

SYDNEY WESTERN CITY PLANNING PANEL

Panel Number:	PPSSWC-63
Application Number:	2017/1193/2
Local Government Area:	Camden
Development:	Modification of an approved multi-dwelling housing development containing 139 dwellings and associated community title subdivision
Site Address(es):	1-5 Main Street, Mount Annan
Applicant:	Sunland No. 35 Pty Ltd
Owner(s):	Sunland No. 35 Pty Ltd
Date of Lodgement:	6 February 2020
Number of Submissions:	Thirteen (13) submissions in total from ten (10) households.
Classification:	Local development
Recommendation:	Approve with modified conditions
Regional Development Criteria (Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011):	Section 4.56 modification to development approved by the Land and Environment Court
List of All Relevant Section 4.15(1)(a) Matters:	<ul style="list-style-type: none"> Camden Development Control Plan 2019.
List all Documents Submitted with this Report for the Panel's Consideration:	<ul style="list-style-type: none"> Modified conditions. Proposed plans. Submissions.
Development Standard Contravention Request(s):	None.
Summary of Key Submission Issues:	<ul style="list-style-type: none"> Staging the development will delay overall construction period and create prolonged impacts on neighbouring residential properties by reason of noise and visual impacts. Delaying payment of contributions should not be permitted Amendments to lot sizes should not be supported Court approval should be adhered to as proposed changes will set a precedent for further future changes
Report Prepared By:	Stephen Pratt, Team Leader Development Assessment (East)
Report Date:	20 March 2020

Summary of Section 4.15 Matters

	Yes
Have all recommendations in relation to relevant Section 4.15 matters been summarised in the Executive Summary of the assessment report?	<input checked="" type="checkbox"/>

Legislative Clauses Requiring Consent Authority Satisfaction

	Yes
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised in the Executive Summary of the assessment report?	<input checked="" type="checkbox"/>

Development Standard Contraventions

	Yes	N/A
If a written request for a contravention to a development standard has been received, has it been attached to the assessment report?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Special Infrastructure Contributions

	Yes	No
Does the application require Special Infrastructure Contributions?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Conditions

	Yes
Have draft conditions been provided to the applicant for comment?	<input checked="" type="checkbox"/>

PURPOSE OF REPORT

The purpose of this report is to seek the Sydney Western City Planning Panel's (the Panel's) determination of a modification application (modification) to modify an approved multi-dwelling housing development at 1-5 Main Street, Mount Annan.

The Panel is the consent authority for this modification as it is a Section 4.56 modification to a regionally significant development approved by the Land and Environment Court.

SUMMARY OF RECOMMENDATION

That the Panel determine modification 2017/1193/2 for the modification of an approved multi-dwelling housing development pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* subject to the modified conditions attached to this report.

EXECUTIVE SUMMARY

The Land and Environment Court approved development application (DA) 2017/1193/1 for a multi-dwelling housing development comprising 139 dwellings with 254 resident car parking spaces and 49 visitor car parking spaces, community title subdivision creating 139 residential lots and one community property lot comprising open space, drainage reserve and roads and associated site works at 1-5 Main Street, Mount Annan by judgement handed down by Commissioner Smithson on 21 August 2019.

Council is now in receipt of an application which proposes to:

- Modify the approved staging of the approved development;
- Modify the approved lot sizes of the approved development;
- Amend the development consent with regard to Section 7.11 Contributions to require payment prior to the issue of a Subdivision Certificate (rather than prior to the issue of a Construction Certificate); and,
- Amend the development consent to split payments of Section 7.11 Contributions to accord with the approved staging and number of lots in each stage.

Following discussion with the applicant after lodgement of the application, the application was amended so that the relocation of Condition 2.0(16) to the 'Prior to Issue of a Subdivision Certificate' section of the development consent now does form part of the application. The applicant has accepted the advice of Council staff that the payment shall be made prior to the release of the construction certificate for each stage of the development.

It should also be noted that while the approved suite of plans approved by the Land and Environment Court contain a four stage community title scheme, conditions relating to the payment of Section 7.11 Contributions were not staged in the same manner.

The modification has been assessed against the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, relevant environmental planning instruments, development control plans and policies.

The modification was notified for a period of 14 days in accordance with Camden Development Control Plan 2019 (Camden DCP). The exhibition period was from 25 February 2020 to 9 March 2020. Thirteen (13) submissions from ten (10) households were received, of which twelve (12) objected to the proposed modification and one submission that neither objects nor supports the modification. Of the total submissions received, there are four (4) unique submissions.

The issues raised in the submissions relate to:

- Staging the development will delay overall construction period and create prolonged impacts on neighbouring residential properties by reason of noise and visual impacts;
- Delaying payment of contributions should not be permitted;
- Amendments to lot sizes should not be supported; and,

- Court approval should be adhered to as proposed changes will set a precedent for further future changes

Based on the assessment, it is recommended that the modification be approved subject to the modified conditions attached to this report.

AERIAL PHOTO



THE SITE

The site is commonly known as 1-5 Main Street, Mount Annan and is legally described as Lot 206 DP 1070297. The site is irregular in shape and has a total site area of 5.5ha. The property is located on the corner of Main Street and Annanvale Circuit, with Narellan Road to the north, being the main arterial connecting Campbelltown to Narellan and Camden.

Retail/commercial development associated with the Mount Annan Town Centre adjoins the site to the south and east, including the Mount Annan Marketplace shopping centre to the east and on the opposite side of Annanvale Circuit.

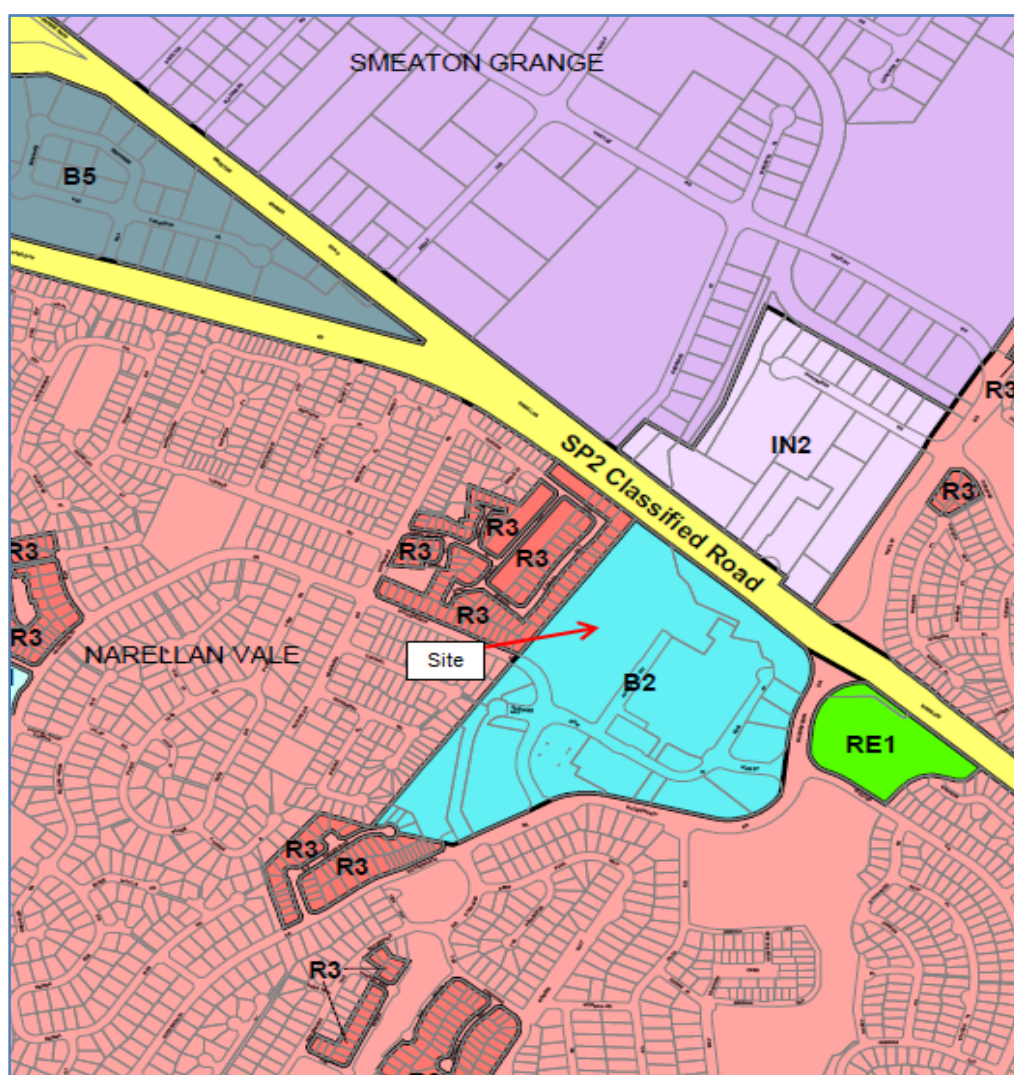
The areas to the west, south and east surrounding the Mount Annan Town Centre are characterised by generally low density residential dwellings of single and two storey height associated with the suburbs of Mount Annan and Narellan Vale.

HISTORY

The relevant development history of the site is summarised in the following table:

Date	Development
1 March 2016	The Land and Environment Court refused development application DA/2014/626/1 for the construction of a four storey multi-dwelling housing development comprising 256 dwellings, car parking, landscaping and associated works.
21 August 2019	The Land and Environment Court approved development application DA/2017/1193/1 for a multi-dwelling housing development comprising 139 dwellings with 254 resident car parking spaces and 49 visitor car parking spaces, community title subdivision creating 139 residential lots and one community property lot comprising open space, drainage reserve and roads and associated site works.
10 December 2019	Under delegated authority, Council approved development application DA/2019/743/1 for the construction of a temporary sales office/display suite, associated signage, off-street car parking, site hoarding and associated site works.

ZONING PLAN



THE PROPOSAL

Council has received an application pursuant to Section 4.56 of the Environmental Planning and Assessment Act, 1979 seeking to modify a development consent approved by the Land and Environment Court for a multi-dwelling housing development comprising 139 dwellings with 254 resident car parking spaces and 49 visitor car parking spaces, community title subdivision creating 139 residential lots and one community property lot comprising open space, drainage reserve and roads and associated site works. Details are as follows:

- Modification to the staging of the approved development. The Land and Environment Court approved plans nominated a four stage subdivision and it is proposed to adjust the number of lots within each of the four stages.
- Modification to the approved lot sizes of the approved development. The site area of 49 of the 139 residential lots are proposed to be amended. Of the 49 lots where the site areas are changing, 25 lots are increasing in area and 24 lots are decreasing in area.
- Amend the development consent with regard to Section 7.11 Contributions to require payment prior to the issue of a Subdivision Certificate (rather than prior to the issue of a Construction Certificate); and,
- Amend the development consent to split payments of Section 7.11 Contributions to accord with the approved staging and number of lots in each stage.

Following discussion with the applicant after lodgement of the application, the application was amended so that the relocation of Condition 2.0(16) to the 'Prior to Issue of a Subdivision Certificate' section of the development consent now does form part of the application. The applicant has accepted the advice of Council staff that the payment shall be made prior to the release of the construction certificate for each stage of the development.

Favourable consideration of the modification will require amendment to the wording of Condition 1.0(2) relating to the revised suite of approved plans that reflect the proposed amendments, the amendment to the wording of Condition 2.0(16) regarding the payment of Section 7.11 Contributions to stage the payment of the Section 7.11 Contributions in line with proposed staging arrangements.

MODIFICATION OF CONSENTS

Pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*, Council staff are satisfied that:

- the development to which the consent as modified relates is substantially the same as the development for which consent was originally granted;
- the application has been notified in accordance with the *Environmental Planning and Assessment Regulation 2000* and Camden Development Control Plan 2019;
- has notified each person who made a submission with respect to the original development application; and
- has considered the submissions received concerning the proposed modification.

ASSESSMENT

Environmental Planning and Assessment Act 1979 - Section 4.15(1)

In determining a modification, the consent authority is to take into consideration such of the following matters as are of relevance to the modification:

(a)(i) the provisions of any environmental planning instrument

Camden Local Environmental Plan 2010 (Camden LEP)

The Camden LEP aims to make local environmental planning provisions for land in Camden in accordance with the relevant standard environmental planning instrument under Section 3.20 of the *Environmental Planning and Assessment Act 1979*.

Site Zoning

The site is zoned B2 Local Centre pursuant to Clause 2.2 of the Camden LEP.

Land Use Definitions

The modification will still result in the development being defined as “multi-dwelling housing” by the Camden LEP.

Permissibility

Multi dwelling housing is prohibited in the B2 Local Centre zone under CLEP 2010, however, in accordance with the provisions of Clause 2.5 and Schedule 1 (Additional Permitted Uses) of CLEP 2010, multi dwelling housing is permitted with consent as an additional permitted use of the site.

A modification to the development is permitted pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*.

(a)(ii) the provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)

Draft Environment State Environmental Planning Policy (Draft Environment SEPP)

The modification is consistent with the Draft Environment SEPP in that there will be no detrimental impacts upon the Hawkesbury-Nepean River system as a result of it.

(a)(iii) the provisions of any development control plan

Camden Development Control Plan 2019 (Camden DCP)

The changes proposed as part of this modification do not give rise to any new issue of non-compliance that requires discussion as part of this application.

Camden Contributions Plan 2011

Section 2.17 of Camden Contributions Plan 2011 states that Council's policy in relation to the timing of payments of monetary contributions required under this Plan is as follows:

- Development involving subdivision - prior to the release of the first subdivision certificate (linen plan) or strata certificate;
- Other development that requires a construction certificate - prior to the release of the construction certificate; and
- Other development not requiring the issuing of a construction certificate - prior to the issuing of the first occupation certificate or commencement of the use, whichever occurs first.

In this instance, the approved development involves the construction of dwellings and as such, the payment of contributions will occur prior to the issue of a Construction Certificate.

Condition 2.0(16) as it exists does not recognise the staging of the development and will be amended to reflect the revised staging of the development now sought.

(a)(iia) the provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No relevant planning agreement or draft planning agreement exists or has been proposed as part of this modification.

(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

The *Environmental Planning and Assessment Regulation 2000* prescribes several matters that will continue to be addressed through existing conditions despite the modification.

(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

As demonstrated by the assessment, the modification is unlikely to have any unreasonable adverse impacts on either the natural or built environments, or the social and economic conditions in the locality.

(c) the suitability of the site for the development

As demonstrated by the above assessment, the site is considered to be suitable for the modification.

(d) any submissions made in accordance with this Act or the regulations

The modification was publicly exhibited from 25 February to 9 March 2020. Thirteen (13) submissions from ten (10) households were received, of which twelve (12) objected to the proposed modification and one submission that neither objected nor supported the modification. Of the total submissions received, there are four (4) unique submissions.

The following discussion addresses the issues raised in the submissions.

1. *Staging the development will delay overall construction period and create prolonged impacts on neighbouring residential properties by reason of noise and visual impacts*

Officer comment:

The development consent issued by the Land and Environment Court included plans to stage of the construction of the development into four stages. As a result, no changes are proposed to the timing of construction than what is currently the case. The nature of the modification is therefore not expected to result in any prolonged period of construction that may extend any inconvenience to local residents through the construction phase. However, relevant conditions of consent, and more particularly, the condition relating to the payment of Section 7.11 contributions did not reflect this fact. As a result, the applicant has sought to modify the condition to reflect this approved staging.

2. *The Court approval should be adhered to as proposed changes will set a precedent for further future changes*

Officer comment:

The modification seeks to alter the size of various allotments within the development. Some lots are increasing in area, while others are decreasing in area, but there is no change to the approved development yield of 139 dwellings/lots. Other changes proposed by this modification are to modify the suite of approved plans, modify the approved staging of the development and amend the wording of the Section 7.11 contributions condition to reflect revised staging.

Any further amendments proposed by the applicant (should there in fact be any) will be considered on their individual merit at that time, but the modifications sought in this instance are relatively minor in nature, in accord with the Land and Environment Court issued approval and as such, are worthy of support.

3. *Amendments to lot sizes should not be supported*

Officer comment:

Forty-nine (49) of the 139 residential lots approved by this development are proposed to be amended in area. Of the 49 lots where the site areas are changing, 25 lots are increasing in area and 24 lots are decreasing in area. The greatest increase in the area of an individual approved lot is from 256.1 to 260.6 square metres (1.7%), while the greatest decrease in area of an individual approved lot is from 240.2 to 227.2 square metres (or 5.4%).

The applicant has indicated that the changes in area have been brought about by issues arising from detailed survey and engineering design.

While no specific detail is provided about why the lot size changes should not be supported, a common concern raised in discussions with Council staff during the

notification period was that the changes would result in an increase of dwellings across the site.

In this regard, the proposed amendments will not alter the approved development yield of 139 dwellings/lots. No minimum lot size applies to the subject site so the adjustments to lot areas are not problematic from a development standard perspective. Further, no changes are proposed to the built form, roads, access arrangements and the like. The proposal remains a multi-dwelling housing development and is substantially the same development as approved. The proposed amendments to lot areas are therefore acceptable.

4. Delaying payment of contributions should not be permitted

Officer comment:

The proposed amendments initially sought by this application was to defer the payment of Section 7.11 contributions to prior to the issue of a Subdivision Certificate.

During the assessment of the application, Council staff indicated to the applicant that it was of the view that the wording of the Camden Contributions Plan indicated that where only subdivision was proposed, the payment of Section 7.11 contributions could be made prior to the release of the Subdivision Certificate. However, in circumstances where dwelling construction was involved, payment was required prior to the release of the Construction Certificate.

On this basis, the applicant amended their application to remove this element from the proposal and now seeks merely to split the payment of contributions to reflect the staging of the development. The payment of Section 7.11 Contributions will continue to be made prior to the release of a Construction Certificate, but in four stages. This approach is reasonable and permitted by the relevant provisions of the Contributions Plan.

(e) *the public interest*

The public interest is served through the detailed assessment of this modification under the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, environmental planning instruments, development control plans and policies. Based on the above assessment, the modification is consistent with the public interest.

EXTERNAL REFERRALS

No external referrals were required for this modification.

FINANCIAL IMPLICATIONS

This matter has no direct financial implications for Council.

CONCLUSION

The modification has been assessed in accordance with Sections 4.56 and 4.15(1) of the *Environmental Planning and Assessment Act 1979* and all relevant instruments, plans and policies. The modification is recommended for approval subject to the

modified conditions attached to this report.

RECOMMENDED

That the Panel approve DA/2017/1193/2 for the modification of an approved multi-dwelling housing development at 1-5 Main Street, Mount Annan, subject to the modified conditions attached to this report.