



Draft Standard DCP Definitions

UDIA NSW Response

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ABOUT THE UDIA

Established in 1963, the Urban Development Institute of Australia (UDIA NSW) is the leading industry group representing the property development sector. Our 500 members include developers, engineers, consultants, local government, and utilities. Our advocacy is focussed on developing liveable, connected, and affordable cities.

GENERAL COMMENTS

UDIA supports the move toward standardising environmental planning instruments (EPIs). A standard Development Control Plan (DCP) would provide a useful guidance document; however, it needs to be emphasised the DCP is meant to be an advisory document only. Therefore, there needs to be a discussion about what level of prescription or description is necessary in a standard DCP.

UDIA supports the initial step of standardising definitions, this will make it much easier for industry and community to understand the DCP across council areas. Many definitions are simply duplicated from elsewhere. The Standard DCP should avoid duplication of terms already defined elsewhere, however it could possibly provide a direct link to the terms.

The core set of planning legislation that defines planning terms is the EP&A Act, the EP&A Reg, and the Standard Instrument LEP. The standard DCP definitions should say something like “Words and expressions used in this DCP have the same meanings as they have in the Act, the Environmental Planning and Assessment Regulation 2000, and the Standard Instrument - Principal Local Environmental Plan”.

Where a definition has been pulled from somewhere else, there is the risk that in duplicating the definition in the DCP, the DCP definition will become outdated and at odds with the intended definition if the source definition is updated. Rather than repeating the definition in the DCP, it should just refer to the location of the definition - for example “has the same meaning as in the SEPP (Exempt and Complying Development Codes)”. While this means that a person will need to look up the definition from the original source, it avoids the problem of DCP definitions becoming incorrect and confusing or requiring frequent updates to DCPs. We recommend hyperlinks in an online version.

In the draft standard definitions, we recommend always acknowledging the source definition, where it is applied elsewhere, for example and, “waterbody (natural)” and “commercial premises” are defined in the Standard Instrument LEP with the same definition but is not referenced.

There are terms which could benefit from being clarified as the meaning is dependent on different circumstances such as Conservation (heritage) and Conservation (natural). We recommend terms like these are clarified wherever possible.

Where terms are given their ordinary natural meaning in EPIs, it is not appropriate to define them in a development control plan. This is because the purpose of a DCP is to provide guidance to facilitate development under an EPI. The other thing is that the definitions were not provided in context, but the detail to which the definitions go to suggests a great deal of prescription in the DCPs. Again, there is a broader question about whether that level of prescription is appropriate or necessary in a DCP.

The following is a detailed review of definitions with suggested amendments, clarification, and addition for the terms.

SECTION A – GENERAL ADMINISTRATION

Term	Comments
Alternation	Definition refers to “existing building footprint”, but the term “building footprint” itself is not defined and can be subject to different interpretations. “Building footprint” is also a term used in the definition of “built-upon area”
Approval	Definition does not reference local/regional planning panels or Minister.
Emergency	Definition refers to threats to the safety of persons or damage to property, which seems a bit narrowly defined. “Property” is not defined and on its face, would not be broad enough to include the environment more broadly. “Environment” is defined in the <i>Protection of the Environment Administration Act 1991</i> .
Lawful	Lawful is a highly problematic term to define. We recommend deleting this definition completely to avoid artificially constraining the meaning of the word as used in the DCP. The proposed definition does not incorporate all the aspects of lawfulness that have been considered by the courts - for example, a development may have a DA and CC but may be carried out unlawfully if it is not carried out in accordance with the conditions of the consent.
Local Development	There are EPIs other than an LEP that can allow local developments eg Seniors SEPP.
Suitably qualified hydraulic engineer	this definition does not necessarily require any particular experience or qualifications in hydraulic engineering. A person could meet this definition simply by being a civil or structural engineer with no special expertise in hydraulic engineering.

SECTION B – BIODIVERSITY

Term	Comments
Arboreal fauna	Definition should exclude domestic pets.
Assisted natural regeneration	The sentence “this is used in preference to the use of revegetation” should be omitted because not appropriate in a defined term.
Bank	The definition is uncertain. What is a bank, what is the top of bank and what is primary is a complex matter. This may be useful to have diagram. Insert clarification to avoid confusion with bank (land use). Eg. Bank (waterbody)
Bushland conservation area	It is unlikely that there are places where “no development is allowed”. Even revegetation can constitute “development”.

Commercial hydroponic development	There is no definition of “crop protection technology”. The definition should include examples.
Compensatory planting	Definition should be “compensatory planting means “planting with the objective of replacing biodiversity values...”
Dead tree	We query how anyone can determine a tree has no living vascular tissue – such as in the roots without removing the tree. Therefore concerned about applicability of the control.
Deep soil zones	The word “natural ground” should be omitted given the deep soil zone can be created or recreated not retained. Some subterranean structures do not necessarily prevent the establishment of substantial trees - some arborists will say that it is perfectly possible to provide “deep soil planting” above a basement car park, for example, depending on the depth of the car park, and the choice of trees. See also “deep soil landscaped area” on p 42 which would exclude any area that has development above or below it - which would exclude all land over basements and also all land which balconies or cantilevered sections of the building may overhang, even if this overhanging built element is many metres above the ground, and would not interfere with any deep soil planting. These definitions require further consideration and input from arborists in relation to minimum soil depths and air heights above the soil required for significant landscaping.
Drip line of a tree	The definition may suggest dripline encompasses the whole canopy area of tree, it should refer only to area defined by outermost circumference of the tree canopy, where water drips onto the ground – add to end of definition – “projected to ground level.”
Ecotone	The definition is too specific, it refers to a region of transition between two biological communities.
Edge Effects	Replace “urbanized” with “disturbed” or “non-natural” as it could refer to paths, roads crops, etc. Consider removing the second and third sentence and list, as it is inappropriate as part of a defined term.
Endangered ecological community	The Act reference should be “Biodiversity Conservation Act 2016”.
Native Plant/Native Vegetation	The definition of “native plant” conflicts with the definition of “native generation”. Is it necessary to define “native plant” given the definition of “native vegetation”.
Preservation (biodiversity)	The word “geodiversity” is not well known and should be separately defined if used. We note that it is used in “regeneration” as meaning “(soils, rocks, landforms)”. “Conservation (Natural)” might be a more commonly recognized term for natural diversity, rather than preservation.
Property vegetation plan	At the end it should add “and continues in force by virtue of the Biodiversity Conservation (Savings and Transitional) Regulation 2017”.
Hollow bearing	This requires a definition.
Ground cover	This requires a definition.

Riparian	This requires a definition.
Significant Tree	In section (iii) an “and” or “or” is needed before “provides food for wildlife”.

SECTION C – HAZARD MINIMISATION AND MANAGEMENT, AND AMENITY

Term	Comments
Acoustic Privacy	Definition differs from ADG definition and is unclear.
Buffer	Definition does not consider buffering between land uses and an ecological value or hazard such as bushfire vegetation.
Coastal Management Program	The definition should insert specific council name, as for maps and other documents.
Geotechnical report	The definition should include reference to habitable floors.
Planning for Bushfire Protection	This is a reference document, not a term to be defined.
Remedial action plan	Definition should specify it applies only to contaminated land.
Remediation	The term should be “Remediation (land contamination)” to not confuse with other types of remediation.
Retaining Wall	Incorporating adequate provision for drainage is not necessarily an essential element of a retaining wall. It is not clear how this term will be used in the DCP, but if it is used to refer to existing retaining walls, it is possible that they will not meet the definition of “retaining wall” if they don’t have any provision for drainage.
Site Audit	The term should be “Site Audit (land contamination).”
Vista	This is repeated in Section E with a different definition.

SECTION D – UTILITIES AND INFRASTRUCTURE

Term	Comments
Co-located facilities	When this goes alphabetical, it may be confusing co-located facilities may be relevant to things other than utilities or infrastructure, therefore should clarify.
Disinfection	Consider labelling the term as “Disinfection (wastewater)”.
Irrigation management area	Consider labelling the term “Irrigation Management Area (wastewater)”.
On-site sewage management system (OSSMS)	Delete acronym for consistency in list. The acronym in definition “OSSM” is different to acronym in term “OSSMS”.
Sewage System	Consider having a performance-based definition, defining what the systems do.

SECTION E – URBAN DESIGN

Term	Comments
Active street frontage	‘Active street frontage’ is defined in some LEPs – with corresponding maps – need to ensure consistency.
Accessible	Add definition for ‘Accessible’ relating to accessible units, parking etc.
Attic	Add definition for ‘attic’.
Building height plane	The building height plane should not be limited at 45 degrees, the plane depends on what individuals are trying to achieve.
Built-upon area	Rationalise “site coverage” and “Built-upon area” both concepts relate to the amount of site covered with buildings, the more they are used the more inconsistency there is created cross controls. We consider there is room for simplification.
Butterfly Roof	Delete “forming a shape that resembles a butterfly’s wings”, we question if it is essential in the definition, and are concerned about the situation where a roof meets the first part of the definition but doesn’t really resemble butterfly’s wings.
Certificate of Completion	This definition should be clarified to mean only related to public artwork, to separate it from any other certificate of completion.
Deep Soil Landscaped Area	This is always contentious and open to interpretation, defining no subterranean development is also too restrictive and does not assist in achieving the outcomes desired for deep soil areas.

Floor to Floor Height	The definitions have 'ceiling height' consider including 'floor to floor height'.
Human Scale	The definition introduces controls particularly limited to two stories. There is also a range of urban design literature (Gehl etc) which considers human scale up to 4-5 storeys. The definition also provides an inappropriate limitation to existing buildings. This needs to be revised as it is highly subjective.
Infill Development	Includes the phrase 'developed area', which may need to be defined.
Landmark building	Is the definition intended to include 'key site'?
Lightweight appearance and lightweight materials	Definition tends to confine the terms to steel and timber structures. This should also include glass and be expressed in a non-exhaustive manner. "lightweight materials" is expressed non-exhaustively, but "lightweight appearance" does not refer back to this definition.
Lightwell	For clarity of meaning 'glazed' should be replaced with 'having a glazed roof'.
Maximum Floorplate Size	Include definition of 'maximum floorplate size' for tower floorplates.
Maisonette Apartment	Include a definition of 'maisonette apartments', which is often used for ground level apartments.
Non-habitable room	Include reference to Building Code of Australia.
Public Open Space	The definition doesn't consider the possibility of urban public spaces, like plazas for passive recreation.
Street Frontage Height	Include a definition for 'street frontage height' to ensure consistency in any controls related to this.
Upper Level Setback	Include definition for 'upper level setback'
Vista	Repeated in section C with a different definition
Walking Distance	Remove "is typically 400m or a 5 minute walk." As this depends. Walking distance to public transport is often considered to be 800m or 1.2km for commuter rail trips. The definition should focus on how walking distance is measured.
Wintergarden Balcony	Use the ADG definition.

SECTION F – HERITAGE

Term	Comments
BCA / DDA	<p>The DCP should provide solutions that assist with resolving BCA and DDA non compliances that are inherent with heritage buildings.</p> <p>Provisions that provide waivers for minor non compliances and a pathway for resolving major non compliances where the changes or upgrades cannot meet the new BCA / DDA standard because they would damage the heritage significance of the building</p>
New definition Interpretive reconstruction	Where a building element is to be demolished and is to be reconstructed in an alternate location and configuration, the design will re-interpret the existing use, design and fabric of that element.
breezeway	Ambiguous definition requires clarification.
Conservation	Clarify definition refers to heritage conservation not conservation of natural environment, possibly list term as 'Conservation (heritage)'
Cultural landscape	Clarify "landscape" includes the natural and built landscape.
Cultural significance	Are the words, "for past, present or future generations" required for the definition of "cultural significance".
In the vicinity (of a heritage item or HCA)	For clarity of meaning, parenthesis should be added around "due to landform, size or location" and the "of" immediately following this should be replaced with "to".
Inter-war flat building	The Second World War commenced 1939, should the period reflect this.

SECTION G – WASTE MINIMISATION AND MANAGEMENT

Term	Comments
Communal Composting Area	Include definition for communal composting area.
Commercial Waste	Also include definitions for residential and industrial waste.

SECTION H – PARKING, TRAFFIC AND ACCESS

Term	Comments
Access Road	Remove sentence 'Access roads function at the lowest level of the road hierarchy'.
Basement Carpark	The definition should align with standard LEP definitions, for example basement is 1m or less above ground level. The definitions should consider including tandem or stacked parking definitions, accessible car parking, delivery vehicles, bicycle and motorcycle.
Pick up/set down area	Check/reference kiss and ride, and holding area.
Public Transport Corridors	Add definition.
Road Reserve	Include a definition for road reserve.
Transport Corridors	Add definition.

UDIA recommends the following definitions are considered for inclusion: pedestrian movement;, laneway, vehicle access (single and double) and footpath crossing with diagram showing dimensions and distinguishing street, kerb and footpath.

SECTION I – SUBDIVISION

Term	Comments	Corresponding Definition
Allotment	Allotment <i>or lot</i> means an identifiable area of land. Lot should also be defined.	See below 1.3- Issa v Burwood Council (2005) 137 LGERA 221
Battle-axe access handle (or laneway)	Amend definition so it starts " Access handle in the context of a battle-axe lot means.."	
Battle-axe lot		Section 1.5 of the State Environmental Planning Policy (Exempt and Complying Codes) 2008 – exact wording

Term	Comments	Corresponding Definition
Boundary adjustment	Boundary adjustment means a subdivision consisting only of one or more boundary realignments between lots that will not result in additional lots being created, or an increase in the number of lots with a dwelling entitlement, and will not increase the opportunity for additional dwellings. The resulting lots must bear some resemblance to the lots that existing before subdivision.	<i>Barnes v Dungog Shire Council</i> [2012] NSWLEC 1021
Community scheme		Section 3 of the Community Land Development Act 1989 – exact wording
Easement	Easement means a right annexed to land to utilise other land in a particular manner, not involving the taking of any part of the natural produce of that land, or any part of its soil, or to prevent the owner of the other land from utilising their land in a particular manner.	Halsbury's Laws of England 4 th Edition Vol 14 Page 4.
Greenfield	Amend the definition to 'Greenfield means land that has not been previously developed for residential or industrial purposes.'	
Holding Map	Map names should generally reflect the Standard Technical Requirements for Spatial Datasets and Maps, published by the Department	
Right of way	Right of way is a type of Easement that allows the dominant tenement the right to use or traverse over a specified strip of land belonging to the servient tenement.	Reflects previous definition of 'Easement' used by DPE. Our view is that this would be more appropriate for the definition of right of way.
Strata scheme		Section 4 of the Strata Schemes Development Act 2015 – almost exact wording, insertion of Act name
Subdivision certificate		Part 6 of the EP&A Act – exact wording for s 6.4(d)
Subdivision of land		Part 6 of the EP&A Act – exact wording in s 6.2(1) However, appears as though exclusions in sub-s (3) do not apply.

1. Definition of Allotment – In NSW

1.1 Encyclopaedic Australian Legal Dictionary

- (a) A single, separately delineated piece of land, usually in an approved plan of subdivision

1.2 Issa v Burwood Council (2004) 135 LGERA 252

- (a) [10] In S & I Investments Talbot J noted that:
- (b) In its ordinary sense the word allotment refers to a separate or distinct area of land with a definite identity and which is generally restricted to the ownership or control of a particular person and, in most cases, is confined to the one use or purpose. In the absence of a statutory definition it is not a technical word limited, for example, to an area of land held in a particular configuration, size or locality.
- (c) In that case his Honour held that the relevant Regional Environmental Plan facilitated the erection of two dwellings on one existing undivided piece of land. That case otherwise dealt with whether there was such an identifiable piece of land or allotment. As the facts in S & I Investments were also different to those before me, I do not consider that it supports the Applicant's case either.
- (d) [11] I consider that the term "allotment" should be given either its ordinary meaning of "a block of land" or the formulation stated by Talbot J in S & I Investments should apply.

1.3 Issa v Burwood Council (2005) 137 LGERA 221

- (a) It seems clear from all these clauses that what is being referred to is an identifiable area of land, and there is nothing in these clauses which necessitates that identity depending upon registration of a plan of subdivision or formal conveyancing title.

SECTION J – RESIDENTIAL AND MIXED USE

Term	Comments
Abutting dwelling	There is potential confusion as to how this relates to standard instrument definition relating to dwelling house and attached dwelling.
deck	Replace with "Deck means an external platform, it can be elevated."
Dwelling entitlement	Define "existing holdings".
Outbuilding	Add i) Rural Shed, this needs to be clearly defined and separated.
Residential flat building	Clarify the number of levels that defines a "flat building".
Residential net developable area	The definition does not work. "developable" is generally used to refer to development that may happen in the future, but this definition would define "developable area" by reference to that part of the land that is already occupied by development. This makes no sense. Definition requires reconsideration.

	<p>This is a broad definition and needs to be carefully considered in relation to the calculation of density, development contributions and other development codes.</p> <p>Clarify the definition of “adjoining access roads that provide vehicular access” are all public roads included in this?</p> <p>What is the impact of excluding open space and non-residential land?</p>
Secondary dwelling	Recommend “dual occupancy” is defined.
Short term accommodation	The bolded term does not match the term in the actual definition, which is “short term residential accommodation”. The definition refers to a dwelling used for the purpose of “short-term accommodation”, but “short-term accommodation” is not defined.
Studio apartment	Clarify by including a bathroom.

SECTION K – COMMERCIAL, CENTRES AND INDUSTRIAL USES

Term	Comments
Commercial premises	Clarify the definition of “business”.
Companion animal boarding and breeding establishment	The bolded term does not match the term in the actual definition, which is “companion animal boarding or training establishment”.
Centres	These terms are generally used to refer to activity centres in strategic planning documents and serve a particular purpose in terms of describing what types of uses are appropriate in such activity centres (for example, a subregional shopping centre is not appropriate in a village centre), and the character of the different activity centres. It is unclear how these terms are proposed to be used in the DCP but “district centre” and “neighbourhood centre” appear to be describing types of shopping centres as opposed to general activity centres. “neighbourhood centre”, in particular appears to be describing a shopping centre, as it requires the “centre” to be under single management. This definition is confusing – if it relates to a scale of shopping centre it should be described as “neighbourhood shopping centre”.
Designated stock storage area	Delete the words “and out of sight of customers” as this is not a relevant control.
District centre	Delete the words “at least one” and “such as banks, building societies and restaurants” and replace with more generic uses. Town centre has not been defined.
Goods display area	Clarify the heading, by adding “outdoor” in front of goods display area.
Hazardous materials	Delete the words “all goods containing such materials or chemicals, or may have other” because many goods contain hazardous materials but are not hazardous.

Light industry	Add the words “but not limited to “ after “includes”.
Neighbourhood Centre	Include “approximately” after the words “centre is”.
Outdoor eating area	Delete the words “approved” and “(al-fresco)” they are not relevant.
Restricted premises	Clarify the definition, replace “over” with “below the age of”.
Specialised retail premises	The preferred definition is the Large format retail definition.
Village Centre	Village Centre needs to be defined. Further definitions required, town centre, rural village.

SECTION L – RURAL

Nil comments.

SECTION M – TOURIST AND VISITOR ACCOMODATION, CARAVAN PARKS AND CAMPING GROUNDS

Term	Comments
Amenity Block	Consider adding “or any combination of these” at the end.
Bed and Breakfast	Definition required
Eco-tourist facility	Definition required
Hotel or Motel Accommodation	Definition required
Serviced Apartment	Definition required

SECTION N – EDUCATION, PLACES OF PUBLIC WORSHIP AND COMMUNITY

Term	Comments
out of school hours care service	Consider changing “children who are at school” to “school aged children”. As currently worded, it could be argued that the service needs to be provided at a school.
Early education and care facility	Definition for centre-based child care facility only, it should also consider home-based child care and school-based child care.

SECTION O – SIGNAGE AND ADVERTISING

Term	Comments
awning fascia (or awning face) sign	In (b) and (c) of the definition there is an “[insert number]” – is the intention that each council can specify its own number, or will this be standardised. Where standard definitions are proposed it is preferable that the same numbers apply.
Bill poster (or fly poster)	Definition provides an exhaustive definition which may not capture all types of bill poster – for example, what about a poster attached to a hoarding or scaffolding.
Billboard/bulletin board	This definition overlaps significantly with “wall sign”, p 87, meaning that something could be both a billboard and a wall sign, which could make it difficult to apply the DCP provisions if different requirements will apply to the different types of sign.
Temporary sign	Part (b) of the definition does not flow. All of the other parts of the definition clearly flow and create requirements. On a plain reading, (b) requires the sign to advertise the fact that the event is organised by a charitable organisation etc. If the intention of (b) is to require that the event referred to in (a) must be organised by a relevant body referred to in (b) then this could be better express by merging (a) and (b) as follows “announces any local event of a religious, cultural, social or recreational character or relates to any matter in connection with such an event, where the event is organised by a charitable organisation, community group, sporting association or public authority”.

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