MALLESONS STEPHEN JAQUES

Seaside City Planning Agreement

Dated

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

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Details

The Development

Seaside City is located along the Tweed Cost 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 Schedulised terms and conditions

The parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations where 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 publish 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

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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 m^3)

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.

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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.

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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:

.....
Signature of witness

JENNIFER JANE MORGAN
Name of witness (block letters)

.....
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:

RICHTECH PTY. LTD. A.C.N. 010 977 536 Seal

.....
Signature of authorised person

DIRECTOR
Office held

BRUCE HAMILTON BARCLAY
Name of authorised person (block letters)

.....
Signature of authorised person

DIRECTOR
Office held

ZERNA LORRAINE CRESWICK
Name of authorised person (block letters)

Land and Environment Court
of New South Wales

CITATION : NSWLEC 174	**Richtech Pty Limited v Tweed Shire Council [2007]**
PARTIES :	APPLICANT Richtech Pty Limited RESPONDENT Tweed Shire Council
FILE NUMBER(S) :	10217 of 2006
CORAM:	Hoffman C
KEY ISSUES:	Development Application :- staged development concept plan and stage 1 infrastructure, 1927 subdivision previously unbuilt, existing lots under multiple ownership, coastal erosion, acid sulphate soils, bushfire, wetland protection, public access, weed removal, bulk earthworks, re-contouring, vegetation rehabilitation, desired future character and sense of place, endangered species.
LEGISLATION CITED:	Environmental Planning and Assessment Act 1979 Local Government Act 1919 Tweed Shire Local Environmental Plan 2000 Tweed Shire Development Control Plan No. 55 Tweed Shire Development Control Plan No. 2 Tweed Shire Development Control Plan No. 16 Tweed Shire Development Control Plan No. 47 North Coast Regional Environmental Plan 1988 State Environmental Planning Policy No 55 State Environmental Planning Policy No 65 Planning for Bushfire Protection 2001 New South Wales Coastal Design Guidelines
CASES CITED:	Stockland Pty Ltd v Manly Council [2004] NSWLEC 472
DATES OF HEARING:	14/03/2007, 15/03/2007 and 16/03/2007
EX TEMPORE JUDGMENT DATE :	16 March 2007
LEGAL REPRESENTATIVES:	APPLICANT Mr M. Craig, SC instructed by D. O'Donnell, solicitor RESPONDENT Ms S. Duggan, barrister instructed by Mr M. Delany, solicitor of Stacks Law Firm

JUDGMENT:

THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

Hoffman

16 March 2007

10217 of 2006 Richtech Pty Limited v Tweed Shire Council

JUDGMENT

1 This is a Class 1 Appeal No. 10217 of 2006 between Richtech Pty Limited and Tweed Shire Council, in respect of the deemed refusal of consent for a concept plan and stage 1 infrastructure development on a parcel of land known as Seaside City, Tweed Coast, south of Kingscliff. Seaside City is a 205 lot paper subdivision in DP 14895, issued in 1927. It has never been developed except for a through road shown as Catherine Street on DP 14895. The road is now called Casuarina Way, and is the connecting road for several new developments along the coastal strip.

2 On the west of Casuarina Way and within Seaside City is a single row of allotments fronting the street, and at their rear is a 9 ha lot called Lot 1971. The latter occupies all the land between the subject property and Cudgen Creek. The subject has been sand mined for rutile in the past and now consists of undulating sand hills, bitou bush and native coastal vegetation mixed together.

3 The northern neighbour to Seaside City is a new subdivision development called Salt. It has a Peppers Resort on it, plus allotments for single and multiple dwellings and holiday accommodation.

4 Along the common boundary but within Seaside City, is a laneway running east-west from boundary to boundary. On the north side of the lane, are vacant lots within Salt. They front their own road running east-west parallel to the laneway. Across Seaside City there are five paper roads running north-south, parallel to and including Casuarina Way. The eastern most is called Lorna Street, and it is proposed to connect at its northern end into a similar road in Salt. The other three north-south streets terminate on the laneways along the northern boundary and the southern boundary.

5 The southern neighbour of Seaside City is another new development called Casuarina. It, like Salt, has allotments for single and multiple dwellings, holiday accommodation, and a resort, and a village centre. Along the southern common boundary with Casuarina there is another laneway within Seaside city running east-west boundary to boundary. Whilst Casuarina Way connects through, the other north-south streets in Seaside City, including Lorna Street, terminate at the southern laneway. Within Casuarina a number of cul-de-sacs terminate near the laneway so that pedestrian and cycle access through may be obtained but not vehicular. There are mainly detached houses or dual occupancies on lots within Casuarina adjoining the common boundary.

6 Within the eastern border of Seaside City and on the east of Lorna Street, is a single row of

allotments, the rear of those lots is the eastern boundary of Seaside City. Beyond it is another allotment called Lot 500. It contains the frontal dune of the ocean beach, and it runs north-south for the length of Seaside City. East of Lot 500 is the beach that runs many kilometres from Kingscliff in the north to Brunswick Heads in the south.

7 The east-west roads in Seaside City terminate at Lot 500 and Lot 1971. Apart from the two lanes on the north and the south boundaries, there are three other east-west streets. One through the centre of the subdivision is called Ocean Avenue, the other two are laneways half way between Ocean Avenue and the north and the south boundaries.

8 Because Lot 500 and Lot 1971 have been granted consent by Tweed Shire, they play no role in this appeal suffice to say that both are intended for conservation and recreation purposes and within Lot 1971 is a stormwater infiltration zone to which proposed stormwater drains will be laid from the development. Within Lot 500 the consent provides for bitou bush and weed removal, revegetation, provision of beach accesses plus a north-south cycleway that will connect to similar paths on the east of Salt and Casuarina. The cycleway comes four kilometres from Kingscliff in the north, and will eventually run along the dune system for a number of kilometres to the south through new coastal developments.

9 The original development application was lodged in 2005. Richtech, the applicant, owns 174 of the 205 lots. The unbuilt roads and lanes within the development are Crown roads by virtue of the *Local Government Act 1919.*

10 The complexity of ownerships, the unbuilt nature of the subdivision, and the environmental aspects caused the Council to prepare a Development Control Plan now called *DCP No. 55 Seaside City version 1.0.* This was drafted, exhibited, objections considered, and finally adopted on 25 October 2006. The preparation of the DCP was in fact mandated by the *Tweed Shire Local Environmental Plan 2000* amendment *No 3,* that inserted cl 53C into the statute in September 2006. That clause allowed in the 2(e) Residential Tourist zone, uses such as detached dwellings and dual occupancies, in addition to the tourist and holiday accommodation and associated facilities.

11 The clause also requires a range of aspects to be investigated in the DCP and any subsequent development including environmental, infrastructure, traffic, coastal erosion, acid sulphate soils, bush fire, coastal access, any threatened species, buffer areas, wetland protection, vegetation weed removal, and native coastal species rehabilitation, and also the investigation of appropriate land uses to create a sense of place and a desirable character for any proposed development.

12 The DCP provides a land use plan that I was told had input from the relevant state departments including the Government Architect, the Coastal Engineering Branch of the Public Works Department, and the Rural Fire Service. The plan widens Ocean Avenue and provides a core area along it for a village centre and tourist accommodation. It leads from Casuarina Way to the Lot 500 coastal erosion buffer and coastal access and recreation land. North and south of the core area is proposed multi-dwelling housing and holiday accommodation, local parks, and then further away from the core, individual dwellings.

13 The application had asked the Council to approve a concept plan as it complies exactly with the adopted DCP land use plan, but only for the Richtech lots west of Lorna Street. The concept plan is part of the application for a staged development required under s 83(b) of the *Environmental Planning and Assessment Act 1979.* The statute allows the consent authority to approve the concept plan and Stage 1 of the staged development, any stage after that requires

separate consent.

14 The application does include a Stage 1 to carry out infrastructure works of re-contouring the undulating sand dunes to provide appropriate building platforms and roads, the provision for sewerage, storm water drainage, vegetation clearing and rehabilitation together with dedication of the lots or parts of the lots for public open space, road widening and drainage.

15 Tweed Shire Council has recently completed an assessment of the development application and resolved to approve Stage 1 of the project, for the works outlined above, subject to withdrawal of the appeal lodged by Richtech, but did not at the time resolve to approve the concept plan. The applicant seeks approval of the concept plan in addition to approval of the Stage 1 works with some amendment to conditions within a development consent for DA 05/1464. The proceedings before the Land and Environment Court pursuant to DA 05/1464 are therefore in respect of:

(a) the concept plan and
(b) amendments which the applicant seeks to the conditions imposed by the council for Stage 1 works.

16 At the time of the hearing I was told there is now full agreement between the Council and the applicant on the terms and conditions for the concept plan approval and the amended conditions for the Stage 1 engineering works. The concept plan component of DA 05/1464 relates only to the 174 lots owned by Richtech, within Seaside City together with proposed access points extending east off Lorna Street to the beach. This land is shown in colour on the February 2007 version of the concept plan. The Stage 1 land clearings and engineering components of the application relate to all of the Seaside City land which compromises 205 existing lots of which 31 lots are not owned by Richtech.

17 DA 05/1464 does not include Lot 500, the frontal dune or Lot 1971, the creek side lands. The land and the subject of DA 05/1464 falls within two zones under *Tweed Local Environmental Plan 2000*, as follows, zone 2(e) Residential Tourist, zone 7(f) Environmental Protection (Coastal Lands).

18 The current development application does not seek consent for subdivision of any development lots, or the construction of any buildings and no demand for public open space arises from this application. The concept plan does however provide for the creation of public open space in the future in accordance with DCP 55 Seaside City. The concept plan is the last plan version advertised by Council and is identified as overall concept plan revision 3(H)(i) prepared by Malcolm Middleton Architects/EDAW dated 27 June 2006.

19 The parties tendered consent orders and conditions in Exhibit 1. The relevant concept plan and engineering drawings are in Exhibit 2 tab 17 and are listed by drawing reference numbers in Exhibit 1. There were 93 objectors of whom 26 are owners or part owners of lots in Seaside City. They have been notified of the consent orders and of the date of this hearing.

20 At the hearing only some of the objectors wished to give evidence, they were:

- Mr R Gill of 11 Conifer Street Carindale Queensland,
- Mr H Gill of 11 Conifer Street Carindale Queensland,
- Ms N Nunan of PO Box 605 Tweed Heads New South Wales.

They represent the Gill Estate, being Lots 11, 12 and 13, section 1, in DP 14895, and giving

evidence for them in Exhibit 6 was Mr McCormack solicitor.

- Part owner of Lot 5, section 5, DP 14895 was Ms Frizelle of PO Box 1687 Southport Queensland.
- Part owner of Lots 15 and 16, section 5, DP 14895 were Mr S Blair and
- Ms P McKenzie-Blair of 142 Mallawa Drive Palm Beach Queensland. Assisting them was Mr D Gibson consultant town planner.
- Mr B Ring real estate agent also represented Mr AR and Mr D St George, of 4 Small Street Wagga Wagga New South Wales.

21 For the applicants evidence was given by:

- Mr N Ingham consultant town planner and
- Dr T Johnson civil engineer and author of the Stage 1 engineering drawings.

22 All witnesses gave oral evidence during the view of the site, and did not wish to return to the Court House for recording of their testimony. Their written objections and reports were tendered by the parties.

23 All the owners, part owners and owner bodies, such as trusts and deceased estates, in Seaside City, had given owners consent to the Stage 1 infrastructure, development application lodged by Richtech.

24 Those who gave evidence at the hearing had several major concerns. One is the location of the zone 7(f) Environmental Protection (Coastal Lands) boundary with zone 2(e) Residential Tourist zone. The latter zone covers the majority of Seaside City. The 7(f) zone line passes through all of the lots on the east side of Lorna Street. It commenced at about a quarter the depth of the lots near the north-east boundary of Seaside City, and proceeds southwards in a diagonal direction to include about two thirds the area of the lots in the south-east corner. The objectors seem to think the Court could deal with the zone boundary.

25 Mr Ring said his discussions with coastal engineering experts had shown the zone line had not accounted for sand accumulation along the beach that would allow the zone to be moved eastwards.
26 The 7(f) zone is for coastal erosion buffer zone and allows minimal development. The zone is a statutory boundary and apart from it being outside the area of the Richtech application, the Court has no power in this appeal to move the zone line. That would require the Council and the Department of Planning of NSW and its Minister to determine.

27 As some consolation the Council has attempted to give some benefit to the southern most 9 Lots in Lorna Street, being the most affected lot owners, *Inter alia* by including in the DCP special provisions to exchange 4 m of Lorna Street with 4 m of the 7(f) zone of each of the 9 Lots.

28 In regard to all of the lots east of Lorna Street, the DCP also allows front setbacks of only 3 m with up to 50% of the frontage of the lot to be permitted to have a 1.5 m front setback and zero side setbacks for most of the side boundaries of each lot. The DCP also allows a 4 m cantilever of an upper floor deck over the 7(f) zone facing the ocean.

29 Another concern of objectors is that their lots have a 2-storey height limit for those lots east of Lorna Street, when the rest of Seaside City has a 3-storey limit. They also noted that within the Salt development and the Casuarina there is a 3-storey limit. They insisted they had been told by Councillors and staff during the preparation of the DCP, that 3-storey height limit would apply to their land too. Once again their lots are not part of the subject application and any change to the height limit is subject to council amending the DCP or considering an individual application on their lots. This hearing cannot deal with it.
30 Another concern was to do with Lots 12, 15 and 16 in Section 5, adjoining and near the boundary with the Salt development in the north-east corner of Seaside City.

31 The Salt development had been allowed to raise its land with fill and retain it against the common boundary with Seaside city using a masonry wall varying between about 1.2 m and 2 m in height. The wall adjoins the 6 m wide laneway previously referred to along the common boundary. The road servicing these lots within the Salt development is sloped down to the common boundary with the subject property to meet up with the proposed construction of Lorna Street.

32 DCP No 55 does not show land fill on Lots 12, 15 and 16 similar to the Salt development. The lots in Salt, fronting the cycleway and the erosion buffer in front of the Salt development have a 3-storey height limit. The objectors said this is unfair and unreasonable to require that their land should not be filled, and should have a 3-storey height limit instead of 2-storey. Further that the provisions of the DCP should be changed to allow similar provisions to Salt. Otherwise it means their land being on the south side would be overshadowed in winter by any 3-storey house or dual occupancy built on the adjoining vacant lot. And, being at a lower land level, and 2-storey height limit, any building on their land would be dwarfed by the neighbour, on the Salt development. This would create an unreasonable impact on the streetscape, and the amenity impacts on any development on their land.
33 They asked that the Court should condition the Stage 1 infrastructure works to require Lorna Street to be raised to provide for a level access to their land, and for fill to be permitted to a similar level to the adjoining Salt allotment on the common boundary, and to taper the fill back down to the proposed levels further south within Seaside City.

34 Dr Johnson said that the road on Salt, that Lorna Street is to connect with, had been constructed as could be seen on the site, during the view. The road is constructed to the Council's conditions and to its requirements and specified levels. To raise Lorna Street within Seaside City would mean raising the road within the Salt development and the latter is probably beyond the Court's power. It would also mean importing fill as Dr Johnson said, when the re-contouring design of the site and infrastructure had balanced cut and fill volumes in accordance with Council's DCP 47. It would also mean affecting lots on the west side of Lorna Street involving other owners.

35 The respondent put that the DCP 55 provisions had established what the Council wanted for Lorna Street, and the subject application complies with that. Given the wide public and owner consultation in the preparation of DCP 55, the precedent case of S*tockland Pty Ltd v Manly Council* [2004] NSWLEC 472 gave the control plan considerable weight against any amendment.
36 I agree with that submission. In any case the Council's advocate said the owners of the lots could, in any development application to Council for a building on their own lot, ask to be allowed to fill. And it would mean only an inclined driveway if Council allowed it, the same as occurred on some of the Salt allotments that are filled above the level of the adjoining road.

37 Mr Ingham noted that the 6 m wide laneway would separate any house on the adjacent Salt

allotment from any building on the nearest lot in Seaside City. That would provide some separation to minimise overshadowing.

38 I have concluded that the determinant in this particular objection is the existing road in Salt that Lorna Street must connect to. I cannot, in this appeal, require the road on the Salt land to be raised in order to connect with any raising of Lorna Street on the subject land. As a consequence Lorna Street should be constructed as designed.

39 One further matter I would like to comment upon arises from Exhibit 6 Mr McCormack's objection on behalf of the trustees of the Gill Estate. Apparently the father of the three trustees was a Gallipoli veteran and bought six lots in 1927. The history indicates three of the lots were lost in unfortunate circumstances in 1932, and in 1987 the Public Works Department of New South Wales established the first one in 100 year coastal erosion zone that has evolved into the 7(f) zone. The trustees allege they have seen technical reports that indicate the 7(f) zone line may be able to be relocated. They are also concerned about the narrowing of Lorna Street. All these changes over 80 years have seen their land affected, in their opinion, from a potential of say 92 holiday flats on the 6 Lots as measured against the Casuarina development medium density units, and reduced to perhaps three dual occupancies.

40 Whilst I can appreciate the feelings they may have, these matters are beyond the power of this appeal, that is only for the Richtech land in the zone 2(e) area, and for the Stage 1 infrastructure works that are mainly within the Crown Road reserves.. Any redress they may seek or review of existing statutes and development controls need to go before the Council, and some are within Council's control and others, if supported, need to go onwards to the New South Wales Department of Planning and its Minister. The Council appears to be carrying out its role of environmental protection and orderly control of development that has been established by State Government over the last 80 years of experience in natural disasters along the coast and the necessary protection of community from future adverse impacts by planning controls.

41 Another matter I will comment upon is draft condition 3.8 in Exhibit 1 requiring monitoring of the site for radiation. Dr Johnson explained that it is to do with the former sandmining for rutile of the coastal areas between Kingscliff and Brunswick Heads in the last 40 years. The sand dredgers took the rutile and zircon but the ilmenite largely remained in the tailings. Ilmenite has a radiation level that in high concentrations can be unacceptable.

42 In developing Casuarina and Salt, tailing dumps were found that required the ilmenite to be reduced in concentration to acceptable levels by mixing with the sand during re-contouring operations. Mr Rich who has personal knowledge of the previous sandmining operations said he knew of the tailings dumps on the Salt and the Casuarina land but to his knowledge there is no such dump on Seaside City.
43 Dr Johnson agreed with this from the findings of the draft Seaside City Radiation Report of 2006, and said the condition of consent is only to ensure the re-contouring operation does not inadvertently create any pockets of concentration of ilmenite.

44 The applicant and the Council have agreed on a draft Seaside City Planning Agreement under s 93 of the *Environmental Planning and Assessment Act* 1979. It must be entered into as a condition upon any granting of any consent. This relates to the carrying out of infrastructure works proposed and the dedication of land. It incorporates the relevant provisions of the *Tweed Shire s 94 Plan No 28 Seaside City* adopted by the Council on 23 October 2006. The s 94 Plan sets out the public infrastructure works needed as a result of the development of Seaside City and the developer contributions for works, or land in lieu of

contributions, that are required.

45 Overall, I am satisfied that the proposal and its technical studies and the draft conditions of the consent orders between the parties deals satisfactorily with the applicable statutes and controls being the *Environmental Planning and Assessment Ac*t 1979, the *Tweed Local Environmental Plan* 2000, the *North Coast Regional Environmental Plan* 1988, *State Environmental Planning Policy No* 55 Remediation of Land, *State Environmental Planning Policy No* 65 Design Quality of Residential Flat Development, insofar as it applies to the Concept Plan under s 83(b) of the *Environmental Planning and Assessment Act* 1979, and *Tweed Shire DCP No* 55 Seaside City.

46 Other applicable statutes and controls are *State Environmental Planning Policy No.* 71 Coastal Protection, and the New South Wales Coastal Policy 1997, the *Tweed Shire Development Control Plan No.* 2 Site Access and Parking, *Tweed Shire Development Control Plan No.* 47 Cut and Fill of Residential Land, *Tweed Shire Development Control Plan No* 55 Seaside City and the *New South Wales Coastal Design Guidelines*, and finally *Planning for Bushfire Protection* 2001 by New South Wales Rural Fire Service. The Tweed Shire DCP No 16 for subdivision is in my opinion superseded for the purposes of this application under DCP No 55 because the latter has its own subdivision provisions. Therefore the orders of the Court by consent of the parties are:

1. The consent orders in Exhibit 1 are granted.
2(a) Development consent is granted to DA05/1464 for staged development and the concept plan under s 83B of Environment Planning & Assessment Act 1979, for land at Seaside City, Tweed Coast as described in Schedule A and Schedule B of Annexure 1 hereto, subject to the conditions in annexure 1.

2(b) Development consent is also granted for the first stage of the development generally comprising civil works including clearing and removal of vegetation, bulk earth works, road construction, drainage works, water supply reticulation and sewerage works on the land described in Schedule B (the civil works land) subject to conditions contained in Annexure 1 hereto.

3. The exhibits are returned to the parties except Exhibits 1, 2 tabs 2, 3, 17 and Exhibits 3, 6, 7, 8 and B, C, D, and G.
The agreement by the parties of no order as to costs is noted.

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K G Hoffman
Commissioner of the Court
ljr

NSW | The Hon **Kristina Keneally** MP
Minister for Planning | Minister for Redfern Waterloo

Mr Michael Rayner
General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Y09/1910

Attention: Patrick Knight

Dear Mr Rayner

I refer to Council's letter dated 2 March 2009 containing an application for an approval under clause 4 of my direction under s94E of the Environmental Planning and Assessment Act 1979 (Act) dated 13 January 2009 (Direction).

I note that the Council's application related to a number of areas and contributions plans.

I have considered the Council's application and the recommendations of the Local Contributions Review Panel and have decided not to approve the application except insofar as it relates to the land to which Section 94 Plan No 28 - Seaside City dated 25 October 2006 applies (Seaside Land). In relation to the Seaside Land, I have decided to give the Council the attached further direction under s94E of the Act (Further Direction).

To the extent that I have decided to refuse the Council's application, my decision takes effect when the Further Direction takes effect, which is seven (7) days after the date of the Further Direction.

I may decide to revoke or substitute the Further Direction at any time. In that regard, the Council should be aware that I would consider doing so if the administrative arrangements set out in the Notes at the end of the Further Direction are not complied with to the satisfaction of my Department.

The effect of my decision is that on and from the date the Further Direction takes effect, the Council cannot grant development consents requiring monetary contributions that exceed the amount referred to in clause 3 of the Direction, except in relation to residential development on the Seaside Land under existing contributions plans applying to that land as in force at the date of the Further Direction.

My summary reasons for issuing the Further Direction include:

- The higher contribution rates applying to the Seaside Land are not only facilitating the development of this long standing area but have also arisen from a recent

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decision of the Land and Environment Court case and reflect the outcome of that matter. Accordingly, it is appropriate for an exemption to be granted to the maximum amount set out in the Direction to development consents requiring monetary contributions for residential development on the Seaside Land.

- Council is levying for street tree planting and library book stock. It is considered that these items are not appropriate pieces of infrastructure for which contributions should be required. As such, Council must no longer require monetary section 94 contributions for those purposes.

My summary reasons for not approving the application in respect of areas other than the Seaside Land include:

- Council is currently levying for additional community infrastructure which is not considered appropriate including street trees, library book stock, surf lifesaving facilities, cemeteries and council administration buildings. It is considered that these items are not appropriate pieces of infrastructure for which contributions should be required.

- Council's administration levies are nearly twice the rate of other councils.

- The number of contributions plans operated by Council makes its contributions regime complex and difficult to interpret.

- It is therefore considered appropriate that the Council review its suite of contributions plans to be consistent with the intended requirements of proposed Part 5B of the Act as contained in Schedule 3 of the *Environmental Planning and Assessment Amendment Act 2008* and that the maximum amount set out in the Direction should apply to development consents requiring monetary section 94 contributions for residential development in those areas.

Should you have any further enquiries about this matter, I have arranged for Mr Brett Whitworth, Local Contributions Review Panel Secretariat, to assist you. Mr Whitworth may be contacted on telephone number (02) 4224 9455.

Yours sincerely

10 JUL 2009

The Hon Kristina Keneally MP

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

DIRECTION UNDER SECTION 94E

1. INTRODUCTION

1.1. I, the Minister for Planning (**Minister**), being the Minister administering the *Environmental Planning and Assessment Act 1979* (**Act**), having considered an application from the Council under clause 4 of the Existing Direction, pursuant to section 94E of that Act:

(a) direct the Council to comply with the requirements set out in this Direction;

(b) revoke any previous direction under section 94E to the extent of any inconsistency with this Direction.

1.2. This Direction takes effect seven (7) days after the date of this Direction.

1.3. Notes do not form part of this Direction.

2. DEFINITIONS

2.1. Words and expressions used in this Direction have the same meaning as in the Act except where otherwise indicated.

2.2. The following definitions apply in this Direction:

'**Contributions Plan**' means a contributions plan referred to in section 94EA of the Act.

'**Council**' means Tweed Shire Council in its capacity as a *consent authority* as defined in section 4(1) of the Act.

'**Development Consent**' means consent under Part 4 of the Act to carry out development and includes a complying development certificate.

'**Dwelling**' means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

'**Existing Direction**' means my direction under section 94E of the Act dated 13 January 2009.

'**Interim Exemption Direction**' means my direction under section 94E of the Act dated 28 April 2009.

'**Monetary Contribution**' means a monetary contribution required by a condition of Development Consent imposed under s94(1) or s94(3) of the Act, excluding any indexation provided for in the condition.

'**Residential Development**' means development, or any part of development, for the purpose of one or more Dwellings.

Note:

1. Development is defined in section 4(1) of the Act to include, amongst other things, *the subdivision of land* as defined in s4B of the Act.

'**Seaside Land**' means land to which the Contributions Plan titled *Section 94 Plan No 28 - Seaside City* dated 25 October 2006 as in force at the date of this Direction applies.

3. INTERIM EXEMPTION DIRECTION DOES NOT APPLY TO THE COUNCIL

3.1. The Interim Exemption Direction ceases to apply to the Council.

4. DIRECTIONS TO THE COUNCIL

4.1. The Existing Direction ceases to apply to a Development Consent in respect of Residential Development on the Seaside Land requiring Monetary Contributions imposed under any Contributions Plan in force at the date of this Direction.

4.2. Monetary Contributions towards library book stock or street tree planting are not to be required by any Development Consent under any Contributions Plan applying to land within the Council's area.

MINISTER FOR PLANNING

DATE: 10/7/09

Notes:

1. This Direction may be revoked or substituted at any time by the making of a further direction under s94E of the Act.
2. The Council is to undertake a review of its Contributions Plans to ensure that they are consistent with the intended requirements of proposed Part 5B of the Act as contained in the *Environmental Planning and Assessment Amendment Act 2008* (**Amendment Act**). The review, including any necessary amendment of the Plans consequent upon that review, is to be completed by the end of 2009 and a progress report is to be provided to the Department of Planning within three (3) months from the date of this Direction. The review is to include the preparation of a business plan justifying any continued contributions for public cemeteries, and the Council's administration building(s) and depot(s). The business plan is to be independently verified and be consistent with the intended requirements of proposed Part 5B of the Act as contained in the Amendment Act. In that regard, Council should give particular attention to proposed clause 31B(a) and (b) of the *Environmental Planning and Assessment Regulation 2000* contained in Schedule 3 of the Amendment Act. The review is also to:
   a. provide for the removal of contributions for library book stock, street tree planting, and surf lifesaving facilities; and
   b. ensure that contributions towards administration costs are based on costs no higher than 5% of the cost of public facilities to be funded by the relevant Contributions Plan.

NSW GOVERNMENT Planning

PLANNING circular

PLANNING SYSTEM

Development Contributions

Circular	PS 10-014
Issued	4 June 2010
Related	supersedes PS09-001 supersedes "only that part of PS08-017 which is inconsistent with PS10 -014

Local Development Contributions

The purpose of this circular is to advise councils and the public of changes relating to local development contributions as a result of a revised mechanism for setting these contributions and council rates.

Introduction

On 4 June 2010, the Premier, the Hon. Kristina Keneally MP, announced a revised approach for setting local development contributions and local council rates. It includes:

- a $20,000 per residential lot or dwelling limit on local development contributions
- allowing councils to apply for special rate variations for legitimate council costs arising from development.

These changes aim to increase housing supply by lowering development charges for infrastructure to stimulate housing construction.

This forms part of a comprehensive strategy to improve housing supply across NSW.

$20,000 limit to local development contributions

Section 94E Direction

Attached to this circular is a Direction issued by the Minister for Planning under section 94E of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

The Direction applies to monetary contributions required by conditions of development consent imposed by councils under section 94 of the EP&A Act.

Effect of the Direction

The Direction provides that a council must not impose a condition requiring a development contribution under section 94 of the EP&A Act that requires the payment of a monetary contribution of more than $20,000 for each residential dwelling or for the purposes of residential subdivision, no more than $20,000 for each lot.

This Direction also revokes:

- the previous Direction under section 94E, dated 13 January 2009
- the previous Directions (dated 31 May 2009 and 10 July 2009) to individual councils

Development to which the Direction applies

The Direction applies to consents granted, and applications for complying development determined on or after 7 June 2010.

The Direction does not apply to:

- section 94 contribution conditions imposed before 7 June 2010
- voluntary planning agreements
- monetary contributions required under section 94A (fixed percentage levies) of the EP&A Act
- section 94F (affordable housing contributions) of the EP&A Act
- conditions requiring the dedication of land free of cost (section 94(1)(a)).

This Direction does not affect the ability of councils to accept the dedication of land or provision of material public benefits in lieu of monetary contributions (section 94(5)).

Complying Development

As a result of changes to the EP&A Act that took effect on 17 July 2009 accredited certifiers will now need to take into account directions issued by the Minister for Planning.

Implementation of Part 5B of the EP&A Act

The Department of Planning is finalising the introduction of the new Part 5B of the EP&A Act. It is expected that this will commence on 1 July 2010.

The changes outlined in this circular will be continued under the Part 5B provisions.

Guidelines

In the coming months, the Government will release guidelines to assist councils in preparing development contributions plans under the new provisions.

Reporting requirements

Commencing in the 2010/11 financial year, councils will be asked to report on development contribution activity to the Department of Planning. A template will be prepared and distributed to councils by 30 June 2010.

More formal reporting arrangements will be investigated for implementation from July 2011.

Further information

If you have queries about the Direction and this Planning Circular please contact the Department's Information Centre 02 9228 6333 or email information@planning.nsw.gov.au

If you have queries about changes to council rates contact NSW Treasury.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/circulars

Authorised by:

Sam Haddad
Director-General
NSW Department of Planning

Direction Section 94E

under the
Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 94E of the *Environmental Planning and Assessment Act 1979* (the Act) direct councils as consent authorities to comply with the requirements set out in this Direction.

This Direction revokes the previous Directions issued under section 94E of the Act as set out in the Schedule to this Direction.

Tony Kelly - 4 JUN 2010

TONY KELLY, M.L.C.,
Minister for Planning

Requirements of this Direction

(1) A council as a consent authority must not impose a condition of development consent under section 94(1) or 94(3) of the Act requiring the payment of a monetary contribution exceeding $20,000 for each dwelling authorised by the consent or in the case of a development consent that authorises the subdivision of land into residential lots, exceeding $20,000 for each lot authorised by the consent.

Date this Direction takes effect

(2) This Direction takes effect on and from 7 June 2010.

Definitions

(3) Words and expressions in this Direction have the same meaning as they have in the Act unless otherwise defined.

(4) In this Direction:

(a) ***Dwelling*** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile,

(b) ***Residential lot*** means a lot created by the subdivision of land (as defined in section 4B of the Act) for the purpose of a dwelling not being a lot, which in the opinion of the council, is to be further subdivided for the purpose of creating lots to be used for dwellings.

(5) Notes do not form part of this Direction.

Notes

Section 94EC(1A) of the Act provides as follows:

The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 94E(1)(a), (b) or (d) with which a council would be required to comply if issuing the complying development certificate concerned.

Schedule

(1) The following directions are revoked by this Direction:

(a) The Direction, dated 13 January 2009, to councils exercising functions as a consent authority,

(b) The Directions, dated 31 May 2009, to Blacktown City Council, Camden Council, City of Sydney Council, Ku-ring-gai Council, Lake Macquarie City Council, Liverpool City Council, Maitland City Council, Penrith City Council and Wyong Shire Council,

(c) The Directions, dated 10 July 2009, to Campbelltown City Council, Holroyd City Council, Leichhardt Municipal Council, Palerang Council, Pittwater Council, Shoalhaven City Council, The Hills Shire Council, Tweed Shire Council, Wollondilly Shire Council and Yass Valley Council.