

Mark Schofield, Team Leader
Metro & Regional Projects (South)
Major Projects Assessments
Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Mark

Re: Preferred Project Report, Mortlake Concept Plan

Council has reviewed the Preferred Project Report prepared on behalf of Mortlake Consolidated Pty Ltd and is of the view that many of the concerns raised by the City of Canada Bay and the community remain unaddressed.

A supplementary submission is provided as an attachment to this letter.

For further enquiries, please contact Marjorie Ferguson, Manager Strategic Planning on 9911 6409.

Yours sincerely



Tony McNamara
Director, Planning & Environment

26 November 2012

ENGLISH

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SUPPLEMENTARY SUBMISSION TO THE PREFERRED PROJECT REPORT (PPR) ON BEHALF OF THE CITY OF CANADA BAY

This supplementary submission should be read in conjunction with Council's previous submission prepared by GSA Planning, dated November 2011.

The Preferred Project Report (PPR) has been reviewed and many of the issues raised by both Council and the community remain unresolved.

Due to the disregard of adopted local and state government planning frameworks, the departures to adopted planning standards and the significant traffic impact that will occur as a consequence of the development, it is Council's view that the application should not be supported.

1. THE PROPOSAL IS INCONSISTENT WITH STATE AND LOCAL STRATEGIC PLANNING DOCUMENTS

The Mortlake peninsula is not identified as a centre to accommodate additional growth in any strategy adopted by any level of government.

The ***Metropolitan Plan for Sydney 2036*** adopts a centres policy whereby increased densities are accommodated in and near centres with good access to public transport and services.

The ***draft Inner West Subregional Strategy*** reaffirms the centres based approach contained within the Metropolitan Plan for Sydney. Mortlake is not identified as a centre to accommodate increased densities under the Inner West Subregional Strategy.

Council is satisfied that it can meet the dwelling target contained within the draft Inner West Subregional Strategy, with or without an uplift in densities at Mortlake. Indeed, Metropolitan Development Plan data indicates that the dwelling target of 10,000 dwellings for the City of Canada Bay will be significantly exceeded prior to 2031.

The ***Canada Bay Local Planning Strategy 2010 – 2031*** was adopted by Council in June 2010 and details how and where dwelling growth will occur in the City of Canada Bay between 2010 and 2031. The Strategy provides consistent strategic planning objectives in accordance with the framework established by the Metropolitan Plan for Sydney and the draft Inner West Subregional Strategy.

In particular, the Strategy identifies how the 10,000 dwelling target contained within the draft Inner West Subregion will be accommodated.

As the 10,000 dwelling target will be exceeded prior to 2031, the Local Planning Strategy provides a framework to inform ongoing development.

Actions are included in the Local Planning Strategy that require increased residential densities to be located in, and in the immediate vicinity of, the existing centres of Drummoyne, Five Dock, Concord, Concord West and North Strathfield. Particular emphasis is placed on achieving higher densities at close range, such as 200 metres from existing retail area and centres serviced by high frequency public transport.

Increasing densities in Mortlake is contrary to transport orientated development principles adopted by both State and Local Government.

Increasing density on the Mortlake peninsula would represent the abandonment of adopted Local and State government planning policy and should not be supported.

2. THE PROPOSAL DOES NOT COMPLY WITH THE STATUTORY PROVISIONS CONTAINED IN THE CANADA BAY LOCAL ENVIRONMENTAL PLAN (LEP) 2008

Floor Space Ratio

The PRR proposes a floor space ratio of 1.13 in Precincts 1, 3 and 4. A floor space ratio of 1.95:1 is proposed in Precincts 2 and 6. These floor space ratios represent significant departures to the adopted floor space ratio standard of 0.75:1 for residential development in Mortlake.

Council has generally been consistent with its application of the Floor Space Ratio standard in Mortlake. Whilst there are examples where departures from the adopted standard have been permitted, these are exceptions to the rule and the vast majority of approved residential flat development in Mortlake complies with the adopted floor space ratio standard.

The Land and Environment Court of New South Wales has upheld the 0.75:1 floor space ratio in Mortlake given the relationship between floor space and increased traffic (*Proceeding No. 10530 of 2004, Scott Beynon v City of Canada Bay*). The Court determined that the "break even" point following which a deterioration in traffic conditions would occur was the adopted floor space ratio standard of 0.75:1.

In August 2010, Council engaged Transport and Urban Planning to assess the potential increases in traffic impacts associated with increasing the floor space ratio in Mortlake. The report considered the traffic likely to be generated by development in accordance with the Canada Bay Local Environmental Plan 2008 and the traffic likely to be generated should an increase to the current floor space ratio be permitted. The study found that even with redevelopment under the existing Floor Space Ratio, the level of service of many intersections would deteriorate (see further discussion below in relation to traffic impact).

The departures from the adopted floor space ratio standard are significant and the likely traffic impacts arising from the abandonment of the floor space ratio are substantial. As such, the application should not be supported.

Economic feasibility justification

The PPR justifies an increase to the floor space ratio on the site on the basis that the existing floor space ratio of 0.75:1 does not provide a feasible development outcome.

A letter provided to Council on 28 June 2010 from Mortlake Consolidated Pty Ltd confirms that the purchase price of the land was based on future development achieving a floor space ratio of 1.5:1. Indeed, it is stated that achieving a floor space ratio of 1.5:1 was the single most significant factor influencing the price paid for the land. A copy of the letter is provided as an attachment.

The land was purchased at an inflated price contrary to the true development potential facilitated by the Canada Bay Local Environmental Plan 2008 or the preceding Concord Planning Scheme Ordinance, 1969. It is considered unreasonable to abandon development standards on the basis of poor economic decisions. Adopting such an approach would undermine sound strategic planning and create an unjust planning system for other stakeholders who make financial decisions on the basis of objectives and controls contained within adopted government policy. Supporting the application would also undermine the community's confidence in the planning system.

The justification provided by the applicant to depart from the adopted floor space ratio standard is unsatisfactory and the application should be refused.

3. THE PROPOSED INCREASED DENSITY WILL RESULT IN A PROPORTIONAL INCREASE IN TRAFFIC THAT WILL EXACERBATE TRAFFIC ISSUES ON THE PENINSULA AND DIMINISH THE AMENITY OF RESIDENTS.

Traffic impacts do not arise solely from individual development sites. The cumulative impact of traffic growth arising from development of the peninsula is a significant issue. In August 2010, Council engaged *Transport and Urban Planning* to:

- a) assess the cumulative impact of traffic generated by future medium density residential development in Mortlake, Breakfast Point, and Cabarita Peninsulas, on the surrounding local and collector roads leading to nearby State and Regional Roads.
- b) Estimate the impact of additional traffic generated from an increase in floor space ratio permitted under LEP 2008 and 2

alternative scenarios (Scenario 1 - 50% increase in floor space ratio and Scenario 2 - 100% increase in floor space ratio).

- c) Make recommendations of what, if any, increase in floor space ratio could be permitted considering the impact on the surrounding local and collector roads.

Unlike the Traffic assessment prepared by *Transport and Traffic Planning* on behalf of the applicant, Council's traffic assessment includes an analysis of the entire peninsula and investigates the impact on traffic should other sites achieve a floor space ratio greater than 0.75:1.

The assessment found that even with redevelopment of disused industrial land to the floor space ratio contained in the Canada Bay LEP 2008, the level of service of many intersections would deteriorate. With an increase in floor space ratio above that permitted by the LEP, there would be a substantial decrease in the level of service of many intersections with many recording an "F", which is the lowest level identified.

Intersections with Level of Service "F" are characterised by forced flows with movement of the traffic stream at very slow speeds and represent a breakdown in vehicular flow. Flow is forced; every vehicle moves in lockstep with the vehicle in front of it, with frequent slowing required. Technically, an intersection in a constant traffic jam would be at Level of Service "F".

Importantly, it has been established that with increased levels of traffic, there will be an ongoing reduction to the amenity of residents in the locality. Once the level of service at intersections drops below "C" and delays on streets become protracted, the amenity for residents is reduced.

In September 2010, *Transport and Urban Planning* undertook an additional review and concluded that the trip assignments utilised by *Transport and Traffic Planning* were based on a relatively small samples of survey results and were not comprehensive enough to be statistically significant.

To resolve the problems arising from an increase to the permitted floor space ratio requires broad ranging road and intersection upgrades and increased public transport services (bus and ferry).

The expected cost to reconstruct the most affected intersections to acceptable performance levels is beyond the fiscal capabilities of the City of Canada Bay. Further, the provision of additional public transport services is not within either the developer's or Council's control.

An increase to floor space ratio in Mortlake has significant local and regional traffic impacts and should not be supported.

4. APPROVAL OF THE DENSITY PROPOSED WILL SET AN UNDESIRABLE PRECEDENT IN THE LOCALITY

The Land and Environment Court has established that where there is a sufficient probability that there will be further applications of a like kind, then the fact that a request would operate as a precedent may be taken into consideration. It must be acknowledged that Council may have difficulty in refusing other similar requests if the significant departures to the adopted development standards are supported in this instance.

Approval of the significant departures proposed by the PRR would set an undesirable precedent and should be refused.

5. THE LEGITIMATE CONCERNS RAISED BY LOCAL RESIDENTS.

Council hosted a public meeting on the subject application on 7 November 2011. One hundred and forty (140) concerned residents and property owners attended the meeting. A transcript of the meeting is attached.

Council's submission supports many issues raised by the public in objection to the development including non compliance with adopted standards, traffic impact and precedent.

The proposal is contrary to the public interest and does not respond to legitimate concerns raised by local residents.

CONCLUSION

Council has reviewed the PRR and remains of the view that the development is inappropriate and should be refused for the following reasons:

1. The proposal is inconsistent with the centres policy contained within the Metropolitan Plan for Sydney 2036, the draft Inner West Subregional Strategy and the Canada Bay Local Planning Strategy.
2. The proposal does not comply with the statutory provisions contained in the Canada Bay Local Environmental (LEP) 2008.
3. The proposed increased density will result in a proportional increase in traffic that will exacerbate traffic issues on the peninsula and diminish the amenity of residents.
4. Approval of the density of development proposed will set an undesirable precedent in the locality.
5. The proposal is contrary to the public interest and does not respond to legitimate concerns raised by local residents.

ATTACHMENTS

- A. Planning submission prepared by GSA Planning, dated November 2011.
- B. Beynon S v Canada Bay City Council [2005] NSWLEC 10530 of 2004
- C. Letter from Mortlake Consolidated Pty Ltd dated 28 June 2008.
- D. Transcript of Public Meeting of 7 November 2011.
- E. Mortlake Redevelopment Traffic Impact Assessment prepared by Transport and Urban Planning, dated August 2010.
- F. Peer Review of Traffic Impacts by Transport and Urban Planning, dated September 2010.



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PLANNING SUBMISSION

To the Department of Planning and Infrastructure in response
to the Major Project (MP 10_0154) for the proposed:

Residential Development, Majors Bay

Prepared for:

Canada Bay Council

Locked Bag 1470

DRUMMOYNE NSW 1470

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners

(A.B.N 18 003 667 963)

JOB NO. 11263

NOVEMBER 2011

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1.0 EXECUTIVE SUMMARY

GSA Planning has been engaged to prepare an independent assessment of the Major Project application (MP10_0154) for the proposed 'Majors Bay Residential Development' at Mortlake. The Concept Plan application includes the demolition of existing industrial buildings and the construction of 14 residential flat buildings containing approximately 402 apartments with a proposed FSR of 1.43:1 and height of three (3) to nine (9) storeys.

Mortlake is framed by Mortlake Point to the north, Breakfast Point to the east and Majors Bay to the west. The peninsula is a former industrial area and is characterised by disused industrial buildings and residential buildings. The proposed replacement of the existing obsolete industrial buildings has distinct merits. However, the height and density proposed significantly exceeds the development standards in the Canada Bay LEP and is likely to have unreasonable impacts on the traffic network and amenity of local residents.

This Planning Submission: describes the site and surrounds; outlines the proposal; reviews the relevant planning documents; considers the studies undertaken by Council; and, identifies the potential impacts that are likely to result from the substantial increase in density. The concerns identified in this Submission are summarised in the following paragraphs.

The subject site is zoned R1 Residential (General), which permits residential buildings with a maximum height of 12m and a maximum FSR of 0.75:1 under the Canada Bay LEP 2008. The proposal almost doubles the prescribed height and FSR, which will set an undesirable precedent in the locality and adversely impact on the future development and traffic generation of the Peninsula.

Increased densities are normally around nodal points and locations where public transport is readily available. There is limited access to public transport from the subject site. In our opinion, the Applicant has not justified this significant exceedance of two key (2) Development Standards or objectively assessed the likely ramifications of this exceedance.

We acknowledge that there is some merit in replacing the existing disused industrial buildings with residential flat development. However, if the Application is approved with its current FSR, the credibility of Council's planning controls would be undermined. With the exception of a few development applications, Council has generally been consistent with its approach to FSR in the locality of Majors Bay.

Council has been diligent in its recognition of the relationship between the increasing density and an increase in traffic. Council has consistently endeavoured to contain densities. Separate studies by GTA Consultants and Transport and Urban Planning have confirmed that streets in the locality are currently near capacity and if there are substantial increases above the density contained in Council's LEP, then the amenity and level of service for the Peninsula will be intolerable.

There are inconsistencies in the documentation submitted with the application, including the number of units proposed and the number of car parking spaces. There is also a lack of clarification regarding the use, provision and maintenance of the public and private open space and foreshore land.

Community consultation has been an important component of Council's planning submission for the Major Project Application. Council held a public meeting on 7 November 2011 and a further residents meeting on 29 November to discuss the proposed application and provide residents and stakeholders with the opportunity to ask questions and raise any issues in relation to the proposal. Council also received numerous written submissions. The issues raised during the public consultation process have formed part of this submission.

Finally, for the reasons contained in this Submission, in our respectful opinion, the Major Application (MP 10_0154) for the proposed Majors Bay Residential Development should not be approved in its present form.

2.0 INTRODUCTION

This Planning Submission has been prepared for Canada Bay Council (Council) by Gary Shields & Associates Pty Ltd – (hereafter referred to as GSA Planning). GSA Planning has expertise in Urban Design, Environmental & Traffic Planning. This Independent Assessment was commissioned by Council and represents the considered opinions of GSA Planning.

GSA Planning has been engaged to assess the impact of the Major Project application (MP10_0154) for the proposed 'Majors Bay Residential Development' at Mortlake. The Concept Plan application includes the demolition of existing industrial buildings and the construction of 14 residential flat buildings containing approximately 402 apartments with a proposed FSR of 1.43:1. Concept drawings indicate Basement car parking for 653 vehicles. There are five (5) separately designated areas of private and public open space, comprising 5,267m², and existing and public road reserve upgrades.

Our assessment has included, and is not limited to, the following:

1. Review of the Concept Major Project Application documentation;
2. Site inspections from the public and private domain and the surrounding locality;
3. Attending meetings with Council Officers, Councillors, stakeholders and one (1) public meeting;
4. Consideration of decisions by the Land and Environment Court and Council relating to residential flat building applications in the Canada Bay Council Local Government Area (LGA); and,
5. Assessing the application against the relevant planning controls and public and private interests.

Having undertaken this assessment, we acknowledge that there are benefits in replacing the disused industrial lands with residential accommodation. However, the density of any proposed residential is critical to the future functional operation and amenity of the precinct.

Accordingly, we have concluded that the extent of development proposed will have a significant impact on the Mortlake Peninsula residents and the locality and is, therefore, not in the public interest. In our respectful submission, the Major Application (MP 10_0154) for the proposed Majors Bay Residential Development should not be approved in present form for the following reasons:

1. The proposal does not comply with the statutory provisions contained in the Canada Bay Local Environmental Plan (LEP) 2008;
2. There is no substantive justification or SEPP No. 1 Objection reasoning to exceed the FSR provisions to the extent proposed;
3. Approval of the density of development proposed will set an undesirable precedent in the locality;
4. The proposed increased density will result in a proportional increase in traffic that will exacerbate traffic issues on the Peninsula and diminish the amenity of residents;
5. The proposed massing and built form, particularly the nine (9) storey residential flat building, has the potential to present a development that is incompatible with the character of the foreshore;

6. There are inconsistencies in the documentation and a lack of clarity of the proposed use of open space and foreshore areas, which suggests that the concept plan and its ramifications have not been thoroughly considered; and
7. The legitimate concerns raised by Council and the local residents.

The following sections will deal with the site and surrounds, the background, the proposal and the planning context. The remaining sections will provide the reasons why the application should not be approved in its present form.

3.0 SITE & SURROUNDS

3.1 The Locality

Mortlake Peninsula is located approximately 3.5km from Concord West Railway Station and 4km from North Strathfield Railway Station. Mortlake is a former industrial area located on a peninsula north of Breakfast Point. The peninsula is framed by the eastern foreshore of Majors Bay and the Parramatta River, within the Canada Bay local government area (LGA).

3.2 The Subject Site

The proposed residential development will comprise three (3) core sites, containing 24 allotments (see Figure 1). The core sites have the following areas:

- Site 1 – 10,483m²;
- Site 2 – 2,911m²; and,
- Site 3 – 14,047m².



(Source: Google and Mecone 2011)

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**Figure 1:
Location Plan**

3.3 Character of the Locality

Mortlake is an area that is characterised by small scale industrial developments and a mixture of older low density detached dwellings and more recent medium density residential development.

Mortlake has foreshore access from Wangal Centenary Bushland Reserve and Parramatta River to the north, Breakfast Point to the east and Majors Bay to the west.

Mortlake adjoins the suburb of Breakfast Point, which is a brown field redevelopment site. As the former AGL Gas site, Breakfast Point has been remediated and redeveloped in recent years to a medium to high density residential neighbourhood.

Breakfast Point is a master planned suburb, with a mixture of residential accommodation types from detached dwellings to residential flat buildings. The character of Breakfast Point varies from two storeys to nine storeys, with single dwelling footprints being predominant. There is also a shopping precinct, open space areas and community facilities such as childcare centre, country club and community hall, which are accessible to residents of Breakfast Point.

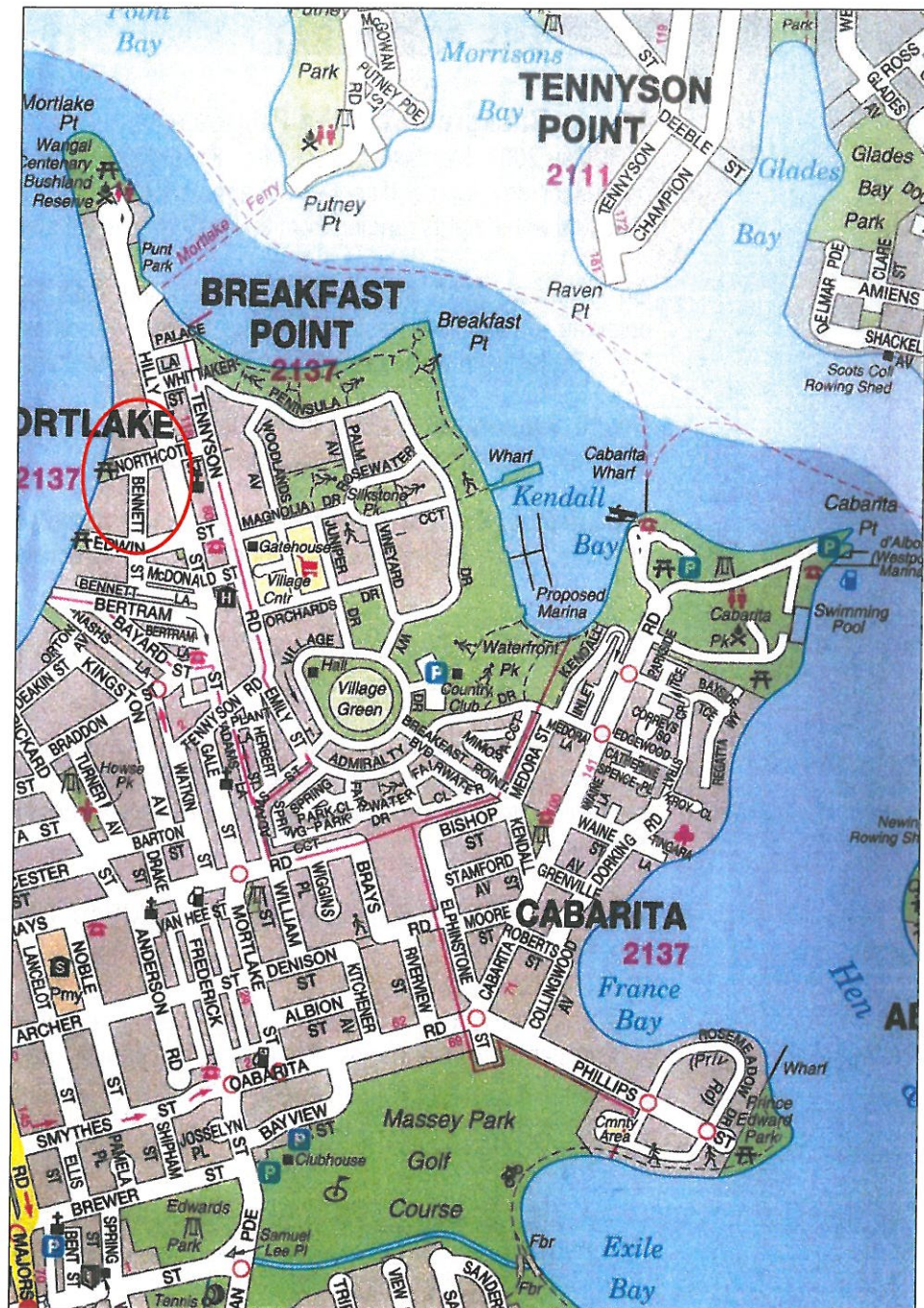
One of the key characteristics of Breakfast Point is the significant set back of the built form from the water and, the considerable amount of public open space on the foreshore. The public open space and walking/cycling tracks provide unimpeded visual access to water views and foreshore pedestrian access to nearby Cabarita and Mortlake.

3.4 Access to the Peninsula

Mortlake is a narrow peninsula with one main road providing access to the area (see Figure 2). A number of local streets also provide indirect access to Mortlake.

The site has frontages to Hilly, Northcote, Bennett and Edwin Streets and is adjacent to Majors Bay (see Figure 2 on the following page). Hilly Street is a two lane carriage way, carrying traffic in north/south direction to Mortlake Point, where the road terminates at a turning bay. Northcote and Edwin Streets are two lane roads carrying traffic in an east/west direction. These roads terminate at public reserves fronting Majors Bay. Bennett Street is a two lane carriageway carrying traffic in a north/south direction. The site is also in close proximity to Tennyson Road, Bertram Street and Majors Bay Road. A series of roundabouts have been installed at numerous intersections to control and calm the existing traffic.

According to the Roads and Traffic Authority's (RTA) established road hierarchy, Hilly, Northcote, Bennett and Edwin Streets, which bound the subject site, are classified as Local roads. Tennyson Road and Bertram Street are also classified as Local roads. Nearby Majors Bay Road is classified a Regional road.



Source: UBD, 2002

 Subject Site

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**Figure 2:
Existing Road
Network**

4.0 THE PROPOSAL

4.1 Background to the Proposal

On **3 May 2007**, Mortlake Consolidated Pty Ltd submitted a concept application for a residential development containing approximately 402 units in 14 residential flat buildings with heights ranging from three (3) to nine (9) storeys.

On **7 October 2010**, the Director General of the, then, Department of Planning, as delegate for the Minister for Planning, formed the opinion that the proposal is a Major Project with the Department of Planning as the consent authority.

On **10 January 2011**, the, then, Department of Planning issued the Director Generals Requirements (DGRs) for the development.

In **September 2011**, an Environmental Assessment and accompanying studies were submitted to the Department of Planning and Infrastructure for the Mortlake Concept Plan.

The Major Project Application (MP10_0154) is on public exhibition between **4 October 2011 and 2 December 2011**.

On **7 November 2011**, Council held a community meeting at Massey Park Golf Club to discuss the proposed residential development. There was overwhelming opposition to the proposal. This is discussed further in Section 11 of this Submission.

4.2 The Proposed Concept Plan (MP10_0154)

4.2.1 Concept Elements

The proposed concept plan is for a high density residential development, including 14 residential flat buildings, basement car parking and landscaping and public domain works, adjacent to the Majors Bay foreshore. The proposed development, as described in the project application (Source: Mecone, 2011, 18-24), will comprise the following elements:

1. The use of the site for residential flat buildings and open space areas;
2. Building envelopes for 14 residential flat buildings with heights ranging between three (3) and nine (9) storeys;
3. A gross floor area (GFA) of 39,340m² and floor space ratio (FSR) of 1.43:1 across the site. Site 1 will have an FSR of 1.2:1, Site 2 will have an FSR of 0.75:1 and Site 3 will have an FSR of 1.13:1;
4. A total of 2,801m² of public open space along the Majors Bay foreshore. A portion of this foreshore is proposed to be dedicated to Council as part of a Voluntary Planning Agreement (VPA);
5. Public domain upgrades to the streetscape, landscape masterplan, pedestrian links and cycle ways; and
6. Basement car parking for each residential building.

A staged approach to development is proposed, dependent on market conditions. Stage 1, adjacent to the foreshore and east of Northcote Street, is to be developed first to provide access to the foreshore. Infrastructure will also be provided on a staged basis, in accordance with the overall development and on the basis of demand.

4.2.2 Building Envelopes

The Concept Plan proposes building envelopes for 14 residential flat buildings with heights ranging between three (3) and nine (9) storeys. The building heights and dwelling yield for each site is as follows:

TABLE 1: PROPOSED BUILDING ENVELOPES		
Site	Height	Apartment Yield
Site 1	Part 3/4 storey RFB	22
	4 storey RFB	34
	4 storey RFB	15
	4 storey RFB	46
	Part 8/9 storey RFB	102
Subtotal		219
Site 2	3 storey RFB	10
	4 storey RFB	10
Subtotal		20
Site 3	3 storey RFB	14
	3 storey RFB	14
	3 storey RFB	14
	3 storey RFB	14
	Part 3/4 storey RFB	21
	4 storey RFB	28
	6 storey RFB	36
Subtotal		141
Total	3 – 9 storeys	380

Source: Mecone, 2011

N.B While these figures total 380 apartments, references in this and other documents suggest that 402 apartments are proposed.

The proposal provides lower scale buildings of three (3) storeys along the Majors Bay Foreshore stepping up to four (4) to nine (9) storeys along the Hilly Street frontage (see Figure 3).

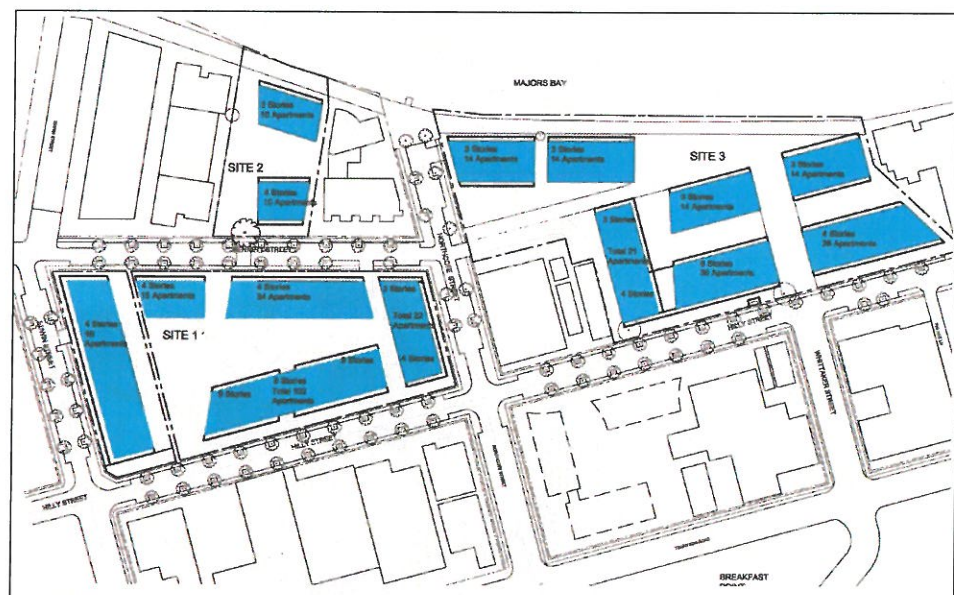


Figure 3: Concept Plan – Density

4.2.3 Floor Space

The Concept Plan proposes an average floor space ratio (FSR) of 1.43:1 across the total site. The total areas and FSR for each site is described in Table 2 below.

TABLE 2: PROPOSED GFA			
Site	Site Area	GFA	FSR
Site 1	10,483m ²	21,307m ²	2:1
Site 2	2,911m ²	2,183m ²	0.75:1
Site 3	14,037m ²	15,850m ²	1.3:1
Total	27,431m²	39,340m²	1.43:1

Source: Cox Richardson, 2010 and Mecone, 2011

The concept plan proposes 60 x 1 bedroom apartments, 201 x 2 bedroom apartments and 141 x 3 bedroom apartments across the site, providing a total dwelling yield of 402 apartments (see Table 3).

TABLE 3: INDICATIVE YIELD SUMMARY				
Site	1 Bedroom	2 Bedroom	3 Bedroom	Total Apartment
Site 1	33	109	77	219
Site 2	3	11	7	21
Site 3	24	81	57	162
Total	60	201	141	402

Source: Cox Richardson, 2010 and Mecone, 2011

The Urban Design Report, prepared by Cox Richardson and dated 17 December 2010, suggests that when surrounding streets and public domain areas are included in the site area (an additional 11,807m²), the proposal has an FSR of 1:1.

4.2.4 Landscaping and Public Domain

The proposed landscaping and public domain dedication comprises the following elements:

- Four new connections through the site to the Majors Bay foreshore;
- Provision of public open space along the foreshore (2,810m²);
- Part of the public domain is to be dedicated to Council in a VPA;
- Public domain upgrades to the streetscape; and
- Landscape Master Plan.

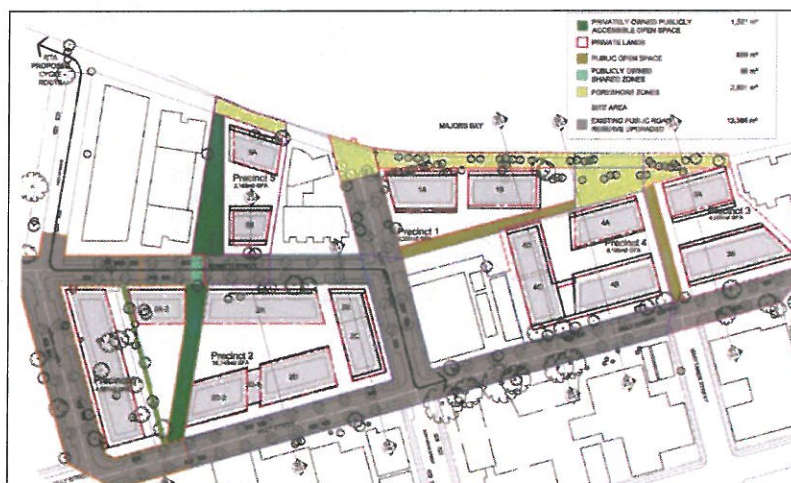


Figure 4: Concept Plan – Public Domain

4.2.5 Car Parking

The proposed car parking will be provided over multiple basement levels. The Environmental Assessment and Urban Design Reports do not provide a minimum and maximum number of spaces proposed, rather car parking rates. The car parking rates identified, including on street parking for visitor spaces, and the required number of spaces is as follows:

TABLE 4: CAR PARKING RATES				
Site	Control - Min	Control - Max	Requirement - Min	Requirement - Max
1 bedroom	0.5	1	30	60
2 bedroom	1	1.5	201	301.5
3 bedroom	1.5	3	211.5	423
Visitor	1/10 units	1/5 units	40.2	80.5
TOTAL			483	865

Source: Mecone, 2011

On the basis of the proposed dwelling yield of 60 x 1 bedroom, 201 x 2 bedroom and 141 x 3 bedroom apartments, the subject site would be required to provide a minimum of 483 car parking spaces and a maximum of 865, including visitor spaces.

One of the drawings accompanying the Project Application entitled "Basement extents" shows the location of car parking in the six (6) precincts, the numbers of basement levels and the total of 653 spaces. We are advised that this number is only indicative.

5.0 PLANNING CONTEXT

5.1.1 Canada Bay Local Environmental Plan (LEP) 2008

Zoning and Permissibility

Canada Bay LEP was gazetted on 7 March 2008 and applies to the proposal. The site is zoned R1 – General Residential under the LEP. 'Residential flat buildings' are listed as a permissible use with consent in the R1 zone.

The objectives of the zone are focussed on residential activities and the community generally. The proposed residential development is considered to be consistent with the objectives of the R1 Zone.

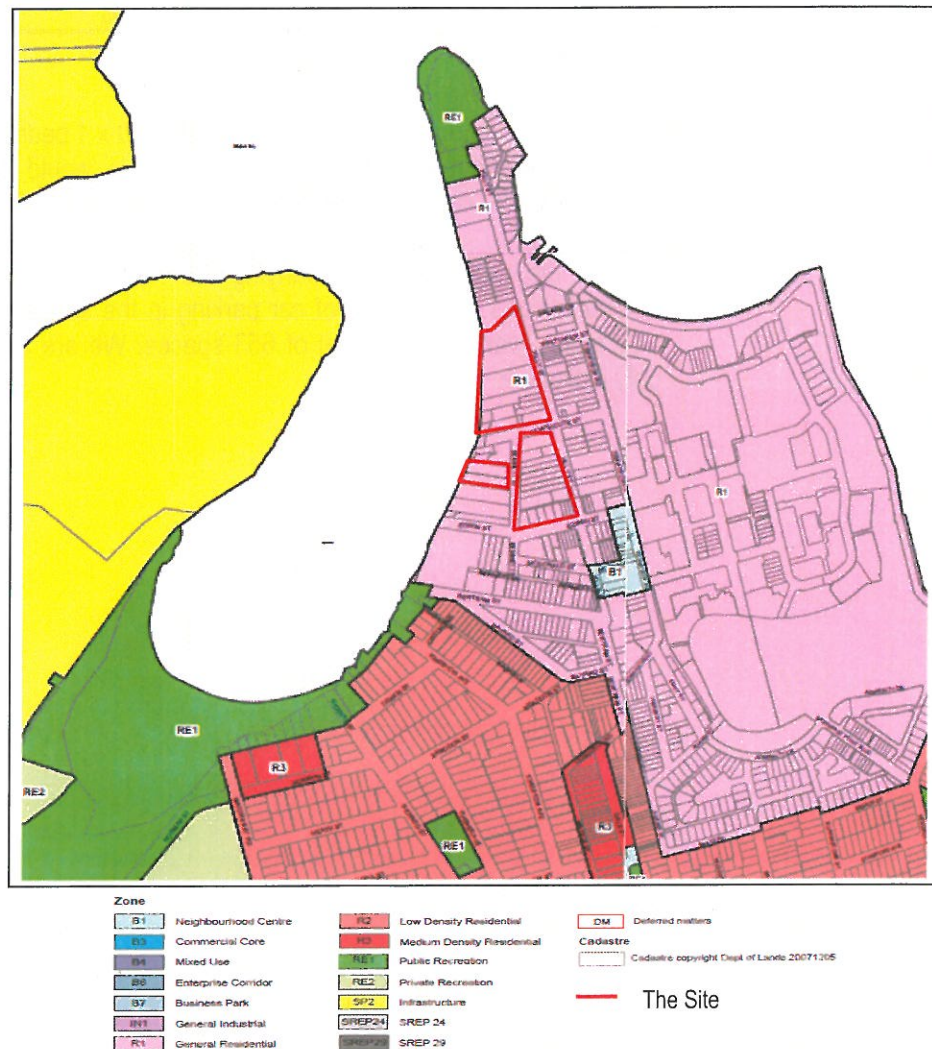


Figure 5: Zoning Map

Height of Buildings

The site is identified on the CBLEP 2008 height map as being within 'Area M', which has a maximum height of 12m. The proposal has a maximum height of nine (9) storeys across the site, which exceeds Council's development standard. The buildings on Site 2 have a maximum height of three (3) storeys and are likely to comply with the LEP height standard.

Comment: The proposed height significantly exceeds the 12m development standard (see Section 6).

Floor Space Ratio

The LEP 2008 prescribes a maximum FSR of 0.75:1 for residential development in Mortlake. The proposal has a maximum FSR of 2:1, with FSRs ranging from 0.75:1 to 2:1 and an average across the site of 1.43:1, which does not comply with Council's development standard.

Comment: The proposed FSR significantly exceeds the 0.75:1 development standard (see Section 6).

Foreshore Building Line

The LEP 2008 prescribes a foreshore building line (FBL) of 12m for the subject sites. Four (4) of the proposed buildings (1A, 1B, 3A and 5A) within Sites 1 and 2 encroaches the FBL by between 2 and 3m, which does not comply with Council's development standard.

Comment: The proposed setbacks from the foreshore encroaches the 12m FBL development standard (see Section 6).

5.1.2 Mortlake Point Development Control Plan

The Mortlake Point Development Control Plan (DCP) was adopted by Council on 4 September 2007 and came into effect on the date of gazettal of the City of Canada Bay LEP.

The DCP states that for the key built form controls of height and FSR for the subject sites reference should be made to the Building Height and FSR Maps accompanying the Canada Bay Local Environment Plan.

5.2 Strategic Studies

5.2.1 Mortlake Point Planning Study

In **July 1999**, the Mortlake Point Planning Study was undertaken by Scott Carver to provide a primary reference for future land use planning in Mortlake, located in the former Concord LGA. The Planning Study states that the subject site was zoned Industrial 4A (Industrial General) under the Concord Planning Scheme Ordinance, which was gazetted on August 1969.

The Planning Study proposed commercial, industrial and mixed use zones for the Mortlake area. No specific zoning was identified for individual sites. The Planning Study proposed a maximum height of 12m and maximum FSR of 0.5 - 0.75:1 for residential development on the subject site and a maximum FSR of 1:1 for industrial development. The Study recommended that the residential and industrial FSRs should not be applied as an absolute or statutory maximum, but rather as a design guideline.

5.2.2 City of Canada Bay Local Planning Strategy 2010-2031

On **1 June 2010**, Council adopted the Local Planning Strategy (LPS) 2010-2031, which provides a framework for future land use planning in the preparation of the new Local Environmental Plan (LEP) and Development Control Plan (DCP). The LPS was prepared to ensure that the Metropolitan Strategy for Sydney and the draft Inner West Subregional Strategy are implemented at a local level.

The LPS has relied on forecasts from the Transport Data Centre (TDC), which estimates a likely growth in population of Canada Bay between 2006 and 2031 of 29% (20,076 people). The Canada Bay LGA is likely to need to cater for approximately 9,700 additional dwellings between 2006 and 2031.

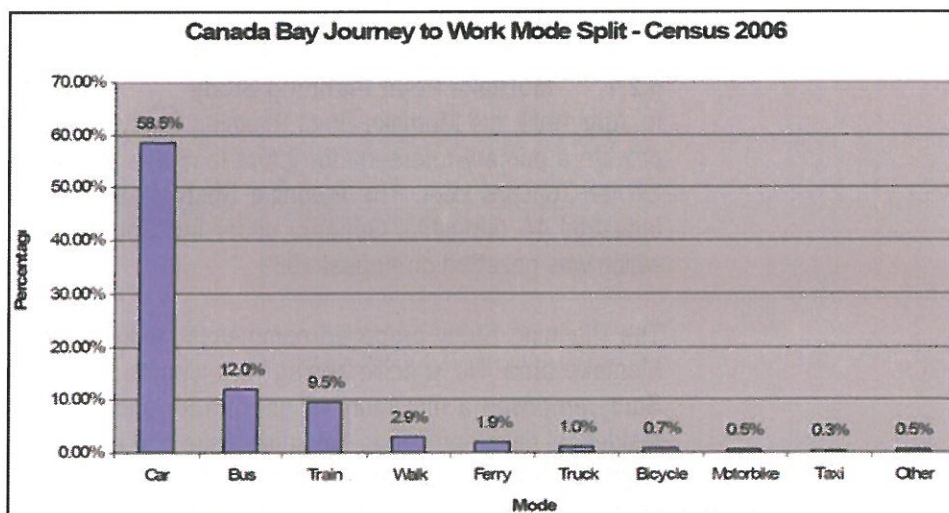
The LPS anticipates that most new housing will be located within walking distance of transit nodes (6,467 dwellings or 64% of supply), primarily at Rhodes and the Strathfield Triangle. A significant amount of new development is also forecast to occur outside of existing transit nodes (3,642 dwellings or 36% of new dwellings), primarily on large ex-industrial sites. The LPS anticipates this to be concentrated at two major sites – Rhodes Peninsula (4,500 dwellings) and Breakfast Point (1,899 dwellings).

The LPS identifies a R1 General Residential zone for the sites and a maximum dwelling potential for the whole Mortlake area of 750 dwellings, including existing dwellings.

5.2.3 NSW Metropolitan Transport Plan Review

GTA Consultants undertook a review of the Metropolitan Transport Plan released by the NSW State Government in February 2010. The report identified a number of critical transport issues in the Canada Bay LGA. In particular, it noted that 30% of residents work in the city or North Sydney, 17% in the Canada Bay LGA and relatively smaller numbers travelling to identified key locations of Burwood, Ryde and Parramatta.

Importantly, almost 60% of the journey to work modal split was by car with 12% by bus, 9.5% by train, 2.9% walking and 1.9% by ferry (see Figure 6). As a majority of the proposed apartments are two and three bedrooms, it would be expected that a high proportion would travel by car.



Source: GTA Consultants 2010

**Figure 6: Canada Bay Journey to Work Mode Split –
Census 2006**

The report also concludes, inter alia:

"It is important to understand that there is currently little, if any, spare capacity on the existing transport network during the AM/PM peak commuting periods. Buses are impacted by the heavy congestion on the surrounding arterial road networks (i.e. Parramatta Road, Victoria Road, Concord Road) with commuters experiencing long travel delays, ferries are generally full when arriving at Drummoyne as a large majority of the ferries commence further afield and only a small portion of the Canada Bay LGA residents have easy access to heavy rail line and associated rail stations."

Majors Bay does not have access to heavy rail, limited access to ferry and only a limited number choose to travel by bus. **Accordingly, the density of development and the number of cars to be generated becomes a critical consideration.**

5.3 Other Statutory Instruments

5.3.1 State Environmental Planning Policy (SEPP) (Major Development) 2005

SEPP Major Development was gazetted on **25 May 2005**. Clause 6(1)(a) of the Major Development SEPP provides that development, which in the opinion of the Minister is development of a kind described in Schedule 1 of the Major Development SEPP, is declared to be a project to which Part 3A of the Act applies. Schedule 1 of the SEPP has been repealed. This is because in April 2011, the NSW Government announced that it will not be accepting any new applications under the Part 3A assessment system. However, applications which were already in the system at that time, including the subject application, will continue to be processed under the Part 3A system.

In a letter dated **7 October 2010**, before the repeal of Part 3A of the Act, the Director General formed the opinion that the project may be considered under Part 3A and that a Concept Plan may be prepared.

Accordingly, the applicant lodged a Major Project Application with the, then, Department of Planning. A major project application is not bound by the normal statutory process. For example, SEPP No. 1 Objections are not required for non-compliance with development standards.

5.3.2 SEPP No. 32 – Urban Consolidation

State Environmental Planning Policy No. 32 – Urban Consolidation (Redevelopment of Urban Land) was gazetted on 15 November 1991, and amended on 6 April 2009. The SEPP focuses on redevelopment of urban land that is no longer required for the purpose it is currently zoned or used, to allow for redevelopment of that land for multi unit housing and related development.

The SEPP No. 32 aims to implement the Policy of urban consolidation by locating housing in areas where there is existing public infrastructure, transport and community facilities, and increasing opportunities for people to live close to employment, leisure and other opportunities.

The subject site is located in an industrial and low density residential and is not within a major centre. Given its location away from a major centre, the subject site does not satisfy the criteria to be land for urban consolidation.

5.3.3 SEPP No. 55 – Remediation of Land

State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land was gazetted on **28 August 2005** and applies to the whole of the State. An Environmental Site Assessment has been undertaken by Aargus Pty Ltd. In our opinion, given the past and present industrial uses on or adjacent to the site, further investigation should be undertaken in order to assess the likelihood and/or extent of potential soil and groundwater contamination.

5.3.4 SEPP No. 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy (SEPP) No. 65 was gazetted **26 July 2002** and applies to the subject site. The SEPP contains ten (10) design quality principles including consideration of context, scale, built form, density, resource, energy and water efficiency, landscape, amenity, safety and security, social dimensions and aesthetics.

It is difficult to undertake a SEPP No. 65 Assessment of the ten design principles for the concept application. However, principles that can readily be questioned include context, scale, built form, density, amenity and social dimensions. Landscaping is separately discussed later in this submission.

The proposal has issues with these design principles, which will potentially result in adverse impacts to the locality.

5.3.5 Sydney Regional Environmental Policy (SREP) (Sydney Harbour Catchment) 2005

Sydney Regional Environmental Plan (SREP) (Sydney Harbour Catchment) was gazetted on **28 September 2005** and applies to land within the Sydney Harbour foreshores. The SREP (Sydney Harbour Catchment) land use maps identifies that land along the foreshore adjacent to Site 2 is zoned W2 - Environmental Protection. This zone provides for the protection, rehabilitation and long-term management of the natural and cultural values of the waterways adjoining the foreshores. Land along the foreshore adjacent to Site 3 is zoned W8 – Scenic Waters Passive Use. This zone aims to give effect to inter-tidal public access zones and gives priority to protecting the environment and scenic values of predominately natural shores and waters. The Passive Use Zone may adjoin residential land or public open space.

There are a number of aims, objectives and planning principles contained in the SREP. The provisions relevant to this submission will be addressed in Section 5 of this document. However, the plan and the second part of those aims adopts three (3) specific principles. Clause 2(2) states, inter alia:

“(2) For the purpose of enabling these aims to be achieved in relation to the Foreshore and Waterways Area, this plan adopts the following principles:

- a. Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good;
- b. The public good has precedent over the private good wherever and whatever change is proposed for Sydney Harbour or its foreshores;
- c. Protection of the natural assets of Sydney Harbour has precedent over all other interests.”

The mangroves adjoining the site are zoned W2 (Environmental Protection) under SREP – Sydney Harbour Catchment 2005. The impact of the proposal on the mangroves has not been specifically assessed. The Heritage Impact Assessment accompanying the project application stated, inter alia:

"If there is any potential impact on the existing mangroves, this should be separately assessed by appropriately qualified environmental specialists or through liaison with Canada Bay Council, otherwise it is recommended that the mangroves in the area of the subject site is retained for its environmental values."

In our opinion, the proposal would not meet the test under the SREP and if the public good has precedent over the private good then the application would fail.

6.0 THE PROPOSAL DOES NOT COMPLY WITH THE STATUTORY PROVISIONS CONTAINED IN THE CANADA BAY LOCAL ENVIRONMENTAL PLAN (LEP) 2008

The Canada Bay LEP zones the subject site R1 – Residential (General), which permits residential flat buildings. The LEP provides for a maximum height of 12m and a maximum FSR of 0.75:1. Building heights for the proposal vary from 3 storeys to 9 storeys with a maximum building height in the order of 27m. A Planning Study for Mortlake Point, undertaken in 1999, informed the planning process. This document recommended maximum heights for the subject site and surrounds of between 8m and 12m with a maximum FSR between 0.5:1 and 0.75:1.

The proposal substantially exceeds the height and FSR provisions contained in the Canada Bay LEP 2008 and the Mortlake Point Planning Strategy. Indeed, the proposed exceedance of the LEP Development Standards is likely to have a precedent effect that will adversely impact on the future development and traffic generation of the Peninsula.

Clause 6.5 of the Canada Bay LEP 2008 provides a statutory Foreshore Building Line of 12m. The proposal has four (4) buildings that encroach this development standard. In our opinion, public access along the foreshore should be maximised in a similar way to Breakfast Point. The Breakfast Point development has substantial setbacks and good pedestrian and cycle access along the foreshore. In our opinion, there is no justification for a non-compliance with this development standard.

In summary, the subject site is zoned R1 Residential (general), which permits residential buildings with a maximum height of 12m and a maximum FSR of 0.75:1. The proposal will almost double the maximum height and FSR. Indeed, one of the sites will be almost three times the FSR development standard. In our opinion, this is unreasonable in the extreme and will have considerable and adverse repercussions on the surrounding area. Also, there is no justification for the failure to comply with the statutory FBL. The 12m FBL is really the starting point and buildings should be set back an even greater distance to maximise public access to the foreshore.

7.0 THERE IS NO SUBSTANTIVE JUSTIFICATION OR SEPP NO. 1 OBJECTION REASONING TO EXCEED THE FSR PROVISIONS TO THE EXTENT PROPOSED

It is desirable for the existing industrial buildings to be replaced with residential accommodation. It is also appropriate that the redevelopment is subject to an overall Concept Plan embracing three (3) sites. It would be better if the land between Sites 1, 2 and 3 were also included. The Applicant has said that there are costs involved in remediating the land previously used for industrial purposes. While this is true, these factors would have been considered when the sites were purchased.

As this is a major application, there is not a requirement for a SEPP No. 1 Objection to exceed the height and FSR. **However, when the exceedance is as great as that proposed in this Application, in our opinion, there should be substantial justification for the variation.**

The planning principle adopted by the Department of Planning and Infrastructure (DoPI) and most Councils in the metropolitan area is to encourage higher densities around nodal points. This approach has been pursued in the Metropolitan Strategy and the Inner West Subregional Strategy. These nodal points include rail stations, bus interchanges and light rail where residents can utilise public transport. **Providing higher densities in locations that do not have direct access to public transport is not good planning practice and results in high levels of car ownership, increased traffic generation, increased usage of local streets and a loss of amenity for local residents.** In our opinion, these are the problems that would result if the proposal is approved in its present form.

In summary, there is some merit in replacing the existing disused industrial buildings with residential flat development. However, increased densities are normally around nodal points and locations where public transport is readily available. There is limited access to public transport from the subject site. In our opinion, the Applicant has not justified this significant exceedance of two (2) Development Standards or objectively assessed the likely ramifications of this exceedance.

8.0 APPROVAL OF THE DENSITY OF DEVELOPMENT PROPOSED WILL SET AN UNDESIRABLE PRECEDENT IN THE LOCALITY

A review of Council and Court determinations for the Majors Bay/Mortlake Peninsula indicates a consistent approach to the FSR Development Standard. It is also accepted that there is a nexus between increased density and an increase in the amount of traffic on the peninsula.

In a Development Application for the demolition of an existing factory building and the erection of three (3) storey residential flat building with an FSR of 1:1, the Court refused the application citing the relationship of floor space and increased traffic (Proceedings No. 10530 of 2004, Scott Beynon v Canada Bay City Council). The judgement stated, inter alia:

"Having found that there is a relationship between floor space and increased traffic, and in the absence of any other evidence, it is reasonable that the appropriate 'break-even' point should be at the FSR standard. It is the adopted standard and consequently it must be given some weight."

In our opinion, approval of this application could be reasonably viewed as abandoning the FSR development standard, particularly as the site has no features that would constrain future development. While each application would need to be considered on its individual merits, we acknowledge that the Council or the Court would have great difficulty in refusing other similar applications if it was accompanied by a SEPP No. 1 Objection.

Although the FSR has been exceeded on a few occasions, Council has generally been consistent with its approach to FSR in the Majors Bay locality.

Council has supported increased densities on the Rhodes West Peninsula where the area is serviced by heavy rail. There is also direct access to good bus services on arterial links, without the need to drive through local streets. In our opinion, an increase in density at Rhodes West can be justified with the public transport that is available in close proximity. To encourage the use of public transport in Rhodes West, Council has limited the amount of off-street car parking. Residents purchasing apartments in this location do so on the understanding that they will have limited parking and will need to use the available public transport.

If the PAC was to approve this Application with its current FSR, the credibility of Council's planning controls would be undermined and there would be ramifications for the Peninsula from a traffic and planning point of view.

In summary, our opinion is, approval of this application with the density proposed will set an undesirable precedent for Majors Bay and the Mortlake Industrial area. It will be difficult for Council to credibly enforce the statutory FSRs for this locality if this application is approved.

9.0 THE PROPOSED INCREASED DENSITY WILL RESULT IN A PROPORTIONAL INCREASE IN TRAFFIC THAT WILL EXACERBATE TRAFFIC ISSUES ON THE PENINSULA AND DIMINISH THE AMENITY OF RESIDENTS

Canada Bay Council has been aware of the potential increase in dwellings in Breakfast Point and Mortlake and the direct relationship between an increase in density and an increase in traffic.

In 2010, Council engaged GTA Consultants to review traffic implications for Canada Bay LGA as a result of the NSW Metropolitan Transport Plan Review. This report identified: *that there is currently little, if any, spare capacity on the existing transport network during the AM and PM peak commuting periods.*

The report also identified that buses are impacted by heavy congestion on the surrounding arterial network and that there is low levels of ferry usage due to congestion. The report noted approximately 60% of the journey to work was by car and that current levels of congestion on the Canada Bay road network are unacceptable during the AM and PM periods.

In August 2010, Council engaged Transport and Urban Planning to assess the potential increases in traffic with a potential growth in residential dwellings in Mortlake and Breakfast Point with the replacement of disused industrial buildings. The report considered three (3) scenarios, including the traffic likely to be generated by development in accordance with the LEP 2008. The study found that even with redevelopment of disused industrial land generally to the FSR contained in Council's LEP, the level of service of many intersections would deteriorate. With an increase in FSR for redevelopment project in Mortlake, above the FSR in the LEP, there would be a substantial decrease in the level of service of intersections with many recording an "F", which is the lowest level identified. Importantly, the report also identified a noticeable loss of amenity for residents in the locality.

In September 2010, Transport and Urban Planning reviewed the subject proposal for Mortlake and concluded that the trip assignments were based on relatively small samples of survey results and were not comprehensive enough to be statistically significant. Importantly, Transport and Urban Planning concluded that with increased levels of traffic, there will be a diminution on the amenity of residents. Once the level of service at intersections drops below "C" and delays on streets become protracted, the amenity of residents is reduced. To possibly resolve these problems would require a combination of additional public transport services to the peninsula (which is not within the either developer's or Council's control) and road network improvements on collector roads to the peninsula. Road network improvements such as imposing peak hour parking restrictions on local collector roads would have serious amenity impacts on residents. In either case, it is a moot point whether these improvements could resolve the increased traffic congestion on the collector roads.

A traffic report accompanying the application, dated September 2011, is vague about the proposed level of car parking and identified minimum and maximum levels per unit. On the basis of the unit break up provided in the submission, the minimum number would be 483 car parking spaces while the maximum would be 865. The accompanying Masterplan provides for 653 spaces. It is in the Developer's interest to provide as many car parking spaces as possible as units are more sellable with additional car parking. The Applicant's traffic report concludes, inter alia:

"The potential traffic generation of the site under the proposed development scheme will be less than that occurs at present under the Industrial Uses and will not have any unsatisfactory implications or require any upgrading to roads or intersections."

There are obvious questions that result from this conclusion.

The AM and PM vehicle generation is different for industrial than it is for residential. Traditional industrial uses start earlier and finish earlier while residential tend to generate vehicular trips during the normal AM and PM peaks. Many of the industrial buildings in Mortlake are not operating anywhere near capacity and a number are, in fact, vacant. Accordingly, in our opinion, it is not an accurate assessment to suggest that traffic generation of the existing industrial and proposed residential will be the same.

Finally, the Applicant's submission does not offer any solutions to the likely traffic generation and simply suggests the proposal "will not have any unsatisfactory implications". There are casual comments referring to increased bus, train and ferry movements, which will have their own individual problems. Buses are caught up in the AM and PM peak and there is limited availability for future residents in this location to use ferries or rail. There is a compelling argument to suggest that the Applicant needs to be part of the solution rather than simply creating the problem.

In summary, Council has been diligent in its recognition of the relationship of between the increase density and an increase in traffic. Council has consistently endeavoured to contain densities. Separate studies by GTA Consultants and Transport and Urban Planning have confirmed that streets in the locality are currently near capacity and if there are substantial increases above the density contained in Council's LEP, then the amenity and level of service for the Peninsula will be intolerable.

10.0 THE PROPOSED MASSING AND BUILT FORM, PARTICULARLY THE NINE (9) STOREY RESIDENTIAL FLAT BUILDING HAS THE POTENTIAL TO PRESENT A DEVELOPMENT THAT IS INCOMPATIBLE WITH THE CHARACTER OF THE FORESHORE

Although there are only concept drawings available, the proposed massing and built form and the relationship to the foreshore are matters of concern. Concept drawings do not provide sufficient detail to properly assess the potential impact.

The concept drawings do not show the mean high water mark or the 12m FBL identified as a development standard in Council's LEP 2008. Similarly, there are no dimensions shown on the site identification plan or subsequent plans advising the setbacks of the proposed buildings from the foreshore. The Environmental Assessment does identify that all of the foreshore buildings will encroach the FBL. One of the important characteristics of the Breakfast Point development was the extensive setback from the foreshore and the amount of public open space. This proposal does not offer that important characteristic and in our opinion, there is no justification for the four (4) buildings encroaching the FBL. Indeed, the setback from the foreshore should be similar to that existing in Breakfast Point.

The location of the buildings is largely oriented towards Majors Bay and facing west to optimise views. This also offers the greatest amount of building massing when viewed from the waterway. Also, the majority of buildings present their longest elevation to the water with limited gaps between buildings and increasing in height from the foreshore to Hilly Street. This will result in a substantial massing of built form when viewed from Majors Bay and the public domain. With the majority of buildings having an east-west orientation and assuming these buildings are double loaded, there are likely to be solar access issues for many of the proposed units and difficulties in satisfying SEPP 65 design principles.

Breakfast Point has a mixture of dwelling types including single dwellings and residential flat buildings. If the density of the proposed development was reduced and the proposal included single dwellings with increased setbacks, in our opinion, the development would offer a similar character to Breakfast Point and provide a more acceptable massing when viewed from Majors Bay.

In summary, there is no justification for the proposed buildings encroaching the FBL. In our opinion, the setbacks from the foreshore should be similar to Breakfast Point to provide usable active and passive public open space.

The provision of the largest elevation facing the water maximises the building massing when viewed from Majors Bay. This is highlighted by the nine (9) storey building that will be obvious from the foreshore and public domain. A reduced density with greater setbacks and a reduced scale of development is recommended to ensure compatibility with the surrounding area.

11.0 THERE ARE INCONSISTENCIES IN THE DOCUMENTATION AND A LACK OF CLARITY OF THE PROPOSED USE OF OPEN SPACE AND FORESHORE AREAS, WHICH SUGGESTS THAT THE PLAN AND ITS RAMIFICATIONS HAVE NOT BEEN THOROUGHLY CONSIDERED

There is a level of inconsistency in the documentation that forms part of this Major Project Application. In the reports prepared by Cox and Mecone, there is reference to 380 and 402 units proposed as part of the application. We are advised that the response from the developer has been that this is only a concept plan and the final numbers will need to be resolved. Our respectful suggestion is that whether there is 380 or 402 apartments in this proposal is critical to the reasonable assessment of the application, the resulting FSR and the likely traffic generation.

Similarly, there is a degree of ambiguity relating to the number of car parking spaces proposed as part of this application. The Applicant's Traffic Report does not categorically state the proposed number of car parking spaces relying on peak hour assessments and a survey that was challenged by Council's Traffic Engineer to determine the overall generation. Although not stated in the Applicants traffic report, if the parking rates are extrapolated in light of the number of units, then the proposed car parking in accordance with Council's DCP would be somewhere in between 483 and 865 car parking spaces. The Masterplan drawings prepared by Cox and Mecone indicate that there will be a number of 1 and 2 level basements under the 14 proposed residential flat buildings. When the numbers on that drawing are tabulated there are 653 car parking spaces. Again, the suggestion from the Applicant is that these are indicative and subject to more detailed design.

It is critical to the assessment of this application to know the number of car parking spaces proposed in this application. As there is public transport difficulties in this locality during peak periods, people are likely to choose to own and drive motor vehicles. Similarly, the developer will have greater prospect of selling units with an increased level of car parking.

If the PAC limits the level of car parking by way of its conditional approval, this can result in an increased demand for on street parking which are problems experienced in roads and Breakfast Point. Thirdly, the open space is divided into four (4) categories which are described as privately owned publicly accessible public open space, public open space, publicly owned shared zones, and foreshore zones. There is also the existing public road reserve upgraded (see Drawing No. REV CP020503). This drawing then needs to be considered in conjunction with the basement extents Drawing No. REV CP020602. This drawing has deep soil, basement extent, rain water harvesting (indicative location), numbers of car parking spaces and level of car parking. The Environmental Assessment Report considered the Section 94 Contributions which may be considered as offset by the following:

- *"Greater foreshore access;*
- *Parks;*
- *Gardens; and Open Space close to residential areas;*
- *Increased Pedestrian Networks and Increased Bicycle Paths."*

There is a distinct lack of detail that would assess the DAC in concluding that the Section 94 Contribution should be offset. Similarly, there is a lack of clarity in how the identified Open Space would be utilised. In addition, there is no condition about the relationship of the open space to the mangroves. The mangroves are a critical part of the ecology in Majors Bay and need to be considered in conjunction with any foreshore access.

In summary, there is some confusion over the number of units proposed in this Major Project with reference to 380 and 402 apartments. Also, the number of car parking spaces is somewhere between 483 and 865 spaces with the numbers referred to on the drawings of 653 said to be indicative. Finally, there is a lack of clarity in relation to the use provision and maintenance of the public and private open space and foreshore land together with its relationship to the mangroves. These are all critical elements of the assessment of this application.

12.0 THE LEGITIMATE CONCERNS RAISED BY COUNCIL AND THE LOCAL RESIDENTS

On **7 November 2011**, Council held a public meeting to discuss the proposed Major Project application. The public meeting was well attended and provided approximately 140 residents and stakeholders with the opportunity to ask questions and raise any issues in relation to the proposal. The main issues raised by the local residents at this meeting included, but not limited to, the following:

- Access to the peninsula – there is one main road in and out of Mortlake. This road is heavily congested, as existing and it would be difficult to clear the peninsula in the event of an emergency;
- Impact on the natural environment, particularly the mangroves, as a result of the proposed works and the increased population to the area;
- Non-complaint FSR that would set an unreasonable precedent for the area;
- Increase in traffic volumes and increased pressure on on-street car parking;
- The traffic study comparison of the existing industrial uses to the proposed residential development is not valid as the area has limited industrial activities operating.
- Changed traffic conditions as result of road configuration;
- Contamination and the deficiencies in the contamination assessment accompanying the major project application;
- Increased pressure on existing public transport, being bus and car ferry;
- Increased pressure on existing services and local centres; and,
- Bulk and scale and height is inappropriate for the locality and will have impacts on existing amenity.

Following the public meeting, Council received numerous written submissions from local residents in response to the Major Project application. The main issues raised by the local residents include the following:

- Increase in traffic volumes and increased pressure on on-street car parking;
- Need for a Traffic Management and Public Transport Plan;
- Increased pressure on existing public transport, being bus and car ferry;
- Increased pressure on existing services and local centres;
- Access to the peninsula – one main road in and out of Mortlake. This road is heavily congested, as existing;
- Lack of landscaping and public open space, particularly when compared to Breakfast Point; and,
- Bulk and scale and height is inappropriate for the locality and will have impacts on existing amenity.

On **29 November 2011**, a workshop was held with residents and Councillors to provide a further opportunity for residents to raise any issues. The main issues raised by the local residents included many of the items mentioned above.

The issues raised by the local residents have been an important consideration in the preparation of this planning submission.

13.0 CONCLUSION

In conclusion, GSA Planning have been engaged to prepare an independent assessment of the Major Project application (MP10_0154) for the proposed 'Majors Bay Residential Development' at Mortlake. The GSA Planning assessment of this Major Project has involved a number of activities. These include: a review of the Project Application documentation; site inspections; consideration of decisions by the Land and Environment Court and Council relating to residential flat building applications in the Canada Bay Council Local Government Area (LGA); and, assessing the application against the relevant planning controls and public and private interests. Our assessment has also included a community consultation process, involving meetings with Council Officers, Councillors, stakeholders, residents and one (1) public meeting. The legitimate concerns raised by Council and the local residents have been taken in to consideration.

We acknowledge that the replacement of obsolete industrial buildings has merit. However, the density of any proposed residential is critical to the future functional operation and amenity of the precinct. Accordingly, we have concluded that the extent of development proposed will have a significant impact on the Mortlake Peninsula residents and the locality.

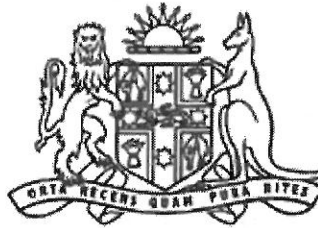
The proposal does not satisfy the objectives and development standards for height and FSR as contained in the LEP 2008. There is no substantive justification or reasoning in the submitted documents to exceed the FSR provisions to the extent proposed. Also, there are four (4) buildings that would encroach the 12m statutory FBL. Again, foreshore public open should be maximised, not minimised. We further consider that the proposal does not satisfy the aims, planning principles, matters for consideration and various provisions contained in the SREP (Sydney Harbour Catchment) 2005. In our assessment, the proposal cannot be considered as being for the public good or in the public interest.

In our submission, approval of the density of development proposed will set an undesirable precedent in the locality and will result in unreasonable and unacceptable traffic impacts on the Peninsula. To possibly resolve these problems would require a combination of additional public transport services to the peninsula, which is not within the either developer's or Council's control, and road network improvements on collector roads to the peninsula. Road network improvements, such as imposing peak hour parking restrictions on local collector roads, would have serious amenity impacts on residents. In either case, it is a moot point whether these improvements could resolve the increased traffic congestion on the collector roads.

The proposed massing and built form, particularly the nine (9) storey residential flat building, has the potential to present a development that is incompatible with the character of the locality.

In our review of the submitted documentation, there are inconsistencies relating to the number of proposed apartments and number of car parking spaces to be provided. There is also a lack of clarity of the proposed use of open space and foreshore areas, which suggests that the concept plan and its ramifications have not been thoroughly considered.

For all of the above reasons, our opinion is that the proposed residential development at Mortlake is unsatisfactory and unacceptable in its present form.



Land and Environment Court
of New South Wales

CITATION :	Beynon S v Canada Bay City Council [2005] NSWLEC 6
PARTIES :	APPLICANT Scott Beynon RESPONDENT Canada Bay City Council
FILE NUMBER(S) :	10530 of 2004
CORAM:	Brown C
KEY ISSUES:	Development Application :- demolition of existing industrial building erection of residential flat building SEPP 1 objections to floor space ratio and density impact on road network amenity impacts
LEGISLATION CITED:	Environmental Planning and Assessment Act 1979 State Environmental Planning Policy No 1 State Environmental Planning Policy No 65 Concord Planning Scheme Ordinance
CASES CITED:	Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46; Hooker Corporation Pty Limited v Hornsby Shire Council (NSWLEC, 2 June 1986, unreported); Goldin & Anor v Minister for Transport Administering the Ports Corporatisation and Waterways Management Act 1995 [2002] NSWLEC 75; Stadurn Pty Limited v Blacktown City Council [2004] NSWLEC 348; Re Drake and Minister for Immigration and Ethnic Affairs (No 2) [1979] 2 ALD 634 ; North Shore Gas Co. North Sydney Municipal Council (Unreported 15 September 1986)
DATES OF HEARING:	19/08/04, 09/12/04
DATE OF JUDGMENT:	19/01/2005

RESPONDENT
Mr P Jackson, solicitor
SOLICITORS
Pike Pike and Fenwick

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

10530 of 2004 Scott Beynon v Canada Bay City Council

<http://www.lawlink.nsw.gov.au/lecjudgments/2005nswlec.nsf/00000000000000000000000000000000...> 21/11/2012

industrial premises. Neighbouring development to the north comprises a three and four storey mixed development divided into two buildings. Adjoining to the south are two factory warehouse buildings. To the east, on the opposite side of Tennyson Road is the Breakfast Point residential development including several three-storey residential flat buildings. To the west on the opposite side of Bertram Street are single detached dwellings.

The amended proposal

7 The amended proposal provides for a three-storey residential flat building containing 22 residential units with basement parking. The proposal will contain 12 x 2 bedroom and 10 x 3 bedroom units. Access to the basement level is obtained from Bertram Street. Two elevators will provide access from the basement level to the residential units. Each unit will feature a master bedroom, additional bedroom/s, ensuite, internal foyer and internal lift access. Ground level units are provided with paved courtyards and upper level units are provided with balconies.

Relevant planning controls

8 The site is zoned 10(a) Mixed – Use zone under *Concord Planning Scheme Ordinance* (the Ordinance). The proposed use is permissible within this zone. Clause 41L(2) provides requirements for height that restrict development to a maximum height of three storeys or 12 metres above natural ground level. Clause 41L(3) provides requirements for density that restricts residential development to a maximum density of 35 dwellings per hectare. Clause 41L(4) provides requirements for floor space ratio (FSR) that restricts residential development to a maximum FSR of 0.75:1.

9 There was agreement that the proposed development did not satisfy the development standards for density and FSR. To address the departures, the applicant lodged objections pursuant to *State Environmental Planning Policy No. 1 - Development Standards* (SEPP 1) to show why strict compliance with the development standard is unreasonable and unnecessary in this case.

10 *State Environmental Planning Policy No 65 - Design of Residential Flat Buildings* (SEPP 65) also applies. The proposed development applies through cl 4 of the policy, being a residential flat building of 3 or more storeys. Clause 30(2) requires consideration to the given to the Design Quality Principles in Part 2 (cl 30(2)(b)) and the publication *Residential Flat Design Code* (cl 30(2)(c)).

11 *Development Control Plan No. 35 - Development in the 10(a) Mixed Use Zone, Mortlake Point, Mortlake* (DCP 35) also applies. Relevantly, Part C addresses built form/architectural character, building and scale, streetscape and public domain.

The issues

12 Following the readvertising, the council filed a Final Amended Statement of Issues that contained 7 individual issues. These issues can be conveniently grouped into the following main areas:

- 1) whether the SEPP 1 objection to the FSR development standard is well founded,
- 2) whether the SEPP 1 objection to the density development standard is well founded,
- 3) whether the proposed development would generate unacceptable levels of traffic on the local road network, and
- 4) whether the proposed design is acceptable, considering potential

privacy impacts, inadequate areas of storage, insufficient outdoor space and insufficient setbacks.

The evidence

13 The parties agreed to the appointment of Mr Geoff Baker as the Court appointed urban design expert, Mr Graham Pindar as the Court appointed traffic expert and Mr Michael Nash as the Court appointed contamination expert. Mr Phillip Drew provided town planning evidence for the applicant and Ms Kristy Idle provided town planning evidence for the council on the amended plans.

14 The evidence of Mr Nash and Mr Pindar was accepted by the parties although Mr Baker, Mr Drew and Ms Idle were required for cross-examination.

SEPP 1 objection to FSR development standard

15 Mr Drew and Ms Idle agree that the proposed development has a FSR of 1.0:1. Clause 41L (4) provides for a maximum FSR of 0.75:1

16 The LEP does not contain any objectives for the FSR standard so the SEPP 1 objection prepared by Mr Drew adopts the objectives for FSR from the *Residential Flat Design Code*. These objectives relate to:

- ensuring the development is in keeping with the optimum capacity of the site and local area,
- defining allowable development density for generic building types,
- providing modulation and depth of external walls,
- promoting thin building cross sections to maximise daylight and ventilation,
- allowing generous habitable balconies.

17 The SEPP 1 objection states that compliance with the standard is unreasonable and unnecessary for the following reasons:

- there is no known optimum or desirable capacity for the Mortlake point area with regard to public infrastructure,
- compliance is unreasonable with regard to traffic impacts, giving traffic generation for industrial/factory development at a FSR of 1:1 generates more traffic,
- the bulk, and scale of the proposal satisfies height, design and facade principles,
- the proposal is 4 metres lower and provides an articulated and less bulky appearance compared to the adjoining development,
- compliance is unnecessary to satisfy articulation, privacy, sunlight, day light, ventilation, and private open space requirements,
- the proposal has merit with regard to its landscaped area and tree preservation compared to nearby development,
- compliance is unreasonable when a FSR of 1:1 is permitted for non-residential development.

18 The appropriate manner of dealing with a SEPP 1 objection is found in the judgment of Lloyd J in *Winten Property Group Limited v North Sydney Council* (2001) NSWLEC 46, at par 26, where a number of questions are posed. The first question asks whether the subject planning control is a development standard. In this regard there was no dispute that the answer to this question was yes. The second question asks what is the underlying object or purpose of the

standard. The third question asks whether compliance with the development standard is consistent with the aims of SEPP 1. The aims state:

3. This policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable and unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.

19 This question also asks does compliance with the development standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the EPA Act. These objects state:

5. The objects of this Act are:

(a) to encourage –

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
(ii) the promotion and coordination of the orderly and economic use and development of land.

20 The fourth question asks whether compliance with the development standard is unreasonable or unnecessary in the circumstances of case. The fifth, and final question asks whether the objection is well founded.

21 On the second question asked in *Winten*, Mr Drew and Ms Idle, in their joint statement, agree that the principal purpose of the FSR standard is to have regard to bulk, scale, amenity (internally and externally), overshadowing, overlooking, landscaping and deep soil landscaping, visual form, character, and compatibility with the surrounding locality.

22 By virtue of the proposals acceptable height, number of storeys and articulated facade, Mr Drew and Ms Idle agree the proposal has an acceptable streetscape presentation to Tennyson Road. While accepting that the impact on adjoining residents and the streetscape to Bertram Street are relevant objectives, Mr Drew and Ms Idle disagree on the question of whether the proposal satisfactorily addresses these objectives.

23 Mr Drew and Ms Idle also disagree over whether the minimisation of potential traffic generation is an appropriate FSR objective. Ms Idle includes this as an objective for the FSR standard although she ranks this objective marginally below the other objectives. Her concerns over traffic generation relate to her belief that one of the purposes of the FSR control is to place an appropriate limit on the size and density of residential development to minimise cumulative impact of traffic in the locality. Mr Drew describes traffic as not a significant issue for FSR consideration.

24 Mr Pindar also addresses this matter. He relies on the councils 1999 *Mortlake Point Planning Study* that examines the traffic capacity of Mortlake Point under various residential density scenarios. The report establishes that the "break-even" point at which residential traffic equals the existing industrial traffic is at a density of about 60 dwellings per hectare. Mr Pindar notes that this does not take into account the type of traffic being generated, just the number of trips being generated. In his opinion, the removal of heavy industrial traffic has considerable community benefit in terms of approved amenity, safety and road capacity. On this basis, he estimates the sustainable density to be in the order of 70 dwellings per hectare, although he

concedes that this will need to be further considered by the council.

25 He also expresses the view that if future development results in an average density of about 70 dwellings per hectare across Mortlake Point this would be a cause for concern as it would result in a deterioration in existing traffic conditions. On this basis, the proposed density of 93 dwellings per hectare is of concern if it forms a precedent for widespread adoption. On balance however, Mr Pindar does not consider that the subject proposal will form a precedent.

26 At this point, the adequacy of the councils planning controls makes the assessment unnecessarily complex. While the *Mortlake Point Planning Study* and Mr Pindar approach the question of local road capacity through density, the evidence before the Court indicates that the density standard is a requirement that has been largely abandoned by the council in favour of the FSR standard in the assessment of any application for Mortlake Point. The council helpfully tendered, as part of Ms Idle's evidence, a table showing recent applications and determinations (see Attachment 1) that confirms the council's approach of relying the FSR standard while giving little weight to the density development standard.

27 Even though Mr Pindar and the *Mortlake Point Planning Study* address density, I accept that there is a relationship between floorspace and increased population (and consequently increased traffic) although it has not been quantified in the same manner as density. Because there was no dispute that the Mortlake Point area has constraints on the capacity of the local roads to deal with the increased traffic, I agree with Ms Idle that the potential traffic generation and its impact on the local roads is a relevant objective of the FSR standard.

28 The third question asked in *Winten* is whether compliance with the development standard is consistent with the aims of SEPP 1 and does compliance with the development standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the EPA Act. The fourth question in *Winten* asks whether compliance with the development standard is unreasonable or unnecessary in the circumstances of case. It is convenient to answer these questions together.

29 SEPP 1 aims to provide flexibility in the application of planning controls where strict compliance is unreasonable or unnecessary. The judgement of Cripps J in *Hooker Corporation Pty Limited v Hornsby Shire Council* (NSWLEC, 2 June 1986, unreported) contains a number of important principles for the consideration of a SEPP 1 objection. These principles are still relevant and are addressed in *Winten*. They can be summarised as follows:

- there are no limits to the dispensing power of SEPP 1,
- it is not sufficient to merely point to the absence of environmental harm to found an objection,
- it must be assumed that a development standard has a purpose,
- it is not to be used as a means to affect general planning change.

30 In my view, the applicant has provided no adequate reasons why it was unreasonable or unnecessary to comply with the FSR development standard.

31 The SEPP 1 objection provides objectives for the standard from the *Residential Flat Design Code*. These objectives are overly general and do not necessarily reflect the particular objectives for the standard in Mortlake Point. The reasons given that compliance with the standard is unreasonable and unnecessary are largely inconsistent with the principles in *Hooker*. They rely on a lack of environmental impact or a comparison with the 1:1 FSR for industrial/ factory development rather than why the development standard is unreasonable and unnecessary in this particular case.

32 The deficiencies in the SEPP 1 objection were rectified in the joint statement and there was general agreement between Mr Drew and Ms Idle on the objectives for the standard, with the exception of some amenity and streetscape issues and the traffic generation potential based on the additional floor area.

33 In light of the development standard objectives and for the reasons set out later in the judgement (see pars 48 to 50) I accept that the proposal is consistent with the objectives relating to the impact on adjoining residents and the impact on the streetscape to Bertram Street through the amended plans and additional refinements suggested by Mr Baker.

34 In relation to the objective relating to the potential for additional traffic, I accept Ms Idles evidence that the proposal is inconsistent with this objective. Even though Mr Pindars evidence relates to density, his evidence indicates that there is a "break-even" point where traffic becomes a concern. Having found that there is a relationship between floorspace and increased traffic, and in the absence of any other evidence, it is reasonable that the appropriate "break-even" point should be at the FSR standard. It is the adopted standard and consequently it must be given some weight.

35 While Mr Pindar ultimately accepted that the proposal was acceptable on traffic grounds, this acceptance was conditional upon the proposal not creating a precedent for other similar developments. With respect, I do not agree with this conclusion.

36 Precedent is a valid planning consideration (*Goldin & Anor v Minister for Transport Administering the Ports Corporatisation and Waterways Management Act 1995* [2002] NSWLEC 75). In this case, the evidence suggests that the development applications have already been lodged with the council, and ultimately refused, for proposals with an FSR generally greater than 0.75:1 (see Attachment 1). Additionally, the Court was advised that three development applications have been received, but not determined that also have an FSR greater than 0.75:1. In my view, the approval of this application could be reasonably seen as abandoning the FSR development standard, particularly as the site had no features that could be seen as a constraint on its future development. While each application would need to be considered on its individual merits, I acknowledge that the council would have great difficulty in refusing other similar applications if the SEPP 1 objection was supported by the Court in this case.

37 The proposed development seeks a 33% increase in floor area from that provided by the LEP. In my view, this increase is significant and falls within one of the principles established in *Hooker*; that being that the SEPP 1 process is not to be used as a means to affect general planning change.

38 I also see no reason why some weight should not be given to the consistent approach taken by the council in the use of the FSR standard in the determination of development applications in the Mortlake Point area. The council has consistently enforced the 0.75:1 FSR development standard apart from a small number of applications where the 0.75:1 FSR was exceeded by a small amount.

39 The importance of consistency in the context of a planning appeal is highlighted in the judgement of Pain J in *Stadurn Pty Limited v Blacktown City Council* [2004] NSWLEC 348 with a reference to *Re Drake and Minister for Immigration and Ethnic Affairs* (No 2) (1979) 2 ALD 634 where Brennan J states;

One of the factors to be considered in arriving at the preferable decision in a particular case is its consistency with other decisions in compatible cases...

40 The fifth question asked in *Winten* is whether the objection is well founded. For the reasons mentioned in the preceding paragraphs, this question must be answered in the negative. The consequence of this finding is that the appeal must be dismissed and the development application refused

41 For completeness, I will briefly deal with the other issues.

SEPP 1 objection to density development standard

42 Mr Drew and Ms Idle agree that the density of the proposed development is 93 dwellings per hectare. Clause 41L(3) provides for a maximum 35 dwellings per hectare.

43 While the departure from the density development standard was an issue raised by the council, Ms Idle states that the council has placed little emphasis on strictly enforcing the density development standard. Mr Jackson in his opening submission, also acknowledges that the council has not consistently applied the development standard and greater weight has been placed on the FSR development standard in the assessment of development applications.

44 In considering these comments, the judgement of Stein J in *North Shore Gas Co. North Sydney Municipal Council* (Unreported 15 September 1986) is relevant. In this case, His Honour found that compliance with a development standard was unnecessary and unreasonable as the standard had been virtually abandoned or destroyed by the council.

45 In my view, a similar conclusion can be reached in this case. Attachment 1 clearly indicates the significant departures from the density development standard.

46 Consequently, I find that compliance with the density development standard is unreasonable and unnecessary in this instance, as the standard has been abandoned by the council.

Traffic

47 This issue is addressed as part of the consideration of SEPP 1 objection to the FSR development standard (see pars 24 to 27).

The amended design

48 Mr Baker describes the amended application as a significant improvement over the original proposal. He acknowledges the fundamental design strategy of running the building east-west across the site so that its long facade faces north thereby maximising solar penetration in winter and optimising control of sun penetration in summer. Adequate separation is provided from the adjoining development at 46 Tennyson Rd. and there are sufficient setbacks on the south side of the proposed development to ensure the same level of separation in the event that the adjoining properties are redeveloped as housing. He describes the streetscape elevations as modest when seen in their context. Mr Baker recommends a number of readily achievable refinements to the amended plans.

49 While coming to conclusion that the proposed development is acceptable in urban design terms, he notes that the issue of appropriate density involves considerations at a district scale and that he is unable to assess this matter under the scope of his brief.

50 At the hearing, Mr Baker explained the refinements recommended to the plans in his report and how they related to the requirements in the *Residential Flat Design Code*. With the benefit of this explanation, I accept that the proposed development generally satisfies the requirements of SEPP 65 and the *Residential Flat Design Code*. I also accept that where total compliance is

not achieved, the departure is not of such significance as to warrant the refusal of the application.

Orders

51 For the foregoing reasons, the Orders of the Court are:

- 1) The appeal is dismissed.
- 2) Development Application 870/03 for the demolition of an existing factory building and the erection of a three-storey residential flat building at 40-44 Tennyson Road and 11-15 Bertram Street, Mortlake is refused.
- 3) The exhibits are returned.

G T Brown
Commissioner of the Court

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28 June 2010

Mr Gary Sawyer
General Manager
City of Canada Bay Council
Locked Bag 1470
DRUMMOYNE NSW 2000

Dear Gary

Submission for Rezoning of Land in Mortlake

I refer to your letter to Ben Hendriks of Mecone dated 20 January 2010 (**Council's Letter**). This letter seeks to address the comments raised in paragraph 9 of Council's letter, which requests further information relating to the economic feasibility of development on the Mortlake land. Council's Letter states:

Reference is made in several places that amendments to the planning controls will provide an economically feasible development on the site. There is no explanation why the existing planning controls do not allow for an economically feasible development to occur.

In my view, an economically feasible development could not occur if the existing development controls are maintained. This is because the underlying land values in the area are based on:

1. other sites that are developed or have similar redevelopment potential, and
2. the area's potential to redevelop.

However the economics of this site's development are impacted by a number of historic matters, the most significant being the residual contamination and the significant costs associated with the remediation required to prepare the site for development. In this regard the following points are raised for Council's consideration:

1. A Taubmans paint factory was previously located on the subject site. As a result the site contains a range of contaminants. The appropriate geotechnical and contamination investigations have been conducted and the site can be remediated to a safe residential standard but only at significant cost.
2. The nature and financial implications of the contamination was known at the time of purchase and factored into the pre-purchase financial modelling for the feasible development of the site.

3. Also at the time, as part of the pre-purchase financial modelling, a significant amount of planning and design due diligence was undertaken.
4. The planning due diligence included discussions with senior Canada Bay Council planning staff including the then Director of Planning.
5. During discussions with the former Director of Planning it was made clear by Council that Council considered current floor space ratio controls on the site would not encourage, and in fact had hampered, its economic redevelopment, at a time when other similar sites in the area, with more favourable economic dynamics, were already being remediated and developed. Moreover, it was expressed that Council felt it appropriate and would favourably consider an increase in building scale and densities to levels similar to surrounding large-scale development including Breakfast Point and specific reference was made to FSR's of approximately 1.5:1.
6. Council also considered the consolidation of small lots in the area would provide a better development outcome if amalgamated with the larger development site. These benefits would include provision of meaningful parcels of open space, completion of public access to the foreshore, consistent streetscape and a more integrated built form. Council understood that smaller sites could only be purchased at a higher rate per square metre which would further demand a higher floor space ration in order to be viably developed.
7. Therefore the purchase price of the site was based on the need to fund its remediation and Council's stated preference to see a consolidated proposal for the area and the consequent consolidation costs and the expectation these significant additional costs would be offset through the provision of additional floor space to levels similar to other large development sites in the area.

Further, Council's Letter states:

It is not explained whether the purchase price was based on, before or after remediation or before or after the FSR has been increased from 0.75:1 to 1.5:1 overall.

The purchase price of the land took into account the likely cost of the remediation and the likely purchase price of the smaller lots to be consolidated. Further, the purchase price of the land took into account the need for an increase in the applicable floor space ratio from 0.75:1 to 1.5:1 (as discussed with Council). In this regard the following points are raised for Council's consideration:

1. The underlying sales price of the Taubmans sites were largely determined by the vendor's expectations of the sites value. If the site were not purchased by Mortlake Consolidated Investments then it would be likely that the vendor would maintain their expectations (as they had done for the preceding 10 years or more), meaning the site would not be redeveloped until the higher FSR had been achieved by any other potential owner.
2. As outlined above, the pre-purchase due diligence undertaken in consultation with Council indicated that current configuration of density and height controls would allow for the sites economic development and an FSR of 1.5:1 was an appropriate outcome given the sites context. This was the single most significant factor influencing the price we agreed to pay for the sites.

I would be happy to discuss the specific financial modelling and purchase price with you in more detail. As you would appreciate this information is commercially confidential and therefore not appropriate for this submission.

Please contact me if you require any further information.

Yours sincerely,

Per Matt Ault

Ian Edwards

City of Canada Bay

Part 3A Concept Plan Residential Project Mortlake

Massey Park Golf Club, Ian Parade, Concord,

Monday 7 November 2011, 7 - 9 pm.

Independent facilitator: Brian Elton, Elton Consulting.

BRIAN ELTON: Good evening and welcome. Thanks very much for being with us this evening for this consultation on the Mortlake Peninsula Part 3A Concept Plan application.

My name is Brian Elton. I'm the managing director of Elton Consulting and it's my very great pleasure to chair and facilitate tonight's meeting for you.

In opening, I just want to say that I've had no association with the application historically, nor with Council on this matter. My job tonight is simply to chair and facilitate the meeting, to get through the next two hours, make sure you're out of here at 9 o'clock or just before and to make sure that everyone in the room has a fair hearing tonight.

With your permission what I'd like to do is just set some rules around the way we'll conduct this evening's meeting. As you'll see from the agenda, we should go for two hours till 9 o'clock. I'd like to hold to 9 o'clock if that's okay with you to make sure everyone can get out of here in time.

There are some boards around the room that the proponent has put up. If you'd like to linger and have a look at those boards afterwards, I'm sure that's absolutely fine but with your permission I'll conclude the meeting at 9 o'clock this evening.

As you'll see from the agenda, we have about five speakers. Each of those five speakers will make a fairly short presentation ranging from about five minutes to about fifteen minutes and then the bulk of the evening will be given over to you to ask questions and make comments.

Now obviously we've got a fairly good roll up tonight. I want to make sure this evening that as many people as possible are given the opportunity to ask a question, make a comment or make their views known. So with your permission what I'd like to do when we come to question time is I'll ask someone to make a comment or ask a question, have that question answered. I'll allow you to follow it up and then I won't come back to you until I have exhausted the hands in the air.

Does that sound like a fair and reasonable way to conduct the process? That way as many people as possible get the opportunity to make comments and be heard if that's okay. It seems fair? Thank you.

Just a couple of housekeeping matters. The ladies and gents toilets are over here. Can I ask you to refrain from going to the bar for next two hours, particularly to get alcoholic drinks? I've had very bad experiences of public

meetings and alcohol so I'll ask you to refrain from doing that for the next two hours if that's okay.

Please allow the speakers to speak. There will be plenty of time for questions and comment after they've spoken but if you can just hear the speakers and pay them that courtesy. I'm sure this evening will be about very strongly held views about a range of matters from a variety of different quarters. That's absolutely fine, we expect that, can I ask you to respect and value the contributions that everyone makes and to allow them to speak and remain silent while they're doing so. Then I'll open up to the floor.

Does that sound a reasonable way of conducting the process?

Thank you very much. It is now my very great pleasure to introduce our first speaker, the Mayor, Cr. Angelo Tsirekas. Angelo is going to talk about the Council position on the project. I welcome the Mayor.

MAYOR ANGELO TSIREKAS: Thanks Brian and I appreciate residents turning up tonight. Who would have guessed we're back here at Massey Park talking about a development under Part 3? Well by experience hopefully we can view this and give consideration to this application and deal with it on its merits and then put a submission in.

Can I welcome the Deputy Mayor Jeanette O'Hara and Cr. Cestar and I think Cr. Tyrrell is here as well and John Sidoti, the state member for Drummoyne. Also Ian Edwards, the proponent, and certainly I think it's important that we hear from all sides so impartial consideration can be given on this application.

I think it's very important also to give everybody an opportunity to know a bit about the history of this application too because there's a bit of misunderstanding out in the community that I'm hearing, that Council should be rejecting this application.

As it stands, it is a fairly large application and I know that the developers and architects will explain it but I'll go through the issues that we have with it. Certainly the major thing is that Council is not the authority dealing with this application. It is a Part 3A application, the Department and PAC and the Minister will be the consent authority, not Council.

But what we can all collectively do is make sure that submissions for the assessment process are put in. We've had a win already, we've had the extension because it was totally inappropriate the way that this application went out on advertisement and notification. So we've got a win out of Department,

they extended the time period till December the 2nd and also they renotified the wider area, which is only appropriate because on a peninsula there's only one way in and out. It doesn't affect just a small area, this is going to impact a larger area. So certainly we thank for the extension of time that we've got.

Just to give a bit of background, we have had discussions with the developer over a long time and I do credit Ian and his team that they were part of discussions over a long period of time. It was going nowhere when we really couldn't get the justification to consider their application at that time and it was around the impact that it was going to have on the residents. Namely, the traffic and the open space and a lot of other planning issues in particular with this development.

The impact it's going to generate and the effect that it will have if this was to be approved, the on-going effect that it would have on the other areas on that peninsula because there are still a lot of industrial areas there that are zoned for development.

This is a very important application, it's a large application, it's important on its impact on future developments in the area.

We are talking about the issue with density really because when you look at this application, it's not all nine storeys, they vary, the storeys, and you can see here they're varying in height, but the thing we've got to realise is that it's asking for a 1.5 to 1 floor space ratio.

To put that into context, look at Breakfast Point and that's .75 to 1. So it's basically doubling it.

Now the impact that will have and generating in that area is that there will be more people living in there because it will be more dense and there will be more cars. We couldn't really get a justification to even look at this because of the generation of more people and more cars in the area.

What we did, and you've got to realise there's a lot of pressure on Council from developers in that area, we went and got ourselves a traffic study. When we got the traffic study back it said if anything over and above what Council is allowing in your local environment or plan is going to cause a problem. It is going to create more traffic and chaos in the streets.

Since that time we've rejected four applications that have come in and we've got them on standby because we do think that there is an issue of getting people in and out and to do with public transport and how people move in and out of

that peninsula. So we're dealing with an area that there is going to be a lot of pressure on and we've got to get it right and we've really got to get back to the basics.

In the first place we had .75 to 1, what are the justifications to go to 1.5 to 1? What are the justifications? We really couldn't get that answer for us to go out even to consider it.

There is going to be some benefit and I'll grant the proposers as well, there will be foreshore access and there's some parks you see there which probably need to be looked at again but view corridors and enhancing the roadways and streetscapes.

But why we're here tonight is to hear from residents because Council needs to get an indication from everyone in this room, and anyone else, how they feel about this application. It's very important for us to get those views and we might be able to strike some views here tonight so we can leave this room with a bit of an indication of where we go from here with a bit of a resolution and something like that, if we get to that stage.

If it's going to go to PAC it will need a submission from Council or 25 residents' submissions to go to PAC, which is a body that works under the Department, gives the report to the Minister and so forth, the recommendation.

I know that the issue of Part 3A was a pretty critical planning instrument that was used by the last government and we did hear the promise that it would not be used again. Quite clearly we're pretty disappointed that under the transitional laws that were introduced by the new government that they decided which applications they would keep and which applications they would give back to Council.

I think everybody in this room would agree that the Council, the residents are probably the best to really deal with the application on the ground and truly indicate how this should move forward.

During the transitional period the government brought in laws and they handed back to Council a number of applications and they withheld applications and this is one of them. That's why Council is not the consent authority. That's why I think we're here tonight to hear from all sides and certainly I'll be anticipating the discussion at the end of the meeting and really, it is our job, as always, to make sure that we do get a clear response from the residents so we can then take your views and put them forward.

That's just a bit of an outline of where we're at tonight. The assessment is still being done by Council and we've got till December the 2nd to put our submissions in.

I'll be back up here later to wrap up the meeting and happy to hear from everyone else so I'll hand back to Brian.

BRIAN ELTON: Thank you Mr Mayor. Our next speaker is from the Department of Planning and Infrastructure to talk about the Part 3A process just to be absolutely clear with you about the planning process that we're in. I'd like to introduce Anthony Witherden from the Department of Planning and Infrastructure.

ANTHONY WITHERDEN: Thank you Brian. Good evening everyone. My name is Anthony Witherden, as Brian mentioned. I'm the Acting Director of Metropolitan and Regional Projects and I'm here tonight with my colleague Mark Schofield and we are managing the assessment of this application.

Tonight I'm going to run through the process and I'll basically concentrate on two things. I'll firstly talk about why the Department of Planning is assessing the proposal and secondly I'll run through the major project assessment process so that everyone is clear.

I'd also like to say early on in the meeting that it's a good opportunity to be here tonight to represent the Department and address all the community concerns, and I've certainly take note of the issues that the Mayor has raised this evening.

I'll talk about the transitional arrangements to basically explain why the Department's continuing to assess the proposal. As some of you will be aware, the new government honoured it pre-election commitment to repeal Part 3A of the legislation. So that means no new major projects are going to be assessed by the Department of Planning. However, under the transitional arrangements existing residential projects, such as this one, where Director-General's environmental assessment requirements have been issued before the 8th of April, they're going to continue to be assessed by the Department of Planning.

So basically this project will be continued to be assessed by the Department because it's in an advanced stage within the assessment process.

The major project assessment process is basically broken up into four steps and without using too much bureaucratic sort of sounding words, I'll try to keep it in as plain English as possible.

The first step is issuing a document which we call the Director General's Environmental Assessment Requirements and that's simply a document that the Department issues which identifies all the key issues with the proposal. They may include issue that have been spoken about tonight such as traffic, such as a density and building height, things like that.

So once that document has been issued we then issue it to the proponent and they go away and they prepare an environmental assessment and that environmental assessment is based on the Director-General's Environment Assessment Requirement. Once the environmental assessment is issued the Department exhibits the proposal. The Department usually exhibits the proposal for thirty days but in this case we've extended the notification period to 60 days and that ends on the 2nd of December.

The Department's also, as Angelo mentioned earlier, extended the exhibition, the area which the exhibition period covered. We did that in consultation with Council.

If you wish to view the application, there's a copy at the Department of Planning offices. There's also a copy at Council offices and all the information regarding the proposal is on the Department's website. So you're encouraged to make the submission on the proposal and write to the Department of Planning and now is the time to do so.

Once the exhibition period finishes, the Department of Planning will ask the proponent to prepare a report which addresses all of the issues raised. So that's all issues raised from Council, from the local community, from the Department of Planning and all key state agencies like the RTA, the STA and agencies like that.

The proponent then submits the report to the Department of Planning and that is placed on the Department's website and we use that report to finalise our assessment of the application.

Now once the Department has finalised its assessment, the project will be determined by the independent Planning and Assessment Commission if Council objects to the proposal or if there are more than 25 submissions.

Just to give you a brief outline of the PAC, it's probably a new term to everyone, basically the Planning and Assessment Commission is an independent body and it's usually made up of three panel members and they're completely separate from the Department of Planning.

An important note for everyone is that once the Department makes its recommendation, the recommendation is made publicly available on the Department's website before the application is determined by the PAC.

Generally the PAC will hold a public meeting so that if there's more than 25 submissions, the PAC can hold a public meeting and you can actually attend the PAC and voice your concerns about the proposal. If you want more information regarding the PAC it's best to basically view the PAC's website, if you've got any further queries about the Planning and Assessment Commission.

The only other point about the application that I'd like to make today is that the application is a concept plan. Now that's basically like a master plan so the approval, if any, that the Department would issue would be a master plan approval or a concept plan approval and future applications, if it was approved, would have to go to the Department of Planning for further assessment. Sorry, it would have to go to the Council for further assessment.

That's simply how the process works. I know that's probably a lot to take in in one evening but for those of you who are familiar with the development application process through Council, the process is pretty much the same except for that first step in the process which is issuing DGRs.

For anyone who is interested to find out anything further about the savings and transitional arrangements, that is the why the Department of Planning is continuing to assess this proposal, I've got an information sheet here for everyone. I don't know if I've got enough copies but again you can get this information from the Department's website. I'll leave it in a convenient place for you and you can look at that further if you wish.

That really summarises the process and I'll hand you back to Brian.

BRIAN ELTON: Thanks Anthony and just before I introduce our next two speakers, can I just say whoever has a silver Nissan with the registration XMU 933, you've left your lights on.

Our next two speakers will talk about the concept application itself and I introduce Ian Edwards, the proponent, and John Richardson from Cox Architects who are the master planners and architects, Ian.

IAN EDWARDS: Good evening ladies and gentlemen. As Brian said I'm Ian Edwards, representing Mortlake Consolidated, the proponent of the concept plan. I'm just going to take a couple of minutes to give you a brief introduction and some history to the concept plan and then I'll hand over to John