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Attn: Jane Flanagan
Modification Assessments
Department of Planning & Environment
GPO BOX 39
SYDNEY NSW 2001

Our Ref: P17/28375
File: MP-2009/82/B
Date: 21 April 2017

Dear Ms Flanagan

RESPONSE TO SUBMISSION RELATING TO THE MODIFICATION TO THE CALDERWOOD CONCEPT PLAN (MP 09_0082 MOD 2)

Thank you for providing Council with the opportunity to respond to the letter prepared by JBA on behalf of Lendlease Communities ("JBA letter") dated 3 April 2017.

Council notes the amendment to the proposal and the attachments that accompany the JBA letter.

The amendment to the proposal comprises of the amended wording to new condition B7 to be added to Schedule 2, Part B of the Concept plan as follows:

Condition B7 – Riparian, Environmental Reserve and Open Space Land

1. *The land identified on the Special Subdivision Area plan prepared by Lendlease and dated March 2017 may be subdivided irrespective of the size of the lots that are created.*
2. *Development consent must not be granted for a residential purpose or for an ecotourism facility on land identified on the Special Subdivision Area Plan that is zoned E3 Environmental Management unless the size of the lot on which the development is proposed is equal to or greater than the relevant contiguous area of land zoned E3 Environmental Management as at March 2017.*
3. *In granting consent to the subdivision of land identified on the Special Subdivision Area plan the consent authority must take into consideration the following:*
 - a. *A plan showing whether each of the lots to be created as part of that application is proposed to be retained in public or private ownership, and details of the public purpose of any lands that are proposed to be dedicated to the relevant Council;*
 - b. *A plan showing the relationship of any lot to be created as part of that application and proposed to be retained in private ownership to the anticipated pattern of future development under the Concept Plan on immediately adjoining land;*
 - c. *Whether the permissible uses of any lot proposed to be created as part of that application and retained in private ownership (whether or not the lot also includes land located outside of the Special Subdivision Area) is consistent with the objective of protecting the ecological, scientific, cultural or aesthetic values of the land identified on the Special Subdivision Area plan.*

Wollongong Local Government Area (LGA) contains land zoned R1, R5, E2 and E3 in the Calderwood site pursuant to State Environmental Planning Policy (State Significant Precincts) 2005 ("State Significant Precinct SEPP") and our comments are provided in this context.

The modification seeks the ability to allow adjoining E2 Environmental Conservation, E3 Environmental Management and RE1 Public Recreation land, identified as “Special Subdivision Area” to form part of any future created lot with B4 Mixed Use, R1 General Residential, R5 Large Lot Residential and RU2 Rural Landscape. However, with no limitations on amount of E2, E3 and/or RE1 zoned land that forms part of a future proposed lot created with split zoning.

No minimum lot size in the Special Subdivision Area would allow for the further fragmentation of E2 and E3 land that will be inconsistent with the objectives of these zones and the intent of the Calderwood Concept Plan (“Concept Plan”).

It is noted the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 in regards to Part 2, Division 1, Subdivision 38 is applicable to the development whereby subdivision of land for the purpose of creating a public reserve or excising land for a lot intended to be used for public purposes could be considered exempt development. In this instance the requirement of modification would not be considered necessary as there is existing provision to enable this part of the development.

Furthermore, it is considered there is adequate developable area within the R1 and R5 zoned land for the permissible land uses and with the provisions in the Exempt and Complying Development Codes SEPP as discussed above would assist in the delivery of the Calderwood Development. Based on the Lendlease response that indicates road corridors, public recreational parks, drainage etc which as a rule be dedicated to the relevant council.

It is considered that utilising a provision similar to clause 4.1A in Wollongong Local Environmental Plan 2009 would allow for a more appropriate mechanism to ensure subdivision occurs in a manner that promotes suitable land uses and development that has been adopted within the Standard Instrument rather than the proposed modification.

Lendlease provides in the response that the modification sought to the Concept Plan is for the inclusion of a new condition and no amendments are sought to amend Part 28 Calderwood site of State Significant Precinct SEPP.

It is considered that the modification sought may result in inconsistencies between the Concept Plan and the State Significant Precinct SEPP with regards to Part 28, Clause 18 (4) Minimum subdivision lot size and Clause 23 (7) Exception to development standards – other developments.

18 Minimum subdivision lot size

(4) Despite any other provision of this Part, development consent must not be granted for the subdivision of any land in the Calderwood site if the subdivision would create a lot smaller than the minimum lot size permitted for the land immediately before the commencement of this clause.

23 Exception to development standards – other developments

(7) Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation.

The current Lot Size Map does not indicate a minimum subdivision lot size for the land zoned E2 and E3 however in applying Part 28 Clause 18(4) it could be interpreted that the minimum lot size for this land is 40 hectares. As prior to the commencement of this clause (if considered prior to the gazettal of the State Significant Precinct SEPP) the subject land was zoned 1 Non-Urban zoned land pursuant to Wollongong Local Environmental Plan 1990 where a minimum of 40 hectares required for each allotment created.

In addition, if the proposal does not meet the required minimum subdivision lot size Clause 23 allows for the provision to consider an exception to a development standard, however subclause 7 explicitly excludes the ability in E2 zoned land. The modification would allow for subdivision of E2 land and this appears to undermine the intent of the State Significant Precinct SEPP.

Clarification is sought on the relationship of State Significant Precinct SEPP with the Concept Plan if the modification request is supported. As discussed above, it appears the modification may present a number of inconsistencies and conflicts in the assessment of any future development application for the subdivision of land within the Calderwood site.

The consistency and certainty in the management biodiversity values, riparian corridors and environmental and reactional water quality for land use planning in greenfield developments is embedded in the Directions and accompanying Actions of Illawarra-Shoalhaven Regional Plan ("Regional Plan") (Department of Planning and Environment, 2015).

It is considered that the potential effect of the proposed modification will result in the fragmentation of areas of high or special ecological, scientific, cultural and/or aesthetic values will be in conflict with, or has not considered the Illawarra-Shoalhaven Regional Plan with regards to the following:

- Direction 2.3 Deliver housing in new release areas best suited to building new communities, provide housing choice and avoid environmental impact
- Direction 2.4 Identify and conserve biodiversity values when planning new communities
- Direction 5.1 Protect the region's environmental values by focusing development in locations with the capacity to absorb development
- Direction 5.4 Secure the health of coastal landscapes by managing land uses and water quality

Further discussion of each direction and accompanying actions in the modification is discussed in greater detail at Attachment 1 of this letter.

Despite the inconsistencies the modification may present with the Concept Plan and State Significant Precinct SEPP, the proposal will enable the further fragmentation of the existing E2 and E3 zoned land within the Calderwood site to be inconsistent with the objectives of these zones and not considered to promote subdivision to occur in a manner that promotes future suitable land uses and orderly development. In addition as detailed in Attachment 1 of this letter, the modification appears to have not considered and is likely to be in conflict with the Directions and accompanying Actions of the Illawarra –Shoalhaven Regional Plan.

Therefore, Council does not support the modification request to the Calderwood Concept Plan in its current form.

It is considered that E2 and E3 zoned land should be consolidated into riparian areas and public reserves to align with zone objectives and not be further subdivided. It is recommended that any future modification request of this nature should be sought to the State Significant Precincts SEPP rather than the Concept Plan. If the Department is to consider the provision that enables subdivision of split zones for the Calderwood site, it is suggested a clause similar to the wording of Clause 4.1A in Wollongong Local Environmental Plan 2009.

In considering Council's submission, it is noted that the NSW Department of Planning and Environment local office is currently working with Wollongong and Shellharbour Councils and other key stakeholders to progress priority actions from the Regional Plan including those highlighted above. The implementation of the priority actions has, and continues to, involve coordination and facilitation of established working parties, focus groups and workshops. Concern is raised that the proposed project modification, as highlighted above, will conflict progress on the current strategic directions and actions to provide consistency and certainty in the management biodiversity values, riparian corridors and environmental and reactional water quality for land use planning locally and in the region.

Please contact Vivian Lee, Senior Development Project Officer on 4227 7314 if you wish to discuss the matter.

This letter is authorised by

Andrew Carfield
Director Planning & Environment – Future City and Neighbourhoods
Wollongong City Council
Telephone (02) 4227 7284

Attach

Directions from the Illawarra Shoalhaven Regional Plan

The modification to the Calderwood Concept Plan will be in conflict with, or have overlooked the following from the Illawarra-Shoalhaven Regional Plan:

- *'Direction 2.3 Deliver housing in new release areas best suited to build new communities, provide housing choice and avoid environmental impact'*, where the proposed project modification would not be consistent with the intention that 'The land use planning process will identify and protect natural corridors and waterways'.
- *'Direction 2.4 Identify and conserve biodiversity values when planning new communities'* where it is entirely foreseeable there will be diminished certainty that the E2 and E3 zone objectives will be met in view of an unquantifiable level of fragmentation over a mosaic of land ownership.
- *'Direction 5.1, Action 5.1.1 Avoid, minimise and mitigate the impact of development on significant environmental assets'*, where noting the specific actions and outcomes;
 - Marshall Mount Creek within the Wollongong LGA is mapped in Figure 1 as supporting 'High Environmental Values'.
 - Marshall Mount Creek within the Wollongong LGA is mapped by NSW DPI as 'Key Fish Habitat'.
 - The proposed project modification reduces the long term likelihood that 'areas of important environmental value that need to be protected' would be consistently protected over an unquantifiable level of fragmentation throughout a mosaic of land ownership.
 - There would be diminished opportunity for Councils in assessing development applications to consider how unavoidable impacts can be managed through particular planning controls or other environmental management mechanisms.
- *'Direction 5.1, Action 5.1.3 Protect the region's biodiversity corridors in local planning controls,'* noting that consideration be given to 'appropriate land uses within the corridor to maintain and, where possible, enhance ecological connectivity.' and the statement that the 'NSW Government will look for opportunities to improve the functioning and resilience of corridors in strategic planning.'
- *'Direction 5.1, Action 5.1.4 Create a consistent approach to protect important riparian areas in planning and development controls'* that references the DIPNR (2004) Riparian Corridor Management Study (RCMS) and highlights that the information and recommendations including those relating to land use planning have 'not been consistently applied in Council local environmental plans' and where a commitment is made that 'The NSW Government will review riparian management outcomes to deliver greater consistency and certainty in the way they are applied in development controls.'
- As the foundation for Action 5.1.4 the following is noted from the RCMS which the proposed project modification is considered to be in conflict with:
 - 'At the Local Government level, the local environmental plan (LEP) is probably the most important planning tool to best implement the detailed riparian outcomes set out in this Study. For example, the LEP can look to the zoning table to provide a zone that contains key objectives to achieve the Study outcomes and permits/prohibits appropriate development. Alternately, the LEP can contain special provisions that inform the type of development or the type of consideration to be made to ensure the value of the riparian lands results.'

- 'There is a multitude of small decisions continuing to occur in any single catchment over many years. It is imperative that there is some way to ensure the many small decisions work towards a larger vision. An integrated management plan prepared at the local level for strategic catchments can play a role in delivering consistent decisions towards long term outcomes. A series of integrated plans could be developed over the medium term for key/strategic catchments initially.'
- Section 5.2 General Principles of Riparian Management
- *'Direction 5.4 Secure the health of coastal landscapes by managing land uses and water quality'* which invokes that coastal landscapes such as Lake Illawarra need to be protected by adopting a strategic approach to 'provide certainty about future land use and to preserve the unique characteristics of the natural environment.'
- *'Direction 5.4.1 Action 5.4.1 Protect sensitive estuaries and coastal lakes'* where it is recognised that for these natural resources, including Lake Illawarra 'A higher level of management intervention is needed to protect, maintain and/or restore the water quality and ecological condition of these sensitive estuaries.'
- *'Direction 5.4, Action 5.4.2 Implement a risk-based decision-making framework to manage water quality and waterway health outcomes for Lake Illawarra'*, where the Lake Illawarra catchment is a priority for adopting the OEH/EPA risk-based decision-making framework to integrate NSW Water Quality Objectives into the strategic planning process and the NSW Government has committed to:
 - Apply the framework through planning and infrastructure programming of development sites within Lake Illawarra catchment.
 - Work with Councils on implementation with support from stakeholders such as Wollongong and Shellharbour Councils.
- *'Direction 5.4, Action 5.4.3 Implement a risk based decision-making framework to manage water quality and waterway health for all coastal lakes and estuaries in the region where development is planned, with priority given to listed sensitive lakes and estuaries'* and where;
 - Lake Illawarra is identified as 'sensitive'.
 - The decision framework 'will inform consideration of water quality outcomes in all strategic planning decisions for the region'.
 - The NSW Government is committed to applying the risk-based decision-making framework for all coastal lakes and estuaries giving priority to sensitive waterbodies such as Lake Illawarra.