



TWEED SHIRE COUNCIL

AGENDA

PLANNING COMMITTEE MEETING

Thursday 9 October 2008

Councillors: Cr J van Lieshout, Mayor
Cr B Longland, Deputy Mayor
Cr D Holdom
Cr K Milne
Cr W Polglase
Cr K Skinner
Cr P Youngblutt

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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

MATTERS FOR CONSIDERATION

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
 - (a) the provisions of
 - (i) any environmental planning instrument; and
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
 - (iii) any development control plan, and
 - (iv) any matters prescribed by the regulations,that apply to the land to which the development application relates,
 - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality,
 - (c) the suitability of the site for the development,
 - (d) any submissions made in accordance with this Act or the regulations,
 - (e) the public interest.

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P1 [EO-PC] Adoption of Amended Section 94 Plan No 5 – Local Open Space (Version 6)

ORIGIN:

Planning & Infrastructure

FILE NO: Section 94 Plan No 05 – Local Open Space

SUMMARY OF REPORT:

This plan has been in existence since July 1993 and collects contributions towards the acquisition and/or embellishment of Local Open Space.

An essential amendment to the plan was drafted in October last year to revise occupancy rates, enable indexation of rates, incorporate revised population projections, update the works program and amend the rates accordingly.

The exhibition of this Plan has been significantly delayed as a result of changes to S94 legislation announced in late 2007 that were not assented until July 2008.

The draft plan was exhibited until 17 September 2008 and no submissions were received.

Summary of Revised Works Program (to 2031)

	Local Structured Open Space	Local Casual Open Space
Total Project Cost	\$7,200,000	\$6,800,000
Administration Levy 10%	\$720,000	\$680,000
TOTAL	\$7,920,000	\$7,480,000

In summary, the revision results in the following change to the contribution rates:

	Version 5		Version 6	
	Per Person	Per Lot or Dwelling House	Per Person	Per Lot or Dwelling House
Structured Open Space	\$300	\$780	\$251	\$653
Casual Open Space	\$64.13	\$167	\$219	\$570

RECOMMENDATION:

That Council:-

- 1. Approve Draft Section 94 Plan No 5 – Local Open Space (Version 6) to repeal and replace the existing version in accordance with Clause 31 of the Environmental Planning & Assessment Regulations 2000;**
- 2. Gives Public Notice in the Tweed Link of Council's decision specifying that the amended Version 6 of the Plan (CP 5) comes into effect on the date of the notice.**

REPORT:

Introduction

Section 94 (S94) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) enables Council to require developers to contribute funds towards the provision of **community infrastructure** to meet additional infrastructure needs generated by their development.

In Tweed Shire the collection of direct contributions for specific community infrastructure is authorised by what is known as a **Section 94 Plan** or **Contribution Plan**. Contribution plans can apply to a specific development area, or to the whole Shire. The plan must comply with the requirements of the EP&A Act, and specify the works to be carried out and associated costs, as well as demonstrate the **nexus** between the works and the need generated by the development.

Nexus: *The relationship between the expected types of development in the area and the demand created by those developments for additional public facilities. The link between the proposed development and the increased demand for public facilities may be demonstrated through causal nexus (what), spatial nexus (where) and temporal nexus (when). **Causal nexus** requires that the need for the service or facility being levied must be a result of the development being levied. **Physical nexus** requires that the service or facility be near enough in physical terms to provide benefit to that development. **Temporal nexus** requires that the service or facility must be provided within a reasonable time.*

Council currently has 23 active contribution plans. Approximately half of these apply to the whole shire, the rest are area-specific plans. The majority of plans levy contributions on residential and tourist development, while others, like the Road Contribution Plan (No 4) and Council Admin Facilities Plan (No 18), also levy contributions on commercial development.

As a matter of interest, although collected from developers at the same time as S94 Contributions, contributions for water and sewer infrastructure are not levied under S94 of the EP&A Act and do not require a S94 Contribution Plan, however they need a Development Servicing Plan prepared in accordance with the Department of Water and Energy *Best-Practice Management of Water Supply and Sewerage Guidelines 2007* which is levied via S64 of the Local Government Act.

All of Council's current contribution plans and plans on exhibition are available on the website: www.tweed.nsw.gov.au.

Section 94 Plan No 5 – Local Open Space

Background

This plan has been in existence since July 1993 and collects contributions towards the acquisition and/or embellishment of what is referred to as Local Open Space. The EP&A Act makes a distinction between “local” infrastructure and “district” infrastructure. The area covered by this plan is the whole of the shire, with the exception of development areas (Cobaki Lakes, Kings Forest, West Kingscliff, Seabreeze etc., see clause 2.2 of the Contribution Plan) which are covered by site specific contribution plans for local open space. This plan is distinct from Council’s contribution plan for shirewide, regional or district open space (Contribution Plan 26).

The objectives of the plan are:

- To implement the Tweed Shire Open Space Infrastructure Policy (2002) concerning local open space provision;
- To enable the acquisition of land for local public open space which is defined as ‘key community infrastructure’ in accordance with Environmental Planning and Assessment Regulation 31A;
- To enable Council to require, as a condition of development consent, a reasonable contribution towards the cost of providing local public open space to meet the needs of the development;
- To demonstrate compliance with Environmental Planning and Assessment Regulation 116H by establishing the nexus between population growth as a result of future development and demand / need for local open space facilities; and
- To require the dedication of land for local open space where appropriate in cases where Council considers the development and land has the locational and quality attributes for viable open space.

Amendment

An essential amendment to the plan was drafted in October last year to revise occupancy rates, enable indexation of rates, incorporate revised population projections, update the works program and amend the rates accordingly.

Projected population growth indicated in the amended plan is based on Tweed Futures 4/24 Strategic Plan dated September 2004 which suggested a growth figure of 2,000 persons per year and recommended that the projected growth figure for future population in Tweed Shire remain at 2,200 persons per annum. The recently released Urban Land Release Strategy which was not available at the time of drafting the Plan projects population growth for the Shire using alternative criteria and includes alternative occupancy rates, however the projections and occupancy rates in the original plan as drafted are retained in this version.

Amended Legislation

In November 2007 the State Government directed Councils to refrain from making or amending S94 plans to await forthcoming changes to the legislation. Therefore, although the draft was ready for exhibition, this plan was not exhibited at that time.

The changes to the legislation were assented in July 2008 and the effect of these changes resulted in the need to make only minor changes to the plan as originally drafted in October 2007. Upon enquiry, verbal advice from the Department of Planning indicated that gazettal of the amendments may be some time off. In consideration of the fact that the exhibition of this plan had been delayed for 8 months and was overdue, it was decided to exhibit the amended plan as drafted as soon as possible, with the minor changes required in line with the amended Act. At the time of writing this report the amendments to the EP&A Act in relation to infrastructure contributions have still not been gazetted.

As well as taking account of the recently assented amendments to the EP&A Act, the amended plan includes

- Revision of occupancy rates;
- revised population projection to 2031;
- the means by which the plan rates will be adjusted in accordance with relevant indices; and
- updated works program.

Revised Works Programs – extract from the Draft Plan

Local Structured Open Space

Proposed Amenity	Project Cost	Status
Kingscliff Sports Complex (Walter Peate, Reg Dalton, Merv Edwards Sports Fields)	\$2,000,000	
Piggabeen Sportsfield	\$1,335,000	Completed
Arkininstall Park Upgrade (Local)	250,000	80% Completed
Bogangar/Hastings Point, Pottsville, Burringbar (includes rural catchment)		
Upgrade Pottsville sports facilities	\$160,000	60% Completed
Bogangar – Les Burger Field	\$755,000	
Round Mountain - Barry Smith Fields	\$300,000	
Murwillumbah (includes rural catchment):		
Knox Park – Netball, Croquet	\$800,000	
Murwillumbah – Jim Devine	\$800,000	
Murwillumbah – Stan Sercombe	\$500,000	
Murwillumbah – Les Cave, Rabjones	\$300,000	
SUB-TOTAL	0	
Administration Levy 10%	\$720,000.00	
TOTAL	\$7,920,000.00	

Local Casual Open Space

Proposed Amenity	Project Cost	Status
Tweed Heads/ West Tweed,		
Ducat Park Upgrade (5)	\$250,000	5% Completed
Razorback Look-Out	\$100,000	
Kennedy Drive / Cobaki Creek Upgrade (6)	\$200,000	
Quota Park Upgrade	\$250,000	5% Completed
South Tweed/Banora Point		
Upgrade local parks	\$500,000	
Kingscliff/Chinderah/		
Upgrade Open Space at Cudgen Creek (north shore)	\$500,000	
Fingal		
Upgrade boat harbour and foreshore area	\$500,000	
Bogangar/Hastings Point		
Upgrade Local Parks	\$1,500,000	8% Completed
Pottsville		
Upgrade Casual Open Space	\$1,000,000	
Murwillumbah Parks		
Upgrade local parks	\$2,000,000	
SUB-TOTAL	0	
Administration levy 10%	!H21 Is Not In Table	
TOTAL	!H21 Is Not In Table	

In summary, the revision results in the following change to the contribution rates:

	Version 5		Version 6	
	Per Person	Per Lot or Dwelling House	Per Person	Per Lot or Dwelling House
Structured Open Space	\$300	\$780	\$251	\$653
Casual Open Space	\$64.13	\$167	\$219	\$570

The new rates reflect a rationalised distribution of the works program between works required for the embellishment of structured and casual open space and the revised work plan is designed to correct the imbalance between the contribution for structured open space versus casual open space in previous versions of the plan.

Exhibition and Submissions

At the Council meeting held 12 August 2008, it was resolved to exhibit the draft plan for 28 days in accordance with Regulation 28 of the Environmental Planning and Assessment Regulations 2000. The plan was exhibited via Council's Tweed Link and website exhibition page from 20 August 2008 to 17 September 2008 and no submissions were received during this period.

Section 94 Plan No 5 – Local Open Space (Version 6) is therefore recommended for approval.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

In order to ensure that contributions for local open space are legally levied at current rates, this amended plan should be adopted.

POLICY IMPLICATIONS:

This plan was due to be exhibited in November 2007 and was delayed as a result of a direction to wait for the passing of forthcoming changes to the legislation. The adoption of this amended plan is therefore overdue.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. Section 94 Plan No 5 – Local Open Space (Version 6) (DW 1898896)
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