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# **PLANNING SUBMISSION**

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

## **Residential Development, Majors Bay**

Prepared for:

**Canada Bay Council**

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## 1.0 EXECUTIVE SUMMARY

GSA Planning has been engaged to prepare an independent assessment of the Major Project application (MP10\_0154) for the proposed 'Majors Bay Residential Development' at Mortlake. The Concept Plan application includes the demolition of existing industrial buildings and the construction of 14 residential flat buildings containing approximately 402 apartments with a proposed FSR of 1.43:1 and height of three (3) to nine (9) storeys.

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

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

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

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

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

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

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

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

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

## 2.0 INTRODUCTION

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

GSA Planning has been engaged to assess the impact of the Major Project application (MP10\_0154) for the proposed 'Majors Bay Residential Development' at Mortlake. The Concept Plan application includes the demolition of existing industrial buildings and the construction of 14 residential flat buildings containing approximately 402 apartments with a proposed FSR of 1.43:1. Concept drawings indicate Basement car parking for 653 vehicles. There are five (5) separately designated areas of private and public open space, comprising 5,267m<sup>2</sup>, and existing and public road reserve upgrades.

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

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

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

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

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

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

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

## 3.0 SITE & SURROUNDS

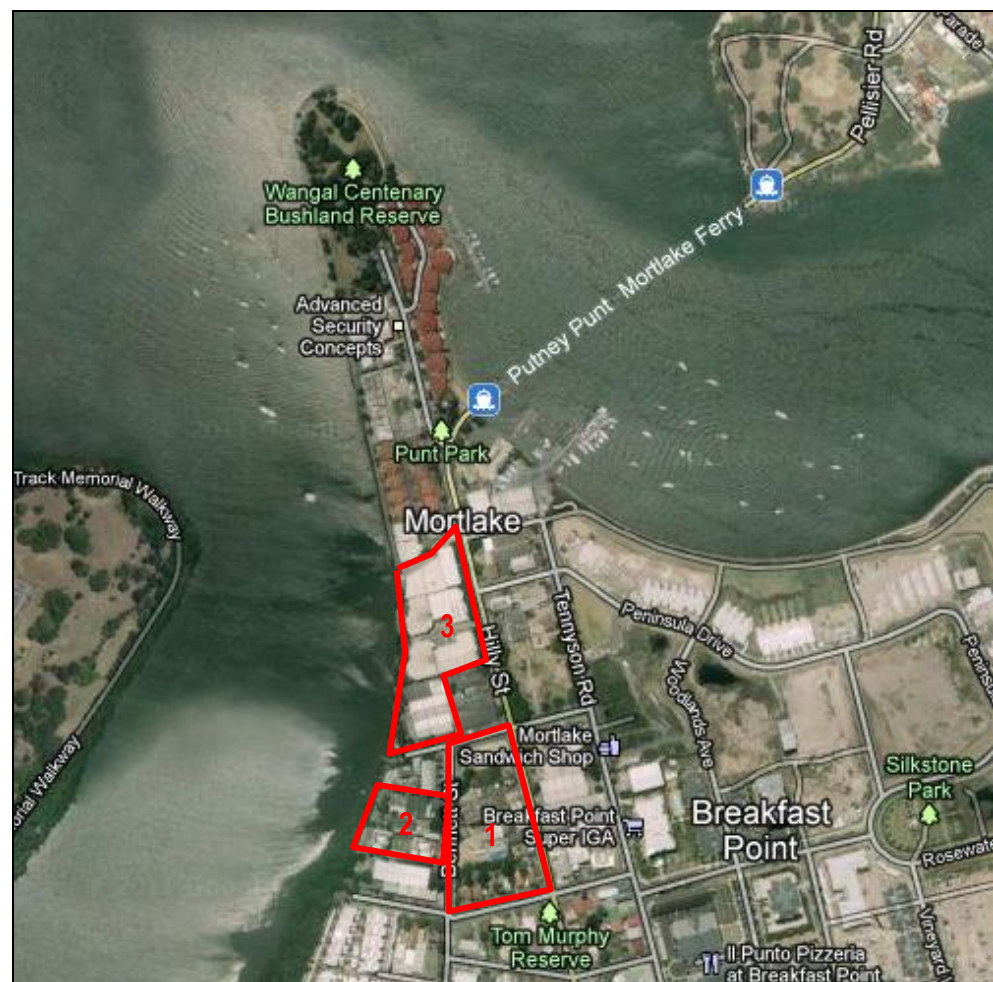
### 3.1 The Locality

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

### 3.2 The Subject Site

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

- Site 1 – 10,483m<sup>2</sup>;
- Site 2 – 2,911m<sup>2</sup>; and,
- Site 3 – 14,047m<sup>2</sup>.



(Source: Google and Mecone 2011)

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**Figure 1:  
Location Plan**

### 3.3 Character of the Locality

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

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

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

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

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

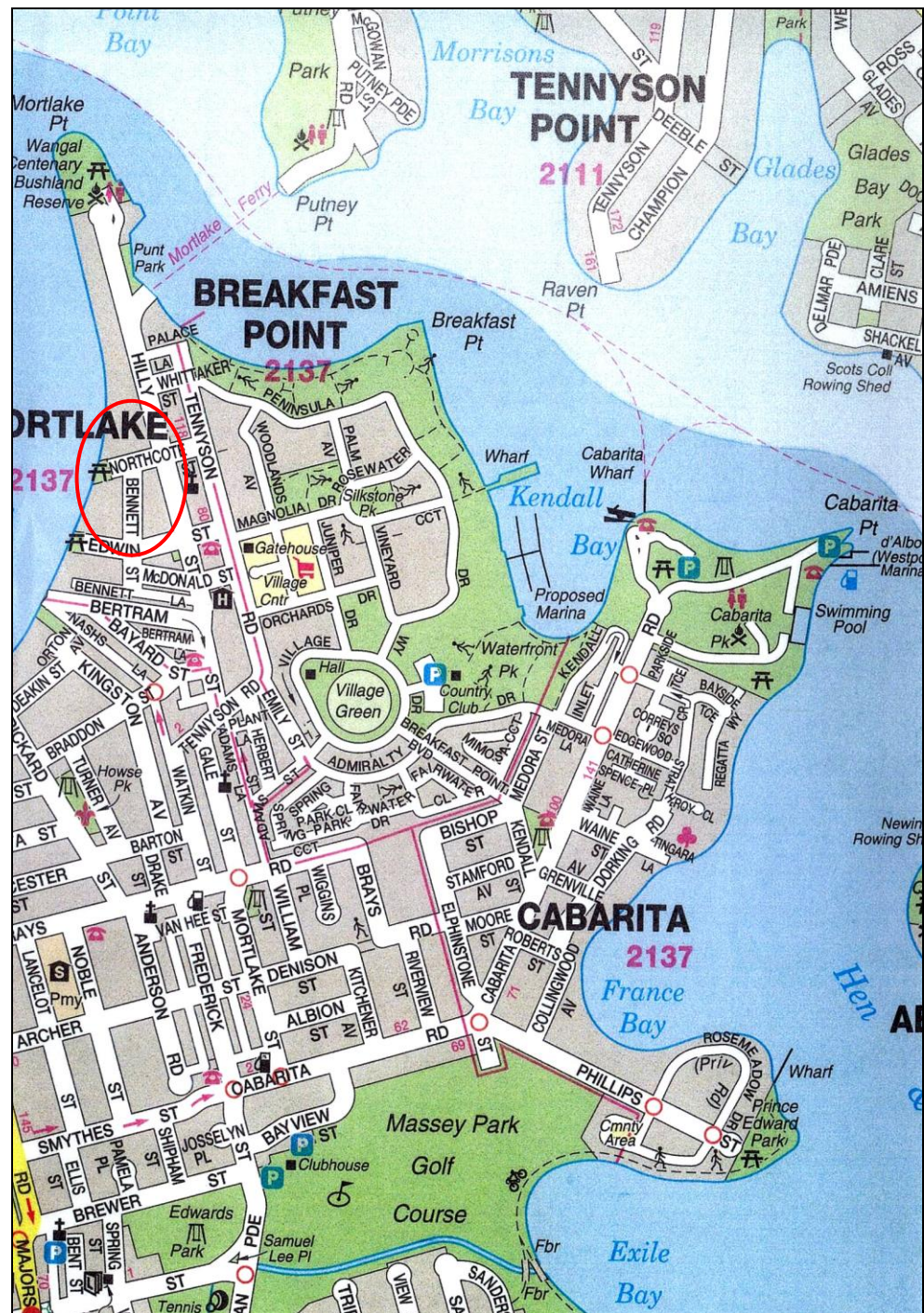
### 3.4 Access to the Peninsula

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

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

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





Source: UBD, 2002

 Subject Site

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**Figure 2:  
Existing Road  
Network**

## 4.0 THE PROPOSAL

### 4.1 Background to the Proposal

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

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

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

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

The Major Project Application (MP10\_0154) is on public exhibition between **4 October 2011 and 2 December 2011**.

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

### 4.2 The Proposed Concept Plan (MP10\_0154)

#### 4.2.1 Concept Elements

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

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

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

## 4.2.2 Building Envelopes

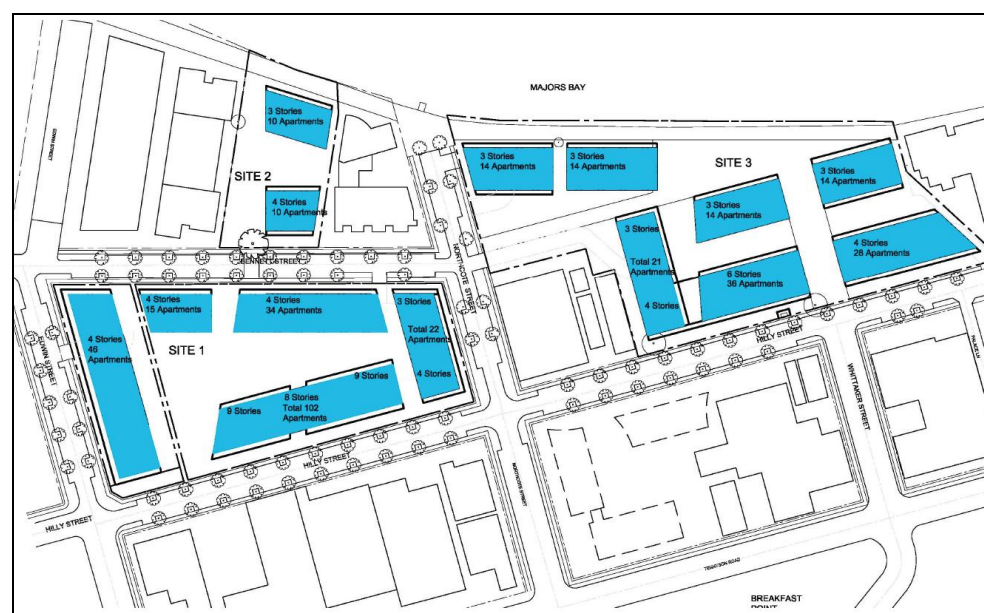
The Concept Plan proposes building envelopes for 14 residential flat buildings with heights ranging between three (3) and nine (9) storeys. The building heights and dwelling yield for each site is as follows:

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

Source: Mecone, 2011

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

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



**Figure 3: Concept Plan – Density**



### 4.2.3 Floor Space

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

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

Source: Cox Richardson, 2010 and Mecone, 2011

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

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

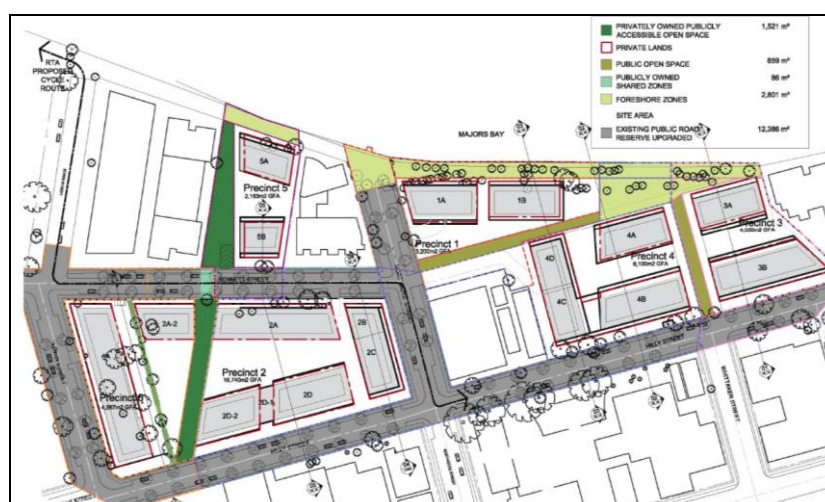
Source: Cox Richardson, 2010 and Mecone, 2011

The Urban Design Report, prepared by Cox Richardson and dated 17 December 2010, suggests that when surrounding streets and public domain areas are included in the site area (an additional 11,807m<sup>2</sup>), the proposal has an FSR of 1:1.

### 4.2.4 Landscaping and Public Domain

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

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



**Figure 4: Concept Plan – Public Domain**

#### 4.2.5 Car Parking

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

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

Source: Mecone, 2011

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

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

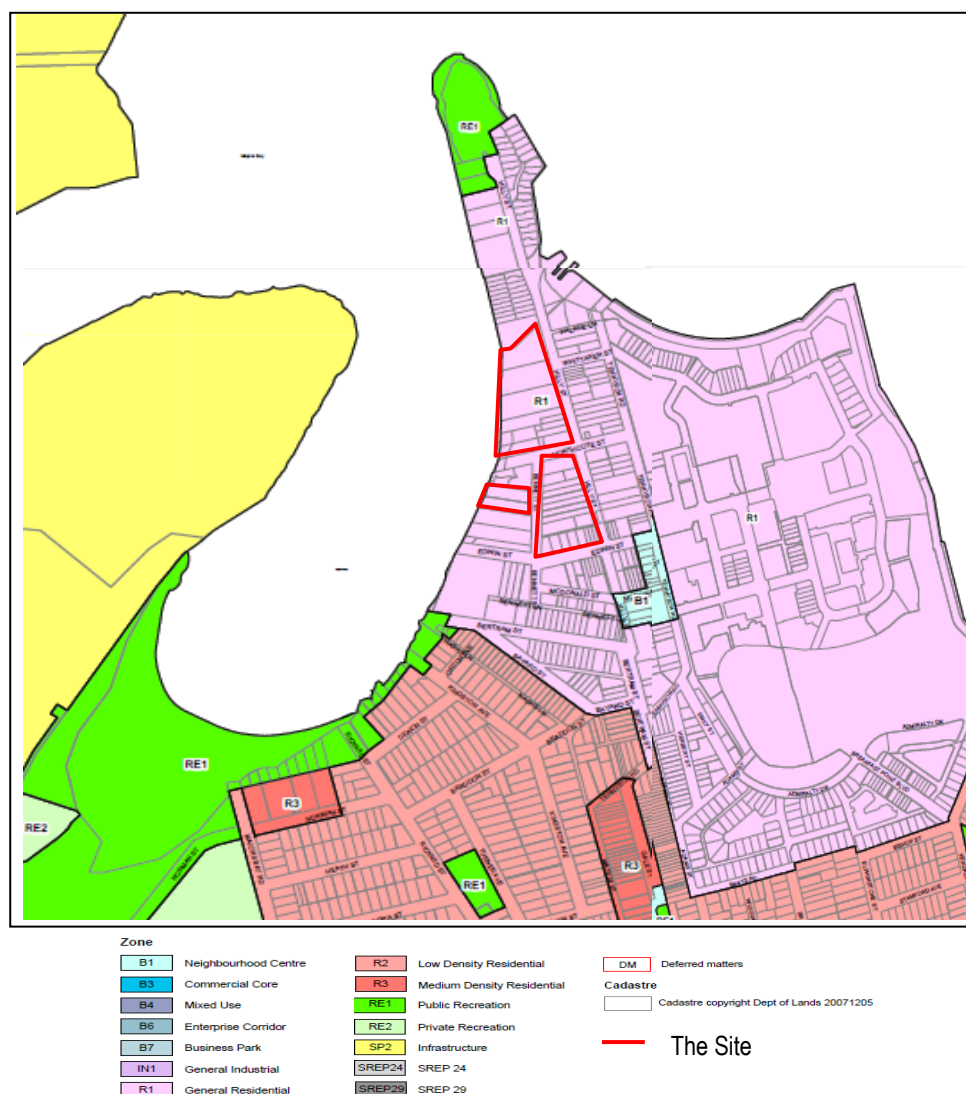
## 5.0 PLANNING CONTEXT

### 5.1.1 Canada Bay Local Environmental Plan (LEP) 2008

#### Zoning and Permissibility

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

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



**Figure 5: Zoning Map**

#### Height of Buildings

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

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

### **Floor Space Ratio**

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

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

### **Foreshore Building Line**

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

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

### **5.1.2 Mortlake Point Development Control Plan**

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

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

## **5.2 Strategic Studies**

### **5.2.1 Mortlake Point Planning Study**

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

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

### **5.2.2 City of Canada Bay Local Planning Strategy 2010-2031**

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

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

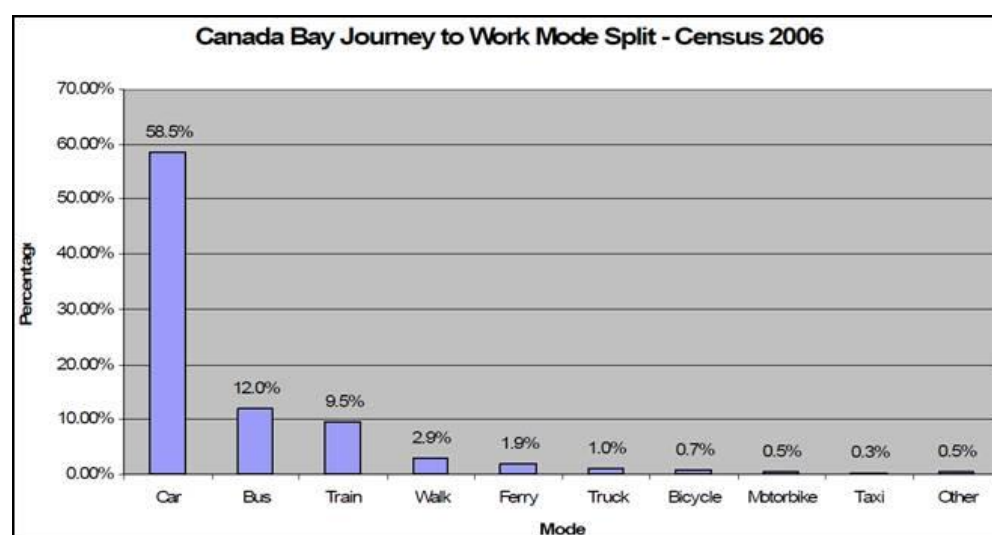
The LPS anticipates that most new housing will be located within walking distance of transit nodes (6,467 dwellings or 64% of supply), primarily at Rhodes and the Strathfield Triangle. A significant amount of new development is also forecast to occur outside of existing transit nodes (3,642 dwellings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

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

### 5.2.3 NSW Metropolitan Transport Plan Review

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

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



Source: GTA Consultants 2010

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



The report also concludes, inter alia:

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

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

### 5.3 Other Statutory Instruments

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

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

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

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

#### 5.3.2 SEPP No. 32 – Urban Consolidation

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

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

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

### 5.3.3 SEPP No. 55 – Remediation of Land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are obvious questions that result from this conclusion.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 12.0 THE LEGITIMATE CONCERNS RAISED BY COUNCIL AND THE LOCAL RESIDENTS

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

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

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

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

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

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

## 13.0 CONCLUSION

In conclusion, GSA Planning have been engaged to prepare an independent assessment of the Major Project application (MP10\_0154) for the proposed 'Majors Bay Residential Development' at Mortlake. The GSA Planning assessment of this Major Project has involved a number of activities. These include: a review of the Project Application documentation; site inspections; consideration of decisions by the Land and Environment Court and Council relating to residential flat building applications in the Canada Bay Council Local Government Area (LGA); and, assessing the application against the relevant planning controls and public and private interests. Our assessment has also included a community consultation process, involving meetings with Council Officers, Councillors, stakeholders, residents and one (1) public meeting. The legitimate concerns raised by Council and the local residents have been taken into consideration.

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

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

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

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

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

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