

Submission  
No 192

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS  
OF CLIMATE CHANGE ON THE ENVIRONMENT AND  
COMMUNITIES**

**Organisation:** Culburra Residents & Ratepayers Action Group Committee  
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# **CULBURRA RESIDENTS AND RATEPAYERS ACTION GROUP INCORPORATED**

11th November, 2023

Portfolio Committee 7  
NSW Legislative Council  
Parliament of NSW  
6 Macquarie St  
Sydney NSW 2000

## **Inquiry into the Planning System and the Impacts of Climate Change on the Environment and the Communities**

### About Culburra Residents and Ratepayers Action Group

The mission of the Culburra Residents and Ratepayers Action Group (CRRAG) is to protect Culburra Beach and Orient Point from inappropriate development. The group was formed to give voice to those who object to the proposed West Culburra Development. The aim is to preserve the coastal village feel of the area and to conserve the town's natural beauty. CRRAG is committed to appropriate town planning that is sustainable, economically sensible for the community and respects our environment and cultural heritage.

CRRAG believes that current planning legislation is failing in its job to protect and balance the needs of people and the environment to secure a successful future for all. Out-of-date legislation and planning loopholes are being used to push development approvals that are environmentally destructive, particularly in light of climate change and society's current understanding of the fragility and value of ecological communities.

We commend this Portfolio 7 inquiry into the planning system and the impacts of climate change on the environment and communities and are grateful for the opportunity to be heard. Through our work striving to protect Culburra Beach from overdevelopment and the destruction this would cause, we have seen many examples of how our current legislation and processes are failing to protect the community that government is here to serve.

In the following pages we will identify areas we believe reform is necessary to address:

1. an imbalance in the legislation and processes that greatly favour the power and wealth of developers over the needs and opinions of the community.
2. the ability to amend, revoke or review past decisions when current evidence shows those decisions, made in a different era sometimes up to half a century ago, are no longer appropriate in light of current facts and/or were made based on self-serving goals of a few rather than for the greater good.
3. a system that is not looking at the overall bigger picture of all these pockets of developments being forced through - the cumulative impact is going to be critical to Australia in the future and needs to be planned consciously rather than be 'allowed to happen'.

### Culburra Beach developments - history and overview

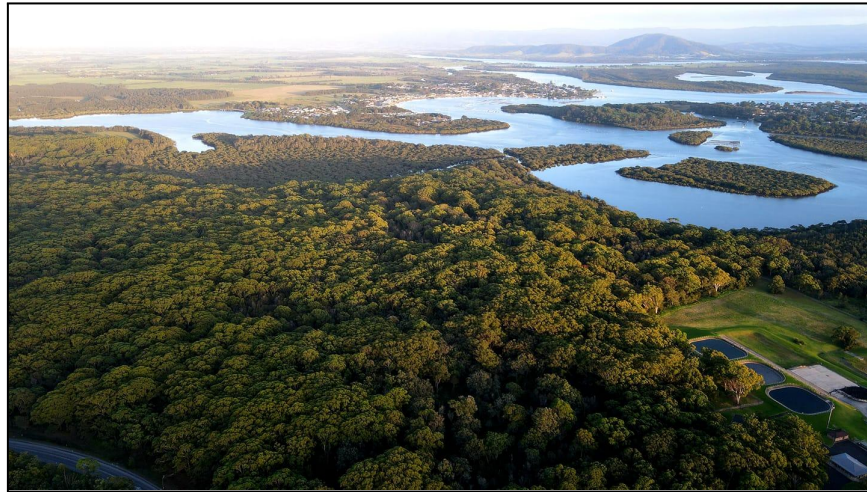
The Halloran family purchased huge amounts of land on the South Coast during the first half of the 20th century. Mr Halloran was a prominent surveyor at that time and when Canberra became the nation's capital, and Jervis Bay Canberra's port, he saw massive development opportunity. The family vision, which was passed down through the next three generations, was to develop all land to its fullest potential and build the Shoalhaven area into a city to rival Sydney. The grand plans were to include casinos, universities, canals linking Huskisson to Culburra, and housing as far as the eye could see. Obviously the reality developed quite differently and to continue to push even the essence of this vision upon the region comes at the loss and destruction of irreplaceable natural environments that are valued by today's society.

All Halloran family members are now deceased and the land has been left to be managed by the Halloran Trust to enact the vision. Large amounts of Halloran land are around Culburra Beach and there are currently two large, separate development projects underway:

- West Culburra Development (WCD) - 47Ha of forested land on the outskirts of Culburra to be developed as retail/industrial/residential. The Halloran Trust subsidiary Sealark manages the West Culburra Development (WCD) project. Rejected by DPIE in 2018 this development

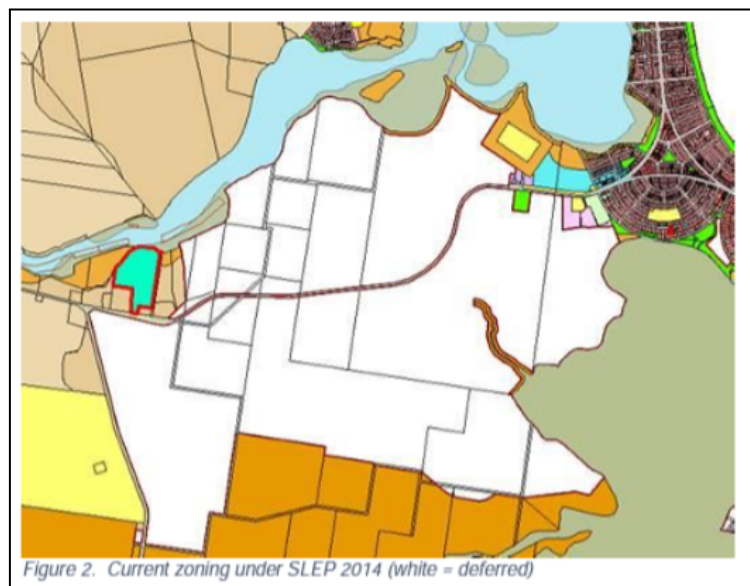
was given approval on appeal, pending conditions, in 2021 by the Land and Environment Court (LEC).

West Culburra Development site:



- The second major development proposed for Culburra has historically been known as PP006. This predominantly forested land was originally rural/environmental zoning in the SLEP1985. The land has been 'deferred matter' since the second draft of the SLEP2014 when the developer sidestepped local council planning advice to keep the rural/environmental zoning and went directly to the then Planning Minister to have a decision made that better suited the his needs. The land became 'deferred' in anticipation of submission of a masterplan, and it remains deferred today.

Shoalhaven City Council diagram of the deferred matter land (image source SCC submission to LEC Hearing, May 2021, p6):



These two projects have both been in process for decades and while not 'zombie DAs' in the literal sense of the term, they are classic examples of where decades-old planning processes from the last century, which are not relevant to the current community or 21st century environmental needs, are continuing to be forced through by loopholes exploited by developers and a legislative system unable to change course to keep abreast of changing societal needs.

Culburra Beach is a one-road-in, one-road-out village. The village:

- was threatened by the black summer bushfires and the forest that is currently ear-marked for clear felling for housing was one of the small pockets of bushland in the Shoalhaven not to have burned. There are endangered species of wildlife that live in this critical remaining bushland corridor, including Gliders, Powerful Owls, Glossy Black Cockatoo and Gang-gang cockatoos.
- sits on government-recognised sensitive waterways that support an oyster growing industry and cannot risk pollution by massive increases of human habitation.
- does not have the infrastructure that would be required by doubling or tripling the population.
- is known to have great historical significance to the local Indigenous community, Jerrinja, and indigenous historical value to Australia's history (less than five kilometres away from the proposed West Culburra site, thousands of extremely valuable cultural artefacts have already been uncovered).

### 1. Imbalance in legislation and processes that favour the power and wealth of developers over the needs and opinions of the community

When we look at the history of how the Culburra Beach developments came to be in their current state, there are a number of pivotal points where a lack of transparency and a lack of conscious balance in government processes has greatly favoured the wishes of developers over the needs of the community. The result is that despite the Culburra developments making no sense on environmental, financial, heritage or cultural grounds they are still pushing forward. Reform is needed at all levels of government to insist on proper transparency and conscious balance to rectify this situation, and the important

starting point is to recognise the huge imbalance between the power and wealth of the developer vs the community voice:

Community	Developers
<ul style="list-style-type: none"> <li>- those whose lives will be impacted by development</li> <li>- have to do this work in their spare time in addition to their own jobs and family responsibilities</li> <li>- don't have in-depth understanding of planning legislation and council processes</li> <li>- do not have monetary resources to get legal advice or support of any kind</li> </ul>	<ul style="list-style-type: none"> <li>- those who make financial gain from developments</li> <li>- part of multi-person teams working over the longer term to achieve their goals</li> <li>- getting paid full-time salary to achieve their objectives</li> <li>- have in-depth knowledge of planning legislation</li> <li>- have time on their side, never take no for an answer and just keep on pushing and pushing until they get their own way</li> <li>- have relationships with council planners via external committees, previous work history</li> <li>- have huge budgets to invest in achieving their objectives</li> </ul>

Examples where a lack of processes ensuring conscious balance has affected the course of developments in Culburra Beach, include:

- As outlined in the history and overview section above, the second major development pending in Culburra Beach refers to a large portion of land currently zoned 'deferred matter'. In the 2011 first draft of SLEP2014 this land was zoned rural/environmental on the advice of council planners, in line with the South Coast Regional Strategy document which exists to "*set out a clear and certain land use plan for the South Coast which balances the demands for future growth with the need to protect and enhance environmental values*".

Unhappy with this recommended zoning which would not enable the scale of development the Halloran family had planned, Mr Halloran sidestepped local government processes and went directly to the then Planning Minister

(The Honourable Brad Hazzard) to have a decision made that better suited his own needs. The land became 'deferred' in anticipation of submission of a masterplan, and it remains deferred today.

According to the NSW Govt Planning and Environment 'Planning Team Report B' (p12) at the time:

*"The zoning of the land at Culburra Beach, in the Lake Wollumboola catchment was a highly contentious issue. The land was zoned a combination of environmental protection and rural landscape under the exhibited draft LEP to implement the requirements of the South Coast Regional Strategy and Sensitive Urban Lands Review Panel recommendations for the site.*

If the developer had not been granted this special access to the State Planning Minister and allowed to sidestep local government recommendations, the land in question would be zoned rural/environmental today, protecting Culburra's sensitive waterways and ecological communities, in line with recommendations on page 21 of the South Coast Regional Strategy that state:

*"smaller and more isolated villages should be a low priority for development and should not be considered for additional land release rezonings given the lack of potential of these settlements to reach critical thresholds for service delivery."*

- a second example of this power of developers to gain special access to government resulting in a change of course in their favour, was seen with West Culburra in early 2021. At this time the West Culburra developer was granted the opportunity to meet with and present to sitting councillors about West Culburra. The result of this relationship-building exercise that gave a one-sided view of a complex situation was a motion being passed unanimously by councillors in favour of West Culburra. This demonstrates a critical lack of government procedures to ensure appropriate transparency and balance.

**Processes should never have allowed councillors to meet with a developer without ALSO meeting with groups representing an alternative view.**

**There should be safeguards in place at all levels of government to actively ensure a process of conscious balance in decision making.**

- Most recently the developer Sealark, on behalf of Halloran Trust and via the private company Eco Logical, has submitted a controlled action application under the Federal EPBC Act. According to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) website, community consultation is a requirement before a referral to the department is made and the department gives examples such as hosting a community meeting, doing a letterbox drop, posting a notice on public boards, sharing project information on a website. However, the onus for the extent of this consultation is on the developer.

In our situation the developer did what they considered the legally required minimum - they put the report on display in the Nowra library (15kms away from the affected community) and at the State Library (200km from the affected community) and publicised it on their own company website (which no-one in the community had ever heard of).

This of course led to a scenario where the community did not get the opportunity to lodge submissions because nobody knew the application was in process. Having discovered belatedly what was afoot, many in the community emailed the EPBC NSW only to be told that the *“Minister is not required to consider late comments when making a decision”*.

So in essence, the planning system became complicit in enabling the developer to obfuscate critical information for their own gain.

**Reform is absolutely needed in this process to ensure balance and transparency. There should be no options on how a developer notifies an affected community.**

**It should be compulsory for any developer to letterbox drop every house in a 20km radius of a development at every stage of community consultation. This is the only way to ensure proper transparency of process.**



## 2. The ability to amend, revoke or review past decisions based on current evidence

A major failing of the planning system centres around its inability to reassess past decisions both in terms of a decision's legitimacy of intent - ie whether it was made for the benefit of the community rather than to serve the needs of a few individuals - and also in light of modern standards, knowledge and future requirements. This has led to a situation where many developments are happening in spite of common sense, scientific evidence and the future needs of the community. Reform needs to be achieved that will enable government to reassess past decisions in light of 21st century standards.

Examples of this in relation to Culburra Beach developments:

- The South Coast Regional Strategy 2006-31 is "*an agreed NSW government position on the future of the South Coast*" and exists to "*set out a clear and certain land use plan for the South Coast which balances the demands for future growth with the need to protect and enhance environmental values.*"

Key points in this strategy document include:

P6 - "*Overall, the Region is well supplied with vacant urban land to cater to new housing demand.*"

P13 - "*Urban development will be located on largely cleared land or areas where only limited clearing of native vegetation with low conservation values is required.*"

P21 - "***smaller and more isolated villages should be a low priority for development and should not be considered for additional land release rezonings given the lack of potential of these settlements to reach critical thresholds for service delivery. Given the surrounding environmental values of these villages and the available land in larger and better serviced centres, the Regional Strategy limits the unnecessary expansion of these villages.***"

Given all of these points, it makes no sense to consider either WCD or the future rezoning of the deferred matter land and yet both of these developments are in the pipeline. Why? Because in the early 1980s councillors passed a resolution that created Culburra Beach as an Urban Expansion area to enable the Halloran family to continue the expansion of the Culburra Beach village in line with their personal vision.

Following this, the concept of the Culburra Urban Expansion area was included in the SLEP 1985 as Amendment number 41. It then filtered through time in the Five Centre Growth Strategy in 1990, and the Jervis Bay Settlement Strategy in 2003 where Culburra was identified as a town as opposed to a village, despite similar population and service levels to nearby villages like Callala Bay/Callala Beach.

Culburra as an Urban Expansion area was delved into again in the South Coast Sensitive Urban Lands Review in 2016 when it was deemed “*Small parts of the northern section of the Culburra Urban Expansion Area may be suitable for limited urban development ...*” and that the growth data from the last two census (prior to 2006) “*do not bear out claims that the growth pressures in Culburra warrant significant additional land to be released*”.

In the South Coast Regional Strategy 2006-31 Culburra as an Urban Expansion area is added in the appendix, despite the strategy itself recommending against tacking housing developments to smaller villages on the grounds of lack of employment, services, infrastructure and environmental constraints.

Does Culburra as an Urban Expansion area strategy make sense now in light of 21st century understanding of extreme weather events, potentially rising sea levels, the value and fragility of coastal ecosystems and cultural heritage? No. Yet the developer continues to push forward because an outdated council resolution from the early 1980s - half a century ago - enables them to.

**Reforms must be made to enable review of past decisions to assess:**

- **was the decision made in the best interests of the community or were decisions made to benefit an individual; and,**
- **does the decision meet with society’s current ideas and future requirements.**

- We are nearly a quarter way through the 21st century and yet our development and planning processes are still following colonial ideals from a century ago. The current planning system must have the ability and resources to be able to reassess and change past decisions in light of current evidence.

Speaking about the Intergovernmental Panel on Climate Change (IPCC) report on global warming in August 2021, the UN Secretary General, warned:

*“[This report] is a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable: greenhouse gas emissions from fossil fuel burning and **deforestation** are choking our planet and putting billions of people at immediate risk.”*

**The wealth of current scientific data that identifies the risk to humans of climate change and the role the humble tree plays in balancing carbon emissions should be instantly reflected in planning reform.**

**All developments that require the clear felling of native bushland habitat should be immediately revoked and reassessed using a cost-benefit analysis incorporating the social cost of carbon.**

- Likewise, the stated objective of the NSW Save Our Species strategy is *“to increase the number of threatened species that are secure in the wild in NSW and control the key threats facing them”*. Despite this aspirational statement, Eastern Australia and NSW in particular, are ranked as a global deforestation hotspot, the only developed nation on the list and therefore a global leader in Habitat Destruction (Nature Conservation Council of NSW).

And in 2020 in its post-bushfire report the Department of Agriculture, Water and the Environment stressed the importance of protecting unburnt areas within or adjacent to recently burnt ground that provide refuge to fauna.

Culburra’s forest was in the 20% of the Shoalhaven bushland untouched by the 2019/2020 bushfires and no independent flora and fauna studies have been done since this time. Arguably this forest has become an even more critical habitat refuge for the region’s flora and fauna. Clear felling

the forest at West Culburra will result in loss of habitat for endangered species of Gliders, Gang Gang and Black Glossy Cockatoos, Microbats and Powerful Owls.

**Immediate reassessment of the WCD approvals should be conducted and should include independent, post-bushfire environmental impact reports.**

### 3. Assessing cumulative impact of planning decisions

A planning system that is not looking at the overall bigger picture of all developments is inherently flawed. The cumulative impact of development is going to be critical to Australia's wellbeing in the future and needs to be planned consciously rather than be 'allowed to happen'. If we don't act now the nation has much to lose:

- Australia is known and loved locally and globally for its iconic beach village culture. The coast is where the majority of city dwellers and countless international visitors head to relax and unwind with their families. Unabated housing developments up and down the east coast is set to destroy this cultural heritage. We need a solution to the housing crisis but not at the cost of the country's wellbeing. We can have both if the correct planning reforms are put into place now to reassess developments currently in process.
- We have a wealth of indigenous cultural heritage also at risk of being lost through unabated development. Culburra is home to the Jerrinja community and the Culburra Beach-Orient Point area is full of indigenous artefacts, with some of the oldest artefacts in NSW discovered less than five kilometres away from the proposed WCD site.

The consultation with the Jerrinja community throughout the years regarding development in Culburra has been tokenistic at best and the clear felling of 47 hectares of culturally significant land will be a great loss to Australian indigenous heritage and history when it should be protected for future generations.

**CRRAG fully supports a government review of the cumulative impact of developments across NSW to ensure we achieve a future that balances growth with the need to protect and enhance environmental and cultural values.**

Conclusion

There is much that can and should be done to improve the current ailing system and we look forward to seeing reforms that will ensure a more positive future for us all.

Yours sincerely,  
Culburra Residents & Ratepayers Action Group Committee