

NO. 36-38 VICTORIA STREET BURWOOD – DEMOLITION OF EXISTING BUILDING & CONSTRUCTION OF A MIXED COMMERCIAL AND RESIDENTIAL DEVELOPMENT OVER BASEMENT CAR PARKING – JRPP NO 2012SYE022

TRIM No: 12/23255

Applicant: P & N Group Holdings Pty Ltd
Location: Southern side of Victoria Street, between Burwood and Shaftesbury Roads
Zoning: Mixed Uses B4 – Burwood Town Centre Local Environmental Plan (LEP) 2010
(Proposed B4 Mixed Uses – Draft Burwood LEP 2012)

Proposal

The subject mixed commercial and residential development consists of the following:

- A part 13 and part 18 storey building over 4 basement car parking levels;
- Total Floor Space Ratio (FSR) 4.5:1 - commercial 1.5:1, residential 3:1;
- Car Parking – 120 car spaces on 4 basement levels (6 commercial shops, 21 serviced apartments, 79 residential units, 14 visitors spaces);
- Commercial space 2,773.5m² - 4 ground level commercial suites, 21 serviced apartments - Levels 1, 1A (Mezzanine) & 2;
- Residential space 5,547m² - 77 units (25x1br, 48x2br, 4x3br) above commercial suites and serviced apartments;
- Maximum height 59.5m.

Background

The application was submitted on 9 February 2012 and a Joint Regional Planning Panel (JRPP) Briefing Meeting was held on 15 March 2012. A number of issues were identified as follows:

- a. Residential FSR of 3.3:1 exceeds the maximum permitted 3.1. Council will not support the additional 0.3:1 floor space ratio.
- b. Serviced apartment “voids” areas – identified as “mezzanines” however, are treated as floor space, as the voids consist of a volume, equal to additional floor area.
- c. Pedestrian link for public access between Victoria and George Streets required along western boundary – Clause 4.1.4 of DCP Part 36 requires the link to be 4.5–6m in width.
- d. Communal open space – inappropriate location adjacent to serviced apartments and inadequate provision. Roof(s) of building to be landscaped for communal use and not private use as proposed.
- e. Deep soil planting is not provided. Only a planter box located on western boundary.
- f. State Environmental Planning Policy (SEPP) No. 65 – urban design consultant engaged by council to address BLEP 2010 and DCP Pt 36 urban design issues – copy to be forwarded to applicant.
- g. Extension of street awning over street front setback area.
- h. Service truck manoeuvring issues within basement.

On 26 March 2012, Council advised the applicant of the above issues, and on 19 and 27 April 2012 amended plans were received. The amended plans addressed the above issues, including the SEPP 65 and Urban Design matters, however, did not

further address the pedestrian link matter. The excess 0.3:1 residential floor space has been converted into additional serviced apartments, so as to comply with the maximum FSR under BTC LEP 2010.

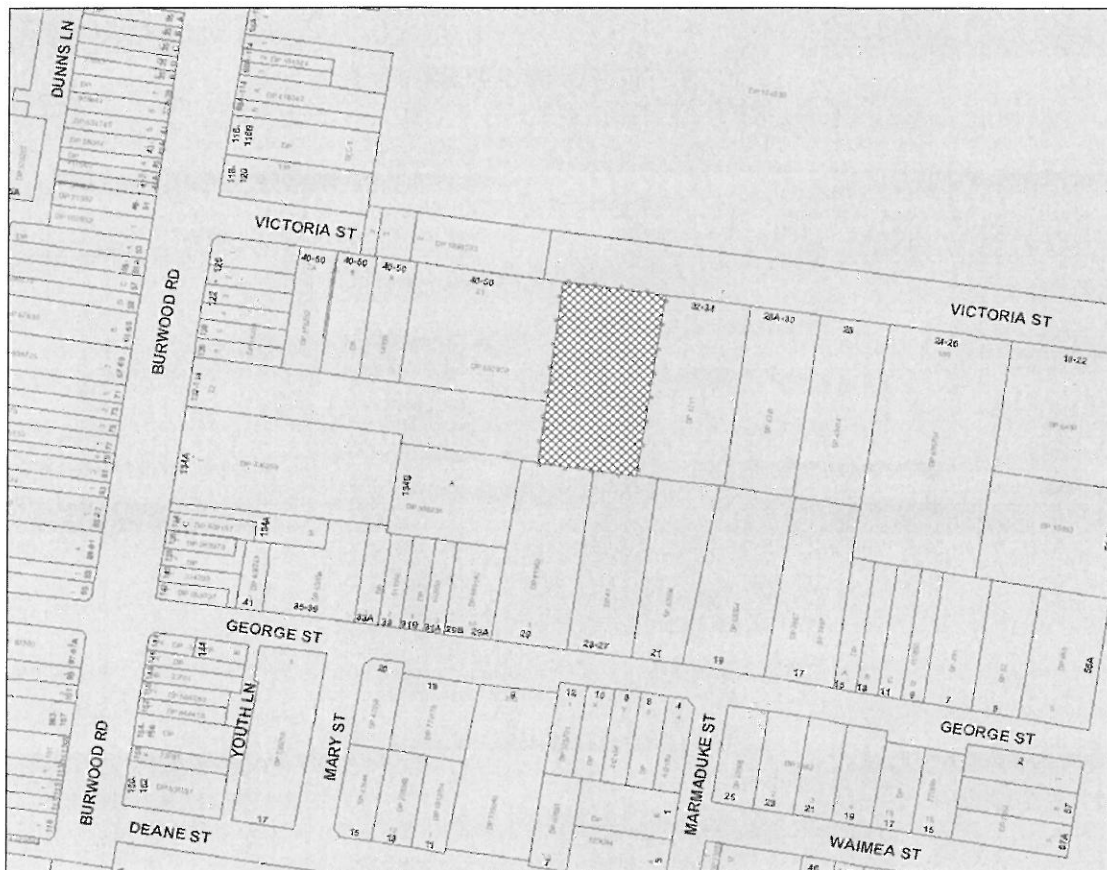
Statutory Requirements

Heads of Consideration

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

- The provisions of an environmental planning instrument – Burwood Town Centre LEP 2010;
- SEPP 65 – Design Quality of Residential Flat Buildings and the NSW Residential Flat Design Code;
- The provisions of Development Control Plans (DCP) Part 36 – Burwood Town Centre;
- The impact of the development in relation to:
 - The context and setting of the development;
 - The impact of the natural and built environment;
 - Shadowing of adjoining properties;
 - Traffic impacts;
 - Streetscape and urban design issues;
 - Crime prevention through environmental design;
- The suitability of the site for development;
- The public interest;
- Social and economic impacts; and
- Submissions made under the Act and Regulations.

Locality



Site & Surrounding Area

The site has an area of 1,849m², a Victoria Street frontage width of 30.55m, and a depth of approximately 60.30m. A three storey commercial building with a basement car park occupies the site. The frontage has a fall of approximately 0.7m from its eastern to its western boundary. The site has a fall of approximately 0.8m from its rear boundary to the street.

Westfield Shopping Centre is located to the north across Victoria Street, and its theatre complex is located on part of the western boundary of the subject site. A Child Care Centre is located on the roof of the theatre complex. The rear of the commercial properties (Nos. 132-134 Burwood Road) abuts the remaindering part of the western boundary of the site.

Residential flat buildings are located to the east and south-east of the site. The Burwood Gospel Chapel and hall is located to the south of the site.

Burwood Town Centre LEP 2010 & DCP Part 36

Burwood Town Centre LEP 2010

- Floor Space Ratio:
 - Total 4:5:1.
 - Maximum Residential 3:1.
- Height: Max 60m.

DCP Part 36 (Middle Ring Area)

- Podium Height: 15m.
- Street Front Setbacks: 3m.
- Secondary Setback: 6m.
- SEPP No. 65: requirements to be met.
- Pedestrian Link to be provided along western boundary – 4.5m to 6m in width.
- Communal Open Space to be provided.
- Deep Soil Planting to be provided.

The proposed B4 Mixed Uses under the Comprehensive Draft Burwood LEP 2012, reflects the development controls of BLEP 2010, for the Burwood Town Centre.

Assessment

The application is assessed under the development standards of Burwood Town Centre LEP 2010 – Mixed Use B4 zoning, and the controls under Burwood DCP Part 36 – Burwood Town Centre. The site is located within the Middle Ring Area under DCP Part 36.

| Development Standard | Permitted / Required | Proposed | Compliance |
|-----------------------------|--|---|-----------------------|
| <u>LEP 2010</u> | | | |
| Floor Space Ratio | 4.5:1 Total FSR | 4.5:1 | Yes |
| | 3:1 Maximum residential FSR | 3:1 | Yes |
| Building Height | 60m | Pt. 38m & Pt. 59.5m | Yes |
| Minimum Lot Size | 500m ² | 1,849m ² | Yes |
| Architectural Roof Features | Aesthetic contribution, create variety in skyline, promote design excellence | Included in design of building | Yes |
| <u>DCP Part 36</u> | | | |
| Street Front Setback | Victoria Street – 3m | 3m – street awning projects 2.4m | Yes/No |
| Communal Open Space | Landscape of 3m street front setback | Provided | Yes |
| Apartment Mix | Mix of 1, 2 & 3 bedroom units | 25x1br, 48x2br, 4x3br | Yes |
| Apartment Size | 1br – min. 50m ² | 1br – min. 53m ² | Yes |
| | 2br – min. 70m ² | 2br – min. 73m ² | Yes |
| | 3br – min. 95m ² | 3br – min. 106m ² | Yes |
| Building Depth | 18m | Varies: 11m - 14m | Yes |
| Ceiling Height | Commercial shops – min. 3m | 3m | Yes |
| | Residential – min. 2.7m | 2.7m | Yes |
| Public Pedestrian Link | 4.5m – 6m wide along western boundary | No provision – rear and eastern access not for public usage | No |
| Building Setback | <u>Western Boundary:</u> | | |
| | <i>Portion A (Victoria Street)</i> | | |
| | 4 storey – 0m | 0m | Yes |
| | 5 storey – 9m | 0 – 300mm | No (minimal openings) |
| | 9 storey – 12m | 0 – 300mm | No (minimal openings) |
| | <i>Portion B (Rear)</i> | | |
| | 4 storey – 6m | 10m | Yes |
| | 5 storey – 9m | 10m | Yes |
| | 9 storey – 12m | 10m | No |
| | <u>Eastern Boundary</u> | | |
| | <i>Portion A (Victoria Street) :</i> | | |
| | 4 storey – 6m | 6m | Yes |
| | 5 storey – 9m | 9m | Yes |
| | 9 storey – 12m | 9m | No |
| | <i>Portion B (Rear)</i> | | |
| | 4 storey – 6m | 6m | Yes |
| | 5 storey – 9m | 9m | Yes |

| | | | |
|--|---|---|-----------------------|
| | 9 storey – 12m | 9m – 12m | Yes/No |
| | <u>Southern Boundary:</u> | | |
| | 4 storey – 6m | 3m – 9m | Yes/No |
| | 5 storey – 9m | 9m | Yes |
| | 9 storey – 12m | 9m | No (minimal openings) |
| Separate Entry to Commercial & Residential | 2 separate entries | Provided | Yes |
| Private Open Space | 1 & 2br – 8m ² min. | 12 – 17m ² | Yes |
| | 3br – 10m ² min. | 50 – 110m ² | Yes |
| Storage Areas | 1br – 6m ³ (50% within unit) | 3m ³ | Yes |
| | 2br – 8m ³ (50% within unit) | 4.5m ³ | Yes |
| | 3br – 10m ³ (50% within unit) | 4m ³ | No |
| | | Private storage areas are provided within the basement car parking levels | |
| Safety & Security | Satisfy Crime Prevention and Safety Plan, clear sight lines of entry, lighting of common area. | Satisfactory | Yes |
| Access & Mobility | Access for people with mobility impairment - AS1428.1, AS1428.2 & AS1428.4 accessible units & visitor car spaces. | 11 accessible units & 12 access car spaces | Yes |
| Energy Efficiency & Sustainability | BASIX Certificate & commercial 4.5 star NABERS | BASIX Certificate & ABSA Certificate to achieve 4.5 star NABERS | Yes |
| Car Parking | Residential 79 Commercial & Service Apartments 27 Visitors 14 Total 120 | 120 | Yes |
| Bicycle Storage | 26 bays (1 per 3 dwellings) | 66 | Yes |

Pedestrian Link (DCP Part 36)

DCP Part 36 requires the provision of a public pedestrian link – Clause 4.1.4, to allow public access through Deane/George and Victoria Streets as follows:

Overview

Long street blocks are characteristic of Burwood Town Centre. They often increase walking distances and reduce accessibility for pedestrians. Pedestrian links between streets can increase the permeability of the pedestrian network by providing for public access through public and private development.

Objectives

- O1** To improve the pedestrian network in the Town Centre by providing well-located, safe and attractive pedestrian links between existing streets.
- O2** To increase the permeability of the pedestrian network by providing pedestrian links through private development.

Provisions

Pedestrian links are illustrated in Figure 4.1.4.

- P1** Existing pedestrian links must be retained or replaced.
- P2** Pedestrian links should be provided in development with frontage to a street exceeding 100 metres in length, at the approximate mid point of the frontage.
- P3** New pedestrian links should complement and link with existing and planned pedestrian links.
- P4** Any pedestrian link must:
 - have interactive uses

- be obvious and direct through-ways for pedestrians
- provide public access from at least 6am to 10pm daily
- have a minimum width of 4.5 metres, clear of all obstructions and where possible a width of 6 metres
- have access to natural light for part of their length wherever possible and at the openings at each end
- where air conditioned, have clear glazed entry doors comprising at least 50% of the entrance
- have signage at the street entries indicating public accessibility and the name of the street to which the connection links.

The applicant has advised that a pedestrian link is not provided, as it would require the building to be relocated and moved towards the eastern boundary. The amended comments of BBC Consulting Planners (consultant to applicant) further states:

"Pedestrian Link/Walkway

There appears to be some confusion on this issue. **The proposal does not propose a public pedestrian link within the site.**

Please refer to Section 4.3.8.1 (Pages 41 and 42) of the Statement of Environmental Effects (SEE) which cross references Figure 5G which shows the Council's planned pedestrian link running adjacent to the western boundary of the site. As stated on Page 42 of the SEE, the proposal does not impact on this link.

The proposal does provide for ground level access around the southern and eastern parts of the site but that is because the Applicant has not sought to extend the podium to those boundaries. However, it does not comprise a public pedestrian thoroughfare."

In regard to the provision of a pedestrian link as required by DCP Pt 36, Council's Strategic Planning section advises as follows:

"The diagram showing the location of pedestrian links is indicative only, as at the time of the DCP preparation it was not possible to foresee which sites would be redeveloped and conditions and constraints of sites were unknown. The DCP map (Figure 4.1.4) clearly shows a pedestrian link traversing both the subject site and the adjoining Westfield site, therefore both sites are considered to be affected by the DCP requirement. Other properties affected include No. 132-134 Burwood Road and No. 29 George Street.

The Westfield site is burdened by an easement for vehicle access, which makes the provision of a link unlikely, more reason for the subject site to encompass the link. Further, if the link was wholly provided on the Westfield site, it would require the rear portion of No. 132-134 Burwood Road to incorporate part of the link between Victoria Street and George Street. The rear of this site is a basement car park with vehicle access over the Westfield site and Council has not been approached by the owner of the property regarding future plans for redevelopment. Council has been approached by the owner of the property at No. 29 George Street regarding redeveloping the site for a mixed use building and the Pre-DA plans submitted to Council incorporate a pedestrian link along the western boundary in accordance with the DCP requirement.

Opportunity to complete a link between George Street and Victoria Street should not be missed. There is also a potential opportunity for the link to form part of a broader pedestrian network in the Town Centre. This includes an east-west connection between Elsie Street and the subject north-south link between George Street and Victoria Street.

Development at No. 36-38 Victoria Street should encompass a pedestrian link, and not be an arcade style. The link should be provided along the western boundary of the site and be a minimum 4.5 metres wide. Due to the level difference between the two sites, the pedestrian link does not have to be strictly straight. However, there should be clear sightlines. A link on this site is also more at the mid point of Victoria Street than the Westfield site.

It is recommended that the applicant be requested to amend the design to provide a public pedestrian link on the western boundary of the site as described above."

Given the above, the proposal is not acceptable as it does not make provision for a public pedestrian link through the western boundary of the site, to allow public access between the streets, when future adjacent sites are developed. Further there is a difference of approximately 4m in ground level between Victoria Street and the rear of No 29 George Street to the south and rear of the subject site. To

provide the pedestrian link as required by DCP 36 – Burwood Town Centre will necessitate a re-design of the ground floor of the development and may also compromise the vehicle access as proposed. This is considered sufficient reason for the application to fail on its merits given the importance from Council's point of view for the incorporation of the pedestrian through site link within the development.

Building Setbacks

The setback of the fore-portion of the building along Victoria Street does not satisfy SEPP 65 setbacks, however, given the Westfield Shopping Centre across Victoria Street, no objection is raised to this non-compliance with the side setbacks. The minor non-compliance with SEPP 65 setbacks of the rear portion of the building will not have an adverse impact on adjacent properties, and are considered acceptable.

Setback from Street Frontage

The proposed street awning extends to within 600mm of the existing kerb/gutter, notwithstanding a required 3m setback under DCP Part 36, to ensure improvements to the public domain. The awning can, however, be conditioned not to project more than 1m beyond the required building line.

Communal Open Space

The open space provided at level 1 along the western boundary has been embellished and provided with deep soil areas that is an improvement on the original proposal however it is "exposed" to view to the person using the access walkway to the serviced apartments along the western elevation of the building. The roof of the rear portion of the building has been retained as private open space. The overall amount of open space is satisfactory however the private open space should not compromise a satisfactory level of communal open space for any development.

SEPP No. 65 – Design Quality of Residential Flat Development

The application has addressed the Design Quality Principles in the SEPP 65 Design Report:

- Principle 1: Context.
- Principle 2: Scale.
- Principle 3: Built Form.
- Principle 4: Density.
- Principle 5: Resource, Energy and Water Efficiency.
- Principle 6: Landscape.
- Principle 7: Amenity.
- Principle 8: Safety and Security.
- Principle 9: Social Dimensions.
- Principle 10: Aesthetics.

The statements contained in the SEPP 65 Design Report are satisfactory and agreed with, with exception to Principle 7 – Amenity. Council's Urban Design Consultants are

satisfied with amendments to the proposal, as submitted on 27 April 2012, with exception for the non-provision of a public pedestrian link.

NSW Residential Flat Design Code (RFDC)

The documentation under the RFDC identify the development guidelines of the code – Building Depth, Setbacks from Boundaries, FSR, Deep Soil Zones, Landscape Design, Open Space, Orientation, Building Entry/Safety, Parking, Visual Privacy, Apartment Layout and Size, Apartment Mix, Building Configuration, Storage Provision, Acoustic Privacy, Daylight Access, Natural Ventilation and Building Facade Treatment.

The proposal principally satisfies the RFDC guidelines. Visual privacy to adjoining developments on the eastern boundary of the proposal can be alleviated with the provision of privacy screens to the edge of the balconies and additional landscaping.

Referrals

The Asset and Design Section has no objections to the proposed stormwater disposal concept, subject to standard conditions.

Council's Manager Traffic and Transport has recommended installation of bollards to shared areas for disabled car spaces, installation of convex safety mirrors as recommended by the Parking Impact Statement prepared by McLaren Traffic Engineering and the provision of adequate head room to the driveway and Basement 1 level for MRV or SMV service vehicles.

Health Services recommends standard conditions in regard to environmental and waste management.

Community Consultation

Twenty-three (23) Pro-Forma letter submissions and one (1) other individual submission were received, objecting to the development.

A summary of the objections and comments is as follows:

1. **Objection:**

"Loss of privacy due to large balconies, particularly on the eastern elevation."

Comment

The building setback from the eastern boundary has been amended to satisfy SEPP No. 65. The serviced apartments previously had extensive balconies and within 3m of the eastern boundary, they are now setback 6m. The 1m wide planting strip along this boundary would provide screening for the lower levels, with advanced tree planting. Upper level balconies can be provided with privacy/shading screens to 30% of its length to alleviate this issue.

2. **Objection:**

"Non-compliance with required building setbacks on the eastern and rear boundaries."

Comment

The amended eastern and rear building setbacks are generally in compliance with the RFDC recommended setbacks, with minor non-compliances, which are considered acceptable, as the non-compliances would not have an impact on adjacent properties.

3. Objection:

"The roof terraces be provided with privacy screens."

Comment

The roof terrace of the Victoria Street portion of the building serves two residential units and at this height will not cause a loss of privacy to the adjoining property located to the east of the site.

4. Objection:

"The 3m walkway along the eastern boundary will be a security risk and needs to be landscaped."

Comment

This walkway is for occupants of the building only and landscaping is proposed along the eastern boundary.

5. Objection:

"The development may have structural impact on the existing building to the east."

Comment

The development is contained within the site with four basement levels. The existing building currently has three basement levels. The builder/developer is required to ensure the structural integrity of existing buildings is not at any time compromised and if an approval is granted, dilapidation surveys of the adjacent properties are required to be carried out prior to release of construction certificate.

6. Objection:

"The development will aggravate the existing traffic congestion in the street and cause additional kerbside parking demand."

Comment

Council's Manager Traffic and Transport has advised that the development is not expected to have a major impact on the existing road network, and the design of the access into and egress out of the site is satisfactory. There is currently limited kerbside parking on Victoria Street, due to usage by public buses and vehicle access into Westfield Shopping Centre.

7. Objection:

"The development will create a wind tunnel to the area."

Comment

Given the building setbacks and landscaping along the eastern boundary, it is unlikely that a wind tunnel would result.

8. Objection:

"Loss of solar access."

Comment

The development has a north-south orientation, with the narrowed portion of the building on the southern end. Whilst some loss in sunlight is expected, the winter hours of solar access to adjacent properties is estimated to be at least 4+ hours.

9. Objection:

"The development will result in additional air and noise pollution."

Comment

The builder/developer is required to control noise and air pollution from the site. Residents can lodge a complaint to Council in regard to these two matters, which would then be investigated.

10. Objection:

"The development will have an adverse impact on the amenity of the existing neighbourhood."

Comment

Burwood Town Centre is and will undergo further change and development, in view of the making of BTC LEP 2010. The proposal is within the height, scale and bulk of the LEP and desired future character of the Town Centre. There will be "temporary" impact on the immediate adjoining properties within the Burwood Town Centre, until future re-development of remaining sites occurs.

Conclusion

The subject site is currently zoned B4 Mixed Uses under BTC LEP 2010. The exhibited Comprehensive Draft LEP 2012 for Burwood proposes to zone the subject site B4 Mixed Uses, which reflects the current zoning and development controls applicable under the current BTC LEP 2010.

The amended proposal complies with the controls under LEP 2010 and DCP Part 36, with exception to the provision of a public pedestrian link, as required under clause 4.1.4 - DCP Part 36. Council's Urban Design Consultant has viewed the amended proposal and considers the proposal acceptable under LEP 2010 and DCP Part 36, with exception to the pedestrian link.

Given that the applicant and Planning Consultant have stated that there is no provision for or intention to provide for the public pedestrian link, which is part of the strategy of the BTC LEP 2010 to allow for public access within the Town Centre, the application is considered unsatisfactory, unacceptable and is not supported for the reasons listed below.

Recommendations

That amended DA 12/2012 for demolition of the existing building at No 36-38 Victoria Street, Burwood, and construction of a mixed commercial and residential development, consisting of 4 commercial shop premises, 21 serviced apartments, 77 residential units (25 x 1br, 48 x 2br, 4 x 3br), over 4 basement car parking levels with 120 car spaces, be **refused** on the following grounds:

1. The non-provision of a public pedestrian link along the western boundary of the site, as required under the Burwood Town Centre DCP Part 36, is contrary to the objectives of Clause 4.1.4 Pedestrian Link of Burwood Town Centre DCP Part 36 to facilitate public pedestrian links within the Burwood Town Centre.
2. The non-provision of the public pedestrian link is not in the public interest.
3. The non-provision of the public pedestrian link is likely to undermine the provisions of the Burwood Town Centre DCP Part 36 and set an undesirable precedent for future development sites, which are affected by this requirement.

Attachment

1. DCP Part 36 Map – Figure 4.1.4 Location of Pedestrian Links.



Figure 4.1.4 Location of pedestrian links