

**Section 96(2) Application - No.36-38 Victoria Street Burwood - Demolition of existing building & construction of a mixed commercial and residential development over basement car parking - JRPP No. 2015SYE061**

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REPORT PREPARED BY NEXUS ENVIRONMENTAL PLANNING PTY LTD

**Applicant:** P & N Group Holdings Pty Ltd.  
**Location:** Southern side of Victoria Street between Burwood Road and Shaftesbury Road.  
**Zoning:** B4 Mixed Use- Burwood Local Environmental Plan 2012.

**Proposal**

The modifications to the consent which are sought by this Section 96(2) application will:

- lower the approved floor-to-floor heights of Levels 9 to 17 from 3200mm to 3000mm.
- provide for three additional floors, two of which will be in Building B (the southern building) and one will be in Building A (the northern building) resulting in an additional 11 residential apartments.
- increase the residential GFA of the approved development by 832m<sup>2</sup>.
- increase the maximum overall building height by 1.7m from RL 76.30m AHD to RL 78 m AHD.
- result in various other design changes to the approved development, including:
  - an increase in parking spaces from 142 to 156,
  - alterations of the store and plant rooms,
  - realignment of the walls in the north-eastern corner of the basement levels,
  - minor adjustments to the apartment sizes on Levels 17 and 18, and
  - an increase in the size of the balconies for the apartments on Level 18.

No modification of the approved building footprint is proposed as part of the modification.

A Voluntary Planning Agreement (VPA) is also proposed as part of the modification application. The details of the VPA are the subject of a separate assessment by the Council's Strategic Planning Branch.

**Background**

On 6 July 2012, a Notice of Determination was issued to the applicant indicating that approval had been granted to the original application. The approved mixed commercial and residential development consists of the following:

- A part 13 and part 18 storey building over 4 basement car parking levels.
- Total Floor Space Ratio (FSR) 4.5:1 - commercial 1.5:1, residential 3:1.
- Car Parking - 120 car spaces on 4 basement levels (6 commercial shops, 21 serviced apartments, 79 residential units, 14 visitors spaces).
- Commercial space 2,773.5m<sup>2</sup> - 4 ground level suites/shops, 21 serviced apartments - Levels 1, 1A (Mezzanine) and 2.
- Residential space 5,547m<sup>2</sup> - 77 units (25x1br, 48x2br, 4x3br) on levels 3 to 16.
- Maximum Building Height - AHD (RL) 76.30.
- A 2.5m wide public pedestrian link along the southern half of the western boundary.

- 66 bicycle storage bays.

On 21 December 2012, a Notice of Determination was issued to the applicant indicating that modification to the originally approved development had been granted pursuant to s.96 of the Environmental Planning and Assessment Act 1979. The modification included:

- Amendments to the approved serviced apartments, shops, car parking, retention of existing sub-station and building details.

The 21 December 2012 modification resulted in the following development, as detailed in modified conditions (1) and 6(a), 6(d) and 6(e):

(1) *The development is to consist of the following:*

- a. *A total Floor Space Ratio (FSR) of 4.5:1 - Commercial FSR 1.5:1 (includes retail/commercial and serviced apartments) and Residential FSR 3:1.*
- b. *Commercial space consists of 8 ground level suites/shops, and 40 serviced apartments on levels 1, 1A (mezzanine) and 2.*
- c. *Residential space consists of 77 units (25x1br, 44x2br, 8x3br) on levels 3 to 16. 11 of the residential units are adaptable.*
- d. *142 car parking spaces on 4 basement levels - 8 commercial/retail spaces, 40 serviced apartments spaces, 81 residential and 13 visitors spaces. 15 of the residential car spaces are accessible spaces.*
- e. *Maximum Building Height B AHD (RL) 76.30.*
- f. *A 2.5m wide public pedestrian link along the southern half of the western boundary.*
- g. *18 bicycle storage bays.*

(6)a *The 40 serviced apartments on levels 1, 1A, and 2 are to be managed from a first floor Management Office, which has good directional signage from Victoria Street. Signage is to be provided to ensure that patrons know how to access and contact the management office at all hours, including lodgement of complaints.*

(6)d *On any strata subdivision of this development, which includes strata subdivision of the 40 serviced apartments on levels 1, 1a and 2 and the area designated "office" on level 1 in architectural drawing DA03 and DA04 issue E, there shall be registered over the titles to:*

- (a) *each of the 40 serviced apartment lots pursuant to s88E of the Conveyancing Act a restriction as to user in the following form:*

*"The registered owner of the lot burdened must not use the lot, nor cause, permit or allow it to be used other than for temporary or short term accommodation on a commercial basis providing self contained tourist and visitor accommodation that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agent."*

- (b) *The "office" area pursuant to s88E of the Conveyancing Act a restriction as to user in the following form:*

*"The registered owner shall not use the lot nor cause, permit or allow the lot to be used other than as the office for the site manager of the serviced apartments on levels 1, 1a and 2."*

- (6)e *Any strata by-laws registered over the strata subdivision shall include the following strata by-laws specifying that:*

- (a) *The serviced apartment lot owners must not enter into a residential tenancy agreement in relation to the lot.*
- (b) *The 40 serviced apartment lots will be managed by one company or agent to be nominated by the strata manager and that such manager or agent shall operate from the office located on level 1.*

The current modification application was lodged on 19 March 2015.

Since lodgement, the plans have been amended with the current plans lodged with Council on 25 May 2015.

The amended plans are the subject of this report.

### **Statutory Requirements**

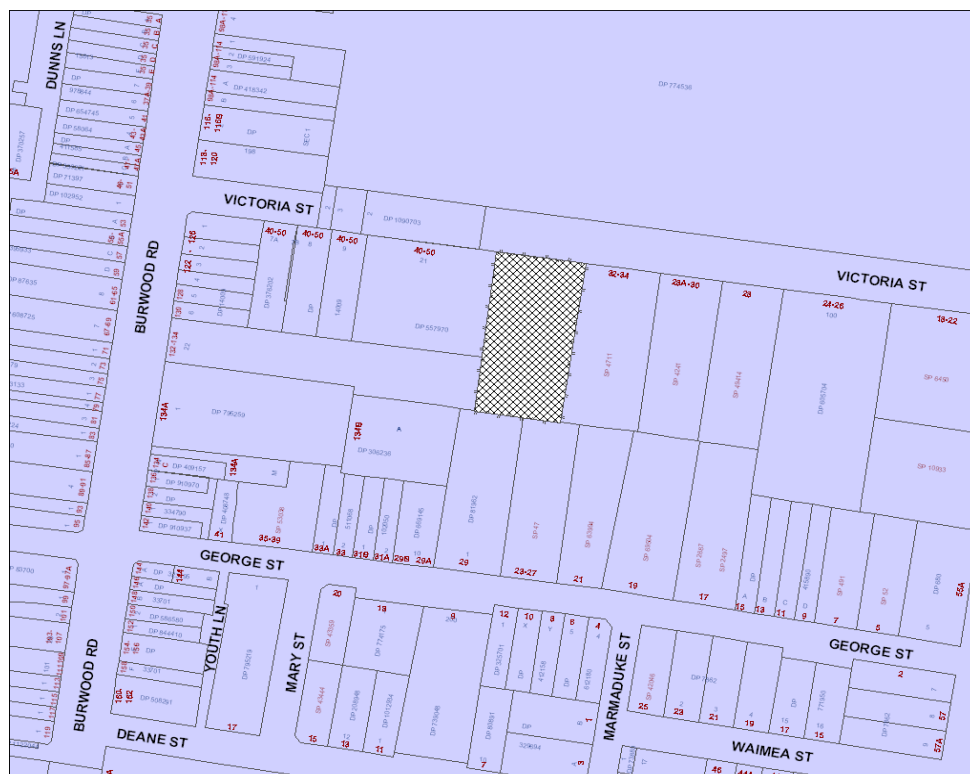
#### **Heads of Consideration**

The application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) which includes:

- The provisions of any environmental planning instrument:
  - Burwood Local Environmental Plan 2012.
  - SEPP 65 Design Quality of Residential Flat Development and the NSW Residential Flat Design Code.
- The provisions of the Burwood Development Control Plan (DCP).
- The impact of the development.
- The suitability of the site for the development.
- The public interest.
- Social and economic impact.
- Submissions made under the Act and Regulation.

These matters are considered and addressed in this report.

## **Locality**



## **Site & Surrounding Area**

The site has an area of 1,849m<sup>2</sup>, a Victoria Street frontage width of 30.55m, and a depth of approximately 60.30m.

A three storey commercial building with a basement car park occupied the site prior to commencement of the construction of the approved development. The approved development remains under construction pending resolution of the subject s.96(2) modification application.

Westfield Shopping Centre is located to the north across Victoria Street, and its theatre complex is located on part of the western boundary of the subject site.

A Child Care Centre is located on the roof of the theatre complex.

The rear of the commercial properties (Nos.132-134 Burwood Road) abuts the rear of part of the western boundary of the site.

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

## **Development Standards - Burwood Local Environmental Plan 2012**

The following development standards apply:

- Floor space ratio:
  - Total 4.5:1
  - Maximum Residential 3:1
- Maximum Height of Buildings 60m.

## **Planning Assessment**

Pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979:

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed in the regulations or provided by the development control plan, as the case may be.*

As stated in sub-section 96(2)(a), in order to proceed with a merit assessment of the Application, the Council, or the Joint Regional Planning Panel, must be satisfied that the development to which the Consent, as modified, relates is substantially the same development as that for which consent was originally granted.

The Applicant has provided the following justification as to why the development, as proposed to be modified, is ... *substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), as follows:*

*In relation to Section 96(2)(a), the consent authority can be satisfied that the development to which the consent as modified relates will still be substantially the same development for which consent was originally granted and before that consent as originally granted was modified. The proposed modifications primarily relate to:-*

- i) lower the approved floor-to-floor heights of Levels 9 to 17 from 3200mm to 3000mm;*
- ii) provide for three additional floors, two of which will be in Building B (i.e. the southern building) and one will be in Building A (i.e. the northern building) resulting in an additional 11 residential apartments;*

- iii) *increase the residential GFA of the approved development by 832m<sup>2</sup>;*
- iv) *increase the maximum overall building height by 1.7m from RL 76.30mAH to RL 78.0 mAH; and*
- v) *result in various other design changes to the approved development, including an increase in parking spaces from 142 to 156 (primarily by adding a partial new basement level), alterations of the store and plant rooms, realignment of the walls in the north-eastern corner of the basement levels, minor adjustments to the apartment sizes on Levels 17 and 18 to increase the size of the apartments, and an increase in the size of the balconies for the apartments on Level 18.*

*When considering the question of whether the development as modified is 'substantially the same development' as was originally approved, it is important to review the facts. In his decision in Moto Projects (No 2) Pty Ltd V North Sydney C [1999] NSWLEC 280, Justice Bignold stated:-*

*"The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."*

*In Tyagrah Holdings Pty Limited v Byron Bay Shire Council (2008) NSWLEC 1420 Commissioner Bly stated:-*

*"The provisions of s96 have been judicially considered on a number of occasions and the following are the relevant important findings or principles that can be utilised in considering whether or not a particular development is substantially the same development as the development for which the consent was originally granted:*

- 1. The word "substantially" means essentially or materially having the same essence. In assessing whether the test is met a factual comparison between the approved development and proposed modifications is required.*
- 2. The question must be asked and answered with respect to the particular circumstance of the individual modification application.*
- 3. It is for the decision maker to decide the relevant range of facts to assist in determining the question.*
- 4. Even though certain modifications of development may be described as significant this does not mean that the modified development could not necessarily remain substantially the same as the approved development. A comparison process involves an appreciation of both qualitative and quantitative.*
- 5. Any planning appraisal of the modified development is not relevant to the threshold question.*

*Whilst there are design detail differences between the approved and modified developments, in themselves they are not relevant to the test ("is the development materially and essentially the same development"?). The original DA was submitted and approved as a mixed use development comprising commercial tenancies, residential apartments, serviced apartments and basement parking. The development, as modified, is still for a mixed use development with very similar proportional elements, albeit with various design amendments. Based on a qualitative and quantitative assessment comparing the approved and modified sets of architectural plans in Appendices 4 and 5A respectively, the consent authority can be satisfied that the threshold question has been answered satisfactorily, as the development, once modified, will still substantially be the same as the development originally approved.*

Advice from Council's Solicitor is that the justification provided by the applicant is correct and that the Council, or the Joint Regional Planning Panel, can be satisfied that the development, as proposed to be modified, is ... *substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).*

Sub-clause 96(3) states:

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79(C)(1) as are of relevance to the development the subject of the application.*

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

The proposed development would modify the approved development to achieve the following:

- Floor space ratio:
  - Total 4.95:1 (standard is 4.5:1)
  - Maximum residential 3.45:1 (standard is 3:1)
- Maximum Height of Building 61.065m (standard is 60m)

Clause 4.6(3) of LEP 2012 states:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

In order to justify the above non-compliance with the development standards of LEP 2012, the applicant has stated:

### ***Lowering of the floor-to-floor levels between Levels 10 and 18***

*The approved floor-to-floor height between Levels 10 and 18 is 3200mm. This Section 96(2) application seeks approval to lower the floor-to-floor levels, between Levels 10 and 18, to 3000mm, the same as the lower floors, as approved.*

*Detailed design investigations have revealed that a floor-to-floor height of 3000mm on these upper levels will provide sufficient space for services whilst still allowing adequate ceiling treatments, just as they do on the lower levels.*

*Levels 2 to Level 10 are approved with floor-to-floor heights of 3000mm. Therefore, the proposed design modifications will simply ensure that the floor-to-floor heights match throughout the approved building.*

### ***Additional floors***

#### ***Building B***

*The Applicant seeks to insert two additional floors into Building B (Levels 11 and 12) and raise approved Level 11 to Level 13.*

*The apartments on the new Level 11 will be residential.*

#### ***Building A***

*This Section 96(2) application also seeks approval to insert an additional level into Building A (Level 15) containing 4 additional residential apartments and raise approved Levels 15 and 16 to Levels 16 and 17 respectively.*

### ***Various other design modifications***

*The various design modifications .... are generally of a minor nature and largely arise out of the detailed design development process typical of major projects of this type. No significant issues arise out of these other proposed design amendments.*

*The increase in the number of basement car spaces is to reflect the increase in the number of serviced and residential apartments. The increased traffic generation associated with the additional parking spaces will be indiscernible.*

### ***Increase in building height***

*The proposed modifications result in a maximum building height increase of only 1.7m. This is of minor consequence in the context of a building with a maximum height of just over 60m.*

*The non-compliance of 1.065m (or 1.77%) with the 60m height limit is minor and of no environmental consequence, as the non-compliant element is setback from the site boundaries and is not visible from the adjoining public domain. Overshadowing, bulk and scale, and streetscape presentation all remain reasonable and appropriate.*

With regard to the non-compliance of the proposed modification with the floor space ratio development standards of LEP 2012, the applicant states:

*Clause 4.4 of Burwood LEP 2012 (BLEP 2012) prescribes a maximum overall Floor Space Ratio ("FSR") for the site of 4.5:1. As the site area is 1,849m<sup>2</sup>, the maximum Gross Floor Area ("GFA") permissible pursuant to Clause 4.4 is 8,320.5m<sup>2</sup>. In addition, Clause 4.4A of BLEP 2012 prescribes a maximum residential FSR for the site of 3:1. As the site area is 1,849m<sup>2</sup>, the maximum permissible residential GFA permitted pursuant to Clause 4.4A is 5,547m<sup>2</sup>.*



*The approved "commercial" FSR is 1.50:1 and the approved residential FSR is 2.999:1 (or 3:1), making a total of 4.499:1 (or 4.5:1) which complies with both the 4.5:1 overall limit and the limit on the residential component. The proposed design amendments will add 832m<sup>2</sup> of residential floor space, raising the residential FSR to 3.45:1, which does not comply with the residential FSR standard in Clause 4.4A(3)(b) of BLEP 2012. ....*

*The proposed modifications will result in an overall GFA of 9,153m<sup>2</sup> which equates to an FSR of 4.95:1 which does not comply with the maximum FSR development standard of 4.5:1 for the site, established by Clause 4.4 of BLEP 2012 .....*

*Clause 4.6 of BLEP 2012 allows approval to be granted to a DA, even though a proposed development contravenes a development standard in the LEP, including the FSR limits in Clause 4.4 and Clause 4.4A. Section 96 is subject to its own stand-alone tests ("substantially the same development", and a requirement to consider all relevant s.79C matters). Section 96 does not rely upon having a Clause 4.6 variation in order to approve the development. However, this Clause 4.6 variation has nevertheless been prepared to assist with the assessment of the Section 96 Application.*

*This written request addresses the provisions of Clause 4.6 of BLEP 2012 as if a formal variation was needed.*

As stated by the applicant, the non-compliance of the proposed modification is minor and although the proposed modification results in a non-compliance with the Height of Buildings and Floor Space Ratio development standards, it has been determined that the development, as modified, would be ... *substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).*

The non-compliance with the development standards of LEP 2012 would be seen as a marginal increase in the height of the modified development, with the other architectural aspects of the development remaining essentially as approved. The internal modifications to the floor to floor heights would not be perceptible in the modified development, nor would the majority of the internal modifications proposed.

It is considered that the non-compliance with the development standards is minor in nature and strict application of the development standards would be unreasonable and unnecessary in the circumstances of this modification application.

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

State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development has been devised to:

- provide the strategic and statutory focus for the State government Design Quality Program.
- give legal force to the government's initiative to improve the design quality of residential flat development.
- explain why design quality is important and how it can be better achieved.

Part 2 of SEPP 65 contains ten (10) Design Quality Principles. Those principles deal with the following issues:

- Context
- Scale
- Built form
- Density
- Resource, energy and water efficiency
- Landscape
- Amenity
- Safety and security
- Social dimensions
- Aesthetics.

The approved development, as modified, was assessed against the Design Quality Principles of SEPP 65 with the conclusion that the approved development, as modified, is consistent with the design principles. It is considered that the modifications proposed are minor in nature when assessed against the Design Quality Principles of SEPP 65 such that the consent as proposed to be modified would be consistent with SEPP 65.

With regard to the Residential Flat Design Code (RFDC), the original development, as modified, was assessed against the provisions of the RFDC with the conclusion that the development generally meets those requirements.

The development, as now proposed to be modified, would result in a non-compliance with the building separation rule of thumb requirement of the RFDC. In this regard, the applicant states:

*The proposed design modifications will result in a minor encroachment into the recommended RFDC building separation distance (of 12 metres) on Level 13 of Building B, which results in the balconies of the units on Level 13 in Building B being located 9m from the side setback of the adjoining property (No. 32-34 Victoria Street).*

*All of the living spaces of the units on this level will be setback 12 metres from the boundary and it is only the balconies on Level 13 (of Building B) that do not comply with the recommended separation requirements in the RFDC. This has been done to ensure there is uniformity in the built form. To comply with the building separation recommendations of the RFDC would require cantilevering the top of Building B over the middle section of the building which would have unacceptable impact on the appearance of the building. Given that the non-compliance only relates to the balconies on Level 13 of Building B, the non-compliance is considered to be minor in nature. The site located to the east (No. 32-34 Victoria Street) currently contains a four storey, strata-subdivided residential flat building. Therefore, the proposed balconies will have no effect on the privacy of the residents in the adjoining existing building.*

It is considered that the non-compliance is justified and that variation to the building separation rule of thumb requirements of the RFDC is warranted.

### **Burwood Development Control Plan**

The original development application was assessed against the provisions of the Burwood Consolidated Development Control Plan, Part No. 36 - Burwood Town Centre, which has now been replaced by the Burwood Development Control Plan. The relevant provisions from Burwood Development Control Plan are addressed below.

### Design Excellence (Section 3.2.1)

The proposed modifications would not result in any significant architectural design modifications to the approved building, as modified, other than the insertion of two (2) new levels in the southern building and one (1) new level in the northern building. Although there would be new levels in the building, the reduction in the floor to ceiling height would ensure that only 1.7 metres would be added to the approved height of the development.

The proposed development is consistent with the Design Quality Principles of SEPP 65 and a revised Design Verification Statement has been submitted with the modification application.

### Roofs and Roof Tops (Section 3.2.3)

The height of the modified building has increased from 59.365 metres to 61.065 metres which would be largely imperceptible. No change has been made to the design of the approved roof, other than it occurs at a slightly higher level.

### Street-Front Activities and Building Access (Section 3.2.4)

No change is proposed to the approved ground floor or to the approved access to the upper floors.

### Apartment Mix and Minimum Dwelling Sizes (Section 3.2.8)

All of the proposed additional apartments comply with the minimum apartment size requirements in Burwood DCP. No change is proposed to the size of any other apartments, except for the apartments on Levels 17 and 18 of Building A, which are being increased, however, those apartments would comply with the requirements of the DCP.

As a result of the proposed design modifications, the residential apartment mix on the site will be as follows:

- 30 x 1 bedroom residential apartments.
- 50 x 2 bedroom residential apartments.
- 8 x 3 bedroom residential apartments.

### Ceiling Height (Section 3.2.11)

The proposed modifications would allow for the following finished floor levels to finished ceiling levels:

- No change to the ground floor.
- 2.7 metres for non-residential floors above ground level.
- 2.7 metres for all residential apartments.

The proposed development would not provide finished floor levels to finished ceiling levels of 3 metres for non-residential floors above ground level, however, those floors are to be used for the purposes of serviced apartments, which are unlikely to ever be converted to another commercial use. A variation to this requirement is considered warranted.

### Natural Ventilation (Section 3.2.12)

The RFDC rule of thumb is that 60% of apartments should be cross ventilated. The proposed modifications would result in 70% of apartments being cross ventilated.

#### Daylight Access (Section 3.2.13)

The RFDC rule of thumb is that 70% of apartments should receive 3 hours of daylight access between 9 am and 3 pm in midwinter. The proposed modifications would result in 75% of apartments receiving 3 hours daylight access between 9 am and 3 pm in midwinter.

#### Visual and Acoustic Privacy (Section 3.2.14)

No windows are proposed in the southern elevation of the southern tower, therefore, no privacy issues arise with that interface.

Separation distance for privacy across side boundaries is consistent with the RFDC.

Appropriate acoustic treatment is proposed for the modified development as provided for in the approved development.

#### Private Open Space (Section 3.2.15)

The proposed modification would result in 11 new residential apartments, each with a private open space area (balcony) which exceeds the minimum dimensions and would provide an adequate level of amenity for future residents.

#### Storage for Apartments (Section 3.2.17)

The proposed modification would result in 11 new residential dwellings, each with storage space which meets the recommendations of the RFDC.

#### Access and Mobility (Section 3.2.19)

No changes are proposed to the main entry of the approved development. The proposed modification would result in 88 residential apartments. A total of 9 adaptable dwellings is required. A total of 12 adaptable dwellings is provided.

Each adaptable dwelling is provided with an accessible car space.

The Council Traffic Engineer has raised no objection to the proposed number of car parking spaces in the modified development.

## **Referrals**

### **Traffic and Transport**

Council's Manager Transport and Traffic raised no objection to the proposed modification stating that the amended design meets the requirements of the Council for parking.

### **Environment and Health**

The Manager of Environment and Health has raised no objection to the proposed modification.

## **Community Consultation**

The proposed modification was exhibited between 2 April 2015 and 23 April 2015. No submissions were received.

## **Conclusion**

The modifications to the consent which are sought by this Section 96(2) application will:

- lower the approved floor-to-floor heights of Levels 9 to 17 from 3200mm to 3000mm.
- provide for three additional floors, two of which will be in Building B (the southern building) and one will be in Building A (the northern building) resulting in an additional 11 residential apartments.
- increase the residential GFA of the approved development by 832m<sup>2</sup>.
- increase the maximum overall building height by 1.7m from RL 76.30m AHD to RL 78 m AHD.
- result in various other design changes to the approved development, including:
  - an increase in parking spaces from 142 to 156,
  - alterations of the store and plant rooms,
  - realignment of the walls in the north-eastern corner of the basement levels,
  - minor adjustments to the apartment sizes on Levels 17 and 18, and
  - an increase in the size of the balconies for the apartments on Level 18.

No modification of the approved building footprint is proposed as part of the modification.

The proposed modification would result in a non-compliance with the floor space ratio and height of buildings development standards of LEP 2012.

It is considered that the non-compliance with the development standards is minor in nature and strict application of the development standards would be unreasonable and unnecessary in the circumstances of this modification application.

The development, with recommended conditions of consent, is considered worthy of support and accordingly is recommended for approval.

### **Recommendation**

The s.96(2) modification application be **approved** subject to the following conditions:

#### **Conditions of Approval**

- (1) The development being carried out in accordance with Development Consent D2012/ 12, issued on 6 July 2012, Section 96 Modification, issued on 21 December 2012, and this Section 96(2) modification, except where amended by the conditions of consent.
- (2) Amended **Inventory of Plans and documentation** are as follows
  - Architectural plans prepared by **George Matsos Architect**:

<i>Drawing No.</i>	<i>Plan</i>	<i>Issue/Revision</i>	<i>Dated</i>
DA01	Site Plan	E	16.02.2015
DA02	Basements L2, L3,L4 & (A3)	E	18.03.2014
DA03	Basement L1, ground & L1 floors (A3)	F	18.03.2014
DA04	L2, 3 & 4 floors	F	16.02.2015
DA05	L5, 6 & 7 floors	E	16.02.2015
DA06	L8, 9 & 10 floors	E	16.02.2015
DA07	L11, 12 & 13 floors	E	16.02.2015
DA08	L14, 15 & 16 floors	E	16.02.2015
DA09	L17,18 & 19 (Roof) floors, finishes	E	16.02.2015
DA 10	Sections CC & BB	E	16.02.2015
DA 11	Section AA	F	16.02.2015
DA 12	East elevation	E	16.02.2015
DA 13	West elevation	E	16.02.2015
DA 14	North & South elevations	E	16.02.2015

- Landscape Architect plans prepared by Michael Siu, Drawing Nos LO 1 and 02, dated 25 January 2012.
  - Stormwater Drainage Concept Plans prepared by United Consulting Engineers Pty Ltd- Drawing Nos D01 and D02, dated January 2012
  - Amended Basix Certificate No 412089M-04, dated 18 February 2015
  - Amended ABSA Certificate (Assessor Certifier -20827), issued 18 February 2015
  - Waste Management Report and Waste Management Construction Plan, prepared by Olsson & Associates, dated 18 January 2012.
- (3) This Section 96 (2) Modification Consent is subject to a Voluntary Planning Agreement (VPA) between the applicant and Burwood Council. The VPA shall be executed following the granting of approval of the Section 96(2) Modification, and the monetary contribution paid on the date of the execution of the VPA, and **prior to the issue of an amended Construction Certificate**, for works under this Section 96(2) Modification.

(4) **Amended Fees Conditions (1) and (5) are as follows:**

- (1) Building and Construction Industry Long Service Corporation Levy – For  
Additional Section 96(2) Works \$2,937.00

**(Payment to be made to Council, the Corporation or its Agent)**

- (5) Pursuant to Section 94A of the Environmental Planning and Assessment Act 1979 and the Section 94A Contributions Plan for Burwood Town Centre, the following monetary contribution towards public services and amenities is required:

Contribution Element (Additional)	Contribution
A levy of 4 per cent of the cost of carrying out the development, where the cost calculated and agreed by Council is additional cost \$2,018,087.00. (Total Building Cost of \$23,252,273.00)	\$80,723.48 (additional)

Index Period	March 2015	CPI	107.3
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The above contribution will be adjusted at the time of payment. Applicants are advised to contact Council for the adjusted amount immediately prior to arranging payment.

The contribution will be adjusted in accordance with the following formula:

$$\text{Contribution (at time of payment)} = C \times \frac{\text{CPh}}{\text{CPII}}$$

Where:

C: the original contributions amount as shown in the development consent;

CPh the Consumer Price Index: All Groups Index for Sydney, for the immediate past quarter (available from the Australian Bureau of Statistics at the time of payment)

CPII the Consumer Price Index: All Groups Index for Sydney, applied at the time of granting the development consent as shown on the development consent.

Note: The minimum payment will not be less than the contribution amount stated on the consent.

The contribution is to be paid to Council, or evidence that payment has been made is to be submitted to the Principal Certifying Authority, prior to the issuing of a Construction Certificate.

Council may accept works in kind or other material public benefits in lieu of the contribution required by this condition subject to and in accordance with the requirements specified in the Section 94A Contributions Plan for Burwood Town Centre.

**Note: Credit cards and personal cheques are not accepted for the payment of Section 94A contributions.**

**(5) Amended Planning Condition (1) is as follows:**

- (1) The development is to consists of the following:
  - a. A total Floor Space Ratio (FSR) of 4.95:1 -Commercial FSR 1.5:1 (includes retail/commercial and serviced apartments) and Residential FSR 3.45:1.
  - b. Commercial space consists of 8 ground level suites/shops, and 40 serviced apartments on levels 1, 2 and 3.
  - c. Residential space consists of 88 units (30x1br, 50x2br, 8x3br) on levels 3 to 17. Eight (8) of the residential units are adaptable.
  - d. 155 car parking spaces on 4 basement levels - 8 commercial/retail spaces, 40 serviced apartments spaces, 92 residential and 15 visitors spaces. 15 of the residential car spaces are accessible spaces.
  - e. Maximum Building Height- AHD (RL) 78.0
  - f. A 2.5m wide public pedestrian link along the southern half of the western boundary.
  - g. 21 bicycle storage bays.

**(6) Amended Planning Condition (10) is as follows:**

(10) The maximum height of the building is not to exceed a maximum of AHD (RL) 78.30 measured from the top of the parapet or roof, to the natural ground level, vertically below. This maximum height is to be identified on the Construction Certificate plans, and a survey is to be submitted to Council confirming compliance with this condition, prior to the issue of an Occupation Certificate.

The maximum height of the rear portion of the building is not to exceed AHD(RL) 65.50.

- (7) An amended Construction Certificate shall be issued for the works proposed by this Section 96(2) Modification.

**(8) Amended Subdivision Condition (1) is as follows;**

(1) A separate development application is to be lodged for any proposed strata subdivision of the development.

Note: Also refer to Planning Conditions (2), (4) in regard to the pedestrian access, and the (6) strata lot for the serviced apartments, associated car parking and the on-site office / reception.

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