

Application to Modify Pursuant to s4.55(2) of the *Environmental Planning & Assessment Act 1979*

Prepared on behalf of CTC Multiple Lots Pty Ltd

1.0 INTRODUCTION

Planit Consulting has been engaged by CTC Multiple Lots Pty Ltd to prepare an application for the modification of Major Project Approval No. 06_0258. This application relates to an error encountered during the survey undertaken for MOD 6 of the project. Specifically, prior to this Modification the approval contained several stages and individual allotments as demonstrated within the Plan of Development of the original approval included under **Appendix A**. This plan formed part of the original approval and has carried generally the same throughout the Modifications to date. This modification can be known as MOD12 to the Major Project 06_0258.

This modification application seeks to correct the oversight in not maintaining separate titles for lot 35 and lot 36 as part of Mod6 where amalgamation occurred of Lot 16 in DP1198266. Lot 35 (totaling 8679m²) has always been intended for medium density development and Lot 36 (totaling 928.2m²) contains a constructed car park (as demonstrated from Concept Approval through all modifications). This allotment (lot 36) is maintained as intended for the provision of car parking spaces for the Lot115 SP77971 being known as the Spiced Den of Santai Resort. Lot 35 is for medium density development which has since been incorrectly registered on title to include Lots 35 and 36 as Lot 16 in DP1198266. This oversight requires amending merely because it is an error and also presents a perceived incorrect connection with the medium density development as associated under the same SP number. The appropriate mechanism to amend the major project approval to correct this concern is via s4.55(2) of the Act.

Section 4.55(2) of the Act, states:-

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
- (5) (Repealed)

This application has been made in accordance 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. 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. Lot 36 has erroneously been included as part of Lot 16 undertaken during survey for DP1198266.

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.

Concept and Project Approvals – Modification 11

Modification 11 is currently under assessment and seeks to establish revised operating hours for the Coles Supermarket.

3.0 THE PROPOSED MODIFICATION

The original approval included lot 35 (medium density allotment) and Lot 36 (car park) as demonstrated in the Figure below.



Figure 1. Lot 36 is the original subject site of this modification request.

Since the original project approval, there have been several modifications and changes to the plan, particularly where Lot 36 boundaries have been reconfigured in relation to the redirection of the swale drain and easements granted in favour of Tweed Shire Council which have reduced the overall size of lot 36 to the current size (as demonstrated in Figure 2). The intended purpose of lot 36 has been envisaged since concept approval for car parking purposes to service the Santai Resort with the registration of an easement for the use of the car park and access strictly for the Spiced Den (Santai Resort).

As such, we seek to amend the Major Project MP06_0258 to include specific provision for Lot 36 to be reinstated as Torrens title tenure, as evident throughout the development's progression. Presently, Lot 36 is utilised by the Spiced Den (Santai Resort) through an easement numbered 2 on the s88b instrument. The change in the titling system will not in any way reduce the number of available parking facilities to the Spiced Den that are currently available, this is through the retention of the easement. The reverted lot sizes place the subdivision of Lot 16 in DP1198266 into two allotments consistent with the Major Project approval with Lot 35 (totaling 8679m²) and Lot 36 (totaling 928.2m²) as demonstrated in Figure 3.

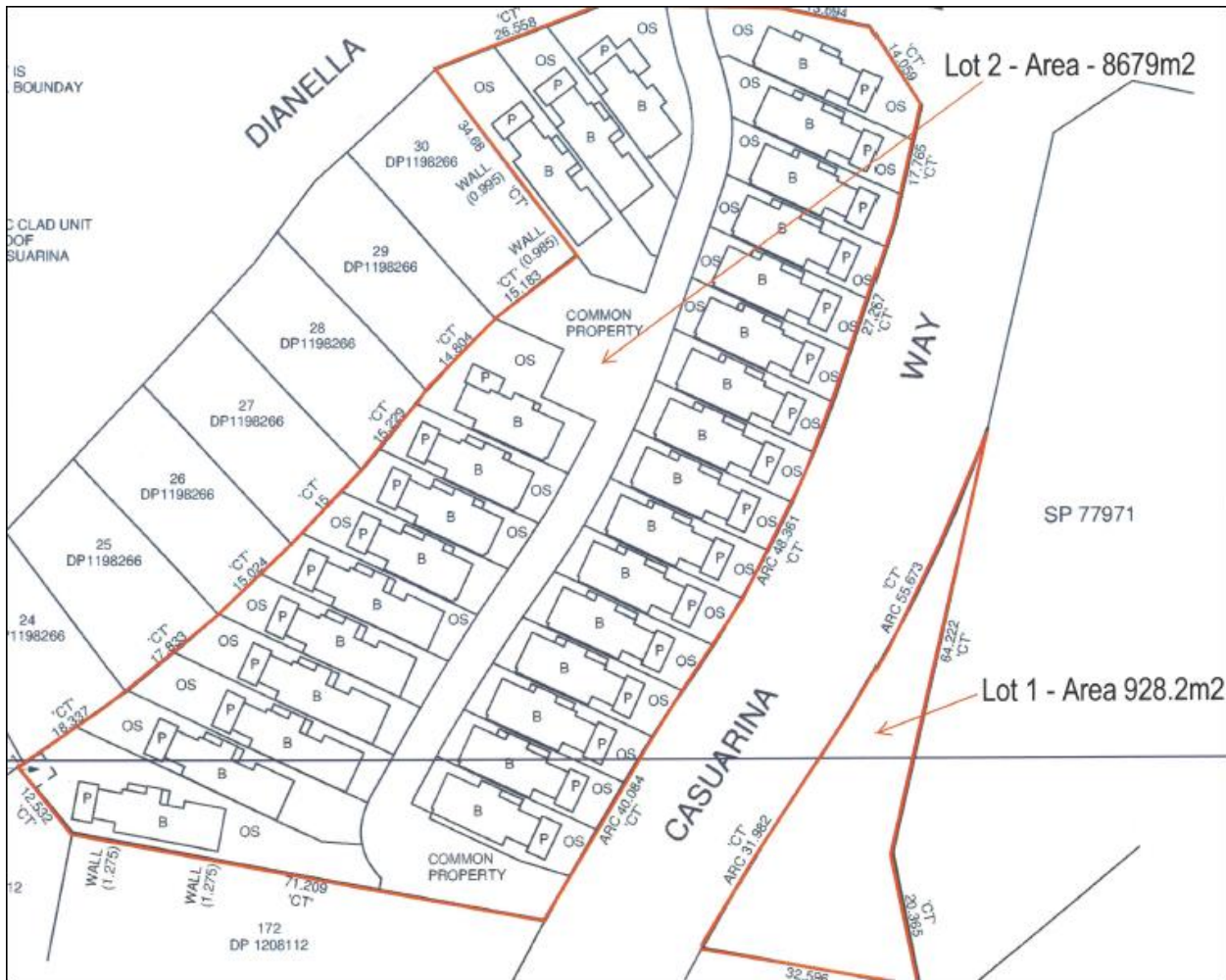


Figure 3. Lot 35 (lot2) and lot 36 (lot 1).

This modification may require an additional condition to outline the purpose of Lot 36, which has not been detailed from initial concept approval nor through any of the modifications or planning assessment reports of MP06_0258. The proposed wording for this condition is as follows:

A Plan of Survey is to be lodged with the Land and Property Information service that grants separate Torrens title of the two portions of Lot 16 in DP1198266 in perpetuity.

As the current use of Lot 36 is as a constructed car park, we request that provision of services such as water and sewer not apply to this allotment until such time as it is to be used for private occupation. This is in accordance with Tweed Shire Council's DCP Chapter 5 Subdivision manual which states (A5.4.13):

All lots created in urban areas for private occupation must be fully and individually serviced with sealed road (equipped with kerb and gutter both sides of the road) frontage, water supply, sewerage, underground electricity and telecommunications.

We request this deferral of service connection be reflected within an additional condition as the use of the allotment is not yet for private occupation. Further to this support within the council DCP, a restriction of use can be included to inhibit any habitable occupation of the allotment until such time as the relevant services are approved by the local authority.

4.0 ENVIRONMENTAL ASSESSMENT

The Lot 36 parcel of land is located erroneously as part of Lot 16 in DP1198266 Casuarina Way, Casuarina. The particulars for the site are summarized in the table below:

Real Property Description	Part of Lot 16 in DP1198266 (lot 36)
Physical Address	Casuarina Way, Casuarina
Site Area	928.2m ²
Local Government Authority	Tweed Shire Council
LEP Zoning Designation	R1 – General Residential, pursuant to the <i>Tweed Local Environmental Plan 2014</i>

The proposed modification will have no impact in respect of the functionality or efficiency of the proposed development, 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 to correct a titling error which occurred with the survey of Mod 6 to reinstate Lot 36 in tenure as Torrens title.

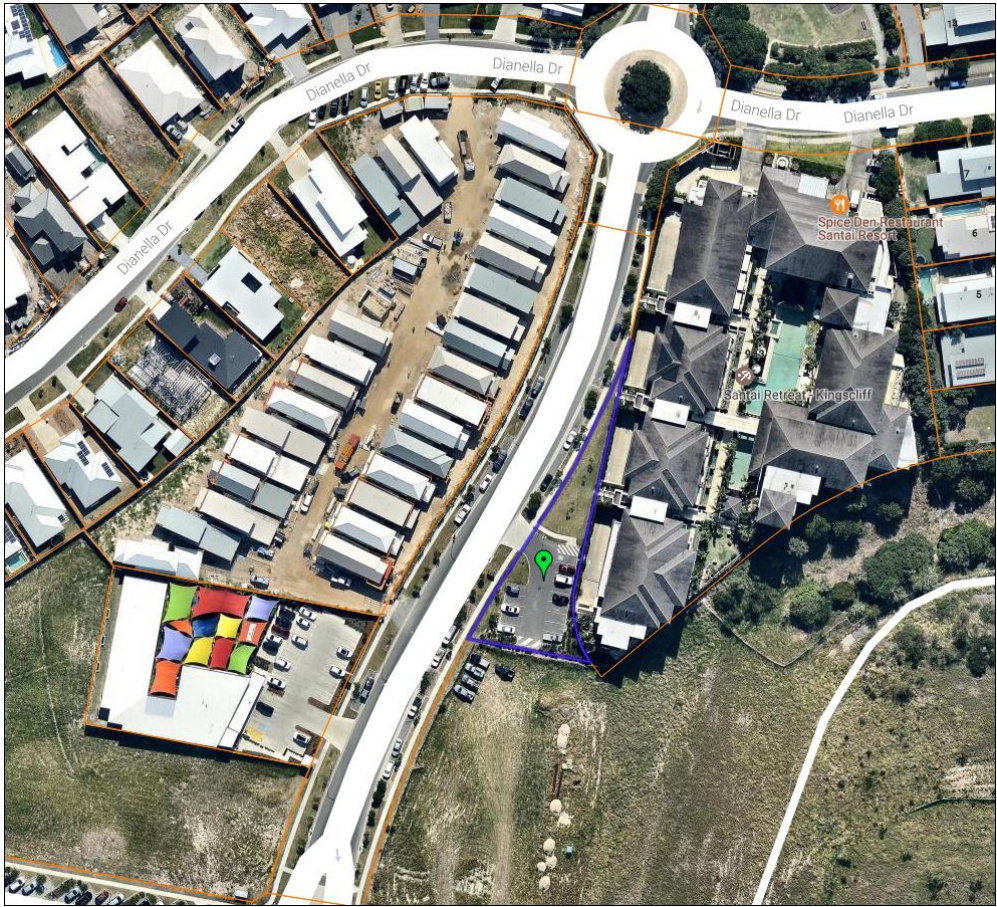


Figure 4. Aerial Image of lot 36.

No adverse Social or Environmental impacts are considered likely in the context of the proposed modification and there is no legislative impediment to amending the proposal to comply with the original approval.

5.0 CONCLUSION

Modification as per this proposal is authorised by Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.

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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Amended 27th May 2019 – Planit Consulting.

Appendix A – Original Project Approval

Appendix B – Owners Consent (Lot 16 in DP1198266)

Appendix C – Plan of Subdivision