

## Application to Modify Pursuant to S75W of the EP&A Act, 1979

Prepared on behalf of Woolworths Limited

### 1.0 INTRODUCTION

Planit Consulting has been engaged by Woolworths Limited to prepare an application for the modification of Major Project Approval No. 07\_0179 which relates to a mixed use development in the village of Cabarita Beach.

A copy of this consent is provided at **Appendix A** to this report.

This Modification Application seeks to vary the approved consent in so much as it relates to the timing of the registration of easements relating to the rear access arrangements and the dedication of a road through the centre of the site to Tweed Shire Council (specifically condition B22(6)).

Section 75W of the Act, states, inter alia:-

#### **"Modification of Minister's approval 75W**

(1) In this section:

**Minister's approval** means an approval to carry out a project under this Part, and includes an approval of a concept plan.

**Modification of approval** means changing the terms of a Minister's approval, including:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and
  - (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.
- (2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.
- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.
- (5) The proponent of a project to which Section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request with 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.
- (6) Subsection (5) does not apply to a request to modify:
- (a) an approval granted by or as directed by the Court on appeal, or
  - (b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.
- (7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan."

This application has been made in accord with the above provisions.

### 2.0 THE EXISTING CONSENT

On the 2<sup>nd</sup> December 2009 the Director General, as Delegate for the Minister for Planning, granted Project Approval No. 07\_0179 for the carrying out of a part three and part four storey mixed use development entailing ground level commercial

including supermarket and retail shops, upper level residential units, basement and surface car parking and landscape areas. The project had a capital investment value of \$22 million.

Two (2) subsequent applications to modify have since been granted (dated 21/12/11 and 8/8/12).

### 3.0 THE PROPOSED MODIFICATIONS

The proposal seeks to modify the terms of Condition **B22(6)** of the Project Approval. In this regard, the condition requires the dedication (as road) and the registration of associated easements relating to the access arrangements to the rear of the site, prior to the occupation of the building.

Whilst the physical access and driveway works (including agreement from all surrounding property owners to undertake such works) have been commenced and are largely complete, there is a disconnect between being able to complete these works (which were staged late in the construction period so as to focus on the physical building elements in the first instance) and being able to register appropriate easements and the registration of the road in a timely manner after construction is complete.

In this regard it is expected that final completion of building works will be arrived at or around the 22<sup>nd</sup> May 2013. Whilst the survey works associated with the road creation and easement registration has commenced in earnest, it is not possible to effectively seek council sealing (including the need for Council resolution) and Lands Titles registration in the period between now and the 22<sup>nd</sup> May 2013. Accordingly, without modification of the consent condition, there is the possibility that a fully complete and operational building could sit idle until such time that the relevant conditional requirements have been met. This application to modify seeks to amend the wording of **condition B22(6)** so as to facilitate **Land dedication (as road) and registration of easements to be completed within 6 months of the completion of construction / issue of Occupation Certificate**.

Whilst it is possible that the works (registration and dedication) will be complete in a period very soon after the 22<sup>nd</sup> May 2013, there is much at risk if indeed they are not and as such this application seeks to build some buffer in to the timing of the requirement, without also restricting the ability for the centre to commence trading and for employment of a significant number of persons to be commenced.

Tweed Shire Council have been consulted on this matter (Mr. Danny Rose – Infrastructure Engineer) and have advised that they do not have any concerns with the suggested amendment, so long as works are underway. In this regard, confirmation can be given that the physical construction of all required access arrangements has been completed and surveyors have been commissioned (Mr. Phil Wyper B&P Surveys – 0755361111) to undertake the necessary registration and dedication processes. A copy of Council's correspondence in this regard is provided at **Appendix B** to this report.

### 4.0 ENVIRONMENTAL ASSESSMENT

The proposed modification will have no impact in respect of the functionality or efficiency of the proposed development and nor will it lead to any associated environmental or public risk. Rather, the proposal seeks to simply rationalize the timeframes in which elements relating to the tenure of access are to the rear of the site are enforced. No changes are proposed relative to the detailed design of the proposed access and to this end, works associated with these elements are largely completed.

No adverse Social or Environmental impacts are considered likely in the context of the proposed modification.

The proposed modification will assist in ensuring that employment and other indirect and direct economic benefits are realized in a timely and efficient manner.

### 5.0 CONCLUSION

Modification of the conditions and terms of the approval as proposed is authorised by Section 75W (1)(a) and (b) of the Environmental Planning and Assessment Act.

The proposed modifications do not give rise to any physical changes to the scale, nature or footprint of the approved project and therefore no impacts other than those addressed in the original Environmental Assessment and this Modification Application are likely to arise.

The proposed modification of the approval is considered to be sustainable and in the public interest and therefore approval of the application is respectfully requested.

Adam Smith  
**Director**  
**Planit Consulting P/L**

Enc.

## Appendix A – Original Project Approval

## **Appendix B – Tweed Shire Council Correspondence**