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Property: 121-133 Burwood Road & 38-40 Railway Parade, Burwood
Lot A in DP 363674, Lot 1 in DP 1909106, Lots E and F in DP 404557 and Lot 100 PC: Prt DP 703387

DA No: DA 149/2014

Date Lodged: 18 September 2014

Cost of Work: \$57,173,949.00

Owners: Blairgrove Pty Ltd & Bondbarb Pty Ltd

Applicant: CDR Design Pty Ltd

PROPOSAL	Demolition of the existing buildings, retention and refurbishment of the Burwood Hotel and construction of a 23 storey mixed use development containing 4 levels of basement parking, 4 levels of retail and a 20 storey tower containing seven storeys of serviced apartments (56 serviced apartments) and 13 storeys of residential units (92 units). The application has been submitted with a voluntary planning agreement.
ZONE	<i>B4 – Mixed Use zones.</i>
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE	Yes – the proposal is best described as a mixed use development which comprises hotel, commercial premises, serviced apartments and a residential flat building. Each use is permissible with consent from Council.
IS THE PROPERTY A HERITAGE ITEM	No
BCA CLASSIFICATION	Classes 2, 3, 6 and 7a.
NOTIFICATION	Notified 23 October 2014 to 17 November 2014 – One (1) submission received

EXECUTIVE SUMMARY

This report considers a proposal to demolish all existing site improvements and retain and refurbish the existing Burwood Hotel building to enable the construction of a 23 storey mixed use building. The building contains four (4) basement levels, four (4) retail levels, as well as a 20 storey tower comprising 56 serviced apartments and 92 residential apartments.

The site is known as Nos. 121-133 Burwood Road and 38-40 Railway Parade, Burwood and has a legal description of Lot A in DP 363674, Lot 1 in DP 1909106, Lots E and F in DP 404557 and Lot 100 PC: Prt DP 703387.

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) to provide an independent assessment of the proposal in relation to urban design related matters.

From a town planning point of view the application is generally considered to be acceptable, subject to conditions of development consent. Non-compliances with floor space ratio and the height of the proposal are considered reasonable and acceptable in the circumstances as analysed below.

The primary issues that remain unresolved in the urban design assessment by GMU relate to:

- Façade treatment of the western elevation for the podium and tower with respect to existing streetscape;
- Built form transition and potential access to the roof of the isolated site at No.34 Railway Parade from the proposed podium;
- Compromised internal amenity of some of the proposed units;
- Insufficient communal open space provision;
- Further design development of the corner of ground level along Clarendon Place; and
- Separation of uses in the proposed basement parking.

A copy of GMU's most recent Urban Design Assessment dated 10 March 2016 is appended to this report (Appendix B). It is noted that the proposed scheme has previously been modified during the assessment period to address urban design issues raised by GMU in their original assessment dated 16 December 2014 (Appendix C). GMU is of a view that the above issues remain unresolved and the applicant should be given a further opportunity to resolve the issues raised before further consideration.

As discussed in detail in the report, Planning Ingenuity is of the view that the remaining issues generally relate to subjective design choices made by the applicant, which do not directly contravene any applicable planning controls, or are able to be addressed by way of appropriate conditions of consent. On this basis, Planning Ingenuity is of the view that the remaining issues do not warrant refusal of the application.

Assessment of traffic, heritage, stormwater and waste management, public works, BCA Compliance, accessibility and landscaping has determined that the proposal can be supported with appropriate conditions of development consent.

A preliminary site investigation has not been provided as part of the development application. The site has a history of office and retail uses and as such, it is considered that there is no reason to suspect that the site is contaminated. However, deferred commencement is recommended requiring site investigations to be undertaken. This is consistent with the intentions of the SEPP in ensuring that a site is suitable for its intended use.

Issues raised in a written submission that are relevant to the assessment of the proposal have been considered in the assessment process and can be addressed through conditions of development consent.

Accordingly it is considered that the application can be approved and a deferred development consent be issued in accordance with the draft Conditions included in Annexure A.

BACKGROUND AND ASSESSMENT HISTORY

Development Application DA149/2014 was lodged on 18 September 2014. The application was notified between 23 October and 17 November 2014 and one (1) submission was received.

Council engaged Planning Ingenuity and GM Urban Design and Architecture (GMU) to undertake independent assessment of the development application on behalf of Council.

A letter dated 27 January 2015 requesting additional information was provided to the applicant and required attention be given to the following matters:

- Site isolation – insufficient information provided regarding isolation of No.34 Railway Parade;
- SEPP 55 - requirement for site contamination assessment report;
- Urban design review – a number of issues raised by GMU in their assessment;
- Burwood hotel building – no detail provided as to extent of maintenance and upgrade works provided;
- Disabled access – lack of disabled access to mezzanine level of the retail tenancy;
- Operational details – conditions of consent will be recommended regarding hours of operation;
- Heritage matters – request for design changes in relation to parapet details, glass awnings, location of the balustrades to Level 2 amongst other things.
- Parking concession – request for provision of details of contributions that have been paid to enable consideration as to the merits of applying this concession;
- Basement plans – provide separate plans for Basement 1 and 2; and
- Consideration of traffic impacts – provide details to ensure there will not be a pedestrian and vehicular conflict.

Amended plans and accompanying documents were submitted to Council on 14 September 2015 to address the above issues. Additionally, based on amendments to the Burwood DCP and Council's adoption of the "Carrying out Bonus Development in Exchange for Public Benefits Policy", the proposal was amended to include additional height and density. The revised application has been submitted with an offer to enter into a Voluntary Planning Agreement ("VPA") to secure various public benefits to offset the increase in FSR. The VPA was considered at Council's meeting on 22 March 2016 where it was resolved to enter into a VPA with the developer.

A final package of amended plans was submitted to Council on 22 January 2016. The final proposal has been reviewed by Planning Ingenuity, GMU and internal referral officers and all matters are considered to have been resolved and satisfactorily addressed with the exception of issues raised in the Design Assessment Report by GMU. As discussed throughout this report, the remaining design issues are not considered to warrant refusal of the application.

The original Design Assessment Report by GMU is included in Annexure B and the most recent report is provide at Annexure C.

THE SUBJECT SITE AND CONTEXT

The subject site is located within the Burwood Town Centre. The site has a frontage to Burwood Road, Railway Parade and Clarendon Place (Figure 1). The site consists of 5 lots and has a total area of 3,306.2m². The site is known as Nos. 121-133 Burwood Road and 38-40 Railway Parade, Burwood and has a legal description of Lot A in DP 363674, Lot 1 in DP 1909106, Lots E and F in DP 404557 and Lot 100 PC: Prt DP 703387.

The site is generally regular in shape with exception of excluding No. 34 Railway Parade from the development site at the Railway Parade frontage.

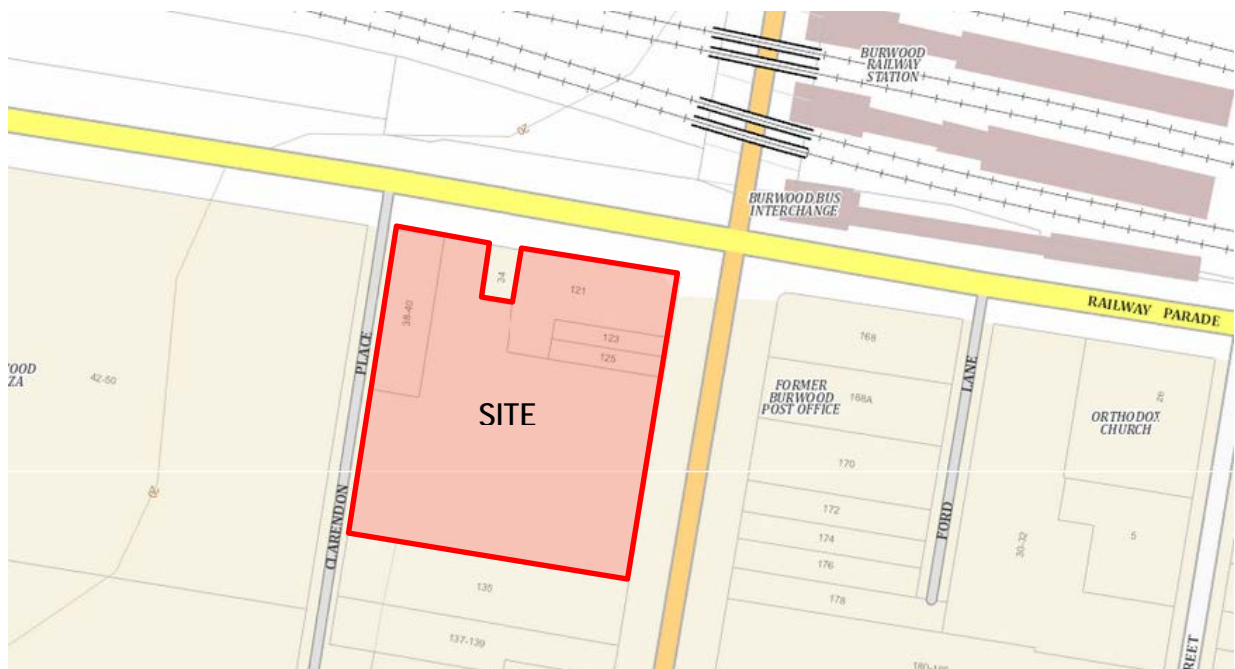


Figure 1: Site location Plan

Existing site improvements are detailed as follows:

- **No. 121 Burwood Road:** Located at No. 121 Burwood Road is a two storey hotel building (Burwood Hotel) that occupies the corner of Burwood Road and Railway Parade (Figures 2 & 3).
- **No. 123 & 125 Burwood Road:** Situated on this property is a single storey retail premises that has a frontage to Burwood Road and contains active shopfronts with an awning that covers the pedestrian access way adjacent to the site frontage (Figure 2). An existing street tree is located adjacent to the property frontage;
- **No. 127-133 Burwood Road:** Situated on this part of the site is a two storey building with retail premises on ground level and commercial premises in the levels above fronting Burwood Road. A pedestrian link through the property provides access to Burwood Plaza which is located to the west of the site. The property contains a small single storey element that fronts Railway Parade as indicated at Figure 3; and

- **No. 38-40 Railway Parade:** Situated on this part of the site is a two storey commercial building occupying the corner of Railway Parade and Clarendon Place with retail at the ground floor level fronting Railway Parade (Figure 3).



Figure 2: Existing buildings on the site within the Burwood Road frontage



Figure 3: Existing buildings on the site within the Railway Parade frontage

The location of the site within the Burwood Town Centre is identified at Figure 4.

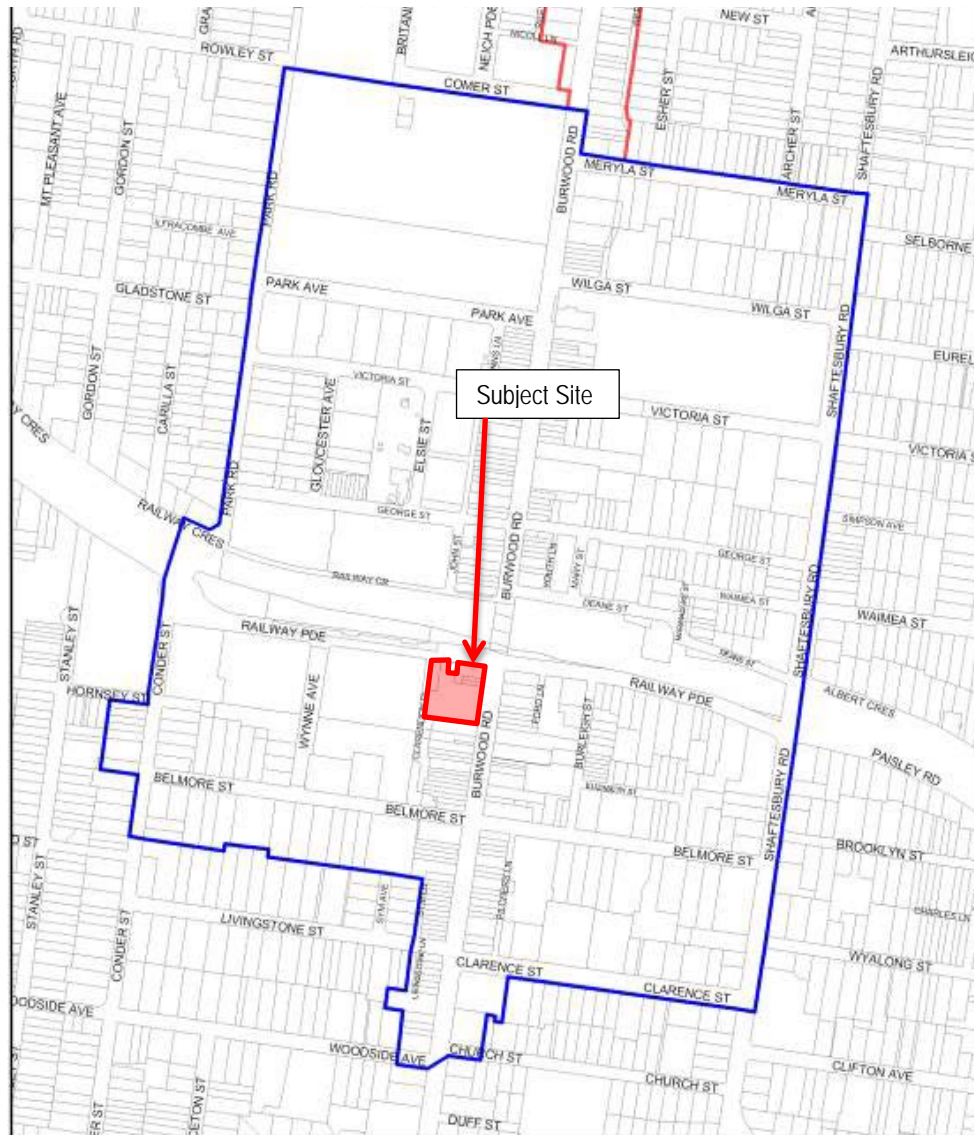


Figure 4: Location of subject site within Burwood Town Centre

The site adjoins a single property to the south, identified as No. 135 Burwood Road. This property is identified as local heritage item – *I21 Federation shops—first floor facades* and contains a 2 storey commercial building. Two other heritage items are located on the opposite side of Burwood Road, with the former Burwood Post Office (Item I24) being identified as a State Heritage Item. A heritage item (Former Parcels Office) is located on the opposite side of Railway Parade.

THE PROPOSAL

The proposal involves demolition of the existing buildings at the site (and retention and refurbishment of the Burwood Hotel building) to enable the construction of a 23 storey mixed use building comprising 4 basement levels, 4 retail levels (comprising a three storey podium), as well as a 20 storey tower comprising 56 serviced apartments and 92 residential apartments.

PROPOSED WORKS

The extent of the proposed works is described as follows:

- Demolition

The proposal involves demolishing all of the existing buildings at the site with exception of the Burwood Hotel building which will be retained and refurbished. In addition, the building located at No. 34 Railway Parade which adjoins the site on three boundaries will be retained and protected for the duration of the construction of the proposal as this was not incorporated into the development site.

- Basement Levels

The proposed development comprises 4 basement levels and provides parking for a total of 306 vehicles. Parking for each aspect of the development is provided within separate areas. Specifically, Basement 4 provides 76 parking spaces for the residential apartments, Basement 3 provides 58 parking spaces for the serviced apartments and 18 residential parking spaces, Basement 2 provides parking for 19 residential visitors and 59 retail parking spaces and Basement 1 provides parking for 76 retail parking spaces. Vehicular access to the basement levels and access to the ground floor loading area is provided via Clarendon Place.

- Podium

The podium comprises 4 levels of retail floor area within a mixture of tenancy sizes. The podium comprises the Lower Ground level which generally sits below the street level and is accessed via the Ground Floor retail space and escalators that extend from Railway Parade.

The Ground Level facilitates access directly from Burwood Road to an arcade that maintains a through site link to Burwood Plaza. The ground level also provides access to the residential and serviced apartments from Burwood Road. The ground level contains high ceilings which also enables the provision of 2 retail tenancies within a mezzanine level.

The main retail access is clearly defined from Burwood Road and a secondary access is provided via Railway Parade. The Ground Level also contains garbage storage areas for the residential, serviced apartments and commercial units within the development. The bin storage areas are provided separately for the residential and commercial uses and are located adjacent to the loading dock which is accessed from Clarendon Place.

The podium level maintains a two storey scale of development at the Burwood Road frontage and contains a recessive upper level that is setback from the street frontage that contains additional retail tenancies. A Photomontage of the proposal is provided at Figure 5.



Figure 5: Photomontage of the proposed building

- 20 Storey Tower

A 20 storey tower sits above the podium level. Within the bottom 7 storeys of the tower are 56 serviced apartments comprising 21 x 1 bedroom apartments and 35 x 2 bedroom apartments.

Above the serviced apartments are 13 levels of residential apartments containing 33 x 1 bedroom, 56 x 2 bedroom, 2 x 3 bedroom and 1 x 4 bedroom apartments (total of 92 apartments). Of the 92 dwellings proposed, 10 have been provided as adaptable dwellings.

LANDSCAPING AND OPEN SPACE

Landscaping at the site is provided within a number of podium planted areas. The area above the refurbished Burwood Hotel building will contain landscaped gardens that are accessible from the retail spaces at Level 1.

Significant planting is provided at Level 2 above the retail spaces and adjacent to the upper retail level. Planting at this level will create interest when viewed from the street and will provide high amenity for residents and patrons of the retail floor area.

An additional landscaped roof terrace is provided for exclusive use by the residents of the proposed development at Level 22 adjacent to the access to the penthouse levels.

OPERATIONAL DETAILS

The operational aspects of the existing Hotel will be unchanged as part of this application.

The following core hours are proposed for the retail uses at the site:

- Friday to Wednesday - 9.00am till 7.00pm; and
- Thursday - 9.00am till 9.00pm.

No signage forms part of this application.

VOLUNTARY PLANNING AGREEMENT

The proposal is accompanied by a VPA pursuant to Section 93F of the Environmental Planning and Assessment Act, 1979. The VPA seeks additional density (8.95% variation) on the basis of providing developer contributions towards public facilities. The offer of a VPA aligns with Council's policy which states that:

"A maximum FSR bonus of not exceeding 10% may be accepted in the Commercial Core and Middle Ring areas only of the Burwood Town Centre. The bonus floor space may fully apply to the residential component."

The VPA was considered by Council at its meeting on 22 March 2016 where it was resolved:

- " 1. That Council enter into the Voluntary Planning Agreement (VPA) for Nos. 121-133 Burwood Road and 38-40 Railway Parade, Burwood for the provision of a monetary contribution towards public facilities after the granting of consent for the Development Application, which would include a condition requiring that the VPA be entered into.*
- 2. That Council authorise the General Manager to sign the VPA and any related documentation under his Power of Attorney.*
- 3. That Council authorise the General Manager to endorse minor revisions of the VPA documents prior to execution.*
- 4. That the Developer pay the monetary contribution to Council, on or before, the execution of the VPA by Council."*

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 2012; and
- Burwood Development Control Plan.

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 does not include a Preliminary Soil Contamination Assessment. The site has a history of office and retail uses and as such, it is considered that there is no reason to suspect that the site is contaminated. However, deferred commencement is recommended requiring site investigations to be undertaken. This is consistent with the intentions of the SEPP in ensuring that a site is suitable for its intended use.

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.

The subject application was submitted on 18 September 2014 which is prior to the recent amendments to SEPP No. 65 (Amendment 3 which came into effect on 19 June 2015). As such, this application is assessed under the SEPP prior to it being amended and with regard to the Residential Flat Design Guide.

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. Council's DCP largely defers to the RFDC for core built form controls. The "Rules of Thumb" where relevant to the proposal are considered in the following Table (and are the subject of a detailed report by GMU which is annexed).

SEPP 65 "Rule of Thumb"/ Standard	SEPP 65 Flat Code Numerical Standard	Proposal Performance
Building Depth	<ul style="list-style-type: none">• Max 18m (glass line to glass line)	The building has a depth of up to 28.7m however despite exceeding the building depth requirement, the building is designed with breezeway corridors and achieves the required solar access and cross ventilation requirements of the RFDC. The proposal locates non-habitable or mechanically ventilated spaces towards the central parts of the building.

SEPP 65 "Rule of Thumb"/ Standard	SEPP 65 Flat Code Numerical Standard	Proposal Performance
		Therefore, despite exceeding the building depth requirements, the proposal ensures that appropriate natural light and ventilation is received to future residents – Acceptable on Merit.
Building Separation Visual Privacy	<ul style="list-style-type: none"> Up to 4 storeys / 12m <ul style="list-style-type: none"> 12m, habitable rooms / balconies to habitable rooms / balconies 9m, habitable rooms / balconies to non-habitable rooms 6m, non-habitable rooms to non-habitable rooms 5 to 8 storeys / 12m to 25m <ul style="list-style-type: none"> 18m, habitable rooms / balconies to habitable rooms / balconies 13m, habitable rooms / balconies to non-habitable rooms 9m, non-habitable rooms to non-habitable rooms 	<p>The proposal achieves the required building separation as follows:</p> <p>North façade: min setback of 6m to boundary.</p> <p>East façade: min setback of 9.4m to the boundary.</p> <p>South façade: min setback of 12m</p> <p>West façade: min setback of 12m</p> <p>Complies.</p>
Deep Soil	<ul style="list-style-type: none"> Min 25% of open space area of site 	N/A - DCP controls apply.
Communal Open Space	<ul style="list-style-type: none"> Min 25% of site area 	N/A – DCP controls apply.
Private Open Space at Ground Level or on podium/car park	<ul style="list-style-type: none"> Min area 25m² 	N/A – DCP controls apply.
Pedestrian Access	<ul style="list-style-type: none"> Barrier-free access to min 20% of units 	100% of units are single level and accessed by elevators from street lobbies and the basement – complies.
Vehicle Access	<ul style="list-style-type: none"> Max driveway width 6.0m 	The driveway that extends from Clarendon Place is 7m in width. The width is appropriate given the density and mixed use nature of the development. – Acceptable on Merit
Apartment Layout	<ul style="list-style-type: none"> Max depth from window of single aspect apartments 8.0m Max distance from window to back of kitchen 8.0m 	<p>The majority of apartments are designed to have internal plan depths of 8m. - Complies.</p> <p>All single aspect apartments contain kitchens that are generally within 8m of a window – Complies.</p>
Balconies	<ul style="list-style-type: none"> Each apartment must have a "primary balcony", defined as "located adjacent to the main living areas, such as living room, dining room or kitchen" Min primary balcony depth for each apartment 2.0m 	<ul style="list-style-type: none"> 100% of units have a primary balcony adjacent to a main living room 100% of units have primary balcony depth of 2m + - Complies.
Ceiling Heights (finished floor level to finished ceiling level)	<ul style="list-style-type: none"> Residential building/floors <ul style="list-style-type: none"> Habitable rooms, min 2.7m Non-habitable rooms, min 2.25m - 	<ul style="list-style-type: none"> All apartments contain 2.7m high ceilings to habitable rooms with exception of the top floor of the penthouses which are 2.4m. – Acceptable on merit.

SEPP 65 "Rule of Thumb"/ Standard	SEPP 65 Flat Code Numerical Standard	Proposal Performance
Internal Circulation	<ul style="list-style-type: none"> For double-loaded corridor, max 8 units accessed from single core/corridor 	<ul style="list-style-type: none"> The proposal provides a maximum of 8 units per lift core– Complies.
Storage	<ul style="list-style-type: none"> Excluding kitchen cupboards and bedroom wardrobes <ul style="list-style-type: none"> – Studio apartment, min 6m³ – 1 bedroom apartment, min 6m³ – 2 bedroom apartment, min 8m³ – 3 bedroom apartment, min 10m³ 	Sufficient storage areas are provided within the basement and within the dwellings to achieve compliance with the required residential storage – Acceptable on merit.
Daylight Access	<ul style="list-style-type: none"> For min 70% of apartments, living rooms and private open spaces receive min 3 hours (2 hours in an urban area) direct sunlight in mid-winter between 9.00am and 3.00pm 	100% of apartment living rooms and private open spaces receive a minimum of 2 hours direct sunlight in mid-winter between 9.00am and 3.00pm.– Complies.
	<ul style="list-style-type: none"> Max 10% of units to have single southerly aspect (SW-SE) 	Due to the orientation of the site and layout of apartments, no dwellings have a single southerly aspect – Complies.
Natural Ventilation	<ul style="list-style-type: none"> Min 60% of apartments naturally cross ventilated 	50% of the units are dual aspect and at least 60% are naturally cross ventilated - Complies
	<ul style="list-style-type: none"> Min 25% of kitchens to have access to natural ventilation 	Kitchens generally have access to natural ventilation – Complies.

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.

BASIX Certificates have been submitted for the residential flat building aspects of the development which demonstrate compliance with the requirements of the Policy.

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.

The subject site is located in the *B4 – Mixed Use* zone under the Burwood Local Environmental Plan 2012. The proposed development is best described as a mixed use development which is permissible with consent in the zone. The proposed development comprises a mix of various

permissible uses comprising a *hotel* and *commercial premises* from the Lower Ground to Level 2, *serviced apartments* from Level 3 to Level 9, and a *residential flat building* from Level 10 to Level 22. In light of the above, the proposal comprises a mixture of uses that are permissible in the zone and the proposal is permissible as a mixed use development. The objectives for development in Zone B4 are as follows:

- "To provide a mixture of compatible land uses; and
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling."

The proposal provides a range of appropriate land uses comprising business, retail and commercial uses that are compatible with the location of the site in the commercial core of the Burwood Town Centre.

Clause 4.3 Height of Buildings

Clause 4.3 prescribes a maximum building height of 70m for the site. The proposed development has an overall height of 80.81m inclusive of an architectural roof feature that is permitted to project above the building height requirement pursuant to Clause 5.6 of the LEP. Excluding the architectural roof feature, the proposal provides a height of 76.45m and results in a 6.46m or 9.21% variation to the maximum building height requirement as detailed at Figure 6 below.

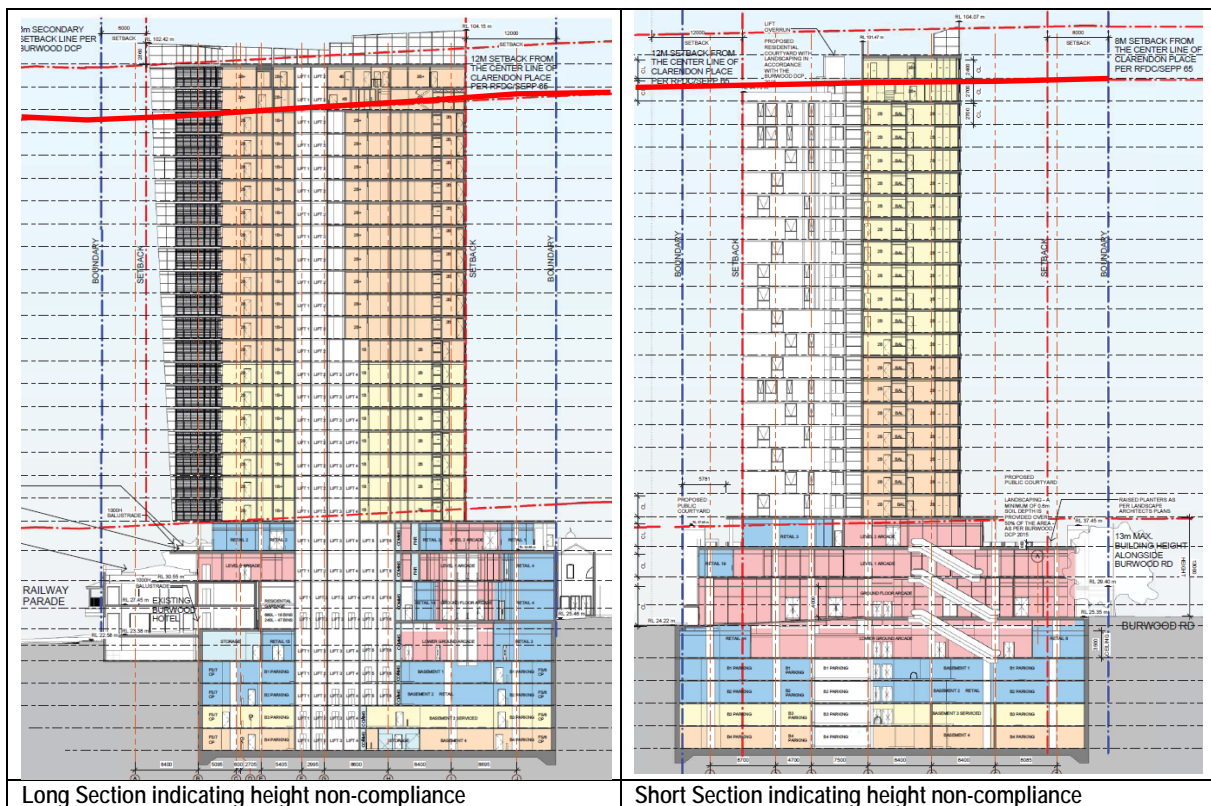


Figure 6: Height exceedance in short and long section

A written request, in relation to the development's non-compliance with the maximum height development standard in accordance with Clause 4.6 (Exception to Development Standards) of

BLEP 2012, was submitted with the application. That request is discussed below under the heading "Clause 4.6 - Exceptions to Development Standards".

Clause 4.4 – Floor Space Ratio

Clause 4.4 prescribes a maximum floor space ratio of 6:1 across the entire site and the proposal results in a total FSR of 6.54:1 and a GFA of 21,584m², therefore resulting in an exceedance of the maximum FSR at the site.

The applicant has submitted a variation request pursuant to Clause 4.6 in respect of this non-compliance. That request is discussed below under the heading "Clause 4.6 - Exceptions to Development Standards".

4.4A Exceptions to floor space ratio

In addition Clause 4.4A requires that the ratio of the gross floor area of any part of a building used for the purpose of residential accommodation to the site area must not exceed 2:1. The proposal provides 8,563m² or an FSR of 2.59:1 of residential GFA and exceeds the maximum permitted residential accommodation at the site. It is noted that the serviced apartments are excluded from the residential FSR calculations.

The applicant has submitted a variation request pursuant to Clause 4.6 in respect of this non-compliance. That request is discussed below under the heading "Clause 4.6 - Exceptions to Development Standards".

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the BLEP 2012 provides authority and procedures for consent authorities to consider, and where, appropriate grant consent to, development even though the development would contravene a particular development standard. The objectives of this clause are to provide an appropriate degree of flexibility in applying development standards, and to provide better outcomes for and from development by allowing flexibility. The provisions of Clause 4.6 may be applied to the maximum building height development standard pursuant to Clause 4.6(6)&(8).

In accordance with Clause 4.6(3), for Council to consent to an exception to a development standard it must have considered a written request from the applicant that seeks to demonstrate that:

- "
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard."

The applicant has submitted a written variation request under Clause 4.6 which forms Appendix D of the submitted Statement of Environmental Effects. It is noted that the submitted Clause 4.6 seeks to jointly address variations to a number of development standards which include Clause 4.3 – Height of Buildings, Clause 4.4 – Floor Space Ratio and Clause 4.4A – Exceptions to Floor Space Ratio. This report addresses each development standard and its respective variation separately. However, in

citing and extracting the applicant's justification reference may be made to other development standards which are requested to be varied.

Request to vary Maximum Height Development Standard

As detailed in Clause 4.3 above, the proposed development has an overall height of 80.81m inclusive of an architectural roof feature. Excluding the architectural roof feature, the proposal provides a height of 76.45m and results in a 6.46m or 9.21% variation.

In relation to subclause 4.6(3)(a), the submitted variation request includes the following reasons for why compliance with the maximum height development standard is unreasonable and unnecessary:

"1. The unique nature of the site being so centrally located at the heart of the Town Centre provides the most outstanding opportunity to further enhance urban consolidation and the results of planning directives and objectives for the Town Centre by increasing development and development height at this location being located so close to major public transport modes. The subject site is also unique because its location being furthest from and ensuring minimal impact on, surrounding low scale development outside the Town Centre.

The unique absolute central location of the subject site is also opportune in that it is physically located at the core of the Centre and as such is the most appropriate site to be pronounced and expressed with additional height to draw focus to the Centre which is a primary objective of the BLEP.

2. The size and character of the site can accommodate and support the architectural manifestation and expression of the proposed increase development sought without adverse impacts of overshadowing, loss of amenity from loss of audible and visual privacy on surrounding development including items of heritage significance, or other development surrounding the Burwood Town Centre.

....

8. The additional height proposed affords its occupants access to higher amenity by way of light, ventilation and views.

9. The underlying purpose of promoting outstanding architectural design based on best practice urban design principles with planning merit and the provision of public benefits identified in the Public Domain Plans and the Open Space and Community Facilities Study 2014 as provided in Council's Carrying out Development in Exchange for Public Benefits Policy, would be undermined and frustrated if compliance with the respective development standards was mandated.

...

17. Significant precedent is provided by Council demonstrated endorsement of other development (also located within the Central Core of the Town Centre) also exceeding BLEP's controls for height and density in its recent approval of development located at 9 – 15 Deane Street and 18-20 George Street Burwood – DA 51/2015.

The development sought variation to BLEP height standards for a building with a maximum height of 82.24 metres (25 storeys) representing a 17.49% increase above the allowable maximum building height of 70 metres.

The development also sought to vary the maximum residential FSR by 0.6:1 being a variation of approximately 30% which resulted in an overall FSR variation also sought for increase of FSR of 0.55:1 being a variation of approximately 9.2% consistent with Council's Carrying out Bonus Development in Exchange for Public Benefits Policy.

The variations to the BLEP's development standards were supported by voluntary planning agreement for financial contribution for public benefit and planning arguments regarding clause 4.6 exceptions."

The arguments advanced by the applicant are supported in relation to the height non-compliance. It is noted that the height exceedance principally relates to the provision of architectural roof features. Provision of the architectural roof features are in accordance with Clause 5.6 of BLEP 2015 with no floor space of any kind provided within the envelope created by the roof feature. As discussed further below, insisting on strict compliance would not yield an improved building outcome and it is accordingly acceptable in the circumstances.

Furthermore, in relation to subclause 4.6(3)(b), which requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify the non-compliance, the applicants planning grounds can be summarised as follows (noting that the below planning grounds were cited in the applicant's variation as forming the justification for all departures sought):

- 1) **Urban Consolidation & BLEP Planning Direction** – *the primary planning basis and strategy for the BLEP sees the highest FSR and height limits provided in the central core of the town centre being the optimum location for such intense uses in very close proximity to Burwood's railway station and major bus routes. The need to maximise employment generating non-residential uses in Burwood while also providing additional housing was implemented by providing the lowest residential FSR limit on the town centre in conjunction with the highest overall FSR limit for mixed use development to the Central Core area.*

The subject application proposes additional residential floor area which manifests in a direct increase in the overall maximum FSR for the overall development site rather than a reduction of non-residential floor space or FSR.

The amount of residential floor space, including the additional bonus residential floor space, is still of such a small amount to ensure the quantum of non-residential floor space (retail, serviced apartments and hotel) continues to represent the dominant and majority use of the development and thereby maintains, without compromise, the planning direction as provided and clarified in the BLEP clause 4.4A's objective and as such forms part of the planning grounds which justify the departures sought.

- 2) **Bonus Development Policy and Public Benefit** – *The development includes provision of additional publically accessible ground level area adjacent to the development along Clarendon Place to improve pedestrian amenity which in conjunction with the proposed planning agreement will contribute funds to Council for its provision of public facilities within the local area, sees the development provide an overall substantial public benefit.*
- 3) **Housing Stock, Diversity and Affordability** – *The proposed additional apartments resulting from the non-compliance with BLEP's height and FSR standards, will directly contribute to increasing housing stock and availability simply by providing more housing.*

Greater housing stock and choice will also eventually contribute to greater housing affordability as housing stock continues to grow with other new development, against a constant high demand.

Greater housing stock and affordable housing is a highly desirable planning outcome by State and local planning authorities and such outcome demonstrates the embodiment of sound planning grounds for the proposed additional development in achieving these results.

- 4) **Social and Economic Effect** – *The proposed additional residential development will support greater residential population and attract a greater residential demographic which will introduce greater diversity and social mix to blend with the area.*

The proposed additional residential development is predicated in the applicant's provision of public benefits which include the applicant's proposed financial contribution to Council to spend on public improvements in the local area. There is a clear economic benefit derived from the implementation of these improvements, but more importantly, there will be a significant improvement and increase in terms of the existing and proposed additional community's social interaction, amenity and general wellbeing.

- 5) **Public Interest** – *The benefits of urban consolidation, attainment of local planning objectives and surpassing of State planning objective and directions, increased housing and housing affordability and social and economic benefits as stem from the proposed additional residential development resulting from the non-compliance with BLEP's height and FSR standards, are considered to be consistent with whole of government approach to meeting community expectations and raising standards of living in all respects and is therefore considered to be in the public interest.*

The arguments advanced by the applicant are supported in the circumstances. It is accepted that the site is optimally located for additional height, being located in the town centre core and just to the south west of Burwood railway station. The site is also well separated from the lower density transition areas that surround the centre. The development has responded to the circumstances that are specific to the site, in terms of minimising impact, and has accommodated the additional height within a form that is appropriately massed and compatible with the desired scale and presentation at each street frontage.

The additional height allows for enhanced amenity in terms of solar access, cross-ventilation and opportunity for outlook and views to a greater extent that would a compliant scheme. The application also consolidates a larger large for a Town Centre development and this in itself has enabled a development outcome that is likely to be superior to piecemeal development of the individual sites, even if strict compliance with the height control was achieved.

Pursuant to Clause 4.6(4)(a) consent cannot be granted unless Council is satisfied that:

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and...*

Pursuant to Clause 4.6(4)(a)(i), the applicant's written request has adequately responded to and addressed the matters required by Clause 4.6(3) and the arguments that the applicant has advanced are supported in the circumstances.

In relation to Clause 4.6(4)(a)(ii), the applicant's Clause 4.6 variation request responds to the objectives of the standard as follows:

Objectives of the Building Height Standard

(a) To establish the maximum height of buildings to encourage medium density development in specified areas and maintain Burwood's low density character in other areas,

The applicant's Clause 4.6 variation request states that:

"The proposed additional height further facilitates the provision of more housing within the centre rather than in its medium density development areas outside the Town Centre. This acts to further reinforce the strategy of providing Burwood Town Centre as the place for taller and more intense development as compared to those other areas.

By facilitating height and density within the Town centre, Council is further able to manage and address high housing demand and storage or supply within its area, by allowing its orderly supply in an appropriate location within the Town Centre, in manner consistent with its overarching strategic directions."

It is accepted that the non-compliance in height is consistent with objective (a)."

(b) To control the potentially adverse impacts of building height on adjoining areas.

The applicant's Clause 4.6 variation request states that:

"The additional height proposed demonstrates the ability of the Town Centre to control the amenity of Burwood's low density character in other areas surrounding the Burwood Town Centre. The additional height demonstrates there is additional capacity for the Town Centre to support development with more height as the proposed additional height proposed casts no shadow on those areas nor is there any associated adverse impact arising as a result of loss of visual or audible privacy."

It is accepted that the building height exceedance as proposed will not result in a building that is significantly larger than what is expected in the area or inconsistent with the strategic intention of the transitional building form.

In addition, the height exceedance in itself does not result in any material amenity impacts on the adjoining properties beyond a compliant scheme and in this regards the previously submitted shadow diagrams (which involved a compliant scheme) and the shadow diagrams of the proposed development have been examined and show no significant additional overshadowing impacts as a result of the additional height. The arguments presented by the applicant's in the Clause 4.6 variation request are supported. The additional height does not generate any additional adverse privacy impacts.

Objectives of the Zone

The objectives of the B4 – Mixed Use zone are as follows:

- *"To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling."*

The application sufficiently demonstrates that the zone objectives are met despite the height exceedance.

In light of the above, the applicant has submitted a variation request in relation to the building height limit that demonstrates that there are sufficient environmental planning grounds to justify contravening the building height standard and that compliance with the height standards is unreasonable or unnecessary in the circumstances of the case, as required by Clause 4.6(4) of the LEP.

Applying the flexibility granted under Clause 4.6 in this instance, the variation to the height of buildings control is consistent with the objectives of Clause 4.6 as it will represent an appropriate degree of flexibility to allow a better outcome for and from the development in the circumstances.

Request to vary Maximum Floor Space Ratio

Clause 4.4 prescribes a maximum floor space ratio of 6:1 across the entire site and the proposal results in a total FSR of 6.54:1 (8.95% variation), therefore resulting in an exceedance of the maximum FSR at the site.

In relation to subclause 4.6(3)(a), the submitted variation request includes the following reasons for why compliance with the maximum floor space ratio standard is unreasonable and unnecessary:

“....

5. The proposed additional development and clear public benefits proposed to accompany the additional development is consistent with Council's Carrying out Bonus Development in Exchange for Public Benefits Policy”

...

9. The underlying purpose of promoting outstanding architectural design based on best practice urban design principles with planning merit and the provision of public benefits identified in the Public Domain Plans and the Open Space and Community Facilities Study 2014 as provided in Council's Carrying out Development in Exchange for Public Benefits Policy, would be undermined and frustrated if compliance with the respective development standards was mandated.

17. Significant precedent is provided by Council demonstrated endorsement of other development (also located within the Central Core of the Town Centre) also exceeding BLEP's controls for height and density in its recent approval of development located at 9 – 15 Deane Street and 18-20 George Street Burwood – DA 51/2015.

The development sought variation to BLEP height standards for a building with a maximum height of 82.24 metres (25 storeys) representing a 17.49% increase above the allowable maximum building height of 70 metres.

The development also sought to vary the maximum residential FSR by 0.6:1 being a variation of approximately 30% which resulted in an overall FSR variation also sought for increase of FSR of 0.55:1 being a variation of approximately 9.2% consistent with Council's Carrying out Bonus Development in Exchange for Public Benefits Policy.

The variations to the BLEP's development standards were supported by voluntary planning agreement for financial contribution for public benefit and planning arguments regarding clause 4.6 exceptions.”

The arguments advanced by the applicant are supported in relation to the FSR non-compliance. The proposed variation is in accordance with Council's strategy for encouraging greater density in the town centre, through its application of the *Carrying out Bonus Development in Exchange for Public Benefits Policy*. As discussed further below, insisting on strict compliance would not yield an improved building outcome and it is accordingly acceptable in the circumstances.

Furthermore, in relation to subclause 4.6(3)(b), which requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify the non-compliance, the applicants planning grounds were previously summarised above (under the maximum height variation).

The planning grounds advanced by the applicant are justified in the circumstances. As per the variation to the height standards, it is accepted that the site is the optimum location for additional density, being located in the town centre core and just to the south west of Burwood railway station. The proposal consolidated several allotments resulting a comprehensive approach to redevelopment. The outcome is considered to be superior to that which would be achieved by redevelopment of the site in separate parts, even if that development were to strictly meet the development standards.

The proposal also allows for additional high quality housing in immediate vicinity of public transport and a range of services. If the site were to be developed in separate parts, the density may be lower from providing setbacks between each development, however the overall built form and relationship between those buildings is likely to be inferior to the consolidated site being developed in this application.

Additionally, whilst not a matter for Section 79C assessment, the public benefits of the additional floor space being the provision of developer contributions towards public facilities and the ability of the proposal to provide ground floor pedestrian access between Burwood Road and Clarendon Place are considered to be additional planning grounds to justify the 8.95% variation.

Pursuant to Clause 4.6(4)(a) consent cannot be granted unless Council is satisfied that:

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and...*

Pursuant to Clause 4.6(4)(a)(i), the applicant's written request has adequately responded to and addressed the matters required by Clause 4.6(3) and the arguments that the applicant has advanced are supported in the circumstances.

In relation to Clause 4.6(4)(a)(ii), the applicant's Clause 4.6 variation request responds to the objectives of the standard as follows:

Objectives of the Floor Space Ratio Standard

(a) To enable development density and intensity of land use to achieve an appropriate urban form",

The applicant's Clause 4.6 variation request states that:

"The proposed additional floor space further pronounces the intended urban form, in the terms anticipated by the objective, by further increasing height and density at the very heart of the Burwood Town Centre which provides greater emphasis on the effect tapering heights and densities provided by the remaining areas within the Town Centre approaching the perimeter edges of the Town Centre.

The additional height, density and intensity does not detract from, but rather, helps to reinforce the physical expression and implementation of the urban town centre concept.

The proposed additional floor space demonstrates an appropriate urban form to be implemented suited to its context as it provides acceptable impacts in terms of overshadowing, privacy and traffic impacts in relation to public areas immediately surrounding the development and other areas of the Town Centre as well as areas outside and adjacent to the Town Centre."

It is accepted that the non-compliance in FSR is consistent with objective (a)."

(b) To focus higher development density and intensity of land use in the inner part of the Burwood Town Centre and to provide a transition in development density and intensity of land use towards the edge of the Burwood Town Centre."

The applicant's Clause 4.6 variation request states that:

"the proposed additional floor space further pronounces the hierarchy of the urban form in terms of height and intensity as provided in the heart of the Burwood Town Centre as compared to other areas with lower scale and density character outside and adjacent to the Town Centre.

The additional height, density and intensity provides greater contrast between it and the lower tapering heights attainable on other precincts toward the edge of, but still within, the Town Centre. This does not detract from but rather, helps to reinforce the objective through stronger physical expression and implementation of that higher focal point urban town centre concept by providing even more additional growth, height and density only at the very heart of the Town Centre."

It is accepted that the additional density is consistent with objective (b). In addition, as per the height exceedance, the additional density in itself does not result in any material amenity impacts on the adjoining properties beyond a compliant scheme. The arguments presented by the applicant's in the Clause 4.6 variation request are supported.

Objectives of the Zone

The application sufficiently demonstrates that the zone objectives are met despite the FSR exceedance.

In light of the above, the applicant has submitted a variation request in relation to the FSR limit that demonstrates that there are sufficient environmental planning grounds to justify contravening the FSR standard and that compliance with the FSR standard is unreasonable or unnecessary in the circumstances of the case, as required by Clause 4.6(4) of the LEP.

Applying the flexibility granted under Clause 4.6 in this instance, the variation to the FSR standard is consistent with the objectives of Clause 4.6 as it will represent an appropriate degree of flexibility to allow a better outcome for and from the development in the circumstances.

Request to vary Exceptions to Floor Space Ratio

Clause 4.4A requires that the ratio of the gross floor area of any part of a building used for the purpose of residential accommodation to the site area must not exceed 2:1. The proposal provides 8,563m² or an FSR of 2.59:1 of residential GFA and exceeds the maximum permitted residential accommodation at the site.

In relation to subclause 4.6(3)(a), the submitted variation request includes the following reasons for why compliance with the exception to floor space ratio development standard is unreasonable and unnecessary:

"3. Additional residential development as proposed meets and is consistent with the objectives of the relevant BLEP clauses.

....

12. The additional housing is also proposed in close proximity to existing and future jobs growth in the Town Centre and in close proximity to multiple modes of public transport providing highly efficient access to jobs across greater Sydney.

13. The additional residential population assists in achieving higher levels of activation of the urban interface, invigorating and improving the vibrancy and activity of the Burwood Town Centre.

14. The proposed additional dwellings promotes attainment of affordable housing and provision diversified housing in the area."

The arguments advanced by the applicant are supported in relation to the exceptions to floor space ratio development standard. As discussed further below, insisting on strict compliance would not yield an improved building outcome and it is accordingly acceptable in the circumstances.

Furthermore, in relation to subclause 4.6(3)(b), which requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify the non-compliance, the applicants planning grounds were previously summarised above (under the maximum height variation). The planning grounds advanced by the applicant are justified in the circumstances. As per the variation to the height and density standards, it is accepted that the site is the optimum location for additional residential density, being located in the town centre core and just to the south west of Burwood railway station.

Additionally, it is agreed that additional dwellings will assist in the attainment of affordable housing and higher levels of activation within the town centre. The proposed development incorporates a significant amount of commercial and retail space that will significantly enhance the services provided in the Town Centre as well as the employment base of the locality. The development as proposed incorporates a suitable mix of uses and the design of the building would not necessarily support other commercial uses at higher levels beyond what is provided,.

Pursuant to Clause 4.6(4)(a) consent cannot be granted unless Council is satisfied that:

- (iii) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (iv) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and...*

Pursuant to Clause 4.6(4)(a)(i), the applicant's written request has adequately responded to and addressed the matters required by Clause 4.6(3) and the arguments that the applicant has advanced are supported in the circumstances.

In relation to Clause 4.6(4)(a)(ii), the applicant's Clause 4.6 variation request responds to the objectives of the standard as follows:

Objectives of the Exception to Floor Space Ratio Standard

(a) to limit the density of residential development in certain business zones to ensure it does not dominate non-residential development in those zones.,

The applicant's Clause 4.6 variation request states that:

" The proposed additional residential development of 1.776.8m² results in a total residential gross floor area of 8,563m². When comparing the resultant amount of residential floor space to the proposed development's total gross floor area of 21,614m², the resultant residential area represents 39.6% of the total proposed development area. This represents a development ratio of 1 in 2.51 which demonstrates a significant subservient development proportion of the quantum of proposed residential development, despite its proposed additional residential areas, as compared to the entire development.

The non-residential floor space proposed at 13,501m² is 1.52 times greater than the proposed residential floor space of 8,563m² including the proposed additional residential area, and as such clearly maintains its dominant land use over the residential use despite the additional residential floor area proposed."

It is accepted that the non-compliance is consistent with the objective of the exception to floor space ratio standard. It is agreed that the development as a whole is consistent with the objective. The arguments presented by the applicant's in the Clause 4.6 variation request are supported.

Objectives of the Zone

The application sufficiently demonstrates that the zone objectives are met despite the residential ratio exceedance.

In light of the above, the applicant has submitted a variation request in relation to the exceedance to floor space ratio limit that demonstrates that there are sufficient environmental planning grounds to justify contravening the standard and that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, as required by Clause 4.6(4) of the LEP.

Applying the flexibility granted under Clause 4.6 in this instance, the variation to the residential floor space ratio standard is consistent with the objectives of Clause 4.6 as it will represent an appropriate degree of flexibility to allow a better outcome for and from the development in the circumstances.

Cause 5.6 – Architectural Roof Features

Clause 5.6 of BLEP permits flexibility in building height limits where architectural roof features result in minor encroachments. The proposed development includes architectural features that protrude past the height limit (noting that the proposal also includes building mass beyond the height limit). The SEE accompanying the application provides that the provisions of Clause 5.6 have been addressed by the proposal as:

" The amended design proposes architectural features that protrude past the height limit.

- These are structurally architecturally decorative visual elements used to accentuate architectural focus and contribute to the design's architectural excellence.*
- There is no advertising signage proposed to be attached to or forming part of the roof feature in anyway.*
- There is no floor space of any kind provided within the envelope created by the roof feature.*
- The additional height created by the roof feature is located on the most eastern part of the tower element which ensures any shadow cast by the roof feature in the morning falls within the subject site upon the roof of the tower and not any adjoining properties. The roof feature is created by thin blade wall running in a north/south direction and casts no additional shadow in the afternoon. Afternoon shadows are slightly*

intensified by the proposed roof feature however, being made predominantly of transparent glass, this will allow sunlight to penetrate and cause minimal adverse effect."

The applicant's argument that the proposed height exceedance is not simply related to building mass but includes architectural roof features is supported. The variation to the maximum height limit is discussed in detail above in regards to the Clause 4.6 request.

Clause 5.10 – Heritage Conservation

The subject site is not identified as a heritage item and is not located in a heritage conservation area. However, the site is located in the vicinity of a number of Heritage Items. A Heritage Impact Assessment prepared by *Colin Israel Heritage Advice* dated September 2015 was submitted as part of the revised DA submission. The Report concludes that:

"Overall the design, while contemporary in character and materials, takes its cues from the surroundings to create a sympathetic context for the adjoining and nearby heritage items by responding subtly to the cues of the immediate streetscape and to the opportunities to redefine the relationship with the Former Burwood Post Office without resorting to imitation. The Revised DA has incorporated positive refinements at Street level as well as in the Podium and Tower."

The revised Heritage Impact Assessment has been considered by Council's Heritage officer who has advised that the design changes adequately addressed previous heritage issues raised and that the application was acceptable subject to conditions of consent which have been incorporated into the draft conditions of consent in Annexure A.

Clause 6.1 Acid Sulfate Soils

The subject site is identified as containing Class 5 acid sulfate soils. No Acid Sulfate Soils Management Plan is required as the proposal does not involve works within 500m of an adjacent site identified as containing Class 1, 2, 3 or 4 acid sulfate soils and will not lower the water table below RL5 AHD.

Clause 6.3 Active Street Frontages

The Active Street Frontages maps of the LEP identify Burwood Road and Railway Parade as requiring active street frontages. The proposed development provides access to a retail arcade and a retail premises directly from Burwood Road as well as maintaining access to the Burwood Hotel and providing direct access to a retail premises from Railway Parade. As such, the proposal satisfies the requirements of Clause 6.3 of the LEP.

Planning Proposal – Serviced Apartment Development and Other Amendments

Currently on exhibition (until 31 March 2016) is a Planning Proposal that seeks to amend the Burwood Local Environmental Plan 2012 (BLEP) to limit the proportion of floor space available for serviced apartments. The limit would be set at 10% of the overall permissible Floor Space Ratio (FSR) and the provision would apply only in specific locations. The Planning Proposal is intended to manage the supply of serviced apartments and forestall the pressure to convert serviced apartments to residential accommodation. Clause 4.4A (1) of the BLEP relating to the objectives of this clause

would be amended. Whilst this Planning Proposal, if gazetted, would apply to the subject site, given that it is currently on public exhibition it cannot be considered imminent or certain and should be given limited weight in assessment.

Burwood Development Control Plan 2013

Burwood Development Control Plan (DCP) was adopted by Council on 12 February 2013 and came into effect on 1 March 2013. Compliance with the relevant DCP controls is summarised in Table 1.

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
2.3 Views and vistas	Identify significant views and vistas and demonstrate how they are to be improved and enhanced Encourage view sharing	The building will obscure some views of other high density residential buildings that will be constructed in the Burwood Town Centre in the future, however, the form of development promotes view sharing due to its slim tower form. The degree of impact could be reasonably expected from application of the relevant controls.	Yes
2.4 Streetscapes	Identify streetscape characteristics Demonstrate how building design, location and landscaping will enhance and protect streetscapes.	The podium level appropriately responds to the scale of each streetscape frontage. The proposal promotes an active frontage within each streetscape and provides a contextually appropriate scale of development at the podium levels.	Yes Yes
PART 3 DEVELOPMENT IN CENTRES AND CORRIDORS			
3.2.1 Design Excellence	Represent architectural design excellence by: <ul style="list-style-type: none"> - Form and external appearance to improve the quality and amenity of the public domain - building elements and finishes to reflect use and structure - Respond positively to the environmental context - Considering development potential for adjoining sites 	Design excellence has been assessed by GMU (see Appendix C) and found to be generally satisfactory. It is considered that the remaining issues of urban design, on balance, are not unacceptable and do not warrant refusal of the application.	Yes
3.2.2 Materials and Finishes	Building exteriors to have high quality finishes Avoid extensive expanses of blank glass or solid walls Visually interesting treatments Conceal equipment and machinery	Materials, colours and finishes proposed with the Development Application are considered to be satisfactory subject to additional information and a refined set of samples and annotated plans being submitted with the application for a Construction Certificate. Appropriate conditions can be	Yes

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	<p>from public view</p> <p>Incorporate external lighting (avoid excessive light spillage)</p> <p>Translucent or opaque materials for balustrades</p> <p>Building entrances visible from the street</p> <p>Discourage painted finishes</p> <p>Walls to be articulated and designed for visual interest when viewed from the street</p> <p>Low maintenance and graffiti resistant materials used</p>	<p>imposed (see Annexure A)</p> <p>Conditions can be imposed to require details of external lighting to be submitted with an application for a Construction Certificate for assessment by Council.</p> <p>Each building and each retail premises is provided with an entry that is visible from the adjoining street.</p>	
3.2.3 Roofs and Roof Tops	<p>Roof design to be integrated with the overall building and its role in the Burwood Town Centre skyline</p> <p>Roofs to respond to site orientation</p> <p>Service elements screened and integrated with the roof design</p> <p>Design to have regard to the view from the street, from adjacent development and as part of the skyline</p>	<p>The roof design has been assessed by GMU and determined to be satisfactory (see Annexure C).</p>	Yes
3.2.4 Street-front Activities and Building Access	<p>Security measures to be integrated with building design</p> <p>Ground floor development must:</p> <ul style="list-style-type: none"> - promote quality non-residential activity in accordance with the zone - minimise the number of service doors - provide access points to the public domain at no more than 20m intervals - provide at grade access points <p>Provide separate, clearly</p>	<p>The building design activates the street frontages and has been designed to enable incorporation of appropriate security measures at each pedestrian and vehicular access point.</p> <p>Each street frontage contains active retail uses.</p> <p>Service doors are limited on the Burwood Road and Railway Parade frontages.</p> <p>Appropriate access points are provided along each frontage.</p> <p>Access points from each street frontage are provided at grade.</p> <p>Both pedestrian and vehicular</p>	Yes

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	identifiable entrances from the street for pedestrians and cars, residential and non-residential uses.	entrances are clearly identifiable.	
3.2.5 Subdivision and Car Parking Spaces	Consent must not be granted to Strata Title or Community Title subdivision which results in the subdivision of car parking alone.	No strata title subdivision is proposed, however, a consent condition will be imposed which requires that all parking spaces are not to be separately subdivided.	-
3.2.6 Site Isolation	<p>The creation of isolated sites is discouraged.</p> <p>Where a development may result in the creation of an isolated site or sites, the applicant is required to demonstrate that negotiations between the owners of the properties commenced at an early stage that was prior to the lodgement of the Development Application. Where no satisfactory result is achieved, the Development Application must include evidence of negotiations with the owners of the properties. These details must include offers to such owners. Such offers are to be reasonable and are to be based on at least one recent independent valuation and include other reasonable expenses likely to be incurred in the sale of the process.</p> <p>Where a development may result in the creation of an isolated site the applicant must demonstrate that orderly and economic use and development of the separate sites can be achieved that is consistent with the planning controls. Such demonstration is achieved by the applicant providing an envelope for that site, indicating height, setbacks, resultant site coverage and/or built area (building and basement), sufficient to understand the relationship between the development and that site, the likely impacts the development will have on each other, such as solar access, visual and acoustic privacy, impacts for residential development and traffic impacts if that site is on a main</p>	<p>The proposal results in the creation of an isolated site at No.34 Railway Parade.</p> <p>The applicant has provided evidence of negotiations between the owner of the isolated site and the owners of the site. The documentation provided shows that negotiations were started prior to the application being lodged. The offers were based on recent and independent valuations however were not accepted.</p> <p>The submitted SEE states that: <i>"Envelope concept plans for the development of the isolated site are submitted as part of the application. These include potential access from basement levels of the development site to the basement levels of the adjoining site.</i></p> <p><i>The study demonstrates the isolated site may best be developed as extensions to the existing building to avoid Council's 3 metre setback requirement. This will also achieve a satisfactory resultant form which will achieve a reasonable contextual fit, particularly in relation to the existing hotel whose structure is to remain".</i></p>	<p>Yes</p> <p>Yes</p>

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	<p>road.</p> <p>The development of an isolated site is not to detract from the character of the streetscape and is to achieve a satisfactory level of amenity, including solar access, visual and acoustic privacy.</p>	<p><i>"The street front massing will be appropriate regardless of whether the isolated site is developed or not. In the event the site remains unchanged, it works well with the proposed developed as the single storey massing relates well to the existing hotels 2 storey mass. In the event the site is developed, the mass will serve well in the relationship between the proposed podium as it would match streetfront height and secondary setbacks.</i></p> <p>The applicant has followed the process set out in the DCP (and supported by Court principles) in relation to site isolation and the application is considered to be acceptable in this regard. Evidence has been produced to show appropriate attempts have been made to acquire the isolated site as part of the subject site.</p>	Yes
3.2.8 Apartment Mix and Minimum Dwelling Sizes	<p>Residential development in excess of 20 dwellings must provide a mix of dwellings containing 1, 2 or more bedrooms</p> <p>All residential developments must provide the following minimum apartment sizes: Studio 40m² One bedroom apartment 50m² Two bedroom apartment 70m² 3+ bedroom apartment 95m²</p>	<p>The residential flat building contains a mix of one, two and three bedroom units.</p> <p>All one bed dwellings exceed 50m² All two bed dwellings exceed 70m² All three bed dwellings exceed 95m²</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
3.2.10 Building depth	Refer to RFDC	Refer to RFDC Assessment above.	-
3.2.11 Ceiling Height	<p>Ground level 3.3m.</p> <p>Non-residential floors above ground level: 3.0 metres.</p> <p>Residential floors above ground level 2.7m habitable rooms and 2.4m non-habitable rooms</p>	<p>Ground level exceeds 3.3m.</p> <p>Commercial levels above the ground floor exceed 3m with exception to the serviced apartments which contain 2.7m ceiling heights. This is appropriately justified in the submitted SEE and is considered to be an acceptable departure.</p> <p>Minimum 2.7m for all levels above the ground floor with exception to the 2.4m ceiling height for the top</p>	<p>Yes</p> <p>Yes</p> <p>On merit</p>

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
		floor of the two storey penthouses. The minor non-compliance is acceptable given the nature of these apartments, being high quality, large apartments over two floors.	
3.2.12 Natural Ventilation	Refer to RFDC	Refer to RFDC Assessment above.	Yes
3.2.13 Daylight Access	Refer to RFDC	Refer to RFDC Assessment above.	Yes
3.2.14 Visual and Acoustic Privacy	<p>Development must be located and orientated to maximise visual privacy between development on the site and adjacent development by:</p> <ul style="list-style-type: none"> Providing adequate rear and side setbacks. Utilising the site layout to increase building separation. For example, orientation of buildings on narrow sites to the front and rear of the lot, thereby utilising the street width and rear garden depth to increase the apparent building separation distance. <p>Privacy provisions should not compromise natural light and air</p>	The residential apartments are located between levels 10 and 20 and each apartment will be setback from the property boundary by more than 12m to comply with the separation requirements of the RFDC. The design and orientation of the apartments will enable appropriate privacy for future residents and future development on adjoining sites.	Yes
3.2.15 Private Open Space	All dwellings to have direct access to a primary area of private open space from the main living room	All dwellings have private open space directly accessible from the main living room.	Yes
	Primary open space of dimensions to promote outdoor living suitable for outdoor table and chairs	Private open space areas are suitable to the proportions of the dwellings proposed.	Yes
	Minimum dimensions: 1 bedroom – minimum depth 2m and minimum area 8m ²	All 1 bedroom dwellings have balcony depths of at least 2m and an area that exceeds 8m ² .	Yes
	2 bedrooms – minimum depth 2.5m a minimum area 8m ²	All 2 bedroom dwellings have balcony depths of at least 2.5m and an area that exceeds 8m ² .	Yes
	3 or more bedrooms – minimum depth 2.5m and minimum area 10m ²	3 bedroom dwellings have a balcony depths that are greater than 2.5m and contain areas that exceed 10m ² .	Yes
	Private open space which responds to site conditions and integrated with the building design	Private open space is provided in response to the site context.	Yes
3.2.16 Lobbies and	Entry lobbies to provide seating,	The main residential entry lobby is	Yes

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
Internal Circulation	mail delivery and collection and space for supervising personnel	appropriate in size.	
	Lift lobbies to have natural ventilation and natural light	Lift lobbies have access to ventilation and natural light.	Yes
	Common area corridors minimum 2m wide	Corridors are at least 2m in width.	Yes
	Name and number of development clearly displayed at the entry and suitably illuminated	Suitable conditions will be imposed in this respect.	Yes
3.2.17 Storage for apartments	Refer to RFDC	Refer to the RFDC compliance table above.	Yes
	At least 50% of the storage area to be provided within the dwelling	Each dwelling is generously proportioned and contains identified storage areas internally.	Yes
	At least 25% of storage area accessible from active areas	All storage spaces are accessible from active areas of each dwelling.	Yes
3.2.18 Safety and Security	Route between shared entrance and each dwelling to maximise safety including from car parking	Pedestrian movement paths considered safe.	Yes
	Clearly defined boundaries to distinguish between private and public space	Residential and public areas are distinguished by access points to the building.	Yes
	Various controls relating to compliance with the CPTED principles.	The security measures and crime prevention components of the proposal are discussed in detail in the applicant's SEE.	Yes
3.2.19 Access and Mobility	Main entry accessible from the street footpath and common accesses in accordance with AS 1428: Design for Access and Mobility	Entrance points from the Burwood Road frontage to each retail apartment and the retail arcade provides level access.	Yes
		The access point from Railway Parade provides level access to the retail unit and lift access to the main portion of the retail arcade.	Yes
		The proposed office spaces within the Burwood Hotel and Retail mezzanine level do not benefit from lift access.	Yes
	Minimum 10% of dwellings as Adaptable Housing Class A or B	10 Units or 10% of units are selected for pre and post adaptable layouts.	Yes
	At least one car space for each accessible or adaptable dwelling to comply with AS1428.2	Each adaptable unit will contain an adaptable apartment layout.	Yes
	Development of 80+ dwellings	The proposal provides 10	Yes

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	accessible visitor car parking to be provided at the rate of one per each 60 dwellings or part thereof. – two accessible visitor spaces are required.	accessible spaces.	
3.2.20 Awnings	To be provided above the public domain in B4 Zone	Awnings will be provided.	Yes
	No part of any awning may be constructed less than 3.2 metres or more than 5.5 metres from the finished ground level of the public domain	The proposed awnings are between 2.5m in height along Clarendon Place and a maximum of 4.5m along Railway Parade. The applicant's SEE has requested that the non-compliance be dealt with via a condition of consent. A condition of consent has been included in the draft conditions.	Yes
	Awnings must be set back a minimum 600mm from the kerb line.	All proposed awnings are setback at least 600mm from the kerb line.	Yes
PART 3.3 AREA BASED CONTROLS – BURWOOD TOWN CENTRE			
3.3.2.1 Building Height Plane	Height of buildings not to exceed the building height plane	The site is centrally located and not affected by the Burwood Height Plane.	Yes
3.3.2.3 Commercial Core and Middle Ring Areas	Podium Height Development in the Commercial Core and Middle Ring Areas built to the street front must not have a podium height greater than 15 metres.	Development that is built to the boundary alignment along Railway Parade and Clarendon Avenue is within the 15m height limit.	Yes
	<i>Burwood Road</i> Development along Burwood Road built to the street front must not be greater than 13 metres in height.	The building that is built to the boundary alignment along Burwood Road is within the maximum 13m height limit.	Yes
	Street front development along Burwood Road must enhance the existing streetscape and be of a similar scale, form, bulk, placement and character to adjoining and nearby street front development.	Refer to the urban design comments prepared by GMU in relation to appropriate response to the site context.	Yes
	Street Front Setbacks Development must be built to the street front boundary except where a minimum of 3m is required from the Railway Parade frontage.	The development is built to the boundary along Burwood Road and is setback 3.4m from the frontage to Railway Parade.	Yes
	These measurements are taken from the street boundary after any	Noted.	-

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	land acquisition required by BLEP 2012 has been completed.		
	Setback areas must be free of any projections or encroachments, except for approved awnings and at grade landscaping.	Setbacks to Railway Parade will contain an awning structure only.	Yes
	All ground level setbacks are to be finished at-grade with Council's footpath and finished with materials to match Council's current public domain requirements.	Ground level setbacks are finished at the same level as the footpath areas.	Yes
	Secondary Setbacks <i>Burwood Road</i> Where development along Burwood Road exceeds 13m in height, the part of the development above 13m must be set back a minimum of 8m from the street front boundary.	Level 2 is setback 8m from Burwood Road.	Yes
	<i>Railway Parade</i> The part of the development above 15m must be set back a minimum of 6m from the street front boundary.	The portions of the building at level 2 are setback in excess of 15m from the street front boundary.	Yes
	Side and Rear Setbacks For residential development refer to the building separation setback provisions of the RFDC which supplements SEPP 65 - Design Quality of Residential Flat Development.	The residential apartments achieve compliant shared separation at the side and rear boundaries.	Yes
	Other street front development up to 15m in height must be built to the side boundary and may be built to the rear boundary.	All street front development up to 15m in height is built to the side and rear boundaries.	Yes
	Building separation/frontage RFDC building separation must be shared equally with adjoining development across a boundary	The proposal achieves the required shared separation to properties located on the opposite side of each street frontage.	Yes
	The maximum length in any direction of any part of a building parallel to the street above 15 metres in height is 45m.	The tower element of the proposal is 60m and appropriately articulated.	Yes
	Communal open space <i>Podium Areas</i> Podium areas must be made accessible as communal open space.	The podium area provides common open space.	Yes

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	Landscaping must be provided in communal open space. A minimum 0.6 metre soil depth must be provided over 50% of the area to support planting or soft landscaping.	50% of the podium rooftop is provided with 600mm deep soil planting.	Yes
	<i>Roof Tops</i> Accessible communal open space may be provided on roof tops of development.	The roof top provides common open space.	Yes
	The design of roof top communal open space must also have regard to its visual and acoustic impact and effects of wind.	The roof terrace is well protected due to its location and protection from adjoining buildings.	Yes
	For residential development refer to the communal open space provisions of the RFDC which supplements SEPP 65 – Design Quality of Residential Flat Development.	Refer to the RFDC provisions above for compliance.	Yes
3.7 Transport and Parking in Centres	Resident on-site parking: 0.5 spaces per studio unit – N/A 1 space per 1 and 2 bedroom unit – <i>89 spaces required.</i> 1.5 space per 3 bedroom unit – <i>5 spaces required.</i> <i>Total – 94 residential</i>	94 residential parking spaces are proposed.	Yes
	Visitor on-site parking: 1 space per 5 units – <i>19 spaces required</i>	19 Residential visitor parking spaces in Basement Level 03.	Yes
	Serviced Accommodation 1 space per accommodation unit – 56 spaces + 2 for staff – total 58 spaces	58 parking spaces provided in Basement Level 03.	Yes
	Retail- B4 Mixed Use in the BTC · 1 space for the first 400m ² or part thereof, plus · 1 space per 40m ² or part thereof additional to the first 400m ² . <i>Retail floor area is 7392m² – 176 parking spaces.</i>	135 spaces proposed.	No – see discussion below
3.7.6 General Requirements in All Centres and Corridors	A loading dock and servicing facilities for developments must be provided as required by AS 2890.2	A loading area is proposed at ground level extending from Clarendon Place.	

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
- B1, B2, B4 and B6 Zones	Part 2: Off-street commercial vehicle facilities, or in any case for all developments erected on land having an area greater than 1500m ² .		
3.7.2 Burwood Town Centre	All vehicles to be capable of entering and leaving the site in a forward direction.	All vehicles can enter and leave in a forward direction.	Yes
	Vehicle access to be provided by secondary streets in preference to major roads	Vehicular access is provided from Clarendon Place.	Yes
	No impacts on bus operations	The vehicular access does not affect bus stops.	Yes
	Openings must be screened with automatic closing doors	A security roller door will be provided.	Yes
	Vehicle access to be separated from pedestrian access	Vehicular and pedestrian access points are clearly separated.	Yes
	Bicycle parking facilities in accordance with AS 2890.3	Bicycle parking facilities are provided and comply.	Yes
3.8 Heritage in Centres and Corridors	Heritage Impact Statement required.	The Heritage Impact Assessment submitted with the development application has been assessed by Council's Heritage Officer. Following the amendments the officer has provided conditions of consent which have been included in the draft conditions – Annexure A.	Yes
3.9.4 Lanes	Existing lanes in the BTC should be retained.	Clarendon Place will be maintained.	Yes
	Where development has a frontage to a lane that is also a pedestrian route, the environment of the lane must be improved by providing design details that create visual interest and improve public safety and amenity.	N/A 0 Clarendon Place is not a pedestrian Route.	
3.9.5 Treatment of Street Front Setbacks – Commercial Core and Middle Ring areas.	In the Commercial Core and Middle Ring Areas, where a street front setback of development is required in Figure 6, the setback area is to be treated and upgraded in a manner consistent with the requirements for the public domain immediately in front of the development. A right of pedestrian	Appropriate conditions of consent can be imposed.	Yes

TABLE 1: Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	and vehicle movement by way of an easement in Council's favour in accordance with a Section 88B Instrument under the Conveyancing Act 1919 over the setback area is to be placed on the title of the land.		
3.9.6 Public Domain Finishes and Elements within Development	<p>Lighting to be provided appropriate to the setting</p> <p>Publicly accessible areas provided with paving, street furniture, planting, fences, kerbs and drainage to a standard not less than Council's Public Works Elements Manual (June 2006)</p>	Appropriate conditions of consent can be imposed to achieve compliance with these requirements.	Yes
3.9.9 Access and Mobility for the Public Domain	<p>The public domain immediately adjacent to any development must be upgraded to Council's standards at the applicant's cost</p> <p>Where the pedestrian way meets a public road and pedestrians are to cross the roadway, laybacks shall be provided in the kerb line of gradients suitable for people with a mobility impairment</p> <p>Tactile indicators in accordance with AS1428.4 are to be installed where there is a change of floor surface level</p>	Appropriate conditions of consent can be imposed to achieve compliance with these requirements (see Annexure A).	Yes
PART 6.2 WASTE MANAGEMENT			
6.2.5.2 Design of Waste Management Facilities in Multi Dwelling Housing and Residential Flat Buildings	<ul style="list-style-type: none"> · Residential buildings containing more than three (3) storeys shall provide a waste chute system. ii. 240 litre general waste bin (red / grey lid) per two dwellings; iii. 240 litre recycling bin (yellow lid) collected fortnightly iv. 240 litre greenwaste bin (green lid) up to 3 bins per unit block collected fortnightly · Developments which include at least 10 dwellings will need a dedicated storage area of at least 15 square metres for the temporary storage of bulky items to be removed. 	<p>A waste chute is provided to each building.</p> <p>To be provided.</p>	

The proposal complies with most of the relevant provisions of Burwood DCP and where minor departures to numerical controls result, sufficient justification has been provided. Provision of car parking is discussed further below.

Provision of car parking

Under the provision of the Burwood DCP, the proposed development requires the provision of 94 residential car spaces, 19 visitor spaces, 58 serviced apartment spaces and 176 retail spaces. The proposal complies with the provision of residential spaces but includes a shortfall in retail spaces of 41 spaces (providing only 135 spaces). The applicant seeks to justify the shortfall by stating that the remaining 41 spaces would be provided by contribution in lieu. However, the applicant argues that no contribution for parking should be applied as a contribution in lieu has previously been provided to Council for a development on the site in 1983. It is noted that Council have no record of the previous Section 94 Contributions been paid. Irrespective, the contribution was in relation to a separate application to address a shortfall in parking for that particular development.

As such a condition of consent requiring contributions in lieu of the 41 required retail spaces has been included as a condition of consent in Annexure A.

Overshadowing

It is noted that Council's DCP does not include a control in relation to overshadowing, nor does the RFDC. To assess the potential impacts of overshadowing on the property to the south (No.135 Burwood Road), the applicant has provided shadow diagrams and elevations to make a comparison between existing shadows and proposed shadows. The applicant has provided the following analysis of overshadowing:

"overshadowing of the development will be reasonable and minimal as evidenced in the shadow analysis submitted with the supporting documentation. The rectangular floor plate with the smallest dimension facing north results in a slender proportioned built form tower which creates fast moving shadows during the middle of the day and minimises overshadowing impacts during midwinter. The substantial setbacks of the tower component also aid in minimising overshadowing. The majority of overshadowing will occur over adjoining existing roof areas. This is highlighted by the shadow cast at midday during mid-winter which sees the shadow not reaching Belmore Street. The width of Clarendon Place to the west and Burwood Road to the east, combine with the proposed substantial setbacks, to ensure minimum overshadowing in the mornings and afternoon during midwinter. There is no overshadowing resultant from the development over any public plaza or public open space identified in Council's LEP or Public Domain Plans. The State heritage listed old Post Office is also protected from overshadowing from the development until extremely late in the afternoon after 3pm only during midwinter."

The analysis by the applicant is supported. Overall the shadow to be cast by the proposal is considered reasonable for a high density residential environment. 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 fully protected is unrealistic.

CONSULTATION

External Referrals

Sydney Trains

Sydney Trains raised no objection to the application subject to the imposition of some recommended conditions and that a copy of the consent was sent to them upon approval.

GMU Urban Design

GMU's most recent Urban Design Assessment dated 10 March 2016 is provided at Appendix B. The assessment concludes that:

"This current set of amendments has not resolved the issues that were raised previously. GMU strongly recommends that the applicant be provided with opportunity to address the issues raised before any further consideration of approval. These include:

- Façade design for both the western portion of the tower and podium levels with respect to the rest of the streetscape*
- Built form transition and a potential access from the proposed podium top to the isolated site*
- Internal amenity issues regarding a number of proposed kitchens, study rooms and bedrooms*
- Insufficient communal open space provision*
- Further design development of the corner ground level along clarendon place*
- Separation of uses in the proposed basement parking*

Each of the remaining issues is addressed below.

Façade Design for western portion

GMU have requested actual samples of materials to be provided to enable them to form part of the conditions of consent.

GMU have also stated that further design development is required to the western elevation (rear portion of tower) and a better podium response to Burwood Road and Railway Parade, stating that the first floor elevation of the podium facing Burwood Road is generally a continuous glass wall.

Planning Ingenuity is of the view that the built form has a satisfactory visual impact on the public domain and that this issue is of a highly subjective nature, without any basis in specific planning controls. Therefore, on balance, it is considered that this issue does not warrant refusal of the development application. Were the Panel to disagree, a deferred commencement condition could perhaps be imposed to require further design refinement, however this condition in our view would have uncertain objectives.

A condition requiring submission of samples of materials has also been included in the draft conditions of consent.

Built form transition and access from proposed podium to isolated site

GMU have raised concern with the regard to the possible access between the proposed podium top to the potential development within No.34 Railway Parade, requiring the applicant to take this into account to avoid potential future safety and access issues.

It is the view of Planning Ingenuity that the access issue can be addressed via a condition of consent requiring balustrades to be erected at the top podium level to prevent access to No.34 Railway Parade.

Internal amenity issues and Communal open space provision

The internal amenity issues that GMU have identified as remaining are:

- *From Level 3 to 9, the proposed kitchens for unit type 4 are too enclosed and located deeply at the centre of the proposed units, which does not facilitate natural ventilation*
- *The proposed unit 21.01, 21.04 has a study that will be highly likely be used as a bedroom, which needs to be rectified by integrating the study more as part of the living space*
- *The under provision of communal open space is still relevant as previously identified. A note has been added suggesting that areas to the podium open space is for residents and public access only during retail operating hours; however, this space will be fully overlooked by the restaurant uses in this level, which is not a good outcome.*

GMU also identified a number of proposed bedrooms with compromised daylight access. The proposed unit types 2 and 7's master bedrooms are all located behind a floor to ceiling solid wall according to the elevation. These bedrooms' daylight access is significantly compromised. A similar issue is found for the bedrooms within the top floors penthouse units as well.

It is noted that Levels 3 to 9 are the serviced apartments and hence the RFDC does not apply. Nevertheless, the layout of unit type 4 consists of an open plan layout with the living and dining rooms adjoining the kitchen. The living and dining rooms have north and west facing windows and therefore it is considered that natural ventilation is facilitated.

A condition of development consent is recommended that no nibs are permitted as part of the studies to prevent this space becoming a bedroom.

The proposal provides 417m² (13%) of communal open space. The applicant has put forward an argument that the communal open space is appropriate given that the podium and the area over the Burwood Hotel can also be utilised by residents (and the public) during the operating hours of the centre. Planning Ingenuity are of the view that the proposed communal open space arrangements are appropriate in the circumstances. The podium open space will be overlooked by the proposed retail spaces however this will not necessarily deter usage but rather facilitate a more public space, similar to a public park. The communal space on Level 21 will provide the opportunity for a more secluded open space for use by residents only. Thus, in conjunction the provided communal space is considered to address the objectives of the RFDC in regard to open space.

The RFDC provides that “daylight consists of skylight - diffuse light from the sky - and sunlight - direct beam radiation from the sun”. It is considered that the bedrooms located behind the solid walls will still receive daylight, albeit not direct sun. It is noted that the living rooms and private open spaces of 100% of the units will receive 2 hours of direct sunlight in mid-winter. Thus, daylight access to the individual units is considered to meet the RFDC.

Design Development of the corner ground level along Clarendon Place

GMU raised concern with the western edge activation, especially the corner of Railway Parade and Clarendon Place and requested that the vehicular openings should be minimised to improve the character of this elevation.

Planning Ingenuity is of the view that whilst the principles of SEPP 65 and the RFDC must be applied to assessment of the proposal, there is an absence of any specific design controls that are breached by the proposed vehicular entrances and corner treatments. Further, the proposed vehicular entrances are functional and necessary for the development to operate. They are not in excess of what would reasonably be expected to service a development of this scale.

For these reasons, and given the subjectivity that is associated with assessment of this aspect of the proposal, Planning Ingenuity is of the view that the issues related to the corner ground level do not warrant refusal of the application.

Separation of uses in proposed basement parking

GMU have raised issue with the lack of separation of the residential parking in the basement from that of the serviced apartments and commercial retail areas.

It is considered that whilst it is ideal to have separate of carparking for separate uses, this is not often achievable. The labelling of car spaces for the allocated use is standard practice in mixed use developments and the requirement for labelling of spaces has been included as a condition of consent.

Roads and Maritime Authority

The application was sent to the RMS for comment based on it being classified as a Traffic Generating Development pursuant to Schedule 3 of SEPP (Infrastructure) 2007. The RMS responded on 22 January 2015 with the requirement for the inclusion of a number of comments which have been incorporated into the conditions of consent.

Internal Referrals

Stormwater

The application was reviewed by Council's Stormwater Engineer and found to be acceptable subject to conditions as included in Annexure A.

Health

The application has been reviewed by Council's Health Officer and found to be acceptable subject to conditions as included in Annexure A.

Building

The application has been reviewed by Council's Building Surveyor and found to be acceptable subject to conditions as included in Annexure A.

Traffic

Council's Traffic and Transport officer raised no objection to the application subject to the imposition of a number of conditions which includes road works at the Clarendon Place and Railway Parade intersection as well as the lengthening of the median island on Railway Parade.

Tree Management Officer

Council's Tree Management Officer raised no objections to the application subject to the imposition of the requested conditions.

Heritage and Strategic Planning

The application has been reviewed by Council's Heritage and Strategic Planning Officer and a number of concerns were raised including request for design changes in relation to parapet details, glass awnings, location of the balustrades to Level 2 amongst other things. A letter detailing those concerns was sent to the applicant on 27 January 2015. The heritage officer raised no objection to the application (as amended) subject to the imposition of the requested conditions.

Neighbour notification

The subject development application was notified on 2 occasions under Council's Notification Policy. Three (3) submissions were received in response to the notification plus 2 submissions from State government agencies. A summary of the issues raised that relate to the planning matters in that submissions is provided below. Technical issues relating to the Building Code of Australia or Geotechnical matters would be addressed at Construction Certificate stage.

Issue: Short length of consultation period

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

Issue: Safety of staff and clients visiting the premises

Comment: The public footpath and adjoining existing buildings will need to be protected during construction to ensure no damage from excavation and construction occurs. A condition of consent

has been included in this regard.

Issue: The sewer line from No.34 Railway Parade runs beneath No.36 Railway Parade

Comment: Existing infrastructure will need to be protected or relocated as part of the works. The approved plans will be required to be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Issue: Proposed streetscape does not match Burwood Town Centre Plan.

Comment: As discussed in detail above in regards to the urban design assessment by GMU, the proposed streetscape is generally consistent with the Burwood town centre controls and results in a satisfactory outcome.

Issue: Isolation of 34 Railway Parade Burwood

Comment: This matter has been addressed in the body of this report

Issue: Width of Clarendon Lane & access problems.

Comment: The applicant is providing a widening to Clarendon Lane for the development to facilitate traffic access to and from the lane. Council's Manager Traffic & Transport as well as the RMS have raised no objection to the development.

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 2012 and all relevant Council DCPs, Codes and Policies.

The proposed development is consistent with the objectives for building height and density of development envisaged by the controls that apply to the Burwood Town Centre and is generally considered to display a high quality of architectural design and consistency with the guidelines of the Residential Flat Design Code for building length.

The primary design issues that remains relate to the western façade of the podium level and the relationship of the development to the isolated lot. In essence, GMU is of a view that further design development is required in regards to articulation of the western façade and protection from the development to any future development on No.34 Burwood Road. As discussed in detail in the report, Planning Ingenuity is of the view that whilst the principles of SEPP 65 and the RFDC must be applied to assessment of the proposal, there is an absence of any specific design controls that relate to other remaining issues in the urban design assessment. For these reasons, and given the

subjectivity that is associated with assessment of these aspects of the proposal, Planning Ingenuity is of the view that these issues do not warrant refusal of the application.

It is recommended that the application can be granted deferred commencement development consent subject to the conditions contained in Annexure A.