

Due Diligence – AHIMS

228, 230 and 232A Barrenjoey Rd, Newport NSW 2106

By Ecological Consultants Australia Pty Ltd

TA Kingfisher Urban Ecology and Wetlands

January 2023 amended July 2023





About this document

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Statement of Authorship

This study and report were undertaken by Ecological Consultants Australia for the client. The author of the report is Geraldene Dalby-Ball whose qualifications are BSc majoring in Ecology and Botany with over 25 years' experience in this field and specialising in projects within Sydney urban areas.

Limitations Statement

Information presented in this report is based on an objective study undertaken in response to the brief provided by the client. Any opinions expressed in this report are the professional, objective opinions of the authors and are not intended to advocate any particular proposal or pre-determined position.

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Signed: Geraldene Dalby-Ball – Director of Ecological Consultants Australia Pty Ltd

A handwritten signature in black ink, appearing to read "G Dalby-Ball".

Executive Summary

Ecological Consultants Australia (ECA) trading as Kingfisher Urban Ecology & Wetlands has been contracted by David Lowe c/o Vaughan Milligan Development Consulting P/L to provide a **Due Diligence Report** (First Peoples Heritage) for the proposal at 228, 230 and 232A Barrenjoey Rd, Newport NSW 2106 within the Northern Beaches Council LGA.

The proposal seeks to construct a driveway.

This report is consistent with the Due Diligence Guidelines: <https://www.heritage.nsw.gov.au/search-for-heritage/publications-and-resources/aboriginal-cultural-heritage-publications/>

It is consistent with the Aboriginal cultural heritage consultation requirements for proponents (2010): <https://www.heritage.nsw.gov.au/assets/Uploads/publications/524/aboriginal-cultural-heritage-consultation-requirements-for-proponents-2010-090781.pdf>

It also acknowledges the principles contained in *Working to protect Aboriginal cultural heritage* by OEH: <https://www.heritage.nsw.gov.au/assets/Uploads/publications/526/working-to-protect-aboriginal-cultural-heritage-110760.pdf>

The introductory AHIMS search (745296) revealed no recorded sites within the 200m buffer.

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1 Glossary

AHIMS Aboriginal Heritage Information Management System

ALR Act Aboriginal Land Rights Act 1983

CAP Catchment Action Plan

CCHD Country, Culture and Heritage Division (OEH)

FM Act Fisheries Management Act 1994

ILC Indigenous Land Corporation

ILUA Indigenous Land Use Agreement

LALC Local Aboriginal Land Council

NPW Act National Parks and Wildlife Act 1974

NPWS National Parks and Wildlife Service NSW

NSWALC NSW Aboriginal Land Council

OEH Office of Environment and Heritage, Department of Premier and Cabinet

Aboriginal Heritage Impact Permit (AHIP) – The statutory instrument that the Director General of DECCW issues under s.87 and/or s.90 of the NPW Act: s.87

Aboriginal Heritage Impact Permits – required to disturb or move an Aboriginal object or disturb or excavate land for the purposes of discovering an Aboriginal object.

s.90 Aboriginal Heritage Impact Permits – required to destroy, damage or deface an Aboriginal object or Aboriginal place.

Aboriginal object – A statutory term, meaning: *‘... any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises NSW, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains’* (s.5 NPW Act).

Aboriginal owners – Aboriginal owner is a term used under the Aboriginal Land Rights Act 1983 and the National Parks and Wildlife Act 1974. Aboriginal owners are defined as *‘...persons whose names are entered on the Register of Aboriginal Owners because of the persons’ cultural association with particular land...’* (ALR Act 1983). Registration as an Aboriginal owner under the *Aboriginal Land Rights Act 1983* provides statutory recognition of an Aboriginal person’s cultural associations with land. For more information about the ALR Act see section 2.2.4 of these requirements.

Aboriginal place – A statutory term, meaning any place declared to be an Aboriginal place (under s.84 of the NPW Act) by the Minister administering the NPW Act, by order published in the NSW Government Gazette, where the Minister is of the opinion that the place is or was of special significance with respect to Aboriginal culture. It may or may not contain Aboriginal objects.

Cultural knowledge - For the purpose of these requirements, cultural knowledge is directly associated with Aboriginal lore. Aboriginal people connect to their land through their lore, and through lore, people acquire knowledge of all aspects of their environment along with responsibilities, obligations and behaviours that

are required to sustain their survival. Cultural knowledge has been passed on through the generations in a complex system of stories, language, art, songs, dance, ceremonies and customs that have been practiced since the time of creation (Dreamtime). The lore continues to govern all aspects of life for Aboriginal people on their traditional land/Country and waters. While cultural knowledge can be interpreted to mean something that is 'in the past' or 'fixed' and 'unchanging', in the context of these requirements it is considered as a living, dynamic force that is adaptive and innovative and as belonging to living communities.

Proponent – A person undertaking consultation which may lead to an application for an AHIP under the NPW Act.

Registered Aboriginal parties – Aboriginal people, Aboriginal organisations or their representatives who have registered an interest in being consulted in accordance with stage 1 of these requirements.

2 Background

2.1 Purpose of the report

Ecological Consultants Australia (ECA) Pty Ltd trading as Kingfisher Urban Ecology & Wetlands has been contracted by David Lowe c/o Vaughan Milligan Development Consulting P/L to provide a **Due Diligence Report** (First Peoples Heritage) for a proposal at 228, 230 and 232A Barrenjoey Rd, Newport NSW 2106 within the Northern Beaches Council LGA.

The proposal seeks to construct a driveway.

This report is consistent with the Due Diligence Guidelines: <https://www.heritage.nsw.gov.au/search-for-heritage/publications-and-resources/aboriginal-cultural-heritage-publications/>

2.2 Methods

AHIMS

The Aboriginal Heritage Impact Permits (AHIP) application and determination process requires an assessment (by the proponent) and evaluation of the Aboriginal heritage values of Aboriginal object(s) and place(s) potentially harmed by an activity. The *Due Diligence Code of Practice for the Protection of Aboriginal Objectives in NSW* (the Code) explains and provides practical guidance about what due diligence means <http://www.environment.nsw.gov.au/legislation/NPWamendmentAct2010>.

The Code provides practical steps which individuals and organisations who own, manage or use land need to take in order to:

- *Identify whether or not Aboriginal objects are, or are likely to be, present in an area;*
- *Determine whether or not their activities are likely to harm Aboriginal objects; and*
- *Determine whether an Aboriginal Heritage Impact Permit (AHIP) is required.*

There are several benefits to having a due diligence process for assessing potential harm to Aboriginal objects:

- *Assists in avoiding unintended harm to Aboriginal objects;*
- *Provides certainty to land managers and developers about appropriate measures for them to take;*
- *Encourages a precautionary approach;*
- *Provides a defence against prosecution if the process is followed; and*
- *Results in more effective conservation outcomes for Aboriginal cultural heritage.*

Due diligence obliges people whose actions may affect Aboriginal cultural heritage to take reasonable steps to consider if Aboriginal objects may be present and avoid harm to that heritage. If harm cannot be avoided, they are required to apply for an AHIP.

2.3 Sources of information used in the assessment

The following information sources were used in the assessment:

- AHIMS (2023)

2.4 Legislative context and statutory requirements

Aboriginal Land Rights Act 1983

The *Aboriginal Land Rights Act 1983 (ALR Act)* recognises that the land is of cultural, spiritual, social and economic importance to Aboriginal people. The ALR Act creates an Aboriginal land council system to address Aboriginal land rights. LALCs are able to negotiate agreements with private landholders to permit access to the land by Aboriginal people for the purpose of hunting, fishing or gathering. The ALR Act also allows for the NSW Land and Environment Court to determine access arrangements where negotiated outcomes are not achievable.

National Parks and Wildlife Act 1974

Private landholders can play an important role in protecting Aboriginal cultural heritage on their land. Provisions enacted in 2010 significantly strengthen the protection of Aboriginal cultural heritage on all public and private land in NSW. They include new strict liability offences and a range of defences and exemptions. Landholders should be aware that some of their land management activities could harm Aboriginal cultural heritage.

To help land managers avoid harm, the new provisions contain two important defences:

1. Checking for Aboriginal objects and sites of significance through due diligence will be a defence against strict liability harm.
2. Low impact activities, such as normal farming operations on disturbed land, will not trigger the strict liability harm offence.

AHIMS Searches Made:

The *Aboriginal Heritage Information Management System (AHIMS)* was used to search for Aboriginal Places, objects and other significant sites at 230 Barrenjoey Rd, Newport plus a 200 m radius through <https://www.environment.nsw.gov.au/topics/heritage/search-heritage-databases/aboriginal-heritage-information-management-system>.

The 'AHIMS Basic Search' indicated that no Aboriginal Places, objects or other significant sites occur on or within 200 m of 230 Barrenjoey Rd, Newport.

3 Results

3.1 Desktop – Aboriginal Heritage AHIMS Basic Search

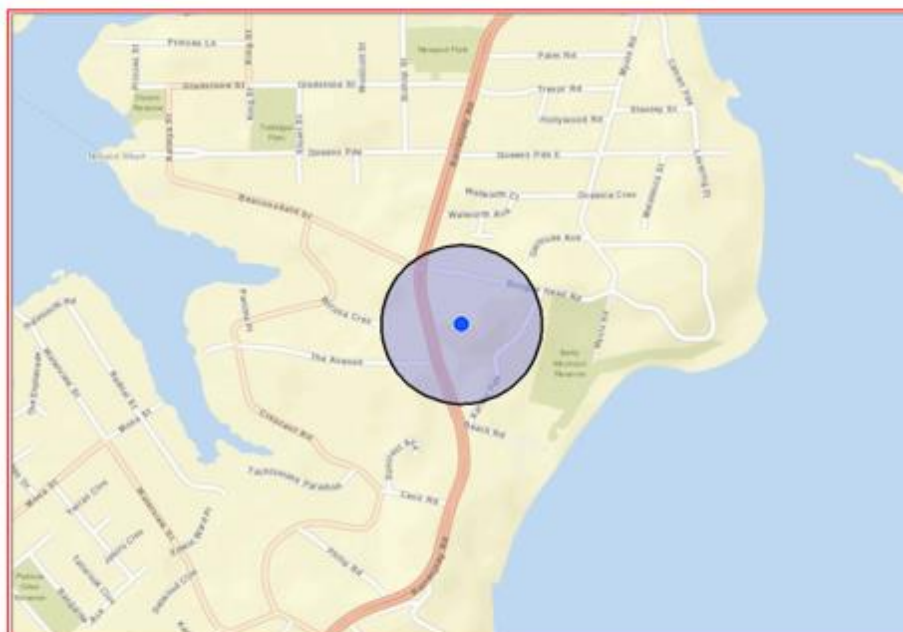
The *Aboriginal Heritage Information Management System* (AHIMS) was used to search for Aboriginal Places, objects and other significant sites at 230 Barrenjoey Rd, Newport plus a 200 m radius through <https://www.environment.nsw.gov.au/topics/heritage/search-heritage-databases/aboriginal-heritage-information-management-system>.

The 'AHIMS Basic Search' indicated that no Aboriginal Places, objects or other significant sites occur on or within 200 m of 230 Barrenjoey Rd, Newport. See Figure 3.1.

Given that no Aboriginal Places, objects or other significant sites occur on or within 200 m of 230 Barrenjoey Rd, Newport, an extensive search was not requested.

AHIMS Web Service search for the following area at Address : 230 BARRENJOEY ROAD NEWPORT 2106 with a Buffer of 200 meters, conducted by Geraldene Dalby-Ball on 16 January 2023.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

| | |
|---|--|
| 0 | Aboriginal sites are recorded in or near the above location. |
| 0 | Aboriginal places have been declared in or near the above location.* |

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette](https://www.legislation.nsw.gov.au/gazette) (<https://www.legislation.nsw.gov.au/gazette>) website. Gazettal notices published prior to 2001 can be obtained from Heritage NSW upon request

Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not to be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Heritage NSW and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.

Figure 3.1. Extract from AHIMS for 230 Barrenjoey Rd, Newport. Source: AHIMS 2023.

4 Expertise of Authors

With over 25 years wetland and urban ecology experience, a great passion for what she does, and extensive technical and on-ground knowledge make Mia a valuable contribution to any project.

Geraldene has over 8 years local government experience as manager of environment and education for Pittwater Council. Geraldene presented papers on the topic at the NSW Coastal Conference, Sydney CMA and Hawkesbury Nepean forums. Geraldene is a Technical Advisor Sydney Olympic Park Wetland Education and Training (WET) panel.

Geraldene has up to date knowledge of environmental policies and frequently provides input to such works. Mia was a key contributor to the recent set of Guidelines commissioned by Southeast Queensland Healthy Waterways Water Sensitive Urban Design Guidelines. Geraldene's role included significant contributions and review of the Guideline for Maintaining WSUD Assets and the Guideline for Rectifying WSUD Assets.

Geraldene is a frequent contributor to many community and professional workshops on ecological matters particularly relating to environmental management. She is an excellent Project Manager.

Geraldene is a joint author on the popular book Burnum Burnum's Wildthings published by Sainty and Associates. Author of the Saltmarsh Restoration Chapter Estuary Plants of East Coast Australia published by Sainty and Associates (2013). Geraldene's early work included 5 years with Wetland Expert Geoff Sainty of Sainty and Associates. Geraldene is an expert in creating and enhancing urban biodiversity habitat and linking People with Place.



Geraldene Dalby-Ball

DIRECTOR

SPECIALISATIONS

- Urban Ecology – and habitat rehabilitation and re-creation.
- Urban waterway management – assessing, designing, and supervising rehabilitation works
- Saltmarsh and Wetland re-creation and restoration – assessment, design, and monitoring
- Engaging others in the area of environmental care and connection
- Technical Advisor – environmental design, guidelines, and policies
- Sound knowledge and practical application of experimental design and statistics
- Project management and supervision
- Grant writing and grant assessment
- Budget estimates and tender selection
- Expert witness in the Land and Environment Court

CAREER SUMMARY

- **Director and Ecologist**, Ecological Consultants Australia. 2014-*present*
- **Director and Ecologist**, Dragonfly Environmental. 1998-*present*
- **Manager** Natural Resources and Education, Pittwater Council 2002-2010
- **Wetland Ecologist** Sainty and Associates 1995-2002

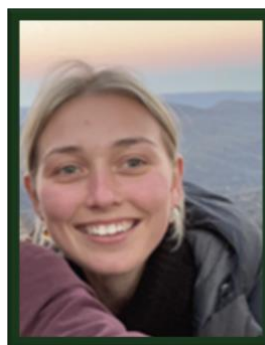
QUALIFICATIONS AND MEMBERSHIPS

- **Bachelor of Science with 1st Class Honors**, Sydney University.
- WorkCover WHS General Induction of Construction Industry NSW White Card.
- Senior First Aid Certificate.

Practicing member and vice president Ecological Consultants Association of NSW

Brooke Thompson

ECOLOGIST



Brooke is an ecologist with valuable on-ground experience working on bush regeneration projects throughout the Sydney region, including revegetation and weed management projects.

Brooke is passionate about conserving and restoring natural areas for native species to thrive.

Brooke completed her undergraduate Bachelor of Science degree majoring in Conservation Biology. Brooke has knowledge of experimental design and analysis, research and reports, geographic information systems (GIS), environmental legislation, and flora identification.

Brooke has experience working with conservation organisations, including Sea Shepherd Australia, helping to raise awareness around the destruction of habitats in the world's oceans. She has participated in the organisation and delivery of fundraising events around Sydney.

Brooke has exceptional communication and customer service skills and an extended client relations history.

SPECIALISATIONS

- Urban and Landscape Ecology
- Fauna and Flora Assessments
- Vegetation Management
- Habitat Tree Assessment, Marking and Mapping

CAREER SUMMARY

- **Ecologist**, Ecological Consultants Australia. 2022-*present*
- **Natural Area Specialist**, Dragonfly Environmental. 2022

QUALIFICATIONS AND MEMBERSHIPS

- **BSc Conservation Biology**, University of Wollongong.
- WorkCover WHS General Induction of Construction Industry NSW White Card.