

# Mysteries of Section 90

Have you ever felt frustrated because you wanted to make a submission to council? These articles aim to assist the would-be submission-writer and may also help those already blooded. The public is free to send in comments or objections to any proposed development that is being considered by council.

All development applications are assessed by council officers in the light of points set out in Section 90 of the Environmental Planning and Assessment Act. (See adjacent article).

It's not a case of every one of these factors having to be met. It's more that these Section 90 factors are considered and balanced against each other in coming to the final decision.

If there are significant public objections to a proposal, that Development Application comes before the elected councillors for their vote.

At the outset it is important to say that you don't have to style your submissions in the image of Section 90. It is perfectly acceptable to write a letter saying what you think is wrong with the proposal. Council staff will then extract your comments, categorising them under the relevant sub-headings.

It's also important to say that an entire letter of complaint may turn out to be invalid under the Act. This is where some understanding of Section 90 may improve your effectiveness.

Elizabeth Smith of BEACON, a veteran submission writer thinks Section 90 can help clarify your thoughts and feelings about any development.

She recommends a standard package of 2 - 3 typed pages, with the DA number on the top of your submission.

"A good format helps. You can use the appropriate Section 90 clause as a subheading for your own comments on the development", Elizabeth says.

It is good to be aware of, and so avoid, invalid comments. They will be discounted anyway. Prejudiced comments such as not wanting 'the sort of people who live in flats' next door is regarded as invalid.

Similarly expressing a dislike for the developer is not a valid objection.

Assertions that a subdivision will reduce the value of your property are hard to prove. As Malcolm Ryan, the council's Planning Manager, points out: "In these buoyant days, it's very hard to depress the value of a property. It's

more likely to have the reverse effect. If the block next door can be subdivided, it is probable that yours can be also."

Clause o) about 'the existing and likely future amenity of the neighbourhood' can have clashing implications. For example residents may argue that a block of flats is out of character with the existing neighbourhood. If, however, flats are already a permissible use for that site, then the future amenity has already been decided.

This is crucial. To argue against what has already been nominated in a Development Control Plan for that area, does not count as a valid objection. It is too late in the planning process to make your wishes known.

If you wish to object to the principle of land use, you need to comment on DCP's when they are framed and rezonings as they are advertised.

The words 'public interest' can be confusing. It does not mean the amount of interest shown by the public. Jane Stanley, council's Planning Director, says: "Instead 'public interest' means the greater community good. Council has to look at the global picture, weighing up the interests of different groups in the community."

If this suddenly all seems like too much bother, don't be discouraged. Public objections are important.

They can raise issues that council may have been unaware of. For instance the DA for The Fig Tree Restaurant was met with many objections from neighbours about the noise and mess of the clientele. To that point, neither council nor the restaurateurs were aware of these problems. When all these groups came together, it became clear that the problems were caused by poor signposting, something easy to remedy.

"More often, public objections can lead to a withdrawal of the application", says Jane Stanley. Responding to objections to a 3 unit development in Mullumbimby, for instance, council met with the developer and objectors on site. As a result, the developer withdrew his application and resubmitted a new one for just 2 units. The objectors had agreed this was more acceptable.

"There are many examples where the developer volunteers a modification of the application, or council puts conditions on an approval, that result from a particular issue raised in public objections", says the Planning Director

## Keep This for Your Archives

### Abbreviated version of Section 90

In determining a development application, a consent authority should consider, where relevant, the following:

- (a) the provisions of:
  - (i) any environmental planning instrument
  - (ii) any draft environmental planning instrument that is or has been placed on exhibition
  - (iii) any draft State environmental planning policy
  - (iv) any development control plan in force under section 72 applying to the land
- (a1) the provisions of:
  - (i) any conservation agreement entered into under the National Parks and Wildlife Act 1974
  - (ii) any plan of management adopted under the Act
- (b) the impact of that development on the environment and any means that may be employed to protect the environment and mitigate harm
- (c) the effect of that development on the landscape or scenic quality of the locality
- (c1) the effect of that development on any wilderness area
- (d) the social effect and the economic effect of that development in the locality
- (e) the character, location, siting, bulk, scale, size, height, density, design or external appearance of that development
- (f) the size and shape of the land, the siting of any building or works thereon and the area to be occupied by that development
- (g) whether the land is unsuitable for that development by reason of its being, or is likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk
- (h) the relationship of that development to development on adjoining land or on other land in the locality
- (i) whether the proposed means of entrance and exit from that development are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles
- (j) the amount of traffic likely to be generated, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system
- (k) whether public transport services are necessary
- (l) whether utility services are available and adequate for that development
- (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved
- (m1) whether that development is likely to cause soil erosion
- (n) any representations made by a public authority
- (o) the existing and likely future amenity of the neighbourhood
- (p) any submission made under section 87
- (p1) any matter specified in an environmental planning instrument
- (q) the circumstances of the case
- (r) the public interest
- (s) any other prescribed matter.

Written & edited by Nadine Hood  
for Byron Shire Council  
Typeset by Brunswick Byron Echo  
Printed by Wrightprint, Byron Bay



# Mysteries of Section 90

Have you ever felt frustrated because you wanted to make a submission to council? These articles aim to assist the would-be submission-writer and may also help those already blooded. The public is free to send in comments or objections to any proposed development that is being considered by council.

All development applications are assessed by council officers in the light of points set out in Section 90 of the Environmental Planning and Assessment Act. (See adjacent article).

It's not a case of every one of these factors having to be met. It's more that these Section 90 factors are considered and balanced against each other in coming to the final decision.

If there are significant public objections to a proposal, that Development Application comes before the elected councillors for their vote.

At the outset it is important to say that you don't have to style your submissions in the image of Section 90. It is perfectly acceptable to write a letter saying what you think is wrong with the proposal. Council staff will then extract your comments, categorising them under the relevant sub-headings.

It's also important to say that an entire letter of complaint may turn out to be invalid under the Act. This is where some understanding of Section 90 may improve your effectiveness.

Elizabeth Smith of BEACON, a veteran submission writer thinks Section 90 can help clarify your thoughts and feelings about any development.

She recommends a standard package of 2 - 3 typed pages, with the DA number on the top of your submission.

"A good format helps. You can use the appropriate Section 90 clause as a subheading for your own comments on the development", Elizabeth says.

It is good to be aware of, and so avoid, invalid comments. They will be discounted anyway. Prejudiced comments such as not wanting 'the sort of people who live in flats' next door is regarded as invalid.

Similarly expressing a dislike for the developer is not a valid objection.

Assertions that a subdivision will reduce the value of your property are hard to prove. As Malcolm Ryan, the council's Planning Manager, points out: "In these buoyant days, it's very hard to depress the value of a property. It's

more likely to have the reverse effect. If the block next door can be subdivided, it is probable that yours can be also."

Clause o) about 'the existing and likely future amenity of the neighbourhood' can have clashing implications. For example residents may argue that a block of flats is out of character with the existing neighbourhood. If, however, flats are already a permissible use for that site, then the future amenity has already been decided.

This is crucial. To argue against what has already been nominated in a Development Control Plan for that area, does not count as a valid objection. It is too late in the planning process to make your wishes known.

If you wish to object to the principle of land use, you need to comment on DCP's when they are framed and rezonings as they are advertised.

The words 'public interest' can be confusing. It does not mean the amount of interest shown by the public. Jane Stanley, council's Planning Director, says: "Instead 'public interest' means the greater community good. Council has to look at the global picture, weighing up the interests of different groups in the community."

If this suddenly all seems like too much bother, don't be discouraged. Public objections are important.

They can raise issues that council may have been unaware of. For instance the DA for The Fig Tree Restaurant was met with many objections from neighbours about the noise and mess of the clientele. To that point, neither council nor the restaurateurs were aware of these problems. When all these groups came together, it became clear that the problems were caused by poor signposting, something easy to remedy.

"More often, public objections can lead to a withdrawal of the application", says Jane Stanley. Responding to objections to a 3 unit development in Mullumbimby, for instance, council met with the developer and objectors on site. As a result, the developer withdrew his application and resubmitted a new one for just 2 units. The objectors had agreed this was more acceptable.

"There are many examples where the developer volunteers a modification of the application, or council puts conditions on an approval, that result from a particular issue raised in public objections", says the Planning Director

## Keep This for Your Archives

### Abbreviated version of Section 90

In determining a development application, a consent authority should consider, where relevant, the following:

- (a) the provisions of:
  - (i) any environmental planning instrument
  - (ii) any draft environmental planning instrument that is or has been placed on exhibition
  - (iii) any draft State environmental planning policy
  - (iv) any development control plan in force under section 72 applying to the land
- (a1) the provisions of:
  - (i) any conservation agreement entered into under the National Parks and Wildlife Act 1974
  - (ii) any plan of management adopted under the Act
- (b) the impact of that development on the environment and any means that may be employed to protect the environment and mitigate harm
- (c) the effect of that development on the landscape or scenic quality of the locality
- (c1) the effect of that development on any wilderness area
- (d) the social effect and the economic effect of that development in the locality
- (e) the character, location, siting, bulk, scale, size, height, density, design or external appearance of that development
- (f) the size and shape of the land, the siting of any building or works thereon and the area to be occupied by that development
- (g) whether the land is unsuitable for that development by reason of its being, or is likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk
- (h) the relationship of that development to development on adjoining land or on other land in the locality
- (i) whether the proposed means of entrance and exit from that development are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring, and parking of vehicles
- (j) the amount of traffic likely to be generated, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system
- (k) whether public transport services are necessary
- (l) whether utility services are available and adequate for that development
- (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved
- (m1) whether that development is likely to cause soil erosion
- (n) any representations made by a public authority
- (o) the existing and likely future amenity of the neighbourhood
- (p) any submission made under section 87
- (p1) any matter specified in an environmental planning instrument
- (q) the circumstances of the case
- (r) the public interest
- (s) any other prescribed matter.

Written & edited by Nadine Hood  
for Byron Shire Council  
Typeset by Brunswick Byron Echo  
Printed by Wrightprint, Byron Bay



# Mysteries of Section 90

Have you ever felt frustrated because you wanted to make a submission to council? These articles aim to assist the would-be submission-writer and may also help those already blooded. The public is free to send in comments or objections to any proposed development that is being considered by council.

All development applications are assessed by council officers in the light of points set out in Section 90 of the Environmental Planning and Assessment Act. (See adjacent article).

It's not a case of every one of these factors having to be met. It's more that these Section 90 factors are considered and balanced against each other in coming to the final decision.

If there are significant public objections to a proposal, that Development Application comes before the elected councillors for their vote.

At the outset it is important to say that you don't have to style your submissions in the image of Section 90. It is perfectly acceptable to write a letter saying what you think is wrong with the proposal. Council staff will then extract your comments, categorising them under the relevant sub-headings.

It's also important to say that an entire letter of complaint may turn out to be invalid under the Act. This is where some understanding of Section 90 may improve your effectiveness.

Elizabeth Smith of BEACON, a veteran submission writer thinks Section 90 can help clarify your thoughts and feelings about any development.

She recommends a standard package of 2 - 3 typed pages, with the DA number on the top of your submission.

"A good format helps. You can use the appropriate Section 90 clause as a subheading for your own comments on the development", Elizabeth says.

It is good to be aware of, and so avoid, invalid comments. They will be discounted anyway. Prejudiced comments such as not wanting 'the sort of people who live in flats' next door is regarded as invalid.

Similarly expressing a dislike for the developer is not a valid objection.

Assertions that a subdivision will reduce the value of your property are hard to prove. As Malcolm Ryan, the council's Planning Manager, points out: "In these buoyant days, it's very hard to depress the value of a property. It's

more likely to have the reverse effect. If the block next door can be subdivided, it is probable that yours can be also."

Clause (c) about 'the existing and likely future amenity of the neighbourhood' can have clashing implications. For example residents may argue that a block of flats is out of character with the existing neighbourhood. If, however, flats are already a permissible use for that site, then the future amenity has already been decided.

This is crucial. To argue against what has already been nominated in a Development Control Plan for that area, does not count as a valid objection. It is too late in the planning process to make your wishes known.

If you wish to object to the principle of land use, you need to comment on DCP's when they are framed and rezonings as they are advertised.

The words 'public interest' can be confusing. It does not mean the amount of interest shown by the public. Jane Stanley, council's Planning Director, says: "Instead 'public interest' means the greater community good. Council has to look at the global picture, weighing up the interests of different groups in the community."

If this suddenly all seems like too much bother, don't be discouraged. Public objections are important.

They can raise issues that council may have been unaware of. For instance the DA for The Fig Tree Restaurant was met with many objections from neighbours about the noise and mess of the clientele. To that point, neither council nor the restaurateurs were aware of these problems. When all these groups came together, it became clear that the problems were caused by poor signposting, something easy to remedy.

"More often, public objections can lead to a withdrawal of the application", says Jane Stanley. Responding to objections to a 3 unit development in Mullumbimby, for instance, council met with the developer and objectors on site. As a result, the developer withdrew his application and resubmitted a new one for just 2 units. The objectors had agreed this was more acceptable.

"There are many examples where the developer volunteers a modification of the application, or council puts conditions on an approval, that result from a particular issue raised in public objections", says the Planning Director

## Keep This for Your Archives

### Abbreviated version of Section 90

In determining a development application, a consent authority should consider, where relevant, the following:

- (a) the provisions of:
  - (i) any environmental planning instrument
  - (ii) any draft environmental planning instrument that is or has been placed on exhibition
  - (iii) any draft State environmental planning policy
  - (iv) any development control plan in force under section 72 applying to the land
- (a1) the provisions of:
  - (i) any conservation agreement entered into under the National Parks and Wildlife Act 1974
  - (ii) any plan of management adopted under the Act
- (b) the impact of that development on the environment and any means that may be employed to protect the environment and mitigate harm
- (c) the effect of that development on the landscape or scenic quality of the locality
- (c1) the effect of that development on any wilderness area
- (d) the social effect and the economic effect of that development in the locality
- (e) the character, location, siting, bulk, scale, size, height, density, design or external appearance of that development
- (f) the size and shape of the land, the siting of any building or works thereon and the area to be occupied by that development
- (g) whether the land is unsuitable for that development by reason of its being, or is likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk
- (h) the relationship of that development to development on adjoining land or on other land in the locality
- (i) whether the proposed means of entrance and exit from that development are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles
- (j) the amount of traffic likely to be generated, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system
- (k) whether public transport services are necessary
- (l) whether utility services are available and adequate for that development
- (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved
- (m1) whether that development is likely to cause soil erosion
- (n) any representations made by a public authority
- (o) the existing and likely future amenity of the neighbourhood
- (p) any submission made under section 87
- (p1) any matter specified in an environmental planning instrument
- (q) the circumstances of the case
- (r) the public interest
- (s) any other prescribed matter.

Written & edited by Nadine Hood  
for Byron Shire Council  
Typeset by Brunswick Byron Echo  
Printed by Wrightprint, Byron Bay



# Mysteries of Section 90

Have you ever felt frustrated because you wanted to make a submission to council? These articles aim to assist the would-be submission-writer and may also help those already blooded. The public is free to send in comments or objections to any proposed development that is being considered by council.

All development applications are assessed by council officers in the light of points set out in Section 90 of the Environmental Planning and Assessment Act. (See adjacent article).

It's not a case of every one of these factors having to be met. It's more that these Section 90 factors are considered and balanced against each other in coming to the final decision.

If there are significant public objections to a proposal, that Development Application comes before the elected councillors for their vote.

At the outset it is important to say that you don't have to style your submissions in the image of Section 90. It is perfectly acceptable to write a letter saying what you think is wrong with the proposal. Council staff will then extract your comments, categorising them under the relevant sub-headings.

It's also important to say that an entire letter of complaint may turn out to be invalid under the Act. This is where some understanding of Section 90 may improve your effectiveness.

Elizabeth Smith of BEACON, a veteran submission writer thinks Section 90 can help clarify your thoughts and feelings about any development.

She recommends a standard package of 2 - 3 typed pages, with the DA number on the top of your submission.

"A good format helps. You can use the appropriate Section 90 clause as a subheading for your own comments on the development", Elizabeth says.

It is good to be aware of, and so avoid, invalid comments. They will be discounted anyway. Prejudiced comments such as not wanting 'the sort of people who live in flats' next door is regarded as invalid.

Similarly expressing a dislike for the developer is not a valid objection.

Assertions that a subdivision will reduce the value of your property are hard to prove. As Malcolm Ryan, the council's Planning Manager, points out: "In these buoyant days, it's very hard to depress the value of a property. It's

more likely to have the reverse effect. If the block next door can be subdivided, it is probable that yours can be also."

Clause o) about 'the existing and likely future amenity of the neighbourhood' can have clashing implications. For example residents may argue that a block of flats is out of character with the existing neighbourhood. If, however, flats are already a permissible use for that site, then the future amenity has already been decided.

This is crucial. To argue against what has already been nominated in a Development Control Plan for that area, does not count as a valid objection. It is too late in the planning process to make your wishes known.

If you wish to object to the principle of land use, you need to comment on DCP's when they are framed and rezonings as they are advertised.

The words 'public interest' can be confusing. It does not mean the amount of interest shown by the public. Jane Stanley, council's Planning Director, says: "Instead 'public interest' means the greater community good. Council has to look at the global picture, weighing up the interests of different groups in the community."

If this suddenly all seems like too much bother, don't be discouraged. Public objections are important.

They can raise issues that council may have been unaware of. For instance the DA for The Fig Tree Restaurant was met with many objections from neighbours about the noise and mess of the clientele. To that point, neither council nor the restaurateurs were aware of these problems. When all these groups came together, it became clear that the problems were caused by poor signposting, something easy to remedy.

"More often, public objections can lead to a withdrawal of the application", says Jane Stanley. Responding to objections to a 3 unit development in Mullumbimby, for instance, council met with the developer and objectors on site. As a result, the developer withdrew his application and resubmitted a new one for just 2 units. The objectors had agreed this was more acceptable.

"There are many examples where the developer volunteers a modification of the application, or council puts conditions on an approval, that result from a particular issue raised in public objections", says the Planning Director

## Keep This for Your Archives

### Abbreviated version of Section 90

In determining a development application, a consent authority should consider, where relevant, the following:

- (a) the provisions of:
  - (i) any environmental planning instrument
  - (ii) any draft environmental planning instrument that is or has been placed on exhibition
  - (iii) any draft State environmental planning policy
  - (iv) any development control plan in force under section 72 applying to the land
- (a1) the provisions of:
  - (i) any conservation agreement entered into under the National Parks and Wildlife Act 1974
  - (ii) any plan of management adopted under the Act
- (b) the impact of that development on the environment and any means that may be employed to protect the environment and mitigate harm
- (c) the effect of that development on the landscape or scenic quality of the locality
  - (c1) the effect of that development on any wilderness area
  - (d) the social effect and the economic effect of that development in the locality
  - (e) the character, location, siting, bulk, scale, size, height, density, design or external appearance of that development
  - (f) the size and shape of the land, the siting of any building or works thereon and the area to be occupied by that development
  - (g) whether the land is unsuitable for that development by reason of its being, or is likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk
  - (h) the relationship of that development to development on adjoining land or on other land in the locality
  - (i) whether the proposed means of entrance and exit from that development are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles
  - (j) the amount of traffic likely to be generated, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system
  - (k) whether public transport services are necessary
  - (l) whether utility services are available and adequate for that development
  - (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved
  - (m1) whether that development is likely to cause soil erosion
  - (n) any representations made by a public authority
  - (o) the existing and likely future amenity of the neighbourhood
  - (p) any submission made under section 87
  - (p1) any matter specified in an environmental planning instrument
  - (q) the circumstances of the case
  - (r) the public interest
  - (s) any other prescribed matter.

Written & edited by Nadine Hood  
for Byron Shire Council  
Typeset by Brunswick Byron Echo  
Printed by Wrightprint, Byron Bay



# Mysteries of Section 90

Have you ever felt frustrated because you wanted to make a submission to council? These articles aim to assist the would-be submission-writer and may also help those already blooded. The public is free to send in comments or objections to any proposed development that is being considered by council.

All development applications are assessed by council officers in the light of points set out in Section 90 of the Environmental Planning and Assessment Act. (See adjacent article).

It's not a case of every one of these factors having to be met. It's more that these Section 90 factors are considered and balanced against each other in coming to the final decision.

If there are significant public objections to a proposal, that Development Application comes before the elected councillors for their vote.

At the outset it is important to say that you don't have to style your submissions in the image of Section 90. It is perfectly acceptable to write a letter saying what you think is wrong with the proposal. Council staff will then extract your comments, categorising them under the relevant sub-headings.

It's also important to say that an entire letter of complaint may turn out to be invalid under the Act. This is where some understanding of Section 90 may improve your effectiveness.

Elizabeth Smith of BEACON, a veteran submission writer thinks Section 90 can help clarify your thoughts and feelings about any development.

She recommends a standard package of 2 - 3 typed pages, with the DA number on the top of your submission.

"A good format helps. You can use the appropriate Section 90 clause as a subheading for your own comments on the development", Elizabeth says.

It is good to be aware of, and so avoid, invalid comments. They will be discounted anyway. Prejudiced comments such as not wanting 'the sort of people who live in flats' next door is regarded as invalid.

Similarly expressing a dislike for the developer is not a valid objection.

Assertions that a subdivision will reduce the value of your property are hard to prove. As Malcolm Ryan, the council's Planning Manager, points out: "In these buoyant days, it's very hard to depress the value of a property. It's

more likely to have the reverse effect. If the block next door can be subdivided, it is probable that yours can be also."

Clause o) about 'the existing and likely future amenity of the neighbourhood' can have clashing implications. For example residents may argue that a block of flats is out of character with the existing neighbourhood. If, however, flats are already a permissible use for that site, then the future amenity has already been decided.

This is crucial. To argue against what has already been nominated in a Development Control Plan for that area, does not count as a valid objection. It is too late in the planning process to make your wishes known.

If you wish to object to the principle of land use, you need to comment on DCP's when they are framed and rezonings as they are advertised.

The words 'public interest' can be confusing. It does not mean the amount of interest shown by the public. Jane Stanley, council's Planning Director, says: "Instead 'public interest' means the greater community good. Council has to look at the global picture, weighing up the interests of different groups in the community."

If this suddenly all seems like too much bother, don't be discouraged. Public objections are important.

They can raise issues that council may have been unaware of. For instance the DA for The Fig Tree Restaurant was met with many objections from neighbours about the noise and mess of the clientele. To that point, neither council nor the restaurateurs were aware of these problems. When all these groups came together, it became clear that the problems were caused by poor signposting, something easy to remedy.

"More often, public objections can lead to a withdrawal of the application", says Jane Stanley. Responding to objections to a 3 unit development in Mullumbimby, for instance, council met with the developer and objectors on site. As a result, the developer withdrew his application and resubmitted a new one for just 2 units. The objectors had agreed this was more acceptable.

"There are many examples where the developer volunteers a modification of the application, or council puts conditions on an approval, that result from a particular issue raised in public objections", says the Planning Director

## Keep This for Your Archives

### Abbreviated version of Section 90

In determining a development application, a consent authority should consider, where relevant, the following:

- (a) the provisions of:
  - (i) any environmental planning Instrument
  - (ii) any draft environmental planning Instrument that is or has been placed on exhibition
  - (iii) any draft State environmental planning policy
  - (iv) any development control plan in force under section 72 applying to the land
- (a1) the provisions of:
  - (i) any conservation agreement entered into under the National Parks and Wildlife Act 1974
  - (ii) any plan of management adopted under the Act
- (b) the impact of that development on the environment and any means that may be employed to protect the environment and mitigate harm
- (c) the effect of that development on the landscape or scenic quality of the locality
- (c1) the effect of that development on any wilderness area
- (d) the social effect and the economic effect of that development in the locality
- (e) the character, location, siting, bulk, scale, size, height, density, design or external appearance of that development
- (f) the size and shape of the land, the siting of any building or works thereon and the area to be occupied by that development
- (g) whether the land is unsuitable for that development by reason of its being, or is likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk
- (h) the relationship of that development to development on adjoining land or on other land in the locality
- (i) whether the proposed means of entrance and exit from that development are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles
- (j) the amount of traffic likely to be generated, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system
- (k) whether public transport services are necessary
- (l) whether utility services are available and adequate for that development
- (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved
- (m1) whether that development is likely to cause soil erosion
- (n) any representations made by a public authority
- (o) the existing and likely future amenity of the neighbourhood
- (p) any submission made under section 87
- (p1) any matter specified in an environmental planning Instrument
- (q) the circumstances of the case
- (r) the public interest
- (s) any other prescribed matter.

Written & edited by Nadine Hood  
for Byron Shire Council  
Typeset by Brunswick Byron Echo  
Printed by Wrightprint, Byron Bay



# Mysteries of Section 90

Have you ever felt frustrated because you wanted to make a submission to council? These articles aim to assist the would-be submission-writer and may also help those already blooded. The public is free to send in comments or objections to any proposed development that is being considered by council.

All development applications are assessed by council officers in the light of points set out in Section 90 of the Environmental Planning and Assessment Act. (See adjacent article).

It's not a case of every one of these factors having to be met. It's more that these Section 90 factors are considered and balanced against each other in coming to the final decision.

If there are significant public objections to a proposal, that Development Application comes before the elected councillors for their vote.

At the outset it is important to say that you don't have to style your submissions in the image of Section 90. It is perfectly acceptable to write a letter saying what you think is wrong with the proposal. Council staff will then extract your comments, categorising them under the relevant sub-headings.

It's also important to say that an entire letter of complaint may turn out to be invalid under the Act. This is where some understanding of Section 90 may improve your effectiveness.

Elizabeth Smith of BEACON, a veteran submission writer thinks Section 90 can help clarify your thoughts and feelings about any development.

She recommends a standard package of 2 - 3 typed pages, with the DA number on the top of your submission.

"A good format helps. You can use the appropriate Section 90 clause as a subheading for your own comments on the development", Elizabeth says.

It is good to be aware of, and so avoid, invalid comments. They will be discounted anyway. Prejudiced comments such as not wanting 'the sort of people who live in flats' next door is regarded as invalid.

Similarly expressing a dislike for the developer is not a valid objection.

Assertions that a subdivision will reduce the value of your property are hard to prove. As Malcolm Ryan, the council's Planning Manager, points out: "In these buoyant days, it's very hard to depress the value of a property. It's

more likely to have the reverse effect. If the block next door can be subdivided, it is probable that yours can be also."

Clause o) about 'the existing and likely future amenity of the neighbourhood' can have clashing implications. For example residents may argue that a block of flats is out of character with the existing neighbourhood. If, however, flats are already a permissible use for that site, then the future amenity has already been decided.

This is crucial. To argue against what has already been nominated in a Development Control Plan for that area, does not count as a valid objection. It is too late in the planning process to make your wishes known.

If you wish to object to the principle of land use, you need to comment on DCP's when they are framed and rezonings as they are advertised.

The words 'public interest' can be confusing. It does not mean the amount of interest shown by the public. Jane Stanley, council's Planning Director, says: "Instead 'public interest' means the greater community good. Council has to look at the global picture, weighing up the interests of different groups in the community."

If this suddenly all seems like too much bother, don't be discouraged. Public objections are important.

They can raise issues that council may have been unaware of. For instance the DA for The Fig Tree Restaurant was met with many objections from neighbours about the noise and mess of the clientele. To that point, neither council nor the restaurateurs were aware of these problems. When all these groups came together, it became clear that the problems were caused by poor signposting, something easy to remedy.

"More often, public objections can lead to a withdrawal of the application", says Jane Stanley. Responding to objections to a 3 unit development in Mullumbimby, for instance, council met with the developer and objectors on site. As a result, the developer withdrew his application and resubmitted a new one for just 2 units. The objectors had agreed this was more acceptable.

"There are many examples where the developer volunteers a modification of the application, or council puts conditions on an approval, that result from a particular issue raised in public objections", says the Planning Director

## Keep This for Your Archives

### Abbreviated version of Section 90

In determining a development application, a consent authority should consider, where relevant, the following:

- (a) the provisions of:
  - (i) any environmental planning Instrument
  - (ii) any draft environmental planning Instrument that is or has been placed on exhibition
  - (iii) any draft State environmental planning policy
  - (iv) any development control plan in force under section 72 applying to the land
- (a1) the provisions of:
  - (i) any conservation agreement entered into under the National Parks and Wildlife Act 1974
  - (ii) any plan of management adopted under the Act
- (b) the impact of that development on the environment and any means that may be employed to protect the environment and mitigate harm
- (c) the effect of that development on the landscape or scenic quality of the locality
  - (c1) the effect of that development on any wilderness area
- (d) the social effect and the economic effect of that development in the locality
- (e) the character, location, siting, bulk, scale, size, height, density, design or external appearance of that development
- (f) the size and shape of the land, the siting of any building or works thereon and the area to be occupied by that development
- (g) whether the land is unsuitable for that development by reason of its being, or is likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk
- (h) the relationship of that development to development on adjoining land or on other land in the locality
- (i) whether the proposed means of entrance and exit from that development are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles
- (j) the amount of traffic likely to be generated, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system
- (k) whether public transport services are necessary
- (l) whether utility services are available and adequate for that development
- (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved
- (m1) whether that development is likely to cause soil erosion
- (n) any representations made by a public authority
- (o) the existing and likely future amenity of the neighbourhood
- (p) any submission made under section 87
  - (p1) any matter specified in an environmental planning Instrument
- (q) the circumstances of the case
- (r) the public interest
- (s) any other prescribed matter.

Written & edited by Nadine Hood  
for Byron Shire Council  
Typeset by Brunswick Byron Echo  
Printed by Wrightprint, Byron Bay



# Mysteries of Section 90

Have you ever felt frustrated because you wanted to make a submission to council? These articles aim to assist the would-be submission-writer and may also help those already blooded. The public is free to send in comments or objections to any proposed development that is being considered by council.

All development applications are assessed by council officers in the light of points set out in Section 90 of the Environmental Planning and Assessment Act. (See adjacent article).

It's not a case of every one of these factors having to be met. It's more that these Section 90 factors are considered and balanced against each other in coming to the final decision.

If there are significant public objections to a proposal, that Development Application comes before the elected councillors for their vote.

At the outset it is important to say that you don't have to style your submissions in the image of Section 90. It is perfectly acceptable to write a letter saying what you think is wrong with the proposal. Council staff will then extract your comments, categorising them under the relevant sub-headings.

It's also important to say that an entire letter of complaint may turn out to be invalid under the Act. This is where some understanding of Section 90 may improve your effectiveness.

Elizabeth Smith of BEACON, a veteran submission writer thinks Section 90 can help clarify your thoughts and feelings about any development.

She recommends a standard package of 2 - 3 typed pages, with the DA number on the top of your submission.

"A good format helps. You can use the appropriate Section 90 clause as a subheading for your own comments on the development", Elizabeth says.

It is good to be aware of, and so avoid, invalid comments. They will be discounted anyway. Prejudiced comments such as not wanting 'the sort of people who live in flats' next door is regarded as invalid.

Similarly expressing a dislike for the developer is not a valid objection.

Assertions that a subdivision will reduce the value of your property are hard to prove. As Malcolm Ryan, the council's Planning Manager, points out: "In these buoyant days, it's very hard to depress the value of a property. It's

more likely to have the reverse effect. If the block next door can be subdivided, it is probable that yours can be also."

Clause (c) about 'the existing and likely future amenity of the neighbourhood' can have clashing implications. For example residents may argue that a block of flats is out of character with the existing neighbourhood. If, however, flats are already a permissible use for that site, then the future amenity has already been decided.

This is crucial. To argue against what has already been nominated in a Development Control Plan for that area, does not count as a valid objection. It is too late in the planning process to make your wishes known.

If you wish to object to the principle of land use, you need to comment on DCP's when they are framed and rezonings as they are advertised.

The words 'public interest' can be confusing. It does not mean the amount of interest shown by the public. Jane Stanley, council's Planning Director, says: "Instead 'public interest' means the greater community good. Council has to look at the global picture, weighing up the interests of different groups in the community."

If this suddenly all seems like too much bother, don't be discouraged. Public objections are important.

They can raise issues that council may have been unaware of. For instance the DA for The Fig Tree Restaurant was met with many objections from neighbours about the noise and mess of the clientele. To that point, neither council nor the restaurateurs were aware of these problems. When all these groups came together, it became clear that the problems were caused by poor signposting, something easy to remedy.

"More often, public objections can lead to a withdrawal of the application", says Jane Stanley. Responding to objections to a 3 unit development in Mullumbimby, for instance, council met with the developer and objectors on site. As a result, the developer withdrew his application and resubmitted a new one for just 2 units. The objectors had agreed this was more acceptable.

"There are many examples where the developer volunteers a modification of the application, or council puts conditions on an approval, that result from a particular issue raised in public objections", says the Planning Director

## Keep This for Your Archives

### Abbreviated version of Section 90

In determining a development application, a consent authority should consider, where relevant, the following:

- (a) the provisions of:
  - (i) any environmental planning instrument
  - (ii) any draft environmental planning instrument that is or has been placed on exhibition
  - (iii) any draft State environmental planning policy
  - (iv) any development control plan in force under section 72 applying to the land
- (a1) the provisions of:
  - (i) any conservation agreement entered into under the National Parks and Wildlife Act 1974
  - (ii) any plan of management adopted under the Act
- (b) the impact of that development on the environment and any means that may be employed to protect the environment and mitigate harm
- (c) the effect of that development on the landscape or scenic quality of the locality
  - (c1) the effect of that development on any wilderness area
  - (d) the social effect and the economic effect of that development in the locality
  - (e) the character, location, siting, bulk, scale, size, height, density, design or external appearance of that development
  - (f) the size and shape of the land, the siting of any building or works thereon and the area to be occupied by that development
  - (g) whether the land is unsuitable for that development by reason of its being, or is likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk
  - (h) the relationship of that development to development on adjoining land or on other land in the locality
  - (i) whether the proposed means of entrance and exit from that development are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles
  - (j) the amount of traffic likely to be generated, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system
  - (k) whether public transport services are necessary
  - (l) whether utility services are available and adequate for that development
  - (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved
  - (m1) whether that development is likely to cause soil erosion
  - (n) any representations made by a public authority
  - (o) the existing and likely future amenity of the neighbourhood
  - (p) any submission made under section 87
  - (p1) any matter specified in an environmental planning instrument
  - (q) the circumstances of the case
  - (r) the public interest
  - (s) any other prescribed matter.

Written & edited by Nadine Hood  
for Byron Shire Council  
Typeset by Brunswick Byron Echo  
Printed by Wrightprint, Byron Bay



# Mysteries of Section 90

Have you ever felt frustrated because you wanted to make a submission to council? These articles aim to assist the would-be submission-writer and may also help those already blooded.

The public is free to send in comments or objections to any proposed development that is being considered by council.

All development applications are assessed by council officers in the light of points set out in Section 90 of the Environmental Planning and Assessment Act. (See adjacent article).

It's not a case of every one of these factors having to be met. It's more that these Section 90 factors are considered and balanced against each other in coming to the final decision.

If there are significant public objections to a proposal, that Development Application comes before the elected councillors for their vote.

At the outset it is important to say that you don't have to style your submissions in the image of Section 90. It is perfectly acceptable to write a letter saying what you think is wrong with the proposal. Council staff will then extract your comments, categorising them under the relevant sub-headings.

It's also important to say that an entire letter of complaint may turn out to be invalid under the Act. This is where some understanding of Section 90 may improve your effectiveness.

Elizabeth Smith of BEACON, a veteran submission writer thinks Section 90 can help clarify your thoughts and feelings about any development.

She recommends a standard package of 2 - 3 typed pages, with the DA number on the top of your submission.

"A good format helps. You can use the appropriate Section 90 clause as a subheading for your own comments on the development", Elizabeth says.

It is good to be aware of, and so avoid, invalid comments. They will be discounted anyway. Prejudiced comments such as not wanting 'the sort of people who live in flats' next door is regarded as invalid.

Similarly expressing a dislike for the developer is not a valid objection.

Assertions that a subdivision will reduce the value of your property are hard to prove. As Malcolm Ryan, the council's Planning Manager, points out: "In these buoyant days, it's very hard to depress the value of a property. It's

more likely to have the reverse effect. If the block next door can be subdivided, it is probable that yours can be also."

Clause (c) about 'the existing and likely future amenity of the neighbourhood' can have clashing implications. For example residents may argue that a block of flats is out of character with the existing neighbourhood. If, however, flats are already a permissible use for that site, then the future amenity has already been decided.

This is crucial. To argue against what has already been nominated in a Development Control Plan for that area, does not count as a valid objection. It is too late in the planning process to make your wishes known.

If you wish to object to the principle of land use, you need to comment on DCP's when they are framed and rezonings as they are advertised.

The words 'public interest' can be confusing. It does not mean the amount of interest shown by the public. Jane Stanley, council's Planning Director, says: "Instead 'public interest' means the greater community good. Council has to look at the global picture, weighing up the interests of different groups in the community."

If this suddenly all seems like too much bother, don't be discouraged. Public objections are important.

They can raise issues that council may have been unaware of. For instance the DA for The Fig Tree Restaurant was met with many objections from neighbours about the noise and mess of the clientele. To that point, neither council nor the restaurateurs were aware of these problems. When all these groups came together, it became clear that the problems were caused by poor signposting, something easy to remedy.

"More often, public objections can lead to a withdrawal of the application", says Jane Stanley. Responding to objections to a 3 unit development in Mullumbimby, for instance, council met with the developer and objectors on site. As a result, the developer withdrew his application and resubmitted a new one for just 2 units. The objectors had agreed this was more acceptable.

"There are many examples where the developer volunteers a modification of the application, or council puts conditions on an approval, that result from a particular issue raised in public objections", says the Planning Director

## Keep This for Your Archives

### Abbreviated version of Section 90

In determining a development application, a consent authority should consider, where relevant, the following:

- (a) the provisions of:
  - (i) any environmental planning Instrument
  - (ii) any draft environmental planning Instrument that is or has been placed on exhibition
  - (iii) any draft State environmental planning policy
  - (iv) any development control plan in force under section 72 applying to the land
- (a1) the provisions of:
  - (i) any conservation agreement entered into under the National Parks and Wildlife Act 1974
  - (ii) any plan of management adopted under the Act
- (b) the impact of that development on the environment and any means that may be employed to protect the environment and mitigate harm
- (c) the effect of that development on the landscape or scenic quality of the locality
  - (c1) the effect of that development on any wilderness area
  - (d) the social effect and the economic effect of that development in the locality
  - (e) the character, location, siting, bulk, scale, size, height, density, design or external appearance of that development
  - (f) the size and shape of the land, the siting of any building or works thereon and the area to be occupied by that development
  - (g) whether the land is unsuitable for that development by reason of its being, or is likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk
  - (h) the relationship of that development to development on adjoining land or on other land in the locality
  - (i) whether the proposed means of entrance and exit from that development are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles
  - (j) the amount of traffic likely to be generated, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system
  - (k) whether public transport services are necessary
  - (l) whether utility services are available and adequate for that development
  - (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved
  - (m1) whether that development is likely to cause soil erosion
  - (n) any representations made by a public authority
  - (o) the existing and likely future amenity of the neighbourhood
  - (p) any submission made under section 87
  - (p1) any matter specified in an environmental planning Instrument
  - (q) the circumstances of the case
  - (r) the public interest
  - (s) any other prescribed matter.

Written & edited by Nadine Hood  
for Byron Shire Council  
Typeset by Brunswick Byron Echo  
Printed by Wrightprint, Byron Bay