

Rebecca Lockart
Principal Planner
Allen Price
By email: rebecca@allenprice.com.au

**RE: RESPONSES TO SUBMISSIONS FOR SSD3846 – MOD 1,
WEST CULBURRA, NEW SOUTH WALES**

Dear Rebecca,

This letter outlines Austral’s responses to the feedback received following submission of the Aboriginal Cultural Heritage Assessment (ACHA) and Aboriginal Cultural Heritage Management Plan (ACHMP) for the State Significant Development Application (SSDA) [SSD3846-MOD1] for the works at West Culburra in New South Wales (NSW).

HERITAGE NSW RESPONSE

Heritage NSW provided advice on the modification on 26 August 2025 (HMS 11558). This stated:

We note that the ACHAR and ACHMP provided with the Modification Report are those that were uploaded to the Aboriginal Heritage Information Management System (AHIMS) following the completion of the reporting requirements for the test excavations previously completed under Aboriginal Heritage Impact Permit (AHIP) 5076. No additional assessment or consultation with project registered Aboriginal Parties (RAPs) appears to have been undertaken to support the current Modification application.

They provided the following comments to be addressed. These queries are provided with their associated responses below.

1. *As per Requirement 1b of the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010a), [AHIMS] searches must be contemporaneous with the project (less than 12 months). Please update the AHIMS search and review for currency.*

The ACHA is currently being updated to ensure that the AHIMS search is contemporaneous with the project. In the interim, a basic search of the AHIMS system has been undertaken on 4 November 2025 (Client Service ID 1062118) and has identified no new sites within 200 metres of the study area.

2. *Please clarify whether the proposed changes as part of the current Modification application, including the reorientation of the development footprint, will result in any changes to the proposed impacts to and/or management requirements for Aboriginal cultural heritage compared to those as part of the original concept approval.*

The proposed modification to the development footprint was included with the ACHA versions dated 17 June 2024, 31 July 2024, and 25 November 2024. The impact assessment within the current ACHA takes into account the modified design. The resulting recommendations have been carried through to the current ACHMP.

3. *Please provide evidence that the project RAPs have been notified of the current Modification application and that any comments or concerns have been adequately addressed.*

In line with the Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010b), the proposed modification was provided as part of the ACHA for the Stage 4 stakeholder review. RAPs had 28 days to review the design included with the ACHA and provide feedback. Two separate review periods were run on 17 June 2024 and 25 November 2024. No feedback was received regarding the modified design.

Austral is able to re-supply these records as required.

SHOALHAVEN COUNCIL

Shoalhaven council provided the following advice in their review of the modification application:

'The [ACHA] (Map 2.1) depicts a number of Artefacts within the area subject to the relocation and reduction of the overall development footprint. It should be ensured that the outcomes presented in the submitted Report are consistent with changes made to the approved layout.'

As above, it is noted that the ACHA and ACHMP include the proposed modification. All impacts addressed in that report are consistent with the proposed changes to the approved layout.

JERRINJA LOCAL ABORIGINAL LAND COUNCIL

On Thursday 4 September 2025, Jerrinja Local Aboriginal Land Council (LALC) provided an objection to the proposed modification. This raised several concerns. These are discussed below.

REQUIREMENT TO CONSULT JERRINJA LALC

Jerrinja LALC has raised concerns over proposed updates to Clause 12, which has been updated to require consultation with the Aboriginal Community, rather than naming Jerrinja LALC outright.

Of most concern is their proposal to remove the requirement to consult us (Clause 12).

We are the single legislated, mandated, member-based body responsible for the protection of Aboriginal cultural heritage within our footprint. Local Aboriginal Land Councils are specifically named in the Aboriginal Cultural Heritage Consultation Requirements for Proponents (DECCW, 2010) as the body that proponents must consult with regarding their developments.

The proponent of this development is well aware of the grave concerns we hold for the impact this development would have on the Jerrinja cultural landscape. This was one of the reasons the Independent Planning Commission originally refused the development proposal. And this is precisely why conditions were placed on the SSD consent that mandated consultation with us – specifically with us, the Jerrinja LALC.

Sealark is now, buried deeply in this modification application they promote as "minor", without justification or explanation, attempting to change Clause 12 from consultation with us, to consultation "with the Aboriginal community". This is offensive, this is inappropriate – it is unthinkable that their response to being faced with genuine community concerns is to modify who the community is that they have to consult with.

We note that this does not remove the requirement to consult with Jerrinja LALC, under the new verbiage this is still required. We also note that Heritage NSW has returned feedback that they approve with the proposed change.

Jerrinja LALC's other concerns are with the planning system and approvals pathway. These cannot be addressed by Austral.

In the original Aboriginal Cultural Heritage Assessment (2012) for this development there were only two Registered Aboriginal Parties – ourselves, and the Jerrinja Traditional Owners Aboriginal Corporation. In the most recent (2024) this had blown out to 10, with the majority not even coming from Jerrinja Country. I personally have firsthand experience of these off-country Registered Aboriginal Parties being involved in workshops related to this project, asking about sites of immense cultural significance, causing cultural harm.

It is deeply culturally offensive to us that under the current NSW Planning system, there are no safeguards against off-country Registered Aboriginal Parties exploiting the self-identification and self-registration system – not to mention proponents potentially exploiting an eagerness to participate in paid fieldwork, paid workshop attendance, and endorsement of developments which threaten cultural heritage which they are not knowledge holders of.

INADEQUATE COVERAGE OF EXISTING ACHA AND ACHMP

The existing ACHA and ACHMP did not contemplate the modifications currently being proposed. We are concerned that in particular, that revision of the ACHA will now be required, potentially with additional test pitting now that the area of disturbance of the development has changed and the increased area of disturbance includes areas within 200m of the foreshore, which the original 2012 ACHA identified as having a high potential for sub-surface deposits of artefacts to occur.

The current ACHA contains an updated impact assessment for the modified design. Subsequent ACHA recommendations were used to formulate the ACHMP.

INCREASED CLEARING BEYOND EPBC APPROVAL

The EPBC approval for this development permitted no more than 45.99 ha of clearing of grey headed flying fox habitat. The supporting documentation for the EPBC referral prepared by EcoLogical contains habitat maps for the grey headed Flying Fox which show that the entire development footprint (and beyond) is habitat. In this application, Allen Price state (3.2.1) that the modification would result in an increase to 47.64 ha of vegetation to be impacted.

We are concerned:

- *That this would exceed the EPBC approval*
- *This would contradict the proposed amendments to C19 which only propose offsets for 45.75 ha of impacted vegetation.*

We are also concerned about the changes that have been proposed regarding offsets in this section. It is beyond our technical knowledge to provide commentary on whether these are compliant and without reassessment by independent ecologists as we have been requesting for so many years, we would respectfully request the Department to monitor / assess for compliance.

The concerns raised by Jerrinja LALC here are ecological in nature, not heritage. Austral is unable to provide advice or response to this effect.

DEFINITION OF BASELINE

We object to Sealark's intention to change conditions of consent being triggered at works commencement, to being triggered at "construction" commencement. Given the immense impact this development will have on the ecological values of our Jerrinja cultural landscape, and the wellfounded reasons there were so many consent conditions placed on a development that was refused consent to begin with, it is inconceivable that the proponent would want to commence work without environmental controls being in place. We of course object.

Further, It is critical that baseline data is collected before any works whatsoever commence, so that it is truly baseline data rather than data that is skewed by any commencement of any works whatsoever. The proponent has provided no justification for the delay proposed.

The concerns raised by Jerrinja LALC are ecological or relate to the approvals process. No heritage concerns are raised. Austral is unable to provide advice or response to this concern.

AMENDMENT OF CONDITION A9

This is another amendment which Sealark and Allen Price have failed to mention in their description of this modification. As it currently stands, the SSD approval lapses, rightfully, without DA lodgement within 5 years of the approval being granted. This amendment seeks to remove this safeguard.

This LALC has fought against "Zombie Developments" on the grounds that older approvals are out of step with contemporary planning standards, particularly regarding cultural and environmental controls. The West Culburra development already relies on out of date studies – the oldest attachment to the EPBC application dates back to 2011.

It is critical that the standard 5 year lapsing condition is not amended.

As above, the concerns raised by Jerrinja LALC here are with the planning system and current nature of the approvals pathway. No heritage concerns are raised.

STAGING PLANS

We would also like to seek clarification on whether the requirement for staging plans (Condition A12 Subclause A) is for the proponent to submit "approved" or "proposed" staging plans. We note that Shoalhaven City Council's approval of the plans has been exhibited as part of the documentation for this modification, however the plans they have approved do not form part of the application. The only documentation available on Sealark's website are draft plans which formed part of the EIS.

This final concern is directly addressed to Shoalhaven City Council. Austral has not provided a response.

COMMUNITY SUBMISSIONS

Several comments provided by the local community have been included with the responses to the modification application. Sealark has provided an example comment, this is included below:

'The consultation process with both Aboriginal stakeholders and the rest of the Culburra Beach community has been marked by a lack of transparency, inclusion and respect since the original concept plan was exhibited. The Culburra Beach Progress Association has systematically excluded and publicly bullied any opponents of the development, and refused to even listen to resident concerns, let alone authentically consult with community members. Similarly, indigenous community members have been disrespected throughout the process by not having their cultural heritage treated with the importance it deserves. The developer's own Aboriginal heritage assessment found middens and artefacts of 'significant regional importance' in the areas surrounding proposed development in the amended plans, yet no real consultation or representation of the rich indigenous history of the area has been conducted. It is unconscionable to think we would continue to show such disrespect to the traditional owners of the land in this way in 2021, given all we have supposedly learnt about the decimation of Aboriginal culture by colonisation over the past 200 years.'

Austral has undertaken consultation with the local Aboriginal community as part of the ACHA and ACHMP preparation, as prescribed by the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (Department of Environment, Climate Change and Water NSW 2010b). It is the aim of the ACHMP to provide informed, community-led management strategies for the identified Aboriginal heritage sites.

Project consultation with the broader community is outside the scope of these reports.

Please do not hesitate to contact me for further information at the contact details provided below.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Lindsay Costigan".

Lindsay Costigan

Senior Archaeologist / Team Leader – Eastern Region

Austral Archaeology Pty Ltd

M: 0402 745 058

E: lindsayc@australarch.com.au

REFERENCES

Department of Environment, Climate Change and Water NSW 2010a, *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, Department of Environment, Climate Change and Water NSW

Department of Environment, Climate Change and Water NSW 2010b, *Aboriginal Cultural Heritage Consultation Requirements for Proponents*, Department of Environment, Climate Change and Water NSW

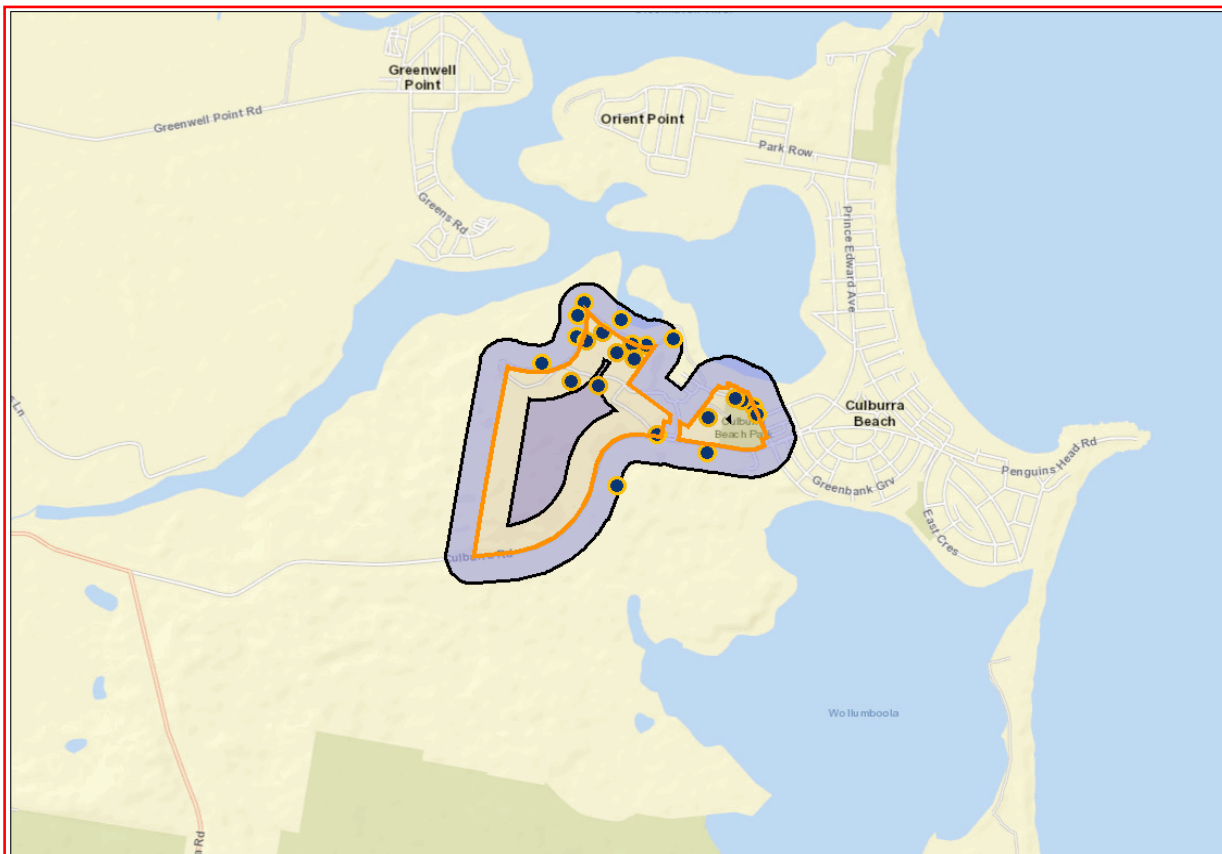
Austral Archaeology
148 Tongarra Road
Albion Park New South Wales 2527
Attention: Jake Allen
Email: jakea@australarch.com.au

Date: 04 November 2025

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 1, DP:DP1305809, Section : - with a Buffer of 200 meters, conducted by Jake Allen on 04 November 2025.

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:

| | |
|-----------|--|
| 23 | 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.