

2011

Maitland Development Control Plan



Part A

Administration

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A.1 - Introduction

The Maitland Local Environmental Plan 2011 (LEP) has been prepared in the Standard Instrument format. Consequential amendments were required to the Maitland Citywide DCP to reflect the new language and provisions in the LEP. The opportunity was also taken to further consolidate the document, resulting in the preparation of the Maitland DCP 2011.

The Maitland DCP 2011 has been designed to allow for amendments over time, within a logical framework of Parts and Chapters.

1.1 Purpose

The purpose of this DCP is to provide detailed provisions for development within the Maitland LGA. These provisions supplement the legal framework contained in the Maitland LEP 2011.

1.2 Aims

The aims of this DCP are:

- a) To provide a detailed planning document that outlines requirements for development which meets community expectations and addresses the key environmental planning issues of the Local Government Area;
- b) To identify certain development as advertised development and to detail public notification requirements in accordance with Section 74C of the EPA Act;

1.3 Legal Status

This Plan is titled **Maitland Development Control Plan 2011 (MDCP 2011)**.

This document is a Development Control Plan prepared in accordance with the provisions of the Environmental Planning and Assessment Act, 1979, and associated Regulations.

This DCP came into force on 16 December 2011. The amendment table at the beginning of this document lists any amendments since this time.

A DCP does not have the same legal force as an environmental planning instrument (such as the Maitland LEP 2011 or various State Environmental Planning Policies). In the event of any inconsistency between this DCP and an environmental planning instrument, the Environmental Planning and Assessment Act 1979 states that the environmental planning instrument shall prevail.

A consent authority is required to consider this DCP when determining Development Applications within the Maitland LGA. However, compliance with the provisions of this DCP does not necessarily imply that a consent authority will consent to the application. A consent authority is required to consider the full range of matters listed under Section 79C of the Environmental Planning and Assessment Act 1979 in its assessment of a development application.

This DCP does not apply to any development considered to be either “exempt” or “complying” development under an environmental planning instrument. These categories of development are currently regulated by various State Environmental Planning Policies.

1.4 Land to which this DCP applies

The Maitland DCP 2011 applies to all land within the Maitland LGA to which the Maitland LEP 2011 applies.

1.5 Relationship to previous Development Control Plans

This DCP **repeals** the following chapters in the Maitland Citywide DCP:

- Aberglasslyn/North Rutherford
- Avalon Forest Rural-Residential Estate
- Bolwarra/Largs
- Chisholm Road, Greenhills
- Commercial and Retail Policy
- Conservation of Clay Resources
- Former Rutherford Abattoir Site and Adjoining Land
- Greenhills Low Density Residential
- Items of Environmental Heritage
- Metford
- Oakhampton Heights
- Raworth
- Stormwater
- Telecommunications and Radio Communications
- Thornton Business Park – Thornton East
- Thornton County (Somerset Park)
- Thornton Rural Residential Area

This DCP **repeals, condenses and replaces** the following chapters in the Maitland Citywide DCP 2006:

<u>Description</u>	<u>Relevant chapter in this DCP</u>
Aberglasslyn Area Plan	F: Aberglasslyn Urban Release Area
Accessible Living	C: Accessible Living
Advertisement/Notification of DAs	A.4: Community Participation
Ashtonfield Sth Residential Precinct	D: Ashtonfield South
Bolwarra Heights Rural Small Holdings	D: Bolwarra Heights
Car Parking Requirements	C: Vehicular Access and Parking
Central Maitland	E: Central Maitland
Child Care	C: Child Care Centres
Exhibition Homes and Villages	C: Exhibition Homes & Villages
Gillieston Heights Area Plan	F: Gillieston Heights Urban Release Area
Glenwood Residential and Industrial Estate	D: Thornton (Woodlands Estate)
Hunter River Floodplain Management	B: Hunter River Floodplain Management
Industrial Development	C: Industrial Development
Largs Urban Release Area Plan	F: Largs Urban Release Area
Louth Park – Waterforde Estate	D: Louth Park (Waterforde Estate)
Maitland Conservation & Design Guidelines (Part 1)	C: Heritage Design and Conservation Guidelines (Appendix 1)
Maitland Conservation & Design Guidelines (Part 2)	E: Heritage Conservation Areas
Maitland Conservation & Design Guidelines (Part 3)	C: Heritage Design and Conservation Guidelines
Maitland Conservation & Design Guidelines (Part 4)	C: Heritage Design and Conservation Guidelines
On-Site Sewage Management Systems	B: On-Site Sewage Management Systems
Orient Street Greta – Small Rural Lots	D: Greta (Orient Street)
Outdoor Advertising	C: Outdoor Advertising
Outdoor Dining	C: Outdoor Dining
Regulation of Brothels & Other Sex Industry Establishments	C: Sex Services Premises and Restricted Premises
Residential Design	C: Residential Design
St Helena Village Lochinvar	D: Lochinvar (St Helena Village)
Subdivisions	C: Subdivisions
Tenambit	D: Tenambit
Thornton North Area Plan	F: Thornton North Urban Release Area
Waste Not	B: Waste Not
West Bolwarra Heights	D: West Bolwarra Heights
West Rutherford Area Plan	D: West Rutherford

1.6 How to Use this DCP

The DCP is divided into six (6) parts:

- Part A: **Administration** details the statutory requirements of the DCP under the *Environmental Planning and Assessment Act 1979*, explains the aims of this DCP, the structure of the document and the public notification and advertising process.
- Part B: **Environmental Guidelines** contains chapters of the DCP that are not design-specific, but relate to consideration of environmental matters that may be relevant when preparing a Development Application, such as flooding and vegetation management. These chapters assist in pre-planning a development outcome.
- Part C: **Design Guidelines** contains chapters of the DCP that provide design-specific guidelines, such as car parking requirements and residential design.
- Part D: **Locality Plans** collates a number of chapters in the DCP that guide development outcomes for specific localities based on an analysis of both natural and man-made constraints.
- Part E: **Special Precincts** contains chapters of the DCP that provide comprehensive design concepts for areas that contain a mixture of land uses and development outcomes such as Central Maitland, or areas that have specific requirements such as Heritage Conservation Areas.
- Part F: **Urban Release Areas** contains chapters of the DCP that are identified as Urban Release Areas in the Maitland LEP 2011.

1.7 Departures from this DCP

Council may consent to an application that departs from the provisions of this DCP. In this case, the request for a departure shall be in writing (either as part of the Statement of Environmental Effects or a separate submission) justifying the need for the departure. Such justification may necessitate the need for additional plans, photomontages and the like, or additional studies and reports such as traffic or car parking studies.

Any departure from this DCP will only be considered where it can be demonstrated to the satisfaction of the consent authority that the departure has merit.

1.8 Savings and transitional provisions

This DCP does not apply to the following applications, where they were lodged with the consent authority but undetermined at the time this DCP came into force:

- A Development Application,

- An application to modify a Development Consent under s96 of the EPA Act, or
- An application for a review of a determination under Section 82A of the EPA Act.

In this circumstance, the application will be assessed in accordance with the DCP that was in force at the time of lodgement of the application.

This clause does not apply to any site-specific DCP that is prepared concurrently with a Development Application.

1.9 Disclaimer

The contents of this DCP are subject to periodic review and change. Applicants must ensure that they have obtained the latest version.

The DCP is not necessarily an exhaustive list of requirements for particular proposals. Pre-application discussion with Council staff is essential to ensure all relevant matters are considered.

Council will accept no responsibility for reader interpretation of this DCP. Applicants should consult with Council staff to ensure the relevant parts of the DCP have been addressed and are understood.

A.2 – Preparing an Application

2.1 Before you begin

Pre-application discussion with relevant Council staff **prior to preparation of detailed plans** is highly recommended to ensure that the development proposal is permissible under the LEP, to ensure that all relevant matters are addressed in the application, and that adequate supporting documentation is submitted.

For larger or more complex proposals, it is recommended that applicants meet with Council's **Development Control Unit**. The Unit is a team of senior Council staff responsible for the assessment of development, subdivision and construction certificate proposals. It provides advice aimed at avoiding delays during application processing and maintaining effective communication. Attendance at the Panel does not infer an approval from Council.

2.2 Preparing an Application

A Development Application must be accompanied by a Statement of Environmental Effects and other relevant documentation as prescribed under the EPA Regulation 2000 (Schedule 1). Council's Application Form Guides can assist in this regard by identifying the types of information required.

The supporting documentation required with an application will vary with the nature of the proposal, its size and complexity, the other agencies from which comment or approval is required and the particular environmental characteristics of the land to be developed. Additional detail regarding issues to be addressed, and the resulting documentation requirements, can be found throughout this DCP.

2.2.1 Section 79C of the EPA Act

This section of the Act specifies matters that a consent authority needs to consider in the assessment of development applications. These heads of consideration also provide an applicant with a checklist to ensure that all aspects of a development have been addressed in the preparation of an application.

Section 79C of the Act includes:

- a) Environmental planning instruments – this section requires consideration of whether the application is consistent with environmental planning instruments (State Environmental Planning Policies and Local Environmental Plans);
- b) Any DCP that applies to the land;
- c) matters prescribed by the Regulation associated with the Act – these include such matters as fire safety considerations;

- d) environmental, historical, social and economic impacts;
- e) whether the site is suitable for the development;
- f) any submissions made in relation to the development; and
- g) public interest matters.

Consideration of matters specified in the EPA Act may require the applicant to prepare site-specific specialist reports or studies and/or broader studies where the proposed development will have greater impacts on the wider community.

2.2.2 Integrated Development

In addition to any consent issued under the EPA Act, some proposals will also require approvals (or licences) from other statutory authorities or agencies before commencing work or undertaking the activity.

Section 91 of the EPA Act lists the approvals that trigger the 'integrated development' provisions in the Act. The onus is on the applicant to identify whether their proposal is integrated development and 'tick the box' on the DA form and pay the associated referral and administration fee to the relevant authority.

It is the responsibility of the applicant/owner to obtain the relevant approval necessary, either through Council at DA stage or alternatively post approval and prior to the commencement of any works on site. This alternative process may require amendments to be sought to the development consent granted.

Council staff can provide advice about other approvals required. Additional information may be necessary for referral to other authorities, such as a bushfire threat assessment report.

2.2.3 Bushfire Prone Land

Any Development Application over land that is classified as 'bush fire prone land' on Council's Bush Fire Prone Map is required to comply with the NSW Rural Fire Service's publication titled "*Planning for Bushfire Protection*" (2006). Where the development is 'integrated development', the application will be referred to the NSW RFS for comment.

2.2.4 Clearing native vegetation

The *Native Vegetation Act 2003* (NVA) and Regulation came into force in 2005. This Act regulates the clearing of native vegetation on all land across NSW except for land excluded in that Act (including certain urban zones). This Act is administered by the Hunter-Central Rivers Catchment Management Authority (CMA) as the consent authority.

Where clearing of native vegetation (as defined under the NVA) is proposed, development consent may be required from the CMA before any clearing works can be undertaken. Early consultation with the CMA is recommended in this regard.

2.2.5 Consent authority

In most cases, Council is the relevant consent authority for applications within the LGA. *State Environmental Planning Policy (Major Developments) 2005* establishes the Minister for Planning (or by delegation the Department of Planning) as the consent authority for development categorised as Major Projects/State Significant Development.

Other subordinate panels have also been established under the EPA Act, including the Planning Assessment Commission (PAC) and Joint Regional Planning Panels (JRPPs). These panels exercise consent functions either under delegation from the Minister or for development of regional significance. Details of projects that are determined by JRPPs can be found in the Major Developments SEPP. Council officers can assist in this regard.

A.3 – Lodging an Application

3.1 Application Form and documentation

All Development Applications must be lodged with the Development Application Form, the Statement of Environmental Effects and appropriate accompanying documentation. Applicants should refer to Council's Application Guide for details. **Applications will not be accepted without the required documentation.**

The length of time taken for assessment and determination of applications will vary depending upon the extent to which the proposal complies with the provisions of this DCP, and on the adequacy of the supporting documentation submitted. Variations to development standards contained in the LEP or requests for departures from the provisions of this DCP may require a decision of Council for final approval. This will generally delay determination of an application considerably.

3.2 Fees and Charges

All Development Applications attract fees and charges for the administration and assessment of the proposal, including public notification and advertising if required. Council's Corporate Management Plan contains all the relevant information and is updated annually. Applicants should ensure they have consulted the current document.

3.2.1 *Integrated Development*

Where an application is identified as "integrated development", an additional fee as prescribed by the EPA Act and Regulation is required. The fee is applicable to each separate approval or licence process identified as 'integrated', as the application is referred to each relevant Authority on behalf of the applicant with the prescribed fee.

3.2.2 *Subdivision*

In addition to Development Application fees, other fees and charges which may be applicable for subdivision include, but are not limited to:

- Subdivision Certificate (Endorsement) fees;
- Principal Certifying Authority fees;
- Hunter Water Corporation Fees;
- Construction Certificate fees; and
- House numbering/Rural house numbering fees.

3.2.3 Developer Contributions

Sections 94 and 94A of the EP&A Act permits Council to levy certain developer contributions towards the cost of facilities and amenities in the LGA.

Details relating to the amount of a monetary contribution, other forms it may take and when the contribution is required are contained in the relevant Section 94 Contributions Plan (CP).

Additional infrastructure levies may be required where land is identified as an Urban Release Area in the Maitland LEP 2011. Part 6 in the LEP applies in this regard.

A.4 – Notification

4.1 Preamble

Formal notification of development applications is a requirement of the legislation. There are different requirements for different development types. This section identifies which development types require notification and the form that notification shall take. It also defines if and how modifications to development approvals are notified.

Designated, state significant, integrated and advertised development types have specific notification and consultation requirements that are detailed in the [Environmental Planning and Assessment Act 1979](#).

Designated Development – Schedule 3 of the Environmental Planning and Assessment Regulation 2000 identifies certain development as “designated development” and also describes thresholds over which other forms of development become “designated development”. These are developments that are likely to significantly impact on the environment. The EP&A Act and its Regulation prescribes the procedures for the public exhibition and notification of designated developments.

Integrated Development – The EP&A Act and its Regulation also provide specific requirements for the advertisement of integrated development. Integrated development is development that, as well as requiring development consent, also requires one (or more) nominated State agency permits or licences as listed in Section 91 of the EP&A Act.

Advertised Development – Where a development is classified as advertised development, but does not comprise designated development, the EP&A Act provides that it must be advertised in the same manner as is designated development.

4.2 Development Requirements

4.2.1 Objectives

1. Development applications are notified locally.
2. Reasonable time is given for the public to assess applications and prepare submissions.
3. The application and supporting material is easily accessible.
4. Adequate information is provided to the adjoining landowners so that they can understand what is proposed and how they can participate.
5. The adjoining owner for the purpose of notification is clearly defined.
6. Parties that are likely to be affected by larger or more intrusive

- impacts are notified of the development.
7. Other Advertised Development: Development for the purpose of Clause 79A of the Environmental Planning and Assessment Act 1979 is specified.
 8. Notified Development: Development for the purpose of Clause 79A of the Environmental Planning and Assessment Act 1979 is specified.
 9. Development applications that are amended before they are determined are advertised where changes are considered significant and notification is in the public interest.
 10. Development applications that are modified after the application was determined are advertised where changes are considered significant and notification is in the public interest.
 11. Development applications modified under Sections 96(2) or 96(AA) of the Environmental Planning and Assessment Act are advertised as required.
 12. Council will notify and/or advertise an application under Section 96(2) or 96(AA) in accordance with the requirements of the original application.

4.2.2 Development controls

1. Where a development application is to be advertised, advertising will occur as follows:
 - A notice is published at least once in the Maitland Council news section of the local newspaper.
 - Written notice of the proposal, including a notification plan, is to be provided to all adjoining landowners.
 - The application and supporting material is available for inspection at the Administration Building for a minimum period of 14 days from the date of the published notice.
2. A written notice and a published notice of the development application must contain the following information:
 - A description of the land (including the address) on which the development is proposed to be carried out.
 - The name of the applicant and the name of the consent authority.
 - A description of the proposed development.
 - A statement that the application and the documents accompanying that application may be inspected at Council's Administration Building for a period specified in the notice during the consent authority's ordinary office hours.
 - A statement that any person during the period specified may make a written submission in relation to the development application to the consent authority.
 - The dates of the period specified.

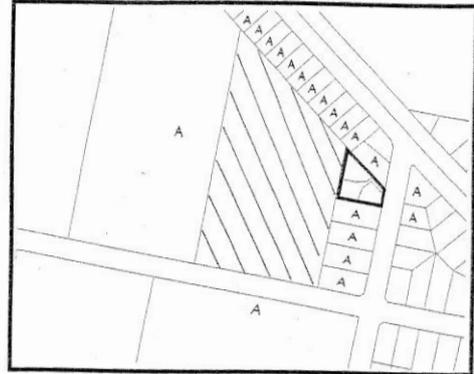
3. An adjoining landowner/s is the registered person/s or company/s or representative/s who own land which:
 - Shares a common boundary with the land subject to the application; or
 - Is directly opposite the subject land and is only separated by a pathway, laneway or public road; or
 - Is only separated from the subject land by land held in the same ownership as that being developed.
4. If the adjoining land is strata or community title, the body corporate is notified.
5. Where the development is likely to result in impacts over a larger area, Council may, at its discretion expand the notification area.
6. Any of the following development requires advertising:
 - All development and/or demolition proposed affecting a heritage item identified under Maitland Local Environmental Plan 2011 (except private swimming pools).
 - Major works, including any proposal for second-storey additions in a Heritage Conservation Area.
 - Major council projects (excluding utility services with a value exceeding \$100,000 or likely to be of significant community interest).
 - Multi-dwelling housing, group homes, boarding houses, hostel, residential flat buildings, seniors housing or similar type of developments.
 - Non-residential uses in or adjacent to a residential zone.
 - Subdivision of land zoned R5 Large Lot Residential or E4 Environmental Living.
 - Subdivision of residential land into more than 2 allotments.
 - Development for the purpose of hotel or motel accommodation, pubs, hospitals, places of worship and sex services premises in any zone.
7. Where council is of the opinion that the proposed development is minor in nature and its location, size, height, bulk and proposed use will not adversely affect the amenity of the adjoining land, advertising of the development may not be required.
8. Any development application that involves alteration to the external configuration of a building or the erection of a new building requires notification except the following:
 - New residential dwelling houses, additions and alterations up to and including two-storeys with a maximum height of 8.5 metres measured from the existing ground level.
 - Dual occupancies up to and including two-storeys with a maximum height of 8.5 metres measured from existing ground

- level, provided they meet the privacy, setbacks and overshadowing provisions of the Residential Design chapter of this DCP.
- Open carport, pergola, verandah or similar development.
 - Enclosure of an existing patio or verandah within the existing roofed area.
 - Private swimming pool.
 - Detached garage or shed enclosed by walls and associated with a dwelling.
 - Any building on a property in a rural zone which has an area of 2 hectares or more.
 - Industrial development in an industrial zone.
 - Subdivision of R1 General Residential land resulting in not more than two (2) lots.
 - Commercial development in a commercial zone.
 - Development in a Heritage Conservation Area including:
 - a. Internal and external alterations.
 - b. Single storey car ports.
 - c. Single storey garages.
 - d. Single storey additions.
 - e. Minor demolition of ancillary, non-contributory elements
 - A change of use in commercial areas.
9. Despite the exceptions above, Council may notify the development if it considers that notification is in the public interest.
10. Development applications that are amended before they are determined are advertised where changes are considered significant and notification is in the public interest.
11. If a development application is amended prior to determination; and
- Council has notified/advertised the original application, and
 - Council is of the opinion that the amended application differs only in minor respects from the original application, and
 - The application does not result in a greater environmental impact; Council may decide to dispense with further notification/advertising in relation to the application.
12. Where Council considers that amended plans or additional information submitted prior to determination is likely to have a greater or different, detrimental effect on adjoining properties, Council will re-notify those persons originally notified and those who made a formal written submission.
13. Modifications to approvals under Section 96(1) of the EP&A Act do not require notification.
14. Modification to approvals under Section 96(1A) of the EP&A Act will only be notified where Council is of the opinion that the use or enjoyment of adjoining land may be detrimentally affected by the proposed modification.
15. Where modification applications under Section 96(2) or 96(AA) are for designated development or other advertised development,

notification requirements will be as required under the Environmental Planning and Assessment Regulation 2000.



- The development site is edged heavy black
- Adjoining land is marked with an "A"



- The development site is edged heavy black.
- Land in the same ownership as the development site is hatched.
- Adjoining land is marked with an "A".

Figure 1: An example of adjoining properties for the purpose of this section.

A.5 – Post Determination Matters

5.1 Subdivision

If the development consent requires the carrying out of any works associated with the subdivision of land, a Construction Certificate is required prior to any work being undertaken. Detailed Engineering Plans will usually be required for approval. Council is the sole Principal Certifying Authority (PCA) able to oversee the subdivision construction process. You cannot appoint an accredited certifier to be your PCA.

A Subdivision Certificate is required prior to release of the final plan of survey, so that the plan of subdivision can be registered under the Conveyancing Act 1919. All required work must be completed and consent conditions satisfied prior to issue of a Subdivision Certificate, or else security must be lodged with Council (usually in the form of a Bond and Agreement) to cover the cost of the outstanding works plus contingencies.

A Subdivision Certificate can be issued over part of a subdivision, provided that all requirements for that part have been met. Details of requirements for Construction Certificates, Engineering Plans and Subdivision Certificates are contained in Council's Manual of Engineering Standards (MOES).

5.1.1 Bonding of Works

In some instances, Council may require the applicant to provide a monetary bond to ensure that works relating to a development consent are completed. A monetary bond may be required to be lodged prior to the issue of a Construction Certificate.

5.2 Modification of Consents

Sections 96 and 96A of the Environmental Planning and Assessment Act 1979 set out the procedure for modification of development consents. An application for modification must be made to the consent authority, and fees paid, in accordance with the Environmental Planning and Assessment Regulation 2000.

Minor errors, mis-descriptions or miscalculations may be modified without further referral or notification. However, more significant modifications may require re-advertising and referrals to government authorities.

In all cases, the consent authority must be satisfied that the development to which the consent as modified relates is substantially the same development. For significant modifications, lodgement of a new development application will be required.

5.3 Lapsing of Consents

Section 95 of the *Environmental Planning and Assessment Act 1979* describes when a development consent lapses.

5.4 Review of Applications and Rights of Appeal

Should an applicant be dissatisfied with the determination of a development application where Council is the consent authority, a Review of Determination may be requested under Section 82A of the *Environmental Planning and Assessment Act, 1979*. The request must be made within 28 days of determination of the application, accompanied by the prescribed fee.

Rights of appeal also exist to the Land and Environment Court of NSW. These rights are set out in Sections 97, 98 and 99 of the *Environmental Planning and Assessment Act, 1979*.

A.6 – Dictionary

“**Adjoining land**” comprises –

- a) Land identified in Map 1 as being land which shares a common boundary with the development site, or is separated only by a pathway, driveway, laneway or public road or,
- b) Land identified in Map 2 as being the closest land that is not owned by the registered proprietor of the development site.

NB – Council will need to apply discretion in relation to sub-clause (b). For example, development within the State Rail Authority corridor would not require all those properties which also about the corridor to be notified.

“**Notification plan**” means an A3 or A4 size plan submitted by the applicant specifically for notification purposes which incorporates the following components –

- a) A site plan indicating:-
 - (I) The dimensions of each boundary of the allotment;
 - (II) The distance between each part of the building and the allotment boundary; and,
 - (III) The effect of the proposed building on any existing building, trees, landscaping and fences.
- b) An elevation of each side of the proposed building indicating:-
 - (I) The gradient of the land adjacent to the elevation and the existing ground surface;
 - (II) The overall height of the wall measured from the existing ground level;
 - (III) The height of the proposed roof measured for the top of the wall to the ridgelines or highest point;
 - (IV) The size, position and shape of any openings, windows and doors, whether such windows or doors are openable and the type of glass used; and
 - (V) The position, size and shape of any verandahs, landings and decking.

“**Written notice**” in relation to advising of a proposed development shall contain the following information –

- a) A description and address of the site;
- b) The proposed use of the building and a description of the building;
- c) The name of the applicant;
- d) The time period within which written submissions may be made; and
- e) A notification plan.