

APS' Response to the DPE Environmental Assessment Report 30/7/18

DPE has concluded the Concept Approval should be refused and has based this decision on a number of reasons. These reasons are outlined below and an explanation is provided as to why the final conclusions are not correct.

A) Unsuitability of the Site

- 1) Inconsistent with strategic planning**
- 2) Incompatible with population growth projections**

These conclusions are incorrect for the reasons outlined below:

ISRP2015

- The Shoalhaven GMS (SGMS2014) is listed as a specific strategic planning document that the ISRP relies upon (Direction 2.1 page 33)
- The area of West Culburra is specifically listed as an area to add to the diversity of housing supply in the region (Direction 2.3 page 38)
- Protection of Lake Wollumboola from “inappropriate development that affects water quality or ecological function” is stipulated (Direction 5.4, Action 5.4.1 page 55-56)

SGMS 2014

- Bay and Basin, Ulladulla/Mollymook and Culburra Beach/Orient Point will provide the bulk of 'greenfield' development along the coastal fringe (Section 3.2.1 page 27)
- Shoalhaven's major 'employment lands' are Nowra/Bomaderry, Milton/Ulladulla and the series of settlements at St. Georges Basin district, Culburra Beach and Sussex Inlet (Section 4.5.4 page 46)
- Culburra Beach is specifically discussed as part of the JBSS which identifies the zoned residential land to the west of Culburra Beach (Section 5.2 page 63-64)
- Culburra Beach forms one of the five key centres of the City (Nowra/Bomaderry, Culburra Beach, Jervis Bay / St. Georges Basin, Sussex Inlet and Milton/Ulladulla. (Section 6.1 page 78)
- Culburra Beach is listed as a “Coastal Town” with specific growth considerations (Section 6.2 page 81)

JBSS 2003

- Review the planning controls for the Culburra Urban Expansion Area (page 6)
Note that SCC/DPE proposed to zone the subject land R1 in the draft SLEP2009 and draft SLEP2013;
- Growth Projections for Culburra Beach specifically exclude the zoned urban expansion area “as its future was uncertain” (Table 5 page 20 see note 1)
- *“The most pressing issue for Area 2 regarding current land availability is the need to resolve the future of Culburra Beach urban expansion area. The future development of this area is currently uncertain in light of the outcomes arising from the LB Pt Col (see section 10.2). If the growth projections for Area 2 are realised and the expansion area unresolved, Area 2 is likely to be fully developed by 2006/2007.”* (page 21) The predicted

outcome from the lack of resolution of the development of the subject land is upon this community.

CoI Findings 2003

- The CoI findings relate to an 800-lot subdivision at Long Bow Point but do provide some direction for the subject land
- The Crookhaven catchment is an open (regularly flushed) system and development in this catchment is preferred by Government Agencies (page 54);
- There is adequate opportunity outside the sensitive catchment of LW to prove the effectiveness of WQ controls (page 54);
- The commission notes that likely future development of the adjacent Culburra UEA may yield up to 2000 lots. Government agencies generally do not oppose development of the area, subject to a cautious approach. The Commission recommends a staged approach. (page 65)

Illawarra Shoalhaven Urban Development Program 2016

- The ISUDP2016 identifies that the approximate capacity of Culburra Beach UEA is “to be determined” and notes that “The Sensitive Urban Lands Review determined that there is limited urban potential in this area outside of the Lake Wollumboola catchment”.
- On page 13 and 14 of DPE’s EAR, the ISUDP2016 is commented upon. The text on page 13 of the EAR states that only a small proportion of the land covered by the concept proposal is located within the Culburra Investigation Area and then on the top of page 14 “The concept proposal is not consistent with the ISUDP as it does not optimise development within the Culburra Investigation Area.” The reader is directed to review Figure 8 on page 14, and upon review of Figure 8 the reader of the EAR would have to agree with DPE’s comments.
- However, Figure 8 has been specifically compiled by DPE for the purposes of the EAR. It is not the map in the ISUDP2016 that relates to Culburra Beach that has also been prepared by DPE. A scanned copy of Map 10 (unedited) from the ISUDP2016 is attached. You will note on Map 10 there is an area outlined in red that sits over Culburra CBD. The legend indicates that this area is the “Centre”. This is not the Culburra Investigation Area. The Culburra Investigation Area is notated on the map to the west of the centre and corresponds precisely with the proposed site. The other maps in the series e.g. Map 9 indicate that my interpretation is correct.

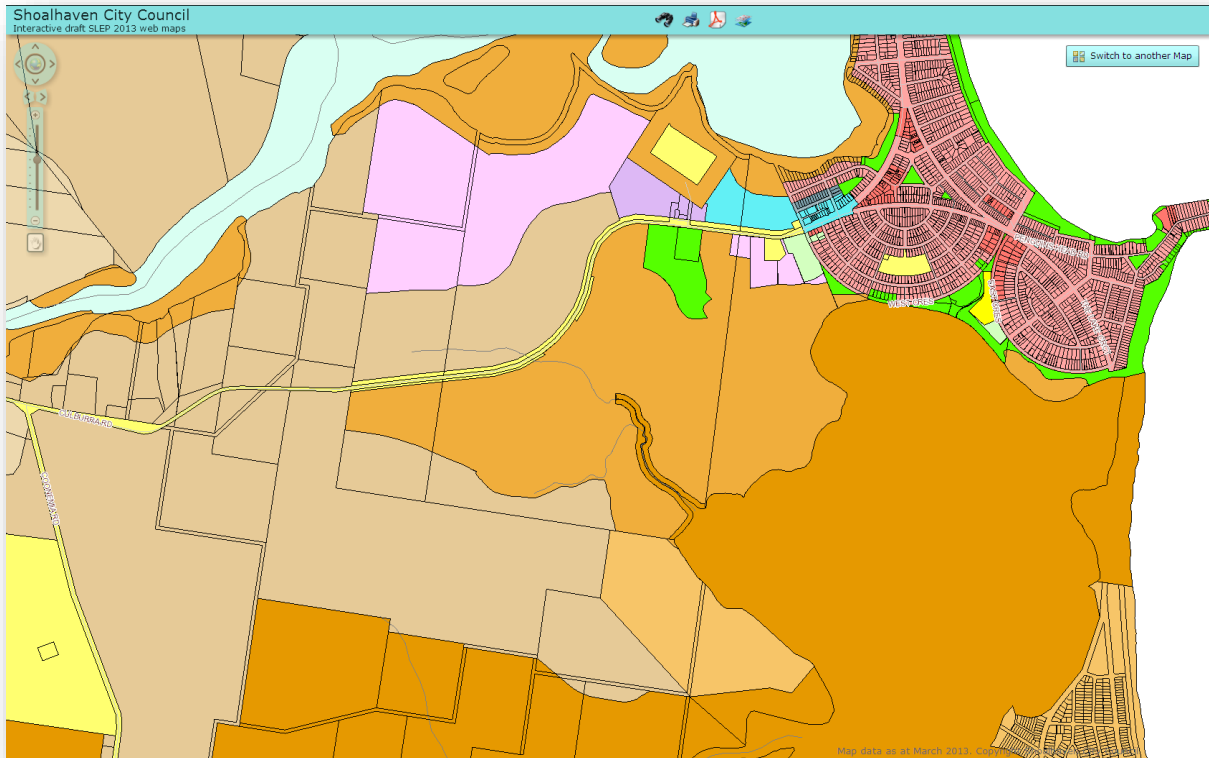
Population Projections

- Council’s population projections are contained on the following webpage:
<https://forecast.id.com.au/shoalhaven/residential-development?>
- This indicates in Culburra-Orient Point that 401 dwellings are expected between 2016 and 2036.
- I am not sure where DPE got its data from but it is incorrect.

Land Use Zone

- It is worth reiterating that the planning instrument that has the most weight when it comes to suitability of a site for a particular use is the LEP.
- This area is zoned as 2(c) Residential in accordance with Shoalhaven LEP1985.

- Whilst a standard instrument LEP was not adopted on this site in 2014 when this occurred for the majority of the Shoalhaven due to a decision by the Planning Minister, the draft SLEP2009 and draft SLEP2013 which were both publicly exhibited for this site proposed to rezone this area R1 as per the attached plan:



- The proposed zoning clearly indicated the intention of both Shoalhaven City Council and DPE in relation to the future of this site.

Conclusion:

The West Culburra site is clearly identified and relied upon in all recently adopted strategic planning documents including the Shoalhaven Growth Management Strategy, the Illawarra-Shoalhaven Regional Plan, the Jervis Bay Settlement Strategy, the Long Bow Point Commission of Inquiry and the Illawarra Shoalhaven UDP.

It is acknowledged that inappropriate development in the catchment of Lake Wollumboola is undesirable if it will have a negative impact on water quality in the Lake. This is discussed in more detail in the following section.

The population projections that DPE relied upon are not correct and Councils projections indicate that 4012 dwellings are required between 2016 and 2036.

Further, and more importantly, the site is zoned for residential purposes and was proposed to be zoned for residential purposes in the standard instrument LEP, however this was not adopted due to a decision by the Planning Minister to defer this area.

3) Inconsistent with strategic studies recommending protection of Lake Wollumboola

This conclusion is incorrect for the reasons outlined below:

It is acknowledged that there are a number of documents that discuss the need to protect Lake Wollumboola. The Halloran Trust completely supports this goal.

However, 91% of the proposed development is within the catchment of the Crookhaven River which was the area identified in the Col to develop as it was less sensitive than the Lake Catchment.

The portions of the development within the Lake catchment are:

- Stage 1 residential area – 1.93Ha that will be drained into the Crookhaven catchment through WQ facilities that will treat water to the Neutral or Beneficial Effect (NorBE) requirement
- Stage 3 residential area (near playing fields) – 1.74 Ha that will be drained into the Crookhaven catchment through WQ facilities that will treat water to the Neutral or Beneficial Effect (NorBE) requirement
- Stage 5 Industrial area – 1.38Ha that will be drained into the Crookhaven catchment through WQ facilities that will treat to Neutral or Beneficial Effect (NorBE). (There is capacity to slide this area north out of the Lake Wollumboola catchment to reduce perceived impacts.)
- The roundabout area – 0.6Ha that will drain to Lake Wollumboola through WQ facilities that will treat water to the Neutral or Beneficial Effect (NorBE) requirement.
(It is worth noting that the existing Culburra Rd is within the catchment of Lake Wollumboola in the vicinity of the site. Therefore, there is no location for an access point from Culburra Rd to the site unless it is in the Lake catchment.)
- The playing fields – 4.8Ha that drains to Lake Wollumboola through WQ facilities that treat to the Neutral or Beneficial Effect (NorBE) requirement.
(This area could be removed however the community would lose significant new sporting facilities.)

The total area within the catchment is about 10.45Ha.

The total area of development is approximately 115.6Ha. So, the area in the catchment is about 9% but as these small areas are either diverted into the Crookhaven and/or treated to NorBE standard the impact on the Lake and the Crookhaven catchment from these areas are zero. This has been scientifically proven through best practice WQ modelling.

4) presents an unacceptable risk to water quality in both the Crookhaven and LW Catchments

This conclusion is incorrect for the reasons outlined below:

Opponents to the development have done zero science to prove that there will be any impact from the proposal on Lake Wollumboola or the Crookhaven River. The only thing that is offered by DPE are unfounded claims. DPE's view is not based on any scientific

evidence that any government agency has provided but on conjecture, hypothesis and assumption, despite the scientific evidence presented.

In Section 4.10 of the EA (page 21), DPE advises that “The Applicant has been unable to demonstrate with certainty there is no threat of serious or irreversible damage, or that these impacts can be effectively avoided or mitigated.” 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 require for this proposal.

Further, DPE has not provided any scientific assessment of the proposal to demonstrate that there will be a serious or irreversible impact on the environment. 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 one of the primary reasons for refusing the application.

To the contrary, we have demonstrated through the use of best practice water quality modelling that the water quality impacts have hit the stringent NorBE standard.

5) presents an unacceptable risk to Aboriginal Heritage Sites of Regional Significance

This conclusion is incorrect for the reasons outlined below:

The Commissions attention is drawn to the conclusion of the South East Archaeology report which was prepared in conjunction with registered Aboriginal stakeholders:

- there are no Aboriginal heritage constraints to the approval of the concept plan;
- further heritage investigations by qualified archaeologists should be undertaken in certain sections of the site in accordance with the NPWS Act as part of future DA’s to identify the nature, extent and significance of any heritage evidence and to enable the subsequent formulation of appropriate management strategies in consultation with the registered Aboriginal parties;
- if any impacts outside the study area are proposed, further Aboriginal cultural heritage investigations should be undertaken;
- Any impacts will require an AHIP to be obtained prior to any works being undertaken;
- The Culburra midden sites adjacent to the investigation area warrant total conservation and are potentially regionally significant. Direct impacts are to be avoided and indirect impacts must be managed and minimised.
- To this end, a Conservation Management Plan specific to the protection of the midden sites will be prepared by a heritage specialist in conjunction with the registered Aboriginal stakeholders when development is occurring in proximity to this significant area;
- The oral account recorded in the late 1970s which explains some of the significance of the midden sites by Jerrinja Elder, Mr Jack Campbell, should be researched;

- Appropriate protective measures will be implemented for those sites in close proximity to the construction works, including education, information, signage and protective fencing;
- Other land users will be educated with respect to the nature and location of the Aboriginal sites;
- All contractors will receive heritage awareness training prior to work commencing on site;
- Any previously unrecorded Aboriginal sites or objects detected during the works which are not covered by the AHIP will force works in the vicinity to cease so that the artefact can be recorded and reported to OEH and advice on the appropriate action can be obtained;
- If skeletal remains are found, work will cease and the relevant authorities notified;
- If an additional AHIP is required, this will be obtained;
- No activity would be undertaken within the Aboriginal Heritage site area without a valid AHIP;

Please note that the fieldwork for the SEA Report was conducted with members of the local aboriginal groups and a copy of the draft report was provided to both groups for comment prior to it being used in the concept application. No comments were received.

The proposal will enhance the protection and understanding of the local aboriginal heritage as outlined

OEH's letter endorses various recommendations in the SEA Report to conduct additional test excavation and prepare a Conservation Management Plan.

OEH also endorses the recommendation to have no impact on the midden complex. Please note that no impact is proposed. It is acknowledged that potentially significant conservation management measures may be required to protect the midden complex when development occurs and it is proposed that these would be developed more fully when development in the vicinity of the middens is proposed and additional test excavations can be carried out.

Prior to Concept Plan approval is not the appropriate time to develop a complete Conservation Management Plan for these areas. It would be expected that this would be developed in stages with each development consent.

It is also acknowledged that an AHIP will be required before any works are commenced.

The proposed mitigation measures outlined above including additional test excavation and complete protection of the midden complex under the Conservation Management Plan provide a suitable array of measures to protect the aboriginal heritage significance on the site as per the requirements of the NPWS Act.

I note the letter from Jerrinja LALC dated 25/1/17 which discusses the SSD Subdivision. The contents of this letter appear to be more focussed on land within the Lake Wollumboola catchment which does not appear to relate to the subdivision DA. Further, members of Jerrinja LALC were on site undertaking field investigations as part of our work and did not raise any objections in the statutory process of report compilation. OEH does not object to anything that is being done either.

B) Applicant has been unable to demonstrate the impacts could be effectively mitigated;

This conclusion is incorrect for the reasons outlined below:

Significant mitigation measures have been provided to mitigate against environmental harm in water quality and aboriginal heritage, as well as mitigation measures for many other issues.

A full “treatment train” of water quality protection measures will be implemented to protect downstream water quality and to ensure the NorBE benchmark is achieved. This has been scientifically demonstrated through the use of the NMUSIC model.

Significant aboriginal heritage mitigation measures are also proposed including additional test excavation, additional approvals, and a Conservation Management Plan developed in accordance with the local registered aboriginal groups as development is rolled out in stages.

Removal of native vegetation is completely offset through the retirement of credits on significant tracts of land to the south within the catchment of Lake Wollumboola.

C) Development is not in the public interest

This conclusion is incorrect for the reasons outlined below:

DPE has concluded “The concept proposal is also inconsistent with the ISRP, SCSULR and the ISUDP as it proposes development within the catchment of Lake Wollumboola. The concept proposal has the potential to cause serious water quality impacts on Lake Wollumboola, the Crookhaven River estuary, priority oyster leases, SEPP 14 wetlands, marine vegetation and fish habitat. The Applicant has been unable to provide sufficient evidence to demonstrate there would not be serious or irreversible impacts, or that such impacts could be effectively avoided or mitigated. The Applicant has not demonstrated that the economic and social benefits of the proposal would sufficiently outweigh the potential serious environmental impacts. On this basis, the Department concludes the concept proposal in its current form is not in the public interest.”

In response, only a very small section (less than 10%) of the development is within the catchment of Lake Wollumboola and some of this is unavoidable e.g. the roundabout cannot be located outside the catchment. The small area of development within the lake catchment are proposed to be treated and some of those small areas that sit right on the catchment boundary are proposed to be diverted to the Crookhaven catchment.

The proposal will generate significant economic development for the township of Culburra Beach which has shown population decline for a number of census periods and has decreasing commercial activity. This development will significantly boost the housing stock availability for downsizers and first home buyers who are both unable to find an appropriate housing style in Culburra Beach.

As the Commission would have seen at the public meeting, the public, i.e. the community of Culburra Beach, are heavily in favour of this development proceeding.

The public interest test is clearly satisfied though the approval of this development.

CONCLUSION:

The site is clearly located in an area that foreshadows residential development and fits well with Council's population projections.

The proposal will have negligible impact on Lake Wollumboola as it is generally located outside the catchment of the lake. Small areas are located within the catchment but these areas have water quality mitigation measures that treat runoff to a NorBE standard. Some of these areas which are on the ridge line also proposed to divert water back into the Crookhaven catchment. If IPC perceives that the impact on the Lake catchment is still too significant, the playing fields could be removed (although this leads to a poorer social outcome for the township) and the industrial area could be shifted to the north to be located within the Crookhaven catchment.

Water quality mitigation measures have been instigated as a "treatment train" to ensure runoff meets the stringent NorBE criteria.

Aboriginal heritage impacts are not significant and will be carefully managed through mitigation measures such as additional test excavations, further approvals and a Conservation Management Plan to ensure the long-term protection of the aboriginal heritage areas and particularly the midden complex along the foreshore.

All vegetation clearing offsets have been resolved to the satisfaction of OEH, who have prepared a condition of consent to this end to be inserted in any consent. A refusal of this Concept Approval is not in the Public interest. Approval of this development will lead to long-term economic benefits to the residents and visitors of Culburra Beach.

For the reasons outlined above, it is our position that the DPE's conclusions are incorrect and it is recommended that the IPC approve the proposed Concept Plan.

Note:

Figure 5 in the DPE EAR is not the latest plan submitted with the latest RTS. The plan included in the EAR is an earlier plan. The latest plan being APS drawing ref 25405-37 Rev 10 does not contain a medium density site south of the Collector Rd, nor does it contain any foreshore clearing for vista creation.