

Reference: 22054

30 September 2024

Matt Philpott

Managing Director – Land and Development

Sealark Pty Ltd

Email: [matt@sealark.com.au](mailto:matt@sealark.com.au)

Dear Matt,

## **RE: ENGAGEMENT WITH FIRST NATIONS PEOPLE AND COMMUNITIES FOR WEST CULBURRA RESIDENTIAL SUBDIVISION, NEW SOUTH WALES**

Austral Archaeology Pty Ltd (Austral) has been engaged by Sealark Pty Ltd to complete an Aboriginal Cultural Heritage Assessment (ACHA) for the proposed mixed-use development of an area comprising 65.85 hectares (Lot 1 DP 1279350, Lot 2 DP 1279350, and Lot 3 DP 1279350) adjacent to the existing suburb of Culburra Beach, New South Wales (NSW).

Austral understands that the project has been determined to be a “controlled action” due to “listed threatened species and communities” under Sections 18 and 18A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) [EPBC # 2023/09524]. This letter of advice provides guidance on how the ACHA and associated works interface with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) guideline Interim Engaging with First Nations People and Communities on Assessments and Approvals under the Environmental Protection and Biodiversity Conservation Act 1999 (DCCEEW 2023).

### **ACHA PROCESS**

Engagement with Aboriginal stakeholders has been facilitated through the preparation of an ACHA which has been formulated to meet the requirements of the *National Parks and Wildlife Act 1974* (NPW Act), *National Parks and Wildlife Regulation 2019*, and the NSW Land and Environment Court determination (Case Number 2019/00078149) [Austral 2023]. It should be noted the ACHA is the second to be completed for the study area, the first, completed by Kuskie (2012), incorporated consultation with Aboriginal stakeholders in accordance with the Aboriginal cultural heritage consultation requirements for proponents (DECCW 2010) [Consultation Requirements].

A further supplementary report to the 2012 ACHA was completed by Kamminga (2020) during the legal proceedings relating to the appeal in the Land and Environment Court,

Throughout the Development Application process, both with the Independent Planning Commission and the NSW Land and Environment Court, there were multiple points of engagement with First National peoples and the broader community, including an elder of Jerrinja Local Aboriginal Land Council (LALC) addressing a public meeting in front of Dixon SC.

The ACHA completed by Austral, whilst building on the assessments by Kuskie and Kamminga (2012, 2020), includes standalone consultation in accordance with the Consultation Requirements (DECCW 2010). This process requires that the proponent complete a four-step process to identify and then consult with Aboriginal stakeholders with regards to the project. In particular, the following agencies were notified as part of the ACHA, the following outcomes were documented:

- A response was received from Heritage NSW with a list of stakeholders who may have an interest in the proposed development.
- The Jerrinja LALC responded on 30 May 2022 with a request to register.
- The Southeast Local Land Service did not respond with a list of stakeholders.
- The Shoalhaven City Council replied with a list of stakeholders who may have an interest in the proposed development.
- The National Native Title Tribunal replied with contact details for the Jerrinja LALC, as there are no RAO's (Registered Aboriginal Owners) for the study area.
- NTSCORP responded with a request to register the South Coast People's Native Title Application.
- Office of the Registrar sent a letter reply stating that there are currently not any Registered Aboriginal Owners for the study area and advised contacting Jerrinja LALC so they can contribute and be involved.

Letters were sent to all identified Aboriginal stakeholders on 2 June 2022, and an advert was placed in the Shoalhaven & Nowra News on 3 June 2022. Both the letter and advert requested that individuals with cultural knowledge holders relevant to the study area register their interest in the project. A total of 11 groups or individuals registered to be consulted over the project. Once registered, the Aboriginal stakeholders were provided with project information (Stage 2), invited to review the project methodology (Stage 3), and the draft ACHA (Stage 4). The completion of these steps is summarised in Table 1, and a detailed summary of consultation from the project is presented in Section 2 and in Volume 2 of the ACHA (Austral 2023).

Table 1 Summary of ACHA consultation process

Stage	Component	Commenced	Completed
Stage 1	Letters to agencies	17/05/2022	N/A
	Registration of stakeholders	02/06/2022	16/06/2022
Stage 2	Project information	23/06/2022	N/A
Stage 3	Review of project methodology	23/06/2022	21/07/2022
Stage 4	Review of ACHA by Aboriginal stakeholders	20/12/2022	31/01/2023
	Review of ACHA with updated methodology by stakeholders	30/06/2023	14/07/2023
	Review of ACHA with testing data by stakeholders	17/06/2024	15/07/2024

In addition to the stages identified above, the following steps have been made to include Aboriginal stakeholders in the ACHA process:

- An archaeological survey was completed with a representative of the Jerrinja LALC on 25 July 2022.
- An information session was held with Aboriginal stakeholders on 19 January 2023; this was to provide information in relation to the ACHA report and introduce Susan Dale Donaldson who has been engaged to prepare an Anthropological Assessment.
- A further information session was held with Aboriginal stakeholders on 31 January 2024 to discuss how the recommendations from the ACHA and Anthropological Assessment can be translated into a robust Aboriginal Cultural Heritage Management Plan (ACHMP) that will inform the management of Aboriginal values into the future.

The ACHA identified seven archaeological sites and areas of moderate to high archaeological potential. Identified sites included several low-density artefact scatters (AHIMS # 52-5-0649, 52-5-0650, 52-5-0651, 52-5-0900, 52-5-1068, 52-5-1077) and middens (52-5-0651, 52-5-0651, 52-5-0182). It should be noted that of these sites, only AHIMS # 52-5-0900 and AHIMS # 52-5-1077 are located within or in proximity to proposed impacts from the project. Due to the presence of known middens in the study area, the ACHA supported an application for an Aboriginal Heritage Impact Permit (AHIP) to complete test excavations, this was approved by Heritage NSW on 18 July 2023 (AHIP # 5076). Archaeological testing was proposed for sites outside of the impact footprint to ensure that these sites were able to be managed as part of an ACHMP.

Archaeological testing with members of Jerrinja LALC and the Jerrinja Tribal Council was completed in July and August 2023. The archaeological testing program confirmed that the study area contained a low-density artefact scatter in the crest and slope landforms, with minimal evidence for subsurface midden material along the Crookhaven River.

Key recommendations from the revised ACHA (currently in preparation) will be to provide informal access to the Crookhaven River and midden complexes that line it through bush management processes, obtaining an AHIP for the Aboriginal objects that may be harmed by the development, and establishment of an interpretation plan that enshrines Aboriginal cultural heritage values into the development. The revised ACHA and its recommendations will be subject to review by Aboriginal stakeholders prior to finalisation.

Further, ongoing consultation with First Nations people will continue throughout the course of the development's progress over the next 10 to 15 years.

## **ANTHROPOLOGICAL ASSESSMENT**

In addition to the ACHA, an anthropologist, Susan Dale Donaldson, was engaged to prepare an Anthropological Assessment for the project (Donaldson 2023). The anthropological assessment took place between June 2022 and June 2023 and included interviews with traditional knowledge holders within the Jerrinja community and a review of information held by the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS). The Anthropological Assessment complies with a range of EPBC Act guidelines including *The Interim Engaging with First Nations People and Communities on Assessments and Approvals under Environment Protection and Biodiversity Conservation Act 1999 (interim guidance)* (DEECW 2023).

The anthropological assessment did not identify any specific places within the study area that were of high cultural significance but did note that the entire landscape is culturally significant. The significance related to travel, the collection of natural resources and a possible post-contact camp. Regarding the cultural landscape, the anthropological assessment states that:

*The cornerstone features of the cultural landscape surrounding the study area are Bundarwa (Beecroft Peninsula) and Cullunghutti (Coolangatta Mountain); two sacred places associated with the spiritual life and death of Aboriginal people and the basis for Aboriginal people's cultural identity today and in the past. Situated between these two sacred places is Lake Wollumboola, a highly significant cultural area.*

*As recommended by Kuskie (2012) and subsequently requested by Heritage NSW a review of AIATSIS oral history materials relating to Aboriginal man Jack Campbell has been undertaken as part of this assessment. It has been established that the cultural information contained in the AIATSIS audio and visual files, and in particular information relating to shell middens do not relate to the study area. The AIATSIS records do however provide important details about the cultural significance of places in the landscape surrounding the study area including at Crookhaven Heads, Orient Point, Beecroft Peninsula, Jervis Bay and Currarong.*

*The rich archaeological record at nearby Crookhaven Heads, Orient Point and around the shores of Wollumboola Lake strongly influences how the study area is culturally valued by Aboriginal people today. The few archaeological sites known to be located in the study area are understood by Aboriginal people to be connected to the archaeological story across the broader cultural landscape. Aboriginal people hold strong contemporary connections to these archaeological sites (shell middens and artefacts) primarily because these 'objects' are believed to have been deposited by their Ancestors and are thus a tangible reminder of the rich cultural life of the past.*

*There is a strong sense in the Aboriginal community, regardless of the archaeological evidence or the results from the AIATSIS search, that the study area is culturally significant by virtue of its association with the surrounding cultural landscape (Donaldson 2023, pp.7–8)*

Based on this assessment, the anthropological assessment provides several recommendations including some which relate directly to the site and some which have a broader focus including:

- Involving Aboriginal people in the development of the required ACHMP for the adjacent foreshore Crown Land.
- Develop and install cultural interpretive signage in public places within the development footprint to foster respect between residents and local Aboriginal people.
- Ensuring built infrastructure (streets / footpaths / parks / pathways / seats etc) are allocated names reflecting local Aboriginal cultural concepts.
- Supporting Aboriginal people to revisit the middens in the foreshore Crown Reserve.
- Employing the local Aboriginal ranger group to eradicate weeds on the property and propagate seeds as part of a broader long-term environmental program to rehabilitate cleared blocks with local flora species of cultural relevance.
- The completion of a regional cultural heritage management strategy.

- Favouring impact to land already disturbed.

Rezoning the bushland to the west of the study area as a reserve for public enjoyment and use (which would also enable Aboriginal people to undertake cultural practises).

## ADDITIONAL CONSULTATION

Conditions B48-B50 of the Development Consent for West Culburra requires the preparation, approval and implementation of a Community Engagement Strategy which specifically requires engagement with the Aboriginal Community and other stakeholders. The Community Engagement Strategy has been prepared and is in a process of review with Shoalhaven City Council. The Community Engagement Strategy will be implemented following its approval.

## CONCLUSION

Based on the broad and long-term consultations that have been completed to date with First Nations people through the Development Assessment process, ACHA, and Anthropological Assessment, Sealark Pty Ltd is able to demonstrate that adequate consideration and engagement with First Nations People and Communities has been completed that satisfies DCCEEW's guideline (2023). This consultation with First Nations people will continue as required by the NSW Heritage processes and the Development Consent. No further assessments or works are required as part of the environment referral, assessment, and approval process under Chapter 4 of the EPBC Act.

Please do not hesitate to contact me on 0490 190 290 to discuss any aspect of this submission.

Yours sincerely,



Alexander Beben

Director

Austral Archaeology Pty Ltd

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## REFERENCES

Austral Archaeology Pty Ltd 2023, *West Culburra, Culburra Beach, NSW: Aboriginal Cultural Heritage Assessment. Prepared for Sealark Pty Ltd.*

DCCEEW 2023, *Interim Engaging with First Nations People and Communities on Assessments and Approvals Under the Environment Protection and Biodiversity Conservation Act 1999*, Department of Climate Change, Energy, the Environment and Water, Canberra ACT.

DECCW 2010, 'Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010'.

DEECW 2023, 'The Interim Engaging with First Nations People and Communities on Assessments and Approvals under Environment Protection and Biodiversity Conservation Act 1999 (interim guidance)'.

Donaldson, SD 2023, 'West Culburra Lots 5 and 6 DP 1065111, Culburra Road, Culburra Beach: Anthropological Assessment.'

Kamminga, J 2020, *Sealark Supplementary Report to Aboriginal Cultural Heritage Assessment.*

Kuskie, P 2012, *Propose Mixed Use Subdivision at West Culburra, Shoalhaven City, South Coast of New South Wales: Aboriginal Cultural Heritage Assessment*, Report to Realty Realization Pty Limited.