



***MAJOR PROJECT ASSESSMENT:
Breakfast Point Concept Plan***

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

April 2006

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1 EXECUTIVE SUMMARY

- 1.1. The \$566 million redevelopment of Breakfast Point site will facilitate State and regional planning outcomes by contributing to major residential growth in an identified urban renewal area; achieving a high standard of environmental design and providing continuing employment opportunities for the existing 1000+ construction workforce
- 1.2. The Minister for Planning, formed the opinion that the proposal is a Major Project and subject to Part 3A of the Environmental Planning and Assessment Act, on 29 November 2005.
- 1.3. On 8 December 2005, Rosecorp submitted the Breakfast Point Concept Plan 2005 in response to the Director General's Environmental Assessment Requirements.
- 1.4. The proposal was exhibited for the 59 days between 13 December 2005 and 3 February 2006. Forty six (46) submissions were received from public authorities and local residents.
- 1.5. Key issues raised related to proposed departures from the 2002 Master Plan (including gross floor area, density, and dwelling mix) traffic and parking, future use of the on site heritage buildings, developer contributions, and staging.
- 1.6. The proponent has addressed these issues and submitted a Preferred Project Report and Statement of Commitments to address issues and provide added mitigation measures.
- 1.7. In balancing the State significant planning outcomes with the issues raised above, the Department is of the view that the proponent has satisfactorily mitigated the environmental and heritage impacts arising from the redevelopment of the Breakfast Point site. In assessing the proposal, the Department has resolved any outstanding environmental issues through recommended conditions of approval.
- 1.8. The Department has worked closely with the community, local member Angela D'Amore, MP and has met with City of Canada Bay Council a number of times. This has ensured an effective and efficient approval process.
- 1.9. Recommended conditions of approval are provided at Appendix A. The reasons for the imposition of conditions are to encourage good urban design, future sympathetic adaptive reuse of and redevelopment in the vicinity of heritage buildings, maintain the amenity of the local area, and adequately mitigate the environmental impact of the development.

2 BACKGROUND

2.1 Introduction

The redevelopment of the Breakfast Point site for predominantly residential purposes follows the prolonged use of the site as a gasworks by the Australian Gaslight Company (AGL). The site was rezoned by Concord Council (as it was at the time) from 4(a) Industrial General to Residential 2(e) in 1998 and also identified as a site of "strategic significance" pursuant to the provisions of State Environmental Planning Policy No. 56 – Sydney Harbour Foreshores and Tributaries (SEPP 56). In accordance with SEPP 56 Council adopted the Breakfast Point Master Plan in 1999 as a guiding document for the ongoing development of the site, which proposed 1650 residential dwellings and 18,800 m² of commercial uses. The adoption of the Master Plan was subject to the preparation of several supporting master plans/documents including the Breakfast Point Landscape Master Plan, a site specific Conservation Management Plan and the Breakfast Point Visitor Car Parking Master Plan.

The Breakfast Point Master Plan was amended in 2002 to allow for 1,865 dwellings and 12,300 m² of commercial uses on the site. Up until the Minister's recent decision to assume the approval role for remaining development at Breakfast Point, the City of Canada Bay Council had been the consent authority and was assessing DAs under Part 4 of the Environmental Planning and Assessment Act, 1979 (EP & A Act). The site has been subdivided into a Community titled arrangement and over 650 dwellings have been approved, almost all of which have been constructed. In addition, nearly all the required infrastructure and community facilities (open space, community centre and commercial/retail facilities) have been put in place.

In June 2005, Council resolved to prepare a development control plan (DCP) for the site under the provisions of its local environmental plan. The Breakfast Point DCP was adopted by Council on 16th August 2005 on the basis that the controls in the 2002 Master Plan were vague, generic and lacking specificity in some areas which had led to various interpretations being applied to assessments. The new provisions within the DCP sought to provide greater certainty in relation to building footprints and locations, building heights and also sought to clarify ambiguous definitions.

On 31 August 2005 the Minister for Planning agreed that the remaining development of the Breakfast Point site was a major project and that future development should be subject to the provisions of Part 3A of the Act. The Minister's decision followed a request from Rosecorp (the proponent) to intervene as a result of lengthy delays in Council dealing with development applications for site and Council's adoption of the Breakfast Point DCP that appeared to affect, amongst other things, dwelling yield.

Rosecorp advised that it intended to continue the redevelopment of the Breakfast Point site consistent with the Council-adopted Breakfast Point Master Plan 2002 albeit as a re-badged concept plan under Part 3A of the EP & A Act. On 8 December 2005 Rosecorp submitted the Breakfast Point Concept Plan for those portions of the Breakfast Point site that remain undeveloped. This Assessment Report is an assessment of that Concept Plan.

2.2 Site Location and Description

The Breakfast Point site is a 51.82 ha piece of land located on the Mortlake Peninsula, approximately 9km west of the Sydney CBD. The site is wholly located within the Canada Bay LGA and is bounded by Tennyson Road, Emily Street and Adams Lane to the west, Brays Road, Bishop Street and Medora Street to the south and east and Parramatta River to the east and south (Figure 1). The river frontage extends some 1.3 kilometres.



Figure 1: Location Plan

The Breakfast Point Concept Plan only applies to a limited portion of the larger Breakfast Point site. Figure 2 identifies that area. The Concept Plan area is 20.73 ha and is legally described as Lot 25, Pt Lot 26, Lots 43, 48-53 and 64 in DP 270 347.

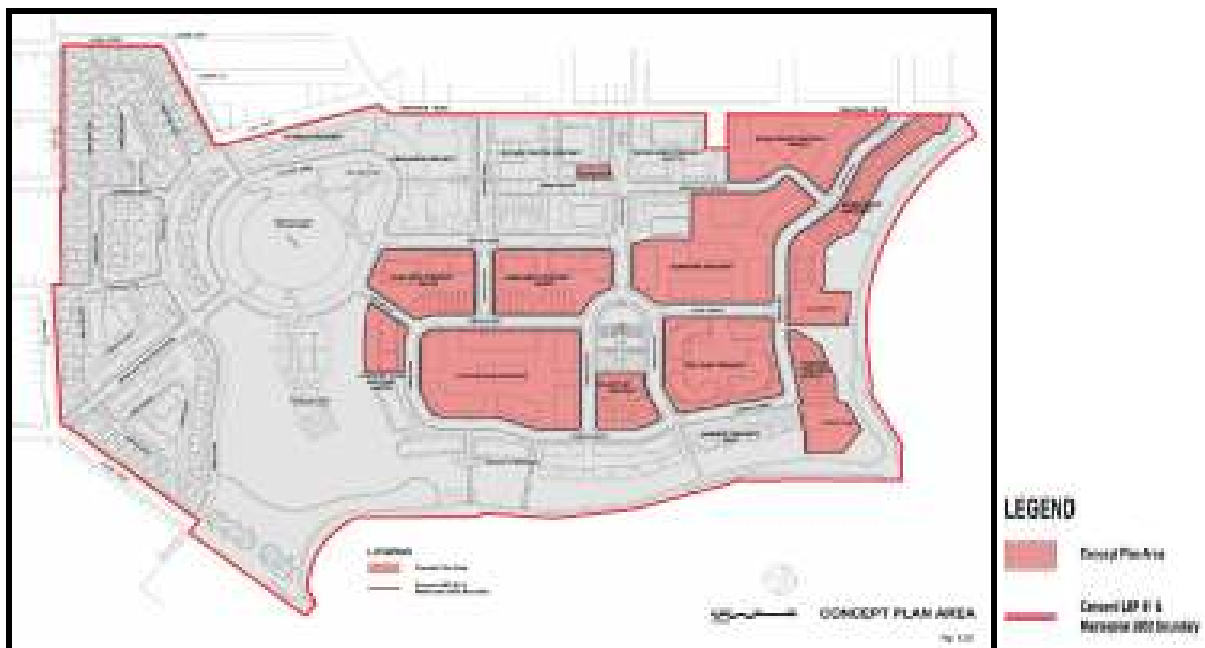


Figure 2: Concept Plan Area

2.3 Existing Uses and Structures

Since the decommissioning of the AGL gasworks, the Breakfast Point site has been significantly remediated including site-wide earthworks and re-shaping. The site has also been subdivided in anticipation of construction. The site is predominantly a Community scheme development however dwellings located on the perimeter of the site are not within the Community scheme and are separately Torrens titled.

Approximately 50% of the total Breakfast Point site has now been developed (see Figure 3). Those parts of the site that have been redeveloped now accommodate residential dwellings and town houses, residential apartment buildings ranging from 3 to 9 storeys high, the Village Centre, Community Meeting Hall, the Breakfast Point Country Club, the Village Green (recreational oval), waterfront park, foreshore cycleway, landscaping (parks and the road network), and seawall.



Figure 3: Development to Date

All road networks and utility infrastructure works have also been fully constructed.

Those parts of the site that remain undeveloped have been excavated to base rock level and remain unfilled pending detailed design.

2.4 Surrounding land uses

The site is located in a predominantly residentially zoned area. The locality is characterised by low density (single houses) residential uses and relatively large open space areas. Land immediately to the west, along Tennyson Road accommodates industrial type development including factories, storage facilities and a boat repair workshop/facility (River Quays Marina).

Cabarita Park (to the east) and Majors Bay Reserve (to the west) are located within a 1 kilometre radius of the site. The Cabarita swimming pool is located east of the site and the Concord and Massey Park Golf Courses are also within a few kilometres of the site. The site is within reasonable proximity to a range of community services provided by private and public organisations including meeting halls, senior citizens centres, libraries and youth services.

The location of the site in its context can be seen in the aerial photograph (Figure 4) below.



Figure 4: Aerial Photograph

3 PROPOSED DEVELOPMENT

3.1 Approval Originally Sought

On 8 December 2005, Rosecorp submitted the Breakfast Point Concept Plan 2005 prepared in response to the Director General's environmental assessment requirements (discussed in Section 4). Rosecorp concurrently lodged six project applications which seek to undertake the construction of residential apartments or townhouses, landscaping and ancillary works. The assessment of those project applications are not the subject of this report and are to be forwarded to the Minister separately pending the resolution of any outstanding issues and outcome of the Breakfast Point Concept Plan.

The original Concept Plan identified 10 individually named precincts within which residential development, private and public open space and associated infrastructure was proposed. The precincts were identified as Vineyards Precinct South, Vineyards Precinct North, Country Club Precinct North, Plantations Precinct, Silkstone Precinct, Point Precinct, Manors Precinct, Seashore Precinct, Riverfront Precinct, and Woodlands Precinct.

Through implementation of the Concept Plan, Rosecorp sought to deliver over 360 000m² of floor space and up to 2073 dwellings across the whole of the Breakfast Point site. Rosecorp sought to achieve this by proposing to increase the gross floor area, dwelling yield and density to comply with the statutory LEP provisions within the concept plan area only. A summary of the approval originally sought by Rosecorp is outlined in Table 3.1:

Table 3.1: Summary of Approval Sought Pre and Post Exhibition (concept plan area only)

<i>Development Standard</i>	<i>Concept Plan 2005 (original)</i>	<i>Concept Plan 2005 (preferred project report)</i>
Floor Space Area (total)	204, 208m ²	188, 662m ²
Maximum heights	2-9 storeys	2-9 storeys
Floor Space Ratio (FSR)	0.99:1	0.91:1
Dwellings/Ha	57	57
Maximum dwellings	1197	1197
Maximum bedrooms	2860	2860
Dwelling mix	No data provided	No data provided
Non Residential uses (max)*	13.58%	0.8%
Non Residential uses – maximum gross floor area	49,252m ²	1, 519m ²
Commercial/shops	1, 575m ²	1, 519m ²

NB: Non residential uses are calculated as a proportion of the total floor space area.

In addition to the above, Rosecorp also requested the Department facilitate resolution of land tenure issues at the foreshore of the site. Rosecorp's request follows Council's subdivision approval of the site under a Community title arrangement. The foreshore strip is presently leased back to Council as public open space, however without appropriate easements or safeguards for continued and free public access. In submitting the Concept Plan for approval, Rosecorp has requested the Department's intervention and possible ownership of the foreshore land.

3.2 Amendments to the Proposal

Following the completion of the consultation period (discussed in Section 5) Rosecorp submitted a preferred project report in response to the issues raised. The preferred project report proposed several amendments to the exhibited proposal – the most significant of which was a proposed reduction in gross floor area (and in particular commercial gross floor area). Rosecorp intends to pursue the same dwelling yield. A summary of the development outcome proposed under the preferred project report is outlined in Table 3.1 above.

The preferred project report is supported by the proponent's response to all submissions received during the public consultation (**Appendix D**) process as well as a Statement of Commitments which are attached at **Appendix B** and discussed in Section 6.

4 STATUTORY CONTEXT

4.1 Part 3A of the Environmental Planning and Assessment Act, 1979

Part 3A of the Environmental Planning and Assessment Act commenced operation on 1 August 2005. Part 3A consolidates the assessment and approval regime of all major projects previously considered under Part 4 (Development Assessment) or Part 5 (Environmental Assessment) of the EP&A Act.

Under the provisions of Section 75B of the Act development may be declared to be a Major Project by virtue of a State Environmental Planning Policy or by order of the Minister published in the Government Gazette.

Section 75M of the Act provides that the Minister can authorise the submission of a concept plan for a Major Project.

4.2 State Environmental Planning Policy (Major Projects) 2005

State Environmental Planning Policy (Major Projects) 2005 outlines the types of development declared to be a Major Project for the purposes of Part 3A of the Act.

For the purposes of the SEPP certain forms of development may be considered a Major Project if the Minister (or his delegate) forms the opinion that the development meets criteria within the SEPP.

On 31 August 2005 the Minister for Planning formed the opinion that remaining development of the Breakfast Point was a development described in Schedule 1, Group 5, Clause 13 of the SEPP, namely:

“Development for the purpose of residential, commercial or retail projects with a capital investment value of more than \$50 million that the Minister determines are important in achieving State or regional planning objectives”.

As the capital investment value of outstanding development on the site was in the order of \$554 million and therefore exceeded the \$50 million criteria the Minister formed the opinion that the development was a Major Project. In doing so the Minister satisfied himself that the development was important in achieving State or regional planning objectives on the basis:

- the Breakfast Point site was identified as being of “strategic significance” in SEPP 56;
- the redevelopment of the site would significantly contribute to major residential growth in an identified urban renewal area;
- the site is well located for public transport (bus and ferry); and
- the capital investment value of outstanding development on the site was in the order of \$554 million with a current construction workforce of approximately 1000.

On 29 November 2005, following Rosecorp's revision of the area they sought to obtain a Part 3A approval for, the Minister revoked the opinion formed in August 2005 and formed a new opinion that the revised area was a Major Project under Schedule 1, Group 5, Clause 13 of the SEPP. In doing so, the Minister authorised the submission of a Concept Plan for the site for those areas of the site. The area to which Part 3A applies and for which the Breakfast Point Concept Plan has been prepared is shown in Figure 2 and is shaded pink.

PERMISSIBILITY

4.3 Concord Planning Scheme Ordinance (Local Environmental Plan Amendment No. 91)

In 1998, Local Environmental Plan Amendment No. 91 (LEP 91) amended the Concord Planning Scheme Ordinance to rezone the site ‘Residential E’. LEP 91 is a site specific LEP which articulates the objectives and development standards for the future development of the site.

Residential, commercial, and open space uses (as proposed by the Concept Plan) are all permissible within the ‘Residential E’ zone. LEP 91 also nominates additional uses (Schedule 11) which are also permissible subject to

the satisfaction of site specific development standards. The development standards that apply to the site are as follows:

- gross floor area of all buildings on the site must not exceed a floor space ratio of 0.7:1;
- the total gross floor area of all buildings comprising Schedule 11 uses must not exceed 15% of the total floor area;
- no more than 10 000m² of gross floor space can be used for commercial uses/shops; and
- the maximum number of dwellings must not exceed 40 dwellings/ha.

ENVIRONMENTAL ASSESSMENT REQUIREMENTS

4.4 Director General's Environmental Assessment Requirements

On 2 December 2005, the Director General issued environmental assessment requirements (DGRs) pursuant to Section 75F of the EP & A Act (attached at **Appendix E**). The DGRs issued in respect of the Breakfast Point Concept Plan which specifically relate to:

- access, traffic and transport
- utilities and infrastructure provision
- urban design
- Section 94 developer contributions
- Ownership and subdivision
- phasing of development
- variation and changes from the Breakfast Point Master Plan 2002

In addition to these key issues, the proponent was also requested to address /demonstrate:

- the suitability of the site
- the likely environmental, social and economic impacts of the proposal
- the public interest
- compliance with relevant environmental planning instruments
- extent and nature of any non compliance with environmental planning instruments

CONSIDERATION OF RELEVANT LEGISLATION

4.5 Other relevant legislation and environmental planning instruments

Section 6 and **Appendix F** both set out the relevant consideration of legislation (including other Acts) and environmental planning instruments as required under Part 3A of the Act.

5 CONSULTATION AND ISSUES RAISED

5.1 Consultation Process

The Breakfast Point Concept Plan was publicly exhibited and notified in accordance with the EP & A Act and Council's Notification Policy. Section 75H(3) of the EP & A Act requires that after the Environmental Assessment has been accepted by the Director General, the Director General must, in accordance with any guidelines published in the Gazette, make the environmental assessment publicly available for at least 30 days. The Director General has not published any specific guidelines in relation to the public exhibition of the Concept Plan.

A "Test of Adequacy" was undertaken by the Department which determined that the matters contained in the DGRs were adequately addressed in the Environmental Assessment prior to public exhibition.

The process followed in terms of the public exhibition is broadly below:

- The application was placed on exhibition between 13 December 2005 and 3 February 2006 – an extended public exhibition period in recognition of the Christmas/New Year holiday period.
- An informal extension to the public exhibition period was secured by the local member following significant pressure from the community for a longer consultation process.
- Copies of the Environmental Assessment and associated documents were available for inspection at the Department of Planning in Sydney and Council's Drummoyne and Concord offices. Copies were also available for inspection at the Concord Branch Library and Concord West Library.
- Advertisements were placed in two local newspapers – the Inner Western Suburbs Courier and Inner Western Suburbs Weekly in mid December at the commencement of the exhibition and again in mid January 2006.
- Copies of the Environmental Assessment documents were forwarded to key relevant Government Departments including City of Canada Bay Council, NSW Maritime, the Roads and Traffic Authority, NSW Heritage Office and State Transit Authority.
- Details of the application were forwarded to other relevant Government Departments including Department of Environment and Conservation, Department of Natural Resources, Ryde City Council, Sydney ferries, Sydney Water and the Department's Sydney East Region Branch.
- Details of the application were also forwarded to over 1800 Breakfast Point residents, owners of land directly adjoining and in the vicinity of the subject land (i.e. landowners in the area bounded by Kingston Avenue, Watkin Street, Brays Road, Mortlake Street, Denison Road, and Cabarita Road) as well as special interest groups including local ALP branches and community associations within the Breakfast Point site.
- Details of the application were placed on the Department of Planning and Breakfast Point (www.bpconceptplan.com.au) websites.
- As a result of the consultation, a total of 46 submissions were received.

5.2 Community Meetings

Prior to and during the public exhibition, Angela D'Amore MP facilitated three community meetings on 2 November 2005, 30 January 2006, and 13 February 2006. All three meetings were attended by Departmental representatives.

Council also hosted a separate meeting on 6 February 2006 after the formal closure of the exhibition period.

Key concerns raised related to proposed increases in height and density, dwelling mix, and commercial/retail uses (and potential traffic and parking implications), future use of the heritage buildings on site, car parking provisions, and staging.

5.3 Government Departments

The Department received written submissions from City of Canada Bay Council, NSW Maritime, NSW Heritage Office, the Roads and Traffic Authority and the Department's Sydney East Region Branch. Copies of the submissions are provided at **Appendix D** whilst the proponent's response to submissions is at **Appendix D**.

Issues raised in the respective submissions are outlined below:

5.3.1 *City of Canada Bay Council*

- Inadequate justification provided for proposed density increases
- Concept Plan is deficient in relation to public access to and along the foreshore, visual quality of the development when viewed from Parramatta River and requirements for phasing of development.
- Concept Plan is not consistent with the LEP objectives/intent
- Departures from the Master Plan 2002 including increased floor space ratios, heights and densities
- Limited focus on public transport through and from the site
- Diluted access to the foreshore and through site links
- Lack of necessary clarity in relation to the provision of community facilities
- No commitment to the staging or order of development and the provision of facilities and infrastructure
- Concept Plan makes no reference to the development standards contained within the Master Plan 2002

5.3.2 *NSW Maritime*

- The Concept Plan is generally similar to the 2002 Master Plan with the exception of car parking and dwelling mix.
- Recommended that Concept Plan address relevant provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, particularly as they apply to the foreshores and waterways area.

5.3.3 *NSW Heritage Office*

- 3 heritage items fall within the Concept Plan area.
- Approval not required under the Heritage Act 1977 however site has heritage significance.
- Breaching of the Tennyson Road perimeter wall approved by the Master Plan approval.
- Concept Plan proposes adaptive reuse of Blacksmiths Shop and Powerhouse – future use and proposed conservation works not proposed as part of current application.
- Timing of approvals is important to avoid “mothballing” of heritage items.
- Curtilage of Blacksmiths Shop is unclear – should be clarified and conditioned appropriately.
- If further excavation is proposed a condition should be imposed requiring consultation with Heritage Office in accordance with Section 146 of the Heritage Act in the event that archaeological relics are discovered during construction.

5.3.4 *Sydney Water*

- Increases in density may require amplifications to Sydney Water infrastructure.
- Conditions of approval should require Section 73 Compliance Certificate from Sydney Water.
- Some areas may contain low-level residual contamination.
- Design and construction of water and wastewater infrastructure must address potential risks from soil or groundwater contaminants.
- A Work Method Statement (WMS) relating to earthworks will be required
- WMS to be approved prior to commencement of earthworks/soil preparation works.
- A trade waste permit to discharge into sewers is required prior to commencement of discharge.
- Requested that subsequent development applications and project approvals be referred to Sydney Water for comment.

5.3.5 *Department of Planning – Sydney East Region*

- Concept Plan does not provide enough built form guidance, particularly with respect to visual impact from Parramatta River.
- Views from the River, specifically massing and bulk.
- Development appears unbroken and not well articulated.
- Concept Plan does not offer sufficient control to gradation of buildings.

5.3 **Public Submissions**

At the conclusion of the exhibition period on 17 February 2006 a total of 41 community submissions were received all generally objecting to the proposal. The key issues raised in submissions were: the departures from the 2002 Master Plan, traffic and car parking, future uses of on-site heritage items, and developer contributions.

A discussion of the issues raised and their resolution is in Section 6.

5.4 Independent Hearing and Assessment Panel

Section 75G of the Environmental Planning and Assessment Act provides that the Minister may constitute an independent panel to assess any aspect of a project. No panel was constituted for the purposes of Section 75G.

6 ASSESSMENT

6.1 ENVIRONMENTAL ASSESSMENT REQUIREMENTS

Section 75F of the Environmental Planning and Assessment Act provides that the Director General is to prepare Environmental Assessment requirements for each project. The Environmental Assessment outlines the matters that the Director General considers should be considered as part of the assessment process.

On 2 December 2005, the Director General issued environmental assessment requirements (DGRs) pursuant to Section 75F of the EP & A Act to the proponent for consideration during the preparation of the environmental assessment. The DGRs issued in respect of the Breakfast Point Concept Plan are attached in **Appendix E** and specifically relate to:

- access, traffic and transport
- utilities and infrastructure provision
- urban design
- Section 94 developer contributions
- ownership and subdivision
- phasing of development
- variation and changes from the Breakfast Point Master Plan 2002

In addition to these key issues, the proponent was also requested to address /demonstrate:

- the suitability of the site
- the likely environmental, social and economic impacts of the proposal
- the public interest
- compliance with relevant environmental planning instruments
- extent and nature of any non compliance with environmental planning instruments

The Environmental Assessment prepared by Giles Tribe Architects and Urban Planners forms the basis for consideration of the significant issues associated with the development.

6.2 DIRECTOR GENERAL'S REPORT

The purpose of this submission is for the Director General to provide a report on the project to the Minister for the purposes of deciding whether or not to grant approval to the Concept Plan pursuant to Section 75O of the Act.

Section 75I(2) sets out the scope of the Director General's report to the Minister. Each of the criteria set out therein have been addressed below, as follows:

(a) a copy of the proponent's environmental assessment and any preferred project report; and

The proponent's environmental assessment is included at **Appendix E** while the proponent's Preferred Project Report is set out for the Ministers consideration at **Appendix C** along with the Statement of Commitments at **Appendix B**.

(b) any advice provided by public authorities on the project; and

All advice provided by public authorities on the project for the Minister's consideration is set out at **Appendix D**.

(c) a copy of any report of a panel constituted under Section 75G in respect of the project; and

No independent hearing and assessment panel was undertaken in respect of this project.

(d) a copy of or reference to the provisions of any State Environmental Planning Policy (SEPP) that substantially govern the carrying out of the project; and

A brief assessment of each relevant State Environmental Planning Policies that substantially govern the carrying out of the project is set in **Appendix F**.

- (e) except in the case of a critical infrastructure project – a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division; and

An assessment of the development relative to the prevailing environmental planning instrument is provided in **Appendix F**.

- (f) any environmental assessment undertaken by the Director General or other matter the Director General considers appropriate.

The environmental assessment of the Concept Plan is this report in its entirety.

6.2 KEY ISSUES

6.3.1 Limited Concept Plan Area

6.3.1.1 Raised by

Both Council and the community are concerned the site will not be dealt with holistically/strategically. The Council, in particular, seems to be of the viewpoint the Concept Plan will invalidate or render the 2002 Master Plan completely void and as such there will be no certainty regarding the future delivery of built forms and uses envisaged under the 2002 Master Plan. The community is also concerned that limiting the concept plan area will create interface issues as the criteria for assessing future applications within and outside the concept plan area will differ.

6.3.1.2 Consideration

It is the Department's view that these concerns are unwarranted. This conclusion is on the basis that the nature of the comments received, suggest a misunderstanding/lack of knowledge of the new Part 3A legislation and subsequently how the Concept Plan will relate to the 2002 Master Plan. In any case it is considered appropriate that the Concept Plan only apply to the undeveloped portions of the site.

Any approval of the Concept Plan under Part 3A of the EP & A Act will not override Part 4 development consents issued by Council or Council's adoption of the 2002 Master Plan under SEPP 56. The 2002 Master Plan is a key matter for consideration for this assessment and is discussed below in further detail. The 2002 Master Plan will continue to apply to those areas outside the concept plan area.

The transfer of the 2002 Master Plan Site Planning Objectives into the Concept Plan (see Section 4 – Site Planning Objectives) addresses the interface concerns raised in submissions. The Concept Plan also depicts areas beyond the area to which it applies to articulate the relationship between the 2002 Master Plan and the Concept Plan and to demonstrate how the objectives beyond the Concept Plan are to be achieved.

6.3.1.3 Resolution

The Concept Plan's "Section 1.05 – Relationship to Other Plans" clearly articulates how the Concept Plan relates to the 2002 Master Plan and vice versa. The insertion of the Site Planning Objectives into the Concept Plan ensures that the assessment of future project applications will be required to assess the interface between the 2002 Master Plan and the Concept Plan areas.

6.3.2 Departures from the 2002 Master Plan

6.3.2.1 Raised by

Public submissions have identified the departures from the 2002 Master Plan as a key concern, particularly the proposed increases in residential and commercial floor space areas, floor space ratios and heights.

6.3.2.2 Consideration

Whilst Rosecorp initially advised the Department that it intended to submit a Concept Plan consistent with the 2002 Master Plan, the submitted Concept Plan now seeks to deliver an outcome more consistent with LEP 91. In this regard, Table 6.1 (overleaf) outlines the nature and extent of the departures or variations between LEP 91, the 2002 Master Plan and the Concept Plan (both pre and post exhibition).

Table 6.1: Development Standards under 2002 Master Plan and Exhibited Concept Plan 2005

<i>Development Standard</i>	<i>LEP 91</i>	<i>2002 Master Plan</i>	<i>Concept Plan 2005 (Approval Originally Sought)</i>	<i>Concept Plan 2005 (Preferred Project Report)</i>
Floor Space Area (total)	362,740m ²	310 920m ²	362,740m ²	347, 194m ²
Maximum heights	2-9 storeys	2-9 storeys	2-9 storeys	2-9 storeys
Floor Space Ratio (FSR) (over the whole of the site)	0.7:1	0.6:1	0.67:1	0.67:1
Dwellings/Ha	40	36	40	40
Maximum dwellings	2073	1865	2073	2, 073
Maximum bedrooms	6219	4950	5182	5, 182
Dwelling mix	No data provided	2 bed- 35% 3 bed - 65%	No data provided	1 bed – 11% 2 bed 47% 3 bed 42%
Dwelling size (average)	164m ²	164m ²	164m ²	164m ²
Non Residential uses (max)*	15%	4%	15%	1.9%
Non Residential uses – maximum gross floor area	54,411m ²	12, 300m ²	54,411m ²	6, 678m ²
Commercial/shops	10,000m ²	5,600m ²	3,742m ²	3, 742m ²

*NB: Non residential uses are calculated as a proportion of the total floor space area.

In summary, the Concept Plan has departed from the 2002 Master Plan by:

- proposing increases in residential and commercial floor space areas;
- proposing increases in dwelling yield;
- changing the dwelling mix;
- proposing increases in floor space ratio (density); and
- proposing new uses in the Silkstone Precinct (not indicated in Table 6.1, however discussed in Section 6.3.6).

The departures from the 2002 Master Plan are numerically identified in Table 6.2.

Table 6.2: Comparison of Development Standards under 2002 Master Plan and Concept Plan 2005 – Preferred Project Report (post exhibition)

<i>Development Standard</i>	<i>2002 Master Plan</i>	<i>Concept Plan 2005 – Preferred Project Report</i>	<i>Deviation</i>
Floor Space Area (total)	310 920m ²	347 194m ²	+ 36 274 m ²
Maximum heights	2-9 storeys	2-9 storeys	–
Floor Space Ratio (FSR)	0.6:1	0.67:1	+ 0.07
Dwellings/ha	36	40	+ 4
Maximum dwellings	1 865	2 073	+ 208
Maximum bedrooms	4 950	5 182	+ 232
Dwelling mix (indicative)	2 bed- 35% 3 bed - 65%	1 bed – 11% 2 bed 47% 3 bed 42%	–
Dwelling size (average)	164m ²	164m ²	0
Non Residential uses (max)*	4%	1.9%	- 2.1%
Non Residential uses – maximum gross floor area	12 300m ²	6 678m ²	- 5 622m ²
Commercial/shops	5 600m ²	3 742m ²	- 1 858m ²

*NB: Non residential uses are calculated as a proportion of the total floor space area.

Residential and commercial floor space areas

Following significant concern regarding the proposed increases in gross floor area during the consultation period, Rosecorp conceded a reduction in total floor space across the concept plan area and particularly the proposed

commercial gross floor area (a cutback representing a 46% reduction). Notwithstanding this, Rosecorp still proposes to provide an additional 36 247m² of additional floor space for all uses.

It is the Department's understanding that the proposed increases in residential and commercial floor space areas are primarily Rosecorp's response to changing market forces. Rosecorp is of the view that there is now a greater demand for smaller sized units. To this end, a predominantly 3-bedroom dwelling mix has shifted focus to 1 and 2-bedroom dwellings. The proposed increase in residential gross floor area is required to accommodate sizeable common living areas (kitchens, dining/lounge rooms, etc) in all units.

The proposed increase in commercial gross floor area is also in response to changing market forces. The Concept Plan was prepared in different market conditions to the 2002 Master Plan and Rosecorp (as a commercial undertaking) wished to "fine tune" its proposal after a 4 year period.

Dwelling Yield and Bedroom Numbers

The proposed increase in gross floor area has direct implications for dwelling yield. Rosecorp has claimed that reconfiguring the dwelling mix has provided an opportunity to provide an additional 208 dwellings (11% increase) within the concept plan area.

The proposed increase in dwelling yield is consistent with the prescribed maximums provided by LEP 91. Interestingly, the total floor space area required by the additional 208 dwellings, (totalling 34 112m² when based on the average indicative dwelling size) is almost the exact amount of increase in gross floor area Rosecorp is seeking to secure (i.e.: 36 274m²).

The proposed increase of 2 860 additional bedrooms within the concept plan area will result in a maximum of 5 182 bedrooms across the entire site – some 232 more bedrooms than permitted under the 2002 Master Plan. The proposed increase equates to a 4.6% increase in bedroom numbers across the site. Furthermore, the proposed 4.6% (or 232 bedrooms) increase is 1 037 (17%) bedrooms less than that permitted under the LEP 91.

Dwelling Mix

The Concept Plan did not initially nominate a dwelling mix. However, during the assessment process and through the preferred project process, Rosecorp indicated a preferred dwelling mix which includes:

- 1 bedroom dwellings are not to exceed 25% of the dwellings in any single building;
- a minimum of 75 1-bedroom dwellings will be provided within the concept plan area;
- a maximum of 200 1-bedroom dwellings will be provided within the concept plan area;
- a minimum of 400 large dwellings (3+ bedrooms) will be provided within the concept plan area; and
- a maximum of 600 large dwellings (3+ bedrooms) will be provided within the concept plan area.

Based on the above principles, an indicative average dwelling mix for the entire site has been calculated as:

- 11% 1-bedroom dwellings;
- 47% 2-bedroom dwellings; and
- 42% 3-bedroom dwellings.

In contrast, the 2002 Master Plan required a dwelling mix of 35% 2-bedroom dwellings and 65% 3-bedroom dwellings. The 2002 Master Plan was silent on one bedroom dwellings.

Dwelling Size

Despite Rosecorp's claim that it is seeking to achieve smaller dwelling sizes, Table 6.2 suggests that on average (using the proposed gross floor area and dwelling yield) there has been no change in dwelling size. This is probably because smaller dwellings (i.e. 1-bedroom dwellings) are only marginally smaller than 2 and 3-bedroom dwellings. An analysis of dwelling size (calculated using indicative averages based on Rosecorp's preferred dwelling mix) suggests Rosecorp is generally marketing dwellings that are substantially larger than industry norms (see Table 6.3).

Table 6.3: Breakfast Point Concept Plan (Preferred Project Report) – Average Dwelling Mix and Size

Dwelling Type	Average Mix	Average Number	Average Size	SEPP 65
1 bedroom	11%	137	150m ²	60m ²
2 bedroom	47%	560	157m ²	95m ²
3 bedroom	42%	500	157m ²	130m ²
TOTAL/AVERAGE (as relevant)	100%	1197	155m ²	96m ²

Based on the indicative averages (i.e: without the benefit of a definitive dwelling mix) Rosecorp is still providing predominantly 3-bedroom units that are approximately 60m² larger than the SEPP 65 code indicates as an average recommended size. Similarly, 1 bedroom units are almost 3 times greater than the SEPP 65 recommended standard for a dwelling with the same number of bedrooms. Most significantly a 1 bedroom unit under the Rosecorp model (and averaging 150m²) is larger than the SEPP 65 recommended size for a 3-bedroom unit.

Floor Space Ratio / Density

The 2002 Master Plan restricted the density of the site to 0.6:1 (or 36 dwellings/ha) which was less than the prescribed maximum provided by LEP 91 of 0.7:1 (or 40 dwellings/ha).

The increase in gross floor area to accommodate the additional 208 dwellings has direct implications for the calculation of floor space ratios (density). As a result of the increase in floor space being concentrated within a defined portion of the site, the floor space ratio within the concept plan area is in the order of 0.9:1 (or 57 dwellings/ha). Across the whole of the site, and taking into account the development approved or constructed under the 2002 Master Plan, the Concept Plan could achieve a site wide floor space ratio of 0.67:1 which is 0.07 more than proposed under the 2002 Master Plan but less than that permitted under LEP 91.

Discussion/Comments

As a result of the larger dwelling sizes and the indicative average dwelling mix it is highly unlikely that Rosecorp will be able to accommodate the additional gross floor area (and consequently the 208 additional dwellings) wholly within the same development parcels/envelopes as evinced/anticipated by the 2002 Master Plan. This is the case even with a greater proportion of 1 bedroom units. Whilst the proposed building heights have not increased, the floor plates of some/all buildings will need to be larger, resulting in bulkier and greater massing of those particular buildings.

Notwithstanding the above, LEP 91 contains the statutory controls for the site and accordingly Rosecorp has right to seek approval for a development outcome consistent with those provisions. Given LEP 91 allows 2073 units (based on initial traffic studies) and allowed greater commercial and non-residential floorspace the Rosecorp proposal is wholly within the then Concord Council's vision for the site. The proposed increase in gross floor area is accordingly considered entirely reasonable.

However, whilst the increased dwelling yield could probably be achieved on the site, the prominence of the site from the Parramatta River foreshore and the already intrusive appearance of the development does not lend support to a significantly increased building footprint.

Without the benefit of definitive gross floor areas, dwelling mixes and dwelling sizes it is unreasonable to completely dismiss the proposed departures from the 2002 Master Plan. This is particularly relevant regarding potential "flow-on" impacts such as traffic generation and Section 94 Contributions. The proposed increase in gross floor area will not have significant implications for traffic generation and car parking provisions can be conditioned as discussed below (Sections 6.3.3 and 6.3.4). The more direct implications that the proposal will have on Section 94 contributions can also be conditioned accordingly (Section 6.3.5). Accordingly, it is recommended that an increase in gross floor area be supported however the floor space ratio should be reduced to limit the bulk and scale concerns raised by the community. The reduction in gross floor area in conjunction with a reduced floor space ratio may have obvious implications for the dwelling yield achieved on the site. Again without the benefit of definitive dwelling mixes and sizes, and the need to provide appropriate flexibility to deliver a good planning outcome on the site it is considered unreasonable to limit Rosecorp to a maximum dwelling yield.

It is the Department's view that Rosecorp should be provided with an opportunity to achieve a dwelling yield consistent with the LEP prescribed maximums within the gross floor area and floor space ratio parameters.

In recognition of the ability for the site and road network to accommodate the gross floor area sought by Rosecorp, it is recommended that an opportunity be provided to seek a nominal increase in gross floor area. This increase would be subject to the Director General's approval and Rosecorp duly demonstrating that any increase would not impact amenity, views and open space amongst other things. Additionally an increase in gross floor area should be capped to provide for an additional 200 units only.

6.3.2.3 Resolution

Following consideration of the community's concerns regarding the potential bulk and scale of the increased gross floor area, the Department recommends conditions of approval be imposed which seek to achieve a floor space ratio across the entire Breakfast Point site of 0.65:1.

Accordingly, recommended *Condition No. 1 – Development Description* at *Appendix A, Schedule 2* provides that the development within the concept plan area is:

- a maximum of 176, 222m² gross floor area (representing a 0.65:1 floor space ratio across the entire Breakfast Point site);
- 1, 519m² maximum commercial and non-residential uses (within the 176, 222 m² maximum gross floor area specified above);
- up to 989 dwellings (and up to a maximum of 1,189 dwellings subject to *Condition No. 7 – Additional Floor Space*)
- landscaped public and private open space;
- associated services and infrastructure;
- land use distribution, building heights, densities, dwelling mixes and types;
- subdivision into no more than 100 Torrens Title Lots; and
- subdivision into no more than 1,189 strata subdivision lots (for residential dwellings) subject to compliance with other recommended conditions of approval.

A dwelling cap has been identified in *Condition No. 1 – Development Description* to ensure an appropriate number of dwellings is provided on the site (in the context of the applicable planning controls) as well as to provide a basis upon which Section 94 and developer contributions can be calculated.

Condition No. 7 – Additional Floor Space (*Appendix A, Schedule 2*) provides Rosecorp with an opportunity to request an increase in the approved gross floor area (as identified in *Condition No. 1 – Development Description*) within the concept plan area to achieve a floor space ratio for development across the entire Breakfast Point site equalling a maximum of 0.67:1.

In doing so, Rosecorp will be required to demonstrate that any increase the gross floor area will:

- Maintain or improve the amenity of existing and approved buildings (and their occupants);
- Maintain and not obstruct existing view corridors and vistas as proposed under the *Breakfast Point Master Plan 2002*; and
- Not result in the significant loss of open space within the subject Precinct; and
- Address any other matter as required by the Director General.

The Director General has been nominated as the determining authority for such a request. Should the Director General approve an increase in gross floor area, the total number of additional units must not exceed the specified 1865 dwellings in the Breakfast Point Master Plan 2002, by more than 200 dwellings.

In the event that further departures from the Concept Plan are proposed, *Statements of Commitment at Appendix B, Part B, B1 – Development Control* requires Rosecorp to submit detailed plans and documentation addressing building envelopes, internal circulation areas (within the concept plan area) and any other aspect of the proposal that requires amending. Any revision to the scheme will be require an urban design strategy, an analysis of existing buildings, heights and footprints, landscaping, etc (at the time of the proposed revision) and a description

of the proposed built form, building heights, open space, densities, car parking and traffic management measures.

6.3.3 Traffic

6.3.3.1 Raised By

The amount of traffic that will be generated by the development and its resultant traffic congestion was a primary concern of the community. Council also raised concern that the proponent has not adequately addressed sub-clause 41(B)(f) of the Concord Planning Scheme Ordinance (LEP 91) which encourages integrated public transport systems.

6.3.3.2 Consideration

The proponent's traffic report, prepared by Colston Budd Hunt & Kafes, considered the implications of the development proposed under the Concept Plan on external traffic, site access, internal roads, public transport, parking and emergency and service vehicle access. In summary the traffic report found:

- the maximum development permissible on the site under LEP 91 (being a maximum of 2073 dwellings and in excess of 8000m² for commercial/community/adaptive re-uses) would generate a maximum of 1, 140 vehicles per hour;
- the development as proposed under the 2002 Master Plan would generate 1, 100 vehicles per hour;
- the development as proposed under the Concept Plan – Preferred Project Report is estimated to generate 1, 115 vehicles per hour – less than the figure generated by the prescribed maximums permitted under LEP 91;
- site access is unaltered with three access roads off Tennyson Road in addition to access of Emily Street, Kendall Street and Medora Street;
- the internal road network, which is already constructed, remains the same in its form and function;
- the Concept Plan does not alter the ability of the development to cater for public transport;
- car parking will be designed in accordance with nationally recommended standards and provided in accordance with the rates previously proposed under the 2002 Master Plan; and
- the road network has been designed to accommodate emergency vehicles.

The minimal increase in traffic (some 15 additional traffic movements an hour above that anticipated under the 2002 Master Plan) is considered negligible given the total traffic generation anticipated by the Concept Plan is less than the that anticipated by LEP 91.

The Concept Plan was sent to the RTA for review and comment as part of the consultation process. The RTA raised no issues about the proposal's traffic impacts and expressed in support principle for the proposal subject to the following conditions:

- the applicant should contribute an appropriate contribution towards Council's Section 94 Plan;
- off street parking associated with the proposed development (such as driveway, ramp grades, aisle widths, aisle lengths, parking bay dimensions, sight distances and loading bays) should be designed in accordance with AS 2890.1 – 2004 and AS 2890.2 – 2002; and
- all works associated with the proposed development shall be at no cost to the RTA.

Whilst there will be an increase in traffic as the site is developed, it is considered that a large proportion of that increase was to be expected, as a result of the site being developed under the 2002 Master Plan. The increase in traffic generated by the Concept Plan is relatively low to that expected under the 2002 Master Plan.

Furthermore, the capacity of the existing road infrastructure to absorb any traffic generation from the site would have been considered during the rezoning process, and in fact the prescribed maximums permitted under LEP 91 suggest this is the case. Additional traffic is therefore not likely to have a significant effect on the surrounding road network.

6.3.3.3 Resolution

Notwithstanding the above, it is considered that traffic impacts could be ameliorated in part through the provision of better public transport services, particularly bus services. It is understood that the existing road network within

the site has been constructed to accommodate buses and accordingly there should be no physical hindrance to the provision of bus services. Moreover, it is understood that Rosecorp has had a number of ongoing discussions with the STA in this regard.

Council planning staff did not raise any other traffic/transport related issues other than the removal of the 2002 Master Plan's Access, Parking and Circulation objectives from the Concept Plan. Those objectives specifically required a co-ordinated access and circulation network designed to conveniently and safely serve the pedestrian movements, private motor vehicles, bicycles, public transport, service and emergency vehicles, and car parking. The road network is fully constructed and therefore it is the Department's view that many of these objectives have been largely achieved. Notwithstanding this, the objectives related to pedestrian movements and bicycles are still valid and accordingly *Condition No. 17 – Submission of Subsequent Project Applications at Appendix A, Schedule 2* requires the consideration of objectives in the 2002 Master Plan's "Section 5 – Access, Parking and Circulation" at project application stage.

6.3.4 Car Parking

6.3.4.1 Raised By

Council and public submissions referred to existing constraints on the availability of on-street parking spaces in the area surrounding the site, and an already high demand for them. Council in particular considers that all parking spaces for the proposal should be accommodated on site. RTA's recommended conditions of consent were also recommended requiring the development to comply with specific Australian Standards relating to car parking design.

6.3.4.2 Consideration

The Breakfast Point Concept Plan contains car parking requirements in "Section 5.11 – Car Parking Standards" consistent with that required under 2002 Master Plan. Development proposed within the concept plan area will be required to be provided in accordance with rates identified in Table 6.4.

Table 6.4: Car Parking Rates

Use	Rate	Notes
House or townhouse (attached dwelling)	2 spaces garaged	Applies to dwellings on a Torrens Title lot
Apartment – 3 or more bedrooms	2 spaces garaged	
Apartment – 2 bedrooms	1.5 spaces garaged	0.5 space available for allocation to a specific unit
Apartment – 1 bedroom	1 space garaged	
Residential visitors	Min. 1 space per 5 dwellings	Provided on street
Shops	1 space per 20m ² gross floor area	
Offices	1 space per 40m ² gross floor area	

Essentially, the parking requirements are calculated on the proposed use and area and require 1 garaged space per one bedroom unit, 1.5 garaged spaces per two bedroom unit and 2 garaged spaces per 3 bedroom unit. The number and location of visitor spaces is identified in the Visitor Parking Master Plan prepared to support the 2002 Master Plan. Visitor spaces are to be provided by way of a combination of on-street and off-street parking at a rate of 1 space per 5 dwellings. On-street visitor parking is required to be within 100m of those dwellings it serves.

6.3.4.3 Resolution

The provision of car parking for all proposed uses on the site is considered reasonable for the site. The Department's recommended *Condition No. 17 – Submission of Subsequent Project Applications (Appendix A, Schedule 2)* requires the proponent to identify the total number off street car parking spaces proposed by every project application.

To ensure the satisfactory provision and allocation of visitor spaces a condition of approval has been recommended requiring future project applications to identify the number and location of all visitor car parking spaces. In the event that visitor spaces can not be provided within 100m as proposed, the Department's recommended *Condition No. 17 – Submission of Subsequent Project Applications* also requires the provision of

those spaces within the basement car parking. A condition of approval requiring compliance with AS 2890.1 – 2004 and AS 2890.2 – 2002 as per the RTA's advice has also been recommended.

6.3.5 Section 94 and Developer Contributions

6.3.5.1 Raised By

Council is of the view that the Part 3A process provides an opportunity to revisit the payment of Section 94 Contributions at Breakfast Point. The Department considers it imperative that a reasonable Section 94 contribution framework be established for the remaining development subject to Part 3A of the EP & A Act.

6.3.5.2 Consideration

As the relevant consent authority at the time, City of Canada Bay Council imposed conditions of consent on all approvals requiring payment of Section 94 Contributions. The Section 94 Contributions were based in part on key arrangements catered for under the adopted Master Plan including the provision of:

a neighbourhood community centre;

- a children's centre (i.e: child care); and
- 15 hectares of open space in the form of foreshore land, landscaping of the proposed town centre, and on site recreation areas.

The Contributions Plan permitted the off-setting of levied contributions by provision of the above mentioned facilities and open space. Accordingly, in 2001 Council entered into an agreement with Rosecorp regarding the rates at which Section 94 Contributions would be levied for the Breakfast Point development. Under the agreement, Council agreed to discount the Contribution rates to \$1830/dwelling subject to the provision of community facilities which were intended to be further off-set as works in kind.

It is the Department's understanding that both parties accorded with the terms of the agreement up until 2004 when an issue surrounding the provision versus dedication of certain facilities emerged. Council is of the view that Rosecorp was obliged to dedicate the neighbourhood community centre (on the Village Green); children's centre (located in the Village Centre); and 15 hectares of open space (including foreshore land, the proposed town centre, and on site recreation areas) to Council free of charge. In the absence of those facilities being dedicated, Council is of the view that the reduced contribution rate has resulted in a \$17 million shortfall in contributions. Rosecorp maintains that it was only ever required to provide those facilities (which it did), not dedicate them and accordingly has fulfilled the requirements of the agreement to date.

On 15 February 2005, Council adopted the *Section 94 Contributions Plan for the Concord Area* with adjusted formulae and rates to accommodate increases in CPI (Consumer Price Index).

Since the Minister's decision to assume the approval role at Breakfast Point, both Council and Rosecorp have presented their views as to what may constitute an appropriate Section 94 framework for the remaining development on the site. Rosecorp is seeking to continue payment of the rates agreed with Council (i.e.: \$1830/dwelling). Council meanwhile is of the view that Rosecorp should be required to:

- pay Section 94 contributions in accordance with the current rates.
- dedicate to Council an embellished public walkway and bicycle path adjacent to the foreshore;
- dedicate to Council the Power House (a heritage item located on the site) for the purposes of a community centre and/or museum;
- pay an increased child care levy (or equivalent up-front cash contribution) to cater for the demand created by the additional 208 dwellings proposed by the concept plan above the unit/dwelling cap under the Breakfast Point Master Plan); and
- pay an appropriate cash contribution to recognise (and redeem) the perceived \$17 million shortfall created by the \$1830/dwelling contribution required under the 2001 Agreement.

The Department has reviewed both the Council's and Rosecorp's case for their preferred Section 94 contribution rates as well as Council's *Section 94 Contributions Plan for the Concord Area 2005*, to determine an appropriate Contributions Framework for remaining development at Breakfast Point under the Concept Plan 2005. In seeking to establish a reasonable Section 94 Contributions framework for the remaining development at Breakfast Point,

the Department calculated the likely monetary contributions that could be delivered under four available options. The four options can be summarised as:

- 1. Agree to Rosecorp's preferred Section 94 Arrangement:**
All development proposed under the Concept Plan continues to be levied at \$1830/dwelling, in accordance with the 2001 Agreement entered into by Rosecorp and Council.
- 2. Agree to Council's preferred Section 94 Arrangement:**
All development proposed under the Concept Plan to be levied at the new rates (for all contributions) under Council's *Section 94 Contributions Plan for the Concord Area 2005*.
- 3. Split rates applied to development previously proposed under the Breakfast Point Master Plan 2002 and that proposed under the Concept Plan 2005.**
Development within the maximum dwelling yield envisaged by the Master Plan 2002 continues to be levied at \$1830/dwelling while the additional 208 dwelling proposed under the Concept Plan are levied at the new rates (for all contributions) under Council's *Section 94 Contributions Plan for the Concord Area 2005*.
- 4. Adjust contributions in respect of childcare facilities**
All development proposed under the Concept Plan to be levied in accordance with the 2001 Agreement for recreation/open space facilities and roads/traffic management facilities. However, contributions in respect of community facilities would be apportioned to reflect development proposed under the Breakfast Point Master Plan 2002 and the additional 208 dwellings proposed under the Concept Plan.

The Department also considered the appropriateness of requiring Rosecorp to dedicate the foreshore strip and the Power House to Council and concluded that the dedication of the foreshore strip and the Power House Heritage item (whilst not levied for under Council's current *Section 94 Contributions Plan for the Concord Area 2005*), are additional facilities that should be contributed in-kind and in addition to the any recommended monetary contributions.

Regardless of the option chosen it is considered that any monies/contributions obtained as a result of the Breakfast Point Concept Plan should be through the implementation of Section 94 contributions or an equivalent mechanism that provides appropriate social and physical infrastructure within the locality.

6.3.5.3 Resolution

In summary the Department's assessment concludes the most appropriate Section 94 Contributions framework for the Breakfast Point site would require Rosecorp to honour the \$1830/dwelling agreement for those dwellings within the "cap" identified in the Breakfast Point Master Plan 2002, whilst any dwellings in excess the 2002 Master Plan outcome would be subject to Council's current contributions plan. The dedication to Council of the 15m wide foreshore open space strip and dedication to Council of part of the Power House (240m²) and open space curtilage should also be pursued.

The use of a planning agreement and/or Section 80A conditions of approval (at project application stage) is recommended to implement the payment of monetary contributions and dedication of lands.

The total effect of *Condition Nos. 8-11* is to ensure that an appropriate levying of contributions, either monetary or in-kind, is established for the remaining development of the site. This is achieved via:

- continued payment of \$1830/dwelling to a value of \$1,809,870.00 for those dwellings within the "cap" identified in the Breakfast Point Master Plan 2002;
- payment up-front of \$1,493,431.68 for implementation of a community enhancement plan;
- dedication to Council of the foreshore strip (with lease back arrangement to the Breakfast Point Community). In the event that Council indicates it will/can not accept the dedication, the foreshore strip must be dedicated to the Department; and
- dedication to Council of 240m² of the Power House's gross floor area and appropriate curtilage. Should Council not accept the dedication, the owner of the site will continue to be responsible for care control and maintenance.

6.3.6 Silkstone Precinct

6.3.6.1 Raised By

The Department is currently assessing a project application for the Silkstone Precinct (within the concept plan area) which may have implications for the approval of the Concept Plan.

6.3.6.2 Consideration

As discussed in Section 6.1.2, the Silkstone Precinct is a departure from the 2002 Master Plan.

Under the 2002 Master Plan, the Silkstone Precinct was to accommodate a built element (of up to 5 storeys) and public car parking associated with the proposed marina within the "Waterfront Precinct". To date, Council has only approved a 5 storey building in the Silkstone Precinct which remains un-constructed. The Waterfront Precinct has not been delivered either, however the Hunters Wharf development (five storey apartment building) has been approved and constructed and appears to encroach on the area designated as the Waterfront Precinct (which is outside the concept plan area but adjacent to the Silkstone Precinct).

Rosecorp has advised that it still wishes to provide the Waterfront Precinct (or similar) and is in discussions with NSW Maritime as the relevant public authority and land owner. Rosecorp is of the view that until certainty is provided from NSW Maritime with respect to the Waterfront Precinct, a car parking area is not required in the Silkstone Precinct. Accordingly, the Concept Plan proposes a building footprint in place of the car parking and Rosecorp has in fact concurrently lodged a project application for the Precinct.

The project application proposes construction of 6 x two storey townhouses, each with two garaged parking spaces off a 3.5m wide driveway along the western boundary. Landscaping and subdivision of the existing site into 6 Torrens Title lots is also proposed.

At this stage the Department is not convinced that the proposed townhouses should replace the Waterfront Precinct car parking as envisaged by the 2002 Master Plan. Only once certainty from NSW Maritime about land owner's consent for the proposed marina is obtained, that an alternative use for the Silkstone Precinct can be considered. Notwithstanding this, the Department still has reservations concerning the proposed Silkstone Townhouses. Both the Department and Rosecorp agree that a good urban design outcome for the Precinct is necessary. Rosecorp has advised that it may wish to review the approved five storey Silkstone building and may seek a modification or new approval for that building. In any case, the proposed town houses would be "sandwiched" between the 5 storey Hunters Wharf development and a five storey element within Silkstone. Raising privacy, solar access and overshadowing concerns. The Department is continuing to work with the proponent to resolve the final design of Silkstone, however at this stage there is no certainty as to the future intent of the Silkstone Precinct. The Silkstone Townhouses Project Application is currently "on-hold".

Accordingly, it is recommended, that the building envelopes nominated in the Concept Plan for the Silkstone Precinct not be approved at this stage. In their place, urban design principles have been developed which would need to be considered and complied with during the assessment and approval of any project application for the Precinct. This approach would also alleviate the need for Rosecorp to modify the concept plan approval should it decide to pursue the car parking associated with the Waterfront Precinct. Furthermore, the Department has advised Rosecorp that any project approval within the Silkstone precinct would be conditioned to defer commencement of any construction until the Waterfront Precinct is resolved between all relevant parties.

6.3.6.3 Resolution

Recommended Condition No. 16 –Silkstone Precinct (at Appendix A, Schedule 2) requires Rosecorp to demonstrate compliance with SEPP 65 and in the case of the Silkstone Precinct address the following criteria:

- Future development within the Precinct shall not exceed 44 dwellings;
- Future development shall be limited to a maximum of 5 storeys in height;
- A landscape strip shall be provided adjacent to Peninsula Drive;
- Future perimeter planting shall be of a location and type which softens the visual impact of the development in that Precinct
- Basement parking and bicycle parking shall be in accordance with the Concept Plan's "Section 5.00 – Access and Parking Circulation" rates.

6.3.7 Heritage

6.3.7.1 Raised By

Concern has been raised regarding the future of the existing buildings and their potential demolition to facilitate implementation of the concept plan proposal. Council and the community are of the view that the existing buildings have historical significance and should be adaptively re-used for alternative commercial/museum uses.

6.3.7.2 Consideration

There are four existing structures within or adjacent to the concept plan area which have been identified as having local heritage significance. The items are the brick wall facing Tennyson Road, Main Meter Readers Office, Blacksmith's Shop and Power House. Figure 5 identifies their location.

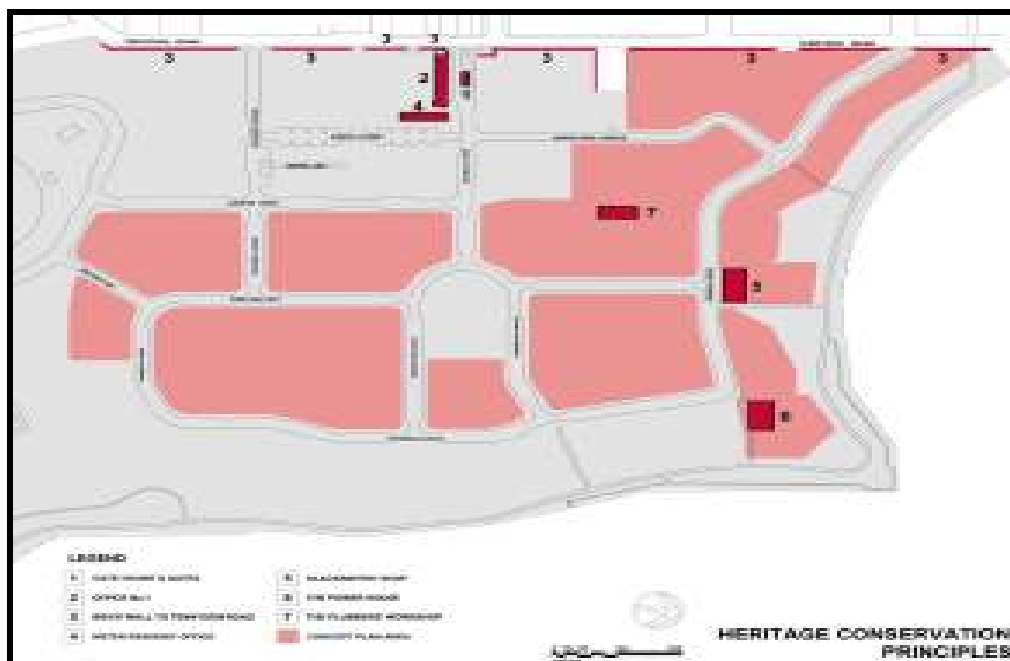


Figure 5: Heritage Items at Breakfast Point

The Concept Plan's "Section 11 – Heritage Conservation" prohibits the demolition, alteration, removal or modification of any heritage item without the consent of the relevant authority. Furthermore, Section 11 contains some very basic heritage conservation principles which nominate the likely future adaptive re-uses of the heritage items. At this stage, it is considered premature to specify the future use of the on-site heritage items as the buildings are run down and require considerable renovation. A comprehensive heritage assessment will be required at project application stage to determine whether in fact a particular building is worthy of retention (in its current form) having regard to its architectural or aesthetic merit.

6.3.7.3 Resolution

The Department considers that there is nothing in the Concept Plan which precludes the existing buildings from being adaptively re-used in the future. In fact, the nomination of building envelopes in the Concept Plan (which in fact do not coincide with the heritage items) provides the certainty the items will be retained.

In the event that any heritage item is to be demolished, Rosecorp through Statements of Commitment at *Appendix B, Part B, B10 – Heritage* has committed to documenting the historic, social and cultural significance of the item through photographic archives and a professionally written history.

Additionally the Department's recommended *Condition No. 11 – Dedication of Power House and Curtilage* (at *Appendix A, Schedule 2*) requires the dedication of the 240m² of the Power House's gross floor area and curtilage to Council for the purposes of a museum. The condition also requires Rosecorp to undertake any structural and buildings works to ensure the building is habitable when dedicated to Council.

6.3.8 ESD Principles

6.3.8.1 Raised By

The Department's DGRs required Rosecorp to demonstrate that future development would achieve ESD principles.

6.3.8.2 Consideration

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to BASIX affected buildings for which the Regulation requires a BASIX certificate to accompany a development application. The SEPP and Regulation do not apply to Part 3A proposals.

Notwithstanding this, the Department is keen to ensure the proposal can achieve a high standard of environmental design and as such conditions have been recommended requiring the applicant to demonstrate the development can achieve minimum water and energy ratings and the installation of ecologically sustainable water fixtures. It is considered that although the proposal has not been assessed against BASIX, the development achieves a number of ESD principles that are consistent with the State Government's objective of reducing greenhouse gas emissions and use of potable water.

6.3.8.3 Resolution

The proponent has broadly committed to being BASIX compliant for all new residential buildings through *Statements of Commitment at Appendix B, Part B, B11 – State Environmental Planning Policy Building Sustainability Index (BASIX). Statement of Commitment B12 – Submission of Subsequent Applications* commits Rosecorp to submit documentation at project application demonstrating BASIX compliance. This is further reinforced through the Department's recommended conditions of approval at Appendix A, Schedule 12.

6.3.9 Maintaining a Working Harbour

6.3.9.1 Raised By

The operators of the adjoining River Quays Marina are concerned the Riverfront Precinct in particular will overlook their facility, therefore creating interface issues.

6.3.9.2 Consideration

The State Government through Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 seeks to maintain a working harbour. Whilst the Sydney Harbour Catchment REP is not strictly a matter for consideration as part of this assessment, consistency with the Government's working harbour policy is considered instrumental. To that end, it is the Department's view that the Breakfast Point Concept Plan should demonstrate compliance with the Sydney Harbour Catchment REP.

The Department met with the operators on the River Quays Marina site to discuss the relationship between the boat repair facility/service and the residential development at Breakfast Point (particularly the townhouses proposed in the Riverfront Precinct). The key issues discussed were:

- overlooking of the Riverfront terraces into the River Quays Marina operation;
- noise associated with truck movements on Tennyson Road (which occur at all times of the day and night); and
- the provision of a greater buffer between the River Quays Marina and the Riverfront Precinct.

Clauses 2(d), 14(e), and 14(g) of the REP relate to maintaining a prosperous working harbour, as well as ensuring compatible and adequate land supply (for those uses) is compatible adjacent land uses. River Quays Marina provides a unique and specialised boat repair facility/service which services vessels from Sydney and interstate. Rosecorp's preferred project report has been modified in this regard to ensure their dwelling yield is maintained. The Riverfront Precinct is the subject of a concurrent project application which the Department is assessing separately.

6.3.9.3 Resolution

The Department has raised the key issues raised by the River Quays Marina with Rosecorp and the Riverfront Precinct has been amended to address those concerns. Rosecorp has amended the Concept Plan through the

preferred project process to ensure the River Quays Marina's use of its site is not compromised by the encroachment of residential development.

6.3.10 Subdivision

6.3.10.1 Raised By

The Minister's decision to identify all remaining development on the site as subject to Part 3A has captured strata subdivision. Should Rosecorp wish to strata subdivide a particular building, the Department and the Minister will be bound by a Part 3A assessment and approval process.

6.3.10.2 Consideration

The Department is of the view that it was never the Minister's intention to deal with minor land and strata subdivision under Part 3A. Nonetheless, should Rosecorp wish to lodge subdivision applications as stand alone applications, they will be required to be assessed under Part 3A. This would mean issuing of DGRs, 30 day exhibition period, etc, which is considered extremely onerous on Rosecorp and the Department.

Accordingly the Department has investigated alternative options as to facilitate subdivision on the site, including;

- Rosecorp lodging draft subdivision plans with each project application and the Department imposing conditions requiring final subdivision plans as part of any approval. This would mean there may be a need to amend plans should there be amendments made to the building design;
- in approving the concept plan, the Minister could nominate subdivision as Part 4 development - not preferable given the relationship with Council; or
- a condition could be imposed on the concept plan identifying a maximum number of Torrens and strata lots that the Minister grants approval for subject to Rosecorp obtaining the required certification. Future project applications would then need to demonstrate that they are within the relevant subdivision "cap".

The Department believes that nominating a "cap" is the most appropriate option to facilitate subdivision. Lodging draft plans is not considered suitable as Rosecorp has indicated that in the case of strata subdivision in particular there may be cases where the detail required by strata subdivision is not available at project application stage. Furthermore it could be argued that exhibiting subdivision proposals is not in the public interest given that at Breakfast Point any such proposals would seek to legalise a building's internal access arrangements or reconcile lot boundaries (created under the an earlier subdivision approval) with the proposed built form. Given the somewhat strained relationship with Council, requiring Rosecorp to obtain development consent from under Part 4 is also not optimal.

Moreover, the nomination of a maximum number of lots that Rosecorp could develop on the site, and imposition of conditions that require administrative arrangements to be put in place (easements and the like) the Department would be in a position to focus of State significant issues.

To that effect, it is considered reasonable that the Minister approve a maximum of 100 Torrens title lots and 1,189 strata lots (equivalent to the maximum number of dwellings permitted under the LEP if Rosecorp can demonstrate delivery of those within the restricted gross floor area and having regard to the targeted floor space ratio) plus a reasonable number of strata lots to accommodate common areas.

6.3.10.3 Resolution

The Department has drafted a number of conditions to formalise the above position. Recommended *Condition No. 1 – Development Description (Appendix A, Schedule 2)* identifies the approval of a maximum of 100 Torrens title lots and 1,189 strata lots within the concept plan area. Recommended *Condition No. 18 – Strata Subdivision (Appendix A, Schedule 2)* provides Rosecorp with the opportunity to create a reasonable number of common area strata lots (corridors, foyers, etc). In any case, the total number of common area strata lots cannot exceed 15% of the total 1,189 strata lots that could be approved for residential dwellings (consistent with LEP 91). Recommended *Condition Nos. 19 and 20 (Subdivision Certificate and Other Details Required Prior to Issue of a Subdivision Certificate respectively)* require Rosecorp to undertake and meet all necessary certification processes as well as arrange for any necessary easements and/or rights or carriageway to be legalised. Recommended *Condition No. 20 – Other Details Required Prior to Issue of a Subdivision Certificate* also requires a restriction as to user to be placed on car parking to ensure any spaces are not used as commercial entities.

CONCLUSION

- 6.1. The ongoing development at Breakfast Point will facilitate State and regional planning outcomes by contributing to major residential growth in an identified urban renewal area; achieving a high standard of environmental design and providing continuing employment opportunities for the existing 1000+ construction workforce.
- 6.2. The Breakfast Point Concept Plan seeks approval for:
- (1) 176, 222 m² maximum gross floor area (representing a floor space ratio of 0.65:1 across the entire Breakfast Point site)
 - (2) 1, 519m² of commercial and non-residential uses (within the 176, 222 m² maximum gross floor area specified above);
 - (3) 989 residential dwellings (and up to a maximum of 1, 189 residential dwellings, subject to compliance with other recommended conditions of approval);
 - (4) Landscaped public and private open space;
 - (5) Associated services and infrastructure;
 - (6) Land use distribution, building heights, densities, dwelling mixes and types;
 - (7) Subdivision into no more than 100 Torrens Title Lots; and
 - (8) Subdivision into no more than 1,189 strata subdivision lots (for residential dwellings) subject to compliance with the conditions of this consent.
- 6.3. The Department has reviewed the environmental assessment and the preferred project report and duly considered advice from public authorities as well as issues raised in general submissions in accordance with Section 75I(2) of the Act. All the relevant environmental issues associated with the proposal have been extensively assessed. These issues primarily focus the departures from the 2002 Master Plan (such as increased gross floor area, density, dwelling mix), urban design, traffic and car parking, future use of the heritage buildings on site, developer contributions and staging.
- 6.4. Whilst there are related landscaping issues, and construction and operational issues, arising from the proposal, the impacts can be readily mitigated through the preparation and adoption of conservation and environmental management plans, or existing plans prepared under the 2002 Master Plan.
- 6.5. The proponent has committed (through Statements of Commitment) to a number of measures to ensure the redevelopment proceeds smoothly and does not adversely impact on local amenity, and existing heritage buildings and landscapes on the site. The Department is recommending further conditions of approval to augment commitments made by the proponent.
- 6.6. The Department is of the view that the proposal satisfactorily mitigates the environmental and heritage impacts arising from the redevelopment and adequately maintains the amenity of the local area. In assessing the proposal, the Department resolved any outstanding environmental issues through conditions of approval that impose mitigation measures.
- 6.7. The Department has worked closely with Council, the local member, Angela D'Amore, and the community to ensure an effective and efficient approval process.
- 6.8. Recommended conditions of approval are provided at **Appendix A**. The reasons for the imposition of conditions are to encourage good urban design, future sympathetic adaptive reuse and redevelopment in the vicinity of heritage buildings, maintain the amenity of the local area, and adequately mitigate the environmental impact of the development.

7 RECOMMENDATION

It is recommended that the Minister for Planning, pursuant to Section 75O of the Environmental Planning and Assessment Act, 1979 (as amended):

- **Consider** the findings and recommendations of this report; and
- **Approve** the Breakfast Point Concept Plan as outlined in the Environmental Assessment prepared by Giles Tribe Architects and Urban Planners and the proponent's Preferred Project Report and Statement of Commitments, subject to the conditions of approval set out in the attached instrument of approval at **Appendix A**; and
- **Sign** the attached instrument of approval; and
- **Authorise** the Department to carry out post-determination notification.

APPENDIX A. CONDITIONS OF APPROVAL

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

DETERMINATION OF BREAKFAST POINT CONCEPT PLAN

(File No. 9039939 - 10)

I, the Minister for Planning, pursuant to Section 75O of the *Environmental Planning & Assessment Act, 1979*, determine the Breakfast Point Concept Plan referred to in the attached Schedule 1, by **granting approval** subject to the conditions of approval in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) To adequately mitigate the environmental impact of the development.
- (2) To maintain the amenity of the local area
- (3) To encourage good urban design and a high standard of architecture.
- (4) To ensure future sympathetic adaptive reuse of, and redevelopment in the vicinity of, heritage buildings.

Frank Sartor MP
Minister for Planning

Sydney,

2006

SCHEDULE 1

PART A — TABLE

Application made by:	Breakfast Point Pty Ltd 51 Riley Street WOOLLOOMOOLOO NSW 2011
Application made to:	Minister for Planning
On land comprising:	19-21 Tennyson Road MORTLAKE NSW 2037
Local Government Area	City of Canada Bay
For the carrying out of:	A detailed description of the development approved to is described in Condition A1, Part A, Schedule 2
Capital Investment Value	\$566 million (approximately)
Type of development:	Concept approval under Part 3A of the EP&A Act
Determination made on:	
Determination:	Concept approval is granted subject to the conditions in the attached Schedule 2.
Date of commencement of approval:	This approval commences on the date of the Minister's approval.
Date approval is liable to lapse	5 years from the date of determination unless specified action has been taken in accordance with Section 75Y of the EP&A Act.

DEFINITIONS

In this approval the following definitions apply:

Act means the Environmental Planning and Assessment Act, 1979 (as amended).

Applicant means the person proposing the carry out of development comprising all or any part of the project, and includes persons certified by the Minister to be the proponent.

BCA means the Building Code of Australia.

Breakfast Point Concept Plan 2005 means the project described in Schedule 2, Part A, Condition A1 and the accompanying plans and documentation described in Schedule 2, Part A, Condition A2.

Concept Plan Area means the land coloured pink in Figure 1.02 of the Breakfast Point Concept Plan 2005.

Council means City of Canada Bay Council.

Department means the Department of Planning or its successors.

Director General means the Director General of the Department of Planning

Entire Breakfast Point Site means all land in DP 270 347 and Part Lot 1 DP 1052824 at 19-21 Tennyson Road, Mortlake.

Minister means the Minister for Planning.

Project means development that is declared under Section 75B of the Act to be a project to which Part 3A of the Act applies.

Regulations means the Environmental Planning and Assessment Regulations, 2000 (as amended).

RTA means the Roads and Traffic Authority.

Subject Site has the same meaning as the land identified in Part A of this schedule.

SCHEDULE 2

CONDITIONS OF APPROVAL

BREAKFAST POINT CONCEPT PLAN

1. Development Description

Concept approval is granted only to the carrying out the development solely within the concept plan area as described in the document titled "Breakfast Point Concept Plan 2005" prepared by Giles Tribe Architects & Urban Planners (dated 22 March 2006 – Issue 3) including:

- (1) 176, 222 m² maximum gross floor area (representing a 0.65:1 floor space ratio over the entire Breakfast Point site);
- (2) 1, 519m² maximum commercial and non-residential uses (within the 176, 222 m² maximum gross floor area specified above);
- (3) 989 residential dwellings (and up to a maximum of 1,189 residential dwellings, subject to compliance with Condition No. 7 of this approval);
- (4) Landscaped public and private open space;
- (5) Associated services and infrastructure;
- (6) Land use distribution, building heights, densities, dwelling mixes and types;
- (7) Subdivision into no more than 100 Torrens Title Lots; and
- (8) Subdivision into no more than 1,189 strata subdivision lots (for residential dwellings) subject to compliance with the conditions of this approval.

2. Development in Accordance with Plans and Documentation

The development shall also be generally consistent with the following plans and documentation:

- (1) Breakfast Point Concept Plan 2005 prepared by Giles Tribe Architects & Urban Planners (dated 22 March 2006 – Issue 3)
- (2) Statement of Commitment for the Concept Plan prepared by Rosecorp (dated 24 March 2006)
- (3) Breakfast Point Response to issues raised in submissions prepared by Rosecorp (dated 24 March 2006)
- (4) Response to issues raised in Council's submission prepared by Rosecorp (dated 24 March 2006)

Except for otherwise provided by the plans and documentation described in Condition 1, Schedule 2 and the Department's conditions of approval as set out in Schedule 2, and the proponent's statement of commitments.

3. Inconsistency Between Plans and Documentation

- (1) In the event of any inconsistency between the plans and documentation described in Conditions 1 and 2, Schedule 2 the plans and documentation described in Condition 1, Schedule 2 prevail.
- (2) In the event of any inconsistency between the conditions of this concept approval and the plans and documentation described in Conditions 1 and 2, Schedule 2 the conditions of this concept approval prevail.

4. Lapsing of Approval

Approval of the Breakfast Point Concept Plan shall lapse 5 years after the determination date in Part A of Schedule 1 unless an application is submitted to carry out a project or development for which concept approval has been given.

5. Withdrawal of Applications

In order for the development of land to proceed in a coordinated and orderly manner and to avoid potential conflicts with this approval, the Applicant shall, within 3 months of the date of commencement of this approval and in the manner prescribed by Clause 52 of the Regulation, withdraw from the City of Canada Bay Council any development applications for development within the concept plan area.

6. Prescribed Conditions

The Applicant shall comply with the prescribed conditions of concept approval under Clause 75J(4) of the Act.

7. Additional Floor Space

The Applicant may request an increase in the approved gross floor area (as identified in Condition No. 1) within the concept plan area to achieve a floor space ratio for development across the entire Breakfast Point site equalling a maximum of 0.67:1.

Any request to increase the gross floor area in the manner set out above will demonstrate through the submission of detailed plans and documentation that the proposed increase in gross floor area will:

- Maintain or improve the amenity of existing and approved buildings (and their occupants);
- Maintain and not obstruct existing view corridors and vistas as proposed under the *Breakfast Point Master Plan 2002*; and
- Not result in the significant loss of open space within the subject Precinct; and
- Address any other matter as required by the Director General.

The timing, format and content of further detailed plans and documentation to be lodged in respect of this condition will be to the satisfaction of, and subject to approval by, the Director General.

Should the Director General approve an increase in gross floor area, the total number of additional units must not exceed the specified 1865 dwellings in the Breakfast Point Master Plan 2002, by more than 200 dwellings.

8. Monetary Contributions – Section 94 Contributions

In accordance with Division 6 of Part 4 of the Act, the Applicant shall pay the following monetary contributions:

Contribution Category	Rate of Contribution/Unit or Single Dwelling Lot	Amount for 989 units or single dwelling lots
Community Facilities	\$251.74	\$248, 970.86
Open Space	\$412.02	\$407, 487.78
Roads	\$1166.24	\$1, 153, 411.36
TOTAL (for 989 units)	\$1830.00	\$1, 809, 870.00

Timing and Method of Payment

The relevant contributions shall be paid at the time of the project application at which those dwellings are proposed to be constructed. Evidence of the payment to City of Canada Bay Council shall be submitted to the Certifying Authority prior to the issue of the construction certificate for the relevant project application(s).

All contributions shall be paid in the form of cash or bank cheque made out to City of Canada Bay Council. For accounting purposes the contribution pay require separate payment for each of the categories above. Confirmation should be sought from Council in this regard.

9. Other Monetary Contributions

In the event that the Applicant obtains approval from the Director General to increase the gross floor area (pursuant to *Condition No. 7 – Additional Floor Space* of this approval), a further monetary contribution for community enhancement will be levied for all additional dwellings resulting from that increase. This Contribution will be levied at a rate of \$7, 200.00 per dwelling regardless of size (equating to \$1.44 million if the maximum of 200 dwellings is achieved).

The Contributions shall be administered by the Applicant through the establishment of a Trust Fund or other appropriate mechanism.

The Applicant shall prepare and submit a Community Enhancement Plan for the approval of the Minister. The Community Enhancement Plan shall be prepared in consultation with Council, and the local community and nominate funding for community projects and infrastructure within the suburbs of Concord, Mortlake, Breakfast Point, and Cabarita. The Community Enhancement Plan shall also determine a works program, timing and means through which the Contribution delivered through this condition is accessed.

10. Dedication of Foreshore Lands

Within 3 months of the determination date in Part A of Schedule 1 of the Breakfast Point Concept Plan, the Applicant shall use their best endeavours to seek the dedication of the 15m wide foreshore strip known as Lot 501 in DP 1052824 to Council.

Should an agreed outcome not be reached within that timeframe (and the Director General has not specified an alternative timeframe), the 15m wide foreshore strip shall be dedicated to the Department.

In either case, the care control and maintenance of the 15m wide foreshore strip shall be conferred to the appropriate Community Association.

11. Dedication of Power House and Curtilage

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

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

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

12. Revised Staging Plan

Within 3 months of the determination date in Part A of Schedule 1 of the Breakfast Point Concept Plan, the Applicant shall submit a revised staging plan consistent with this approval (and the maximum parameters set out in Condition No. 1 of this approval) showing the proposed distribution of units and associated car parking, gross floor areas, unit type, and dwelling mix for the subject site.

The revised staging plan will be to the satisfaction of, and subject to approval by, the Director General.

13. Development Control

With respect to the Applicant's Statement of Commitment No. B1, the Director General will determine whether a future application for development constitutes a significant departure from this approval. A significant departure will require submission and approval of a new concept plan proposal.

14. Technical Audit

The proponent will undertake a technical audit to ensure absolute consistency between the plans and documentation set out at Condition 2, Schedule 2 within three months of the determination date in Part A of Schedule 1 of the Breakfast Point Concept Plan, or as otherwise determined by the Director General, to provide consistency between the plans and documentation, to the satisfaction of the Department.

15. Urban Design Principles

The proponent will accord with the maximum heights, maximum number of dwellings, maximum floor space and minimum setbacks in the development parcels as set out in the plans and documentation described in Condition 2, Schedule 2.

The proponent will submit subsequent project applications in accordance with the maximum development parameters in the plans and documentation described in Condition 2, Schedule 2 and in accordance with the urban design principles set down in State Environmental Planning Policy 65 – Design Quality of Residential Flat Development, Residential Flat Design Code (DIPNR) and the Residential Flat Design Pattern Book (DIPNR).

The proponent will adopt the following urban design principles which:

- (1) Maximise the northern aspect for solar access to dwellings;
- (2) Respond to the microclimate of each location and to the varying topography;
- (3) Set back buildings from the street frontages to create landscaped settings;
- (4) Enhance view corridors through the subject site to maximise visual permeability;
- (5) Share views by stepping buildings down the slope;
- (6) Diversify building forms to create variety and visual interest;
- (7) Limit overshadowing to 50% for 2 hours per day for private open space;
- (8) Minimise overshadowing of public open space;
- (9) Maintain privacy by ensuring adequate distances between dwellings - windows of habitable rooms be a minimum of 12m apart or if these distances are not achievable other design measures, such as appropriate window and balcony locations and screening, being incorporated; and
- (10) Ensure that external colours and finishes are consistent with the palette of precedents and standards already established for Breakfast Point.

16. Silkstone Precinct

This approval does not include the building envelopes identified within the Silkstone Precinct in the Breakfast Point Concept Plan.

Should residential development be proposed within the Silkstone Precinct, the Applicant shall demonstrate the project application is consistent with all relevant conditions of this approval and the following additional criteria:

- (1) Future development shall be limited to a maximum number of 40 dwellings (+/- 10% in accordance with the Concept Plan's Section 15 – Development Staging);
- (2) Future development shall be limited to a maximum height of 5 storeys plus attic, with “storey” being interpreted in accordance with Fig 10.02 of the Breakfast Point Concept Plan;
- (3) Future development shall be appropriately located and articulated to reflect the overarching landscape nature of the Precinct. To this end development shall allow for a publicly accessible landscape strip along the eastern edge of the precinct adjoining Peninsula Drive;
- (4) Future perimeter planting shall be of a location and type which softens the visual impact of development while providing for an appropriate visual transition between the development and adjoining parkland; and
- (5) Basement car parking and bicycle parking to be provided in accordance with 5.00 Access and Parking Circulation in Breakfast Point Concept Plan 2005.

17. Submission of Subsequent Project Applications

The Applicant will submit subsequent project applications for the development of the subject site in accordance with the Breakfast Point Concept Plan conditions of approval.

The subsequent project applications will be supported (but not be limited to) the following:

- (1) plans and/or maps specifying existing ground level;
- (2) documentation that demonstrates compliance with relevant Site Audit Statements and any recommendations within the Breakfast Point Site Management Plan Revision E;
- (3) an archaeological investigation prepared and undertaken by a suitably qualified person(s) (as relevant);
- (4) detailed landscape survey and design plans consistent with the Breakfast Point Landscape Principles contained within Section x of the Breakfast Point Concept Plan;
- (5) a detailed staging plan (or similar) showing proposed distribution of units and associated car parking, gross floor areas, unit type, and dwelling mix;
- (6) plans which demonstrate that all off street car parking associated with the proposed development (such as driveway, ramp grades, aisle widths, aisle lengths, parking bay dimensions, sight distances and loading bays) has been designed in accordance with AS 2890.1 – 2004 and AS 2890.2 – 2002;
- (7) plans (or similar) which confirm the number and location of visitor car parking spaces having regard to the Visitor Car Parking Master Plan;
- (8) documentation that demonstrates compliance with the 2002 Master Plan's “Section 5.00 – Access, Parking and Circulation” as they apply to pedestrian movements and bicycles;
- (9) documentation that demonstrates compliance with BASIX; and
- (10) draft subdivision plans having regard to the matters in Conditions 18 – 20.

18. Strata Subdivision

Approval is granted to strata subdivision solely within the concept plan area for the creation of 1189 strata lots (for residential dwellings) and a reasonable number of ancillary strata lots required for common areas (such as foyers, corridors plant rooms and the like). The indicative number of strata lots shall be submitted to the Department at the time of the relevant project application and the Director General shall determine what constitutes a reasonable number of common area strata lots for any individual project application.

The total number of common area lots within the concept plan area shall not exceed 15% of the 1,189 strata lots approved.

19. Subdivision Certification

An application under Part 4A of the Act shall be submitted to the approval authority or accredited private certifier along with a plan of subdivision prepared by a registered surveyor, for certification prior to the issue of the Subdivision Certificate for any Torrens Title or Strata Subdivision.

20. Other Details Required prior to Issue of Subdivision Certificate

In order to obtain a Subdivision Certificate, the Applicant shall comply with any relevant conditions of approval imposed at project application stage. The Applicant shall also demonstrate compliance with the following to the certifying authority:

- (1) Relevant documentary easements must be created for access over the appropriate lots in the subdivision to provide for public access and access to lifts, lobbies, fire stairs, service areas, loading areas and car parking areas, and created pursuant to Section 88B of the *Conveyancing Act 1919*
- (2) Relevant documentary easements for services, drainage, support and shelter, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created over the appropriate lots in the subdivision pursuant to Section 88B of the *Conveyancing Act 1919*.
- (3) The on-site car parking spaces, exclusive of service spaces, are not to be used by those other than an occupant or tenant of the subject building. Any occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than an occupant, tenant or lessee of the building.

These requirements are to be enforced through the following:

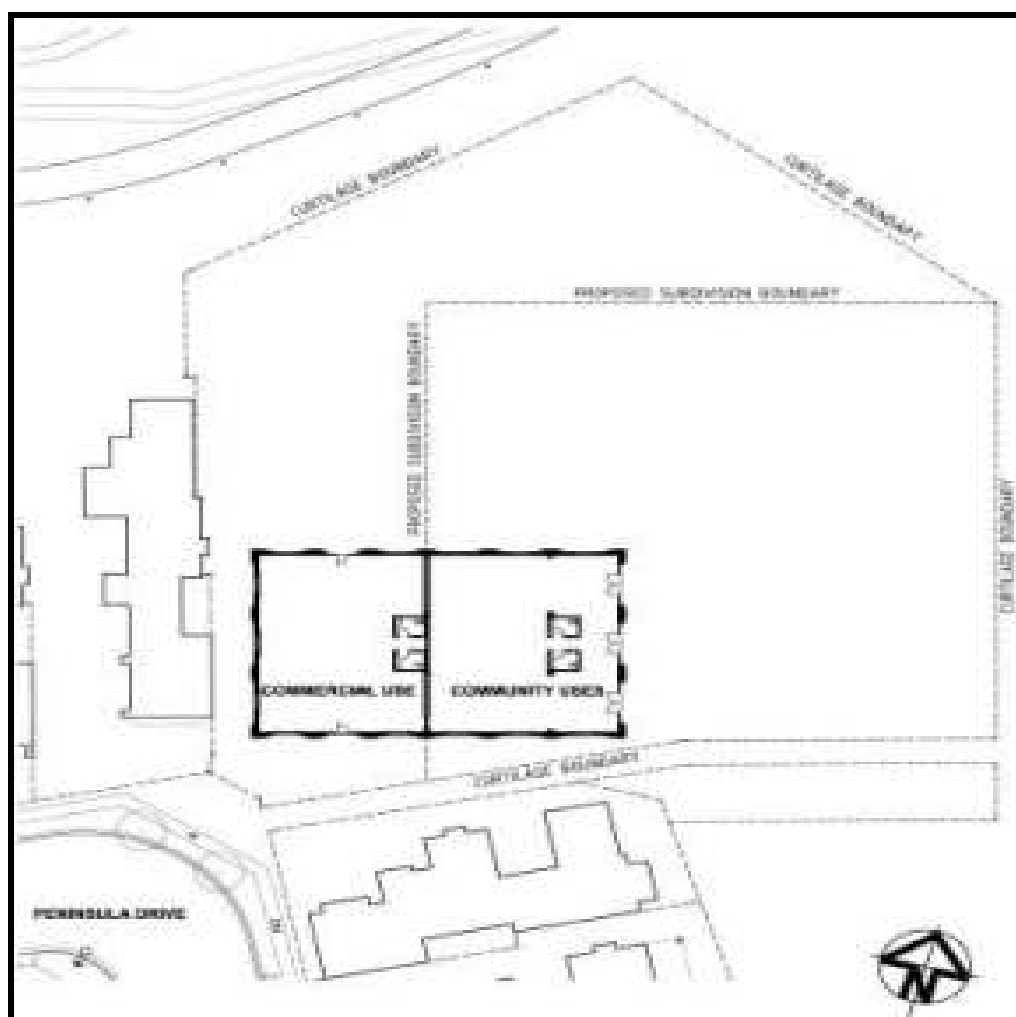
- restrictive covenant placed on title pursuant to Section 88B of the *Conveyancing Act, 1919*,
- restriction on use under Section 68 of the *Strata Schemes (Leasehold Development) Act, 1986* to all lots comprising in part or whole car parking spaces, and
- sign visible at exits (excluding fire stairs and individual unit entries) from car parking areas.

All costs associated with the above requirements are to be borne solely by the Applicant.

- (4) No right of exclusive use and enjoyment of the whole or any specified part of the designated common area or similar in the approved plans will be conferred on any person or persons without the prior consent of the Department.

These requirements are to be made, at no cost to Council or the Department, and to the satisfaction of Department and a restrictive covenant placed on title pursuant to Section 88E of the *Conveyancing Act, 1919*.

SCHEDULE 3



NB: Indicative only and subject to final survey.

APPENDIX B. STATEMENT OF COMMITMENTS

APPENDIX D. SUMMARY OF SUBMISSIONS & RESPONSES

APPENDIX E. ENVIRONMENTAL ASSESSMENT

APPENDIX F. ENVIRONMENTAL PLANNING INSTRUMENTS CONSIDERATION

State Environmental Planning Policy (Major Projects) 2005

State Environmental Planning Policy (Major Projects) 2005 outlines the types of development declared to be a Major Project for the purposes of Part 3A of the Act.

For the purposes of the SEPP certain forms of development may be considered a Major Project if the Minister (or his delegate) forms the opinion that the development meets criteria within the SEPP.

On 31 August 2005 the Minister for Planning formed the opinion that remaining development of the Breakfast Point was a development described in Schedule 1, Group 5, Clause 13 of the SEPP, namely:

“Development for the purpose of residential, commercial or retail projects with a capital investment value of more than \$50 million that the Minister determines are important in achieving State or regional planning objectives”.

The capital investment value of outstanding development on the site was in the order of \$554 million and therefore exceeded the \$50 million criteria the Minister formed the opinion that the development was a Major Project. In doing so the Minister satisfied himself that the development was important in achieving State or regional planning objectives on the basis:

- the Breakfast Point site was identified as being of “strategic significance” in SEPP 56;
- the redevelopment of the site would significantly contribute to major residential growth in an identified urban renewal area;
- the site is well located for public transport (bus and ferry); and
- the capital investment value of outstanding development on the site was in the order of \$554 million with a current construction workforce of approximately 1000.

State Environmental Planning Policy No.11 (Traffic Generating Developments)

SEPP 11 Traffic Generating Developments aims at ensuring that the Roads and Traffic Authority is aware of major traffic generating developments.

Developments of the types listed in Schedule 1 of the SEPP require referral to the Roads and Traffic Authority. Schedule 1 includes:

- the erection of, or conversion of a building into, a residential flat building comprising 300 or more dwellings or the enlargement or extension of a residential flat building by the addition of 300 or more dwellings.

Developments of the types listed in Schedule 2 of the SEPP require referral to the Roads and Traffic Authority. Schedule 2 includes:

- the erection of, or the conversion of a building into, a residential flat building comprising 75 or more dwellings or the enlargement or extension of a residential flat building by the addition of 75 or more dwellings, or
- the erection of a building for the purposes of shops where the gross floor area of the building is or exceeds 500 square metres or the enlargement or extension of a building used for the purposes of shops where the gross floor area of that enlargement or extension is or exceeds 500 square metres, or
- the erection of a building for the purposes of shops and commercial premises where the gross floor area of the building is or exceeds 1 000 square metres or the enlargement or extension of a building used for the purposes of shops and commercial premises where the gross floor area of that enlargement or extension is or exceeds 1 000 square metres, or
- subdivision of land into 50 or more allotments.

Whilst the Concept Plan does not entail the erection/construction of gross floor space for either residential or commercial/retail uses, the development in its entirety satisfies the criteria for referral established under the SEPP.

In accordance with the requirements of SEPP 11, the RTA was consulted and responded with issues, which have subsequently been addressed by recommended conditions of approval.

State Environmental Planning Policy No.55 (Remediation of Land)

SEPP 55 Remediation of Land aims to promote the remediation of contaminated land by specifying under what circumstances consent is required to remediate land.

The site has undergone extensive rehabilitation works in accordance with the Remedial Action Plan – Mortlake Rehabilitation Project (dated 21 July 1999).

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Whilst REPs are not a matter for consideration, the Department has considered those provisions within the Sydney Harbour Catchment REP that could be construed as being of relevance. Those provisions are:

2. Aims of plan

- (c) to achieve a high quality and ecologically sustainable urban environment,*
- (d) to ensure a prosperous working harbour and an effective transport corridor,*
- (f) to ensure accessibility to and along Sydney Harbour and its foreshores*

4. Land to which plan applies

- (1) This plan applies to land within the Sydney Harbour Catchment, as shown edged heavy black on the Sydney Harbour Catchment Map, being part of the Sydney Region declared by order published in Gazette No 38 of 7 April 1989 at page 1841.*
- (2) Within the Sydney Harbour Catchment, particular provisions of this plan apply to:*
 - (a) the Foreshores and Waterways Area*

AGL Mortlake (i.e.: the Breakfast Point site) is nominated as a Strategic Foreshore site within the Foreshores and Waterways area under the REP.

14. Foreshores and Waterways Area

The planning principles for land within the Foreshores and Waterways Area are as follows:

- (a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,*
- (b) public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*
- (c) access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*
- (d) development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,*
- (e) adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses,*
- (f) public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes,*
- (g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes,*
- (h) water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront,*
- (i) the provision and use of public boating facilities along the waterfront should be encouraged.*

Clauses 2(d), 14(e), and 14(g) relate to maintaining a prosperous working harbour, as well as ensuring adequate land supply (for those uses) and adjacent land uses being compatible. The Department has addressed development at the intersection of foreshore and Tennyson Road, to ensure River Quays Marina's use of its site is not compromised by the encroachment of residential development.

Concord Planning Scheme Ordinance (Local Environmental Plan Amendment No. 91)

The subject land is zoned 'Residential E' under the Ordinance. LEP No. 91 is a site specific LEP which articulates the objectives and development standards for the future development of the site.

Residential, commercial, and open space uses (as proposed by the Concept Plan) are all permissible within the 'Residential E' zone. LEP No. 91 also nominates additional uses (Schedule 11) which are also permissible subject to the satisfaction of site specific development standards. The development standards that apply to the site are as follows:

- gross floor area of all buildings on the site must not exceed a floor space ratio of 0.7:1;
- the total gross floor area of all buildings comprising Schedule 11 uses must not exceed 15% of the total floor area;
- no more than 10 000m² of gross floor space can be used for commercial uses/shops; and
- the maximum number of dwellings must not exceed 40 dwellings/Ha.

The development as envisaged under the Concept Plan complies with LEP No. 91.

City of Canada Bay Council's Development Control Plan – Breakfast Point

The Breakfast Point DCP is not a matter for consideration under Part 3A of the Act. The planning objectives that form the basis for the DCP are as follows:

Urban Character and Context

- To establish a new community within an urban village that embodies the principles of traditional neighbourhoods.
- To achieve quality urban design with high levels of amenity and sense of community.
- To establish a village centre that includes a convenience shopping centre, shops and services for the community and surrounding area.
- To achieve a transition from existing residential areas to new development with a gradation of height and density from the perimeter of the site.
- To ensure the provision of significant areas of public parkland providing easy access for the community to the waterfront.
- To ensure the provision of a variety of focal points for the community with different characters and functions.

Views and Vistas

- To ensure that views, access and connections to the waterfront are maximised.
- To ensure the creation, retention and enhancement of significant vistas to and from the site and the Parramatta River / Sydney Harbour.
- To ensure that the views to the site from the Parramatta River are not dominated by residential development forms but are integrated with significant public open space, revitalised heritage items and community facilities.

Access and Linkages

- To ensure safe and convenient access to and through the site for all users.
- To establish a hierarchy of streets that respond to different types of circulation.
- To create a network of pathways for pedestrians and cyclists throughout the site.
- To provide convenient parking for residents, employees, visitors and commuters.
- To provide convenient access to public transport options.
- To ensure a high level of continuity to existing urban elements through access links, built form, landscape and open space linkages.

Building Envelope and Built Form

- To control the form and height of buildings to ensure all relevant statutory controls are met, and achieving the best practice urban design outcomes for the site.
- To control the form and height of buildings to ensure the best practice urban design outcomes for the site.
- To provide a choice of residential dwellings in a variety of forms.
- To provide definition to the public domain by ensuring buildings address the streets and give form to open spaces.
- To provide appropriate curtilage to Heritage Items by ensuring adjacent development is of sympathetic scale and character.

Whilst the DCP seeks to achieve an outcome consistent with the 2002 Master Plan, it contains a number of new standards relating to, amongst other things, roof pitch, setbacks and deep soil and the like. Many of the standards relate to the detailed design of buildings.

The Concept Plan does not entail the erection/construction of gross floor area and accordingly a merit assessment of the development against the DCP cannot be undertaken at this stage. Notwithstanding this, it is considered that the Concept Plan meets the objectives of the DCP.

OTHER ACTS AND APPROVALS

Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act 1997

The EPBC Act commenced on 16 July 2000. The EPBC Act includes the assessment and approvals system for actions that have a significant impact on:

- Matters of National Environmental Significance (NES); and
- The environment on Commonwealth land.

Should an action be determined to likely have a significant impact, an approval from the Commonwealth Minister for the Environment and Heritage is required.

The EPBC identifies seven matters of national environmental significance being:

1. World Heritage properties;
2. National Heritage places;
3. RAMSAR wetlands of international significance;
4. Nationally listed threatened species and ecological communities;
5. Listed migratory species;
6. Commonwealth marine areas; and
7. Nuclear actions.

The Environmental Assessment identified that no NES matters or Commonwealth land are likely to be impacted by the proposal and therefore an approval from the Commonwealth Minister is not required.