



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

Prepared on behalf of Coles Supermarkets Australia Pty Ltd

1.0 INTRODUCTION

Planit Consulting has been engaged by Coles Supermarkets Australia Pty Ltd to prepare an application for the modification of Major Project Approval No. 06_0258, this application relates specifically to condition G5 which sets the operating hours for the supermarket and retail shops within the approved (and now constructed) retail centre. The Shopping Centre is located on Lot 11 DP1198266, commonly referred to as No. 482 Casuarina Way, Casuarina.

Currently the approved supermarket is permitted to operate between as 8.00am and 9.00pm Monday to Sunday and Public Holidays. It is proposed to amend the operating hours to 7.00am and 9.00pm Monday to Sunday and Public Holidays.

This modification application seeks to vary condition G5 as it relates to the supermarket only and no changes are proposed to the operating hours of the specialty retail stores or service delivery hours.

In preparing this modification, brief informal discussions were held with Tweed Shire Council officer Lindsay McGavin and on face value no issues with the proposal were raised. However this discussion indicated that as the hours of operation form part of the Major Project approval, the appropriate mechanism to amend the major project approval is via S75W of the Act.

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

Major Project Approval MP06_0258 was originally granted consent on 20/09/2009. Since that time the consent has been subject to a number of modifications. A brief summary of these is provided below. It is also noted that Condition G5 remains as originally approved under MP06_0258 with none of the subsequent modifications ever amending this condition. As such, a copy of the original project approval MP06_0258 is included under **Appendix A** for reference.

Concept and Project Approvals – Modification 1

Approval was granted on 17th June 2010 to modifications to the Concept Plan and Project Approval (Modification 1, referred to herein as "the first modifications"). The first modifications involved:

- ▮ carrying out of stormwater infiltration works and landscaping within adjoining Lots 10 and 13;
- ▮ filling of the existing drainage easement within the site and relinquishing the easement rights that benefitted Council in exchange for dedication of these areas to Council (once landscape works were complete); and
- ▮ carrying out of works and landscaping to facilitate the construction of a cul-de-sac at the western end of Dianella Drive and subsequently closing the existing intersection of Dianella Drive and Tweed Coast Road.

Essentially, the first modifications were the result of Tweed Shire Council granting the Proponent land owner's consent to undertake stormwater, sewerage and landscaping works on Council-owned land, such consent having previously been withheld during the original assessment of the Concept and Project Applications.

Concept and Project Approvals – Modification 2

Approval was granted on 1 July 2011 to further modifications to the Concept Plan and Project Approval (Modification 2). Modification 2 had the effect of allowing Stage 1 of the development to be carried out in two stages: Stage 1A and the 'balance of Stage 1. The modified plans and conditions reflected the staging. It is noted that the retail centre would be undertaken as part of the Stage 1A development, although the approvals as modified facilitate the issue of separate Construction Certificates for the retail centre and other Stage 1A works.

Concept and Project Approvals – Modification 3

Approval was granted on 7 March 2012 to further modifications to the Concept Plan and Project Approval (Modification 3). This modification related to the retail centre and had the effect of reducing the size of the centre.

Concept and Project Approvals – Modification 4

Modification 4 relates to modification to the staging of the subdivision, consolidation of lots 7, 8, 9, 14 & 15 into a development lot, modification of Condition A2 to allow the sequencing for future stages to be varied with the written approval of the Department, insert of a new condition relating to the timing to obtain approval for the beach access and the amendment to the timing in which Section 94 and Section 64 Contributions are paid for the shopping centre. The Modification was approved in April 2013.

Concept and Project Approvals – Modification 5

Modification 5 approved an amendment to the location of a retaining wall on the southeastern boundary of the Casuarina Town Centre site adjacent to the cul-de-sac of Road 6. The modification was approved on 24 September 2013.

Concept and Project Approvals – Modification 6

Modification to the Concept Plan and Stage 1 Project Application for the Casuarina Town Centre involving:

- The number of lots through the subdivision of Lots 7,8 ,9, 14 & 15 into 40 torrens title residential lots;
- the introduction of additional sub-stages 1B and 1C;
- an associated amendment to the concept plan staging

The modification as approved on 16 May 2014.

Concept and Project Approvals – Modification 7

Approval was granted on 18 June 2014 to further modifications to the Concept Plan and Project Approval (Modification 7). This modification related to the retail centre and allowed an increase in size with additional supermarket and specialty shop floor space. It also allowed the centre to be constructed in stages.

Concept and Project Approvals – Modification 8

Approval was granted on 21 January 2015 to permit design revisions to the retail centre and inclusion of new Condition B5B to permit the installation of a 12 m high illuminated pylon sign on the north-eastern corner of the site.

Concept and Project Approvals – Modification 9

Approval was granted on 15 June 2016 for further modifications to the design of the approved retail shopping centre and the installation of a 12m high illuminated pylon sign on the north-eastern corner of the site.

Concept and Project Approvals – Modification 10

Modification 10 is currently under assessment and seeks a raft of changes to the remainder of the town centre area that has not yet been constructed.

3.0 THE PROPOSED MODIFICATIONS

The proposal seeks to modify the terms of **Condition G5** of the project approval.

Condition G5 currently reads:

G5 Retail Centre Hours of Operation

The hours of operation for the supermarket and retail shops shall be restricted to between:

Day	Commencement time	Cessation time
Monday	8.00am	9.00pm
Tuesday	8.00am	9.00pm
Wednesday	8.00am	9.00pm
Thursday	8.00am	9.00pm
Friday	8.00am	9.00pm
Saturday	8.00am	9.00pm
Sunday	8.00am	9.00pm
Public Holidays	8.00am	9.00pm

It is proposed to amend **Condition G5** to read as follows:

G5 Retail Centre Hours of Operation

The hours of operation for the supermarket shall be restricted to between:

Day	Commencement time	Cessation time
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Monday	7.00am	9.00pm
Tuesday	7.00am	9.00pm
Wednesday	7.00am	9.00pm
Thursday	7.00am	9.00pm
Friday	7.00am	9.00pm
Saturday	7.00am	9.00pm
Sunday	7.00am	9.00pm
Public Holidays	7.00am	9.00pm

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Wednesday	8.00am	9.00pm
Thursday	8.00am	9.00pm
Friday	8.00am	9.00pm
Saturday	8.00am	9.00pm
Sunday	8.00am	9.00pm
Public Holidays	8.00am	9.00pm

4.0 ENVIRONMENTAL ASSESSMENT

The shopping Centre as constructed is located on Lot 11 DP1198266 commonly referred to as 482 Casuarina Way, Casuarina. The particulars for the site are summarized in the table below:

Real Property Description	Lot 11 DP1198266
Physical Address	482 Casuarina Way, Casuarina
Site Area	1.64 Hectare
Owner	CSV Lane Capital Partners Pty Ltd
Local Government Authority	Tweed Shire Council
LEP Zoning Designation	B2 – Local Centre pursuant to the Tweed Local Environmental Plan 2014 (TLEP 2014)

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. The proposal is not considered to raise any issues in regards to ongoing compliance with the relevant provisions of any State Environmental Planning Policy, Tweed Local Environmental Plan 2014 and Tweed Development Control Plan 2008. Rather, the proposal seeks a minor extension to the operating hours for the supermarket to enable:

- ▮ More effective retail servicing for the residents of Casuarina by enabling convenience shopping opportunity during the morning commute periods;
- ▮ Additional employment opportunities; and
- ▮ Effective competition with Woolworths Kingscliff which provide 7am to 10pm operating hours

Importantly the design and layout of the retail centre as a whole was undertaken in such a way as to ensure maximum separation to residents and to locate areas of potential noise generation adjacent to either Tweed Coast Road or adjacent sporting fields. Extending the operating hours for the super market by 1 hour in the morning periods will not result in any deleterious impacts relating to noise. Refer **Figure 1** below identifying the site and separation to closest dwelling.



Figure 1: Aerial Image. Source: Nearmaps.

No adverse Social or Environmental impacts are considered likely in the context of the proposed modification and there is no legislative impediment to amending condition G5.

5.0 CONCLUSION

Modification of condition G5 as proposed is authorised by Section 75W (1)(a) and (b) of the Environmental Planning and Assessment Act.

The proposed modification does 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, subsequent modifications 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.


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Appendix A – Original Project Approval

Appendix B – Owners Consent (Lot 11 DP1198266)