

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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22 November 2021

Land and Environment Court Commissioner
c/- Alyce Johnson and Emma Fleming, SWAAB
Level 4, 20 Hunter Street
Sydney NSW 2000
Email:

aij@swaab.com.au

cxz@swaab.com.au

Cc: Land and Environment Court

Email: lecourt@justice.nsw.gov.au

Dear Land and Environment Court Commissioner,

Re: Land & Environment Court

Proceedings No. 2021/295333

Graham & Sanders Pty Ltd

Application made directly to the Land and Environment Court pursuant to s. 4.55 (8) of the Environmental Planning and Assessment Act 1979 to modify development consent DA2018/599/1 granted by the Land and Environment Court on 30 July 2021

It has been less than four months since the protracted pursuit of this grossly non-compliant and contentious development application culminated in approval by the Land and Environment Court (LEC) after consent orders were filed on behalf of Camden Council.

This modification application is for the rear section only and includes:

- Removing the hipped roof with Dutch gables and expanding the roof bulk;
- Increasing the floor area of the third level (mezzanine) by 31.6sqm;
- Adding extra skylights in the rear roof;
- Changing the first-floor side facing windows;
- Adding a big window at the eastern side of the building facing Edward Street.

Clearly this modification is unacceptable as it increases the scale and bulk of what is already a completely non-compliant, imposing, inappropriate and disproportionate building in the Heritage Conservation Area (HCA).

It is unclear how the claim can be made that the modification does not involve an increase in building height. As the ground falls away the added roof volume at the rear must result in greater height above ground.

The East elevation, facing Edward Street, shows a new window, large at roughly 2.9m in height, in the third level. The sill height is extremely high compared to the height of surrounding building stock and clearly presents a further loss of privacy.

Also, no shadow diagrams are publicly provided, although additional overshadowing and loss of solar access must occur with the roof extension. We do not accept the claim that there is no increase in overshadowing, which is simply illogical. There is obviously an increase in overshadowing to the south because of the extended roof profile and corresponding bulk.

This modification undoubtedly must exacerbate the detrimental impacts beyond what was approved by the LEC under the consent orders. This DA should never have reached the point it did because it is grossly non-compliant. The many heritage protections have been sidelined as irrelevant and it seems to be lost that the DCP precludes anything over two storey and the LEP height standard in the Heritage Conservation Area is 7m.

The Camden Local Planning Panel (CLPP) twice refused similar iterations to those of the consent orders, despite being recommended by Council staff, because they were grossly non-compliant and degraded the heritage values of the HCA and adjacent and nearby heritage items.

The HCA views, particularly through the adjacent heritage listed cottages in Mitchell Street, pattern of development, roofscape, streetscapes, fine-grain, human scale and rural character are even more detrimentally impacted by the increase in scale and bulk of this modification.

Adjacent and nearby heritage items, already severely compromised, are also more detrimentally impacted through increased overshadowing, potential loss of privacy and further crowding of heritage curtilage.

The DA has been running now for three and a half years with numerous iterations, and there is no guarantee that incremental modifications will not continue. The number of iterations and CLPP refusals indicate that the DA is conceptually flawed and should never have been accepted for exhibition and recommended for approval. Instead, Council staff have repeatedly supported the grossly non-compliant DA despite the CLPP determinations, failure of the LEC conciliation and resounding community (including Councillor) objections.

It is not fair, even though the gross inappropriateness of the proposal is crystal clear, that the community must navigate convoluted environmental planning provisions and legal manipulations of due process that it is not equipped to understand. It is deeply unfair that the community must again and again object about a DA that flouts the legislation and Camden's sense of place and identity, enshrined in all Council policies.

The development also flouts Camden's Local Strategic Planning Statement which aligns with the Greater Sydney Region Plan and Western City District Plan at the local level. The Planning Statement refers repeatedly to the Camden Town Centre's exceptional heritage, its unique and rich cultural and agricultural history and opportunities to strengthen and protect its identity for current and future generations. This development removes a cottage that contributes to the cultural identity according to the HCA heritage listing. It replaces a cottage, which most are happy to use as intended or adapt for business use, with a generic urban building of modern materials and construction that is overscale and would be at home in a green field suburb, not the 1840 Macarthur town.

This modification, yet another iteration of the DA, again demonstrates contempt for Camden's unique heritage and special character, which is highly valued by the community, including its residential community, affected neighbours and businesses that rely on the point of difference of the HCA as a competitive advantage.

This modification continues its ongoing quest to achieve what is profoundly unacceptable in Camden's HCA. The long history of non-compliant iterations of this DA has made a mockery of the legislation, Council policies, the CLPP determinations and the planning process generally.

Council's original SOFAC, based on the CLPP¹ 8.2 appeal determination, the subject of the LEC case, clearly stated that the proposal was an over-development, that the s4.6 variation of height (47%) request was unjustified and that the heritage impact was unacceptable. The CLPP determined that the 4.6 request failed to provide sufficient environmental planning grounds to justify the height contravention having regard to the objectives of the standard and did not demonstrate that compliance with the development standard was unreasonable or unnecessary in the circumstances of the case.

In this case there are no special circumstances, simply an assumption of an entitlement to development yield without regard to the full range of constraints requiring consideration. This approach is not valid as supported in LEC case law².

On appeal to the LEC, the s34 Conciliation Conference was terminated as unsuccessful.

¹ Camden Council Camden 15 October 2019 *Local Planning Panel Minutes CLPP01* available at <https://www.camden.nsw.gov.au/assets/pdfs/Development/CLPP/2019/CLPP-MINUTES-15-October-2019-final.pdf>

² **Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191** Available at <https://www.caselaw.nsw.gov.au/decision/5bf636fae4b0a8a74af0b08d>

To the community's astonishment, Council subsequently exhibited another iteration, with greater height exceedance (60%). Despite community objections, Council presented consent orders for that iteration to the Court. The CLPP and the community never accepted that the height variations of the various previous iterations were justified, and yet the consent orders were for a greater height variation at 11.2m, 4.2m above the height limit and approximately double the height of most of the surrounding cottages. Arguably the 4.6 LEP clause was never intended to support a 60% height variation. Even with very specific and unique planning reasons, surely such an excessive variation would require a spot planning proposal.

This modification application seeks to make what was never shown to be justified even worse by increasing the bulk of the rear roof (which was inexplicably increased to three-level height from the CLPP 8.2 appeal iteration two-level height). The development is fully three-storey despite the third level of the rear section being claimed to be a "mezzanine". This development does not respect the HCA and its two-storey limit provision to protect the human scale of its building stock.

As the Local Government NSW³ recommends, there should be clear criteria for assessing variations under LEP 4.6. Although presumably required, as usually addressed in Court cases⁴, it is not apparent that any criteria, including the objectives of LEP 4.3 Height⁵ were considered in drawing up the consent orders for the Court. The Court decision⁶ did not address how the s4.6 variation request justified a 60% height variation. As a 47% exceedance was found by the CLPP not to have been justified, the community feels entitled to a full explanation.

We submit that without that explanation there is also no basis upon which to justify the expansion of the height exceedance and corresponding bulk through expansion of the roof space.

³ Local Government NSW May 2021 *Submission in response to the Review of clause 4.6 of the Standard Instrument LEP – Varying Development Standards: Explanation of Intended Effect* Available at [https://lgsw.org.au/common/Uploaded%20files/Submissions/2021/LGNSW Submission Clause 4.6 Variations to development standards EIE.pdf](https://lgsw.org.au/common/Uploaded%20files/Submissions/2021/LGNSW%20Submission%20Clause%204.6%20Variations%20to%20development%20standards%20EIE.pdf)

⁴ *Brunswick Project Developments Pty Ltd v City of Canada Bay* [2016] NSWLEC 1531 Available at <https://www.caselaw.nsw.gov.au/decision/58252c51e4b0e71e17f5530c>

Al Maha Pty Ltd v Marrickville Council [2015] NSWLEC 1494 Available at <https://www.caselaw.nsw.gov.au/decision/565ba12be4b003c5681fb06d>

Statewide Planning Pty Ltd v City of Canterbury Bankstown [2017] NSWLEC 1499 Available at <https://www.caselaw.nsw.gov.au/decision/59b5f536e4b058596cbaa365>

⁵ *Camden LEP 4.3 Height (1) The objectives of this clause are as follows:*

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
 - (b) *to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - (c) *to minimise the adverse impact of development on heritage conservation areas and heritage items.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

⁶ *Graham & Sanders Pty Ltd v Camden Council* [2021] NSWLEC 1433 Available at <https://www.caselaw.nsw.gov.au/decision/17aea75f2b178d5e918848c9>

The community wishes to take the opportunity to express its outrage that:

- the Consent Orders, after the termination of the conciliation conference were for a building taller than what had already been rejected;
- both the Consent Orders and Court approval were completely inconsistent with the CLPP 8.2 appeal reasons for refusal and Council's original SOFAC;
- Council ignored its own SOFAC to give the developers what they wanted.

The approval of this DA ignored the local voice and the Local Planning Panel determinations, which were based on Council policy and the LEP; it would seem to those outside the closed doors that the consent orders were used to avoid the tests of LEP 4.6 variation to a legislated standard (LEP s4.3 Height).

Now the modification seeks to further increase the scale and bulk, and the height towards the rear.

Concerningly, as pointed out by Local Government NSW⁷, the requirement to justify departures to development standards under s4.6 only applies when development is granted, not when a s4.55 modification application is made. In this modification, the impact of the height exceedance is exacerbated and logically should be addressed under a s4.6 variation request in terms of the objectives of s4.3 Height.

In this case the approved impact is already excessively detrimental and the modification would make it more so. Incremental modifications clearly favour the developer and potentially exclude proper scrutiny of the development's absolute impact.

No explanation has ever been provided as to why Council staff are not required to assess and recommend development consent according to legislation and policy. The community expects no less and is calling for the matter to be investigated. The DA should never have been recommended for approval and never have caused disbursement of community resources on Court actions.

Whilst we do not suggest it as a cause of Council's continual support of the developers despite the legislated height limit and Council policy, we take this opportunity to note that a Land and Environment Court - Working Party⁸, identified that "inappropriate political decision-making" can be a problem. It also identified that consent orders can be used for unpopular decisions so that the decision will be seen as one by the Court, not the Council.

⁷ Ibid

⁸ Land and Environment Court - Working Party 19 September 2001 4. *Council Processes*; 9.5 *Consent Orders* Available at http://www.lawlink.nsw.gov.au/report%5Cldpd_reports.nsf/pages/lec-working-4-council-processes
http://www.lawlink.nsw.gov.au/report%5Cldpd_reports.nsf/pages/lec-working-9.5

Although Local Planning Panels have since been instituted to ensure transparency and accountability, the determinations of the CLPP and its reasons for them have been swept aside, without explanation.

Whatever may or may not have influenced the process that led to the consent orders of Camden Council being approved by a Commissioner of the Court on 30 July 2021, from the community's perspective and in its opinion, the outcome does not pass the pub test or any other test of probity.

The community relied on the Court as the last defence against loss of what it so highly values. It is extremely disappointed that its approval did not:

- explain how community objections and the rationality of their arguments were considered in the decision,
- question the history of the DA and why consent orders would be supported by Council despite the Planning Panel refusals and gross non-compliance with legislation and policy.

We also point out that the DA approval not only flies in the face of the LEP, DCP and all Council policies, but also objectives of the EP&A Act (s1.3) such as:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(c) to promote the orderly and economic use and development of land,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

It is no wonder that the community has lost confidence and faith in its Council and the planning system.

As was pointed out strongly to the Commissioner on 20 May 2021, the day of the Consent Orders hearing, an approval would send a signal to developers. One developer in particular has since met with the community and stated that DA approval is not a matter of law or policy, but what can be got away with and indicated that 14.8m height will be sought. When asked why, as the height standard is 7m, the answer was because Council consented to and the Court had recently approved 11.2m. In other words, the LEP is irrelevant.

This is not good planning. There is no place for the LEP or DCP in this approach and the community and neighbours are also irrelevant. It is not how the system is meant to work.

We refer to our previous numerous submissions and presentations to Camden Council, CLPP and LEC, which are attached. We should not have to expend this much effort, all to no avail, to protect what is already protected in legislation and policy. The number of community objections is almost certainly a record in Camden if not NSW, but all have been seemingly ignored. Something is not right here.

The community is frustrated by what to it appears as a manipulation of process and obviation of planning standards and policies to achieve a development outcome, inexplicably endorsed by Council staff; an outcome that hands advantage to this and other developers at the expense of the wider community and at the cost of our heritage that has been legislated for conservation for future generations.

The pattern continues with this modification application. It has been successful so far. This modification amounts to again playing the authorities for an outcome that the LEP and DCP do not permit and despite loud and long community objection.

Clearly the community is beyond frustrated and has lost faith in the integrity of the planning system, at least in relation to the process of this DA approval and its obvious ramifications.

We are told that the approval does not create a precedent and that all proposals are assessed on merits. We know that developers and even planners do not see it that way. Unfortunately, much damage is being done with would be developers arranging themselves for easy pickings.

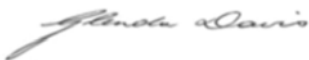
It is time to decide whether the LEP and DCP are to be honoured, or not.

The modification application should be thrown out.

We submit that the Court approval should be re-evaluated under s4.15. We consider it to be in the public interest that what is seen in the community as being unjustly and unfairly approved, due to gross non-compliance with the planning instruments, be transparently and independently assessed.

We request that the Court exercise all its functions and discretions to restore faith in the planning instruments and the planning process by overturning the approval.

Yours sincerely



Glenda Davis
President

Camden Residents' Action Group

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9 June 2021

Land and Environment Court Commissioner
c/- Alyce Johnson and Emma Fleming, SWAAB
Level 4, 20 Hunter Street
Sydney NSW 2000
Email: aij@swaab.com.au
Cc: Land and Environment Court
Email: lecourt@justice.nsw.gov.au

**Re: Land & Environment Court (Proceedings No. 81653 of 2020)
Camden Council ats Graham & Sanders
Consent orders hearing 18 June 2021.**

We strongly object to the proposed development at 20 Elizabeth Street Camden, which is located in Camden's Heritage Conservation Area (HCA) and adjacent to and in the near vicinity of a number of heritage- listed items. In particular, the iteration of the proposal that is presented to the Court is essentially similar to those that have been previously refused or failed in conciliation due to failure of justification for height exceedance and because of detrimental heritage impacts. This iteration also does not satisfy many of the contentions raised in Camden Council's Statement of Facts and Contentions (SOFAC).

We further state that our reasons for objection are supported by a legal statement on the Variation Request provided by John Paul Merlino of HWL Ebsworth Lawyers (see Appendix 5) and a heritage impact report provided by renowned heritage advisor Robyn Conroy of Conroy Heritage Planning (see Appendix 6).

Our reasons for objection, which reflect the views of the community, are set out to align with those of the contentions of the SOFAC. Our submission elaborates upon and justifies these reasons and also outlines the inaccuracies of the Camden Local Environmental Plan (LEP) Clause 4.6 request March 2021 to vary the height standard of LEP 4.3 (Variation Request) and Heritage Impact Statement March 2021 (HIS) accompanying the latest plans.

Our submission and reasons for objection are set out under the following headings:

1. Insufficient Environmental Planning Grounds to Justify Contravention of LEP 4.3 Height of Buildings Standard (SOFAC Contention 1)

History of Variation Requests (p. 4)

Significantly greater height exceedance of height standard (60%) than previously refused by Camden Local Planning Panel (LPP) (47% at the front portion only of the proposed building).

Variation Request March 2021 (p. 5; Appendix 5)

No substantive difference in arguments than previously submitted in unsuccessful s4.6 Variation Request

Council's SOFAC states that the Court would not be satisfied with the s4.6 Variation Request would be sufficient and well founded (for above noted maximum (partial) height exceedance of 47%)

Independent legal statement that the s.4.6 Variation Request does not provide sufficient planning ground or demonstrate that it is in the public interest, and that to accept it would be an error at law. (Appendix 5)

Non-compliance with Objectives of LEP 4.3 Height standard (p. 6)

Adverse heritage impacts as independently assessed (p. 6)

Deficiencies in HIS (p. 7; Appendix 1; Appendix 6)

Methodology

Fails to assess contributory status of extant cottage

Relies on unsubstantiated statements

Not in public interest (p. 7; Appendix 2)

Irrelevant claims of environment planning grounds (p. 8)

No particular circumstances of the case (s4.6(a)) (p. 13)

Conclusion: Insufficient environmental planning grounds (p. 13)

2. Overdevelopment of the Site (SOFAC Part B (2) pp. 10-12) (p. 14)

The Proposal remains an overdevelopment of excessive height and scale in the HCA and in relation to adjacent and nearby heritage items

3. Inconsistency with Character of the HCA (SOFAC Part B (3) pp. 12-14) (p. 14)

- i) Demolition of extant contributory cottage in HCA (p. 15; Appendix 6)**
- ii) Non-compliance with LEP 5.10 Heritage conservation (p. 16; Appendix 6)**
- iii) Non-compliance with LEP Aims of Plan (p. 17; Appendix 3)**
- iv) Non-compliance with Camden Development Control Plan (DCP) and desired future character (p. 18; Appendix 4; Appendix 6)**
 - DCP analysis: non-compliance (p. 18; Appendix 4)
 - Non-compliance with Camden Town Centre Urban Design Framework (UDF) (p. 19)
 - Non-observance of the Burra Charter (p. 19)
 - Desired future character: non-compliance (p. 20)

4. Community Request (p. 20; Appendix 7)

Sincerely request that this vexatious proposal of many iterations, all gross over-developments, be refused, as was indicated in Council's pre-DA advice. It is in the public interest that the community have faith in the planning instruments and confidence in making life and investment decisions. If approved it would be a loss to the greater good, both in terms of loss of irreplaceable heritage and certainty in the planning process.

APPENDIX 1 Deficiencies of Heritage Impact Statement (March 2021)

APPENDIX 2 Objectives of CLEP 4.3 Height standard and B4 Zone

APPENDIX 3 Non-compliance with LEP Aims of Plan

APPENDIX 4 Non-compliance with DCP: Camden Heritage Conservation Area

APPENDIX 5 Independent statement on legal inadequacy the Variation Request (HWL Ebsworth Lawyers)

APPENDIX 6 Independent statement of heritage impact (Conroy Heritage Planning)

APPENDIX 7 CRAG submissions:

2 March 2021 re public submission of iteration of proposal post termination of s34 Conciliation conference.

Other submissions and LPP presentations.

This Appendix of the history of community objection is included for convenience and in the interests of full disclosure of the continuation of this DA with many varied iterations of non-compliant proposals.

1. Insufficient Environmental Planning Grounds to Justify Contravention of LEP 4.3 Height of Buildings Standard (SOFAC Contention 1)

History of Variation Requests

The 4.6 Variation Request in accordance with LEP 4.6 (3) attempts to demonstrate

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with LEP 4.6 (4)(a)(ii) justification of sufficient environmental planning grounds requires that the Variation Request to show that the proposed development is in the public interest because it is consistent with the objectives of LEP 4.3 Height and the B4 zone.

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

Author	Date	Proposed Max. Height (m)	Exceedance sought 4.6 request	Outcome
CPS	May 2018	11.47	64%	Refused Camden Council
CPS	Nov. 2018	10.3 Submitted to LPP 10.1	47% Submitted to LPP: 44%	Refused Camden LPP 21 May 2019
CPS Revision D	Aug. 2019	Front 10.3 Rear 7.4	47% 6%	Refused Camden LPP 8.2 Appeal 15 October 2019
PI	8 Dec. 2020	11.2	60%	Not conciliated. LEC s34 process terminated as advised 23 Dec 2020
PI	3 Mar. 2021	11.2	60%	LEC Consent orders pending

The Variation Requests to date have been unsuccessful.

Variation Request March 2021

We find no substantive difference in arguments in the PI Variation Request compared to those refused in the LPP 8.2 Appeal.

As noted in the above table, the LPP 8.2 appeal refusal, the subject of this Court case, was for an iteration of maximum heights of approximately 10.3m, 47% exceedance of the statutory control at the front portion of the proposed building and 7.4m at the rear portion of the building, occupying approximately half of the entire building footprint, of less than 6% exceedance.

The latest plans obviously beg the question- how is it possible to argue that a maximum 60% height exceedance over most of the whole building is reasonable, when 47% exceedance on the front part of the proposed development in the Camden LPP 8.2 Appeal was refused by the LPP?

The LPP determinations of 21 May and the 8.2 Appeal of 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.

As concluded by our legal representative (HWL Ebsworth Lawyers, 3 June 2021, para. 13; Appendix 5)

The Court cannot be satisfied, either in respect of the requirements under cl 5.10 of the CLEP or in respect of the matters for satisfaction under cl 4.6 of the CLEP. Particularly, the Variation Request does not provide sufficient planning grounds or demonstrate that it is in the public interest having regard particularly to the objectives of the development standard.

We would urge the Court not to approve the Application despite the parties' reaching agreement and intending on entering into consent orders. The Court does not have the jurisdiction to make the orders sought in the circumstances set out above and therefore, making the orders could constitute an error at law.

Non-compliance with Objectives of LEP 4.3 Height standard

That an increase in scale over the requirements of the LEP and DCP should not be supported is reinforced by the Objectives of LEP 4.3 Height:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) to minimise the adverse impact of development on heritage conservation areas and heritage items.*

The maximum permissible height under the CLEP for development on this site is 7m including roof form. The proposed development, as stated in the latest 4.6 Variation Request (dated 3 March 2021) is 11.2m. This equates to a 60% exceedance of the statutory control and an additional third floor level, which is also in contravention of the DCP limit of two storeys.

The arguments in demonstration of 4.6(3)(a) and (b) can therefore be expected to rely on new design elements of this current iteration being sufficient to show that the above objectives of the height standard are achieved and that there are sufficient environmental planning grounds for a large height exceedance to a maximum of 60% over the entire building.

Adverse heritage impacts as independently assessed

As submitted in Robyn Conroy's Review of Heritage Impacts (June 2021; Appendix 6) the new design elements of this iteration do not offset its detrimental heritage impact on the HCA and heritage items, particularly in terms of height, bulk, scale, visual impact, disruption of views and historic development pattern. The Review questions the approach taken by this HIS and refutes its conclusions.

We also draw attention to the conclusion reached by Robyn Conroy, who is familiar with the numerous iterations of this proposal and has previously provided her expert opinion to the LPP, that this development application should be refused. Ms Conroy also notes in her conclusion that *zoning and development standards do not over-ride the LEP's Aims and Objectives relating to the need to protect Camden's environmental heritage, including the traditional pattern of development within the Camden HCA. Any development must satisfy these aims and objectives. This includes (and is particularly relevant to) consideration of a request for variation of development standards as per Cl. 4.6 of the LEP.*

Deficiencies in HIS

We understand that the Variation Request relies on the arguments and heritage assessment of the latest HIS (March 2021) submitted with these plans before the Court. As noted above Robyn Conroy's Review of Heritage Impacts (June 2021; Appendix 6), which employed best practice methodology, concluded that the proposal would result in adverse heritage impact on the HCA and heritage items.

We cover our concerns with the HIS in more detail in Appendix 1 and hereby submit that it is flawed and should not be used to support the Variation Request.

In summary, the deficiencies in the HIS, as explained in Appendix 1, are that it

- does not employ best practice methodology in assessment of heritage impact by not employing for instance:
 - NSW Heritage *Design in Context*
 - Burra Charter
 - Camden Town Centre Urban Design Framework (UDF) and its statutory expression of the HCA's unique character and desired future character;
- does not assess the extant cottage as contributory to the HCA as an analysis of the Heritage Listing of the HCA in accordance with LEC Planning Principles¹ would clearly indicate;
- makes false arguments based on assertion and unsubstantiated assumptions.

Not in Public Interest

Section 7 of the Variation Request (pp. 11-14) addresses 4.6(4)(a)(ii), which requires that the proposed development will be in the public interest because it is consistent with the objectives of both the height standard and the B4 zone.

We address and refute claims of satisfaction of these objectives in detail in Appendix 2.

The Variation Request (p. 12) is predicated on a self-serving value judgement that additional commercial floor space is preferable to conservation of the HCA and heritage items and 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.

¹ Helou v Strathfield Municipal Council [2006] NSW LEC 66. Paras. 43-46

The answer is clear. The planning instruments quite deliberately, on the grounds of heritage conservation, do not provide for a third level and the additional commercial floor space sought. The height standard in the HCA has 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 written to be changed to accommodate private investment decisions and preferred return outcomes.

The site is the same, despite the numerous iterations for its development, and is similar to many sites elsewhere in the HCA. No new arguments are presented with the latest iteration that *compliance with the development standard is unreasonable or unnecessary in the circumstances of this case* (4.6(a)). The case is in no way special.

On balance we find no compelling argument that the proposal is in the public interest, which is served by due process and certainty and confidence in the planning system and its planning rules.

Irrelevant claims of Environmental Planning Grounds

The Variation Request, in Section 5 (pp 5-10), provides a list of claims that there are sufficient environmental planning grounds as required under LEP 4.6(3)(b). We submit that these claims do not pertain to environmental planning grounds, but rather are self-serving excuses for non-compliance with the planning instruments. Also, the claims made in this section do not obviate that compliance with the development standard has not been shown to be unreasonable or unnecessary in the circumstances of the case (LEP 4.6(3)(a)) or that the proposed development will not be in the public interest because it is inconsistent with the objectives of both the height standard and the B4 zone as covered above.

The claims in Section 5 are also refuted as follows.

1. *The non-compliance is only applicable to the pitched roof form, with the rest of the development (ground and first levels) being entirely compliant with the 7m height limit. The point of maximum breach is centrally located for part of the roof and is set away from the sensitive front and side boundaries and significantly setback from the rear boundary to facilitate significant green space and landscaping to the rear of the site and setback from the curtilage and views to and from the heritage items within Mitchell Street. The proposed height breach will therefore not result in any adverse impacts on the amenity of the locality.*

Comment: It is nonsense to suggest that the roof form does not contribute to height. The roof form is unusually large to accommodate an additional floor. The reason for the roof form is pursuit of return on investment despite the planning rules. Heritage principles would dictate no more than two storey height and a compatible fine grained and human scale.

2. *The design of the subject development has been extensively amended following numerous discussions with Council and relevant referral bodies. This includes amendments to the scale of the development, building setbacks, landscaped area, building form and massing (including roof form), and architectural design and materiality..... Insisting on strict compliance with the 7m height limit would require the removal of the traditional pitched roof form which would be completely uncharacteristic of the built form within the streetscape – both historic and newer infill development - thus prejudicing the visual aesthetic of the heritage conservation area and the setting of heritage items in the vicinity of the site.... Insisting on strict compliance with the 7m height limit would require the removal of the traditional pitched roof form*

Comment: the reason for numerous discussions and amendments is that the Applicant is not accepting the planning controls. The height control does not prejudice the visual aesthetic, and on the contrary is in place to protect it. This control does not restrict a pitched roof, only a third level, which in any case is not permitted under the DCP. It is unclear why examples of pitched roofs in historic and newer infill development are provided as they demonstrate that pitched roofs and two levels are compatible. It is incorrect to claim that a pitched roof requires height exceedance, and a nonsense to suggest that a pitched roof requires a 60% exceedance.

3. *It is the height variation which allows for a reduced footprint for the proposed building which facilitates these beneficial outcomes that relate to the pattern of rear setbacks, maintenance of the “green spine” in the locality and a positive response to the HCA.*

Comment: the height variation accommodates a third level. The “beneficial” outcomes are not discretionary, they are required and should have been included in the initial DA and subsequent iterations. They are not a reason to claim any dispensation on height.

4. *a significant rear setback ensures that view corridors from public spaces looking towards the site and over heritage items will be maintained and enhanced.*

Comment: this statement is incorrect. Whilst the view corridors with this iteration are preferable to previous iterations, they are demonstrably not maintained and certainly not enhanced. For instance, the view from the public space of Mitchell Street looking towards the adjoining heritage listed cottages is badly compromised.

5. *...the amended development includes building setbacks of 4m from the front boundary, 14.6m from the rear boundary, 1.8m from the southern side boundary, and 1.59m-1.8m from the northern side boundary.*

Comment: the increased setbacks are welcomed. However, they are not necessarily sufficient to reinforce the development pattern of the HCA and its residential housing stock with modest building footprints and large gardens and side setbacks. They are also

not an argument that is relevant to the height exceedance which is predicated on insistence of three levels.

6. *The site is flood affected and consequently basement parking is not feasible. Car parking has therefore been proposed at ground level, with the commercial floor space principally located at first and mezzanine levels. This has resulted in an increase in height of the overall development that contributes to the height breach. The maximum height is necessary to appropriately deal with the flood constraints that affect the site, whilst ensuring an acceptable yield of commercial floor space is provided to contribute to the vitality of Camden Town Centre and necessary car parking is accommodated on site.*

Comment: Flooding is a known constraint and should be respected through siting space-hungry commercial development elsewhere. This site in the HCA does not allow two levels of “habitable” commercial space.

Flood affectation is not an argument for height exceedance because

- The flood-liability status of the area was known when the CLEP was made.
- It was known when the land was zoned B4.
- It was known when the 7m height limit was included in the CLEP.
- It was known when the site was purchased by the current applicant.
- There is no environmental contradiction between the setting of habitable areas at 71.60 AHD and a finished roof height of 7m above ground level.

7. *It is considered that there is an absence of any impact of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character.*

Comment: as clear in the HCA listing and as already covered there is considerable impact on amenity and area character that would be caused by the non-compliance. This claim is self-serving, not substantiated and refuted by experts, residents and the general community who highly value the HCA.

8. *The proposed height breach, being the roof of the building, allows for an increase in commercial floor space on the site without giving rise to any adverse heritage, aesthetic or amenity impacts (as outlined above). Maximising commercial floor space in this location is consistent with the aims and objectives of the B4 Zone and Camden Town Centre, where there is an identified shortfall in high quality commercial floor space.*

Comment: the common theme throughout the 4.6 Request is that the Applicant insists on increased habitable floor space that is simply not permitted by the planning instruments. There are many opportunities to invest in the Municipality. It is clear that property prices are comparatively lower in the HCA due to heritage and flooding constraints, which are very well known. It is not fair play for a developer to persist in trying to circumvent the planning rules for increased return at the expense of residents, other businesses and conservation of heritage into the future. No evidence is presented to substantiate the claim that maximizing commercial floor space is more important than the planning controls.

Even if there was a shortfall of commercial space, which in any case is not apparent, it is not identified and not substantiated.

9. *The proposed development meets the objectives of the development standard and meets the objectives of the B4 Mixed Use zone (as further detailed in Section 7).*

Comment. As noted above and refuted in detail in Appendix 3, claims that the proposed development meets the objectives of the height standard are unsubstantiated and wrong. Claims that the proposed development meets the objectives of the B4 Zone are also addressed in Appendix 3. Further as pointed out in Robyn Conroy's Review of Heritage Impact (Appendix 6) this claim is not substantiated because it does not meet the objectives of LEP 5.10 Heritage Conservation. We also contend that it cannot be substantiated because it does not meet the general aims and objectives of the LEP 1.2 (2) as examined in Appendix 2.

10. *The proposed development achieves the objects in Section 1.3 of the EPA Act.*

Comment: the 4.6 Request cherry picks particular objects (as highlighted below) and ignores the spirit of the Section 1.3 which includes all of these referenced objects.

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

Comment: this proposal does not conserve the resource of the HCA and is not in the interests of the community.

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: this proposal does not integrate environmental and social considerations, but is a quest to maximise investment return at their expense.

- (c) a. to promote the orderly and economic use and development of land,*

Comment: this proposal does not conserve the resource of the HCA and is not in the interests of the community. The 4.6 Variation request claims that the proposal satisfies this object as the site is underutilised commercially. This is nonsense as the corollary is that all of sites within the HCA with small building footprints are underutilised, yet the spacious and small-scale nature of the HCA is fundamental to its significance and is highly valued by the community.

(d) to promote the delivery and maintenance of affordable housing,

Comment: this proposal actually removes housing within the HCA. At the time of purchase the cottage was residential and many cottages remain in affordable residential use. This adds to the vibrancy of the town and is concept endorsed by the Urban Design Framework.

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

Comment: this proposal does not protect the built and natural environment and it took the LPP to require the retention of the large gum tree at the back of the property. A large building footprint and large areas of hardstand add to the urban heat island effect and are generally disastrous to any habitat.

(f) b. to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)

Comment: the 4.6 Variation Request claims that the cottage is dilapidated and has a negative effect on the HCA, and that its demolition and replacement is an improvement. This opinion is not substantiated.

The cottage is not dilapidated. It is currently offered for lease and is in apparent good condition.

As covered above it is very reasonably arguable that the cottage is contributory. Even if it were dilapidated would be worthy of restoration, and possible extension.

(g) c. to promote good design and amenity of the built environment,

Comment: the 4.6 Variation Request claims that the proposed development promotes good design and amenity which is responsive to its setting and context and will not prejudice the heritage significance of nearby heritage items or the HCA.

As already covered, this opinion is self-serving and unsubstantiated. Non-compliance with the heritage control of the height and storey limit cannot be argued to be appropriate and well-considered. Clearly what is proposed is excessively over- height and of a scale that clearly dominates and is not compatible with adjacent properties, the streetscape or its cottage-dominated block.

(h) d. to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

Comment: it is not apparent in what is exhibited that the proposed development complies with disabled access requirements or fire regulations. It is also of note that the site is within a high hazard flood area. It is not clear that the proposal does promote protection of the health and safety of occupants.

What is proposed arguably does not satisfy any of the above objects of the EPA Act.

No Particular Circumstances of the Case (s4.6 (a))

The 4.6 Variation Request (p. 10) goes on to claim that the cited environmental grounds are not general propositions, and that they are unique circumstances, particularly the flood affection and heritage constraints of the site.

This is clearly untrue:

- the height standard is long standing and was set in full knowledge of the heritage and flooding constraints of the HCA
- Any developer in the largely flood-affected HCA, or in other parts of NSW with similar constraints, could present the same arguments. If they were accepted the HCA would be lost and the planning controls would be rendered void.

Conclusion: insufficient environmental planning grounds

We do not find any reasonable environmental grounds for non-compliance with the height standard, or with any of the objectives of the LEP, particularly those reinforced by LEP 5.10 Heritage conservation.

The objective of LEP 4.6 is to achieve better outcomes from development by allowing flexibility in particular circumstances.

There is nothing particular about the circumstances of this case, and this has been determined twice before by the LPP.

What is proposed does not 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.

2. Overdevelopment of the Site (SOFAC Part B (2) pp. 10-12)

The Proposal remains an overdevelopment of excessive height and scale in the HCA and in relation to adjacent and nearby heritage items

The SOFAC contends that the proposal refused on LPP appeal was an overdevelopment of the site because of its bulk and scale and excessive maximum height at 47% above the height limit at its front portion. It also contends 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 also incorporates a third level.

Logically the proposal before the Court is more of an overdevelopment of the site. The contentions of the SOFAC that

- *the height, bulk and scale result in the development unreasonably dominating the streetscape and adjoining properties,*
- *the proposed development fails to establish a bulk and scale that is consistent with the character, scale and massing of building elements that is sought from the suite of planning controls applicable to the land,*

unequivocally remain valid.

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.

The Camden HCA, which is highly valued by the community, has long been regarded as a unique asset to be conserved in all council policies and strategies and land within it is subject to compliance with many planning controls to ensure compatibility of any development.

The HIS makes statements about the compatibility of the proposed overdevelopment in the HCA and compliance with heritage controls and objectives including those of the DCP. The SOFAC refers to non-compliance with DCP 2011 whereas the HIS refers to DCP 2019. The objectives and controls of the earlier and later DCPs are similar and not materially different.

The inconsistency of what is proposed in the HCA and its non-compliance with the LEP and DCP are addressed in the next section.

3. Inconsistency with Character of the HCA (SOFAC Part B (3) pp. 12-14)

Council's SOFAC contends inconsistency with the character of the HCA because

- a) the development is inconsistent with the existing character of the HCA and would have a detrimental impact on the heritage items in the vicinity of the site;
- b) the development does not satisfy LEP 5.10 (1) heritage conservation objectives and 5.10(4) on the effect of proposed development on heritage significance;
- c) the height, bulk, scale and architectural expression of the development would not be compatible with the significant characteristics of the conservation area
- d) the development is inconsistent with the provisions of the DCP including protection and conservation of heritage in accordance with the principles of the Burra Charter and the objectives and controls of the Camden Heritage Conservation Area.

These contentions of the SOFAC remain valid and are supported in detail by Robyn Conroy's heritage report (Appendix 6).

The development proposes:

- i. demolition of a contributory cottage in the HCA,
- ii. non-compliance with LEP 5.10 Heritage conservation,
- iii. non-compliance with the DCP and desired future character.

ii) Demolition of extant contributory cottage in HCA

As explained in more detail in Appendix 1, the extant cottage is contributory to the HCA according to the HCA's heritage listing². Whilst the HCA listing is referenced in the HIS there is no attempt to assess the relationship of it with the cottage and explore whether it is contributory.

Its dismissal in the HIS as "undistinguished" misses the point entirely of why the HCA is of heritage and cultural significance. Despite the numerous iterations for development of the site in the HCA, no justification has ever been provided for demolition of the cottage.

This omission is contrary to the LEC Planning Principle³ of consideration of the impact of removing an original heritage element through analysis of the HCA listing. The cottage is not dilapidated and is advertised for lease.

² NSW Heritage *Camden Town Centre Heritage Conservation Area* Available at <https://apps.environment.nsw.gov.au/dpcheritageapp/ViewHeritageItemDetails.aspx?ID=1280090>

³ Land and Environment Court *Planning Principles: Helou v Strathfield Municipal Council* [2006] NSWLEC 66. Paras. 43-46 Available at <https://www.caselaw.nsw.gov.au/decision/549f84273004262463abec2e>

As set out in Appendix 1 the cottage is clearly contributory and this analysis accords with Ms Conroy's assessment that the cottage

...is a substantially intact modest mid-20th century cottage and garden in a part of the HCA that is characterised by this type of development which is of historical importance to the town of Camden. HCAs are not collections of individually significant examples of their type. They are precincts that are important for their collective values. 20 Elizabeth Street makes a solid contribution to the mid-20th century layer of the historic and aesthetic heritage values of the HCA and should not be demolished and redeveloped without a comprehensive analysis of alternatives and why an option that would have retained the evidence of this layer (i.e., adaptive re-use of the building as seen in many of the former houses in this area including the Items 7 and 9 Mitchell Street) should not be sought. (Appendix 6)

ii) Non-compliance with LEP 5.10 Heritage conservation

The objectives of LEP 5.10 include:

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

Although the accompanying HIS claims compliance with LEP 5.10 we submit that this claim has not been justified. Our view is substantiated by Robyn Conroy's report (cited above; Appendix 6). In particular, as explained in Appendix 1, the HIS employs deficient methodology, false arguments and unsubstantiated statements.

The proposed development will not be capable of compliance with LEP 5.10 objectives because:

- It is an over-development, of excessive height and scale, as previously addressed.
- It will not conserve existing contributory fabric (house and garden) associated with the traditional pattern of development in the area in the mid-20 century (also see Appendix 3 LEP 1.2 Aim (j)).
- Its proximity to similar properties within the HCA contributes to understanding this pattern of development, with this flood - affected and outlying edge remaining largely undeveloped for over 100 years. If the cottage was rare or outstanding it should be a heritage item. Instead, it must be respected as a representative example of the tradition of development in this part of Camden. Loss of these modest houses and large gardens through incremental development will contribute to the erosion of the heritage significance of the HCA.

- The existing open quality of streetscape views and the setting (visual curtilage) of the items over this area will be largely lost which will irrevocably alter the quality and contextual heritage value of the Items (i.e., their curtilage) and also the traditional views associated with the streetscapes of Elizabeth, Mitchell and Edward Streets as important view lines within the HCA.
- The scale, form and siting of the development is not consistent with the historic and significant pattern of land use in this part of the HCA. The historic pattern of development is derived from the late Georgian/early Victorian town plan, with its grid of wide streets and large lots, the depth of which have provided space at the rear for large trees to grow and long, low view lines over the predominantly single storey cottages and houses from the other side of the wide streets. The patterns of development have resulted in wide setbacks on both sides of buildings, and this has allowed open and well-vegetated streetscape views in which buildings largely play a secondary role. The proposed development ignores the traditional principles of streetscape rhythms and site planning that underpin the heritage significance of the HCA.
- The issues of setback, scale and bulk of the proposed development; and their impact on the traditional qualities of streetscapes and views within the HCA will be exacerbated by uncharacteristic design elements such as
 - The oddly jarring and non-traditional rear section clumsily supported over an open parking area.
 - The verandas of the front elevation introduce visual confusion to the streetscape and should not be considered an ‘interpretation’ of a traditional posted verandah above a shop in a historic country town.
 - The unsympathetic approach of simply extracting isolated building elements from two quite different heritage listed buildings.
 - The “missing tooth” effect of the central driveway.

iii) Non-compliance with LEP Aims of Plan

Clearly the proposal is non-compliant with LEP 5.10 Heritage conservation and LEP 4.3 Height. All development in the Camden Local Government Area is also required to satisfy all LEP aims and objectives that are applicable. As we have previously found with the various iterations of this proposal, this latest version is also not compliant with the overarching Aims of the Plan (specifically LEP 1.2 (2) a, b, c, d, e, f, h and j). The site of the proposed development within the HCA and adjacent and within the immediate vicinity of Heritage Items means that satisfying the heritage and environmental protection aims are equally important to aims of encouraging development.

Compliance with the Aims of the Plan is not optional or negotiable. We contend as set out in Appendix 3, that this proposal is not only non-compliant with specific LEP provisions but also the very reasons for the LEP.

*iv) **Non-compliance with DCP and desired future character***

- **DCP analysis: non-compliance**

An analysis of non-compliance with DCP 2011 was provided in our submission dated 2 March 2021. This submission addressed essentially the same iteration as that before the Court, which was exhibited after termination of the s34 conciliation conference.

The HIS addresses DCP 2019 which is materially similar to DCP 2011.

Similarly, under General Heritage Provisions of DCP 2019 (2.16.3) the proposal is clearly not compliant with its objectives and controls. In particular the proposal does not address 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. This control is consistent with the LEC Planning Principle as previously referenced.⁴

Even if the cottage was beyond repair, Design Control 5 requires that new development must be designed to interpret and complement the general form, bulk, scale, height, architectural detail and other significant elements of the surrounding heritage place. This proposal is grossly not compliant with the height and scale of surrounding cottages and would present as an anomaly in the HCA.

An analysis and commentary on claims made in the HIS against the objectives and controls of DCP 2019 2.16 Camden Heritage Conservation Area is provided in Appendix 4. The proposal is clearly grossly non-compliant.

Importantly also, the HIS has omitted assessment of heritage impact according to the UDF and Burra Charter, both of which are adopted by the DCP.

⁴ Land and Environment Court *Planning Principles*: Helou v Strathfield Municipal Council [2006] NSWLEC 66. Paras. 43-46 Available at <https://www.caselaw.nsw.gov.au/decision/549f84273004262463abec2e>

- **Non-compliance with Camden Town Centre Urban Design Framework (UDF)**

Under DCP 5.3 *Camden Town Centre Development Controls*, at 5.3.2 *Camden Heritage Conservation Area*, Control 2 of *Heritage and Character* states

Development within the B4 Mixed Use zone at Camden must be consistent with the Camden Town Centre Urban Design Framework (UDF).

The only reference to the UDF in the HIS (p. 37) is to acknowledge development must be consistent with it and a reference to see the “SEE” which is assumed to be a Statement of Environmental Effects. We have no access to this SEE, and in any case a SEE usually refers to the HIS on heritage matters.

The proposed development cannot be argued to be consistent with the findings of the UDF or its Built Form 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).

Non-observance of the Burra Charter

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).

The HIS references the principles of the Burra Charter briefly but does not demonstrate how it is consistent with the Articles of the Charter, in particular Articles 8 (the need to protect and conserve the setting of the place; 15 (change and the importance of conserving cultural significance and respecting all aspects of a place’s cultural significance, including fabric of different periods and associations); 21 (the need to have minimal impact on the cultural values and significance of the place); and 22 which applies to new work. Article 22 is subject to a practice note emphasising that work should comply with the Charter as a whole, and not adversely affect setting, cultural significance or detract from its interpretation and significance.

- **Desired Future Character: non-compliance**

The DCP and UDF describe its current and desired future character. Non-compliance with them erodes what is highly valued by the Camden community and Australians more generally. Camden Council have voted to pursue investigation into its state and national listings.

Most recently the need to conserve the unique rural history and character of the town has again been expressed in the Camden Local Strategic Plan in alignment with the District Plan of the Greater Sydney Commission, which acknowledges Camden as a heritage town and its rural character.

The character of the 1840 Camden town, a private town founded by the Macarthur family and its connection to the Australia's European settlement and history are well known and highly valued. No one wants to see it compromised.

The heritage and cultural significance of the HCA are well documented and continue to be the subject of research. Academic works, its heritage listing, the DCP, UDF and numerous other studies commissioned by Council attest to its unique significance and its heritage value.

The desired future character of the HCA is not negotiable as seemingly suggested by the HIS and the persistence shown by this proposal to obviate the very deliberate planning protections that ensure its conservation. There has been no change in thinking as suggested and there is 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 increase the value of the town and its agricultural history as a tourist destination.

4. Community request

We on behalf of the community, sincerely request that this proposal be refused.

As evident in Appendix 5, the number of iteration and objections on the overdevelopment of this site are many.

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 stated:

Height

A review of the submitted plans indicates the proposed 10.5m height limit is in excess of the 7m height limit as per Clause 4.3 of Camden Local Environmental Plan 2010.

Building height discussion was provided referencing previously approved development in the local vicinity and flood requirements; however, these developments were determined prior to the current LEP 2010 coming into effect and a brief review of recent approvals does not indicate Council's support of such a variation.

Based on the plan as submitted, Council considers the development is inconsistent with the objectives of the height control and will be out of character with the locality and the development form envisaged for this locality.

Further, it should be noted the significant variation of a development standard would require determination by the Independent Hearing and Assessment Panel (IHAP).

Heritage Officer Advice

The proposed 3 storey commercial building would not be supported due to prevailing heritage controls. In addition to the 7m HOB control the following controls are outlined in Part B of the CDCP

B3.1.2 Camden Heritage Conservation Areas

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.

I note that the applicant has requested a height variation of 3.5m to be considered. This height increase is not appropriate to the scale of residential development in the vicinity and would have a negative impact on the adjacent heritage items. Also, due to the prevailing heritage controls the concept sketch would be considered an overdevelopment of the site, given that it is located in a cottage dominated streetscape of the conservation area.

I also note that the proposed development would also involve the demolition of all extant structures and removal of all trees. The dwelling and shed at the site can be considered to contribute to the significance of the streetscape in the vicinity of the adjacent heritage items and the conservation area. Any development on the site must seek to maintain the scale of development evident in the vicinity of Elizabeth Street. As the site is not individually listed, demolition could be supported, however a photographic archival of the site will be required, prior to demolition. Any future development will need to demonstrate

a sympathetic character, scale, form, materials, colours and detailing to the significance of the conservation area and heritage items in the vicinity.

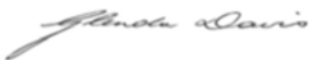
Given this advice, which the community fully endorses as it requires compliance with the LEP and DCP (which reflect community views on conservation of our unique and remarkable heritage), the applicant has persistently chosen to defy it. This seemingly vexatious proposal has plagued the community for over three years and from the community's perspective makes a mockery of the planning system. Appendix 7 evidences the number of iterations and the repeated community objections to them. We submit that tying up Council and community time and resources with grossly non-compliant plans is not in the public interest.

The community deserves to have faith in the planning instruments. We must be able to rely on them for our own housing, business and investment decisions.

The maximum height exceedance with this latest iteration at 4.2m is even greater than the 3.5m as first proposed. It is beyond our comprehension that consent orders have been issued. Please do not allow them.

If approved it would send a signal to developers to be persistent despite the rules. Developers would be encouraged to try their luck in this small rural oasis of greater Sydney where land is cheaper because of flooding and heritage constraints. This would be a loss to the greater good, which is yet another reason why this proposal is not in the public interest.

Yours sincerely

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

Glenda Davis
President

APPENDIX 1

Deficiencies of Heritage Impact Statement (March 2021)

Methodology

We note the description of the methodology of the Heritage Impact Statement (HIS).

Whilst it refers to relying on guidelines set out in NSW OEH *Statements of Heritage Impact*¹, the HIS does not systematically address questions on new development within a conservation area and adjacent to heritage items. The HIS offers opinions but does not analytically substantiate, for example, answers to these questions

- *Why is the new development required to be adjacent to a heritage item?*
- *Is the new development sympathetic to the heritage item? In what way (e.g., form, siting, proportions, design)?*
- *Will the additions visually dominate the heritage item? How has this been minimised?*

The methodology does not reference to *Design in Context: Guidelines for Infill Development in the Historic Environment*² which sets out design criteria and a check list for Assessing New Development in an Historic Context (p.15).

For instance, scale is an important element of the design assessment and this guideline states:

Infill design should recognise the predominant scale (height, bulk, density, grain) of the setting and then respond sympathetically. The impact of an inappropriately scaled building cannot be compensated for by building form, design or detailing. The grain, or pattern of arrangement and size of buildings in a precinct or conservation area, can be an important part of its character. The subdivision patterns and layouts of the streets provide the predominant scale and rhythm of building frontages

Also, the principles of the Burra Charter are referenced in the description of the methodology but not addressed specifically.

Under Article 15 Change, contributions of all aspects of cultural significance must be respected, including fabric, uses, associations or meanings of different periods, and that to emphasise or interpret one period or aspect at the expense of another can only be justified when what is left out, removed or diminished is of slight cultural significance. The HIS makes the unsubstantiated judgment that the cottage is of no cultural significance, and that to replace it with a modern edifice of much greater scale enhances cultural significance. According the HCA listing, as addressed below, the cottage is intrinsic to the history and character of the HCA and is culturally significant.

¹ NSW Department of Planning *Statements of Heritage Impact* Available at

<https://www.heritage.nsw.gov.au/assets/Uploads/a-z-publications/s-u/Statements-of-Heritage-Impact.pdf>

² NSW Heritage Office *Design in Context: Guidelines for Infill Development in the Historic Environment*

Available at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Heritage/design-in-context-guidelines-for-infill-development-historic-environment.pdf>

According to Article 22 New Work Practice Note³, work should comply with the Charter as a whole, and

- *Not adversely affect the setting of the place (Article 8)*
- *Have minimal impact on the cultural significance of the place (Article 21.1)*
- *Not distort or obscure the cultural significance of the place, or detract from its interpretation and appreciation (Article 22.1)*
- *Respect and have minimal impact on the cultural significance of the place (Article 22.2).*

The HIS does not address the cultural significance of the HCA as set out in its heritage listing and fails to demonstrate consistency with these Burra Charter principles.

It is concerning that the methodology and the HIS itself does not reference the Camden Town Centre Urban Design Framework (UDF).

This is a major omission as the DCP (5.3.3) states *Development within the B4 Mixed Use zone at Camden must be consistent with the Camden Town Centre Urban Design Framework.*

This is the latest Council study that documents the existing character of the 1840 town and reiterates its desired future character. Conservation of the fine grain and human scale of the HCA is repeatedly referenced and the built form principle is unequivocal:

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).

What is proposed is far from “rural” and does nothing to contribute, and is arguably detrimental, to Camden's unique and highly valued identity.

Contributory extant cottage

No reasonable argument that the cottage cannot be re-used has been provided, nor justification for its demolition. This important aspect of the proposal is barely addressed except to conclude that in itself it is undistinguished and to offer the opinion

P. 24 We consider that the current house on the property is a non-contributory element in the conservation area....

Assessment of the cottage as not sufficiently meeting the criteria for heritage listing in its own right is not the same as being non-contributory to the HCA. As set out in LEC Planning Principle⁴ on contributory items, the starting point for determining what contribution the item makes is the Statement of Significance of the conservation area⁵.

³ Australia ICOMOS Practice Note Burra Charter Article 22 — New Work Available at https://australia.icomos.org/wp-content/uploads/Practice-Note_Burra-Charter-Article-22-New-Work.pdf

⁴ Land and Environment Court *Planning Principles: Helou v Strathfield Municipal Council* [2006] NSWLEC 66. Paras. 43-46 Available at <https://www.caselaw.nsw.gov.au/decision/549f84273004262463abec2e>

⁵ NSW Heritage *Camden Town Centre Heritage Conservation Area* Available at <https://apps.environment.nsw.gov.au/dpcheritageapp/ViewHeritageItemDetails.aspx?ID=1280090>

Questions posed in the Planning Principle are easy to answer: the building is not structurally unsafe and the costs of restoration are not prohibitive.

Whilst the HCA listing is referenced in the HIS there is no attempt to assess the relationship of it with the cottage and explore whether it is contributory.

What is clear in the Statement of Significance of the HCA listing is that the township is not renowned for being homogenous, which the HIS wrongly implies is relevant. Implications in the HIS that the north eastern Area 8 is somehow up for redevelopment because it is eclectic and non-homogenous is clearly wrong. The town is significant partly because of its non-homogenous nature. Its character reflects its long history as a country town and provides a window into Australia's agricultural and social history. It is noted as historically significant for many reasons, including as a useful case study of Australian social history.

The HCA listing states that its many built forms, cultural landscape, features and township layout contribute to its character which is held in high esteem. It describes the eclectic small-scale nature of the town, combined with its visually detached built forms screened by exotic and native vegetation, all spreading up to St John's church and spire, as providing a setting of rare and high quality (semi) rural character. Its significance is also related to

- A substantially good level of integrity of relatively intact remnant building stock from c1841 to mid-20th century
- the place of "rural towns" in the spread of Sydney residential areas.
- the existence of well-known urban families who contributed to the life of Camden over several generations

Whilst the history of the cottage itself has been covered in some detail in the HIS, discounting it as non-contributory is unsubstantiated. Such an opinion is contradictory to statements in the HCA listing, and cannot be accepted as there is no due analysis as to why residential elements, including those that represent the early post-war era of building shortages and social and economic recovery such as represented by this cottage, are not contributory.

It is contributory because it:

- is mid-20th century
- is intact building stock
- reflects the economic, social and cultural conditions of that time
- is small scale
- is visually detached
- is one of many cottages in the cottage dominated block within Area 8
- is residential and reflective of Camden as a rural town
- is associated with a well-known family who owned various lots in the north eastern section of the town and were involved in its further subdivision.

False arguments

There is no analysis in the HIS that justifies that what is proposed will not be materially affect the HCA or heritage items, and indeed it wrongly suggests that such change is expected and welcomed. Conservation areas by definition are to be conserved, not transformed into something else. This principle is evident and reinforced in many council policies and strategies, including the DCP, UDF and Local Strategic Planning Statement, a key principle of which is that heritage values are to be preserved and reinforced.

Concerningly the HIS states

P. 24 *It is clear that the scale and character of the historic built form in the area has changed considerably over time and will continue to change.*

The evidence presented in an attempt to support this claim is essentially incorrect. The HCA was legislated in 2010. There has been nothing approved or built since then on an original residential housing lot that exceeds the height limit to the extent proposed nor of the scale proposed. Reference to development on the Camden High School site is spurious as this site was a special case being contaminated and owned by the state government, as well as being approved prior to legislation of the HCA. Rather than being an argument for approval of this proposal, it is a very good reason not to allow anything else of excessive height and scale. It was also noted in the council report⁶ (p. 13) of approval of the seniors and aged care housing that Council should note that support of this particular development does not create a precedent. It is wrong to now refer to this development as a reason to allow what is proposed.

The historic built form will not “continue to change” if the planning instruments are observed. The Burra Charter takes a cautious approach to change: *do as much as necessary to care for the place and to make it useable, but otherwise change it as little as possible so that its cultural significance is retained.*

Very concerning also are these unsubstantiated statements.

P. 30 *The area has been identified as an area for growth*

Comment: There is no evidence in any planning instrument that the area is identified for growth. On the contrary the HCA is referenced repeatedly as an area to be protected in council policy and strategy, as well as in the LEP and DCP. DCP (2.16.4) Control 8 states *Existing cottage dominated streetscapes must be retained, new development such as extensions/additions should be compatible with the existing streetscape.*

⁶ Camden Council Report submitted to the Ordinary Council Meeting held on 08 September 2009 ORD04 Mixed Residential / Commercial Development at no 2 (Lot 1 Dp 806544) John Street, Camden Available at <https://www.camden.nsw.gov.au/assets/pdfs/Development/Development-Information/Camden-High-School-Site-Council-report-and-resolution-from-the-Ordinary-Council-meeting-of-8-September-2009.pdf>

P. 31 *The proposed development is outside of the more historic section of the conservation area*

This statement is a surprising value judgement that is inconsistent with the HCA listing and the concept of cultural significance. Cultural significance is defined in the Burra Charter as meaning *aesthetic, historic, scientific, social or spiritual value for past, present or future generations* and is *embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects*. The HCA encompasses the 1836 private town plan of the sons of John and Elizabeth Macarthur and SG Sir Thomas Mitchell (which is evident in the street names). To infer that cultural significance is necessarily increased as a function of the age of the building stock is clearly wrong.

P. 25 *A well-mannered, two storey, contemporary building is not out of context.*

Claiming that the building is two-storey clearly serves the applicant, but is misleading. There are three levels, not two and the height of the proposed building is at least of three storeys.

As noted in the HCA listing, the history of the town has long been subject to research and its heritage value is very well documented. It continues to attract researchers due to its special place in Australia's history of European settlement.

There is no scope in this HIS or in any development proposal to redefine the cultural significance of the town by assertion. To identify a part of it as an area for growth or as somehow unworthy of conservation is nonsense.

APPENDIX 2 Objectives of CLEP 4.3 Height standard and B4 Zone
Analysis of and comments on Variation Request CLEP Clauses 4.6 (3)(a) and 4.6 (4)(a)(ii)

CLEP 4.6 (3)(a)	Extracts from Applicant's written request for variation 3 March 2021.	Comment
CLEP 4.6 (3) (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case		The Request has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as explained in our submission and in more detail in the following comments.
CLEP 4.3 Height of buildings Objective (a) <i>to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality</i>	<i>The variation to the height of buildings development standard is limited to the pitched elements of the proposed roof. (p.11)</i>	The height of buildings measure always includes the roof. It is noted that the pitched roof accommodates an extra floor level. Buildings in the HCA are limited to two-storey. What is proposed is not compatible.
	<i>These variations are considered to be necessary to ensure that the proposed development provides a form and design that is compatible with other historical building typologies in the locality. (p.11)</i>	The form and design serve the accommodation of a third level. A pitched roof can be accommodated on a building of two levels.
	<i>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. (p.12)</i>	If additional commercial floor space was a required outcome of the investment project, the applicants should have purchased elsewhere. The heritage and flooding constraints of Camden's HCA are common knowledge and well understood.

CLEP 4.6 (3)(a) cont. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	Extracts from Applicant's written request for variation 3 March 2021.	Comment
	<i>The proposed development will not appear excessive in scale when viewed from Elizabeth or Mitchell Streets and will be consistent with the scale of other recently approved developments in the locality. (p. 12)</i>	As explained elsewhere, this statement is an opinion and not supported by factual analysis. It is in fact self-evident that what is proposed is of a height and scale that far exceeds the building stock of heritage listed items and the HCA generally. There are no recently approved developments of similar scale. What is proposed is not compatible. 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.
	<i>The building will replace an existing dilapidated building that has reached the end of its economic life and has a negative impact on the visual quality of the streetscape and heritage conservation area. (p. 12)</i>	This is an unsupported opinion. 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. Like all the fabric of the HCA, the extant cottage is not at the end of its economic life. It is contributory to the pattern of development and interpretation of the cultural and social history of Camden and representative of early post-war development. It does not appear to be particularly dilapidated, and in any case is easily restored.

<p>CLEP 4.6 (3)(a) cont. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case</p>	<p>Extracts from Applicant's written request for variation 3 March 2021.</p>	<p>Comment</p>
<p>CLEP 4.3 Height of buildings Objective (b) <i>to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i></p>	<p><i>The roof design and substantial setback to the rear boundary ensures that the visual impact of the proposed development sits comfortably within the HCA and minimises any impact on surrounding properties or views from public spaces. (p. 12)</i></p>	<p>The visual impact is significant as the height and scale of what is proposed, compared to existing development, is much greater and in fact would dwarf its neighbours. It does not fit comfortably in the HCA for the very reasons it is non-compliant with the planning instruments</p>
	<p><i>The non-compliant height will not compromise the use and enjoyment of neighbouring properties in terms of privacy or daylight access.</i></p> <p><i>In relation to solar access, 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. (p. 13)</i></p>	<p>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.</p> <p>We note that the proposed building is around twice as high as its neighbours, which certainly raises questions of both privacy and solar access. The loss of privacy to 18 Elizabeth Street and properties in Mitchell Street and any loss of solar access especially to the south is not addressed in any available documentation. The plans also show non-existent trees, presumably to indicate more privacy and screening of the overdevelopment.</p> <p>No shadow diagrams are provided. It is admitted (p.12) that <i>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.</i></p>

CLEP 4.6 (3)(a) cont. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	Extracts from Applicant's written request for variation 3 March 2021.	Comment
Objective (b) <i>to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i>	<i>In terms of view loss, the proposed variation will not result in any loss of views or outlook given that no significant views are provided across or through the site. (p. 13)</i>	<p>The spatial characteristics of the HCA, its country town form and development pattern are significant and fundamental to its heritage value. The impact of the height and bulk on the setting and curtilage of adjacent heritage items is unacceptable. The proposed building will be clearly visible from Elizabeth, Mitchell and Edward Streets. These streetscapes and associated views are intrinsic to the significance of the HCA.</p> <p>It is also very concerning that there has been no acknowledgment of the impact on adjacent heritage listed cottages in Mitchell Street. The impact is much greater than claimed in the 4.6 request</p>
	<i>The proposed development will enhance the activation at street level along Elizabeth Street through the incorporation of a ground floor café (p. 13)</i>	The proposed developed is within the B4 zone, an objective of which is not to detract from the viability of the main street in the B2 zone.

CLEP 4.6 (3)(a)	Extracts from Applicant's written request for variation 3 March 2021.	Comment
CLEP 4.3 Height of buildings Objective (c) <i>to minimise the adverse impact of development on heritage conservation areas and heritage items.</i>	<i>The proposed roof design for the rear portion of the building combined with the significant setback to the rear boundary and implementation of landscaping within the green zone ensures that the building sits comfortably within the HCA and that the impact of the proposed development on the HCA and heritage items provides for a positive contribution to the locality and does not adversely impact the significance. (p.13)</i>	As covered elsewhere this is an opinion that is not evidenced. The removal of a contributory cottage and infill with a building of a height and scale that far exceeds the adjacent cottages, including heritage listed items and the cottage dominated character of the vicinity cannot be justified as minimising adverse impact, and inarguably would make a negative, not positive, contribution.
	<i>The proposed development has been carefully designed following numerous amendments during the assessment process. (p.13)</i>	<p>What is now proposed remains grossly non-compliant. The common thread throughout these numerous iterations is that the height exceedance and number of floor levels has been non-compliant with the LEP and DCP, which clearly set out the planning rules.</p> <p>Planning certainty is important to everyone, residents, business and developers. It is not reasonable to tie up resources with numerous attempts to break the rules and then claim it as a justification.</p>

CLEP 4.6 (4)(a)(ii)	Extracts from Applicant's written request for variation 3 March 2021	Comment
Clause 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the Height standard and the objectives of the B4 zone		As commented above the proposed development is not consistent with CLEP 4.3 Height of buildings standard, and is therefore not in the public interest.
CLEP 2.3 B4 Mixed Use zone objectives		As commented below the proposed development does not provide compelling arguments that it satisfies the objectives of the B4 zone
To provide a mixture of compatible land uses.	<p><i>This site provides a unique opportunity to contribute to ...commercial viability of Camden</i></p> <p><i>...where there is an identified shortfall of such space. (p. 13)</i></p>	<p>There is no evidence that this is a unique opportunity</p> <p>No identifiable shortfall has been demonstrated. This claim 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.</p>
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.	<ul style="list-style-type: none"> <i>• excellent access to public transport</i> <i>• promote the use of active transport for future occupants and patrons. (p.14)</i> 	<p>Camden town centre does not have excellent access to public transport. This claim is not evidenced. This development would encourage use of private cars, not public transport patronage.</p> <p>It is not explained how the site would encourage walking and cycling (active transport), particularly as initial access to the town is most often by car.</p>

CLEP 4.6 (4) (a)(ii) cont.	Extracts from Applicant's written request for variation 3 March 2021	Comment
CLEP 2.3 B4 Mixed Use zone objectives cont.		
To minimise conflict between land uses within the zone and land uses within adjoining zones.	<p><i>The proposed development is located within a short distance of the B2 Local Centre zone, and to the RUI Primary Production zone. The range of uses that are permissible within the B4 Mixed Use zone are generally not considered to be in conflict with that provided within the nearby zones. It is unlikely that the proposal will result in any negative impacts to other land uses surrounding the subject site or within adjoining zones (p.14)</i></p>	<p>There will be negative impacts on other land uses. What is proposed makes a mockery of the sensitive adaptive re-use of cottages. It conflicts with the rural character of the HCA and is inconsistent with the nearby town farm, equestrian centre and livestock sale yards and other rural elements of the town. It is non-compliant with the LEP, DCP and Built Form Principle of the UDF which describe Camden's character and Desired Future Character.</p> <p>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 and UDF. Non-compliance with these statutory instruments has been covered throughout this submission, and as referenced by the LPP and in Council's SOFAC. Land uses in the HCA often rely on the point of difference of its unique character and special attractiveness. Conflict is inevitable if contributory cottages are replaced with grossly over-height and over-scale constructions that are irrelevant and consequently destructive to the history and rural sense of place of the HCA.</p>

CLEP 4.6 (4) (a)(ii) cont.	Extracts from Applicant's written request for variation 3 March 2021	Comment
CLEP 2.3 B4 Mixed Use zone objectives cont.		
To encourage development that supports or complements the primary office and retail functions of the local centre zone.	<i>The proposed development is not of a scale that will undermine the viability of existing commercial uses in the B2 Zone and will in fact contribute to the viability and vitality of Camden Town Centre as a commercial centre in the region. (p.14)</i>	<p>The scale of the development is observably as large or greater than provided by extant building stock in the B2 local centre zone. The provision of another café does not support the many cafes that already exist in the local centre. 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. Extra floor space will not complement what already exists, but compete with it.</p> <p>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.</p>

APPENDIX 3

Non-compliance with LEP Aims of Plan (LEP 1.2 (2) a, b, c, d, e, f, h and j)

All development in the Camden Local Government Area is required to satisfy all of the aims and objectives of the Camden LEP that are applicable. Relevant objectives are set out below with commentary as to how this proposal does not comply with them. As the proposal is within Camden HCA and adjacent to and in close vicinity to heritage items the environmental aims are equally important to any aims associated with encouraging development, for which there is ample opportunity outside the heritage area within the municipality.

LEP 1.2

(2) (a) to ensure Camden retains its valued traditional qualities, character and scenic landscapes while providing for sustainable urban growth,

Comment: The development as proposed is not capable of compliance with this objective. The traditional qualities of Camden village are embodied in its historic patterns of subdivision and development. The north-eastern sector of the original 1840 village (within which both the proposed commercial building and the heritage items are located) have historically and traditionally been the location of small-scale residential and small business development which has serviced the needs of the local village and rural communities. The value of these traditional qualities, character and scenic landscapes (in the case of the village, the cultural landscape and its embodied views) are evidenced clearly by the designation of the village of Camden as a significant Heritage Conservation Area.

The proposed development does not respect the traditional qualities or character of the historic township of Camden. It will be an excessively over-height, bulky and aesthetically incoherent office building that is incompatible with the character of the old rural village and its scenic qualities as embodied by its urban form, fabric and streetscape rhythms.

Commercial office buildings such as that proposed are not a traditional part of the north-eastern corner of Camden. The documentation submitted with the application attempts to justify it on the basis of questionable precedents that are highly unsympathetic in terms of the traditional qualities, character and views. This is not a sustainable argument, particularly in the context of these Aims.

Approval based on unsympathetic precedent leads rapidly to the erosion of the integrity of both the HCA and significant heritage items in the vicinity and should not in any circumstances be supported by Council, especially given the legislated status of the HCA since 2010, the provisions of the DCP and how conservation of the special and unique character of Camden is embedded in Council's documented strategies.

Development that provides urban growth without ensuring that the valued traditional qualities, character and scenic landscapes of the historic township of Camden are protected cannot be considered to satisfy this primary Aim of the LEP. This aspect of the proposal's non-compliance is also covered by *LEP 5.10 Heritage Conservation*.

(b) to ensure that new communities are planned and developed in an orderly, integrated and sustainable manner and contribute to the social, environmental and economic sustainability of Camden,

Comment: The proposed development will not be an example of orderly or integrated development. It is significantly non-compliant with Council's adopted controls and is evidently informed by development expectation.

The development will have a demonstrable adverse impact on the socio-cultural, environmental and economic sustainability of Camden, and in particular the historic Camden township. Socio/cultural values include the long-established recognition of the unique historical, aesthetic and associational significance of the township by the wider community as evidenced by the making of the HCA after a long process of consultation and deliberation and by the listing of Heritage Items in recognition of their additional heritage values.

The proposed development will not contribute to the social sustainability of Camden. It will read as a poorly resolved, over-scaled and aesthetically confusing office building inserted into, not sympathetically integrated with, the traditional streetscape of the HCA.

It will also not satisfy the required aim to contribute to the environmental sustainability of Camden. It is to be located within an area subject to significant flood risk and will impact on the natural water flows of surrounding land. It will also result in significant environmental impacts in terms of overshadowing of adjacent properties.

Loss of environmental quality in the private open spaces including that of heritage items will be likely to impact on the future economic sustainability and market attractiveness of these properties. Sensitive and low-impact adaptive re-uses of historic fabric will be compromised by the loss of amenity and historic character of the setting of the Heritage Items.

(c) to ensure natural assets within Camden are protected and enhanced,

Comment: The proposed development will not protect or enhance the natural assets within the Camden HCA.

Natural assets are not limited to bushland; they include cultural landscapes, i.e., the contribution that gardens and vegetation make to the streetscape qualities and heritage values of the HCA. The traditional gardens in this part of the HCA are characterised by mature native and introduced trees set at the rear of the lots that not only provide a high-quality backdrop to streetscape views, they also are highly likely to provide corridors for birds and native animals.

The development includes the loss of a substantial garden area to building and parking. The amount and distribution of unbuilt-upon land proposed around the development is grossly inadequate in the context of its historically and aesthetically sensitive setting and will harm the natural assets on adjoining properties, including the heritage items along Mitchell Street.

(d) to minimise the impact on existing and future communities of natural hazards such as bush fires and flooding,

Comment: The proposed development will not minimise the impact of flooding on other properties, including the adjacent heritage items at 1, 7 and 9 Mitchell Street. It will therefore not satisfy this Aim of the LEP.

We note that there is no Flood Impact Report submitted with this latest iteration, and assume it relies on reports relating to earlier iterations which are different.

This latest iteration will alter natural water flows around the site and over the adjoining gardens by significantly reducing porous surfaces on the site. However, it is also noted in the 4.6 variation request as a reason for seeking very significant variation from the height standard. The contributory cottage on site, which could be re-used, is a better solution and one that is evidently the usual choice in the flood-affected area.

It is noted that the anticipated flood in this area is very significant and that the non-compliant height of the proposed building is to protect its occupants from impacts. This protection of a non-existing community will however come at the expense of community resources and the existing community of surrounding residents.

(e) to ensure that appropriate housing opportunities are provided for all existing and future residents of Camden at all stages of their lives,

Comment: One of the most important urban design typologies that characterise the historical built environment of Camden is the provision of modestly scaled and simply designed houses set on large lots. These are increasingly rare in this part of the HCA but such properties continue to provide appropriately scaled housing opportunity for families with children, the largest demographic group in the LGA.

The proposed development will result in the permanent loss of housing stock on this site. We note the recommendation of the Camden Town Centre Urban Design Framework (p. 79) that dwellings be made a permitted use within the town's zones thus allowing cottages, heritage listed or not, that have already been adapted for commercial use to revert to residential use. Unlike the sensitive adaptation of the cottages at 7 and 9 Mitchell Street for commercial use which have retained the potential for reversal and reinstatement of residential occupation, the proposed development will not be capable of providing housing for any existing or future resident of Camden.

The loss of housing on the site will be contrary to this Aim.

(f) to ensure that the economic, employment and educational needs of all existing and future residents of Camden are appropriately planned for,

Comment: The development as proposed will provide economic and employment opportunities for the developer and eventual building owner and occupants, but in the context of the economic needs of the owners of the adjacent Heritage Items, their economic and employment needs will be threatened.

The Items at 7 and 9 Mitchell Street are already in commercial use, with the tenants having been attracted to the special heritage qualities of the cottages and their traditional setting. Loss of this setting, particularly if the requested non-compliance with the planning controls is supported, will also impact on the economic and employment potential of these two Items.

The economic needs of the owners of Nepean House also need to be considered under this Aim. They are residents of the Item and have sacrificed the development potential of their aggregated site in order to provide a historically appropriate setting for the House.

Development of the scale and form proposed does not represent ‘appropriate planning’ for the existing and future economic, employment and educational needs of the surrounding residents, both existing and future.

(h) to ensure that the recreation, cultural and social needs of all existing and future residents of Camden are appropriately planned for,

Comment: The proposed development will not achieve this Aim.

The cultural and social needs of the existing and future residents of Camden include the need to ensure that the historic values and significance of the Camden township can continue to be protected, conserved and able to be appreciated. This is not achieved by the retention of isolated heritage items in streetscapes of over-scaled commercial buildings. It is achieved by retaining the evidence of historic settlement, including mid-20th century cottage streetscapes, and encouraging adaptive re-use that respond to contemporary needs, whether residential or commercial. Such an approach does not preclude some additional development on the site, but it is critical for the ongoing interpretation of the HCA that this is sensitive to the heritage values of the area.

(j) to conserve and enhance the built and landscape heritage of Camden.

The proposed development will not conserve or enhance the built and landscape heritage of Camden's HCA nor that of the Heritage Items in its vicinity. The degree of non-compliance is significant.

It will result in the demolition of a contributory, traditional mid-20th century cottage and garden (including traditional outbuildings) within the HCA. This cottage may not be individually notable (and hence is not a heritage item in itself). It, and the similar cottages along Elizabeth and Edward Streets in particular, are however representative examples of the morphological development of Camden, and provide evidence of the relatively slow take-up of land in this outlying and flood-prone corner. It needs to be valued in this context as an intact c.70-year-old cottage and setting that contributes to a valid and important layer of the HCA's development, not dismissed as a nondescript mid-20thC cottage in a Victorian town. The building could be conserved and adapted (even sympathetically extended) for contemporary needs whilst respecting its contribution to the heritage values of the HCA.

The insertion of a grossly over-scaled and aesthetically challenging commercial building in an area historically dominated by small-scale residential and modest rural/service businesses will damage the traditional streetscape quality and substantially intact evidence of historic patterns of development that make a significant contribution to the heritage values of the HCA.

The aesthetically significant low, open character of this part of the HCA as representative of Camden as a traditional rural town is evidenced in part by the streetscape views over the block. These extend from the wide streets (sufficient to allow that traditional marker of a country town, angled street parking) and over the modestly scaled buildings to the mature canopy trees along the boundary lines which define the skyline.

One particularly important aesthetic and historic manifestation of the heritage values of any HCA is its streetscape rhythms. The rhythm in this edge area is characterised by a high level of visual and physical permeability – a result of the width of the blocks and modestly scaled buildings set well back from their boundaries, allowing the gardens and trees to dominate.

The proposed development will be three stories in height (11.2m), very significantly higher than the building stock of this cottage dominated area and its scale and bulk will present as an incoherent block of development.

APPENDIX 4 Non-compliance with DCP: Camden Heritage Conservation Area

	Camden DCP 2.16 Camden HCA	HIS statement of compliance	Comment
	Objectives		
(a)	<i>Retain the unique heritage significance of Camden town, recognising it as a rare and distinctive area;</i>	The development is a good fit into the conservation area and draws on historic precedent for its style, form and detail	<p>The HCA listing refers to it as small scale with residential elements consistent with its rural town history. What is proposed is over-height and of large scale within its contextual setting. Also, what is proposed is not consistent with the built form principle of the UDF which this DCP adopts. A large commercial building on a residential building site is not a good fit. Retention of the town's unique significance requires retention of the cottage.</p> <p>DOES NOT COMPLY</p>
(b)	<i>Retain and promote evidence of the historical development of the town and enable interpretation of that historical development;</i>	The development is part of the ongoing and more intense development of the north eastern section of the HCA	<p>There is no deliberate ongoing and more intense development of this section of the town. This claim is self-serving and not substantiated with any reference to the planning instruments and heritage listing.</p> <p>DOES NOT COMPLY</p>
(c)	<i>Retain the cohesive character particularly evident in the scale of development in each street;</i>	The scale and character of the immediate area is very mixed and the development reflects this	This proposed development is not of similar or small scale, and its character is at great variance to that of the cottage dominated section 8 of the 1841 town.
(d)	<i>Retain distinctive features which unite the place. Such as parapets, chimneys, veranda's, the mixture of roofs, the road network, subdivision patterns, pathway connections, consistency of colours and the limited building material palette;</i>	N/A	<p>Retention of the cottage would retain a distinctive feature of the HCA.</p> <p>DOES NOT COMPLY</p>

APPENDIX 4 Non-compliance with DCP: Camden Heritage Conservation Area

	<i>Camden DCP 2.16 Camden HCA</i>	HIS statement of compliance	Comment
	<i>Objectives cont.</i>		
<i>(e)</i>	<i>Seek to foster a balance between historic character and sensitive contemporary development;</i>	The development is a good fit into the conservation area and draws on historic precedent for its style, form and detail	See (a) above. It is not a good fit and what is proposed is not sensitive to the fine-grained human scale and spacious nature of the town. DOES NOT COMPLY
<i>(f)</i>	<i>Promote the concept of adaptive reuse as a major conservation tool;</i>	N/A	This was not promoted or considered. It is required to be as demolition of the cottage is demolition of part of the HCA. DOES NOT COMPLY
<i>(g)</i>	<i>Reflect an embellishment of public spaces and places in a manner which is sympathetic and does not compete</i>	N/A	
<i>(h)</i>	<i>Retain the rural character of Camden town centre; and</i>	The site does not contribute to the landscape character of the area	This is a nonsense statement. A domestic cottage does contribute to the rural character of the town. This is explained in the HCA listing. DOES NOT COMPLY

APPENDIX 4 Non-compliance with DCP: Camden Heritage Conservation Area

	Camden DCP 2.16 Camden HCA	HIS statement of compliance	Comment
	Controls		
3	<i>The rural-urban interface must be sensitively addressed in new development proposals.</i>	N/A	<p>The site is close to the rural-urban interface and the scale of what is proposed does not sensitively contribute to the village profile of the town in its rise from the floodplain to the St John's church on the hill.</p> <p>Being of three storey height it will sit as an anomaly within the small-scale interface with the rural surrounds. DOES NOT COMPLY</p>
6	<i>Additional development on the fringe of the town should complement and not detract from the viability of the "main street".</i>	The development is a good fit into the conservation area and draws on historic precedent for its style, form and detail and reflects the mixed scale and character of the immediate area	<p>This HIS statement of compliance is not relevant. What is proposed is larger than most buildings in the main street and includes a café. Clearly this proposal has the potential to detract from the viability of the main street. DOES NOT COMPLY</p>
7	<i>Original uses of significant buildings should be encouraged and facilitated. Where this is no longer possible, appropriate adaptive re-use opportunities can be used to facilitate the conservation of these buildings.</i>	The current house on the site is of little heritage significance	<p>The cottage on the site is contributory. If it is not to be used for its original purpose as a residence, adaptive reuse should be considered. It is evident that other cottages in Section 8 of the 1840 town have been successfully adapted for commercial use. This is the clear expectation of the HCA listing and intentions of LEP 5.10, the DCP and its adopted Urban Design Framework and Burra Charter.</p> <p>DOES NOT COMPLY</p>
8	<i>Existing cottage dominated streetscapes must be retained, new development such as extensions/additions should be compatible with the existing streetscape.</i>	The street is quite mixed in character and has a range of building types, uses and scales	<p>This is a cottage dominated streetscape and block (Section 8 of the old 1840 town). The site contains a cottage and is adjacent to cottages, two of them heritage listed and opposite another two heritage listed cottages. What is proposed does not retain the streetscape and is not compatible. DOES NOT COMPLY</p>

APPENDIX 4 Non-compliance with DCP: Camden Heritage Conservation Area

	Camden DCP 2.16 Camden HCA	HIS statement of compliance	Comment
	<i>Controls cont.</i>		
9	<i>A two-storey height limit must prevail except for significant architectural features incorporated into the design of buildings in significant locations.</i>	The building is two storeys	This statement is clearly wrong. The building is three storeys in height and has three levels. DOES NOT COMPLY
10	<i>Large built forms in cottage dominated precincts must be avoided through the use of various roof forms and pitches, wall openings and recesses, materials, recessive colours and landscaping</i>	The street is quite mixed in character and has arrange of building types, uses and scales and the proposal draw on historic precedent for its style, form and detail	This is a large built form in a cottage dominated area. It is over-height and of three storey height. DOES NOT COMPLY
11	<i>Development of the flood affected fringes of the town must not compromise the prevailing character.</i>	The proposal has been designed to address flood issues while limiting the scale to two storeys	This proposed development in the flood affected fringe, which is not of two storeys in height and is of three levels, does compromise the prevailing character by removal of contributory fabric and being of three storey height and large scale. DOES NOT COMPLY

APPENDIX 5

**Graham and Sanders v Camden Council
Land and Environment Court of NSW proceedings no. 2020/81653
Property: 20 Elizabeth Street, Camden**

LEGAL OPINION

Re s4.6 Variation Request

HWL Ebsworth

3 June 2021

Our Ref: 970120

3 June 2021

Land and Environment Court
C/O Swaab Lawyers
Level 1, 20 Hunter Street
Sydney NSW 2000 Australia

Email: ejf@swaab.com.au

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Dear Commissioner

Graham and Sanders v Camden Council
Land and Environment Court of NSW proceedings no. 2020/81653
Property: 20 Elizabeth Street, Camden

1. We refer to letter dated 20 May 2021 from Swaab, solicitors for Camden Council, which invited objectors to make submissions to the Land and Environment Court care of their office, for consideration at the consent orders hearing on 18 June 2021.
2. These proceedings relate to s8.2 review application DA2018/599/1 for the demolition of existing dwelling, shed and timber awning, removal of one jacaranda tree and construction of a commercial development for three commercial tenancies and one café and associated works (**the Application**) at 20 Elizabeth Street, Camden (**the Site**).
3. We act for Camden Residents Action Group Inc.
4. For the sake of completeness, we note that the clause 4.6 variation request notified with the letter from Swaab dated 20 May 2021 was not the variation request that is proposed to be considered by the Court. Upon our request for clarification we have however been provided with a clause 4.6 variation request dated 3 March 2021 (**Variation Request**) being the variation request that will form part of the final application to the Court.
5. We now provide the following submission, primarily in relation to the **Variation Request** which we are advised by Swaab is to form part of the consent orders being sought by the parties' for approval of the application the subject of this appeal.

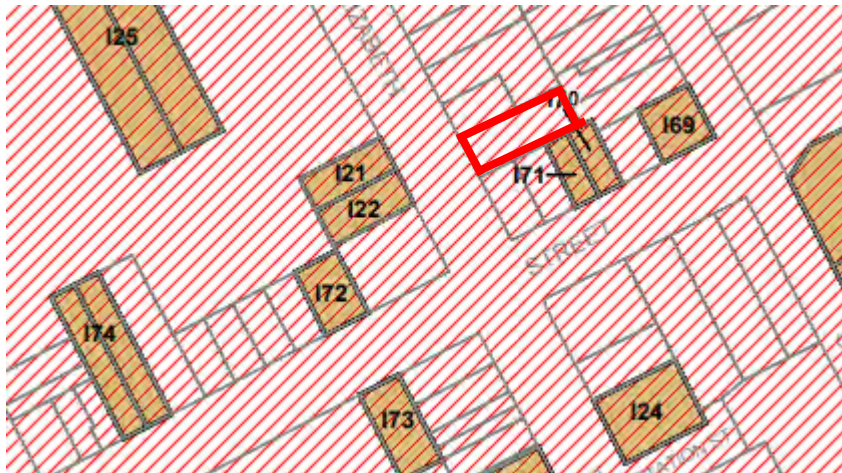
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6. Despite the parties' reaching agreement in these proceedings, there are two jurisdictional matters that require the Court to be satisfied before entering any orders and we submit, the Court cannot be satisfied in relation to these matters.

7. **Jurisdictional Requirements - Heritage**

- 7.1 We note separate submissions are made on our client's behalf by Robyn Conroy in respect to heritage concerns with the application. These are also relevant to the Court's consideration in relation to the Variation Request. That submission should be read in conjunction with our submissions.
- 7.2 Clause 5.10(4) of the *Camden Local Environmental Plan 2010 (CLEP)* requires the consent authority to consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area in which the Site is located before granting consent.
- 7.3 The Site is located in a heritage conservation area and directly adjoins heritage items I71 and I70 and in proximity to multiple other heritage items. The large curtilage to heritage item I69 also directly adjoins the Site, this curtilage is considered part of the setting to that heritage item. An extract of the heritage map is below showing the Site outlined in red:



- 7.4 Ms Conroy's position is that the Application proposes commercial form of a scale significantly greater than the historic pattern of development in the conservation area, with an unsympathetic roof form and significant bulk which is visually dominant particularly when viewed over 7 and 9 Mitchell Street and 23 Edward Street (heritage items) and views from Elizabeth and Edward Street.
- 7.5 The demolition of the existing cottage on the Site, which is considered culturally significant and contributory to the Heritage Conservation Area has a clear effect on the heritage significance of the conservation area.¹

¹ The Court should have regard to the Planning Principle in *Helou v Strathfield Municipal Council* [2006] NSWLEC 66 particularly paragraph 45 *The demolition of a building which contributes to a conservation area will impact on the area's heritage significance even if its replacement building "fits" into the conservation area...*

- 7.6 We submit that the Court cannot be satisfied with the effect of the proposed development on the heritage significance of the conservation area or the specific heritage items in proximity to the Site. The Court should have regard to the submissions of Ms Conroy to support this conclusion.
8. **Jurisdictional Requirements - Clause 4.6 Variation**
- 8.1 As the Court would be aware, it is a jurisdictional requirement for the consent authority, in this case the Court, to be satisfied that the Variation Request adequately addresses the requirements under clause 4.6(3) and will be in the public interest because it is consistent with the objectives of the standard and the zone. Therefore, regardless of the parties agreement in relation to the proposal, the Court must be satisfied and we would submit, the Court cannot be satisfied, that the Variation Request provided justifies the contravention and there is therefore no jurisdiction to approve the Application.
- 8.2 In our view, the Variation Request fails to adequately demonstrate the matters required to be addressed under cl4.6(3) and cl 4.6(4) of the CLEP:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) That there are sufficient environmental planning grounds to justify contravening the development standard; and
 - (c) That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
- 8.3 The Variation Request seeks to justify exceedance of the 7m height standard by 4.2m being a 60% non-compliance with the standard. This represents a significant height exceedance within a sensitive heritage context that has not been adequately justified.
9. **Variation Request - Unreasonable or Unnecessary**
- 9.1 The Variation Request seeks to establish that compliance with the standard is unreasonable or unnecessary by demonstrating that the objectives of the standard are achieved notwithstanding the non-compliance. We accept that this is a common way to establish that compliance is unreasonable or unnecessary².
- 9.2 The Variation Request defers demonstration of the achievement of the objectives of the standard to the public interest section of the Variation Request. We will similarly defer our submissions on this point to that section.

² *Wehbe v Pittwater Council* (2007) NSWLEC 827 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 are accepted as authority on this point.

10. Variation Request - Sufficient Planning Grounds

10.1 The Variation Request puts forward ten planning grounds to justify variation, we will deal with each in corresponding numbers.

- 1) The Variation Request suggests that the maximum height breach is located away from boundaries and would not result in adverse impacts on the amenity of the locality. Lack of adverse impacts do not, by themselves, constitute sufficient environmental planning grounds.³ We submit that the height breach is not limited in its location or form but continues along the boundary with views to it from multiple points along Elizabeth and Edward Street and from neighbouring properties. The visual impact from the continuous bulk and scale sitting above heritage items and surrounding neighbours generally has clear adverse amenity impact on the locality. We have not been provided with shadow diagrams or sections demonstrating no overlooking into neighbouring properties however it would appear that overlooking from second storey office windows into 9 Mitchell Street and loss of solar access to 7 and 9 Mitchell Street is likely at a minimum.
- 2) The Variation Request argues that the breach is a consequence of the pitched roof form which has been incorporated for heritage reasons. The Variation Request goes on to list two storey buildings with pitched roof forms in the area. Whilst we accept that a two storey development with pitched roof is characteristic of this area, the Applicant has sought to rely on this to justify a significant height breach including an attic element within the roof form. The Application is essentially for a three storey development which is uncharacteristic with the two storey scale in the vicinity. Those other developments do not breach the height limit as proposed here. The pitched roof form could be contained within the height limits if the development was not three storeys. There is nothing unique about the Site that would justify requiring the additional height to accommodate the pitched roof form rather than just accommodating that form within the height limit.
- 3) The Variation Request argues that increased setbacks with deep soil landscaping have been enabled by the height breach. There is no demonstrable connection between the proposed height breach and the proposed setbacks, the building footprint could be retained without the height breach. The Court would not accept that merely pointing to benefits of a proposal as a whole constitutes justification for contravention of a standard.⁴
- 4) The Variation Request suggests that setbacks to 9 Mitchell Street will allow the building, despite the height breach, not to appear overbearing or visually obtrusive when viewed from 9 or 7 Mitchell Street. Lack of adverse impacts do not, by themselves, constitute sufficient environmental planning grounds.⁵ Regardless, we refer to the submissions of Robyn Conroy which sets out clearly why this is not the case and demonstrates that views to the Site,

³ *Peric v Randwick City Council* (2019) NSWLEC 1509

⁴ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]

⁵ *Peric v Randwick City Council* (2019) NSWLEC 1509

including from 9 and 7 Mitchell Street, will be dominated by the new visual form which will be a significant form above the existing streetscape views.

- 5) The Variation Request goes on to argue that view corridors are maintained along Elizabeth and Mitchell Streets. We again refer to the submissions of Robyn Conroy which expresses the issues with the views from those streets as a result of the Application. Again we note that lack of adverse impacts do not, by themselves, constitute sufficient environmental planning grounds.⁶
- 6) The Variation Request argues that flood impacts on the Site require car parking at ground level. We submit that this is not unique to this Site and should not result in a height breach. We understand that the height limit was set with full awareness of the flood affectation of this area but having regard to the heritage values of the area was still deemed to be an appropriate limit. The Applicant is not entitled to rely on flood planning limitations to justify an entitlement to additional height to ensure they get the yield they desire⁷.
- 7) The Variation Request submits that there are no impacts from the non-compliance on amenity or area character. We again refer to the submissions of Robyn Conroy in relation to character and to the case law on lack of environmental impact not being a sufficient planning ground. No evidence has been provided to us to demonstrate no impacts on privacy or overshadowing. Given the extent of the height breach, 60% above the limit, it seems unlikely that the additional built form would not result in privacy and overshadowing impacts. Again we note that lack of adverse impacts do not, by themselves, constitute sufficient environmental planning grounds.⁸
- 8) The Variation Request submits that the height breach allows additional commercial space consistent with the aims of the zone - we submit further below in relation to the objectives. We again note that the Court would not accept that merely pointing to benefits of a proposal as a whole constitutes justification for contravention of a standard.⁹
- 9) The Variation Request submits that the proposed development meets the objectives of the standard and the zone. We submit further on this below in the public interest section.
- 10) Finally, the Variation Request submits that the proposed development achieves the objects in s1.3 of the *Environmental Planning and Assessment Act 1979*. In our view this is not substantiated. The Site is presently in good condition and reflective of the pattern of development in the conservation area. The Application seeks to remove a sympathetic building and replace it with one which is visually dominant and obtrusive in the heritage conservation area. It is not considered to be orderly and economic development.

⁶ *Peric v Randwick City Council* (2019) NSWLEC 1509

⁷ Refer to paragraphs [26] and [53] in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191

⁸ *Peric v Randwick City Council* (2019) NSWLEC 1509

⁹ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]

- 10.2 All of the above planning grounds should not be accepted as sufficient by the court to justify variation¹⁰. This is a relatively high bar that has not been met. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 Pain J stated (as referred to by Preston CJ in Initial Action):

[31] Further support for the Commissioner's approach is derived from the use of the word "sufficient". Contrary to the Appellant's submission that this suggests a low bar, I draw the opposite inference, namely that the written report must address sufficient environmental planning grounds to inform the consent authorities finding of satisfaction in cl 4.6(4)(a)(i). Nor do I accept the Appellant's submission that the Commissioner's finding is contrary to the objectives in subclause (1) which refer to appropriate flexibility being approved in particular circumstances. The Commissioner's approach is consistent with subclauses (1)(a) and (b).

- 10.3 The Applicant bears the onus with respect to the written Variation Request and we would submit that this onus has not been met.

11. Variation Request - Public Interest and Consistency with Objectives of the Development Standard

- 11.1 The Variation Request sets out the objectives which the Applicant must demonstrate compliance with.
- 11.2 Objective (a) requires compatibility with existing and desired future character of the locality. The Applicant has failed to demonstrate compatibility. We refer to the submissions from Robyn Conroy in this regard but note particularly that the excessive height for a large length of the Site results in excessive bulk and scale and a development which 'sticks out' along the streetscape and in the conservation area generally.

¹⁰ See *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118 where Preston CJ held: "the environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15] .

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]".

- 11.3 Relevant to determining compatibility is the planning principle in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 which sets out in relation to height, at paragraph 27 as follows:

*27 Buildings do not have to be the same **height** to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.*

- 11.4 The Application before the Court results in a jarring and sudden change in height, 60% above the height standard, and next to buildings which are not currently within the same height range and are unlikely to redevelop to that height given the status of many of these buildings in the vicinity as heritage items. Whilst acceptable gradients in height might be considered, this sudden change within the relatively consistent area is not compatible with either the existing or the future character of the locality.
- 11.5 Objective (b) requires minimisation of visual impact, disruption of views, loss of privacy and loss of solar access to existing development. The significant bulk and scale results in a clear and adverse visual impact on surrounding properties and views from the streetscapes surrounding. There is a lack of detail provided to enable proper assessment of privacy and solar impacts but it seems likely that there will be overshadowing to neighbouring residents particularly due to the significant non-compliant height.
- 11.6 Objective (c) requires minimisation of adverse impact on heritage conservation areas and heritage items. Again we refer to our submissions above and particularly the submission of Robyn Conroy which demonstrates a significant adverse impact on the adjoining heritage items and the conservation area generally as a result of this Application.
- 11.7 It is clear that the objectives of the height standard are aimed at ensuring protection of the heritage values and character of the area. The Variation Request does not demonstrate compliance with these objectives, nor can it in the context of a design which is clearly out of character with the area and presents a significant bulk and scale to a consistent and historic locality.

12. **Variation Request - Public Interest and Objectives of the Zone**

- 12.1 We would accept that there is general compliance with the objectives of the zone for the development as a whole but that this would be true regardless of if a height variation was sought or not. The height variation does not contribute to this compliance.

13. **Conclusion**

- 13.1 The Court cannot be satisfied, either in respect of the requirements under cl 5.10 of the CLEP or in respect of the matters for satisfaction under cl 4.6 of the CLEP. Particularly, the Variation Request does not provide sufficient planning grounds or demonstrate that it is in the public interest having regard particularly to the objectives of the development standard.

13.2 We would urge the Court not to approve the Application despite the parties' reaching agreement and intending on entering into consent orders. The Court does not have the jurisdiction to make the orders sought in the circumstances set out above and therefore, making the orders could constitute an error at law.

Yours faithfully



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APPENDIX 6

Conroy Heritage Planning

**Review of the heritage impacts of proposed commercial development
20 Elizabeth Street, Camden (DA 2018/00599)**

Land & Environment Court (Proceedings No. 81653 of 2020)

Consent orders hearing 18 June 2021.

Mr Jim Davis
'Nepean House'
1 Mitchell Street
Camden 2570

Robyn Conroy (BTP, M. BltEnvt (Conservation))
Conroy Heritage Planning
conroyheritageplanning@iinet.net.au
M. ICOMOS Australia

Dear Mr Davis,

**Review of the heritage impacts of the proposed commercial development
20 Elizabeth Street, Camden (DA 2018/00599)
Land & Environment Court (Proceedings No. 81653 of 2020)
Consent orders hearing 18 June 2021.**

Thank you for inviting me to provide a further review of the heritage impacts of the above development on Camden Town Centre Heritage Conservation Area (HCA), with particular reference to the impacts on your properties known as 1 (Nepean House), 7 and 9 Mitchell Street, each of which shares a common boundary with the site of the proposed development. I have attached a copy of a summary Curriculum Vitae outlining my 37 years of experience as a planner and heritage consultant for your information. I am a full Member of Australia ICOMOS (the International Council on Monuments and Sites) and am committed to the Principles and Articles of the Burra Charter.

The proposed development is located within the Camden HCA and abuts/is in the immediate vicinity of five listed Heritage Items (1, 7 and 9 Mitchell Street, plus 17 and 19 Elizabeth Street) and in the vicinity (viewsheds) of an additional four Heritage Items at 33 and 34 Elizabeth Street and 18 Mitchell Street plus (to a lesser extent due to constraints of sightlines) 17 Mitchell Street. This means that the impact of any proposed development on the subject site needs to be designed and assessed with full recognition of the impact on the heritage significance of this HCA and these items.

A series of proposals for the redevelopment of 20 Elizabeth Street have been considered by Council and now the Land and Environment Court since 2018 and I have already provided formal opinions on two that were presented to Camden Local Planning Panel (LPP). Each of these proposals was refused. This iteration that is now presented to the Land and Environment Court for determination is again different. It responds to many of my earlier concerns but remains non-compliant with the Camden Local Environmental Plan 2010 (the LEP), the Camden development Control Plan (DCP) and the Camden Town Centre Urban Design Framework for the reasons that I outline below.

The height of the proposed building above ground (10.2m at the street frontage and 11.2m at the rear) remains well in excess of the maximum permissible on the land under the Camden HCA which is 7m. This 7m height limit was identified in concert with the rezoning of the land to allow sympathetically - scaled (i.e. residentially-scaled) commercial development in this part of the HCA. These height controls and associated land use and density controls were made in full cognisance of the flood-affectation of this part of Camden, and also the need to conserve the area's heritage values. The maximum of 7m also ensures that the scale of the historically significant early-mid Victorian Nepean House at 1-5 Mitchell Street retains its historic spatial prominence in the street block. The submission to vary this provision of the LEP does not take the heritage impacts of the variation sufficiently or accurately into account and continues to rely on an argument of precedent.

1. Summary of the development – June 2021

The development as now proposed is a three storey building with commercial uses to part of the ground level on the Elizabeth Street elevation and portal access to the unscreened and at-grade parking area to

the rear of the site and two levels of commercial office space above, the upper of these on mezzanines within the pitched roof forms, each with a ridge set at RL78.2. Ground RL at the front of the site is RL68.00 and at the rear is slightly lower, i.e. the ridges are 10.2m above ground level to Elizabeth Street and 11.2m at the rear elevation (the natural ground level varies). The rear building sits on columns above the open carpark for approximately 3/5 of its length. Access to this carpark is via a 'carriage portal' set centrally in the Elizabeth Street façade.

The overall character of the elevation to Elizabeth Street is clearly commercial with a contemporary 'infill development' character. The height of the roof and its form to the rear compromises the intention of this aesthetic approach by unduly complicating the building's profile when viewed from Mitchell Street and adjoining sites. The roof to the Elizabeth Street frontage has a gabled form with its ridge aligned to Elizabeth Street with four large skylight openings to Elizabeth Street glazing to the gable ends. The roof changes angle to extend over the two-storey verandah to Elizabeth Street with a break over the portal to the carpark. The rear of the building is under a separate roof which is of different form and orientation, being hipped and gabled with large glazed gablets to each end of the ridge which is set parallel to the side boundaries. The side planes of this roof break to a flat skillion-style skirt along the northern and southern elevations. The rear roof has three large penetrations on each side for in-plane skylights to illuminate the mezzanine level (the materials and finishes drawing is contradictory in its description of whether they are openable or fixed). Materials generally accord with current fashions and are consistent with the design aesthetic of the building, although not with the lightweight/brick and tile/iron of the original houses in this part of the HCA.

The footprint extends across the frontage with 1.59m setback from the northern side boundary and 1.8m from the southern boundary. The setback to the rear boundary is 14.6m, almost half of which will be permeable paving for carparking, and half of the remainder will be a paved BBQ area. The tree in the south-eastern corner is to be removed for carparking. Proposed screen planting to the southern boundary (adjacent to the heritage items 7 and 9 Mitchell Street) relies on tree ferns which have a tall, narrow stem trunk and spreading canopy. Larger shrubs/small trees are proposed to the other boundaries and the eucalyptus near the rear boundary is to be retained with a root protection zone identified. Boundary fencing is not indicated on the drawings.

2. Summary of the heritage impacts of the proposal

The proposed development will impact on the heritage values of the Camden Heritage Conservation Area (HCA) through the demolition of an original building and garden within the HCA and inserting an infill development of commercial form and substantially greater scale than the significant historic pattern of development in this residential block of the HCA. This historic pattern is one of low-density and modestly-scaled residential cottages on large blocks with planted gardens and tall trees to the centre of the street block. The proposed development covers most of its site and is clearly three-stories in height, with the preponderance of openings to the roof form and height of the ridges advertising this level. It is grossly out of scale with the other developments in this historically residential street block within the HCA.

The roof form of the proposed commercial development has undergone at least four major revisions under the guise of this DA. The current form addressing Elizabeth Street has a character (apart from the driveway set centrally on the street elevation, creating a 'missing tooth' quality to the composition given its relative width in the frontage), that is a contemporary interpretation of a traditional two-storey development in a country town, and if the skylights were removed and the height reduced to the

maximum of 7m above ground level that is permitted under the controls, could be considered a reasonable solution. The roof form of the rear part of the building is however still unsympathetic in its configuration, particularly the detachment from the front roof and its ridge-height, which is now set at the same level as that of the front building, giving the two parts equal prominence. This side elevation runs along the rear boundary of the heritage items to Mitchell Street and will be clearly visible from Mitchell Street due to its bulk and the modest scale of the items, particularly over 7 and 9 Mitchell Street which have intact pyramidal cottage roof forms, allowing clear views of the new building as it rises two stories (including the mezzanine level with skylights etc.) immediately behind the boundary, with 'screen planting' of tree ferns which may be an appropriate selection for a space such as the south side of a three-storey building which will receive very little natural light, but which have marginal screening qualities.

Views of the development will also be available from Elizabeth Street and Edward Streets, and the bulk and form of the rear part of the building will be prominent in all non-frontal views, further compromising the integrity of the low-density suburban character of the streetscape of the HCA.

3. Assessment of compliance with the provisions of the Heritage Objectives of the Camden LEP 2010

All development in the HCA must satisfy the Objectives for heritage in the LEP (5.10). The proposed development will not satisfy these objectives because:

1. It will not conserve the historic fabric of the HCA. Fabric and spatial qualities that form part of the historic pattern of Camden's development in the mid-20th century will be demolished and overwritten. This period was a significant phase in the course of Camden's development, and the modest houses on garden blocks in this part of the original town continue to provide evidence of the pattern of Camden's growth following WW2 when modest houses for workers at the new industries nearby and other businesses were constructed on land that had remained vacant, in part at least because it was flood-prone. The house and garden at 20 Elizabeth Street is a good, representative and substantially intact example of this layer of development that contributes to the historic fabric of the HCA.
2. 20 Elizabeth Street contributes to the evidence of this aspect of Camden's historic and aesthetic heritage values as a substantially intact house and garden from this period. Its 'undistinguished' quality is an important attribute of this contributory value. If the property was rare or outstanding it should be a heritage item. Instead, it must be respected as a representative example of the tradition of development in this part of Camden.
3. The development will be approximately twice the height and length of the existing building and many times its visual bulk in all views over the site and the Items in its vicinity.
4. The existing open quality of streetscape views and the setting (visual curtilage) of the items over this area will be lost and replaced by a wall of development. This will irrevocably alter the quality and contextual heritage value of the Items (i.e., their curtilage) and will also adversely impact the traditional views associated with the streetscape views of Elizabeth, Mitchell and Edward Streets at this important entrance to the HCA.
5. The scale, form and siting of the development is not consistent with the historic and significant pattern of land use in this part of the HCA. The historic pattern of development is derived

from the late Georgian/early Victorian town plan, with its grid of wide streets and large lots, the depth of which have provided space at the rear for large trees to grow and long, low view lines over the predominantly single storey cottages and houses from the other side of the wide streets. The patterns of development have resulted in wide setbacks on both sides of buildings, and this has allowed open and well-vegetated streetscape views in which buildings largely play a secondary role. The proposed development ignores the traditional principles of streetscape rhythms and site planning that underpin the heritage significance of the HCA by building almost boundary-to-boundary and using disparate roof forms on the two parts of the building that otherwise are unified in their scale and styling. The uncomfortable profile of the rear roof from when viewed over the Heritage Items 7 and 9 Mitchell Street in particular will draw undue attention to what was normally (and in all types of land uses) a secondary and visually recessive element in the overall composition. It is important to recognise that the proposed 'screen planting' of three tree ferns and underplanting mean that this visual prominence as the backdrop to views over these items (part of their visual curtilage) will have a permanent adverse impact on the setting and views of both the items and the HCA.

6. The massing of the rear building with the floor slab supported over an open parking area is a clumsy solution to the need to lift the building above flood level and is made at the expense of impact on the heritage values of the HCA through the consequent increase in scale and bulk of the upper levels.
7. The proposed building's relationship with Edward Street and Mitchell Street streetscapes is incoherent in design, building envelope, scale and height.
8. The roof form is proportionally and stylistically uncomfortable. The incongruity of purpose in the choice of a domestic roof form with 1980's design references in its hipped and gabled design on a commercially scaled building of a much greater and wider footprint than a residentially-scaled property is not only aesthetically incongruous it raises the ridge-height significantly above compliance. Reducing this ridge height and linking the rear to the Elizabeth Street roof in a traditional hipped configuration would significantly reduce the impact of the development on the integrity of views and the setting of the original buildings in the HCA, including the nearby heritage items.
9. The Elizabeth Street façade is more appropriate in the context of a commercial development in a historic country town than the previous multi-dormered proposals but it remains unduly prominent due to its height and bulk.
10. The development will overlook, overwhelm and loom over the private open space of the Items at 1, 7 and 9 Mitchell Street. Part of the traditional pattern of development in early-mid 19th century HCAs is that each property, particularly in the blocks away from the main retail area, was characterised by a large private back garden. This continues to be demonstrated by the properties at 1-9 Mitchell Street (although currently reading as exposed because they are unshielded by fences) and in particular Nepean House, where the original area of the site in the 1840's Village Subdivision has been re-aggregated so that it remains interpretable as a historic garden space and increases the heritage significance of the curtilage of the Item. (Note that the definition of 'curtilage' in the LEP is the area of land that contributes to the significance of the item or area, and does not necessarily coincide with the listed area. It can include other properties and/or the public domain. For example, the curtilage of 1 Mitchell Street includes

the surrounding garden, the setting established by the surrounding development (including 20 Elizabeth Street) and contributory views associated with the property.)

11. The scale, form and potential for planting, as well as the existing potential for private enjoyment, of these gardens will be lost. Shadowing will be significant and will have the potential to impact the viability of plant growth on the site of the items. It is noted that the shadow diagrams do not appear to respond to the proposed built form, particularly the 21 June set, but also that the submitted plans are not dimensioned sufficiently to confirm.

4. The Heritage Impact Statement (March 2021)

I note the description of the methodology used in the preparation of the Heritage Impact Statement (HIS) and reference to the Australia ICOMOS' Charter for the Conservation of Cultural Significance 2013 (the Burra Charter). The historical research is thorough.

The HIS includes an assessment of the individual heritage significance of the property at 20 Elizabeth Street which concludes that it does not satisfy the Criteria for local heritage significance as an individual heritage item, which is agreed. The property is not a Heritage Item, nor is it being considered for listing as an individual Item. It is a substantially intact modest mid-20th century cottage and garden in a part of the HCA that is characterised by this type of development which is of historical importance to the town of Camden. HCAs are not collections of individually significant examples of their type. They are precincts that are important for their collective values. 20 Elizabeth Street makes a solid contribution to the mid-20th century layer of the historic and aesthetic heritage values of the HCA and should not be demolished and redeveloped without a comprehensive analysis of alternatives and why an option that would have retained the evidence of this layer (i.e. adaptive re-use of the building as seen in many of the former houses in this area including the Items 7 and 9 Mitchell Street) should not be sought. The HIS does not include such an analysis.

The assessment of visual character of the surrounding area at s.8.1 is limited to a table of selected photos of properties in the area, mainly in Elizabeth Street with some from Edward, Exeter and Mitchell Streets. The buildings abutting the site along Mitchell and Edward Streets, including the three Victorian-period Items, sharing common boundaries with the development, are not included. The sentence describing the 'analysis' is consistent with the historical research and concludes that most of the development in this part of Camden occurred after WW2 (a significant phase in Camden's development when most of its vacant town lots were finally developed with modest housing, of which 20 Elizabeth Street is an example), with more recent infill development of larger scale with confused aesthetic qualities further along Mitchell Street.

The suggestion at p.23 that Council is actively promoting infill development of densities greater than permissible under its controls is emphasised by the HIS highlighting approvals of non-conforming developments. The developments are cited in an attempt to support the premise that the area is in a state of change and that this will continue. This is of particular concern. A HCA is not intended to be static, but the controls that are relevant to the HCA are legislated to ensure that change is controlled and respects the heritage significance of the HCA as required by the Heritage Objectives of the LEP (see comments above). Any assumption that 'change' relies on increasing degrees of non-compliance with the LEP in terms of its numerical controls through the citing of precedents, most of which were established prior to the gazettal of these same controls, cannot be considered to be in the public interest.

The implications of this increasing reliance on precedence seen throughout the path of this DA and others in the area must be of significant concern and cannot be ignored. It is critical that this cycle of ever-taller and bulkier developments in this part of Camden be called to a halt by the refusal of the proposed development (unless its height is reduced to comply). Any consent that relies on the precedent of development that does not respect either the heritage values of the area nor the gazetted planning controls also cannot be considered to be in the public interest.

With regard to s.8.3.2 (Style) the HIS does not explain why two unrelated roof forms of identical height and very similar scale have been used. A more sympathetic solution would have been for the rear roof to attach to the main roof using a simple, traditional hipped form. The statement that the rear roof will read as a lower element and provide a descending scale (s.8.3.3. Form) is only achievable through the effect of perspective. A lower roof form to the rear would provide a much more authentic sense of descending scale in oblique views from Elizabeth Street. More importantly, it would also provide a descending scale in the prominent and direct view of the side elevation over the Heritage Items 7 and 9 Mitchell Street, views that are not likely to change given lack of space for screening of the development and use of mono-trunked (stalked) tree ferns as screening plants.

It is noted that the HIS does not address the proximity and significance of the adjacent Heritage Items in any detail until Section 8.5.2, and even then is limited in scope to a brief summary of the Items and cursory attempt to describe the impacts of the development on these items, which misleadingly describes the development at the rear as two storeys (which was the previous proposal; the current drawing shows three levels: the parking at ground and two levels above). Nepean House at 1 Mitchell Street is wrongly described as a late Victorian, not early Victorian, house (it is one of the earliest surviving houses in the town) and its actual curtilage, which includes the northern garden, is not addressed. This area is in the same ownership as Nepean House, was part of the original site and reads as part of its setting. It needs to be respected as part of the historic curtilage and considered as such in the assessment of heritage impacts of the development.

Similar concerns are raised with regard to the lack of identification of the impacts of the development on the cottages at 7 and 9 Mitchell Street, including overlooking, overshadowing and impacting on the visual setting and aesthetic curtilage of the cottages by the three (not two) storey scale and length of the new building to their rear with minimal setbacks and inadequate screen planting. At present the rear of 20 Elizabeth Street is of traditional suburban garden character with perimeter planting, particularly to the back garden, where its vegetation forms a soft backdrop and skyline to views over and between the roofs of the items along Mitchell Street.

The assessment of one of the most important and problematic aspects of this development, the section addressing the height of the proposed development (s.8.3.4) does not mention the impact that the height of the proposed development, which will read clearly as a three-storey, large footplate commercial building, will have on the heritage significance of the HCA and the cultural value of Camden. It relies once again on citing precedent from other non-complying and unsympathetic development in the area.

With regard to the proposed landscaping of the development, the increase in setback to the rear and retention of the existing eucalypt, and enhancement of other planting in this corner are supported as they will help to retain the integrity of the 'green corridor' that runs along the spine of the street block. The removal of the existing tree is not addressed. The appropriateness of using tree ferns as "screen planting" along the boundary to the Mitchell Street Heritage Items is not addressed (their shape of spreading crown on a narrow, pole-like base will not necessarily achieve the level of screening anticipated although it is agreed that a shade-loving species will be the most viable in this location and will not cause root-invasion to the gardens of the adjacent properties).

The HIS is thorough in some respects and deficient in detail in others, most concerningly in the analysis of the impacts of the proposed development on the underlying historic and aesthetic heritage values of the HCA and the important role that the mid-20th century layer that finally infilled the mid-19th century subdivision pattern of this historic town. There is no certainty that the development will not materially affect the heritage significance of either the HCA or heritage items in the vicinity of the site. It relies on the precedent established by earlier non-compliant and unsympathetic developments and although it argues the rationale for the form of the development, in particular the part addressing Elizabeth Street reasonably well, the impacts on the HCA, including the visual and spatial integrity of the historically and aesthetically significant settings of the adjacent Heritage Items at 1, 7 and 9 Mitchell Street remain unresolved.

5. Other matters

The Camden Town Centre Urban Design Framework

The HIS includes a superficial assessment against the provisions of the LEP and DCP but does not address the adopted Camden Town Centre Urban Design Framework. This is a major omission as the DCP (5.3.3) states that *Development within the B4 Mixed Use zone at Camden must be consistent with the Camden Town Centre Urban Design Framework*. Detailed provisions of the Framework emphasise that the conservation of the fine grain and human scale of the HCA is integral to Council's vision for the precinct. The Framework documents the existing character of the 1840 town and makes a clear Statement of Council's desired future character for Camden as follows: *Built Form Place Principle: Protect and enhance the unique character of Camden's heritage, its human scale and network of urban fabric ensuring all built form contributes to Camden's identity as a rural town* (p33). The proposed development is urban, not rural, in its scale, form and character. It will not contribute in any positive manner to Camden's identity as a rural town.

NSW Heritage Council guidelines for the design of infill development in historic environments

The NSW Heritage Council has published *Design in Context: Guidelines for Infill Development in the Historic Environment*¹ which sets out design criteria and a check list for assessing new development in a historic context (p.15). It places a high priority on the need for new development to be sensitive to the character and traditional values of an area, stating: *Infill design should recognise the predominant scale (height, bulk, density, grain) of the setting and then respond sympathetically. The impact of an inappropriately scaled building cannot be compensated for by building form, design or detailing. The grain, or pattern of arrangement and size of buildings in a precinct or conservation area, can be an important part of its character. The subdivision patterns and layouts of the streets provide the predominant scale and rhythm of building frontages.*

The proposed development imposes its own economic imperatives on the HCA and although the current proposal is an improvement on earlier versions its built form still does not respond sympathetically to the existing urban grain.

Australia ICOMOS' Burra Charter (2013)

The HIS references the principles of the Burra Charter briefly but does not demonstrate how it is

¹ <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Heritage/design-in-context-guidelines-for-infill-development-historic-environment.pdf>

consistent with the Articles of the Charter, in particular Articles 8 (the need to protect and conserve the setting of the place; 15 (change and the importance of conserving cultural significance and respecting all aspects of a place's cultural significance, including fabric of different periods and associations); 21 (the need to have minimal impact on the cultural values and significance of the place); and 22 which applies to new work. The Charter is not a statutory checklist, but it does provide the framework for the conservation of cultural heritage significance through its Articles and accompanying Practice Notes.

Under Article 15 Change, contributions of all aspects of cultural significance must be respected, including fabric, uses, associations or meanings of different periods, and that to emphasise or interpret one period or aspect at the expense of another can only be justified when what is left out, removed or diminished is of slight cultural significance and that which is emphasized or interpreted is of much greater cultural significance. The HIS makes the unsubstantiated judgment that the cottage is of no cultural significance, and that to replace it with a modern structure of much greater scale will enhance the area's cultural significance. The HCA listing recognises that the cottage is part of the early and historically significant layers of development in the town of Camden, and although modest in scale, form and materials, it contributes to the evidence of the historic patterns of the town's settlement and is therefore part of Camden's cultural significance. The fabric of the existing cottage is historically appropriate to its original purpose as modest housing and is not a valid reason for the statement that it does not contribute to the heritage significance of the HCA and the cultural significance of Camden.

The Practice Note applicable to new work (Article 22) highlights the need for new work to be identifiable as such, but NOT at the expense of respecting the cultural significance of the place, in this case, the Camden HCA. According to the Practice Note², work should comply with the Charter as a whole, and

- *Not adversely affect the setting of the place (Article 8)*
- *Have minimal impact on the cultural significance of the place (Article 21.1)*
- *Not distort or obscure the cultural significance of the place, or detract from its interpretation and appreciation (Article 22.1)*
- *Respect and have minimal impact on the cultural significance of the place (Article 22.2).*

The cultural significance of the Camden HCA ("the place") is that of a historic country town with a clearly defined and historic business core and residential built forms surrounding this core that provide evidence of the course and pattern of the town's settlement over almost 200 years. The proposed development is situated within the street block at the north-eastern corner of the historic town plan and had remained largely undeveloped until the 20th century due to the flood-prone nature of the land. Its cultural significance is not commercial in nature, nor is it reliant on large-scaled development. The cottages at 7 and 9 Mitchell Street are exemplars of sympathetic adaptive re-use of a residence for commercial purposes.

Nepean House at 1 Mitchell Street, and its neighbouring cottages at 7 and 9 Mitchell Street are amongst the earliest surviving residences in Camden. Fabric and setting to each, including views to and over them, is substantially intact. The trees and other vegetation along the spine of the street block, including on 20 Elizabeth Street, make an important contribution to views over the items from the public domain, both direct and oblique viewpoints by providing a soft and vegetated backdrop which is free of visual clutter and confusion from unsympathetic development.

Nepean House is also a very rare example of two-storey development in the town. Its landmark value at an important entry-point to the historic town should not be confused or challenged by the larger scale,

² https://australia.icomos.org/wp-content/uploads/Practice-Note_Burra-Charter-Article-22-New-Work.pdf

bulkier form and prominent siting of the proposed commercial development on the adjacent site.

6. Concluding Comments

In my professional opinion compliance with the Heritage Objectives of LEP 2010, the objectives and provisions of the DCP and other Council policies cannot be achieved by the current development because the development will not conserve or protect the heritage significance of the Camden HCA or those of the Heritage Items within the vicinity as required by the Objectives. It is noted that zoning and development standards do not over-ride the LEP's Aims and Objectives relating to the need to protect Camden's environmental heritage, including the traditional pattern of development within the Camden HCA. Any development must satisfy these aims and objectives. This includes (and is particularly relevant to) consideration of a request for variation of development standards as per Cl. 4.6 of the LEP.

The heritage significance of each of the items at 1, 7 and 9 Mitchell Street, both individually and as a group, rely on the spatial and landscape setting provided by the adjacent properties including 20 Elizabeth Street. The scale, form, bulk and siting of the proposed development will irrevocably impact on the heritage significance of each of these items and the HCA. It is grossly over-height, over-scaled and bulky with side setbacks that are inconsistent with the streetscape.

The proposed land use for commercial office development is not consistent with the historic pattern of residential and low-key village edge/rural service activities characteristic of a country town and in particular the Camden HCA. Any introduction of commercial office use as facilitated by the current LEP provisions should be integrated into the existing fabric in an aesthetically sympathetic manner that clearly respects the traditions of built forms and site planning of this sub-precinct.

The development remains an inappropriate overdevelopment of the site that will have significant adverse impact on the heritage values of the HCA, will contribute to the pattern of increasingly unsympathetic developments that are eroding the integrity of the historic and aesthetic values of the HCA and will in turn be cited as precedent by future proposals. The granting of consent would not be in the public interest. The Development Application should therefore be refused.

Please do not hesitate to contact me should you require any further information or clarification of the matters identified above.

Yours Sincerely,



Robyn Conroy

BTP (Hons); M. BltEnvt (Conservation); M. Australia ICOMOS.

Robyn Conroy BTP, M.Blt Env't (Conservation)

HERITAGE CONSERVATION PLANNER

Conroy Heritage Planning

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Professional education

- | | |
|------------|---|
| 1978-1983 | Bachelor of Town Planning with Honours at graduation. University of New South Wales |
| 1996 -1998 | Master of the Built Environment (Conservation) University of New South Wales |
- Major research report: *Queen Anne in front and Fergie behind: a study of the effectiveness of statutory planning controls in the conservation planning process.*
- Prize at graduation: Sydney Harbour Foreshores Authority Prize for outstanding thesis or research.*

Professional memberships

- Australia ICOMOS
- Australian Garden History Association (NSW)
- NSW National Trust
- NSW Historic Houses Trust (Sydney Living Museums)

Author

Planning for heritage conservation and management. in *Planning Australia: an overview of Urban and Regional Planning* (ed. Thompson, Susan and Maginn, Paul) 1st (2007) and 2nd (2012) editions.

Experience and Employment History – Robyn Conroy

2012 – PRESENT: INDEPENDENT HERITAGE AND PLANNING CONSULTANT

- Eryldene Historic House and Garden Trust: Review and update of the Conservation Management Plan for the house and garden.
- Georges River Council: Heritage Review of the former Hurstville LGA: Review of existing Heritage Items and critical analysis of State Heritage Inventory forms.
- Bayside Council: Heritage Review to update the State Heritage Inventory forms for the former Botany Bay LGA.
- Blue Mountains City Council: Major Review of Period Housing Areas to progress their conversion to Heritage Conservation Areas (including documentation and analysis of the contributory qualities of approximately 4000 properties)
- Provision of Heritage Advisory services on contract basis to Ku-ring-gai Council focusing on large and controversial developments affecting heritage items and heritage conservation areas

including Expert Witness to the Land and Environment Court, JRPP assessments and complex negotiations

- In-house heritage advisor to Leichhardt Council (now Inner West Council) on contract basis with focus on residential development
- Provision of expert independent advice and reports on planning and heritage matters to local government and the community
- Research, preparation and project management of heritage studies, urban design studies, character analysis studies, development control plans and heritage conservation policies for local government including the City of Sydney, Blue Mountains City Council, Dubbo City Council and the City of Botany Bay.
- Assessment of heritage significance and preparation of State Heritage Inventory Forms for potential heritage items including properties subject to Interim Heritage Orders under the NSW Heritage Act
- Preparation of Heritage Impact Assessments and Statements of Environmental Effects
- Review of proposed development applications and identification of heritage impacts on behalf of local residents
- Provision of a wide range of urban and rural planning services including the preparation of Local Planning Strategies; Planning Proposals and provision of general statutory and strategic planning advice to land owners and proponents
- Community liaison and consultation

2008 – 2012: PAUL DAVIES HERITAGE ARCHITECTS

Heritage Specialist

- Research, preparation and project management of heritage studies, Development Control Plans (heritage-focussed and general planning) and cultural landscape studies and controls for local councils including Marrickville, City of Campbelltown and the City of the Blue Mountains.
- Research, preparation and project management of heritage conservation management plans and heritage impact assessments.
- Provision of expert heritage conservation and general planning advice to private and government organisations.
- Community liaison and consultation for heritage and planning projects.

2011-2012: CAMPBELLTOWN CITY COUNCIL

In-House Planning Consultant

- Member of study team preparing the Comprehensive Local Environmental Plan for the Campbelltown Local Government Area.
- Provision of specialist heritage and cultural landscape advice to Council and Council staff regarding heritage issues and development affecting significant items and historic scenic and cultural landscapes.

2008: NSW DEPARTMENT OF PLANNING

(N.B.: the conservation planning functions of the NSW Heritage Branch were transferred to the Department of Planning in May 2008)

Planner (Policy and systems review)

- Preparation of State Environmental Planning Policies for World and National heritage places in NSW.
- Provision of expert planning and heritage conservation advice to policy and planning reform sections in the Department.
- Research and preparation of State environmental planning policy.
- Preparation of submissions on behalf of the Department on various matters.

1998 - 2000 and 2004 –2008: NSW HERITAGE OFFICE

(now known as the Heritage Branch, Department of Environment and Heritage)

Heritage Officer: conservation planner

- Critical analysis and review of draft State and Local government planning policies and instruments (SEPPs, REPs, LEPs and DCPs) to identify impacts on local and state heritage items including:
 - Listing and de-listing heritage items;
 - Analysing the likely implications of changes in zonings and development potential on the development potential of properties;
 - Identifying implications for the future of the wider built environment arising from the draft EPI.
- Briefing and negotiating outcomes between the NSW Heritage Council, the relevant local government body, and the affected community.
- Negotiation with state and local government bodies to achieve better conservation planning outcomes through improved legislation, policies and practices.
- Management of the planning process for the first listing of a town on the State Heritage Register in NSW (Braidwood). This included the identification and analysis of heritage values and a program of extensive consultation with Council, the community and the Minister for Planning (Frank Sartor) to achieve the listing with extensive community support as well as the development of a specialised CMP/DCP for the town to facilitate future development that would be sympathetic to the town's heritage values.
- Negotiation with land owners, developers and the community to achieve better heritage outcomes as part of the EPI and development processes in all Local Government Areas.
- Consultation and information programs for owners of potential heritage items, planning staff in areas introducing conservation planning controls and Councillors.
- Provision of regular advice to the NSW Heritage Council about planning matters affecting heritage items, areas and cultural landscapes.
- Development of policy and legislation for the conservation of places including the Model Heritage LEP and draft Model Heritage DCP.
- Assessment of development applications affecting heritage listed places, including Section 60 determinations (for places listed on the State Heritage Register), Council-referred applications for the demolition of items, Integrated Development Applications and the assessment of Major Development Projects under Part 3A of the EP&A Act.
- Analysis and reporting on the impacts of the 2008 draft Planning Reforms discussion paper and the draft legislative amendments to the Environmental Planning and Assessment Act and Heritage Act.
- Provision of expert advice to and negotiation with the Department of Planning to improve the quality and scope of heritage management as part of the Department's planning reforms,

including the research and development of provisions for the regional, sub-regional and Six-Cities plans and the Department's Standard LEP Template.

- Membership of the Department of Planning's Specialist Advisory Committee for the development of exempt and complying development reforms throughout NSW.
- Development and implementation of education programs for State and local government planners and others involved in the planning process.
- Supervision of consultant planners and projects.

2001 – 2011: UNIVERSITY OF NEW SOUTH WALES AND SYDNEY UNIVERSITY

Lecturer (Regular and Special Guest)

- Course developer and presenter: Heritage Conservation and Urban Design course for the Master of Urban Design and Development program (presented 2004-6). Case study sites set for students include Millers Point, the Signal Master's Cottage at Observatory Hill and Daceyville.
- Guest lecturer for planning, design and heritage courses including topics such as an overview of the heritage conservation process, assessing heritage significance; the principles and practices of conservation planning; researching and preparing a conservation management plan; the statutory planning process and its impact on heritage conservation; heritage for statutory planners; and documenting and recording the suburban cultural landscape.

NSW HISTORIC HOUSES TRUST

Special Consultancy: Curtilage Study: Elizabeth Farm, Parramatta

This included:

- researching the contextual significance of Elizabeth Farm and its historic setting;
- identifying its complex connections to the cultural landscape of the Parramatta River basin;
- identifying multiple curtilages and connections between Elizabeth Farm and the cultural landscape;
- a critical review of existing planning controls and their ability to protect these curtilages; and
- developing a replacement suite of planning controls to ensure the significance is appropriately protected from the impact of new development in the area.

2000 GODDEN MACKAY LOGAN HERITAGE CONSULTANTS

Conservation Planner (special secondment)

- Research and preparation of heritage studies and strategies for local government; including Randwick LGA Heritage Study (fieldwork, documentation and policy development).
- Preparation of heritage impact statements for clients.
- Provision of advice to owners of heritage items about impacts of listing, proposals for change, etc.
- Preparation of submissions to council on behalf of owners regarding heritage issues and impacts.

1995 -1998 ASHFIELD COUNCIL

Manager, Statutory Planning

Management of Council's statutory planning team and development assessment processes.

- Assessing and reviewing Development Applications.
- Provision of expert statutory planning advice to Council.
- Supervision of consultant planners and projects.
- Community liaison and consultation

1983 -1995 SYDNEY CITY COUNCIL

1994-1995: Principal Planner, Building Better Cities Program

Development and implementation of policy for the provision of child care centres (community-based and private) in the CBD; including:

- Negotiation with developers and the community to facilitate the location, design and construction of child care centres (community-based and private).
- Negotiation with bodies such as the NSW Department of Community Services and the NSW Fire Brigades to achieve safe above-ground child care centres.
- Member of working party with State agencies for the development of child care centres accreditation scheme.

1990-1994: Principal Statutory Planner

- Development assessment – including many significant CBD buildings.

1988-1990 Information Planner (research) 1983-1988

- Development of computer-based planning tools and systems for Sydney City Council

1983-1988: Strategic Planner

- Member of major precinct planning review team, including research and development of new urban design and development controls for City East, Millers Point, Western and Central Precincts.
- Research into changing city structure and functions including the implications of this for housing and employment opportunities.
- Research and development of strategic planning policies and legislation. Precinct planning Social planning study of Millers Point.
- Research and preparation of Council's 1983 Strategic Plan.

APPENDIX 7

Camden Residents' Action Group Inc

20 Elizabeth Street, Camden (DA 2018/00599)

2 March 2021 Submission

Submission and LPP Presentation History

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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

Face Book:

<https://www.facebook.com/CRAGcamdenresidentsactiongroup/>

PO Box 188

Camden NSW 2570

Email: admin@crag.org.au

Phone: 0415 617 368

General Manager

Camden Council

70 Central Avenue

Oran Park 2570

Email: mail@camden.nsw.gov.au

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 LSPS, 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 LSPS, 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.

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 join 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
02	19.08.20	Amendments following feedback from client		<div> <div>SYDNEY</div> <div> Suite 1.01, 77 Curragh St., Randwick, NSW 2031 T: 02 9397 0000 E: info@bka.com.au W: www.bka.com.au </div> </div> <div> <div>NEWCASTLE</div> <div> 10 Station St, Newcastle NSW 2300 T: 02 4929 0000 E: info@bka.com.au W: www.bka.com.au </div> </div> <div> <div>SYDNEY</div> <div> Suite 1.01, 77 Curragh St., Randwick, NSW 2031 T: 02 9397 0000 E: info@bka.com.au W: www.bka.com.au </div> </div>
03	02.11.20	Issue for Section 34 Conference		
04	07.12.20	Section 34 Amendments		
05	16.01.21	Section 34 Amendments		

- 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.

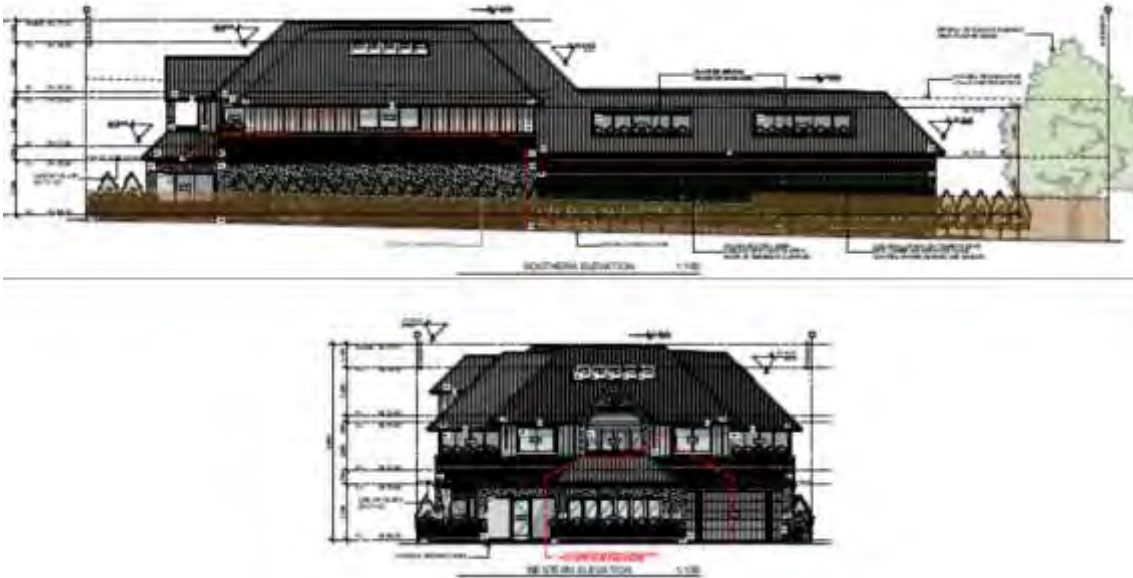


Source: Allman Johnston Architects, Bowral NSW, 5 February 2019

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

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



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LEC Conciliation Conference 23 November 2020 20 Elizabeth St Camden

I speak as President of Camden Residents' Action Group which has served the community since 1973 in protecting our heritage and environment.

The DA for 20 Elizabeth Street has antagonised the community which finds it extraordinary given the protections and significance of the heritage conservation area. It has been through 4 iterations of design, none of them remotely compliant with the LEP, DCP and Council policy plus two refusals by the Local Planning Panel.

Our Group lodged a joinder motion to the initial and withdrawn court case on the first LPP refusal.

Many objections have been lodged. We have lodged three evidence-based ones and also submitted further supporting documentation to the LPP. An unprecedented number of people have spoken against the DA at the LPP hearings and expert heritage and legal opinions have been tabled. This DA has been subject to media articles and astonished commentary and has patently failed the pub test.

We emphasise the following points:

- Camden township is unique in Australia and of exceptional significance to the Macarthur region. It was privately designed and founded by the Macarthur's and retains a close connection to the original colonial estate, Camden Park, still home to the descendants of John and Elizabeth Macarthur
- The town's human scale, iconic village profile, historic street grid and spacious country town fabric remain intact.
- Its sense of place is distinct and highly valued.

- It is regarded as the jewel in the crown of the municipality and is the hub of community events.
- The Greater Sydney Commission acknowledges it as a significant heritage town to be conserved. The NSW Heritage Office has recommended future consideration for the State Heritage Register and Council is looking into its state and national listing.
- Its economic future depends on retaining its uniqueness. It is an extremely valuable tourism asset being within close proximity of Sydney and Badgerys Creek airport
- This DA attempts to rewrite Camden's existing and desired future character, which is clearly articulated in the LEP and DCP, which adopts the Burra Charter, and in all of Council's policies and strategies.
- Desired future character is reaffirmed in 2018 Urban Design Framework which was in the public domain at the time the DA was lodged.
- Camden's Local Strategic Planning Statement for the next 20 years affirms adherence to this framework and that heritage values are to be preserved and reinforced.
- The Framework emphasises retaining the fabric and the fine-grained character of the town. It sets out a built form principle which includes *ensuring that all built form contributes to Camden's identity as a rural town. (p33)*
- The built form of this proposal does the opposite.
- No reasonable argument has been put forward for demolition of the contributory cottage. Under the Burra Charter and DCP it should be retained and adaptively re-used.
- Indeed, the cottage has been renovated and advertised as 3 Offices plus reception with excellent natural light, storage spaces and excellent parking. This belies the DA claim that it is not suitable for retention. It appears to be leased.
- The current iteration is also for three tenancies plus a café.
- But, what is proposed is destructive to Camden's existing and desired character, and would pave the way for further degradation.
- The proposed building dwarfs the scale and bulk of buildings in the cottage dominated block bounded by Elizabeth, Mitchell, Exeter and Edward Streets,
- It disrespects three adjacent heritage items.
- It also mocks many other nearby agricultural and heritage items and makes no attempt to reference them.
- It does not even attempt to address universal design principles such as
 - contributing to its context
 - being of appropriate scale in terms of the street and surrounding buildings.
 - being consistent with existing density

- The Heritage Impact Statement is seriously and unacceptably deficient.
- No attempt is made to follow the guidelines of the NSW Heritage Office for development in conservation areas and adjacent to listed heritage items.
- The proposal repeatedly asserts that the site, which adjoins Mitchell and Edward Streets, is in an area of transition, but does not delineate the area. This claim is self-serving. It contradicts the planning instruments and attempts to rewrite them by insisting that this so-called transition area seeks the introduction of such over-scaled new development. This is nonsense, and seems to rely on the irrelevancy of seniors housing on the large vacated high school site which was approved under the SEPP subject to its decontamination and prior to legislation of the HCA.
- In any case the 4.6 height variation request fails
- In relation to the height standard objectives:
- It is incompatible with existing and desired future character, it has a devastating visual and heritage impact, and results in unacceptable loss of privacy and solar access to its neighbours.
- In relation to its zoning, it does not integrate with other land uses of town farm, sale yards, residences and businesses in adaptively re-used cottages. It is not consistent with heritage tourism.
- The 4.6 request fails to provide any planning grounds or justify why compliance is unreasonable or unnecessary in the circumstances of this case.
- Flooding and heritage constraints are well-known and factored into market price of property.
- There are no special circumstances.
- This case is no different to any other attempt to maximise investment return by gaming the planning system.
- It is in the public interest of course that faith in the planning system be upheld.
- We fully agree with Council's Statement of Facts and Contentions. Regretfully, we must however take this opportunity to draw attention to the fact and our concern that the contents are quite contrary to the council staff assessment reports which led as to seek joinder to the case.
- This DA, based on false premises, is not salvageable.
- We sincerely trust that this DA will be refused with instructions to respectfully observe legislation and council policy.

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**Local Planning Panel
15 October 2019
20 Elizabeth St Camden**

Our group has lodged three evidence-based objections on this DA.

Although the modifications made to the refused DA address a number of impacts on privacy, the building remains incompatible with the HCA and the front portion at 10.3m is 47% above the height limit to accommodate an additional tenancy on a questionable third-floor level.

A number of new documents were lodged with this Appeal including a new Heritage Impact Statement and 4.6 Variation Request.

We note that our objections about the inadequacy of the heritage statement and 4.6 request were independently confirmed by renowned heritage and legal experts who presented at the Panel hearing that resulted in the DA refusal.

We find that the new Heritage Impact Statement is largely unchanged and still incomplete and non-compliant with professional guidelines.

We find that the new 4.6 request does not present any new argument and remains legally inadequate, as previously independently advised by Minter Ellison law firm. We wish to table a second opinion of its inadequacy prepared within our group by a retired environmental lawyer.

In addition, we strongly disagree with other aspects of the Agenda Report.

- 1. It does not acknowledge the long-held position of the community on conservation of the 1840 Macarthur town with its unique rural characteristics, which is reflected in all relevant Council studies and strategies (such as Camden 2040, Camden Local Draft Strategic Plan 2018, Community Strategic Plan 2017, Camden LGA Destination Management Plan 2016)**
- 2. It does not reflect the position of community's elected representatives which was most recently reiterated on 10 September when Councillors unanimously voted to look into the HCA's state and/or national listing. The NSW Heritage Council also recommended investigation into its state listing in 2016.**
- 3. The Agenda Report correctly maintains that the proposal must be assessed on its own merits but includes various old precedents of height exceedance which are irrelevant to the current planning instruments**
- 4. Further it dismisses the Urban Design Framework 2018 and Strategy 2008 as non-binding but also cherry picks them on building height. As detailed in our objections neither document condones exceedance of the height limit as asserted.**
- 5. It seeks to rewrite the existing and desired future character of the HCA, although this is clearly set out in the DCP and reaffirmed in the 2018 Framework.**
- 6. We request to table evidence of this.**
- 7. It claims that the locality of the site is not cottage-dominated despite Council's documentation and independent expert opinion to the contrary.**
- 8. Its claim that the site is within a transition area seems to be based on the as yet unbuilt seniors living development approved by the state government on the old contaminated high school site. As explained in our objections this is irrelevant being a special case that was assessed under state planning policy and prior to legislation of the HCA.**
- 9. Importantly it does not acknowledge that the Greater Sydney Commission has designated Camden as a heritage town and that the LEP and DCP heritage controls, including the 7m height limit are critical in maintaining and enhancing the economic tourism potential and strategic place of the heritage asset in local and state planning.**

Approval of this proposal would not be in the public interest. The community sees the attempt to flout the planning rules as a bonanza for private developers and an attack on the integrity of the old town's much-loved and renowned identity, unique rural character and strong sense of place.

The fact that this DA has gone through so many iterations and is still against Council policy and grossly non-compliant with the intent and letter of the LEP and DCP has already failed the pub test.

As well as upsetting the community, approval of such non-compliance would be unfair to those relying on the planning instruments to make investment and life decisions.

We respectfully request that the appeal be dismissed.

647 words

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14 October 2019

**Re: 20 Elizabeth St., Camden
DA 2018/599/1
Cl. 4.6 Variation Request
Opinion on Legal Adequacy**

As a retired environmental lawyer, I have been asked on behalf of the community to comment on the Clause 4.6 Variation Request submitted with the development application in progress for 20 Elizabeth Street, Camden.

A fundamental component of our democracy, acknowledged by the High Court of Australia, is the doctrine of the separation of powers. This is reflected in the structure of the Australian Constitution. The doctrine is equally applicable in NSW, although our State parliamentary structure does not represent a pure form of the separation of powers.

The doctrine stipulates that the three major organs of the governmental system each perform a single and different function:

- **The legislature** (Parliament) enacts laws
- **The executive** applies those laws in individual cases
- **The judiciary**, in the event that a dispute arises about the meaning or application of a law, conclusively resolves the dispute¹.

Given the doctrine of separation of powers, where we have a planning dispute relating to the interpretation of state legislation, the opinion of the judiciary is conclusive. The dispute I have been asked to comment on specifically relates to the height standard in Camden's Heritage Conservation Area. The development proposed is significantly above the height limit of 7 metres set down in the Camden Local Environment Plan 2010. The relevant clause is 4.6 – Exceptions to Development Standards – which sets out the **requirements** that a developer

¹ R. Creyke & J. McMillan *Control of Government Action*, 3rd Ed. (2012) LexisNexis Butterworths, p 259

has to go through to justify an exception to the development standards in the LEP. Height standards are listed in Clause 4.3 of the Camden LEP.

These requirements are set out in Clauses 4.6(3) and 4.6(4). Note that the legal language used in these clauses is the strongest you are likely to find in a planning statute – both clauses state that:

Development consent must not be granted for development ...unless...

The clauses provide what in my view is clear guidance to consent authorities considering an exception to development standards, although of course it is in the nature of developers to push the boundaries of the envelope (as they would clearly seem to have done in relation to the 20 Elizabeth St development) in an attempt to get their development over the line.

In relation to clause 4.6(3), the applicant must demonstrate in writing to the satisfaction of the consent authority that **both conditions** (note the crucial word “and”) 4.6(3)(a) **and** (b) are justified. The developer has to justify to the consent authority that the development standard is unreasonable or unnecessary in the circumstances of the case **and** that there are sufficient environmental grounds to justify contravening the development standard.

Clause 4.6(4) provides extra hurdles for the developer to jump.

- 4.6(4)(a)(i) is in my opinion restating the requirements in 4.6(3). The **inadequacy** of the developers’ submission in addressing the matters required in 4.6(3) would be useful grounds for attack, always referencing the wording of the section so it is quite clear to the consent authority what you are doing.
- 4.6(4)(a)(ii) opens up further grounds for attack because it requires the public interest to be satisfied (one of the matters for consideration of every development under Part 4 of the EPA Act) **and** it requires the development to meet the objectives of the standard **and** zone. I will consider LEP objectives below in more detail.

Relevant Aims and Objectives of Camden LEP 2010

1. Aims of Camden LEP 2010, Clause 1.2:

While Clause 4.6 – Exceptions to Development Standards – does not specifically refer to the LEP aims, it is always relevant to refer to them in general discussion. In my opinion, only two of the aims set out in 1.2(2) are applicable to the 20 Elizabeth Street site, and the proposed development **is not consistent with either of them.**

2. Zone B4 Mixed Use – Objectives

These objectives are so broad that an argument can be made that virtually any development fits in here, and the developers have certainly made this argument. I would argue that the proposed development is not consistent with 2 of the 4 zone objectives, viz:

- *To integrate **suitable** business, office etc development...* - the community's argument is that the proposed development is **not** suitable and therefore does not satisfy this objective.
- *To minimise conflict between land uses within the zone...* the level of opposition from owners of other land uses within the vicinity of the development and within the zone indicates that the proposed development has maximised conflict within the zone, not minimised it.

3. Clause 4.3 – Height of Buildings

The 3 clause objectives listed as 4.3(1)(a) to (c), to my way of thinking clearly argue **against** the proposed development, which violates the wording of all three objectives. The developers argue that their development does meet the height objectives, but I disagree with their foreign perspective on what constitutes a desired future character of the heritage conservation area of Camden town centre. The developers seem to have put most of their effort into arguing compatibility with existing and future character [4.3(1)(a)]. I can't see any valid arguments that indicate the development is consistent with objectives 4.3(1)(b) & (c). '

However, the developers must establish under 4.6(4)(ii) that:

“the proposed development will be...consistent with the objectives (i.e. all of them) of the particular standard”

In an attempt to demonstrate compatibility with existing and future character of the locality, the developers spend two pages (10-11) in their latest written request for a Clause 4.6 exception talking about the height of the proposed development on the old Camden High School site. Of course, this is all about “desired future character”- the site is currently just a cleared, rehabilitated open area of land.

My understanding of the history of the site is that it was owned by the State Government for decades, with Camden High School being built in the early 1950s, prior to the height restriction with buildings significantly exceeding the current LEP height standard. Once the contamination of the site became known and the High School was moved to Cawdor in 2001, the NSW Government eventually on-sold the site to a developer, who intended to retain at least one of the over-height buildings, on the condition that the site be rehabilitated as part of the development approval.

Council and the Camden community had little, or no, say about approval of the development (in 2009) as it came under State Environmental Planning Policy (specifically SEPP Housing for Seniors 2004). It is also noted that approval predated the legislation of the HCA in 2010.

It is completely invalid to use the height of the proposed buildings on the high school site as a justification for a further over height development proposal as the developers have done on pages 10-11 of their application. This is like comparing apples with oranges. The proposed development on the high school site does not represent the desired future character of the locality or its transition – most local residents would not even know what is proposed to be built at the old high school site.

Public Interest:

All indications are that the preservation of Camden as a heritage conservation area is a clear element of the public interest in the local area. Evidence for this is the listing of central Camden as a heritage conservation area in the Camden LEP 2010. More recently, Camden Council agreed unanimously across party lines to look into heritage listing of the Camden Town Centre. These are clear indications that heritage preservation is an important element of the public interest in central Camden.

The proposed development is not only contrary to the demonstrated public interest, but is fundamentally inconsistent with LEP Clause Objective 4.3(1)(c), which states that the third clause objective is:

4.3(1)(c): To minimise the adverse impact of development on heritage conservation areas and heritage items

Only refusal of the DA will be consistent with this height standard objective.

Judicial Interpretation of LEP Clause 4.6

The applicants have kindly provided us with two NSW Land and Environment Court judgements, handed down by the eminent Chief Judge of the Court, Chief Justice Brian Preston. These provide us with what in my view is a conclusive interpretation on the application of the Exception to Standards Clause 4.6 in the Camden LEP (this clause is one of the commonly worded clauses inserted in all NSW LEPs when they were last revised by the NSW Government). The Initial Action case² relates to a development under the Woollahra LEP – Height Clause 4.3 differs to the Camden LEP, but the wording of Clause 4.6 is essentially the same in both Camden and Woollahra LEPs. As noted at the beginning about separation of powers these judgments are binding on the local consent authority and any opinions from Council staff, councillors, developers and panel members which contradict the judgements are legally invalid and of no effect.

Initial Action P/L v Woollahra Municipal Council [2018] NSWLEC 118 (14 August, 2018)

The facts of this case can be readily distinguished from the circumstances associated with the current case under the Camden LEP. The Woollahra LEP has a significantly different wording under Clause 4.3 – Height of Buildings to the Camden LEP Clause 4.3, and the affected land was not classified as flood prone, nor were heritage issues a factor in the judgement.

The value of the case is in Chief Judge Preston's reference to two of his previous cases on Clause 4.6 which indicate the correct legal approach to the application of Clause 4.6. If you go back to the comments about the separation of powers at the beginning of this report, Judge Preston is providing a clear and binding guide to the resolution of disputes involving LEP Regulation 4.6.

The first case mentioned in Initial Action is ***Randwick City Council v Micaul Holdings***³. Preston CJ notes in Initial Action at 6-7 that:

"To understand how the Commissioner misinterpreted and misapplied cl 4.6, it is necessary to recount what is the correct approach...I summarised the correct approach under cl 4.6 in Randwick City Council v Micaul Holdings P/L"

In Randwick City Council⁴, Preston CJ stresses the importance of assessing Clause 4.6(3)(a) which requires that the consent authority must be satisfied that the written request demonstrates that compliance with the development standard (Cl 4.3) is unreasonable or unnecessary in the circumstances of the case before giving consent. Preston CJ also lists one of the established tests to allow this to be done:

² [2018] NSWLEC 118 914 August 2018)

³ [2016] NSWLEC 7

⁴ Randwick City Council v Micaul Holdings @ 34

“One of the established tests to demonstrate that compliance with a development standard is unreasonable or unnecessary is if the development is consistent with the objectives of the standard. The objectives of the building height standard ⁵... included ensuring that the development does not cause environmental harm (such as adversely impacting on the amenity of adjoining and neighbouring land). Hence, establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”

In my opinion the clause 4.6 written variation requests for 20 Elizabeth Street, Camden do not meet this test.

The second case referred to in Initial Action by Chief Justice Preston is the Wehbe case⁶. Preston CJ stated in Initial Action @ 16:

“As to the first matter required by cl. 4.6(3)(a)⁷, I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council... Although that was said in the context of an objection under SEPP 1 to compliance with a development standard, the discussion is equally applicable to a written request under cl. 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary”.

The important clauses in Wehbe are clauses 42-49. The circumstances in Wehbe are very different to 20 Elizabeth Street, Camden and the rest of the case is of no importance as a legal precedent. Interestingly, CPS referred to the Wehbe case on page 56 of their November 2018 Statement of Environmental Effects. The reference seems to have disappeared from the Clause 4.6 variation request dated August 2019, even though the Wehbe case is highly pertinent to the assessment of Clause 4.6 and was thought sufficiently important for inclusion in the Statement of Environmental Effects dated November 2018.

⁵ Referring to Clause 4.3 of the Randwick LEP 2012, similar in wording to Clause 4.3 of the Camden LEP

⁶ Wehbe v Pittwater Council [2007] NSWLEC 827 (21 December 2007)

⁷ Same wording as Cl 4.6(3)(a) in Camden LEP 2010

In Wehbe, Preston CJ sets out 5 common ways of establishing that compliance to a planning standard is unreasonable or unnecessary. I will summarise them below:

1. The most commonly invoked way is to establish that compliance with the development standard⁸ is unreasonable or unnecessary **because the objectives of the development standard are achieved notwithstanding non-compliance with the standard**⁹... If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).
2. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
3. A third way is to establish that the underlying purpose would be defeated or thwarted if compliance was required.
4. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. A fifth way is to establish that the zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary.

In my opinion, none of these 5 ways from the Wehbe case are applicable to the circumstances of the 20 Elizabeth Street development.

Any questions on this opinion may be directed to the Committee of Camden Residents' Action Group Inc. in writing.

⁸ In our case, this refers to the CI 4.3 Height of Buildings standard in Camden LEP 2010

⁹ My emphasis

Camden DCP Camden Heritage Conservation Area

Character Elements

The distinguishing natural and built character elements of the Camden Heritage Conservation Area include:

1. Distinct tree lined visual gateways as viewed from rural floodplain on the fringes of Camden town.
2. A topographical form which rises from the floodplain.
3. A town which is surrounded by rural hinterland containing transitional community uses.
4. Prominent landmark buildings dominated by St John's Church and in particular it's spire.
5. Cowpasture Bridge which opened land to the west of the Nepean River.
6. A strong grid street network of Camden town.
7. A pronounced "High Street" in Argyle Street, performing a traditional shopping and commerce role and thoroughfare function.
8. A distinctive tree lined and landscaped medium strip with minimal landscaping fronting the shops along Argyle Street.
9. Street lights delineating the carriageway and communicating "seasonal" festive and event information.
10. Buildings covering a range in stylistic periods reflecting the evolution of the town centre and reflecting a diverse palette of building materials and finishes.
11. Uniform single to two storey shop fronts along a wide main street.
12. An important historical, visual and social axis is formed by John Street.
13. A cluster of civic and community buildings in lower John Street.
- 14. A range of residential premises, from the stately to workers cottages, largely converted to commercial functions; but still some with a residential use.**
- 15. A unique roofscape of smaller roof forms viewed throughout the town.**
- 16. Remnants of a rural service town, particularly in Edward Street.**
17. A modest workers cottage precinct in View Street, transitioning into large middle class housing in Alpha Road.
18. Federation cottages and interwar bungalows radiating out from the town centre, with adaptive reuse of these in Broughton Street.
19. A health precinct surrounding Camden Hospital.
20. A series of informal pathways linking parking precincts.
21. The grand Macarthur Park is on the fringe of the Town Centre.

Part 2 – General Land Use Controls

Objectives

- a. Retain the unique heritage significance of Camden town, recognising it as a rare and distinctive area;
- b. Retain and promote evidence of the historical development of the town and enable interpretation of that historical development;
- c. Retain the cohesive character particularly evident in the scale of development in each street;
- d. Retain distinctive features which unite the place. Such as parapets, chimneys, veranda's, the mixture of roofs, the road network, subdivision patterns, pathway connections, consistency of colours and the limited building material palette;
- e. Seek to foster a balance between historic character and sensitive contemporary development;
- f. Promote the concept of adaptive reuse as a major conservation tool;
- g. Reflect an embellishment of public spaces and places in a manner which is sympathetic and does not compete with the period qualities of the township;
- h. Retain the rural character of Camden town centre; and
- i. The collection of distinctive worker's cottages in View Street, will be conserved with sensitive and appropriate development encouraged.

Controls

1. Views associated with the St John's Church spire must not be compromised.
2. The tree lined "gateway" entrances to the township must be retained and embellished.
3. The rural-urban interface must be sensitively addressed in new development proposals.
4. The strong street grid must be maintained and not compromised by closures and/or permanent malls.
5. Opportunities for enhanced pedestrian linkages must be sensitively promoted
6. Additional development on the fringe of the town should complement and not detract from the viability of the "main street".
7. Original uses of significant buildings should be encouraged and facilitated. Where this is no longer possible, appropriate adaptive re-use opportunities can be used to facilitate the conservation of these buildings.
8. Existing cottage dominated streetscapes must be retained, new development such as extensions/additions should be compatible with the existing streetscape.
9. A two storey height limit must prevail except for significant architectural features incorporated into the design of buildings in significant locations.
10. Large built forms in cottage dominated precincts must be avoided through the use of various roof forms and pitches, wall openings and recesses, materials, recessive colours and landscaping
11. Development of the flood affected fringes of the town must not compromise the prevailing character.
12. In commercial areas where historical evidence exists, awnings and/or veranda's must be provided on the front elevation and must complement existing awnings and verandahs on adjacent buildings.

Claims contained in the Agenda Report about the 2008 Strategy and 2018 Framework

Both the 2008 Strategy and 2018 UDF reinforce the LEP and DCP heritage controls. There is NO evidence that 20 Elizabeth Street is in a transition zone that seeks an over-height and bulky development of a design that is not consistent with the LEP and DCP and adopted Burra Charter.

Camden Town Centre Strategy 2008

The strategy presents nine (9) precincts as the basis for future planning. The plans provide principles for site design, public realm improvements and indicative building heights (p.20). 20 Elizabeth Street is halfway between Precincts 6 and 7 (see Fig 3, p. 23).

Precinct 6 - Mixed Uses

The precinct is currently a mixture of uses marking a transition between more formally designed precincts. Current uses should be reinforced with development sensitive to residential street frontages opposite.

Precinct 7 –Arts and Culture (Mixed Use)

The precinct can be considered as a location for the development of cultural activities combined with a modest residential component. As the land is flood prone the range of uses may be significantly restricted. Existing houses might be adapted for community arts facilities and or as private studios.

- *Complementary activities to the adjoining town farm;*
- *Introduction of town entry treatment on Macquarie Grove Road;*
- *Possible through block pedestrian access with redevelopment. (p. 21).*

Unlike what is portrayed in the Agenda Report, the 2008 Strategy may be interpreted as meaning that current uses should be reinforced with development sensitive to residential street frontages and that the existing house should be adaptively reused. It cannot be interpreted as meaning that the height limit should be grossly violated.

In relation to height the 2008 strategy also states

Review of Building Heights

In some parts of the town centre, there is the possibility for considering moderate increases in permissible building height. In some locations 3 storeys with suitable roof forms and siting could be successfully incorporated into the existing streetscape and would not detract from the overall character and design principles of the town centre. For sites affected by the 1 in 100-year flood, appropriately designed buildings with additional height to facilitate the raising of habitable rooms above flood levels would be one way of utilising this land provided safe access to flood free land can be facilitated. Taller buildings could allow increased residential development without impacting on character of more sensitive 1 and 2 storey residential areas. Opportunities to introduce taller land mark elements on prominent sites should be investigated in more detail as part of a future revision of planning controls affecting the town centre. (p. 20)

Even if the height review had been undertaken at the time of the 2008 Strategy it is a great stretch to claim that 47% is a moderate increase. Also, as in the 2018 Framework, there is an emphasis on residential accommodation within the town. Its current prohibition is intended to be rectified as pursued in the Urban Design Framework 2018.

There is no evidence within 2008 Strategy supporting the claim that a 10.3m commercial building of the design proposed is suitable for 20 Elizabeth Street.

Camden Town Centre Urban Design Framework 2018

Documentation of Camden Council's adoption of the Urban Design Framework on 14 August 2018 is attached. In summary this documentation:

- ❖ recognises that the town centre has a unique and distinct heritage character that is highly valued by the community and should be retained.
- ❖ recognises the importance of heritage in the town centre and **the need to preserve and enhance it**
- ❖ does not propose radical change, but rather it considers opportunities for minimal change to the built form and uses within the town centre, with a **focus on enhancing the attributes that make Camden unique.**
- ❖ **recommends reinstating dwelling houses as permissible land uses**
- ❖ **does not propose to amend the height control of 7m over the Camden Town Centre**
- ❖ identifies Murray Street for potentially viable for a minor increase in height. It is understood that most or all of the area identified is not within the HCA.

Criteria for consideration of **minor** height amendments will be further investigated as part of a future planning proposal to provide clarity and consistency when considering variation requests. **Any change in height requirements will be the subject of further investigation and a future planning proposal and community engagement.**

- **does not propose major changes to increase commercial floor space** or incentivise growth.
- **does not specify or promote development in the floodplain.**
- **identifies that residential use adds to the vibrancy and viability of a town centre**

The 2018 Framework makes the following statements about desired future character which are consistent with the DCP:

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)

It explains this principle as follows:

The term fine grain as used in this document refers to the human scale of the town centre. Fine grain contributes to a kind of spatial experience and allows for a diversity and range of specialised activities. Urban components of the fine grain include small shops, micro plazas, active arcades, laneways, and the specifics of how people relate to each of them. These elements all contribute to the vibrant and diverse offering in the town centre.

The grain and character of Camden Town Centre is one of relatively low scale and density; a rural township with a modest and varied collection of architecture...., the community of Camden emphasised the importance of recognising the current heritage fabric of Camden by limiting over dominating built form into the area and retaining the existing 7m building height limit.

<p>There is no evidence within 2018 Framework supporting the claim that a 10.3m commercial building of the design proposed is suitable for 20 Elizabeth Street.</p>
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ORDINARY COUNCIL

ORD01

SUBJECT: POST EXHIBITION REPORT - CAMDEN TOWN CENTRE URBAN DESIGN FRAMEWORK

FROM: Director Planning and Environment

TRIM #: 17/278945

PURPOSE OF REPORT

The purpose of this report is for Council to consider the submissions received from the public exhibition of the draft Camden Town Centre Urban Design Framework (the Framework).

The report recommends Council adopt the Framework subject to minor post-exhibition amendments. A copy of the Framework, as amended, is included as an **attachment** to this report.

BACKGROUND

The Camden Town Centre Strategy was adopted by Council in 2008. The aim of the Strategy was to *'manage and maintain the character of the town centre while making provision for modern planning and development requirements'*.

With the Camden LGA experiencing rapid urban growth since 2008, the role and context of the town centre has changed with developing urban centres at Narellan and throughout the Growth Centre.

In 2013, Council undertook a series of studies and community engagement to inform a revised vision for the town centre. The Camden Town Centre Vision (the Vision) was endorsed by Council at its meeting of 14 April 2015.

The intent of the Vision is to protect and strengthen the town centre's valued and distinct character whilst at the same time facilitating appropriate change and growth. The Vision contains a series of initiatives, several of which have been combined into the Framework, including:

- Prepare an urban design framework to establish objectives for the town centre and to identify development opportunities and associated controls for selected catalyst sites;
- Preparation of a public domain and streetscape plan;
- Preparation of a place focused, performance based DCP;
- Investigate current planning controls;
- Undertake master planning for the John Street Precinct;
- Preparation of a wayfinding and signage strategy; and
- Commencement of detailed investigation for a new public square.

In June 2016, Council engaged McGregor Coxall, urban designers to undertake the project along with a team of specialists including heritage experts and engagement specialists. Figure 1 below shows the study area of the Framework.



- Community Open Day (Camden Markets and stall in Argyle Street);
- Stall at Camden Show;
- Business Workshop;
- Community Roundtable;
- Online survey;
- Youth online survey.

Following the first round of engagement, key findings were presented back to the community roundtable (October 2017) prior to finalisation of the draft Framework.

The draft Framework was publicly exhibited from 24 April to 6 July 2018. During the exhibition Council officers offered and met with key stakeholder groups including the Camden Historical Society and the Camden Resident Action Group.

Councillors have been briefed on the progress of the Framework with the latest briefing on 10 July 2018.

MAIN REPORT

Structure of the Framework

The Framework is structured around six key principles or 'place vitality criteria'. These include;

- Natural Environment
- Economics
- Access and Movement
- Public Domain
- Built form; and
- Culture.

Central to the key principles has been engagement with the community of Camden.

Informed by the community engagement and investigation of key principles, a series of initiatives were developed under each of the key principles. If adopted, these initiatives will inform an implementation plan to deliver the outcomes of the Framework.

In addition to the initiatives, the Framework considered four catalyst precincts within the town centre including Larkin Place, John Street, Murray Street and the Nepean River Link.

Key Findings and Initiatives

The Framework recognises that the town centre has a unique and distinct heritage character that is highly valued by the community and should be retained. The Framework does not propose radical change, but rather it considers opportunities for minimal change to the built form and uses within the town centre, with a focus on enhancing the attributes that make Camden unique.

Zoning

The Framework reviewed the current B2 Local Centre and B4 Mixed Use zonings within the town centre and recommends that the current zoning be retained. However, the Framework does recommend a review of the permissible uses within these zones and consideration of reinstating "dwelling houses" as a permissible use.

Built Form – Height

The Framework reviewed the current height restrictions within the town centre, as well as considering the height of existing buildings and preferred architectural style. The

Framework does not recommend amending the current 7m height limit throughout the town centre. Rather, the Framework identifies opportunities for further investigation of specific sites and recommends reviewing controls to provide greater consistency in the consideration of development applications.

The Framework identifies that, in some circumstances, the height restriction reduces the ability to achieve pitched roofs which complement the existing heritage buildings. The Framework found there is an opportunity to investigate controls that restrict the number of storeys combined with height restrictions to achieve the desired urban design outcomes.

The Framework also recommends further investigation be undertaken regarding height, including developing criteria for when variations may be considered. The Framework identifies some opportunities for minor height increases where improved architectural and urban design outcomes can be achieved, and where it is clearly demonstrated that there is no impact on key view corridors to and from the town centre.

The Framework recommends a further study be undertaken to establish criteria where variations could occur. Matters that need further investigation include building design, built form, topography, view corridors and impact on the human scale of Camden.

Public Domain – Signage & Materials

The Framework includes a Public Domain Manual that establishes a street hierarchy and provides a standard palette of materials to guide future public domain works.

The manual also considers wayfinding and signage within the town centre as integral elements to the success of the public domain and recommends that Council undertake further work to develop a suite of heritage signs and a wayfinding strategy that minimises ad hoc signage in the town centre.

Access and Parking

The Framework identifies that while the town centre is dependent on vehicular traffic, it is a highly pedestrianised centre with most of the town centre contained within a 400m walkable radius.

The Framework includes initiatives that emphasise the pedestrian nature of the town centre and provide opportunity to increase cycle access into the town centre.

The Framework also recommends investigation into parking restrictions within the town centre that will create a greater turnover of parking and encourage long stay parking to the outer edges.

Key Precincts

The Framework identified and investigated four key precincts within the town centre to test the proposed strategies.

Larkin Place

Larkin Place is well positioned to connect to the John Street Precinct and other civic uses, such as the Camden Library and Museum.



The Framework identifies Larkin Place as having the potential to provide a flexible (temporary) town square and civic space for events, whilst still functioning as a public carpark.

The Framework also identifies opportunities to improve the interface with the rear of buildings facing onto the Larkin Place carpark, providing opportunities for infill development for small commercial or retail use.

In doing this, the Framework reviewed the Camden Town Centre Strategy (2008) which recommended a formal Town Square in John Street. The Framework concludes that Larkin Place has the potential to become a flexible town square, providing opportunities for more commercial and social activity and recommends that the proposed John Street Town Square not proceed.

John Street

The Framework identifies John Street as the cultural hub of the town centre. Given its existing strong heritage character and existing civic uses such as the Camden Library, Museum and the Alan Baker Art Gallery this precinct could further be developed as a cultural and community precinct. The Framework recommends investigating public domain works including signage and lighting, and other small-scale facilities to support public performance and enhance the civic amenity.

Murray Street

Murray Street plays an important role as a gateway entry point into the town centre. The Framework identifies the Murray Street precinct as an opportunity for re-imagining as an eat-street with a program of public domain improvements to increase pedestrian amenity and traffic calming.

The Framework also identifies Murray Street as being potentially viable for a minor increase in height, subject to demonstrating design excellence and undertaking further analysis with regards to key view corridors.

Nepean River Link

The Nepean River Link provides an opportunity to better connect the river and rural floodplain with the town centre. The establishment of a river pathway could provide linkages with existing pathways and the Camden Town Farm.

Public Exhibition Process

The draft Framework was placed on public exhibition from 24 April to 6 July 2018. Copies of the document were placed in Council's administration centre and in the Camden and Narellan libraries.

During the exhibition period Council staff conducted information kiosks at:

- Camden Library – 6.00 to 8.00pm, Tuesday 1 May 2018.
- National Australia Bank corner Camden – 10.00am to 12.00 noon, Friday 4 May 2018 and Saturday 5 May 2018.

A total of 15 submissions were received. Copies of submissions are provided as a **supporting document**. A summary table outlining the issues raised in submissions and Council officer response is provided as an **attachment** to this report.

Summary of key issues raised and responses

A list of key issues and officer responses is provided below.

1. Building Height

Several submissions raised concerns regarding the potential to increase the height limit of 7m within the town centre. Submissions also called for Council not to consider variations to this control. Concerns were also raised regarding the review of heights in the Murray Street Precinct.

Officer Response

The Framework does not recommend changing the existing 7m height limit throughout the town centre. Rather, the Framework identifies that the height control combined with a storey control could be used to achieve better urban design outcomes, including the ability to have pitched roofs.

The Framework recognises that many existing buildings within the town centre do not meet the 7m height limit and recommends that clear criteria be prepared for how and when variations to the height control will be considered.

The Framework also identifies Murray Street for possible further consideration in relation to height. The Framework recognises that the typography and location of the Murray Street Precinct may facilitate a minor height increase subject to detailed design and analysis with regards to key view corridors.

Any change to height in the town centre would be subject to a separate planning proposal to amend the Camden LEP 2010 and this would require further investigation and community engagement.

2. Signage and Wayfinding

Concerns were raised regarding the general suite of signage within the town centre, and that it detracts from the heritage of the town centre.

Officer Response

The Framework recommends the preparation of a heritage suite of signage for the town centre. This will be undertaken in conjunction with a wider wayfinding strategy for the town centre.

3. Heritage and its role in the Framework

Concerns were raised that the heritage significance of the town centre was not prominent enough within the Framework, and that heritage should be strengthened in terms of the overall document and, more specifically, within the economic principles, as heritage has a key role in the economic viability of the town.

Officer Response

The draft Framework recognises the importance of heritage in the town centre and the need to preserve and enhance heritage in the future. There is no objection to amending the Framework to further recognise and support this.



4. Zoning

Concerns were raised regarding the zoning of the town centre and the St Johns Church Precinct.

Officer Response

The Framework does not recommend changing the current zoning within the town centre, however it does recommend a review of the current permissible uses within the B2 Local Centre and B4 Mixed Use zones as they currently prohibit dwelling houses.

With regards to the St Johns Church precinct, this was not included within the scope of the Framework, however zoning will be considered as part of the broader review of the Camden LEP 2010.

5. Arrival experience

Concerns were raised regarding the need to improve the entry points into the town centre.

Officer Response

The Framework identifies potential initiatives to improve the arrival experience into the town centre. These include investigating the opportunity to underground power infrastructure (where possible) and reinforcing tree lined avenues on the approaches to the town centre.

6. Public Art

The need for a public art strategy was raised, including the opportunity for public art to emphasise the history and significance of the town centre.

Officer Response

The Framework identifies an initiative to develop a public art strategy for the town centre.

7. Traffic and Parking

Concerns were raised with the speed of traffic in the town centre and a need to reduce the speed limit. Concerns were also raised regarding the availability of parking close to the town centre.

Officer Response

The Framework doesn't review traffic or parking, however, it includes initiatives to further improve access and movement within the town centre, including initiatives to improve walkability and cycle access into the town centre.

In relation to parking, the Framework recommends Council undertake monitoring and investigate parking restrictions within the centre and promote long stay parking on the outer edges of the town centre.

8. Development in the Floodplain

Concern was raised with potential future development within the floodplain surrounding the town centre and the need to preserve the floodplain.

Officer Response

The Framework doesn't consider or promote development within the floodplain surrounding the town centre. Any future proposals within the floodplain would need to take into consideration all relevant planning controls.

Proposed Changes to the Framework

Minor post-exhibition changes are recommended to the draft Framework resulting from the submissions. These are listed in the table below.

Reference	Proposed Amendment
Page 15	Add the following sentence to the last paragraph: <i>'In addition, the entire Camden Town Centre is within a heritage conservation area'.</i>
Economics Place Principle - Page 57	Replace the existing place principle with the following: <i>'Maintain and evolve the local retail, commercial and residential economy by creating a range of opportunities that complement the heritage fabric of the Town Centre'.</i>
Outcome 04 Page 87	Replace with the following wording: <i>'Allow small scale (2 storey with pitched roof) residential development facing Larkin Place.'</i>
Outcome 03 - Page 95	Replace with the following wording: <i>'Any built form, or modification to existing facades on Murray Street is to engage with the streetscape and provide enclosed outdoor space'.</i>

Where to From Here?

Subject to Council adopting the Framework, an implementation plan will be prepared. A summary of some of the key initiatives and broad delivery timeframes are provided below:

Short Term

- Further investigation into the LEP and DCP provisions.
- Prepare a signage and wayfinding strategy.
- Review and monitor Camden Town Centre parking restrictions.
- Prepare a public art strategy.
- Explore use of Larkin Place for future events.

Medium Term

- Public domain works, including pedestrian crossings on John Street and Murray Street.
- Investigate opportunities to enhance cycling experience.
- Investigate planning for a cycleway along the Nepean River.
- Investigate Water Sensitive Urban Design in parking areas with increased permeability of surfaces.



Long Term

- Physical works in Larkin Place car park to improve its usability for events.
- Investigate underground power (where possible) to strengthen entry experience to the town centre.

FINANCIAL IMPLICATIONS

There are no direct financial implications for Council from this report.

There is funding currently available for the preparation of strategic studies, including studies as part of the LEP/DCP review. Specific initiatives will be subject to consideration in the preparation of future budgets.

CONCLUSION

The Framework builds on the initiatives from the Camden Town Centre Vision. Consistent with the Vision, the Framework recognises the unique and distinct heritage character of the town centre and provides a series of initiatives which aim to protect and strength the future of the town centre.

The community has been engaged throughout the process and have assisted in the preparation of the Framework. Having considered the submissions received, it is recommended that Council adopt the Framework.

RECOMMENDED

That Council:

- i. **adopt the Camden Town Centre Urban Design Framework (as amended);**
- ii. **publicly notify the adoption of the Camden Town Centre Urban Design Framework; and**
- iii. **advise submitters of the outcome of this report.**

ATTACHMENTS

1. Camden Town Centre Urban Design Framework
2. Table of Submission responses - Camden Town Centre
3. Submissions - *Supporting Document*

ORD01 POST EXHIBITION REPORT - CAMDEN TOWN CENTRE URBAN DESIGN FRAMEWORK

AMENDMENT

Resolution: Moved Councillor C Cagney, Seconded Councillor Morrison that Council:

- i. adopt the Camden Town Centre Urban Design Framework (as amended);
- ii. publicly notify the adoption of the Camden Town Centre Urban Design Framework;
- iii. advise submitters of the outcome of this report;
- iv. revisit the concept of residential development in Larkin Place in 12 months' time; and
- v. remove Outcome 04 – *'allow small scale (2 storey with pitched roof) residential development facing Larkin Place'*.

ORD151/18 THE MOTION ON BEING PUT WAS **CARRIED**

(Councillors Sidgreaves, Symkowiak, Fedeli, C Cagney, A Cagney, Farrow, Mills and Morrison voted in favour of the Motion. No Councillors voted against the Motion.)

ORD02 RMS ACQUISITION OF COUNCIL OWNED LAND

Resolution: Moved Councillor Sidgreaves, Seconded Councillor Fedeli that Council:

- i. agree to the compulsory acquisition of land and easement – part of Lot 1730 DP 1032925, part of Lot 1701 DP 1034645, part of Lot 233 DP 843696, part of Lot 240 DP 852594 and part of Lot 5740 DP 873263, being the areas highlighted in pink and brown on the attached plan;
- ii. agree to a reduction in the Proposed Acquisition Notice (PAN) period to seven days, with Council reserving the right of appeal should Council not agree with the Valuer General's determination;
- iii. note that a further report will be brought back to Council if the Valuer General's determination is to be appealed; and
- iv. make the appropriate budget adjustments for the provision of compensation, as determined by the Valuer General, for the acquisition and note that all necessary documentation, including acceptance of the Valuer General's determination, will be executed under delegated authority by the General Manager or his nominee.

ORD152/18 THE MOTION ON BEING PUT WAS **CARRIED**

(Councillors Sidgreaves, Symkowiak, Fedeli, C Cagney, A Cagney, Farrow, Mills and Morrison voted in favour of the Motion. No Councillors voted against the Motion.)

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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

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

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

12 September 2019

Dear General Manager,

RE: DA 2018/599/1

20 Elizabeth Street Camden

LPP Determination Review EPA Act s8.2

*Refusal of DA/2018/599/1 for the 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*

We note that the above DA was refused by the Local Planning Panel (LPP) on 21 May 2019 due to non-compliance with the Camden's LEP and DCP, which has also adopted the principles of the Burra Charter, other Council plans and policies which reflect the community's values about liveability and conservation of Camden's unique heritage and the Greater Sydney Commission's (GSC's) district plan for Camden as a heritage town. As would be expected for a grossly non-compliant proposal in a legislated Heritage Conservation Area (HCA), a large number of objections were lodged and the DA was referred to the LPP. Many community members addressed the LPP with their objections. Also, a lawyer addressed the Panel on legal deficiencies in the LEP 4.6 variation request and a renowned heritage consultant addressed the Panel on non-compliance with the planning instruments and the detrimental impact of the height, scale, form and design of the proposal within the conservation area.

A number of changes have been made to the proposal as a result of the LPP refusal. For instance, the number of tenancies has been reduced from nine to four through merging what were two buildings and a reduction of the back portion of the proposal in footprint and height.

It is acknowledged that the applicant has increased the rear setback (some of which is also to be used for carparking) that runs at the rear of buildings fronting Elizabeth and Edward streets. However, all the setbacks remain inadequate and the proposal's footprint is excessive. The footprint and setbacks remain incompatible with the pattern of development in the block and HCA.

We acknowledge that the additional rear setback allows the retention of the mature gum tree at the rear of the site as an important part of the character of the settings of the heritage items in this part of the HCA.

Whilst the modifications are welcomed as a step in the right direction, they are far from sufficient.

The proposal, particularly the main front portion of the building facing Elizabeth Street, remains grossly non-compliant with the LEP and DCP controls, other Council planning policies and the Greater Sydney Commission's designation of Camden as a heritage town.

We find it concerning that the proposal remains described as a two storey plus attic, although it includes floor space on three levels and its proposed maximum height of 10.0 to 10.3 is that required for three storeys.

The Heritage Impact Statement (HIS) under Background (p.3) sets out the iterations of this proposal and notes that this is the fourth redesign. None of the iterations satisfactorily address the excessive height, 47% above the height standard, that results in an excessive footprint and bulk, lack of setbacks and inconsistency with the fabric of the HCA. This is a fundamental flaw in this proposal which cannot be sufficiently mitigated through redesign or argued to be acceptable within the townscape.

The amended design of this iteration therefore does not lessen the overall validity of our previous two rejections of arguments for a variation of the height limit and our objections on the grounds of heritage impact and neighbourhood amenity.

Our objections are substantially the same as those for the proposal which was refused by the LPP. The following comments and arguments are additional to and are to be read in conjunction with our objections covered in our two previous submissions which are appended.

This Appeal includes a revised Statement of Environmental Effects (SEE), Heritage Impact Statement (HIS) and various plans and sketches as well as a new Clause 4.6 Request to vary the height standard (LEP4.3). The contraventions in relation to the objectives of Height of Buildings Standard (LEP 4.3) may have been mitigated slightly by the modifications referred to above but they remain severe and unacceptable.

The proposed excessive height is fundamental to the failure of the development application to comply with the height standard objectives and the objectives and controls designed to protect the HCA and individual heritage items.

We therefore first address the Clause 4.6 Variation Request and also refute any of its referenced arguments from the SEE and HIS. We then refute any outstanding arguments in the HIS.

4.6 Request to vary the height standard

This Request attempts to argue that the impact on heritage value and neighbour amenity of a 47% increase over the height limit of 7 metres in the human scale HCA would be minimal.

It remains the case, as stated in the LPP determination of 21 May 2019, that

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.

Although the Clause 4.6 Variation Request has been reworked, no new or any justifications have been presented. The Applicant arguments are generic and not specific to the circumstances of the case as they fundamentally relate to investment return. The arguments could apply to any flood prone land with planning constraints such as a height restriction. In this case there are also heritage constraints. They could be made by any developer wishing to capitalise to the maximum on an investment in land. Why not be able to build whatever the boundaries of the site will accommodate? Because much research and community input has produced planning instruments that reflect our values which as good citizens we respect and observe.

For completeness, we refute the revised arguments presented under the headings provided in the Clause 4.6 Variation Request.

4.6(3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (p.5)

Building is Non-Contributory

This claim is untrue in the sense that the building is a cottage in a cottage dominated area as is recognised in Council documents.

The existing cottage on the site, as a home built in the early post war period of building material shortages, informs the town's historic narrative of post war "fibro-majestic" housing. It does contribute to the form and scale of the HCA.

It is suitable for retention and restoration for adaptive reuse. Simple observation shows this is the usual approach in the HCA. The new HIS does not, as claimed, prove otherwise. The adjoining heritage listed properties at 7 and 9 Mitchell Street were much older and in a worse state of repair before their restoration between 2006 and 2009. They are adaptively reused and in their new life contribute significantly to the value of the HCA.



Dwellings are valid and contributory built forms and land uses within the HCA as was affirmed in the 2018 Urban Design Framework (UDF) which recommends their reinstatement as a permitted use. The UDF also encourages residential living in the HCA.

Prohibited Use as a Dwelling House

The argument that the existing cottage as a dwelling house is not permissible in the B4 zone is irrelevant as that is not the use proposed. Commercial interests are encouraged to adaptively reuse cottages through the DCP and the Burra Charter as adopted by Camden Council.

There seems to be some confusion in the documentation accompanying the Appeal.

The HIS (p.14) states that *It is likely that a future resident of a residential redevelopment of the site would demolish the existing building and replace it with a purpose built, contemporary house with all of the modern facilities expected in a modern dwelling complete with modern materials and finishes. As a result, the demolition of the cottage is considered to be a logical result of any development of the site regardless of the future use.*

Currently a dwelling is prohibited in the zone except through grandfather rights or heritage listing (which it is understood allows the reversion to residential use if that provides protection of the item).

However, the 2018 UDF for the township includes the recommendation to include dwellings in the B4 zone land uses of the HCA. The 2019 draft Local Strategic Planning Statement, which is designed to align with the Greater Sydney Commission's plan for Camden incorporates the UDF, and it is likely that dwellings will soon become a permitted use. Nevertheless, flooding constraints may affect use as a home and building of a new residence. Buildings used for commercial purposes are subject to fewer flooding constraints than residences.

Flooding Constraints

The applicant (p. 5) argues that due to the constraints of the site's location in a flood area that compliance with the height standard (and therefore the heritage protective controls) in delivery of a commercial development is unreasonable and unnecessary.

The premise upon which this argument is based is flawed.

The flooding constraints, like the heritage constraints, are well known and were abundantly clear at the time of purchase of the site in 2018. Other commercial developments, as is observable, respect the constraints and adaptively reuse the cottages and seek sympathetic extensions that comply with the planning instruments. This is clearly the expectation as expressed in the DCP which also states (B3.1.2) that 'the development of the flood affected fringes of the town shall not compromise the prevailing character'.

Other commercial proposals do not find this unreasonable. It is normal commercial practice to undertake due diligence in finding an appropriate location for a proposal. There are many opportunities for the type of commercial development sought within the Municipality on flood free land in non-heritage listed areas.

In the flood affected areas, the expectation expressed through the planning instruments and the Burra Charter as adopted by Camden Council, is that the fabric of the old town be conserved and adaptively reused for commercial purposes. The Applicant does not acknowledge that many of the surrounding properties have already been adapted to commercial uses whilst complying with the development controls and without significant loss of the fabric and spatial qualities of the HCA.

Most developers do their due diligence and if they proceed to purchase within the HCA comply with the planning controls. This is readily observable by the number of adaptively reused cottages throughout the HCA.

This non-compliant proposal would degrade the prevailing character of the area. It is not true that the existing cottage cannot be restored and adaptively reused or that there are no alternative designs that can accommodate the flooding constraints.

The question is why not find a site that is suitable for the commercial venture envisioned rather than assume that the rules can be changed at the expense of an irreplaceable heritage asset and other occupiers of the area?

Compatibility with heritage items and conservation area

Although the amended design has reduced the overall building envelope and provided some additional setbacks it remains incompatible in bulk, scale, form and height with heritage listed adjacent properties and all of its close neighbours and within the fine-grained character of the HCA.

The applicant (p. 6) claims that ‘the current proposal provides taller elements that are well separated from the surrounding heritage items to the south’. Although the rear curtilage has been increased the setback to the south is still minimal in comparison to other land coverage in the area at only 0.9m for the three-storey section and 1.45m for the two-storey section.

The proposed building would dominate the streetscape and have adverse impacts on other heritage listed items in the vicinity: 17, 19, 33 and 34 in Elizabeth Street; 17 (Taplin Cottage), 18 (Edithville) and 29-31 (Mitchell House) in Mitchell Street, the Camden Town Farm and 33 (Nant Gwylan) in Exeter Street and the Camden Sale Yards in Edward Street. The proposed building would tower over all these listed items and be many times their bulk.

The DCP also lists potential heritage items in Elizabeth Street: cottages at 6-10 and 42 and the former Picture Theatre at 39-41.

There is no demonstrable compatibility between a bulky three-storey building with minimal curtilage that provides modern office space and the Town Farm, Sale Yards, Equestrian Centre, residences, cottage-based businesses and heritage tourism

Camden is regarded as the “jewel in the crown” and the cultural and event hub of the Municipality not least because of its pattern of development with wide streets, leafiness and openness. The proposed overdevelopment of the site in terms of footprint, bulk and height is not compatible with this function. Its visual incongruity with the town’s overall cottage and rural character and adjacent and nearby heritage items would detract from Camden’s current attractiveness to visitors. It would undermine Council’s strategic plan to increase the town’s profile as a tourist destination.

Transition Area

To claim (p. 6) that *the site is located within a transition area, within a zone which seeks the introduction of such development to replace dwellings that are not contributory within the conservation area* makes no sense, is not referenced and is clearly refuted by Council documents and planning instruments.

The area is not a ‘transition area’ that seeks replacement of dwellings with any other built form. Objectives of the B4 zone include minimisation of conflict of land uses within the zone and adjoining zones and supporting and complementing the primary office and retail functions of the local centre zone (B2). This proposal conflicts with uses of the fine-grained small cottages in the B2 and B4 zone and is functionally and aesthetically inconsistent with the town farm, sale yards and Camden’s rural heritage generally.

The claim that the northern section of Elizabeth Street is a transition area is used a number of times throughout the SEE and HIS. This is not a term often used in Camden’s planning instruments and studies, but the term was found in the 2008 Camden Town Centre Strategy (which has been superseded by the 2018 Camden town Centre Urban Design framework, as well as legislation of the HCA, LEP2010 and DCP2011). However, its meaning is not that of a zone that seeks introduction of development to replace dwellings that are not contributory.

The 2008 Strategy states

In order to permit a transition between zones and to allow the town centre to respond to market conditions it is proposed to encourage adaptable building forms which could be utilised for both residential or commercial uses in transitional areas and key locations. (p. 18).

Precinct 6 - Mixed Uses

The precinct is currently a mixture of uses marking a transition between more formally designed precincts. Current uses should be reinforced with development sensitive to residential street frontages opposite. (p. 21)

Precinct 7 –Arts and Culture (Mixed Use)

The precinct can be considered as a location for the development of cultural activities combined with a modest residential component. As the land is flood prone the range of uses may be significantly restricted. Existing houses might be adapted for community arts facilities and or as private studios.

- *Complementary activities to the adjoining town farm;*
- *Introduction of town entry treatment on Macquarie Grove Road;*
- *Possible through block pedestrian access with redevelopment.*

Similarly, the SEE (p. 38) refers to Precinct 6 and claims that: *The proposal seeks to introduce a new commercial development into the Mixed-Use Precinct, and will be appropriate within the mixture of developments within this precinct.*

In fact, according to the 2008 Strategy, 20 Elizabeth Street is halfway between Precincts 6 and 7.

Precinct 7 suggests that the existing house should be adaptively reused.

With reference to the Precinct descriptions clearly the SEE is incorrect. The proposal does not reinforce a current use and it is not at all reflective of residential street frontages.

The above claims are without any foundation.

Nevertheless, the argument of the site being in a transition area is pursued as a major justification for the proposal throughout the HIS. Its following claims are wishful thinking at best. They are not correct and not how the local community, Camden Council or the State government views the town.

It is evident that for this portion of Elizabeth Street at least, existing development is and has been for many years in a state of transition from individual small lot cottages on relatively large blocks to more mixed density, style and type buildings reflecting the diversity of development to be expected in the existing mixed use B4 zone of the precinct peripheral to the commercial centre of the town. (p. 11)

*It is evident that the northern portion of the heritage conservation zone of Camden is undergoing a transition from historically less dense, mixed use development to higher density, mixed uses (including commercial and residential) due to the paucity of available space in the southern portion. The B4 mixed use zoning encourages non-residential or higher density residential development. **This is contrary to the assertion that Camden's Heritage Conservation Zone is (and by inference should continue to be) dominated by 'cottage dominated streetscapes' (DCP B3.1.2),** at least in this northern part of the conservation zone. (p.17)*

In recognition that the area is in a state of transition, the proposed density of development is greater than the existing small cottage it replaces but reflective of other development in the B4 mixed use zones throughout Camden. (p. 23)

This portion of Elizabeth Street has no uniform heritage theme and is obviously undergoing a transition from more open, low density development of varying uses to denser more commercially based and/or higher density residential development. This is already evident in the high density residential neo-Victorian style development immediately opposite the site at the corner of Elizabeth and Mitchell Streets and the current redevelopment of the Camden high school site with its high density, seniors living residential use and correspondingly large scale and tall buildings. Both these developments take up a significant proportion of the existing street frontage for this part of Elizabeth Street. (A total of 169m of the 202m or 82% of street frontage available on the western side). (p.24)

We consider Elizabeth Street to be in a state of transition from low density, mixed scale development of various uses (commercial, community and residential) to higher density residential and general commercial use development.

This is a logical progression for development of any township and particularly for Camden which sits at the western edge of the rapidly expanding outer suburbs of Sydney. (p. 26/27)

Given its rich history and vital place in the story of NSW and Australia the town may not have a singular heritage theme as suggested in the HIS. This is because it reflects our agricultural history as a working country town. Its rural heritage character is its strongest heritage feature. It is an agricultural town on the edge of Sydney that is an extremely valuable heritage asset with enormous tourism potential. It is not in a state of transition to anything other than what it is. Camden's history is as an agricultural town which was planned as a private town in 1840. Its founding by and connection with the Macarthur family and its central place within the European development of Australia is well documented and understood. It evolved as a self-sufficient working country town and focal service area for many farming families and miners in the surrounding hinterland. Agricultural, automotive and other small-scale businesses, restaurants, medical and service industries, schools, churches, showground, town farm, equestrian centre, museum, library are well-used and compatible with its rural and heritage character.

It is a legislated Heritage Conservation Area. The Greater Sydney Commission has designated it as a heritage town. Camden Council is considering its State heritage listing which was recommended to be investigated by the NSW Heritage Council. That it is a special place that needs to be conserved is not up for debate.

The fact that it is on the edge of Sydney is one of its most valuable tourism features. This in itself is a very good reason why the town is protected against the “logical progression” of the expansion of Sydney.

It is not reasonable or relevant to suggest that the research and documentation underpinning recognition of its heritage status, which had informed the objectives and protective controls in the planning instruments is somehow wrong.

4.6(3)(b) - there are environmental planning grounds to justify the contravention of the standard

Landscaped Character



The Clause 4.6 Request (pp. 8,9) claims that development not only responds to the character of both the subject urban block, as well as the Elizabeth Street streetscape, it also provides abundant landscaping sympathetic to the adjoining heritage items fronting Mitchell Street and ensuring that the proposal appears as recessive. It also claims that the proposal provides a quantity of new plantings that is well in excess of that commonly provided to surrounding properties.

As can be seen in the aerial view above this is clearly an overstatement and not consistent with the historic pattern of surrounding development or the town's rural heritage and renowned leafiness.

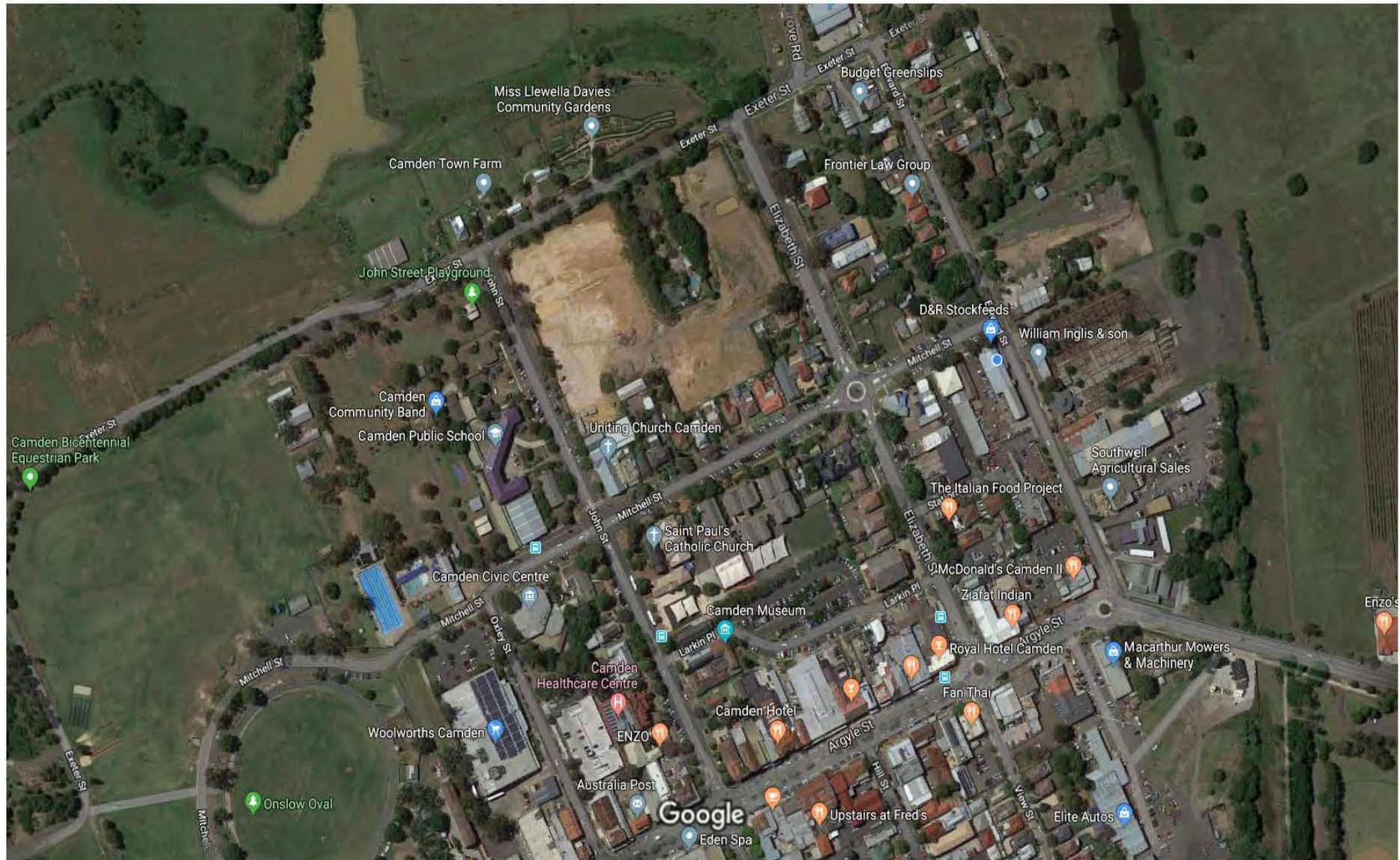
The proposed plantings, with little room and shaded by the building itself are unlikely to grow, particularly on the southern side.

No 11 Mitchell Street, as shown in these photos, was also vegetated until recently when the new owner cleared the site.



Unlike the existing pattern of the town shown in the wider aerial view below, the proposed building would take up most of the site. This would be a significant departure from the average proportion of building footprint and detract from the valued country town feel of the town. The proposal would present as an anomaly and be in sharp contrast to the rural backdrop of the town, which abruptly starts a matter of metres from 20 Elizabeth Street.

The new proposal does not, as claimed, maintain the landscaped character of the block or the town.



Character of the Built Form

References to Camden Town Centre Strategy 2008 of course are somewhat irrelevant as it precedes LEP 2010, DCP2011, 2018UDF, GSC 2016 SW and 2018 WCD District Plans. However, as covered under *Transition Area* above the 2008 Strategy (p. 21) rather than supporting the demolition of the existing cottage the Strategy suggests that it should be adaptively re-used and refers to the restrictions on use of flood prone land.

To argue that the following statement from the 2008 Strategy which is headed *Review of Building Heights* refers to Elizabeth Street is clearly wrong and is an example of cherry picking.

In some parts of the town centre, there is the possibility for considering moderate increases in permissible building height. In some locations 3 storeys with suitable roof forms and siting could be successfully incorporated into the existing streetscape and would not detract from the overall character and design principles of the town centre. For sites affected by the 1 in 100-year flood, appropriately designed buildings with additional height to facilitate the raising of habitable rooms above flood levels would be one way of utilising this land provided safe access to flood free land can be facilitated.

It is not clear as claimed that the area surrounding the subject site is one part of the town that is referenced within the comment above. The “review” continues but we know from the adoption of the 2018 UDF by Council at its meeting of 14 August 2018¹ that the Framework:

- does not recommend changing the existing 7m height limit throughout the town centre;
- identifies Murray Street for possible further consideration in relation to height.

The area of Murray Street under consideration is not within the HCA.

It is claimed that 20 Elizabeth Street is not in a cottage-dominated area despite Council’s documentation to the contrary. It is claimed that only four cottages will remain between Exeter and Mitchell Street once 20 Elizabeth Street is demolished. This is incorrect. The cottage adjacent at 18 Elizabeth Street has been omitted as has the new cottage at 14 Elizabeth Street. The count is actually 6 cottage style buildings counting the commercial building at 14 Elizabeth Street and 2 commercial buildings including 21 Elizabeth Street which is arguably an overdevelopment but presents sympathetically. Clearly it is a cottage dominated streetscape.

Even if it were not, the block within which it sits most definitely is and in any case the planning rules for the HCA still apply, most notably the 7m height limit. However, the Clause 4.6 Variation

¹ <https://www.camden.nsw.gov.au/assets/pdfs/Council/Business-Papers/2018/BP-agenda-14-Aug-2018.pdf>
<https://www.camden.nsw.gov.au/assets/pdfs/Council/Business-Papers/2018/BP-attach-14-Aug-2018.pdf>
<https://www.camden.nsw.gov.au/assets/pdfs/Council/Minutes/2018/Minutes-14-Aug-2018.pdf>

Request states that the following developments provide a clear indication of the character of the urban block.

Camden High School Redevelopment – AEH Lifestyle Estate Project (“the AEH Development”)

The High School was relocated in 2001 due to old gas works contamination. The State government and Camden Council grappled with the problem of contamination for a number of years before a seniors’ living facility DA was approved in 2009. The DA has been subject to a Land and Environment Court decision and a number of modification applications.

This redevelopment is not relevant for the following reasons:

- Each proposal is assessed on its own merits, not perceived precedents
- The High School was a special case due its government ownership, relocation due to contamination and the need to pay for decontamination of the site
- Development was contingent on the new owner taking responsibility for and decontaminating the site before construction could commence
- The High School was built in the early 1950s and parts were of three storey which were originally intended to be retained.
- It is as yet unbuilt and has recently changed ownership
- The proposal was assessed under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP) which overrides the local planning instruments
- It was approved prior to gazettal of LEP2010 and legislation of the HCA

We consider that development of the high school site is irrelevant to this proposal on an originally residential lot which is to be assessed under LEP2010 and DCP2011

21-23 Elizabeth Street

This development is frequently mentioned in the documentation as a precedent. Whilst quite arguably an overdevelopment of the site it is not relevant for the following reasons:

- Each proposal is assessed on its own merits, not perceived precedents
- It was approved prior to gazettal of LEP2010 and legislation of the HCA
- It is on a corner site which allows minor exceedance of the height limit with architectural roof forms
- Any extra height is largely due to its roof form
- It is predominantly two storeys and has been carefully designed to present as two storeys to both Elizabeth and Mitchell Street,
- It has been carefully designed so as not to overlook any other properties, unlike 20 Elizabeth Street,
- Overshadowing is largely to the street, not other properties, unlike 20 Elizabeth Street

We do not agree with the claim that this development provides an overall scale which is similar to the proposal for 20 Elizabeth Street



11 Mitchell Street (under assessment)

This proposal is under assessment and subject to community objections and a request for more information from Council. We cannot therefore make comment about its relationship to 20 Elizabeth Street and view lines from Mitchell Street. We consider it irrelevant to the variation request as any form of justification for the building design proposed for 20 Elizabeth Street.

However, the shadow diagrams of 20 Elizabeth Street show that solar access to 11 Mitchell Street would be severely compromised by a building of over 10 metres at its back boundary. No doubt this is something the new owner did not predict or factor into the purchase price as the planning instruments state that the height limit is 7 metres. It is not fair play or in the public interest that variations such as that requested are considered.

The Request also refers to other buildings in excess of 7 metres as justification to allow the variation. As each case is determined on merits, we find these references irrelevant. However, for the record:

*11 Argyle Street **Camden Vale Milk Depot** (Heritage listed Item)*

This approval was subject to considerable public protest and the intervention of Sydney media. Although finally approved in 2017 no building work has begun. It is also not relevant to the Request because

- is not adjacent to other heritage listed properties
- required concurrent restoration of the Milk Depot
- does not overlook or overshadow other properties
- is not in a cottage dominated area
- and is at the entrance to the HCA in the main street.

Extent of non-compliance

As covered elsewhere the impact of the non-compliance on the HCA and neighbours is unacceptable. The HIS (p. 22) shows the many changes made to the design through objections about non-compliance and the LPP refusal.

The original proposal opposite was very far removed from meeting the objectives of the height standard, the two-storey control and other protections of the HCA and heritage items within the DCP.

We do not understand why the planning rules were not factored into the design in the first place.

What has evolved is still grossly non-compliant. This process wastes everyone's time and resources.

The fact that the back half of the proposal is now somewhere within the 7m height limit is not a reason for allowing the gross height exception of up to 3.3m, its domination of the streetscape and block and the proposal's overall incompatible footprint, scale and bulk.



Approval of such non-compliance would not be fair to others who rely on the planning instruments to make investment and life decisions.

Objects of the Act

(c) to promote the orderly and economic use and development of land

The orderly use and development of land relies on everyone respecting and following the same rules. This proposal does not comply in that it seeks an exemption from those rules.

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)

Management of the cultural heritage involves restoring the cottage. If that were proven to be impossible (which it has not been) the proposal should be for a compatible alternative that does not degrade the HCA or heritage items. This proposal fails to promote sustainable management.

(g) to promote good design and amenity of the built environment,

This proposal would degrade the fabric of the HCA and the amenity of the existing built environment. We do not agree that an additional rationale for the excessive height is to improve the heritage outcome. We refute the claims made as follows:

- Multi-storey buildings are not a feature of the HCA.
- A pitched roof is commensurate with single storey and two-storey in the HCA, not multi-storey.
- The proposed roof is not typically pitched but is of a more mansard shape which is not seen in the HCA.
- The front gable entry is not a typical feature of buildings in the locality.

No examples to support how the proposal is a “good design” have been provided.

Clause 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

As stated in the application one reason the previous design was refused by the CLPP was because it did not meet the objectives of the height of buildings development standard.

Some changes have been made to the rear of the building but the maximum height has increased from 10.1m to 10.3m and the bulk and scale of the building remain excessive. In particular the impact on the streetscape of the Elizabeth Street frontage remains virtually unchanged with only minor cosmetic changes.

The objectives of the height standard are violated by this proposal as follows.

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

The largest buildings near to the proposed development are The Elizabeth c2000 (DA/2000/2250) and Nepean House c1858.



Both are on corner lots and present as two storeys to their street frontages. Both were built prior to legislation of the Heritage Conservation Area (2010). Nevertheless, their bulk and scale are reflective of the desired future character the HCA and architectural roof features as encouraged on signature sites (LEP2010 s5.6) largely account for any height in excess of 7m. Their contribution to the HCA contrasts sharply with what is proposed for a non-corner lot within the streetscape of Elizabeth St and the block within which it sits.



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

The visual impact of the proposal would be very significant.

As well as adjacent heritage listed Nepean House and its historic garden, the site is in a block that is cottage dominated with cottages less than half the height of the proposed building.



Two other heritage listed properties are adjacent at 7 and 9 Mitchell Street.



Other adjacent cottages include



18 Elizabeth St, a residential cottage.



15 Mitchell St, an adaptively reused cottage



21 Edward St, an adaptively reused cottage



Two other heritage listed properties are directly opposite the site at 17 and 19 Elizabeth Street.

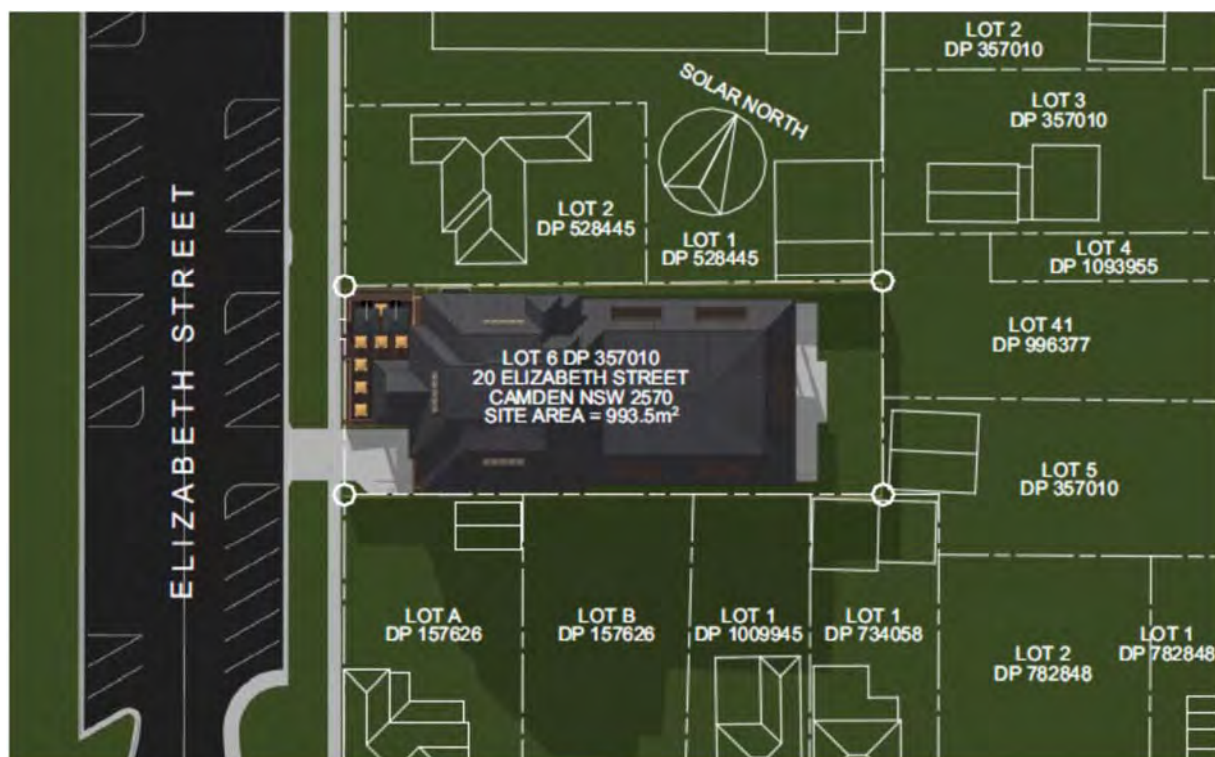
The visual impact on these properties, their contribution to the HCA and their individual settings is unacceptably severe.

Privacy

Loss of privacy due to the potential for overlooking all of the surrounding cottages is unacceptable. Windows at the second and third storey levels provide opportunities to invade the privacy of residents of private homes and occupants of adaptively reused cottages that expect the amenity provided by the residential origin and nature of their premises.

Solar Access

Loss of solar access during the winter months would be dramatic. As can be seen in the provided diagram below the properties to the south in Mitchell Street are severely and unacceptably affected. The loss would be even more severe after 3pm.



JUNE 21 3 PM

Height Standard Objective (c) To minimise the adverse impact of development on heritage conservation areas and heritage items

Minimisation requires compliance with the LEP, DCP, other council policies and strategies and the Greater Sydney Commission's recognition of Camden as a heritage town. Non-compliance with this objective has been partly covered above and is covered in greater detail in our following discussion.

In its refusal the LPP stated

The proposal is an overdevelopment of the site because of its excessive height, bulk, scale and roof form which incorporates a whole level of floor space. The height and minimal side and rear setbacks result in a building that adversely dominates the streetscape and adjoining properties to the detriment of those properties including heritage items.

The rear setback has been increased and the rear part of the building reduced in height. However, the proposal otherwise remains largely unchanged as can be seen in the two artists impressions below of what was refused and what is to be reviewed.



It is probably stating the obvious, but of course the artist's impressions are not accurate and over-flattering in terms of perspective and greenery. Nevertheless, the excessive height, bulk and scale are clear and cannot but impact on adjoining heritage items, adjoining cottages, the streetscape and the HCA.

We do find the various depictions of the development concerning.



- The greenery and curtilage depicted is subjective and inaccurate.
- It is unlikely that plants will grow in the 1.45 m width area to the south due to lack of sunlight
- Neighbouring cottages and their comparative scale are not shown
- The buildings depicted to the north are not shown to scale
- The building is 6 to 7 times taller than the average car

We also find the streetscape sketches provided to be unreflective of the proposal and to inappropriately include the unbuilt seniors living facility planned for the large disused High School site.

- Sketch 1 shows an elevation for the High School site which is difficult to compare with the elevation provided in a 2012 s96 application to the 2008 DA;
- Sketch 2 shows the proposed building as smaller in scale in comparison to heritage listed cottages at Nos 7 and 9 Mitchell Street than the plans indicate;
- Sketch 3 shows an incorrect interpretation of the building at 15 Mitchell Street;
- Sketch 4 shows an out of scale characterisation and comparison of what is proposed for 20 Elizabeth St and what is planned for the old high school site.

The objectives of the B4 Mixed Use Zone are as follows:

- (a) *To provide a mixture of compatible land uses.*

There is not an identified shortfall of commercial office space within the town centre. No evidence is provided to support this assertion. The conversion of residential cottages into offices is an example of adaptive reuse as directed by the planning instruments. There is ample opportunity in the Municipality to accommodate the additional business activity that the Western City airport may generate without degrading the small area of the HCA.

- (b) *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.*

Suitable integration would be adaptive reuse of the existing cottage.

- (c) *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

This proposal significantly conflicts with land uses of residents and businesses occupying cottages in the zone. Arguably the additional commercial space will conflict with the primary function of the B2 zone, in which there are a noticeably large number of vacant premises at the time of writing.

- (d) *To encourage development that supports or complements the primary office and retail functions of the local centre zone*

The proposal is offering space for primary office and retail functions that the B2 zone provides, and in that sense is not complementing the local centre but competing with it.

The Public Interest

The Request does not directly address how the proposal is in the public interest.

Certainty in planning and trust in the planning instruments is in the public interest. What is not in the public interest is this proposal's request for

- Exemption from meeting objectives of the height standard
- Exemption from complying with the heritage protections
- Permission to degrade heritage items
- Permission to degrade the HCA, its valued amenity and tourism potential
- Exemption from contributing to desired future character
- Permission to gain at the expense of other owners and occupants

Variation of standards is only for very special circumstances. The circumstances and arguments presented are generic to any developer who wishes to maximise return. It is not the intent of Clause 4.6 to facilitate abnegation of the planning instruments.

The public's interest in the future planning and patterns of development of the town has been the subject of repeated consultation over the years. The public's view has not wavered about conservation of our heritage and environment. That view is expressed and operationalised in Camden 2040, 2019 draft Strategic Local Plan Statement, 2018 Urban Design Framework, GSC District Plans, LEP2010 and DCP2011.

All development serves the public interest by respecting and conserving Camden's heritage.

Conclusion

It is absolutely NOT clear as claimed that the development meets the objectives of the standard. Whether it meets the objectives of the zone in its current form is doubtful.

Certainly, the proposed development is not compatible with the height, bulk and scale of buildings within its vicinity or the HCA. It would have a devastating effect on the heritage value of the town and adjacent and nearby heritage items. It would exacerbate developer interest in snapping up cheap flood prone land to claim the same exemptions.

As covered in detail above, the Request has not demonstrated that compliance with the standard is unnecessary and unreasonable. No environmental planning grounds have been provided to justify the contravention of the development standard.

We maintain that the LPP reason for refusal has not changed and should stand:

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.

Heritage Impact Statement

Deficiencies in this document have been partly covered through the above analysis of the Clause 4.6 Request for variation. The following further deficiencies are worthy of mention.

The statement fails to recognise the desired future character of the Camden Town Centre and the HCA. In fact, the HIS (p. 17) disputes Camden DCP2011 in stating

It is evident that the northern portion of the heritage conservation zone of Camden is undergoing a transition from historically less dense, mixed use development to higher density, mixed uses (including commercial and residential) due to the paucity of available space in the southern portion. The B4 mixed use zoning encourages non-residential or higher density residential development. This is contrary to the assertion that Camden's Heritage Conservation Zone is (and by inference should continue to be) dominated by 'cottage dominated streetscapes' (DCP B3.1.2), at least in this northern part of the conservation zone.

The HIS frequently insists that the northern section of Elizabeth Street is of comparatively little heritage value and a transition area to more urbanised, high rise, high density development. The claim of it being a transition area is nonsense. This is not how the community sees any part of the town into the future. The HCA is one heritage item and the heritage objectives and controls are clearly stated.

As covered above the 1840 town is what it is and is not transitioning to any other character.

Further the 2018 UDF makes the following statements about desired future character which are consistent with the DCP:

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)

The term fine grain as used in this document refers to the human scale of the town centre. Fine grain contributes to a kind of spatial experience and allows for a diversity and range of specialised activities. Urban components of the fine grain include small shops, micro plazas, active arcades, laneways, and the specifics of how people relate to each of them. These elements all contribute to the vibrant and diverse offering in the town centre.

The grain and character of Camden Town Centre is one of relatively low scale and density; a rural township with a modest and varied collection of architecture, much of which is listed as having local heritage significance. In addition, the entire Camden town centre is within a heritage conservation area.

An overwhelming response from the community engagement has highlighted that the community of Camden wish to see the heritage and historical values of their town preserved, enhanced and celebrated.

They emphasised the importance of recognising the current heritage fabric of Camden by limiting over dominating built form into the area and retaining the existing 7m building height limit. This will ensure that development will be in sympathy with the Town Centre's character and incorporates the human scale.

There is a strong desire that the fine grain character and human scale of Camden is retained into the future.

Recommendation – Height

To be considered via separate studies and/or Planning Proposals:

Storey controls that ensure that character-based outcomes are appropriate. This would be in the form of a map, identifying where only single storey is appropriate along with 2 storey-built form and limited opportunities where a 3rd storey may be acceptable.

A change to Council's LEP height control in the form of lowering the height on some sites and proposing a minor increase from 7m to 8m on sites where 2 storey-built form is appropriate. This LEP change would be facilitated at the same time as introducing the number of storeys map within the DCP (p.79)

It is considered that this approach will result in the lowering of the height control on some sites where single storey-built form is appropriate and a minor increase in height from 7m to 8m where a two-storey built form is appropriate.

This will limit the bulk and scale of buildings but allow flexibility from a heritage perspective to provide a more appropriate pitched roof consistent with surrounding built form in certain instances.

The extant and desired future character of the town is quite clear. The proposal is not consistent with that character.

Other issues

It is concerning that

- the HIS is an almost identical reproduction to that submitted with the proposal that was refused in part by the LPP on the grounds of adverse heritage impact.
- the HIS fails to make any mention of the adjoining significant heritage item of Nepean House (1858) and its historic garden and half- acre curtilage, which is consistent with the original town plans drawn up by James and William Macarthur and Surveyor General Sir Thomas Mitchell. Note that the names of the streets in the HCA reflect its heritage – Mitchell, the parents of James and William, John and Elizabeth and elder brother Edward.
- it is disingenuous to state (p7) that the closest point of the adjacent heritage listed cottages is 14 metres from southern boundary. Most of the 14 metres is within their own lots, which are part of their heritage value. The proposed building is less than 1.5m from their boundaries. This setback is quite different to that expected and found in landscape surrounds of a cottage dominated area.

- the statement (p.16) is made that there is no consistent architectural heritage theme to development which has occurred in the township over the past 70 years (post-World War II). This shows a lack of understanding of the unique history of the town.
- the HIS does not seem to be prepared according to accepted professional practice including the NSW State Government Guidelines – in particular these require a much more rigorous and detailed analysis and assessment of the impact of a proposal on heritage items, particularly adjacent ones, and also the HCA.

We consider that we have adequately demonstrated that the following reasons for refusal of this proposal by the LPP on 21 May 2019 should be upheld.

REASONS FOR DETERMINATION

- 1. 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.***
- 2. The proposal is an overdevelopment of the site because of its excessive height, bulk, scale and roof form which incorporates a whole level of floor space. The height and minimal side and rear setbacks result in a building that adversely dominates the streetscape and adjoining properties to the detriment of those properties including heritage items.***
- 3. The proposal does not maintain the predominately landscaped rear setback, which runs at the rear of buildings fronting Elizabeth and Edward streets, which is part of the character of this location in the Camden Heritage Conservation Area.***
- 4. Given reasons 2 and 3 above, the proposal is not consistent with the existing character of the heritage conservation area and would have a detrimental impact on the heritage items in the vicinity of the site.***

We trust that the Proposal will again be refused.

Yours sincerely



Glenda Davis, President

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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13 December 2018

Dear General Manager,

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

We note that the above DA has been revised and resubmitted as a result of non-compliance with the Camden's LEP and DCP, which has also adopted the principles of the Burra Charter.

We note that several amended documents as referenced in the Statement of Environmental Effects (SEE) were not publicly available on Council's DA tracker. As they may be pertinent to this submission, we must ask to reserve the right to add to it when these documents become available. This is particularly the case with the Flood Report, as diversion of flood waters may impact on surrounding properties due to the scale of the proposal and the Landscape Plan due to perimeter trees being proposed to soften the impact of the development.

The proposal is for a three-storey over-height and over-scale development within Camden's Heritage Conservation Area (HCA) and within close proximity to heritage listed properties, all of which are of nineteenth century human scale and single or two-storey. All of the points and issues raised in our previous submission, which is appended, are relevant to the revised proposal which like its predecessor is non-compliant with the height standard and heritage protection provisions within relevant planning instruments.

The proposal includes an application to vary the height standard (LEP s. 4.3) and attempts to argue that its heritage impact would be minimal.

HEIGHT VARIATION

The amended design and slight reduction in height of this iteration of the proposal for 20 Elizabeth Street do not lessen the validity of our previous rejection of arguments for a variation of the height limit. Our following comments and arguments are additional to and are to be read in conjunction with our previous appended objection.

- The SEE (p. 58) claims that a relevant consideration to the height variation application in this iteration of the proposal for 20 Elizabeth Street is its amended design response which reduces the overall building envelope and provides additional setbacks .

Comment: The fact is that the proposal remains as three storeys and grossly over-height. It contravenes the height objective 4.3 (b) to a greater extent than the previous iteration because it now has large windows at the eastern elevation which provide more extensive views to other properties.

- The SEE (p. 55) seeks to clarify the role of the consent authority and assert the outcome by stating: *The independent role for the consent authority is therefore to determine whether the proposed development will be consistent with the objectives of the standard and the objectives of the zone. This involves a consideration of the “development” in its entirety, not just the proposed variation. It is clear that the development meets the objectives of the standard and of the zone as discussed throughout this written request.*

Comment: we categorically dispute, as covered below and in our appended initial objection, the claim that the proposed development meets the objectives of the standard and zone, either in its entirety or otherwise.

- The SEE (p. 55) states that the recent Land and Environment Court case, Initial Action¹, means that the consent authority now only has to be satisfied that:
 - 1) the applicant has adequately addressed matters covered by LEP clause 4.6(3);
 - 2) the development is consistent with the objectives of the standard and zone, pursuant to 4.6(4)(a)(ii)

We address whether the proposal satisfies these two clauses below.

¹ Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC

1) MATTERS COVERED BY LEP CLAUSE 4.6 (3)

LEP Clause 4.6 (3) states

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

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

Comment:

- a) Compliance is not unreasonable or unnecessary. Others comply and there is no reason why this applicant should be considered differently. The owner surely knew that the site was subject to flooding and heritage constraints. The question must be asked as to why the private company purchased the property? The question must be asked as to why, if the constraints are unacceptable, the owner pursues this non-compliant DA instead of selling and finding a site that suits its needs? It is this proposal that is unreasonable and unnecessary, not the standard.
- b) The environmental planning grounds that the SEE pursues are similar to those in the first proposal. They are not clearly articulated and seem to depend on wrong assumptions that a multi-storey office block is desirable and needed in the HCA and that it must be over-height due to potential flooding. For instance, the SEE makes the following claims:

- *A multi-storey development with a ground floor building frontage of a sufficient width, would be not be in keeping with the character of the area if it were to comply with the 7m building height limit. A taller façade provides greater opportunities for a better streetscape presentation, and is proportionally consistent with the pattern of development within the locality, including the proportions provided to single storey heritage items within the vicinity of the proposal development. (p. 57)*

Comment: this is a nonsensical argument. A two-storey limit applies. Multi-storey is not a consideration, is not compliant and in any case is NOT consistent with the proportions of the HCA as simple observation makes evident.

- *given the flooding constraints at ground floor, a development of only two-storeys would require the majority of habitable areas throughout the development to be contained within a pitched roof. A more appropriate design response to the streetscape is to include at least one complete habitable level that is not contained within a pitched roof form, to enable the provision of façade windows. (p. 57)*

Comment: another nonsensical claim. Many businesses operate from cottages. The proposal is an overreach for the area and is an attempt to maximise return at the expense

of the public interest. Three storeys with a height of 10.1 metres is NOT an appropriate design response for the HCA. This is an assertion without foundation.

- *On sites where the existing building is not suitable for retention, where a new commercial development is proposed, and where the site is drastically affected by flooding, there is little utility in providing a development that complies with the height limit. (p. 57)*

Comment: The cottage is suitable for retention as is evidenced by the many cottages being used for business purposes. Its footprint is valuable as a renovation project, which could be undertaken for relatively little capital outlay and possibly a similar percentage return on investment in the site. The question really is: If there is no appetite to use the cottage, why pursue a non-compliant development on this site? The SEE (p. 58) tells of the bias inherent in this proposal and the problem with it: *The development provided to this site must necessarily be a multi-storey development, and it is clear that a multi-storey commercial development which complies with the height limit would generally be inconsistent with the character of the locality and plainly unfeasible.* Yes, the development is UNFEASIBLE and should not be pursued.

The SEE also cites precedents, all of which have been comprehensively covered in our initial appended objection. None of the precedents (Milk Depot, The Elizabeth, the High School DA) are relevant, and the High School site is on the market to be sold. Even if a precedent could be shown to be relevant it remains the case that each proposal is assessed on its compliance and merits, not precedents.

Other attempted arguments include:

- *The subject site is located within a transition area, within a zone which seeks the introduction of such development to replace dwellings that are not contributory within the conservation area. (p. 58)*

Comment: This statement is untrue. Small scale dwellings are at the very soul of the HCA. They tell the story of Camden's evolution and are consistent with its small scale nineteenth century private town origins and contribute to the village profile as deliberately designed in 1836 by the sons of John Macarthur. Residential uses within the town centre including in the B4 zone are to be encouraged according to the recently approved Urban Design Framework which is covered in more detail under Heritage Impact below.

- *it is evident that no other commercial redevelopments have been able to achieve compliance with the height limit (p. 58)*

Comment: this is simply irrelevant and untrue as many cottages have been adapted for commercial use.

- *...there is an identified shortfall of commercial space within the Camden Town Centre with much of new commercial floor space provided within former cottages ... (p. 66)*

No evidence or reference is provided to support the claim of lack of commercial space and it is a contradiction to then observe that new commercial floor space is provided by cottages adapted for business use. As evidenced through a google search noted in our previous submission there are many commercial premises for lease within and close to the HCA. The best use of 20 Elizabeth Street would be to renovate the cottage and do what others find appropriate and do what is compliant.

We found no environmental planning grounds that would support the height variation.

2) OBJECTIVES OF THE STANDARD AND ZONE, PURSUANT TO 4.6(4)(a)(ii)

LEP Clause 4.6 (4)(a) (ii): states

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

(a) the consent authority is satisfied that: (ii) the proposed development will be in the public interest because it is consistent with the

- *objectives of the particular standard (HEIGHT) and the*
- *objectives for development within the ZONE (B4) in which the development is proposed to be carried out*

OBJECTIVES: HEIGHT STANDARD

The three objectives of the LEP 4.3 Height standard ² are very clear:

- (a) **HEIGHT STANDARD OBJECTIVE:** to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

² **Camden Local Environmental Plan 2010** Current version for 9 November 2018 to date (accessed 10 December 2018 at 16:15)

Comment: the proposed development is not compatible with the height, bulk and scale of the existing HCA character by a very large margin. The desired future character is of a low-rise, small scale conservation area that remains cottage dominated and true to its 19th century private town origins. This is reflected by the LEP 7m height restriction, DCP controls and recently ratified Urban Design Framework for the town, both covered in the next section on Heritage Impact, and in the significant documentation of the town by Council and researchers.

(b) HEIGHT STANDARD OBJECTIVE: to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development

Comment: the visual impact, loss of privacy and solar access is unacceptable and is likely also covered by other personal submissions.

The artist's impression supplied with the DA below is blatantly deceptive with a raised horizon, non-existent mountains and fields and out of scale figures. Assuming a person was tall at 2 metres the building would be more than 5 times higher.

The fact is that the site is surrounded by cottages less than half the height of the proposed building and heritage listed items that at most are two-storey. The large windows would provide excellent views into other properties. The height and bulk would cast long shadows throughout the day.



The Land and Environment Court³ also uses criteria for assessing impact on neighbouring properties in the form of the following relevant questions:

- How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

Comment: many properties would be affected adversely, including heritage listed properties, as the prevailing character is that of small-scale buildings with large gardens. The impact has not been appropriately addressed in the SEE or HIS. As covered in our original objection an above height building, including one of 10.1 metres (44% above the height limit) in this iteration of the proposal, provides exceptional opportunity for overlooking properties in Elizabeth, Mitchell and Edward Streets. The highest building within the vicinity (Nepean House) at its steep roof peak is 8 metres. **Most cottages are less than half the height of the proposed building.**

The shadow diagrams that are provided are insufficient but nevertheless indicate unacceptable loss of solar access and impact on liveability, particularly for residents.

- How reasonable is the proposal causing the impact?

Comment: It presents as an anomaly and is not reasonable as explained throughout this objection and in our previous objection

- How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Comment: In the cases of adjoining properties, including Nepean House garden and outbuilding at 23 Edward St and Lina's Touch of Beauty at 21A Edward Street the impact would be severe in terms of loss of privacy and solar access, and would unfairly limit compliant development potential on the properties.

Most properties in Edward Street and Elizabeth Street towards the Town Farm would be adversely impacted in terms of loss of privacy.



³ **Davies v Penrith City Council [2013] NSWLEC 1141**
<https://www.caselaw.nsw.gov.au/decision/54a63b123004de94513daebd>

- Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Comment: Yes, it is over-height and overscale and bears no complementarity or sympathetic interpretation of the character of the HCA or buildings within it. The third storey and floor space sought is an over-reach and simply an attempt to maximise financial return at the expense of neighbours, heritage conservation and the public interest.

- Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?

Comment: As covered throughout our two objections this proposal categorically does not comply with the planning controls and hence has a very large and unacceptable impact.

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

Comment: clearly this proposal would have a detrimental effect on the HCA and surrounding heritage listed items by presenting as a large modern anomaly with no reference to its surrounds. This aspect is covered in more detail under Heritage Impact below.

Clearly this proposal does not achieve any of the objectives of the LEP s4.3 height control.

OBJECTIVES of ZONE (B4)

The objectives of the zone are

- *To provide a mixture of compatible land uses.*

Comment: the proposal is incompatible with the land uses of cottage-based businesses and residences.

The SEE and HIS attempt to argue that the built form in Elizabeth Street is non-homogenous and land uses within the Elizabeth Street or northern section of the HCA are eclectic and transitional to higher density commercial and residential uses.

The SEE (p. 58) claims: *the site is located within a transition area, within a zone which seeks the introduction of such development to replace dwellings that are not contributory within the conservation area.*

The Heritage Impact Statement (HIS (p. 16) claims: *it is evident that the northern portion of the heritage conservation zone of Camden is undergoing a transition from historically less dense, mixed use development to higher density, mixed uses (including commercial and residential) due to the paucity of available space in the southern portion. The B4 mixed use zoning encourages non-residential or higher density residential development. This is contrary to the assertion that*

Camden's Heritage Conservation Zone is (and by inference should continue to be) dominated by 'cottage dominated streetscapes' (DCP B3.1.2), at least in this northern part of the conservation zone.

The HCA provides a mixture of compatible land uses as befits its history as a working country town servicing its surrounding population. The nearby Guide Hall is a community asset like many others in the old township. The location of the former high school was an expected use within the town, just like the nearby public and catholic primary schools. The agricultural, automotive and other small-scale commercial uses are likewise typical of a working country town.

The HIS (p. 6) claims that *the vacant former Camden high school site ... is undergoing development for high density residential use including seniors living.*

This statement implies that the DA attached to this land is mainly for use as normal residential living. It is fully seniors living which comes under state policy which can override Camden's LEP and DCP.

Further this is a highly difficult site, which no-one wanted to lay claim to because it required remediation from serious contamination that may have affected students and teachers from the early 1950s until it was evacuated and a new high school built by the State government. The requirement to decontaminate and rehabilitate the site was a condition of sale. It was also approved prior to 2010 when Camden's Heritage Conservation Area was legislated.

Also, the site is for sale and the development is not being pursued by the current owner. It is not as claimed (HIS p. 13) currently under construction.

It is a weak assertion at best to claim that a potential land use that may or may not be pursued by a future prospective purchaser, that comes under different jurisdiction, is grounds for allowing a development that is non-compliant with Camden's current LEP and DCP. As pointed out in our original objection the DA attached to this land is completely irrelevant to the proposal for 20 Elizabeth Street.

There is currently NO high-density large-scale residential or commercial land use in the area and as pointed out above if there ever is on the High School site it would have been assessed under state level policy and before the HCA was legislated. The SEE and HIS fail to appreciate that most buildings in the vicinity are one storey cottages and that any alterations to them are minor. "The Elizabeth", on the corner of Mitchell and Elizabeth, which could be argued to be an overdevelopment of the site, was approved prior to legislation of the HCA. Nevertheless, it fronts the streets as two-storey, captures the architectural styles of surrounding buildings, especially Taplin cottage and Nepean House and has been designed not to overlook any other properties. It is only approximately 10% above the 7m height limit at its peak. It accommodates architectural

features, which may be allowed contribute to minor exceedance of the height limit on a corner block. This does not apply to 20 Elizabeth Street.

The SEE and HIS make no mention of the agricultural land uses nearby to 20 Elizabeth Street, conveniently dismiss the many heritage listed properties in close vicinity as shown in the map below and instead concentrate on one small section of the HCA. This is despite the fact that, according to the planning instruments, the HCA is considered to be one integrated heritage place.



Heritage Map - Sheet HER_010

The HIS (p. 14) also makes the ill-informed and easily refuted comment:

.....the variety of uses, Architectural styles and quality of buildings on this portion of Elizabeth Street is at odds with the comment in Council's development control plan that the conservation area is dominated by cottage development. By contrast, the southern portion of the heritage precinct (south of Argyle Street) has a greater density of cottage development and is provided with parallel Street parking (other than a small portion of angled parking on the southern end of John Street adjacent to St John's Church).

The fact is that the entire HCA is dominated by human scale buildings as befits a carefully designed village inspired by the home country of the Macarthur family. It is a self-evident fact that land uses within the township beyond Argyle Street with its mainly two storey buildings are accommodated by one storey cottages, a few two storey houses and civic buildings.

Current land uses throughout the town currently mainly accommodate and respect the town's significant heritage, unlike this proposal. To suggest that the buildings in the northern part of the HCA are somehow of a lesser (although not defined) "quality" than those in the southern part is an irrelevant opinion and probably on the whole erroneous depending on perspective; a larger proportion of the northern area is comprised of a variety of heritage listed items.

Another implausible argument presented in the HIS (p. 15) is: *The fact that Council have provided such a large amount of street parking adjacent to the subject site at the expense of streetscape appeal suggests a future need for parking in the area associated with denser development (either commercial or high density residential) than currently exists.*

To claim a connection between the number of parking spaces near 20 Elizabeth Street and an intention by Council to allow denser development is a non-sequitur and refuted by the planning instruments and the recently approved Urban Design Framework discussed below under Heritage Impact.

Elizabeth Street is NOT a transition zone of land uses for large scale, high density development and this proposal would not be a compatible land use. The alleged transition is NOT evident.

- *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.*

Comment: the proposal is not suitable. It does not particularly encourage patronage of public transport or walking and cycling.

- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

Comment: the land use of modern office space is not particularly compatible with the Town Farm, Sale Yards, Equestrian Centre, heritage tourism, residences or cottage-based businesses.

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

Comment: the proposed development would not support or complement the local centre zone as it is far greater in scale than anything in this zone. It would detract and/or compete with primary office function of the main centre.

The application for height variation must fail through lack of achievement of the objectives of the height standard and the zone. We could find no environmental planning grounds to allow this over-height and over-scale development.

HERITAGE IMPACT

The cultural significance of Camden as a privately designed, working country town with its unique character described in the DCP is not consistent with the proposal for 20 Elizabeth Street. The complete inappropriateness of the proposal and its contrasts with the mainly one-storey cottage character of the HCA outside the main street has been addressed in our first objection in July 2018 which is provided for completeness in the Appendix. The revised proposal remains as over-height and overscale and as a potential anomaly within the HCA. All of the arguments presented in our earlier objection remain valid despite changes to the first proposal.

Despite attempts in documents submitted with the proposal to downplay the character of the town and the importance of preservation, conservation and enhancement, there is no doubt that Camden is exceptionally historically significant and well worthy of careful and sympathetic treatment. It is the only known extant town in Australia with private origins and is strongly connected to Camden Park and the Macarthur family. Its original design, by the sons of John and Elizabeth (James and William) and Surveyor General Sir Thomas Mitchell, crowned by St John's Church Precinct, its streetscapes and lay-out named for the Macarthur family (for example John and Elizabeth Streets) remain intact to this day.

Camden's cultural, social and aesthetic significance is well documented as evidenced within Council documents, our fully referenced 2016 Heritage Study⁴, Land and Environment Court ruling⁵ and most recently in the state listing of the church precinct⁶ which was expedited by the NSW Heritage Council because of fears of a potential purchaser pursuing overdevelopment of the site through possible State government policy exemptions to the Camden LEP and DCP.

Further on 14 August 2018 Camden Council⁷ adopted the Urban Design Framework for the town, the Council Report and attachments for which make the following statements. The Framework:

- recognises that the town centre has a unique and distinct heritage character that is highly valued by the community and should be retained.
- recognises the importance of heritage in the town centre and **the need to preserve and enhance heritage in the future.**

⁴ Camden Residents' Action Group Inc (April 2016) *HERITAGE STUDY CAMDEN NEW SOUTH WALES Documentary Evidence addressing criteria for statutory heritage listing* Available at: <http://www.crag.org.au/wp-content/uploads/2016/06/Camden-Heritage-Study-April-2016.pdf>

⁵ Land and Environment Court (1996) *Gledhill Constructions Pty Limited V. The Council of Camden NSWLEC 120 (19 April 1996)* Available at: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/1996/120.html?stem=0&synonyms=0&query=1996%20gledhill%20camden>

⁶ NSW Office of Environment and Heritage *St Johns Anglican Church Precinct* Available at: <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5053423>

⁷ Camden Council, see <https://www.camden.nsw.gov.au/assets/pdfs/Council/Business-Papers/2018/BP-agenda-14-Aug-2018.pdf>
<https://www.camden.nsw.gov.au/assets/pdfs/Council/Business-Papers/2018/BP-attach-14-Aug-2018.pdf>
<https://www.camden.nsw.gov.au/assets/pdfs/Council/Minutes/2018/Minutes-14082018.pdf>

- does not propose radical change, but rather it considers opportunities for minimal change to the built form and uses within the town centre, with a **focus on enhancing the attributes that make Camden unique.**
- **does not propose to amend the height control of 7m over the Camden Town Centre.** Criteria for consideration of **minor** height amendments will be further investigated as part of a future planning proposal to provide clarity and consistency when considering variation requests. Any change in height requirements will be the subject of further investigation and a future planning proposal and community engagement.
- **does not propose major changes to increase commercial floor space** or incentivise growth.
- **does not specify or promote development in the floodplain.**
- **identifies that residential use adds to the vibrancy and viability of a town centre** and recommends re-introducing the ability to have a dwelling house under the existing zoning.
- **is designed to strengthen the planning controls contained in the DCP.**

The proposed change to the HCA at 20 Elizabeth Street is founded in misinterpretation as it is not guided by an understanding of Camden's rich history, strong community identity, sense of place and associations with the Macarthur heritage (Burra Charter Article 15).

Instead of understanding that the diverse uses in the town are integral to its historic character and value, they are cited as reasons for a non-compliant, grossly overscale and over-height development.

Instead of recognising that any degradation of the amenity in the HCA is not acceptable and should be subject to restoration, the HIS and SEE argue it as a reason to allow a non-sympathetic and grossly oversized change to the special area.

This approach in these documents is not logical. The above misinterpretations lead to arguments presented in the SEE and HIS which are actually solid reasons why proposals should interpret the cultural identity of the unique town and strive to reflect its cultural and aesthetic significance and enhance it.

For instance, the HIS (p. 8) states

The wider streets of Camden in the Heritage Precinct are typically provided with angled (45°) parking and Elizabeth Street is no exception with angled parking existing along both sides of the street in the vicinity of the subject site between Mitchell Street and Exeter Street. This creates the effect of vehicles dominating the street frontage and detracts from the heritage theme. (p. 8)

The streetscape in the vicinity of the site is dominated by 45° angled parking with sparsely spaced or no street front planting. As much as this provides useful parking for the precinct and adjacent commercial areas, it is contradictory to the listed heritage significance of this part of the conservation area, allowing vehicles to dominate the streetscape. This is contrary to the objectives of the heritage conservation zone, diminishing the streetscape quality by allowing vehicles to dominate rather than the buildings. (p.14)

To make much of the fact that 45° angle parking and lack of tree planting reduces the heritage amenity of streets in the northern area of the town, especially Elizabeth Street is an obvious overreach. The parking design (note that the HCA is a small defined area which borders open space including Onslow Park and the Town Farm that can be made available) and lack of trees are easily remedied, and in any case on weekends and public holidays the streets are usually mainly clear and the intent of the town's original design and overall leafiness is fully evident.

The issue is that the town is unique in Australia's European history and the site of this proposed development is in the original grid pattern set out in 1836 by the sons of John Macarthur, and named for their mother Elizabeth. Future generations are entitled to be able to appreciate this town with its nineteenth century townscape and the focus and profile of St John's Hill as originally designed. This proposed development is larger than St John's church and completely out of proportion with its cottage dominated surrounds.

The HIS (p. 14) also overreaches with

.....the variety of uses, Architectural styles and quality of buildings on this portion of Elizabeth Street is at odds with the comment in Council's development control plan that the conservation area is dominated by cottage development. By contrast, the southern portion of the heritage precinct (south of Argyle Street) has a greater density of cottage development and is provided with parallel Street parking (other than a small portion of angled parking on the southern end of John Street adjacent to St John's Church).

The fact is that the entire HCA is dominated by human scale buildings as befits a carefully designed private village that grew to be an important country town as wool and horticultural industries became established in the colony. It is a self-evident fact that the township beyond Argyle Street with its mainly two storey buildings is dominated by one storey cottages, with a few two storey houses and civic buildings.

The Land and Environment Court ⁸ is required to give weight to the controls in a DCP⁹ and the Controls for the HCA are very clear with the most relevant being:

6. Additional development on the fringe of the town should complement and not detract from the viability of the “main street”.

Comment: There is no building in the main street of three storeys or that comes near the scale and floor space of this proposal, and therefore it can only detract from the primacy of the main street.

7. Original uses of significant buildings should be encouraged and facilitated. Where this is no longer possible, appropriate adaptive re-use opportunities should be explored to facilitate the conservation of these buildings.

Comment: although arguably the original residential cottage at 20 Elizabeth may not be significant in that there are many similar examples across NSW it does complement the streetscape scale. It contributes to Camden’s historical narrative as reflective of post war architectural austerity and shortage of building materials. There are many examples of similar sized cottages, some with minor extensions at ground level being restored and successfully used for business purposes. Examples are the faithfully restored much smaller heritage listed cottages at 7 and 9 Mitchell Street, 15 Mitchell Street and 21A Edward Street, all of which adjoin 20 Elizabeth Street. This proposal if approved would make a mockery of the efforts of others to respect the HCA.

8. Existing cottage dominated streetscapes shall be retained and complemented with compatible extensions/additions and new developments.

Comment: Cottages can be extended and compatible human scale two storey developments added. This approach is common throughout the HCA. A good example of a recent, compliant single storey cottage-fronted development with two storeys at the rear exists nearby at 14 Elizabeth Street.

9. A two storey height limit shall prevail except for significant architectural features incorporated in the design of buildings in significant locations.

Comment: this proposal is for THREE storeys. It is simply non-compliant and unacceptable. The location site is not a significant location, as are the sites of “The Elizabeth” which is often referenced as a precedent in the proposal and Nepean House, which surprisingly is not mentioned at all.

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

⁸ **New Street No. 1 Pty Ltd v Waverley Council [2017] NSWLEC 1592**

<https://www.caselaw.nsw.gov.au/decision/59e93d23e4b058596cbab420>

⁹ **Camden Development Control Plan 2011** P. B56 Accessed 10 December 2018

<https://www.camden.nsw.gov.au/assets/pdfs/Planning/Development-Control-Plan/Part-B-UPDATED-May-2018-2.pdf>

Comment: the proposal argues illogically and unsuccessfully that the vicinity of 20 Elizabeth Street is not cottage dominated. Simple observation indicates otherwise. The proposed design seeks to maximise floor space at the expense of neighbours and the HCA.

11. The development of the flood affected fringes of the town shall not compromise the prevailing character.

Comment: There is no building within the HCA of similar design to that proposed. It would sit as an anomaly within the HCA. Citing possible flooding as a reason for an above height, three storey development is a nonsense. If it is a problem for the scale of development that the owner wishes to undertake, then a site should have been purchased elsewhere.

This proposal is not compliant with any of the above DCP controls.

We find that the revised HIS makes incorrect assumptions to prosecute arguments that instead are no more than wishful assertions. As covered in our original objection the HIS is not prepared according to guidelines supported by the NSW Heritage Council¹⁰ including analysis of the impact on the conservation area and adjacent heritage items (cottages at 7 and 9 Mitchell Street and Nepean House).

Simple observation shows that businesses are in fact adaptively using restored cottages as is compliant with the LEP and DCP and acceptable as having minimal impact on the HCA (Burra Charter Article 21).

To claim and continue to claim otherwise ties up and wastes the resources of Council and the community unnecessarily.

¹⁰ NSW OEH *Statements of Heritage Impact* Available at:
<http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>

We trust that this proposal will be denied because it fails to meet the objectives of the height standard and the zone, and because it would have a detrimental impact on the significance of the HCA.

We hope that the applicant will be encouraged to either sell the site or follow the example of others and respect the heritage of the town.

As for the first iteration of this proposal for 20 Elizabeth Street, we again request for the second iteration that:

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

Yours sincerely

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

Glenda Davis

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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

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

PO Box 188
Camden NSW 2570
Email: admin@crag.org.au

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

30 July 2018

Dear General Manager,

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

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

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

We strongly object to the proposal on the following grounds.

HEIGHT VARIATION

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

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

Justification for the variation is required from the Applicant under 4.6 (3) by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The attempt at justification in the Application for Variation of the Height Standard (SEE pp. 43-58) is not successful.

The SEE (p. 47) correctly refers to the authority established by *Four2Five Pty Ltd v Ashfield Council* (2015)¹¹ noting that it *necessitates that environmental planning grounds for the proposed variation must be established aside from the consistency of the development with the objectives of the standard and the objectives of the zone*. The Land and Environment Court in this 2015 case¹² established that applicants need to demonstrate and justify that application of the development standard is unreasonable or unnecessary not merely or only because the development is consistent with zone objectives and achieves the objectives of the development standard but also that

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

¹¹

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

¹² For an analysis, see Lindsay Taylor Lawyers (24 July 2015) *Is an Objection Under Clause 4.6 More Onerous to Establish Than Under SEPP1?* Available at http://www.lindsaytaylorlawyers.com.au/in_focus/index.php/2015/07/is-an-objection-under-clause-4-6-more-onerous-to-establish-than-under-sepp1/#.W1U2Ntlza70

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

The SEE (p. 47) also cites the earlier case of *Wehbe* 2007¹³ and claims that it is generally understood that Clause 4.6(3) can be satisfied if one or more of Points 2-5 below are satisfied:

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

Similarly, NSW Planning and Infrastructure (2011)¹⁴ refers to a five-part test indicating that as well as demonstrating consistency with the objectives of the relevant standard that written applications for variations may also address matters set out in the 'five-part test' established by NSW Land and Environment Court. Point 1 or Test 1 must at a minimum be achieved.

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

¹³ The test is identical to the five points except for Test 5; the reworded Point 5 is similar and found in use by the legal profession. The wording of Test 5 is

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

¹⁴ NSW Planning and Infrastructure (2011) *Varying development standards: A Guide August 2011* Available at <http://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/~media/7CCD3A20E9A24B0E858DF2E05A856867.ashx>

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

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

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

4.3 Height of buildings

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

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,**
- (b) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,**
- (c) to minimise the adverse impact of development on heritage conservation areas and heritage items.**

Zone B4 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.**
 - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.**
 - To minimise conflict between land uses within the zone and land uses within adjoining zones.**
 - To encourage development that supports or complements the primary office and retail functions of the local centre zone.**
-

The application for variation makes two arguments:

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

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

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

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

The circumstantial arguments for this conclusion are refuted as follows.

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

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

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

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

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

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

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

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

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

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

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

This development proposal was very contentious and drawn out with many objectors and significant media interest. CRAG lodged three objections¹⁵.

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

The contentiously approved building is at a signature gateway site within the heritage conservation area, within the main approach and entrance to the town which is in itself listed as a potential heritage item¹⁶, is well within the flood area and research by CRAG members has shown that it is in a floodway. The approval accepts that the floodway begins discretely at the very edge of the new building which is most unlikely given the way flood waters behave.

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

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

¹⁵ CRAG (2016-2017) Camden Vale Milk Depot objections. Available at:
<http://www.crag.org.au/wp-content/uploads/2016/06/CRAG-OBJECTION-Camden-Vale-Milk-Depot-22-April-2016.pdf>

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

¹⁶ Camden DCP 2011 *Table B5 Potential Heritage Items – Cultural and Visual Landscapes* Available at:
<https://www.camden.nsw.gov.au/assets/pdfs/Planning/Development-Control-Plan/Part-B-UPDATED-May-2018-2.pdf>

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

No building of that height currently exists in John Street. No street number is provided and the DA number was found to relate to the redevelopment on the Camden High School site¹⁷. The DA (644/2008) was lodged in 2008 and amended in May 2009, prior to gazettal of LEP 2010. Clearly this development is overscale and over-height, and generally an overdevelopment of the site.

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

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

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

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

¹⁷ Ian Willis (30 November 2017) *Camden History Notes The phoenix rises from the ashes at the old Camden High site* Available at <https://camdenhistorynotes.wordpress.com/2017/11/30/the-old-camden-high-site/>

Further the Land and Environment Court (April 1996)¹⁸ ruled in favour of Council against a development application in the vicinity of St John's Church. The Honourable Justice M L Pearlman AM, stated:

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

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

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



¹⁸ Land and Environment Court (1996) *Gledhill Constructions Pty Limited V. The Council of Camden NSWLEC 120* (19 April 1996) Available at: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/1996/120.html?stem=0&synonyms=0&query=1996%20gledhill%20camden>

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

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

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

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

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

For the proposed development:

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

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

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

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

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

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

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

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

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



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

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



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

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

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

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

Views

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

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

Privacy

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

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

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

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

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



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

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



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

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

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



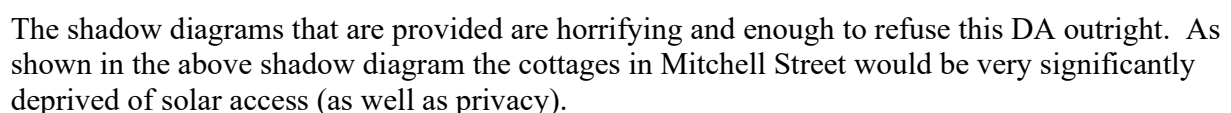
Most properties in the vicinity would experience a building that is more than twice their height and many would be confronted by a first storey landscaped rooftop (4.7m above ground level at the rear of the building) and/or another two levels of second and third storey office windows on both the south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

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

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

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

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



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

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

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

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

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

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

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

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

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

Achievement of the objectives of Zone B4 is refuted as follows

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

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

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

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

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

HERITAGE IMPACT

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

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

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

The HIS is not prepared according to guidelines supported by the NSW Heritage Council¹⁹. For instance, it does not answer the following questions about a new development within a conservation area and adjacent to heritage items:

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

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

¹⁹ NSW OEH *Statements of Heritage Impact* Available at <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>

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

Listed Heritage Items (LEP Schedule 5 extract)

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

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

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

Article 8 of the Burra Charter²⁰ requires the retention of an appropriate setting to heritage properties, as do the LEP and DCP.

We also consider that the HIS conclusions are inconsistent with the NSW Heritage Office guidelines²¹ for new development in a heritage context which for instance, on scale and form, advises that *...the grain, or pattern of arrangement and size of buildings in a precinct or conservation area, can be an important part of its character. ...The form of a building its overall shape and volume and the arrangement of its parts.....should be sympathetic with the predominant form of its neighbours.*

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

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



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

²⁰ ICOMOS (2013) *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance* Available at: <https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf>

²¹ NSW Heritage Office (June 2005) *Design in Context Guidelines for Infill Development in the Historic Environment* Available at: <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/DesignInContext.pdf>



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

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



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

The HIS also does not address the history of the cottage that it flags for demolition. Increasingly the style and fabric of cottages built in the post war period of austerity and shortage of building materials are being recognised as reflective of an important historical era²². Post War Fibro Cottages are making their way into heritage lists of LEPs in NSW.²³ The cottage, a Fibro Majestic as acclaimed in our culture²⁴ is not beyond restoration and provides an appropriate footprint for the site, perhaps with an increase in floor area as allowed on flood prone land as was undertaken in neighbouring 9 Mitchell Street.

²² Antony Lawes (2 January 2012) *Architects defend the majesty of unwanted '50s fibros* Available at <https://www.domain.com.au/news/architects-defend-the-majesty-of-unwanted-50s-fibros-20111230-1pfed/>

²³ <http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=1172092>

²⁴ Junior (2010) <https://junioraustralia.bandcamp.com/album/the-fibro-majestic>



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

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

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

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

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

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

❖ **LEP 5.10 Objectives**

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

❖ **DCP Part B DCP 3.1.1 General heritage objectives**

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

❖ **DCP Part B 3.1.1 General heritage controls**

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

❖ **DCP Part B 3.1.2 Camden Heritage Conservation Area objectives**

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

❖ **DCP Part B 3.1.2 Camden Heritage Conservation Area controls**

- 6. Additional development on the fringe of the town should complement and not detract from the viability of the “main street”.
 - 9. A two storey height limit shall prevail except for significant architectural features incorporated in the design of buildings in significant locations.
 - 10. Large built forms in cottage dominated precincts shall be avoided through the use of various roof forms and pitches, wall openings and recesses, materials, recessive colours and landscaping
 - 11. The development of the flood affected fringes of the town shall not compromise the prevailing character.
-

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

Camden's heritage is irreplaceable and culturally important to current and future generations. This has been documented most recently in a 2016 Heritage Study 2016²⁵ which has been endorsed by academic and eminent historians.

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

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

We request that:

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

Yours sincerely,



Glenda Davis, President

²⁵ Camden Residents' Action Group Inc (April 2016) *HERITAGE STUDY CAMDEN NEW SOUTH WALES* Documentary Evidence addressing criteria for statutory heritage listing Available at <http://www.crag.org.au/wp-content/uploads/2016/06/Camden-Heritage-Study-April-2016.pdf>

APPENDIX A: LEP 2010 Clause 4.6

4.6 Exceptions to development standards

(1) The objectives of this clause are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B: Acknowledgment of Heritage Significance of Camden

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

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

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

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

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

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

Photographs	None
List	Register of the National Estate (Non-statutory archive)
Class	Historic
Legal Status	Registered (21/03/1978)
Place ID	3225
Place File No	1/15/009/0002
Statement of Significance	
<p>Camden is one of the most delightful early towns near Sydney. It has perhaps the strongest plan form of any of them. The buildings of John Street are very important to the main feeling of the town and the group is enhanced by several extremely fine examples of architecture; the picturesque Macaria, the Italianate CBC Bank and restrained elegance of No 39 John Street.</p> <p>(The Commission is in the process of developing and/or upgrading official statements for places listed prior to 1991. The above data was mainly provided by the nominator and has not yet been revised by the Commission.)</p>	
Description	
See related Files 3226, 3227, 3228, 3229, 3230, 3231	
History Not Available	
Condition and Integrity Not Available	
Location	
Comprising: CBC Bank, John and Argyle Streets, Camden; cottage 39 John Street, Camden; Macaria, 37 John Street, Camden; Police Station and Residence, 33-35 John Street, Camden; Courthouse, 31 John Street; and St Pauls Catholic Church, John and Mitchell Streets, Camden.	
Bibliography Not Available	
Official Values Not Available	
Description	
See related Files 3226, 3227, 3228, 3229, 3230, 3231	
History Not Available	
Condition and Integrity Not Available	

Report Produced Mon Jul 23 18:10:58 2018

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

Full statement available at

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

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

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

St John's Anglican Church Precinct is an exemplary demonstration of the regional use of landscape design. St John's Anglican Church, with its tower and spire, dominates and commands the Camden landscape on its high prominence (St John's Hill) in the middle of what is a low-lying flood plain. Its tower and spire symbolically reach for heaven and point the way for the minds and souls of the local community. The church tower and spire, as well as other elements of the church precinct such as the rectory, are visible from many locations in the local landscape from Cobbitty to the north, Narellan in the east, Cawdor in the south, and Grasmere and Bickley Vale to the west. More distant views are also available of the church in the greater region as well. This effect on the local landscape is the result of a deliberate landscape design by the Macarthur family that was aimed both at creating picturesque vistas that reminded them of an English countryside, and reinforcing the social order the Macarthurs, as part of the ruling class, wished to uphold. St John's extraordinary command of the regional landscape ensures that it is visible from all the major roads, high points, and the seats of several of the major local estates. This command is expressed through 16 significant views and vistas in the regional landscape that is identified in the CMP (2004:35-36, 44)²⁶.

²⁶ The Conservation Management Plan is available at <https://stjohnscamden.org.au/index.php/about/history>

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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

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

PO Box 188
Camden NSW 2570
Email: admin@crag.org.au

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

30 July 2018

Dear General Manager,

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

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

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

We strongly object to the proposal on the following grounds.

HEIGHT VARIATION

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

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

Justification for the variation is required from the Applicant under 4.6 (3) by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The attempt at justification in the Application for Variation of the Height Standard (SEE pp. 43-58) is not successful.

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

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

¹

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3 Height of buildings

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

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,**
- (b) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,**
- (c) to minimise the adverse impact of development on heritage conservation areas and heritage items.**

Zone B4 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.**
 - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.**
 - To minimise conflict between land uses within the zone and land uses within adjoining zones.**
 - To encourage development that supports or complements the primary office and retail functions of the local centre zone.**
-

The application for variation makes two arguments:

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

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

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

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

The circumstantial arguments for this conclusion are refuted as follows.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵ CRAG (2016-2017) Camden Vale Milk Depot objections. Available at
<http://www.crag.org.au/wp-content/uploads/2016/06/CRAG-OBJECTION-Camden-Vale-Milk-Depot-22-April-2016.pdf>
<http://www.crag.org.au/wp-content/uploads/2016/06/Milk-Depot-additional-objection-17-June-2016.pdf>
<http://www.crag.org.au/wp-content/uploads/2016/06/CRAG-Milk-Depot-objection-20-April-2017.pdf>

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

For the proposed development:

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

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

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

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

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

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

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

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

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



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

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



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

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

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

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

Views

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

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

Privacy

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

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

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

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

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



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

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



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

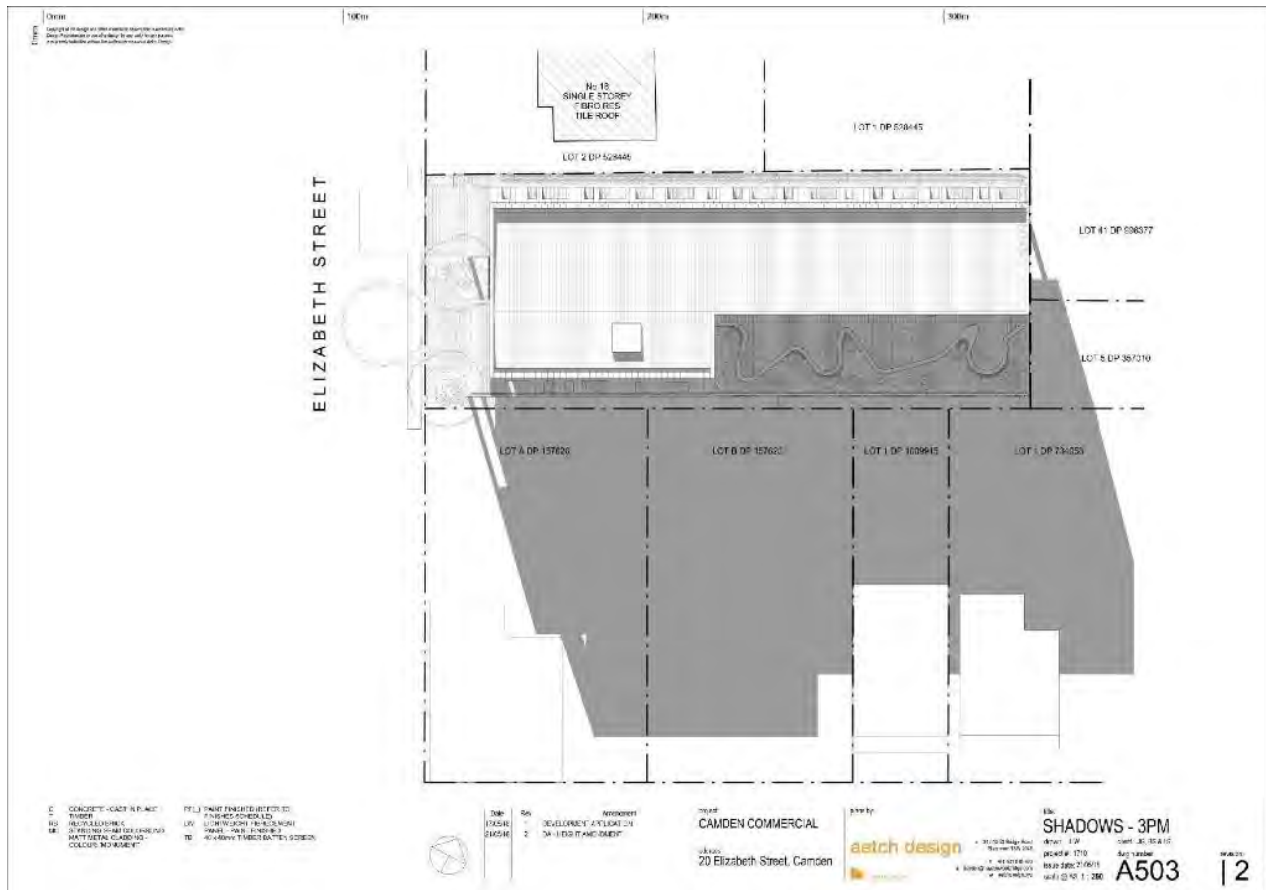
Australian cities and towns that respect their history, such as Launceston in Tasmania, are more attractive. Development that creates stark contrast between old human scale architecture and architecture blatantly only made possible by modern materials and new engineering solutions are generally found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

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

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

Solar Access

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



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

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

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

This is not acceptable.

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

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

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

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

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

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

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

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

Achievement of the objectives of Zone B4 is refuted as follows

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

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

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

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

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

HERITAGE IMPACT

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

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

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

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

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

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

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

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

Listed Heritage Items (LEP Schedule 5 extract)

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

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

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

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

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

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

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



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

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

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



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

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



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

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

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

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

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



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

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

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

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

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

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

❖ LEP 5.10 Objectives

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

❖ DCP Part B DCP 3.1.1 General heritage objectives

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

❖ DCP Part B 3.1.1 General heritage controls

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

❖ DCP Part B 3.1.2 Camden Heritage Conservation Area objectives

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

❖ DCP Part B 3.1.2 Camden Heritage Conservation Area controls

- 6. Additional development on the fringe of the town should complement and not detract from the viability of the “main street”.
 - 9. A two storey height limit shall prevail except for significant architectural features incorporated in the design of buildings in significant locations.
 - 10. Large built forms in cottage dominated precincts shall be avoided through the use of various roof forms and pitches, wall openings and recesses, materials, recessive colours and landscaping
 - 11. The development of the flood affected fringes of the town shall not compromise the prevailing character.
-

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

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

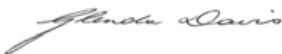
It must be noted also that conservation of Camden's heritage is economically important. It cannot compete with Narellan or Oran Park on the same terms. It must capitalise on having irreplaceable authentic heritage as this underpins its economic base. It is a place of special events and a visitor and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

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

We request that:

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

Yours sincerely,



Glenda Davis, President

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

APPENDIX A: LEP 2010 Clause 4.6

4.6 Exceptions to development standards

(1) The objectives of this clause are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B: Acknowledgment of Heritage Significance of Camden

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

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

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

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

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

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

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

Statement of Significance

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

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

Description

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

History Not Available

Condition and Integrity Not Available

Location

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

Bibliography Not Available

Official Values Not Available

Description

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

History Not Available

Condition and Integrity Not Available

Report Produced Mon Jul 23 18:10:58 2018

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

Full statement available at

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

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

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

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

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

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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Local Planning Panel

21 May 2019

20 Elizabeth St Camden

We have lodged two comprehensive objections on this DA, dated 30 July and 13 December 2018. Since submissions on the second notification closed (on 13 December 2018) changes have been made to the DA and amendments made to documents lodged with Council which affect the Report before us, including a change in description of the building from three storey to two-storey but with no reduction in its height. The changes only became apparent in the Report made available from 14 May. For this reason we contend that if this DA is not refused outright it should be deferred as the community and affected parties have not been given the opportunity to respond to new information.

We do strongly urge that this DA be refused today as it remains grossly non-compliant with the LEP2010, DCP2011 and council policy which is to conserve what is a legislated Heritage Conservation Area with many individually listed items. Council has adopted the Burra Charter's standard of practice. The proposal and its assessment are not consistent with its principles of conservation and management of significant places and are contrary to many of its Articles¹. Simple observation shows that businesses, as consistent with Article 21, are adaptively re-using cottages.

We find reference to other buildings that may exceed the 7m height limit to be irrelevant for an old town that predates planning law and in any case present as one or two-storey. Most examples provided predate legislation of the HCA.

We strongly disagree with many of LEP and DCP assessments in the Compliance Tables. As presentations are time limited, on behalf of the community we must ask to table our objections.

In a particular we dispute the DCP assessment (B3.7.4 (5) p. 54) that the proposal does not contravene the overarching desired future character of the HCA which is repeatedly expressed in Council policy documents.

¹ Including Article 8 on conservation of an appropriate setting, and Article 22 that new work is not to distort or obscure or detract from interpretation and appreciation of cultural significance

Council policy was reconfirmed in the town's Urban Design Framework which was unanimously adopted by Council on 14 August 2018. The outcome of the Framework project, which is referenced in the Report, would have been known at the time this DA was lodged and throughout its assessment.

The earlier 2008 Strategy as referenced in the LEP 4.6 Request (p. 17) describes the Precinct of 20 Elizabeth Street as a cultural and residential area with complementary activities to the adjoining town farm and adaptation of existing houses for arts and private studios. Any reference to possible moderate increases in height were about subsequent review, as has occurred in the 2018 Framework.

The Framework does not recommend an overall increase in the height limit and describes the town as being of *relatively low scale and density; a rural township with a modest and varied collection of architecture, much of which is listed as having heritage significance* and uses the term *fine grain* to refer to the town's human scale, spatial experience and urban components. It expresses a built form place principle for the future as: *Protect and enhance the unique character of Camden's heritage, it's human scale and network of urban fabric ensuring all built form contributes to Camden's identity as a rural town.*

This proposal is not fine grained and exceeds the height limit by a massive 44%. It cannot be argued to contribute to historic Camden's identity as a rural and historic town and therefore should not be allowed to proceed.

The 4.6 argument of the site being flood prone, which was known and factored into its purchase price, is not a valid reason for exceeding the LEP height limit. Much of the HCA is flood prone and obviously the LEP and DCP controls have accounted for that well-known fact. It is very evident that it is possible to comply with the height limit and the two-storey restriction, perhaps with minor additional height to accommodate a pitched roof and architectural roof features to reflect and complement the roofscape of the HCA.

The approval of this proposal would be seen as an invitation for a developer bonanza of over-height buildings. We sincerely request that this proposal be refused.

Notes on Urban Design Framework

On 14 August 2018 Camden Council⁷ adopted the Urban Design Framework for the town, the Council Report and attachments for which make the following statements. The Framework:

- ❖ recognises that the town centre has a unique and distinct heritage character that is highly valued by the community and should be retained.
- ❖ recognises the importance of heritage in the town centre and **the need to preserve and enhance it**; does not propose radical change, but rather it considers opportunities for minimal change to the built form and uses within the town centre, with a **focus on enhancing the attributes that make Camden unique**.
- ❖ **does not propose to amend the height control of 7m over the Camden Town Centre.**

Criteria for consideration of **minor** height amendments will be further investigated as part of a future planning proposal to provide clarity and consistency when considering variation requests. Any change in height requirements will be the subject of further investigation and a future planning proposal and community engagement.

- **does not propose major changes to increase commercial floor space** or incentivise growth.
- **does not specify or promote development in the floodplain.**
- **identifies that residential use adds to the vibrancy and viability of a town centre** and recommends re-introducing the ability to have a dwelling house under the existing zoning.
- **is designed to strengthen the heritage planning controls contained in the DCP in the future.**

Note on HIS

The HIS is not prepared according to guidelines supported by the NSW Heritage Council including analysis of the impact on the conservation area and adjacent heritage items

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

13 December 2018

Dear General Manager,

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

We note that the above DA has been revised and resubmitted as a result of non-compliance with the Camden's LEP and DCP, which has also adopted the principles of the Burra Charter.

We note that several amended documents as referenced in the Statement of Environmental Effects (SEE) were not publicly available on Council's DA tracker. As they may be pertinent to this submission, we must ask to reserve the right to add to it when these documents become available. This is particularly the case with the Flood Report, as diversion of flood waters may impact on surrounding properties due to the scale of the proposal and the Landscape Plan due to perimeter trees being proposed to soften the impact of the development.

The proposal is for a three-storey over-height and over-scale development within Camden's Heritage Conservation Area (HCA) and within close proximity to heritage listed properties, all of which are of nineteenth century human scale and single or two-storey. All of the points and issues raised in our previous submission, which is appended, are relevant to the revised proposal which like its predecessor is non-compliant with the height standard and heritage protection provisions within relevant planning instruments.

The proposal includes an application to vary the height standard (LEP s. 4.3) and attempts to argue that its heritage impact would be minimal.

HEIGHT VARIATION

The amended design and slight reduction in height of this iteration of the proposal for 20 Elizabeth Street do not lessen the validity of our previous rejection of arguments for a variation of the height limit. Our following comments and arguments are additional to and are to be read in conjunction with our previous appended objection.

- The SEE (p. 58) claims that a relevant consideration to the height variation application in this iteration of the proposal for 20 Elizabeth Street is its amended design response which reduces the overall building envelope and provides additional setbacks .

Comment: The fact is that the proposal remains as three storeys and grossly over-height. It contravenes the height objective 4.3 (b) to a greater extent than the previous iteration because it now has large windows at the eastern elevation which provide more extensive views to other properties.

- The SEE (p. 55) seeks to clarify the role of the consent authority and assert the outcome by stating: *The independent role for the consent authority is therefore to determine whether the proposed development will be consistent with the objectives of the standard and the objectives of the zone. This involves a consideration of the “development” in its entirety, not just the proposed variation. It is clear that the development meets the objectives of the standard and of the zone as discussed throughout this written request.*

Comment: we categorically dispute, as covered below and in our appended initial objection, the claim that the proposed development meets the objectives of the standard and zone, either in its entirety or otherwise.

- The SEE (p. 55) states that the recent Land and Environment Court case, Initial Action¹, means that the consent authority now only has to be satisfied that:
 - 1) the applicant has adequately addressed matters covered by LEP clause 4.6(3);
 - 2) the development is consistent with the objectives of the standard and zone, pursuant to 4.6(4)(a)(ii)

We address whether the proposal satisfies these two clauses below.

¹ Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC

1) MATTERS COVERED BY LEP CLAUSE 4.6 (3)

LEP Clause 4.6 (3) states

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

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

Comment:

- a) Compliance is not unreasonable or unnecessary. Others comply and there is no reason why this applicant should be considered differently. The owner surely knew that the site was subject to flooding and heritage constraints. The question must be asked as to why the private company purchased the property? The question must be asked as to why, if the constraints are unacceptable, the owner pursues this non-compliant DA instead of selling and finding a site that suits its needs? It is this proposal that is unreasonable and unnecessary, not the standard.
- b) The environmental planning grounds that the SEE pursues are similar to those in the first proposal. They are not clearly articulated and seem to depend on wrong assumptions that a multi-storey office block is desirable and needed in the HCA and that it must be over-height due to potential flooding. For instance, the SEE makes the following claims:

- *A multi-storey development with a ground floor building frontage of a sufficient width, would be not be in keeping with the character of the area if it were to comply with the 7m building height limit. A taller façade provides greater opportunities for a better streetscape presentation, and is proportionally consistent with the pattern of development within the locality, including the proportions provided to single storey heritage items within the vicinity of the proposal development. (p. 57)*

Comment: this is a nonsensical argument. A two-storey limit applies. Multi-storey is not a consideration, is not compliant and in any case is NOT consistent with the proportions of the HCA as simple observation makes evident.

- *given the flooding constraints at ground floor, a development of only two-storeys would require the majority of habitable areas throughout the development to be contained within a pitched roof. A more appropriate design response to the streetscape is to include at least one complete habitable level that is not contained within a pitched roof form, to enable the provision of façade windows. (p. 57)*

Comment: another nonsensical claim. Many businesses operate from cottages. The proposal is an overreach for the area and is an attempt to maximise return at the expense

of the public interest. Three storeys with a height of 10.1 metres is NOT an appropriate design response for the HCA. This is an assertion without foundation.

- *On sites where the existing building is not suitable for retention, where a new commercial development is proposed, and where the site is drastically affected by flooding, there is little utility in providing a development that complies with the height limit. (p. 57)*

Comment: The cottage is suitable for retention as is evidenced by the many cottages being used for business purposes. Its footprint is valuable as a renovation project, which could be undertaken for relatively little capital outlay and possibly a similar percentage return on investment in the site. The question really is: If there is no appetite to use the cottage, why pursue a non-compliant development on this site? The SEE (p. 58) tells of the bias inherent in this proposal and the problem with it: *The development provided to this site must necessarily be a multi-storey development, and it is clear that a multi-storey commercial development which complies with the height limit would generally be inconsistent with the character of the locality and plainly unfeasible.* Yes, the development is UNFEASIBLE and should not be pursued.

The SEE also cites precedents, all of which have been comprehensively covered in our initial appended objection. None of the precedents (Milk Depot, The Elizabeth, the High School DA) are relevant, and the High School site is on the market to be sold. Even if a precedent could be shown to be relevant it remains the case that each proposal is assessed on its compliance and merits, not precedents.

Other attempted arguments include:

- *The subject site is located within a transition area, within a zone which seeks the introduction of such development to replace dwellings that are not contributory within the conservation area. (p. 58)*

Comment: This statement is untrue. Small scale dwellings are at the very soul of the HCA. They tell the story of Camden's evolution and are consistent with its small scale nineteenth century private town origins and contribute to the village profile as deliberately designed in 1836 by the sons of John Macarthur. Residential uses within the town centre including in the B4 zone are to be encouraged according to the recently approved Urban Design Framework which is covered in more detail under Heritage Impact below.

- *it is evident that no other commercial redevelopments have been able to achieve compliance with the height limit (p. 58)*

Comment: this is simply irrelevant and untrue as many cottages have been adapted for commercial use.

- *...there is an identified shortfall of commercial space within the Camden Town Centre with much of new commercial floor space provided within former cottages ... (p. 66)*

No evidence or reference is provided to support the claim of lack of commercial space and it is a contradiction to then observe that new commercial floor space is provided by cottages adapted for business use. As evidenced through a google search noted in our previous submission there are many commercial premises for lease within and close to the HCA. The best use of 20 Elizabeth Street would be to renovate the cottage and do what others find appropriate and do what is compliant.

We found no environmental planning grounds that would support the height variation.

2) OBJECTIVES OF THE STANDARD AND ZONE, PURSUANT TO 4.6(4)(a)(ii)

LEP Clause 4.6 (4)(a) (ii): states

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

(a) the consent authority is satisfied that: (ii) the proposed development will be in the public interest because it is consistent with the

- *objectives of the particular standard (HEIGHT) and the*
- *objectives for development within the ZONE (B4) in which the development is proposed to be carried out*

OBJECTIVES: HEIGHT STANDARD

The three objectives of the LEP 4.3 Height standard ² are very clear:

- (a) **HEIGHT STANDARD OBJECTIVE:** to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

² **Camden Local Environmental Plan 2010** Current version for 9 November 2018 to date (accessed 10 December 2018 at 16:15)

Comment: the proposed development is not compatible with the height, bulk and scale of the existing HCA character by a very large margin. The desired future character is of a low-rise, small scale conservation area that remains cottage dominated and true to its 19th century private town origins. This is reflected by the LEP 7m height restriction, DCP controls and recently ratified Urban Design Framework for the town, both covered in the next section on Heritage Impact, and in the significant documentation of the town by Council and researchers.

(b) HEIGHT STANDARD OBJECTIVE: to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development

Comment: the visual impact, loss of privacy and solar access is unacceptable and is likely also covered by other personal submissions.

The artist's impression supplied with the DA below is blatantly deceptive with a raised horizon, non-existent mountains and fields and out of scale figures. Assuming a person was tall at 2 metres the building would be more than 5 times higher.

The fact is that the site is surrounded by cottages less than half the height of the proposed building and heritage listed items that at most are two-storey. The large windows would provide excellent views into other properties. The height and bulk would cast long shadows throughout the day.



The Land and Environment Court³ also uses criteria for assessing impact on neighbouring properties in the form of the following relevant questions:

- How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?

Comment: many properties would be affected adversely, including heritage listed properties, as the prevailing character is that of small-scale buildings with large gardens. The impact has not been appropriately addressed in the SEE or HIS. As covered in our original objection an above height building, including one of 10.1 metres (44% above the height limit) in this iteration of the proposal, provides exceptional opportunity for overlooking properties in Elizabeth, Mitchell and Edward Streets. The highest building within the vicinity (Nepean House) at its steep roof peak is 8 metres. **Most cottages are less than half the height of the proposed building.**

The shadow diagrams that are provided are insufficient but nevertheless indicate unacceptable loss of solar access and impact on liveability, particularly for residents.

- How reasonable is the proposal causing the impact?

Comment: It presents as an anomaly and is not reasonable as explained throughout this objection and in our previous objection

- How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?

Comment: In the cases of adjoining properties, including Nepean House garden and outbuilding at 23 Edward St and Lina's Touch of Beauty at 21A Edward Street the impact would be severe in terms of loss of privacy and solar access, and would unfairly limit compliant development potential on the properties.

Most properties in Edward Street and Elizabeth Street towards the Town Farm would be adversely impacted in terms of loss of privacy.



³ **Davies v Penrith City Council [2013] NSWLEC 1141**
<https://www.caselaw.nsw.gov.au/decision/54a63b123004de94513daebd>

- Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?

Comment: Yes, it is over-height and overscale and bears no complementarity or sympathetic interpretation of the character of the HCA or buildings within it. The third storey and floor space sought is an over-reach and simply an attempt to maximise financial return at the expense of neighbours, heritage conservation and the public interest.

- Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?

Comment: As covered throughout our two objections this proposal categorically does not comply with the planning controls and hence has a very large and unacceptable impact.

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

Comment: clearly this proposal would have a detrimental effect on the HCA and surrounding heritage listed items by presenting as a large modern anomaly with no reference to its surrounds. This aspect is covered in more detail under Heritage Impact below.

Clearly this proposal does not achieve any of the objectives of the LEP s4.3 height control.

OBJECTIVES of ZONE (B4)

The objectives of the zone are

- *To provide a mixture of compatible land uses.*

Comment: the proposal is incompatible with the land uses of cottage-based businesses and residences.

The SEE and HIS attempt to argue that the built form in Elizabeth Street is non-homogenous and land uses within the Elizabeth Street or northern section of the HCA are eclectic and transitional to higher density commercial and residential uses.

The SEE (p. 58) claims: *the site is located within a transition area, within a zone which seeks the introduction of such development to replace dwellings that are not contributory within the conservation area.*

The Heritage Impact Statement (HIS (p. 16) claims: *it is evident that the northern portion of the heritage conservation zone of Camden is undergoing a transition from historically less dense, mixed use development to higher density, mixed uses (including commercial and residential) due to the paucity of available space in the southern portion. The B4 mixed use zoning encourages non-residential or higher density residential development. This is contrary to the assertion that*

Camden's Heritage Conservation Zone is (and by inference should continue to be) dominated by 'cottage dominated streetscapes' (DCP B3.1.2), at least in this northern part of the conservation zone.

The HCA provides a mixture of compatible land uses as befits its history as a working country town servicing its surrounding population. The nearby Guide Hall is a community asset like many others in the old township. The location of the former high school was an expected use within the town, just like the nearby public and catholic primary schools. The agricultural, automotive and other small-scale commercial uses are likewise typical of a working country town.

The HIS (p. 6) claims that *the vacant former Camden high school site ... is undergoing development for high density residential use including seniors living.*

This statement implies that the DA attached to this land is mainly for use as normal residential living. It is fully seniors living which comes under state policy which can override Camden's LEP and DCP.

Further this is a highly difficult site, which no-one wanted to lay claim to because it required remediation from serious contamination that may have affected students and teachers from the early 1950s until it was evacuated and a new high school built by the State government. The requirement to decontaminate and rehabilitate the site was a condition of sale. It was also approved prior to 2010 when Camden's Heritage Conservation Area was legislated.

Also, the site is for sale and the development is not being pursued by the current owner. It is not as claimed (HIS p. 13) currently under construction.

It is a weak assertion at best to claim that a potential land use that may or may not be pursued by a future prospective purchaser, that comes under different jurisdiction, is grounds for allowing a development that is non-compliant with Camden's current LEP and DCP. As pointed out in our original objection the DA attached to this land is completely irrelevant to the proposal for 20 Elizabeth Street.

There is currently NO high-density large-scale residential or commercial land use in the area and as pointed out above if there ever is on the High School site it would have been assessed under state level policy and before the HCA was legislated. The SEE and HIS fail to appreciate that most buildings in the vicinity are one storey cottages and that any alterations to them are minor. "The Elizabeth", on the corner of Mitchell and Elizabeth, which could be argued to be an overdevelopment of the site, was approved prior to legislation of the HCA. Nevertheless, it fronts the streets as two-storey, captures the architectural styles of surrounding buildings, especially Taplin cottage and Nepean House and has been designed not to overlook any other properties. It is only approximately 10% above the 7m height limit at its peak. It accommodates architectural

features, which may be allowed contribute to minor exceedance of the height limit on a corner block. This does not apply to 20 Elizabeth Street.

The SEE and HIS make no mention of the agricultural land uses nearby to 20 Elizabeth Street, conveniently dismiss the many heritage listed properties in close vicinity as shown in the map below and instead concentrate on one small section of the HCA. This is despite the fact that, according to the planning instruments, the HCA is considered to be one integrated heritage place.



Heritage Map - Sheet HER_010

The HIS (p. 14) also makes the ill-informed and easily refuted comment:

.....the variety of uses, Architectural styles and quality of buildings on this portion of Elizabeth Street is at odds with the comment in Council's development control plan that the conservation area is dominated by cottage development. By contrast, the southern portion of the heritage precinct (south of Argyle Street) has a greater density of cottage development and is provided with parallel Street parking (other than a small portion of angled parking on the southern end of John Street adjacent to St John's Church).

The fact is that the entire HCA is dominated by human scale buildings as befits a carefully designed village inspired by the home country of the Macarthur family. It is a self-evident fact that land uses within the township beyond Argyle Street with its mainly two storey buildings are accommodated by one storey cottages, a few two storey houses and civic buildings.

Current land uses throughout the town currently mainly accommodate and respect the town's significant heritage, unlike this proposal. To suggest that the buildings in the northern part of the HCA are somehow of a lesser (although not defined) "quality" than those in the southern part is an irrelevant opinion and probably on the whole erroneous depending on perspective; a larger proportion of the northern area is comprised of a variety of heritage listed items.

Another implausible argument presented in the HIS (p. 15) is: *The fact that Council have provided such a large amount of street parking adjacent to the subject site at the expense of streetscape appeal suggests a future need for parking in the area associated with denser development (either commercial or high density residential) than currently exists.*

To claim a connection between the number of parking spaces near 20 Elizabeth Street and an intention by Council to allow denser development is a non-sequitur and refuted by the planning instruments and the recently approved Urban Design Framework discussed below under Heritage Impact.

Elizabeth Street is NOT a transition zone of land uses for large scale, high density development and this proposal would not be a compatible land use. The alleged transition is NOT evident.

- *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.*

Comment: the proposal is not suitable. It does not particularly encourage patronage of public transport or walking and cycling.

- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

Comment: the land use of modern office space is not particularly compatible with the Town Farm, Sale Yards, Equestrian Centre, heritage tourism, residences or cottage-based businesses.

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

Comment: the proposed development would not support or complement the local centre zone as it is far greater in scale than anything in this zone. It would detract and/or compete with primary office function of the main centre.

The application for height variation must fail through lack of achievement of the objectives of the height standard and the zone. We could find no environmental planning grounds to allow this over-height and over-scale development.

HERITAGE IMPACT

The cultural significance of Camden as a privately designed, working country town with its unique character described in the DCP is not consistent with the proposal for 20 Elizabeth Street. The complete inappropriateness of the proposal and its contrasts with the mainly one-storey cottage character of the HCA outside the main street has been addressed in our first objection in July 2018 which is provided for completeness in the Appendix. The revised proposal remains as over-height and overscale and as a potential anomaly within the HCA. All of the arguments presented in our earlier objection remain valid despite changes to the first proposal.

Despite attempts in documents submitted with the proposal to downplay the character of the town and the importance of preservation, conservation and enhancement, there is no doubt that Camden is exceptionally historically significant and well worthy of careful and sympathetic treatment. It is the only known extant town in Australia with private origins and is strongly connected to Camden Park and the Macarthur family. Its original design, by the sons of John and Elizabeth (James and William) and Surveyor General Sir Thomas Mitchell, crowned by St John's Church Precinct, its streetscapes and lay-out named for the Macarthur family (for example John and Elizabeth Streets) remain intact to this day.

Camden's cultural, social and aesthetic significance is well documented as evidenced within Council documents, our fully referenced 2016 Heritage Study⁴, Land and Environment Court ruling⁵ and most recently in the state listing of the church precinct⁶ which was expedited by the NSW Heritage Council because of fears of a potential purchaser pursuing overdevelopment of the site through possible State government policy exemptions to the Camden LEP and DCP.

Further on 14 August 2018 Camden Council⁷ adopted the Urban Design Framework for the town, the Council Report and attachments for which make the following statements. The Framework:

- recognises that the town centre has a unique and distinct heritage character that is highly valued by the community and should be retained.
- recognises the importance of heritage in the town centre and **the need to preserve and enhance heritage in the future.**

⁴ Camden Residents' Action Group Inc (April 2016) *HERITAGE STUDY CAMDEN NEW SOUTH WALES Documentary Evidence addressing criteria for statutory heritage listing* Available at: <http://www.crag.org.au/wp-content/uploads/2016/06/Camden-Heritage-Study-April-2016.pdf>

⁵ Land and Environment Court (1996) *Gledhill Constructions Pty Limited V. The Council of Camden NSWLEC 120 (19 April 1996)* Available at: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/1996/120.html?stem=0&synonyms=0&query=1996%20gledhill%20camden>

⁶ NSW Office of Environment and Heritage *St Johns Anglican Church Precinct* Available at: <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5053423>

⁷ Camden Council, see <https://www.camden.nsw.gov.au/assets/pdfs/Council/Business-Papers/2018/BP-agenda-14-Aug-2018.pdf>
<https://www.camden.nsw.gov.au/assets/pdfs/Council/Business-Papers/2018/BP-attach-14-Aug-2018.pdf>
<https://www.camden.nsw.gov.au/assets/pdfs/Council/Minutes/2018/Minutes-14082018.pdf>

- does not propose radical change, but rather it considers opportunities for minimal change to the built form and uses within the town centre, with a **focus on enhancing the attributes that make Camden unique.**
- **does not propose to amend the height control of 7m over the Camden Town Centre.** Criteria for consideration of **minor** height amendments will be further investigated as part of a future planning proposal to provide clarity and consistency when considering variation requests. Any change in height requirements will be the subject of further investigation and a future planning proposal and community engagement.
- **does not propose major changes to increase commercial floor space** or incentivise growth.
- **does not specify or promote development in the floodplain.**
- **identifies that residential use adds to the vibrancy and viability of a town centre** and recommends re-introducing the ability to have a dwelling house under the existing zoning.
- **is designed to strengthen the planning controls contained in the DCP.**

The proposed change to the HCA at 20 Elizabeth Street is founded in misinterpretation as it is not guided by an understanding of Camden's rich history, strong community identity, sense of place and associations with the Macarthur heritage (Burra Charter Article 15).

Instead of understanding that the diverse uses in the town are integral to its historic character and value, they are cited as reasons for a non-compliant, grossly overscale and over-height development.

Instead of recognising that any degradation of the amenity in the HCA is not acceptable and should be subject to restoration, the HIS and SEE argue it as a reason to allow a non-sympathetic and grossly oversized change to the special area.

This approach in these documents is not logical. The above misinterpretations lead to arguments presented in the SEE and HIS which are actually solid reasons why proposals should interpret the cultural identity of the unique town and strive to reflect its cultural and aesthetic significance and enhance it.

For instance, the HIS (p. 8) states

The wider streets of Camden in the Heritage Precinct are typically provided with angled (45°) parking and Elizabeth Street is no exception with angled parking existing along both sides of the street in the vicinity of the subject site between Mitchell Street and Exeter Street. This creates the effect of vehicles dominating the street frontage and detracts from the heritage theme. (p. 8)

The streetscape in the vicinity of the site is dominated by 45° angled parking with sparsely spaced or no street front planting. As much as this provides useful parking for the precinct and adjacent commercial areas, it is contradictory to the listed heritage significance of this part of the conservation area, allowing vehicles to dominate the streetscape. This is contrary to the objectives of the heritage conservation zone, diminishing the streetscape quality by allowing vehicles to dominate rather than the buildings. (p.14)

To make much of the fact that 45° angle parking and lack of tree planting reduces the heritage amenity of streets in the northern area of the town, especially Elizabeth Street is an obvious overreach. The parking design (note that the HCA is a small defined area which borders open space including Onslow Park and the Town Farm that can be made available) and lack of trees are easily remedied, and in any case on weekends and public holidays the streets are usually mainly clear and the intent of the town's original design and overall leafiness is fully evident.

The issue is that the town is unique in Australia's European history and the site of this proposed development is in the original grid pattern set out in 1836 by the sons of John Macarthur, and named for their mother Elizabeth. Future generations are entitled to be able to appreciate this town with its nineteenth century townscape and the focus and profile of St John's Hill as originally designed. This proposed development is larger than St John's church and completely out of proportion with its cottage dominated surrounds.

The HIS (p. 14) also overreaches with

.....the variety of uses, Architectural styles and quality of buildings on this portion of Elizabeth Street is at odds with the comment in Council's development control plan that the conservation area is dominated by cottage development. By contrast, the southern portion of the heritage precinct (south of Argyle Street) has a greater density of cottage development and is provided with parallel Street parking (other than a small portion of angled parking on the southern end of John Street adjacent to St John's Church).

The fact is that the entire HCA is dominated by human scale buildings as befits a carefully designed private village that grew to be an important country town as wool and horticultural industries became established in the colony. It is a self-evident fact that the township beyond Argyle Street with its mainly two storey buildings is dominated by one storey cottages, with a few two storey houses and civic buildings.

The Land and Environment Court ⁸ is required to give weight to the controls in a DCP⁹ and the Controls for the HCA are very clear with the most relevant being:

6. Additional development on the fringe of the town should complement and not detract from the viability of the “main street”.

Comment: There is no building in the main street of three storeys or that comes near the scale and floor space of this proposal, and therefore it can only detract from the primacy of the main street.

7. Original uses of significant buildings should be encouraged and facilitated. Where this is no longer possible, appropriate adaptive re-use opportunities should be explored to facilitate the conservation of these buildings.

Comment: although arguably the original residential cottage at 20 Elizabeth may not be significant in that there are many similar examples across NSW it does complement the streetscape scale. It contributes to Camden’s historical narrative as reflective of post war architectural austerity and shortage of building materials. There are many examples of similar sized cottages, some with minor extensions at ground level being restored and successfully used for business purposes. Examples are the faithfully restored much smaller heritage listed cottages at 7 and 9 Mitchell Street, 15 Mitchell Street and 21A Edward Street, all of which adjoin 20 Elizabeth Street. This proposal if approved would make a mockery of the efforts of others to respect the HCA.

8. Existing cottage dominated streetscapes shall be retained and complemented with compatible extensions/additions and new developments.

Comment: Cottages can be extended and compatible human scale two storey developments added. This approach is common throughout the HCA. A good example of a recent, compliant single storey cottage-fronted development with two storeys at the rear exists nearby at 14 Elizabeth Street.

9. A two storey height limit shall prevail except for significant architectural features incorporated in the design of buildings in significant locations.

Comment: this proposal is for THREE storeys. It is simply non-compliant and unacceptable. The location site is not a significant location, as are the sites of “The Elizabeth” which is often referenced as a precedent in the proposal and Nepean House, which surprisingly is not mentioned at all.

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

⁸ **New Street No. 1 Pty Ltd v Waverley Council [2017] NSWLEC 1592**

<https://www.caselaw.nsw.gov.au/decision/59e93d23e4b058596cbab420>

⁹ **Camden Development Control Plan 2011** P. B56 Accessed 10 December 2018

<https://www.camden.nsw.gov.au/assets/pdfs/Planning/Development-Control-Plan/Part-B-UPDATED-May-2018-2.pdf>

Comment: the proposal argues illogically and unsuccessfully that the vicinity of 20 Elizabeth Street is not cottage dominated. Simple observation indicates otherwise. The proposed design seeks to maximise floor space at the expense of neighbours and the HCA.

11. The development of the flood affected fringes of the town shall not compromise the prevailing character.

Comment: There is no building within the HCA of similar design to that proposed. It would sit as an anomaly within the HCA. Citing possible flooding as a reason for an above height, three storey development is a nonsense. If it is a problem for the scale of development that the owner wishes to undertake, then a site should have been purchased elsewhere.

This proposal is not compliant with any of the above DCP controls.

We find that the revised HIS makes incorrect assumptions to prosecute arguments that instead are no more than wishful assertions. As covered in our original objection the HIS is not prepared according to guidelines supported by the NSW Heritage Council¹⁰ including analysis of the impact on the conservation area and adjacent heritage items (cottages at 7 and 9 Mitchell Street and Nepean House).

Simple observation shows that businesses are in fact adaptively using restored cottages as is compliant with the LEP and DCP and acceptable as having minimal impact on the HCA (Burra Charter Article 21).

To claim and continue to claim otherwise ties up and wastes the resources of Council and the community unnecessarily.

¹⁰ NSW OEH *Statements of Heritage Impact* Available at:
<http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>

We trust that this proposal will be denied because it fails to meet the objectives of the height standard and the zone, and because it would have a detrimental impact on the significance of the HCA.

We hope that the applicant will be encouraged to either sell the site or follow the example of others and respect the heritage of the town.

As for the first iteration of this proposal for 20 Elizabeth Street, we again request for the second iteration that:

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

Yours sincerely

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

Glenda Davis

Camden Residents' Action Group

Incorporated

Camden – Still a Country Town

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

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

PO Box 188
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General Manager
Camden Council
70 Central Avenue
Oran Park 2570
Email: mail@camden.nsw.gov.au

30 July 2018

Dear General Manager,

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

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

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

We strongly object to the proposal on the following grounds.

HEIGHT VARIATION

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

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

Justification for the variation is required from the Applicant under 4.6 (3) by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The attempt at justification in the Application for Variation of the Height Standard (SEE pp. 43-58) is not successful.

The SEE (p. 47) correctly refers to the authority established by *Four2Five Pty Ltd v Ashfield Council* (2015)¹¹ noting that it *necessitates that environmental planning grounds for the proposed variation must be established aside from the consistency of the development with the objectives of the standard and the objectives of the zone*. The Land and Environment Court in this 2015 case¹² established that applicants need to demonstrate and justify that application of the development standard is unreasonable or unnecessary not merely or only because the development is consistent with zone objectives and achieves the objectives of the development standard but also that

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

¹¹

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

¹² For an analysis, see Lindsay Taylor Lawyers (24 July 2015) *Is an Objection Under Clause 4.6 More Onerous to Establish Than Under SEPP1?* Available at http://www.lindsaytaylorlawyers.com.au/in_focus/index.php/2015/07/is-an-objection-under-clause-4-6-more-onerous-to-establish-than-under-sepp1/#.W1U2Ntlza70

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

The SEE (p. 47) also cites the earlier case of *Wehbe* 2007¹³ and claims that it is generally understood that Clause 4.6(3) can be satisfied if one or more of Points 2-5 below are satisfied:

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

Similarly, NSW Planning and Infrastructure (2011)¹⁴ refers to a five-part test indicating that as well as demonstrating consistency with the objectives of the relevant standard that written applications for variations may also address matters set out in the 'five-part test' established by NSW Land and Environment Court. Point 1 or Test 1 must at a minimum be achieved.

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

¹³ The test is identical to the five points except for Test 5; the reworded Point 5 is similar and found in use by the legal profession. The wording of Test 5 is

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

¹⁴ NSW Planning and Infrastructure (2011) *Varying development standards: A Guide August 2011* Available at <http://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/~media/7CCD3A20E9A24B0E858DF2E05A856867.ashx>

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

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

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

4.3 Height of buildings

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

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,**
- (b) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,**
- (c) to minimise the adverse impact of development on heritage conservation areas and heritage items.**

Zone B4 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.**
 - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.**
 - To minimise conflict between land uses within the zone and land uses within adjoining zones.**
 - To encourage development that supports or complements the primary office and retail functions of the local centre zone.**
-

The application for variation makes two arguments:

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

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

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

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

The circumstantial arguments for this conclusion are refuted as follows.

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

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

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

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

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

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

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

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

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

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

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

This development proposal was very contentious and drawn out with many objectors and significant media interest. CRAG lodged three objections¹⁵.

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

The contentiously approved building is at a signature gateway site within the heritage conservation area, within the main approach and entrance to the town which is in itself listed as a potential heritage item¹⁶, is well within the flood area and research by CRAG members has shown that it is in a floodway. The approval accepts that the floodway begins discretely at the very edge of the new building which is most unlikely given the way flood waters behave.

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

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

¹⁵ CRAG (2016-2017) Camden Vale Milk Depot objections. Available at:
<http://www.crag.org.au/wp-content/uploads/2016/06/CRAG-OBJECTION-Camden-Vale-Milk-Depot-22-April-2016.pdf>

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

¹⁶ Camden DCP 2011 *Table B5 Potential Heritage Items – Cultural and Visual Landscapes* Available at:
<https://www.camden.nsw.gov.au/assets/pdfs/Planning/Development-Control-Plan/Part-B-UPDATED-May-2018-2.pdf>

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

No building of that height currently exists in John Street. No street number is provided and the DA number was found to relate to the redevelopment on the Camden High School site¹⁷. The DA (644/2008) was lodged in 2008 and amended in May 2009, prior to gazettal of LEP 2010. Clearly this development is overscale and over-height, and generally an overdevelopment of the site.

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

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

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

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

¹⁷ Ian Willis (30 November 2017) *Camden History Notes The phoenix rises from the ashes at the old Camden High site* Available at <https://camdenhistorynotes.wordpress.com/2017/11/30/the-old-camden-high-site/>

Further the Land and Environment Court (April 1996)¹⁸ ruled in favour of Council against a development application in the vicinity of St John's Church. The Honourable Justice M L Pearlman AM, stated:

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

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

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



¹⁸ Land and Environment Court (1996) *Gledhill Constructions Pty Limited V. The Council of Camden NSWLEC 120* (19 April 1996) Available at: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/1996/120.html?stem=0&synonyms=0&query=1996%20gledhill%20camden>

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

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

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

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

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

For the proposed development:

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

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

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

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

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

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

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

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

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



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

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



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

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

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

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

Views

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

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

Privacy

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

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

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

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

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



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

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



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

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

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



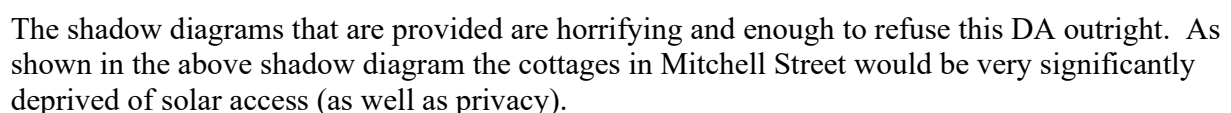
Most properties in the vicinity would experience a building that is more than twice their height and many would be confronted by a first storey landscaped rooftop (4.7m above ground level at the rear of the building) and/or another two levels of second and third storey office windows on both the south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

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

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

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

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



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

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

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

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

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

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

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

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

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

Achievement of the objectives of Zone B4 is refuted as follows

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

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

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

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

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

HERITAGE IMPACT

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

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

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

The HIS is not prepared according to guidelines supported by the NSW Heritage Council¹⁹. For instance, it does not answer the following questions about a new development within a conservation area and adjacent to heritage items:

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

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

¹⁹ NSW OEH Statements of Heritage Impact Available at <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/hmstatementsofhi.pdf>

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

Listed Heritage Items (LEP Schedule 5 extract)

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

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

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

Article 8 of the Burra Charter²⁰ requires the retention of an appropriate setting to heritage properties, as do the LEP and DCP.

We also consider that the HIS conclusions are inconsistent with the NSW Heritage Office guidelines²¹ for new development in a heritage context which for instance, on scale and form, advises that *...the grain, or pattern of arrangement and size of buildings in a precinct or conservation area, can be an important part of its character. ...The form of a building its overall shape and volume and the arrangement of its parts.....should be sympathetic with the predominant form of its neighbours.*

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

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



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

²⁰ ICOMOS (2013) *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance* Available at: <https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf>

²¹ NSW Heritage Office (June 2005) *Design in Context Guidelines for Infill Development in the Historic Environment* Available at: <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/DesignInContext.pdf>



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

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



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

The HIS also does not address the history of the cottage that it flags for demolition. Increasingly the style and fabric of cottages built in the post war period of austerity and shortage of building materials are being recognised as reflective of an important historical era²². Post War Fibro Cottages are making their way into heritage lists of LEPs in NSW.²³ The cottage, a Fibro Majestic as acclaimed in our culture²⁴ is not beyond restoration and provides an appropriate footprint for the site, perhaps with an increase in floor area as allowed on flood prone land as was undertaken in neighbouring 9 Mitchell Street.

²² Antony Lawes (2 January 2012) *Architects defend the majesty of unwanted '50s fibros* Available at <https://www.domain.com.au/news/architects-defend-the-majesty-of-unwanted-50s-fibros-20111230-1pfed/>

²³ <http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=1172092>

²⁴ Junior (2010) <https://junioraustralia.bandcamp.com/album/the-fibro-majestic>



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

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

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

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

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

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

❖ LEP 5.10 Objectives

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

❖ DCP Part B DCP 3.1.1 General heritage objectives

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

❖ DCP Part B 3.1.1 General heritage controls

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

❖ DCP Part B 3.1.2 Camden Heritage Conservation Area objectives

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

❖ DCP Part B 3.1.2 Camden Heritage Conservation Area controls

- 6. Additional development on the fringe of the town should complement and not detract from the viability of the “main street”.
 - 9. A two storey height limit shall prevail except for significant architectural features incorporated in the design of buildings in significant locations.
 - 10. Large built forms in cottage dominated precincts shall be avoided through the use of various roof forms and pitches, wall openings and recesses, materials, recessive colours and landscaping
 - 11. The development of the flood affected fringes of the town shall not compromise the prevailing character.
-

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

Camden's heritage is irreplaceable and culturally important to current and future generations. This has been documented most recently in a 2016 Heritage Study 2016²⁵ which has been endorsed by academic and eminent historians.

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

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

We request that:

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

Yours sincerely,



Glenda Davis, President

²⁵ Camden Residents' Action Group Inc (April 2016) *HERITAGE STUDY CAMDEN NEW SOUTH WALES* Documentary Evidence addressing criteria for statutory heritage listing Available at <http://www.crag.org.au/wp-content/uploads/2016/06/Camden-Heritage-Study-April-2016.pdf>

APPENDIX A: LEP 2010 Clause 4.6

4.6 Exceptions to development standards

(1) The objectives of this clause are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B: Acknowledgment of Heritage Significance of Camden

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

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

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

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

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

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

Photographs	None
List	Register of the National Estate (Non-statutory archive)
Class	Historic
Legal Status	Registered (21/03/1978)
Place ID	3225
Place File No	1/15/009/0002
Statement of Significance	
<p>Camden is one of the most delightful early towns near Sydney. It has perhaps the strongest plan form of any of them. The buildings of John Street are very important to the main feeling of the town and the group is enhanced by several extremely fine examples of architecture; the picturesque Macaria, the Italianate CBC Bank and restrained elegance of No 39 John Street.</p> <p>(The Commission is in the process of developing and/or upgrading official statements for places listed prior to 1991. The above data was mainly provided by the nominator and has not yet been revised by the Commission.)</p>	
Description	
See related Files 3226, 3227, 3228, 3229, 3230, 3231	
History Not Available	
Condition and Integrity Not Available	
Location	
Comprising: CBC Bank, John and Argyle Streets, Camden; cottage 39 John Street, Camden; Macaria, 37 John Street, Camden; Police Station and Residence, 33-35 John Street, Camden; Courthouse, 31 John Street; and St Pauls Catholic Church, John and Mitchell Streets, Camden.	
Bibliography Not Available	
Official Values Not Available	
Description	
See related Files 3226, 3227, 3228, 3229, 3230, 3231	
History Not Available	
Condition and Integrity Not Available	

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

Full statement available at

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

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

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

St John's Anglican Church Precinct is an exemplary demonstration of the regional use of landscape design. St John's Anglican Church, with its tower and spire, dominates and commands the Camden landscape on its high prominence (St John's Hill) in the middle of what is a low-lying flood plain. Its tower and spire symbolically reach for heaven and point the way for the minds and souls of the local community. The church tower and spire, as well as other elements of the church precinct such as the rectory, are visible from many locations in the local landscape from Cobbitty to the north, Narellan in the east, Cawdor in the south, and Grasmere and Bickley Vale to the west. More distant views are also available of the church in the greater region as well. This effect on the local landscape is the result of a deliberate landscape design by the Macarthur family that was aimed both at creating picturesque vistas that reminded them of an English countryside, and reinforcing the social order the Macarthurs, as part of the ruling class, wished to uphold. St John's extraordinary command of the regional landscape ensures that it is visible from all the major roads, high points, and the seats of several of the major local estates. This command is expressed through 16 significant views and vistas in the regional landscape that is identified in the CMP (2004:35-36, 44)²⁶.

²⁶ The Conservation Management Plan is available at <https://stjohnscamden.org.au/index.php/about/history>