

1 April 2014

## **S.75W MODIFICATION TO BREAKFAST POINT CONCEPT PLAN 2005 (MODIFICATION NO. 4), SEASHORES PRECINCT**

### **EXECUTIVE SUMMARY**

On 20 December 2013, the Executive Director, Development Assessment Systems and Approvals of Planning and Infrastructure (P&I) referred the subject section 75W modification application to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation. The referral was triggered under the terms of the delegation as the application was submitted by a proponent other than a public authority and more than 25 public submissions of objection were received.

The modification application seeks to amend the Breakfast Point Concept Plan 2005 in relation to the Seashores Precinct to:

- Replace the previously approved seniors housing (227 dwellings / 509 beds) within 4 approved building envelopes with 400 residential dwellings;
- Provide for the adaptive reuse of the Plumber's Workshop for residential apartments;
- Increase the dwelling cap from 1189 to 1589 dwellings;
- Retain the existing approved envelopes with external design changes including the introduction of flat roof forms for Buildings 7D2, 7D3 and 7D4 resulting in an additional storey to these buildings (total 6 storeys);
- Increase the number of car spaces within the Seashores Precinct from 304 to 510 car spaces; and
- Provide a 300m<sup>2</sup> precinct facility for the Seashores Precinct containing a gym, swimming pool and amenities.

The modification seeks approval to increase the residential dwelling cap by 400 from 1,189 to 1,589 although it is noted that the Concept Plan previously allowed 227 senior housing dwellings in addition to the 1,189 residential dwelling cap generally within the Seashores Precinct. However these 227 dwellings have previously been redistributed across the site (Building 7D5 within the Seashores Precinct, and within the Plantations, Point and Woodlands North Precincts) in the form of residential dwellings. Accordingly the modification will result in an additional 400 residential apartments within the Concept Plan area.

The proponent for the modification is Breakfast Point Pty Limited.

The Director General's Assessment Report recommends approval of the modification subject to recommended conditions of consent.

The Commission members visited the site and its surroundings and held a public meeting to hear community views about the recommendation to approve the development. The Commission also met with the proponent and Canada Bay Council.

Subsequent to the public meeting and the finalisation of the Director-General's assessment report, the proponent has amended its Statement of Commitment which forms part of the subject application to address concerns raised with it by the Commission. The amendment provides that Breakfast Point Pty Ltd commits to the payment of a total of \$1.78 million into a community fund in favour of the Breakfast Point Community Association to provide for:

- Extensions to the existing Country Club including design and construction to the value of \$1,500,000 (ex. GST);
- Installation of CCTV cameras to the Foreshore Walk to the value of \$180,000 (ex. GST); and
- Road signage for time restrictions to the value of \$100,000 (ex. GST).

This amount is proposed in addition to the payment of required section 94 contributions under the relevant Section 94 Contributions Plan and would be paid prior to the issue of the first construction certificate for any building within the Seashores Precinct.

The proponent has also agreed to provide 20 new visitor car parking spaces within the Seashores Precinct site, in addition to on street visitor parking already proposed.

Having regard to the above commitments and all other relevant matters, the Commission has concluded that the proposed modification is appropriate and should be approved subject to recommended conditions of consent as amended by the Commission.

## 1. INTRODUCTION

Approval was issued to the Breakfast Point Concept Plan 2005 on 7 April 2006 for a mixed use residential/commercial/retail development on land known as Breakfast Point within the Mortlake / Breakfast Point Peninsula. The approval has been modified on three occasions and currently provides:

*Concept approval for development solely within the concept plan area including:*

- (1) 183,480m<sup>2</sup> maximum gross floor area
- (2) 1,519m<sup>2</sup> maximum commercial and non-residential uses (within the 183,480m<sup>2</sup> maximum gross floor area specified above);
- (2a) 37,004m<sup>2</sup> maximum gross floor area for Services Self-Care Housing (as defined by State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (within the 183,480m<sup>2</sup> 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 the approval);
- (3a) 227 seniors housing dwellings;
- (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 Titles 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.

The subject modification application relates to the Seashore Precinct, the final precinct within the Breakfast Point development. Specifically the modification seeks to amend the Concept Plan to:

- Replace the previously approved seniors housing (227 dwellings / 509 beds) within the building envelopes of Buildings 7D1, 7D2, 7D3 and 7D4 and the Plumbers Workshop with 400 residential dwellings;
- Provide for the adaptive reuse of the Plumber's Workshop for residential apartments (as provided above);
- Increase the Concept Plan dwelling cap from 1189 to 1589 dwellings;
- Retain the existing approved envelopes with external design changes including the introduction of flat roof forms for Buildings 7D2, 7D3 and 7D4 resulting in an additional storey to these buildings (total 6 storeys);
- Increase the number of car spaces within the Seashores Precinct from 304 to 510 car spaces; and
- Provide a 300m<sup>2</sup> precinct facility for the Seashores Precinct containing a gym, swimming pool and amenities.

The subject application is a transitional Part 3A matter within the meaning of the *Environmental Planning and Assessment Act 1979*. Clause 3 of Schedule 6A Part 3A and the associated regulations continue to apply to transitional Part 3A projects and accordingly the Minister (or his delegate) may approve modifications under Section 75W of the EP&A Act.

## 2. DELEGATION TO THE COMMISSION

The modification application falls within the general terms of delegation issued to the Commission by the Minister on 14 September 2011 being applications:

- Objected to by the relevant council;
- Where a political disclosure statement has been made; or
- Where more than 25 objections were received.

The application is the subject of a political disclosure statement and more than 25 objections have been received (92 objections received).

The application was referred to the Commission on 20 December 2013 for determination.

The Commission for the purposes of this application consisted of Ms Abigail Goldberg (Chair) and Mr Richard Thorp.

### **3. INFORMATION AVAILABLE TO THE COMMISSION**

#### **3.1 Documents**

The referral to the Commission included the following documents:

- The Director General's environmental assessment report (DG's report) and appendices;
- The proponent's environmental assessment report (EA);
- Submissions received by P&I including submissions from Canada Bay Council, Transport for NSW and RMS, and 95 public submissions on the EA (92 objections, one submission in support and two submissions seeking further clarification);
- The proponent's response to submissions report (RTS) and preferred project report (PPR);
- Supplementary advice provided by the Council and the proponent;
- Amended Statement of Commitment; and
- Recommended conditions of approval.

#### **3.2 Site visit**

The Commission members visited the site and the surrounding area in February 2014 (various dates).

### **4. DIRECTOR- GENERAL'S ASSESSMENT REPORT**

#### **4.1 Key issues**

The Director General's (DG's) report identified the key issues with the proposed modification as:

- Density;
- Traffic and car parking;
- Built form;
- Residential amenity;
- Open space and facilities;
- Monetary contributions; and
- Heritage.

#### **4.2 Council's view**

The DG's report notes that Canada Bay Council did not object to the proposal however raised a number of concerns. However, Council representatives at the public meeting held

by the Commission, indicated that Council did object to the proposal. In its submission the key concerns raised by Council include:

- traffic impacts of proposed increase dwelling numbers, cumulative traffic impacts and inadequacy of traffic assessment;
- heritage impact primarily related for proposal to demolish the Plumber's Workshop (Note: the Proponent amended its proposal in PPR to retain the Plumber's Workshop);
- development contributions to be paid in accordance with Contributions Plan; and
- concerns regarding proposed flat roof form which Council considers is inconsistent with visual continuity created by existing pitched roof forms within the Breakfast Point development.

#### **4.3 Public submissions**

95 public submissions were received on the proposal, 92 in the form of objections, one submission in support and two submissions seeking further clarification. The DG's report identifies that the main issues raised in the public submissions as:

- Insufficient resident and visitor car parking;
- Negative impacts, including amenity, from increased density and residents;
- Increase traffic;
- Negative heritage impacts specifically demolition of the Plumber's workshop which was originally identified to be adaptively reused;
- Increased infrastructure / community facility demands;
- Proposed built form is inconsistent with Breakfast Point, particularly flat roof form and building footprints;
- Proposal is inconsistent with original plans;
- Proposal breaches maximum height of buildings approved by increasing the number of storeys;
- Traffic report inadequate;
- Proposal breaches Minister's determination to protect residents amenity and maintain view corridors;
- Proposal breaches sales contract of original buyers;
- Proposal breaches dwelling cap in original Council LEP 91;
- Environmental Assessment lacks detail;
- Public exhibition was too short;
- Proposal not in the public interest;
- Floor space approved already exceeds Breakfast Point Concept Plan 2005 limit;
- Seniors Housing is preferred and should be retained; and
- Smaller apartment including 1 bedroom apartments are not supported.

#### **4.4 Preferred Project Report**

Following exhibition of the modification application and the receipt of submissions the proponent prepared a PPR. The report essentially responds to issues raised by P&I in relation to the proposed demolition of the Plumber's Workshop and amends the proposed modification to retain the building. The PPR proposes the Plumbers Workshop be adaptively re-used to accommodate 14 residential dwellings within the existing fabric of the

building. The 14 dwellings are included within the proposed 400 residential apartments provided for under the modification.

#### **4.5 Recommendations**

The DGs report concludes that on balance P&I considers that the proposed modification will:

- *Result in a quality development providing additional housing choice in an existing and established residential housing estate;*
- *Maintain and provide for sufficient open space and facilities (existing and proposed) to cater for the additional demand generated by the increased density;*
- *Satisfactorily safeguard the amenity of surrounding residents and is compatible with the surrounding uses; and*
- *Conserve the heritage significance of the Plumber's Workshop building.*

Accordingly the report recommends approval of the section 75W application (as amended by the PPR) subject to conditions to:

- Ensure section 94 contributions are paid for the additional 400 dwellings in accordance with the relevant Canada Bay Council Section 94 Contributions Plan at the time of the approval;
- Require that future applications for buildings in the Seashore Precinct shall provide roof forms that are appropriate to the character of the locality and that maintain the visual continuity and scenic foreshore quality of the Breakfast Point locality; and
- Provide for the inclusion of a Precinct Facility being a minimum of 300m<sup>2</sup> containing a gym, swimming pool and amenity for use for up to a minimum of 50 people at any one time.

### **5. MEETINGS WITH STAKEHOLDERS**

On 5 February 2014 the Commission met with senior officers of Canada Bay Council and a public meeting was held on 12 February 2014. The Commission also met with representatives of Breakfast Point Pty Ltd on 5 February and 7 March 2014.

#### **5.1 Meeting with Canada Council**

Senior Council officers provided the Commission with an overview of Council's concerns in relation to the application. The main concerns relate to development creep and traffic impacts particularly given nature of site being on a peninsula, lack of public transport options, and impact of proposed flat roof forms on character of the Breakfast Point area. They also noted that the DG's report misrepresented the Council's view stating that it did not object to the proposal. Council indicated that it did object to the development particularly in relation to traffic impacts and the inadequacy of the traffic report submitted with the application.

#### **5.2 Public Meeting**

The public meeting was held on 12 February 2014 at Concord Community Centre Function Centre (commencing at 4pm). A total of 27 people addressed the Commission including the local member Mr John Sidoti MP, the Mayor of Canada Bay City Council, representative of

various community associations / committees within Breakfast Point and members of the general public. Issues raised were consistent with those raised in the submissions as outlined above in addition to a new concern that investment in community facilities would be better in the centralised Country Club serving all residents with optimal facilities, rather than in a small facility with limited features serving the Seashores Precinct only.

At the public meeting the Breakfast Point Community Association requested an extension of time to make a submission on the subject modification putting forward the claim that it has been denied adequate time to prepare a submission due to ongoing negotiations with the proponent that ultimately broke down. The Commission granted a two week extension to the Association and a detailed submission was received from the Association on 27 February 2014. This submission has been given due consideration by the Commission.

### **5.3 Meetings with Proponent**

The Commission met with representatives of the proponent who advised that it supported the Department's recommendation. The proponent outlined the scope of the modification and reasons for the changes to the Concept Plan. Two issues were raised in relation to the recommended conditions of consent:

- (1) Condition 9A Additional Monetary Contributions – Section 94 Contributions – request additional wording at the end of the condition to provide for a “possible credit for a Precinct Facility as required by proposed Condition 16B of this consent”; and
- (2) Proposed Condition 16A Roof Forms in the Seashores Precinct – request deletion of condition however if not supported suggest changed wording which refers specifically to flat roof forms being permitted.

Following detailed consideration of the application, the Commission met with the proponent further on 7 March 2014 to discuss options to resolve outstanding issues identified by the Commission. Following this meeting the proponent agreed to provide 20 new visitor car parking spaces within the Seashores Precinct site, in addition to on street visitor parking already proposed. It also amended its Statement of Commitment which forms part of the subject application to address concerns raised with it by the Commission. The amendment provides that Breakfast Point Pty Ltd commits to the payment of a total of \$1.78 million into a community fund in favour of the Breakfast Point Community Association to provide for:

- Extensions to the existing Country Club including design and construction to the value of \$1,500,000
- Installation of CCTV cameras to the Foreshore Walk to the value of \$180,000
- Road signage for time restrictions to the value of \$100,000.

This amount is proposed in addition to the payment of required section 94 contributions under the relevant Section 94 Contributions Plan and would be paid prior to the issue of the first construction certificate for any building within the Seashores Precinct.

## 6. KEY ISSUES

Following detailed consideration of all information before it, the Commission has identified the following key issues in relation to the subject modification application:

- Increase in density and dwelling numbers;
- Traffic impact;
- Visitor parking;
- Impact on community facilities and amenities; and
- Proposed flat roof form.

These issues are discussed below:

### 6.1 Increase in density and dwelling numbers

The Commission has considered issues raised in submissions regarding the proposed increase in dwelling numbers and has concluded that the modification represents an increase of 400 residential dwellings over and above the existing Concept Plan approval. This increase is due to the permitted 227 seniors housing dwellings having previously been redistributed elsewhere within the Concept Plan area.

The Commission considers that the proposed additional 400 dwellings, including new smaller units, are acceptable within the existing building envelopes and maximum Gross Floor Area provided for under the Concept Plan subject to:

- Traffic impacts being acceptable (refer section 6.2 below);
- Additional visitor car parking being provided (refer section 6.3 below); and
- the provision of extensions / additions to existing community facilities and amenities provided within the Breakfast Point area (refer section 6.4 below).

The Commission has formed the view that subject to the resolution of the above issues, the additional 400 dwellings are appropriate on site and will not result in any adverse impact on the Breakfast Point development or amenity of its existing residents.

### 6.2 Traffic impact

Concerns have been raised by the Council and members of the community that the original traffic report submitted with the application did not address key intersections, did not use traffic generation rates appropriate to the nature of the Breakfast Point locality and did not address cumulative traffic impacts. This matter was raised with the proponent and two additional reports prepared by its traffic consultants. These reports modelled additional intersections as identified by Council and used the traffic generation rate identified by Council as appropriate for the Breakfast Point area.

The modelling included in the supplementary reports confirmed that following the proposed additional development all affected intersections would continue to operate at acceptable Levels of Service (LoS) including both cumulative traffic and having regard to the rates of generation agreed by Council.

Having regard to all relevant reports the Commission therefore agrees that the proposed modification will not result in a significant adverse traffic impact. The proposed additional



400 dwellings will result in additional traffic however this is within the capacity of the surrounding road network. In addition the Commission considers that additional section 94 funds, to be paid as a result of the modification, will assist Council to undertake required road works in the vicinity and to mitigate any impacts.

The Commission does however consider that it is appropriate to include a condition of consent to encourage public and active transport use as follows:

Future development applications for residential buildings shall include a Travel Access Guide (TAG) / Green Travel Plan, to encourage public and active transport use, for future occupants and visitors.

Accordingly the Commission considers that the proposed modification is acceptable in terms of traffic, subject to inclusion of the above condition of consent, and will not result in any significant adverse impacts.

### **6.3 Visitor car parking**

Both Council and the local community have raised concerns regarding the visitor car parking within the Breakfast Point area and in particular have noted that due to the number of residents with more cars than car parking spaces, on street parking is at a premium. The modification proposes that visitor car parking would be provided at the existing rate (1 space per 5 dwellings) on street. This would total 80 visitor car parking spaces which the applicant has shown on its Visitor Parking Masterplan can be accommodated within the surrounding street network. The Commission, from anecdotal evidence and its own investigations, agrees that visitor car parking is in short supply within Breakfast Point and that this current situation could potentially be exacerbated by the proposed modification. To address this issue the Commission considers that it is appropriate to require the provision of 20 additional visitor car parking spaces within the Seashore Precinct itself. These spaces would be in addition to the 80 to be provided on the street. Accordingly a condition of consent to this effect is to be imposed.

As noted by the community the shortage of available visitor car parking spaces within Breakfast Point is related to car ownership rates and spaces being taken up by residents. To address this issue the proponent has also agreed to pay \$100,000 (ex. GST) towards road signage for parking time restrictions. The Commission considers that this signage combined with enforcement of parking time restrictions by the local Council and the provision of 20 additional spaces on site, will assist to alleviate the existing parking issue. A condition of consent is therefore proposed as follows:

Future applications in the Seashores Precinct shall provide an additional 20 dedicated visitor spaces on site (not on street) in addition to provision of on street visitor car parking in accordance with the rates outlined in the Breakfast Point Concept Plan 2005.

### **6.4 Impact on community facilities and amenities**

The community has raised concern that the existing community facilities and amenities within Breakfast Point were designed to cater for the dwelling numbers and commensurate population of the original Concept Plan. They have indicated that with the increase in dwelling numbers and reduction in dwelling size, additional facilities have not been provided

by the developer to cater for the additional demand. The community is concerned that this development creep has resulted in excess demand being placed on the existing facilities and crowding during peak periods. The community has noted that section 94 funding to be paid by the development to Council is not able to be spent on facilities within the Breakfast Point area due to the land and facilities being in private ownership. Further the community has indicated that the increase in development density / yield is contrary to the concept that owners bought in to.

Concern has also been raised that the proposed Seashores Precinct Facility (min. 300m<sup>2</sup> facility including a gym, swimming pool and amenities for use for up to a minimum of 50 people at any one time) is not appropriate and will not be utilised by residents. Rather the community has argued that the Country Club is the centre of the community and that funds should be utilised to upgrade / expand this larger facility rather than create a separate smaller facility for the sole use of the Seashores Precinct.

The Commission considers that the Breakfast Point community is well serviced in terms of open space and community facilities when compared to other similar residential developments. Notwithstanding it agrees that the increase in dwelling numbers / density will result in an additional impost on the existing community facilities and amenities provided within the area not able to be addressed through s94 contributions. The Commission notes that to address this impact and preserve residential amenity, the proponent has committed to the payment of a total of \$1.78 million (ex. GST) into a community fund in favour of the Breakfast Point Community Association to provide for:

- Extensions to the existing Country Club including design and construction to the value of \$1,500,000 (ex. GST);
- Installation of CCTV cameras to the Foreshore Walk to the value of \$180,000 (ex. GST); and
- Road signage for time restrictions to the value of \$100,000 (ex. GST).

It is considered that the provision of \$1,500,000 (ex GST) for the provision of extensions / enhancements to the existing Country Club for community and / or recreation facilities will adequately cater for the demand generated by the additional 400 dwellings the subject of the modification. Accordingly the Commission considers that subject to the imposition of appropriate conditions in this regard, the proposed development will be adequately provided for in terms of open space and community facilities / amenities.

In lieu of this provision the Commission considers that the proposed condition requiring the provision of a 300m<sup>2</sup> Precinct Facility within the Seashores Precinct should be deleted. The Commission notes that it is open to the proponent to provide this facility as an amenity to future Seashore residents however its provision as part of the approval is no longer required.

## **6.5 Proposed flat roof form**

The modification seeks approval to introduce flat roof forms to Buildings 7D2, 7D3 and 7D4 within the Seashores Precinct. The introduction of the flat roof form proposed at the 6<sup>th</sup> storey would be in lieu of the habitable attic of the pitched roof space currently allowed for

5 storey buildings elsewhere throughout Breakfast Point. The 6<sup>th</sup> storey will allow an additional storey of apartments.

The Commission notes that the Council has objected to the proposed flat roof form but that the DGs report considers that this matter is a matter of detailed design that is more appropriately considered as part of future development applications when a comprehensive design of the three buildings is submitted for assessment. Accordingly a condition has been recommended in this regard.

The Commission agrees that in principle a flat roof form on the subject buildings could be acceptable if well resolved and that this would not necessarily detract from the visual quality or continuity of the Breakfast Point area. It also agrees that this is a matter of detail that should be determined at the development application stage. It however does consider that a modification to the wording of the future assessment requirement is needed to ensure that flat roof forms are specifically able to be considered at the DA stage. Accordingly it has amended the proposed condition as follows:

Future applications for buildings in the Seashore Precinct shall provide roof forms including potential flat roof forms that complement the character and design aesthetic of the Breakfast Point locality and that enhance the scenic quality of the foreshore.

## **6.6 Additional Conditions**

The Commission has further reviewed the remaining recommended conditions of consent, in light of requested amendments made by the proponent, and considers that generally they are appropriate. It does not agree with the proponent's request to amend Condition 9A Additional Monetary Contributions – Section 94 Contributions to provide a "possible credit for a precinct facility" although this matter is now redundant as the precinct facility is no longer to be provided.

In relation to the proponent's commitment to provide funds to the Community Association for the upgrading/ expansion of the Country Club, provision of CCTV and parking road signage the Commission requires that an additional condition be included to implement the commitment provided in the Statement of Commitments as follows;

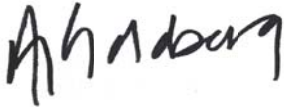
Future applications for buildings in the Seashore Precinct are to include evidence of the satisfaction of Commitment B15 of the proponent's Statement of Commitments (attached) which provides that Breakfast Point Pty Ltd will establish a fund (the Seashores Precinct Works Fund), within twelve (12) months of the date of the approval of Modification Application No. 4, in the amount of \$1.78 million (ex. GST) for the Seashores Precinct Works as outlined therein. The Seashores Precinct Fund will be used to pay the Breakfast Point Community Association's (Association) costs of undertaking the Seashores Precinct Works which include Country Club upgrade/expansion and provision of CCTV and parking road signage.

## **7. COMMISSION'S DETERMINATION**

The Commission has considered all relevant information in relation to the proposed modification and has concluded that following amendment of the proposal by the proponent and the imposition of an additional condition, it agrees with the Planning and Infrastructure's recommendation for approval subject to conditions as amended. The

amendments proposed by the proponent include the provision of \$1.78 million (ex. GST) in additional funding for the Country Club upgrade/expansion and provision of CCTV and parking road signage. Further the additional condition will require the provision of 20 new visitor car parking spaces within the Seashores Precinct site in addition to the 80 on-street car parking spaces already proposed.

The modification is therefore approved as recommended subject to conditions as amended by the Commission.



Ms Abigail Goldberg  
**Commission Chair**



Mr Richard Thorp  
**Commission Member**

## APPENDIX 1 List of Speakers

### Planning Assessment Commission Meeting

Breakfast Point Concept Plan, Modification 4, Canada Bay

Date & Time: Wednesday 12 February 2014, 4 pm

Place: Concord Community Centre Function Centre, 1a Gipps Street, Concord

1. City of Canada Bay  
Angelo Tsirekas, Mayor  
Greg New
2. Fairwater Community Centre Association  
John Small
3. Breakfast Point Community Association  
Peter Marshall, Chairman
4. Breakfast Point Residents Group  
Ian West, Chairman
5. Spyglass Hill Executive Committee  
Kevin Guest, Chairman
6. Caroline Building at Breakfast Point  
Brian Lawrenson, Chairman
7. Acacia Strata  
Joe Grabowski
8. Hunters Wharf Executive Committee  
Peter Ryrie, Chairman
9. John Clarke
10. John Tisdale
11. Laurie Ihnativ
12. Don McKenzie
13. Mason Allen
14. Patricia Allen
15. Paul Driver
16. Robin Amm
17. Greg McGrath
18. Susan White
19. Denis Osbourne
20. Stephen Matthews
21. Gerard Martin
22. Ryan McDonald
23. Rod Jeffery
24. Brian McDonald
25. Maree Dawes
26. Rona Tranberg
27. Terrence Bransdon
28. Janet Griffin
29. John Sidoti MP