



SG/LB  
09077  
10 May 2016

Ms Carolyn McNally  
The Secretary  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2000

Attention: Anthony Witherdin (A/Director, Regional Assessments)

Dear Anthony,

**S75W TO CALDERWOOD CONCEPT PLAN - MP09\_0082 (MOD 1)  
CALDERWOOD URBAN DEVELOPMENT PROJECT**

We write to you on behalf of the proponent Lend Lease Communities (the Proponent) in relation to a proposed modification to the Calderwood Urban Development Project Concept Plan (Mod 1) MP09\_0082 pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification seeks to update Condition C12 of the Concept Plan (Local Infrastructure Contributions) to accord with the Voluntary Planning Agreement between Lendlease and Shellharbour City Council (refer **Attachment A**) in respect of local contributions to be made to Shellharbour City Council (SCC); and also to update Condition C12 of the Concept Plan to reflect the findings of the Land and Environment Court of NSW (LEC) in relation to Matter No. 10492 of 2012 *Lend Lease Communities (Australia) Limited v Minister for Planning and Infrastructure & Ors* with respect to local contributions to be made to Wollongong City Council (WCC).

As is required by the terms of Condition C12 of the Concept Plan, the modification application seeks to confirm the total cost, apportionment and timing of contributions that are to be made by Lendlease to WCC in consultation with the Department of Planning & Environment.

## **1.0 BACKGROUND**

### **1.1 Concept Plan**

Lend Lease Communities (Lendlease) is the proponent of the Calderwood Urban Development Project (the Calderwood Project). On 8 December 2010 the Minister for Planning determined (with modifications) the Calderwood Urban Development Project Concept Plan (MP09\_0082) (the Approved Concept Plan). The Approved Concept Plan provides for the development of 700 hectares of land at Calderwood (the Calderwood Project site) for approximately 4,800 dwellings and 50 hectares of mixed use / employment land.

The Calderwood Project is to be developed in stages over an approximately 20+ year period. Following approval of the Concept Plan, on 14 January 2011 Schedule 3 of the Major Development SEPP was amended and the Calderwood Project site rezoned. Together, the planning provisions at Schedule 3 of the Major Development SEPP and the Approved Concept Plan establish the statutory planning regime for the development of the Calderwood Project site.

In determining the Approved Concept Plan, the Minister for Planning considered in detail a series of Schedules setting out the human services, open space and transport contributions proposed by Lendlease to be made to both SCC and WCC in respect of the overall Calderwood Urban Development Project.

The Minister subsequently imposed modification (condition) C12 on the Concept Plan setting out the general requirements for the contributions to be made by Lendlease towards local infrastructure provision for the whole of the Calderwood Urban Development Project including community facilities, open space and local roads.

Condition C12 of the Approved Concept Plan states as follows:

***“C12 Local Infrastructure Contributions***

*The requirements for local infrastructure shall be generally in accordance with the following principles:*

- a) Community facilities – the following community facilities as identified in Appendix K of the Preferred Project Report are to be provided:*
  - A temporary community centre (approximately 120-150m<sup>2</sup>);*
  - A permanent community centre (approximately 900 m<sup>2</sup>), including the dedication of 4000 m<sup>2</sup> land; and*
  - Branch library (approximately 626 m<sup>2</sup>) adjoining the community centre.*
- b) Open space – the following open space areas are to be provided:*
  - A total of approximately 17.36 ha of open space (made up of local parks, district parks and city wide parks); and*
  - Sports fields of approximately 15.84 ha*

*Note: the area identified as Johnson’s Spur and the ancillary open space areas (made up of drainage reserves and open space corridors reserves) are not to be included in the open space contributions.*
- c) Local roads – contribution towards the following road works are supported. The total cost, apportionment and timing of these works shall be determined in consultation with the Department of Planning:*
  - Upgrade of Marshall Mount Road (referred to in the TMAP as 22, 23 & 24);*
  - Upgrade of Yallah Road from Marshall Mount Road to Haywards Bay Drive (referred to in the TMAP as 25);*
  - Upgrade to the intersection of Marshall Mount Road and Yallah Road (referred to in the TMAP as 36);*
  - Construction of the Tripoli Way extension (referred to in the TMAP as 14, 15 & 16);*
  - The construction of the intersection of Tripoli Way with the Illawarra Highway (referred to in the TMAP 30);*
- d) Other Road Works – the following road works are needed to directly access to site and are therefore not to be included in the S94 framework. These will be required as per conditions of approval and the timing will be determined as part of future subdivision approval.*
  - The upgrade of Calderwood Road from the site boundary to Tripoli Way extension (referred to in the TMAP as 32);*
  - Construction of the internal north-south sub arterial road (referred to in the TMAP as 33, 34 & 35);*
  - Upgrade of the intersection of the Illawarra Highway and Yellow Rock Road to provide site access (referred to in the TMAP as 37).”*

Conditions C12(a) and C12(b) identify the quantum of local contributions towards community facilities and open space to be delivered by Lendlease as on site works in kind (dedication of land and embellishment / construction works) within both the Shellharbour and Wollongong LGAs.

The local road works items towards which contributions are to be made by Lendlease are specified by Condition C12(c), with the total cost, apportionment and timing of the works required to be determined in consultation with the Department of Planning & Environment (DP&E).

The Consolidated Concept Plan documentation submitted to the DP&E in 2011 includes (refer to Appendix I) final local contributions schedules for human services, open space and road works reflecting the modifications imposed by the Minister at Condition C12 of the Approved Concept Plan.

A copy of the final local contributions schedules reflecting the determination of the Minister for Planning as part of the Approved Concept Plan and forming part of the Consolidated Concept Plan is included at **Attachment A**.

The determination of future development applications at Calderwood must be generally in accordance with the Approved Concept Plan, including the provisions of Condition C12.

## 1.2 Stage 1 Project Application

As the DP&E would be aware, on 15 August 2013 the NSW Land and Environment Court (LEC) upheld an appeal by Lend Lease Communities against the refusal of a Project Application for the first stage of the implementation of the Approved Concept Plan (the Stage 1 Project – MP 09\_0083) (Matter No. 10492 of 2012). The Stage 1 Project site comprises approximately 127 hectares within the overall Calderwood Project site, of which physical works and subdivision is proposed over approximately 75 hectares and 50 hectares comprises a residue lot. The approved Stage 1 subdivision (as amended) includes 239 residential lots (9 mixed use and 4 residue lots) and associated works.

The only contention of the Court proceedings for Stage 1 was the quantum of local infrastructure contributions payable by Lendlease. In granting approval to the Stage 1 PA, the LEC therefore considered in detail the scope of contributions set out at Condition C12 of the Approved Concept Plan and scrutinised all aspects of the local contributions payable in respect of the Stage 1 development. In particular, the appropriateness and scope of each local infrastructure item identified at Conditions C12(a), C12(b) and C12(c) was examined in detail in relation to the full development potential of the project (i.e. all 4,800 dwellings and not just the dwellings proposed in the Stage 1 PA) and the resultant demand for human services, open space and local road infrastructure that it would generate, and the LEC also determined the total reasonable cost, relevant apportionment and timing for each of the local road works specified at Condition C12(c).

Further, notwithstanding that the appeal related to the determination of local contributions to be paid in respect of the Stage 1 Project Application only (as this was the subject of the DA before the Court for determination), the LEC provided strong guidance as to the way in which future local infrastructure contributions are to be levied across all remaining stages of the Calderwood Project.

The NSW LEC clearly articulated the key principles upon which the determination of future local contributions should be based.

In particular the LEC concluded that contributions should be apportioned across the entire anticipated 4,800 dwelling yield of the Project. The reasons that the LEC reached this conclusion are provided at paragraphs 45 to 58 of the judgement. In summary, the stated reasons of the Court are as follows:

- The project is an integrated single new community that should make contributions spread uniformly across all stages of the project. This approach provides equity and equality of access to facilities across the project.
- Setting contributions for Stage 1 in a way designed to inform the setting of contributions for subsequent stages provides an appropriate degree of financial predictability for the developer and for the councils. The identification of the expected infrastructure programs for which contributions are appropriate together with the anticipated (indexed) quantum for such contributions provides appropriate and desirable predictability able to be applied across the totality of the project.

- The Approved Concept Plan clearly envisages what might be described as a unity of purpose for the whole of the project. As a consequence, it is implicit that the broad planning framework within which the totality of the project will be brought to fruition will remain coherent and consistent, in general terms, throughout the life of the project. An essential element of such consistency and coherence is the application of a contributions regime of the nature proposed by Lendlease and the Minister (i.e based on 4,800 dwellings).
- Any combination of these reasons (and certainly in their totality) provides a compelling basis to adopt a position of basing contributions on 4,800 dwellings.
- As a matter of practicality it is clear based on the staging of the project that if the setting of infrastructure contributions for some stages were to be deferred until later, there is the prospect that there might well be a lack of equity across the allotments in certain stages.
- The present state of the internal road efficiency within Albion Park is such that it is appropriate to have all stages of the project making contributions towards the future upgrades of the road network rather than simply deferring contributions to later stages of the project.

In addition to the principle of determining local contributions in a manner that is uniformly spread across all stages of the project (i.e based on 4,800 future dwellings), all local open space and community facilities infrastructure items identified at Condition C12(a) and (b) were considered, as were each of the potential contributions contended by both Shellharbour and Wollongong City Councils in relation to the need or otherwise to contribute towards off-site open space, community facilities and local road works.

In determining the contributions payable in relation to the Stage 1 PA, and providing strong guidance as to the way in which future local infrastructure contributions are to be levied across all remaining stages of the Calderwood Project the LEC determined the monetary contributions per dwelling payable with respect to the local road works contributions identified at Condition C12(c) and also determined that in addition to the open space and community facilities items specified at Conditions C12(a) and C12(b), that it is reasonable for the Calderwood Project to make a further monetary contribution towards a limited number of specific city wide (off site) open space and community facilities within the Shellharbour LGA.

The total monetary contributions payable to Wollongong and Shellharbour Councils in respect of the Stage 1 development determined by the LEC – and taking into consideration the 4,800 dwellings proposed as part of the project in terms of total resultant demand for local infrastructure and relevant apportionment - were set out at Condition E1 of the Stage 1 Project Application Approval as follows:

Council	Facility	Cost per dwelling
Shellharbour City Council	Albion Park Bypass (TMAP Items 14, 15, 16 and 30)	\$1,236.48
	City Wide Open Space Facilities	\$362.24
	City Wide Community Facilities	\$1,263.76
	Section 94 Management	\$28.62
	<i>Total Shellharbour Contribution</i>	<i>\$2,891.10</i>
Wollongong City Council	Marshall Mount Road (TMAP Items 22 - 24 and 36 + Section 11 Bus stops Bus Shelters)	\$1,188.00
	Yallah Road	\$132.00
	<i>Total Wollongong contribution:</i>	<i>\$1,320.00</i>

The SCC city wide open space facilities that the LEC determined was reasonable for the Calderwood development to make a contribution towards are items C1.02 (Beach Foreshore) and C1.17 (Shellharbour City Stadium).

The SCC city wide community facilities that the LEC determined it is reasonable that the Calderwood development make a contribution towards are items C2.01 (Shellharbour City Performance Theatre), C2.06 (City Library), C2.08 (Council Administration Offices) and C2.09 (Civic Auditorium).

The LEC also determined it is reasonable that a contribution of 1% of otherwise payable monetary contributions for plan administration / s94 management in Shellharbour be made.

The contributions payable to Shellharbour and Wollongong Council in respect of TMAP items 14, 15, 16, 22, 23, 24, 36 and 30, and towards Yallah Road identify the monetary contributions reasonably payable towards these items in accordance with Condition C12(c) of the Calderwood Concept Plan.

A full copy of the NSW LEC Judgement and Determination of the Stage 1 Project Application is provided at **Attachment B**.

### 1.3 Executed VPA with SCC

Following the approval of the Stage 1 Project Application by the NSW LEC, a Voluntary Planning Agreement between Lendlease Communities and SCC relating to contributions to be made to the Council was executed on 15 September 2014.

To reflect the executed VPA, as part of a modification application to the Stage 1 PA the DP&E deleted Conditions E1 – Local Infrastructure Contributions and E3 – Voluntary Planning Agreement of the Stage 1 PA (MP09\_0083 MOD 1) in their entirety and replaced them with new Conditions E1 and E3 as follows:

#### ***“E1 Local Infrastructure Contributions***

*Prior to the issue of a Subdivision Certificate, the monetary contributions set out in the following table must be paid to Wollongong City Council in accordance with the provisions of Section 94 of the Act. The contributions set out below are to be recalculated during September each year in accordance with movements in the Chain Price Index for Non-Dwelling Building and Construction (CPI) published by the Australian Bureau of Statistics and may be varied with written agreement with Council.*

<i>Council</i>	<i>Facilities</i>	<i>Cost per Dwelling</i>
<i>Wollongong City Council</i>	<i>Marshall Mount Road (TMAP Items 22, 23, 24 and 36 and Section 11 Bus Stops and Bus Shelters)</i>	<i>\$1,188.00</i>
	<i>Yallah Road</i>	<i>\$132.00</i>
		<i>Total Wollongong Contribution: \$1,320.00</i>

#### ***E3 Voluntary Planning Agreement***

*The Proponent must comply with all necessary requirements of the Calderwood Voluntary Planning Agreement, as executed on 15 September 2014 between Lend Lease Communities (Australia) Limited and Shellharbour City Council.”*

It is noted that the executed VPA excludes the application of Section 94 and Section 94A in their entirety. No Section 94 contributions may be levied on that part of the Calderwood Urban Development Project that is within the Shellharbour LGA (ie approximately 4,000 of the 4,3800 dwellings). All local contributions are to be met in accordance with the provisions of the VPA .

#### 1.4 VPA Offer to Wollongong City Council

On 21 November 2014 a Development Application (DA-2014/1480) was lodged with WCC for subdivision. Accompanying this DA was a formal offer, by Lend Lease, to enter into a draft VPA with WCC.

The Draft VPA offer related to the future development of the broader Calderwood Urban Development Site (as it related to Wollongong LGA) and included on-site and off-site contributions.

The draft VPA proposal was fully consistent with:

- the Approved Concept Plan in respect of proposed Works-in-Kind for on-site local open space infrastructure as identified at Condition C12 and also the Contributions Schedules at Appendix I of the Consolidated Concept Plan; and
- the decision of the LEC of August 2013 in respect of cash contributions for proposed off-site local road works infrastructure.

Accordingly the draft VPA proposed the delivery of Local Parks 1, 2 and 3, District Park 1 and City Park CW1 which are located on land within the Wollongong LGA (dedication of land and carrying out of embellishment works) to a total nominated value of \$9,395,000 in accordance with the Approved Concept Plan; and a further cash contribution of \$6,336,00 towards local road works being a contribution equivalent to \$1,320 per dwelling payable for all 4,800 dwellings within the development in accordance with the reasonable scope of items, reasonable total cost of those items and appropriate apportionment to the Calderwood Urban Development Project determined by the NSW LEC in relation to the Stage 1 PA.

DA-2014/1480 was refused by WCC on 10 June 2015.

On 17 September 2015 the Director Planning and Environment WCC wrote to Lendlease in respect of the offer to enter into a VPA advising that on 14 September 2015 Council resolved not to accept the offer.

The Director Planning and Environment further notified Lendlease on 17 September 2015 that WCC has resolved instead to prepare and exhibit a draft Section 94 Plan for the Calderwood development area before the end of 2015.

The Council Report of 14 September 2015 states that a draft Section 94 Plan is to be prepared for the Calderwood Urban Release Area based on a significant increase in infrastructure costs that the Council has identified as being required to support the rezoning of its Yallah-Marshall Mount release area, which is located to the north of Calderwood. The Council Report appears to suggest that as Yallah Marshall Mount comprises some 4,000 dwellings, the overall Calderwood area 7,700 dwellings (of which the Calderwood Urban Development Project comprises 4,800 dwellings), Lendlease should be funding \$35.02 million of the total \$131.48 million in road infrastructure costs that have been identified as necessary to support the future development of Yallah Marshall Mount.

The Council Report of 14 September 2015 further appears to suggest that the Council intends to prepare a cross boundary Section 94 Plan in relation to the full 4,800 lots comprising the Calderwood Urban Development Project (and potentially in relation to all land within the broader Calderwood release area within the Shellharbour LGA).

In this regard the Council Report incorrectly identifies (p.27) that the VPA executed between Lendlease and Shellharbour City Council relates to contributions payable in relation to land within the Wollongong LGA and identifies contributions payable for development within the Wollongong LGA. It does not. The executed VPA provides for all local contributions payable in respect of all development within the Shellharbour LGA and operates to the full exclusion of Section 94 for all development within the Shellharbour LGA.



No Section 94 Contributions can therefore be levied by either SCC or WCC on any part of the Calderwood Urban Development Project that is located within the Shellharbour LGA (ie on the approximately 4,000 lots located within Shellharbour).

On 4 December 2015 WCC wrote to SCC objecting to Lendlease's Stage 2A Development Application No.0663/2015 proposing a 279 lot subdivision stating a concern that there has been no proper consideration of the local infrastructure implications of the Calderwood Urban Development Project within the Wollongong Local Government Area and in particular with regard to the required road upgrades for Marshall Mount Road and Yallah Road to support the land release.

Notwithstanding its rejection in September of the offer made by Lendlease to enter into a VPA for contributions towards the road upgrades for Marshall Mount Road and Yallah Road in accordance with the determination of the Land and Environment Court in the Stage 1 approval, the submission made by WCC in relation to the Stage 2A Development Application states that there is a need to *"include an apportionment of the total local road infrastructure costs for the Calderwood Urban Development Project in a Section 94 Plan, or a Planning Agreement, as recognised by the Land and Environment Court in the Stage 1 approval."*

## 2.0 PROPOSED MODIFICATION TO CONDITION C12

This modification seeks to update Condition C12 of the Concept Plan (Local Infrastructure Contributions) to accord with the VPA between Lendlease and Shellharbour City Council (SCC) in relation to the local contributions payable to SCC. It also seeks to reflect the findings of the LEC (Matter No. 10492 of 2012) in relation to the local contributions payable to WCC.

The proposed modification will remove the inconsistency between Condition C12 and the executed VPA with Shellharbour Council in relation to contributions to be made to SCC.

It is proposed to delete the existing Condition C12 in its entirety, and replace it with a new Condition C12 as follows:

### *"C12 Local Infrastructure Contributions*

*The requirements for local infrastructure shall be generally in accordance with the following:*

#### *Contributions to Shellharbour City Council*

*The Proponent must comply with all necessary requirements of the Calderwood Voluntary Planning Agreement, as executed on 15 September 2014 between Lend Lease Communities (Australia) Limited and Shellharbour City Council*

#### *Contributions to Wollongong City Council*

#### *(a) Open space – the following open space areas are to be provided:*

- *Local Park 1 Embellishment and dedication of a minimum of 0.3 ha of land (in R1 and/or E3 zoned land) comprising:*

##### *Contribution Works:*

- *Developer to design and construct item (notional Value \$150,000).*
- *Developer to maintain item for three years following practical completion of item (notional value \$16,000)*

##### *Contribution Land:*

- *Development to procure dedication of item to the Council at no cost (notional value \$924,000)*

- *Local Park 2 Embellishment and dedication of a minimum of 0.3 ha of land (in R1 and/or E3 zoned land)*

*Contribution Works:*

- Developer to design and construct item (notional Value \$150,000).
- Developer to maintain item for three years following practical completion of item (notional value \$16,000)

*Contribution Land:*

- Development to procure dedication of item to the Council at no cost (notional value \$924,000)

- *Local Park 3 Embellishment and dedication of a minimum of 0.3 ha of land (in R1 and/or E3 zoned land)*

*Contribution Works:*

- Developer to design and construct item (notional Value \$150,000).
- Developer to maintain item for three years following practical completion of item (notional value \$15,000)

*Contribution Land:*

- Development to procure dedication of item to the Council at no cost (notional value \$924,000)

- *District Park D1 Embellishment and dedication of a minimum of 1 ha of land (in R1 and/or E3 zoned land)*

*Contribution Works:*

- Developer to design and construct item (notional Value \$750,000).
- Developer to maintain item for three years following practical completion of item (notional value \$16,000)

*Contribution Land:*

- Development to procure dedication of item to the Council at no cost (notional value \$1,383,200,000)

- *City Park CW1 (Heritage) Embellishment and dedication of a minimum of 1.3 h of land (in R1 zoned land)*

*Contribution Works:*

- Developer to design and construct item (notional Value \$985,000).
- Developer to maintain item for three years following practical completion of item (notional value \$46,000)

*Contribution Land:*

- Development to procure dedication of item to the Council at no cost (notional value \$4,034,800)

(b) *Local roads – the following contributions are to be provided:*

- ***Marshall Mount Road (TMAP items 22, 23, 24 and 36 and Section 11 bus stops and bus shelters) contribution amount: \$5,702,400***

***Yallah Road contribution amount: \$633,600***

***With the total \$6,336,000 to be paid on the basis of four equal payments of \$1,584,000 prior to the release of the relevant residential subdivision certificate for the following:***

***200th residential lot (as developed in Wollongong LGA) (ie 25%);***

***400th residential lot (ie 50%)***

***600th residential lot (ie 75%); and***

***800th residential lot (ie 100%)***

*Indexation is to be applied annual in accordance with the Chain Price Index for Non Dwelling Building and Construction (CPI), published by the Australian Bureau of Statistics.*

(c) *Other Road Works – the following road works are needed to directly access to site and are therefore not to be included in the S94 framework. These will be required as per*



*conditions of approval and the timing will be determined as part of future subdivision approval.*

- *The upgrade of Calderwood Road from the site boundary to Tripoli Way extension (referred to in the TMAP as 32);*
- *Construction of the internal north-south sub arterial road (referred to in the TMAP as 33, 34 & 35);*
- *Upgrade of the intersection of the Illawarra Highway and Yellow Rock Road to provide site access (referred to in the TMAP as 37).*

### 3.0 JUSTIFICATION FOR PROPOSED MODIFICATION

#### 3.1 Contributions to Shellharbour City Council

The proposed modification to Condition C12 as it relates to the local contributions that are to be made to SCC relates to the VPA executed between SCC and Lendlease.

The executed VPA incorporates the full scope of local infrastructure contributions to be made to SCC for the Calderwood Urban Development Project, including those contributions relating to local open space, community facilities and local road works. It operates to the exclusion of section 94. Contributions to be imposed on all future development applications for the Calderwood Urban Development Project within the Shellharbour LGA will be dealt with under the terms of the VPA.

The executed VPA does not reduce / alter the quantum of local road works, open space and community facility contributions that are to be made to SCC as compared to that set out in Condition C12 in any way. Rather, it provides certainty as to the nature, quantum, cost and timing of each of those contributions.

The proposed modification seeks to delete the itemised contributions towards local road works, open space and community facilities within Shellharbour from Condition C12 and to reference the executed VPA instead.

The wording of the proposed amended Condition C12 is consistent with the approach already taken by DP&E in relation to the Stage 1 Project Application. DP&E has already modified the contributions condition under the Stage 1 Project Application to reference the executed VPA in lieu of the formerly stated monetary contributions in the same manner as the modification that is now proposed to be made to Condition C12.

#### 3.2 Local contributions to Wollongong City Council

##### 3.2.1 Open space contributions

The proposed modification does not reduce the nature or quantum of local open space contributions to be made to WCC as compared to that set out in Condition C12 in any way. The items of local open space within the Wollongong LGA identified in the proposed modification are the same local open space items that have been approved as part of the Concept Plan and are set out in the Contributions Schedules included at Appendix I of the Consolidated Concept Plan document (**Attachment C**).

There are no circumstances arising since determination of the Concept Plan Approval that influence the nature or quantum of local open space contributions that are required to be made.

The proposed modification seeks to identify the notional monetary value relating to each of the identified open space works that is to be paid by Lendlease, and the relevant maintenance period for each item that is to be provided for by Lendlease.

As the land that is to be dedicated to Council as open space is owned by Lendlease, and the cost of carrying out embellishment works, dedication and maintenance of works is to be fully met by Lendlease, the modification identifies a notional value of works to be borne by Lendlease rather than a monetary contribution to be paid to the Council. The final value of works will be determined once the detailed design of the open spaces is prepared and planning approvals obtained, but is expected to be generally consistent with the notional value identified.

The notional value of open space works that are proposed by Lendlease is based on the outline scope of works for each category of item as set out in Schedule E. This scope of works is in accordance with the scope of the items set out in the Contribution Schedules at Appendix I of the Consolidated Concept Plan document.

The purpose of inserting a notional value relating to each identified contributions item, and specifying a maintenance period as proposed is to provide certainty for both Council and the developer in relation to the scope of the contribution.

The modification is justified on the basis of providing certainty. It is consistent with the requirement of Condition C12 that the total cost of contributions that are to be made by Lendlease to WCC be determined in consultation with the DP&E.

### **3.2.2 Road works contributions**

#### ***Identified road upgrades***

As part of the determination of the Calderwood Concept Plan the external road infrastructure upgrades that are required in order to meet the increased traffic demand within the Wollongong LGA arising from the whole of the Calderwood Project were identified. The relevant external road infrastructure upgrades are specified in Condition C12(c) as Marshall Mount Road items (22, 23, 24 and 36), and Yallah Road item 25.

As part of Matter 10492 of 2012 the NSW Land and Environment Court re-confirmed that the road works items currently included in Condition C12(c) are the road works items within the Wollongong LGA towards which the Calderwood Project should contribute; subject to the inclusion of one additional item known as 'Section 11 bus stops and bus shelters' as part of the overall Marshall Mount Road upgrades.

This modification application upholds the findings of the NSW Land and Environment Court, and proposes the inclusion of the additional item 'Section 11 bus stops and bus shelters' into Condition C12, as a road works item towards which the Calderwood Project ought to contribute.

This modification application does not propose to remove any of the road works items that are currently included in Condition C12(c). Items 22, 23, 24, 25 and 36 will remain specified in the condition.

It is considered both reasonable and appropriate to include the additional item 'Section 11 bus stops and bus shelters' within the proposed amended Condition C12 on the basis that it has been determined under appeal that the Calderwood Project will generate a demand for the carrying out of this work.

There are no circumstances arising since determination of the Stage 1 Project Application that ought to reasonably influence the nature or quantum of road works contributions that are required to be made to WCC by the Calderwood Project.

WCC has mooted in its report to the Ordinary Meeting of Council dated 14 September 2015 that in its view there are a number of shortcomings with the determination of the NSW Land and Environment Court and that it has since progressed other documentation as part of the finalisation of its draft Planning Proposal for Yallah-Marshall Mount. WCC identify that the updated Council

documentation now includes several additional road works items that were not part of the Court's earlier consideration.

However, as also stated in the report to the Ordinary Meeting of Council dated 14 September 2015 the additional road works items now under consideration *"will all need to be built / upgraded without Calderwood"*. The additional road works items are demanded by the Yallah-Marshall Mount land release irrespective of any development occurring at Calderwood.

On this basis, it is concluded that the road upgrades identified in Condition C12, together with the additional road works item determined as necessary to be provided by the NSW Land and Environment Court are the works demanded by the Calderwood Project, and are the works that are required to be carried out in order to allow the Calderwood Project to proceed.

The additional items proposed by WCC relate to the development of the Yallah-Marshall Mount precinct and it is not therefore reasonable to seek contributions towards these additional works from the Calderwood Project. There is no nexus to the Calderwood Project.

Consistent with the principle clearly established by the NSW Land and Environment Court it would be unreasonable to require Calderwood to contribute towards road infrastructure items that are demanded by the future development in Yallah Marshall Mount, however are not demanded by the Calderwood Project.

Should WCC wish to pool the contributions towards local road works towards received from the Calderwood Project towards an alternative set of road works than that demanded by the Calderwood Project, Lendlease has no objection in principle.

#### ***Cost of road works items***

The Concept Plan Approval did not determine the costings of any of the road upgrade items specified in Condition C12. As previously stated, this is a matter required by Condition C12 to be determined in consultation with the DP&E.

This modification proposes to insert the monetary contributions that are to be made towards each identified road works upgrade into Condition C12.

The monetary contributions that are proposed to be inserted are based on the estimated cost of each road work item determined by:

- 1) identifying the appropriate road standard / design to be adopted; and
- 2) then applying an appropriate road construction cost to the adopted road standard / design.

The appropriate road design standard and road construction costs to be applied in relation to each of the road works upgrades identified at Condition C12 was a matter examined in detail by the NSW Land and Environment Court as part of Matter 10492 of 2012.

Specifically, the NSW Land and Environment Court examined three distinct elements in relation to the design assumptions to be adopted for the upgrade works:

- The general structure and width of the upgraded road formations;
- What should be the construction methodology for bridging of watercourses along Marshall Mount Road and Yallah Road; and
- What form of intersection control should be provided at the intersection of Marshall Mount Road and Yallah Road.

In respect of the standard of road formation the key contention between parties during the appeal was that WCC desired a future road standard of two full trafficable lanes in each direction with kerb and gutter on each side, and Lendlease's position - derived by a TMAP analysis - was that the standard for which contribution is appropriately required from

Calderwood is that of an upgraded standard of road formation with one trafficable lane in each direction but with re-engineered road shoulders to accommodate breakdowns and the like (as stated in paragraph 95 and 96 of the judgement).

The NSW Land and Environment Court determined that the standard of road formation for Marshall Mount Road (i.e. items 22, 23, 24 and 36) and Yallah Road (i.e item 25) was that to be derived from the TMAP modelling i.e one trafficable lane in each direction with re-engineered road shoulders to accommodate breakdowns and the like.

This finding of the Court was predicated on the proposition that if a higher standard of road is required / desired to be provided by WCC (namely two full trafficable lanes in each direction with kerb and gutter on each side) the demand for it will come from the future development of the West Dapto Release Area rather than as a consequence of the lesser contributory demand that would come from Calderwood. In other words, two full trafficable lanes is a demand derived from development other than Calderwood, it is not rendered necessary as a consequence of increased demand generated by Calderwood.

With respect to the standards of bridge structure to be adopted, the NSW Land and Environment Court accepted that a conventional plan (reinforced, prefabricated concrete sections) appropriately supported at relevant standing distances is the appropriate method of construction to be adopted for all bridges relating to both the Marshall Mount Road and Yallah Road works (paragraph 97 of the judgement).

The NSW Land and Environment Court therefore determined that the contribution rate to be applied across the whole of the Calderwood Project toward the future upgrade of Marshall Mount Road is to be based on the carriageway, intersection and bridge standards derived from the TMAP modelling, as generally summarised above (paragraph 100 of the judgement).

The total cost estimate for the upgrade of Marshall Mount Road (items 22, 23, 24 and 36) adopted by the NSW Land and Environment Court was \$16,186,951.

The total cost estimate for the upgrade of Yallah Road (item 25) adopted by the NSW Land and Environment Court was \$7,033,759.

The total cost estimate for Section 11 adopted by the NSW Land and Environment Court was \$165,792.

This modification proposes to insert monetary contributions for each road works item into Condition C12 that are directly derived from the costing of the road design standards for each item (correctly apportioned) determined to be appropriate by the NSW Land and Environment Court.

As above, there are no circumstances arising since determination of the Stage 1 Project Application that influence the nature or quantum of road works contributions that are required to be made.

WCC has mooted in its report to the Ordinary Meeting of Council dated 14 September 2015 that the costing of road works that it now wishes to provide in support of the rezoning of the Yallah-Marshall Mount land release area has increased substantially.

However, as identified above, there is no nexus between this increased cost and the nature of the road upgrade works that are reasonably needed in order to support the Calderwood Project.

On this basis, it can be concluded that the cost of the road upgrades identified in Condition C12, together with the cost of the additional item determined as necessary to be provided by the NSW Land and Environment Court remains as per the NSW Land and Environment Court determined.

***Apportionment of road works items***

In addition to road design standards and relevant costings, as part of Matter No. 10492 of 2012 the NSW Land and Environment Court examined in detail proposed apportionment factors for the contribution to be made towards each road works item as presented by Lendlease, and also by WCC.

The NSW Land and Environment Court did not accept Lendlease's proposed apportionment factors and instead determined that those presented by WCC should be applied.

As such, the Court determined that the following apportionment rates should be applied:

- Item 22: 46%
- Item 23: 27%
- Item 24: 26%
- Item 25: 9%
- Item 36: 26%
- Section 11: 100%

The NSW Land and Environment therefore determined to adopt the technical road construction standards and costings presented by Lendlease (refer to above), and the apportionment factors proposed by WCC.

Although Lendlease did not agree with the Court's findings in relation to the apportionment factors, this modification proposes to uphold the Court's decision in this regard.

The apportionment factors that have been applied to the road design standards and relevant costings for each of the identified road works upgrades in order to determine the monetary amounts included within the proposed amended Condition C12 are therefore consistent with the apportionment factors (as WCC did not agree with the Courts Findings in relation to design standards and costings) for each item determined to be appropriate by the NSW Land and Environment Court.

In summary, the monetary contributions proposed to be inserted into Condition C12 in respect of the local road upgrade works within the Wollongong LGA are based on the following information as determined to be both reasonable and appropriate by the NSW Land and Environment Court. The figures provided below are based on the attached spreadsheet prepared 9 September 2013. This led to establishing the final conditions in the orders of the Land and Environment Court dated 29 September 2013.

Item	Description	Total Estimated Cost (\$)	Apportionment to Calderwood Project	Contribution (\$)
22		\$6,277,766.26	46%	\$2,887,772
23		\$3,570,390	27%	\$964,005
24		\$5,866,621.26	26%	\$1,525,322
36		\$545,000	26%	\$141,700
Section 11		\$165,792	100%	\$165,792
Yallah Road (25)		\$7,033,759	9%	\$633,038

As above, there are no circumstances arising since determination of the Stage 1 Project Application that influence the apportionment fact that should be applied to the estimated cost of identified road works.

WCC has mooted in its report to the Ordinary Meeting of Council dated 14 September 2015 that the apportionment factors that should be applied to the Calderwood Project range between 0% to 68% for different items.

There is no logical basis for application of apportionment rates of this nature.

It is concluded that the cost of the road upgrades identified in Condition C12, together with the cost of the additional item determined as necessary to be provided by the NSW Land and Environment Court remains as per the NSW Land and Environment Court determination.

#### **4.0 CONCLUSION**

Pursuant to Section 94B of the Environmental Planning & Assessment Act, the Minister for Planning may impose conditions other than in accordance with an adopted Section 94 Contributions Plan.

The proposed modification to Condition C12 fully accords with the executed VPA with Shellharbour in relation to contributions to be made in respect of development within the Shellharbour LGA and is also fully consistent with the wording of Modification 1 already made to the Stage 1 Project Application by the DP&E.

The decision of the NSW LEC provided clear and express guidance by identifying a framework for contributions across all future stages of the Calderwood Project. The NSW LEC examined the scope of contributions that are reasonably payable in respect of the Calderwood Urban Development Project to both SCC and WCC towards human services, open space and local road works in great detail, and the proposed modification to Condition C12 is entirely consistent with the findings of the LEC in this regard.

In accordance with the findings of the NSW LEC, Lendlease is proposing that monetary contributions towards local road works within the Wollongong LGA be made on a per dwelling basis across the whole of the Calderwood Urban Development Project. As WCC has resolved to not enter into a VPA with Lendlease that would facilitate this outcome, and given that (despite its recent resolution) WCC cannot otherwise require the payment of monetary contributions under Section 94 over the whole of the development (given the terms of the executed VPA with SCC), Lendlease has identified that the Minister is in a position to facilitate this outcome via the proposed modification to Condition C12.

Lendlease continues to offer that a whole of project contribution be made to WCC towards local road works in good faith on the basis that the Minister upholds the findings of the LEC with respect to the reasonable scope of the required infrastructure, its cost and apportionment to the Calderwood development.

The proposed amendments seek to provide ongoing certainty for Lendlease in the delivery of this key project.

In view of the above, and in the absence of any adverse environmental impacts, we support a S75W Modification Application to modify the Concept Plan Condition C12 (Mod 1).

I trust this is all the information you require at this stage, however should you have any queries regarding this matter or require any further particulars then please do not hesitate to contact me on 9956 6962 or [lbull@jbaurban.com.au](mailto:lbull@jbaurban.com.au).

Yours faithfully,



A handwritten signature in blue ink, appearing to read 'Lesley Bull', with a stylized, cursive-like script.

Lesley Bull  
*Director*