

**HERITAGE REPORT
PREPARED FOR
WINTERGREEN FARM PTY LTD
3,329 OXLEY HWY SOMERTON NSW 2340**

Prepared for: Wintergreen Farm Pty Ltd
Tamworth Regional Council

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Benbow
ENVIRONMENTAL

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Acknowledgement

Benbow Environmental acknowledges the Kamilaroi/ Gamilaroi/ Gomeroi people as the traditional custodians of the land that this assessment took place and pay respects to their ancestors and Elders past and present, their beliefs, cultural traditions and heritage, and continuing connection with the land.

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1. INTRODUCTION

Benbow Environmental (BE) was engaged by Wintergreen Farm Pty Ltd (the Site) to prepare a Heritage report for 3329 Oxley Highway, Somerton NSW, 2340, legally described as Lot 175, DP755340.

This assessment follows the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (due diligence; DECCW 2010). The report is to support an Environmental Impact Assessment currently being prepared for the Site.

1.1 SCOPE OF WORKS

The scope of this report is limited to the following:

Provide a desktop assessment and review of all available relevant, current and historical documents to assess the potential heritage values at the Site. The search is primarily conducted to assess the potential for Aboriginal objects and Places to exist within the study area. Additionally, a search was made to assess the potential for heritage values to exist at the Site post colonisation. A report is to be prepared and issued based on the desktop's assessment of the following documents and information:

- Council Records of the Site;
- The Aboriginal Heritage Information Management System (AHIMS) Web Services;
- Heritage Inventory (an online heritage database which includes listings from Aboriginal Places, State Heritage Register, Interim Heritage Orders, State Agency Heritage Registers and Local Environmental Plans); and
- Other records such as from the Australian National Library (TROVE archive);

Additionally, aerial images of the Site were viewed to assess land changes since 1961 until the present time. These were sourced from BE's Preliminary Site Investigation (PSI), report, (#251021_PSI_Rev2), undertaken to support the EIS.

No field inspection to specifically assess the likelihood of potential Aboriginal items was undertaken of the study area or of the larger land parcel. Reliance was made of the observations and photographs in the PSI, as well as observations from the reviewer of this report, who had recently performed the PSI site walkover. Additionally, current photographs taken of vegetation within the proposed works area, as requested by BE, were kindly supplied by Wintergreen Farms.

1.2 THE STUDY AREA

The study area is approximately 75,000 m². It was limited to the area earmarked for the proposed development, within the larger land parcel legally described as Lot 175, DP755340, and also includes surrounding land that may be potentially disturbed during the construction period. See Figure 2-1 below of an aerial image of the Site showing the location of the proposed works.

2. SITE IDENTIFICATION

2.1 SITE INFORMATION AND LAND USE SUMMARY

The study area is approximately 17.5 Ha and located within the land parcel legally described as Lot 175, DP755340, consisting of 215 hectares (ha) of former grazed agricultural land. The Site is located in a rural setting within the Tamworth Regional Council's Local Government Area and the Tamworth Aboriginal Land Council. On the Aboriginal Land Council's website it states, the Kamilaroi/ Gamilaroi/ Gomeroi people are the traditional custodians of the land in the Tamworth area. Table 2-1 below provides a summary of the Site details.

Table 2-1: Summary of the Details of the Site

Site	Details
Site Address	3,329 Oxley Highway, Somerton NSW, 2340
Lot and DP Numbers	Lot 175, DP755340
Approximate Site Area	215 Ha
Approximate Study Area	17.5 Ha
Local Government Area	Tamworth Regional Council
Parish of	Somerton
County of	Parry
Current Land Zoning	RU1 - <i>Primary Production</i>
Aboriginal Local Land Council	Tamworth Local Aboriginal Land Council
Aboriginal Language Group	Kamilaroi
Nearest SCIMS Survey Mark	SS 1385 N
SCIMS Latitude	150.58
SCIMS Longitude	-30.94
SCIMS Altitude (AHD71) metres	32.004
Geocentric Datum	GDA2020

2.2 DESCRIPTION OF SITE

The whole land parcel comprises mainly of cleared paddocks with a scattering of trees in the parcel's southern area. A cluster of historical farm structures including a dwelling are located in the mid-eastern portion of the Site. West of these contains the six existing poultry sheds situated in the Site's middle. The Site is accessed from the Oxley Highway (B56) at its northern boundary, via an internal, tree-lined, unsealed road. The Site's only natural waterbody is Sandy Creek, that runs through the Site's northeastern corner. The topography of the Site presents an overall falling slope from an elevation of 350 m (AHD) at the southwestern corner, towards the Site's north-east and south-east boundaries, with a fall of 25-30 m.

2.3 CURRENT USE

The Site currently operates as a poultry broiler farm with 240,000 birds accommodated in six tunnel-ventilated sheds. Each existing shed has an internal floor area of 2,323 m² with a stocking density of approximately 34 kg per m². Each shed undergoes a 9-10 week production cycle, typically consisting of a seven to eight weeks of growing phase, followed by two weeks of cleaning and preparation for the next growth cycle of new birds.



The Site is proposing to add eight new sheds to be located below (south) the current operating sheds. The current sheds and the site of the proposed sheds are located in the middle of the land parcel.

2.4 PROPOSED DEVELOPMENT

Wintergreen Farm Pty Ltd are seeking to expand their poultry broiler farm, from the existing six poultry sheds to a total of fourteen (14) sheds (thus eight (8) additional sheds are proposed). Each shed employs mechanical ventilation methods. The expansion would increase the current bird numbers from 240,000 to accommodate some 810,510 birds. The existing sheds have an internal floor area of 2,323 m² with the proposed sheds being slightly larger, will have an internal floor area of 2,970 m².

The proposed development may seek, in the future, to retrofit the tunnel ventilated sheds with the capacity to convert the farm to free range. This would involve installing doors to allow the birds access to an adjacent yard, however, this is not proposed for in this DA.







2.4.1 Area to be Disturbed

The size of the proposed area for development, including land potentially disturbed during the construction period, is approximately 75,000 m². The area has a gentle slope that falls downwards from west to east, some 4 – 6 m, over 400 m but appears as generally flat. Some earthworks would be required to prepare the ground surface for the footings and concrete slabs required to accommodate the tunnel shed structures, and other site infrastructure necessary for the development such as water tanks (capacity of 900,000 L), the pump house and underground water piping, electricity supply, eight 7,500 L above ground LPG tanks, and the construction of internal access roads.

Figure 2-1: Aerial of the Site Showing Location of the Current and Proposed Poultry Sheds



Source: Google Earth/Image © Airbus 2025

 Not to scale	<p>LEGEND:</p> <ul style="list-style-type: none"> Site cadastral boundary Area of current and proposed development Proposed poultry sheds Proposed water tanks and treatment system (to supply bird drinking water)	 <p>Benbow Environmental 27-29 Sherwood Street Northmead NSW 2152</p>
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3. PROTECTION OF ABORIGINAL OBJECTS, ARTEFACTS, PLACES AND SITES

3.1 LEGISLATED PROTECTION OF ABORIGINAL OBJECTS AND PLACES

Under the *National Parks and Wildlife Act 1974* (NPW Act), the NSW Government's Environment and Heritage, a sub-department of the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW), is responsible for protecting Aboriginal objects and Aboriginal Places throughout NSW. The objects of the NPW Act include:

... the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to: places, objects and features of significance to Aboriginal people...2A(1)(b)(i)

The Office of Environment and Heritage (OEH) is responsible for legislation protecting Aboriginal objects and Aboriginal Places by assessing the impacts of proposed activities on Aboriginal objects and Aboriginal Places and only allowing acceptable impacts to occur.

3.1.1 Offences for Harming Aboriginal Objects

Section 86 of the NPW Act, outlines a number of offences about 'harm' or desecration to an Aboriginal object. Harm means any act or omission that:

- destroys, defaces or damages the object;
- moves the object from the land on which it had been situated; or
- causes or permits the object to be harmed.

Harm does not include trivial or negligible actions. Examples of what can constitute as a trivial or negligible act includes picking up and replacing a small stone artefact, breaking a small Aboriginal object below the surface when gardening, or crushing a small Aboriginal object when you walk on a track. There are now two types of offences for harming an Aboriginal object:

1. *An offence of harming or desecrating an object which a person knows is an Aboriginal object (a 'knowing offence');*
2. *An offence of harming an object whether or not a person knows it is an Aboriginal object (a 'strict liability offence').*

There are severe penalties for both offences, with the maximum penalty for the 'knowing offence' (item 1) is \$550,000 or \$275,000 (in circumstances of aggravation) and one or two years gaol for an individual. For a corporation the maximum penalty for the knowing offence is \$1.1 million.

The *National Parks and Wildlife Act 1974* (NPW Act), provides that a person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution if they later unknowingly harm an object, without an Aboriginal heritage impact permit.



3.2 DUE DILIGENCE

In order to assist land holders, developers and other interested parties, the DCCEEW (formerly the DECCW, Department of Environment, Climate Change and Water), has published the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (2010). Section 57 of the National Parks and Wildlife Regulation 2019 (NPW Regulation) recommends a due diligence process should be conducted to determine potential impacts on Aboriginal objects. Carrying out due diligence provides a defence to the *offence* of harming Aboriginal objects and is a crucial step in satisfying NSW Aboriginal heritage obligations.

3.3 ABORIGINAL DUE DILIGENCE ASSESSMENT

The DECCW's due diligence code of practice provides a process for individuals and organisations to follow to determine the following;

- Whether an Aboriginal object or Aboriginal Place will be harmed by a proposed activity;
- Whether further investigation is needed; and
- Whether the application to harm requires an Aboriginal heritage impact permit (AHIP).

This requires a proponent to work through a step process as summarised in Table 3-1 below. Prior to the process, it is essential to consult the Aboriginal Heritage Information Management System (AHIMS), to check whether the land parcel contains either Aboriginal objects or Places, as listed on this registry. Section 4 of this report outlines the search process undertaken, that did not reveal any Aboriginal objects or Aboriginal Places listed within the land parcel or within the buffer zone outside the property's cadastral boundary.

3.3.1 Determining Due Diligence Requirements

Below in Table 3-1 is the step process followed from the DECCW's due diligence code of practice.

Table 3-1: The Step Process to Determine the Appropriate Due Diligence Code

Item	Response
1. Is the activity a Part 3A project declared under s.75B of the EP&A Act?	No , the proposed development will be assessed under Part 4 of the EP&A Act
2. Is the activity exempt from NPW Act or NPW Regulation?	No , the development is not an exempt activity
3. Will the activity involve harm that is trivial or negligible?	No, the activity will require some excavation and the loss of two mature trees.
4. Do either or both of these apply: - Is the activity in an Aboriginal Place? - Have previous investigations that meet the requirements of this code identified Aboriginal objects?	No , the activity will not occur in a known Aboriginal place. No previous investigations have been undertaken for this proposal.
5. Is the activity a low impact one for which there is a defence in the NPW Regulation?	No . The proposed activity includes an area that has not been clearly modified (as defined by the Act).



6. Do you want to use an industry specific code of practice, adopted by the NPW Regulation or other due diligence process?	No. There is no applicable industry code, therefore use generic due diligence code.
7. Follow the Generic Due Diligence Code of Practice.	See below for the generic code of steps 3.4 Due Diligence Steps and Figure 3-1 Generic Due Diligence Process.

3.3.2 Low Impact Activities Defence

If a proposed activity is considered a “low impact activity” (**Step 5** of Table 3-1), a defence in the NPW Regulation can be applied with exemptions listed in Section 58. To determine what is considered as “low impact”, it is important to understand the definition of disturbed land as defined by the Regulation:

“Land is disturbed if it has been the subject of a human activity that has changed the land’s surface, being changes that remain clear and observable.

Examples include ploughing, construction of rural infrastructure (such as dams and fences), construction of roads, trails and tracks (including fire trails and tracks and walking tracks), clearing vegetation, construction of buildings and the erection of other structures, construction or installation of utilities and other similar services (such as above or below ground electrical infrastructure, water or sewerage pipelines, stormwater drainage and other similar infrastructure) and construction of earthworks.”

Although much of the Site’s land has clearly been disturbed (vegetation cleared, furrowing of soils, establishment of land features to control the flow of water), the proposed development area contains some vegetation, including two mature trees have not been subjected to the “modification” and almost certainly predate pre-European occupation of the land. Potentially, these may be culturally modified trees and are likely to be harmed (removed) during the proposed activities.

Therefore, as the activity cannot be considered as “low impact”, a due diligence process must be applied (**Step 6**).

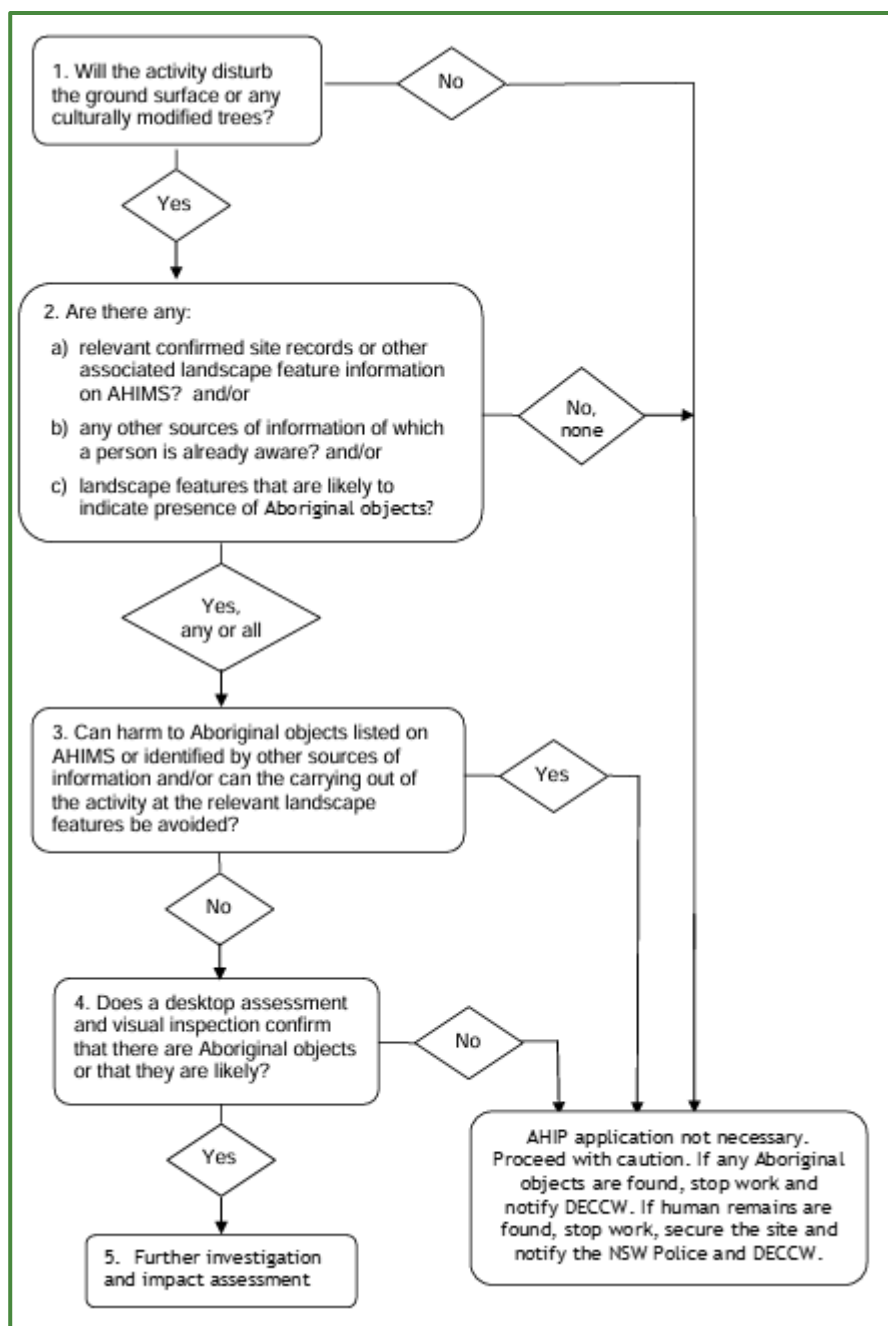
If a proponent, after working through the steps, is confident of answering “no” to the above items, and the industry they represent does not hold a due diligence protocol, the NPW Act allows for a generic code of practice to be adopted. Such as code is provided by DECCW which explains what due diligence means, and the step processes that can be applied for all activities that may potentially cause harm to Aboriginal objects. To determine whether DECCW’s code is required or the generic code can be used, a series of tabulated questions in Table 3-1 below, can be used.

3.4 DUE DILIGENCE STEPS

Step 1 of the generic due diligences code in Figure 3-1 below, poses the question “*Will the activity disturb the ground surface or any culturally modified trees*”

Yes, the ground surface will be disturbed and trees removed

Figure 3-1: The Generic Due Diligence Process Flowchart



Source: Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010)

3.4.1 Step 2a

Are there any relevant confirmed site records or other associated landscape feature information on AHIMS?

No, there are no previously recorded sites within the proposed area.

A search of the Aboriginal Heritage Information Management System (AHIMS) database was undertaken on the 22nd of April 2025 and an additional search on 14th of May 2025 (see results in the attachments). Neither search returned Aboriginal sites or Places in or near the land parcel.

3.4.2 Step 2b.

Are there any other sources of information of which a person is already aware?

Yes, there is some information that may indicate the presence of an Aboriginal site in the study area.

Searches, not conducted by Benbow Environmental (BE), for areas away from the subject land parcel but within the Tamworth region, found culturally modified trees (scar trees) are the second most commonly recorded Aboriginal site type. These site types were primarily located in flat areas which still contained mature vegetation and within close proximity to a named waterway.

One finding from the 1999 archaeological study of Aboriginal sites across the Tamworth Regional LGA conducted by Wison and McAdam (Wilson & McAdam, 2000), found tree species within the Tamworth City area most likely to have scars, are predicted to be white box, yellow box, and river red gum species. Additionally, many sites that these two researchers identified were previously unknown and not listed on the AHIMS database.

Within the proposed development area, there are two large mature eucalyptus trees. Images taken of the trees and provided to BE, show one tree with marks on the base of its trunk consistent in appearance with known scar trees. Based on this photographic evidence, and that many such sites have been identified in the Tamworth LGA, and *not* listed on the AHIMS database, it seems plausible that this tree may represent such a site (See image of the tree and potential scarring in Figure 5-2 below).

3.4.3 Step 2c.

Are there any landscape features that are likely to indicate presence of Aboriginal objects?

Yes, potentially the eastern portion of the proposed development is within 200 m of a water course (Sandy Creek). This portion is elevated above the creek flats but is not a ridgeline, top or headland. The land is also disturbed (as per the Act's definition).

The DECCW's due diligence Code of Practice refers to several landscape features more likely to contain Aboriginal objects. These include:

- Within 200 m of 'waters';
- Located within a sand dune system;
- Located on a ridge top, ridge line or headland;
- Located within 200 m below or above a cliff face;
- Within 20 m of or in a cave, rock shelter, or a cave mouth; and
- On land that is not disturbed land.

Drainage features within the proposed area of development appear to be anthropogenic in origin and design with modifications of the surface soils evident when viewing historical aerials (251021_PSI_Rev2). Since 1961, drainage lines have become more prominent due to erosion from land clearing. It seems more likely that Aboriginal groups would make use of the waters and flats of the north flowing Sandy Creek, a tributary of the Peel River east of the proposed works.



The meandering channel of Sandy Creek is parallel to and runs the length of the land parcel's eastern boundaries before it enters and passes through its northeastern corner. At one point, a meander loop is within 180-200 m of the proposed development. The land in this section of the proposed development, is elevated above the floodplain (flats) of Sandy Creek. Whether this would have been of importance to Indigenous people's past cultural practices is of course unknown (the site may have once contained trees or plants of significance). When conducting the AHIM's search, the buffer zone applied during one search included the areas along both banks of the creek.

3.4.4 Step 3:

Can harm to Aboriginal objects or disturbance of archaeologically sensitive landscape features be avoided?

The proposed works include the removal of the few trees within the area (including both mature eucalypts). This is for biosecurity reasons, therefore harm is unavoidable. Other considerations include minor excavation that are to occur in this area. This aspect of potential harm (to a buried artefact for example), even though it is in a portion of previously disturbed land, could probably be effectively managed by implementing an unexpected finds protocol during construction works.

3.4.5 Step 4:

Does a desktop assessment and visual inspection confirm that there are Aboriginal objects or that they are likely?

The desktop study raises the possibility that a scar tree *may* exist onsite (see Figure 5-1 below for location). It is important to note that many trees bear scars from natural processes or are the result of practices from non-Indigenous people. These marks can at times, appear similar to cultural tree scarring and therefore, a visual inspection is required by an appropriately qualified person to assess the tree and the surrounding area.

3.4.6 Step 5:

Further investigation and impact assessment required.

3.5 THE NEED TO IMPLEMENT AN UNEXPECTED FINDS PROTOCOL

Subject to an inspection of the potential scar tree and the land portion within the proposed development area, no other evidence was found for the proposed development area to contain Aboriginal Places or objects. However, as Aboriginal people have occupied this region for tens of thousands of years, clearly many artefacts related to cultural activities would have been manufactured and used extensively throughout the region. Therefore, the potential for some items to still exist and be unearthed during excavation, remains. In light of this and as a part of due diligence, an "unexpected finds" protocol should be implemented during the proposed works. This is provided in the following section of this report.



4. SEARCHES

4.1 INDIGENOUS HERITAGE ARTEFACTS

Indigenous artefacts and sites (also referred as Aboriginal objects and Aboriginal Places) are protected under the National Parks and Wildlife Act 1974 even if they are not listed as a heritage site on the Aboriginal Heritage Information Management System (AHIMS). Heritage NSW hosts the web based AHIMS, which is a searchable database that lists known Aboriginal Objects and Places. A search of AHIMS is required when it is likely or known that Aboriginal objects and/or places/sites are present within the area of a proposed activity (such as greenfield sites).

The investigation and assessment of Aboriginal cultural heritage is undertaken to:

- Identify whether Aboriginal cultural values and objects are present;
- Assess the nature and extent Aboriginal cultural values and objects; and
- Assess the harm a proposed activity may cause to Aboriginal Objects and declared Aboriginal Places.

This process provides a way to clearly identify the potential and or real harm that an activity may cause to Aboriginal heritage items and places.

A search of the AHIMS data base was undertaken on the 14/05/2025. No heritage items, Aboriginal sites or places were returned from this search. Search results are provided in Attachments 1.

4.2 NON INDIGENOUS HERITAGE ITEMS

A search for heritage places and items was conducted on 01/05/2025 via the OE&H State Heritage Inventory, an online heritage database which includes listings from Aboriginal Places, State Heritage Register, Interim Heritage Orders, State Agency Heritage Registers and Local Environmental Plans.

The land parcel does not contain and is not in the vicinity of any State Heritage Register items and is not under an Interim Heritage Order under the provisions of the NSW Heritage Act 1977.

5. POTENTIAL SCAR TREE

Photographs were taken of the two mature trees within the proposed development area. One tree was noted to exhibit features consistent with those of a traditional Aboriginal scar tree. Scar trees hold significant cultural value to Aboriginal people by, among other reasons, providing an important link to their culture and past, and by marking the historical presence of Aboriginal people in the area. Scarring results from the removal of bark, and sometimes the epithelial wood, from a tree for a variety of purposes but typically to fashion cultural implements. These include small carry containers to a water crafts. Certain tree species were used for these purposes.

It is worth noting that tree scarring can occur from other processes, such as lighting strikes, insect damage or from accidental damage such as from farm machinery or animals. Sometimes early European settlers also marked trees.

Figure 5-1: The Location of the Two Mature Trees, Tree 1 Carries a Scar On Its Lower Trunk



Source: Google Earth/Image © Airbus 2025






 Not to scale	<p>LEGEND:</p> <ul style="list-style-type: none"> Site cadastral boundary Proposed poultry sheds Location of mature trees	 Benbow Environmental 27-29 Sherwood Street Northmead NSW 2152
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Figure 5-2: The Potential Scar Tree (Image courtesy of Wintergreen Farms Pty Ltd)



Given the potential cultural significance of this tree, further consultation has been undertaken with the Tamworth Local Aboriginal Land Council (TLALC) to ascertain whether the tree is of significance to Aboriginal people. A ranger from TLALC has agreed to come to site to confirm significance when available. Given the likelihood of its significance, protective fencing will be erected around the tree as shown in the architectural plans and the tree will be retained and preserved.

5.1 ABORIGINAL HERITAGE IMPACT PERMIT

Following completion of due diligence, if an Aboriginal site has been identified in the proposed development, and due to the nature of the development the site will be disturbed, a proponent can apply for an Aboriginal Heritage Impact Permit (AHIP). This is a legal document that grants you permission to harm Aboriginal objects or declared Aboriginal places and sets out the complying conditions. AHIPs are currently issued by the Chief Executive of the NSW Office of Environment and Heritage (OEH) under section 90 of the NPW Act. The Act requires the proponent to consult with the local Aboriginal community as part of the application process. The



results of the consultation and views of the Aboriginal community are considered by the OEH when determining the issuing of a permit.

5.1.1 Factors Considered For Determining Permits

In Section 90K of the NPW Act, the following list of factors are considered:

(1) In making a decision in relation to an Aboriginal heritage impact permit, the Secretary must consider the following matters—

(a) the objects of this Act,

(b) actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit,

(c) practical measures that may be taken to protect and conserve the Aboriginal objects or Aboriginal place that are the subject of the permit,

(d) practical measures that may be taken to avoid or mitigate any actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit,

(e) the significance of the Aboriginal objects or Aboriginal place that are the subject of the permit,

(f) the results of any consultation by the applicant with Aboriginal people regarding the Aboriginal objects or Aboriginal place that are the subject of the permit (including any submissions made by Aboriginal people as part of a consultation required by the regulations),

(g) whether any such consultation substantially complied with any requirements for consultation set out in the regulations,

(h) the social and economic consequences of making the decision,

(i) in connection with a permit application—

(i) any documents accompanying the application, and

(ii) any public submission that has been made under the Environmental Planning and Assessment Act 1979 in connection with the activity to which the permit application relates and that has been received by the Secretary,

(j) any other matter prescribed by the regulations.

5.1.2 AHIP Allowances for Conservation and Protection

The OEH may issue an AHIP with certain conditions including site specific requirements. This may include a proponent to implement an Aboriginal Heritage Management Plans, salvaging artefacts, or only undertaking development in certain areas.



5.1.3 Refusals and Appealing Decisions

The OEH may refuse to issue an AHIP, refusals are determined on a case-by-case basis. The following circumstances of where a refusal may occur, is taken from the OEH's *"Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants"*. The list includes where:

- the project design is unsympathetic to the Aboriginal cultural heritage values of an Aboriginal object(s) or declared Aboriginal place(s) and will involve extensive harm to significant Aboriginal object(s) or declared Aboriginal place(s);
- where harm could be avoided by the adoption of other reasonable and practical measures;
- where the loss of an Aboriginal object would irreversibly diminish the ability of Aboriginal communities to exercise cultural practices within the region
- where an identified Aboriginal object is known to be of national, state or regional significance;
- where an identified Aboriginal object is of a type that is rare or cannot be readily accessed in the wider region;
- where the Aboriginal object is of a type that is known to be poorly conserved in the reserve system; and
- where proposed works on a declared Aboriginal place(s) are inconsistent with the reasons for its declaration.

Appeals against the OEH's decision including imposed conditions, are made through the Land and Environment Court and must be made within 21 days of the date of the notice of the decision.



6. UNEXPECTED FINDS PROTOCOL

Searches of available data bases and historical records do not reveal the existence of any *known* Aboriginal Places, sites or artefacts on the land parcel or within the proposed development area. However, this does not mean that such places and items did not at one time exist on site. Such places may have been erased due to the passage of time, historical dispossession, agricultural land practices or loss of oral histories with knowledge of such places within the land parcel. Additionally, many Indigenous artefacts were fashioned from materials that naturally degrade over time such as wood, bark and fibres sourced from plants.

Due to the proposed development requiring some level of excavation and earth works, in order to manage the risk from potentially damaging an Indigenous artefact (if one exists within the proposed area), the exercising of due diligence is highly recommended.

Due diligence amounts to taking reasonable and practicable steps to protect Aboriginal objects that may become unearthed due to land modifying activities.

An Aboriginal artefact is anything which is the result of past Aboriginal activity. This includes stone (artefacts, rock engravings etc.), plant (culturally scarred trees) and objects. Human bone (skeletal) remains may also be uncovered during earth works.

Cultural heritage significance is assessed by the Aboriginal community. Typically, significance is based on traditional and contemporary lore, spiritual values, and oral history. Scientific and educational values can also be a consideration.

The following protocol should be implemented if previously unrecorded or unanticipated Aboriginal object(s) are encountered during the proposed works:

1. If any Aboriginal object(s) is/are discovered, or damaged, or encountered during the proposed development works, the proponent:

- Must not further harm the object;
- Must immediately cease all work at the particular location;
- Shall secure the area to avoid further harm to the Aboriginal object;
- Will notify Heritage NSW as soon as practical on (02) **9873 8500** (heritagemailbox@environment.nsw.gov.au), and provide details of the potential Aboriginal object such as its location; and
- Shall not recommence any work at the particular location unless authorised in writing by the NSW OEH.

2. If Aboriginal remains are unexpectedly encountered during the proposed works, work must immediately cease, and the area secured to prevent unauthorised access. The NSW Police and Heritage NSW must be contacted.

3. Liaison with the appropriate Government agencies and relevant Aboriginal community representatives to ensure:

- The finds are appropriately assessed and recorded;
- All legal constraints arising from the find(s), including any from Heritage NSW are followed; and



- The development and implementation of appropriate management strategies, including consultation with stakeholders and the assessment of the significance of the find(s).

4. If a find is determined to be an Aboriginal object, work within the area of the find can only resume after gaining written approval from the OEH, most typically in the form of an Aboriginal Heritage Impact Permit.

See Appendix_2 for examples of Aboriginal objects/artifacts that potentially may be unearthed during the proposed works.

7. SUMMARY AND CONCLUDING REMARKS

Benbow Environmental (BE) was engaged by Wintergreen Farm Pty Ltd (the Site) to prepare a Heritage report for 3329 Oxley Highway, Somerton NSW, 2340, legally described as Lot 175, DP755340.

This report was a desktop study only, of information currently available of the potential heritage status for the Site, particularly the existence of Aboriginal objects or Places within or near the proposed development area. No heritage items were found on the State Heritage Inventory, an online heritage database which includes listings from State Heritage Register, Interim Heritage Orders, State Agency Heritage Registers and Local Environmental Plans. A search was made of the Aboriginal Heritage Information Management System (AHIMS) hosted by Heritage NSW which did not return any listed items for the land parcel.

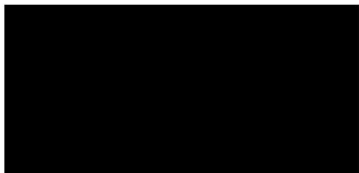
This report followed the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (published by DECCW in 2010). Although no Aboriginal objects or Aboriginal Places were identified, the existence of a potential scar tree within the proposed development area was located. It is an offence under NSW law to cause harm to Aboriginal heritage items.

This report provides two recommendations:

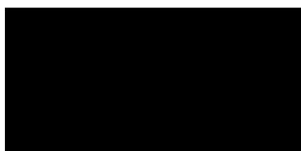
Firstly, an assessment of the potential scar tree, as identified in the proposed works area, is required to determine if it is an Aboriginal heritage item. Consultation has been undertaken with the Tamworth Local Aboriginal Land Council (TLALC) to ascertain whether the tree is of significance to Aboriginal people. A ranger from TLALC has agreed to come to site to confirm significance when available. Given the likelihood of its significance, protective fencing will be erected around the tree as shown in the architectural plans and the tree will be retained and preserved.

Secondly, it is recommended that an unexpected finds protocol should be implemented during the proposed works (as detailed in Section 6). The following of the protocol will minimise potential harm that may occur to potential Aboriginal object/s and is a legal defence if harm to an object occurs.

This concludes the report.



Senior Environmental Scientist



Principal Consultant



8. LIMITATIONS

Our services for this project are carried out in accordance with our current professional standards for site assessment investigations. No guarantees are either expressed or implied.

This report has been prepared solely for the use of Wintergreen Farm Pty Ltd, as per our agreement for providing environmental services. Only Wintergreen Farm Pty Ltd is entitled to rely upon the findings in the report within the scope of work described in this report. Otherwise, no responsibility is accepted for the use of any part of the report by another in any other context or for any other purpose.

Although all due care has been taken in the preparation of this study, no warranty is given, nor liability accepted (except that otherwise required by law) in relation to any of the information contained within this document. We accept no responsibility for the accuracy of any data or information provided to us by Wintergreen Farm Pty Ltd for the purpose of preparing this report.

Any opinions and judgements expressed herein, which are based on our understanding and interpretation of current regulatory standards, should not be construed as legal advice.



9. REFERENCES

Benbow Environmental, Preliminary Site Investigation, 2025, 251021_PSI_Rev2

Department of Environment, Climate Change and Water, 2010, *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, available online at:

<https://www.environment.nsw.gov.au/publications/due-diligence-code-practice-protection-aboriginal-objects-new-south-wales>

Wilson and McAdam 2000 Wilson, J. and L. McAdam. 2000. *The Tamworth Aboriginal Archaeological Site Study*. Report for Tamworth City Council.