

24 April 2014
Our Ref: 10194.2.docx

The Director General
NSW Planning & Infrastructure
GPO Box 39
Sydney NSW 2001

Dear Sir,

Submission on Carter Street Urban Activation Precinct Planning Proposal

Introduction

1. We have been engaged by the following owners of land within the Carter Street Urban Activation Precinct (**UAP**) to provide comments to NSW Planning & Infrastructure (**P&I**) regarding the planning options currently being developed:
 - a. Winro Pty Ltd and Wolsten Investments Pty Ltd – owners of 6 Carter Street, Lidcombe; and
 - b. G M Keating, D W Kirby, W Williams Pty Ltd, P C B Clement and A E D Mears – owners of 8 Carter Street, Lidcombe.
2. Together these properties (**subject properties**) constitute a large parcel of land in the UAP, south of Carter Street, developed with an industrial complex utilised for fresh food processing, packaging, and distribution. The operators of the complex, Moraitis, undertake activities from the very early morning (3am) till 6pm on weekdays and between 5am and 2pm on Saturdays and Sundays. Moraitis employs around 150 staff and has operated from this location for over 20 years due to the proximity to the Flemington Markets and the regional road network.
3. This submission follows on from our submission made to P&I during the plan preparation phase dated 1 November 2013 (**attached**) which should be read in conjunction with this submission.
4. This submission also supplements a submission made by Design Collaborative on behalf of a broader owners group that control the majority of the properties on the south side of Carter Street. As this submission relates to a specific property, more detail comments and site specific recommendations are provided that prevail. Notwithstanding, the general comments provided in the Design Collaborative submission are considered to provide an apt critique of the planning proposal, an explanation of the issues arising, and the need for a significant reconsideration of the proposal.

Issues

5. Concerns identified within our previous submission remain valid and we refer you back to that submission for detail comments. This submission recaps on previous comments and includes further details and concerns regarding the consultation process followed during the plan preparation phase and the inadequacies with the proposed planning controls should the contested planning proposal progress. Consequently, there are 5 primary issues we address:
 - a. The consultation process during the plan preparation process and misleading representations provided within the exhibition documentation;
 - b. the effect of 'deactivating' the development potential of the subject properties due to the lack of demand for commercial floorspace in the UAP;
 - c. creation of a substantial conflict between the new incoming residential population and the remaining industrial developments south of Carter Street; and
 - d. constraint on the ability to intensify or expand existing industrial developments south of Carter Street; and
 - e. while the planning proposal is not supported, should it be progressed there are considered to be inadequacies that require rectification.

Consultation Process

6. The exhibition documents indicate "community consultation is important in developing plans for all urban activation precincts" (P&I 2014, *Carter Street Planning Report*, pg.3 – the **Planning Report**). Section 4 of the Planning Report refers to the Landowners' forum and lists key issues raised by the landholders, implying that the plan preparation process has been a participatory process.
7. Contrary to the above, our clients submit that the plan preparation process has not taken into consideration the significant issues raised during landholders meetings or subsequently outlined in writing within our submission of 1 November, 2013. This previous submission was prepared on behalf of the majority of landholders on the south side of Carter Street. It is perceived that P&I have pursued a predetermined outcome that suits the majority land owner north of Carter Street (Goodman) at the cost of lost legitimate planning opportunities for the landowners south of Carter Street.

Deactivation of the Precinct

8. The primary issue would be the allocation of residential development opportunities principally within the Goodman's land north of Carter Street and commercial opportunities within the relatively smaller landholdings south of Carter Street. If this was to occur the likely outcome for the precinct would be the redevelopment of the Goodman's land only as residential development, as this provides the only pertinent economic incentive for redevelopment. This issue is expanded upon in our previous submission.

Land Use Conflict

9. There is an inevitability of conflict arising between the new incoming residential population and the remaining industrial developments south of Carter Street. This is likely to result in increasing pressure to curtail activities that are considered unsightly or generate noise or truck traffic in the area, which in turn will affect the viability of existing industrial operations and the ability to continue to tenant the subject properties. This issue is again expanded upon in our previous submission, and we provide additional comments below.
10. Our clients advise that representatives of P&I indicated that consideration would be given to the introduction of measures that preclude any authority from taking action on complaints from incoming residential occupants in regard to the operation of industrial premises in the manner currently occurring under existing consents. It was understood that this would be similar to the site specific considerations afforded to other noise generating activities within the Olympic Park precinct by the "Sydney Olympic Park Noise Management Plan." There is no evidence in the exhibition documents that this has been considered and the issues raised within our previous submission remain unresolved.

Development Constraint on Existing Development

11. The subject properties are currently zoned IN2 Light Industrial pursuant to Auburn Local Environmental Plan 2010 and are proposed to be zoned B6 Enterprise Corridor. The objective and land use table of each are set out below.

Zone IN2 Light Industrial

1 Objectives of zone

- *To provide a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*
- *To minimise adverse effects on the natural environment.*

2 Permitted without consent

Nil

3 Permitted with consent

Building identification signs; Business identification signs; Depots; Garden centres; Hardware and building supplies; Industrial training facilities; Kiosks; Landscaping material supplies; Light industries; Plant nurseries; Markets;

Neighbourhood shops; Restaurants or cafes; Roads; Timber yards; Warehouse or distribution centres; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Eco-tourist facilities; Educational establishments; Electricity generating works; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Health services facilities; Heavy industrial storage establishments; Heavy industries; Highway service centres; Home occupations (sex services); Information and education facilities; Marinas; Mooring pens; Moorings; Office premises; Open cut mining; Passenger transport facilities; Port facilities; Recreation facilities (major); Registered clubs; Research stations; Residential accommodation; Restricted premises; Retail premises; Rural industries; Sewerage systems; Sex services premises; Signage; Tourist and visitor accommodation; Veterinary hospitals; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities.

Zone B6 Enterprise Corridor

1 Objectives of zone

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*

2 Permitted without consent

Nil

3 Permitted with consent

Building identification signs; Bulky goods premises; Business identification signs; Business premises; Community facilities; Food and drink premises; Garden centres; Hardware and building supplies; Hotel or motel accommodation; Kiosks; Landscaping material supplies; Light industries; Markets; Neighbourhood shops; Passenger transport facilities; Plant nurseries; Roads; Timber yards; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks;

Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Eco-tourist facilities; Electricity generating works; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Heavy industrial storage establishments; Highway service centres; Home occupations (sex services); Industrial training facilities; Industries; Marinas; Mooring pens; Moorings; Open cut mining; Port facilities; Recreation facilities (major); Research stations; Residential accommodation; Restricted premises; Retail premises; Rural industries; Sewerage systems; Sex services premises; Signage; Tourist and visitor accommodation; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities.

12. There are discrete differences between these zones. The objectives of the B6 zone excludes a fundamental objective of the IN2 zone, being “to support and protect industrial land for industrial uses”. While there are number of uses within the IN2 zone that will be prohibited in the B6 zone (in particular depot, industrial training facility and restaurants or cafes) the more critical exclusion is that of “general industry” defined as:

general industry means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.

Note. General industries are a type of industry—see the definition of that term in this Dictionary.

13. A development application or application to modify existing consents submitted for the subject properties under a future B6 zoning would be required to take into consideration the new planning intentions for the area. There is no evidence within the exhibition documents of consideration of the impact of the proposed zoning on the existing approved operations.

Inadequacies of Proposed Planning Controls

14. While the planning proposal is not supported, should it progressed there are considered to be inadequacies that should be addressed.
15. While the proposed planning controls include a height limit of 22.9m (6 storeys) for the subject site both the existing and proposed FSR is 1.5:1, providing no feasible incentive to redevelop. The existing utility easement adjacent Carter Street (approximately 40m in width) together with proposed side setbacks of 10m and rear setback of 20m, would lend itself to a higher height limit and greater FSR to facilitate redevelopment.

Conclusion

16. The above issues warrant the consideration of alternate planning options for the precinct. The primary concern is to ensure the future planning regime for the UAP does not threaten the existing lawful processing distribution activities on the subject properties. The current proposal poses a significant threat.
17. Consequently, it is considered that the rationale to the UAP planning proposal is flawed and should not proceed. The proposed land use pattern that provides for significant residential development on the north side of Carter Street facing onto

existing established noise generating industrial development with no realistic redevelopment prospects, is poor planning.

18. While an option that provided residential development to the north of Carter Street and Commercial development to the south of Carter Street could activate the development potential of the Goodmans land, it is inevitable that this would deactivate both the viability of current uses and the development potential of the subject properties south of Carter Street. This is clearly contrary to the intent of the UAP projects.
19. As previously submitted, should the planning proposal for the UAP proceed we consider that the land on the south side of Carter Street should be provided feasible redevelopment option. This could involve concentrating all employment opportunities within a single precinct as close as possible to the existing train station, which should be capable of providing sufficient employment opportunities to more than replace that which exists in the precinct. The land south of Carter Street could then be designated for higher density residential development consistent with the option mooted for the land on the northern side of Carter Street but with a substantially increased height limit and additional FSR potential. These sites could provide good amenity for residential development as the wide easement along Carter Street results in a reduced building footprint but greater landscaped area conducive to higher tower buildings. The primary northerly orientation of units would be towards the landscape corridor along Carter Street while the south side of the buildings adjacent the M4 motorway) could be acoustically treated with no material loss of amenity.
20. Should you wish to discuss this submission, please contact the writer.

Yours faithfully
GLN PLANNING



PAUL GRECH
DIRECTOR

cc Messrs W Williams and G Keating
Encl. Copy of GLN Submission dated 1 November 2013.

1 November 2013
Our Ref: 10194.1.docx

NSW Department of Planning & Infrastructure
GPO Box 39
Sydney NSW 2001
Attention: Ms Silvija Smits
By Email: <mailto:silvija.smits@planning.nsw.gov.au>

Dear Ms Smits,

Carter Street Urban Activation Precinct

Introduction

1. We have been engaged by the owners of land (Warwick Williams and the Suttons Motors Group) within the Carter Street Urban Activation Precinct (**UAP**) to provide comments to the Department of Planning & Infrastructure (**DPI**) regarding the planning options currently being developed.
2. Warwick Williams is the part owner and managing agent for Nos. 6-8 Carter Street. The Suttons Motor Group are the owners of Nos. 16-18, 20-22, 28, 30 and 32 Carter Street (held in the name of Investments and Loans Pty Limited). Together these properties (**subject properties**) constitute the majority of land in the UAP, south of Carter Street.
3. The writer attended the landowners briefing meeting at the DPI on 23 November 2103 and reviewed documentation provided to the landowners to date including the *Economic Feasibility Study Carter Street Urban Activation Precinct – Overview of Key Findings* (Jones Lang LaSalle, 1 October 2013) (**JLL Report**).
4. We note that your email to Warwick Williams of 25 October 2013, advises that the DPI are in the process of exploring land use options for the UAP prior to seeking guidance from your executive. Having regard to our investigations to date, including a review of the operational imperatives of the current tenancies within the subject properties, we believe it is opportune to provide definitive comments for your consideration prior to finalising the planning options.

Issues

5. Concerns have been identified specifically with regard to any planning option that imposes a land use zone that principally provides for commercial development (offices and the like) on the subject properties and primarily residential development on the balance of the UPA. There are 3 primary issues we seek to be carefully considered prior to finalising any planning options and progressing into the plan making phase, being that an option such as the above will:
 - a. have the effect of 'deactivating' the development potential of the subject properties due to the lack of demand for commercial floorspace in the UAP;
 - b. create substantial conflict between the new incoming residential population and the remaining industrial developments south of Carter Street; and
 - c. constrain the ability to intensify or expand existing industrial developments south of Carter Street.

Deactivation of the Precinct

6. The primary issue would be the allocation of residential development opportunities principally within the Goodman's land north of Carter Street and commercial opportunities within the relatively smaller landholdings south of Carter Street. If this was to occur the likely outcome for the precinct would be the redevelopment of the Goodman's land only as residential development would provide the only pertinent economic incentive for redevelopment.
7. Our clients have expertise in real estate and property development industry and specific knowledge of the study area through the management of the subject properties. Their view is that there is no potential for viable commercial development generally within the Carter Street UAP, and specifically the subject properties, within the foreseeable future.
8. While we have not been provided with the entire JLL Report, section 4 of the overview document generally supports the above view. The recommendation within section 4.3 of this report, while equivocal, suggests that commercial office uses are a medium to long term prospect that would be subject to significant competition from commercial development proposals being pursued by Sydney Olympic Park (**SOP**). As alluded to in the JLL report, the subject properties would be an inferior office development location due to the inability to integrate with SOP proposals and because they are just outside of walking distance to the train station.
9. We understand that subsequent to the most recent landowners briefing meeting, you discussed with Mr Williams an option involving zoning the land south of Carter

Street B6 Enterprise Corridor. The objectives of this zone as set out in Auburn Local Environmental Plan 2010 are as follows:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
 - *To provide a range of employment uses (including business, office, retail and light industrial uses).*
 - *To maintain the economic strength of centres by limiting retailing activity.*
10. In our view the objectives of this zone would not fit either the planning strategy discussed at the landowners briefing nor our recommendation as concluded below. It is the view of our clients (based on their expertise in property development) that this zoning would not provide incentive to redevelop the subject properties in the short to long term. Further this option would not address the remaining 2 issues, as discussed below.

Land Use Conflict

11. There is an inevitability of conflict arising between the new incoming residential population and the remaining industrial developments south of Carter Street. This is likely to result in increasing pressure to curtail activities that are considered unsightly or generate noise or truck traffic in the area, which in turn will affect the viability of existing industrial operations and the ability to tenant the subject properties.
12. The Suttons Motor Group have owned their sites for many years, Suttons utilise some sites directly and tenant others. Suttons operates a centralised distribution centre as part of their vehicular sales business. The Suttons' lessee, Primo Moraitis Fresh have operated from Carter Street for many years and currently occupy Nos. 28, 30 and 32 and require an industrial location in very close proximity to Sydney Markets.
13. Other businesses on the properties on the South side of Carter Street are similarly located to take advantage of a centralised Sydney location for distribution purposes. Consequently there is a need to maintain the need for the operation of heavy vehicles throughout the night.
14. There would be no incentive for the relocation of these businesses, in the short term or foreseeable future, to take up a commercial development opportunity. Conversely the operational requirements of such businesses will lead to conflict with amenity expectations of the potential incoming residential population north of Carter Street in regard to noise, traffic, parking and the appearance of industrial uses. This has been the experience with other areas, including a recent similar example associated with an industrial property owned by Mr Williams in Erskineville, for which we provided planning services.

Development Constraint on Existing Developments

15. Consistent with the planning options being considered, a potential Business zoning of the subject properties could permit light industrial uses but there may be some current uses that would need to rely on existing use rights. For example, a *B7 Business Park* zone as currently provided for by *Auburn Local Environmental Plan 2010* would permit *light industries* with consent, but all other uses within the parent definition of *industries* and freight transport facilities would become prohibited development.
16. A development application submitted for these industrial properties under a future Business zoning such as B7 would be required to take into consideration the new planning intentions for the area which is likely to curtail the ability to intensify or expand existing industrial operations. The ability to utilise the subject properties for industrial uses would diminish while a possible commercial business zone would provide no viable alternate development opportunity.
17. The above concern would be relevant for either conforming or non-conforming land uses but is particularly an issue for those current operations that would rely on existing use rights. The provisions of clause 41 of the *Environmental Planning and Assessment Regulation 2000* and decisions of the Court in matters such as *Botany Bay City Council v Parangool Pty Ltd [2009] NSWLEC 198* would provide significant limitations on the ability to introduce new tenants to existing premises within the subject properties. Further in our experience, should residential development proceed to the north the development application issues that would arise with new industrial or transport related uses, or expansion of existing uses, would impose significant impediments to the introduction of any new tenants that would utilise the subject properties to their current potential.

Conclusion

18. The above issues warrant the consideration of alternate planning options for the precinct. Contrary to our preliminary thoughts as previously discussed, we consider that the only viable option for the UAP is to concentrate all employment opportunities within a single precinct as close as possible to the existing train station. Based on the discussion had at the recent land owners meeting this should be capable of providing sufficient employment opportunities to more than replace that which exists in the precinct.
19. The land south of Carter Street should be designated for higher density residential development consistent with the option mooted for the land on the northern side of Carter Street. These sites could provide good amenity for residential development as the wide easement along Carter Street results in a reduced building footprint but greater landscaped area conducive to higher tower buildings. The primary northerly orientation of units would be towards the landscape corridor along Carter Street while the south side of the buildings adjacent the M4 motorway) could be acoustically treated with no material loss of amenity.

20. While an option that provided residential development to the north of Carter Street and Commercial development to the south of Carter Street would activate the development potential of the Goodmans land, it is inevitable that this would deactivate both the viability of current uses and the development potential of the subject properties south of Carter Street. This is clearly contrary to the intent of the UAP projects.
21. We gratefully acknowledge the commitment made at the at the recent land owners meeting to take into consideration the above concerns prior to finalising plans. As requested by our clients, we would be pleased to make ourselves available to discuss with you the above matters.
22. Thank you for your consideration and we look forward to your response.

Yours faithfully
GLN PLANNING



PAUL GRECH
DIRECTOR

cc

1. [Mr Warwick Williams](#) (Principal & Property Consultant, Warwick Williams Real Estate).
2. [Mr Bruce Coneybeare](#) (Property Portfolio Manager, Suttons Motor Group).
3. [Mr Michael File](#) (Director, DPI).
4. [Mr David Wilson](#) (Specialist Planning Officer, DPI).