

ARCHITECTURE  
PLANNING AND  
URBAN DESIGN

## **PLANNING PROPOSAL**

### **AMENDMENT TO NON-RESIDENTIAL FLOOR SPACE RATIO**

#### **CLAUSE 31**

#### **NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2001**

#### **136 – 140 WALKER STREET, NORTH SYDNEY**

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on behalf of

The Winten Property Group

July 2010

Ref: 10604R9

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## 1. INTRODUCTION

Development Approval No DA 195 of 2008 was granted by North Sydney Council for a Mixed Use development on 22 December 2008. In essence it was for 46 residential units and 3,530m<sup>2</sup> of commercial floor space plus recreational facilities and parking for 58 vehicles. Currently a new Application is under preparation and intended to reduce the amount of commercial floor space approved and substitute residential units within the retained parameters of building height, footprint and floor space.

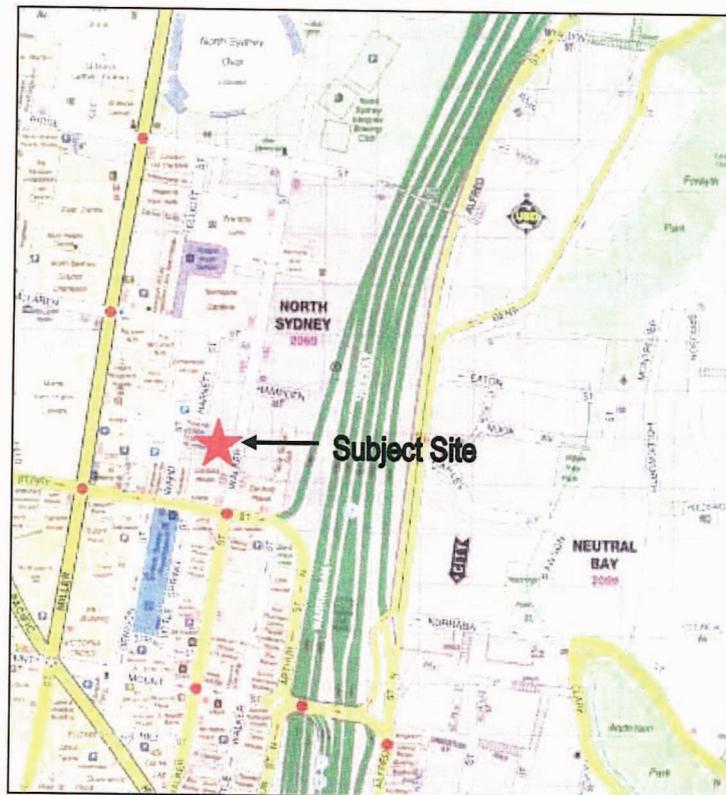
Although technically the change of commercial floor area is a standard within a planning instrument and could be made under a State Environmental Planning Policy No 1 (SEPP 1) Objection, that course has been discouraged following advice from Council that a Planning Proposal is the preferred course to follow.

Accordingly this application is for revision of the minimum required commercial floor area under the current North Sydney Local Environmental Plan 2001 (NSLEP 2001). It has been prepared as a 'gateway determination' by making it separately from any other particular merit considerations arising under the Development Application and of which it is part.

## 2. THE SITE AND LOCALITY

### *The Site*

The land is described as 136-140 Walker Street and incorporates Lot B in DP 952192 and SP12057 (including lots 1 and 2). It is located within the suburb of North Sydney on the western side of Walker Street, between McLaren and Berry Streets.



**FIGURE 1: Location Plan** (source: 2005 Sydney Street Directory)

The combined site is rectangular in shape with an additional 1.5 metre wide, 7.5 metre long handle that runs along the back of the neighbouring property (No. 142 Walker Street) linking the subject site with Harnett Street. The remainder and main part of the site has the following boundary dimensions:

- 28.84 metres to Walker Street (eastern boundary)
- 28.83 metres to the rear (western boundary)
- 39.06 metres to the northern boundary
- 40.36 metres to the southern boundary

The area of the site is 1176.5m<sup>2</sup> (refer to the Site Survey Plan attached under separate cover).

The land is sloping with a cross fall of approximately 7 metres south-west to north-east.

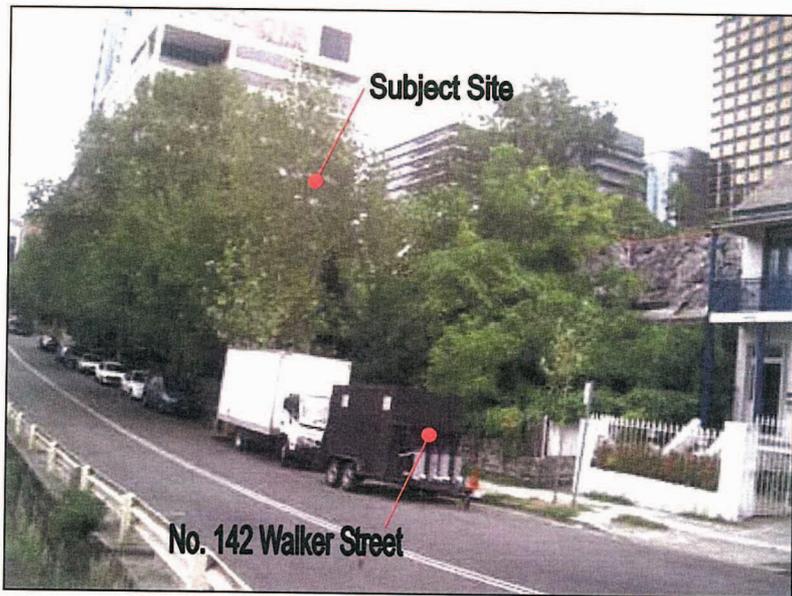


**FIGURE 2: Aerial Photo of site** (source: North Sydney Council)

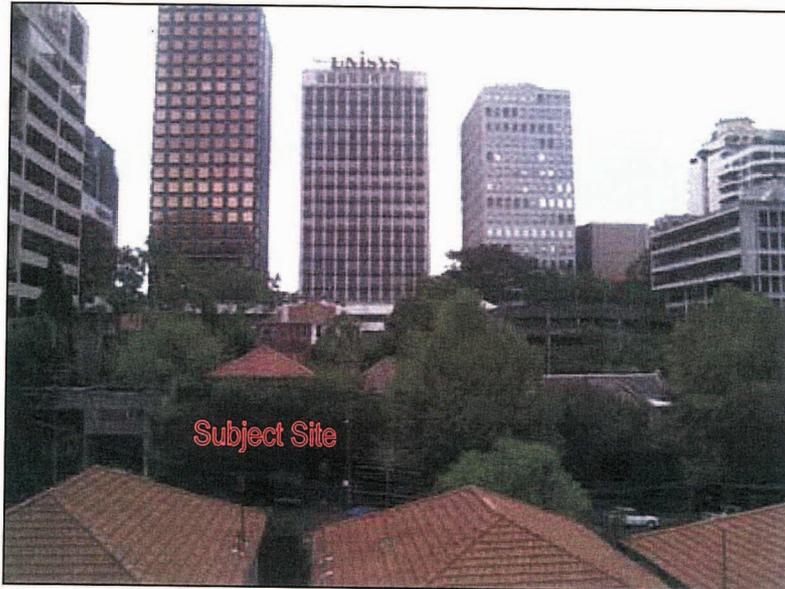
Existing buildings on the site are two low rise residential flat buildings obscured from the street (refer Photographs 1, 2 and 3).



**Photograph 1:** *View of existing buildings on subject site looking west.*



**Photograph 2:** *View towards subject site looking south-west (street trees obscure the site)*



**Photograph 3:** View towards subject site looking west

### ***The Locality and Neighbouring Development***

Walker Street runs north-south parallel to the Expressway and the site is therefore oriented east-west. Walker Street is located within walking distance of North Sydney's central business district. North Sydney 'Shoppingworld' and the retail end of Walker Street is located within 300m and 150m 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 and Anderson Park are also within reasonable walking distance.

The site is within a mixed residential/commercial neighbourhood which predominantly consists of residential apartments, office buildings and some occasional dwelling houses. 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 and the more recently constructed high rise flats and offices. Directly to the north at No. 142 Walker Street is a similar brick two storey residential flat building. Those properties 144 to 150 Walker Street are a series of two storey terraces of heritage value and are listed under NSLEP as heritage items (refer to **Photograph 4** below). Further north again at No. 160 Walker Street is a high-rise commercial tower with Wenona Girls School located towards the northern most end of Walker Street.

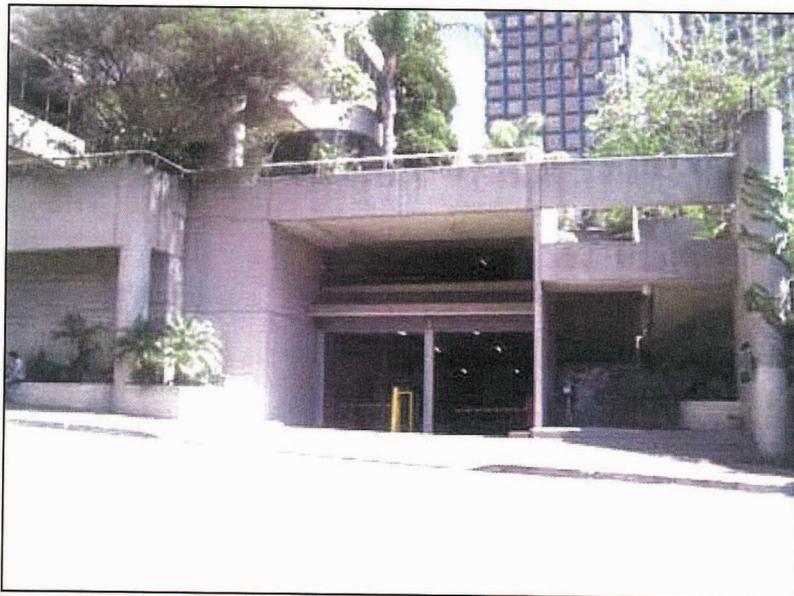
To the rear of the site is a property with the street address of No's 3-11 Ward Street which has been substantially excavated in anticipation of an enlarged sub-station to be constructed for Energy Australia.

Directly to the south of the site at the corner with Berry Street is a multi-storey commercial building also with a frontage onto Walker Street. It having a large courtyard area attached to the northern side of that building which is raised above a fire exit staircase and a parking entrance to that building. That courtyard/terrace area is the near equivalent to two storeys above ground level in height and serves to separate the main building from the proposed development by approximately 19 metres.

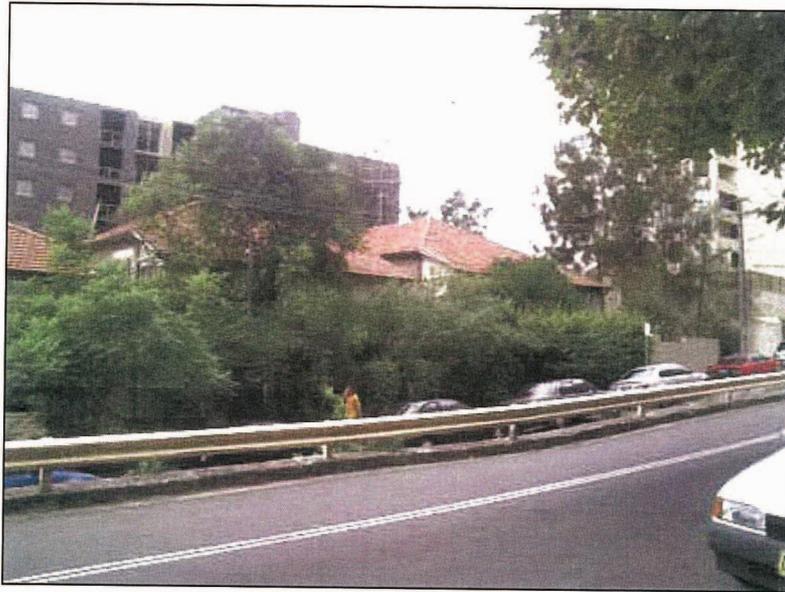
Immediately to the east of the site, on the opposite side of Walker Street are a number of three storey brick apartments with their ground floor levels set below the road. These are amongst two storey town house developments and multi-storey residential apartment buildings interspersed with older Federation style single dwellings (see **Photograph 6** below).



**Photograph 4:** *Nos 146-150 Walker Street (heritage items) north of the subject site.*



**Photograph 5:** *View of open courtyard area above the parking entrance and back stairwell to No. 76 Berry Street (adjoining the site)*



**Photograph 6:** *View of Walker Street streetscape looking south-east (across from site)*

The site can be said to be located at the interface of the North Sydney CBD and the residential area of North Sydney being in the 'transition' area that comprises the extremes of both large scale commercial and residential buildings and small scale residential dwellings. Hence the site's appropriate zoning for mixed uses.

### 3. STATUTORY CONTEXT

The subject site is currently zoned Mixed Uses 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 uses 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 inter alia apartment buildings, commercial premises, community facilities, medical centres, refreshment rooms, shops, showrooms, take away food shops and taverns.

The particular objectives of the mixed use zone are to:

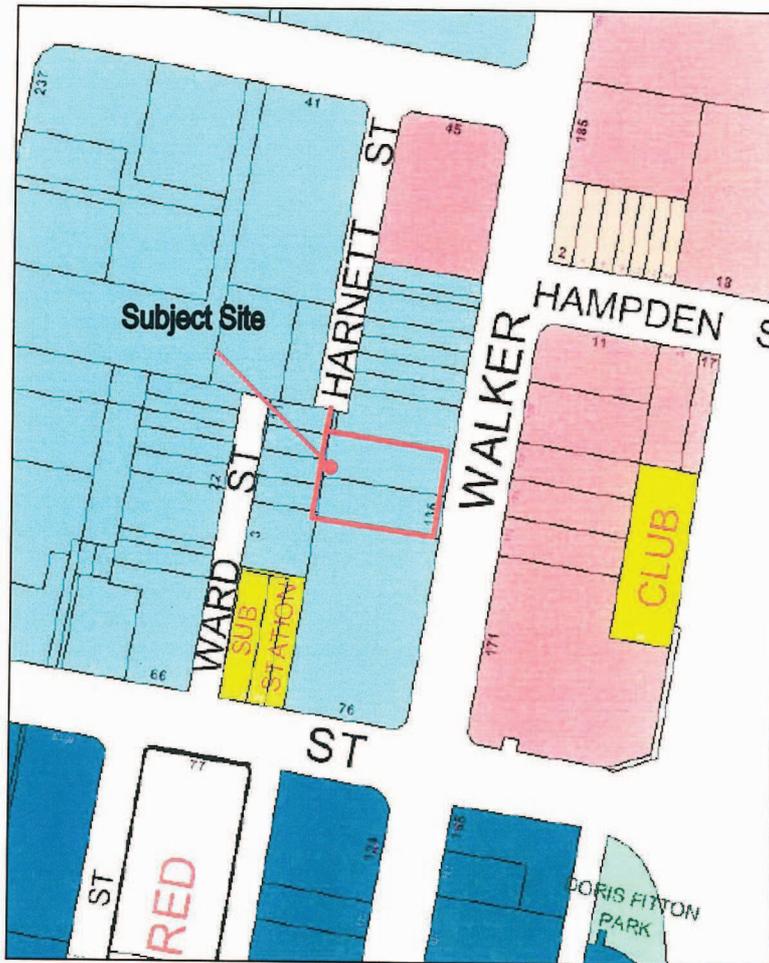
- "1(a) encourage a diverse range of living, employment, recreational and social opportunities, which do not adversely affect the amenity of residential areas, and*
- (b) create interesting and vibrant neighbourhood centres with safe, high quality urban environments with residential amenity, and*
- (c) 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 located on the corner of Walker and Berry Streets known as No. 76 Berry Street, contains a commercial building over 11 storeys in height with a maximum RL 110.5. This property is zoned Mixed Use under NSLEP 2001 and is therefore affected by the same controls as the subject property.

The properties at 144 to 150 Walker Street back onto Harnett Street and each contain a 2 storey residential building listed as heritage items under the LEP. They are also zoned Mixed Use and are limited to a 10 metre height requirement.

Opposite the site and across Walker Street the properties at No. 175-179 Walker Street are zoned Residential C which allows inter alia, residential flat buildings, educational establishments, hospitals and child care centres.



**FIGURE 3: Extract from Zoning Map**  
 (Source: North Sydney LEP 2001)

The properties at No. 3-11 Ward Street are also zoned Mixed Use but a sub-station would also be permitted as a utility installation.

The Planning Proposal is consistent with the objectives of the Mixed Use zone as it continues to provide residential use above non-residential use at the lower floor levels. The proposal also encourages development of an excellent site within reasonable distance to facilities and public transport that provides for a range of uses and unit types; the commercial uses being at or close to ground level and will serve to activate the street front. The amendment proposed will not give rise to any more adverse impacts on the locality by virtue of noise, privacy, overshadowing, visual impacts or other factors already associated with the use of the site.

Given the location of the site at the interface of North Sydney CBD, it is anticipated that the commercial component of the building will have only limited commercial floor space and attraction for 'destination driven' uses such as a medical centre, fitness centre, specialty restaurants and the like. Beyond Berry Street to the west the dominant use is and will remain residential and school.

## 4. THE PLANNING PROPOSAL

### 4.1 Objectives (Intended 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.

The development outcome under this planning proposal would mean the reduction of non-residential floor space from roughly 3:1 to 1.37:1 and the substitution of residential floor space, including ancillary recreational floor areas available exclusively for the residential occupants.

The planning intention previously under Draft Amendment 28 of the NSLEP was to reduce the minimum non-residential floor area to 0.5:1 of the total allowable floor space. That 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 that this Planning Proposal would exceed that minimum standard, it is proposed that such a figure also be applied to the site, for the sake of consistency with the future nominated minimums when the current NSLEP controls are amended.

The amended North Sydney DLEP 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 change proposed and not any limits to the total amount permitted.

With respect to conformity 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*

*Minimise the impact of new development on local character, amenity, environment and heritage."*

The stated objectives under the NSLEP therefore remain unaltered and expressed as (a), (b), (c), and (d) in the preceding section.

## 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 136 – 140 Walker Street, North Sydney, shall be no less than 0.5:1." \*

\* A minimum figure above 0.5:1, provided it was below the ratio proposed under the subject application would be equally acceptable.

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 Justification

The following justification addresses the questions to be answered 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 previously 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 previous intentions that are still unchanged.

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 the analysis

that it was based on. But the proposal otherwise is a direct response to the site specific requirements of the proposed development and is in its nature a minor change. It is of no cumulative consequence because the reduction to the minimum floor space as proposed is comfortably more than a minimum attainable at 0.5:1.

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

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

The timing of the change to the controls that is sought does not pre-empt a forthcoming LEP amendment intended to address the minimum amount of non-residential floor space but as yet has no S65 Certificate. Nevertheless the change to the standard could otherwise be made as a SEPP 1 Objection. But (it is understood) with the assent of the Department, North Sydney Council has directed that a planning amendment is the preferred course to follow.

The Proposal is outside the timing for a comprehensive LEP amendment. Based upon its history to date and the lack of a S65 Certificate for the current amendment, a more expedient course for amendment is deemed to be more appropriate. Where the Planning Proposal would be a 'gateway' consideration for the determination of what is an otherwise non contentious Development Application and where, but for timing of the LEP, the amendment sought would not be required.

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

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

Insofar as there is a reduction in potential employment in North Sydney that is not inconsistent with a wider regional planning goal: the maximum permissible non residential floor space under this proposal is not altered.

Both of these planned community benefit outcomes are products of the Department of Planning's own research underlying its policies and requires no further justification. But to the extent that employment potential due to the loss of non-residential floor space is reduced, the absolute amount under the proposal for the subject site is not critical to the size of the intended reduction overall.

Any reduction to 0.5:1 minimum will still be exceeded by the actual application to which this planning proposal is to be applied. The figure in the order of 1.37:1 as intended under the Development Application also allows flexibility above 0.5:1 as to the ultimate minimum threshold and still remain consistent with the regional strategy.

As a site location on the edge of the CBD the transitional reduction in commercial floor space relative to a more dominant residential use is appropriate and current emphasis on commercial offices is not appropriate. Retention of two floors of non-residential uses as proposed therefore remains appropriate to the achievement of a mixed use development and still provides for transitional CBD fringe uses as planned.

## Section B – Relationship to Strategic Planning Framework

(d) *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 11,000 figure is targeted for fulfillment by 2031. (See P29 Actions – Economy and Employment Inner North A1.1) of the NSW Metropolitan Strategy

A new LEP amendment is under preparation and intended to better reflect the previous conclusions drawn that underpinned the formulation of the NSLEP Amendment No 28 but that has not been enacted for reasons of technical drafting rather than any new strategic intent.

The planning proposal intends no reduction in 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.

State planned provision for residential dwelling growth however is to be concentrated within centres of all kinds, where two thirds of the new residences have taken place over the last decade and also in central North Sydney no less. There is a forecast marginal decline in numbers within centres under the Metropolitan Planning Strategy. Within the inner North of the metropolitan area of North Sydney itself is targeted 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)*.

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

The proposal would be consistent with the previous draft amendment No 28 to NSLEP 2001 when it was resolved on 10 August 2009. It was the only available evidence up to that time of an intent to reduce the minimum non-residential floor space index from 3:1 to 0.5:1.

The re-drafting of a further amendment to the NSLEP in lieu of the now rescinded Amendment No 28 is not intended to alter the intent to reduce the minimum threshold for non-residential floor space. The objectives of the adopted North Sydney Residential Development Strategy are identified previously under **Section 4.1** of this Planning Proposal: the identified capacity of 7,000 additional dwellings to be measured against a target capacity of 5,500 new dwellings for the same period, up to 2031.

Up to 2021 the North Sydney population is forecast to be increasing the number of smaller households. The new development approval has been necessitated to reduce the number of larger three bedroom units and substitute a full range of unit sizes including bed-sits. The smaller residential units are ones that are substituting for the commercial area that is forgone.

Therefore the change to the minimum non-residential threshold under the Planning Proposal would remain consistent with the Council's strategic planning for both residential and non-residential activities.

**(f) *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.

**(g) *Is the Planning Proposal consistent with applicable Ministerial Directions ( S 117 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, it 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.

**Section C**

**(h) *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.

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

As a result of the Planning Proposal being accepted there are no new consequences for any impacts arising that are not already accounted for in the already approved application and otherwise being sought to be amended within the bounds of a Development Application.

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

The social effects of further residential accommodation on site are not altered from the consequences for residential accommodation already approved. While at the same time there will be a general economic benefit, in not having more and otherwise economically marginal non-residential uses on site at the expense of the more socially and economically viable residential floor space.

**Section D**

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

The considerable infrastructure provisions as there are in North Sydney is adequate to meet the change in demands under the Planning Proposal and potentially offer a nett reduction in overall demand for peak service transport and utility services.

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

No further consultation on the views at State or Commonwealth governments' level is necessary.

#### 4.4 Community Consultation

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

- A 'low impact' Planning Proposal
- The change does not constitute a principle LEP.
- Consistent with surrounding land uses.
- Consistent with the aims under the Metropolitan Strategy.
- There will be no net increase in demand placed on the infrastructure servicing the site.
- There is no impact on classified public land.

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

In the course of addressing the Development Application on its merits and as a 'Gateway' consideration of minimum non-residential floor space will be assessed within the usual North Sydney community consultation protocols.

## 5. CONCLUSION

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

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

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 processes now concluding at the local government level.