

A decorative graphic on the left side of the page consisting of several concentric, irregular green lines that resemble topographic map contour lines, suggesting a landscape or terrain.

West Culburra Residential Development

**Response to public submissions on the EPBC Act Referral
Documentation (EPBC 2023/09524)**

Prepared for Sealark Pty Limited

Document Tracking

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Abbreviations

Abbreviation	Description
APZ	Asset Protection Zone
BC Act	Biodiversity Conservation Act 2016
BCAM	Biodiversity Certification Assessment Methodology
CEMP	Construction Environmental Management Plan
DCCEEW	Commonwealth Department of Climate Change, Energy, the Environment and Water
DPE	NSW Department of Planning and Environment
EIS	Environmental Impact Statement
ELA	Eco Logical Australia
EP&A Act	NSW Environmental Planning and Assessment 1979
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
GBC	Glossy Black Cockatoo
GG	Greater Glider
GGBF	Green and Golden Bell Frog
GGC	Gang-gang Cockatoo
HBT	Hollow Bearing Tree
LEC	NSW Land and Environment Court
LEP	Local Environmental Plan
LGA	Local Government Area
MNES	Matters of National Environmental Significance
PMST	Protection Matters Search Tool
PoM	Plan of Management
PD	Preliminary Documentation
PER	Public Environment Report
RtS	Response to Submissions Report
SCC	Shoalhaven City Council
TEC	Threatened Ecological Community
YBG	Yellow-bellied Glider

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1. Introduction

Sealark Pty Limited (Sealark) is proposing a mixed-use development in an area comprising 68.07 ha adjacent to the existing suburb of Culburra Beach, 15km east of Nowra, NSW at Part Lot 1 DP 1305809, Part Lot 3 DP 1279350 and Part Lot 1 DP1279350 (Previously Lots 1, 2 & 3 DP 1279350). The development will include the subdivision of the action area to create residential allotments, industrial allotments, medium density allotments, integrated housing allotments, commercial allotments and subsequent buildings on those allotments, alongside the construction of new roads, utility services, and the establishment of public reserves.

The proposed action has been determined to be a “controlled action” under the EPBC Act. The controlling provision under the EPBC Act is “Listed threatened species and communities” (Sections 18 and 18A). The Commonwealth Department of Climate Change, Environment, Energy and Water (DCCEEW) advised that the project will be assessed through Preliminary Documentation (i.e. the material included in the referral without the preparation of a detailed Preliminary Documentation Report. Accordingly, the exhibition documentation was in the format required for a referral).

The EPBC Referral Documentation for the proposed Residential Development (EPBC 2023/09524) was placed on public exhibition pursuant to Section 95A(3) of the EPBC Act from Monday 9 to Friday 20 October 2023 (10 business days). Hard copies of the assessment report and all appendices were available at the State Library of NSW and Shoalhaven City Library in Nowra and by downloading from a website hosted by Eco Logical Australia (ELA). Public Notices regarding the exhibition were placed in the Sydney Morning Herald and Illawarra Mercury newspapers on Monday 9th October 2023.

A number of concerns were raised by Culburra Beach residents who did not see the newspaper notices and/or were not able to travel to Nowra to see the hard copy documents. In consultation with DCCEEW, Sealark offered to re-exhibit the proposed development and placed a further notice in the South Coast Register on Wednesday 8 November 2023 and provided hard copies of the assessment reports at the Culburra Beach Post Office as well as the Shoalhaven City Library in Nowra. The Jerrinja Local Aboriginal Land Council and Crookhaven Oyster Farmers (via the Secretary of the Shoalhaven Crookhaven Rivers Shellfish Quality Assurance Program Secretary) were also directly notified by e-mail on 7 November 2023. The second exhibition period was between Wednesday 8 to Tuesday 28 November 2023, i.e. a further 15 business days.

Sixty-eight (68) submissions were received during the exhibition period (**Appendix A**). All submissions received were individually acknowledged within one or two days of receipt. Of all submissions received, the overwhelming majority were from the Culburra Beach/Orient Point area or nearby villages/towns (e.g. Callala Bay, Currarong, Nowra).

All the submissions were reviewed, and issues raised were tabulated (**Section 2 and Appendix B**). Comments have been grouped by “broader issue” and subsets of these broader issues and are presented below in a series of tables. Comments that have been raised by more than one submission have been grouped to avoid repetition.

Of these submissions, 25 (37%) were in support of the proposal (on-social/economic grounds and need for more affordable housing, provision of local open space & protection of significant tracts of local bushland providing habitat for multiple threatened species in the Lake Wollumboola Biobank site) and 42 (62%) objected (on environmental grounds – lack of community consultation, impacts to endangered communities and threatened species, impacts of flooding on the project site, impacts to local waterways, need to retain unburnt bushland due to the impacts of the 2019/20 bushfires, in adequate survey effort, misleading information regarding the age of the forest, presence of hollow bearing trees and their associated threatened species, no assessment of various threatened species despite the species previously being recorded on-site, non-support and/or inadequate offsets and management of retained areas). One submission was neutral.

The submissions supporting the proposal were received from local & regional residents and businesses including several special interest groups (Culburra Beach Chamber of Commerce, several Real Estate Agencies, Jerringa Tribal Elders). Whilst no template submissions were received, the majority of submissions supporting the proposal noted similar issues.

The submissions objecting to the proposal were received from local & regional residents including several special interest groups (Culburra Residents & Rate Payers Action Group, Lake Wollumboola Protection Society, Jerrinja LALC, Callala Matters, Australian Wildlife Needing Aid and Shoalhaven Youth). Whilst no template submissions were received, the majority of submissions objecting to the proposal raised identical issues (in slightly different orders) and drew comparisons to ELA’s assessment of Sealark’s 2020 Callala Bay proposal (EPBC 2020/8637), which was approved by the then Department of Agriculture, Water and the Environment in June 2021. Multiple submissions have erroneously claimed that *“Greater Gliders and other threatened species were not assessed by ELA in the Preliminary Documentation Report and the NSW Biocertification Assessment Report and therefore the assessment for West Culburra should not be trusted as it was prepared by the same authors and should be independently reviewed”*.

In general, despite the 42 submissions objecting to the proposal, the range of issues raised were quite consistent, were expressed in the same terms and failed to consider all of the material provided (including Appendices) and accordingly have made several incorrect assumptions about the impacts, lack of survey effort, or which threatened species required assessment under the EPBC Act. Only those species listed on the EPBC Act Schedules need to be assessed and not those listed only under the NSW

Biodiversity Conservation Act 2016 (e.g. Powerful Owl, Eastern Pygmy Possum, White-footed Dunnart etc).

This report provides a summary of the submissions, along with a response and whether any changes or additions to the exhibited documentation have been made as a result of these submissions.

Six broad issues were raised in the 68 submissions and are summarised below as either “Planning issues”, “Site Description”, “Site Assessment”, “Assessment of MNES issues including impacts to other threatened species”, “Impacts assessment” and “Suitability of Offsets”.

Summary of issues raised.

- **Planning Issues** including,
 - the need for additional housing (i.e. proposal is inconsistent with the South Coast Regional Strategy)
 - inappropriate nature (scale) of the proposed development for the local community
 - lack of infrastructure
 - impacts on local traffic
 - will lead to a decrease in open space and recreational opportunities
 - general lack of consultation with the local community and Jerrinja Local Aboriginal Land Council.
 - Lack of infrastructure
 - Likely illegal encroachment into conservation areas as no policing or management of foreshore reserve.
- **Description of proposal and current condition of site inaccurate and misleading**
 - Lack of detail regarding the different elements of the proposal
 - No alternatives considered/proposed
 - Inaccurate statement regarding when logging occurred (1940s versus 1960s) and subsequent age of regrowth and suitability of habitat for hollow dependent species (owls, gliders, cockatoos etc) resulting in under mapping of Hollow Bearing Trees (HBTs)
 - Lack of hydrology reports and inaccurate statements regarding the susceptibility of the site to flooding (and subsequent impacts to water quality in Curley Bay and Lake Wollumboola)
 - Conflict of interest between the proponent engaged consultant and assessment process (assessment reports need independent review).
- **Site Assessment Issues**
 - Surveys inadequate (in particular lack of survey after 2019/20 bushfires)
 - Specific species survey methodologies inadequate (e.g. only 8 hours spent spotlighting for Greater and Yellow-bellied Gliders (that are cryptic and hard to detect) in 2021 & 2022

- Have not followed EPBC Survey Guidelines and BAM Methodology
- Remote cameras not set in accordance with survey guidelines
- Have not used the “BioValues” map to identify areas of “Outstanding Natural Importance”;
- Proposal should be assessed by Public Environment Report (PER) or Environmental Impact Statement (EIS)
- Has not assessed “prescribed additional impacts” (as required by the EPBC Act)
- Impacts to endangered communities and loss of habitat for threatened species
- Retention basins in conservation areas
- Asset Protection Zones (APZs) in conservation areas
- Creek crossings through conservation areas.
- **Assessment of Matters of National Environmental Significance (MNES)**
 - MNES in project site not assessed (Only one MNES (Glossy Black Cockatoo) assessed when there are 18 of 78 threatened species known to be in the area)
 - Migratory species not assessed (31 of 61 predicted species known to be in area)
 - YBG, GG, GGBF, Eastern (sic) Brown Bandicoot, GHFF, Osprey not assessed
 - Species previously recorded in the project site (i.e. White-footed Dunnart, Powerful Owl) not assessed, not mentioned as being present)
 - Orchids that have been recorded on-site not assessed.
- **Impact Assessment**
 - Alternatives (i.e. use of cleared land owned by Sealark) not considered
 - Confusion regarding area to be impacted (65 or 47 ha)
 - Proposal is bigger (65 ha) and will have greater impacts than the NSW Land and Environment Court approved residential development
 - Assessment has not included fragmentation and isolation impacts
 - Assessment has not included indirect impacts on foreshore reserve, adjacent waterways and marine habitats for birds/oysters as a result of runoff/erosion
 - Assessment has not included any management plans/restriction on use of the retained areas (foreshore reserves).
- **Use of Offsets instead of avoiding impacts**
 - Offsets are not supported and are being reviewed by Government
 - Offsets (3.99 ha) are inadequate.

2. Modification

2.1. Reason for the approved modification

Since the public exhibition of the Preliminary Documentation, the proposed development footprint has been revised to respond to community concerns regarding impacts to Matters of National Environmental Significance, the mapping of natural fluctuations to the mean high-water mark (MHW) and to meet specific stormwater development controls outlined in the Land and Environment Court conditions of consent (2021). The changes to the development footprint have resulted in the action area shifting to the west and an overall reduction of impacts to MNES (Figure 1). A Section 156A variation request under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was approved by DCCEEW on 23 August 2024 to account for the modification.

2.2. Approved changes to the development footprint

The action and development footprint assessed in the referral was informed by the existing MHW mapping from the Digital Cadastral Database. Due to the natural fluctuations in the MHW over time, the mapping has been revised. The MHW has been located by a detailed survey exercise of the foreshore zone in consultation with NSW Crown Lands. The MHW has shifted to the south in the northern part of the area proposed for residential development. A 100 m set back from the MHW is required as part of the LEC Consent (Condition A11(a)). As a result, both the action area and development footprint have shifted to the south-west of its northern and western edges.

In addition, all water quality basins have been redesigned to meet the requirements set out in Condition B6 of the consent and Condition A11 (d) with the most noticeable changes at the basin south of Culburra Road.

Lastly, the modifications to the development footprint have responded to the below submissions received from the public during the exhibition, which expressed concerns over impacts to biodiversity values. These changes have resulted in:

- the action area moving away from the foreshore along the north and west boundaries
- removal of the proposed boardwalk from the development footprint
- revised emergency access along the boundary with the Culburra Sewage Treatment Plant, replacing the original access to Strathstone Street along the northern boundary of the action area
- revised intersection for access from Culburra Road

- revised stormwater controls to the south of Culburra Road.

3. Responses to issues raised

Submissions have been grouped by “broader issue” and subsets of these broader issues, and responses to these submissions are presented in the series of tables below.

3.1. Planning issues			
Comments	Raised in submissions	Response	Relevant Section of Referral Documentation
Need for a holistic planning approach to implement CS&E’s recommendations			
Several submissions questioned the need for additional housing at Culburra Beach stating that the proposal was inconsistent with priorities for future urban development in the South Coast Regional Strategy (DoP 2007).	Multiple submissions	<p>The site of the approved Concept Plan was zoned for residential, industrial and commercial development in 1991 and maintains the zoning either under the Shoalhaven Local Environment Plan 1985 or the Shoalhaven Local Environmental Plan 2014. The Development Consent issued in December 2021 by the NSW Land and Environment Court confirms the suitability of the site for urban development following a detailed environmental assessment by the Court.</p> <p>The South Coast Regional Strategy 2007 is a strategic planning document prepared by the NSW Department of Planning to cover the period 2007-2012. It has subsequently been superseded by the Illawarra Shoalhaven Regional Plan 2015 (NSW DPE November 2015) and the current Illawarra Shoalhaven Regional Plan 2041 (NSW DPIE May 2021).</p> <p>At a local Council level, the area of the approved Concept Plan is covered by the Shoalhaven Growth Management Strategy (SCC 2012) and the more recent Shoalhaven 2040 Strategic Land Use Planning Statement (September 2020) which foreshadows the need for 14,600 new dwellings in the Shoalhaven by 2041. Action Item CW1.3 in the Shoalhaven LSPS states the need to “deliver residential subdivision of existing zoned land in Culburra Beach...” (page 25).</p> <p>The Federal Government’s National Housing Accord 2022 proposes that NSW complete 375,000 new well-located homes by 2029, i.e. 75,000 homes per year for 5 years. At the time of writing, it is predicted there will be a significant shortfall in the number of dwellings delivered leading to an “acute supply</p>	Refer to 2018 DPE Assessment Report of refused Part 3A / SSD Application, Revised 2020 SSD Site Assessment Report; and Approved Masterplan in L&EC approval provided as Appendix J in the Referral Documentation. Figure 1

3.1. Planning issues

	<p><i>shortage and a wide spread further reduction of housing affordability.” (UDIA State of the Land Report March 2023).</i></p> <p>In May 2024, the NSW Government released new housing targets for various LGA's across NSW. The target for the Shoalhaven LGA is 4,900 new homes by 2029, which is, on average, 980 homes per annum. This target is twice the historical maximum dwelling yield that has previously been reached in the Shoalhaven.</p> <p>The need for additional housing in NSW, including its regional areas, is more important than it ever has been.</p> <p>Sealark submitted a Concept Plan to develop the site in 2010 under Part 3A of the EP&A Act to reflect the vision of the strategies outlined above and this was placed on public exhibition. This application was refused by the NSW Independent Planning Commission in 2018.</p> <p>A revised Concept Plan was submitted to the Land & Environment Court in 2020 (significantly reducing the Master Plan footprint from 91.65 ha of vegetation impacted to 46.26 ha), and approved by the LEC in December 2021 (Appendix J of Referral documentation). The 2024 modification of the Master Plan approved by DCCEW (Commonwealth) further reduces the impacts to 45.99 ha of vegetation.</p>
<p>Several submissions state that there has been a lack of consultation with the local community (and the Jerrinja Local Aboriginal Land Council)</p>	<p>There has been extensive consultation with the general community with respect to the West Culburra development. The DA was placed on exhibition on two occasions by the NSW Department of Planning during its assessment process. The DA was also exhibited by the NSW Independent Planning Commission in July 2018 prior to it making a determination. A modified proposal was subsequently placed on exhibition during Land and Environment Court proceedings in 2021. The community has had multiple opportunities to provide input into the proposal which has led to various changes being made to the proposal since its initial inception.</p>

3.1. Planning issues

		<p>Extensive community consultation was undertaken as part of the above processes. General community consultation is a statutory requirement of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act) under which the Concept Plan was approved. In response to the EP&A Act, extensive consultation was undertaken as part of the NSW Development Assessment processes with various government agencies including Shoalhaven City Council and the broader community, over an extended period of time.</p> <p>Advertised public consultation occurred in 2013 and again in 2021 prior to the Court's approval of the Concept Plan, including public forums where community representatives were invited to address the public meeting.</p> <p>With respect to specific consultations with the Jerrinja Local Aboriginal Land Council, following the advertised public consultation, a submission was received from Jerrinja Local Aboriginal Land Council.</p> <p>Austral Archaeology has recently completed an Aboriginal Cultural Heritage Assessment, which has included test pitting over the site, in order to satisfy conditions of the Development Consent for the Concept Plan. An Aboriginal Cultural Heritage Management Plan has also been prepared for West Culburra in consultation with the Registered Aboriginal Parties.</p> <p>Further, as part of this same ACHA, anthropologist Susan Dale Donaldson was engaged to further document the intangible values of the Aboriginal heritage of the West Culburra land and surrounding sites. The Donaldson work forms an Appendix to the Austral ACHA and informs the ACHMP outcomes.</p> <p>The work completed by both Austral Archaeology and Susan Dale Donaldson complies with "The Interim Engaging with First Nations People and Communities on Assessments and Approvals under Environment Protection and Biodiversity Conservation Act 1999 (interim guidance)". See the attached letter from Austral Archaeology which confirms this.</p>	
The proposal is of an inappropriate scale for the location, the area lacks the necessary infrastructure to support the		The scale of the proposal and the need for supporting infrastructure was assessed as part of the NSW Land and Environment Court's approval of the development.	

3.1. Planning issues

proposal and needs to be reduced in size (It has greater impacts than the L&EC approved Masterplan).		As outlined, during the assessment process, the proposal was reduced in area from 91.65 ha of vegetation impacted to 46.26 ha as approved by the LEC in December 2021. The impacts are in the process of being further reduced to 45.99 ha of vegetation impacted.	
The proposal will impact local traffic, lead to a decrease in open space and recreational opportunities.		<p>Impacts on local traffic were assessed by the NSW Land and Environment Court and the project was deemed to be acceptable.</p> <p>The area is currently private land and is not available as open space or for recreational activities.</p> <p>The proposed Masterplan provides 6.84 ha of open space and recreational opportunities (oval etc) for the broader community (See Conditions B41-B47 of the L&EC approval) and retains 20.44 ha of vegetation on-site (which is in addition to the proposed offsets in the Lake Wollumboola Biobank site).</p>	
The proposal will impact retained areas as there is no management proposed for the foreshore reserve, walking paths will be created leading to erosion and water quality issues, boat launching etc		As stated in the description of the action in the referral documentation, a CEMP will be prepared to ensure that the development does not adversely impact biodiversity values in retained areas during construction and a VMP/PoM will be prepared to guide the management of the retained woodland and foreshore reserve once transferred to Council as 'Community Land' under the Local Government Act (The PoM will prohibit any structures for boat launching and maintain specified access tracks for management purposes only (not recreational use).	

3.2. Description of proposal and current site condition inaccurate and deliberately misleading			
Comments	Raised in submissions	Response	Relevant Section of Referral Documentation
Conflict of interest between the proponent engaged consultant and assessment process (assessment reports need independent review).		Proponents directly engaging ecological consultants to prepare assessment reports (in accordance with the relevant legislation and relevant guidelines) is standard practice across NSW and Australia. The assessment reports and this RtS, <u>are independently assessed by DCCEEW</u> as part of their “adequacy” assessment prior to exhibition, and prior to making a determination on the proposal.	Section 1.21 of Referral Documentation and Figure 6. Refer to Figure 1 showing boundary of original (refused) application and current Master Plan. Attachment 1 - Martens 2013 Contamination Report added. Refer to Attachments 2 and 3 and Figure 2. No changes required.
Lack of detail regarding the different elements of the proposal.		The proposed action is described in Section 1.2.1 of the referral documentation and is shown in Figure 6 of Appendix C.	
No alternatives considered/proposed.		The proposal is consistent with the zoning of the land and numerous planning documents over the past 20 years that have identified the need for additional urban areas and have carefully considered the location based on environmental values, proximity to existing urban areas and existing infrastructure. The current proposal is a significant reduction in scale (91.65 to 45.99 ha) to the development refused in 2018 and is consistent with the NSW LEC 2021 approval.	
Inaccurate statement regarding when logging occurred (1940's versus 1960's) and subsequent age of regrowth and suitability of habitat for hollow dependent species (owls, gliders, cockatoos etc), resulting in under mapping of HBTs.		<p>Examination of historical aerial images included in the Martens and Associates Pty Ltd 2013 Contamination Report from 1949, 1961 and 1974, submitted as part of the Part 3A application show the extent of clearing and associated tracks within the project site (Attachment 1).</p> <p>These activities have resulted in regrowth forest ranging in age from 60 to 80 years old, with a few older trees bearing hollows suitable for owls, cockatoos and gliders, as mapped by ELA, left behind. These threatened species require large hollows (i.e. entrances greater than 10 cm diameter and up to 1m deep (as stated in the EPBC Act Conservation Listing Advice for these species) which do not develop until trees are 100+ years old. Small hollows suitable for microbats and small glider species (which are not MNES) will start to develop when trees are <100 years old - ELA mapped every HBT with medium-large hollows that provide potential denning and nesting habitat for Yellow-bellied</p>	

3.2. Description of proposal and current site condition inaccurate and deliberately misleading

		and Greater Gliders, and Glossy Black and Gang-gang Cockatoos. A total survey effort was 96 trap nights, 1,008 camera trap nights and 8 hours spotlighting. Stag watching and spotlighting in 1993, 1997, 2001-02, 2007, 2010, 2012-13, 2015-17, 2021 and 2022 (See Figure 10 in Referral documentation and associated earlier reports) did not indicate any of these trees were being used for breeding by these species in the study area and adjacent lands. Research has shown that the probability of occurrence of Greater and Yellow-bellied Gliders is positively correlated with the availability of tree hollows, which is a key limiting resource. The species are absent when there are insufficient hollows (DCCEEW, 2022).	
Lack of hydrology reports and inaccurate statements regarding the susceptibility of the site to flooding (and subsequent impacts to water quality in Curley Bay and Lake Wollumboola).		<p>A detailed Flood Impact Assessment was prepared by Allen Price & Scarrats in October 2020 as part of the LEC assessment (Attachment 2). Figure 2 shows the Masterplan approved by the LEC in December 2021 showing the 100 year flood level in 2100 (1%AEP RL3.0m AHD) and the PMF level (Probable Maximum Flood) or 1 in 10,000 event in 2100 at RL5.9m AHD, both being below the proposed Bio retention basins and water quality ponds.</p> <p>The 2020-2022 flood events referred to in several submissions were below these levels.</p> <p>Attachment 3 is the Flood Certificate issued by SCC in March 2023.</p>	

3.3. Assessment (Survey) of MNES

Comments	Raised in submissions	Response	Relevant Section of Referral Documentation
Ecological surveys were generally inadequate	Several Submissions	Several submissions objecting to the proposal stated that the ecological surveys were generally inadequate, and in particular are inadequate after the 2019/20 bushfires, and used in appropriate methods for various subject species. The submissions also stated that EPBC and 'BAM' guidelines/methodology was not followed.	Refer to Section 3.5, Appendix D and Figures 10 and 11 of the Referral Documentation

3.3. Assessment (Survey) of MNES

The subject land (and adjoining properties) have been subject to extensive flora and fauna surveys since 1993 (as documented in Appendix D and Figures 10 and 11 of the referral documentation, and included additional surveys in 2021 and 2022 (after the 2019/20 wildfires) to address MNES listed since previous surveys were completed (i.e. the EPBC listing of GG (in 2016 and changed status in 2022), YBG, GG, GBC and GGC in 2022). As such, the subject land has been assessed for threatened flora and fauna species extensively over multiple years and seasons, and whilst the earlier surveys would only have followed the survey guidelines relevant at the time, the more recent surveys were compliant with both the BAM methodology (even though the BAM method is a NSW assessment process and is not relevant to EPBC assessments) and specific EPBC MNES survey guidelines.

Impacts to listed EPBC Act threatened communities have been fully assessed.

Similarly, the “BioValues Map” and “Prescribed Additional Impacts” are components of the BAM Assessment Process in NSW and used to trigger certain steps in the BAM assessment process. They are not relevant to EPBC Act assessment requirements.

Particular statements that surveys for Greater Gliders were “inadequate” as only 8 hrs was spent spotlighting in 2021/22 are incorrect.

Tables 13, 14 and 15 in Appendix D of the Referral Documentation show that 11.5 hrs in 1993, 12 hrs in 1996, 62 hrs in 1997, 12 hrs in 2001, 4 hrs in 2002, 11 hrs in 2007, 24 hrs in 2010, 8 hrs in 2016, 28.5 hrs in 2012/13 and 8 hrs in 2022 were spent stag watching for owls and gliders as well as spotlighting, plus 1,000s of hrs of remote cameras to detect the presence of these species in and/or adjacent to the study area. Members of the survey teams are very familiar with these species having recorded them at other Sealark project sites, including Callala Bay (as clearly documented in the 2019 biocertification assessment report and 2020 EPBC PD Report), despite erroneous assertions in the submissions that these species were missed by Eco Logical Australia ecologists and were only recorded by Council staff and community members. Given the results (i.e. lack of presence of key species such as YBG and GG and

Refer to Tables 13, 14 and 15 in Appendix D of the Referral Documentation

3.3. Assessment (Survey) of MNES

		no confirmed breeding habitat for GBC or GGCs in the project study area) we consider it not appropriate to prepare an PD or PER Assessment Report and support the determination made by DCCEEW to assess the referral on existing information provided in the referral documentation.	
Surveys inadequate (in particular lack of survey after 2019/20 bushfires)		The subject land (and adjoining properties) have been subject to extensive flora and fauna surveys since 1993 (as documented in Appendix D and Figures 10 and 11 of the referral documentation, and included additional surveys in 2021 and 2022 (after the 2019/20 wildfires) to address MNES listed since previous surveys were completed (i.e. the EPBC listing of GG (in 2016 and changed status in 2022), YBG, GG, GBC and GGC in 2022).	Refer to Appendix B in Referral Documentation (MNES Likelihood of occurrence assessment)
Have not followed EPBC Survey Guidelines and BAM Methodology		The subject land has been assessed for threatened flora and fauna species extensively over multiple years and seasons, and whilst the earlier surveys would only have followed the survey guidelines relevant at the time, the more recent surveys were compliant with both the BAM (even though the BAM method is a NSW assessment process and is not relevant to EPBC assessments) and specific EPBC MNES survey guidelines.	The PD referral documentation addresses all MNES as required.
Specific species survey methodologies inadequate (e.g. only 8 hours spent spotlighting for Greater and Yellow-bellied Gliders (that are cryptic and hard to detect) in 2021/22		Tables 13, 14 and 15 in Appendix D of the Referral Documentation show that 11.5 hrs in 1993, 12 hrs in 1996, 62 hrs in 1997, 12 hrs in 2001, 4 hrs in 2002, 11 hrs in 2007, 24 hrs in 2010, 8 hrs in 2016, 28.5 hrs in 2012/13 and 8 hrs in 2022 were spent stag watching for owls and gliders as well as spotlighting, plus thousands of hrs of remote cameras to detect the presence of these species in and/or adjacent to the study area. Members of the survey teams are quite familiar with these species having recorded them at other Sealark project sites, including Callala Bay (as clearly documented in the 2019 biocertification assessment report and 2020 EPBC PD Report), despite assertions in the submissions that these species were missed by Eco Logical Australia ecologists and were only recorded by Council staff and community members.	NSW threatened species such as White-footed Dunnart, Powerful owl) were addressed as part of the Part 3A application and LEC.
Remote cameras not set in accordance with survey guidelines		Thousands of hours of remote cameras to detect the presence of these species in and/or adjacent to the study area. Members of the survey teams are very familiar with these species having recorded them at other Sealark project sites, including Callala Bay (as clearly documented in the 2019 biocertification assessment report and 2020 EPBC PD Report), despite assertions in the submissions that these species were missed by Eco Logical Australia ecologists and were only recorded by Council staff and community members.	No Changes Required.

3.3. Assessment (Survey) of MNES

		<p>30 cameras were set from April - June 2022. Cameras traps were used as a supplementary survey method in addition to spotlighting (four nights in May, June, July 2022) and 130 hair tubes were set for 10 weeks to detect ground mammals.</p> <p>In addition, 36 cameras were set from 9 December 2016 - 8 February 2017. This was also supplementary survey technique in addition to the following:</p> <ul style="list-style-type: none"> • 131 arboreal B traps set for 1 month December 2016 - February 2017 • Four nights of spotlighting and call playback (December 2016) • Pitfall traps (1,440 trap nights in December 2016, January and February 2017). • Elliott A traps December 2016 (160 trap nights) • Hair tubes, 2,480 trap nights (December 2016 - 8 February 2017) <p>Therefore, the combined survey effort has been undertaken as per the Commonwealths' Survey Guidelines for Australia's threatened mammals (DCCEEW 2011). Further extensive survey effort was undertaken from 1993 - 2013 within the western portion of the site (refer to Table 15 of the Referral Document, ELA 20230).</p>	
Have not used the "BioValues" map to identify areas of "Outstanding Natural Importance".		The "BioValues Map" and "Prescribed Additional Impacts" are components of the BAM Assessment Process in NSW and are used to trigger certain steps in the BAM assessment process. They are not relevant to EPBC Act assessment requirements.	
Proposal should be assessed by PER or EIS		Given the results (i.e. lack of presence of key species such as YBG and GG and no confirmed breeding habitat for GBC or GGC's in the project study area) we consider it not appropriate to prepare a PER or EIS Assessment Report and support the determination made by DCCEEW to assess the proposed action based on Preliminary Documentation with no further information required.	
Has not assessed "prescribed additional impacts" (as required by the EPBC Act)		"Prescribed Additional Impacts" are components of the BAM Assessment Process in NSW and are used to trigger certain steps in the BAM assessment process. They are not relevant to EPBC Act assessment requirements	
Impacts to endangered communities and loss of habitat for threatened species		The indirect/direct potential impacts associated with the Threatened Species and Endangered Communities (TEC) were assessed as documented in the Referral Documentation.	

3.3. Assessment (Survey) of MNES

<p>MNES in project site not assessed (Only one MNES (Glossy Black Cockatoo) assessed when there are 18 of 78 threatened species known to be in the area.</p> <p>Migratory species not assessed (31 of 61 predicted species known to be in area).</p>		<p>Several submissions objecting to the proposal stated that only the Glossy Black Cockatoo (GBC) was assessed in the referral documentation when 18 of the predicted 78 MNES known in the area (SPRAT Database), and 31 of the 61 migratory species have been recorded in the project area. Similarly, the submissions stated threatened species previously recorded in the project site (i.e. White- footed Dunnart, Powerful Owl) were not assessed and not mentioned as being present.</p> <p>These statements are incorrect. Section 4.4 and Table 5 of the Referral Documentation and Appendix B clearly lists all of the likely MNES present or likely to occur in the study area (noting that White- footed Dunnart, Eastern Pygmy Possum and Powerful Owl are not listed on the schedules of the EPBC, they are only listed as threatened in NSW under NSW legislation and are not required to be assessed under the EPBC Act).</p>	<p>Section 4.4 and Table 5 of the Referral Documentation and Appendix B lists the species and their assessments were completed.</p> <p>Only MNES are required to be assessed as part of the referral process</p>
<p>YBG, GG, GGBF, Eastern (sic) Brown Bandicoot, GHFF, Osprey not assessed.</p> <p>Species previously recorded in the project site (i.e. White-footed Dunnart, Powerful Owl) not assessed, not mentioned as being present)</p>	<p>Several Submissions</p>	<p>Several submissions objecting to the proposal stated that only the Glossy Black Cockatoo (GBC) was assessed in the referral documentation when 18 of the predicted 78 MNES known in the area (SPRATT Database), and 31 of the 61 migratory species have been recorded in the project area. Similarly, the submissions stated threatened species previously recorded in the project site (i.e. White- footed Dunnart, Powerful Owl) were not assessed and not mentioned as being present.</p> <p>These statements are incorrect. Section 4.4 and Table 5 of the Referral Documentation and Appendix B clearly lists all of the likely MNES present or likely to occur in the study area (noting that White- footed Dunnart, Eastern Pygmy Possum and Powerful Owl are not listed on the schedules of the EPBC, they are only listed as threatened in NSW under NSW legislation and are not required to be assessed under the EPBC Act).</p> <p>The referral documentation clearly identifies Gang-gang Cockatoo, Glossy Black Cockatoo and Grey-headed Flying Fox as being recorded in the study area and as MNES that would be directly affected by vegetation removal. Further, whilst not identified in the Study Area, Greater Glider, Yellow-bellied Glider and Magenta Lily Pilly were also assessed on the basis of loss of potential habitat. Each of these species is then assessed in some detail in Section 4.4.2.</p>	<p>Refer to Appendix B in Referral Documentation (MNES Likelihood of occurrence assessment)</p> <p>The PD referral documentation addresses all MNES as required.</p> <p>NSW threatened species such as White-footed Dunnart, Eastern Osprey and Powerful owl) were addressed as part of the Part 3A application and the LEC.</p> <p>No Changes Required</p>

3.3. Assessment (Survey) of MNES

		<p>Green and Goden Bell Frogs that have been recorded nearby were the subject of targeted survey and were not recorded in the Project area. Accordingly, they were not assessed any further in the referral documentation.</p> <p>Similarly, Southern Brown Bandicoots that appear in BioNet records in the area are an 'error' in BioNet. Long-nosed Bandicoots (a common, widespread species) were recorded by Cumberland Ecology for Sealark as part of the investigations into other lands in the area and were inadvertently entered into BioNet as Southern Brown Bandicoots (which has now been corrected). Regardless the targeted surveys undertaken by ELA in 2021/22 included hair tubes and terrestrial remote cameras to detect this species (and Long-nosed Potoroo (as detailed in Appendix B) and neither were recorded. Accordingly, they were not assessed any further in the referral documentation.</p>	
Orchids that have been recorded on-site not assessed		Threatened orchids were the subject of several targeted surveys during the known flowering times of the species by staff expert in the identification of orchids (after local reference sites were checked and confirmed to be flowering). The orchid species shown in the INaturalist website were the species recorded by ELA's survey team as part of this assessment. All are common, widespread species, none are MNES and so do not require further assessment as part of the referral.	

3.4. Assessment of all proposal impacts (ecological, water quality etc)

Comments	Raised in submissions	Response	Relevant Section of Referral Documentation
Confusion regarding area being assessed (65 ha versus 47 ha) and L&EC approved Masterplan 2021.	Several Submissions	Several submissions raised queries about the area to be impacted (was it 47 or 65 ha) and that it was larger (and would therefore have greater impacts) than the proposal approved by the NSW LEC in 2021.	See Attachment 4 – Final Action component areas
Proposal is bigger (65 ha) and will have greater impacts than the NSW Land and		The study area (Action Area) assessed was 65.85 ha (now 68.07 ha) as stated in the referral documentation with a development or impact footprint of 8.25 ha	No changes required.

3.4. Assessment of all proposal impacts (ecological, water quality etc)

Environment Court approved residential development		<p>(now 47.63 ha) of which 46.27 ha (now 45.99 ha) comprised native vegetation (the remainder being cleared land/access tracks etc).</p> <p>The Masterplan referred under the EPBC Act was essentially the same Masterplan as that approved by the LEC. The approved modification of the Concept Plan and the development footprint including the removal of the proposed walking paths through the retained foreshore reserve, impacts have been reduced to 47.63 ha of land, of which 45.99 ha is native vegetation).</p> <p>The Action area includes 18.22 ha (now 20.44 ha) of 'retained land' (foreshore reserve and woodlands park) that was included in the Action Area to provide context and gather information to inform the future conservation management of these areas. This retained land is not the proposed offset area which is located off-site outside of the Action area, in the Lake Wollumboola Biobank site).</p> <p>The Final Action Area, after the approved modification, is 68.07 ha of which 47.63 will be directly and indirectly impacted, with 20.44 ha of retained land (refer to Attachment 4).</p>	
<p>Alternatives (i.e. use of cleared land owned by Sealark) not considered</p> <p>Assessment has not included fragmentation and isolation impacts</p> <p>Assessment has not included indirect impacts on foreshore reserve, adjacent waterways and marine habitats for</p>	Several Submissions	<p>The proposal is consistent with the zoning of the land and numerous planning strategies over the past 20 years that have identified the need for additional urban areas and have carefully considered the location based on environmental values, proximity to existing urban areas and existing infrastructure. The proposal is a significant reduction in scale (91.65 to 47.63 ha) to that refused in 2018 and is consistent with the NSW LEC 2021 approval.</p> <p>The proposed Masterplan does not lead to major fragmentation / isolation of remaining areas. Woodland reserves and foreshores are connected to habitat to the north and west, while the township of Culburra Beach is to the east.</p> <p>The Masterplan and the Statement of Commitments has addressed indirect impacts to the retained foreshore area (which will be subject to a CEMP and Management Plan, as stated in the referral documentation and consistent with Conditions B1-B8 in the LEC consent). The proposed development is</p>	<p>Refer to Conditions B1-B8 in LEC Consent</p> <p>No changes required.</p>

3.4. Assessment of all proposal impacts (ecological, water quality etc)

birds/oysters as a result of runoff/erosion		surrounded by perimeter roads that will be fully curbed with appropriate stormwater infrastructure and management, to minimise the risk of any erosion and runoff into the foreshore reserve, thereby not affecting water quality in Curleys Bay.	
Assessment has not included any management plans/restriction on use of the retained areas (foreshore reserves)			
Have stormwater detention basins been designed to cope with post development stormwater flows.	Several submissions	The stormwater management infrastructure has been designed and peer reviewed by expert engineers and water scientists to ensure all post development flows are adequately treated and managed consistent with the conditions of the LEC consent.	No changes required

3.5. Comments about the type of assessment (PER/EIS) & NSW BAM Assessment process

Comments	Raised in submissions	Response	Relevant Section of Referral Documentation
Review of BC and EPBC Acts – current flawed legislation shouldn't be followed	Several Submissions	<p>Several submissions referred to the fact that the EPBC Act is currently being reviewed and that the assessment should follow the new legislation. There is no new legislation that has been drafted and gazetted that would apply to this action.</p> <p>The assessment has appropriately followed the relevant legislation at the time of the application.</p>	No changes to Assessment report required

3.6. Comments about the use of Offsets and the management of offset areas

Comments	Raised in submissions	Response	Relevant Section of Referral Documentation
In appropriate use of offsets			

3.6. Comments about the use of Offsets and the management of offset areas

Offsets should not be used instead of avoiding impacts	Several Submissions	<p>Several submissions stated that offsets should not be used as an alternative to first avoiding and minimising impacts.</p> <p>A revised Concept Plan was submitted to the Land & Environment Court in 2020 (significantly reducing the original Master Plan footprint from 91.65 ha of vegetation impacted to 45.99 ha).</p> <p>The proposed offset is a measure to compensate for the residual impacts of the action following the above avoidance measure undertaken.</p> <p>The 218 ha of 'like for like' vegetation and habitat in the Lake Wollumboola Biobank Site is an established biobank site that is of a size and scale proportionate to the residual impacts of the proposed action and maintains the viability of MNES affected by the proposed action. Therefore, the proposed offset strategy meets the principles of the EPBC Act Environmental Offsets Policy (DCCEEW 2012).</p>	No changes to Assessment report required
Offsets (3.99ha) are inadequate	Several Submissions	The 18.22 ha (now 20.44 ha) of 'retained land' within the action area, is not the proposed biodiversity offset for this development. 218 ha of suitable habitat (i.e. the same vegetation types impacted) in the Lake Wollumboola Biobank site on the south side of Culburra Road) will be set aside and managed as an 'in perpetuity offset area', consistent with the L&EC Consent Condition C19.	No changes to Assessment report required
Inappropriate activities within Retained Areas			
Foreshore Reserve	Several Submissions	<p>As stated in the L&E Court approval in 2021, the elevated boardwalk/footpath/cycleway shown in earlier plans are NOT approved and do NOT form part of the EPBC Act proposal (Refer to revised Masterplan at Figure 3).</p> <p>The 18.22 ha (now 20.44 ha) of 'retained land', together with 6.84ha of open space will be dedicated to council as 'Community Land' under the Local Government Act and will be subject to Plans of Management prepared/funded by Sealark.</p>	No changes to Assessment report required

3.6. Comments about the use of Offsets and the management of offset areas			
		Sealark have already commenced this PoM which includes addressing foreshore access, rehabilitating existing/unauthorised walking tracks, and weed control, and management (however, this area is NOT the proposed offsets for the development, that is 218 ha in the Lake Wollumboola Biobank site on the south side of Culburra Road) and is consistent with the L&EC Consent Condition C19.	

4. Conclusion

In general, despite the 42 submissions received that objected to the proposal, the range of issues raised were quite consistent and expressed in the same terms and failed to consider all of the material provided (including Appendices) and accordingly have made several incorrect assumptions about the impacts, lack of survey effort, or which threatened species required assessment under the EPBC Act (i.e. only those species listed on the EPBC Schedules and not those listed under the NSW Biodiversity Conservation Act but not the EPBC Act (e.g. Powerful Owl, Eastern Pygmy Possum, White-footed Dunnart etc).

Following a review of the issues raised in the exhibition period, the following reports / documents and / or Figures has been provided to clarify the assessments undertaken:-

- Figures 1, 2 and 3 – A comparison of the original Major Project / SSD modification Masterplan boundary and the approved Masterplan showing setbacks from Curleys Bay.
- Attachment 1 – The 2013 Martens Pty Ltd Contamination Report with historical aerial images showing the extent of private forestry undertaken in the Action Area between 1949 and 1961 (Pages 49, 50 and 51).
- Attachment 2 & 3 – The 2020 APS Pty Ltd Flood Impact Assessment Report, and Associated Master Plan (Figure 3) showing the 1% AEP flood level and Probable Maximum Flood Level (1 in 10,000 event) as at the year 2100, together with Shoalhaven Council Flood Certificate issued in 2023.
- Attachment 4 – Final Action component areas.
- Attachment 5 – Engagement with First Nations People and Communities for West Culburra Residential Subdivision. Austral Archaeology 30 September 2024.

The recently approved modification (23 August 2024) to the Masterplan has reduced impacts to native vegetation by 0.29 ha. No other changes to the Referral documentation or Masterplan are required having regard to the issues raised during the consultation process.

5. References

Allen, Price & Associates, 2014. Planning Proposal – The Halloran Trust - Culburra, Callala Bay, Kinghorne Point.

Allen, Price & Scarratts Pty Ltd, 2020. Environmental Impact Statement – West Culburra Beach Expansion Area Revised Concept Plan NSW LEC Case Number 2019/00078149 (in response to Section 34 Conciliation Conference). Prepared for Sealark Pty Ltd SSD Application No: 3846, 4 November 2020.

Allen, Price & Scarratts Pty Ltd, 2020. Flood Impact Assessment – West Culburra Beach Expansion Area Revised Concept Plan NSW LEC Case Number 2019/00078149 (in response to Section 34 Conciliation Conference). Prepared for Sealark Pty Ltd SSD Application No: 3846, 28 October 2020.

DAWE 2022a Conservation Advice for *Petaurus australis australis* (Yellow-bellied glider (south-eastern)), 2022.

DAWE 2022c Conservation Advice for *Callocephalon fimbriatum* (Gang-gang Cockatoo), 2022.

DCCEEW 2022a Conservation Advice for *Calyptorhynchus lathami lathami* (South-eastern Glossy Black Cockatoo), 2022.

DCCEEW 2022b Conservation Advice for *Petauroides volans* (greater glider (southern and central)), 2022.

Land and Environment Court Consent LEC No. 2019/78149, December 2021.

Martens Consulting Engineers Pty Ltd 2013. Preliminary (Stage One) Land Contamination Assessment. Part DP 1065111 and Lot 61 DP 755971, Culburra Road, West Culburra, NSW. Prepared for Allen, Price & Associates, February 2013.

Eco Logical Australia (ELA) 2019. Biobanking Agreement Credit Assessment Report – Lake Wollumboola Biobank Site. Report prepared for The Halloran Trust, February 2019.

Eco Logical Australia (ELA) 2019. Culburra Beach Biodiversity Certification Assessment. Report prepared for Sealark Pty Ltd, August 2019.

Eco Logical Australia (ELA) 2024 West Culburra Mixed Use Development EPBC 2023 / 09524 Section 156A Variation Request.

John Toon Pty Ltd, 2013. West Culburra Mixed Use Concept Plan: Major Project 09-0088 Environment Assessment.

SLR Consulting Australia 2013. Culburra West Urban Development Project Ecological & Riparian Issues & Assessment Report

Commonwealth of Australia 2011. *Survey guidelines for Australia's threatened mammals*.

