



allen, price & associates
land and development consultants

7 December 2012
Our Ref: 24163 KAR
Your Ref: MP05_0024

NSW Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attention: Mr Stuart Withington

Dear Mr Withington

**REQUEST TO MODIFY A DEVELOPMENT APPROVAL UNDER SECTION 75W OF THE EP&A ACT –
MAJOR PROJECT 05_0024 FOR A STAGED 102 LOT RESIDENTIAL SUBDIVISION – LOT 171
DP 1081810 HIGHVIEW DRIVE DOLPHIN POINT FOR MALBEC DOLPHIN POINT PTY LTD**

I refer to your meeting with our Mr Matthew Philpott on 8 August 2012 with regard to the proposal.

We seek to make the following amendments to the Major Project consent under Section 75W of the Environmental Planning & Assessment Act as it applied when this Major Project application was determined.

Herein, when it is proposed to modify the wording of an issued condition of consent, I have highlighted those alterations using ***bold italics***, so that the changes are obvious. I have not, for the purposes of brevity, reiterated the original condition as well as provided the modified version of the condition, but only provided the modification sought.

The Allen, Price & Associates plans provided to you 28 June 2010 have been slightly modified to number each lot in each stage however, submitted engineering plans prepared by Storm Consulting and Landscape Plans prepared by HW Smit have not been amended, therefore the attached plan (24163-21 Revision 07, dated 16.11.12) represents the latest information in relation to our modification request.

1. Amend Condition A1 to read:

Project Description

A ***102*** lot residential subdivision, roads and associated infrastructure, minor and major stormwater drainage system, Endangered ecological community/drainage reserve, water quality detention basin and threatened species habitat Conservation Reserve.

Reason

Consistency between the revised lot layout, in accordance with condition **B1 Design Modifications** and Allen, Price & Associates plan reference 24163-21 revision 06 approved by the Director, Regional Projects on the 8th July 1020. Further, we have numbered each lot in accordance with its relevant stage.

2. Amend Condition A2 to read:

Staging

- 1) Stage 1 comprises:

14 Residential lots (including a 4,930m² drainage reserve with a 900m² water quality detention basin to be dedicated to Council at this stage, **construction and dedication of the public reserve of 1615m²**, construction of the connector road, roundabout at the intersection with Road One, Highview Drive and Dolphin Point Drive, footpaths and cycleways, stormwater drainage works, road connection to the subdivision to the west (this may be deferred to a later stage depending on the development of the subdivision to the west) and associated road infrastructure; **clearing of trees in accordance with the approved tree retention plan for this stage including the provision of an appropriate asset protection zone, and fencing of Conservation Reserve in accordance with condition B2(5).**

- 2) Stage 2 comprises:

17 lots, roads, footpaths and cycleways and stormwater drainage works; **and clearing of trees in accordance with the approved tree retention plan for this stage including the provision of an appropriate asset protection zone**

- 3) Stage 3 comprises:

19 lots, roads, footpaths and cycleways and stormwater drainage works; **and clearing of trees in accordance with the approved tree retention plan for this stage including the provision of an appropriate asset protection zone**

- 4) Stage 4 comprises:

18 lots, roads, footpaths and cycleways and stormwater drainage works; **and clearing of trees in accordance with the approved tree retention plan for this stage including the provision of an appropriate asset protection zone**

- 5) Stage 5 comprises:

16 lots (**including two medium density lots, minimum areas 1765m²**), roads, footpaths and cycleways and stormwater drainage works; **and clearing of trees in accordance with the approved tree retention plan for this stage including the provision of an appropriate asset protection zone**

- 6) Stage 6 comprises:
18 lots, roads, footpaths and cycleways and stormwater drainage works; *and clearing of trees in accordance with the approved tree retention plan for this stage including the provision of an appropriate asset protection zone*

REASON

Consistency between the revised lot layout and approved plan (24163-21 revision 06), and the conditions of approval as stated in the Recommended Conditions of Approval, as well as implementing the conditions with the works required in a timely manner.

Reference to the staging of the subdivision, throughout the conditions of approval, to refer to the layout plan as approved and signed by the Director Regional Projects on the 8th July 2010 (Allen Price & associates Plan reference 24163-21 revision 06).

Proposing to add the medium density lot provision from Stage 4 to Stage 5 is a result of the change to the initial design amendments to meet the criteria of condition B1. The location of those lots was approved by the Department on 8 July 2010.

The high angle left turn onto the Princes Highway is proposed to be deleted from Stage 5 as there is no nexus between this subdivision and that construction work. This site does not have direct access onto the Princes Highway and there are valid Section 94 Developer Contribution road projects which this subdivision will contribute to for this work – 05ROAD0063 Dolphin Point / Burrill Lake Collector and Link Road, and 05ROAD2011 Southern Link Road.

The Dolphin Point Collector Road project (construction works now complete) was based upon DCP 52 and the potential traffic likely to be generated from the rezoning of the land in this locality from rural to urban. The subdivision proposed generates significantly less traffic than that originally anticipated by Council due to the environmental constraints where almost 6ha of land are excluded from development.

There is no direct nexus between this 102 lot subdivision and the necessity for the left turn lane onto the highway as the road design of the intersection for the S94 project was undertaken with an anticipated yield from the rezoned lands. The Contributions Plan that is the basis of this project states that *“the purpose of this plan is to ensure that the demand for road infrastructure in the Dolphin Point / Burrill Lake area is addressed”*. The Contributions plan allocated 149 ETs to the development of the subject land based upon the original lodged Major Project application.

Further, the clearing of each stage with the provision of an appropriate asset protection zone around each stage allows dwelling houses to be constructed without onerous bushfire attack level construction standards upon registration of each stage. The recommendation for APZ surrounding each stage was made in the Bushfire & Environmental Services bushfire report (BES REF 6498 June 2007) submitted with the original application.

We also wish to advise the Department that due to market demand, stages may be advanced or undertaken out of the 1 – 6 consecutive sequence, subject to the issue of a construction certificate by Shoalhaven City Council. As the subdivision works progress, it may be necessary to advance a stage, or part of a stage, as a requirement of orderly civil construction works, for example to comply with electricity reticulation requirements. We seek to be able to alter the staging without the necessity of a further Section 75W application to the Department, similar to the “Bayswood” subdivision in Vincentia.

3. Amend Condition A3 to read:

Project in Accordance with Plans

Plan of Subdivision prepared by Allen, Price and Associates			
Drawing No.	Revision	Name of Plan	Date
24163-21	07, As approved by Department of Planning, Director Regional Projects, 8 th July 2010	Plan of Proposed Residential Subdivision at Lot 171 DP 1081810 at Highview Drive, Dolphin Point for Malbec Pty Ltd.	<u>(Revision 07 16-11-2012)</u>
Engineering Drawings prepared by Storm Consulting			
Drawing No.	Revision	Name of Plan	Date
611-P01	-	Dolphin Point, stormwater management schematic	As submitted within Appendix M Water Cycle Management Report Oct 2008 for the Preferred Project Report.
611-P02	-	Dolphin Point, stormwater management schematic	As submitted within Appendix M Water Cycle Management Report Oct 2008 for the Preferred Project Report
Landscape Drawings prepared by WH&G Smit Landscape Architects			
Drawing No.	Revision	Name of Plan	Date
LA.1	B	Landscape Plan	30 October 2008

REASON

Our application sketch plan has been modified to ensure consistency between the revised lot layout, as per condition **B1 Design Modifications** and staging plan (24163-21 revision 06) as approved on the 8th July 2010.

The changes on our most recent application sketch (24163-21 Rev 07 dated 16.11.2012) reflect numbers for each lot that are consistent with the staging of that particular section of the subdivision – e.g. – Stage 1 lots are numbered 101 – 114, and Stage 2 – 6 are similarly consecutively numbered.

4. Delete Condition B1 - Design Modifications

REASON

This condition of consent has been complied with through the previous provision of 24163-21 Revision 06, approved by the Department on 8 July 2010. All aspects of the required design modifications have been completed in that plan modification.

5. Amend Condition B2 (1) to read:

Conservation Reserve

The 5.9 hectare Conservation Reserve is to be managed in perpetuity for the purpose of conservation of threatened species habitat. No development is to occur within this Reserve. The management of the Reserve is to be funded and implemented by the proponent in accordance with a Conservation Management Plan to be endorsed by the NSW Office of Environment & Heritage and approved by the Department prior to the issue of a Construction Certificate for Stage 1.

REASON

This condition is amended to reflect the alteration to the conservation reserve as provided in AP&A sketch 24163-21 Rev 06 approved by the Department 8 July 2010, which at the time was illustrated as 5.89 hectares.

6. Amend Condition B2(5) to read

Conservation Reserve

A vehicle proof fence is to be constructed along the perimeter of the interface of the reserve with residential areas. The fence is to be constructed progressively along with the construction of the perimeter road for each stage.

REASON

The wording “or at an earlier stage if the Department requests” is proposed to be deleted from the condition as this would effectively mean that the roads adjacent to the conservation reserve would have to be constructed out of sequence or that areas of vegetation would need to be removed for the construction of the vehicle proof fencing when no roads exist. This also has flow on consequences for drainage and service provisioning through the subdivision.

Logically, there will be no need for the fence / vehicle barrier until such time as the road is constructed, thus allowing the fence to be erected as the road fronting the reserve is being prepared for construction. By doing so, this area of the site will be disturbed once for both the road construction and the fencing of the reserve as the road is built.

Further, by virtue of condition B4, all areas that are to be left undisturbed (i.e. the conservation area) are to be cordoned off from construction works, therefore bringing forward the construction of the vehicle proof fence to an earlier stage is not considered to be appropriate if the area is to be retained as undisturbed.

7. Amend Condition B3 to read:

Medium Density Lot

Two lots within Stage 5 of at least 1700m² that are capable of supporting medium density developments are to be provided. The medium density lots are to comply with DCP 71 Medium Density Housing.

REASON

This condition is proposed to be amended to reflect the approved revised subdivision layout and staging plan reference 24163-21 revision 6 prepared by Allen Price & Associates.

This formalises the Department's letter of approval dated 8th July 2010 confirming that Allen Price & Associates' revised subdivision layout and staging plan, reference 24163-21 Rev 06, has been accepted.

8. Amend Condition B4 to read:

Tree Retention Plan

A Tree **Retention** Plan is to be prepared by a suitably qualified arborist showing structurally stable and healthy trees to be retained after the creation of the Roads, Drainage Works, Building Envelopes and Asset Protection Zones for each **stage**. **The plan will detail the method to be employed for tree retention and tree removal.**

The Plan is to be produced by a suitably qualified arborist and shall ensure:

- 1) Each tree **to be retained within a residential allotment, public reserve or drainage reserve** is identified by a number, its species and its health;
- 2) Retention of **suitable** structurally stable trees not required to be removed to fulfil Asset Protection Zone requirements or to accommodate building envelopes and driveways or for the provision of services; and

- 3) Retention of **suitable structurally stable** trees within public reserves, except where required to be removed for the provision of services and construction of roads.

Before any trees are felled and removed the Tree Retention Plan is to detail:-

- 1) The proposed tree removal method including inspection of hollows by a suitably qualified person prior to felling. Methods should be consistent with the recommendations contained in the Environmental Assessment at Sections 6.2 of Appendix 4 – Flora and Fauna Assessment;
- 2) Nest boxes are to be provided at a ratio of three boxes for each hollow bearing tree removed. Details should be provided of methods to be used to permanently attach nest boxes at an appropriate height to suitable trees within the land to be excluded from development;
- 3) Safeguards for the protection of fauna both prior to, during and following the works, including the presence of a suitably qualified person during the entire felling operation to ensure that proper management of any affected fauna can be effectively managed;
- 4) The means of protecting trees and vegetation nominated for retention during construction of all works. All areas that are to be left undisturbed are to be cordoned off from areas of construction works.

A Tree ***Retention*** Plan is to be submitted to Council for approval prior to the issue of a Construction Certificate for each stage.

REASON

Tree cover over the entire site is very dense making detailing of individual trees difficult, time consuming and the value of such a detailed survey is questioned when the trees will be removed for roads, drainage and asset protection zones. In particular stages 4, 5 & 6 are predominantly covered in She-Oak at a ratio of 20 trees per 25 square metres. Stages 1, 2 & 3 are covered in Eucalypt and are not as dense but the task remains substantial and financially onerous for the clients.

By maintaining conditions, required to assist any fauna that may be within the site, the majority of the aims of the condition are met. The conservation reserve is to be maintained intact as it is to be held in private ownership, as it is to be managed for habitat purposes. Identifying every tree to be retained within this 5.9ha reserve has no nexus to the remainder of the subdivision.

Sections 1 – 5 of the second part of the condition detailing existing conditions on site, service location etc, are proposed to be deleted in this S75W modification because that information is largely to be provided on other plans submitted with the construction certificate.

Further, the physical works required to create the lots, including road, drainage, location of services above and underground and establishment of asset protection zones will impact on the health and safety of trees within the subdivision. Clause 2.1.3 of Shoalhaven City Council's, *Tree Management Policy - Part 2* notes that "... *trees at risk from cumulative, long-term impacts are better removed at subdivision stage.*" The trees located within the construction areas of the site will be removed and the structural standard and health of those in close proximity will be jeopardised, therefore if a tree that straddles the boundary of a residential lot and road, it is likely that it will be removed as a prudent measure to reduce future liability.

We fail to see the value in identifying and describing trees that will be removed in the normal process of developing the land for residential subdivision. By nominating those trees that will be retained ensures that during the development process these trees will be safeguarded and protected from on site machinery and processes.

9. Delete Condition B8

Groundwater Interception

REASON

It is uncertain what the intent of this Condition is. Water quality control measures in the form of bioswales, required as per Storm Consulting's Water Cycle Management report dated March 2007 rely on water exfiltrating out of bioswales. Bioswales will typically be less than 1m deep and are unlikely to intercept the ground water table.

Other drainage structures, such as detention basins and water quality control basins will more than likely be lined, depending on in situ soil type, to stop water from escaping these structures.

10. Amend Condition B9

Provision of Bus Bays and Bus Shelters

The developer is to provide one bus shelter on the residential lots side of Road Six, in the vicinity of the intersection with Road Four. A bus shelter plan is to be submitted to Council for approval prior to release of a construction certificate for the stage containing the bus shelter that details the location and specification of the bus shelter including a concrete pad at the back of the kerb suitable for the shelter.

REASON

In consultation with Shoalhaven City Council's traffic unit, Council have advised that one bus shelter constructed in the vicinity described in the Condition is sufficient for this development. Council have also advised the 9m wide carriageway of Road six is sufficient enough to sustain a bus shelter only and an indented bus bay is not required.

11. Amend Condition B13 to read:

Formalised entry to Barnunj SCA

Prior to the issue of a Construction Certificate for Stage **6** agreement must be reached with **NSW Office of Environment & Heritage** about the location of a formalised entry from the subdivision into Barnunj SCA. The proponent is to fund all required work.

REASON

To reflect the approved revised subdivision layout and staging plan reference 24163-21 revision 7 prepared by Allen Price & Associates.

12. Remove Condition B14 from Part B, amend wording to read as follows and add Condition to Part C – Prior to Commencement of Works:

CXX Construction Management Plan

- 1) Prior to **commencement of Works** for each stage of the project, a Construction Management Plan shall be submitted to and approved by the Certifying Authority. A copy of the approved plan shall be submitted to Council. The Plan shall address, but not be limited to, the following matters where relevant:
 - a) hours of work;
 - b) contact details of site manager;
 - c) traffic and pedestrian management;
 - d) noise and vibration management;
 - e) construction waste management;
 - f) erosion and sediment control; and,
 - g) flora and fauna management
 - h) protection of Conservation Reserve

REASON

The construction contractor who will be undertaking the works is best placed to prepare the Construction Management Plan as they are the experts on construction methodologies and how best to manage risks and safety with respect to their works. The Construction Contract will not be awarded before the Construction Certificate is issued therefore Conditioning timing of the issue of the Construction Certificate on preparation and approval of the CEMP is an unreasonable time constraint on the Developer.

13. Delete Condition B15

Traffic and Pedestrian Management Plan

REASON

The roads within and immediately adjacent to this subdivision are not RMS controlled roads, and no works are proposed within an RMS controlled road for this subdivision.

The approval for works to be undertaken within a constructed & dedicated road reserve requires the approval of Council under Section 138 of the Roads Act. Dolphin Point Road, Vista Drive and Highview Drive are all Council maintained and owned road reserves. The requirement for compliance with an RTA (RMS) publication is unwarranted and unnecessary in the circumstances of this case.

As part of the construction certificate process where works are being undertaken adjacent to or within a dedicated public road reserve, a S138 approval will be sought from Shoalhaven City Council. This requires the preparation and submission of a traffic control plan prepared by a suitably qualified & certified consultant. That TCP will include a traffic and pedestrian management plan where necessary.

14. Amend Condition B17 to read:

Stormwater Drainage

- 1) The stormwater drainage system shall be designed to satisfy the minor and major systems performance criteria of Shoalhaven City Council;
- 2) The peak rate of runoff from the development shall not exceed current condition rates of runoff for storms ranging between 1 year and 100 year ARI for a range of storm durations up to and including three hours duration;
- 3) The following environmental targets are to be achieved for the development.: 90% reduction in the average annual gross pollutant (size>5mm)load, 85% reduction in the average annual total suspended solids load, 65% reduction in the average annual total phosphorus load, and 45% reduction in the average annual total nitrogen load.
- 4) The proposed constructed wetland (as per plan produced by Storm Consulting numbered 611-P01 and plan of Proposed Residential Subdivision by Allen Price and Associates **24163-21 Rev 07**) shall be designed by an appropriately qualified person and generally in accordance with the Constructed Wetlands Manual (DLWC 1998).
- 5) A plan of any required interallotment drainage, and easements to facilitate this drainage, is to be approved by Council.

Details of the design of the stormwater drainage system are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate for each Stage.

REASON

To reflect the approved revised subdivision layout and staging plan reference 24163-21 revision 07 prepared by Allen Price & Associates.

Further, the requirement for peer review of the MUSIC model electronic input and output files has been deleted from part 3 of the condition as the MUSIC modelling was conducted by an expert consultant with substantial experience in the field. Peer review is unreasonable and onerous.

15. Amend Condition B19 to read:

Road Works Design

- 1) The collector road (Road One) and sections of Road Three, Road **Six** and Vista Drive that form the 20 metre wide perimeter road to the Conservation Reserve are to be constructed with a 9 metre road pavement width. All other roads are to be 16 metres wide with a 6 metre road pavement.
- 2) All roundabouts are to be designed to make provision for pedestrians to cross the road at all splitter islands in accordance with the Austroads guidelines.
- 3) Traffic control devices are to be incorporated into the design of roads in accordance with the requirements of Element RE4 of Shoalhaven DCP100.
- 4) As per the Plan of Proposed Residential Subdivision drawn by Allen, Price & Associates 24163-21 Revision **07** dated 16/11/2012, a **mountable** roundabout is to be provided at the intersection of Dolphin Point Road, Seaside Parade, Highview Drive and Road One.
- 5) Pram ramps to the Australian Standard are to be provided at all locations where pathway cross roads, including where layback kerb and gutter is provided.
- 6) A pedestrian refuge in accordance with RTA Technical Directions is to be provided where the footpath/cycleway crosses Road One at the roundabout. Refuge design is to accommodate swept paths of semi trailers which are used to deliver building materials for house construction.
- 7) A mountable roundabout is to be constructed at the intersection of Road One and Road Four if Safe Intersection Sight Distance to Austroads standards cannot be achieved around the curve in Road One. The measurement for sight distance should occur in conjunction with each stage release and if found deficient, the roundabout is to be constructed prior to the release of the next stage release.
- 8) Public road access is to comply with section 4.1.3(1) and all property access roads are to comply with section 4.1.3(2) of Planning for **Bushfire Protection**.

Final design plans of the roads within the subdivision, incorporating these requirements, prepared by a qualified practicing Civil Engineer and in accordance with the requirements of Shoalhaven City Council shall be submitted to and approved by the Certifying Authority prior to issue of a Construction Certificate for each stage.

REASON

To reflect the approved revised subdivision layout and staging plan reference 24163-21 revision 06 prepared by Allen Price & Associates, as updated with the lot numbers to revision 07.

Also, the original specified roundabout is more suited to higher traffic flows areas. For example, this is the same specification as the nearby roundabout on The Princess Highway. Furthermore, given the low traffic counts in this locality the mountable roundabout provides a safe traffic solution as well as offering a less visually imposing structure. Additional information has been provided by traffic consultants Colston Budd Hunt & Kafes Pty Ltd (see attached), supporting the proposed amendments to B19(4) as provided above, seeking the construction of a mountable roundabout at the intersection without the necessity of accommodating the manoeuvring of a 14.5m rigid bus.

It is also proposed to remove the LATM treatments as Shoalhaven City Council has advised they are not considered appropriate for this development.

16. Amend Condition B20 to read

Construction of Collector Road Connection

- 1) The collector road connection to the **eastern boundary of the** adjoining site to the west (Lot 2 DP 1123774) is to be constructed at the cost of the proponent **as part of Stage 2 civil works**.
- 2) The collector road connection is to be constructed at an appropriate level to join with the collector road connection from the western side of the creek (to be provided by the developer of the adjoining site).
- 3) Should the collector road connection between the subject site and the adjoining site to the west not be constructed prior to the completion of the construction of the final stage of subdivision covered by this approval, a bank guarantee covering the cost of the abovementioned works is to be provided to Council, prior to the issue of a Construction Certificate for Stage **6**.

REASON

This condition does not relate directly to the land, which is the subject of the application currently before the Department. The subject application is confined to the land contained within Lot 171 DP 1081810.

Before a condition of consent can be imposed on a determination a direct nexus must be established between the application as submitted and determined and the condition imposed. In other words the reason the condition is imposed is that the proposed development generates the need for that particular condition and that condition is a consequence of the application made.

In the timely and orderly development of residential land, roads are built by the owners of, or proponents of any development on, those lands. It is unfair to require roads to be built by a party that has no connection or relationship, other than being an adjoining neighbour, on land where they have no legal right to occupy, work on or in fact erect structures. If the road is required as a result of the adjoining subdivision then it should be a condition of that development. The overall road layout for this area would have been determined at Development Control Plan or at the strategic planning stage, prepared by Shoalhaven City Council, and in accordance with normal practices, unless subject to a specific section 94 plan, construction of roads are the responsibilities of those land owners where the proposed roads are located.

A specific section 94 plan does cover this area for the construction of the collector road and Condition E11 levies contributions for both the Southern Link Road and the Dolphin Point/Burrill Lake Connector and Link Road.

The subdivision does not rely on this connector road for access to the subdivision. Access to the subdivision is available from Dolphin Point and Vista Drives and the internal roads off these Drives.

The land (Lot 2 DP 1123774 Wuru Drive) where the connector road is to be located and built upon does not form, nor is part of, the land subject of this application.

17. Delete Condition B21

Provision of Left Turn Lane onto the Princes Highway from the Roundabout at Dolphin Point Road Link.

REASON

The roundabout that requires upgrading, as noted in the condition, along with the southern link road was subject of a section 94 plan adopted by Shoalhaven City Council as 05 ROAD 0063 and 05 ROAD 2011 adopted in 2008. At the time the section 94 plan was adopted for these projects, Shoalhaven City Council and presumably the RTA would have been fully aware of the land zoned residential, south of the Princes Highway, and of the full impact the land when fully developed would have on the roundabout in question.

The subject land represents part of the residential zoned land within the Dolphin Point area. The land south of the Princes Highway, which is to be developed for residential purposes, contains 483 lots (approved and existing). All of these lots will use the roundabout at the Princes Highway and Wallaroy Drive. The increase in traffic at the roundabout is a direct result of developments occurring within this residential zoned area

as determined by Shoalhaven City Council, which is greater than the subject 102 lot subdivision application.

There is no direct nexus between this subdivision and the required works, as this subdivision with the potential for a greater number of lots was taken into account during the implementation phase of the S94 contributions and the design and construction of the roundabout.

18. Delete Condition D3

Provision of Indented Bus Bays and Bus Shelters

REASON

The requirements for the bus shelter are outlined in Condition B9.

19. Delete Condition D13

Cut and Fill

REASON

We seek to delete this condition as there may be instances where 500mm is insufficient to permit slab on ground construction for a future dwelling house as the fall over some of the lots is 1 - 2 metres. In general terms, cut and fill of 600mm or less does not require specific development approval, i.e. earth works and retaining walls under SEPP Exempt & Complying Development Codes. The condition is not considered to be necessary and other legislation is in place to ensure that significant cut and fill is approved by Council without adverse harm on the surrounding environment.

Further, under Subdivision 6 of Part 3 General Housing Code (SEPP Exempt & Complying Development Codes), a dwelling house or ancillary development (other than a swimming pool) must not be more than 1m below ground level (existing), where filling is to be no more than 600mm to meet the specified development standards of the code. If cut and fill for a new dwelling house meets these requirements then the dwelling house construction can be pursued via a complying development certificate.

20. Delete Condition D16

Water Quality Monitoring

REASON

Condition is the same as Condition D10

21. Amend Condition D18 to read

Dust Control Measures

Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction. In particular, the following measures must be adopted:

- 1) Physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust emissions,
- 2) Earthworks and scheduling activities shall be managed to coincide with the next stage of development to minimise the amount of time the site is left cut or exposed,
- 3) All materials shall be stored or stockpiled responsibly,
- 4) The surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run-off occurs,
- 5) All vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other materials,
- 6) **Shaker pads or rumble grids shall be installed at the work site construction entry (within the site) to remove dust from vehicle wheels before exiting the site.**
- 7) Gates shall be closed between vehicle movements and shall be fitted with shade cloth;
- 8) Clearing of footpaths and roadways shall be carried out regularly.

REASON

We seek this modification to replace the wash down bay requirement with a simpler yet effective mechanism that can be easily moved around the site as stages of the construction require.

22. Amend Condition D20 to read:

The hours of construction for all stages of the project, including the delivery of materials to and from the site, shall be restricted as follows:

- 1) Between 7.00am and 6.00pm, Mondays to Fridays inclusive;
- 2) Between 8.00am and **3.00pm**, Saturdays;
- 3) No work on Sundays or Public Holidays

Works may be undertaken outside these hours where:

- 4) The delivery of materials is required outside these hours by the Police or other authorities;
- 5) It is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;
- 6) The work is approved through the Construction Noise and Vibration Management Plan; and
- 7) Residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of works.

REASON

We seek this modification to increase the productive time available for the contractor to complete the project in accordance with the developers timeframes as well as increasing the economic viability of working on a Saturday. Civil contractors are unlikely to work Saturdays if there is insufficient time in the working day to obtain a reasonable amount of production particularly when penalty rates apply for working Saturdays.

23. Amend Condition D21 to read

Construction Noise Objective

- 1) The construction noise objective for all stages of the project is to manage noise from construction activities **(as measured by a $L_{Aeq, (15 \text{ minute})}$ descriptor) so it does not exceed the background L_{A90} noise level by more than 10dB.**
- 2) Background noise levels are those identified in the Environmental Assessment or otherwise identified in the approved Construction Management Plan. The Proponent shall implement all feasible noise mitigation and management measures with the aim of achieving the construction noise objective.
- 3) Any activities that have the potential for noise emission that exceed the objective must be identified and managed in accordance with the approved Construction Management plan.
- 4) If the noise from a construction activity is substantially tonal or impulsive in nature (as described in Chapter 4 of the NSW Industrial Noise Policy), **10dB** must be added to the measured construction noise level when comparing the measured noise with the construction noise objective.

REASON

We seek this modification so that the condition reflects the current Office of Environment & Heritage's (formerly Department of Environment, Climate Change and Water) Construction Noise Guidelines 2009 requirements. These best practice guidelines recommends a construction noise management level ($L_{Aeq\ 15\ \text{minute}}$) of Rating Background Noise Level (L_{A90}) + 10dB.

The condition of consent was based upon an older guideline which is more stringent than current guidelines permit and we seek this condition to be modified to current requirements.

24. Amend E5 (3) to read

In addition to the above certification, the following is to be included in the Section 88E instrument to accompany the final plan of subdivision for each stage as necessary:

- a) A restriction to user for each lot requiring that no cats or dogs (other than guide dogs for assistance of vision impaired persons) **may be kept on any allotment at any time unless within the curtilage of the dwelling or secured on a leash;**
- b) A positive covenant requiring that at the commencement of building works and in perpetuity each affected lot shall be managed, in accordance with the amended Subdivision Layout and Asset Protection Zone plan, as in inner protection area as outlined in Planning for Bush Fire Protection and the RFS document Standards for Asset Protection Zones;
- c) A restriction as to user for each lot requiring that lots affected by flooding as shown on the plan produced by Storm Consulting numbered 611-PO2 shall have a flood planning level set at a minimum of RL 4.01 AHD;
- d) A restriction as to user for each lot requiring that 5kL rainwater tanks are to be connected to each residential dwelling;
- e) A covenant requiring that the conservation reserve is to be managed in perpetuity by the **registered proprietor** for conservation and in accordance with the approved Conservation Reserve Management Plan (if this Reserve is transferred to OEH Estate this part of Condition E5 will not be necessary);
- f) A restriction to user for each lot requiring that all residential lots in all stages of the subdivision are required to use materials and colours in the erection of buildings on the lots predominantly of muted shades that will blend with the surrounding bushland.

REASON

We seek this modification to make this subdivision consistent with others in the locality and utilise Council's standard wording in relation to the keeping of cats and dogs within the curtilage of a dwelling. This is also consistent with our submitted Statement of Commitments.

With regard to the conservation reserve, the amendment sought is only to reflect the ownership of the property rather than the proponent (which technically is Allen, Price & Associates).

25. Amend Condition E8 to read

Dedication of Internal Roads

All internal roads shall be constructed by the proponent and dedicated to Council as public roads **for each relevant stage and noted as such on a plan of subdivision** for the issue of a Subdivision Certificate.

REASON

The roads cannot be dedicated until a subdivision certificate and plan of subdivision are lodged with the Land & Property Information Office for registration. A notation is usually placed on the plan of subdivision stating that it is intended to dedicate the roads as public road reserves and that then is undertaken by LPI in the plan registration process.

26. Amend Condition E10 to read

Construction of Collector Road Connection

Should the collector road between the subject site through to the **eastern boundary of the** adjoining property to the west (**Lot 2 DP 1123774**) to Wuru Road not be constructed prior to the construction of the final stage of subdivision covered by this approval, a bank guarantee covering the cost of the connection of the collector road to the **eastern boundary of the adjoining site to the west (Lot 2 DP 1123774)**, is to be provided to Council.

Upon construction of the connection of the collector road from the west through the adjoining property, the works are to be funded by the bank guarantee. Should no subdivision works commence on the adjoining land within 5 years of the release of the subdivision certificate for the final stage of the subdivision, the bank guarantee is to be released by Council.

REASON

As provided in the amendment to Condition B20, the land to the west is not included within our application and a condition cannot be imposed to require construction of road works on

another landowner's property, particularly when there is no nexus to the subdivision we have proposed.

Our site can gain access from Dolphin Point Drive and Vista Drive and it is highly unlikely that residents will utilise the collector road through the adjoining subdivision to gain access to the Princes Highway.

This condition has been amended to be consistent with Condition B20.

27. Amend Condition E11 to read

Section 94 Monetary Contributions

Staging of the lots need to be changed to reflect the new staging of the development as follows:-

	Existing Staging as per Approval	Amended Staging as per Revised Layout (APA reference 24163-21 version 06)
	Number of ET	Number of ET
Stage 1a - 3 lots; Conservation Reserve, Stage 1b & Superlot Stages 2 to 6.	2	0
Stage 1b (14 lots)	19	13
Stage 2 (17 lots)	19	17
Stage 3 (19 lots)	1	19
Stage 4 (18 lots)	15	18
Stage 5 (14 lots + 2MD lots)	12	16
Stage 6 (18 lots)	20	17
Stage 7	18	0
Total number of lots (102)	106	101 + credit for existing land

(1) Amount of contributions

STAGE 1 - 14 LOTS WITH 1 CREDIT

Project	Description	Rate	Qty	Total	GST	GST Incl
05AREC0001	Tennis, Football, Cricket & Netball (Area 5)	\$1,798.12	13	\$1,798.12	\$0.00	\$23,375.56
05AREC0002	Leisure Centre Heated Indoor Swimming Pool	\$206.33	13	\$206.33	\$0.00	\$2,682.29
05CFAC0010	Southern Shoalhaven Branch Library	\$273.42	13	\$273.42	\$0.00	\$3,554.46
05OREC0017	Dolphin Point	\$2,143.01	13	\$2,143.01	\$0.00	\$27,859.13
05ROAD0063	Dolphin Point/Burrill Lake Connector and Link Road	\$3,857.82	13	\$3,857.82	\$0.00	\$50,151.66
05ROAD2011	Southern Link Road	\$448.19	13	\$448.19	\$0.00	\$5,826.47
CWAREC0003	Hockey Facilities	\$288.13	13	\$288.13	\$0.00	\$3,745.69

CWCFAC0001	Stage 1: Shoalhaven City Library Extensions	\$305.15	13	\$305.15	\$0.00	\$3,966.95
CWCFAC0001	Stage 2: Shoalhaven City Arts Centre	\$27.60	13	\$27.60	\$0.00	\$358.80
CWCFAC0001	Stage 3: Shoalhaven Mobile Children's Services	\$9.05	13	\$9.05	\$0.00	\$117.65
CWCFAC0002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$272.82	13	\$272.82	\$0.00	\$3,546.66
CWFIRE0001	Citywide Fire & Emergency services	\$169.10	13	\$169.10	\$0.00	\$2,198.30
CWFIRE0002	Shoalhaven Fire Control Centre	\$221.39	13	\$221.39	\$0.00	\$2,878.07
CWMGMT2001	Section 94 Administration	\$459.41	13	\$459.41	\$0.00	\$5,972.33
CWOREC0001	Embellishment of Icon and District Parks and Walking Tracks	\$176.94	13	\$176.94	\$0.00	\$2,300.22
	STAGE Total:	\$10,656.48	13			\$138,534.24

STAGE 2 - 17 LOTS

Project	Description	Rate	Qty	Total	GST	GST Incl
05AREC0001	Tennis, Football, Cricket & Netball (Area 5)	\$1,798.12	17	\$1,798.12	\$0.00	\$30,568.04
05AREC0002	Leisure Centre Heated Indoor Swimming Pool	\$206.33	17	\$206.33	\$0.00	\$3,507.61
05CFAC0010	Southern Shoalhaven Branch Library	\$273.42	17	\$273.42	\$0.00	\$4,648.14
05OREC0017	Dolphin Point	\$2,143.01	17	\$2,143.01	\$0.00	\$36,431.17
05ROAD0063	Dolphin Point/Burrill Lake Connector and Link Road	\$3,857.82	17	\$3,857.82	\$0.00	\$65,582.94
05ROAD2011	Southern Link Road	\$448.19	17	\$448.19	\$0.00	\$7,619.23
CWAREC0003	Hockey Facilities	\$288.13	17	\$288.13	\$0.00	\$4,898.21
CWCFAC0001	Stage 1: Shoalhaven City Library Extensions	\$305.15	17	\$305.15	\$0.00	\$5,187.55
CWCFAC0001	Stage 2: Shoalhaven City Arts Centre	\$27.60	17	\$27.60	\$0.00	\$469.20
CWCFAC0001	Stage 3: Shoalhaven Mobile Children's Services	\$9.05	17	\$9.05	\$0.00	\$153.85
CWCFAC0002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$272.82	17	\$272.82	\$0.00	\$4,637.94
CWFIRE0001	Citywide Fire & Emergency services	\$169.10	17	\$169.10	\$0.00	\$2,874.70
CWFIRE0002	Shoalhaven Fire Control Centre	\$221.39	17	\$221.39	\$0.00	\$3,763.63
CWMGMT2001	Section 94 Administration	\$459.41	17	\$459.41	\$0.00	\$7,809.97
CWOREC0001	Embellishment of Icon and District Parks and Walking Tracks	\$176.94	17	\$176.94	\$0.00	\$3,007.98
	STAGE Total:	\$10,656.48	17			\$181,160.16

STAGE 3 - 19 LOTS

Project	Description	Rate	Qty	Total	GST	GST Incl
05AREC0001	Tennis, Football, Cricket & Netball (Area 5)	\$1,798.12	19	\$1,798.12	\$0.00	\$34,164.28
05AREC0002	Leisure Centre Heated Indoor Swimming Pool	\$206.33	19	\$206.33	\$0.00	\$3,920.27
05CFAC0010	Southern Shoalhaven Branch Library	\$273.42	19	\$273.42	\$0.00	\$5,194.98
05OREC0017	Dolphin Point	\$2,143.01	19	\$2,143.01	\$0.00	\$40,717.19
05ROAD0063	Dolphin Point/Burrill Lake Connector and Link Road	\$3,857.82	19	\$3,857.82	\$0.00	\$73,298.58
05ROAD2011	Southern Link Road	\$448.19	19	\$448.19	\$0.00	\$8,515.61
CWAREC0003	Hockey Facilities	\$288.13	19	\$288.13	\$0.00	\$5,474.47
CWCFAC0001	Stage 1: Shoalhaven City Library Extensions	\$305.15	19	\$305.15	\$0.00	\$5,797.85
CWCFAC0001	Stage 2: Shoalhaven City Arts Centre	\$27.60	19	\$27.60	\$0.00	\$524.40
CWCFAC0001	Stage 3: Shoalhaven Mobile Children's Services	\$9.05	19	\$9.05	\$0.00	\$171.95
CWCFAC0002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$272.82	19	\$272.82	\$0.00	\$5,183.58
CWFIRE0001	Citywide Fire & Emergency services	\$169.10	19	\$169.10	\$0.00	\$3,212.90
CWFIRE0002	Shoalhaven Fire Control Centre	\$221.39	19	\$221.39	\$0.00	\$4,206.41
CWMGMT2001	Section 94 Administration	\$459.41	19	\$459.41	\$0.00	\$8,728.79
CWOREC0001	Embellishment of Icon and District Parks and Walking Tracks	\$176.94	19	\$176.94	\$0.00	\$3,361.86
	STAGE Total:	\$10,656.48	19			\$202,473.12

STAGE 4 - 18 LOTS

Project	Description	Rate	Qty	Total	GST	GST Incl
05AREC0001	Tennis, Football, Cricket & Netball (Area 5)	\$1,798.12	18	\$1,798.12	\$0.00	\$32,366.16
05AREC0002	Leisure Centre Heated Indoor Swimming Pool	\$206.33	18	\$206.33	\$0.00	\$3,713.94
05CFAC0010	Southern Shoalhaven Branch Library	\$273.42	18	\$273.42	\$0.00	\$4,921.56
05OREC0017	Dolphin Point	\$2,143.01	18	\$2,143.01	\$0.00	\$38,574.18
05ROAD0063	Dolphin Point/Burrill Lake Connector and Link Road	\$3,857.82	18	\$3,857.82	\$0.00	\$69,440.76
05ROAD2011	Southern Link Road	\$448.19	18	\$448.19	\$0.00	\$8,067.42
CWAREC0003	Hockey Facilities	\$288.13	18	\$288.13	\$0.00	\$5,186.34
CWCFAC0001	Stage 1: Shoalhaven City Library Extensions	\$305.15	18	\$305.15	\$0.00	\$5,492.70
CWCFAC0001	Stage 2: Shoalhaven City Arts Centre	\$27.60	18	\$27.60	\$0.00	\$496.80

CWCFAC0001	Stage 3: Shoalhaven Mobile Children's Services	\$9.05	18	\$9.05	\$0.00	\$162.90
CWCFAC0002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$272.82	18	\$272.82	\$0.00	\$4,910.76
CWFIRE0001	Citywide Fire & Emergency services	\$169.10	18	\$169.10	\$0.00	\$3,043.80
CWFIRE0002	Shoalhaven Fire Control Centre	\$221.39	18	\$221.39	\$0.00	\$3,985.02
CWMGMT2001	Section 94 Administration	\$459.41	18	\$459.41	\$0.00	\$8,269.38
CWOREC0001	Embellishment of Icon and District Parks and Walking Tracks	\$176.94	18	\$176.94	\$0.00	\$3,184.92
	STAGE Total:	\$10,656.48	18			\$191,816.64

STAGE 5 - 16 LOTS

Project	Description	Rate	Qty	Total	GST	GST Incl
05AREC0001	Tennis, Football, Cricket & Netball (Area 5)	\$1,798.12	16	\$1,798.12	\$0.00	\$28,769.92
05AREC0002	Leisure Centre Heated Indoor Swimming Pool	\$206.33	16	\$206.33	\$0.00	\$3,301.28
05CFAC0010	Southern Shoalhaven Branch Library	\$273.42	16	\$273.42	\$0.00	\$4,374.72
05OREC0017	Dolphin Point	\$2,143.01	16	\$2,143.01	\$0.00	\$34,288.16
05ROAD0063	Dolphin Point/Burrill Lake Connector and Link Road	\$3,857.82	16	\$3,857.82	\$0.00	\$61,725.12
05ROAD2011	Southern Link Road	\$448.19	16	\$448.19	\$0.00	\$7,171.04
CWAREC0003	Hockey Facilities	\$288.13	16	\$288.13	\$0.00	\$4,610.08
CWCFAC0001	Stage 1: Shoalhaven City Library Extensions	\$305.15	16	\$305.15	\$0.00	\$4,882.40
CWCFAC0001	Stage 2: Shoalhaven City Arts Centre	\$27.60	16	\$27.60	\$0.00	\$441.60
CWCFAC0001	Stage 3: Shoalhaven Mobile Children's Services	\$9.05	16	\$9.05	\$0.00	\$144.80
CWCFAC0002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$272.82	16	\$272.82	\$0.00	\$4,365.12
CWFIRE0001	Citywide Fire & Emergency services	\$169.10	16	\$169.10	\$0.00	\$2,705.60
CWFIRE0002	Shoalhaven Fire Control Centre	\$221.39	16	\$221.39	\$0.00	\$3,542.24
CWMGMT2001	Section 94 Administration	\$459.41	16	\$459.41	\$0.00	\$7,350.56
CWOREC0001	Embellishment of Icon and District Parks and Walking Tracks	\$176.94	16	\$176.94	\$0.00	\$2,831.04
	STAGE Total:	\$10,656.48	16			\$170,503.68

STAGE 6 - 17 LOTS

Project	Description	Rate	Qty	Total	GST	GST Incl
05AREC0001	Tennis, Football, Cricket & Netball (Area 5)	\$1,798.12	17	\$1,798.12	\$0.00	\$30,568.04

05AREC0002	Leisure Centre Heated Indoor Swimming Pool	\$206.33	17	\$206.33	\$0.00	\$3,507.61
05CFAC0010	Southern Shoalhaven Branch Library	\$273.42	17	\$273.42	\$0.00	\$4,648.14
05OREC0017	Dolphin Point	\$2,143.01	17	\$2,143.01	\$0.00	\$36,431.17
05ROAD0063	Dolphin Point/Burrill Lake Connector and Link Road	\$3,857.82	17	\$3,857.82	\$0.00	\$65,582.94
05ROAD2011	Southern Link Road	\$448.19	17	\$448.19	\$0.00	\$7,619.23
CWAREC0003	Hockey Facilities	\$288.13	17	\$288.13	\$0.00	\$4,898.21
CWCFAC0001	Stage 1: Shoalhaven City Library Extensions	\$305.15	17	\$305.15	\$0.00	\$5,187.55
CWCFAC0001	Stage 2: Shoalhaven City Arts Centre	\$27.60	17	\$27.60	\$0.00	\$469.20
CWCFAC0001	Stage 3: Shoalhaven Mobile Children's Services	\$9.05	17	\$9.05	\$0.00	\$153.85
CWCFAC0002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$272.82	17	\$272.82	\$0.00	\$4,637.94
CWFIRE0001	Citywide Fire & Emergency services	\$169.10	17	\$169.10	\$0.00	\$2,874.70
CWFIRE0002	Shoalhaven Fire Control Centre	\$221.39	17	\$221.39	\$0.00	\$3,763.63
CWMGMT2001	Section 94 Administration	\$459.41	17	\$459.41	\$0.00	\$7,809.97
CWOREC0001	Embellishment of Icon and District Parks and Walking Tracks	\$176.94	17	\$176.94	\$0.00	\$3,007.98
	STAGE Total:	\$10,656.48	17			\$181,160.16

REASON

This change is sought to bring the Section 94 developer contributions into line with the proposed staging of the development – AP&A Ref: 24163-21 Rev 07 dated 16/11/2012 and to update them to the current financial year.

28. Amend Condition F2 to read

Registration of Easements

Prior to the issue of any Occupation Certificate, the proponent shall provide to the PCA evidence that all easements required by this approval, approvals and other consents have been or will be registered on the certificate of title **for the relevant stage.**

REASON

This minor amendment ensures that required easements have been registered prior to the issue of a construction certificate for a dwelling house on any new lot in any stage as the subdivision progresses to completion.

29. Amend condition G1 to read

A restriction to user for each lot requiring that no cats or dogs (other than guide dogs for assistance of vision impaired persons) **may be kept on any allotment at any time unless within the curtilage of the dwelling or secured on a leash;**

REASON

This amendment maintains consistency with the submitted statement of commitments and this is also consistent with other subdivisions within the locality. While it is acknowledged that the white-footed dunnart is present within the locality, companion animals should be able to be kept within the curtilage of a dwelling house, either in a specifically designed cat run or within the building itself.

Conclusion

This Section 75W modification represents substantially the same development as that approved by the Department on 8 July 2010 (Allen, Price & Associates sketch plan 24163-21 Rev 06). The majority of amendments sought in this S75W modification is to rectify conditions to reflect the current plan number and modifications approved in the Rev 06 plan.

The modifications sought do not have an adverse impact generally upon the environment or upon the threatened species known to occur within the locality.

The Department & Council's favourable consideration of this Section 75W modification request is sought so that we can seek from Council the issue of a Construction Certificate for Stage 1 of the subdivision and the subdivision can be lawfully commenced. Should you have any queries or wish to discuss the matter further, please do not hesitate to contact either Matt Philpott or Mark Klein on 4421 6544.

Yours faithfully
ALLEN, PRICE & ASSOCIATES



Kerry Rourke
Encl