

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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2 March 2021

Re: Submission in respect of the amended DA/2018/599/1- APPEAL 2 for
20 Elizabeth Street Camden

We strongly object to the above amended DA which cannot possibly address the reasons why the s34 conciliation process was terminated nor resolve the substantive contentions as to why this development should be refused.

The many iterations of the proposal, including this one, have not addressed the fundamental fact that it is grossly non-compliant with Camden's LEP, DCP and Town Centre's Urban Design Framework (UDF), as well as not meeting the community's understanding of and expectations for the Heritage Conservation Area (HCA) and its renowned and highly valued unique sense of place. Its many iterations, including this new plan, also persistently propose significant height exceedance without providing justification for it under LEP 4.6, which should be enough to refuse the DA outright.

This latest iteration of the DA is no exception. **We trust it will not be considered and refused because it does not address:**

- **the community's many objections;**
- **the reasons why the proposed overdevelopment was refused twice by the LPP;**
- **the contentions listed in Council's Statement of Facts and Contentions (SOFAC).**

Our submission follows under these headings:

- 1. Inconsistency with Character of the HCA (p. 3)**
 - (a) Non-compliance with LEP 5.10 Heritage Conservation (p. 3)
 - (b) Non-compliance with desired future character (p. 3)
 - (c) Demolition of cottage is not justified (p. 5)
 - (d) Other non-compliance with DCP and adopted Burra Charter (p. 8)
 - (i) DCP B3.1.1 General Heritage Provisions (p. 9)
 - (ii) DCP B3.1.2 Camden Heritage Conservation Area (p. 10)
 - (iii) DCP D3.2.3 General Controls Applying to all Business Zone Areas, Built Form and Appearance (p. 11)

- 2. Insufficient Environmental Planning Grounds to Justify Contravention of LEP 4.3 Height of Buildings Standard (p. 13)**
 - (a) LEP 4.3 Objectives (p. 14)
 - (b) Zone B4 Objectives (p. 18)

3. Conclusion (p. 19)

Appendix: Other Matters of Community Relevance (p. 22)

- (a) Community experience with this DA (p. 22)
- (b) Unexplained exhibition of new plans for potential new s34 conciliation conference process (p. 25)
- (c) Timeline and various iterations of the same DA (p.27)

Previous submissions and presentations are also provided as a separate file in reference to the long history of community opposition to the iterations of this non-compliant DA.

1. Inconsistency with Character of the HCA

a) Non-compliance with LEP 5.10 Heritage Conservation

The new plan, like the previous iterations, does not satisfy the objectives of LEP 5.10:

- (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.*

It proposes:

- demolition of a contributory cottage in the HCA,
- construction of an over-height and over-bulky building that is not consistent with the HCA's character or its desired future character.

It would be an anomaly in the town and cottage dominated area, an unexpected and oversized prominent edifice which degrades

- the significance of the HCA;
- the unique rural country character and fabric of the town;
- the settings of adjacent and nearby heritage listed items.

b) Non-compliance with desired future character

Desired future character of the Camden township and the legislated HCA, is and has been consistently and repeatedly expressed in Council studies, policies and strategies as well as the LEP and DCP.

There has been no change in thinking and every evidence that the appetite for heritage protection has grown in the wake of the fast-tracked development of the South West Growth Sector and advent of Badgerys Creek airport which increases the town's tourism potential.

Past and recent Council visions including Camden 2025 and Camden 2040, town centre studies and strategies clearly reiterate the rural character and heritage significance and desired future character of the town and HCA.

Camden's 2020 Local Strategic Planning Statement (LSPS) repeatedly refers to Camden's HCA and its special rural character and heritage. The LSPS aligns with Western City District Plan for Greater Sydney which also references Camden as a significant agricultural heritage town. The LSPS refers repeatedly to the 2018 UDF and relies on its findings and implementation.

Although it seems the 2018 UDF has been ignored in the DA documentation, it is relevant because it:

- was on public exhibition when the DA was lodged;
- specifically states (p. 5): *The Camden LEP and DCP were both reviewed as part of the Camden Framework;*
- records and defines the fine grain, low scale, low density, human scale of the town and describes it as rural with a modest and varied collection of architecture, much of which is heritage listed;
- specifically sets out principles and in so doing defines desired future character:

Built Form 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 (p33);

- is specifically referred to as being relevant by the LPP in its Minutes of the s8.2 appeal determination dated 15 October 2019;
- is now a statutory document as compliance with it is required by DCP 2019 which states as Control 2 under **Heritage and Character of 5.3.2 Camden Heritage Conservation Area: Development within the B4 Mixed Use zone at Camden must be consistent with the Camden Town Centre Urban Design Framework.**

The existing and desired future character of the Camden town centre, especially its HCA, as expressed throughout the UDF and LSPPS, is reiterated and reinforced. It is not new. Objective 8 under 3.1.2 Camden Heritage Conservation Area of DCP 2011 is *Retain the rural working town character of Camden.*

Desired future character of the HCA is evident in DCP 2011 and long been expressed in council policies and strategies. It has been further affirmed in DCP 2019 and 2020 LSPPS, both of which specifically incorporate the principles and strategies of the 2018 UDF.

This proposed development is an urban edifice and an overdevelopment of a cottage site that has no connection to Camden's history as a country town and is clearly not consistent with desired future character of the 1840 privately designed Macarthur town and its HCA.

c) **Demolition of cottage is not justified**

The extant cottage is quite arguably contributory to the HCA. No arguments have been presented as to why it is not. Its demolition is not consistent with LEP 5.10 or the DCP.

NOTE: The Applicant has renovated the cottage and advertised it¹ as being “located on the fringe of the Camden centre & features the following:

- 3 Offices plus reception
- Floorboards
- High ceilings
- Excellent natural light
- Storage space at the rear of office plus separate store area
- Excellent parking”



*Source: Camden Real Estate Agents-
Real Commercial and Inglis Commercial*

Leases were offered for the total property or as individual office and yard leases.

The agents notice states that it was leased on 17 November 2020.

It is observable that cottages in the HCA are reused for business purposes. This is usually because owners respect the planning instruments which, in conjunction with the zoning, are designed to retain the cottage character of the area, as befits a conservation area. Businesses choose to operate in the HCA as it provides an attractive point of difference to modern developments. Otherwise, they are free to set up elsewhere.

¹ Real Commercial 20 Elizabeth Street Camden 2570 Available at <https://www.realcommercial.com.au/leased/property-20-elizabeth-street-camden-nsw-2570-503471622>
Accessed 26 February 2021

In accordance with the DCP, the Burra Charter it adopts and LEP 5.10, all of which state that the fabric, settings and heritage significance of the HCA and its heritage items are to be conserved, the cottage should be retained and continue to be adaptively reused.

For instance, DCP Part B 3.1.2 Camden Heritage Conservation Area objectives are clear:

- 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.*

This proposal does none of this.

What is proposed destroys historical evidence, reduces the town's rarity and its rural working country town character, which is also documented as its desired future character in Council policy and strategy, most recently and notably reiterated in the 2018 UDF and 2020 Camden Local Strategic Planning Statement (LSPS).

Demolition of fabric within the heritage place of the listed HCA could also arguably be subject to these DCP 3.1.1 controls:

47. The demolition of a heritage place is contrary to the intent of heritage listing. It will only be considered as a last resort, where a Heritage Impact Statement is submitted covering the following:

- (a) Documentation that all alternatives for retention have been investigated and ruled out.*
- (b) It can be satisfactorily demonstrated that the building does not satisfy the criteria for listing established by the NSW Heritage Branch.*
- (c) It has been sufficiently documented and justified that the structure is considered incapable of repair.*

48. Where consent is issued for demolition, or part demolition, of a heritage place a comprehensive diagrammatic and photographic archival record is to be made of the structure to be demolished. This must be submitted to Council's satisfaction prior to commencement of any demolition works. A heritage consultant experienced in the preparation of an archival recording is required to undertake the recording.

In our opinion there has been insufficient, possibly no, consideration of the reasons why demolition of the cottage is necessary or appropriate. We have seen no analysis or documentation. The existing cottage on the site, as a home built as a “fibro-majestic” in the early post war period of building material shortages and the town’s central role as a country service town for its farming hinterland is contributory. The cottage informs the historic narrative of the town’s long and continued rural support function and contributes, as do all of its cottage dominated areas, to the setting, form and scale of the HCA. The rural characteristics of the town are alive, represented for example by Camden stock and sales yards, agricultural retail outlets, town farm, equestrian centre and Camden show.

The existing and desired cottage character of the area is intrinsic to the historic and cultural value of the HCA, is significant to the story of Camden as a country town and its sense of place and community.

The Burra Charter has long been adopted in Camden’s DCP. The plans are non-compliant with its principles of conservation including of cultural significance, settings and relationships (Article 8) and adaptive re-use, as well as practice notes on interpretation and new work (Article 22).

No argument has been presented for demolition of the cottage.

The cottage should be retained and continue to be adaptively re-used, in accordance with the Burra Charter and DCP objectives and controls, as contributing to the fabric and history of the HCA.

d) Other non-compliance with DCP and adopted Burra Charter

Council's SOFAC lists many areas of non-compliance with DCP 2011 especially in relation to its bulk, height and heritage impact, which also do not meet the objectives of the LEP 4.3 Height as referred to in the next section (*Insufficient Environmental Planning Grounds to Justify the Contravention of the Height of Buildings Standard*).

The new plan does not resolve most of the SOFAC's contentions about non-compliances with DCP 2011. This DCP, replaced by DCP 2019 which is not materially different, is no longer publicly available. We have referred to non-compliance with DCP 2011 extensively in our previous objections, dated 30 July 2018, 13 December 2018 and 12 September 2019, which raise the same contentions expressed in the SOFAC.

The proposal is an overdevelopment of the site that is incompatible with the special character of the HCA. It adversely dominates the streetscape and adjoining properties, to their detriment, including heritage listed items due to

- **Excessive height**
- **Excessive bulk**
- **Scale of the roof form that incorporates a third level of floor space**

This outcome is also not compliant with LEP 5.10, UDF and other council policies and strategies which clearly express the township's special character and desired future character as covered above.

(i) DCP B3.1.1 General Heritage Provisions

The proposed development is not compliant with and promotes the opposite of the following objectives of DCP B3.1.1 General Heritage Provisions:

- 1. Retain and conserve heritage items and their significant elements and settings.*
- 2. Retain and conserve where possible, the significant character of heritage conservation areas, and of the cultural and visual landscapes.*
- 5. Encourage new uses of buildings to conserve their heritage significance.*
- 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.*

The new work proposed does none of the above and is also non-compliant with these objectives of DCP B 3.1.1 as it does not

- 10. Ensure development is based on, and sympathetic to, an understanding of the heritage significance of the place.*
- 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.*

What is proposed is non-compatible with the HCA and adjacent and other heritage listed items.

Far from making a positive contribution, it would make a detrimental impact because of its height and bulk and lack of respect for the human scale, character and significance of the HCA.

The design of what is proposed is also non-compliant with this DCP 3.1.1 control:

- 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.*

No Heritage Impact Statement (HIS) has been provided in support of the new plans, but the plans speak for themselves as an overdevelopment that does not sensitively reflect significant elements of heritage items or the HCA.

(ii) DCP B3.1.2 Camden Heritage Conservation Area

The proposed development is not compliant with and promotes the opposite of the following objectives of DCP B3.1.2 Camden Heritage Conservation Area:

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*
3. *Retain the cohesive character particularly evident in the scale of development in each street.*
4. *Retain distinctive features which unite the place.*
5. *Seek to foster a balance between historic character and sensitive contemporary development.*
6. *Promote the concept of adaptive reuse as a major conservation tool.*
8. *Retain the rural working town character of Camden.*

Objectives 2, 6 and 8 have also been covered under (c) *Demolition of cottage is not justified* and Objective 8 under (b) *Desired Future Character*.

The proposed development is also not compliant with the following controls of DCP B3.1.2.

3. *The rural-urban interface shall be sensitively addressed in new development proposals.*
6. *Additional development on the fringe of the town should complement and not detract from the viability of the “main street”.*
8. *Existing cottage dominated streetscapes shall be retained and complemented with compatible extensions/additions and new developments.*
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.*

The proposed overdevelopment does not sensitively address or present any gradation towards the rural interface including the stock yards, town farm and flood plain. The proposed three levels of commercial space do not complement the two-storey character and viability of the main street of the HCA.

Clearly what is proposed is not two-storey as required and its excessive use of glass in the façade and oddly formed verandas compromises the prevailing character of the cottage dominated area.

(iii) *DCP D3.2.3 General Controls Applying to all Business Zone Areas, Built Form and Appearance*

The proposal is not compliant with controls of DCP D3.2.3 *Built Form and Appearance*, as follows.

1. Buildings should have a similar mass and scale to create a sense of consistency. Within business zones, generally there will be gradation of massing from a dense inner core to a less dense outer edge to provide an appropriate interface with land uses in the adjoining zones and symmetry to the building.

What is proposed cannot be argued to be of a similar mass and scale to create a sense of consistency and would present as an intrusive anomaly in the low-scale HCA amongst its many cottages and human scale heritage listed items. Its excessive height and bulk cannot present as a gradation of massing from the denser development of the B2 zone to the outer edge of the HCA towards the town farm and open flood plain.

2. Business development must feature high quality architectural design and a built form that promotes a 'sense of place' and contemporary character for all business zones

Our qualified and renowned heritage expert makes the following observations about the architectural design:

- The pizza-hut look on stilts of the back section, with a pitch rising to a central ridge with gablet terminations, is particularly odd and jarring.
- The proposed building's relationship with Edward Street and Mitchell Street streetscapes is incoherent.
- The Elizabeth Street façade relates to nothing in the streetscape or HCA.
- The choice of a 1980's project home roof form as a reference is anomalous in the context of the 1950's streetscape.

- The roof form is proportionally wrong for the site, over-scaled and over-bulked. The incongruity of purpose in the choice of a domestic roof form on a commercially scaled building, of a much greater and wider footprint than intended for the dwelling site, is always doomed to fail.

We contend that what is proposed is not of high-quality architectural design for this particular site and degrades sense of place in this streetscape and surrounds, and the overall sense of place of the HCA itself.

What is proposed is not of a built form that is consistent with the cottage character and special, heritage and country town sense of place of the HCA. There is no evidence that it respects Camden's long rural history. It would in fact degrade the sense of place of the conservation area with an incongruous and out of scale and proportionally wrong new build.

3. Development in business zones must be compatible with surrounding business development in terms of appearance, type, bulk and scale, design and character.

It is evident that there are no three level buildings in the vicinity, and in fact they are effectively prohibited by the height limit and DCP B3.1.2 Control 9 limit of two-storeys.

What is proposed is completely incompatible with surrounding development including adjacent heritage listed items, and

- cannot be referenced in the HCA in terms of its height, bulk, scale, appearance, type of non-cottage and non-traditional construction, eclectic and questionable mix of design elements including the unusual verandas and excessive glass in the front façade;
- bears no relationship to Camden's existing character and sense of place as a country town and its well documented desired future character.

7. Roof forms should be appropriately designed to respond to the built form of other nearby business development. The design of roofs may adopt traditional forms found in the immediate locality, or alternatively they may adopt a more contemporary appearance to a juxtaposition to traditional roof forms. However, it must be clearly demonstrated that the proposed roof form relates appropriately to the existing adjoining development.

Clearly the roof form accommodates a third level of floor space and consequently is excessive and unable to achieve the 7m height control prescribed by LEP 4.3.

Its excessive and immodest bulk cannot possibly be demonstrated to relate appropriately to existing adjoining development. The roof towers above adjoining cottages at approximately twice their building height.

2. Insufficient Environmental Planning Grounds to Justify Contravention of LEP 4.3 Height of Buildings Standard

To date we have been presented with four versions of 4.6 requests for variation of the height standard, three prepared by Creative Planning Solutions (CPS) Pty Ltd and the latest by Planning Ingenuity Pty Ltd. Our understanding of the outcome of these requests to date is set out in the table below.

Author	Date	Proposed Max. Height	Exceedance sought 4.6 request	Max. Height presented to determining consent authority	Exceedance sought for determination	Outcome
CPS	May 2018	11.47	64%	11.47	64%	Refused Camden Council
CPS	Nov. 2018	10.3	47%	10.1	44%	Refused Camden LPP 21 May 2019
CPS <i>Revision D</i>	Aug. 2019	10.3	47%	10.3	47%	Refused Camden LPP 8.2 Appeal 15 October 2019
PI	8 Dec 2020	11.2	60%	11.2	60%	Not conciliated. LEC s34 process terminated as advised 23 Dec 2020

The LPP determinations of 21 May and 15 October 2019 both stated:

The applicant's written request to contravene Clause 4.3 - height of building development standard of Camden LEP 2010 fails to provide sufficient environmental planning grounds to justify the contravention having regard to the objectives of the standard nor does it demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

As stated in Council's SOFAC:

The Court, having the functions of the consent authority for the purposes of hearing and disposing of this appeal, would not be satisfied that the Applicant's written request pursuant to Clause 4.6(3) of Camden LEP in relation to the contravention of the development standard in clause 4.3 of the Camden LEP is sufficient and well founded.

We contend that there is no justification or reasonable argument presented in the latest 4.6 variation request for the new plans.

The plans obviously beg the question- how is it possible to argue that 60% height exceedance over essentially the whole building is reasonable, when 47% exceedance on the front part of the proposed development was not?

The site is the same, so unless new arguments are presented that the circumstances of the site as addressed by the new plans are somehow unique, this contention must logically stand.

The 4.6 variation request attempts to address one of the ways (set out in *Wehbe V Pittwater Council (2007)*) and the LEC template for 4.6 variation requests) of establishing that compliance with the objectives of the development standard is unreasonable or unnecessary:

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

(a) LEP 4.3 Objectives

The claims of meeting the objectives of LEP 4.3, covered in the 4.6 variation request in its Section 7, are refuted as follows.

The 4.6 request does not justify LEP 4.3 objective (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

Again, as stated in the SOFAC, the roof form attempts to achieve a greater than two-storey development by providing for a third level. The consequent excessive roof size is therefore unable to achieve the height control standard which reinforces the two-storey limit prescribed in the DCP.

As already covered above in our objection, the proposal is non-compliant with LEP 5.10 Heritage Conservation and many objectives and controls of the DCP and other council policies and strategies that describe the town's existing and desired future character.

The request (p. 12) claims that

The burden of insisting on strict compliance would result in the removal of the pitched roof and additional commercial floor space located in the roof, which would be an unreasonable and unnecessary planning outcome given the nature of the non-compliance and the location of the site within Camden Town Centre.

The answer is clear- the planning instruments do not provide for a third level and the additional commercial floor space sought. This development control and the height standard which ensures it, have long been in place. If a third level was deemed to be necessary to the investment in a commercial building then a different site, located outside the HCA of the Camden Town Centre, should have been chosen. The rules are not changed to accommodate private investment decisions and preferred return outcomes.

The 4.6 request does not justify LEP 4.3 objective (b) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

In relation to objective (b), the visual impact is exceptionally incongruous and intrusive as already explained. It does not fit comfortably in the HCA for the very reasons it is non-compliant with the planning instruments as covered above.

No evidence is presented for the claim that the non-compliant height *will not compromise the use and enjoyment of neighbouring properties in terms of privacy or daylight access.*

Shadow diagrams have not been made available. It is admitted (p. 13) that *the proposed building will result in additional shadow impacts that could be reasonably anticipated as part of redeveloping the site, given its size and orientation.*

We note that the proposed building is around twice as high as its neighbours, which certainly raises questions of both privacy and solar access. In particular the large triangle shaped windows in the third level of the sides of front of the building are unnecessary and provide exceptional vantage points.

The loss of privacy to 18 Elizabeth Street and properties in Mitchell Street and any loss of solar access especially to the north is not addressed in any available documentation.

It is also very concerning that there has been no acknowledgment of the impact on heritage listed cottages in Mitchell Street. The impact is much greater than claimed in the 4.6 request and as shown by the plans which are wrongly drawn in a manner that is highly questionable.

The site boundaries of the properties in Mitchell Street as drawn in the plans are observably wrong, showing larger blocks at 15 and 11 Mitchell and a much-reduced block width at 9 Mitchell Street, which is heritage listed. The plans show the building envelope lines up with the boundary between 9 and 11 Mitchell Street. In fact, it intrudes well past the western boundary of 9 Mitchell Street. The impacts on properties in Mitchell Street, including heritage listed properties are unaddressed.



The plans also show non-existent trees, presumably to indicate more privacy and screening of the overdevelopment.

These misrepresentations in architectural plans are extraordinary and unacceptable. They beg the question about the accuracy and veracity of the exhibited documents, which in any case are inadequate in number and content. For these reasons, even if not for the many other reasons provided in this submission, this exhibition must be withdrawn.

The 4.6 request does not justify LEP 4.3 objective (c) *to minimise the adverse impact of development on heritage conservation areas and heritage items.*

In relation to objective (c) many arguments have already been comprehensively covered. No argument has been made for demolition of the cottage and what is proposed is an overdevelopment that is inconsistent with existing and desired future character and would result in a degradation of the significance of the HCA and its many nearby heritage listed items, three of which adjoin the site.

As noted above the architectural plans do not correctly indicate the siting of the building in relation to heritage items or the streetscape of Mitchell Street. Clearing there is a severe impact on at least one adjacent heritage listed item, and probably others.

Montages of impact from different views are not provided. No new Heritage Impact Statement is provided although this iteration is quite different and the site is located in adjacent to or in close proximity of listed heritage items and within Camden's HCA.

It is a nonsense to claim (p. 13) that the proposal *will enhance the existing streetscape through the replacement of dated building stock that has reached the end of its economic life.*

The HCA is mainly comprised of dated building stock. Adaptive re-use of HCA buildings is clearly evident. There has never been any suggestion and no proof has been presented that the cottage in question, or indeed any of the buildings in the HCA have reached the end of their economic life. On the contrary, it is reasonable to assume that their economic value increases with time. Buildings and cottages of the 1950s and older throughout the HCA are in full and productive use.

Clearly what is proposed adversely impacts the HCA, and also adversely affects heritage listed items.

The 4.6 request as required by 4.6(3) fails to justify contravention of the development standard and does not demonstrate that compliance with it is unreasonable or unnecessary in the circumstances of the case or provide any environmental planning grounds.

(b) Zone B4 Objectives

The 4.6 request also attempts to show that the new plans are consistent with the objectives of the B4 zone.

The objectives of the zone are generic in the LGA and NSW and must also be considered in relation to LEP 5.10 Heritage Conservation, legislated status of the HCA and Camden's DCP. Non-compliance with these statutory instruments has been covered above, and in fact as referenced previously is related to LEP height standard as pointed out by the LPP and included in Council's SOFAC.

The 4.6 request (p. 14), under the zone objective *provide a mixture of compatible land uses* acknowledges that businesses are using the cottages. It is then claimed that there is an identified shortfall of commercial floor space. This claim is not evidenced and can easily be refuted by a search of available space and by observation of empty premises. Population growth is to the north and east of the LGA, and Camden town centre has no apparent shortage of office space.

Under the zone 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*, it is claimed that Camden has excellent access to public transport (p. 14). This is simply not true as there is not even a train service available and again no attempt is made to evidence the claim.

Under the zone objective *to minimise conflict between land uses within the zone and land uses within adjoining zones* it is claimed that there is no conflict of uses (p. 14). This is clearly wrong. There is major conflict between use of cottages for residential and adaptive re-use for business purposes and use of a three-level new overdevelopment of a dwelling site. This proposal makes a mockery of the restoration efforts of cottage owners and the business models and plans of businesses which are happily using the cottages and capitalising on the attractive point of difference that they provide.

Under the zone objective *to encourage development that supports or complements the primary office and retail functions of the local centre zone* the unevidenced and incorrect claim is again made that there is an identified shortfall of commercial floor space in the town (p. 14). There are already many cafes in close proximity and this proposed café will not complement them but detract from their trade. Most banks have moved out of Camden, as have many larger organisations and businesses because the centre of population has moved to the north and South West Growth sector. As noted above a quick search at any time will reveal that there is always

commercial floor space for lease in Camden town centre. Extra floor space will not complement what already exists, but compete with it.

The 4.6 request, as required by 4.6(4) also fails to satisfy that contravention of LEP 4.3 is in the public interest because it is consistent with the objectives for development within the zone.

The mechanism of a s4.6 variation request in our understanding is to provide some flexibility to **achieve the same planning outcomes by accommodating unique situations.**

This is not a unique situation. Any potential developer could make the same arguments and the HCA would be lost.

There is no point in legislating planning instruments or following the planning approval process if proponents can persistently attempt to rewrite the rules and choke the system with repeated non-compliant DA iterations.

What is proposed does not, by any stretch of the imagination, achieve the same planning outcome as compliance would achieve and would in fact be not only a breach of the letter and intent of the planning instruments but a breach of faith with the community.

There is no public benefit in undermining faith in the planning system.

3. Conclusion

Council's SOFAC, which contains arguments almost identical with those that our Group has repeatedly submitted, are not addressed by this new proposal. We have already been down the planning rules road many times.

- We note that no new HIS is publicly available. We assume that no new heritage arguments exist for this newest iteration, no doubt because the height and bulk of what is proposed exceed those of the iteration of the s8.2 appeal that was refused as an overdevelopment.

Publicly available heritage arguments have already been refuted three times by our Group and debunked by a comprehensive report presented to the LPP by a renowned independent heritage expert.

The arguments presented do not even attempt to reasonably address

- LEP 5.10,
 - various protective controls of the DCP and its companion UDF and adopted Burra Charter,
 - the status of the highly valued HCA which is frequently referred to in Council policies and most recently in its LSPS which aligns with the Western City District Plan for Greater Sydney.
- We point out that the arguments put in the 4.6 requests to vary height standard remain inadequate. The height variation sought is all about incorporating a non-compliant third level of commercial floor space. Any developer could make similar arguments, because of or regardless of flooding constraints, to exceed the legislated height limit.

There are no unique circumstances. Essentially, all of the DA iterations, including this latest new plan, are about maximising private return on investment in the site by obviating the known constraints of heritage and flooding factored into the purchase price.

The attempted reasons and justifications for height exceedance have twice been refused on legal grounds by the LPP and independent legal opinions as to their inadequacy have also been submitted to the LPP.

It is a commonly held opinion within the community, including our opinion, that this DA is an attempt to rewrite the planning rules for developer personal gain. The site was purchased cheaply because of its flooding and heritage constraints.

This proposed development would be at home in many other areas of the LGA, but the site would be more expensive and the investment return lower, probably similar to that of adaptively re-using the extant cottage as that is how economies work.

The constraints are far from secret and most developers until recently have respected them and adaptively reused the building stock, including of course the cottages that contribute to the Macarthur planned country town and its unique rural heritage.

The community's experience with this DA is explained in detail in Appendix 1(a). The continued pursuit for approval of non-compliant iterations of this DA is beginning to be seen as a bullying attempt to wear down the community's opposition. The seemingly selective exhibition of the latest new plan, after the termination of the s34 conciliation process, has left the community bewildered and has reinforced that view as explained in Appendix 1(b). The number and variations in iterations since early 2018, as depicted in Appendix 1 (c) is extraordinary and is viewed by the community as an abuse of due process.

This latest iteration, a new plan by a new third architect, must once again be refused. We repeat that the plans are wrong in their depiction of the siting of the building in relation to properties in Mitchell Street which is misleading, at best. The true heritage impact of what is proposed is not addressed in the documentation.

It is not in the public interest to thwart and undermine the planning process and set precedents that would destroy the HCA and deny the strongly expressed intent throughout all Council policy of protection of Camden's valuable and valued heritage. The HCA contains many state and locally listed heritage items and has recognised potential for state heritage listing by Camden Council and NSW Heritage Council.

It is not in the public interest to introduce uncertainty into the decision making of current owners of properties in the HCA or potential purchasers. It is imperative that all stakeholders in the community have faith in the planning rules.

After so many refused iterations of the DA, we suggest it is time for the Proponent to stop wasting the time of the community, Council and the Land and Environment Court.

From the community's viewpoint and we suggest from the Proponent's viewpoint, the best outcome is sale of the property (if adaptive re-use of the cottage is not to be considered) and purchase of a site where three levels and modern office premises are welcomed.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Glenda Davis".

Glenda Davis
President

Appendix: Other Matters of Community Relevance

(a) Community experience with this DA

For the record, as we believe it to be relevant to the seemingly vexatious nature of this DA, we summarise some of our long experience with its many and various iterations since early 2018.

Perhaps the strategy behind the many persistently non-compliant iterations of this DA is to limit opposition by exhaustion of community members who work, raise families and lead busy lives dealing with their own varied issues. This may work to an extent, though it is not fair play and is not the fair go expected in Australia. We point out that this DA has already been the subject of much media interest and the community will never accept and long remember any such insult to the integrity of the highly valued HCA and its planning protections. It is not fair that the community must keep going over the same ground hoping that enough people have the time to make yet another objection on a grossly non-compliant DA that quite arguably should never have been considered for assessment in the first place.

We respectfully point out that the community respects and relies on the rule of law tradition in this country.

Council provided pre-DA advice to the applicant on 12 February 2018 that the extent of the contravention of LEP 4.3 Height of Buildings would not be supported. Nevertheless, after a number of iterations to the design, the DA was lodged on 23 May 2018, which as well as contravening the heritage provisions of the LEP and DCP was 44% above the height limit.

On 21 May 2019 Camden Local Planning Panel (LPP) refused this DA as a non-compliant overdevelopment that also presented no environmental planning grounds for the height exceedance. Council staff had recommended approval.

The applicant appealed this refusal decision with yet another iteration of the design but which was 47% above the height limit on the front half of the building.

On 15 October 2019 the LPP refused the appeal, for similar reasons, that the proposal was a non-compliant overdevelopment which again presented no environmental planning grounds for the height exceedance. Council staff had again recommended approval.

The message was clear, the planning provisions were upheld, and the community breathed a sigh of relief.

To our surprise, at the end of 2019 we were alerted by the media that the Applicant had lodged an appeal to the LEC.

On 10 December 2019 our Group, on behalf of the community, sought to joinder the LEC case because Council staff reports to the LPP had twice recommended approval of the DA.

Our legal advice was that it was only the s8.2 LPP refusal that could be appealed. To everyone's astonishment, it was found that the applicant was appealing the iteration originally refused by the LPP, wanting to ignore the iteration presented to the s8.2 LPP appeal which at least addressed some issues. The Registrar directed that our Group be kept informed and be provided with Council's SOFAC.

This LEC case did of course not proceed. Having wasted everyone's time, a second case was brought against the s8.2 LPP appeal decision.

Council's SOFAC covered the main issues covered in our objections. Our legal advice was that the Court would probably not accept our joinder to the second case unless we brought different contentions, and that we could/should trust the process.

On 23 November 2020, a conciliation conference was held.

On 23 December 2020 we were advised that the s34 conciliation process was terminated and court hearing dates were set for June 2021.

On 2 February 2021, we were advised that:

- since the termination of the s34 conference that the Applicant had provided Council with amended plans for its review,
- Council had considered and reviewed these plans and wished to put them on exhibition,
- subject to consideration of the public submissions received and advice received from Council's consultants, the s34 conference process may be reconvened,
- if Council's substantive contentions were not resolved then the case will proceed to Court hearing.

We have already

- lodged three objections dated 30 July 2018, 13 December 2018, 12 September 2019;
- made presentations and tabled additional documentation to Camden Local Planning Panel (LPP) on 21 May 2019 and 15 October 2019 on the appeal to the first LPP refusal;
- sought legal advice because Council twice recommended approval to the LPP;
- applied on 10 December 2019 to joinder the Land and Environment Court (LEC) case pending receipt of Council's SOFAC;
- made a presentation at the LEC conciliation conference on 23 November 2020.

We have done all of this because what is proposed in its many and various iterations, including the one currently exhibited, is grossly non-compliant with the planning rules and that no justification in a s4.6 variation request or Heritage Impact Statement (HIS) has been provided as to why this particular DA is somehow worthy of special dispensation.

Yet again the community must object to a non-compliant overdevelopment that is unbelievably 60 % above the height limit, and again presents a legally inadequate s4.6 variation request. If we do not then the s34 process may start again, even though variations of this same new plan had already been unsuccessfully presented for conciliation.

As noted above Council advised the applicant on 12 February 2018 that the height exceedance would not be supported, so we fail to understand why plans indicating a 60% height exceedance would be considered and exhibited and not simply rejected.

The level of non-compliance with the LEP and Council policy was so great in the iterations presented to the Camden LPP, that a number of Councillors attended and presented at the hearings and we understand submitted formal objections.

The history of this DA raises a number of questions and speculation in the community:

- **why was this DA, one that is so clearly and grossly non-compliant, accepted in the first place;**
- **why are very different iterations of this DA accepted as the same DA. The only common elements are their persistent non-compliance, particularly in height and bulk, and inadequate justifications;**
- **why were iterations of the DA twice recommended for approval to the LPP, especially as the LPP refused the first iteration recommended (and then the second);**
- **why is a grossly non-compliant new plan seemingly selectively exhibited after termination of the conciliation process.**

Speculation about and loss of faith in the integrity of the planning process inherent in the above questions is not in the public interest.

(b) Unexplained exhibition on new plans for potential new s34 conciliation conference process

We must take this opportunity to state on behalf of the community that we do not understand why this particular grossly non-compliant iteration of the DA, in the form of new plans by a new architect, is seemingly selectively exhibited for possible subsequent potential conciliation.

We note:

- there is no evidence of the usual neighbour notification on the DA tracker;
- it is not clear who has been notified of the new plans;
- it appears that at least 3 or 4 amendments to these same plans have already been unsuccessfully presented for conciliation before the s34 process was terminated;
- a new Heritage Impact Statement (HIS) has not been exhibited with the new plans although the site is within the HCA and adjacent to and in close proximity to heritage listed items, and it is referenced in and fully relevant to the s4.6 variation request;
- that these new plans were not considered as a new DA, although the design has changed considerably and height exceedance has increased significantly.

It appears that from the community viewpoint that appropriate opportunity for informed input has not been provided. This new plan may have been exhibited to original objectors, but it is not clear, with it seemingly not made public, whether all interested parties have an opportunity for input. Interested parties include all neighbours, including potentially new neighbours and other stakeholders, including businesses that rely on the point of difference afforded by the HCA, those who believe we are custodians of our heritage for future generations and those who think we should all be good citizens and respect legislation and agreed policy.

We contend:

- these new plans, if submitted as a new DA, given their gross non-compliance with the planning instruments should rightly be rejected;
- 60% above the legislated height limit is significantly greater (at least 13%) than exceedances that have already been refused as non-justifiable;
- the new s4.6 variation request contains no new arguments or justification than those proposed in the two previous requests that were found to be legally inadequate;
- a new Heritage Impact Statement (HIS) at a minimum is required;

- this new iteration of the DA, which unusually takes the form of new plans by a new architect, is reasonably subject to notification and re-notification protocols (DCP 2011: A2.2; DCP 2019: 1.2.2, 1.2.7):
 - it is a major commercial development that is not in keeping with the established scale and character of surrounding development;
 - it has been substantially amended;
 - there has not been a reduction in impacts or no impact as a result of the DA amendments.
- this iteration, according to the extract below from the plans of BKA Architecture, appears to have already considered in the s34 conciliation

Rev	Date	Issue	Client	Architect
01	14.08.20	Amendments following without prejudice meeting held 16.07.20	Graham & Sanders Pty Ltd	BKA Architecture SYDNEY Suite 1.04, 77 Dunning Ave, Rosebery, NSW 2018 T: +61 2 9318 9090 E: bka@bka.com.au W: www.bka.com.au
02	19.08.20	Amendments following feedback from client		
03	02.11.20	Issue for Section 34 Conference		
04	07.12.20	Section 34 Amendments		
05	18.01.21	Section 34 Amendments		
				NEWCASTLE 10 Bolton St, Newcastle NSW 2300 T: +61 2 4926 5563
				BYRON BAY Unit 1, 10 Station St, Bangalow NSW 2479 T: +61 2 4926 5563

- the plans are not worthy of exhibition, should be rejected and the case be dropped or proceed to the LEC in June 2021.

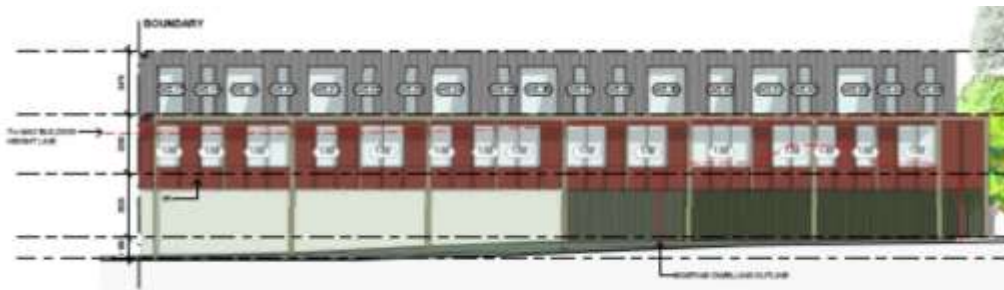
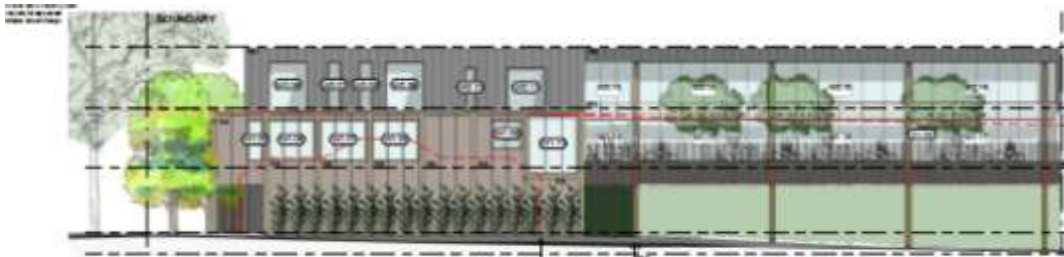
(c) Timeline and various iterations of the same DA

11 July 2018: Council notification

DA description: *Demolition of existing structures and construction of a 3-storey commercial building, car parking, landscaping, service provision and landscape works*

Our first objection to an iteration of this DA in July 2018 was extraordinarily for a three-storey, flat roofed building design that took up almost all of the site.

*Source: Aetch Stanmore NSW
Revision 2 Architectural Plans,
May 2018*



30 July 2018: CRAG objection

27 November 2018: Council re-notification

DA description: *Demolition of existing structures and construction of a 3-storey commercial building, car parking, landscaping, service provision and landscape works*

Our second objection in December 2018 was for quite a different three-storey building design by a different architect that again took up almost all of the site.



Source: Allman Johnston Architects, Bowral NSW, 2 November, 2018

13 December 2018: CRAG objection

14 May 2019: LPP Hearing Notification

21 May 2019: LPP Hearing – DA refused

The DA that was put to the LPP on 21 May 2019 for determination was described differently. There was no material change in height.

DA Description: Demolition of the existing dwelling house and construction of a 2 storey plus attic level commercial building, car parking, landscaping, service provision and landscape works.

The plans were modified but similar to those exhibited that we had last objected upon in December 2018.



Source: Allman Johnston Architects, Bowral NSW, 5 February 2019

This iteration was recommended for approval to the LPP and refused.

26 August 2019: Council Re-notification of new iteration

DA Description: Demolition of the existing dwelling house and construction of a 2 storey plus attic level commercial building, car parking, landscaping, service provision and landscape works.



Source: Allman Johnston Architects, Bowral NSW, 12 July 2019

12 September 2019: CRAG objection

8 October 2019: LPP s8.2 Review Notification

15 October 2019: LPP s8.2 Review Hearing – refused

10 December 2019: CRAG applied to joinder LEC Case: 2019/00362348 upon media alert to CRAG that it had been filed.

17 December 2019: LEC Directions Hearing re CRAG joinder – disagreement of parties that first LPP refusal could be brought to LEC. Adjourned

4 February 2020: LEC Directions Hearing CRAG joinder motion adjourned pending preparation and provision to CRAG of Council’s SOFAC

4 March 2020: Case 2019/00362348 discontinued as not being on correct LPP refusal

2 April 2020: Council’s SOFAC lodged for new case 2020/00081653 re s8.2 LPP refusal

23 April 2020: Notice to objectors of conciliation conference

13 November 2020: Deadline for written material from objectors

23 November 2020: Conciliation conference

23 December 2020: Conciliation process terminated; court dates set

2 February 2021: advice that new plans were to be exhibited by Council.



Source BKA Architecture, Sydney: s34 amendments, revision 5, 18 January 2021
