

EXECUTIVE SUMMARY

JRPP No	2012SYE052
DA Number	184/2012
Local Government Area	City of Canada Bay
Proposed Development	Construction of a 5 storey residential flat building comprising 92 apartments, basement parking, services, landscaping and strata subdivision
Street Address	68 – 74 Peninsula Drive, Woodlands North Precinct, Breakfast Point (Lot 92 in DP 270347)
Applicant	Rosecorp Management Services Pty Ltd
Owner	Breakfast Point Pty Ltd
Number of Submissions	Zero (0)
Recommendation	Refusal
Report by	Mr Stuart Ardlie- Senior Statutory Planner

RECOMMENDATION

Pursuant to Sections 80 of the Environmental Planning and Assessment Act 1979 (as amended)

THAT Joint Regional Planning Panel – Sydney East Region as the determining authority resolve to refuse development consent to Development Application No. 184/2012 for Construction of a 5 storey residential flat building comprising 92 apartments, basement parking, services, landscaping and strata subdivision on land at 68- 74 Peninsula Drive, Woodlands North Precinct, Breakfast Point, for the following reasons;

1. Pursuant to the provisions of Section 79C (1) (a) (i) and (b) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy Principle 7 Amenity of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development, as adequate solar access and natural ventilation is not achieved to the percentage of units identified under the SEPP.
2. Pursuant to the provisions of Section 79C (1) (a) (i) and (b) of the Environmental Planning and Assessment Act 1979, the proposal does not satisfy Principle 3 Built Form and Principle 8 Safety and Security of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development, as the pedestrian entry is not well defined and has reduced sightlines resulting in safety and security impacts.
3. Pursuant to the provisions of Section 79C (1) (a) (iii) and (b) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the daylight access provisions of the Residential Flat Design Code.
4. Pursuant to the provisions of Section 79C (1) (a) (iii) and (b) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the natural ventilation provisions of the Residential Flat Design Code.
5. Pursuant to the provisions of Section 79C (1) (a) (iii) and (b) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the single aspect south facing apartment provisions of the Residential Flat Design Code.
6. Pursuant to the provisions of Section 79C (1) (a) (iii) and (b) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the apartment depth provisions of the Residential Flat Design Code.

7. Pursuant to the provisions of Section 79C (1) (a) (iii) and (b) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the building depth provisions of the Residential Flat Design Code.
8. Pursuant to the provisions of Section 79C (1) (a) (iii) and (b) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the corridor loading provisions of the Residential Flat Design Code.
9. Pursuant to the provisions of Section 79C (1) (b) of the Environmental Planning and Assessment Act 1979, the proposed waste storage area requires the bins to be presented to the street which is unsightly and increases maintenance/ management costs.
10. Pursuant to the provisions of Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979, the proposed development is not suitable for the subject site.
11. Pursuant to the provisions of Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 and having regard to the previous reasons noted above, approval of the development application is not in the public interest.
12. The applicant has not satisfied condition 9 of the Breakfast Point Concept Plan Approval No. 9039939 – 10 (as amended) as a contribution mechanism and a Community Enhancement Plan have not been approved by the Minister.

1. BACKGROUND

1.1. SITE - CONTEXT

Breakfast Point is located within the Canada Bay LGA and is approximately 9 kilometres west of the Sydney CBD. The site is located on the Mortlake Peninsula within the Breakfast Point Housing Estate and has an overall area of 51.82 hectares (ha) (refer to **Figures 1 and 2**).



Figure 1 - Site Location in context with Sydney CBD

1.2. THE SUBJECT SITE

The subject site is known as Lot 92 in DP 270347 and is located within the Woodlands North Precinct at Breakfast Point. The precinct has an area of 1.312 ha and a site area of 4,450m². The precinct is bounded by Peninsula Drive to the north, Woodland Avenue to the east and Tennyson Road to the west (refer to **Figure 3**).

The Concept Plan (as modified) provides for three residential flat buildings in the Woodland North Precinct. This application is for a five storey building in the northern portion of the precinct fronting onto Peninsula Drive. The Concept Plan includes a nine storey and a three storey residential building to the south.

The site is devoid of buildings or significant vegetation and contains a driveway for construction traffic with tyre wash down area, pond and escarpments. The northern portion of the site has a general fall of approximately 6 metres from the southwest down to the northeast and a general slope down towards Peninsula Drive.

Development adjacent to the site consists of:

- Peninsula Homes to the north comprising two storey townhouse buildings.
- A vacant site to the east which is identified for a future seniors living development.
- Development to the south consists largely of constructed residential flat buildings which range in height from three, six and nine storeys. Further to the south is the Village Centre Precinct which in addition to residential includes commercial / retail uses.
- Commercial / industrial activities to the west on Tennyson Road comprising two storey buildings.
- A 3-3.5m high brick wall “Tennyson Road Wall” which is a local heritage item runs the length of the Tennyson Road frontage.



Figure 2 – Location Plan

1.3. CONCEPT PLAN AND SITE HISTORY

In 1999, the Breakfast Point Master plan was adopted by the City of Canada Bay (Council) in accordance with State Environmental Planning

Policy No. 56 – Sydney Harbour Foreshores and Tributaries (SEPP 56), allowing 1650 residential dwellings and 18,800m² of commercial floor space.

In 2002, the Master Plan was amended by Council to allow for 1,865 dwellings and 12,300m² of commercial uses on the site.

On 31 August 2005, the then Minister for Planning assumed the role of approval authority for outstanding development at Breakfast Point under the former provisions of State Environmental Planning Policy (Major Projects) 2005.

On 7 April 2006, the then Minister for Planning approved the *Breakfast Point Concept Plan 2005* for a mixed use residential/commercial/retail development comprising (additional to the approvals granted by the Council):

- 176,222m² of GFA, including 1,519m² of non-residential GFA;
- 989 dwellings; and
- subdivision into Torrens title and strata lots.

On 4 August 2006, the Director General approved an additional 200 dwellings for the *Breakfast Point Concept Plan 2005* site allowing a maximum of 1,189 dwellings to be constructed, pursuant to Condition 7 of the Concept Plan approval. As a result, the total GFA for the *Breakfast Point Concept Plan 2005* was also increased to 183,480m². Overall a total of 2,065 dwellings are allowed for Breakfast Point under the Concept Plan approval, when including the Masterplan 2002 approved dwellings.

On 18 October 2010, the then Minister for Planning granted approval for a Section 75W modification application to the *Breakfast Point Concept Plan 2005 MOD 1* including:

- Redistribution of dwellings originally approved (under the Concept Plan) in Buildings 7D1 – 7D4 and 7D6 of the Seashores Precinct to Building 7D5 of the Seashores Precinct, Buildings 6F2, 5B1 and 5B2 of The Point Precinct and all buildings within the Woodlands North Precinct, whilst maintaining the approved dwelling cap of 2065 dwellings;
- Amendment to Buildings 7D1, 7D2, 7D3, 7D4 of the Seashores Precinct for use as Seniors Housing comprising 509 additional bedrooms (227 dwellings) and the retention and adaptive reuse of the former Plumbers' Workshop building for communal facilities;
- Variation to the dwelling mix of Buildings 5B1, 5B2 and 6F2 of the Point Precinct resulting in an additional 52 dwellings within the approved building envelope;
- Variation of dwelling numbers and mix allocated within Building 7D5 of the Seashores Precinct and Buildings 7B1, 7B2, 7B3 of the Woodlands North Precinct;

- Incorporation of changes to dwelling numbers already approved by previous s.75W modification applications;
- Amendments to the Concept Plan Modification 1 and 7 (Conditions 1 and 7) to delete the references to the FSR/dwelling cap applying to the entire Breakfast Point site.
- Inclusion of Exempt and Complying development;
- Provision of a framework to ensure all future applications are dealt with under Part 3A of the Act only if they meet the provisions of State Environmental Planning Policy (Major Development) 2008, or if the application involves the modification of a Minister's approval; and
- Provision of a S94 Contributions regime for Seniors Housing.

To date, Project Approval has been granted for **959** dwellings pursuant to the overarching *Breakfast Point Concept Plan 2005* (refer to **Appendix A**). This application includes 92 additional dwellings, which if approved will result in a total 1,051 dwellings within the Concept Plan area identified in Figure 3.

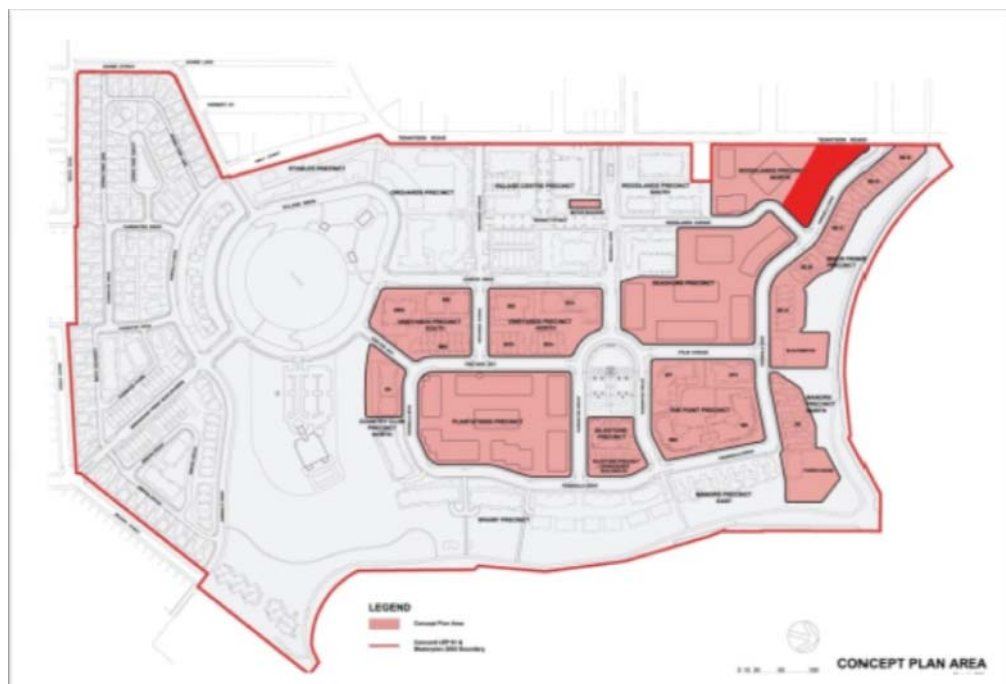


Figure 3 - Location of subject site (Building 7B2) within Breakfast Point Concept Plan 2005

1.4. APPLICATION BACKGROUND

This application was lodged on the 18 May 2012 and notified for period of 14 days and no submissions were received.

Based on a detailed assessment of the application Council wrote to the applicant on the 5 July 2012 and advised that the application was likely to be refused for the following reasons:

- Number of single aspect south facing apartments and associated amenity impacts.
- Solar access to the living rooms or the private open space. This impact is the result of the building depth, number of single aspect apartments and corridor loading.
- Depth of single aspect apartments. This impacts upon the ability to provide adequate natural ventilation and adequate solar access to the south facing apartments.
- Deficient cross ventilated apartments.
- Double loading of corridor.
- Building depth. The proposal does not provide satisfactory solar access or natural ventilation.
- The overall design approach with single aspect apartments split by a corridor down the spine of the building will not be supported.
- This application will bring your approved dwellings within Breakfast Point to a total of 1,051 which will trigger condition 9 of the Breakfast Point Concept Plan approval (as amended). This links the subject application to the concept plan approval and prohibits Council from finalising this application until such time as condition 9 is satisfied through the establishment of a contribution mechanism and a Community Enhancement Plan as approved by the Minister.

The applicant was advised that the issues were fundamental and would require the proposal to be redesigned and substantial modifications made. Council recommended that the application be withdrawn prior to determination and that amended plans would not be accepted. Comments were also provided for the applicant's consideration in the preparation of any future re-designed development application for the site.

The applicant advised that they would be pursuing the current application and as such submitted further justification and amended plans on the 20 July 2012.

1.5. PROPOSED DEVELOPMENT

The proponent is seeking approval for the construction of a 5 storey residential flat building comprising 92 apartments, 119 basement car parking spaces, 17 on-street visitor parking spaces, landscaping and strata subdivision.

The key components of the proposal are detailed in **Table 1** below.

Table 1: Key Components of the Project

<i>Aspect</i>	<i>Description</i>
<i>Project Summary</i>	Project Application for a Residential Flat Building
<i>Site Area</i>	4,450m ²
<i>Building Height</i>	Maximum building height of 5 storeys
<i>Gross Floor Areas</i>	Maximum total Gross Floor Area of 9,710m ² Resulting FSR is 2.18:1
<i>Residential Apartment Size and Mix</i>	Total of 92 apartments comprising: 48 x 1 bedroom (52%) 32 x 2 bedroom (35%) 12 x 3 bedroom (13%) A total of 148 bedrooms
<i>Landscaping</i>	Associated landscaping including treatment to the public domain on the periphery of the site and on the outside of the private courtyards at ground floor level.
<i>Car Parking</i>	Provision of 119 car parking spaces over 3 levels for future residents and 17 on-street visitor parking spaces.
<i>Strata Subdivision</i>	Strata subdivision of apartments
<i>Cost of Development</i>	\$29,400,000 (As stated on development application form)

Summary extracts from the proposal are shown in **Figures 4 – 7**.



Figure 4: Northern elevation



Figure 5: Southern elevation



Figure 6: Eastern elevation



Figure 7: Western elevation

1.6. PUBLIC SUBMISSIONS

In accordance with Council's Notification Development Control Plan, adjoining and nearby property owners and occupiers were advised of the proposal and invited to comment. The notification generated no submissions.

2. ASSESSMENT UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

2.1. Environmental Planning Instruments [Section 79C (1) (a) (i & ii)]

2.1.1. *State Environmental Planning Policies*

The proposed development is subject to the following State Environmental Planning Policies.

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

According to clause 7 of SEPP No. 55 Council may not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

The Breakfast Point land has been remediated under an audited Remediation Action Plan. The Concept Plan identifies the site as an 'Unrestricted Residential Zone' which anticipates all forms of residential buildings, child care and school facilities, commercial and industrial buildings, parks, recreational facilities and open space. The proposal is a residential development consistent with these uses.

The proposal was considered by Council's Sustainability and Health Projects Coordinator who raised no issue in relation to contamination for the proposed development.

State Environmental Planning Policy No 65 - Design Quality of
Residential Flat Buildings

SEPP 65 aims to improve the design quality of residential flat development in NSW through the application of a series of 10 design principles, which guide the consideration of a proposed residential flat building to ensure that it achieves an appropriate level of design quality.

Clause 30(2) of SEPP 65 requires residential flat development to be designed in accordance with the design quality principles in Part 2 of

SEPP 65. In this regard a Design Verification Statement has been provided by Anthony Occhiuto stating that the proposed development was designed by Rose Architectural Design under his direction. Rose Architectural Design verifies that the design quality principles set out in Part 2 of SEPP 65 are achieved for this residential flat building. A detailed assessment is provided in the table below.

<i>Key Principles of SEPP 65</i>	<i>Response</i>
<i>Principle 1: Context</i>	SEPP 65 requires that development respond to the desired future character of its context as stated in planning and design policies. The proposal is consistent with the footprint and height requirements as approved and contained within the <i>Breakfast Point Concept Plan 2005</i> (as modified). The proposal will not have any detrimental impacts on the amenity of existing adjoining developments. The amenity of the future occupants is considered in Principle 7.
<i>Principle 2: Scale</i>	In terms of scale the proposal complies with the 5 storey height limit as approved within the <i>Breakfast Point Concept Plan 2005</i> (as modified). The building is considered to be an appropriate height and scale for the locality and is compatible with development adjoining the site. The proposed scale would complement existing development within Breakfast Point and future development of adjoining sites.
<i>Principle 3: Built Form</i>	<p>The proposed will have a linear form with a central corridor down the spine. This design splits the units front to back with the exception of corner units. This results in a building with poor residential amenity. This design culminates in single aspect apartments, increased building width and unit depths.</p> <p>The overall built form will follow Peninsula Drive providing a built edge. The building is designed to be consistent and compatible with the overall appearance and character of the Breakfast Point redevelopment. The building is well articulated through the use of balconies and steps in the facade. The roof will be predominately a hipped form which incorporates both gable and balcony elements.</p> <p>Due to the topography the ground floor level to Peninsula Drive is elevated. This provides for the privacy and amenity of the ground floor occupants courtyard areas whilst still providing passive surveillance.</p> <p>The building entry is located in the centre of the proposal where the building turns. This results in an</p>

	entry which is not well defined, being narrowed by the built form and fencing which extends forward of the entry door.
<i>Principle 4: Density</i>	<p>The proposal contributes towards the cumulative total of dwellings on the site. The dwellings are of an appropriate size and scale to facilitate a range of living arrangements. The proposed density complies with the approved <i>Breakfast Point Concept Plan 2005</i> (as modified).</p> <p>The proposed unit mix including 1, 2 and 3 bedrooms is appropriate to this area with most units containing study areas. The proposed design will provide for a variety of units sizes and a unit mix which will promote diversity, affordability and housing choice.</p> <p>The close proximity and connectivity of the site to public transport, services and community facilities is also noted.</p>
<i>Principle 5: Resource, Energy and Water Efficiency</i>	<p>A valid BASIX certificate has been submitted with the application. It indicates that the proposal complies with the established water and energy efficiency targets. The submitted landscape plan includes indicative planting, so compliance with the commitment to provide indigenous low water use planting could not be assessed.</p> <p>Comprehensive stormwater plans have been submitted in respect of the proposal with a significant area of deep soil providing desired infiltration.</p> <p>The waste storage area does not provide direct access from Peninsula Drive and as such Council's waste contractors cannot service the site directly from Peninsula Drive. The applicant has confirmed that they will not provide access, so the bins will need to be presented to the street for servicing. This increases maintenance costs and results in unsightly bins on the street frontage.</p>
<i>Principle 6: Landscape</i>	<p>The submitted landscape plan identifies generalised planting types (i.e. trees and shrubs) with a selection of specific species nominated for each planting type. Although the specific species cannot be identified the landscape plan does provide a variety of planting around the perimeter of the site which includes deciduous and evergreen feature trees and screen planting along the boundary fencing. Canopy planting is provided within each of the street setbacks of the proposal which also softens the proposal and provides a green outlook from the apartments.</p> <p>The applicant is proposing to plant Boston Ivy and Star</p>

	Jasmine climbers on the 'Tennyson Road Wall' which is a local heritage item. This will not be supported as it will obscure views towards the wall and damage the wall.
<i>Principle 7: Amenity</i>	<p>The proposal will have a linear form with a central corridor down the spine. This design splits the units front to back with the exception of corner units. This results in 38% of the units being single aspect south facing and this increases up to 47% with the addition of 8 single aspect units which are 15 degrees outside the SW – SE arch. This design culminates in increased building width and unit depths. This design results in poor solar amenity and limits the ability to provide adequate cross ventilation.</p> <p>The design limits solar access during mid winter to the living area of 48% of units and 63% of private open space areas. This is the result of poor design and well below the minimum on a site which is not constrained.</p> <p>The proposal provides cross ventilation to the living areas of approximately 37% of the dwellings which is well below the 60% of the SEPP code.</p> <p>A number of the units include study areas which are located towards the back of the units and do not have a window for natural light or ventilation. This is a result of the provision of deep single aspect apartments and will have a direct impact upon the amenity of the future occupants.</p> <p>The use of a single corridor in the spine of the development results in a corridor loading of up to 19 units and restricts the provision of cross over and dual aspect apartments.</p> <p>All units are of sizes consistent with the design code and have all been provided with private open space areas in the form of terraces and / or balconies.</p> <p>All units are provided with storage areas within the units with a further 50% of secure storage within the car park.</p>
<i>Principle 8: Safety and Security</i>	<p>The pedestrian entry is not readily identifiable as it is narrowed by the built form and fencing. The east lift is not clearly visible from the entry area. The long corridors and bends in the corridors obscure sightlines.</p> <p>The apartments and associated balconies within the</p>

	<p>complex will provide for good passive surveillance both within the development and along the street frontages.</p> <p>Adequate passive surveillance of the surrounding street network is also provided by the elevated ground floor apartments and through the utilisation of extensive glazing and balconies to all elevations.</p> <p>The applicant has not submitted a statement addressing the crime prevention through environmental design principles.</p>
<i>Principle 9: Social Dimensions and Housing Affordability</i>	The proposed unit mix including 1, 2 and 3 bedrooms is appropriate to this area. The proposed design will provide for a variety of units sizes and a unit mix which will promote diversity, affordability and housing choice all within proximity to public transport, employment opportunities and retail uses.
<i>Principle 10: Aesthetics</i>	The design of the building is articulated and includes a variety of materials and colours which blend with the overall character of Breakfast Point. The building will contribute towards a desirable streetscape character, complementing the character of surrounding development.

Further to the above design quality principles, Clause 30(2) of SEPP 65 also requires residential flat development to be designed in accordance with the Department of Planning's publication entitled 'Residential Flat Design Code', which contains a number of 'Rules of Thumb' (standards).

<i>Part 1 – Local Context</i>	<i>Consideration</i>
<i>Primary Development Controls</i>	
<i>Building Height</i>	The building is compliant with the 5 storey numerical height provision of the Concept Plan.
<i>Building Depth</i>	<p>The Code states the maximum building depth for apartment buildings should be 18m. If greater than this, it should be demonstrated that units still achieve adequate daylight and natural ventilation.</p> <p>The proposal provides a building depth from glazing to glazing of between 19 and 23m which results in the proposal providing poor solar access and limited cross ventilation.</p>
<i>Building Separation</i>	The building footprints and separations are consistent with the built forms provided for by the Concept Plan.

	The road frontage to the North, East and South provide significant separation, exceeding the standard.
Part 2 – Site Design - Primary Development Controls	
<i>Deep Soil Zones</i>	A deep soil landscaping zone is provided around the perimeter of the site. Substantial deep soil landscaped areas are provided in the greater Woodlands North Precinct.
<i>Fences & Walls</i>	Definition between public / private domain has been established through the use of planting and fencing.
<i>Landscape Design</i>	<p>Landscaping to the ground floor courtyard areas provides a quality environment for the future occupants.</p> <p>The scale of planting is varied and landscaping to the street setback softens the built form.</p> <p>The applicant is proposing to plant Boston Ivy and Star Jasmine climbers on the ‘Tennyson Road Wall’ which is a local heritage item. This will not be supported as it will obscure views towards the wall and damage the wall.</p>
<i>Open Space</i>	<p>The Breakfast Point development provides communal open space which exceeds 25%.</p> <p>All ground floor apartments are serviced by courtyards and upper levels are provided with balconies.</p>
<i>Orientation</i>	<p>38% of the units are single aspect and orientated in a south or southwest direction. This increases up to 47% with the addition of 8 single aspect units which are 15 degrees outside the SW – SE arch.</p> <p>The design limits solar access during mid winter to the living area of 48% of units and 63% of private open space areas. This is the result of poor design and well below the minimum on a site which is not constrained.</p>
<i>Planting on structures</i>	No planting over a structure is proposed.
Site Amenity	
<i>Stormwater Management</i>	An adequate stormwater management system is proposed.
<i>Safety</i>	The pedestrian entry is not readily identifiable as it is narrowed by the built

	<p>form and fencing. The east lift is not clearly visible from the entry area. The long corridors and bends in the corridors obscure sightlines.</p> <p>The applicant has not submitted a statement addressing the crime prevention through environmental design principles.</p> <p>Passive surveillance provided by proposed courtyard and balconies. Building and vehicular access secured.</p> <p>Street boundary is reinforced through landscaping which delineates the public and private domain.</p>
<i>Visual Privacy</i>	Compliant separation has been provided between the subject building and those upon adjacent sites. Blade walls and screens have been used to provide privacy between units.
<i>Building Entry</i>	The building entry is located in the centre of the proposal where the building turns. This results in an entry which is not well defined, being narrowed by the built form and fencing which extends forward of the entry door.
<i>Site Access</i>	
<i>Parking</i>	<p>Resident and visitor parking provided is compliant with the provisions of the Concept Plan.</p> <p>Proximity of the site to public transport services is also considered beneficial.</p> <p>The parking is accessed from Peninsula Drive and the garage door is recessed from the façade.</p>
<i>Pedestrian Access</i>	Entry foyer is not well defined but level access is available from the street frontage.
<i>Vehicle Access</i>	<p>The vehicular entry point provides adequate separation from pedestrian entries</p> <p>Width of the driveway crossing measures a compliant 6m.</p>
<i>PART 03 - BUILDING DESIGN</i>	
<i>Building Configuration</i>	

<i>Apartment Layout</i>	<p>74% of units are single aspect and 38% are single aspect south facing. This increases up to 47% with the addition of 8 single aspect units which are 15 degrees outside the SW – SE arch.</p> <p>The north facing units have depths greater than 8m from a window, including kitchens. As these units have large areas of glazing facing north they receive good solar access, but natural ventilation remains an issue. A number of units contain studies which have no direct light or ventilation source.</p> <p>The south facing units have poor solar access and natural ventilation.</p> <p>A variety of unit sizes, compliant with the minimum stipulated within the code are provided.</p>
<i>Apartment Mix</i>	The proposal incorporates 52% Studio / 1 bed, 35% 2 bed and 13% 3 bed apartments. Therefore, a satisfactory mix of one, two and three bedroom apartments has been provided within the proposal.
<i>Balconies</i>	Balconies have been provided to all units and retain dimensions which are appropriate and ensure their useability.
<i>Ceiling Height</i>	Minimum ceiling heights comply with the rules of thumb with minimum 2.7m provided to the residential units.
<i>Flexibility</i>	Considered to achieve the objectives in providing internal flexibility for use by occupants
<i>Ground Floor Apartments</i>	Ground floor apartments with courtyards are provided. Five units have separate entries directly from Peninsula Drive.
<i>Internal Circulation</i>	The proposal has a single central corridor with a maximum corridor loading of 19 units and restricts the provision of cross over and dual aspect apartments.
<i>Storage</i>	Sufficient storage areas have been allocated for each residential apartment, both within the apartment itself and parking level of the building.
<i>Building Amenity</i>	
<i>Acoustic Privacy</i>	The siting of the building is generally in

	accordance with the Concept Plan. The proposal is not located in close proximity to any noise generating activities.
<i>Daylight Access</i>	<p>It is noted that SEPP 65 ordinarily require 70% of apartments receive 3 hours solar access between 9am and 3pm.</p> <p>The design limits solar access during mid winter to the living area of 48% of units and 63% of private open space areas. This is the result of poor design and well below the minimum on a site which is not constrained.</p> <p>47% of apartments within the proposal have been provided with singular southerly aspects.</p>
<i>Natural Ventilation</i>	The proposal provides cross ventilation to the living areas of approximately 37% of the dwellings which is well below the 60% of the SEPP code.
<i>Building Form</i>	
<i>Facades</i>	Building facade generally considered acceptable with effective articulation provided.
<i>Roof design</i>	Roof form has been integrated within the overall design of the buildings. Incorporates hipped roof form with gables and balconies. Partial flat roof form towards corner, but generally consistent with character of the area.
<i>Building Performance</i>	
<i>Energy Efficiency</i>	A BASIX certificate was submitted in respect of the application demonstrating target passes. Landscape commitments could not be assessed.
<i>Waste Management</i>	<p>A waste management plan was submitted with appropriate storage and recycling areas provided within the basement level of the development.</p> <p>The waste storage area does not provide direct access from Peninsula Drive and as such Council's waste contractors cannot service the site directly from Peninsula Drive. The applicant will not provide access so the bins will need to be presented to the street for servicing. This increases maintenance costs</p>

	and results in unsightly bins on the street frontage.
<i>Water conservation</i>	Stormwater plans have been submitted.

Based on the assessment provided above the proposal will result in the future occupants having poor amenity with issues identified including solar access, natural ventilation, aspect, orientation, waste management, corridor loading, safety and security. These aspects of the proposal are discussed within Section 5 of this report.

State Environmental Planning Policy - Building Sustainability Index (2004)

To encourage sustainable residential development, all new dwellings must comply with the provisions of State Environmental Planning Policy – Building Sustainability Index (BASIX).

The proposed development has achieved full compliance with the BASIX commitments as they have reached targets of 40 for water and 20 for energy. The schedule of BASIX Commitments is specified within the BASIX Certificate No. 427533M and is included in the recommended conditions of consent.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site falls within the map area shown edged heavy black on the Sydney Harbour Catchment Map and hence is affected by the provisions of SREP (Sydney Harbour Catchment) 2005. The SREP aims to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. The SREP also provides a set of guiding principles to be taken into consideration in the preparation of environmental planning instruments and / or master plans.

Provisions of the SREP were generally considered in the development of the Concept Plan. The proposal is separated from the Parramatta River by the River Front Precinct which contains attached and detached dwellings and Peninsula Drive with a separation between the built form and foreshore of approximately 80m. In so far as the proposal is not inconsistent with stipulated building envelope provisions and overall design of Breakfast Point it is generally considered acceptable.

2.1.2. Local Environmental Planning Instruments

The proposed development, defined as residential flat building is permissible with the consent of Council, within a General Residential R1 zone under Canada Bay Local Environmental Plan 2008. Following is a summary table indicating the performance of the proposal against relevant statutory standards.

<i>Provision</i>	<i>Provided</i>	<i>Compliance</i>
Zoning – R1 (General Residential)	Permissible	Yes
Floor Space Ratio – 0.7:1 (Breakfast Point)	Cumulative compliance table in Appendix B	Yes
Acid Sulfate Soils - Class 5	Statement provided by Douglas Partners	N/A

As demonstrated in the table above, the proposed development achieves full compliance with the relevant statutory standards.

Heritage Conservation

The site is in the vicinity of a local heritage item being the ‘Tennyson Road Wall’ which adjoins the site, running along the west boundary.

An assessment is provided in accordance with Clause 5.10 of the Canada Bay LEP 2008 and Part 4 of the Canada Bay DCP 2008.

Heritage Item in the Vicinity

The statement of significance for the ‘Tennyson Road Wall’ is as follows:

“The brick wall facing Tennyson Road marks part of the western boundary of the former AGL Gasworks at Mortlake; once one of the largest gasworks in the Southern Hemisphere.

The Tennyson Road entry gates are a memorial to AGL workers who served in WWI. The gates and entry pavilion continue to provide an attractive landmark at the entry to Breakfast Point.

The following comments relate to the controls in the Canada Bay Development Control Plan for development in the vicinity of heritage items.

The proposed built footprint, height and envelope are consistent with the Breakfast Point Concept Plan. The colours and materials are consistent with the overall pallet within the broader development.

The applicant is proposing to plant Boston Ivy and Star Jasmine climbers on the ‘Tennyson Road Wall’ which is a local heritage item. This aspect of the proposal was considered by Council’s Heritage Advisor and will not be supported as it will obscure views towards the wall and damage the wall.

2.2. Draft Environmental Planning Instruments [Section 79C (1) (a) (i & ii)]

The Draft Canada Bay Local Environmental Plan was placed exhibited from the 14 November 2011 until the 24 February 2012 and as such is considered below:

<i>Provision</i>	<i>Provided</i>	<i>Compliance</i>
Zoning – R3 (Medium Density Residential)	Permissible	Yes
Floor Space Ratio – 0.7:1 (Breakfast Point)	Cumulative compliance table in Appendix B	Yes
Acid Sulfate Soils - Class 5	Statement provided by Douglas Partners	N/A

As demonstrated in the table above, the proposed development achieves full compliance with the relevant statutory standards. The heritage assessment provided in section 2.1.2 remains relevant.

2.3. **Development Control Plans, Council Policies or Codes [Section 79C(1)(a)(iii)]**

The proposed development is affected by the provisions of the Breakfast Point Concept Plan (As Amended) and Breakfast Point Landscape Master Plan. Following is a summary table indicating the performance of the proposal against relevant statutory standards.

<i>Provision</i>	<i>Control</i>	<i>Provided</i>	<i>Compliance</i>
2.00 Floor space ratio	Max. 0.67:1 (whole site)	A cumulative compliance schedule demonstrating consistency with the Concept Plan is attached at Appendix B	
2.00 Dwellings	Max. 1189 (whole site)		
2.00 Bedrooms	Max. 2280 (whole site)		
5.11 Resident parking	Min. 1 Bed – 1 2 Bed – 1.5 3 or more Bed – 2 Required – 120	120	Yes
5.11 Visitor parking	Min. 1/5 dwellings, on street within 100m Required – 19	19	Yes
5.14 Through site link	Located adjoining south boundary	Not subject of this application. Can be provided.	
5.15 Bicycle parking	In accordance with Guide to Traffic Engineering Practice” (Ausroads) Part 14	Adequate areas within the basement car parking that can be used for bicycle parking.	
7.00 Landscaping	In accordance with Landscape Master Plan	Landscape verification statement provided by Uyen Bui of Context	
10.00 Building	Set by Concept Plan	Not	Yes

footprint		inconsistent	
10.05 Building Height	Max. 5 storeys (excluding attic space with dormers and balconies)	5	Yes
10.15 Adaptable housing	Min. 5% of total dwellings	None proposed in this development. Applicant states that compliance achieved within entire Breakfast Point development.	
12.00 Remediation	Unrestricted Residential Zone	Residential	Yes

As indicated in the compliance table above, the proposed development has achieved full compliance with the non-statutory controls applicable to the site and is considered acceptable in this regard.

2.4. **Likely Impacts of the Development [Section 79C (b)]**

The likely impacts of the proposed development are discussed as follows:

Residential Amenity

Part 10.06 Building Envelope & Built Form of the Breakfast Point Concept Plan (As Amended) identifies that the proposed developments to fit the volume set by the approved Concept Plan should also be designed in accordance with the SEPP 65 design standards. The assessment provided within Section 2.1.1 of this report concluded that poor levels of amenity are provided within the proposal, contrary to SEPP 65 and the Residential Flat Design Code.

The applicant cannot rely on overall compliance across the whole Breakfast Point development site when it is considered that all development should strive to provide for the best possible amenity for future occupants. It is also noted that the applicant's interpretation varies from that of Council.

Before each aspect is considered the overall design approach should be examined. The overall external form and volume is set by the Concept plan and the proposal is generally consistent with this, however, the assessment of this application relates to the consideration of the residential amenity of the future occupants within this approved volume.

The applicant has designed a proposal that has a main centralised pedestrian entry point which provides access to a single corridor for each floor, noting that the ground floor is not a full level due to the above ground car parking level. This design results in a single corridor within the spine of the building which on each floor services up to 19 units. This results in 74% of the dwellings being single aspects apartments which are

orientated towards the north, south and southwest. The dual aspect apartments are limited to the corners of the proposal and no cross through apartments are provided. The site is not constrained by any features. This design approach gives rise to the following key issues which are discussed below.

South Facing Single Aspect Apartments

As defined by the Residential Flat Design Code, the proposal will provide 43 single aspect south facing apartments which represents 38% of the total dwellings within this building. This increases up to 47% with the addition of 8 single aspect units which are 15 degrees outside the SW – SE arch. The proposal is well above the maximum 10% specified by the Code.

Most of these single aspect apartments have a step in the wall of 1 to 1.5 metres with glazing to these areas. However, these apartments are still defined as single aspect and this configuration does not improve the amenity of the future occupants as discussed under separate headings below.

This level of noncompliance and the direct amenity impacts that it will have on the future occupants is considered to warrant refusal of the application.

Solar access

The site is relatively flat and bound by roadways to the north, east and west which provide increased separation to the surrounding developments, noting that the development to the north is characterised by two storey terraces. It is considered that the site is not constrained by any features which limit solar access to the site.

The Design Code ordinarily requires 70% of apartments receive 3 hours solar access between 9am and 3pm (in dense urban areas 2 hours may suffice) to living areas and private open space.

The proposed design directly affects the level of solar access available during mid winter with 48% of the living areas and 63% of the private open space areas receiving compliant solar access in mid winter, well below the minimum 70%. This will result in poor amenity for the future occupants and environmental impacts from the increased energy costs to heat the development.

It is not considered that the provision of skylights to the south and southwest hipped roof plane is a suitable design solution as they do not provide adequate solar penetration to the units they service.

The level of solar access could be improved within this development whilst still providing the same number of units and a built form that is contained

within the approved concept plan volume. Solar access could be improved by providing multiple entries and foyer areas which would remove the central corridor spine so that cross through apartment could be provided. This would increase the number of dual aspect apartments and apartments which have a northerly aspect. It is acknowledged that this would require a substantial redesign, but, does not affect the development potential for this site.

This design approach has been discussed with the applicant, however, they have chosen not to withdraw this applicant and to pursue the proposal in its current form.

This level of noncompliance and the lack of solar access is considered to warrant refusal of the application.

Natural Ventilation

The proposal provides cross ventilation to the living areas of 31 dwellings or 37% of the overall proposal. This is well below the minimum 60% specified by the Code. This will result in poor amenity for the future occupants and environmental impacts from the increase energy costs to cool the development.

It is not considered that the provision of ventilated skylights should be used as a method for primary ventilation, but the overall design approach reconsidered.

As with the solar access assessment above, the level of cross ventilation could be improved through the use of multiple entries and foyer areas to facilitate the provision of cross through apartments. This would increase cross ventilation as additional units would be dual aspect. This does not impact upon the applicant realising the reasonable development potential for this site.

This design approach has been discussed with the applicant, however, they have chosen not to withdraw this applicant and to pursue the proposal in its current form.

This level of noncompliance and the lack of natural ventilation is considered to warrant refusal of the application.

Corridor Loading

The Design Code specifies that where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to 8. This building has a single corridor which services up to 19 apartments and as discussed above splits the building into single aspect apartments. The applicant has not demonstrated that a high level of amenity for common lobbies, corridors and units (cross over and dual aspect apartments) has been achieved.

The length and bends in the corridor have further issues including safety issues from reduced sightlines and reduced natural lighting. Windows servicing the corridors are limited to central south facing glazing with the adjoining built form projecting out 5m south of the glazing and a small south facing glazed area servicing the eastern lift which is setback 7m from the south face of the building. No natural light is provided to the large western corridor.

This level of noncompliance and the direct amenity impacts that it will have on the future occupants is considered to warrant refusal of the application.

Building Depths

The Design Code stipulates that apartment buildings should generally have a depth of between 10-18 metres. The proposal has a building depth between 15 and 22 metres. The building depth has a direct correlation to internal amenity for future occupants. In this instance the single aspect apartments and central corridor widen the building to accommodate the floor plates. In this instance this directly results in a proposal which does not provide satisfactory daylight or natural ventilation.

This level of noncompliance and the direct amenity impacts that it will have on the future occupants is considered to warrant refusal of the application.

Apartment Depths

The Design Code stipulates that single aspect apartments should be limited in depth to 8 metres from a window and the back of kitchens should be no more than 8 metres from a window. The proposal includes 33 apartments which are single aspect with a depth greater than 8 metres and which have kitchens more than 8 metres from a window. This includes 25 dwellings which are orientated in either a north or northeast with the remainder facing southwest.

No issue is raised with the solar access to the north and northeast orientated units. Issue is raised with the lack of cross ventilation to these units which is exacerbated by the depth. Each of these units provides a study area at the rear with small overall room dimensions and no external openings, with shared light and ventilation provided from the adjoining room. This gives rise to potential Building Code of Australia issues. This issue is a direct result of the design approach taken for this site.

The southwest orientated units do not receive adequate solar access in mid winter and are not adequately cross ventilated in the living area. The ability to share light from the adjoining rooms is further compromised.

This level of noncompliance and the direct amenity impacts that it will have on the future occupants is considered to warrant refusal of the application.

Breakfast Point Concept Plan Approval

This application will, if approved, bring the total dwellings within Breakfast Point to 1,051. As the applicant is aware this number of dwellings will trigger condition 9 of the Breakfast Point Concept Plan approval (as amended).

This effectively links the subject application to the concept plan approval and prohibits determination of this application until such time as condition 9 is satisfied through the establishment of a contribution mechanism and a Community Enhancement Plan as approved by the Minister.

It is considered that the timing required for the applicant to consult and prepare this Plan and seek approval from the Minister, would unreasonably delay the subject development application, and as such the application should be refused.

Privacy

The site is bound by streets on the north, east and west which provide adequate separation which mitigate any potential privacy issues. The development to the south is within the same precinct and can be designed in a manner to address any potential privacy issues.

Privacy within the proposal is managed through the use of blade walls and screens where required. Any privacy impact is considered reasonable within this density of residential development.

The private open space of the ground floor units to the north are elevated above that of Peninsula Drive, which protects privacy and provides for passive surveillance of the surrounding area.

View Corridors/View Sharing

The proposed built form is contained generally within the building envelope set by the Concept Plan. No submissions were received raising any view loss issues.

Traffic generation and parking

The overall dwelling numbers and intensity are generally consistent with those of the Concept Plan and the traffic reports which supported it. The local road network within Breakfast Point is fully established. The proposal provides compliant resident and visitor parking, noting that the latter is provided onstreet within 100m of the proposal.

Council's Traffic Engineer reviewed the proposal and raised no issue.

Streetscape, Bulk and Scale

As discussed under SEPP 65 consideration above, the proposal is satisfactory with regard to the built form, including street presentation and building envelope. It is considered that the overall design, including colours and materials are consistent with those within Breakfast Point. Specific aspects of the proposal are discussed further below.

Council's written advice discussing issues with the proposal included comments for the applicant to consider before lodgement of any future applications. The applicant chose to pursue this application and addressed some matters. In this instance a discrepancy between the entry area floor plan and elevation was identified. It was recommended that the entry be widened at the first floor level to match the entry configuration of the ground floor. The issue is that in this central location the entry was narrowed by the adjoining built form and fencing. This results in an entry which is not clearly identifiable in the street and reduces sightlines into the entry area and foyer. The applicant dismissed this advice and through the amended plans chose to narrow the proposal at the ground floor level. This further exacerbating the issue and resulted in an entry which is not clearly identifiable within the street and gives rise to safety issues.

The proposal includes elevated ground floor levels towards Peninsula Drive which are visible within the streetscape. The applicant has provided sections which detail typical planting within this area. These features are considered to soften these built elements.

Noise Impact

Generally, the proposed development is not likely to result in any unreasonable on-going noise impacts on surrounding properties following construction.

Intensity of Use

The proposal is considered acceptable with regard to proposed intensity of use.

Social/Economic

The proposal is not expected to have any significant social or environmental implications.

Landscaping

A landscape verification statement provided by Uyen Bui of Context has been submitted. The proposal will provide adequate landscaping including deep soil zones on the site. Residents will also have access to the communal facilities located within the suburb of Breakfast Point.

Safety and Crime

Council also advised the applicant in writing to consider the Crime Prevention Through Environmental Design principles. The applicant

advised that there is no requirement to prepare a crime risk assessment for the building.

- 2.5. **Suitability of the Site for the Development Proposed [Section 79(c)]**
Based on the assessment provided within this report and the issues which were identified it is considered that the current design of the proposed development is not suitable for the subject site.

- 2.6. **The Public Interest [Section 79C (e)]**
The public interest is served by permitting the orderly and economic development of land in a manner which is sensitive to the surrounding built and natural environment and having due regard to the reasonable amenity expectations of the future occupants and surrounding land users. In view of the foregoing assessment it is considered that the proposed development will not provide for the amenity of the future occupants. Therefore, the proposal is not considered to be in the public interest.

On the basis of this assessment the development originally is deemed to be unsatisfactory from an environmental planning perspective.

3. INTERNAL REFERRALS

- 3.1. **Landscaping**
The proposal was considered by Council's Landscape Architect. They advised that the BASIX commitments could not be assessed as the plant schedule was indicative. No further issues were raised.
- 3.2. **Stormwater Drainage**
The proposal was considered by Council's Stormwater Engineer who raised issues with the proposed stormwater design. As this issues are technical in nature and the proposal is recommended for refusal this issues is not discussed further.
- 3.3. **Traffic Engineering**
The proposal was considered by Council's Traffic Engineer and no issues were raised.
- 3.4. **Access Committee**
The proposal was considered by Council's Access Committee who requested that one on street visitor car space is marked for as a disabled car space. The applicant has no issue with this requirement.
- 3.5. **Heritage**
The proposal was considered by Council's Heritage Advisor as the application includes planting climbers on the 'Tennyson Road Wall' which is a local heritage item. This aspect of the proposal will not be supported as it will obscure views towards the wall and damage the wall.

3.6. Waste Management

The proposal was considered by Council's Waste Coordinator who advised that the waste storage area should be amended to provide a door with direct access to Peninsula Drive. This would enable Council's waste contractors to service the bins directly from the waste storage area negating the need for the bins to be presented to the kerb. This has a benefit in terms of reduced management costs and removes the unsightliness of bins on the street.

The applicant advised that they did not agree with this waste storage solution as they have not had to do this previously and this would result in a non compliance with the visitor parking requirement. Through further discussions with the applicant they would not accept the provision of two time limited visitor car spaces for the garbage collection day.

The waste storage area should not be supported in its current form.

4. CONCLUSION

The proposal is unacceptable having regard to Section 79C of the Environmental Planning and Assessment Act 1979 and Council policies, for the reasons provided in the recommendation below.

Attachments:

1. Appendix A – Schedule of Approved Dwellings
2. Appendix B – Cumulative Compliance Schedule

APPENDIX A – SCHEDULE OF APPROVED DWELLINGS

<i>Total Dwellings under Masterplan 2002 and Breakfast Point Concept Plan 2005 Approvals</i>	
	Dwellings
Pre Concept Plan Approvals (approved under Council's Masterplan 2002)	876
Breakfast Point Concept Plan 2005 Approval	989
Additional bonus dwellings granted pursuant to Condition 7 of Concept Plan	200
Total	2065

Dwellings Approved to Date	
Precinct	Dwellings Approved
Vineyards North – approved 2006	110
Vineyards South – approved 2006	118
River Front – approved 2006	25
MOD 1	-1
Country Club – approved 2006	83
The Point - approved 2006	128
MOD 1	30
MOD 2	20
MOD 4	21
Plantations – approved 2008	267
MOD 3	18
MOD 5	35
Silkstone – approved 2008	45
Seashores Precinct – Building 7D5	60
Total	959

This application includes 92 additional dwellings, which if approved will result in a total 1,051 dwellings within the Concept Plan approval area.

NOTE: SITE AREA		Updated By NJ		15.12.10		518200		RESIDENTIAL										RESIDENTIAL										OTHER USES			
STAGE / SUPERLOT	PRECINCT / DEVELOPMENT SITE	MARKETING NAME	FSR (Whole Site)	ALL USES FSR Area am	Total Residential FSR	Residential FSR Completed	Residential FSR Under Construction	Residential FSR DA Approved	Residential FSR To Be Designed	Dwellings Completed	Dwellings Under Construction	Dwellings DA Approved	Dwellings DA Submitted	TOTAL DWELLINGS	1B DWELLINGS	2B DWELLINGS	3B DWELLINGS	4B DWELLINGS	BEDROOMS	PARKING (off street)	VISITORS (on Street)	SENIORES LIVING	SENIORES LIVING PARKING	OFFICE/COMMUNITY USE	OFFICE/COMMUNITY USE PARKING						
CONCEPT PLAN AREA																															
	Lot 5A	Harbourfront Homes		2420	2420	2420	0	0	0	0	0	0	0	0	0	0	0	0	0	24	12	2	0	0	0						
		Total Harbourfront Homes		2420	2420	2420	0	0	0	0	0	0	0	0	0	0	0	0	0	24	12	2	0	0	0						
	Lot 6E Block A	Forshore Townhouses		1595	1595	1595	0	0	0	0	0	0	0	0	0	0	0	0	13	12	1	0	0	0	0						
	Lot 6E Block B	Forshore Townhouses		1071	1071	1071	0	0	0	0	0	0	0	0	0	0	0	0	12	8	1	0	0	0	0						
	Lot 6E Block C	Forshore Townhouses		1836	1836	1836	0	0	0	0	7	0	0	0	7	0	7	0	0	21	14	1	0	0	0						
	Lot 6E Block D	Forshore Townhouses		1836	1836	1836	0	0	0	7	0	0	0	0	7	0	7	0	0	21	14	2	0	0	0						
	Lot 6E Block E	Forshore Townhouses		370	370	370	0	0	0	1	0	0	0	0	1	0	0	0	0	4	2	1	0	0	0						
		Total Forshore Townhouses		6708	6708	6708	0	0	0	25	0	0	0	25	1	24	0	0	76	50	6	0	0	0	0						
	Lot 5B	Harbour Precinct		6750	6750	0	0	0	6750	0	0	0	62	62	0	9	26	27	106	84	13	0	0	0	0						
	Lot 5B	Harbour Precinct		5900	5900	0	0	5900	0	0	55	0	55	0	6	25	24	92	74	11	0	0	0	0	0						
	Lot 6F	Harbour Precinct		5560	5560	0	5560	0	0	60	0	0	60	0	0	30	30	90	75	12	0	0	0	0	0						
	Lot 6F	Harbour Precinct		5015	5015	0	5015	0	0	45	0	0	45	1	5	19	20	77	61	9	0	0	0	0	0						
		Total Harbour Precinct		23225	23225	0	10575	5900	6750	0	105	55	62	222	1	20	100	101	365	294	45	0	0	0	0						
	Lot 5C	The Silkstone		5804	5804	5804	0	0	0	45	0	0	0	45	0	20	15	10	100	73	9	0	0	0	0						
		Total Silkstone Precinct		5804	5804	5804	0	0	0	45	0	0	0	45	0	20	15	10	100	73	9	0	0	0	0						
	Lot 6A	Observatory Hill		11100	11100	11100	0	0	0	83	0	0	0	83	0	24	59	0	190	137	17	0	0	0	0						
		Country Club Precinct North		11100	11100	11100	0	0	0	83	0	0	0	83	0	24	59	0	190	137	17	0	0	0	0						
	Lot 6B	Chateau		5115	5115	5115	0	0	0	40	0	0	0	40	0	20	20	0	100	70	8										