

2 July 2013

Mr John Roseth
Chairperson
Joint Regional Planning Panel
Sydney East Regional Panel
23-33 Bridge Street
SYDNEY NSW 2000

Dear Mr Roseth,

LEWISHAM ESTATE – REFERENCE NO.2013SYE022

The application will be considered at the meeting of the 11 July 2013 and we want to bring to your attention a number of concerning matters that has led to the report prepared by Council which is currently recommending refusal.

Firstly, Council in their report to you has mentioned no detailed assessment of the Development Application against SEPP 65 was made, yet conclude that the proposed development does not comply with the SEPP 65 Guidelines. Tony Owen Architects designed the proposed development and the planning report prepared by Planning Ingenuity consulting town planners, states the buildings comply with SEPP65.

Secondly, on the 19 November 2012, we lodged an amendment to the Concept Plan with the Department of Planning and Infrastructure NSW to reflect the Development Application currently before the Panel, and we were reasonably expecting determination in March 2013 by the latest. The timing of the determination for this amendment has been significantly delayed beyond our control, and will be considered by the Planning and Assessment Commission on the 4 July 2012. The amendment to the Concept Plan is recommended for approval (refer to the attached planning report and draft conditions).

Thirdly, Council's report states that a design competition is required. However, this is not exactly true. The Concept Plan condition requires a future Development Application to comply with the requirements of the Director General Design Guidelines. These Guidelines do state that a design competition is to be held, but also allows for an exemption to the competition process where an architect has demonstrated excellence in design. Tony Owen Architects was employed to design the buildings based on his design experience both in Australia and overseas.

The Department of Planning and Infrastructure NSW has decided that a design competition is not needed. Instead a panel of three architects are to consider the building design, but this cannot commence because Council is yet to nominate their panel member, which is also holding up the approval process.

Lastly, we have been seeking Council's agreement to the Voluntary Planning Agreement which also is a requirement to comply with the Concept Plan. We have been trying to reach an agreement with the Council since November 2012.

As you will appreciate, there have been many variables that have been beyond our control and we have found the process of seeking an approval very frustrating on this occasion.

Yours faithfully

MERITON GROUP

A handwritten signature in dark ink, appearing to read 'W Gordon', with a stylized, flowing script.

Walter Gordon

Director of Planning and Development



Planning &
Infrastructure

MODIFICATION REQUEST:

Mixed Use Development at 78-90 Old Canterbury Road, Lewisham Concept Plan

MP 08_0195 MOD 1

Modifications to the Concept Plan Approval



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

June 2013

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Published June 2013
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

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1. BACKGROUND

The purpose of this report is to assess a request to modify an approved Concept Plan (MP 08_0195) for residential development at 78-90 Old Canterbury Road, Lewisham pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Proponent seeks approval for a number of changes to the Concept Plan approval consisting of minor adjustments to the alignment of the space between Buildings A and B, the introduction of the concept of "dual use" live-work spaces to provide flexibility in providing ground floor retail / commercial floor space, changes to solar access requirements, clarification around the provision of affordable housing, treatment of the public domain, relocation of the loading dock and the amendment of various conditions of the approval and Statement of Commitments.

1.1 Site Description

The subject site is located within an area in the Marrickville LGA known as the McGill Street Precinct, which is near the boundary of the Ashfield LGA. The site has frontages to Old Canterbury Road, Longport Street, Hudson Street, Brown Street and William Street. Its western boundary is delineated by the light rail corridor.

The site is illustrated in **Figures 1 and 2** below.

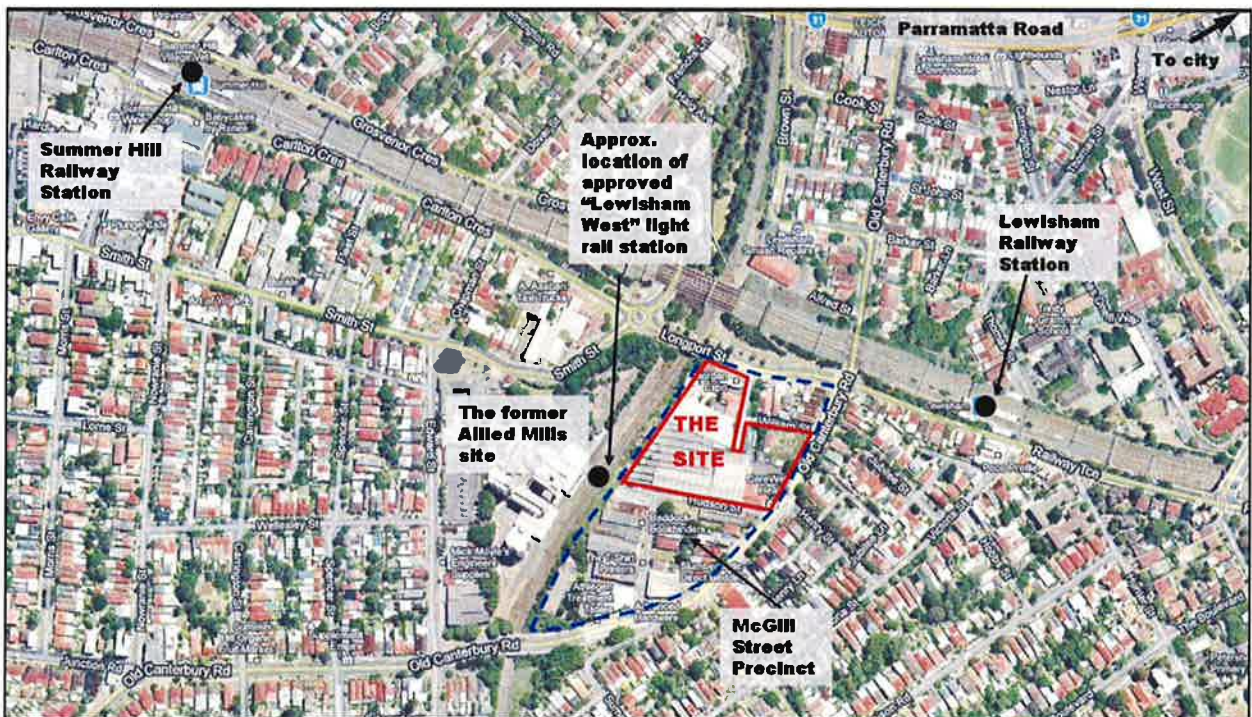


Figure 1: Site location (Source: Google Maps, 2011)

1.2 Previous Approvals

On 15 March 2012, the Planning Assessment Commission (PAC) approved a Concept Plan for the following:

- use of the site for residential, retail, commercial and public open space;
- indicative building envelopes for 7 separate buildings with heights ranging from 4 to 10 storeys;
- basement and at grade car parking;
- internal and external road works; and
- public pedestrian and cycle pathways providing connections to the surrounding area, the Lewisham railway station and Lewisham West light rail stop.



Figure 2: Aerial photograph of the site and locality (Source: Near Maps, May 2013)

As part of its approval, the PAC imposed a number of modifications and future assessment requirements including:

- minimum area for the central open space of 3,000m² with a minimum depth north of Hudson Street of 20 metres;
- at least 50% of the central open space must receive a minimum 2 hours solar access in mid-winter;
- future development applications to achieve design excellence in accordance with the *Director-General's Design Excellence Guidelines*; and
- 4 storey maximum building height to the Old Canterbury Road frontage.

The approved Concept Plan is shown in **Figure 3**.

To date the Concept Plan has been modified as follows:

- On 13 February 2013, **MOD 2** was approved by the then Deputy Director-General, Development Assessment and Systems Performance to amend the timing of the Voluntary Planning Agreement.

12.2 MASTER PLAN (REV B)

25 JUNE 2012

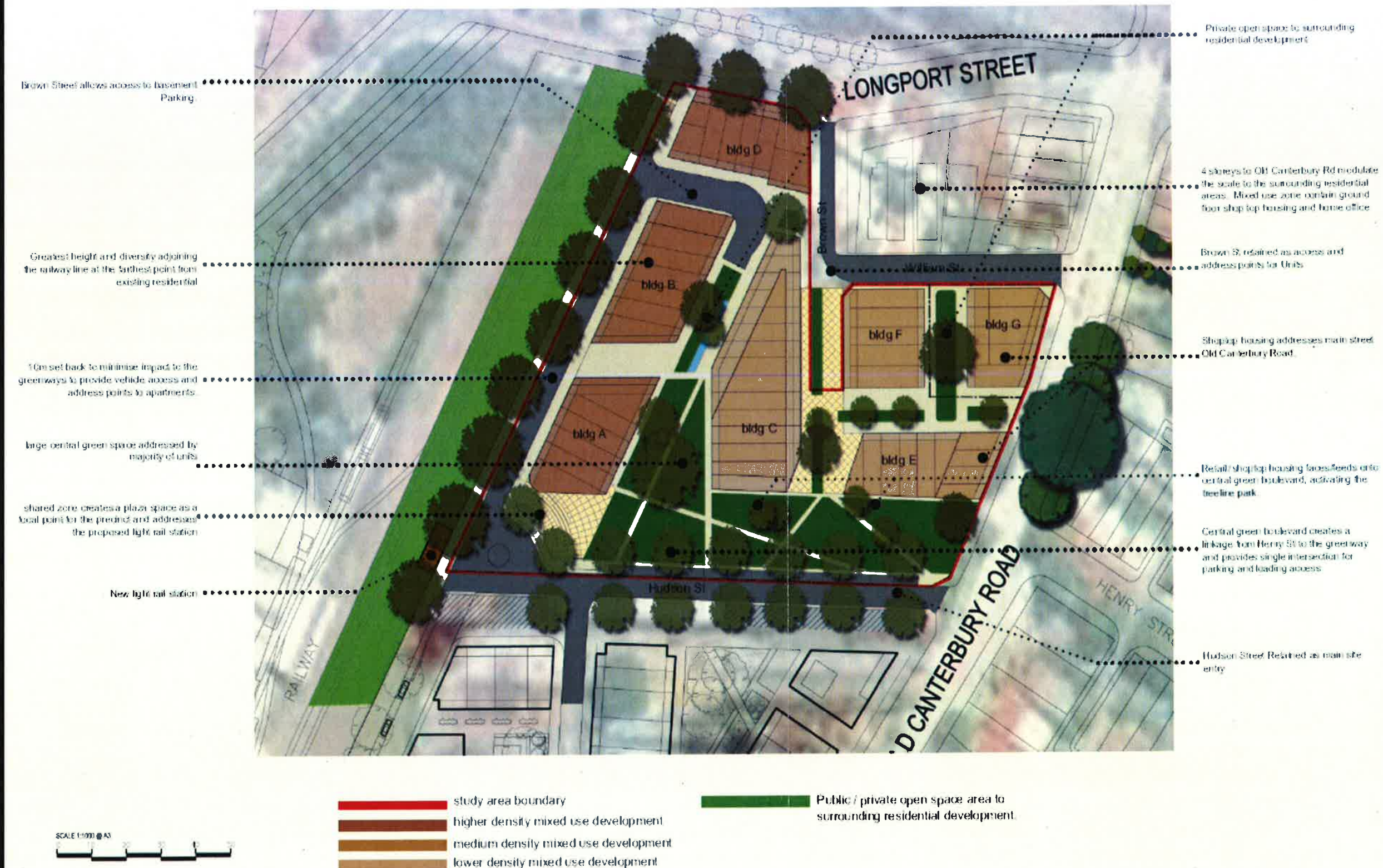


Figure 3: Approved Concept Plan

2. PROPOSED MODIFICATION

The application as submitted proposed substantial modifications to a number of aspects of the Concept Plan including changes to the vehicular access, redistribution of publicly accessible open space and private open space, variation of solar access requirements, the deletion of the commitments to the provision of affordable housing, public art and the achievement of design excellence.

In response to submissions from Council and concerns raised by the Department, the Proponent amended the request for modification, which included reverting to the "as approved" Concept Plan in the following areas:

- vehicular access arrangements;
- publicly accessible open space to preserve pedestrian / cyclist through-site links;
- public art; and
- design excellence.

The Proponent also provided further information in relation to ESD, affordable rental housing, solar access to apartments and road / footpath widths in William Street.

The revised application seeks approval for amendments to the Concept Approval and the Statement of Commitments, in relation to the following:

- minor adjustments to the alignment of the space between Buildings A and B;
- reduction in the size of the central open space from 3,054.4m² to 3,002.1m²;
- modulation of approved building heights;
- changes to the land use plan:
 - redefinition of the ground floor uses in Buildings A, C and G to be retail and commercial. It is proposed to make provision for these spaces to be "dual use", enabling them to be used for either residential or non-residential; and
 - deletion of the requirement for non-residential land use along the north-south access road.
- vary the minimum solar access requirements from a minimum of 3 hours between 9.00am and 3.00pm in mid-winter to a range of between 2 and 3 hours;
- clarify the manner of providing the component of affordable housing within the development;
- reduce the solar access requirements to primary living spaces from a minimum of 3 hours between 9.00am and 3.00pm in mid-winter to 2 hours;
- amendment to requirement for widening of the footpaths in William Street to adjust the footpath requirements; and
- amendment to requirement for all future applications to demonstrate that all necessary approvals have been obtained from Sydney Airports Commission and Air Services Australia.

The proposed Concept Plan layout is shown in **Figure 4**.

The Department has considered these issues as part of its assessment of the proposed modification (**Section 5**).

12.2 MASTER PLAN (REV E) 16 MAY 2013

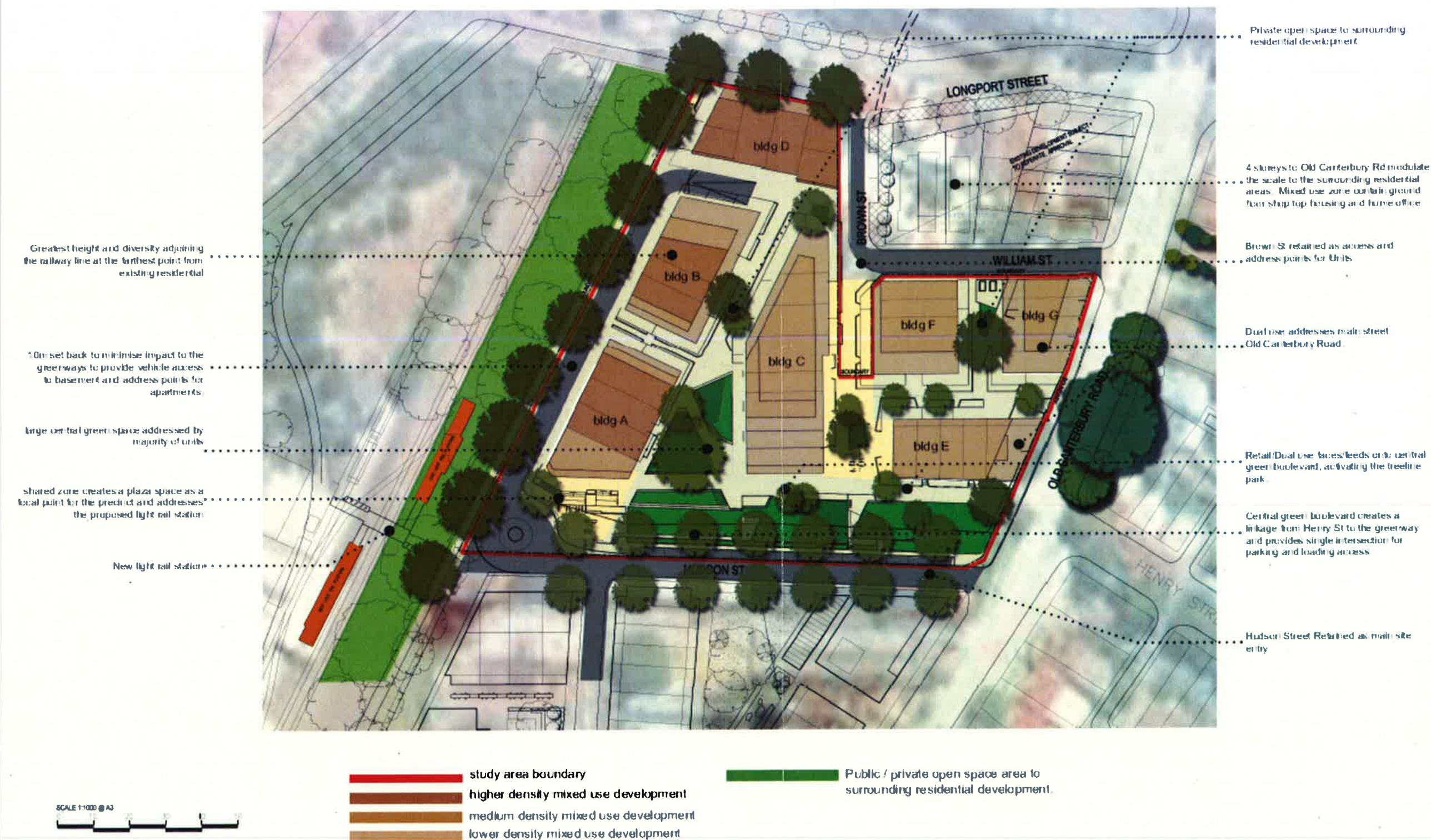


Figure 4: Proposed Concept Plan (Source: Proponent's Section 75W application)

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the *Environmental Planning and Assessment Act 1979*, section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove of the modification to the project under section 75W of the EP&A Act.

3.2 Modification of a Minister's Approval

The modification application has been lodged with the Director-General pursuant to section 75W of the EP&A Act. Section 75W provides for the modification of a Minister's approval including *"revoking or varying a condition of the approval or imposing an additional condition of the approval."*

The Minister's approval of a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify terms of approval imposed on the Concept Plan, and therefore, approval is required.

3.3 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the Director-General may notify the Proponent of the Director-General's Environmental Assessment Requirements (DGRs) with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister.

No additional environmental assessment requirements were issued with respect to the proposed modifications, as sufficient information was provided to the Department in order to consider the application and the issues raised remain consistent with the key assessment requirements addressed in the original DGRs.

3.4 Delegated Authority

The Minister has delegated his functions to determine Part 3A applications to the Planning Assessment Commission (PAC) where an application has been made by persons other than by or on behalf of a public authority.

The application is being referred to the PAC for determination as Marrickville Council has made a submission in the nature of an objection to the proposal.

4. CONSULTATION AND SUBMISSIONS

Under section 75W of the Act, a request to modify an approval does not require public exhibition. However under 75X(2)(f) of the Act, the Director-General is required to make the request for modification of the approval publicly available.

The Department publicly exhibited the application. The exhibition commenced on 23 January and concluded on 1 March 2013 (37 days) and was available on the Department's website, at the Department's Information Centre and at the Marrickville Council Administration Centre. The Department also advertised the public exhibition in the Sydney Morning Herald, the Daily Telegraph and the Inner West Courier on 23 January 2013 and notified nearby land owners and relevant State and local government authorities in writing.

The Department received 14 submissions in response to the exhibition of the modification request – 4 submissions from public authorities, 2 submissions from local interest / community groups and 8 submissions from the general public.

The Proponent's PPR / response to submissions made a number of amendments to the modification request and proposed an additional modification by providing a loading dock beneath the eastern end of the Building D envelope.

Having regard to the changes to the proposal the Department referred the PPR to Marrickville Council for comment and notified the residents / property owners in the block bounded by Old Canterbury Road, Longport, William and Brown Streets specifically in relation to the loading dock. Council provided further comments and a further 3 submissions were received from property owners.

A summary of the issues raised in the submissions is provided below.

4.1 Public Authority Submissions

Four submissions were received from public authorities, including Marrickville Council, Ashfield Council, Roads and Maritime Services and Transport for NSW.

Marrickville Council advised that it did not support a number of the proposed modifications, including the changes to the quantity/location of publicly accessible open space and private open space, the car park access, specifically the ramp along the western boundary, the reduction in the footpath width along William Street, the conversion of ground floor retail/commercial space to residential and the reduction in the solar access requirement from 3 hours to 2 hours.

Council also raised objection to the proposed deletion of the commitments to provide beyond-BASIX energy efficiency initiatives, affordable rental housing, public art and deletion of the requirement to comply with the Director-General's Design Excellence Guidelines.

Ashfield Council raised concern in relation to the proposed ramp along the western property boundary in terms of the likely poor urban design outcome, particularly in terms of its relationship to the Light Rail / deferred Greenway corridor; and the proposal to eliminate the ground floor commercial uses from Buildings A, C and E on the basis that such uses are essential for the "activation" of the Hudson Street open space corridor.

Roads and Maritime Services did not raise any concerns in relation to the proposed modifications.

Transport for NSW (Transport Projects) raised a number of issues in relation to the design and operation of the roundabout in Hudson Street; the proposed ramp to the basement car park, particularly the physical barrier to pedestrian / cycle movements along the western edge of the site; and the apparent reduction in pedestrian / cyclist permeability through the site.

4.2 Public Submissions

A total of 10 submissions were received from the public, including 2 from special interest groups. All the public submissions objected to the proposal. The key issues raised in the objections include:

- need to maintain requirement for design excellence;
- traffic and access;
- poor urban design outcome associated with proposed western vehicle ramp;
- inadequate pedestrian / cyclist permeability and through-site links;
- amenity issues - solar access, ESD initiatives, public art;
- affordable rental housing; and

- footpath widths.

The Department has considered the issues raised in the submissions in its assessment at **Section 5** of the report.

4.3 Proponent's Response to Submissions

On 23 April 2013, the Proponent amended the modification request in response to issues raised in the submissions by reverting to the "as approved" Concept Plan by deleting the following from the application:

- vehicular access arrangements;
- publicly accessible open space to preserve pedestrian / cyclist through-site links;
- public art; and
- design excellence.

It should be noted that no further discussion is provided as part of this assessment in relation to the abovementioned items.

Further information was provided by the Proponent in relation to the following:

- solar access to the apartments on 3 May 2013;
- road / footpath widths in William Street on 20 May 2013;
- use of ground floor spaces in Buildings A, C, E and G on 20 June 2013; and
- affordable rental housing on 20 June 2013.

4.4 Further Submissions

Marrickville Council provided further comments in response to the Proponent's Response to Submissions which acknowledged that some of its previous concerns had been addressed. However, the following matters have not been resolved to Council's satisfaction:

- reduction in the width of the William Street footpath;
- conversion of retail space to residential;
- provision of affordable housing; and
- variation of the solar access requirements.

Two additional submissions were received from the public in response to the re-notification which raised concerns about the accuracy of the documentation accompanying the application, the ability of William and Brown Streets to accommodate two-way traffic and on-street parking, noise impacts associated with the relocated loading dock and concern about road widening at the corner of Longport Street and Old Canterbury Road.

5. ASSESSMENT

The Department considers the key assessment issues for the proposed modification to be:

- provision of affordable housing;
- solar access;
- road / footpath widths in William Street;
- location of the loading dock; and
- conversion of ground floor spaces.

5.1 Affordable Housing

The Statement of Commitments which forms part of the Concept Plan approval commits to provide affordable housing units in the future redevelopment of the site. The commitment also stated that the quantum of units proposed would be resolved under future Project / Development Applications.

The Proponent originally sought to have the commitment for Affordable Housing to be deleted on the basis that there is no statutory requirement or mandated policy for affordable housing provision. In response to concerns raised by Council and the Department, the Proponent's PPR confirms the commitment to provide a component of affordable housing. However it further seeks to amend this Commitment to clarify the mechanism for providing affordable housing within the development, through either participation in the National Rental Affordability Scheme (NRAS) or another similar scheme.

The NRAS is an Australian Government program to invest in affordable rental housing. The scheme addresses the shortage of affordable rental housing by offering tax-free financial incentives per annum (indexed annually) for each approved dwelling rented at 20% below current market rates for a period of 10 years.

Properties which qualify for participation in the NRAS are located in potential high growth areas, with a strong rental demand or an under supply of rental stock. To qualify for the scheme the dwellings must be brand new, self-contained, built to the highest standards, and be indistinguishable from equivalent properties in the market.

Participants who are approved by the scheme may build, own, finance or manage NRAS dwellings.

Council's comment

In its submission to the PPR, Council raised concern that the wording of the amended commitment lacks clarity and that affordable dwelling numbers are not specified, nor is there any clear indication as to the method of providing the affordable housing.

Council has expressed the view that a commitment to the quantum of affordable housing should be included in the Statement of Commitments and recommends that the rate be calculated using the model employed in other contemporary environmental planning instruments (for example, Sydney LEP 2012), being 3% of residential floor space and 1% of non-residential floor space.

Council has raised concern about the Proponent's statement that the affordable housing may be provided under the NRAS. Whilst the Proponent is able to apply to participate in the NRAS, there is potential uncertainty about when this would occur and whether such an application would be successful. Council argues that the provision of affordable housing should not be tied to the applicant being approved as a provider under the NRAS.

Council has therefore advised that it would prefer to accept a cash contribution in lieu of floor space based on the value of the floor space calculated in accordance with the abovementioned rates and Council has recommended that details of this arrangement should be included in the VPA for the development.

Department's comment

In its original assessment and as agreed by the PAC, the Department considered that the Statement of Commitment to provide affordable housing (the quantum of which would be resolved as part of future applications) to be acceptable. Noting that this issue is now being considered in more detail, the Department supports Council's view that a rate of provision for affordable housing should be stipulated in the Concept Approval as it provides a degree of certainty for all parties.

In response to the above noted concerns from Council and also in further negotiation with the Department, the Proponent has clarified that it will provide 3% of the total dwelling yield as affordable housing. Further, it has clarified that this housing will be provided through the NRAS or alternatively be provided at a 20% rental discount for a period of 7 years.

In consideration of the proposed 3% provision of dwelling yield, the Department examined Council's comments and other similar schemes, as discussed below.

Applying the rate recommended by Marrickville Council of 3% of residential floor space and 1% of non-residential floor space equates to approximately 960m² which translates to approximately 17 dwellings, assuming an average size per unit of 55m².

The affordable housing provision offered by the recently approved Allied Mills project (located to the west of the site) which has Concept Approval for a yield of between 280 and 300 dwellings is 10 dwellings, equating to 3 – 3.5% of total dwelling yield.

In view of the close proximity of the Allied Mills and Lewisham developments and the similarities in terms of housing typology and the large scale of both projects, the Department considers it reasonable to apply a comparable rate for the provision of affordable housing.

Applying a 3% rate to the total dwelling yield for the Lewisham Estate project (based on a current yield of 362 apartments) would result in an affordable housing component of 11 dwellings.

The Department therefore considers that the provision of affordable housing at a rate of 3% of the total dwelling yield is acceptable.

In relation to the mechanism for providing the affordable units, the Department notes that there is a range of models available for the delivery including:

- participation in the NRAS; or
- transfer of management of affordable housing units to community housing providers; or
- dedication of affordable housing units to council; or
- contributions in lieu.

The Department considers that the underlying commitment to provide affordable housing is consistent with the original Concept Plan approval that was supported by the PAC. This is now reinforced by the inclusion of a specific rate (3% of dwelling yield) which establishes the quantum of affordable housing provided as part of the development.

Whilst noting the various options and models available to facilitate the delivery of the affordable housing component, the Department considers that it is appropriate that the dwellings be provided on site as part of the development. This is consistent with the approach adopted for the Allied Mills development and is considered to be an environmentally and socially

responsible approach having regard to the nature of the development and its proximity to a range of transport options, employment, services and facilities.

The Department notes that the Proponent's offer of a 20% reduced rental discount for a period of 7 years is not consistent with the same discount over a 10 year period that is provided for under the NRAS. The Department therefore does not support the Proponent's offer as it appears to provide an inconsistent and potentially substandard approach to the provision of affordable housing.

The detail associated with arrangements for the supply of affordable housing and also the identification of these units and their distribution throughout the development is most appropriately resolved between the Proponent and Council, as part of future development applications.

Having regard to the above, the Department recommends the inclusion of the following future assessment requirement:

Affordable Rental Housing

28. Future Development Applications shall demonstrate the provision of affordable rental housing equivalent to 3% of total dwelling yield.

The Proponent shall ensure that the appropriate arrangements are made to provide the affordable housing units on site to Council's satisfaction.

5.2 Solar Access

The Concept Plan approval requires that 70% of dwellings be provided with a minimum of 3 hours solar access between 9.00am and 3.00pm in mid-winter. The proposal seeks to vary the solar access requirement from a minimum of 3 hours to a range of between 2 and 3 hours.

Proponent's justification

The Proponent has advised that at the time the original Concept Plan was prepared, the plans had insufficient detail to undertake an accurate solar study for each dwelling. However a conceptual study was undertaken which indicated that 73% of the dwellings could achieve a minimum of 3 hours solar access.

The project has since been the subject of detailed design development and apartment layouts, balconies and other variations in the facades have been finalised. This has been the subject of a more detailed modelling exercise, which now indicates that the solar access performance across the development is as follows:

Building No.	Hours Solar Access / number of units (%)
A	3 hours / 55 units (74%)
B	2 hours / 42 units (70%)
C	2 hours / 45 units (70%)
D	2.5 hours / 48 units (75%)
E	2.5 hours / 28 units (70%)
F	2.5 hours / 27 units (75%)
G	2 hours / 18 units (75%)

Council's comment

Council maintains its objection to the variation of this requirement on the basis that an inability to achieve the Concept Plan requirement of 3 hours solar access to a minimum of 70% of apartments between 9.00am and 3.00pm in mid-winter reflects the excessive scale of the development.

Although the modification would comply with Council's DCP requirements for solar access (2 hours of sunlight access to 65% of apartments between 9.00am and 3.00pm in mid-winter), Council has advised that it would like to see a higher standard applied to this development, which could be achieved if the scale of the development was appropriate. The fact that surrounding development is of lower density adds further argument for a higher solar access standard to be achieved.

Department's comment

In its original assessment of the Concept Plan the Department noted the ability for the scheme to provide 3 hours of solar access and included a future assessment requirement to this effect.

The Department notes that the RFDC indicates that in higher density urban areas at least 70% of apartments should receive a minimum of 2 hours direct sunlight access between 9.00am and 3.00pm in mid-winter.

The Proponent's analysis demonstrates that 55 dwellings or 15% of the total number of apartments can achieve 3 hours solar access and a further 28% receive a minimum of 2.5 hours, resulting in 43% of apartments achieving between 2.5 and 3 hours of solar access to primary living areas and private open space in mid-winter. Calculated across the entire development, 263 dwellings or 73% of apartments receive a minimum of 2 hours solar access, which satisfies the rule of thumb set out in the RFDC.

The Department acknowledges Council's comments regarding the low density character of the surrounding area. The Department notes however that the approved Concept Plan is for a high density urban environment and sits within a wider high density precinct (McGill Street Precinct).

Having regard to the urban context of the site, its orientation and the density of the approved development, the Department considers the variation to the solar access, within the parameters described above, to be reasonable. Noting that the proposed level of solar access to the dwellings exceeds the requirements of both the RFDC rules of thumb and Council's DCP requirements, it is considered that future residents will achieve a good level of internal amenity in this regard.

It is recommended that the Concept Plan Approval be amended in the following manner:

Residential Amenity

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 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 mid winter; and~~
 - (a) at least 70% of apartments within the Building A envelope shall receive a minimum of 3 hours solar access to living areas and balconies in mid winter;**
 - (b) at least 70% of apartments within Building envelopes D, E and F shall receive a minimum of 2.5 hours solar access to living areas and balconies in mid winter;**
 - (c) at least 70% of apartments within Building envelopes B, C and G shall receive a minimum of 2 hours solar access to living areas and balconies in mid winter; and**
 - (b)(d) a minimum of 60% of apartments within each building are capable of being naturally cross ventilated.**

5.3 William and Brown Streets Road / Footpath Widths

The Concept Plan approval requires that William and Brown Streets shall be a minimum of 9.6 metres wide, comprising a 6 metre wide carriageway (as exists) and the provision of 1.8 metre wide footpaths on each side.

The proposal seeks to amend the requirements associated with road and footpath widths in William and Brown Streets to delete the requirement to provide a 1.8 metre wide footpath on the northern side of William Street and the eastern side of Brown Street. The Proponent has however confirmed that it will provide a 1.8 metre wide path, associated kerbs and gutters on the southern side of William Street and the western side of Brown Street, adjacent to the site.

Proponent's justification

The Proponent has indicated that it is unreasonable to require the provision of a 1.8 metre pedestrian path on the northern side of William Street and on the eastern side of Brown Street given that this part of the McGill Street Precinct (block defined by Old Canterbury Road, Longport Street, William Street and Brown Street) is yet to be developed.

Council's comment

Council has confirmed that the provision of a 1.8m wide footpath on the southern side of William Street is required, but that the existing carriageway and footpath on the northern side can be maintained at their current widths. No comment was made in relation to Brown Street.

Department's comment

In its assessment of the original Concept Plan, the Department required the provision of 1.8 metre wide footpaths on both sides of William and Brown Streets in anticipation of the additional pedestrian activity in the higher density environment and on the basis that it would be consistent with footpath widths elsewhere in the McGill Street Precinct.

In reviewing this issue, it is noted that the block bounded by Old Canterbury Road, Longport Street, William Street and Brown Street is also part of the McGill Street Precinct and as such may be redeveloped for a high density residential development. Accordingly, the Department considers that the construction of new 1.8 metre wide footpaths on the northern side of William Street and the eastern side of Brown Street may reasonably be borne by any (future) developer of the land to the north of the Concept Plan site.

It is noted that this arrangement may require the dedication of land from the Concept Plan site along both the William and Brown Street frontages. The mechanism for this dedication may be resolved as part of the assessment of the future development application with Council.

It is recommended that the Concept Plan be modified to reflect these arrangements, as follows:

Road Works

18. Future Development Applications shall provide for minimum road widths as follows:

- ~~(a) William and Brown Streets shall be a minimum of 9.6 metres (6 metre carriageway and 1.8 metre footpaths on each side);~~
- (a) **The William Street carriageway shall be a minimum of 6 metres. A new 1.8 metre wide footpath shall be constructed along the southern side of the street along the entire length of the Concept Plan site;**
- (b) **The Brown Street carriageway shall be a minimum of 6 metres. A new 1.8 metre wide footpath shall be constructed along the western side of the street along the entire length of the Concept Plan site;**
- (b)(c) **Hudson Street shall be a minimum of 6 to 8.5 metres (6 metre carriageway and 2.5 metre indented parking bays); and**

(e)(d) the north-south street (private road) shall be a minimum of 9.5 metres (5.5 metre carriageway, 3 metre footpath on the eastern side and 1 metre footpath on the western side).

Note: Appropriate arrangements shall be made for those parts of the new footpaths on the southern side of William Street and the western side of Brown Street that are currently on private land, to be dedicated to Council.

5.4 Location of Loading Dock

In its determination of the Concept Plan, the PAC imposed a modification (Condition B2 Schedule 2) on the approval which required the deletion of the loading facilities shown on the Longport Street frontage at the north western corner of the site, adjacent to the Building D envelope and the light rail corridor. Amended plans demonstrating compliance with this modification were required to be submitted to and approved by, the Director-General.

The Proponent now seeks to provide a loading dock on the ground floor at the eastern end of the Building D envelope, on the Brown Street frontage of the site (**Figure 5**).

Proponent's justification

A range of options for the location of these facilities has been investigated and having regard to the site constraints. The eastern end of Building D (on the Brown Street frontage of the site) has been identified as the best possible location.

Council's comment

Council notes the proposed location for the loading area and has assumed that the primary waste collection area would also be located at this point. Council supports this arrangement in principle, providing the area is appropriately designed to minimise visual and other impacts on the public domain and existing/future residents. Council also notes that William and Brown Streets will also need to be treated in a manner to ensure the safe movement (and parking) of trucks, cars, pedestrians and cyclists.

Public submissions

A number of residents in the block bounded by Old Canterbury Road, Longport, William and Brown Streets raised concerns about the proposed location of the loading dock, primarily in terms of the potential for conflict between commercial vehicles and resident's cars and noise impacts.

Department's comment

Council's in principle support to the location of the loading dock is noted.

The Department notes that William and Brown Streets are limited to left-in / left-out traffic movement and will operate primarily as access roads to the basement car park. As all parking for residents and visitors to the Concept Plan site is provided within the basement, it is unlikely the development will generate additional demand (beyond existing) for on-street parking.

The existing form and function of William Street / Brown Street is typical of small roads in the Inner West which fulfill a service function. The Department is of the opinion that the location of the loading dock is appropriate in this context.

Notwithstanding the above, the Department notes that the design details, including vehicle manoeuvring areas will need to be resolved as part of future development applications. Accordingly the following additional future assessment requirement is recommended:

Loading Dock

29. Future development applications shall demonstrate a suitable design treatment to the loading dock on the ground floor, at the eastern end of Building D and which addresses the following matters:

- (a) the means of minimising visual impacts on the public domain;**
- (b) noise management measures to preserve the amenity of adjoining dwellings, including proposed hours of operation;**
- (c) full details of swept paths demonstrating the ability of service vehicles to safely manoeuvre in and around the facility without adversely impacting traffic flows in William and Brown Streets.**

5.5 Conversion of ground floor spaces

The Concept Plan approval made provision for approximately 643m² of ground floor retail floor space and 720m² of commercial floor space potentially able to be provided as live/work space in the ground floor of SOHO-style apartments.

The ground floor retail uses were approved adjacent to the main area of public open space and the light rail stop (Buildings A and C), while the commercial floor space was intended to be provided on the ground floor in Building E, which showed the entire ground floor of the building as potentially providing live/work space and in Building G on the Old Canterbury Road frontage.

The proposed modification involves redefining the specific requirements for ground floor retail and commercial floor space in Buildings A, E and G. In particular, the Proponent seeks approval to:

- delete ground floor retail / commercial in Building A along the western access road;
- introduce the concept of "dual use" spaces at the ground floor of Buildings E and G where they address Old Canterbury Road.

It should be noted that only configuration changes are proposed to the retail component on the ground floor of the southern end of Building A, adjacent to the light rail stop or the retail component on the ground floor of the southern end of Building C where it addresses the central park.

Figure 5 provides a comparison between the approved Concept Plan and the amended land use arrangement.

Proponent's Justification

The deletion of the requirement for non-residential space at ground floor in Building A along the western access road is sought on the basis of there being a likelihood of lesser pedestrian traffic, thereby potentially compromising the viability of such space.

Dual use spaces are a universal design practice that ensures a space can be used or easily adapted for use as either residential or non-residential purposes. This practice allows important street level spaces to remain active and occupied. If retail or commercial space is in demand, these ground floor spaces would be used as such, but in times of lower demand for retail and / or commercial floor space, these areas can be occupied for residential purposes.

Council's comment

Council reiterated the importance of retaining the retail / commercial floor space on the ground floor at the southern end of Building A in the area fronting Hudson Street, which is required to serve the light rail station and activate the public park. It made no specific comment regarding Building C.

No objection was raised to the deletion of the requirement for non-residential space in Building A along the western access road.

In relation to the proposal for "dual use" space Council notes the rationale for allowing flexibility in converting retail to residential use and raises no objection to such conversion in any building provided that retail and / or commercial uses are retained on the ground floors of Buildings E and G fronting Old Canterbury Road to provide active uses in this part of the site.

Department's comment

Council's position in relation to the activation of the Old Canterbury Road frontage (ground floor of Buildings E and G) is noted. However the Department believes that the retail and commercial land uses at the ground floor of the buildings adjacent to the open space and light rail stop are more strategically important in ensuring the access to the light rail along the public open space is activated. Furthermore, in light of the through-site links it is likely that Old Canterbury Road will carry lesser volumes of pedestrian traffic.

The dual use approach to the Old Canterbury Road frontages of Buildings E and G has the advantage of ensuring that the ground floor of these buildings will be occupied and it is considered that the proposed dual use will allow for a flexible approach to ensure the uses better respond to changing demand. On this basis, the Department is prepared to support the proposed modification to allow "dual use" in these areas.

The Department also supports the proposal to delete the requirement for non-residential ground floor uses along the western internal access road.

5.6 Other Issues

A number of other issues were raised during the exhibition period and are discussed below.

5.6.1. ESD Requirements

A Commitment was provided as part of the Concept Plan approval that committed to the consideration of sustainability measures as detailed in the ESD Report which accompanied the original Environmental Assessment.

The Proponent seeks to amend the Commitment in relation to the scope of ESD initiatives to be employed in the development, by updating the reference to the ESD Report.

The Proponent has confirmed its commitment to the implementation of a range of ESD initiatives and has submitted a revised ESD Report which reflects the design development since the Concept Plan was approved.

Council has advised that it supports the proposed modification.

The revised ESD Report details the initiatives to be incorporated in the development, including building materials, methods of heating and cooling, energy efficiency and water conservation.

Having regard to the above and in light of Council's comment in this regard, the Department is satisfied that the proposal is consistent with the principles of ESD and that the revised ESD Report makes appropriate and relevant recommendations in relation to the proposed development.

It is recommended that the Future Assessment Requirements be amended as follows:

ESD

6. Future Development Applications 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 **as detailed in the ESD report prepared by Efficient Living, dated 3 April 2013.**

5.6.2. Publicly Accessible Open Space

Concern was raised by Council and in the public submissions in relation to changes to the quantity and location of publicly accessible open space and private open space.

The Proponent has confirmed as part of its Response to Submissions that the publicly accessible open space between Buildings C and F has been reinstated as originally approved in the Concept Plan to maintain pedestrian through-site links and optimise permeability of the scheme.

The Department is of the view that this issue has been satisfactorily resolved.



Figure 5: Comparison illustrating amendments to the Land Use Plan showing location of "dual use" spaces and location of proposed loading dock

5.6.3. Road Widening

A number of the public submissions raised concern about road widening being shown on the Concept Plan at the corner of Old Canterbury Road and Longport Street.

Marrickville Council has confirmed that there is no provision for road widening at this location. The Proponent has amended the Concept Plans accordingly.

5.6.4. Building A Footprint

Council raised concern that the amended Concept Plan appeared to alter the footprint at the southern end of Building A and encroach on sightlines to the light rail stop.

The Proponent has confirmed that there is no change to the southern end of the footprint of Building A and as a consequence, the Department considers that this issue has been resolved.

6. CONCLUSION

The Department has assessed the application and has considered the submissions and the Proponent's response to submissions. The key issues relate to:

- provision of affordable housing;
- solar access;
- road / footpath widths in William Street;
- location of the loading dock; and
- conversion of ground floor spaces.

The Department is satisfied that the proposed modification is acceptable, subject to the conditions recommended in the instrument of approval.

It is noted that the issues raised by Council regarding the quantum of affordable rental housing, the width of the footpaths in William and Brown Streets and the location of the loading dock have been satisfactorily resolved either by amended plans or through conditions recommended in the instrument of approval.

In relation to the solar access requirements and the proposed dual use of ground floor spaces in Buildings E and G, the Department is satisfied that the proposed modifications are reasonable having regard to the urban context of the site.

The Department supports the proposed modifications as outlined in this report and it is therefore recommended that the application be approved subject to the modified conditions.


7. RECOMMENDATION

It is recommended that the Planning Assessment Commission:


- (a) **Consider** the findings and recommendations of this report;
- (b) **Approve** the modification, subject to modified terms of approval and conditions under Section 75W of the *Environmental Planning and Assessment Act 1979*; and
- (c) **Sign** the attached Instrument of Modification for MP 08_0195 (**Appendix D**).

Prepared by: Helen Mulcahy
Planner, Metropolitan & Regional Projects South

Endorsed by:

 27.6.13.

Ben Lusher
Acting Director
Metropolitan & Regional Projects South

 27/6/13

David Kitto
A/Executive Director
Development Assessment Systems & Approvals

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation executed on 14 September 2011, the Planning Assessment Commission of New South Wales (the Commission) determines to approve the modification to the concept plan referred to in Schedule 1, subject to the terms of approval in Schedule 2, future assessment requirements in Schedule 3 and the Proponent's Revised Statement of Commitments in Schedule 4.

Member of the Commission

Sydney

2013

SCHEDULE 1

Concept Approval: **MP 08_0195** granted by the Planning Assessment Commission on 15 March 2012.

For the following: Mixed use residential, retail and commercial development at 78-90 Old Canterbury Road, Lewisham consisting of:

- residential building retail and commercial floor space;
- basement car parking;
- publicly accessible open space and through site links;
- road works; and
- pedestrian and cycle pathways.

Modification: **MP 08_0195 MOD 1** includes various amendments to the Concept Plan including the re-alignment of the space between Buildings A and B, the introduction of the concept of "dual use" spaces to provide flexibility in providing ground floor retail / commercial floor space, changes to solar access requirements, clarification around the provision of affordable housing, treatment of the public domain, relocation of the loading dock and amending the Terms of Approval and the Statement of Commitments.

SCHEDULE 2

The above approval is modified as follows:

- (a) *Term of Approval A2 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~stuck-out~~ words / numbers as follows:*

Development in Accordance with the Plans and Documentation

A2 The development shall be undertaken generally in accordance with:

- the Environmental Assessment dated October 2010 prepared by Planning Ingenuity, except where amended by the Preferred Project Report dated August 2011 and the Response to PPR submissions dated 30 November 2011 including all associated documents and reports **and the Statement of Commitments prepared by Planning Ingenuity as amended by;**
- ~~the Statement of Commitments prepared by Planning Ingenuity; and~~
- Section 75W Application to MP08 0195 (Modification 1) and the Environmental Assessment dated January 2013 prepared by Meriton Property Services Limited, except where amended by the Response to Submissions dated 23 April 2013 prepared by Meriton Property Services Limited and** the following drawings:

Drawing No.	Name of Plan	Drawn By	Date
12.2 <u>(Rev E)</u>	Concept Plan	Tony Owen Partners	November 2011 <u>16 May 2013</u>
12.3 <u>(Rev E)</u>	Traffic, Access & Parking	Tony Owen Partners	November 2011 <u>16 May 2013</u>
12.4 <u>(Rev F)</u>	Land Use	Tony Owen Partners	November 2011 <u>20 June 2013</u>
12.5 <u>(Rev E)</u>	Building Height	Tony Owen Partners	November 2011 <u>16 May 2013</u>
22.1 (800 Revision D <u>E</u>)	Green Space Calculation Analysis	Tony Owen Partners	22.11.11 <u>19 April 2013</u>

except for as modified by the following pursuant to Section 75O(4) of the Act.

SCHEDULE 3

- (b) *Future Assessment Requirement 4. is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~stuck-out~~ words / numbers as follows:*

Residential Amenity

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 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 mid winter; and~~

- (a) at least 70% of apartments within the Building A envelope shall receive a minimum of 3 hours solar access to living areas and balconies in mid winter;
 - (b) at least 70% of apartments within Building envelopes D, E and F shall receive a minimum of 2.5 hours solar access to living areas and balconies in mid winter;
 - (c) at least 70% of apartments within Building envelopes B, C and G shall receive a minimum of 2 hours solar access to living areas and balconies in mid winter; and
 - ~~(b)~~(d) a minimum of 60% of apartments within each building are capable of being naturally cross ventilated.
- (c) Future Assessment Requirement 6 is amended by the insertion of the **bold and underlined** words and deletion of the ~~stuck-out~~ words as follows:

ESD

6. Future Development Applications 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 **as detailed in the ESD Report prepared by Efficient Living, dated 3 April 2013.**
- (d) Future Assessment Requirement 10 is amended by the insertion of the **bold and underlined** words and deletion of the ~~stuck-out~~ words as follows:

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: **with the exception of the proposed loading dock located on the ground floor, at the eastern end of the Building D envelope. Detailed plans shall be submitted to Council as part of future development applications which demonstrate the provision of adequate vehicle manoeuvring areas.**
- (e) Future Assessment Requirement 18 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~stuck-out~~ words / numbers as follows:

Road Works

18. Future Development Applications shall provide for minimum road widths as follows:
- ~~(a) William and Brown Streets shall be a minimum of 9.6 metres (6 metre carriageway and 1.8 metre footpaths on each side);~~
 - (a) **The William Street carriageway width shall be a minimum of 6 metres. A new 1.8 metre wide footpath shall be constructed along the southern side of the street along the entire length of the Concept Plan site;**
 - (b) **The Brown Street carriageway shall be a minimum of 6 metres. A new 1.8 metre wide footpath shall be constructed along the western side of the street along the entire length of the Concept Plan site;**
 - ~~(b)~~(c) Hudson Street shall be a minimum of 6 to 8.5 metres (6 metre carriageway and 2.5 metre indented parking bays); and
 - ~~(c)~~(d) the north-south street (private road) shall be a minimum of 9.5 metres (5.5 metre carriageway, 3 metre footpath on the eastern side and 1 metre footpath on the western side).

Note: Appropriate arrangements shall be made for those parts of the new footpaths on the southern side of William Street and the western side of Brown Street that are currently on private land, to be dedicated to Council.

- (f) Future Assessment Requirement 21 is amended by the insertion of the **bold and underlined** words and deletion of the ~~stuck-out~~ words as follows:

Sydney Airports

21. Future applications shall demonstrate all necessary approvals have been obtained from **applications have been made to** Sydney Airports Commission and Air Services Australia.

- (g) Insert new Future Assessment Requirement 28 as follows:

Affordable Rental Housing

- 28. Future Development Applications shall demonstrate the provision of affordable rental housing equivalent to 3% of total dwelling yield.**

The Proponent shall ensure that the appropriate arrangements are made to provide the affordable housing units on site to Council's satisfaction.

- (h) Insert new Future Assessment Requirement 29 as follows:

Loading Dock

- 29. Future development applications shall demonstrate a suitable design treatment to the loading dock on the ground floor, at the eastern end of Building D and which addresses the following matters:**
- (a) the means of minimising visual impacts on the public domain;**
 - (b) noise management measures to preserve the amenity of adjoining dwellings, including proposed hours of operation;**
 - (c) full details of swept paths demonstrating the ability of service vehicles to safely manoeuvre in and around the facility without adversely impacting traffic flows in William and Brown Streets.**

SCHEDULE 4

STATEMENT OF COMMITMENTS (Source: Preferred Project Report)