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| DATE OF DETERMINATION | 12 December 2024 |
| DATE OF PANEL DECISION | 12 December 2024 |
| DATE OF PANEL MEETING | 2 December 2024 |
| PANEL MEMBERS | Justin Doyle (Chair), Louise Camenzuli, David Kitto, Mary-Lynne Taylor, Grant Christmas |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | None |

Public meeting held by video conference on 2 December 2024, opened at 1:00pm and closed at 2:00pm

MATTER DETERMINED

PPSSWC-365 – Camden - DA/2023/526/1 – 200 Camden Valley Way & 50 and 50A Lodges Road, Narellan - Retention, restoration, ongoing maintenance and adaptive reuse of Studley Park House, the Dining Hall and the Army Butcher Shop (as a tennis pavilion), demolition of remaining buildings / structures on site, site remediation, vegetation removal and bushland management and construction of a two storey hotel building and four x part three and part four storey residential flat buildings with basement level car parking, community title subdivision and associated site works including the construction of a separate vehicular driveway via Lodges Road.

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the Council's Assessment Report and for the reasons set out below.

The Panel received submissions at the public meeting from various members of the public (see summary of the submissions below). The Panel was also addressed by Council's representative (Jaimie Erken) and the Applicant's representative (Kendall Mackay – DFP Planners, accompanied by Peter Moran and the Applicant's expert team) addressed the issues raised by submitters at the public meeting. The matters raised by the Council and the Applicant in response to those issues are incorporated in the Panel's comments on the central issues in contention.

Various written objections have also been made in relation to the DA, which are summarised on pages 9-12 and pages 50-85 of the Council's Assessment Report. The primary (but by no means all) issues for assessment and the Panel's consideration, centred around the following key matters:

- The reliance on clause 5.10(10) of the Camden LEP to establish permissibility;

- Owners' consent;
- Impact on endangered flora and fauna, in particular, but not limited to, the *Pimelea spicata*;
- Use of the right of way over Lot 5 and the covenant in favour of Camden Golf Club.

Taking each of these issues in turn:

Reliance on Clause 5.10(10) of the Camden LEP to establish permissibility

The Panel understands that the site is zone RE2 Private Recreation pursuant to the Camden LEP. Apart from roads, all of the proposed land uses are prohibited in the RE2 zone. However, the Applicant has sought consent under the conservation incentive provisions under clause 5.10(10) of the Camden LEP.

The Applicant has provided legal advice, which was independently reviewed and which is para-phrased in the Council's Assessment Report. Following a review of the two respective legal opinions and the decision in *Howe Architects Pty Ltd v Ku-Ring-Gai Council* (2021), the Panel is satisfied that the words "land on which such a building is erected" is the cadastral lot identified by Schedule 5 and is not confined to the footprint of the building that is the heritage item. It was plain to the Panel that the whole of the lot has a long-standing association with the heritage residence now to be restored for use as a hotel, and the heritage significance associated with the item identified in the Schedule extended in substance to the boundaries of that lot. The Panel has examined the conservation management plan submitted with the DA and is satisfied that (subject to the conditions) it provides the means whereby the item of State significance which has long been allowed to fall into disrepair, will be restored, funded by the permitted development.

In terms of the way in which the development will fund the restoration of Studley Park House, the Panel notes that part of the general terms of approval include a costed restoration works schedule for the heritage item. Restoration of the item itself is anticipated to cost in the order of \$3-4M, with ongoing costs anticipated to be over \$9-10M. Use as a hotel was seen to be an ideal fit for this building to allow for ongoing public use.

To address ongoing maintenance costs, a community scheme is proposed over the whole development, inclusive of Studley Park House and all of the grounds. Members of the community scheme would have the benefit of the Studley Park House lot for their enjoyment, but they would also pay for the upkeep of it. This is necessary as a hotel operator would not be able to finance upkeep alone. The restoration of Studley Park House is the first stage of the development, and will occur prior to any residential development.

The Panel also notes that Heritage NSW has provided its general terms of approval for the determination.

Having inspected the site and examined the proposed location of the apartment buildings, the Panel is satisfied that the proposed siting and density of the development will not significantly compromise the amenity of the wider area or any significant view corridors identified within and around the site (see pages 14-15 of the Council's Assessment Report). The proposed built forms are located on the eastern end of Lot 1 to ensure significant views will not be compromised. The Panel is also satisfied that the granting of development consent, coupled with the proposed community scheme arrangement, will fund the restoration works and upkeep of the Studley Park House and its ongoing conservation into the future in accordance with the conservation management plan which the Panel approves subject to the conditions.

On that basis, and for the reasons set out on pages 32-38 of the Council's Assessment Report, the Panel is satisfied that the proposed development meets the five criteria identified in clause 5.10(10(a)-(e), and in particular sub-paragraphs (d) and (e). In reaching that satisfaction the Panel has considered carefully the various concerns raised in writing and at the public meeting by objectors relating to those criteria.

Clause 5.10(10) is therefore engaged to permit the Panel to approve the proposed uses.

Owner's Consent

The Panel was satisfied that despite relatively complex land ownership issues, owners' consent has been provided for the development by Camden Council and the Camden Golf Club, which occupies part of the land to which the DA relates pursuant to a 99 year lease. The letter recording the Club's consent to the DA observes that *"any work required to facilitate the development will occur only upon an agreement being reached with the club"*.

While the legal permissions necessary as a matter of private property law for the development to be carried out are not for the Panel to resolve, the Panel was informed by the Applicant at the public meeting that it accepted that any development consent granted to the DA would not remove the requirement for it to separately establish a legal right to carry out the proposed development as against the land owner and occupier of the Club land.

In that regard, Lots 3 and 5 are community land owned and managed by Camden Council under a deed of agreement with the Commonwealth. Lot 3 primarily contains vegetation and no structures. Lot 5 contains the golf clubhouse, golf pro shop and an eighteen hole golf course and is subject to a 99 year lease to Camden Golf Club. Pursuant to section 10.1 of the deed of agreement, Commonwealth consent is required to undertake certain works above \$200,000 and will therefore need to be sought prior to the commencement of any works. However, that separate contractual obligation for Commonwealth consent under the deed is not a restriction to the grant of development consent. Nor does the grant of development consent remove the contractual obligation.

Various easements and covenants benefit the land leased by the Golf Club, including reciprocal rights re power, drainage, access etc. There are also presently encroachments on the access rights to Lot 1 which overlaps with the Club's carpark. The development anticipates resolution of some of those issues which would seem to provide tangible benefits to the Gold Club. In addition to allowing an additional safer point of access and egress to the Club, the overlap between the registered right of way and the Club carpark would be solved, noting that the conditions require the surrender of the encroached upon easement. The Panel is aware that opposition to the new driveway arrangements within the Club site, which (among other impacts) will require adjustment of the golf course, will no doubt feature in the discussions required to establish the property rights necessary to carry out the development.

The Panel does not however consider that communicated concerns of the Club and its members present adverse planning outcomes as relevant to the assessment required under s 4.15 of the EP&A Act which would warrant refusal of the DA.

Use of the right of way over Lot 5 and the covenant in favour of Camden Golf Club

As set out above, proposed condition 3 of the development consent requires formal arrangements to be entered into with the Council, meaning that whilst the development may be approved, for the development to proceed further contractual and other matters will need to be resolved post approval to facilitate access. As set out below, the Panel notes that the covenant in favour of Camden Golf Club is not proposed by the Applicant to be suspended by the development consent. That was confirmed by representatives of the Applicant at the public meeting. Accordingly, resolution of consistency of the development with the covenant obligations along with any applicable lease rights of the Club will also need to be addressed prior to the development proceeding as post consent matters, and a condition of consent is to be imposed to that end.

While the Panel notes the Golf Club's concerns regarding the scale of the development, in particular the proposed hotel use and consistency with the existing covenants regarding use, private agreements even where recorded by registered covenant are not determinative matters. As already discussed, issues as to legal permissions that seem to be required from the Commonwealth under the deed, the Council as land owner, and the Golf Club as occupier under a registered lease can be resolved after the DA is determined.

The suggestion in the Council assessment report that clause 1.9A of the LEP would operate to supplant the effect of any registered covenant is not adopted by the Panel.

The Panel accepts the Council's advice that the construction of the road is authorised by the Council's Generic Plan of Management which applies to the land under the Local Government Act. The road will not be a public road, such that ss 47E and 47F of the Local Government Act will not be engaged (as was suggested in community submissions summarised below). This is set out in the Practice Note relating to Public Land Management – see section 6.1 relating to the use of community land for roads, which makes clear that this only applies to the creation of public roads. The Panel accepts advice from the assessment staff that Council officers have delegation to provide owners' consent.

It is observed that while the right of way over the Club land to Lodges Rd is required to be extinguished by condition of development consent, the easement to Camden Valley Way is not required to be released. The easement to Camden Valley Way is the original path to the house. The Applicant proposes secondary access to the site via this easement would be used on limited occasions such as for wedding vehicles, but again that would be subject to separate resolution of any property rights that it is not necessary to resolve with this DA.

Impact on endangered species

The Applicant has formed the view that encroachment into the *Pimelea spicata* does not require referral under the EPBC Act. The Council assessment advises that this decision not to refer the DA is a matter for the Applicant but does not contest the Applicant's position that referral is not required in circumstances where no significant impact on biodiversity values of national environmental significance is expected. That is not however a matter the Panel is required to resolve in the determination of this DA according to NSW law.

The Panel understands that 21 plants will be removed, with 78 potentially affected in the APZ, amounting to roughly 8% of the community on site. The proposed consent conditions require a 3:1 propagation and replacement of the *Pimelea spicata*, inclusive of those that may be potentially affected. This will result in the replanting of 297 *Pimelea spicata* plants.

In addition, circa 0.68 hectares or 4.03% of Cumberland Plain Woodland will be removed. The BAM calculations outline in the BDAR impose a requirement to retire 12 ecosystem credits relating to Cumberland Plain Woodlands, 10 species credits *Meridolum Corneovirens*, 7 species credits relating to the Southern Myotis and 10 species credits relating to the *Pimelea spicata*. Various ongoing management measures are also imposed under the conditions of consent, in particular via the proposed Management Plan.

The Panel is satisfied after considering the BDAR and the Council's Assessment Report, and inspecting the site, that for the purposes of Part 7 of the Biodiversity Conservation Act 2016 (NSW) (**BC Act**), the proposed development with the ameliorative measures proposed is unlikely to significantly affect any threatened species or result in 'serious and irreversible impacts on biodiversity values'.

CONDITIONS

Having regard to those matters, the development application was approved subject to the conditions in the Council's Assessment Report but with an additional condition to read:

"The development is to be conducted in a manner consistent with the requirements of registered covenants burdening the development site (unless such covenants are first varied to remove any inconsistency, or the written consent of the owner of the dominant tenement is first obtained).

Reason: The grant of development consent is not intended to supplant the continued operation of such rights and obligations as may arise under any applicable registered covenant."

The Panel notes that representatives of the Applicant indicated the Applicant's acceptance of a condition to that effect at the public meeting.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Traffic and Parking implications
- Adverse impacts to endangered communities
- Heritage significance of Studley Park House
- Stormwater Management
- Acoustic Amenity
- Overdevelopment
- Inconsistent with the general character of other developments
- Not consistent with Clause 5.10(10) of the *Camden Local Environmental Plan 2010*.
- Inconsistent with the objectives of the RE2 Private Recreation zone.
- Not consistent with the management plans set out for Lot 3 and 5.
- Lack of Notification
- Impacts of operation for adjoining golf course

The Panel was addressed at the meeting by six objectors who raised additional issues including the following:

Nicholas Heinecke – Legal representative for the Camden Golf Club. Mr Heinecke submitted that:

- the golf course land is within Lot 5. The Club has an interest in Lot 5 pursuant to a lease that continues through to 2099. The Club does not consent to this land being utilised for the purpose of the driveway, which is the only access way into Lot 1. The easements through Lot 5 are for access alone;
- the business uses proposed are not supported and also run contrary to the covenant restricting uses. The covenant permits without consent development for the purpose of golf club, aged care and retirement village and a private hotel. A private hotel would not include stand alone businesses of bars and a significant function centre. In order to consider a business of the size being proposed, the access rights would first need to be determined and set in stone. The size and scale of the development gives rise to a formal objection overall; and
- the carpark licence has also been ignored.

In relation to the covenant, the Panel Chair queried whether clause 1.9A of the Camden LEP had been considered. Mr Heinecke responded in the negative, noting the biggest concern was access.

Joe O'Brien – Vice President of the Camden Historical Society (CHS). Mr O'Brien submitted that:

- the CHS strongly objects to the development;
- is primarily concerned that cl 5.10(10) is being used to override several major planning issues, stating that this provision is designed to allow works secondary to the conservation of the heritage item rather than completely overturning the zoning. Particular concern was raised regarding sub-paragraphs (d) and (e) relating to the potential impacts of the development on the heritage item and the amenity of the surrounding area;
- the CMP states that new development should have regard to heritage significance of the place, cultural landscape, existing setting, endangered species and opportunities to retain the army buildings;
- the State heritage listing is about more than Studley Park House. The curtilage of the item is a key part of heritage significance. Views to the adjoining Cumberland Plain Woodland will be lost. Instead, 3-4 storey buildings will be visible;
- *Pimelea spicata* does not propagate well and is difficult to protect into the future;
- a planning proposal should have been lodged before any DA; and
- it is not clear that all other options for the upkeep of Studley Park House have been considered. E.g. commercial purposes or private grand residence.

Keith Hart – Resident of 1A Rivers Rd Elderslie. Mr Hart submitted that:

- the NSW Heritage Council approved CMP shows clearly on maps 8 and 10 that the heritage curtilage is only over the western half of the site and clause 5.10(10) therefore does not apply;
- the development is prohibited under the RE2 zoning;
- Figure 203, page 82 of the Studley Park House CMP shows a wide distribution of the *Pimelea spicata* on this portion of Lot 1;
- no referral has been made under the EPBC Act; and
- Mr Hart was an independent councillor at the time the Commonwealth Department of Defence proposed to sell the land to developers. The land was “saved” from sale due to the efforts of Jim Murray (Councillor) in advocating that it was in the best interests of the community that Studley Park House and its surrounds be retained as public open space and subject to a 99 year lease.

Fletcher Joss - Resides in Camden South. Mr Joss submitted that:

- his father was, as part of the site’s long history, once stationed at Studley Park House;
- a spot rezoning is inappropriate to take away community and recreation land for private use;
- he is concerned that the Panel lacks the legal authority to favourably determine the DA and the Council is in breach of its fiduciary duty to the community. Specifically, the concern was that a Council resolution is required to “break the covenants” and provide owners’ consent for Lots 3 and 5;
- only 4% of profits will be used for conservation of heritage. Clause 5.10(10) of the LEP requires facilitation of heritage conservation and the avoidance of significant impacts on the heritage item and the amenity of the surrounding area; and
- under the Plan of Management for Council land there is no provision for land access.

Glenda Davis: Speaking as representative of the Camden Residents Action Group. Amongst various matters raised, Ms Davis submitted that:

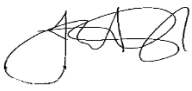




- As owner of Lots 3 and 5, there is a potential perceived conflict of interest in Council assessing this DA;
- Camden Golf Club’s letter of consent of 23 July 2023 may not in fact have amounted to consent;
- Under s47F of the Local Government Act, community land can only be dedicated as a public road if it is necessary to enjoy the land and if it is expressly provided for in the POM. The POM does not authorise roads or carparks on Lots 3 and 5. Under s47E Council cannot delegate its power to change a POM and, therefore, a question arises as to whether the DA can be approved;
- Facilitation of the development as approved would require the breaking of contractual arrangements, the cost of which would be borne by community, as there is the potential for compensation to be payable to the Club for breach of leases when extrapolated to 2099;
- The proposed apartments and boardwalks encroach into the endangered area for the *Pimelea spicata*. Proposed fences and bollards cannot fully protect this area from people and pets entering.
- A referral of the application should have been made under the EPBC Act in view of the potential impacts on the *Pimelea spicata* and other endangered species; and
- The DA relies on an “overreach” of the application of clause 5.10(10) of the Camden LEP to establish permissibility.

David Nethercote– Resides at 55 Macarthur Rd, Elderslie. Mr Nethercote submitted that:

- the DA seeks to ruin “a good walk and a game of golf”;
- there is a selective use of clause 5.10(10) of the Camden LEP and sub-clauses (d) and (e) have not been satisfied (relating to anything that would adversely affect the heritage significance of the item and amenity of the surrounding area, which Mr Nethercote submitted would be adversely impacted by the apartments);
- any new development should be disbursed within the landscape, with scale and mass subservient to Studley Park House; and
- the DA seeks to encroach and impact on the endangered species.

The Panel considers that each of the concerns raised by the community have been adequately addressed in either the Council’s Assessment Report or this report. Whilst many issues were raised during the public

meeting by the submitters, after careful review by the Panel, the Panel is satisfied that no new issues requiring further assessment were raised.

| PANEL MEMBERS | |
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| Justin Doyle (Chair)  | Louise Camenzuli  |
| David Kitto  | Mary-Lynne Taylor  |
| Grant Christmas  | |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | PPSSWC-365 – Camden - DA/2023/526/1 |
| 2 | PROPOSED DEVELOPMENT | Retention, restoration, ongoing maintenance and adaptive reuse of Studley Park House, the Dining Hall and the Army Butcher Shop (as a tennis pavilion), demolition of remaining buildings / structures on site, site remediation, vegetation removal and bushland management and construction of a two storey hotel building and four x part three and part four storey residential flat buildings with basement level car parking, community title subdivision and associated site works including the construction of a separate vehicular driveway via Lodges Road. |
| 3 | STREET ADDRESS | 200 Camden Valley Way & 50 and 50A Lodges Road, Narellan |
| 4 | APPLICANT/OWNER | Applicant: DFP Planning Owner: Peter Moran (Lot 1) and Camden Council (Lots 3 & 5) |
| 5 | TYPE OF REGIONAL DEVELOPMENT | General development over \$30 million |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Planning Systems) 2021. ○ State Environmental Planning Policy (Transport and Infrastructure) 2021. ○ State Environmental Planning Policy (Resilience and Hazards) 2021. ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021. ○ State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development. ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. ○ Camden Local Environmental Plan 2010. • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Camden Development Control Plan 2019. • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development |
| 7 | MATERIAL CONSIDERED BY THE PANEL | <ul style="list-style-type: none"> • Council assessment report: 20 November 2024 • Written submissions during public exhibition: 39 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Members of the Public: Nicholas, Jo O'Brien, Keith Hart, Fletcher Joss, Glenda Davis, David Nethercote. ○ Council assessment officer – Adam Sampson, Jamie Erken ○ On behalf of the applicant – Peter Moran, Kendal Mackay, John Wittingham, Nadia Zhao, Geoff Hollier • Total number of unique submissions received by way of objection: 39 |

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| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> • Briefing: 23 October 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Louise Camenzuli (Acting Chair), Louise Camenzuli, David Kitto, Mary-Lynne Taylor, Grant Christmas ○ <u>Council assessment staff</u>: Laura Poulton, Jamie Erken, Adam Sampson ○ <u>Applicant Representatives</u>: Peter Moran, Kendal Mackay, John Wittingham, Nadia Zhao, Geoff Hollier • Site inspection: 25 November 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Mary-Lynne Taylor ○ <u>Council assessment staff</u>: Laura Morobito, Jamie Erken • Final briefing to discuss council's recommendation: 2 December 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Mary-Lynne Taylor, Grant Christmas ○ <u>Council assessment staff</u>: Adam Sampson, Jamie Erken |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the council assessment report |