

File Ref: DA201200588

Director, Planning & Environmental Services reports:

Synopsis

Development Application DA201200588 seeks development consent for 7 multi-storey buildings (2 - 10 storeys), 362 apartments, 3 retail tenancies and 1 café with outdoor dining, 2 basement levels of car parking totalling 303 spaces, new private road, 3,000m² public park at southern end of site and new public access route connecting Brown and William Streets, on land known as 78-90 Old Canterbury Road, Lewisham. The land is legally described as Lot 11 DP 774322 and Lots 6, 7 and 8 DP 977044. The proposal has a capital investment value of \$101,075,655 and the Joint Regional Planning Panel (JRPP) is therefore the consent authority. The development comprises a total GFA of 30,096.90m² and represents an FSR of 2.29:1 having a site area of 13,115m².

The site is subject to a Concept Plan (CP) approval issued under Part 3A of the EP&A Act 1979 by the Planning Assessment Commission on 15 March 2012 (MP08_0195). The approval provides for a maximum of 430 residential units and 39,896m² of GFA. The approval includes plans illustrating the building footprints, traffic access and parking arrangements, approved land uses, and maximum building heights. A plan illustrating Green Space calculations was also included and forms part of the approval.

The subject development application was notified in accordance with Council's Notification Policy and 76 letters of objection were received. The main issues raised were non-compliance with Concept Plan, traffic and parking impacts, inadequacy of open space provision, overdevelopment of site, poor pedestrian connections and interface with Greenway and lack of design excellence.

The development application does not comply with the Concept Plan approval, the development does not comply with SEPP 65 or the Residential Flat Design Code, does not demonstrate design excellence and Railcorp has not yet granted its concurrence as required under the Infrastructure SEPP. In addition Sydney Water has advised that it does not support the application in its current form. It is therefore considered that the proposal is unsupportable in its current form and in view of the circumstances, refusal of the application is recommended.

PART A - PARTICULARS

Location: 78-90 Old Canterbury Road, Lewisham

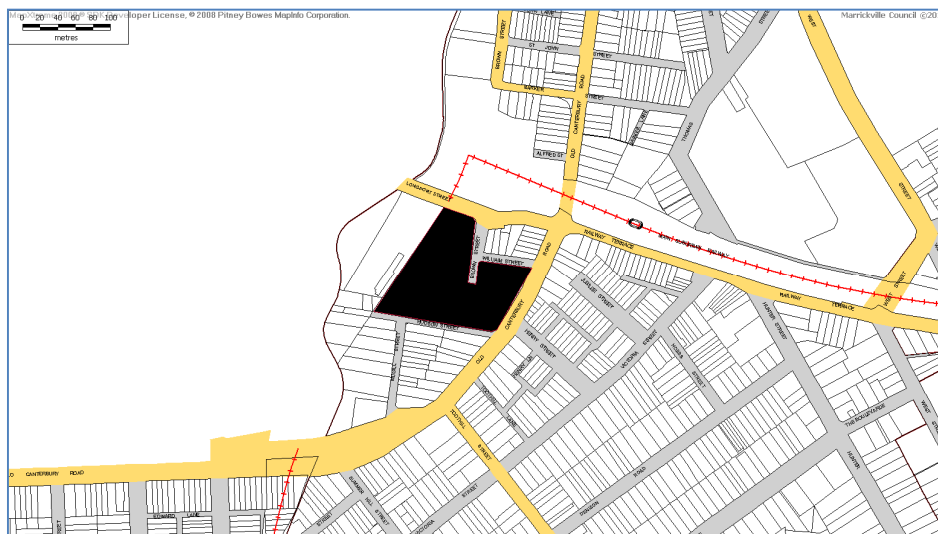


Image 1: Location Map

D/A No: 201200588

Application Date: 20 December 2012

Proposal: A development application has been submitted to Marrickville Council seeking approval for:

- 7 multi-storey buildings ranging in height from 2 storeys to 10 storeys, with building scale generally rising from Old Canterbury Road in the east to the light rail corridor in the west
- 362 apartments comprising 3 x studios, 138 x 1 bedroom, 208 x 2 bedroom and 13 x 3 bedroom apartments (including 8 x SOHO units)
- 3 retail tenancies and 1 café with outdoor dining
- 2 levels of basement car parking comprising 303 car spaces (262 for residents, 36 visitor spaces, 3 retail spaces, 2 café spaces and 1 disabled space for retail use), 15 motorcycle parking spaces, 186 bicycle spaces, loading / servicing areas
- New private road / ramp to west of site
- Embellishment and dedication of 20m wide 3,000m² public park at southern end of site to form major pedestrian connection from Old Canterbury Road to Light Rail station, and
- New public access route connecting from Brown and William Streets.

Work is proposed to be undertaken in 5 stages as follows:

1. Tree removal and site remediation
2. Two basement levels and new private access road to western boundary
3. Construct three buildings (E, F and G) and associated landscaping and civil works, construct Green Boulevard and upgrade Hudson Street
4. Construct four buildings (A, B, C and D) and associated landscaping and civil works, and
5. Remaining works and works required under the VPA.

Applicant: Meriton Property Services Pty Limited

Estimated Cost: \$101,075,655

Zoning: The subject property is located within 4 different zones under Marrickville LEP 2011: R4 High Density Residential, B4 Mixed Use, B5 Business Development and IN2 Light Industrial.

Notwithstanding the zoning, the site is subject to a Concept Plan approval issued under Part 3A of the EP&A Act therefore inconsistent provisions contained within the LEP / DCP do not apply and the provisions of the CP approval have effect.

PART B - BACKGROUND

Relevant background to the application is outlined below:

Concept Plan Approval:

- A Concept Plan approval for the site was issued by the Planning Assessment Commission on 15 March 2012 (MP08_0195) subject to modifications and future assessment requirements. The project was assessed under Part 3A of the EP&A Act 1979 being a “transitional Part 3A project” as defined under the Act.
- The approval provides for a maximum of 430 residential units and 39,896m² of GFA and included plans illustrating the building footprints, traffic access and parking arrangements, approved land uses, and maximum building heights. A plan illustrating Green Space calculations was also included and forms part of the approval.
- The approval also included conditions which required changes to the plans to be approved by the Director-General of the Department of Planning and Infrastructure (DP&I) including:
 - Changes to the separation between buildings,
 - Deletion of loading area adjacent to Building D and the light rail corridor, landscaping of space and use for publicly accessible through site link, and
 - Provision of a central open space to have total area of not less than 3,000m² with at least 50% of the “central open space” to receive a minimum of 2 hours of solar access in mid-winter. In addition the open space area to the north of Hudson Road was required to have minimum width of 20 metres (excluding on-street parking and adjacent footpath).
- Amended plans submitted to address the above changes were approved by the Director-General on 19 July 2012.
- The Concept Plan approval also included ‘future environmental assessment requirements’. These notably required: compliance with SEPP 65 and the RFDC, the achievement of design excellence, appropriate privacy treatments, detailed design of open space and interface zones, incorporation of ESD measures, creation of rights of public access, appropriate pedestrian connections to light rail and railway station etc. Those matters were to be addressed in subsequent development applications.

Section 75W Modifications:

- A minor S75W Modification to the Concept Plan has also since been approved by the Department of Planning and Infrastructure (DP&I). The modification related to the timing of the required voluntary planning agreement (VPA) and allowed for a development application to be submitted prior to the finalisation of a VPA for the site.
- A further section 75W application was lodged with DP&I on 19 November 2012 seeking to make significant modifications to the Concept Plan approval. The proposed modifications can be summarised as follows:
 - amendments to footprints of Buildings A and B;
 - amendments to car park access including deletion of access off William Street and changes to dimensions of the sole western access road and adjacent pedestrian pathway;
 - changes to proposed public and private open space including as a result of deletion of second car park access;
 - various amendments to approved building heights;
 - deletion of ESD commitments in addition to BASIXs requirements;
 - deletion of Affordable Rental Housing;
 - deletion of commitment to provide public art;
 - deletion of requirement to achieve design excellence in accordance with the Director General’s Design Excellence Guidelines;

- amendment to condition requiring a minimum of 3 hours of solar access to living areas and balconies to 70% of apartments to only require 2 hours;
- amendment to required works to, and widths of, William Street and north south private road along western side of site; and
- amendment to timing of future applications to Sydney Airport's Commission and Air Services Australia to allow lodgement of DA prior to approvals being granted.
- The current development application assumes approval of the above modifications with the subject plans reflecting the proposed modifications.
- Following exhibition of the S75W application, amendments were made by the proponent through a preferred project report including deletion of a number of the proposed modifications. However, the remaining proposed modifications would still require amendment to the subject development application plans.
- It is understood that the applicant has deleted to request to remove the design excellence provision requiring a design competition. Instead DP&I has agreed in principal to the establishment of a Design Review Panel to ensure design excellence is achieved. Council is awaiting formal advice from the DP&I regarding the establishment of this Design Review Panel and such advice had not been received at the time of writing this report. However, the DP&I have advised that at this stage it does not consider that the design demonstrates design excellence therefore amendments to the design will be required as a result of the Design Review Panel consideration.
- At the date of writing this report the Concept Plan approval has not been amended by the PAC. The subject development application relies upon approval of the proposed modifications. Given that the Concept Plan approval has not been modified by the PAC, it is not possible for consent to be granted as the current application is inconsistent with the 'parent approval'.

PART C - THE SITE AND ITS CONTEXT

Improvements: Vacant – site has recently been cleared.



Image 2: The Site prior to clearing (Source Google Maps, 2013)

Current Use: Vacant

Prior Determinations: Concept Plan Approval No. MP08_0195 dated 15 March 2012 (refer above)

Environment: The site is situated at the junction of the future light rail corridor and the western suburbs railway line. Lewisham railway station is located approximately 250 metres to the east of the site (400 metres walking distance). The property was previously occupied by a number of old existing dwellings and low scale warehouse buildings but has recently been

cleared in accordance with Concept Plan approval. Vehicular access is currently obtained from Brown Street.

PART D - ASSESSMENT

1. The Site and Surrounds

The site is bound to the east by Old Canterbury Road, which is a four lane state road. The land to the east of Old Canterbury Road is predominantly characterised by low scale residential development, with a mix of detached and attached dwellings. A heritage conservation area generally includes properties in Victoria Street and Toothill Street.

To the west, the site adjoins the future light rail corridor and the Lewisham West light rail stop. Further west is the former Allied Mills site. The site was formerly used for flour milling. Approval has been granted for the redevelopment of the site comprising a mixed use residential, retail and commercial development to be constructed in four stages including re-use of 6 existing buildings and structures and new building envelopes ranging from 2-11 storeys in height accommodating approximately 280-300 dwellings, 2,000-2,500m² of retail space, 3,500-4,000m² of commercial space, at-grade and basement parking, public open space, new public streets and associated infrastructure works..

The subject site is bound to the north by Longport Street, which is a regional road. On the northern side of Longport Street is the western railway line. To the north of the railway line is further low density residential development and scattered light industrial uses. Parramatta Road is located approximately 400 metres to the north.

The site is surrounded by a mix of low and medium density residential housing and light industrial uses. Residential development in the vicinity is predominantly in the form of single and two storey dwellings, terraces and a small number of three storey walk up flat buildings. To the west of the light rail corridor, light industrial uses are located along Edward Street.

2. The Proposal

Approval is sought for:

- 7 multi-storey buildings ranging in height from 2 storeys to 10 storeys, with building scale generally rising from Old Canterbury Road in the east to the light rail corridor in the west
- 362 apartments comprising 3 x studios, 138 x 1 bedroom, 208 x 2 bedroom and 13 x 3 bedroom apartments (including 8 x SOHO (small office home office) units)
- 3 retail tenancies and 1 café with outdoor dining
- 2 levels of basement car parking comprising 303 car spaces (262 for residents, 36 visitor spaces, 3 retail spaces, 2 café spaces and 1 disabled space for retail use), 15 motorcycle parking spaces, 186 bicycle spaces, loading / servicing areas
- New private road / ramp to west of site
- Embellishment and dedication of 20 metre wide 3,000m² public park at southern end of site to form major pedestrian connection from Old Canterbury Road to Light Rail station, and
- New public access route connecting from Brown and William Streets.

Work is proposed to be undertaken in 5 stages as follows:

1. Tree removal and site remediation;
2. Two basement levels and new private access road to western boundary;
3. Construct three buildings (E, F and G) and associated landscaping and civil works, construct Green Boulevard and upgrade Hudson Street;
4. Construct four buildings (A, B, C and D) and associated landscaping and civil works; and

5. Remaining works and works required under the Voluntary Planning Agreement (VPA).

A copy of the site plan elevations and photomontages of the proposed development as submitted with the application are reproduced below:

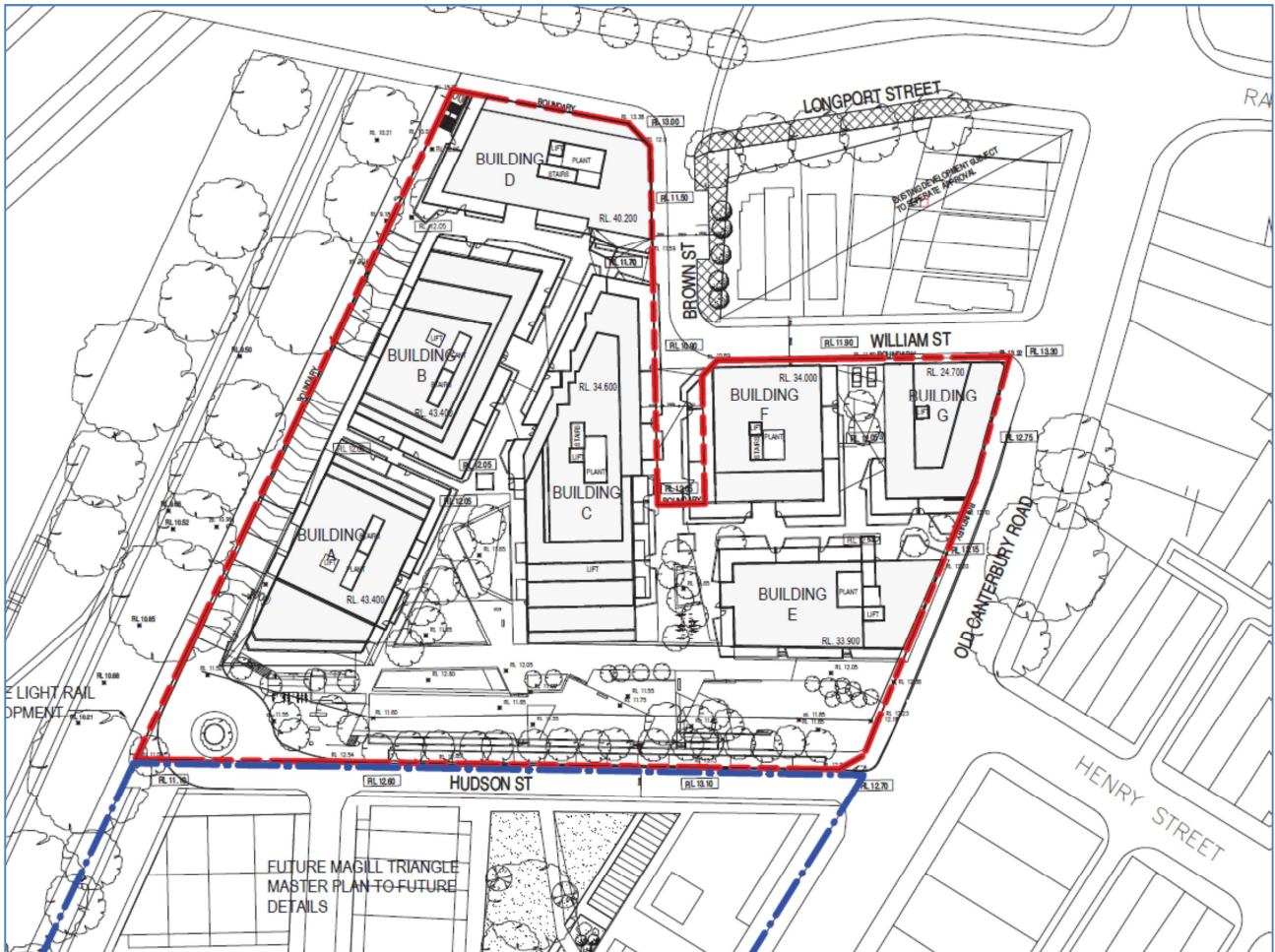


Image 3: Site Plan

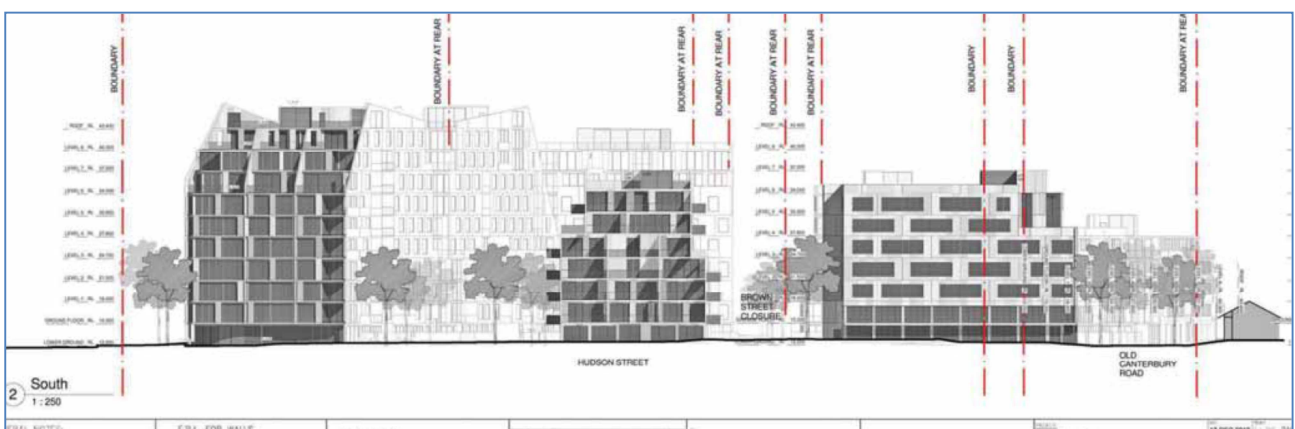


Image 4: Hudson Street Elevation



Image 5: William Street & Longport Street Elevations



Image 6: Old Canterbury Road Elevation



Image 7: Light Rail Corridor Elevation



Image 8: Photomontage from western end of Hudson Street

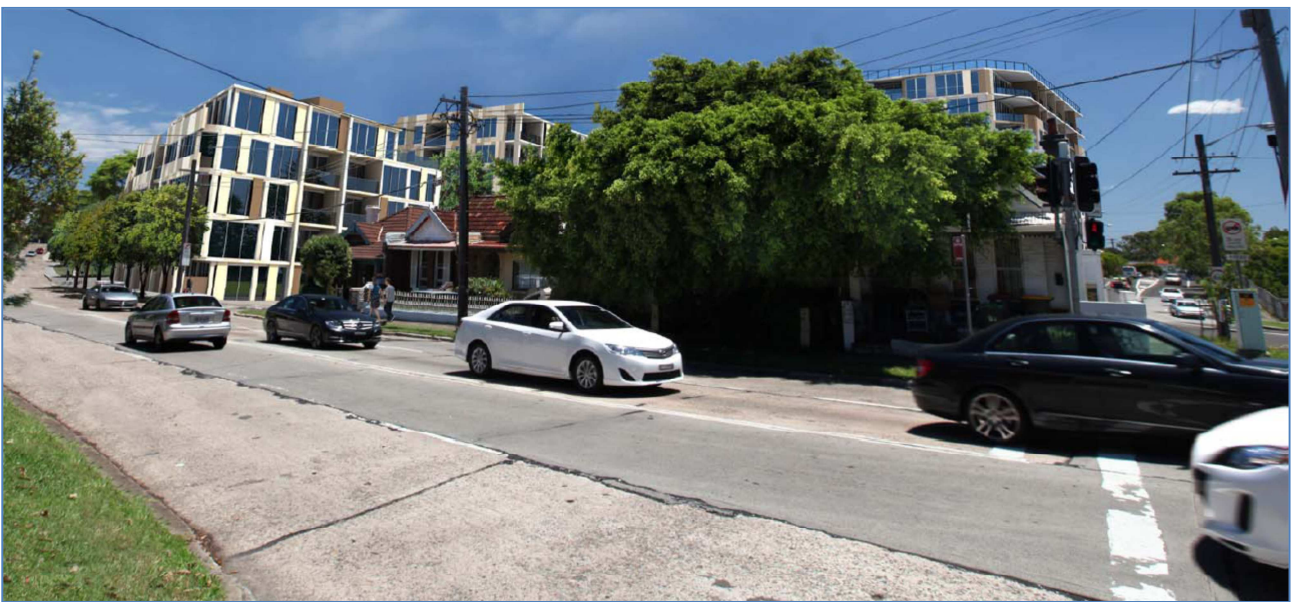


Image 9: Photomontage from corner of Old Canterbury Road and Longport Street



Image 10: Photomontage from corner of Old Canterbury Road and Hudson Street

3. Compliance with Concept Plan Approval

As noted above the proposed development is inconsistent with the approved Concept Plan in a number of respects including:

- footprints of Buildings A and B
- car park access arrangements
- public and private open space
- building heights, and
- ESD commitments.

In addition the proposal does not provide for / achieve:

- Affordable Rental Housing
- public art
- design excellence in accordance with the Director General's Design Excellence Guidelines
- a minimum of 3 hours of solar access to living areas and balconies to 70% of apartments
- the required works to, and widths of, William Street and north south private road along western side of site, and
- approvals from Sydney Airports Commission and Air Services Australia,

as required under the Concept Plan approval.

In addition Schedule 3 of the Approval Future Environmental Assessment Requirements set requirements to be achieved in future development applications. Compliance with these requirements is outlined in the Table at Appendix 1. In summary the development application does not comply with requirements in relation to: design excellence, high standard of architectural design, compliance with SEPP 65 and RFDC, privacy and interface treatment, ESD, flood

management, public open space, public access, linkages to railway station, roadworks, Sydney Airport approvals, stormwater, and compliance with Railcorp and Sydney Water requirements.

Any development application submitted for the subject site which seeks to rely on the Concept Plan Approval, must be in accordance with that Approval. The subject application is not consistent with the Concept Plan Approval therefore the proposal cannot be approved and refusal is therefore recommended.

4. State Environmental Planning Policy No. 55 - Remediation of Land

SEPP 55 applies to the subject site and a Detailed Site Investigation and Remedial Action Plan have been prepared in accordance with relevant requirements. At this stage no assessment of these reports has yet been undertaken as the proposal is recommended for refusal due to non-compliance with the Concept Plan approval.

5. State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65) prescribes ten design quality principles to guide architects designing residential flat buildings and to assist councils in assessing such developments. The ten principles relate to key design issues including the context, scale, built form and building density, resource, energy and water efficiency, landscape design, amenity, safety/security, social impacts and aesthetics.

The provisions of SEPP 65 apply to the proposed development and in particular the Schedule 3 Future Environmental Assessment Requirements Condition 4 Residential Amenity provides:

- 4. Future Development Applications shall demonstrate compliance with the provisions of the State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Residential Flat Design Code 2002, except where modified by the Concept Plan approval. In particular, future applications shall demonstrate that:*
 - (a) a minimum of 70% of apartments within each building receive a minimum of 3 hours solar access to living areas and balconies in mid winter; and*
 - (b) a minimum of 60% of apartments within each building are capable of being naturally cross ventilated.*

As required by the SEPP, a Design Verification Statement was submitted with the application indicating that a registered Architect directed the design of the proposed residential flat development and that the proposal generally satisfies the design quality principles set out in Part 2 of SEPP 65.

The Design Verification Statement also provided an assessment of the proposal with respect to the ten design principles contained in SEPP 65. The Statement concludes that the proposal is generally considered acceptable having regard to the ten design quality principles however it is noted that the Statement makes a number of references to the site being close to Jannali station. It is therefore unclear whether the statement applies to the subject site. It is therefore considered that the proposal does not satisfy the Design Verification Statement requirement.

A detailed assessment of compliance with SEPP 65 design principles has not been undertaken given that the development application is recommended for refusal due to non-compliance with the Concept Plan approval. However upon cursory review it would appear that the proposal does not comply with a number of design principles. In particular it is considered that the proposal does not comply with principles: (1) context, (2) massing and scale, (3) built form, (5) resources, energy and water efficiency, (6) landscape, (7) amenity, (9) social dimensions and housing affordability; and (10) aesthetics.

It is also noted as outlined above, that the proponent has agreed (as part of the current Section 75W modification) for a Design Review Panel to be convened to review the subject application to ensure that design excellence is achieved. This future process is intended to address the requirement to achieve design excellence however it is noted that as part of its consideration of the current Section 75W Modification application the DP&I has declined to sign off that the current design represents design excellence. It is therefore reasonable to be expect that design changes will be an outcome of the Design Review Panel process and that the application currently submitted for approval is not the final design.

Residential Flat Design Code

The Residential Flat Design Code (RFDC) is a set of guidelines that provide benchmarks for better practice in the planning and design of residential flat buildings to achieve environmental sustainability, improved energy efficiency and residential amenity and higher design quality to improve the presentation of the building to the street. The Code achieves this by providing controls to ensure that developments respond to their local context, and provide a suitable site analysis and quality design. The controls contained in the Code are required to be addressed in any Development Application.

At this point in time a detailed assessment against the RFDC has not been undertaken as the development application is recommended for refusal due to non-compliance with the Concept Plan approval. However a brief review has been undertaken as detailed below:

ASPECT	CONTROL	PROPOSAL	COMPLIES?
Building Depth	Depth should be between 10-18m	Building depth greater than 18m for all buildings except Building E (generally ranging from maximum of 21- 26m)	No
Minimum apartment sizes	1 bedroom apartment 50m ² 2 bedroom apartment 70m ² 3 bedroom apartment 95m ²	Appears to comply	Yes
Storage	Studios 6m ³ 1 bedroom 6m ³ 2 bedroom 8m ³ 3 bedroom 10m ³	Appears to comply	Yes
Balconies	Provide primary balconies for all apartments with a minimum depth of 2m.	A number of units have balconies with depth less than 2m	No
Ceiling heights	Minimum 2.7m Minimum 3.3m for GF	3.1m (upper levels) 3.1m (ground floor)	Yes No
Open Space	The area of communal open space should be between 25-30% of the site area.	3108.8m ² (23.7%) – quality of space also questioned	No
Deep Soil	A minimum of 25% of the open space area should be a deep soil zone	3,872m ² proposed – not yet measured	Unclear
Internal circulation	A maximum of 8 units should be provided off a double loaded corridor	Buildings B and E have 9 and 11 apartments respectively off double loaded corridor	No
Daylight Access	Living rooms and private open spaces for at least 70% of apartments should receive 3 hours direct solar access on winter solstice	No – Section 75W application seeks to reduce to 2hrs	No

	Max. 10% single aspect apartments with southerly aspect	44 apartments (12% proposed)	No
	Single aspect apartments maximum depth 8m	Significant % (27% or 97 apartments) of units exceed depth of 8 metres	No
Natural ventilation	60% of units should be naturally cross ventilated	76% of total naturally cross ventilated	Yes
Natural ventilation	The back of a kitchen should be no more than 8m from a window	Significant % (17% or 62 apartments) of units exceed depth of 8 metres	No

The proposal does not comply with a number of “rules of thumb” contained within the RFDC.

6. State Environmental Planning Policy (Infrastructure) 2007

The subject site is located immediately adjacent to a rail corridor. Clauses 85 and 86 of State Environmental Planning Policy (Infrastructure) 2007 provide guidelines for development immediately adjacent to rail corridors including excavation in, above or adjacent to rail corridors. Clause 86 requires the concurrence of Railcorp for excavation to a depth of 2 metres or greater within the rail corridor or within 25m of a rail corridor. In this regard Railcorp advised Council on 16 May 2013 that it had “stopped the clock” on the subject application until such time as the applicant addresses its concerns. Railcorp’s concerns relate particularly to:

- the requirement in the Concept Plan approval that a number of documents be submitted to Railcorp for approval PRIOR to the submission of any development application;
- the applicant’s proposal to construct a drainage swale within the rail corridor including a surcharge pit which would overflow into the corridor causing flooding,
- the finding contained within the flooding report that the proposal would result in flooding near the light rail station during the 1:100 year event,
- the applicant’s proposal to undertake excavation in the rail corridor to create a batter during the excavation of the development site,
- the proposed use of rock anchors within Railcorp’s land, and
- the proposed use of cranes which will extend over the rail corridor and overhead power lines.

Clause 87 of the SEPP relates to the impact of rail noise or vibration on non-rail development, and for a development for the purpose of a building for residential use, requires appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded. In this regard those measures are to ensure that the following LAeq levels are not exceeded:

- “(a) *in any bedroom in the building - 35 dB(A) at any time between 10.00pm and 7.00am,*
- (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.”*

An acoustic report has been submitted with the application which identifies construction techniques and materials to provide adequate acoustic attenuation. A detailed assessment of this report has not been undertaken at this time as the application is recommended for refusal.

The subject site has a frontage to Old Canterbury Road which is a classified road. Under Clause 101 (2) of State Environmental Planning Policy (Infrastructure) 2007:

- “2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road."*

Vehicular access to the property is proposed from Hudson Street and as such *"is provided by a road other than the classified road."* It is therefore considered that the proposed development would not affect *"the safety, efficiency and ongoing operation of the classified road"* subject to access road connections being left in and left out as detailed in the Roads and Maritime Services (RMS) referral dated 22 May 2013.

The subject site is also located in or adjacent to a road corridor. Clause 102 of State Environmental Planning Policy (Infrastructure) 2007 relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor...or any other road with an annual average daily traffic volume of more than 40,000 vehicles.... Under that clause, a development for the purpose of a building for residential use, requires that appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded. In this regard those measures are to ensure that the following LAeq levels are not exceeded:

- "(a) in any bedroom in the building - 35 dB(A) at any time between 10.00pm and 7.00am,*
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time."*

As noted above an acoustic report has been submitted with the application which proposed noise attenuation measures. At this point in time a detailed assessment of this issue has not been undertaken as the application is recommended for refusal.

7. Other planning instruments

A detailed assessment of the proposed development against Marrickville Local Environmental Plan (MLEP) 2011, Marrickville Development Control Plan (MDCP) 2011 and Marrickville Section 94/94A Contributions Plan 2004 has not been undertaken at this time given that the proposed is inconsistent with the 'parent' Concept Plan approval and therefore recommended for refusal. It is however noted that these instruments only apply in so far as they are not inconsistent with the Concept Plan approval.

8. Voluntary Planning Agreement

At the time of drafting this report, no Voluntary Planning Agreement (VPA) has been entered into between the Applicant and Council. Negotiations are continuing although it is unlikely that the VPA will be entered into anytime soon as there are still areas of disagreement between the parties and Council is unlikely to accept a VPA whilst the plans for the development remain uncertain.

In the absence of a VPA, the Applicant is not able to meet the requirements of the Concept Approval in relation to public domain requirements (such as open space, bicycle links and road improvements) and the Statement of Commitments that forms part of the approval.

9. Flooding

The development application was referred to Councils Development Engineer who provided the following comments:

“1. Hawthorne Canal:

The site is affected from flooding during a 1 in 100 year storm from the Hawthorne Canal. Council and Sydney Water have met and discussed issues in relation to the flood Impact Assessment by Cardno ITC and the proposed relocation of Council's and Sydney Water's stormwater drainage assets to accommodate the development. Sydney Water has subsequently written to the applicant outlining many of these concerns. The main issues of concern are:

- i. Inadequacy of the hydraulic analysis of the pipe line diversion and the connection to Sydney Water's system; and*
- ii. The flood study does not adequately demonstrate that the development will not adversely impact on adjacent properties due the redirection of flows and the loss of flood storage.*

An independent consultant Bewsher Consulting was engaged by Sydney Water to peer review the Cardno ITC flood study. Bewsher Consulting has since written to Sydney Water (letter dated 18 June - copy attached) recommending that the peer review be suspended as the Flood Impact Assessment and the flood models are inadequate and need to be revised.

The key issues of concern are Cardno ITC's failure to address the loss of flood storage and the lack of information provided by Cardno ITC with regard to flood impacts on third parties adjacent to the site.

The letter also concludes that given that a rigorous assessment of flood impacts has not yet been carried out by Cardno ITC, it is quite possible that alterations to the development proposal will be required in order to manage the flood impacts.

In response to the letter Sydney Water has requested Bewsher Consulting stop the peer review until:

- Meriton and Cardno ITC accept the above issues of concern;*
- Cardno ITC conducts a proper flood impact assessment in accordance with best practice;*
- Meriton review the development configuration; and*
- Cardno provide all the relevant information necessary to complete a peer review.*

Council agrees with the conclusions of both Bewsher Consulting and Sydney Water and the application is recommended for refusal due to the failure of the flood Impact Assessment to address the loss of flood storage in the modelling and the failure to adequately demonstrate that the development will not adversely impact on adjacent properties.

2. Local Overland Flow (from Old Canterbury Road):

The site is also subject to flooding at a low point in the catchment in Old Canterbury Road. This low point has been assessed by Cardno ITC in a Flood Management Report dated November 2011. The report finds that flooding will increase in Old Canterbury Road during a 1 in 100 year storm by 140mm i.e. from RL 12.42m AHD to 12.56m AHD. The report states that the result is due to the elevated start level of the overland flowpath. It also states that there will be no adverse impacts on adjoining properties on Old Canterbury Road as these properties are higher than the flood level. However no floor level information has been provided to confirm this and to establish that sufficient freeboard remains above the 1 in 100 year flood for these properties.

The current development proposal results in the flooding of the buildings fronting Old Canterbury Road as their floor levels have been set at 360mm below the 1 in 100 year flood level of RL 12.56m AHD. In addition flood waters will flow along the pedestrian path between Buildings G and E rather than the designated overland flowpath resulting in possible flooding of buildings F and C. All building floor levels will need to be set at 500mm above the overland flow level to protect them from flooding during a 1 in 100 year storm.

Again this application is recommended for refusal as the proposed development has not been adequately protected from flooding during a 1 in 100 year flood from Old Canterbury Road."

As indicated in the above comments, inadequate information has been provided in relation to flood impacts and as such the application cannot be supported.

10. Community Consultation

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the subject property were notified of the proposed development in accordance with Council's policy. Seventy six (76) submissions were received raising the following concerns in order of frequency:

- (i) Traffic impacts including impacts on adjacent intersections, light rail station, emergency access, etc.
- (ii) Non-compliance with CP approval / PAC recommendations
- (iii) Reduction in open space, lack of open space / landscaping / deep soil area etc.
- (iv) Low level of parking provided and impact of development on on-street parking in area
- (v) DA assumes approval of S75W modification, should be refused or deferred until determined
- (vi) Poor interface with Greenway including car park ramp adjacent
- (vii) Overdevelopment of site, inconsistent with surrounding character of areas
- (viii) Single access to basement car parking inadequate
- (ix) Poor pedestrian access within site and to key facilities (i.e. light rail, railway station etc.)
- (x) Development does not represent design excellence, need for design excellence competition
- (xi) Deletion of green power initiatives
- (xii) Deletion of affordable housing
- (xiii) Construction impacts including noise, dust, pollution
- (xiv) Deletion of car share scheme, and
- (xv) Impact on infrastructure.

It is considered that these concerns are valid and that the proposed development in its current form is inconsistent with the parent Concept Plan approval and would give rise to significant adverse environmental impacts.

11. Conclusion

The application seeks consent for 7 multi-storey buildings (2-10 storeys), 362 apartments, 3 retail tenancies and 1 café with outdoor dining, 2 basement levels of car parking totalling 303 spaces, new private road, 3,000m² public park at southern end of site and new public access route connecting Brown and William Streets, on land known as 78-90 Old Canterbury Road, Lewisham.

Following consideration of the application it has been determined that the proposal is inconsistent with the 'parent' Concept Plan Approval issued by the Planning Assessment Commission on 15 March 2012 (MP08_0195). It is therefore considered that the application is not able to be approved in its current form.

In addition the concurrence of Railcorp is required for the proposed development under clause 86 of the Infrastructure SEPP. Railcorp has not issued its concurrence and has "stopped the clock" on the application. The application is also inconsistent with SEPP 65 or the Residential Flat Design Code and does not demonstrate design excellence. Further inadequate information has been provided in relation to flooding impacts and the application is considered not to be in the public interest. It is also noted that no Voluntary Planning Agreement (VPA) has been entered into between the Applicant and Council and in the absence of a VPA, the Applicant is not able to meet the requirements of the Concept Approval in relation to public domain requirements (such as open space, bicycle links and road improvements) and the Statement of Commitments that forms part of the approval.

It is therefore considered that the application in its current form is unsupportable and in view of the circumstances, refusal of the application is recommended.

PART E - RECOMMENDATION

A. THAT the development application to carry out a multi-building mixed use development containing 7 multi-storey buildings (2-10 storeys), 362 apartments, 3 retail tenancies and 1 café with outdoor dining, 2 basement levels of car parking totalling 303 spaces, new private road, 3,000m² public park at southern end of site and new public access route connecting Brown and William Streets be **REFUSED** for the following reasons:

1. The application is inconsistent with the Concept Plan Approval (MP08_0195) for the site issued by the Planning Assessment Commission on 15 March 2012.
2. The proposal does not comply with State Environmental Planning Policy 65 – Design Quality of Residential Flat Buildings and the provisions of Residential Flat Design Code.
3. The proposal does not achieve design excellence in accordance with in accordance with the Director General's Design Excellence Guidelines.
4. Railcorp has not issued its concurrence as required by Clause 86 of State Environmental Planning Policy (Infrastructure) 2007.
5. Inadequate information has been provided in relation to flood impacts.
6. No Voluntary Planning Agreement (VPA) has been entered into that would support the delivery of key aspects of the Concept Approval, particularly in terms of public domain elements and the Statement of Commitments that forms part of the approval.
7. The proposal is not in the public interest.

B. THAT those persons who lodged submissions in respect to the proposal be advised of the Joint Regional Planning Panel's determination of the application.

Development Assessment Officer: Helena Miller
MG Planning Pty Ltd **Date:** 21 June 2013

APPENDIX 1 - APPROVAL FUTURE ENVIRONMENTAL ASSESSMENT REQUIREMENTS

Requirement	Compliance	Comment
Built Form		
1. Future Development Applications are to achieve design excellence in accordance with the Director General's design Excellence Guidelines	No	Design Review Panel to be convened – DP&I has advised does not consider current DA represents Design Excellence
2. Future Development Applications shall demonstrate that the development achieves a high standard of architectural design incorporating a high level of modulation / articulation of the building and a range of high quality materials and finishes	No	As noted above – development does not achieve a high standard of design
3. Future Development Applications shall demonstrate that the building height along Old Canterbury Road is a maximum of 4 storeys	Yes	Complies
Residential Amenity		
4. Future Development Applications shall demonstrate compliance with the provisions of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Residential Flat Design Code 2002, except where modified by this Concept Plan approval. In particular future applications shall demonstrate that: (a) a minimum of 70% of apartments within each building receive a minimum of 3 hours solar access to living areas and balconies in mid-winter (b) a minimum of 60% of apartments within each building area capable of being naturally cross ventilated.	No	Refer RFDC at section 5 of Assessment Report. S75 modification requests amendment to minimum 2 hours.
Privacy		
5. Future Development Application shall demonstrate an appropriate design treatment to provide an appropriate interface and adequate level of privacy to ground level apartments which adjoin Longport, Brown and William Streets, areas of publicly	No	Built to boundary with windows adjacent to footpath on Longport Street, William Street and Brown Street frontages.
ESD		
6. Future Development Application shall demonstrate the incorporation of ESD principles in the design, construction and ongoing operation phases of the development including the selection of fabric and materials, water conservation and management initiatives, and energy efficiency and renewable energy initiatives	No	Propose to amend ESD commitments to not more than BASIX requirements under Section 75W
Flood Levels		
7. Future Development Applications shall comply with the Cardno Flood Management Report dated 30.11.11 and consider and address any recommendations in any Council adopted Flood Study and relevant state policies at the time of lodgement of the application to demonstrate the finished floor levels of the buildings will be above the probable maximum flood for the site and that the development will not adversely impact on any surrounding property (including the light rail corridor) by redirection of flood waters or loss of flood storage.	No	Railcorp has advised proposal will result in flood impacts to rail corridor. Council's Development Engineer has also advised that Council and Sydney Water have raised concerns: <ul style="list-style-type: none"> with the inadequacy of the hydraulic analysis of the pipe line diversion and the connection to Sydney Water's system; and that the flood study does not adequately demonstrate that the development will not adversely impact on adjacent properties due the redirection of flows and the loss of flood storage.
Car Parking		
8. Future Development Applications shall provide on-site car parking at the following rates: (a) 1 space per 4 studio / 1 bedroom apartment (b) 1 space per 2/3 bedroom apartment	Yes	Complies

Requirement	Compliance	Comment
(c) 1 visitor space per 10 apartments; and (d) 1 space per 45m ² of retail GFA.		
9. Future Development Applications are to demonstrate that a minimum of 13 on-street car parking spaces will be provided within the Hudson Street road reserve adjacent to the public open space.	Yes	Complies
Servicing		
10. Future Development Applications shall provide for all servicing, including waste collection, removalist vehicles and all loading / unloading operations to occur within the basement.	Yes	Complies – but ramp to west of site raised other public domain and interface issues
Public Open Space		
11. Future Development Applications shall provide a minimum of 3,000m ² of publicly accessible open space. Through site links and drainage reserves should not be including as open space provision. All public and private open spaces shall be clearly defined and functions identified.	No	Public open space identified includes footpaths, areas immediately adjacent to dwellings, through site links and drainage reserves.
12. Future Development Applications shall provide for the embellishment and dedication of the public open space north of Hudson Street to Council in accordance with the terms of the VPA between the proponent and Council.	TBD	VPA not finalised.
13. Future Development Applications shall demonstrate a suitable treatment to the area immediately to the south of Building Envelopes A, C and E to encourage pedestrian traffic adjacent to the building edge and provide a 'street address', in the absence of public road frontage.	No	Area not considered appropriate.
Brown Street		
14. Future Development Applications shall provide for a suitable treatment in the portion of Brown Street between Building Envelopes C and F to prohibit vehicle movements and provide a landscape pedestrian through site link. The proponent shall endeavour to obtain approval to close this portion of road reserve and embellish this area as public open space.	No	Public link very narrow (1m) and will not encourage public use.
Public Access		
15. Future Development Applications shall clearly set out the mechanism for creating rights of public access to the: <ul style="list-style-type: none"> Private road adjacent to the light rail corridor All publicly accessible areas of open space and through site links With the relevant instrument/s to be executed prior to commencement of the occupation/use of the development	?	Refer VPA
Linkages to Lewisham railway station and Lewisham Light rail stop		
16. Future Development Applications shall provide for new and/or upgraded pedestrian connections between the site and Lewisham railway station and the Lewisham West light rail stop in consultation with Council and Railcorp in accordance with the terms of the VPA	No	No upgraded pedestrian connection to Lewisham railway station proposed?
Car Share Scheme		
17. Future Development Applications shall require the provision and implementation of car share scheme.	No	Proposed to be deleted in Section 75W application
Road Works		
18. Future Development Applications shall provide for minimum road widths as follows: <ul style="list-style-type: none"> (a) William and Brown Streets shall be a minimum of 9.6m (6m carriageway and 1.8m footpaths on each side); (b) Hudson Street shall be a minimum of 6 to 8.5m (6m carriageway and 2.5m indented parking bays); and (c) The north-south street (private road) shall be a minimum of 9.5m (5.5m carriageway, 3m footpath on the eastern side and 1m footpath on the western side) 	No	Does not comply with width of footpaths in William Street and required footpath widths adjacent to private north south street. Proposed to be amended in Section 75W.
19. Future Development Applications shall provide for left in left out access to the development via Hudson, William, Brown and McGill Streets at all times. The proponent shall comply with the Local Traffic Committee requirements in relation to banning right turns at these intersections.	Yes	Condition
Section 94 Contributions		
20. Future applications shall be required to pay developer contributions to the Council towards the provision or improvement of public amenities and services. The amount of the contribution	TBD	Condition. VPA not finalised.

Requirement	Compliance	Comment
shall be determined by Council in accordance with the requirements of the Contributions Plan current at the time of the approval. A VPA with Council may off-set Section 94 Contributions.		
Sydney Airports		
21. Future applications shall demonstrate all necessary approvals have been obtained from Sydney Airports Commission and Air Services Australia	No	Approvals have not been obtained.
Noise and Vibration		
22. Future applications shall ensure that the internal residential amenity of the proposed apartments is not unduly affected by the noise and vibration impacts from the Western Suburbs Railway Line, Old Canterbury Road and Longport Street to comply with the requirements of Clause 102 of State Environmental Planning Policy (
Stormwater		
23. Future Development Applications shall provide for the treatment of stormwater prior to discharge to surface water and/or groundwater sources.	No	Council and Sydney Water have advised that proposed stormwater and flood management scheme is inadequate. It is understood further modelling is being undertaken to address relevant requirements.
Groundwater		
24. Future Development Applications shall provide an assessment of ground water, including the need for licences in relation to taking or interfering with groundwater or dewatering.		
Roads and Maritime Services requirements		
25. Future Development Applications shall demonstrate that the RMS requirements have been met in relation to: (a) Excavation Future development applications shall include civil design plans which provide detail on the level of excavation and a Geotechnical Report for any excavation works adjacent to Old Canterbury Road and Longport Street. (b) Hydraulics Plans / details demonstrating that post development stormwater discharge from the site into the RMS drainage system does not exceed the pre-development discharge.	Yes	RMS has provided advice that it does not object to the proposal subject to certain conditions.
Railcorp requirements		
26. Future Development Applications shall address Railcorp's requirements in relation to: (a) Geotechnical and structural impacts The proponent shall submit a Geotechnical and Structural Report, Excavation and Construction methodology and Cross Section drawing (showing ground surface, rail tracks, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail corridor) to Railcorp for approval prior to lodgement of future development applications which propose excavation of other ground penetration (including footings) greater than 2 metres and within 25 metres of the light rail corridor. (b) Encroachments within the light rail corridor The proponent shall detail the removal of all encroachments within the adjoining light rail corridor including Railcorp's landowner's consent within future Development Applications. (c) Electrolysis The proponent shall submit an Electrolysis Risk Assessment in relation to stray currents from the light rail corridor to RailCorp for approval prior to lodgement of future Development Applications. (d) Landscaping and fencing The proponent shall submit landscaping and fencing details for all land within 20 m of the light rail corridor prior to the lodgement of future Development Applications (e) Pedestrian connections Future Development Applications shall demonstrate upgraded	No	Railcorp has provided "stop the clock" letter dated 16 May 2013. Proponent has not complied with requirements. Also notes works proposed in light rail corridor and no owner's consent / approval sought and that works would result in flooding of the rail corridor.

Requirement	Compliance	Comment
and/or new pedestrian pathway between the site and Lewisham railway station and Lewisham West light rail stop.		
Sydney Water requirements		
<p>27. Future Development Applications shall address Sydney Water's requirements in relation to:</p> <ul style="list-style-type: none"> (a) The required upsizing of the existing 100mm drinking water main to a 200mm main for the full length of Old Canterbury Road from Longport Street to Hudson Street, and Hudson Street from Old Canterbury Road to the light rail corridor. (b) The required upsizing of the existing 150mm wastewater main to a 225mm main which traverses the site and may require deviation of the wastewater main, in accordance with Sydney Water's Guidelines for Building over or Adjacent to Sewer (c) The required adjustment to a section of Sydney Water's Hawthorne Canal stormwater system including the removal of the entire section of redundant asset and construction of a new maintenance pit to terminate the adjustment; and (d) A water sensitive urban design stormwater treatment plan and MUSIC model which demonstrates: <ul style="list-style-type: none"> i. a 90% reduction in the post development mean annual load of total gross pollutant loads; ii. a 85% reduction in the post development mean annual load of Total Suspended Solids; iii. a 60% reduction in the post development mean annual load of Total Phosphorus; and iv. a 45% reduction in the post development mean annual load of Total Nitrogen. <p>Details shall be submitted with future Development Applications in accordance with Sydney Water and Council requirements.</p>	No	Sydney Water has provided advice to applicant (and Council) that the flood and pipe hydraulic analysis submitted with the application is inadequate.