

**Property:** 27-31 Belmore Street, Burwood

**DA No:** 89/2012

**Date Lodged:** 30 July 2012

**Cost of Work:** \$108,523,384

**Owner:** Goldfield Australia Pty Ltd

**Applicant:** Goldfield Investment Pty Ltd

<b>PROPOSAL</b>	Mixed Use Development: 3 storey podium and 3 residential towers (of 12, 13 and 14 storeys above) containing 222 residential units, 8,718m <sup>2</sup> of commercial/retail space, with 6 basement parking levels
<b>ZONE</b>	Mixed Use – B4
<b>IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE</b>	Yes
<b>IS THE PROPERTY A HERITAGE ITEM</b>	No
<b>BCA CLASSIFICATION</b>	2, 6 and 7a
<b>NOTIFICATION</b>	Neighbours: 16 August 2012 to 17 September 2012

## EXECUTIVE SUMMARY

This report considers a proposal to construct a mixed use building comprising a 3 storey podium with retail and commercial uses, 3 residential towers above the podium comprising 222 units, and 6 basement parking levels on land described as 27-31 Belmore Street, Burwood.

Planning Ingenuity Pty Ltd has been engaged by Burwood Council to provide the Joint Regional Planning Panel (JRPP) with an independent town planning assessment of this application, including the preparation of this report. Planning Ingenuity Pty Ltd has been assisted in this process by GM Architects and Urban Designers (GMU) and McLaren Traffic Engineering to provide an independent assessment of the proposal in relation to urban design and traffic related matters.

The proposed development is consistent with the height and density of development envisaged by the new suite of controls that apply to the Burwood Town Centre. The proposal also incorporates important elements of the public domain envisaged by Council's planning controls and is generally considered to display a high quality of architectural design and internal amenity.

The application has however, from the initial pre-development application consultation, through amendments to the current scheme, presented fundamental issues in relation to building separation. Council's Burwood Town Centre DCP Part No. 36, 2010 effectively adopts the building separation requirements of the Residential Flat Design Code (RFDC) under SEPP 65 for the purpose of its setback requirements. The proposal involves non-compliances with the required separation distances under the RFDC that have implications for amenity of the proposed residential component of the development, for the amenity of future surrounding development and the overall built form of the Town Centre.

Amendments to the design that was originally presented to Council in the pre-application forum have been made by the applicant throughout the process, however these changes are not considered to have

fully resolved all concerns. Notwithstanding, analysis of the proposal by GMU has culminated in development of principles for possible changes to the current scheme that would assist and most likely resolve the building separation issues that remain. These principles are detailed in the "Final Recommendation" of the Urban Design Assessment included at Annexure A.

Whilst adoption of these recommendations would require additional detailed design work on the part of the applicant, it is considered that these principles do not pre-empt any significant transformation of the overall nature of the development. In fact, the recommendations require little change to the commercial component of the development or the proposed public domain. The amendments would however significantly improve the amenity of the residential component of the proposal and the impacts of the proposal on surrounding development.

Further, the intersection design of the site entrance on Wynne Avenue is still raised as a concern by the Roads and Maritime Services (RMS). It would appear that this matter is nearing resolution however in the interests of satisfying the requirements of SEPP (Infrastructure) 2007 further consultation would be appropriate. Finally, the proposed floor space mix, exceeding the maximum residential control, is not supported. Refinements to the scheme encouraged above may result in closer compliance with this requirement.

Accordingly, given that the outstanding matters are considered to be capable of resolution but are not matters that can be covered by conditions of development consent it is considered that the most appropriate resolution would be to defer determination of the application in order to allow the applicant to address the following:

- Finalise consultation with RMS to reach agreement on intersection works at Wynne Avenue/site entrance;
- Further develop the massing of the proposal in accordance with the "Final Recommendation" contained within GMU Urban Design Assessment and in consultation with Council (pages 8 and 9);
- Remove units between grid lines 5 and 10 at Levels 4 and 5 to improve solar access to No. 33-35 Belmore Street (8 units between Towers B and C that bridge the opening to the proposed public square);
- Review use mix within the development to achieve compliance with DCP provisions; and,
- Communal open space to be provided to the Level 6 rooftop.

Should these matters not be satisfactorily addressed by the applicant within an appropriate timeframe, the application in its current form should be refused.

## **THE SUBJECT SITE**

The subject site is located on the northern side of Belmore Street between Burwood Road and Wynne Avenue. The site has a street address of No. 27-31 Belmore Street, Burwood and is legally known as Lot 3 in DP 816606 and Lot 1 in DP 817913. The site has a total area of 6,399m<sup>2</sup> and is L-shaped with a frontage to Belmore Street, Wynne Avenue and Clarendon Place (refer to Figure 1).

Existing on No. 27 Belmore Street is a hard stand public car park with 186 parking spaces both at grade and within a decked structure on the northern part of the site. Access to the car park is via a ramp from Wynne Avenue and egress is via a ramp and shared driveway running along the eastern boundary to Belmore Street. Existing on Nos. 29-31 Belmore Street is a part 2 and 3 storey commercial office building with basement parking accessed from Belmore Street.

An east-west walkway runs along the northern boundary of the site, providing pedestrian access from the existing car park to Burwood Plaza, as well as from Clarendon Place to Wynne Avenue. Fire exits from Burwood Plaza also discharge onto this walkway. The site is burdened by rights-of-way for vehicular access to and from Burwood Plaza and a sewer line runs diagonally across the site.



Figure 1: Site Location

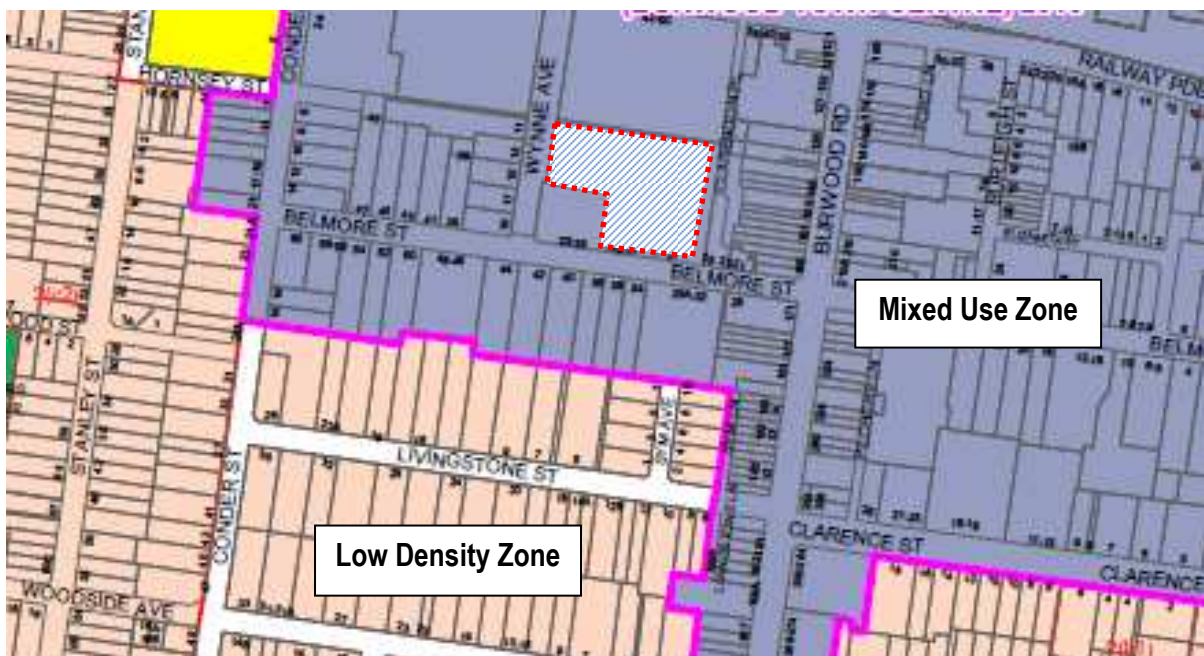


Figure 2: Zoning boundaries

## SITE CONTEXT

The subject site is located within the south-western part of Burwood Town Centre, in close proximity to Burwood Road and Railway Parade which are the main spines of the Town Centre. The site is approximately 300m from Burwood Railway Station. It is immediately adjacent to retail facilities within

Burwood Plaza and is well connected to the centre. The site is located within the 'Middle Ring Area' (as identified by the Town Centre LEP and DCP) which is expected to undergo significant transition to higher and more dense built forms under the current planning controls.

The current context of the site includes Burwood Plaza to the north which is a multi-level building with car parking above. This site is located in the 'Commercial Core Area' under the DCP and has the potential for development to 70m in height.

To the east beyond Clarendon Place is the primary retail/commercial strip fronting Burwood Road which extends north and south. Immediately adjoining the site to the east is No. 25 Belmore Street which is a 2 storey commercial building fronting Belmore Street on a 10 to 16m wide allotment. Further east is the rear of commercial and retail development that fronts Burwood Road.

To the south across Belmore Street is a mixture of retail/commercial and residential development. The scale of development is typically 3-4 storeys but ranges from 1 storey to 6 storeys. Belmore Street comprises an automotive repair use, church, grouped commercial uses, mixed use development with retail at ground floor and residential above and traditional walk-up flats. This area is identified as a 'Transition Area' under the DCP with a height limit of 15m.

No. 33-35 Belmore Street is located at the corner of Belmore Street and Wynne Avenue and immediately adjoins the subject site to the south and west. Existing on this site is a 7 storey mixed use development with retail uses at ground floor and residential uses above. This property is the only immediate residential interface with the subject site.

Across Wynne Avenue to the west is an existing on-grade public car park. This site is located within the 'Middle Ring Area' and has the potential to development up to 60m in height.

Given the range of potential building heights between the Commercial Core, Middle Ring and Transition Areas, the site context is likely to significantly change in the future as a result of the relatively new Town Centre LEP and DCP.

## **THE PROPOSAL**

The proposed development involves demolition of existing structures on the site including decked parking and a commercial building fronting Belmore Street and construction of a mixed use development over basement parking. The development comprises the following:

- Six levels of basement parking providing 593 parking spaces. Both public and private parking is provided with access from Wynne Avenue;
- A three storey podium including 8,718m<sup>2</sup> of retail and commercial floor area; and
- 222 residential units within three towers above a shared podium.

The site area is 6,399m<sup>2</sup> and the total floor space proposed is 28,786m<sup>2</sup>, resulting in an FSR of 4.5:1.

The applicant proposes to enter into a Voluntary Planning Agreement (VPA) in respect of the provision of public parking and the pedestrian way. The applicant indicates that this is a response to contractual obligations related to purchase of the site. Specifically, the VPA includes construction of and dedication to Council of a car park comprising 185 car spaces and a pedestrian right of way from Wynne Avenue to Clarendon Place, along the Pedestrian Way.

## BACKGROUND

In June 2011, Goldfield Australia Pty Ltd reached agreement to purchase No. 27 Belmore Street (Site C) from Council via a public tender process.

On 29 March 2012 a Pre-DA meeting was held between the applicant and a group of independent consultants engaged by Council to undertake the assessment, including Planning Ingenuity (planning), GMU (urban design) and McLaren Traffic Engineering (traffic). The consultants raised several issues in relation to the development concept and indicated that the scheme would not be supported in the form presented. The primary concerns related to:

- Overall FSR non-compliance and excess of parking spaces;
- Site isolation in relation to No. 25 Belmore Street;
- Building setbacks and street front treatment to Belmore Street and Wynne Avenue;
- Amenity impacts to adjoining properties including solar access and privacy;
- Traffic and parking implications, including provision and management of public car park;
- Consideration of Wynne Avenue in terms of public domain presentation; and
- Fundamental urban design issues relating to building presentation and the relationship with adjoining properties.

On 30 July, 2012 the subject development application was submitted to Council. The applicant submits that the following design changes were provided in response to Council's pre-DA advice:

- Increased public parking spaces to replace all existing spaces;
- Modifications to the proposed vehicle access and loading arrangements to improve safety;
- Changes to building design to increase solar access to the residential properties to the south.

Council engaged Planning Ingenuity, GMU and McLaren Traffic Engineering to undertake independent assessment of the development application on behalf of Council.

Preliminary review of the development application concluded that a number of fundamental issues in terms of scale and form remained, as well as potential amenity impacts on surrounding properties. Deficient car parking and site isolation of No. 25 Belmore Road were also matters raised. A letter was provided to the applicant which included a detailed urban design assessment prepared by GMU (refer to **Annexure B**).

On 11 October, 2012, the independent consultants and Council officers met with the applicant to discuss the contents of the letter referred to above. In terms of urban design, discussion focussed on the design of the through site pedestrian link, building separation and massing of the development. The applicant did not present amended plans to this meeting however foreshadowed that changes would be made to the scheme in response to the preliminary assessment.

On 19 October, 2012 the applicant and their planning consultants met with Planning Ingenuity and Council's Manager Building and Development. At that meeting, discussion focussed on:

- Acknowledgement by the applicant that car parking would be made to comply, as would height and secondary street setbacks to Belmore Street;
- Proposed treatment to the eastern elevation of Tower B;
- Improvements to the cross section through the proposed loading dock and adjoining No. 33-35 Belmore Road;
- Mediation of levels within the northern through site link and its landscape treatment;

- The applicant indicated that further solar access analysis had been undertaken in relation to the north facing units at No. 33-35 Belmore Street. It was suggested that transfer of units on Levels 4 and 5 between grids 5-10 to elsewhere on the site would assist with providing an additional 15-30 minutes of solar access to No. 33-35 at mid winter, thereby providing some sunlight to units that would receive no sunlight as a result of the scheme.

On 5 November 2012 the applicant submitted a revised development application package including Issue B Plans dated 5 November 2012. The following summarises the applicant's response to the main issues raised by Planning Ingenuity in the correspondence dated 20 September and the subsequent meetings.

- The provision for 593 parking spaces has now been made;
- The commercial loading dock area has been reconfigured so that adjacent roof gardens do not extend above the levels of existing boundary masonry walls and soil depth has been increased;
- The lower roof garden has been increased in width to 3.15m;
- Access to the pedestrian way from Wynne avenue has been modified to provide a wider urban staircase with a more gradual rise and improved sight lines;
- The massing alternatives to transfer some units on Level 4/5 between grids 5-10 were not adopted by the applicant.

A number of issues and inconsistencies were raised with the revised package. The applicant was advised of these issues and inconsistencies and a further revised submission was provided on 15 November 2012 including Issue C plans dated 14 November 2012. The Issue C plans form the subject of this assessment. The Issue C plans incorporate the following changes:

- Reconfiguration of business and retail space within the podium;
- Reconfiguration of units to comprise 61 x 1 bedroom, 153 x 2 bedroom, and 8 x 3 bedroom;
- New internal lobby from Wynne Avenue frontage;
- Increased parking to accommodate 593 spaces over 6 basement levels;
- Increased bicycle parking associated with commercial uses;
- Revised landscaping including treatment to the pedestrian link and public open space at ground level, podium level common open space, the Wynne Avenue frontage and loading dock areas;
- Alteration to the loading dock, lowering the ceiling level adjacent to the boundary with Nos. 33-35 Belmore Street;
- Additional articulation of building facades, particularly Tower B to reduce building bulk and scale.

The application has been reviewed by GMU Architects and Urban Designers and McLaren Traffic Engineering. The review by GMU is attached and discussed where relevant in this report (refer to **Annexure A**). McLaren Traffic Engineering has provided draft traffic conditions, should the application be approved.

## **STATUTORY PLANNING FRAMEWORK**

The proposed development is subject to the following Environmental Planning Instruments (EPIs), Development Control Plans (DCPs), Codes and Policies and Draft EPIs and DCPs:

- State Environmental Planning Policy No. 55 – Remediation of Contaminated Land;
- State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;



- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (State & Regional Development) 2011;
- Burwood Local Environmental Plan (Burwood Town Centre) 2010;
- Draft Burwood Local Environmental Plan 2012; and
- Burwood Town Centre Development Control Plan.

The subject site is located within the Mixed Use B4 zone under the Burwood Local Environmental Plan (LEP) (Burwood Town Centre) 2010 and mixed use development is permissible with consent.

The site is not a heritage item or located within a heritage conservation area.

### **State Environmental Planning Policy No 55 – Remediation of Contaminated Land**

This policy provides a framework for the assessment, management and remediation of contaminated land. Clause 7(1) of the Policy prevents Council from consenting to development unless:

- a. It has considered whether the land is contaminated, and
- b. 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, and
- c. If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The application submission included a Preliminary (Phase 1) Site Investigation Report prepared by Douglas Partners. This report concludes that *'generally the site has low risk of soil contamination with respect to the proposed development'*. The report further recommends given the limited sampling, that the following take place post approval:

- Additional sampling and testing within the proposed basement footprint, following demolition of the current building and car park, to verify the preliminary waste and VENM classifications provided.
- Additional sampling and testing in areas of the site outside the proposed basement footprint in order to confirm that the retained soils do not present human health or ecological risk under the proposed development; and
- Preparation of contamination assessment reports addressing both recommendations.

The above recommendations could be included as consent conditions, should approval be granted.

### **State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

Part 2 of the Policy sets out 'Design Quality Principles' and Clause 30(2) requires the consent authority, in determining a development application to take into consideration the design quality of the residential flat development when evaluated in accordance with these design quality principles.

A *Design Verification* has been submitted with the application and therefore the development application meets the requirements of Clause 50 of the EP&A Act.

An independent Urban Design review, providing assessment on SEPP 65 compliance of the application, has been carried out by GMU and is attached as **Annexure A** of this report.

The Urban Design Assessment Report concludes as follows:

“ GMU considers that the proposal has resolved a number of significant issues with regards to its approach to Wynne Avenue and the pedestrian link as well as issues including the level of safety, security and internal way-finding. However, it is GMU's opinion that the proposal has not yet properly addressed the separation and setback issues with adjacent properties mainly for levels above the podium which lead to lack of privacy, overlooking and compromised amenity for current and future residents. The proposal has also failed to address the overshadowing issues to the neighbouring properties namely those located along the northern boundary of 33-35 Belmore Road. The impact to this property in terms of total loss of solar access is too significant to be ignored. It puts in question the overall planning and distribution of built form above the proposed podium levels.

The Applicant has provided a number of justifications as to why these non-compliances should be assessed upon merit; however, it is GMU's opinion that the cumulative effect of all the non-compliances with regards to separation and setbacks will set the wrong precedent for future development in the Burwood CBD, if this proposal were to be approved in its current form.

For this proposal to be fully supportable, it is paramount that these issues are better resolved, especially in areas where amenity i.e. privacy, overshadowing and outlook to adjacent and future developments is compromised. The following sketch illustrates a number of suggested design modifications in order to address the issues discussed above with regards to the separation distances.”

The Urban Design Assessment Report provides a sketch illustrating the way in which a number of the primary design issues relating to building separation may be addressed. This image is reproduced and discussed in further detail in the “building separation” section of the Town Centre DCP compliance assessment.

### **NSW Residential Flat Design Code**

Clause 30 of SEPP 65 requires that in determining a development application, the consent authority consider the NSW Residential Flat Design Code. Given that Council's DCP largely defers to the RFDC for core built form controls, discussions of compliance with the RFDC is contained in the Town Centre DCP section of this report and in the separate Urban Design Assessment Report (refer to **Annexure A**). The proposal is generally consistent with the RFDC with the exception of building separation.

### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

This Policy seeks to ensure that new development is designed to use less water and be responsible for fewer greenhouse gas emissions by setting energy and water reduction targets, which are based on the NSW average benchmark. The Policy also sets minimum performance levels for the thermal comfort of a dwelling.

The original application was accompanied by a BASIX certificate for each residential tower (Issue A plans). Provision of revised BASIX certificates to reflect the final building design would be required prior to determination.

### **State Environmental Planning Policy (Infrastructure) 2007**

This policy requires Council to refer this application to the Roads and Maritime for consideration due to the proposed amount of parking and commercial floor area.

No formal referral response has been received from RMS to date. There remains an outstanding issue regarding traffic signalling at Wynne Avenue. As such further consultation is required to resolve this matter prior to determination.



### **State Environmental Planning Policy (State & Regional Development) 2011**

The proposal is development nominated in Part 4 of this Policy, being development that has a capital investment value exceeding \$20 million. Consequently the Joint Regional Planning Panel is the consent authority for this application.

### **Burwood Local Environmental Plan 2012**

The Burwood Local Environmental Plan 2012 came into effect on 9 November 2012. It replaces (and consolidates) the Burwood Planning Scheme Ordinance (BPSO) and the Burwood Town Centre (BTC) LEP 2010.

Clause 1.8A of the LEP provides a savings provision whereby if a development application has been made before the commencement of the LEP and the application has not been finally determined before that commencement, the application must be determined as if the LEP had not commenced.

The current application was lodged on 30 July 2012. As such, determination of the subject application is made pursuant to the now repealed Town Centre LEP 2010 and BLEP 2012 is considered as a Draft Environmental Planning Instrument.

In any case, in consideration of the new LEP, the following key factors are noted:

- The B4 zoning of the subject site will not change;
- The permitted height of 60m will not change;
- The permitted FSR of 4.5:1 will not change; and
- Public parking remains an exclusion from gross floor area.

### **Burwood Local Environmental Plan (Burwood Town Centre) 2010**

The Burwood LEP (Burwood Town Centre) 2010 came into effect on 10 May 2010 and was repealed by Burwood LEP 2012 on 9 November 2012. The now repealed LEP remains applicable to the proposed development as discussed above.

The subject site is zoned *Mixed Use B4* pursuant to Burwood LEP. Within this zone, “business premises”, “office premises”, “residential flat buildings” and “retail premises” are permissible with consent from Council. The following table illustrates the proposal’s compliance with the applicable development standards contained within the LEP.

<b>TABLE 1: Burwood Town Centre LEP 2010 – Compliance Table</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
Minimum Lot size	500m <sup>2</sup>	6,399m <sup>2</sup>	Yes
Building Height	60m	60m	Yes
Building Height Plane	1.8m line height projected north at 30 degrees from Belmore Road	Building within height plane	Yes
Floor Space Ratio	4.5:1	4.50:1 (28,786m <sup>2</sup> )	Yes
Residential FSR	3.0:1	3.14:1 (20,068m <sup>2</sup> )	<b>No</b>
GFA exclusions	Any part of a building (whether located at, above or below ground level) that is	Public parking is provided within the basement and has been	Yes

	used for public car parking that is owned or operated by or on behalf of the consent authority immediately before the commencement of this Plan is excluded from building's gross floor area.	excluded from the gross floor area figure.	
Heritage Conservation	Development in the vicinity of a heritage item must consider impacts on that item	The subject site is in the vicinity of 4 heritage items. See discussion below.	Yes

The proposed development complies with the applicable planning controls under the LEP, with the exception of maximum residential floor area (Clause 4.4A). The applicant has provided justification in accordance with Clause 4.6 of the LEP as follows:

#### Clause 4.4A

##### *Applicant's submission*

Burwood Town Centre LEP requires a residential FSR of 3.0:1 which equates to 19,197m<sup>2</sup>. The objectives seek to limit residential density in the Town Centre and to facilitate the enhancement of residential character in the transition from the inner part of the Town Centre towards its boundary.

The proposed development will provide a residential FSR of 3.14:1 or 20,068m<sup>2</sup> which represents 871m<sup>2</sup> in excess of the maximum residential gross floor area or 4.5% variation to Clause 4.4A of the LEP.

The main justification for the variation, in accordance with Clause 4.6, is summarised as follows:

- The development will provide for a significant number of jobs, contributing to the overall job targets for Burwood Town Centre;
- Reducing the potential non-residential floor space has minimised the potential amenity impact of the development on the adjoining residential property. It is considered unreasonable to reduce the overall GFA/FSR based on the need to reduce the non-residential floor space at the lower levels to accommodate the adjoining development;
- The proposed development is consistent with the objectives of the B4 Mixed Use zone to provide a mixture of compatible land uses in accessible locations to maximise public transport and sustainable transport uses;
- The proposal incorporates a significant public benefit through the provision of public car parking and high quality pedestrian linkages between Wynne Avenue, Belmore Street and Clarendon Place. The proposed design of these pedestrian linkages goes beyond the requirements of the DCP and makes a significant contribution to the quality of pedestrian access and public domain amenity within the Burwood Town Centre. Only a limited number of sites in the Town Centre area likely to present similar benefits that would justify a minor variation to the residential FSR control.
- The redevelopment site has a number of constraints that limits its development potential, including the existing sewer line and the need to retain existing car parking spaces. The minor variation enables a reduction in the total number of parking spaces as residential uses require less on-site car parking compared with non-residential uses.

##### *Assessment comment*

It is considered that the applicant has not adequately demonstrated that the objectives of the clause are met. It must be assumed that the intent of transitioning to a higher proportion of residential uses on sites

further from the core of the Town Centre has been taken into account in the drafting of the “FSR mix” controls. That is, compliance with the control would represent a reasonable transition. Conversely, it is our view that the objectives of the control place emphasis on limiting residential development in certain areas, not amplifying it for the sake of transition. This limitation on residential use would appear to be underpinned by economic as well as urban design objectives. The applicant has provided no evidence to demonstrate the implications on the commercial make up of the Town Centre, particularly if this control were varied or abandoned on other sites across the Town Centre.

The applicant’s argument that residential development will have fewer impacts than commercial development on surrounding development is also not accepted. Subject to appropriate design responses there may be less need to treat boundary interfaces for commercial development than situations where balconies and living areas are oriented to the edges of a site.

In relation to the proposed public domain improvements, in our view, there is no relationship between these aspects of the proposal and the proposed variation. The applicant has provided no evidence as to how the proposed “public domain package” exceeds the requirements of Council’s DCP and what the nexus is between these improvements and the proposed variation.

Finally, in terms of site constraints, we note the applicant’s argument that more parking would be required for commercial development. We also note however that the lower basement levels of parking have been designed to avoid the Sydney Water sewer and this approach could be repeated on additional levels. Alternatively, use mixes could be manipulated to achieve closer compliance with parking controls.

This matter was raised with the applicant in pre-application discussions and the applicant was advised that given the infancy of the planning controls, the strategic intent of the control remains valid and variation is unlikely to be supported. The additional information provided by the applicant does not appease these concerns. It is considered that this matter could be further considered in any design refinements that may be pursued in accordance with the recommendation of this report.

#### Clause 5.10

The subject development is in the vicinity of the following 4 heritage items listed in Burwood LEP 2010:

- Federation Shops (first floor facades only), located at 135-139 Burwood Road;
- Shops (first floor facades only), located at 157-159 Burwood Road;
- Shop facades only, located at 171-171D, 185D, 185E and 187 Burwood Road; and
- Saint James Church and Hall, located at 46-48 Belmore Street.

A Heritage Impact Statement prepared by Urbis dated July 2012 was submitted with the application package. This report provides that the proposed development will not impact on the heritage significance of shops along Burwood Road and the Church and Hall along Belmore Street.

In relation to the site, the following recommendations have been provided:

- During site works, should any historical relics be discovered, works should cease and the Heritage Branch of the Office of Environment and Heritage should be contacted for further information;
- During site works, should any Aboriginal objects be discovered, works should cease and the regional office of the office of Environment and Heritage should be contacted for further information; and

- Whilst the sewer is not heritage listed across the subject site, there is a tunnel of unknown dimensions and appropriate mitigation measures should be undertaken to avoid impacting on these built elements during excavation and construction of pad footing.

The above recommendations could be included as conditions of consent if approval were to be granted.

### **Development Control Plan – Part No. 36 – Burwood Town Centre**

DCP – Part No.36 was adopted by Burwood Council on 2 June 2009 and took effect when the Town Centre LEP came into effect on 10 May, 2010. Compliance with the DCP controls is summarised in the following table:

<b>TABLE 2: Development Control Plan – Part No. 36 – Burwood Town Centre</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Complies</b>
Site isolation	Demonstrate that attempts made to acquire land and demonstrate development potential;	Adequate evidence provided	Yes
Podium height	15m	15m	Yes
Street front setback	Belmore Street - 3m	<3m, aligns with adjoining building at Nos. 33-35	<b>No</b>
	Wynne Avenue - 0m	5m	<b>No</b>
Secondary setback	Belmore Street – Min. 6m (above 15m podium)	Tower A: 4.6m (L5)	<b>No</b>
		Tower A: 6m (L6-15)	Yes
		Tower B: 19m	Yes
		Tower C: 8.8m	Yes
Side setback/building separation	Per RFDC	Refer to table below	<b>No</b>
Building length parallel to street above podium	45m	Building C – 24.5m of 51m building length parallel to Clarendon Lane	Yes
Communal Open Space	25-30% of site area (as per RFDC)	20.7% of site area	<b>No</b>
Apartment Mix	Mix of 1, 2 and 3 bedroom units	61 x 1 bed 153 x 2 bed 8 x 3 bed	Yes
Apartment size	1 bed = 50m <sup>2</sup> 2 bed = 70m <sup>2</sup> 3 bed = 95m <sup>2</sup>	1 bed: 59.6 – 65.98m <sup>2</sup> 2 bed: 74-89.5m <sup>2</sup> 3 bed: 112-145.9m <sup>2</sup>	Yes
Building Depth	18m (as per RFDC)	Tower A: 24m	<b>No</b>
		Tower B: 18m	Yes
		Tower C: 22m	<b>No</b>
Ceiling height	Commercial – 3.3m (ground level) 3.0m (above ground)	Floor levels provided in excess of minimum requirements	Yes
	Residential - 2.7m (habitable) 2.4m (non-habitable)	As above	Yes
Natural ventilation	60% of units (as per RFDG)	56% (natural ventilation)	<b>No</b>

		5% (mechanical controlled) Total: 61%	
Daylight access	70% of units to achieve 3 hours to living rooms/ private open spaces in mid-winter (as per RFDG)	58% - 3 hours 25% (additional) - 2 hours Total >2 hours = 83%	<b>See discussion</b>
Private open space	1 & 2bd – 8m <sup>2</sup> / 2m 3 bed – 10m <sup>2</sup> / 2.5m	4 units do not meet minimum dimensions.	<b>No</b>
Storage Areas	1 bed – 6m <sup>2</sup> 2bed -8m <sup>2</sup> 3bed – 10m <sup>2</sup> (as per RFDC)	98.6% of units comply.  Units 1606, 1607 and 1608 do not comply.	<b>No</b>
Location of storage	50% within unit and balance within basement	50-50% split between basement and units.	Yes
Safety and Security	Satisfy Crime Prevention and Safety Plan, clear sight lines of entry, lighting of common areas	Satisfactory	Yes
Access and mobility	Comply with AS 1428;	23 adaptable units & parking spaces	Yes
Energy Efficiency and Sustainability	BASIX Certificate for residential apartments	Certificates provided for each residential tower.	Yes
Car parking	Retail: 114.35 Commercial: 29.2 Residential: 226 Visitor: 37 Public: 185 Total: <b>592</b>	     593 spaces	     Yes
Bicycle Parking	1 per 3 dwellings = 74	74 (resident and business)	Yes
Public parking strategy	Provide showers/ locker rooms.	Provided on B2.	Yes
Public domain	Where public car parking is to be redeveloped, the first basement level is to be allocated as public car parking by way of an easement in a strata subdivision to offset loss.	185 public spaces provided in levels B1, B2 and B3.	Yes
Pedestrian Ways	Pedestrian way between Wynne Avenue and Clarendon Place.	A 9.5m wide open pedestrian way provided along northern portion of site;	Yes
	Unobstructed by buildings; Minimum width 9.5m;	A 1.6m overhang is proposed into pedestrian way;	<b>No</b>
	Passive surveillance from balconies above;	Achieved.	Yes
	Shopfronts to be setback from pedestrian way.	To be setback 1.2m from edge of pedestrian way.	Yes
Treatment of street front setbacks	A right of pedestrian and vehicle movements by creation of an easement is required.	Would serve no purpose as continual street front setback along Belmore St not provided by existing/proposed development (including No. 33-35).	Yes

The proposal does not comply with respect to the following requirements:

### **Street front setback**

Part 2.2.1.2 of DCP 36 requires a 3m street setback to Belmore Street. The street alignment of Belmore Street is stepped, being 3m further forward at its eastern end than its western end. The eastern portion of the Belmore Street façade will be setback the required 3m, however the western portion of the façade where it aligns with Nos. 33-35 Belmore Street is proposed with a 400mm setback to the boundary. The proposed alignment has been adopted to achieve consistency with the existing built form at Nos. 33-35 Belmore Street and is considered to achieve the intent of the provision which is to maintain a strong and consistent street interface. In contrast, compliance with the control would create a disjointed streetscape. It is noted that the existing building on the site provides a similar non-compliance.

Part 2.2.1.2 requires a nil setback to the Wynne Avenue frontage. The proposal provides a setback of 5m which aligns with the elevated ramp to Burwood Plaza. The proposed increased setback is considered appropriate as it provides for landscape treatment that will assist with softening this frontage which is dominated by vehicular and pedestrian access points. The applicant has also indicated that the location of the elevated ramp creates a linear barrier and prevents meaningful use of this area. As such the proposed variation to the street front setback is supported.

### **Secondary setback (Belmore Street)**

Part 2.2.1.2 of DCP 36 requires a secondary setback of 6m above the 15m podium. Tower A, fronting Belmore Street, complies with this setback requirement with the exception of Level 5 which provides a reduced setback of 4.6m. The reduced setback relates to an extended portion of balcony which creates a continuous horizontal band across the front elevation of the building and breaks up the glazed façade between Levels 4 and 5. The setback at this level will better align with the adjoining setback at this level to Nos. 33-35 Belmore Street and results in no significant amenity or visual impacts. As such the reduced secondary setback at Level 5 is supported.

### **Side and rear setbacks / Building separation**

Part 2.2.1.4 of DCP 36 adopts the building separation provisions of the RFDC for the purposes of setback controls. These controls require:

- Up to 4 storeys (12m) – 12m between habitable rooms/balconies; 9m between habitable balconies and non-habitable rooms; 6m between non-habitable rooms.
- 5-8 storeys (up to 25m) - 18m between habitable rooms/balconies; 13m between habitable rooms/balconies & non-habitable rooms; 9m between non-habitable rooms; and
- 9 storeys and above (over 25m) - 24m between habitable rooms/balconies; 18m between habitable rooms/balconies & non-habitable rooms; 12m between non-habitable rooms.

The proposed setbacks and building separation remains the most significant issue related to this application. Ultimately, the proposal raises substantial concerns as to the acceptability of the proposed siting of each tower in relation to potential future development of adjoining sites. Given the relatively new suite of Town Centre controls that encourage significantly higher density and height, it is considered that future development is likely on some adjoining properties and the potential form of such development should be analysed.

This assessment is however made difficult by the fact that some adjoining properties have already been redeveloped, such as that to the south and west at Nos. 33-35 Belmore Road, but may also have further

future potential. Other challenges are putting into context the likely redevelopment potential or form of highly constrained sites such as No. 25 Belmore Road to the east.

Accordingly, in the following assessment, consideration has been given to existing development, the likelihood of future development and the appropriateness of the proposed development in relation to existing and future development on each immediately adjoining site.

Of assistance to this assessment, the applicant has provided indicative future development options for adjoining development to illustrate potential sharing of separation requirements and submits that suitable building separation could occur in the event that surrounding sites were redeveloped (see figure 3).

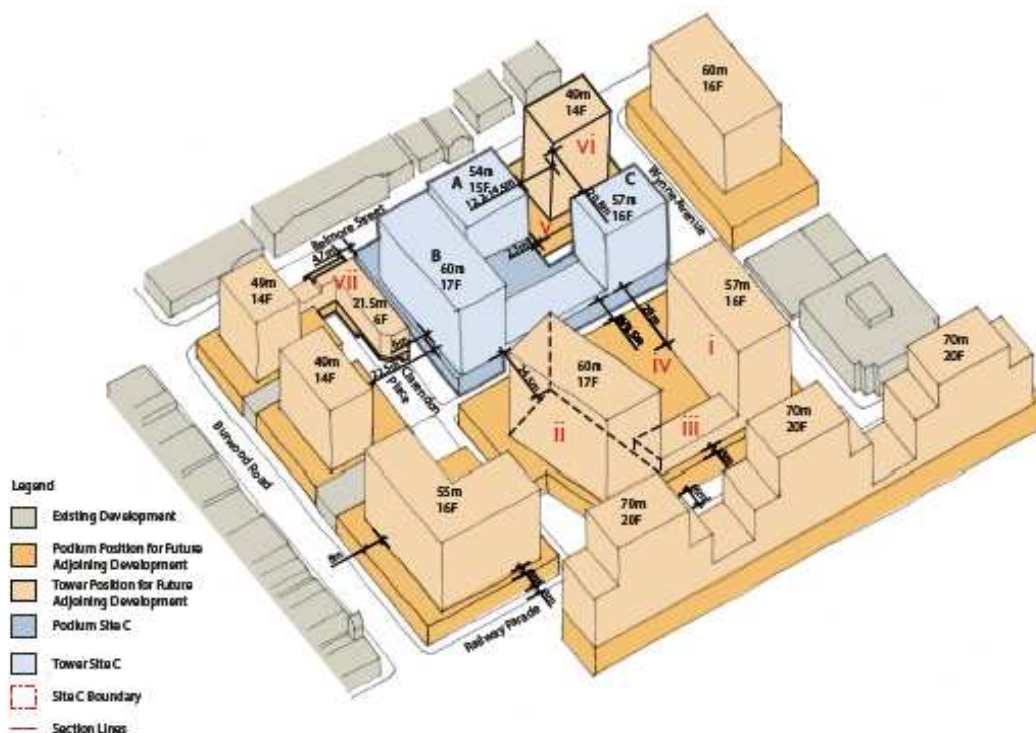


Figure 3: Separation model (page 45 – Project Design Report prepared by AJC)

#### Towers B and C to Burwood Plaza (to north)

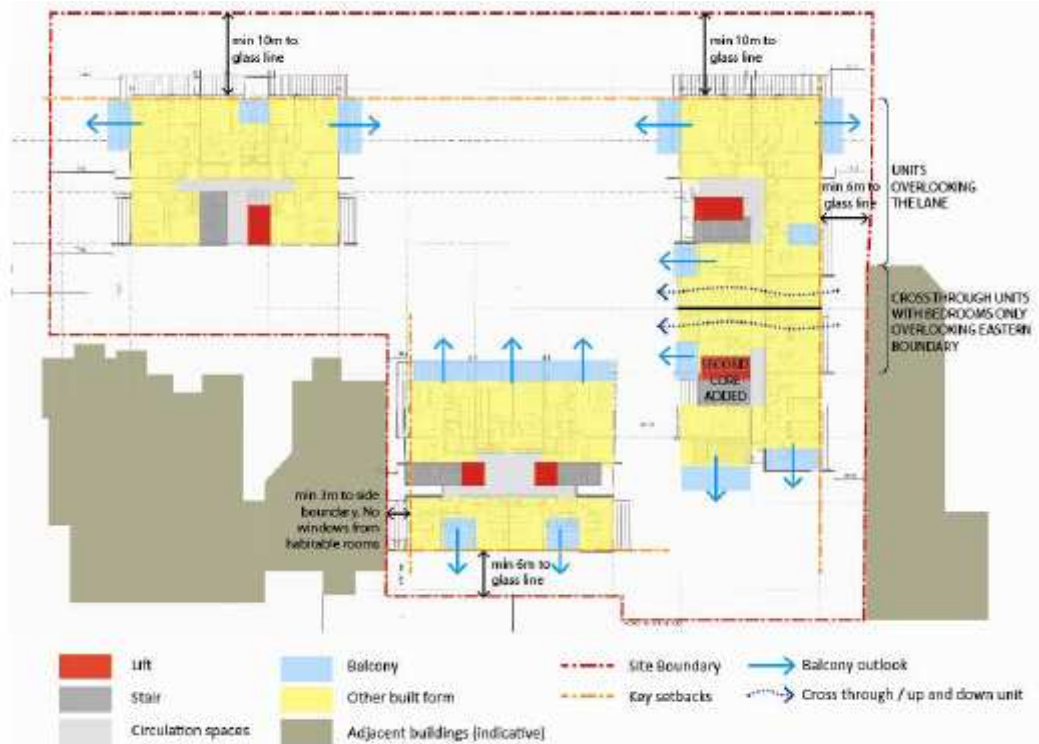
Levels 1 and 2 of the adjacent Burwood Plaza are situated on a nil setback to the common boundary with the subject site. However the proposal easily meets the 6m separation requirement between non-habitable rooms for the levels of the development adjacent to that building.

The Burwood Plaza site is however subject to a 70m height limit and 6:1 FSR requirement under the Town Centre LEP and therefore is likely to be redeveloped in the future. We are instructed that conceptual planning has been undertaken for future development scenarios. On the basis of future development scenarios, the Burwood Plaza site would incorporate some residential uses, likely to be in the form of towers above a podium.

Whilst the proposal provides in excess of 50% of the total separation distance up to 4 storeys, it does not provide its 50% share of the 18m separation required between 5 and 8 storeys or 12m required over 9 storeys. Rather the proposal provides a 7.9m setback from the northern boundary which is up to 4.1m deficient of providing half of the separation. Note, given the requirements for residential/commercial split of uses on the Burwood Plaza site, only 18m may be required for separation to parts of future towers.







**Figure 5: Suggested design modification (page 8 GMU Urban Design Assessment)**

#### Tower A to 33-35 Belmore Street

The existing building on No. 33-35 Belmore Road is built to the common boundary with the subject site and its eastern elevation is a blank wall. Proposed Tower A has a nil setback to Level 3 and from Levels 4 to 9 has a 2,350mm setback to the external wall and 1m to balconies off the north-western corner. Level 10 and above have a nil setback to balconies.

Therefore, the proposal results in non-compliance with building separation requirements both in terms of existing development and potential future development on No. 33-35. In terms of the proposal's relationship with the existing building at No. 33-35, the proposal introduces privacy measures such as blade walls and privacy screens to address potential conflicts with a Level 6 roof light well/courtyard and south facing balconies on Levels 5 and 6 (refer to Figure 6).

In terms of future redevelopment potential, it is noted that No. 33-35 Belmore Street is a strata scheme with a large number of units. This presents challenges for future redevelopment however, under the current planning controls additional density is available for take up on the site. The applicant has presented a conceptual scheme that shows a development scenario for this site that places a tower element towards the corner of Wynne Avenue and Belmore Street, providing for its 50% of the RFDC separation requirement. In contrast, the subject proposal at most levels does not contribute to the separation requirement.

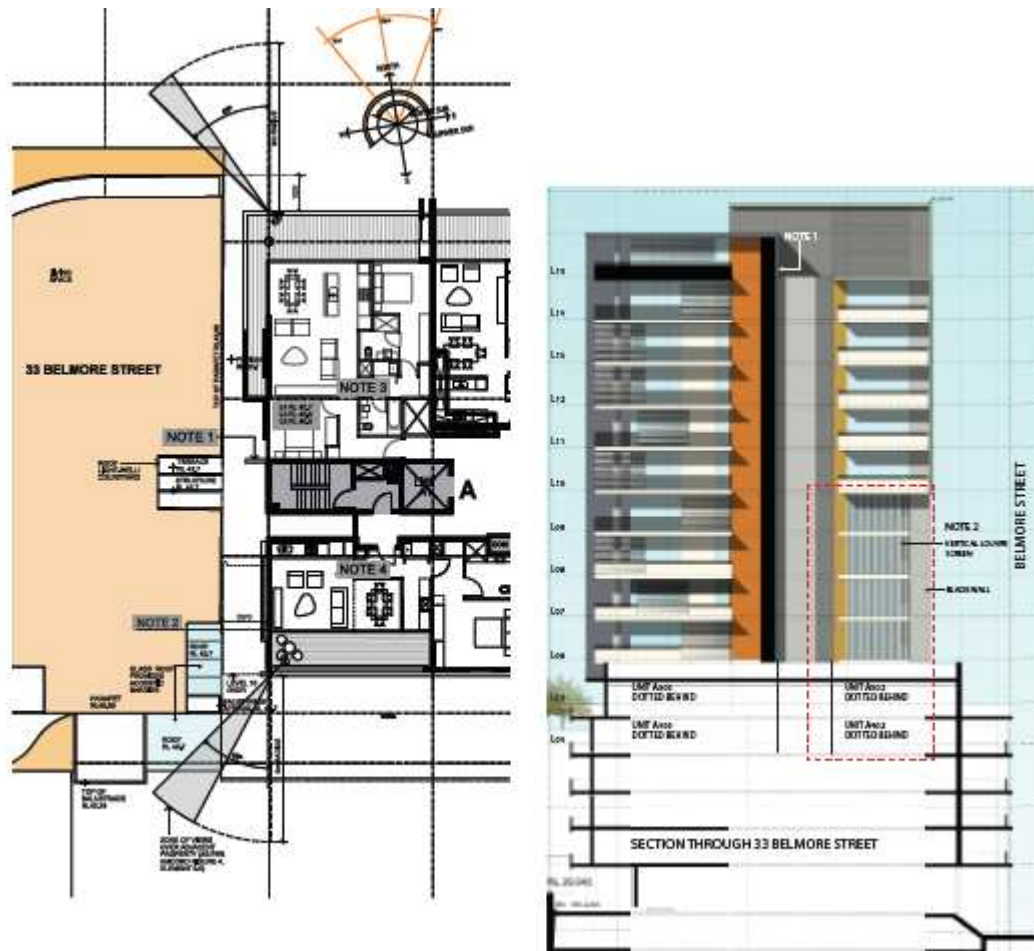


Figure 6: Separation diagram to the west (page 42 – Project Design Report prepared by AJC)

In terms of the relationship between Proposed Tower A and No. 33-35 Belmore Street, GMU comments as follows:

“ Tower A has secondary bedrooms looking onto the side boundary setback of approx. 2.35m away from a blank wall for levels 4-15. This is a poor outcome since these habitable rooms depend on borrowed amenity over side boundaries for outlook and solar access. A number of balconies above Level 10 also depend on borrowed amenity. According to the RFDC's building separation distances, the minimum separation distances required between balconies/habitable rooms is 24m for levels 8-17/ over 25m. For levels 10 to 15, the balconies of units 1002, 1102, 1202, 1302, 1402 and 1502 have zero setback to the western boundary. This fails to provide any setback and therefore, it does not comply with the building separation distances. The lack of setbacks at higher levels adds to the perception of bulk and scale. The tower encroaches into the minimum setback arguing that the redevelopment potential of that site is minimal. It is GMU's opinion that this is unacceptable as the proposal hinders the opportunity of 33-35 Belmore Street to redevelop up to its 60m allowable LEP height and this could establish a dangerous precedent for future development in Burwood.”

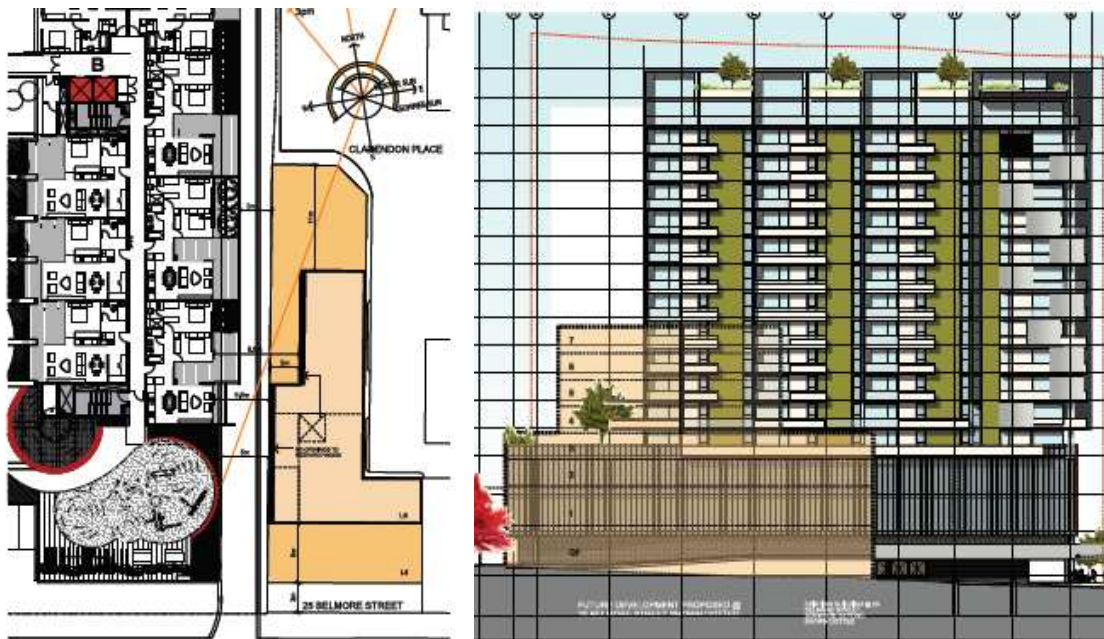
Given that No. 33-35 is somewhat challenged for redevelopment, it may be appropriate to look more flexibly at the separation requirements, particularly when it would appear that there is a scheme that could be pursued on that site. However, the proposal in its current form does not represent one that respects the western interface with No. 33-35. Whilst a reduction in the RFDC required setback may be supportable, it is considered that balconies built to the boundary and side oriented glazing do not represent a sympathetic approach to the boundary treatment. In this regard, GMU have developed a possible alternative solution to separation at the interface with No. 33-35 Belmore Street which is identified in Figure 5 above and is summarised as follows:

- To be located at least 3m from the western boundary with no habitable windows overlooking the side boundary to 33-35 Belmore Rd.
- Outlooks from balconies and main living areas are to be oriented to the north and south. No balconies to overlook the western boundary.
- Side boundary treatment to be attractive and display design excellence.
- 6m setback to Belmore Street to be maintained throughout the extent of the tower with no private open spaces projecting into the setback.

#### Tower B to 25 Belmore Street

Proposed Tower B is setback from the common eastern boundary with No. 25 Belmore Road by 5m (Level 3) and 4.4m (Level 5-17) The proposed building is however only partly adjacent to the building on No. 25. The southern 42m of the building is adjacent to the adjoining site and north of that, Clarendon Place provides separation to the rear of properties fronting Burwood Road (refer to Figure 7).

In terms of existing separation distances, No. 25 Belmore Road is occupied by a 2 storey commercial building and therefore a separation of 6m is required between non-habitable uses. The proposal is therefore 1m short of meeting the required separation requirement between non-habitable rooms for the levels of the proposal adjacent to that building.



**Figure 7: Separation diagram to the east (page 44 – Project Design Report prepared by AJC)**

GMU summaries separation distances in the context of potential future development on No. 25 Belmore Street as follows:

- “ To the east, the proposal’s eastern residential tower is setback between 5m and 5.4m to the eastern boundary. The podium levels are setback between 5m and 5.6m for an easement of a vehicular ramp except for Level 4 which has a setback of 3 - 3.5m. The southern half of the eastern boundary is abutted by a 2 storey commercial building (25 Belmore Street) which is approx. 10m in width along two thirds of its length. The tower levels above have private open spaces as close as 4.47m to the boundary, which compromises the redevelopment potential of the adjacent site to the east. The Applicant’s Project Design Report shows (page 44) a potential redevelopment scenario for No. 25 Belmore Street where the proposal on that site has been forced to provide blank walls along its western facade with potential redevelopment to the east abutting that elevation as well. Should that development be allowed to do exactly the same as the proposal, it will have private open spaces facing its western boundary with the proposal as close as 3.5m

for Level 4 resulting in private open spaces facing each other no farther than 6m apart. This would be a very negative outcome. A setback of 5.4m to the common boundary line for residential levels 5-17 falls short of the RFDC's minimum required setbacks of 6m (up to level 3/12m), 9m (for levels 4-7/ up to 25m) and 12m (for levels 8-17/ over 25m) in order to achieve corresponding building separation distances of 12m, 18m and 24m between balconies/habitable rooms. GMU considers this as a serious noncompliance that can set a negative precedent of borrowed amenity over side boundaries to neighbouring sites, poor privacy and no outlook."

No. 25 Belmore Street is subject to a 60m height limit and 4.5:1 FSR requirement under the Town Centre LEP and therefore may be redeveloped in the future. Redevelopment is however made uncertain by the width of the site being 9.7m for 31m of its 44m length which presents significant constraints to building form and will likely preclude on-site car parking. Further, if the site was to be developed in a manner that provided 50% of the RFDC separation distances, above the fifth level this would effectively sterilise the site.

The applicant is therefore presented with a scenario that even if they were to provide building separation on the subject site to compliant levels, the property to the east would not be capable of doing the same upon redevelopment. The applicant has provided a conceptual development plan for No. 25 that rather than relying on building separation to provide an appropriate interface between sites, considers a "blank wall" to the west facing the site and orienting units to the north and north-east. Separations of between 5.6m and 8.6m are provided glass line to blank wall (refer to Figure 7).

Whilst these constraints to achieving compliant building separation are noted, GMU has developed a potential alternative solution that is considered to result in a superior relationship between the subject site and No. 25 Belmore Street. This is identified in Figure 5 above and is summarised as follows:

- Southern units to look to Belmore Street.
- Addition of a second core to allow for cross through units or up and over units that have main living areas oriented to the landscaped courtyard and only bedrooms looking at the side boundary. The building envelop is to provide a 6m setback to the eastern boundary to the glass line with no balconies encroaching on the 6 metres, unless directly overlooking the lane. For the northern units of this tower, an east-west outlook for the private open space is preferred in order to avoid privacy issues with potential development to the north.
- Northern boundary to achieve at least 10m separation to the glass line by redirecting the balconies to the east and west with no private open space projecting into the setback. Living areas can maintain a northerly outlook behind the 10m line.
- North-facing façade to be well articulated.

#### Internal separation between Tower A and B

The setback between Tower A and B is 8.45m from Levels 4 to 15. Vertical louvres have been provided to living area glazing of Tower A where it faces Tower B and living areas to Tower B are provided with operable louvres to enable management of privacy from bedroom and balconies of Tower A and still maximise solar access (refer to Figure 8). Generally it is considered that these treatments will adequately alleviate privacy impacts despite the shortfall in internal building separation.



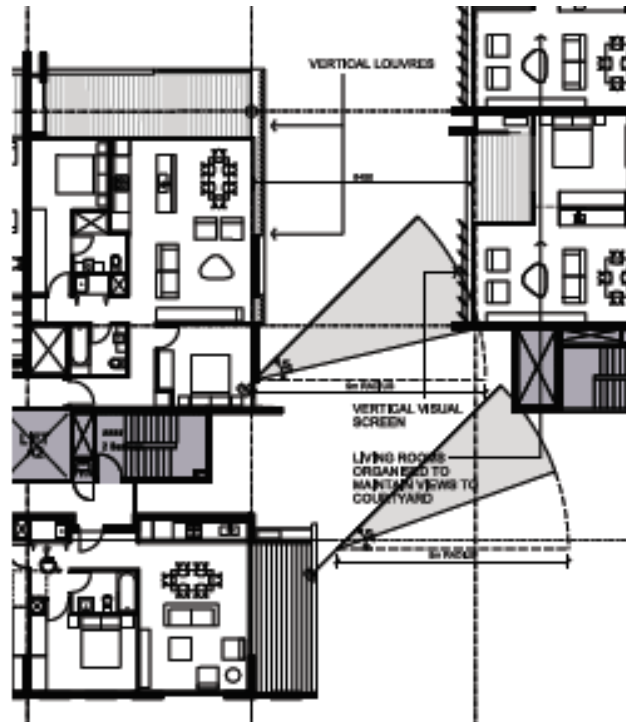


Figure 8: Internal separation diagram - Towers A & B (page 47 – Project Design Report prepared by AJC)

### **Common open space**

Part 2.2.1.6 of DCP 36 defers to the RFDC in relation to the provision of common open space which states that 25-30% of a site should be provided as communal open space. The proposal provides 20.7% (1,330m<sup>2</sup>) at Level 4 podium. This represents a shortfall of 269.75m<sup>2</sup> (on requirement of 1,599.75m<sup>2</sup>) or a 16.9% variation.

The applicant has indicated that a further 300m<sup>2</sup> of communal open space could be provided to the Level 6 rooftop which would be directly accessible from Tower B and C lobbies and enjoys good solar access. This would result in a total provision of 25.5% of the site as communal open space. Should the application be approved, it is considered appropriate that a deferred commencement condition be imposed requiring the inclusion of this space as foreshadowed.

In general, the proposed collection of private, public and communal spaces throughout the site is considered to provide diversity in passive and recreational opportunities and will meet the desired objectives for open space.

### **Building depth**

Part 2.3.3 of DCP 36 defers to the RFDC in relation to building depth which permits a maximum of 18m from glass to glass. The objectives of the control seek to provide adequate scale, natural light and ventilation. Tower A has an average building depth of 22m and a maximum building depth of 24m and Tower C has an average building depth of 19m and a maximum building depth of 22m. Typically these buildings exceed the maximum building depth by 4m and 1m, respectively.

GMU raised concern in relation to building depth in their report dated September 2012 (refer to **Annexure B**), particularly with regard to bulk, scale and visual prominence of the development from the public domain. The blade walls framing the corners of the building were considered to amplify these impacts. The amended plans, subject of this assessment, have deleted the blade walls reducing the

appearance of excessive building scale to these towers. In terms of building design, GMU's final report dated November 2012 no longer raises building depth as an outstanding issue (refer to **Annexure A**).

As discussed below, the proposed development is considered to provide acceptable levels of natural ventilation and daylight access through providing a high number of corner and cross-through units as well as good levels of natural lighting to the lobby areas to each tower. Therefore, this objective of the building depth requirement is met.

### **Natural ventilation**

Part 2.3.5 of DCP 36 defers to the RFDC in relation to natural ventilation which requires 60% of units to be naturally ventilated. The objectives of this requirement seek to provide adequate amenity and minimise energy consumption through reduced reliance on mechanical ventilation.

The proposed development will include 56% naturally ventilated units (through dual aspect orientation and skylights). Given the minor variation and the high amenity afforded to most units, the 4% shortfall in naturally ventilated units is considered acceptable. A further 5% of units will be controlled through damper ventilation louvres. This will equate to 61% of units being provided with a form of adequate ventilation, albeit 5% will be resident controlled mechanical ventilation.

### **Daylight access**

In relation to daylight access, Part 2.3.6 of DCP 36 defers to the RFDC which requires 70% of units to achieve 3 hours to living rooms/private open spaces in mid-winter. In dense urban areas, 2 hours is considered acceptable.

The proposal will result in 58% of units achieving 3 hours and 83% of units achieving 2 hours of daylight access. Given the site's location within the Town Centre, it is reasonable to accept that the desired future character of the area is one of a dense urban area and support the proposed development in this regard as it will achieve 2 hours between 9am and 3pm for the majority of units.

### **Private open space**

Part 2.8.8 P2 of DCP 36 requires a minimum area of 8m<sup>2</sup> and a minimum dimension of 2m for 1 and 2 bedroom units and a minimum area of 10m<sup>2</sup> and a minimum dimension of 2.5m for 3 bedroom units.

Of the 222 residential units, 4 units within Tower B (Levels 16 and 17) provide reduced dimensions of 1.6m x 12.2m (19.5m<sup>2</sup>). Whilst the balcony width is undersized, the private open space to units 1606, 1607, 1608 and 1701 is acceptable as the shortfall represents only 400mm and the overall area is met at the lower level, directly off the primary living area. Furthermore, additional private open space is located at the upper bedroom level and the combined private open space provides well in excess of the minimum required.

### **Encroachment of pedestrian way**

Part 4.1.3 of DCP 36 requires that pedestrian ways be open to the sky for all of their width. There are no specific objectives related to this control however general objectives for pedestrian ways seek to provide a safe and active place, achieve improved pedestrian movement, provide break-out squares, and provide continuous shopfronts.



The proposed pedestrian way will generally be open to the sky with the exception of the existing vehicular access ramps to Burwood Plaza and a proposed 1.6m building overhang commencing at Level 5 and continuing to levels above of proposed Towers B and C. The overhang commences at approximately 16.3m above the pedestrian way.

Despite the proposed overhang, the pedestrian way will meet each of the stated general objectives by providing good connectivity from Wynne Avenue to Clarendon Place, including active and passive public spaces with direct access to retail uses at grade with through connection to Belmore Street. None of these benefits are compromised by the minor encroachment at Level 5 into the pedestrian way as a result of the cantilevered building.

Furthermore, the applicant has demonstrated that the proposed non-compliance does not impact on solar access as illustrated by the following image (see Figure 9).



**Figure 9: Solar angles within pedestrian way (page 22 – Project Design Report prepared by AJC)**

In terms of passive surveillance, Levels 2, 3 and 4 do not overhang the pedestrian way and will provide good passive surveillance. From Levels 5-16, passive surveillance of the majority of the pedestrian way remains despite the overhang. The overhang is considered to provide shading benefits to the commercial uses at Level 2 and 3 and articulates the tower element from the podium.

The encroachment of the pedestrian way is however directly related to matters of building separation. That is, if the building did not overhang the pedestrian way greater separation to potential building forms on the Burwood Plaza site would be provided. This matter is discussed in detail above under side and rear setbacks / building.

Therefore, whilst this non-compliance is not considered to be a determinative issue, resolution of building separation issues will assist with improving compliance with this numerical control.

### **Privacy**

The proposed development will introduce 222 new units to the site within 3 residential towers each with balconies and glazing facing side and rear boundaries. Consideration is given below to the privacy implications of the proposed development in relation to existing neighbouring development, namely to the east at No. 25 Belmore Street and south/west at No. 33-35 Belmore Street. Privacy consideration in terms of potential future development of adjoining properties is discussed in relation to building separation earlier in this report.

### 33-35 Belmore Street

The relationship between proposed Tower A and the eastern elevation of No. 33-35 Belmore Street is a significant concern. The existing building on No. 33-35 Belmore Road is built to the common boundary with the subject site and its eastern elevation is a blank wall. Proposed Tower A has a nil setback to Level 3 and from Levels 4 to 9 has a 2,350mm setback to the external wall and 1m to balconies off the north-western corner. Level 10 and above have a nil setback to balconies.

As discussed under side and rear setbacks/ building separation above, the proposal results in non-compliance with building separation requirements both in terms of existing development and potential future development on No. 33-35. In terms of the existing building at No. 33-35, the proposal introduces privacy measures such as blade walls and privacy screens to address potential conflicts with a Level 6 roof light well/courtyard and south facing balconies on Levels 5 and 6. It is however considered that this elevation is poorly resolved and that design changes are required to address privacy impacts on both existing and future development at No. 33-35.

Accordingly, it is considered that design changes are required to the western elevation of proposed Tower A. GMU has considered this issue in their report and has tested potential solutions (refer to Figure 5). The solution would include removing balconies and habitable windows facing west, maintaining at least a 3m setback to the western boundary and orienting any private open space to the north and south. These changes would require internal reconfiguration of this building and therefore could only be undertaken through further design work in consultation with Council as opposed to being addressed by conditions of consent.

In terms of the interface between proposed Tower C and the northern elevation of No. 33-35 Belmore Street, a void has been created up to Level 7 within the southern part of the tower where adjacent to north facing units of No. 33-35. This creates a 20m setback between residential units and the shared boundary. From Levels 8-15, units on the southern side of Tower C are setback 11.47m from the shared boundary and are oriented to the east and west with minimal window openings facing south. Accordingly, the building separation from Tower C to No. 33-35 Belmore Street both in terms of existing and potential future development is considered acceptable. Furthermore, the privacy relationship between adjoining buildings is considered appropriate given the absence of balconies, minimal glazing and building separation.

In terms of aural privacy, the proposed loading dock will be fully enclosed and has been treated with a roof. The acoustic report submitted by the applicant confirms that the loading dock and adjacent ventilation stack will not result in any significant noise concerns.

### 25 Belmore Street

There are no immediate privacy implications in terms of proposed Tower B and No. 25 Belmore Street to the east as the existing building at No. 25 is a 2 storey commercial building and the proposed residential tower will commence beyond the existing roof height. There would however be significant privacy implications in the event that this property is developed in the future. This issue is discussed in detail in the context of building separation where it is suggested that the eastern treatment of the residential tower should be given further design consideration in terms of its interface with No. 25, particularly given the recognised inability to achieve building separation requirements (refer to Figure 5). These changes would require internal reconfiguration of this building and therefore could only be undertaken through further design work in consultation with Council as opposed to being addressed by conditions of consent.

### Overshadowing

Consideration is given below to the shadow impacts of the proposed development in relation to neighbouring development, namely to the south/west at No. 33-35 Belmore Street and to the south at No. 28A-32 Belmore Street.

It is noted that Council's DCP does not include a control in relation to overshadowing, nor does the RFDC. In terms of testing appropriateness of solar impacts, a degree of guidance can be provided by comparing the impacts of existing and proposed development (which is not helpful in this case) or comparing the proposed development with development that would comply with building separation and other envelope controls.

Alternatively, the RFDC controls could be applied to the assessment. However, in our view, this approach undermines the importance of considering impacts to solar access of individual units ie. only 70% of units need obtain 2-3 hours solar access and 30% of units could effectively have no solar access. We therefore take a merit approach to this assessment.

### 33-35 Belmore Street

The applicant has provided comparative daylight access studies showing the existing and proposed scenario for the southern adjoining building at No. 33-35 Belmore Street. The studies show the duration for which each window and private open space area will receive sunlight between 9am and 3pm.

GMU have summarised this information as follows:

" The existing condition is 6 hours of solar access to the glass and to the private open space of the top floor units at No. 33-35. The rest of the units on the lower floor vary between 0-2 hours of to the glass and 4-6 hours to the private open space. The resulting solar access after the proposal is in place will be approximately 1-2 hours to the glass of the upper units with 2-4 hours to the private open space. 0-45 minutes of solar access to the glass of the lower level units with some private open spaces (7 units) having as little as 15 min and some having zero (2 units) to the private open space. Other units range between 1-3 hours (6 Units) for the private open space for those located closer to the western end of that elevation."

In the submitted Design Report by AJ+C, it is submitted that on the southern side of Tower C units have been removed from Levels 4 -7 to create a landscape garden space to minimise overshadowing to Nos. 33-35 and reduce visual bulk when viewed from Wynne Avenue.

The report also provides that the units being impacted on are highly vulnerable to loss of winter sun. To obtain 2 hours of winter solar access to the balconies of these units any development would need to limit development to no higher than that currently proposed within Level 2 of the podium and in addition, further setback the proposed podium approximately 14.5m from the common boundary.

As indicated in the "Background" section to this report, during earlier consultation with the applicant, some options to reduce overshadowing were discussed. One option was for units at Levels 4 and 5 between grids 05 and 10 to be removed, and perhaps relocated elsewhere within the development (8 units between Towers B and C that bridge the opening to the proposed public square). The applicant has elected not to pursue this change on the premise that the amendments would achieve only a 15-30 minute improvement to the lower units of No. 33-35 and therefore these changes were not warranted.

The applicant provides that whilst there would be a small improvement, the affected units do not currently receive 2 hours of winter sun to habitable rooms as the windows are deeply setback from the balcony edges or are currently overshadowed by the existing building being demolished at No. 29-31 Belmore Street.

Of relevance, in the Land & Environment Court case *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082, Senior Commissioner Moore commented that the protection of sunlight is made more difficult as densities increase and that the expectation to retain it in a dense urban environment should not be as strong.

In this respect it must be recognised that in light of Council's newly introduced Town Centre controls, the height and density proposed reflects the scale of built form anticipated and encouraged by Council and therefore in line with the above planning principle, the expectation that existing solar access would be protected in full is unrealistic.

Notwithstanding, Moore SC also provided that a more sensitive design should be sought where it would have the benefit of reducing the impact on neighbours, even where a proposed scheme achieved compliance. Moore SC also places emphasis on the actual size of open space proportionate to sunlight access. Essentially, the smaller the open space, the greater the proportion of it would require sunlight for it to have adequate solar amenity.

As such, given the scarcity of mid-winter solar access to lower level units and their open spaces at No. 33-35, it is considered that any improvement, no matter how small would be of great benefit to existing residents. The design changes foreshadowed at earlier meetings are considered to represent a more sensitive design and should be pursued.

#### No. 28A-32 Belmore Street

In terms of solar access impacts across Belmore Street to the south (No. 28A-32 Belmore Street), the applicant has provided comparative daylight access studies that demonstrate the shadow implications of a complying envelope against the proposed built form. The study illustrates that, except for a reduction from 3 hours to 2 hours and 1 hour 15 minutes to 45 minutes to the two upper units and by 15 minutes to some windows, the proposed scheme will perform better than a fully compliant scheme in terms of solar access maintained to No. 28A-32.

The applicant has only provided detailed solar access figures between a compliant development and the proposal and therefore the total impact between existing levels of solar access with those of the proposal cannot be ascertained. However, in light of Council's controls, the site is located on the southern edge of the 'Middle Ring Area' with a height limit of 60m where the area to the south is the 'Transition Area' with a height limit of 15m. The level of impact to the units to the south is predominantly due to the built form envisaged by Council's controls and could be reasonably expected.

### **CONSULTATION**

#### Roads and Maritime Services (RMS)

The application was referred to RMS in accordance with SEPP (Infrastructure) 2007. The matter was considered by the Sydney Region Development Advisory Committee as it is classified as traffic generating development. To date, no formal response has been provided by RMS however at its meeting, the RMS Sydney Region objected to the proposed provision of traffic signals on Wynne Avenue at the site entrance on the basis that the RMS "warrants" for the provision of traffic signals is not satisfied. It is noted that the applicant's traffic engineer and McLaren Traffic Engineering (on behalf of Council) are in agreement that the proposal is acceptable subject to conditions of development consent. Notwithstanding, it is considered that further consultation between the applicant and RMS is required to resolve this issue prior to determination of the application.

Whilst the SEPP (Infrastructure) 2007 does not require concurrence from the RMS, it does require the consent authority to “take into consideration” any submission that the RTA provides in response within 21 days. Given that the RMS has considered the application and expresses concerns in relation to the proposal, it is considered that the application should not be determined until such time as further consultation can take place and matters can be resolved to the satisfaction of the RMS. It is acknowledged that delay of determination of the application on these grounds places a burden on the applicant however Council’s traffic engineer has indicated that resolution is likely and that Council would prefer to reach an outcome in conjunction with the RMS.

#### Traffic - External Consultant

McLaren Traffic Engineering has been engaged by Burwood Council to provide traffic and parking consideration of the proposed development. The proposal is found to be acceptable subject to conditions of approval. Note comment above however in relation to RMS consultation.

#### Urban Design – External Consultant

GMU has been engaged by Burwood Council to provide Urban Design consideration of the proposed development. Refer to discussion provided under SEPP 65 section of this report (and references throughout the report).

#### Stormwater

The application has been reviewed by Council’s Stormwater Engineer and found to be acceptable subject to conditions.

#### Health

The application has been reviewed by Council’s Health Officer and found to be acceptable subject to conditions.

#### Building

The application has been reviewed by Council’s Building Surveyor and found to be acceptable subject to conditions.

#### Heritage

The application has been reviewed by Council’s Heritage Officer and found to be acceptable subject to conditions.

#### Neighbour notification

The subject development application was notified under Council’s Notification Policy. Ten (10) submissions, and 1 petition (32 signatures) were received in response to the first notification. A summary of the submissions and planning assessment comment is provided below.

- *Zero setback of podium on southern side*

Comment: The interface between the northern elevation of No. 33-35 Belmore Street and the southern elevation of the proposed development has been given significant consideration throughout pre-

application discussions, the submitted development proposal and again through amended plans. The nil setback referred to occurs at the basement levels and part of level 1 which is setback beyond the waste storage area to create a buffer from the loading dock. Between Levels 2 to 4, the podium is setback 11.47m and this space is a roof garden with a landscape wall and landscape planters to provide a pleasant outlook for residential units fronting this area. The existing retaining wall height of RL 29.94 will be maintained for north facing units of No. 33-35. As detailed by Section Plan A (DA3201-C) prepared by AJ+C, this retaining wall height will be maintained and a setback of 2.5m is provided before the Level 2 floor level is introduced with planter above at RL 32.6. This outlook is considered to be an improvement from the existing car park outlook currently provided to these residents. In terms of solar access to north facing units adjoining this space, refer above to detailed discussion.

- *Shadow impacts*

Comment: Refer to above under DCP compliance discussion.

- *Overdevelopment/ FSR non-compliance / Excessive height, scale and proportion*

Comment: The proposed development complies with the overall permitted FSR and height limits. The development reflects Council's intentions for higher density development within the Town Centre. Matters of building bulk and scale are discussed in detail throughout this report and in the Urban Design Assessment undertaken by GMU.

- *Loss of amenity (privacy & visual amenity)*

Comment: Refer to discussion above under DCP compliance section.

- *Location of commercial loading dock/zone inappropriate and will create noise impacts to adjoining residential units.*

Comment: The proposed loading dock will be fully enclosed. A noise assessment prepared by Acoustic Logic has been carried out and provides consideration of the proposed commercial loading dock. Noise emissions from the loading dock have been determined based on site noise logging and noise emission guidelines typically adopted by Council. The proposal is found to be acceptable subject to recommendations provided. These recommendations could be included in conditions of consent were approval to be granted. A further consent condition could require post operational noise logging of the commercial loading dock and certification to ensure noise generated are within acceptable levels.

- *Increase in traffic volume and related safety concerns*

Comment: Traffic implications of the proposed development have been reviewed by an independent Traffic Consultant and are found to be acceptable. Refer to comments above under consultation.

- *No details provided on signalised intersection at Wynne Avenue*

Comment: This matter remains an outstanding issue and is yet to be resolved with further consultation required between the applicant and RMS. Refer to discussion under RMS consultation above.

- *Loss of street parking due to loading dock entry (Belmore Street) / replacement parking required*

Comment: The proposal will incorporate 185 public parking spaces within the development (in addition to the required parking provision. The proposed parking arrangement has been revised by an

independent traffic consultant and found to be acceptable. Refer to discussion under external consultation above.

- *High density development will change to character of Burwood.*

Comment: The proposed development complies with the overall permitted FSR and height limits. The development reflects Council's desired future character for Burwood Town Centre for higher density development. Matters of building bulk and scale are discussed in detail throughout this report and in the Design Assessment undertaken by GMU.

- *The proposal will have a negative social impact as the high density tower block will likely attract overseas investors and be rented out to short term residents*

Comment: As mentioned above, the proposed development reflects the desired future character for Burwood Town Centre which includes increased residential accommodation and therefore increased population within the centre. The type and permanency of future owners/occupants of a new development is not a matter for consideration under Section 79C of the EP&A Act, 1979.

- *Did not receive notification*

Comment: The application was notified and advertised in accordance with Council's notification policy.

- *Reduction in parking a major problem and limited information on what a VPA is and how this impacts parking availability/cost*

Comment: The proposal complies with the DCP parking requirements and provides public parking in lieu of the 185 spaces from the current public car park. The Voluntary Planning Agreement (VPA) relates to a legal arrangement between the applicant and Council and is not in relation to the cost of public parking for users. The replaced parking spaces will be available to the public and will operate as a public parking station with boom gate control comparable to the Burwood Plaza system.

- *New commercial uses will have significant burden and financial impact on existing businesses*

Comment: The proposed development will contribute to the business functions of the Town Centre as envisaged by Council's Town Centre controls that encourage high density development which incorporates a large provision for commercial business. Direct impacts on existing businesses are not a matter for consideration under Section 79C of the EP&A Act, 1979.

- *Access to podium roof garden by persons other than for maintenance will create additional privacy issues.*

Comment: The garden area referred to is to improve the outlook for residents of No. 33-35 Belmore Street only and is not for public or resident use. Access to this area will be reserved for maintenance staff only. This can be confirmed by conditions of consent were approval to be granted.

- *Proposal should not be accepted until a gas supply agreement with energy retailer is supplied*

Comment: This is one of several infrastructure and services related matters that the applicant will need to resolve prior to commencement of works.



- *The proposed landscape schedule does not contain enough native species*

Comment: Additional native species will be required through consent conditions.

- *No information is provided regarding relocation of the pedestrian crossing (Stage 1 works)*

Comment: This is a matter for the applicant to resolve with RMS.

- *No alternative is provided for the fire door exit from Burwood Plaza that opens onto the Council car park to be demolished on the subject site*

Comment: The subject site is no longer in Council ownership and as such this exit cannot rely on egress to the site. As such it is the responsibility of Burwood Plaza to ensure that adequate fire egress is available in accordance with the BCA.

- *Undue stress on local infrastructure as a result of the proposed development (roads, buses, trains, footpaths etc.)*

Comment: The applicant would require payment of Section 94 contributions towards local infrastructure. These contribution rates reflect the increased density of Council's controls.

- *The proposed development will be visually dominant without adequate provision of green space, playgrounds and liveable spaces*

Comment: Matters of visual appearance are discussed in detail throughout this report and in the Design Assessment undertaken by GMU. The proposal provides adequate provision for private and common open space in addition to public domain provisions.

- *The high density of the development will create additional noise and air pollution*

Comment: A noise assessment prepared by Acoustic Logic has been carried out and provides recommendations for management of noise during and post construction of the development. In terms of both noise and air pollution, construction and operation of the proposed development will be subject to standard EPA regulations.

- *Increased density will result in crime rate increase*

Comment: The proposed development has been considered in accordance with Crime Prevention through Environmental Design (CPTED) principles and found to be satisfactory.

- *Concern is raised in relation to fire safety and adequate evacuation procedures*

Comment: As standard requirements, prior to occupation of the building, the developer would be required to prepare an evacuation management plan and install appropriate signage in accordance with fire safety regulations.

- *Concern is raised regarding LEP non-compliances*

Comment: Refer to detailed discussion within Statutory Framework section of this this report.

- *Dubious architectural merit and breaches of planning regulations*

Comment: Matters of visual appearance are discussed in detail throughout this report and in the Design Assessment undertaken by GMU. In terms of the proposal's performance against planning regulations refer to detailed discussion within Statutory Framework section of this report.

- *Disruption to businesses and service, limit access during construction*

Comment: Should consent be granted, construction of the proposed development will be subject to construction management requirements including traffic and noise management to minimise as best as possible disruption to the locality.

- *Already exists an inferior quality development in Railway Parade*

Comment: Assessment of the proposed development has been carried out in isolation to the quality and appearance of the above-mentioned development. Furthermore, matters of visual appearance are discussed in detail throughout this report and in the Design Assessment undertaken by GMU.

- *Rain, poor design and building quality have affected No. 38 Belmore Street in terms of mould build up. The proposed development will likely worsen these issues to No. 32 to 40 Belmore Street.*

Comment: This would appear to be an issue with existing built form rather than one created by the proposed development. There is no evidence to suggest that the proposed development would contribute to damage to existing nearby development. The application has been reviewed in terms of on-site stormwater management and found to be satisfactory.

- *Excessive excavation to accommodate 6 basement levels (potential damage to nearby buildings)*

Comment: The extent of excavation is typical of a development of the size proposed. The development will be subject to geotechnical requirements as well as a requirement the preparation of dilapidation reports on nominated adjoining development to document the state of existing buildings. It would be the responsibility of the developer to make good any damage caused by excavation of the site.

- *Planting will not survive within nature strip in the middle of the development due to lack of sunlight*

Comment: Detailed consideration has been given to the provision of landscaping within the public domain. The pedestrian way has been designed to be open to the winter sun and shaded in the summer heat to provide both comfort to pedestrians and protection for landscaping.

## CONCLUSION

This application has been assessed having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979, the provisions of SEPP 55 (Remediation of Contaminated Land); SEPP 65 (Design Quality of Residential Flat Development), SEPP (Building Sustainability Index: BASIX) 2004, Burwood LEP (Burwood Town Centre) 2010, Draft Burwood LEP 2012 and all relevant Council DCPs, Codes and Policies.

The proposed development is consistent with the height and density of development envisaged by the new suite of controls that apply to the Burwood Town Centre. The proposal also incorporates important elements of the public domain envisaged by Council's planning controls and is generally considered to display a high quality of architectural design and internal amenity.

Notwithstanding, the proposal presents some fundamental design issues and cannot be supported in its current form. These issues primarily relate to proposed building separation. The proposal does not meet the building separation requirements of the RFDC which Council's DCP effectively adopts for the purpose of its setback requirements. The proposed non-compliances with the separation distances have implications for amenity of the proposed residential component of the development and for the amenity of future surrounding development and the overall built form of the Town Centre.

GMU has undertaken an urban design assessment of the proposal and has established some principles for testing solutions for building separation (Refer to **Annexure A**, pages 8 and 9). These principles do not pre-empt any significant transformation of the overall nature of the development however will significantly improve the impacts of the proposal. Refinement of the massing of the proposal is also considered critical to addressing amenity impacts on 33-35 Belmore Road, particularly in terms of solar access. The applicant has foreshadowed design alternatives in this regard and it is considered that these should be pursued.

Further matters that remain unresolved are the intersection design of the site entrance on Wynne Avenue which is still raised as a concern by the RMS. In addition the proposed floor space mix, exceeding the maximum residential control, is not supported. Refinements to the scheme encouraged above may result in closer compliance with this requirement.

Accordingly, whilst the current scheme cannot be supported, it is recommended that the applicant be given an opportunity to address the matters outlined in this report, which can be summarised as follows:

- Finalise consultation with RMS to reach agreement on intersection works at Wynne Avenue/site entrance;
- Remove units between grid lines 5 and 10 at Levels 4 and 5 (8 units between Towers B and C that bridge the opening to the proposed public square);
- Further develop the massing of the proposal in accordance with the "Final Recommendation" contained within GMU Assessment (pages 8 and 9) and in consultation with Council;
- Review use mix within the development to achieve compliance with DCP provisions; and
- Communal open space to be provided to the Level 6 rooftop.

Should these matters not be satisfactorily addressed by the applicant within an appropriate timeframe, the application in its current form should be refused for the following reasons:

- 1) The proposal results in significant departures from DCP Part No. 36 - Burwood Town Centre and the Residential Flat Design Code in respect of building separation;
- 2) The proposal results in unreasonable overshadowing impacts on No. 33-35 Belmore Street;
- 3) The proposal results in non-compliance with the use mix provisions under Clause 4.4A of the Burwood Town Centre LEP and the justification provided under Clause 4.6 is not well founded;
- 4) The proposed intersection works at the site entrance and Wynne Avenue have not been designed to the satisfaction of the RMS;
- 5) The proposal is not in the public interest.

## **ANNEXURE A**

### **GMU URBAN DESIGN ASSESSMENT REPORT (NOVEMBER 2012)**

**ANNEXURE B**

**GMU URBAN DESIGN ASSESSMENT REPORT  
(SEPTEMBER 2012)**