
ANNEXURE 2

17 September, 2013

Mr Tim Moore
Director of Planning and Environmental Services
Marrickville Council
2-14 Fisher Street
PETERSHAM NSW 2049

Dear Tim

**VOLUNTARY PLANNING AGREEMENT (VPA)
70 – 90 OLD CANTERBURY ROAD, LEWISHAM**

Further to our meeting held at Council's Offices on 9th September 2013, we have undertaken a further review of the proposed Draft VPA, associated proposed works and their apportionments including a complete review of costs. We now submit a fresh VPA Offer for Council's consideration on the basis of wholly excluding the application of Section 94 (S94) and Section 94A of the Environmental Planning and Assessment Act 1979 (EPAA). We believe it addresses the matters discussed at our meeting and the good will of both parties to finalise the VPA. This letter also outlines the value of other items that are required as part of the Concept Approval (MP 08_195) and should be considered in the context of this offer. We now seek Council's response in writing to allow this matter to be finalised.

The underlying justification for the works included in this VPA Offer and their apportionment is consistent with our previous letter dated 19 June 2013. Essentially, this current offer is based on revised costs for all items previously offered which reduce the total value of the works by approximately \$240,000 which increases the cash contribution to \$2.09M. It is also proposed to include other "Concept-approved" items that generate a public benefit that generate a total value to the public under the VPA Offer of approximately \$8.32M.

For the purposes of comparing the value of the Offer and establishing the cash contribution, the S94 contributions have been recalculated based on Council's 2013/14 fees and charges (approx. \$4,957,234 based on scheme under previous DA). As outlined in Table 1, the revised value of all items in the previous offer plus the increased cash contribution is 100% of that which would ordinarily be levied under S94. Under the revised VPA Offer, including the additional "concept-approved" items that generate a public benefit, the total value to the public is approximately \$8.32M or 168% of S94.

Table 1 – Overview of public benefit value

	Total	% S.94
Items included in previous VPA Offer plus cash	\$4,957,234	100%
Additional "Concept-approved" items generating additional public benefit	\$3,369,810	68%
Total Value	\$8,327,044	168%

The intent of this offer is to obtain agreement for a VPA that does not require any further modifications to the current Concept Approval MP 08_0195. Accordingly, a community room and public toilet has not been included in this offer as it will require an alteration to the Concept Approval. Notwithstanding, should Meriton secure approval for a revised concept to address issues around solar access and floor space allowances, Meriton will commit to these items under a future corresponding modification to the Concept Approval (Note: A design modification will be issued under separate letter).

SUMMARY OF VPA OFFER

Table 2 provides a summary of the revised VPA offer based on updated costs with regard to the plans provided on 19 June 2013. As part of ongoing discussions on design, should the number of units be increased / decreased, the cash contribution will alter accordingly to maintain the same proportion of the value of the VPA to the S94 value.

Table 2 – Summary of VPA Offer

Land/Work included in VPA Offer	Embellishment Value/Offset Estimate
Upgrade of Hudson Street (50% of full cost - \$1,206,568)	\$603,284
Public Open Space Embellishment	\$1,692,222
Public Art (incl. consultants, design, construction and installation)	\$150,000 allowance included in open space
Cycle and Pedestrian Links to Light Rail Stop	Incl in open space
Cycle and Pedestrian Links to Lewisham Station and Surrounds	\$184,874
Brown Street Closure and Embellishment	\$1
Brown Street Stormwater Works (50% of full cost - \$177,066)	\$88,533
McGill Street Stormwater Works	\$116,766
Footpath and Road Upgrades to William and Brown St (50% of full cost - \$372,469)	\$186,234
Sub-total of Items previously included	\$2,871,914
Cash Contribution	\$2,085,320
Dedication of 3,000m2 of land for public open space	\$2,400,000
Major Drainage Works to convey stormwater from Old Canterbury Road to the Rail Corridor (50%)	\$969,810
Sub-total of additional concept-approved items	\$3,369,810
TOTAL VALUE OF VPA OFFER	\$8,327,044
COMPARISON WITH S94 (\$4,957,234 based on Councils 2013/14 Fees and Charges)	168%

ADDITIONAL CONCEPT-APPROVED ITEMS

There are a number of "Concept-approved" items that generate a tangible public benefit that were not included in the original VPA Offer. We propose to include the following items to provide a more holistic view of the public benefit being generated by the development.

Dedication of 3,000m² of land for public open space

In accordance with previous negotiations and VPA offers, Meriton, in good faith dedicated the land without a request to seek an offset which is acceptable given the uplift in the development potential of the site. Notwithstanding, Condition A3 envisages that the "dedication" will be included in the VPA. Meriton has obtained preliminary valuations of approximately \$800/m² for the land which is zoned Light Industrial (IN2) under the Marrickville LEP 2011. This equates to almost \$2.4M and we would seek inclusion of this significant contribution in this VPA offer to demonstrate the tangible public benefit.

Major Drainage diversion works to convey stormwater from Old Canterbury Road to the Rail Corridor (50% of total cost)

There have been ongoing discussions to include these major diversion works in the VPA. Meriton maintains that while the diversion and delivery of new infrastructure will facilitate delivery of the project, the design requirements to enhance the capacity of the new system well beyond the capacity of the existing system to accommodate existing catchment-wide drainage / flooding issues should be recognised in this VPA. Cardno are currently revising the flood study for the area and can provide more detailed analysis upon completion, however the works will result in the following:

- Mitigating flooding on Old Canterbury Road
- Mitigating flooding in the rail corridor
- Facilitating redevelopment of the land south of Hudson Street.

The works benefit the entire catchment of approximately 21ha, while the site is only 1.3ha demonstrating that the site should not be responsible for bearing the full cost of this public infrastructure. For the purposes of the calculation in Table 2, a 50% apportionment is used against the total costs of \$1,939,619 based on the latest designs being discussed with Council and Sydney Water.

Summary

We are firmly of the view this revised VPA offer provides significant public benefits that will be enjoyed by, and create a safer environment for the broader community. With a total value of \$8.32M, the VPA Offer generates an additional 68% of monetary value for public benefit then would ordinarily be levied under Section 94.

We believe the public benefits now contained within this VPA warrant Council's full support and we look forward to finalising the content of the VPA to support future development applications.

Yours sincerely

MERITON GROUP



Matthew Lennartz
PLANNING EXECUTIVE

ANNEXURE 3

19 June, 2013

Mr Joe Strati
Principal Solicitor
Marrickville Council
2-14 Fisher Street
PETERSHAM NSW 2049

Dear Joe

**VOLUNTARY PLANNING AGREEMENT (VPA)
70 – 90 OLD CANTERBURY ROAD, LEWISHAM**

Further to Council's letter of 12 November 2013 and our meeting held at Council's Offices on 6th May 2013, we have undertaken a further review of the proposed Draft VPA, associated proposed works and their apportionments.

Following this review, the Draft VPA (Appendix 1) has been updated to include revised Section 94 Contribution amount as per the lodged DA unit mix, apportionments for infrastructure works and the inclusion of two additional infrastructure items (stormwater works). This re-submission has been prepared consistent with condition A3 of the Planning and Assessment Commission (PAC) Concept Approval.

Each item is addressed below:

Section 94 Contribution Amount

As per the Draft VPA and the Planning and Assessment Commission Concept Approval, it is proposed to off-set the proposed works-in-kind from the payable Section 94 Contributions as calculated under Marrickville Councils Section 94/94A Contributions Plan 2004 (including amendment No 3). The total amount payable based on the unit mix as currently before Council is as follows:

Unit Mix	Payable Contributions
68 Small Dwellings (@\$9,361.70/Dwell)	\$636,595.60
228 Medium Dwellings (@\$13,261.63/Dwell)	\$3,023,651.64
66 Large Dwellings (@\$17,710.21/Dwell)	\$1,168,873.86
Total Dwellings 362	Total Payable \$4,829,121.10

Schedule 2 Section 2 of the Draft VPA has been updated accordingly.

Infrastructure – Apportionment

At our meeting of the 6th May, Council disputed the 50% apportionment for the upgrade of Hudson Street. We have reviewed the proposed upgrade works and considered them having regard to our development, the future redevelopment of the McGill Precinct to the South and the broader Community. We are firmly of the view the apportionment should remain at 50% for the following reasons:

- The proposed development provides for all parking including visitor spaces within the basement car park. In this regard, the subject development is not reliant on the provision of the 14 kerb side spaces; however it is acknowledged that the future residents will benefit from the improved Hudson Street amenity.
- The widening and introduction of 14 inset kerb side spaces along Hudson Street provides significant public benefits by way of:
 - Vastly improved safe pedestrian and vehicular access to the future light rail station;
 - Kerb side parking immediately opposite the new Park and Associated Children's Playground;
 - The introduction of the inset kerb side spaces and round-about facility adjacent the new light rail station provides for future kiss and ride scenarios to the benefits of the broader community
 - The introduction of a dish drain facility for the full length of the of 14 inset kerb spaces in lieu of traditional kerb and gutter therefore significantly reducing the surface flow of water that currently flows down Hudson Street. The dish drain will connect into the McGill Street Stormwater Pipe and divert waters into the proposed stormwater system being provided as part of the stormwater diversion works.
- Hudson Street kerb side parking is currently limited to approximately 8 legal spaces. This proposal seeks to increase the number of kerb side (inset) spaces to 14 spaces, an increase of 6 spaces.

Ordinarily, a development such as proposed would typically be required to replace kerb and gutter where required, provide a 1.2m footpath and in certain circumstances, re-sheet 50% of the carriageway. The current proposal seeks to provide 14 inset car parking spaces, 9 metre diameter roundabout and re-sheet the full length and width of Hudson Street, all of which are over and above that normally required in a redevelopment of an infill site.

The total value of the proposed upgrade works to Hudson Street is \$1,018,262 of which Meriton proposed initially to capture 50% of the costs, with the remaining offset against future Section 94 Contributions. We recognise the improvement to the streetscape will have benefit to the future development and therefore propose to continue to capture 50% of the costs with the remaining 50% offset against the Section 94. Given the extensive nature of the works, we believe this to be a fair apportionment. Furthermore, future redevelopment of the McGill Street southern precinct will benefit significantly from the works as proposed; therefore Council could then seek reimbursement of these costs as part of that future development.

Based on the above, the Draft VPA contains an apportionment of 50% resulting in a value of \$509,131.

Additional Infrastructure Items - Brown Street Stormwater Works

The Brown Street Stormwater works are identified on diagram SKC16 Issue P2 (Appendix 2) and has been designed to capture the catchment associated with William and Brown Street and the future stormwater generated from the future redevelopment of the McGill Street North site through the provision of twin 525mm diameter pipes. Ordinarily we would be only required to provide for one 525mm pipe to convey the William and Brown Street Catchments. In providing for the increased capacity, it is proposed to apportion the costs at 50%. Council, in any future redevelopment of the northern precinct could then seek reimbursement of these costs as part of that future development.

The proposed works has a total value of \$177,592 therefore at 50% the value for offsetting against Section 94 has been set at \$88,796.

This has been reflected in the revised VPA.

Footpath and Road Upgrades to William & Brown Street

The total value of the proposed upgrade works to William and Brown Street is \$363,033 of which Meriton proposes to capture 50% of the costs, with the remaining offset against future Section 94 Contributions. We recognise the improvement to the streetscape will have benefit to the future development and therefore propose to continue to capture 50% of the costs with the remaining 50% offset against the Section 94. As with the Brown Street stormwater works, Council in any future redevelopment of the northern precinct could then seek reimbursement of these costs as part of that future development. Given the extensive nature of the works, we believe this to be a fair apportionment.

Based on the above, the Draft VPA contains an apportionment of 50% resulting in a value of \$181,017.

McGill Street Stormwater Works

The McGill Street Stormwater works are identified on diagram DAC011 Issue B (Appendix 3) and has been designed to capture the catchment associated with McGill Street and the future stormwater generated from the future redevelopment of the McGill Street south site through the provision of 59metres of 450mm - 600mm diameter pipes and associated inlet pits.

This system will then be connected into the proposed stormwater diversion works proposed as part of the development and conveyed to the Sydney Water system. These proposed works provide no direct benefit to the subject development; however they will enable the redevelopment of the southern McGill precinct in the future and therefore it is proposed to capture 100% of these costs in the VPA. Council, in any future redevelopment of the southern precinct could then seek reimbursement of these costs as part of that future development.

These proposed works have a total value of \$83,062.

Draft VPA

Below attached is the revised VPA for your review and comment. The revised S94 Offset Schedule Table below provides the additional items as discussed above.

Land/Work	Embellishment Value/Offset Estimate
Upgrade of Hudson Street*	\$509,131
Public Open Space Embellishment	\$2,071,836
Cycle and Pedestrian Links to Light Rail Stop	Incl in Public Open Space
Cycle and Pedestrian Links to Lewisham Station and Surrounds	\$180,158
Brown Street Closure and Embellishment	\$1
Brown Street Stormwater Works**	\$88,796
McGill Street Stormwater Works	\$83,062
Footpath and Road Upgrades to William and Brown St***	\$181,017
TOTAL (OFFSET)	\$3,114,001

Note *: the value shown for the upgrade of Hudson Street is 50% of the Total Value of the works

Note **: the value shown for the Brown Street stormwater works is 50% of the Total Value of the works

Note ***: the value shown for the upgrade of William and Brown St is 50% of the Total Value of the works

Estimated s94 Contributions	\$4,829,121
Estimated Cash Payment (s94 less agreed OFFSET)	\$1,715,120

Affordable Housing	5 Units
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Affordable Housing

Utilising the parameters contained in the Affordable Rental Housing SEPP2009, it is proposed to include within the VPA the allocation of 5 x 1 bedroom units for Affordable Housing. The rental of these units will be restricted to 20% below the annual median rental and reflected on title by way of a restrictive covenant. If Meriton is successful in its application for an allocation of National Rental Affordability Scheme (NRAS), these units will be allocated in accordance with the provisions of that Scheme.

Meriton is not seeking an offset for the provision of Affordable Housing in the VPA.

Request for a Community Room and Associated Public Toilet

With regards to Council's request for a Community Room and Public Toilet, in reviewing the draft VPA in accordance with Condition A3 of the Concept Approval, we are unfortunately unable to include the request at this time as the consent does not permit such a land use. Such a use would not be in accordance with the approved concept plan, most notably the approved Land Use Plan.

Summary

We are firmly of the view this revised VPA provides significant Public Benefits that will be enjoyed by the broader community.

We believe the public benefits now contained within this VPA warrant Council's full support and we look forward to finalising the content of the VPA prior to determination of the Development Application as lodged (or as subsequently amended) with Council.

Yours sincerely

MERITON GROUP



Joe Bevacqua

DEVELOPMENT AND PLANNING EXECUTIVE

Encls.

APPENDIX 1

PLANNING AGREEMENT

78-90 Old Canterbury Road, Lewisham

BETWEEN

Marrickville Council

And

Karimbla Properties (No. 23) Pty Ltd

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PLANNING AGREEMENT

Dated day of 2013

PARTIES

1. **Marrickville Council**, of 2-14 Fisher Street, PO Box 14, Petersham NSW 2049 (**Council**); and
2. **Karimbla Properties (No. 23) Pty Ltd** of Level 11, 528 Kent Street, Sydney, New South Wales (**Developer**).

BACKGROUND

- A. The Land is owned by Karimbla Properties (No. 23) Pty Ltd (**Owners**).
- B. The Land has Concept Plan development approval for Application No. MP08_0195 .

OPERATIVE PROVISIONS

1 PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement governed by Part 4 of the Act.

2 SCOPE AND APPLICATION OF THIS AGREEMENT

2.1 This Agreement binds the parties and applies to the Land on which the Development is to be carried out by the Developer. This Agreement does not include mechanisms for the payment of but does include, subject to this clause, a mechanism for offsetting, the Developer's obligations to pay monies under:

- (a) s. 94 of the Act;
- (b) any other statute or instrument that may apply to the land or to the development application.

2.2 It is not a condition of this agreement that the Development and the object of expenditure of any money required to be paid by the Developer be connected but must still be applied for a community benefit.

3 OPERATION OF THIS AGREEMENT

This Agreement takes effect on the date of this Agreement after execution by both parties

4 DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act.

Completion means the stage in the construction of the Developer's Works when, in the reasonable discretion of the Council's Representative and notified under clause 9.5(a) or (c), the Developer's Works are complete except for minor omissions and minor defects which are non-essential and:

- (a) which do not prevent the Developer's Works from being reasonably capable of being used for their intended purposes;
- (b) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the Developer's Works.

Construction Certificate has the same meaning as in the Act.

Construction Costs means the construction cost of the Developers Works, as determined by the Council in accordance with clause 7.5.

Council's Representative means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this Agreement or such other person as may be nominated by the person occupying the role of General Manager of the Council from time to time.

Dealing means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedicated Land means the land specified in Item 6 of Schedule 1 to be dedicated to the Council free of cost in accordance with this Agreement.

Defects Liability Period means the period of 12 months from the date on which the Developer's Works reach Completion.

Development means the proposal of the general nature set out in Item 4 of Schedule 1 to be completed by the Developer in accordance with the Development Consent.

Development Application means the development application identified in Item 4 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted by the Minister for Planning and Infrastructure being for the Development identified in Item 4 of Schedule 1.

Developer's Contribution means the sum of the Monetary Contribution, Dedicated Land or other Public Benefits (including, without limitation, the Developer's Works) and any combination of a Monetary Contribution, Dedicated Land or any other Public Benefits identified in this Agreement.

Developer's Works means the works identified in Schedule 2 as refined and developed in accordance with this Agreement.

Guarantee means a Bond or an unconditional and irrevocable bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia;

- (a) is in favour of the Council;
- (b) for the Guarantee Amount; and
- (c) on such other terms and conditions the Council may approve from time to time.

Guarantee Amount means the amount specified in Schedule 1 item 9 this Agreement.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means the land identified in Item 3 of Schedule 1, comprising the land the subject of the Development Application.

Monetary Contribution means the amount set out in Item 5 of Schedule 1 (indexed in accordance with clause 5.2) to be paid by the Developer to the Council in accordance with this Agreement.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this agreement, and includes their successors and assigns.

Public Benefits means the public benefits identified in Item 8 of Schedule 1 which are to be provided as a result of the Developer's Works.

Public Space Instrument means an instrument creating an easement, covenant or other interest over or in respect of the Encumbered Land required under the Development Consent and upon terms that are acceptable to the Council.

Quantity Surveyor means a duly qualified quantity surveyor of at least five (5) year's experience in the assessment of building material and construction costs.

Quantity Surveyor's Assessment means an assessment by an independent quantity surveyor of the Construction Cost to the reasonable satisfaction of the Council.

4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) a reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (f) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) references to the word 'include' or 'including' are to be construed without limitation.
- (h) reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (i) any schedules and attachments form part of this Agreement.
- (j) a word defined in the Act has the same meaning in this Agreement.

5 DEDICATED LAND

5.1 Dedication of Land

- (a) The Developer must, carry out all steps required to dedicate the Dedicated Land to the Council (including making any necessary subdivision application) if that is required under the Development Consent.
- (b) The dedication referred to in paragraph (a) must occur prior to or after Completion, but before the grant of a Final Occupation Certificate in respect of any part of the Development Consent.

5.2 Directions by the Council

The Developer must comply with any reasonable directions by the Council in respect of the dedication of the Dedicated Land to the Council.

6 APPROVAL OF DEVELOPER'S WORKS

6.1 Definition of Scope of Works

The parties agree that the works described in Schedule 2 comprise the Developer's Works for the purposes of this Agreement. The parties acknowledge and agree that further design detail and refinement are/may be necessary, having regard to the following:

- (a) the extent to which the design of any part of the Developer's Works has been completed to the reasonable satisfaction of Council (in its capacity as a party to this deed and not as consent authority) at the date of execution of this Agreement;
- (b) conditions reasonably affecting the Developer's Works which were not reasonably capable of identification on or before the date of this Agreement;
- (c) to take into account a modification to the Development Consent made and approved under s.96 of the Act or any other development consent granted in respect of the Developer's Works; and

6.2 Developer to Prepare and Submit

The Developer must promptly (and in any event within 4 months of the date of this Agreement, or such later time as the parties may agree) prepare a detailed description, including, design drawings, for the Developer's Works in accordance with the requirements set out in Schedule 2, and submit it to Council's Representative for approval, such approval not to be unreasonably withheld and must be issued within 7 days.

6.3 Notice of Plans

The Council will promptly (and in any event within 10 days of submission) give the Developer notice whether or not the design drawings and description of the Developer's Works prepared under clause 7.2 is satisfactory. If the design or description is not satisfactory, then Council will identify the further information, or modifications, (as the case may be) which are required. The Developer must promptly amend the proposed design to take into account the comments to the extent that they are reasonable, made by the Council under this clause.

6.4 Valuation of Proposed Developer's Works

The Developer must prior to or during the course of preparation of the design plans prepare and submit a detailed costs estimate for the estimated costs of the Developer's Works. The total of such costs will be fully offset against any s94 contributions

7 DESIGN OF THE DEVELOPER'S WORKS

7.1 Preparation of the Plans and Specifications

The Developer must complete construction drawings in accordance with the design developed and approved by Council under clause 6.

8 CONSTRUCTION OF DEVELOPER'S WORKS

8.1 Approvals and Consents

- (a) The Developer must (at its cost) obtain all relevant approvals and consents for the Developer's Works whether from the Council or any other relevant government agency, including any necessary road opening permit.
- (b) Before commencing the Developer's Works, the Developer must give to the Council copies of all approvals and consents that are relevant to the Developer's Works.

8.2 Construction Work

The Developer must (at its cost):

- (a) carry out and complete the Developer's Works in accordance with the all approvals and consents relating to the Developer's Works (including the approval by Council of plans and any other information submitted under this Agreement); and
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner in accordance with the plans approved under this Agreement so that they are structurally sound, fit for purpose, and suitable for their intended use; and

- (c) promptly advise the Council's Representative of any significant delays which it experiences in completing the Developer's Works; and
- (d) comply with any reasonable directions from the Council in respect of the construction of the Developer's Works.

8.3 Works Completion

When, in the opinion of the Developer, the Developer's Works have reached completion, the Developer must notify the Council's Representative in writing, and must include in that notice:

- (a) a statement from the person with direct responsibility carriage and supervision of that work that in their opinion the Developer's Works have reached completion; and
- (b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the ongoing nature of the work; and
- (c) at least three (3) sets of the "as built" drawings of the Developer's Work, including one set in electronic format.

8.4 Final Inspection by Council

The Council's representative must inspect the Developer's Works within 7 days and must by written notice to the Developer:

- (a) concur that Completion has been achieved; or
- (b) disagree that Completion has been achieved and (if the Councils' representative so disagrees) identify the errors or omissions which have been identified and which in the opinion of the Council's representatives prevent Completion; or
- (c) issue a notice of the nature identified in clause 8.6.

8.5 Date of Completion of Developer's Works

The Developer must ensure that the Developer's Works reach Completion on or before the date on which an Occupation Certificate is issued in respect of the last building the subject of the Development Consent.

8.6 Non-Completion of Developer's Works

- (a) The Council may permit the Developer not to complete the Developer's Works (or part of them) by issuing a notice in writing to the Developer, expressly stating that completion of the items identified in that notice is not required in fulfilment of this Agreement.

(b) If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under the Development Consent or this Agreement, then Council in its discretion may either:

- (i) complete the Developer's Works; or
- (ii) modify the Public Benefits to reasonably achieve the objectives identified in this Agreement or the Development Consent;

and may recover all costs of and reasonably incidental to that work from the Developer.

9 DEFECTS LIABILITY PERIOD

9.1 Defects in the Developer's Works

If the Council notifies the Developer of a defect in the Developer's Works within the Defects Liability Period and the Developer agrees with the defect, then the Developer must remedy that defect to the reasonable satisfaction of the Council's Representative, within a reasonable period (having regard to the nature of the defect).

10 SECURITY

- 10.1 The Developer must within fourteen (14) days of this agreement deliver to the Council a bank Guarantee for the Guarantee amount.
- 10.2 The Developer may elect not to complete the Developer's Works (or part of them) by issuing a notice in writing to the Council, expressly stating that completion of the items identified in that notice will not be fulfilled.
- 10.3 The Council may if Clause 10.2 is exercised make an appropriation from the Guarantee in such amount as agreed between the Developer and Council but not more than the Guaranteed Amount.

11 DISPUTE RESOLUTION

11.1 Reference to Dispute

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve in accordance with this clause 11.

11.2 **Notice of Dispute**

The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve latter than by way of this clause 11;
- (b) the intent to involve this clause 11;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;
- (d) any material impact which the dispute has upon the completion of the Developer's Works (and in particular the completion of the remainder of the Development).

The contents of a notice issued under the clause 11.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

11.3 **Principals of Parties to Meet**

The principals of the parties must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion, or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 **Neither Party May Constrain**

If:

- (a) at least one meeting has been held in accordance with clause 11.3; and
- (b) the parties have been unable to reach an outcome identified in clause 11.2(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 11.3;

then that party may, by 14 day's notice in writing to the other, terminate the dispute resolution process in respect of that dispute. The

termination of the process set out in this clause 11 does not of itself amount to a breach of the Agreement.

12 NOTICES

12.1 Service of Notice

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out in Item 11 of Schedule 1; or
- (b) faxed to that Party at its fax number set out in Item 11 of Schedule 1.

12.2 Change of Address

If a Party gives the other Party 10 business day's notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Time of Service of Notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address.
- (b) if it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 Service After Hours, on Weekends and Holidays

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

13 COSTS

13.1 Legal and Administrative Costs

Each Party must pay their own legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this Agreement;
- (b) the giving effect to this Agreement; and
- (c) any enforcement of the rights under this Agreement.

13.2 Stamp Duty

The Developer is liable for and must pay all stamp duty (including any fine or penalty) on or relating to this Agreement.

14 ENTIRE AGREEMENT

This Agreement sets out the whole agreement of the Parties in respect of the subject matter. There are no other agreements, warranties or undertakings.

15 FURTHER ACTS

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

16. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

17 JOINT AND SEVERAL LIABILITY

Any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually.

18 NO FETTER

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

19 REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power:

- (a) to enter into this Agreement
- (b) comply with their obligations under the Agreement.

20 SEVERABILITY

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

21 MODIFICATION

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

22 WAIVER

A waiver by either Party is only effective if it is given in writing, and will only relate to the particular obligation or breach (as the case may be) identified in that communication.

23 GST

- 23.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the "GST Act").
- 23.2 If a party to this Agreement (the "Supplier") makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of

the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

- 23.3 If this Agreement requires a party to pay for, or reimburse any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- 23.4 If a party to this Agreement has the benefit of an indemnity for a cost, expense, loss or outgoing ("indemnified cost") under this Agreement, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- 23.5 Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.
- 23.6 Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Agreement are GST exclusive.

**SCHEDULE 1
REFERENCE SCHEDULE**

Item	Name	Description	Dates
1	Developer's Name Developer's ACN Developer's Address	Karimbla Properties (No. 23) Pty Limited ACN 59115511236 Level 11, 528 Kent Street, Sydney NSW 2000	
2	Council's Representative	Director of Planning	
3	Land	Lot 11 DP 774322, Lot 6 DP 977044, Lot 7 DP 977044, Lot 8 DP 977044	
4	Development Application No	MP08_0195	
5	Monetary Contribution	N/A	
6	Dedicated Land	An area of approximately 3000m2sqm to the North of Hudson Street as shown marked on the plan comprising Annexure "A"	
7	Public Benefits	Dedication of land as referred to in Item 6 above combined with the Developer's Works identified in Schedule 2.	
8	Notices Council Attention Address Fax Number Developer Attention Address Fax Number	General Manager Marrickville Council 2-14 Fisher Street, PO Box 14 Petersham NSW 2049 02 9335 2029 Karimbla Properties (No. 23) Pty Ltd General Manger Level 11, 528 Kent Street, Sydney NSW 2000 9287 2777	
9	Guarantee Amount	TBC	
10	Affordable Housing	Five (5) one bedroom units rented at 20% below the annual median rental and reflected on title by way of a restrictive covenant. If Meriton is successful in its application for an allocation of National Rental Affordability Scheme (NRAS), these units will be allocated in accordance with the provisions of that Scheme	

SCHEDULE 2 DEVELOPER'S WORKS

SECTION 1

1. Upgrade of Hudson Street
2. The dedication of Public Open Space to the North of Hudson Street
3. The embellishment of the dedicated Public Open space to the North of Hudson Street
4. The embellishment of Cycle and Pedestrian access links to the Lewisham West light rail stop
5. The embellishment of Cycle and Pedestrian access links to the Lewisham railway station and surrounding residential areas
6. Brown Street Road Closure and inclusion with Development Site
7. Brown Street Stormwater Works
8. McGill Street Stormwater Works
9. Footpath and Road Upgrades to William and Brown St

SCHEDULE 2 – SECTION 2

Voluntary Planning Agreement s94 Offset Schedule

Land/Work	Embellishment Value/Offset Estimate
Upgrade of Hudson Street*	\$509,131
Public Open Space Embellishment	\$2,071,836
Cycle and Pedestrian Links to Light Rail Stop	Incl in Public Open Space
Cycle and Pedestrian Links to Lewisham Station and Surrounds	\$180,158
Brown Street Closure and Embellishment	\$1
Brown Street Stormwater Works**	\$88,796
McGill Street Stormwater Works	\$83,062
Footpath and Road Upgrades to William and Brown St***	\$181,017
TOTAL (OFFSET)	\$3,114,001

Note *: the value shown for the upgrade of Hudson Street is 50% of the Total Value of the works

Note **: the value shown for the Brown Street stormwater works is 50% of the Total Value of the works

Note ***: the value shown for the upgrade of William and Brown St is 50% of the Total Value of the works

Estimated s94 Contributions **\$4,829,121**

Estimated Cash Payment (s94 less agreed OFFSET) **\$1,715,120**

SECTION 3

Landscape Concept Plan – Sturt Associates Drawing DA-1220-01, 02, 03 rev B

AT&L Brown Street Closure - Drawing DAC020 Issue B

AT&L Pedestrian and Bicycle Link – Option B Drawing SKC10 Issue P1, SKC11 Issue P1

AT&L Hudson Street Upgrade works – Drawing DAC011 Issue B, DAC021 Issue B, DAC008 Issue B

AT&L Brown and McGill Street Stormwater Diversion Works

DRAFT

EXECUTED as an Agreement.

Marrickville Council

)
)
)
)
)

Witness:

Name (printed):

(Council Appointed Signatory)

**Karimbla Properties (No. 23) Pty
Limited**

)
)
)
)
)

Level 11, 528 Kent Street, Sydney)
NSW 2000)

Signature:

Name:

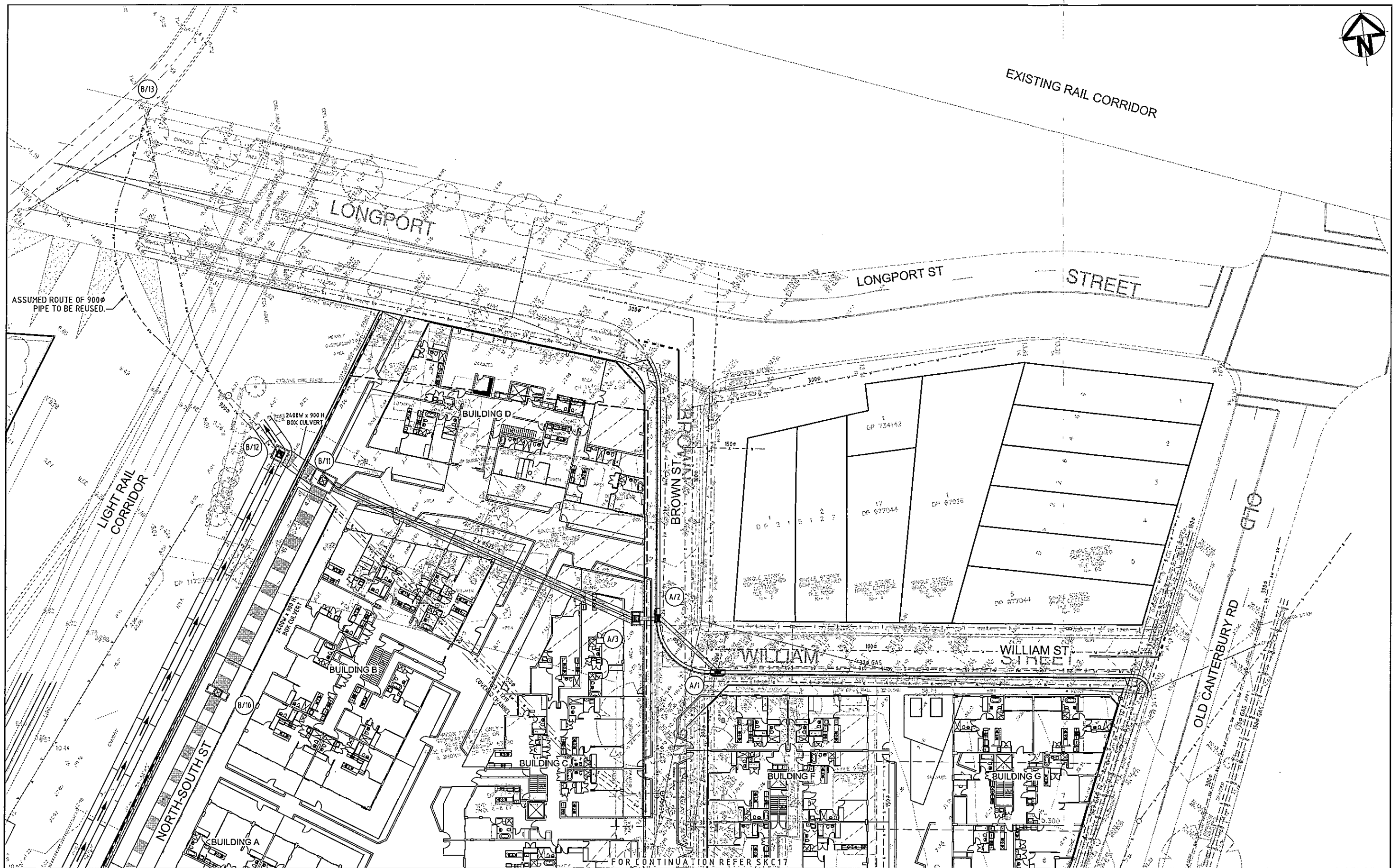
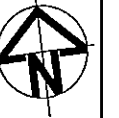
Position:

Signature:

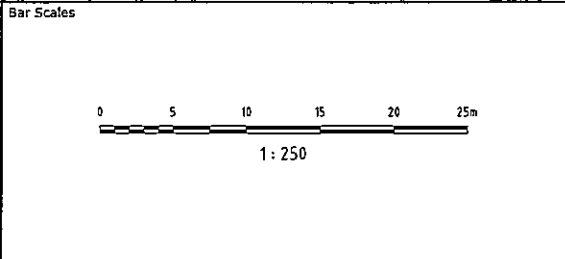
Name:

Position:

APPENDIX 2



Issue	Description	Date
P2	ISSUED FOR INFORMATION	22-05-13
P1	ISSUED FOR INFORMATION	24-04-13



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Client

Meriton

Scales	1 : 250
Grid	MGA
Height Datum	AHD
Drawn	GB
Designed	AT
Checked	AMc
Approved	

Project

LEWISHAM ESTATE

Title

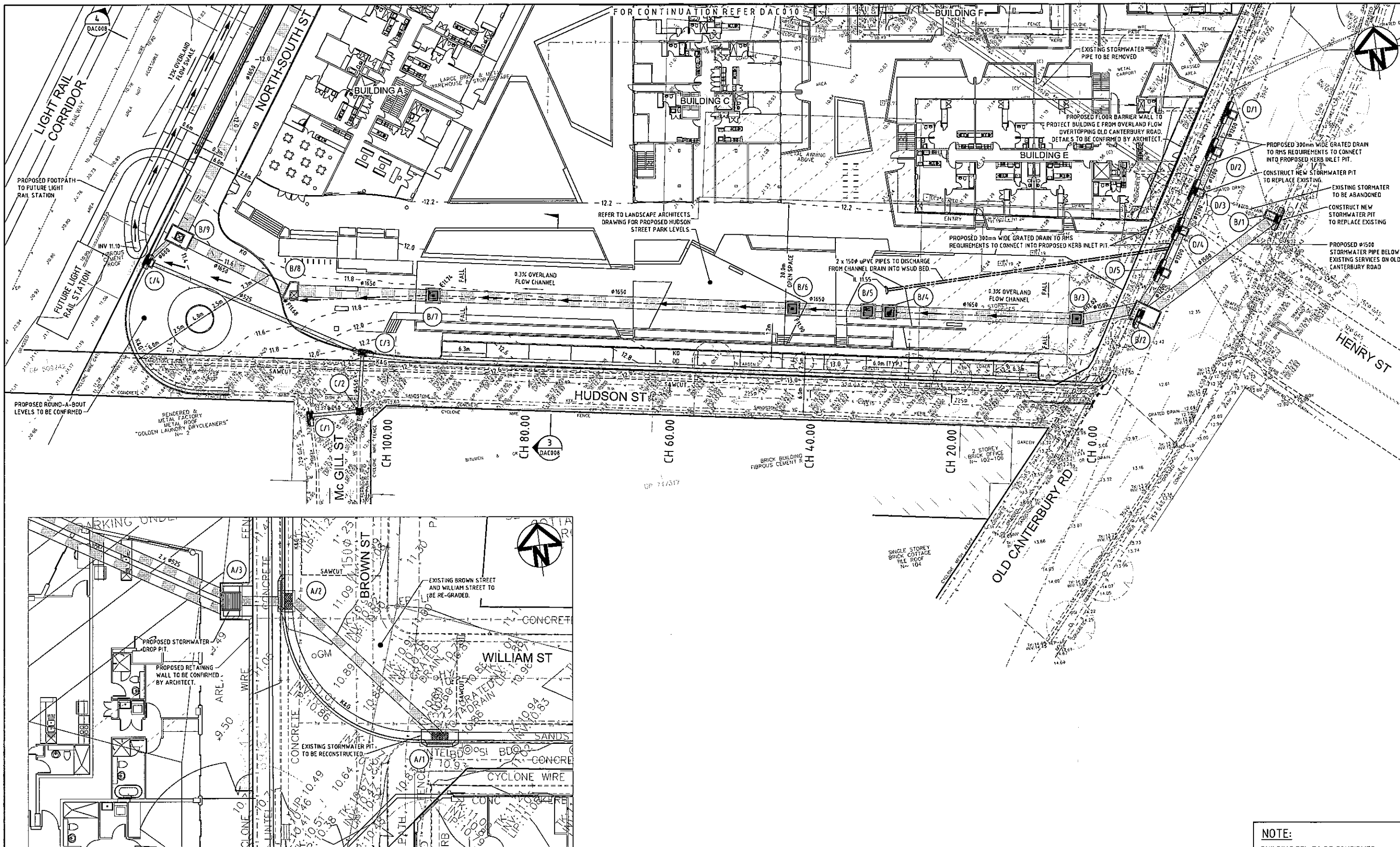
SITWORKS AND STORMWATER DRAINAGE PLAN SHEET 1

Civil Engineers and Project Managers

Suite 702, 154 Pacific Hwy
St Leonards NSW 2055
ABN 96 130 882 405
Tel: 02 9439 1777
Fax: 02 9469 8413
www.atf.net.au
info@atf.net.au

Status	FOR INFORMATION NOT TO BE USED FOR CONSTRUCTION	A1
Drawing No.	SKC16	Issue
Project No.	12-100	P2

APPENDIX 3



INSET A
1:100

NOTE:
BUILDING FFL TO BE CONFIRMED
WITHIN WMA WATER FLOOD REPORT.

			<div>Bar Scales</div> <div><div><div>0246810m</div><div>1:100</div></div><div><div>0510152025m</div><div>1:250</div></div></div>	<div>THIS DRAWING CANNOT BE COPIED OR REPRODUCED IN ANY FORM OR USED FOR ANY OTHER PURPOSE OTHER THAN THAT ORIGINALLY INTENDED WITHOUT THE WRITTEN PERMISSION OF AT&L</div>	<div>Client</div> <div><div><div><div></div></div><div>MERITON</div></div></div>	<div><div><div>Scales</div><div>1:250</div></div><div><div>Grid</div><div>MGA</div></div><div><div>Height Datum</div><div>AHD</div></div></div> <div><div><div>Drawn</div><div>TS</div></div><div><div>Designed</div><div>GB</div></div><div><div>Checked</div><div>AT</div></div><div><div>Approved</div><div></div></div></div>	<div><div><div>Project</div><div>LEWISHAM ESTATE</div></div><div><div><div>Title</div><div>SITWORKS AND STORMWATER DRAINAGE PLAN SHEET 2</div></div></div></div>	<div><div><div>Civil Engineers and Project Managers</div><div><div><div>at&l</div><div><div>Suite 702, 154 Pacific Hwy St Leonards NSW 2065 ABN 96 130 882 405 Tel: 02 9439 1777 Fax: 02 9460 8413 www.atl.net.au Info@atl.net.au</div></div></div></div><div><div><div>Status</div><div>FOR APPROVAL NOT TO BE USED FOR CONSTRUCTION</div></div><div><div><div>Drawing No.</div><div>DAC011</div></div><div><div>Project No.</div><div>12-100</div></div><div><div>Issue</div><div>B</div></div></div></div></div></div>	
B	ISSUED FOR DA APPROVAL	19-12-12							
A	ISSUED FOR CLIENT REVIEW	12-12-12							
P1	ISSUED FOR NFORMATION	07-12-12							
Issue	Description	Date							

ANNEXURE 4

Joe Bevacqua

From: Joe Strati <psol@marrickville.nsw.gov.au>
Sent: Monday, 8 July 2013 11:26 AM
To: Joe Bevacqua
Subject: RE: Lewisham VPA
Attachments: VPA - Lewisham Towers (11.0 KB)

Dear Joe,

I refer to your letter of 19 June 2013 and the further letter from Meriton dated 5 July 2013.

For the reasons expressed in my email to Tony Bellingham of 19 March 2013 (copy attached), Council remains dissatisfied with the offer made by Meriton in the VPA. To reiterate:

1. The open space offering will not serve the broader needs of the community and, therefore, does not warrant Council ownership and the associated reduction in contributions otherwise payable in conjunction with the development. Meriton's position that a community space is neither allowed nor mandated by the Concept Approval (a position I make no comment on at this time) does not change the fact that the absence of such space detracts from the utility of the open space. Meriton has sought modifications to the Concept Approval in the past and is not prevented from doing so again if it:
 - a. is willing to offer the community space; and
 - b. considers that a modification is required to the Concept Plan to allow that to occur.
2. The amount of Council contribution for infrastructure upgrades is excessive. The proposed development generates the need for the infrastructure works and, therefore, the vast majority of that cost should be borne by Meriton.
3. The draft VPA does not seek to make an offer that exceeds the financial benefit Council would receive from s.94 contributions alone. Indeed, given the poor quality of the open space offering, the VPA represents worse value than s.94. Meriton also gains further financial reward associated with carrying out works at builder's (as opposed to QS) costings and paying those costings much later than CC stage (which is when s.94 contributions would be payable) and makes no attempt to share that benefit with the Council and the community in the VPA.

In addition to the above, Council is not willing to consider the VPA further as the design of the overall development remains in a state of flux. Apart from modifications to the Concept Approval that Meriton continues to apply for, there is a fundamental issue with flooding on the site which, to my instructions, may necessitate major changes to the location, nature and quality of the open space. Until those issues are sorted and finalised (together with the issues identified above), Council will not be further assessing the VPA proposal.

Regards

Joe Strati
General Counsel
Marrickville Council

Direct line: 9335 2021
Direct fax: 9335 2019

2-14 Fisher Street
PETERSHAM NSW 2049

DX 3910 ANNANDALE

Joe Bevacqua

From: Joe Strati <psol@marrickville.nsw.gov.au>
Sent: Tuesday, 19 March 2013 10:38 AM
To: Tony Bellingham
Cc: Brian Barrett; Justin Fitzpatrick-Barr; Caroline McLeod; Judy Clark; Marcus Rowan; George Tsaprounis; Joe Di Cesare; Simon Lowe
Subject: VPA - Lewisham Towers

Dear Tony,

I note recent correspondence from Meriton wherein it indicated that it is not willing to further refine the VPA offer for the Lewisham Towers development.

In the circumstances, Council is now willing to proceed to advertise the VPA with the associated explanatory memorandum. Would you be kind enough to issue a collated VPA so that the advertising process can commence.

Notwithstanding the above, I wish to reiterate that the offer currently made by Meriton has been assessed at a staff level as being inadequate to meet the needs of the broader community. The open space offering still appears spartan and does not contain features that would make it a destination for persons other than those occupying the proposed development. The absence of any community space associated with the open space further serves to localise the benefits of the open space. I also note that agreement has not been reached on some aspects of the VPA including what public value should be ascribed to the upgrade of Hudson Street. The view of staff is that the benefit is low at best. Those details can be worked through during the assessment process. Lastly, I reiterate that Council's expectations when it comes to VPAs is to achieve a better outcome than that offered by section 94 contributions. The current offer falls well short of that objective and, indeed, may constitute a worse outcome.

In the circumstances, and subject of course to whatever comments are received through the public exhibition process, the likely recommendation from staff will be that the VPA should not be entered into by Council. The end decision will rest with the Councillors.

I look forward to receiving the comprehensive documentation from you on the VPA and to further discussing the matter.

Regards

Joe Strati
Principal Solicitor
Marrickville Council

Direct line: 9335 2021
Direct fax: 9335 2019

2-14 Fisher Street
PETERSHAM NSW 2049

DX 3910 ANNANDALE

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Joe Bevacqua

From: Joe Strati <psol@marrickville.nsw.gov.au>
Sent: Wednesday, 10 July 2013 11:58 AM
To: Joe Bevacqua
Subject: RE: Lewisham VPA

Dear Joe,

At no stage has Council indicated that it does not want open space within the subject development area to be dedicated and transferred into its ownership. The issue is that the current design is not suitable. Council's expectation is for Meriton to continue to develop the design of the open space and an associated community offering so as to make the public space a more attractive option.

Regards

Joe Strati
General Counsel
Marrickville Council

Direct line: 9335 2021
Direct fax: 9335 2019

2-14 Fisher Street
PETERSHAM NSW 2049

DX 3910 ANNANDALE

From: Joe Bevacqua [mailto:joeb@meriton.com.au]
Sent: Wednesday, 10 July 2013 11:53 AM
To: Joe Strati
Subject: RE: Lewisham VPA

Joe,

Thank you for your response below. With regards Point 1 below in relation to the Open Space, can you please confirm Council no longer want the open space dedicated and transferred into their ownership.

If this is the case, I will then make the necessary amendments.

Regards
Joe Bevacqua
Development & Planning Executive

Meriton Group
Level 11, Meriton Tower, 528 Kent St, Sydney 2000
Direct: +61 2 9287 2691 | Mob: +61 0438 156 361
Tel: +61 2 9287 2888 | Fax: +61 2 9287 2777
joeb@meriton.com.au

From: Joe Strati [mailto:psol@marrickville.nsw.gov.au]
Sent: Monday, 8 July 2013 11:26 AM
To: Joe Bevacqua
Subject: RE: Lewisham VPA

Dear Joe,

I refer to your letter of 19 June 2013 and the further letter from Meriton dated 5 July 2013.

For the reasons expressed in my email to Tony Bellingham of 19 March 2013 (copy attached), Council remains dissatisfied with the offer made by Meriton in the VPA. To reiterate:

1. The open space offering will not serve the broader needs of the community and, therefore, does not warrant Council ownership and the associated reduction in contributions otherwise payable in conjunction with the development. Meriton's position that a community space is neither allowed nor mandated by the Concept Approval (a position I make no comment on at this time) does not change the fact that the absence of such space detracts from the utility of the open space. Meriton has sought modifications to the Concept Approval in the past and is not prevented from doing so again if it:
 - a. is willing to offer the community space; and
 - b. considers that a modification is required to the Concept Plan to allow that to occur.
2. The amount of Council contribution for infrastructure upgrades is excessive. The proposed development generates the need for the infrastructure works and, therefore, the vast majority of that cost should be borne by Meriton.
3. The draft VPA does not seek to make an offer that exceeds the financial benefit Council would receive from s.94 contributions alone. Indeed, given the poor quality of the open space offering, the VPA represents worse value than s.94. Meriton also gains further financial reward associated with carrying out works at builder's (as opposed to QS) costings and paying those costings much later than CC stage (which is when s.94 contributions would be payable) and makes no attempt to share that benefit with the Council and the community in the VPA.

In addition to the above, Council is not willing to consider the VPA further as the design of the overall development remains in a state of flux. Apart from modifications to the Concept Approval that Meriton continues to apply for, there is a fundamental issue with flooding on the site which, to my instructions, may necessitate major changes to the location, nature and quality of the open space. Until those issues are sorted and finalised (together with the issues identified above), Council will not be further assessing the VPA proposal.

Regards

Joe Strati
General Counsel
Marrickville Council

Direct line: 9335 2021
Direct fax: 9335 2019

2-14 Fisher Street
PETERSHAM NSW 2049

DX 3910 ANNANDALE

From: Joe Bevacqua [mailto:joeb@meriton.com.au]
Sent: Tuesday, 25 June 2013 11:37 AM
To: Joe Strati
Subject: FW: Lewisham VPA

Joe,

When you return from your conference, could you please give me a call to discuss the VPA. I would like to know if Council is agreeable to the items included in the VPA sent to on the 19th June.

Regards

Joe Bevacqua

Development & Planning Executive

Meriton Group

Level 11, Meriton Tower, 528 Kent St, Sydney 2000

Direct: +61 2 9287 2691 | Mob: +61 0438 156 361

Tel: +61 2 9287 2888 | Fax: +61 2 9287 2777

joeb@meriton.com.au

From: Joe Bevacqua [<mailto:joeb@meriton.com.au>]

Sent: Wednesday, 19 June 2013 4:41 PM

To: psol@marrickville.nsw.gov.au

Subject: Lewisham VPA

Joe,

Please find attached our revised VPA for your consideration (hard copy has been placed in the post).

We welcome your comments on the detail and if Council is agreeable to the items contained within, we will finalise the cost estimates for submission to Council.

If you have any queries, please do not hesitate to call.

Regards

Joe Bevacqua

Development & Planning Executive

Meriton Group

Level 11, Meriton Tower, 528 Kent St, Sydney 2000

Direct: +61 2 9287 2691 | Mob: +61 0438 156 361

Tel: +61 2 9287 2888 | Fax: +61 2 9287 2777

joeb@meriton.com.au

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ANNEXURE 5

10 October 2013

Mr Tim Moore
Director of Planning and Environmental Services
Marrickville Council
2-14 Fisher Street
PETERSHAM NSW 2049

Dear Tim

**VOLUNTARY PLANNING AGREEMENT (VPA)
70-90 OLD CANTERBURY ROAD, LEWISHAM**

Further to our letter dated 17 September and subsequent meeting at Council's offices on 4 October, we are seeking verification of Council's position on the offsets considered acceptable for the purposes of finalising the VPA.

At the meeting, Mr Joe Strati advised that there were three (3) items amounting to approximately \$900,000 that could not be accepted as offsets to make the VPA offer acceptable to Council, being:

1. Upgrade of Hudson Street,
2. Stormwater Works in Brown Street, and
3. Footpath and Road Upgrades to William and Brown Street

Our understanding of Council's position from that meeting is outlined in **Table 1**. This will result in total offsets of \$1,993,862 and a cash contribution \$2,963,372 to provide a total VPA value of \$4,957,234 which is equivalent to the estimated S94 contributions which would ordinarily be levied. We maintain that other "concept approved items" outlined in our previous letter substantially increase the overall benefits to Council and the public well beyond the value of the estimated S94 contributions.

Table 1 – Understanding of Council's Accepted VPA Offsets

Land/Work included in VPA Offer	Offset Estimate
Upgrade of Hudson Street (50% of full cost – \$1,206,568)	\$603,284
Public Open Space Embellishment (including Public Art and links to Light Rail Stop)	\$1,692,222
Cycle and Pedestrian Links to Lewisham Station and Surrounds	\$184,874
Brown Street Closure and Embellishment	\$1
Brown Street Stormwater Works (50% of full cost – \$177,066)	\$88,533
McGill Street Stormwater Works	\$116,766
Footpath and Road Upgrades to William and Brown St (50% of full cost – \$372,469)	\$186,234
Sub-total of Offset Items	\$1,993,862
Cash Contribution	\$2,963,372
VPA Value	\$4,957,234

We would appreciate your feedback in writing so that we can understand Council's requirements to finalise this critical component of the approval process.

Please contact the undersigned should you wish to discuss this matter further.

Yours sincerely
MERITON GROUP



Matthew Lennartz
PLANNING EXECUTIVE

ANNEXURE 6

OUR REF: 4580

24 October 2013

Meriton Property Services Pty Ltd
Meriton Tower
L11, 528 Kent Street
SYDNEY 2000
DX 1177 SYDNEY

Attention: Walter Gordon

Dear Walter,

70-90 OLD CANTERBURY ROAD LEWISHAM – VPA.

I refer to your letter of 10 October 2013.

At a broad level, it is difficult to provide a definitive response on the attractiveness of the VPA offer in the absence of a development application. This is particularly the case as the value of s.94 contributions suggested in your letter (ie. \$4,957,234) appears greater than the amount of s.94 that applied to the previously refused DA (ie. \$4,416,653.51) which suggests that there is a change proposed in the development from the previously refused one.

As has been previously advised on several occasions, Council ordinarily looks for a VPA return greater than that afforded by s.94 and I am unable to judge whether the subject offer achieves that outcome.

However, I can confirm that the nature of the offsets are accepted particularly in that you have now agreed to exclude items that Council has considered at all times not to warrant any offset.

In order for Council to make a final and proper assessment of the offer, including verification of the actual dollar amounts specified, Meriton will need to lodge a VPA with Council in conjunction with a development application.

For further enquiries please contact me on 9335 2110.

Yours sincerely,



Tim Moore,
Director Planning and Environmental Services

ANNEXURE 7

28 October 2013

Mr Tim Moore
Director of Planning and Environmental Services
Marrickville Council
2-14 Fisher Street
PETERSHAM NSW 2049

Dear Tim

**VOLUNTARY PLANNING AGREEMENT (VPA)
70-90 OLD CANTERBURY ROAD, LEWISHAM**

Thank you for Council's letter dated 24 October 2013. It is encouraging that Council has now provided some direction, however the response has misinterpreted the request in our letter dated 10 October 2013 which was only seeking verification as opposed to an assumed agreement with the position put forward. Council's response has reiterated the gap between our understanding of the intent of Condition A3. The response also makes assertions about our intentions with the project based on the incorrect application of Council's Section 94 Plan. It is also vague on Council's position and provides no certainty for Meriton to move forward.

Our letter to Council requested verification of a verbal position made by Council at our meeting with you on 4 October 2013. Verification was sought on your position regarding offsets under the VPA as we believe the statement was contrary with the intent of Condition A3 of the Concept Approval (MP08_195). The underlying intent of the Condition is that the items listed are "offset" including any "other parts of the site that will be upgraded, embellished, constructed or dedicated to Council" as per page 39 of the Director General's Assessment Report. Council's response incorrectly assumed that we have "now agreed to exclude items".

We believe that the calculation of Section 94 contributions put forward by Council is incorrect. The estimated S94 contributions we have submitted on the 17 September and 10 October 2013 are based on the 362 unit scheme which was refused by the Joint Regional Planning Panel (JRPP) as outlined in the table below. The calculations are in accordance with Council's current "Sections 94/94A Contributions Plan 2004" and latest "Pricing Policy and Fees and Charges 2013/2014" (adopted June 2013) downloaded from Council's website. Council's calculation seemingly uses the number of bedrooms in each unit as opposed to floor area of units as required under Section 1.2 of Council's Section 94 Plan. Meriton at all times has tried to provide Council with appropriate and relevant information to make a decision which is consistent with how we deal with a number of other Council's throughout metropolitan Sydney.

Table 1 – Section 94 Calculations

	Number	S94 Rate	Estimated Contribution
Small Residential Unit (<55m ²)	68	\$9,596.21	\$652,542.28
Medium Residential Unit (55-85m ²)	228	\$13,593.83	\$3,099,393.24
Large Residential Unit (>85m ²)	66	\$18,153.86	\$1,198,154.76
Retail (Retail – 3, Café 2, 1 accessible)	6	\$1,190.69	\$7,144.14
		TOTAL	\$4,957,234.42

Council's letter also suggests that it cannot determine if there is additional monetary value beyond that which would be ordinarily levied under Section 94. Please refer to our letter dated 17 September 2013 addressed to yourself which clearly identifies that Council would receive approximately 168% of the value of S94 which would ordinarily be levied on this development.

Given the gap between Meriton's and Council's understanding of the intent of Condition A3, we have no other alternative but to lodge a Section 75W modification to the concept plan to provide certainty with the VPA.

Please contact the undersigned should you wish to discuss this matter further.

Yours sincerely

MERITON GROUP



Walter Gordon

Director Planning and Development

ANNEXURE 8

Our Ref: 59914007[13-0242-D]

Contact: Matthew Zollinger

18 October 2013

Meriton Group

Level 11, Meriton Tower,
528 Kent Street, Sydney NSW 2000

Attention: Shener Dursun

Dear Shener

Cardno (NSW/ACT) Pty Ltd
ABN 95 001 145 035

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The Forum
203 Pacific Highway
St. Leonards NSW 2065

P.O. Box 19
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Lewisham Estate Drainage Works

This letter is to discuss the upgrade to Council's and Sydney Water's drainage infrastructure by the proposed Lewisham Estate development.

Existing Drainage Network

The existing drainage network consists of a covered Sydney Water channel flowing through the Lewisham Estate with no formal allowance for overland flow. Presently flows exceed the capacity of the conduit in approximately a 1-2 year storm event. Water will pond on Old Canterbury Road before overtopping and flowing through the site as shown in Figures 1 & 2 below. Buildings have been constructed across the natural overland flow path resulting in damage to buildings and risk to life from high hazard flow through the site during flood events. Flows then cross the light rail corridor before entering Hawthorne Canal.

The existing trunk drainage infrastructure (covered channel and oviform pipe) traversing the site is owned by Sydney Water (Figure 3). Council owns the street network on Old Canterbury Road which drains into the Sydney Water system, surface water on Old Canterbury Road enters the system through four pits located on Old Canterbury Road (Figure 4). Flows that exceed the capacity of these pits travel overland through the site.



Figure 1 - Existing Overland Flow

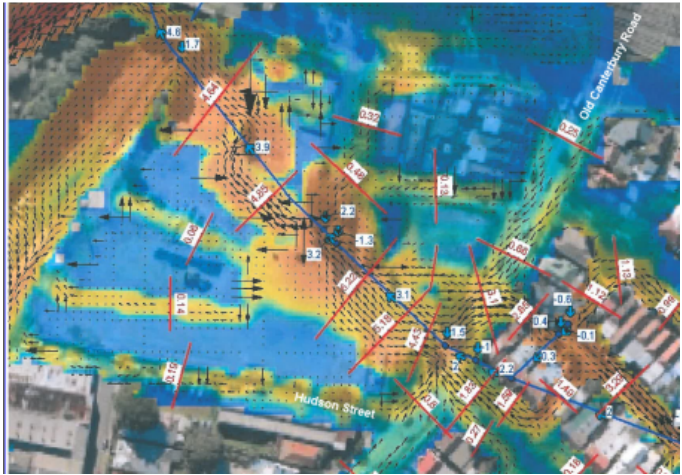


Figure 2 - Existing Overland Flow

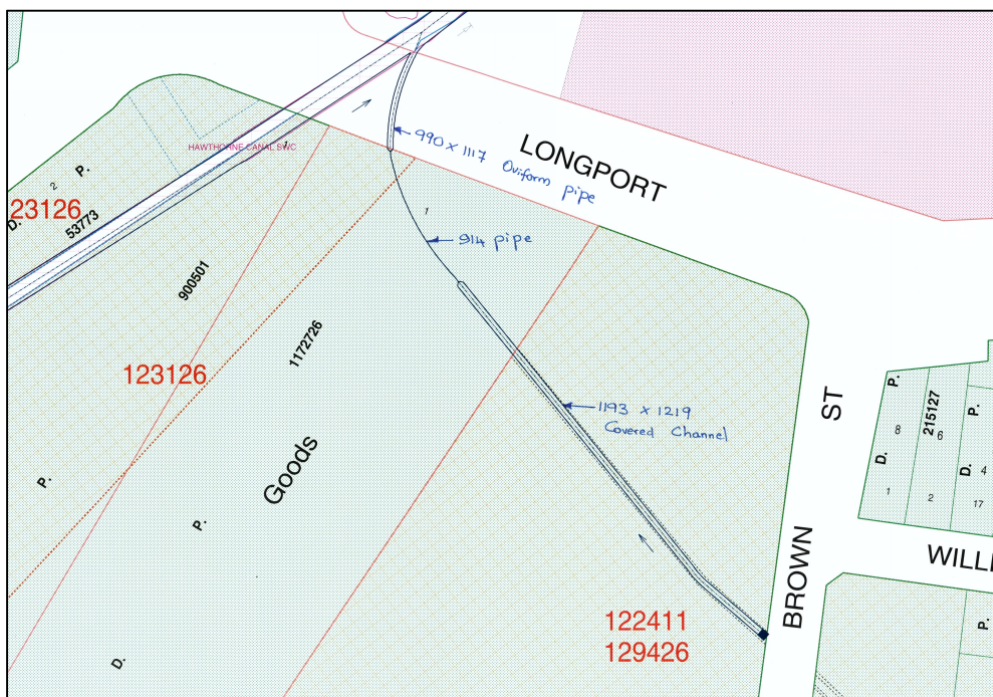


Figure 3 - Sydney Water Infrastructure

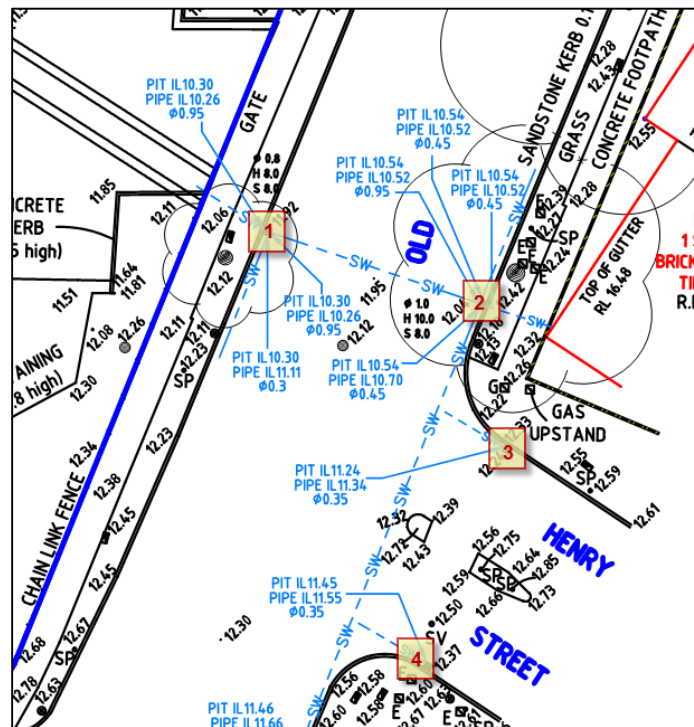


Figure 4 – Existing Inlet pits on Old Canterbury Road

Proposed System

The proposed development of Lewisham Estate seeks to upgrade the trunk drainage system that presently flows through the site and provide a formal overland flow path which will minimise the risk of damage to property and risk to people (Figure 5). The proposed upgrade of the system is consistent with the intent of the 2005 Floodplain Development Manual and Council's DCP 2.22 and will provide a substantial benefit to the present and future community.

The development of Lewisham Estate provides an additional two stormwater pits in Old Canterbury Road which enables water that previously ponded on Old Canterbury Road to access the upgraded trunk drainage system. The existing pipes that flow under buildings will be replaced by larger pipes that will be located under the proposed open space area parallel to Hudson Street (Figure 5), Table 1 shows a summary of flows affecting the upgraded trunk drainage system.

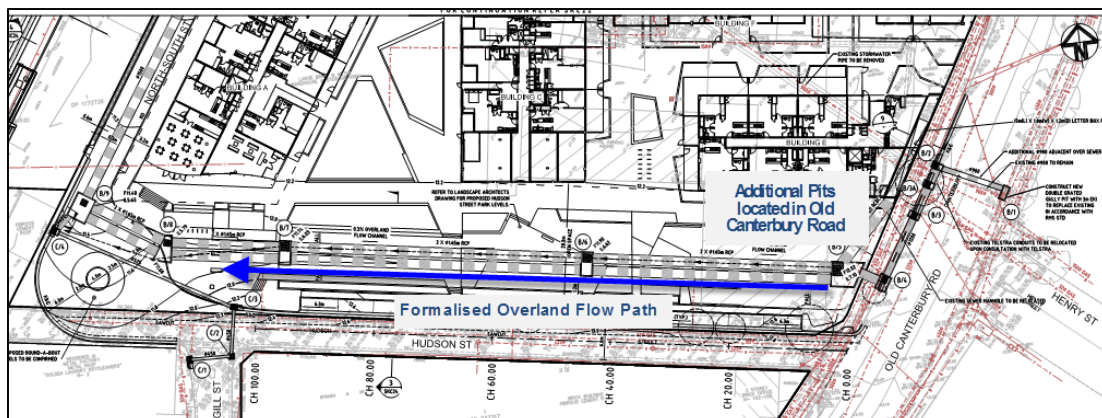


Figure 5 - Upgraded Drainage Network

Table 1 - Flow Summary

ARI	Current Site Discharge* (m ³ /s)	Post Development Site Discharge* (m ³ /s)	Upgraded trunk drainage flow capacity* (m ³ /s)	Overland flow (m ³ /s)	Total Catchment flows (m ³ /s)	percentage contribution of site to total catchment flows
20	0.56	0.43	5.7	0.8	6.5	7%
100	0.69	0.51	6.8	2.2	9.0	6%

* Site discharges reported by Browns (Dec 2012)

+ Trunk drainage capacity is measured as the flow within pipes that flow into pit B/5 within the site. This pit may surcharge and transfer some of this flow into the formalised overland flow path.

Benefit to the Community

- Flooding on Old Canterbury Road – The existing pipe network has a limited capacity and will only convey the 1-2 year storm event with additional flows ponding on Old Canterbury Road before flowing overland. The proposed upgrade to the network will convey flows up to the 5-10 year event;
- Light Rail Corridor - The proposed development will not significantly impact flooding in the light rail corridor. Additional modelling and works have been undertaken and civil works will be undertaken to ensure the new station adjacent to the site is not adversely affected by overland flow from the catchment upstream of Lewisham Estate;
- Reduction in runoff - The development of Lewisham Estate includes on site detention sufficient to return the discharge of stormwater from the site to that of a completely undeveloped site. Flows generated now represent only 6% of flows during the 100 year event and 7% of flows during the 20 year event. The proposed development only contributes a minor portion of the catchment with greater than 90% of flows during the 20 year event being generated upstream of the site;
- Relocation of Council / Sydney Water assets - The relocation of the upgraded trunk drainage system from below existing privately owned buildings to Council owned public open space allows for easier access for maintenance and future improvements to the upstream network if required; and
- Development south of Hudson Street – Presently stormwater from south of the site flows along Hudson Street and discharges into the light rail corridor in the vicinity of the new train station. The proposed upgrade to the drainage network includes the installation of pits and pipes in McGill Street to manage the drainage of the area south of Hudson Street. This benefits the community by improving the flooding of the Light Rail station and accommodating future development of the area immediately south of Hudson Street.

Conclusion

The development of Lewisham Estate is located at the downstream end of a highly urbanised local catchment with a drainage system with very limited capacity and with no provision for overland flows. The proposed upgrade of the drainage system through the site increases the capacity of the trunk drainage system from approximately a 1-2 year to 5-10 year ARI capacity. In addition to the increased pipe capacity the development provides a formal overland flow path to convey flows in excess of the augmented drainage system capacity. The proposed development considers future development of adjacent sites and provides upgraded street drainage on both McGill Street and Old Canterbury Road.

The upgrade of the trunk drainage system and installation of OSD as part of the development of Lewisham Estate benefits the wider community by increasing the drainage system capacity, providing a formal overland flow path, reducing peak flows generated by the site and facilitating future development south of Hudson Street.

Should you have any questions please do not hesitate to contact the undersigned.

Yours faithfully,



Matthew Zollinger

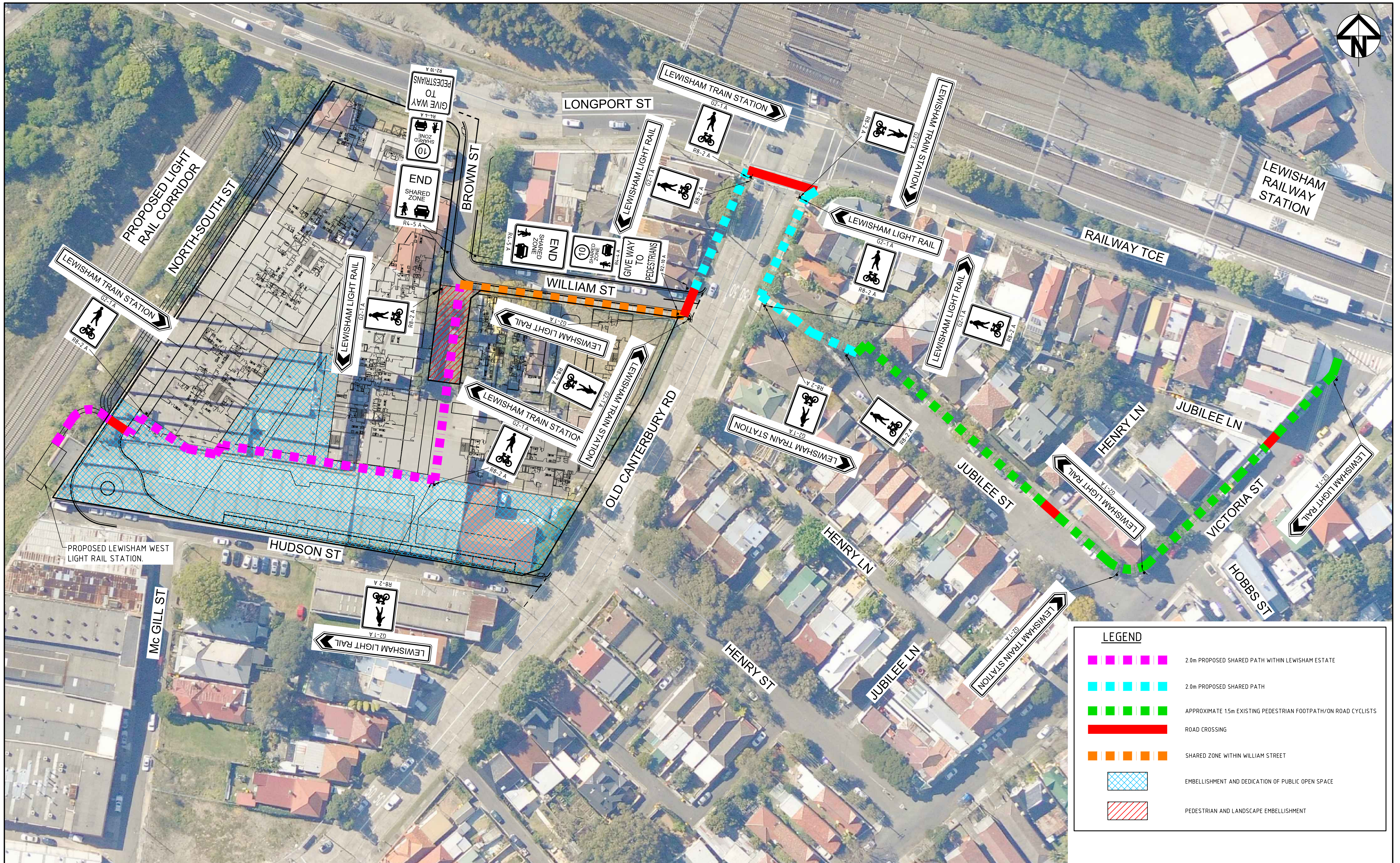
Senior Project Manager

For Cardno

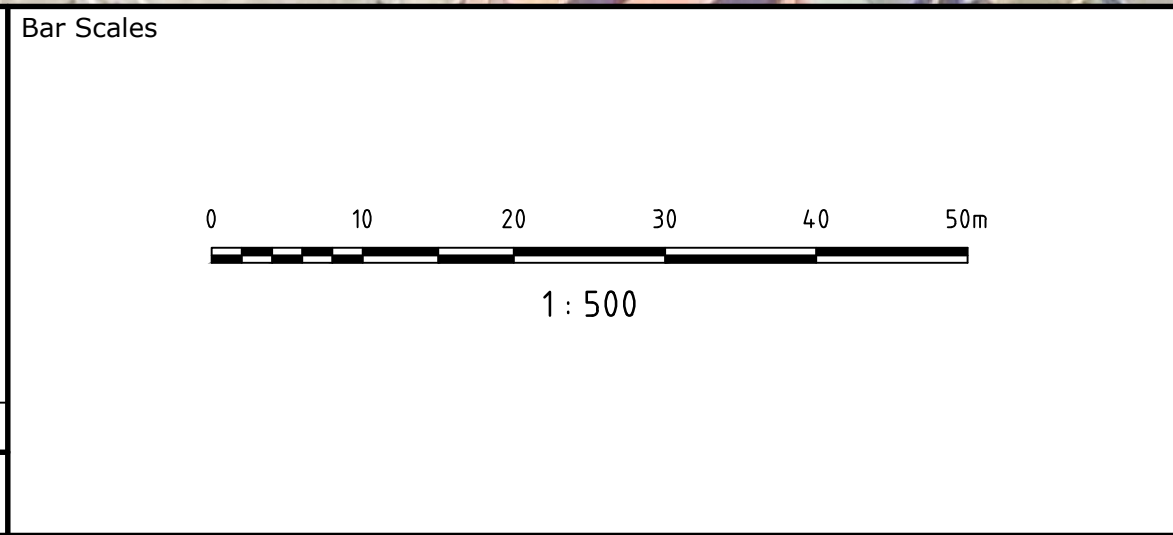
9024 7133

matthew.zollinger@cardno.com.au

ANNEXURE 9



P1	ISSUED FOR INFORMATION	07-02-13
Issue	Description	Date



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Scales	1 : 500	Drawn	GB
Grid	MGA	Designed	GB
Height Datum	AHD	Checked	AMc
		Approved	

Project	LEWISHAM ESTATE
Title	PEDESTRIAN AND BICYCLE LINK - OPTION B

Civil Engineers and Project Managers		
Suite 702, 6A Glen Street Milsoms Point NSW 2061 ABN 96 130 882 405 Tel: 02 8920 2466 Fax: 02 9922 5102 www.atl.net.au info@atl.net.au		
Status	PRELIMINARY ONLY NOT TO BE USED FOR CONSTRUCTION	A1
Drawing No.	SKC10	Issue
Project No.	12-100	P1



Bar Scales

0 5 10 15 20 25m

1: 250 @ A1 1: 500 @ A3

Client

The Meriton logo is displayed, consisting of a blue square icon with a white 'M' and a yellow crown on top, followed by the word 'MERITON' in white capital letters on a dark blue rectangular background.

Project	07/20/2025 10:51:17 AM 1/1/2025 1:17:21 PM 1/1/2025 1:17:21 PM
LEWISHAM ESTATE	
Title	SITEWORKS AND STORMWATER DRAINAGE PLAN - SHEET 1

Civil Engineers and Project Managers



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<p>Status:</p> <p>PRELIMINARY ISSUE</p> <p>NOT TO BE USED FOR CONSTRUCTION</p>	<p>A1</p>
<p>Drawing No.</p> <p>SKC22</p>	<p>Project No.</p> <p>12-100</p>
<p>Issue</p> <p>P4</p>	

