

Seaside City Planning Agreement

Dated

RICHTECH PTY LTD ("Developer")
TWEED SHIRE COUNCIL ("Council")

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Seaside City Planning Agreement

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Seaside City Planning Agreement

Details

The Development

Seaside City is located along the Tweed Coast approximately three kilometres south of Kingscliff and between the developments of SALT and Casuarina Beach.

Seaside City comprises a 32 hectare parcel of land. Seaside City was approved for subdivision in the 1920s and comprises 205 titled lots (including the area between Cudgen Creek and the development). At the time of the making of this plan Richtech Ltd owned approximately 85% of the lots with the remainder individually owned. Cudgen Creek forms the western edge to the study area and the Pacific Ocean to the east.

Interpretation – definitions are at the end of the General terms

Parties	Council and Developer	
Council	Name	Tweed Shire Council
	ABN	90 178 732 496
	Address	Tumbulgum Road, Murwillumbah, New South Wales 2484
	Fax	(02) 6670 2429
	Attention	Mike Rayner
Developer	Name	Richtech Pty Limited
	ACN	010 977 535
	Address	Unit 6, 1990 Logan Road, Upper Mt Gravatt, Queensland, Q4122
	Fax	(07) 3849 2960
	Attention	Bruce Barclay

Recitals	
A	The Developer is the owner of the Land.
B	Seaside City comprises the Land, the Other Lots.
C	The Council has entered into this planning agreement in its capacity as the Consent Authority.
D	The Developer made the Development Applications and proposes to make further development applications, in relation to the Land.

- E** The parties agree that the Developer will carry out the Works and dedicate the Open Space. Further, the parties agree that the carrying out of the Works, and dedication of the Open Space comprise a material public benefit to be used or applied towards a public purpose for the purposes of Section 93F(1) of the Act.
- F** The Council has prepared a Section 94 Plan incorporating the Works as public amenities and services for Seaside City. Any inconsistencies between this Planning Agreement and the Section 94 Plan will not prevent the Developer from being properly reimbursed for the Works.
- G** As contemplated by section 93I(3) of the Act, the Developer has made the offer to enter into this planning agreement in connection with its Development Applications and understands that if development consent is granted, it will be required to enter into this planning agreement as a condition of the Development Consent.
- H** The Council agrees to reimburse the Developer for the value of the Works as they relate to, and benefit Other Lots in accordance with the terms of this planning agreement and to take into account the Open Space as a relevant matter for the purposes of a set-off pursuant to section 94(5) of the Act.
- I** The schedules to this Planning Agreement may be adjusted from time to time to accommodate amendments and changes to the costs of the Works to be undertaken by the Developer.

Governing law New South Wales

Date of deed See Signing page

Seaside City Planning Agreement

Operative Provisions

1 Planning Agreement under the Act

The parties agree that this deed is a planning agreement within the meaning of section 93F of the Act.

2 Application of this planning agreement

This planning agreement applies to:

- (a) the Land, the Other Lots and the Crown Lot;
- (b) the Development;
- (c) any Development Consent(s) granted in relation to the Development;
and
- (d) the Works and Open Space.

3 Operation of this planning agreement

The parties each agree that the terms of this planning agreement will operate and be effective from the commencement date of the Works.

4 Developer to carry out Works

- (a) The Developer will carry out and deliver the Works in accordance with the Development Consents for the purpose of providing amenities or services to the public, with works to commence within five (5) years from the date of the grant of an operative development consent and completed within seven (7) years from the date of the commencement of the Works.
- (b) The Total Cost of Works is to be adjusted following the completion of the Works with the costs to be based on the actual costs incurred in carrying out the Works.

5 Developer to dedicate open space

- (a) The Developer will dedicate the passive Open Space.
- (b) The parties agree that the dedication of the passive Open Space is a relevant matter for the purposes of consideration of a set-off pursuant to section 94(5) of the Act.

- (c) The embellishment costs for Open Space Contribution is to be adjusted for CPI at the end of each 12 month period on the Anniversary Date.
- (d) The Land value for the passive Open Space contribution is to be valued by a valuer jointly appointed by the parties (or by a valuer appointed by the Chairman of the Institute of Valuers, in the absence of agreement) immediately following the completion of the Works and will be adjusted for CPI at the end of each 12-month period on the Anniversary Date.

6 Repayment of some costs of the Works

6.1 Council to recover costs in accordance with Part 4, Division 6 of the Act

- (a) Given that a significant proportion of the Works will not only benefit the Land, but also the Other Lots, the Council agrees to collect from the Other Owners, in accordance with Part 4, Division 6 of the Act, the Repayment Value and to pay it to the Developer.
- (b) In order to collect the Repayment Value from the Other Owners, the Council has prepared the Section 94 Plan.
- (c) Upon the grant of development consent for any of the land within the Other Lots the Council will use its best endeavours to apply the Section 94 Plan and impose conditions requiring monetary contributions in respect of the public amenities and services listed in the Works Schedule.

6.2 Timing of payment of Repayment Value to Developer

- (a) The Council agrees to collect the relevant part of the Repayment Value applicable to each of the Other Lots on the first occasion it is entitled to obtain a monetary contribution in relation to the Other Lots in accordance with the Section 94 Plan.
- (b) Within 60 days of receipt by the Council of any part of the Repayment Value, adjusted for CPI increases in accordance with this planning agreement, the Council must forward the amount received to the Developer.

7 Application of s94 and s94A of the Act to the Development

7.1 Application of sections 94 and 94A of the Act

- (a) Subject to 6.1(c) of this planning agreement, section 94 of the Act does apply to the Land.
- (b) Section 94A of the Act does not apply to the Land.

- (c) The Developer and Council agree that there will be no other contributions required under Part 4, Division 6 of the Act in respect of the Land in connection with the Works or related matters.
- (d) The Developer and Council agree that there will be no other contributions required under Part 4, Division 6 of the Act in respect of the Land in connection with the provision of open space for structured, passive or conservation purposes, unless there is an increase in the population of the land. Any increase in the population may require further areas of structured open space to be provided beyond the boundaries of Seaside City. However, any increase in population requiring additional passive open space must be provided within the boundaries of Seaside City. Any further additional areas will be based on Council's standard of 2.83 hectares per 1,000 persons as follows: 1.7 Structured Open Space and 1.13 Passive Open Space adjusted for permanent/tourist use.
- (e) Notwithstanding this planning agreement, the Council is entitled to levy the Developer for head works charges for sewerage and water in connection with the Land.

8 Registration of this planning agreement

8.1 Ownership of the Land

The Developer is the registered owner of the Land and consents to the lodgement of this planning agreement for registration by the Registrar-General either:

- (a) in the relevant folio of the Register; or
- (b) in the General Register of Deeds if this planning agreement relates to land not under the Real Property Act 1900,

as the case may be.

9 Review of this planning agreement

This planning agreement may be reviewed or modified by the agreement of the parties using their best endeavours and acting in good faith.

10 Dispute Resolution

If a dispute between any of the parties arises in connection with this planning agreement or its subject matter, then the process and procedures set out in Schedule 3 ("Dispute Resolution") will apply.

11 Notices

11.1 Form

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

11.2 Delivery

They must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

11.3 When effective

They take effect from the time they are received unless a later time is specified.

11.4 Receipt - post

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

11.5 Receipt - fax

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

12 Council to provide information

The Council agrees to give the Developer, upon written request, all information to enable the Developer to determine whether the Council is complying with this planning agreement.

13 Assignment and dealings

Either party may assign or otherwise deal with its rights under this planning agreement with the written consent of the other party.

14 Costs

Each party is to pay its own costs regarding the negotiation, preparation, execution, stamping and registration of documents in relation to this planning agreement.

15 Further Acts

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this planning agreement and all transactions incidental to it.

16 Governing Law and Jurisdiction

16.1 Governing law

This planning agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

16.2 Serving documents

Without preventing any other method of service, any document in an action may be served on a party by being delivered or left at that party's address in the Details.

17 Representations and warranties

The parties represent and warrant that they have power to enter into this planning agreement and comply with their obligations under the planning agreement and that entry into this planning agreement will not result in the breach of any law.

18 Modification

The parties may by written agreement amend the Works Schedule or any other aspect of this planning agreement. No modification of this planning agreement will be of any force or effect unless it is in writing and signed by the parties.

19 Waiver

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this planning agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another party.
- (b) A waiver by a party is only effective if it is in writing.
- (c) A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not

to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

20 GST

If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this planning agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.

21 Effect of Scheduled terms and conditions

The parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this planning agreement.

22 Definitions and Interpretation

22.1 Definitions

Act means the Environmental Planning and Assessment Act, 1979 (NSW).

Anniversary Date means 12 months from the date of this planning agreement, and the reoccurrence of the date in each subsequent 12 month period.

Authorised Officer means in the case of any party, a director, secretary or an officer whose title contains the word “manager” or a person performing the functions of any of them or any other person appointed by that party to act as an Authorised Officer for the purpose of this planning agreement.

Authority means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes, where applicable, an accredited certifier accredited under section 109T of the Act.

Business Day means a day on which banks are open for general banking business in New South Wales (not being a Saturday, Sunday or public holiday in that place).

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired by the parties in relation to the other’s activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or

- (d) is information which may reasonably be considered to be of a confidential nature.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

Council means the party described as such the “Details” of this planning agreement.

CPI means Consumer Price Index as published by the Australian Bureau of Statistics.

Crown Lot means Lot 500 in Deposited Plan 727420.

Developer means the party described as such the “Details” of this planning agreement.

Development means the development described in the Development Applications.

Development Applications means the applications for Development Consent provided in Development Applications Nos:

- (a) DA 05/1464;
- (b) DA 05/0793; and
- (c) DA 05/0775,

lodged with the Council on or about 15 December 2005 in connection with Seaside City, as amended from time to time.

Development Consent means any consent under the Act to the Development Applications, as amended, modified, varied or replaced from time to time.

Environmental Audit Statement means a certificate, pursuant to the Contaminated Land Management Act 1997 (NSW), from an environmental certifier certified by the Department of Environment and Conservation certifying that the Land is suitable for the following purposes:

- (a) residential with accessible soil, including garden (minimal home-grown produce contributing less than 10% fruit and vegetable intake), excluding poultry;
- (b) day care centre, preschool, primary school;
- (c) park, recreational open space, playing field; and
- (d) commercial/industrial,

without being subject to compliance with an environmental management plan.

General Register of Deeds means the land registry so entitled at the New South Wales Department of Lands.

GST has the meaning it has in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

Land means the whole of the land comprised in the titles described in Schedule 1.

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

Minister means the Minister for Planning.

Open Space means the land to be dedicated by the Developer as set out in Schedule 3 and as indicated on the plan annexed and marked "A".

Open Space Contribution means the value of the Open Space to be dedicated by the Developer as set out in the Open Space Schedule.

Other Lots means Lots 1-3, 7-13 and 16-18 in Section 1, Lots 1-9 in Section 2, Lots 9-10 and 13-16 in Section 5 and Lots 5-8 and 14-15 in Section 6 of Deposited Plan 14895, and includes, where appropriate, Crown Land.

Other Owners means the registered proprietors of the Other Lots.

Register means the Torrens title register held by the New South Wales Department of Lands.

Registrar-General means the Registrar-General of the land registers at the New South Wales Department of Lands.

Release and Discharge Terms means the obligations imposed on the relevant parties under, and by virtue of, Clause 7.2 ("Release and discharge of this planning agreement").

Repayment Value means a sum equal to 16.17 per cent of the Total Cost of the Work and which is collected by the Council on a pro rata basis of 0.49 per cent per lot for each of the lots comprising the Other Lots, and as adjusted for any CPI increase on each Anniversary Date.

Seaside City means the whole of the land in Deposited Plan 14895.

Section 94 Plan means a contributions plan within the meaning of Part 4, Division 6 of the Act prepared in relation to the Works.

State means the State of New South Wales.

State Government means the government of New South Wales.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of Council.

Total Cost of the Works means the estimated cost of the Works to be incurred by the Developer as set out in the Works Schedule.

Works means the obligations imposed on the Developer (including the benefits to be provided by the Developer) under, and by virtue of, Schedule 2 - Works Schedule.

Works means the work referred to in the Works Schedule.

Works Schedule means the schedule of Works in Schedule 2 of this planning agreement.

Works Schedule means the terms and conditions imposed on the relevant parties under, and by virtue of, Schedule 2.

EXECUTED as a deed

Seaside City Planning Agreement

Schedule 1 - Land (clause 2)

Land means the land comprising the following folio identifiers:

Lot 1971 in Deposited Plan 133919

Lots 4-6 and 14-15 of Section 1, Lots 10-36 of Section 2, Lots 1-36 of Section 3, Lots 1-18 of Section 4, Lots 1-8 and 11-12 of Section 5, Lots 1-4, 9-13 and 16-32 of Section 6, Lot 500, Deposited Plan 727420, Lots 1-32 of Section 7 and Lots 1-16 of Section 8, Deposited Plan 14895, Parish of Cudgen, County of Rous, situated at Casuarina Way, Seaside City, Kingscliff South

Seaside City Planning Agreement

Schedule 2 - Works Schedule (clause 4)

1 Developer's Works

1.1 Summary of Works

The Developer agrees to provide:

- (a) Land dedication for Open space and roadworks (see Schedule 3 of this Agreement);
- (b) Embellishment of the passive open space;
- (c) Clearing and earth works;
- (d) Road works and landscaping;
- (e) Prior construction of Catherine Street in early 2001;
- (f) Drainage and water quality management;
- (g) Sewerage reticulation;
- (h) Water supply;
- (i) Cycleways;
- (j) Electrical reticulation;
- (k) Material testing;
- (l) Eastern and Western Vegetation Management Works;
- (m) Professional consultant fees; and
- (n) Other fees.

1.2 Clearing and earth works

- (a) Development of the site for urban purposes will require clearing of the existing vegetation, as well as bulk earth works and allotment shaping to facilitate road construction and storm water drainage. The following works are anticipated:

Clearing and disposal of vegetation (4 ha)

Bulk earth works (130,000 m³)

Allotment shaping (192 lots)

- (b) The total cost of these clearing and earth works is estimated at \$1,590,000.00.

1.3 Road works and landscaping

- (a) Construction of the roads contained within the area of Seaside City are acquired to provide access to all lots. The road areas required to be constructed include the following:

Ocean Avenue	320 m x 22 m of pavement
Carne Street	730 m x 7.5 m of pavement
Lorna Street	210 m x 5.5 m of pavement
Lorna Street	90 m x 7.5 m of pavement
Lorna Street	430 m x 11 m of pavement
Unnamed end roads	340 m x 7.5 m of pavement
Parking spaces south	43 spaces x 5.4 m of pavement
Ocean Avenue West	60 m x 7.5 m of pavement
Western lane way	790 m x 7.5 m of pavement
Eastern lane way	790 m x 7.5 m of pavement

- (b) The road works component also include a requisite allowance for the provision of conduits in the road reserve for other infrastructure such as electricity and telecommunication.
- (c) The total cost of road works and landscaping is estimated at \$2,749,800.00.

Note: Schedule 3 sets out the land required for road dedication.

1.4 Prior construction of Catherine Street in early 2001

- (a) At its own cost, the Developer constructed Catherine Street in early 2001 thus providing the extension of Casuarina Way to the north. In addition, construction of Catherine Street facilitates the future development of Seaside City and, accordingly, the costs of the works is a relevant matter for set off against any section 94 contributions the Developer may otherwise be liable to pay.
- (b) The cost of constructing Catherine Street, including road works, earth works and drainage was \$1,200,000.

1.5 Drainage and water quality management

- (a) Richtech understands that the Department of Planning requires the discharge of excess storm water to be into Cudgen Creek rather than through the Dunal zone to the ocean. Control of water quality and storm water run off has been a key element of all other development

projects undertaken in the South Kingscliff area. The Developer proposes to undertake installation of hard drainage infrastructure within the development area itself, allowance for over land flow path and provision of infiltration basins and other water quality control features.

- (b) The estimated cost of drainage and water quality works is \$1,101,000.00.

1.6 Sewerage reticulation

- (a) The Developer proposes to provide sewerage reticulation services, including the provision of an internal pipe system, a pumping station and rising main to deliver northward flow to the existing "SALT" system.

- (b) The estimated cost of sewerage reticulation services is \$538,000.00.

1.7 Water supply

The Developer proposes to provide water supply services within the development site (as no external works are required) at an estimated cost of \$163,000.00.

1.8 Cycleways

The Developer proposes to provide cycleway/walkways on the eastern and western boundaries of the site to connect with existing services which either have been, or will be, constructed south and north of Seaside City. The estimated cost of providing these facilities is \$208,650.00.

1.9 Electrical reticulation

The Developer proposes to provide electrical reticulation to each lot within the development site at a cost of approximately \$2,000 per allotment. The total estimated cost of these works is \$429,000.00.

1.10 Materials Testing

The Developer proposes to provide materials testing covering two principal components. Firstly, to validate the compaction density required for the pavements in road construction. Secondly, to achieve Level 1 certification for the compaction of any fill material placed on allotments, in compliance with the relevant Australian Standard for construction contract management. The total estimated cost for material testing: \$50,000.

1.11 Eastern and Western Vegetation Management Works

The Developer proposes, in lot 500 on the eastern side and in lot 1971 on the western side, to carry out clearance works, ground preparation, extensive re-vegetation and maintain for a 5 year period. The total estimated cost of these works is:

- Eastern \$1,560,875.00

- Western \$1,547,000.00
- TOTAL \$3,107,875.00

1.12 Professional Consultants Fees

The Developer will engage professional consultants for the development and supervision of the works at an estimated cost of \$1,380,000.00.

1.13 Other Fees and Charges

The Developer proposes to provide the administration fees that apply to the development of Seaside City: \$157,000.

1.14 Embellishment of Passive Open Space

The Developer will bear the costs of the embellishment and improvement of the proposed passive open space. The costs of embellishment and improvement are detailed in the Section 94 Plan. The total cost of the embellishment is estimated at \$2,200,580.00.

Seaside City Planning Agreement

Schedule 3 - Open Space and Road Dedication Schedule

Seaside City Section 94 Contribution Plan

Richtech Lots to be Dedicated: \$11,655,000

Lot to be Dedicated	Reason for Dedication	Area to be Dedicated (m ²)	Estimated Value
1/5	Park	1,012	\$1,000,000
1/6	Road (Ocean Ave)	1,505	\$400,000
32/6	Road (Ocean Ave)	1,290	\$350,000
1/7	Road (Ocean Ave)	1,170	\$300,000
32/7	Road (Ocean Ave)	1,012	\$300,000
9/6	Road and Park	1,644	\$400,000
12 m of 24/6	Park	774	\$210,000
25/6	Park	1,290	\$350,000
26/6	Park	1,290	\$350,000
10 m of 9/7	Park	855	\$150,000
10 m of 24/7	Park	506	\$150,000
10 m of 9/8	Park	506	\$150,000
10 m of 10/2	Park	699	\$200,000
22/2	Park	1,290	\$350,000
23/2	Park	1,290	\$350,000
24/2	Park	1,290	\$350,000
25/2	Park	1,290	\$350,000
26/2	Park	1,290	\$350,000
27/2	Park	1,290	\$350,000
14 m of 21/2	Road	903	\$245,000
10 m of 10/3	Park	585	\$150,000
8m of 9/3	Road	469	\$120,000
10 m of 27/3	Park	506	\$150,000
8 m from 1-18/4	Road (Casuarina Way)	2,768	\$830,000
8 m from 1-16/8	Road (Casuarina Way)	2,408	\$720,000
8 m from 19-36/2	Road (Lane widening)	2,768	\$750,000
8 m from 17-32/6	Road (Lane widening)	2,408	\$650,000
8 m from 1-18/3	Road (Lane widening)	2,768	\$710,000
8 m from 1-16/7	Road (Lane widening)	2,408	\$620,000
8 m from 16-17/7 & 17/6	Road (Lane widening)	1,184	\$300,000
TOTAL		40,468	\$11,655,000

Seaside City Planning Agreement

Schedule 4 - Dispute Resolution (clause 10)

1 Dispute Resolution

1.1 Notice of Dispute

If a dispute between any of the parties arises in connection with this planning agreement or its subject matter, then any party may give to the other parties a notice of dispute in writing adequately identifying and providing details of the dispute.

The parties must continue to perform their respective obligations under this planning agreement if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each party indemnifies the other parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying party.

1.2 Further Steps Required Before Proceedings

Any dispute between the parties arising in connection with this planning agreement or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each party (under written notice to the other parties) to represent that party.

1.3 Disputes for expert determination

If the mediation referred to in paragraph 1.2 ("Further Steps Required Before Proceedings") has not resulted in settlement of the dispute, any one party may, with the prior written consent of each other party, refer the matter to expert determination in accordance with paragraph 1.4 ("Choice of expert"), such expert to act in accordance with paragraph 1.6 ("Directions to expert").

1.4 Choice of expert

A dispute to be referred to an expert in accordance with paragraph 1.3 ("Disputes for expert determination") must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the parties; or
- (b) in the absence of agreement within 5 Business Days of the agreement of the parties to refer the matter to expert determination under paragraph 1.3 ("Disputes for expert determination"), appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the parties cannot agree as to the relevant field, any one party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.

1.5 Requirements for expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
- (c) must inform the parties before being appointed the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.

The parties must enter into an agreement with the expert appointed under this Schedule 9 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

1.6 Directions to expert

In reaching a determination in respect of a dispute under paragraph 1.3 ("Disputes for expert determination"), the independent expert must give effect to the intent of the parties entering into this planning agreement.

1.7 Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both parties are present and on receipt of written submissions from one party ensure that a copy of such submission is given promptly to the other party; and
- (c) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

1.12 Other courses of action

If the mediation referred to in paragraph 1.2 ("Further Steps Required Before Proceedings") or the expert determination required or agreed under paragraph 1.3 ("Disputes for expert determination") has not resulted in settlement of the dispute, any one party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

1.13 Confidentiality of information

The parties agree, and must procure that the mediator and expert agrees as a condition of his or her appointment:

- (a) subject to paragraph (b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 1.13 ("Confidentiality of information"); or
 - (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (d) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (e) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (f) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

Seaside City Planning Agreement

Signing page

DATED: 9.1.2007

SIGNED by me)
as delegate of **TWEED SHIRE**)
COUNCIL in its capacity as owner)
of the Land and I certify that I have)
had no notification of revocation of)
this delegation: and in the presence)
of:)

J Morgan)
Signature of witness)

JENNIFER JANE MORGAN)
Name of witness (block letters))

M Ryan

Signature of delegate

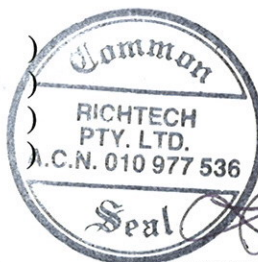
, delegate of Tweed Shire Council

THE COMMON SEAL of)
RICHTECH PTY LIMITED is duly)
affixed by authority of its directors in)
the presence of:)

B Dullay)
Signature of authorised person)

DIRECTOR)
Office held)

BRUCE HAMILTON BARCLAY)
Name of authorised person)
(block letters)



Z Lorraine Creswick)
Signature of authorised person)

DIRECTOR)
Office held)

ZERMA LORRAINE CRESWICK)
Name of authorised person)
(block letters)