

## Part 1 Preliminary

### Explanatory outline

Part 1 sets out the general context and framework for the DCP. The following matters are covered:

- statutory context
- purpose of the DCP
- how the DCP applies to development
- determination of development applications
- structure of the DCP and how to use it.

## 1a Statutory context

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### 1a.1 Title

This plan is *Upper Hunter Development Control Plan 2023* ('the DCP').

### 1a.2 Status

The DCP is a development control plan prepared under Part 3 Division 3.6 of the Environmental Planning and Assessment Act 1979 as amended.

### 1a.3 Relevant LEP

The DCP supplements the provisions of the *Upper Hunter Local Environmental Plan 2013*.

### 1a.4 Commencement and updates

This DCP was originally adopted by Council on 25 May 2015 (and titled 'Upper Hunter Development Control Plan 2015') and commenced on 5 June 2015. This version of the DCP (titled 'Upper Hunter Development Control Plan 2023') was adopted on 30 January 2023 and commenced on 23 February 2023. All amendments adopted by Council are outlined on the inside cover of this DCP.

### 1a.5 Previous policies & plans

The DCP repeals 'Upper Hunter Development Control Plan 2015'.

### 1a.6 Relationship to other environmental planning instruments

In the event of an inconsistency between any environmental planning instrument and the DCP, the provisions of the environmental planning instrument prevail.

### 1a.7 Relationship to Council's Engineering Design Guidelines, Masterplans and other Council policies

This DCP references Council's *Upper Hunter Engineering Guidelines for Subdivisions and Developments*, as amended, and a range of Council Masterplans and Policies.



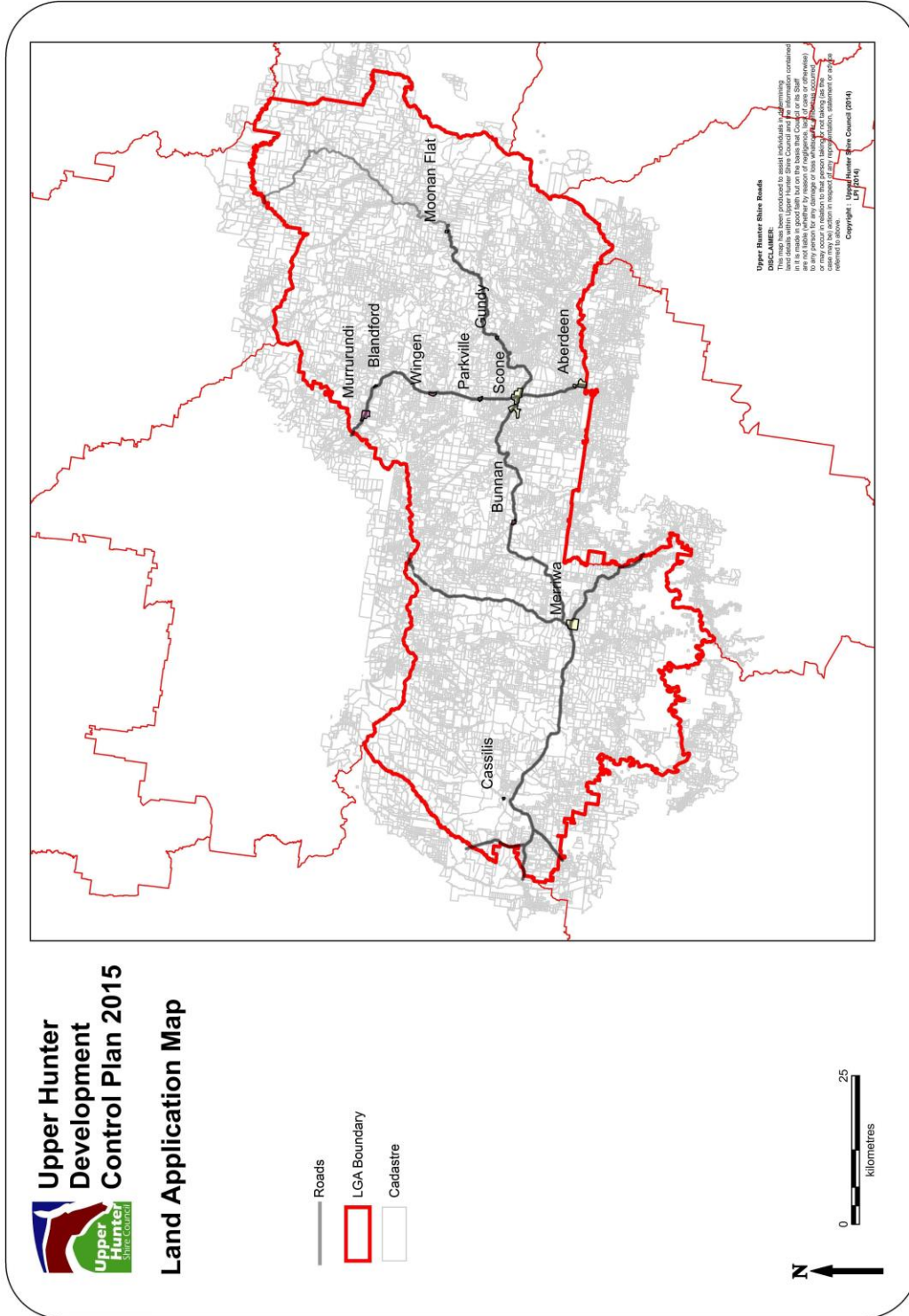
Where there is an inconsistency between this DCP and any of the referenced Engineering Guidelines, Masterplans or Council Policies, the provisions of this DCP prevail.

## **1a.8 Where the DCP applies**

The DCP applies to all land within the Upper Hunter local government area, as shown in Figure 1 on the following page.



Map 1 Upper Hunter Local Government Area



## 1b Purpose of the DCP

The purpose of the DCP is to:

1. provide a detailed development assessment framework that delivers outcomes desired by the Upper Hunter community; and
2. provide clear and concise development guidelines for various forms of development; and
3. encourage innovation in design and development by not over-specifying development outcomes; and
4. provide certainty in development outcomes for developers and the community.

## 1c How the DCP applies to development

### 1c.1 Development that needs consent

The DCP applies to all development that may only be carried out with consent under Part 4 of the *Environmental Planning and Assessment Act 1979*.

### 1c.2 Exempt & complying development

The DCP does not apply to:

- exempt development
- complying development for which a complying development certificate is sought or obtained

except in situations where specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, for example Clause 1.9 ‘Land on which complying development may not be carried out’

**Note.** Exempt and complying development are specified in various environmental planning instruments, including:

- *Upper Hunter Local Environmental Plan 2013* (refer to Schedules 2 and 3)
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
- *State Environmental Planning Policy (Infrastructure) 2007*

### 1c.3 Development that does not need consent

It is the intention of the Council to take this DCP into account when determining activities under Part 5 of the *Environmental Planning and Assessment Act 1979*, in relation to development that does not require consent under Part 4 of that Act.

The Council recommends that other public authorities should take this DCP into account when determining activities under Part 5 of the *Environmental Planning and Assessment Act 1979*.

### 1c.4 Requirement for other approvals

There may be other approvals, licences or the like that are required for some activities, either from Council or from other agencies. It is the responsibility of the proponent to ensure that all necessary approvals are obtained.

## 1d Determination of development applications

### 1d.1 Development application process

The Upper Hunter Shire Council *Application Guide* provides a summary and explanation of the development application process.

### 1d.2 Matters for consideration under EP&A Act

When determining a development application, the Council (or other relevant consent authority) is required to take into consideration the matters listed in section 4.15 of the *Environmental Planning and Assessment Act 1979*. These may be summarised as:

- the provisions of relevant environmental planning instruments and development control plans (including this DCP)
- planning agreements or draft planning agreements under section 93F of the *Environmental Planning and Assessment Act 1979*
- matters prescribed by regulation
- likely impacts of the development, including those on the natural, built, social and economic environments
- the suitability of the site
- any submissions made by the public
- the public interest.

### 1d.3 How this DCP applies to development applications

When determining a development application, the Council (or other relevant consent authority) will take into consideration the extent to which any applicable objectives or development outcomes specified by this DCP will be satisfied or achieved by the design, construction or operation of the proposal. Further information on this is given in section 1e.3 below under ‘**Assessment Considerations**’.

However, compliance with the provisions of this DCP does not necessarily imply that Council will consent to an application. Council must consider the full range of matters listed under Section 4.15 of the *EP&A Act*. Each application will be considered on its merits.

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 must 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 information to Council in addition to that specified in this DCP.

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 the overall zone objectives and any specific provisions of the *Upper Hunter LEP 2013* and this DCP (including the relevant Part(s)) will be satisfied.

## 1e Structure and application of the DCP

This DCP contains Parts relevant to the different types of land uses permitted in the various zones as specified in *Upper Hunter LEP 2013*, as well as specific issues that need to be addressed by all types of land uses.

The following summarises the structure of the DCP.

Relevant cross references to other Parts are given in each section.

### 1e.1 Preliminary (Part 1)

Part 1 outlines the statutory context, purpose, and structure of this DCP.

**Section 1h Sustainability** contains matters to ensure that Council's commitment to the achievement of Ecologically Sustainable Development is identified and considered in all development applications

### 1e.2 Development application process (Part 2)

**Part 2** sets out procedural requirements that apply to preparing and lodging a development application.

### 1e.3 Assessment considerations (Parts 3 to 13)

**Parts 3 to 13** of the DCP each relate to a matter that apply to broad classes of development, particular issues or specific locations, as given below.

Council may use its discretion to apply appropriate Part(s) of this DCP to any type of development where the development proposal does not 'fit' any specific Part listed below.

- **Part 3: Subdivision**—matters that apply to the subdivision of land.
- **Part 4: Urban residential**—matters that apply to residential accommodation and ancillary development (other than rural dwellings at Part 7).
- **Part 5: Commercial and mixed use development**—matters that apply to commercial and Town Centre development in Scone, Murrurundi, Aberdeen and Merriwa.
- **Part 6: Industrial development**—matters that apply to industrial development (but not rural industries).
- **Part 7: Rural development**—matters that apply to a range of rural land uses, activities and rural dwellings.
- **Part 8: Other development**—matters that apply to other types of development, including tourist and visitor accommodation, advertising and signage, extractive industries, sex services premises and wind energy systems.
- **Part 9: Heritage**—matters that apply to heritage items, heritage conservation areas, and development that may affect Aboriginal cultural heritage.
- **Part 10: Natural hazards**—matters that apply to development likely to be affected by natural hazards, including flood risk, bushfire risk, geotechnical hazard and others.
- **Part 11: Environment protection**—matters that need to be considered to ensure adequate protection of the environment, including:
  - trees and vegetation
  - biodiversity conservation

- watercourses and riparian land
- groundwater protection
- drinking water catchments
- soil and water management
- wastewater management
- waste minimisation and management
- buffer areas and separation distances.
- **Part 12: Specific infrastructure issues**—including access and car parking.
- **Part 13: Specific localities**—matters that apply to miscellaneous localities or precincts.

Each **Part** (with the exception of *Part 10a Floodplain Management*) is divided into several **sections** dealing with specific issues or types of development. Each section in turn specifies applicable assessment criteria and other relevant matters according to a similar basic format, as follows:

- **Application of this section**—specifies the circumstances in which the section applies, based on the type and location of development.
- **Relevant planning instruments & legislation**—identifies other statutory instruments that may be relevant.
- **Definitions**—identifies specialised terms that are relevant to the section. These terms are defined in the Dictionary.
- **Objectives**—specifies the general objectives that the section seeks to promote.
- **Supporting plans & documentation**—identifies information or other matters that are to be provided with development applications, usually as part of a statement of environmental effects. This information is necessary to enable a proper assessment of the proposal.
- **Assessment criteria**—specifies two types of criteria that the Council will take into consideration when determining a development application:
  - **Design outcomes**—these are ‘performance-based criteria’ that must be satisfied or achieved by the design, construction or operation of the proposal. They indicate what is to be achieved, rather than the manner in which it is to be achieved.
  - **Design guidelines**—these are suggested design and operational guidelines that, if followed, would assist in achieving the design outcomes. The guidelines do not preclude other solutions that may be suitable under particular local circumstances. All proposals will be considered on merit.

(Note: *Part 10a Floodplain Management* uses prescriptive requirements and performance-based criteria rather than the above assessment criteria)
- **Supplementary guidance**—identifies reference documents that provide further advice or information.

#### 1e.4 Vegetation permits -

**Part 14 Vegetation permits** outlines requirements for approval for vegetation clearing and activities affecting vegetation. Its key role is to define regulatory provisions under *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, and to integrate these with other Parts of the DCP.

### **1e.5 Dictionary and definitions**

The Dictionary provides a dictionary of terms used in the DCP. Most of the terms are drawn from the *Upper Hunter Local Environmental Plan 2013*, which incorporates the dictionary of terms contained in the *Standard Instrument (Local Environmental Plans) Order 2006*. Other terms are drawn from other important documents. In some cases, terms are defined according to their meaning in various Acts or Regulations. Sources of defined terms are indicated at the end of each definition.

Where terms are not otherwise defined in this DCP, they have the same meaning as that given in the *Environmental Planning & Assessment Act, 1979* (as amended).

Note that most land uses and land use activities that are used in the DCP are defined in *Upper Hunter Local Environmental Plan 2013*, unless they are specifically defined in this DCP.

### **1e.6 Schedules**

The Schedules (if any) provide additional detail to issues referenced in previous sections.

## **1f DCP Maps**

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### **1f.1 Reference to maps**

Any maps referred to in this DCP refer to the set of DCP electronic maps named '*Upper Hunter Development Control Plan 2022 Maps*' held at the offices of Council. The maps included in this document are copies only.

## **1g Assessment of development applications on council owned or controlled land**

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### **Assessment of Council applications**

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 and delegated 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, Council 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. For example, small-scale, uncontroversial applications would normally 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



## 1h Sustainability

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### Explanatory outline

Part 1h seeks to ensure Council's commitment to the achievement of Ecologically Sustainable Development is identified and considered in all development applications.

This Part is an overarching statement of Council's commitment to efficient urban form, maintenance of rural land capabilities, protection of environmental values, increased utilisation of renewable energy and energy efficiency, and reduced resource consumption and waste generation.

This Part applies to all development and is supported by detailed requirements in other Parts of the DCP

### 1h.1 Application of this Part

This Part applies to all development on all land, however the requirement for a Sustainability Assessment only applies to certain types of development, as outlined in section **1h.6**.

### 1h.2 Purpose

The purpose of this section is to integrate and apply Upper Hunter Council's *Sustainability Action Plan 2018 to 2021* relating to sustainability within the DCP.

### 1h.3 Sustainability principles & considerations

Ecologically sustainable development (ESD) is an object of *the Environmental Planning and Assessment Act 1979* and is recognised as a fundamental consideration in development proposals. Provisions relevant to the achievement of sustainability are included throughout this DCP.

This DCP integrates sustainability through:

1. recognising and applying ESD principles in the development assessment framework.
2. identifying development guidelines that are important for achieving ESD in Upper Hunter LGA.
3. requiring applicants to undertake a sustainability assessment for certain types of development.
4. identifying key sections of this DCP that offer important opportunities for implementing ecologically sustainable development (ESD) within Upper Hunter Shire.

### 1h.4 Ecologically sustainable development principles

The following interpretation of 'ecologically sustainable development' will be used for the purposes of the DCP:

Ecologically sustainable development requires the effective integration of social, economic and environmental considerations in decision-making processes.



Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

- a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.  
In the application of the precautionary principle, public and private decisions should be guided by:
  - i. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
  - ii. an assessment of the risk-weighted consequences of various options,
- b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
- d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:
  - i. polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
  - ii. the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
  - iii. environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Note: at April 2020, this definition was the same as that in the *Protection of the Environment Administration Act 1991* and therefore the *Environmental Planning and Assessment Act 1979* as amended.

### 1h.5 Objectives

The objectives of this Part are to:

1. encourage a more compact urban form and increase housing choices with an overall increase in densities in urban areas.
2. facilitate increased opportunities for utilisation of public transport including rail and bus.
3. encourage increased accessibility for pedestrians and cyclists in all urban areas.
4. ensure subdivision layouts allow optimum solar access to buildings.
5. encourage opportunities for off-grid subdivision layouts or incentives for renewable energy generation at the neighbourhood scale.
6. ensure rural land subdivision reflects land capability and facilitates long term productive use of the land and conservation of natural environmental assets such as native vegetation and biodiversity, soils and water.

## 1h Sustainability



7. ensure new development maintains and facilitates preservation of local environmental values, has a neutral or beneficial effect on water quality and quantity, and protects and improves watercourses through urban areas.
8. ensure that all new development complies with the requirements of BASIX and utilises energy constrained design to increase use of renewable energy and improve energy efficiency.
9. ensure that all new development considers reduced resource consumption and minimisation of waste.
10. ensure no net loss of biodiversity within the LGA.
11. facilitate transition to net zero carbon emission development, landuse and transport.

### 1h.6 Supporting plans & documentation

Development applications that are subject to this Part should be supported by the following plans and documentation.

Item	When required	Plans or information to be provided
<b>A. Sustainability analysis</b>	<p>An application to subdivide land into 3 or more lots and/or</p> <p>An industrial development, or an extension or alteration to an industrial development and/or</p> <p>A development with a development footprint of 1,500 square metres or greater and/or</p> <p>Residential accommodation comprising 3 or more dwellings and/or</p> <p>Tourist and visitor accommodation comprising 3 or more units and/or</p> <p>Seniors housing</p>	<p>A report, prepared by a suitably qualified professional, containing:</p> <ul style="list-style-type: none"> <li>• A brief statement as to how the objectives in Section 1h.5 are met</li> <li>• Details of the considerations and relevant supporting information used to reach the conclusions in the statement. The sustainability analysis should be guided by relevant considerations included in Table 1: Sustainability analysis considerations, as applicable to the type of development proposed</li> <li>• quantification of relevant considerations (eg carbon emissions, energy and water balance)</li> </ul> <p><i>Note that many of these considerations are required by other Parts of this DCP, as shown in the Table below, and that some are already required by BASIX or other State legislation or policy.</i></p>



Table 1: Sustainability analysis considerations

Sustainability topic	Matters to address in Sustainability analysis	Minimum acceptable standard (where relevant)	Examples of other Part(s) of DCP with relevant requirements
Urban form, housing choice & density	<ul style="list-style-type: none"> <li>Does the development lead to a more compact urban form, or increase housing choice?</li> <li>How does the development affect urban density?</li> <li>Does the development provide affordable housing options?</li> </ul>	-	Subdivision Urban residential
Land disturbance and capability	<ul style="list-style-type: none"> <li>How much land is physically disturbed by the development?</li> <li>Is cut and fill minimised?</li> <li>To what extent does the development sterilise future productive agricultural land?</li> <li>Does the development have direct or indirect impacts on native vegetation, and how has this been assessed?</li> <li>How does the development interfere with natural drainage flow and patterns (both surface and underground)?</li> <li>Have suitable buffer areas been identified to separate inappropriate land use interactions, and to protect important natural features and environmental assets, such as waterways?</li> <li>Has the development taken consideration of natural hazards such as flood, fire, geotechnical issues?</li> </ul>	-	Rural development Biodiversity Soil and water management Groundwater Riparian land Buffer areas Floodplain management Bushfire risk Geotechnical hazards
Energy efficient subdivision and building alignment	<ul style="list-style-type: none"> <li>Are roads and lots in a subdivision close to an east-west alignment, so buildings can be oriented with close to north facing walls allowing efficient building sun control measures such as awnings and shading, and orientation for solar panels?</li> </ul>	For residential subdivision proposals of 3 or more lots, the new residential lots are to have at least two major boundaries oriented within 10 degrees of true north, south, east or west to facilitate future building orientation that optimises solar access.  Lots facing east-west oriented streets are to have a minimum 25m frontage and lots	Subdivision

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Sustainability topic	Matters to address in Sustainability analysis	Minimum acceptable standard (where relevant)	Examples of other Part(s) of DCP with relevant requirements
		in north-south oriented streets are to have a frontage of between 15m to 20m.	
Renewable energy options in development design	<ul style="list-style-type: none"> <li>How has the development incorporated renewable energy facilities in its design?</li> <li>What passive energy measures have been incorporated in the design, such as thermal mass for heat storage, passive solar gain for heating, use of light coloured materials in roofing or paved surfaces, shading or use of vegetation for temperature control?</li> </ul>	Buildings are to provide a roof plane facing north or west with a minimum dimension of 3m by 2m to allow for future rooftop photovoltaic system installation(s)	Part(s) relevant to particular land use
Carbon emissions (during construction and operation)	<ul style="list-style-type: none"> <li>Have carbon emissions during construction and operation of the development been calculated?</li> <li>Have carbon emission calculations been made using accepted and relevant methodologies (eg NABERS <a href="https://nabers.gov.au">https://nabers.gov.au</a>)?</li> <li>What measures have been taken to avoid and reduce carbon emissions over the life of the development?</li> </ul>	-	Part(s) relevant to particular land use
Energy balance (electricity, heating & cooling)	<ul style="list-style-type: none"> <li>Does the development utilise energy efficient design principles, and improved energy outcomes?</li> <li>Does the development go further than BASIX in achieving desired efficiency targets?</li> </ul>	-	Part(s) relevant to particular land use
Water balance	<ul style="list-style-type: none"> <li>Water quality, quantity, and watercourses – what are the impacts of the development on water?</li> <li>Does the development go further than BASIX in achieving water efficiency targets?</li> </ul>	-	Soil and water management Groundwater Riparian land Floodplain management
Transport & access	<ul style="list-style-type: none"> <li><b>Is public transport</b> currently available to the development? Would the development facilitate future access to public transport? What is the distance from the development to</li> </ul>	-	Subdivision Access and parking

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Sustainability topic	Matters to address in Sustainability analysis	Minimum acceptable standard (where relevant)	Examples of other Part(s) of DCP with relevant requirements
	<p>the nearest public transport services, and what is the frequency of these services? Has the developer consulted with public transport providers about access?</p> <ul style="list-style-type: none"> <li>• <b>Walking and cycling</b> access- what are the pedestrian and cycling metrics for the site (eg walking distance to nearest school, shop, bus stop, railway station, etc)? Are there barriers discouraging walking or cycling to the development and how could they be overcome (eg paths, parking facilities, shade, dangerous roads or crossings, noise and dust, etc)?</li> </ul>		and Part(s) relevant to particular land use
Resource consumption and waste minimisation	<ul style="list-style-type: none"> <li>• How has the development ensured that construction materials are minimised and waste is eliminated as far as possible?</li> <li>• What is the design life of the building or development?</li> <li>• How has the development incorporated durability and adaptability measures in the design to avoid future waste and management costs? Such measures could include durable materials, recycling, flexible design and adaptable layout.</li> </ul>	-	Waste minimisation and management and Part(s) relevant to particular land use
Biodiversity	<ul style="list-style-type: none"> <li>• What methodology has been used to assess biodiversity impacts?</li> <li>• Have biodiversity impacts been avoided or minimised, and if so what measures have been taken?</li> <li>• Does the development achieve no net loss of natural biodiversity?</li> <li>• Have suitable buffer areas been identified to protect biodiversity values and natural areas from adjacent development and land use?</li> </ul>	<p>No net loss of biodiversity values</p> <p><i>Note: the NSW Government's Biodiversity Assessment Methodology (BAM) prepared under the Biodiversity Conservation Act 2016 provides a method to determine no net loss of biodiversity values.</i></p>	11b Biodiversity
Vegetation clearing	<ul style="list-style-type: none"> <li>• Has the vegetation clearing from the development been quantified (eg area and carbon dioxide emissions)?</li> <li>• Have vegetation waste disposal arrangements been specified?</li> </ul>	<p>Vegetation waste is to be re-used (eg rehabilitation, landscaping, or habitat augmentation)</p> <p>Carbon emissions from vegetation clearing are to be offset</p>	11a Vegetation (including trees) 11b Biodiversity

## 1h Sustainability



### 1h.7 Assessment criteria

In the design and assessment of development proposals, priority should be given to the implementation of measures that:

1. achieve the sustainability objectives in section **1h.5** above; and
2. are consistent with relevant ESD principles as given in section **1h.4** above; and
3. satisfactorily address the considerations in Table 1: Sustainability analysis considerations.

To achieve this, applications should demonstrate that:

- consideration has been given to relevant sustainability matters; and
- they also address relevant objectives and outcomes relating to sustainability in other relevant Parts of the DCP.

Where the Council determines that there is a high and reasonable likelihood that ESD principles will be achieved, and the development achieves substantial community sustainability benefits substantially higher than minimum standards, the Council may consider opportunities for incentives to support the development.