



Calderwood Concept Plan

*Part 3A Modification
Assessment
(MP 09_0082 MOD 5)*

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Glossary

Abbreviation	Definition
APZ	Asset Protection Zone
BCD	Biodiversity and Conservation Division of the Department of Planning, Industry and Environment
CEEC	Critically Endangered Ecological Community
Council	Shellharbour City Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
IPC	Independent Planning Commission
LEP	Local Environmental Plan
LGA	Local Government Area
Minister	Minister for Planning
PAC	Planning Assessment Commission (now IPC)
Proponent	RBWI Pty Ltd
RFS	Rural Fire Services
RTS	Response to Submissions
Secretary	Secretary of the Department of Planning Industry and Environment
SEPP	State Environmental Planning Policy
STOP Regulation	Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017



1. Introduction

1.1 Preamble

This report provides an assessment of a request to modify the concept approval for the Calderwood residential and mixed-use development (MP 09_0082 Mod 5).

The modification request (as revised during the assessment) seeks to:

- amend the Special Subdivision Areas Plan (SSAP) to clarify the designation of a parcel of E3 zoned land (at Clover Hill Estate) as being ‘Environmentally Significant Land’ and not ‘Environmental Reserve Lands’
- replace an open riparian corridor between the parcel of E3 zoned land and Escarpment Drive with a ‘habitat enhancement link’ to Johnson’s Spur.

The modification has been lodged by RBWI Pty Ltd pursuant to section 75W of the Environmental Planning and Assessment Act 1979 (EP&A Act).

1.2 The site

The Calderwood concept approval site (the site) has an area of approximately 700 ha and is located approximately 10 km west of the Shellharbour City Centre and 20 km south-west of Wollongong (**Figure 1**). It is located within the Shellharbour and Wollongong Local Government Areas (LGA).

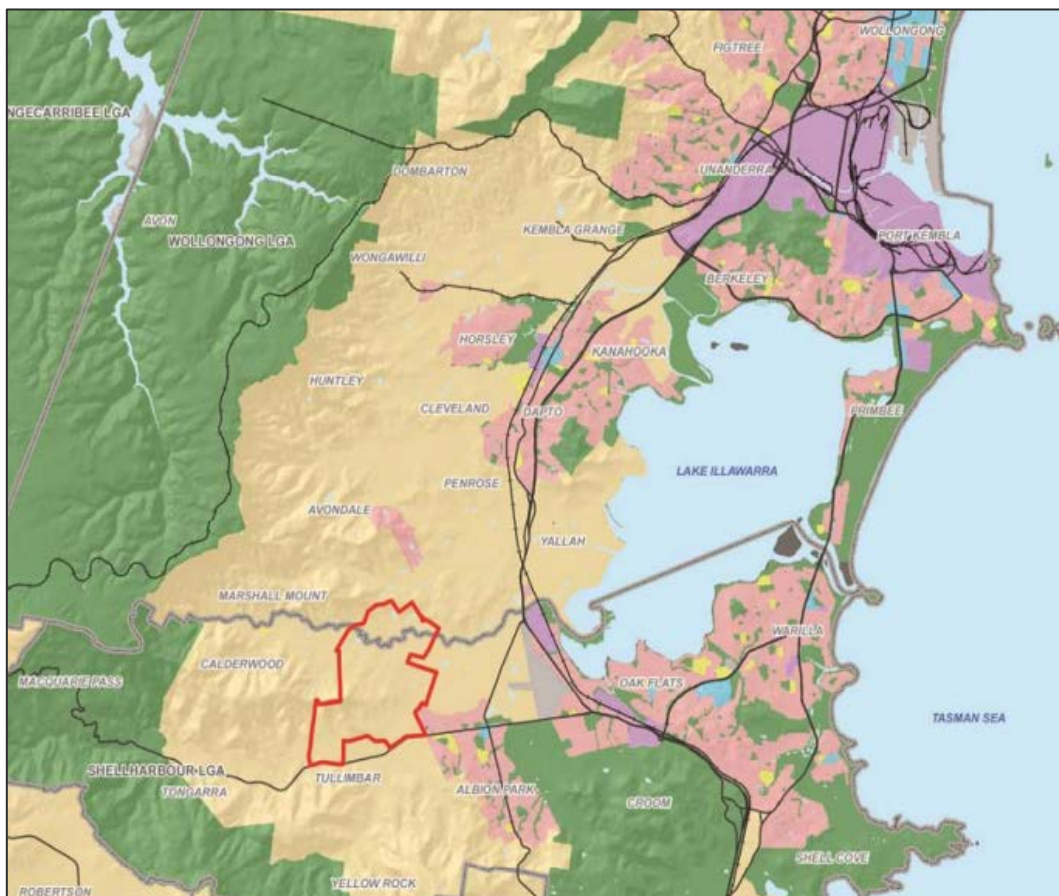


Figure 1 | The Calderwood concept approval area shown in red (Source: Concept Plan EA Report)

The site is currently being transformed from low intensity farming, dairying, agistment and hobby farms to a new residential community (in accordance with the concept approval discussed below). Once constructed the new residential community will comprise 4,800 residential dwellings, employment uses, open space, environmentally significant land, and community facilities. Construction of the new residential community is underway, with development consent granted for approximately 1,200 lots (within Stages 1, 2a, 2b, 2c and 3a).

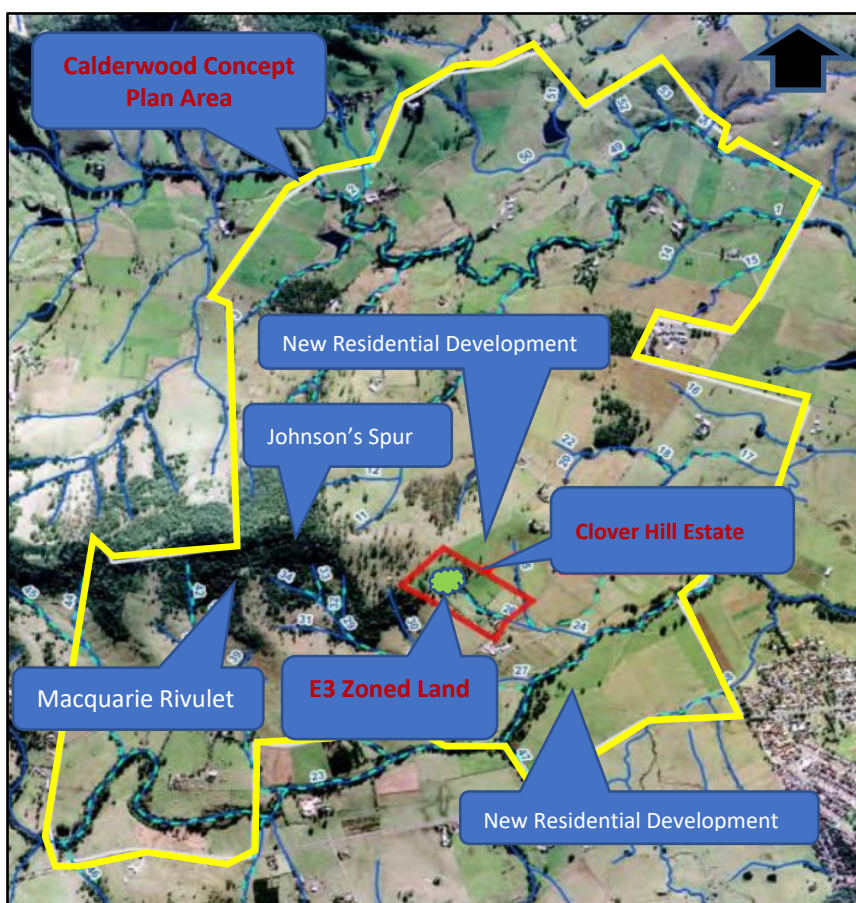


Figure 2 | The site (in yellow) and area of the proposed modification at the Clover Hill Estate (in red)
(Source: Proponent's planning report)

The proposed modification relates to part of the site known as Clover Hill Estate (CHE or the mod site) (**Figure 2**), measuring approximately 10 ha in area and located within the Shellharbour LGA. It comprises a single dwelling, cleared former pastoral land and native vegetation zoned E3 – Environmental Reserve (**Figure 3**).

Land uses within the vicinity of the mod site include (**Figure 2**):

- residential lots to the north-east and south-east
- large lot residential development and pastoral lands to the north and west
- Johnson's Spur and the Macquarie Rivulet to the north-west, which are areas of remnant native vegetation.

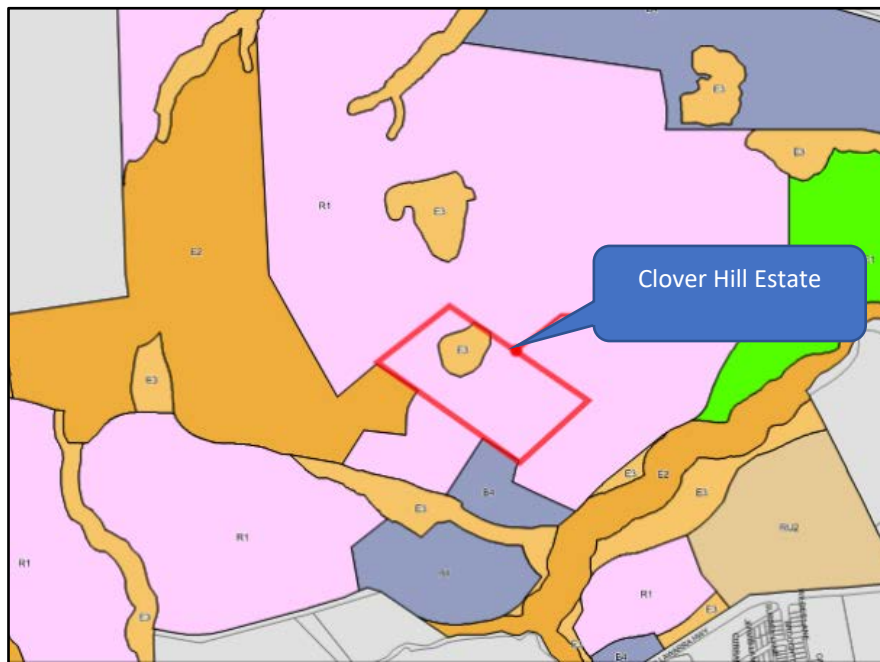


Figure 3 | Zoning map excerpt – Clover Hill Estate (Source: Shellharbour LEP 2013)

1.3 Approval History

Commonwealth Approval

In February 2010, the Proponent referred the proposed development at Calderwood to the Commonwealth to determine whether it requires approval under the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This referral was required as the proposal had the potential to impact four flora, two bird and two mammal species identified as either vulnerable or endangered under the EPBC Act, as well as four migratory species protected under this Act.

On 30 March 2010, the Commonwealth advised the Proponent that the proposal is not a controlled action and approval is not required under the EPBC Act.

Calderwood Concept Plan (MP 09_0082)

On 8 December 2010, the then Minister for Planning granted concept approval for the development of 700 ha of land at Calderwood (MP 09_0082) for the following purposes:

- 4,800 residential dwellings
- 50 ha of mixed-use land for retail, commercial and light industrial uses
- open space and the protection of environmentally significant lands
- internal roads, service infrastructure and community facilities.

The concept approval has been modified once, one modification has been withdrawn and two modifications are currently under assessment (**Table 1**).

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 1	Amendment to requirements for local infrastructure contributions	-	Part 3A Mod	Under assessment
MOD 2	Amendment to clarify minimum lot sizes for land zoned E1, E2 and E3	Independent Planning Commission (Commission)	Part 3A Mod	Approved on 27 March 2018
MOD 3	Modifications to the cycle and pedestrian arrangements and bridge length	-	Part 3A Mod	Withdrawn
MOD 4	Proposal to increase dwelling numbers	-	Part 3A Mod	Under assessment

State Significant Site and State Significant Precinct SEPP Controls

On 14 January 2011, the Calderwood concept plan area was declared a State Significant Site (SSS) under the State Environmental Planning Policy (Major Development) 2005 [now State Environmental Planning Policy (State Significant Precincts) 2005 – SEPP SSP]. The SSS listing identifies the land use zones, minimum lot size and building height requirements applicable to the concept plan area.

The SEPP SSP does not specify a minimum lot size for the subdivision of the E3 zoned land on the mod site. However, the concept approval (as modified in Mod 2) allows the subdivision of the E3 zoned land on the mod site to a minimum lot size of 1.4 ha.

Project Approval (MP 09_0082)

On 23 September 2013, the NSW Land and Environment Court (LEC) granted (on appeal) project approval for the first stage of the development, including 231 residential lots, nine mixed use and medium density lots and associated infrastructure on part of the concept approval site. This project approval has been modified five times.

Council Approvals

Shellharbour Council has approved several development applications (DA), under Part 4 of the EP&A Act, permitting new residential allotments, public reserves and public domain works to the north-east and south-east surrounding the mod site.

The Proponent has also lodged a DA (DA0569/2017) with Shellharbour Council to facilitate the subdivision of the mod site into 141 residential lots (ranging in size from 308 m² to 757m² with an average of 440m², plus one lot of 1.39 ha being the E3 zoned land) and an associated habitat corridor to connect the E3 land to significant vegetation at Johnson's Spur (**Figure 4**).

DA0569/2017 has not yet been determined.

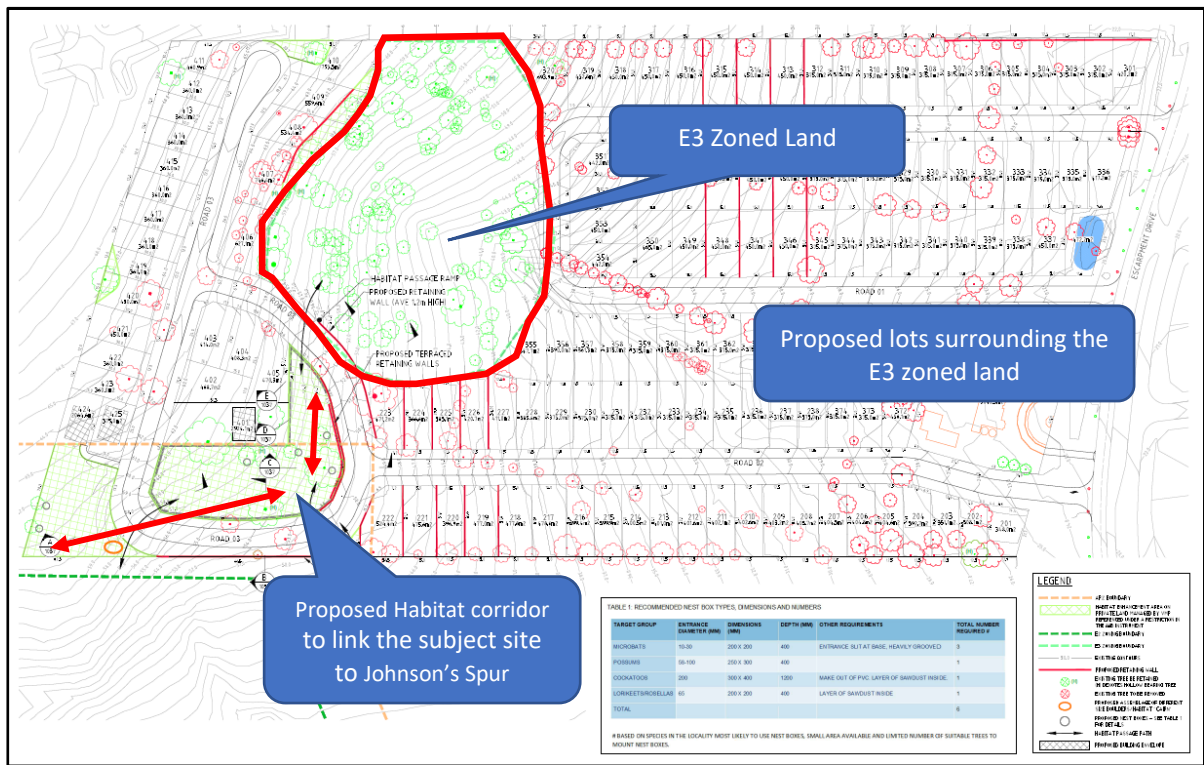


Figure 4 | Council DA0569/2017 – Proposed Plan of Subdivision



2. Proposed Modification

2.1 Proposed modification (as exhibited)

The proposal as exhibited originally sought to subdivide the E3 land on the mod site into five 2,000m² 'environmental lifestyle' lots, each with building envelopes for a primary and secondary dwelling.

2.2 Proposed modification (as revised during the assessment)

Following exhibition and during the assessment, the Proponent revised the proposal to:

- amend the SSAP to clarify the designation of a parcel of E3 zoned land on the mod site as 'Environmentally Significant Land' and not 'Environmental Reserve Lands' (**Figures 5 and 6**)
- replace an open riparian corridor between the parcel of E3 zoned land and Escarpment Drive with a habitat enhancement linkage to Johnson's Spur (**Figure 7 and 8**).

Table 2 summarises the changes made to the proposal following exhibition and during the assessment.

Table 2 | Revisions to Proposal

	Approved	Exhibited	Response to Submissions	As assessed
Designation of E3 zoned land within mod site	Environmental Reserve Land (MOD 2)	Environmental Reserve Land	Environmentally Significant Land	Environmentally Significant Land
Minimum lot size of E3 zoned land within mod site	1.4 ha (MOD 2)	2,000m ² to cater for smaller 'lifestyle' lots	2,000m ² to cater for smaller 'lifestyle' lots	No change to 1.4 ha minimum lot size (as approved in MOD 2)
Bushfire	Bushfire safety using Asset Protection Zones (APZs) in accordance with "Planning for Bushfire Protection 2006".	Bushfire hazard assessment	No APZ proposed as E3 zone would not constitute a fire hazard	No APZ proposed provided the existing vegetation within the E3 zone does not exceed an area of 1 ha.

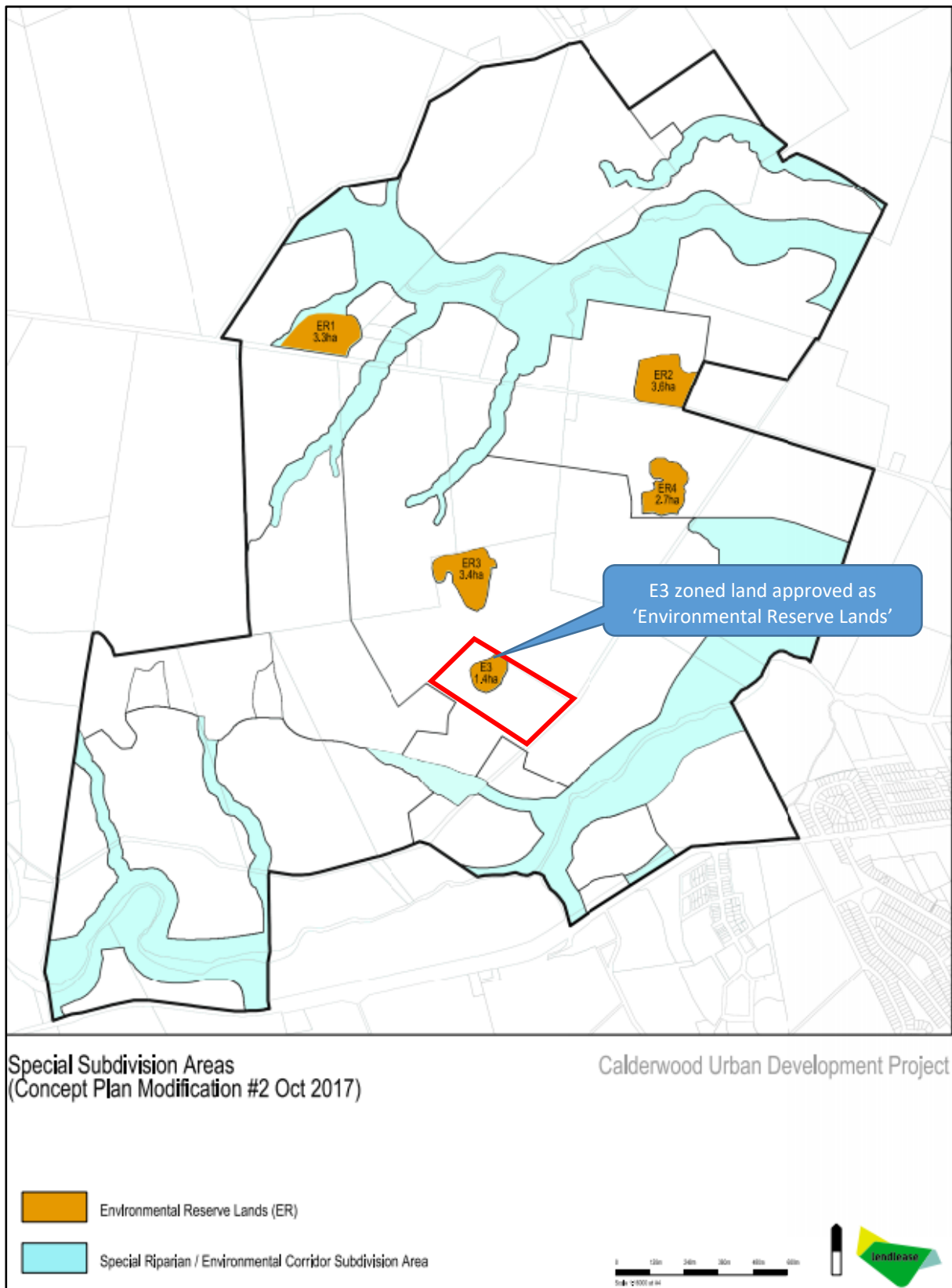


Figure 5 | Approved Special Subdivision Areas Plan (MOD 2)

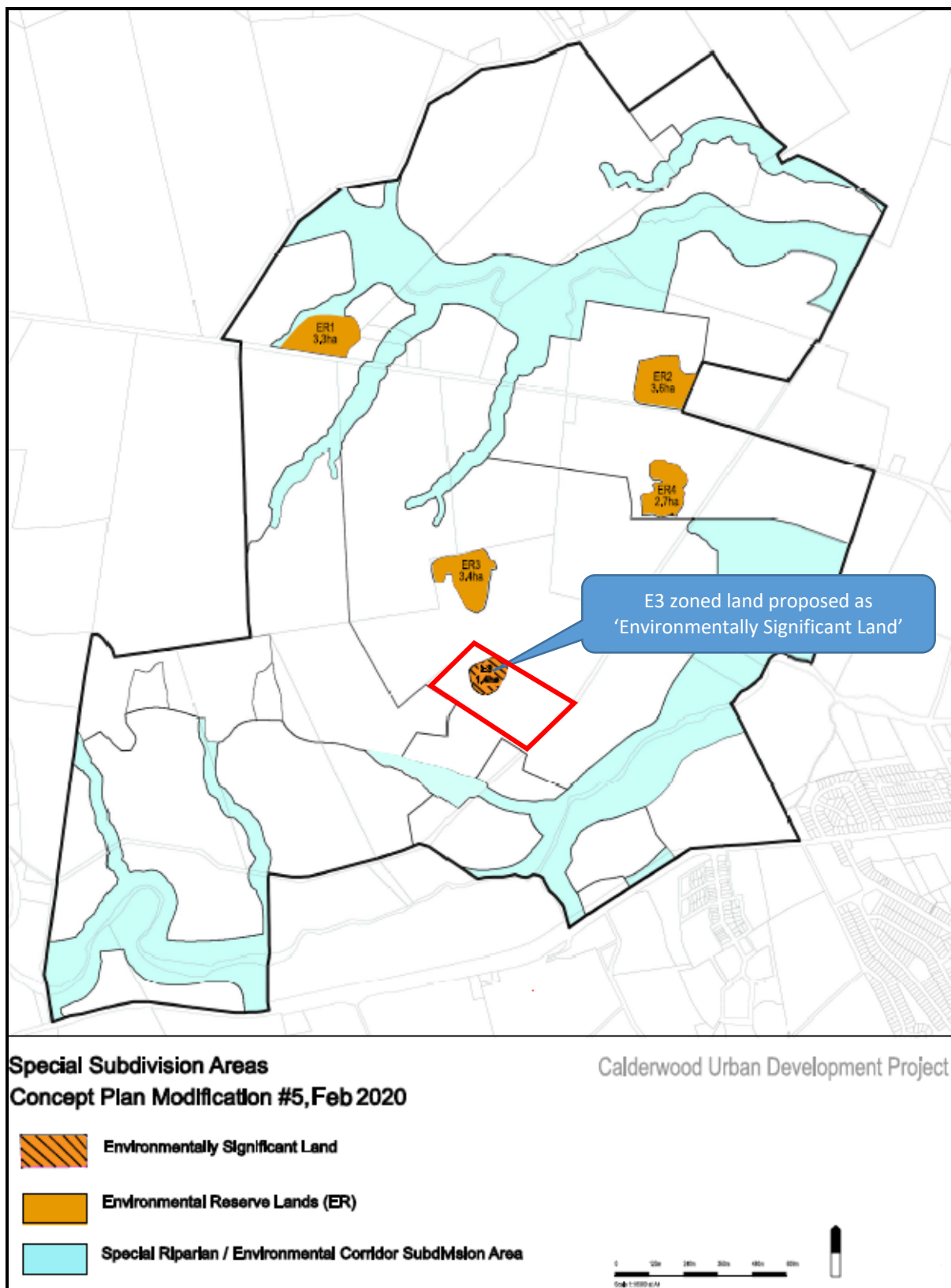


Figure 6 | Proposed Special Subdivision Areas Plan (Source: Proponent's supplementary RTS)

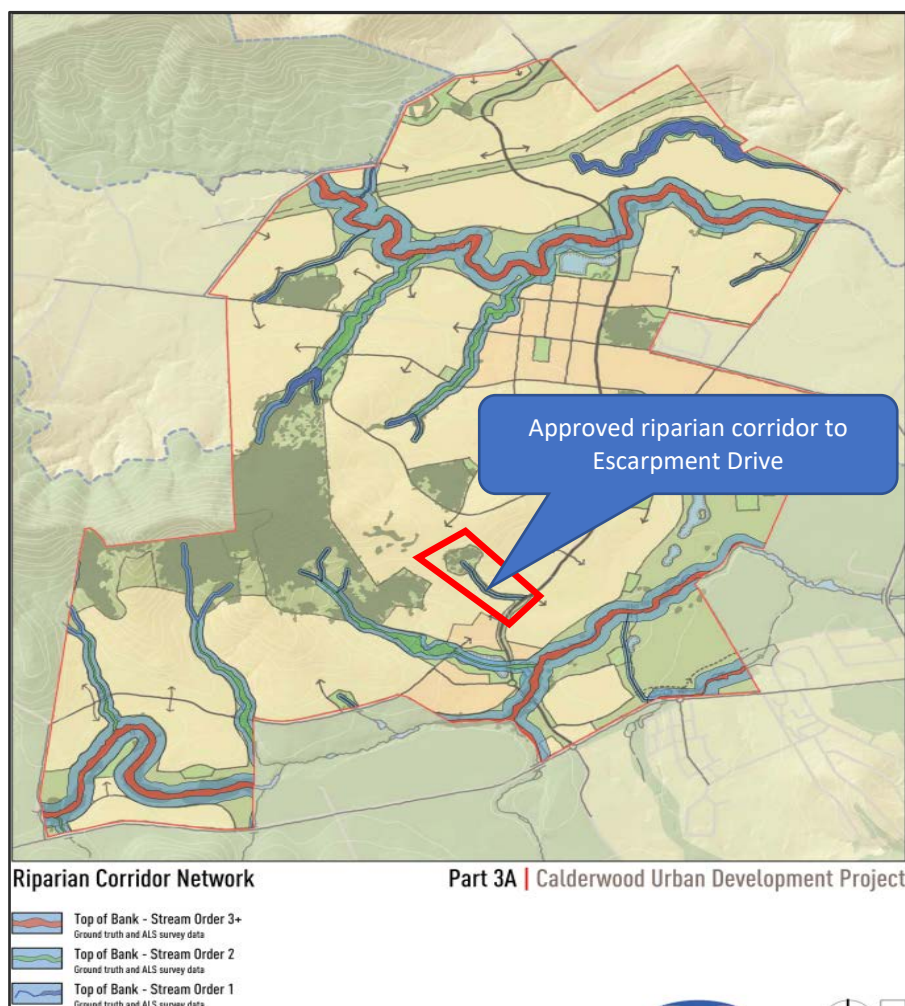


Figure 7 | Approved Riparian Corridor Network (Source: Concept Approval)

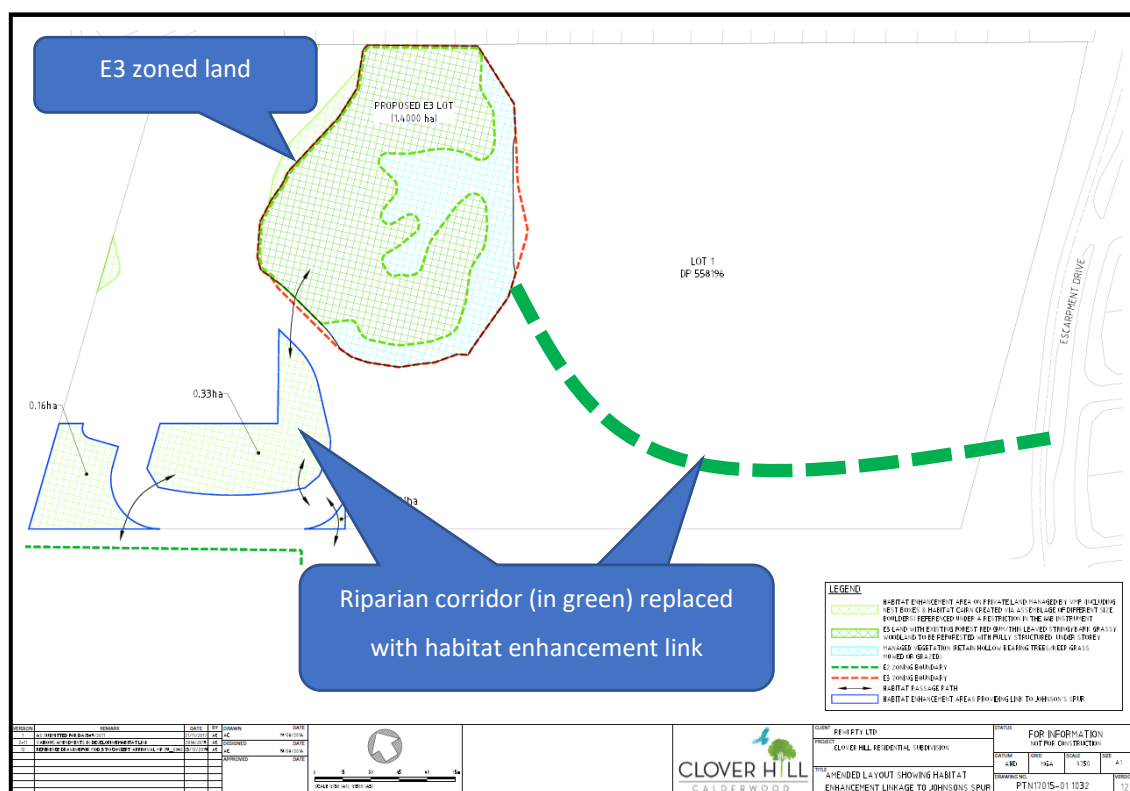


Figure 8 | Proposed replacement of riparian corridor with habitat enhancement link (Source: Proponent's supplementary RTS)



3. *Strategic Context*

3.1 Illawarra Shoalhaven Regional Plan

The Illawarra Shoalhaven Regional Plan sets the planning priorities for the Kiama, Shellharbour, Shoalhaven and Wollongong LGAs and provides guidance and direction for regional and local planning decisions.

The Plan seeks to facilitate growth in the region by developing a strong, diverse and competitive economy that allows communities to adapt to changing economic, social and environmental circumstances. In addition, it seeks to ensure residents are provided with access to a wide range of lifestyle choices, stunning landscapes and biodiversity, work opportunities, a network of centres, and high-quality education and health care facilities.

The proposal is consistent with the directions and actions outlined in the Regional Plan as it would ensure the E3 zoned land on the mod site is retained and managed as a large 1.4 ha lot to preserve its biodiversity and landscape values.



4. Statutory Context

4.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017 (STOP Regulation). The power to modify transitional Part 3A projects under section 75W of the EP&A Act is being wound up. However, as this modification request was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) of the STOP Regulation continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the modification request under section 75W of the EP&A Act.

The Department is satisfied that the proposed changes are within the scope of Section 75W of the EP&A Act and the proposal does not constitute a new application.

4.2 Consent Authority

The Minister for Planning is the consent authority for the modification request. However, the Director, Regional Assessments may determine the application as the relevant Council (Shellharbour Council) does not object to the proposal, the Proponent has not declared a political donation and there are no public submissions objecting to the proposal.

4.3 Environmental Planning Instruments

The original concept plan (MP 09_0082) was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (State Significant Precincts) 2005
- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy No. 55 – Remediation of Land
- Illawarra-Shoalhaven Regional Plan
- Shellharbour Local Environmental Plan 2013.

The Department has considered the proposal against the above EPIs, and is satisfied that the proposed modification remains generally consistent with these EPIs.



5. Engagement

5.1 Department's Engagement

The Department notified the modification request for 14 days from 14 March 2018 to 29 March 2018. The request was made publicly available on the Department's website and notified to Shellharbour City Council (Shellharbour Council); Wollongong City Council (Wollongong Council); the former Office of Environment and Heritage (now the Biodiversity and Conservation Division (BCD)); the former Department of Industry – Water (DPI – Water) (now Regions, Industry, Agriculture and Resources Division); the Rural Fire Service (RFS) and surrounding landowners.

5.2 Summary of Submissions

The Department received four submissions on the modification request, from Shellharbour Council, Wollongong Council, BCD and DPI - Water. No public submissions were received. A summary of the issues raised is provided in **Table 3** and a link to the submissions is provided in **Appendix A**.

Table 3 | Summary of Submissions on Modification Request

Shellharbour Council (relevant LGA)

Shellharbour Council originally objected to the proposal for the following reasons:

- insufficient detail on how the proposed reduction in the minimum lot size (from 40 ha to 2,000 m²) would be made to the concept approval, Minimum Lot Size Map in SEPP SSP and SSA Plan
- the E3 zoned land was not intended to be developed but retained as Environmentally Significant Land and no dwellings should be permitted on the E3 land
- insufficient information regarding the impacts of future development on the adjoining riparian corridor, the maintenance of APZs for dwellings within the E3 zone and impacts on existing vegetation.

Wollongong Council

Wollongong Council did not object to the proposal but made the following comments:

- the proposal is inconsistent with the 1.4 ha minimum lot size (approved under MP 09_0082 MOD 2) and does not clearly identify the proposed changes to the lots
- the Department should consider any impacts on local infrastructure due to the creation of additional lots.

BCD

The BCD did not object to the proposal and provided the following advice:

- the proposed subdivision of the E3 land into five 2000m² 'environmental lifestyle' lots is inconsistent with the intent of MOD 2 as it would increase the development potential of the site
- it is inconsistent with the Regional Plan as it does not address the impact of development on environmentally significant land or facilitate passive recreational uses, as the site contains significant vegetation (Coastal Grassy Red Gum Forest now Illawarra Lowlands Grassy Woodland) which is listed as an Endangered Ecological Community (EEC) under the *Biodiversity Conservation Act 2016*

- the Proponent has not considered potential biodiversity impacts associated with vegetation clearing permitted under the 10/50 Vegetation Clearing Code
- the E3 zoned lands should either be converted to public ownership with an associated vegetation management plan or conservation agreement, or retained in private ownership with an associated conservation agreement
- the preliminary archaeological assessment prepared to support DA0569/2017 concludes there is a potential archaeological deposit (PAD) on-site
- an Aboriginal Heritage Impact Permit will be required prior to the commencement of any works where harm to Aboriginal objects cannot be avoided.

Department of Industry – Water

The DoI advised it had no comments.

5.3 Response to Submissions

The Department published the submissions on its website and provided them to the Proponent for a response. On 4 May 2018, the Proponent lodged its first Response to Submissions (RTS) responding to issues raised in submissions.

The RTS provided the following confirmation and/or additional justification for the proposal:

- no change to the proposed minimum lot size (of 2,000m²) as it would not adversely impact the E3 land and single ownership of the E3 land would be difficult given its small size (1.4ha), biodiversity needs and that it will be surrounded by residential properties
- infrastructure requirements would be negotiated with Council and the Department via voluntary planning agreements (VPAs)
- matters relating to drainage, bushfire safety, heritage, availability of roads and the strategic context were further justified as acceptable
- clarification that the E3 land allows a range of uses, including dwellings under SEPP SSP (and Shellharbour and Wollongong LEPs) and these uses would not adversely ‘fragment’ the land
- clarification that the 10/50 vegetation clearing entitlement does not apply to the site due to its small size and that it is not mapped as bushfire affected
- Aboriginal cultural heritage investigations would commence with the Illawarra Local Aboriginal Land Council.

The Proponent also revised the scope of the modification to amend **Term B7** (Riparian and Environmental Reserve Land) and **Term C3** (Ecology and Biodiversity) to clarify the E3 land on the mod site is not an ‘Environmental Reserve’ which would require more complex conservation measures and proposed to amend the SSAP (approved under MOD 2).

The Department published the RTS on its website and sent the information to Shellharbour and Wollongong Councils, BCD and RFS. The Department received further submissions on the RTS from Shellharbour Council, BCD and RFS. **Table 4** summarises the issues raised in these submissions.

Table 4 | Summary of submissions on the RTS

Shellharbour Council (relevant LGA)

Council maintained its objection to the proposal for the following reasons:

- the proposal may result in the creation of split zoned lots
- the SSAP identifies the E3 land as being suitable for 'eco-low' development which is not a defined land use under SEPP SSP or the concept approval
- the proposal involves clearing of 0.4 ha of E3 land to facilitate the creation of an APZ along the north-eastern boundary of the site
- an APZ in this location would be contrary to the requirements of **Term C10(d)** and Section 3.7 of the concept approval, which requires the restoration and enhancement of land within the E3 zone in accordance with a Vegetation Management Plan (VMP).

BCD

BCD provided the following advice:

- the E3 zoned land would no longer be 'Environmental Reserve Land' but remain as 'Environmentally Sensitive Land' meaning a VMP would not set out conservation mechanisms for that land
- more extensive Aboriginal cultural heritage studies had been completed and potential impacts caused by the proposal are reduced by retaining the E3 lands as one lot in single ownership
- potential impacts on Aboriginal cultural heritage values could be addressed through Council's subdivision development application and Aboriginal heritage impact permit processes
- the Proponent should contact the Commonwealth Government regarding potential impacts on the Illawarra Lowlands Grassy Woodland threatened ecological community on the E3 zoned lands.

RFS

The RFS provided further advice (although this largely relates to the DA with Council - DA0569/2017):

- RFS previously issued a Bushfire Safety Authority for a Part 4 DA which required land within the E3 zone to be managed to ensure retained vegetation would not present a bushfire hazard
- should the Proponent proceed with the revised subdivision layout currently before Council, a revised bushfire assessment would be required to address the impacts of reforestation within the E3 zone
- 'eco-low' development is not a defined use in the LEP and RFS requires this land use to be defined to comment on its suitability.

5.4 Updated Response to Submissions

On 29 March 2019, the Proponent provided an Updated RTS (URTS), which provided the following further clarification and amendments to the proposal:

- retain the approved minimum lot size of the E3 zoned land (of 1.39 ha) instead the proposed 2,000m²
- the E3 zoned land on the mod site is proposed to be reclassified as 'Environmentally Sensitive Land' (instead of Environmental Reserve Land as indicated on the SSAP and in **Conditions B7** and **C3**) to be retained in private ownership and suitable for 'eco-low' development.

The URTS was made publicly available on the Department's website and notified to those who made previous submissions. The Department received submissions on the URTS from Shellharbour Council, the BCD and the RFS. A summary of the issues raised in these submissions is provided in **Table 5**.

Shellharbour Council (relevant LGA)

Council advised that it withdrew its objection to the proposal once the following matters were resolved:

- the term 'eco-low' development on the SSAP was inappropriate as it is not defined in the concept approval or SEPP SSP
- clearing of the E3 land by 0.4 ha to provide an APZ for neighbouring lots is contrary to **Term C10(d)**, which requires that APZs not be located in areas containing threatened species or EEC
- Council noted the revised proposal conflicts with the current Council DA 0569/2017 (yet to be determined) and associated plans showing residential subdivision layout, such as in relation to
- APZ requirements not identified in the bushfire plans needed to inform the ecological report
- reduction of the E3 land within the mod site to less than 1 ha in order to negate the need for an APZ in the residential zone
- the reduced size of the E3 land caused by the removal of the riparian corridor
- the proposed subdivision layout (in Council's DA 0569/2017) should not form part of the concept approval and roads should not be shown on the E3 land
- lack of clarity regarding the proposed habit link being provided in lieu of the riparian corridor
- reduction of the minimum lot size of the E3 land from 1.4 ha to 1.39 ha would lead to road infrastructure being partly located within the E3 land
- lack of clarity regarding the classification of the E3 land as 'Environmental Reserve Lands', 'Environmentally Significant Lands' and 'Environmentally Sensitive Lands'.

BCD

BCD raised the following comments:

- designating the E3 land as Environmentally Sensitive Land would mean the site is not be subject to a VMP needed to set out conservation mechanisms in accordance with **Term C3**
- the Aboriginal cultural heritage studies demonstrate the risks of additional impacts have been mitigated and/or significantly reduced by retaining the E3 zoned lands in a single lot. Any residual impacts can be addressed under a future development application and Aboriginal heritage impact permit process
- the loss of CEEC (Illawarra Lowlands Grassy Woodland) caused by the clearing of part of the E3 lands to accommodate APZs is not favoured and should be avoided to minimise impacts on native vegetation
- the need to reduce the distance of separation (caused by a roadway) between the proposed habitat enhancement area and Johnson's Spur
- loss of trees resulting from the proposed subdivision design (under Councils DA)
- the VMP should be enforced by way of conditions. A section 88B instrument (under the Conveyancing Act 1919) could be used to ensure the Illawarra Lowland Grassy Woodland areas are protected for conservation purposes.

RFS

In its submission, RFS advised that:

- it supports the use of a VMP to manage vegetation on the E3 land to be less than 1 ha so as to comply with Planning for Bushfire Protection, while noting that BCD and Council prefer a larger area of E3 land

- the VMP required to retain and enhance the vegetation in the E3 zone of the mod site could be managed to ensure it does not exceed 1 ha and would not therefore become a bushfire hazard
- bushfire protection would also apply to the proposed habitat areas
- if the E3 land is greater than 1 ha, a further bushfire risk assessment would be required to demonstrate compliance with Planning for Bushfire Protection
- no objection raised to amended plan PTN17015-01 1032 v. 11 which depicts a single storey dwelling envelope on the E3 land, though a VMP would be required.

5.5 Further information provided during the assessment

During the assessment, the Proponent also provided further information in response to comments received from the Department and Council. The following further information and amendments to the proposal were made:

- deleted subdivision details relating to Council's DA 0569/2017 and not the concept approval (**Figure 5**) and replaced with a new layout plan
- removed the term 'eco-low' development to describe the uses permitted on the E3 land within the mod site
- removed an indicative single storey dwelling envelope from the E3 zoned land.

In response to this further information, on 13 January 2020 Council advised that it no longer objects to the proposal, given that:

- the E3 land is proposed to be designated 'Environmentally Significant Land'
- the minimum lot size would be 1.4 ha
- the amended layout plan removes all references to Council's DA and shows the new habitat link to Johnson's Spur
- the term 'eco-low' development has been removed
- **Conditions B7, C2 and C3** are proposed to be amended to reflect these biodiversity related matters.



6. Assessment

In assessing the merits of the modification request, the Department has considered:

- the modification request and associated documents
- the Environmental Assessment and conditions of approval for the original project
- all submissions received on the proposal
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key issues associated with MOD 5 are:

- designation of the E3 land within the mod site
- VMP requirements applicable to ESL
- minimum lot size of the E3 zoned land
- replacement of the riparian corridor with a habitat enhancement area
- bushfire management.

6.1 Designation of E3 land within the mod site

The proposal seeks to amend the SSAP to clarify the designation of the E3 zoned land on the mod site as being 'Environmentally Significant Land' rather than 'Environmental Reserve Lands' (**Figures 5 and 6**).

The Proponent (for MOD 5) contends that the originally approved SSAP designated this site as Environmentally Significant Land. However, this was inadvertently changed to Environmental Reserve Lands through the approval of Mod 2, which was lodged by a different Proponent (Lendlease).

The Proponent (for MOD 5) further contends that the originally proposed and approved designation of Environmentally Significant Land on this site was so that it could be retained in private ownership suitable for 'eco-low' development. MOD 5 originally proposed to introduce 'eco-low' as a residential land use within the E3 land on the mod site to allow low density residential housing that would have a minimal environmental impact. However, this was withdrawn in response to concerns raised by Council, RFS and BCD, that the term 'eco-low' is not defined in the SSP SEPP.

The Department's Environmental Assessment Report for the original Calderwood concept plan (November 2010) and **Terms B7, C2 and C3** of the concept approval refers to the term Environmentally Sensitive Land to describe what was actually meant to be Environmentally Significant Land (as described in the original concept application). Several approved plans, including the Environmentally Significant Lands map (**Figure 9**), designates this site as Environmentally Significant Land.

The Department supports the proposed amendments to the SSAP and **Terms B7, C2 and C3**, as this would clarify the designation of the E3 land on the mod site as Environmentally Significant Land, consistent with the original concept approval. This would also ensure the designation of this site is consistent with other approved plans.

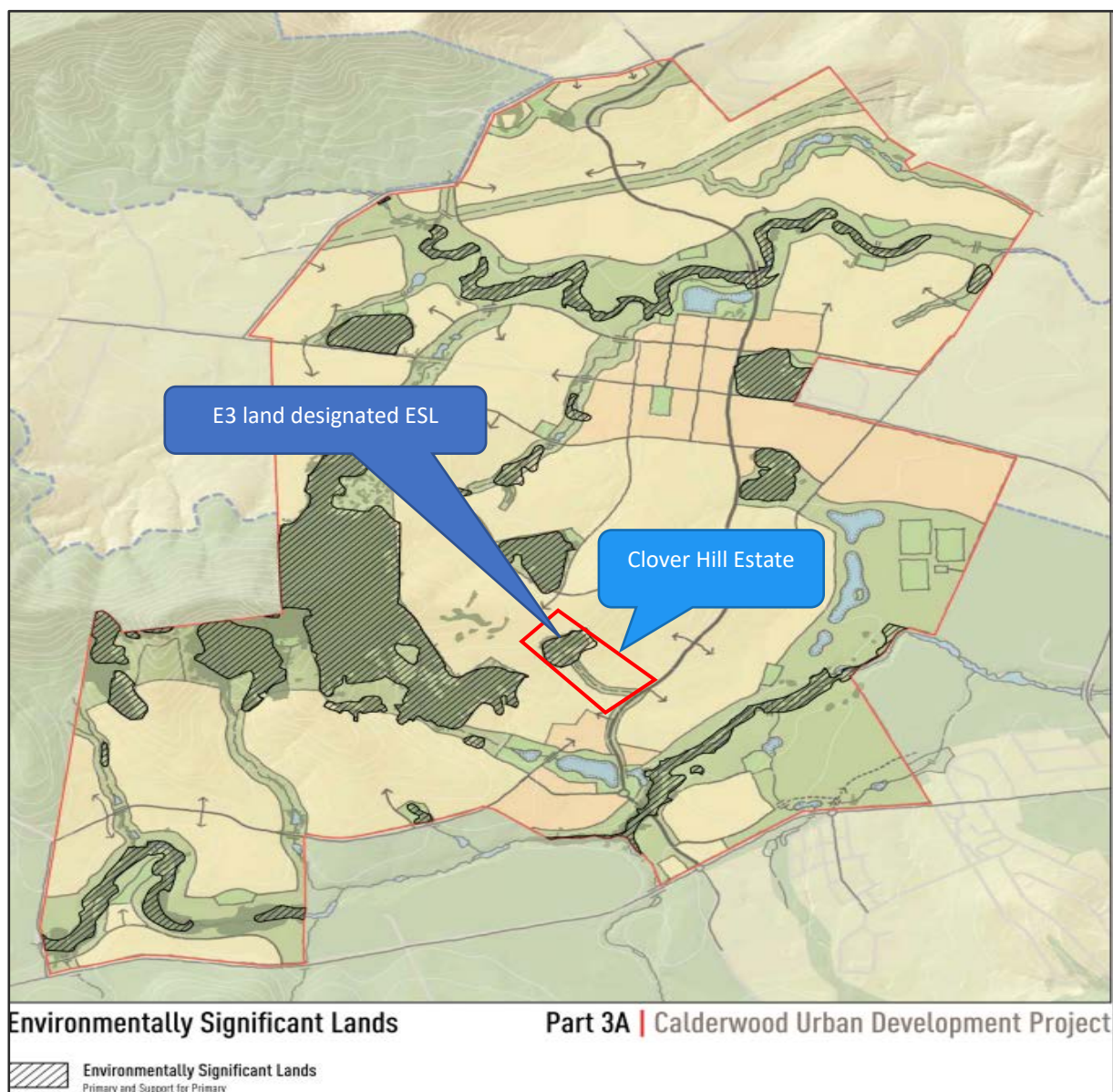


Figure 9 | Approved Environmentally Significant Lands map (Source: Concept Plan EIS)

6.2 Vegetation Management Plans (VMP)

The proposal also seeks to amend **Term C3** (Ecology and Biodiversity) to clarify that vegetation management plans (VMPs) are not required for the E3 land on the mod site.

Both Council and BCD advised that a VMP should apply to the E3 land within the mod site making it consistent with the original concept approval and to ensure the vegetation contained on site is enhanced and appropriately managed. RFS also supported the use of a VMP provided that the vegetation within the E3 land does not exceed 1ha and would not therefore compromise the Planning for Bushfire Protection guidelines.

The Proponent contends that, in addition to amending the designation of the E3 land within the mod site (**Section 6.1**), MOD 2 required the preparation of VMPs for the Environmental Reserve and Special Riparian/Environmental Corridor lands (identified in the approved SSAP – **Figure 5**) which included the E3 land on the mod site. The Proponent contends these changes result in a higher standard of environmental performance for the mod site than was intended in the original concept approval.

The Department notes **Term C3** was modified under MOD 2 to ensure one VMP applied to the riparian corridor lands (**Figure 10**) to facilitate the management of these lands as a single lot (as intended in **Term B7(2)**). However, MOD 2 did not change a requirement in Statement of Commitment (SOC) 35 to prepare a VMP for the Environmentally Significant Lands and core riparian zones in the Riparian Corridor Network Plan, consistent with the principles of the Landscape and Open Space Master Plan.

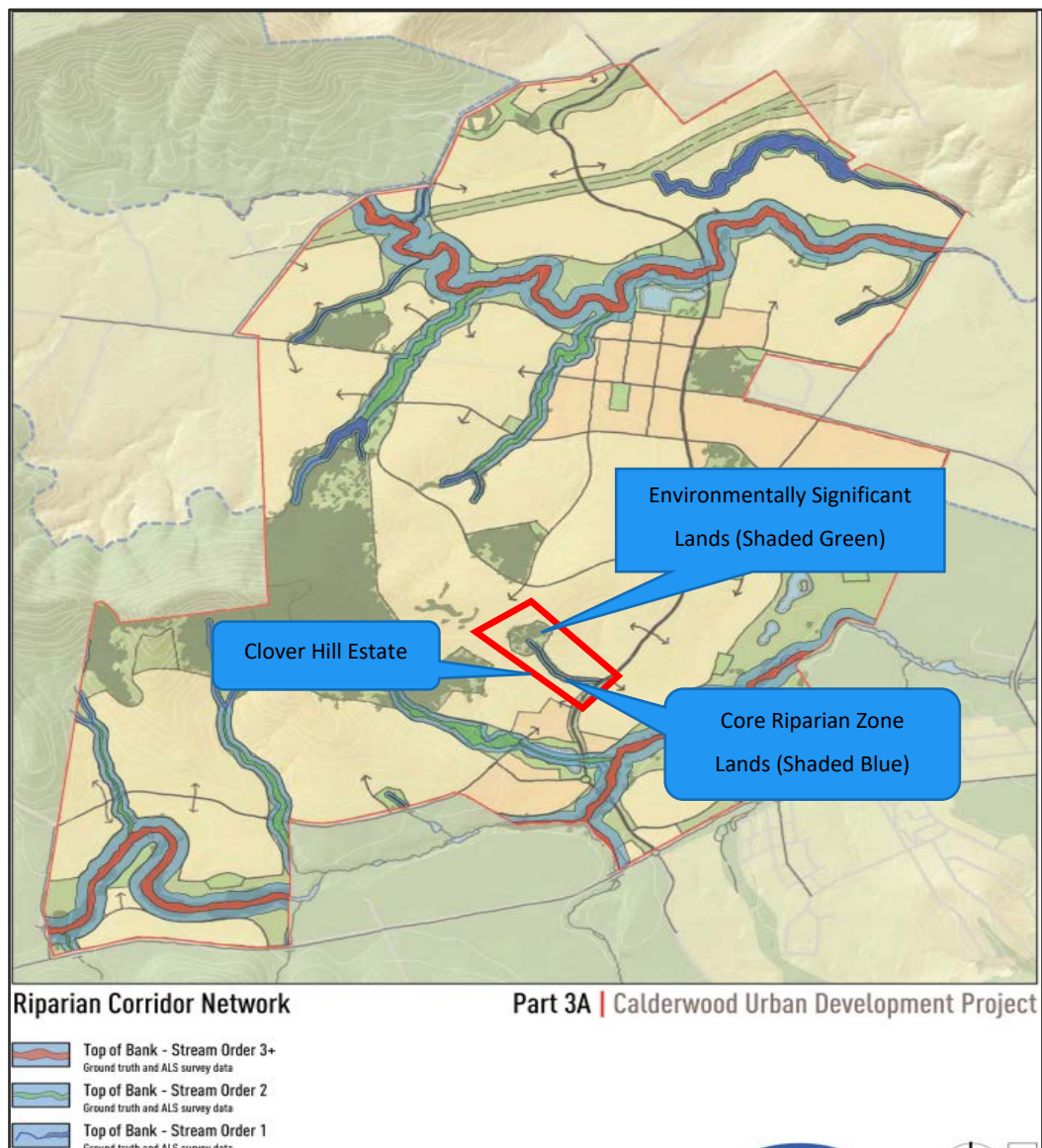


Figure 10 | Approved Riparian Corridor Network Plan (Source: Concept Plan EIS)

The Department has reviewed various documents approved under the concept plan (including maps contained in the approved Flora and Fauna Assessment and the approved Environmentally Significant Land map) and the Director General’s Environmental Assessment Report and notes that the E3 land on the mod site contains high quality vegetation to be retained and appropriately enhanced. The Department agrees with Council and BCD that a VMP should be prepared for the E3 land within the mod site. This is consistent with requirements for all E3 land within the concept approval site and will enhance the remnant vegetation by managing the habitat for native fauna and providing a connection to the larger area of native vegetation on Johnson’s Spur.

Based on the above, the Department recommends **Terms B7, C2 and C3** be modified to require VMPs for Environmentally Significant Land as identified on the amended SSAP.

6.3 Bushfire Management

The Department notes the mod site contains some bushfire prone land towards Johnson's Spur (**Figure 11**). In its submission, RFS noted that APZs should apply to the E3 land on the mod site if the vegetation exceeds 1 ha because the E3 land is close to future residential development both within and surrounding the mod site.

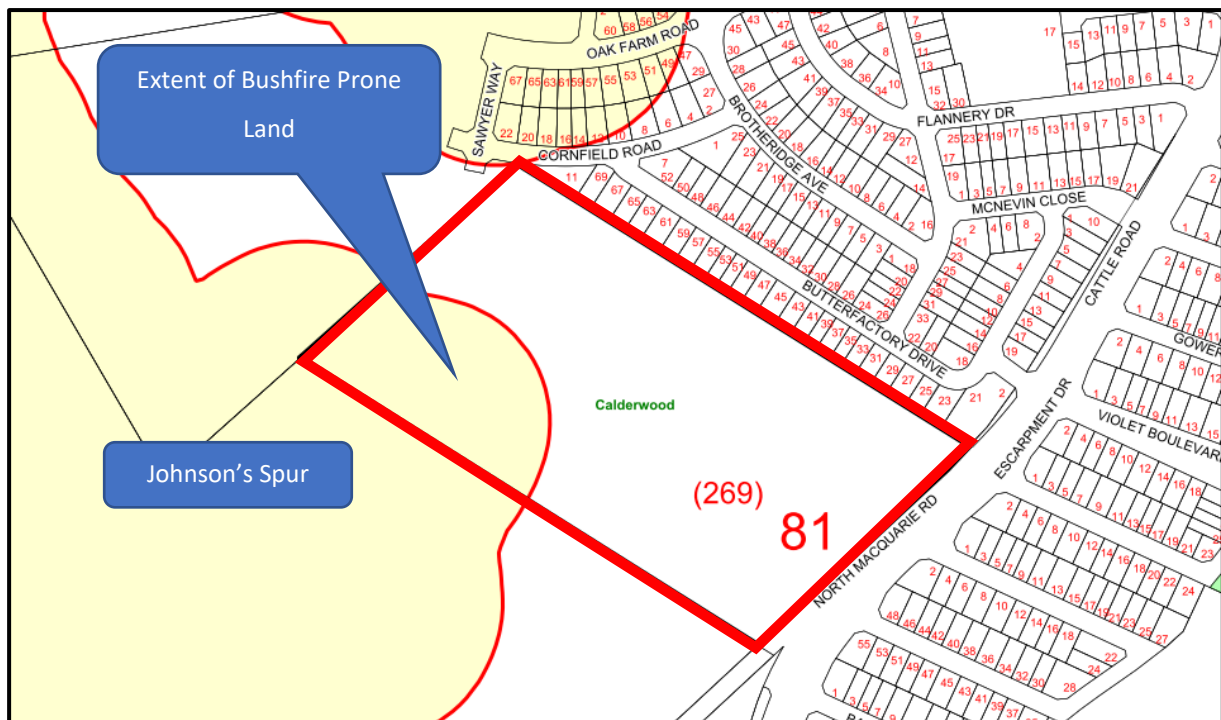


Figure 11 | Shoalhaven Council Bushfire Prone Land Map

The Department notes that existing Future Environmental Assessment Requirement C10 (Bushfire) requires:

- the bushfire management measures to be implemented in the future stages of the development, including requirements for APZs to riparian corridors and remnant vegetation
- prevents the establishment of APZs in areas supporting threatened species or endangered ecological communities to prevent the removal of significant vegetation and habitat.
- compliance with Planning for Bushfire Protection 2006.

As requirements for an APZ or containment of the E3 land to 1 ha are matters for Council to determine when it considers the detailed subdivision layout in future development application(s) for the mod site, the Department does not consider it necessary to amend FEAR C10 (Bushfire).

The Department is therefore satisfied that the concept approval, and in particular FEAR C10, adequately addresses potential bushfire impacts consistent with the requirements of Planning for *Bushfire Protection 2006*.

6.4 Other Issues

An assessment of all other issues is set out in **Table 6** below.

Table 6 | Assessment of other issues

Issue	Findings	Recommendation
Critically Endangered Ecological Community (CEEC)	<ul style="list-style-type: none"> As set out in Section 1.3, the original concept application was referred to the Department of Environment and Energy (now Department of Agriculture, Water and Environment (DAWE)) to determine whether the proposal was a controlled action. At that time, DAWE advised that approval was not required under the EPBC Act as the proposal was not a controlled action. However, during the assessment of MOD 5, BCD noted that the mod site may contain vegetation associated with the Illawarra and south coast lowland grassy woodland, which is a CEEC. BCD advised the Proponent should refer the proposal to DAWE to determine whether the CEEC is a controlled action. In response, the Proponent referred the proposal to DAWE and was advised on 14 January 2020 that it is not a controlled action under the EPBC Act. 	No additional conditions or amendments to existing conditions are recommended.
Subdivision of subject site (excluding the E3 land)	<ul style="list-style-type: none"> The Department notes several comments from RFS, BCD and Council relate to impacts associated with the detailed subdivision of the mod site, which is subject to Council DA 0569/2017. Detailed plans submitted with MOD 5 originally showed the proposed subdivision and an indicative single storey dwelling envelope on the E3 land within the mod site. As these are not proposed or considered in the assessment of MOD 5, an amended layout plan has been provided no longer showing the future DA subdivision details or the indicative single storey dwelling envelope. 	No additional conditions or amendments to existing conditions are recommended.
Minimum lot size of E3 zoned land within Clover Hill	<ul style="list-style-type: none"> The proposal originally sought to amend the approved SSAP to reduce the required minimum lot size on the E3 land on the mod site from 1.4 ha to 2,000m². Council and the BCD raised concerns that the reduction in lot size would fragment the E3 land and diminish its environmental value. In response to concerns raised by Council, the BCD and comments from the Department, the Proponent withdrew this element of the proposal, retaining the required minimum lot size within the mod site of 1.4ha. 	No additional conditions or amendments to existing conditions are recommended.

Replacement of riparian corridor with habitat enhancement link	<ul style="list-style-type: none"> • The proposal seeks to replace an approved riparian corridor, linking the E3 land on the mod site to Escarpment Drive, with a new habitat link between the E3 land and Johnson's Spur (Figure 8). • The habitat link comprises three separate parcels of land with a total area of 5,000m². • Council and BCD raised no issues with this component of the proposal. • The Department also supports the proposed replacement, as the habitat link provides a more practical and logical link between two areas of vegetation, as apposed to the approved arrangement that provides a narrow corridor link to Escarpment Drive. 	No additional conditions or amendments to existing conditions are recommended.
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6. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department has carefully considered the issues raised in the agency submissions and has concluded the proposal is acceptable as it would:

- ensure the E3 zoned land on the mod site is retained as a single 1.4 ha lot in accordance with SEPP SSP and the concept approval
- clarify the E3 zoned land on the mod site as Environmentally Significant Land, as originally approved in the concept approval
- clarify that a VMP is required for Environmentally Significant Land
- ensure the mod site complies with bushfire safety without compromising existing remnant vegetation
- not result in any adverse environmental or social impacts.

The Department's assessment therefore concludes the modification request can be approved (see **Appendix B**).



7. Recommendation

It is recommended that the Acting Director, Regional Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application MP09_0082 MOD 5 falls within the scope of section 75W of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **modifies** the concept approval MP 09_0082
- **signs** the attached Modification of Concept Approval (**Appendix B**).

Recommended by:

Silvio Falato
Team Leader, Regional Assessment



8. *Determination*

The recommendation is: **Adopted by:**

6 March 2020

Brendon Roberts
Acting Director
Regional Assessments



Appendices

Appendix A – Environmental Assessment

1. Modification Request
2. Submissions
3. Response to Submissions
4. Supplementary Response to Submissions

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9187

Appendix B – Modification of Concept Approval

The recommended notice of modification of concept approval can be found at the Department's website, at the following link:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9187