



ASSESSMENT REPORT

Section 75W Modification Tweed Ultima, Modification 6 (DA-456-10-2003 MOD 6)

1. BACKGROUND

This report is an assessment of a request by the Zinkohl Pty Ltd (the proponent) to modify the development consent DA 456-10-2003 for a two-stage mixed-use residential and commercial development known as "Tweed Ultima" under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification relates to Stage 2 only.

The approved development comprises 2 x 14 storey ellipsoid towers (Stage 1) and a 10 storey rectilinear tower (Stage 2). The development site is located within the Tweed town centre, about 200 metres (m) south of the State border within the Tweed local government area. It is in a prominent location opposite Jack Evans Boat Harbour on the Tweed River and about 450 m from Coolangatta-Greenmount Beach (see **Figure 1**).



Figure 1: Site (red outline) and surrounding uses (Source: Google).

The site is legally known as Lot B DP33237, Lot 1 DP962785, Lot 1 DP962784, Lot 2 Section 1 DP758279 and Lot 100 DP775892. It has a total area of 7,951 m² and is bound to the east by Wharf Street, to the south by Bay Street and to the west by Stuart Street. Navigation Lane dissects the site, dividing Stage 1 (to the west) and Stage 2 (to the east) (see **Figure 2**).



Figure 2: Subject site and main road frontages (Source: Google).

The Stage 2 land has an eastern frontage to Wharf Street of 70m, a southern frontage to Bay Street of 50m, a western frontage to Navigation Lane of 71m and an area of 3,551m².

Modification history

The development consent has been modified on 5 occasions as outlined in **Table 1**.

Table 1: Summary of modifications to the development consent

Application No.	Proposal
MOD 1 56-4-2005	Modification to developer contributions.
MOD 2 160-10-2005	Transfer of 19 tourist use units in Stage 2 to Stage 1.
MOD 3 48-5-2007	Enclosure of outdoor area in Stage 1 to permit use as a gym.
DA 456-10-2013 MOD 4	Change to external materials and finishes of Stage 2 tower.
DA 456-10-2013 MOD 5	Changes in the use of 23 tourist units in Stage 2; the use of a restaurant to retail; change 9 ground floor retail units to create 20 retail units; and a new second level of basement car parking.

Development history

Stage 1 has been constructed on the western portion of the site and is occupied. Stage 2 has not physically commenced and the eastern part of the site remains vacant.

Tweed Heads town centre is in transition from low-rise, narrow commercial lots to high-rise mixed-use buildings. To the north of Stage 2 is the approved 10 storey Dolphin Hotel development site. To the north of Stage 1 is an existing 16 storey serviced apartment building (see **Figures 3 and 4**).

Relevantly, a public pedestrian link was partially completed during Stage 1 and runs along the site's southern boundary from Stuart Street to Navigation Lane (see **Figure 5**). Stage 2 will complete the final section of the pedestrian link for pedestrian access between Stuart and Wharf Streets.

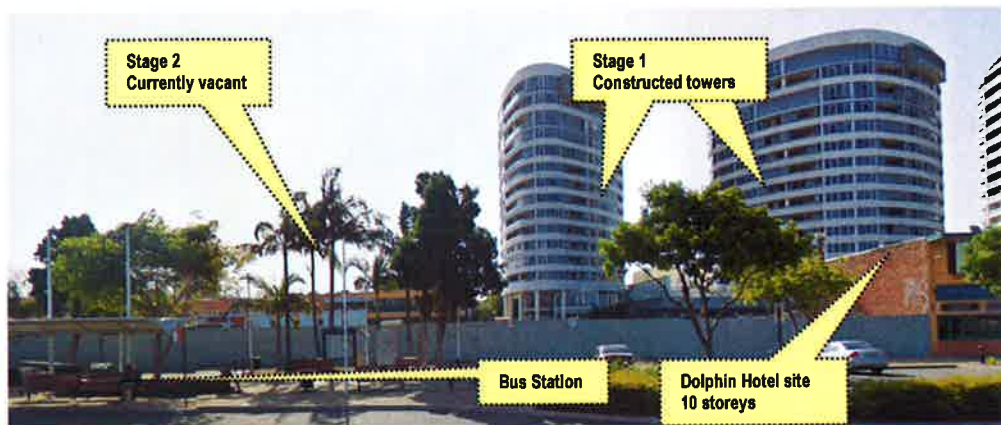


Figure 3: Site looking west from Wharf Street with Stage 1 in the background (Source: Google).



Figure 4: Site looking north from Bay Street with Navigation Lane dissecting Stages 1 and 2 (Source: Department of Planning and Environment).



Figure 5: Site looking east from Stuart Street along southern boundary (Source: Google).

2. PROPOSED MODIFICATION

The modifications relate to Stage 2 only and they are essentially market driven. The proponent explains that there is strong demand for 1 and 2 bedroom apartments in the area, whereas the approved Stage 2 is made up of 2 and 3 bedroom apartments. The proponent also explains that the basement and ground floor layout is expensive and the sub-surface impacts of the project could be improved by deleting the lower of the 2 basement levels.

The proposed modifications include:

- an increase in the total number of residential units from 75 to 126 (generally by converting 3 bedroom apartments to 2 bedroom apartments);
- deletion of the lower basement car park and the connection to Stage one in the upper basement car park;
- at ground level, a new vehicle access, 45 car parking spaces, deletion of 676 m² of retail space, deletion of one pedestrian link, and relocation of one building entry point to the northern boundary;
- reconfiguration of car parking to provide a total of 166 spaces, a net decrease of 54 spaces; and
- redesign of the exterior building façade (see **Figure 6**);
- developer contributions to be paid at occupation stage, rather than construction stage.

Table 2 compares the proposed modification with the approved development. Further details of the proposed modification are in the modification description at **Appendix B**.

Table 2: Comparison of the proposed modification with the existing consent.

Aspect	Description		
	Existing consent (2009)	Proposed modification	Net change
Ground level	<ul style="list-style-type: none"> • Shop/office 1539m² GFA comprising 20 tenancies • 2 x pedestrian links to public square 	<ul style="list-style-type: none"> • Vehicle access from Navigation Lane • Shop/office 863m² GFA • 1 x pedestrian link to public square and 45 car spaces 	<ul style="list-style-type: none"> • New vehicle access • Decrease of 676 m² shop/office GFA comprising 9 tenancies • Removal of 1 pedestrian link • Increase of 43 car parking spaces
Basement Level 1	<ul style="list-style-type: none"> • 110 car parking spaces with basement connection to Stage 1 under Navigation Lane 	<ul style="list-style-type: none"> • 121 car parking spaces • Remove basement connection under Navigation Lane 	<ul style="list-style-type: none"> • Increase of 11 car parking spaces. • Removal of basement connection under Navigation Lane
Basement Level 2	<ul style="list-style-type: none"> • 65 car parking spaces with basement connection to Stage 1 under Navigation Lane 	<ul style="list-style-type: none"> • Level 2 Basement deleted 	<ul style="list-style-type: none"> • Basement Level 2 deleted • Decrease of 65 car parking spaces
Level 1	<ul style="list-style-type: none"> • Office GFA 998 m², 3 x flexi units (2 bed residential units with office space) • Residents community room, gym and swimming pool and outdoor area 	<ul style="list-style-type: none"> • 1 x 1 bed + study unit • 10 x 2 bed+ study units • 1 x 3 bed + study unit • Residents swimming pool and outdoor area 	<ul style="list-style-type: none"> • Increase of 12 residential units. • Removal of 3 x flexi units, residents gym, community room and "flexi" office space
Levels 2-7	<ul style="list-style-type: none"> • 36 x 2 bed units • 24 x 3 bed units 	<ul style="list-style-type: none"> • 6 x 1 bed + study units • 78 x 2 bed + study units 	<ul style="list-style-type: none"> • Increase of 24 units
Level 8	<ul style="list-style-type: none"> • 3 x 2 bed units • 3 x 3 bed units 	<ul style="list-style-type: none"> • 1 x 1 bed + study units • 13 x 2 bed + study units 	<ul style="list-style-type: none"> • Increase of 8 units
Level 9	<ul style="list-style-type: none"> • 3 x 2 bed units • 2 x 3 bed units • Part 3 x 3 bed units (L8-L9) 	<ul style="list-style-type: none"> • 1 x 1 bed + study unit • 13 x 1 bed + study units 	<ul style="list-style-type: none"> • Increase of 6 units
Level 10	<ul style="list-style-type: none"> • Part 1 x 3 bed unit (L9-L10) 	<ul style="list-style-type: none"> • 2 x 3 bed + study units 	<ul style="list-style-type: none"> • Increase of 1 unit



Figure 6: Proposed modified eastern elevation (Stage 2) from corner of Wharf and Bay Streets (Source: Proponent).

3. STATUTORY CONTEXT

Approval authority

The proposed modification is considered under section 75W of the *Environmental Planning & Assessment Act 1979* (EP&A Act), as the original proposal was State significant development and integrated development. Since 3 September 2010, clause 8J of the *Environmental Planning & Assessment Regulation 2000* (the Regulation), has required that all forms of State significant development be modified under section 75W of the EP&A Act.

In accordance with clause 12 Schedule 6A of the EP&A Act, section 75W, in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to the modification of development consents referred to in clause 8J of the Regulation. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or delegate) may determine the modification.

Under the Ministerial delegation of 14 September 2011, modification requests may be determined by the Director – Industry, Key Sites & Social Projects where:

- the local council has not made an objection to the proposal; and
- a political disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

Tweed Shire Council did not object to the proposed modification. The proponent has not made a political disclosure statement, and no public submissions in the nature of objections were received. Therefore, all of the above circumstances are satisfied and the Director, Industry Key Sites and Social Projects, is able to determine the modification request under delegation.

Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the department may notify the proponent of Secretary's Environmental Assessment Requirements (SEARs) for the proposed modification.

No additional SEARS were issued for the proposed modification. Sufficient information was provided to the department in order to consider the application. Moreover, the issues raised by the proposed modification are consistent with the key assessment requirements addressed in the original application.

Consultation

In accordance with Section 75X of the EP&A Act and clause 8G of the EP&A Regulation, the department made the modification request publicly available on the department's website on 26 November 2013. Comments on the modification were invited from Tweed Shire Council (additional information was also referred to Council on 8 April 2014). The modification was advertised in the *Tweed Link* and *Tweed Bordermail* local newspapers on 26 November 2013.

Tweed Shire Council (Council) advised that it "does not have a fundamental issue with the amended proposal generally", but raised a number of concerns for the department to address (see **Appendix C**). In summary:

- generally, ground level car parking is a waste of space and poor urban design;
- service provision to the retail tenancies is poor with deliveries made from Navigation Lane. Painted road surface treatments and signage should be installed for traffic direction;
- visual clarity and an active edge along the pedestrian link are required;
- tandem car spaces are unsuitable for retail use as the Tweed Town Centre DCP say they should not be used for customers or staff;
- retail tenancies cannot be adapted for restaurants as they are too small, and require a higher rate of parking. This limits future intensification options;
- external finishes should be coastal themed and properly implemented;
- commercial tenancies inadequately delineate between retail and offices;
- the developer should consult with Council to ensure any public works are properly integrated with Council's public works; and
- identified updated developer contributions for the development.

The department has addressed these matters in the assessment in Section 5 of this report and where appropriate by approval conditions. In particular the matters relating to streetscape works, external finishes, access and tandem parking, and developer contributions have been addressed through approval conditions.

There were no public submissions.

Proponent's Response to Submissions

The proponent submitted a response to submission (RTS) report responding to the issues raised by Council and the department (see **Appendix D**). The RTS was published on the department's website and referred to Council. In summary, the RTS addressed the following matters:

Urban design and the ground floor redesign

To improve visual clarity and street activation, introduce:

- perforated steel screening and glazing to Navigation Lane frontage;
- a small kiosk/food and drink premise to the pedestrian link;
- amended landscaping that incorporates a range of vegetation plant species and higher quality granite stone finishes;
- reduced setback to Bay Street;

- agreement to prepare sample board of materials and finishes, coloured drawings and a statement from the architect confirming design consistency with the approval; and
- agreement to directional signage indicating building entry for customers.

Traffic parking and access

To improve access and parking, and reduce pedestrian conflict in the laneway, introduce:

- painted 'left-out' median and signage to Navigation Lane vehicle egress;
- separate pedestrian connection between Navigation Lane and Bay Street;
- a service bay in Navigation Lane for delivery trucks, etc; and
- allocations for the tandem parking spaces to ensure they are always fully used.

Amenity

- amended unit layout to ensure that over 70% of units achieve solar sufficient solar access to primary living and external spaces; and
- cross ventilation diagrams for assessment of cross-ventilation.

The department has considered the issues raised in the submission and the RTS in its assessment below.

4. ASSESSMENT

The department considers the key assessment issues to be related to the ground level redesign, traffic and access, and residential amenity in the revised apartments.

Ground Level Redesign

The modification request proposes to eliminate one level of approved basement car parking and relocate 43 car spaces to the ground level. This redesign of the ground level will result in the deletion of 676m² of retail space and reduce the number of tenancies from 20 to 10.

Council considers the ground level parking to be a waste of commercial space and a poor urban design outcome. The approved development incorporated good urban design practice for mixed use developments by accommodating car parking within the basement. This enables full utilisation of ground level public domain areas along the pedestrian link for uses such as shops or cafes, which provide improved activation and passive surveillance.

The 10 remaining retail tenancies facing Bay and Wharf Streets activate those streets. However, the ground level redesign reduces activation to the north and west frontages due to a long blank wall facing Navigation Lane and the pedestrian link, which provides less than 30% of active frontage.

The proponent's RTS provided an additional ground level retail tenancy to the north elevation; glazing to the bicycle storage area; and perforated metal screening to the ground level interface with the Navigation Lane (see **Figures 8 and 9**).

The RTS was referred to Council for further comments and it did not raise any further objections, although it did reiterate the importance of retail uses at ground level in activating street frontages as envisaged in its Tweed City Centre Development Control Plan B2.

The department considers that the additional retail tenancy, perforated screening and glazing will improve activation and passive surveillance of Navigation Lane. For the remaining 12m blank wall facing the pedestrian link (see **Figure 10**), the department has recommended continuation of the perforated screening to improve passive surveillance from the car park. An example of perforated screen is shown in **Figure 11**.

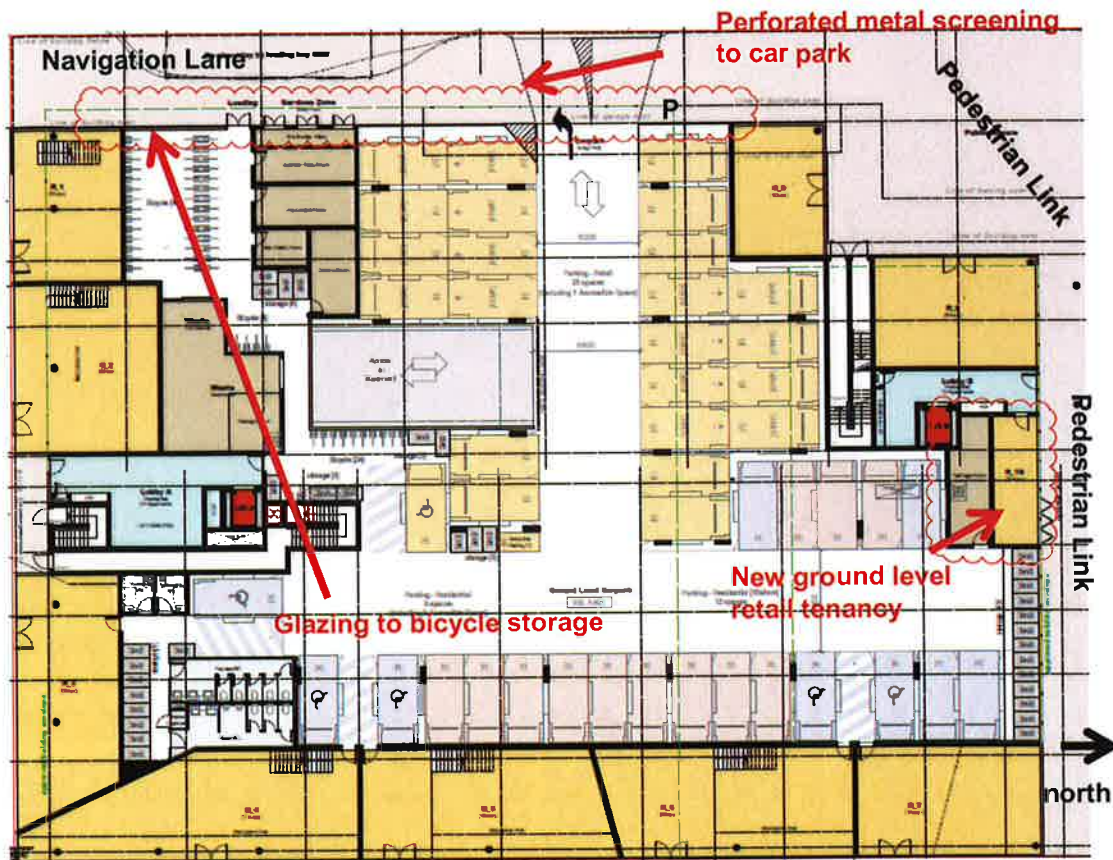


Figure 8: Preferred ground level plan with new screening and retail tenancy.



Figure 9: Comparison of exhibited (top) and amended (bottom) west elevations displaying perforated screening and glazing to Navigation Lane frontage.



Figure 10: Comparison of exhibited (top) and amended (bottom) north elevations displaying new retail tenancy to pedestrian link frontage and remaining blank wall.



Figure 11: Examples of proposed perforated screening for Navigation Lane frontage (Source: Proponent).

Council remains hesitant about the urban design attributes of the changes to the ground floor. However, the department appreciates the changing nature of land economics and often there is a need to re-consider certain aspects of an approved design before construction work begins. In the circumstances, omission of the lower level basement will significantly improve the economics of Stage 2 by reducing the cost to engineer, secure and dewater the lower basement level.

By way of improving the urban design attributes of the proposed ground level, the proposal includes an additional retail tenancy suitable for a coffee or juice stop facing the pedestrian link, and glass and perforated metal walls, which reveal the interior of the building to provide age, visual interest and encouraging passive surveillance. Overall, with the inclusion of the recommended condition for an additional perforated screen along the 12 metres of blank wall along the pedestrian link, the department is satisfied that the proposed ground level redesign is a satisfactory urban design outcome.

Traffic and Access

Access to Navigation Lane

Navigation Lane will become the main vehicular access to the development due to the proposed deletion of the basement level 1 connection with the Stage 1 car park. This will generate an additional 78 vehicular trips per hour on Navigation Lane and has the potential to increase vehicular conflicts with pedestrians on the pedestrian link (see **Figure 12**).

The RTS amended the vehicular access by introducing painted median to restrict vehicles leaving the site to a 'left out' exit. The department considers that the proposed driveway treatment combined with 'no right turn' signage will adequately reduce vehicle-pedestrian conflicts (refer to **Figure 13**).

Restricting movement to left turn out means vehicles will need to travel only 35m. This compares with a distance of 155m if access to the north (to Stuart St) is unrestricted (see **Figure 14**). Bay Street via Navigation Lane is the most direct route for both northbound (Gold Coast) and southbound (South Tweed) traffic accessing the site. Council has also indicated its support for the proposed vehicular access treatment.

The department is satisfied that the proposed traffic management measures will minimise vehicular conflicts on the pedestrian link. The recommended conditions of approval require 'no right turn' signs for vehicles exiting the site and restricting entry via Stuart Street.

Vehicular conflicts on Navigation Lane

The proposed modification is likely to increase the potential for vehicular conflicts on Navigation Lane between service vehicles and cars in Navigation Street site. Service vehicle access to the development is provided via a 'reverse in' arrangement off Navigation Lane.

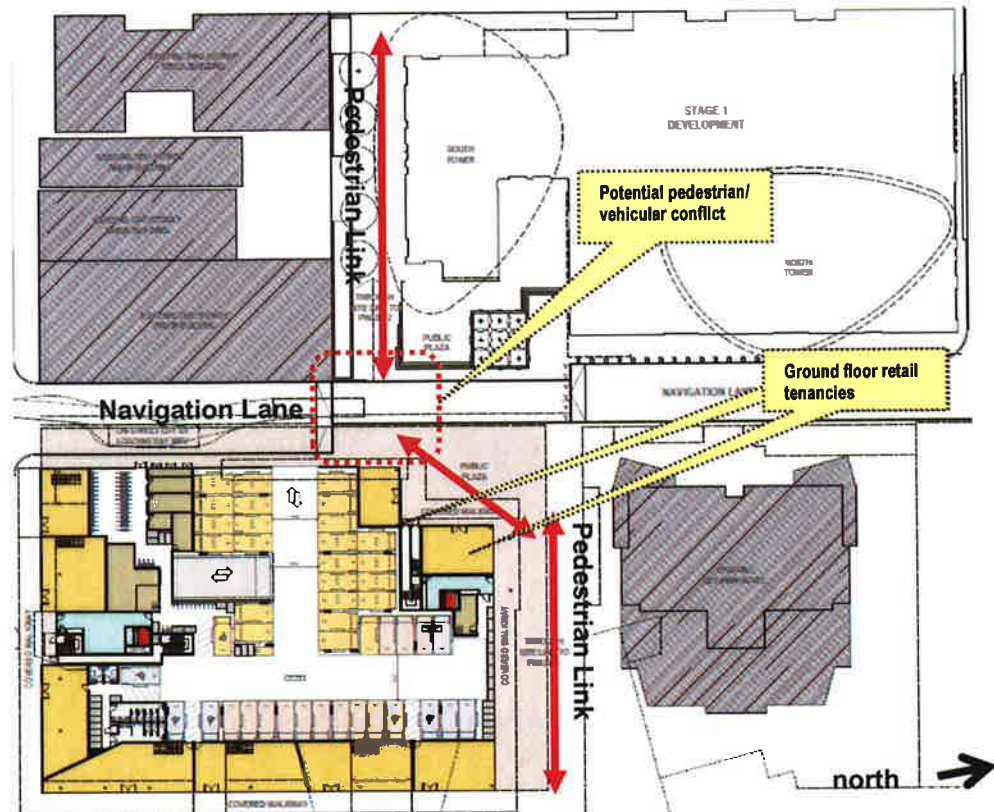


Figure 12: Potential for pedestrian/vehicular conflicts on Navigation Lane.

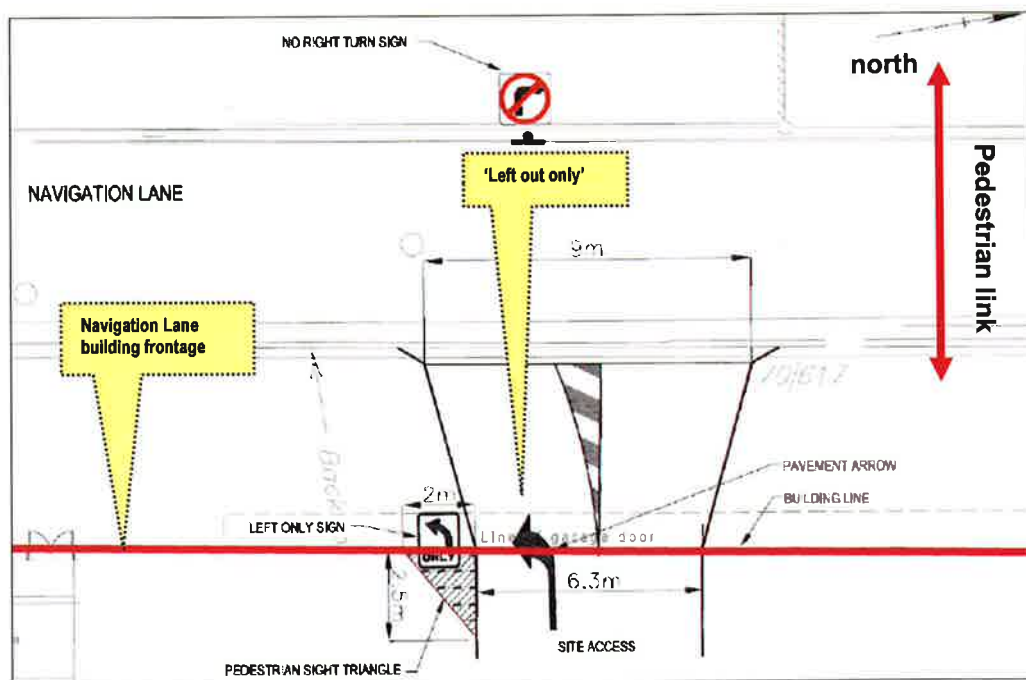


Figure 13: Proposed vehicular access with 'left out only' exit and 'no right turn' signage at Navigation Lane.

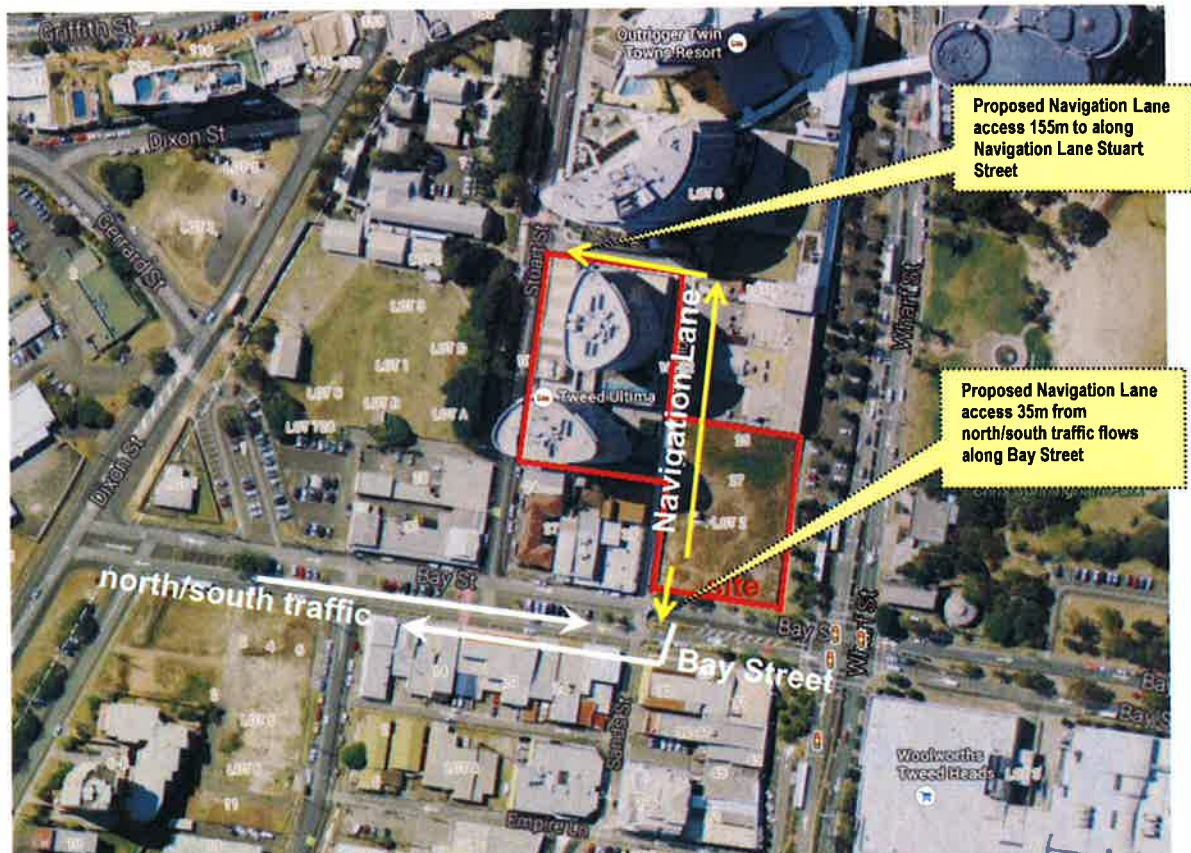


Figure 14: Site showing north/south traffic flows along Bay Street via Navigation Lane.

The department originally supported this 'reverse in' arrangement because of low traffic volumes in Navigation Lane. However, potential conflict now arises because of the greater number of vehicle movements along Navigation Lane, which may bank-up behind parked or reversing service vehicles.

The proponent's RTS amended the eastern ground level to include an indented service bay on the site adjoining Navigation Lane. The design of the service bay (**Figure 15**) provides:

- a 12.5m length to allow access for a garbage collection vehicle;
- road tapering for efficient service vehicle manoeuvring; and
- a 3m width to store a service vehicle clear of Navigation Lane.

The RTS also amended the vehicular access by introducing painted median to restrict vehicles leaving the site to a 'left out' exit. The department considers that the proposed driveway treatment combined with 'no right turn' signage will adequately reduce vehicle-pedestrian conflicts (refer to **Figure 13**).

Restricting movement to left turn out means vehicles will need to travel only 35m. This compares with a distance of 155m if access to the north (to Stuart St) is unrestricted (see **Figure 14**). Bay Street via Navigation Lane is the most direct route for both northbound (Gold Coast) and southbound (South Tweed) traffic accessing the site. Council has also indicated its support for the proposed vehicular access treatment.

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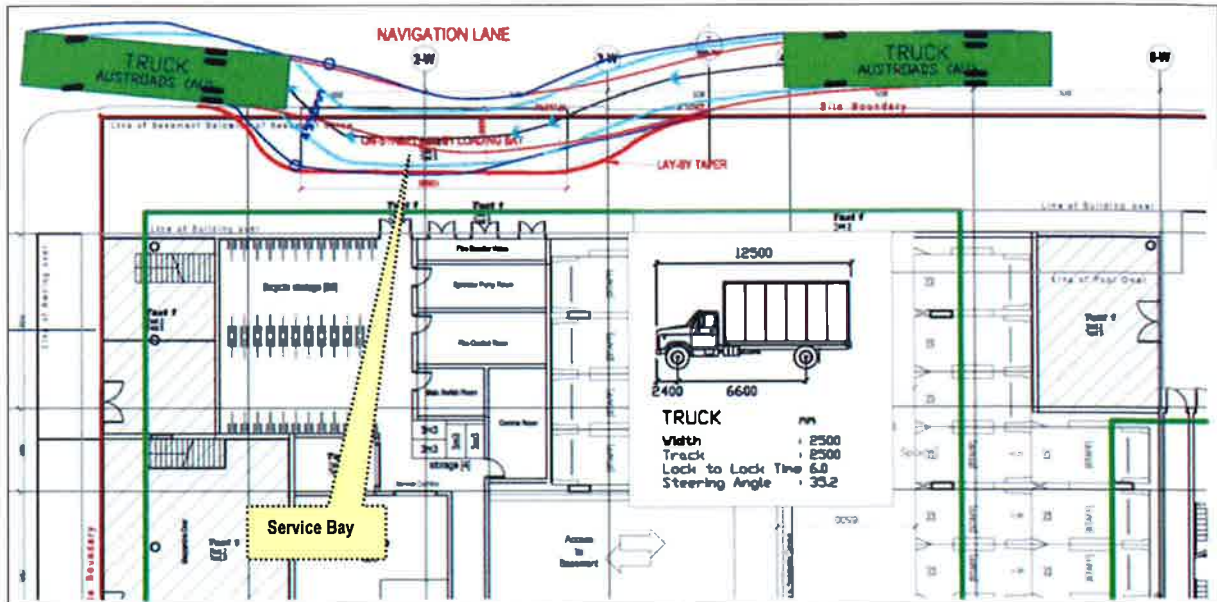


Figure 15: Indented service bay along Navigation Lane.

Vehicular conflicts on Navigation Lane

The proposed modification is likely to increase the potential for vehicular conflicts on Navigation Lane between service vehicles and cars in Navigation Street site. Service vehicle access to the development is provided via a 'reverse in' arrangement off Navigation Lane.

The department considers a service bay is required to ensure adequate traffic flow, and reduce the incidence of blocked traffic in Navigation Lane. Council supports the proposed service bay.

Car parking

The proposal requires a total of 165 car parking spaces based on Council's *Development Control Plan B2* as shown in **Table 3**:

Table 3: Car parking requirements based on Council's DCP B2.

Development Component	Rate	Spaces required	Spaces provided
1 & 2 Bedroom Unit	1 /dwelling	123	129
3 Bedroom Unit	1.5/ dwelling	4.5	unallocated
Visitors	1/ 10 dwellings	12.6	12
Retail	1 / 40m ² GFA	25	25
Total		165	166

The modification proposes to provide 166 on-site parking spaces comprising 121 in the basement and 45 at ground level. Of those spaces, the basement will provide 6 tandem (stacked) spaces and the ground will provide 16 tandem spaces.

Council raised concerns with the proposed use of the 16 ground level tandem spaces for retail use due to potential difficulties in motorists access/moving their vehicles. However, the department is satisfied that the proposed tandem parking spaces (which will be used by staff only, not customers) satisfy the requirements of the DCP. Moreover, the use of the tandem spaces can be managed by conditions of consent that govern signage and users.

The proponent's RTS provides one additional residential space (by converting a proposed commercial parking space to residential) and an additional five spaces from existing surplus spaces in Stage 1. Both the department and Council support the additional spaces.

Amenity

Solar Access

In the reconfigured building layout of the proposed modification, 73 (or 58%) of the proposed 126 units achieve two hours of sunlight in mid-winter. The Residential Flat Design Code (RFDC) rule of thumb under *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development* (SEPP 65) requires 70% of units in residential flat buildings to achieve two hours of sunlight in mid-winter.

The proponent's RTS amended unit layouts A2.02 to A9.02, and A2.03 to A9.03, such that the living rooms will achieve a minimum of two hours solar access in mid-winter. As a result 91 (72.5%) of units will now receive a minimum of two hours solar access in mid-winter. This complies with the RFDC requirement. Accordingly, the department is satisfied that the proposed unit layouts will provide sufficient solar access.

Natural Ventilation

Thirty-two (37%) of the proposed 126 units (as exhibited) will achieve natural cross ventilation. The RFDC rule-of-thumb requires 60% of units in residential flat developments to be naturally cross-ventilated. The proposed modification, therefore, does not comply with 60% requirement of the RFDC.

The recommended modification instrument requires the proposed north-south common corridor on each of the residential levels to be naturally ventilated by appropriate window openings and fixed ventilation devices. This will improve cross-ventilation for the 92 single aspect 'non-corner' units of the development.

Accordingly, the department is satisfied that adequate natural ventilation can be achieved in the middle of the building for the proposed single aspect units of Stage 2.

Delayed payment of developer contributions

The existing development consent requires the payment of Section 94 developer contributions to Council prior to the issue of a Construction Certificate. The Council's policy on the matter changed (by Council resolution) on 14 April 2013, and it now specifies that contributions should be paid prior to the issue of a Occupation Certificate. The proponent requests the timing be changed in the consent. The department agrees to the change and includes an amending condition in the recommendation.

6. CONCLUSION

The proposed modification falls within the scope of section 75W of the EP&A Act and does not alter the original assessment as to the site's suitability for the approved development.

In assessing the proposal, the department has reviewed the proponent's modification request and RTS, and the submission made by Council. The key issues for the department's assessment are the ground level redesign; traffic and access; and amenity.

The department supports the proposed development, as modified, as it achieves the same objectives as assessed under the original approval including the provision of a mixed use/commercial development with a safe and activated pedestrian link running through the site and defined by the use of quality materials, textures and colours.

The proposed modification ensures these objectives can still be achieved. It is therefore recommended that the modification request be approved. Overall, the department considers that the modification does not alter its original assessment of the development or change the nature of any environmental impacts.

Therefore, the department recommends approval of the modification request. The modification can be determined by the Director – Industry, Key Sites & Social Projects, as it satisfies the Minister's delegation.

7. RECOMMENDATION

It is recommended that the Director, Industry, Key Sites & Social Projects, as the delegate of the Minister for Planning, under section 75W of the Act, approve the proposed modification (MOD 6) to DA 456-10-2003, as set out in the recommended notices of modification for the development consent (**Appendix A**).



19.8.14

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