

Camden Residents' Action Group

Incorporated
Camden – Still a Country Town

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LEC Hearing 18 June 2021 20 Elizabeth St Camden

I speak as President of Camden Residents' Action Group. We have represented the community on matters of Camden's heritage and environment since 1973.

A great number of objections and LPP presentations have been made against various iterations of this DA and it has been subject to media attention. It is newsworthy because it is so far beyond what the community understands is reasonable and what the planning parameters allow in the highly valued heritage conservation area.

We understand that the Court has not necessarily received all of the community objections and therefore may not be fully aware of the strength of community opposition. As an example, the LPP¹ reports an average number of speakers per hearing of 2 and 3 persons. The number on just this DA was 17 at the first LPP hearing ²and 15 at the appeal hearing ³. The number of written objections was much greater⁴. Written submissions were also made to the s34 conference, and again after its termination as a result of the exhibition to objectors by Council of the new plans in February 2021. It is of note that Camden Councillors have also made both written objections and spoken at hearings.

Our Group's file of presentations and objections, including our 22-page objection to the current consent orders, runs to 281 pages. I will try to keep our comments brief, bearing

¹ NSW Planning Local Planning Panels (IHAPs) Evaluation Final report (April 2018 – March 2019) Table 3. Summary data on panel decision-making

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/Assess-and-regulate/Development-assessment/Local-Planning-Panels/local-planning-panels-evaluation-final-report-2019-03.pdf>

² on 21 May 2019

³ on 15 October 2019

⁴ 21 May 2019: 42 from 28 different objectors over 2 notification periods; 15 Oct 2019: 21

in mind that our detailed arguments are referenced and evidenced in our written submission. We would also like to point out that they are supported and reinforced by expert legal and heritage statements.

From the community's perspective this DA does not pass the pub test and if approved will destroy faith in community consultation, council policy and the planning instruments. We submit this is not in the public interest.

At the outset we must state that it is beyond us to understand why and how we have reached the point of consent orders. We know from references in documentation in the public domain, that the Applicants were advised by Council Pre-DA ⁵ and again⁶ after the first iteration was lodged⁷, that what was proposed was an overdevelopment that could not be supported due to non-compliance with the LEP and DCP, especially in terms of height, building envelope and unacceptable heritage impact.

On 10 December 2019, we made application to joinder the first case brought to the Court because Council staff had twice recommended approval to the LPP. The Registrar directed that our Group be kept informed and provided with Council's Statement of Facts and Contentions. We sought legal advice and were advised that unless our contentions were additional and different it was unlikely that we would be permitted to joinder the case.

This first case was dropped because it was wrongly appealing the first LPP refusal.

The subject of the current case is the second LPP appeal refusal which was for a 47% maximum height variation on the 3-level front portion of the proposed building and 6% variation on the rear 2- level portion. Council's contentions were the same as ours except that we contended that no justification had been provided for demolition of the cottage.

Our legal advice was to trust the process.

But here we are with a proposal for three levels and 60% above the height limit. We do not understand how it can possibly satisfy Council's contentions, which reflect the planning controls and the LPP decisions.

⁵ Council's formalised pre-DA advice (PREDA/2017/138/1; dated 12 February 2018) as referenced in the Statement of Environmental Effects dated May 2018 submitted with the first iteration of the proposal. This documented appears to have been removed from the DA Tracker. Advice dated 18 February 2018
⁶ 7 September 2018: Council Letter Appendix C (Amended and original) Flood Impact Report - 20 Elizabeth Street CAMDEN. Camden Council DA Tracker DA 2018/599 Reference 18/165542 Advice dated n 7 September 2018 Available at <https://planning.camden.nsw.gov.au/Application/ApplicationDetails/010.2018.00000599.001/>
⁷ 23 May 2018

We explain in detail in our written submission why we consider that Council's contentions are not satisfied and why this iteration is grossly non-compliant in spirit and letter.

In relation to Council's first contention of **Insufficient Environmental Planning Grounds** to Justify a height exceedance of 47%, Council's SOFAC states that the Court would not be satisfied that the s4.6 Variation Request was sufficient and well founded.

We found no substantive difference in arguments in the new s4.6 Variation Request dated March 2021 for a height exceedance of 60%.

We also submit an independent legal statement from HWL Ebsworth that this Request does not provide sufficient planning grounds or demonstrate that it is in the public interest, and that to accept it would be an error at law.

This legal statement is supported by an independent heritage report by Conroy Heritage Planning that clearly justifies why what is proposed is non-compliant with the objectives of the Height standard (LEP 4.3) as well as LEP 5.10 Heritage conservation and other provisions of the planning instruments and would result in adverse heritage impacts on the HCA and adjacent heritage items.

Our own written submission also refutes every argument in the 4.6 Request *that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case* (4.6(a)) and explains why the claims of environmental planning grounds are irrelevant. The underlying argument can be condensed as an insistence on a third level to achieve what the Applicants describe as an "Acceptable yield of commercial floor space". That this is not an environmental planning ground was pointed out to the Applicant in a meeting with Council on 30 August 2018⁸.

The second contention in Council's SOFAC was that the iteration refused at the LPP appeal was an **Overdevelopment of the Site** because of its bulk and scale and excessive height.

⁸ Meeting notes held on 30 August 2018 in Statement of Environmental Effects Nov 2018 (p. 7) Record Number 18/165554 Available at available from Camden Council's DA tracker

The SOFAC states that the roof *attempts to achieve a greater than two- storey development by providing for a third level. The consequent excessive height is therefore unable to achieve the height control standard which reinforces the two-storey limit prescribed in the DCP* (SOFAC (2(g), p. 12).

This current iteration is a maximum of 60% above the height limit over the whole building footprint and it incorporates a third level. Its bulk is excessive and its building envelope⁹ is also not consistent with the pattern of side setbacks and the character of the cottage dominated block.

Logically the proposal before the Court is more of an overdevelopment of the site than the one refused by the LPP.

The contentions of the SOFAC that the height, bulk and scale of the development unreasonably dominate the *streetscape and adjoining properties and fail to be consistent with the character, scale and massing of building elements that is sought from the suite of applicable planning controls* unequivocally remain valid.

The third contention in Council's SOFAC is that of **inconsistency with the character of the HCA** and that in particular the proposal

- a) would have a detrimental impact on its existing character and heritage items;
- b) does not satisfy LEP 5.10 heritage conservation objectives and effect on heritage significance;
- c) is incompatible with the significant characteristics of the conservation area due to its height, bulk, scale and architectural expression;
- d) is inconsistent with the provisions of the DCP including the Burra Charter and the objectives and controls of the Camden Heritage Conservation Area.

These contentions of the SOFAC remain valid for this latest iteration before the Court. Our written submission explains why in detail and provides tables of non-compliance with the DCP.

⁹ PDE Investments No 8 Pty Ltd v Manly Council [2004] NSWLEC 355 at 48

The expert heritage report of Conroy Heritage Planning also explains why this latest iteration is **inconsistent with the character of the HCA** and non-compliant with the planning instruments.

Whilst we understand that the heritage impacts will be assessed independently for the purposes of the Court hearing, we draw attention to deficiencies in current Heritage Impact Statement lodged by the Applicant. Our written submission provides full justification as to why its various claims about the HCA and this proposal are unfounded and wrong.

One reason is that it does not employ best practice methodology, which would have led to different conclusions. For example, it does not follow NSW Heritage *Design in Context* guidelines or the principles of the Burra Charter such changing as little as *possible so that cultural significance is retained*.

Importantly it does not address the Court's planning principle¹⁰ in relation to contributory items in HCAs. No analysis of the HCA Heritage listing and the contribution that the cottage makes within it is provided. This planning principle is consistent with the DCP (2019, 2.16.3, general heritage provisions) that demolition of part of a heritage place is a last resort after all alternatives for retention have been investigated and that it is proven to be incapable of repair.

We also draw attention to the assessment of Conroy Heritage Planning that the extant cottage is contributory to the HCA.

Also, extraordinarily, the Urban Design Framework (UDF) and its statutory expression of the HCA's unique character and desired future character is ignored, although the DCP states (5.3.3): *Development within the B4 Mixed Use zone at Camden must be consistent with the Camden Town Centre Urban Design Framework*.

What is proposed is not at all consistent and makes no attempt at compliance with the town's desired future character as expressed in its Built Form Principle which is to

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).

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¹⁰ Helou v Strathfield Municipal Council [2006] NSWLEC 66 at 43-46

As well as finding the 4.6 Variation Request and Heritage Impact Statement to be inadequate, we also point out that the community has not had access to all relevant documents.

For instance, it appears that the proposal is not compliant with LEP 7.1 Flood Planning and Council's Flood Risk Management Policy.¹¹ The Policy mandates that safe and stable access must be certified by a qualified engineer and that habitable floors be at least equal to the Flood Planning Level. We have not seen an engineer's report or clarification of any exemption for the habitable floor of the rear building being below the Flood Planning Level.

Also, we have seen no Reports demonstrating compliance with the Building Code of Australia (BCA), Fire Regulations, or Disability Access legislation.

We do not know if all relevant documents exist but understand that as the Court now stands in place of the consent authority it will probably require them in order to come to a determination.

In closing we must emphasise again that the community has repeatedly and emphatically opposed this development over three years of numerous iterations. It is contrary to all Council policy and strategic statements including on tourism. The process has undermined faith in the planning system and confidence in being able to rely on the planning instruments for housing, business and investment decisions.

We sincerely request the Court to restore our belief in our institutions and do not allow the consent orders.

1919 words

¹¹ Section 2.3 <https://www.camden.nsw.gov.au/assets/pdfs/Council/Policies/Flood-Risk-Management.pdf>