

# *Camden Residents' Action Group*

*Incorporated*

*Camden – Still a Country Town*

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27 September 2021

***Re: MODIFICATION NO: 2012/195/2***

***St John's Anglican Church Precinct, Camden***

***State Heritage Inventory (Item ID 5053423; SHR 02006)<sup>1</sup>***

***Anglican Church Diocese of Sydney***

***APPROVED DEVELOPMENT: Alterations and extensions to the existing church hall, its use as a place of public worship and associated site works***

***PROPOSED MODIFICATION: Section 4.55(2) Modification – Design modifications to approved church hall alterations and extensions, extended operating hours and tree removal***

At the outset, we must draw attention to the background and current circumstances of the 2012 DA which was due to lapse on 17 August 2014, unless physical work was commenced.

The basis of its 2012 approval has greatly changed.

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<sup>1</sup> NSW Heritage State Heritage Register: St John's Anglican Church Precinct Available at <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=5053423>

Most importantly, in 2016, the Church first publicly documented that it was necessary to sell the Rectory and horse paddock to fund the building project<sup>2</sup>.

To raise the asking price of \$7m + to fund the project, the Church intends to sell to a developer.

This new fact is highly problematic. The development outcome of raising the necessary funds, is not compliant with the 2012 DA consent conditions nor consistent with the 2004 Clive Lucas, Stapleton and Partners Conservation Management Plan (CMP) and its 2010 NBRS Addendum<sup>3</sup>.

We note that NBRS is seemingly the same firm that:

- wrote the 2010 Addendum to the 2004 Clive Lucas, Stapleton and Partners Conservation Management Plan (CMP) both of which were adopted into the 2012 consent conditions;
- drew up the 2021 Architectural Plans and Landscape Plans and wrote the BCA Report;
- wrote the 2021 Heritage Impact Statement (HIS).

The fact that 2012 DA modification cannot be realised without destroying intrinsic features of the heritage significance of the Church Precinct, is not acknowledged and certainly not addressed in the 2021 documentation.

Therefore, we assume that NBRS, which describes itself as preserving the spirit of the past and as champions of heritage, is unaware of the underlying issues of destructive heritage impact of this project if it were ever to be able to come to fruition.

We also question at the outset why the toilet block close to the Church is staged to be constructed first. No reason is provided. If approved this 'stage' may be the only affordable component without selling areas of the Precinct to a developer. As a part of this much bigger DA, it is put forward as simply a "modification" of a previous consent. However, if it was lodged as a separate DA, its design and encroachment on the immediate Church curtilage would almost certainly be considered of unacceptable heritage impact.

Our following submission details our objections.

We argue that the 2012 DA, as set out in our letter of 3 September 2021 (appended), is likely to have automatically lapsed due to lack of physical commencement in accordance with the consent conditions. This 2021 modification application in that case is void.

We also argue that continuation of the 2012 DA is invalid because the changed circumstances since the 2012 consent mean that the very basis of assessment in 2012 no longer applies and the consent conditions relating to the 2004 CMP and 2010 Addendum will necessarily be breached.

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<sup>2</sup> Background information accessible at <https://www.crag.org.au/st-johns-church-precinct-sale-community-alert/>

<sup>3</sup> 2004 CMP and 2010 Addendum available at <http://www.crag.org.au/wp-content/uploads/2016/12/CMP-and-Addendum.pdf>

We then present objections to the 2021 plans and the deficiencies in their supporting documentation.

Our objections are organised under the following headings.

- 1. Lapsing of 2012 development consent**
- 2. 2012 DA consent: changed circumstances**
  - a. Findings of research into terms of the Macarthur trusts**
  - b. State heritage listing**
  - c. Sale of the horse paddock and Rectory to fund the development**
  - d. Funding timeframe and “staged” toilet block**
  - e. Breach of 2012 Consent Conditions re 2004 CMP and 2010 Addendum**
  - f. Change in Ministry**
- 3. 2021 Modification objections**
  - a. Heritage Impact Statement**
  - b. Arborist Report**
  - c. Curtilage encroachment**
  - d. Carpark**
  - e. Parking**
  - f. John and Broughton Streets: perspectives/views**
  - g. Changes to 2012 architectural plans**
  - h. More information is required**



*Source: Google aerial view of the Precinct*

## **1. Lapsing of 2012 development consent**

Nine years have passed since approval with no apparent evidence of physical commencement as required to keep the 2012 DA current. It was to expire on 17 August 2014.

In our (appended) letter of 3 September, we sought explanation as to why this s4.55 modification to the consent is acceptable as the physical survey work claimed as commencement is not publicly evidenced, and in any case, it was not undertaken in compliance with the consent conditions, a requirement which is also supported in case law.

To date we have received no answer, and believe this is a matter that must be considered before anything else. Our research suggests the 2012 DA has long lapsed and we question the validity of acceptance and exhibition of this s4.55 modification application.

## **2. 2012 DA consent: changed circumstances**

One rationale for a time limit on consent for DAs is that their basis and surrounding circumstances change.

We also question the validity of continuation of the 2012 DA because the circumstances upon which it was based have changed substantially as follows.

### **a. Findings of research into terms of the Macarthur trusts**

Research into the terms of the trust deeds, set up by the Macarthur family in donating the use of the land to the Church, proves that the Anglican Church Property Trust must hold the land ‘for ever’ for religious purposes on behalf of the community. Whilst potential developers may have a different view, the Precinct is not to be developed for purposes not covered in the Trusts.

CRAG, on behalf of the community, has written legal advice to this effect.

### **b. State heritage listing**

On 24 August 2018, the Precinct was added to the State heritage register, which although the 2012 DA consent was carried over, affords it greater heritage protection than in 2012.

The NSW community, and not only the people of Camden, have a vested interest in conservation of the Precinct. Important landscape elements of its listed significance would be lost by sale of Precinct land.

### **c. Sale of the horse paddock and Rectory to fund the development**

Since the 2012 consent, the Church has emphasised that it must sell two-thirds of the Precinct (the horse paddock and Rectory) for development, in order to achieve the funds necessary to pay for the building works, including a 400-seat worship centre, and the modifications now sought<sup>4</sup>.

**Any potential sale was not a consideration in the assessment of heritage impact in the 2012 approval which assumed that the Precinct would otherwise be unchanged.**

St John's has set in place the mechanism to sell and followed through on its funding plan by seeking purchasers.

The Church entered into an option contract in 2018 to sell the horse paddock and Rectory for seniors living/aged care. That contract recently lapsed but the Church has reiterated to its congregation that: *The building of a new Worship Centre project is on hold until sufficient funds are obtained*<sup>5</sup>.

Any developer as a potential purchaser, if it undertakes due diligence, would discover many development hurdles. Economic return, if any were possible, would likely be negligible, certainly on the asking price of \$7m+ required to fund the new worship centre.

### **d. Funding timeframe and “staged” toilet block**

We refer to the toilet block within the immediate curtilage of the Church, which according to the Statement of Environmental Effects (SEE) (5.7, p. 12) is requested to be “staged” within the larger development and built first. The block is situated to the west, whereas the 2012 plan was limited to development to the east.

**It would seem to be new proposal, rather than a modification of the 2012 proposal.**

The time involved in finding a developer who would pay the \$7m+ asking price to fund the full development, assuming that were possible, is clearly very substantial especially given the time involved in buyer due diligence and the contractual process.

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<sup>4</sup> As an aside, we find this approach questionable as our understanding is that there is nothing in Church regulations which permits funds received from sale of any part of the Precinct to be used for the construction of a worship centre. Well over 300 acres of land held by the Parish has been sold over the last 100 years, but the funds have gone to the Diocese or to pay operational expenses.

<sup>5</sup> St John's Church Warden's notice in the Church's newsletter 18 July 2021 (p. 3) ***Proposed Sale of Church land*** *Our church has been advised by Moran Aged Care that they are not proceeding with the purchase of church land. In February 2019 Moran Aged Care obtained a Put and Call Option to purchase Church Land. An extension of time was granted in February 2020 with an expiry date of 1st July 2021. Moran Aged Care has advised of their decision. The building of a new Worship Centre project is on hold until sufficient funds are obtained.* Available at [https://www.stjohnscamden.org.au/images/stjohns/Resources/2021\\_07\\_18Newsletter.pdf](https://www.stjohnscamden.org.au/images/stjohns/Resources/2021_07_18Newsletter.pdf); <https://youtu.be/N0VFy0IP9Oc?t=618>

This raises questions about the ability of the Church to commence physical work (except for the toilet block) within the time frame of any consent and why the DA modification is lodged at this time.

No explanation or justification has been provided for this “staging”. We submit that if the toilet block is slipped through, despite its unacceptable heritage impact within the guise of the 2012 consent as part of this modification proposal, it will be used to extend the 2012 DA indefinitely. If our reading is correct, this is an unacceptable manipulation of the 2012 consent and heritage conservation.

**e. Breach of 2012 Consent Conditions re 2004 CMP and 2010 Addendum**

Selling parts of the Precinct is not only in contravention of the terms of the Macarthur trusts, but also the consent conditions of the DA 2012 as they pertain to the Clive Lucas, Stapleton & Partners 2004 Conservation Management Plan and NBRs + Partners 2010 Addendum (hereinafter *CMP/Addendum* where appropriate). This 2021 application to modify DA 2012 is not a modification because it requires a fundamental rethink of the basis for development approval because of this changed circumstance.

Consent condition 6 of the Council Report (which was approved unchanged) of the 2012 DA approval states

*(6) Conservation Management Plan – The St John’s Church Precinct Conservation Management Plan prepared by Clive Lucas, Stapleton and Partners, prepared in 2004 and the Conservation Management Plan Addendum, prepared in 2010 by NBRs+Partners must be complied with and used to guide all current and future work.*

The 2010 Addendum (in repeating 2004 CMP) contains the following policies:

*p. 31 Policy 36 - Continue the existing historic use of the rectory and adapt to modern rectory standards.*  
*p. 34 Policy 54 – Retain and conserve open space rural character of the horse paddock.*

The Church if it did raise the funds by selling the Rectory and horse paddock to a developer, could not honour the CMP/Addendum and comply with the 2012 DA conditions which would be expected to carry into the consent conditions of the modification (if approved).

As per the following extracts, a number of consent conditions relating to the CMP/Addendum were specifically included in the 2012 DA approval.

These, by the Church’s own public admissions, would never be complied with by continuation of the 2012 consent and approval of the 2012 DA Modification.



Note that the Addendum to the CMP is in addition to and does not supersede the 2004 CMP (NRBS, Major Recommendations, p. 2).

A 2012 consent condition is that the CMP/Addendum must be complied with in all future work.

**Details of Conditions:**  
  
**1.0 - General Requirements**  
  
(6) **Conservation Management Plan** – The St John's Church Precinct Conservation Management Plan prepared by Clive Lucas, Stapleton and Partners, prepared in 2004 and the Conservation Management Plan Addendum, prepared in 2010 by NBRSPartners must be complied with and used to guide all current and future work.

*Source: 17 August 2012 Camden Council Notice of Determination of Development (p. 3)*

A new worship centre is not consistent with the 2004 CMP policy of using the Church as the prime place of worship:

#### **8.4 St John's Church Building**

##### **8.4.1 Use**

*St John's continues in its purpose-built historic use unbroken since the 1840's. Many churches share this otherwise rare quality of an unbroken line of use since construction in contrast to other public buildings such as post offices, banks and even schools. The church building should continue to be used for public worship, the style of which may change. Provided that the basic spatial use of the interior is preserved, the existing entrance doors maintained, and an eastward facing form of pattern of worship continued, minor changes that support worship should not be prevented.*

***Policy 3 – Continue to use St John's as the prime place of Anglican Worship in Camden.***

*Source: 2004 Clive Lucas, Stapleton & Partners Conservation Management Plan*

As already detailed above, the Rector has reiterated that a sale of part of the Precinct (horse paddock and Rectory) must occur to fund the new worship centre and this building project.

As the required amount could only be realised if the purchaser could develop the land, the project is clearly non-compliant with the CMP/Addendum as per the following statements and policies.

***Use of the Place***

The character of the church yard is one of large open undulating rural spaces between the various church buildings. The church yard should remain as a site used by the Camden Anglican community. Paths interconnecting the buildings, together with interconnecting views and vistas should be retained, conserved and interpreted.

- ***Policy 53: Conserve the topography and landscape of the place including all original fabric and that associated with nineteenth and early twentieth century landscape development.***

***Significant Open-Space Setting***

The Menangle Road Streetscape to the east retains the open-space rural church setting comprising the rectory, horse paddock and church and entry lych gates, is significant and should be retained.

- ***Policy 54: Retain and conserve open-space rural character of the Horse Paddock. Ensure carparking is restricted to areas within the churchyard immediately around the perimeter of the church.***

*Source: 2010 NBRIS addendum*

**The only means by which the proposed development can proceed is by loss of the landscape setting and rural character that are intrinsic to the heritage significance of the Precinct. This is clearly non-compliant with the CMP/Addendum and the 2012 consent conditions.**

We note that the 2012 Council report (p. 15) recommended that conservation works identified in the CMP/Addendum be imposed as development consent conditions. The expectation and clear implication throughout the consent is that policies of the CMP/Addendum were to guide conservation and maintenance of the Precinct.

Operational Conditions of the 2012 consent (as copied in below) make this specific and leave us in no doubt that in exchange for consent to development in 2012, the policies of the CMP/Addendum were to be honoured.

It is understood that, although the Church claims to follow accrual accounting (but not necessarily Australian Accounting Standards) its financial accounts include no provision for conservation maintenance and repair works. There may be a provision in a budget but maintenance work and cyclic inspection as set out in the Operational Conditions are not apparent to our Parishioner members. Also, there would seem to be no receipt of potentially available heritage grants in the financial accounts. The cemetery for instance requires major conservation works.



**The 2012 consent specifically included these operational consent conditions:**

#### **6.0 - Operational Conditions**

- (5) **Conservation Works** – The following works identified in the Conservation Management Plan Addendum, prepared in 2010 by NBRSPartners, are to be undertaken to ensure the ongoing conservation of the church property:

Policy 41 and 69 – Implement drainage to correct structural cracking to 1906 hall.

Policy 46 – Maintenance and conservation of the cemetery.

Policy 49 – An arborist is to correct structural damage to the cemetery fabric.

Policy 57 – Reconstruct and conserve the Menangle Road lych gate and Broughton Street stairway entry to the church.

Policy 68 – A detailed management plan of St John's Church complex.

Policy 70 – Establish a maintenance allowance in annual budgets.

Policy 71 – Implement cyclic inspection schedules.

Policy 72 – Review maintenance plan

The following works identified in the St John's Church Precinct Conservation Management Plan prepared by Clive Lucas, Stapleton and Partners, prepared in 2004 are to be undertaken to ensure the ongoing conservation of the church property:

Policy 14 – Policy for ongoing preservation and maintenance of cemetery.

Policy 19 – Replace obtrusive elements.

Policy 28 – Preserve the form, materials and front elevation of the 1906 hall.

**NOTE:** This condition is to identify priority policies within the relevant plans that will be undertaken on an ongoing basis with the conservation of the St John's Church property.

*Source: 17 August 2012 Camden Council Notice of Determination of Development (p. 22-23)*

We therefore question the intention of the church to undertake conservation works and how they have complied with the consent conditions over the past nine years that the 2012 DA is claimed to have remained current.

## **f. Change in Ministry**

St John's may soon seek a different ecclesiastical path than investing millions in replacing the use of the 1849 Church, which would obviate the purpose of the DA modification:

- i. St John's Church Camden is now under the jurisdiction of a new Bishop;
- ii. The Church is actively seeking a replacement Rector. The long-term Rector, the main proponent of the need for a new large modern worship centre to replace the use of the 1849 Church, announced on 4 July 2021, his retirement effective from 25 July 2021<sup>6</sup>. However, it is understood he remains in the employ of St John's Church at the time of the lodgement of this DA modification and at the time of writing this submission.

We also have it on good authority from our Parishioner members that the lodged modification plans have not been put, as we understand is required, to the congregation, for approval. A new Ministry may provide explanations about the future direction of the Church which would not see majority Parishioner approval of this development. It is not difficult to visualise more financially sound future directions, for instance ones involving community outreach with additional smaller, conveniently timed and located services and possible capitalisation on the unique Precinct in raising funds for good works.

## **3. 2021 Modification Plan objections**

### **a. Heritage Impact Statement (HIS)**

Objectivity is of possible concern as the architectural plans and HIS are prepared by the same firm (NBRS).

The 2021 HIS does not address the loss of two-thirds of the Precinct for the project to proceed. As noted at the outset, NBRS is also the same firm responsible for the 2010 CMP Addendum. It is possible this firm is unaware that the means of funding the build, as set out in official and public Church documentation, is sale of two-thirds of the Precinct for development which would be a breach of conservation policy in the Addendum.

This fact must change the assessment of heritage impact on the Precinct. **The 2021 HIS cannot be accepted as assessing the full impact of this proposal on the Precinct.**

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<sup>6</sup> Video at <https://youtu.be/FLEZeaVr4Xc?t=2662>

The HIS only purports to compare the plans of 2021 with 2012 rather than make any heritage assessment in absolute terms. As objected above, the circumstances under which the 2012 plans were approved have changed.

This is a reason why it is important that the 2012 consent be lapsed. The application should be assessed on its merits in relation to the Precinct's NSW heritage significance as fully recognised since its 2018 State listing and other changed current circumstances.

We find little benefit is examining the HIS due to its limited scope.

We do however highlight that its assessments of modifications associated with the raised carpark with utility room underneath, increased encroachment of the new toilet block on immediate church curtilage and the toilet block's location in relation to the columbarium are in our opinion inadequate, if not non-existent. Also, we believe the toilet block cannot be regarded as a modification to the 2012 plans, which were limited to the east of the Precinct away from the Church.

We also point out some further examples of errors and inadequacies which call into question its depth of analysis.

The HIS (4.1 Heritage Status) states in error that the Precinct is located within the 'Camden A' Conservation Area. There is only the Camden Heritage Conservation Area in the town. It is unclear what the blue line on the map (HIS, p. 17) indicates.

The HIS (4.3 Significance of 'The Camden A' Conservation Area; 6.0 Assessment of Heritage Impact) refers to Development Control Plan (DCP) 2010. There is no DCP 2010 and it appears the assessment refers to DCP 2011. We understand that the relevant DCP is 2019 DCP.

The HIS (6.2 Evaluation against CMP Policies) does not systematically or comprehensively evaluate consistency with CMP (or Addendum) conservation policies. The HIS (6.2, p. 23) indicates that 2004 CMP considered the opportunity of extending the 1973 hall, but does not mention that the CMP (p. 72) states the likely heritage impact as

*This solution would significantly detract from the heritage of the site because it would further obscure the views of the church from Broughton Street and build over more of the line of the old path to the church from the top of Hill Street. At a practical level it is doubtful that the building could be easily adapted to make a sufficiently large hall and doubts have been raised about the long-term competency of the structure.*

As shown in the comparison below, the heritage impact in absolute terms is severe. Whilst the highest point of the proposed 2021 building compared to the 2012 proposed building is lower by 0.3m, its bulk is likely to be perceived as greater as the 2012 parapet, which accounted for much more than 0.3m of height, has been removed. If so the rural and open space views of the Precinct in general and to the Church from Broughton Street could be more significantly compromised.



*CRAG photo 7 September 2021 Broughton St looking SW*



*Source: NBRAS Architectural Plans: Artist's Impression (p. 14) Broughton St looking SW*



We also make note that the HIS (6.3 Evaluation of the Guidelines of the NSW Heritage Division) states that

*The change in materials selected for the new building exterior would have a softer, more contextual appearance. Replacing the white aluminium panels and terra cotta tiles on the approved exterior with sandstone and muted grey zinc sheets will lead to a less assertive presentation to the street. The selected exterior materials would blend in with the slate greys and the sandstone trims that are common in the Camden conservation area.*

Again, the HIS is comparing the 2021 material palette to the 2012 palette. As can be seen in the Artist's impressions of the 2021 build, its materials and palette will stand in stark contradiction to those of the Church and 1906 hall. Certainly, there is little resemblance to the traditional materials and colours of the Precinct and Camden's Heritage Conservation Area.

We must also draw attention to the acknowledgment in the HIS (3.3.1 Cemetery) that:

*The modern cemetery covers an area of around 0.4 hectare across approximately six terraces ranged across the southern slopes of the church lot. It holds approximately 1600 grave sites and is scattered with and surrounded by various tree plantings. Since 1977 there has been an ongoing program of maintenance which ensures that the site is not overgrown by vegetation. Between 1977 and 1987 a survey of the cemetery was undertaken that recorded all the grave sites. Further work has been undertaken in 1995 by a Land Environment Action Program team and in 1999 by a work for the dole program. Today sections of the cemetery are in poor condition and require maintenance, rebuilding, and interpretation (CMP, 2004:16: Addendum, 2010:25).*

However, it makes no assessment of the DA modification in relation to this neglect. It ignores the potential impact of the adjacent path and nearby children's playground, and also that the only vehicle access to the storeroom under the raised carpark is through the cemetery.

There is a lack of respect for heritage and history of the Church evident in neglect of the cemetery. We also point out that whilst the columbarium is relatively "modern" the cemetery is not. Its plots date from 1844 and many of gravestones are very old.

This neglect of the cemetery translates to a lack of respect for those with loved ones and ancestors buried there, also for its importance to the local community.

The HIS only makes sketchy and patchy references to the guiding CMP/Addendum policies that the 2012 consent required adherence to and which are referenced in its State heritage listing.

We consider this to be a definitive failing of the HIS. If the 2012 consent required adherence to CMP/Addendum conservation policies, then so should the 2021 modification also be assessed and evaluated against them.

## **b. Arborist Report**

The 2021 Arborist Report (April 2019, updated July 2021) does not necessarily identify all trees and vegetation captured by the DCP provisions. Approximately 50% of trees are to be removed from the development site but there is no plan to plant 4 for each tree removed as required under 2019 DCP. This is especially significant because the site is located in Camden's Heritage Conservation Area and is State listed.

The Report assessed the health and condition of thirty-seven (37) trees over 3 metres in height, which, according to the Report, come under the Camden Council Tree Development Control Plan, 2011. There is no such plan but it is presumed the reference is to 2011 DCP B1.5 (as legislated in Camden LEP 5.9 *Preservation of trees or vegetation*).

The site plan located all trees, totalling 37, over three (3) metres in height, including all street trees. Eleven (11) trees were previously approved for removal under DA 195/2012. Two additional mature Forest Red gums (trees 53 and 64), assessed to be of moderate significance in the landscape, are flagged for removal due to modification of the 2012 DA. (The total of 37 trees does not include an extra 2 grey box included as tree 44 b and c to be removed and does include 9 street trees which presumably are not on the subject site and therefore not subject to possible removal; the proportion of 3m+ trees to be removed on the development site along Broughton Street is approximately half  $((11+2+2)/(37+2-9)) = 50\%$ ).

Note the Arborist Report (2.2) states *It takes no account of any tree or shrub under three (3) metres in height.*

In fact, Control 1 of 2011 DCP B1.5 states

- In Clause 5.9(2) of LEP 2010 a tree or vegetation is prescribed as being any tree, sapling or shrub which meets or exceeds one of the following;*
- (a) is 3 metres or more in height;*
  - (b) has a circumference of 300mm (100mm diameter) or more at a height of 1 metre above natural ground surface; or*
  - (c) has a branch span of 3 metres or more.*

The Arborist Report states at

**3.4 Environmental Significance:** *A Tree Management Control Plan (TMCP) applies to the whole of the Camden Local Government Area and is part of the Camden Council Development Control Plan, 2011. This TMCP protects all trees above three (3) metres in height with a girth of thirty (30) centimetres or more, measured at a distance of one hundred (100) centimetres above the ground.*

This is clearly not correct as 2011 DCP B1.5 states *meets or exceeds one of the following* not that the tree must meet all three (a, b, c) criteria.

The relevant DCP is the 2019 DCP which similarly states at 2.4 *Trees and Vegetation*

*Definition of a Tree under this DCP is prescribed as being any tree, sapling or shrub which meets or exceeds one of the following;*

- *is 3 metres or more in height;*
- *has a circumference of 300mm (100mm diameter) or more at a height of 1 metre above natural ground surface; or*
- *has a branch span of 3 metres or more.*

*Definition of Vegetation under this is prescribed as being any native vegetation including any of the following types of plants:*

- *trees (including any sapling or shrub or any scrub),*
- *understorey plants,*
- *groundcover (being any type of herbaceous vegetation),*
- *plants occurring in a wetland.*

The loss of extant vegetation is not covered in the Arborist's Report, but this is required to be addressed.

We find there is little attempt within the documentation of this DA modification to justify the loss of trees and vegetation that are inherent to the significant rural landscape of the Precinct. As shown in the following photos of Broughton Street this loss is significant.

There is no acknowledgment of 2019 DCP Control 6 (a)):

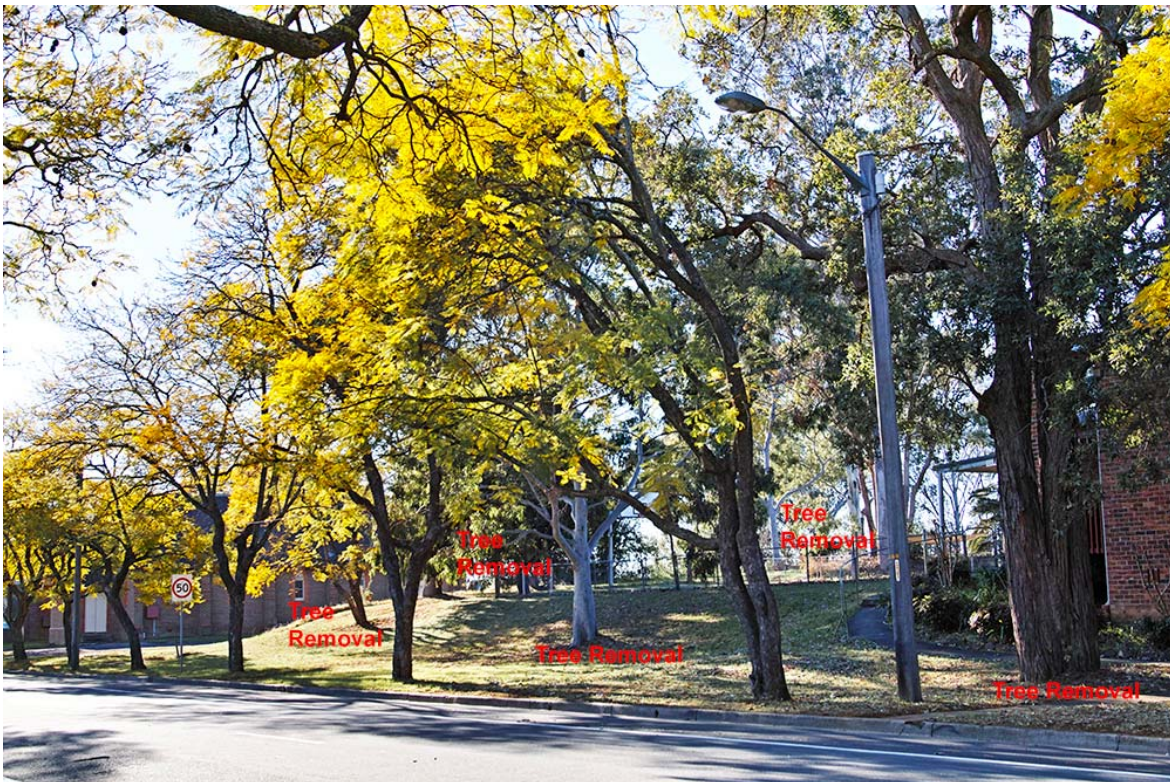
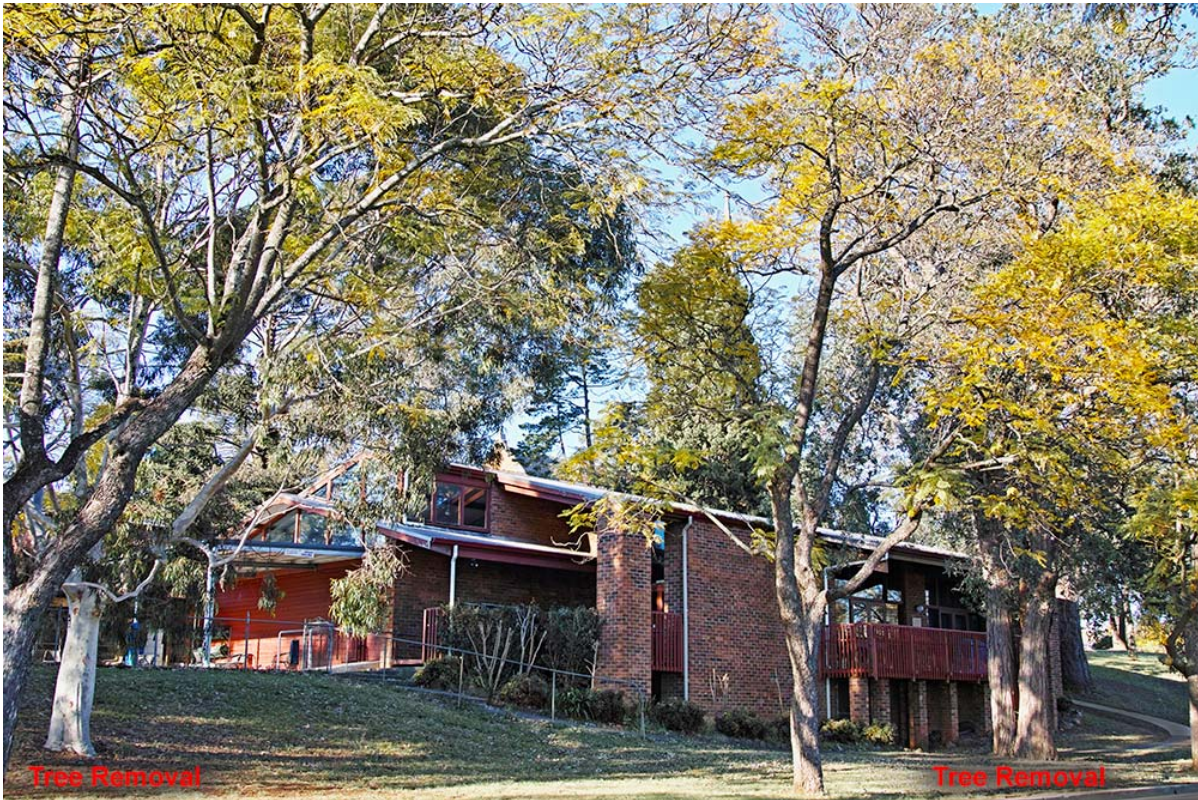
*Approval cannot be issued under this DCP for the removal of a tree or other vegetation:*

- a. that is, or forms part of a heritage item or that is within a heritage conservation area.*

We also note, as acknowledged in the Statement of Environmental effects (SEE) (p. 4), the following loss of vegetation included in the 2012 landscape plan:

- *Removal of previously approved 2 *Pyrus Calleryana*'s to the north of the lobby to be replaced with a balcony and paved area.*
- *Removal of previously approved row of *Rhaphiolepis indica*'s to the south-east of the previously approved auditorium wall to be replaced with paving in this location.*
- *Removal of previously approved *Callistemon* 'Anzac' planting between the existing office and the approved auditorium to be replaced by a new pathway and planter boxes for easier maintenance and cleaner aesthetic.*





*CRAG photos 7 September 2021: Broughton Street*



There is no evidence in the DA Modification 2021 documentation that the loss of vegetation and trees will be redressed adequately, appropriately or at all as required under Control 5 which states:

*If an approval is granted for the removal of a tree or vegetation, up to four (4) replacement trees are required to be planted for every tree removed. This control does not apply to a tree or other vegetation, where Council is satisfied, is dying or dead, is not required as the habitat of native fauna and/or is a risk to human life or property.*

The proposal makes no mention of the impacts of removal of trees and vegetation, or of planting 4 trees for every 1 that is to be removed.

The Precinct is not only State heritage listed and within Camden's Heritage Conservation Area, but its setting is recognised as highly significant.

As stated in the CMP (6, p.56) the setting of the church, *within a fine group of other ecclesiastical buildings that includes the rectory (1859) and church hall (1906), together with the cemetery in a rural landscaped environment resplendent in native and exotic mature trees, fence lines, paths and memorials* is of exceptional heritage significance.

We submit that the loss of vegetation, trees and rural setting has not been appropriately addressed in the documentation of the proposal.



Source: CRAG photo (recent) View from Elderslie

### c. Curtilage encroachment

We strongly object to the layout of the development where it involves disrespectful encroachment, including of toilets and walkways, on the immediate vicinity of the Church, cemetery and columbarium. We describe the following artist's impression and site plan to illustrate our objections.

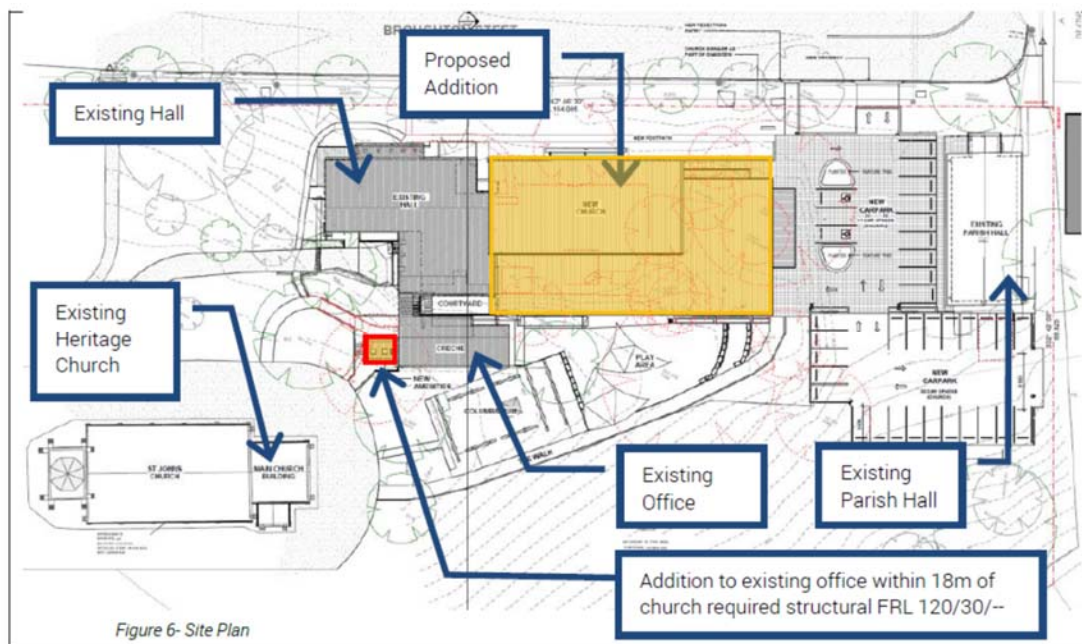


*Source: NBRS Architectural Plans (p. 15) Internal view*

Artist's impression (p. 15) above depicts:

- Between 1906 hall and Church; between Broughton St and Alpha Rd; looking towards Broughton St.
- Carpark nearest Alpha Rd - in foreground with steps to left
- Cemetery – green area left foreground (to left of and immediately adjacent to path)
- Columbarium- adjacent children's playground with sails

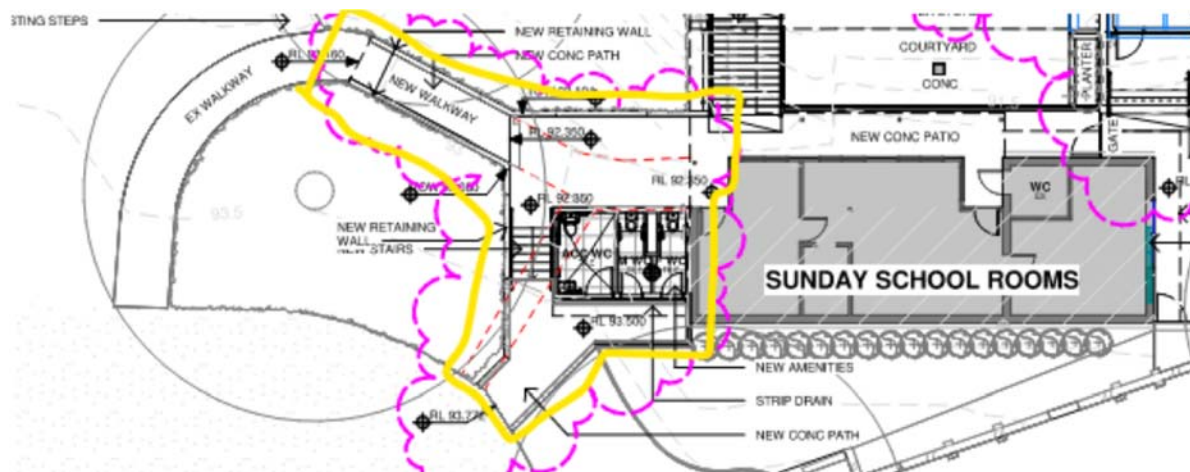
The site plan below depicts the increased development of the Precinct including a new toilet block marked in red which has doors at grade to the south facing the columbarium, but is otherwise higher than the adjacent building.



*Source: NBRs Architecture BCA & DDA/Access Compliance Review (p. 11)*

CHURCH

We also objected about the staging of this toilet block under 2 *d. Funding timeframe and “staged” toilet block.*



*Source: Ethos Urban SEE Section 4.55(2) Modification to 195/2012 (p.12)*

It is very possible that sufficient funds will never be raised for the proposed development, but that the toilet block will be affordable. Its siting and form within the immediate curtilage of the Church is not consistent with its State listing, the Burra Charter, or compliant with the CMP/Addendum conservation policies. Its siting towards the Church, as noted elsewhere is not within the siting of the 2012 development.

We are surprised and disappointed that the HIS does not acknowledge, address, or assess (as also noted under 3a), the heritage impact of the toilet block except to state that tree 64 is to be removed (a large healthy forest red gum) to enable it to be built.

It should not be “staged” within this DA modification but be subject to full and independent analysis and assessment.

## CEMETERY

The path through the Precinct is too close to the cemetery. The layout shows lack of respectful surrounding quiet space and respectful access to it.

## COLUMBARIUM

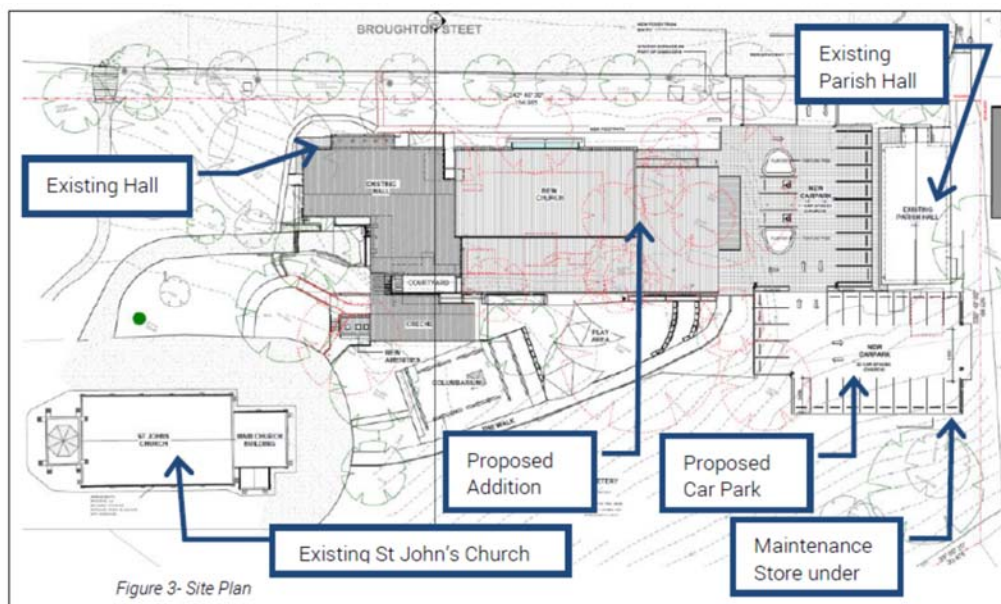
Similarly, there is a lack of respectful and dignified quiet space surrounding the columbarium. The proposed toilet block doors open to it. The children’s playground is too close.



#### d. Carpark design

The design of the carpark shown to the right in site plan below includes

- a paved plaza area between 1906 hall and new hall raised 600mm above 2012 design;
- an above grade area behind 1906 hall and Alpha Road with
  - a utility room housed underneath on right for lawn mowers etc.,
  - a large water tank on left which will appear like a “wall”.



Source: NBR Architecture BCA & DDA/Access Compliance Review (p. 8)

Design objections include:

- i. Unecological and impervious hardstand and concrete materials;
- ii. Water is likely to run towards the 1906 hall and under its footings;
- iii. The rear above-grade and raised carpark
  - would seem to overlook backyards in Alpha Road,
  - would likely be an eyesore from Alpha Road,
  - would be source of noise to residents, especially of Alpha Road;
- iv. The large hardstand areas detract from the Precinct’s significant rural landscape setting.

The impacts on privacy and of noise of the rear above-grade carpark needs to be carefully assessed. Our reading is that its height will be well above that of the houses in Alpha Road. If so, this is unacceptable.

#### **e. Parking**

The NBRS BCA report (p. 14) states the maximum occupancy capacity of the existing 1973 hall and its addition as 694, and suggests that its actual occupancy is unlikely to exceed 500 at any point in time. These numbers do not include the capacity or possible occupancy of the 1906 hall or the Church at the same time. Nor do the numbers include the overlap of occupancy on site when consecutive services, meetings and other events overlap and increase pressure on carparking.

The DCP (as per the 2012 consent) requires carpark spaces at the rate of 1 per 6 persons. At 500 occupants the number of car spaces required is 83, at 400 (one full church service in the auditorium) the required number would be 67.

As only 31 car spaces are included in the plans, it is very likely that parking around the Church itself and in the horse paddock will be sought. It is also noted that the 2012 consent did not allow the Church to be used at the same time as the addition to the 1973 hall as this would increase the need for car spaces.

As the Church intends to sell the horse paddock (and Rectory) to a developer to fund the build, it is very unclear that sufficient parking can be provided.

The 2012 consent of course was predicated on the horse paddock remaining open space (and available for parking) as it is inherently significant to the Precinct as explained in the CMP/ Addendum.



**f. John and Broughton Streets: perspectives/views**



*Source: NBRS Architectural Plans (p.17)*

The perspective provided in above artist's impression is wrong. The extension of the existing deck of the 1973 hall is to provide level access from the western path. Midground, the walkway onto the veranda is to the first floor, and will be higher and more prominent than depicted. The ground floor of the building is not shown appropriately or to perspective.

This part of the building will be more highly visible from the top of John Street than portrayed. Note the softening trees that screen the 1973 hall are to be removed.

The veranda on Broughton St at the first floor is likely to provide an elevated view into back yards of John and Hill Streets.

**g. Changes to 2012 architectural plans**

We state as a caveat to the following objections that public access to all documentation of the 2012 architectural plans has not been provided to us or others who may wish to lodge a submission.

**However, in the 2021 plans, these are changes to the 2012 plans we do know about that should be rejected:**

- i. The addition of a utility room under the proposed carpark to service the external maintenance of the property. There is no access to take a vehicle down to it except through the cemetery.
- ii. Raising the height of the paved plaza between the new structure and the 1906 Parish Hall by 600mm, presumably to make the carpark less conspicuous. This is likely to deflect water under the footings of 1906 hall.
- iii. Deletion of the curved architectural features which softened the stark imposition of the new build.
- iv. Straight paths, rather than the previous curved ones which helped to soften the starkness of the development.
- v. The changed colours and materials that are non-traditional and too numerous; they lack harmony with each other and the Church and 1906 hall (see Architectural Plans p. 13). They are not a “change of materials for a more muted, more contextual response to the warm earthy colours existing in this town precinct” as claimed in the HIS (5.0, p. 21).
- vi. Machine cut sandstone blade wall in front of the 1973 hall on Broughton Street. It is not historically appropriate and unsuccessfully mimics the use of old sandstone within the conservation area, which was of course mainly used for practical rather than purely “decorative” purposes.



- vii. Light grey (seemingly unsmooth) render to the brickwork of the existing Hall and administration block. It is historically inappropriate, conspicuous and possibly reflective.



- viii. Fibre cement external cladding.  
Both light grey and dark grey are chosen for reasons not explained.

Both are highly inappropriate in the heritage Precinct and certainly do not reflect the materials and palette of its extant heritage buildings or the Heritage Conservation Area.



- ix. Increase in the glazed area of the building which is not consistent with the heritage conservation and DCP 2.16.3 (control 3 materials and finishes: large expanses of glass are not appropriate)



*Source: NBRs Architectural Plans: Artist's Impression (p. 14)*

- x. Cross on front façade facing Broughton Street. It is unnecessary, very large and prominent and detracts from the rural setting and the significance of the original Church. The iconic tower and spire of the original Church convey everything necessary about the Precinct in a culturally appropriate way that pays due deference to its history.



*Source: NBRS Architectural Plans: Artist's Impression (p. 16)*

- xi. Change of the southeast car park surface finish from crushed granite to hardstand concrete. It inappropriately detracts from the heritage Precinct's significant rural setting and is not environmentally friendly.
- xii. Deletion of the solar panels. These were important ecologically and to reduce future running costs of the large worship centre and meeting rooms.
- xiii. Addition of 3m shade sails at unspecified positions in the children's play area. They are likely to be in the view corridor and visible from public vantage points.
- xiv. Lack of natural light and lack of ventilation in building (due to building partly being underground).
- xv. Crying room location. The necessity for a crying room was a major reason given in a public meeting with St John's as to why the Church was not up to modern standards and why the new worship centre was required. The plan shows a crying room with no ventilation or windows. This is unacceptable to the well-being of children and disrespectful to families.



And as already covered in detail in our submission:

- xvi. Reduction in vegetation and the number of trees. The removal of vegetation and trees and lack of a plan to compensate for the loss in the State listed Precinct and within the Camden Heritage Conservation Area, creates an unacceptable heritage impact and does not comply with the DCP.
- xvii. Provision and unjustified staging of an additional toilet block adjoining the existing administration building. It is of unacceptable heritage impact on Church curtilage and disrespectfully impacts the Columbarium.

**In the 2021 plans, there are also changes to the 2012 plans we know about that should be reinstated or included:**

- i. Solar panels that have been removed from the 2012 plans should be reinstated.
- ii. Installation of an appropriate fire rated ceiling above the undercroft of the existing 1973 hall.
- iii. Location of the plant must be included. No obviously appropriate place is apparent in the 2021 plans. **Information on where the substantial amount of plant is to be appropriately housed and any noise impacts needs to be provided.**

The Section 4.55(2) Acoustic Report (Section 5.3 Mechanical Plant, p. 10) notes *the location of the mechanical plant for the proposed church auditorium building is yet to be finalised. Furthermore, as neither the type nor the number of mechanical plant such as air conditioners are known at this stage of the project, their noise emissions cannot be calculated to assess their noise impact.*

The 2012 approved design had clearly defined locations for condensers and auditorium fan units. The roof had a parapet to shield such plant from view. Further, the design contained concealed stairways to provide access to the plant.

The location of appropriate housing of air-conditioning plant is problematic. The roof is flat and has no parapet so positioning on roof would not be acceptable.

Potentially affected residents need to know this information and the potential noise impacts before any assessment of the DA modification.

Also not shown in the plans is the location of appropriate housing of the lift plant, which normally sits on top of the lift well and can be quite substantial in size. Again, this could be relevant to building design and therefore assessment of the DA modification.

#### **h. More information is required**

We have found that the publicly provided information was insufficient to make fully detailed comment.

We also believe that there is insufficient information to make a full planning assessment.

We list the obvious omissions:

- i. Updated CMP/Addendum, as was due in 2015 and preferably by other than NBRS, the architect involved in this DA modification.
- ii. Proper detailed plans. None of the plans available to us have provided easily found and deciphered dimensions, which has made visualisation of what is proposed unnecessarily difficult.
- iii. A 4.6 Height Variation Request. The height of the parapet in the 2012 plan was 1.6m and its deletion accounts for much more than the entire height reduction (0.3m) from the 2012 plan in the proposed design. It is likely that the apparent bulk of the 2021 modification will be greater than the 2012 plan and of course significantly more imposing than the existing 1973 hall.

**Any dispensation on the 7m height limit should be subject to re-evaluation as the heritage impacts of the changed design are different.**

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In conclusion, we cannot stress enough that the proposed development of this State heritage listed Precinct is momentous. It is an aberrant blip in the long history of the Precinct that St John's most recent Ministry has envisioned that the Precinct be largely developed. This is despite the fact that it would destroy the Precinct 'for ever', in breach of the terms of the Macarthur gifts to the Anglican Church.

Development of the Precinct is of exceptional public interest. The community is most definitely and defiantly on the public record as being outraged by the planned sale of major areas of the Precinct to fund the new worship centre and their loss to third-party development.

The community claims ownership of the Precinct, which is supported by the terms of the Macarthur trust deeds, and is fiercely protective of it. It is the focus of Camden's identity and sense of place, as it was designed to be in 1836.

What the Church proposes in the 2012 DA modification includes building additions of 1194 m<sup>2</sup> compared to the existing 296 m<sup>2</sup> of the 1973 hall, including two storey additions (sunken ground floor) to provide a new 400 seat worship auditorium, additional office space, meeting rooms, toilet block, a raised carpark level near 1906 hall and elevated concrete carpark to the rear towards Alpha Road with garden maintenance store underneath.

Universally understood heritage guidelines, ones that are included in Camden's planning instruments, require that new development be designed to reflect the general form, bulk, scale, height, architectural elements and other significant elements of the surrounding heritage items and heritage conservation areas. The proposed building footprint is approximately three times the size of St John's Church and much larger still than the numerous other nearby heritage buildings.

We know of no feasibility study or investment analysis that has been undertaken on the Church's building project, as would be usual management practice and due diligence if this were a decision accountable in any business sense. Though there are no "shareholders", the community claims equity in it, and the people of NSW are stakeholders now and in the future.

Many questions of viability remain unanswered. The proposal is largely seen as a white elephant, the additional expenses of which will not be able to be maintained by the congregation. The community believes it is not in the Church's interest to pursue this path, not only for financial reasons but because of the huge reputational damage to the Church within the community. This is the same community from which it seeks to attract Parishioners to fill the new auditorium. Damage to how the Church is perceived has already occurred. The congregation has already shrunk and the number of services reduced. This observed trend predates any covid 19 impact.



We do not believe that the 2012 DA should be able to continue or a modification to it be accepted for all of the reasons we have explained. In any case the changes to the 2012 DA would seem too considerable to be a mere “modification”. In relation to the 2021 modification documentation, we maintain that the conservation policies (that were also required to be followed according to the 2012 consent) have not been addressed or factored adequately into the plans.

In hindsight the 2012 consent, which is claimed to be current, would have been better served by the requirement to lodge a bond to ensure compliance with the consent condition of observing conservation and maintenance policies of the CMP/Addendum. In hindsight, it should also have included a conservation and maintenance plan with a timeline.

We respectfully suggest that any future approval of development of the Precinct include consent conditions with very specific conservation obligations and timed outcomes.

As already argued at length, this proposed development is ill-conceived and not in anyone’s interest, including that of the Church.

Much time and effort will be saved by simply confirming that the 2012 DA has lapsed. If in the unlikely event of a new DA being lodged for a similar proposal, it can be rigorously assessed in light of the current circumstances.

Yours sincerely,

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

Glenda Davis

President

# *Camden Residents' Action Group*

*Incorporated*

*Camden – Still a Country Town*

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3 September 2021

Dear Mr Moore,

***Re: DA 2012/195***

***St John's Anglican Church Precinct, Camden***

***State Heritage Inventory<sup>1</sup> (Item ID 5053423; SHR 02006)***

***Alterations and extensions to the existing church hall, its use as a place of public worship and associated site works***

We discovered several issues while investigating the legality of the Anglican Church's decision to sell parts of the historic St John's Church Precinct and are gradually bringing each issue to the attention of the responsible authorities.

We request a formal review of an operational decision made by Council Officers in 2014. While consistent with Court decisions of the time, it seems that decision is inconsistent with a later decision by the NSW Court of Appeal.

Please note, this request is not related to the current S.96 application (S96 (S96/2012/195/2) and should not be seen as an objection to that application. Our advice is that the issue we raise concerns an operational decision not a planning decision.

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<sup>1</sup> <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=5053423>

The Development Consent of DA 2012/195/1 states that its expiry date is 17 August 2014 unless works have commenced.

We understand Camden Council replied on 10 April 2013, to a letter from Rector Galea dated 8 March 2013 requesting confirmation as to what works may constitute physical commencement of this DA, as follows:

*It is Council's view that survey work and pegging out of the development site, as approved under Development Consent 195/2012, and submission of documented survey work to Council before the lapse of the consent, would be considered as physical commencement, with the meaning of the Environment Planning and Assessment 1979.*

Council's letter cites **Hunter Development Brokerage Pty Ltd v Cessnock City Council; Tovedale Pty Ltd v Shoalhaven City Council [2005] NSWCA 169<sup>2</sup>** as the reason for its view that survey work and pegging out of the development site would be considered as a necessary step and physical commencement of the development<sup>3</sup>.

In the cited case, both councils contended that development consent had lapsed and both developers challenged those contentions. Both appeals against lapsing of consent, heard together, involved subdivision of land into residential lots (not development of a single lot as in DA 2012/195/1). In each case survey work had been carried out prior to the relevant lapsing date.

We ask, did Camden Council receive the *"documented survey work to Council before the lapse of the consent"*?

We ask you to consider the impact of the more recent judgement of 4 July 2013, prior to the lapsing date, of **K and M Prodanovski Pty Ltd v Wollongong City Council [2013] NSWCA 202<sup>4</sup>**. This case clarifies that development is defined and described by the instrument constituting the consent and conditions which specify or regulate the manner and sequence of performance of the development. If work is undertaken as part of a development, such as the erection of a building or the subdivision of land, but is not undertaken in accordance with the consent, it will not "relate to" the development to which consent has been given. That is so notwithstanding that the work would need to be performed to erect the building or complete the subdivision.

We draw to your attention the pre-conditions (2.0 – Construction Certificate Requirements) in the development consent for granting a construction certificate and work that must be done before works commencing (3.0 – Prior to Works Commencing).

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<sup>2</sup> <https://www.caselaw.nsw.gov.au/decision/549fb9f43004262463b9b98e>

<sup>3</sup> Such survey work (including the placing of pegs or other survey equipment) cannot now be classified as engineering work under the EP & A Act (s 4.53, prev. s 95). The Department of Planning has specifically clarified that it is not "physical commencement" and cannot be claimed as such for any DA approved post 5 May 2020 (Clause 124AA *Environmental Planning and Assessment Regulation 2000*).

<sup>4</sup> <https://www.caselaw.nsw.gov.au/decision/54a63a753004de94513dacf4>

The development consent clearly states no work (including site works) (3.0 Section 8, p. 12) can occur until a Construction Certificate has been issued and a Principal Certifying Authority is appointed. It also states as a condition of consent that the survey and peg out of the building must be done by a Registered Land Surveyor during the construction phase of the development (4.0 Section 2).

Whilst the natural and ordinary meaning of "engineering work" may be capable of including physical survey work it is the nature and extent of that work and whether it was work "relating to" the development consent that is in question.

It seems to us that any survey works were not undertaken following the consent conditions and are therefore unlawful and cannot relate to the consent. The absence of a Construction Certificate, Principal Certifier, and tree protection work seems particularly relevant.

We ask the Council to review their 10 April 2013 letter in light of the supporting documentation on hand and the later **K and M Prodanovski Pty Ltd v Wollongong City Council [2013] NSWCA 202** decision and tell us of your current position on the lapsing of DA/2012/195/1.

As it has been nine years since consent, well beyond a period normally understood to be reasonable if there is no physical commencement apparent, it is in the public interest that survey documentation relied upon be provided on the DA Tracker and we request for it to be provided.

We are sure you are aware that this development is highly contentious, not only because of its size and design within the Heritage Conservation Area and the State listed Church Precinct, but because of the means by which the Church intends to fund it by selling off parts of that same Precinct for more development. Since the intention to sell first became public knowledge in 2016, there has been significant and long-standing opposition locally and in NSW against loss of the Precinct.

It is in the public interest that the community understand why, if it is still the Council's position the DA/2012/195/1 did not lapse on 17 August 2014. We respectfully request detailed written reasons as the community may wish to seek independent legal advice on the validity of the Council's decision.

Yours sincerely,



Glenda Davis

President