

# Greater Sydney, Place and Infrastructure Plan finalisation report

IRF19/6151

**Local government area:** Cumberland

## 1. NAME OF DRAFT LEP

Auburn Local Environmental Plan 2010 (Amendment No. 28)

## 2. SITE DESCRIPTION

The planning proposal applies to land at 2 Percy St, Auburn, being Lot 1 DP 721683; Part Lot 14 and Lots 15-21 Section 1 DP 2647; and Lot 1 DP 76735 (Figure 1 below). The site is triangular in shape and has a frontage to Percy Street and Gelibolu Parade. The site area is approximately 7,300m<sup>2</sup> and contains a two-storey industrial warehouse, administration building and car park.

The site is located within the broader Gelibolu Precinct identified in the Auburn and Lidcombe Town Centre Strategy.



Figure 1: Aerial view of 2 Percy Street and surrounding area (Source: Cumberland Council)

### 3. PURPOSE OF PLAN

The draft LEP seeks to allow for educational establishments as an additional permissible use, via an amendment to Schedule 1 of the Auburn Local Environmental Plan (LEP) 2010. The draft LEP also seeks to apply a maximum Height of Building (HOB) of 12m, where none currently applies.

The proposed school seeks to accommodate up to 650 students (including 350 kindergarten/primary students and 300 secondary students) and 50 staff.

The draft LEP will not alter the existing IN2 Light Industrial zone for the site or any other development controls applying to the land.

#### State Significant Development Application

A state significant development (SSD) application for the new school was lodged by the proponent with the Department on 23 November 2017 with the Secretary's Environmental Assessment Requirements (SEARS) issued on 20 December 2017. The SSD seeks consent for the staged construction of the school and the Department is assessing the application (SSD 17\_8926).

### 4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Auburn state electorate. Ms Lynda Voltz MP is the State Member.

The site falls within the Blaxland federal electorate. The Hon Jason Clare MP is the Federal Member.

To the Central (GPOP) team's knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

### 5. GATEWAY DETERMINATION AND ALTERATION

The Gateway determination issued on 20 February 2018 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 16 July 2019 (**Attachment C**) to extend the time for completion.

The timeframe for finalisation was extended to 20 November 2019. The Department received the request by Council to finalise the planning proposal prior to the due date.

Prior to undertaking public exhibition, Council was required to satisfy the Gateway conditions. The Department is satisfied that Council has met the conditions of the Gateway determination as addressed in Table 1 (below).

Table 1: Compliance with the Gateway conditions.

Gateway Condition	Council's Response
Condition 1(a) required Council to provide further justification regarding the proposed additional permitted use rather than applying a land use zone that	Council officers and the proponent considered an option to rezone the site as SP2 Infrastructure (Educational Establishments). However, Council officers advised that this option was not favoured due to the following reasons: <ul style="list-style-type: none"><li>the SP2 use would unnecessarily limit the use of the site to only 'educational establishment' uses;</li></ul>

Gateway Condition	Council's Response
permits educational facilities.	<ul style="list-style-type: none"> <li>• under the Auburn LEP 2010, existing educational establishments are zoned under residential zones (R2, R3 and R4). Additionally, the SP2 Infrastructure zone prohibits 'educational establishments' under Auburn LEP 2010; and</li> <li>• retaining the IN2 zone with an additional use would provide greater flexibility for the use of the site in the longer term and allow for an appropriate transition of the site in a manner that is consistent with the strategic direction for "orphaned" industrial sites as described in the Auburn Employment Lands Strategy 2015.</li> </ul> <p>On 20 June 2019, Council provided this advice to the Cumberland Local Planning Panel prior to proceeding to public exhibition (<b>Attachment F</b>). The Panel recognised the demand for the educational establishment within the community and that the use on the site may be acceptable.</p>
<u>Condition 1(b)</u> required Council to prepare a Phase 1 – Preliminary Site Contamination Investigation Study.	A preliminary site investigation study has been prepared to address this condition ( <b>Attachment H</b> ). The study found that the site does not pose risk to human health or the environment. The proposal has addressed Gateway condition 1(b). It is noted that a Phase 2 – Detailed Site Investigation has been completed as part of the SSD application.
<u>Condition 1(c)</u> required Council to review and consider the proposed Floor Space Ratio (FSR) control and whether additional floor space could be supported on the site.	No changes were made to the proposed FSR. The proponent and Council agreed to maintain the current development standard of 1:1 FSR.
<p><u>Condition 1(d)</u> required Council to complete an updated traffic study for the Gelibolu precinct.</p> <p><u>Condition (e)</u> required Council to refer the planning proposal to Transport for NSW (TfNSW) and Roads and Maritime Services (RMS).</p>	<p>Council has updated the Draft Gelibolu Precinct Traffic and Access Study (prepared by GHD). The study has considered the cumulative impacts of the proposed school and the development yield proposed within the Gelibolu Precinct.</p> <p>On 24 September 2018, Council referred the planning proposal and Draft Gelibolu Precinct Traffic and Access Study to TfNSW and RMS for comments to fulfil requirements of the Gateway condition.</p> <p>Initially, the study identified a Church Street link extension over Sydney Trains land, which was not supported by the transport agencies. On 23 May 2019, TfNSW and RMS advised that the study is unlikely to inform any land acquisitions or specific site improvements. The advice also requested that the proposed Church Street link be removed from proposal.</p> <p>Subsequently, Council updated the traffic impact assessment (<b>Attachment I</b>) to:</p> <ul style="list-style-type: none"> <li>• remove the proposed Church Street link; and</li> <li>• address transport provisions as required for the SSD application, such as local road network.</li> </ul>

Gateway Condition	Council's Response
<p><u>Condition 1(f)</u> required Council to confirm local and state infrastructure requirements (including improvements for traffic, parking, transport, recreation and community facilities) to support the additional use.</p>	<p>The proposal does not identify any site-specific improvements or/and land acquisitions for the new school as per TfNSW and RMS advice and the revised traffic impact assessment.</p> <p>On 16 August 2019, the Australian Turkish Maarif Foundation met with Council to discuss the offer to enter into a VPA in relation to the SSD Application. Given that there are no contribution plans under Council's section 7.11 and 7.12 that would apply to the development, it is proposed that the proponent will provide a contribution of \$400,000 to Council by way of way a VPA.</p> <p>Upon considering the results of the exhibition of planning proposal, Council resolved to endorse the public benefit offer in principle. A VPA has not yet been prepared or executed, but Council has sought that this be enforced by way of a condition of consent for approval of the SSD should it proceed.</p> <p>The Department's Social and Other Infrastructure assessment team will consider this matter through the assessment of the SSD.</p>
<p>Prior to finalisation: <u>Condition 4</u> requires Council to review the proposed height of building control having regard to the findings of the view-line analysis being carried out as part of the Auburn and Lidcombe Town Centres Strategy.</p>	<p>As part of the broader Gelibolu Precinct, Council has undertaken a view line and building height analysis to inform the Auburn and Lidcombe Town Centres Strategy. The purpose of the study is to identify key sight lines to the Gallipoli Mosque and potential building envelope and other site-specific requirements for inclusion into Council's Development Control Plan (DCP).</p> <p>In accordance with the study, the view line analysis carried out for the site confirms a building height control of 12m and FSR of 1.2:1 can demonstrate that the views from the Gallipoli Mosque to the future school site will not be impacted or disrupted. It is noted that the proponent and Council have agreed to maintain the current development standard of 1:1 FSR.</p>

## 6. PUBLIC EXHIBITION

In accordance with Condition 2 of the Gateway determination, the proposal was publicly exhibited by Council from 17 July 2019 to 18 August 2019.

Council received 165 community submissions (163 submissions supporting the proposal and 2 submissions did not object nor support the proposal). The community submissions and Council's responses are in Appendix 24 of **Attachment A**.

Submissions in support highlighted the proposed relocation of the existing Maarif International Campus at Turella will improve travel time for the students, staff and parents who live within the Cumberland LGA. Submissions also noted that the proposed relocation will accommodate the need to cater for the growing population of children in the area and will be beneficial for the rest of the Auburn community.

It is considered that Council has adequately addressed the community submissions.

### Cumberland Local Planning Panel

While not required, an update on the proposal was provided to the Local Planning Panel on 20 June 2019 prior to proceeding to public exhibition (**Attachment F**). The Panel noted that the use may be appropriate, but that the scale and number of students proposed may be



excessive for the site. The Panel also noted that the use is inconsistent with the objectives of the IN2 Light Industrial zone.

The advice of the Panel is noted, however, the student population size and scale of development are matters which can be addressed through the SSD assessment.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult with Department of Education, Department of Industry – Crown Lands and Water Division, and the Department's Environment, Energy and Science (EES) Group (formerly the Office of Environment and Heritage) in accordance with Condition 3 of the Gateway determination.

Council received two submissions from EES and NSW Crown Lands (**Attachment G**). Council did not receive any comments from the Department of Education. Advice from the public authorities are summarised below.

### Environment, Energy and Science (EES)

EES raised concerns relating to inconsistencies between the exhibited planning proposal and the SSD. The main concerns were around the proposed students and staff being greater in the SSD than the planning proposal.

In light of the SSD, the following matters were raised in EES submission:

- provision of adequate open space provided on site for the students;
- biodiversity concerns related to the Duck River corridor due to potential increase usage by the proposed educational establishment;
- increase in urban tree canopy cover and identification of tree species;
- site landscaping and recommendation to use local native plants; and
- a recommendation for a site emergency response plan be prepared.

EES advised that Aboriginal cultural heritage may need to be considered in future development applications.

Council acknowledged the concerns relating to inconsistencies between the proposed student and staff population of the SSD and planning proposal. Council advised that the matters raised in EES's submission can be addressed as part of the SSD application. Council also notes that Aboriginal cultural heritage may be considered by the consent authority.

### *Department response*

The Department agrees with Council that the matters raised can be considered and addressed as part of the SSD application.

### NSW Crown Lands

NSW Crown Lands raised no concerns relating to the planning proposal.

## **8. POST-EXHIBITION CHANGES**

No changes were made to the planning proposal, due to the supportive nature of the submissions.

On 4 September 2019 at its Ordinary Meeting (**Attachment G**), Council resolved to proceed with the planning proposal without any post-exhibition changes.

## **9. ASSESSMENT**

### **9.1 Section 9.1 Directions**

At the time of the Gateway determination (**Attachment B**), the delegate of the Secretary agreed that the planning proposal's inconsistency with section 9.1 Directions 4.3 Flood Prone Land, is justified in accordance with the terms of the directions.

#### Direction 6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls.

The proposal is inconsistent with this direction as it seeks to introduce a new additional permitted use clause for the site to allow a particular development proposal to be carried out in addition those already contained in the existing IN2 Light Industrial.

However, the inconsistency is considered to be of minor significance as the proposal seeks to deliver a new school within a town centre location that has reasonable access to transport, community facilities, services and is expected to experience significant growth to meet changing needs of the community.

Therefore, it is recommended that the Secretary's delegate agree that any inconsistency with this direction is of minor significance.

### **9.2 State environmental planning policies**

#### State Environmental Planning Policy No 55—Remediation of Land

The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.

The Phase 1 preliminary site investigation prepared for the site examines the possible contamination risks from historical land uses. The report has found that the site does not pose risk to human health or the environment.

### **9.3 State, regional and district plans**

#### Central City District Plan

The Greater Sydney Commission released the Central City District Plan on 18 March 2018. The District Plan provides a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision of Greater Sydney. It is noted that the Gateway determination was issued prior to the release of the District Plan.

The planning proposal seeks to enable a new school on the site to meet the demand for school facilities within the Auburn Town Centre area and the Cumberland LGA. This is consistent with Planning Priority C3 Providing services and social infrastructure to meet people's changing needs. The District Plan states "planning for new schools must respond to growth and changing demand in innovative ways such as more efficient use of land, contemporary design, greater sharing of spaces and facilities, and flexible learning spaces".

Planning Priority C11 seeks to protect industrial land and is generally not supportive of losses of industrial land uses. While the additional permitted use facilitates the school use as an alternative use in the existing IN2 Light Industrial zone, it does not rezone the land and retains the flexibility for the site to be used for industrial purposes in the future by maintaining the industrial zoning.

This industrial land is identified under the District Plan as "review and manage" which involves undertaking a review of all industrial lands to confirm their retention or transition to higher order uses (such as business parks) and prepare appropriate controls to maximise

business and employment outcomes, considering the changing nature of industries in the area.

The District Plan also states that in limited cases, conversion to other uses may be appropriate. The Department considers that for this particular circumstance the adaptive reuse of the existing industrial building for a school is deemed appropriate as it:

- promotes the development of an urban infill school site in a location close to transport and community infrastructure;
- delivers a school location in a location expected to experience significant growth to meet community needs;
- enables an opportunity to provide more jobs; and
- is isolated from other industrial land and surrounded by residential uses (Figure 2 below), therefore the current industrial use is considered to be “orphaned”.

Therefore, the Department is satisfied that the proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

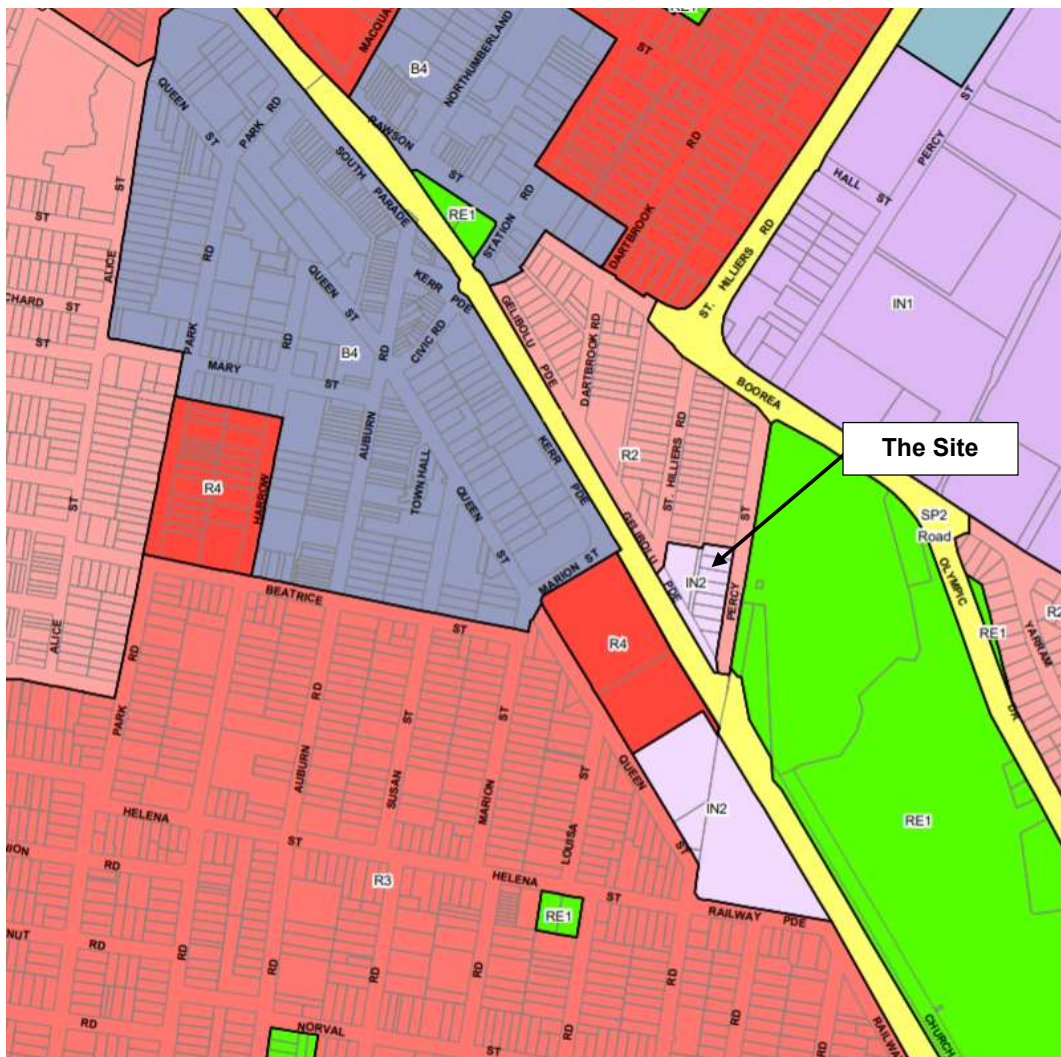


Figure 2: Current land use zoning map (Source: Auburn LEP 2010)

## 10. MAPPING

The draft LEP includes two maps (**Attachment Maps**) and an accompanying map cover sheet (**Attachment MCS**). The following maps are associated with this amendment:

Map	Map Identification Number
Height of Buildings Map HOB_002	0200_COM_HOB_002_010_20190923
Additional Permitted Uses Map APU_002	0200_COM_APU_002_010_20190923

The maps and map cover sheet have been approved by the Department's ePlanning Team and provided to Parliamentary Counsel.

## 11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment D**).

Council confirmed on 29 October 2019 that it was happy with the draft and that the plan should be made (**Attachment E**).

## 12. PARLIAMENTARY COUNSEL OPINION

On 1 November 2019, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

## 13. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the plan will facilitate the delivery of a new school within a town centre location with access to a train station, community facilities and services;
- it will enable the provision of local jobs contributing to the economic growth of the Auburn Town Centre while allowing for flexibility for future land uses;
- the school will address the educational and religious needs of the existing community; and
- the inconsistency with section 9.1 Direction 6.3 Site Specific Provisions is minor and justified.



13/11/19

**Jazmin van Veen**  
**Acting Manager Place and Infrastructure, Central (GPOP)**

Assessment officer: Peter Pham  
Senior Planner, Central (GPOP)  
Phone: 9860 1593