



PLANNING PROPOSAL

for

239 – 247 PACIFIC HIGHWAY, NORTH SYDNEY

To

AMEND NON-RESIDENTIAL FLOOR SPACE RATIO

referred to in Clause 31

NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2001

P.D. MAYOH PTY LTD
Architects
60 Strathallen Avenue
NORTHBRIDGE 2063
Tel: 9958.0488
Fax: 9958.6424

On behalf of

PETER VERSI INTERNATIONAL PTY LTD
Suite 4A / Level 1
2A Waters Road
NEUTRAL BAY 2089
Tel: 9909.3700
Fax: 9953.3885

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1. INTRODUCTION

P.D. Mayoh Pty Ltd have prepared a Development Application for a mixed use development at a site known as **239 – 247 Pacific Highway, North Sydney**.

It is intended to reduce the amount of non-residential floor space to .67:1 from the current 3:1 floor space as stipulated in the North Sydney Local Environmental Plan 2001. It should be noted that Council in their proposed Draft North Sydney Local Environmental Plan 2010 have reduced the non-residential floor space to .5:1 for this site.

Although technically the change of non-residential floor area is a standard within a planning instrument and could be made under a State Environmental Planning Policy No 1 (SEPP 1) Objection, that course has been discouraged following advice from Council, at a Pre-lodgment Meeting on 19 January 2011, that a Planning Proposal is the preferred course to follow.

Accordingly, this application is for revision of the minimum required non-residential floor area of 3:1 under the current North Sydney Local Environmental Plan 2001 (NSLEP 2001).

2. THE SITE & CONTEXT

The Site

The land is described as 239 – 247 Pacific Highway, North Sydney and incorporates Lot 1, DP 528054 + Lot 1 DP 186220, Lot 1 DP 597003 and SP 47574. It is located within the suburb of North Sydney on the eastern side of Pacific Highway, between McLaren and Berry Streets. The site is within the North Sydney CBD as shown on the Development Control Plan 2002 Planning Area Boundaries.



Figure 1: Location Plan

The combined site is rectangular in shape with 2 frontages; fronting onto Pacific Highway and backing onto Angelo Street. The site has the following boundary dimensions:

- Pacific Highway boundary 50.995 metres (western boundary)
- Angelo Street boundary 49.17 metres (eastern boundary)
- 22.375 metres to the northern boundary
- 24.79 metres to the southern boundary.

The area of the site is 1173.2 m² (refer to the Site Survey Plan attached under separate cover).

The land is sloping with a cross fall of approximately 3.2 metres along its long axis facing Pacific Highway and Angelo Street at the rear.

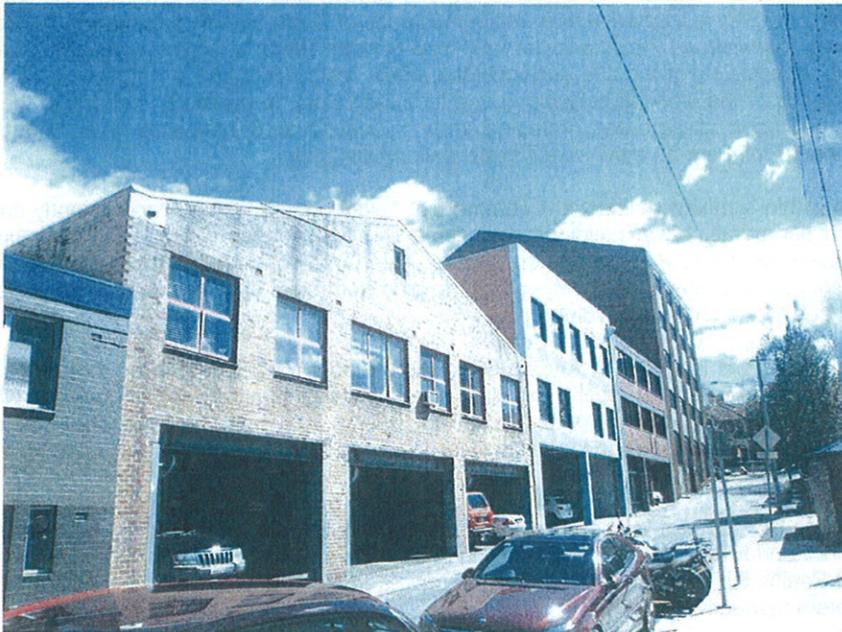


Figure 2: Aerial Photo of Site

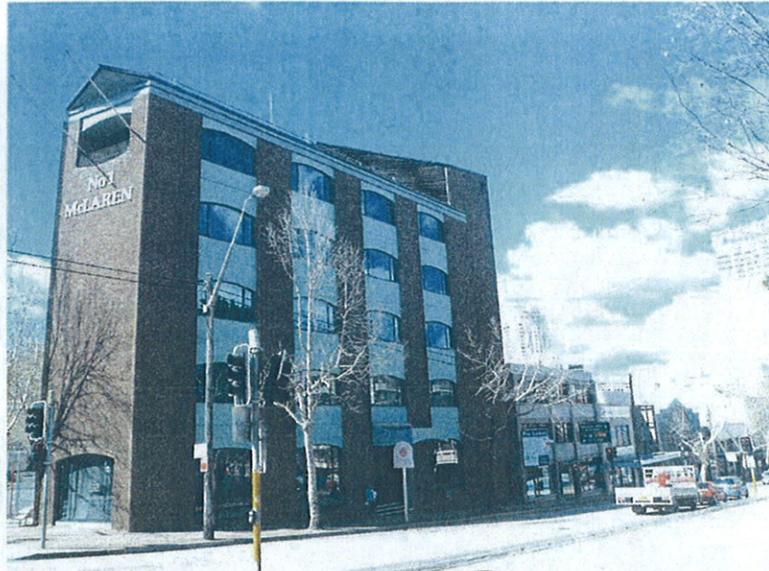
Existing buildings on the site are 3 x 2 storey commercial buildings with ground level parking at the rear, obscured from the street (refer photographs 1, 2 and 3).



Photograph 1: View of existing buildings from Pacific Highway.



Photograph 2: View of existing buildings from Angelo Street.



Photograph3: View from corner of site looking towards Berry Street.

The context and surrounding development

Pacific Highway runs north-south parallel to the Expressway and the site is therefore oriented east-west. Pacific Highway is located within walking distance of North Sydney's central business district. North Sydney 'Greenwood Plaza' and the retail end of Miller Street is located within 300 meters and 150 meters respectively of the site and includes cafes, restaurants and a range of retail outlets to serve the needs of the working population and local residents. In particular, access to the harbour foreshores and open space areas, including North Sydney Oval, St Leonards Park, Anderson Park and McMahons Point are all within reasonable walking distance.

The site is within a mixed residential / commercial neighborhood which predominantly consists of residential apartments, office buildings and some dwelling houses within a Conservation Zone, which is located at the rear of the site on Angelo Street and along McLaren Street. The residential development in this locality is relatively mixed, ranging from older style two storey dwellings to older style three and four storey flat buildings.

To the rear of the site is Monte St Angelo Girls' High School. Directly to the north of the site at the corner of McLaren Street and Pacific Highway is a five storey commercial brick building which also backs onto Angelo Street. This neighboring building has an 18.1 meter high parapet to the corner of McLaren Street and Pacific Highway and a 26.15 meter high parapet on its southern boundary abutting the subject site.

Immediately to the south of the site is a single storey commercial building with an allowable height limit of RL125 under the current NSLEP, which equates to 45.8. Further towards the corner of Berry Street and Pacific Highway, the height limit increases to RL 135 and RL 145, which equate to 61 and 73 meters respectively.

The site is located at the start of the North Sydney CBD as shown on the CBD map. This is an area under 'transition' from its low scale commercial rising to mid and high rise mix use and commercial buildings of the North Sydney Centre. As per NSLEP, the future developments along this section of Pacific Highway will mark the start of North Sydney Centre.

3. STATUTORY CONTEXT

The subject site is currently zoned Mixed Use under the North Sydney Local Environmental Plan 2001 (NSLEP 2001), gazetted on 1 June 2001 and last amended in July 2010.

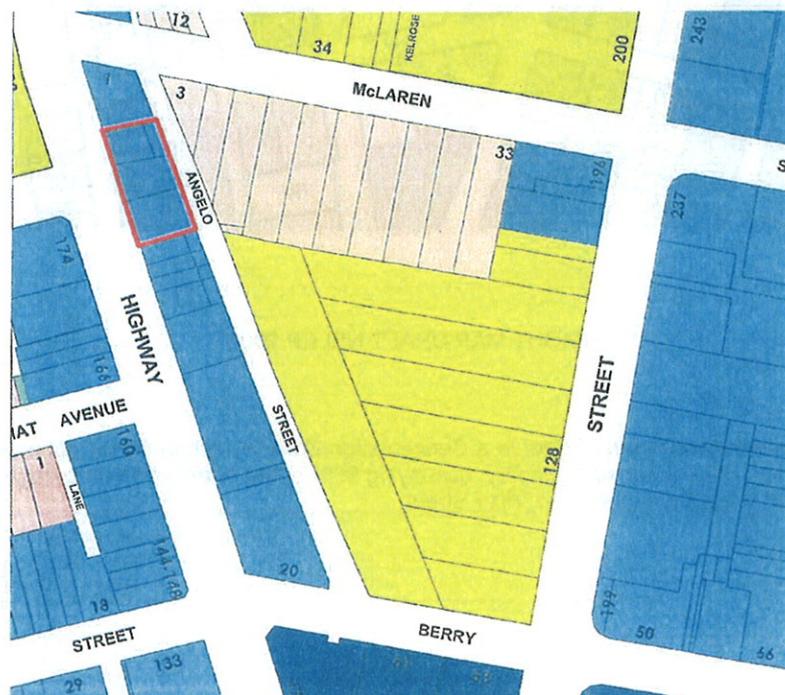
The site will continue to be zoned for Mixed Use under the Draft amending the LEP of 2009.

Clause 9 of NSLEP 2001 outlines the objectives of the zone and includes a Development Control Table for land uses in the zone. As prescribed by the clause, permissible development with consent includes residential apartment buildings, commercial premises, community facilities, medical centres, refreshment rooms, retail, showrooms, take away food shops and taverns.

The particular objectives of the Mixed Use Zone are to:

- "1(a) Encourage a diverse range of living, employment, recreational and social opportunities, which do not adversely affect the amenity of residential areas, and*
- (b) Create interesting and vibrant neighborhood centres with safe, high quality urban environments with residential amenity, and*
- (c) Maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at lower levels and residential above, and*
- (d) Promote affordable housing."*

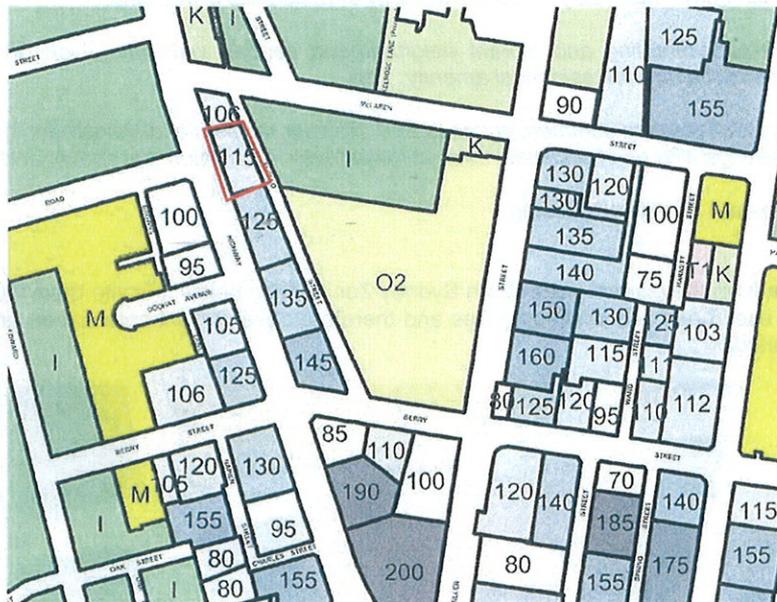
As can be seen from the extract of the North Sydney Zoning Map below, the site is surrounded by a variety of land use zones and allotment sizes and therefore development potential on any one site is extremely varied.



The property amalgamates 3 lots known as 239 – 247 Pacific Highway, North Sydney containing 3 commercial buildings of 2 storeys in height. The property to the north of the site known as No 1 McLaren Street is on the corner of McLaren Street and Pacific Highway.

Existing and Proposed controls

The Draft Height Controls remain the same, which stipulate RL 106 for No 1 McLaren Street rising to RL 115 to the proposed development, and increasing gradually to RL 145 to the corner of Pacific Highway and Berry Street.



HEIGHT MAP DRAFT NSLEP 2009

Opposite the site across Angelo Street is a Conservation Zone in McLaren Precinct and Monte St Angelo Girls' High School with its boundary, occupying 90% of the Angelo Street frontage, ending at Berry Street and wrapping around into Miller Street.

4. THE PLANNING PROPOSAL

4.1 Objectives and Outcomes

The objective is to allow for the minimum provision of non-residential floor space to be reduced from the present minimum required under the NSLEP 2001. Clause 31(2) specifies the range of non-residential floor space allowable to be between a minimum of 3:1 and a maximum of 4:1 to the Council's proposed DLEP that minimizes the non-residential f.s.r. to .5:1.

The development outcome under this planning proposal would mean the reduction of non-residential floor space from roughly 3:1 to .67:1 and the substitution of residential floor space, including ancillary recreational floor areas available exclusively for the residential occupants.

The planning intention under Draft Amendment 28 of the NSLEP is to reduce the minimum non-residential floor area to 0.5:1 of the total allowable floor space. The Draft instrument has not been pursued in its original form, but rather Council resolved in August 2009 to incorporate those amendments into the comprehensive North Sydney DLEP 2009.

Notwithstanding the minimum non-residential f.s.r. under the Draft NSLEP 2009, this Planning Proposal exceeds that minimum standard. It is proposed that this proposal is consistent with the future nominated minimums when the current NSLEP controls are amended.

The amended North Sydney Draft Local Environmental Plan of 2009 has been adopted by Council and is awaiting s65 certification. In the advice to Council, it was reported (on 30 November last year) that the majority of the changes from the 2008 Draft LEP arose from the need to achieve a 'best fit' to comply with the Standard LEP Instrument. Otherwise 'the preparation of the new LEP does not include significant or wholesale policy changes' neither has it 'altered the approach to the transition of LEP 2001 into the Standard Instrument, which has been to build on and reflect Council's existing strategies and planning objectives.'

The overall planning objectives therefore remain unchanged from previous intentions and only the minimum threshold for non-residential relative to residential space is altered by the proposed DLEP and not any limits to the total amount permitted.

The proposal conforms with the outcome for residential growth. The North Sydney Residential Strategy 2008 as adopted by Council will be incorporated into Council's future LEP and is intended to meet the following goals:

'Contain sufficient capacity to accommodate over 7,000 additional dwellings over the next 25 years, and therefore meet the NSW Government's housing target of 5,500 additional dwellings by 2031, without having to make significant policy changes, upzonings or increases in development potential;

Concentrate the bulk of new dwellings in Mixed Use centres in close proximity to retail, office, health, education, transport, leisure, entertainment facilities and community and person services.

Deliver housing choice for a range of socio-economic groups throughout North Sydney to meet the needs of existing and future residents; and

Minimize the impact of new development on local character, amenity, environment and heritage.'

The objectives as stipulated under the NSLEP remain unaltered and expressed as (a), (b), (c) and (d) in the following sections.

4.2 Explanation of Amended Provisions

As there are no changes to the objectives of the NSLEP and no colour change necessary on the Planning Maps incorporated into the NSLEP, then the only change required would be an additional clause to Clause 31 of the NSLEP addressing floor space.

The current provisions read as follows:

- '31 *Floor space*
- (1) *Floor space objectives*
The specific objectives of the floor space ratio controls in the mixed use zone are to:
- (a) *Ensure a diverse mix of uses in each building in the mixed use zone, and*
(b) *Minimize traffic generation from commercial development.*
- (2) *Floor space controls*
A building must not be erected in the mixed use zone if the floor space ratio of the part of the building to be used for non-residential purposes is not within the range specified on the map.'

The additional third clause would therefore read as follows:

'Notwithstanding the provisions of sub-clause (2) above, non-residential floor space at 239 – 247 Pacific Highway, North Sydney shall be no less than 0.5:1.'

The new effect being that sub-clause (3) would therefore not be inconsistent with any zoning map referred to in sub-clause (2).

4.3 Rationale

The justification below addresses the questions according to Parts A to D inclusive of the Planning Proposal Guidelines as published by the Department.

Section A – Need for a Planning Proposal

(a) *Is the Planning Proposal a result of any Strategic Study or Report?*

In accordance with the Draft Amendment 28, the reduction of non-residential floor space under this proposal would remain justified, to the extent that it is consistent with the basis for intentions set out in the Draft NSLEP 2009.

Draft Amendment No 28 was derived from extensive analysis and the Department's involvement such that in itself the amending document could be regarded as the equivalent of the studies and analysis that it was based on. But the proposal is a direct response to the site specific requirements of the proposed development. Also the reduction to the minimum floor space as proposed is comfortably more than a minimum allowable at 0.5:1 as stipulated in the Draft NSLEP 2009.

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

Yes, as the current and future objectives remain unaltered and the change sought is only a response to an issue of timing.

The time required to change the controls which is sought does not allow the right to a forthcoming LEP amendment intended to address the minimum amount of non-residential space and, as yet, no s65 Certificate has been issued. Although the change to the standard could be made as a SEPP 1 Objection, however, North Sydney Council have directed that a planning amendment is the preferred course of action, following our Pre-D.A. Meeting.

(c) *Is there a net community benefit?*

The substitution of residential accommodation for the commercial use is of community benefit in that increasing residential density is a regional objective of the planning for the North Sydney community and State Planning.

The community benefit outcomes are the products of the Department of Planning's own research putting forward its policies, and no further justification is required. However, the extent that employment potential due to the loss of non-residential floor space is reduced is not evident as the absolute amount under the proposal for the subject site is not critical to the size of the intended reduction overall when assessing the proposal with respect to the wider context.

The figure in the order of 792 m² i.e. .67:1 F.S.R. is intended under the Development Application which allows flexibility above 0.5:1 which is the minimum threshold F.S.R. set under the Draft N.S.L.E.P. 2009 which remains consistent with the regional strategy.

As the site is located at the start of the CBD, the transitional reduction in non-residential floor space relative to a more dominant residential use is appropriate and current emphasis on commercial offices is not appropriate as there are more than adequate commercial properties within the CBD which will meet the required objectives. Retention of the single ground floor non-residential use therefore remains appropriate to achieve a mixed use development and provide for transitional CBD uses, as planned and stated in the Draft NSLEP 2009.

Section B – Relationship to Strategic Planning Framework

(a) *Is the planning proposal consistent with the objections and actions contained within the applicable regional or sub-regional strategy?*

Under the NSW Metropolitan Strategy, North Sydney has an employment capacity target of 11,000 within the employment lands available in inner North Sydney. It is acknowledged that this figure varies from some sub-regional strategies and relates to two different time frames. The figure of 11,000 is targeted to be achieved by 2031. (Refer to P29 Actions – Economy and Employment Inner North A1.1 of the NSW Metropolitan Strategy.)

The Draft NSLEP intends to better reflect the previous conclusions which underpinned the formulation of the NSLEP.

This planning proposal intends not to reduce the area of zoned land for employment and the relationship between the Mixed Uses Zone and its surrounding context. In this case, the zoned area does not change, but is a reduction in the level of intensity of the non-residential uses. This proposal is not seeking to change zoning, but proposes a reduction in the minimum non-residential floor space from 3:1 to 0.5:1 as intended under the Draft NSLEP 2009.

State planning for urban consolidation proposes residential growth within existing centres, such as North Sydney. There is a marginal decline in numbers within centres under the Metropolitan Planning Strategy. Within the inner North of the metropolitan area of North Sydney itself, the target is to construct a further 5,500 dwellings and is a declared action within the Strategy (P63) to *Plan for Increased Housing Capacity Targets in Existing Areas (C1.3)*.

(b) *Is the Planning Proposal consistent with the local Council's Community Strategic Plan, or other local Strategic Plan?*

The proposal is consistent with the Draft Amendment No 28 to NSLEP 2009. The Draft's intent is to reduce the minimum non-residential floor space index from 3:1 to 0.5:1.

The Draft Amendment No 28 to the NSLEP objective is to reduce the minimum threshold for non-residential floor space, as stated above. The objective of the adopted North Sydney Residential Development Strategy is to increase the capacity of 7,000 additional dwellings to be measured against a target capacity of 5,500 new dwellings.

It is forecasted in the next ten years, the North Sydney population will increase the requirement for smaller dwellings in the area. Therefore, the change to the minimum non-residential threshold under this Planning Proposal would remain consistent with Council's strategic planning for both residential and non-residential activities.

(c) *Is the Planning Proposal consistent with applicable State Environmental Planning Policies?*

There are no directly applicable State Environmental Policies that have any direct bearing on the outcome of this proposal to lower the minimum threshold for non-residential uses in a Mixed Use Zone.

(d) *Is the Planning Proposal consistent with applicable Ministerial Directions (S117 Directions)?*

Though only the Minister's S117 Direction No 3 entitled 'Commercial Zones' would apply, any reduction of floor space for non-residential purpose under this Planning Proposal is not inconsistent with that direction. North Sydney Council, in refining the disposition of its allotted commercial floor space, has the agreement of the Department that its total figure as a target for employment has been maintained by a balance of decreases and increases in floor space ratio between sites distributed throughout the North Sydney CBD, means that the subject site, as part of the diminished commercial fringe on the north-west of the CBD, qualifies for lower minimum non-residential floor space as stipulated in the Draft NSLEP.

Section C

- (a) ***Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?***

No critical ecological community or habitat has been identified that has any bearing on this central urban site or any area within its surrounding urban area.

- (b) ***Are there any other likely environmental impacts as a result of the Planning Proposal (and if so), how are they to be managed?***

There are no environmental impacts as a result of this Planning Proposal. The Development Application will be assessed within the bounds of the North Sydney Council Guidelines.

- (c) ***Has the Planning Proposal adequately addressed any social and economic effects?***

The proposal does not envisage there will be impact on social and economic effects as a result of further residential accommodation.

Section D

- (a) ***Is there adequate public infrastructure for the Planning Proposal?***

There are considerable infrastructure provisions in North Sydney adequate to meet the change in demands under this proposal.

- (b) ***What are the views of State and Commonwealth public authorities consulted in accordance with the 'Gateway' determination?***

No further consultation or assessment has been necessitated by State or Commonwealth Governments.

4.4 Community Consultation

After limited consultation with Council Officers, the amendments as sought are considered to be:

- Consistent with the proposed Draft NSLEP
- Planning Proposal will be 'low impact'
- Do not constitute a principle LEP
- The proposal is consistent with surrounding land uses
- Consistent with the aims put forward under the Metropolitan Strategy
- No net increase in demand is envisaged on the infrastructure servicing the site
- No impact placed on classified public land.

Therefore, given the extent to which the proposed modification is consistent with the Draft NSLEP now awaiting a S65 Certificate, the level of community consultation is deemed to be both extensive and adequate.

The Development Application will be assessed on its merits, proposing to reduce the minimum non-residential floor space within the usual North Sydney Council community consultation and processes.

5. CONCLUSION

The change intended by the Planning Proposal is entirely consistent with its wider context in the physical, strategic and local area planning framework and within the Draft NSLEP.

As a 'low impact' proposal for a change to a planning standard, there are no wider impacts beyond that of the Development Application and therefore no greater implications at either the State or Commonwealth levels of government are anticipated.

All of the accessible future planning policy intent that has been made available to date would demonstrate that the Planning Proposal should be fully endorsed. For the reason of its potentially seamless integration with the strategic planning of the North Sydney Inner Region following the outcome of the current statutory process now concluding at the Local Government level.