



TWEED
SHIRE COUNCIL

Policy

Development Control

Version 1.1

Adopted by Council at its meeting on 13 November 2007

Minute No: O290 and 179

Division:
Section:
File Reference:
Historical Reference:

Planning and Regulation
Development Assessment

Version 1.0 adopted 15 December 2004,
Reviewed 21 July 2009

THIS PAGE IS BLANK

Development Control

Development Application - Late Provision of Information

Where information is tendered by the applicant or his/her agent(s) in relation to a Development Application listed on the Council agenda within seven (7) days preceding the Council Meeting, then this item be withdrawn from the Council Agenda until consideration is given to the information so that it can be included in a revised report/agenda item to Council and that this information be printed on the Development Application form.

Development Application Fees - Council Works

No fees are required for any Council work because such works are a normal function of Council and funds are provided through the Estimates.

Direction Signage for New Residential Estates

Objective

To provide for directional signage to be located within road reserves for new residential estates, cluster housing developments and the like in a planned and co-ordinated way that facilitates the marketing of such projects and that does not detract from existing Council erected signs.

On application, Council will consider the erection of directional signage for new residential developments that:-

- a) In the case of a residential subdivision, has a minimum of 20 lots.
- b) In the case of a cluster housing development or similar, has a minimum of 20 lots.
- c) In the case of rural residential subdivisions that have been designated as having a subdivision entitlement.

The signs may only:-

- a) Contain the "estate" or "project" name;
- b) Be located at key intersections
- c) Be a maximum of 150mm wide
- d) Be independent of Council signs; and
- e) Have white words on a brown background.

The signs are to be supplied and erected by the proponent at no cost to Council and in accordance within a scheme approved by Council.

Approval of the signs will be limited to 12 months.

Headworks Policies

Policy for the levying of headworks charges for water and sewerage on existing properties:

- a) Headworks will not be payable for properties already paying the relevant water or sewerage rates where a single dwelling is to be constructed.
- b) Property on which water or sewerage rates are not presently paid may join the respective schemes upon the payment of appropriate headworks fees except when Council resolves from time to time to expand these services into new areas from the public purse.
- c) It follows that new water or sewerage rates shall not be levied on properties where:
 - i) appropriate headworks charges have been paid; or
 - ii) Council resolves to expand the relevant water or sewerage services to include such properties. In this latter case, payment of appropriate rates will be compulsory irrespective of owner preferences. (It is intended that such resolutions refer to catchment areas, or Local Environmental Plan Zonings rather than individual properties).
 - iii) Payment of water and sewer headworks charges may be deferred for a period of three months for:
 - release of the subdivision certificate or release of the building certificate for medium density developments (ie, multi dwelling housing, cluster housing, integrated housing, relocatable housing developments, caravan parks and the like but excluding dual occupancy); and major industrial or commercial developments (ie those developments with a floor area greater than 1000m²); provided that:
 - a) a Bank Guarantee is lodged prior to release of the linen plan or building permit;
 - b) no further extensions of the 3 month period will be granted;
 - c) if the contribution is not paid in cash prior to expiry of the 3 month period Council will call up the Bank Guarantee;
 - d) an administration fee of \$200.00 is paid when the Bank Guarantee is lodged, with the amount of the fee to be reviewed quarterly.

This clause applies to the Cobaki Lakes Development.

Payment of water and sewer headworks charges may be deferred for a period of 24 months for:

- release of the linen plan of subdivision or release of the building permit for medium density developments (ie. residential flat buildings, cluster housing, integrated housing, relocatable housing developments, caravan parks and the like but excluding dual occupancy); and major industrial or commercial developments (ie. those developments with a floor area greater than 1000m²); provided that:
 - a) a bank guarantee is lodged prior to release of the linen plan or building permit;
 - b) no further extensions of the 24 month period will be granted;
 - c) if the contribution is not paid in cash prior to expiry of the 24 month period Council will call up the bank guarantee;
 - d) an administration fee of \$500 is paid when the bank guarantee is lodged, with the amount of the fee to be reviewed quarterly;
 - e) the developer shall reimburse Council for the interest foregone for the 21 month period at the average investment rate which Council would have received if the contribution were paid in cash. The amount of the bank guarantee shall include the estimated cost of interest foregone and the actual amount shall be calculated and paid PRIOR to cancelling the Guarantee.”

Hydraulic Filling of Land

Installation of a suitable perimeter drainage system is required, utilising lined drains and subsoil drains where required to a design submitted to and approved by the Director Planning and Development. The drainage system is to be installed and functioning prior to the placement of any fill hydraulically.

No filling is to be placed hydraulically within 20 metres of any boundary that abuts private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.

Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.

All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.

A bond or bank guarantee of \$10,000 is to be lodged with Council prior to placement of any fill on the site. This bond will be drawn on by Council to undertake any rectification work directed but not completed or progressing to the satisfaction of the Director Engineering Services within three days from the date of serving any notice. The bond to be released upon completion of all work to the satisfaction of the Director Engineering and Operations.

The applicant is to provide details of settling ponds and the method of discharging the return water from the site. No work is to commence until the scheme is approved by the Director Engineering and Operations.

On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped to the satisfaction of Council's Director Planning and Development.

All dredge lines to be laid and located to the satisfaction of Council's Director Engineering and Operations.

Compliance with all requirements of Council's Environment and Community Services Division.

Road Development Contribution - Multiple Occupancy Development

Council agrees to accept payment of Road Development Contribution over a period of five years subject to the owners providing a secured mortgage over the property.

Rezoning Submissions - Administrative Procedure

The following is the administrative procedure with regard to rezoning submissions relating to land within the Environmental Protection (Coastal Wetlands) and (Habitat) zones.

Applicants in the first instance should submit to Council a Plan Map and Photographs (3 copies) showing the area proposed to be rezoned. An environmental analysis should not be submitted at this stage.

Council officers will inspect the site with National Parks and Wildlife Service and Department of Infrastructure Planning and Natural Resources and if in their opinion it is a simple drafting error then the concurrence to the change by the Department of Infrastructure Planning and Natural Resources and National Parks and Wildlife Service will be sought.

If the proposed rezoning is not a drafting error then a local Environmental Study must be prepared prior to initial determination by Council. This Local Environmental Study must be prepared on behalf of Council who will also arrange payment to the Consultants. The applicant, however, must agree to quotations being obtained and must pay Council the cost of the Study prior to the Consultant being commissioned. The selection of the Consultant is at the sole discretion of the Council.

All Local Environmental Studies for 7(1) Habitat zones must address the following issues, which are based on the National Parks and Wildlife Services' selection criteria for assessment of 7(1) Habitat zones:

- a) a vegetation survey and map (preferably at a scale of 1:4,000) to particularly indicate the occurrence of any rare or endangered plant species, their values and the extent of any weed infestation;
- b) condition of vegetation on the site, including a brief summary of any history of disturbance, stage of regeneration and exotic species;

- c) presence of significant plant species, including rare or threatened species, species of State and Regional significance and species at the limit of their range;
- d) habitat value of the site for native animal, including presence of seasonally varied food supply and specific habitat for endangered or significant species;
- e) native animals present on site;
- f) presence of significant native animals;
- g) importance of area as a link between areas of high habitat value;
- h) likely consequence of rezoning area from habitat zoning on remaining or adjacent areas zoned for habitat protection, including provision for buffers to habitat zones.

All Local Environmental Studies for 7(a) Coastal Wetland zones must address the following issues, which are based on the standard matters to be addressed in State Environmental Planning Policy No 14 Wetland Environmental Impact Statements:

- a) Identification of the wetland's habitats and ecological values and of its water characteristics including:
 - i) a vegetation survey and map (preferably at a scale of 1:4,000) to particularly indicate the occurrence of any rare or endangered plant species, their values and the extent of any weed infestation;
 - ii) a fauna survey describing the birds (both indigenous and migratory), reptiles, amphibians and mammals (including bats) of the area and the occurrence of any rare or endangered and protected species; and
 - iii) an analysis of the surface and groundwater quality and hydrological regime of the Coastal Wetland.
- b) Alternatives to the site and to the proposal including the reasons and justification for choosing the proposed development at this location.
- c) A discussion of the environmental implications of the proposal including but not limited to the following:
 - i) an assessment of the changes in the distribution and abundance of plant and animal species;
 - ii) a description of the design features incorporated in the proposed development to guard against actual and potential disturbances to the vegetation, fauna, water quality and hydrological regime;
 - iii) a description of measures proposed to be taken to guard against actual and potential disturbances to the vegetation, fauna, water quality and hydrological regime during the construction and operation of the proposal.

This discussion should not be limited to direct effects within the site proposed to be developed; it should include consideration of possible effects on those parts of the Wetland not included in the development proposal.

- d) A description of any proposed measures intended to offset losses in wetland values or other environmental impacts which may occur if the development is allowed to proceed such as:
 - i) the preparation of a management plan which maintains or enhances wetlands not affected by the proposal;
 - ii) the establishment either on site or nearby of a wetland habitat which functions to replace some values lost through the development or contributes other wetland values.

Upon completion of the Local Environmental Study a report is to be presented to Council for determination pursuant to Section 54 of the Act.

Strategic Planning - Illegal Actions Within Environmental Protection Zones

Land that is within an Environmental Protection Zone that no resolution to prepare a Local Environmental Plan pursuant to Section 54 of the Environmental Planning and Assessment Act will be considered by Council where;

The proposed Local Environmental Plan includes land which was subject to legal proceedings in which Council was successful in prosecuting a breach of the Local Environmental Plan.

The proposed Local Environmental Plan includes land which is the subject of legal proceedings concerning alleged breaches of the Tweed Local Environmental Plan 2000 that have not been concluded.

Application Determination Policy

1.0 Introduction

1.1 Tweed Shire has one of the highest growth and development rates in New South Wales and Australia – and this is accelerating. Many applications for development raise complex issues requiring demanding assessment and decision-making processes to achieve the correct balance between social, economic and environmental factors. As well as having the high growth and development rates, Tweed Shire has some very significant coastal and environmental issues.

1.2 These factors create a high workload for both Council staff and Councillors when dealing with development applications and associated certificates. These applications require good management to ensure appropriate service to the customers as well as a high level of assessment and decision-making by Council having regard to the interests of the applicants, neighbours, local residents, interest groups and the community generally.

1.3 This Policy amends the current Application Determination Policy adopted by Council in 1998. The Policy applies to development applications and certificates associated with subdivision and development that are the responsibility of the Planning and Development.

2.0 Objectives

2.1 The objectives of this Policy are: -

1. To provide for improved service to all customers involved in the Development Application and development certificate process.
2. To achieve enhanced effectiveness and efficiency in the assessment and decision-making processes.
3. To increase the focus of stakeholders and Council professional staff on the quality of outcomes and reduce emphasis on process times.
4. To ensure the appropriate response of staff priorities to applicants who submit well prepared, adequate and valid applications.
5. To increase the level of partnership between Council and proponents in managing an effective and efficient development assessment and decision-making process.

3.0 Service Commitment

- 3.1 Council has legal obligations to determine all applications promptly and an applicant has a right of appeal to the Land and Environment Court on the basis of a deemed refusal if development applications are not determined within 40 days – 60 days if the applications are for integrated development, designated development or concurrence is required from another authority under the Environmental Planning and Assessment Act, 1979 (as amended). If additional information is required from the applicant then the period of time taken to provide that information is not counted in the 40 or 60 day period.
- 3.2 The NSW Department of Local Government publishes annual statistics on the mean and median processing times for development applications by Council's in New South Wales.
- 3.3 There are targets for processing times for development applications in Council's Management Plan.
- 3.4 The key responsibility to which Council needs to commit is to ensure that the quality of development works and subdivision that result from the assessment and decision-making processes is of a high standard in each case.
- 3.5 Council's Management and staff seek to prioritise workload to respond to: -
 - a. the sequence of lodgement of development applications;

- b. the public interest importance of applications;
- c. the priorities that Councillors place on decision-making on certain applications;
- d. equitable response to applicants who have invested time and resources in pre-lodgement and discussions and the preparation of good quality, well prepared applications.

4.0 Obligations of Applicants

- 4.1 The New South Wales legislation applicable to planning, development and environmental issues is contained in many different pieces of legislation and is highly complex.
- 4.2 Good process of assessment and decision-making depends very significantly upon the quality of documentation comprising the original development application lodged with Council. The onus is upon applicants to provide quality applications to serve this process and have applications supported with all relevant and valid information and plans. Applicants need to consider very strongly the engagement of consultants and expertise to ensure such quality of applications.
- 4.3 Council will give priority responsiveness to applicants who have invested the time and professional resources in pre-lodgement discussions and preparing high quality of applications that enable efficient processes of assessment and decision-making by Council.

5.0 Assessment and Decision-Making Processes

- 5.1 Where an application is not statutorily valid, the application will be rejected under delegation within 7 days of lodgement. To be statutorily valid an application must be submitted in the prescribed form accompanied by the appropriate fee (refer to Council's fees and charges), include the consent of all landowners and include all plans and necessary supporting information such as a Statement of Environmental Effects of an Environmental Impact Statement.
- 5.2 As provided for in Part 6 of the Environmental Planning and Assessment Regulations, Council can reject an application within 7 days after receipt if the application is illegible or unclear as to the development consent sought and this will be implemented by Council.
- 5.3 In accordance with Clause 51(2) of the Environmental Planning and Assessment Regulation: -
 - a. Council will reject an application within 14 days if it is an application for development that requires concurrence but the application does not include the concurrence fees appropriate for each concurrence relevant to the development; or
 - b. The application is for integrated development but the application fails to identify all the approvals referred to in Section 91 of the Environmental

Planning and Assessment Act and fails to include the approval fees appropriate for each approval relevant to the development or;

- c. Is an application that requires a Species Impact Statement (SIS) in accordance with Section 78A(8)(b) of the Act but does not include such an SIS.

When an application is rejected under the above terms the application is for the purposes of the legislation considered never to have been made and the Council will refund the whole of any application fee paid.

- 5.4 If the application is concluded to be statutorily valid but is manifestly inadequate in terms of supporting information or conformity with Tweed LEP 2000 or relevant Development Control Plans, Policies and Codes, the application will be refused at the discretion of Council's Director of Planning and Development or Manager of Development Assessment.
- 5.5 If the Development Application is statutorily valid, generally adequate in terms of supporting information and plans and consistent with legal and policy requirements but raises issues that require further information or clarification, then the applicant will be advised by letter and requested to supply that information and/or clarification within 21 days of that letter. If the relevant information and/or clarification is not provided within that 21 day period then the application will be determined under delegation on the information provided or recommended to Council based upon the information currently provided.
- 5.6 It is at the discretion of the Director of Planning and Development and/or Manager of Development Assessment to call a meeting with the proponents and any other stakeholders in relation to a particular development application to seek to negotiate the provision of additional information or indeed improvement in the content of the DA.
- 5.7 It is also at the discretion of the Director of Planning and Development and/or Manager of Development Assessment that if there is a significant policy issue raised by an application, and it is considered productive to the assessment process to do so, then a report will be submitted to Council to seek a resolution to clarify those issues notwithstanding that the total application cannot yet be determined at that time.

6.0 Consultation

- 6.1 It is desirable and productive particularly for major sensitive or complex applications that proponents should consult key community groups and stakeholders prior to finalising the application for lodgement with Council.
- 6.2 Council provides a three tier system of pre-lodgement consultation for proponents to provide guidance and assistance in ensuring applications are valid, adequate and generally acceptable. These comprised:

- a. discussions with individual Council planners and other appropriate professional staff;
- b. consultation with Council's Development Assessment Panel;
- c. addressing the full Council at community access sessions

Council's Development Assessment Panel particularly is able to provide comprehensive advice prior to lodgement of applications and provides the service of presenting notes of the interview on screen display at the time and providing a hard copy print of those notes of the discussion for the benefit of the proponents as an agreed record of the meeting.

6.3 Where applications meet the criteria of legal and policy requirements and supporting applications and plan but there is significant resident, community and/or interest group objections then at the discretion of the Director of Planning and Development or requests of a Councillor a meeting can be called to seek to facilitate negotiations regarding the application. Those meetings shall comprise:

- a. the Director of Planning and Development and/or Manager of Development Assessment and the responsible planner for the application;
- b. any other Council professionals responsible for input into the application;
- c. other state government agencies that have significant advisory roles for the application;
- d. representatives of the main sectors of objection – neighbours, local residents, interest groups – usually a maximum of 5 such representatives are sought to attend;
- e. the Mayor and/or Deputy Mayor plus the Councillor requesting the meeting and any interested Councillor;
- f. the applicant and/or his/her representative.

The meeting will usually take the course of an on site inspection and then adjournment to the nearest appropriate facility for negotiations and discussions. The meeting will be chaired by the Mayor or Deputy Mayor if present – if there is not a Councillor present then by the Director of Planning and Development or Manager of Development Assessment.