

ASSESSMENT REPORT

Section 75W Modification Dolphin Point Residential Subdivision, MP 05_0024 MOD 3

1. BACKGROUND

This report is an assessment of a request to modify the Project Approval for the Dolphin Point residential subdivision (MP 05_0024) at Highview Drive, Dolphin Point. The request has been lodged by Allen, Price and Associates (the Proponent) on behalf of Malbec Dolphin Point Pty Ltd and the Ulladulla Local Aboriginal Land Council (ULALC) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification request seeks to amend the Aboriginal Heritage Management Plan (AHMP).

2. SUBJECT SITE

The subject site is located at Dolphin Point, a coastal town situated within the Shoalhaven Local Government Area (LGA). The site is irregular in shape, comprises approximately 16 hectares (ha) of land and is legally described as 117/118 DP 1226471 (see **Figure 1**). The site is owned by the ULALC.



Figure 1: The site context with the subject site shaded red (source: DPE)

3. APPROVAL HISTORY

On 8 August 2009, the then Minister for Planning approved a Major Project Application from Malbec Property Pty Ltd for the development of a 104 lot residential subdivision at Highview Drive, Dolphin Point. The Project Approval permits the construction and establishment of:

- 104 lot residential lots
- a conservation reserve for threatened species
- an endangered ecological community/drainage reserve
- stormwater drainage systems
- a water quality detention basin
- roads and associated infrastructure.

The approval has been modified on two occasions as outlined in **Table 1**.

Table 1 – previous modifications to MP 05_0024

Mod no.	Proposal	Determination
1	Redesign of several roads, alteration to tree retention plan and reduction in the number of construction stages from 7 to 6.	3 July 2013
2	Removed restriction of keeping dogs on site.	22 April 2016

4. PROPOSED MODIFICATION

The proposal as amended seeks approval to:

- amend Condition A4 to include reference to an updated Aboriginal Heritage Management Plan (AHMP) dated November 2017
- relocate Scrape Sites 4A, 4B, 5A and 5B so that they are wholly contained within the development footprint
- amend the approval to make the agency responsible for implementation of the plan to be OEH instead of the Department.

5. STATUTORY CONSIDERATIONS

5.1 Modification of Minister's Consent

The Project Approval 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. The power to modify transitional Part 3A projects under section 75W of the Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) 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 carrying out of the project under section 75W of the EP&A Act.

5.2 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Director, Modification Assessments, may determine the request under delegation as:

- the relevant local Council has not made an objection, and

- a political donation disclosure statement has not been made, and
- there are no public submissions in the nature of objections.

6. CONSULTATION

The modification request was made publicly available on the Department's website and referred to Shoalhaven City Council (Council), the Office of Environment and Heritage (OEH) and the Ulladulla Local Aboriginal Land Council (ULALC). Due to the minor nature of the proposed modification, the modification request was not exhibited by any other means.

The Department received submissions from Council and the OEH.

No **public** submissions were received.

Council provided a response on the 24th May, 2017, and raised no objections to the proposed modification.

OEH provided a response on the 25th May, 2017. OEH opposed changing the methodology outlined in Section 4.6 of the AHMP as no new information had been provided to warrant a deviation from the approved methodology. OEH recommended the following:

- retain the existing Section 4.6 of the AHMP so that archaeological salvage occurs in landscape contexts 4B and 5A
- Figure 1 of the updated AHMP should show new locations for archaeological salvage within landscape contexts 4B and 5A. The new locations ought to be wholly within the construction footprint
- Section 4.6 of the AHMP should determine the long-term management of Aboriginal objects, include a requirement for listing Aboriginal objects on the OEH AHIMS database and address the archaeological implications of realigning Road One.

Following a site visit, OEH clarified:

- the proposed **Scrape Site 4B** is to be relocated further south so that it remains within the 4B landform whilst also being within the construction footprint, allowing the 4B excavation methodology set out in the AHMP to be implemented.
- Archaeological hand excavation should be conducted in the small part of the landform unit **5A** that is within the Stage 3/4 construction footprint. The excavated area is to be within 4-25 m². OEH also confirmed that archaeological test pits were to be excavated within the conservation zone of the proposed 5A site. OEH considered that this would allow for the research questions outlined in Section 4.6 of the AHMP to be addressed despite a smaller area being excavated.

The Proponent submitted a response to submissions (RTS) on 10 November 2017 and an updated AHMP on 11 December 2017, confirming:

- **Site 4B:** Scrape site 4B was to be fully relocated into the building footprint of Stage 5.
- **Site 5A:** The test pits for hand excavation could occur just inside the boundary of the conservation area to offset the impact of the non-compliant loss of this area. The Proponent noted concerns that this requirement could interfere with the vegetation management plan (VMP) as white orchids and the white-footed Dunnart have been identified in the area. Clarification was sought from OEH on how to proceed.
- **Administrative matters:** The AHMP included administrative and reference updates specified by OEH.

OEH responded to the RTS and amended AHMP on 18 January 2018 indicating it was satisfied that the issues raised had been resolved. OEH noted, however, that future cumulative impact assessments should acknowledge the impact of Road 1 being built prior to the original salvage works being undertaken.

7. ASSESSMENT

The proposed modification seeks to amend Condition A4 of the Project Approval to reference an updated AHMP dated November 2017. The revised AHMP includes the following changes:

- Scrape Site 4A – revised location
- Scrape Site 4B – revised location
- Scrape Site 5A – revised location and modified methodology to mitigate impacts
- Scrape Site 5B – proposed salvage
- include a Transfer of Aboriginal Objects under Section 85A of the *National Parks and Wildlife Act* to ensure adequate long-term management of Aboriginal objects
- administrative amendments to the Project Approval.

Revised Location of Archaeological Scrape Sites

The proposed modification originally sought to relocate scrape sites 4A and 5B into areas that the Proponent advises are of potentially higher conservation value. The original application also sought to remove the requirement to conduct archaeological salvage at remaining sites 4B and 5A. Following advice from OEH, the modification application has been amended and now seeks to relocate all four scrape sites. **Figure 2** depicts the original and revised locations of Scrape Sites 4A, 4B, 5A and 5B.

Section 4.6 of the original AHMP requires the impacts of development upon the cultural and scientific values of potential heritage to be mitigated by a program of archaeological excavation. Scrape sites were therefore required to fulfil this objective by retrieving and conserving samples of evidence to enhance the understanding of previous human occupation in the locality. The Department considers that the proposed relocation of all scrape sites would still allow for this objective to be fulfilled.

The Department also considers that relocating sites 5A and 4B wholly within the construction footprint would reduce the level of disturbance to the conservation area, which contains the threatened Leafless Tongue Orchid and White-footed Dunnart.

OEH is supportive of the revised locations for all sites. The Department therefore considers the revised location of the scrape sites is acceptable.

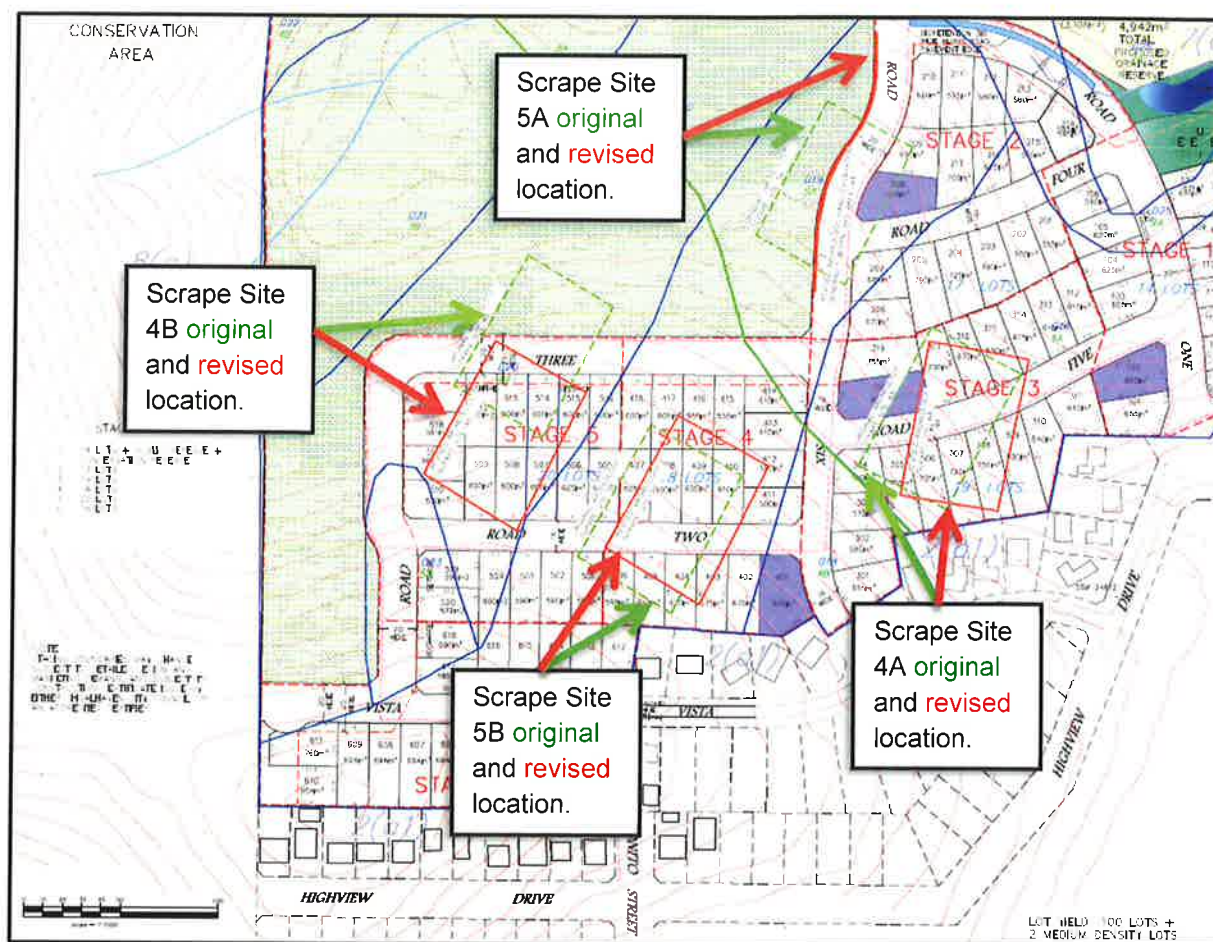


Figure 2 - The original and revised location of Scrape Sites 4A, 4B, 5A and 5B (source: allen price & scarratts)

Revised Salvage Methodology at Scrape Site 5A

Due to Scrape Site 5A being compromised by unauthorised works, OEH recommended the archaeological salvage methodology be amended to incorporate hand excavation between the conservation area and the road. The Proponent accepted the alternate methodology and will undertake hand excavation within Scrape Site 5A shown by the elongated red polygon in **Figure 2**. The Department considers the revised salvage methodology for Scrape Site 5A would suitably achieve the research objectives outlined in Section 4.6 of the AHMP, consistent with OEH's advice.

Long term management of Aboriginal Objects

OEH recommended that the long term management of the excavated objects should be finalised as a part of this modification application. To resolve this matter, a Transfer of Aboriginal Objects application was completed by the Proponent. This will allow for the ULALC to have legal care and control of excavated Aboriginal Objects under section 85A of the *National Parks and Wildlife Act*. OEH support the arrangement and the Department considers the outcome to be acceptable

Administrative changes

The Proponent seeks to amend the AHMP by replacing the Department of Planning and Environment with the Office of Environment and Heritage as the agency responsible for the implementation of Aboriginal heritage provisions relating to the development. The Department supports this change given that OEH is the lead agency for Aboriginal Heritage.

8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposed modification is appropriate as:

- the revised location of the scrape sites and revised archaeological salvage methodology would still fulfil the objectives outlined in the AHMP
- the revised scrape site locations will reduce the impact of development upon the conservation zone
- OEH is satisfied with the proposed changes.

Accordingly, the Department recommends that the Project Approval be approved in accordance with the modification instrument at **Appendix A**.

9. RECOMMENDATION

It is recommended that the Director, Modification Assessments, as delegate of the Minister for Planning:

- **consider** the findings and recommendations of this report
- **determine** that the application falls within the scope of section 75W of the EP&A Act
- **modify** the approval MP05_0024 MOD 3
- **sign** the attached notice of modification (**Appendix A**).

Recommended by:



Tim Green
Planning Officer
Modification Assessments

DECISION

The recommendation is Approved by:



Anthony Witherdin
Director
Modification Assessments
as delegate of the Minister for Planning.

APPENDIX A: SUPPORTING INFORMATION

The following supporting information can be found on The Department of Planning and Environment's website at:

1) Modification request:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8345

2) Submissions:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8345

3) Response to submissions:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8345

APPENDIX B: INSTRUMENT OF MODIFICATION

A copy of the modification can be found on the Department's website at:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=834