



**Planning &  
Infrastructure**

***MODIFICATION REQUEST:***

***Breakfast Point Concept Plan 2005  
MOD 3 – Change to condition 9 requiring  
a Community Enhancement Plan***

***Breakfast Point, Canada Bay***



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

May 2013

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## 1. BACKGROUND

### 1.1 The Site in Context

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



**Figure 1:** Location Plan

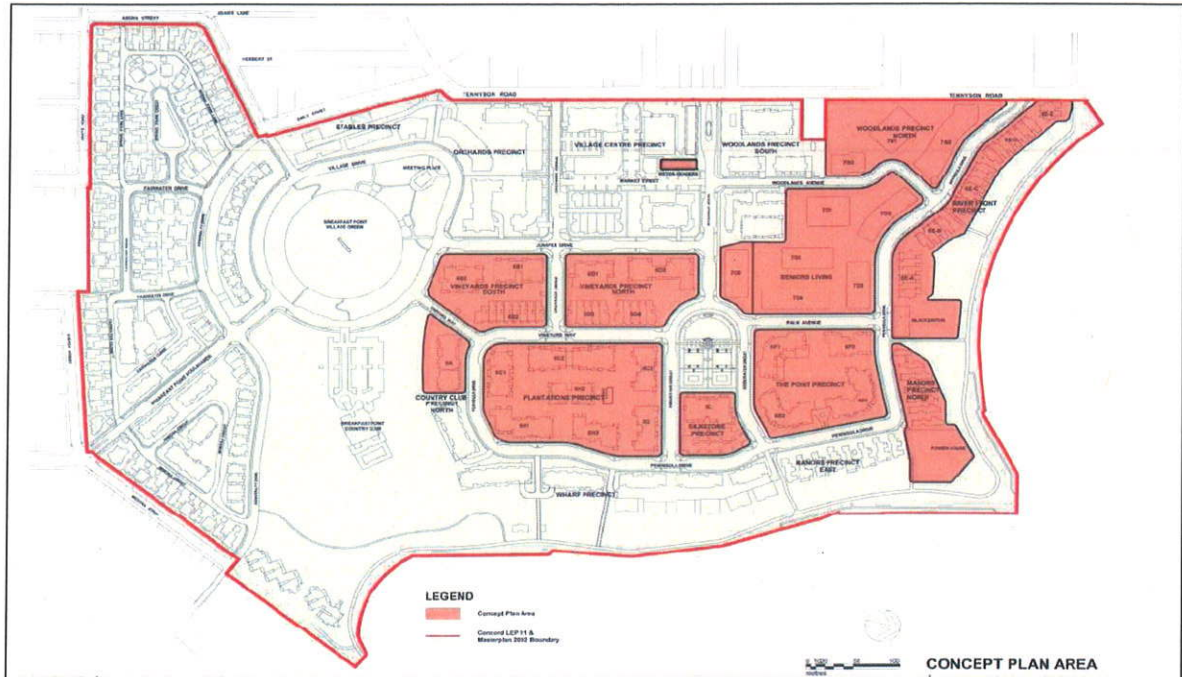
### 1.2 Breakfast Point Concept Plan

The City of Canada Bay Council (Council) adopted the *Breakfast Point Master Plan* in 1999 which proposed 1650 residential dwellings and 18,800m<sup>2</sup> of commercial uses. The Master Plan was amended by Council in 2002 to allow for 1,865 dwellings and 12,300m<sup>2</sup> of commercial uses on the site. The area covered by the Masterplan is shown in **Figure 1**.

On 7 April 2006, the former Minister of Planning approved the *Breakfast Point Concept Plan 2005* (CP) for the redevelopment of a portion of the Breakfast Point site. The area covered by the Concept Plan is shown in **Figure 2**. The number of dwellings approved in the Concept Plan was capped at 989 dwellings. However, Condition 7 of the Concept Plan approval facilitates an increase in the amount of approved gross floor area on top of the existing approved amount, to a maximum of 200 dwellings.

On 4 August 2006, the Director-General approved the 200 dwelling increase in accordance with Condition 7 resulting in an increase in the dwelling yield from the approved 989 dwellings to 1,189 dwellings.





**Figure 2: Location Plan**

In accordance with Condition 9, the additional 200 dwellings are contingent on a further monetary contribution and the preparation of a Community Enhancement Plan (CEP) which is designed to provide public facilities in nearby suburbs.

A Development Application, approved by Council on 2 October 2012, for 84 additional dwellings in the Woodlands Precinct North triggered the requirement in Condition 9 for Rose Group Pty Ltd (the Proponent) to prepare a Community Enhancement Plan.

The majority of these additional dwellings have either been approved by Council or are under assessment as shown in the following table:

DA Reference	Number of dwellings	Status
DA/184/12	84	DA approved 2/10/12
DA 65/13	100	DA lodged 5/3/13 and under assessment
DA68/13	4	DA lodged 5/3/13 and under assessment

## 2. PROPOSED MODIFICATION

### 2.1 Modification Description

This modification application seeks that the preparation of the Community Enhancement Plan be prepared and implemented by Canada Bay Council. This application follows discussions held between the Proponent and Council which have resulted in Council agreeing to prepare the Community Enhancement Plan in accordance with Condition 9 of the Concept Approval.

Therefore Condition 9 of the Concept Approval would need to be modified to reflect Council's agreement to prepare the Community Enhancement Plan on behalf of the proponent.

### **3. STATUTORY CONTEXT**

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#### **3.1 Continuation of Part 3A**

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

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

#### **3.2 Modification of the Minister's Approval**

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

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

#### **3.3 Environmental Assessment Requirements**

No additional environmental assessment requirements were issued with respect to the proposed modification, as sufficient information has been provided to the Department in order to consider the application.

#### **3.4 Delegated Authority**

On 4 April 2013, the Minister delegated his functions to determine modification requests under Section 75W of the Act to the Executive Director, Development Assessment Systems and Approvals where:

- the relevant Council has not made an objection, and
- a political disclosure has been made but only in respect of a previous related application, and
- there are less than 25 public submissions objecting to the proposal.

Less than 25 submissions have been received from the public and the City of Canada Bay Council does not object to the proposal. While a donation has not been disclosed in relation to this application, the proponent provided a statement disclosing a reportable political donation with a previous Section 75W application related to the Breakfast Point development. The application is therefore referred to the Executive Director, Development Assessment Systems and Approvals for determination.

### **4. CONSULTATION AND SUBMISSIONS**

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Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition however, the application to modify the approval was made publicly available on the Department's website.

Council was notified and subsequently provided a written response in support of the proposed modification. Further discussion on Council's response is provided in **Section 5**.

A total of 14 public submissions were received in response to the application being made publicly available on the Department's website. The concerns raised in the submissions are summarised as follows:

- the proponent should pay for the cost of the Community Enhancement Plan;
- the contributions should be placed in a trust fund;
- the proponent should fund the cost of notifying the community of the proposed changes to the Community Enhancement Plan;
- the additional dwellings are located at Breakfast Point and therefore the funds should be allocated to the Breakfast Point community;
- there should be a transparent and consultative process to enable the community to submit their views regarding the Community Enhancement Plan;
- developers should not be able to amend the provisions to increase dwellings to achieve higher profit;
- there has been a lack of advice and consultation with the community regarding the proposed changes;
- an explanation as to why the responsibility of the Community Enhancement Plan is being transferred from the applicant to Council should be provided;
- the increased dwelling numbers will have an adverse impact on the capacity of the existing facilities;
- the preparation and implementation of the Community Enhancement Plan should be the responsibility of the Breakfast Point Community Association; and
- the increased population will result in traffic congestion in surrounding suburbs and adversely impact property values.

This modification application relates solely to the preparation of the Community Enhancement Plan. However, the main concerns raised in the public submissions relate to the number of dwellings and the specific details of the Community Enhancement Plan process such as the consultation requirements and the timing and allocation of funds for community projects. The Department notes that this modification application does not seek to increase the total number of dwellings already approved in the Concept Plan. Furthermore, all other procedural requirements of Condition 9 remain as approved. Specifically Condition 9 requires:

- undertaking consultation with the local community during the preparation of the Community Enhancement Plan;
- provision of funding for community projects and infrastructure within the suburbs of Concord, Mortlake, Breakfast Point, and Cabarita; and
- preparation of a works program, timing and means through which the contribution delivered through this condition is accessed.

## **5. ASSESSMENT**

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The Department considers that the key issue relates to whether Council agrees to the preparation of the Community Enhancement Plan (on behalf of the proponent) in accordance with the requirements of the Concept Approval and whether the agreement between Council and the proponent is secure.

In response to the Department's notification, Council issued a letter signed by the Director of Planning & Environment, dated 27 March 2013 confirming Council's resolution to prepare the Community Enhancement Plan. The Department notes that Council also sought additional changes to the condition by way of:

- clarification and/or agreement to ensure the amount paid is adjusted in accordance with the Consumer Price Index (CPI);
- a request that the payments be in the form of cash or a bank cheque prior to the issue of a Construction Certificate; and



- the preparation of the Community Enhancement Plan being funded by the applicant to a total cost to a maximum of \$30,000 and evidence of payment be provided prior to the issue of a Construction Certificate.

The Department considers that Council's request for an adjustment to the payment in accordance with the CPI is outside the scope of this modification request and therefore not supported. In terms of the form and timing of the payment, the Department is of the view that Council is able to impose suitable conditions on the DA approval to cover these aspects, similar to other DA approvals which attract a Section 94 contribution. Therefore the Concept Plan approval does not warrant modification in this regard.

The Proponent has provided the Department a copy of the \$30,000 payment receipt made to Council on 3 April 2013 to cover the cost of preparing the Community Enhancement Plan. Council's acceptance of the \$30,000 payment for this purpose provides the Department with an appropriate level of assurance that the requirement for the Concept Plan will be met. The Department also notes that Council has commenced the preparation of the Community Enhancement Plan by way of preparation of the consultant brief, outlining the scope of the project including specific tasks and requirements. Furthermore, the Community Enhancement Plan is still required to be submitted to and approved by the Minister to ensure the requirements of the Concept Plan have been satisfied.

The Department therefore considers that the requirements of the Concept Plan remain secure. Noting this, the Department considers that it is appropriate for Council to prepare the Community Enhancement Plan as agreed with and on behalf of the proponent. Accordingly, the Department has modified Condition 9 of the Concept Approval to facilitate this arrangement.

## 6. CONCLUSION

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The Department supports the proposed modification to Condition 9 of the Concept Approval relating to the preparation of the Community Enhancement Plan. The Department considers that Council is an appropriate authority to identify the amenities and infrastructure needed by the community. The modified proposal remains consistent with the intent of Condition 9 and is considered to be acceptable. It is therefore recommended that the application be approved, subject to a modified condition.

## 7. RECOMMENDATION

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It is recommended that the Executive Director, Development Assessment Systems and Approvals

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

Endorsed by:



**Ben Lusher**  
A/Director  
Metropolitan & Regional Projects South

Approved by:

**Chris Wilson**  
Executive Director  
Development Assessment & Systems Approvals



## **APPENDIX A    MODIFICATION REQUEST**

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See the Department's website at

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=4797](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=4797)

## **APPENDIX B SUBMISSIONS**

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See the Department's website at

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=4797](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=4797)

## **APPENDIX C    RECOMMENDED MODIFYING INSTRUMENT**

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