

COUNCIL AGENDA ADDENDUM

ORDINARY COUNCIL MEETING

31 July 2019

ADDENDUM ITEMS

PAGE

Notices of Motion Of Rescission

NOMR 01	Rescission of EGROW 04 - Middleton Grange Town Centre Planning Proposal – Post exhibition report from the Council Meeting of 12 December 2018.....	3
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Strategic Direction	Strengthening and Protecting our Environment Exercise planning controls to create high-quality, inclusive urban environments
File Ref	182661.2019

NOTICE OF MOTION OF RESCISSION

We the undersigned move a rescission motion to rescind item EGROW 04 Middleton Grange Town Centre Planning Proposal – Post exhibition report (as shown below) that was passed at the ordinary Council meeting held on Wednesday 12 December 2018.

“That Council:

1. *Notes the gateway determination issued by the Department of Planning & Environment;*
2. *Notes the submissions received during the public exhibition of the planning proposal, including public agency comments;*
3. *Notes that significant infrastructure upgrades will likely be required to support the planning proposal, including regional road upgrades;*
4. *Notes that no funding mechanism for infrastructure and public benefits has been advanced by the proponent to date;*
5. *Notes the issues identified in the assessment report in relation to the proposed built form, environmental impacts and density and the area not serviced with regular and reliable public transport services;*
6. *Withdraws support for the planning proposal pursuant to Section 3.35 of the Environmental Planning & Assessment Act 1979;*
7. *Writes to the Minister of Planning and the Greater Sydney Commission to request that the planning proposal not proceed pursuant to Section 3.35(4) of the Environmental Planning & Assessment Act 1979;*

8. *Writes to the proponent and all those who made a public submission to advise of Council's decision;*
9. *Notes that the current zoning and land use controls enable the development of a local shopping centre for the Middleton Grange community which is consistent with the Liverpool Retail Centres Strategy; and*
10. *Work with the applicant to explore the option of some form of temporary retail on the site."*

And moves the following motion:

That:

1. Council notes that no exploration of some form of temporary retail on the site has occurred in accordance with Council's resolution of 12 December 2018.
2. Council notes the Council and the Community support the development of a town centre at the Middleton Grange site and acknowledges that the process for the development of the town centre in that location has been years in the making.
3. Council acknowledges the urgent need for the commencement of roads and civil infrastructure within the town centre at Middleton Grange to begin the process of activating that area.
4. Council notes the Fifteenth Avenue smart transit corridor connecting Liverpool and Badgerys Creek via Middleton Grange with public transport as contained in the draft Liverpool local strategic planning statement.
5. Council notes that exhibition of the Planning Proposal included a Draft DCP to facilitate the provision of roads, civil infrastructure and open space that matches the subdivision approval granted by Council in 2015.
6. Council endorses the Middleton Grange DCP as exhibited in 2018 (which included amendments) to facilitate the immediate delivery of civil infrastructure and roads infrastructure for the town centre at Middleton Grange.
7. Council notes the State Significant Development application for Hospital and Medical Centre at lot 2 and provides in principle support for the provision of these services and ancillary roads infrastructure in the Middleton Grange Town Centre.
8. Council notes the community opposition to the Planning Proposal as exhibited and the issues raised regarding proposed building heights and the number of residential apartments.

9. Council notes that the Planning Proposal is with the Minister for Planning for finalisation.
10. Council now supports the planning proposal if the following changes to that which was exhibited are made to it:
 - a. A decrease in maximum building heights from 12 levels to 9 levels.
 - b. An endorsement of the density as exhibited (2.3:1, 1:1) but with a requirement for a decrease in the number of residential apartments by approximately 250.
 - c. The ability for the provision of a Hospital and Medical Centre and ancillary social infrastructure on lot 12.
 - d. The provision of an increase in the amount of community accessible open space as exhibited in the town centre Planning Proposal with the additional accessible open space to be provided for public access at no cost to council.
11. Council direct the CEO to immediately meet with the applicant to progress negotiations on the provision of additional publicly accessible open space as listed in point 10.d.
12. Council notes that the Middleton Grange 7.11 Infrastructure contributions plan applies to the Middleton Grange town centre for the delivery of local public infrastructure benefits.
13. Council immediately write to the Minister for Planning advising of this resolution of Council and request that the amendment of the Planning Proposal be progressed, with the consideration of appropriate mechanisms to fund relevant state roads infrastructure and public transport, as a priority to enable the delivery of services to the community at Middleton Grange.

Signed:

Clr Peter Harle

Clr Karress Rhodes

Clr Tony Hadchiti

Clr Gus Balloot

Clr Mazhar Hadid

Clr Tina Ayyad

CHIEF EXECUTIVE OFFICER'S COMMENT

Council resolved at its meeting of 12 December 2018 to withdraw support for the Middleton Grange Town Centre Planning Proposal. The proposal was for the modification to zoning and development standards applying to the subject site in order to enable the following outcomes:

- 86,031m² of residential space (approx. 912 dwellings);
- 20,240m² of retail; and
- 2,533m² of other commercial uses.

In relation to the resolution of 12 December 2018, Council staff have taken the following actions:

- Points 1-5 and 9 of the Council resolution of 12 December 2018 note the Gateway determination issued by the Department of Planning & Environment, details of submissions received on the planning proposal, the required infrastructure to support the proposal, funding implications, particularly state infrastructure, the issues raised in the assessment of the proposal and noting that a town centre is permitted under the current zoning.
- Points 6, 7, 8 and 10 of the Council resolution have been actioned. On 18 December 2018, Council wrote to the Department of Planning advising that Council had resolved to withdraw support for the planning proposal and requested that the planning proposal not proceed (point 6 and 7 of the resolution). On the 18 and 20 December 2018, Council wrote to the applicant and submitters advising of Council's decision (point 8 of the resolution) and in the letter to the proponent offered to work with the proponent to further explore the option of some form of temporary retail on the site (resolution 10). To date, Council has not received a response from the proponent in relation to the offer to explore a temporary retail use on the site.

It is important to note that the zoning and development standards in the LEP currently allow for a DA to be lodged for a town centre with commercial and residential development (in fact the resolution of 12 December 2018 specifically makes note of that fact). There is nothing to prevent a Development Application being made; in fact it would be welcomed, recognising community wishes.

Council staff have not received a DA consistent with the current zoning for the built form of the town centre; nor has the proponent made contact to discuss an amended Planning Proposal. Council does not have the authority to compel a land owner to develop their land (nor to place retail on it).

In relation to the key points of the proposed Notice of Motion, the following comments are offered.

Point 1 - As outlined above, Council wrote to the proponent on 18 December 2018 offering to work with the proponent to further explore the option of some form of temporary retail on the site. To date, Council has not received a response from the proponent in relation to the offer. The zoning and development standards in the LEP currently allow for a DA to be lodged for a town centre with commercial and residential development.

Point 6 - The draft DCP that was exhibited in 2018 will need to be amended further prior to finalisation to cater for recent developments north of the town centre, particularly the alignment of roads. If Council supports the intent of the motion, it is recommended that Council requests a further report back with the details of the amendments prior to approving or finalising the DCP amendment.

Point 9 - Council has confirmed that the Department of Planning / Minister has not made a decision on the planning proposal at this time.

Point 10 (a) and (b) – If Council supports a reduction in the height of buildings (HOB), this should be reflected in metres not storeys (as per the LEP controls) and clearly identify which parts of the site the new height of buildings development standards apply to. The Gateway conditions require an appropriate transition of heights from the low density residential area to the west and south to the town centre core. In addition there will need to be appropriate consideration to whether there should also be a corresponding reduction in FSR applying to the site. FSR and HOB are two key development standards that hand in hand, control the bulk and scale of proposed buildings. If the height of buildings is reduced and the FSR is not amended, there is the potential for the two development standards to be inconsistent with each other. If FSR is not reduced, the issues raised in the original planning assessment report regarding the size of this centre and its potential impacts on surrounding centres (namely Carnes Hill Marketplace) will remain. It is recommended that an appropriate FSR and height comparison be undertaken (including revised FSR and HOB maps).

Point 12 – The Development Contributions Plan provides for local infrastructure in Middleton Grange. Based on a developable area of approximately 43,559m² with approximately 662 dwellings (being the original approx. of 912 dwellings minus the 250 dwellings identified in point 10(b), the development contribution will be approximately \$24m (as at 25/7/19). This amount will be indexed quarterly.

Point 13 – RMS raised concerns about the proposal, particularly the impact on the regional road network and required upgrades to RMS controlled roads, which are not funded. The Gateway conditions require Council to address any comments from State agencies. If Council supports this motion, the RMS concerns remain. For RMS and DPE to support the planning proposal, there is likely to be a requirement that the planning proposal includes reference to Clause 6.4A of the LEP. This clause requires that prior to a development application being approved by Council, satisfactory arrangements must be entered into with the Secretary of the Department of Planning for the provision of monetary contributions to provide for State public infrastructure.

If Council wishes to amend its position on this planning proposal, it is recommended that Council consider a revised motion to allow the proposed amendments outlined in the NOM to be consolidated into a revised planning proposal with amended maps and an updated DCP. Considering the significant and unprecedented level of interest from the community in this matter, it is also recommended that the revised planning proposal be publicly exhibited for 28 days.

An alternate motion which addresses the issues raised above is provided below.

That Council:

1. Direct the CEO to prepare a further report back to Council with an updated planning proposal which addresses the built form outcomes and other matters contained with the proposed NOMR 01, including revised LEP maps and an updated DCP; and
2. Exhibit the revised planning proposal for 28 days.

ATTACHMENTS

Nil