

# *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](mailto:admin@crag.org.au)

Ph: 0415 617 368

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Meeting with Camden MP

## **Studley Park DA 2023/526/1 – Studley Park**

### **Apparent Breaches of Local Government Act in relation to community land associated with the Studley Park DA.**

#### **Studley Park Land History<sup>1</sup>**

- In April 1940 during World War 2, the entire site at Studley Park, containing a heritage house and a golf course, was purchased by the Department of Defence for army training purposes.
- In 1988, the Commonwealth Government subdivided the Studley Park estate, creating a 5.53 ha portion known as Lot 1 containing Studley Park House. Lot 1 is an 'island lot' completely surrounded by Studley Park Golf Course. Lot 1 has right of way access through part of the golf club lands to Camden Valley Way in the west (not currently used) and to Lodges Road in the east through the golf club carpark. Lot 1 was sold by the Commonwealth in 1989, and returned to use as a residence.
- In late 1991, it became apparent to Camden Council that the Commonwealth Government had declared the Studley Park land to be surplus to its future requirements, and was seeking to sell some or all of the land for urban development. This proposal was of great concern to the golf club, the local community and Camden Council.

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<sup>1</sup> From **Conservation Management Plan (CMP)**, Studley Park (State Heritage Register #389), 52 Lodges Road, Narellan NSW 2567. Urbis, Prepared for Allen, Jack + Cottier. Endorsed by NSW Heritage Council, April 2023. Submitted to Camden Council with Statement of Environmental Effects for the Development of Studley Park by Applicant Peter Moran, September 2023

By mid-1992 <sup>2</sup>, after lobbying by the golf club assisted by the NSW local member, Dr Liz Kernohan, Camden Council had resolved to present a case directly to the Prime Minister of Australia Paul Keating. Excerpts from the Mayor's covering letter reveal the Camden Council position on the retention of Studley Park:

*"Dear Prime Minister,*

**RE: Studley Park Golf Course**

*I refer to representations made to you by Alderman John Murray of this Council... and advise that the Camden Municipal Council is totally opposed to the utilization of any part of the Studley Park Golf Course for any purpose other than Open Space... Obviously, this means that Council cannot agree to any proposals of the Australian Property Group<sup>3</sup> for the utilization of some areas of the property for housing development.*

*It is the firm opinion of Council that the entire area of this valuable community resource should be transferred to the care, control and management of Council, on behalf of the citizens of this Municipality and Region....*

*Naturally, Council would also give an undertaking that any proposal to utilize any part of the land for any purpose other than those compatible with its zoning as Open Space, or any proposal for disposal of any part of the land, will only be considered in conjunction with the Federal Government.*

*With very best regards,*

*Theresa Testoni*

*Mayor of the Municipality of Camden*

*29 June, 1992*

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<sup>2</sup> Under the old local government legislation prior to the 1993 Local Government Act

<sup>3</sup> Commonwealth agency managing Studley Park land issues

- Council's representations to the Federal Government were successful. Initially, a 99-year lease to Camden Golf Club was agreed in 1995, but it was not actually signed off until 2000.
- In 2006, after a further subdivision of the Studley Park land, Camden Council purchased the golf course property (Lots 3, 4, 5 & 7) from the Commonwealth Government, which did not affect club's rights under the 99-year lease with the Commonwealth. Camden Council is now listed on title as the owner of the golf club land at Studley Park.
- The Camden Golf Club had purchased Studley Park House in 1996 (Lot 1). In 2008, the Golf Club sold Lot 1 to a developer, Peter Moran. In September 2023, Moran submitted a development application to Camden Council, accompanied by a Statement of Environmental Effects and a Conservation Management Plan. The restoration of State Heritage listed Studley Park House is estimated to cost less than \$5m. It is argued that major development of the site, estimated to additionally cost approximately \$104m, is needed to conserve Studley Park House.
- The developer proposes to build a new access road to Lot 1 (see attached maps) across Lot 3 and Lot 5 which are community land under the Local Government Act 1993. Camden Council staff recommended approval of this road development which we believe is in breach of Council's legal responsibilities under the Local Government Act 1993, Local Government (General) Regulation 2021 and NSW Department of Local Government policies relating to the management of community land.

### **Legal Responsibilities of Local Government with Respect to Community Land**

NSW Parliament, in drafting the Local Government Act, 1993, allocated considerable importance to the subject of community land. Part 2 of Chapter 6 of the Act devotes numerous sections to the classification and management of community land.

NSW Parliament went to the trouble of adding a note to Part 2 – Public Land – with the intention of removing any doubt about how community land should be managed by Councils under the Local Government Act, 1993.

The Note states, in part:

***“Community land must not be leased or licensed for more than 21 years and may only be leased or licensed for more than 5 years if public notice is given and, in the event that an objection is made to the proposed lease or licence, the Minister’s consent is obtained.”***

Camden Council's actions, possibly through the mechanism of staff delegation, in agreeing to the building of a road through Lot 3 and Lot 5 of Studley Park for the private benefit of a developer, would appear contrary to this directive and in breach of specific provisions of the Local Government Act 1993 as listed and covered below.

In spite of what must have appeared to be clear directives to NSW local government about the classification and management of community land, the NSW Parliament was once again forced to address the issue in 1998. Excerpts from the Minister's Second Reading Speech to Parliament<sup>4</sup> are pertinent to the Studley Park situation and are reproduced below:

*“The commencement of the Local Government Act in July 1993 resulted in a new approach to the concept of public land management by councils. The previous approach was replaced with a new system whereby councils, in consultation with their local communities, became responsible for deciding how public land in their areas would be used and managed.... Community land cannot be sold. However, there is widespread concern that the present provisions leave too much scope for misuse of environmentally sensitive land, and for inappropriate alienation of community land for essentially private purposes by lease or licence.... A number of significant court decisions have also illustrated the need for clarification, at least, of the existing provisions of the Act....*

*The bill, accordingly, makes provision to identify what land should appropriately be placed in each category and prescribes a number of core management objectives that must apply to land in each category.*

**Councils will no longer be able to grant leases, rights of way, et cetera, for a purely private purpose, such as allowing vehicular access over community land to adjoining privately owned land.” (emphasis added).**

The highlighted section of the Minister's Second Reading Speech describes precisely what Camden Council has allowed in relation to the road access across the golf course to Lot 1 in the Studley Park development.

The NSW Department of Local Government has provided guidance to local councils in its Practice Note No 1 on Public Land Management, revised in May 2000 to take into account the changes to the Act introduced by the above NSW Parliament Bill which were specifically made to constrain actions with respect to community land.

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<sup>4</sup> E. Page, Minister for Local Government. Second Reading Speech to the Local Government Amendment (Community Land Management) Bill, Legislative Assembly Hansard

## **Specific Apparent Breaches of Legislation and Policy**

A licence is a personal or contractual right to occupy or use land for particular purposes. Camden Council employees have agreed to a licence to the developer of Studley Park across community land.

The Studley Park Statement of Environmental Effects proposes “a new vehicular access driveway from existing roundabout on Lodges Road, over Lot 3 and Lot 5 (see Map 1 below) to Lot 1...”.

Both Lots are community land, but Lot 5 has the most significant disturbance, being the Lot that incorporates most of the Studley Park golf course, including a community of the listed endangered plant *Pimelea spicata*. Lot 5 is categorised as a Natural Area and Bushland.

- **Local Government Act, s 36E:**  
There are 5 core objectives listed for management of community land categorised as a natural area. On any objective assessment, the construction of a road to provide access to a private development is not consistent with **any** of these objectives.
- **Local Government Act, s 36J:**  
There are 7 core objectives listed for management of community land categorised as bushland. On any objective assessment, the construction of a road to provide access to a private development is not consistent with **any** of these objectives.

The NSW Department of Local Government Practice Note<sup>5</sup> further clarifies the legal requirements for councils:

***“Community land must be managed in accordance with the core objectives for the relevant category. They apply as a result of the legislation and are not optional.... A council may only grant a lease, licence or other estate in community land if the purpose of the grant is consistent with the core objectives for the category”.***

- **Local Government Act, s 46:**  
Section 46(1) lists several circumstances under which a lease, licence or other estate may be granted in respect of community land. **None** of these circumstances are consistent with the proposal to build an access road across community land to a private development at Studley Park.

Further, apart from the provision of public utilities or to allow a filming project (not relevant here), Section 46(2) requires that the other listed purposes in Section 46(1)(b) can only be approved if the purpose is consistent with the core objectives of the community land categorisation. The proposed access road is of course not consistent.

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<sup>5</sup> Practice Note No 1 (revised) Public Land Management, NSW Department of Local Government, (May 2000), p 12

## **Local Government Act, ss 47 & 47A.**

It is not absolutely clear from the Studley Park Statement of Environmental Effects what length of time is anticipated for the required licence – it would appear from the text that the intention is that it be indefinite, and the provisions of the Local Government Act have not been considered.

Under Section 47(5), a licence in excess of 21 years can only be granted with the approval of the Minister for Local Government. For a lesser period, Section 47 applies for licence terms between 5 & 21 years, and Section 47A for terms less than 5 years, but the critical point is the same – Council is legally obliged to give public notice of the proposal and to consider any submissions made. If there are any objections made, the proposal must be forwarded to the Minister for determination.

It appears that Camden Council has failed to comply with its legal obligations with respect to Local Government Act Sections 47 or 47A.

## **Maps:**

**Map 1** is a reproduction of Figure 5 from the Studley Park Conservation Management Plan indicating:

- Lot 1, outlined in red, showing the location of Studley Park House. The Lot 1 land is privately owned by the developer.
- The map also shows Lot 3 and Lot 5, which comprise the Studley Park golf course, completely surrounding Lot 1. Lot 3 and Lot 5 are community land, under the ownership of Camden Council.

**Map 2** is a reproduction of Figure 19 from p 21 of Camden Council's assessment report of the Studley Park DA, showing the proposed access road to Lot 1 which enters the Camden Golf Club land from the roundabout on Lodges Road before traversing Lot 3 community title and the Lot 5 community title land leased to the golf club land on its way to the boundary of the privately owned Lot 1.

## Map 1

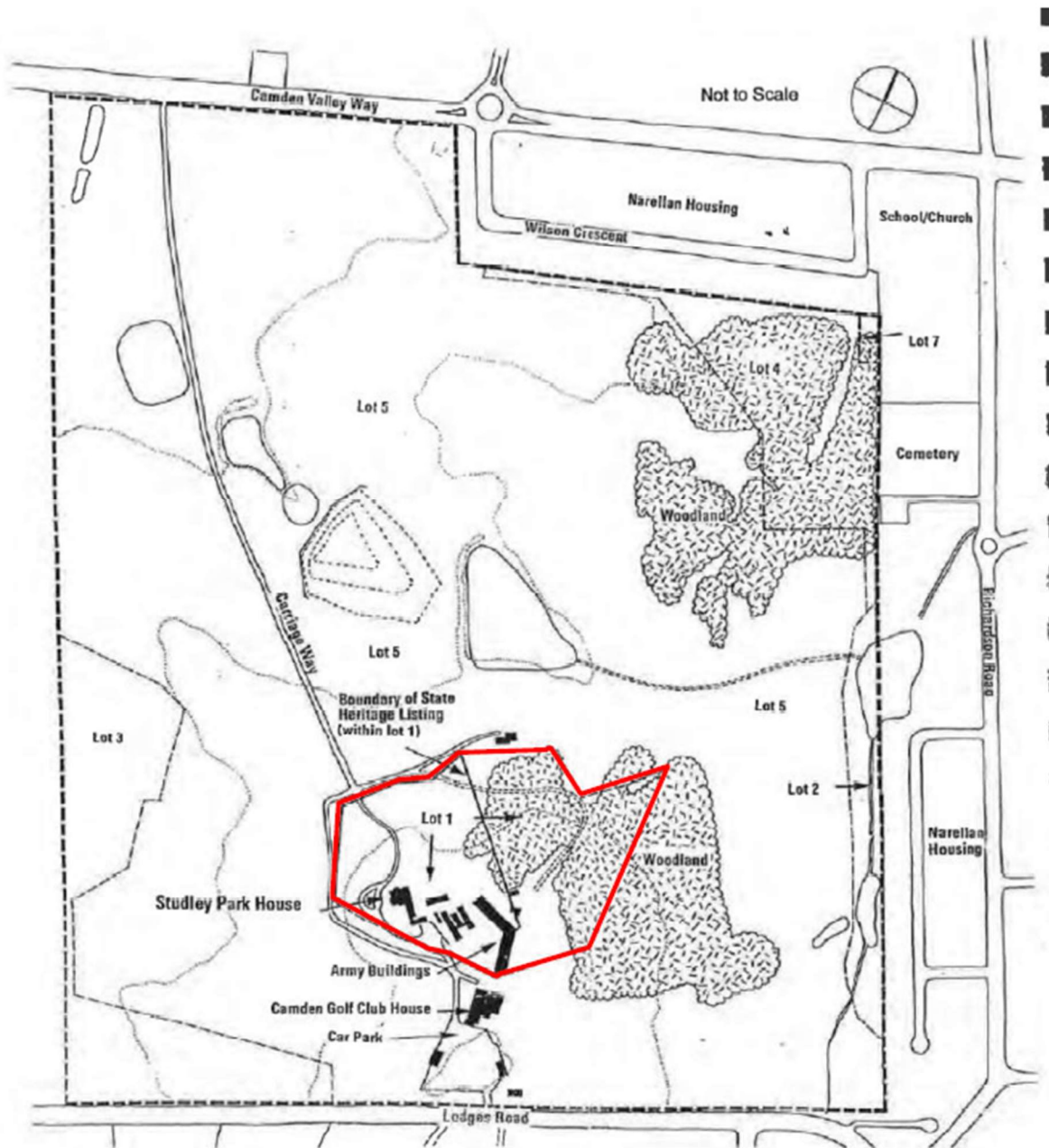


Figure 5 — Studley Park Plan showing Lot 1 in the context of the Golf Club and former Estate lands

Source: GML 2000: 6, Figure 1.3 GML 2000: 6, Figure 1.3



## Map 2

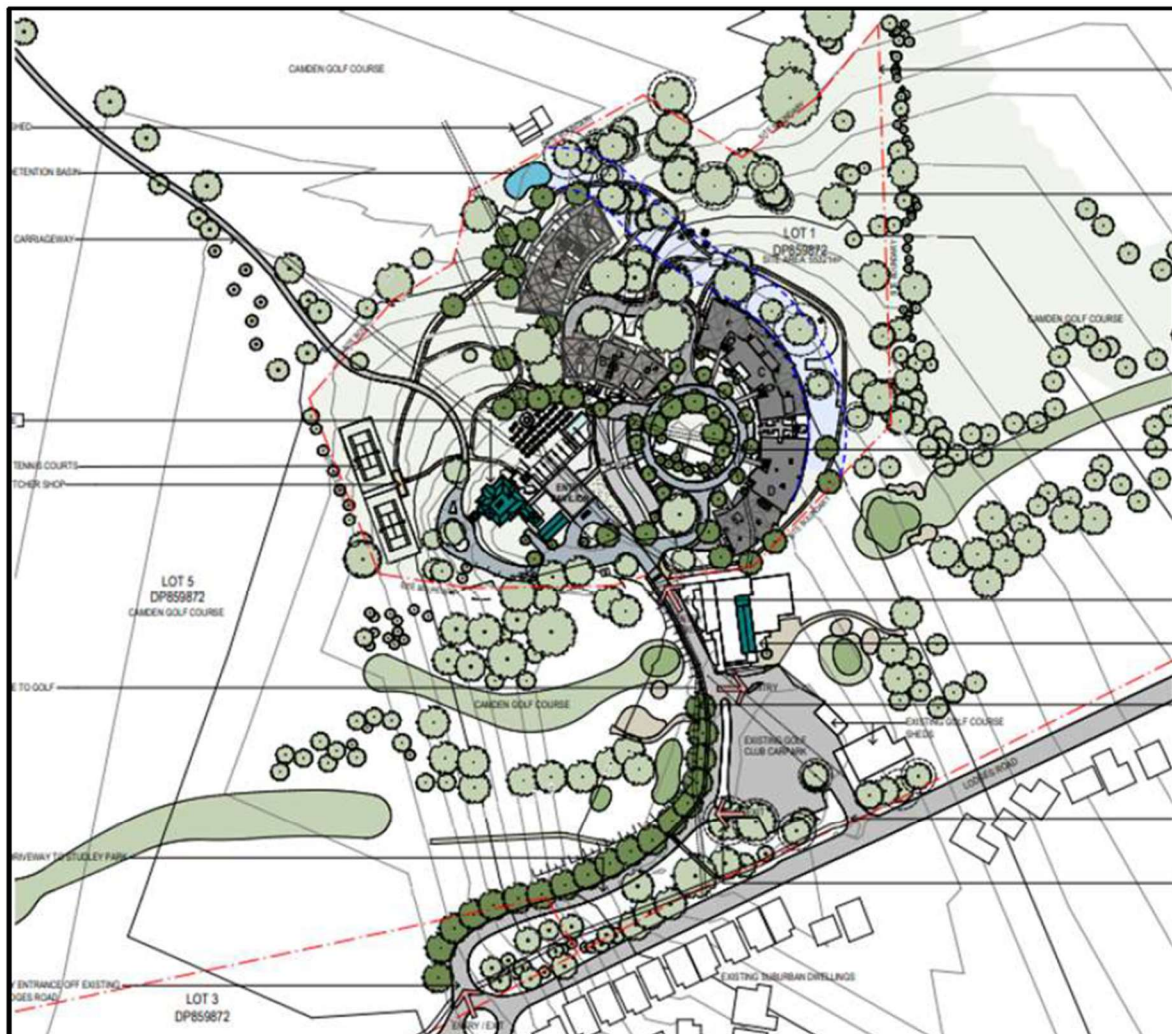


Figure 19 – Site plan of the proposed development.