

# Camden Residents' Action Group

*Incorporated*

*Camden – Still a Country Town*

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## SYDNEY WESTERN CITY PLANNING PANEL

2 December 2024 at 1pm by videoconference

PPSSWC-365 – Studley Park DA 2023/526/1<sup>1</sup> 52 Lodges Road, Narellan

*Demolition, restoration works to a heritage item, site remediation, construction of a hotel, residential flat buildings and associated road access, vegetation removal, landscaping, civil infrastructure and Community Title subdivision.*

We begin by stating that we do not consider that any of the issues raised<sup>2</sup> in our submission or our follow up questions have been resolved in the SWRPP Report (the Report). We will concentrate on salient issues as there is not time to cover everything.

### **Perceived conflict of interest**

The Report states that Council owns community land Lots 3 and 5. The Report is written by council staff. How the perceived and potential conflict is managed has not been explained.

### **Club consent**

Everything of which we are currently aware, strongly indicates that this DA was wrongfully exhibited without the signature of the Club and its consent. The Club has entered into leases on the land in question dating from 1950, with the current 99-year lease for Lot 5 in place until 2099 and for Lot 3 until 2039. As a community group we associate with the Camden Golf club and are familiar with the history and significance of this major community facility.

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<sup>1</sup> 20/9/23 DA lodged; 47 documents uploaded to DA Tracker

3/10/23 to 6/11/23 Public exhibition

7/11/23 to date, an additional 24 documents were uploaded to the DA Tracker including revised architectural plans, landscape plans, heritage and traffic analyses. The DA was not re-exhibited.

Arguably this DA should be submitted as a Planning Proposal because it involves major changes not consistent with zoning and management of community land facilities.

<sup>2</sup> CRAG lodged:

- submission 6 November 2023
- due process questions on 12 November 2024. Our questions were not answered directly. Council staff responded that the questions would be treated as a submission. Answers and explanations are not included in the SWRPP Report written by council staff

Our immediate response to this DA was why would the Golf club consent to a DA involving its occupied land that is of obvious detriment to the Club's operations and which in our opinion could render the club unviable. We now know the answer, they never did.

The Report refers to the Club giving consent in a letter dated 26 July 2023. This letter was not written to Council but to owner of Lot 1 and stated: *we look forward to receiving a copy of the proposed DA and the form of consent for execution by the Club.*

The Report cherry-picks the first sentence of the letter, which was not written to them in any case, and ignored the context. We know that the Club's ongoing discussions with the Applicant about any DA was to seek mutually beneficial outcomes. We know that the Club has formally advised both the Applicant (29/8/24) and Council (13/11/24) that they do not agree with this development proposal, and have engaged a lawyer who wrote to council on 26 November reiterating its position.

We also question why the Club was not a participant in the Briefing held on 23 October 2023.

## Community land

Under the Local Government Act<sup>3</sup>, the core objectives for Lot 3 Park and Lot 5 Bushland (Lot 3: s36G Park; Lot 5: 36J Bushland) cannot be reconciled to the access sought through them. Under s 47F community land can only be dedicated as a public road if it is necessary to enjoy the land on which it is constructed and is expressly authorised under the required Plan of Management<sup>4</sup>. Clearly the road is not necessary, and is only proposed to facilitate a private investment. Consistent with the Act, Council's Plan of Management<sup>5</sup> does not authorise development of roads or carparks on Lot 3 or Lot 5. The current version of the Office of Local Government's practice note on public land<sup>6</sup> explicitly states that roads are not allowable unless a road is explicitly listed in the plan. as an allowed use in the management plan. provision exists in the plan. If it would likely be prohibited unless a specific amendment or council approval is obtained.

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<sup>3</sup> Part 2 Public Land

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-030#sec.36G>

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-030#sec.36J>

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-030#sec.47F>

<sup>4</sup> Lot 3 is categorised as Generic-Park and Lot 5 as Generic- Natural Area Bushland. Both come under a Plan of Management (POM) as required by the Local government Act (chapter 6, part 2 division 2). The current POM was adopted on 12 September 2023, just prior to lodgement of the DA on 20 September 2023. The only previous Plan of Management of community land that we found was adopted on 24 June 1996. The 2023 Generic Plan of Management does not include roads and carparks as authorised developments for community land designated as park or natural area.

The Report covers the Generic Community Land Plan of Management at 1.2 (pp. 39-40). It does not specify which POM is being referred to, but in any case, the Local Government Act 1993 covers the core objectives for community land and how it may be used. Dealings in community land are heavily restricted (s45), it cannot be sublet except for the original purpose (s47c) and it cannot be dedicated as a public road except to facilitate enjoyment of the community on which the road is constructed and the POM authorises it (s47F) (which it does not)

<sup>5</sup> <https://www.camden.nsw.gov.au/council/plans-and-strategies/plans-of-management/camden-generic-community-land-plan-of-management/>

<sup>6</sup> Office of Local Government PRACTICE NOTE No.1 REVISED May 2000 Public Land Management 6.1 Use of community land for roads <https://www.olg.nsw.gov.au/wp-content/uploads/Practice-Note-No1-Public-Land-Management-Revised-May-2000.pdf>

The claim made in the Report (p.40) that the road is authorised by the Plan of Management is NOT correct.

Under s47E<sup>7</sup> Council cannot delegate its power relating to development of community land. Given the intent of the Act, and the process required to change a Plan of Management, including community consultation and adoption by Councillors, we question the authority of the recommendation of approval. As a corollary, if our reading of the Act is correct, we must question whether the Panel can decide on the DA.

### **Green recreational space**

We do not accept the urbanisation of the green breathing space between Elderslie and Narellan which is so important to the well-being of the community. Camden DCP Schedule 1.1<sup>8</sup> states that housing density must transition between the Golf course and housing areas and that it forms a significant open space break. The Report (p. 61) incorrectly claims that Camden Housing Strategy<sup>9</sup> specifies there is a planning capacity to accommodate a minimum of 4,822 dwellings within Narellan. This number covers Camden and Narellan plus all existing suburbs and is based on land that is zoned residential, not recreational. This DA essentially requires spot rezoning that is contrary to adopted strategies of Council that align with the Western City District Plan.

### **Fiduciary duty**

This development requires breaking terms of the Club's leases<sup>10</sup> over Lot 3 and Lot 5 which include rights of quiet enjoyment and preclusion of the lessor from creating an interest that would interfere with or derogate rights of use and occupation. This leaves the Council open to litigation for breach of lease and compensation, the costs of which would be borne by the community. We note again that even if community land could be appropriated to be used in the way proposed, the community has not been consulted about a change to the Plan of Management required by the Local Government Act.

The Report (p. 67) states that the DA has no direct financial implications for Council. The resources needed to change the Plan of Management, create easements and generally administer what is proposed, would be direct costs. But they pale into insignificance when compared to potential compensation to the club for breach of their leases especially when extrapolated to 2099.

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<sup>7</sup> [https://www5.austlii.edu.au/au/legis/nsw/consol\\_act/lga1993182/s47e.html](https://www5.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/s47e.html)

<sup>8</sup> <https://dcp.camden.nsw.gov.au/schedules/schedule-1-elderslie/introduction/elderslie-planning-principles/>

<sup>9</sup> Camden Local Housing Strategy Oct 2021 Section 2.9.1

<sup>10</sup> Lot 3 is leased by Camden Golf Club for 21 years from 6 July 2018 to 5 July 2039 under a Deed of Consent dated 30 May 2018 between the Commonwealth government, Camden Council and Camden golf club. We understand that the Commonwealth is involved because a Deed of Option was entered into on 29 July 1979 for Camden Council to purchase the land for \$1 under the condition that the Commonwealth be given the option to purchase back the land. The 1979 Deed states that the land must be used for recreational purposes and any development on it, including for vehicular access that exceeds a certain threshold, must be approved by the Commonwealth. The proposed development far exceeds the threshold. Lot 5 is subject to a current 99-year lease from 20 July 2000 to 19 July 2099. Our understanding is that such a lease confers similar rights to ownership.

## Ecological loss

We cannot accept the ecological loss<sup>11</sup> and proposed attempts to mitigate it. In 2018 only 7.8% of Cumberland Plain Woodland remained<sup>12</sup>. Since then, much has been destroyed, along with associated *Pimelea spicata*, to make way for the Badgery's Creek airport.

One of our members has produced an overlay map combining information from the NSW Spatial Viewer and the landscape plan of the Applicant. By overlaying the NSW Spatial Viewer map with the DA's Landscape Plan of the enlarging this map greatly we can see the endangered *Pimelea spicata* plants, trees making up critically endangered Cumberland Plain Woodland and how the proposed apartments and boardwalks encroach into this sensitive area<sup>13</sup>.

A Managed Ecological Zone (MEZ) is immediately adjacent to the proposed apartments. This area cannot be fully protected by the proposed fences and bollards. It is not explained how residents and pets of the apartments can be prevented from taking short cuts and entering into it and the Bushland Conservation Area (BCA).

Another member consulted a local Ecologist who is an expert in this *Pimelea spicata*, and was advised that no populations of it have survived long-term (>50 years) in areas adjoining residential development particularly if they are downslope (regardless of the distance from the impact)<sup>14</sup>. This effect is exacerbated by the residential density of the proposed apartments and permanent impacts of changed water flows, sediment and nutrient-rich storm water run-off as well as weed invasion and competition from landscape plants, mowing and spraying of herbicides.

*Pimelea* exists in small, geographically isolated populations resulting in inbreeding. The larger population within this green area including Studley Park and Golf Club, with their greater genetic diversity are better able to adapt to climate change and provide genetic material to avoid their extinction into the future.

Its conservation is already prioritised by Government. Our letter/submission of 12 Nov 2024 included a letter from Department of Environment<sup>15</sup> about *Pimelea spicata* and its Recovery Plan under the *Environment Protection and Biodiversity Conservation Act* 1999 (EPBC Act) and 2016 conservation advice. This letter indicated that the proposed impact on the plant should be referred to the Department for determination as to whether its approval is required, and that the applicant would be contacted about their obligations under the Act.

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<sup>11</sup> The Report covers Vegetation and Tree Removal at section 3 pp 47-49

<sup>12</sup> State of the Cumberland Plain Woodland Report 2017-2018 p.13 <https://greater-sydney-landcare.org/wp-content/uploads/2018/10/GSLN-CCN-State-of-the-Cumberland-2018-GSLN.pdf>

<sup>13</sup> To be lost:

- 21 *Pimelea spicata* plants and 0.68 hectares of CPW are sought to be removed as part of this DA.
- An additional 78 *Pimelea spicata* plants are located within the proposed APZ and may be impacted during the ongoing maintenance of the APZ.

<sup>14</sup> Peter Ridgeway

<sup>15</sup> Department of Climate Change, Energy, the Environment and Water (DCCEEW)

Although the (BDAR<sup>16</sup>) Biodiversity Report refers to consultation with the Department it considers<sup>17</sup> that the proposal does not have a significant impact on matters of national environmental significance and that a referral to the Department should not be required. We maintain that this is a decision for the independent Department not the applicant's consultant, and that referral is a prerequisite to this DA.

The CPW provides habitat of nine threatened animal species<sup>18</sup> observed within or close to the proposed development footprint. The habitat will be degraded through human and pet activity, noise and light pollution. Research shows that smooth reflective surfaces of modern buildings, particularly of a scale of the proposed apartments disrupt the instincts of birds and bats<sup>19</sup>.

At the same time, we have Council's Natural Resource Team<sup>20</sup> calling for more volunteers for its co-ordinated bush care program on contiguous Parrott Farm Reserve and its Strategic Planning Department recommending approval of apartments adjacent to the same *Pimelea* population and bush habitat.<sup>21</sup>

The Statement of Significance of Studley Park includes this statement<sup>22</sup>

*The site has natural heritage value in retaining two areas of regenerating remnant (endangered ecological community) Cumberland Plain Woodland including a population of the nationally endangered shrub species, Pimelea spicata.*

Yet the DA is seeking to encroach into and endanger this setting of natural heritage.

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<sup>16</sup> Revised Biodiversity Development Assessment Report (BDAR) dated 12 July 2024 at 1.44

<sup>17</sup> under Legislative Compliance at 6.1

<sup>18</sup> Of these, two were bird species and 6 were bats.

<sup>19</sup> Birds in Backyards research shows buildings closer to urban green spaces that have large windows have increased rates of window collisions. Research in 2017 in Germany showed that smooth reflective surfaces such as large windows act as acoustic mirrors and make it harder for bats to read their echolocation, resulting in collisions.

<sup>20</sup> <https://www.camden.nsw.gov.au/environment/environmental-programs/bushcare-and-volunteering/>

<sup>21</sup> Previously, Camden Council has allocated grants to form Bush Care groups and one of these has been primarily to care for *Pimelea spicata* on Parrott Farm Reserve adjacent to Camden golf course. This group is ongoing today and is still calling for volunteers in the council's Let's Connect Edition Three 2023. It is one of the volunteer groups invited each year to the Mayor's Volunteer Luncheon.

<sup>22</sup> NSW Heritage Studley Park, statement of significance last paragraph (Read, S., 2005)

<https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=5045438>

## LEP 5.10 (10) Heritage incentives<sup>23</sup>

We stand by our arguments in our submission that it is an overreach to rely on LEP 5.10 (10) *Conservation incentives* to obtain approval for the proposed apartment buildings<sup>24</sup>

Camden LEP lists the heritage item of Studley Park as part of Lots 1 and 5 (DP859872) which corresponds with its heritage curtilage as defined in the CMP<sup>25</sup>. The apartments would be located mainly outside the heritage curtilage and on land zoned as recreation, not residential.

We dispute the claim in the Report (p. 22) that the apartments are not subject to the lands recreational zoning and usual LEP provisions based on a referenced sentence from a court case<sup>26</sup>, taken out of context. A close reading of this reveals that its circumstances are irrelevant as the heritage curtilage of Studley Park is defined in its Conservation Management Plan. We note that the attempt in the cited case to rely on s 5.10 (10) to develop beyond the heritage item was in fact denied and the usual provisions of the LEP were to be applied.

The heritage incentives require facilitation of conservation of the heritage item itself. According to the 2024 Costed Schedule of Work (p. 92) 27 the cost of urgent and short-term restoration work required over 4 years is approx. 2.4m, the cost of all restoration work totals \$3.8m over 10 years and \$40,000 is allocated annually to maintenance. The economic analyses focused on the shortfall of economic return of the proposed hotel. There is surely a better solution to any shortfall of the hotel in covering these costs than adversely affecting the amenity of the surrounding area (5.10(10)(e)). The proposed apartments are facilitating a projected shortfall of proposed hotel operations, not the conservation of Studley Park as heritage listed, which involves a very small cost compared to the CIV of the proposed development. It is more than possible that the profits generated by 148 apartments would far exceed the funds needed to facilitate conservation of Studley Park House (5.10 (10) (a)).

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<sup>23</sup> LEP 5 (10) **Conservation incentives** The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

<sup>24</sup> Apartment buildings (148 units, 271 bedrooms). No height limit or FSR – failure of LEP 2010

<sup>25</sup> Urbis April 23 *CMP 9. Conservation Policies 9.5 Managing Change and New Development* Endorsed NSW Heritage Council 6 April 2023 Section 2.2, p. 7 with map at p. 8. Studley Park is listed as a heritage item under Schedule 5 of the Camden Local Environmental Plan 2010 (Item No. 133) and is also listed on the State Heritage Register (Listing number 00389) and forms the SHR heritage curtilage for Studley Park (refer to Figure 2)

<sup>26</sup> *Howe Architects Pty Ltd v Ku-ring-gai Council* [2021] NSWLEC 1233

<https://www.caselaw.nsw.gov.au/decision/17939c32f73ff09ea578ccdb>

<sup>27</sup> Weir Phillips June 2024 *Costed Schedule of Conservation Works Studley Park House*

The proposed apartments would not be consistent with CMP policies (17-23 p. 304) on new development (b). These policies include that any new development should be dispersed within the landscape to retain overall bush character, that its height should be appreciably below the top of the tree canopy, and scale and mass should be subservient to the size of Studley Park House. The apartments cannot be argued to be subservient. With a large mass and maximum height of around 16m the proposed apartments are inconsistent with the surrounding green-space and fine-grained residential areas of single and two storey houses with a maximum height of 9.5m.