

Planning Proposal Request for 459 Merrylands Road, Merrylands

Responsible Department: Development, Environment & Infrastructure
Officer: Michael Ryan - Specialist Strategic Planner
File Number: HC 23-08-32
Delivery Program Code: 5.1.1 Oversee the land use planning, design and compliance framework for managing and facilitating appropriate development.

Application lodged	19 April 2016
Proponent	Saint Raymond Charities of Hadchite Inc
Owner	Saint Raymond Charities of Hadchite Inc
Description of Land	459 Merrylands Road, Merrylands Lot W in DP 391056
Proposal	Request to enable additional permitted uses namely 'take away food premises'; 'restaurant or cafe'; and 'business premises';
Site Area	284m ²
Zoning	R3 Medium Density Residential
Disclosure of political donations and gifts	Nil disclosure
Previous Considerations	Nil

SUMMARY

Council has received a request to prepare a planning proposal to amend Holroyd LEP 2013 to enable an existing take away pizza outlet to continue operating.

The proposal specifically requests three (3) additional land uses namely:

- Take away food premises;
- Restaurant or cafe, and
- Business premises.

The proposal does not involve a change of zoning, but rather the inclusion of additional permitted uses (APUs) in schedule 1 of Holroyd LEP 2013 which enables them to be lawfully carried out with development consent.

It is recommended that Council proceed with the planning proposal to only permit 'take away food premises' as an additional permitted use and not a 'restaurant or cafe' or 'business premises' for reasons discussed in this report.

REPORT**Background**

Historically, the site has been used for retail purposes for many years.

On 10th January 1989, Council issued Development Consent No. 89/16 for the use of the premises as a pizza shop including a home delivery service for a trial period of 12 months.

At the expiration of the 12 months period the applicant was required to reapply for the use to continue operating.

On 8 February 1990, Council received a request for permanent approval.

Council's response was that until written confirmation was provided securing suitable parking for pizza delivery vehicles, it was unlikely support could be given to extending the consent.

Council's records do not indicate any further correspondence or lodgement of a further DA for continuation of the 12 month trial period.

In September 2014, a development application was lodged for the internal fit out and use of the premises as a food shop.

The application was refused on the grounds the site no longer enjoyed existing use rights and that a food shop is a prohibited land use in a R3 Medium Density Residential zone.

Consequently, a planning proposal has been submitted requesting that additional land uses be permitted to allow for the existing take away food shop to continue, with development consent.

Site and Context

The site is legally described as Lot W in Deposited Plan (DP) 391056 with a site area of 284m² and a frontage to Merrylands Road of 7.4m

The property is located approximately 2km west of the Merrylands town centre and Merrylands train station (see Figure 1).

Built improvements on the site include a single storey shop with a residence at the rear, connected by a storeroom.

Existing floor areas are approximately:

- shop 58m²;
- storeroom 23m²; and
- dwelling 100m².

The shop has a zero setback from the street and does not have any vehicular access or onsite parking.

Pedestrian access to the dwelling is provided via a side passageway on the western side of the allotment.



Figure 1: Aerial Photograph (Source: Don Fox Planning [Modified])



Figure 2: Subject site viewed from Merrylands Road (Source: Cumberland Council)

Surrounding development

The locality is predominately characterised by low and medium density residential development of varying scales and densities.

Development to the south (across Merrylands Road) comprises high density residential flat building development of 3 – 4 storeys.

Single and two storey detached dwellings are located to the north and west.

Development immediately to the east comprising two separate shops, currently used for the sale of school uniforms and shoes, a retail tyre repair outlet (*Tyres Excel*) and a single level building to the rear occupied by *Freezy Rentals* fronting Holroyd Road.

Contextually, all five properties present as a small neighbourhood centre surrounded by a mix of residential buildings, in spite of being zoned R3 Medium Density Residential.



Figure 3: Site context showing adjoining shops and retail tyre outlet (Source: Cumberland Council)

Consultation

Prior to lodging the planning proposal the proponent met with Council staff to discuss the possibility of either rezoning the site to B1 Neighbourhood Centre or allowing take away food shops as an additional permitted use.

The proponent was advised that for the land to be rezoned, it was preferable to include the two adjoining shops as part of the application.

Alternatively, if the option of allowing additional permitted uses was to be pursued, any uses that generated car parking in excess of the required parking for a take away food shop should be excluded from the proposal.

Assessment of Planning Proposal

The relevant definitions for consideration with this planning proposal are:

- **'take away food and drink premises'** means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises'.
- **'restaurant or cafe'** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.
- **'business premises'** means a building or place at or on which:
 - (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
 - (b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

Apart from 'business premises', the difference between the two food based definitions is that a 'take away food and drink premises' requires food and drink to be consumed **away** from the premises, whereas a 'restaurant or cafe', allows food and drink to be consumed **on** the premises.

Zone objectives

As it is proposed to maintain the current R3 Medium Density Residential zoning and rely on Schedule 1 to permit the additional permitted use, it is pertinent to consider whether the proposal is consistent with the objectives of a R3 zone, which are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Included in the list of permissible uses with consent are 'neighbourhood shop', which is defined as:

'neighbourhood shop' means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises"

Considering that the intent of a R3 zone is to provide a range of housing types supported by uses that meet the daily needs of residents, it is considered reasonable to allow the take away food shop to continue operating.

It is unreasonable therefore not to allow the use of the shop building to continue on the grounds that a pizza shop is separately defined as a 'take away food premises', when compared to a 'neighbourhood shop', which is permitted under a R3 zone.

Both uses are similar in nature and function as retail outlets to serve the needs of the surrounding residential population and those working in the local area.

Required LEP Amendments

Clause 2.5 of Holroyd LEP 2013 provides for additional land uses that would not ordinarily be able to be carried out on land due to the use being prohibited in the zone.

Clause 2.5 states the following:

2.5 Additional permitted uses for particular land

- (1) Development on particular land that is described or referred to in Schedule 1 may be carried out:
 - (a) with development consent, or*
 - (b) if the Schedule so provides—without development consent in accordance with the conditions (if any) specified in that Schedule in relation to that development.**
- (2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.*

The planning proposal is a site specific amendment to the Holroyd LEP 2013 to allow additional permitted land uses in the R3 zone pursuant to Schedule 1 of Holroyd LEP 2013.

In order for this to occur, it will be necessary to include the following item, Item 17, into Schedule 1 of the LEP.

17 Use of certain land at 459 Merrylands Road, Merrylands

- (1) This clause applies to land at 459 Merrylands Road, Merrylands, being Lot W, DP391056, identified as "APU 17" on the Additional Permitted Uses Map.*
- (2) Development for the following purposes is permitted with development consent:
 - (i) Take away food and drink premises**
- (3) Any development identified in sub clause (2) is limited to a maximum floor area of 100m².*

The 100m² floor area restriction is consistent with Clause 5.4 Holroyd LEP 2013 which stipulates that neighbourhood shops (which are permitted in a R3 zone) must not exceed 100m² in retail floor area.

It will also be necessary to amend the Additional Permitted Uses map.

It is not recommended to allow a 'restaurant or café' or 'business premises' as additional permitted uses for the following reasons:

- The primary objective of the planning proposal is to make the current use permissible without amending the existing zoning;
- The site has historically been used as a take away food shop;
- Restaurants by nature have the potential to generate more traffic compared to take away food shops, particularly with food being consumed on the premises;
- Business premises allow a variety of professions and occupations that have the capability of generating a higher number of staff and therefore, an increase in demands for parking;
- Business premises includes many types which may not be consistent with the R3 zone objective of meeting 'the day to day needs of residents'.

Traffic & Parking Impact

The site has frontage to Merrylands Road, which is an Unclassified Regional Road and a signalised pedestrian crossing directly in front.

The site and those adjoining to the east do not have any onsite car parking.

A traffic and parking report was submitted with the planning proposal prepared by ML Traffic Engineers. The report includes results of a parking survey of surrounding streets. Refer to Figure 4.

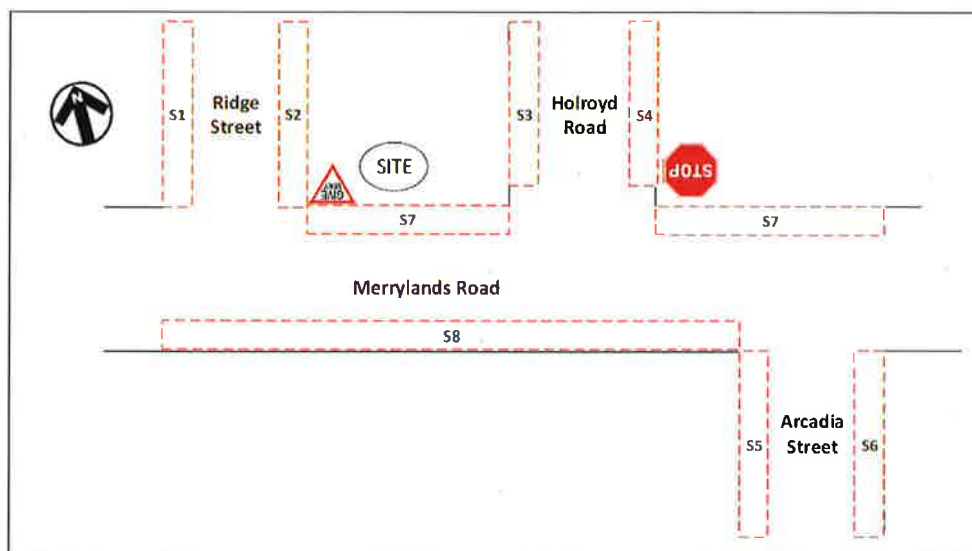


Figure 4: Parking survey area - Source: ML Traffic Engineers)

In summary, the results demonstrated that on week days including Saturdays between 4.30pm and 8.00pm, on average, 60% of on-street car spaces in surrounding streets (i.e. Holroyd Road, Ridge Street and Arcadia Street) were vacant. This equates to approximately 24 of a total 40 spaces being vacant.

Table 1 below summaries the car parking rates for each of the requested additional land uses as set out in Holroyd DCP 2013. The rates are based on the current floor space of the shop of 58m².

Land use as defined in the LEP	Land use as defined DCP	Minimum car parking spaces required	Estimated parking demand based on estimated GFA of 58m ²
Take away food premises	Food and drink premises (including restaurants, take away food and drink premises and pubs) in all zones other than B1, B2, B4, B6 and R4)	1 per 8m ²	7
Restaurant or café	Food and drink premises (including restaurants, take away food and drink premises and pubs) in all zones other than B1, B2, B4, B6 and R4)	1 per 8m ²	7
Business premises	Commercial (including retail premises, business premises and office premises) in all other B1, B2 and B6 zoned areas	Ground Floor - Leasable GFA 1 per 20m ² Above Ground Floor - Leasable GFA 1 per 40m ²	3

Table 1: Car parking rates for additional permitted uses – Holroyd DCP 2013

Whilst 'take away food and drink premises' and 'restaurants' are both defined under the same group term of 'food and drink premises', it is reasonable to accept that restaurants have the potential to generate a higher parking demand because food is consumed on the premises as compared to offsite with a take away food shop.

The results of the parking survey are accepted. The lack of onsite car parking should not prevent the request to allow the take away food shop to be considered for approval to operate.

Social and economic effects

To allow 'take away food and drink premises' as an additional permitted use is unlikely to result in any adverse economic impacts on other established centres for the following reasons:

- Anecdotally a take away food shop has operated from the premises for a number of years without any obvious impacts on the nearby local centre on the corner of Merrylands Road and Sherbrook Road;
- The limitation on floorspace to a maximum of 100m² is the same as for a neighbourhood shop which is a permissible use in the R3 zone;
- A take away food shop is not dissimilar in nature to a neighbourhood shop as both generally function to serve the needs of the surrounding residential population; and

- A take away food shop is compatible with the adjoining residential and other commercial activities surrounding, and is unlikely to result in development which would adversely impact on the existing built and natural environment.

Conclusion

The planning proposal has been assessed as having merit taking into consideration the history of the site and development consent having previously been granted for a pizza shop and home delivery service from the existing shop building.

As a result of existing use rights no longer applying to the site, it is necessary to amend Holroyd LEP 2013 to allow 'take away food premises' to continue operating from the site.

It is recommended that the planning proposal proceed to Gateway Determination to only permit 'take away food premises' as an additional permitted use and not a 'restaurant or cafe' or 'business premises' for reasons discussed in this report.

Report Recommendation:

That the Cumberland Independent Hearing and Assessment Panel (CIHAP) recommend that:

- 1. Council forward a planning proposal to the Department of Planning and Environment for Gateway Determination to amend Schedule 1 of Holroyd LEP 2013 by including the following item:***

'17 Use of certain land at 459 Merrylands Road, Merrylands

(1) This clause applies to land at 459 Merrylands Road, Merrylands, being Lot W, DP391056, identified as "APU 17" on the Additional Permitted Uses Map.
(2) Development for the following purposes is permitted with development consent:
(i) Take away food and drink premises
(3) Any development identified in sub clause (2) is limited to a maximum floor area of 100m².
- 2. The Additional Permitted Uses map in Holroyd LEP 2013 is amended accordingly.***
- 3. Council advise the Department of Planning and Environment that it wishes to exercise its plan making delegations for the planning proposal.***
- 4. A further report be provided to Council following the exhibition of the planning proposal.***

Attachments (to be circulated to CIHAP members only under separate cover):

- 1. 459 Merrylands Road Planning Proposal Report and Traffic and Parking Report***

ITEM C020/16 - PLANNING PROPOSAL REQUEST FOR 459 MERRYLANDS ROAD, MERRYLANDS

Note: Mr B. McDonald declared an interest in the item and did not participate in the consideration and discussion of the matter and did not vote.

Resolved unanimously that the Cumberland Independent Hearing and Assessment Panel (CIHAP) recommend that:

1. Council forward a planning proposal to the Department of Planning and Environment for Gateway Determination to amend Schedule 1 of Holroyd LEP 2013 by including the following item:

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2. The Additional Permitted Uses map in Holroyd LEP 2013 is amended accordingly.
3. Council advise the Department of Planning and Environment that it wishes to exercise its plan making delegations for the planning proposal.
4. A further report be provided to Council following the exhibition of the planning proposal.

For: The Hon. Paul Stein AM, QC (Chairperson), Mr. S. McDonald and Mr. M. Byrne.

Against: Nil.

The meeting terminated at 12.45 p.m.

Signed:



Chairperson

