

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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30 July 2018

Dear General Manager,

RE: DA 2018/599/1
20 Elizabeth Street Camden

It is noted that Council provided a formalised Pre-DA advice letter (PREDA/2017/138/1 dated 12 February 2018) as referred to in the Statement of Environmental Effects (SEE, p. 5). We thank Council for raising important issues and problems with the proposal.

Unfortunately, we find that these issues were not subsequently resolved and that the proposal as lodged is an affront to the Heritage Area and a number of individually listed heritage items. The proposal contravenes the spirit and letter of the LEP, DCP and Burra Charter.

We strongly object to the proposal on the following grounds.

HEIGHT VARIATION

The applicant seeks a variation of the height standard under LEP Clause 4.6 (see Appendix A). Building height is defined in the LEP to mean the vertical distance between ground level (existing) at any point to the highest point of the building. The height limit in the conservation area is 7 metres.

The SEE refers to the Pre-DA meeting in which the height is referred to as 10.5 metres (43% above the height limit). The SEE (p.18) indicates that the height of the proposed building is 11.47 metres (64% above the height limit).

Justification for the variation is required from the Applicant under 4.6 (3) by demonstrating:
(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 attempt at justification in the Application for Variation of the Height Standard (SEE pp. 43-58) is not successful.

The SEE (p. 47) correctly refers to the authority established by *Four2Five Pty Ltd v Ashfield Council* (2015)¹ noting that it *necessitates that environmental planning grounds for the proposed variation must be established aside from the consistency of the development with the objectives of the standard and the objectives of the zone*. The Land and Environment Court in this 2015 case ² established that applicants need to demonstrate and justify that application of the development standard is unreasonable or unnecessary not merely or only because the development is consistent with zone objectives and achieves the objectives of the development standard but also that

- aspects of the specific proposal outweigh the countervailing objective that controls ought generally to be observed;

¹

Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (30 January 2015);
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (3 June 2015);
Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (20 August 2015) Available at <https://www.caselaw.nsw.gov.au/decision/55d6b37ae4b0a95dbff9e015>

² For an analysis, see Lindsay Taylor Lawyers (24 July 2015) *Is an Objection Under Clause 4.6 More Onerous to Establish Than Under SEPP1?* Available at http://www.lindsaytaylorlawyers.com.au/in_focus/index.php/2015/07/is-an-objection-under-clause-4-6-more-onerous-to-establish-than-under-sepp1/#.W1U2NtIza70

- under clause 4.6(3)(a) the development standard was unreasonable or unnecessary on grounds other than consistency with zoning and development standard objectives (because this is a matter for the consent authority under 4.6(4)(a)(ii));
- under clause 4.6(3)(b) there are other non-generic and sufficient environmental planning grounds to justify contravening the development standard particular to the circumstances of the proposed development.

The SEE (p. 47) also cites the earlier case of *Wehbe* 2007³ and claims that it is generally understood that Clause 4.6(3) can be satisfied if one or more of Points 2-5 below are satisfied:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Similarly, NSW Planning and Infrastructure (2011)⁴ refers to a five-part test indicating that as well as demonstrating consistency with the objectives of the relevant standard that written applications for variations may also address matters set out in the ‘five-part test’ established by NSW Land and Environment Court. Point 1 or Test 1 must at a minimum be achieved.

Whilst court cases challenging Council’s application of Clause 4.6 are interesting, each case of course, is different. The Courts make determinations based on the arguments, specific merits and circumstances of each proposed development, as well as examining and taking into account the reasoning and interpretation associated with previous judgements. It is abundantly clear from

³ The test is identical to the five points except for Test 5; the reworded Point 5 is similar and found in use by the legal profession. The wording of Test 5 is

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

⁴ NSW Planning and Infrastructure (2011) *Varying development standards: A Guide August 2011* Available at <http://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/~media/7CCD3A20E9A24B0E858DF2E05A856867.ashx>

previous legal interpretations that justification for a variation under 4.6 (3) requires at a minimum that the objectives of the LEP height standard and B4 zoning are demonstrated to have been met.

However as covered above, case Four2Five 2015 established that applicants need to demonstrate and justify that application of the development standard is unreasonable or unnecessary not merely or only because the development is consistent with zone objectives and achieves the objectives of the development standard. Under clause 4.6(3)(b) other non-generic and sufficient environmental planning grounds to justify contravening the development standard particular to the circumstances of the proposed development need to be demonstrated.

These objectives of the height standard and zone are set out below.

4.3 Height of buildings

(1) The objectives of this clause are as follows:

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

Zone B4 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.**
 - 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.**
 - To minimise conflict between land uses within the zone and land uses within adjoining zones.**
 - To encourage development that supports or complements the primary office and retail functions of the local centre zone.**
-

The application for variation makes two arguments:

1. That strict application under the circumstances, although the standard may not have been destroyed, is decidedly unreasonable (Wehbe Point Test 4; SEE pp. 47-50)
2. That the objectives of the standard (and zone) are achieved notwithstanding non-compliance (Wehbe Point/Test 1; SEE pp. 50-58)

It is noted (SEE p. 5) that Council have advised the applicant this significant variation of a development standard would require determination by the Independent Hearing and Assessment Panel (IHAP).

ARGUMENT 1: Strict application of the 7-metre height standard is decidedly unreasonable

The SEE (p. 48) states that it has been determined, in the circumstances of the case of 20 Elizabeth Street, that compliance with the maximum height development standard is unreasonable and unnecessary (LEP 4.6(3)(a)) and concludes (SEE p.50) *although the standard may not have been destroyed, its strict application under these circumstances is decidedly unreasonable.*

The circumstantial arguments for this conclusion are refuted as follows.

The SEE (p. 48-49) argues that the constraints and opportunities of the site are valid reasons to allow a multi-storey development that is over-height. This is a self-serving and illogical argument. Rather the constraints are reasons why the land should not have been purchased if the aim was to build a such a structure.

If parking areas must be provided at grade because of significant flooding this is an indication that only one above-ground storey is acceptable to comply with the 7-metre height limit. The human scale of the conservation area and reuse of old cottages as business premises is testament to the respect paid to Camden's unique character and observance of provisions of the planning instruments.

The better solution is to restore the existing building, as is usual practice, including on flood prone land which makes up much of the conservation area.

We do not agree that the existing cottage is beyond retention. It has been allowed to deteriorate but it can be restored. The cottages on adjoining properties at 7 and 9 Mitchell Street are much older and were in a worse state of repair. They have been faithfully restored and are used as offices as is readily apparent. This proposed development being directly behind and towering over them by more than 6 metres would make a mockery of that restoration, and the conservation area.

The SEE (p. 48-49) makes various claims that are unreasonable or incorrect. In a heritage conservation area

- It is not generally appropriate, as is claimed, to provide minimal setbacks if that is not consistent with heritage character and streetscapes;
- It is not a reasonable expectation as is implied to be able to erect a multi storey building that is not consistent with the heritage and character of the area;
- It is not reasonable to maintain that a pitched roof cannot be incorporated because it would not be appropriate for a commercial development. Why not?
- It is not reasonable to assert that the development must necessarily be a multi-storey development. Why?
- It is incorrect to state that no other commercial developments have been able to achieve compliance with the height limit. Camden township is already largely developed and it is a matter of reusing building stock not replacing it with something totally out of character, over-height and overscale;
- It is irrelevant to present the argument that Argyle Street buildings may be over 7 metres. They are human scale, not more than two-storey and built prior to planning controls. They are located in Zone B2 not B4. Also, they are significantly less high than this proposed building;
- It is a nonsense to state that Elizabeth Street is within a “transition zone”. A transition zone to what? It is an important street within the intact street grid designed by the Macarthur brothers, the sons of John and Elizabeth, on Camden Park in 1836. This is an essential element of the heritage value of the Camden township. It is not necessarily or deliberately transitioning to anything else. It is what it is.

The usual caveat emptor applies. The planning instruments and their heritage protections are designed to conserve the only known extant originally private town in Australia, the town that served the birthplace of Australia’s wealth and that has stood largely intact for nearly 180 years. The heritage protections are not in place to be criticised and argued against, but to be observed. The existing and desired cottage character of the area is intrinsic to the heritage value of the conservation area, is significant to the story of Camden as a country town and its sense of place and community.

An alarming trend has become apparent, as in the case of 11 Argyle Street cited by the SEE (p.50), for developers to purchase land that is comparatively cheaper due to its being flood prone and within a heritage protected precinct, and then argue to vary the planning controls.

Citing flooding as a reason for exceeding the height limit when the land was known to be flood-prone and subject to height control as a heritage protection is not fair play. Clearly the purchase and subsequent 4.6 variation application were undertaken to seek a greater economic return than would have been achievable on land purchased at a price reflective of its context, i.e. appropriate for multi-storey development.

Although applications are intended to be assessed on their own merits according to the planning instruments, the SEE (p. 50) cites three examples or precedents of Council approved variations as arguments in support of this variation request.

1. DA/2016/169 – 11 Argyle Street, Camden – determined on 28/11/2017, with a maximum building height of 12.815m, and similar flooding and heritage constraints to the subject site.

This development proposal was very contentious and drawn out with many objectors and significant media interest. CRAG lodged three objections⁵.

The approval of the private development for an additional overscale and 12.8 metre over-height building, adjacent to the much smaller scaled heritage listed Milk Depot, possibly sets a new State record for non-observance of an LEP, a DCP and a number of Burra Charter principles.

The contentiously approved building is at a signature gateway site within the heritage conservation area, within the main approach and entrance to the town which is in itself listed as a potential heritage item⁶, is well within the flood area and research by CRAG members has shown that it is in a floodway. The approval accepts that the floodway begins discretely at the very edge of the new building which is most unlikely given the way flood waters behave.

It is unfathomable as to how this development came to be approved as clearly and inarguably it is in complete contravention of the height limit and other provisions of the planning instruments as well as Burra Charter Principles.

It should not be pointed to as an argument or precedent.

⁵ CRAG (2016-2017) Camden Vale Milk Depot objections. Available at <http://www.crag.org.au/wp-content/uploads/2016/06/CRAG-OBJECTION-Camden-Vale-Milk-Depot-22-April-2016.pdf>

<http://www.crag.org.au/wp-content/uploads/2016/06/Milk-Depot-additional-objection-17-June-2016.pdf>
<http://www.crag.org.au/wp-content/uploads/2016/06/CRAG-Milk-Depot-objection-20-April-2017.pdf>

⁶ Camden DCP 2011 *Table B5 Potential Heritage Items – Cultural and Visual Landscapes*
<https://www.camden.nsw.gov.au/assets/pdfs/Planning/Development-Control-Plan/Part-B-UPDATED-May-2018-2.pdf>

2. DA/2008/644 – John Street, Camden – approved with a maximum building height of 12.815m.

No building of that height currently exists in John Street. No street number is provided and the DA number was found to relate to the redevelopment on the Camden High School site⁷. The DA (644/2008) was lodged in 2008 and amended in May 2009, prior to gazettal of LEP 2010. Clearly this development is overscale and over-height, and generally an overdevelopment of the site.

However, it is understood that the circumstances of this proposal were unique and/or different to the circumstances of 20 Elizabeth Street:

- the site was found to be contaminated and a new high school had to be built;
- the source of the contamination, old gas works, had long ceased to exist as an entity;
- neither Council nor NSW government wished to take responsibility for clean up;
- the developer agreed to undertake the clean-up;
- the development is for senior living which is believed to come under SEPP Housing for Seniors, which provides incentives allowing developers to override local planning instruments if building homes for people over 55;
- for the most part it does not impinge upon the quiet enjoyment, privacy and solar access of other properties;
- social and economic advantages are likely; seniors will be able to access the town and its services easily; and additional residents will add to the town's economic base and vibrancy.

Being approved almost 10 years ago we could not properly establish how the High School site development would compare to the proposal for 20 Elizabeth Street. At the time of exhibition of the high school development CRAG inspected documents at Council's enquiry desk and lodged two objections, the second relating to amendment of the plans in 2009, that particularly referred to the proposal's exceedance of the relevant height limit control of LEP45. Little information could be found in the public domain today of the exact nature of what is planned, except that the units are marketed as being within historic Camden with views to the north over the town farm and floodplain.

Also, we find the inference that John Street is generally available for new developments to be misleading given the acknowledged significance of John Street and conservation area of the glebe of St John's Church. As shown in Appendix B many items in Camden township have long been recognised to be of national heritage significance. Most of John Street is included as indicated in the descriptions of St John's Hill and John Street Conservation Area and John Street Group. The NSW Heritage Office has also recently investigated and written of the high significance of St John's Church Precinct and its relationship to Camden township.

⁷ Ian Willis (30 November 2017) *Camden History Notes The phoenix rises from the ashes at the old Camden High site* Available at <https://camdenhistorynotes.wordpress.com/2017/11/30/the-old-camden-high-site/>

Further the Land and Environment Court (April 1996)⁸ ruled in favour of Council against a development application in the vicinity of St John's Church. The Honourable Justice M L Pearlman AM, stated:

"It is abundantly clear that the Camden Township represents a particularly significant and sensitive heritage site in which conservation, involving reuse of buildings or land, must necessarily be approached with considerable care."

Other developers have taken care and attempted sensitive and sympathetic developments such as at 21 Elizabeth Street, approved prior to gazettal of LEP2010, which is discussed below as the third of the precedents cited.

- 3. 21 Elizabeth – commercial building constructed in the early 2000s, which is a total of three storeys, and is provided with under-croft parking.***



⁸ Land and Environment Court (1996) *Gledhill Constructions Pty Limited V. The Council of Camden NSWLEC 120* (19 April 1996) Available at: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/1996/120.html?stem=0&synonyms=0&query=1996%20gledhill%20camden>

This development is also quite arguably an overdevelopment of the site but it has little in common with what is proposed for 20 Elizabeth Street:

- At Mitchell and Elizabeth Street interfaces it is estimated to be around 8 metres and less than 7 metres excluding the pitched roofs;
- It is comprised of a number of pitched roofs that interrupt and reduce the seeming mass of the building and also reflect the predominant surrounding roofscapes.
- It largely presents as two storeys, not three as claimed. As shown opposite two storeys face Elizabeth Street. The section with three stories is set well back from the street.
- The building has been designed to avoid overlooking of other properties. Windows have been placed to face Mitchell and Elizabeth Streets or internally only; walls facing other properties are blank but with architectural features that simulate windows similar to the technique often observed in larger old buildings, to break up what would otherwise be too large and homogenous to be aesthetically pleasing.
- Similarly, it has been designed to minimise blocking of solar access and being on a corner block most shadowing is to the two streets, not to cottages occupied as homes and businesses.

The photos provided in the application (SEE Figure 3 p.52) are not taken from Elizabeth Street as is implied but are taken from cherry-picked angles that are not reflective of how the building presents in the streetscapes of Elizabeth and Mitchell Streets.

It should be noted that DCP D3.2.3 (10) makes allowance for buildings on corner lots to have feature elements that exceed the building height limit if compliant with LEP 5.6. The proposed building is not on a corner block.

Under LEP 5.6 development that includes an architectural roof feature or decorative element that causes a building to exceed the height limit and does not include floor space or cause unreasonable overshadowing of other properties may be carried out with development consent.

For the proposed development:

- The roofline has no architectural feature or decorative element;
- The height exceeds the standard without including the roof;
- The roof includes floor-space;
- The height, scale and position cause unreasonable overshadowing.

The mansard roofline of the proposed building is completely inconsistent with the pitched roof character of the area and contravenes DCP B 3.1.1 Control 13: *The existing pattern, pitch, materials and details of original roof forms within the Heritage Conservation Area shall be retained.*

None of the three precedents cited provide telling arguments relevant to this proposal.

Our opinion is that, in any case, they should not be used to support arguments for developments that are non-compliant with the planning provisions. Allowing precedents to inform assessment and approval of developments has a domino effect over time of rendering the planning provisions ineffectual and irrelevant, and creating an outcome that is far removed from existing and desired character.

Such precedents could reasonably be viewed as a reason for NOT allowing another dilution of Camden's authentic character and heritage value.

ARGUMENT 2: Objectives of the standard (and zone) are achieved notwithstanding non-compliance

Achievement of each of the objectives of the LEP 4.3 Height of Buildings are refuted as follows

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

The height and scale, the absolute bulk of the proposed development have nothing in common with 21 Elizabeth or surrounding properties as shown in the indicative graphic below.



The SEE (pp.50-53) attempts to show, quoting from the Heritage Impact Statement (HIS) which is covered below, that the area in question is eclectic with non-uniform height, bulk and scale and a mix of building styles, residential and non-residential cottages.

It again refers to 21 Elizabeth Street as a three-storey development and the over-height development on the Camden High School site, claiming that these two developments combine to dictate the dominant existing character within Elizabeth Street. It claims that this demonstrates that the area is not “cottage-dominated” and that the proposed development is more consistent with its soon-to-be existing character and therefore compliant with 4.3 (a).



Clearly from the above aerial photo (SEE p.43) the footprint of the proposed development, which is to take up most of the lot, is greater and more intrusive by far than any other building and unlike most other buildings, has minimum curtilage.

It would sit closely adjacent to the main outbuildings of No 7 Mitchell Street and Nepean House garden at 23 Edward and be around twice the height of most buildings in its surroundings.

The conclusion that the above arguments indicate compliance with the desired future character of the area is nonsensical. The claim is easily refuted by referring to the current LEP and DCP, which are addressed below under Heritage Impact, as they are written to conserve the town’s existing character and direct and ensure a similar character over time as would be expected for planning controls for a conservation area.

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

Views

There are obviously private views from surrounding properties that would be detrimentally affected, if not blocked completely. Instead of leafy openness occupants would be confronted by an urban style monolith completely at variance to their accustomed surroundings.

The streetscape view would obviously be detrimentally affected. The village profile of the town, so intrinsic to its heritage value would be interrupted. Views between the town and Camden Town Farm and river plain would be interrupted.

Privacy

Loss of privacy of surrounding properties is a major consideration and is categorically unacceptable by any standard.

The proposed building provides exceptional opportunity for overlooking properties in Elizabeth, Mitchell and Edward Streets.

The SEE (p. 30) states that boundary screen planting is proposed along the side and rear boundaries of the proposed development in order to minimise overlooking into the adjoining properties. This statement is misleading. Trees that are currently in place are no higher than the proposed building and have taken decades to reach their height. Given that so little room remains outside the building envelope and that new plantings would receive negligible sunlight they would rarely reach maturity anyway. Almost certainly they would be stunted or die.

The statement that no residential property directly adjoins the proposed development is absolutely wrong. Heritage listed Nepean House (1858) with its old garden and outbuildings is residential and adjacent.

Nepean House is inexplicably not mentioned in the SEE or HIS.



Many Edward and Elizabeth Street properties are residential and given the excessive height of the proposed building would obviously be overlooked. Business properties would also be overlooked and this is not acceptable given their cottage and garden nature. It is also generally understood that heritage listed properties can flip-flop between residential and business use.

Compared to the adjacent tallest outbuilding (5.9 metres) of Nepean House, as shown in the indicative graphical representation below, the proposed building is of massive scale and almost twice as high.



The proposed building is more than twice as high as most other nearby properties. Nepean House itself is only 8 metres high including architectural roof features.

Australian cities and towns that respect their history, such as Launceston in Tasmania, are more attractive. Development that creates stark contrast between old human scale architecture and architecture blatantly only made possible by modern materials and new engineering solutions are generally found to be segregated in more successful areas. European cities renowned as tourist destinations take this approach to conservation.

As a very telling comparison the heritage listed cottages, adjacent at 7 and 9 Mitchell Street, are around 5m in height to their rooftops, which are architectural features. The cottages are miniscule in relation to the proposed building. Note the proposed building would also be closely adjacent to the outbuilding at No 7 a part of which is captured to the left in the above graphic.



Most properties in the vicinity would experience a building that is more than twice their height and many would be confronted by a first storey landscaped rooftop (4.7m above ground level at the rear of the building) and/or another two levels of second and third storey office windows on both the south and north elevations.

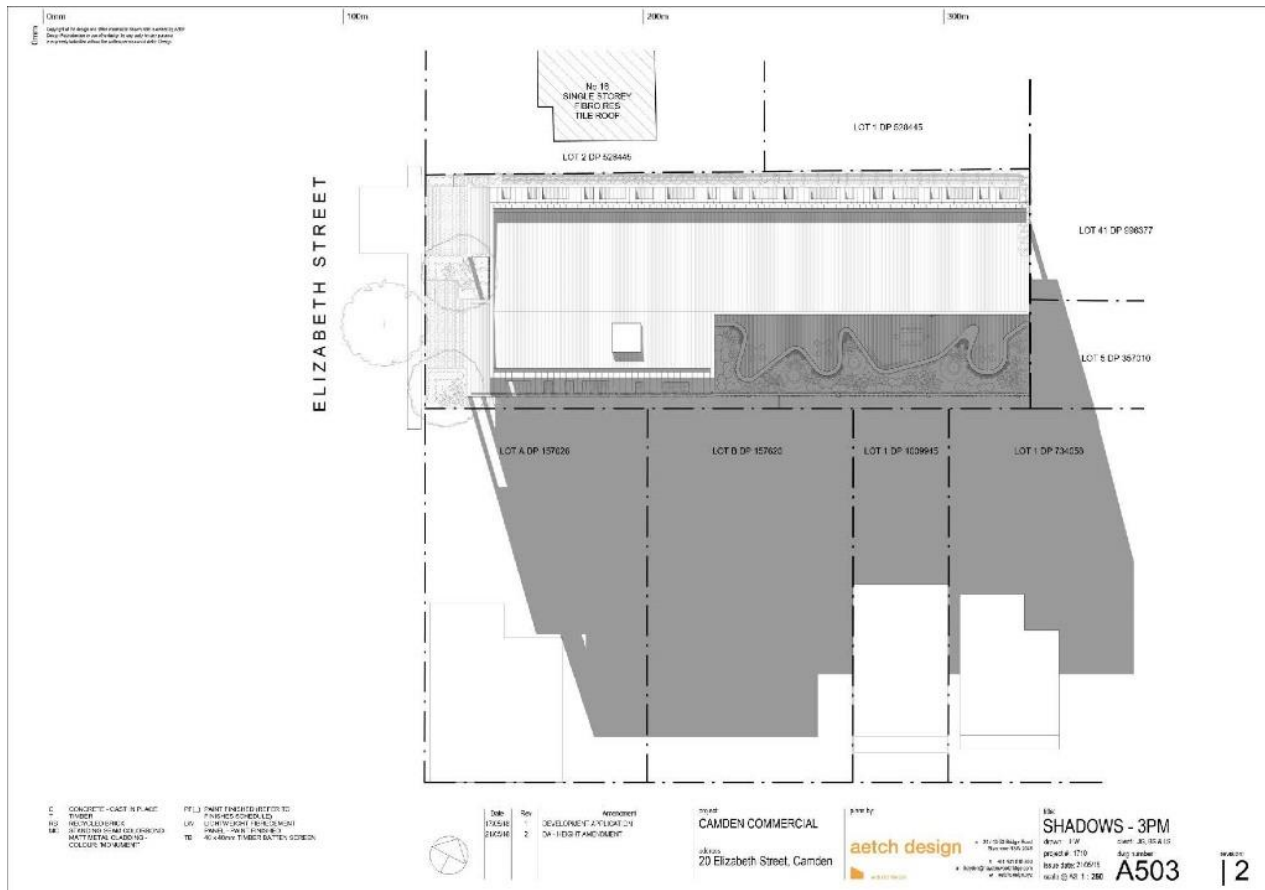
The height differential of roughly between 3.5 and 6.5 metres between the proposed building and its potential neighbours is preposterous.

The loss of privacy is breathtakingly apparent and alarmingly extreme. It is extraordinary that it can be documented in a DA as being insignificant.

It is clearly wrong to state that privacy impacts are minor; they are major and deny others quiet enjoyment of their properties and the peace of mind to which they are entitled.

Solar Access

Blocking of solar access due to the height of this proposed building is absolutely unacceptable.



The shadow diagrams that are provided are horrifying and enough to refuse this DA outright. As shown in the above shadow diagram the cottages in Mitchell Street would be very significantly deprived of solar access (as well as privacy).

However, the shadow diagrams provided do not show shadowing over the full hours of daylight or in different seasons. They do not show overshadowing of all properties affected.

No doubt the heritage listed Nepean House property would be similarly affected, as would 21 Edward Street and possibly other properties, but diagrams were not made available. The real impact of the building on solar access to all affected properties has not been explained.

This is not acceptable.

It is disingenuous at best to make the statement: *It would be expected that generous solar access will remain available for other properties, particularly at 9am and 12pm* (SEE p. 55).

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

The height and scale and design of the proposed building is completely inconsistent with the character, height and scale of the listed heritage items and the human- scale and fine-grained HCA.

The SEE (p. 33) states that given the minor scale of the proposed development, it is not considered to result in amenity conflicts to adjoining and nearby development within the mixed-use zone.

This is clearly a false statement. It cannot be of minor scale given its height and scale in relation to surrounding cottages. Loss of amenity would be unacceptably significant.

The proposed building would potentially be comfortable in newer nearby areas such as Oran Park, Gregory Hills and Spring Farm, if it met their height limits.

The impact of the development on the HCA and heritage items would be devastating. This is explored further in the next section on Heritage Impact.

The SEE has failed to demonstrate consistency with the objectives of LEP 4.3 Height of Buildings and has failed under clause 4.6(3)(b) to show sufficient environmental planning grounds and non-generic circumstances particular to the proposal to justify contravention of the height limit.

Achievement of the objectives of Zone B4 is refuted as follows

It is observable that the three relevant zone objectives of representation of a mixture of compatible land uses, integration of suitable business, office, residential and retail developments and complementing the primary functions of the local centre B2 zone are being met by normal market forces.

Achievement of these objectives is not reliant on proposals such as that for 20 Elizabeth Street. Indeed, it could be argued that the proposed development would compete with the function of the B2 zone rather than complement it.

It is evident that cottages are reused for business purposes. This is because owners observe the planning instruments which, in conjunction with the zoning, are designed to retain the cottage character of the area, as befits a Heritage Conservation Area.

The SEE (p. 57) claims that there is an identified shortfall of commercial floor space within the Camden Town Centre. This needs to be evidenced, as it is not apparent, and is contradictory to its own statement that much of the new commercial floor space is provided within former cottages converted for commercial use.

As at 28 July 2018 a Google search brought up more than 40 commercial properties for lease including suites 2 and 4 of 21 Elizabeth Street which almost always has office space for lease and 1/33 Elizabeth Street. Many were in Argyle Street; the remainder were also in the conservation area or just outside it. The cottages in the conservation area are easily reused as office space as they come on to the market. The fact that they are still purchased as non-income generating homes suggests that the market demand for office space is not great enough to put them out of reach for residential use.

HERITAGE IMPACT

The Heritage Impact Statement (HIS) (p.3) rightly states that

- *owners of land in heritage precincts have a responsibility to ensure that the heritage significance of the precinct is maintained and not adversely affected by the proposed development;*
- *new developments within a heritage conservation area should be designed to ensure that the heritage significance of the surrounding area is not diminished by the new development, and that new development is sensitive and respectful to adjacent heritage items and their contribution to the character and setting of their surrounds.*

The conclusions reached in the HIS (p. 24) that the proposed development will cause negligible adverse impacts and that it is sympathetic and appropriate are not supported throughout the HIS; as will be shown below, they are not evidence-based or arrived at through best practice analysis.

The HIS is not prepared according to guidelines supported by the NSW Heritage Council⁹. For instance, it does not answer the following questions about a new development within a conservation area and adjacent to heritage items:

- *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 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?*

The HIS fails to address the impact of the proposed building being adjacent to heritage listed properties. It notes that two heritage listed properties (17 and 19 Elizabeth Street) are opposite the proposed development and that two lots containing rare, intact examples of small late Victorian cottages in Mitchell St are adjacent to it. It fails to mention that the site is also adjacent to the site of Nepean House (1858) and its historic garden, which makes three heritage listed properties adjacent to the proposed development.

⁹ NSW OEH *Statements of Heritage Impact* Available at <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>

It also fails to address the impact on all heritage items in its close vicinity which can quickly be ascertained by perusal of the LEP and DCP:

Listed Heritage Items (LEP Schedule 5 extract)

Cottage	17 Elizabeth Street
“Chesham’s Cottage”	19 Elizabeth Street
Inter-war flat building	33 Elizabeth Street
House weatherboard	34 Elizabeth Street
“Nepean House”	1–3 Mitchell Street;
	23 Edward Street
Cottage	7 Mitchell Street
Cottage	9 Mitchell Street
“Taplin”	17 Mitchell Street
“Edithville”	18 Mitchell Street
“Mitchell House”	29–31 Mitchell Street
“Nant Gwylan” (including house and garden)	33A Exeter Street
Camden Town Farm (including cottage, dairy, milking parlour, barn, rustic storage sheds and out buildings, fences and views to Nepean River and hinterland)	40 Exeter Street and 75 and 75A Macquarie Grove Road
Stockyard (including auction ring, buildings and cattle chutes)	30, 32 and 34 Edward Street

Potential Heritage Items (DCP Table B4 Potential Heritage Items – Built Environment P. B61 extract)

Cottage	6-10 Elizabeth Street
Cottage	42 Elizabeth Street
Cottage	44 Elizabeth Street
Former Picture Theatre	39-41 Elizabeth Street

Article 8 of the Burra Charter¹⁰ requires the retention of an appropriate setting to heritage properties, as do the LEP and DCP.

We also consider that the HIS conclusions are inconsistent with the NSW Heritage Office guidelines¹¹ for new development in a heritage context which for instance, on scale and form, advises that *...the grain, or pattern of arrangement and size of buildings in a precinct or conservation area, can be an important part of its character. ...The form of a building its overall shape and volume and the arrangement of its parts.....should be sympathetic with the predominant form of its neighbours.*

The HIS fails to appreciate or analyse the differential in height and scale of the proposed building to its neighbours.

The claim (p.23) that the different scale of the proposed development would create negligible conflict with the existing smaller scale heritage items is clearly wrong, even by its own artist's impressions (which in any case seem to underestimate the relative height of the proposed building).



The HIS makes no mention that Camden's agricultural history is intrinsic to its heritage value, and that the nearby listed sale yards and Camden Town Farm, as well as retail agricultural suppliers and Equestrian Park very much represent that history. This tangible history is not enhanced by this proposal and would, very arguably, be diminished.

¹⁰ ICOMOS (2013) *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance* Available at: <https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf>

¹¹ NSW Heritage Office (June 2005) *Design in Context Guidelines for Infill Development in the Historic Environment* Available at: <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/DesignInContext.pdf>



The proposed urban-style high rise would sit in sharp contrast to the 19th century country townscape and distort the village profile deliberately planned by the Macarthur brothers and Surveyor General Sir Thomas Mitchell in 1836.

It would be of greater scale and bulk than St John's Church, designed in 1836 as the spiritual, social and physical focus of the planned private town of Camden, and which is acknowledged to be of great cultural and aesthetic significance (see Appendix B).



The HIS, instead of addressing the impact of the proposal on the Heritage Conservation Area and heritage items in its vicinity, concentrates on and makes much of the eclectic nature of the existing built form, irregularity of setbacks and dominance of angle parking in the northern section of Elizabeth Street.

The HIS also does not address the history of the cottage that it flags for demolition. Increasingly the style and fabric of cottages built in the post war period of austerity and shortage of building materials are being recognised as reflective of an important historical era¹². Post War Fibro Cottages are making their way into heritage lists of LEPs in NSW.¹³ The cottage, a Fibro Majestic as acclaimed in our culture¹⁴ is not beyond restoration and provides an appropriate footprint for the site, perhaps with an increase in floor area as allowed on flood prone land as was undertaken in neighbouring 9 Mitchell Street.

¹² Antony Lawes (2 January 2012) *Architects defend the majesty of unwanted '50s fibros*
Available at <https://www.domain.com.au/news/architects-defend-the-majesty-of-unwanted-50s-fibros-20111230-1pfed/>

¹³ <http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=1172092>

¹⁴ Junior (2010) <https://junioraustralia.bandcamp.com/album/the-fibro-majestic>



Essentially the argument running through the HIS is that this proposed development would simply create more diversity within the immediate streetscape.

It is well understood that conservation areas have protective planning controls and also that developers are required to understand and interpret the area's special character and qualities and enhance it. Developers should purchase elsewhere if that is not acceptable to them. Camden is tired of developers snapping up cheaper flood-prone land in the conservation area and then wanting to override the rules to maximise return at the expense of Camden's unique character, heritage significance and the amenity of residents and other businesses who have incorporated Camden's difference into their business models.

According to the SEE (p. 6) Council has advised the applicant that the development needs to demonstrate character, scale, form, materials, colours and detailing sympathetic to the significance of the conservation area and heritage items in the vicinity.

The SEE (p. 4) states that the proposal has been assessed as generally compliant with the provisions of the LEP 2010 and DCP 2011, with the main exception being the maximum height of the building. The HIS (p. 24) concludes with the following unsubstantiated and unjustified opinions:

- *It is our opinion that there are negligible adverse impacts upon the heritage precinct, its historical setting and use, adjacent locally listed heritage cottages or their curtilage.*
- *The architectural scale and mass and overall detailing of the proposal is considered to be appropriate to the heritage setting and colours and finishes are compatible with the existing streetscape.*
- *The proposed development is considered sympathetic and appropriate in architectural form and scale to the existing and future streetscape and anticipated development within the B4 zone in which it stands.*

We cannot agree, not least because the following provisions of the LEP and DCP have not been addressed in the SEE or HIS.

❖ LEP 5.10 Objectives

- (a) to conserve the environmental heritage of Camden,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.

❖ DCP Part B DCP 3.1.1 General heritage objectives

- 1. Retain and conserve heritage items and their significant elements and settings.
- 6. Protect and conserve heritage in accordance with the principles of the Burra Charter.
- 9. Ensure that adequate consideration is given to the significance of a heritage place and all alternative options, where the demolition of a heritage place is proposed.
- 11. Ensure that any development within a heritage conservation area is compatible with and sympathetic to the significant characteristics of the conservation area as a whole and make a positive contribution to the area.
- 12. Ensure that the development in the vicinity of a heritage place is undertaken in a manner that does not detract from the heritage significance of the place.
- 13. Ensure the integrity of the heritage item and its setting (including landscape and special qualities); or the Heritage Conservation Area is retained by the careful design, scale and siting of new buildings and alterations and additions to existing buildings.

❖ DCP Part B 3.1.1 General heritage controls

- 5. New development must be designed reflecting the general form, bulk, scale, height, architectural elements and other significant elements of the surrounding heritage items and heritage conservation areas.
- 13. The existing pattern, pitch, materials and details of original roof forms within the Heritage Conservation Area shall be retained.

❖ DCP Part B 3.1.2 Camden Heritage Conservation Area objectives

- 1. Retain the unique heritage significance of Camden town, recognising it as a rare and distinctive area
- 2. Retain and promote evidence of the historical development of the town and enable interpretation of that historical development
- 6. Promote the concept of adaptive reuse as a major conservation tool.
- 8. Retain the rural working town character of Camden.

❖ DCP Part B 3.1.2 Camden Heritage Conservation Area controls

- 6. Additional development on the fringe of the town should complement and not detract from the viability of the “main street”.
 - 9. A two storey height limit shall prevail except for significant architectural features incorporated in the design of buildings in significant locations.
 - 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
 - 11. The development of the flood affected fringes of the town shall not compromise the prevailing character.
-

No analytic attempt has been made to address the proposals impacts on heritage value of heritage listed items or the conservation area.

Camden's heritage is irreplaceable and culturally important to current and future generations. This has been documented most recently in a 2016 Heritage Study 2016¹⁵ which has been endorsed by academic and eminent historians.

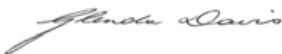
It must be noted also that conservation of Camden's heritage is economically important. It cannot compete with Narellan or Oran Park on the same terms. It must capitalise on having irreplaceable authentic heritage as this underpins its economic base. It is a place of special events and a visitor and tourism destination because of its special amenity which also supports the livelihoods of those depending on Camden's attractiveness and differentiation.

The HIS offers no evidenced opinions and makes no evidenced-based attempt, to justify this proposal. In light of the detailed critique provided above this would undoubtedly be a fruitless endeavour.

We request that:

- **the demolition of the cottage be refused;**
- **the DA be refused;**
- **the applicant be encouraged to restore and reuse the existing cottage.**

Yours sincerely,



Glenda Davis, President

¹⁵ Camden Residents' Action Group Inc (April 2016) *HERITAGE STUDY CAMDEN NEW SOUTH WALES* Documentary Evidence addressing criteria for statutory heritage listing Available at <http://www.crag.org.au/wp-content/uploads/2016/06/Camden-Heritage-Study-April-2016.pdf>

APPENDIX A: LEP 2010 Clause 4.6

4.6 Exceptions to development standards

(1) The objectives of this clause are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (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.

(4) Consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

(6) Consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4, (c1) clauses 6.1, 6.2 and 6.3.


APPENDIX B: Acknowledgment of Heritage Significance of Camden

Camden Items Register of the National Estate (non-statutory archive)

Camden Airport	Airport Rd	Camden, NSW, Australia	(Indicative Place)
Camden Courthouse	31 John St	Camden, NSW, Australia	(Registered)
Camden Park	Camden Park Estate Rd	Camden Park, NSW, Australia	(Registered)
Cottage	39 John St	Camden, NSW, Australia	(Registered)
Cottage rear Macquarie Grove House	Macquarie Grove Rd	Camden, NSW, Australia	(Interim List)
Home Farmhouse	Camden Park Estate Rd	Camden South, NSW, Australia	(Registered)
John Street Group	John St	Camden, NSW, Australia	(Registered)
Macaria	37 John St	Camden, NSW, Australia	(Registered)
Macarthur Family Cemetery	Camden Park Estate Rd	Camden South, NSW, Australia	(Registered)
Macquarie Grove House	Macquarie Grove Rd	Cobbitty, NSW, Australia	(Registered)
National Australia Bank	Argyle St	Camden, NSW, Australia	(Registered)
Police Station and Residence	33-35 John St	Camden, NSW, Australia	(Registered)
St John the Evangelist Anglican Church	Menangle Rd	Camden, NSW, Australia	(Registered)
St Johns Anglican Church Group	Menangle Rd	Camden, NSW, Australia	(Registered)
St Johns Hill and John Street Conservation Area		Camden, NSW, Australia	(Registered)
St Johns Rectory and Stables	Menangle Rd	Camden, NSW, Australia	(Registered)
St Pauls Catholic Church	John St	Camden, NSW, Australia	(Registered)

Report Produced: Mon Jul 23 17:56:57 2018 <http://www.environment.gov.au/cgi-bin/ahdb/search.pl>

St Johns Hill and John Street Conservation Area, Camden, NSW, Australia

Photographs	
List	Register of the National Estate (Non-statutory archive)
Class	Historic
Legal Status	Registered (28/09/1982)
Place ID	3255
Place File No	1/15/009/0030
Statement of Significance	
<p>St Johns Church is one of the finest examples of early Gothic Revival in Australia, superbly sited for near and distant appreciation, virtually as it was when erected. It has an unusual character with a hilltop site of rural character approached by way of climbing streets closely built in the manner of a well-developed country town, the combination is worthy of preservation.</p> <p>(The Commission is in the process of developing and/or upgrading official statements for places listed prior to 1991. The above data was mainly provided by the nominator and has not yet been revised by the Commission.)</p>	
Official Values Not Available	
Description	
<p>An uncommon townscape, consisting of a large and mostly open hilltop (tree filled around buildings) containing the prominent Church, overlooking Camden, the hilltop is double humped, the Church is on one prominence, the rectory on the other, with a grassy saddle of land between. Distant views to and from the area are important and views from the town along John Street are of high quality.</p>	
History Not Available	
Condition and Integrity	
<p>Virtually as it was when erected. Street plantings have matured. Recently built cluster of parish meeting rooms discreetly located and designed.</p>	
Location	
<p>About 9ha, around St Johns Anglican Church, Camden. The boundary of the area extends in the north to include property blocks fronting John Street, between Argyle and Broughton Streets, as far north as and including Lot 3 on the western side and Lot 19 on the eastern side, and property blocks fronting Hill Street as far north as and including, Lot 9 on the west and the western half of the block containing the presbytery, on the east. In the east the boundary includes the Masonic Temple and extends south along the rear of subdivisions fronting Alpha Road and the eastern boundary of the property block containing St Johns rectory and stables. In the south the boundary follows the south boundary of the block containing the rectory. In the west the boundary excludes Macarthur Park and includes all property blocks fronting the western side of Menangle Road between Park and Broughton Street.</p>	
Bibliography Not Available	

John Street Group, John St, Camden, NSW, Australia

Photographs	None
List	Register of the National Estate (Non-statutory archive)
Class	Historic
Legal Status	Registered (21/03/1978)
Place ID	3225
Place File No	1/15/009/0002

Statement of Significance

Camden is one of the most delightful early towns near Sydney. It has perhaps the strongest plan form of any of them. The buildings of John Street are very important to the main feeling of the town and the group is enhanced by several extremely fine examples of architecture; the picturesque Macaria, the Italianate CBC Bank and restrained elegance of No 39 John Street.

(The Commission is in the process of developing and/or upgrading official statements for places listed prior to 1991. The above data was mainly provided by the nominator and has not yet been revised by the Commission.)

Description

See related Files 3226, 3227, 3228, 3229, 3230, 3231

History Not Available

Condition and Integrity Not Available

Location

Comprising:
CBC Bank, John and Argyle Streets, Camden;
cottage 39 John Street, Camden;
Macaria, 37 John Street, Camden;
Police Station and Residence, 33-35 John Street, Camden;
Courthouse, 31 John Street; and
St Pauls Catholic Church, John and Mitchell Streets, Camden.

Bibliography Not Available

Official Values Not Available

Description

See related Files 3226, 3227, 3228, 3229, 3230, 3231

History Not Available

Condition and Integrity Not Available

Report Produced Mon Jul 23 18:10:58 2018

Extract: Statement of Significance of St John's Church within Camden and its landscape

Full statement available at

<http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5053423>

St John's Anglican Church Precinct is of state heritage significance as a group of ecclesiastical buildings set in a beautiful landscape setting comprised of mature and exotic tree plantings and open grassed slopes. The precinct's centre and focal point is St John's the Evangelist Anglican Church which is of state heritage significance as the first Gothic Revival church constructed in NSW that was correct in its medieval detail ('archaeologically correct'). This status, along with its strong connection to the 1836 Church Act, renders it an important early forerunner of the Gothic Revival movement which was to dominate ecclesiastical architecture in the Colony throughout the remainder of the nineteenth century.

The church, and especially its tower and spire, is aesthetically significant to NSW as part of the regional Camden landscape created by the Macarthur family. St John's as an important regional landmark is a significant element in the picturesque landscape planning used to create the Camden Park Estate, the seat of the Macarthur family. As part of a triumvirate of significant points in the landscape, along with Camden Park House and the township of Camden, it also expresses the power structures the Macarthur family wished to instil in the local community they were creating in the early nineteenth century. This regional landscape design is of state heritage significance as an important example of early-mid nineteenth century landscape planning.

St John's Anglican Church Precinct is an exemplary demonstration of the regional use of landscape design. St John's Anglican Church, with its tower and spire, dominates and commands the Camden landscape on its high prominence (St John's Hill) in the middle of what is a low-lying flood plain. Its tower and spire symbolically reach for heaven and point the way for the minds and souls of the local community. The church tower and spire, as well as other elements of the church precinct such as the rectory, are visible from many locations in the local landscape from Cobbitty to the north, Narellan in the east, Cawdor in the south, and Grasmere and Bickley Vale to the west. More distant views are also available of the church in the greater region as well. This effect on the local landscape is the result of a deliberate landscape design by the Macarthur family that was aimed both at creating picturesque vistas that reminded them of an English countryside, and reinforcing the social order the Macarthurs, as part of the ruling class, wished to uphold. St John's extraordinary command of the regional landscape ensures that it is visible from all the major roads, high points, and the seats of several of the major local estates. This command is expressed through 16 significant views and vistas in the regional landscape that is identified in the CMP (2004:35-36, 44)¹⁶.

¹⁶ The Conservation Management Plan is available at <https://stjohnscamden.org.au/index.php/about/history>