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Acting Director  
NSW Department of Planning and Environment  
Modification Assessments  
GPO Box 39  
SYDNEY NSW 2000  
*Attention - Mr Anthony Witherdin*

Your Ref:	MP 09 0082 MOD 1
Our Ref:	Z16/123036
File:	MP-2009/82/A ESP-100.05.020
Date:	7 June 2016

Dear Mr Witherdin

## **MP-2009/82/A MODIFICATION 1 – CALDERWOOD URBAN DEVELOPMENT PROJECT**

Reference is made to your letters of 18 and 23 May 2016 seeking input into the proposed modification of the Calderwood Urban Development Concept Plan (MP-09/0082) lodged by JBA on behalf of Lend Lease.

Council **objects to the modification in the strongest possible terms.**

This most recent request from Lend Lease follows a disturbing history:

- In December 2010, the former Minister for Planning, Tony Kelly, approved the Concept Plan for the Calderwood Land Release under Part 3A. This approval was granted in the absence of any local infrastructure plans.
- The out-of-sequence Calderwood approval was contrary to the Regional Plan and was opposed at that time by Wollongong, Shellharbour and Kiama Councils on this basis.
- In April 2012, the Planning Assessment Commission refused consent to Stage 1A of the land release. The Planning Assessment Commission's refusal is made more significant in the context that the Part 3A Concept Plan had been approved.
- The Land and Environment Court overturned the Planning Assessment Commission's refusal and granted consent to Stage 1A of the land release. In 2013 the Land and Environment Court was required to consider and determine an appropriate Section 94 development contribution for both Wollongong City Council and Shellharbour City Council given that no local infrastructure plans had been developed.
- The Court's determination of \$1,320 per lot in 2013 was provided in the context that:
  - The Yallah-Marshall Mount (West Dapto Stage 5) was not rezoned and future development outcomes were uncertain.
  - There was no available flood study for the Duck Creek catchment. As a consequence, flooding constraints were not properly considered in cost estimates for Marshall Mount and Yallah Roads.
  - Given the status of planning in Yallah-Marshall Mount, road upgrades were costed on the basis of this area retaining a rural (rather than future urban) land use.

Clearly, as the Department is aware, the context of the 2013 Court decision does not reflect the current infrastructure planning which has been undertaken for West Dapto and Yallah-Marshall Mount (Stage 5).

Council is still amazed that the Department supported the Lend Lease Concept Plan and rezoned the Calderwood land without an infrastructure plan in place, or an understanding of the infrastructure demands and costs associated with the development.

### ***Proposed Modification 1***

It is acknowledged that Lend Lease and Shellharbour City Council have signed a Planning Agreement. However, contrary to the advice provided by JBA on page 6, the Planning Agreement does apply to land in the Wollongong City Council Local Government Area, as indicated by Schedule 8 Applicable Area of the Agreement, which depicts land in both Local Government Areas. Council remains concerned that the two parties signed a Planning Agreement that includes land within the Wollongong City Council area.

Further, the draft Planning Agreement lodged by Lend Lease with Wollongong City Council in 2014 proposed a contribution from development in both Council areas to Wollongong City Council, and addresses the proposed 4,800 lots of the total development.

The contribution amount offered by JBA/Lend Lease has not changed since the Land & Environment Court case of 2013. This is despite CPI increases and land increasing in value by some 30%. The acceptance of 5 year-old rates will immediately mean that any potential income will not meet the increased infrastructure costs.

As the JBA letter notes, Council considered and rejected the Lend Lease Planning Agreement offer in 2015, as it did not represent good value for the community. Council has prepared a draft Section 94 Plan for the Calderwood area, which is on exhibition until 28 June 2016. A copy of the Council report and draft Section 94 Plan are attached for your information.

While the value of the works has not changed, we note that JBA have amended the proposed contribution payment schedule to only relate to the proposed 800 lots within the Wollongong Local Government Area, rather than divided against the total development. The proposal is unclear as to what will be the contribution for the 801st lot or additional development beyond the estimated 800 lots. The proposal does not address what the contribution will be for additional development, such as dual occupancies that may be constructed on lots sold by Lend Lease.

Please note that the Department's Section 94E Direction of 21 August 2012 – Schedule 2 clause 14 relating to the West Dapto Release Area includes the Calderwood Urban Release Area within the Wollongong LGA. Under the Direction, Council can levy \$30,000 per lot for the 800 lots within the Wollongong LGA, which equates to \$24 million. Accordingly, Council is not going to settle for Lend Lease's \$16.8 million offer.

Council has also lodged objections with Shellharbour City Council against the development applications lodged within the Calderwood area, as the local infrastructure issues remain unresolved.

### ***Local Infrastructure***

The proposed contribution to Wollongong City Council relates to two components of local infrastructure, namely roads and open space.

#### ***Local Roads***

The road infrastructure component relates to Yallah Road and Marshall Mount Road. As noted by JBA the road infrastructure was considered in the 2013 Land and Environment Court case. Council does not believe that the 2013 Land and Environment Court case remains relevant to the development beyond Stage 1. As noted previously, the Court was not privy to a range of more recent information which may have altered its judgement, including:

- The development of Yallah–Marshall Mount was not considered. Yallah was regarded as a rural area, as Council had at that time not approved the draft Planning Proposal for exhibition. Council has now exhibited and endorsed a Planning Proposal to rezone the area. The Planning Proposal will be finalised when the infrastructure funding issue is resolved.
- The cumulative effect of both Yallah–Marshall Mount and Calderwood on traffic volumes and road design was not considered. Therefore a 2 lane road (not 4 lane) road design was considered.
- The Duck Creek Flood Study and Floodplain Risk Management Study and Plan were still in preparation – so the flood levels were not known, and the required bridge lengths were not known. These studies and information are now available, so more accurate designs and costings have been prepared.

- The West Dapto Section 94 Development Contribution Plan did not include a “flood access” route for Yallah–Marshall Mount.

As part of the planning for the Yallah-Marshall Mount area, Council has undertaken substantial traffic analysis and modelling. This modelling confirms the impact Calderwood will have on the local road network, including the need to widen existing roads, and construct new roads. Council has considered and modelled the road network for the Yallah-Marshall Mount area, both with and without Calderwood.

This analysis, together with the (now costed) local road designs, have been used to inform the preparation of a Draft Calderwood Development Contributions Plan. As mentioned previously, a copy of this Draft Plan is attached.

#### *Open space*

The land values associated with the open space areas, at some \$1.3 - \$3.1 million / hectare, were over inflated in 2014 and despite the increase in land values remain over inflated. JBA have indicated the land value of District Park D1 (page 8) to be \$1.383 billion. Further, the nominated areas have never been agreed to by Council, and are designed to service the Lend Lease community, rather than the broader population. Council will have the long term maintenance responsibilities for these areas, so it is important that Council can fund the maintenance, by having input into the location, size, dimensions and embellishment of the areas. In addition, the nominated locations do not have regard to the proposed open space in the surrounding areas.

An open space buffer around the historic Marshall Mount House is supported, however the appropriate size and orientation of the curtilage has not been determined.

I reiterate that Council objects to the proposed modification and I will be seeking a meeting with Ms Carolyn McNally, the Secretary of the Department, as a matter of urgency, to enable Council to further discuss these concerns in person.

Should you require further information please contact Council's Director Planning & Environment – Future City and Neighbourhoods, Mr Andrew Carfield on 4227 7284.

Yours faithfully



David Farmer  
**General Manager**  
Wollongong City Council  
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*Attach*