

AUBURN CITY COUNCIL

August 15, 2012
To the Ordinary Meeting of Council

Director's Report
Planning and Environment
Department

166/12 Planning Proposal for 33 - 43 Cumberland Road, Auburn

PP-9/2011 AK: EG

SUMMARY

This report contains legal advice received by the General Manager and the planning rationale associated with the Planning Proposal for land at 33 - 43 Cumberland Road, Auburn.

RECOMMENDATION

1. ***That Council receive and note the legal advice obtained by the General Manager.***
2. ***That Council resolve to forward the attached Planning Proposal for 33 - 43 Cumberland Road, Auburn to the Department of Planning and Infrastructure pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 to amend the Auburn Local Environmental Plan 2010 as follows:***
 - (a) ***Rezone the land from RE1 Public Recreation zone to R2 Low Density Residential zone;***
 - (b) ***Amend the Minimum Lot Size Map to apply the minimum lot size notation of 450m²;***
 - (c) ***Amend the Height of Buildings Map to apply the 9m Maximum building height notation;***
 - (d) ***Amend the land Reservation Acquisition Map to remove the yellow highlight 'Local open space (REI)' notation.***

REPORT**1.0 Legal advice**

Council at its meeting of October 19, 2011 (Item 284/11) resolved below:

"Resolved unanimously on the motion of Clr Simms, seconded Clr Curtin that further consideration of the matter deferred until such time as the General Manager can obtained legal advice on the matter".

Council sought legal advice on Council's Planning Proposal for 33 - 43 Cumberland Road, Auburn (the subject land), to determine the potential litigation issues by the land owners as a consequence of the Council's failure to progress Council meeting resolution dated 19 March 2003 (Minute No. 109/03) as resolved below:

- "a) resolve to prepare and exhibit a draft Local Environmental Plan to rezone Nos 33 - 43 Cumberland Road, Auburn to 3(a) Business (Retail and Office Development) under the Auburn Local Environmental Plan 2000".*

The legal advice received by Council from Wilshire Webb Staunton Beattie suggests that Council should proceed to consider the report and the planning proposal and has summarised the current position of the subject land as follows:

August 15, 2012
To the Ordinary Meeting of Council

Director's Report
Planning and Environment
Department

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

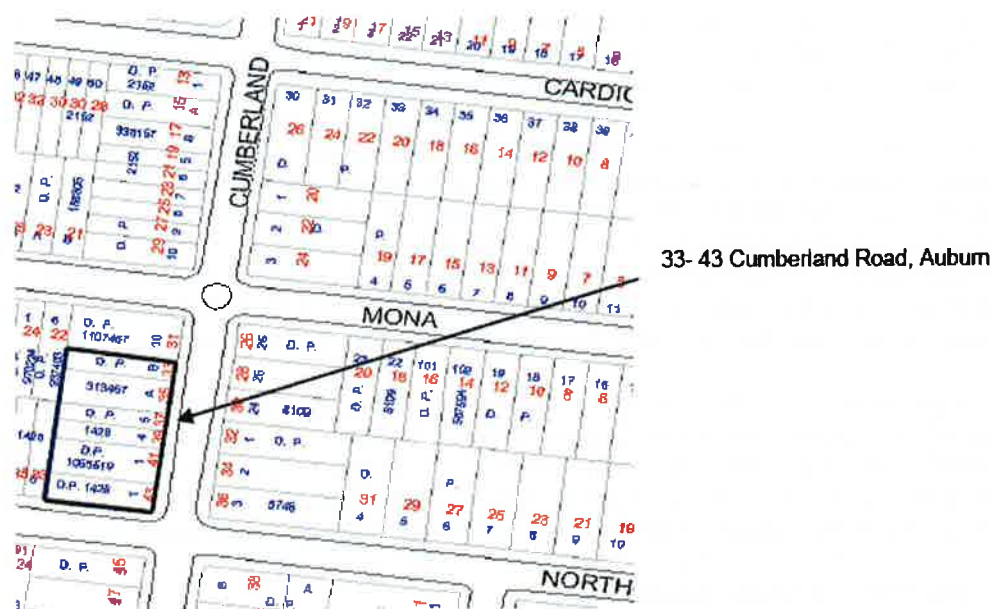


Figure 1- The subject land

2.1 AUBURN LEP 2010 ZONING AND OTHER PROVISIONS

2.1.1 Zoning

The subject land is currently zoned RE1 Public Recreation under *Auburn LEP 2010* as per Figure 2 below.



Figure 2 – Auburn LEP 2010 zoning

August 15, 2012
To the Ordinary Meeting of Council

Director's Report
Planning and Environment
Department

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

39 Cumberland Road, Auburn	GEAC property search indicates uses for a butcher shop and an accountancy practice.	Single storey brick dwelling with an attached shopfront structure used as part of the dwelling.	308.4
41 Cumberland Road, Auburn	Council's historical GEAC property records for 41 Cumberland Road, Auburn indicate that from around 1960's the existing lot has been used for various small business purposes such as for shoe/boot repairing, dry cleaning, jewellery, sale of arts and crafts between the period of 1960 – 2003, that has been approved by Council.	Two storey brick dwelling with a shopfront structure that is utilised as part of the dwelling.	576.5
43 Cumberland Road, Auburn	GEAC property search indicates uses for business (shops) such as fish and chips, mixed business and tobacconist approved by Council.	Single storey corner shop (business) with dwelling house.	436.1

2.2.2 Existing use rights

The predominant use on the subject land is residential development. Under existing use rights provisions the permissibility of business development, which had occurred in the past at Nos. 41, 39 and 37, have been extinguished as these parcels have been operating as detached dwellings for some time. An existing 'neighbourhood shop' and dwelling at No 43 is permissible within the proposed R2 Low Density Residential zone.

The existing detached dwelling development is not permissible in the RE1 Public Recreation zone as per *Auburn LEP 2010*. However, the development is permissible in the proposed R2 Low Density Residential zone.

August 15, 2012
To the Ordinary Meeting of Council

Director's Report
Planning and Environment
Department

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

Table 2 below provides a history of the Council resolutions pertaining to the subject land between March 2003 and October 2010.

Table 2: Chronology of Council decisions pertaining to the subject land

Chronology of Events	Milestones
19 March 2003 (Council meeting Item No 109/03)	Council resolved to prepare an amendment to the ALEP 2000 to rezone land for 33 - 43 Cumberland Road, Auburn from 6(a) Public Recreation zone to 3(a) Business (Retail and Office). Council resolved the following: <i>"a) resolve to prepare and exhibit a draft Local Environmental Plan to rezone Nos 33 – 43 Cumberland Road, Auburn to 3 (a) Business (Retail and Office Development) under the Auburn Local Environmental Plan 2000."</i> Council officers could not establish a clear reason through Council records as to why the rezoning of the above 6 lots to 6(a) Public Recreation zone under the ALEP 2000 occurred.
6 October 2004 (Council meeting Item No 474/04)	Council resolved to defer the DALEP 2000 (Amendment No.14) to address various anomalies that arose as a result of ALEP 2000. This included the zoning of the subject land.
20 October 2004 (Council Meeting Item No 517/04)	Council resolved to prepare the DALEP 2000 (Amendment No.14) as follows: <i>"5.2 To activate and include as part of this draft LEP Council's resolution from the meeting of 19 March 2003 to rezone Lots 1, 4, 5, DP 1428, Lot 1 DP 1055519 and, Lots A & B DP313267 known as 33-43 Cumberland Road, Auburn shown edged heavy black on Sheet 2 to 3(a) Business (Retail and Office Development) under the Auburn LEP 2000."</i>
11 January 2005 Council's Section 54(4) letter to DP&I	S.54 letter sent to DP&I informing Council has resolved to prepare the DALEP 2000 (Amendment No.14)
2 June 2005 Council's Section 65(1) Notice	S.65 certificate for Draft Auburn LEP 2000 (Amendment No.14) prepared and signed by Council. Note: Council had delegations to prepare and issue s.65 certificate for the Draft LEP.
8 June 2005 to 15 July 2005	Exhibition of Draft ALEP 2000 (Amendment No. 14)
12 December 2005 Parliamentary Counsel Opinion received	Parliamentary Counsel opinion received for DALEP 2000 (Amendment No.14) advising that the draft LEP may be legally made under section 68(4) of the EP&A Act 1979.
15 February 2006 (Council meeting Item No 014/06)	The Council report recommending adoption of Draft ALEP 2000 (Amendment No.14) was withdrawn from this meeting.

August 15, 2012
To the Ordinary Meeting of Council

Director's Report
Planning and Environment
Department

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

The zone change was undertaken because on a more detailed analysis there is no evidence which shows that the application of the 6(a) Public Recreation zone under Auburn LEP 2000 was an error, nor is there strategic planning support for the 3(c) Neighbourhood Business zone.

2.4 LEGAL ADVICE – (During preparation of Auburn LEP 2010)

In April 2010, prior to completion of the Comprehensive Auburn LEP 2010, legal opinion was sought to query the introduction of the R2 Low Density Residential zone because the DALEP 2010 was shortly to proceed to (the former) Section 68 stage. The legal advice recommended returning the public open space zone (i.e. the RE1 Public Recreation zone) which was the rollover zone from the former Auburn LEP 2000.

The current Auburn LEP 2010 notified (gazetted) by the Department of Planning and Infrastructure, applies the RE1 Public Recreation zone to the subject land.

3.0 SAVINGS & TRANSITIONAL PROVISIONS

The draft Auburn LEP 2000 (Amendment No.14), which proposed the application of the commercial zone, is affected by DP&I transitional provisions which came into effect on 1 July, 2010. These provisions affected those draft LEPs where a Section 65 Certificate had been issued before 1 July, 2009 but which had not proceeded to notification.

These Draft LEPs had to be finalised by 1 July 2010 or they will cease to have any status as draft LEPs. Because the draft ALEP 2010 (Amendment No. 14) was not finalised by 1 July 2010, it was subsequently extinguished. This means all resolutions pertaining to this draft LEP between 2003 and 2007 as shown by Table 2, have no effect. In short, draft ALEP 2000 (Amendment No.14) has no legal existence.

4.0 LAND ZONING CONCLUSIONS

The following conclusions support the rationale for the R2 Low Density Residential zone over the subject land.

1. The subject land does not have specific vision or direction as a 'Local Centre, 'Village' or a 'Neighbourhood Centre' under the *Metropolitan Plan for Sydney 2036*. However, the subject land is currently located within the north western fringe of the Auburn Town Centre's 800 metre walking catchment, as stipulated for 'Local Centres' by the Department of Planning and Infrastructure (Department of Planning 2010, p.59).

The subject land is consistent with the *Metropolitan Plan for Sydney 2036's* – "Action B1.3 - Aim to locate 80 per cent of all new housing within the walking catchments of existing and planned major centres of all sizes" (Department of Planning and Infrastructure 2010, p.65).

2. The *West Central Subregion Draft Subregional Strategy (WCDSS)* does not identify the subject land as a separate 'local centre' within Centres and Corridors Section nor as public open space. Given that the subject land is located within the Auburn Town Centre's north western fringe belonging to the 800 metre radius, the subject land is consistent with the *WCDSS's* – "Action C2.1 Focus residential development around Centres, Town Centres, Villages and Neighbourhood Centres" (Department of Planning, p.88).

August 15, 2012
To the Ordinary Meeting of Council

Director's Report
Planning and Environment
Department

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

5.0 LINK TO OPERATIONAL PLAN

This report relates to Action 2a.2 "Assessed and determine Planning Proposals" in the 2012/2013 Operational Plan.

ATTACHMENTS

1. Planning Proposal for 33-43 Cumberland Road, Auburn - T053043/2012

August 15, 2012
To the Ordinary Meeting of Council

320
Director's Report
Planning and Environment
Department

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

ATTACHMENT 1

Planning Proposal: 33 - 43 Cumberland Road, Auburn

Introduction

- Part 1 -** A statement of the **Objectives or Intended Outcomes** of the proposed LEP
- Part 2 -** An **Explanation of the Provisions** that are to be included in the proposed LEP
- Part 3 -** The **Justification** for those objectives, outcomes and provisions and the process for their implementation
- Part 4 -** Details of the **Community Consultation** that is to be undertaken on the planning proposal

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)
ATTACHMENT 1

Planning Proposal: 33 - 43 Cumberland Road, Auburn

Part 1 - Objectives or Intended Outcomes

The objective of the Planning Proposal is to provide an appropriate zoning and associated development standards which are consistent with existing land uses and the surrounding area as well as Council's strategic vision.

Part 2 - Explanation of Provisions

This Planning Proposal seeks to amend the Auburn LEP 2010 as per Tables 1 - 4 below.

- Amend the Land Zoning Map (LZN) Map (Tile LZN_002) as per Table 1:

Table 1 – LZN Map changes

Current (ALEP 2010)	Proposed amendment
RE1 (Public Recreation) Zone	R2 Low Density Residential zone

- Amend the Maximum Height of Buildings (HOB) Map (Tile HOB_002) as per Table 2:

Table 2 – HOB Map changes

Current (ALEP 2010)	Proposed amendment
Shown uncolored	9 metres

- Amend the Minimum Lot Size Map (LSZ) (Tile LSZ_002) as per Table 3:

Table 3 – LSZ Map changes

Current (ALEP 2010)	Proposed amendment
Shown uncolored	450 square metres

- Amend the Land Reserved for Acquisition (ACQ) Map (Tile ACQ_002) as per Table 4:

Table 4 – LRA Map changes

Current (ALEP 2010)	Proposed amendment
Shown Yellow and notated 'Local open space (RE1)'	Show uncoloured

The proposed maximum Height of Buildings and Minimum Lot Size controls are consistent with the Standard development standards Council applies to the R2 (Low Density Residential zone) throughout the Auburn Local Government Area.

Part 3 - Justification

A Need for the planning proposal

A1 Is the planning proposal a result of any strategic study or report?

No. This Planning Proposal seeks to fix an outstanding anomaly in Auburn LEP 2010.

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)
ATTACHMENT 1

Planning Proposal: 33 - 43 Cumberland Road, Auburn

Is the LEP likely to create a precedent or create or change the expectations of the landowners or other landholders?	No. However maintenance of the RE1 Public Recreation zone may cause landowners to approach Council to acquire the land under the requirements of <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	There are no other spot rezonings in the locality that are being considered.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	N/A.
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	No. The PP seeks to apply the R2 Low Density Residential zone over land which currently contains detached dwelling development. Density increases are possible by way of dual occupancies or secondary dwellings development in the proposed R2 zone.
Is the existing public infrastructure (roads, rail, and utilities) capable of servicing the proposal site?	Yes. The PP will not create any additional demand for public infrastructure.
Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?	The subject land proposed by the PP is currently serviced by Veolia bus route 908 only. The subject land is located within a reasonable 25 to 30 minute walking distance from the Auburn Railway Station (transit node) and the lands are constrained by access to bus transport services relative to other areas of Auburn.
Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	No change is anticipated.
Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?	No.
Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	There are no known land issues pertaining to the land.
Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	The Planning Proposal introduces the R2 Low Density Residential zone which is the predominant surrounding zone and reflects the surrounding land zone.
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	Not applicable.

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

ATTACHMENT 1

Planning Proposal: 33 - 43 Cumberland Road, Auburn

Table 6 - Consistency with State Environmental Planning Policies

No.	Title	Consistency with Planning Proposal
1	Development Standards	SEPP repealed by Auburn LEP 2010
4	Development Without Consent and Miscellaneous Exempt and Complying Development	Clause 6 and Parts 3 and 4 repealed by Auburn LEP 2010. Consistent with remainder
6	Number of Storeys in a Building	Consistent The Planning Proposal does not contain an objective to hinder the application of this SEPP
14	Coastal Wetlands	Not applicable
15	Rural Land sharing Communities	Not applicable
19	Bushland in Urban Areas	Consistent The Planning Proposal does not contain an objective to hinder the application of this SEPP
21	Caravan Parks	Not applicable
22	Shops and Commercial Premises	Not applicable
26	Littoral Rainforests	Not applicable
29	Western Sydney Recreation Area	Not applicable
30	Intensive Aquaculture	Not applicable
32	Urban Consolidation (Redevelopment of Urban Land)	Not applicable
33	Hazardous and Offensive development	Not applicable
36	Manufactured Home Estates	Not applicable
39	Spit Island Bird Habitat	Not applicable
41	Casino Entertainment Complex	Not applicable
44	Koala Habitat Protection	Not applicable
47	Moore Park Showground	Not applicable
50	Canal Estate Development	Not applicable
52	Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable
55	Remediation of Land	Not applicable The land is not affected by contamination.
59	Central Western Sydney Regional Open Space and Residential	Not applicable
60	Exempt and Complying Development	Not applicable - SEPP repealed by Auburn LEP 2010
62	Sustainable Aquaculture	Not applicable
64	Advertising and Signage	Not Applicable
65	Design Quality of Residential Flat Development	Not applicable
70	Affordable Housing (Revised Schemes)	Consistent The Planning Proposal does not contain an objective to hinder the application of this SEPP

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

ATTACHMENT 1

Planning Proposal: 33 - 43 Cumberland Road, Auburn

No.	Title	Consistency with Planning Proposal
9	Extractive Industry (No.2 - 1995)	Not applicable
11	Penrith Lakes Scheme	Not applicable
16	Walsh Bay	Not applicable
19	Rouse Hill Development Area	Not applicable
20	Hawkesbury-Nepean River (No.2 - 1997)	Not applicable
24	Homebush Bay Area	Not applicable
25	Orchard Hills	Not applicable
26	City West	Not applicable
28	Parramatta	Not applicable
29	Rhodes Peninsula	Not applicable
30	St Marys	Not applicable
33	Cooks Cove	Not applicable
	(Sydney Harbour Catchment) 2005	Not applicable

B3 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

See Table 8 below reviews the consistency with the Ministerial Directions for LEPs under section 117 of the *Environmental Planning and Assessment Act 1979*.

Table 8 - Consistency with applicable s.117 Ministerial Directions

1. Employment and Resources

No.	Title	Consistency with Planning Proposal
1.1	Business and Industrial Zones	Not applicable
1.2	Rural Zones	Not applicable
1.3	Mining, Petroleum Production & Extractive Industries	Not applicable
1.4	Oyster Aquaculture	Not applicable
1.5	Rural Lands	Not applicable

2. Environment and Heritage

No.	Title	Consistency with Planning Proposal
2.1	Environmental Protection Zones	Not applicable
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

	Title	Consistency with Planning Proposal
	Residential Zones	Consistent
3.2	Caravan Parks and Manufactured Home Estates	Not applicable
	Home Occupations	Consistent
	Integrating land use and Transport	Consistent
	Development near Licensed Aerodromes	Not applicable
3.6	Shooting ranges	Not applicable

Planning Proposal for 33 - 43 Cumberland Road, Auburn (cont'd)

ATTACHMENT 1

Planning Proposal: 33 - 43 Cumberland Road, Auburn

C2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no known environmental effects as a result of the planning proposal.

C3 How has the planning proposal adequately addressed any social and economic effects?

Whilst detailed assessment of the social and economic effects has not been undertaken, it is not anticipated that there will be great significant effects in this regard.

D State and Commonwealth Interests

D1 Is there adequate public infrastructure for the planning proposal?

Yes. The subject land currently functions as Low Density Residential development in accordance with the proposed zone. This Planning Proposal is not anticipated to create an increased demand for public infrastructure.

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

Consultation with appropriate State and Commonwealth public authorities has not yet been undertaken.

Part 4 - Community Consultation

A comprehensive community consultation engagement strategy will be prepared by Council that would include the following mechanisms:

- Advertisement in a local newspaper (i.e. the *Auburn Review*).
- Notification (via letter) to the following land holders:
 - Land owners who are affected by the proposal; and
 - Surrounding land owners.
- Advertise the proposal on the Council's website.
- Exhibit the Planning Proposal at the following locations:
 - Council's Customer Services Centre, 1 Susan Street, Auburn,
 - Auburn Library
 - Lidcombe Library
 - Regents Park Library
 - Newington Library
- Undertake any other consultation methods appropriate for the proposal if required.