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4 May 2018

Modification Assessments
Department of Planning and Environment
320 Pitt Street SYDNEY 2000
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Attention: Ms Jane Flanagan

Dear Sir/Madam,

RESPONSE TO SUBMISSIONS RELATING TO MODIFICATION 5 TO THE CALDERWOOD CONCEPT PLAN (MP 09_0082 MOD 5) (File: DE-2018/34)

RBWI Pty Ltd is pleased to present this "Response to Submissions" report in respect of Mod 5 to the Calderwood Concept Plan. We note that at the time of writing this response, three submissions have been made, namely:

1. Submission by Wollongong City Council (p18/22768) dated 6 April 2018
2. Submission by Shellharbour City Council dated 29 March 2018 and
3. Submission by Office of Environment and Heritage (sf18/234273) dated 3 April 2018.

All matters raised by the submitters have been addressed in the RTS duly enclosed.

We note whilst preparing this Mod 5 Response to Submissions report, Mod 2 has now been determined by the Department. Whilst this approval puts beyond any doubt that E3 land can be subdivided into a single lot (with a primary and secondary dwelling without attaching a small portion of R1 land), it has introduced a new land category of Environmental Reserve Lands (ERL).

This has only become apparent from reading the IPC's determination report. The category of Environmental Reserve Lands (with very specific requirements pertaining to VMPs) was not included in the original application nor exhibition material pertaining to Mod 2. The further amendments to Condition C3 referred to in the IPC's Determination Report would have seem to have occurred after the Department's Recommended Notice of Modification, which did not propose to extend the application of amended Condition C3 to the Blissett E3 land. The amended Condition C3 has significant effects on the development potential of the Blissett land, yet has been resolved without any consultation with RBWI and/or the Blissetts, despite the submission made by RBWI on the environmental attributes and long-term management of the Blissett E3 parcel.

The implications of the ERL classification mean that the Blissett E3 land is now subject to a more specific VMP (to be submitted at the DA stage) which is to *demonstrate how the proposal will contribute to fauna habitat connectivity*. Even though any VMP would support ongoing private ownership of the Blissett E3 land, the relevant E3 parcel (1.4ha) is significantly smaller than the preferred minimum size of 4ha for ecological sustainability purposes and totally isolated on all sides by proposed residential development. It is difficult to conceive how any fauna habitat connectivity could be achieved. Such a proposition appears contrary to the statements by the Department in their Assessment Report (4th para) that *“such changes would not change the development potential of the environmental zoned lands”*.

The need for such specific VMPs described under amended condition C3 was never a requirement of the original concept plan approved by the Minister, which only called for VMPs to be prepared for the Environmental Reserves identified on the Open Space Network included in Appendix L of the PPR. Unlike the other four ERLs identified in the Mod 2 Special Subdivision Areas map, which were also classified as Environmental Reserves on the Open Space Network included in PPR Appendix L, the Blissett E3 land was not previously classified as an Environmental Reserve in the PPR (for what we think is good reason).

RBFI's solicitor will be writing separately to the Department as to the apparent failure to consider RBWI's submission in relation to Mod 2, and how this may give rise to grounds for judicial review of the Mod 2 determination.

Procedural matters relating to Mod 2 aside, we believe the Mod 5 application currently before the Department provides the opportunity to set an appropriate minimum size that preserves the biodiversity values of the land whilst realising improved planning outcomes corresponding to the context of the surrounding development.

Yours faithfully,



Paul Nichols
Project Manager
RBWI Pty Ltd

CALDERWOOD CONCEPT PLAN MODIFICATION 5 (MP 09_0082 MOD 5)
RESPONSE TO SUBMISSIONS, 15 APRIL 2018
BY RBWI PTY LTD

SUBMISSION BY WOLLONGONG CITY COUNCIL (P18/22768) 6 APRIL 2018

Comment by Wollongong City Council	Response by RBWI
<p><i>(1). Wollongong City Council (WCC) understands that the subject land is subject to a number of current matters including:</i></p> <ol style="list-style-type: none"> <i>1. Calderwood Concept Plan (CCP) Modification 2 (MOD 2);</i> <i>2. Proposed CCP Modification 5 (MOD 5), subject of this response and</i> <i>3. DA-0569/2017, a subdivision development application for Lot 1 DP 558196 under assessment by Shellharbour City Council (SCC).</i> <p><i>WCC has provided submissions to the Department in relation to item 1 above however, Council has only been recently aware that MOD 2 was approved by the Independent Planning Commission on 27 March 2018. WCC also provided a submission to SCC in relation to item 3 is attached for your information.</i></p> <p><i>Due to the three above matters it is not clear to Council what is proposed for this site as all three items above have and propose varied outcomes.</i></p>	<p>Calderwood, like other large-scale developments in the region such as West Dato and Tallawarra, is subject to a myriad of planning controls. These plans apply at different scales, different time periods and for different purposes. Whilst confusing, the general principles of hierarchy of control (ie, state > regional > local as well as latter > former) would apply in determining which controls apply.</p> <p>Calderwood has an approved State Significant Site zoning, a Part 3A Concept Plan and an initial Part3A Project Approval. Each of these plans/documents applies different controls to the site.</p> <p>The Concept Plan has been modified on four occasions to date. This current modification is the fifth version since the Concept Plan was approved. As discussed below and in some detail in the Mod 5 s.75W Modification application, Lendlease initiated Mod 2 for an entirely different purpose to Mod 5, which was to facilitate the subdivision of E2 and E3 land to create lots to be dedicated to the relevant local council and to create lots to be <u>retained and managed by Lendlease</u> in private ownership. It has little direct relevance to Mod 5. If approved, Mod 5 will supersede all others (including Mod 2) to the extent of the inconsistency, unless there are statements to the contrary.</p> <p>At the Pre-Lodgment meeting for DA-0569/2017, Shellharbour Council identified legal difficulties in approving a DA for subdivision where any lot a is less than the minimum lot size, advising they could only consider a subdivision of land involving the Blissett E3 parcel via a Modification to the Concept Plan. With Mod 2 now approved, the Blissett E3 parcel can be subdivided into a single allotment. It can potentially be subdivided into smaller lots via a further modification (ie, Mod 5). Insofar as DA-0569/2017 was concerned, the applicant thought it best to take a cautious and non-adversarial approach in applying for development that was not in contention from the outset rather than cause the whole site to be questioned. As noted in the Statement of Environmental Effects and plans that that supported DA-0569/2017, there is no current development application to subdivide the E3 land within the Blisset site into more than one lot.</p> <p>There is no apparent confusion with the current DA, and any lingering concerns can be suitably addressed via a determination of Mod 5.</p>
<p><i>(2). In this specific S.75W modification application the applicant refers to proposed “‘environmental lifestyle’ lots of say >2,000m² parcels.” However, the</i></p>	<p>A variety of lot sizes have been considered for subdivision of the Blissett E3 parcel up to 5,000m². The report talks about a typical lot size of 2,500m² (ie, ¼ hectare) but a minimum lot size of 2,000m² was chosen as it was simply a round number in multiples of 1,000m². A conceptual layout has been prepared which complies with the minimum lot size of 2,000m² and this is included in the S.75W Mod 5</p>

<p><i>preferred option referred to in Section 4.2 of the applicant's report is typ. 2,500 as preferred.</i></p> <p><i>Council recommends that the Department seek clarity from the applicant as to what specifically is proposed and how the proposal relates to items 1 and 3 above prior to finalising assessment of the proposed modification.</i></p>	<p>application (refer Dwg 1026 Rev 3 on p.24). There are five lots proposed with sizes ranging from 2,260m² to 3,280m². The final sizing of each lot will be determined following more detailed assessment but subject to a minimum lot size of 2,000m². Based on geometric and topographic constraints, 5 lots will be the maximum lot yield.</p> <p>There is no ambiguity as to what is proposed. That is, a minimum lot size of 2,000m².</p>
<p><i>(3). It appears to Council that this modification request would be inconsistent with the recently approved MOD 2 to the Calderwood Concept Plan and the E3 zoned land on Lot 1 DP 558196 where a minimum lot size of 1.4 hectares was approved for this identified Environmental Reserve Lands in the Special Subdivision Areas Map.</i></p>	<p>The S.75W Mod 5 application report (pp 21–22) has gone to lengths to highlight the difference between the Blissett E3 land (subject of Mod 5) and the balance of the Calderwood 'non-urban' lands, which are now subject to the Mod 2 approval. These differences are summarised as follows:</p> <ol style="list-style-type: none"> 1. <i>The Blissett E3 is entirely cut off from other environmental lands that are the subject of the Calderwood Concept Plan. Other environmental lands are contiguous with a creek or bushland reserve.</i> 2. <i>The Blissett E3 will soon be entirely surrounded by urban development. The current proposal has a perimeter road around it which is consistent with best practice urban design.</i> 3. <i>The Blissett E3 land is not identified as Open Space and Citywide Bushland in Appendix C04 of the Consolidated Concept Plan.</i> 4. <i>The Blissett E3 land is not identified as Rural Landscape/Lifestyle in Appendix C04 of the Consolidated Concept Plan.</i> 5. <i>The Blissett E3 land is not identified as Environmental Reserve in Appendix C04 of the Consolidated Concept Plan.</i> 6. <i>The Blissett E3 land is neither a riparian/ environmental corridor or an environmental reserve, and so amendment Condition B7 (2) does not directly in this regard.</i> 7. <i>The Blissett E3 land is small at only 1.5-ha which is less a third of the size recommended in the Bio-Banking Assessment (4.0ha) for the long-term viability of an isolated bushland parcel.</i> 8. <i>The Blissett E3 land, marked as the distinctive "E3-09" purple patch in the middle of the Proposed Open Space Ownership Map above is one of only 3 privately held parcels in the entire Calderwood Concept Plan.</i> 9. <i>Appendix I of the Preferred Project Report (PPR) lists the preferred ownership as private and suitable for 'eco low development'.</i> 10. <i>The land is not classified as being fire prone, European or Aboriginal heritage significance.</i> 11. <i>The land has low ecological significant per advice from Dan Williams Principal Environmental Scientist/ NSW Leader Bio-Banking from GHD (see below).</i> 12. <i>The possibility that the Blissett E3 land would be transferred to a public land manger is improbable. Council has indicated they have no desire to assume ownership of small fragmented reserves.</i>

	<p>On this basis, it would appear that the Blissett E3 land has been not been adequately considered to date in the current planning process for the Calderwood lands. The approval of Mod 2 does little the change this situation given the primary purpose of Mod 2 is to facilitate a change in land ownership, ostensibly from the private developer (Lendlease or its landowner clients) to the relevant public land manager (ie, Shellharbour City Council, Wollongong City Council, Department of Lands/Bio Bank/Trust).</p> <p>The point cannot be overstated that Blissett E3 land is unique in the context of the Calderwood Concept Plan.</p>
<p><i>(4). Council would also recommend that any change to the concept approval contemplated by the Department is consistent with the development standards prescribed for Calderwood in State Environmental Planning Policy (State Significant Precincts) 2005 and the recently approved MOD 2 to the Calderwood Concept Plan.</i></p>	<p>The works approved under Mod 2 are not inconsistent with any development standard prescribed for Calderwood in State Environmental Planning Policy (State Significant Precincts) 2005. In particular, the SEPP permits a range of rather intensive landuses within the E3 zone and prescribes no minimum allotment size.</p> <p>For the reasons outlined above, the Blissett E3 land is in a unique position in that:</p> <ul style="list-style-type: none"> • It is separated from other such conservation lands • It is not part of the larger Johnsons Spur conservation area • It is not classified in the Concept Plan as Open Space, Citywide Bushland, Rural Landscape/Lifestyle or Environmental Reserve • It will soon be completely surrounded by conventional houses thus negating any opportunity to link it to adjoining reserves • It is not classified as being fire prone, European or Aboriginal heritage significance • It is not proposed to be transferred to Council and/or other public land managers • It has been identified in the PPR as being suitable for 'eco low development' and • Its long-term ownership arrangement is for it to be privately owned although under a management regime that is currently unclear.
<p><i>(5). Council also asks that the Department consider local infrastructure demand implications of any decision to modify the current concept approval that would result in additional residential development. Details of our specific concern in this regard are outlined in our attached submission to Shellharbour City Council regarding DA-0569/2017.</i></p>	<p>The additional lots proposed in the E3 zone would have minimal demand on local infrastructure. There is no proposed transfer of land to the public and all infrastructure necessary to service the site will be developed and paid for by the developer.</p> <p>Notwithstanding, we note Council's comments and can confirm that the developer has agreed to enter into separate agreement with both Shellharbour and Wollongong Councils as well as the Department of Planning regarding appropriate infrastructure agreement via a VPA or payment of S.94 and SIC charges on a per dwelling basis.</p>
<p><i>(6). WCC was not formally notified of this modification and therefore Council requests that <for> any future modifications WCC be notified.</i></p>	<p>This is a matter for DPE and not particularly relevant to this s.75W. Having said that, RBWI has maintained an open and transparent communication with both Wollongong and Shellharbour Councils during the course of this application.</p>

SUBMISSION BY SHELLHARBOUR CITY COUNCIL 29 MARCH 2018

Comment by Shellharbour City Council	Response by RBWI
<p><i>(1). The proposed modification to the Concept Plan Approval proposes to introduce a minimum lot size of 2000m² on the E3 zoned land on Lot 1 DP 558196. It does not however specify how that is proposed to be facilitated through amending the Concept Approval. It would appear that the application refers to amending the Min Lot Size Map contained in the SEPP or else is proposing a Special Subdivision Map be introduced into the Concept Approval (referring to the subject land only) similar to the approach taken in the current Mod 2 of the same Concept Approval which is yet to be determined.</i></p> <p><i>Without the detail of how the applicant proposes to amend the Concept Approval to allow the nominated Minimum Lot Size on the E3 land affected and subsequent adequate environmental impact assessment it is difficult for Council to offer informed comments.</i></p>	<p>Section 4.4 of the S.75W Mod 5 application report notes that the proposed development could be undertaken by either a variation to the minimum allotment size for the E3 parcel on the Blissett land only (say min 2,000m²) or by an approval to the Calderwood Concept Plan itself.</p> <p>There is no need to change other controls such as permissible land uses, which would remain unchanged. There is also no change to the proposed classification of such land, designation as approved riparian / environmental corridors and environmental reserves or permissible land uses.</p> <p>RBWI has left the decision of the appropriate planning mechanism with the Department. No other changes to the approved Concept Plan are considered necessary.</p> <p>Section 4.3 of the S.75W Mod 5 application report outlines the likely environmental impacts of the proposed development as follows:</p> <ul style="list-style-type: none"> • Ecology – RBWI previously engaged GHD to provide advice with respect to the NSW Threatened Species Conservation Act 1995 (TSCA) notwithstanding such matters were dealt with under the Major Projects SEPP. GHD note that the TSC Act is not a ‘listed item’ requiring consideration associated with future DAs (ref. pp 39 of Eco Logical Australia report). GHD have provided a Vegetation Clearing and Fauna Management Plan includes pre-clearance surveys, supervision during clearing, fauna management as well as protocols should any fauna be encountered during clearing and the post clearing survey. GHD make note that dwelling houses are permitted provided impacts to biodiversity are minimal. Dan Williams GHD’s Principal Environmental Scientist/ NSW Leader Bio-Banking has reviewed the relevant tree plan and provided advice as to where dwellings (including their required access) could be sited without creating biodiversity impacts. This is on the basis that the main biodiversity feature in the E3 land is the existence of remnant trees, some with important habitat features such as large hollows. Large lots could be provided with suitable dwelling locations while maintaining most of this area’s biodiversity features. Subdivision here would avoid significant trees etc. and we could use things such as Section 88b instruments or similar to protect canopy trees being retained. When coupled with the Vegetation Clearance and Fauna Management Plan, would provide a suitable basis for development. Further enhancements could be made with regards to long-term ownership/management, edge effects on this small pocket of native vegetation when surrounded by development. • Drainage – DPI Water has already issued GTAs for the piping of the watercourse immediately downstream of the E3 land. This was granted on the basis that the watercourse has been modified by the construction of on-line farm dams and exhibits minimal existing vegetation. This action is consistent with actions further downstream by Lendlease who have removed or piped similar watercourse in other urban releases at Calderwood. Specialist assessment has found that the development of Clover Hill Estate is consistent with the earlier Calderwood Concept Plan.

	<ul style="list-style-type: none"> • Bushfire/Geotechnical/PASS – the land is not mapped as containing any of these environmental hazards nor is expected to present any risk to future occupants. • Heritage – the subject site is unlikely to contain items of Aboriginal or European Heritage on the basis of previous investigations. • Management Responsibility (Finance and Resources) – there would be no impact on existing public land managers as all lands would be retained in private ownership. • Services – there would be no additional impact as all lots can and will be fully serviced by utilities being provided within Clover Hill Estate. • Roads and Access – all lots are fully accessed from existing roads. The impact of five additional dwellings is well within the carrying capacity of the local road network. • Strategic Context – the consideration of this modification does not in any way undermine the integrity or roll out of the Calderwood Concept Plan. The subdivision and dedication of land for public purposes and the establishment of the boundaries of the developable lands will continue on a stage by stage basis over the 20+ year life of the Project at the time of each subdivision development application, as is relevant. This has already occurred with the Stage 1 Project Application approved by the NSW Land and Environment Court and also the initial stages of residential development that have been approved by Shellharbour City Council. The modification does not change, in any material way, the approved dwelling yield of the Project and does not give rise to any change to the environmental outcomes for riparian and environmental lands as otherwise envisaged and approved by the Concept Plan. • Precedent – the unique characteristics of the Blissett property have been spelt out in detail above. On this basis, it is highly unlikely that this approval would create a precedent for the Department and/or Council. <p>RBWI believes that adequate information has been provided on both the mechanism to amend the Concept Approval and the associated environmental impact assessment.</p>
<p><i>(2). The application specifies that the fragmentation of the E3 land into 2000m² lots is the best long-term management solution. Council disagrees with this claim and would like to reiterate that the areas that are uncoloured on the lot size map contained in the SEPP were never intended to be developed, whereas other parts of the Concept Plan Area specify minimum lot sizes for the E3 zone (shaded maroon and red) and it is those areas that were identified as being permissible for dwellings, B&B and ecotourism only.</i></p>	<p>The application does not refer to of the subdivision of the Blissett E3 land as ‘<i>fragmentation</i>’, a term which usually implies degradation of habitat. To the contrary, the application presents well-reasoned arguments as to why subdivision would present the best long-term management option, based on site specific ecological assessment. It is further observed that the Blissett E3 land has already been ‘fragmented’ to below an ecologically self-sustainable size by the Minister’s original Concept Approval (consistent however with what we believe is its ecological value as a small parcel of remnant trees, totally isolated by residential land on all sides).</p> <p>It is also observed there is no evidence that the areas that are uncoloured on the original lot size map contained in the SEPP were never intended to be developed. To the contrary, these E3 areas permit a wide range of land uses such as dwelling houses (and other associated residential uses such as bed and breakfast accommodation, home businesses, home industries, home based child care etc.) and also for some limited commercial activity in the form of eco-tourism facilities.</p>

	<p>It should be noted that Shellharbour Council's LEP 2013 supports a similar range of land uses in E3 zones such as: "Animal boarding or training establishments; Bed and breakfast accommodation; Building identification signs; Business identification signs; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Emergency services facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Farm buildings; Farm stay accommodation; Flood mitigation works; Group homes; Home-based child care; Home businesses; Information and education facilities; Recreation areas; Roads; Water reticulation systems". Wollongong's LEP 2009 also has a similar range of uses.</p>
<p>(3). In this regard the E3 zoned land the subject of this application has been identified as Environmentally Sensitive Land, is known to contain Coastal Grassy Red Gum Forest, an Ecologically Endangered Community and Critically Endangered Ecological Community under the EPBC Act.</p>	<p>The Concept Plan identified the E3 zoned land the subject of this application as being 'environmentally significant lands'. Whilst not being significant enough to warrant classification as a Park or Environmental Reserve or inclusion into the proposed publicly-owned Johnsons Spur Conservation Area (a designated District Park), the treed area on the subject site were proposed to be preserved for passive recreation or eco low development, and was subsequently rezoned as E3 land.</p> <p>Notwithstanding the above delineation, the Blissett E3 land:</p> <ul style="list-style-type: none"> • Is separated from other such conservation lands • Is not part of the larger Johnsons Spur conservation area • Is not classified in the Concept Plan as Open Space, Citywide Bushland, Rural Landscape/Lifestyle or Environmental Reserve • Will soon be completely surrounded by conventional houses thus negating any opportunity to link it to adjoining reserves • Is not classified as being fire prone, or having European or Aboriginal heritage significance • Is not proposed to be transferred to Council and/or other public land managers • Its long-term ownership arrangement is for it to be privately owned although under a management regime that is currently unclear. <p>Dan Williams GHD's Principal Environmental Scientist/ NSW Leader Bio-Banking has provided advice that the main biodiversity feature in the E3 land is the existence of remnant trees, some with important habitat features such as large hollows. He has advised that large lots could be provided with suitable dwelling locations while maintaining most of this area's biodiversity features. He has reviewed the relevant tree plan and provided advice as to where dwellings (including their required access) could be sited without creating significant adverse biodiversity impacts. This is on the basis that the Subdivision here would avoid significant trees etc. and we could use things such as Section 88b instruments or similar to protect canopy trees being retained. When coupled with the Vegetation Clearance and Fauna Management Plan, this would provide a suitable basis for development.</p>
<p>(4). The E3 Area is also adjacent to an identified Riparian Corridor which has not been adequately addressed in any documentation. Although not identified as bushfire affected, the application has failed to identify the likelihood of APZ requirements</p>	<p>DPI Water has issued GTAs for the piping of the watercourse immediately downstream of the E3 land (termed Strahler Line 26 in the Concept Approval) on the basis that the watercourse has been modified by the construction of on-line farm dams and exhibits minimal existing vegetation. This action is</p>

<p><i>for future dwellings proposed within the E3 Area and the impacts that those may have on the existing vegetation.</i></p>	<p>consistent with actions further downstream by Lendlease who has removed or piped similar watercourses in other urban releases at Calderwood.</p> <p>There is no APZ requirement caused by these lands principally because the land is not mapped as containing any bushfire threat mainly because of its small size and isolated nature. The E3 land contains a stand of scattered overstorey eucalypts with a cleared and managed understorey. The management regime envisaged for the E3 land will continue to retain the trees and a managed understorey so that the stand of trees does not act as a bushfire hazard.</p>
<p><i>(5). The application also wrongly claims that the E3 land is not identified as 'Open Space Corridors and City-Wide Bushland' in the Approved Concept Plan Open Space Network. The area was coloured green and identified as 'Open Space Corridors and City-Wide Bushland' and also identified as 'Principal Open Space and Drainage' in the Approved Concept Plan Map.</i></p>	<p>There is no land within Lot 1 DP 558196 that is classified in the Open Space Network at Figure 7 of the Consolidated Concept Plan as either parks (which are designated by large coloured asterisks); environmental reserves (designated by brown hexagons); 'Open Space Corridors and City-Wide Bushland' (designated by apple green colouring) or 'Rural Landscape and Lifestyle' (designated by cross-hatched green colouring). The Blissett E3 land is a pale olive green that is not described in the legend. There is some inconsistency in the Concept Plan Open Space Network maps in that the Open Space Network map at Appendix L of the PPR removes the 'Rural Landscape and Lifestyle' lands from both the map and the legend. Even so, there is no doubt that the Blissett E3 land is not designated as Open Space Corridors and City-Wide Bushland' in any of the approved Open Space Network maps.</p> <p>It is agreed with Council that that the E3 land is designated as "<i>Principal Open Space and Drainage</i>" in the approved Concept Plan map, being one of 3 separate components that link through to the Village Pond. The other two components comprise Strahler Line 26 and a corridor following Escarpment Drive extending through to the Village Pond. It is noted however that the relevant section of Escarpment Drive has been constructed <u>without</u> incorporating the 'open space & drainage' component indicated in the Concept Plan. The previously proposed connection through to the Village Pond has been removed. In addition, it is now proposed to pipe Strahler Line 26, as has been done with Strahler Line 25 and the higher order Strahler Line 24 on the southern side of Escarpment Drive, for which DPI-Water has granted its GTAs. In light of this, the relevance of the Blissett E3 land as <i>Principal Open Space and Drainage</i>" is considerably diminished and has negligible effect when compared to the higher order statutory provisions in the SEPP itself (ie, zoning and minimum lot size).</p>
<p><i>(6). The land has not been identified for residential purposes and clause 18(4) identifies these areas as requiring 40ha, clearly there was no intention to allow any dwellings in these areas. The possible fragmentation of E3 lands into multiple private ownerships with dwelling entitlements creates unacceptable ongoing long-term maintenance and management concerns for Council.</i></p>	<p>Again, there is no evidence that the E3 areas were not intended to allow any dwellings given the zoning table permits dwelling houses, bed and breakfast accommodation, home businesses, home industries, home based child care, eco-tourism facilities and subdivision. Even under Mod 2, the E3 land can be subdivided into a single lot with a primary and secondary dwelling without the need for an adjoining portion of R1 land. This is also consistent with the table in Appendix I of the Preferred Project Report (PPR) which lists the preferred ownership as private and suitable for 'eco low development'.</p> <p>There is no long-term maintenance and management concerns for Council as these lands will be kept in limited private ownership (say 5 lots) with suitable dwelling locations maintaining most of this area's biodiversity features. Subdivision here would avoid significant trees and Section 88b instruments or</p>

	<p>similar would protect canopy trees being retained. Further enhancements could be made with regards to long-term ownership/management, edge effects on this small pocket of native vegetation when surrounded by development.</p> <p>Should Mod 5 note be approved and the E3 land be subdivided into a single lot (with permitted low eco impact residential development), it is will be difficult to attract an owner with the financial capacity and interest to take the desired amount of environmental care. Such owners are interested in larger, ecologically-sustainable, lots located some distance from urban development, rather than a comparatively small 1.4-ha lot surrounded on all sides by residential development.</p>
<p><i>(7). Council would like to acknowledge the inability to develop the land for subdivision and comply with the current controls within the SEPP regarding the 40ha minimum lot size required. In this regard Council Officers have offered comments and suggestions to the proposed MOD 2 of the same Concept Approval which also relates to this issue. The proposed Special Subdivision Area Map that forms part of that application nominates a Minimum Lot Area that reflects the size of the E3 zoned land. Although this should also be reflected as an amendment to the Min Lot Size Map in the SEPP, Council has indicated its support for this component of the application subject to the exclusion of dwellings and other development that may impact on the preferred outcomes for the area. Council has also requested that a Management Plan be required for the area prior to it being severed from the remainder of the land. Council feels that this approach best reflects the intention of the Concept Approval.</i></p>	<p>The overriding purpose of Mod 2 was to facilitate a change in land ownership, ostensibly from the private developer (Lendlease or its landowner clients) to the relevant public land manager (ie, Shellharbour City Council, Wollongong City Council, Department of Lands/Bio Bank/Trust). This seems to be an odd position to have to apply a S.75W Mod to a fundamental element of the Concept Plan that has been approved by the Minister. Such lands are local parks, riparian corridors, water quality basins as depicted on the Preferred Open Space Ownership Plan included in the Preferred Project Report below.</p> <p>Much of the discussion in Modification 2 concerns a ‘trade off’ as envisaged in Shellharbour City Council’s consent condition for Lendlease’s Stage 2B (DA663/2015) requiring the residue lots that are uncoloured on the lot size map be consolidated to achieve 40 hectares’ minimum lot size in accordance with SLEP 2000 for subdivision in the Rural 1(a) zones. Council’s objective here is clearly stated in their objection to Mod 2 which is to prevent the fragmentation of the riparian zones and open space networks that are on the Rivulet flood plain.</p> <p>The nature of the Blissett E3 land is fundamental different to the other E3 lands as now determined by Lendlease’s Mod 2. The E3 land that is the subject of Mod 5 is small, isolated and degraded (ref: GHD Senior Ecologist); not identified for either parks, environmental reserves or ‘Open Space Corridors and City-Wide Bushland’ in the Approved Concept Plan; ear-marked for long term private ownership; and designated as suitable for ‘eco low development’. On this basis, it would appear that the Blissett E3 land has been not been adequately considered in the current (or now approved Mod 2) planning process for the Calderwood lands. There is not one block of land in the entire Calderwood Concept Plan that exhibits similar characteristics.</p>
<p><i>(8). Council would also like the comments contained in its submissions lodged as part of the assessment of MOD2 to be considered in relation to this Application as the two Modification Applications relate to the same issues and Councils preferred approach is consistent with both.</i></p>	<p>Again, the two applications are fundamentally different and it is unconstructive to continue to deal with them as if they are the same thing. Mod 2 was principally concerned with transferring land to public land managers whilst Mod 5 is about rectifying and apparent zoning anomaly to allow a small development to be considered on merit. Chapter 3 of the S.75W Mod 5 report highlights the difference between the Blissett E3 land (subject of Mod 5) and the balance of the Calderwood ‘non-urban’ lands (subject of the approved Mod 2) which are summarised in the response to SCC comment (3) above.</p>

SUBMISSION BY OFFICE OF ENVIRONMENT AND HERITAGE (SF18/234273) APRIL 2018

Comment by Office of Environment and Heritage	Response by RBWI
<i>(1) We do not support the proponent's preferred option for subdivision of the land into 5 lots greater than 2000m2 for environmental lifestyle purposes for the following reasons:</i>	See below
<i>(i) The proposal is not consistent with the Illawarra Shoalhaven Regional Plan (ISRP) however we identify an opportunity for the NSW Government to achieve a positive outcome.</i>	The Illawarra Shoalhaven Regional Plan is such a 'high level' document that it is relatively easy to find areas of compliance and yet non-compliance with a range of Directions and Actions at a specific project level. Development of large lot housing in a regionally-significant urban release area with minimal environmental impact supports the Plan in terms of diversity and affordable housing supply, adequate infrastructure provision and reducing costs to Councils.
<i>(ii) The proposal is not consistent with the original intent of the Concept Plan, including retention and enhancement of "Environmentally significant land".</i>	<p>Whilst mapped as 'environmentally significant lands', the E3 land the subject of this application not significant enough to warrant inclusion into the proposed publicly-owned Johnsons Spur Conservation Area. It should be noted that the subject land:</p> <ul style="list-style-type: none"> • Is separated from other such conservation lands • Is not part of the larger Johnsons Spur conservation area • Is not classified in the Concept Plan as Open Space, Citywide Bushland, Rural Landscape/Lifestyle or Environmental Reserve • Will soon be completely surrounded by conventional houses thus negating any opportunity to link it to adjoining reserves • Is not classified as being fire prone, European or Aboriginal heritage significance • Is not proposed to be transferred to Council and/or other public land managers and • Its long-term ownership arrangement is for it to be privately owned although under a management regime that is currently unclear.
<i>(iii) The land contains significant vegetation which is listed as "endangered" under the NSW Biodiversity Conservation Act 2016. The vegetation may also be categorised as "critically endangered" under the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999. Further assessment is required to confirm this.</i>	Dan Williams GHD's Principal Environmental Scientist/ NSW Leader Bio-Banking has provided advice that the main biodiversity feature in the E3 land is the existence of remnant trees, some with important habitat features such as large hollows.
<i>(iv) The function and integrity of existing habitat features are unlikely to be maintained if the preferred option proceeds, particularly as the 10/50</i>	Dan Williams has advised that large lots could be provided with suitable dwelling locations while maintaining most of this area's biodiversity features. He has reviewed the relevant tree plan and provided advice as to where dwellings (including their required access) could be sited without creating biodiversity impacts. This is on the basis that the Subdivision here would avoid significant trees etc. and

<i>vegetation clearing entitlement under the Rural Fires Act may apply to the site.</i>	<p>we could use things such as Section 88b instruments or similar to protect canopy trees being retained. When coupled with the Vegetation Clearance and Fauna Management Plan, would provide a suitable basis for development.</p> <p>The 10/50 vegetation clearing entitlement does not apply as the site is not mapped as bushfire affected due to its small size and isolated nature.</p>
<i>(v) The site has landscape connectivity importance and occurs near other significant native vegetation remnants (e.g. Johnston's Spur).</i>	The site is some distance from Johnsons Spur and will soon be completely surrounded by conventional houses thus negating any opportunity to link it to adjoining reserves. It is not proposed to be transferred to Council and/or other public land managers. The long-term ownership arrangement is for it to be privately owned although under a management regime that is currently unclear.
<i>(vi) The land provides an opportunity for passive recreation / conservation in line with current and future urban greening objectives.</i>	It remains suitable for passive recreation (and eco low development) under a private ownership arrangement.
<i>(vii) Visual amenity should also be considered as the site is in a prominent, elevated landscape position</i>	The land has marginal visual qualities when compared to the nearby Johnsons Spur conservation area, being a small land parcel (1.4ha) is surrounded by urban development on all sides. It is also not classified in the Concept Plan Open Space Network maps as either <i>parks</i> (which are designated by large coloured asterisks); <i>environmental reserves</i> (designated by brown hexagons); ' <i>Open Space Corridors and City-Wide Bushland</i> ' (designated by apple green colouring) or ' <i>Rural Landscape and Lifestyle</i> ' (designated by cross-hatched green colouring).
<i>(2) We support resolution of the long-term management of and ownership of the site and recommend that a Conservation Agreement or Vegetation Management Plan be place over the site to clarify and guide future management goals, as noted above, vegetation on the subject site may constitute the federally listed "Illawarra and South Coast Lowland Forest and Woodland Community". We recommend that the proponent contact the Commonwealth government on whether the matter should be referred for further assessment.</i>	Subdivision here would avoid significant trees/hollows, and Section 88b instruments or similar would be used to protect canopy trees. When coupled with the Vegetation Clearance and Fauna Management Plan, these mechanisms would provide a suitable basis for development. Further enhancements could be made with regards to long-term ownership/management, edge effects on this small pocket of native vegetation when surrounded by development.
<i>(3) In relation to Aboriginal cultural heritage assessment, we advise that:</i>	
<i>(i) Reducing the minimum allotment site can increase pressure on some types of Aboriginal heritage sites.</i>	No PAD areas were identified within or near the Blissett E3 land.

<p><i>(ii) A preliminary assessment (Kelleher Nightingale Consulting 2017) has identified a PAD adjacent to the land covered by this modification application.</i></p>	<p>The only PAD was a level area on the lower slopes which is some distance from the E3 land the subject of this application. Kelleher Nightingale has also prepared an assessment of Clover Hill Estate Stage 4, within which the E3 land is wholly contained, concluding that “no aboriginal archaeological sites will be impacts by the proposed development within the boundaries of Stage 4”. A copy of this assessment date 20/11/2017 has been submitted to Shellharbour City Council in support of DA0569/2017.</p>
<p><i>(iii) The preliminary assessment did not identify Aboriginal concepts or a PAD within the land subject to the current application.</i></p>	<p>Agreed.</p>
<p><i>(iv) Aboriginal cultural heritage assessment of the boarder property (KNC 2017) is limited because the details test excavation and Aboriginal community consultation has not bet been conducted.</i></p>	<p>The PAD site is now the subject of more detailed investigations by the Illawarra Local Aboriginal Land Council (in association with Biosis). This involves test excavation as well as consultation with the local Aboriginal Community. This work is currently underway with excavations scheduled to commence on 8 May 2018. The Draft ACHAR for Clover Hill Estate PAD site is expected to be available by the end of May 2018.</p>