

TWEED SHIRE COUNCIL

COUNCIL MEETING Tuesday, 18 October 2011

TITLE: Draft Section 94 Contributions Plan No31 – Terranora Area E

**Cr D Holdom
Cr P Youngblutt**

RESOLVED that

1. Council adopts Draft S94 Plan No 31 – Terranora Area E Version 1.0 as a basis for exhibition and community discussion/consultation.
2. Draft S94 Plan No 31 – Terranora Area E Version 1.0 is exhibited as required by the Environmental Planning and Assessment Regulations.

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr K Skinner, Cr J van Lieshout, Cr B Longland
AGAINST VOTE - Cr K Milne

TITLE: Draft Section 94 Contributions Plan No31 – Terranora Area E

ORIGIN:

Planning and Infrastructure

SUMMARY OF REPORT:

At the 19 July 2011 Council meeting, draft Development Control Plan Section B24 – Area E Urban Release Development Code (DCP-B24) was placed on public exhibition. Area E cannot function without the provision of essential services and access, therefore a draft Section 94 Developer Contribution Plan has been prepared as a means of providing the necessary public infrastructure works.

Concurrently with the DCP and S94 Contributions process, the NSW Department of Planning and Infrastructure is considering a Part 3A application over the eastern part of Area E called by the proponents "Altitude Aspire". It is understood that the Department is anxious for Council to speedily resolve the DCP/CP process so they can proceed with determination of the Part 3A application within a settled strategic planning and contributions framework.

The infrastructure proposed to be provided under this plan is:

- Acquisition of a road corridor and construction of the Broadwater Parkway
- Upgrading of Mahers Lane
- Acquisition of land, earthworks and embellishment of three structured public open space sporting fields
- Acquisition of land and embellishment of various casual public open space areas throughout the development
- Acquisition of Council easements over existing an existing flood levee and two drainage channels through private environmental zoned land to the north of the urban area adjacent to Trutes Bay.
- Capping of the levee and installation of new stormwater outlets to service the development
- Provision of a tidal floodgate at the existing flow control structure in the levee for mosquito control.

The proposed contributions under the draft plan are \$34,777 per dwelling or subdivision lot, however when combined with other contributions plans current and under review, the aggregate contribution is likely to be \$56,064. Section 64 water supply and sewerage headworks contribution are not included in the Section 94 Plan and are subject to separate additional payment.

The resolution of the Contributions Plan may be prolonged because under the terms of the Minister for Planning S94E Direction of 3 March 2011, Council cannot apply a contribution of more than \$30,000 per lot/dwelling without the approval of the minister.

After exhibition of this contributions plan and consideration of submissions, a report and recommendations on the final form of the contributions plan is expected to be submitted concurrently to Council with the submissions report on the Area E DCP. The report on the contributions plan will amongst other matters be likely to recommend that the draft contributions plan be forwarded to the Department of Infrastructure and Planning for their assistance on a process for obtaining the Minister for Planning's approval for the plan and its exceedence of the \$30,000 cap.

RECOMMENDATION:

That

- 1. Council adopts Draft S94 Plan No 31 – Terranora Area E Version 1.0 as a basis for exhibition and community discussion/consultation.**
- 2. Draft S94 Plan No 31 – Terranora Area E Version 1.0 is exhibited as required by the Environmental Planning and Assessment Regulations.**

REPORT:

1. Background

At the 19 July 2011 Council meeting, draft Development Control Plan Section B24 – Area E Urban Release Development Code (DCP-B24) was placed on public exhibition by Council. Area E cannot function without the provision of essential services and access, therefore a draft Section 94 Developer Contribution Plan has been prepared as a means of providing the necessary public infrastructure works. The draft plan is called Contribution Plan No.31 – Terranora Area E (CP31) and applies only to land within the Area E urban release area. The infrastructure to be provided in CP31 has been deduced from the draft DCP, except for minor variations that have arisen during the strategic design and estimating process that has enabled the works program for CP31 to be compiled.

Area E consists of steep land, sloping downwards to the flat lands bordering Trutes Bay. Most of the site is not served by services or access from surrounding urban area. The cost of servicing Area E is therefore very high and this is reflected in the level of contributions in the draft plan. The level of necessary contributions is well above the NSW Government's contribution cap.

Concurrently with the DCP, S94 Contributions process, the NSW Department of Planning and Infrastructure is considering a Part 3A application over the eastern part of Area E called by the proponents "Altitude Aspire". It is understood that the Department is anxious for Council to speedily resolve the DCP/CP process so they can proceed with determination of the Part 3A application within a settled strategic planning and contributions framework.

The resolution of the Contributions Plan will be prolonged because under the terms of the Minister for Planning S94E Direction of 3 March 2011, Council cannot apply a contribution of more than \$30,000 per lot/dwelling without the approval of the minister.

There seem to be two alternative processes for gaining such approval:

1. The applicant gives written agreement to the higher contribution (difficult in Area E where there are over 30 landowners) or
2. Council can submit the proposed S94 Contributions Plan to the Independent Pricing and Regulatory Tribunal (IPART). IPART reviews the Plan and will give advice and make recommendations to the minister for Planning and Council regarding the Plan. This process is supposed (see various Department of Planning Circulars and Practice Notes) to take place before the draft contributions plan is exhibited.

There is also a NSW Department of Planning Circular (PS 10-22, 16 September 2010) directing that they review all draft contributions plans before they are placed on public exhibition. However there is contrary advice that the circulars do not have any legislative power and are not enforceable.

At this time, notwithstanding the directions of various NSW Department of Planning Circulars and Practice notes, it is proposed to place draft Section 94 Plan No.31 Area E on public exhibition for the following reasons:

- The exhibited Area E DCP presents an incomplete picture of the strategic planning of Area E without the accompanying draft contributions to advise on the cost of necessary infrastructure
- The Area E Landowners and the public need to be informed of both the way Area E is to be developed (the DCP) and the accompanying infrastructure cost (the Contributions Plan) so they can make meaningful submissions on the Area E Plans.
- The proponents of the Altitude Aspire Part 3A application need to consider the draft contributions plan so they can decide whether they support the contributions proposed per lot/dwelling which are above the Government's cap. And to decide whether they will advise the NSW Department of Planning and Infrastructure that they are agreeable to have the Part 3A application determined within the Contributions Plan No.31 framework.
- The Part 3A application determining authority (The NSW Department of Planning and Infrastructure) need to have the Contributions Plan progressed so they can determine the Altitude Aspire application, having some confidence that there is in place a mechanism to provide the necessary infrastructure for both Altitude Aspire and the remainder of Area E.
- Placing Draft CP31 on exhibition now will give all stakeholders a mechanism to review and make submissions on the proposed infrastructure and associated contributions.

It is further proposed that after exhibition and consideration of submissions, that a report and recommendations on the final form of the contributions plan be submitted concurrently to Council with the submissions report on the Area E DCP. The report on the contributions plan will amongst other matters likely is to recommend that the draft contributions plan be forwarded to the Department of Planning and Infrastructure for their assistance on a process for obtaining the Minister for Planning's approval for the plan and its exceedance of the \$30,000 cap.

Draft CP31 identifies the need to provide the following infrastructure works due to the new development, apportioned at 100% to the Area E development:

- Acquisition of a road corridor and construction of the Broadwater Parkway
- Upgrading of Mahers Lane
- Acquisition of land, earthworks and embellishment of three structured public open space sporting fields
- Acquisition of land and embellishment of various casual public open space areas throughout the development
- Acquisition of Council easements over existing an existing flood levee and two drainage channels through private environmental zoned land to the north of the urban area adjacent to Trutes Bay.
- Capping of the levee and installation of new stormwater outlets to service the development
- Provision of a tidal floodgate at the existing flow control structure in the levee for mosquito control.

Draft CP31 does not provide for the collection of developer contributions to fund

- External arterial road network
- Libraries
- Bus shelters
- Cemeteries

- Community facilities
- Council administration offices,
- Cycleways
- Regional open space

These facilities are the subject of shire wide contributions plans that also apply to Area E.

Draft CP31 does not provide for internal subdivision infrastructure that is required by DCP A5 - Subdivision Manual, nor does it provide for Water supply and sewerage, S64 headworks charges.

Draft CP31 does not provide for the collection of developer contributions to fund the acquisition and rehabilitation of environmental land. In accordance with the NSW Department of Planning's *Draft Development Guidelines 2009*, the acquisition and rehabilitation of environmental land is not considered to be an eligible public amenity or services, and as such cannot be funded by developer contributions. According to the Guidelines, planning agreements and other funding sources such as government grants should be pursued in order to undertake environmental works.

It had been expected that Draft CP31 would provide for acquisition and environmental rehabilitation of Lot 227. For the preceding reasons and because it is not possible to establish a reasonable nexus between this activity and the development of Area E, Draft CP31 does not provide for acquisition and environmental rehabilitation of Lot 227 DP755740.

2. Works Program

2.1 Broadwater Parkway and Mahers Lane

Broadwater Parkway is the major connector road proposed to service the Area E Urban Release Area, connecting to Fraser Drive to the east, and Mahers Lane / Terranora Road to the west. Mahers Lane is an existing road with a varying cross section. The carriageway requires upgrading and realignment in order to service the traffic demands of the development.

Broadwater Parkway and Mahers Lane were previously included as Local Area Contributions in Contribution Plan No.4 – Tweed Road Contribution Plan (TRCP). The Local Area Contributions are to be deleted from the TRCP as part of a review in 2011 (Version 6) to be submitted to Council in November 2011, in order for it to be included in CP31. The eastern portion of Broadwater Parkway, adjacent to and including the intersection with Fraser Drive has been retained in the TRCP, within the general works program. This intersection is located just south of Amaroo Drive and will require acquisition of privately owned land.

Broadwater Parkway is 2.16 km in length and is to be constructed to Connector Road standard, being 13.4m kerb to kerb width from Fraser Drive to the Area E Town Centre and 11m kerb to kerb width from the Town Centre to Mahers Lane. It includes three bridges to accommodate north flowing water courses originating upstream towards Terranora Road. The largest bridge is 40m long and located immediately west of the Town Centre. A signalised intersection has been provided at the Town Centre. The cost estimate allows for acquisition of land for road, construction of road, off road cycleway, lighting, bridges and intersections.

The upgrade of Mahers Lane is 1.38km long and is 11m wide kerb to kerb Connector Road standard. The upgrade will be on the existing road reserve so there are no acquisition costs. The cost estimate allows for construction of the road, off road cycleway and lighting.

Estimated Cost

Broadwater Parkway	\$19,634,388
Mahers Lane	\$1,906,443
Total	\$21,540,830

The above roadworks are currently in Contributions Plan No.4 (TRCP), as a specific Area E, Local Area Contribution (LAC). As the works are now to be in CP31, the Local area contribution for area E will be deleted from the TRCP.

2.1 Open Space

For the purposes of deriving the area of land set aside for public open space Council has adopted the commonly used standard of 2.83 hectares per 1000 persons. This standard has generally been adopted by the Land and Environment Court for developing areas (Department of Planning 1992).

Public open space shall be provided in the following proportions:

- 1.7 hectares (60%) "structured" open space (sports fields) per 1000 persons);
- 1.13 hectares (40%) "casual" open space (neighbourhood parks, etc) per 1000 persons.

Estimated Population of Area E as per Exhibited Draft DCP, 3,782 persons			
Open Space Areas required (ha) in accordance with above formula		Open Space Proposed in exhibited draft DCP	Open Space provided in this Contributions Plan
Structured	6.4294	6.81	6.11
Casual	4.2737	5.2143	4.211

Whilst there is a small variance between the areas required by formula and actual areas provided in this plan the variations are small and deemed acceptable.

2.11 Structured Open Public Space

The following table summarises the estimated cost for the provision of structured public open space in Area E:

Structured summary	OS		Gross Area (ha)	Net Area Structured OS (ha)
Field 1		Village Centre	4.17	3.00
Field 2		Mahers Lane	2.89	1.46
Field 3		Central	2.09	1.65
Total			9.15	6.11

Assumed land value \$850,000 per ha

Structured summary	OS		Net Area (m2)	Cost	Comment
Field 1		Village Centre	30,000	\$8,842,720	1 AFL/cricket field & infrastructure. An additional 7,000m2 allocated to casual open space (see Sport field No. 1 park)
Field 2		Mahers Lane	14,600	\$5,987,431	1 rectangle field & infrastructure. An additional 10,400m2 allocated to casual open space (see Sport field No.2 park)
Field 3		Central	16,500	\$6,325,496	1 rectangle field & infrastructure & 1,900m2 used as unallocated sports field space
Total			61,100	\$21,155,612	

2.12 Casual Open Public Space Costings

The following table summarises the provision of casual public open space in Area E:

Casual summary	OS	Area (m2)	Cost	Comment
Park 1	Altitude Aspire North	5,500	\$1,170,217	
Park 2	Altitude Aspire South	5,570	\$1,181,524	
Park 3	Altitude Aspire Central	0	\$0	Does not meet DCP-A5 subdivision standards, so not included in casual OS calculations
Park 4	Parke Lane	3,640	\$853,885	
Park 5	Central East	4,500	\$1,138,976	
Park 6	Central West	5,500	\$1,439,950	
Sport field no.1 park	Village Centre	7,000	\$1,228,338	
Sport field no.2 park	Mahers Lane	10,400	\$1,692,586	Same land parcel as Sports field 2
Public toilet			\$201,858	4 WC, location to be decided
Total		42,110	\$8,907,333	

Costings are as follows:

Field Number	1. Altitude Aspire North	2. Altitude Aspire South	3. Altitude Aspire Central – does not comply with DCP-A5 requirements	4. Parkes Lane
Land Acquisition	\$467,500	\$484,500	NA	\$309,400
Earthworks	\$113,750	\$168,000	NA	\$62,500
Road Access	\$109,500	\$98,550	NA	\$140,160
Embellishment and services	\$326,830	\$276,362	NA	\$230,449
Contingency (15%)	\$152,637	\$154,112	NA	\$111,376
TOTAL	\$1,170,217	\$1,181,524	NA	\$853,885
Field Number	5. Central East	6. Central West	Sports field 1 Casual Park	Sports field 2 Casual Park
Land Acquisition	\$382,500	\$467,500	\$595,000	\$884,000
Earthworks	\$102,000	\$175,000	\$0	\$0
Road Access	\$240,900	\$284,700	\$0	\$0
Embellishment and services	\$265,014	\$324,930	\$473,120	\$587,814
Contingency (15%)	\$148,562	\$187,820	\$160,218	\$220,772
TOTAL	\$1,138,976	\$1,439,950	\$1,228,338	\$1,692,586
Public Toilet	4 x Unisex WCs	Location to be confirmed	TOTAL	\$201,858
TOTAL STRUCTURED OPEN SPACE				\$8,907,333

3. Part 116D of the Environmental Planning and Assessment Act

Part 116D of the (as yet unproclaimed amendments to the) Environmental Planning and Assessment Act requires that Council take account of 5 key considerations for development contributions:

(a) Can the public infrastructure that is proposed to be funded by a development contribution be provided within a reasonable time?

The timing of provision of the public infrastructure will be dependent on the cash flow from developer contributions which is dependent on the rate of development of Area E. This is not within Council's power to control. However as contributions are paid, infrastructure will be provided incrementally as the contribution cash flow permits. The full provision of infrastructure will not be completed until all of Area E is developed and all contributions have been collected. This timing is considered reasonable.

(b) What will be the impact of the proposed development contribution on the affordability of the proposed development?

The development contributions required are considerable and will have a negative impact on affordability. This is inevitable as the physical constraints of the land are such that provision of necessary infrastructure is very expensive.

(c) Is the proposed development contribution based on a reasonable apportionment between existing demand and new demand for public infrastructure to be created by the proposed development to which the contribution relates?

Yes. 100% is apportioned to the new demand as none of this infrastructure is needed for existing demand.

(d) Is the proposed development contribution based on a reasonable estimate of the cost of proposed public infrastructure?

Yes. Estimates are based on the latest available concept plans, current market rates for construction and contingencies based on the principles in the NSW RTA publication "Project Estimating" 31 March 2008.

(e) Are the estimates of demand for each item of public infrastructure to which the proposed development contribution relates reasonable?

Yes. Demand for open space is based on standard provision of 2.83ha per 1,000 populations. The road provision is based on a single collector standard road with connections to Fraser Drive in the east and Terranora Road in the south west.

4. Calculation

Summary works program:

Road Works	\$21,540,830
Structured Open Space	\$21,155,612
Casual Open Space	\$8,907,333
Stormwater and Flooding Facilities	\$588,724
TOTAL	\$52,192,499

Applying the revised works program cost to the current population estimate (3,782 people) based on the development yield forecast by DCP-B24 (1799 allotments), the plan results in the following contribution rates:

	Persons	Road Works Base Rate	Structured Open Space Base Rate	Casual Open Space Base Rate	Stormwater / Flooding Facilities Base Rate	TOTAL
Per person	1	\$5,980	\$5,873	\$2,473	\$163	\$14,490
Per Lot/ET	2.4	\$14,353	\$14,096	\$5,935	\$392	\$34,777
Detached dwelling	2.4	\$14,353	\$14,096	\$5,935	\$392	\$34,777
1 bedroom unit	1.3	\$7,775	\$7,635	\$3,215	\$212	\$18,837
2 bedroom unit	1.7	\$10,167	\$9,985	\$4,204	\$278	\$24,633
3 bedroom unit	2.1	\$12,559	\$12,334	\$5,193	\$343	\$30,430
4+ bedroom unit	2.4	\$14,353	\$14,096	\$5,935	\$392	\$34,777

5. How this Plan Relates to Other Contribution Plans

5.1 Plans Applying to Area E

The following contributions plans apply now, prior to adoption of CP31:

S94-04 Tweed Road Contribution Plan	9,926.00
S94-04 TRCP, Local area charge, Area E	3,601.00
S94-05 Casual Open Space	526.00
S94-05 Structured Open Space	602.00
S94-11 Libraries	792.00
S94-12 Bus Shelters	60.00
S94-13 Cemeteries	120.00
S94-15 Community Facilities	1,325.00
S94-18 Council Administration building & depots	1,772.82
S94-22 Cycleways	451.00
S94-26 Regional Casual Open Space	1,042.00
S94-26 Regional Structured Open Space	3,656.00
S94 contribution per lot including indexation	\$ 23,873.82

As advised elsewhere in this report, the local area charge for Area E units to be removed from the TRCP and placed in CP31.

Including draft CP31 into this mix results in the following aggregate S94 charges:

S94-04 Tweed Road Contribution Plan	9,926.00
S94-04 TRCP, Local area charge, Area E	0.00
S94-11 Libraries	792.00
S94-12 Bus Shelters	60.00
S94-13 Cemeteries	120.00
S94-15 Community Facilities	1,325.00
S94-18 Council Administration building & depots	1,772.82
S94-22 Cycleways	451.00
S94-26 Regional Casual Open Space	1,042.00
S94-26 Regional Structured Open Space	3,656.00
S94-31 Terranora Area E	34,777
S94 contribution per lot including indexation	\$ 53,921.82

There are also amendments to the TRCP (CP4) and CP15 (Community facilities) that are likely to be submitted to Council for approval to exhibit by the end of 2011.

The affect of these further amendments on Area E Section 94 Contributions is as follows:

S94-04 Tweed Road Contribution Plan	11,902
S94-04 TRCP, Local area charge, Area E	0
S94-11 Libraries	792
S94-12 Bus Shelters	60
S94-13 Cemeteries	120
S94-15 Community Facilities	1,491.00
S94-18 Council Administration building & depots	1,772.82
S94-22 Cycleways	451
S94-26 Regional Casual Open Space	1,042
S94-26 Regional Structured Open Space	3,656
S94-31 Terranora Area E	34,777
S94 contribution per lot including indexation	\$ 56,064

Clearly the aggregate contribution for a subdivision lot or dwelling at Area E will exceed the NSW Government's cap by a considerable amount and will need the Ministers approval if CP31 is to proceed to be applied to development approval conditions.

6. Issues with the Contributions Cap

6.1 Section 94E Direction, 3 March 2011

Clause 6(3) of Section 94E Direction dated 3 March 2011 issued by the Minister for Planning Tony Kelly limits the contributions per dwelling or allotment at Area E Terranora to \$30,000 per dwelling or subdivision lot.

Clause 6(4) advises that "A council (or planning panel) may, in a particular case, require, as a condition of development consent, the payment of a monetary contribution that exceeds the maximum amount of the contribution calculated in accordance with subclause (2) or (3), but only with both the written agreement of the applicant for the consent and the written approval of the Minister, given before the condition is imposed."

The applicant for Altitude Aspire has verbally indicated that such approval is likely to be given for their application, however there are more than 30 other landowners at Area E and securing agreement from them all could be difficult.

Council is bound by this direction; however the direction can be replaced by the current Minister.

6.2 NSW Department of Planning Circular PS 10-022, 16 September 2011

Amongst other matters this circular advises:

"Preparing new Contributions Plans

Before a draft contributions plans is publicly notified a council must seek approval from the Department to publicly exhibit the draft plan.

What if a developer agrees to make a contribution over the cap?

Where an applicant wishes to pay a contribution, identified in a contributions plan, that exceeds the determined cap the Minister may, on the application of a council and support of the developer, approve a higher contribution amount than is authorised under the Direction.

A council will need to make an application to the Minister.

This application is to:

- *be accompanied a by letter from the applicant agreeing to pay more than the maximum amount and that this is agreed to voluntarily*
-

provide the following detail:

- *the relevant Development Application (DA) or area, and what the DA will authorise*
- *the number of dwelling/or lots and the land to which the application relates*
- *the maximum contribution under the cap*
- *the name of the relevant contributions plan*
- *the rate per/dwelling or per lot under the contributions plan*
- *the public amenities and public services that are being levied for (compared against the essential works list)*
- *the details of any security*
- *□ provide justification for an increase above the cap*
- *□ identify the total value of the contribution payable."*

"The role of IPART

Under the new regime, the Independent Pricing and Regulatory Tribunal (IPART) will be involved for the first time in the implementation of the development contributions system.

IPART's role will include reviewing:

- *new contributions plans above the relevant cap*
- *development contributions plans above the relevant cap for those councils that are seeking priority infrastructure funding, and*

- *development contributions plan above the relevant cap for those councils that are seeking a special rate variation.*

•
In addition, IPART will be responsible for developing and calculating annually a Local Government Cost Index and a productivity factor for council rates and reviewing councils' applications for special variations under the Local Government Act 1993."

6.3 Local Development Contributions Practice Note - For the Assessment of Local Contributions Plans by IPART - November 2010

This is a 13 page practice note that fleshes out the requirements of submissions to IPART.

6.4 The Way Forward

Discussions with the representatives of NSW Department of Planning and Infrastructure, who are assessing the "Altitude Aspire" Part 3A Application, indicate that they are uncertain of how the section 94 cap matter will be resolved. They have undertaken to seek further internal advice within the Department of how the matter may be progressed.

It is considered that delaying public exhibition will not serve the process of reaching resolution of Area E strategic planning and infrastructure funding. It is therefore proposed, notwithstanding the contrary directions of Department of Planning Circulars to proceed with public exhibition of the contributions plan and concurrently negotiate with the Department on the means to process the approval to exceed the contributions cap of \$30,000.

The Draft Plan (copy attached) is attached to this report and is recommended for exhibition.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The adoption of Draft *Section 94 Plan No 31 – Terranora Area E* will enable Council to collect developer contributions for the provision of road infrastructure, embellished structured and casual public open space areas and stormwater and flood management facilities in the Area E Urban Release Area. If the Draft Plan is not adopted, the development of Area E cannot proceed as Council would not be able to fund and provide the infrastructure necessary for Area E to proceed.

The process for approval of draft CP31 is uncertain as it is caught up with the previous NSW Government's attempts to place a cap on developer contributions on dwelling or residential lot. There are various processes suggested in Department of Planning Circulars and Practice Note to resolve the matter and further advice will be sought.

POLICY IMPLICATIONS:

Contributions are required so that Council is able to provide the road infrastructure, embellished structured and casual public open space areas and stormwater and flood management facilities identified by DCP-B24 as being required as a result of development.

UNDER SEPARATE COVER:

1. Draft Developer Contribution Plan No.31 – Terranora Area E Version 1.0 (DW 40250959)
 2. Section 94E Direction, 3 March 2011 (DW 40252006)
 3. NSW Department of Planning Circular PS 10-022, 16 September 2011 (DW 40250991)
 4. Local Development Contributions Practice Note - For the Assessment of Local Contributions Plans by IPART - November 2010 (DW 40252000)
-