



Armidale Dumaresq Development Control Plan 2012

Section 1 Development Control Plan General Matters

Chapter 1.1 Introduction and Public Notification

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Part 1 Introduction

1.1 Name of this Development Control Plan

The name of this document is the *Armidale Dumaresq Development Control Plan 2012 (DCP 2012)*.

1.2 Commencement of this Development Control Plan

The *Armidale Dumaresq Development Control Plan (DCP) 2012* was adopted by Council on 24 June 2013 and came into effect on 26 June 2013.

1.3 Repeal of Armidale Dumaresq Development Control Plan 2007

This *Armidale Dumaresq DCP 2012* replaces the *Armidale Dumaresq DCP 2007*. Applications lodged for assessment up to the date of adoption of this Plan will be assessed under the DCP applicable at the lodgement date of the application.

1.4 Legislative background

This DCP has been prepared pursuant to Part 3 of the *Environmental Planning and Assessment Act 1979 (EPA Act)*. Development Consent under the EPA Act is required for most building works, subdivision of land, and changes in land use. Consent may also be required for undertaking 'works' such as significant earthworks. However, some projects with minor environmental impact can be carried out without development consent. Relevant State government State Environmental Policies and Council's Local Environmental Plan (LEP) identify whether consent is needed to carry out a particular development.

1.5 Relationship to the Armidale Dumaresq Local Environmental Plan 2012

LEPs are statutory planning instruments and should be read with this document. LEPs establish the type of development that is permissible in particular locations. This is done mainly through land use zoning and other statutory provisions and standards outlined in the LEP.

Where an LEP permits and a development application must be submitted, this DCP provides further guidance and more detailed requirements that specific proposals must address.

This DCP supports the LEPs applying to Armidale Dumaresq local government area. Armidale Dumaresq LEP 2012 (LEP 2012) applies to most of Armidale Dumaresq. The areas that LEP 2012 does not apply to are identified on the LEP maps as a 'Deferred Matter'. In the 'Deferred Matter' areas Armidale Dumaresq LEP 2008 (LEP 2008) applies.

A copy of our current LEPs and any amendments can be obtained from the NSW Parliamentary Council's website, www.legislation.nsw.gov.au (under 'Environmental Planning Instruments in force'); from Council's offices at 135 Rusden Street, Armidale; or, on Council's website www.armidale.nsw.gov.au

1.6 Relationship to legislation, plans and policies

Other Federal, State and local legislation and Council policies may apply to your development, including matters relating to issues such as infrastructure, signage, access for people with a disability, health requirements, engineering, and utility services.

Where there is an inconsistency between the provisions of an environmental planning instrument, (such as a State Environmental Planning Policy Council's LEP 2012 and this DCP, the environmental planning instrument will prevail to the extent of the inconsistency.

1.7 Aims and objectives of this plan

The aim of this Plan is to explain the legislative planning requirements for development activity in the Armidale Dumaresq local government area, including land subdivision, land use, and construction and building.

The objectives of DCP 2012 are to:

- O.1 Outline the controls required for development (including subdivision and construction) in specific land use zones.
- O.2 Encourage excellence in design to ensure buildings maximise solar access to living areas and private open space, and use any site to its best advantage.
- O.3 Promote health, safety and amenity in the planning, design, construction and performance of individual buildings and the built environment.
- O.4 Protect the environment, including the impacts on land, air and water, flora and fauna, habitats and biodiversity from the built environment.
- O.5 Promote sustainability in infrastructure provision, construction materials, waste minimisation, and energy and water saving products.
- O.6 Preserve and protect rural and scenic landscapes.
- O.7 Avoid land use conflict and protect amenity.
- O.8 Conserve and promote the heritage attributes.

1.8 Land to which Development Control Plan 2012 applies

DCP 2012 applies to all land in the Armidale Dumaresq local government area.

The following table outlines the current zone names in the LEP 2012 applying to land in the Armidale Dumaresq LGA.

R1	General Residential	B2	Local Centre
R2	Low Density Residential	B3	Commercial Core
R5	Large Lot Residential	B4	Mixed Use
RU1	Primary Production	B5	Business Development
RU3	Forestry	B7	Business Park
RU4	Primary Production Small Lots	IN1	General Industrial
RU5	Village	IN2	Light Industrial
E3	Environmental Management	RE1	Public Recreation
E4	Environmental Living	RE2	Private Recreation
SP2	Infrastructure		

The current zone name in the 'Deferred Matter' in LEP 2008 applying to land in the Armidale Dumaresq LGA is 4(a) Industrial.

1.9 Amendments to the development control plan

Any amendments made to the DCP can only take effect after a process of public exhibition, consideration of submissions, formal adoption by Council and notification of commencement in a local newspaper.

Adopted amendments to this DCP at the date of publication of this edition are set out in the table below:

Amendment Number	Section of the DCP Amended	Details of Council Resolution and Date of Effect
		Resolution Number Date of Effect

Part 2 What is a development control plan?

Development Control Plans (DCPs) provide specific, more comprehensive guidelines for certain types of development, or areas and precincts within Armidale Dumaresq. The detailed guidelines contained within a DCP are in addition to the provisions of the legal planning instrument (SEPP or LEP). DCPs are important in the planning system because they provide a flexible means of identifying additional development controls for addressing development issues without the need for a formal statutory plan.

Part 3 Variations to development controls

3.1 Variations for individual applications/assessment on merit

All development applications are assessed in relation to the relevant legislation, and the merits and circumstances of the application. The development controls in this DCP are a set of 'deemed to satisfy' provisions that Council is satisfied will achieve the relevant objectives. Council will consider alternative solutions where an Applicant can demonstrate that the development would satisfy the objectives. Alternative solutions must demonstrate that a better outcome can be achieved than would be the case if the development standard were applied.

Where applicants wish to apply for variations to controls in this DCP, we recommend early discussion with planning staff.

Please refer to the provisions in Clause 4.6 of the LEP 2012 where it is proposed to vary a development standard in the LEP.

Part 4 Structure of this plan

This Plan has the following six sections:

Section 1 – Development control plan general matters

Section 1 includes material which has general application and explains what a DCP is; and where and when it applies. This Part also explains the process of development consent. It does not outline the provisions for Exempt Development or Complying Development. These matters are dealt with in the *State Environmental Planning Policy (Exempt and Complying Development) Code 2008* and other legislative instruments.

Where development consent is required for construction, demolishing and subdivision, a Development Application is required by Council. This part sets out procedural and other matters relevant to Council's role as a development consent authority. This includes information to be addressed in applications, criteria for assessment and requirements for notifying the public of applications we receive.

Section 2 – Site analysis and land constraints

This section outlines the site issues to be addressed in a development application, including designing to manage site attributes and constraints.

Sections 3, 4 and 5 – Development controls

These sections describe the relevant controls for development applications for various types of development activity, such as subdivision, residential development, commercial development, industrial development and so on.

Part 6 – Locality specific precincts

This section contains information on special provisions applicable to particular localities. Please check whether your proposed development is located in one of these areas.

Part 5 Public notification of applications

5.1 Legislative requirements for notification

This section supplements the relevant provisions of Part 4 of the *Environmental Planning and Assessment Act 1979* and sets out the process we undertake for routine public/neighbour notification of proposed development activity.

Public notification of certain development with potentially major environmental impacts, such as ‘advertised’ and ‘designated’ development is the subject of a prescribed statutory process under the Act and Council’s LEP. Such developments occur infrequently in Armidale Dumaresq. In brief, these developments normally require public notice in the local press and extended exhibition periods.

In this section, the word ‘neighbour’ means a person who owns land adjoining an application site (ie land which abuts an application site or is separated from it only by a pathway, driveway or similar thoroughfare), or other land which we consider may be adversely affected by development activity on an application site.

Note: Development Application documents, including your contact details, may be made available to others in connection with any Public Notification of the proposal. Moreover, all application documents, other than internal plans of residential parts of buildings, are available for public inspection pursuant to the *NSW Government Information (Public Access) Act and Regulation 2009*.

5.2 Why do we notify neighbours?

The process of notification enables us to consider matters that might concern your neighbours and helps us make more informed decisions. Notification of Complying Development proposals does not occur under State legislation as these do not involve merit-based assessment.

The opportunity for neighbours to comment on Development Applications is outlined in this section and will generally be provided where there is likely to be a significant adverse impact on nearby properties.

5.3 Which applications require notification?

It is Council policy for the following Development Application types to be notified to neighbours:

- a) non-residential development adjoining a more sensitive land use;
- b) two storey residential development;
- c) multi-unit housing, where three (3) or more new units are proposed;

- d) single storey dwelling-houses (including alterations and additions) where a new wall adjacent to any side or rear property boundary is to be located less than 900mm from the boundary; and
- e) subdivisions, where three (3) or more new lots are proposed (not including a strata subdivision where buildings currently exist on the proposed lots).

In some cases Council may decide to notify other applications, taking into consideration the following matters:

- a) the views to and the view from surrounding land;
- b) potential overshadowing of surrounding land;
- c) privacy of surrounding land;
- d) potential noise and odour emissions to the surrounding land;
- e) the likely visual impact of the proposed building in relation to the streetscape;
- f) the scale or bulk of the proposed building;
- g) proposed hours of use;
- h) potential light spillage or reflection;
- i) potential traffic generation;
- j) vehicle access to the site;
- k) provision of parking on the site.

5.4 Who is notified and how?

We will send a letter about an application to neighbours where we think that the enjoyment of their land may be adversely affected by a proposed development. Our letters may be addressed to only one owner where a property is owned by a number of people. A notice forwarded to the Manager or Secretary of the Body Corporate, or an Association under the Community Land Development Act 1989 is taken to be a notice to the owner of each lot within a strata plan or community association, as applicable.

Our letters to neighbouring property owners will also request that any tenants of nearby properties should be advised of the application by their landlords. As a further measure, we will arrange for a sign to be displayed on the application site advising of Council's receipt of an application and the potential for the public to make submissions.

All applications on notification are available on enquiry through Council's web site.

In the case of major development activity, the legislation may require Council to place a notice in the local newspaper and write to building occupants in the vicinity of the application site.

5.5 What information will Council provide with notification letters?

Where notification is required, our notice will contain the following information:

- a) description and address of the site;
- b) description of the development/work and its proposed use;
- c) name of the applicant and the Council;
- d) where and when the plans can be inspected;
- e) time period within which written submissions may be made (*see section below*);
- f) substance of written submissions may be included in reports and be available for the applicant to consider;

- g) Notification Plans

5.6 Can applicants assist in this process?

We encourage applicants to consult with the owners and occupiers of neighbouring properties in the preparation of their proposals to reduce the potential for objections during the application process. However, we cannot accept the submission of plans or documents signed by owners of adjoining properties to the effect that they do not object to an application.

5.7 Notification plans to be provided by applicants

We require Notification Plans to be provided by applicants. The Notification Plans should not show internal floor plan configuration. The Plans should be on A4 or A3 size sheets for ease of reproduction and mailing; and

- a) clearly show features of the proposed building which may impact on adjoining properties;
- b) show the dimensioned height and external configuration of the proposed building in relation to the site on which it is proposed to be erected (but not internal details of any residential parts of buildings);
- c) include a Site Plan showing the relationship of the proposed building to the boundaries of the allotment with clearly marked dimensions;
- d) show any new building work or additions to existing buildings by means of cross hatching or other suitable notation.

5.8 Can some applications be dealt with without notification?

Yes. We will not notify an application to neighbours where:

- a) it is considered that the proposal is not likely have a material impact on neighbours; or
- b) a modified Development Application does not propose a significant change to the use, height and/or the external configuration of premises, as shown on the original Development Application.

Part 6 Making submissions on applications

6.1 What are the arrangements for making submissions on applications?

Any person may make a submission for a minimum of 10 working days (ie. days during which the Council is open for business) after we notify an application. The closing date for comments will be clearly indicated in the notification letter, together with the name of the relevant contact person. Full scale plans (other than internal plans of residential buildings) can be inspected during the notification period at the Council's Customer Service Centre, Civic Administration Building, 135 Rusden Street Armidale between the hours of 9.00am - 4.00pm.

Note: Full scale plans refer to the scaled plans that the Applicant supplies to Council as part of the Development Application. The Notification Plans supplied as part of the notification process are usually A3 or A4 size plans (ie. reduced from the original full scale plans). These plans may not be to scale.

We may provide an additional period for submissions in the circumstances of individual applications, such as major projects. Special arrangements may also be made with the Planning Project Officer to enable a person to inspect a Notification Plan relating to an application outside our normal business hours or for people who are unable to visit Council's offices.

Submissions made in relation to applications must be in writing and addressed to the General Manager. They must indicate the name and address of the person making the submission, and should relate directly to the development proposed and its possible impact on surrounding property or locality.

Special arrangements may be made with the Planning Project Officer to make submissions in a form other than in writing where this creates difficulties for a person wishing to respond (e.g. people with disabilities).

6.2 To what extent will Council consider representations received?

Out of courtesy to applicants, and in order to meet legal requirements, we need to consider all applications as soon as possible. Equally, our staff must consider all submissions made in response to the notification process before determining the application.

The matters which we must consider in the assessment of applications are set out in the *Environmental Planning and Assessment Act 1979*.

The legislation and this DCP provide the basis against which applicants need to prepare proposals to carry out development in Armidale Dumaresq. Applicants have the expectation that they can carry out work that is in accordance with the permitted use of the land and relevant policies adopted by Council. However, an applicant's compliance with quantitative standards does not necessarily guarantee success. Equally important are the environmental merits of each proposal.

Comments received from the public will be considered in conjunction with Council's legal responsibilities, the interests of the community at large and the reasonable expectations and rights of the applicants. We are often required to resolve a number of competing interests in decisions that we make.

The Planning Project Officer responsible for a specific application can help with enquiries.

All submissions are considered in reports prepared by our officers. The report sets out representations and any relevant responses by the applicant. All such material is considered as part of the decision-making process. Where valid objections are received and cannot be resolved by negotiation or imposing Conditions of Consent or Approval, the matter will usually be referred to a full Council meeting for decision.

6.3 Is the Applicant made aware of submissions received by Council?

Issues raised in written submissions cannot remain completely confidential as they may be used in negotiations with the applicant. In the event of a dispute, our officers may meet with objectors and applicants to discuss issues arising from an application, clarify concerns and seek possible solutions.

In addition, written submissions may be subject to requests under State legislation relating to the use of Government Information, and the details may be included in Council Business Papers.

However, in order to protect the confidentiality of information and having regard to NSW privacy laws, documents containing personal information such as name, address, phone numbers and signatures are not included on open Council business papers or placed on Council's web site.

6.4 What happens if plans are amended?

An applicant may make amendments to an application at any time before its determination, and request modification of any Development Consent afterwards. In these circumstances, we will re-notify:

- a) those persons who made submissions on the original application; and
- b) any other persons who own adjoining land (including those persons who were previously notified of the application) who may be detrimentally affected by the proposal as amended,

unless, in our opinion, the amendments are unlikely to have greater or different detrimental effect on the enjoyment of adjoining or neighbouring land than the original application. If re-notification is required, further sets of plans for this purpose must be provided by the applicant.

We will consider the submissions made on the original application in conjunction with our assessment of amended proposals.

6.5 What happens when an application is determined?

After the application has been determined, we will write to each person who made a submission, to advise them of our decision and the manner in which their concerns were considered and addressed in the assessment process.

6.6 Do appeal rights exist for objectors?

The applicant may appeal to the Land and Environment Court of NSW against any Condition of Approval or a decision to refuse an application. While options such as mediation may be pursued in an effort to reach an amicable resolution of any dispute, ultimately, we may have to justify our decision to the Court.

Where we have relied on submissions from the public in reaching a decision, we may ask the people who made submissions to support the decision by participating in any mediation process or appearing on Council's behalf at any subsequent Court hearing.

Where objectors are dissatisfied with our final decision, appeal to the Court is normally available only on the grounds that Council has made a legally invalid decision. Merit issues may be appealed in respect of major 'Designated' Development Applications under the *Environmental Planning and Assessment Act 1979*.

If you are considering an appeal, it is a good idea to obtain legal advice first.

Part 7 Assessment of development applications on council owned or controlled land

7.1 Who undertakes assessment on Council owned land?

When considering an application for land that Council owns or controls, and where Council would normally be the decision-maker, an independent assessment of the application will be undertaken by:

- a) appropriately qualified Council Officers not involved in preparing or commissioning the application; and/or
- b) appropriately qualified Consultants; and/or
- c) appropriately qualified officers of another Council.

In deciding whether to use outside assistance, we will consider the estimated cost of the development, the public interest in the matter and the extent of any public concern that may be evident to Council on the matter. Small-scale, uncontroversial applications would always be processed 'in-house'. Consultants, or the staff of another Council, would normally be used where there are inadequate internal resources to separate Council's functions or the matter is considered significant in size, cost or in terms of public interest.

7.2 Public notification of council applications

When we are considering an application for land which we own or control where we are also the decision-maker, public notification will take place in accordance with the notification requirements outlined in this chapter, and may also be advertised in the local newspaper.

7.3 Determination of council applications

An application for land which we own or control will be determined at an open meeting of the Council, unless:

- a) the application involves matters which must be considered in private, pursuant to s.10 of the *Local Government Act 1993*, in which case we will first discuss the most appropriate means of dealing with the matter with our legal advisors or the state government; or
- b) the development does not involve:
 - i) 'Designated development' under the *Environmental Planning and Assessment Act 1979*; or
 - ii) development to which s.23G of the EP&A Act applies, involving determination by a Joint Regional Planning Panel; and
 - iii) development that is of State significance under the Act or which under any other relevant legislation requires determination by an agency other than Council; or
- c) the development is not being undertaken primarily to return a financial benefit to the council or the proposal relates to an operational activity of the council; and
- d) no objections have been received in response to public notification of the application; and
- e) the proposed development complies with all applicable development standards; and
- f) Councillors have previously been notified of the proposal;

in which case the application may be determined by the General Manager or delegate, provided they have not been involved in the preparation of the application.

Part 8 Political donations

Section 147 of the *Environmental Planning and Assessment Act 1979* also makes specific provision for the declaration by applicants or persons making submissions (or their associates) in relation to development applications under the Act, where they have made certain political donations or gifts to a local Councillor or employee of Council.

Such declarations must then be maintained in a public register and included on Council's web site. Further details of the relevant requirements are included in Council's development application forms and notification letters.

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