



allen price & scarratts pty ltd
land and development consultants

Our Ref: N25405

27 September 2018

NSW Independent Planning Commission
By Email: ipcn@ipcn.nsw.gov.au

Attention: Alana Jelfs

Dear Alana,

RE: Response to the UNSW's Independent Review of the Water Quality Assessment of the proposed Concept Subdivision at West Culburra

Please find attached our submission in response to the UNSW Water Research Laboratory's Independent Review of the Water Quality Assessment (IR) dated 11 September 2018. We note that John Toon, Martens and Associates and Cardno have all made submissions in this regard.

We must state up front that we are very disappointed in the quality of the advice given to the IPC by the UNSW Water Research Laboratory. It shows a lack of understanding of the NSW Planning System, the proposal and the practical applications of both the modelling and land development processes.

This response will deal with each section of the IR in turn:

Section 3.1 – Environmental Setting of Proposed Development

The IR states that the Crookhaven River catchment supports some priority oyster leases and habitat to migratory birds. It concludes, therefore, that this is a "sensitive ecosystem". We note *SEPP (Coastal Management) 2018* does not list this catchment as being sensitive., nor is it listed as a sensitive catchment in the Illawarra Shoalhaven Regional Plan. It was also recommended that development should occur in the Crookhaven catchment in the *South Coast Sensitive Urban Lands Review*.

As stated in other submission, the Crookhaven and Lower Shoalhaven River catchments (which are in effect one catchment) are dominated by rural land uses that are significant generators of pollutants into the catchment e.g. dairy farming runoff. The Crookhaven catchment is dominated by significant tidal flushing and relatively rapid release of pollutants from the wider catchment as outlined in the Martens estuary study.

The IR reports that "Any potential change to the surface water and groundwater dynamics...is likely to have a direct impact to Lake Wollumboola." It is acknowledged that there are some small aspects of the proposal that are located within the catchment of Lake Wollumboola, which we accept is a more sensitive catchment than that of the Crookhaven River. It is critical that the IPC understands that only 5.4Ha of the proposal will drain to Lake Wollumboola. The catchment of Lake Wollumboola is 4,206Ha in area. Therefore, the proposal will impact less than 0.13% of the Lake's catchment. It is difficult to take seriously a scientific assessment that conclude that this proposal will have a significant impact on Lake Wollumboola when it affects less than 0.13% of the catchment of Lake Wollumboola and at the same time proposes best practice water quality measures.

The IR continually refers to the "2018 SEPP". We assume this is to be interpreted to relate to *SEPP (Coastal Management) 2018*, for which Schedule 1 does classify Lake Wollumboola as a Sensitive Coastal Lake. It must be pointed out to the IPC that the provisions of *SEPP (Coastal Management) 2018* do not relate to this DA as it was not even in draft form when the DA was lodged in 2011.



Section 3.2 – Uncertainty Regarding the nature of the Proposal

The IR states that the nature of the proposal “needs to (be) better framed”. The IR reports that because over a 10-year period the proposal has had slight variations to what it is called then there is some uncertainty to what is proposed. This is a ludicrous position.

IPC will recall that there have been various changes to the legislation under which this application is being assessed and processing of the application has been carried out by a number of different planners at DPE.

By its very nature, this application is a concept proposal originally assessed under Part 3A (which is now repealed). No works are proposed in this application and all future DA's will need to be assessed and approved by Shoalhaven City Council. The concept proposal allows the NSW Government to provide a robust framework against which all future DA's must be measured.

There have been many variations to the proposal along the way, which is the normal development assessment process, as feedback from various government agencies and the community are taken on board and incorporated into the proposal. It would appear the IR sees this as a weakness (or uncertainty) in the proposal when it is actually a strength of the DA Assessment process.

The only proposal that IPC needs to assess is the final proposal that is before it. There is little uncertainty regarding this proposal if the documents are reviewed carefully.

The IR states that the concept proposal includes “development in the immediate proximity of the coastal wetlands around Billy's Island.” It is noted that there are wetlands in front of the site, which were categorised under SEPP14 when the DA was lodged. Importantly, Section 4 of SEPP 14 stipulates that it is only land within the mapped areas where SEPP14 applies. As there are no works proposed within the mapped areas, the provisions of SEPP14 do not apply to this DA.

It is also noted that a “precautionary approach” should be taken regarding the impacts to the wetlands. This is exactly the approach that has been taken with water quality on this site.

The Commissions attention is drawn to ***Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133*** where the “precautionary principle” is carefully explained by Preston Chief Judge. It is noted that the judgement confirms that “A zero risk precautionary standard is inappropriate” (s158) but this appears to be what DPE and the IR require.

Further, there is no scientific assessment of the proposal to demonstrate that there will be a serious or irreversible impact on the wetlands. Again, from ***Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133*** it states “The threat of environmental damage must be adequately sustained by scientific evidence.” (s134). This has not occurred but is still used as a reason to recommend refusal of the application.

To the contrary, we have demonstrated through the use of two highly respected experts in their respective fields (Martens and Cardno) that the water quality impacts are acceptable and that NorBE can be achieved at the site.

Section 3.3 – Groundwater

Again, the impact on the catchment of Lake Wollumboola is approximately 0.13%. To suggest that the groundwater from this tiny component of the catchment will have any impact on Lake Wollumboola when it is protected with “best practice” water quality measures is absurd. It is an unreasonable position which cannot be maintained under any serious scrutiny.



The HGEO work being undertaken for the Planning Proposal is a separate planning process to this proposal and is not relevant for the purposes of the assessment of the West Culburra DA. We are not willing to defer the determination of the proposal until this work is done.

It is our position that the groundwater impacts of the proposal are negligible. The edge of the development is setback at least 100m from the mean high water mark which provides a significant buffer to water quality impacts on the site.

Section 4.0 Review of Water Quality Modelling

It is noted that Martens has completed an extensive review of the IR and Cardno has also provided some comments in this regard. The position of our two experts on the detailed modelling issues are provided for the IPC's fuller understanding of the modelling issues.

The surface water quality modelling has been through extensive peer review process and has been modified over time to reduce the number of areas of concern between the designer and the peer reviewer.

Field calibration of MUSIC models is not a normal part of the assessment process in my experience. I am not aware of any DA's in the Shoalhaven LGA where any MUSIC model has been field calibrated. This shows that the IR is not cognisant of how normal Development Assessment processes operate in this area, including Land and Environment Court proceedings. The actual ability to field calibrate the MUSIC model is questioned. An interesting point here is that the DPE's peer reviewer has never once asked for field calibration of the model, further indicating that this is not normal practice.

Further, the IR purports to not understand the reasons behind the pre-development node pollution load increases but this does not mean that the modelling is incorrect. This is addressed in detail by Martens in their response.

The critical question for the IPC here is: Can the development be designed in such a way that water quality impacts have a minimal environmental impact? The answer is unequivocally "Yes it can!". It has been demonstrated by Martens and checked by Cardno that NorBE can be achieved at this site for all sub-catchments, including those draining to Lake Wollumboola.

Section 5.0 Comments on the Water Quality Treatment Solution

The comments made in the IR regarding staging of the development over a 20-year period show no understanding whatsoever of the urban development process. Subdivisions of this nature are generally constructed in stages of between 20 and 50 lots at a time with corresponding roads and infrastructure. Construction works typically take between 16 and 20 weeks to construct each stage. Larger construction stages become unwieldy and difficult to manage and it is our experience that smaller stages allow better control and are more appropriate in the local market. A stage may occur every 6-12 months depending on market conditions. At any one time, it is normal practice that only one stage would be under construction which reduces the amount of disturbed soil on the site. The IR clearly does not understand this fact and appears to assume that construction will be an ongoing process for 20 years. This is incorrect.

Construction phase sediment loads are discussed in the IR. Erosion control measures as outlined in the "Blue Book" are standard construction phase processes and adequately deal with sediment loads from construction sites.

This is a concept proposal and it is acknowledged that additional detail is required on many aspects of the proposal. All of these details will be assessed by SCC under new DA's submitted in accordance with the concept approval. This should not surprise the writers of the IR.



Section 6.0 Gateway Determination for the Planning Proposal

As stated previously, the planning proposal is a separate planning process and has nothing to do with the assessment of this DA.

Section 7.0 Cumulative Impacts and Tipping Point for Lake Wollumboola

Firstly, DA09/2675 and DA10/1330 are two dwellings, both already with Development Consent issued by SCC, on separate lots over Long Bow Point. Both dwellings are provided with on-site effluent disposal fields and both DA's have been "physically commenced" in accordance with the EP&A Act 1979. If the Golf Course was approved, it is most likely that these DAs would not be completed as the dwellings would be located within the middle of the golf course which is not desirable. It is highly unlikely that the dwellings and the golf course would both be developed on the site – it will be either the golf course (if approved) or the two approved dwellings.

The IR claims that there will be pollutant load increases in Lake Wollumboola from these proposed developments. It is acknowledged that the approved dwellings and associated effluent disposal fields will have a small localised impact on nutrient loads at the site of the effluent disposal fields but this will not have any impact on Lake Wollumboola. (Note: these impacts were assessed and approved by Shoalhaven City Council.) There is no basis for the claimed increased in pollutant loads in the IR from either the golf course or the West Culburra subdivision. Post-development water quality on both the current proposals to NorBE level has been proposed. This assumption in the IR is incorrect.

The IR claims there are developments along the foreshore of Lake Wollumboola. None of the proposed developments are along the foreshore but are all set back a significant distance in excess of 100m from the foreshore.

Again, the IR suggests a precautionary approach be taken. We reiterate that a precautionary approach has been taken to date on all proposals, which has led to water quality measures that meet NorBE requirements. The IR assumes that a precautionary approach equals no development. As stated earlier in this submission, that is not Preston Chief Judge of the Land and Environment Court's position with respect to the use of the "precautionary principle".

The IR mentions clearing of the foreshore vegetation "immediately next to" the wetland. This is quite clearly not part of the latest proposal as all foreshore clearing for view corridors has been removed. Some minor clearing approximately 70m back from the foreshore for the purposes of a community cycleway and footpath may be required but this will have negligible impact on water quality.

Section 8.0 Summary

It is our position that the IR:

- clearly misunderstands the proposal;
- clearly misunderstands the water quality measures proposed;
- clearly misunderstands the likely impact on receiving water quality; and
- clearly misunderstands the Development Assessment process;
- clearly misunderstands the "precautionary principle" and how it should be applied.

In light of the above issues and the submissions from Toon, Martens and Cardno in this regard, the IR should not be accepted by the IPC as a guiding document in its determination of this proposal. We strongly suggest that the Martens and Cardno documents be relied upon.

Further, we request that the IPC determine that a water quality system can be designed that meets the NorBE requirement and inserts this requirement as a condition of consent.



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We look forward to receiving the IPC's Determination and taking the next steps in this process.

Allen Price & Scarratts Pty Ltd

Matt Philpott
Director