



ASSESSMENT REPORT

Section 75W Modification Mixed Use Development Tweed Coast Road, Cabarita Beach MP07_0179 MOD 5

1. BACKGROUND

This report is an assessment of a request to modify the Cabarita Beach Mixed Use Development Project Approval (MP07_0179) under Section 75W in order to correct a minor error in the wording of Condition B22(4) of the approval. The modification seeks approval to amend a condition in order to facilitate the dedication of a laneway to Tweed Shire Council (Council) as a public road.

2. SUBJECT SITE

The subject site is located between Tweed Coast Road and Hastings Road at Cabarita Beach/Bogangar in the Tweed local government area, and comprises the following separate land holdings:

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

3. PROPOSED MODIFICATION

On 24 February 2015, Woolworths Limited (the Proponent) submitted a Section 75W modification application seeking approval to correct a minor error in the wording of Condition B22(4) of the Project Approval.

Condition B22(4) of the project approval is currently worded as follows:

"The 3 m wide section of laneway adjacent to lots 188, 189 and 190 in DP 259164, together with the 3m wide section of laneway over the rear portion of lots 188, 189 and 190 in DP 259164 shall be constructed to Council specifications or as otherwise accepted by Council and dedicated to Council as a public road."

The condition as currently worded does not make mention of lots 1 and 2 in DP 772172. It is requested that Condition B22(4) be amended to include reference to lots 1 and 2 as follows;

"The 3m wide section of laneway adjacent to and within lots 188, 189 and 190 in DP 259164 and lots 1 and 2 in DP 772172 shall be constructed to Council specifications or as otherwise accepted by Council and dedicated to Council as public road."

The Council has indicated that the amended wording would be sufficient to facilitate the dedication of the subject laneway to Council as a public road.

4. STATUTORY CONSIDERATION

4.1 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 requests 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, the Minister's approval is required.

The proposed change constitutes a modification, is within the scope of Section 75W of the EP&A Act, and does not constitute a new application. Therefore, the Minister (or delegate) has the ability to determine the modification request.

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 delegate) may approve or disapprove of the modification of the project under Section 75W of the EP&A Act.

4.2 Approval Authority

The Minister for Planning delegated responsibility for the determination of Section 75W modification applications to Executive Directors who report to the Deputy Secretary, Planning Services 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 (Council) does not object to the proposal, a political disclosure statement has not been made in relation to the request, and no public submissions were received in the nature of objections. Accordingly, the Executive Director, Infrastructure and Industry Assessments may determine the request in accordance with the Minister's delegation.

4.3 Consultation

The Council was notified of the proposed modification on 25 February 2015. The modification request was also placed on the Department's website. Given the minor administrative nature of the modification request, it was not publicly exhibited. Council raised no objection and expressed its support for the revised wording of Condition B22(4). No public submissions were received.

5. ASSESSMENT

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

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

There will be no additional environmental impact as a consequence of the proposed changes to the wording of Condition B22(4). The changes are necessary to correct a minor error. Accordingly, no additional environmental assessment is required. The proposed changes to the wording of Condition B22(4) are necessary to facilitate the dedication of the subject laneway to Council as a public road, as two lots were omitted in the original condition.

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 of the laneway to Council as a public road. Council is supportive of the proposed changes.


6. 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 correct a minor error in the wording of Condition B22(4). Correction of the error will facilitate the dedication of a laneway to Council as a public road, as provided for by the project approval, as modified.

7. RECOMMENDATION

It is recommended that the Acting Executive Director, Infrastructure and Industry Assessments, as the delegate of the Minister for Planning, under Section 75W of the EP&A Act, approve the modification request MP07_0179 MOD 5, as set out in the recommended Instrument of Modification (**Appendix B**).

Robert Byrne
Senior Planner
Industry Assessments


Joanna Bakopanos
Acting Manager
Industry Assessments
15/4/15


Chris Wilson
Executive Director
Industry Assessments
15.4.15

APPENDIX A: MODIFICATION REQUEST MP07_0179 MOD 5

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

APPENDIX B: MODIFYING INSTRUMENT MP07_0179 MOD 5 PROJECT APPLICATION

Notice of Modification

Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate, under delegation executed on 16 February 2015, I approve the Section 75W modification of the project approval referred to in Schedule 1, subject to the modified conditions of approval outlined in Schedule 2.

Chris Wilson
Executive Director
Infrastructure and Industry Assessments

Sydney

15 April

2015

SCHEDULE 1

PART A—TABLE

Application made by:	WA Stockwell Pty Ltd
Application made to:	Minister for Planning
Project Application Number:	07_0179
On land comprising:	Tweed Coast Road and Hastings Road, Bogangar Lots 184-187, 188-190, 191-194 in DP 259164, Lots 20-23 in DP 31208, and Lot 1 and Lot 2 in DP 772172.
Local Government Area	Tweed Shire
For the carrying out of:	Part 3 part 4 storey mixed use development entailing ground level commercial including supermarket and retail shops, upper level residential units, basement and surface car parking and landscaped areas.
Type of development:	Project Application
Determination made on:	2 December 2009
Date approval is liable to lapse:	5 years from the date of determination

As amended by Modification 1 approved on 21 December 2011, Modification 2 approved on 8 August 2012, Modification 4 approved on 19 December 2014, and the following:

Modification 5: Amendment of Condition B22(4) to correct a minor error

SCHEDULE 2

The approval described in Schedule 1 is modified as follows:

1. In Schedule 2, Part B, Condition B22, delete B22(4) and replace it with the following:

- (4) The 3m wide section of laneway adjacent to and within lots 188, 189 and 190 in DP 259164 and lots 1 and 2 in DP 772172 shall be constructed to Council specifications or as otherwise accepted by Council and dedicated to Council as a public road.

END OF MP07_0179 MOD 5