

# 4 When do I need a development application?

## Heritage information series



**This fact sheet explains when a development application may, or may not, be required and the difference between exempt development, minor development and maintenance.**



Condong General Store within the Condong Conservation Area

### When is development consent required?

Works to a heritage item or development activity within a heritage conservation area (HCA) generally requires a development application (DA) and consent. Under the applicable LEP clause 5.10(2) development consent is required for:

- a. demolishing or moving a heritage item or building, work, relic or tree within a HCA;
- b. altering a heritage item or a building, work, relic or place within a HCA, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior;
- c. altering a heritage item that is a building by making structural changes to its interior;
- d. disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed;
- e. disturbing or excavating a HCA that is a place of Aboriginal heritage significance;
- f. erecting a building on land on which a heritage item is located or that is within a HCA; or
- g. subdividing land on which a heritage item is located or that is within a HCA.

To assist Council in determining the development applications, Council requires additional information to be submitted as is outlined in the Tweed DCP Heritage Chapter (Section A18).

Development which requires a DA also requires an assessment of the impact of the proposed development under Clause 5.10(5). This is called a Statement of Heritage Impact (SOHI). Guidelines for how to undertake a SOHI are outlined in *Fact Sheet 5 - Undertaking a Statement of Heritage Impact* of this series.

In some cases a Heritage Conservation Management Plan (CMP) may be required and Council's Heritage Advisor can provide advice should this be necessary.

**Information on the LEP and DCP is available on Council's website at [Planning Policies](#)**

## When is a DA not required?

There are circumstances where consent is not required for certain works under Clause 5.10(3) of the applicable LEP. Works without a DA may be undertaken where an applicant has notified Council of the proposed works and Council has provided written authorisation that the works to be carried out satisfy the following:

- a. work is of a minor nature or maintenance of a heritage item, archaeological site, or a building, work, relic, tree or place within a HCA, and where those works would not adversely affect the significance of the heritage item, archaeological site or HCA; or
- b. the development is in a cemetery or burial ground; or
- c. the development is linked to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property; or
- d. the development is exempt development.

Development which requires a development application requires an assessment of the impact upon the heritage significance of the place.

### Exempt development

Exempt development refers to minor building works and changes that do not require planning approval under the NSW planning system.

Exempt development is provided for under the Environmental Planning and Assessment Act, 1979 (EP&A Act) Section 76(2).

The NSW Heritage Act, 1977 s19, governs exempt development for State heritage items.

A limited range of additional Exempt Development provisions are also contained within Schedule 3 of the applicable Local Environmental Plan (LEP).

Exempt development provisions are also contained within the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, known as the Code SEPP. The Code SEPP is a State Government Policy.

Exempt development under the Code SEPP must meet the standards specified for the development type and can only be carried out on the appropriate land specified in the policy. No application, approval or written authorisation is required from Council or a Private Certifier for development which meets the exempt development required standards.

The Code SEPP can be accessed through:

[The State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#)

**Fact Sheet 5 - Maintenance and Minor Development outlines the requirements and process for undertaking these types of works without a development application.**

## Development of a minor nature and maintenance

Routine maintenance and repairs are encouraged for heritage items and all properties within conservation areas and generally do not require development consent from Council, where the works are minor in nature and would not adversely affect the heritage significance of the item or conservation area.

The applicable LEP defines “maintenance” as:

*Maintenance, in relation to a heritage item, Aboriginal object or Aboriginal place of heritage significance, or a building, work, archaeological site, tree or place within a heritage conservation area, means ongoing protective care, but does not include the removal or disturbance of existing fabric, alterations (such as carrying out extensions or additions) or the introduction of new materials or technology.*

To undertake minor works or maintenance, the written authorisation of Council confirming the works are maintenance or minor is required prior to the commencement of these works.

An *Application for Minor Works and Maintenance* is required to be submitted and may be downloaded from Council's website at:

[Tweed Shire Council Forms](#)

There is no fee for the Minor Works and Maintenance application.

While each request is reviewed on the information provided and merit, the following guidelines are provided to assist in understanding what may be considered as minor works or maintenance.

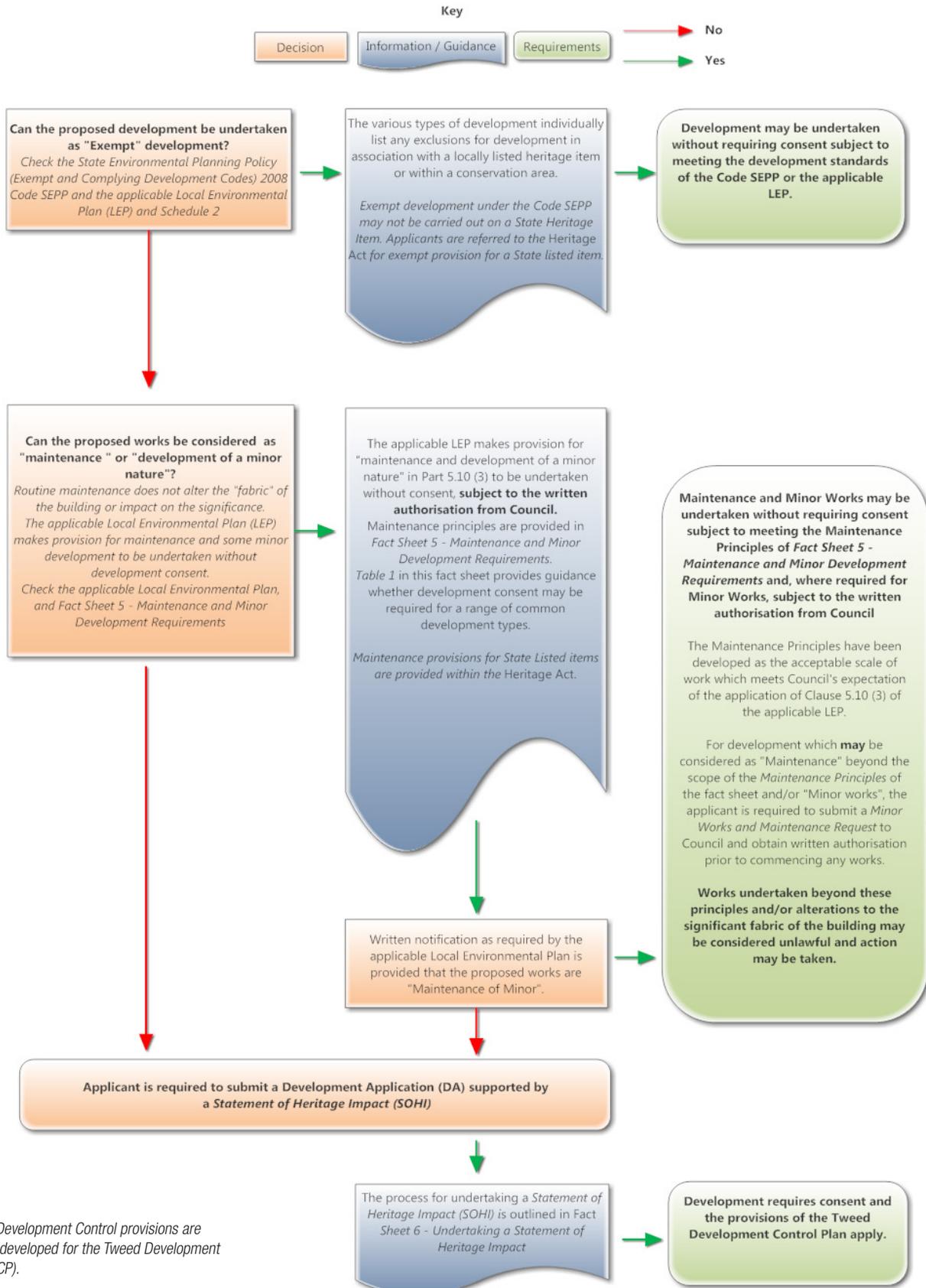
It is noted that works undertaken without the written authorisation of Council, works beyond these Maintenance Principles and /or alterations to the significant fabric of the building or item may amount to work without consent, and may necessitate any of the following: demolition, rectification, penalty infringement notice and/or an application for development approval.

### How is minor development different from exempt development?

Minor development is development, which otherwise would require development consent under the provisions of the Environmental Planning and Assessment Act, 1979 (EP&A Act) Section 76A(1) and 76A(2), however, MAY be considered “minor or maintenance” under Clause 5.10(3) of the applicable LEP, where the works do not impact on the heritage significance of the place and therefore, may be waived from requiring consent.

Exempt development is development which does not require application or consent.

## DETERMINING WHEN CONSENT IS REQUIRED



*Note: Heritage Development Control provisions are currently being developed for the Tweed Development Control Plan (DCP).*