the:

- broader Aboriginal cultural landscape, including Kings Plains and the Belubula River;
- Aboriginal Ancestral Remains and an ochre quarry that are present within the study area but are not addressed in the Cultural Heritage Assessment; and
- Kings Plains Frontier Wars Landscape.

The final part of this submission details concerns regarding inadequate consultation with the OLALC in relation to the Cultural Heritage Assessment.

Impacts to Aboriginal cultural heritage landscape

Kings Plains area and Belubula River

Kings Plains is an important part of the Aboriginal cultural landscape within the Orange region, an area with a long history of occupation (Pardoe and Brown 1986; Pearson 1981). A rich array of sites has been documented in Kings Plains and the immediate vicinity, including stone artefact scatters, stone quarries, stone arrangements, culturally modified trees, rock art, burials and potential archaeological deposits. Each individual site is important as a direct link to the past and for what its activity traces reveal about a past event, or events, that took place at that particular location. For the Wiradjuri people, however, these sites cannot be viewed in isolation as they form part of the broader Aboriginal cultural landscape or Country (earth, water and sky), forming the basis of their everyday life including subsistence, dreaming stories, and connections to the past. This “landscape” approach is also



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established in the field of archaeology, as traces of past human activities at any one location are part of a broader system that extends across the landscape (Rossignol and Wandsneider 1992; Schiffer 1972).

The proposed development would irreversibly devastate the headwaters of the Belubula River (“stony river” or “big lagoon”), a significant Aboriginal waterway for the Wiradjuri people. Waterways were, and continue to be, central to the lives of the Wiradjuri people as sources of subsistence, travelling routes, markers of clan boundaries, locations of dreaming stories, and connections to past ancestors (Australian Human Rights Commission 2008: Chapter 6; Water Act 2007 (Cwlth)). The Belubula River is the dominant waterway in the southern part of the OLALC boundary, running approximately east-west, with its origins located in the study area. Traditionally, this waterway is associated with the *Billabearra* (Belubula tribe) (Pearson 1984: 65), including “Tibaroo – Chief of the Bellubla” who is mentioned on a copper plate presented to him by the New South Wales Government some time during the 19th century (Peak Hill Express 6 September 1907: 6). The headwaters of the Belubula were frequented by the *Muc-are* (Kings Plain tribe) at the time of contact (Pearson 1984: 65), who likely occupied the study area. The Belubula River and its upper catchment continue to be extremely significant to the Aboriginal community, who maintain “strong spiritual and cultural connections with this area” (Greg Ingram and Ian Sutherland, OLALC pers. comm.; Appendix P in EIS: 14):

“I call the lovely area where I live the valley of the Bilabula, which is the Wiradjuri way of naming our river. The entire Cultural landscape of this area is in my soul and in the soul of all Wiradjuri people and the wider community who are here now and have always been... It is an area of huge Cultural significance... Our beloved Bilabula rises near the Ochre site, it wends it's way through the valley to eventually join the Bila Galari (Lachlan River), the Bila Marrambidya (Murrumbidgee River) then on to the Murray and ultimately to the sea. It may be tiny to start with but it is part of a very significant river system and many Dreaming stories follow it's path and no one has the right to destroy this. No one... The Bilabula is like an artery through our land as shown by this painting I did to be permanently displayed in Blayney Hospital. I have used Wiradjuri symbols to tell the story of the Bilabula. The river is the life blood to animals along the way and to the people who grow food and use it for recreation. This river sustains life. It will not sustain life if the headwaters are poisoned, and that is not acceptable in any sense of fairness.” (Aunty Nyree Reynolds, Wiradjuri Elder; Appendix 1)

“Kings Plains was a big gathering area – people were brought through from other parts of Country, from the north, south, east and west. Songlines all come into that area there... The Belubula River was part of a travel route and Songline. The headwaters and Kings Plains was the main gathering area before they [Wiradjuri men] took the boys onto Wahluu [Mount Panorama].” (Uncle Bill Allen, Wiradjuri

Elder and descendent of Wiradjuri Warrior Windradyne/Saturday; pers. comm. October 2019)

Archaeological studies undertaken previously in the Kings Plains area and to the west reinforce that waterways, including the Belubula River, were the focus of occupation for the Wiradjuri people, with most Aboriginal sites situated within close proximity of a waterway (Austral Archaeology 2004; Gresser 1961-1964; Kelton 1994, 1995, 1999, 2000a, 2000b; Paton 1993; Pardoe and Brown 1986). The results of the Cultural Heritage Assessment undertaken in the study area also confirm this, with most of the 38 sites identified in the study area during the field survey centred around the stream bank/channel and drainage lines associated with the Belubula River – particularly the headwaters in the northeast of the study area (Appendix 9 of EIS: Table 6.3; Figure 6.3). These 38 sites comprise 20 stone artefact scatters and 18 isolated finds of stone artefacts. This relatively high number of Aboriginal sites must also be considered within the context of the poor ground surface visibility conditions that were encountered during the field survey, which resulted in low effective coverage of the study area (i.e. only 10% of the total study area was surveyed effectively, meaning that the remaining 90% of the study area was in effect unsurveyed) (Appendix 9 of EIS: Tables 6.1-6.2). The OLALC does not consider that the Aboriginal sites identified in the study area during the Cultural Heritage Assessment (Cupper 2019; Appendix 9 of EIS) reflect the true nature and extent of Aboriginal cultural heritage that is present at this location, which is likely to be significantly greater and richer, and to extend into subsurface deposits. This impacts the characterisation of Aboriginal cultural heritage and its significance in the study area (Appendix 9 in EIS).

Aboriginal Ancestral Remains within study area

The OLALC are deeply concerned that Aboriginal Ancestral Remains have been identified previously within the study area, yet this is not addressed in the Cultural Heritage Assessment (Appendix P in EIS). The *Dubbo Liberal and Macquarie Advocate* reported the presence of these remains at the 'The Dungeon' property on Friday 15th November 1912 (p. 6) – which is located within the study area. The discovery was reported to the Blayney Police and a police report was filed subsequently. These bones were assessed at the time as belonging to an Aboriginal person. No further action was taken at the time, and these remains were left at the property. A copy of the newspaper article detailing the discovery is presented in Figure 1, and the location of 'The Dungeon' property is shown in Figure 2.

Concerns regarding these remains were discussed with Matthew Cupper during consultation for the Cultural Heritage Assessment (Appendix P of EIS: Appendix 4), but are not addressed adequately in Appendix 9 of the EIS, and remain unactioned (see below).



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Pigment rock source within study area

The OLALC are also deeply concerned that a source of rock traditionally used as pigment by the Wiradjuri is located in the study area in Pounds Lane, but is not mentioned in the Cultural Heritage Assessment (Appendix P in EIS). This source of pigment rock is highly significant as it contains yellow, white, red and blue varieties with a deep history of use for a range of traditional purposes by the Wiradjuri, which continues today (Figure 3):

“The ochre was used for healing, ceremonies, and burial ceremonies to heal the spirit as it goes into the next side. You have yellow, white, red and blue ochre. Men used blue for wars, women used red, everyone used white for protection, and women used yellow for healing as mainly women were healers.” (Uncle Bill Allen, Wiradjuri Elder, pers. comm. October 2019)

“It is an area of huge Cultural significance and for many, many years I have used the Ochre site to obtain the Ochre to use with the children I work with in dance and art. I use the Ochre in my paintings which links my art to it's place of origin. I am following on from the practices of our ancestors over many thousands of years.” (Aunty Nyree Reynolds, Wiradjuri Elder; Appendix 1)

Kings Plains Frontier Wars Landscape

The OLALC and several scholars consider the study area to be of State and National Significance due to the events that occurred there between 1822-1824, which played a critical role in the subsequent Bathurst Wars and ultimately set a template for future Frontier Wars beyond the settlements in the rapidly expanding pastoral occupation of Aboriginal lands. The events that occurred at Kings Plains are also of critical importance for Wiradjuri post-contact history, shaping the way that their lives were transformed and upheaved. However, the Cultural Heritage Assessment makes no mention of the Kings Plains events and their significance (Appendix P in EIS). This impacts the characterisation of Aboriginal cultural heritage significance of the study area, and the proposed specific management strategies.

The Frontier Wars is a collective term describing the violent conflicts that occurred between Aboriginal people and white settlers after 1788, resulting in the deaths of thousands of Aboriginal people and well as white settlers. The earliest documented conflicts occurred in the late 18th century and early 19th century, when white settlers began to establish farms to the west of Sydney in the Hawkesbury Valley and in Parramatta and other areas (Gapps 2018).

The Bathurst Wars began in 1824, less than a decade after white settlers expanded into inland New South Wales, following Surveyor George Evan's successful crossing of the Blue Mountains in 1815. Initial encounters between the Wiradjuri and Europeans were relatively peaceful, however they deteriorated with the expansion of



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agriculture and pastoralism in the early 1820s. From 1822, a series of violent encounters occurred between the Wiradjuri and European stockmen at several different locations including Kings Plains, many of which were led by Wiradjuri warrior Windradyne/Saturday.

Dr Stephen Gapps (Historian, Author, MPHA, President of History Council of NSW, Curator at the Australian National Maritime Museum, Lecturer at the University of Technology Sydney) has provided the OLALC with an overview of the events at Kings Plains and their historical significance for both Aboriginal and non-Aboriginal people:

“I am currently researching and writing a history of the Bathurst War and note that the Kings Plains area is an extremely prominent and important part of this conflict. Previous warfare in the Sydney region was very much a state sanctioned affair with the colonial authorities firmly in control of the military, and use of Magistrates and settler ‘militias’. In Bathurst, the template for future Frontier Wars beyond the settlements in the rapidly expanding pastoral occupation of Aboriginal lands was laid out.

The conflict at Bathurst set a pattern – initial encounters between settlers and Wiradjuri were for several years peaceful, but then as traditional economic resources became reduced due to massive numbers of sheep and cattle, Wiradjuri began to kill stock and this spiraled into reprisal attacks. The lessons of occupying Aboriginal land far beyond the firm reach of colonial authorities were learned at Bathurst, arguably culminating in the Myall Creek and other massacres of the 1830s.

Existing research into the Bathurst War is limited and only written about quite generally in several local histories. Much of the information concerning conflict is based on work by local historians, most prominently Salisbury and Gresser, in the 1970s.

Many local histories suggest conflict in the region erupted in 1824, however my initial detailed research in the NSW State Archives suggests it commenced in 1822, firstly around George Cox’s Cudgegong River station in February and then in late 1822 raids were reported elsewhere.

By 1823, conflict was escalating. In August Judge Advocate Wylde received a letter from his overseer Andrew Dunn about the situation and Wylde wrote to Colonial Secretary Goulburn ‘again to report the depositions sometimes since transmitted to you by L^t Lawson Commandant & Magistrate at Bathurst, the black Natives of the place having killed some, injured others and widely dispersed the Herds of horned stock belonging to myself and Mr George Thomas Palmer at our stations on Kings Plains beyond Bathurst...’. Wylde wrote to reiterate the earlier incidents and to notify



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of another, more serious one. He was clear that in late July, 'further mischief has been done and more is it expected to arise from renewed similar Incursions'.¹

On the 20th of July, at Wylde's 'further Station', Henry Alsop was armed but alone in a hut when it was attacked. According to Wylde's overseer Andrew Dunn Alsop was 'cut in a most shocking manner'. Then, 'one of the natives got the loaded Gun, which was discharged at — Booth and — Butcher two other Stockmen coming soon after to the Hut. A general severe affray took place amongst them, during which one of the blacks was shot dead on the spot. Some of the blacks, while others were engaged with the Stockmen plundered the Hut of everything' before they made off 'for the time gave way thinking to come again'.²

This incident is important as one of the few documented cases of Aboriginal warriors using firearms, another factor in the desperate European response to Wiradjuri attacks and resistance. Wylde believed 'the loss of all the Stockmen at the Station' would occur with such a massed attack of hundreds of warriors. He begged 'to appeal to the colonial government, that some measures may be adopted for the personal protection of the station - or rather of the men there - either by a small military or even civil party of defence station[ed] for a time in the spot - or by some other means ... suitable to the emergency'. If soldiers could not be spared from Sydney, Wylde requested a militia force be raised and sent to Bathurst. For Wylde this was an 'emergency' as 'at present the men are afraid to go into the bush so as to collect the cattle for removal to any other station'.

Wylde urged Goulburn that his plea for help was more than just a case of 'a private nature' and suggested that if the raids and attacks went unchecked, it would affect the entire district.³

The seeds of Governor Brisbane's 1824 declaration of martial law – the only time this was declared in response to Aboriginal attacks on Europeans in Australian history – were sown in Wylde's plea. In November, Wylde once more wrote to Colonial Secretary Goulburn about 'renewed incursions of the Natives upon our horned stock on Kings Plains'. Both he and George Palmer had suffered cattle killed in August by 'incursion of the Blacks' (as Goulburn replied to him). On 21 November Goulburn wrote to Wylde that 'the appointment of Major Morisset to the Commandant at Bathurst' would be a 'vigorous step in the determination of His excellency to pursue [the] protection of distant property for the future'. During 1823, Wylde and Palmer had been petitioning the Governor for action against what seems

¹ 'Re: inquest into death of Peter Bray' NRS 897; [4/1798] Reel 6065 SRNSW, 312-14

² 'Re: inquest into death of Peter Bray' NRS 897; [4/1798] Reel 6065 SRNSW, 312-13

³ 'Re: inquest into death of Peter Bray' NRS 897; [4/1798] Reel 6065 SRNSW, 313-14

to have been many and regular raids on their stock that were not reported in detail. The broader picture of these attacks is yet to emerge.⁴

Judge Advocate Wylde's 'first station' on 'Kings Plains, Djyawong', was raided three times in September and October. On the 20th of September Charles Booth 'Stockman to M Palmer' was 'out with his cattle and a black Native by the name of (Scrammy) and a number of other natives took and drove his Cattle away from him'. According to Booth's testimony to Magistrate Lawson on 9 October, 'early the next Morning they killed a fat Cow out of the same Herd which they had driven away'. Then 'about 2 miles from the place where they had taken the cattle from him' Booth 'found the skin and head only left, the whole of the meat being carried away. On examining the hide there appeared a great number of Spear Holes, with pieces of Broken spears laying about', as well as another Cow killed belonging to the same Herd'. Booth then 'came upon the natives, finding in their possession a quantity of beef which they were roasting'. As he was 'armed with a Musket, the natives ran away, and as they did 'shouted "murra gerund white fellows"'.⁵

It seems Booth reported the incident to his overseer Dunn, and then ventured out again to search for the cattle. He then found a 'native in the act of skinning a Steer the property of the Judge Advocate'. Booth 'approached very near to them unperceived, and fired at them, and wounded one that was in the act of chopping open the hinder quarters'. He then saw 'two of the natives leading him off' and as they left, they said 'they wanted tumble white man down'.⁵

This response to Dunn, to 'tumble down' (kill) 'white man', is in my mind an open declaration of the war that was escalating in the region. The various raids and attacks at Kings Plains were central to this series of events." (Stephen Gapps pers. comm. 20 October 2019)

The violent encounters between the Wiradjuri and white settlers on Kings Plains led to several retaliation attacks on either side, playing a key role in the Bathurst Wars, the declaration of martial law by Governor Thomas Brisbane on 14 August 1824, and the dispatchment of military troops to quash Wiradjuri resistance. The events at Kings Plains, and ultimately the Bathurst Wars, established a template for how the Government responded to Aboriginal resistance outside of settled areas. The descriptions of the events above also illustrate the types of activity traces that resulted from these conflicts in Kings Plains. The Kings Plains Frontier Wars Landscape is therefore significant both at a State and National level for its critical role in the Frontier Wars. However, the proposed development covers most of the Kings Plains area and would irreversibly destroy this important landscape (Figure 4).

⁴ Wylde to Goulburn Re incursion of Aborigines upon his cattle at Kings Plains, 21 November 1823, SRNSW; NRS 897; [4/1766 p.70] Reel 6057

⁵ 'Re cattle killed by natives', NRS 897, Reel 6065, [4/1798], SRNSW, 339-44



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Inadequate consultation with the OLALC

The OLALC notes that the concerns detailed above, which were raised during consultation for the Cultural Heritage Assessment (Appendix P of EIS: Appendix 4), have not been addressed adequately, resulting in an inaccurate assessment of the Aboriginal cultural heritage significance of the study area in the Cultural Heritage Assessment (Appendix P in EIS), which does not reflect the views of the OLALC. It has also resulted in inappropriate proposed specific management strategies for Aboriginal cultural heritage, which the OLALC does not endorse (Appendix P of EIS: Table 9.1). The inadequate consultation, and the failure to action the concerns raised by the OLALC during this process adequately, go against the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (Part 6 of the National Parks and Wildlife Act 1974 (NSW)).

The OLALC strongly objects to the following assessment of the Aboriginal cultural heritage significance of the study area:

“This assessment has concluded that the Aboriginal cultural heritage sites that would be impacted by the activity are not of high scientific or cultural significance. Most of the historical cultural heritage sites similarly do not meet thresholds of State-significance. Therefore, it can be concluded the mine and ancillary infrastructure disturbance footprint is located in areas where significant impacts on highly-important cultural heritage would be avoided.” (Appendix P of EIS: E.12)

In particular, the OLALC draw attention to ‘Section 3.2.4. Aboriginal involvement following the field assessment’ (Appendix 9 of EIS: 11-14; Appendix 4), and notes the following:

- OLALC Submission 1 – State Heritage register: the response to this submission states that the Aboriginal sites identified during the Cultural Heritage Assessment are registered on the Aboriginal Heritage Information Management System, but do not meet the threshold for inclusion on the State Heritage Register. The OLALC argues that the study area, and the Kings Plains area more broadly, meet several criteria for inclusion on the State Heritage Register – and even a national listing;
- OLALC Submission 2 – Aboriginal Ancestral Remains: the response states that non-destructive geophysical subsurface investigative techniques, such as Ground Penetrating Radar, would be unsuitable and impractical to detect burials in the shallow soils of the study area. The OLALC notes that 1) Copper made no attempt to investigate documentary evidence that describes the location of these remains (see above), or to undertake an archaeological survey of the specified area; 2) it is illegal to harm or desecrate an Aboriginal place or object (National Parks and Wildlife Act 1974 (NSW)); and 3)



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geophysical techniques would indeed be one appropriate technique to pinpoint the location of these remains more accurately;

- OLALC Submission 3 – sites of Frontier Wars: the response states that no known sites relating to conflict between Aboriginal people and non-Aboriginal people occur in the project area. The OLALC argues that 1) Cupper made no attempt to investigate documentary sources which make plain the events that occurred at Kings Plains, and which also allude to the types of activity traces that were left behind consequently (see above); 2) the Kings Plains Frontier Wars Landscape is critical for our understanding of how the Frontier Wars evolved beyond early settlement areas; and 3) it is illegal to harm or desecrate an Aboriginal place or object (National Parks and Wildlife Act 1974 (NSW));
- OLALC Submission 4 – government records of burial sites related to Frontier Wars: the response states that no known government records relating to conflict between Aboriginal people and non-Aboriginal people occur in the project area. The OLALC refers to the response for OLALC Submission 3, above;
- OLALC Submission 9 – Aboriginal spiritual connections to Kings Plains/Belubula River: the response states that the OLALC was invited to provide information about the Aboriginal social and cultural values of the project area. The OLALC argues that insufficient opportunity was given for investigating and discussing these values with the Aboriginal community (e.g. EIS: Table 14), including a telephone call from a Hansen and Bailey Queensland-based company commissioned by Regis to Lisa Paton (OLALC) in July 2019 asking for information about the social and cultural values of the study area by the end of the same day, which Lisa stated was totally inadequate in the same conversation (L. Paton pers. comm. October 2019). In fact, the process of gathering this information is extremely time-intensive, involving several face-to-face meetings with Elders and other community members on Country to document this information. This process should have been incorporated from the very outset of the study;
- OLALC Submission 13 – inter-site analysis in study area: the response states that the local and state significance of Aboriginal sites in the study area is examined in sections 7.1 and 7.2 of the Cultural Heritage Assessment. The OLALC argues that the current analysis is totally inadequate, particularly given the problems outlined above;
- OLALC Submission 14 – impacts of proposed site disturbance on Wiradjuri wellbeing etc. The response states that the OLALC was invited to provide information about the Aboriginal cultural and social values of the project area. The OLALC refers to the response for OLALC Submission 9, above; and



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- OLALC Submission 15 – appointment of archaeologist for future proposed investigations. The response states that the archaeologists commissioned for the cultural heritage assessment were appropriately qualified and that the assessment was completed to regulatory standards. The OLALC argues that the archaeologists commissioned to undertake this study did not undertake the appropriate due diligence necessary to identify the Aboriginal cultural heritage significance of the study area (see above), and that the inadequate consultation in fact goes against the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (Part 6 of the National Parks and Wildlife Act 1974 (NSW)). The OLALC again requests that any future archaeological investigations are undertaken by a suitably qualified archaeologist appointed by the OLALC.

Conclusion

In summary, the OLALC believes that the proposed McPhillamys Gold Project is entirely unsuitable for the proposed study area, which has deep Aboriginal cultural significance for the Wiradjuri – and plays a critical role in Wiradjuri post-contact history, the Bathurst Wars, and our shared history generally. The OLALC also believes that the Cultural Heritage Assessment was insufficient and did not involve adequate research and consultation to identify these important cultural values.

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Figures and Tables

HUMAN BONES.

Whilst Mr. Robert Finley was sinking a post hole in fencing at his farm at "The Dungeon" (Blayney) he came across portion of a human skeleton about 2 feet below the surface. The matter was reported to the Blayney police, and Sergeant Blanchford went out to investigate. An examination showed that the bones, which were judged to be those of an aboriginal by the thickness of the skull, had lain there for many years, probably before white settlement, as the oldest hands have no recollection of an interment at the spot where the bones were unearthed. No action was taken with respect to the discovery.

Figure 1. 'Human Bones', in *Dubbo Liberal and Macquarie Advocate* on Friday 15th November, p. 6

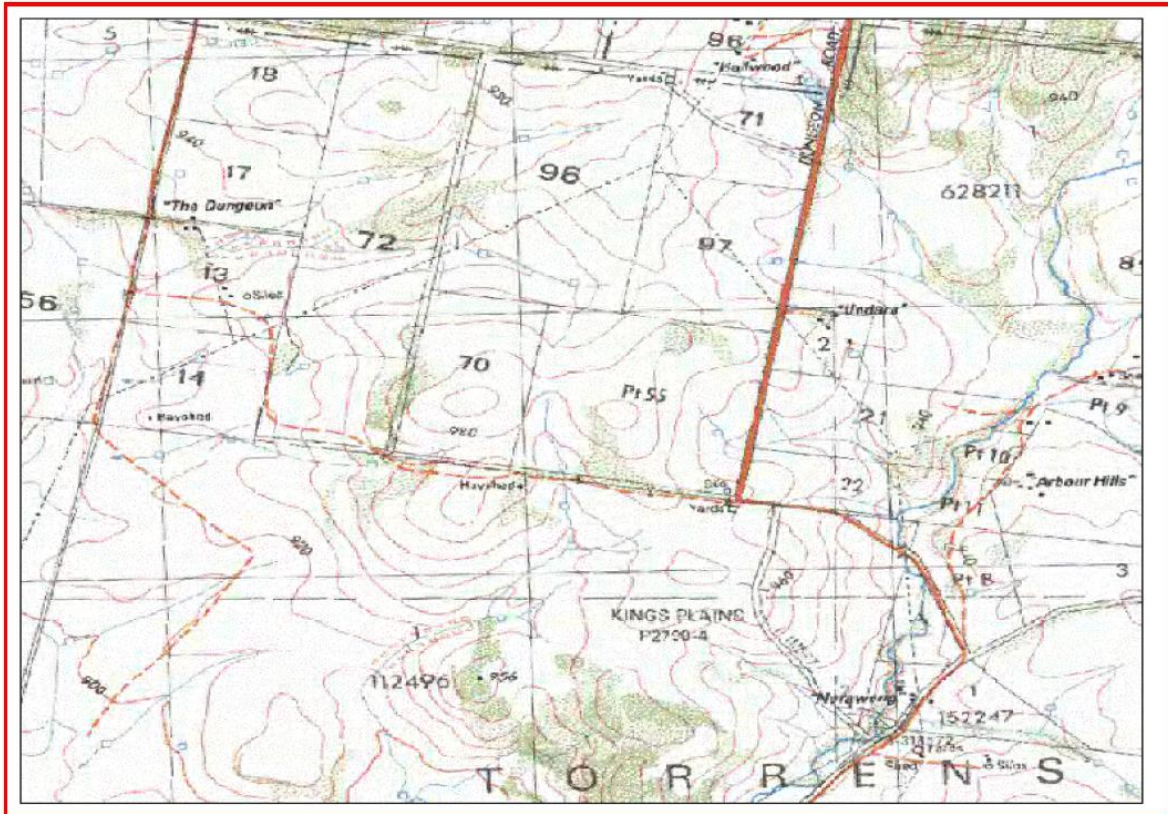


Figure 2. Location of 'The Dungeon' property (source: AHIMS)



Figure 3. Source of pigment rock on Pounds Lane, in the study area, with this rock visible in the non-vegetated area on the right

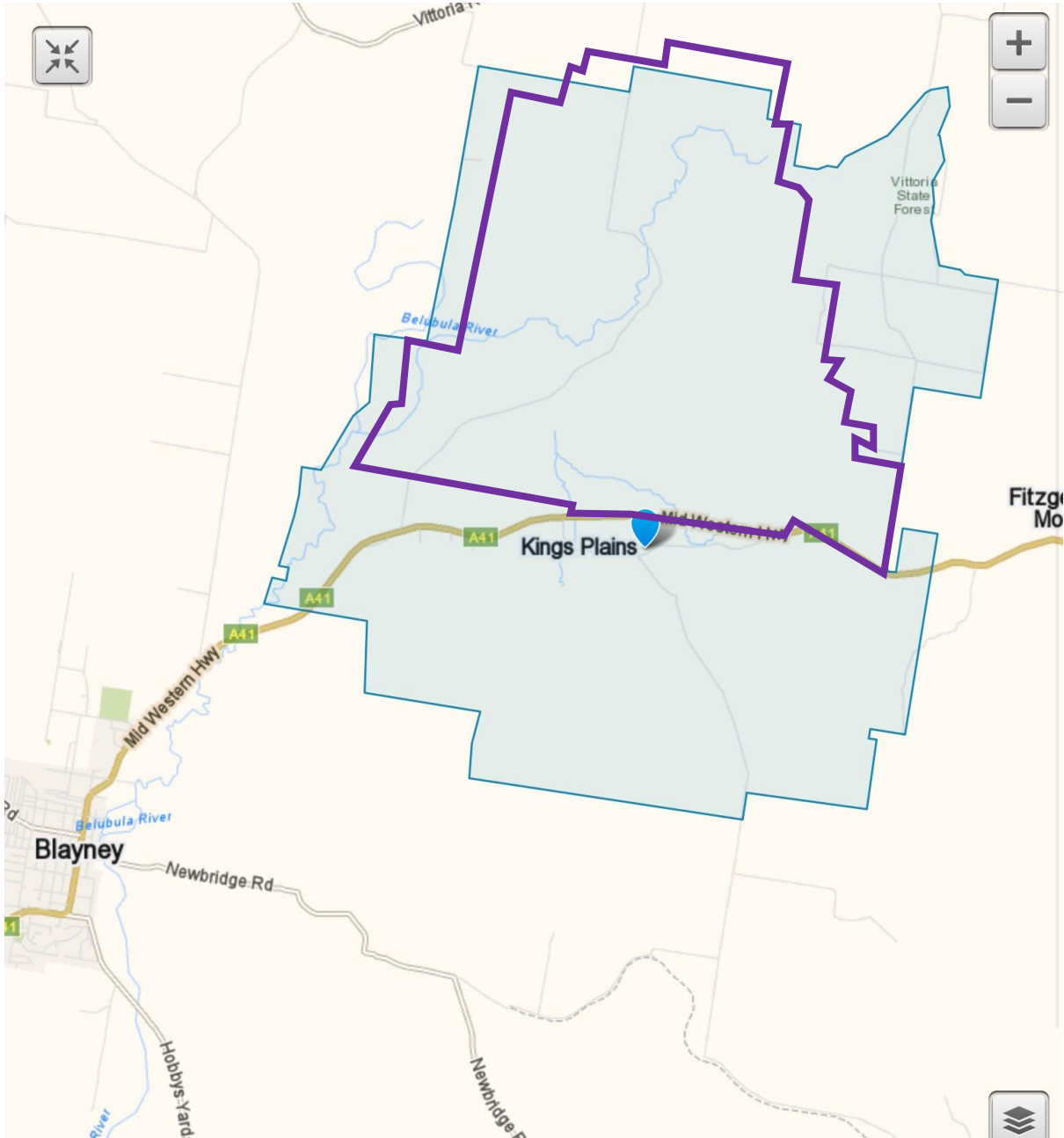


Figure 4. Map showing proposed mine development project area in relation to Kings Plains, NSW



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Appendices

Appendix 1. Statement of Aboriginal cultural significance by Aunty Nyree Reynolds,
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