



17 May 2019

Dolphin Point Residential Subdivision (MP 05_0024 MOD 4)

1. INTRODUCTION

1. On 5 April 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning and Environment (**Department**) a modification request from Malbec Dolphin Point Pty Ltd and the Ulladulla Local Aboriginal Land Council (**proponent**) to modify the Dolphin Point residential subdivision at Highview Drive, Dolphin Point (**modification request**). The modification request was lodged pursuant to section 75W of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*,
2. The modification request is a transitional Part 3A project under clause 2 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (Transitional Regulation)*. The Commission is the consent authority in respect of such transitional Part 3A projects under the Minister for Planning's delegation of that function to the former Planning Assessment Commission by instrument of delegation dated 14 September 2011, given that the Commission is to be taken to be the same legal entity as the Planning Assessment Commission, pursuant to clause 7 of the Transitional Regulation. Under the Minister's delegation dated 14 September 2011 the Commission is the consent authority as a political disclosure statement has been made by the proponent.
3. Professor Mary O'Kane AC, Chair of the Commission, nominated Dr Peter Williams (Chair) and Ilona Millar to constitute the Commission determining the modification request.

1.1 Site and locality

4. The approved Dolphin Point Residential Subdivision is located at Dolphin Point, NSW, within the Shoalhaven Local Government Area (**Shoalhaven LGA**). The subdivision site is located on Lots 117/118 DP 12226471 and is accessed through Dolphin Point Road which connects to the Princes Highway (Figure 1).

1.2 Background to Modification request

5. On 8 August 2009, the 132 Lot Residential Subdivision Lot 171 DP 1081810 Highview Drive, Dolphin Point major project (MP 05_0024) (**Dolphin Point Residential Subdivision**) was approved, creating 104 freehold title lots across seven development stages and a 6.2-hectare conservation reserve.
6. The Dolphin Point Residential Subdivision was subsequently modified three times. These modifications were:
 - Modification 1 – redesign of the intersection Dolphin Point Road, Seaside Parade, Highview Drive and Road One and amendments to conditions relating to subdivision staging. Approved 3 July 2013;
 - Modification 2 – removal of restrictions relating to keeping dogs on the site. Approved 22 April 2016; and
 - Modification 3 – amendments to Condition A4 to reflect an updated Aboriginal Heritage Management Plan. Approved 7 March 2018 October 2017.

1.3 Summary of Modification request

7. The modification request before the Commission for determination proposes to:
 - Delete condition B21, requiring the construction of a left turn approach lane onto the Princes Highway from the roundabout at Dolphin Point Road;
 - The replacement of two medium density residential lots with individual lots, increasing the total

- number of lots in Stage 5 from 16 to 20; and
- Amendments to the Statement of Commitments (**SoCs**) for matters relating to ecology, urban design, road infrastructure provisions and development staging.

Figure 1: Aerial view of the Project Site. Source: *Dolphin Point Residential Subdivision Part 3A Modification Assessment (MP 05_0024 MOD 4)*



1.4 Stated need for modification

8. The proponent stated in its *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 (Modification application)*, dated 8 November 2017, that the modification request was required to:
 - adjust housing density, noting “*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*”;
 - update 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.*”; and
 - delete condition B21 as it 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*”.

2. THE DEPARTMENT’S CONSIDERATION OF THE MODIFICATION REQUEST

2.1 Key steps in Department’s consideration of the Modification Request

9. On 2 November 2017, the proponent submitted a request to modify a major project, the Dolphin Point residential subdivision at Highview Drive, Dolphin Point.
10. The Department exhibited the modification request from 23 January 2018 to 6 February 2018. No public submissions were received. Shoalhaven City Council (**Council**), Roads and Maritime Services (**RMS**) and the Office of Environment and Heritage (**OEH**) provided submissions on the modification request.

11. On 13 April 2018, the proponent provided the Department with a Response to Submissions (**RtS**) to address issues raised by the Council, RMS and OEH. On 28 August 2018, the proponent provided an addendum to the RtS to further address the issues raised by Council and OEH.
12. On 5 April 2018, the Department finalised the *Dolphin Point Residential Subdivision Part 3A Modification Assessment (MP 05_0024 MOD 4)* (the **Department's assessment report**)

2.2 The Department's assessment report

13. The Department's assessment report, dated 5 April 2018, identified the removal of the left turn approach onto the Princes Highway, the amendment of the SoCs, and replacing two medium density lots with six standard residential lots as the key impacts associated with the modification request.
14. The Department's assessment report concluded that:
 - *"The requirements to provide a left-turn approach onto the Princes Highway is no longer necessary as a new roundabout has recently (been) constructed further to the north of the site which provides a second northbound access onto the Princes Highway*
 - *Replacing two medium density lots with six standard residential lots would not result in any significant environmental, traffic or car parking impacts and the revised subdivision layout is in keeping with the existing low-density character of Dolphin Point*
 - *The protection of threatened species would be maintained as part of the SoCs with Council and OEH supportive of the amendments*
 - *It would not result in any adverse environmental impacts beyond those impacts assessed as part of the original application."*

3. THE COMMISSION'S CONSIDERATION

3.1 Meeting with the Department

15. On 30 April 2019, the Commission met with the Department to discuss the modification request. A transcript of this meeting was made available on the Commission's website on 14 May 2019.
16. The Department opted to take some questions on notice during the meeting regarding the tenure of the conservation area and the compatibility of change in housing density with strategic planning in the Shoalhaven local government area. On 9 May 2019, the Department provided a written response, dated 9 May 2019, to the outstanding questions (**Department's response**). The Department's response was made available on the Commission's website on 16 May 2019.

3.2 Site Inspection

17. On 30 April 2019, the Commission attended a site inspection, including the location of the approved left turn out lane onto the Princes Highway, the two roundabouts managing access to the Princes Highway, the subdivision site, including the developed residential areas and stages currently being developed on Vista Drive and Highview Drive and the conservation area. A summary of the site inspection was made available on the Commission's website on 16 May 2019.

3.3 Material considered by the Commission

18. In this determination, the Commission has carefully considered the following material (**material**):
 - the modification request, lodged 2 November 2017;
 - the modification application, dated 8 November 2017, and its accompanying report and appendices (**modification report**);
 - the RtS, dated 13 April 2018, and addendum RtS, dated 28 August 2018, both prepared by Allen Price and Scarratts Pty Ltd, and accompanying appendices;
 - the Department's assessment report;
 - The Dolphin Point Residential Subdivision, and subsequent modifications;
 - the *Conservation Reserve Management Plan Highview Drive, Dolphin Point*, dated March 2018, prepared by Travers Bushfire and Ecology (the **Conservation Management Plan**); and

- the Department's response to questions on notice, dated 9 May 2019.

3.4 Mandatory considerations

19. In determining this modification request, the Commission has taken into consideration the following relevant mandatory considerations, as provided in s 75W of the EP&A Act (**mandatory considerations**):
- the provisions of all:
 - environmental planning instruments;
 - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - development control plans;
 - planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7.4; and
 - the *Environmental Planning and Assessment Regulations 2000 (Regulations)* to the extent that they prescribe matters for the purposes of s75W of the EP&A Act; that apply to the land to which the modification request relates;
 - the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
 - the suitability of the site for development;
 - submissions made in accordance with the EP&A Act and Regulations; and
 - the public interest.

3.5 Scope of the modification within section 75W of the EP&A Act

20. The Commission has reviewed the modification request against the original approval for the Dolphin Pont Residential Subdivision and subsequent modifications, as discussed at paragraphs 5 - 7. The Commission considers that the modification request is substantially the same development as the Dolphin Point Residential Subdivision because the scale of the subdivision is not increasing, the number residential lots is remaining substantially the same and the extent of the conservation reserve will remain unchanged.
21. For the reasons set out in paragraph 20, the Commission finds that the modification request can be considered under s75W of the EP&A Act as it is substantially the same development for which approval was originally granted and will not result in additional impacts.

3.6 Relevant Environmental Planning Instruments

22. The Department identified the following Environmental Planning Instruments (**EPIs**) as relevant to the modification request:
- *State Environmental Planning Policy No. 44 Koala Habitat Protection (Koala SEPP)*;
 - *State Environmental Planning Policy No. 55 – Remediation of Land (Remediation SEPP)*;
 - *Shoalhaven Local Environmental Plan 2014 (SLEP 2014)*; and
 - *State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)*.
23. The Department has considered the modification request in relation to the Koala SEPP and the Remediation SEPP in the assessment of the Dolphin Point Residential Subdivision (MP 05_0024), as modified. The Department's assessment report stated, "*the modification does not result in any significant changes that would alter the considerations and conclusions made as part of the original assessment*".
24. The Department considered the modification request with regard to the objectives and requirements of the SLEP 2014. The Department's assessment report stated that the Department "*is satisfied that the proposal is consistent with the objectives of the R1 and E2 zones, noting the development will continue to provide low-density residential dwellings to meet the needs of the community and continue to include a range of measures to protect and mitigate impacts to biodiversity, groundwater and water quality*".

25. The Project site is identified as being located within the Coastal Environment Area and therefore clause 13 of the Coastal SEPP applies. The Department's assessment report concluded that "*the proposal is consistent with the Coastal SEPP as it does not seek to change the footprint of the development and would not result in any additional coastal impacts beyond those already assessed and approved in the original assessment.*"
26. The Commission accepts the findings of the Department's consideration of relevant instruments as set out in paragraphs 22 - 25, and finds that the modification request is consistent with the requirements of relevant EPIs because the modification request does not change the footprint of the Dolphin Point Residential Subdivision, continues to provide low density residential development, would not result in any additional coastal impacts, and continue to provide a range of measures to mitigate and manage environmental impacts.

3.7 Illawarra-Shoalhaven Regional Plan

27. The Department's response provided consideration of the Illawarra-Shoalhaven Regional Plan (**Regional Plan**), which was identified as setting the planning priorities for the Shoalhaven LGA. The Department's response stated:

"that the modification is consistent with the Plan as it provides single lot housing which is aligned to the demand generated by the community for housing in the area. The Department also notes the subject site does not have frequent public transport services and the closest town centre is located over 4km away. As such is less suited to medium density housing."

28. The Commission accepts the findings of the Department's consideration of the Regional plan, as set out in paragraph 27, and finds that the modification request is consistent with the requirements of the Regional Plan because the modification request maintains a mix of residential development opportunities consistent with the local housing needs.

3.8 Likely impacts of the development on both natural and built environments

3.8.1 Amendment to the Statement of Commitments regarding ecological management

29. The assessment and approval of the Dolphin Point Residential subdivision provides specific consideration for mitigating and managing impacts to biodiversity through establishing a translocation program and conservation reserve to mitigate impacts to the Leafless Tongue Orchid and White-footed Dunnart and placing limitations on dogs and cat ownership. The modification request includes amendments to the condition of approval and Statement of Commitments which would alter how measures designed to institute ecological management would be implemented.

Council's consideration

30. Council's submission on the modification request, as originally exhibited, was supportive of proposed amendments removing the requirement to translocate Leafless Tongue Orchids and the restrictions on keeping pets within the Dolphin Point Residential Subdivision.
31. Council's submission raised concerns regarding the amendment of the Statement of Commitments in relation to managing impacts to threatened species. Council's submission stated that:

*"Council does not support other changes proposed under the ecological item in relation to Leafless Tongue Orchid *Cryptostylis hunteriana* and White-footed Dunnart *Sminthopsis leucopus*. 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.*

Leafless Tongue Orchid

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. 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.....

White-footed Dunnart

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."

32. Council reviewed the RtS and stated in response that:
- *"Council can agree that the conditions relating to the translocation of the Leafless Tongue Orchid may be removed; however, given the above-mentioned reasons and advice from Lesryk Environmental relating to the ongoing monitoring and/or management of Leafless Tongue orchid and White-footed Dunnart, council retain the position of opposing the removal of commitments relating to these effects.";* and
 - With regard to the removal of management requirements for the Leafless Tongue Orchid and the White-footed Dunnart was from the statement of commitments that Council was *"Not supportive without a replacement commitment"*.
33. Council reviewed the addendum RtS, which included a replacement commitment in the Statement of Commitments for the management of the Leafless Tongue Orchid and the White-footed Dunnart, stating that:

"Council supports the proposed amendments to the Statement of Commitment with the following exception:

'Funding [for the Leafless Tongue Orchid] to be provided prior to the issue of a subdivision certificate for Stage 6 to NSW National Parks and Wildlife or NSW Office of Environment and Heritage for plan preparation and implementation'

The timing of the payment of the funding for the Leafless Tongue Orchid must be prior to subdivision certificate for Stage 3 (or at next appropriate approval), as per the timing of the preparation of a management plan for the Leafless Tongue Orchid in the approved Statement of Commitments."

Proponent's consideration

34. The proponent considered the impacts of amending the management commitments as part of the submitted Modification report, RtS and Addendum RtS. The Addendum RtS included an ecological review prepared by Lesryk Environmental Pty Ltd (**the Lesryk report**) on the management requirements for the Bunaji Conservation Area.
35. The Lesryk report concluded that:
- *"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";* and
 - *"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 [will] ... continue this management and monitoring through to July 2019 (end of stage 5) when 80% of the lots are expected to have been sold."*
36. The proponent states in the RtS that *"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."*

OEH's consideration

37. The OEH submission on the modification request stated that:
"We have reviewed the submitted information and have no major issues with the proposed modification itself. We do however have concerns with the proposed amendments to the statement of commitments, particularly the ones which relate to biodiversity.....
We are supportive of the modification to the commitment relating to the keeping of pets and the relocation of the Leafless Tongue Orchid (Cryptostylis hunteriana). We do not, however, support the removal of the commitment relating to the management of the Leafless Tongue Orchid and the White-footed Dunnart. The justification provided is related to the relocation of each species, not the management of each within the conservation area."
38. OEH's submission on the RtS confirmed that OEH's "previous comments still remain applicable. The commitments to managing the conservation area remain valid".
39. OEH's submission on the addendum RtS confirmed its support for the modification request, as set out in the addendum RtS.

Department's consideration

40. The Department's assessment report states that:
- *"The original proposal translocated the Leafless tongue orchid individuals as they were located in an area proposed to be cleared for future residential development within Lot 171. However, the conditions of approval for MP 05_0024 amended the boundary between the conservation area and residential land use, which resulted in the retention of vegetation originally proposed to be cleared and as such, the orchids were subsequently retained."*
41. The Department's response to questions on notice, dated 9 May 2019, stated that:
"The Conservation Management Plan (CMP) requires the conservation reserve be maintained by the Proponent for a period of three years after which it will be handed over the local Aboriginal Land Council for management in perpetuity in accordance with the CMP. The Department notes that in 2013, OEH declined an offer to include the conservation reserve within the adjoining Meroo National Park (previously called the Barnunj State Conservation Area)."
42. The Department's assessment report concludes that:
- *"The Department supports the proposed amendment to the SoC requiring funding to be provided to either NPWS or OEH. The Department notes that the subdivision certificate for Stage 3 has been released and the next stage for release is Stage 6. As such, the funding will be required prior to the release of the subdivision certificate for Stage 6. The amended SoC will ensure the Proponent maintains the obligation to contribute to the management and sustainability of threatened species located on the site.";* and
 - *"is satisfied the Leafless tongue orchid individuals will be retained as part of the development and therefore supports the proposed deletion of the SoC."*

Commission's consideration

43. The Commission acknowledges the views and concerns raised by Council, as set out in paragraphs 30 - 33, and OEH, as set out in paragraphs 37 - 39.
44. The Commission accepts the conclusions of the Department outlined in paragraphs 40 - 42 above because the modification request, as set out in the addendum RtS, reflects an outcome which has been negotiated by the proponent with Council and OEH and will maintain management of the nature conservation area and funding for management actions to benefit the Leafless Tongue Orchid and White-footed Dunnart. The Commission also acknowledges and supports the retention of Conditions B2 and E5, which maintains the conservation area in perpetuity.
45. Based on the material, the Commission finds that the proposed changes to the funding of

approved management actions is acceptable because it will continue to provide for management of the nature conservation area, funding for actions to benefit the Leafless Tongue Orchid and White-footed Dunnart in the adjoining Meroo National Park, which will be managed and monitored through an organisation, the NSW National Parks and Wildlife Service, with the requisite expertise in implementing these programs.

3.8.2 Amend local traffic management through changes to Condition B19 and the deletion of Condition B21

Council's consideration

46. Council did not raise any objections regarding the removal of an obligation to construct a left-turn approach lane onto the Princes Highway from the roundabout at Dolphin Point Road. Council did provide comments regarding the proposed changes to the construction of Local Area Traffic Management (LATM) treatments, through amendments to Condition B19(7), and stated:

“support the deletion of condition B21, noting the issues surrounding the condition, its delivery and noting the recent changes to highway access following the RMS Burrill Lake Bridge project with construction of the roundabout (Balmoral Road / Princes Highway / Dolphin Point Road) having opened a second right turn (northbound) access opportunity for the subdivision and surround.

Council's traffic unit partly support the revision noting the changes between revision 02 and revision 09 in road layout. However the condition for providing an appropriate LATM treatment on Vista Drive south of Bonito Street should remain to discourage through traffic and maintain a low speed environment.”

Proponent's consideration

47. The proponent considered the impacts of amending the traffic management commitments as part of the submitted Modification report. The RtS and addendum RtS did not provide further consideration of the amendments to Condition B19 and deletion of condition B21.
48. The proponent states in its Modification report that:
- *“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.”; and*
 - *With regard to the deletion of Condition B21 “All subdivisions in the benefit area identified for the road contributions project... 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”.*

Department's consideration

49. The Department states in its assessment report that:

“The RMS Burrill Lake Bridge – Princes Highway project has created an additional northbound access point to the Princes Highway from Dolphin Point Road for traffic generated by the development

- *The additional northbound traffic access point provides a solution to the Department's and Council's previous concerns relating to traffic generated by the development*
- *Council supports the deletion of the condition and RMS have not raised concerns relating to this most recent request to delete the condition.”*

50. With regard to the deletion of Condition B21, requiring the construction of a left-turn approach lane at the Princes Highway / Dolphin Point Road / Wallaroy Drive roundabout, the Department's assessment report concludes that it *“is acceptable as a new roundabout has been constructed*

creating a second northbound access point from Dolphin Point Road to the Princes Highway.”

Commission’s consideration

51. The Commission accepts the conclusions of the Department outlined in paragraphs 49 - 50 above.
52. Based on the material, the Commission finds that the proposed amendments to Condition B19(7) to remove 2 LATM treatments should be accepted because the layout out of the Dolphin Point Residential Subdivision and gradient of Vista Drive, as detailed by the proponent and observed by the Commission during the site inspection, are suitable to manage vehicular speeds.
53. Based on the material, the Commission finds that the requirement for the proponent to construct a left turn lane onto the Princes Highway (Condition B21), should be removed from the conditions of consent because the construction of the new roundabout at the juncture of the Princes Highway and Dolphin Point Road provides a second access point for the subdivision and will manage the expected traffic volumes associated with the subdivision.

3.8.3 Subdivision of Lots 504 and 512 from two medium lots to six low density lots

Council’s consideration

54. Council did not raise any concerns regarding the replacement of the two medium density lots with low density lots and the associated adjustment to the financial contributions to Council as part of Stage 5 of the Dolphin Point Residential Subdivision.

Proponent’s consideration

55. The proponent considered the impacts of changing the density for lots 504 and 512 as part of the submitted Modification report. As Council noted its support for this component of the modification request, this aspect was not further considered in the RtS or addendum RtS.
56. The proponent concluded in its Modification report 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.”*

Department’s consideration

57. The Department’s assessment report also stated that the *“medium density residential lots were originally included as part of the development to address the requirements of Shoalhaven Planning Policy No. 1 (SPP No. 1) which states ‘the predominant form of development for the Burrill Lake/Dolphin Point area is ‘standard urban residential’. However, given the increasing demand for higher density housing and tourist orientated development in the area, the Policy includes scope for appropriately located ‘medium density development’. The policy outlines a requirement of between 10% and 20% of the total area of land identified as ‘standard urban residential’ to provide for medium density residential development.”*
58. The Department’s assessment report noted that the *“residential market conditions at Dolphin Point may have changed since SPP No. 1 was adopted by Council in 2004 and acknowledges the Proponent’s justification that there is now greater demand for individual lots.”*
59. The Department’s assessment report has also identified that the proposed instrument of modification contains amendments to Condition E11, updating the developer contributions associated with Stage 5 of the Dolphin Point Residential Subdivision.
60. The Department stated during its meeting with the Commission that *“that some lots will be able to accommodate dual occupancies, subject to, you know, future DA assessments. So there will be some opportunities for medium style residential development – medium density residential development on the site.”*
61. The Department’s assessment report concluded *“that the replacing two medium density residential lots with six standard residential lots is acceptable as:*
 - *the overall density of the development would remain similar to the original approval*

- *the proposal would not result in any significant environmental, traffic or car parking impacts*
- *the amended subdivision layout will remain consistent with the existing low-density residential environment at Dolphin Point and Burrill Lake.”*

Commission’s consideration

62. The Commission accepts the assessment and conclusions of the Department outlined in paragraphs 57 - 61 because the residential market is likely to have changed since the approval of the Dolphin Point Residential Subdivision, the change from two medium density residential lots to six low density residential lots is likely to better meet the housing needs for the locality and the opportunity to develop medium density dwellings will be retained in the subdivision if housing requirements change.
63. Based on the material, the Commission finds that the proposed change in residential dwelling density is acceptable because the amendment from a medium density to low density development will maintain the character of the surrounding residential developments and is a suitable use of Lots 504 and 512.

3.9 The public interest and principles of ecologically sustainable development

The public interest

64. The Department considered the public interest as part of its assessment of the Dolphin Point Residential Subdivision and concluded that the *“proposal serves the public interest by the orderly provision and release of serviced residential land that is well designed and provides appropriate linkages to facilities and services. The public interest is also served by the ongoing protection and rehabilitation of riparian corridors and protection of threatened species habitat on site and the linking of this habitat to the Barnunj SCA to the south and Public Reserve to the west”*.
65. The Department’s assessment report did not provide further consideration of the public interest.
66. The Commission considers that the benefits of the modification request include updated conditions of consent and Statement of Commitments which more accurately reflect and manage the impacts from the Dolphin Point Residential Subdivision and reflect the residential needs in the Shoalhaven LGA.
67. The Commission considers that the impacts of the modification request are minimal and consistent with the approved impacts for the Dolphin Point Residential Subdivision.
68. The Commission accepts the Department’s consideration of the public interest as set out in paragraph 64, 66, and 67. The Commission finds that the modification request is in the public interest because the proposed amendments will better reflect the residential requirements for the Dolphin Point area, while the amendments to the statement of commitments will assist in achieving ecological benefits for the Leafless Tongue Orchid and the White-footed Dunnart.

The Objects of the EP&A Act, including the principles of ecologically sustainable development

69. The Department considered the *Objects of the EP&A Act and the principles of ecologically sustainable development (ESD)* as part of its assessment of the Dolphin Point Residential Subdivision and concluded that:
- *“Of particular relevance to the assessment of the subject application is consideration of the Objects under section 5(a). Relevantly, the Objects stipulated under section 5(a) (i), (ii), (ii), (iv), (v), (vi), (vii), (viii) are significant factors informing the determination of the application”;* and
 - *the Dolphin Point Residential Subdivision “explores key ESD opportunities, including appropriate water sensitive design, protection of riparian corridors along creeklines, protection and management of EECs on the site and appropriate subdivision layout with regard to orientation to allow passive solar design”.*
70. The Department’s assessment report did not provide further consideration of the objects of the EP&A Act, including the principles of ESD.

71. The Commission accepts the Department's consideration of the Objects of the EP&A Act, including the principles of ESD, as set out in paragraph 69, because the modification request will still incorporate the environmental protections and design considerations set out in the approval of the Dolphin Point Residential Subdivision.

4. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

72. The Commission has carefully considered the Material before it.

73. For the reasons set out in paragraphs 45, 53, 63, 68, and 71 the Commission finds that consent for the modification request should be granted, subject to conditions. Specifically, the Commission finds that the changes outlined in the modification request and addendum RtS are acceptable as they would not:

- change the current approved uses of the Development;
- result in a significant change to the approved residential density for the Dolphin Point Residential Subdivision;
- result in unacceptable changes to traffic patterns and management; and
- result in a reduction in the conservation and management of actions to benefit the Leafless Tongue Orchid and White-footed Dunnart.

74. As noted above at paragraph 73, the Commission has determined that the consent should be subject to conditions. These conditions are designed to:

- prevent, minimise and manage adverse environmental impacts;
- require regular monitoring and reporting; and
- provide for the on-going environmental management of the Dolphin Point Residential Subdivision.



Dr Peter Williams (Chair)
Member of the Commission



Ilona Millar
Member of the Commission