



SECTION 94 CONTRIBUTIONS PLAN

NO. 20

**PUBLIC OPEN SPACE AT
SEABREEZE ESTATE**

TWEED SHIRE COUNCIL

**CERTIFIED IN ACCORDANCE WITH
THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
AND REGULATIONS**

GENERAL MANAGER

DATE

**S94 CONTRIBUTION PLAN NO. 20
PUBLIC OPEN SPACE AT SEABREEZE ESTATE**

In Force

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1.0 INTRODUCTION

1.1 What is the name of this Plan?

The name of this Plan is *Tweed Shire Council Section 94 Contributions Plan No. 20 – Public Open Space at Seabreeze Estate*.

1.2 Where does this Plan apply?

This Plan applies to all new residential and related accommodation development on land within the Seabreeze Estate, being Lot 4 in DP 803030, located on the Mooball – Pottsville Road, at Pottsville.

1.3 What is the context and purpose of this Plan?

Section 94 (S.94) of the Environmental Planning and Assessment Act 1979 as amended gives Council the authority to levy contributions from developers to fund additional public facilities and amenities required as a result of carrying out a development. Contributions may be in the form of cash payments, transfer or dedication of land to Council, or the provision of a material public benefit (known also as works-in-kind). For Council to levy contributions there must be a clear “nexus” between the proposed development and the need for the public facility or amenity for which a levy is required.

The NSW Land and Environment Court has verified that S.94 is the only source of authority for the levying of contributions under the Act. The Court has also established the following principles on which contributions should be determined:

- The contribution must be for, or relate to, a planning purpose;
- The contributions must fairly and reasonably relate to the subject development; and
- The contributions must be such as a reasonable planning authority, duly appreciating its statutory duties, could have properly imposed.

The overriding purpose of the Plan is to set out the contributions standards to apply to residential and related accommodation development within the Seabreeze Estate at Pottsville, in order to ensure the provision and funding of public open space for that development, pursuant to S.94 of the Act.

1.4 What are the objectives of this Plan?

The objectives of this Plan are as follows:

1. To set out Council's policy for the provision, dedication, embellishment and / or upgrading of public open space, as a consequence of demand generated by the anticipated future population within the Seabreeze Estate community.
2. To establish the “nexus” between the anticipated population and development and the demand for open space facilities.
3. To require the dedication of land for open space where appropriate, consistent with the requirements of Development Control Plan No. 38 – Seabreeze Estate.

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4. To enable Council to require, as a condition of development consent, a reasonable contribution towards the cost of providing public open space facilities, and
5. To demonstrate that the contributions received will be used for the purposes for which they were levied and within a reasonable time.

1.5 How does this Plan relate to other Plans and Policies and what is its status?

This Contributions Plan supports the other relevant Contributions Plan in relation to proposed facilities for the Seabreeze Estate. The Plan should be read in conjunction with the Tweed Local Environmental Plan 1987, Development Control Plan No. 38 – Seabreeze Estate, and the other relevant Section 94 Contributions Plan which apply to the Pottsville area.

This Plan has been prepared in accordance with S.94 of the Environmental Planning and Assessment Act 1979, as amended and the Environmental Planning and Assessment Regulation 1994, in relation to Contributions Plans.

1.6 When did this Plan come into force?

The provisions of this Plan came into force on 6/12/99.

2.0 ESTABLISHING THE NEXUS BETWEEN DEVELOPMENT AND DEMAND FOR PUBLIC OPEN SPACE FACILITIES

2.1 What is nexus?

The power of Council to levy a contribution under S.94 relies entirely upon Council's ability to establish a clear nexus between the proposed development and the need for increased amenities and services. Three aspects of nexus which must be identified are causal, physical and temporal. Causal nexus requires that the need for the service or facility being levied must be as a result of the development which is to be levied. Physical nexus requires development. Temporal that the service or facility be near enough in physical terms to provide benefit to that nexus requires that the service or facility must be provided within a reasonable time.

The anticipated population of the Seabreeze Estate is anticipated to be approximately 1,800 persons. This new population will result in proportional increased demand for high quality open space facilities within the Estate to satisfy the outdoor recreational needs of the future community to reside in the Estate, thus establishing a causal nexus between development and required open space.

Physical nexus is established by identifying the proximity of the whole of the proposed Estate to the proposed open space facilities to be provided within the Estate, in such a way that all future dwellings within the Estate will be within a 400m walking distance of passive open space. All dwelling houses will be within 800m distance of the proposed sportsfield within the central part of the Estate.

Temporal nexus is identified by establishing that all the requirements for passive and sportsfield open space will be provided and embellished in stages as the proposed Estate develops.

2.2 What is the expected residential development and population growth?

It is expected that the ultimate population of the anticipated residential development on the Seabreeze Estate will be of the order of 1,800 persons. This assumes a residential development yield taking account of the provisions of the Development Control Plan No. 38 in relation to development of the site. Approximately 65 hectares of the land is located within a 2(c) Urban Expansion Zone.

At this stage, the indicative development yield is approximately 700 dwellings on a total of approximately 560 lots, thus assuming that about 80% of dwellings on this estate will comprise single dwelling houses, and about 20% of dwellings will comprise medium density or dual occupancy dwellings. Dwelling occupancy rates are based on 2.7 persons per single dwelling lot, and 2.0 persons per medium density/ dual occupancy dwelling. It is likely that the staged development of this Estate will take place over 10 – 15 years.

2.3 What is the demand for open space, and what types of open space facilities are required ?

The new population which will reside on the Seabreeze Estate will create a demand for *both local passive or casual open space (neighbourhood parks) and active or structured (sportsfield) open space*. It is proposed to provide these types of open space.

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In addition, environmental open space is to be provided in the form of riparian corridor rehabilitation and buffer areas along Cudgera Creek and adjacent to an area of closed forest in the south-eastern corner of the Estate. This environmental open space is to be provided independent of this S.94 Plan, and derives from the characteristics of the site and environmental protection requirements, rather than the demand for public open space likely to be created by the future population.

3.0 CALCULATING SECTION 94 CONTRIBUTIONS

3.1 What are the standards for open space provision used in this Plan?

Council's existing policy for the provision and acceptance of additional public open space to cater for new development is expressed in Section 94 Contributions Plan No 5 for Shire wide Public Open Space, and has been utilised in this S.94 Plan. This policy is based on the following:

1. a quantitative standard of 2.83 hectares per thousand resident population made up of the following components:
 - 1.7 hectares per 1,000 population (60%) for structured or sportsfield open space provision,
 - 1.13 hectares per 1,000 population (40%) for casual or passive open space provision; and
2. specific criteria to be applied to ensure appropriate location and quality of open space to be dedicated and embellished to most effectively meet the requirements of the new community, and minimise Council's ongoing maintenance responsibility in relation to the open space to be provided.

3.2 How are the contributions calculated?

The formulae for calculating the amount of the contribution towards the embellishment and upgrading of active or structured (sportsfields) open space is based on current capital costs and project / administration costs.

3.2.1 Provision of local structured or sportsfield open space

An area of 3.1 hectares of sportsfield or structure/active open space is to be provided to serve the needs of the population of the Seabreeze Estate. This equates to approximately 1.7 hectares per 1,000 population, assuming dwelling occupancy rates similar to existing dwelling occupancy rates in the Kingscliff-Pottsville area (2.7 persons per dwelling and 2.0 persons per medium density/dual occupancy based on 1996 ABS Census).

The 3.1 hectare area shall be dedicated and initially embellished as set out in Table 1 in total before the release of the 100th residential subdivision allotment, or 30 December, 2000 (or such later date as may be approved by Council), whichever is sooner.

The said 3.1 hectare area is to be fully embellished in accordance with all of the requirements in Table 1 no later than the release of the 300th residential allotment within this estate.

Table 1

LOCAL STRUCTURED OR ACTIVE OPEN SPACE EMBELLISHMENT COSTS TO PROVIDE TWO SPORTSFIELDS	
<u>Initial Embellishment</u>	
Topsoil (35/m ² @ 150mm deep for 3ha)	\$157,500
Seeding (120kg/ha @ \$6/kg)	\$2,160
Toilet block	\$70,000
<u>Final Embellishment</u>	
Irrigation (\$20,000/ha)	\$60,000
Amenities block (235m, less the area of the toilet block)	\$194,500
Car parking and access (40 cars @ 30m ² /space x \$80/m ²)	\$96,000
Establishment costs	\$20,000
Flood lighting (one sportsfield only)	\$37,000
TOTAL	\$537,160

The developer shall construct the toilet block at the initial embellishment stage, towards which Council shall provide \$40,000. On completing the amenities block no later than the release of the 300th residential allotment, the developer will reimburse Council that \$40,000, indexed by the CPI from the date Council provides those funds to the developer.

The finished level of the playing field and associated drainage shall be at a minimum level of RL 1.9m AHD. Otherwise, the open space shall only be developed in accordance with Plans submitted to and approved by Council.

3.2.2 Provision of local casual or passive open space

Council's long-established standard of 1.13 hectares per thousand population is to be applied, as follows:

- 1.13 ha / 1,000 = 11.3m² / person
- dwelling house / lot = 11.3m² x 2.7 persons
= 30.5m² / dwelling house or lot
- medium density unit = 11.3m² x 2.0 persons
= 22.5m² / medium density or dual occupancy unit

The pro rata proportion of casual or passive open space shall be provided generally in the location shown in **Appendix A**, which shows the indicative Open Space Strategy based on Figure 6 in Development Control Plan No. 38 for this Estate. There are proposed to be seven (7) areas of local passive open space distributed throughout the Seabreeze Estate.

It is envisaged that each subdivision release be generally self contained or self sufficient in relation to the amount and size of casual or passive open space to be dedicated. Where a subdivision development contains more than the "pro rata" requirement for

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passive open space, Council will accept the accrual of a credit for open space land to be dedicated in a subsequent subdivision stage of this estate development.

The determination of the suitability of land for passive open space to be dedicated will occur at the Development Application (DA) stage and will be in accordance with the performance criteria set out in **Appendix B**.

Open space provided outside the nominated area in Appendix A, for instance, in the form of open space adjacent to the proposed entry statements, will NOT be accepted as part of the open space dedication to satisfy the provisions of this Section 94 Contributions Plan. However such land may be dedicated over and above compliance with the standards contained in this Plan. The riparian buffer rehabilitation and closed park forest open space area are to be dedicated outside the ambit of the passive open space requirements of this S.94 Plan, being environmental park open space.

3.3 What is the timing of contributions?

If payment is made subsequent to three months from the date of the consent, a contribution rate shall be increased by the amount by which the Consumer Price Index (CPI) has increased from the date of the consent to the date of the payment (percentage increase).

Council's policy regarding the timing of payment of S.94 contributions is as follows:

- Development Applications involving subdivision - prior to release of Subdivision Certificate (Linen Plan);
- Development Applications involving building work – prior to release of Construction Certificate Building Plan; and
- Development Applications where no building work is involved – prior to occupation.

Where a bond is lodged in the form of a bank guarantee, the amount of the guarantee shall be reviewed annually and increased as necessary in accordance with the Construction Cost Index (Brisbane).

3.4 What discounting and apportionment factors apply?

In the case of residential subdivision development utilising the Community Land Development and Community Land Management Acts 1989, Council may accept a reduction in the amount of public open space to be dedicated or the monetary contribution in lieu, where Council is satisfied that a suitable amount and type of private communal open space is available and that such private open space is accessible to the general public and community groups, guaranteed through the management statement or other legally binding agreement to which Council is a party. Each case will be assessed on its merits.

3.5 How is accountability ensured?

An account / register has been established for the management of Section 94 contributions which depicts separate categories of contributions. These contributions must be spent for the purposes for which they are levied, and interest will be calculated on funds held for each category and credited.

Council will maintain the register of all contributions to record the following information:

- origin of each contribution by reference to development consents;

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- type of contribution received (eg, money, land, works in kind);
- amount of contribution and purpose for which levied;
- name of the S.94 Contributions Plan for which contributions levied; and
- date of receipt of contribution.

The register is to be made available for public inspection at any time during normal office hours. An annual statement of contributions will be produced documenting amounts received and relevant details. Such statements will also be made available for public inspection.

Any material change in this Plan, with the exception of the annual adjustment of contributions, will require the amendment of the Plan in accordance with S.94 AB of the Act.

The Contributions Plan will be subject to regular review, at least every two years, so as to adjust contribution levels to reflect current costs, land values, etc.

Council may permit the short term transfer of funds between categories of funds and between Contributions Plan funds in order to enable works to be undertaken on a priority basis subject to the following requirements:

- full details of transfer and subsequent reimbursement of funds shall be recorded including interest;
- transferred funds shall be returned to relevant categories for future contributions;
- there must be a reasonable expectation based on anticipated development that future contributions will be obtained to enable reimbursement of the category from which monies have been transferred;
- the purpose for which contributions are transferred is a purpose identified in the Works Program of Council; and
- transfer of funds between S.94 accounts and other funds will not be permitted.

Appendix B – Performance Criteria for Design and Hand-over of Local Passive Open Space

- locate such local passive parks within safe walking distance of dwellings, ie: no dwelling to be located further than 250m straight line distance or 400m walking distance (5 minute walk) from a local park;
- locate to allow casual supervision from adjacent households and local streets;
- design of park to be as permeable as practicable, with vehicle/ cycle/ pedestrian access via the local street system in directions which discourage through traffic, and with at least 50% frontage to a street for visibility and security;
- each park to serve 180-260 lots (based on 10-12 lots per hectare);
- minimum size to be generally 2,000 m² ;
- provide central activity zone within each park with minimum 400 m² containing play equipment and play area with 20m wide buffer to all residential boundaries; and
- park area to be graded, drained, weeds removed, topsoiled, and turfed or seeded, provided with play equipment, soft fall surfaces under play equipment, shade cover and seating, drinking fountain and fencing; and
- park area to be embellished in accordance with above criteria prior to release of subdivision linen plan for the relevant stage, and dedicated in conjunction with the linen plan registration for that stage.