
Min.264 Extension of Council Meeting**Motion (Elmore/Hussein)**

That Council in accordance with clause 18.2 of the Code of Meeting Practice, extend the meeting by 1 hour to conclude at 11:00pm, or if an item being discussed is unfinished at 11:00pm, at the conclusion of that item.

The Motion on being Put was declared **CARRIED**.

Councillor(s) For the Motion: Christou, Colman, Cummings, Elmore, Farooqui, Garrard, Hamed, Huang, Hughes, Hussein, Lake and Zaiter.

Councillor(s) Against the Motion: Nil.

Debate then resumed on Item C10/22-171.

The Motion on being Put was declared **CARRIED** Unanimously.

Councillor(s) For the Motion: Christou, Colman, Cummings, Elmore, Farooqui, Garrard, Hamed, Huang, Hughes, Hussein, Lake and Zaiter.

Councillor(s) Against the Motion: Nil.

During debate, Councillor Colman raised a Point of Order, advising that Councillor Christou had already spoken to the Motion. The Mayor, Councillor Lake sought clarification and confirmed that Councillor Christou had only spoken on the amendment, and was entitled to speak to the Motion.

During debate, Councillor Christou raised a Point of Order, citing an alleged breach of Clause 15.11 (d) of *the Code of Meeting Practice*, advising that Councillor Colman made personal reflections toward him. The Mayor, Councillor Lake did not uphold the point of order.

Councillor Cummings left the Meeting at 9:39pm and returned to the Meeting at 9:41pm during the consideration of this item.

Councillor Sarkis left the Meeting at 9:41pm during the consideration of this item.

Min.265 C10/22-173 Planning Proposal and Draft Voluntary Planning Agreement for 239 Merrylands Road, Merrylands

Note: Councillor Sarkis remained outside the Chamber prior to the consideration of this item at 9:41pm as he had declared a Less Than Significant, Non-Pecuniary interest in this item.

Motion (Hamed/Elmore)

That Council:

1. Adopt the exhibited planning controls for 239 Merrylands Road, Merrylands, as resolved by Council and revised following a Gateway Determination, being:
 - a. Height of Building control of 64 metres for proposed building D and Height of Building control of 84 metres for proposed building E
 - b. Floor Space Ratio control be increased to 7:1 for proposed buildings D and E.
2. Finalise the Planning Proposal, as delegated by the Minister, following execution of the Voluntary Planning Agreement and registration on title.
3. Endorse and delegate authority to the Mayor and General Manager to execute the Voluntary Planning Agreement on behalf of Council for 239 Merrylands Road, Merrylands, as provided in Attachment 2.
4. Note that the Local Environmental Plan amendment will be published on the NSW legislation website and in the Government Gazette upon finalisation.

The Motion on being Put was declared **CARRIED**.

Councillor(s) For the Motion: Colman, Cummings, Elmore, Farooqui, Hamed, Huang, Hussein, Lake, Saha and Zaiter.

Councillor(s) Against the Motion: Hughes, Garrard, Christou.

Councillor Saha returned to the Meeting at 10:13pm during the consideration of this item.

At this point of the Meeting, Councillor Saha declared a Less Than Significant, Non-Pecuniary interest in item C10/22-172 which had previously been resolved during Items By Exception, as one of the properties in the report recommended for noting only is in close proximity to his place of residence. He requested that the matter be recommitted so he could take no part in the matter. The Mayor, Councillor Lake sought a Motion to effect this.

Min.266 Recommittal of Council Resolution**Motion (Elmore/Sarkis)**

That Council recommit item C10/22-172 for determination in accordance with Clause 17.14(a) of the *Code of Meeting Practice*.

The Motion on being Put was declared **CARRIED**.

Councillor(s) For the Motion: Christou, Colman, Cummings, Elmore, Farooqui, Garrard, Hamed, Huang, Hughes, Hussein, Lake, Saha, Sarkis and Zaiter.

Councillor(s) Against the Motion: Nil.

Item No: C10/22-173

PLANNING PROPOSAL AND DRAFT VOLUNTARY PLANNING AGREEMENT FOR 239 MERRYLANDS ROAD, MERRYLANDS

Responsible Division: Environment & Planning
Officer: Director Environment & Planning
File Number: PP2021/0001
Community Strategic Plan Goal: *A resilient built environment*

SUMMARY

On 21 July 2021, Council endorsed a planning proposal for 239 Merrylands Road, Merrylands (formerly 233 and 249-259 Merrylands Road and 52 McFarlane Street, Merrylands) to be forwarded to the Department of Planning and Environment (the Department) for a Gateway Determination. At the same meeting, Council resolved to prepare a Voluntary Planning Agreement to derive public benefit should a Gateway Determination be received.

On 4 March 2022, the Department issued a Gateway Determination endorsing the planning proposal for public exhibition, subject to certain changes being made to the proposal. Consistent with the Gateway Determination, Council officers updated the planning proposal and placed it on public exhibition.

As required by Council's resolution, Council officers also prepared a draft Voluntary Planning Agreement based on a letter of offer from the proponent and reported to Council's meeting of 20 July 2022. The Agreement included the delivery of a street sweeper parking and storage space with other amenities for use by Council in perpetuity, as well as a monetary contribution towards local infrastructure improvements and public domain upgrades in the Merrylands Town Centre. The draft Agreement was notified in accordance with legislative and policy requirements.

This report outlines submissions received during public exhibition of the planning proposal and notification of the draft Voluntary Planning Agreement. It is recommended that Council adopts and finalises the Planning Proposal to proceed to plan making as delegated by the Minister. It is also recommended that Council adopts and delegates authority to the Mayor and General Manager to execute the Voluntary Planning Agreement.

RECOMMENDATION

That Council:

- 1. Adopt the exhibited planning controls for 239 Merrylands Road, Merrylands, as resolved by Council and revised following a Gateway Determination, being:**

- a. **Height of Building control of 64 metres for proposed building D and Height of Building control of 84 metres for proposed building E**
 - b. **Floor Space Ratio control be increased to 7:1 for proposed buildings D and E.**
2. **Finalise the Planning Proposal, as delegated by the Minister, following execution of the Voluntary Planning Agreement and registration on title.**
3. **Endorse and delegate authority to the Mayor and General Manager to execute the Voluntary Planning Agreement on behalf of Council for 239 Merrylands Road, Merrylands, as provided in Attachment 2.**
4. **Note that the Local Environmental Plan amendment will be published on the NSW legislation website and in the Government Gazette upon finalisation.**

REPORT

Planning Proposal

Background

A Planning Proposal request was lodged with Cumberland City Council in April 2021 for 233, 249-259 Merrylands Road and 52-54 McFarlane Street, Merrylands, (currently known as 245 and 239 Merrylands Road and 52 McFarlane Street, Merrylands) which sought to increase the maximum height of buildings and floor space ratio controls for the site under the former *Holroyd Local Environmental Plan (LEP) 2013*. Merrylands Investment Co Pty Ltd (Coronation) is the applicant for this proposal.

The proposal was considered by the Cumberland Local Planning Panel on 4 June 2021. On 21 July 2021, Council considered a report on the planning proposal request for former 233, 249-259 Merrylands Road and 52-54 McFarlane Street, Merrylands (currently 245 and 239 Merrylands Road and 52 McFarlane Street, Merrylands). At this meeting, Council resolved to:

- “1. Endorse a planning proposal for 233, 249-259 Merrylands Road and 52-54 McFarlane Street, Merrylands, that seeks to amend the Holroyd Local Environmental Plan 2013, to:*
 - a. Increase Height of Buildings (HOB) controls for:*
 - i. Building D from 55m (16 storeys) to 64m (19 storeys)*
 - ii. Building E from 77m (23 storeys) to 84m (25 storeys)*
 - iii. Building A from 55m (16 storeys) to 77m (23 storeys).*
 - b. Increase the Floor Space Ratio control for Buildings D and E from 5.5:1 to 7.5:1.*
2. *Endorse that the planning proposal for 233, 249-259 Merrylands Road and 52-54 McFarlane Street, Merrylands, be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination.*

3. *Prepare a Voluntary Planning Agreement to derive public benefit, should a Gateway Determination be received.”*

Map showing the Land and the location of Building D and Building E.



The diagram below shows the location of Building D and Building E.

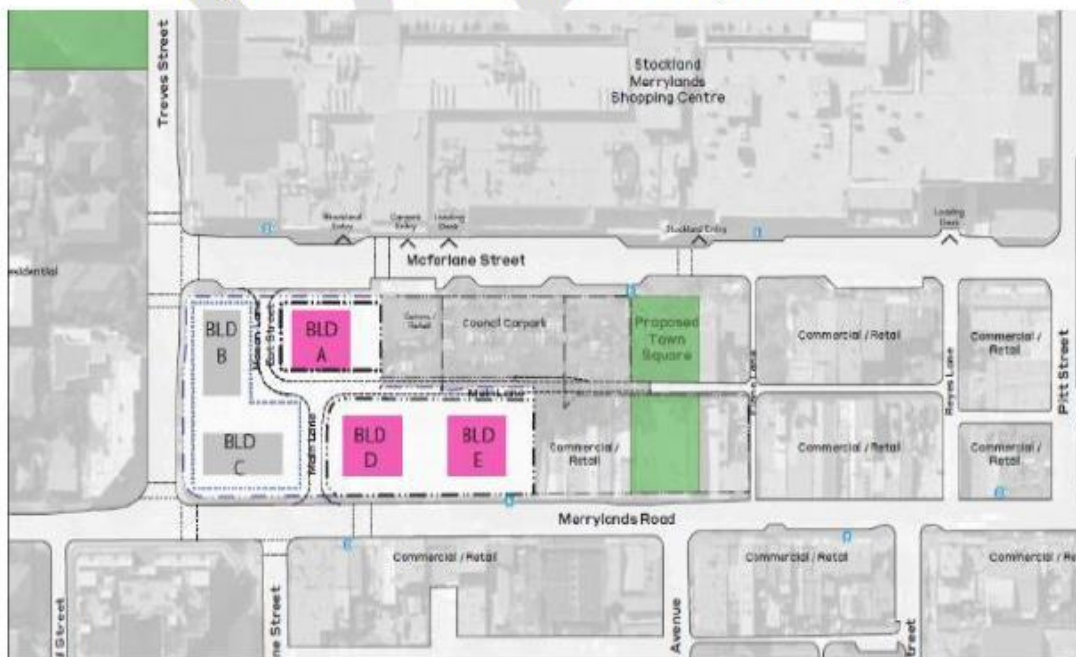


Figure 1: Location of Planning Proposal and Voluntary Planning Agreement

On 4 March 2022, the Department of Planning and Environment issued a Gateway Determination and endorsed that the proposal proceed with delegations issued by the Minister for public exhibition, subject to the following changes being made:

- a) *remove the proposed height of building of 77m for Building A from the planning proposal;*
- b) *amend the proposed FSR to 7:1 (Buildings D and E);*
- c) *amend the proposed maps to ensure consistency with the lettering approach used by Council and insert a legend;*
- d) *remove references to Holroyd LEP 2013 and replace with Cumberland LEP 2021;*
- e) *amend the response to demonstrate consistency in relation to Section 9.1 Direction 6.2 Reserving Land for a Public Purpose; and*
- f) *amend the traffic impact study in line with the proposed uplift. “*

Based on the Gateway Determination issued and notification of Cumberland LEP 2021 in November 2021, Council officers further revised the planning proposal to reflect the proposed planning controls sought under the *Cumberland Local Environmental Plan 2021* and amended the land to which the proposal applied to 239 Merrylands Road, Merrylands (proposed Buildings D and E) as follows:

- a. *Increase Height of Buildings (HOB) controls for:*
 - *Building D from 55m (16 storeys) to 64m (19 storeys)*
 - *Building E from 77m (23 storeys) to 84m (25 storeys)*
- b. *Increase the Floor Space Ratio control for Buildings D and E from 5.5:1 to 7:1.*

Council officers updated the planning proposal in accordance with the Gateway Determination, and the revised proposal was placed on public exhibition.

An altered Gateway Determination was issued by the Department of Planning and Environment on 15 August 2022 to remove the condition where exhibition must commence within 3 months following the date of the Gateway Determination. This was undertaken by the Department to reflect the additional time required to update the relevant studies in accordance with the Gateway Determination and enable Council to finalise negotiations and consider the Voluntary Planning Agreement.

Public exhibition

The updated Planning Proposal was placed on public exhibition from 15 June 2022 to 14 July 2022 for a period of 30 days. During this time, the exhibition material was made available on Council's Have Your Say page and the NSW Government's planning portal. Owners and occupiers within a 200-metre distance of the subject site also received written notification on the proposal.

Community submissions

During the public exhibition of the planning proposal, two community submissions were received. Key concerns raised in community submissions include objections to the proposed density and uplift, potential impacts on amenity, traffic and parking and dwelling mix. A summary and response to the submissions is provided as an attachment to the report.

Public Agency submissions

As per the Gateway Determination issued, Council also consulted the proposal with Transport for NSW, to which no major issues or concerns were raised with regards to the revised proposal. Transport for NSW considered the proposed change was a minor uplift and had no objections raised to the proposal. Any further traffic and transport impacts as a result of the proposed uplift to this proposal will be further assessed when a DA is lodged for the proposal.

A submission was also received from Endeavour Energy expressing some minor concerns that the development's proposed uplift would also need to consider and meet additional electricity infrastructure provisions as required. Any further impacts on electrical service infrastructure will be further assessed when a DA is lodged for the proposed uplift in the future.

All public authority submissions received did not object to progressing the proposal in principle but raised matters that would need to be dealt in detail when a development application is lodged or modified for the proposal if the proposal proceeds to notification. Council also did not receive any submissions requesting a hearing.

Next steps

The issues raised in the community and public authority submissions have been considered by Council officers. These matters have either been responded as part of this report or are matters which can be addressed in detail at the development application stage. No changes to the Planning Proposal are proposed in response to the public submissions.

It is recommended that Council endorse and finalise the Planning Proposal to proceed to plan making. Subject to endorsement, the proposal intends to be undertaken as a mapping amendment to the existing Cumberland LEP 2021 to amend existing FSR and Height of Buildings controls proposed for the site.

Voluntary Planning Agreement

Background

Following a resolution by Council in July 2021 to derive public benefit on the planning proposal, an offer was received by the proponent to Council and a draft Voluntary Planning Agreement prepared. The draft Agreement proposes the provision of a sweeper parking and storage facility with some amenities for Council's exclusive use in perpetuity to be located within the proposed development (buildings D or E), to provide a location where facilities to support the cleansing of public domain in the growing Merrylands Town Centre can be efficiently operated. A monetary contribution

towards ongoing local infrastructure improvements and public domain upgrades in the Merrylands Town Centre. An offset from section 7.11 local infrastructure contributions is also proposed in the Agreement, based on the value of the sweeper parking and storage facility.

The offer and draft Voluntary Planning Agreement was considered by Council in July 2022 and endorsed to progress to notification.

Notification

Following Council's resolution, the draft Voluntary Planning Agreement was notified from 3 August 2022 to 30 August 2022 on Council's Have Your Say page on website for a period of over 28 days. Hardcopies of the voluntary planning agreement were also provided at Auburn and Merrylands customer service centres.

Submission

Council has received one (1) community submission at the close of exhibition on 30 August 2022. Key concerns raised in the community submission include objections to have your say page, draft schedules, why 50% is adopted for negotiations to apportion costs as a result of value uplift, does the Agreement include community benefit and ongoing maintenance costs. A summary and response to the submission is provided as an attachment to the report.

Next steps

The issues raised in the submission on the draft Voluntary Planning Agreement have been considered by Council officers. These matters have been responded as part of this report.

Given some of the issues raised in the submission, a further review by Council's legal advisor for the Voluntary Planning Agreement has also been undertaken to ensure that the information included is accurate. Following this review, minor administrative changes have been made to the Agreement in regard to the reference of the Australian Company Number rather than the Australian Business Number reference (noting that the number provided in the draft version is correct), as well as amending a typographical issue in Schedule 2 numbering to reflect existing items as A, B and C which was drafted as A, B and B. These changes are minor that do not change the intent or scope of the Voluntary Planning Agreement, and therefore do not require a re-notification of the document.

It is recommended that Council endorse and delegate authority to the Mayor and General Manager to execute the Voluntary Planning Agreement on behalf of Council for 239 Merrylands Road, Merrylands.

COMMUNITY ENGAGEMENT

Consultation processes for the proposal are outlined in the main body of the report.

POLICY IMPLICATIONS

Policy implications for Council are outlined in the main body of the report.

RISK IMPLICATIONS

There are minimal risk implications for Council associated with this report. This report's recommendation stipulates that the Voluntary Planning Agreement must be executed and registered on title prior to the Local Environmental Plan (LEP) amendment being finalised. All statutory and Council policy requirements have been met.

FINANCIAL IMPLICATIONS

Financial implications for Council regarding the Voluntary Planning Agreement are outlined in the main body of the report.

CONCLUSION

As required by Council's resolution, the draft Planning Proposal and draft Voluntary Planning Agreement have been prepared and publicly exhibited. It is recommended that Council finalise the Planning Proposal as per delegations issued and endorse and delegate authority to execute the Voluntary Planning Agreement.

ATTACHMENTS

1. Planning Proposal [↓](#)
2. Voluntary Planning Agreement [↓](#)
3. Altered Gateway Determination [↓](#)
4. Summary of Public Submissions - Planning Proposal [↓](#)
5. Public Agency Submissions - Planning Proposal [↓](#)
6. Summary of Submission - Voluntary Planning Agreement [↓](#)
7. Engagement Evaluation Report - Planning Proposal [↓](#)
8. Engagement Evaluation Report - Voluntary Planning Agreement [↓](#)