

COUNCIL MEETING
8th DECEMBER 2009

ATTACHMENT H

HOUSEKEEPING AMENDMENTS TO LEICHHARDT LEP 2000

Attachment H – PLANNING PROPOSAL

ITEM 8

34 - 40 NICHOLSON STREET & 5A DUKE PLACE, BALMAIN

Part 1 – Objectives or Intended Outcomes

This amendment proposes to rezone to '*Residential*' those portions of 34, 36, 38 & 40 Nicholson Street and 5A Duke Place that were incorrectly zoned '*Open Space*' during the preparation of LEP 2000.

Part 2 – Explanation of the Provisions

Rezone to '*Residential*' those portions of the following parcels of land incorrectly zoned '*Open Space*' under the Leichhardt LEP 2000:

Property Address	Legal Description
34 Nicholson Street	Lot 4 DP 624911
36 Nicholson Street	Lot 3 DP 706387
38 Nicholson Street	Part Lot 2 DP 706387
40 Nicholson Street	Lot 1 DP 624991
5A Duke Place	Lot 1 DP 514238

Refer to Appendix 1 for map of subject site.

Part 3 – Justification

Section A – Need for planning proposal

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

No, the anomaly was discovered by property owners and was brought to Council's attention in 2003.

The rationale is discussed as follows:

- Council gained right-of-footway easements across the properties of 34, 36, 38 & 40 Nicholson Street and 5A Duke Place in the course of development applications for the sites. This was consistent with Council's objective of securing public access to the foreshore.
- Unlike a lease, an easement does not give Council possession of the property. The land is still owned by the private property owner; however, the public can be entitled to walk across it. Council cannot undertake embellishments to the right-of-footway (unless pre-negotiated into the terms of the right-of-footway, which did not occur in this case). The right-of-footway is registered on the title of the affected property and so continues even if the property is sold.
- During the preparation of the Leichhardt LEP 2000, a decision was made to rezone the right-of-footway along the waterfronts and another 5-10 metres of these properties '*Open Space*'. The additional 5-10 metres was due to clause 26(5) of LEP 2000 – the application of which was originally thought would provide added flexibility for Council to undertake embellishments on the right-of-footway.
- Property owners were not consulted when rezoning of their properties took place and this was brought to Council's attention in 2003 however this issue has yet to be resolved.
- It has been clarified that the open space zoning applied to these properties does not expand the rights Council has under the terms of the right-of-footway. As mentioned, Council is unable to undertake any embellishment to the right-of-footway therefore the open space zoning was incorrectly applied.

- The consequence of the incorrect zoning is the imposition of additional and unreasonable limits on development for the owners of these private properties.

For more information refer to Council Report "*Housekeeping Amendments to Leichhardt LEP 2000*".

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

The proposal involves statutory amendments to the Leichhardt LEP 2000 therefore it is considered that the planning proposal is the best way of achieving the intended outcomes and objectives.

3. *Is there a net community benefit?*

As discussed, the planning proposal will clarify that the land is not open space but private residential land subject to right of footway easements. It will also remove the additional and unreasonable limits on development for the owners of these properties.

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 (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

The planning proposal is consistent with the objectives and actions contained within the *Inner West Draft Subregional Strategy*. It is considered that there are no policy changes, the proposed amendments are only to confirm the status of subject land as private residential properties with right of footway easements registered on the title.

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

The planning proposal is consistent with the following objectives of Council's Community Strategic Plan '*Leichhardt 2020+*':

3.2 "Develop a clear consistent and equitable planning framework and process that enables people to develop our area according to a shared vision for the community" and

6.1 "Apply our Values to deliver transparent, consistent, efficient and effective participative processes".

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

The planning proposal is consistent with State Environmental Planning Policies (refer to Appendix 2 & 3).

7. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 Directions) ?*

The planning proposal is consistent with Section 117 Directions (refer to Appendix 4).

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 proposal does not apply to land that has been identified as containing critical habitat or threatened species, populations or ecological communities, or their habitats. Should it be discovered through community consultation, or by another means, that species, populations, communities or habitats may be adversely affected, this will be taken into consideration and the planning proposal will be modified if necessary.

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

The proposal being of minor significance will not have any environmental effects. Where future development applications are lodged a full merit assessment of environmental effects will be made at the time.

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

Given the nature of the proposal it is not expected that the proposal will have any social or economic effects, other than those previously mentioned.

Section D – State and Commonwealth interests

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

Given the nature of the proposal (minor administrative changes) the above question is not considered relevant.

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

Consultation has not been carried out at this stage. This section of the planning proposal is completed following the gateway determination which identifies which State and Commonwealth Public Authorities are to be consulted.

Part 4 – Community Consultation

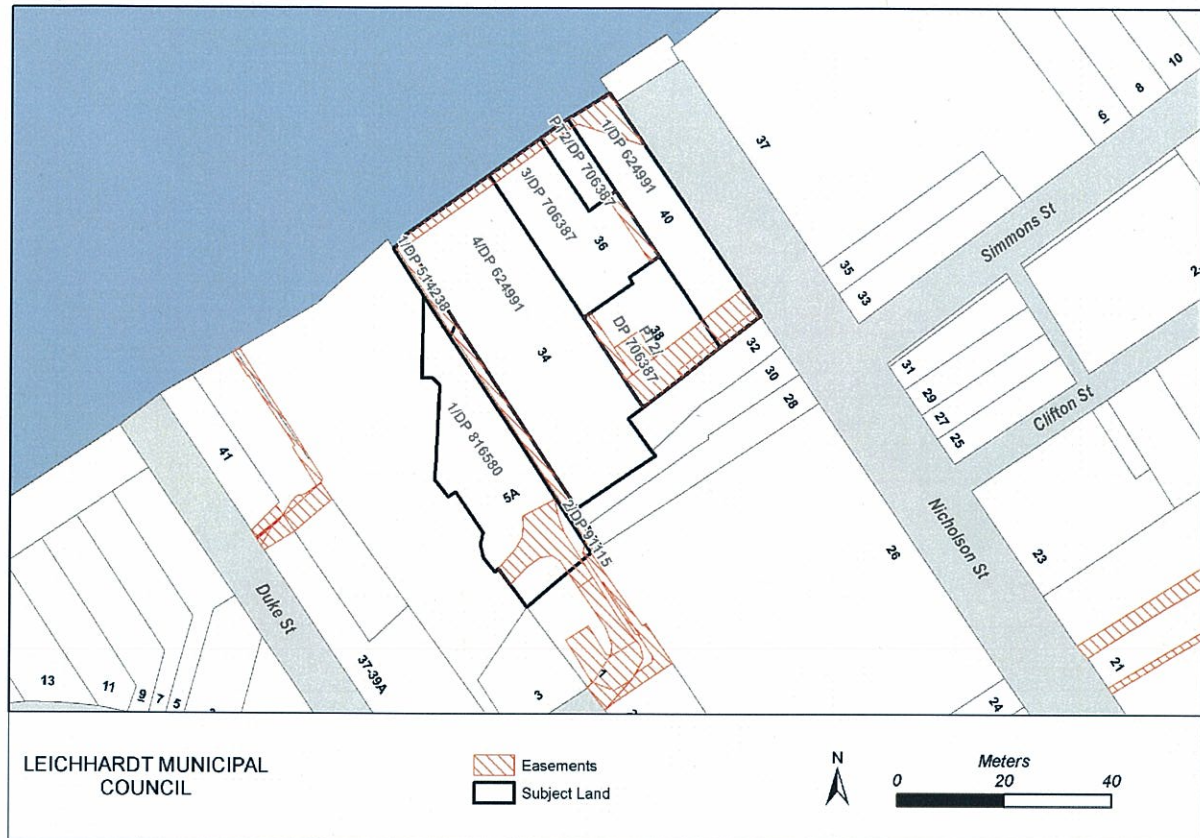
This component of the planning proposal is considered to be low impact, in that:

- it is consistent with the pattern of surrounding land uses;
- it is consistent with the strategic planning framework;
- presents no issues with regards to infrastructure servicing;
- is not a principle LEP and
- does not reclassify public land.

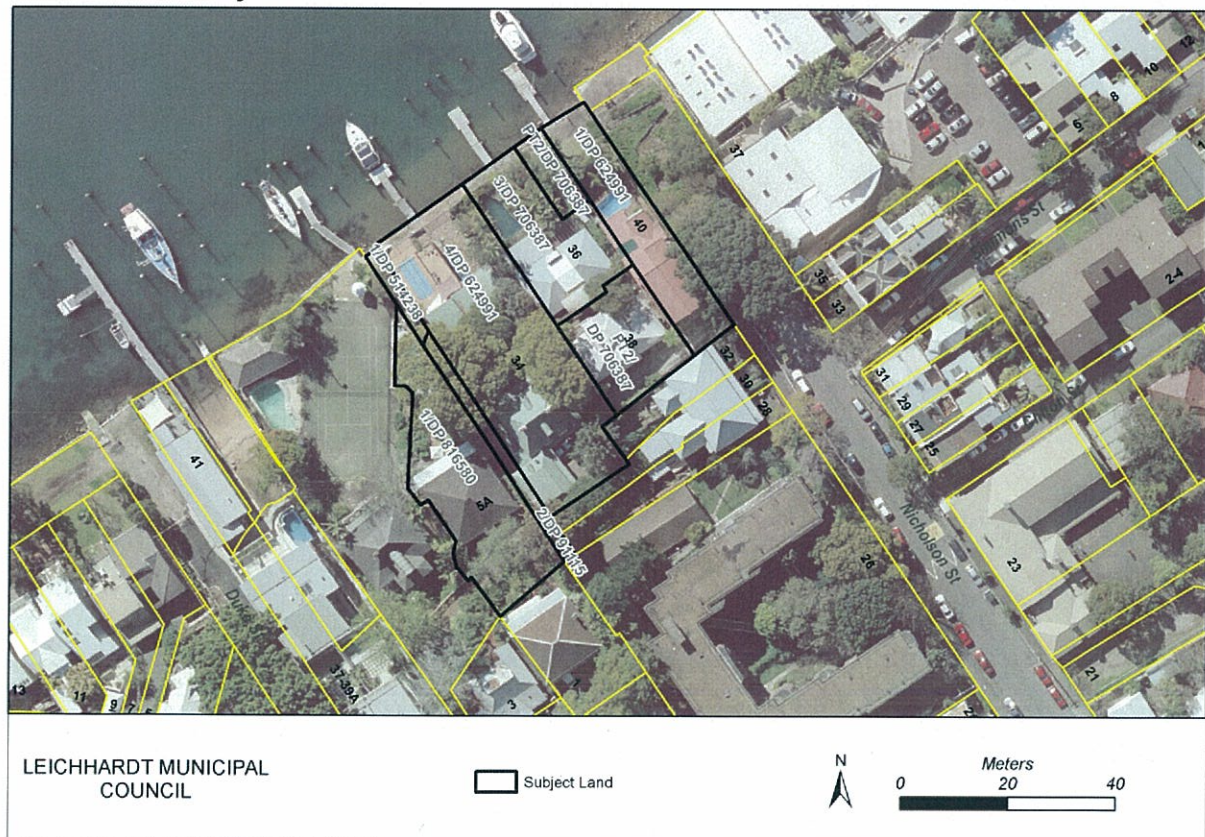
It is outlined in "A guide to preparing local environmental plans" that community consultation for a low impact planning proposal is usually 14 days. However it is Councils preference that the Housekeeping Amendment be exhibited for 28 days as other elements of the proposal are expected to require a longer exhibition period.

Appendix 1:

Subject Land



Aerial view of Subject Land



LEICHARDT MUNICIPAL COUNCIL

LEP 2000

- New Residential
- New Business
- New Industrial
- New Special Uses
- New Open Space
- Open Space to be Acquired
- Easements
- Subject Land

Meters
0 20 40

Appendix 2:

Consideration of State Environmental Planning Policies (SEPPs)

SEPP Title	Applicable	Consistent	Reason for inconsistency
1. Development Standards	No	N/A	
4. Development without Consent and Miscellaneous Complying Development	Yes	Yes	
6. Number of Storeys in a Building	No	N/A	
14. Coastal Wetlands	No	N/A	
15. Rural Landsharing Communities	No	N/A	
19. Bushland in Urban Areas	No	N/A	
21. Caravan Parks	No	N/A	
22. Shops and Commercial Premises	No	N/A	
26. Littoral Rainforests	No	N/A	
29. Western Sydney Recreation Area	No	N/A	
30. Intensive Agriculture	No	N/A	
32. Urban Consolidation (Redevelopment of Urban Land)	No	N/A	
33. Hazardous and Offensive Development	No	N/A	
36. Manufactured Home Estates	No	N/A	
39. Spit Island Bird Habitat	No	N/A	
41. Casino Entertainment Complex	No	N/A	
44. Koala Habitat Protection	No	N/A	
47. Moore Park Showground	No	N/A	
50. Canal Estate Development	No	N/A	
52. Farm Dams and Other Works in Land and Water Management Plan Areas	No	N/A	
53. Metropolitan Residential Development	No	N/A	
55. Remediation of Land	Yes	Yes	
59. Central Western Sydney Regional Open Space and Residential	No	N/A	
60. Exempt and Complying Development	No	N/A	
62. Sustainable Aquaculture	No	N/A	
64. Advertising and Signage	No	N/A	
65. Design Quality of Residential Flat Development	No	N/A	
70. Affordable Housing (Revised Schemes)	No	N/A	
71. Coastal Protection	No	N/A	
SEPP Affordable Rental Housing 2009	No	N/A	
SEPP Building Sustainability Index: BASIX 2004	No	N/A	
Exempt and Complying Development Codes) 2008	No	N/A	
Housing for Seniors or People with a Disability 2004	Yes	Yes	
SEPP Infrastructure 2007	Yes	Yes	
SEPP Kosciuszko National Park – Alpine Resorts 2007	No	N/A	
SEPP Major Development 2005	Yes	Yes	
SEPP Mining, Petroleum Production and Extractive Industries 2007	No	N/A	
SEPP Rural Lands 2008	No	N/A	
SEPP Sydney Region Growth Centres 2006	No	N/A	
SEPP Temporary Structures and Places of Public Entertainment 2007	Yes	Yes	
SEPP Western Sydney Employment Area 2009	No	N/A	
SEPP Western Sydney Parklands 2009	No	N/A	

Appendix 3:**Consideration of deemed State Environmental Planning Policies (SEPPs)
(former Regional Environmental Plans (REPs))**

REP Title	Applicable	Consistent	Reason for Inconsistency
5. Chatswood Town Centre	No	N/A	
8. Central Coast Plateau Areas	No	N/A	
9. Extractive Industry (No 2—1995)	No	N/A	
11. Penrith Lakes Scheme	No	N/A	
13. Mulgoa Valley	No	N/A	
16. Walsh Bay	No	N/A	
17. Kurnell Peninsula (1989)	No	N/A	
18. Public Transport Corridors	No	N/A	
19. Rouse Hill Development Area	No	N/A	
20. Hawkesbury-Nepean River (No 2—1997)	No	N/A	
24. Homebush Bay Area	No	N/A	
25. Orchard Hills	No	N/A	
26. City West	No	N/A	
28. Parramatta	No	N/A	
29. Rhodes Peninsula	No	N/A	
30. St Marys	No	N/A	
33. Cooks Cove	No	N/A	
SREP Sydney Harbour Catchment 2005	Yes	Yes	

Appendix 4:

Consideration of Ministerial Directions

s.117 Direction Title	Applicable	Consistent	Reason for Inconsistency
1. Employment & Resources			
1.1 Business and Industrial Zones	No	NA	
1.2 Rural Zones	No	NA	
1.3 Mining, Petroleum Production and Extractive Industries	No	NA	
1.4 Oyster Aquaculture	No	NA	
1.5. Rural lands	No	NA	
2. Environment & Heritage			
2.1 Environment Protection Zones	No	N/A	
2.2 Coastal protection	No	N/A	
2.3 Heritage Conservation	Yes	Yes	
2.4 Recreation Vehicle Areas	No	N/A	
3. Housing Infrastructure & Urban Development			
3.1 Residential Zones	Yes	Yes	
3.2 Caravan parks	No	N/A	
3.3 Home Occupations	No	N/A	
3.4 Integrating Land Use & Transport	No	N/A	
3.5 Development near licensed aerodromes	No	N/A	
4. Hazard & Risk			
4.1 Acid Sulphate Soils	No	N/A	
4.2 Mine Subsidence and Unstable land	No	N/A	
4.3 Flood Prone Land	Yes	Yes	
4.4 Planning for Bush Fire Protection	No	N/A	
5. Regional Planning			
5.1 Implementation of Regional Strategies	No	N/A	
5.2 Sydney Drinking Water Catchments	No	N/A	
5.3 Farmland of State and Regional Significant on the NSW Far North Coast	No	N/A	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	N/A	
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	No	N/A	
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	N/A	
5.8 Second Sydney Airport: Badgerys Creek	No	N/A	
6. Local Plan Making			
6.1 Approval and Referral Requirements	Yes	Yes	
6.2 Reserving Land for Public Purposes	No	N/A	
6.3 Site Specific Provisions	Yes	Yes	
7. Metropolitan Planning			
Implementation of the Metropolitan Strategy	Yes	Yes	