

+ MODIFICATION OF DEVELOPMENT CONSENT NO. DA456-10-2003

TWEED ULTIMA (STAGE 2)

Wharf Street, Tweed Heads

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**MODIFICATION OF DEVELOPMENT CONSENT NO. DA456-10-2003
TWEED ULTIMA (STAGE 2)
WHARF STREET, TWEED HEADS**

1.0 INTRODUCTION

Zinkohl Pty Ltd has commissioned Darryl Anderson Consulting Pty Ltd to prepare an application for modification of Development Consent No. DA456-10-2003, which relates to the Tweed Ultima development. Stage 1 of the development has been completed.

The proposed modification of the consent is made pursuant to Section 75W of the Environmental Planning and Assessment Act 1979 (as amended) and relates to Stage 2 of the development. The site is located in the Tweed Shire Local Government Area.

2.0 THE SITE

The site is located within the eastern parcel of the development known as the "Tweed Ultima" site.

The total site area of the "Tweed Ultima" development is 7951m². The location of the Stage 1 and Stage 2 sites are shown on **Figure 1**.



Figure 1 - Aerial Photograph

Two 14 storey buildings have been constructed on the western part of the site (Stage 1) in accordance with the consent (as modified).

The eastern part of the site (Stage 2) is presently vacant and comprises Lot B DP 33237, Lot 1 DP 962785, Lot 1 DP 962784, Lot 2 Section 1 DP 758279 and Lot 100 DP 775892. This part of the site has an eastern frontage to Wharf Street of 70.61m a southern frontage to Bay Street of 50.298m, a western frontage to Navigation Lane and provides an area of 3551m².

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3.0 BACKGROUND TO THE PROPOSAL

On 10 January 2005 Development Consent No. 456-10-2003 was issued for a mixed tourist/residential development comprising a total of 227 units. Schedule 2, Part A, Condition A1 of that consent describes the subject development as follows:

" A1 *Development Description*

Development Consent is granted only to carrying out the development described in detail below:

Development of a 227 unit 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 a ten storey rectilinear building is proposed, surrounded on the east, south and west by a two storey podium element.

On the western parcel the proposed built form comprises three components; a two storey podium; an ellipsoid tower of an additional fourteen storeys above; and to the south a second ellipsoid tower of fourteen storeys. 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."

On 19 September 2005 the Minister granted modification (MOD 56-4-2005) in relation to the staging of the development.

On 29 August 2006 the Minister granted modification (MOD 160-10-2005) to exchange 19 tourist units from the eastern tower with 19 residential units from the western towers. The modification of the consent provided 96 Tourist Accommodation Units at Levels 2 to 9 and 56 Residential Units at Levels 10 to 14 in the two buildings on the western parcel (the subject site).

On 3 August 2007 the Minister granted modification (MOD 48-5-2007) to enclose the outdoor area of the centre plaza for use as a gym.

On 11 December 2009 the Minister granted modification (MOD 456-10-2003 Mod 4 and Mod 5) to change the use of 23 tourist accommodation units in the eastern building (Stage 2), to dual use tourist accommodation/multi dwelling housing (residential). The modifications also provided changes to the external façade, an additional level of basement car parking in the eastern tower, the change of use of the ground floor restaurant/bar to shop and changes to the internal partitioning of the non-accommodation tenancies.

On 8 July 2009 Tweed Shire Council granted Development Consent DA08/0907 to change the use of 35 of the existing tourist accommodation units in the two buildings on the western parcel (the subject site) to dual use tourist accommodation/multi dwelling housing (residential) units. This approval includes a boundary adjustment between the Stratum Lots on the site to reallocate car parking spaces and requires that 22 car parking spaces be provided on the 'front lot' (Lot 100 DP 775892).

On 27 August 2010 Tweed Shire Council granted Modification DA08/0907.05 to amend Condition 4 relating to the timing of the temporary car park.

On 28 January 2011 Tweed Shire Council granted Modification DA08/0907.06 to "swap" two units which the dual use applies to.

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On 18 January 2013, Tweed City Centre LEP and Tweed DCP 2008, Section B2 – Tweed City Centre came into effect. These new Plans introduce a complete new set of planning controls for the site, including new land use definitions, building design controls and car parking requirements.

Various development consents have been granted by Tweed Shire Council for uses within the non-accommodation tenancies at ground level of the building constructed as Stage 1 of the development.

On 17 October 2013 Tweed Shire Council granted approval to DA13/0294. The application authorises the change of use of 19 Tourist Accommodation Units to 19 Dual Use of Shop Top Housing Units and Serviced Apartments.

On 17 October 2013 Tweed Shire Council granted approval to Section 96 Modification DA08/0907.07. The modification recalculated car parking for the 34 units subject to DA08/0907 and removed the need for 22 spaces to be provided in Stage 2 of the development (as originally required by DA08/0907).

In June 2013 the project architect and the proponent met with Officers of the Department of Planning and Infrastructure to discuss a modification of the development consent.

On 17 June 2013 the Department of Planning and Infrastructure provided correspondence in response to the plans provided at the meeting and indicated that there was no objection to the proposed change in mix and number of dwellings provided that car parking and Section 94 contributions are met. A number of design modifications were also suggested in relation to the ground floor and public domain, podium, external architecture and internal amenity.

Presently there is limited demand for tourist accommodation in the area. However there is demand for residential units, predominantly 2 bed room units. The configuration of the retail, office and residential floor space of the Stage 2 building under the existing approval is also not economically viable to construct. The proponent is interested in completing Stage 2 of the Tweed Ultima development which will occupy a prominent corner site in the Tweed City Centre. The modification of the approved building to reconfigure the mix of units and retail space is required to allow the project to proceed.

The revised building design, occupies a similar building footprint to the originally approved development but makes a more efficient and functional use of the available space.

4.0 PROPOSED MODIFICATIONS AND JUSTIFICATION

The proposed modification of the development consent relates only to Stage 2 of the proposed development, which located on the eastern part of the Tweed Ultima site.

Complete details of the proposed modifications are shown on the Application Plans attached as **Annexure A**.

A description and justification of the proposed modifications is provided as follows:

4.1 Deletion of Basement Level 2

Development Application DA13/0294 and Section 96 modification DA08/0907.07 relate to uses in the Stage 1 Western Towers of the Tweed Ultima Development and were approved by Tweed Shire Council on 17 October 2013. The effect of those applications is that the previous requirement for the provision of 22 car parking spaces within the basement of the Stage 2 building on the eastern site is no longer required. The Stage 1 development is self-sufficient in terms of car parking provided within the basement of the Stage 1 western site.

The review of the unit mix, commercial floor space and internal configuration made it possible to avoid the impacts associated with excavating and dewatering the second level of basement car parking on the Stage 2 eastern site. The reduced impacts include those upon ground water quality, geotechnical stability, acid sulfate soils and disturbance to the surrounding locality.

4.2 Modification to Basement Level 1

The configuration of Basement level 1 has been modified to delete the basement connection to the Stage 1 basement car park beneath Navigation Lane.

Since the car parking requirements of Stage 1 and Stage 2 of the development are self-sufficient in terms of car parking the originally approved underground connection between the basements (across Navigation Lane) is now unnecessary. The basement connection would involve the construction of a substantial structure and diversion of public services within the road reserve. The revised access and car parking provision is justified in the Traffic Impact Assessment attached as **Annexure B**.

4.3 Modification to Ground Level

The configuration of the originally approved ground floor retail space has been revised to provide a sleeve of retail and office tenancies to the key street frontages. Each of the proposed ground floor tenancies are provided with direct service connections to a centrally located and concealed car parking area which is accessed via the rear lane.

The revised configuration removes the internal through site link beneath the building and maintains an active frontage to the primary public interfaces of Wharf Street, Bay Street, the "public square" and to the northern through-site pedestrian link. The modified location of the apartment lobbies provides improved street level activation of the public domain adjoining the building (Bay Street at the southern end and the through site link at the northern end), compared to the originally approved development.

The internal through-site link is deleted in the modified plans. This is justified on the basis that it would be subject to undesirable shade and wind tunnel effects and because it is duplicated by the pedestrian link located only 10m to the north. The duplication is considered unnecessary given the limited amount of pedestrian activity. The proposed modification to the ground level allows for a more effective use of the available area, consolidating and encouraging the regular use of the through site link at the northern side. The modified design optimises solar access to the proposed public thoroughfares making it more attractive to pedestrians. It also provides improved shelter to the proposed public square from coastal winds.

The modified ground floor configuration also facilitates the removal of the second level basement and a reduction in the associated environmental impacts of that deep basement construction. Direct vehicular access to the ground floor car parking area and basement within Stage 2 of the development also reduces impacts and disturbance to the public domain associated with constructing the underground basement link. It also allows the respective body corporates more effective control of the available on-site car parking and will not interfere with the present operation of the Stage 1 basement car park or access arrangements thereto.

In summary the proposed modification to the ground floor level provide a more efficient use of the available space and will provide increased amenity to the public domain and a reduction in environmental impacts during construction.

4.4 Modification to Level 1

The originally approved "flexi units" (three of) which comprises a 2 bedroom unit attached to an office space are not commercially viable. Similarly the original residents "community room" and gym are not commercially viable given the facilities available in the locality and represent an ongoing maintenance liability to the body corporate.

The proposed modified layout provides a much more functional use of the space comprising 11 x two-bedroom and 1 x three-bedroom apartments (12 apartments). Each of the proposed apartments at level 1 are provided with access to a private landscaped podium terrace.

The resident's swimming pool area is maintained on the western side of the proposed building with an improved 25m lap pool and deck area replacing the previous smaller facility. Amenity between the western private open space terraces and the communal recreation area is maintained through changes in levels between the two areas and raised landscape planter beds.

The proposed modification improves the use of the space within Level 1 and will add to the stock of apartments available in the Tweed Heads City Centre. The proposed modification also maintains a high standard of residential amenity and the modified communal facilities will be more cost effective for the future body corporate to maintain and manage in the long term.

4.5 Modification to Levels 2 - 9

The proposed modification to the apartments at levels 2 to 9 represent a refinement of the unit configurations that reflect the identified demand for generally smaller apartments in the Tweed City Centre locality. The original approval of 6 x two-bedroom and 4 x three-bedroom apartments (10 apartments per floor) is not economically viable. The modified proposal provides for 1 x one-bedroom and 13 x two-bedroom apartments (14 apartments per floor).

The proposed units range in size from 61m² to 105m² in size and are accessed via a central access corridor, which is the same as the originally approved access arrangements.

4.6 Modification to Level 10

The proposed modification to Level 10 will provide 2 x three-bedroom penthouses and a roof-top pool and deck area, to the western side, for use by the penthouse residents.

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The proposed modifications expand to the north and west of the originally approved building "envelope" at that level, however the proposal does not unreasonably intercept the views to the east from the Stage 2 tower or from other developments in the area. The proposal remains fully compliant with the 49.5m AHD building height limit that applies to the site.

4.7 Response to Merit Issues Raised in DOPI Letter dated 17 June 2013

The project architect has considered the comments provided by the Department of Planning and Infrastructure in relation to the preliminary plans of the proposal and provided a response to those matters, which also resulted in refinement of the application plans. The comments relate to ground floor and public domain, activation and passive surveillance, streetscape, podium, articulation materials and finishes as well as internal amenity. The detailed response from the project architect addressing each of these matters is attached as **Annexure C**.

4.8 Modification of Conditions of Consent

The proposed modifications to the building design may be given effect by adjusting the project description (condition A1.1) and call up the modified application plans (condition A2.1) in Schedule 2, Part A of the consent.

The design modifications conditions as part of Mod 4 are no longer required and may be deleted from Schedule 2, Part B (condition B1A).

Modification will be required to adjust the Section 94 and Section 64 contributions (as advised by Tweed Shire Council) provided in Schedule 2, Part B (condition B5.1 and B6.1) of the consent.

Modification will also be required to Schedule 2, Part F (condition F1A) will be required to reflect the revised allocation of car parking in the Eastern Tower. It is noted that the previous requirement to provide 22 car spaces for commercial uses in the Western Towers is no longer required.

5.0 COMPARISON TO THE APPROVED DEVELOPMENT

A summary of the proposed modifications to the Stage 2 building compared to the approved Stage 2 building (as modified) is provided in **Table 1**.

TABLE 1 – COMPARATIVE ANALYSIS			
	APPROVED DEVELOPMENT (AS MODIFIED)	MODIFIED DEVELOPMENT	NET CHANGE
Basement L2	65 car parking spaces with basement connection to Stage 1 under Navigation Lane	Level 2 Basement deleted	Basement Level 2 deleted. Decrease of 65 car parking spaces.
Basement L1	110 car parking spaces with basement connection to Stage 1 under Navigation Lane	120 car parking spaces Remove basement connection under Navigation Lane	Increase of 10 car parking spaces. Removal of basement connection under Navigation Lane

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TABLE 1 – COMPARATIVE ANALYSIS			
	APPROVED DEVELOPMENT (AS MODIFIED)	MODIFIED DEVELOPMENT	NET CHANGE
Ground	Shop 1539m ² GFA 2 x through site links and public square at north east corner	Shop 486m ² GFA Office 357m ² GFA 1 x through site link and public square at north east corner 43 car parking spaces	Decrease of 696m ² shop and office GFA. Removal of 1 through site link. Increase of 43 car parking spaces.
Level 1	Office 998m ² 3 x flexi units (two-bed residential units with office space) Residents community room, gym and swimming pool and outdoor area	1 x one-bed + study unit 10 x two-bed+ study units 1 x three-bed + study unit Residents swimming pool and outdoor area	Increase of 12 residential units. Removal of 3 x flexi units, residents gym, community room and “flexi” office space.
Level 2	6 x two-bed units 4 x three-bed units	1 x one-bed + study unit 13 x two-bed+ study units	Increase of 4 residential units
Level 3	6 x two-bed units 4 x three-bed units	1 x one-bed + study unit 13 x two-bed+ study units	Increase of 4 residential units
Level 4	6 x two-bed units 4 x three-bed units	1 x one-bed + study unit 13 x two-bed+ study units	Increase of 4 residential units
Level 5	6 x two-bed units 4 x three-bed units	1 x one-bed + study unit 13 x two-bed+ study units	Increase of 4 residential units
Level 6	6 x two-bed units 4 x three-bed units	1 x one-bed + study unit 13 x two-bed+ study units	Increase of 4 residential units
Level 7	6 x two-bed units 4 x three-bed units	1 x one-bed + study unit 13 x two-bed+ study units	Increase of 4 residential units
Level 8	3 x two-bed units 3 x three-bed units	1 x one-bed + study unit 13 x two-bed+ study units	Increase of 8 residential units
Level 9	3 x two-bed units 2 x three-bed units Part 3 x three-bed units (L8-L9)	1 x one-bed + study unit 13 x two-bed+ study units	Increase of 6 residential units
Level 10	Part 1 x three-bed unit (L9-L10)	2 x three-bed + study units	Increase of 1 residential unit.
TOTALS	Total of 75 residential units (36 x two-bed and 42 x three-bed) Plus 3 x “flexi units” (2 bed units with office space) & 175 car spaces	Total of 126 residential units (9 x one-bed, 114 x two-bed and 3 x three-bed units) & 163 car spaces	Increase of 51 units, decrease of 696m ² of commercial GFA, removal of 3 “flexi units” and decrease of 12 car parking spaces.

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The external dimensions of the proposed modifications to the building compared to the originally approved building indicate the similar bulk and scale of the proposal.

6.0 STATUTORY PLANNING CONTEXT

6.2 Environmental Planning and Assessment Act 1979 (as amended)

Schedule 6A, Clause 3 of the Act relates to Continuation of Part 3A - transitional Part 3A provisions and states that Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.

Clause 12 of Schedule 6A states:

“ 12 Continuing application of Part 3A to modifications of certain development consents

Section 75W of Part 3A continues to apply to modifications of the development consents referred to in clause 8J (8) of the Environmental Planning and Assessment Regulation 2000, and so applies whether an application for modification is made before or after the commencement of this clause.”

Clause 8J(8) of the *Environmental Planning and Assessment Regulation 2000* states:

- “*** (8) For the purposes only of modification, the following development consents are taken to be approvals under Part 3A of the Act and section 75W of the Act applies to any modification of such a consent:
- (a) a development consent granted by the Minister under section 100A or 101 of the Act,
 - (b) a development consent granted by the Minister under *State Environmental Planning Policy No 34—Major Employment-Generating Industrial Development*,
 - (c) a development consent granted by the Minister under Part 4 of the Act (relating to State significant development) before 1 August 2005 or under clause 89 of Schedule 6 to the Act,
 - (d) a development consent granted by the Land and Environment Court, if the original consent authority was the Minister and the consent was of a kind referred to in paragraph (c).
- The development consent, if so modified, does not become an approval under Part 3A of the Act.”

Section 75W (as in force immediately before the repeal of that Part) applies to the lodgement and determination of an application to modify a Part 3A approval. Section 75W is in the following terms:

“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.*

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- (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."*

There are no other regulations of relevance to a modification application.

6.3 Tweed City Centre Local Environmental Plan 2012

This Plan commenced on 18 January 2013. Under the Plan and in accordance with Clause 2.2, the site is within the B3 – Commercial Core zone.

Pursuant to the Zone B3 Land Use Table, the zone objectives are as follows:

"Objectives of zone

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To encourage upper floor residential or tourist accommodation that does not compromise the commercial use of the land."*

Development for the purposes of Shop Top Housing is permissible, with Consent. The relevant land use definitions are provided below.

"shop top housing means one or more dwellings located above ground floor retail premises or business premises.

Note. Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary."

"residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,

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(k) semi-detached dwellings,
(l) seniors housing,
(m) shop top housing,
but does not include tourist and visitor accommodation or caravan parks."

The following clauses are relevant to the proposal.

Clause 4.3 Height of Buildings – The maximum building height is shown as RL 49.5m AHD. This is unaltered from Tweed LEP 2000. The modified proposal maintains full compliance with the building height development standard. The proposed modified building provides roof heights which are generally consistent with the originally approved upper and lower roof heights (less than RL 39.85m AHD). The modified lift over run will have a maximum height of RL 40.050m AHD.

Clause 4.4 Floor Space Ratio – The maximum floor space ratio (FSR) is shown as 4.5:1. There are no 'bonus' provisions. The original building was approved on the basis of an FSR of 4.1:1. The modified proposal, which comprises a similar gross floor area to the original design, will maintain compliance with the 4.5:1 FSR control.

Clause 5.5 Development Within the Coastal Zone - The subject land is within the coastal zone and therefore this Clause applies. Given that the proposed development only involves the reconfiguration of the approved building, generally within the originally approved development envelope no additional negative impacts are likely.

Clause 6.2 Flood Planning - The subject land is not mapped as flood prone in the design flood event. The proposed development is not inconsistent with the provisions of this Clause. No physical works are proposed on or below ground level which might impact on flood behaviour or be inconsistent with relevant provisions of Clause 6.2.

Clause 6.8 Ground floor and first floor development in certain business zones – This Clause is in the following terms:

- "(1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones.*
- (2) This clause applies to land in Zone B3 Commercial Core and Zone B4 Mixed Use.*
- (3) Development consent must not be granted to the erection of a multi storey building, or a change of use of a multi storey building, on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the building will have an active street frontage after its erection or change of use, and*
 - (b) the ground floor of the building will be used for the purpose of commercial activities, and*
 - (c) if the building is, or will be, located on land in Zone B3 Commercial Core, the first floor of the building will also be used for the purpose of commercial activities.*
- (4) Subclause (3) does not apply to any part of a building that is used for any of the following purposes:*
- (a) entrances and lobbies (including as part of a mixed use development),*
 - (b) access for fire services,*
 - (c) vehicular access.*
- (5) In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street (that is not a service lane) are used for the purposes of business premises or retail premises.*

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- (6) *In this clause, commercial activities means amusement centres, business premises, function centres, hotel or motel accommodation, medical centres, office premises, registered clubs or retail premises."*

This Clause applies to the granting of a "development consent". The application seeks only modification of an existing development consent and therefore subclause 6.8 does not apply to the proposal.

The proposed modification is consistent with the originally approved (Stage 2, eastern) building configuration which included commercial and residential uses at the first floor level. The Stage 1 western towers also provide residential uses at the first floor level. The provision of residential uses at the first floor level is consistent with the provisions of the Tweed LEP 2000 which applied at the time the development was originally approval.

Clause 6.10 Design Excellence - Clause 6.10(1) provides that *"This clause applies to development involving the erection of a new building or external alterations to an existing building on land to which the plan applies."*

Clause 6.10(2) requires the consent authority to consider whether the development exhibits design excellence. The relevant matters for consideration required by Clause 6.10(3) are addressed in **Table 2**.

TABLE 2 – DESIGN EXCELLENCE MATTERS FOR CONSIDERATION UNDER CLAUSE 6.10(3)	
MATTERS FOR CONSIDERATION	COMMENT
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved	The proposed modification will improve the originally approved building in line with the high quality theme and architectural design adopted in the completed Stage 1 of the development.
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain	The proposed external appearance of the building has been reviewed by the project architect to improve the presentation of the building and to optimise the configuration of the adjoining public domain areas.
(c) whether the development detrimentally impacts on view corridors	<p>The proposed work is generally within the existing approved building envelope. A slight increase to the north of the originally approved envelope is proposed at Level 10, however the overall height of the building will remain between 9m and 10m below the maximum allowable building height under the Tweed City Centre LEP 2012.</p> <p>Directly to the East of the completed Stage 1 towers of the Tweed Ultima Development, the modified design maintains the same building height as the original approval. Accordingly, it is submitted that the proposed modification will not adversely impact upon view corridors.</p>
(d) the requirements of the Tweed City Centre DCP	Refer to Section 6.5 of this statement. Notwithstanding the proposals general compliance with the "policy" controls of the new DCP, the proposal relates to an existing development consent and provides improvements over the originally approved design.
(e) how the development addresses the following matters:	

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TABLE 2 – DESIGN EXCELLENCE MATTERS FOR CONSIDERATION UNDER CLAUSE 6.10(3)	
MATTERS FOR CONSIDERATION	COMMENT
(i) the suitability of the land for development,	The site remains suitable for the proposed mixed-use Stage 2 Tweed Ultima Development.
(ii) existing and proposed uses and use mix	See above.
(iii) heritage issues and streetscape constraints	The modifications to the design of the building have been carefully considered in order to improve the external appearance of the development and to optimise the amenity of the streetscape.
(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,	The modifications maintain a similar “building envelope” to the originally approved development. However improvements are proposed to the external appearance of the development which will result in an improved outcome for the amenity of the locality.
(v) bulk, massing and modulation of buildings,	See above.
(vi) street frontage heights,	See above.
(vii) solar access controls,	See above.
(viii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,	See above.
(ix) the achievement of the principles of ecologically sustainable development,	Energy and water efficient fittings will be utilised where practical.
(x) pedestrian, cycle, vehicular and service access, circulation and requirements,	Refer to the Traffic Impact Assessment at Annexure B .
(xi) the impact on, and any proposed improvements to, the public domain	Refer to comments at (b) above.

Clause 6.10(4) relates to the requirement to have an Architectural Design Competition and is in the following terms:

“(4) Development consent must not be granted to the following development on land to which this Plan applies unless an architectural design competition that is consistent with the Design Excellence Guidelines has been held in relation to the proposed development:

- (a) development having a capital value of more than \$2,000,000 on land identified as “Key Sites” on the Key Sites Map,*
- (b) development in respect of a building that is, or will be, higher than 35 metres,*
- (c) development for which the applicant has chosen to have such a competition.”*

The proposal is a modification of a development consent. Development consent is not sought as part of this application. Accordingly Subclause 4 does not apply to the proposed modification and an “Architectural Design Competition” as contemplated by Clause 6.10(4) is not required in this instance.

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6.4 Tweed Development Control Plan 2008 Section B2 - Tweed City Centre

The following summary of the relevant clauses is provided.

Chapter 3 Building Form:

3.1 Building Alignment and Setbacks – The proposal complies with the required zero setback at street level adjacent to the primary frontage at Wharf Street. The southern frontage to Bay Street is consistent with the original approval.

3.2 Street Frontage Heights – The Street Frontage Height (SFH) 'Type C' applies to Wharf Street, and 'Type B' applies to Bay Street. In both cases the control comprises a zero setback at the street frontage vertically for a minimum of 12m. A setback of 6m applies to the remainder of the building above. The proposed modification will provide SFH of approximately 5.5m and building setbacks above that level of between 2m (towards the corner at Bay Street) and 7m. The architectural features of the building including the selection and application of materials and colours together with the siting of the building at the site corner are considered to achieve the objective of the SFH controls by providing a strong, consistent and appropriate definition of the public domain, solar access and pedestrian amenity, scale, sense of enclosure and wind mitigation. In addition the modified proposal maintains the general form of the originally approved development.

3.2.1 Side and Rear Setbacks - The proposal does not strictly comply with the 9m side and rear setback. However the proposed side setback is generally consistent with the original development consent granted by the Minister for Planning, and is considered to be an appropriate alternate solution as it maintains reasonable building separation and improves the layout and amenity of the units located at the north-western corner of the proposed building.

3.3 Building Depth and Bulk – This control provides for a maximum building length of 45m and depth of 18m and a gross floor area (GFA), per floor level, of 900m² for residential uses above the SFH. The proposed building provides a total building length (with articulation) of approximately 61.5m and a GFA of 1148m² per floor. Again this is based on the existing approved building and the proposed modification is considered to be justified on this basis.

3.4 Mixed Use Building – the proposal maintains similar uses compared to the originally approved development and the proposed floor to ceiling heights are generally consistent with this control.

3.5 Building Design and Materials – The proposal provides a variety of materials and colours to achieve a high standard of appearance. The proposal generally complies with this control.

3.6 Landscape Design – For residential flat building development the minimum area of 'communal open space area' is to be 30% of the site area (approximately 1065m²), and 25% of the 'landscaped area' is to be deep soil zone. Definitions of the terms 'communal open space area', 'landscaped area' and 'deep soil zone' are not provided in the DCP. We note that Table 3.3 in the DCP provides that 'deep soil zones' may be provided as plantings on structures with minimum soil depth of 500mm. The existing shared open space areas at ground level, first floor level and roof top communal open space area and landscaping may achieve compliance with this control.

3.7 Planting on Structures – Planter areas are to comply with the minimum depth and volume as per Table 3.3. Minimum depth of 500mm applies for 'shrub' vegetation.

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Chapter 4.0 Pedestrian Amenity – The existing building generally complies with the controls in this Section in relation to permeability, in particular the proposed modified through site pedestrian link is considered to be consistent with Figure 4.1 of the DCP in that a single mid-block link is proposed.

Chapter 5.0 Access Parking and Servicing – The car parking rates in the Section B2 of the Tweed DCP 2008 prevail over those contained in Section A2. A car parking assessment of the modified development has been prepared to demonstrate numerical compliance (see **Annexure B**). The ground level car parking area complies with the setback and active frontage controls of this chapter.

Chapter 6.0 Environmental Management – A BASIX Certificate is not required. The original DA 456-10-2003 was made before 1 October 2006, the development is not a BASIX affected development. Notwithstanding this, water and energy efficient fitting and appliances will be selected where possible in the construction of the building.

Chapter 7.0 Residential Development Controls – The existing building generally complies with the controls in this Section.

In summary, the proposed modification is generally compliant with the current controls of the Tweed City Centre DCP. Where variations are proposed, they are based on the design of the originally approved development and therefore comprise reasonable alternate solutions.

7.0 CONCLUSION

Modification of the conditions and terms of the approval as proposed is authorised by Section 75W of the Environmental Planning and Assessment Act.

The proposed modifications do not give rise to any unreasonable physical changes to the scale, nature or footprint of the approved project.

The proposed modification of the development is generally compliant with the current policy controls contained in the Tweed City Centre DCP. The variations are considered to be justified on the basis that the modifications relate to an approved development. The proposed modifications to development will enable the development to proceed on a viable basis and provide a much needed stimulus to the Tweed City Centre area.

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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ANNEXURE A Modified Application Plans Tweed Ultima (Stage 2) – Turner & Associates

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ANNEXURE B Traffic Impact Assessment – Bitzios Consulting, October 2013

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Modification of DA456-10-2003
Project No: ZIN 13/109 – November 2013

Tweed Ultima
Wharf Street, Tweed Heads



ANNEXURE C Architectural Response to DOPI Letter 17 June 2013 – Turner Architects

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ANNEXURE D SEPP 65 Statement – Turner Architects

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ANNEXURE E Completed Modification Application Form

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Tweed Ultima
Wharf Street, Tweed Heads