

**Office of Sustainable Development Assessment and Approvals
Urban Assessments**

**Planning Report
DA 456-10-2003 Ultima**

1. SUMMARY

Zinkohl Pty Ltd has submitted a development application (DA 456-10-2003 Ultima) seeking consent for a mixed residential, commercial / tourist accommodation development on the corners of Wharf, Bay and Stuart Street, Tweed Heads.

The proposal comprises a 227 room mixed tourist / residential development, including 382 car parking spaces, retail space, restaurant and bar, gymnasium and conference facilities.

The proposal will be located on two parcels separated by Navigation Lane and comprises an 11 storey rectilinear building and two 14 storey ellipsoid towers set on a podium (15 storeys in total). The two land parcels will be united across Navigation Lane at street level by a plaza providing unrestricted public access between Stuart and Wharf streets and beneath by a basement car-park.

The Minister for Infrastructure and Planning is the consent authority for the proposal under clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71). The proposal is also integrated development under the Water Act 1912 and the Roads Act 1993.

The DA was exhibited and notified in January 2004 and then again in August 2004 following significant amendments to the design of the proposal. These design changes resulted from discussions with DIPNR staff who commented that the initial proposal did not achieve suitable standards in terms of design, articulation, height and ground level amenity.

Following both exhibition periods, submissions were received from Department of Infrastructure, Planning and Natural Resources (Natural Resources), Tweed Shire Council, Roads and Traffic Authority, DIPNR Regional Office (Grafton) and Tweed Heads Ministerial Taskforce. Ten submissions were received from the community, of which five were objections.

The following report assesses the environmental and planning issues associated with the proposal and addresses issues raised in submissions. The report concludes that all relevant environmental issues have been adequately addressed and that potential impacts from the development can be managed subject to the recommended conditions of consent. It is therefore recommended that the Minister grant consent to DA 456-10-2003 subject to the recommended conditions of consent.

2. THE DEVELOPMENT AREA AND SUBJECT SITE

The proposed development is bounded to the east by Wharf St, to the south by Bay St, to the west by Stuart St and to the north by the Twin Towers Services Club and the Dolphin Hotel site. The land has a total area of 7951m² (tag 'B').

The subject land is zoned 3(a) Sub-Regional Business under the provisions of Tweed Shire Councils' Local Environmental Plan (LEP) 2000. The proposed development is permissible with consent under Item 2 in this zone.

The site ranges from approximately RL 3.6 m AHD to approximately RL 4.5 m AHD. The site has already been developed and currently has vacant buildings on the site which were previously used for retail and commercial purposes. No vegetation remains on the site.

Site visits were conducted in December 2003 and March 2004.

3. THE DEVELOPMENT PROPOSAL

The application seeks consent for the development of a 227 room mixed tourist / residential development, including 382 car parking spaces, retail space, restaurant and bar, gymnasium and conference facilities. The proposed development would be located on two parcels separated by Navigation Lane.

On the eastern parcel an 11 storey rectilinear building is proposed, surrounded on the east, south and west by a two storey podium element. This building would comprise 75 units, 2386 m² of mixed retail space, 415 m² of restaurant/ bar space and 117 car-parking spaces, see tag 'C'.

On the western parcel the proposed built form comprises three components; a two storey podium; an ellipsoid tower of an additional 14 storeys above; and to the south a second ellipsoid tower of 14 storeys, see tag 'D'. This building would total 15 storeys in height and comprise 1181m² of mixed retail space, 594 m² of conference space, 1107 m² of flexi space and a gym and spa area of 405m² which goes onto a terrace area of 689 m². The two ellipsoid towers are 14 storeys each and comprise a total of 152 apartments which vary from one to three bedrooms. 265 car-parking spaces and 24 public bicycle spaces are available (residents are expected to lock up bicycles in car spaces provided).

The two land parcels would be united across Navigation Lane at street level by a plaza providing unrestricted public access between Stuart and Wharf streets and beneath by a basement car-park being single storey on the eastern parcel and two storey on the western parcel.

The site currently comprises vacant buildings which were previously used for retail and commercial purposes, however the applicant has lodged a separate development application with Tweed Shire Council for demolition of these buildings.

The application does not at this stage seek consent for subdivision of the proposed units.

4. STATUTORY CONTEXT

The following legislation applies to this proposal:

1. The Environmental Planning and Assessment Act 1979: Matters for consideration by the determination authority are listed in section 79C of the *Environmental Planning and Assessment Act 1979*.

It is considered that the proposal is consistent with the aims and objectives of section 79C. The proposal is permissible within the current zoning of the land and with the objectives of the relevant instruments. Any potential impacts of the proposed development are discussed in Section 7 of this planning report and it is considered that any potential impacts can be managed to acceptable levels. An assessment of the proposal against section 79C is at tag 'E'.

The following instruments apply to this proposal:

State Environmental Planning Policy No. 71 – Coastal Protection

The proposed development is located within the coastal zone, as defined in Part 1 (3) of SEPP 71.

The development application is identified as *significant coastal development – specified development* under Schedule 2 of SEPP 71 as it involves development comprising tourist facilities and structures greater than 13 metres in height. Therefore, the application is State Significant development pursuant to clause 10(1) of the Policy. Pursuant to section 76A (9) of the Environmental Planning and Assessment Act, 1979 and clause 10(2) of SEPP 71, the Minister for Infrastructure and Planning is the consent authority for State Significant development. An assessment of the proposal against the relevant provisions of SEPP 71 is at tag 'F'.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

SEPP 65 aims to improve the design quality of residential flat development in NSW. Generally it is considered that the development as proposed will provide accommodation which takes into consideration the design quality principles of SEPP 65.

An assessment of the proposal against the relevant provisions of SEPP 65 is at tag 'G'.

Coastal Protection Act 1979

In terms of the relevant objectives of the Coastal Protection Act 1979, the proposal will not restrict public pedestrian access to coastal areas and it is considered the proposal will not have a detrimental impact on the coastal environment.

NSW Coastal Policy 1997

The proposed development is consistent with the goals and objectives of the NSW Coastal Policy 1997. The proposal will not restrict public access to coastal areas, and it is considered the proposal will not have a detrimental impact on the coastal environment. The proposal will not detrimentally impact on the aesthetic qualities of the coastal zone.

North Coast Regional Environmental Plan

Clause 3 of the North Coast Regional Environmental Plan (NCREP) identifies local government areas which are subject to the provisions of the NCREP. The local government area of Tweed is identified under clause 3 and therefore the provisions of the NCREP apply to the subject site. An assessment of the proposal against the relevant provisions of the NCREP is at tag 'H'.

Tweed Local Environmental Plan 2000

In addition to the zone provisions discussed in Section 2, the following clauses are relevant to the proposal and have therefore been considered during this assessment:

- Clause 2 – Aims, objectives, etc;
- Clause 11 – The Zones;
- Clause 15 – Availability of Essential Services;
- Clause 16 – Height of Building;
- Clause 17 – Social Impact Assessment;
- Clauses 22 and 23 – Designated Roads;
- Clause 35 – Acid Sulfate Soils; and
- Clause 50 – Floor Space Ratios.

An assessment of the proposal against these provisions is at tag 'I'.

Tweed Shire Council Development Control Plan No. 2 – Car Parking Code (DCP2)

Where a development is proposed in respect of land in the Tweed Shire, the provisions of DCP 2 are required to be considered in determining the application. It is considered that the proposal provides adequate provision for safe and convenient access to the site. Adequate car parking spaces are available, including provision for disabled access. Bicycle parking facilities are available, and whilst the number provided does not meet the DCP quota, it is considered that enough spaces are available for the development proposed.

Tweed Shire Council Development Control Plan No. 18– Tweed Heads (DCP 18)

The proposed development site is identified as Central Precinct in DCP 18. The proposal is consistent with the precinct objectives in that the proposal has the potential to achieve a high standard of mixed use commercial and residential development, provide an area for retail and tourism and through the establishment of the open plaza area bring vitality to the town centre.

The proposal includes well designed pedestrian and outdoor eating / entertainment area. The proposal has been designed to establish a well defined street frontage and an open and interesting plaza area.

Tweed Shire Council Development Control Plan No. 45 – Socio-Economic Impact Assessment (DCP 45)

The proposal is consistent with the aims of DCP 45 by providing additional housing for residential and tourist purposes, additional employment opportunities and facilities to increase the opportunity for low cost social interaction.

Ministerial Taskforce Master Plan

The Tweed Heads Town Centre Masterplan was launched by the Hon. Diane Beamer MP, Minister Assisting the Minister for Infrastructure and Planning on 27 August 2004.

The Masterplan was developed by a Ministerial Taskforce which was established to investigate and report on the following:

- Investigate current issues impeding the development of Tweed Heads as the commercial, retail and cultural hub of Tweed Heads.
- Investigate opportunities for links to Queensland, in particular, light rail extensions and the need for a cross border strategy.
- Review current planning instruments and development controls, specifically open space network, building heights and urban design in the context of opportunity, connectivity and coastal policy.
- Undertake necessary studies as required.

The Ultima project sits within the precinct of the Town Centre Core. The objectives in this precinct which relate to this project comprise:

- Integrate the Tweed Mall and Bay Street Precincts into a coherent Town Centre Core.
- Enhance the potential synergies with and connection to the Griffith Street Precinct.
- Provide a range of retail, office, tourism, cultural and commercial uses suitable for a Town Centre core and thus activate the streetscape during the day and evening.
- Improve the public domain of the area to provide an attractive landscaped pedestrian environment complemented by new developments and built form.
- Activate the street frontages along Wharf and Bay Streets in particular adjacent to the Jack Evans Boat Harbour.
- Rationalise car parking throughout the Precinct as retail demand and traffic volumes increase.
- Create a visually distinctive skyline that defines the Town Centre Core.

It is considered by the Department that the Ultima proposal is consistent with the objectives of the Tweed Heads Town Centre Masterplan. The proposal will aid in the revitalisation of the town centre by providing additional retail spaces, the proposal also includes conference and office areas with both residential and tourist accommodation located from level 2 upwards.

The proposal has been carefully designed to provide an appealing pedestrian link through the site which is to be appropriately landscaped for the location. The proposal defines the street frontages by interesting use of material, texture and colour. The maximum height of the buildings will be 15 storeys, and this is considered appropriate as it will provide a scaling down from the adjacent twin towers which are at 18 storeys.

Car parking provided is considered adequate as the development in fact provides additional numbers of car spaces than what is required in the Tweed LEP.

Integrated Approvals:

1. *Water Act 1912*

The proposal requires dewatering to be undertaken during the construction process. This is results from the depth of excavation for the establishment of the proposed basement carparking.

Dewatering requires a licence under Part 5 of the Water Act 1912 and as such the proposal has been assessed as integrated development with the Department of Infrastructure, Planning and Natural Resources (Natural Resources). DIPNR – Natural Resources have provided their general terms of approval which have been included into the recommended conditions of consent. Issues relating to dewatering are discussed in section 7 of this planning report.

2. *Roads Act*

As the proposal requires access onto public roads, the application is integrated with under the Roads Act 1993 with Tweed Shire Council as the Road Authority.

Access onto public roads requires a permit under section 138 of the Roads Act 1993 and as such Tweed Shire Council have undertaken an assessment of the proposal, specifically in regard to access and have provided their general terms of approval which have been included into the recommended conditions of consent. Issues relating to access are discussed in section 7 of this planning report.

5.0 STATE ELECTORATE AND MEMBER

The site is within the electorate of Tweed. The views of Local member, Neville Newell MP are not known.

6.0 PUBLIC CONSULTATION

Statutory Advertising and Notification

The DA and accompanying documentation was publicly notified in the Tweed Link on 6 January 2004. All documentation was placed on public exhibition at Tweed Council and DIPNR's Planning Centre between 6 January 2004 and 3 February 2004.

Relevant public authorities such as, Tweed Shire Council, DIPNR Regional, DIPNR – Natural Resources (formerly Department of Land and Water Conservation), Natural Resource Commission (formerly NSW Coastal Council), Roads and Traffic Authority and Department of Environment and Conservation (formerly EPA) were notified of the proposal and given the opportunity to comment. Surrounding residents were also sent notification letters inviting comments.

Following review of the application and taking into consideration various comments from agencies, the proposal was amended and re-advertised and re-notified. The amended application was advertised in the Gold Coast Bulletin on 18 August 2004. All documentation was placed on public exhibition at Tweed Council and DIPNR's Planning Centre between 19 August 2004 and 15 September 2004.

Agencies re-notified of the proposal include; Tweed Shire Council, DIPNR Regional, DIPNR Natural Resources, Roads and Traffic Authority, Department of Environment and Conservation and Tweed Heads Ministerial Taskforce. Surrounding residents were also sent notification letters inviting comments.

Submissions Received

Tweed Shire Council: The proposal is supported by Council and their submission addressed the need to ensure there is adequate capacity for stormwater drainage, the flexi-space is restricted to office uses, traffic conflicts in Navigation Lane and the potential relocation of a sewer main.

All these issues have been discussed in section 7 of this report and Council's recommended conditions are included in the recommended conditions of consent where appropriate.

DIPNR Natural Resources: DIPNR Natural Resources required several pieces of additional information, specifically in relation to acid sulphate soils, dewatering and retaining walls. Having now received all information requested, the General Terms of Approval have been issued and these are incorporated into the conditions of consent.

Roads and Traffic Authority: The RTA provided comments to Tweed Council in regard to the proposal. These comments however related to the initial proposal and no response has been received regarding the request for comments on the amended proposal.

Generally, the comments related to traffic movement, access and traffic generation. The RTA comments are based on traffic travelling through the site, specifically along Navigation Lane. DIPNR is not supportive of this from a pedestrian amenity position and as such these comments can not be included. In regard to vehicle bays and traffic generation, Council have assessed these issues and have not raised concern and as such the Department is satisfied with their assessment and conclusion that access and parking is adequate and the reported traffic generation is accurate.

Ministerial Taskforce: The Ministerial Taskforce are supportive of the proposal, and stated that "the proposed design has achieved an appropriate built form for the site by reducing the overall bulk and height perception; it will also help create more active diverse and lively urban environment in the Town Centre core, encouraging further pedestrian connectivity and movement within the Centre". Further the letter states, "the team believes that the proposed new design has achieved an appropriate design for the Town Centre site through a considered design approach that has been informed by the Tweed Heads Masterplan".

Natural Resources Commission: The NRC (formerly the Coastal Council) did not provide comment on the proposal as it is unlikely to affect the foreshore.

Department of Environment and Conservation: DEC did not provide comment on the proposal.

Public Submissions: 9 submissions were made regarding the proposal during the first exhibition. Of these 4 were objections. Generally the concerns raised were the height of the buildings and potential overshadowing; increased traffic and lack of off-street parking (existing); potential to create a wind tunnel; lack of existing amenities, such as water supply and shopping centres and the potential for Jack Evans Boat Harbour to be polluted.

One additional objection was received from the second exhibition (the amended application). This objection opposed the potential of a mass of multi storey buildings,

the potential for the harbour to be overshadowed and the lack of roads and infrastructure for this type of development.

Where relevant, these issues are addressed in section 7 of this report.

7.0 CONSIDERATION

Design

The proposed development is essentially three separate buildings unified by a podium base that clearly defines the existing streetscape and the proposed public domain area. The buildings are set back from the street by the podium base.

Generally the proposal is described in two parts, being the eastern building and the western towers. The eastern building defines the corner of Bay and Wharf Streets through the use of a podium, under which retail and commercial space is provided. This building which is rectilinear in shape also comprises 10 storeys of mixed residential and tourist apartments above the podium level (11 storeys in total). The orientation of the apartments is generally east-west and all apartments are designed to have either water or hinterland views.

The western towers are ellipsoid in shape and have been designed to maximise views and cross ventilation. The shape is considered suitable to off-set the arched shape of the built portion of the twin towers proposal and also in consideration of the second tower of this approved development which is currently being erected. Both ellipsoid towers are 14 storeys, with the first level being part of the podium level (15 storeys in total). The northern portion of this part of the proposal also contains retail and conference facilities on the ground level and flexi space, a gym and spa surrounded by a terrace on the podium level.

The building materials are described as, at street level being tactile materials including timber, stone profiled precast, off form concrete elements and metal cladding. On the upper levels, a more robust palette of materials including smooth and textured precast and metal cladding together with operable louvre screens and a mix of solid and glazed balustrades provide an appropriate scale and form when viewed from both the street level and adjoining buildings.

It is considered that the design is suitable for the area and addresses the streetscape and public domain well. The Department also considers that the internal apartment design has been well designed given the constraints of the site. Overall, the department is satisfied with the design of the proposal.

Height of Buildings

The North Coast REP requires, under clause 15, the DG's concurrence for buildings over 14 metres measured from natural ground level. The proposed buildings ellipsoid towers on the western portion of the site will reach a height of approximately 45 metres above natural ground level and the rectilinear building on the eastern portion of the site will reach a height of about 32 metres above natural ground level.

As a result of the height of the proposed buildings, the application was referred to DIPNR's North Coast Regional Office for assessment and concurrence. The regional office assessed the proposal in consideration of the regional social / economic implications, the regional visual effects and the amenity of the area.

The concurrence report states that *"It is acknowledged that the proposed buildings will be a prominent development in the area. However, the development is in accordance with the Masterplan for the CBD adopted by the Government and in accordance with the planning controls contained in Council's LEP. The development will provide an economic benefit for the area and provide employment potential. The building has been designed in consultation with the Department to provide for a more aesthetically acceptable development on the site"*.

As such concurrence has been supported by the Department, see tag 'J'.

Overshadowing

Clause 32B of the North Coast REP provides that "councils must not consent to the carrying out of a development.... If carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time)".

It has been identified that the proposal will overshadow Chris Cunningham Park in midsummer and as such a SEPP No. 1 objection was included as part of the DA submission.

The SEPP No. 1 objection was referred to DIPNR's North Coast Regional Office for assessment and concurrence. The regional office assessed the proposal in consideration of the impact on the amenity of the area that will be overshadowed.

The concurrence report states that *"the shadow is over a small area of the park and does not affect the Park till about 5.30 mid summer daylight savings time. The shadow does not extend to the beach in Jack Evans Boat Harbour before 6.30PM as identified in Clause 32B of the REP. The park is not overshadowed in the winter period, the shadow extending over roadways to the south and east of the site. In addition, the Tweed Heads Town Centre Masterplan and Council's high rise planning controls envisages some overshadowing of the park by providing for high rise development on the sites as proposed"*.

As such concurrence has been supported by the Department, see tag 'J'.

Carparking

All short and long term carparking for the development is to be located at basement levels with access from Navigation Lane, off Stuart Street.

DCP 2 requires the following facilities be provided:

Car Parking spaces	-	360
Service Vehicle Bays	-	3
Car Wash Bays	-	8
Bicycle Parking	-	327

The proposal exceeds the number of car parking spaces being provided by allocating 382 spaces which is considered to be valuable for the development as the additional spaces can support the retail portion of the development.

Two (2) service vehicle Bays are provided and while this is less than DCP 2 specifies, the proposed bays are considered to be of an adequate area to enable the development to be serviced.

Two (2) car wash bays have been provided in the east tower, which can be accessed by both towers. The applicant has stated that 8 car wash bays would seem excessive for the development and further it would exceed the number provided in typical commercial car wash establishments. In consideration of this issue, the Department is satisfied that the two car wash bays is suitable for the development as proposed.

The applicant has suggested that 327 bicycle spaces is excessive for the proposed development. It is proposed to provide 10 spaces at ground level for the retail uses at the east tower and 14 spaces for the west tower. In regard to residents and visitors, suitable storage areas are provided that can be used for bicycle storage.

The Department is satisfied that the car parking, service bays, wash bays and bicycle parking as proposed is suitable for the design and scale of the development.

Access and Traffic Generation

The application was lodged as an integrated development under the Road Act. As such Tweed Shire Council was requested to provide General Terms of Approval. Following some negotiation Council has considered that access onto the public roads is adequate and therefore issued GTAs which have been included into the recommended conditions of consent.

Generally, access to the site will be from Stuart Street into Navigation Lane which connects to the basement car parking. Limited traffic, being only service vehicles can turn into Navigation Lane from Bay Street.

The traffic report submitted with the application indicates that the intersection at Wharf and Bay Streets is suitable for the predicted additional traffic.

Vehicular movement within the site is not supported by the Department. As such it has been discussed with Council that prior to roads approvals being granted, the proposal be amended to ensure appropriate turning spaces can be established along Navigation Lane and therefore not require movement through the site. This position is supported and appropriate conditions have been included in the recommended conditions of consent.

Dewatering and Acid Sulfate Soils

The application was lodged as an integrated application under the Water Act 1912 as the required excavation for the proposed basement carparking requires dewatering processes to be undertaken. In addition, as a result of the depth of excavation, the applicant was required to assess the likelihood of encountering acid sulfate soils.

A hydrogeological assessment and Acid Sulfate Soils Management Plan were submitted with the application. These reports were referred to DIPNR – Natural Resources for assessment. Although further information was requested to allow a

thorough assessment, DIPNR – Natural Resources have now advised that subject to conditions, which have been included in the recommended conditions of consent the dewatering methodology and Acid Sulfate Soil Management Plan is suitable to ensure that any adverse impact from these activities can be management and remediated suitably.

Water Management

Stormwater management has been considered in the design of the buildings, in particular by incorporation of the following management solutions:

- Minimising the impervious areas by using pervious and open pavement materials;
- Retain runoff from roofs and balconies for reuse activities such as car washing and garden watering;
- Landscape design incorporating appropriate vegetation;
- Minimising formal drainage systems with vegetated flowpaths and infiltration trenches.

Generally, it is considered that the methods proposed will ensure a sustainable approach to water management on the site.

8.0 CONCLUSION

The proposed development is located in an area which is zoned for Sub-Regional Business, it is consistent with the planning objectives of the area. The proposal has been assessed under the provisions of SEPP 71, Section 79C of the EP&A Act and Tweed Shire LEP 2002 and is considered appropriate.

It is considered that any potential impacts of this proposal can be managed appropriately to minimise any impact on the environment or to the existing local amenity. The applicant has been consulted on the recommended conditions generally agrees with all conditions recommended for this development. It is recommended that the proposal be granted consent, subject to the recommended conditions.

9.0 RECOMMENDATION

It is recommended that the Minister:

1. Grant consent to DA No. 456-10-2003 for the development of a 227 room mixed tourist / residential development, including 382 car parking spaces, retail space, restaurant and bar, gymnasium and conference facilities in accordance with the conditions for consent at schedule 2, at tag 'A';
2. Sign and date the Notice of Determination for DA No 456-10-2003 tag 'A'; and
3. Authorise the Director to notify the applicant and Tweed Shire Council of the determination.

Endorsed:

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