



## APPLICATION FOR A PLANNING PROPOSAL

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Amendment to the *Auburn Local Environmental Plan 2010* to reclassify land from 'community land' to 'operational land'

2-10 Victoria Street East, Lidcombe  
Lot 1 DP 1161392

Prepared for: Gabriss Pty Ltd

REF: M210307

Date: 28 July 2021





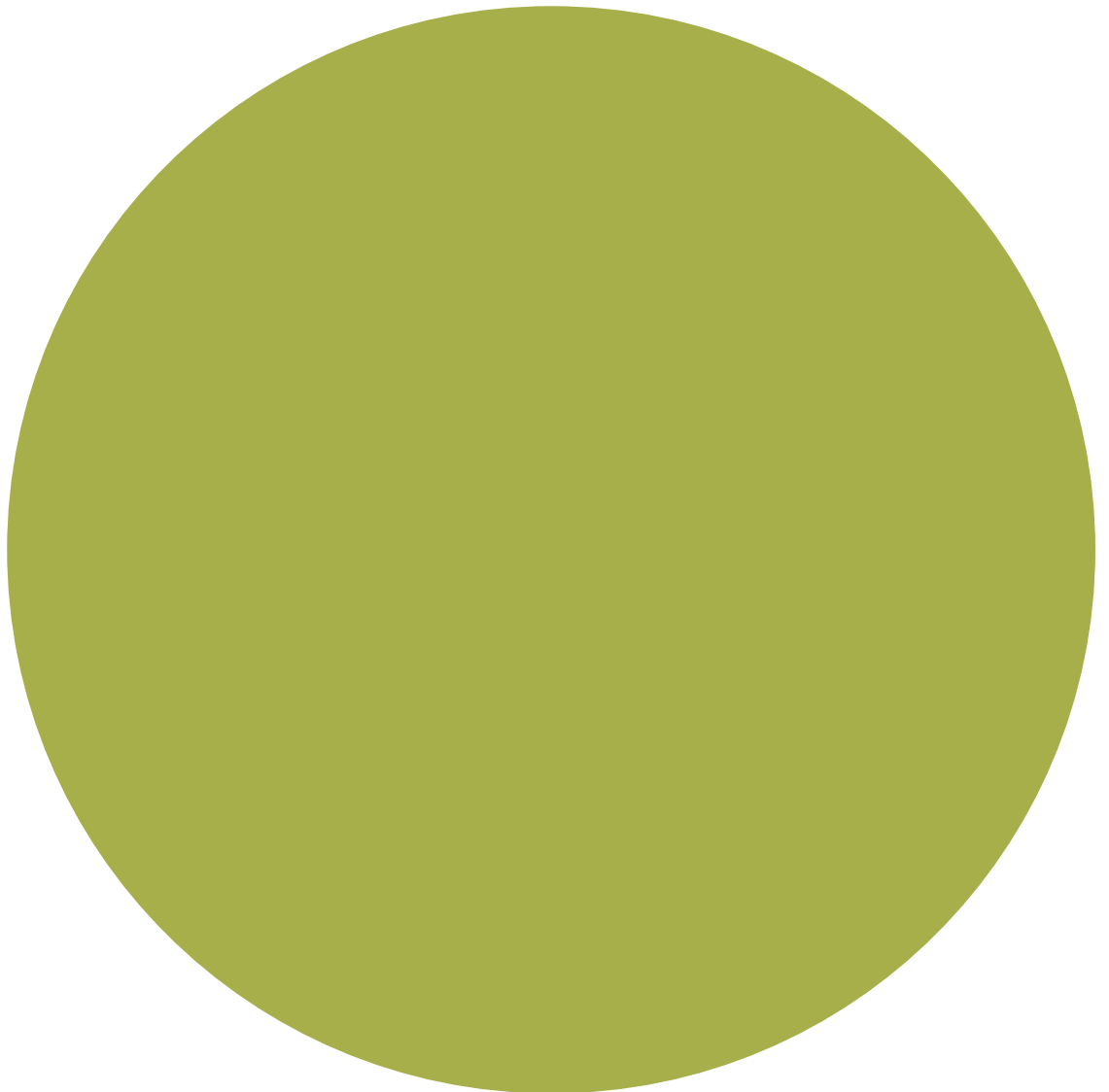
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# 1. Introduction

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This application is submitted on behalf of Gabriss Pty Limited to initiate a Planning Proposal process to reclassify a narrow strip of Council owned land traversing their land (2-10 Victoria Street East, Lidcombe (Lot C DP 384900)) through an amendment to the *Auburn Local Environmental Plan 2010* (ALEP). The land subject to this planning proposal is legally described as Lot 1 DP 1161392 and contains stormwater drainage infrastructure. The land is approximately 5 metres wide and traverses both Lot C DP 384900 (2-10 Victoria Street) and Lot 1 DP 135368 (49 East Street). The purpose of the proposal is to reclassify Lot 1 DP 1161392 from 'community land' to 'operational land' to enable its sale and further development in conjunction with the adjoining land (Lot C DP 384900). The proposal does not involve any change of zoning or other planning controls applicable to the land under the ALEP.

This application for a planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* as well as the NSW Department of Planning publications "*A Guide to Preparing Planning Proposals*" and "*A Guide to Preparing Local Environmental Plans*". It explains the intended effect of the proposed amendment to the ALEP and sets out the justification for making that plan.

The application demonstrates that the proposed LEP amendment has strategic and site-specific merit. Importantly, the proposed reclassification will allow for the orderly use and development of the subject land and adjoining Lot C DP 384900 in accordance with the provisions of the ALEP and the IN2 Light Industrial zone that applies to the land.

This report is divided into sections including a locality and site analysis, the planned future development scheme, the existing planning provisions, the draft planning proposal (including justification for the proposal and project timeline) and a conclusion.

## 2. Locality and Site Analysis

### 2.1 THE SITE

The subject site comprises a narrow strip of land approximately 5 metres wide passing through Lot C DP 384900 (2-10 Victoria Street East) and Lot 1 DP 135368 (49 East Street). The legal description of the land is Lot 1 DP 1161392 and it has an area of 727.2m<sup>2</sup>. The land is owned by Cumberland Council and is classified as 'community land' for the purposes of the *Local Government Act 1993*. The subject land and surrounds are shown in the aerial photo in Figure 1 below.



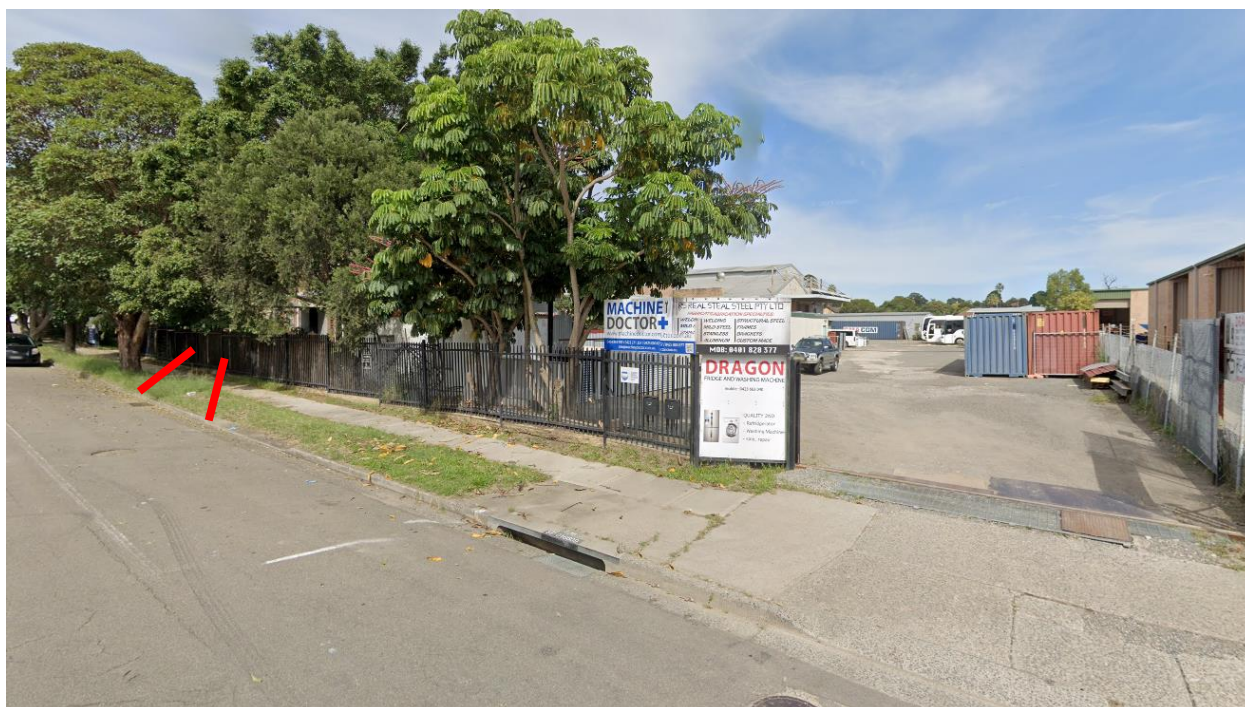
Figure 1 Aerial photo of site, with land area subject to this planning proposal outlined red (Source: Nearmap)



For practical purposes, it is considered that the entirety of the drainage lot should be reclassified as community land (rather than only that portion that traverses the applicant's site), particularly noting that this classification is inconsistent with Local Government Act provisions to classify drainage infrastructure as community land.

The subject land contains a stormwater drainage channel approximately 5 metres wide and 152 metres long and is part of a larger stormwater drainage network established in 1915 as the Rookwood Stormwater Channel. The channel is part of the Haslams Creek catchment and conveys stormwater runoff from the western parts of the Rookwood Cemetery and the Lidcombe urban area before emptying into Haslams Creek and ultimately the Parramatta River.

Through the subject site the channel is mostly open (approximately 96 metres) with part of the channel at its northern end (for about 56 metres) enclosed and below ground, covered by an existing industrial building. The location of the channel through the site is illustrated on the images below in Figures 2-5 with its approximate below ground location marked.



**Figure 2** Frontage of 2-10 Victoria Street East (facing southeast)





Figure 3 Frontage of 2-10 Victoria Street East (facing west)



Figure 4 No. 2-10 Victoria Street East viewed from East Street (facing northwest)







**Figure 5** Frontage of 49 East Street

## 2.2 SURROUNDING DEVELOPMENT

Lot 1 DP 1161392 containing the stormwater channel directly affects two land parcels being Lot C DP 384900 (2-10 Victoria Street East) and Lot 1 DP 135368 (49 East Street) severing these lots into two.

The property at 2-10 Victoria Street East (Lot C DP 384900) is owned by Gabriss Pty Limited and currently contains a mix of light industrial land uses across the site utilising existing buildings and hardstand areas. The stormwater drainage channel enters this site on its southern boundary as an open channel before passing below the existing building within an enclosed channel. The enclosed channel continues beyond the northern boundary of the site under Victoria Street East before returning to an open channel. Although the current configuration of the channel through 2-10 Victoria Street East within Lot 1 DP 1161392 does not directly affect the ongoing uses of the site, it limits the development potential of Lot C DP 384900 which is severed by Lot 1. Because Lot 1 DP 1161392 is Council owned community land, under the provisions of the *Local Government Act 1993*, it cannot be developed or leased for commercial purposes or sold until it is reclassified as operational land.

The property at 49 East Street (Lot 1 DP 135368) is owned by the Commonwealth of Australia and is identified as the Lidcombe Training Depot currently utilised for defence support purposes and Australian Air Force Cadets. Being located close to the front boundary of Lot 1 DP 135368, the stormwater drainage channel does not significantly affect the ongoing or future use of 49 East Street but is included in this planning proposal request for completeness.

The land surrounding the stormwater drainage channel and the above sites comprises the following:

- A range of light industrial uses immediately to the west of 2-10 Victoria Street East and to the north along East Street;



- Low density residential uses to the south, west and northwest; and
- The Rookwood Cemetery to the east.

The site and its surrounding context (including the continuation of the stormwater channel to the north and south) is illustrated in Figure 6.

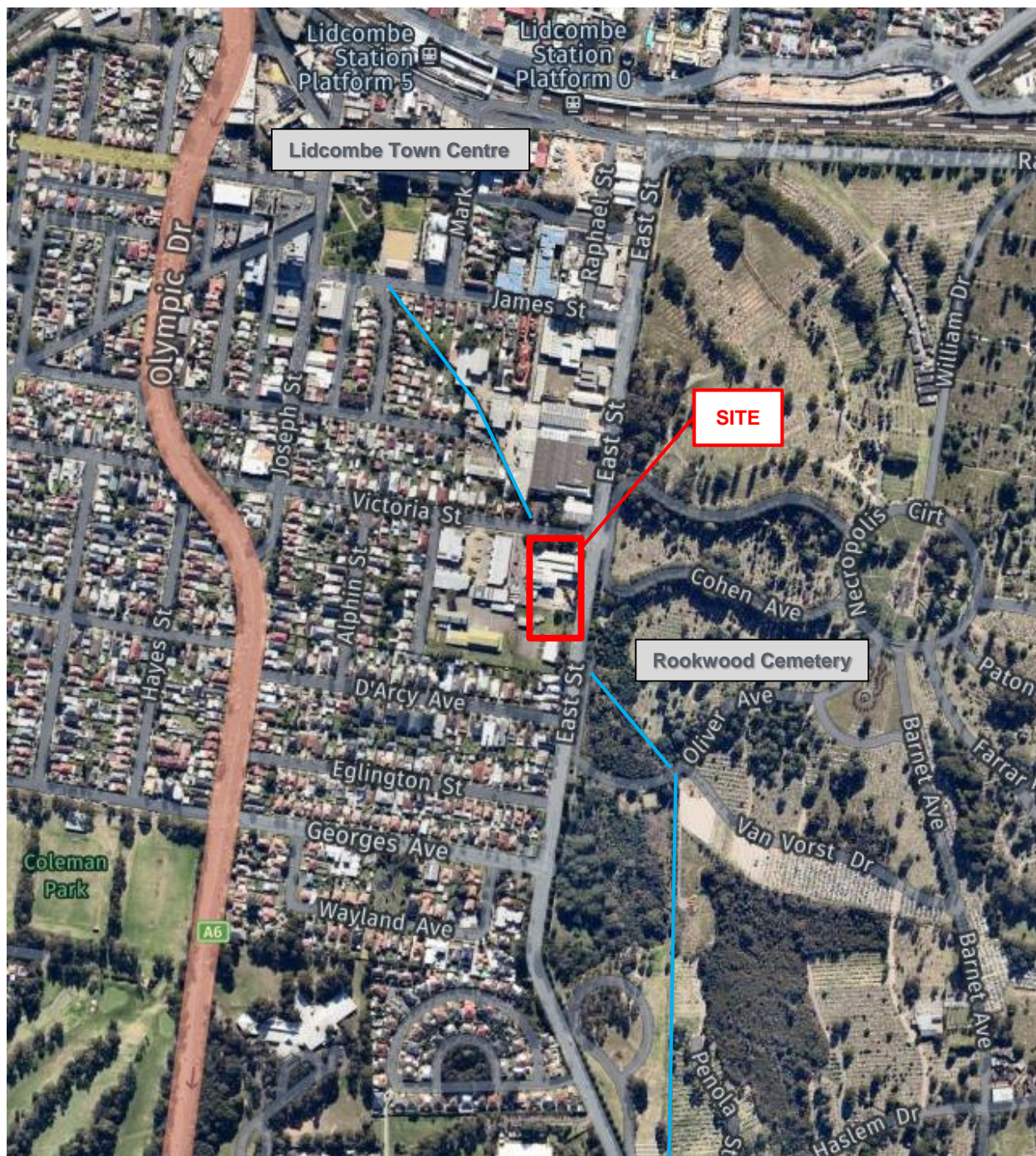


Figure 6 Local context of the site (Source: Nearmap)

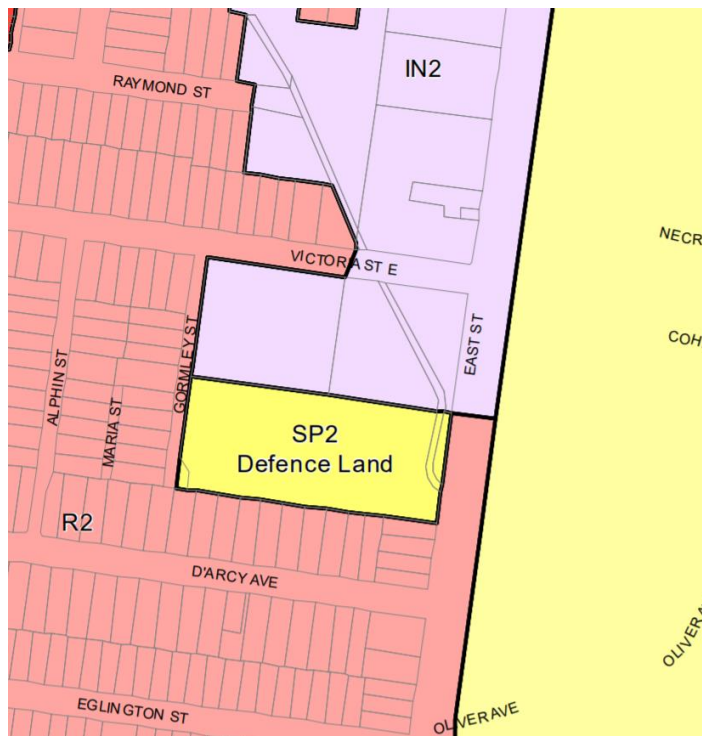
### 3. Existing Planning Provisions

This planning proposal application seeks an amendment to the *Auburn Local Environmental Plan 2010* (ALEP) to facilitate the reclassification of Council owned land from 'community land' to 'operational land' for the purposes of the *Local Government Act 1993*. The reclassification will facilitate the continuing use and development of the land for purposes consistent with the ALEP provisions. No changes to the existing planning provisions applicable to the land are proposed. For context, the general planning provisions applicable to the subject site are summarised below.

The site is within the Cumberland local government area and was formerly within the City of Auburn local government area prior to its amalgamation in 2016. The ALEP remains the primary land use planning instrument applicable to the subject site with the following planning controls applicable:

Table 1 Summary of Current Planning Controls under ALEP	
Control	Existing Provisions
Zone	IN2 (Lot C DP 384900 and adjoining part of Lot 1 DP 1161392) SP2 (Defence Land) (Lot 1 DP 135368 and adjoining part of Lot 1 DP 1161392)
Height of Buildings	N/A
Floor Space Ratio	1:1 (Lot C DP 384900 and adjoining part of Lot 1 DP 1161392 only)
Minimum Lot Size	1,500m <sup>2</sup> (Lot C DP 384900 and adjoining part of Lot 1 DP 1161392 only)

An extract of the ALEP zoning map is provided in Figure 7.



**Figure 7** Zoning of the site and surrounds (Source: ALEP Land Zoning Map – Sheet LZN\_007)





## 4. Planning Proposal

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### 4.1 PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The purpose of this planning proposal is to amend the *Auburn Local Environmental Plan 2010* (ALEP) to enable the reclassification of Lot 1 DP 1161392 from 'community land' to 'operational land'. The reclassification of the land to operational land will enable Council to sell or lease the land and enable its use for commercial purpose in accordance with the provisions of the *Local Government Act 1993* and the land use provisions of the ALEP. It is anticipated that, if the land is sold, Council will establish an easement over the stormwater drainage infrastructure.

### 4.2 PART 2 – EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by amending Schedule 4 of the ALEP to add reference to the reclassification of Lot 1 DP 1161392 from community land to operational land for the purposes of the *Local Government Act 1993*.

### 4.3 PART 3 – JUSTIFICATION

This section details the reasons for the proposed LEP amendment and is based on a series of questions as outlined in the Department of Planning and Environment's '*A Guide to Preparing Planning Proposals*'. The matters to be addressed include the strategic planning context of the amendments, potential State and Commonwealth agency interests, environmental, social and economic impacts.

#### 4.3.1 Section A - Need for the Planning Proposal

***Q1. Is the Planning Proposal a result of an endorsed local strategic planning statement, strategic study or report?***

No. However, it is noted that (subject to Council endorsement) the Planning Proposal will facilitate the ongoing use and future development of the land for light industrial and defence purposes consistent with the current ALEP zoning provisions.

***Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?***

Cumberland Council have advised that Lot 1 DP 1161392 is classified as 'community land' for the purposes of the *Local Government Act 1993* (LG Act). As community land, its use and development for private purposes is limited under the LG Act provisions. To enable the ongoing business and industrial use of the land or its sale or lease to enable future development, it needs to be reclassified as 'operational land'. The reclassification of community land to operational land must be undertaken by a local environmental plan in accordance with the requirements of section 27(1) of the LG Act.

#### 4.3.2 Section B – Relationship to Strategic Planning Framework

***Q3: Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?***

The reclassification of the subject site is consistent with the objectives and actions in the Central City District Plan and will facilitate the ongoing use and future development of the land in accordance with the desired outcomes in these strategies.





**Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

The reclassification of the land will enable the ongoing use of the site and the adjoining land for light industrial purposes and will facilitate the further development of the land consistent with the provisions of the ALEP. This gives effect to the identified priorities in the Cumberland 2030: Our Local Strategic Planning Statement for the Cumberland Council area that include:

- Priority 10 – Supporting a strong and diverse local economy across town centres and employment hubs,
- Priority 11 – Promoting access to jobs, education and care service, and
- Priority 12 – Facilitating the evolution of our employment and innovation lands to meet future needs.

Under Priority 12, the local strategic planning statement identifies actions to update planning controls to support employment and innovation lands in Cumberland. The reclassification of the subject site is consistent with the above strategic planning priorities and actions.

**Q5. Is the planning proposal consistent with applicable state environmental planning policies?**

The proposal is generally consistent with applicable State Environmental Planning Policies.

**Q6. Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?**

The proposal is consistent with all applicable Ministerial Directions under Section 9.1 of the *Environmental Planning and Assessment Act 1979* as outlined in the below table.

**Table 2 Section 9.1 Ministerial Directions**

Ministerial Direction	Relevance	Consistency	Comments
<b>1. Employment and Resources</b>			
1.1 Business and Industrial Zones	<p>The objectives of this direction are to encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified centres.</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"><li>(a) give effect to the objectives of this direction,</li><li>(b) retain the areas and locations of existing business and industrial zones,</li><li>(c) not reduce the total potential floor space area for employment uses and related public services in business zones,</li><li>(d) not reduce the total potential floor space area for industrial uses in industrial zones, and</li><li>(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning</li></ul>	Yes	The proposal protects employment land and will enable the orderly development of Lot C DP 384900 in conjunction with part of Lot 1 DP 1161392 in accordance with the provisions of the <i>Auburn Local Environmental Plan 2010</i> and the IN2 Light Industrial zone.

**Table 2 Section 9.1 Ministerial Directions**

**4. Hazard and Risk**

4.1 Acid Sulfate Soils	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. This direction applies to land shown on the Acid Sulfate Soils Planning Maps.	Yes	The site is identified as containing potential Class 5 acid sulfate soils on the mapping contained within the ALEP. The reclassification of the land will not result in any significant adverse environmental impacts and the future use and redevelopment of the site that may be facilitated by the reclassification will not increase this risk.
4.3 Flood Prone Land	The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> , and 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.	Yes	The site is within a "flood planning area" as identified on the ALEP Flood Planning Map with no changes to the flood planning provisions for the site proposed. The reclassification of the land will not affect or alter the current identified flood risk for the site. Any future development of the site facilitated by the reclassification can be designed to mitigate flood risk and address the flood planning requirements of Clause 6.3 of the ALEP.

**6. Local Plan Making**

6.1 Approval and Referral Requirements	<p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>• minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority,</li> <li>• not identify development as designated development unless the relevant planning authority has obtained the approval of the Director-General of the Department of Planning</li> </ul>	Yes	The planning proposal does not introduce any additional concurrence requirements or identify the development as designated development.
6.2 Reserving Land for Public Purposes	The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes and to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	Yes	The subject site contains public infrastructure but is not specifically identified for acquisition or reservation under the ALEP provisions. It is anticipated, following the completion of the land reclassification process, that Council will apply appropriate legal protections of the existing public infrastructure on the site prior to any future lease, sale or redevelopment of the land.

**Table 2 Section 9.1 Ministerial Directions**

6.3 Site Specific Provisions	<p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> <li>(a) allow that land use to be carried out in the zone the land is situated on, or</li> <li>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</li> <li>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</li> </ul>	Yes	<p>The planning proposal to reclassify the land is not inconsistent with this Direction. The reclassification of the land will not change the existing uses of the site and will facilitate the ongoing use and future development of the land for light industrial purposes consistent with the current ALEP provisions.</p>
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#### 4.3.3 Section C – Environmental, Social and Economic Impact

***Q7. 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 site is within an urban environment and does not contain habitat for threatened species, populations or ecological communities.

***Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?***

No other likely environmental effects are expected.

***Q9. Has the planning proposal adequately addressed any social and economic effects?***

The reclassification of the land is not expected to result in any adverse social or economic effects. The reclassification of the land from community land to operational land will facilitate the orderly use of the land and enable the continuation of its existing uses and will enable the future development of the site in association with the adjoining land consistent with the ALEP provisions. The reclassification of the land to operational land will provide Council with the ability to either lease or sell the land to enable its future development subject to appropriate protective measures for the public infrastructure within the site.

#### 4.3.4 Section D – State and Commonwealth Interests

***Q10. Is there adequate public infrastructure for the planning proposal?***

The planning proposal will not create any need for public infrastructure



***Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?***

A future Gateway determination will specify the list of agencies and public authorities required to be consulted and the methods and timing of such consultation.

#### **4.4 PART 4 – MAPPING**

The proposed reclassification of the land will not require any amendment of existing mapping or the addition of new mapping into the ALEP.

#### **4.5 PART 5 – COMMUNITY CONSULTATION**

It is expected that community consultation will be undertaken by Council following the initiation of the Planning Proposal process accordance with Council's Community Engagement and Participation Strategy and the legislative provisions of the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*.

#### **4.6 PART 6 – PROJECT TIMELINE**

It is anticipated that the project timeline will be clarified once Cumberland Council have reviewed the proposal.







## 5. Conclusion

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This planning proposal application seeks to initiate an amendment to the *Auburn Local Environmental Plan 2010* (ALEP) to enable the reclassification of Lot 1 DP 1161392 from 'community land' to 'operational land' for the purposes of the *Local Government Act 1993*. The proposal does not involve a change of zoning or other LEP development standards for the site, but rather the inclusion of the site as reclassified land in Schedule 4 of the ALEP.

This application for a planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as well as the NSW Department of Planning publications "*A Guide to Preparing Planning Proposals*" and "*A Guide to Preparing Local Environmental Plans*".

The application demonstrates that the proposed LEP amendment has strategic and site-specific merit. The reclassification of the land is consistent with the Central City District Plan, the Cumberland Council Local Strategic Planning Statement, applicable State Environmental Planning Policies and Ministerial Directions as prescribed by Section 9.1 of the EP&A Act.

The reclassification of the land from 'community land' to 'operational land' will enable the ongoing use of the site for light industrial uses as well as the leasing or sale of the land to facilitate the orderly development of the site and adjoining land for land uses consistent with the provisions of the ALEP and the IN2 Light Industrial Zone that applies to the site.

The planning proposal will not result in any unacceptable environmental effects as identified within this report.

Accordingly, this application for a Planning Proposal is entirely worthy of Council's support and the initiation of the reclassification and LEP amendment process is respectfully requested.