

8 November, 2017  
Our Ref: 24163 KW  
Your Ref: MP05\_0024

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

Attention: Michelle Niles

Dear Michelle,

**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 – (FORMER LOT 171 DP 1081810) NOW LOTS 117/118 DP 1226471,  
HIGHVIEW DRIVE DOLPHIN POINT FOR MALBEC DOLPHIN POINT PTY LTD**

We seek to amend the Major Project consent under Section 75W of the  
Environmental Planning & Assessment Act as it applied when this Major Project  
application was determined on 8 August 2009.

The application proposes:

- (i) A series of “house-keeping” amendments to the development approval.  
These amendments are intended to correct a series of anomalies some of  
which date back to the original approval when the boundary of the  
conservation reserve was extended.
- (ii) The replacement of the two medium density lots within Stage 5 of the  
subdivision being Lot 504 – 1765m<sup>2</sup> and Lot 512 – 1775m<sup>2</sup> with smaller  
individual lots.

Stage 5 was approved with sixteen (16) lots in total. This modification seeks  
to increase the number of lots within Stage 5 from sixteen (16) to twenty (20)  
lots by detailing the medium density lots as individual lots. The individual lots  
ranging in size as follows:

- Lot 504 – 600m<sup>2</sup>
- Lot 512 – 600m<sup>2</sup>
- Lot 517 – 611m<sup>2</sup>
- Lot 518 – 561m<sup>2</sup>
- Lot 519 – 596m<sup>2</sup>
- Lot 520 – 572m<sup>2</sup>

- (iii) The deletion of Condition B21 requiring a left turn lane onto the Princes Highway at the roundabout at Dolphin Point Road.

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

## Proposal

1. Amend Condition A1 to read:

### ***Project Description***

A 102 **106** 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 for Stage 5 (as proposed by this application), in accordance with the amended subdivision layout title Proposed Residential Subdivision Ref No. 24163 – 21 Rev 09 dated 20 July, 2017 prepared by Allen Price and Scarratts Pty Ltd.

2. Amend Condition A2 (5) to read:

### ***Staging***

- (5) Stage 5 comprises:

~~46~~**20** 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**

This application seeks to amend the approval by removing the medium density lots in favour of additional single lots based on market demand. The amended layout provided for 20 lots within Stage 5.

It is noted that other stages include medium density lots which are closer to the main entry to the subdivision, therefore the development overall still achieves a mix of medium density and low density housing provision.

3. Amend Condition A3 to read:

***Project in Accordance with Plans***

<b>Plan of Subdivision prepared by Allen, Price and Associates</b>			
<b>Drawing No.</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
24163-21	<del>08</del> 09	Plan showing Project Application for Proposed Staged Residential Subdivision of Lot 171 DP 1081810 at Highview Drive, Dolphin Point for Malbec Dolphin Point Pty Ltd.	<del>6 June 2013</del> <b>20 July 2017</b>
<b>Engineering Drawings prepared by Storm Consulting</b>			
<b>Drawing No.</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
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
<b>Landscape Drawings prepared by WH&amp;G Smit Landscape Architects</b>			
<b>Drawing No.</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
LA.1	B	Landscape Plan	30 October 2008

**Reason**

To reflect the proposed changes to the lot layout in Stage 5.

#### 4. Delete Condition B3

##### ***Medium Density Lots***

~~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.~~

##### **Reason**

This condition is proposed to be deleted to reflect the approved revised subdivision layout and staging plan reference 24163-21 revision 9 prepared by Allen Price & Associates.

It is noted that other stages include medium density lots which are closer to the main entry to the subdivision, therefore the development overall still achieves a mix of medium density and low density housing provision.

#### 5. 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 24164 – 21 Revision 8, dated 06.06.13 **Revision 9 dated 20 July, 2017** 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 inter-allotment 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 09 prepared by Allen Price & Associates.

6. Amend Condition B19 (4) and (7) to read:

## Road Works Design

- 1) The collector road (Road One) and sections of Road Three, Road \_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 08, dated 06.06.13 **09** dated **20/07/17**, 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 14.5m 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 applicable Austroad Standards.
- 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 Austroads standards 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) LATM treatments are to be provided in accordance with AS1742.13 and RTA TDT2001/04 along Road One and Road Two and on Vista Drive south of Bonito Street.~~

***LATM treatments are to be provided in accordance with AS 1742.13 and RTA TDT 2001/04 along Road One.***

- 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**

With regard to subclause (4) the amendment is proposed to reflect the approved revised subdivision layout and staging plan reference 24163-21 revision 09 prepared by Allen Price & Associates.

With regard to subclause (7) there is no engineering need for Local Area Traffic Management (LATM) such as speed humps on roads other than along Road One. LATM is not in keeping with the rest of the area and is over engineering in this instance. LATM is not desirable from the perspective of future residents nor for Council due to additional maintenance requirements.

## **7. Delete Condition B21:**

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

~~The proponent shall construct a second approach lane to the lghway from the exit from the adjacent roundabout, including a high entry angle left turn lane onto the Highway to RTA standards, either in conjunction with Stage 5 of the subdivision or when road widening is undertaken at Lot 6 DP 1123774, which ever is the latter. The following RTA conditions will be required to be met:~~

~~1) Geometric road design shall be in accordance with RTA Road Design Guide. Pavement design shall be in accordance with the AUSTROADS Pavement Design Guide.~~

~~2) All roadworks and/or traffic control facilities associated with this development will be at no cost to RTA and completed prior to occupation.~~

- ~~3) Prior to the issuing of a construction certificate, the developer shall enter into a Works Authorisation Deed for any works within the Princess Highway road reservation.~~
- ~~4) Section 138 concurrence under the Roads Act, 1993 shall be obtained from the RTA prior to construction.~~
- ~~5) The developer shall apply for a Road Occupancy Licence (ROL) from the RTA Traffic Operations Unit (TOU) prior to commencing work within the classified road reserve or within a 100m of signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified to prepare Traffic Control Plans. Should the TMP require a reduction to the road speed limit, a Direct to Restrict will also be required from the TOU. Please allow 2 weeks prior to the commencement of works until an authorisation letter for the works has been issued by the RTA Project Manager.~~

## Reason

It is noted that Allen Price and Scarratts proposed to delete this condition in a previous s75 application dated 7 December, 2012. The reasons for the removal of this condition at the time were as follows:

*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.*

Since applying for the above Allen Price and Scarratts has had further consultation with RMS (email dated 21 July, 2017) which advises that RMS will consider an application to modify this condition (such an application to include modelling and an



amended traffic report). APS has also consulted with Council (in emails dated 28 June, 2017. Copies of relevant emails are attached **(Refer Attachment 1)**).

In summary, the points raised in the email to Council (and which form additional reasons for this modification) were:

- a) The existing boundary of Lot 6 DP 1123774 generally follows the existing top of batter. The batters currently extend approximately 5m into Lot 6. Therefore, unless part or all of lot 6 is acquired by RMS or SCC there will be insufficient area for the slip lane. Furthermore, the available area is reduced, the closer to the highway the link road gets.
- b) Neither the subdivision that created Lot 6 (being SF9957) nor the dairy subdivision, include a proposal to dedicate any part of Lot 6.
- c) All subdivisions in the benefit area identified for the road contributions project (05ROAD0063 - Construction of roundabout, internal roundabout and link road at Dolphin Point (Princes Highway to Dolphin Point Road) and the surrounding existing developed area use the Princes Highway intersection. All these current and future residential properties would benefit from the requirement for a slip lane at the Princes Highway intersection). It seems unreasonable to that the Malbec consent is the only land that is conditioned to provide the slip lane infrastructure without wider consideration and contribution of surrounding development. The requirement for the slip lane should have been included in the s94 plan if required.
- d) There is no certainty in terms of financial obligations for this condition, on face value it appears to be a condition that cannot be complied with. Keeping in mind that we cannot add a new parcel of land into a consent there really is no way possible to do anything other than prepare a concept plan with a few lines that will show there will need to be part of lot 6 acquired. At best this should have been a deferred commencement condition, at worst the condition does not meet Newbury Test requirements.
- e) It is unreasonable to expect when the subdivision certificate for stage 5 or 6 is submitted to Council, to be advised that an exorbitant bond is to be paid or similar to cover the cost of these works with there being no certainty if they will occur at all. Moreover, an "open ended" deed of agreement will not work



as once the final subdivision certificate is sought it would be inappropriate to expect Malbec to return if it does go ahead in 10 years' time (for example).

- f) The condition is confusing having been poorly drafted and implies that no matter when this work occurs, our client will be responsible for this construction which is unreasonable.

Council's advice in the email dated 28 June is:

*This sounds like a modification application may be in order here.*

*This particular condition won't prevent the issue of an SC in the immediate future but you are right, the condition is asking for something but effectively deferring it to 'whenever'.*

*This provides no certainty for anyone and is bound to cause a problem in the future.*

*The question also arises if it is in fact a reasonable condition and passes the Newbury test.*

*I think you need to engage in some formal discussions with the RMS and Council with a view to amending / deleting the condition (depending on what advice you get) to provide clarity.*

We would suggest that regardless of whether an additional traffic report and modelling is supplied, the condition is unreasonable and would not pass the Newbury Test.

The **Newbury Principles** (Test) collectively refer to an urban planning guideline stating that decisions should be made based only on the planning considerations relevant to the current development, even if the consideration of ulterior purposes may lead to a greater public good. In practice, the principles are used as a test to verify the validity of conditions to be imposed by a planning authority.

Specifically, the decision of the House of Lords in *Newbury District Council v Secretary of State for the Environment* (1981) contains the following three principles when considering the reasonableness of imposing conditions on consents:

1. It must be imposed for a planning purpose.

2. It must fairly and reasonably relate to the development for which permission is being given.
3. It must be reasonable.

The Newbury test of the above principles has been cited in NSW Land and Environment Court cases.

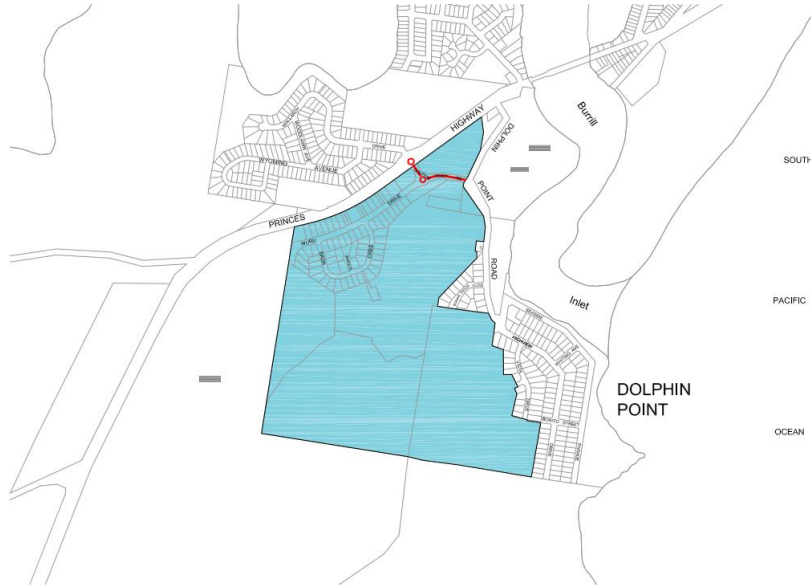
As previously argued in the first s75 application lodged, there is no direct nexus between this subdivision and the required works, as this subdivision (with its potential for a greater number of lots) was taken into account during the implementation phase of the S94 contributions plan and in the design and construction of the roundabout. Therefore, the condition does not meet the second Newbury principle as it cannot be demonstrated that it fairly and reasonably relates to the development for which permission is being given.

The condition is unreasonable and does not meet Principle 3 of the Newbury Test as it places sole responsibility for the provision of the slip lane on this development. Moreover, the condition has been written in such a manner as to provide no certainty that it can be addressed given the lack of acquisition provisions identified for the slip lane in the Council LEP or RMS planning documents. The following aerial photo details the location of the site in relation to Lot 6 and the roundabout. The photo demonstrates how far off site the roundabout is in relation to the development.



***Location of Lot 6 DP 1123774 in relation to development site (Source: Six Maps).***

The following plan is the s94 contributions catchment area for contributions to the roundabout.



***Extract from Shoalhaven Contributions Plan 2010, 05 ROAD 0063, Local/Area 5***

As can be seen when comparing the two maps, there is a substantial area within the roundabout catchment exclusive of the subject site. As previously stated, the s94 plan provides for the construction of the roundabout (now completed) but no further works. This was in the knowledge of the amount of zoned land for re-development was contained within the identified catchment.

The requirement for the left turn slip lane is questionable in itself given that the vast majority of traffic movements will be northbound onto the Princes Highway.

8. 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:-

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	\$32,366.18
Stage 5	<del>16-20</del>	<del>\$28,769.92</del> \$35,962.40
Stage 6	17	\$30,568.04
Total	<del>\$181,610.02</del> \$188,802.62	
05 AREC 0002 Leisure Centre Heated Indoor Swimming Pool		
\$ per ET - \$206.300		
	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	<del>16-20</del>	<del>\$3,301.28</del> \$4,126.00
Stage 6	17	\$3,507.61
Total	<del>\$20,839.33</del> \$21,663.44	
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	<del>16-20</del>	<del>\$4,374.72</del> \$5,468.40
Stage 6	17	\$4,648.14

Total	<del>\$27,615.42</del> \$28,708.96	
05 OREC 0017 Dolphin Point		
\$ per ET - \$2,143.01		
	No. of ET	Sub-Total
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 20	<del>\$34,288.16</del> \$42,860.20
Stage 6	17	\$36,431.17
Total	<del>\$216,444.01</del> \$225,016.05	
05 ROAD 0063 Dolphin Point/Burrill Lake Connector and Link Road		
\$ per ET - \$3,857.82		
	No. of ET	Sub-Total
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 20	<del>\$61,725.12</del> \$77,156.40
Stage 6	17	\$65,582.94
Total	<del>\$398,639.82</del> \$405,071.10	
05 ROAD 2011 Southern Link Road		
\$ per ET - \$448.19		
	No. of ET	Sub-Total

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 20	<del>\$7,171.04</del> \$8,963.80
Stage 6	17	\$7,619.23
Total	<del>\$45,267.19</del> \$47,059.95	
CW AREC 0003 Hockey Facilities		
\$ per ET - \$288.13		
	No. of ET	Sub-Total
Stage 1	14	\$4,003.82
Stage 2	17	\$4,898.21
Stage 3	19	\$5,474.47
Stage 4	18	\$5,186.34
Stage 5	16 20	<del>\$4,610.08</del> \$5,762.60
Stage 6	17	\$4,898.21
Total	<del>\$29,101.13</del> \$30,223.65	
CW CFAC 0001 Stage 1: Shoalhaven City Library Extensions		
\$ per ET - \$305.15		
	No. of ET	Sub-Total
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	20	<del>\$4,882.40</del> \$6,103.00



Stage 6	17	\$5,187.55
<b>Total</b>	<del>\$30,820.15</del> <b>\$32,040.75</b>	
<b>CW CFAC 0001 Stage 2: Shoalhaven City Arts Centre</b>		
<b>\$ per ET - \$27.60</b>		
	No. of ET	Sub-Total
Stage 1	14	\$368.40
Stage 2	17	\$469.20
Stage 3	19	\$524.40
Stage 4	18	\$496.80
<b>Stage 5</b>	<del>16</del> <b>20</b>	<del>\$441.60</del> <b>\$552.00</b>
Stage 6	17	\$469.20
<b>Total</b>	<del>\$2,787.60</del> <b>\$2,880.00</b>	
<b>CW CFAC 0001 Stage 3: Shoalhaven Mobile Children's Service</b>		
<b>\$ per ET - \$9.05</b>		
	No. of ET	Sub-Total
Stage 1	14	\$126.70
Stage 2	17	\$153.85
Stage 3	19	\$171.95
Stage 4	18	\$162.90
<b>Stage 5</b>	<del>16</del> <b>20</b>	<del>\$144.80</del> <b>\$181.00</b>
Stage 6	17	\$153.85
<b>Total</b>	<del>\$914.05</del> <b>\$950.25</b>	
<b>CW CFAC 0002 Shoalhaven Multi Purpose Cultural and Convention Centre</b>		
<b>\$ per ET - \$272.82</b>		



	No. of ET	Sub-Total
Stage 1	14	\$3,819.48
Stage 2	17	\$4,637.94
Stage 3	19	\$5,183.58
Stage 4	18	\$4,910.76
<b>Stage 5</b>	<b>16 20</b>	<b><del>\$4,365.76</del> \$5,456.40</b>
Stage 6	17	\$4,637.94
<b>Total</b>		<b><del>\$27,554.82</del> \$28,646.10</b>
<b>CW FIRE 0001 Citywide Fire and Emergency Services</b>		
<b>\$ per ET - \$169.10</b>		
	No. of ET	Sub-Total
Stage 1	14	\$2,367.40
Stage 2	17	\$2,874.70
Stage 3	19	\$3,212.90
Stage 4	18	\$3,043.80
<b>Stage 5</b>	<b>16 20</b>	<b><del>\$2,705.60</del> \$3,382.00</b>
Stage 6	17	\$2,874.70
<b>Total</b>		<b><del>\$17,079.10</del> \$17,755.50</b>
<b>CW FIRE 0002 Shoalhaven Fire Control Centre</b>		
<b>\$ per ET - \$221.39</b>		
	No. of ET	Sub-Total
Stage 1	14	\$3,099.46
Stage 2	17	\$3,763.63
Stage 3	19	\$4,206.41
Stage 4	18	\$3,985.02

<b>Stage 5</b>	<b>16 20</b>	<b><del>\$3,542.24</del> \$4,427.80</b>
Stage 6	17	\$3,763.63
<b>Total</b>	<b><del>\$ 22,360.39</del> \$23,245.95</b>	
<b>CW MGMT 2001 Section 94 Administration</b>		
<b>\$ per ET - \$459.41</b>		
	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
<b>Stage 5</b>	<b>16 20</b>	<b><del>\$7,350.56</del> \$9,188.20</b>
Stage 6	17	\$7,809.97
<b>Total</b>	<b><del>\$46,400.41</del> \$48,238.05</b>	
<b>CW OREC 0001 Embellishment of Icon and District Parks and Walking Tracks</b>		
<b>\$ per ET - \$176.94</b>		
	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
<b>Stage 5</b>	<b>16 20</b>	<b><del>\$2,831.04</del> \$3,538.80</b>
Stage 6	17	\$3,007.98
<b>Total</b>	<b><del>\$ 17,870.94</del> \$18,578.70</b>	

<b>TOTAL CONTRIBUTIONS PAYABLE</b>	
Stage 1	\$149,190.72
Stage 2	\$181,160.16
Stage 3	\$202,473.12
Stage 4	\$191,816.64
<b>Stage 5</b>	<del>\$170,503.68</del> <b>\$213,129.60</b>
Stage 6	\$181,160.16
<b>TOTAL</b>	<del>\$1,076,304.48</del> <b>\$1,118,930.40</b>

## 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 09 dated 20/07/2017, it is also requested that the ET amounts in each column reference which year they are from.

## 9. Amend the Statement of Commitments outlined within the table under Schedule 3 to read:

Item	Commitment	Timing
<b>General</b>	The Developer will carry out the development in accordance with the Preferred Project Report prepared by Allen, Price & Associates dated October 2008 (and Supporting Appendixes)	For the duration of the subdivision
<b>Legislative Controls/Requirements</b>	<p>The developer will obtain and maintain the following licences, permits and approvals for the residential subdivision:</p> <ul style="list-style-type: none"> <li>Shoalhaven City Council- Construction Certificates for engineering works for each stage of the subdivision. The application for Construction Certificates will contain Design Drawing submitted containing, where relevant, detailed designs relating to</li> </ul>	For the duration of the subdivision

	<p>earthworks, drainage, soil erosion and Sediment Control and site rehabilitation, tree clearing and site stability, roadworks, footpaths, water supply and sewerage works, and landscaping.</p> <ul style="list-style-type: none"> <li>• Shoalhaven City Council – Section 138 Consent for roadworks (Roads Act 1993);</li> <li>• Integral Energy – Design Certification;</li> <li>• Integral Energy – Notification of Arrangement;</li> <li>• Telstra – Compliance Certificate;</li> <li>• Shoalhaven Water – Certificate of Compliance;</li> </ul> <p>Department of Land and Property Information- registration of subdivision.</p>	
<b>Final Plan of Subdivision</b>	The developer will prepare a final plan of subdivision and Section 88B instrument for each stage of the development in accordance with the recommendations of the Environmental Assessment.	Prior to the release of Subdivision
<b>Ecological</b>	<b>Endangered Ecological Community</b>	
	The developer will prepare a Vegetation Management Plan (VMP) in relation to that part of the site containing the Endangered Ecological Community (EEC) for approval by Shoalhaven City Council.	Prior to the release of the Construction Certificate
	The developer will implement the recommendations and prepare the site containing the Endangered Ecological Community (EEC) in accordance with the VMP prior to its dedication to Shoalhaven City Council.	Prior to the release of the Subdivision Certificate which creates the lot(s) containing the EEC.
	The developer will maintain the Endangered Ecological Community in accordance with the recommendations of the approved Vegetation Management Plan after its dedication to Shoalhaven City Council.	For a period of three (3) years, commencing upon the dedication of the land to Shoalhaven City Council.

Ecological (Continued)	Offsets	
	<p><b>Delete:</b></p> <p><del>The proponent will fund \$15,000 for the preparation and implementation of an appropriate Management Plan for the Leafless Tongue Orchid in the Barnunj State Conservation Area to enhance the known population and increase its long term security. Implementation of the plan will include but not be limited to:</del></p> <ul style="list-style-type: none"> <li><del>a) Additional targeted field surveys for the species within 800 m of the known population;</del></li> <li><del>b) Light ripping of existing tracks identified for closure in the vicinity of the know population;</del></li> <li><del>c) Revegetation of lightly ripped tracks;</del></li> <li><del>d) Construction of additional barriers and promotion of revegetation at points where tracks to be ripped adjoin tracts to be retained for access;</del></li> <li><del>e) Provision of fencing around sub-populations under immediate threat from ongoing use of the conversation area;</del></li> <li><del>f) Monitoring of the known orchid population, revegetation works and barriers for a period of up to three years; and</del></li> <li><del>g) Research on the species within the locality by university graduates on projects identified by the plan and agreed between Malbec Properties and the Department of Environmental and Conservation.</del></li> </ul> <p><b>Reason:</b></p> <p>The area identified as containing the Leafless Tongue Orchid on Lot 171 has been included within the Conservation Reserve as extended in the original development consent. Accordingly, there is no longer a need to relocate the orchid.</p>	<p><b>Delete:</b></p> <p><del>Prior to the release of the Subdivision Certificate for Stage 3.</del></p>
	<p><b>Delete:</b></p> <p><del>The proponent will fund the attempted translocation of the Leafless Tongue orchid individuals from Lot 171 into suitable habitat in Barnunj State Conservation Area following the preparation and approval of an orchid translocation plan.</del></p> <p><b>Reason:</b></p>	<p><b>Delete:</b></p> <p><del>Prior to the release of the Subdivision Certificate for Stage 3.</del></p>

Ecological (continued)	<p>The area identified as containing the Leafless Tongue Orchid on Lot 171 has been included within the Conservation Reserve as extended in the original development consent. Accordingly, there is no longer a need to relocate the orchid.</p>	
	<p><b>Delete:</b></p> <p><del>The proponent will fund \$15,000 for the development and implementation of an appropriate management plan for the White-footed Dunnart in Barnunj State Conservation Area. The implementation of such a plan will include but not be limited to:</del></p> <ul style="list-style-type: none"> <li><del>a) Targeted field surveys for the species in preferred habitat;</del></li> <li><del>b) Mapping of anticipated home ranges for the species;</del></li> <li><del>c) Fire management of known and/or preferred habitat;</del></li> <li><del>d) Predator control within known and/or preferred habitat via capture and baiting;</del></li> <li><del>e) Research on the species by university graduates on projects identified by the plan and agreed between Malbec Properties and the Department of Environment and Conservation;</del></li> <li><del>f) Translocation of White-footed Dunnart individuals from Lot 171 to vacant home ranges within Barnunj State Conservation Area; and</del></li> <li><del>g) Monitoring of any identified White-footed Dunnart population for a period of three years</del></li> </ul> <p><b>Reason:</b></p> <p>The area identified as containing the White -footed Dunnart on Lot 171 has been included within the Conservation Reserve as extended in the original development consent. Accordingly, there is no longer a need to relocate the White -footed Dunnart individuals.</p>	<p><b>Delete:</b></p> <p><del>Prior to the release of the Subdivision Certificate for Stage 6.</del></p>
	Other	

	<p><b>Amend:</b></p> <p><del>The developer will impose a restriction on the title of each allotment requiring that any dogs and cats are kept only within the curtilage of a dwelling house, unless secured on a leash.</del></p> <p><b>The developer will impose a restriction on the title of each allotment requiring that:</b></p> <p>(i) <b>No cats be kept on any allotment at any time; and</b></p> <p>(ii) <b>All dogs must be kept within the confines of a residential allotment, or kept on a leash at all other times.</b></p> <p><b>Reason</b></p> <p>Consistency with Condition E5 as amended by Modification No. 2.</p>	Prior to the release of the Construction Certificate for that stage of development.
<b>Public Open Space</b>	The developer will prepare and embellish all public reserves in accordance with the Vegetation Management Plan (for EEC) and detailed landscape design plans to be approved by Shoalhaven City Council as part of the Construction Certificate.	Prior to the release pf certificate for subdivision for each stage/s containing public reserve.
	The developer will dedicate all the public/drainage reserves to Shoalhaven City Council.	Prior to the release of Subdivision Certificate and dedicated upon registration.
<b>Construction</b>	The developer will prepare a Construction Management Plan for approval by Shoalhaven City Council including education of workers in the approvals and conditions requiring compliance (including soil erosion and sediment controls, flora and fauna and aboriginal archaeological issues), details of the environmental management procedures during the development and measures relating to waste minimisation and management.	Prior to the commencement of construction and for the duration of the development
<b>Urban Design</b>	The developer will finalise the form and implementation strategies regarding the Draft Design	Prior to the release of the Subdivision Certificate for each stage.



	Guidelines in consultation with Shoalhaven City Council.	
	The Final Design Guidelines will be incorporated into the contracts for sale for each allotment.	Prior to the release if the subdivision Certificate for each stage and at the time of sale of each
	<b>Restriction as to User</b>	
	<p><b>Delete:</b></p> <p><del><i>The developer will impose a Section 88B Restriction as to User on the title of those allotments opposite the Barnunj State Conservation Area and retained public reserve to require that any buildings are finished in darker toned, non-reflective, colours that blend with the natural landscape.</i></del></p> <p><b>Reason:</b></p> <p>When the original development was approved, the Conservation Reserve was extended, therefore the dwellings that were proposed to be opposite the Barnunj State Conservation Area are no longer a part of the approved development.</p>	<p><b>Delete:</b></p> <p><del><i>Prior to the release of the Subdivision Certificate for the relevant stage/s.</i></del></p>
<b>Bushfire Management</b>	<b>Provision of Asset Protection Zone</b>	
	The developer will establish and maintain Asset Protection Zones (APZs) in accordance with the letter by Bushfire and Environmental Services Pty Ltd dated 30 September 2008.	Prior to the release of the Subdivision Certificate for each stage.
	The developer will install relevant infrastructure as required, including fire hydrants.	Prior to the release of the Subdivision Certificate for each stage.

<b>Bushfire Management (Continued)</b>	The developer will impose a Section 88B Restriction as to User on the title of relevant allotments specifying a Level of Construction in accordance with Figure 3 in the Bush Fire Assessment prepared by Bushfire and Environmental Services.	Prior to the release of the Subdivision Certificate for each stage.
	<b>Restriction as to User</b>	
	The developer will impose a Section 88B Restriction as to User on the title of relevant allotments specifying a Level of Construction in accordance with Figure 3 in the Bush Fire Assessment prepared by Bushfire and Environmental Services.	Prior to the release of the Subdivision Certificate for each stage.
<b>Water Quality Management and Soil Control</b>	The developer will design, install and dedicate water quality control measures which are generally in accordance with the Water Cycle Management Plans prepared by Storm Consulting. Construction Certificate Plans approved by Shoalhaven City Council will show detail of the proposed facilities.	Prior to the release of the Subdivision Certificate for each stage.
	The developer will maintain the water quality control measures for a period after dedication to Shoalhaven City Council.	For a period of three (3) years, commencing upon the dedication to Shoalhaven City Council of the land containing the water quality control measures.
	The developer will prepare a soil and water management plan to control run off during construction in accordance with the principles of the Landcom publication Managing Urban Stormwater (MUS): Soils and Construction Volume 1, 4 <sup>th</sup> Edition and Construction Certificate Plans approved by Shoalhaven City Council and DCP 100.	Prior to release of the Construction Certificate for each stage.
<b>Cultural Heritage</b>	The developer will implement salvage and other management measures as recommended in the reports prepared by South East Archaeology Pty Ltd dated May 2007.	For the duration of subdivision works.

	<b>Note: If Modification No. 3 is approved this reference will require updating.</b>	
	The developer will liaise with the Ulladulla Local Aboriginal Land Council of progress of the development.	Ongoing through the construction of the subdivision.
<b>Infrastructure</b>	<b>Roads</b>	
	The developer will construct all roads and intersections with Highview Drive, Vista Drive, Bonnie Troon Close, and un-named road reserve off Vista Drive in accordance with DCP 100 and approved Construction Certificate drawings.	Prior to the release of the Subdivision Certificate for each relevant stage.
	The developer will provide a minor street drainage system to accommodate the 5 year A.R.I storm event in accordance with plans approved by Shoalhaven City Council with the Construction Certificate.	Prior to the release of the Subdivision Certificate for each relevant stage.
	The developer will provide a major street drainage system to accommodate the 100 year A.R.I storm event in accordance with plans approved by Shoalhaven City Council with the Construction Certificates.	Prior to the release of the Subdivision Certificate for each relevant stage.
	<p><b>Amend:</b></p> <p><del>The developer will construct footpaths as shown on Drawing 24163—21 Rev 2 prepared by Allen Price and Associates.</del></p> <p><b>The developer will construct footpaths as generally shown on drawings 24163-21 Revision 09 dated 20/07/17 prepared by Allen Price and Scarratts and approved Construction Certificate Drawings.</b></p> <p><b>Reason:</b></p> <p>The plan reference requires updating to align with the most recent revision. The word “generally” has been inserted to provide some flexibility at construction certificate stage with the exact locations of footpaths.</p>	Prior to the release of the Subdivision Certificate for each relevant stage.

	The developer will provide street signs in accordance with the requirements of Shoalhaven City Council.	Prior to the release of the Subdivision Certificate for each relevant stage.
	<b>Traffic Calming</b>	
	<p><b>Delete:</b></p> <p><del>The developer will construct raised thresholds within the road connecting Bonnie Troon Close to other public roads in the subdivision in order to discourage through traffic and reduce traffic speeds. Such works shall be in accordance with plans approved by Shoalhaven City Council with the Construction Certificate.</del></p> <p><b>Reason:</b></p> <p>Bonnie Troon Close does not connect with the roadways within the approved subdivision. This was never corrected when the original approval was issued.</p>	Prior to the release of the Subdivision Certificate for Stage 1.
	<p><b>Amend:</b></p> <p><del>The developer will construct traffic calming facilities in the locations shown on drawing 24163-21 Revision 2 prepared by Allen Price and Associates.</del></p> <p><i>The developer will construct traffic calming facilities in the locations shown on drawing 24163-21 Revision 09 dated 20/07/17 prepared by Allen Price and Scarratts.</i></p> <p><b>Reason:</b></p> <p>To update plan reference to most recent version.</p>	Prior to the release of the Subdivision Certificate for the stage in which the facilities are located.

Infrastructure (continued)	<b>Electricity and Telecommunications</b>	
	The developer will provide underground power to each residential lot in the subdivision accordance with the requirements of Integral Energy.	Prior to the release of the Subdivision Certificate for each stage.
	<b>Drainage</b>	
	The developer will install street and inter-allotment drainage as necessary in accordance with plans approved by Shoalhaven City Council.	Prior to the release of the Subdivision Certificate for each stage as applicable.
	<b>Water and Sewer Services - Residential Allotments</b>	
	The developer will provide reticulated water and sewerage services to each lot in the subdivision in accordance with the requirements of Shoalhaven Water.	Prior to the release of the Subdivision Certificate for each stage.
	<b>Water and Sewer Services – Public Reserves</b>	
	Within the public reserves, the developer will provide a single connection to the reticulated water supply.	Prior to the release of the Subdivision Certificate for each stage/s containing public reserve.
<b>Landscaping Plans</b>	The developer will prepare Construction Certificate landscape plans generally in accordance with the concept plans prepared by Hans Smit lodged with the Preferred Project Report, and will construct the landscaping within each stage in accordance with those plans.	Prior to the release of the Subdivision Certificate for each.

<b>Geotechnics</b>	The developer will provide a lot classification geotechnical report to Shoalhaven City Council for each stage of development prior to the release of the final plan of subdivision for that stage.	Prior to the release of the Subdivision Certificate for each stage.
<b>Staging</b>	<p><b><i>Amend:</i></b></p> <p><del>The developer will construct the subdivision in the stages shown on drawing 24163-21 Revision 2 dated 20/07/17 prepared by Allen Price and Associates or as otherwise approved in Construction Certificate plans approved by Shoalhaven City Council.</del></p> <p><b><i>The developer will construct the subdivision in the stages shown on drawing 24163-21 Revision 09 dated 20/07/17 prepared by Allen Price and Scarratts or as otherwise approved in Construction Certificate plans approved by Shoalhaven City Council.</i></b></p> <p><b>Reason:</b></p> <p>The staging needs to reflect the most up to date revision of the approved plan.</p>	For the duration of the subdivision works.
<b>Developer Contributions</b>	The developer will pay Section 94 developer contributions in accordance with Shoalhaven City Council's Section 94 Contributions Plan on a "per ET" basis for each stage of the residential subdivision.	Prior to the release of the Subdivision Certificate for each stage.
	The developer will pay Section 64 water and sewer developer contributions.	Prior to the release of the Subdivision Certificate for each stage.
<b>Signage</b>	The developer will provide estate marketing signs in accordance with the provisions of DCP 89 – Exempt and Complying Development or as otherwise approved by Shoalhaven City Council.	For the Duration of the subdivision works.

## Conclusion:

The development is substantially the same as the approved development; the amended conditions relate to:

- The proposal to split the lots in Stage 5; or
- The request to delete condition B21 regarding the requirement for the left turn lane at the Princes Highway roundabout.
- Housekeeping amendments relating to the expansion of the Conservation Reserve in the original approval.

The modification sought does 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 requested is sought so that the proponent can progress with construction. Should you have any queries or wish to discuss the matter further, please do not hesitate to contact me on 4421 6544.

Yours faithfully,  
ALLEN PRICE & SCARRATTS PTY LTD



Kate Wooll  
**Town Planner**  
Encl