

2011

Maitland Development Control Plan



Part A

Administration

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 3.43 of the *Environmental Planning and Assessment Act 1979*;

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 4.15 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
- Child Care Centre
- 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
- Lodging an Application
- Metford
- Oakhampton Heights
- On-site Sewage Management Systems
- 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: Community Participation
Ashtonfield Sth Residential Precinct	D: Ashtonfield South
Bolwarra Heights Rural Small Holdings	D: West Bolwarra Heights
Car Parking Requirements	C: Vehicular Access and Parking
Central Maitland	E: Central Maitland
Child Care Centres	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
Lodging an Application	A: Lodging an Application
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 Sewer Management Systems	B: On-Site Sewer 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 – Site Waste Minimisation & Management
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 4.55 of the EPA Act, or
- An application for a review of a determination under Section 8.3 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 20021 (Schedule 1).

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 4.15 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 4.15 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 4.46 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*" (2019). Where the development is 'integrated development', the application will be referred to the NSW RFS for comment.

2.2.4 Clearing native vegetation

The Local Land Services Act 2013 and the Biodiversity Conservation Act 2016 govern the clearing of native vegetation. These Act regulate the clearing of native vegetation on all land across NSW except for land excluded in that Act (including certain urban zones).

2.2.5 Consent authority

In most cases, Council is the relevant consent authority for applications within the LGA. *State Environmental Planning Policy (Planning Systems) 2021* establishes the consent authority for development categorised as Regional/State Significant Development and identifies what the triggers are for such development.

Other subordinate panels have also been established under the EPA Act, including Hunter and Central Coast Regional Planning Panels (HCCRPPs). The Panel determine a range of developments, including all developments with a value of more than \$30 million, that are not classified as being of State significance.

A.3 – Lodging an Application

This chapter has been repealed. As of July 2021, all Development Applications are required to be lodged via the NSW Planning Portal. Advice can be sought from Council's duty service in assembling the appropriate documentation for an application. For information on lodging an application, visit the NSW Planning Portal, where you can also register for an account and complete the online application form.

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.

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 are 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. Development applications that are amended before they are determined are advertised where changes are considered significant, and notification is in the public interest.
8. Development applications that are modified after the application was determined are advertised where changes are considered significant, and notification is in the public interest.
9. Development applications modified under Sections 4.56 of the Environmental Planning and Assessment Act are advertised as required.
10. Council will notify and/or advertise an application under Section 4.56 in accordance with the requirements of the original application.

4.2.2 Development controls

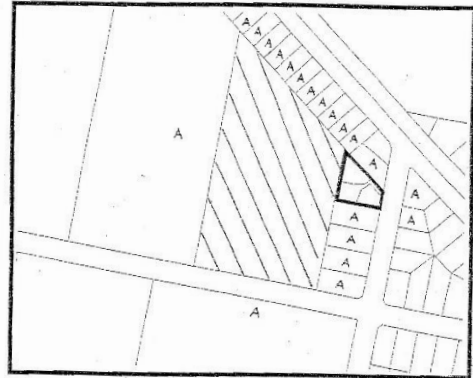
1. Where a development application is to be advertised, advertising will occur in accordance with the Community Participation Plan.
2. An adjoining landowner/s is the registered person/s or company/s or representative/s who own land which:
 - Shares a common boundary with the land subject to the application; 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.

3. If the adjoining land is strata or community title, the body corporate is notified.
4. Where the development is likely to result in impacts over a larger area, Council may, at its discretion expand the notification area.
5. 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 C4 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.
6. 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.
7. 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.
8. Despite the exceptions above, Council may notify the development if it considers that notification is in the public interest.
 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. 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.
 11. 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.
 12. Modifications to approvals under Section 4.55(1) of the EP&A Act do not require notification.
 13. Modification to approvals under Section 4.55(1A) and 4.55(2) 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.
 14. Where modification applications under Section 4.55(2) or 4.56 are for designated development or other advertised development, notification requirements will be as required under the Environmental Planning and Assessment Act and Regulations.



- 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 Subdivision Works Certificate (SWC) is required prior to any work being undertaken. Detailed Engineering Plans will usually be required for approval. In the majority of cases, Council is the sole entity authorised to be the Principal Certifier (PC) able to oversee the SWC process.

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. Details of requirements for Subdivision Works Certificates and Engineering Plans are contained in Council's Manual of Engineering Standards (MOES).

5.2 Modifications of Consents

Sections 4.55 and 4.57 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 2021*.

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 4.53 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 8.2-8.5 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 8.7, 8.8 and 8.15 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.