



PLANNING PROPOSAL

To Amend Schedule 1 of Holroyd LEP
2013 and associated map to permit an
additional use on land at
459 Merrylands Road, Merrylands

December 2016

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1 INTRODUCTION

This Planning Proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and relevant guidelines produced by the NSW Department of Planning and Environment.

The purpose of the planning proposal is to seek an amendment to Holroyd Local Environmental Plan 2013 (HLEP 2013) to make permissible a single additional land use at 459 Merrylands Road, Merrylands. The proposal does not involve a change of zoning, but rather the inclusion of an additional permitted use (APU) in Schedule 1 of Holroyd LEP 2013 to enable an existing take away pizza outlet to continue operating after 27 years in the same location.

A planning proposal request was submitted to the former Holroyd City Council (Refer **Attachment 1**) for the subject site seeking approval to permit three (3) additional land uses on the site, namely:

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

Council resolved to support the planning proposal but only on the basis of enabling '*take away food premises*' as a permitted use but not a '*restaurant or cafe*' or '*business premises*' for reasons discussed in this report.

1.1 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. The request for permanent approval was received by Council on 8th February 1990.

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. However, 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 was submitted requesting three (3) additional land uses be permitted including the continued use of the existing take away food shop. Council assessed the merit of each additional land use in its report to Cumberland IHAP (CIHAP) meeting of 14th September 2016. CIHAP recommended to Council that take away food and drink premises be approved as an additional permitted use, but not support the request for business premises and restaurant or café to be included. Refer to CIHAP Report at **Attachment 2**.

At its meeting on 2nd November 2016, Council endorsed the recommendation by declaring:

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

"17. Use of certain land at 459 Merrylands Road, Merrylands.

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

1.2 LAND TO WHICH THE PLANNING PROPOSAL APPLIES

The Planning Proposal applies to the site known as 459 Merrylands Road, Merrylands. The location is shown in **Figure 1**.

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 7.4 metres. The property is located approximately 2km west of the Merrylands town centre and Merrylands train station.

Built improvements on the site include a single storey shop with a residence at the rear, connected by a storeroom. Refer **Figure 2**.

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 on site parking.

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

Immediately adjoining to the east are 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 in spite of being zoned R3 Medium Density Residential.

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, whilst single and two storey detached dwellings dominate to the north and west.



Figure 1: Site Location (Source: Don Fox Planning [Modified])



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

1.3 CURRENT PLANNING CONTROLS

Holroyd Local Environmental Plan 2013

Zoning

The subject site is currently zoned R3 Medium Density Residential under Holroyd Local Environmental Plan (LEP) 2013.

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 the intent of a R3 zone is to allow ancillary uses that meet the daily needs of residents, it is considered reasonable to assume a take away food shop would serve such a purpose and be permitted to continue operating. However, by definition as a ‘take away food premises’, it is prohibited whereas a neighbourhood shop is permitted in a R3 zone.

Both uses are similar in nature and function as retail and convenience food outlets serving the daily needs of the local population.

There are no requested changes to other LEP controls such as FSR, height or built form controls.

Holroyd DCP

There are no changes required to any provisions of the DCP.

2 PLANNING PROPOSAL

Section 55 (2) Environmental Assessment & Planning Act 1979 outlines that a Planning Proposal must include:

Part 1 - Objectives or intended outcomes

Part 2 - Explanation of provisions

Part 3 - Justification

Part 4 - Community consultation

2.1 OBJECTIVES OR INTENDED OUTCOMES

Objectives

The primary objective of the Planning Proposal is to:

- a) acknowledge the historic and ongoing use of the site as a take away food premises by making the use permissible without amending the zoning
- b) achieve the objectives of the R3 zoning by only allowing an additional use that is deemed to serve the day to day needs of the local community.
- c) make no changes to the built form or associated controls.
- d) only permit uses which by nature will not generate additional traffic or demand for parking.

2.2 EXPLANATION OF PROVISIONS

The planning proposal will require a site specific amendment to the Holroyd LEP 2013 to allow an additional permitted land use in the R3 zone, structured as follows.

Required Amendment to Schedule 1

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.

In order for this to occur, it will be necessary to add 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.

Referring to Subclause 17(3) above, 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.

Required Map Amendments

Amend the **Additional Permitted Uses Map** (Sheet APU_006) on the subject site to permit “Take away food and drink premises” and noted as APU 17.

Refer to **Attachment 3** for draft map amendment.

2.3 JUSTIFICATION

This section details the reasons for the proposed outcomes in accordance with Department of Planning and Environment Guidelines.

2.3.1 Need for the Planning Proposal

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

The planning proposal is not the direct result of a strategic study or report.

The nature of the site and LEP amendment being sought is too specific and minor to warrant a broader study or investigation.

The proposal is seeking an ‘additional permitted use’ amendment as a means of recognising the historic and current use on the site. However, the amendment does not preclude or hinder the application of existing built form controls on any future development of the site.

Q: Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

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.

The Planning Proposal, as submitted, was site specific and sought support for a range of land uses in addition to the existing take away food and drink premises. However, Council does not support the request for inclusion of *'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 include many types which may not be consistent with the R3 zone objective of meeting 'the day to day needs of residents'.

In respect to the take away food outlet, the proponent has not been able to establish existing use rights for the pizza outlet. Whilst neighbourhood shops less than 100sqm are permitted, the existing food business is prohibited. Therefore a Planning Proposal is the only mechanism by which the existing use can continue to operate. It was resolved that the intended outcome of the Planning Proposal is best achieved through a site specific amendment to permit the small scale use to continue operating.

An amendment Schedule 1 of the Holroyd LEP 2013 (and a corresponding amendment to the Additional Permitted Uses map) is the best way to allow the current take away food premises to continue its small scale operation. The use serves the surrounding residential population and is consistent with the objectives of the R3 zone and thereby an amendment to Schedule 1 of the LEP achieves the intended outcome of the Planning Proposal.

2.3.2 Relationship to strategic planning framework

Q: Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The Metropolitan Plan – *A Plan for Growing Sydney* provides a long term planning framework based on strategic directions for the future growth of Sydney. The Planning Proposal is consistent with the aims and objectives of the Plan by:

As noted in *A Plan for Growing Sydney*, shops, cafes and other food services play a positive role in improving the general liveability of an area, particularly in areas where there are higher population densities. The immediate locality comprises a mix of low and medium density dwellings. Accordingly, the take away food premises deliver a service that caters to the needs of local residents thereby responding to the aims of the strategy.

Q: Is the Planning Proposal consistent with a council’s local strategic or other local strategic plan?

Council’s Community Strategic Plan 2013 – *Living Holroyd* provides Council’s long term planning framework and strategic vision for the City. The Plan balances Council’s commitment to social cohesion, the local economy, the natural and built environments and all members of the Holroyd Community.

The Planning Proposal is consistent with Holroyd Council’s Community Strategic Plan. The plan establishes a central vision for Holroyd for 20 years into the future. By 2031, Holroyd is expected to accommodate an additional 30,000 people and over 15,000 new homes. The Planning Proposal supports the objectives of the Community Strategic Plan in that the existing use will potentially provide support food services to serve the day to day needs of the anticipated residential population.

Holroyd City Economic Development Strategy (2014)

The Holroyd City Economic Development Strategy provides an overarching vision for the economic direction and growth of the LGA. One of the key strategies is to support businesses enabling them to develop and grow within Holroyd, a crucial component of any economic development strategy.

Adopting a collaborative approach in working with businesses and industries that are already established as well as those seeking to set up operations will ensure that opportunities for economic growth in Holroyd are maximised.

Accordingly, this planning proposal is a means of ensuring the continuation of a use established in Merrylands for the past 27 years.

Q: Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The following table provides an assessment of the Planning Proposal with the relevant State Environmental Planning Polices (SEPP):

Table 1 - Consistency with applicable SEPP’s

SEPP	Consistent
SEPP No. 19 – Bushland in Urban Areas	N/A
SEPP No. 21 – Caravan Parks	N/A
SEPP No. 33 – Hazardous & Offensive Development	N/A
SEPP No. 55 – Remediation of Land	The planning proposal does not result in a more sensitive or contaminating land use on the site. The proposal will not contain provisions inconsistent with the SEPP nor hinder the application of the SEPP.
SEPP No. 64 Advertising & Signage	The proposal will not contain provisions inconsistent with the SEPP nor hinder the application of the SEPP.
SEPP No 65-Design Quality of Residential Flat Development	The proposal will not contain provisions inconsistent with the SEPP nor hinder the application of the SEPP should the site be redeveloped in the future for residential purposes.
SEPP (Affordable Rental Housing) 2009	The proposal will not contain provisions inconsistent with the SEPP nor hinder the application of the SEPP should the site be redeveloped in the future
SEPP (Building Sustainability	The proposal will not contain provisions inconsistent with the SEPP nor hinder the application of the SEPP should the site

Index: BASIX) 2004	be redeveloped in the future for residential purposes.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	N/A
SEPP Miscellaneous Consent Provisions) 2007	N/A
SEPP (Infrastructure) 2007	The proposal will not contain provisions inconsistent with the SEPP nor hinder the application of the SEPP.
SEPP (Exempt and Complying Development Codes) 2008	N/A
SEPP (Housing for Seniors or People with a Disability) 2004	The proposal will not contain provisions inconsistent with the SEPP nor hinder the application of the SEPP should the site be redeveloped in the future.
Sydney Regional Environmental Plan No. 9- Extractive Industry (No. 2 – 1995)	N/A
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	The site is within the catchment area; however there is no inconsistency with the planning principles of the SEPP. The site is not in a strategic location defined by the SEPP such as critical habitat, strategic foreshore site, protection zone or foreshore and waterway area.

Q: Is the Planning Proposal consistent with applicable Ministerial Directions (s117 directions)?

The consistency of the Planning Proposal against relevant Section 117 Directions is detailed in Table 2 below:

Table 2 - Consistency with applicable Section 117 Directions

Section 117 Direction	Consistent	Comment
Employment and Resources		
1.1 Business and Industrial Zones	Yes	N/A as residential zoning to be retained.
1.2 Rural Zones	N/A	
1.3 Mining, Petroleum Production and Extractive Industries	N/A	
1.4 Oyster Aquaculture	N/A	
1.5 Rural Lands	N/A	

Environment and Heritage		
2.1 Environment Protection Zones	N/A	
2.2 Coastal Protection	N/A	
2.3 Heritage Conservation	N/A	
2.4 Recreation Vehicle Areas	N/A	
2.5 Application of E2 Zones and Environmental Overlays in Far North Coast LEPs	N/A	
Housing, Infrastructure and Urban Development		
3.1 Residential Zones	Yes	The Planning Proposal does not alter the R3 zone boundary and is therefore not inconsistent with the objectives of this direction.
3.2 Caravan Parks and Manufactured Home Estates	N/A	
3.3 Home Occupations	N/A	
3.4 Integrating Land Use and Transport	Yes	The Planning Proposal does not alter the R3 zone and is consistent with the objective to provide services within proximity to new housing.
3.5 Development near licensed aerodromes	N/A	
3.6 Shooting Ranges	N/A	
Hazard and Reduction		
4.1 Acid Sulfate Soils	N/A	The subject site is not mapped under Holroyd LEP 2013 as have a probability of contain acid sulphate soils.
4.2 Mine Subsidence and unstable land	N/A	
4.3 Flood Prone Land	N/A	The land is not identified as flood prone land.
4.4 Planning for Bushfire Protection	N/A	The land is not mapped bushfire prone land or in proximity to land mapped as bushfire prone land.
Regional Planning		
5.1 Implementation of	N/A	

Regional Strategies		
5.2 Sydney Drinking Water Catch	N/A	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A	
5.8 Second Sydney Airport: Badgerys Creek	N/A	
5.9 North West Rail Link Corridor Strategy	N/A	
5.10 Implementation of Regional Plans	Yes	Refer to Section 2.3.2
Local Plan Making		
6.1 Approval and Referral Requirements	Yes	The Planning Proposal does not include provisions requiring the concurrence, consultation or referral of applications. The Planning proposal does not identify the development as designated development.
6.2 Reserving Land for Public Purposes	N/A	
6.3 Site Specific Provisions	Yes	Consistent. The inclusion of a APU with a floor area restriction is not unnecessarily restrictive as it will ensure development is compatible in nature and scale with surrounding residential development.
Metropolitan Planning		
7.1 Implementation of A Plan for Growing Sydney	Yes	Refer to Section 2.3.2
7.2 Implementation of Great Macarthur Land Release Investigation	N/A	

2.3.3 Environmental, Social and Economic impact

Q: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The site is located in a highly modified and well established urban area.

No threatened species, populations or ecological communities or their habitats exist within the site and therefore would not be adversely affected by the proposal.

Q: Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

In determining the range of additional uses to be permitted, consideration was given to the social and economic effects as well as traffic and parking implications of the land uses nominated by the proponent.

Social and Economic Effects

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

- Anecdotally a take away food shop has operated from the premises for many years without obvious impacts on the nearby local centre on the corner of Merrylands Road and Sherbrook Road;
- The limitation on floor space to a maximum of 100m² limits the scale to that of 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 daily food needs of the surrounding residential population; and
- A small scale take away food shop is compatible with a residential neighbourhood, and is unlikely to result in any activities that would adversely impact on the existing built and natural environment

Traffic and Parking

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.

ML Traffic Engineers prepared traffic and parking assessment report with the planning proposal which included a traffic and parking survey of surrounding streets. A copy of the report is provided in Attachment 1 of the Planning Proposal Request.

The report took into account the lack of on-site parking and noted that all parking and traffic generated by the take away food shop is included in the existing traffic conditions. In summary the report concluded that there is ample on-street parking and the surrounding road intersections perform well with spare capacity. Essentially there are no traffic engineering reasons to warrant refusal of the take away food shop operations.

However, 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.

2.3.4 State and Commonwealth Interests

Q: Is there adequate public infrastructure for the Planning Proposal?

The proposal does not involve building works or intensification of uses on site. Rather the intent of the planning proposal is to legitimise a continuation of an existing use on site. On this basis, the existing public infrastructure will adequately cater for the proposal.

Q: What are the views of state and commonwealth public authorities consulted in accordance with the Gateway determination?

The Gateway determination will provide a list of public authorities that will need to be consulted. It is proposed that public authority consultation be undertaken concurrently with community consultation.

2.4 MAPPING

The Planning Proposal will require amendment to the Additional Permitted Uses map accompanying Holroyd LEP 2013 to identify the subject site as one on which additional uses are permitted. Refer **Attachment 3**.

2.5 COMMUNITY CONSULTATION

It is proposed the Planning Proposal be exhibited for a period of 28 days.

The exhibited material will contain a copy of the Planning Proposal and relevant maps supported by a written notice describing the objectives and intended outcomes of the proposal, the land to which the proposal applies and an indicative time frame for finalisation of the Planning Proposal. Consultation will not occur until receipt of the 'gateway determination'.

The proposed consultation methodology will include, but is not limited to:

- forwarding a copy of the Planning Proposal and the gateway determination to State and Commonwealth public authorities identified in the gateway determination;
- giving notice of the public exhibition in the main local newspaper circulating in Merrylands (Parramatta Advertiser);
- notifying the exhibition of the Planning Proposal on Council's web site including all relevant documentation;
- providing a copy of the Planning Proposal and supporting documentation at Council's Administration buildings and Merrylands Library;
- notifying all adjoining and surrounding property owners

2.6 PROJECT TIMELINE

1.	Planning Proposal submitted for Gateway Determination	February 2017
2.	Receive Gateway Determination	March 2017
3.	Public exhibition process and consultation commences	April 2017
4.	Consideration of submissions	May 2017
5.	Post exhibition report to Council	June 2017
6.	Council forwards final Proposal to Department for gazettal	July 2017

3 ATTACHMENTS

Attachment 1

Planning proposal request prepared by DFP Planning Consultants, December 2015 including Traffic and Parking Report prepared by ML Traffic Engineers, March 2016

Attachment 2

Report C020/16 to Cumberland IHAP Meeting of 14 September 2016

Attachment 3

Report 111/16 to Council Meeting of 2 November 2016

Attachment 4

Additional Permitted Uses (APU) Map as amended