

<b>JRPP No:</b>	2010SYE067
<b>DA No:</b>	BD.2010.139
<b>PROPOSED DEVELOPMENT:</b>	Demolition of Dwellings and Construction of 2 Residential Flat Buildings of 10 & 4 stores for 40 units over 2 basement parking levels for 51 cars - 5-7 Wilga Street, Burwood
<b>APPLICANT:</b>	Tony Jreige
<b>REPORT BY:</b>	Rick Beers, Burwood Council

## Assessment Report and Recommendation

### Proposal

#### The proposed development comprises:

- Demolition of the dwelling houses on 2 adjoining lots;
- Construction of 2 separate residential flat buildings of 10 storeys (30m high) to the Wilga Street frontage and 4 storeys (12.5m high) to the rear of the site;
- Building setbacks of 3m to Wilga Street (4m to building façade), 6.378m from the rear boundary and zero side setbacks;
- Floor Space Ratio (FSR) of 3:1 (gross floor area of 3956sqm);
- There is to be a Home Office and 28 residential units in the 10 storey building, and 12 units in the 4 storey building, collectively comprising 9 x 1 bed, 11 x 2 bed and 20 x 3 bed apartments;
- 51 car spaces on 2 basement levels;
- Communal open space of 206.4sqm between buildings and 75.5sqm within the front setback, total 281.9sqm.
- 310.4sqm of deep soil planting areas comprising 23.5% of the site area
- The 17 x 3 bed units on levels 1-7 are two-bed units that are dual-keyed with a studio unit, but will each comprise one strata unit.

#### Note:

- (i) As the proposal has a value in excess of \$10M, the application is required to be referred to the Joint Regional Planning Panel – East (JRPP) for determination. In this regard, a briefing on the matter was held with the JRPP on 14 October 2010, when it was decided that the DA would be determined by the JRPP on 1 December 2010.
- (ii) Arising from the JRPP briefing it was decided to engage an independent urban design consultant (GMU) to assess the proposal with respect to the principles of SEPP 65 and the Residential Flat Design Code (RFDC), and to suggest changes to the design of the proposed development, as appropriate. A copy of the consultant's report is attached.

## Background

**Pre DA advice was provided in respect of two options for development of the site submitted to Council by the applicant. One of the options proposed a zero setback to side boundaries (option 2 for 59 units). The subject application varies from both options, however several points made with respect to Option 2 are relevant as follows:**

*“In addition to any requirement for development in Burwood Town Centre, any application will require the submission of:*

- *a schedule of materials and finishes,*
- *plans showing roof/rooftop treatment;*
- *elevations;*
- *detailed landscape plan;*
- *location of letterboxes.*

## Comment

All the above issues have been addressed in the submission of documentation with the DA.

*Specific **Planning** pre-DA comments that were provided to the applicant in respect of Option 2 are set out below:*

- *Zero setbacks to side boundaries are not in accordance with Burwood Town Centre DCP Part 36 and the RFDC and are not supported. It is considered that the site is of sufficient width and size to comply with the setback requirements;*
- *There is no indication that the Building Height Plane as per 2.1.1 of the DCP is complied with.*
- *Balconies that are appended to the main building with minimal setbacks from side boundaries are not supported. They are required to be recessed and integrated with the structure;*
- *There is no articulation in the elevations of the building;*
- *provision of at least 3 units for people with a disability in accordance with AS 1428.2 is required;*
- *floor to ceiling height on the ground floor needs to be increased from 2.7m to 3.3m;*
- *Recessed building entry to be amended to satisfy the requirements of Crime Prevention Through Environmental Design (CEPTD).*

*Having regard to the above deficiencies, their potential impact on adjoining properties and restriction to their development, this option is not supported and would be recommended for refusal.”*

## Comment

The following remain as issues which have not been addressed:

- Zero setback to side boundaries.
- Identification of units for disabled persons on submitted plans.

In addition, the Manager Traffic and Transport raised concerns over the shortage of parking for persons with disabilities, and details of ramp widths for basement levels.

The above matters are addressed in the Planning Assessment below.

## Statutory Requirements

### Heads of Consideration

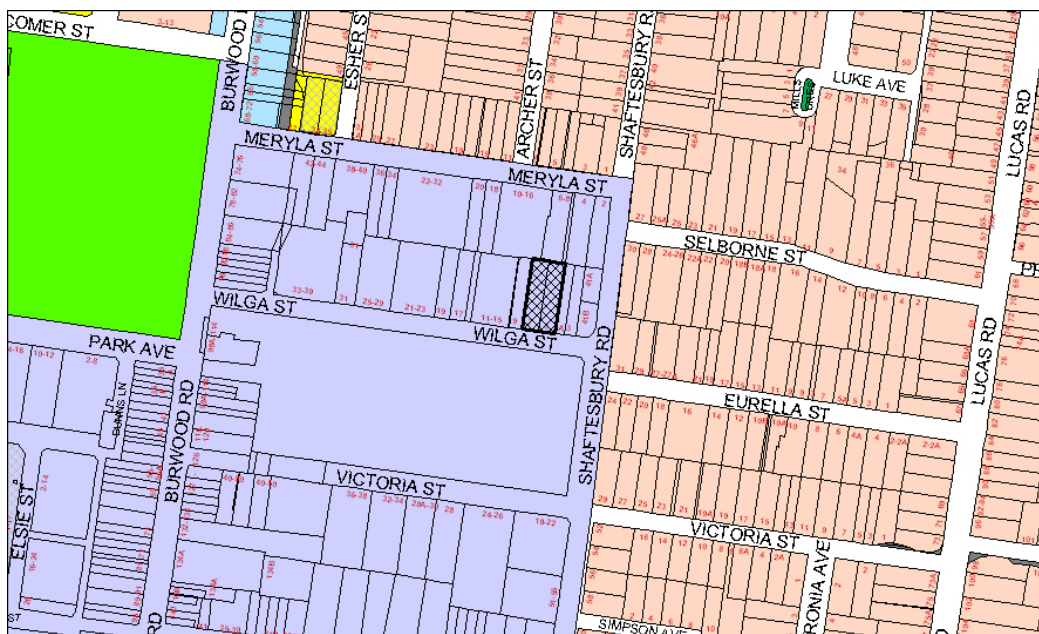
The application is assessed under the provisions of Section 79C of the Environmental Planning & Assessment Act, 1979, as amended, which includes:

- The provisions of an environmental planning instrument – Burwood Local Environmental Plan (Burwood Town Centre) 2010 (BLEP 2010);
- SEPP 65 and Residential Flat Design Code.
- The provisions of Development Control Plan (DCP) Part No. 36 (Burwood Town Centre);
- The impact of the development in relation to:
  - The context and setting of the development.
  - The impact on the natural and built environment.
  - Shadowing of adjoining properties.
  - Traffic and parking impacts.
  - Streetscape and urban design issues.
  - Crime prevention through environmental design.
- The suitability of the site for development.
- The public interest.
- Social and economic impact.
- Submissions made under the Act and Regulations.

### Zoning

The site is zoned B4 Mixed Business under BLEP 2010 and the proposed development is permissible in the zone.

### Map



## Locality

The site comprises two allotments that currently contain a dwelling house on each lot. It is on the north side of Wilga Street opposite Westfield and three blocks west of Shaftesbury Road. The site has a street frontage of 24.635m and an area of 1318.7sqm. There is a fall of 2.18m or 3.25% from the NE corner to the SE corner.

There are single storey dwelling houses on Nos. 3A and 9 Wilga Street either side of the subject site, and a two-storey dwelling house on 4 Meryla Street to the rear. There is a 3 storey residential flat building at 11-15 Wilga Street further to the west, and two storey residential flat development also to the rear of the site at 6-8 and 10-16 Meryla Street. The remainder of Wilga and Meryla Streets is a mixture of single dwellings and three storey residential flat buildings.

The land surrounding the site is also zoned B4 Mixed Use.

## Planning Assessment

### Development Control Plan (DCP) Part No. 36 (Burwood Town Centre)

The prescriptive criteria of the DCP are assessed as follows:

DCP Part No. 36	Required	Provided	Compliance
<ul style="list-style-type: none"> <li>Building Height Plane (BHP)</li> <li>Site isolation</li> </ul>	Below BHP	Below BHP	Yes
<ul style="list-style-type: none"> <li>Setbacks/bldg separation</li> </ul>	Not isolate an allotment	No. 9 Wilga St is isolated	No*
<ul style="list-style-type: none"> <li>- front</li> <li>- rear</li> <li>- side</li> <li>-</li> </ul>	3.25m 6.378m Block A – 6m Block B – 12m	3m 6m Zero Zero	Yes Yes No No

- between buildings	12m	12m	Yes
• apartment mix	1,2 & 3 bed units	1,2 & 3 bed units	Yes
• dwelling sizes	Min 50, 70 & 95sqm	Minima exceeded	Yes
• building depth	<18m	Max 15m	Yes
• ceiling height	3.3 & 2.7m	3.3 & 2.7m	Yes
• natural ventilation	60% of units	67% of units	Yes**
• solar access	Accessible to 3 hours	North-facing living rooms	Yes
• private open space	1 bed 2m/8sqm 2 bed 2.5m/8sqm 3bed 2.5m/10sqm	1 bed 2m/8sqm 2 bed 2.5m/8sqm 3bed - 2.5m/10sqm	Yes Yes Yes
• storage	1 bed – 6 cubic m 2 bed – 8 cubic m 3 bed – 10 cub.m	1 bed – 6 cub.m 2 bed – 8 cub.m 3 bed – 10 cub.m	Yes Yes Yes
• parking	1 space per 1 & 2 bed units – 20 1.5 spaces per 3 bed unit – 30 1 visitor space per 6 units – 7 Total – 57 spaces (including 4 for disabled)	1 space per 1 & 2 bed units – 20 1.5 spaces per 3 bed unit – 30 1 visitor space per 6 units -1 Total – 51 spaces (including 4 for disabled)	Yes Yes <b>No***</b> <b>No***</b>
	Bicycle parking	12 spaces	Yes
<u>SEPP 65 (in addition to DCP Pt 36)</u>			
• Deep soil Planting	25% (329.7sqm)	23.5% (310.4sqm)	<b>No</b>
• Communal open space	25-30% (329.7 to 395.6 sqm)	15.7% (206.4sqm) or 21.3% (281.9sqm) including Wilga St front setback.	<b>No</b>

#### DCP Pt 36 – Principles of Perimeter and Transition Areas

The Perimeter and Transition areas of Burwood Town Centre are more residential in character than the Commercial Core and Middle Ring Areas, as reflected in lower maximum permitted heights and floor space ratios of BLEP 2010, and no restriction on maximum residential content. DCP Pt 36 envisages that there will be more residential and some commercial development in these areas. Hence residential amenity is a high priority in these areas.

The building form in Perimeter and Transition Areas should differ from that in the Commercial Core and Middle Ring Areas by providing residential amenity through daylight/solar access, greater landscaping, private and communal open space. To achieve this, boundary to boundary development should be avoided and buildings should have adequate separation as recommended in the Residential Flat Design Code, expressed in boundary setbacks - preferably above podium (4 storey) levels. Architectural design, such as stepping in the facades and/or articulation, is also important in providing aesthetic interest to the street and confirming the residential character of the building, as distinct from a commercial one.

\* Isolation of No. 9 Wilga Street

No. 9 Wilga Street which adjoins the subject site to the west is a long narrow block which has a frontage of 9.78m, depth of 53.49m and area of 518sqm. Land that it adjoins to the north (10-16 Meryla Street) and to the west (11-15 Wilga Street) are developed with residential flat buildings and are owned by Housing NSW and strata subdivided respectively. As such, they are unlikely to be redeveloped in the near future. Even if included with these sites, the result would be a disjointed development site.

Accordingly, the only realistic opportunity for amalgamation of 9 Wilga Street with adjoining land to realise its development potential, is with the subject site.

Comment on applicant's negotiations with the adjoining owner of 9 Wilga Street

DCP Pt 36, 2.1.7 requires evidence of negotiations with adjoining owner/s for purchase where a proposed development isolates a site. In this regard, the applicant has advised:

*"the proposed development will not result in the creation of isolated sites. Due to the age of existing buildings and lack of any recent development in the locality, it is considered that adjoining sites have future potential to amalgamate with an alternate adjoining property."*

*Notwithstanding, the proponents of the development have approached the neighbour at 9 Wilga Street and made an offer to purchase. The owners of 1 & 3 Wilga Street have indicated that they will be pursuing a separate development proposal on their site.*

*The proponent of this proposal has obtained an independent valuation from a local real estate agent and a formal valuation of the amalgamated site. Both valuations put a value on No. 9 Wilga Street of between \$1.1M - \$1.3 M.*

*A formal offer was made to the owners of 9 Wilga Street of \$1.9M. This is seen to be very reasonable and well over the market price. The owner of No.9 Wilga Street would not agree to a price less than \$3.3M and so an agreement could not be reached."*

A valuation of No. 9 Wilga Street is attached to the SEE. On the basis of the above, it appears unlikely that the development site could feasibly amalgamate with 9 Wilga Street with the current positions of the relevant parties. However in accordance with the DCP, written evidence is required to be submitted to support any negotiations held.

\*\* Cross Ventilation

Should the 3 bedroom units be split into 2 bedroom and studio units, cross ventilation for the studio units will not be adequate.

\*\*\* Car parking

## Comment

Although there is a deficiency of 6 car spaces, there is provision for payment of a contribution in lieu of such spaces in DCP Pt 36 through of a Voluntary Planning Agreement. The applicant has not made an offer to Council in this regard and therefore it is considered that to allow a shortfall in parking of this number without any public benefit offset would not be in the public interest and is not supported.

## SEPP 65

The independent urban design consultant (GMU) engaged to assess the proposal with respect to the principles of SEPP 65 and the Residential Flat Design Code (RFDC), suggested changes to the design of the proposed development, or alternatively refuse the application. A copy of the consultant's report is attached. The conclusions of GMU's report with respect to the Principles are as follows:

### • **Principle 1: Context**

The proposal is considered to isolate the adjoining lot at 9 Wilga Street, as it would be arguably impossible to develop alone. This is because the lot is only 9.78m wide and it is questionable whether such a narrow lot could achieve a workable development solution. For example, it would be unable to realise any sort of sensible underground parking layout, as the driveway would occupy 6m of the frontage leaving insufficient space for entry, fire egress, storage for waste, access to services and limited use of the ground floor at the front of the site.

Therefore, GMU recommends that the applicant amalgamate the subject site with this adjoining lot or amend the proposal to allow the future development of the adjoining lot so that it is able to use the car park access of the proposed development. This approach could also extend to designing the central open space so that the adjoining lot could also eventually connect to the site's communal space which would tie the two developments together appropriately at a future date.

Therefore whilst the proposal satisfies some elements of context the issue of site isolation and scale is considered to be significant. Therefore it is considered that the proposal does not satisfy this principle.

### • **Principle 2: Scale**

GMU consider that an improved streetscape and more equitable outcome would be achieved if the development was amended to provide:

- Amalgamation of the subject site with No. 9 Wilga Street or amendment of the proposal to allow the future development of this adjoining lot, so that it is able to use the car park access of the proposed development. In this case, a nil setback to the western side boundary for the height of the subject development would be acceptable, as this would satisfy the issue of isolation and amalgamation under Principle 1: Context (above). Otherwise, an acceptable outcome could not be achieved.
- A 3m setback for the 10 storey building to Wilga Street for its full height and length
- A further 3m setback to the top two floors of the development from the eastern facade and a 3m setback from the southern front facade to reduce the street wall scale to a maximum of 8 storeys.

This will create a more acceptable street scale and response to context and will ensure that an 87m long 10 storey street wall does not occur.

Therefore the proposal does not satisfy this principle and it is recommended that the above amendments be adopted in addition to either requiring amalgamation with 9 Wilga Street or amendments to the design to enable sharing of vehicle access and services etc so a workable development can be achieved on the adjacent lot.

- **Principle 3: Built form**

Issues exist with the design treatment of the side walls and front facade, activation at ground level and also with the setbacks etc as discussed above. To address these issues amendments would be required to the design including:

- Redesign of the entry arrangements to the home office to provide a direct street address
- Redesign of the refuse and service arrangements to provide a greater extent of small commercial starter space and active frontage
- Redesign of all the side facades to achieve better visual interest and for the eastern facade of the tower to be redesigned as a full facade setback from the side boundary.

Therefore the proposal does not satisfy this principle.

- **Principle 4: Density**

The proposal satisfies this principle and offers a variety of living options.

- **Principle 5: Resource, energy and water efficiency**

The proposal partially satisfies this principle but is not particularly innovative in relation to sustainable measures beyond those mentioned above. The proposal achieves reasonable solar access but should be amended to achieve compliance with cross ventilation.

- **Principle 6: Landscape**

The proposal does not achieve the highest quality of open space and does not meet the communal open space requirements in terms of the area % of the RFDC. Therefore the proposal is not considered to satisfy this principle.

- **Principle 7: Amenity**

The issues with amenity could be conditioned as part of any approval but do require resolution to satisfy this principle.

- **Principle 8: Safety and security**

The proposal should be amended to expand the extent of activated space via home office or similar use and if this is achieved then the proposal will satisfy this principle.



- **Principal 9: Social dimensions**

The proposal satisfies this principle subject to earlier comments for studios under amenity.

- **Principle 10: Aesthetics**

The proposal is not considered to satisfy this principle without further design development. On the basis of the above analysis, GMU summarises the proposal as follows:

*“The Development Application for 5-7 Wilga Street provides a reasonable development pattern in terms of the two building model and is of appropriate height generally. However the lack of side and other setbacks is a considerable issue and the implications for 9 Wilga Street are considerable.*

*The architecture could be more interesting particularly to the side boundaries and roof forms and it does not satisfactorily address some amenity and landscaping issues.*

*Therefore there are a numerous design issues that need to be addressed prior to approval of the project. These in summary are:*

- *Provide an opportunity for 9 Wilga Street to share access arrangements and basement car parking and demonstrate that this lot can be developed appropriately or amalgamate the proposal with this lot.*
- *Redesign the proposal to provide a 3m setback for the 10 storey building to the eastern boundary and a further 3m setback to the upper two floors from the east and south.*
- *Provide better activation to Wilga Street and a safer, clearer entry.*
- *Provide visual interest to side walls and roof form*
- *Redesign the laundries in many units*
- *Provide balconies to the studio units*
- *Increase the amount of communal open space to meet the code requirements*
- *Amend the design to meet the requirements for cross ventilation*
- *Delete the laundry and full bathroom from the home office*

*On the basis of the major issue regarding 9 Wilga Street and its development potential, the implications of the setbacks above in addition to the other myriad smaller issues it is considered that this proposal will require significant redesign. On that basis it is recommended that the proposal is either refused or deferred pending resolution of these urban design issues.”*

Additional comment re Design

The comments of GMU are endorsed with regard to design. In addition, it is considered that lack of side setbacks would set a precedent in the street and potentially create a wall of buildings. Together with the continuous 4-5 storey high wall of Westfield opposite, a canyon effect would result and little or no sunlight would be available to the street for a large part of the year. Accordingly, boundary to boundary development is not supported.

No side setbacks also creates potential for balconies to overlook adjoining properties in the absence of screening and may create privacy issues.

Further, additional treatment of the level 9 façade to Wilga Street would improve the presentation to the street as would additional articulation.

#### Provision for Disabled Persons

##### Comment

The SEE states that there will be 3 units which will have access for disabled persons, with a further 6 units being adaptable. These are not indicated on the floor plans. In addition it is stated there are 7 car spaces for disabled persons provided, however, only 4 are shown on the plans.

#### Referrals

Council's Manager Traffic and Transport has advised that due to low traffic generated by the proposal, the 6m wide vehicular crossing could be reduced to 5.5m, from 6.28m.

#### Community Consultation

**Six (6) submissions have been received in response to notification of the proposed development.**

**The grounds of objection relate to:**

- Concern over the lack of side setbacks/building separation

##### Comment

Building to side boundaries would not permit adequate building separation from existing and likely future development on adjoining land, and would compromise amenity of residents in terms of privacy, solar access and daylight, bulk and scale, and absence of landscaping. As such nil side setback is not supported.

- The size of the land is too small for the density of development proposed.

##### Comment

The proposed development complies with the maximum permissible FSR.

- The residents are concerned about the effect that excavations would have on their property which is old.

##### Comment

Any approval would be condition to minimise the impact of excavations. However, compliance with side setback requirements would reduce the risk of any damage.

- Concern is raised over noise and dust during construction.

##### Comment

These aspects would be addressed by conditions of approval and construction management plan.

- They object to another density development adjacent to their home, with Westfield opposite and 3 storey residential flat buildings adjoining to the west and north.

#### Comment

The density developments are consistent with the zoning and future intended development of the area.

- The development would limit light and solar access, obstruct views and light to 5 house windows and lead to reflected heat in summer.

#### Comment

Sufficient light and solar access would be available to 9 Wilga Street with the 10 storey building only one metre away. However, views would be obstructed and heat could be reflected onto their dwelling during hot days. These impacts would be reduced by setbacks from boundaries and planting along the setback areas.

- The 3m setback from Wilga Street is too small and out of character with the existing buildings in the street.

#### Comment

The setback complies with that required by DCP Pt 36, however the impact upon the streetscape could be improved with a stepped setback at the upper levels.

- The building lacks architectural merit.

#### Comment

It is considered that there is scope to improve the relationship of the building to the street and adjoining properties, as indicated above and in GMU's report.

#### Options

Should the JRPP wish to consider options other than refusal of the proposed development, the following alternatives are recommended:

1. That the application be withdrawn to enable the site to be amalgamated with the property immediately to the west, then resubmitted as a fresh application, incorporating No. 9 Wilga Street, having regard to the deficiencies of the current application as outlined in this report.

OR

2. That the application be deferred to allow the adjoining property to the west (No. 9 Wilga Street) right of access via the proposed access to the subject development, thereby assisting the future development of such land and incorporate the following amendments:

- Provide a 3m setback to the eastern boundary for the length of the site;

- Provide a further setback of 3m for the top two floors from the eastern façade and southern front façade;
- Redesign the entry arrangement for the ground floor home office to provide a direct street address and access;
- Redesign the refuse and service arrangements to provide an increased small commercial space and active frontage;
- Redesign all side facades to achieve better visual interest, particularly the eastern façade;
- Improve cross-ventilation for studio units;
- Improve the quality of and increase the area of communal open space (the front 'communal open space' is not considered acceptable);
- Improve the amount of internal storage for units 32, 34, 37 & 40 and provide internal storage for studio apartments
- Improve the laundry for units (they should be located outside the kitchen area), and provide laundries for studio apartments;
- Provide balconies for the studio apartments;
- Delete the laundry, full bathroom and kitchen facilities from the home office;
- Indicate which units are to be provided for persons who have a disability and corresponding accessible parking spaces ;
- Increase the area for deep root planting to a minimum of 25% of the site area.
- Increase the amount of on site car parking in accordance with the requirements of BDCP Pt 36.

## Conclusion

While the proposed development complies in many respects, it crucially does not provide adequate building separation through side setbacks – as recommended in the Residential Flat Design Code for amenity and urban form reasons, it restricts the future development potential of 9 Wilga Street through isolation, and is deficient in a number of other areas, particularly design, streetscape and car parking.

The result is unacceptable impacts on the development potential of adjoining properties and the amenity of existing dwellings on these properties. There would also be a major impact on the streetscape, where boundary to boundary development would set an undesirable precinct in the perimeter area of the Burwood Town Centre and be inconsistent with the desired future character of the street.

Together with deficient car parking – particularly for disabled persons, and units for disabled persons not being identified and isolation of No.9 Wilga Street, the development is not supported in its current form.

## Attachments

1. SEPP 65 and Urban Design Assessment Report dated October 2010 by GMU.  
(32 pages)

### **Recommendations**

- A. That the application for demolition of dwellings and erection of two buildings of 4 and 10 storeys for a home office and residential flats over basement parking at 5 – 7 Wilga Street Burwood, be REFUSED for the following reasons:
1. The development fails to provide for adequate building separation through side boundary setbacks to existing and likely future development on adjoining land, contrary to the Residential Flat Design Code, and would create unacceptable impacts on the development potential of these adjoining properties, and on the amenity of existing dwellings on such properties in terms of solar access, views, overshadowing, heat reflection and damage to foundations during excavation.
  2. Building boundary to boundary to a height of 10 storeys would have a major impact on the streetscape and set an undesirable precinct in the Perimeter area of the Burwood Town Centre and be inconsistent with the desired future character of the street.
  3. The proposed development has a number of design deficiencies, including:
    - Lack of visual interest to the roof form and side walls – the presentation to the streets and adjoining properties is poor and would set an undesirable precedent for Burwood town Centre;
    - Lack of activation of the Wilga Street frontage;
    - Insufficient commercial content at ground floor level to activate the street frontage. (The 'home office' should be amended to delete the laundry, full bathroom and kitchen facilities to better provide for a commercial opportunity);
    - Inadequate cross-ventilation for some units;
    - The quality of and quantity of usable communal open space is considered inadequate (the front 'communal open space' is not considered acceptable);
    - The internal storage for units 32, 34, 37 & 40 and studio apartments is considered inadequate;
    - The laundry for units need to be located outside the kitchen area;
    - Lack of laundries for the studio apartments;
    - Lack of balconies for the studio apartments.
  4. Insufficient provision has been made for parking for persons with a disability and parking overall.
  5. Units for persons with a disability have not been indicated as provide on the DA plans.
  6. The development would result in the isolation of No. 9 Wilga Street, thereby inhibiting its future development potential and the orderly development of the locality.
  7. The area of deep soil zones does not achieve that suggested in the RFDC of a

minimum of 25% of site area.

- B. That the persons who made submissions be advised of Council's decision.

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