

# Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation executed on 14 September 2011, I approve the section 75W modification of the project approval referred to in Schedule 1, subject to the modified conditions of approval outlined in Schedule 2.



Heather Warton  
**Director**  
**Metropolitan and Regional Projects North**

Sydney 3rd July 2013

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## SCHEDULE 1

- Project Approval:** 05\_0024 granted by the then Minister for Planning on 8 August 2009.
- Proponent:** Malbec Dolphin Point Pty Ltd
- Land:** Lot 171 DP 1081810, Highview Drive, Dolphin Point – Shoalhaven local government area.
- Project:** Residential subdivision in 7 stages to create 104 freehold title lots, and the creation of 6.2 hectare Conservation Reserve.
- Modification:** 05\_0024 MOD 1 involving:
- Deletion of** Conditions A2, B1, B3, B4, B8, B9, B13, D3, D9, D16, E10 and E11.
  - Amendments to** Conditions A1(1), A3, B2(1), B17(3), B17(4), B18, B19(1), B19(4), B19(6), B20(3), D18(5), D18(6), D21(1), D21(4), E8, and F2.
  - Inserting new** Conditions A2, A4(3), B3, B4, B7A, B9, B13, D9, D10(5), D13A and E11.
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## SCHEDULE 2

The project approval as described in Schedule 1 is modified as follows:

- (a) Delete the number “1091810” within the second column of the fourth row of the table under Part A of Schedule 1 and replace with the following:

1081810

- (b) Delete the number “104” under clause (1) of Condition A1 and replace the following:

102

- (c) Delete Condition A2 and replace with new Condition A2 as follows:

### **A2      *Staging***

The project is to be constructed in six stages generally as follows:

- (1) Stage 1 comprises:

14 residential lots, a 5.9ha threatened species habitat Conservation Reserve and fencing of the Conservation Reserve, a 4942m<sup>2</sup> drainage reserve (including 3108m<sup>2</sup> for Endangered Ecological Community (EEC) conservation and 900m<sup>2</sup> for a water quality detention basin to be dedicated to Council at this stage), 1564m<sup>2</sup> for useable passive Open Space (to be embellished and dedicated to Council at this stage), 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), associated road infrastructure, and provision of an appropriate asset protection zone;

- (2) Stage 2 comprises:

17 lots, roads, footpaths and cycleways, stormwater drainage works, and provision of an appropriate asset protection zone;

- (3) Stage 3 comprises:

19 lots, roads, footpaths and cycleways, stormwater drainage works, and provision of an appropriate asset protection zone;

- (4) Stage 4 comprises:

18 lots, roads, footpaths and cycleways, stormwater drainage works, and provision of an appropriate asset protection zone;

- (5) Stage 5 comprises:

16 lots (including two medium density lots), roads, footpaths and cycleways, stormwater drainage works, provision of an appropriate asset protection zone, and provision of high angle left turn lane onto the Princes Highway;

- (6) Stage 6 comprises:

18 lots, roads, footpaths and cycleways, stormwater drainage works, and provision of an appropriate asset protection zone.

It is noted that staging of allotment construction may vary in timing according to market forces. Essential infrastructure shall be constructed as specified in the staging listed above.

- (d) **Delete Drawing No. 24163-21 Revision 02 as listed in the table under Condition A3 and replace with new drawing as follows:**

24163-21	08	Plan Showing Project Application for Proposed Staged Residential Development of Lot 171 DP1081810 at Highview Drive, Dolphin Point for Malbec Dolphin Point Pty Ltd	6 June 2013
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- (e) **Insert new clause (3) following clause (2) under Condition A4 as follows:**

- (3) *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 prepared by Allen, Price and Associates on behalf of Malbec Dolphin Point Pty Ltd, dated 7 December 2012.*

- (f) **Delete Condition B1.**

- (g) **Delete the number “6.2” under clause (1) of Condition B2 and replace with the following:**

5.9

- (h) **Delete the words “Department of Environment and Climate Change (DECC)” under clause (1) of Condition B2 and replace with the following:**

NSW Office of Environment and Heritage

- (i) **Delete Condition B3 and replace with new Condition B3 as follows:**

**B3 Medium Density Lot**

Two medium density lots of 1765m<sup>2</sup> and 1775m<sup>2</sup> (lots 504 and 512 respectively) are to be provided within Stage 5. The medium density lots are to comply with DCP 71-Medium Density Housing.

- (j) **Delete Condition B4 and replace with new Condition B4 as follows:**

**B4 Tree Retention Plan**

A Tree Retention Plan is to be produced detailing each tree required to be retained after the creation of Roads, Drainage Works, Building Envelopes and Asset Protection Zones for each lot.

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

- 1) each tree on the site to be retained (excluding those trees within the Conservation Reserve) is identified by a number, its species, and its health;
- 2) retention of all 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 all structurally stable trees within public and road reserves, except where required to be removed for the provision of services and construction of roads.

The Plan is to detail:

- 4) Existing site conditions (contours, vegetation, drainage etc.);
- 5) All existing and proposed infrastructure including underground services;
- 6) Approximate location and description of structures and vegetation on adjacent property;
- 7) Vegetation to be retained;
- 8) 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 Section 6.2 of Appendix 4-Flora and Fauna Assessment;
- 9) Nest boxes are to be provided at a ration 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;
- 10) 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;
- 11) 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; and
- 12) Any fauna detected as a result of clearing works.

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

**(k) Insert new Condition B7A as follows:**

***B7A Landscape Design Plan – Public Open Space***

A Landscape Design Plan for the Public Open Space is to be provided that is consistent with Element RE7-Public Open Space of *Shoalhaven DCP 100 Subdivision Code Amendment 1* and *Planning for Bushfire Protection*. The Plan is to be submitted to Council for approval prior to the issue of a Construction Certificate for Stage 1.

**(l) Delete Condition B8.**

- (m) **Delete Condition B9 and replace with new Condition B9 as follows:**

***B9 Provision of Bus Shelter within Stage 2***

The proponent is to provide a bus shelter on the southern side of Road One near the intersection of Road Six as part of Stage 2. Details of the precise location and specifications of the bus shelter are to be submitted to Council for approval prior to the release of a construction certificate for Stage 2.

- (n) **Delete Condition B13 and replace with new Condition B13 as follows:**

Prior to the issue of a Construction Certificate for Stage 6, an agreement must be reached with the NSW Office of Environment and Heritage regarding the location of a formalised entry from the site into the Barnunj SCA. The proponent is to fund all required work. Details regarding the formalised entry shall be submitted to and approved by Council.

- (o) **Delete the words “The associated MUSIC model electronic input and output files are to be ‘sound’ and are to be subject to a ‘peer review’ by a suitably qualified and experienced engineer.” under clause (3) of Condition B17.**

- (p) **Delete the words “Rev 2” under clause (4) of Condition B17 and replace with the following:**

Plan No. 24163–21 Revision 8, dated 06.06.13

- (q) **Delete the word “proprietary” under Condition B18.**

- (r) **Delete the word “Five” under clause (1) of Condition B19 and replace with the following:**

Six

- (s) **Delete the clause (4) of Condition B19 and replace with new clause (4) as follows:**

4) As per the Plan of Proposed Residential Subdivision drawn by Allen Price and Associates Plan No. 24163–21 Revision 8, dated 06.06.13, a roundabout is to be provided at the intersection of Dolphin Point Road, Seaside Parade, Highview Drive and Road One. All legs of this roundabout are to accommodate the manoeuvring of a 14.5 m rigid bus (or smaller sized vehicle, as otherwise agreed by council). Design of the roundabout is to be prepared in consultation with council, and is required to conform with the applicable Austroad standards.

- (t) **Delete the words “RTA Technical Directions” under clause (6) of Condition B19 and replace with the following:**

Austroads standards

- (u) **Delete the number “7.” under clause (3) of Condition B20 and replace with the following:**

6. Should no subdivision works commence on the adjoining land within 5 years of the release of the Subdivision Certificate for Stage 6, the bank guarantee is to be released by Council.

- (v) Delete the heading “PART D–DURING CONSTRUCTION OF STAGES 1A-7” following Condition C5 and prior to Condition D1 and replace with the following:

**PART D–DURING CONSTRUCTION OF STAGES 1-6**

- (w) Delete Condition D3.

- (x) Delete Condition D9 and replace with new Condition D9 as follows:

***D9 Operation of Tree Retention Plan***

- 1) All recommendations of the Tree Retention Plan as approved by Council are to be implemented during the clearance of each stage of the subdivision.
- 2) Trees not approved for felling are to be protected during construction works;
- 3) Prior to felling trees with hollows, an inspection by a suitably qualified ecologist is required to ensure that no fauna are harmed during tree felling;
- 4) Tree hollows in trees approved to be felled are to be salvaged and re-used within the land to be excluded from development.

- (y) Insert new clause (5) under Condition D10 as follows:

- 5) Details of the Water Quality Monitoring are to be submitted to the Certifying Authority as soon as they are available after testing is carried out.

- (z) Delete Condition D13.

- (aa) Insert new Condition D13A as follows:

***D13A Groundwater Interception***

The development must not increase the infiltration of surface water into the existing underlying groundwater due to the provision of services, infrastructure, and water quality treatment devices. Should the interception of groundwater occur during construction works, and that groundwater is likely to damage or cause nuisance to current or future property owners, the developer shall be required to collect that groundwater through a sub-soil drainage system and direct the groundwater to the piped stormwater drainage system.

- (bb) Delete Condition D16.

- (cc) Following the words “or other material,” under clause (5) of Condition D18 insert the following:

and the works contractor is required to remove any materials dropped on the roadways during construction and at times of wet weather,

- (dd) Delete clause (6) of Condition D18 and replace with new clause (6) as follows:

- (6) Shaker pads or rumble grids to be maintained by the works contractor shall be installed at the work site construction entry (within the site) to remove dust from vehicle wheels before exiting the site,

- (ee) Delete the words “L<sub>A10</sub> (15minute)” under clause (1) of Condition D21 and replace with the following:

L<sub>Aeq10</sub> (15minute)

- (ff) Delete the words “5dB(A)” under clause (1) of Condition D21 and replace with the following:

10dB

- (gg) Delete the words “5dB(A)” under clause (4) of Condition D21 and replace with the following:

10dB

- (hh) Following the words “issue of a Subdivision Certificate” and before the period under Condition E8 insert the following:

for each relevant stage

- (ii) Delete Condition E10.

- (jj) Delete Condition E11 and replace with new Condition E11 as follows:

### ***E11 Monetary Contributions***

Prior to the endorsement of a Subdivision Certificate for each stage of the project, the Proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*:

#### **Amount of Contributions**

05 AREC 0001 Tennis, Football, Cricket and Netball		
\$ per ET - \$1,798.12		
	No. of ET	Sub-Total
Stage 1	14	\$25,173.68
Stage 2	17	\$30,568.04
Stage 3	19	\$34,164.28
Stage 4	18	\$32,366.16
Stage 5	16	\$28,769.92
Stage 6	17	\$30,568.04
Total	\$181,610.12	
05 AREC 0002 Leisure Centre Heated Indoor Swimming Pool		
\$ per ET - \$206.33		
	No. of ET	Sub-Total
Stage 1	14	\$2,888.62
Stage 2	17	\$3,507.61
Stage 3	19	\$3,920.27
Stage 4	18	\$3,713.94
Stage 5	16	\$3,301.28
Stage 6	17	\$3,507.61
Total	\$20,839.33	
05 CFAC Southern Shoalhaven Branch Library		
\$ per ET - \$273.42		
	No. of ET	Sub-Total
Stage 1	14	\$3,827.88
Stage 2	17	\$4,648.14
Stage 3	19	\$5,194.98

Stage 4	18	\$4,921.56
Stage 5	16	\$4,374.72
Stage 6	17	\$4,648.14
<b>Total</b>	<b>\$27,615.42</b>	
<b>05 OREC 0017 Dolphin Point</b>		
<b>\$ per ET - \$2,143.01</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$30,002.14
Stage 2	17	\$36,431.17
Stage 3	19	\$40,717.19
Stage 4	18	\$38,574.18
Stage 5	16	\$34,288.16
Stage 6	17	\$36,431.17
<b>Total</b>	<b>\$216,444.01</b>	
<b>05 ROAD 0063 Dolphin Point/Burrill Lake Connector and Link Road</b>		
<b>\$ per ET - \$3,857.82</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$54,009.48
Stage 2	17	\$65,582.94
Stage 3	19	\$73,298.58
Stage 4	18	\$69,440.76
Stage 5	16	\$61,725.12
Stage 6	17	\$65,582.94
<b>Total</b>	<b>\$398,639.82</b>	
<b>05 ROAD 2011 Southern Link Road</b>		
<b>\$ per ET - \$448.19</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$6,274.66
Stage 2	17	\$7,619.23
Stage 3	19	\$8,515.61
Stage 4	18	\$8,067.42
Stage 5	16	\$7,171.04
Stage 6	17	\$7,619.23
<b>Total</b>	<b>\$45,267.19</b>	
<b>CW AREC 0003 Hockey Facilities</b>		
<b>\$ per ET - \$288.13</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$4,033.82
Stage 2	17	\$4,898.21
Stage 3	19	\$5,474.47
Stage 4	18	\$5,186.34
Stage 5	16	\$4,610.08
Stage 6	17	\$4,898.21
<b>Total</b>	<b>\$29,101.13</b>	
<b>CW CFAC 0001 Stage 1: Shoalhaven City Library Extensions</b>		
<b>\$ per ET - \$305.15</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$4,272.10
Stage 2	17	\$5,187.55
Stage 3	19	\$5,797.85
Stage 4	18	\$5,492.70
Stage 5	16	\$4,882.40



Stage 6	17	\$5,187.55
<b>Total</b>	<b>\$30,820.15</b>	
<b>CW CFAC 0001 Stage 2: Shoalhaven City Arts Centre</b>		
<b>\$ per ET - \$27.60</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$368.40
Stage 2	17	\$469.20
Stage 3	19	\$524.40
Stage 4	18	\$496.80
Stage 5	16	\$441.60
Stage 6	17	\$469.20
<b>Total</b>	<b>\$2,787.60</b>	
<b>CW CFAC 0001 Stage 3: Shoalhaven Mobile Children's Services</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
<b>\$ per ET - \$9.05</b>		
Stage 1	14	\$126.70
Stage 2	17	\$153.85
Stage 3	19	\$171.95
Stage 4	18	\$162.90
Stage 5	16	\$144.80
Stage 6	17	\$153.85
<b>Total</b>	<b>\$914.05</b>	
<b>CW CFAC 0002 Shoalhaven Multi Purpose Cultural and Convention Centre</b>		
<b>\$ per ET - \$272.82</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$3,819.48
Stage 2	17	\$4,637.94
Stage 3	19	\$5,183.58
Stage 4	18	\$4,910.76
Stage 5	16	\$4,365.12
Stage 6	18	\$4,637.94
<b>Total</b>	<b>\$27,554.82</b>	
<b>CW FIRE 0001 Citywide Fire and Emergency Services</b>		
<b>\$ per ET - \$169.10</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$2,367.40
Stage 2	17	\$2,874.70
Stage 3	19	\$3,212.90
Stage 4	18	\$3,043.80
Stage 5	16	\$2,705.60
Stage 6	17	\$2,874.70
<b>Total</b>	<b>\$17,079.10</b>	
<b>CW FIRE 0002 Shoalhaven Fire Control Centre</b>		
<b>\$ per ET - \$221.39</b>		
	<b>No. of ET</b>	<b>Sub-Total</b>
Stage 1	14	\$3,099.46
Stage 2	17	\$3,763.63
Stage 3	19	\$4,206.41
Stage 4	18	\$3,985.02
Stage 5	16	\$3,542.24
Stage 6	17	\$3,763.63

Total	\$22,360.39	
CW MGMT 2001 Section 94 Administration		
\$ per ET - \$459.41		
	No. of ET	Sub-Total
Stage 1	14	\$6,431.74
Stage 2	17	\$7,809.97
Stage 3	19	\$8,728.79
Stage 4	18	\$8,269.38
Stage 5	16	\$7,350.56
Stage 6	17	\$7,809.97
Total	\$46,400.41	
CW OREC 0001 Embellishment of Icon and District Parks and Walking Tracks		
\$ per ET - \$176.94		
	No. of ET	Sub-Total
Stage 1	14	\$2,477.16
Stage 2	17	\$3,007.98
Stage 3	19	\$3,361.86
Stage 4	18	\$3,184.92
Stage 5	16	\$2,831.04
Stage 6	17	\$3,007.98
Total	\$17,870.94	
TOTAL CONTRIBUTIONS PAYABLE		
Stage 1		\$149,190.72
Stage 2		\$181,160.16
Stage 3		\$202,473.12
Stage 4		\$191,816.64
Stage 5		\$170,503.68
Stage 6		\$181,160.16
TOTAL		\$1,076,304.48

#### **Timing and Method of Payment**

The contribution shall be paid in the form of cash or bank cheque, made out to Shoalhaven City Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council.

Evidence of the payment to Council, shall be submitted to the Certifying Authority prior to the issue of the Subdivision Certificate for each stage of the project.

#### **Section 94 Plans**

A copy of the Section 94 contribution plans may be inspected at Shoalhaven City Council, Bridge Road, Nowra.

**(kk) Following the words “certificates of title” and before the period under Condition F2 insert the following:**

for each relevant stage

- (II) Delete the following commitment outlined within the Statement of Commitments table under Schedule 3:

Other	
The developer will impose a restriction on the title of each allotment requiring that any dogs or cats are kept only within the curtilage of a dwelling house, unless secured on a leash.	Prior to the release of the Construction Certificate for that stage of the development.

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