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planning • environment • local government

Deed

74-76 Pearl Street, Kingscliff

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Tweed Shire Council

Lathouras Corporation Pty Ltd

Brett Evans

Bralach Pty Ltd

28/8/18

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lindsaytaylorlawyers

Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia

T 02 8235 9700 • F 02 8235 9799 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au

ABN 29 682 671 304

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74-76 Pearl Street, Kingscliff Planning Agreement

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74-76 Pearl Street, Kingscliff

Tweed Shire Council

**Lathouras Corporation Pty Ltd, Mr Brett Evans and Bralach Pty
Limited**



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74-76 Pearl Street, Kingscliff

Tweed Shire Council

Lathouras Corporation Pty Ltd, Mr Brett Evans and Bralach Pty Limited



Planning Agreement for 74 – 76 Pearl Street, Kingscliff

Summary Sheet

Council:

Name: Tweed Shire Council

Address: PO Box 816 Murwillumbah NSW 2484

Telephone: (02) 6670 2400

Facsimile: (02) 6670 2429

Email: tsc@tweed.nsw.gov.au

Representative: Mr Troy Green, General Manager

Developers:

Name: Lathouras Corporation Pty Ltd

Address: PO Box 2348 NERANG QLD 4211

Telephone: 07 5596 7500

Facsimile: 07 5596 7511

Email: paul@superior.com.au

Representative: Paul Lathouras

Name: Brett Evans

Address: PO Box 2348 NERANG QLD 4211

Telephone: Telephone: 07 5596 7500

Facsimile: 07 5596 7511

Email: paul@superior.com.au

Representative: Brett Evans

Name: Bralach Pty Limited

Address: PO Box 2348 NERANG QLD 4211

Telephone: Telephone: 07 5596 7500

Facsimile: 07 5596 7511

Email: john@superior.com.au

Representative: John Evans

74-76 Pearl Street, Kingscliff

Tweed Shire Council

**Lathouras Corporation Pty Ltd, Mr Brett Evans and Bralach Pty
Limited**



Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.



Planning Agreement for 74 – 76 Pearl Street, Kingscliff

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Tweed Shire Council ABN 90 178 732 496 PO Box 816 Murwillumbah NSW 2484
(Council)

and

Bralach Pty Limited ACN 153 571 647 of 50 Simpsons Road, Currumbin, 4223, Qld,

and **Lathouras Corporation Pty Ltd**, ABN 97 088 284 100 of 116 Marine Parade,
Miami, 4220, Qld,

and **Brett Evans** of 2 Trumper Place, Pottsville, 2489, NSW (**Developers**)

Background

- A The Developers have lodged the Development Application with Council.
- B The Developers are prepared to make the Contribution in connection with the carrying out of the Development in accordance with this Agreement.
- C This Agreement constitutes the Developer's offer to make the Contribution on the terms and conditions set out in this Agreement.

Operative provisions

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Construction Certificate has the same meaning as the Act.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

CPI means the annual *Consumer Price Index (All Groups)* published by the Australian Bureau of Statistics.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.



Development means the development for which approval is sought as described in DA 17/0231 being a three (3) level multi-unit development comprising a total of fourteen (14) units, together with basement parking for thirty (30) car spaces.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the monetary contribution specified in clause 10 to be used for, or applied towards a public purpose.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means Lot 2 DP 21242, located at 74-76 Pearl Street Kingscliff.

Party means a party to this Deed.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.



- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.
- 3.3 The Developer agrees that this deed operates as a deed poll in favour of the Council, on and from the date of execution of this deed until the date on which this deed commences.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.



6 Further agreements

The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

This Deed does not exclude the application of s7.11, s7.11 or s7.24 of the Act to the Development.

9 Provision of Development Contributions

- 9.1 Subject to this Agreement, the Developers are to pay to the Council a monetary Development Contribution of \$7,035.32.
- 9.2 The amount of the Development Contribution is to be adjusted in accordance with published quarterly increases in the CPI between June 2018 and the date of payment in full to the Council.
- 9.3 The Development Contribution is to be paid prior to the issue of any Construction Certificate for the Development.
- 9.4 The Council is to apply the Development Contribution paid under this Agreement towards the public purpose of improving littoral rainforest within the Tweed Shire.
- 9.5 Despite clause 9.4, the Council may apply the Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

- 10.1 The Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.



11 Dispute Resolution - mediation

- 11.1 Should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.
- 11.2 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a dispute, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales that are current at the time the dispute is mediated and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 11.3 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

12 Enforcement in a court of competent jurisdiction

- 12.1 Any Costs incurred by the Council in remedying a breach of this Agreement may be recovered as a debt due in a court of competent jurisdiction.
- 12.2 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 12.3 For the avoidance of doubt, nothing in this Deed prevents:
 - 12.3.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 12.3.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

13 Restriction on dealings

- 13.1 The Developers are not to:
 - 13.1.1 sell or transfer the Land, or
 - 13.1.2 assign the Developers' rights or obligations under this Deed, or novate this Deed, to any person unless:
 - 13.1.3 at no cost to the Council, the Developers have first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 13.1.4 the Developer is not in breach of this Deed, and
 - 13.1.5 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.



- 13.2 Subject to clause 13.3, the Developers acknowledges and agree that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 13.1.

14 Notices

- 14.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 14.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 14.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 14.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 14.2 A notice, consent or information given to any one of the Developers' representatives identified in the Summary Sheet to this Deed is taken to be notice given to the Developers.
- 14.3 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 14.4 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 14.4.1 delivered, when it is left at the relevant address,
 - 14.4.2 sent by post, 2 business days after it is posted,
 - 14.4.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 14.4.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 14.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

15 Approvals and Consent

- 15.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 15.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.



16 Costs

- 16.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 16.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

17 Entire Deed

This Deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

18 Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

19 Governing Law and Jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

20 Joint and Individual Liability and Benefits

- 20.1 Except as otherwise set out in this Deed:
 - 20.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 20.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

21 No Fetter

Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.



22 Illegality

If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

23 Severability

- 23.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 23.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

24 Amendment

No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

25 Waiver

- 25.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 25.2 A waiver by a Party is only effective if it:
 - 25.2.1 is in writing,
 - 25.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 25.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 25.2.4 is signed and dated by the Party giving the waiver.

26 GST

- 26.1 Except as provided by clause 26.2, if any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.
- 26.2 If the Developer is or becomes liable to pay GST on a Development Contribution under this Agreement, the Contribution Value of that Development Contribution shall be taken to include the value of the GST which the Developer is liable to pay.



27 Explanatory Note

- 27.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 27.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

74-76 Pearl Street, Kingscliff

Tweed Shire Council

Lathouras Corporation Pty Ltd, Mr Brett Evans and Bralach Pty Limited

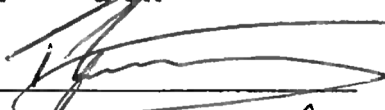


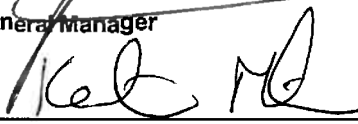
Execution


Executed as a Deed

Dated: 28/8/18

Executed on behalf of the Council



General Manager


Mayor


Witness


Witness

Executed on behalf of Lathouras Corporation Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001


Name/Position


Name/Position


74-76 Pearl Street, Kingscliff

Tweed Shire Council

Lathouras Corporation Pty Ltd, Mr Brett Evans and Bralach Pty Limited



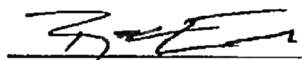
Executed on behalf of Bralach Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001

John Evans 

Name/Position

Name/Position

Executed by Brett Evans in the presence of


Brett Evans


Witness

Name/: Mrs GORRIE



Appendix

(Clause 54)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Tweed Shire Council ABN 90 178 732 496 PO Box 816 Murwillumbah NSW 2484
(Council)

and

Bralach Pty Limited ACN 153 571 647 of 50 Simpsons Road, Currumbin, 4223, Qld,
and **Lathouras Corporation Pty Ltd**, ABN 97 088 284 100 of 116 Marine Parade,
Miami, 4220, Qld, and **Brett Evans** of 2 Trumper Place, Pottsville, 2489 NSW
(Developers)

Description of the Land to which the Draft Planning Agreement Applies

Land means Lot 2 DP 21242, located at 74-76 Pearl Street Kingscliff, New South Wales.

Description of Proposed Development

Development means the development for which approval is sought in DA 17/0231 described as being a three (3) level multi-unit development comprising a total of fourteen (14) units, together with basement parking for thirty (30) car spaces.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement are:



- to provide for a monetary contribution of \$7,035.32 to be used towards the improvement of littoral forest in the Tweed Shire local government area.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979* (Act). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for a public purpose (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the application for development consent lodged with Tweed Shire Council, namely DA 17/0231,
- makes provision for monetary Development Contributions to be used towards the improvement of littoral rainforest in the Tweed Shire local government area,
- does not exclude the application of ss7.11, 7.12 or 7.24 of the Act,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- provides a dispute resolution methods for a dispute under the agreement, being mediation,

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement provides funding for the improvement of littoral forest in the Tweed Shire local government area.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(a), (b), (c), and (e) of the Act

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A



Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing a means for the private funding for the improvement of the natural environment for the benefit of the local community and the wider community, and
- demonstrating that Council has considered the principles of ecological sustainable development in its consideration of the Development,
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The Draft Planning Agreement conforms with Council's capital works program as it will ensure developers fund the offsets required for compensatory plantings.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Draft Planning Agreement requires the full amount of the Development Contribution to be paid prior to the release of any Construction Certificate for the Development.