



Local Aboriginal Land Council
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Department of Planning, Housing and Infrastructure

Thursday 4th September 2025

To Whom It May Concern

Re: West Culburra Mixed Use Subdivision Modification (SSD 3846-Mod-1)

I am writing to lodge Jerrinja LALC's objection to this modification on several grounds. Our overall objection is that this modification is not "minor". The proponent is characterising this as a minor modification and we are concerned that this is to comply with Section 4.55 (1A) of the Environmental Planning and Assessment Act where the modification has no or minimal environmental impact. We are concerned that the impact here is more than minimal, and therefore we believe a more rigorous assessment should be required.

Our objections to specific aspects of the application are as follows:

Requirement to consult Jerrinja LALC

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.

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 Aboriginal Cultural Heritage Assessment (ACHA) and Aboriginal Cultural Heritage Management Plan (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.

Increased clearing including 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.

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 well-founded 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.

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.

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.

In summary, while our chief objection is the removal of the requirement to consult us as the mandated, legislated, cultural heritage protection body directly impacted by this development, we hold several other concerns with this modification application as well. We trust that you will take these objections into account and refuse this application.

Yours sincerely



Alfred Wellington
Chief Executive Officer