

Part 1

Introduction



Development Control Plan



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1 Introduction

1.1 Purpose of this Development Control Plan

The DCP has been prepared as Council considers it necessary or desirable to provide the guidance referred to in section 74BA(1) and for other necessary or desirable purposes as contained within section 74C of the Environmental Planning and Assessment Act. The DCP will:

- (i) Guide future development within the Botany Bay Local Government Area (LGA);
- (ii) Support the controls found within the Botany Bay Local Environmental Plan 2013; and
- (iii) Protect and enhance the public domain.

The introduction of the *Environmental Planning and Assessment (Infrastructure and Other Planning Reform) Act 2005* on 30 September 2005 introduced new requirements for DCPs. Changes to the Act required Council to consolidate all of its DCPs that apply to the Botany Bay LGA into one comprehensive plan.

This Comprehensive DCP replaces all the DCPs and Policies that apply to land that the BBLEP 2013 applies to.

Under Section 79C of the Act, the consent authority being The City of Botany Bay Council is required to take into consideration the relevant development controls contained within this DCP in determining an application for development in Botany Bay LGA.

1.2 Relationship of this Development Control Plan to the Local Environmental Plan

The development controls contained in this DCP are in addition to the controls found within the Botany Bay Local Environmental Plan 2013. The LEP will prevail in the event of any inconsistency between this DCP and the LEP.

Any provision of this Development Control Plan has no effect to the extent that:

- (a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land; or
- (b) it is inconsistent or incompatible with the provisions of any such instrument.

This Development Control Plan imposes various standards or performance criteria and although those standards may be phrased in mandatory language the Council when dealing with a proposed development, where that development does not comply with any of the standards, is to be flexible in applying those provisions and is to allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development. Section 79C(3A) of the Environmental Planning and Assessment Act sets forth how Council is to consider the standards or performance criteria that are contained within a Development Control Plan the provisions of which apply to this Development Control Plan.



Compliance with the provisions of this DCP does not necessarily guarantee that consent to a Development Application (DA) will be granted. Each DA will be assessed having regard to the LEP, this DCP, other matters listed in Section 79C of the Act, and any other policies adopted by the consent authority.

Consistent application of the provisions of this DCP will be given high priority by the consent authority.

1.3 Plan Name and Commencement

This plan is called the Botany Bay Development Control Plan 2013. The plan was originally adopted by Council on 11 December 2013 and came into effect on 17 December 2013.

This plan has been amended as follows:

Amendment Number	Date of Adoption	Date of Effect	Description
1	09/12/2014	16/12/2014	<ul style="list-style-type: none"> • Correct grammar and spelling errors; • The inclusion of additional objectives and controls and the deletion and rewording of objectives and controls (responding to submissions received to the public exhibition of the draft DCP in 2013); • Amendments to figures, maps, illustrations and diagrams; • Provision of setbacks in Part 4C.7 (Large Development Sites) for land zoned R3 Medium Density Residential and R4 High Density Residential with its interface with R2 Low Density Residential Land and front property boundaries; • The addition of the Part 9D – 130-150 Bunnerong Road, Eastgardens; and • The addition of Part 3D – Signage.
2	26/08/2015	08/09/2015	<i>To insert a new Planning Framework diagram into Part 9A (Mascot Station</i>



Amendment Number	Date of Adoption	Date of Effect	Description
			<i>Town Centre Precinct) and revise Wilson-Pemberton Planning Framework diagram in Part 9C of the Botany Bay Development Control Plan 2013</i>
3	24/02/2016	08/03/2016	<i>Update to Parts 4C and Part 9A with regards to the amended SEPP65 and Apartment Design Guide.</i>
4	24/02/2016	08/03/2016	<i>Incorporates Amendment 3. Housekeeping amendment to Part 4 – Residential Development. General housekeeping to: Part 3C; Part 3E; Part 3F; Part 3H; Part 3K; Part 3L; Part 4A; Part 4B; Part 4C; Part 4D; Part 5; Part 7B; Part 7O; Part 7T; Part 9A.</i>
5	23/03/2016	04/04/2016	<i>Makes changes to Part 4A Dwelling Houses to include controls for secondary dwellings, and new controls for ancillary development to rear and side lanes.</i>
6	20/07/2016	02/08/2016	<i>Deletes Urban Block 3 from Part 9A due to concerns regarding overshadowing to the Heritage Item 182 comprising Mascot Oval and Lionel Bowen Park.</i>
7	12/10/2016	25/10/2016	<i>Amends controls to ensure that caretaker dwellings are ancillary to an approved industrial or business use, and will only be used by a caretaker, owner or operator of an approved business on the site; do not compromise the integrity of industrial or business areas; and are appropriately designed.</i>
8			<i>Amend controls to address a number of duplications and formatting issues, to clarify definitions, to update references to external documents and to make implementation of the DCP simpler and easier.</i>



1.4 Savings Provisions

The provisions of Botany Bay Development Control Plan 2013 that apply to Residential Flat Development within the land specified below and in force immediately before their amendment by Amendment 3 or 4, continue to apply to all;

- Development applications;
- Applications to modify development consent under Section 96 of the Environmental Planning and Assessment Act 1979; and
- Applications for review of determination under Section 82A of the Environmental Planning and Assessment Act 1979;

that were lodged prior to 19 June 2015 as if they had not been amended or repealed.



1.5 Land to which the Development Control Plan Applies

This Plan applies to all land within the Botany Bay Local Government Area as identified in **Figure 1** except for the following sites:

- Land identified within the *State Environmental Planning Policy (Three Ports) 2013*;
- 26 Tupia Street, Botany; and
- 2, 4, 10, 12, 16 and 18 Macintosh Street and 862, 864, 866 and 868 Botany Road, Mascot.

Figure 1 - Botany Bay Local Government Area



Note: The white area is not included in this DCP as this land is covered the *State Environmental Planning Policy (Three Ports) 2013*.



1.6 General Aims and Objectives

This DCP sets out objectives aimed at creating a dynamic City, one that looks forward to a firm, prosperous and secure future. In applying these objectives at a local level the improvement of local amenity, business opportunities and environmental conditions will be major considerations in assessing development proposals. At a wider level sustainable development has now become a necessity for the protection of the environment for future generations.

- O1** To provide more detailed objectives and controls for all types of development to support those contained in the Botany Bay Local Environmental Plan 2013;
- O2** To ensure that new development addresses the principles of ecologically sustainable development, in particular energy, water and stormwater, efficiency, solar access, waste reduction and local biodiversity;
- O3** To ensure that development is sensitive to the local environment, is socially responsible, promotes a safe living environment, and makes better use of existing infrastructure;
- O4** To create a highly liveable urban place, through promotion of design excellence in all elements of the built environment and public domain;
- O5** To minimise negative impacts of development on the amenity of adjoining properties, in particular to reduce the landuse conflict between residential and non-residential uses;
- O6** To encourage innovative housing, commercial and industrial design;
- O7** To maintain and enhance the natural, built and cultural significance of Heritage Items by tailoring specific urban design and development guidelines;
- O8** To ensure future developments will provide for a community that considers the needs of all people who live, work and visit Botany Bay; and
- O9** To ensure that new development protects and enhances the public domain.



1.7 How to Make an Application

Before commencing detailed design work, applicants are advised to make themselves familiar with the relevant LEP, SEPP and DCP controls.

Applicants should discuss proposals with Council staff prior to lodging a development application. This can save time and money and enable Council Officers to explain the contents of this Plan, address potential conflicting issues.

Council has prepared a **Development Application Guide** that provides an overall picture of the steps that are required in attaining a development approval from Council. A copy of these documents can be obtained from Council's web site <http://www.botanybay.nsw.gov.au> or Council's Customer Service Centre.

1.8 Monitoring and Review

The City of Botany Bay Council is required to keep its LEP and DCP under regular and periodic review.

The City of Botany Bay Council is committed to this process to ensure that the Plans continue to be useful and be relevant as a planning instrument and a policy of Council.

The Council is to review both the Botany Bay Local Environmental Plan 2013 and Botany Bay Development Control Plan 2013 at least five yearly intervals in order to:

- (i) Assess the continued relevance and responsiveness of both Plans' provisions; and the achievement of the objectives of each Plan;
- (ii) Identify the need for changes to the provisions to better achieve the objectives of the Plans and changes in circumstances; and
- (iii) Ensure the availability of adequate development capacity under the Plans' provisions.

1.9 Structure and Use of the DCP

This DCP provides planning controls that aim to produce a high standard of design and thereby improve the overall environmental amenity and liveability for the residents of the City of Botany Bay.

The DCP is intended to advise residents, applicants, developers and their agents at an early stage of the design process and will be applied by the Council when considering the impact of development proposals.

Where any controls within this DCP have not been satisfied, it should be demonstrated that the intent of the controls has been satisfied in the Statement of Environmental Effects (SEE) by referring to the relevant objectives and character statements.

Compliance with the provisions of this DCP does not necessarily guarantee that consent to a Development Application (DA) will be granted. Each DA will be assessed having regard to the Botany Bay Local Environmental Plan 2013, this DCP, other matters listed in Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act), and any other policies adopted by the Council from time to time.



This DCP contains character statements, objectives and controls that should be complied with. Consistent application of the provisions of this DCP will be given high priority by Council.

The structure and format of this DCP has been established to enable the user to efficiently find the relevant development provisions in a logical manner.

Maps, photos and diagrams are used in this DCP to inform and support the development provisions.

The following outlines the structure of this DCP:

- Part 1 - Introduction
- Part 2 - Notification and Advertising
- Part 3 - General Provisions
- Part 4 - Residential Development
- Part 5 - Business Centres
- Part 6 - Employment Zones
- Part 7 - Other Development Types and Land Uses
- Part 8 - Character Precincts
- Part 9 - Key Sites
- Part 10 – Technical Guidelines



2. General Information for Development within the Council of the City of Botany Bay

2.1 Section 94 Development Contributions Plan

The City of Botany Bay Section 94 Contributions Plan applies to development approved by the Consent Authority. Development contributions are payable for development that increases the worker and/or resident population. The identified infrastructure and public domain works are essential to achieve public amenity and meet the basic needs to support the higher density development anticipated within the Business Centres.

2.2 Voluntary Planning Agreements

Planning Agreements are made in accordance with the requirements of the Act and are **Voluntary Agreements** between a Council and a landowner. Planning Agreements are designed to provide a 'public benefit' to the community and can include infrastructure works, recurrent expenditure for a public amenity, facility or service or the donation of open space or a community facility. The Planning Agreement needs to detail how it relates to any relevant Section 94 Contributions Plan. If the Consent Authority agrees then it can accept that a development is excluded from the requirements of that Plan in exchange for the works listed in the Planning Agreement.

The works proposed within the public domain will be carried out at the developer's expense via the implementation of Voluntary Planning Agreements (VPA's) between Council and each developer. Section 93F of the *Environmental Planning and Assessment Act 1979* outlines provisions for the implementation of such Agreements.

Developers will be required in some instances, under VPA's, to construct infrastructure and all proposed public domain works and, in some cases, dedicate the land required as part of the future public domain to Council. Prior to commencement of any infrastructure and public domain works stated in the VPA, engineering design and drawings are to be submitted and approved by Council via a separate application under the *Roads Act 1993* and/or *Local Government Act 1993*. A plan checking and construction inspection fee will be applicable.

Under the legislation VPA's cannot be entered into unless public notice has been given and an explanatory note is made available for inspection for at least 28 days. Planning Agreements within the Botany Bay Council area are listed on a public register.

Each VPA will specify how it relates to any applicable Section 94 Contributions Plan, and may provide that a development proposal be excluded from the requirements of that Contributions Plan in exchange for works in kind.



The Act relevantly requires that VPA's provide for the following:

- *a description of the land to which the agreement applies,*
- *a description of:*
 - *the change to the environmental planning instrument to which the agreement applies, or*
 - *the development to which the agreement applies,*
- *the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,*
- *in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development,*
- *if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94,*
- *a mechanism for the resolution of disputes under the agreement,*
- *the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.*

Where public domain works are proposed within a redevelopment site, developers must make early contact with Council officers to discuss the VPA for that development site.