

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, 7 April 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:

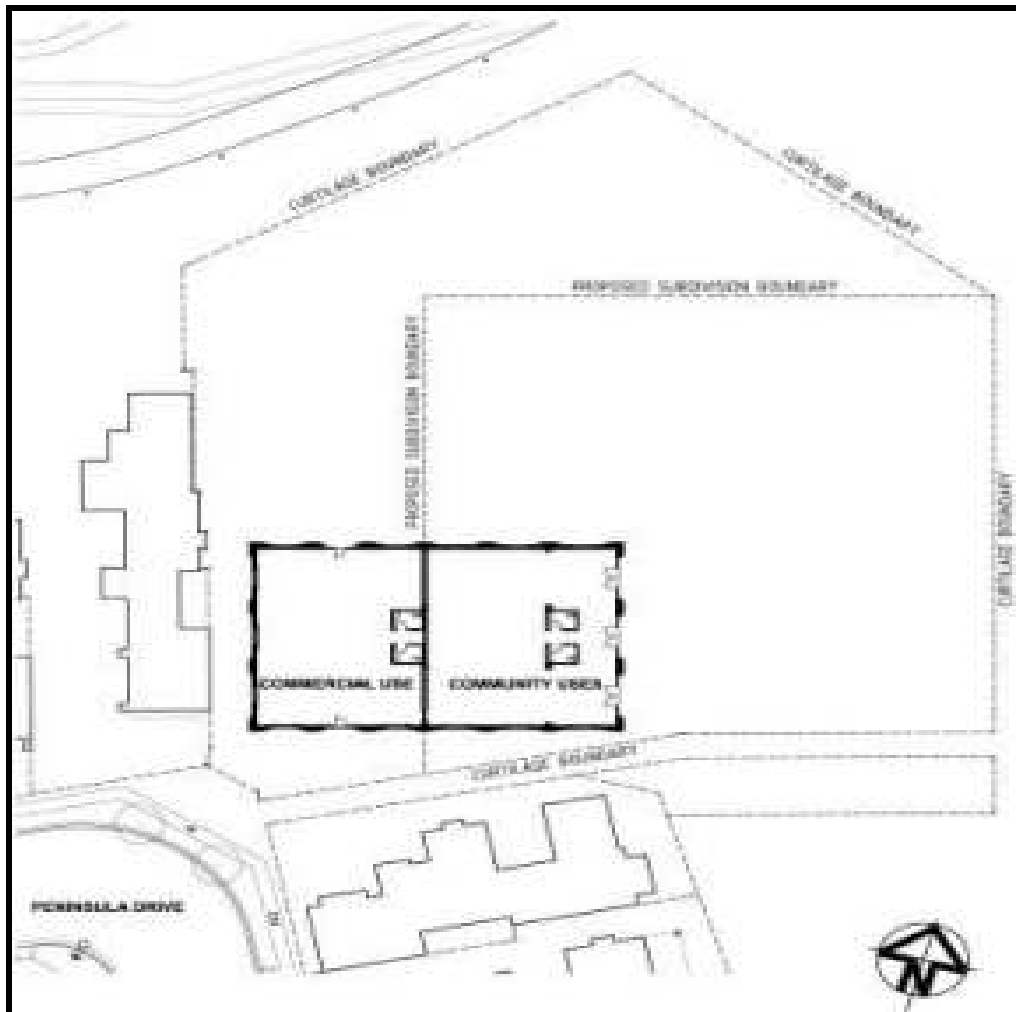
- restrictive covenant placed on title pursuant to Section 88B of the *Conveyancing Act, 1919*,
- restriction on use under Section 68 of the *Strata Schemes (Leasehold Development) Act, 1986* to all lots comprising in part or whole car parking spaces, and
- sign visible at exits (excluding fire stairs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