

13 April, 2018

Our Ref: 24163 KW
Your Ref: MP_0024_MOD4

Department of Planning and Environment
PO Box 5475
WOLLONGONG NSW 2520

Attention: Michelle Niles

Dear Michelle,

**RE: Consolidated Response to Submissions on s75W Modification
(MP_0024_MOD4) Highview Drive, Dolphin Point**

I refer to the s75 W application to modify the existing subdivision approval currently being assessed by the NSW Department of Planning and Environment's (DPE) and the DPE's request for a consolidated response to submissions received. Attached is a summary of the submissions to DPE and Allen Price and Scarratts P/L (APS) responses in the attached table (Appendix 1).

It would appear from the DPE web site that the only submissions received on this project were from:

- Shoalhaven City Council (SCC)
- NSW Office of Environment and Heritage (OEH)
- Roads and Maritime Authority RMS.

We would like to request that should NSW DPE approve this application that a consolidated approval be issued.

We trust this response provides NSW DPE with the required information it needs to finalise its assessment of this application. Should you require any further information, please do not hesitate to contact me.

Yours Faithfully,



Kate Wooll
Town Planner
ALLEN PRICE & SCARRATTS PTY LTD



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Appendix 1 – Consolidated Response to Submissions Table

Appendix 2 – Letter from Lesryk Environmental Pty Limited (Ecologist's Response to Submissions – SCC & OEH).

Appendix 1 - CONSOLIDATED RESPONSE TO SUBMISSIONS TABLE - MP_0024_MOD3

Appendix 1

CONSOLIDATED RESPONSE TO SUBMISSIONS TABLE

MP_0024_MOD3

Submission	Submission Comment	APS Response
Shoalhaven Council (SCC)	<p>It is noted that Shoalhaven Council supports a number of the proposed modification requests.</p> <p>In relation to the requests that have not been supported by Council the following is provided (Council comments in blue):</p> <p>1. Local Area Traffic Management LATM</p> <p>Amend: The developer will construct traffic calming facilities in the locations shown on drawing 24163-21 Revision 2 prepared by Allen Price and Associates. 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.</p> <p>Council's Traffic unit partly support the amendment, however the LATM device on Vista Drive south of Bonito Street should remain, as referred to previously.</p> <p>2. Amend statement of commitments schedule 3 (several TS issues)</p> <p><i>Council does not support other changes proposed under the ecological item in relation to Leafless Tongue Orchid <i>Cryptostylis hunteriana</i> and White-footed Dunnart <i>Sminthopsis leucopus</i>. The reasoning provided for these changes were not considered by a qualified ecologist and are not sound. The request to remove these requirements is rejected under the following reasons.</i></p>	<p>Where Shoalhaven Council has supported modifications, APS does not consider a response to be required.</p> <p>In relation to LATM devices, it is noted that Vista Drive south of Bonito Street is servicing only 17 – 18 lots. Furthermore, Vista Drive curves between Bonito Street and Highview Drive which would naturally slow the speed of traffic approaching Highview Drive. The LATM identified for Dolphin point in Stage 6 has a longitudinal gradient of over 5% which exceeds the maximum grade in AS 1742.13 - 2009, therefore, speed humps are not appropriate. The following is an extract from the AS1742.13 – 2009:</p> <p>C2 ROAD HUMPS</p> <p>C2.1 Location</p> <p>Road humps are generally best used in streets where all of the following conditions apply:</p> <ul style="list-style-type: none"> (a) In local areas with a local or limited collector function. (b) Where a speed limit of 50 km/h or less applies. (c) Where the traffic volumes are less than 400 vph in the peak hour. (d) Where truck (4.5 tonne GVM or greater) volumes are less than 50 vpd. (e) Where the longitudinal gradient of the road is less than 5 percent. (f) Where the road does not form part of an important access to a commercial development. (g) Where that part of the road is not used extensively for access to emergency service establishments, high density residential developments or public meeting places. (h) Where the road does not form part of a bus route unless steps are taken to minimize discomfort to passengers, e.g. use of long flat-top humps with minimum grade on the ramps. <p>Accordingly, we maintain our request to modify this provision as previously outlined</p> <p>2. Please refer to the response to Council and OEH submissions in relation to the Statement of Commitments prepared by Lesryk Environmental Pty Ltd (Lesryk) and submitted with this letter Appendix 2). Lesryk's response is as follows:</p>

<p><i>Leafless Tongue Orchid</i> Areas where the Leafless tongue orchid have been located will reside on the edge of the cleared lands once development is completed. Edge effects to this population will occur as a result of this.</p> <p><i>The boundary for the conservation area will be directly adjacent to the mapped population of Leafless Tongue Orchid. Clearing in this area will involve the removal of habitat for this species.</i></p> <p><i>As stated by AP&S in their response to OEH's comments regarding changes to Archaeological excavations, the locations of the orchids are not considered accurate (AP&S 2017). The potential loss of individual plants during clearing works is high as a result of this.</i></p> <p><i>As such, Council can see no valid reason why the provisions for the species or the Statement of Commitments outlined within the table under Schedule 3 should be modified as requested.</i></p> <p><i>White-footed Dunnart</i> As the boundary for the conservation area will be directly adjacent to the recorded locations for this species, there will be breeding, foraging and sheltering habitat and associated resources for White-footed Dunnart removed by the clearing works that will occur. White-footed dunnart is known to have a home range of approximately 80 metres for females and 100 metres for males (OEH 2017), while males are also known to make exploratory movements up to 1 km (OEH 2017).</p> <p><i>Appendix C of the Flora and fauna report prepared by BES considers the White-footed Dunnart under Part 3A of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act). Within this consideration the following points were highlighted regarding the White-footed Dunnart:</i></p>	<p>The commitments listed in Table 1 assume that the population of Leafless Tongue Orchid and White-footed Dunnart habitat was to be cleared as part of the areas development. The commitments aim to translocate and manage these species to protect their local occurrence.</p> <p>Lesryk is supportive of deleting the commitments in relation to the Leafless Tongue Orchid and White-footed Dunnart on the following basis. Lesryk has been advised that during the initial DA process a reserve and a residue parcel was proposed (these totalling around 3.9 ha). As the Leafless Tongue Orchid and Whitefooted Dunnart were recorded outside of this area it was imposed that the Conservation Reserve be significantly increased and include the areas in which the above species were "found/seen". The Conservation Reserve was increased to 6 ha. In June 2016, to include the two threatened species, their habitat and home range, the Conservation Reserve was fenced. Creation of the Conservation Reserve negated the need to disturb and translocate either population.</p> <p>The presence of the Conservation Reserve assists with and is a component of the management of the Leafless Tongue Orchid as it retains suitable habitat for this species, restricts public access and permits monitoring of weeds and pest fauna. Fencing and restriction of public access through the erection of signage has resulted in those previous earthen tracks that were present becoming overgrown and naturally regenerating.</p> <p>It is noted that Lesryk has been monitoring the Conservation Reserve quarterly for the past 12 months noting the progress of:</p> <ul style="list-style-type: none"> ▣ weed removal ▣ natural regeneration ▣ waste removal ▣ fencing ▣ erosion and sediment control ▣ pest fauna management.
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	<ul style="list-style-type: none"> · <i>One female individual was trapped at each of the two locations and it is possible that the same individual was captured on each occasion.</i> · <i>Disturbance to the white-footed Dunnart may be avoided and mitigated by retaining vegetation within a proximity of 80 – 100 metre wide radius of the two locations were the species was recorded.</i> <p><i>These two statements conflict slightly and if there is potential for BES to have captured the same individual at two locations separated by over 150 metres, it is highly unlikely that the recorded locations for White-footed Dunnart represent the extent of home range and used habitat on site.</i></p>	<p>Given the above, the relocation of the Leafless Tongue Orchid and White-footed Dunnart into the adjacent Barnunj State Conservation Area is not required as both species' and their habitat initially proposed to be cleared is now conserved. Therefore, management of any translocated population is not required.</p> <p>It is considered that the ongoing monitoring and management of the Leafless Tongue Orchid population within the Conservation Reserve is required. In accordance with the conditions of consent, Lesryk have been engaged by Allen Price and Scarratts Pty Ltd to continue this management and monitoring through to July 2019 (end of stage 5) when 80% of the lots are expected to have been sold.</p> <p>Management of the Conservation Reserve will also preserve habitat for the White-footed Dunnart.</p>
Roads & Maritime Services (RMS)	<p>RMS has completed an assessment of the development, based on the information provided and focussing on the impact to the State Road Network. For this development, the key state road is the Princes Highway.</p> <p>RMS recognises that the applicant is seeking to have condition B21 removed from the conditions of consent and is requesting RMS' support for the removal. Ultimately, this is a decision for Council as the requirement to provide a left-turn approach lane to the Princes Highway was a Council condition.</p> <p>However, RMS believes that there would be merit in the submission of justification, such as a traffic analysis and SIDRA modelling, to demonstrate that the works are not required.</p>	<p>As stated by RMS in this response this is a matter for Council assessment as it was a Council condition. The Council in its response to submissions in relation to this matter stated:</p> <p><i>CONDITION B21 This condition concerns the left turn onto the Princes Highway required and comment is being provided by Council's Traffic and Transport Unit. It should be noted that the MP 05_0024 also has access via this intersection and no condition was placed on this development in this regard. There is no nexus to put the full works onto this one development, the deletion is supported.</i></p> <p>Given the support by the Council and the lack of nexus between this condition and the development it would seem unreasonable to put our client to the additional expense of traffic analysis and SIDRA modelling, to demonstrate that the works are not required.</p> <p>As previously advised, the left lane requires acquisition of land from a lot which is not a part of the development. This acquisition is not identified in a s94 plan nor in the LEP as land required for roads etc. The roundabout has already been constructed by Council as per the s94 plan</p>

		<p>which had a catchment which included this site amongst other sites to be serviced. APS maintains that the imposition of this condition does not meet Newbury principles and is effectively a “Clayton’s condition” as it potentially cannot be met without the forceful acquisition of the required land from another owner.</p>
Office of Environment and Heritage (OEH)	<p>Aboriginal cultural heritage</p> <p>A concurrent modification (MP_0024_MOD3) updated the ACH management plan and establishes where salvage excavation must occur. We note that MP_0024_MOD3 is yet to be approved by DPE. In the event that Modification 3 and 4 are approved, we would like to see the most recent Aboriginal Heritage Management Plan (South East Archaeology 2017) listed in the updated statement of commitments to avoid any confusion. Our previous advice on MP_0024_MOD3 is provided at Attachment A for your reference</p> <p>Biodiversity</p> <p>We note that there are no specific modifications proposed to the biodiversity conditions as part of this application. We do note however, that there are proposed changes to the statement of commitments. We are supportive of the modification of the commitment relating to the keeping of pets and the relocation of the Leafless tongue orchid (<i>Cryptostylis hunteriana</i>). We do not however,</p>	<p>Aboriginal cultural heritage</p> <p>The concurrent modification (MP_0024_MOD3) with the updated the ACH management plan has been approved by DPE.</p> <p>We agree that the approved Aboriginal Heritage Management Plan (South East Archaeology 2017) should be referred to in the statement of commitments as detailed in the approval as follows:</p> <p><u>(4) Aboriginal Heritage Management Plan by South East Archaeology dated March 2016 and Supplementary Report for Reassessment in Relation to Revised Development Plans – “An Aboriginal Heritage Impact Assessment of the Proposed Residential Subdivision of Lot 171 DP 1081810, Highview Drive, Dolphin Point, South Coast of New South Wales” by South East Archaeology dated November 2017.</u></p> <p>Biodiversity</p> <p>Please refer to the attached response from Lesryk on this matter.</p> <p>The commitments listed in Table 1 assume that the population of Leafless Tongue Orchid and White-footed Dunnart habitat was to be cleared as part of the areas development. The commitments aim to translocate and manage these species to protect their local occurrence.</p> <p>Lesryk is supportive of deleting the commitments in relation to the Leafless Tongue Orchid and White-footed Dunnart on the following basis.</p>

	<p>support the commitments relating to the management of the Leafless tongue orchid and White-footed dunnart. The justification provided is in relation to the relocation of each species, not the management of each within the conservation area. As such we believe that the proponent's commitments to management of biodiversity should remain and be adhered to.</p> <p>Lesryk has been advised that during the initial DA process a reserve and a residue parcel was proposed (these totalling around 3.9 ha). As the Leafless Tongue Orchid and Whitefooted Dunnart were recorded outside of this area it was imposed that the Conservation Reserve be significantly increased and include the areas in which the above species were "found/seen". The Conservation Reserve was increased to 6 ha. In June 2016, to include the two threatened species, their habitat and home range, the Conservation Reserve was fenced. Creation of the Conservation Reserve negated the need to disturb and translocate either population.</p> <p>The presence of the Conservation Reserve assists with and is a component of the management of the Leafless Tongue Orchid as it retains suitable habitat for this species, restricts public access and permits monitoring of weeds and pest fauna. Fencing and restriction of public access through the erection of signage has resulted in those previous earthen tracks that were present becoming overgrown and naturally regenerating.</p> <p>It is noted that Lesryk has been monitoring the Conservation Reserve quarterly for the past 12 months noting the progress of:</p> <ul style="list-style-type: none"> ▣ weed removal ▣ natural regeneration ▣ waste removal ▣ fencing ▣ erosion and sediment control ▣ pest fauna management. <p>Given the above, the relocation of the Leafless Tongue Orchid and White-footed Dunnart into the adjacent Barnunj State Conservation Area is not required as both species' and their habitat initially proposed to be cleared is now conserved. Therefore, management of any translocated population is not required.</p> <p>It is considered that the ongoing monitoring and management of the Leafless Tongue Orchid population within the Conservation Reserve is required. In accordance with the conditions of</p>
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allen price & scarratts pty ltd
land and development consultants

		<p>consent, Lesryk have been engaged by Allen Price and Scarratts Pty Ltd to continue this management and monitoring through to July 2019 (end of stage 5) when 80% of the lots are expected to have been sold.</p> <p>Management of the Conservation Reserve will also preserve habitat for the White-footed Dunnart.</p>
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Ms Kate Wooll
Town Planner
Allen Price and Scarratts Pty Ltd
75 Plunkett Street
Nowra NSW 2541



10 April 2018

Dear Kate,

Comment on conditions of consent modification, residential subdivision, Highview Drive, Dolphin Point, NSW

1.0 Introduction

Lesryk Environmental Pty Ltd (Lesryk) is aware that conditions of consent were placed on the development approval (DA) for a staged 102 lot residential subdivision at Lots 117/118 DP 1226471 (former lot 171 DP 1081810), Highview Drive, Dolphin Point, NSW.

Under section 75W of the NSW *Environmental Planning and Assessment Act 1979*, on behalf of Malbec Properties (the proponent), Allen Price and Scarratts Pty Ltd have submitted a request to the NSW Department of Planning and Environment to modify components of the DA.

During the notification period the NSW Office of Environment and Heritage (OEH) and Shoalhaven City Council both submitted responses to the proposed modification request. These responses have been reviewed and drawn upon where necessary when providing the following advice. The original flora and fauna report prepared for the proposed subdivision (BES 2007) and OEH's threatened species database (OEH 2018) have also been consulted.

It is noted that only the approval conditions regarding biodiversity, and that are the subject of the proposed modification, have been considered in this letter of advice.

2.0 The proposed modifications

There are two primary matters of biodiversity concern that AP&S request modification to, these pertaining to the:

- 1) Leafless Tongue Orchid (*Cryptostylis hunteriana*)
- 2) White-footed Dunnart (*Sminthopsis leucopus*).

For reference, the commitments AP&S have requested modification of, and their reason, have been provided in Table 1.

AP&S proposes that the requirements that pertain to the translation and management of both the Leafless Tongue Orchid and White-footed Dunnart be deleted on the grounds that these commitments were made prior to the establishment of the Conservation Reserve that occupies the southern portion of Lots 117/118 DP 1226471 (Figure 1). This Conservation Reserve is around six hectares in size and abuts the adjacent Barnunj State Conservation Area.

Lesryk Environmental Pty Ltd
PO Box 3001
Bundeena NSW 2230

Table 1. Commitment modifications and responses

Commitment	AP&S		Response		
			SCC	OEH	Lesryk
1. Leafless Tongue Orchid	<p><i>Original DA approval commitment</i></p> <p>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:</p> <ul style="list-style-type: none"> a) additional targeted field surveys for the species within 800 m of the known population b) light ripping of existing tracks identified for closure in the vicinity of the know population c) revegetation of lightly ripped tracks d) construction of additional barriers and promotion of revegetation at points where tracks to be ripped adjoin tracts to be retained for access e) provision of fencing around sub-populations under immediate threat from ongoing use of the conversation area f) monitoring of the known orchid population, revegetation works and barriers for a period of up to three years 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. 	<p><i>Proposed modification</i></p> <p>Delete commitment</p> <p><i>Reason</i></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>	Not supportive	Not supportive. The reason given pertains to translocation, not management.	Supportive (response below)

Commitment	AP&S		Response		
			SCC	OEH	Lesryk
2. Leafless Tongue Orchid	<p><i>Original DA approval commitment</i></p> <p>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.</p>	<p><i>Proposed</i></p> <p>Delete commitment</p> <p><i>Reason</i></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>	Not supportive	Supportive	Supportive (response below)
3. White-footed Dunnart	<p><i>Original DA approval commitment</i></p> <p>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:</p> <ul style="list-style-type: none"> a) targeted field surveys for the species in preferred habitat b) mapping of anticipated home ranges for the species c) fire management of known and/or preferred habitat d) predator control within known and/or preferred habitat via capture and baiting e) research on the species by university graduates on projects identified by the plan and agreed between Malbec Properties and the 	<p><i>Proposed</i></p> <p>Delete commitment</p> <p><i>Reason</i></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>	Not supportive	Not supportive	Supportive (response below)

Commitment	AP&S		Response		
			SCC	OEH	Lesryk
	<p>Department of Environment and Conservation</p> <p>f) translocation of White-footed Dunnart individuals from Lot 171 to vacant home ranges within Barnunj State Conservation Area</p> <p>g) monitoring of any identified White-footed Dunnart population for a period of three years.</p>				
4. Other	<p><i>Original DA approval commitment</i></p> <p>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.</p>	<p><i>Proposed</i></p> <p>The developer will impose a restriction on the title of each allotment requiring that:</p> <p>(i) no cats be kept on any allotment at any time</p> <p>(ii) all dogs must be kept within the confines of a residential allotment, or kept on a leash at all other times.</p> <p><i>Reason</i></p> <p>Consistency with Condition E5 as amended by Modification No. 2.</p>	No response	Supportive	Supportive

3.0 Lesryk's response

The commitments listed in Table 1 assume that the population of Leafless Tongue Orchid and White-footed Dunnart habitat was to be cleared as part of the areas development. The commitments aim to translocate and manage these species to protect their local occurrence.

Lesryk is supportive of deleting the commitments in relation to the Leafless Tongue Orchid and White-footed Dunnart on the following basis.

Lesryk has been advised that during the initial DA process a reserve and a residue parcel was proposed (these totalling around 3.9 ha). As the Leafless Tongue Orchid and White-footed Dunnart were recorded outside of this area it was imposed that the Conservation Reserve be significantly increased and include the areas in which the above species were "found/seen". The Conservation Reserve was increased to 6 ha.

In June 2016, to include the two threatened species, their habitat and home range, the Conservation Reserve was fenced. Creation of the Conservation Reserve negated the need to disturb and translocate either population.

The presence of the Conservation Reserve assists with and is a component of the management of the Leafless Tongue Orchid as it retains suitable habitat for this species, restricts public access and permits monitoring of weeds and pest fauna. Fencing and restriction of public access through the erection of signage has resulted in those previous earthen tracks that were present becoming overgrown and naturally regenerating.

It is noted that Lesryk has been monitoring the Conservation Reserve quarterly for the past 12 months noting the progress of:

- weed removal
- natural regeneration
- waste removal
- fencing
- erosion and sediment control
- pest fauna management.

Given the above, the relocation of the Leafless Tongue Orchid and White-footed Dunnart into the adjacent Barnunj State Conservation Area is not required as both species' and their habitat initially proposed to be cleared is now conserved. Therefore, management of any translocated population is not required.

It is considered that the ongoing monitoring and management of the Leafless Tongue Orchid population within the Conservation Reserve is required. In accordance with the conditions of consent, Lesryk have been engaged by Allen Price and Scarratts Pty Ltd to continue this management and monitoring through to July 2019 (end of stage 5) when 80% of the lots are expected to have been sold.

Management of the Conservation Reserve will also preserve habitat for the White-footed Dunnart.

If you require any further information on this matter at this stage please contact the under signed on either (02) 9523 2016 or (0408) 258 129.

Yours sincerely,



Deryk Engel
Director
Lesryk Environmental Pty Ltd