



Planning Proposal

AMENDMENT TO THE MAITLAND LEP 2011

SPLIT-ZONE CLAUSE AND ADDITIONAL OBJECTIVE TO E4 ENVIRONMENTAL LIVING

Version 2.0
10/09/2013



CONTENTS

INTRODUCTION	1
PART 1: OBJECTIVES OR INTENDED OUTCOMES	3
PART 2: EXPLANATION OF PROVISIONS.....	3
PART 3: JUSTIFICATION FOR PROPOSED REZONING.....	4
SECTION A – NEED FOR THE PLANNING PROPOSAL	4
SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK	5
SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT	8
SECTION D – STATE AND COMMONWEALTH INTERESTS.....	8
PART 4: MAPS	8
PART 5: COMMUNITY CONSULTATION	9
APPENDIX ONE: EXAMPLES	10
APPENDIX TWO: GATEWAY DETERMINATION	14

Version 0.1 – 16.2.2012 (Report to Council for endorsement to Gateway Determination)
Version 2.0 – 10.09.2013 (Revised Gateway Determination)

Tables

Table 1: Relevant State Environmental Planning Policies.....	5
Table 2: s117 Directions.	6

Figures

Figure 1: Example of split zone scenario facilitated by the introduction of the proposed clause. ..	2
Figure 2: Louth Park.....	10
Figure 3: An example of an alternative zone for Louth Park. Min lot size remains 5000m ²	11
Figure 4: Aberglasslyn.....	12
Figure 5: Lochinvar.....	13

INTRODUCTION

This planning proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979. It explains the intended effect of, and justification for the proposed amendment to Maitland Local Environmental Plan 2011;

- To provide for split land use zones in certain circumstances; and
- To apply the E4 Environmental Living zone at the interface of the R5 Large Lot Residential and RU2 Rural Landscape zones where part of the lot is flood affected and additional lot area is required to achieve a good development outcome.

Council submitted a planning proposal to rezone land at 149 Aberglasslyn Road, Aberglasslyn and to introduce a clause to enable a 'split zone' scenario that resulted in lots less than the minimum lot size. The Department of Planning and infrastructure determined to treat the elements separately and advised Council to divide the proposal into:

1. The rezoning from RU2 Rural Landscape to RU2 and R1 General Residential (PP_2013_MAITL_001_00); and
2. The inclusion of a provision within the Maitland LEP 2011 to allow the subdivision of split-zoned lots that do not satisfy the minimum lot size (PP_2013_MAITL_002_00).

PP_2013_MAITL_001_00 has been publically exhibited and Council is waiting for the applicant to respond with additional information before sending it back to the Department for determination.

This updated planning proposal has been prepared to support PP_2013_MAITL_002_00.

The Hunter River meanders through the Maitland Local Government Area. Intermittent flooding of the floodplain is a key constraint for urban development in Maitland. The s117 Direction 4.3 'Flood Prone Land' prohibits Councils from zoning flood affected (1%AEP) land to a residential zone. Maitland continues to experience significant population and housing growth. Most of this growth is being provided for as detached housing in greenfield areas. The non-linear nature of the flood line often results in zoning patterns that are not practical for residential subdivision.

Under the previous Maitland LEP 1993, split-zones were used to achieve development outcomes at the urban - rural interface where the rural portion of the land is flood affected. The introduction of the Standard Instrument LEP has removed this option by prohibiting subdivision of lots less than the minimum lot size. There remain certain circumstances at the interface between RU2 Rural Landscape and R5 Large Lot Residential where part of the lot is flood affected that Council wishes to enable a development outcome. However this should only be facilitated where alternative design outcomes have been explored and are not practically feasible.

There are a number of other split-zone scenarios where subdivision is not permitted because an existing lot contains multiple zones and one or more of the zones is already under the minimum lot size. For example, a lot contains both R1 General Residential and RU2 Rural Landscape with minimum lot sizes of 450m² and 40ha and the area of the R1 is 1500m² and RU2 is 10ha. Under

the current LEP provisions Council cannot approve a subdivision as it would result in a RU2 lot less than the minimum (40ha). Other NSW Local Governments have introduced a clause to their LEPs that enable an original lot to be subdivided, and result in a lot (i.e. RU2) less than the minimum lot size, where that lot is attached to another lot (i.e. R1) that meets the minimum lot size for that lot (i.e. 450m²). This scenario can also occur between business or industrial and environmental or rural lands.

The inclusion of this clause would provide the solution to this issue in Maitland.

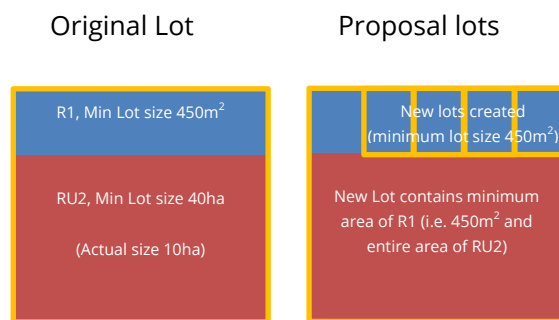


Figure 1: Example of split zone scenario facilitated by the introduction of the proposed clause.

PART 1: OBJECTIVES OR INTENDED OUTCOMES

The objectives of this planning proposal are to:

1. Enable the subdivision of land between R5 Large Lot Residential and R2 Rural Landscape where, to achieve minimum lot sizes, part of the lot needs to extend into the flood affected area.
2. Permit low density residential uses at the rural-urban interface.
3. Enable the subdivision of an original lot containing two or more zones where one lot is less than the minimum lot size.
4. Encourage a practical development outcome.
5. Achieve environmental objectives including flooding protection.
6. Protect prime agricultural land.

PART 2: EXPLANATION OF PROVISIONS

The planning proposal seeks to amend the Maitland LEP 2011 as follows:

1. To add the following objective to the E4 Environmental Living zone:
"To encourage practical development outcomes between areas of large lot residential and rural land where part of the land is affected by flooding by providing for low density residential development."
2. To introduce the following clause;

4.1x Minimum subdivision lot sizes for certain split zones
(1) The objectives of this clause are as follows:
(a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,
(b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.

(2) This clause applies to each lot (an original lot) that contains:
(a) land in a residential, business and industrial zone, and
(b) land in Zone RU2 Rural Landscape, Zone E2 Environmental Conservation or Zone E3 Environmental Management.

(3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:
(a) one of the resulting lots will contain:
(i) land in a residential, business or industrial zone that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land, and
(ii) all the land in Zone RU2 Rural Landscape, Zone E2 Environmental Conservation or Zone E3 Environmental Management, and
(b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

PART 3: JUSTIFICATION FOR PROPOSED REZONING

In accordance with the Department of Planning'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?

No. However, an assessment has been undertaken of a number of split zone scenarios in the Local Government Area. This has helped guide the solutions proposed in the planning proposal. These scenarios are detailed within this proposal.

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

The creation of split zones was permitted by the Maitland Local Environmental Plan 1993. However, the 2011 LEP that is based on the Standard Instrument LEP prohibits the subdivision of lots below the minimum lot size – thereby preventing split-zone lots that contain land that is zoned rural or environmental. In addition to being prohibited in terms of lot size, the rezoning of flood affected land to residential is not permitted by the s117 Ministerial Directions.

Council has considered a number of options to achieve the intended outcome. These include the following;

- a. The introduction of a specific local clause enabling the use of split-zones in certain circumstances.

There is significant risk in introducing an untested, local clause to facilitate split zone scenarios. It may result in unforeseen outcomes.

- b. Amending the minimum lot size maps for rural zoned land at these locations to sizes that achieve a practical development outcome; and

Amending minimum lot size maps is not strategic, is complex and risks undermining the integrity of the plan by setting precedence for reducing the lots size on rural zoned land.

- c. Do nothing.

The do nothing option, would result in certain developments that were expected or planned to occur under the previous LEP, not proceeding. It would also sterilise some land and result in impractical development outcomes in others.

The two approaches proposed in this planning proposal provide sufficient flexibility to achieve the desired outcomes and provides adequate controls to ensure that the flexibility is applied only in certain circumstances.

An amendment is required to enable the objective to be added to the E4 Environmental Living zone and the 'split-zone clause' to be introduced to the Maitland Local Environmental Plan.

The impact on rural lands is considered minor as this will only impact on rural land at the rural-urban interface.

3. Is there a net community benefit?

No net community benefit test has been undertaken for the proposal. There may be a benefit where better development outcomes are achieved in some circumstances

SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Lower Hunter Regional Strategy (NSW Department of Planning and Infrastructure) 2006

The LHRS 2006 does not consider this issue specifically.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Maitland Urban Settlement Strategy 2001-2021 (Maitland City Council) – 2010 Edition

The MUSS2010 provides no direction in relation to interface issues between rural and residential lands.

6. Is the planning proposal consistent with applicable state environmental planning policies?

There are a number of existing SEPPs that are relevant to the proposed development as outlined in this planning proposal. An assessment of relevant SEPPs against the planning proposal is provided in the table below.

Table 1: Relevant State Environmental Planning Policies.

RELEVANCE	CONSISTENCY AND IMPLICATIONS
SEPP (INFRASTRUCTURE) 2007	NOT APPLICABLE
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 affects the aims and provisions of this SEPP.
SEPP (RURAL LANDS) 2008	INCONSISTENT
Provides state-wide planning controls to facilitate the orderly and economic use and development of	The scenario the planning proposal is seeking to address usually occurs at the interface of residential

RELEVANCE	CONSISTENCY AND IMPLICATIONS
rural lands for rural and related purposes. In addition it identifies the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purposes of promoting the social, economic and environmental welfare of the State.	and rural zones and usually results in rural land (RU2 Rural Landscape) being zoned for residential (R5 Large Lot Residential) purposes. Therefore the planning proposal is inconsistent with the SEPP (Rural Lands) 2008 as it would facilitate the rezoning lands previously protected by the flooding constraint. Each application to apply the E4 Environmental Living to the urban-rural interface where part of the site is affected by flooding will require an application under Part 3 of the Act. Each of these applications will address the SEPP (Rural Lands) 2008 and therefore can be considered on its merits at that time.

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

The following table lists the relevant section 117 Ministerial Directions and provides a response to those.

Table 2: s117 Directions.

s117 DIRECTIONS	CONSISTENCY AND IMPLICATIONS
1. EMPLOYMENT AND RESOURCES	
1.1 Business and Industrial zones	Not applicable
1.2 Rural zones	Inconsistent
The objective of this direction is to protect the agricultural production value of rural land.	The proposal seeks to create a scenario where rural land is developed for environmental living purposes. The value of the rural land for agriculture will be considered on merit for each proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Not applicable
1.4 Oyster Aquaculture	Not applicable
1.5 Rural lands	Inconsistent
To protect the agricultural production value of rural land, and facilitate the orderly and economic development of rural lands for rural and related purposes.	The proposal seeks to create a scenario where rural land is developed for residential purposes. Each application to apply the E4 Environmental Living to the urban-rural interface where part of the site is affected by flooding will require an application under Part 3 of the Act. Each of these will address the SEPP (Rural Lands) 2008 and therefore can be considered on its merits.
2. ENVIRONMENT AND HERITAGE	
2.1 Environment Protection Zones	Consistent
The objective of this direction is to protect and conserve environmentally sensitive areas.	The planning proposal will restrict further fragmentation of environmentally zoned (E2/E3) land by requiring land below the minimum lot size to be retained in the residual lot.

s117 DIRECTIONS	CONSISTENCY AND IMPLICATIONS
	The use of the E4 Environmental Living zone at the R5/RU2 interface on land that is affected (in part) by flooding acknowledges the sites' environmental constraint.
2.2 Coastal Protection	Not applicable
2.3 Heritage Conservation	Not applicable
2.4 Recreation Vehicle Areas	Not applicable
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT	
3.1 Residential Zones	Inconsistent
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 proposal seeks to create a scenario where rural land is developed for residential purposes. Each application to apply the E4 Environmental Living to the urban-rural interface where part of the site is affected by flooding will require an application under Part 3 of the Act. Each of these will address the SEPP (Rural Lands) 2008 and therefore can be considered on its merits at that time.
3.2 Caravan Park and Manufactured Housing Estates	Not applicable
3.3 Home occupations	Not applicable
3.4 Integrating Land Use and Transport	Not applicable
3.5 Development Near Licensed Aerodromes	Not applicable
3.6 Shooting Ranges	Not applicable
HAZARD and RISK	
4.1 Acid Sulphate Soils	Not applicable
4.2 Mine Subsidence and Unstable Land	Not applicable
4.3 Flood Prone Land	Consistent
The direction aims to reduce the risk of flood and to ensure that the development of the flood prone land is consistent with the NSW Flood Prone Land policy	The proposal to use an E4 Environmental Living zone for large lot residential development that extends into the flood affected area will be required to demonstrate building envelopes that are above the flood planning level. The relevant development provisions relating to flooding will still apply and exempt and complying development is prohibited in E4 zones.
4.4 Planning for Bushfire Protection	Not applicable
REGIONAL PLANNING	
5.1 Implementation of Regional Strategies	Not applicable
This direction requires a draft amendment to be consistent with relevant state strategies that apply to the LGA	The LHRS2006 does not provide any direction for the proposed amendment.
LOCAL PLAN MAKING	
6.1 Approval and Referral	Unknown
The direction aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Council believes that these are the most efficient and appropriate mechanisms to achieve the intended outcomes.

SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

- 8. 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?**

The introduction of the 'split zone' clause will apply to environmental (E2, E3) zoned land. In an application to subdivide an existing lot with multiple zones that includes environmental zoned land, the environmentally zoned land cannot be subdivided below the minimum lot size but may be attached to a single residential allotment.

Council believes that this is an appropriate mechanism to prevent fragmentation of environmental land and to provide for its ongoing management.

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

None foreseen. Development will not be permitted below the flood planning level. Proponents will be required to demonstrate building envelopes can be provided above the flood planning level.

- 10. How has the planning proposal adequately addressed any social and economic effects?**

The mechanisms proposed in this planning proposal will enable Council to consider applications to rezone land in certain circumstances and allow the subdivision of land at the urban-rural interface for environmental living purposes and to achieve practical development outcomes.

It will also allow the development of those split-zone lots where development potential has been prohibited because of the imposition of the Standard Instrument LEP.

SECTION D – STATE AND COMMONWEALTH INTERESTS

- 11. Is there adequate public infrastructure for the planning proposal?**

Not applicable.

- 12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

The Gateway Determination stipulates that consultation with the Department of Primary Industries – Agriculture is required. Council is seeking an amended Gateway Determination as the scope of the planning proposal has changed.

PART 4: MAPS

No maps are provided. This is expected to be achieved by the introduction of a local clause and an additional objective to the E4 Environmental Living zone objectives.

PART 5: COMMUNITY CONSULTATION

In accordance with Section 57(2) of the Environmental Planning and Assessment Act 1979, community consultation must be undertaken by the local authority prior to approval of the planning proposal.

In accordance with Council's adopted Community Engagement Strategy (March 2009), consultation on the proposed rezoning will be to inform and receive feedback from interested stakeholders. To engage the local community the following will be undertaken:

- Notice in the local newspaper;
- Exhibition material and relevant consultation documents to be made available at Council's Libraries and at its Administration Building; and
- Consultation documents to be made available on Council's website.

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 proposed rezoning before proceeding to finalisation of the amendment.

Council is seeking a revised gateway determination. The revised gateway determination will stipulate the consultation requirements.

APPENDIX ONE: EXAMPLES

Louth Park

This is an example of a rural residential subdivision approved under the Maitland LEP1993. It illustrates lots extending into the R2 Rural Landscape zone land to achieve lots sizes around 5000m².

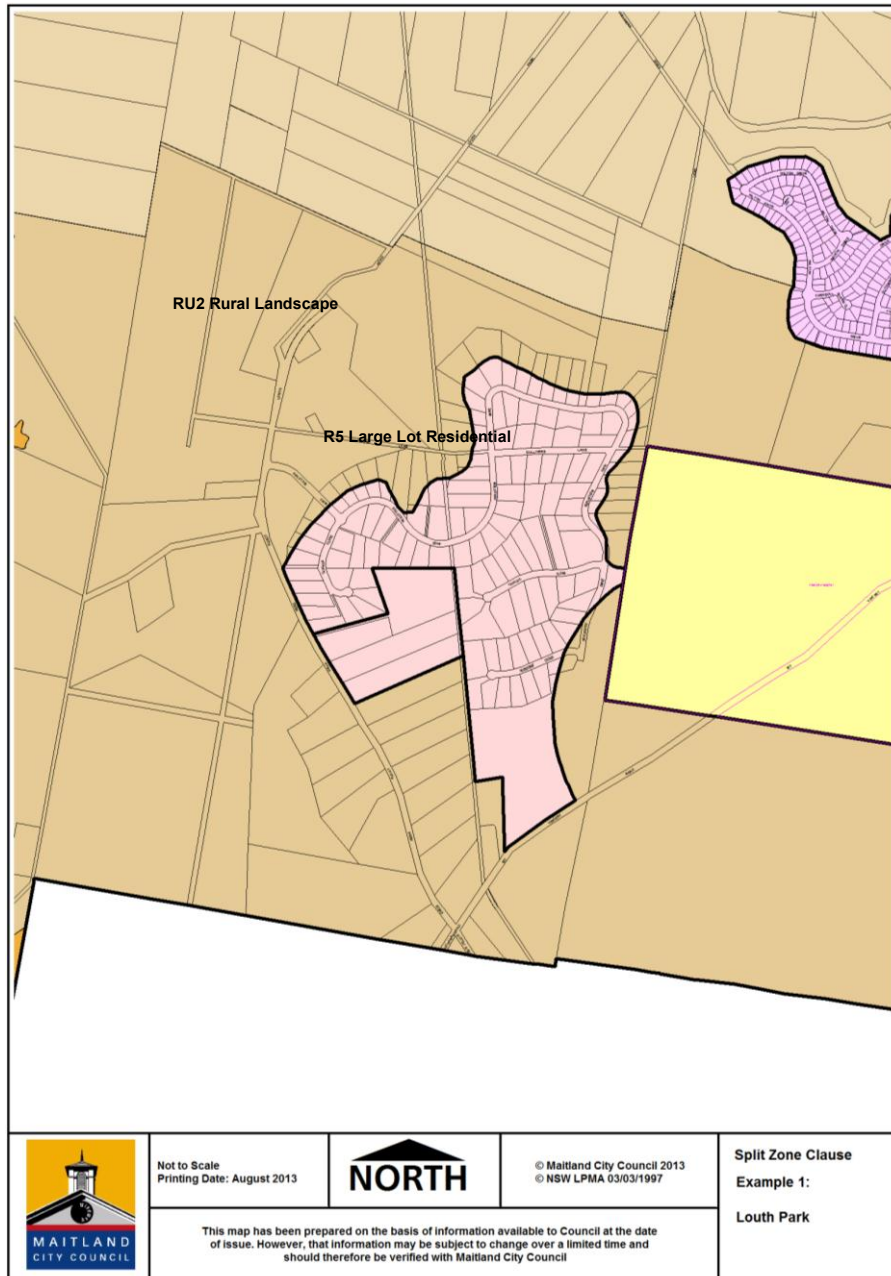


Figure 2: Louth Park.

Figure 3 is a hypothetical example demonstrating how the use of the E4 Environmental Living zone proposed in this planning proposal would be applied for those areas between R5 and RU2 and affected by 1%AEP flooding.

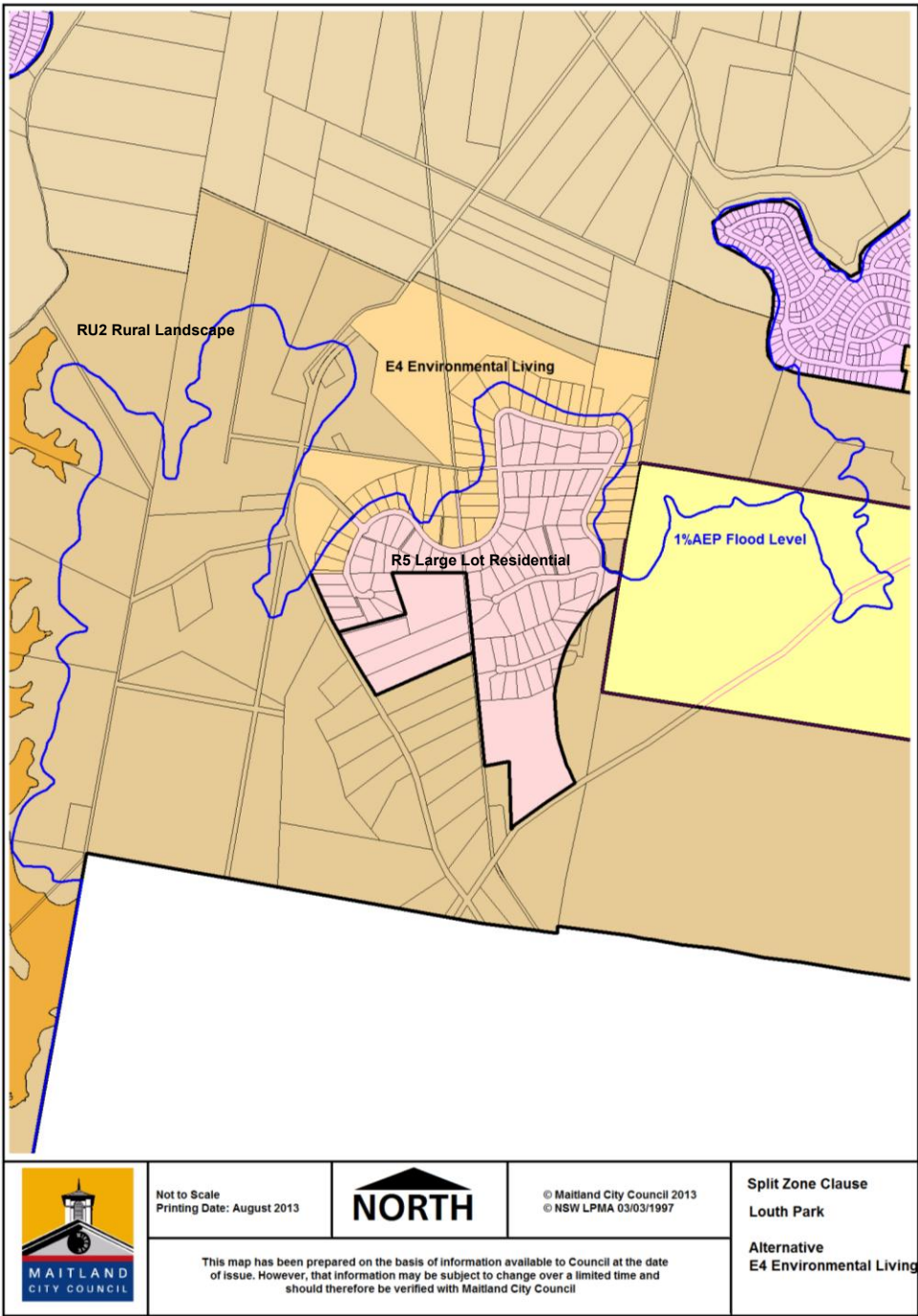


Figure 3: An example of an alternative zone for Louth Park. Min lot size remains 5000m².

Aberglasslyn

This is an example of an existing rural residential area that was approved under the previously LEP and where there are still subdivisions to occur (within the area highlighted in yellow). Under the Maitland LEP2013, the expected development scenario is for rural residential lots off an extension of Rivergum Drive containing an area of R5 Large Lot Residential and RU2 Rural Landscape. Under the proposed mechanism this would be zoned E4 Environmental Living with a minimum lot size of 5000m². In an application to rezone the area to E4 Environmental Living the proponent must demonstrate building envelopes above the 1%AEP flood level.

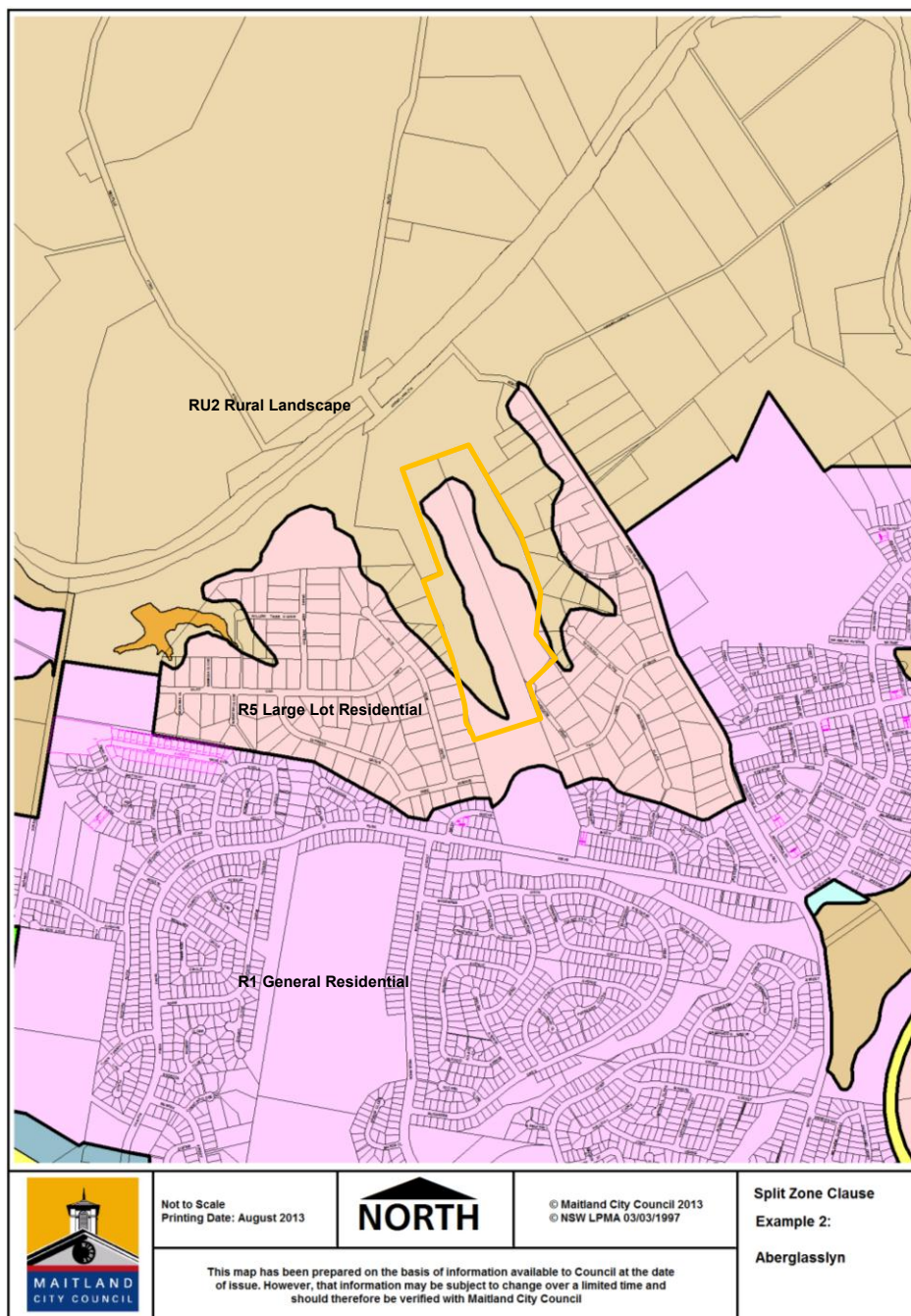


Figure 4: Aberglasslyn.

Lochinvar

This area at Lochinvar will result in management issues for the E3 – Environmental Management land. It is not intended to support the subdivision of the environmental management areas within each cadastral boundary. Under the proposed 'split-zone' clause, an area of E3 less than the minimum lot size must be attached to a single residual lot.

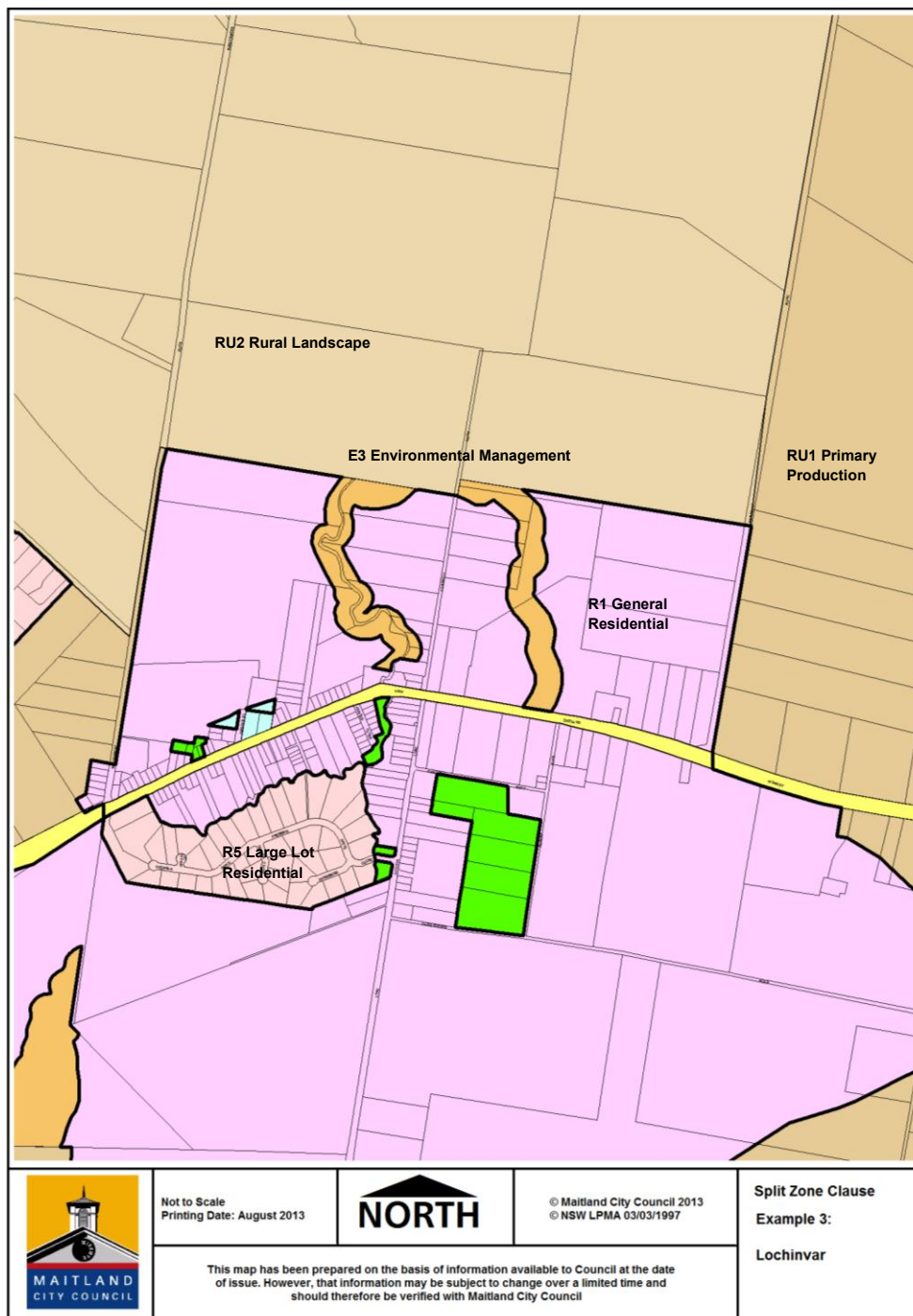


Figure 5: Lochinvar.

APPENDIX TWO: GATEWAY DETERMINATION

(PP_2013_MAITL_002_00) DATED 06.06.2013