

28 January 2011

Zinkohl Pty Ltd
PO Box 5741
GOLD COAST MAIL CENTRE QLD 9726

Dear Sir/Madam

Section 96 Application DA08/0907.06 - amendment to Development Consent DA08/0907 for change of use tourist accommodation units to flexible multi dwelling housing units or tourist accommodation units, stratum subdivision and temporary at grade parking area at Tweed Ultima at Lot's 9, 10, 15, 21, 27, 29, 30, 33, 35, 36, 41, 42, 46, 47, 48, 52, 53, 54, 85, 91, 92, 96, 97, 103, 104, 105, 109, 110, 111, 116, 117, 121, 122, 127, 128 SP 79995; Lot's 1, 5, 6, 9 SP 80159; Lot's 10, 12 SP 80551, No's. 1/18-20, 5/18-20, 6/18-20, 9/18-20, 10/18-20, 12/18-20, 15/18-20, 21/18-20, 27/18-20, 29/18-20, 30/18-20, 33/18-20, 35/18-20, 36/18-20, 41/18-20, 42/18-20, 46/18-20, 47/18-20, 48/18-20, 52/18-20, 53/18-20, 54/18-20, 86/18-20, 91/18-20, 92/18-20, 96/18-20, 97/18-20, 103/18-20, 104/18-20, 105/18-20, 109/18-20, 110/18-20, 111/18-20, 116//18-20, 117/18-20, 121/18-20, 122/18-20, 127/18-20, 128/18-20 Stuart Street Tweed Heads

I refer to your application regarding the above and enclose herewith Amended Consent DA08/0907. The consent has been amended as follows: -

- 1. Delete Condition No. 3 and replace it with Condition No. 3A which reads as follows:**
 - 3A. This Development Application approves the change of use of 35 tourist accommodation units within the ellipsoid towers of the Tweed Ultima into 35 flexible units that can be used as either multi dwelling housing units or tourist accommodation units. The 35 affected units are as follows:
 - Level 2 - Lots 9 and 10 in SP 79995
 - Level 3 – Lots 15 and 91 in SP 79995
 - Level 4 – Lots 21, 97, and 98 in SP 79995
 - Level 5 – Lots 27, 29, 30, 103, 104, and 105 in SP 79995
 - Level 6 – Lots 33, 35, 36, 109, 110, 111 in SP 79995
 - Level 7 – Lots 41, 42, 116, and 117 in SP 79995
 - Level 8 – Lots 46, 47, 48, 121 and 122 in SP 79995
 - Level 9 – Lots 52, 53, 54, 127 and 128 in SP 79995

2. Insert Condition No. 3B which reads as follows:

3B. This Development Application approves the change of use of 2 tourist accommodation units within the ellipsoid towers of the Tweed Ultima into 2 multi dwelling housing units. The 2 affected units are as follows:

- Level 9 - Lots 51 and 129 in SP 79995

3. Insert Condition No. 3C which reads as follows:

3C. This Development Application approves the change of use of 2 dual use units within the ellipsoid towers of the Tweed Ultima into 2 tourist units. The 2 affected units are as follows:

- Level 2 - Lot 85 in SP 79995
- Level 3 - Lot 92 in SP 79995

For further information regarding this matter please contact James Warren on (02) 6670 2496.

Yours faithfully

Colleen Forbes
Acting Manager Development Assessment

Enc

AMENDED CONSENT ISSUED 28/1/2011

NOTICE NO. DA08/0907

TWEED SHIRE COUNCIL

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

To: Zinkohl Pty Ltd
PO Box 5741
GOLD COAST MAIL CENTRE QLD 9726

Pursuant to Section 81(1)(a) of the Act, notice is hereby given of the determination by the Tweed Shire Council of Development Application No. **DA08/0907** relating to land described as:-

Lot's 9, 10, 15, 21, 27, 29, 30, 33, 35, 36, 41, 42, 46, 47, 48, 52, 53, 54, 85, 91, 92, 96, 97, 103, 104, 105, 109, 110, 111, 116, 117, 121, 122, 127, 128 SP 79995; Lot's 1, 5, 6, 9 SP 80159; Lot's 10, 12 SP 80551, No's. 1/18-20, 5/18-20, 6/18-20, 9/18-20, 10/18-20, 12/18-20, 15/18-20, 21/18-20, 27/18-20, 29/18-20, 30/18-20, 33/18-20, 35/18-20, 36/18-20, 41/18-20, 42/18-20, 46/18-20, 47/18-20, 48/18-20, 52/18-20, 53/18-20, 54/18-20, 86/18-20, 91/18-20, 92/18-20, 96/18-20, 97/18-20, 103/18-20, 104/18-20, 105/18-20, 109/18-20, 110/18-20, 111/18-20, 116//18-20, 117/18-20, 121/18-20, 122/18-20, 127/18-20, 128/18-20 Stuart Street Tweed Heads

to be developed in accordance with plans and details submitted for the purpose of –

CHANGE OF USE TOURIST ACCOMMODATION UNITS TO FLEXIBLE MULTI DWELLING HOUSING UNITS OR TOURIST ACCOMMODATION UNITS, STRATUM SUBDIVISION AND TEMPORARY AT GRADE PARKING AREA AT TWEED ULTIMA

The Development Application has been determined by the granting of consent subject to the conditions described below:-

GENERAL

1. The development shall be completed in accordance with:

- The Statement of Environmental Effects prepared by Darryl Anderson Consulting dated July 2008 except where varied by the amended application as detailed in Darryl Anderson Consulting letters dated 16 September 2008 and 23 April 2009;
- Stratum Subdivision Plan (in relation to Stage 1 of Ultima) Nos 8431-16 Sheets 1 -6 (inclusive) prepared by Michel Group Services and dated 15/08/2008;
- Temporary Car Park Plan marked in red as Plan 1 - 23/04/2009

except where varied by the conditions of this consent.

[GEN0005]

2. The proposed change of use to the 35 units can not be undertaken until:
- a. A new S138 Application (in accordance with the Roads Act) be received and approved by TSC for works within Navigation Lane as required by Condition 7 of this consent). The works must be completed as required by Condition 7 and any subsequent conditions on a s138 Approval.
 - b. Should the new S138 Application require the modification of any water or sewer infrastructure a S68 Application is required to be submitted and approved by TSC (as required by condition 8 of this consent).
 - c. Stratum Subdivision approved for Stage 1 of Ultima (Note: Stratum Subdivision can not be released until (a) and (b) above have been completed).

[GEN0006]

3. DELETED

- 3A. This Development Application approves the change of use of 35 tourist accommodation units within the ellipsoid towers of the Tweed Ultima into 35 flexible units that can be used as either multi dwelling housing units or tourist accommodation units. The 35 affected units are as follows:

- Level 2 - Lots 9 and 10 in SP 79995
- Level 3 – Lots 15 and 91 in SP 79995
- Level 4 – Lots 21, 97, and 98 in SP 79995
- Level 5 – Lots 27, 29, 30, 103, 104, and 105 in SP 79995
- Level 6 – Lots 33, 35, 36, 109, 110, 111 in SP 79995
- Level 7 – Lots 41, 42, 116, and 117 in SP 79995
- Level 8 – Lots 46, 47, 48, 121 and 122 in SP 79995
- Level 9 – Lots 52, 53, 54, 127 and 128 in SP 79995

[GENNS01]

- 3B. This Development Application approves the change of use of 2 tourist accommodation units within the ellipsoid towers of the Tweed Ultima into 2 multi dwelling housing units. The 2 affected units are as follows:

- Level 9 - Lots 51 and 129 in SP 79995

- 3C. This Development Application approves the change of use of 2 dual use units within the ellipsoid towers of the Tweed Ultima into 2 tourist units. The 2 affected units are as follows:

- Level 2 - Lot 85 in SP 79995
- Level 3 - Lot 92 in SP 79995

4. DELETED

- 4A. The applicant is to construct a temporary car park accommodating 22 spaces on Lot 100 in DP755892 until a second tier of basement is built under the rectangular building associated with Tweed Ultima (Stage 2). During construction of the rectangular building the subject site will be short 22 car spaces.

Should the developer start building Stage 2 within 24 months from the date of this consent the deferred temporary at grade parking lot will not be required. If

construction of building Stage 2 has not commenced to Council's satisfaction within 24 months from the date of the consent DA08/0907 (July 2009) , the temporary at grade parking spaces are needed to supply the temporary shortfall until such time as the second tier basement is constructed.

Stage 2 of Ultima will permanently be burdened on title to provide a further 22 spaces to make up the shortfall of parking as a result of this application.

Any floodlighting associated with the temporary car park shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the General Manager or his delegate **PRIOR** to use of the car park.

The off-street car park shall be designed and constructed to the standards set in AS/NZS 2890.1 Parking facilities - Off-street car parking, and Council's DCP Section A2 - Site Access and Parking Code. Certification of the works by a qualified professional engineer is required to be submitted to the PCA **prior to occupation**.

5. The temporary car park is to be finished in a professional manner and incorporate landscaping to soften the impact of the car park. The area is to remain in a clean and tidy manner at all times and should not be used for storage of any building or site materials.

[GENNS03]

6. The Ultima development is required to have the following parking provisions:

Stage 1 - Western Ellipsoid Towers

Stage 1 (western ellipsoid towers) shall provide parking as follows:

- 40 Commercial Spaces (minimum 19 in basement, remainder at grade via temporary car park then via basement within Stage 2 see below);
- 23 Visitor Spaces;
- 61 Tourist Spaces;
- 160 Residential Spaces divided equally (stacked spaces must be allocated to the same unit).

Stage 2 – Eastern Rectangular Tower & Navigation Lane

Stage 2 (eastern rectangular tower) shall provide parking as follows:

- 121 spaces for the development as per the approved plans;
- 22 Commercial Spaces as a result of this DA (DA08/0907);
- Plus any additional spaces to cater for future change of use applications from tourist to residential;
- Plus any additional spaces to cater for current S96 Modifications before the Department of Planning

The parking spaces are to be allocated within the respective body corporates and include parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

[GENNS04]

7. The development works shall include the reconstruction, to a standard that is satisfactory to Council, of the north-south section of Navigation Lane for a distance of approximately 130m from the intersection of Bay Street to the right angled bend in

Navigation Lane, to tie into the previously reconstructed east-west section adjacent to the Twin Towns development. A Section 138 Application under the Roads Act is to be submitted to Council and approved **prior to release of the subdivision certificate**, and **prior to construction** commencing for works in the Navigation Lane road reserve. Applications for these works must be submitted on Council's standard s138 application form accompanied by the required attachments and the prescribed fee.

The application must include detailed engineering plans of the Navigation Lane reconstruction in accordance with all appropriate design standards including, but not limited to:

- i) Cross sections;
- ii) Long sections;
- iii) Pavement design;
- iv) Existing and finished levels;
- v) The extent and depth of pavement excavation required for construction;
- vi) A quantity survey, including any spoil material to be taken from the site for disposal;
- vii) Vehicle turning templates to Austroads design standards demonstrating access and egress from the Dolphins Hotel, including the hotel loading dock, is compliant and showing any road widening required. Any land to be dedicated as road widening must be clearly marked on the plans;
- viii) Details of the interface between the road works and the eastern frontage of the Stage 1 Ultima development;
- ix) A stormwater drainage design for the lane. This design shall demonstrate the contributing runoff catchment(s), existing drainage infrastructure to be retained, new infrastructure to be installed, connections from adjoining properties, and the ultimate discharge point in Bay Street;
- x) An erosion and sediment control plan for the works, in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*. Erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - Code of Practice for Soil and Water Management on Construction Works.

Once approved, the above works are to be completed to the satisfaction of the Director of Engineering & Operations **prior to release of the subdivision certificate**, unless satisfactory alternate arrangements are agreed to by the Director Engineering & Operations to bond any incomplete works.

- [GENNS07]
8. Should the Navigation Lane reconstruction require the modification to any Council water and/or sewerage infrastructure, a s68 Application for Water & Sewerage Works under the Local Government Act is to be submitted to Council and approved **prior to construction** commencing. Applications for these works must be submitted on Council's standard s68 Water & Sewerage Application form accompanied by the required attachments and the prescribed fee.
- [GENNS08]
9. A Section 138 Application under the Roads Act 1993 is to be submitted to Council and approved **prior to construction** of a new driveway access, or modification of an existing access, for the off-street carpark. Applications for these works must be submitted on Council's standard s138 application form accompanied by the required attachments and the prescribed fee.

10. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works prior to commencement of any work for the temporary car park.

11. A s68 Stormwater Application under the Local Government Act is to be submitted to Council and approved **prior to construction** of the off-street carpark. [GENNS10]

Applications for these works must be submitted on Council's standard s68 Stormwater Drainage Application form accompanied by the required attachments and the prescribed fee. The application must include:

- a) Detailed engineering plans of cut/fill levels and associated drainage for the carpark. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system.
- b) A detailed stormwater management plan (SWMP) for the occupational or use stage of the carpark prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*. Permanent stormwater quality treatment shall comply with section 5.5.3 of the *Tweed Urban Stormwater Quality Management Plan* and Councils *Development Design Specification D7 - Stormwater Quality*.
- c) A detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*. Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - Code of Practice for Soil and Water Management on Construction Works.

[GENNS11]

PRIOR TO COMMENCEMENT OF WORK

12. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

DURING CONSTRUCTION

13. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

14. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

15. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works approved under Section 138 of the Roads Act (minimum \$1,000.00) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

16. Prior to the issue of a subdivision certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

17. Prior to the issue of a subdivision certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

18. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

19. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- | | | |
|-----------------------------------|--|----------|
| (a) Open Space (Casual): | | |
| 9.604 ET @ \$597 | | \$5,734 |
| S94 Plan No. 5 | | |
| (b) Open Space (Structured): | | |
| 27.335 ET @ \$684 | | \$18,697 |
| S94 Plan No. 5 | | |
| (c) Shirewide Library Facilities: | | |
| 22.8935 ET @ \$688 | | \$15,751 |

S94 Plan No. 11		
(d) Bus Shelters:		
21.539 ET @ \$26		\$560
S94 Plan No. 12		
(e) Eviron Cemetery:		
24.045 ET @ \$131		\$3,150
S94 Plan No. 13		
(f) Extensions to Council Administration Offices & Technical Support Facilities		
2.6915 ET @ \$1996.8		\$5,374.39
S94 Plan No. 18		
(g) Cycleways:		
9.345 ET @ \$352		\$3,289
S94 Plan No. 22		
(h) Regional Open Space (Casual)		
9.583 ET @ \$855		\$8,193
S94 Plan No. 26		
(i) Regional Open Space (Structured):		
22.876 ET @ \$2327		\$53,232
S94 Plan No. 26		

[PCC0215/PSC0175]

20. Prior to the issue of a **Subdivision Certificate**, Works as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[PSC0735]

21. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

22. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over **ALL** public services/infrastructure on private property.
- (b) 21 car parking spaces within the eastern Tweed Ultima Building are to be allocated to and made available to the commercial strata in association with the western Tweed Ultima towers.
- (c) The western Tweed Ultima tower is to have parking allocated as follows, 40 commercial spaces (19 in western tower, and 21 in the future eastern tower or at grade as a temporary measure), 23 visitor spaces, 61 spaces for the tourist accommodation units, and 160 residential spaces (distributed equitably).
- (d) The clear nomination of the development nature of each unit. This will need to delineate between those units which are tourist accommodation units only, those units which are multi dwelling housing only (residential) and those units which are flexible and can be used for either multi dwelling housing (residential) or tourist accommodation (flexible units apply to only those units approved as per DA08/0907)

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

23. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) for all public infrastructure works to be transferred to Council. The Asset Creation Form is to be submitted to Council with the application for a Subdivision Certificate.

[PSC0855]

24. Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

25. Prior to issuing the subdivision certificate the applicant is to have:

- Modified DA456-10-2003 to incorporate an additional basement tier to accommodate the 22 additional spaces as required by DA08/0907. The second tier should further accommodate 14 more spaces to ensure the eastern tower of Tweed Ultima is self sufficient with parking requirements. Any future change of use applications may also generate additional parking demand and should be catered for within the new second tier basement;
- Surrendered that part of Development Consent No. DA456-10-2003 relating to any areas now redundant as a consequence of DA08/0907 and/or any S96 approved by the Department of Planning. Such surrender shall be by lodgement of the prescribed information, suitably executed, as required by Section 80A(1)(b) of the Environmental Planning and Assessment Act, 1979 (as amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000

[PSCNS01]

The reasons for the imposition of conditions are to minimise any adverse impact the development may cause and to give effect to the objectives of the Environmental Planning and Assessment Act, 1979.

The application was determined on: **8 July 2009**
The consent to operate from: **10 July 2009**
The consent to lapse on 10 July 2014 unless commenced prior to that date.

RIGHT OF APPEAL

If you are dissatisfied with this decision Section 97 of the Environmental Planning and Assessment Act, 1979 gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice.

Signed on behalf of the Tweed Shire Council

Lindsay McGavin, Manager Development Assessment
10 July 2009