

Proposal: Construction of a part 4 & part 10 storey residential flat development containing 123 residential units over 2 levels of basement parking accommodating 137 carparking spaces. The proposal has a capital investment value of more than \$20M and the consent authority is the Joint Regional Planning Panel.

Location:

Lot 11, DP 228782	1 – 7 Neil Street, Holroyd
Lot 1, DP 203553	9 – 11 Neil Street, Holroyd

Owner: Lot 11 Neil Street Pty Ltd

Applicant: Landmark Group Australia Pty Ltd

**Capital
Investment**

Value: \$22,770,600.00

File No: DA 2015/63/1

Author: Katrina Phippen, Town Planning Consultant
KP Planning – for Holroyd City Council

RECOMMENDATION

1. That the application proposing the construction of a part 4 & part 10 storey residential flat development containing 123 residential units over 2 levels of basement parking accommodating 137 carparking spaces be refused for the reasons as outlined in Attachment I of this report.

SUPPORTING DOCUMENTS

AT-A Site Locality Plan
AT-B Architectural Plans
AT-C Statement of Environmental Effects
AT-D Design Verification Statement
AT-E Traffic Report
AT-F Acoustic Report
AT-G Submissions
At -H Holroyd City Council Urban Design Review
AT-I Draft Refusal Notice

EXECUTIVE SUMMARY

This development application proposes the construction of a part 4 (Building 5) & part 10 (Building 6) storey residential flat development containing 123 residential units over 2 levels of basement parking accommodating 137 carparking spaces.

This report summarises the key issues associated with the development application (DA) and provides an assessment of the relevant matters of consideration in accordance with the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy No. 65 – Residential Flat Development (SEPP 65), State Environmental Planning Policy (Infrastructure) 2007, Holroyd Local Environmental Plan 2013 (HLEP 2013) and Holroyd Development Control Plan 2013 (DCP 2013).

The development is classified as Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979, as a Section 91 Controlled Activity Approval is required under the Water Management Act.

The application was placed on public exhibition for a period of 30 days from 4 March to 3 April 2015 wherein letters were sent to adjoining and surrounding owners and occupiers, an advertisement was placed in the local paper and a notice was placed on site. Three submissions were received in response.

The application was referred to Council's Development Engineering Section, Traffic Section, Landscaping Section, Environmental Health Unit, Waste Management Section, Strategic Planning Section, and Community Services Section (Social Planning and Accessibility). In addition, the application was referred externally to Council's Heritage Adviser, Council's Urban Design Adviser, Holroyd Police, Sydney Trains, Roads & Maritime Services, Sydney Water and NSW Office of Water. Their comments are summarised later in this report.

Development Application 2014/133/1 for the Stage 1 Masterplan for building footprints and envelopes for 6 residential buildings, basement parking, road network and open spaces and allocation of gross floor area across 1 – 11 Neil Street was refused by the Land and Environment Court on 27 March 2015. The subject DA is consistent with this Masterplan as it relates to Buildings 5 and 6.

The application is referred to the Sydney West Joint Regional Planning Panel for consideration pursuant to Clause 23G of the Environmental Planning & Assessment Act 1979. The development is for general development with a capital investment value in excess of \$20 million, so falls under Part 3 of Schedule 4A of the Act.

The proposal has been assessed by an independent Town Planning Consultant. There are several non-compliances with relevant Environmental Planning Instruments and Council's DCP.

Building 5 complies with the maximum height permitted under Holroyd LEP 2013, but Building 6 does not.

There are several non-compliances with the 'rules-of-thumb' under the Residential Flat Design Code (RFDC) and the numeric provisions of Council's DCP 2013. These are considered major and unacceptable under the circumstances of the case. It is considered that the objectives of the relevant provisions have not been satisfied.

It is considered that the proposed development is not appropriate for the site or for the locality and will have an adverse impact on the surrounding environment. Based on an assessment of

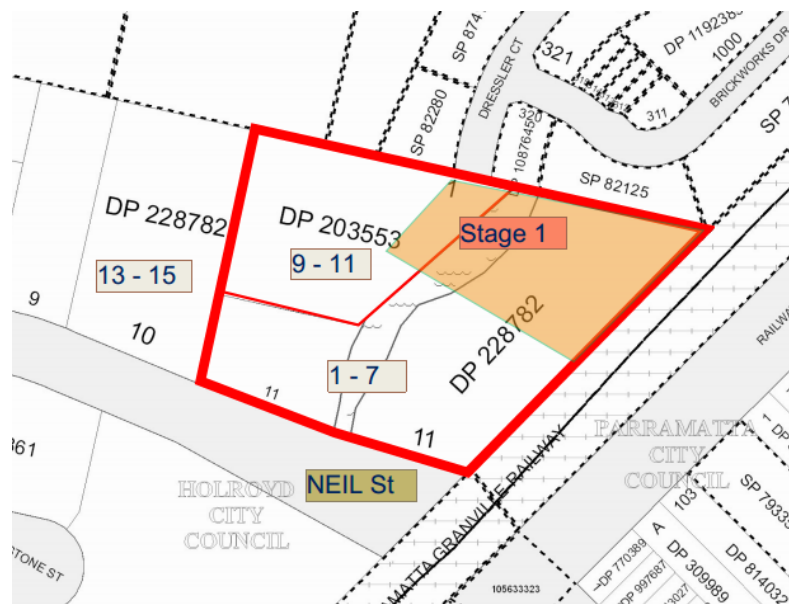
the application, it is recommended that the application be refused for the reasons outlined in Attachment I of this report.

SITE DESCRIPTION AND LOCALITY

The subject site includes 2 allotments, which are identified as follows:

Lot 11, DP 228782	1 – 7 Neil Street, Holroyd
Lot 1, DP 203553	9 – 11 Neil Street, Holroyd

The subject site is situated on the northern side of Neil Street, between the railway line and Pitt Street.



Site Plan

(Source: Base map Land & Property Information – modified by KP Planning)

1-11 Neil Street has a total site area of 15765m². It is adjoined to the north by:

- 42-50 Brickworks Drive – a 7 storey residential flat building (SP 82125)
- 25 Dressler Court – a 4 storey residential flat building (SP 82280)
- A section of Holroyd Gardens public reserve
- A section of public reserve at the corner of Brickworks Drive and Dressler Court
- Dressler Court

It is adjoined to the west by 13 -15 Neil Street, which contains a single storey industrial building. 13 -15 Neil Street has approval (DC 2012/493) for the demolition, subdivision into 2 lots, construction of 8 storey mixed use building containing 28 units and 2 commercial units on Lot A; construction of a part 7 and part 8 storey RFB containing 59 units on lot B. In total 87 units above 3 levels of basement carparking with 122 car spaces. A Section 96 modification to this DA was approved on 6 May 2015 to amend the layout of Block A including new vehicular access; a new basement level and modifications to Schedule A conditions.

The opposite side of Neil Street is occupied by an on grade carpark.

The area affected by the subject DA relates to Stage 1 only, which is 4625m² in area (there is some discrepancy in that some plans & documents show 4556m²). For the purposes of this report 'the site' refers to the area of Stage 1 only as outlined above.

The site is currently vacant with large areas of concrete surface. A driveway exists off Neil Street. The McLeod flour mill (Millmaster Feeds site) previously occupied the site, but all structures have now been demolished and the site is currently vacant except for a temporary shed for use as a site works office and display suites/sales office and associated signage located on 9-11 Neil St (DC 2014/568).

The site is traversed by a water course, A'Becketts Creek, which flows north into Duck Creek. The site is flood affected.

The site falls within the Merrylands Town Centre Precinct – Block 5 within Council's DCP 2013, Part M.

PROPOSAL

This application proposes the construction of a part 4 & part 10 storey residential flat development containing 123 residential units over 2 levels of basement parking accommodating 137 carparking spaces.

Specific details of the proposed development are as follows:

Residential Component

The proposal incorporates the construction of 123 residential units in 2 buildings, as follows:

Building 5

Building 5 is 4 storeys above basement levels, and contains 15 units:

- Ground floor containing 2 x 2 bedroom & 1 x 2 bedroom + study unit – total of 3 units.
- Level 1 containing 4 x 2 bedroom units - total 4 units.
- Level 2 containing 4 x 2 bedroom units - total 4 units.
- Level 3 containing 4 x 2 bedroom units - total 4 units.

The gross floor area of the units (excluding lobbies, foyers & corridors) in Building 5 is 1167m².

Building 6

Building 6 is 10 storeys above basement levels, and contains 108 units:

- Ground floor containing 2 x 1 bedroom, 4 x 1 bedroom + study units & 5 x 2 bedroom units – total of 11 units.
- Level 1 containing 3 x 1 bedroom + study units & 8 x 2 bedroom units – total of 11 units.

- Level 2 containing 3 x 1 bedroom + study units & 8 x 2 bedroom units – total of 11 units.
- Level 3 containing 3 x 1 bedroom + study units & 8 x 2 bedroom units – total of 11 units.
- Level 4 containing 3 x 1 bedroom + study units & 8 x 2 bedroom units – total of 11 units.
- Level 5 containing 3 x 1 bedroom + study units & 8 x 2 bedroom units – total of 11 units.
- Level 6 containing 3 x 1 bedroom + study units & 8 x 2 bedroom units – total of 11 units.
- Level 7 containing 3 x 1 bedroom + study units & 8 x 2 bedroom units – total of 11 units.
- Level 8 containing 2 x 1 bedroom + study units, 7 x 2 bedroom & 1 x 3 bedroom units – total of 10 units.
- Level 9 containing 2 x 1 bedroom + study units, 7 x 2 bedroom & 1 x 3 bedroom units – total of 10 units.

The proposal includes 25 adaptable housing units, all within Building 6.

The gross floor area of the units (excluding lobbies, foyers & corridors) in Building 6 is 7803m².

The total gross floor area of all units (excluding lobbies, foyers & corridors) is 8970m².

The overall development has the following unit mix:

2 x 1 bedroom units
 29 x 1 bedroom + study units
 89 x 2 bedroom units
 1 x 2 bedroom + study unit
 2 x 3 bedroom units

Parking

The proposal includes 2 levels of basement parking under the buildings. A total of 140 parking spaces are proposed, with the following breakdown:

- 74 residential spaces in basement 2 (including 14 adaptable)
- 63 spaces in basement 1 (including 11 adaptable & 14 visitor)
- 3 spaces along the street (extension of Dressler Court)

Three (3) lifts (one within Building 5 and two lifts within Building 6) provide internal access to all residential floors above. There are 3 stairwells up from the basement but these do not provide internal access to the units – they provide fire egress to the ground level.

The plan notes that 28 bicycle spaces are provided but only 14 bicycle spaces are shown in Basement 2.

Storage cages for resident storage are shown adjacent to most residential parking spaces.

No carwash bay has been provided.

Bin Storage

A small bin room is located on the ground floor between the main pedestrian entrance and driveway, which is somewhat separated from the units. A larger bin room is located within basement 1. A chute connects these 2 bin rooms. Two garbage rooms are also located within basement 1 next to the lifts with garbage chutes provided within the floors above.

Communal Open Space (COS)

The proposal includes a total of 1126m² of COS (excluding strips less than 4m wide), which is in 3 'spines' rather than one consolidated parcel. Of this, 759.5m² is on podium, and 366.5m² is deep soil.

SECTION 79C OF THE EP&A ACT

The application has been assessed against the relevant matters for consideration under Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* as amended. The assessment is as follows:

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) *the provisions of:*

(i) *Any environmental planning instrument*

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

BASIX Certificate No. 605119M dated 11 Feb 2015 has been submitted with the application and demonstrates that the proposed development meets the required water, thermal comfort and energy targets. However, the following discrepancies are noted:

- The Certificate states that there are 134 residential car spaces, but plans show 137 in basements.
- The Certificate states that the site area is 4556m², but plans show 4625m².
- A 15000 litre central rainwater tank is to be provided, but this has not been shown on the plans.

State Environmental Planning Policy No. 55 – Remediation of Land

Under the provisions of Clause 7 of SEPP 55 the consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. If the land is found to be contaminated, the Consent Authority must be satisfied that the land is suitable in its contaminated state or can and will be remediated in order for it to be suitable for the purpose for which the development is proposed.

Part of the site (being 1-7 Neil St) has been remediated in accordance with a remedial action plan and Council notes that a Site Audit Statement & Site Audit Report has been submitted for 1-7 Neil Street, Holroyd. However, no Site Audit Statement or Site Audit Report has been submitted for 9-11 Neil Street, Holroyd.

As the planning authority is the JRPP, the authority needs to be satisfied that the proposed development is suitable for the land use. For a planning authority to determine this, the authority needs to ensure that the Site Audit Statement / Site Audit Report states that the land has been remediated to the appropriate type of land use. The planning authority also needs to ensure that there are no conditions on the Site Audit Statement / Site Audit Report that would impact on the proposed development.

In this regard, since insufficient information has been provided to Council to determine whether 9-11 Neil Street is suitable for the proposed use, in accordance with SEPP 55 guidelines, development consent should not be issued until such time as the applicant demonstrates that the site is suitable for the proposed use.

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

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings (SEPP 65) is part of a suite of documents developed by the State Government in an effort to improve the quality of design in residential flat buildings. The Policy was introduced in 2002 and recognises that the design quality of residential flat development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.

The Policy identifies 10 quality design principles which are applied by consent authorities in determining development applications for residential flat buildings. The design principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merits of the proposed solutions.

By virtue of its height and number of dwellings, the proposed development is subject to SEPP 65 considerations. A design verification statement has been submitted from the registered architect who designed the building. The architect states that he designed the project, has considered and achieved the objectives contained in the 10 design quality principles set out in Part 2 of the SEPP 65 policy.

Principles 1 Context, 2 Scale, 3 Built Form, 6 Landscape, 7 Amenity and 10 Safety and Security were issues of contention when the Land and Environment Court considered DA 2014/133/1 for Stage 1 Masterplan, which was refused. The subject DA relies upon the same Stage 1 concept as refused, thus these principals are still in contention.

Clause 30(2) of SEPP 65 requires Council to take into consideration the Department of Planning's publication titled *Residential Flat Design Code*.

It should be noted that a comprehensive review of SEPP 65 has recently been completed. This has resulted in amendments to SEPP65 and a new Apartment Design Guide to replace the RFDC. In accordance with the transitional provisions, the subject DA is not to be considered under the amended SEPP or the new Guide. Accordingly, an assessment of the proposal against the main provisions of the *Residential Flat Design Code (RFDC)* is presented in the table below:

Part 1 – Local Context

Primary Control	Guideline	Provided	Compliance
Building height	To ensure the proposed development responds to the desired scale and character of the street and local area and to allow reasonable daylight	Holroyd LEP stipulates a maximum height of 29 metres where the Stage 1 buildings are located. Building 5 has a maximum	Building 5- Yes Building 6- No (see

	access to all developments and the public domain.	height of 14.1m. Building 6 has a maximum height of 31.95 metres.	discussion below LEP table)
Building depth	Generally, an apartment building depth of 10 – 18 metres is appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.	Building 5 is 13.5m wide including balconies, & 11.2 glassline to glassline. Building 6 is 22.35m including balconies; 20.4 (occupied by 2 units) glassline to glassline & 18.4 cross-thru units glassline to glassline	Building 5 - Yes Building 6 – No (see discussion below DCP table)
Building separation (BS)	<p>Up to 4 storeys (12m) -</p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies; • 19m between habitable rooms/balconies and non-habitable rooms; and • 6m between non-habitable rooms <p>5 to 8 storeys (up to 25m) -</p> <ul style="list-style-type: none"> • 18m between habitable rooms/balconies; • 13m between habitable rooms/balconies and non-habitable rooms; and • 9m between non-habitable rooms <p>9 storeys & above (over 25m)-</p> <ul style="list-style-type: none"> • 24m between habitable rooms/balconies; • 18m between habitable rooms/balconies and non-habitable rooms; and • 12m between non-habitable rooms 	<p>Building 5 is 4 storeys and Building 6 is 10 storeys.</p> <p>Buildings 5 & 6 are adjoined by 42-50 Brickworks Drive to the north which contains a 7 storey RFB setback 3m from the boundary. Proposed Stage 2 (Buildings 3 & 4) adjoin to the south, which have potential for 29m high (9 or 10 storey) RFB.</p> <p>Building 5: <u>North side:</u> As Building 5 does not go over 4 storeys, and 42-50 Brickworks Drive RFB is 7 storeys, it is considered reasonable to apply the building separation (BS) that applies for up to 4 storeys.</p> <p>A 6m setback is provided to most of the northern elevation of Building 5, which results in a 9m BS (does not comply – need 12m). While Building 5 has provided ‘its share’ for most of Building 5 it does have balconies and kitchen walls encroaching by about 1.8m into this 6m setback.</p> <p><u>South Side:</u> As Building 5 does not go over 4 storeys, and proposed Building 3 can go over 25m (so 9 or 10 storeys), it is considered reasonable to apply BS that applies for up</p>	No

		<p>to 4 storeys. There is no formal boundary in this location.</p> <p>Only 5.01m is provided between Building 3 & ground and level 1 of Building 5.</p> <p>Only 7.26m is provided between Building 3 & level 2 & 3 of Building 5, with about 1.4m encroachment by balcony edges. Does not comply - needs 12m.</p> <p>Building 6: <u>North side:</u> As Building 6 is 10 storeys, and 42-50 Brickworks Drive RFB is 7 storeys, it is considered reasonable to apply BS that applies for up to 8 storeys.</p> <p>A 6m setback is provided to the northern elevation of Building 6, which results in a 9m BS (does not comply – need 18m & subject Building 6 has not provided its 9m ‘share’ to boundary).</p> <p><u>South Side:</u> As Building 6 is 10 storeys, and proposed Building 4 can go over 25m (so 9 or 10 storeys) must apply BS that applies for up to 9 storeys & over. There is no formal boundary in this location.</p> <p>Only 9m is provided between Building 4 & Building 6 up to level 7 with balconies encroaching 1.2m for levels 1-3 resulting in a separation of 7.8m. Does not comply – even if Council applied the BS for 5-8 storeys need 18m.</p> <p>Only 12m is provided between Building 4 & level 8 & 9 of Building 6, with</p>	<p>No</p> <p>No</p> <p>No</p>
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		<p>terrace at level 8 being 9m. Does not comply - need 24m.</p> <p>Between Buildings 5 & 6: As Building 5 does not go over 4 storeys, and Building 6 is 10 storeys, it is considered reasonable to apply BS that applies for up to 4 storeys.</p> <p>BS provided is 12m or more (Complies – need 12m)</p>	Yes
Street setbacks	<p>To establish the desired spatial proportions of the street and define the street edge. To relate setbacks to the area's street hierarchy.</p> <p>The RFDC does not nominate specific street setbacks.</p>	<p>Dressler Court is proposed to be extended. A swale with a bridge separates Building 5 from the street.</p> <p>Building 5 has no setback from the new boundary to be created along the swale (DCP 2013 Part M, Block 5 requires a 2.5m setback from the swale).</p>	No (see discussion below DCP table)
Side and rear setbacks	To minimise the impact of development on light, air, sun, privacy, views and outlook for neighbouring properties, including future buildings. Test side and rear setbacks with building separation, open space, deep soil zone requirements and overshadowing of adjoining properties.	<p>Part M Block 5 of DCP 2013 sets compliance with minimum building separation (BS) controls to the sides, & 6m rear setback, for lots running parallel with the railway.</p> <p>BS discussed above, does not comply.</p> <p>Building 6 runs parallel to the railway and provides 6m rear setback to walls. About 1m encroachment by balconies is proposed, which is considered acceptable.</p> <p>COS & shadow impacts are unsatisfactory, as the buildings have been oriented differently to the DCP 2013 with resultant unacceptable amenity impacts.</p>	<p>No to sides</p> <p>Yes to rear</p>
Floor Space Ratio (FSR)	To ensure that development is in keeping with the optimum capacity of the site and the local area. (FSR is not specified in the Design Code).	<p>Holroyd LEP 2013 stipulates an FSR of 2.8:1.</p> <p>The FSR proposed is 2.215:1 (when all stage 1 land area is used in calculation,</p>	Yes

		amenity to these apartments which should not occur within a large greenfield site.	
Orientation	<p>To protect the amenity of existing development, and to optimise solar access to residential apartments within the development and adjacent development.</p> <p>The RFDC indicates that sites should be planned to optimise solar access by positioning and orienting buildings to maximise north facing walls where possible and to provide adequate building separation.</p>	<p>The buildings have not been oriented as per DCP 2013, thus do not achieve optimum solar access.</p> <p>All of the units in Building 5 have reasonable solar access as their POS and living rooms face NW.</p> <p>Building 6 has 60 units with NW facing POS & 70 units with NW or NE facing living rooms. 38 units have SE facing living rooms, so have poor solar access.</p> <p>Insufficient shadow diagrams have been submitted to demonstrate the extent of overshadowing by Building 5 and by 42-50 Brickworks Drive upon the NW to NE facing POS and living rooms. It appears the lower levels will be overshadowed for most of the day.</p>	<p>No</p> <p>Yes</p> <p>No</p>
Stormwater management	To ensure adequate stormwater management.	The drainage design has been assessed by Council's Development Engineer and is not considered satisfactory.	No
Safety	To ensure residential developments are safe, and contribute to public safety.	<p>The application has been assessed by the NSW Police who have raised some concerns regarding opportunities for theft resulting from open car spaces & storage areas in the basement.</p> <p>Entrances to buildings are not visible from the street and serious issues arise from the lack of accessibility to the entrances, lack of natural surveillance, opportunities for concealment and excessive walking distances to building entrances.</p>	No
Visual privacy	To provide reasonable levels of visual privacy externally and	The building separation setbacks do not comply. It	Privacy -Yes

	<p>internally, during the day and at night.</p> <p>To maximise outlook and views from principal rooms and private open space without compromising privacy.</p>	<p>could be argued that visual privacy is maintained through the use of blank walls, minimal numbers of windows and louvered privacy screens – but this is at the expense of optimum orientation for solar access and outlook/views.</p> <p>Privacy between Buildings 5 & 6 is considered satisfactory as the building separation (BS) complies and Building 5 has its POS & living room windows facing away from Building 6.</p> <p>Outlook to the rear will be over the railway line.</p>	Views/ outlook - No
Building Entry	To create entrances with identity and assist in orientation for visitors.	The RFBs are accessed via a bridge over the swale. Their main entries are hidden from the street, and are not clear or direct which is a safety and security concern.	No
Parking	To minimise car dependency, whilst still providing adequate car parking.	Total number of parking spaces falls short by 5 spaces if studies are not counted as bedrooms. If studies are counted as bedrooms then parking falls short by 11 spaces. All required bicycle parking has not been clearly shown.	No
Pedestrian access	<p>Connect residential development to the street.</p> <p>Provide barrier free access to 20% of dwellings.</p>	<p>Barrier free access to all units is possible, given the level path/bridge from the street, however the distance to be travelled is onerous for disabled, elderly & small children. Lifts to all levels is proposed from the basements.</p> <p>There is problematic access for those moving in or out of units as trucks cannot access the basement, must park on the street (not supported by Traffic Committee) and move furniture at least 55m to the closest entry door.</p>	No
Vehicle	Limit width of driveways.	Vehicle access is separated	No

access	Locate driveways away from main pedestrian entries, and on secondary streets.	from the pedestrian access via a landscape divider (both via bridge over swale). A two-way driveway from the extension of Dressler Court to 2 basement levels of parking is proposed. Councils Traffic Engineer has assessed the plans & is not satisfied with the parking layout and on-street loading arrangements. There are several non-compliances with Australian Standards.	
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Part 3 – Building Design

Primary Control	Guideline	Relevant Control	Compliance			
Apartment layout	Depth of single aspect apartment – 8 metres	<p>All of the 15 units in Building 5 are single aspect, or have characteristics of single aspect*. All are deeper than 8m, up to 10.5m.</p> <p>There are 76 units within Building 6 which are single aspect or which are dual aspect with the characteristics of single aspect*. Of these 46 are deeper than 8m, up to 8.75m.</p> <p>The area beyond 8m from glassline is occupied by non-habitable floor area (part of bathroom, laundry, hallway or kitchen), so may be considered acceptable on amenity grounds.</p>	No but variation may be acceptable on amenity grounds			
	Back of the kitchen not more than 8 metres from a window.	16 units have kitchens with a window, 59 units have the back of kitchen further than 8 metres from a window.	No			
		The one bedroom units range from 55 to 66m ² . The 2 bedroom units range from 71m ² to 92m ² .	Yes for 1 & 2 bedroom units.			
	Apartment sizes:	The 3 bedroom units are 89m ² .	No for 3 bedroom units.			
	<table><tr><th>Dwelling Type</th><th>Minimum Area</th></tr><tr><td>Studio</td><td>40m²</td></tr></table>	Dwelling Type	Minimum Area	Studio	40m ²	
Dwelling Type	Minimum Area					
Studio	40m ²					

	<table><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>95m²</td></tr></table>	1 bedroom	50m²	2 bedroom	70m²	3 bedroom	95m²				
1 bedroom	50m²										
2 bedroom	70m²										
3 bedroom	95m²										
Apartment mix	To provide a diversity of apartment types, which cater for different household requirements now and in the future.	A mix of 1, 2 & 3 bedroom units (many with studies) are provided, including adaptable units.	Yes								
Balconies	Minimum 2 metres in depth.	All primary balconies have some part which is 2 metres wide.	Yes								
Ceiling heights	Minimum ceiling height of 3.3m for ground floor commercial and 2.7m for residential floors above.	No commercial floor space. Minimum floor to ceiling heights of 2.7m provided.	Yes								
Internal circulation	Where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to 8.	Building 5 has a breezeway corridor (with one lift & one stairwell) serving no more than 4 units per level. Building 6 has 2 separate corridors, each with its own lift and stairwell. The number of units accessed off each core/corridor is no more than 6 per level.	Yes Yes								
Storage	To provide adequate storage for everyday household items within easy access of the apartment, and to provide storage for sporting, leisure, fitness and hobby equipment. At least 50% of required storage should be within each apartment. <table><tr><td>Dwelling Type</td><td>Minimum Area</td></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 bedroom</td><td>8m³</td></tr><tr><td>3 bedroom</td><td>10m³</td></tr></table>	Dwelling Type	Minimum Area	1 bedroom	6m³	2 bedroom	8m³	3 bedroom	10m³	All units provided with a storage cage in the basement, about 6.5m³ which complies for 1 bedroom units. Insufficient detail on volume and dedication of storage provided on plans. Requested detail could be provided as a condition of consent, should consent be forthcoming.	Appears will comply.
Dwelling Type	Minimum Area										
1 bedroom	6m³										
2 bedroom	8m³										
3 bedroom	10m³										
Acoustic privacy	To ensure a high level of amenity by protecting the privacy of residents within residential flat buildings both within the apartments and in private opens spaces.	There are some instances where a bedroom of one unit adjoins the living room of the next unit, which is not ideal. 20 units (all cross through) adjoin 3 units, & all of these have a bedroom adjoining a living room. The lifts adjoin bathrooms. These separating walls should	No but could be addressed via a specific Acoustic Report condition prior to issue of CC, should consent be forthcoming.								

		be acoustically treated. Standard construction methods in accordance with the Building Code of Australia will ensure acoustic privacy between units.	
Daylight access	<p>Optimise the number of apartments receiving daylight access to habitable rooms and principal windows.</p> <p>Optimise daylight access to habitable rooms and private open space, particularly in winter</p> <p>Design for shading and glare control, particularly in summer using shading devices, such as eaves, awnings, colonnades, balconies, pergolas, external louvres and planting</p> <p>Living rooms and private open spaces for at least 70 % of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter. In dense urban areas a minimum of two hours may be acceptable.</p> <p>Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed.</p>	<p>The units are generally oriented NW or SE. Advantage has not been taken of the northern & NE aspects, which consist largely of blank walls or screened windows & balcony edges with privacy screens.</p> <p>Many units will be exposed to harsh westerly sun in summer.</p> <p>There are several single aspect south facing units, and many units which have the characteristics of such*.</p> <p>75 units have NW facing POS, or 61% (best case).</p> <p>84 units have NW or NE facing living rooms, so 68.3% (best case).</p> <p>Building 5 has no single south aspect units, however Building 6 has 38 units which are single SE aspect, or which are dual aspect with the characteristics of single SE aspect* $38/123 = 30.9\%$</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>
Natural ventilation	<p>Limit building depth from 10 to 18 metres.</p> <p>60% should be naturally cross ventilated.</p>	<p>Building 5 is 13.5m including balconies, & 11.2m glassline to glassline.</p> <p>Building 6 is 22.35m including balconies. 20.4m glassline to glassline (occupied by 2 units). 18.4m deep at cross-thru units.</p> <p>All of the 15 units in Building 5 are regarded as single aspect. 76 of the units in Building 6 are regarded as</p>	<p>Yes</p> <p>No</p> <p>No</p>

	25% of kitchens (31 units) should have access to natural ventilation.	single aspect. So $91/123 = 74\%$ single aspect, so only 32 units, which is 26% have natural cross-ventilation. 16 kitchens have a window & 48 units have a kitchen windows less than 8m to a window (52%).	Yes
Facades	Facades should define and enhance the public domain.	In this context the public domain consists of the street & the swale. Only Building 5 is visible from the public domain. Its front elevation has flat balcony edges with some step back to walls behind, and no front entry facing the street. It does not present well to the street and is considered to be bland with little articulation.	No
Roof design	To integrate the design of the roof into the overall façade.	Flat concrete roof considered satisfactory.	Yes
Energy efficiency	To reduce the necessity for mechanical heating and cooling.	BASIX Certificate submitted, but needs corrections. This could be conditioned on any forthcoming consent.	No
Maintenance	To ensure long life and ease of maintenance for the development.	Considered satisfactory.	Yes
Waste management	Provide waste management plan Allocate storage area.	Plans referred to Council's Waste Management Officer, who has concerns with manoeuvring for garbage trucks & bin collection from the street. Unauthorised parking in the street collection bay is likely to be an issue.	No
Water conservation	Reduce mains consumption, and reduce the quantity of stormwater runoff.	BASIX Certificate submitted. 15000 litre rainwater tank to be provided, but not shown on plans.	No

* Second aspect of most corner dual aspect units, and the second and third aspects of most tri aspect units have small windows with external fixed aluminium privacy screens. These screens limit natural ventilation and daylight access, thus the units are considered to have the characteristics of single aspect.

As demonstrated above, the application fails to satisfy many of the provisions of the RFDC:

Building Separation

The building separation (BS) between Buildings 5 and 6 complies. The separation between Buildings 5 & 6 and adjoining existing and future RFBs does not comply. Neither has

provided for “its share” of the BS requirements when considering side setbacks. In order to address resulting acoustic and visual privacy impacts blank walls, screened windows and solid balcony edges are provided, which in turn result in poor amenity outcomes.

The Land and Environment Court (L&E Court) was not satisfied that the proposed building separation proposed for the Stage 1 Masterplan would achieve the amenity sought under the DCP or the RFDC.

In this regard, the same issues regarding the northern portion of the site including Buildings 5 & 6 remain. The Commissioner was clear in the judgement which stated: -

94. *However, I am not satisfied that the proposed building separations adequately achieve the amenity sought by the DCP or the RFDC. I agree with Mr Baker’s comments “it is critical that if a new Masterplan is to replace the plan in the DCP, it is workable and will give rise to good apartment buildings with, at minimum, satisfactory levels of internal amenity. I also agree that the width of buildings is excessive and that a maximum building depth 22m and glass line to glass line 18m should apply. The orientation of buildings 3 – 6 does not optimise the northern aspect of the site and whilst there are positive benefits in the reduced heights of buildings 3 and 5, there is a consequential reduction in the area available for common open space. Other unsatisfactory impacts arise from the additional height in building 1 that overshadows the public park.*
95. *For these reasons, I am not satisfied that the concept proposal achieves the objects of the DCP. The proposal unnecessarily constrains the ability to provide good amenity to the apartments without the need to rely on amelioration measures to address impacts. This is not an appropriate resolution for a concept proposal.*
96. *Mr Galasso urged the Court to consider the “amber light” approach if the development was considered appropriate other than the issue of building separation. I do not find this is the case and therefore, it is not appropriate that consent should be granted. Such an approach would prevent the realisation of the FSR appropriate to the site and the assessment of any impacts of how that floor space was reallocated. It also would not address the shortfall in common open space.*
97. *For these reasons, consent should be refused.*

In this regard it is Council’s position that the building separations from Buildings 5 & 6 to existing and future adjoining buildings are unsatisfactory and should not be supported.

Communal Open Space (COS)

COS is provided in 3 spines, rather than one consolidated parcel. It is dissected by circulation pathways which makes it dis-functional, with no opportunities for active recreation, poor opportunities for passive recreation and with extremely limited solar access.

Council’s Urban Design Consultant notes that the COS provided does not satisfy the RFDC objective of ensuring that COS *is consolidated, configured and designed to be usable and attractive.*

As noted above, the Commissioner was not satisfied with the area available for COS.

It is Council’s position that the configuration of the COS proposed is not acceptable, especially given that this is a large vacant brownfield site.

Building Orientation

Council's Urban Design Consultant notes:

The sole or principal orientation of all units in Building 5 is north-west. One of the long facades of Building 6 also faces north-west. The majority of apartments in the scheme will thus be exposed to intense solar heat loading during summer afternoons. No shading devices are proposed. The net result would be poor sustainability. Perversely, the proposal fails to exploit the desirable northerly or north-easterly aspect of the site. The north-facing facades of both buildings have minimal openings.

As noted above, the Commissioner was not satisfied with the orientation of Buildings 5 and 6. As proposed, the orientation fails to optimise the northern aspect of the site, leads to poor solar access to units and COS, results in COS having an dis-functional shape and unsatisfactory building entry & access.

In this regard it is Council's position that the orientation of Buildings 5 & 6 leads to serious amenity, sustainability and safety issues and should therefore not be supported.

Building Depth

Under the RFDC, an apartment building depth of 10 – 18 metres is considered appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory day lighting and natural ventilation are to be achieved. It must be noted that Part M of DCP 2013 is more onerous and sets a maximum of 18m total depth, with 15m glassline to glassline.

Building 5 complies with the RFDC and DCP 2013.

Building 6 is 22.35m including balconies; 20.4m (occupied by 2 units) glassline to glassline & 18.4m cross-thru units glassline to glassline, so does not comply with the RFDC or DCP 2013.

The L& E Court noted in its consideration of the Masterplan Appeal that a maximum 18m glassline to glassline should apply, with a maximum of 22m including balconies, and concluded that the width of the subject buildings is therefore excessive.

The application does not satisfy RFDC rules-of-thumb relating to solar access or natural ventilation, and Council's position is that the building depths are not acceptable.

Solar Access

The site may be regarded as brownfield (not an established dense urban area with existing buildings limiting solar access), and 3 hours of solar access should be strived for.

The "best case scenario" of solar access into POS and living rooms does not meet the 70% rule of thumb.

It is expected that the ground floor POS & living rooms of Building 6 will be overshadowed by Building 5 and by 42-50 Brickworks Drive (the shadow diagrams are not detailed enough to fully assess the extent of overshadowing). Accordingly the solar access achieved is likely to be less than the best case scenarios as calculated.

Solar access is considered poor and the design is not considered acceptable on amenity grounds.

Natural Ventilation

It is estimated that only 26% of units will have natural cross ventilation. This results from the large percentage of single aspect units, and units having the characteristics of single aspect (i.e., second aspect of most corner dual aspect units, and the second and third aspects of most tri aspect units have small windows with external fixed aluminium privacy screens. These screens limit natural ventilation and daylight access, thus the units are considered to have the characteristics of single aspect).

Natural Ventilation is considered poor and the design is not considered acceptable on amenity grounds.

Views & outlook

In order to address acoustic and visual privacy impacts resulting from the non-compliances with the building separation rules-of-thumb, blank walls, screened windows and solid balcony edges are provided. This, in turn, results in limited outlook & views from the units.

Building Entry

The RFBs are accessed via a bridge over the swale, which is to the side of Building 5. Long paths lead to concealed entries hidden from the street. The access to the entries is not clear or direct and lacks natural surveillance which is a safety and security concern.

Access

Access for those moving in or out of units is problematic as removal trucks cannot access the basement. Trucks must park on the street and move furniture at least 55m to/from the closest entry door.

The Traffic Committee is not supportive of trucks parking, loading and unloading on the street.

Streetscape/Façade

Facades should define and enhance the public domain. In this context the public domain consists of the street & the swale. Only Building 5 is visible from the public domain. Its front elevation has flat balcony edges with minimal step back to walls behind, and no front entry facing the street. The development does not present well to the street and is considered to be bland with little articulation.

Unit Size

The 3 bedroom units are 89m² as opposed to 95m², so fall short by 6m².

Council's position is that a variation to unit sizes is not considered justified given that the design otherwise has serious amenity issues. It is noted that - although not a consideration for this application, the new Apartment Design Guide (ADG) minimum standards is still 95m² for 3 bedroom units which have 2 bathrooms (& the proposed 3 bedroom units have 2 bathrooms).

Unit Depth

All of the 15 units in Building 5 are single aspect, or have characteristics of single aspect*. All are deeper than 8m, up to 10.5m.

There are 76 units within Building 6 which are single aspect or which are dual aspect with the characteristics of single aspect*. Of these 46 are deeper than 8m, up to 8.75m.

Council's position is that a variation to unit depth is not considered justified given that the design otherwise has serious amenity issues.

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) aims to facilitate the effective delivery of infrastructure across the State. The ISEPP also contains provisions with respect to roads and traffic, including development in or adjacent to road corridors and road reservations. Division 14, Subdivision 2 of the ISEPP - Clauses 85-87 and 101-102 apply to development on sites that are likely to be affected by rail noise and/or road noise. The site adjoins the railway line so the following applies:

Clause 86 Excavation in, above or adjacent to rail corridors

This clause applies to the subject DA as it is development that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land within 25m (measured horizontally) of a rail corridor. Accordingly, Council must refer the DA and gain the concurrence of the chief executive officer of the rail authority, prior to granting consent.

As of 1 July 2014 the property functions of RailCorp have been transferred to Sydney Trains. Whilst RailCorp still exists as the legal land owner of the rail corridor, its concurrence function under ISEPP has been delegated to Sydney Trains.

Sydney Trains have advised that they are not in a position to make a decision on the granting of concurrence until Geotechnical and Structural documentation that meets Sydney Trains requirements are prepared and submitted for review. Sydney Trains therefore "stopped-the-clock" on the assessment. The applicant was advised of the information required by Sydney Trains via Council's deferral letter dated 25 March 2015 and additional information submitted by the applicant was referred to Sydney Trains for comments on 18 May 2015. To date, concurrence has not been received which is required before approval can be granted.

Clause 87 Impact of rail noise or vibration on non-rail development

This clause applies to the subject DA as it is a building for residential use that is on land adjacent to a rail corridor. The consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

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

A Noise and Vibration Assessment Report has been prepared by SLR Consulting Australia Pty Ltd. Council's Environmental Health Unit is satisfied with this report and has recommended conditions to be imposed on any forthcoming consent in this regard.

Holroyd Local Environmental Plan 2013

Holroyd Local Environmental Plan (LEP) 2013 applies and the site is zoned R4 – High Density Residential. The proposal falls under the definition of *residential flat building*, which is permissible within the zone.

The objectives of the R4 zone are:

- *To provide for the housing needs of the community within a high density residential environment.*

- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The 2 RFBs proposed will provide 123 dwellings on site.

The development has a mix of 1, 2 & 3 bedroom units with 25 adaptable units. No other land uses are proposed. The development is considered to be consistent with the broad zone objectives.

An assessment against the relevant LEP clauses is provided in the table below:

Standard	Required/Permitted	Provided	Compliance
4.3	Height of Buildings - Max. 29 metres	The proposed maximum building heights are: - Building 5 - 13.69 to ridge & about 14.1m to lift - Building 6 - 31.25 to ridge & about 31.95m to lifts. NB - No RL has been provided on the lift overrun to confirm max height.	Yes – Building 5 No – Building 6 but Clause 4.6 variation requested – see discussion below
4.4	Floor Space Ratio - Max. 2.8:1	The FSR proposed is 2.215:1 (when all stage 1 land area is used in calculation, including road & swale)	Yes
	Minimum Lot Size - 900m ²	The subject site Stage 1 has an area of 4625m ² .	Yes
5.10	Heritage	The site is listed as an archaeological item- Millmaster Feeds Site & all structures have now been demolished. Council's Heritage Advisor notes that only surface investigation has been undertaken, and that further investigation is required. A Section 60 application must be made to the Heritage Division of Office of Environment & Heritage.	No
6.1	Acid Sulfate Soils	The site is not affected by Acid sulphate soils.	N/A
6.4/6.7	Flood Planning and Stormwater Management	Mainstream flooding. An overland flow path inundates	

		<p>the site in the 1% Annual Exceedance Probability (AEP) storm event. Council's Engineers have advised that from a flooding perspective there are no issues raised with the building locations or the future road/swale.</p> <p>The expanded bridge structure does have flooding impacts that have not been addressed.</p>	No
6.5	Terrestrial Biodiversity	There is no evidence of any terrestrial biodiversity on the site.	N/A
6.6	Riparian Land & Watercourses	<p>A'Becketts Creek which traverses the site is classified as Riparian land.</p> <p>A 'Flora and Fauna Assessment Report' prepared by Anderson Environmental has been submitted, concluding that development will not result in any significant impact on water quality or habitats and ecosystems present on the site.</p> <p>Council has reviewed the information submitted and advises the proposal has satisfactorily addressed Clause 6.6 of the Holroyd LEP 2013.</p> <p>Sydney Water has no objections to the proposal.</p>	Yes
6.8	Salinity	<p>The site is located on lands identified as being affected by moderate salinity.</p> <p>Standard conditions of consent shall be imposed to address this should consent be granted.</p>	Yes

As demonstrated above, the proposal does not comply with the height, heritage or flooding/stormwater management requirements of the Holroyd LEP 2013.

Height

Measured in accordance with the standard definition (i.e., taken from the existing natural ground level to highest point, including lift over-runs):

- Building 5 achieves a maximum height of 14.1m and is well below the 29m height permitted under LEP 2013.
- Building 6 achieves a maximum height of 31.95m and is 2.95m above the 29m height permitted under LEP 2013.

The application includes a Clause 4.6 Variation arguing that, in the circumstances of the case, strict adherence to the control is unnecessary and the consent authority should allow the variation. It is considered that the written application meets the requirements of a Clause 4.6 Variation, and in this regard, the variation can be considered.

In the submitted SEE the applicant's town planner appears to have used the podium RL, rather than existing natural ground level, thus has stated lower heights achieved. The SEE states that a 1.7m variation, or 5.8%, is requested. Based upon Council's Town Planning Consultant's figures the variation is 2.95m, or 10.17%. Regardless, the height exceedance was an issue that was given consideration by the Land & Environment Court in the Appeal against the deemed refusal of the Stage 1 Masterplan for 1- 11 Neil Street. Commissioner Morris concluded:

I am satisfied that the applicant has justified the contravention of the building height development standard and to do so would be in the public interest and would be consistent with the regional environmental planning initiatives. In this case, there would be no public benefit in maintaining the development standard.

Conceptually, there is no objection to the height of Building 6, and the Clause 4.6 variation is supported in principal. However, this extra height does have adverse 'flow on' effects in relation to building separation.

Heritage

1-7 Neil Street is known as the "Millmaster Feeds Site" and is an item of environmental heritage listed as an Archaeological site as per Schedule 5, Part 3 of Council's LEP 2013. Only surface investigation has been undertaken for the purposes of developing the site. Further investigation regarding disturbance is required. As a result, a Section 60 Application to the Heritage Division of the Office of Environment and Heritage is required. The applicant was requested to action this request on the 25 March 2015, however the applicant has not complied with this request. In this regard, insufficient information has been provided to Council to address the heritage provisions of Council's LEP 2013 and as such development consent should not be issued in this instance.

Flood Planning and Stormwater Management

Council's Engineers have advised that from a flooding perspective there are no issues raised with the building locations or the future road/swale. However, the expanded bridge structure does have flooding impacts that have not been addressed and Council's position is that Development consent should not be granted.

- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

The amended SEPP 65 (Amendment No. 3) commenced public exhibition on 23 September 2014 and a comprehensive review of SEPP 65 was finalised in 2015. The review resulted in a number of changes to the policy, including the overhaul of the Residential Flat Design Code into the *Apartment Design Guide*.

The changes to SEPP 65 were notified on the NSW legislation website on 19 June 2015, but will commence four weeks after this date on 17 July 2015. The changes to SEPP 65 include savings provisions, whereby development applications lodged prior to 19 June 2015 the Residential Flat Design Code and former SEPP 65 continues to apply. For apartment development applications lodged after 19 June 2015 and determined after 17 July 2015, the Apartment Design Guide, along with the changes to SEPP 65 will apply.

Given the savings provisions within the SEPP, the amended SEPP 65 and the Apartment Design Guide have not been given weight in the assessment of this application.

(iii) any development control plan

Holroyd Development Control Plan 2013

The Holroyd Development Control Plan (DCP) 2013 came into effect on 5 August 2013 replacing the Holroyd DCP 2007. The DCP provides guidance for the design and operation of development within Holroyd to achieve the aims and objectives of *Holroyd Local Environmental Plan 2013*.

The purpose and status of DCPs is provided in Section 74AB of the Environmental Planning and Assessment Act (EP&A Act), 1979 as follows: -

- (1) The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:*
- (a) giving effect to the aims of any environmental planning instrument that applies to the development,*
 - (b) facilitating development that is permissible under any such instrument,*
 - (c) achieving the objectives of land zones under any such instrument.*

The provisions of a development control plan made for that purpose are not statutory requirements...

Section 79C(3A) of the EP&A Act states:

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and*
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) may consider those provisions only in connection with the assessment of that development application.*

*In this subsection, **standards** include performance criteria.*

Accordingly, Council's DCP 2013 provides guidance for developers and Council to use as benchmarks for development. In this regard, compliance with the controls within DCPs is not mandatory, and the controls may be varied based on the merits of the application.

The following table provides an assessment of the proposed development against the relevant controls under Holroyd Development Control Plan 2013:

Part A – General Controls			
Standard	Required/Permitted	Provided	Compliance
2	Roads & Access Dressler Court must be extended	Plans show extension of Dressler Court. Council is to undertake works as this will be a public road.	Yes
3.1	Car Parking: <ul style="list-style-type: none"> - 0.8 spaces per studio or 1 b/r unit (31 units) = 24.8 spaces - 1 space per 2 b/r unit (90 units) = 90 spaces - 1.2 spaces per 3 b/r unit (2 units) = 2.4 spaces - Visitor parking 0.2 spaces per unit (123 units) = 24.6 spaces, so 25 Required: 141.8 (142 rounded up – including 117 resident & 25 visitor spaces)	123 resident (including 25 adaptable), so 6 extra 14 visitor spaces in basement (plus 3 on street parking spaces which cannot be included in calculations), so 11 short Total provided is 137	Yes No No – 5 short
	Bicycles 0.5 per spaces per unit, so 61.5 0.1 per unit for visitors, so 12.3 = 73.8, so 74 required	The applicant has dedicated more parking to the units, and less for visitors, than required. The total number still falls short. The submitted plan notes 28 bicycle spaces, however only 14 spaces are provided in Basement 2 – which is 60 spaces short.	No
	Separate carwash bay	No separate car wash bay	No
3.3 / 3.5	Dimensions of Car Parking Facilities, Gradients, Driveways, Circulation and Manoeuvring.	Council's Traffic Engineer has assessed the submitted plans & documentation & advises carparking areas & swept turning paths do not comply with AS 2890.	No
3.6	Accessible parking		

	- 2 spaces per 100 spaces	25 disabled resident spaces proposed, which complies (only need 1 for each adaptable unit).	Yes
6.2	Site Contamination	<p>Council's Environmental Health Unit objects to consent being granted until such time as a Site Audit Report is submitted.</p> <p>Only part of the site has been demonstrated as suitable, being 1-7 Neil Street. Partial remediation has occurred on 9-11 Neil St and further remediation is to be undertaken on this portion of the site. In this regard, 9-11 Neil St has not been demonstrated as suitable for the proposed land use as per SEPP 55.</p>	No (see discussion above under SEPP 55)
6.3	Erosion and Sediment Control	A detailed sediment & erosion control plan was submitted. Council's Environmental Health Unit advises that this is acceptable.	Yes
7 & 8	Stormwater Management & Flood Prone Land	<p>Council's Development Engineer has reviewed the Stormwater Drainage Plans, Flood study & calculations & advises that from a flooding perspective there are no issues raised with the building locations or the future road/swale.</p> <p>The expanded bridge structure does have flooding impacts that have not been addressed.</p>	No (see discussion above under LEP table)
11	Site Waste Minimisation and Management Plan (SWMMP)	Council's Waste Officer has reviewed the proposed amended waste and recycling arrangements and has advised that the waste arrangements are unsatisfactory.	No
Part B – General Residential Controls			
1.1	Building Materials		
	Schedule of Colours & Finishes	Materials, colours and	Yes

	to be submitted.	finishes acceptable.	
1.2	Fences Front fences to be solid $\leq 1\text{m}$ and be $\geq 50\%$ transparent to 1.5m	No front fence proposed.	N/A
1.3	Views Minimise obstruction of views	No significant views will be affected.	Yes
1.5	Landscaping Max. 50% of provided landscaped area shall be forward of the front building line. Majority of landscaped area to be at the rear of the building.	Achieved. There is no landscaping forward of Building 5.	Yes
1.8	Sunlight Access 1 main living area of existing adjacent dwellings to receive 3 hours direct sunlight between 9am and 4pm, 22 June. Min. 50% of required POS of existing adjacent dwellings to receive 3 hours direct sunlight between 9am and 4pm, 22 June	No adjacent residential properties to the south, thus no impact to living rooms or POS external to the site.	Yes
1.11	Carparking & Roads New driveways shall be 1.5m from boundary for RFB Max gradient 1:20 first 6m then 1:5, with intermediates Access from basements to all units to be accessible for wheelchair users	New driveway is a bridge over swale, is more than 1.5m from future stage 2 lot line (which is not a formal boundary). Max 1:4, with 1:8 intermediates, which complies with AS 2890.1 There are 3 lifts providing disabled access from both basements to all levels above.	Yes No but complies with AS so acceptable Yes
Part 6 - Residential Flat Buildings			
6.1	Lot size & frontage Min. lot frontage is 45m for all development ≥ 6 storeys	More than 6 storeys proposed so 45m needed. The site (Stage 1) has 'frontage' of approximately 49m behind swale (there is no formal boundary between Stage 1 & Stage 2). Satisfies the intent of the control.	Yes

	The proposal shall not limit future development potential of adjoining lots i.e. landlocking	Adjoining sites to the north are developed with RFBs. Proposed Stage 2 adjoins to the south & has the potential to achieve maximum development potential. No landlocking will result.	Yes
6.2	Site Coverage Maximum of 30% of site area.	$0.3 \times 4625 = 1387.5\text{m}^2$ permitted (when all Stage 1 land area is used in calculation, including road & swale) Ground floor total is 1358.1m^2 , so 29.36%	Yes
6.3	Setbacks & Separation Site specific controls in Part M apply	Part M of DCP applies – see below	N/A
6.4	Building Height The minimum floor to ceiling heights shall be 2.7m for habitable rooms & 2.4m for non-habitable rooms. Site specific controls in Part M apply	2.7m provided to all rooms. Part M of DCP applies – see below	Yes N/A
6.6	Communal Open Space (COS) COS is to be behind the building line (BL), in one unbroken parcel with a minimum dimension of 4m. COS shall be highly visible & directly accessible to the maximum number of dwellings. Avoid excessively long paths of travel COS shall allow for active & passive recreation through facilities such as seating, pergolas, BBQ	COS is proposed between the buildings and to the sides thereof - so has 3 'spines' rather than being in one consolidated parcel. Significant sections of COS are located a long distance from Building 5 (particularly those strips along the side of Building 6) & involves an excessively long travel path to access them. Some seating proposed. Council's Urban Design Consultant notes that the COS contains circulation paths & does not satisfy	No No No

	<p>Private Open Space</p> <p>Balconies shall be 10m² minimum, with 2m width for studio & 1 bedroom units, and 2.4m width for 2 bedroom or more units</p> <p>Ground floor units should have courtyard 10m² & 2.5m min depth.</p> <p>Where possible POS shall have northerly or easterly aspect</p> <p>Balconies shall not be continuous across the entire façade</p> <p>Furniture layouts to demonstrate useability of balconies</p>	<p>the RFDC objectives.</p> <p>There are 59 primary balconies that do not meet the 10m² minimum when sections less than 2m wide are excluded.</p> <p>There are several 2 bedroom units that do not have 2.4m width (have 2.15m max)</p> <p>Building 5 has 3 ground floor terraces. All are 2.5m wide. 2 terraces are 15m² (excluding strip <2m) so comply. One terrace is only 6m² so does not comply.</p> <p>Building 6 has 13 ground floor terraces (the 2 cross-through units have 2 terraces each). All comply.</p> <p>All POS has either NW or SE aspect.</p> <p>Building 5 has balconies along all of NW (front) façade.</p> <p>Building 6 has balconies along all of NW façade, for levels 1 to 3.</p> <p>Furniture layouts not provided. The useability of the undersized balconies is questioned.</p>	<p>No</p> <p>No</p> <p>Building 5 – yes width size of one – No</p> <p>Building 6 – Yes</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>
6.7	<p>Building Appearance</p> <p>Appropriate scale, rhythm and proportion, responding to the building use and contextual character.</p> <p>Walls to street to be articulated by windows, verandahs, balconies or blade walls. Max. projection of 600mm forward of building line.</p>	<p>Building 5 faces the street (but is well setback from it given the location of the swale). Balconies extend along the entire frontage and terminate in a flat line at the swale. Inadequate articulation.</p>	<p>No</p>

	Roofs shall relate to the built form, context and character of the street. Pitched roofs will not be permitted where land has been rezoned high density	A flat concrete roof is proposed which satisfies the desired future character of the Neil Street Precinct.	Yes
6.8	Building Entry Shall be clearly identifiable, sheltered, well lit & visible from the street. Main entry to be separate from carparks or car entries.	Not satisfactory. The pedestrian entry is via a gatehouse to the side of the building. Long paths lead to concealed entries into the buildings (not visible from the street).	No
6.9	Parking & Vehicular Access Shall be maintained to a basement. Vehicle entries shall be setback from the main façade and security doors shall be provided to car park entries to improve the appearance of vehicle entries One car wash bay shall be provided for all developments having 10 or more dwellings (not a visitor space). Direct access shall be provided from the car park to the lobby.	2 levels of basement parking provided. Basement entry door lines up with front façade & is at ground level. A security roller door is proposed. A separate independent carwash bay is not provided. A lift from the basements provides direct access to the residential lobbies.	Yes No Yes No Yes
6.11	Internal Circulation All common facilities must be accessible. All staircases are to be internal.	Achieved. No objection from Council's Access Consultant. Stairs up from the ground floor to residential floors are internal.	Yes Yes
6.12	Facilities & Amenities Each unit shall have a laundry Open air clothes drying facilities shall be provided in a sunny, ventilated area, screened from the public domain by 1.5m high walls.	A laundry is proposed within each unit. No clothes lines have been shown (either on balconies or in COS).	Yes No

	Mailboxes shall not be at 90° to the street and shall be integrated with the overall design.	Mailboxes shown within entry gatehouse, in front of security gates into complex, which will be on private land. Police have commented that they should be accessible from the front/public road for postal workers, with rear openings accessible only to residents from inside the secure complex.	No
6.15	Waste Management Bin storage must: <ul style="list-style-type: none"> • Be located behind the building line (BL) and screened from the street and any public place. • Be accessible and relatively close to each dwelling. • Not impact upon the amenity of adjoining premises or dwellings within the development, i.e. odour. 	A garbage bay with chute is located at ground level, next to gateway entry, with a level path to the street. This presents as part of the building with a blank brick wall to the street so bins are not visible from the street. 2 garbage rooms are located next to the lifts in the basement below Building 6. The main garbage room is at basement level below the entry gateway. Small bin bays are also provided off each residential lobby. Plans do not show ventilation to the basement bin bays, but this could be conditioned on any forthcoming consent.	Yes
Part M – Merrylands Centre			
1	Aims & Objectives The objectives of Part M include to: <ul style="list-style-type: none"> - <i>Ensure buildings are designed to maximise appropriate amenity outcomes for the centre.</i> - <i>Ensure development design promotes the principles of ecologically sustainable development.</i> 	These objectives are not considered to have been satisfied, given the numerous non-compliances/problems regarding solar access, safety & security, POS sizes, COS, unit orientation, ventilation, street appeal, etc.	No
3	Public Domain		

	3.1. Roads and circulation. Figure 2 requires the extension of Dressler Court (New Road 2)	Plans show the extension of Dressler Court.	Yes
	3.2. Pedestrian and Bicycle Network. Figure 3 requires footpaths & bicycle routes along the Dressler Court extension (New Road 2)	Adequate provision on plan to allow for such.	Yes
	3.3. Landscaping and Open Space. Figure 4 shows concept building footprints, swale and public open space	Public open space fits within Stage 2 (not the subject of this DA). Swale as proposed is as per figure 4, but building footprints are not. Planting on structures is shown around the building footprints on Figure 4. Planting on structures plus deep soil is proposed around the building footprints (even though they are oriented differently) so satisfies landscape intent.	Yes
	3.4. Indicative Street Sections Section E-E applies	The design proposed is not in accordance with this section, in that the total width dedicated to Council is 31m as opposed to 34.5m, carparking is shown on the other side of the road, footway width is 2.7m rather than 3m, parking space is 2.4m rather than 2.5m wide, and 2.5m setback not provided from new lot boundary (terrace comes hard up to new lot boundary).	No
4	Building Envelope		
	4.1. Site amalgamation and minimum frontage. Figure 5 shows lots to be amalgamated	Stages 1 to 4 of 1-11 Neil Street generally follow the amalgamation as per figure 5. Swale and road will be public.	Yes
	4.2. Building and Ceiling Height. Maximum permitted building height in storeys shall be in	Building 5 is 4 storeys Building 6 is 10 storeys	Yes No

	<p>accordance with the following table (refer to DCP for full table).</p> <table><tr><th colspan="2">Permitted Height (storeys)</th></tr><tr><th>Height (m)</th><th>Storeys</th></tr><tr><td>29</td><td>8</td></tr></table> <p>Each storey shall have the following minimum floor to ceiling heights:</p> <p>Ground floor - 3.5m First floor (regardless of use) - 3.3m All other floors - 2.7m</p> <p>4.3. Street setbacks, road widening and street frontage heights .</p> <p>Street setbacks in accordance with Figure 6 are required for redevelopment.</p> <p>Street wall height of buildings (podium) shall be 3 storeys, with a minimum height of 11m and maximum height of 14m.</p> <p>4.4. Building Depth and length</p> <p>The maximum horizontal length of any building above the podium shall not exceed 50m.</p> <p>4.6. Active frontages, Street Address and Building Use</p> <p>Street address in the form of entries, lobbies and/or habitable rooms with clear glazing are required at ground level, in accordance with Figure 9.</p>	Permitted Height (storeys)		Height (m)	Storeys	29	8	<p>All floors have 2.7m, which does not comply for ground & first floors. The building is zoned residential & is located some distance from the Merrylands Commercial Centre, thus it is highly unlikely that the ground or first floor will be converted for commercial uses (despite Additional commercial type uses being permitted with consent).</p> <p>Figure 6 requires 2.5m setback from new front lot boundary. Plans show Building 5 with no setback from this boundary.</p> <p>Building 5 has a street wall height of 4 storeys, with a 12m height on podium.</p> <p>Building 6 is 60.7m long at SE elevation unit walls, & 62.3m at edge of associated terraces</p> <p>The street address is considered inadequate. Only Building 5 is visible from the street, and it has no direct entry or lobby from the street to the front (entry & lobby access is</p>	<p>Ground & first floor – No, but considered acceptable</p> <p>All other floors – Yes</p> <p>No</p> <p>Height – Yes</p> <p>Number storeys – No, but street wall height complies so considered acceptable.</p> <p>No</p> <p>No</p>
Permitted Height (storeys)									
Height (m)	Storeys								
29	8								

	<p>Direct pedestrian access off the primary street front shall be provided.</p> <p>Direct 'front door' access to residential units is encouraged.</p> <p>Open space should be oriented to overlook pedestrian access points.</p> <p>Blank walls or dark or obscured glass is not permitted.</p>	<p>via rear pathway). Solid walls of ground floor terraces face the public domain. The majority of COS does not provide surveillance of the main pedestrian side entry.</p>	
5	<p>Block by Block Controls Neil Street Precinct</p> <p>5.5. Block 5 Height - Max 8 storeys along railway</p> <p>Building use – ground & first floors can be commercial or residential, all floor above must be residential</p> <p>Building Depth – max 18m (max 15m glass line to glass line)</p> <p>Setbacks Street setback – 2.5m from swale</p> <p>Side setback – comply with minimum building separation (BS) controls</p> <p>Rear setback - On lots running parallel to the railway line a min 6m</p> <p>Deep Soil & Open space – to be as per building envelope plan & sections</p>	<p>Building 5 is 4 storeys</p> <p>Building 6 is 10 storeys</p> <p>All floors are residential</p> <p>Building 5 is 13.5m wide including balconies, & 11.2 glassline to glassline.</p> <p>Building 6 is 22.35m including balconies; 20.4 (occupied by 2 units) glassline to glassline & 18.4 cross-thru units glassline to glassline.</p> <p>Building 5 has no setback from swale.</p> <p>Minimum BS controls as per RFDC have not been complied with.</p> <p>6m rear setback from railway boundary to Building 6.</p> <p>Design has different building envelopes & location of open space. Deep soil zones are within</p>	<p>Yes</p> <p>No – see comments under LEP table above</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p> <p>Yes</p> <p>No</p>

	<p>Other –</p> <p>Heritage Impact Statement to be lodged prior to DA approval</p> <p>Any Building on New Road 2 is to follow the bend</p> <p>Buildings adjacent to railway line are required to be perpendicular to, not parallel with, the railway line – to minimise number of units impacted by noise & vibration</p> <p>On street parking can be provided on new roads 1 and 2 & on private roads.</p> <p>19m wide riparian corridor</p>	<p>side & rear setbacks, but none to front (as 2.5m setback has not been provided)</p> <p>A satisfactory HIS has not been submitted. Council must not grant consent as insufficient information has been lodged to enable Council to consider the effect of the proposed development on the heritage significance of the site.</p> <p>Site (Stage 1) is not on the bend.</p> <p>Building 6 is parallel to the railway line</p> <p>3 on street carspaces provided on New Road 2 to be constructed by Council so do not count as part of DA provision</p> <p>Plans show swale to be about 14.5m wide</p>	<p>No (see discussion under LEP table above)</p> <p>N/A</p> <p>No</p> <p>N/A</p> <p>No</p>
7	<p>Design and Building Amenity</p> <p>7.2. Managing External Noise and Vibration Developments within 60m of railway line are to demonstrate that internal noise & vibration will satisfy relevant standards</p> <p>7.4. Adaptable Housing</p>	<p>A Noise and Vibration Assessment Report has been prepared by SLR Consulting Australia Pty Ltd. This related to the Masterplan for all stages. A site specific Report for Buildings 5 and 6 has not been submitted. Council's Environmental Health Unit is satisfied with the report and has recommended conditions to be imposed on any forthcoming consent in this regard.</p> <p>0.2 x 123 = 24.6 so 25</p>	<p>Yes</p> <p>Yes</p>

	Provide a total of 20% of dwellings as adaptable housing (a minimum of 10% to comply with Class A & 10% with Class C).	adaptable units needed and 25 are proposed to be adaptable. Post Adaptation plans provided. Access report referred to Council's Access Consultant who raised no objection.	
8	Environmental 8.1. Flood and Stormwater Management - Neil Street Precinct Management of the redevelopment of the Neil Street Precinct must be undertaken in a whole of-site approach. Site amalgamation and re-subdivision under this DCP is required to manage redirection of the floodway. Building footprints are to be placed to allow best movement of flood waters (e.g. 30m separation between buildings on the southern end of New Road (1) north) Provide a 40m floodway through Neil Street Precinct, comprising roads, parks, swales and a natural creek system	Site amalgamation and re-subdivision have not been addressed with the subject DA. Council's Engineers have advised that from a flooding perspective there are no issues raised with the building locations or the future road/swale. The expanded bridge structure does have flooding impacts that have not been addressed.	No Yes No

As demonstrated above, the proposal does not comply with many of the requirements of the Holroyd DCP 2013. Non-compliances are discussed below:

Carparking

Most of the 1 bedroom units have a study. Although the studies are enclosed they are too small to function as a bedroom (are about 7.5m², so less than 9m²). All of the units with a study still fall below the min 70m² GFA required for a 2 bedroom unit. Accordingly, the studies have not been counted as a bedroom for carparking purposes.

The total of 142 carparking spaces is required, consisting of 117 resident spaces & 25 visitor spaces. The applicant proposes a total of 137 spaces (plus 3 on-street spaces that cannot be included in the calculation of onsite parking), consisting of 123 resident spaces & 14 visitor spaces. The total falls short by 5 spaces. There are 6 extra resident spaces provided and the visitor parking is short by 11 spaces. The 6 extra resident spaces could be allocated to visitors, so the visitor parking then falls short by 5.

If the studies are counted as bedrooms then 148 total spaces needed. Only 137 provided, so 11 short.

A separate independent carwash bay is not provided. Bicycle parking is 60 spaces short.

A Traffic and Parking study prepared by Ason Group was submitted with the DA, which argues for a variation in visitor parking based upon the sites proximity to public transport and the draft amendments to SEPP 65. The sites proximity to public transport was a factor taken into account when the Neil Street Precinct Controls were established. The ADG (although not a consideration in the assessment of this DA) has now come into force and allows a minimum of 1 space per 5 units for visitors – so no change to the DCP requirement.

Council's Traffic Engineer does not support the shortfall in car parking, particularly given the limited provision of on-street parking. Council's Traffic Engineer has also assessed the submitted plans & documentation & advises that the carpark layout is not satisfactory as carparking areas & swept turning paths do not comply with AS 2890.

Waste Management

The plans have not demonstrated that a 10.5m heavy rigid garbage vehicle can safely collect garbage and recycling bins.

The proposed waste collection area adjacent to the pedestrian access bridge is not supported due to access issues associated with the collection of waste and impacts on traffic/pedestrian network and is unlikely to be supported by Council's Traffic Committee.

Council's Waste Management officer is not supportive of the waste management arrangements.

Communal Open Space

Refer to the comments on COS above, under the RFDC compliance table.

The COS is considered unacceptable.

Private Open Space

There are several non-compliances with regard to private open space, including

- minimum balcony sizes and depths not achieved
- balconies are too narrow to be functional (many have a max depth of 2m)
- poor solar access to the majority of POS due to their orientation
- continuation of balconies along the facades with no articulation

These non-compliances result in poor amenity outcomes for residents.

Appearance / Street Address / Entry

Only Building 5 is visible from the street, and it has no direct entry or lobby from the street to the front (entry & lobby access is via rear pathway). Solid walls of ground floor terraces face the public domain. The majority of COS does not provide surveillance of the main pedestrian side entry.

Refer also to the relative comments above, under the RFDC compliance table.

These issues are considered problematic and Council is not supportive of the overall design.

Cross-sections

Indicative street section E-E applies under Part M Section 3.4 of DCP 2013. The design proposed is not in accordance with this section in that:

- Section E-E indicates a total public space (between new lot boundaries of Stage 1 and Stage 4 of 34.5m to accommodate the new road, swale, shoulder, footpaths and on-street parking. The plans only show a width of 31m, so 3.5m width has been taken off the public space, and added to the subject site.
- Section E-E shows the swale to be 19m plus 1m shoulder. The proposed plans show the swale about 14.5m wide with no shoulder.
- 2.5m front setback is not provided from new lot boundary (terrace comes hard up to new lot boundary, so nil setback provided).
- the on street carparking is shown on the other side of the proposed road. It appears this change has been made by the applicant in order to get bridge entry into the site and loading bay/waste collection area on the street in front of the development. A request for on street loading and unloading was not supported by the Holroyd Traffic Committee for a neighbouring site, and is unlikely to be supported in this case.

Height

The DCP sets the indicative number of storeys at 8 for a 29m high building. Building 6 is 10 storeys and exceeds the 29m height limit.

See discussion above, under LEP compliance table.

Setbacks

A 2.5m setback is required from the new front lot boundary. Plans show Building 5 with no setback from this boundary.

Side setbacks are required to be in accordance with RFDC. This was an issue that was given consideration by the Land & Environment Court in the Appeal against the deemed refusal of the Stage 1 Masterplan for 1- 11 Neil Street. In this regard, Commissioner Morris concluded:

I am not satisfied that the building separations adequately achieve the amenity sought by the DCP or the RFDC.

See discussion on building separation under the RFDC table above. Council is not supportive of the side setbacks proposed as they result in poor amenity outcomes.

Building Length

The maximum horizontal length of any building above the podium shall not exceed 50m. Building 6 is 60.7m long at SE elevation unit walls, & 62.3m at edge of associated terraces, so does not comply. This limits opportunities for dual aspect units and contributes to an oversupply of single aspect units, which in turn results in poor natural ventilation and poor solar access to those units facing south.

Building Depth

Building 5 is 13.5m wide including balconies, & 11.2 glassline to glassline, so complies with the RFDC and Part M of DCP.

Building 6 is 22.35m deep including balconies, 20.4m (occupied by 2 units) glassline to glassline & 18.4 cross-through units glassline to glassline. Building 6 depths do not comply with the RFDC or with Part M of DCP 2013 (which are more onerous). This was an issue that was given consideration by the Land & Environment Court in the Appeal against the deemed refusal of the Stage 1 Masterplan for 1- 11 Neil Street. In this regard Commissioner Morris concluded:

I also agree that the width of buildings is excessive and that a maximum building depth 22m and glass line to glass line 18m should apply.

While the RFDC does allow wider depths to be considered when natural ventilation and daylight access is achieved, in this case the natural ventilation and daylight access for the units in Building 6 is poor. Residential amenity is considered to suffer as a result of the excessive building depth, and is not supported.

Amenities

No external clothes drying lines have been shown.

The letterbox location and positioning needs to be re-considered in accordance with the NSW Police comments.

These are considered minor issues that could be addressed as conditions on any forthcoming consent.

- (iia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

N/A

- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

There are no specific matters prescribed by the Regulations that apply to this development.

- b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

Built Environment

Council's Urban Designer notes that this is an atypical situation in that a significant portion of the site (Stage 1) is dedicated to local public road & drainage swale extension which Council will construct. These improvements are public in nature, with the ongoing responsibility & cost of maintenance to be borne by Council. Typically the public road and swale would not be regarded as part of the development site, and would not be included in FSR. The net result is that the amount of building bulk permitted on site is significantly greater than would normally be expected. Various unsatisfactory aspects of the proposal appear to be the result of attempting to realise the "permitted FSR" within the permitted height limit.

With regard to context and setting, it is important to note that the site borders other R4 zoned sites and the railway line.

Part M of DCP 2013 outlines controls which establish the desired future character for the Neil Street Precinct. The proposal fails to comply with much of Part M and it is therefore considered that the design is not compatible with the desired future character of the area.

On merit assessment the L&E Court was not satisfied that the Stage 1 Masterplan (DA 2014/133/1) achieved the objectives of the DCP. As the subject DA relies upon this Masterplan layout, it also fails in this regard.

Natural Environment

A'Becketts Creek which traverses the site is classified as Riparian land. A 'Flora and Fauna Assessment Report' prepared by Anderson Environmental has been submitted, concluding that development will not result in any significant impact on water quality or habitats and ecosystems present on the site.

The SEE states:

This is principally a function of the already heavily modified nature and condition of the riparian zone which has led to its present poor environmental condition. Development will in fact, help to stabilise the banks of the storm water channel, assisting in the control of erosion and sedimentation. The 'Flora and Fauna Assessment Report' outlines mitigation measures (to become conditions of consent), relating to the establishment of aquatic and riparian vegetation habitat in the proposed swale. It is considered that these measures will offset the adverse impacts of the proposal on the watercourse. These measures include:

- *Stabilising and revegetating the swale to offset any habitat loss;*
- *Planting of native species;*
- *Developing a riparian corridor landscape plan*

Council has reviewed the information submitted and advises the proposal has satisfactorily addressed Clause 6.6 of the Holroyd LEP 2013.

Significant landscaping of the riparian zone and the COS on site is proposed. Council has found the landscape plan to be acceptable, subject to all existing trees being shown on the plan.

In this regard, the proposed development is not considered to adversely affect the natural environment. On the contrary, it will provide for an enhanced natural environment as the site is currently devoid of vegetation.

Environmental Impacts - Traffic & Parking

The development is short 5 car parking spaces as required under Council's DCP 2013. Given the limited availability of on-street parking, no shortfall in parking should be supported.

The proposed new roads are part of the approved precinct plan under the DCP that has also considered the projected traffic generation for the area. Council's traffic engineers and RMS are in support of the proposed development from a traffic generation perspective noting the proposed new roads and traffic generation will be compliant with the approved precinct plans.

Environmental Impacts - Solar Access and Overshadowing

It is considered that the orientation of the buildings fails to give due consideration to the issues of solar access to the units, the POS and the COS within the development.

The development substantially contains units which are single aspect, or which have the characteristics of single aspect, many of these with living rooms and POS facing SE. This results in poor solar access.

As the railway line adjoins to the south, there is no overshadowing of any existing dwellings or private open space. Proposed Building 4 in Stage 2 will have shadow impact in the morning. The shadow diagram submitted does not show proposed Building 4, but it appears that shadow will clear this building by 1pm, so 3 hours is likely to be obtainable between 1pm and 4pm. The exact position of proposed Building 4 is not confirmed yet and a detailed analysis will be undertaken when the DA for Stage 2 is lodged.

Building 5 overshadows the central spine of the COS, Building 6 overshadows the SW spine and the RFB at 42-50 Brickworks Drive overshadows the NE spine for almost all of the day in mid-winter, such that 3 hours is not obtainable to COS. This is not acceptable on amenity grounds.

It is considered that the development is not satisfactory with regard to solar access and overshadowing.

Environmental Impacts - Acoustic Amenity

The Acoustic Report submitted was prepared to cover all of the Stages in the Masterplan (including Stage 1) and is considered satisfactory.

The applicant is required to prepare an acoustic assessment of noise generated from the development itself (specifically Buildings 5 and 6), including but not limited to proposed mechanical plant (i.e. air conditioners, automatic roller doors, mechanical plant, etc.) prior to the issue of the Construction Certificate, should consent be granted. This assessment is required to be prepared in accordance with the requirements of the NSW Industrial Noise Policy.

Social Impact

In accordance with Council's *Social Impact Assessment Policy August 2012*, a Social Impact Assessment (SIA) prepared by Sarah George Consulting was submitted for Council's consideration. The SIA concludes:

The proposed development for 2 residential flat Buildings in Stage 1 of the overall The Mills development at 1-11 Neil Street, Merrylands is unlikely to generate any negative social impacts other than short terms impacts associated construction.

The proposed development will have no material impact on the current socioeconomic and demographic characteristics of the area. New residents in the area are likely to have similar characteristics to existing residents.

The proposed development is likely to generate a number of positive social impacts, as follows:

- *provision of a mix of unit types, satisfying the objectives of the zone, and on a site in close proximity to shops, services and public transport;*
- *improved safety and security on the site and in the surrounding area;*
- *improved presentation of the site from the railway;*
- *provision of public and private open space on the site (on the completion of all stages of The Mills development);*
- *provision of accessible, modern units with lift access and on-site parking;*

- *increased patronage at local shops and public transport; and*
- *the generation of employment in construction and fit out.*

Council's Social Planner has assessed the report and found that the report followed Council's methodology by reviewing the proposal's potential impacts, and has raised no objection to approval on social impact grounds.

Economic Impacts

Regardless of the urban design and amenity issues, there are no anticipated adverse economic impacts associated with the proposed development.

(c) the suitability of the site for the development

The site is considered suitable for proposed residential flat buildings (RFBs) as it is zoned R4, is large, accessible, and is close to public transport & the Merrylands Town Centre. Given its large size and generous dimensions, it allows for optimal building footprints which maximise the northern orientation of the site. However, as detailed within this report, the subject Buildings 5 & 6 have not been designed to optimise the northern orientation of the site, and numerous adverse amenity issues arise from the proposed building footprints.

At a strategic level, the site has been assessed during the comprehensive LEP process as being able to sustain the part 26m & 29m height and 3.0:1 & 2.8:1 density. In this regard, whilst the RFBs are permissible and the density was anticipated as part of the comprehensive LEP 2013 process, the proposed building footprints and form are not acceptable in their current arrangement. The design fails to satisfy numerous provisions of the RFDC and DCP 2013 and as such the development is not considered suitable for the site.

(d) any submissions made

The application was notified in accordance with the EP&A Regulations applying to Integrated Development for a period of 30 days from 4 March to 3 April 2015. Letters were sent to adjoining and surrounding owners and occupiers, a sign placed on the site and public notification provided in the Parramatta Advertiser. Council received 3 submissions.

The issues raised are discussed below: -

Issue: Shadow impact and insufficient solar access

Comment: As discussed in this report the solar access to units, POS and COS is not considered satisfactory when assessed against the provisions of the RFDC and DCP 2013. Council agrees that this is a relevant issue that is considered valid grounds for refusal of the DA under Section 79C of the EP&A Act.

Issue: Increase in traffic in the residential area of Holroyd Gardens

Comment: In preparing the Masterplan for the Neil Street Precinct the issue of traffic generation resulting from the two new roads has been considered. The new roads act as a connecting link through the precinct to enter and exit the precinct area rather than be treated as main diversions of through traffic.

Once Council has constructed New Roads 1 & 2 and the Sheffield Street extension, these will connect onto Neil Street/Pitt Street, which are likely to be more desirable access routes into and out of the Neil Street precinct rather than through Holroyd Gardens. However, until these roads are constructed, the applicant has to rely upon access via Dressler Court, Brickworks

Drive and onto Walpole Street which will increase the existing traffic through Holroyd Gardens. However, this is a temporary situation which will be rectified once Council is able to construct the new roads upon receipt of sufficient S94 funds. Therefore, this issue is not considered to warrant refusal of the application and based on these considerations the issue of traffic generation is not considered to significantly impact on the amenity of residents of Holroyd Gardens or the surrounding road network.

Issue: Parking

Comment: Objectors are concerned that as there is not enough parking on site, more demand will be placed upon the on-street spaces in Dressler Court and Brickworks Drive (which are already limited and in high demand). Council is not supportive of the proposed shortfall of 5 carparking spaces, and agrees that this is a relevant issue that is considered valid grounds for refusal of the DA under Section 79C of the EP&A Act.

In relation to the concern regarding lack of on-street parking spaces, 3 on-street parking spaces are proposed for Stage 1, which is generally in accordance with Council's DCP and is therefore acceptable.

Issue: Height and number of storeys

Comment: Proposed Building 6 exceeds 29m in height and is 10 storeys, whilst the DCP indicates that 8 storeys is appropriate. Conceptually, Council would be willing to consider a variation to the height and number of storeys if it provided good amenity outcomes. However, since the design is considered to have poor amenity outcomes, a variation is not considered warranted in this case. Council agrees that this is a relevant issue that is considered valid grounds for refusal of the DA under Section 79C of the EP&A Act.

Issue: How are the new roads in Neil Street Precinct being Funded?

Comment: Council's Section 94 Contributions Plan 2013 includes 100% apportionment to new development for the construction of New Road 2 (which links into Dressler Court running through the subject site). In this regard, the applicant is required to pay the appropriate S94 fees applicable for the dwellings proposed, which will go towards funding the construction of the new road in the future.

Issue: Relation between the subject DA and DA 2014/133 which was considered by the Land & Environment Court

Comment: The building footprints in the subject DA (Buildings 5 and 6) are the same as proposed under the Masterplan DA 2014/133, which was refused by the L&E Court in March 2015. On merit assessment the L&E Court was not satisfied that the proposed Masterplan achieved the objectives of the DCP. As the subject DA relies upon this masterplan, it must also fail in this regard. Approval of the subject DA would not be in the public interest.

Council agrees that this is a relevant issue that is considered valid grounds for refusal of the DA under Section 79C of the EP&A Act.

Issue: Size and scale of the project

Comment: Concern was raised that the proposed development is out of scale with the existing development in Holroyd Gardens and will impact on the visual amenity of residents living in Holroyd Gardens. Conceptually, Council raises no objection to the height of Building 6, and the Clause 4.6 variation is supported in principal. However, this extra height does have adverse 'flow on' effects in relation to building separation, adverse visual and acoustic

privacy issues, solar access and overshadowing issues, and it is Council's position that proposed Building 6 does not provide for an adequate transition from the existing 7 storey RFB at 42-50 Brickworks Drive and the subject site. Therefore, the size and scale of the project as designed is not supported in its current form.

Issue: Proximity of Buildings to each other and to RFBs on Brickworks Drive

Comment: Building separation between Buildings 5 and 6 is 12m and complies with RFDC.

In regard to the BS between Building 5 and 42-50 Brickworks Drive, a 6m setback is provided to most of the northern elevation of building 5, which results in a 9m BS (does not comply – need 12m). Building 5 has mostly provided 'its share' but has balcony and kitchen walls encroaching by about 1.8m into this 6m setback. Council is not supportive of these encroachments. Council agrees that this is a relevant issue that is considered valid grounds for refusal of the DA under Section 79C of the EP&A Act.

Issue: Not enough provision for open space

Comment: As discussed in this report, the COS proposed is not considered satisfactory. Council agrees that this is a relevant issue that is considered valid grounds for refusal of the DA under Section 79C of the EP&A Act.

Issue: Density is too high

Comment: Council's stipulated maximum permissible floor space ratio (FSR) anticipated a potential dense urban response, however the proposal as designed has serious adverse amenity outcomes and raises concerns for the adjoining residential development to the north. In this regard, whilst the density of the site is not contested the proposed building form is considered unsuitable for the site and is not supported.

(e) the public interest

Short term benefits include the provision of employment for tradespersons, builders, landscapers, engineers and the like who will undertake physical construction of the development.

These short term positives, however, do not outweigh the long term negatives associated with poor amenity resulting from the design. In particular, the development is not satisfactory with regard to parking, safety/security, solar access, natural ventilation, private open space (size and dimension), overshadowing and configuration of communal open space, etc. The design does not comply with many of the rules of thumb recommended in the RFDC or with many of the provisions of Council's DCP 2013. As such, approval of the DA is not considered to be in the public interest.

The applicant's appeal of Development Application 2014/133/1 for Stage 1 Masterplan for building footprints and envelopes for 6 residential buildings, basement parking, road network and open spaces and allocation of gross floor area across 1 – 11 Neil Street was dismissed by the Land and Environment Court on 27 March 2015. The subject DA is consistent with this masterplan as it relates to Buildings 5 and 6. Approval of building footprints and envelopes in accordance with a Masterplan dismissed by the Court is not considered to be in the public interest.

INTERNAL REFERRALS

During the assessment process, comments were sought from a number of sections within Council. The following summarises Council Officer/Advisers' comments:

Development Engineering Section	Defer
Traffic Section	Defer – Non-compliances AS2890.1 & DCP 2013
Landscaping Section	Defer – trees 40 - 47 to be shown on landscape & OSD plan
Environmental Health Unit	Erosion & Sediment Control Plan - No objection, subject to conditions. Contamination – Defer for Site Audit Statement Noise & Vibration - No objection, subject to conditions.
Waste Management Section	Defer
Strategic Planning Section	No objections based upon Flora & Fauna Report by Anderson Environmental.
Community Services Section (Social Planning and Accessibility)	No objection as per Access Consultant and Social Planner.
Heritage Advisor	Defer – Section 60 Certificate.

EXTERNAL REFERRALS

NSW Police Service - Comments were sought from NSW Police (Holroyd LAC) who raised concern over the open carparking spaces increasing the risk of 'steal from motor vehicle' offences. The plans also show insufficient detail on the letterboxes.

Office of Water (OOW) - General Terms of Approval were issued by the OOW on the 13 April 2015.

Sydney Trains – Concurrence is required under Clause 86 of the ISEPP, which is currently outstanding.

Sydney Water – No objections were issued to the proposal as per their email dated 25 May 2015.

Roads and Maritime Services (RMS) – No objections were raised subject to consideration of their comments, as per their letter dated 15 June 2015.

RECOMMENDATION

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, as are of relevance to the application, have been taken into consideration in the assessment of this application.

Building 6 exceeds the height limit of 29m that applies under LEP 2013.

The design fails to satisfy a large number of the objectives and numerical provisions in the RFDC and Holroyd DCP 2013.

It is considered that approval cannot be granted to the DA as Council is not satisfied that the heritage and flood provisions of LEP 2013 are satisfied. Consent also cannot be granted under

SEPP 55 until a site audit statement is received for 9-11 Neil Street. Sydney Trains concurrence is also outstanding, which is required prior to any consent being issued as per Clause 86 of the ISEPP.

The proposal is not considered acceptable having regard to the applicable State and Council planning controls. It is considered the design would result in significant adverse amenity impacts and should therefore not be supported.

The proposed development is recommended for refusal **subject to the reasons as outlined in Attachment “I” of this report.**

Attachment “I” – Draft Reasons of Refusal
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