

09351

17 November 2009

Penny Holloway
The General Manager
North Sydney Council
200 Miller Street
NORTH SYDNEY NSW 2060

Attention: Joseph Hill

Dear Ms Holloway

PLANNING PROPOSAL - 35 MITCHELL STREET, MCMAHONS POINT

We act on behalf of Mitchell Properties Pty Ltd, the owners of the commercial property at 35 Mitchell Street, McMahon's Point (Lot 1 in DP 57873 and lots 4,5 and 6 in DP 16870). The building is currently occupied by Pacific Magazines, which is operating as a light industrial use pursuant to the existing use rights provisions of section 107 of the Environmental Planning and Assessment Act 1979 (EP&A Act). The use of the site by a printing company is permitted by a development consent issued in 1997. However, Pacific Magazines is due to vacate the premises by the end of the first quarter of 2010. In order to ensure the continued occupation and viability of the building, the owner has identified the need to broaden the range of permissible uses on the site.

On behalf of Mitchell Properties Pty Ltd, we request that North Sydney Council (Council) commence the process of amending the North Sydney Local Environmental Plan 2001 (NSLEP 2001) in respect of 35 Mitchell Street to expand the range of uses permissible on the site to reflect the contemporary business environment in and around the North Sydney Central Business District. Specifically, both "business premises" and "office premises" as defined by the Standard Instrument – Principal Local Environmental Plan and "commercial premises", as defined by the NSLEP 2001 should be permitted on the site.

The site is currently used for activities that are essentially commercial in nature. This planning proposal will enable the continuation of such uses in an existing building. In doing so, it will ensure that the function of the site in generating jobs is continued.

1.0 THE SITE

The site is at 35-51 Mitchell Street, McMahon's Point. It is located on the southern side of Mitchell Street. Mitchell Street is one way east to west from Blues Point Road to Queens Avenue. The location of the site and its context is shown at Figure 1.

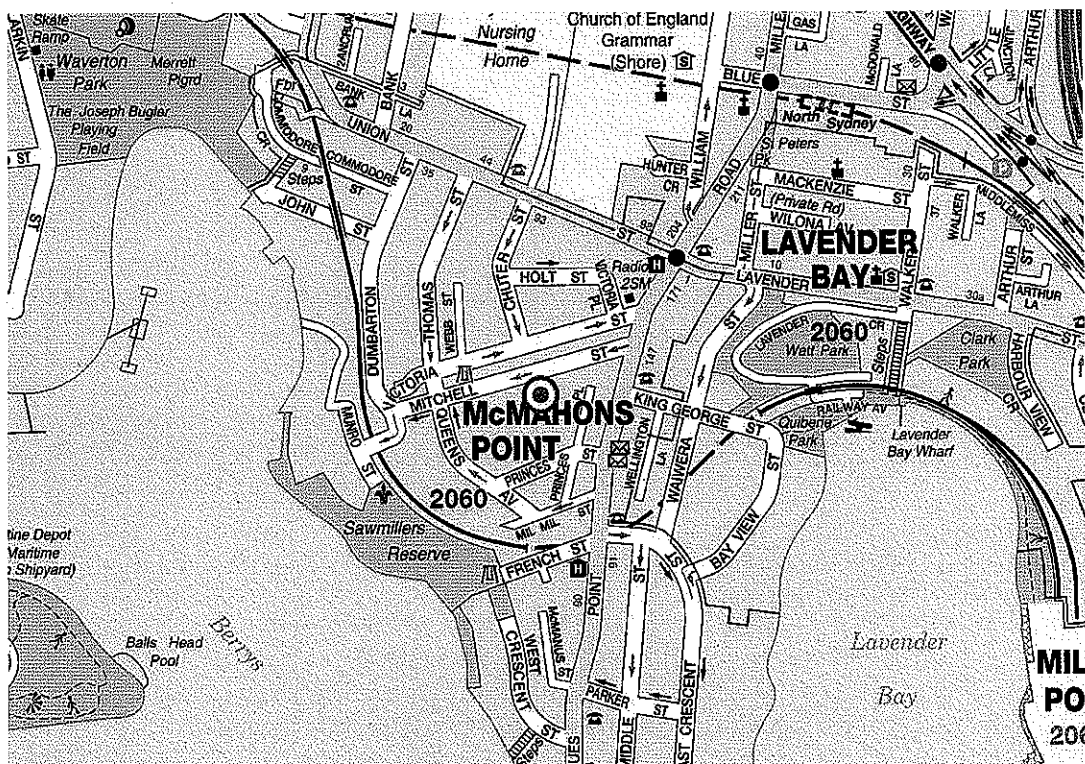
The site area is approximately 7,575m² and has a street frontage of approximately 71 metres to Mitchell Street (Refer to Figure 2). The site is occupied by a three storey (plus basement), concrete and glass building, generally built to and defining the property boundary. The architectural typology is that of a commercial office building (refer to Figures 3 to 5).

The floor plate typically fully extends over 3 floors plus a basement car park accommodating 77 car spaces. The basement level is accessed via ramps located at the western end of the building, with vehicular access from Mitchell Street.

The ground, first and second floor levels accommodate a total of approximately 7,255m² of floor space. The building's main entrance and reception area is located on the second floor, and is also accessed from Mitchell Street. The floor plates offered throughout the building are suitable for light industrial and/or commercial users.

To the north of the site, on the opposite side of Mitchell Street are residential properties predominantly comprising single dwelling houses (Figure 6). Immediately to the south are the rear boundaries of residential properties on Princes Street. Adjacent to the site to the east is a commercial building of two to three storeys in height at 162 Blues Point Road (Figure 7). Residential properties are located along Mitchell Street immediately to the west.

North Sydney railway station is located on Blue Street approximately 400 metres to the north east of the site, providing convenient rail access. Local buses, linking the McMahon's Point ferry terminal with North Sydney CBD run along Blues Point Road and a bus interchange is located adjacent to the railway station.



⊙ The Site

Figure 1 – Locality Plan



Figure 2 – Site Plan

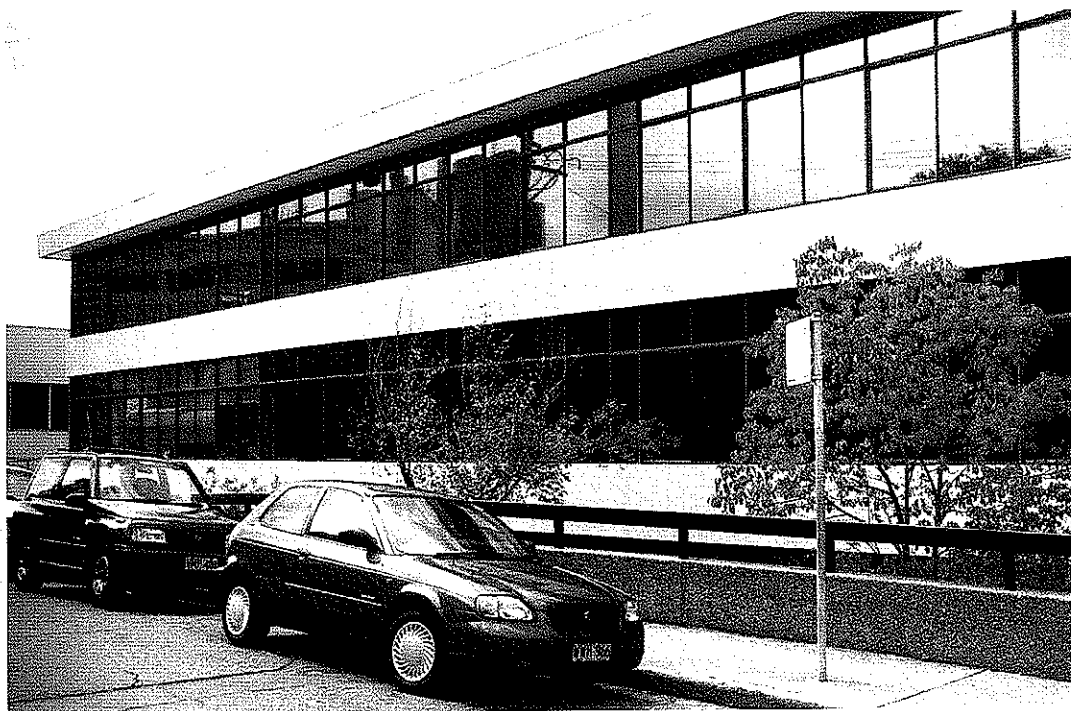


Figure 3 – The eastern portion of the Mitchell Street frontage of the existing building on the site

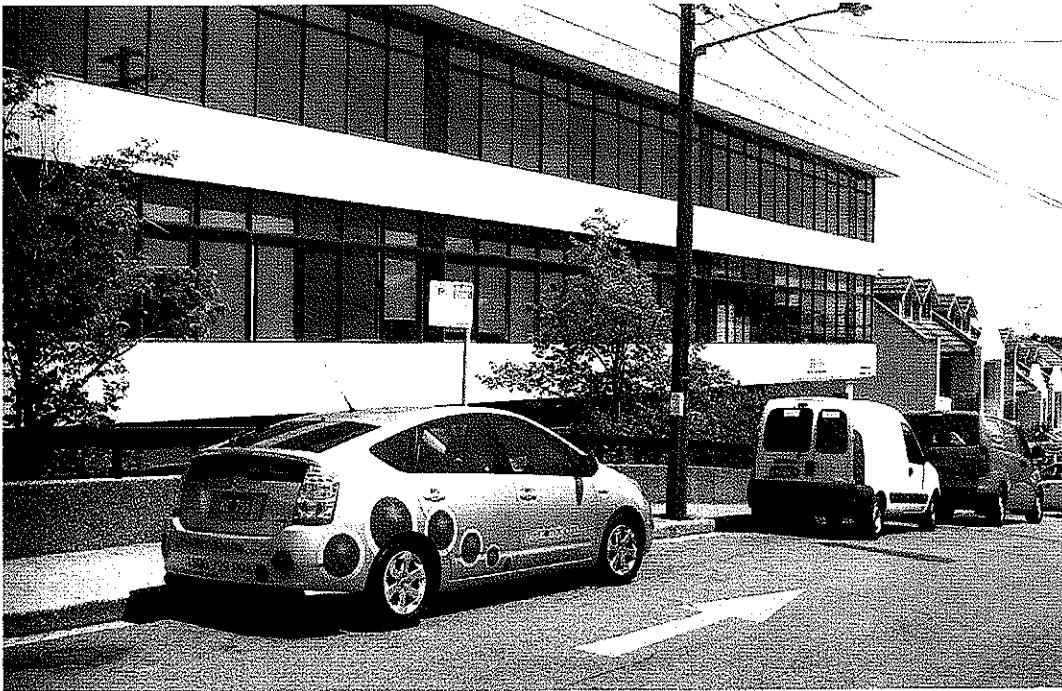


Figure 4 – The western portion of the Mitchell Street frontage of the existing building on the site



Figure 5 – The main entrance to the existing building on the site from Mitchell Street



Figure 6 – View of the opposite (northern) side of Mitchell Street from the roof of the existing building on the site looking east



Figure 7 – Adjacent building to the east of the site (known as 162 Blues Point Road)

2.0 CURRENT ZONING AND PERMISSIBILITY

Uses Permissible Under NSLEP 2001

The site is zoned Residential B under NSLEP 2001. The objectives of the zone are to:

- *Encourage a mix of lower scale housing types, and*
- *Permit light industries which do not interfere with residential and public amenity, and*
- *Permit development which is compatible with the scale and character of the surrounding residential area.*

Uses permissible in the zone under NSLEP 2001 include dwelling-houses, attached dwellings, duplexes, established apartment buildings, boarding houses and a range of non-residential uses such as child care centres, educational establishments, hospitals and resident medical practices¹.

Existing Use Rights

Approval for construction of a 'light industrial' building on the site was granted in 1972. At this time, the site was zoned 4(b) Light Industry under the North Sydney Planning Scheme Ordinance. The North Sydney Local Environmental Plan 1989 (LEP 1989) rezoned the site to 2(f) (McMahon's Point Residential/Light Industrial). Through amendments to LEP 1989, the land was rezoned to Residential B and light industrial uses were prohibited on the site.

Existing use rights were established when Development Application (DA 1418/97) for the 'change of use of existing building for the publishing of magazines and related activities' was granted by Council in 1997. Therefore, DA 1418/97 confirmed existing use rights on the site and effectively changed the use of the building from one type of 'light industrial' activity to another.

Given the expansion of permissible uses afforded by existing use rights, the range of uses that can be undertaken on the site, subject to development consent, are:

- Low scale residential development;
- The continued existing use of 'light industry' on the site;
- A change from one type of 'light industrial' use to another 'light industrial' use; and
- Making alterations or extensions to the building.

3.0 DRAFT NORTH SYDNEY LEP

We understand North Sydney Council is awaiting a Section 65 Certificate to be issued by the Department of Planning for the exhibition of draft NSLEP 2009, a comprehensive LEP that will repeal NSLEP 2001. The version of draft NSLEP 2009 that was reported to Council in 2008 proposes the site be rezoned to IN2 Light Industrial. Within this zone, "light industrial", "business premises" and "office premises" will be permissible uses on the site. The proposed business and office premises uses are akin to the current "commercial premises" as defined under NSLEP 2001.

Mitchell Properties Pty Ltd supports this proposed zoning and the inclusion of the above permissible uses on the site. The owner's concern, however, is that the gazettal of draft LEP may not occur for another 18 months, which would be after Pacific Magazines have vacated the site in approximately 4 months. The Mitchell Properties Pty Ltd has been attempting to find a new tenant for the site without success.

¹ A complete list of permissible uses in the zone is as follows: apartment buildings revision; attached dwellings; boarding houses; child care centres; community notice signs; duplexes; dwelling-houses; educational establishments; established apartment buildings; home industries; home occupations; hospitals; housing for aged or disabled persons; open space; places of public worship; real estate signs; remediation; resident medical practices; telecommunications facilities; temporary signs; utility installations, other than gas holders or generating works.

Market response so far indicates strong demand for commercial/business premises in McMahon's Point, but minimal demand for light industrial premises. Conversion of the site to make it suitable for residential use would require either major refurbishment or the existing building, or demolition and redevelopment, which would result in significant impacts to surrounding residences. While technically a "light industry", the current magazine publishing use of the site has a similar function and appearance to a commercial premise, as defined under the NSLEP 2001. Redevelopment of the site to another permissible use therefore appears unwarranted, given that the existing building is already suited to a commercial/office-activity that will become permissible on the site assuming the draft NSLEP 2009 is gazetted in its present form.

4.0 OBJECTIVES OF THE PLANNING PROPOSAL

Objectives

The objectives of this planning proposal are:

- To ensure the continued viability of land suited for commercial purposes by making permissible commercial premises of a similar function to the existing use of the site;
- To enable the site to fulfill its employment generating function;
- To promote the economic use of land by allowing an existing building to accommodate and retain employment generating uses in demand on the site, while obviating the need for redevelopment;
- To extinguish existing use rights and make any future application for a change of use of the site a merit assessment matter; and
- To achieve state and local planning objectives, in particular by supporting a highly accessible public transport network (refer to Section 6.1).

5.0 EXPLANATION OF PROVISIONS

The objectives of this proposal are to be achieved through site specific provision in Part 5 of NSLEP 2001. The provision will allow commercial, business and office premises on the site.

6.0 JUSTIFICATION FOR THE PROPOSAL

6.1 Section A – Justification For The Planning Proposal

Is the Planning Proposal a result of any strategic study or report?

This planning proposal is not the result of a strategic study or report. The need for the proposed LEP amendment has been identified through the efforts of the owner of the site to lease the existing building on the land. This response demonstrates strong market demand for commercial/business premises in McMahon's Point and weak demand for industrial premises. Permitting a broader range of commercial/business uses on the site will help meet market demand within the property, and accord with the Department of Planning's draft Inner North Subregional Strategy and Council's draft North Sydney Local Development Strategy (refer to Section 6.2).

Given the market demand for commercial/business premises on the site, consistency with state and local government strategic planning objective and as the draft NSLEP 2009 proposes to permit "business premises" and "office premises" on the site, a strategic study is not necessary in this instance.

Is the Planning Proposal the best means of achieving the objectives?

The proposed LEP amendment is the most practicable way to ensure the continued viability of the existing premise and allow the retention of employment generating uses on the site. Given the existing tenant's 4 month timeframe for vacating the site, if the proposed LEP amendment does not proceed, the site would most likely be vacant until the new LEP is gazetted.

and a new tenant found. This would result in the building being unoccupied for up to 2 years, considering the uncertainty of the timeframe for gazettal of the new LEP and the likely time taken to find a new tenant and form a new tenancy agreement.

Therefore, unless this planning proposal is implemented, the provision of employment on the site will be prevented for up to 2 years. In addition, there would also be a risk that the existing building on the site would fall into disrepair, thereby further threatening its commercial viability. (Given the relatively small scale of the magazine publishing industry, it is unlikely that another magazine publisher would seek to move into the existing premise under the existing use rights pertaining to the site).

An alternative to broadening the range of permissible uses on the site may be to allow it to be used for another permissible purpose. However, this may result in the permanent loss of employment generating land in the locality. Given the strong demand for commercial/business premises in the locality, allowing the site to be used for another permissible purpose may result in the underutilization of land. As discussed above, other permissible uses would require either major refurbishment of the existing building, or demolition and redevelopment, which would result in significant impacts to surrounding residences.

Is there a nett community benefit?

A community benefit will result from the continued use of the land for employment generating purposes. At present, 450 people are employed by a single tenant, Pacific Magazines. The continued use of the land will also support economic activity generally, as the future tenant(s) use business support services provided by firms located in North Sydney.

As discussed in Section 3.0, permitting the site to be used for a wider range of activities with a similar purpose to the existing use of the land will obviate the need to extensively refurbish or demolish the building in order to accommodate substantially different and permissible uses. The proposal will therefore reduce the resources and energy consumed in works required to continue the use of the site. This will reduce resultant greenhouse gas emissions, as fewer materials and less fuel will be used in the works required to the building.

As a base case, the likely implications of not increasing the range of permissible uses on the site should be considered. As stated above, if the recommended LEP amendment does not proceed, the building would be likely to become vacant for up to two years. This would result in a loss to the community of North Sydney as the number of jobs in the LGA would decrease and economic activity in North Sydney LGA will be consequently reduced.

The proposal will therefore result in nett community benefits in terms of employment generation and the minimisation of environmental impacts in the continued use of the land.

6.2 Section B – Relationship with Strategic Planning Framework

Sydney Metropolitan Strategy

Adopted in December 2005, the 'City of Cities' (the Sydney Metropolitan Strategy), sets the broad strategic planning framework for the growth of the Sydney metropolitan area over the next 25 years.

Objectives identified in the Metropolitan Strategy relevant to the site include:

- Objective A1.4 Contain the rezoning of employment lands to residential zonings across Sydney. The loss of strategically located employment lands can reduce opportunities for businesses to locate near assets, infrastructure or labour which could otherwise generate significant economic benefits;
- Objective A1.7 Monitor demand and supply of employment lands. Without an increase in employment lands, there will be a significant shortfall in supply over the next 20 years;

- Objective B3.4 Ensure sufficient commercial office sites in strategic centres. This objective seeks to ensure the availability of commercial office space and notes that constraints on the supply of commercial land are likely to be most acutely felt in the centres in the 'Global Economic Corridor', which includes North Sydney; and
- Objective C2 Plan for a housing mix near jobs, transport and services. This objective promotes the location of housing close to employment, transport and services to reduce journey to work time.

The proposal is consistent with the above objectives of the Sydney Metropolitan Strategy as it will:

- Promote the continued use of the employment lands for employment generating uses;
- Increase the supply of commercial premises in a strategic centre through the continued use and availability of an existing building on appropriately zoned land; and
- Promote the continuation of employment uses close to residential land and in the 'Global Economic Corridor'.

Draft Inner North Subregional Strategy

In July 2007, the NSW Government released the draft Inner North Subregional Strategy, which implements the Sydney Metropolitan Strategy at a subregional level. North Sydney LGA is located within the Inner North subregion, along with Hunters Hill, Lane Cove, Mosman, Ryde and Willoughby LGAs.

The Inner North Subregion is to provide capacity for 60,100 additional jobs by 2031, of which 15,000 are to be provided in the North Sydney LGA.

The strategy, amongst other things, aims to concentrate commercial development within the North Sydney and St Leonards CBDs. It also encourages smaller scale development in smaller centres and villages – Blues Point Road is identified as a Neighbourhood Village.

The proposal supports the achievement of the draft Subregional Strategy's objectives by retaining the employment land within the Inner North Subregion and by expanding the range of opportunities for smaller commercial development within a Neighbourhood Village. It is also consistent with the draft Strategy's objectives for supporting the use of public transport as it is located less than 500 metres from North Sydney Railway Station and a major north-south strategic bus corridor and less than 800 metres from McMahon's Point Ferry Wharf.

Draft North Sydney Local Development Strategy 2008

The yet to be released draft North Sydney Local Development Strategy 2008 generally follows the rationale of the Draft Inner North Subregional Strategy. The draft strategy notes that the Blues Point Road and McMahon's Point areas include a mix of land uses with non-residential uses meeting the day to day requirements of residents or support services for businesses in the North Sydney Centre. Likewise, the proposal is not inconsistent with the key aims of the draft North Sydney Local Development Strategy 2008.

Draft North Sydney LEP 2009

Council's resolution that the site is suitable for the proposed range of uses is formalised in draft NSLEP 2009, which rezones the site IN2 Light Industrial and makes "business premises" and "office premises" permissible.

State Environmental Planning Policies

Table 1 demonstrates the proposal's consistency with the relevant State Environmental Planning Policies (SEPPs)

Table 1 – The Planning Proposal's fulfilment of SEPPs

SEPP	Proposal
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Sydney Harbour SREP) Clause 13 <i>Sydney Harbour Catchment</i> - principles for the preparation of environmental planning instruments for land within the Sydney Harbour catchment. These include the protection of hydrological processes, natural assets, water quality, views and the visual qualities of the harbour.	The site is within the catchment area. However, the planning proposal will enable the use of an existing building and will not involve exterior works in adapting the site for future occupants. The building is not visible from Sydney Harbour or foreshore. It is therefore considered that the proposal will not result in adverse impacts to the environmental or visual qualities of the harbour.

Ministerial Directions

Table 2 demonstrates how the proposal is consistent with directions issued by the Minister for Planning in relation to the preparation of environmental planning instruments (EPIs) under Section 117 of the EP&A Act (Section 117 Directions).

Table 2 - The Planning Proposal's fulfilment of Section 117 Directions

Direction	Proposal
1.1 Business and Employment Zones EPIs are to retain the total potential floor space area for employment uses in business zones.	The proposal will ensure the continued use of a site for employment uses in a location well served by public transport. While the site is not located in a business zone, it is used for a purpose with a similar function and appearance to business zoned land.
3.1 Residential Zones Applies when a planning proposal will affect land within an existing or proposed residential zone. A planning proposal must broaden the choice of building types and locations available in the housing market, make efficient use of existing infrastructure and services and reduce the consumption of land for housing.	The proposal will allow land in a residential zone to be used for commercial purposes and not for housing. However, the site has been used for commercial purposes for in excess of 30 years and therefore the Planning Proposal will not reduce housing choice in the area. The proposed rezoning of the site by draft NSLEP 2009 recognises that the land is more appropriately used for commercial/light industrial purposes. This recognition limits the applicability of the direction in this instance.
3.4 Integrating Land Use and Transport A planning proposal must be consistent with Department of Planning guidelines for improving access to housing, jobs and services by walking, cycling and public transport.	As the site is in walking distance of a railway station and bus services in North Sydney, the proposal will promote the use of public transport by employees travelling to and from work. The site's proximity to residential areas promotes the provision of jobs close to home.
6.3 Site Specific Provisions This direction discourages unnecessarily restrictive site specific planning controls. A planning proposal must not include drawings that show details of the development proposal.	This planning proposal is limited to amending NSLEP 2001 to permit a greater range of uses on the site.

Direction	Proposal
7.1 Implementation of the Sydney Metropolitan Strategy Planning proposals shall be consistent with the Sydney Metropolitan Strategy	The proposal fulfils the objectives of the Sydney Metropolitan Strategy as discussed in Section 6.2.

6.3 Section C - Environmental, Social and Economic Impact

Critical habitat, threatened species, populations or ecological communities or their habitats

As the site is already developed, contains no vegetation and is occupied by an existing building. As there will be no impacts to any known critical habitat, threatened species, populations or ecological communities or their habitats resulting from the proposal.

Environmental Effects

As the proposal is for an amendment to a planning instrument, it will not in itself result in any environmental impacts. As stated in Table 1, the intent of the proposal is to allow the continued use of an existing building, thereby minimising the extent of works required to adapt the site to make it suitable for future occupants. It is therefore considered that the proposed future use of the site will not result in adverse environmental impacts.

Any acoustic, visual, construction or other impacts that may result from future works on or use of the site can be appropriately addressed at Development Application or Construction Certificate Application stage.

Social and Economic Effects

The proposal does not include any internal or external works to the site and will not alter the streetscape. No reduction in community services or the amount of land available for housing will result from the proposal. As discussed in Section 6.1, the proposal will allow the continued use of land to generate employment, thereby delivering benefits to the community and supporting economic activity in the North Sydney LGA.

6.4 Section D – State and Commonwealth Interests

Adequacy of Public Infrastructure

The site is already served by existing utilities infrastructure. As the proposal will allow the continued use of an existing building, there will be no significant increase in demand for public transport, waste collection or community services.

7.0 COMMUNITY CONSULTATION

Community consultation will take place in accordance with the process set out in sections 56 and 57 of the EP&A Act. Public exhibition for a period of 14 days is recommended.

8.0 CONCLUSION

The site is currently used for activities that are essentially commercial in nature. This planning proposal will enable the continuation of those uses. In doing so, it will ensure the future viability of an existing building and serve the objective of avoiding the loss of jobs in the North Sydney LGA. As discussed on Section 6.3, the proposed expansion of permissible uses of a site which is already developed will result in minimal adverse environmental or social impacts.

The continued use of the building will deliver community benefits in terms of employment generation and the reduction of greenhouse gases and other pollutants emitted in future works on the site.

The proposal fulfils the objectives of draft NSLEP 2009. Assuming the draft NSLEP 2009 will be gazetted in its present form in relation to the site, the proposal will effectively implement the draft LEP's objectives "ahead of time" by allowing uses that are permissible on the site under the draft LEP prior to its gazettal. By extinguishing existing use rights, the proposal will formalise the planning regime as it relates to the site and make the future use of the land subject to merit assessment, rather than existing use rights provisions.

As discussed in Section 6.2, this proposal is consistent with the Sydney Metropolitan Strategy, the draft Inner North Subregional Strategy and Draft North Sydney Local Development Strategy 2008. It is also consistent with applicable SEPPs and Section 117 Directions.

Considering the absence of adverse impacts, the community and economic benefits of the proposal and the potential loss of jobs that would result from not amending NSLEP 2001, as recommended, we have no hesitation in recommending that Council implement this proposal.

Should you have any queries about this matter, please do not hesitate to contact me on 02 9409 4936 or kwerner@jbaplanning.com.au.

Yours faithfully



Kathryn Werner
Principal Planner