

## Draft Policy

# Section 94 Developer Contributions and Section 64 Developer Charges - Community Organisations

Version 2.0

Adopted by Council at its meeting on xxx

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# Section 94 Developer Contributions and Section 64 Developer Charges - Community Organisations

## Policy Objective

This Policy allows Council to offer alternatives to upfront payment of Section 94 Contributions and Section 64 Developer Charges on Development Approvals granted to smaller community organisations located on Council controlled land.

The Policy is applicable to all lands under the care control and management of Tweed Shire Council.

## Definitions

<b>Council Controlled Land</b>	Includes land owned by Council classified as either community land or operational land under the <i>Local Government Act 1993</i> ; Council Public Roads defined under the <i>Roads Act 1993</i> and Crown Land where Council is appointed trustee under the <i>Crown Lands Act 1989</i> .
<b>Community Organisation</b>	An eligible Community Organisation is a registered not-for-profit organisation with an annual turnover of less than \$500,000. The organisation must be registered for GST and have an active ABN.
<b>Not For Profit</b>	Is a non-government group or organisation that is not operating for the profit or gain of its individual members, whether these gains would be direct or indirect.
<b>Equivalent Tenement (ET)</b>	Is a standard measure used to assess the demand or loading of a particular development will have on Council's Water Supply and Sewerage Infrastructure. It is based on the water consumption or sewage discharge for an average residential dwelling or house, based on state-wide data.

## Policy Background

This Policy has been developed to offer financial relief to eligible community organisations that are seeking development approval for facilities and/or operations on Council Controlled Land. This relief relates to all Section 94 Developer Contributions and Section 64 Developer Charges that are levied upon approval of the development approval being granted. This relief is in the form of offering alternatives to the upfront payment of Section 94 Developer Contributions and Section 64 Developer Charges prior to Construction Certificate.

This Policy can only establish an instalment plan for general Developer Contributions levied as part of a Development Approval granted under *Environmental Planning and Assessment Act 1979*, and water and sewer developer contributions levied under s.64 of the Local Government Act.

Any decision to establish an instalment plan for Section 94 Developer Contributions or Section 64 Developer Charges under this Policy can only be made by a resolution of Council and Council will at all times retain its discretion to accept or refuse any applications. Applicants do not need a Council Resolution to choose High Consumption Charges in lieu of upfront Section 64 Developer Charges. This option is managed through the Certificate of Compliance process.

This policy does not extend to organisations seeking relief from Section 94 Developer Contributions and Section 64 Developer Charges over privately owned land and/or premises on Council Controlled Land where there is a permanent liquor licence or gaming licence.

# Policy

## Section 94 Developer Contributions

Section 94 Developer Contributions are payments made by developers to enable Council to provide public amenities and services required for new residents and businesses. Section 94 of the Environmental Planning and Assessment Act 1979 is the principal legislation enabling Councils to levy contributions for public amenities and services. Section 94 Contributions are imposed by way of a condition of development consent or complying development.

An eligible Community Organisation will need to lodge a written letter to Council requesting that Council approve an instalment plan for Section 94 Developer Contributions upon the granting of consent of their Development Application.

Development Consent must be formally issued before any instalment plan can be considered by Council.

Total Value of Section 94 Developer Contributions	Instalment Period	Instalments
<\$5,000	2 Years	1 / year
\$5,001 - \$15,000	3 Years	1 / year
\$15,001 – \$50,000	5 Years	1 / year
>\$50,001	10 Years	1 / year

**Table 1:** Instalment Plans for Section 94 Developer Contributions

Council will consider any appropriate request under this policy and determine whether to make an offer of an instalment plan for developer contributions.

No Construction Certificate or Occupancy Certificate will be released for the development until all developer contributions are paid in full or Council has resolved to an instalment plan and all necessary agreements have been executed.

The applicant will be required to enter into a written agreement with Council for deferred payments. This agreement will outline milestones, claims and deliverables as per this policy.

Council will only approve the application of this policy if the applicant has tenure that is adequate to repay any contributions generated in the relevant instalment period.

## Section 64 Developer Charges

Section 64 Developer Charges are levied to assist in funding water and sewer infrastructure capital works required for growth. These capital works include water treatment plants, water reservoirs, pumping stations sewer treatment plants etc. Water Supply and Sewerage Section 64 Developer Charges are applied in accordance with Section 64 of the Local Government Act 1993 and Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000.

In Lieu of the upfront payment for Section 64 Developer Charges, Community Organisations defined by this policy have two options:

### Option 1 Instalment Plan

Total Value of S64 Developer Charges	Instalment Period	Instalments
<\$5,000	2 Years	1 per year
\$5,001 - \$15,000	3 Years	1 per year
\$15,000 - \$50,000	5 Years	1 per year
>\$50,001	10 Years	1 per year

**Table 2:** Instalment Plans for Section 64 Developer Charges

An eligible Community Organisation will need to lodge a written letter to Council requesting that Council approve an instalment plan for Section 64 Developer Charges upon the granting of consent of their Development Application.

Development Consent must be formally issued before any instalment plan can be considered by Council.

Council will consider any appropriate request under this policy and determine whether to make an offer of an instalment plan for developer contributions.

No Construction Certificate or Occupancy Certificate will be released for the development until all Developer Charges are paid in full or Council has resolved to an instalment plan and all necessary agreements have been executed, and a Section 307 Certificate of Compliance has been issued.

The applicant will be required to enter into a written agreement with Council for deferred payments. This agreement will outline milestones, claims and deliverables as per this policy.

Council will only approve the application of this policy if the applicant has tenure that is adequate to repay any contributions generated in the relevant instalment period.

## Option 2

### High Consumption Charges

An eligible Community Organisation may maintain the existing ET entitlement for the property and pay for any additional water consumption and sewerage usage above the ET entitlement on an ongoing basis via their Water Notice.

Water consumption up to the equivalent of the existing ET entitlement, will be charged at the consumption charge and consumption greater than the existing entitlement will be charged at the high consumption charge for non-residential properties. Sewerage usage up to the equivalent of the existing ET entitlement will be charged at the sewerage usage charge and usage in excess of the existing entitlement will be charged at the high sewerage usage charge for non-residential properties.

No additional ET entitlement will accrue to the property through the payment of the high consumption and high sewerage usage charges.

The high consumption option is available for Community Organisations proposing a single development on a single lot that is metered separately. Development on a site with multiple uses would need to be assessed on a case by case basis by Council.

Applicants do not need a Council Resolution to choose Option 2. This option is managed through the Certificate of Compliance process. Applicants are advised to complete an *Application for a Certificate of Compliance under Section 305 of the Water Management Act* to commence the process.

No Construction Certificate or Occupancy Certificate will be released for the development until a Section 307 Certificate of Compliance has been issued.

## How to Apply

Community Organisations that are interested in entering into a deferred payment plan should complete the *Application for Deferred Payment of Section 94 Contributions and Section 64 Charges* form.

Applicants should also complete an *Application for a Certificate of Compliance under Section 305 of the Water Management Act* if the requirement for a Certificate of Compliance is conditioned on their Development Approval.

Both forms are available on [Council's website](#).

## Compliance

The Community Organisation shall provide audited financial statements for the previous three financial years with their application. Certificates of registration for GST and ABN also need to be supplied along with any other relevant Federal or State registration requirements. For example registration of business name with Australian Securities and Investment Commission (ASIC), registration with the Australian Charities and Not-for

Profits Commissions (ACNC) or registration as a “Charitable Organisation” with the Australian Tax Office (ATO).

## **Related Legislation**

*Local Government Act 1993*

*Roads Act 1993*

*Crown Lands Act 1989*

*Environmental Planning and Assessment Act 1979*

## **Forms**

[Application for a Certificate of Compliance under Section 305 or the Water Management Act](#)

## **Review Period**

A report will be provided to Council in five (5) years reviewing this Policy making recommendations for amendment.

## **Useful Links**

[Tweed Shire Council website](#)

[Division of Local Government](#)

[Australian Charities and Not-for-profits Commission](#)



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Version Control:

<b>Version History</b>		
<b>Version #</b>	<b>Summary of changes made</b>	<b>Date changes made</b>
1.0	Policy creation	February 2014
1.0	Adopted by Council - Minute No 320	19 June 2014
2.0	Review of Policy and changes made to be consistent with Council resolutions relating to the Business Investment Policy and High Consumption Charges for Water Supply and Sewerage.	01 Sep 2017