



New South Wales

Dungog Local Environmental Plan 1990 (Amendment No 51)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (N00/00220/PC)

ANDREW REFSHAUGE, M.P.,

Minister for Planning

Dungog Local Environmental Plan 1990 (Amendment No 51)

1 Name of plan

This plan is *Dungog Local Environmental Plan 1990 (Amendment No 51)*.

2 Aims of plan

This plan aims:

- (a) to provide environmental planning controls that will result in the management of any disturbance of acid sulfate soils in the Dungog local government area so as to minimise impacts on natural waterbodies and wetlands and on agricultural, fishing, aquaculture, urban and infrastructure activities, and
- (b) to require development consent for works, including some agricultural-related works, that would disturb soils or groundwater levels in areas identified as having acid sulfate soils, and
- (c) to require special assessment of certain development on land identified as being subject to risks associated with the disturbance of acid sulfate soils.

3 Land to which plan applies

This plan applies to land within the Dungog local government area classified as Class 1, 2, 3, 4 or 5 on the map marked “Dungog Local Environmental Plan 1990 (Amendment No 51)—Acid Sulfate Soils Planning Maps” deposited in the office of Dungog Shire Council.

4 Relationship to other environmental planning instruments

- (1) *Dungog Local Environmental Plan 1990* is amended as set out in Schedule 1.
- (2) *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Complying Development* is amended by inserting at the end of Schedule 1:

Clause 61A of *Dungog Local Environmental Plan 1990*

Schedule 1 Amendment

(Clause 4 (1))

Clause 61A

Insert after clause 61:

61A Development on land containing acid sulfate soils

- (1) The objective of this clause is to require special assessment of, and better management of, certain works on land identified as being subject to acid sulfate soils.
- (2) A person must not, without the consent of the Council, carry out works described in the following table on land of the class or classes specified for those works in that table and shown on the Acid Sulfate Soils Planning Map, except as otherwise provided by this clause.

Table

Class of land as shown on Acid Sulfate Soils Planning Maps	Works
1	Any works
2	Works below the natural ground surface Works by which the watertable is likely to be lowered
3	Works beyond 1 metre below the natural ground surface Works by which the watertable is likely to be lowered to any point beyond 1 metre below the natural ground surface

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Class of land as shown on Acid Sulfate Soils Planning Maps	Works
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4

Works beyond 2 metres below
the natural ground surface

Works by which the watertable is
likely to be lowered to any point
beyond 2 metres below the
natural ground surface

5

Works which are likely to lower
the watertable in adjacent Class
1, 2, 3 or 4 land to any point
below 1 metre AHD

- (3) Notwithstanding any other provision of this plan, a person must not, without development consent, carry out development that involves the placing of any acid sulfate soil on or under any land.
- (4) The Council must not grant consent required by this clause unless it has considered:
- (a) a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soils Assessment Guidelines* (unless the applicant agrees that acid sulfate soils are present within the area of the proposed works), and
 - (b) where the preliminary assessment ascertains, or the applicant agrees, that acid sulfate soils are present— the adequacy of the acid sulfate soils management plan prepared in accordance with the *Acid Sulfate Soils Management Guidelines*, and
 - (c) the likelihood of the proposed works resulting in the oxidation of acid sulfate soils and the discharge of acid water from the area of the proposed works, and
 - (d) any comments received from any relevant public authority that the Council has consulted with in respect of the development application.

- (5) Despite subclause (2), development consent is not required for the carrying out of works described in that subclause if:
- (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soils Assessment Guidelines* has been given to the Council, and
 - (b) the Council has provided written advice to the person proposing to carry out the works confirming that results of the preliminary assessment indicate the proposed works need not be carried out pursuant to an acid sulfate soils management plan prepared in accordance with the *Acid Sulfate Soils Management Guidelines*.
- (6) This clause requires consent for development to be carried out by Dungog Shire Council, other councils, county councils or drainage unions despite:
- (a) clause 35 of, and items 2 and 11 of Schedule 1 to, the *Environmental Planning and Assessment Model Provisions 1980*, as adopted by this plan, and
 - (b) clause 10 of *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Complying Development*.
- (7) Despite subclauses (2) and (6), the following types of development may be carried out without consent if carried out by the Council or a county council:
- (a) development consisting of routine maintenance,
 - (b) development consisting of emergency work, that is, the repair or replacement of any part of any works owned or controlled by the Council or by a county council:
 - (i) because the works have been (or are being) damaged by a natural disaster, an accident, an act of vandalism or a like occurrence, or
 - (ii) because the works have ceased to function or suddenly ceased to function adequately,including work reasonably necessary to prevent or limit any further damage or malfunction,

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- (c) development consisting of minor work, that is new work (other than drainage work) that is carried out by, or on behalf of, the Council or a county council and that has a value of less than \$20,000,
 - (d) development ancillary to development described in paragraphs (a)–(c), including, for example, the carrying out of excavation work, the construction of access ways and the provision of power supplies.
- (8) Despite subclause (7), development consisting of routine maintenance or minor work may be carried out only with consent if the development is on the site of a heritage item.
- (9) If the Council or a county council carries out development described in subclause (7) and encounters, or is reasonably likely to encounter, acid sulphate soils, the Council or county council must manage any disturbance of those acid sulphate soils in accordance with the *Acid Sulfate Soils Management Guidelines* so as to minimise the actual or potential impact to the environment arising from disturbance of the soils.
- (10) In this clause:
- acid sulfate soils*** means actual acid sulfate soils or potential acid sulfate soils.
- Acid Sulfate Soils Assessment Guidelines*** means the *Acid Sulfate Soils Assessment Guidelines* as published from time to time by the NSW Acid Sulfate Soils Management Advisory Committee and adopted by the Director-General.
- Acid Sulfate Soils Management Guidelines*** means the *Acid Sulphate Soils Management Guidelines* as published from time to time by the NSW Acid Sulphate Soils Management Advisory Committee and adopted by the Director-General.
- Acid Sulfate Soils Planning Maps*** means the series of maps marked “Dungog Local Environmental Plan 1990 (Amendment No 51)—Acid Sulfate Soils Planning Maps”.
- actual acid sulfate soils*** means soils:
- (a) that contain highly acidic soil horizons or layers resulting from the aeration of soil materials, and

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- (b) that are rich in iron sulfides, primarily pyrite, and
 - (c) that have a pH of less than 4.0 when measured in dry season conditions.

county council has the same meaning as in the *Local Government Act 1993*.

engineering works means works carried out under the supervision of a suitably qualified engineer and using equipment or plant, being work that may consist of or include any of the following:

- (a) construction of roads, bridges, buildings, levees, dams, railways or drains,
- (b) laying of pipes, cables or conduits,
- (c) levelling of the ground,
- (d) extractive industries or mining,
- (e) dewatering,
- (f) flood mitigation works,
- (g) an agriculture-related work.

potential acid sulfate soils means soils:

- (a) that contain iron sulfides or sulfidic material that have not been exposed to air, and
- (b) that become severely acidic when exposed to air and oxidised, and
- (c) the field pH of which, in their undisturbed state, is pH 4 or more or may be neutral or slightly alkaline.

routine maintenance means the periodic inspection, cleaning, repair and replacement of works owned or controlled by the Council or by a county council but does not include work that would result in an increase in the designed capacity of any part of those works or necessitate increasing the capacity of existing works, except where one tonne, or less, of soil is disturbed.

works means:

- (a) any disturbance of more than one tonne of soil (such as occurs in carrying out agriculture, agriculture-related works, the construction of drains, the maintenance of existing drains, engineering works, extractive industries,

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dredging, the construction of artificial waterbodies (including canals, dams and detention basins), the construction of foundations or flood mitigation works), and

- (b) any other works that may alter ground water levels, and
- (c) any landform alteration that results in the disturbance of acid sulphate soils,

but does not include ploughing, scarifying, tilling or deep ripping associated with agriculture on land of Classes 3, 4 and 5.

BY AUTHORITY