



CESSNOCK DEVELOPMENT CONTROL PLAN 2010

PART A Introduction



Amendment History

| Version No. | Nature of Amendment | Date in Force |
|--------------------|---|----------------------|
| 1 | Initial adoption by Council in 1995 (DCP) 21 | 15 November 1995 |
| 2 | Consequential Amendments to site-specific DCP's arising from the Cessnock DCP 2006 | 1 December 2006 |
| 3 | Incorporation into Part E: Specific Areas | 30 March 2007 |
| 4 | Consequential amendments as result of Cessnock Local Environmental Plan | 23 December 2011 |
| 5 | Incorporation into Part C: General Guidelines - Trees and Vegetation Management | 3 April 2013 |
| 6 | Incorporation of Part F: Urban Release Areas | 14 August 2013 |
| 7 | Incorporation into Part C: General Guidelines – Social Impact Assessment and Crime Prevention through Environmental Design Guidelines | 4 September 2013 |

TABLE OF CONTENTS

PART A: INTRODUCTION

| | | |
|-------|---|----------|
| A.1: | | |
| A.1: | STATUTORY CONTEXT..... | 1 |
| 1.1 | Preamble..... | 1 |
| 1.2 | Purpose of the DCP | 1 |
| 1.3 | Aims of the DCP..... | 1 |
| 1.4 | Statutory Requirements | 1 |
| 1.5 | Land to which this DCP applies | 2 |
| 1.6 | Relationship to previous Development Control Plans..... | 2 |
| 1.7 | How to Use this DCP | 2 |
| 1.8 | Application of this DCP..... | 3 |
| 1.9 | How to Interpret This DCP | 3 |
| 1.10 | Departures and Requests for Variations to this DCP..... | 3 |
| 1.11 | Definitions | 4 |
| A.2 | | |
| A.2: | WHAT NEEDS TO BE CONSIDERED IN PREPARING A DEVELOPMENT APPLICATION | 1 |
| 2.1 | Before you begin | 1 |
| 2.2 | Preparing a Development Application..... | 1 |
| 2.2.1 | <i>Section 79C of the Environmental Planning and Assessment Act 1979.....</i> | <i>1</i> |
| 2.2.2 | <i>Integrated Development</i> | <i>1</i> |
| 2.2.3 | <i>Consent authority.....</i> | <i>2</i> |
| 2.2.4 | <i>Designated Development</i> | <i>2</i> |
| 2.2.5 | <i>Bushfire Prone Land.....</i> | <i>2</i> |
| 2.2.6 | <i>Developer Contributions</i> | <i>3</i> |
| 2.2.7 | <i>Bonding of Works</i> | <i>3</i> |
| A.3 | | |
| A.3: | SUBMISSION REQUIREMENTS..... | 4 |
| 3.1 | Fees and Charges..... | 4 |
| 3.2 | Lodging an Application..... | 4 |
| 3.2.1 | <i>Additional Information.....</i> | <i>4</i> |

A.1: STATUTORY CONTEXT

1.1 Preamble

On September 30, 2005 the *Environmental Planning and Assessment Act 1979* (EP&A Act) was amended to provide that only one Development Control Plan (DCP) prepared by a consent authority may apply to any land within a Local Government Area. In order to comply with this amended provision, Council consolidated and condensed the majority of its existing DCPs into Cessnock DCP 2006.

The gazettal of Cessnock Local Environmental Plan (CLEP), resulted in consequential amendments to Cessnock DCP 2006, resulting in Cessnock DCP.

From time to time, the DCP will require amendment to incorporate new sections or to repeal or amend existing provisions.

1.2 Purpose of the DCP

The DCP complements the statutory provisions contained in the CLEP by providing detailed guidelines to assist applicants, staff and others involved and interested in development within the Cessnock Local Government Area.

The DCP amends the existing Development Control Plan as required, in compliance with Section 74C of the *Environmental Planning and Assessment Act 1979*, as amended.

1.3 Aims of the DCP

The aims of the DCP are:

- 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;
- to identify certain development as advertised development and to detail public notification requirements in accordance with section 74C of the EP&A Act;
- to promote a more simplistic framework for dealing with development applications (DAs) consistent with the amended requirements of the EP&A Act;
- to encourage and assist effective community participation in the decision-making process;
- to provide a more accessible and understandable set of guidelines to the general public; and
- to apply common or consistent requirements and procedures in the assessment of all applications.

1.4 Statutory Requirements

The DCP is titled 'Cessnock Development Control Plan'.

The DCP is a development control plan prepared under Section 74C of the EP&A Act and associated Regulations.

Section 74C(5) in the EP&A Act provides that, in the event of any inconsistency between this DCP and the provisions in an environmental planning instrument (such as a State Environmental Planning Policy, Regional Environmental Plan or Local Environmental Plan) the environmental planning instrument shall prevail.

Section 79C(1)(a)(iii) of the EP&A Act requires Council (or any other consent authority) to consider this DCP when determining development applications that are covered by this DCP.

1.5 Land to which this DCP applies

This DCP applies to all land within the Cessnock LGA.

1.6 Relationship to previous Development Control Plans

This DCP amends Cessnock Development Control Plan 2006.

1.7 How to Use this DCP

The DCP is divided into five (5) parts:

Part A: **Introduction** details the statutory requirements under the EP&A Act, explains the purpose and aims of this DCP and outlines the structure of the document.

Part B: **General Information** details the public notification and advertising process.

Part C: **General Guidelines** contains sections of the DCP that apply generally to all applications such as consideration of land contamination. This Part is relevant to all other parts in the DCP and shall be read in conjunction with any specific provisions.

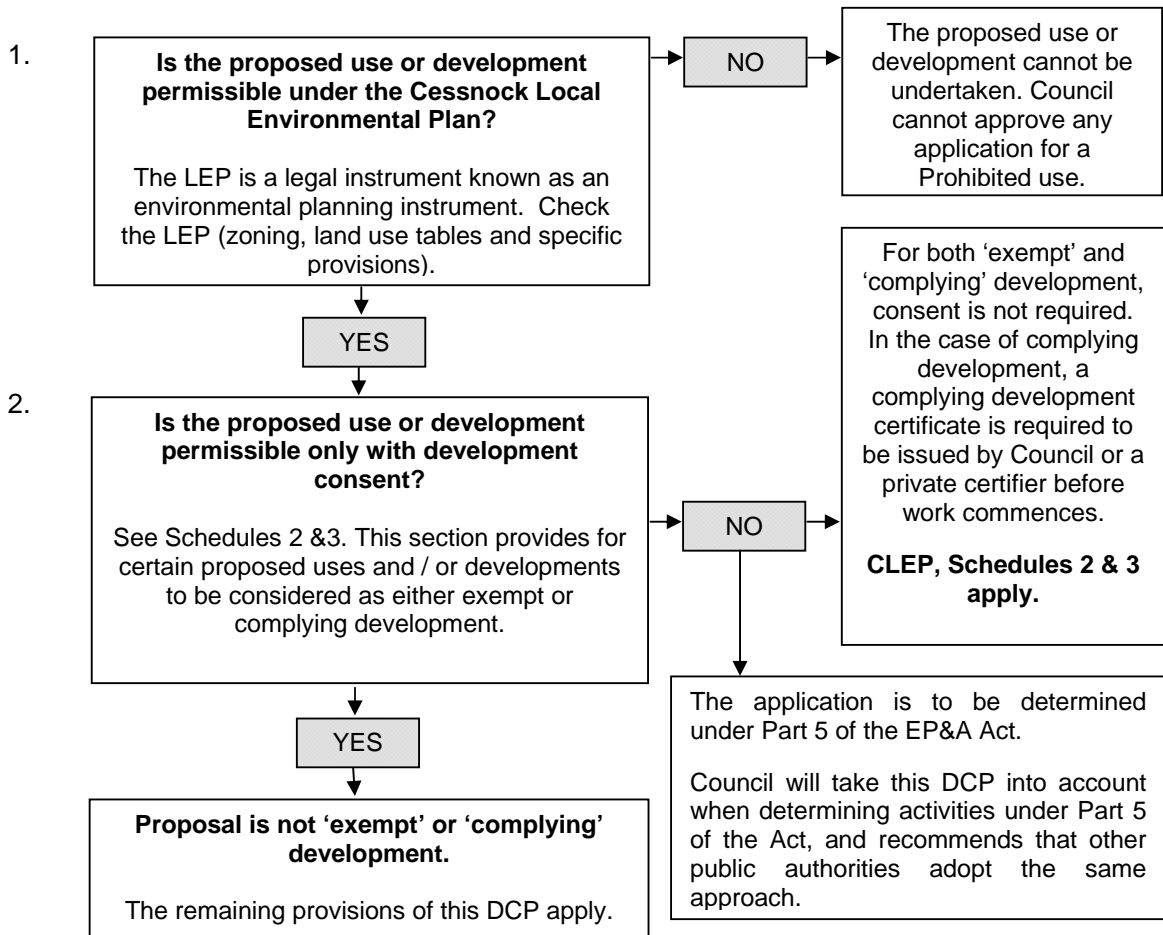
Part D: **Specific Development** contains those sections of the DCP that relate to specific development such as subdivision, residential, industrial, residential, dam construction, etc.

Part E: **Specific Areas** contains those sections of the DCP that relate to specific sites, such as the Vineyards District and Cessnock Air Transport Facility. This Part contains additional requirements for certain site-specific areas above that contained in Parts A – D.

Dictionary: provided to clarify specific aspects and terms within the DCP.

Appendix A: Flora & Fauna Survey Guidelines (LHCC Region, 2002); Volumes 1 and 2.

1.8 Application of this DCP



1.9 How to interpret this DCP

Council shall take the provisions of this DCP into consideration in determining DAs. However, compliance with the provisions of this DCP does not necessarily imply that Council will consent to an application. Council shall consider the full range of matters listed under Section 79C of the EP&A Act and each application will be considered on its merits.

1.10 Departures and requests for variations to this DCP

Council may consent to an application that departs from the provisions of this DCP. Where applicants seek a departure or variation from the provisions of this DCP, the request shall be in writing (either as part of the Statement of Environmental Effects, or a separate submission) and justify the reasons for the departure. Such justification may necessitate the submission of additional plans, diagrams, photomontages and the like, or additional studies and reports such as acoustic or odour assessment studies, traffic and car parking studies.

Any variation or departure will only be considered where it can be demonstrated to Council's satisfaction that there is a clear case for variation of the provisions, and that there are no detrimental environmental impacts, with the overall zone objectives and any specific provisions of CLEP and Cessnock DCP being satisfied.

For variations to buffer areas nominated in Part C: General Guidelines, Chapter 4: Land Use Conflict & Buffer Zones, any application for variation shall address the following matters:

- the extent, nature and intensity of the conflicting land use;
- the operational characteristics of the land use;
- the external effects likely to be generated by the land use (e.g. spray drift, odour, dust, noise, etc.) and methods proposed to reduce/remove such effects;
- any topographical features or vegetation which may act to reduce the likely impacts of the land use;
- prevailing wind conditions and any other relevant climatic characteristics; and
- any other mitigating circumstances.

1.11 Definitions

The Dictionary defines and clarifies terms and meanings used within various Chapters in this DCP.

It does not include definitions contained in an environmental planning instrument (such as the CLEP) or legislation.

All interested persons should ensure that definitions are appropriately sourced and referenced before preparing any applications to Council.

A.2: WHAT NEEDS TO BE CONSIDERED IN PREPARING A DEVELOPMENT APPLICATION

2.1 Before you begin

Before lodging a DA, it is advisable to consult with Council staff to ensure that all relevant issues are addressed and sufficient information is provided. For smaller projects, discussion with the Duty Planner may suffice. For larger or more complex projects, Pre-DA consultation is considered to be important as it provides the opportunity for Council staff to direct applicants to the relevant components of this DCP and other related matters. This can save applicants much time and expense. Requests for additional information, once the application is lodged, will inevitably delay the process. Information on the Pre-DA consultation service and the associated application form can be viewed and downloaded from Council's website at www.cessnock.nsw.gov.au.

2.2 Preparing a Development Application

When preparing a DA there are a number of matters to be considered in addition to the provisions of this DCP.

2.2.1 Section 79C of the Environmental Planning and Assessment Act 1979

This section of the Act specifies matters that need to be considered in the assessment of Development Applications. It includes such matters as:

- a) Environmental planning instruments – these include State Environmental Planning Policies, Regional Environmental Plans and Local Environmental Plans;
- b) any Development Control Plan that applies to the land;
- c) matters prescribed by the Regulation associated with the Act – these include such matters as fire safety considerations for changes of use in a building or for renovations;
- d) environmental, historical, social and economic impacts;
- e) whether the site is suitable for the development;
- f) any submissions made in relation to the development; and
- g) public interest matters.

Consideration of matters specified in the EP&A Act may require the applicant to prepare specialist reports or studies to address either site-specific or broader issues relating to environmental, social or economic impacts resulting from the proposed development. For example, a social and economic impact assessment may be required to support a proposed major commercial or industrial development. Investigation of European heritage or Aboriginal archaeology may be necessary for particular sites.

2.2.2 Integrated Development

In addition to the matters covered under the EP&A Act, some proposals will require approvals (or licences) from other statutory authorities or agencies before commencing work or undertaking the activity.

Applicants need to determine whether other approvals are required and should refer to Section 91 of the EP&A Act to determine whether the proposal is 'integrated development'.

For example, subdivision for the purposes of residential or rural-residential development within an area identified as 'bush fire prone land' on Council's 'Bush Fire Prone Land Map' requires the issue of a Bush Fire Safety Authority under Section 100B of the *Rural Fires Act 1997*.

The onus is on the applicant to 'tick the box' on the Development Application form to identify whether the proposal is 'integrated development' and pay the associated referral fee. *Council's DA form and Application Guide provide the relevant information.*

2.2.3 Consent authority

In most cases, Council is the consent authority for Development Applications over land within its Local Government Area. For some major projects, the consent authority may be the Minister for Planning. For example, development that is defined in SEPP (Major Projects) including developments formerly defined as 'State significant development'. In this instance, applications are to be lodged with the NSW Department of Planning.

The *Native Vegetation Act 2003* came into force on December 1, 2005. Clearing of remnant native vegetation or protected regrowth requires either development consent or a Property Vegetation Plan from the Catchment Management Authorities (the local branch being the Hunter-Central Rivers CMA). The consent authority is the Minister for Natural Resources in this instance. Council also requires development consent for the clearing of land where the *Native Vegetation Act 2003* does not apply, the provisions are contained in Cessnock LEP, Clause 5.9 Preservation of trees or vegetation. In this instance, 'dual' consents apply rather than 'integrated development'. (see www.nativevegetation.nsw.gov.au for information sheets in relation to the *Native Vegetation Act 2003* and application requirements).

2.2.4 Designated Development

'Designated development' is defined in Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*. This Schedule lists those developments that are considered to be of such significance that a more formal and rigorous reporting and assessment process is required. These applications require the preparation of an Environmental Impact Statement (EIS). Council will be the consent authority, unless otherwise provided through legislation or an environmental planning instrument.

Nothing in this DCP removes the need for applicants to determine whether or not a proposal constitutes "designated development". Where an EIS is required, any relevant provisions of this DCP are to be considered and addressed.

2.2.5 Bushfire Prone Land

In 2002, the provisions of the EP&A Act were amended to include specific requirements to consider the impacts of bushfire on development (sections 79BA and 91 of the Act). The NSW Department of Planning and the NSW Rural Fire Service have published a revised document entitled '*Planning for Bushfire Protection 2006*'.

The majority of Council's rural lands (and some urban lands on the fringe of developed areas) are classified as 'bush fire prone land' on Council's Bush Fire Prone Land Map.

Any DA over land that is classified as 'bush fire prone land' is required to comply with the requirements outlined in the above document. In some instances, a DA will be 'integrated development' and be forwarded to the NSW Rural Fire Service for its comments. The document can be viewed and downloaded at www.rfs.nsw.gov.au

2.2.6 Developer Contributions

Under Section 94 of the EP&A Act, Council may levy certain developer contributions towards the cost of facilities and amenities in the area such as roads, drainage, public open space, community facilities and the preparation and review of Contribution Plans. Contributions may be monetary or, subject to Council agreement, provision of works in lieu of the contributions to the same value. An applicant may, instead, elect to enter into a Voluntary Planning Agreement (VPA) with Council.

The amount of monetary contribution is determined in the relevant Section 94 Contributions Plan, (CP). This figure is reviewed annually. Contributions will be used for the projects identified in the Schedule of Works included in each Contributions Plan.

Unless otherwise agreed to by Council, the payment of contributions will be required:

- a) for DAs involving subdivision – prior to the issue of a Subdivision Certificate;
- b) for DAs involving building work – prior to the issue of a Construction Certificate; and
- c) for DAs where no building work is proposed – prior to the issue of development consent.

Applicants should refer to the relevant Contributions Plan to establish the current contribution requirement. In some instances, more than one Contributions Plan may apply.

2.2.7 Bonding of Works

In certain instances, Council may require the applicant to provide a monetary bond to ensure that works pertaining to any development approval are completed. A monetary bond in the form of an irrevocable bank guarantee or fixed term deposit for the value of engineering and landscaping works may be required to be lodged prior to the issue of a Construction Certificate.

A.3: SUBMISSION REQUIREMENTS

3.1 Fees and Charges

All types of applications attract fees and charges for the administration and assessment of the proposal. Council's 'Fees and Charges Plan' details all applicable costs, including additional fees where proposals require public notification and advertising. This document is reviewed annually and applicants should ensure they have access to the current plan. A copy of this document is available from Council offices or can be downloaded from Council's website at www.cessnock.nsw.gov.au.

3.2 Lodging an Application

All types of development (with the exception of 'Exempt Development' & 'Complying Development' – see CLEP Schedules 2 & 3) and some activities require the submission of a formal application to Council.

Council has various Application Forms and Guides to assist applicants in preparing the relevant documentation.

Copies can be obtained from Council offices or downloaded from Council's website at www.cessnock.nsw.gov.au – go to 'Forms and Guides'.

3.2.1 Additional Information

Council may require additional information to assess an application before it makes a decision. It is in both the applicant's and Council's interest that fully documented applications are submitted for ease and promptness of processing. Council has prepared information booklets on specific types of development, such as dual occupancy and temporary events. These booklets contain the relevant application forms and submission requirements. All applications must include the required information (where relevant).

Booklets are available from Council offices or downloaded from Council's website at www.cessnock.nsw.gov.au.

Part B: General Information and Part C: General Guidelines also contain submission requirements within the various chapters. All applicants should ensure that additional information (where relevant) is submitted with any application.