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**Submission – Preferred Project Report and Response to Submissions -
Calderwood Concept Plan (MP 09_0082 MOD 4)**

Dear Anthony

Thank you for the opportunity to comment on the Preferred Project Report and Response to Submissions for the proposed modification to the Calderwood Concept Plan (MP 09_0082 MOD 4). As with the previous submission, this submission was prepared by Council staff and has not been endorsed by the full Council. Council would again like to acknowledge and express its gratitude for the extension of time granted by the Department to prepare and lodge this submission.

As stated in our earlier submission to the proposed modification, Council is consent authority for future development and subdivision applications as well as custodians of future open space and infrastructure assets. Through careful assessment and planning Council is striving to ensure the creation of a desirable, livable residential community that is resilient, sustainable and economically viable in the long term.

To ensure the best interests of Council and the community are considered by the assessment officers at the Department of Planning it was imperative that Council forward a well-researched and detailed submission which contains concerns, queries or outstanding issues that Council has identified when assessing the application and its supporting information.

Council officers have now reviewed and carefully assessed the Preferred Project Report and Response to Submissions as exhibited and have again identified a number of critical matters of concern. These matters were generally raised during a meeting between Council officers, the assessing officer (Casey Joshua) and yourself on 31 July 2019 and are discussed further in this submission. In this regard Council wishes to advise that it continues to object to the proposed modification in its current form.

Council would like to advise that in addition to the comments contained in this submission it would like those raised in its previous submission dated 8 November 2018 (Copy Attached) to also be considered as Council is of the opinion that most have not been adequately addressed by the additional information. Please refer to the attached Table for Councils response to the proponent's response to Councils submission.

Importantly, Council would like to raise the following additional comments, which specifically relate to the proposed introduction of the term 'Principle Dwelling' in the PPR documentation.

Council does not agree with the statement made on page 16 of the Response to Submissions and Preferred Project Report by Ethos Urban dated 31 May 2019, which reads:

*The current approved 4,800 dwellings and proposed total of 6,000 dwellings relates to principal dwellings only. As detailed in the Elton report (Appendix R of the Consolidated Concept Plan), the proposed dwelling mix within the CUDP did not comprise secondary dwellings, see the relevant extract of the report in **Figure 7**.*

For the avoidance of doubt, it is proposed to amend the description of the development and also the relevant conditions of consent as part of this modification. If Council wishes to levy contributions for secondary dwellings, it Calderwood Valley Concept Plan (MP09_0082) would be able to do so via a Section 7.11 contributions plan at the time the relevant landowner seeks approval for that dwelling via either a development application or Complying Development Certificate.

The description of development for the Concept Plan approval for the Calderwood site references a dwelling yield of approximately 4,800 dwellings not lots. The determination of all aspects of this development, including infrastructure provision, are predicated on the proposed dwelling yield not a lot yield. The description of development does not place any qualifications on the type of dwellings to be counted towards this yield and as such all dwellings should be counted.

Definition of a dwelling

The *Environmental Planning and Assessment Regulation 2000* defines a dwelling as:

"A room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used as a separate domicile"

The *Building Code of Australia* establishes the facilities required for a building to be classified as a Class 1 building (or dwelling in its own right).

It is noted that in none of the supporting documentation submitted with the application for the original Concept Approval, the Concept Approval itself or the Planning Agreements that relate to this development is an alternate definition of a dwelling proposed. In this regard, no specific form of dwelling has been excluded from the dwelling count for the purposes of this development.

State Environmental Planning Policy (State Significant Precincts) 2005

The Calderwood site is zoned under *State Environmental Planning Policy (State Significant Precincts) 2005* (the SEPP). Under this SEPP secondary dwellings are permitted in the following zones:

- RU2 Rural Landscape
- R1 General Residential
- R5 Large Lot Residential
- B4 Mixed Use

Secondary dwellings are therefore permitted throughout the majority of the site and are considered an expected dwelling type throughout the development.

Original Assessment

The documentation submitted in support of the original Concept Approval promotes the development as providing a mix of dwelling types catering for a "relatively diverse [population] in terms of age and household profile, reflecting the mix of housing forms and

affordability range to be provided" (*Delfin Lendlease: Calderwood Urban Development Project Social and Community Planning Assessment*).

Secondary dwellings are also specifically referenced in the discussion of dwelling yield and mix throughout the information submitted in support to the original concept application. For example on page 19 of the *Consolidated Concept Plan – Calderwood Urban Development Project* (JBA Planning, March 2011) it states that "secondary dwellings... are to be included throughout the residential neighbourhoods. Design controls for secondary dwellings are included in the Development Control Strategy".

Furthermore the provision of secondary dwellings formed part of the assessment of the concept plan as evidenced on Page 36 of the *Director general's Assessment Report under Section 75I of the Environmental Planning and Assessment Act 1979* (dated November 2010) which states

"The Department supports the proposal for secondary dwellings for all zones other than B4. However as no controls were proposed in the DCS, it is recommended that design controls be prepared and submitted to the Department of Planning for approval."

This was then reinforced in Condition B6(10) of the concept approval which states "Design controls shall be prepared for secondary dwellings and submitted to the Department of Planning for approval".

Having regard to:

- the deliberate use of the term "dwellings" in the description of the development,
- the permissibility of secondary dwellings under the SEPP,
- the adoption of the standard definition of a dwelling without any qualifications as to the type of dwellings to which the development would apply and
- the inclusion of discussions regarding secondary dwellings throughout the information provided in support of the application,

it is reasonable to conclude that secondary dwellings are to be included in the dwelling count for this development.

There is nothing in this supporting documentation or the conditions of the Concept Approval that would indicate that secondary dwellings or any other form of additional dwellings are to be excluded from the dwelling count for the purposes of the determination of the dwelling yield for the project.

Implications of the introduction of the term 'Principle Dwelling'

The description of the development has changed to reduce the number of dwellings from 6,500 to 6,000 however also now includes the term 'principal dwelling'. No definition has been provided for this term and there is no definition that can be used in the Act, Regulation, Standard Instrument LEP or SEPPs.

Without such a definition it is not possible to determine what dwellings have been included in the dwelling count for the purposes of this proposal. This is particularly problematic for infrastructure considerations as these considerations should be based on the future population of the area and it is not possible, based on the information provided, to determine the quantum of the future population.

If the Department is proposing to introduce the term 'principle dwelling' a clear definition of 'principal dwelling' needs to be provided before the infrastructure implications of this development can be considered.

Planning for infrastructure

The information submitted by the proponent relating to infrastructure is not satisfactory as it:

- Considers the Calderwood development in isolation to all other development within the area and even components of the development in isolation to others.

- Seeks to provide only that infrastructure that is required to service the dwellings they wish to have counted towards the development (i.e. principal dwellings) rather than the full range of housing that is expected to be provided.
- Does not provide any scope for expansion of these facilities to cater for increased demand due to the dwellings they have excluded from the calculations.

When planning for infrastructure it is important to ensure that the full extent of future population is planned for as it is both difficult and expensive to augment existing infrastructure to cater for additional need once surrounding development is complete. By seeking only principal dwellings to be included in their approval, the proponent has excluded a potentially significant source of future population from their calculation of demand for future infrastructure.

If no allowance is made for the infrastructure demand created by the excluded development it will become Council's responsibility to provide it. The cost of retrofitting infrastructure in an existing urban environment is far greater than up front provision in a greenfield development. This will place an unreasonable future burden on Council and the Shellharbour Community to meet the demand arising from their development.

The proponent needs to demonstrate that they have made adequate allowances for the total future population of their development when considering infrastructure. The exclusion of specific dwelling types that are permissible on the land from that calculation could be seen as a deliberate strategy to abrogate their responsibility.

Open space

A detailed response to the proposed provision of open space has been provided. There are however some key points that should be noted:

- The additional open space being provided to cater for the additional demand from the increased dwelling yield is generally being achieved through the addition of small areas to existing open space or that open space proposed under the current concept approval. It does little to increase the useable open space for future residents.
- Some of the additional open space proposed is not located so as to be able to service the additional dwellings proposed.
- The additional open active open space is located in Wollongong City and they have advised that the proposal meets their standards. Notwithstanding this it appears very small, will have limited useability and its ability to meet the additional demand created by the proposed modification is questionable. There is potential for it to add further pressure to the current proposed sportsfields in Calderwood and does not cater for the additional demand created by the proposed modification.
- Proximity to open space is being used by the proponent as a locational criteria for higher densities. This is regardless of the size or quality of that open space. It is questionable whether proximity to a local park is sufficient justification for increased density.
- The proponent is seeking to remove the note to C12(b) which states that 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*'. They are also seeking in their revised statement of commitments, to include the potential transfer of this land to Council if it is not wanted by Department of Lands. This poses a significant risk to Council as we are likely to be forced into taking on this land as an asset for a purpose for which it is not suitable. This is not satisfactory and Council should be protected from such a risk through both the statement of commitments and the condition. Therefore, the proposed change to Condition C12 to remove the

explanatory note and the proposed changes to items 2, 3 and 4 in the Revised Statement of Commitments are not satisfactory and should not be agreed to.

Open space is critical to the development of liveable communities. The provision of sufficient appropriate open space to cater for the needs of the development is critical at the initial development stage as, once the land is subdivided and developed, it is difficult and expensive to retrofit additional open space. It is not sufficient to merely seek to meet numerical standards but the land must be appropriately located and fit for purpose. The proponent has not demonstrated this. Of specific concern are the following:

- The proposed additional active open space is not of sufficient size to serve the demand created by the proposed additional dwellings and will place an unreasonable burden on the current proposed Sportsfields.
- There is a focus on meeting the numerical standards for open space provision with little consideration of the quality of that open space and its ability to serve the additional demand created by the increased dwelling yield.
- Council's position regarding the inclusion of Johnson's Spur and ancillary open space areas (eg drainage, environmentally sensitive lands) as open space contribution has not changed and the proposed removal of the note to C12(b) is not supported.

Tripoli Way (apportionment) and Calderwood Road Upgrade

The proponent has stated that as the dwelling yield under this application has been reduced from 6,500 to 6,000 dwellings there is no need for Tripoli Way to be widened to 4 lanes and as such this widening will not be included in the VPA. The reduction in dwelling yield has, however, been artificially achieved through the exclusion of a particular class of dwellings that are permissible on the land from the calculation.

Lendlease are required under the current VPA to contribute towards the provision of the Tripoli Way bypass but only to the extent their development generates demand for that road. If viewed in isolation and based on the artificially reduced dwelling yield, on the surface it would appear that the additional dwellings do not generate demand for the extra two lanes and therefore would not be required to contribute towards their provision. The Calderwood development is, however, not occurring in isolation nor are the dwelling projections being used by the proponent to justify not contributing to the wider road a true picture of the dwellings the Calderwood development are contributing to this area. The Calderwood development is part of a broader greenfield development occurring in that area all of which should contribute to the roads that are required to service the total development in the area.

When determining a reasonable contribution towards any item of infrastructure the cost of that infrastructure should be apportioned across all those who will generate demand for the infrastructure. Development in the Calderwood project area will generate such demand and to seek to not contribute through the artificial reduction of dwelling yield will place an unreasonable burden of Council and other development to provide the infrastructure to meet the demand the Calderwood development creates.

If the total dwelling yield from the Calderwood development contributes to the demand for Tripoli Way to be upgraded to four lanes, regardless of whether this development serves as the trigger for this need, it is reasonable that they contribute to those works on a proportional basis. The current revision of the modification seeks to artificially avoid making such a contribution whilst transferring the cost to Council and other developers. This is not reasonable.

The proponent has also stated that as the dwelling yield under this application has been reduced from 6,500 to 6,000 dwellings there is no need for Calderwood Road East of the project area to be widened to 4 lanes as originally proposed in the modification application.

Council does not agree with this statement for reasons outlined in a detailed assessment of the Traffic and Transport Report (TTR) attached (see **Attachment 2**).

Implications of excluding secondary dwellings from the dwelling count

Even if the definition of a principal dwelling is limited to the exclusion of secondary dwellings from the dwelling count for the purposes of this proposal, there is still the potential for the significant under estimation of demand for infrastructure.

In this regard it should be noted that:

- 450m² is the minimum lot size for a secondary dwelling as complying development under the Affordable Rental Housing SEPP.
- 400m² the minimum lot size for a dual occupancy under the Codes SEPP.
- Section 1.4.11 of the current Calderwood Urban Design Guidelines sets the minimum lot size for a secondary dwelling as 300m².

Based on the lots sizes created to date, these standards would mean that each lot created for a detached dwelling would have the potential to contain a secondary dwelling. Although this extent of development is unlikely to occur, an example of where this has recently occurred is a nearby 36 lot greenfield subdivision. Approval has now been granted to construct 70 dwellings on the original 36 lot subdivision. This is an increase of approximately 100% in the number of dwellings compared to the original number of lots. Allowance must be made for the demand created from this form of development when determining the dwelling thresholds and the infrastructure to be provided.

Based on information provided by Ethos Urban, if the same dwelling mix is applied to the modified proposal approximately 90% of dwellings provided in this development will be detached dwellings (this equates to approximately 5,400 dwellings). If 10% of these detached dwellings have a secondary dwelling built on the same site that equates to an additional 540 dwellings. If the definition of principal dwelling excludes a broader range of dwelling types eg dual occupancies, this figure will increase.

A clear estimation of the scope of dwellings excluded from the proposal needs to be provided to enable a full and proper consideration of the infrastructure implications of the development in the context of the broader development of the area.

Proposed changes to Condition C12

The proponent is proposing a number of changes to Condition C12 which relates to the provision of infrastructure. These changes generally reflect the additional infrastructure required to service the proposed dwelling yield of 6,000 dwellings. Of note, however is that the proponent is seeking to remove the note to C12(b) which states that 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*'. They are also seeking in their revised statement of commitments, to include the potential transfer of this land to Council if it is not wanted by Department of Lands. This poses a significant risk to Council as we are likely to be forced into taking on this land as an asset for a purpose for which it is not suitable. This is not satisfactory and Council should be protected from such a risk through both the statement of commitments and the condition.

In this regard the proposed change to Condition C12 to remove the explanatory note and the proposed changes to items 2, 3 and 4 in the Revised Statement of Commitments are not satisfactory and should not be agreed to.

Proposed changes to the VPA

It is noted that under section 7.7(3) of the EP&A Act 1979 a condition can be imposed requiring a planning agreement to be entered into where it is in the terms of a commitment made by the proponent in a statement of commitments made under Part 3A. The revised statement of commitments refers to the need to enter into a revised VPA to address the changes proposed to the infrastructure to be provided and as such has technically complied with this requirement.

The information provided by the proponent in their statement of commitments focusses on the changes to the items of infrastructure and reflects the increased level of provision required as a result of the additional dwellings. Council has not received a draft revised VPA or letter of offer for consideration and no information has been provided regarding any proposed changes to the administrative components of the VPA. These are critical to the operation of the VPA and as such it is not possible for Council to determine whether the proposed revisions are acceptable without a revised VPA to review.

Having regard to the lack of definition of 'principal dwelling' it is not possible to determine what the likely future population of the development will be. This is critical to the assessment of the reasonableness of any revised VPA to be provided. The application of a condition requiring a revised VPA to be entered into is not appropriate at this stage for the following reasons:

- The lack of definition of principal dwelling means that it is not clear what development the proponent is expecting the revised VPA to cover. Without this information it is not possible to determine the acceptability or otherwise of what they are proposing.
- No information has been provided as to any proposed changes to the administrative components of the current VPA, which is critical to the consideration of a revised VPA.
- The upgrade of the Escarpment Drive/Illawarra Highway to a signalised intersection has not been included in the list of items to be incorporated into a revised VPA (it is noted that this is has also not been included in the proposed changes to Condition C12).

In summary, it is also not possible to determine whether the proposed changes to the VPA as outlined in the Statement of Commitments are satisfactory to Council. The proponent has not sought to explain the changes they propose to Council and as such, we cannot be confident that the infrastructure requirements of the development, its impact on the broader development in the general area and the administrative processes are satisfactorily addressed.

Proposed use of s7.11 contributions for development not covered by the development proposal

The current VPA includes all dwellings including secondary dwellings. The proponent, in their response to submissions, however, state that:

If Council wishes to levy contributions for secondary dwellings, it would be able to do so via a Section 7.11 contributions plan at the time the relevant landowner seeks approval for that dwelling via either a development application or a complying development certificate.

This statement is incorrectly included under the heading *State Contributions – Department of Planning and Environment* it should be under the heading *Local Contributions* which is the area to which it clearly relates. There is also a distinct lack of detail as to how the proponent sees this proposal is able to work in a practical sense.

Firstly, this is not possible under the current VPA as the provisions of that VPA 'switch off' s7.11 for development within the area to which the VPA applies. As there is no sunset clause within the VPA lifting it from the land once the land is subdivided it continues to apply after

the subdivision is complete. Council has not seen a revised VPA that addresses this issue and must assume that the current arrangements will remain.

The infrastructure that is being provided by the proponent is based on the application of numerical standards to the 6,000 dwellings they are seeking to be counted for the purposes of this application, not the forecast dwellings to be provided through the development as a whole. No allowance has been made for the augmentation of these facilities to cater for the demand from development the proponent is seeking to exclude from the VPA. Of particular note are the open space and community centre. This will limit the scope of infrastructure for which Council will be able to levy. Demand will have to be met through existing facilities.

Through this single statement which is hidden in information to which it does not relate, the proponent is seeking to abrogate its responsibility to adequately cater for the infrastructure needs of the community it is creating through this development by passing the responsibility to Council. Council does not currently have the power to impose such a contribution and should not be expected to absorb the financial burden of this development.

Use of term 'work-in-kind'

The term work-in-kind is used throughout the revised statement of commitments in relation to works that are to be completed as part of the subdivision but not covered by the VPA. The use of this term implies that these works will be provided in lieu of a monetary payment. This is not the case and the term should be removed from the statement of commitments, as no offset will be provided.

Low Rise Medium Density Housing Code

As part of its assessment of the modification applications the Department is requested to consider whether the Low Rise Medium Density Housing Code (LRMDHC) should apply to the R1 lands at Calderwood (and reflect its decision in the relevant SEPPs).

The Department is advised that Shellharbour Council currently has the application of the LRMDHC deferred to its LGA until 31 October 2019 (the deferral includes the R1 zoned lands at Calderwood).

Subsequently, The Department is requested consider the following:

- the design/planning merits or otherwise of the LRMDHC applying at Calderwood in the context of all relevant changes proposed by the Modification application, and
- the proponents reference to 'Principle Dwellings' and what affect any application of the LRMDHC to Calderwood will have on dwelling yields and the Capped number of dwellings in the Approval, and
- Clause 3B(f) of Schedule 2 of ENVIRONMENTAL PLANNING AND ASSESSMENT (SAVINGS, TRANSITIONAL AND OTHER PROVISIONS) REGULATION 2017 which reads:

3B(f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan.

Conclusion

Council has now considered the Preferred Project Report and Response to Submissions. To ensure the best interests of Council and the community are considered by the assessment officers at the Department of Planning it was imperative that Council forward a well-researched and detailed submission which contains concerns, queries or outstanding issues that Council has identified when assessing the application and its supporting information.

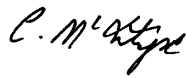
Council officers have now reviewed and assessed both documents and have identified a number of critical matters of concern. These matters were generally raised during a meeting between Council officers, the assessing officer (Casey Joshua) and yourself on 31 July 2019. These are discussed further in this submission. Council continues to object to the proposed modification in its current form.

Council notes that in addition to the comments contained in this submission it would like those raised in its previous submission dated 8 November 2018 (Copy Attached) to also be considered. Council is of the opinion that most have not been adequately addressed by the additional information.

Council would like to continue to work with the Department of Planning, Industry and Environment as well as Lendlease during the consideration and assessment of this application to ensure the best possible outcomes for the environment and the future Calderwood community are achieved in this area.

Should you require further information or clarification of these issues please contact Council's Senior Strategic Planner, Cheryl Lappin on (02) 4221 6127.

Yours sincerely



Carey McIntyre
General Manager

Attachments:

1. Table – SCC responses to proponent's responses
2. Supporting information for Council comments relating to Calderwood Road and other Road upgrades
3. SCC Original Submission and Attachment.