
ORDINARY COUNCIL

ORD01

SECTION 96 MODIFICATION OF DEVELOPMENT CONSENT NO 300017/2002 (PART 5) PROPOSAL TO INCREASE THE ALLOCATION OF RESIDENTIAL 2 SITES WITHIN MOUNT ANNAN SOUTH

FROM:	Director Development and Health
FILE NO:	Binder: Development Applications Pre-EDMS
DA NO:	300017/2002 (Part 6)
OWNER:	Landcom
APPLICANT:	Landcom
ZONING:	2(d) Residential
APPLICABLE PLANNING INSTRUMENT:	Local Environmental Plan 47

PURPOSE OF REPORT

The purpose of this report is to seek a determination from Council of an application to modify a development consent. The application is made under Section 96 of the Environmental Planning and Assessment Act, 1979 (the Act). The application seeks to modify condition No 1 of the development consent by amending the approved plan to including another two Residential 2 (R2) lots within the approved subdivision layout.

The application is referred to Council as there are unresolved objections and the application seeks a significant variation to Camden Development Control Plan (DCP) 2006.

SUMMARY OF RECOMMENDATION

That the Section 96 Modification of development consent for the purpose of amending the approved plan adding two R2 lots to the approved subdivision layout within the Mount Annan South precinct be approved, subject to the draft amended conditions of development consent shown later in this report.

BACKGROUND

The original development consent was granted under delegation on 11 December, 2003, and approved stage one of a three stage subdivision development. The stage one subdivision approved 458 lots which were to be released over 12 subsequent stages.

As part of this development consent, approval was also granted for certain lots to be classified as Residential 2 (R2) land. Primarily R2 land allows for the development of integrated small lot housing (or multi-unit dwellings) which forms part of the overall planning objectives for the Mount Annan South area.

The objective of the R2 sites originates from the previous land release of Mount Annan which is supported by Part G Site Specific; Chapter 11 Mount Annan of DCP 2006. In

summary, Mount Annan south has been developed with the R1 (single dwelling) lots and R2 multi-unit lot principal. This philosophy is also reflected in the main planning policy (being the Camden Local Environmental Plan). In this case the DCP is used to control the number of multi-unit developments within the Mount Annan south area.

The DCP provides the following definitions for a R1 and R2 land:

Residential 1 land use objectives are:

- (a) to provide for traditional one or two-storey single dwelling units;
- (b) to achieve a residential density of 10 to 12 dwellings per hectare.

Residential 2 land use objectives are:

- (a) to allow alternative housing forms to be provided, such as town houses, courtyard housing, dual occupancies and integrated housing. These may be attached or detached, one or two storey in height;
- (b) to achieve a residential density of 15 to 25 dwellings per hectare.

The map within the DCP does not show the land, the subject of this application, however it is Council's intention to include the land area upon a comprehensive review of the DCP. The existing controls within the DCP have been considered for the purpose of this assessment.

The current development application approved 107 R2 sites, and now the applicant seeks to add an additional two, being approved lots 3605 and lot 3910. **A plan showing the subdivision and proposed location is provided at the end of this report.**

The allocation of R2 land is dependent on its proximity to open space, bus routes and commercial or neighbourhood shops. It is considered that the sites within the current Section 96 modification application are located within close proximity to such places. The application has satisfactorily demonstrated that the sites are worthy of R2 allocation. This will be discussed further in this report.

THE SITE

The subject sites being proposed as R2 are within the subdivision commonly known as Garden Gates.

Lot 3605 is located on Hibiscus Circle and has a land area of approximately 2,046m². The site shares boundaries with two residential lots to the north which are currently occupied by single display homes; a privately owned/occupied single storey dwelling to the west and an open drainage channel to the east. The site is generally flat and has an irregular front boundary line. The site is located across from a future public reserve and is approximately 7,400m² in area.

Lot 3910 is located on the corner of Rubus and Myoporum Avenue and has a land area of approximately 775m². Currently the site adjoins vacant land to the east and a car park to the north. The car park has been approved by development consent 797/2007 which services the adjacent display village.

Upon the expiration of the use of the display village, the car park will revert back to a residential property which is already approved as a R2 site. The subject site is also

located diagonally across from a riparian corridor (approximately 2.27ha), which is yet to be dedicated to Council. The corridor has already been constructed and will provide future opportunities for passive recreation for residents.

The distance from approved Lots 3605 and 3910 to Mount Annan Drive is less than 100m and 45m, respectively.

THE PROPOSAL

The proposal is to modify the existing development consent by including an additional two Residential 2 lots within the Mount Annan south area. The intent of the Residential 2 land is to allow for a variety of multi-unit integrated housing on a parcel of land where it can be demonstrated that the land is in close proximity to open space, bus routes and commercial or neighbourhood shops.

NOTIFICATION

The application was publicly notified to the surrounding land owners for a period of 14 days from 6 August to 20 August, 2009. As a result of the exhibition period two submissions were received. The submissions are discussed in detail under the subheading 'submissions'.

PLANNING CONTROLS

- Camden Local Environmental Plan 47
- Draft Camden Development Control Plan 2009
- Camden Development Control Plan 2006

ASSESSMENT

This application has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act, 1979. The following comments are made with respect to the development proposal.

Provisions of any Environmental Planning Instrument

Camden Local Environmental Plan 47

Clause 10 Zone objectives and development control table

The Statement of Permissibility:

The subject lands are zoned 2(d) Residential pursuant to Camden Local Environmental Plan 47 (LEP 47). There is no specific definition applicable for the proposal being the allocation of land for a future multi-unit development proposal. However having regard to the intended future development for multi-unit housing, this land use is currently permissible with development consent pursuant to clause 10 Zone objectives and the development control table.

Objectives of 2(d) Residential zone: the objective relevant for this proposal is as follows:

'to promote a distinctive character and quality of development in each release area, based on the historic and natural characteristics of the land'.

As discussed above, Mount Annan south has been developed on the R1 and R2 principal and as a result has allowed for a distinct built character to be established within the area. It is envisaged that approval of this Section 96 application would contribute to this objective for the Mount Annan south area. Capacity of the road system and site constraints are important considerations when additional density is proposed, particularly due to the constrained width of Mount Annan Drive which is the major collector road for the precinct. It is important to ensure if additional sites are to be added, the traffic generation can be accommodated, and most importantly the sites have capacity to accommodate required parking on-site. It is considered these criteria are satisfied in this case.

No other clause within Camden Local Environmental Plan 47 applies to the subject proposal.

Provision of any Draft Environmental Planning Instrument

The subject application was lodged prior to Draft Camden Local Environmental Plan 2010 being adopted as a draft exhibited Environmental Planning Instrument. Therefore no considerations have been made for the purpose of this assessment.

Provisions of any Development Control Plan

Camden Development Control Plan 2006

Part G Site Specific Controls; Chapter 11 Mount Annan

Control 6 Subdivision requirements

This control does not provide any numerical standard, however it does require reference to be made to Part E Residential Development and Subdivision of the DCP. An assessment has been made against the relevant controls within Part E and is discussed below.

Control 9 - Subdivision

(a) This control states that alternative or further areas for "Residential 2" land may be considered, but such applications must be accompanied by supporting documentation showing that they meet the following criteria:

- (i) the location is within 200m of a bus stop;
- (ii) the proposed development form will not adversely affect adjoining, lower density development.

Officer comment

A site inspection concluded that there are two bus stops within 200m of the subject sites. The applicant has stated that the local bus service (Busways) currently operates the 891 bus route service within the area and runs along Mount Annan Drive.

With respect to control (ii), the built form considerations will be subject to a detailed assessment upon the lodgment of a development application for multi-unit housing, should this Section 96 application be approved. The applicant has provided indicative plans of a multi-unit development, and a preliminary assessment concluded that the proposed densities would not adversely impact on the surrounding residential properties; and those objectives for maintaining adjoining solar and privacy can be achieved through building placement and window

orientation. Adequate area is available to provide for the parking and open space needs of residents of the development.

It must be noted that both sites are located at the end of the perimeter block and share less common residential boundaries than a site which would be located towards the middle of the block. Therefore it is considered that the location of the lots would minimise the impact on surrounding residential properties.

- (b) *Consideration will be given when processing a comprehensive subdivision development application to alternative distribution of 'Residential 2' areas within the proposed development. This will require an appropriate amendment to Map No 1 reflecting the approved development application.*

Officer comment

As discussed above, the map within the DCP does not outline the land subject to this application, however it is Council's intention to include the land area subject to a comprehensive review of the DCP. Notwithstanding, for the purpose of this assessment, the considerations outlined within the DCP for determining the allocation of R2 sites have been used.

Control 10 - Controls

This control makes reference to Part E Residential Development and Subdivision of Camden DCP 2006. An assessment has been made against the relevant controls and is discussed below.

Part E Residential Development and Subdivisions, Chapter 1 Residential Subdivision

The purpose of this chapter is to provide controls for subdivision proposals. No subdivision is being proposed as part of this Section 96 application.

Part E Residential Development and Subdivisions, Chapter 2 Detached dwellings and multi-unit housing

Control 5 Development Density

A dual occupancy site requires a minimum land area of 800m² for corner sites. Indicative plans lodged by the applicant show approved Lot 3910 as a dual occupancy site, however the land area of the site is 774.8m². The applicant has requested a variation to this control as the site has a shortfall of approximately 25.2m². The justification used is based on the fact the lot is in keeping with the definition of integrated housing development, being 'development of a larger lot to create a group of dwellings (multi-unit housing) on separate small lots (averaging about 350m²)'.

Given that the numerical standard relies on the 350m² lot size then it is considered that the site could still accommodate a dual occupancy provided that the performance base criteria and other controls are achieved. This assessment will be made subject to a separate development application being lodged with Council, should this Section 96 application be approved.

With respect to a multi-unit development on approved Lot 3605, there are no numerical standards and therefore it relies on an assessment of the performance base criteria outlined in the multi-unit development DCP. As discussed above, a detailed assessment of the development will be subject to a separate development application being lodged with Council.

Notwithstanding, the site's location and proximity to open space, commercial areas and

public transport and ability to accommodate suitably designed dwellings with adequate carparking and open space, would complement a multi-unit development. Therefore the reclassification of this land to R2 will enable a further assessment of the built form. All other controls apply to design criteria and environmental considerations for the built form. This will be subject to an assessment upon lodgement of an application to construct the dwellings.

Provision of any planning agreements

No planning agreements are relevant to the subject development application.

The likely impacts of the development

Amenity impacts on surrounding residential properties

Whilst the plans submitted are indicative in nature, it is important to ensure that if the land is reclassified to Residential 2, that the sites are capable of accommodating multi-unit housing developments. The following is a summary of relevant considerations.

Privacy impact

The indicative plans submitted for approved Lot 3605 show no habitable room windows on the second floor of the dwellings adjacent to any boundary being shared with another residential property. In addition, no balcony for the purpose of open space is within any lines of sight into the adjoining neighbours' properties.

Currently approved Lot 3910 has a 2-3m fall to the rear of the site and it is considered that a detached dual occupancy would be a better design outcome than a single large dwelling. As such, any overlooking concern could be mitigated by effective window placement or screening.

Shadowing

Any shadowing from approved Lot 3605 would be towards the street or drainage channel due to the site's south-west orientation. In addition, if any overshadowing was caused by the development it is considered that it would not be extensive due to the separation of the dwellings, which could be achieved by having a reasonable separation between the buildings.

With respect to approved Lot 3910, the subject site is located on the western side of the adjoining residential property and as such would result in only minimal overshadowing.

Traffic impacts

Any development application for multi-unit developments would be subject to meeting the requirements for off-street parking. This consideration would be subject to a development application being lodged with Council, however the plans submitted show that parking needs can be accommodated on-site.

Impact on built environment

The location of the subject lots would allow for an alternative housing form and would be located on the perimeter of traditional dwelling stock being constructed within this area. The provision of higher densities on corner lots allows not only for better urban design outcomes to be achieved but will also minimise any privacy impact to the existing built environment, below what would result if a similar development was being proposed on a standard allotment.

The suitability of the site for the development

It is considered that the proposed allocation of R2 lands on the subject sites is suitable in the proposed locations. Having regard to the site's proximity to open space, bus routes and neighbourhood shops, it is considered that it would not only have a positive impact to the surrounding land uses, but also will encourage a range of demographic profiles and housing types into the area. Importantly, the land is of sufficient size to accommodate multi-unit housing.

Submissions

The application was publicly notified to the surrounding land owners for a period of 14 days. As a result of the exhibition period two submissions were received. Council officers met with the authors of the letters and as a result the objections detailed below remain. **Copies of the submissions are provided with the Business Paper supporting documentation.**

(a) Amenity impact

Officer comment:

The objections primarily relate to the potential impact of traffic, privacy, noise and overshadowing as a result of any development on both sites. As discussed above, this development application seeks only to reclassify the land as R2 for the purpose of dual occupancy and multi-unit housing. Therefore the impact on the built form will be assessed upon a detailed development application being lodged with Council.

Notwithstanding, the housing proposals will need to comply with controls and performance criteria outlined in the current detached housing and multi-unit housing development control plan. Indicative plans have been lodged (for information purposes only) as part of this development application and it would appear that the housing products would comply with the current controls.

Any such proposal will be subject to a consultation period in accordance with Council's Notification Policy, inviting comment on the proposed development. Therefore all concerns specifically relating to the built form will be addressed at this stage of the development.

(b) Sites were not marked as R2 land when land was purchased

Officer comment:

This is correct, Development Consent No 17/2002 approved a 631 lot subdivision known as Mount Annan South which has been marketed by Landcom as the Garden Gates Estate. The plans approved under this consent nominated sites as multi-unit housing as a R2 classification. These controls have not to date been incorporated into Camden DCP 2006. Camden LEP 47 applies to the land and the release areas of Mount Annan, Currans Hill and Narellan Vale. Whilst multi-unit housing is permitted with consent in the Residential 2d (Release Areas) zone, the extent of multi-unit housing is controlled by way of the R2 land classifications. Council has consistently applied these provisions and its community is aware that these controls designate sites where multi-unit housing will occur. Whilst Council is not responsible for marketing material, an expectation in the community that the remaining lots will contain single dwellings is relevant and the persons making the

submissions have been advised to discuss this concern with the land owners.

Both submissions state that the subject sites did not have any reference to future R2 housing on the exhibition material for the land release and therefore state the public has been 'deceived' on the developer's intention for the properties.

As discussed above, Mount Annan south has been developed under a R1 single dwelling lots and R2 multi-unit lot principal. The Mount Annan section of the DCP (Part G; Chapter 11) is used to control the number of multi-unit developments within the Mount Annan Release area (by classifying each land either R1 or R2), however it is relevant to note that the maps in this section have not been amended to reflect the subdivision of the Mount Annan South precincts. This will occur in the amendments to be undertaken in association with the gazettal of Camden LEP and will reflect the plans approved under development consent 17/2002. However, as discussed above, it is considered reasonable to reclassify the subject lands as R2.

The public interest

It is considered that the public interest will not be adversely impacted by approving the new lots to be reclassified to R2, as the land is capable of containing multi-unit housing developments, and the process to reclassify the land prior to any development application being received has been followed.

CONCLUSION

Council has received an application to modify a development approval under Section 96 of the Environmental Planning and Assessment Act, 1979. The application seeks to modify condition No 1 of the development consent by amending the approved plan with a view to including an additional two Residential 2 lands within the approved subdivision.

The basis of Residential 2 land is to allow alternative housing forms such as town houses, dual occupancies and integrated housing within the Mount Annan south area. The allocation of such lots does not approve any building works as this would be subject to a more detailed development application being lodged and assessed by Council.

The application was publicly notified and two submissions were received. The concerns primarily relate to the impact of privacy, traffic and overshadowing to the neighbouring properties. It is considered that such concerns can be dealt with during the assessment of any application for multi-unit development.

The proposal has been assessed against principals of R2 land allocation within the Mount Annan South precinct and it is considered that the location of the lots are consistent with the criteria outlined in Camden Development Control Plan, Part G Site Specific; Chapter 11 Mount Annan. Therefore it is recommended that approval be given to the land being allocated as R2 to allow for development applications to be lodged for the purpose of multi-unit/integrated development.

DRAFT CONDITIONS OF CONSENT

Condition 1 to be amended and now read:

APPROVED PLANS – The development must be carried out strictly in accordance with the plans prepared by YSCO GEOMATICS, dated Feb 2002 and numbered S01 Issue D Stage 1 Works; S02-S013 Issue C Stage 1 Works, PED 01 Issue C dated July 2002, and Plan showing Section 96 Amendment to the lot layout of Precinct 41A, Reference LC50309/2/41A-2, dated 6/7/2009 and amended Development Layout Plan dated July 2009; Reference P50309/Resid-2-Areas (sheet 1 and 2).

The development must also comply with the conditions of approval imposed by Council hereunder.

AMENDMENTS – Modifications to the approved plans and specifications requires the prior approval of the Consent Authority (i.e. Camden Council). The procedure for applying to amend the approved plans is to submit an “Amended Development Application” form pursuant to Section 96 of the *Environmental Planning and Assessment Act 1979*.

All other conditions of development consent 300017/2002 issued on the 11 December, 2003 (as amended) are to remain valid and applicable.

END OF CONDITIONS

RECOMMENDED

That:

- i. Council approve a Section 96 Modification application to existing Development Consent 300017/2002, being for the amendment of plans to include two additional Residential 2 lots at approved Lots 3605 and 3910; and**
- ii. the plans which indicate the Residential 1 and 2 classifications within the Mount Annan South precinct be incorporated into the amendments being made to Camden DCP 2006 in association with the review necessitated through the making of Camden LEP 2010 and also the subsequent review of Camden LEP 2010.**

ATTACHMENTS

1. Subdivision plan and location plan
2. Submissions (sup doc)



Subdivision location plan DA3000-17 Res 2 sites.pdf Submissions DA300017-02 Res 2 Sites.pdf

RESOLUTION

Moved Councillor Symkowiak, Seconded Councillor Funnell that:

- i. Council approve a Section 96 Modification application to existing Development Consent 300017/2002, being for the amendment of plans to include two additional Residential 2 lots at approved Lots 3605 and 3910; and**
- ii. the plans which indicate the Residential 1 and 2 classifications within the Mount Annan South precinct be incorporated into the amendments being made to Camden DCP 2006 in association with the review necessitated through the making of Camden LEP 2010 and also the subsequent review of Camden LEP 2010.**

THE MOTION ON BEING PUT WAS **LOST**.

(Councillors Symkowiak, Funnell and Anderson voted in favour of the Motion.

Councillors Campbell, Cottrell, Cagney, Dewbery, Patterson and Warren voted against the Motion).

MOTION

Moved Councillor Cagney, Seconded Councillor Cottrell that the Section 96 Modification to existing Development Consent 300017/2002, being for the amendment of plans to include two additional Residential 2 lots at approved Lots 3605 and 3910 be refused for the following reasons:

- Amenity of the area;
- Impact of vehicle movements;
- Traffic noise;
- Lot 3910 has an area less than that required by Council's DCP for dual occupancy dwellings; and
- The surrounding lots are occupied.

THE MOTION ON BEING PUT WAS **LOST**.

(Councillors Cagney and Cottrell voted in favour of the Motion.

Councillors Anderson, Campbell, Dewbery, Funnell, Patterson, Symkowiak and Warren voted against the Motion).

FURTHER MOTION

Moved Councillor Campbell, Seconded Councillor Warren that:

- i. Council approve the Section 96 Modification application to existing Development Consent 300017/2002, being for the amendment of plans to include one additional Residential 2 lots at approved Lot 3605;
- ii. Council refuse the Section 96 Modification application to existing Development Consent 300017/2002, being for the amendment of plans to include one additional Residential 2 lots at approved Lots 3910 be refused for the following reasons:
 - Overshadowing of the site;
 - Traffic noise;
 - Impact of vehicle movements;
 - Lot 3910 has an area less than that required by Council's DCP for dual occupancy dwellings; and
 - Impact on the amenity of adjoining land.
- iii. the plans which indicate the Residential 1 and 2 classifications within the Mount Annan South precinct be incorporated into the amendments being made to Camden DCP 2006 in association with the review necessitated through the making of Camden LEP 2010 and also the subsequent review of Camden LEP 2010.

THE MOTION ON BEING PUT WAS **CARRIED**.

(Councillors Anderson, Campbell, Cottrell, Cagney, Dewbery, Funnell, Patterson, Symkowiak and Warren voted in favour the Motion.

No Councillor voted against the Motion).

ORD17/10

ACTIONS

CRMS number , Finalised 11/02/2010 9:55:48 AM

Action: Finalised,

Completed

Noted. To be actioned as per the instructions as per the Action Sheet from the Council meeting.

[Link to CRMS document](#)

[CRMS: 10739822 11/02/2010, 08:19:27 AM](#)