

5 NSW STATE FRAMEWORK

The following State legislation is relevant to the exercising of Council's land use planning functions.

5.1 Environmental Planning and Assessment Act, 1979

The Environmental Planning and Assessment Act, 1979 (the Act) sets out the framework for environmental planning throughout NSW. Under the Act, the objectives to be achieved are:

- (a) *to encourage:*
 - i. *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - ii. *the promotion and co-ordination of the orderly and economic use and development of land,*
 - iii. *the protection, provision and co-ordination of communication and utility services,*
 - iv. *the provision of land for public purposes,*
 - v. *the provision and co-ordination of community services and facilities, and*
 - vi. *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
 - vii. *ecologically sustainable development, and*
 - viii. *the provision and maintenance of affordable housing.*
- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

The Dungog LGA land use planning framework will need to reflect each of these objectives.

5.1.1 State Environmental Planning Policies

Planning within the LGA is subject to the provisions of relevant State Environmental Planning Policies (SEPPs). SEPPs are high-order environmental planning instruments and generally prevail in the event of any inconsistency with other environmental planning instruments (such as LEPs). They are prepared by the Director-General of

the Department of Planning (DoP), submitted to the Minister for approval, and can be prepared for any matter considered to be of significance for environmental planning in the State.

Table 3 lists the SEPPs which are of most relevance to development in the LGA.

Table 3: SEPPs and their relevance to the LGA

State Environmental Planning Policy	Relevance to development in the LGA
SEPP 1 Development Standards	SEPP 1 applies to any development application which requires variation to a development standard, for example, it is typically used to allow for the creation of undersized lot/lots in a subdivision. Under SEPP 1 the applicant is required to demonstrate why the relevant development standard is unreasonable or unnecessary in the circumstances of the case. There is currently a Draft SEPP (Application of Development Standards), which is intended to replace SEPP 1, and is much stricter in application, particularly where the application of rural subdivision standards is concerned.
SEPP 4 Development without Consent and Miscellaneous Complying Development	Previously titled SEPP No. 4 - Development without Consent, this policy allows relatively simple or minor changes of land or building use and certain types of development without the need for formal development applications. The types of development covered in the policy are outlined in the policy.
SEPP 6 Number of Storeys in a Building	SEPP 6 sets out a method for determining the number of storeys in a building, to prevent possible confusion arising from the interpretation of various environmental planning instruments.
SEPP 8 Surplus Public Land	SEPP 8 promotes and coordinates the orderly and economic use of public land which is surplus to public needs. It applies throughout NSW with certain exceptions such as national parks, crown land, state recreation areas, state forests and land reserved for open space, recreation or acquisition for a national park or coastal protection. The development of surplus land is to be considered from a State rather than a local perspective, and all development is subject to the Minister's consent.
SEPP 9 Group Homes	SEPP 9 helps to establish permanent and transitional group homes for socially disadvantaged people in areas where houses or flats are permitted.
SEPP 15 Rural Land sharing Communities	SEPP 15 allows the erection of multiple dwellings (3 or more) on a single allotment of land in rural areas. It allows for the collective ownership of a lot of land and the collective sharing of resources, facilities and management of land. Importantly for the LGA, one of the aims of SEPP 15 is to '...create opportunities for an increase in the rural population in areas that are suffering or are likely to suffer from a decline in services due to rural population loss...'. It may provide an opportunity for increased development in the LGA.

State Environmental Planning Policy	Relevance to development in the LGA
SEPP 16 Tertiary Institutions	SEPP 16 provides that where development for the purposes of a particular class of tertiary institution is allowed (either with or without development consent) development for the purposes of any other class of tertiary institution is allowed (with the development consent of the consent authority). The policy includes provisions relating to continued use of land for a tertiary institution (notwithstanding that it may be of a different class or a college of advanced education unlawfully established before the policy came into force) and further development of the land (subject to approval).
SEPP 21 Caravan Parks	This SEPP determines consent requirements and matters for consideration relating to caravan parks, including allowing both short and long term accommodation to be provided in moveable dwellings.
SEPP 22 Shops and Commercial Premises	Permits, within a business zone, a change of use from one kind of shop to another, even if the change is prohibited under an environmental planning instrument. Development consent must be obtained and the consent authority must be satisfied that the change will have no, or only minor, environmental effect.
SEPP 27 Prison Sites	Facilitates the erection and use of buildings for prisons on specific sites in NSW.
SEPP 30 Intensive Agriculture	<p>The aim of SEPP 30 is to require development consent for cattle feedlots to accommodate 50 or more head of cattle or piggeries with the capacity to accommodate 200 or more pigs or 20 or more breeding sows. It outlines additional matters the consent authority must take into consideration when determining development applications for relevant types of development.</p> <p>The SEPP is relevant to development in the LGA because of the significant role played by cattle production in the Dungog LGA economy.</p>
SEPP 32 Urban Consolidation (Redevelopment of Urban Land)	SEPP 32 states the Government's intention to ensure that urban consolidation objectives are met in all urban areas throughout the State. The policy focuses on the redevelopment of urban land that is no longer required for the purpose it is currently zoned or used, and encourages local councils to pursue their own urban consolidation strategies to help implement the aims and objectives of the policy. Councils will continue to be responsible for the majority of rezonings. The policy sets out guidelines for the Minister to follow when considering whether to initiate a regional environmental plan (REP) to make particular sites available for consolidated urban redevelopment. Where a site is rezoned by an REP, the Minister is the consent authority.
SEPP 33 Hazardous and Offensive Development	<p>SEPP 33 defines hazardous and offensive development and subsequently provides a consistent framework for the consideration of such development across the State. The SEPP requires a consent authority to take into consideration the circulars or guidelines produced by the Department of Planning concerning hazardous and offensive development.</p> <p>The SEPP is relevant to development in the LGA as it will apply to any future development application for hazardous and offensive development.</p>

State Environmental Planning Policy	Relevance to development in the LGA
SEPP 36 Manufactured Home Estates	SEPP 36 helps to establish well-designed and properly serviced manufactured home estates (MHEs) in suitable locations. Affordability and security of tenure for residents are important aspects. To enable the immediate development of estates, the policy allows MHEs to be located on certain land where caravan parks are permitted. There are however, criteria that a proposal must satisfy before the local council can approve development. The policy also permits, with consent, the subdivision of estates either by community title or by leases of up to 20 years. A section 117 direction issued in conjunction with the policy guides councils in preparing local environmental plans for MHEs, enabling them to be excluded from the policy.
SEPP 44 Koala Habitat Protection	SEPP 44 aims to protect koala habitat. Before a Council grants consent to a development application, it must determine whether the subject land is core or potential koala habitat. If the land is core koala habitat, consent cannot be granted without a koala plan of management. A koala plan of management can be prepared for an entire LGA.
SEPP 55 Remediation of Land	SEPP 55 introduces state-wide planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. To assist councils and developers, the Department, in conjunction with the Environment Protection Authority, has prepared Managing Land Contamination: Planning Guidelines.
SEPP 62 Sustainable Aquaculture	SEPP 62 assists in the sustainable expansion of the aquaculture industry in NSW. The policy implements the regional strategies already developed by creating a simple approach to identify and categorise aquaculture development on the basis of its potential environmental impact. The SEPP also identifies aquaculture development as a designated development only where there are potential environmental risks.
SEPP 64 Advertising and Signage	SEPP 64 aims to improve the amenity of urban and natural settings by managing the impact of outdoor advertising. The policy responds to growing concerns from the community, the advertising industry and local government that existing controls and guidelines were not effective.
SEPP (Building Sustainability Index: BASIX) 2004	This SEPP operates in conjunction with the Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004 to ensure the effective introduction of BASIX in NSW. The SEPP ensures consistency in the implementation of BASIX throughout the State by overriding competing provisions in their environmental planning instruments and development control plans, and specifying that SEPP 1 does not apply in relation to any development standard arising under BASIX. The draft SEPP was exhibited together with the draft Regulation amendment in 2004.

State Environmental Planning Policy	Relevance to development in the LGA
	<p>BASIX is a web-based planning tool used to assess the sustainability of dwellings. Information on a proposed dwelling is entered into the BASIX website. If the proposed dwelling meets the sustainability index, a BASIX Certificate is provided. The BASIX Certificate must be provided to the Council when submitting a development application.</p> <p>BASIX is applicable to all development applications for houses, dual occupancies, villas, townhouses and multi-unit apartments in the LGA.</p>
<p>SEPP (Housing for Seniors or People with a Disability) 2004</p>	<p>The Housing for Seniors SEPP establishes the requirements for seniors housing (people aged 55 years or more) and housing for people with disabilities. It permits some forms of seniors housing on land that adjoins land zoned primarily for urban purposes.</p> <p>The SEPP is important because of the ageing population, and the large number of 'seniors' living in the LGA. Consequently, there is likely to be an increase in development occurring under the SEPP.</p> <p>SEPP (Housing for Seniors and People with a Disability) 2004 changed its name from SEPP (Seniors Living) 2004 in October 2007, which in turn repealed SEPP 5 – Housing for Older People or People with a Disability.</p>
<p>SEPP (Major Projects) 2005</p>	<p>This SEPP, formerly known as State Environmental Planning Policy (State Significant Development) 2005. The SEPP defines certain developments that are major projects under Part 3A of the Environmental Planning and Assessment Act 1979 and determined by the Minister for Planning. The SEPP also lists State Significant Sites. The policy also repeals SEPPs 34 and 38, as well as provisions in numerous other planning instruments, declarations and directions.</p>
<p>SEPP (Temporary Structures and Places of Public Entertainment) 2007</p>	<p>This SEPP provides for the erection of temporary structures and the use of places of public entertainment while protecting public safety and local amenity. The SEPP supports the transfer of the regulation of places of public entertainment and temporary structures (such as tents, marquees and booths) from the Local Government Act 1993 to the Environmental Planning and Assessment Act 1979.</p>
<p>SEPP (Infrastructure) 2007</p>	<p>This SEPP provides a consistent planning regime for infrastructure and the provision of services throughout the State. It repeals a suite of former SEPPs that deal with infrastructure and services, such as SEPP 11 (Traffic Generating Development), SEPP 48 (Major Putrescible Landfill Sites) and SEPP 69 (Major Electricity Supply Projects).</p>
<p>Rural Lands SEPP</p>	<p>This SEPP was released in May 2008 with two main objectives; to protect the agricultural production value of rural land and to facilitate orderly economic development of rural lands for rural and related purposes. The SEPP was developed following an inquiry in the Central West of NSW into concerns over rural subdivision and their associated impacts.</p>

5.1.2 Draft State Environmental Planning Policies

Table 4 below lists the draft SEPPs that may have relevance to development in the Dungog LGA.

Table 4: Draft SEPPs and their relevance to the LGA

Draft State Environmental Planning Policy	Relevance to development in the LGA
Draft amendment to State Environmental Planning Policy (Major Projects) 2005	<p>The draft amendment to the SEPP includes proposed relevant changes to the following:</p> <ul style="list-style-type: none"> • minor changes to provisions relating to agricultural produce industries, wineries, dredging in tidal waterways and oyster lease areas, turf farms, mining and petroleum industries, electricity generation and recycled water reticulation systems, and • early notification of State significant sites
Draft SEPP (Application of Development Standards) 2004	<p>Currently SEPP 1 provides local councils with flexibility in applying development standards. The Department, in consultation with councils and the community has undertaken a comprehensive review of how SEPP 1 has been used over the past 20 years. This review has led to a new draft policy that provides clearer and tighter criteria that development applicants must meet if they wish to vary from a development standard. The aim is to have the flexibility to achieve better planning outcomes.</p>

5.1.3 Section 117 Directions

Section 117 of the Environmental Planning and Assessment Act 1979 (the Act) allows the Minister for Planning to give directions to Councils regarding principles, aims, objectives or policies to be achieved or given effect in the preparation of draft Local Environmental Plans.

On 19 July 2007, new Section 117 Directions were issued by the Minister for Planning under Section 117(2) of the Act. These directions replaced all existing directions previously in operation.

The key changes aim to:

- Ensure consistency with the Standard Instrument for LEPs
- Improve readability by revising the format
- Make directions clearer and more outcome focused
- Correct some minor identified errors and inconsistencies
- Update references to key policy documents
- Make it easier to identify the requirements for consistency with directions
- Reduce the overall number of directions

The new directions apply to all draft LEP's that are certified for public exhibition under Section 65 of the Act on or after 19 July 2007.

Those provisions relevant to Dungog LGA in the application of its land use planning policy are outlined in table 5.

Table 5: Section 117 Directions and their relevance to the LGA

Section 117 Direction	Relevance to development in the LGA
1. Employment and Resources	<p>1.1 Business and Industrial Zones</p> <p>This direction applies to all councils. The objectives of this direction are to:</p> <ul style="list-style-type: none"> (a) encourage employment growth in suitable locations; (b) protect employment land in business and industrial zones; and (c) support the viability of identified strategic centres. <p>1.2 Rural Zones</p> <p>This direction applies to all councils. The objective of this direction is to protect the agricultural production value of rural land.</p> <p>1.3 Mining, Petroleum Production and Extractive Industries</p> <p>This direction applies to all councils. The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.</p>
2. Environment and Heritage	<p>2.1 Environmental Protection Zones</p> <p>This direction applies to all councils. The objective of this direction is to protect and conserve environmentally sensitive areas.</p> <p>2.3 Heritage Conservation</p> <p>This direction applies to all councils. The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>2.4 Recreation Vehicle Areas</p> <p>This direction applies to all councils. The objective of this direction is to protect sensitive land or land with significant conservation value from adverse impacts from recreational vehicles.</p>
3. Housing, Infrastructure and Urban Development	<p>3.1 Residential Zones</p> <p>This direction applies to all councils. The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to encourage a variety and choice of housing types to provide for existing and future housing needs; (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services; and (c) to minimise the impact of residential development on the environment and resource lands. <p>3.2 Caravan Parks and Manufactured Home Estates</p> <p>This direction applies to the whole of the State other than to :</p> <ul style="list-style-type: none"> (a) Crown land reserved or dedicated for any purpose under the Crown Lands Act 1898, except Crown land served for accommodation purposes, or

- (b) land dedicated or reserved under the National Parks and Wildlife Act 1974.

The objectives of this direction are:

- (a) to provide for a variety of housing types; and
- (b) to provide opportunities for caravan parks and manufactured home estates.

3.3 Home Occupations

This direction applies to all Councils. The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling-houses.

3.4 Integrating Land Use and Transport

This direction applies to all councils. The objective of this direction is to ensure that urban structures, building forms, land use locations development designs, subdivision and street layouts achieve the following objectives:

- (a) improving access to housing, jobs, and services by walking, cycling and public transport, and
- (b) increasing the choice of available transport and reducing dependence on cars, and
- (c) reducing travel demand, including the number of trips generated by development and the distances travelled, especially by car, and
- (d) supporting the efficient and viable operation of public transport services, and
- (e) providing for the efficient movement of freight.

3.5 Development Near Licensed Aerodromes

This direction applies to all councils. The objectives of this direction area:

- (a) to ensure the effective and safe operation of aerodromes, and
- (b) to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, and
- (c) to ensure development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast (ANEF) contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

4. Hazard and Risk

4.1 Acid Sulphate Soils

This direction applies to all Councils that contain land having a probability of containing Acid Sulphate Soils, as shown on Acid Sulphate Soils Planning Maps held by the Department of Planning.

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.

Section 117 Direction	Relevance to development in the LGA
	<p>4.2 Mine Subsidence and Unstable Land</p> <p>This direction applies to land that:</p> <ul style="list-style-type: none"> (a) is within a Mine Subsidence District proclaimed pursuant to Section 15 of the Mine Subsidence Compensation Act 1961, or (b) has been identified as unstable land. <p>The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.</p> <p>4.3 Flood Prone Land</p> <p>This direction applies to all Councils that contain flood prone land in their LGA. The objectives of this direction area:</p> <ul style="list-style-type: none"> (a) to ensure that development of flood prone land is consistent with the NSW Government’s Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land. <p>4.4 Planning for Bushfire Protection</p> <p>This direction applies to all Councils that are required to prepare a bush fire prone land map under Section 146 of the <i>Environmental Planning and Assessment Act 1979</i>, or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act. The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bushfire prone areas, and (b) to encourage sound management of bush fire prone areas.
5. Local Plan Making	<p>5.1 Approval and Referral Requirements</p> <p>This direction applies to all Councils. The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>5.2 Reserving Land for Public Purposes</p> <p>This direction applies to all Councils. The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to facilitate the provision of public services and facilities by reserving land for public purposes; and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition. <p>5.3 Site Specific Provisions</p> <p>This direction applies to all Councils. The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p>

5.2 NSW Native Vegetation Act 2003

The Native Vegetation Act 2003 prescribes the way in which native vegetation is managed across NSW:

- it delivers the NSW Government's commitment to end broadscale clearing, to protect the health of our land, rivers and wildlife
- it delivers investment security and increased flexibility for farmers
- it delivers significant financial incentives to farmers and other local groups to repair damaged rivers and restore over cleared landscapes, and
- It gives new powers to local Catchment Management Authorities to make decisions in the best interests of the community.

The new system is based on voluntary agreements between landholders and Catchment Management Authorities called Property Vegetation Plans.

Key advantages of the Act are:

- Clearing of remnant native vegetation will now only be approved if overall, management actions improve or maintain environmental outcomes protecting land, rivers and wildlife.
- Farmers will not have to go through an approval process to clear regrowth younger than 1 January 1990 (1 January 1983 in the Western Division).
- Clearing for routine agricultural management will also not be subject to an approval process. Routine agricultural management activities include:
 - sourcing timber for farm structures
 - noxious weed removal
 - collection of firewood for non commercial purposes
 - to remove imminent risks of serious personal injury or damage to property
 - controlling pest animals in accordance with eradication orders
 - rural infrastructure within appropriate buffer distances
 - corridors for fire protection, power and water supply
 - harvesting commercially planted timber

For more detail on the routine agricultural management activities available contact your local Catchment Management Authority.

- Property Vegetation Plans cannot be overturned by new threatened species listings or environmental planning instruments: giving farmers greater security to invest.
- Farmers may be able to offset any negative impacts of clearing by improving or planting native vegetation elsewhere on their property, or even on other land.

5.3 NSW Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act* outlines the protection of threatened species, communities and critical habitat in New South Wales. An independent Scientific Committee has been set up under the Act to determine which species, populations and ecological communities should be listed as endangered, vulnerable or extinct under the act, and also to determine key threatening processes.

The objects of this Act are as follows:

- (a) to conserve biological diversity and promote ecologically sustainable development, and
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities, and
- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed, and
- (f) to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

5.4 NSW Protection of the Environment Operations Act, 1997

There is a broad allocation of responsibilities under the Act between the EPA, local council and other public authorities. The EPA is the regulatory authority for:

- activities listed in Schedule 1 to the Act and the premises where they are carried on;
- activities carried on by a State or public authority; and
- other activities in relation to which a licence regulating water pollution is issued.

In nearly all other cases, the regulatory authority is the council.

The objects of this Act are as follows:

- (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development,
- (b) to provide increased opportunities for public involvement and participation in environment protection,
- (c) to ensure that the community has access to relevant and meaningful information about pollution,

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- (d) to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the following:
 - i. pollution prevention and cleaner production,
 - ii. the reduction to harmless levels of the discharge of substances likely to cause harm to the environment,
 - iii. the elimination of harmful wastes,
 - iv. the reduction in the use of materials and the re-use, recovery or recycling of materials,
 - v. the making of progressive environmental improvements, including the reduction of pollution at source,
 - vi. the monitoring and reporting of environmental quality on a regular basis,
- (e) to rationalise, simplify and strengthen the regulatory framework for environment protection,
- (f) to improve the efficiency of administration of the environment protection legislation,
- (g) to assist in the achievement of the objectives of the Waste Avoidance and Resource Recovery Act 2001.

5.5 NSW Local Government Act, 1993

The Council operates within the legislative framework laid down by the State Government. Its powers and responsibilities derive mainly from the Local Government Act, 1993, however, there are many other Acts and regulations that affect the way in which council conducts its business.

Section 8 of the Act outlines Council's charter in regard to Ecologically Sustainable Development (ESD). This means that Council must consider ESD in order to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.