



ASSESSMENT REPORT

Calderwood Concept Plan MP 09_0082 MOD 2

1. INTRODUCTION

This report is an assessment of a request to modify the Concept Plan for the Calderwood residential and mixed-use development in the Shoalhaven and Wollongong City Council local government areas.

The request has been lodged by Lend Lease Communities (Australia) Limited (the Proponent), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The request seeks approval to insert a new Modification into the Concept Approval to clarify the subdivision requirements for land in the E2, E3 and RE1 zones.

Both Wollongong City Council (Wollongong Council) and Shellharbour City Councils (Shellharbour Council) raised concerns about the proposal because it could lead to increased fragmentation of the riparian corridors and result in additional residential and ecotourism development within the E3 zone. Both Councils also raised concern about the proposal being inconsistent with the zoning objectives and minimum lot size requirements outlined in *State Environmental Planning Policy (State Significant Precincts) 2005* (SSP SEPP).

The Department has carefully considered the concerns raised by both Councils and is satisfied the proposed wording of the modification is acceptable as it would:

- facilitate the development of Calderwood, consistent with the original approval and the broader strategic planning framework for the site
- prevent the fragmentation of the riparian/environmental corridors, as all land not required to be dedicated for a public purpose would be progressively consolidated into a single allotment
- not change the development potential of the environmental zoned lands
- facilitate the creation of the Environmental Reserves identified in the approved Concept Plan, and ensure each reserve is appropriately managed.

2. SUBJECT SITE

The site is located approximately 10 kilometres (km) west of the Shellharbour City Centre and 20 km south-west of Wollongong. The site has an area of approximately 700 hectares (ha), with approximately 593 ha of land located within the Shellharbour local government area (LGA), and the remaining 107 ha of land located within the Wollongong LGA (see **Figure 1**).

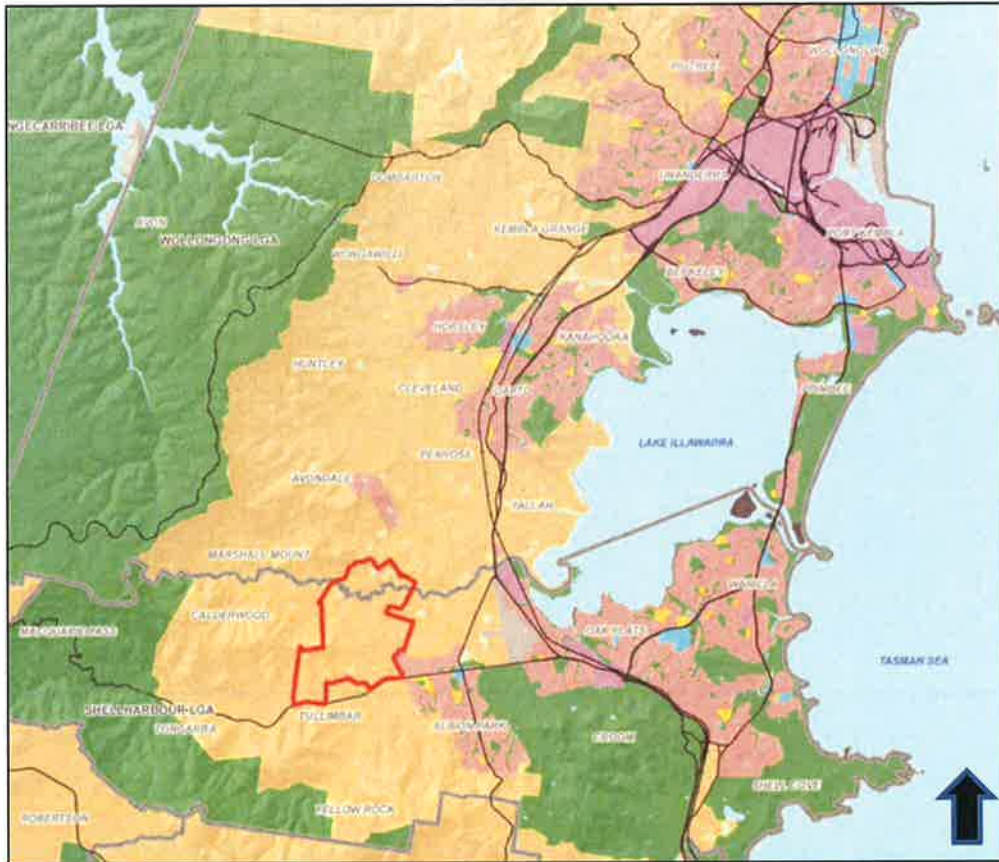


Figure 1: Site Location Plan (Source: Calderwood Concept Plan Environmental Assessment)

Marshall Mount Road is located adjacent to the northern boundary of the site, and the Illawarra Highway runs along the southern boundary of the site. The West Dapto Urban Release area (Yallah/Marshall Mount) adjoins the northern boundary of the site, and the suburbs of Albion Park and Tullimbar are located south-east of the site (see **Figure 2**).

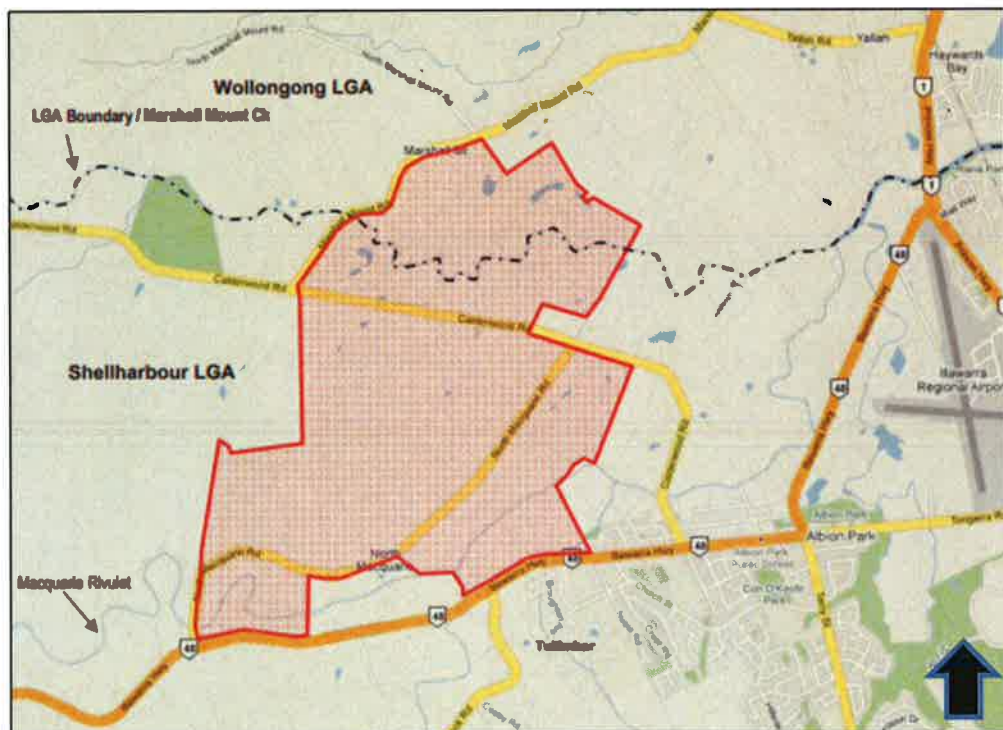


Figure 2: Adjoining Land Uses (Source: Calderwood Concept Plan Director-General's Environmental Assessment Report)

3. APPROVAL HISTORY

3.1 Concept Plan

On 8 December 2010, the then Minister for Planning granted Concept Approval to guide the development of 700 ha of land at Calderwood for the following purposes:

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

On 10 May 2016, the Proponent lodged a section 75W request to modify the Concept Approval (MOD 1) in relation to developer contributions and infrastructure requirements. At the time of writing this report, MOD 1 had not been determined

3.2 State Significant Site Listing and SSP SEPP controls

On 14 January 2011, the subject site was declared a State Significant Site (SSS) in the then *State Environmental Planning Policy (Major Development) 2005* (now the SSP SEPP). The SSS listing carried over most of the zoning and minimum lot size controls proposed in the SSS Listing and Concept Plan, however, minor amendments were made to:

- specify a minimum lot size of 10 ha for the subdivision of land outside the core riparian zones and the proposed environmental reserves located within the E3 zone to protect the environmental values of these lands
- change the zoning of certain land to address potential flood evacuation issues and to provide an appropriate transition to the adjoining rural properties.

The zoning and minimum lot sizes under the SSP SEPP are shown in **Figure 3**.

The SSP SEPP identifies the minimum lot size requirements for the subdivision of land at Calderwood. In summary, the SSP SEPP requires all subdivisions to be consistent with the minimum lot sizes identified in the Calderwood Lot Size Map (shown in **Figure 4**).

The Calderwood Lot Size Map does not specify a minimum lot size for the subdivision of the E2, E3 or RE1 zoned lands, with the exception of land adjacent to Johnsons Spur on the western side of the site. As such, the minimum lot size for this land relies upon Schedule 3, Part 28 Division 2 clause 18(4) of the SSP SEPP, which specifies no new lots can be created below the minimum lot size applicable to the site prior to the operation of clause 18. As such, the relevant provisions of the previous Local Environmental Plans for Shellharbour and Wollongong apply, which both specify a minimum lot size of 40 ha for the subject lands. This modification request relates to those lands, shown as unhatched in **Figure 3**, and white in **Figure 4**.

3.3 Other Approvals

On 23 September 2013, the LEC approved a project application for the first stage of the development, including 231 residential lots, nine mixed use and medium density lots and associated infrastructure on the subject site (MP 09_0083). The Project Approval has been modified on five occasions.

Shellharbour City Council has also approved several Part 4 development applications permitting the creation of new residential allotments, public reserves and public domain works.

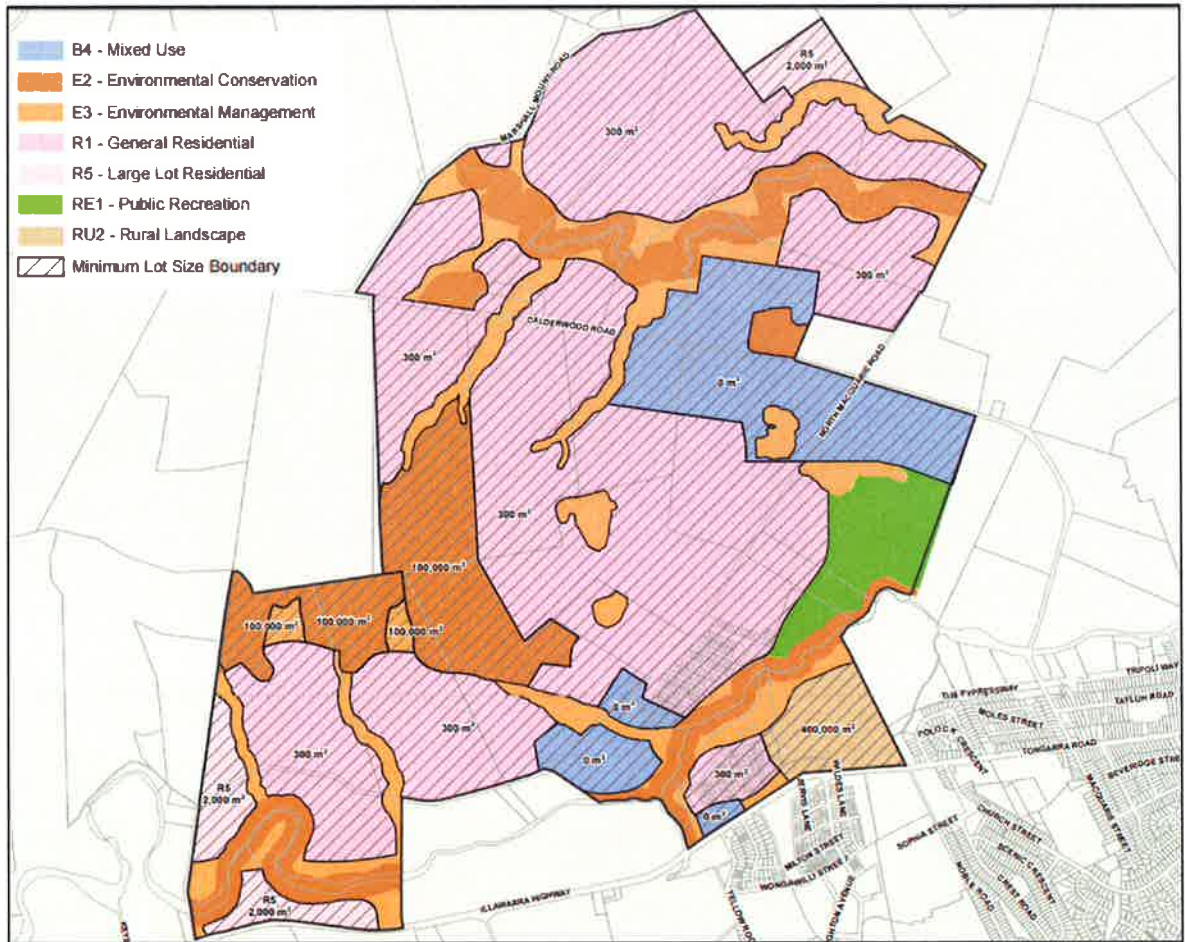


Figure 3: Calderwood zoning map overlay with lot size requirements under the SSP SEPP (Source: Proponents RTS).

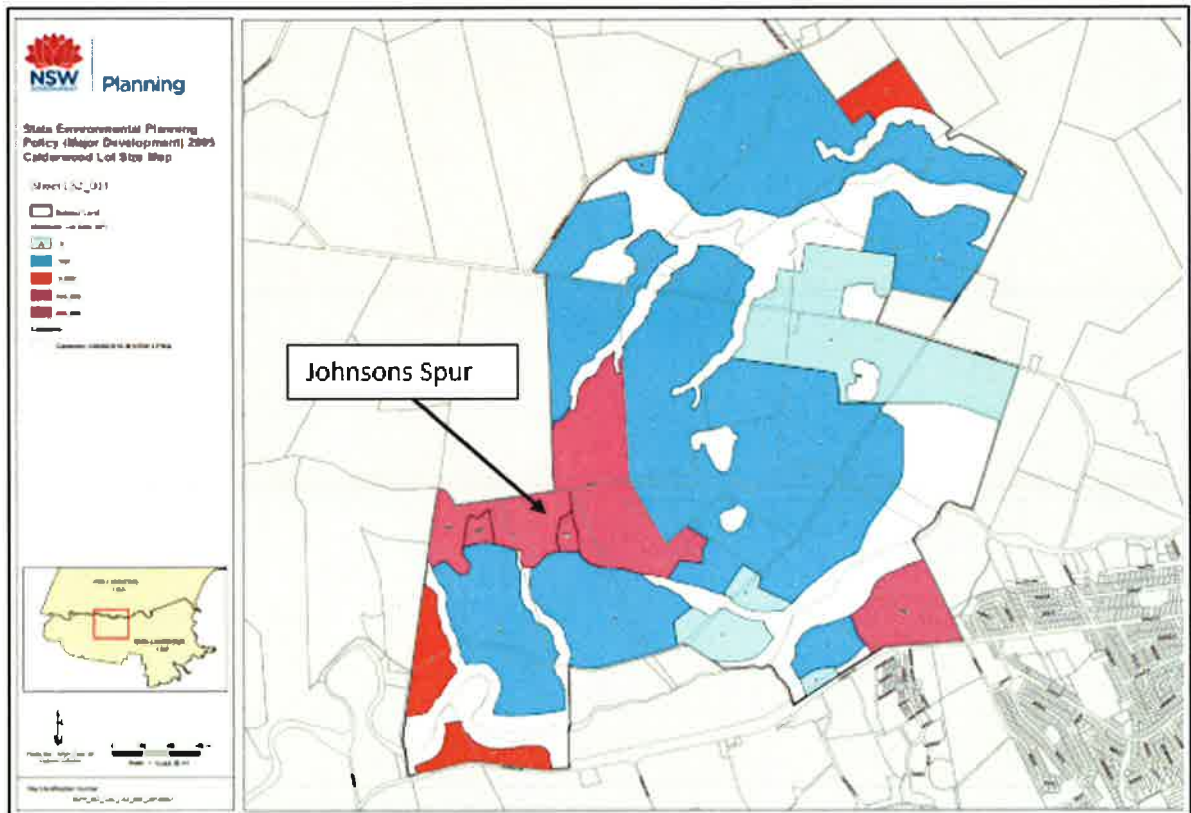


Figure 4: Calderwood Lot Size Map (Source: SSP SEPP).

4. PROPOSED MODIFICATION

The Proponent lodged a section 75W modification request (MP 09_0082 MOD 2) seeking approval to insert a new modification (Modification B7) into the Concept Approval. The proposed modification seeks to clarify the requirements for subdivision within the E2, E3 and RE1 zones.

Specifically, the request seeks to permit subdivision of these lands below the 40 ha minimum subdivision requirement. The Proponent advises the issue was identified when it had difficulty progressing development applications with Council because it could not meet the 40 ha requirement for:

- some isolated parcels of land zoned E3 which are well under 40 ha in size
- subdivision to create boundaries consistent with the approved staging or to deliver public land or infrastructure.

To resolve this issue, the request, as amended, seeks to:

- insert a new modification (Modification B7) into Part B of the Concept Approval. This would permit the subdivision of the E2, E3 and RE1 zoned land within the proposed Special Subdivision Area, subject to:
 - meeting specified minimum lot sizes for the isolated environmental reserves
 - demonstrating all riparian/environmental corridor land not required to be dedicated for a public purpose would be progressively consolidated into a single allotment to prevent the fragmentation of the riparian corridors for all other land within the Special Subdivision areas
 - demonstrating land uses on any new lots created within the E2 and E3 zoned lands would be consistent with the objective of protecting the scientific, cultural or aesthetic values of the land as per the intent of the SSP SEPP.
- modify Term C3 to ensure appropriate management plans for lots created pursuant to proposed Modification B7, are prepared and submitted with each relevant application.

The Proponent has advised the modification is required to:

- enable the orderly, efficient and timely delivery of the Calderwood project by explicitly providing for the subdivision of the uncoloured lands within Calderwood Lot Size Map of the SSP SEPP
- address the inconsistency between the Calderwood Lot Size Map and Schedule 3, Part 28, Division 1, clause 18(4) of the SSP SEPP, which prevents the creation of any lots below 40 ha within the Calderwood site
- enable the delineation of the boundaries between the residential, mixed-use, recreation and environmental zoned lands
- facilitate the excision and dedication of land to the relevant public authority where land is required for a public purpose
- ensure the progressive consolidation of contiguous lots within the E2 and E3 zones to allow these lands to be managed as one land parcel to ensure the environmental values of the riparian lands are retained.

The wording of proposed Modification B7 would read:

B7 Riparian and Environmental Reserve Land

The land identified on the Special Subdivision Areas Plan prepared by Lendlease dated September 2017, may be subdivided as follows:

1. Land identified as Environmental Reserve Lands must not be subdivided so as to create a lot less than the minimum lot size for the Environmental Reserve as shown on the Plan. Environmental Reserve Lands may be consolidated into a larger lot.

Note: The purpose of this condition is to ensure that certain land zoned E2 Environmental Conservation and E3 Environmental Management that is to comprise Environmental Reserves is not subdivided so as to inhibit ongoing management of the land in accordance with the Concept Plan.

2. Land within the Special Riparian / Environmental Corridor Subdivision Area may be subdivided irrespective of the size of the lots that are created, but only if:
 - (a) all riparian / environmental corridor land within a proposed subdivision is to be consolidated into a single lot as part of the proposed subdivision, excluding any areas of the riparian / environmental corridor land shown on the proposed subdivision plans as required to be dedicated for a public purpose including, but not limited to local drainage, local, city wide and district parks and other public open space, roads, pedestrian / cycle ways, utility services or other essential infrastructure; and
 - (b) any riparian / environmental corridor land not required to be dedicated for a public purpose that has or is to be consolidated into a single lot within the area of a subdivision in accordance with (a) above, is also subsequently amalgamated with any other contiguous area of riparian / environmental corridor land that has similarly been consolidated into a single lot to meet this requirement as part of an immediately adjoining subdivision stage, unless otherwise agreed by the consent authority having regard to proposed ownership arrangements.

Note: The purpose of this condition is to ensure that contiguous areas of riparian/environmental corridor land (excluding any land that is required to be dedicated for a public purpose) shown on the Concept Plan can be consolidated into a single lot on a stage by stage basis.

3. In granting consent to the subdivision of land within the Special Riparian / Environmental Corridor Subdivision Area the consent authority must take into consideration the following information that is to be provided as part of any relevant application for subdivision:
 - (a) a plan showing whether each of the lots to be created as part of that application is proposed to be retained in public or private ownership, and details of the public purpose of any lands that are proposed to be dedicated to the relevant council;
 - (b) a plan showing the relationship of any lot to be created as part of that application and proposed to be retained in private ownership to the anticipated pattern of future development under the Concept Plan on immediately adjoining land;
 - (c) whether the permissible uses of any lot to be created comprising riparian/environmental corridor land that is not required to be dedicated for a public purpose is consistent with the objective of protecting the ecological, scientific, cultural or aesthetic values of the land identified on the Special Riparian / Environmental Corridor Subdivision Area Plan.

The proposed Special Subdivision Area Plan is shown in **Figure 5**.

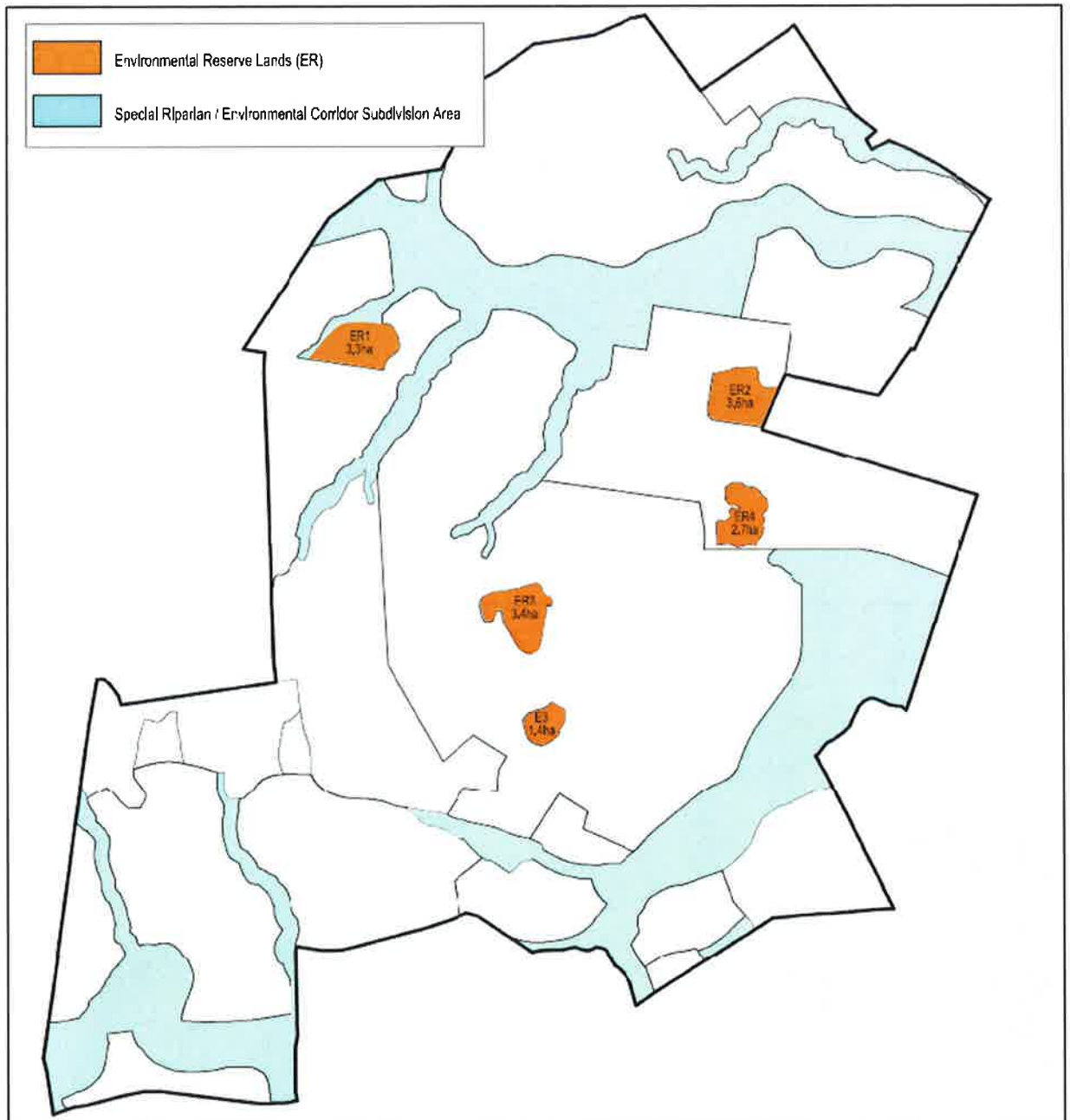


Figure 5: Proposed Special Subdivision Area Plan (Source: Proponent's Supplementary Information dated 14 September 2017)

5. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former section 75W of the Act.

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

5.2 Approval Authority

The Minister for Planning is the approval authority for the modification request. However, the Planning Assessment Commission (the Commission) may determine the request under delegation as both Shellharbour and Wollongong Council object to the proposed modification.

6. CONSULTATION AND RESPONSE

6.1 Consultation

The Department made the modification request publicly available on its website and consulted with Shellharbour Council, Wollongong Council and surrounding landowners about the modification request. Submissions were received from both Councils. One public submission was also received. These submissions are summarised below.

Shellharbour Council objected to the proposed modification and provided the following comments:

- the modification is inconsistent with the SSP SEPP, which prohibits the subdivision of any land within the Concept Plan area below the minimum lot size applicable to the site prior to the operation of clause 18 (40 ha)
- the removal of the minimum lot size requirement for the uncoloured E2 and E3 zoned land is not supported, and the modification request should be amended to specify minimum lot sizes for all E2 and E3 zoned lands
- all future allotments within the E2 and E3 zones should:
 - have no dwelling entitlement
 - have a restriction on title requiring the Proponent to retain ownership of the land, unless Council supports the dedication of this land as a conservation reserve
 - not be consolidated with an adjoining residential allotment.
- the proposal to permit dwellings and ecotourism developments on land that is contiguous within the E2 or E3 zones is not supported.

Wollongong Council did not object to the modification request, however, it raised the following concerns:

- it is unclear whether the modification request relates to the land included within the proposed Special Subdivision Area Map, or to all E2 and E3 zoned land
- the proposed changes to the minimum lot size requirement may be inconsistent with the objectives for E2 and E3 zoned land as outlined in the SSP SEPP
- the E2 and E3 zoned land should be consolidated into riparian areas and public reserves and should not be subdivided to align with the zone objectives. Alternately, the Concept Plan could be amended to include a provision similar to Clause 4.1A of the *Wollongong Local Environmental Plan 2009*, to facilitate the subdivision of lots with multiple land use zones.

One public submission was received during the notification period. The key issues raised in the public submission are summarised below:

- the Proponent should clarify whether 269 North Macquarie Road is designated for use as a park, or is proposed to accommodate any publicly accessible footpaths
- development within the Concept Plan area has the potential to result in flooding impacts.

The Department requested the Proponent address the issues raised the Council and public submissions in its Response to Submissions (RTS).

6.2 Response to Submissions

On 3 April 2017, the Proponent submitted an RTS which clarified the scope of the modification request. It also included changes to the wording of proposed Modification B7 to identify performance-based criteria that must be considered prior to permitting the subdivision of land within the proposed Special Subdivision Area.

The RTS also responded to the public submission noting that:

- no changes are proposed to the approved uses
- the proposed modification will not result in any changes to flooding impacts already assessed and approved as a part of the Concept Plan.

The RTS was referred to Shellharbour and Wollongong Council for comment. In summary, both Councils objected to the amended wording of Modification B7 on the basis that the proposed wording:

- did not identify a minimum lot size for the subdivision of the uncoloured lands in the Calderwood Lots Size Map, and would not prevent the fragmentation of lands adjacent to the Macquarie Rivulet
- did not address potential inconsistencies between the Concept Plan and the SSP SEPP.

Further, both Councils advised it would be more appropriate to amend the Calderwood Lot Size Map in the SSP SEPP to specify a minimum lot size for the uncoloured E2, E3 and RE1 zoned lands.

Following the lodgement of the RTS, the Department and both Councils raised concern about the wording of proposed Modification B7. As a result, the Proponent:

- amended proposed Modification B7 to require the progressive consolidation of lots within the E2 and E3 zones
- amended Term C3 to require the preparation and lodgement of management plans for land within the Open Space Corridors, Citywide Bushland and Environmental Reserves with each relevant development application

The additional changes to proposed Modification B7 and Term C3 were referred to both Councils for comment. Both Councils reiterated their previous objections to the proposed wording of Modification B7. In addition, Shellharbour Council recommended minor changes to the proposed wording of Term C3. The proposed wording of Term C3 is discussed in greater detail in **Section 7.3** of this report.

On 6 February 2018, the Proponent also updated the subdivision controls within the Consolidated Development Control Strategy to ensure it is consistent with the proposed modification to the Concept Plan.

7. ASSESSMENT

The Department considers the key issues associated with the modification request are:

- changes to the minimum lot size requirements for the E2, E3 and RE1 zoned lands
- development potential within the E3 zone
- consequential modifications to Term C3 of the Concept Approval.

7.1 Subdivision within the E2, E3 and RE1 Zoned Lands

The Department notes both Councils raised concern with the proposed wording of Modification B7 on the basis that:

- it is inconsistent with requirements of the SSP SEPP, which prohibits lot sizes smaller than 40 ha on the subject E2, E3 and RE1 zoned land
- it could fragment land within the riparian/environmental zoned lands
- it is inconsistent with the Illawarra-Shoalhaven Regional Plan.

The Department has considered the concerns raised by the Councils and has assessed the environmental, administrative and strategic issues associated with the proposal and supports the inclusion of Modification B7 into the Concept Approval for the following reasons:

The proposal would be consistent with the intent of the original Concept Plan and SSP SEPP

The Department notes Schedule 3, Part 28 Division 2 clause 18 (4) of the SSP SEPP has the effect of prohibiting the subdivision of lots within the subject E2, E3 and RE1 zoned land into lots smaller than 40 ha.

The Department has undertaken a review of the original State Significant Site (SSS) listing and Concept Plan applications and notes these applications never sought to apply a minimum 40 ha lots size to the subject E2, E3 and RE1 zoned land. Rather, the proposal sought approval to:

- apply no minimum lot size to the subdivision of land within the riparian corridors and environmental reserves within the subject E3 zoned land
- apply no minimum lot size for the subdivision of land within the E2 or RE1 zones.

The Concept Plan and SSS proposed minimum lot sizes for the site are shown in **Figure 6**.

The request to apply no minimum lot size to the subdivision of these lands was supported by the Department and no minimum lot size was identified for these lands in the SSP SEPP.

Further, the Department notes most of the existing lots at Calderwood are between 20 and 40 ha in size, therefore clause 18(4) would prevent the subdivision of these lands for any purpose, contrary to the intended outcomes of the Concept Plan. Accordingly, the Department considers this was not the intent of clause 18(4).

The Department also acknowledges both Councils are concerned the modification request would create inconsistencies between minimum lot size provisions of the SSP SEPP and the Concept Plan. However, the Department notes clause 3B(2)(f) of Schedule 6A of the EP&A Act provides that the provisions of an environmental planning instrument, including the provisions of the SSP SEPP, do not have any effect to the extent they are inconsistent with the terms of an approved Concept Plan. Therefore, the amended Concept Plan would prevail over the SSP SEPP and provide clear guidance for future subdivision of the site.

Overall, the Department is satisfied that it was not intended to limit the subject E2, E3 and RE1 zoned lands to 40 ha. Further, the proposed amendments would rectify inconsistencies between the SSP SEPP and the intentions of the Concept Plan and appropriately clarify the subdivision requirements for these lands.

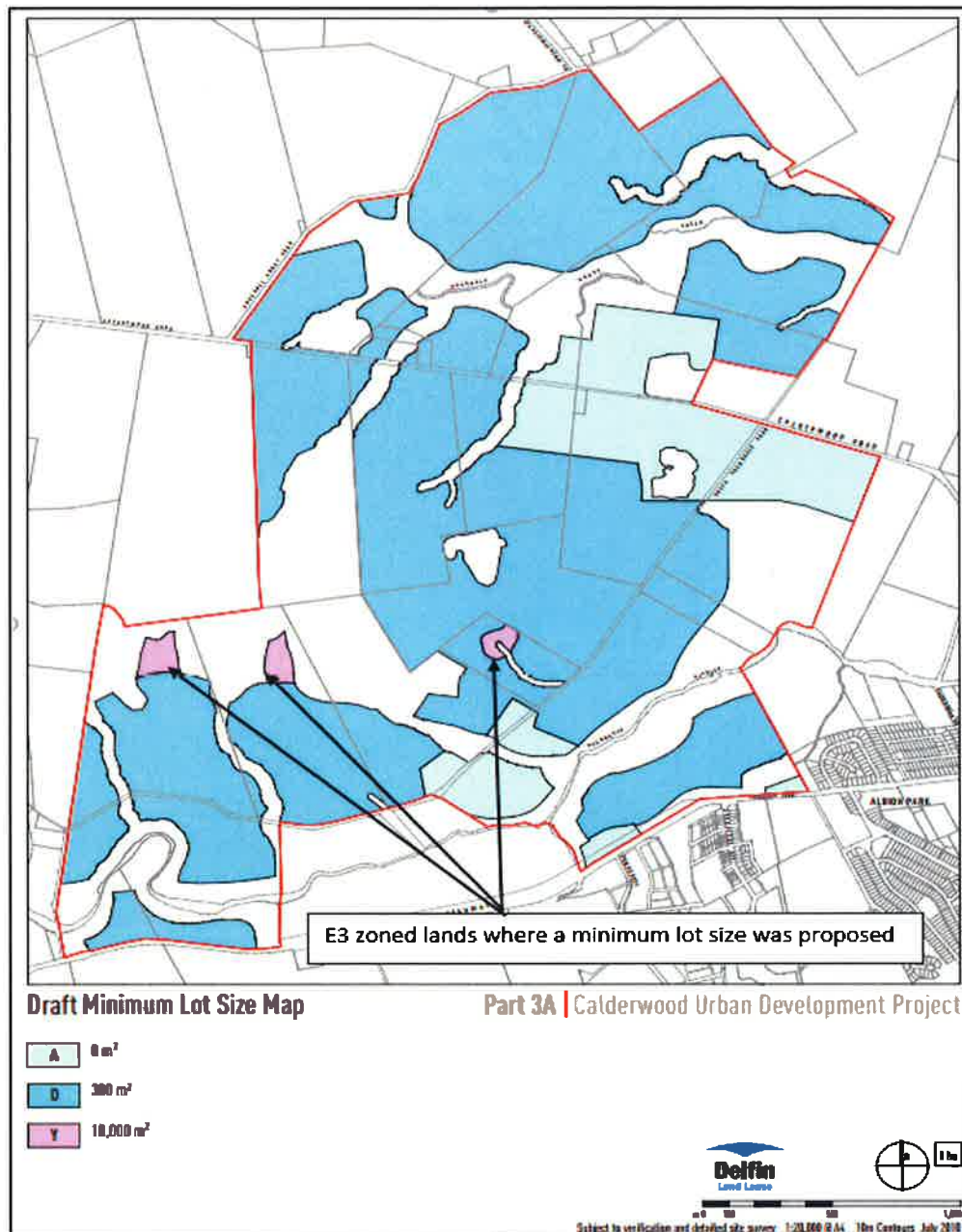


Figure 6: Proposed SSS minimum lot sizes (Source: Proponent's RTS for the SSS Site Listing and Calderwood Concept Plan)

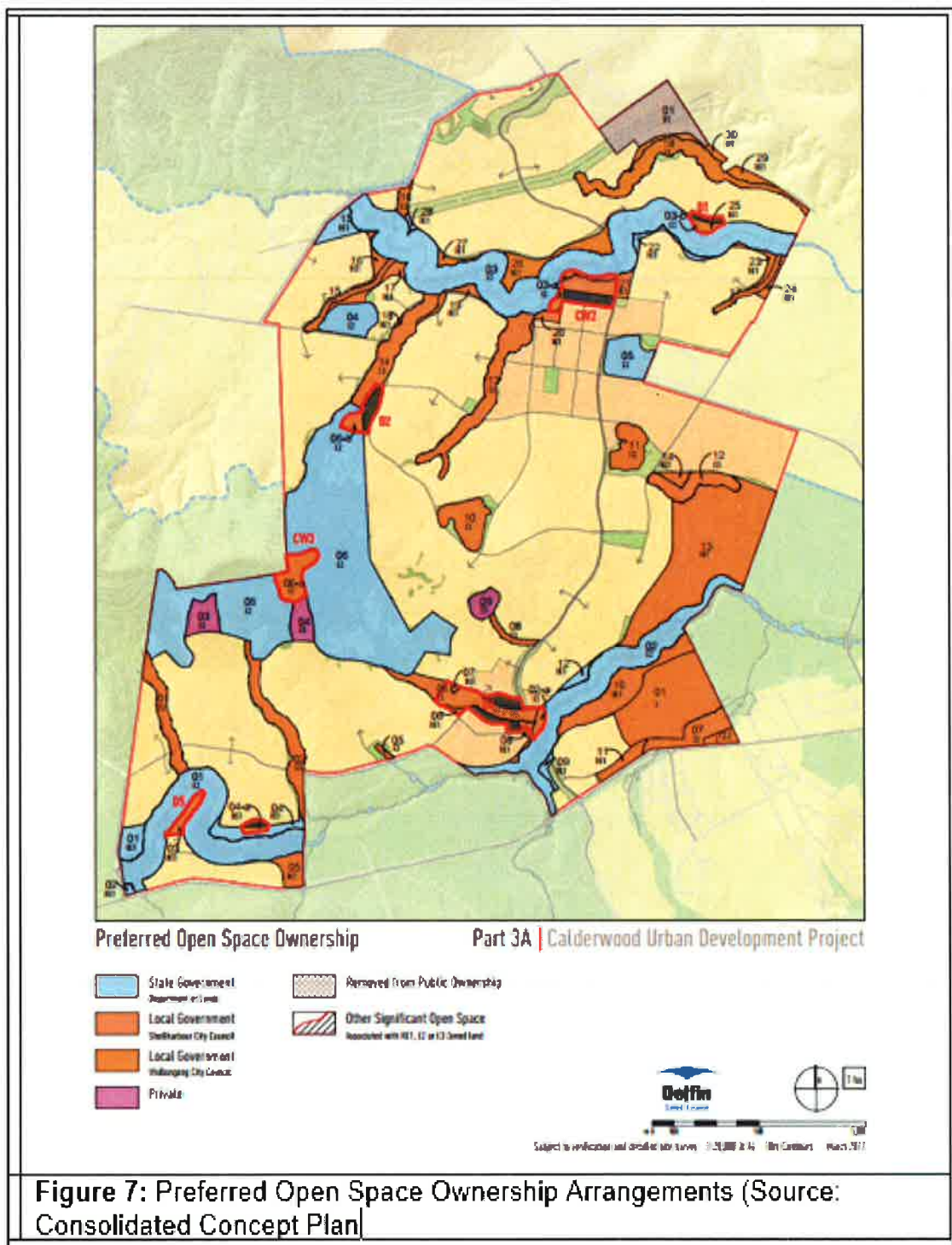
The proposal would require the consolidation of the riparian corridors

The Department and Council raised concern that the original proposal could further fragment land within the E2 and E3 zones, contrary to the zone objectives. In response, the Proponent amended the wording of Modification B7 to require the staged consolidation of all contiguous riparian/environmental corridor land.

The Department considers the revised wording of Modification B7 is acceptable as it would ensure that riparian/environmental corridor land (excluding any land that is required to be dedicated for a public purpose) would be consolidated into a single lot on a stage by stage basis.

This would also ensure the proposal remains consistent with the objectives outlined in the SSP SEPP, as the staged consolidation of these lands into a single allotment would assist with the on-going preservation and rehabilitation of the riparian corridors. The proposal would also be consistent with the Concept Approval, which seeks to ensure the lands would be managed as a single parcel (see **Figure 7**).

The Department is therefore satisfied that the proposed wording of Modification B7 would provide a balance between allowing the staged redevelopment of the site to progress while at the same time, ensuring the riparian/environmental corridors are consolidated, on a stage by stage basis.



The proposal would facilitate the creation of the environmental reserves

The Department notes the SSP SEPP currently prevents the creation of lots identified as environmental reserves within isolated E2 and E3 zoned lands, as these parcels of land are already below the 40 ha minimum subdivision requirement.

To resolve this issue, the Proponent seeks to specify minimum lot sizes for the isolated parcels of E2 and E3 zoned land (see **Figure 5**). This would facilitate the creation of the Environmental Reserves identified in the approved Concept Plan, and ensure each reserve is managed by a single landowner. The Department is satisfied this change is consistent with the zone objectives of the SSP SEPP and the approved Concept Plan.

The proposal would remain consistent with the Illawarra Shoalhaven Regional Plan

The Department notes Wollongong Council raised concern that the proposed modification would be inconsistent with the *Illawarra Shoalhaven Regional Plan* (Regional Plan).

The Department has reviewed the proposal against the relevant provisions of the Regional Plan and considers the proposal would be consistent with the Regional Plan on the basis that:

- it would not alter the boundaries of the E2, E3 or RE1 zoned lands or the approved riparian corridors
- the proposal would progressively reduce the level of fragmentation within the E2, E3 and RE1 zones, and the recommended changes to Term C3 would ensure each riparian corridor is appropriately managed
- it would not permit additional land uses on E2 or E3 zoned lands, or clearing within the Environmentally Significant Lands
- it would not alter the existing water quality targets for Marshall Mount Creek, the Macquarie Rivulet, or Lake Illawarra identified in the Concept Approval
- it would not alter the sustainability and liveability principles outlined in the Concept Plan
- it would continue to ensure the retention of the regional conservation linkages identified in the Concept Plan.

Overall, the Department supports the proposed wording of Modification B7 as it would clarify the subdivision requirements for E2, E3 and RE1 zoned lands and prevent the fragmentation of the Marshall Mount Creek and the Macquarie Rivulet riparian corridors. Further the Department considers the proposal is consistent with the strategic zoning objectives of the site and it would permit the staged subdivision of the site in accordance with the original Concept Plan approval.

7.2 Consequential Modifications to Term C3 of the Concept Approval

Term C3(1) of the Concept Approval requires the Proponent to prepare and submit a management plan for all Open Space Corridors, Citywide Bushland, and Open Space Reserves identified in the Open Space Network Plan. This plan must identify the ownership arrangements for these lands and demonstrate how management regimes will be implemented on an on-going basis. In addition, Term C3(2) requires the preparation of Vegetation Management Plans (VMPs) for the land included within the Riparian Corridor Network Plan.

Under the current circumstances, some of the E2 and E3 zoned lands proposed for inclusion in the Special Subdivision Area would not need to be managed in accordance with a VMP (i.e. the E2 and E3 zoned lands outside the riparian corridor). To improve the environmental outcomes on the site and to ensure all the E2 and E3 zoned land within the proposed Special Subdivision Area is managed in accordance with a VMP, the Department has recommended changes to Term C3 to require the submission of VMPs for all Open Space Corridors, Citywide Bushland, and Open Space Reserves identified in the Open Space Network Plan.

The Department notes Shellharbour Council requested minor modifications to Term C3(2) to ensure each stage specific VMP is consistent with:

- the Management Plan(s) prepared under Term C3(1) of the Concept Plan
- the provisions of any other VMP on adjoining land.

The Department has reviewed Council's comments and agrees future VMPs should be consistent with the relevant management plan(s) prepared to satisfy Term C3(1), and the provisions of any VMP(s) on adjoining land. As such, the Department has recommended modifications to Term C3(2) to incorporate Council's recommendations.

In addition, as the long-term land ownership arrangements for the E2 and E3 zoned are not yet known, the Department has also recommended changes to Term C3 to ensure the VMPs are implemented by the relevant landowner(s) in-perpetuity. This will ensure there is a consistent, holistic approach to land management, regardless of land ownership arrangements.

7.3 Permissible Uses within the E2 and E3 Zones

The Department notes both Councils raised concern about the proposed modifications increasing the development potential for residential and ecotourism developments within the E3 zone. Further, Shellharbour Council requested the Department include a provision prohibiting the construction of residential development on lots less than 40 ha.

Council has requested this prohibition on the basis that clause 18(1) of the *Shellharbour Rural Local Environmental Plan 2004*, which was in place immediately prior to the operation of clause 18(4) of the SSP SEPP, prohibited the creation of a lot less than 40 ha which would contain an existing or proposed dwelling.

The Department notes the SSP SEPP and the Concept Plan currently permit residential and ecotourism developments in the E3 zone. Further, the SSP SEPP and Concept Plan do not include any requirements preventing residential or ecotourism developments on lots under 40 ha. As such, the Department has concluded future proposals for residential and ecotourism development within the E3 zone will need to be assessed on their merits, as per the intent of the SSP SEPP and the Concept Plan.

Further, the wording of proposed Modification B7 requiring the progressive consolidation of all contiguous E2 and E3 zoned lands (not required for a public purpose) would reduce the potential for new residential and ecotourism development, as it would progressively reduce the total number of lots within the zone.

The Department is therefore satisfied the proposal would not increase the development potential of the environmental lands, beyond the current approval.

8. CONCLUSION

The Department has assessed the proposal in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposal is acceptable as it would clarify the subdivision requirements for the subject E2, E3 and RE1 zoned lands, it would prevent the fragmentation of the riparian/environmental corridors and it would facilitate the orderly redevelopment of the site in accordance with the approved Concept Plan.

The Department therefore considers that the project is approvable, subject to the condition outlined in **Section 7** of this report. This assessment report is hereby presented to the Planning Assessment Commission for determination.



Anthony Witherdin
Director
Modification Assessments



Anthea Sargeant 20/2/18
Executive Director
Key Sites and Industry Assessments