

**DECISION OF 3528th COUNCIL MEETING
HELD ON 10/08/09**

542. G01: Report of Planning & Development Committee

Re Minute No.18 PD05: Planning proposal – Additional permitted use at 450 Miller Street and 11 Amherst Street (Cammeray Square), Cammeray.

Report of Alex Williams, Strategic Planner, 22 July 2009

The subject site, being 450 Miller Street and 11 Amherst Street (Lots 2-5, DP 1129460), Cammeray, is currently zoned Residential D – Neighbourhood Business with a small portion in the north western corner of the site zoned Residential C.

Development consent was issued by the NSW Land and Environment Court on 20 July 2006 for a development comprising retail, non-residential and residential land uses. The development has since been constructed and it is understood that the owner is having trouble securing tenants for non-residential levels 1 and 2 of the building adjacent to the Warringah Freeway.

The owner of the site is seeking to expand the range of permissible uses on the site so as to allow this space to be utilised by small scale businesses and office suites which are currently prohibited. To achieve this, the applicant has requested via letter dated 17 June 2009 that 'commercial premises' as defined in NSLEP 2001 be permitted on the site via a site specific provision. This requires an amendment to NSLEP 2001.

The issue of an expanded range of uses for the subject site may be resolved through the process associated with the Draft NSLEP 2009 which is currently awaiting certification from the Department of Planning so as to allow public exhibition. The owners have, however, indicated they require the resolution of the issue to be expedited and request that an amendment be made to NSLEP 2001. Representations have been made to Council and the Department of Planning to that effect.

Correspondence received from the Department of Planning on 13 May 2009 has indicated that they are open to receiving a proposal from Council to amend NSLEP 2001 to allow commercial premises on the site.

This same correspondence from the Department of Planning encourages Council to consider the inclusion of office premises as a permissible use throughout the B1 zone of the Draft NSLEP 2009. This report therefore includes a recommendation for consideration by Council regarding office premises in the B1 zone and other like areas.

Allowing commercial premises on the subject site above ground level is unlikely to have any negative impacts and will allow the owner the desired flexibility in land uses so that tenants can be secured. It is therefore considered that the planning proposal regarding the subject site is appropriate.

This report, therefore, presents a planning proposal regarding the subject site for adoption and exhibition. It also recommends the issue of office premises in the B1 zone be further explored with input from the Department of Planning.

Amendments to the plan making process contained in the Environmental Planning and Assessment Act 1979 came into force on 1 July 2009. This report and associated recommendations have been drafted in accordance with these changes.

Recommending:

THAT Council resolve to forward the attached planning proposal to the Minister for Planning in order to receive a gateway determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979; and

THAT Council staff investigate the issue of office premises in local centres, including the B1 Neighbourhood Centre zone, under the Draft NSLEP 2009.

Resolved to recommend:

THAT the report be adopted

The Motion was moved by Councillor Reymond and seconded by Councillor Carland.

Voting was unanimous

Note: Councillor Baker declared an interest in this item and left the room taking no part in debate or voting.



Report to General Manager

Planning & Development Committee

Attachments: Planning proposal

SUBJECT: Planning proposal – Additional permitted use at 450 Miller Street and 11 Amherst Street (Cammeray Square), Cammeray.

AUTHOR: Alex Williams, Strategic Planner, 22 July 2009

SUMMARY:

The subject site, being 450 Miller Street and 11 Amherst Street (Lots 2-5, DP 1129460), Cammeray, is currently zoned Residential D – Neighbourhood Business with a small portion in the north western corner of the site zoned Residential C.

Development consent was issued by the NSW Land and Environment Court on 20 July 2006 for a development comprising retail, non-residential and residential land uses. The development has since been constructed and it is understood that the owner is having trouble securing tenants for non-residential levels 1 and 2 of the building adjacent to the Warringah Freeway.

The owner of the site is seeking to expand the range of permissible uses on the site so as to allow this space to be utilised by small scale businesses and office suites which are currently prohibited. To achieve this, the applicant has requested via letter dated 17 June 2009 that 'commercial premises' as defined in NSLEP 2001 be permitted on the site via a site specific provision. This requires an amendment to NSLEP 2001.

The issue of an expanded range of uses for the subject site may be resolved through the process associated with the Draft NSLEP 2009 which is currently awaiting certification from the Department of Planning so as to allow public exhibition. The owners have, however, indicated they require the resolution of the issue to be expedited and request that an amendment be made to NSLEP 2001. Representations have been made to Council and the Department of Planning to that effect.

Correspondence received from the Department of Planning on 13 May 2009 has indicated that they are open to receiving a proposal from Council to amend NSLEP 2001 to allow commercial premises on the site.

This same correspondence from the Department of Planning encourages Council to consider the inclusion of office premises as a permissible use throughout the B1 zone of the Draft NSLEP 2009. This report therefore includes a recommendation for consideration by Council regarding office premises in the B1 zone and other like areas.

Allowing commercial premises on the subject site above ground level is unlikely to have any negative impacts and will allow the owner the desired flexibility in land uses so that tenants can be secured. It is therefore considered that the planning proposal regarding the subject site is appropriate.

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This report, therefore, presents a planning proposal regarding the subject site for adoption and exhibition. It also recommends the issue of office premises in the B1 zone be further explored with input from the Department of Planning.

Amendments to the plan making process contained in the Environmental Planning and Assessment Act 1979 came into force on 1 July 2009. This report and associated recommendations have been drafted in accordance with these changes.

RECOMMENDATION:

- A. **THAT** Council resolve to forward the attached planning proposal to the Minister for Planning in order to receive a gateway determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979; and
- B. **THAT** Council staff investigate the issue of office premises in local centres, including the B1 Neighbourhood Centre zone, under the Draft NSLEP 2009.

Financial Implications:

There are no immediate additional financial implications.

Signed _____

ORIGINAL SIGNED

Endorsed by _____
Manager Strategic Planning

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THE SITE

The subject site, being 450 Miller Street and 11 Amherst Street (Lots 2-5, DP 1129460), Cammeray, is located on the south western corner of Miller Street and Amherst Street, Cammeray. The site is generally rectangular in shape with frontages of 80.195m to Amherst Street; 85.0m to Miller Street; 77.95m to the Warringah Expressway; and shares its western boundary of 84.416m with residential properties and has a site area of 6,815m².

The subject site is currently zoned Residential D – Neighbourhood Business with a small portion in the north western corner of the site zoned Residential C.

Four buildings surrounding a landscaped courtyard containing retail and non residential floor space, child care centre, apartments and two levels of basement parking have recently been constructed on site.

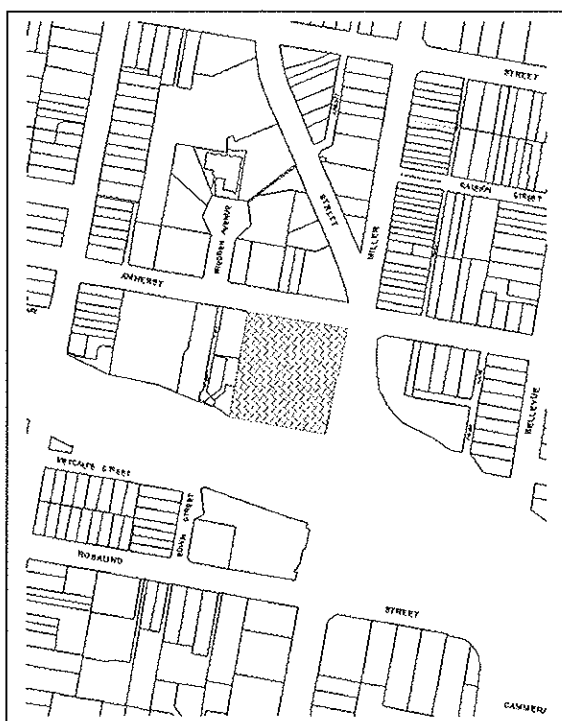


Figure 1 – Site Location

BACKGROUND

Development consent was issued by the NSW Land and Environment Court on 20 July 2006 for a development comprising retail, non-residential and residential land uses. The development has since been constructed and it is understood that the owner is having trouble securing tenants for non-residential levels 1 and 2 of the building adjacent to the Warringah Expressway.

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The owner is seeking to expand the range of permissible uses on the site so as to allow this space to be utilised by small scale businesses and office suites which are currently prohibited. To achieve this the applicant has requested that 'commercial premises' as defined in NSLEP 2001 be permitted on the site via a site specific provision. This requires an amendment to NSLEP 2001.

The issue of an expanded range of uses on the subject site may be resolved through the process associated with the Draft NSLEP 2009 which is currently awaiting certification from the Department of Planning so as to allow public exhibition. The owners have, however, indicated they require the resolution of the issue to be expedited and request that an amendment be made to NSLEP 2001. Representations have been made to Council and the Department of Planning to that effect.

Correspondence received from the Department of Planning on 13 May 2009 has indicated that they are open to receiving a proposal from Council to amend NSLEP 2001 to allow commercial premises on the site. In the Departments view 'there are no obvious strategic issues preventing commercial premises on the site'.

PROPOSED AMENDMENT

Note: Amendments to the plan making process contained in the Environmental Planning and Assessment Act 1979 came into force on 1 July 2009. This report and associated recommendations have been drafted in accordance with these changes.

The attached planning proposal proposes to add the additional permitted use of 'Commercial Premises' on the subject site. 'Commercial Premises' are defined in NSLEP 2001 as:

'... a building or place used as an office or for other business or commercial purposes, but (in Part 2) does not include a building or place elsewhere specifically defined in this Schedule or a building or place used for a land use elsewhere specifically defined in the Schedule.'

To further define the location of the additional commercial premises use the drafting of the clause only permits commercial premises above the ground floor.

Proposed Part 5 clause:

66. 450 Miller Street and 11 Amherst Street, Cammeray

(1) Subject Land

This clause applies to the site known as 450 Miller St and 11 Amherst Street, Cammeray, Lots 2-5, DP 1129460.

(2) Objective

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The specific objective of the control in relation to the subject land is to permit commercial premises above the ground floor.

(3) Permissible Development

Despite the table in Part 2, development for the purposes of commercial premises is permitted above the ground floor, with development consent, on the subject land.

PLANNING APPRAISAL

The subject site is currently mainly zoned Residential D – Neighbourhood Business with a small portion in the north western corner of the site zoned Residential C. The current split zoning is not relevant to the proposed rezoning and this appraisal assumes the site to be wholly contained within the Residential D - Neighbourhood Business zone.

(Note: The portion of the site zoned Residential C is considered to be an anomaly that is inconsistent with the development approved by the NSW Land and Environment Court. The version of DLEP 2009 that is currently awaiting Section 65 certification from the Department of Planning reflects the current split zoning. For this reason, Council staff are working with the Department of Planning to have this anomaly recognised and rectified so that the entire site containing the Cammeray Square development will be zoned B1 Neighbourhood Centre under the Draft NSLEP 2009.)

It is worth noting that although the proposed amendment will allow commercial premises above ground level on the entire site this use is likely to be limited to levels 1 and 2 of the building immediately adjacent to the Warringah Expressway. This is because in the current built form that exists on the site floor space above ground level in all other buildings on the subject site is occupied by residential uses.

The objectives of the Residential D (Neighbourhood Business) Zone are to:

- a) encourage a wide range of services and shops which serve the surrounding residential neighbourhoods, and*
- b) permit a range of small scale businesses which serve local needs, and*
- c) encourage active street life while maintaining high residential amenity, and*
- d) encourage shop top housing.*

The following uses are listed as permissible within the Residential D zone:

advertisements; apartment buildings; attached dwellings; boarding houses; business identification signs; child care centres; community facilities; community notice signs; duplexes; dwelling-houses; educational establishments; home industries; home occupations; hospitals; open space; places of assembly; places of public worship; professional consulting rooms; real estate signs; recreational facilities; refreshment rooms; remediation; shop top housing; shops; telecommunications facilities; temporary signs; utility installations, other than gas holders or generating works.

Location and Context

The addition of commercial uses at Levels 1 and 2 of the building immediately adjacent to the Warringah Expressway is consistent with the mixed use nature of the development itself and the mixed use nature of Cammeray shops. The existing zone objective – “to permit a range of small scale businesses which serve local needs” will continue to apply to future commercial on the site and as such will ensure these future uses will be consistent with the existing context of the site.

Traffic and parking

North Sydney Council Executive Planner Geoff Mossemeneer was asked to provide comment due to the complex nature of the Land and Environment Court decision regarding on site parking. Relevant comments are as follows:

“As indicated in the explanatory notes (regarding the Residential D – Neighbourhood Business zone objectives) ... the development should have minimal adverse impact in terms of traffic. The L & E Court limited parking on the site to restrict the traffic generation to an acceptable level (minimise traffic without the need for traffic calming) and any use that generates a need for more parking than is available on site is considered not to minimise traffic and accordingly not satisfy the objectives of the zone.

The parking required under DCP 2002 for the current approved uses is calculated as follows:

	Area (m ²)	Use	Classification	Parking Rate	Number Spaces Required
1	65	Café	Refreshment	50	1.3
2	110	Takeaway	Refreshment	50	2.2
3	101	Restaurant	Refreshment	50	2.0
4	64	Bookstore	Non-residential	100	0.6
5	98	Takeaway	Refreshment	50	2.0
6	98	Optometrist	Non-residential	100	1.0
7	42	Hair	Non-residential	100	0.4
8	44	Nailbar	Non-residential	100	0.4
9	229	Pharmacy	Non-residential	100	2.3
10	249	Fresh produce	Non-residential	100	2.5
11	464	Fruit market	Supermarket	25	18.6
12	110	Bakery	Non-residential	100	1.1
13	125	Butcher	Non-residential	100	1.3
14	113	Seafood	Non-residential	100	1.1
15	50	Drycleaner	Non-residential	100	0.5
16	182	Restaurant	Refreshment	50	3.6
17	190	Restaurant	Refreshment	50	3.8
	2038	Level 1 and Level 2 of Building C	Non-residential	100	20
		Total			64.7

With level 1 and 2 being used for non residential uses such as an office (requiring one space per 100m²) it is clear from the above table that the mixture of developments creates a demand for parking which would require 65 of the 70 parking spaces approved for the non-residential uses on this site. There would be surplus of 5 spaces on site that would allow part of level 1 or 2 to possibly be used as a small medical centre that would require a higher rate of parking. It should also be noted that the parking requirement for retail shops and offices is the same yet the demand on parking or the turnover of parking would be different. The retail parking would generate more traffic than office parking.

The parking provided on site would be adequate for the use of levels 1 and 2 as “commercial premises” and the use of these levels as “commercial premises” would not generate traffic above the levels allowed for by the Land and Environment Court.”

Residential Amenity

The residential amenity of both the apartments within the Cammeray Square development and neighbouring properties in Amherst Street is unlikely to be affected as a result of permitting commercial uses on the site. Commercial premises typically operate during business hours (i.e. 9am – 5pm) and not on weekends. In addition, commercial uses are generally not noisy operations.

Policy and Strategic Context

Draft Inner North Subregional Strategy - In July 2007, the State Government released the draft Inner North Subregional Strategy covering the North Sydney LGA. The Inner North Subregion is to provide 30,000 new dwellings and capacity for 60,100 additional jobs by 2031. The strategy, amongst other things, aims to focus the majority of new commercial development within the North Sydney and St Leonards CBDs as well as to encourage mixed use development in the smaller centres and villages. Cammeray is identified as a Small Village. It is considered that the proposed amendment is not inconsistent with these aims given the relatively small amount of floor space envisaged (ie ~2,000m²).

Draft North Sydney Local Development Strategy 2008 - The draft North Sydney Local Development Strategy 2008 generally follows the rationale of the Draft Inner North Subregional Strategy. The draft strategy notes that “the Cammeray, Cremorne Junction and Kirribilli areas are small villages consisting of attractive residential neighbourhood shopping areas. The small-scale shops of the area and street level activity serve the needs of local residents.” It is considered that the proposal is not inconsistent with the draft LDS as residential amenity and street level activity will not be impacted and future commercial premises will serve local residents due to the existing objectives of the Residential D zone.

North Sydney LEP 2001 - As noted above, the current zone permits a range of uses. The Residential D zone is not entirely appropriate for the Stockland Cammeray development. The scale of the project and the unique mix of uses make it different from the types of development that typically make up the Residential D (Neighbourhood Business) Zone. However, it is considered that permitting commercial premises above ground level on the subject site will not undermine the current zone objectives in that:

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- it has the potential to enhance the range of services on the site that can serve the surrounding residential neighbourhoods;
- it has the potential to provide accommodation for a range of small scale businesses which serve local needs; and
- it is unlikely to impact on the residential amenity of residents within the site and in surrounding areas.

Council staff considered the inclusion of a maximum leasable area control to ensure future commercial uses are small in scale and serve local needs. However as already noted, the existing zone objective – “to permit a range of small scale businesses which serve local needs” will continue to apply to future commercial uses on the subject site and is considered sufficient to control scale and ensure future uses are directed towards serving local residents.

Draft North Sydney LEP 2009 - The subject site is proposed to be zoned B1 Neighbourhood Centre under the DLEP 2009. The defined uses in DLEP 2009 see the definitions of office premises and business premises separately defined. In the version of DLEP 2009 that is currently awaiting certification from the Department of Planning so as to allow public exhibition ‘business premises’ is listed as a permissible use while ‘office premises’ are proposed to be prohibited.

DEPARTMENT OF PLANNING COMMENT

Recent correspondence from the Department of Planning has encouraged Council to consider the inclusion of office premises as a permissible use throughout the B1 zone. It is considered reasonable that small scale office premises such as those used by solicitors, architects, tax agents, and the like should be accessible in neighbourhood centres such as Cammeray and Kirribilli. The exclusion of office premises from the proposed B1 zone is due to Council’s concerns regarding the potential loss of convenience retail/business uses that serve the needs of the surrounding area.

Council staff consider that the inclusion of an appropriate additional local provision can satisfy the Departments desire to see ‘office premises’ in the B1 zone while protecting the retail/business uses that characterise local centres such as Cammeray and Kirribilli. It is envisaged that an amendment to the B1 zone so as to allow office premises above ground level would satisfy the Departments desire to see office premises in the B1 zone while allaying Council’s concerns regarding the potential loss of ground level convenience uses. That said, it is considered that further investigation is required with input from the Department so as to ensure the most appropriate course of action is adopted.

CONCLUSION

It is considered suitable for commercial premises to be a permissible use above the ground floor on the subject site. In the current built form that exists on the site such uses are likely to be limited to levels 1 and 2 of the building immediately adjacent to the Warringah Expressway.

It is also considered that investigation is warranted regarding the issue of office premises in local centres, including the B1 Neighbourhood Centre zone, under the Draft NSLEP 2009.

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It is therefore recommended:

THAT Council resolve to forward the attached planning proposal to the Minister for Planning in order to receive a gateway determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979; and

THAT Council staff investigate the issue of office premises in local centres, including the B1 Neighbourhood Centre zone, under the Draft NSLEP 2009.
