



**MODIFICATION REQUEST:
Breakfast Point Concept Plan 2005
MOD 2 – Demolition of the Breakfast
Point Power House and replacement with
six residential dwellings**

Breakfast Point, Canada Bay



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

September 2012

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TABLE OF CONTENTS

1.	BACKGROUND	1
1.1	The Site in Context	1
1.2	Development Background	2
1.3	Power House Background	3
2.	PROPOSED MODIFICATION	5
2.1	Modification Description	5
3.	STATUTORY CONTEXT	6
3.1	Continuation of Part 3A	6
3.2	Modification of the Minister's Approval	6
3.3	Environmental Assessment Requirements	6
3.4	Delegated Authority	6
4.	CONSULTATION AND SUBMISSIONS	7
5.	ASSESSMENT	7
5.1	Evaluation of public benefit contribution in lieu of the Power House dedication	7
5.2	Heritage	9
5.3	Proposed dwellings	10
6.	CONCLUSION	11
7.	RECOMMENDATION	12
APPENDIX A	MODIFICATION REQUEST	13
APPENDIX B	SUBMISSIONS	14
APPENDIX C	SGS ECONOMICS INDEPENDENT EVALUATION REPORT	15
APPENDIX D	RECOMMENDED MODIFYING INSTRUMENT	16

1. BACKGROUND

1.1 The Site in Context

Breakfast Point has an area of 51.82 hectares (ha) and is located on the Mortlake Peninsula, approximately 9km west of the Sydney CBD. The site is within the Canada Bay LGA and is shown in Figures 1 and 2 below.

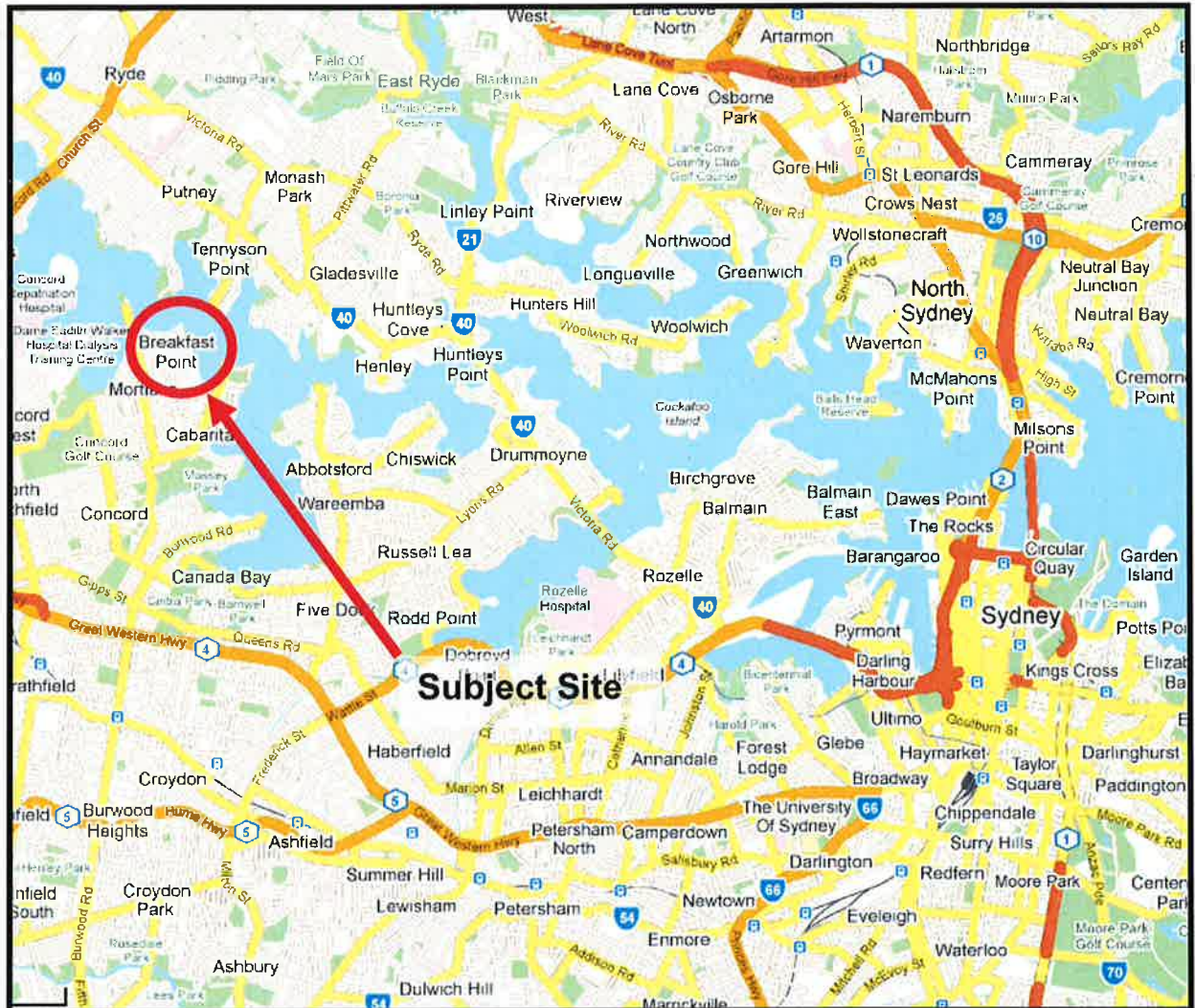


Figure 1: Location in Context with Sydney CBD

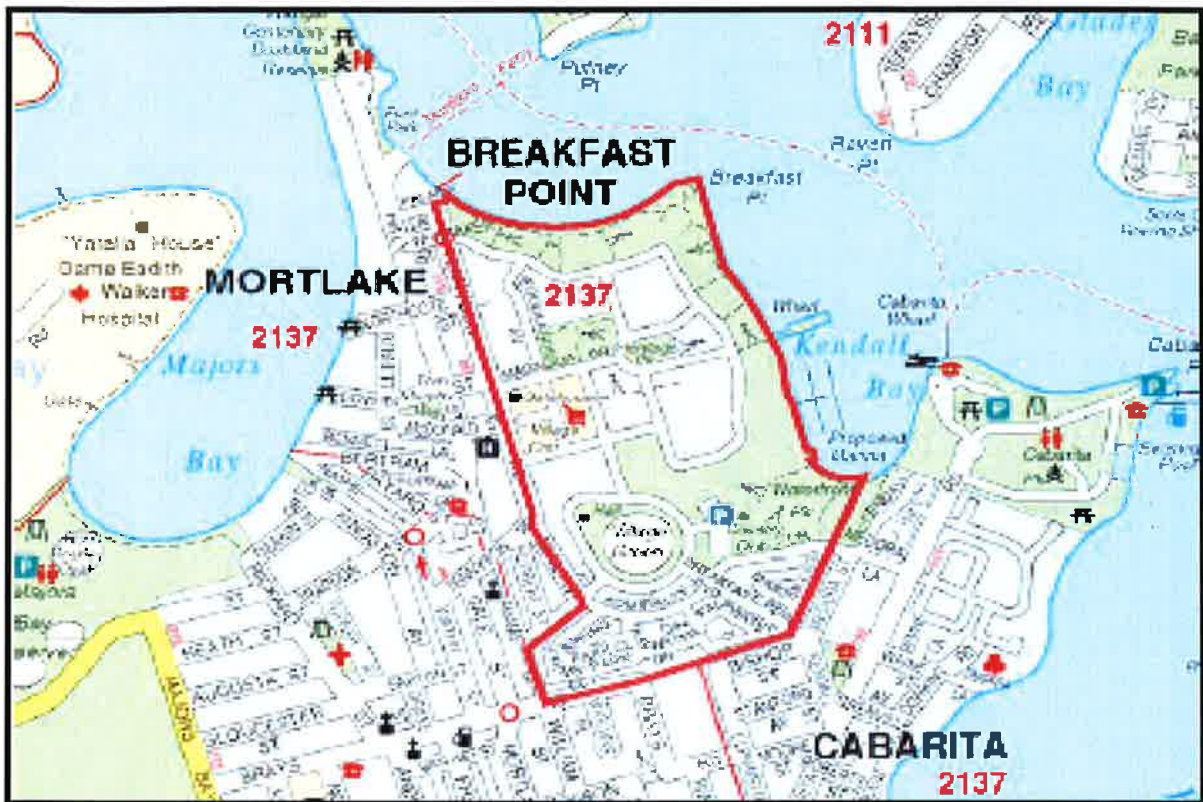


Figure 2: Location Plan

1.2 Development Background

The redevelopment of Breakfast Point follows its former use as a gasworks by the Australian Gaslight Company (AGL). The site was rezoned by the former Concord Council from "4(a) Industrial General" to "Residential 2(e)" in 1998 and also identified as a site of "strategic significance" pursuant to the provisions of State Environmental Planning Policy No. 56 – Sydney Harbour Foreshores and Tributaries (SEPP 56).

On 31 August 2005, the former Minister for Planning assumed the role of approval authority for development at Breakfast Point under the former provisions of State Environmental Planning Policy (Major Projects) 2005.

On 7 April 2006, the Breakfast Point Concept Plan 2005 was approved by the former Minister for a mixed use residential/commercial/retail development comprising the following (in addition to the approvals granted by Council):

- 176,222 sq.m of GFA including 1,519 sq.m of non-residential GFA;
- 989 dwellings; and,
- Subdivision into Torrens Title and Strata Lots.

On 4 August 2006, the Director General granted an additional bonus of 200 dwellings for the Breakfast Point site allowing a maximum of 1189 dwellings on the site. As a result, the total GFA was increased to 183,480sq.m.

Several project approvals have been granted for various precincts including the Vineyards, Plantations, Silkstone, The Point, Manors North and Blacksmiths precincts.

In addition, a number of S.75W modification applications have been approved, which have included changes to the approved dwelling mix/dwelling numbers for the Plantations and Point Precincts. To date Project Approval has been granted for 959 dwellings pursuant to the Breakfast Point Concept Plan 2005.

On 18 October 2010, the Executive Director, Major Projects Assessment granted approval to Breakfast Point Concept Plan 2005 MOD 1 which allowed for the conversion of 4 residential apartment buildings within the Seashores Precinct for Seniors Housing and the redistribution of remaining dwelling numbers to other buildings within the Seashores, Plantations, Point and Woodlands North Precinct.

1.3 Power House Background

The Breakfast Point Concept Plan includes the retention of remnant industrial buildings and structures on the site including the building known as the Power House building. The Concept Plan envisages that part of the Power House building will be adapted for commercial use with the remaining portion required to be dedicated to Council (and used for a community use such as a museum). Requirement 11 states that:

11. Dedication of Power House and Curtilage

Within 12 months of the determination date in Part A of Schedule 1 of the Breakfast Point Concept Plan, the Applicant shall use their best endeavours to seek the dedication of approximately 240m² of the Power House's gross floor area and the curtilage (as identified in Schedule 3) into the care, control and maintenance of Council. Should an agreed outcome not be reached within that timeframe (and the Director General has not specified an alternative timeframe), the Power House and the curtilage shall remain in the care, control and maintenance of the owner at that time.

The Applicant shall liaise with Council and the NSW Heritage Office regarding the appropriate construction standards so that the Power House and curtilage may be dedicated to the Council in the future, if Council chooses to accept the dedication. The final design detail of the Power House and curtilage is to be approved by the Department prior to the issue of the construction certificate for these works.

In the event that Council accepts the dedication, a public positive covenant and right of carriage way is to be created over the Power House and curtilage to allow full public access to the development to the dedicated area. In addition, the owner is to be burdened with the requirement to maintain the Power House and curtilage to the constructed standard. These mechanisms are to be created pursuant to Section 88B of Section 88BA of the Conveyancing Act, 1919 and are to be shown on the title of the land. Details of these mechanisms are to be approved by the Director prior to release of the relevant subdivision certificate or the strata subdivision certificate.

The dedication of part of the Power House building and its curtilage to Council forms part of the package of contributions that comprise the range of public benefits provided by the Breakfast Point Concept Plan.

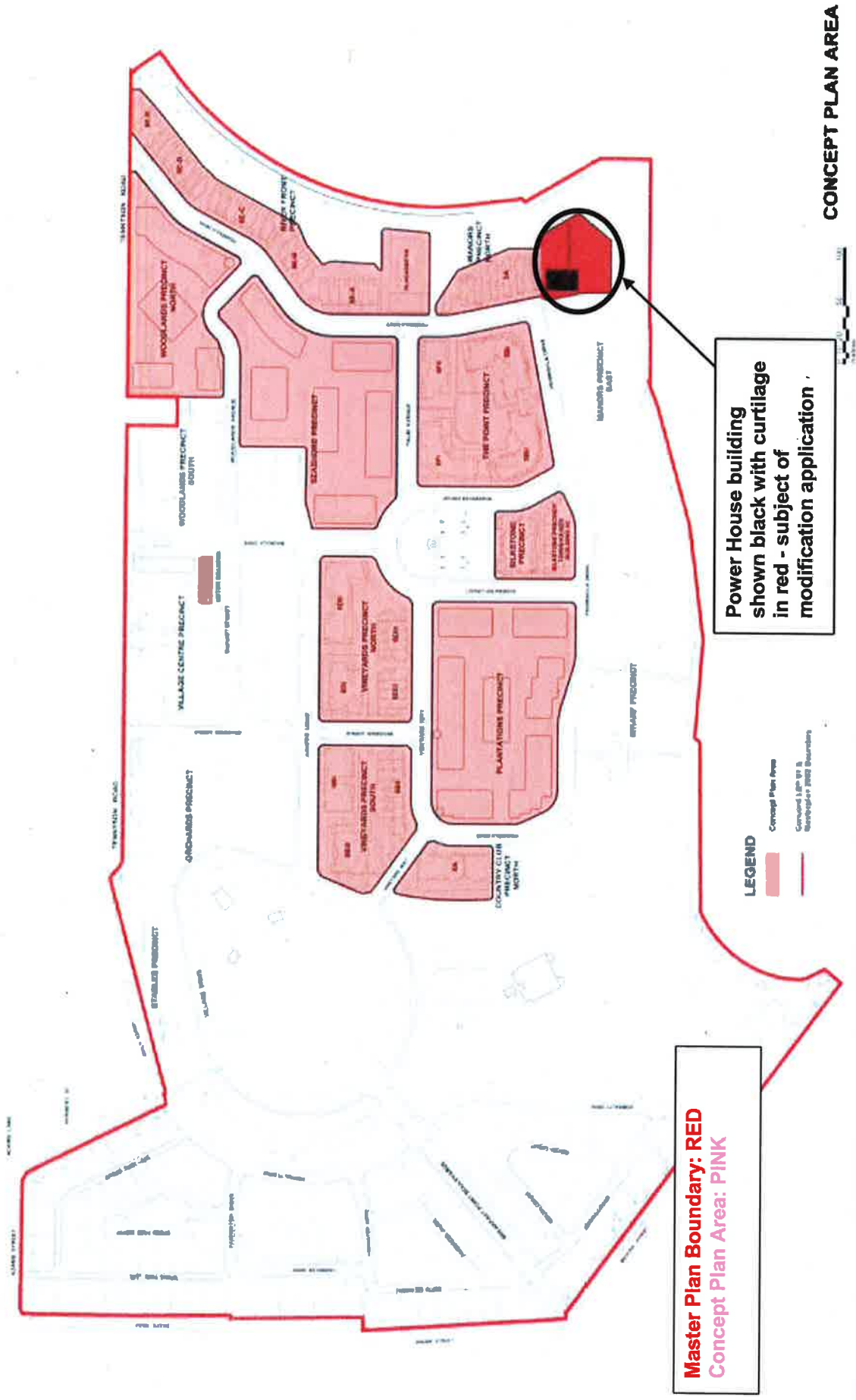


Figure 3: Concept Plan site area and Power House location
NSW Government
Department of Planning & Infrastructure

2. PROPOSED MODIFICATION

2.1 Modification Description

The proposal seeks the modification of the Breakfast Point Concept Plan which would allow for the demolition of the existing Power House building. In its place it is proposed to:

- remediate the land to residential standards;
- subdivide the land into 6 Torrens Title lots; and
- provide 6 x two storey dwelling houses.

The proposed Concept Plan area indicating the location of the proposed dwellings is shown in **Figure 4**.

Condition 11 – *Dedication of Power House and Curtilage* of the Breakfast Point Concept Plan approval is proposed to be deleted as part of the modification.

The Proponent advises that the submission of the modification proposal follows extensive negotiation with Council regarding the use and design of the portion of the building proposed to be dedicated to Council. However Council has declined to accept the dedication. Instead Council prefer a financial dedication, which could be used for the benefit of the whole of the City of Canada Bay.

Following an independent analysis carried out for the Department, the proponent has recently provided the offer of a monetary payment to Council of \$1.65 million in lieu of the dedication of part of the Power House building and curtilage.

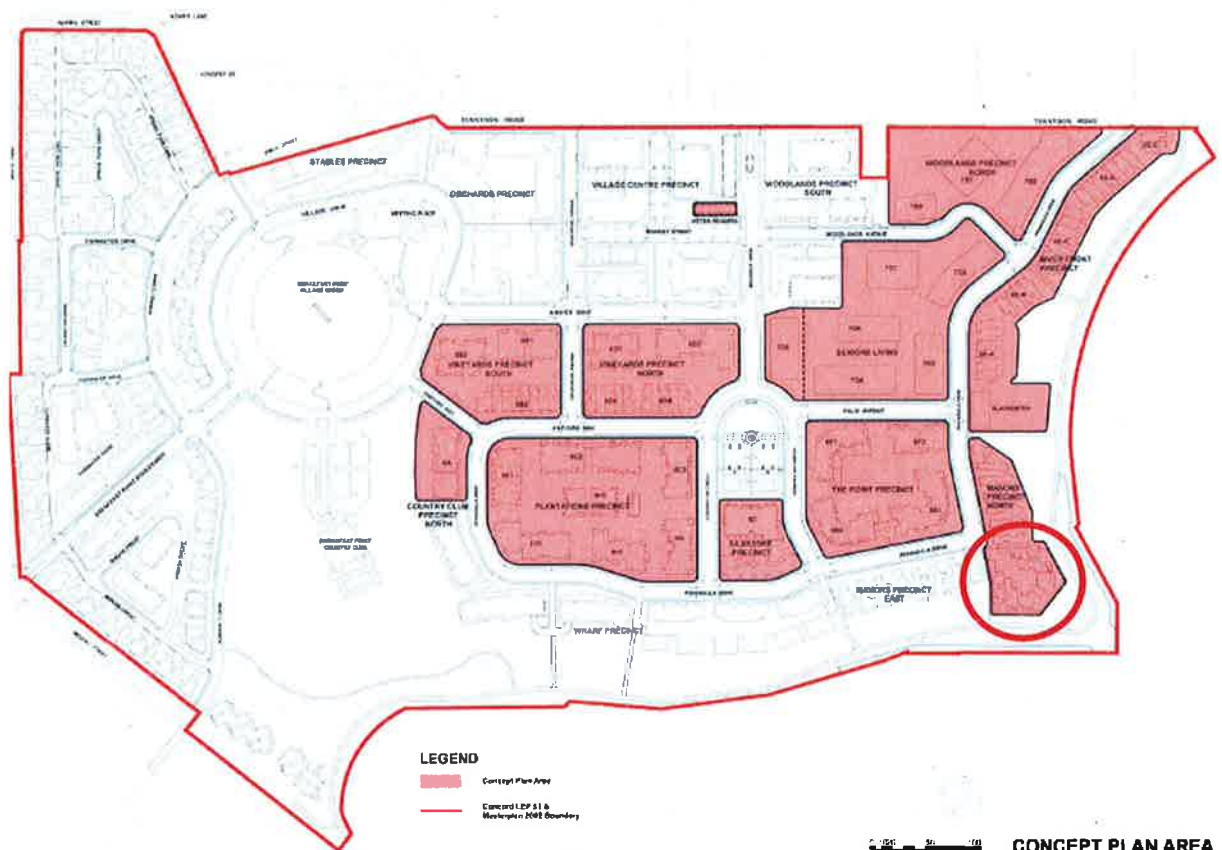


Figure 4: Proposed amended Concept Plan with location of proposed dwellings in place of the Power House building (Power House site circled in red).

The Proponent notes that the Power House is in a poor state of repair, with the concrete structure exhibiting signs of concrete cancer caused by carbonation of the concrete and the consequent loss of protection and corrosion of the reinforcing steel. In September 2008 the estimated cost of repair and adaptation were of the order of \$4.5 million, in addition to ongoing maintenance costs.

The Department notes that the approved 1189 dwellings is not sought to be increased as the dwellings will be redistributed across the site should the modification request be approved.

3. STATUTORY CONTEXT

3.1 Continuation of Part 3A

Under clause 3C of Schedule 6A to the *Environmental Planning & Assessment Act 1979* (the Act), Section 75W of the Act (as in force immediately before its repeal on 1 October 2011) continues to apply for the purpose of the modification of a project application approved before or after the repeal of Part 3A.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Department may approve or disapprove of the modification to the project under Section 75W of the Act.

3.2 Modification of the Minister's Approval

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

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

3.3 Environmental Assessment Requirements

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

3.4 Delegated Authority

The Minister has delegated his functions to determine Part 3A applications to the Deputy Director General, Development Assessment & Systems Performance where:

- the relevant Council has not made an objection, and
- a political disclosure statement has been made, but only in respect of a previous related application; and
- there are less than 10 public submissions objecting to the proposal.

No submissions have been received from the public and the City of Canada Bay Council does not object to the proposal. While a donation has not been disclosed in relation to this application, the proponent provided a statement disclosing a reportable political donation with a previous S75W application related to the Breakfast Point development.

Accordingly this modification application is referred to the Deputy Director-General, Development Assessment & Systems Performance for determination.

4. CONSULTATION AND SUBMISSIONS

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director General is required to make publicly available requests for modifications of approval given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the application to modify the approval was made publicly available on the Department's website. Additionally the City of Canada Bay Council was notified of the proposal in writing.

Council advises that it has been in discussions with the Proponent in relation to this matter since 2006. Initially the Proponent sought to dedicate part of the building and curtilage as per the requirements of the Concept Plan. However following further building assessment, the Power House building was found to have fallen into significant disrepair with the Proponent determining the cost to restore as prohibitive. Additionally Council estimates that the cost to maintain the area of the building dedicated would be in the order of \$80,000 per annum. In light of this Council is willing to discuss an alternative proposal which involves demolition of the Power House and constructing residential dwellings.

In support of this proposal the Proponent offered a monetary contribution of \$1.093 million to Council as public benefit offset. However Council did not accept this offer advising that the monetary contribution offer did not provide a true value of the loss of community amenity. It also views the cost savings and revenue to the Proponent associated with the proposal to be far in excess of this offer.

Council further negotiated with the Proponent, however on 14 November 2010 Council resolved to reject a second monetary contribution offer of \$1.2 million.

On 10 January 2012 Council wrote to the Department advising that further meetings and discussions had been held with the Proponent in an attempt to come to agreement on this matter. This resulted in a further monetary contribution offer of \$1.8 million to Council. Council further advised that this was considered at its meeting of 20 December 2011 where it resolved not to accept this offer and instead refer the matter back to the Department. This was on the understanding that an independent review would be initiated by the Department to resolve an appropriate offset amount for the community benefit associated with the proposal.

Department's Comment:

Council's resolution is addressed in the report under **Section 5.1**.

5. ASSESSMENT

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

- evaluation of public benefit contribution in lieu of the Power House dedication;
- heritage; and
- proposed dwellings.

5.1 Evaluation of public benefit contribution in lieu of the Power House dedication

Given that part of the Power House building and its curtilage are currently required to be dedicated to Council, the demolition of this building and its replacement with 6 private dwellings presents a loss to the community that would otherwise have the benefit of its use in the future. The evaluation of an appropriate contribution figure in lieu of the dedication of the Power House building is the key issue in the Department's assessment of the application.

The evaluation of this public benefit and an appropriate figure to offset the loss of the Power House building dedication has been the subject of negotiation between Council and the Proponent over the past 5 years. As set out in Section 4, the Proponent has made three separate offers of \$1.093 million, \$1.2 million and more recently \$1.8 million to Council.

Council is yet to accept an offer and has cited a counter offer of \$3.5 million. This figure is based on Council's view that the contribution should represent half of the Residual Land Value (RLV) and half of the developer's profit from the development of the 6 proposed dwellings.

On 20 December 2011, Council resolved not to accept the Proponent's most recent offer of \$1.8 million and instead referred the matter back to the Department to resolve the issue. This was on the understanding that an independent review would be initiated by the Department to resolve an appropriate offset amount for the community benefit associated with the proposal. This process was previously set out (and agreed by Council and the Proponent) as the Department's course of action in the event that Council and the Proponent not come to an agreement.

In accordance with the previously agreed course of action (and with Council's resolution) the Department has commissioned an independent evaluation of an appropriate offset amount for the community benefit associated with the proposal. A value for the loss of the public dedication was also reviewed as part of this process. This independent review was undertaken by SGS Economics (SGS). In summary the SGS report (**Appendix C**) provides the following key points of analysis and recommendations:

- SGS notes that if dedicated for a public use, a more likely outcome would be the demolition of the Power House building (subject to retention of some specific items) and the use of the remaining land as public open space. Using the travel cost method, the public benefit value is estimated to be between \$0.75 million and \$1.2 million, with the value of user benefits likely to be at the lower end of this range.
- However to suggest a reasonable offset figure for the removal of the currently required public dedication, SGS considers that an RLV analysis instead provides a better evaluation technique. This is due to a number of ambiguities relating to the future use of the site, absence of survey data for the specific modelling used and the problematic application of the modelling given the small size of the open space.
- SGS considers that the general justifications around the Proponent's RLV analysis (which provides an RLV figure of \$2.186 million) are fair. However specific flaws have been identified in relation to a profit calculation, lack of sensitivity testing on key assumptions and clarity of interest calculations and expected profit calculation.
- SGS has provided a revised RLV calculation reflecting the issues identified in the Proponent's analysis. This revised calculations show that the proposed residential development is likely to result in an RLV of approximately \$3.3 million.
- In principle SGS agrees with Council's view that it should be entitled to at least half of the RLV from the residential development on the site as over half of the site would be dedicated to Council as a requirement of the Concept Plan. However Council would not be likely to be directly involved with the development nor be exposed to any risks associated with the process. Therefore an appropriate allowance should be made in the RLV calculation (noting that the Proponent's likely profit of 20% has been built into the revised RLV figure of \$3.3 million). Accordingly SGS suggest that a reasonable offset figure for the loss of public dedication would be half of the RLV, equating to a contribution of \$1.65 million.

Following this recommendation, Council has been advised and the Proponent has offered a monetary contribution of \$1.65 million in lieu of the dedication requirement contained in the Concept Plan. This contribution is to be made to Council and secured via a VPA. The Proponent has offered this figure as a payment of \$275,000 per dwelling payable at the time of an Occupation Certificate.

The Department has reviewed the SGS report and considers that this provides a fair and reasonable approach to evaluating the loss of the intended public dedication. Critically the Department agrees with the SGS view that despite it being reasonable that Council be entitled to half the RLV, it would not be likely to be directly involved with the development nor be exposed to any risks associated with the process. Therefore it is reasonable to expect that the additional capital investment and risk should accrue a level of return to the Proponent. The Department notes that SGS has accordingly built in a 20% profit forecast for the Proponent into the RLV calculation.

The Department therefore considers that the proposed monetary contribution offer of \$1.65 million in lieu of the dedication requirement provides an equitable distribution of benefits between the Proponent and the community/Council (with the timing of payment being agreed between the Proponent and Council within the terms of the VPA). Further, the Department considers that the independent evaluation process addresses Council's resolution in relation to the valuation of public benefits associated with the proposal.

5.2 Heritage

The Power House building is listed as an item of local significance under the Canada Bay LEP 2008 (the LEP). The Power House is historically significant in the introduction of electric power to the gas production process and contributes to understanding the history of the Breakfast Point site, however is currently a derelict building in an advanced state of disrepair and structural decay.

The Department considers that the building should ideally be retained as currently required. However it also acknowledges that the \$4.5 million restoration cost due to the significantly deteriorated condition of the building presents a substantial obstacle to any earnest restoration and adaptation. Critically both the Proponent and Council have indicated their unwillingness to take up the future use and ownership of the existing building citing both the cost of restoration and its on-going maintenance. Further, the Department notes that Council does not raise any concerns with the demolition proposal on heritage grounds.

The Department does not consider that the cost associated with the restoration of the building should alone determine whether it should be retained. However Council's acknowledgement of the problems with the viability (due to maintenance costs) of the ongoing use of the dedicated portion of the building indicates a significant likelihood that the future dedication and use of the building as envisaged by the Concept Plan will not occur.

In the absence of a viable continuing use, the Department is concerned that the site will remain in decay and without intervention it is likely that the structure will continue to deteriorate with a growing risk of structural failure over time. As such it is considered appropriate to consider a proposal for an alternative use of the site which includes an appropriate alternative form of conservation of the remaining heritage significance of the site.



Figure 5: View of the Power House building from the north east

There are measures available to conserve the heritage significance of the Power House building. These include:

- archival recording of the entire structure by means of measured drawings and photographic survey;
- retention of the significant elements such as the concrete trusses on the Breakfast Point site with a future interpretive display in a public place close to the current location such as the foreshore walk way or an alternative location further inland;
- interpretative displays provided on or nearby the site to depict the former use of the Power House building; and
- removal and recording of any evidence of the boilers under archaeological supervision.

The Department considers that these measures demonstrate that there are a number of options that can appropriately conserve the remaining heritage significance of the site that are consistent with current heritage conservation practice, techniques and principles. These measures may be further considered by Council as part of the assessment of any future application for the demolition of the Power House building.

5.3 Proposed dwellings

The six residential dwellings proposed in place of the Power House building are situated within the surrounding residential context of the surrounding Manors Precinct North and Manors Precinct East (Figure 6). The proposed two storey detached dwelling type is consistent with the building typology in these surrounding residential areas. The Department considers that the proposed land use and building typology are appropriate as they are consistent with the surrounding context.

The proposed layout and alignment of the dwelling envelopes follows the general shape of the peninsula landform and also the extent of the Power House site. The proposed setback of the envelopes to the foreshore is considered to integrate comfortably within the alignment of the adjoining residences to the east in the Manors Precinct North. However the proposed dwelling envelopes nearest the residences to the south within the Manors Precinct East provide an inconsistent building alignment. This will possibly result in impacts to the southern adjoining residences in relation to view loss, privacy and solar access to private open space.

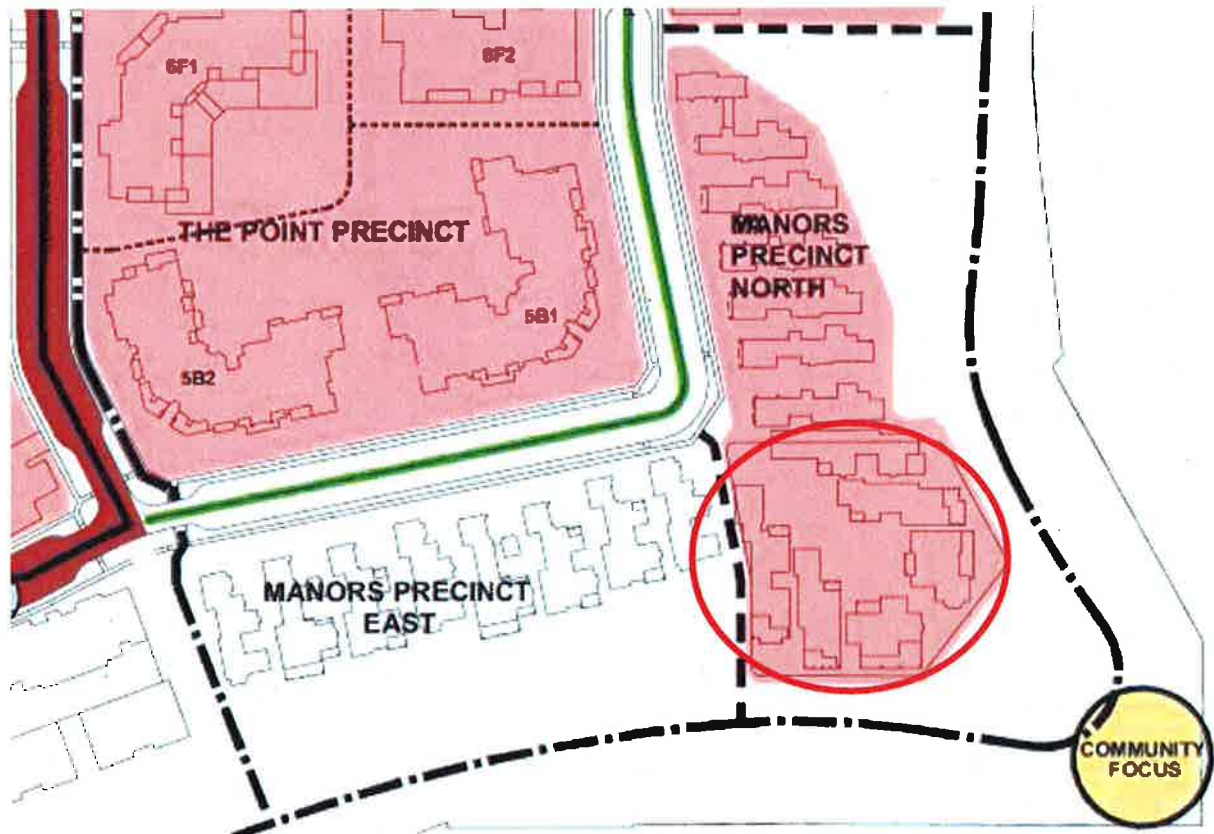


Figure 6: Concept Plan showing layout of proposed building envelopes to replace the Power House (circled in red)

The Department notes that Condition 15 of the Breakfast Point Concept Plan provides a future assessment requirement that ensures further consideration of view sharing, overshadowing and privacy impacts noting that the Concept Plan document provides maximum development parameters which may be refined as a result of further detailed consideration of a Development Application by Council. Noting this, the Department is satisfied that any impacts can be minimised at the detailed design stage with careful consideration to building design and setbacks.

6. CONCLUSION

The department has assessed the application on its merits and the proposed modification is considered to be reasonable and will not result in any unreasonable changes to the development as approved.

The proposed development will however require a monetary contribution in lieu of the public dedication of a portion of the Power House building and its curtilage. This monetary contribution has been the subject of extended negotiations between Council and the Proponent. This process has culminated in the department initiating an independent review to resolve the matter, as agreed with Council and the Proponent. SGS Economics has

carried out the independent review and recommends a monetary contribution of \$1.65 million to Council in lieu of the dedication requirement (representing half of the residual land value of the developed site).

The Proponent has accordingly made an offer of this contribution to be secured via a VPA. The Department considers that this figure is a reasonable resolution of the matter and accordingly recommends that Condition 11 be deleted and replaced with a requirement for the VPA to be executed prior to any DA being lodged to Council in relation to the Power House site.

In addition, heritage conservation impacts and potential amenity impacts to adjoining residences resulting from the proposal are considered to be reasonable and can be managed through a range of measures that may be considered in detail as part of any future application for development of the site.

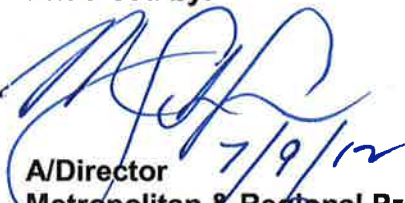
The modified proposal remains generally consistent with the overall design intent and terms of approval and is considered to be acceptable. It is therefore recommended that the application be approved, subject to modified conditions.

7. RECOMMENDATION

It is recommended that the Deputy Director General

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modifications subject to conditions under Section 75W of the Environmental Planning and Assessment Act 1979; and
- (c) **sign** the attached Instrument of Modification for the Breakfast Point Concept Plan 2005 .

Endorsed by:


A/Director
Metropolitan & Regional Projects South

 12.9.12
Executive Director
Major Projects Assessment

Approved by:


Deputy Director-General
Development Assessment &
Systems Performance

19/9/12

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=4797

APPENDIX B SUBMISSIONS

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=4797