

Dunmore Estate

**Subject
Land**

maitland

city council

Planning Proposal

AMENDMENT TO THE MAITLAND LEP 2011

LOT 5 DP 1137052, 39 DUNMORE ROAD, LARGS

Version 2.0
28 July 2022



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INTRODUCTION

This planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979*. It explains the intended effect of, and justification for a proposed amendment to *Maitland Local Environmental Plan 2011* (MLEP 2011) to rezone part of Lot 5 DP 1137052, 39 Dunmore Road, Largs from RU1 Primary Production to R5 Large Lot Residential. The intent of the proposal is to facilitate the subdivision of the subject land into three (3) rural residential lots and the subsequent erection of a dwelling-house on each of the two (2) vacant lots so created. The proposal also seeks an amendment to the LEP minimum lot size map to facilitate a subdivision layout that responds to the existing environmental constraints of the site and is compatible with the land's flood hazard.

The subject land is located on the eastern side of Dunmore Road, approximately one kilometre south of the intersection of Dunmore road with Paterson Road. The lot is an irregular shaped parcel with a total area of 4.65 hectares. The front portion of the site is currently zoned R5 Large Lot Residential, whilst the remainder of the site is zoned RU1 Primary Production.

The site is gently undulating. Adjoining land to the north and west comprises large lot residential development. Land to the south and east comprises low-lying agricultural land. The subject land is predominantly cleared, containing exotic pasture grasses and a few scattered trees and shrubs. The understorey has historically been grazed by cattle. The site contains a small dam in the front (western) portion of the site, as well as a large dam, an area of wetland and a man-made canal in the rear (eastern) portion. A large proportion of the site is flood-prone (i.e. below the Flood Planning Level). There is an existing dwelling and a shed situated in the centre of the site. Access to the existing dwelling is via a gravel access track over an existing farm dam embankment.

A locality plan is included as **Appendix A**. A plan showing the area of the site below the Flood Planning Level is included as **Appendix B** (Note: Flood Planning Level means the level of a 1:100 ARI flood event plus 0.5 metre freeboard).

Council granted development consent for a staged six (6) lot subdivision of Lot 220 DP 1137051 (the parent lot) on 19th January 2007 (i.e. DA 06-3021). Stage 1 of the development, creating four (4) rural residential lots fronting Dunmore Road, was registered in May 2009. Lot 5 (the subject land) was created as the residue lot. Stage 2 of the development, being the further subdivision of Lot 5 into two (2) lots, was never completed. A copy of the approved six (6) lot subdivision plan is included as **Appendix C**.

PART 1: OBJECTIVES OR INTENDED OUTCOMES

The objective of the planning proposal is to amend the Maitland LEP 2011 by rezoning part of Lot 5 DP 1137052, 39 Dunmore Road, Largs from RU1 Primary Production to R5 Large Lot Residential to facilitate subdivision of the subject land into three (3) rural residential lots and the subsequent erection of a dwelling-house on each of the two (2) vacant lots so created. The proposal also seeks an amendment to the LEP minimum lot size map to facilitate a subdivision layout that responds to the existing environmental constraints of the site and is compatible with the land's flood hazard.

PART 2: EXPLANATION OF PROVISIONS

The intended outcome will be achieved by rezoning approximately 9,240m² of land from *RU1 Primary Production* to *R5 Large Lot Residential*. The area of land to be rezoned to *R5 Large Lot Residential* is the RU1 zoned portion of the site that is above the Flood Planning Level (FPL).

It is also proposed to amend the LEP minimum lot size map to apply a minimum lot size of 3,000m² to that portion of the site zoned *R5 Large Lot Residential* and a minimum lot size of 40 hectares to the remainder of the site zoned *RU1 Primary Production*.

The proposal will involve amendments to the following LEP maps:

- Land Zoning Map (Sheet LZN_004C); and
- Lot Size Map (Sheet LSZ_004C).

The proposed map amendments are detailed in Part 4 of this planning proposal.

PART 3: JUSTIFICATION FOR PROPOSED REZONING

In accordance with the Department of Planning and Environment's *'Guide to Preparing Planning Proposals'*, this section provides a response to the following issues:

- Section A: Need for the planning proposal;
- Section B: Relationship to strategic planning framework;
- Section C: Environmental, social and economic impact; and
- Section D: State and Commonwealth interests.

SECTION A – NEED FOR THE PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not the result of any strategic study or report. It has been submitted on behalf of the owners of the land, Goldspring Group Pty Ltd, to enable the subject land to be subdivided into three (3) lots, with the subsequent erection of a dwelling-house on each of the two (2) vacant lots so created. The flood-prone portion of the site will retain its *RU1 Rural Production* zoning and will be annexed to one of the lots, so as to allow for the ongoing management of those lands for agricultural purposes.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

In order to achieve the objectives or intended outcomes for the subject land, the following options were considered:

- a. Amend LEP *Schedule 1 – Additional Permitted Uses for Particular Land* to allow a 3-lot subdivision and the subsequent erection of dwelling-houses to be carried out on the subject land.

This option would be inconsistent with the Department's LEP Practice Note *PN 11-001 – Preparing LEPs using the Standard Instrument: standard clauses*.

- b. Rezone the whole site from *RU1 Primary Production* to *R5 Large Lot Residential* and reduce the minimum lot size from 40 hectares to 2000m², consistent with the land immediately to the west and north.

This option is not considered desirable, as it would result in a much higher lot yield, inconsistent with the existing environmental constraints of the site (e.g. flood-prone land).

- c. Rezone only that portion of the site which is above the FPL from *RU1 Rural Production* to *R5 Large Lot Residential* and apply a 3000m² minimum lot size to the R5 zoned land.

This option is considered the best means of achieving the objectives or intended outcomes for the site, as it allows for some additional infill housing, whilst responding to

the environmental constraints of the site. In addition, it will provide a suitable transition between the agricultural lands to the east and the residential development to the west.

The planning proposal is therefore considered to be the best means of achieving the objectives or intended outcomes for the site

SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies?)

Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* (HRP) is a 20 year blueprint for the future of the Hunter. Its vision is to create a leading regional economy in Australia, with a vibrant metropolitan city at the heart. This vision will be delivered through four goals, as follows:

- a leading regional economy in Australia;
- a biodiversity-rich natural environment;
- thriving communities; and
- greater housing choice and jobs.

It is estimated that an additional 12,550 residential dwellings will be needed in Maitland by 2036. The plan focuses on providing land and infrastructure to meet this requirement and by supporting infill development opportunity in established areas and greenfield sites. The plan provides directions for housing opportunities to be located in areas with established services and infrastructure and which are close to existing towns and villages.

The site is not identified as a growth area in the HRP. However, the proposal will assist in meeting the objectives of the HRP 2036, as it proposes to provide additional infill housing located close to existing services and infrastructure and is proximate to local employment centres.

Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* (GNMP) sets out the strategies and actions that will drive sustainable growth across the five (5) Local Government Areas of Cessnock, Lake Macquarie, Newcastle City, Port Stephens and Maitland, which make up Greater Newcastle. The Plan aims to achieve the vision set out in the HRP – for the Hunter to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

The site is adjacent to an existing urban area with infill housing opportunities. The proposal is considered consistent with the strategies and actions in the GNMP, as it will provide additional infill housing opportunities within an existing urban area, in close proximity to jobs and services.

4. Is the planning proposal consistent with Council's Community Strategic Plan or other local strategic plan?

Maitland +10 (Community Strategic Plan)

Maitland City Council has adopted a Community Strategic Plan (Maitland +10) in line with the State's Integrated Planning and Reporting legislation and guidelines. The planning proposal is considered consistent with the vision and objectives of the Maitland +10 Community Strategic Plan as it provides additional opportunities for urban growth within the city to meet the needs of a rapidly growing population.

Maitland Local Strategic Planning Statement 2040+

The proposal is not inconsistent with the planning priorities of Maitland's Local Strategic Planning Statement (LSPS), as it will provide additional housing to support the LGA's growing population within an existing urban area. It will be an efficient use of land and will support greater accessibility to jobs and services.

Maitland Urban Settlement Strategy (MUSS) 2012

The subject land is identified in the MUSS as a potential urban extension site. Accordingly, Council is able to consider a proposed rezoning of the site for urban extension purposes, where that rezoning is justified based on consideration of the site's opportunities and constraints.

The subject land is currently zoned part *R5 Large Lot Residential* and part *RU1 Primary Production* and is located adjacent to an existing urban area. The land to the north and west of the site has already been developed for urban residential purposes, with a mix of large lot residential and standard residential lots. The proposal to rezone the flood-free portion of the site to *R5 Large Lot Residential* will provide for some additional infill housing opportunities, whilst responding to the existing environmental constraints of the site and providing a transition between the agricultural lands to the south and east and existing residential development to the north and west of the site.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

An assessment of the planning proposal against the relevant SEPPs is provided in the table below.

Table 1: Relevant State Environmental Planning Policies.

RELEVANCE	CONSISTENCY AND IMPLICATIONS
SEPP (INFRASTRUCTURE) 2007	Consistent
Provides a consistent approach for infrastructure and the provision of services across NSW, and to support greater efficiency in the location of infrastructure and service facilities.	Nothing in this planning proposal impacts upon the aims or provisions of this SEPP. Future subdivision of the site will not exceed the traffic generation thresholds in the SEPP

RELEVANCE**CONSISTENCY AND IMPLICATIONS**

due to the limited lot yield.

SEPP (KOALA HABITAT PROTECTION) 2019**Consistent**

This Policy aims to encourage the conservation and management of natural vegetation that provide habitat for Koalas to support a permanent free-living population and reverse the current trend of Koala population decline

Maitland LGA is listed in Schedule 1 of the SEPP. A Flora and Fauna Assessment was carried out by `Firebird ecoSultants Pty Ltd in May 2018. No direct or indirect evidence of *P. cinereus* (Koala) was found on the site. The site contains some scattered *E. tereticornis* (Forest Red Gum), a preferred Koala feed tree. However, the tree cover on the site is considered too sparse to provide suitable habitat for Koalas.

SEPP NO. 55 – REMEDIATION OF LAND**Consistent**

Provides state-wide planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed.

This SEPP no longer applies at the planning proposal stage. Rather the requirements of the SEPP are to be considered at the Development Application (DA) stage.

Ministerial Direction 2.6 – Remediation of Contaminated Land applies to planning proposals and is discussed in the next section of this planning proposal.

SEPP (PRIMARY PRODUCTION AND RURAL DEVELOPMENT) 2019**Consistent**

The aim of this policy is to facilitate the orderly, economic use and development of rural lands, reduce land use conflicts and to identify and protect State significant agricultural land.

The site is not identified as State significant agricultural land. An Agricultural Capability Assessment was carried out by Scott Barnett & Associates in March 2018. The land is classified as Class 4 agricultural land i.e. suitable for grazing but not for cultivation. The land has limited agricultural quality due to its limitations for cultivation and potential for erosion, impact of flooding and soil water logging, potential land use conflicts with immediate residential neighbours and sub economic size.

SEPP (VEGETATION IN NON-RURAL AREAS)**Consistent**

The aims of this Policy are—
 (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and
 (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The policy applies to that portion of the site zoned *R5 Large Lot Residential*.

It is not proposed to clear any existing vegetation as part of the proposal.



6. Is the planning proposal consistent with applicable Ministerial Directions for Local Plan making?

An assessment of the planning proposal against all relevant Section 9.1 Directions is provided in the table below.

Table 2: Relevant Section 9.1 Directions.

S9.1 DIRECTION	CONSISTENCY AND IMPLICATIONS
1. EMPLOYMENT AND RESOURCES	
1.1 Business and Industrial Zones	N/A
1.2 Rural Zones	Inconsistent - Justified
The objective of this direction is to protect the agricultural production value of rural land.	<p>The planning proposal is inconsistent with the objectives of this direction as it proposes to rezone <i>RU1 Primary Production</i> zoned land for urban purposes. However, the inconsistency is considered justified because the subject land is identified in the MUSS 2012 as a potential urban extension site.</p> <p>The subject land is currently zoned part <i>R5 Large Lot Residential</i> and part <i>RU1 Primary Production</i> and is located adjacent to an existing urban area. The land to the north and west of the site has already been developed for urban residential purposes, with a mix of large lot residential and standard residential lots. The proposal to rezone the flood-free portion of the site (i.e. 9,240m²) to <i>R5 Large Lot Residential</i> will provide for some additional infill housing opportunities, whilst responding to the existing environmental constraints of the site and providing a transition between the agricultural lands to the south and east and existing residential development to the north and west of the site.</p>
1.3 Mining, Petroleum Production and Extractive Industries	Consistent
The objective of this direction is to ensure that the future extraction of State or regionally significant reserves coal, other minerals,	<p>The site is not affected by mine subsidence.</p> <p>The proposed residential zoning would have the effect of prohibiting the mining of coal and</p>

S9.1 DIRECTION

CONSISTENCY AND IMPLICATIONS

petroleum and extractive materials are not compromised by inappropriate development.

other minerals, production of petroleum and winning/obtaining of extractive materials from the site. However, the site is not known to contain any existing resources.

1.4 Oyster Aquaculture

N/A

1.5 Rural Lands

Inconsistent - Justified

The objectives of this direction are to protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes.

The planning proposal is inconsistent with the objectives of this direction as it proposes to rezone *RU1 Primary Production* zoned land for urban purposes. However, this inconsistency is considered justified because the subject land is identified in the MUSS 2012 as a potential urban extension site and has limited agricultural quality. It is proposed to rezone the flood-free portion of the site only to enable the land to be subdivided into three (3) lots. The remaining *RU1* zoned portion of the site will be annexed to one of the new lots, so as to allow for the ongoing management of those lands for rural purposes.

2. ENVIRONMENT AND HERITAGE

2.1 Environment Protection Zones

Consistent

The objective of this direction is to protect and conserve environmentally sensitive areas. According to the direction, a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

The planning proposal is consistent with the objectives of this direction as it proposes to retain the existing *RU1 Primary Production* zone over that part of the subject land that is subject to environmental constraints, including mine subsidence, EECs and threatened species.

2.2 Coastal Protection

N/A

2.3 Heritage Conservation

Consistent

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

A Heritage Due Diligence Assessment was carried out by Niche Environment and Heritage Pty Ltd (Niche) in May 2018, which identified an area of high archaeological sensitivity that may be impacted as a result of the proposed rezoning and subsequent development of the site.

Accordingly, the report recommends that further investigation and impact assessment be undertaken to confirm the presence or

S9.1 DIRECTION

CONSISTENCY AND IMPLICATIONS

absence of Aboriginal objects. This should include:

- Aboriginal community consultation; and
- an Aboriginal Cultural Heritage Assessment, including test excavations to assess the significance of the PAD.

In accordance with the Gateway Determination, the Mindaribba Local Aboriginal Land Council (MLALC) was invited to provide comment on this proposal. No feedback was received during agency consultation.

It is Council's recommendation that potential cultural finds are to be continuously managed throughout any development activity on the land.

The persons responsible for the management of onsite works will ensure that all staff, contractors and others involved in construction, maintenance or remediation related activities are made aware of the statutory legislation protecting sites and places of significance. Should any Aboriginal objects be uncovered during works, all work will cease in that location immediately. Such a find will trigger the requirement for assessment and consultation under the National Parks and Wildlife Act 1974.

Any Aboriginal Place or Aboriginal Objects that are found are to be referred to Heritage NSW in the instance that development on the land has the potential to harm these cultural items.

2.4 Recreation Vehicle Areas

N/A

2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North coast LEPs

N/A

2.6 Remediation of Contaminated Land

Consistent

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

The proponent has completed a Phase 1 and 2 Contamination Assessment of the site.

Council officers have reviewed the above documents and raised concerns in relation to the adequacy of sampling carried out across



S9.1 DIRECTION

The direction applies to land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out. Agricultural/horticultural activities are referred to in Table 1 of the guidelines.

Council is required to consider whether the land is contaminated, and if the land is contaminated, that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used.

If the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, Council must be satisfied that the land will be so remediated before the land is used for that purpose.

CONSISTENCY AND IMPLICATIONS

the site to meet the ENM guidelines. Council also has concerns about the unknown source of fill material used to construct the existing flood-free site access, with no site-specific waste exemption sought from the EPA.

The proponent has since provided a Remediation Action Plan (RAP) in support of the proposal. The RAP demonstrates how the site can be remediated to be suitable for future residential use.

3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT

3.1 Residential Zones

Consistent

The objectives of this direction are to encourage a variety and choice of housing, minimise the impact of residential development on the environmental and resource lands and make efficient use of infrastructure and services.

The direction applies as the planning proposal affects land within an existing residential zone.

The proposal will provide additional infill housing opportunities and make more efficient use of existing infrastructure and services in the locality.

3.2 Caravan Parks and Manufactured Home Estates

N/A

3.3 Home Occupations

Consistent

The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.

The proposed *R5 Large Lot Residential* zone will permit home occupations without consent. The proposal is therefore consistent with this direction.

3.4 Integrating Land Use and Transport

Consistent

This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

This direction applies as the planning proposal relates to urban land.

The planning proposal, through providing housing in close proximity to existing services and facilities, will reduce car dependency for the residents and facilitate the use of

S9.1 DIRECTION

CONSISTENCY AND IMPLICATIONS

A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:

- a) *Improving Transport Choice – Guidelines for planning and development (DUAP 2001)*, and
- b) *The Right Place for Business and Services – Planning Policy (DUAP 2001)*.

alternative modes of transport such as cycling, walking and public transport.

3.5 Development Near Regulated Airports and Defence Airfields

N/A

3.6 Shooting Ranges

N/A

3.7 Reduction in non-hosted short-term rental accommodation period

N/A

4. HAZARD AND RISK

4.1 Acid Sulfate Soils

Consistent

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

The site contains Class 3 and Class 5 Acid Sulphate Soils, as shown on the *Maitland LEP 2011 Acid Sulfate Soils Map*. In accordance with Clause 7.1 of the Maitland LEP 2011, further development associated with the subject land will require an Acid Sulfate Soil Management Plan, as a condition of development consent. The proposal is consistent with this direction.

4.2 Mine Subsidence and Unstable Land

N/A

The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.

The subject land is not within a mine subsidence district, nor has it been identified as unstable land.

4.3 Flood Prone Land

Consistent

The objectives of this direction are:

- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, and
- (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

The direction applies as the site is affected by flooding. However, it is only proposed to rezone that portion of the site above the Flood Planning Level (FPL) to *R5 Large Lot Residential*. The remaining flood-affected portion of the site will remain *RU1 Primary Production* zone.

The planning proposal is therefore consistent with the objectives of this direction.

S9.1 DIRECTION**CONSISTENCY AND IMPLICATIONS****4.4 Planning for Bushfire Protection****Consistent**

The objectives of this direction are:

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bushfire prone areas, and
- (b) to encourage sound management of bush fire prone areas.

The subject land is not mapped as bushfire prone land.

According to this direction, in preparing a planning proposal that will affect land that is mapped as bushfire prone land, Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway determination, and prior to undertaking community consultation in satisfaction of Schedule 1, clause 4 of the Act, and take into account any comments so made. It is also a requirement of the direction that a planning proposal must have regard to *Planning for Bushfire Protection 2019*.

5. REGIONAL PLANNING**5.1 Implementation of Regional Strategies**

N/A

5.2 Sydney Drinking Water Catchment

N/A

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

N/A

5.4 Commercial & Retail Development along the Pacific Highway, North Coast

N/A

5.9 North West Rail Link Corridor Strategy

N/A

5.10 Implementation of Regional Plans**Consistent**

This direction applies when a relevant planning authority prepares a planning proposal.

The direction applies as the *Hunter Regional Plan 2036* applies to the Maitland LGA.

Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

As the proposal will provide additional 'infill' housing supply for the region within an existing urban residential area, it is considered to be consistent with the goals, directions and actions of the *Hunter Regional Plan 2036*.



SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Firebird ecoSultants Pty Ltd carried out a preliminary ecological assessment of the site in May 2018, which combined a literature review and desktop research with flora and fauna surveys and a habitat assessment.

A freshwater wetland complex occurs to the rear of the site which is commensurate with Freshwater Wetlands on Coastal Floodplains listed as an EED under the TSC Act. The wetland is disturbed and is currently subject to cattle grazing. There are also two (2) dams on the site and although they are subject to cattle grazing, they contain some areas of dense riparian and aquatic vegetation. The remainder of the site consists of derived, exotic grassland and scattered trees. Five (5) large mature hollow-bearing trees occur on the site. Two (2) threatened species listed under the *Biodiversity Conservation Act 2016* were recorded on the site (Blue-billed Duck and Grey-headed Flying Fox). The site could potentially provide habitat for several other threatened fauna species.

No direct or indirect evidence of *P. cinereus* (Koala) was found on the site. The site contains some scattered *E. tereticornis* (Forest Red Gum), a preferred Koala feed tree. However, the tree cover on the site is considered too sparse to provide suitable habitat for Koalas.

The Firebird report concludes that the baseline ecological investigations carried out to date are sufficient to justify a “Gateway” decision to proceed with a planning proposal. However, further ecological studies should be undertaken to determine the presence of threatened species and to provide a more detailed impact assessment potential development scenarios. A Vegetation Management Plan (VMP) and development/design controls to minimise impacts on threatened species habitats should be established at the development assessment (DA) stage, e.g. measures put in place to avoid or minimise removal of hollow-bearing trees and EEC vegetation.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Contamination

Whitehead and Associates conducted a Phase 1 Environmental Site Assessment (ESA) of the site in September, 2019, which included a desktop review, a review of available site history information, a site walkover and limited surface soil sampling at three (3) nominated locations, with samples analysed for environmental contaminants, including heavy metals and pesticides.

The investigation found two (2) areas on the site containing imported fill material. One area near the western property boundary comprising a cut/fill building platform with a finished surface elevation at approximately the 1% AEP flood level. It is understood that this area was filled to create a flood-free pad for a future dwelling-house, in accordance with an approval granted by Council in 2008. The other area containing fill being the existing causeway/farm dam

embankment that provides vehicular access to the existing dwelling-house. Some excess fill material from the causeway construction is stockpiled along the south side of the driveway.

The importation of VENM/ENM soil for the purposes of constructing a private access road and dam wall was approved by Council under DA 11-760, in August 2011. However, it is understood that the proponent did not obtain certification of this material to verify its source and VENM/ENM classification, which was a condition of the consent.

The Phase 1 investigation also found a risk of contamination present in the vicinity of the existing dwelling-house and storage shed that could preclude the proposed residential development. In particular, lead and zinc were reported in the sample taken from the yard area near the existing dwelling-house, in concentrations exceeding the health-based investigation levels (HIL) for residential use.

Given this finding, as well as the incomplete information regarding the contamination status of imported fill material on the site, further investigation in the form of a Phase 2 ESA was recommended.

A Phase 2 ESA report prepared by Whitehead and Associates was submitted to Council in March 2020. However, upon review of the Phase 2 report, Council raised concerns in relation to the adequacy of sampling across the site to meet the ENM guidelines. Accordingly, in correspondence dated 22 May 2020, Council requested further testing of COCs, including hydrocarbons and heavy metals, around the existing dwelling-house and shed. In addition, Council requested retrospective classification of the fill material under the *Protection of the Environment Operations Act 1997* and the Waste Regulation for importation of waste to the site in compliance with the ENM *Resource Recovery Exemption*. This triggered the requirement for a 'revised' Phase 2 ESA.

A revised Phase 2 ESA report detailing the results of the ENM classification and additional sampling with AEC2 was submitted to Council in September 2020.

The ENM assessment of the in-situ fill and stockpiled material found the majority of the material to be compliant with the EPA's ENM classification criteria. Some non-compliances were identified in the heavy metal concentrations (i.e. copper, lead and zinc) in several samples, as well as PAHs in one sample. Based on this, minor remedial actions area recommended in the form of aglime application to surface soils, as well as off-site disposal of the residual stockpiled fill material to the nearest licenced waste landfill facility.

The results of the additional soil sampling around the existing dwelling-house and shed found that there remains a relatively low risk of lead, hydrocarbon and zinc contamination. Slightly elevated zinc concentrations in the soil are recommended to be remediated through aglime application at the prescribed rate to neutralise and buffer soil PH to inhibit the uptake of zinc by plants.

Based on the results of the 'revised' Phase 2 ESA, Whitehead and Associates recommend that a Remedial Action Plan (RAP) be developed, as a condition of the subdivision DA, incorporating the recommended remedial actions outlined above.

However, for Council to be satisfied that the land can be made suitable for all uses permitted in the proposed zone, and in accordance with Ministerial Direction 2.6, Council required a Remedial Action Plan (RAP) to be prepared. This plan details how the site can be remediated, to make it suitable for future residential use.

The RAP prepared by Tetra Tech Coffey was provided to Council in March 2022 and provides options for remediation and validation strategies.

Flooding

Geoff Craig & Associates Pty Ltd (GCA) carried out a flood assessment of the site in December 2019, to examine the degree to which flooding affects the site, provide advice in managing flood risk and comment on the compatibility of future development with flood planning development controls.

According to the *Hunter River, Branxton to Green Rocks Flood Study* (WMA Water, 2010) the PMF flood level at the site is 9.1m AHD. The 1% AEP flood level at the site is **7.1m** AHD and the 5% AEP flood level is **6.3m** AHD. A plan showing the site's flood affectation is shown in *Appendix B*.

Access to the existing dwelling on the site is via a gravel access track across the existing farm dam embankment, with a minimum surface level of around 6.4m AHD, which is above the 5% (1 in 20yr) AEP flood level but below the 1% (1 in 100yr) AEP flood level.

It should be noted that it is not proposed to rezone any land below the FPL. Only that portion of the site above the FPL will be rezoned to *R5 Large Lot Residential*. There is sufficient space within the proposed *R5 Large Lot Residential* zone for each lot will have a dwelling site located above the Flood Planning Level (FPL), which by definition is 500mm above the 1% AEP flood. Principal access to the allotments will also be across the existing farm dam embankment. This access has been constructed to a level of 6.4m AHD, which is 0.1m higher than the 5% AEP flood level and is therefore considered to provide suitable flood free access to future lots.

The flood assessment report concludes that rezoning and development of the subject land, as proposed, would not have any substantial impact on flooding outside of the site and should therefore be supported.

The proposal was referred to Council's Subdivision Engineer for comment, who advised that if flood free access can be provided at or above the 1% AEP flood level, then it should be. There is scope for a secondary 'emergency' vehicular/pedestrian access to be provided along the northern boundary of the site, where minor filling in the flood fringe area would be contiguous with the adjacent land and potential flood impacts would be acceptable. The emergency access would not need to be physically constructed but should be covered by an easement/right-of-way to ensure appropriate title and legal access. This could be a requirement at the subdivision DA stage.

Visual Impact

Greenspace Planning Co (GSP) undertook a residential visual amenity assessment of the site in March 2020. The primary objective of the assessment was to address Council's concerns relating

to the potential impacts of future development of the site on the adjoining resident's visual amenity.

The visual context surrounding the site to the north, west and south is predominantly characterised by one and two storey residential developments, most of which have been constructed in the last two decades. Extending from the eastern site boundary is low-lying agricultural land of the Paterson River floodplain.

The assessment found that the proposal will present a moderate to high visual impact, primarily due to the close proximity of the adjoining residential properties.

It is accepted that a potential introduction of additional built elements would form a noticeable visual change, however, it is not considered that the impact will dominate views within the surrounding landscape. The subject adjoining individual receivers currently view an existing series of buildings on site, in addition to the other adjoining houses. The scale and pattern of the proposal is compatible with the surrounding landscape character and thereby able to accommodate change without unacceptable adverse effects on its character.

Further, having regard for the nature of the proposal, factoring the proposed large lot sizes and staggered pattern and setbacks of building envelopes, these effects are considered to not be 'overbearing' or 'overwhelming' as a consequence on views. It is also not expected that the proposal would adversely impact other factors relevant to amenity, such as access to direct sunlight, daylight and ventilation.

A number of measures are recommended to further mitigate any adverse visual impacts on adjoining residential properties, specifically:

- All existing trees on the site should be retained.
- Boundary planting of a mix of canopy trees and shrubs should be provided to create a visual buffer between the site and the adjoining residential properties. Plant species selected for visual screening should be typical of the area.
- Future dwellings should be sited, designed and constructed of appropriate materials and colours to ensure they are not visually obtrusive or detract from the surrounding landscape character of the area.

Archaeology and Heritage

A Heritage Due Diligence Assessment was carried out by Niche Environment and Heritage Pty Ltd (Niche) in May 2018, which identified an area of high archaeological sensitivity that may be impacted as a result of the proposed rezoning and subsequent development of the site.

Accordingly, the report recommends that further investigation and impact assessment be undertaken to confirm the presence or absence of Aboriginal objects. This should include:

- Aboriginal community consultation; and
- an Aboriginal Cultural Heritage Assessment, including test excavations to assess the significance of the PAD.

In accordance with the Gateway determination, the Mindaribba Local Aboriginal Land Council (MLALC) was invited to provide comment on this proposal. No feedback was received during agency consultation.

It is Council's recommendation that potential cultural finds are to be continuously managed throughout any development activity on the land.

The persons responsible for the management of onsite works will ensure that all staff, contractors and others involved in construction, maintenance or remediation related activities are made aware of the statutory legislation protecting sites and places of significance. Should any Aboriginal objects be uncovered during works, all work will cease in that location immediately. Such a find will trigger the requirement for assessment and consultation under the National Parks and Wildlife Act 1974.

Any Aboriginal Place or Aboriginal Objects that are found are to be referred to Heritage NSW in the instance that development on the land has the potential to harm these cultural items.

9. How has the planning proposal adequately addressed any social and economic effects?

The planning proposal is unlikely to have any significant adverse social or economic impacts. The proposed rezoning will maximise the development potential of Lot 5 DP 1137052 and provide additional infill housing opportunities within an existing urban area, thereby reducing the consumption of land for housing. Additional contributions towards the provision of community facilities are some of the likely positive social and economic effects of the proposal.

SECTION D – STATE AND COMMONWEALTH INTERESTS

10. Is there adequate public infrastructure for the planning proposal?

Access, Transport and Traffic

Lot 5 DP1137052 has frontage to Dunmore Road, which provides direct connection to High Street at its southern end and Paterson Road at its northern end.

The proposal will generate very low traffic volumes and will not impact on the capacity, level of service or safety of the existing signalised intersections of Dunmore Road and Paterson Road.

Hunter Valley Buses currently operates Route 185 along Dunmore Road between Maitland Railway Station and Gresford.

Infrastructure Services

The subject site is located within an established residential area. All essential services including telecommunications, electricity, gas, reticulated water and sewer services can be readily extended to service all future lots within the proposed development.

Other Public Infrastructure

Council provides a regular waste/recycling collection service in the area. Local shopping and sporting facilities are available in Largs. All other essential services such as health, education and emergency services are available in the nearby centres of Greenhills and Maitland.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

In accordance with the Gateway conditions Mindaribba Local Aboriginal Land Council (LALC) were consulted prior to public exhibition. No formal submissions were submitted to Council during agency consultation.

PART 4: MAPPING

The following maps support the proposal:

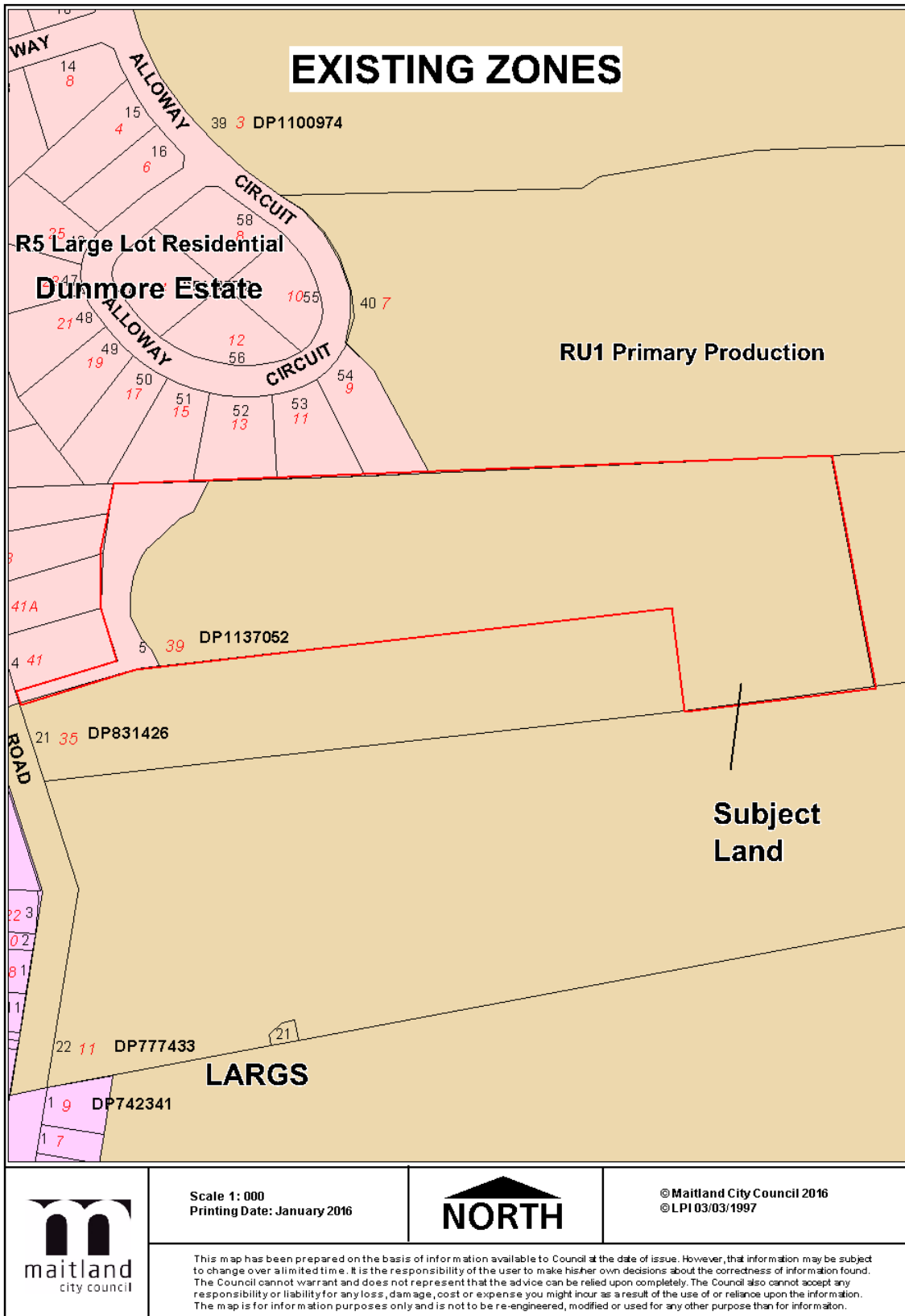
MAP 1 - EXISTING ZONING MAP

MAP 2 - PROPOSED ZONING MAP

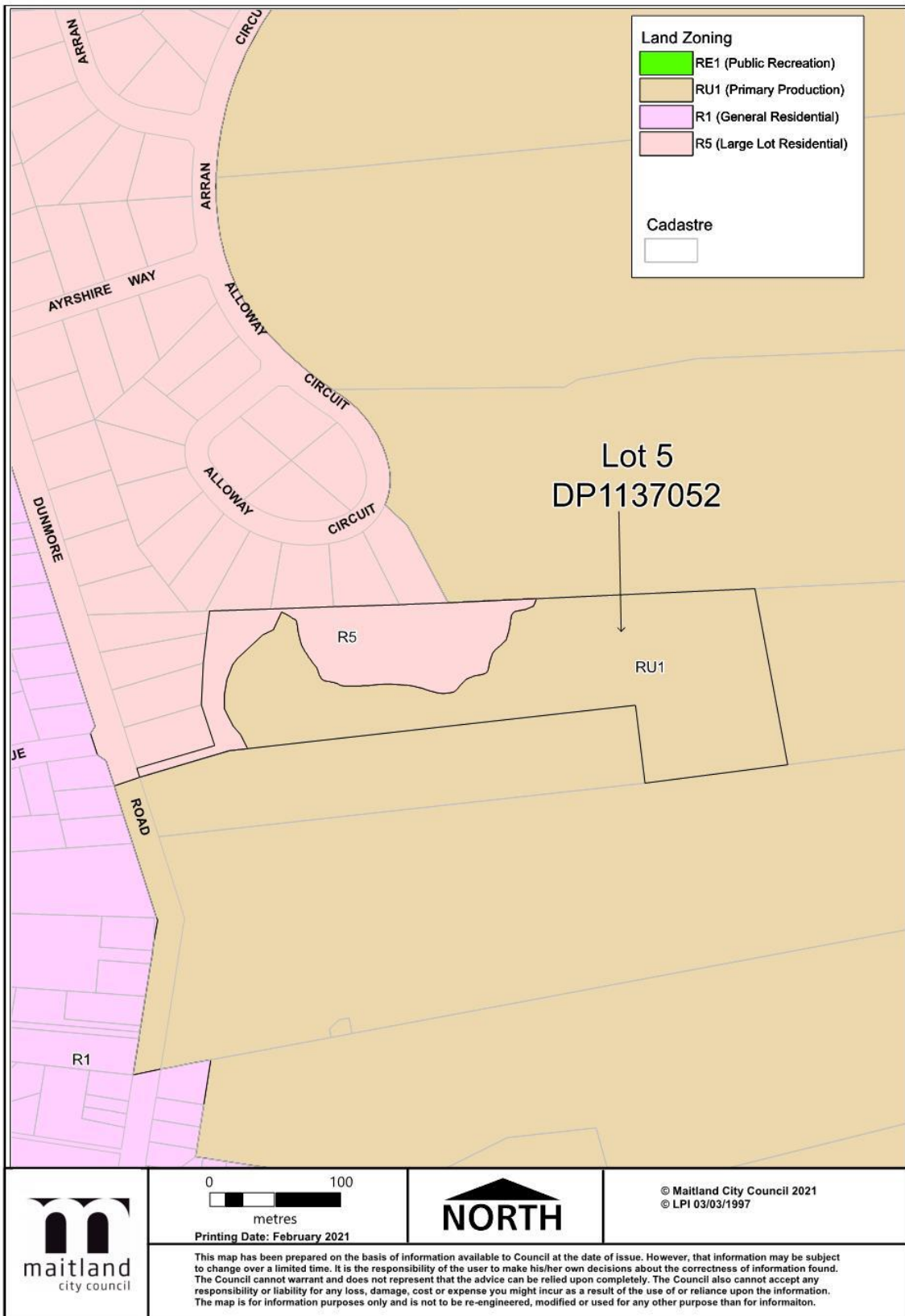
MAP 3 - EXISTING MINIMUM LOT SIZE MAP

MAP 4 - PROPOSED MINIMUM LOT SIZE MAP

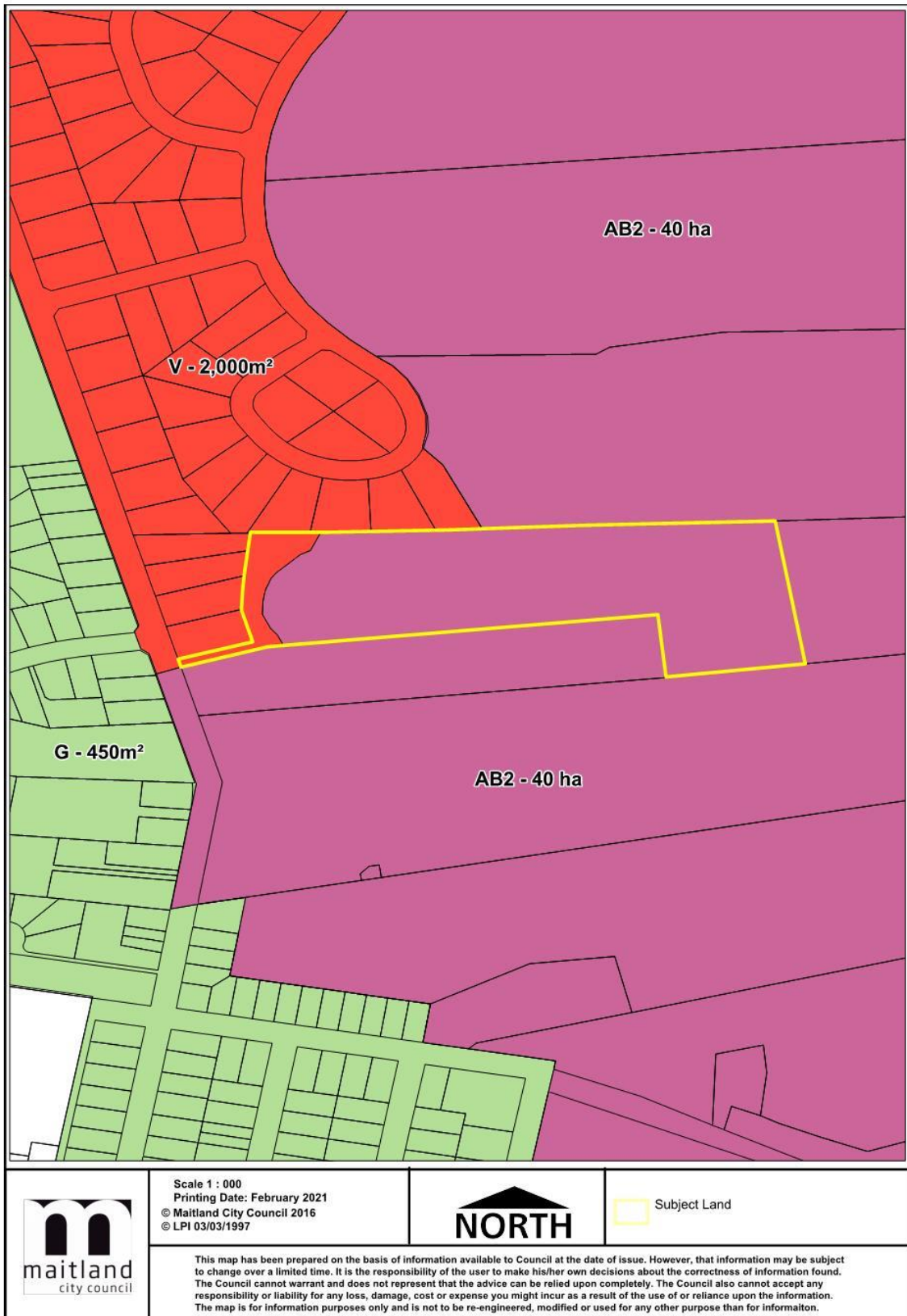
MAP 1 - EXISTING ZONING MAP



MAP 2 - PROPOSED ZONING MAP

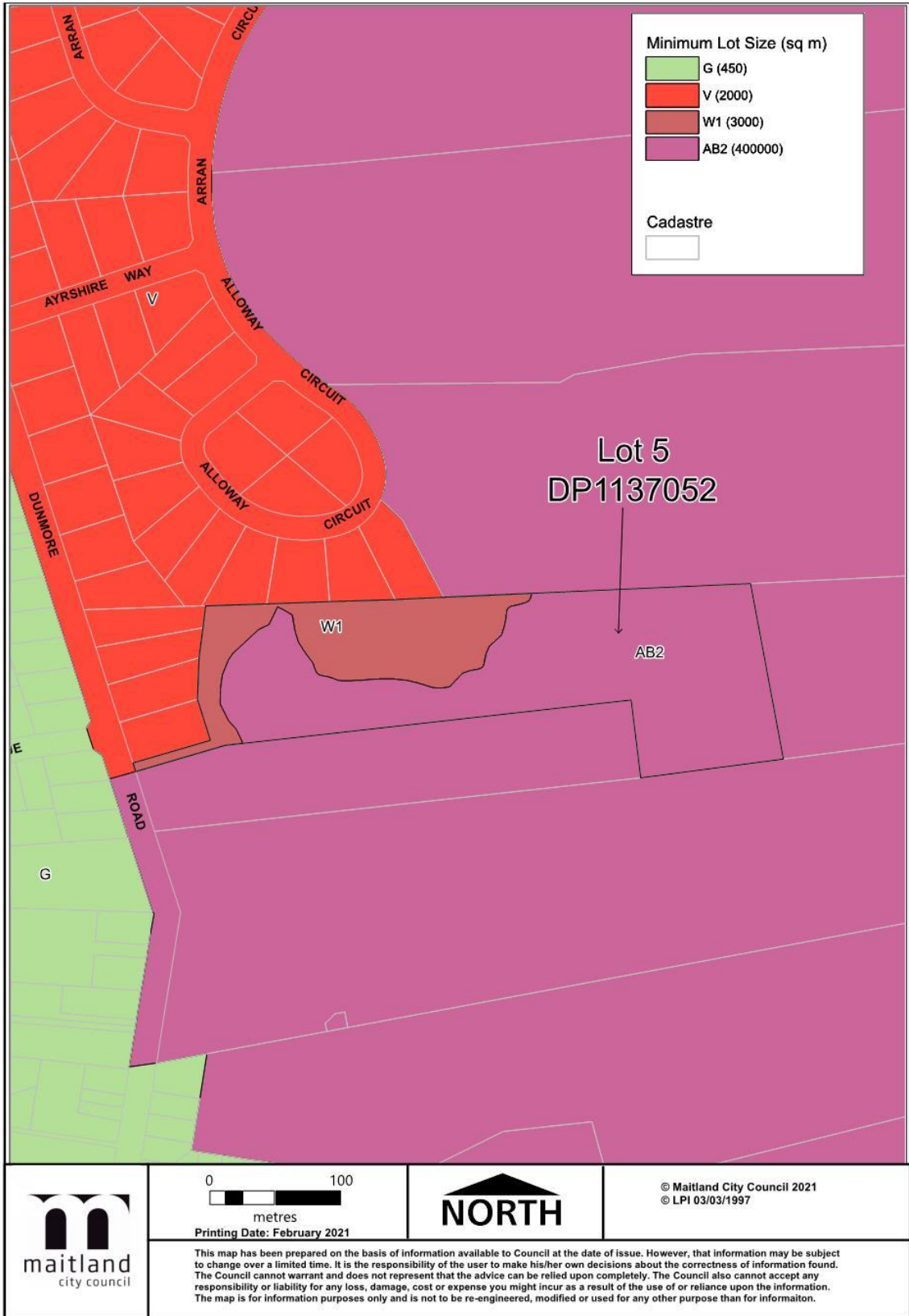


MAP 3 - EXISTING MINIMUM LOT SIZE MAP



MAP 4 – PROPOSED MINIMUM LOT SIZE MAP





PART 5: COMMUNITY CONSULTATION

In accordance with Schedule 1, Clause 4 of the *Environmental Planning and Assessment Act 1979*, community consultation must be undertaken by Council prior to approval of the planning proposal.

In accordance with the Gateway Conditions the following will be undertaken to inform and receive feedback from interested stakeholders:

- A public exhibition period of at least 14 days;
- Consultation documents to be made available on Council's website;
- Letters of notification to adjoining landowners; and
- Consultation documents to be made available on the Department of Planning's Planning Portal.

At the close of the consultation process, Council officers will consider all submissions received and present a report to Council for their endorsement of the planning proposal before proceeding to finalisation of the amendment.



PART 6: TIMEFRAMES

PROJECT TIMELINE	DATE
Commencement and completion dates for public exhibition period	July 28 th – August 25 th 2022
Dates for public hearing (if required)	N/A
Timeframe for consideration of submissions	August 2022
Timeframe for the consideration of a proposal post exhibition	September 2022
Anticipated date RPA will forward the plan to the department to be made (if not delegated)	September 2022
Anticipated date RPA will make the plan (if delegated)	September 2022
Anticipated date RPA will forward to the department for notification (if delegated)	October 2022

Appendix A

Locality Plan



LOCALITY PLAN



Scale 1: 000
 Printing Date: January 2016



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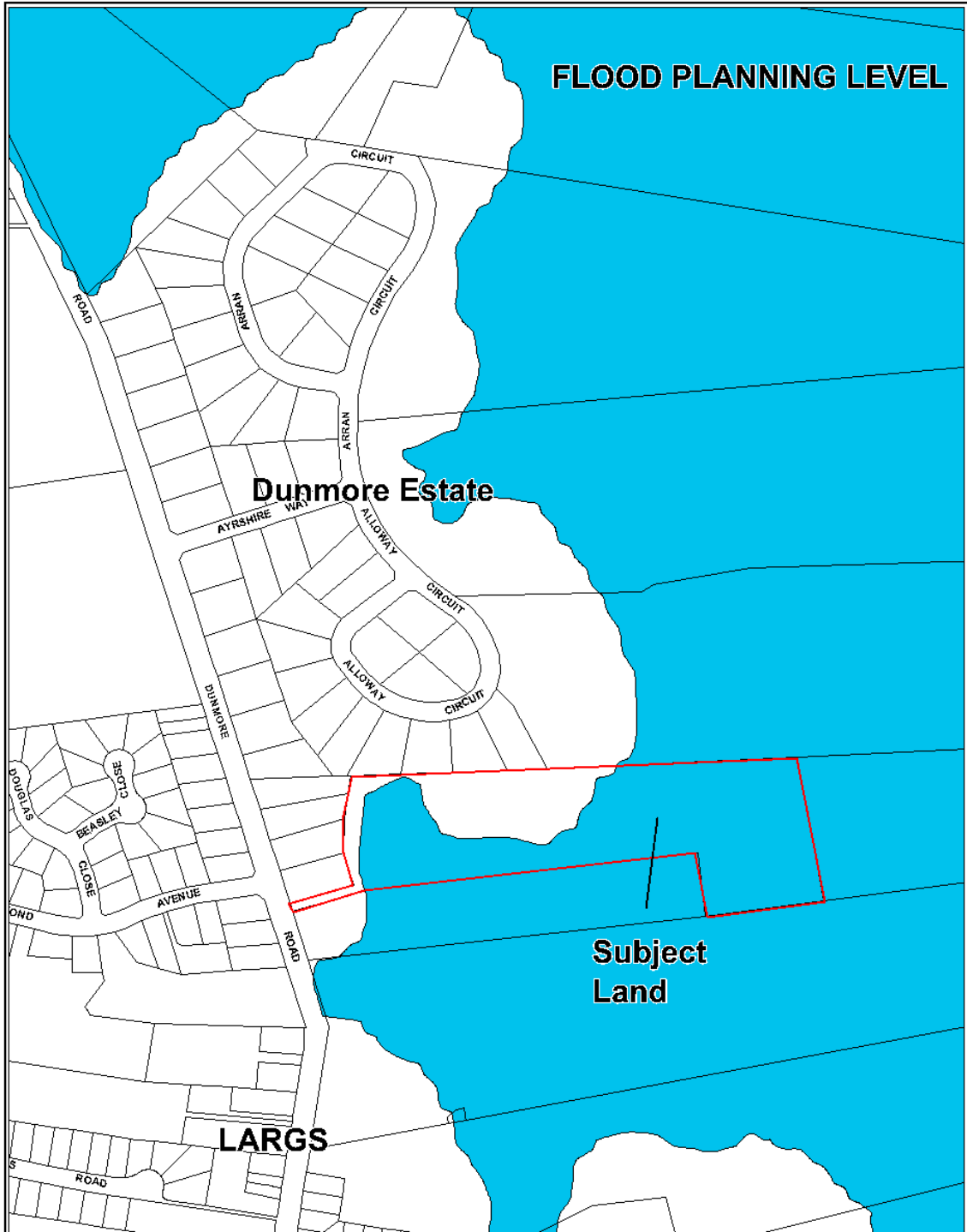
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Appendix B

Flood Planning Level Map





FLOOD PLANNING LEVEL

Dunmore Estate

Subject Land

LARGS



Scale 1: 000
 Printing Date: January 2016



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Appendix C

Existing Approved Subdivision Plan (DA 06-3021)



