

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

Website: <http://www.crag.org.au/>

Face Book: <https://www.facebook.com/CRAG-Camden-Residents-Action-Group-Inc-1805705173088888/>

PO Box 188

Camden NSW 2570

Email: admin@crag.org.au

Phone: 0415 617 368

General Manager
Camden Council
70 Central Avenue
Oran Park 2570
Email: mail@camden.nsw.gov.au

12 March 2020

Dear General Manager,

RE: DA 2019/225/1
11 Mitchell Street Camden

We note the detail of what is proposed for the above DA has been somewhat altered since our submission of 23 April 2019 and that this is its second exhibition. The overall proposal for 11 Mitchell Street remains the same: construction of two buildings, a single storey business premises with mezzanine at front (Unit 1) and two storeys at rear comprised of business premises at ground floor and shop top housing above (Unit 2). Our previous objection remains largely relevant and is appended.

The site is located within the B4 zone of Camden's Heritage Conservation Area (HCA) and is adjacent to a heritage listed property. Its development has the potential to detrimentally affect the HCA and its many listed heritage items. The site's market valuation factors in its main constraints of flooding and heritage location.

Many prospective buyers have considered the site over decades, induced by its very low investment price compared to similar but uncompromised sites. More recently prospective purchasers have also drawn conclusions about its development potential in relation to standards within Camden's Local Environmental Plan (LEP) 2010¹, and their corresponding policies within

¹ Camden Local Environmental Plan 2010 <https://www.legislation.nsw.gov.au/#/view/EPI/2010/514>

Camden's Development Control Plan (DCP)² 2011, now 2019, Camden Town Centre Urban Design Framework (UDF) 2018 and Camden's Flood Risk Management Policy 2006³, hereinafter referred to as the Flood Policy, which incorporates a mapping study of 2015⁴ and implements NSW State Government policy of 2005⁵.

All previous prospective purchasers in light of the site's constraints and required compliance with the planning instruments have decided to invest elsewhere. That is not to say that nothing can be built on the site, but what can be built is limited and its investment return is commensurate with the market price of the site which reflects publicly available information.

It would of course be unjust and contrary to the public interest and faith in the planning system for the rules to be broken to now accommodate a non-compliant development. From the Applicant's Response letter of 16 February 2020, it is apparent that Council have raised issues with the original plans in relation to heritage, flooding, stormwater and civil design, waste, compliance with the Building Code of Australia and the planning instruments.

Although it would appear that some of the issues have been addressed, we object to the revised proposal as it remains non-compliant with the LEP, DCP, UDF and Flood Policy in terms of its heritage impact and flood planning.

In particular the development application does not adequately address its non-compliance with LEP 4.3 which specifies the human-scale height limit within the HCA, LEP 5.10 on conservation of heritage significance and LEP 7.1 which limits development on flood-prone land.

LEP 4.6 requires that development standards cannot be contravened unless the consent authority, in this case the Camden Local Planning Panel (CLPP), is satisfied that written justification demonstrates that compliance is unreasonable or unnecessary in the circumstances of the case, that there are sufficient environmental planning grounds for the non-compliance and that the public interest is served because the objectives of the standard and zoning are met.

We contend that the proposal is seriously flawed and that its accompanying documentation does not, and cannot, justify contravention of the planning instruments. This contention is explained below under the headings of heritage impact and flood affectation, which reflect the site's main constraints.

² Camden Development Control Plan 2019 <https://www.camden.nsw.gov.au/assets/pdfs/Planning/DCP-2019/20-2476-DCP-2019-Final-Table-of-Contents-Revised.pdf>

³ Camden Council 2006 *Flood Risk Management Policy* <https://www.camden.nsw.gov.au/assets/pdfs/Environment/Flood-Information/General/Flood-Risk-Management-Policy-2006-Superseded-Maps.pdf>

⁴ Camden Council and Worley Parsons 2015 *Nepean River Catchment Report and Maps* <https://www.camden.nsw.gov.au/environment/flood-information/nepean-river-catchment/>

⁵ NSW State Government 2005 *Floodplain Development Manual: the management of flood liable land* <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Water/Floodplains/floodplain-development-manual.pdf>

HERITAGE IMPACT

Camden township (1840) is renowned for its village form and rural and country heritage and ambience. Being close to Sydney and with the new airport under construction its tourism potential is recognised as an extremely valuable asset into the future. Setbacks, open space, mature vegetation and gardens are essential to its uniqueness and sense of place.

The site is within Camden's HCA with its rare rural characteristics such as the town farm, equestrian centre and sale yards and is adjacent to a heritage listed item and is in close vicinity of many others. Mitchell Street itself is one of the most historic within the original plan drawn up by Sir Thomas Mitchell and Macarthur brothers in 1836. As well as Mitchell Street, its street names reflect early European history including John, Elizabeth and Edward (Macarthur) and Oxley. Mitchell Street contains original buildings including Camden's oldest cottage (Taplin's cottage), cottage hospital (Edithville) and doctor's residence (Nepean House). The two identical heritage listed properties adjacent to the site are believed to be associated with the 19th century rail connection to Camden.

The urban crowding of the site and modern forms of what is proposed are not compatible with Camden's agricultural history and country town characteristics.

The objective of conservation of the HCA and its characteristics is very evident throughout the planning instruments.

Camden's Local Environmental Plan 2010 (LEP) 4.3 prescribes a maximum building height of 7m and LEP 5.10 sets out objectives of conserving the heritage significance of heritage items and HCA, including associated fabric, settings and views.

Camden's Development Control Plan 2019 (DCP)⁶ (2.16.2, pp. 58, 59; 2.17.4, p. 91) adopts the Burra Charter and refers to NSW Heritage Office and NSW Heritage Council and its widely accepted criteria in assessing heritage significance and what should be included in Statements of Heritage Impact⁷.

In relation to compatibility of new work the DCP (2.16.3, p. 61) requires it to be sympathetic and compatible with and make a positive contribution to the heritage place and conservation area as a whole.

DCP (4.8, p. 195) covers shop-top housing and lists key controls including a rear setback of 6m, a side setback of 2m and site coverage not exceeding 50%, and a landscaped area of at least 30%.

⁶ Camden Council 16 September 2019 *Camden Development Control Plan 2019* (Rescinds CDCP 2011)
<https://www.camden.nsw.gov.au/planning/planning-controls/>

⁷ NSW Heritage Office n.d. *Statements of Heritage Impact*
<https://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>

DCP (5.33, p. 213) requires that development within the B4 Mixed Use zone must be consistent with the UDF⁸ which would require a finer-grained and sensitive response to its country town heritage.

The Burra Charter articles refer to the preferred use of traditional materials (4.2), new work retaining, respecting and not distorting cultural significance and the need to modify proposed changes accordingly (15.1, 22.1, 27.1).

What is proposed would be of detrimental heritage impact according to the Burra Charter and is not compliant with the planning instruments referred to above and as further explained below.

Height Exceedance (LEP 4.3)

The height exceedance relates to the rear building, which at 8.035m is 14.8% above the height limit of 7m, and is an increase over the 9.2% of the original proposal. We note the exceedance is claimed to be 12.8% (i.e., $1.035/8.035 = 12.9\%$) which is incorrect and unusual in that the original exceedance was correctly calculated by the same consulting firm.

Justification for the variation is required from the Applicant under LEP 4.6 (3) by demonstrating in writing:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, AND
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The 4.6 Variation Request (10 Feb., 2020, p. 6) states the principle reason for the proposed exceedance of the maximum building height limit is *the site's constraints of flood affection and its location of being in a heritage conservation area*.

This reason cannot be a justification for contravening the standard. It is not special to the circumstances of the case and there are no environmental planning grounds that are not generally and potentially applicable to any similar site.

As referred to above the site's constraints are well-known, reflected in the planning instruments and factored into the purchase price. As such these constraints have been understood by other prospective purchasers of the site who have not sought to argue for personal benefit that that they constitute environmental planning grounds for a variation of the height standard because it is unreasonable or unnecessary (LEP 4.6(3)).

⁸ Camden Council August 2018 *Camden Town Centre Urban Design Framework*
<https://www.camden.nsw.gov.au/major-developments/major-council-projects/camden-town-centre-2/>

The standard has been deemed to be reasonable and necessary for the protection of the 1840 townscape over decades, and was most recently reiterated in the UDF.

At its meeting of 14 August 2018, prior to lodgement of the DA in question, Camden Council⁹ adopted the UDF for the town. Statements in the Council Report and attachments include that the UDF:

- recognises that the town centre has a unique and distinct heritage character that is highly valued by the community and should be retained;
- focuses on enhancing the attributes that make Camden unique;
- does not propose to amend the height control of 7m over the Camden Town Centre;
- notes that criteria for consideration of minor height amendments will be further investigated as part of a future planning proposal to provide clarity and consistency when considering variation requests and be subject to community engagement;
- does not propose major changes to increase commercial floor space or incentivise growth;
- does not specify or promote development in the floodplain;
- is designed to strengthen the planning controls contained in the DCP.

The UDF identifies four precincts: Larkin Place, John Street, Murray Street and the Nepean River Link. In relation to criteria for minor height amendments noted above from the Council Report, the UDF identified opportunities for minor height increases, where improved architectural and urban design outcomes may be achieved, in the precincts of Larkin Place (p. 87) and Murray Street (p. 93). In Larkin Place no height increase would be considered that dominated or could be seen from Argyle Street. The potential height amendment in Murray Street concentrated on its western side which is not within the HCA.

Much of the HCA is flood affected and clearly, as reiterated by adoption of the UDF, it is not seen as a justification for exceeding the height limit. Rather the height limit is seen as limiting undesirable development within the human scaled and rurally spacious HCA. This is particularly the case in a cottage- dominated area. Most cottages in the vicinity of 11 Mitchell Street are significantly less than 7m in height, many are 5m. The proposed height of over 8m is 60% greater, and clearly unacceptable if the heritage and cultural significance of the area is to be conserved.

Conservation of the town, privately founded by the Macarthur's after which the area is named, has been shown through numerous studies to be extremely important to the community, including as a heritage town as recognised by the Greater Sydney Commission and for tourism as promoted by Camden Regional Economic Taskforce.¹⁰

⁹ Camden Council, see

<https://www.camden.nsw.gov.au/assets/pdfs/Council/Business-Papers/2018/BP-agenda-14-Aug-2018.pdf>

<https://www.camden.nsw.gov.au/assets/pdfs/Council/Business-Papers/2018/BP-attach-14-Aug-2018.pdf>

<https://www.camden.nsw.gov.au/assets/pdfs/Council/Minutes/2018/Minutes-14082018.pdf>

¹⁰ Camden Regional Economic Taskforce <https://www.cret.com.au/tourism/>

There is public benefit in maintaining the standard because it is instrumental to conservation of the town's human scale and rural heritage and economic potential (4.6 (5b)).

Under 4.6(4)(ii) the proposal must establish that the proposal will be in the public interest because it is consistent with the objectives of the particular standard and land use zone. This is covered as follows.

LEP 4.3 Height Standard Objectives

The proposal must satisfy ALL of the three objectives.

Objective (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.

Non-compliance with this objective is further covered below under *Heritage Compatibility* and in the analysis of the proposal's consistency with DCP 2019 controls in Appendix 1.

Of its existing character the UDF states *Camden Town Centre offers a charm and character that is derived from a rich history, quality of original town layout and the evolution of Australian architecture. The heritage of the town centre is present in key buildings, the grid planning of the town's layout, the fine grain lot sizes and key views and vistas to and from the centre. (p. 4) The grain and character of Camden Town Centre is one of relatively low scale and density; a rural township with a modest and varied collection of architecture, much of which is listed as having local heritage significance. (p. 15)*

As covered in detail in Appendix 1, the desired future character is clear from the DCP 2019 controls. DCP 2019 incorporates the findings and principles of the UDF, which states as its Built Form Principle: *Protect and enhance the unique character of Camden's heritage, its human scale and network of urban fabric ensuring all built form contributes to Camden's identity as a rural town (p. 33).*

The desired future character was also clear in the provisions of the superseded DCP 2011, which are analysed in relation to the first iteration of the proposal in our submission of 23 April 2019 (see Appendix 2).

The proposal is not compatible with the fine-grain and residential cottage pattern of the streetscape, block or its rural surrounds. The coverage of most of the site with buildings and hard-stand is not compatible. The rear building being over-height and of bulky and inconsistent shape is clearly not subservient as would be expected in a cottage-dominated area with a rural history.

Objective (b) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development

As also covered below under *Heritage Compatibility* the non-harmonious design of the proposal, with its non-traditional materials and palette, overglazed windows and oddly angled and overly bulky rear building would be of detrimental visual impact.

The view from Mitchell Street would be incongruent and disrupted by the cantilevered and boxlike glazed protrusion of the rear building extending beyond the side of the front building.

The balcony at the side of the rear building overlooks other properties, especially the heritage listed cottage at 9 Mitchell Street. Being heritage listed the cottage may be adaptively reused for uses that are dependent on the ambiance that heritage and privacy provides. Tenants of heritage listed properties in the area choose them because of their special character, which includes a private garden and this is often factored into their business models. Any tenant would resent being overlooked from the proposed rear balcony.

Objective (c) to minimise the adverse impact of development on heritage conservation areas and heritage items.

This objective is not met as partially covered in addressing the other objectives above and also further covered below under *Heritage Compatibility*.

The proposal contravenes the three objectives of the Height Standard, and therefore fails the test of LEP 4.6(4)(ii).

B4 Zone Objectives

In relation to its B4 zoning, we also contend that the documentation supporting the proposal fails to demonstrate that it meets all of its objectives as follows.

Objective: To provide a mixture of compatible land uses.

The proposal's land use is not compatible with the adaptive reuse of cottages in the cottage dominated area and their development pattern. Instead it seeks to overcrowd the site with both a commercial premise and a residence.

Objective: To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

We do not agree, for the many reasons already stated and to follow, that the development is suitable to be integrated into the locality.

Objective: To minimise conflict between land uses within the zone and land uses within adjoining zones.

The proposal introduces conflict with the adjacent heritage listed cottage in terms of loss of privacy and being aesthetically incompatible with the streetscape and locality.

Objective: To encourage development that supports or complements the primary office and retail functions of the local centre zone.

Non-compliant development cannot be encouraged. Its compatibility cannot be judged because it is unclear what use will be made of the front building. Also, the proposed development is non-compliant with DCP (5.33, p. 213) which requires that development within the B4 Mixed Use zone must be consistent with the UDF¹¹, which it is demonstrated not to be under *Heritage Compatibility*.

The 4.6 Variation Request fails to demonstrate consistency with the planning objectives or how the development will be in the public interest because it is consistent with the objectives of the height development standard and the zone.

¹¹ Camden Council August 2018 *Camden Town Centre Urban Design Framework*
<https://www.camden.nsw.gov.au/major-developments/major-council-projects/camden-town-centre-2/>

Heritage Compatibility

The supporting documentation, particularly the Heritage Report (December 2018) and Heritage Statement response (29 January 2019 (*sic*) 2020) to Council's questions, makes various unevicenced claims about the proposed development's sensitivity and complementarity to adjacent and nearby heritage items and HCA.

Our previous objection referred to Camden's DCP 2011, in line with the Applicant's supporting documentation. DCP 2019 came into force on 16 September 2019 and effectively rescinds Camden DCP 2011, which is no longer available on Council's website. Our previous objection, see Appendix 2, covered non-compliance with the controls of DCP 2011, and remains largely applicable to the revised DA. Similarly, comments in our previous objection remain relevant as the DCP 2019 if anything strengthens the heritage controls.

DCP 2019 (5.3.3) also specifically states that development within the B4 zone MUST be consistent with the Camden Town Centre Urban Design Framework (UDF) 2018, which was adopted by Council on 14 August 2018. This was the case anyway as the DA was lodged after that date on 25 March 2019.

The DAs supporting documentation inexplicably refers to the Camden Town Centre Strategy 2008, which the UDF replaced. References to the 2008 Strategy cannot necessarily be used to support arguments of heritage compatibility, and in not recognising the UDF authority, the documentation is deficient.

Camden Council refer to the UDF and its role in prioritising conservation and enhancement of the unique characteristics of Camden Town Centre in its most recent document, the Draft Local Strategic Plan 2018¹² (Local Priority L4. p. 46) which states

The Camden Town Centre Urban Design Framework provides a structure for the future direction of the Camden Town Centre which focuses on revitalising the centre through placemaking. The Framework recognises that the town centre is unique and highly valued by the community, and the provisions within the Framework reflect this value by focusing on enhancing the attributes that make Camden unique.

As noted above, a key principle of the UDF is the Built Place Principle: *Protect and enhance the unique character of Camden's heritage, it's human scale and network of urban fabric ensuring **all built form contributes to Camden's identity as a rural town.***

This proposal, far from contributing to the rural characteristics of the town, seeks to impose itself into a cottage dominated area in a pattern and style that would be at home in a city.

¹² Camden Council 2019 Draft Local Strategic Planning Statement
<https://www.camden.nsw.gov.au/assets/Uploads/19-209832-FINAL-COPY-SENT-TO-PRINTERS-14877-Camden-Council-LSPS-v0612.pdf>

Deficiencies in the Heritage Report in relation to specific and relevant DCP (Part 2) Controls are set out in Appendix 1.

As referred to in the DCP 2019 (Part 2, p. 60), the NSW Heritage Office¹³ guidelines on preparing Statements of Heritage Impact (SOHI), sets out what information is required to be included. The NSW Guideline (p. 2) states:

Where the effect of proposed work is likely to be detrimental to the heritage significance of the item or area, a SOHI needs to argue why such action is the only viable solution and explain why alternatives are not. The works that will have a negative impact should be listed, with statements made under each point as to why the impact/s cannot be avoided, and what steps have been taken to minimise their effect/s. It might also be useful to consider these in relation to the criteria of heritage significance.

The Checklists provided in the guidelines by the NSW Heritage Office require a much deeper consideration and explanation of the heritage impacts than has been provided in the Heritage Report for assessment by Camden Council and CLPP.

For instance, in the case of major additions to the heritage item of the HCA:

- *How is the impact of the addition on the heritage significance of the item to be minimised?*
- *Will the additions tend to visually dominate the heritage item?*
- *Are the additions sympathetic to the heritage item? In what way (e.g. form, proportions, design)?*

In the case of the proposed development adjacent to the identical pair of heritage items (7 and 9 Mitchell Street) the Heritage Report, which also fails to recognise the full and faithful restoration work undertaken on the cottages since their referenced Statements of Heritage Significance were updated in May 2002, make little or no attempt to answer the checklist questions:

- *How is the impact of the new development on the heritage significance of the item or area to be minimised?*
- *Why is the new development required to be adjacent to a heritage item?*
- *How does the curtilage allowed around the heritage item contribute to the retention of its heritage significance?*
- *How does the new development affect views to, and from, the heritage item? What has been done to minimise negative effects?*
- *Is the new development sympathetic to the heritage item? In what way (e.g. form, siting, proportions, design)?*
- *Will the additions visually dominate the heritage item? How has this been minimised?*
- *Will the public, and users of the item, still be able to view and appreciate its significance?*

¹³ NSW Heritage Office n.d. *Statements of Heritage Impact*
<https://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>

NSW Heritage Office's policy about design in context relating to new development in conservation areas or development affecting a heritage item of either local or state significance states that local councils should also use its Guidelines in assessment of proposals¹⁴.

These NSW Guidelines (p.2) state new design should respond to its historic context through an understanding and informed analysis of its character and quality. This will include elements such as its grain, existing patterns of development, important views, scale, materials and building methods.

In relation to new work, the Guidelines:

- specifically list design criteria, as covered in the DCP, to be considered: Character, Scale, Form, Siting, Materials and Colour and Detailing (p. 6)
- provide a checklist endorsed by the NSW Heritage Council for assessing new development in a historic context (p.14).

In relation to this Checklist (Part B), the Heritage Report does not specifically address design criteria and in particular may assert, BUT DOES NOT EXPLAIN, the proposed development's heritage impact in relation to:

- the existing significance of heritage items, streetscape and HCA;
- massing, density, pattern of arrangement of buildings and size of buildings;
- proportions;
- rhythm of buildings and landscape;
- relationship between internal and external spaces;
- location and dimensions of driveways and garages and design strategies to reduce their visual and physical impact on the streetscape;
- quality of spaces created between existing and new;
- response to predominant materials, textures and colour palette;
- commensurate quality of new materials;
- response to distinctive details of neighbouring existing buildings;
- relationship of new fences, garden walls, planting and landscape elements to important existing details.

The documentation accompanying the DA makes no attempt to provide the analysis required for a new development adjacent to a listed heritage item and within a conservation area, and it is therefore seriously deficient and unacceptable.

The inclusion of shop top housing in the plans creates an over-development and uncharacteristic crowding of the site as can be seen in the diagrams extracted from the documentation below. This

¹⁴ NSW Heritage Office June 2005 *Design in Context: Guidelines for Infill Development in the Historic Context*
<https://www.environment.nsw.gov.au/resources/heritagebranch/heritage/DesignInContext.pdf>

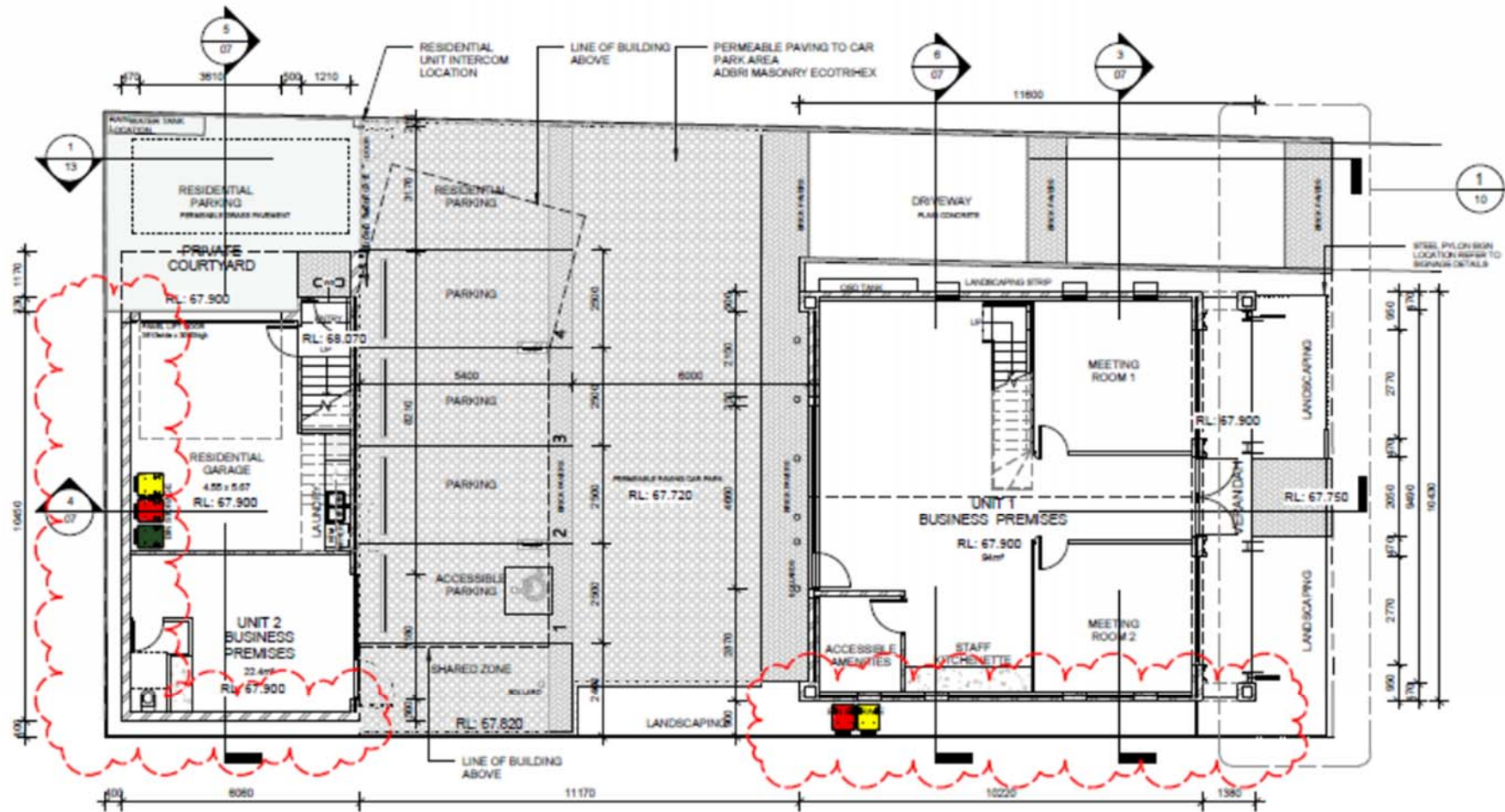
also raises questions about DCP (Part 4) residential controls generally and specifically compliance with those for shop top housing.

DCP (4.8, p. 195) covers shop-top housing and lists key controls including a rear setback of 6m, a side setback of 2m and site coverage not exceeding 50%, and a landscaped area of at least 30%. As the site area is 485.8m² the required landscaped area is a minimum of 145.7 m².

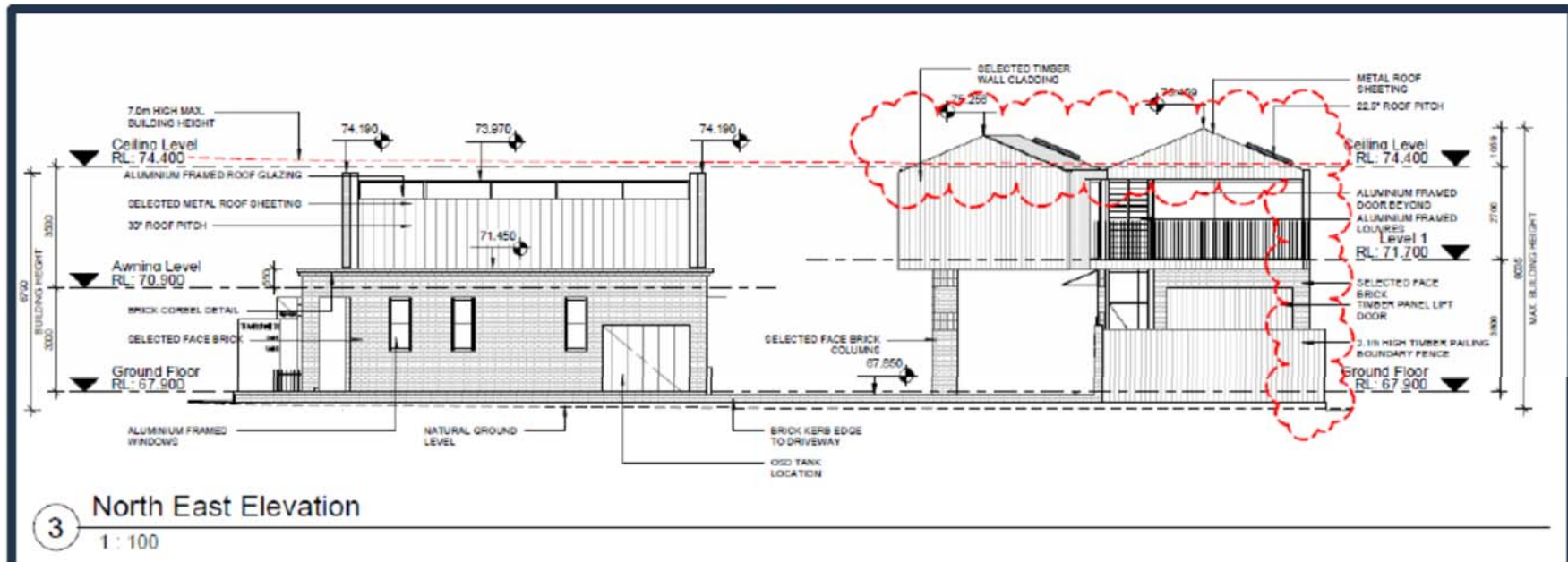


Source: J Mammone 15 January 2020 *Architecture Architectural Public Plans Issue K*

The artist's impression above and architectural plans below show minimal setbacks and minimal landscaped area, with most of the site taken up by building or hardstand.



Source: J Mammone 15 January 2020 Architecture Architectural Public Plans Issue K Ground Floor Plan Sheet 4 extract



Source: J Mammone 15 January 2020 *Architecture Architectural Public Plans Issue K*

FLOOD AFFECTATION

The Flood Risk Management Plan and Evacuation Plan submitted with the DA, hereinafter referred to as the Flood Report, includes information provided by Council from the 2015 Nepean River Flood Study.¹⁵ This information categorises the site as high hazard flood storage and as High Hydraulic Hazard in a 100-year flood event. However, the Flood Report (p. 7) although acknowledging the site as flood storage also “assumes” that it is categorised as Flood Fringe.

The distinction is important as the temporary storage of floodwaters on a site affects the severity of flooding of other sites. Hence a site’s category of Flood Storage, as opposed to Flood Fringe, imposes the additional condition that there is to be no net reduction in its flood storage capacity. This applies to both residential and commercial development.

Except to state (p.4) that there should be no filling or alterations to ground levels onsite, the Flood Report makes no assessment of the proposed development on flood affectation of other properties.

Council’s Flood Policy¹⁶, states that its primary method of flood risk management is through its application of development controls on flood prone lands (para. 1.1) and ensuring that development of individual property minimises financial and personal risk to the community and is balanced against the broader community expectations and physical constraints of the land (para. 1.5). Particularly relevant objectives of the Flood Policy (para. 1.6), to be achieved by providing guidelines and specific requirements for flood prone land, include:

- reduce the impact of flooding on individual properties;
- limit private and public liability resulting from flooding;
- limit the potential risk to life and property resulting from flooding;
- prevent non-compatible development in flood prone areas;
- ensure development in flood prone areas is sympathetic with the character of the surrounding land uses and character;
- assess all proposed developments on flood prone properties on a ‘merits based’ approach taking account of social, economic, environmental and flooding considerations;

¹⁵ Camden Council and Worley Parsons 2015 *Nepean River Flood Study*

<https://www.camden.nsw.gov.au/assets/pdfs/Environment/Flood-Information/Nepean-River/Nepean-River-Flood-Study-April-2015-Report-Body-1.3MB.pdf>

¹⁶ Camden Council 2006 *Flood Risk Management Policy*

<https://www.camden.nsw.gov.au/assets/pdfs/Environment/Flood-Information/General/Flood-Risk-Management-Policy-2006-Superseded-Maps.pdf>

A close reading of the Flood Policy shows that references to the merit approach (paras. 2.1, 2.5, 4.3, 4.5, 4.6, 4.7) for individual DAs do not mention or include new builds. **The Flood Policy only refers to additions to or redevelopment of existing buildings and states that any redevelopment must not increase the number of bedrooms or the number of people residing in high hazard flood areas, such as 11 Mitchell Street.**

This is evidenced by the following extracts from the Flood Policy that refer to the merits-based approach.

Para 2.1 Flood Planning Level Council may approve additions to existing flood liable industrial/commercial buildings, allowing for floor levels at the 1% AEP flood level (in accordance with 4.6 below).

Para 2.5 Land forming and fill operations Fill operations will not be permitted in flood storage areas. Any proposed filling on flood prone land will be given consideration on a merits-based approach.

Para 4.3 House Raising It is expected that the proposed works will not increase the number of people residing in the high hazard areas of the floodplain.

Para 4.5 Alterations and Additions to Dwellings in the Floodplain Any such application will be considered on its merits, having regard to flooding, evacuation, environmental, streetscape and heritage factors.

Council will consider an application provided that the work will not increase the number of people at risk residing in high hazard areas. This will be assured by way of refusing applications for additions where those additions include the creation of new bedrooms or studies that could be later used as a bedroom.

Council may permit a once only minor addition of up to 30m² habitable floor area to an existing lawfully constructed dwelling ...allowing floor levels the same as the existing ground floor level of the dwelling.

Council may permit major additions of greater than 30m² habitable floor area to an existing lawfully constructed dwelling on land lying below the 1% AEP flood level... All habitable floor levels of the new building work must be constructed at or above the FPL ... Such work must not increase the number of bedrooms within the dwelling.

The area of the building work below the FPL must be closed and assumed to impede the flow of floodwaters. The effect of the building on flood levels and the effect of the flood on the building must be determined

In addition to these issues, usual consideration and compliance with Development Control Plan is necessary.

There is no certainty that alterations and additions to existing dwellings on land lying below the 1% AEP flood level will be permitted.

Para 4.6 Redevelopment of Commercial Areas of the Floodplain Council will consider an application for the redevelopment of sites on land below the 1% AEP flood level within areas zoned commercial. Any such application will be considered on its merits having regard to flooding, evacuation, environmental, streetscape and heritage factors.

It is expected that such redevelopment on flood prone land will not increase the number of people at risk residing in high hazard areas.

There is no certainty that redevelopment on land below the 1% AEP flood level will be permitted.

4.7 Flood Proofing Buildings The owner of any house that is on flood prone land may apply to Council for consent to undertake flood proofing of their dwelling. A pre-application meeting with Council Officers is recommended. Each application will be treated on its merits. It is expected that the proposed works will not increase the number of people residing in the high hazard areas of the floodplain.

It is clear from the above analysis of Camden Council's Flood Policy that:

- it contains nothing that explicitly refers to construction of a new building on an empty site in a high hazard flood area;
- whilst the consent authority may use its discretion in a merits-based assessment to allow a new commercial building in a high hazard area (para. 6.3), it is an unusual situation that requires careful judgment of all relevant factors, including environmental, streetscape and heritage factors, and one that has no certainty of approval (para. 4.6).
- it is unequivocal that new development cannot increase the number of people residing in a high hazard flood area and such application will not be considered (para. 4.6) and that the consent authority will assure this by refusing applications for additions where those additions include the creation of new bedrooms or studies that could be later used as a bedroom (para. 4.5).

In relation to the submitted plans:

- it is clear that the “shop-top housing” in the rear building is mainly residential. Only a tiny area (22.4m² with much of it being taken up by a bathroom) is marked as business premises on the ground floor. This area could easily be used for a bedroom with ensuite bathroom or for other domestic purposes so that the rear building effectively becomes a new build two-storey residence in a high hazard flood area.

This scenario would seem to be one to be conscientiously avoided (para 4.5).

- the intended use of the front building is unclear, and it is not clear how the residential and business uses of the two buildings inter-relate to qualify as shop-top housing. The habitable areas¹⁷ are not clearly designated and this confusion is exacerbated by references to “offices” in the Flood Report.

This is important as habitable areas must be at or above the Flood Planning Level (FPL).

The Flood Report submitted with the plans is clearly inadequate because:

- It does not address the flooding effect of the proposed development on other properties;
- It does not reference the cut and fill specified in the Architectural Plans;
- It does not calculate flood water displacement or address its mitigation except to state that extreme flood depths on site will cause windows and/or doors to break, thus rendering the new buildings (effectively) porous (p. 7).
- It refers (p. 7) the issue of displacement of flood waters to an engineer, but no engineers report is available;
- It does not clearly define habitable and non-habitable areas;
- It refers (pp. 4, 9) to the front building as being comprised of an “office”. If this is the case it is habitable and subject to the FPL.
- It makes no mention of climate change.

¹⁷ Council’s Flood Policy, which follows the NSW Floodplain Management Manual 2005, is that the definition of “habitable” is

- in a residential situation: a living or working area, such as a lounge room, dining room, rumpus room, kitchen, bedroom or workroom.
- in an industrial or commercial situation: an area used for offices or to store valuable possessions susceptible to flood damage in the event of a flood.

The proposal must, but does not, satisfy the objectives of LEP 7.1 Flood Planning as follows.

a) minimise the flood risk to life and property associated with the use of land;

The residential component increases the number of people living in a high hazard flood area.

The Flood Report (pp. 6, 7):

- states the porosity of the two buildings in an extreme event results in breakage of windows and doors. This increases the risk to people and other properties;
- estimates monetary values of property losses of \$160, 000 for the residential component and \$120, 000 for the commercial component in a PMF event. This is not minimal and does not include an estimate of any damaging impact on other properties through flood water displacement or debris.

b) to allow development that is compatible with the lands flood hazard, taking into account projected changes as a result of climate change;

According to Council's Flood Policy new buildings are not permitted. They are not compatible with the flood hazard. Strong merits-based arguments are needed for this to be reconsidered.

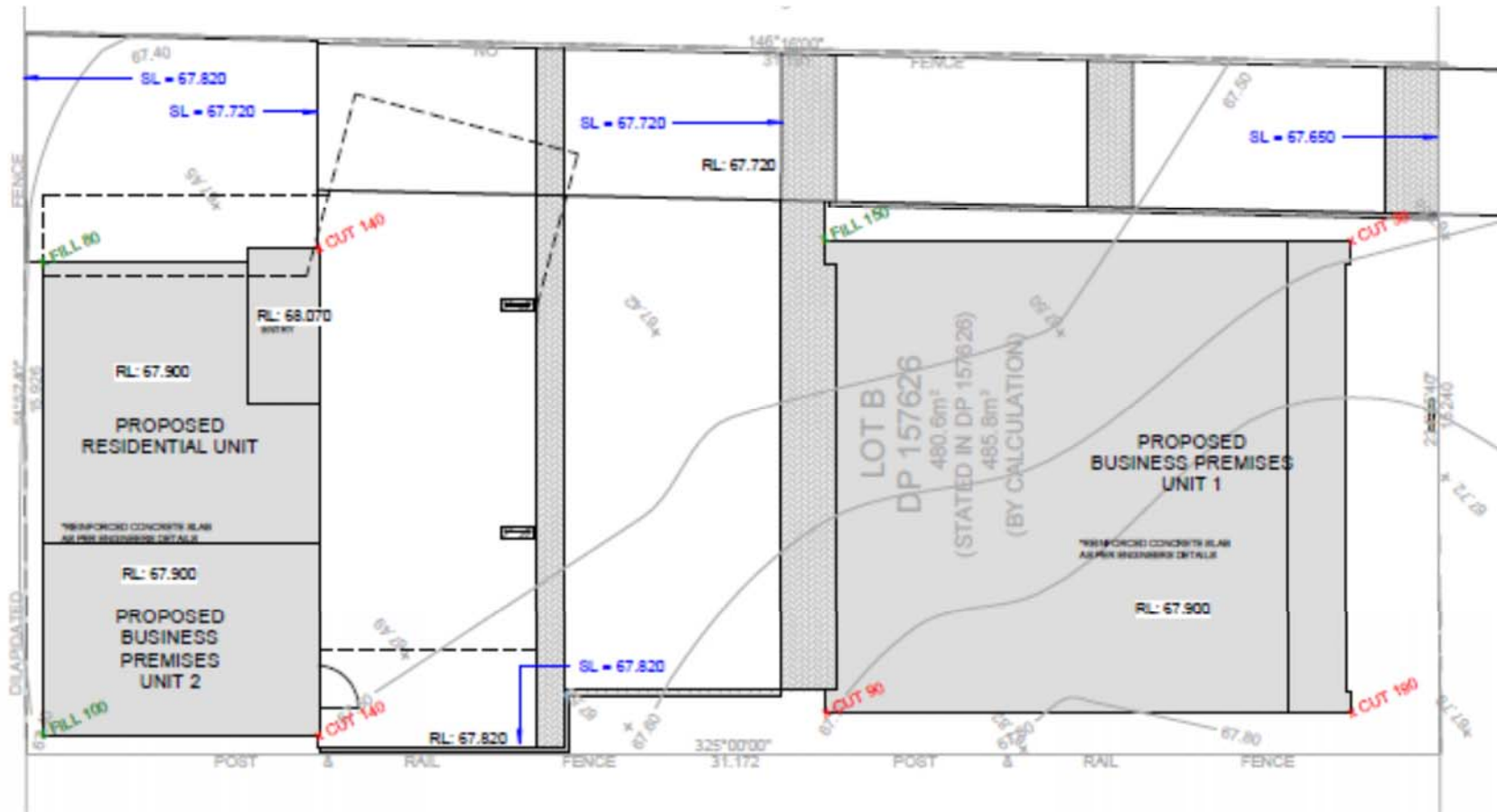
No merit-based arguments required by the Flood Policy or justification (as required under LEP 4.6) have been presented in support of the DA. Climate change is not mentioned.

c) to avoid significant adverse impacts on flood behaviour and the environment.

The impacts on flood behaviour and the environment have not been provided in the DA documents. However, the displacement of flood waters and potential breakage of doors and windows to accommodate storage on site, with possible third-party effects are adverse impacts.

Although the Flood Report (p.4) states that there should be no filling or alterations to ground levels onsite the Architectural Plans, as shown in the extract below, clearly show a Cut and Fill Diagram. As referred to above, fill operations are not be permitted in flood storage areas according to the Flood Policy (Para 2.5 Land forming and fill operations). The DA documents do not address the possibility of adverse impacts of the cut and fill on flood behaviour and the environment.

Source: J Mammone 15 January 2020 *Architecture Architectural Public Plans Issue K*



DCP 2019 (2.8, p. 38) also contains the control that: *Development on flood prone land must comply with Council's Engineering Design Specifications and Flood Risk Management Policy.*

The Engineering Design Specifications are not publicly available. If they do exist, they should be available in order to be fair to the community and to property owners potentially directly affected by the development.

In the absence of a strong merits-based argument, the consent authority has no option but to deny the development proposal under the Flood Policy as being incompatible with the high flood hazard of the site.

From a community perspective a merits-based argument should also offer an opinion from the SES, the body which ensures there is an effective flood plan in place with resources and infrastructure available to manage flood events that affect persons and property. As stated by the SES¹⁸ (pp. 39, 45): *Decision-makers therefore have a duty of care when making floodplain risk management decisions, especially as the flood risk is foreseeable. ...Ensuring that people are fully aware of the implications of investing or living in a flood prone property is the responsibility of government, councils and those involved directly in property development and marketing. In planning for development on flood prone land, the safety of all occupants be they existing or future residents, workers or visitors..... warrants independent consideration and should be in addition to consideration of flood hazard impact on property damage.*

The Flood Policy (2006) is post-dated by the LEP (2010). This suggests that LEP 4.6 is invoked in relation to any contravention of LEP 7.1 as covered above.

As such, not only is a strong merits-based argument required under the Flood Policy but also written justification including environmental planning grounds must be provided for any contravention of LEP 7.1. Also, under 7.1 (3), the consent authority MUST not consent to the proposal unless it is satisfied that it is compatible with the flood hazard and will not create adverse effects.

There is little in the DA documentation that contributes to a merits-based argument under the Flood Policy or that could help satisfy a consent authority, under LEP 4.6 or otherwise, that there is justification for non-compliance with LEP 7.1 Flood Planning. It is of course not within the mechanism of assessment to guess at or presume reasons for approval, it is up to the applicant to put the case.

The conclusion must be that the DA be denied.

¹⁸SES/ Hawkesbury-Nepean Floodplain Management Steering Committee June 2006 *Managing Flood Risk Through Planning Opportunities: Guidance on Land Use Planning in Flood Prone Areas*
https://www.ses.nsw.gov.au/media/2248/land_use_guidelines.pdf

In summary, the DA is non-compliant with planning legislation and policy including LEP 4.3 Height of buildings (in HCA), LEP 5.10 Heritage conservation, LEP 7.1 Flood planning, Camden Council's Flood Policy, Camden Town Centre Urban Design Framework (UDF), DCP 2019 (including 2.16.2, pp. 58, 59; 2.16.3, p. 61; 2.17.4, p. 91; 2.8, p. 38; 4.8, p. 195; 5.33, p. 213) as well as the superseded DCP 2011 as covered in our previous objection.

The documentation accompanying the DA is inadequate and does not provide any justification for its many non-compliances.

In particular the Variation Request on height, according to our analysis of LEP 4.6 is legally inadequate.

The heritage impact is unacceptable, and what is proposed can be shown to be inconsistent and non-compliant with the planning instruments and policies on numerous grounds as covered in the body of this objection and in the table of non-compliances with the DCP 2019 controls (Appendix 1). Many of the comments in our attached objection of 23 April 2019 which referred to DCP 2011 non-compliances also remain just as relevant for this iteration of the proposal.

It is evident that a strong merits-based argument is required in relation to non-compliance with the Flood Policy, and as the proposal is also non-compliant with LEP 7.1, it would seem that reasons for non-compliance also need to be justified according to LEP 4.6.

In short, the DA documentation is deficient. In our opinion it cannot be rectified as the non-compliances are simply too great to be justified.

As stated at the outset of this submission, what can be built is limited because the site is compromised. Its heritage location and flood affectation were factored into its purchase price.

What could easily be assessed as compliant would be a sympathetic cottage of appropriate size and bulk, with perhaps an outbuilding, that retained the historic pattern of development and blended seamlessly into the HCA and streetscape. Our reading of the flood policy is that new builds would be expected to be business premises and that it is unlikely that a new residence can be argued on a merits-basis to be compliant with the Flood Policy or LEP 7.1.

We request that this proposal be denied.

Yours sincerely



Glenda Davis
President

APPENDIX 1

DCP CONTROLS

DCP 2019	
2.16.3 General Heritage Provisions	
Design	CRAG Response
<i>5. New development must be designed to interpret and complement the general form, bulk, scale, height, architectural detail and other significant elements of the surrounding heritage place</i>	<p>No explanation is provided as to how the design interprets or complements its adjacent heritage cottages or the HCA.</p> <p>Re the front building:</p> <ul style="list-style-type: none"> • The large street facing gable is uncharacteristic and jarring; • The front fence is not consistent with the streetscape. • The face bricks to be used are an unnatural colour for the area and appear flat and obviously made with modern machinery. They will sit in stark contrast to the adjacent weather board clad cottages. They will be an anomaly in the streetscape and cannot be referenced to the traditional materials within the HCA. • The front windows are overly glazed, commercially-sized and not reminiscent of the area. The aluminium, frames are out of character and unsympathetic with traditional wood finishes. • Similarly, the proposed use of steel and aluminium elements that are painted and/or powder-coated black are not consistent or compatible with the fabric of cottages or other buildings in the HCA. • The shape of the front aluminium windows detracts from the cottage character of the area and the streetscape which is historically domestic (as shown in the photos below). The window frames should be wooden and the size and shape compatible with the vertical rectangle style which is characteristic of Mitchell Street, adjacent cottages and the B4 zone within the HCA. <p>Re the Rear building</p> <ul style="list-style-type: none"> • It is oversized; • It is not subservient; • It is over-height, more than two metres higher than the adjacent listed cottages; • It crowds the site which is within a leafy and spacious cottage and garden dominated area; • Does not provided setbacks consistent with the area; • Its shape is not seen anywhere in the HCA and is completely inconsistent with this part of the HCA.
<i>6. Where an addition is not visible from a street or public place, greater flexibility in design may be considered.</i>	Both proposed buildings are highly visible from the street which requires closer interpretation of the heritage place which is not apparent in the design and no explanation is provided.

Siting	CRAG Response
<i>1. Alterations and additions to a heritage item or within a conservation area will be sited and designed to retain the intactness and consistency of the streetscape and the significance of the conservation area;</i>	The proposed additions to the streetscape crowd the site and the starkly modernistic rear building is highly visible from the street, which is uncharacteristic.
<i>2. Additions to buildings in the conservation area are to be predominantly to the rear of the existing building. Additions should not visually dominate the existing building</i>	Uncharacteristic of its cottage dominated area, the siting of the rear building which is significantly bulkier than the front building visually dominates the front building and streetscape
<i>3. Additions to the side of existing buildings will be considered where it is substantially set back from the front building alignment and the style and character of the building or conservation area will not be compromised.</i>	The cantilevered section of the rear building is to the side of the front building which is uncharacteristic and highly visible from the street.
<i>5. The existing informal and irregular pattern of rear property building alignments is to be retained.</i>	The rear building alignment is designed to maximise internal residential space which is very unusual in the streetscape and HCA.
Roofs and Roofscape	
<i>1. The existing pattern, pitch, materials and details of original roof forms within the Heritage Conservation Area must be retained.</i>	The roof of the rear building is higher than the adjacent cottages and the front building. This is not an original or characteristic pattern.
<i>2. Secondary roof forms should be subservient in form, scale and location to the main roof.</i>	The roof form of the rear building is not subservient in form and scale to that of the front building.

Verandas and Balconies	CRAG Response
<p><i>3. Verandas and balconies on new buildings should generally be of a contemporary design and materials that respond to the character, scale and from setting of the heritage place.</i></p>	<p>The proposed veranda does not respond to that of the adjacent cottages but seems to be of a lower pitch and abrupt scale that jars with the immediate streetscape and is not consistent with the HCA generally.</p> <p>The balcony of the rear building is residential which is not consistent with subservient buildings in the HCA and therefore does not respond to the character and setting of its location.</p>
<p>Materials and Finishes</p>	
<p><i>2. Materials, finishes, and textures must be sympathetic to the historic context of the original significant buildings within the streetscape.</i></p>	<p>The materials, finishes and textures are not present in the streetscape, nor are they evident in the HCA. Therefore, they present as an anomaly and cannot be described as sympathetic</p>
<p><i>3. Contemporary materials are permitted where their proportions, detailing and quantities are compatible with the character of the area. Large expanses of glass and reflective wall and roof cladding are not appropriate.</i></p>	<p>It is quite possible to use contemporary materials that are sympathetic. Most of those chosen are not compatible including aluminium, grey and brown machine cut bricks, honed concrete with brick inserts for the driveway, large expanses of glass planned for the rear building and façade of the front building.</p>
<p>Colours</p>	
<p><i>2. New buildings need not employ traditional colour schemes, but should use colours sympathetic to surrounding development and contribute to the cohesiveness of the Heritage Place. A material and colour palette sheet must be provided to Council for assessment.</i></p>	<p>No explanation is provided as to how the colours of grey stained wood, grey and brown bricks, black coated aluminium and so on are sympathetic with surrounds, except to claim that the dark grey of the oversized rear building helps to make it appear recessive.</p>

Fences and Gates	CRAG Response
<p><i>2. New fences should be sympathetic to the original fencing in terms of design, materials, colour and height. If the original fence type is not known, it should be representative of the architectural period of the heritage building. Old photographs or inspection of remaining fabric can often reveal the original fence type.</i></p>	<p>The design, height and material of the proposed front fence bears no resemblance to wooden and picket fences of its immediate neighbours, and it would be a struggle to find anything similar within the HCA. The fence would appear as an aberration in the streetscape.</p>
<p>Garages, Carports and Outbuildings</p>	
<p><i>1. Garages, carports and outbuildings must be simple, ancillary structures, that are designed and sited so that they do not dominate the principal building and not detract from the Heritage Conservation Area.</i></p>	<p>The rear building, which in the cottage dominated area and HCA generally would traditionally be a non-dominant outbuilding will dominate the traditionally principal front building in height, scale and visibility from the street.</p>
<p>Vehicle Access</p>	
<p><i>1. Vehicle access must not impact adversely upon the architectural character and significance of buildings or the streetscape.</i></p>	<p>The proposed vehicle access is fully concreted with attention seeking brick inlay and little softening. It will present as a significant landmark and bears no resemblance to the understated driveways of the street, cottage dominated area or HCA.</p>
<p><i>2. Driveways should be constructed of gravel, crushed sandstone, bricks or plain concrete or be designed as separated wheel strips. Stencilled concrete is generally not appropriate.</i></p>	<p>The driveway is planned to be constructed of honed concrete with brick inlays. No explanation is provided for the inappropriate design.</p>
<p><i>3. Hard stand areas should be kept to a minimum.</i></p>	<p>Hard stand areas, along with the building footprints dominate the site. This is uncharacteristic of the cottage dominated HCA and inconsistent with the history of the street.</p>

2.16.4 Camden Heritage Conservation Area	CRAG Response
<i>8. Existing cottage dominated streetscapes must be retained, new development such as extensions/additions should be compatible with the existing streetscape</i>	This proposal detracts from the cottage dominated streetscape and is not compatible
<i>11. Development of the flood affected fringes of the town must not compromise the prevailing character.</i>	The proposal claims flood affectation as a reason for the design and for exceeding the height limit, which is in place to protect the fine-grain and human scale of the old town.
<i>12. In commercial areas where historical evidence exists, awnings and/or veranda's must be provided on the front elevation and must complement existing awnings and verandas on adjacent buildings.</i>	The proposed veranda is not necessarily complementary to those of its neighbours. It is difficult to gauge from the plans, but it does not seem to exhibit the traditional posts and construction method.

2.17.4 Signage on Heritage Items or in HCAs	CRAG Response
General controls	
<p><i>2. The development application will be required to demonstrate that the proposed signage will complement the historic character of the building or conservation area in terms of colour, material, proportion, positioning and font.</i></p>	<p>The Statement of Environmental Effects (SEE) (p. 17) describes the proposed signage.</p> <ul style="list-style-type: none"> • Unit 1 Signage to include a parapet sign with ‘2019’ laser cut steel powder coated numbers fixed to a concrete band; • Horizontal Projecting Signage for Unit 1; • Detached Powder-coated Steel Pylon Sign with allocated space for Business Identification of both Unit 1 and Unit 2 and address and Building name location with raised lettering laser cut steel; • Horizontal Projecting Signage for Unit 2; and • Unit Number location for Unit 2 and Residential Unit on rear building. <p>The architectural plans show the powder-coated steel pylon sign as 1.2m wide, 2.4m high</p> <p>The SEE makes reference to SEPP 64, but fails to address the DCP’s controls on signage in HCAs.</p> <p>The documentation provides no demonstration that the above signage is compatible.</p>
<p><i>4. New signage should have minimal impact on the character of the heritage item or heritage conservation area.</i></p>	<p>The proposed signage, which is of modern materials, construction and design, is not compatible with the cottage character of the adjacent heritage listed property, its other cottage neighbours or the HCA.</p>
<p><i>5. Signage should be appropriately designed and located, to allow the character of the building or conservation area to remain prominent.</i></p>	<p>The location of the signage on the front building is obtrusive and is likely to detract from the evident 19th century character of the streetscape.</p>

Design	CRAG Response
<i>1. The design of new signs should be in harmony with the character of the heritage item and heritage conservation area.</i>	No element of the signage can be found that is consistent with the fabric of the HCA.
<i>2. The design should incorporate traditional materials, colours, fonts and size, with a high standard of materials, construction and graphics.</i>	The signage does not incorporate traditional material or colours. Whilst it is difficult to determine the font it is assumed to be consistent with laser cut steel and a new urban environment.
<i>3. Materials for new signage should be sympathetic to the character of the heritage item and heritage conservation area, and preferably be of a painted surface finish.</i>	The signage is not of a painted finished surface and is not reminiscent of anything in its vicinity.
Other controls	
<i>Pole signs are preferred over pylon signs.</i>	An inappropriate pylon sign has been chosen.

APPENDIX 2
CRAG submission
23 April 2019

Camden Residents' Action Group

Incorporated
Camden – Still a Country Town

Website: <http://www.crag.org.au/>

Face Book: <https://www.facebook.com/CRAG-Camden-Residents-Action-Group-Inc-1805705173088888/>

PO Box 188
Camden NSW 2570
Email: admin@crag.org.au
Phone: 0415 617 368

General Manager
Camden Council
70 Central Avenue
Oran Park 2570
Email: mail@camden.nsw.gov.au

23 April 2019

Dear General Manager,

RE: DA 2019/225/1
11 Mitchell Street Camden

The above DA for 11 Mitchell Street within the B4 zone of Camden's Heritage Conservation Area (HCA) is for construction of two buildings, a single storey business premises with mezzanine at front (Unit 1) and two storeys at rear comprised of business premises at ground floor and shop top housing above (Unit 2). The buildings are to be connected by what appears to be an open awning structure over car parking spaces, the purpose for which is unexplained.

The supporting documentation makes various claims about the proposed development's sensitivity and complementarity to adjacent and nearby heritage items and the Heritage Conservation Area. DCP (B3) states that the heritage impact assessment (HIA) accompanying the proposal must describe the impact on the heritage significance and detail options considered and modifications made to reduce the impact on the heritage place.

Unfortunately, although what is proposed is clearly inconsistent with the fabric and roofscape of the cottage dominated area no explanations supporting the claims of no impact and consistency with heritage values and no detail of options considered are provided.

The HIA does not specifically address the appropriateness of Unit 2 within the cottage dominated area of the HCA and its proximity to heritage items. Surprisingly also the Statement of Environmental Effects (SEE) does not address Unit 2 in its report body.

The following statements about Unit 1, extracted from the HIA and SEE reports, are refuted as follows:

The building is clearly contemporary but references the cottages in its roof form. (HIA p.37).

The reference is not obvious. The proposed roof is designed with a lower pitch than the 19th century heritage listed cottages. The roof pitch is stated as 30^o but the heritage listed cottages have a roof pitch of around 40^o. The roof form includes what seems to be sky lights in its peak made from glazed aluminium, which cannot be referenced in the cottages, elsewhere in the streetscape or within the HCA.



The materials and finishes of the building area sympathetic to the conservation area and integrate well (HIA p.37). The proposed use of brick is sympathetic in its form and scale and reflects neighbouring land uses (SEE p. 15).

A number of materials to be employed are not sympathetic to or integrate with the HCA.

Aluminium, which is out of character and unsympathetic with traditional wood finishes is proposed for the skylights and commercially sized windows.

The face bricks to be used are an unnatural colour for the area and appear flat and obviously made with modern machinery. They will sit in stark contrast to the adjacent weather board clad cottages. They will be an anomaly in the streetscape and cannot be referenced to the traditional materials within the HCA.

Similarly, the proposed use of steel and aluminium elements that are painted and/or powder-coated black are not consistent or compatible with the fabric of cottages or other buildings in the HCA.

The shape of the front aluminium windows detracts from the cottage character of the area and the streetscape which is historically domestic (as shown in the photos below). The window frames should be wooden and the size and shape compatible with the vertical rectangle style which is characteristic of Mitchell Street, adjacent cottages and the B4 zone within the HCA.

Overall whilst the size and bulk of Unit 1 at the front of the site is somewhat compatible within the area the colours and palette of building materials are not consistent with nearby heritage items, adjacent cottages, the streetscape or the HCA and its desired future character. They do not comply with the planning objectives:

- that materials, finishes, and textures must be appropriate to the historic context of the original significant buildings within the streetscape (DCP B3.1.1. 23.)
- of retention of distinctive features that unite the place such as consistency of colours and the limited building material palette (DCP B3.1.2.4).



Appendices to the SEE include tables setting out compliance with the LEP and DCP which cover both Units. Our responses to selected comments/ claims in the LEP Compliance Table (Appendix B) and DCP Compliance Table (Appendix C) are provided below.

LEP Clause Incl. relevant section wording	SEE Comment	CRAG RESPONSE
<p>5.6 Architectural Roof Features <i>(3a.i.) Development consent must not be granted to any such development unless the consent authority is satisfied that the architectural roof feature comprises a decorative element on the uppermost portion of a building</i></p>	<p>Not Applicable</p> <p>The objectives of this clause are to provide flexibility in building height limits where architectural roof features result in minor encroachments.</p>	<p>This LEP clause is applicable because the 7m height limit is exceeded and there is NO architectural roof feature, which is contrary to the DCP which sets out the character elements and controls to conserve the roofscape of the HCA.</p>
<p>5.10 Heritage Conservation <i>The objectives are</i> <i>(a) to conserve the environmental heritage of Camden,</i> <i>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i> <i>(4) Effect of proposed development on heritage significance</i> <i>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.</i></p>	<p>The building sensitively responds to the streetscape. Though modern and distinct, the proposed development compliments the existing neighbouring heritage dwellings.</p>	<p>No reasoning is provided to demonstrate that the proposed development complements or is in sympathy with neighbouring heritage items, the streetscape or the Heritage Conservation Area.</p> <p>Camden Urban Design Framework (2018) reinforced the importance of protection of heritage items and the HCA. The effect of this proposal will be to detract from heritage significance of both.</p>

DCP Clause Requirement Incl. relevant section wording B3.1.2 HCA	SEE Comment	CRAG RESPONSE
<p>Existing cottage dominated streetscapes shall be retained and complemented with compatible extensions/additions and new developments.</p> <p>A two-storey height limit shall prevail except for significant architectural features incorporated in the design of buildings in significant locations.</p> <p>Large built forms in cottage dominated precincts shall be avoided through the use of various roof forms and pitches, wall openings and recesses, materials, recessive colours and landscaping.</p> <p>The development of the flood affected fringes of the town shall not compromise the prevailing character.</p>	<p>The proposed development has been designed to have regard to the existing streetscape.</p> <p>The proposed development incorporates a two-storey design with a minor 650mm height exceedance. Rationale for this has been provided in Appendix D.</p> <p>Architectural features of the proposed development have regard to the cottage streetscape and incorporate a variety of structural elements. The proposed development will not compromise the prevailing character of the town.</p>	<p>Some regard has been paid by Unit 1 to the heritage listed cottages at 7 and 9 Mitchell Street in terms of size and bulk. Otherwise no architectural features are apparent that have regard to the streetscape or adjacent and nearby cottages. The windows, roof pitch and fabric are not complementary.</p> <p>No regard has been paid to the two storey roofscape, shape and fabric of Unit 2 in relation to its surrounds or the HCA. A flat roof especially on a two-storey building is obviously unsympathetic with the cottage character of the area.</p> <p>The 30⁰ pitch of the Unit 1 roof is not as steep as that of early and interwar cottages and inconsistent with the 40⁰ to 45⁰ pitch of the adjacent heritage listed cottages. No roof pitch is provided for Unit 2 and its large box shape and fabric are clearly incompatible with the prevailing and desired character of the HCA as unanimously reconfirmed by adoption of the Camden Town Centre Urban Design Framework (2018).</p> <p>The rationale used for the design of Unit 2 is that it is a flood area. Clearly this argument cannot be used to justify compromising the heritage and cottage character of the area.</p>

<p>DCP Clause Requirement Incl. relevant section wording D2.2.5 Controls Shop Top Housing</p>	<p>SEE Comment</p>	<p>CRAG RESPONSE</p>
<p>Building height, bulk and scale</p> <p>Shop top housing may be designed with flat roof forms in order to maximise the number of storeys within a building. However, such buildings must be a feature of a high level of architectural design and incorporate appropriate treatments to minimise the visual bulk and scale of the building.</p>	<p>Unit 2 has been designed to have a flat roof form due to the height limit of 7m and the site constraints of flood affectation. The proposed development will however incorporate a high level of architectural design which minimises the visual bulk and scale of the building.</p>	<p>The maximum height is established by LEP 4.3 at 7 metres.</p> <p>DCP 2.2.5 for shop top housing is generic for the LGA and requires that design must minimise visual intrusion. It does not (as covered above) automatically override DCP 3.1.2 and its controls, in particular:</p> <p><i>8. Existing cottage dominated streetscapes shall be retained and complemented with compatible extensions/additions and new developments</i></p> <p><i>10. Large built forms in cottage dominated precincts shall be avoided through the use of various roof forms and pitches, wall openings and recesses, materials, recessive colours and landscaping</i></p> <p><i>11. The development of the flood affected fringes of the town shall not compromise the prevailing character.</i></p>

<p>DCP Clause Requirement Incl. relevant section wording D2.2.5 Controls Shop Top Housing</p>	<p>SEE Comment</p>	<p>CRAG RESPONSE</p>
<p>Image and legibility</p> <p>The proposed development should: (a) blend in with its surroundings and/or be in context with the area.</p> <p>(b) minimise intrusion on adjacent land uses e.g. noise, overshadowing, carparking overflow, vehicles reversing onto public roads.</p> <p>(c) create visual interest internally and with its relationship within the streetscape via building design, materials and colour scheme.</p>	<p>The development compliments the streetscape and is sympathetic to the heritage conservation area of the Camden Town Centre.</p> <p>The proposed development will not have any adverse effect on the surrounding area in regard to overshadowing and other land uses.</p> <p>The proposed development will incorporate visually interesting features.</p>	<p>No evidence is provided to demonstrate and specifically show how either the front or back Units complement or are sympathetic to the streetscape or HCA.</p> <p>No explanation is provided for the proposed open awning structure between Unit 1 and Unit 2 (over car parking spaces). It is uncharacteristic of the domestic nature of its surrounds, the HCA and seems to have no purpose.</p> <p>The development will have an adverse impact on the commercial viability of the heritage listed cottages as their competitive advantage is in their setting within the cottage dominated area and old-world attractiveness, particularly for businesses focussing on more rural, artistic and cultural pursuits. The design of Unit 1 and Unit 2 is in jarring contrast to their Victorian authenticity.</p> <p>There is no evidence of visual relationship within the streetscape. The anomalous aluminium and glass feature of the roofline of Unit 1 is unreferenced to the roofscape of the area. Unit 2, as well as being non-compliant with the heritage controls of the LEP and DCP, is designed as an inharmonious box and bears no relationship to its surrounds in its materials and colour scheme.</p>

Appendix D of the SEE presents an application in relation to Unit 2 to vary the 7m height standard (LEP 4.6) within the HCA. The height variation is not simply a result of the site constraints of flood affectation as claimed in the application (p. 10), which in any case the purchaser knew of and was factored into the site cost, at the time of purchase.

The variation requested is due to the desire to provide habitable accommodation and the design chosen for that accommodation. Commercial premises are not subject to the same freeboard level restrictions as evidenced by the design of Unit 1.

The first test, that the application must demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case fails for this reason alone. Further, according to the LEP and DCP the 7m height standard is not unreasonable and was clearly set to retain the town's original intentionally designed village profile. This is supported by DCP (B3.1.2 Control 11) that development in flood affected areas is not to compromise the prevailing character, which Unit 2 most obviously does in terms of shape and materials, and which is exacerbated by the proposed unnecessary and unreasonable height exceedance. There is recent precedence that a more appropriate outcome can be achieved in flood affected areas nearby at 14 Elizabeth Street.

The second test, that the application must adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard fails also.

There is no explanation as to why the exceedance is 650mm and why a more sympathetic roof line cannot be accommodated by Unit 2 on planning grounds. The s 4.6 application (p.5) states: "Floor to ceiling heights in the residential unit are proposed at 2.7m".

A room or space within a building must have sufficient height suitable for its intended function. The function of the shop-top housing of Unit 2 is to provide habitable rooms. According to the National Construction Code/ Building Code of Australia¹ habitable rooms are used for normal domestic activities and

- **Include** a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room, home theatre, and sunroom; but,
- **Exclude** a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods.

¹ See: <https://www.abis.com.au/habitable-room-and-legal-ceiling-heights>

According to the building code (Vol 2 part 3.8.2) for habitable rooms the ceiling height must not be less than:

- *in a habitable room excluding a kitchen - 2.4 m and*
- *in a kitchen, laundry or the like - 2.1m and*
- *in a corridor or passageway or the like - 2.1m and*
- *in a bathroom, shower room, laundry, sanitary compartment, pantry, storeroom, garage, car parking area etc - 2.1m and*
- *in an attic, room with a sloping ceiling or projection below ceiling line or non-habitable room or similar - a height that does not unduly interfere with the proper functioning of the room or space. More than 50% of the ceiling space should be on average a minimum height.*
- *in a stairway - 2.0m measured vertically above the nosing line.*

Otherwise, the room would be deemed to be a "utility room".

Hence for the two proposed bedrooms it is only the average height of 2.4m that must be met, and for the kitchen, laundry, bathroom a height of 2.1m. These standards suggest that a box-like structure accommodating a blanket 2.7m height, measured from floor to ceiling, is NOT required.

There is scope to design a roofline that is less intrusive and significantly more compatible with the roof forms of adjacent and nearby heritage items and the cottage character of the B4 zone of the HCA. There are also performance solutions addressed by the Australian Building Codes Board² that can be explored to seek Deemed to Satisfy exemptions available in special circumstances. There is no evidence in the DA that any alternative to the inappropriate flat roof has been explored.

Therefore, on planning grounds this application for height variation should also be refused. There may be scope to submit a minor height variation to accommodate architectural roof features that



² See: <https://www.abcb.gov.au/Resources/Publications/Education-Training/Room-Heights>

would complement and not detract from the significant character element of the roofscape of immediate area and the HCA generally.

The third test, that the application shows that the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within its zone fails for reasons already covered and expanded on below.

The objectives of Height Standard (LEP s4.3) are

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

(b) To minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development, and

(c) to minimise the adverse impact of development on heritage conservation areas and heritage items.

In relation to objectives (a) and (b), it has already been established in this submission that the proposal for Unit 2 is non-compliant with various LEP and DCP controls that also address the reasons for the height standard including protection of the HCA and heritage items and the desired future character of the area. There can be no doubt that the design of Unit 2 is incompatible with the existing and desired future character of the 1840 Macarthur town and would have an adverse impact on nearby heritage items and the HCA.

In relation to objective (b) it would have a detrimental visual impact on existing development in that the design is not consistent with what does exist and is meant to be protected by the planning instruments. It would also result in a loss of privacy to adjacent items with residential windows overlooking the residential garden of heritage listed Nepean House and heritage listed cottages and back yards, which have grandfather rights as heritage items and under the DCP³ to revert to residential use. Further the Camden Urban Design Framework (2018) has been approved to apply for the addition of “dwellings”, a residential use, within the B4 zone in which 11 Mitchell Street is located. This means that existing cottages or buildings in the B4 zone, including those adjacent and nearby, that have been adapted for commercial use may revert to residential use.

³ DCP B3.1.2 Control 7 states that original uses of significant buildings should be encouraged and facilitated

The privacy issue has not been addressed within the height variation application for Unit 2. Objective (b) is simply dismissed with incorrect assumptions about surrounding existing and potential land uses and rights to solar access.

The proposed development is somewhat consistent with three of the four objectives of the B4 Mixed Use zone in that the land use is compatible, integrates business and residential land uses in an accessible location and is complementary to the B2 zone.

However, as covered throughout this submission, architecturally the proposal is in conflict with land uses within its immediate vicinity and will reduce opportunities associated with other properties. The flat roof, box shape and anomalous fabric, accentuated by its height, do conflict with the prevailing and desired future character of the HCA, comprised of the B4 zone in which it is located and the adjoining B2 zone. Far from the proposed development generating demand and opportunities for businesses to service the area and contributing to economic growth as claimed, the visual incongruity and detrimental impact on the character of the area is more likely to reduce its appeal for the type of business that is attracted to Camden because of differentiated competitive advantage of rural and heritage amenity.

We cannot agree with the application's conclusion that the proposed development will not create an undesirable precedent (it will) or that it is in the public interest (which includes conserving Camden's unique heritage as has been confirmed by the community repeatedly).

We request that this proposal be sent back to the drawing board with full attention to be paid to the streetscape, the roofscape, adjacent and nearby heritage items and the heritage protections within the planning instruments so that what is developed on this vacant lot complements and enhances the HCA and individually listed items, rather than detract from them.

Yours sincerely



Glenda Davis

President

