

ASSESSMENT REPORT

Section 75W Modification Woolworths Mixed Use Development Tweed Coast Road, Cabarita Beach MP07_0179 MOD 4

1. BACKGROUND

This report is an assessment of a request to modify the Project Approval (MP07_0179 MOD 4) for a mixed use development at Bogangar/ Cabarita Beach in the Tweed Shire local government area. The request has been lodged by Planit Consulting on behalf Woolworths Ltd pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks to amend the approval in order to provide for the dedication of a public laneway to the Council as currently required by Condition B22(4) of the approval. The subject modification application has been lodged at the request of Tweed Shire Council (Council).

2. SUBJECT SITE

The subject site is centrally located between Tweed Coast Road and Hastings Road at Cabarita Beach/Bogangar in the Tweed Shire local government area (**Figure 1**). The site is approximately 5,485 metres square (m²).



Figure 1: Regional Context

Cabarita Beach/Bogangar is a coastal village approximately 12 kilometres (km) south of the New South Wales/Queensland state border. The subject site is centrally located within the Cabarita/Bogangar business area and approximately 200 metres (m) from Cabarita Beach. Tweed Coast Road is the main arterial road serving coastal settlements from the Tweed Heads district to the north (**Figure 2**). The eastern side of the site has a 67 m frontage to Tweed Coast Road with a combined western frontage to Hastings Road of 70 m.



Figure 2: Site Location

The site comprises the following separate land holdings:

- lots 184-187 in DP259164;
- lots 191-194 in DP 259164;
- lots 20-23 in DP 31208; and
- lots 1 & 2 in DP 772172.

3. SITE HISTORY

On 2 December 2009, the then Director General, as delegate for the then Minister for Planning granted Project Approval for the construction of a part three and four-storey mixed use development on the subject site under Part 3A of the EP&A Act. The project comprises the following development:

- ground level commercial floor space comprised of a 2,310 m² supermarket and 1,106 m² of retail speciality shops;
- 40 residential apartments (shop top housing);
- ground level public forecourt;
- pedestrian thoroughfare;
- site landscaping;
- basement and surface car parking comprised of 204 car parking spaces and loading facilities;
- three access points from Hastings Road;
- excavation works; and
- signage.

The project approval has been modified on two occasions to:

- increase the size of the supermarket from 2,310 m² to 2,479 m² and decrease the area of specialty retail from 1,106 m² to 913 m² resulting in a 24 m² net decrease in retail floor space on-site;
- allow for the staged construction of the project as follows:
 - Stage 1 comprised the retail/supermarket component;
 - Stage 2 comprised the shop top housing residential component (40 residential apartments);
- relocate the pedestrian link and incorporate a new travelator;

- relocate the residential lift and lobby;
- swap the location of the service loading bay access with the main access to the underground car park on Hastings Road;
- relocate the waste collection area to Hastings Road, adjacent to the open air car park entrance;
- incorporate a new supermarket office level and new plant area within the approved mezzanine office level;
- amend the basement car park flood freeboard requirement to comply with Council's flood planning controls; and
- extend the hours of operation to 7:30 am and 9 pm seven days per week for the retail uses, and 7 am to 6 pm Monday to Saturday for deliveries.

A third modification request (lodged on 19 April 2014) was subsequently withdrawn by the proponent on 6 November 2014. The subject application is the fourth request to modify the approved project.

The Project Approval, as modified, currently permits the following development:

- construction of a part three and four storey mixed use development in two stages, identified as Stage 1 and 2: Stage 1 comprises the retail/supermarket component. Stage 2 comprises the shop top housing residential component (40 residential apartments);
- ground level commercial component encompassing a 2,479 m² supermarket and 913 m² of retail speciality shops;
- 176 m² of mezzanine level supermarket office space and plant area;
- 40 upper level residential apartments (shop top housing);
- ground level public forecourt;
- pedestrian thoroughfare;
- site landscaping;
- basement and surface car parking for 204 vehicles;
- loading facilities;
- excavation; and
- signage.

4. PROPOSED MODIFICATION

On 16 October 2014, Planit Consulting on behalf of Woolworths Limited (the Proponent) submitted a Section 75W modification application seeking approval to modify the terms of Schedule 1 and Conditions A2 and B22(4) of the Project Approval to include lots 1 and 2 in DP772172, and lots 188, 189 and 190 in DP 259164 within the approved project area. The inclusion of these additional lots within the project area was requested by Council to finalise dedication of the public laneway as required by Condition B22 of the Project Approval.

The Proponent has advised that the modification is required on the basis that Council will not accept dedication of the subject laneway until the additional lots are referenced in the project approval.

5. STATUTORY CONSIDERATION

5.1 Section 75W

Part 3A of the EP&A Act, as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A to the EP&A Act, continues to apply to Section 75W modification applications to Part 3A projects.

The modification request has been lodged with the Secretary pursuant to Section 75W of the EP&A Act. The Minister's approval is not required if the project, as modified, remains consistent with the original approval. As the modification request seeks to modify the

conditions of the approval and the Statement of Commitments in Schedule 3, the Minister's approval is required.

The proposed changes constitute a modification, are within the scope of Section 75W of the EP&A Act, and do not constitute a new application. Therefore, the Minister (or her delegate) has the ability to determine the modification application.

Consequently, this report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg). The Minister (or her delegate) may approve or disapprove of the modification of the project under Section 75W of the EP&A Act.

5.2 Approval Authority

The Minister for Planning delegated responsibility for the determination of Section 75W modification applications to Directors and Managers who report to the Executive Director, Infrastructure and Industry Assessments where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

The proposal complies with the terms of the delegation as Tweed Shire Council (the Council) does not object to the proposal, a political disclosure statement has not been made in relation to the application, and no public submissions were received in the nature of objections. Accordingly, the Manager, Industry Assessments may determine the application in accordance with the Minister's delegation.

5.3 Consultation

Under Section 75X(2)(f) of the EP&A Act, the Secretary is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of the EP&A Reg, the modification request was made publicly available on the Department's website and referred to Council and the Roads and Maritime Services (RMS) on 20 October 2014 for comment.

Given the minor nature of the modification request, it was not publicly exhibited or notified to other agencies.

To date, the Department has received a submission from Council. However, no public submissions have been received. The Council's comments are summarised below.

Council

The Council supports the inclusion of lots 1 and 2 in DP 772172, and lots 188, 189 and 190 in DP 259164 within the project area described in Schedule 1, together with the proposed amendments to Condition A2 and Condition B22(4).

Council also noted that the application seeks approval to relocate the "after hours loading bay" from the at grade car park to the basement car park and has requested that the Department consider the impacts of this modification. This issue is discussed in greater detail in Section 6 of this report.

The approved location of the after hours loading bay is shown in **Figure 3**, while the proposed location of the after hours loading bay, on the lower ground floor (basement) is shown in **Figure 4** on the next page.

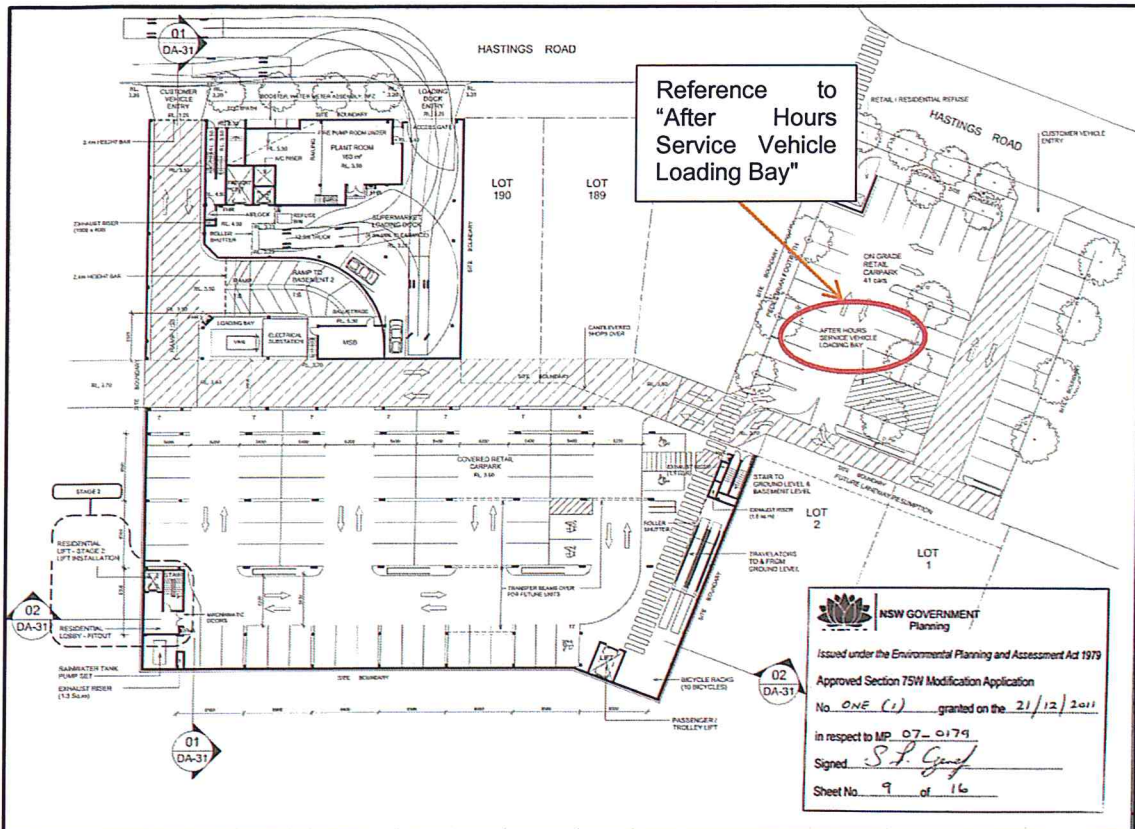


Figure 3: Reference to "After Hours Service Vehicle Loading Bay" on the Approved Plans

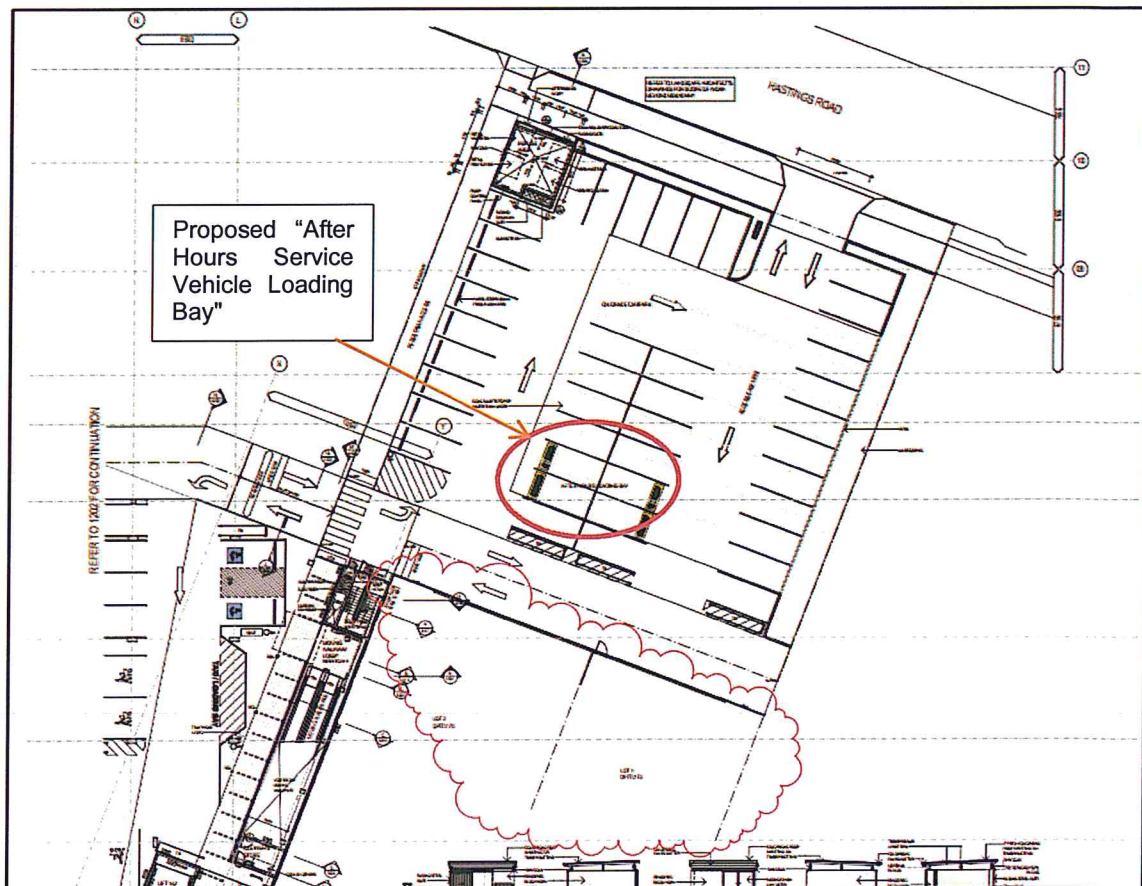


Figure 4: Proposed lower ground level (basement) "After Hours Service Vehicle Loading Bay"

6. ASSESSMENT

In its assessment of the modification application, the Department has considered:

- The requirements of Section 75W of the EP&A Act;
- the EA for the proposed modification;
- all submissions received by the Department; and
- the Director-General's assessment report for the original Part 3A Project Application.

Based on the above, the Department considers the key issues for assessment are:

- Administrative modifications to Schedule 1 and Conditions A2 and B22; and
- relocation of the after hours loading bay.

An assessment of these issues is provided below.

6.1 Administrated Modification to Schedule 1 and Conditions A2 and B22

The plans approved under MOD 1 identified that a future laneway will be constructed over the rear portions of lots 1 and 2 in DP 772172 and lots 188, 189 and 190 in DP 259164. Approved drawing DA – 01 Rev A is shown in **Figure 4**. The relevant lots are highlighted in light blue while the project area is outlined in red.

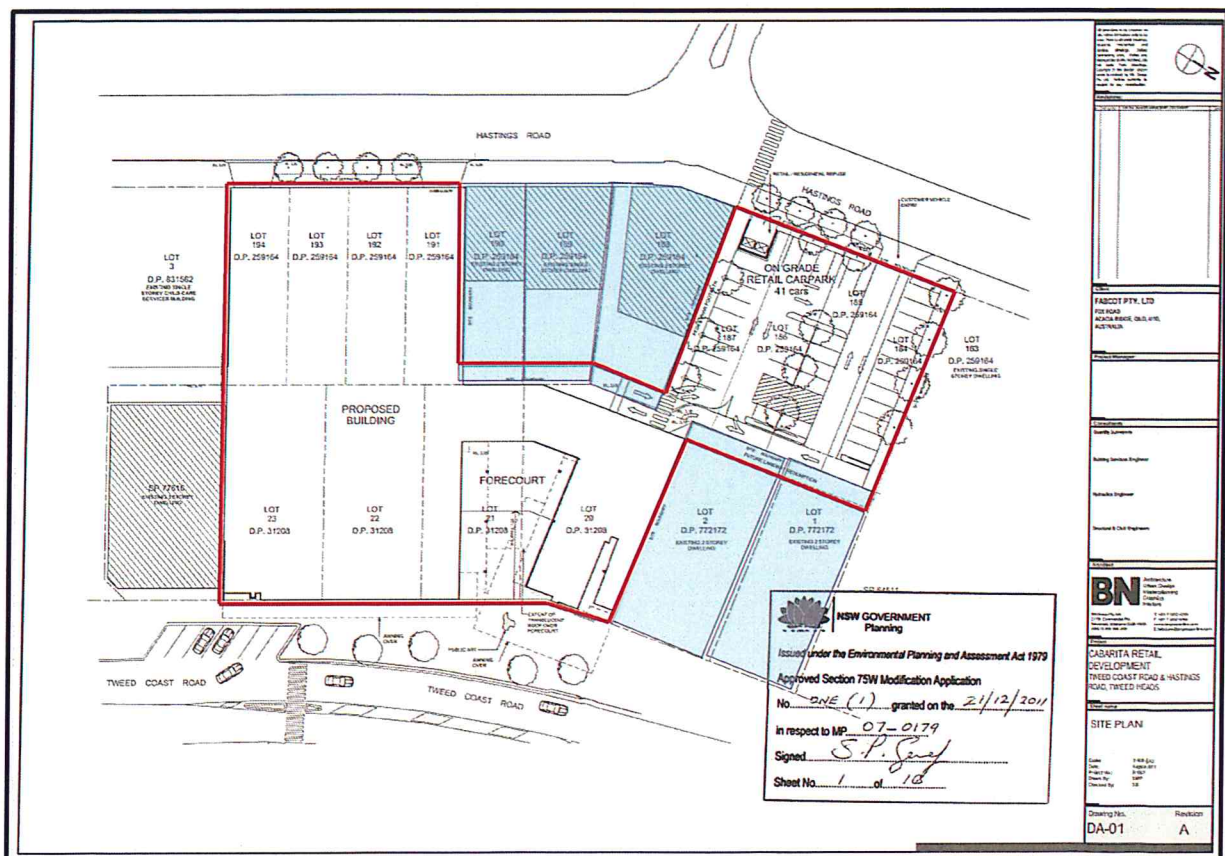


Figure 4: Approved Drawing DA-01 Rev A

The rear portions of lots 188, 189 and 190 in DP 259164 are affected by an existing 3 m wide right of carriageway. Condition B22(4) requires the construction of a 3 m wide laneway 'adjacent' to lots 188, 189 and 190 in DP 259164 but does not specify the construction of laneway over these lots and lots 1 and 2 in DP 772172 despite this being depicted on the stamped plans.

The proponent's certifier has issued a construction certificate which includes the construction of the laneway. Information provided by the proponent indicates that the laneway has been constructed to a standard that would satisfy Council's specifications.

Condition B22(4) of the approval as modified is reproduced below:

B22 Servicing Arrangements

The following amendments must be made to the service vehicle and loading dock area to ensure the safe and effective movement of all vehicle class users within and surrounding the development:

- (4) *The 3m wide section of laneway adjacent to Lots 188, 189 and 190 on DP 259164 shall be constructed to Council specifications and dedicated to Council as public road.*

The Department believes that under the circumstances it is necessary to amend the approval to include lots 1 and 2 in DP 772172 and lots 188, 189 and 190 in DP 259164 in the project area in Schedule 1, Part A - Table. Further, the Department also considers that it is necessary to amend Condition B22(4) by inserting the words, "together with the 3 m wide section of laneway over the rear portion of lots 188, 189 and 190 in DP 259164", after the existing wording, "the 3 m wide section of laneway adjacent to lots 188, 189 and 190 in DP 259164".

The Department considers the request to modify the terms of approval acceptable on the basis that the modifications are administrative in nature and will facilitate the dedication to the Council of the constructed public laneway. The Council is supportive of the proposed changes. Given that the laneway has been certified by H&H Consulting Engineers Pty Ltd (as per the documentation provided by the proponent dated 28 July 2014) the required modification will also have the effect of regularising the unauthorised aspect of these works.

6.2 Relocation of the After Hours Service Vehicle Loading Bay

The modification involves the relocation of the After Hours Service Vehicle Loading Bay from the at grade car park to the lower ground floor (basement) car park. This will result in an improvement of the environmental performance of the approval as the potential for unreasonable noise impacts to any nearby sensitive receivers from the operation of the loading bay would be mitigated by the enclosure of the proposed basement level location.

7. CONCLUSION

The Department considers the proposed modification is consistent with the intent of the original project approval and will not result in any environmental impacts beyond those considered acceptable under the current project approval, as modified. The proposed modification is necessary to facilitate the dedication to Council of the public laneway as provided for by the current project approval, as modified.

8. RECOMMENDATION

It is recommended that the Manager, Industry Assessments, as the delegate of the Minister for Planning and Environment, under Section 75W of the EP&A Act, approve the MP07_0179 MOD 4, as set out in the recommended Modifying Instrument (**Appendix C**).

Robert Byrne
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19/12/14.

APPENDIX A: MODIFICATION REQUEST MP07_0179 MOD 4

Refer to <http://majorprojects.planning.nsw.gov.au>

APPENDIX B: MODIFYING INSTRUMENT MP07_0179 MOD 4 PROJECT APPLICATION