

DUNGOG DEVELOPMENT CONTROL PLAN No 1

PART A - ADMINISTRATION

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A.1 - INTRODUCTION

The Dungog Local Environmental Plan 2014 (LEP 2014) has been prepared in the Standard Instrument format. Consequential amendments were required to the Dungog Shire-wide Development Control Plan (DCP) to reflect the new language and provisions in the LEP. The opportunity was also taken to further consolidate the document, resulting in the amendment of Dungog DCP No.1.

The Dungog DCP No.1 has been designed to allow for amendments over time, within a logical framework of Parts and Chapters.

1.1 PURPOSE

The purpose of this DCP is to provide detailed provisions for development within the Dungog LGA. These provisions supplement the legal framework contained in the Dungog LEP 2014.

1.2 AIMS

The aims of this DCP are:

- a) To provide a detailed planning document that outlines requirements for development which meets community expectations and addresses the key environmental planning issues of the Local Government Area; and
- b) To identify certain development as advertised development and to detail public notification requirements in accordance with Section 3.43 of the EPA Act;

1.3 LEGAL STATUS

This Plan is titled Dungog Development Control Plan No.1

This document is a Development Control Plan prepared in accordance with the provisions of the Environmental Planning and Assessment Act, 1979, and associated Regulations.

This DCP came into force on 4 July 2018. The amendment table at the beginning of this document lists any amendments since this time.

A DCP does not have the same legal force as an environmental planning instrument (such as the Dungog LEP 2014 or various State Environmental Planning Policies). In the event of any inconsistency between this DCP and an environmental planning instrument, the Environmental Planning and Assessment Act 1979 states that the environmental planning instrument shall prevail.

A consent authority is required to consider this DCP when determining Development Applications within the Dungog Local Government Area (LGA). However, compliance with the provisions of this DCP does not necessarily imply that a consent authority will consent to the application. A consent authority is required to consider the full range of matters listed under Section 4.15 of the Environmental Planning and Assessment Act 1979 in its assessment of a Development Application.

1.4 LAND TO WHICH THIS DCP APPLIES

The Dungog DCP No1 applies to all land within the Dungog LGA to which the Dungog LEP 2014 applies.

This DCP is to be read having regard for the Table below, which indicates the zone conversions that typically apply between the *Dungog Local Environmental Plan 2006* (now repealed) and the current Dungog Local Environmental Plan 2014.

Dungog LEP 2006 (now repealed)	Dungog LEP 2014 (Current)
Rural Zones	
Rural 1(a)	RU1 Primary Production
New Zone	RU3 Forestry
Village 2 (v)	RU5 Village
Residential Zones	
Residential 2(a)	R1 General Residential
Rural Lifestyle 1(l)	R5 Large Lot Residential
Rural Enterprise 1(e)	R5 Large Lot Residential
Business Zones	
Business 3(a)	B2 Local Centre
New Zone	B4 Mixed Use
Industrial Zones	
Employment 4(a)	IN1 General Industrial
Special Purpose Zones	
Special Uses 5(a)	SP2 Infrastructure
Recreation Zones	
Recreation 6 (a)	RE1 Public Recreation
	RE 2 Private Recreation
Environment Protection Zones	
Environment 7(a)	E3 Environmental Management
Environmental Living 7(l)	E4 Environmental Living
National Parks 8(a)	E1 National Parks and Nature Reserves
Waterway Zones	
New Zone	W1 Natural Waterways
Other	
Transition 9(a)	RU1 Primary Production RU5 Village

1.5 RELATIONSHIP TO PREVIOUS DEVELOPMENT CONTROL PLANS

This DCP **repeals, condenses and replaces** the following chapters in the Dungog Shire-wide DCP No. 1:

Replaces:	New Chapter:
Part A - General Information	Administration
Part C - Chapter 4- Erection of Rural Sheds	Erection of Farm Buildings and/or Domestic Sheds
Part D - Chapter 7 Count Street, Paterson	Boulton Drive, Paterson
Amends	
Part B - Chapter 1 – Complying Development	
Part B - Chapter 2 – Exempt Development	
Part C - Chapter 8 Boatfalls Rural Residential Estate	
Part C - Chapter 5 Bushfire	
Part C - Chapter 8 Managing Our Floodplains	
Repeals	
Part C - Chapter 10 Farm Gate Sales	
Part C - Chapter 13 Acid Sulfate Soils	
Insert new chapters	
Part C - Chapter 23- On-Site Sewerage Management	
Part C - Chapter 24 – Site Waste Minimisation and Management	

Please Note: All other Chapters currently contained in the Dungog Development Control Plan No. 1 remain in force.

Each chapter of the DCP has been adopted by Council, additional chapters may be added. This plan shall apply from the commencement date to all development consents and building approvals relating to or affected by the matters contained in the following parts of the plan. Council adopted the chapters on the following dates:

	MEETING DATE	ADVERTISED DATE	ADOPTION DATE
Development Control Plan	18 May 2004	26 May 2004	18 May 2004
Administration	20 June 2018	4 July 2018	20 June 2018
Complying Development	20 June 2018	4 July 2018	20 June 2018
Exempt Development	20 June 2018	4 July 2018	20 June 2018
Residential Development	18 May 2004	26 May 2004	18 May 2004
Rezoning & Development in Rural Zones	18 May 2004	26 May 2004	18 May 2004
Building Line Setbacks	18 May 2004	26 May 2004	18 May 2004
[#] Amendment No. 2 Minute No. 36040	[#] 21 May 2013	[#] 5 June 2013	[#] 1 August 2013
Erection of Farm Buildings and Outbuildings Rural	20 June 2018	4 July 2018	20 June 2018
Residential Zones - Sheds			
Bushfire	20 June 2018	4 July 2018	20 June 2018
Energy Efficiency		Repealed	
Buffer Zones	18 May 2004	26 May 2004	18 May 2004
[#] Amendment No 1 Minute No 32288	[#] 19 October 2004	[#] 26 May 2004	[#] 19 October 2004
[#] Amendment No 3 Minute No 32719	[#] 16 August 2005	[#] 6 September 2005	[#] 16 August 2005
Managing Our Floodplains	15 August 2018	22 August 2018	15 August 2018
Employment Development	18 May 2004	26 May 2004	18 May 2004
Farm Gate Sales		Repealed	
Tourist Development	18 May 2004	26 May 2004	18 May 2004
The Keeping of Dogs for Commercial Purposes	19 February 2002	13 March 2002	19 February 2002
Acid Sulphate Soils		Repealed	
Building Over or Near Sewers	20 March 2001	28 March 2001	20 March 2001
Contaminated Land	19 September 2018	3 October 2018	29 October 2018
Biodiversity	18 March 2003	2 April 2003	20 May 2003
Heritage	18 February 2003	26 February 2003	21 October 2003
Water Efficient Building	17 February 2004	25 February 2004	17 February 2004

CHAPTER	MEETING DATE	ADVERTISED DATE	ADOPTION DATE
Off Street Parking	9 July 2005	27 July 2005	9 July 2005
Signage	20 May 2008	28 May 2008	20 May 2008
On Site Sewage Management	20 June 2018	4 July 2018	20 June 2018
Site Waste Minimisation and Management	20 June 2018	4 July 2018	20 June 2018
South Vacy Village	7 June 2003	25 June 2003	18 February 2003
Clarence Town Local Area Plan	15 March 2005	23 March 2005	17 May 2005
Vacy Local Area Plan	16 August 2005	24 August 2005	16 August 2005
Paterson Local Area Plan	15 November 2005	23 November 2005	15 November 2005
Gresford Local Area Plan	20 July 2004	11 January 2006	16 May 2006
Boulton Drive, Paterson	20 June 2018	4 July 2018	20 June 2018
Wind Energy Generation Facility	19 April 2005	27 April 2005	15 August 2006
Boatfalls Rural Residential Estate	20 June 2018	4 July 2018	20 June 2018
Cangon Park Rural Residential Estate	18 March 2020	1 April 2020	18 March 2020

1.6 HOW TO USE THIS DCP

The DCP is divided into four (4) parts:

- Part A: **Administration** details the statutory requirements of the DCP under the Environmental Planning and Assessment Act 1979, explains the aims of this DCP, the structure of the document and the public notification and advertising process.
- Part B: **Environmental Guidelines** contains chapters of the DCP that are not design-specific, but relate to consideration of environmental matters that may be relevant when preparing a Development Application, such as flooding and vegetation management. These chapters assist in pre-planning a development outcome.
- Part C: **Design Guidelines** contains chapters of the DCP that provide design-specific guidelines, such as car parking requirements and residential design.
- Part D: **Local Area Plans** collates a number of chapters in the DCP that guide development outcomes for specific localities based on an analysis of both natural and man-made constraints.

1.7 DEPARTURES FROM THIS DCP

Council may consent to an application that departs from the provisions of this DCP. In this case, the request for a departure shall be in writing (either as part of the Statement of Environmental Effects or a separate submission) justifying the need for the departure. Such justification may necessitate the need for additional plans, photomontages and the like or additional studies and reports such as traffic or car parking studies.

Any departure from this DCP will only be considered where it can be demonstrated to the satisfaction of the consent authority that the departure has merit.

1.8 SAVINGS AND TRANSITIONAL PROVISIONS

This DCP does not apply to the following applications, where they were lodged with the consent authority but undetermined at the time this DCP came into force:

- A Development Application,
- An application to modify a Development Consent under 4.55 of the EPA Act, or
- An application for a review of a determination under Section 8.2 of the EPA Act.

In this circumstance, the application will be assessed in accordance with the DCP that was in force at the time of lodgment of the application.

This clause does not apply to any site-specific DCP that is prepared concurrently with a Development Application.

1.9 DISCLAIMER

The contents of this DCP are subject to periodic review and change. Applicants must ensure that they have obtained the latest version.

The DCP is not necessarily an exhaustive list of requirements for particular proposals. Pre-application discussion with Council staff is essential to ensure all relevant matters are considered.

Council will accept no responsibility for reader interpretation of this DCP. Applicants should consult with Council staff to ensure the relevant parts of the DCP have been addressed and are understood.

A.2 – PREPARING A DEVELOPMENT APPLICATION

2.1 BEFORE YOU BEGIN

Pre-application discussion with relevant Council staff **prior to preparation of detailed plans** is highly recommended to ensure that the development proposal is permissible under the LEP, to ensure that all relevant matters are addressed in the application, and that adequate supporting documentation is submitted.

For larger or more complex proposals, it is recommended that applicants meet with Council's **Development Advisory Panel**. The Unit is a team of senior Council staff responsible for the assessment of development, subdivision and construction certificate proposals. It provides advice aimed at avoiding delays during application processing and maintaining effective communication. Attendance at the Panel does not infer an approval from Council.

2.2 PREPARING AN APPLICATION

A Development Application must be accompanied by a Statement of Environmental Effects and other relevant documentation as prescribed under the EPA Regulation 2000 (Schedule 1). Council's Development Application Guides can assist in this regard by identifying the types of information required.

The supporting documentation required with an application will vary with the nature of the proposal, its size and complexity, the other agencies from which comment or approval is required and the particular environmental characteristics of the land to be developed. Additional detail regarding issues to be addressed, and the resulting documentation requirements, can be found throughout this DCP.

2.2.1 Section 4.15 of the EPA Act

This section of the Act specifies matters that a consent authority needs to consider in the assessment of Development Applications. These heads of consideration also provide an applicant with a checklist to ensure that all aspects of a development have been addressed in the preparation of an application.

Section 4.15 of the Act includes:

- Environmental planning instruments – this section requires consideration of whether the application is consistent with environmental planning instruments (State Environmental Planning Policies and Local Environmental Plans);
- Any DCP that applies to the land;
- Matters prescribed by the Regulation associated with the Act – these include such matters as fire safety considerations;
- environmental, historical, social and economic impacts;

- whether the site is suitable for the development;
- any submissions made in relation to the development; and
- public interest matters.

Consideration of matters specified in the EPA Act may require the applicant to prepare site-specific specialist reports or studies and/or broader studies where the proposed development will have greater impacts on the wider community.

2.2.2 Integrated Development

In addition to any consent issued under the EPA Act, some proposals will also require approvals (or licenses) from other statutory authorities or agencies before commencing work or undertaking the activity.

Section 4.46 of the EPA Act lists the approvals that trigger the ‘integrated development’ provisions in the Act. The onus is on the applicant to identify whether their proposal is integrated development and ‘tick the box’ on the DA form and pay the associated referral and administration fee to the relevant authority.

It is the responsibility of the applicant/owner to obtain the relevant approval necessary, either through Council at DA stage or alternatively post approval and prior to the commencement of any works on site. This alternative process may require amendments to be sought to the development consent granted.

Council staff can provide advice about other approvals required. Additional information may be necessary for referral to other authorities, such as a bushfire threat assessment report.

2.2.3 Bushfire Prone Land

Any Development Application over land that is classified as ‘bush fire prone land’ on Council’s Bush Fire Prone Map is required to comply with the NSW Rural Fire Service’s publication titled “Planning for Bushfire Protection” (2006). Where the development is ‘integrated development’, the application will be referred to the NSW RFS for comment.

2.2.4 Biodiversity Conservation

The NSW Government has introduced a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in NSW on 25 August 2017. The Biodiversity Conservation Act 2016, the Local Land Services Amendment Act 2016 and State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, work together to create a framework for the regulation of clearing of native vegetation in NSW.

As of 25 February 2018, new development applications submitted to Dungog Shire Council are subject to assessment under the provisions of the Biodiversity Conservation Act 2016. The Biodiversity Conservation Act 2016 provides tools to avoid, minimize and offset biodiversity impacts through land use planning and during the development assessment

process. The biodiversity offset scheme will apply to local developments (for which a development application is required), that are likely to significantly affect threatened species. These are defined as a development that:

- Impacts on an Area of Outstanding Biodiversity Value (as mapped by the NSW Office of Environment and Heritage)
- Exceeds the biodiversity offset scheme threshold (as outlined in the Biodiversity Conservation Regulation 2017), or
- Is likely to significantly affect threatened species, ecological communities or their habitats according to the test of significance in section 7.3 of the Biodiversity Conservation Act 2016.

A development to which the biodiversity offset scheme applies will be required to apply the Biodiversity Assessment Method and produce a biodiversity development assessment report to accompany a development application.

The biodiversity impacts of developments that do not trigger the biodiversity offsets scheme will continue to be assessed under section 4.15 of the EP&A Act (formerly 79C of the EP&A Act). Evidence that the biodiversity offset scheme threshold is not triggered and a test of significance will need to accompany a development application to demonstrate that the biodiversity offset scheme does not apply.

2.2.5 Consent Authority

In most cases, Council is the relevant consent authority for applications within the LGA. State Significant Development establishes the Minister for Planning (or by delegation the Department of Planning) as the consent authority for development as categorized by State Environmental Planning Policy (State and Regional Development) 2011.

Other subordinate panels have also been established under the EPA Act, including the Independent Planning Commission (PAC) and Regional Planning Panels (RPPs). These panels exercise consent functions either under delegation from the Minister or for development of regional significance. Details of projects that are determined by RPPs can be found in the. Council officers can assist in this regard.

A.3 – LODGING A DEVELOPMENT APPLICATION

3.1 APPLICATION FORM AND DOCUMENTATION

All Development Applications must be lodged with a Development Application Form, a Statement of Environmental Effects and appropriate accompanying documentation. Applicants should refer to Council's Development Application Guides for details. **Applications will not be accepted without the required documentation.**

The length of time taken for assessment and determination of applications will vary depending upon the extent to which the proposal complies with the provisions of this DCP, and on the adequacy of the supporting documentation submitted. Variations to development standards contained in the LEP or requests for departures from the provisions of this DCP may require a decision of Council for final approval. This will generally delay determination of an application considerably.

3.2 FEES AND CHARGES

All Development Applications attract fees and charges for the administration and assessment of the proposal, including public notification and advertising if required. Council's Corporate Management Plan contains all the relevant information and is updated annually. Applicants should ensure they have consulted the current document.

3.2.1 Integrated Development

Where an application is identified as "integrated development", an additional fee as prescribed by the EPA Act and Regulation is required. The fee is applicable to each separate approval or license process identified as 'integrated', as the application is referred to each relevant Authority on behalf of the applicant with the prescribed fee.

3.2.2 Subdivision

In addition to Development Application fees, other fees and charges which may be applicable for subdivision include, but are not limited to:

- Subdivision Certificate (Endorsement) fees;
- Principal Certifying Authority fees;
- Hunter Water Corporation Fees;
- Construction Certificate fees; and
- House numbering/Rural addressing fees.

3.2.3 Developer Contributions

Sections 7.11 and 7.12 of the EP&A Act permit Council to levy certain developer contributions towards the cost of facilities and amenities in the LGA.

Details relating to the amount of a monetary contribution, other forms it may take and when the contribution is required are contained in Council's Section 94 Contributions Plan.

A.4 – NOTIFICATION AND ADVERTISING OF APPLICATIONS

This section applies to all:-

- Development Applications; and
- Applications to Modify a Development Consent

4.1 AIMS AND OBJECTIVES

The aims of this section of the DCP are:-

- To set out the requirements for the advertisement and/or notification of DA's;
- To provide for public participation in Council's consideration of certain DA's;
- To allow for a reasonable time for the inspection and making of submissions on applications while recognising the obligations of the Council to determine applications within prescribed periods; and
- To detail the form that the notification will take and the requirements of the notification plan.

4.2 COST OF ADVERTISING AND NOTIFICATION

The applicant shall pay to Council a fee in accordance with Council's adopted Schedule of Fees and Charges to cover the cost of advertising and/or notification of the application and any amendments or modifications of the application or any fee prescribed by Regulation.

4.3 WHICH DEVELOPMENTS ARE ADVERTISED?

The following types of Development Applications are required to be advertised in the local Dungog Newspaper:

- Subdivisions
- Boundary adjustments
- Tourist Developments
- New Commercial Developments
- Development of Listed Heritage Item or significant development within a heritage conservation area.
- Medium Density Development
- Dual Occupancy
- Farm Gate Sales
- Applications that are considered to be contentious or of public interest

4.4 WHICH DEVELOPMENTS ARE TO BE NEIGHBOUR NOTIFIED?

The following types of Development Applications are required to be notified by mail:

- Applications for subdivisions
- Boundary adjustments
- Tourist Developments
- New Commercial Developments
- Industrial
- Development within a nominated Heritage Conservation Area or Listed Heritage Item.
- Medium Density Development
- Dual Occupancy
- Farm Gate Sales
- Applications that do not meet Council's setback requirements
- Applications that are considered to be of public interest

4.5 WHO IS TO BE NOTIFIED?

The following people are to be notified by mail of applications that are listed above as being notified or advertised:

- all persons who, according to Council property rating records, own land immediately adjoining and on the opposite side of the road or river; and
- owners or occupiers of any land that the Council or delegated staff considers may be detrimentally affected by the application.

A period of 14 calendar days will be allowed for persons to inspect an application and make a submission, unless otherwise determined.

For "Advertised" or "Designated Development" the length of the inspection period and how the application will be advertised shall be in accordance with the requirements of the Environmental Planning and Assessment Act Regulation 2000.

Applications may be notified at the Council's discretion at a higher level than that indicated, based on consideration of the following criteria:

- scale of the development;
- traffic generation;
- social and economic impact; and
- impact on the streetscape.

In respect to new developments for telecommunication towers, the assessment officer should strongly consider whether wider neighbour notification is appropriate. Depending on the specific circumstances, this could include neighbour notification up to a 300 metre radius from the development in question.

4.6 WHAT IS TO BE CONTAINED IN THE NOTICE?

The notice will contain:-

- The address of the property and description of the land (Lot No., Deposited Plan and House No. and property name if applicable);
- The name of the applicant;
- A brief description of the proposal expressed as informatively as possible in a short statement;
- Where and when the plans can be inspected;
- An invitation to make a submission;
- A statement that confidentiality will not be available to objectors; and
- A plan of the proposal (A4 size).

4.7 WILL THE APPLICANT BE ADVISED OF SUBMISSIONS?

Confidentiality will not be available to objectors. In some cases, submissions may be referred to the applicant for their response.

Where applications are amended in response to objections received, comments may, at Council's discretion, be sought from previous objector/s.

4.8 NOTIFICATION OF DETERMINATION OF APPLICATIONS

Following determination of an applicant all persons who made submissions will be advised in writing of the decision as soon as practical.

A.5 – POST DETERMINATION MATTERS

5.1 SUBDIVISION

If the development consent requires the carrying out of any works associated with the subdivision of land, a Construction Certificate is required prior to any work being undertaken. Detailed Engineering Plans will usually be required for approval.

A Subdivision Certificate is required prior to release of the final plan of survey, so that the plan of subdivision can be registered under the Conveyancing Act 1919. All required work must be completed and consent conditions satisfied prior to issue of a Subdivision Certificate, or else security must be lodged with Council (usually in the form of a Bond and Agreement) to cover the cost of the outstanding works plus contingencies.

A Subdivision Certificate can be issued over part of a subdivision, provided that all requirements for that part have been met. Details of requirements for Construction Certificates, Engineering Plans and Subdivision Certificates are contained in Council's

5.1.1 Bonding of Works

In some instances, Council may require the applicant to provide a monetary bond to ensure that works relating to development consent are completed. A monetary bond may be required to be lodged prior to the issue of a Construction Certificate.

5.2 MODIFICATION OF CONSENTS

Sections 4.55 and 4.56 of the Environmental Planning and Assessment Act 1979 set out the procedure for modification of development consents. An application for modification must be made to the consent authority, and fees paid, in accordance with the Environmental Planning and Assessment Regulation 2000.

Minor errors, mis-descriptions or miscalculations may be modified without further referral or notification. However, more significant modifications may require re-advertising and referrals to government authorities.

In all cases, the consent authority must be satisfied that the development to which the consent as modified relates is substantially the same development. For significant modifications, lodgment of a new Development Application will be required.

5.3 LAPSING OF CONSENTS

Section 4.53 of the Environmental Planning and Assessment Act 1979 describes when a development consent lapses.

5.4 REVIEW OF APPLICATIONS AND RIGHTS OF APPEAL

Should an applicant be dissatisfied with the determination of a development application where Council is the consent authority, a Review of Determination may be requested under Section 8.3 of the Environmental Planning and Assessment Act, 1979. The request must be made within 6 months of the determination date of the application, accompanied by the prescribed fee.

Rights of appeal also exist to the Land and Environment Court of NSW. These rights are set out in Division 8.3 of the Environmental Planning and Assessment Act, 1979.