

S. 94  
ANSON & TOWATITANREPORT TO SECTION 94 COMMITTEE

**SUBJECT/FILE NO.:** IMPLICATIONS OF THE LAND & ENVIRONMENT COURT JUDGEMENT IN THE ANSON CASE FOR SECTION 94 CONTRIBUTION FOR RURAL ROADS (BB/CA: S517/1)

**PREPARED BY:** Strategic Planner - Mr B. Blackford

**REASON:** Requested by Section 94 Committee.

**OBJECTIVE:** For the information of the Section 94 Committee.

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The Committee will be aware of the outcome of the Land & Environment Court hearing of December 12 to 15, 1994 in which the appeal by Mr Mark Anson against Council's refusal of a multiple occupancy development at The Channon, was upheld.

A further outcome of that appeal was that the court modified certain consent conditions as proposed by Council which related to rural road upgrading. Justice Bignold was of the opinion that a condition requiring upgrading of Standing Street from the end of the bitumen sealed pavement to the vehicular access point of the property, smacked of "double dipping". He stated that it imposed an additional obligation in respect of Standing Street beyond the obligation imposed by the Section 94 contribution requirement. To avoid that unfairness, Justice Bignold discounted the original requirements of condition no. 3, to give recognition to the Section 94 contributions imposed by condition no. 2, in so far as it related to road improvements.

Consequently the condition was amended to read as follows:-

*"... a five metre wide formation with a gravel width of five metres comprising a minimum of 150mm of compacted gravel, from the end of the bitumen sealed pavement in Standing Street to the vehicular access point to the property, provided that compliance with this condition shall create a credit or entitlement to a refund (as the case may be) to the applicant for the purposes of condition 2 of the sum equivalent to 50% of the cost of that compliance."*

It is clear from Justice Bignold's judgment that a council cannot levy Section 94 contributions for a particular section of road where the council has already imposed a Section 90 requirement for the upgrading of that section of road. Where Section 90 requirements for road upgrading are required by way of condition of consent, Section 94 contributions should only be calculated from the limit of those Section 90 works, and would only be applicable from that point by the shortest route to Lismore and/or the nearest village.



It should be noted that this is also the intention of Council's Section 94 Plan as it relates to rural road levies, and that the practice of "double dipping" as referred to by Justice Bignold does not reflect the intent of the Plan. Accordingly it is not considered that any amendment to the Section 94 Plan is necessary as a result of the Anson case. However, Council must ensure that in future applications, where Section 90 conditions are imposed for road upgrading, Section 94 levies are not imposed for that section of road to which the Section 90 condition relates.

In the case of Jonathon and others Vs Lismore City Council (March 27 to 30, 1995), the matter of Section 94 contributions was not contested. However, Justice Bannon rejected Council's proposed conditions for roadworks and reconstruction of a concrete causeway, and a deck overlay on Davis Road and Davis Bridge, stating "I doubt that there is power to add contributions outside of S94 of the Act".

This judgement would appear to have more serious implications for Council in that it calls into question Council's ability to impose road upgrading requirements under Section 90 of the Act, even where Section 94 contributions have not been levied for that particular section of road.

Council's option in this regard could be to either appeal the judgement (or at least the conditions imposed by the court), or expand Part B of the S94 Plan to include very detailed works programmes for all rural roads so that reasonable S94 contributions can be sought for works such as the Davis Road Bridge and causeway.

#### ENGINEERING SERVICES COMMENTS

Concurrence with the contents of this report is given.

#### RECOMMENDATION

That the information be noted.

*Graham*

*I consider this to be totally inadequate.*