

Planning and Assessment

IRF20/5326

Gateway determination report

LGA	Dungog
PPA	Dungog Shire Council
NAME	Dungog Common additional permitted uses and temporary events on Council land
NUMBER	PP_2020_DUNGO_001_00
LEP TO BE AMENDED	<i>Dungog Local Environmental Plan 2014</i>
ADDRESS	Local Government Area and Dungog Common
DESCRIPTION	Lots 162, 163, 167 – 170, 236, 301 DP752457, Lot 328 DP704790, Lot 337 DP729762, Lot 7302 DP1162438 and LGA.
RECEIVED	27 October 2020
FILE NO.	IRF20/5326
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Site description

The planning proposal is a combination of:

- a whole-of-local government area amendment to permit temporary events on certain reserves without the need for development consent; and
- amendment to controls applying to Dungog Common Recreation Reserve.

On 21 February 2014, the Dungog Common Recreation Reserve was created for the purposes of public recreation, tourist facilities and services, environmental protection, heritage purposes and rural services. The site retains much of its vegetation and is relatively steep, falling from about 180-meters elevation to 90-meters. Access is from Common Road which continues across the reserve to provide access to properties beyond the site.

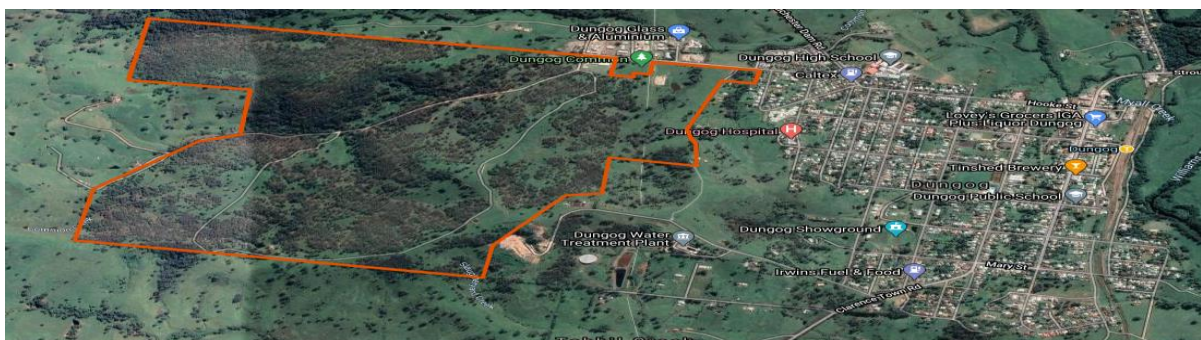


Figure 1: Approximate boundary of Dungog Common Recreation Reserve

There are about 24km of bike track of varying degrees of difficulty and purpose across the Dungog Common Recreation Reserve. The track is well known and popular and a significant tourist attraction for the area.

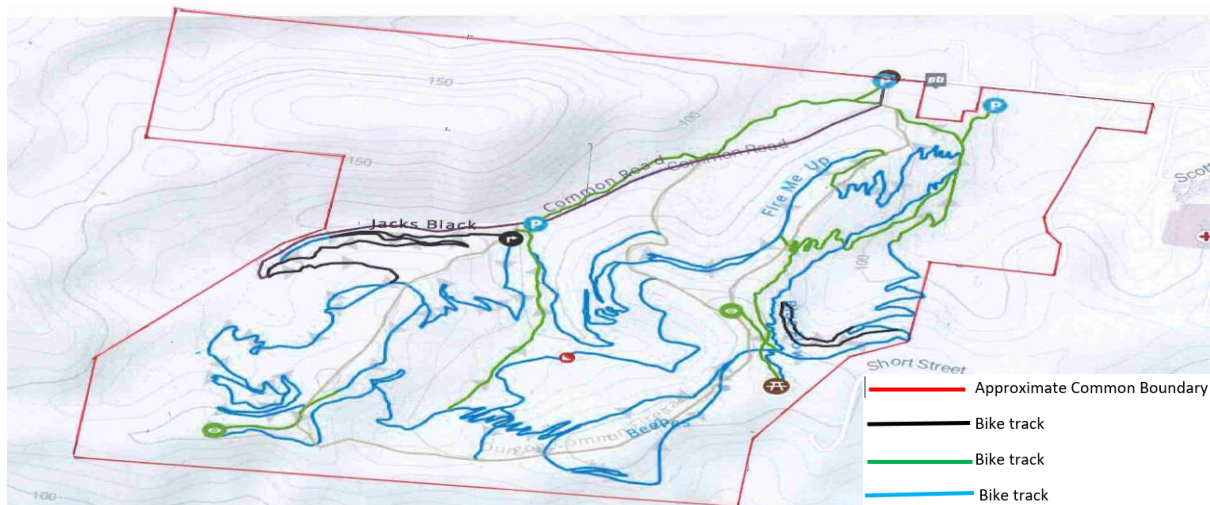


Figure 3: Mountain bike track network on Dungog Common Recreation Reserve

1.2 Existing planning controls

Under the *Dungog Local Environmental Plan 2014* the Dungog Common Recreation Reserve is currently zoned:

- RU1 Primary Production;
- R5 Large Lot Residential;
- R1 General Residential;
- IN1 General Industrial; and
- E3 Environmental Management.

Dungog Shire Council has indicated the mountain bike park would be considered under the definition of recreation facilities (outdoor) under the Standard Instrument Local Environmental Plan. This use is currently prohibited in the E3 Environmental Management and IN1 General Industrial Zones.

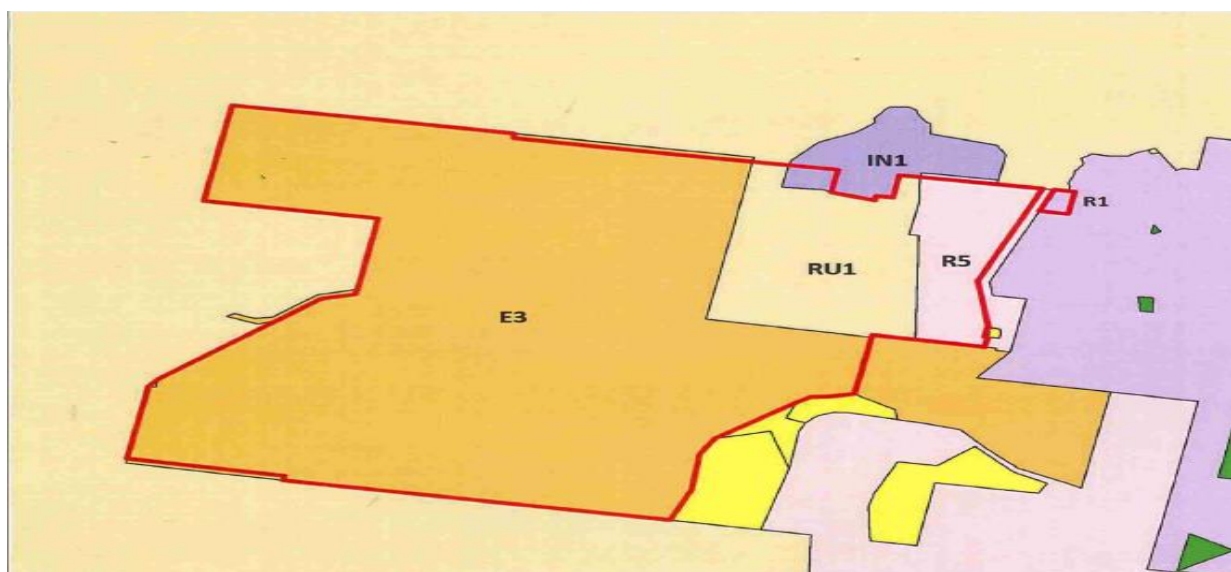


Figure 4: Dungog Common Recreation Reserve land use zones

Under clause 2.8 of the *Dungog Local Environmental Plan 2014* development consent is required for temporary events on council reserves and road reserves.

1.3 Surrounding area

Dungog Common Recreation Reserve adjoins the western edge of Dungog town centre. Adjoining the R5 Large Lot Residential zone is a residential area.

The site adjoins an industrial area to the north with small scale manufacturing and a bus servicing centre. To the south of the site is an area zoned SP2 Special Purpose Infrastructure that includes the Dungog tip and the water treatment plant.

2. PROPOSAL

2.1 Description of planning proposal

An extensive mountain bike track network has been constructed on the Dungog Common Recreation Reserve without development consent and is a prohibited use in the E3 Environmental Management Zone.

At the same time, the Dungog Local Strategic Planning Statement has an action to include a clause in the local environmental plan for temporary events.

As such, the planning proposal is seeking to achieve two separate outcomes:

1. permit the use of a mountain bike park at the Dungog Common Recreation Reserve; and
2. permit the use of public reserves and road reserves for certain temporary events without the need for development consent.

2.2 Objectives or intended outcomes

Dungog Common Recreation Reserve

The objective of this planning proposal is to make a mountain bike park permissible within the recreation reserve. This is an interim measure to enable a development application to be lodged and considered by Council. This objective should be clarified and simplified.

Temporary events

Council has clearly stated the planning proposal is seeking to simplify approval arrangements for temporary uses on Council land without the need for development consent.

2.3 Explanation of provisions

Dungog Common Recreation Reserve

Dungog Shire Council proposes to add mountain bike park to be permissible with consent to Schedule 1 Additional permitted uses in *Dungog Local Environmental Plan 2014*. This will only apply within the E3 Environmental Management Zone on Dungog Common Recreation Reserve. A development application can then be lodged with Council for formal assessment.

Council is seeking to add the standard definition 'recreation facilities (outdoor)' as it includes a mountain bike park to Schedule 1.

The definition of 'recreation facilities (outdoor)' is too broad, permitting a range of uses that include golf courses, go-kart tracks and rifle ranges. Council should refine the definition additional permitted use to only permit a mountain bike park.

Temporary event

Council intends to apply a clause to allow temporary events on Council land without the need for development consent under the existing clause 2.8 Temporary Use of Land in *Dungog Local Environmental Plan 2014*.

The proposed definition of temporary event means an exhibition, meeting, concert or other event that is open to the public for which land is used for a period of not more than 52 dates (whether or not consecutive) in any period of 12 months.

This proposed clause is similar to clause 6.6 of *Newcastle Local Environmental Plan 2012* and clause 7.17 of *Port Stephens Local Environmental Plan 2013*.

2.4 Mapping

No mapping is proposed. While Councils can choose to map their additional permitted uses, in addition to including in Schedule 1, it is not mandatory. The zone/s within which the additional permitted use is to be applied follows lot boundaries and is easily described and identified without the need for maps.

3. NEED FOR THE PLANNING PROPOSAL

Dungog Common Recreation Reserve

Council has provided considerable background information about the history of rezoning of the Common through *Dungog Local Environmental Plan 2014*, which was a conversion of the existing zones into the new standard local environmental plan template zones without a review of their appropriateness or extent. This new local environmental plan came into force on 1 June 2014 and preceded the creation of the Dungog Common Recreation Reserve on 21 February 2014.

The Dungog Common Recreation Reserve Trust, as manager, developed a mountain bike park on the reserve. However, this type of development is prohibited in the E3 Environmental Management Zone.

On 17 July 2020, NSW Crown Lands has written to the Council requesting a zoning review to consider appropriate zones and land uses that reflect the Dungog Common Recreation Reserve's use as a recreation reserve. In particular, Crown Lands advised Council it:

- considers the R1 General Residential, R5 Large Lot Residential and IN1 General Industrial zones to be incompatible with the gazetted purposes of the Crown reserve; and
- is concerned the land use table in the E3 Environmental Management zone does not permit recreational uses (other than recreation areas), which is inconsistent with the gazetted purposes of the Crown reserve.

Council has proposed a three-stage approach:

1. add 'recreation facilities (outdoor)', which includes a mountain bike park, to Schedule 1 Additional permitted uses of *Dungog Local Environmental Plan 2014* for the E3 Environmental Management zoned land, which will make it permissible with consent in the interim period;

2. Council to consider a development application for mountain bike park within the Dungog Common Recreation Reserve; and
3. review the land use zones applying to the Common.

Stage 1 is an appropriate short-term measure. A subsequent development application (Stage 2) will enable Council and the Trust to consider legalising the operation of the mountain bike track, address issues of public liability, and manage its day to day operation within the context as a recreation reserve and its other identified public purposes, including environmental protection.

Temporary events

Council has advised that the new events clause will action a Planning Priority from the Dungog Local Strategic Planning Statement.

4. STRATEGIC ASSESSMENT

4.1 State

There are no State strategies that are relevant to this planning proposal.

4.2 Regional / District

The site is subject to both the *Hunter Regional Plan 2036* and the *Upper Hunter Strategic Regional Land Use Plan 2012*.

Hunter Regional Plan 2036

The planning proposal states it is consistent with the objectives of the *Hunter Regional Plan 2036*. In particular:

- Direction 9: Grow tourism in the region, which seeks to encourage tourism development in natural areas that support conservation outcomes; and
- Direction 18: Enhance access to recreation facilities and connect open spaces.

The temporary events clause will also help Dungog achieve its potential for large-scale music festivals.

Upper Hunter Strategic Regional Land Use Plan 2012

The *Upper Hunter Strategic Regional Land Use Plan 2012* reference the importance of promoting tourism within Dungog, to broaden and diversify the economy. The planning proposal supports this objective.

In addition, *The Upper Hunter Economic Diversification Report* referred to in the Plan says that development of the region requires the generation of sustainable jobs that build on current advantages and create new areas of advantage.

The continued development of the mountain bike park and making local markets and festivals easier to hold will continue to build on what has become an area of local advantage for Dungog.

4.3 Local

Dungog Shire Community Strategic Plan 2030

The planning proposal notes consistency with relevant sections of the Community Strategic through the following sections.

- Section 5 – Recreation and Open Space of that plan identifies Dungog Shire as providing a good lifestyle setting for active recreational pursuits including trail and mountain bike riding.

The planning proposal supports the on-going use of the Common for active recreation and identifies an approval pathway for a mountain bike park.

- Section 3 – Community and Culture identifies the contribution local community events make to community identity and spirit.

The planning proposal supports these community events by reducing the number of approvals required for community events.

Dungog Local Strategic Planning Statement – Moving Toward 2040

The planning proposal identifies the following actions that are relevant and support the planning proposal.

- Thriving New Economy, Planning Priority 4: Growth in Tourism includes a number of actions that support the planning proposal.
 - Action 5 – Seeks the inclusion of the temporary events clause immediately. It also seeks a review of permissible tourism uses in environmental and rural zones.
- Infrastructure Supporting Growth, Planning Priority 2: Improve Tourism Infrastructure.
 - Action 21 supports the development of a mountain bike park and Action 22 supports creating opportunities for events.

These three actions support the planning proposal provisions to permit a mountain bike park and improve the approval pathway for temporary events.

The planning proposal is consistent with and implements the Local Strategic Planning Statement.

4.4 State environmental planning policies (SEPPs)

Dungog Shire Council considers no SEPPs are relevant to the planning proposal.

4.5 Section 9.1 Ministerial directions

Direction 2.1 Environment Protection Zones

The planning proposal indicates this Direction is not relevant. However, it applies as the planning proposal applies to land zoned E3 Environmental Management.

Clause (5) of the direction requires that it must not reduce the environmental protection standards that apply to the land.

The objectives of the E3 Environmental Management in the *Dungog Local Environmental Plan 2014* are:

- to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values;
- to provide for a limited range of development that does not have an adverse effect on those values; and
- to promote the rural amenity and scenic landscape values of the area and prevent the silhouetting of unsympathetic development on ridgelines.

The planning proposal is potentially consistent as it does not affect the environmental protection standards, instead permitting an additional land use that will need to be assessed against those standards.

The consideration of any inconsistency with this direction can occur following consultation with the Biodiversity Conservation Division.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal will have positive social benefits to Dungog and the local government area.

Enabling formal approval of the mountain bike park on the Dungog Common Recreation Reserve will continue to attract visitors to this popular venue. This will have flow on business benefits for the town as well as creating a sense of civic pride. It will also help support the development of other activities and facilities within the reserve to make it a more usable local recreation destination.

Making temporary events on Council land permissible without consent will enable the running of community events to be more streamlined. These events also help to create a sense of community.

5.2 Environmental

The mountain bike park has been substantially developed. Making it permissible in the E3 Environmental Management zone will enable Council to give it appropriate assessment through a development application whereby track and facilities design and location can be managed to minimise any environmental impacts.

However, it is considered appropriate to consult with the Biodiversity Conservation Division as part of the consultation process to identify any environmental issues early in the planning process.

The temporary events clause is unlikely to have any major environmental impacts. It is proposed only to apply to Council public reserves and road reserves. Council will have ultimate control over their location and any potential impacts, such as noise, can be managed. It is also consistent with other approaches applied by Hunter councils.

5.3 Economic

The planning proposal supports local tourism in attracting people to the mountain bike park and to festivals, markets and sporting events. Both activities support the local economy and improve business confidence.

Providing permissibility and the ability to formalise the mountain bike park through a development application will enable managers of the Dungog Common Recreation Reserve to seek funding to further improve the facility.

Improved approval pathways for temporary events will help stimulate the local economy by encouraging more events.

5.4 Infrastructure

The Dungog Common Recreation Reserve has public road access via Common Road. Water and sewer are available.

The development application for the mountain bike park will identify any need for additional or upgraded infrastructure which would be provided by the developer.

There are no infrastructure issues relevant to the temporary events clause.

6. CONSULTATION

6.1 Community

Dungog Shire Council is proposing a 28 day community consultation period which is considered adequate.

Council has indicated that it will be consulting with the Karuah Local Aboriginal Land Council (LALC). There are Aboriginal Land Claims applying to the Dungog Common Recreation Reserve and it may be necessary for Council to meet with the Karuah LALC to clarify any issues it may have with the planning proposal.

6.2 Agencies

Council indicated it will be consulting with NSW Crown Lands which is actively involved in the planning proposal as the landowner.

In addition, it is suggested that Council also consult with the Biodiversity Conservation Division on any environmental or biodiversity issues that may be relevant to Dungog Common Recreation Reserve; and

7. TIME FRAME

Dungog Shire Council has suggested in its timeline it will forward the planning proposal to the Department to be made and published on the NSW Legislation website by March 2021.

However, it may be necessary to allow more time for adequate consultation with the Karuah LALC and to deal with any issues that may arise during the consultation period.

It is recommended the plan be made by 30 September 2021.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be made the local plan-making authority.

While the planning proposal is relatively straight-forward, the proposal for a temporary events clause will apply to Council-owned land. It is not appropriate Dungog Shire Council be made the local plan-making authority.

9. RECOMMENDATION

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. the planning proposal is updated prior to community consultation to:
 - (a) simplify objective 1 to state the planning proposal seeks to make mountain bike parks permissible on the Dungog Common Recreation Reserve; and
 - (b) the addition of the standard definition 'recreation facilities (outdoor)' to Schedule 1 of *Dungog Local Environmental Plan 2014* as an additional permitted use is considered too broad. It should be qualified by adding 'being a mountain bike park'.

2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - NSW Crown Lands;
 - Biodiversity Conservation Division; and
 - Karuah Local Aboriginal Land Council.
4. The time frame for completing the local environmental plan is to be 9 months from the date of the Gateway determination.



01/02/2021

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