

MODIFICATION REQUEST:
Lots 184-187 & 191-194 DP 259164 and
Lots 20-23 DP 31208
(Woolworths Cabarita Beach)

MP 07_0179 Mod 2
Hours of operation and deliveries

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

August 2012



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EXECUTIVE SUMMARY

This proposal is for a modification of a transitional Part 3A project approval to extend the hours of operation, including delivery times, for a retail component of a mixed use development at Cabarita Beach/Bogangar, on the NSW Far North Coast. The approved development includes shop top housing in a future, deferred Stage 2. The proposed extended hours of operation are to apply to Stage 1 of the development, including a Woolworths supermarket, presently under construction.

The proposal is referred to the Planning Assessment Commission for determination owing to the proponent, Woolworths Ltd, having made a political donation declaration.

The modification seeks approval to expand the approved operating hours of the retail component, including the Woolworths supermarket; comprising the periods 8.30am to 5.30pm on Mondays, Tuesdays, Wednesdays, Fridays and Saturdays; 8.30am to 9.00pm on Thursdays; and 9.00am to 4.00pm on Sundays. The proposed extended hours of operation are to be 7.30am to 9.00pm 7 days a week, subject to a noise testing trial procedure. In addition, delivery hours are proposed to be altered, from the currently approved trading hours, to 7am to 6pm Monday to Saturday (inclusive) including a trial of the period from 10am to 12 noon on Sundays or public holidays together with unloading/loading criteria, subject to a review of recorded complaints after 3 months. The proposal was widely notified by newspaper notices as well as letter notification to nearby residents and previous submitters.

The Tweed Shire Council raised initial objections concerning the proposed alteration to the size of delivery vehicle allowed and that the proposed hours were to be confined to the supermarket rather than applying to the whole retail centre. One relevant public objection has been received that relates to noise impact associated with deliveries and the expanded hours of operation. A second submission raised property issues unrelated to this proposed modification.

The council's objections have been resolved by the proponent amending the application to both reinstate the original approved delivery vehicle size and to apply the proposed modified operating hours to the whole commercial component, including the supermarket. The remaining relevant public objection is addressed by the proposed conditions including a trial period for the proposed operating hours and Sunday and public holiday delivery times. This trial includes the registering and reporting of complaints and noise compliance testing. The proposed modified conditions leave scope for the Director General to vary the proposed operating and/or delivery times or consider alternatives as a means to respond to any inability to comply with the noise standard or delivery criteria imposed by the conditions.

The department recommends that the modification be approved, subject to the conditions in the attached draft Instrument of Determination.

1. BACKGROUND

The proponent, Woolworths Ltd, seeks a S75W modification of its approved major project to construct a supermarket and retail/commercial centre, with residential shop top housing, at Cabarita Beach. The approved hours of operation and the proposed delivery arrangements are to be modified. The proposal involves a trial period for Sunday deliveries and noise testing of the extended operating hours.

The site is located within the Bogangar township, adjacent to Cabarita Beach, approximately 20 km south of Tweed Heads and 18km east of Murwillumbah on the NSW Far North Coast. The site is within the Tweed local government area.



Figure 1 Location Map. Far North Coast NSW



Figure 2 Site indicated by red shading.

1.1 Approval history

Project approval.

The project approval was granted under Part 3A of the *Environmental Planning and Assessment Act, 1979*, on 2 December 2009, to develop a part 3 and 4 storey mixed use development comprising the following:

- ground level commercial component encompassing a 2310m² supermarket and 1106m² of retail speciality shops
- 40 upper level residential units (shop top housing)
- ground level public forecourt
- pedestrian thoroughfare
- landscaped podium
- site landscaping
- basement and surface car parking for 204 vehicles
- loading bay
- three access points from Hastings Road
- excavation works, and
- signage

(refer to Director General's Environmental Assessment Report
<http://majorprojects.planning.nsw.gov.au>).

Previous Modifications

The project was modified, on 21 December, 2011, (Mod 1) incorporating the following modifications:

- An increase in the size of the supermarket from 2310m² to 2479m² and decrease in the area of specialty retail from 1106m² to 913m² resulting in a net decrease of 24m².
- Relocation of the pedestrian link to incorporate a new travelator.
- Relocation of the residential lift and lobby.
- Swapping the location of the service loading bay access with the main access to the underground car park on Hastings Road. Moving the waste collection area to Hastings Road, adjacent to the open air car park access.
- New supermarket office level (incorporating fire stair egress from the landscaped roof) and new plant area in the location previously occupied by a mezzanine office.
- Staging of the development to allow implementation over two stages: Stage 1 comprises the retail/supermarket component. Stage 2 comprises the shop top housing residential component (40 residential apartments).
- Altering the flood freeboard requirement for the basement car park to be within the limits provided for under the Council's current flood mapping (no resulting change to maximum building height).

The first modification application was submitted by the previous owners. The modification was granted approval under delegated authority by the Director, Metropolitan and Regional Projects North because the then proponent (the former owner) was not a political donor and the application qualified to be determined by a senior departmental officer under the relevant delegation criteria.

2. PROPOSED MODIFICATION

The proposed modification entails

- extending the hours of operation of the development
- altering the delivery times that currently apply to the development; and
- other associated condition amendments to maintain amenity.

In relation to the **hours of operation**, Condition G5 requires that the centre operates as follows (see over):

Day	Commencement time	Cessation time
Monday	8.30 am	5.30 pm
Tuesday	8.30 am	5.30 pm
Wednesday	8.30 am	5.30 pm
Thursday	8.30 am	9.00 pm
Friday	8.30 am	5.30 pm
Saturday	8.30 am	5.00 pm
Sunday	9.00 am	4.00 pm
Public Holidays	Closed	

The new proposed hours of operation are to be between 7.30am to 9.00pm 7 days per week, including Sundays and public holidays. This is indicated in new condition G5A.

Condition G3 currently states in relation to loading and unloading that:

G3 Loading and Unloading

All loading and unloading of service vehicles in connection with the use of the premises shall be carried out wholly within the site at all times and only during hours of operation for the shopping centre.

Deliveries to the loading dock shall be restricted to small rigid vehicles (maximum 12.5m), and deliveries by semi trailer are not permitted. The proponent shall pay a cash bond of \$20,000 to Council for the purpose of future traffic control devices in Hastings Road, should delivery arrangements be deemed by Council to be unsatisfactory. The bond shall be paid prior to occupation, and the balance of this bond shall be refunded 12 months after the date of occupation.

Condition G3 will be replaced with new condition G3A to expand the current approved delivery hours in condition G3, above (which confine delivery times to the centres opening hours) to 7am to 6pm Monday to Saturday (inclusive) and adding the period from 10am to 12 noon on Sundays or public holidays and unloading/loading criteria – subject to a trial period for Sundays and public holidays (retaining the previously specified cash bond to fund traffic management, if required). The condition will read as follows:

G3A Delivery Hours, Loading and Unloading

- (1) Delivery vehicles may service the site only between the hours of 7am and 6pm, Monday to Saturday, inclusive.
- (2) Notwithstanding part (1), the proponent may seek approval from the Director General, or his delegate, to allow delivery vehicles to service the site on Sundays or public holidays between the hours of 10am and 12noon. Such approval may only be sought following a three (3) month trial period of such deliveries, commencing after occupation of the supermarket and following written notification of the commencement of the trial to the Director General. During the trial the proponent shall keep:
 - a) a register of all Sunday deliveries to the site during this time, including the number, time and type of vehicle; and
 - b) a complaints register which documents all complaints received from the public in relation to such deliveries.
- (3) Immediately following the trial, the proponent shall submit the registers to the department. The continuation of Sunday deliveries during the time the department is considering the registers is at the Director General's discretion. The Director General may require the proponent to address certain matters in response to the review of the registers, which may include a requirement for a further trial period(s). Any action required to be undertaken must be completed within such period as the Director General may agree. Deliveries on Sundays and public holidays may not continue on a permanent basis unless prior written approval has been given by the Director General.

- (3) Deliveries to the loading dock shall be restricted to small rigid vehicles (maximum 12.5m), and deliveries by semitrailer are not permitted. The proponent shall pay a cash bond of \$20,000 to council for the purpose of future traffic control devices in Hastings Road, should delivery arrangements be deemed by council to be unsatisfactory. The bond shall be paid prior to occupation, and Tweed Heads balance of this bond shall be refunded 12 months after the date of occupation.

New conditions relating to maintaining neighbourhood amenity G5B, G5C and G5D are also proposed as follows:

G5B No Interference with Amenity of Neighbourhood

The proposed use must not be conducted in such a manner as would interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise. In particular the noise level emanating from the use of the development must not exceed the background level by more than 5 dB(A) when measured at the boundary of the allotment.

G5C Idling of Delivery Vehicles

Delivery vehicles shall not be left idling during loading or unloading. Refrigeration compressors shall be turned off during unloading.

G5D Noise Compliance Test

- (1) Within 3 months of commencement of the operation of the supermarket, a noise compliance test of the development shall be undertaken by a suitably qualified person that demonstrates that the hours of use complies with the NSW Industrial Noise Policy (NSW INP). Details of the noise testing procedure and results shall be reported to the department for consideration or approval, whereupon the Director General may, if the requirements of NSW INP are not met, require further tests or alter the provisions of the Table in Condition G5A, if such is warranted to meet the requirements of the NSW INP and taking into account any recommended mitigation measures in the report.
- (2) In relation to the consideration of the procedure and results of the noise test, a further noise test may be required to be carried out at a time when the development is fully occupied by commercial tenants, including the supermarket, if the initial test identifies that there are more than two vacant tenancies (not including the supermarket) when the supermarket noise test is conducted.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's approval

Section 75W(2) of the Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The proposed modification as described in Section 2, above is sufficient to require lodgement and consideration as a formal modification to the approval.

3.2 Environmental assessment requirements

Section 75(3) of the Act provides the Director-General with scope to issue Environmental Assessment Requirements that must be complied with before the matter will be considered by the Minister. Environmental Assessment Requirements were not required due to the minor nature of the proposal involving operational changes to the retail centre's approved hours of operation and delivery arrangements only.

3.3 Delegated authority to PAC

The Minister delegated his functions on 14th September 2011, to the PAC to determine a modification request under section 75W of the Act where a political disclosure statement has been made which, in this case, identifies Woolworths Ltd, the owner and the proponent, as a political donor.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the Act and clause 8G of the Environmental Planning and Assessment Regulation 2000, the modification request was made publically available on the department's website. The proposal was also notified, by mail, to previous submitters and to nearby residents from 15 to 29 March, 2012. Public notices of the proposal were also placed in the Tweed Daily News, (10/03/2012), Tweed Sun (08/03/2012) and the Tweed Border Mail (15/03/2012) local newspapers.

The department also consulted with council, which made submissions in relation to the modification application.

4.2 Public authority submissions

The council, in its response dated 29 March, 2012, raised the following matters:

- Under proposed condition G3, reference to a limit on the size of delivery vehicles has been deleted. The size of vehicle proposed has been increased from 12.5 metres to 13 metres in condition G5C, which is inconsistent with the original condition G3 which specified a maximum of 12.5 metres small rigid vehicle.
- While the council generally concurs with the proposed hours of operation of the supermarket, it notes that the reference to the proposed hours is for the supermarket only. The council considers that the proposed hours should relate to the whole commercial centre, not just the supermarket.

These issues raised by the council have subsequently been resolved (see proponent's response to submissions, at section 4.4 below).

4.3 Public submissions

Two submissions received from the public during the notification period raised the following issues:

- The proponents have fenced off an easement over land owned by the objector without formal permission (submitter 1).
- The proposal will adversely impact upon residential amenity of the objector's residence, which is located opposite the car park entry and loading dock, by increasing the time period whereby vehicles (including delivery vehicles) can access the car park and delivery/loading dock (submitter 2).
- The objector also does not have faith that the proponent will accurately record complaints during the trial period (submitter 2).

The planning issues raised by submitter 2 have been addressed in section 5 below.

The property issue relating to the proponent fencing off the easement, raised by submitter 1, is not specifically related to the modifications sought in this application. However, the matter has been referred to the landowner involved, Woolworths Ltd., to address the concern raised (which is unrelated to the proposed modification) and for the proponent to advise the department of the outcome. No further action is required or proposed in relation to this issue within this consideration of the proposed modification.

4.4 Proponent's response to submissions

The proponent has responded to the council's concerns about inconsistencies between the proposed conditions by revising the proposed modifications to conditions to reinstate the requirement for a consistent maximum vehicle delivery size, and for the proposed hours of operation to also apply to the whole commercial component of the development, including the supermarket.

The proponent considers that since the land is zoned for a commercial use, that there is a reasonable expectation that the land would be used for a commercial use and that such uses are not typically limited to the very conservative hours that were nominated in the original approval, especially for a supermarket. Notably, the council has not raised a concern about the proposed hours of operation or the Sunday delivery option.

The proponent's expectation is that a broader span of operating hours will allow for traffic to spread out during the operating hours leading to the incidence of less intensive peak usage than would otherwise be the case for the more restrictive approved operating hours (8.30am to 5.30pm).

5. ASSESSMENT

The key assessment issues are considered in Table 1 (below):

Table 1 Key Assessment Issues

Key issue	Consideration
Draft condition G5C, proposes maximum size of delivery vehicle inconsistent with the original approval.	The proponent has amended the proposed conditions to eliminate the inconsistency (specification of vehicle size now in G3A)
The proposed operating hours should apply to the whole commercial development.	The proponent has revised the proposed conditions to incorporate the whole commercial component into the proposed operating hours.
Residential amenity impact due to noise from deliveries and traffic noise from extended hours of operation. Objector has no confidence in the monitoring procedure in that it is only being reported to the proponent during the trial period.	<p>The proposed conditions limit delivery times, provide for a trial period and a complaints register. This procedure is identical to that recently incorporated at Woolworths, Mullumbimby. In that case, the proponent reports that no complaints were recorded during the trial period – as has been confirmed to the department by Byron Shire Council. The results of noise monitoring are reported to the Director General. Noise testing is also proposed for the extended trading hours.</p> <p>See Figure 3 (see over) for approved plan of the loading bay and car park access arrangements and summary of the benefits of the parking arrangement.</p> <p>Notably, noise impact is also subject to other existing legislation, including the Protection of the Environment Operations Act, 1997, (POEO Act) to control unreasonable noise. This legislation would still apply.</p>

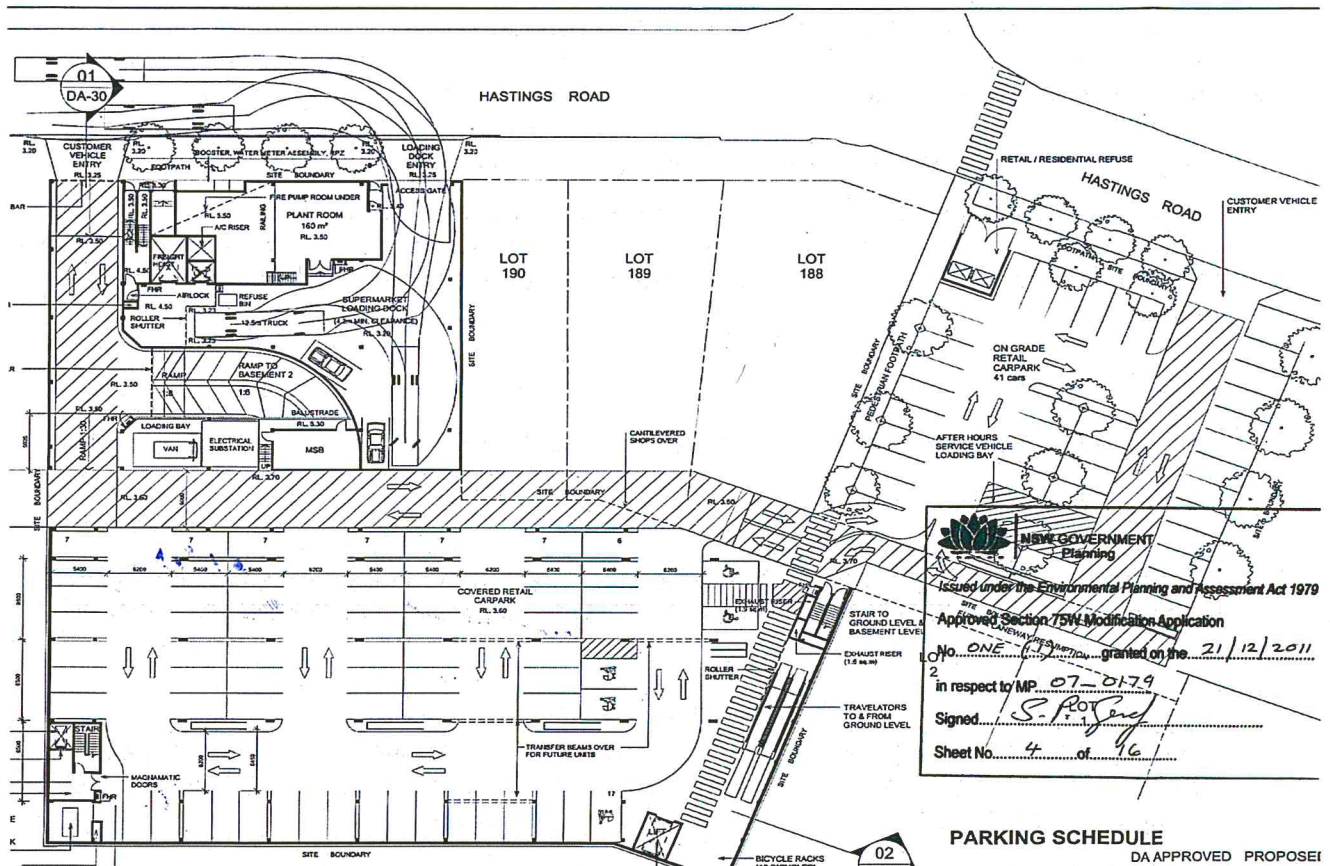


Figure 3 Loading bay and car park access to Hastings Road

The loading dock design provides for internal delivery vehicle manoeuvring (front in front out). The two car parking entry/exits are spaced apart with internal circulation access, thus sharing traffic (noise) between them. The spread of traffic over a broader period will also reduce intensity and potential for congestion.

There are no matters of State environmental planning significance related to State Environmental Planning Policies associated with the proposed modification. The proposal is also consistent with local environmental planning and development controls.

6. CONCLUSION

The council's concerns have been addressed, to its satisfaction, by the proponent amending the originally submitted modified conditions to those now referenced as G3A, G5A, G5B, G5C and G5D in the recommendation (Schedule 2).

The resident objector's concerns relate to traffic noise impacts, which are not unlike those assessed in the original proposal. The proponent has responded to these concerns and amended the proposal. The proposal is to trial the potential for operational impacts during Sunday deliveries and to test noise impacts from the extended operating hours. This is an accepted planning procedure designed to address these concerns, to identify and, ultimately, manage potential noise and operational impacts.

The noise tests will assess the performance of an operational, or near fully operational, retail centre, with no fewer than two unoccupied tenancies, other than the supermarket, thereby allowing the noise tests to reasonably identify any potential impacts. Under the recommended conditions the Director General will retain discretion to alter the approved hours, or may invite the proponent to respond with an alternate operating strategy, if justified by the noise test results.

The proposed condition relating to the opportunity to deliver on Sundays is acceptable and allows for the both the proponent and the department to respond to operational impacts that may be revealed by the recording and reporting of objectors' concerns.

Considering the key issues addressed in Table 1 above, the proposed modifications are considered to be acceptable subject to the recommended conditions.

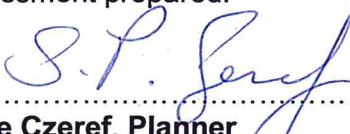
It is therefore concluded that the modification application may be approved.

7. RECOMMENDATIONS


It is recommended that the Planning Assessment Commission **consider** the findings and recommendations of this report; and

- a) **Approve** the modification (Mod. 2), under section 75W of the *Environmental Planning and Assessment Act, 1979*, and;
- b) **Sign** the attached Instrument of Modification Approval (**Tag A**)

Assessment prepared:




Steve Czeref, Planner

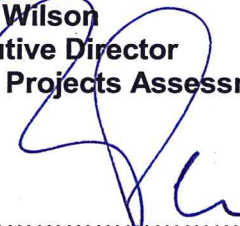
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