

3 August 2010

The General Manager  
Port Macquarie Hastings Council  
P O Box 84  
PORT MACQUARIE NSW 2444

ATTENTION: Mr Tim Molloy

Dear Tim

RE: PROPOSED HEADS OF AGREEMENT  
PROPOSED VOLUNTARY PLANNING AGREEMENT (VPA)  
LOT 4 DP 615261 (SEAWIDE PTY LTD (SEAWIDE)) AND  
LOT 1 DP 374315 (MILLAND PTY LTD (MILLAND))  
OCEAN DRIVE LAKE CATHIE

We refer to our previous correspondence on behalf of Seawide and Milland offering to commence negotiations with respect to VPAs in relation to the subject properties and our subsequent meetings with Council staff and Council's solicitor Lindsay Taylor.

As you are aware the Seawide and Milland properties are known as Stage 1B of the Area 14 Urban Investigation Area and are currently the subject of:

- A Concept Plan Application and Stage 1 Project Application pursuant to Part 3A of the Environmental Planning & Assessment Act 1979. The draft Environmental Assessment (EA) is to be submitted to the Department of Planning for a formal Test of Adequacy this week.
- The preparation of a Planning Proposal and draft LEP to rezone the subject properties from their current Rural 1(a1) zone to a combination of R1 – General Residential, R3 – Medium Density Residential, B4 – Mixed Use, RE1 – Public Recreation, E3 – Environmental Management and E2 – Environmental Conservation. The Planning Proposal currently being prepared by Council is scheduled to be reported to the 25 August 2010 Council meeting before being forwarded to the Department of Planning (DoP) for a Gateway Determination.

After discussions with Council and DoP it is proposed to publicly exhibit the subject VPA in conjunction with the draft LEP. The formal public exhibition of the draft LEP and VPA by Council is also as much as is possible to be coordinated with the public exhibition of the EA by DoP.

urban design

civil engineering

architecture

town planning

landscape architecture

surveying

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We confirm herewith the draft Heads of Agreement for use by Council and their solicitors in the preparation of the VPAs as follows:

1. Parties  
Port Macquarie Hastings Council and Seawide Pty Ltd (Lot 4 DP 615261) – ABN 18 063 316 736 and Milland Pty Ltd (Lot 1 DP 374315) – ABN 80 003 509 822.
2. Landowners Address  
Seawide Pty Ltd, P O Box 360, Port Macquarie NSW 2444 and  
Milland Pty Ltd, Suite 308-309 Henry Lawson Business Centre, Roseby Street, Birkenhead Point NSW 2047.  
Email: [cunnings@bigpond.net.au](mailto:cunnings@bigpond.net.au) (Seawide);  
[paul.obeid@southpacprojects.com.au](mailto:paul.obeid@southpacprojects.com.au) (Milland)  
Representative: Mr Graham Cuning (Seawide Pty Ltd)  
Mr Paul Obeid (Milland Pty Ltd)
3. Land:  
Lot 4 DP 615261 (Seawide Pty Ltd)  
Lot 1 DP 374315 (Milland Pty Ltd)
4. Development means development on the land that is made permissible by the Area 14 Stage 1B LEP.
5. Development Contributions  
Payment of monetary Development Contributions and carrying out of works for water supply, roads, sewerage, open space and environmental lands purposes.
6. Security  
To be negotiated in accordance with Council's policies.
7. Registration  
To be registered on title.
8. Restriction on Dealings  
Assignment and sale of land clause applies prior to registration of agreement on title.
9. Dispute Resolution  
Expert Determination or Mediations
10. Heads of Agreement
  - 10.1 Seawide and Milland to undertake Stage 1 Environmental Works as detailed in the Stage 1 Project Application (pursuant to Part 3A of the Act) as Stage 1 of the Development.

- 10.2 The Stage 1 Environmental Works are to be undertaken in accordance with any conditions of consent attached to the Department of Planning approval of the Stage 1 Project Application. The Stage 1 Environmental Works are to be commenced within 12 months of the making of the LEP or approval of the Stage 1 Project Application (whichever is latest).
- 10.3 Seawide and Milland offer to maintain the Stage 1 Environmental Works for a period of five (5) years commencing from the date that Council or DoP have agreed to the satisfactory completion of the works.
- 10.4 Seawide and Milland offer to pay a monetary contribution towards the maintenance of the Stage 1 Environmental Works (Stage 1EW) for a further 15 years.
- 10.5 Seawide and Milland offer to dedicate the land containing the Stage 1 Environmental Works and the adjoining land to the boundary of the public road as public reserve. The dedication of this land is to occur after completion of the Environmental Works and in stages to coincide with the construction of the public road.
- 10.6 Council agree to seek an Alternate Funding Mechanism for the maintenance of the Stage 1EW and if that application is successful will refund any unused monetary contributions made for maintenance of the Stage 1EW.
- 10.7 Seawide and Milland offer to dedicate and embellish the "Pocket Park" at the eastern end of the main village street and seek offsets against open space contributions for the costs associated with those works.
- 10.8 Seawide and Milland offer to include "Initial Developer Provisions" in the VPA with respect to the works associated with the upgrade of the intersection at Ocean Drive and Abel Tasman Drive or the construction of water supply and sewerage infrastructure that serve the properties. The 'Initial Developer' Provisions are to ensure that each landholding pays for its share of the infrastructure at the time of commencing development. These provisions will apply if either Seawide, Milland or St Vincent's Foundation fund the construction of the intersection or other works.
- 10.9 Seawide and Milland offer to pay the local open space and local roads contributions determined by the current reviews of the Open Space and Roads Contribution Plans.

- 10.10 Seawide and Milland seek Council's agreement to pay contribution offsets for works associated with water supply, sewerage, roads and open space infrastructure proposed to be included in the relevant contribution plans.
- 10.11 The VPA should include the standard provisions with respect to the Performance of Works by Council and the Determination of the Cost of the Works by Council.

We would appreciate Council's review of the above draft Heads of Agreement and advice as to their acceptability prior to referral to Council's solicitor for preparation of the draft VPA.

Should you have any queries regarding the above matter please do not hesitate to contact the writer.

Yours sincerely  
King & Campbell Pty Ltd



Anthony J Thorne

cc      client  
         Mr Rob Corken, PMHC