CONTENTS

ANNEXURES

FIGURES

Property:	No. 7-15 Conder Street, 2-4 Stanley Street and 2-10 Hornsey Street, Burwood Lots A & B DP158771, Lots A & B DP103096, Lot 1 DP723929, Lot 1 DP782454, Lot 1 DP82234, Lot 10 DP77055, Lots X & Y DP103381, Lots 1 & 2 D/504116, and Lot 1 DP83833
DA No:	DA089/2015
Date Lodged:	17 June 2015
Cost of Work:	$29,388,658.00
Owner:	Mrs Liang & Mr Z Chen
Applicant:	Loftex Pty Ltd

PROPOSAL	Demolition of all existing structures, construction of 2 x residential flat buildings comprising 1 x 4 and 1 x 6 storey residential flat buildings over two basement levels containing 96 residential apartments and 116 parking spaces.
ZONE	*R1 – General Residential;* and *B4 – Mixed Use* zones.
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE	Yes – best described as a residential flat building.
IS THE PROPERTY A HERITAGE ITEM	No
BCA CLASSIFICATION	Class 2 and 7a
NOTIFICATION	Neighbours: The application was notified on 21 July to 18 August 2015. In response to the notification, 3 submissions were received.

EXECUTIVE SUMMARY

This report considers a proposal for demolition of all existing structures and removal of 22 trees to enable the construction of 2 x residential flat buildings comprising 1 x 4 storey building (Building A) and 1 x 6 storey (Building B) over a two-level shared basement. The development will accommodate a total of 96 residential apartments and parking for 116 vehicles.

The site is described as Nos. 7-15 Conder Street, 2-4 Stanley Street and 2-10 Hornsey Street, Burwood, being Lots A & B DP158771, Lots A & B DP103096, Lot 1 DP723929, Lot 1 DP782454, Lot 1 DP82234, Lot 10 DP77055, Lots X & Y DP103381, Lots 1 & 2 D/504116, and Lot 1 DP83833.

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.

From a town planning point of view the application is considered to be acceptable, subject to conditions of development consent. Non-compliances with building height for Building B are considered reasonable and acceptable in the circumstances as analysed below. Assessment has concluded that the numeric non-compliances with building depth and length recommended by the Residential Flat Design Code (now superseded by the Apartment Design Guide) do not result in internal amenity issues and do not detract from achieving a high quality of architecture and urban design outcome that will make a positive contribution to the locality and be consistent with the transitionary character of the Burwood Town Centre.

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

Issues raised in written submissions that are relevant to the assessment of the proposal have been considered in the assessment process and in some cases have been addressed in the modified design detail of the proposal and in other cases can be addressed through conditions of development consent.

Accordingly it is considered that the application can be granted development consent in accordance with the draft Conditions included in Annexure A.

BACKGROUND AND ASSESSMENT HISTORY

DA122/2014 - Previous Application

On the 6 August 2014 DA122/2014 was submitted to Council for the construction of 2 residential flat buildings at the site comprising 90 apartments within 1 x 4 storey and 1 x 6 storey building.

Council engaged Planning Ingenuity to undertake independent assessment of the development application on behalf of Council.

A number of issues were identified with the application in a preliminary assessment and these issues were articulated in a letter provided to the applicant. Issues identified included building separation, pedestrian access and circulation, communal open space, compliance with the requirements of the Residential Flat Design Guide and heritage impacts.

In response to the concerns raised during the preliminary assessment of the application and following on from a meeting with Council, the applicant withdrew the application and concurrently lodged the subject application.

DA089/2015 - Subject application

The subject application was submitted to Council on 17 June 2015, two days prior to Amendment 2 of SEPP No. 65 being published on the NSW Legislation website.

Council again engaged Planning Ingenuity to undertake independent assessment of the development application on behalf of Council.

The application was neighbour notified in accordance with the requirements of Burwood DCP between 21 July and 18 August 2015. In response 3 submissions were received. These submissions are considered later in this Report.

A JRPP briefing was held on 10 September 2015 and the original scheme was presented to the Panel with no significant concerns highlighted.

A preliminary assessment of the application raised some issues that required further consideration. A meeting with the applicant was held at the Council offices on 11 November 2015 where issues relating to urban design, apartment planning, building height and the relationship of the proposal to the adjoining heritage items were discussed.

The applicant made some changes to the scheme and a subsequent meeting was held at the Council offices on 25 November 2015 to discuss the design response to the original concerns and provide clarifications in relation to gross floor area calculations, ventilation of the building, the amenity of the lower level apartments, building height and heritage matters. The applicant continued to liaise with Council's heritage advisor until a design outcome for the northern façade and the corner of Conder and Hornsey Street was resolved.

Notable changes to the scheme include the following:

- Change in unit mix;
- A reduction in open space from 865m^2 to 800m^2 due to the reduced area of the roof terrace;
- Changes to Conder Street and Hornsey Street elevations and the corner element at the junction of Conder and Hornsey Streets in response to heritage matters;
- Slight increase in building height at the corner of Conder and Hornsey Street;
- Changes to the building fabric to reduce curved elements; and
- Minor amendments to internal unit configurations.

The applicant submitted a final information package to Council on 19 January 2016 and this information forms the documents that are the subject of this assessment.

THE SUBJECT SITE

The subject site is a collection of 13 properties with three (3) street frontages, being Conder Street, Hornsey Street and Stanley Street (Figure 1). The site is partly located within the Burwood Town Centre and extends to the west to a high density residential area. The site is located within two separate zones, being the *R1 – General Residential* and *B4 – Mixed Use* zones.

The site has a total area of 3,426m^2 and is known as Nos. 7-15 Conder Street, 2-4 Stanley Street and 2-10 Hornsey Street, Burwood. The site is legally described as Lots A & B DP158771, Lots A & B DP103096, Lot 1 DP723929, Lot 1 DP782454, Lot 1 DP82234, Lot 10 DP77055, Lots X & Y DP103381, Lots 1 & 2 D/504116, and Lot 1 DP83833.

The site is generally regular in shape, however, contains a stepped southern property boundary. The topography of the area falls from east to west approximately 2.8m over its 86m width from Conder to Stanley Street and has a minor cross fall to the north.

Figure 1: Aerial photo showing site location

The 13 allotments currently comprise 8 dwellings (including dwelling houses and dual occupancies) as well as 4 commercial buildings. The properties that have a frontage to Stanley Street and Hornsey are in residential use and the properties that front Conder Street are used for commercial purposes.

The site contains 20 trees that are mostly located within the rear portion of the residential properties. The proposal involves the removal of all existing trees from the site.

SITE CONTEXT

The subject site is located in the south-western portion of Burwood Town Centre and the site extends to include a high density residential area at the periphery of the town centre. The site is therefore at the interface between the Burwood Town Centre and the surrounding residential properties. Burwood

Railway Station is located approximately 450m walking distance from the site and the site is in close proximity to a variety of established retail facilities within Burwood Town Centre and has safe, convenient and reasonably level walking distance to these facilities along formed footpaths. Public transport is available by bus and train and the site is within 30 minutes travelling time to Sydney CBD by private and public transport.

Development in the vicinity of the site is varied in age, density and architectural style. A number of heritage listed buildings exist in the vicinity of the site including the part one and part two storey heritage listed Burwood Public School building (Heritage Item I48). This building is located to the north on the opposite side of Hornsey Street and contains an ornate exterior with established trees lining the front boundaries. In addition, the former Burwood Council Chambers exists to the north-east at Nos. 2-4 Conder Street.

To the east of the site on the opposite side of Conder Street is Nos. 6-9 Conder Street which is currently used for parking. These properties form part of a larger site known as Nos. 39-47 Belmore Street, Burwood which benefits from an existing development consent for a multi storey mixed use development comprising 10 and 20 storey towers.

To the south of the site with a frontage to Conder Street is Nos. 17 – 19 Conder Street. Existing on this site is a 5 storey residential flat building constructed over a basement level. This building extends to the boundary that is common with the subject site. Also located to the south of the site, with a frontage to Stanley Street are existing 2 and 3 storey residential flat buildings.

To the west of the site on the opposite side of Stanley Street are a collection of dwelling houses that have a frontage to Stanley Street and west facing rear yards.

As indicated at Figure 3, the site is partially located on the edge of Burwood Town Centre (as defined by the dashed green line in Figure 3).

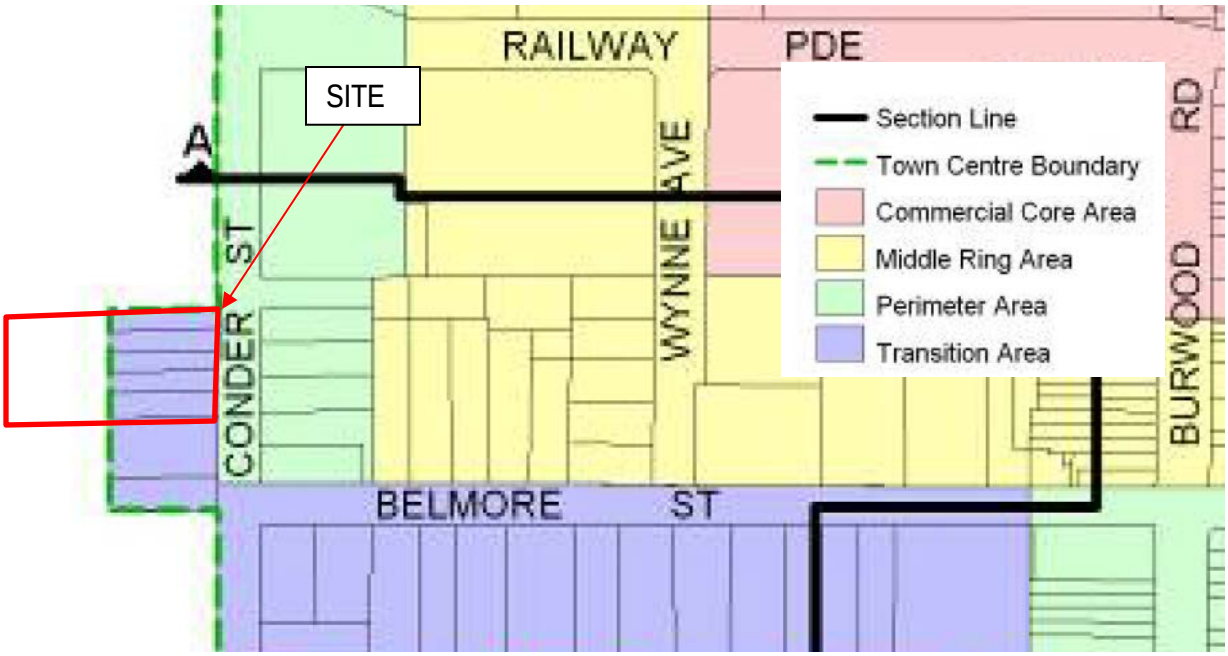

Figure 2: Portions of site within the 'Transitionary Area' of the Burwood Town Centre

THE PROPOSAL

The proposal involves demolition of all existing structures and removal of 22 trees to enable the construction of 2 x residential flat buildings comprising 1 x 4 storey building and 1 x 6 storey residential flat building. The residential flat buildings are identified as Buildings A and B and are located over a shared two-level basement.

The residential flat buildings will accommodate a total of 96 residential apartments and parking for 116 vehicles. The development will contain a unit mix of 32 x 1 bed, 23 x 1 bed with a study, 35 x 2 bed and 6 x 2 bed with a study.

Of the 96 apartments the proposal will provide 10 (10.4%) adaptable dwellings. Below is a description of each aspect of the development.

Basement, Parking and Vehicular Access

The development will contain two levels of basement parking that is common to both buildings. Vehicular access to the basement is gained via Stanley Street and all existing access points from the three street frontages will be removed.

A total of 116 parking spaces are to be provided at the site for residential and visitor parking including 96 residential (including 10 adaptable spaces) and 20 visitor spaces (including two adaptable spaces).

The remaining portions of the basement contain residential storage, bike parking, bin storage, plant areas and lift access to the levels above.

Building A (Western Building)

Building A contains 4 storeys and presents to Hornsey and Stanley Streets. Pedestrian access is gained from each street frontage to a central entry foyer. The unit configuration is duplicated on each level with 7 of the 10 dwellings per level designed to overlook each street frontage. The three east facing dwellings overlook common open space areas located at the ground floor level.

Open breezeways are designed to promote light and ventilation to circulation spaces and small sections of the common access at each level are enclosed to enhance internal amenity.

Building B (Eastern Building)

Building B contains 6 levels of residential accommodation and has a presentation to Conder and Hornsey Streets. The lower level contains dwellings that are oriented internally to the site and sit partially below natural ground level. The first floor dwellings are located at street level and present to the street. Aside from the ground floor level, the building envelope is largely duplicated for the levels above. The building contains a corner element which reinforces the junction of Hornsey and Conder Streets.

Common Open Space and Landscaping

Common open space is provided at the central portion of the site at ground level, within the street setbacks and within the dedicated rooftop open space area of Building B. The roof-top communal garden has been setback from the building facades at the corner of Conder and Hornesy Street.

Landscaping is provided within podium planters as well as deep soil zones that are located at the site frontages and select areas that are not occupied by the basement.

External Appearance

Externally, the building has a contemporary presentation to each street frontage with elements incorporated into the northern façade and north-eastern corner that are intended to provide a sympathetic relationship to the adjacent heritage listed buildings.

Waste Management

Both Buildings A and B contain a waste chute within the common areas of each level that directs waste to the dedicated bin storage areas within the basement. The bin storage areas will contain capacity for waste bins and recycling bins as well as space for bulk storage of recycling materials. Waste management will be coordinated by a contracted service.

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 (State & Regional Development) 2011;
- Burwood Local Environmental Plan 2012;
- Draft State Environmental Planning Policy No. 65 (Amendment No. 3); and
- Burwood Development Control Plan 2012.

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 included a *Report on Contamination Investigation* prepared by Douglas Partners. The Report details the methodology employed as part of investigating the site contamination and noted a combination of historical searches on the property as well as reported on a number of bore holes and sample testing. The Report concluded that the site is suitable for the proposed residential development subject to the following:

- *Detailed waste classification of soils to be removed from the site, including sampling beneath existing building footprints following demolition; and*
- *Waste classification and off-site disposal of filling, and validation of the residual soils from areas of the site not proposed for basement excavation; or*
- *In situ assessment of soils to be retained on site (e.g. landscaping areas), with areas not meeting the site assessment criteria subject to waste classification, off-site disposal and validation.*

As stated in the report, it is recommended that a hazardous building materials (HBM) survey be undertaken to identify HBM in existing buildings, and removal and clearance of the HBM prior to bulk demolition.

The recommendations of the report have been considered by Council's Environmental Health officer and no objections are raised subject to conditions of consent that require implementation of the recommendations of the *Report on Contamination Investigation*.

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.

The subject application was submitted on 17 June 2015, some two days prior to the recent amendments to SEPP No. 65 (Amendment No. 3 which was published on the NSW Legislation website on 19 June 2015). Pursuant to Clause 31(2) of the SEPP (below), the application is to be determined as if the amendment has not taken place.

> *"(2) If a development application or an application for the modification of a development consent has been made before the notification on the NSW legislation website of the making of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3) and the application has not been finally determined before the commencement of that amendment, the application must be determined as if the amendment had not commenced."*

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.

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.

SEPP 65 "Rule of Thumb"/ Standard	SEPP 65 Flat Code Numerical Standard	Proposal Performance
Building Depth	• Max 18m (glass line to glass line)	Each building contains building depths of up to 26m and despite exceeding the building depth requirements, each building is designed with breezeway corridors and appropriate apartment depth. Furthermore, the development achieves the required solar access and cross ventilation requirements of the RFDC and non-habitable or mechanically ventilated spaces are located in the central parts of the building. 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	• Up to 4 storeys / 12m - 12m, habitable rooms / balconies to habitable rooms / balconies - 9m, habitable rooms / balconies to non-habitable rooms - 6m, non-habitable rooms to non-	Internally, the development contains opposing 4 storey elements that achieve separation exceeding 12m between habitable rooms and balconies. The buildings only oppose each other internally up to 4 storeys.

SEPP 65 "Rule of Thumb"/ Standard	SEPP 65 Flat Code Numerical Standard	Proposal Performance
	habitable rooms • 5 to 8 storeys / 12m to 25m - 18m, habitable rooms / balconies to habitable rooms / balconies - 13m, habitable rooms / balconies to non-habitable rooms - 9m, non-habitable rooms to non-habitable rooms	In addition, the subject design promotes light and air vents throughout the buildings to assist with increased natural light and ventilation. These air vents open onto the breezeways. Some dwellings contain windows that open onto the light and air vents and, where appropriate, the windows opening onto the vent spaces have high sill levels with frosted glazing to ensure appropriate separation is achieved - Complies. Building A – This building is located in the R1 – General Residential zone and adjoins residential properties to the south located at Nos. 6-8 Stanley Street. For the full extent of the 4 storey building a setback of 6m is provided to the southern property boundary. In this respect the proposal provides the required shared separation which is consistent with the amendments to the SEPP which, although not applicable to this application, apply to setbacks to the boundary. To further assist with separation, the dimensions of south facing windows have been minimised and the windows are screened to preclude direct lines of sight to the adjoining southern properties – Complies. Building B – This building is located on the part of the site that is within the B4 – Mixed Use zone. The proposal provides a nil setback to the adjoining building at Nos. 17-19 Conder Street to maintain a continuous street wall building which is appropriate in the mixed use zone. Although the separation requirements apply between opposing habitable rooms, the RFDC also indicates that in some circumstances (such as a continuous street wall) a nil setback is appropriate. A setback of 1.2m and a small recessed element is maintained for the remaining southern façade to provide some relief to the courtyard element of the adjoining building. Despite having a reduced setback, the building form is consistent with what could be expected in a Mixed Use zone and the southern façade treatment will ensure that there are no aural and visual privacy impacts to the adjoining properties. Consistent with the Rules of Thumb of the RFDC this is an appropriate circumstance where a nil

SEPP 65 "Rule of Thumb"/ Standard	SEPP 65 Flat Code Numerical Standard	Proposal Performance
		setback is acceptable. The separation is appropriate in the streetscape, contains façade treatments that will ensure good levels of aural and visual privacy separation and is accordingly appropriate – Complies.
Deep Soil	• Min 25% of open space area of site	N/A - DCP controls apply.
Communal Open Space	• Min 25% of site area	N/A – DCP controls apply.
Private Open Space at Ground Level or on podium/car park	• Min area 25m^2	N/A – DCP controls apply.
Pedestrian Access	• 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	• Max driveway width 6.0m	The driveway that extends from Stanley Street is 5.5m in width – complies.
Apartment Layout	• Max depth from window of single aspect apartments 8.0m • Max distance from window to back of kitchen 8.0m	The majority of apartments are designed to have internal plan depths of 8m. Some single aspect apartments slightly exceed this requirement, however, the internal portion of the apartments generally relate to bathrooms which are mechanically ventilated. In addition, each building is designed with breezeway corridors and light and air voids that will enable appropriate light and ventilation to be achieved to each dwelling and shared circulation space– Acceptable on Merit. All single aspect apartments contain kitchens that are generally within 8m of a window – Complies.
Balconies	• 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	• 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)	• Residential building in mixed-use area - GF, min 3.3m • Residential building/floors - Habitable rooms, min 2.7m - Non-habitable rooms, min 2.25m	• Ground Floor units have ceiling heights of 2.7m in the residential and mixed use zones. The ceiling heights provided are acceptable as the ground floor apartments are capable of use as a home office should such a demand exist in the future – Acceptable on merit. • All apartments contain 2.7m high ceilings to habitable rooms. – Complies.
Internal Circulation	• For double-loaded corridor, max 8 units accessed from single core/corridor	• Building A contains 10 dwellings per level that are served by a single lift core. Despite exceeding the requirements of 8 dwellings per level, the proposal contains smaller units with a typical level mix of 6 x 1 bed, 4 x 2 bed (intensity of 14 bedrooms). The scheme

SEPP 65 "Rule of Thumb"/ Standard	SEPP 65 Flat Code Numerical Standard	Proposal Performance
		would be compliant if it had 8 x 3 bedroom dwellings which would generate a significantly higher intensity of people (24 bedrooms). In light of the minor exceedance and the smaller household size anticipated from the proposed dwellings, the intensity per corridor per level for Building A is appropriate – Acceptable on merit. • Building B contains 11 dwellings per level which is serviced by two lift cores– Complies.
Storage	• Excluding kitchen cupboards and bedroom wardrobes - Studio apartment, min 6m^3 - 1 bedroom apartment, min 6m^3 - 2 bedroom apartment, min 8m^3 - 3 bedroom apartment, min 10m^3	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	• 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	73% 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. Due to the site being located in an urban area this is acceptable – Complies.
	• 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	• Min 60% of apartments naturally cross ventilated	58 of the 96 apartments or 60.4% are cross-ventilated. It is noted that some of the apartments rely on light and air wells to allow natural cross ventilation, as such the applicant has engaged Floth Sustainable Building Consultants to undertake an assessment of the apartment ventilation where the light and air well are relied on for natural ventilation. The Report notes that: *"These single aspect apartments have the following alternative design augmentation / features for natural ventilation:* *1. Primary natural ventilation openings via operable window openings to the façade equal to or greater than 5% of the floor area as per NCC (BCA).* *2. Secondary natural ventilation openings via operable window openings to a large open top shaft (light well) to provide natural cross ventilation. These openings from the apartments are awning windows and are approximately 1500 high x 900 to 2000 wide.* *3. The shaft sizes are generous at approximately 6 to 8m² in cross section.* *4. Further openings from the shaft to the breezeways (open ended corridors) via*

SEPP 65 "Rule of Thumb"/ Standard	SEPP 65 Flat Code Numerical Standard	Proposal Performance
		glass louvres." The Report concludes that: *"Based on the above Assessment, it is my professional opinion that the relevant SEPP 65 requirements are met by the alternative solution and I deem the stated alternative solution for the augmented single aspect apartments to therefore satisfy the intent of SEPP 65 with respect to cross flow natural ventilation."* In light of the above, the development is considered to be compliant on merit in relation to the natural ventilation achieved– Acceptable on merit.
	• Min 25% of kitchens to have access to natural ventilation	Kitchens generally have access to natural ventilation – Complies.

In light of the above, the proposal complies or is considered to be acceptable on merit with the relevant Rules of Thumb of the Residential Flat Design Code. The applicant has provided a Design Verification Statement detailing compliance with the SEPP No. 65 Design Principles.

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 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 straddles the *R1 – General Residential* and *B4 – Mixed Use* zones under the Burwood Local Environmental Plan 2012 and residential flat buildings are permissible with consent in each zone. The proposal is best described as 2 x residential flat buildings and is therefore permissible with consent from Council.

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 objectives for development in Zone R1 are as follows:

- *"To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents."*

The proposed development provides residential apartment accommodation that will contribute significantly to housing demand within Burwood, provides variety in housing choice, and creates new living opportunities in close proximity to established public transport. For these reasons the proposal is consistent with the objectives relating to each zone.

Provided below is a consideration of the relevant LEP provisions that apply to the proposal.

<u>Clause 4.3 Height of Buildings</u>
Clause 4.3 prescribes a maximum building height of 14m relating to the western properties within the site and a maximum building height of 15m relating to the eastern properties as indicated at Figure 3.

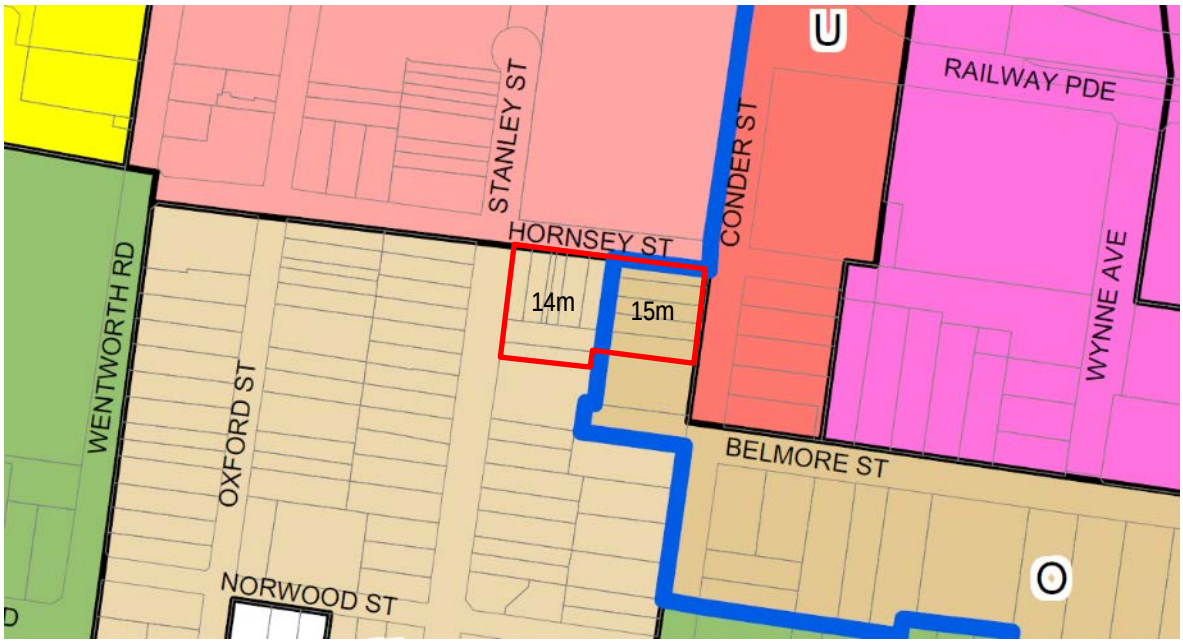

Figure 3: Maximum Building Height under Clause 3.6 of BLEP 2012

The proposal incorporates two buildings. The building occupying the western half of the site (Building A) has a maximum height of 13.76m and complies with the 14m height control applying to that part of the site. However, the building occupying the eastern part of the site (Building B) has variable heights exceeding the 15m height control applying to that part of the site as outlined in the following table.

Building B Description	Proposed Height	Exceedence of 15m height
Conder Street at frontage	14.941m	N/A - Complies
Hornsey Street at frontage	12.778m	N/A - Complies
Conder/Hornsey Corner	15.875m	0.875m
Level 5: setback from Hornsey Street, towards centre of the site	16.298m	1.298m
Lift overrun and fire stair to roof terrace	19.797m	4.797m
Roof-top planter beds	16.994m	1.994m

The proposed non-compliances are described below and principally relate to the roof top communal terrace:

- Building B complies with the 15m height control as it fronts onto Conder Street (with the exception of the corner element that faces the junction of Conder and Hornsey Street. Due to the topography of the site which falls from east to west, towards the centre of the site, Level 5 of the building encroaches into the 15m height control by a maximum of 1.298m. The height exceedance relating to the main portion of the building is minor and is generally limited to the eastern portion of the site as indicated at Figure 4 below.

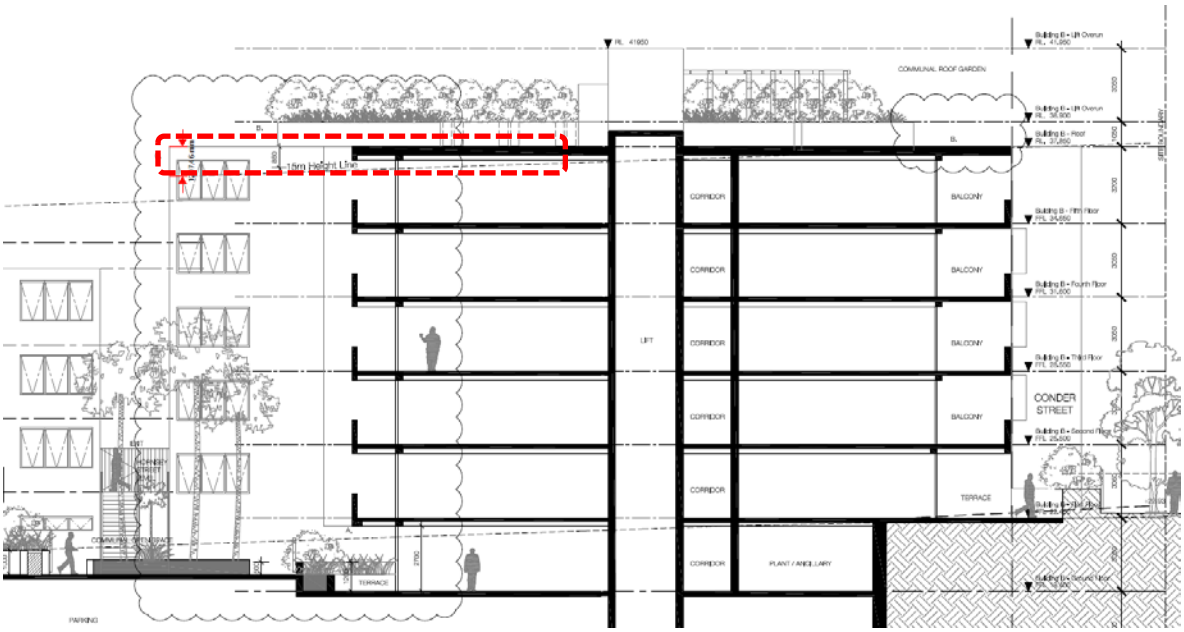

Figure 4: Height Non-compliances relating to Building B

- The height non-compliance also relates to the corner element of the building at the junction of Conder and Hornsey Street which exceeds the height limit by 0.875m. Lift access to the communal open space is required to ensure compliance with the relevant accessibility provisions of the BCA and Australian Standards. The lift overrun which provides access to the roof top communal open space has a maximum height of 19.797m and as such encroaches above the 15m height limit by 4.797m. The lift has a footprint of approximately 8.6m^2, occupying 0.8% of the total roof area. The lift overrun is located towards the centre of the building and is setback 19m from Conder Street and 20m from Hornsey Street and will therefore not be readily visible from each street frontage;

- The fire stair to the communal roof terrace will encroach above the 15m height control by a maximum of 4.797m. The fire stair has a footprint of approximately 12.6m^2, which represents approximately 1.22% of the total roof area and will not be visible from street level; and

- The proposed planter beds within the communal open space at roof top level exceed the 15m height control. These planter beds have been setback from the facade to Conder and Hornsey Streets minimising the scale of these structures when viewed from ground level and will be occupied by plantings that will ultimately improve the appearance of the building and amenity of the roof terrace.

The applicant has submitted a variation request pursuant to Clause 4.6 in respect of this non-compliance and an updated Clause 4.6 variation request was submitted responding to the judgement of *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3').*

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:

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.

In relation to subclause 4.6(3)(a), the variation request submitted with the application states that compliance is unreasonable and unnecessary for the following reasons:

- *"The non-compliances with the height limits are marginal and are confined to a small part of the building. The non-compliance relating to part of level 5 is attributed to the topography of the site as it falls from east to west by approximately 2.6m and occurs towards the centre of the site. Removing the non-compliances would not significantly alter the perceived height of the building as viewed from the public domain or surrounding development.*
- *Compliance would also require the reduction of that part of level 5 of the building which does not comply by a storey. This would diminish the height transition between the part of the site that is zoned B4 Mixed Use, which is subject to a 15m height control and that part of the site that is zoned R1 General Residential and which is subject to a 14m height control. It would also reduce the effectiveness of the height transition to the adjacent residential development further west. The five (5) and four (4) storey buildings create a successful transition that responds to the different land use zones and height controls applying across the site and surrounding development. A complying development would be less successful in achieving this transition.*
- *A building which complied with the height limit at the junction of Conder Street and Hornsey Street would result in a diminished corner element and urban outcome. The additional height creates a strong corner element which reinforces the junction of the two streets.*
- *Compliance would necessitate the removal of roof top communal open space, which significantly enhances the amenity of the development. The provision of the roof –top terrace ensures compliance with the provisions of the SEPP 65 ADG (former RFDC) relating to solar access to communal open space.*
- *There is no discernible difference in the environment impacts between a building that strictly complies with the height control in terms of:*
    - *Visual and acoustic privacy impacts: The parts of the building which do not comply with the height limit include a fire stair, lift overrun and roof top landscaping. These are non-habitable spaces and as such do not generate any privacy impacts. A small section of level 5 does not comply with the 15m, despite this it will not have any privacy impacts;*
    - *Visual impacts: Due to the non-compliances being marginal and that non-complying components of the building including the lift overrun and fire stair are setback, there is a nominal difference in visual impacts between the proposed building and complying building; and*
    - *Overshadowing impacts: There is a negligible difference in shadow impacts of a compliant building and the proposed building.*
    - *Heritage impacts: The proposal will not adversely impact upon the heritage significance or siting of neighbouring heritage items to the north."*

The arguments advanced by the applicant are agreed with in relation to the height non-compliance. It is noted that the height exceedance principally relates to the provision of the roof terrace with planters, shade structures and associated lift and fire stair access. Provision of common roof terraces

has significant benefits for the amenity of residents and will not result in a building form that is materially larger than that which is permitted. The small exceedance relating to the main portion of the building results from the fall in the land and is isolated to a minor and insignificant portion of the building. Whilst additional height could be located further west, this would conflict with the suitable transition of building heights as proposed. As discussed below, insisting on strict compliance would not yield an improved building outcome and the minor variations are 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 applicant states that:

> *"The objectives of clause 4.6 seek to provide flexibility in applying development standards to achieve better outcomes for and from developments. This can involve a consideration of the objectives of s5(a)(1) and (ii) of the EP&A Act 1979 which are addressed separately at section 3.6.*
>
> *The particular circumstance of this site that distinguishes it from others is its transitional nature which is reinforced by the split B4 Mixed Use and R1 General Residential zones applying to the site and the different height controls. The split zoning and height controls seek to respond to the sites transitional location between civic/business precinct and residential area.*
>
> *A better planning outcome can be achieved through allowing a building height, form and density that properly responds to the surrounding built form and its suitability for the purpose. In the circumstances of the case there are sufficient environmental grounds to justify contravening the development standard as outlined below:*
>
> - *The largest numeric non-compliance is attributed to the fire stair and lift overrun which provides access to the roof-top terrace. These structures are well-setback from the edge of the building, are not visible from street level and do not contribute to a discernible increase in the overall bulk and height of the proposed building.*
> - *The removal of the fire stair, lift overrun and planters would necessitate the removal of the roof-top terrace which affords a significant level of amenity to the development by providing a large area of accessible, communal open space with generous solar access. It is considered that the loss of amenity resulting from the removal of the terrace would be a lesser outcome than the maintaining the non-compliances.*
> - *The topography of the site falls from east to west by approximately 2.6m. As a result part of level 5 of the building exceeds the 15m height limit by a maximum of 1.298m as a result of this fall. This noncompliance in height occurs at the centre of the site and only affects a small part of the building. Consequently, it will not be discernible from the surrounding public domain or adjoining properties.*
> - *The non-compliance with the height standard does not result in a scale of building that is out of character with the surrounding development. In particular the non-complying components of the building do not adversely impact on the heritage significance or setting of the adjoining heritage items to the north.*
> - *The proposed development is generally compliant with the controls, or the intent of the controls, contained in SEPP 65 and the Burwood Development Control Plan 2013.*
> - *Non-compliance with the standard does not contribute to adverse environmental impacts in terms of overshadowing, visual impacts or view loss.*
> - *The proposal has a maximum FSR of 2:1 which readily complies with the maximum FSR development standard of 2:1 applying under Cl. 4.4 of the BLEP 2012.*
> - *The development as proposed is consistent with the provisions of orderly and economic development."*

The arguments advanced by the applicant are justified in the circumstances. It is accepted that the sloping nature of the site and the scale of the development as proposed may necessitate a degree of

flexibility with the building height requirements. Notably, the level of the ground floor and roof of the upper basement level is common across the site and has largely been determined by the vehicle access point from Stanley Street. The applicant has explored lowering the level of the basement to ensure strict compliance for the main portions of the building. This has been discounted due to the design inefficiencies that would be introduced simply to ensure numerical compliance and ultimately not give rise to any material improvements to the scheme. Therefore on environmental planning grounds, the development has responded to the circumstances that are specific to the site and has accommodated the permitted FSR within a form that is appropriately massed and compatible with the desired scale and presentation at each street frontage.

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 height of the proposed development is considered appropriate for the site due to its location at the edge of the Burwood Town Centre.*
>
> *The height of the proposal is responsive to surrounding development and the future desired character of the area. To the east of the site is the approved Burwood Grand development which comprises 10 storey and 20 storey towers. To south is a five (5) storey residential apartment building. In contrast, to the west of the site is lower density residential development. The proposal steps down from five (5) to six (6) storeys to four (4) storeys providing a successful transition in the height between the Burwood Town Centre to the east and north and existing lower density residential development to the west and south-west.*
>
> *Compliance with the height limit would necessitate the removal of the roof-top terrace as well as part of level 5 of the building. This would diminish the height transition between the part of the site that is zoned B4 Mixed Use, which is subject to a 15m height control and that part of the site that is zoned R1 General Residential and which is subject to a 14m height control. In this regard the proposal would be less consistent with the objective in terms reinforcing the building heights from the medium density development on site and to the south and the adjacent low density character of development to the west."*

The non-compliance in height is minor and results from a change in the site topography which the building responds to, as well as a lift and fire stair structures providing access and egress to the roof top communal terrace."

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

The applicant's Clause 4.6 variation request states that:

> *"The proposal will have minimal impacts on adjoining and nearby properties. The shadow diagrams prepared by SJB Architects indicate overshadowing to the adjacent residential properties will be minimal.*
>
> *Appropriate building separation distances and screening mitigate loss of privacy and visual intrusion to the adjoining properties.*
>
> *The minor exceedence of the height controls attributed to the lift overrun/fire stair on Building B will not result in any significant impacts to adjoining properties."*

It is accepted that the building height exceedance as proposed will not result in a building that is materially larger than what is expected in the area or inconsistent with the strategic intention of the transitionary 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 the arguments presented by the applicant's in the Clause 4.6 variation request are supported.

Objectives of the Zone

The non-compliance is limited to the portion of the site that is located in the B4 – Mixed Use 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 applicant's Clause 4.6 variation request states that:

> *"The proposed development will contribute to a mix of compatible uses on the edge of the Burwood Town Centre.*
>
> *The site is within an accessible location. It is approximately 400m to the south-east of the Burwood railway station and the Burwood CBD.*
>
> *The site is in a highly accessible area and within a walkable catchment to numerous employment, retail and recreation uses. The site is ideally located to accommodate the proposed development and reduce travel dependence based upon private vehicle travel."*

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.

Clause 4.4 – Floor Space Ratio

Clause 4.4 prescribes a maximum floor space ratio of 2:1 across the entire site. The applicant has provided gross floor area calculation diagrams indicating the parts of the dwelling that have been included in the gross floor area calculation. The applicant has excluded some common corridor areas that are provided as breezeways. The calculation aligns with the interpretation of internal areas and calculation of GFA under the NSW LEC judgement *GGD Danks Street P/L and CR Danks Street P/L v Council of the City of Sydney [10319 of 2015].*

The development results in a gross floor area of 6,852m^2 and an FSR of 2:1 and complies with the relevant requirements.

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 including *I48 – Burwood School of Arts (former), I47 Burwood Council Office* and *I110 – Corner Shop (former).*

A *Heritage Impact Assessment* prepared by NRBS + Partners was submitted with the application detailing that the existing buildings on the site do not have any significant heritage value that would preclude demolition. In addition, the report notes that the development is consistent with the anticipated form of development at the site and will not impact on the existing nearby heritage listed buildings.

The application and the accompanying *Heritage Impact Assessment* were considered by Council's Heritage officer and it was requested that a number of façade changes were made to the building presentation to Hornsey and Conder Streets. Following extended negotiation between Council and the architect, the design resolution is considered to be acceptable on heritage grounds as detailed later in this report.

The proposal therefore satisfies Clause 5.10 of BLEP 2012.

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 the following table.

There are various generic controls that have been considered below that apply to the whole site. However, it is noted that separate controls apply to Buildings A and B by virtue of each building being located within separate zones (Zones B4 and R1). The provisions of Part 3 of the DCP that relate to *Developments in Centres and Corridors* apply to Building B and the Provisions of Part 4 relating to *Development in Residential Areas* apply to Building A.

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
2.2 Site Analysis	To be submitted with Development Application	Included in the architectural plans and the SEPP No. 65 Design Verification Statement.	Yes
2.3 Views and vistas	Identify significant views and vistas and demonstrate how they are to be improved and enhanced Encourage view sharing Have regard to high priority views and vistas identified in the DCP	No significant views or vistas are gained over the subject site. View impacts are minimal and within what could reasonably be expected. N/A	Yes
2.4 Streetscapes	Identify streetscape characteristics Demonstrate how building design, location and landscaping will enhance and protect streetscapes	The proposal achieves the intended height, massing and articulation at each streetscape to respond to the prevailing character of each street as well as the adjoining heritage listed properties.	Yes
PART 3 DEVELOPMENT IN CENTRES AND CORRIDORS *Note: These provisions apply to the part of the site identified within the B4 Zone (Building B)*			
3.2.1 Design Excellence	Represent architectural design excellence by: - 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 achieved with the proposed development through well considered building treatments and ongoing liaison with Council in relation to achieving a building that responds to the sensitive heritage context and the three streetscape.	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 from public view	Materials, colours and finishes proposed with the Development Application are satisfactory and are selected to provide a contemporary building that responds to the heritage context. The material details have been provided with the application and indicate a balanced and well-	Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	Incorporate external lighting (avoid excessive light spillage) Translucent or opaque materials for balustrades Building entrances visible from the street Discourage painted finishes Walls to be articulated and designed for visual interest when viewed from the street Low maintenance and graffiti resistant materials used	presented building.	
3.2.3 Roofs and Roof Tops	Roof design to be integrated with the overall building and its role in the Burwood Town Centre skyline Roofs to respond to site orientation Service elements screened and integrated with the roof design Design to have regard to the view from the street, from adjacent development and as part of the skyline	The roof design for Building A is contemporary and low profile. Building B contains a roof terrace that integrates planting that will ultimately soften and improve the appearance of the building.	Yes
3.2.4 Street-front Activities and Building Access	Security measures to be integrated with building design Ground floor development must: - promote quality non-residential activity in accordance with the zone - minimise the number of service doors - encourage visual interest with clear glazed windows, artwork and articulated architecture - provide access points to the public domain at no more than 20m intervals - provide at grade access points Provide separate, clearly identifiable entrances from the street for pedestrians and cars,	Residential development is provided at the ground floor level with apartments suitable for home business use should such a demand exits. The dwellings promote passive surveillance to the street and provide legible access points. The vehicle entry/exit point from Stanley Street are well separated from pedestrian entry/exit points.	Yes Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	residential and non-residential uses		
	Building entrances must have a direct physical and visual connection to the street	Building entrances for Buildings A and B have direct physical and visual connection to Conder, Stanley and Hornsey Streets.	Yes
	Residential components shall have a clear street address and a separate entry	Clear residential entry points are provided at each street frontage.	Yes
	All commercial components must have a clear street address	N/A – no commercial element provided.	NA
	All mail boxes in accordance with requirements of Australia Post. Where located externally for residential buildings the mail boxes should be at right angles to the street boundary on either or both sides of the main access walkway.	Conditions of consent can be imposed to ensure mail boxes comply.	Yes
3.2.8 Apartment Mix and Minimum Dwelling Sizes	Residential development in excess of 20 dwellings must provide a mix of dwellings containing 1, 2 or more bedrooms	A mix of one, two and three bedroom units are provided.	Yes
	All residential developments must provide the following minimum apartment sizes:		
	Studio 40m^2	N/A	N/A
	One bedroom apartment 50m^2	All one bed dwellings exceed 50m^2	Yes
	Two bedroom apartment 70m^2	All two bed dwellings exceed 70m^2	Yes
	3+ bedroom apartment 95m^2	All three bed dwellings exceed 95m^2	Yes
3.2.9 Site Area	Any development outside the Burwood Town Centre with a height over 9m is required to have a minimum site area of 500m^2.	The portion of the site that is located outside of the Burwood Town Centre exceeds 500m^2	Yes
3.2.10 Building depth	Refer to RFDC	Refer to RFDC Assessment above.	-
3.2.11 Ceiling Height	Ground level 3.3m	Minimum 2.7m which is considered acceptable for the residential flat building.	Acceptable on Merit.
	Residential floors above ground level 2.7m habitable rooms and 2.4m non-habitable rooms	Minimum 2.7m for all levels above the ground floor.	Yes
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

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
3.2.14 Visual and Acoustic Privacy	Development must be located and orientated to maximise visual privacy between development on the site and adjacent development by:		
	• Providing adequate rear and side setbacks.	The proposal provides shared building separation at the southern boundary where it adjoins residential properties in The R1 General Residential zone. The portion of the site that is located in the B4 Zone extends to the boundary to assist with a continuous street wall form. The separation and window treatments at the boundaries and in relation to inwards facing dwellings promote good levels of aural and visual privacy.	Yes
	• 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.	The buildings have been suitably massed at the site to balance streetscape presentation and the relationship to the adjoining properties.	Yes
	Privacy provisions should not compromise natural light and air	Appropriate light and ventilation is achieved to the development.	Yes
3.2.14 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 and 2 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	The 3 bedroom dwelling has a balcony depth of 2.5m and areas that exceed 10m^2.	Yes
	3 or more bedrooms – minimum depth 2.5m and minimum area 10m^2	Private open space is provided in response to the site context with open space areas located at the ground level and within the roof terrace.	Yes
	Private open space which responds to site conditions and integrated with the building design		

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
3.2.15 Lobbies and Internal Circulation	Entry lobbies to provide seating, mail delivery and collection and space for supervising personnel	Entry lobbies are suitable in size.	Yes
	Lift lobbies to have natural ventilation and natural light	Lift lobbies have access to ventilation and natural light.	Yes
	Corridors to facilitate movement of furniture and people and have interest in surface materials and finishes with clearly identified apartment numbers	Corridor lengths and dimensions provide appropriate access.	Yes
	Common area corridors minimum 2m wide	Main corridor areas are designed to be 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
3.2.16 Storage for apartments	Refer to RFDC		
	At least 50% of the storage area to be provided within the dwelling At least 25% of storage area accessible from active areas	Storage areas are provided in the apartments and within the basement in accordance with Council's requirements.	Yes
3.2.18 Access and Mobility	Main entry accessible from the street footpath and common accesses in accordance with AS 1428: Design for Access and Mobility	An Accessibility Report submitted with the Development Application demonstrates compliance and appropriate conditions can be imposed for final details to be submitted with the application for a Construction Certificate.	Yes
	Minimum 10% of dwellings as Adaptable Housing Class A or B	10 Units or 10.4%, are the selected for pre and post adaptable layouts	Yes
	At least one car space for each accessible or adaptable dwelling to comply with AS1428.2	Accessible parking spaces have been provided for each accessible dwelling (ie. 10 accessible spaces). 2 spaces provided.	Yes
	Development of 80+ dwellings 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.		
3.2.19 Awnings	To be provided above the public domain in B4 Zone	N/A - Awnings are not required as the building on the portion of the site zoned B4 is setback from the primary boundary.	N/A
PART 3.3 AREA BASED CONTROLS – BURWOOD TOWN CENTRE *Note: These provisions apply to the part of the site identified within the B4 Zone (Building B)*			

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
3.3.2.1 Building Height Plane	Height of buildings not to exceed the building height plane	N/A – the site is not affected by the Burwood Height Plane.	N/A
3.3.2.4 Perimeter and Transition Areas	*Street Front Setbacks* Required 6m setback to Condor Street	The proposal observes the required 6m street setback to Condor Street and results in an isolated non-compliance at the corner of Condor and Hornsey Street. The building is to provide a pronounced building form that provides a strong presentation to the intersection. The public interest is best served by this improved urban outcome that is accepted to be consistent with the objectives of the controls.	Acceptable on merit
	Side and Rear Setbacks For residential development refer to the side and rear setbacks provisions of the RFDC which supplements SEPP 65 – Design Quality of Residential Flat Development.	The development achieves suitable setbacks to each side boundary as discussed in relation to the requirements of the RFDC.	Yes
	Communal open space The street front setback areas must be provided as communal open space. Where ground floor uses are residential, the street front setback area may be secured, however the setback is to remain a communal space with only one perimeter fence, and must not to be further divided.	The Conder Street frontage is provided as deep soil garden areas. Small courtyards are provided and these spaces do not detract from the communal garden setting adjacent to Conder Street.	Yes
	Existing mature trees must be retained wherever possible.	All existing trees are identified for removal.	-
	Where existing trees are removed, they must be replaced at a ratio of two new trees for each tree removed.	A consent condition will be imposed to ensure appropriate replacement of trees.	Yes
	At least 50% of the street front setback areas must be provided as planting or soft landscaping.	In excess of 50% of the Conder Street frontage is provided as landscaping.	Yes
	Canopy trees must be provided at the rate of 1 per 30 square metres of landscaped area provided within the street front setback area.	The required number of canopy trees are provided.	Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	Development which requires a minimum 6 metre setback from the street front boundary, in a landscaped front setting, are to provide deep soil zones and provide trees planted as selected from Council's Street Tree Management Strategy (STMS).	Deep soil zones are provided at the Conder Street frontage which will be planted with appropriate species.	Yes
3.7 Transport and Parking in Centres 3.7.2 Burwood Town Centre	Resident on-site parking: 0.5 spaces per studio unit 1 space per 1 and 2 bedroom unit 1.5 space per 3 bedroom unit 57 x 1 bed = 57 spaces 37 x 2 bed = 37 spaces 2 x 3 bed = 3 TOTAL Residential = 96 Visitor on-site parking: 1 space per 5 units Requires 19.2 spaces TOTAL PARKING – 116 spaces All vehicles to be capable of entering and leaving the site in a forward direction. Vehicle access to be provided by secondary streets in preference to major roads Minimise vehicle crossings of footpaths No impacts on bus operations Openings must be screened with automatic closing doors Vehicle access to be separated from pedestrian access Bicycle parking facilities in accordance with AS 2890.3	Refer below 96 residential parking spaces provided. 20 visitor parking spaces provided. TOTAL PARKING - 116 provided. All vehicles can enter and leave in a forward direction. Vehicular access point from Stanley Street is appropriate. 1 vehicle crossing proposed at Stanley Street. N/A A roller door is proposed. Vehicular and pedestrian access points are clearly separated. Bicycle parking facilities are provided and comply.	 Yes Yes Yes Yes Yes Yes N/A Yes Yes 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 and the proposal is determined to be satisfactory.	Yes
3.9 Public Domain and Amenity	Conder Street public bus route	Public bus route and shared zone within Conder Street will be	Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
3.9.1 Public Domain – Burwood Town Centre	Conder Street shared zone between Hornsey Lane and Railway Parade.	maintained.	
3.9.5 Treatment of Street Front Setbacks – Perimeter and Transition Areas	Where the development is wholly for residential purposes, the setback area remains part of the common property of the residential development and is to be landscaped and maintained accordingly.	The front setback will be landscaped to maintain a consistent street presentation. Common areas are provided at the boundaries and throughout the site.	Yes
3.9.6 Public Domain Finishes and Elements within Development	Lighting to be provided appropriate to the setting 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)	Appropriate conditions of consent can be imposed to achieve compliance with these requirements.	Yes
3.9.9 Access and Mobility for the Public Domain	The public domain immediately adjacent to any development must be upgraded to Council's standards at the applicant's cost 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 Tactile indicators in accordance with AS1428.4 are to be installed where there is a change of floor surface level	Appropriate conditions of consent can be imposed to achieve compliance with these requirements.	Yes
PART 4 - DEVELOPMENT IN RESIDENTIAL AREAS *Note: These provisions apply to the part of the site identified within the R1 Zone (Building 2)*			
4.1.2.1 Site Planning	*Setbacks* Street setbacks are to be 6m.	The proposal is setback 6m from the Stanley Street frontage. In relation to the Hornsey Street frontage, the proposal provides a setback of 3.2m in relation to the portion of the site that is located in the R1 zone. The setback at this frontage is appropriate and consistent with the intention of the controls as: • This is not a typical residential street block and the opposing development is Burwood Public School. As such the	Yes Acceptable on merit

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
		typical 6m residential setback is not characteristic or necessary in the immediate vicinity; • The site is located at the transitionary part of Burwood Town Centre and the reduced street frontage will allow for a transitionary presentation to the street that responds well to the split zoning of the site whereby the eastern element is located in the B4 Zone; • The reduced setback has no impact on residential amenity and will only serve to provide a contextually appropriate built form context.	
	Side and rear setbacks: • Ground floor – 2m • First floor – 3.5m • Second floor 5m and comply with RFDC separation distances. • Third floor and above – 1m additional floor area above second floor and comply with RFDC separation requirements. (ie. 7m)	 • Minimum 6m between Building A and southern boundary between Ground floor and Level 2. The development exceeds RFDC separation distance requirements of the RFDC as discussed above. • Level 3, is setback 6m-8.16m. The minor variation is acceptable as the development will exceed separation distance requirements and reduced setback extends for only 7.5m of the 28.5m building elevation to Building A which has no openings to the bedroom or balcony beyond.	Yes Acceptable on merit
	• Setback areas must be free of projections or encroachments, except for at-grade landscaping, to protect the amenity and privacy of adjoining properties and streetscape.	Metal fins are proposed along the northern façade of Building A are located behind the 6m setback line. Very minor encroachment will occur from the metal fins proposed along the Stanley Street frontage (to southern units) and these represent a very insignificant projection into the setback area and do not add bulk to the building and therefore have no adverse	Acceptable on merit

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
		impacts.	
	Length of Building Facades The maximum frontage length of a building facing a street is 45m. The side façades of buildings are to include articulation elements at least every 10m.	Hornsey Street – 30.5m Stanley Street – 33m Southern façade is well articulated.	Yes Yes
	Minimum Site Frontage A residential flat building shall not be erected on an allotment of land having a frontage of less than 20m.	Site frontage exceeds 20m.	Yes
	Minimum Site Area Any development with a height over 9m is required to have a minimum site area of 500m^2.	The site identified within the R1 zone exceeds 500m^2.	Yes
	Site Isolation The creation of isolated sites (i.e. with less than 20m frontage) is discouraged	No site isolation will occur.	Yes
4.1.2.2 Building Design	Each street façade must be articulated into smaller components using building elements at a scale or grain that reflects the use of the building and its components; its location relative to public domain elements; and has a clearly defined top, middle and bottom. The pedestrian entries to buildings shall be readily apparent from the street, and that part of buildings adjacent to the public street shall have living room or kitchen windows facing the street.	The building is well articulated with use of recessed balconies, upper level setbacks, separation between buildings and distinct elements and building proportions. Building entries are clearly visible from the street to individual units with street orientation as well as the central site entrance on Hornsey Street and Stanley Street. Suitable natural surveillance is provided by the location of a large number of primary living areas facing the street.	Yes Yes
	Roof Design Integrate the design of the roof to the proposed built form and adjacent properties and reduce the bulk and scale through articulation. The design of the roof should respond to the orientation of the site, minimise the visual intrusiveness of service elements and support the use of the roof for	A flat roof form is proposed which assists in limiting the perceived building bulk. No obtrusive or inappropriate roof top services proposed atop Building A. Building B is the taller of the two buildings and facilitates common open space which	Yes Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	open space and for functions that improve the environmental sustainability of the building.	significantly enhances the development and receives good solar access.	
4.1.2.3 Site and Building Amenity	*Private open space* Private open space may be in the form of courtyards, decks or balconies and is to be provided for every dwelling in a development.	Each dwelling contains a balcony or terrace for all units.	Yes
	Private open space is to have a northern aspect where practicable.	North facing private open space has been maximised as best as possible with 41% of dwellings private open space provide northern orientation. This is acceptable given the site has three street frontages.	Yes
	Private open space is to be directly accessible from the living area of the dwelling and capable of serving as an extension of the living area.	All units have direct access from primary living areas to private open space areas.	Yes
	Communal Open Space A minimum of 25% of the site area must be allocated for communal open space.	Communal open space (800m^2 or 23.3%) across the development is provided within a roof top terrace and at ground level as open gardens. The roof-top terrace was reduced in area in response to design changes and as discussed elsewhere in this report results in a better urban design outcome. The shortfall of 56.5m^2 represents a minor 6.6% shortfall and is off set by the suitable quality and variety in common open space provided. It is considered that there is adequate, good quality communal open space to suit the needs of future occupants which is further supported by the site's proximity to extensive services and facilities within the Town Centre.	Acceptable on merit
	Must have a minimum dimension of 6 metres and 50% of communal open space must be unpaved soft landscaped area.	The provision of COS is 33% soft landscaping provided as gardens and planters. The inclusion of the roof-top terrace provides very high amenity for future occupants maximising solar orientation. The common space in the location	Acceptable on merit

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
		proposed is not enclosed by buildings and as such provides high levels of privacy, solar access and upper level outlook. Hard paved area is most suitable for roof-top recreation space and reduction in the trafficable area at this level to meet this requirement is not considered to be a suitable alternative. The ground level common areas provide a different recreational purpose to the roof terrace, more so providing transitionary spaces through the site between street frontages. The balance of hard and soft landscaping provision is considered acceptable and is supported.	
	Communal open space is to present as a private area for residents only, include passive surveillance from the adjacent living areas of dwellings and provide for active and passive recreation needs.	Common open spaces are private area for residents of the development only. Passive surveillance of the communal areas is generally achieved subject to conditions relating to lighting and access control, the open space areas would be sufficiently safe.	Yes
	Communal open space may be in the form of roof areas and ground level and elevated gardens, but does not include indoor recreation areas. It should have a northerly aspect where practicable.	Provided as both ground level and roof-top areas each with suitable northern orientation to maximise solar access.	Yes
	Communal open space must achieve visual and acoustic privacy, safety and security.	The ground level communal space provides access to units at this level and will enjoy a suitable level of passive surveillance. The roof-top terrace due to its location is afforded high levels of acoustic and visual privacy. These areas are secure and require swipe card system for access. Space management of these areas subject to conditions relating to lighting and access control, the open space areas would be sufficiently safe.	Yes
	At least 30% of the communal open space area is to achieve 2	376m^2 of 47% of the common	Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	hours of direct sunlight between 9am and 3pm on June 21.	open space will receive a minimum of 2 hours of direct sunlight between 9am and 3pm on June 21.	
	Landscaping A minimum of 10% of the site area is to be deep soil and have a minimum dimension of 4 metres. 10% across the site = 342.6m^2 10% of the R1 land = 182.9m^2.	The proposed development will provide a total of 275m^2 of deep soil landscaping which represents 8% across the whole site (R1 and B4 zones) and 15% in relation to the R1 portion of the site to which this control directly applies. See comment below.	Complies
	It is expected that 25% - 30% of the site be landscaped (inclusive of the deep soil zone). Landscaped area includes all pervious surfaces, open space at ground level and open space with a minimum dimension of 1 metre. 25% across the site = 856.5m^2 25% of the R1 land = 457.25m^2	The site contains 457.25m^2 of landscaped area which represents 13.3% of the whole site and 25% in relation to the R1 portion of the site. The numerical provision of deep soil and landscape area complies with the requirements when considering the R1 portion of the site in isolation however has been distributed across the whole site to benefit the overall development. Whilst it is not possible to provide all deep soil and landscaping within the R1 portion of the site, more importantly, it is a far better planning and urban design approach in terms of visual appearance and site amenity. As such the provision of deep soil and landscaped area is supported.	Complies
	Solar Access and Natural Ventilation DAs are to include diagrams in plan and elevation that shows sun access to proposed apartments and the shadow impact on neighbouring dwellings from the proposal at 9am, 12pm and 3pm on March 21 and June 21.	Suitable shadow diagrams have been submitted with the application.	Yes
	At least 70% of the living rooms and private open spaces of the proposed apartments and neighbouring developments are to receive a minimum of 3 hours direct sunlight between 9am and 3pm on June 21.	73% - addressed in RFDC table above.	Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	Where the neighbouring development currently receives less than 3 hours direct sunlight to living areas/habitable rooms or to the private open space area, any additional overshadowing is to be minimised.	Solar impacts are considered acceptable as discussed below.	Yes
	Apartments shall be naturally cross-ventilated, and in particular kitchens should have access to natural ventilation.	60.4% - addressed in RFDC table above.	Yes
	Visual Privacy Provide adequate building separation in accordance with the building separation requirements in the RFDC.	Suitable building separation achieved – addressed in RFDC table above.	Yes
	Avoid overlooking to and from private open space and the main habitable areas of dwellings through building layout and location, design and location of windows and screening devices, balcony design and distance.	Internal to the site, generous separation is afforded between Building A and B for the 4 opposing levels (6 units at each level). Landscape treatment is also provided surrounding buildings A and B to assist with maintaining a suitable level of privacy. Along the southern boundary of the site, where the proposal adjoins existing development. Design elements are also provided including privacy screening and highlight openings.	Yes
	Acoustic Amenity The internal layout of buildings is to be designed to reduce the effects of noise transmission through building materials and locating noise generating areas together.	Internal configuration is acceptable. The building is to comply with the BCA for construction of party walls.	Yes
	A Noise Impact Assessment prepared by a suitably qualified acoustic consultant may be required to accompany a Development Application.	Submitted with application.	Yes
	Design of developments must provide personal and property security for residents and visitors and enhance perceptions of community safety.	Conditions of consent will ensure suitable lighting. CCTV is to be maintained by the Body Corporate as well as safety and security lighting shall be provided to the perimeter of the building and internal courtyard.	Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	A Crime Risk Assessment in compliance with Crime Prevention Through Environmental Design (CPTED) requirements is to be prepared by a suitably qualified consultant is required for DAs of more than 20 dwellings.	A suitable Crime Risk Assessment has been submitted with the application. Relevant recommendations have been incorporated as conditions of consent.	Yes
	Each building shall be provided with an entry that creates a sense of identity for the development.	The two primary pedestrian entrance points to Stanley and Conder Streets have well defined entrance points and each building elevation has good street address. Individual entrances to dwellings and well defined by fencing and entrance gates to courtyards.	Yes
	Buildings shall be designed to provide casual surveillance, have appropriate lighting, clearly defined territory and avoid concealed or blind spots.	Passive surveillance is provided by locating dwellings fronting the street and including private open space and primary living areas with outlook to the street or internal circulation spaces between Building A and Building B.	Yes
	Fences and Walls The design and materials of fences and walls must be sympathetic to the streetscape, visually attractive and complement landscape elements. The height (as measured from the public footpath side) of the front fencing must be: • Not higher than 1.2m above ground level (existing), and with a maximum solid base component of 0.9m high. • Not higher than 1.5m above ground level (existing) if the fence follows a sloping site and is stepped to accommodate the fall in the land, and with a maximum solid base component of 1m high.	A condition of consent in relation to fencing has been provided by Councils Heritage Advisor to ensure maximum height of 1200mm and a solid base maximum height of 0.5m as presented to each street frontage.	Yes
	Forward of the front building line, fences must step-down or transition to the height of the front fence.	NA	NA

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	Facilities and Amenities An amenities room (for meetings etc) is to be provided where the building has more than 15 residential units. The room shall have minimum dimensions of 4m and be available for the use of residents.	An auxiliary/amenities room is provided at ground floor level in Building B.	Yes
	The size, capacity and location of garbage bin areas and storage facilities, and the provision of waste chutes in residential flat buildings shall be in accordance with the Waste Management section of this DCP, which seek to encourage waste minimisation.	Refer to consideration of Section 6.2 of the DCP below.	Yes
	Clothes drying areas shall be provided within an area of communal open space or provided within each residential unit. If provided on the balcony of individual units, the drying area must be screened from exterior view, and be designed in such a way that does not detract from the building's appearance from the public domain.	Suitable to terraces which will be adequately screened from public view by brick walling, solid balustrading and recessed balconies.	Yes
	Adaptable Housing All development for residential flat buildings in the R1 zone must provide 10% of dwellings for adaptable housing to cater for ageing in place and/or mobility impaired residents.	10.4% of dwellings are provided as adaptable.	Yes
	At least one car parking space must be provided and allocated to each dwelling required to be provided as accessible or adaptable housing under this Section and the car parking space must be accessible in accordance with the provisions of AS 1428.2 to facilitate automatic vehicular wheelchair loading and unloading	Accessible parking has been provided for each adaptable dwelling.	Yes
PART 4.6 TRANSPORT AND PARKING IN RESIDENTIAL ZONES			
Parking rates in residential zones.	Parking for residents • 1 space per unit up to 2 bedrooms – 94 parking spaces • 2 spaces per 3 or more bedroom unit – 4 spaces	A total of 116 parking spaces are proposed, representing a 1 space shortfall. This provision complies with the rates prescribed within the B4 zone which nominates a 0.5	Acceptable on merit

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	Parking for visitors to residents of the development • 1 space per 5 units – 19 spaces TOTAL – 117 spaces	lower rate for 3 bedroom dwellings (ie. 1.5 spaces per 3 bed). Given the site forms part of the B4 zone a 1 space shortfall that complies with the B4 zones parking requirement is considered acceptable.	
PART 4.7 HERITAGE IN RESIDENTIAL PRECINCTS			
New development in the vicinity of a heritage item	New development, or alterations and additions to existing development, that is located in the vicinity of a heritage property, must be designed and sited to: - Have regard for, and be compatible with, the significance of the heritage property; - Reflect the bulk, scale, height and proportion of the heritage property; - Respect the front garden setting, any established setbacks, and views and vistas of the heritage property; - Be recessive in character and not dominate the heritage property; - Interpret the materials and architectural detailing of the heritage property. - Respond to the building alignment of the heritage property.	Application was referred to Heritage Advisor and found to be suitable subject to conditions of consent. Refer to heritage discussion below.	Yes
PART 6.2 WASTE MANAGEMENT			
Waste management plan	Waste management plans are required to be lodged with a residential apartment development	Submitted with application	Yes
6.2.5.2 Design of Waste Management Facilities in Multi Dwelling Housing and Residential Flat Buildings	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	A waste chute is provided to each building. Waste management has been reviewed by Councils Environmental Health officer and found to be satisfactory subject to conditions of consent. Condition will ensure that the ongoing waste management for the development will comply with the requirements outlined in the Waste management Plan submitted with the application.	Yes Yes Yes

Burwood Development Control Plan			
Control	Requirement	Proposed	Complies
	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.	Provided within basement level.	

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.

Notably, the proposal seeks a departure from the setback to Hornsey Street in relation to the residentially zoned portion of the site. The setback proposed is appropriate to the built form context where the development site opposes a heritage listed building that is occupied by the Burwood Public School.

Overshadowing

It is noted that Council's DCP does not include a control in relation to overshadowing, nor does the RFDC. To the south of the site with a frontage to the east is Nos. 17 – 19 Conder Street which is a 5 storey residential flat building with its side elevation having a nil setback to the shared boundary. No openings are provided on the northern elevation. This building has a light well at the centre along the shared boundary with the subject site, creating a U-shaped building. Also located to the south of the site, with a frontage to Stanley Street are existing 2 and 3 storey residential flat buildings located at Nos. 6-8 Stanley Street. These buildings include openings along the northern elevation.

To assess the potential impacts of overshadowing on properties to the south, the applicant has provided shadow diagrams and elevations to make a comparison between existing shadows and proposed shadows.

(i) Equinox Shadow

At 9am the proposed development will increase shadows beyond the shared boundary and impact on the northern facades of Nos. 6-8 Stanley Street. It is recognised that the buildings on Nos. 17-19 Stanley Street also contribute to these shadows. Solar access will be maintained between the centre of the two buildings on this property as a result of the separation between proposed Building A and B at the subject site. In relation to Nos. 17-19 Conder Street, existing shadows from the buildings at the subject site and self-shadow currently occur. Increase in shadow will result in no solar access to this area.

By 12 noon, these shadows will extend due south and extend only slightly beyond the shared boundary. In relation to Nos. 17-19 Conder Street these shadows will extend beyond the boundary and into the majority of the light well.

By 3pm, shadows resulting from the proposed development will not impact on Nos. 6-8 Stanley Street and the light well within Nos. 17-19 Conder Street is already in self-shadow at this time.

(ii) Midwinter Shadow

At 9am, shadows will increase to the upper levels of the front building and increase beyond the middle level but enable solar access to two upper level windows of the rear building at Nos. 6-8 Stanley Street.

In relation to Nos. 17-19 Conder Street, the proposed development will create additional shadows to the eastern elevation within the U-shaped portion of the building. The impact will extend to four levels with the exception of 2 upper level openings.

At 12 noon, the lower and middle levels of both buildings at Nos. 6-8 Stanley Street will be in shadow and the upper level of both buildings will receive solar access.

Regarding Nos. 17-19 Conder Street, there are significant existing shadows from existing development at the subject site and this scenario will not change.

At 3pm, shadows will increase to the middle level of the rear building allowing solar access to the upper level and will improve to the front building at Nos. 6-8 Stanley Street, allowing solar access to all levels as demonstrated by the shadow diagrams in elevation.

Regarding Nos. 17-19 Conder Street, similarly to 12 noon shadow impacts, there are significant existing shadows from development already existing at the subject site and this scenario will not change.

In conclusion, the proposed development will not reduce solar access beyond that which would be anticipated at the site in light of Councils height and density controls. Whilst the proposal includes a building height exceedance, the portions of the building which exceed the height control are is located within the centre of the building and the planter boxes to the perimeter of the roof top terrace are stepped in from the southern boundary. A fully compliant building height would not achieve any better solar outcomes for adjoining properties to the south which will inevitably be impacted by shadows due to orientation.

The siting of the proposed development is acceptable (with building setbacks ranging from 6m to 8.1m to Nos. 6-8 Stanley Street) and the building relationship is well resolved in relation to adjoining development providing suitable opportunities for some solar access for a development of the scale permitted at the site and due north to these effected properties.

The shadow 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 controls, the height and density proposed reflects the scale of built form anticipated and encouraged by Council. Therefore in line with the above planning principle, the expectation that existing solar access would be fully protected is unrealistic.

CONSULTATION

Tree Management

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

Environmental Health

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

Traffic Engineer

The application has been reviewed by Council's Traffic Engineer and in relation to traffic, manoeuvring and parking the application is found to be acceptable subject to conditions as included in Annexure A.

Heritage

The application was referred to Council's Heritage Advisor who did not support the application in its original form and sought changes to the façades of the building facing Condor and Hornsey Street. The following key issues were raised and solutions provided:

"Issues that must be addressed are as follows:

- *The proposed building projects an institutional rather than residential character.*
- *It reads as being over-scaled in relation to the heritage buildings.*
- *The form and proportions do not provide a sympathetic context for the items in the immediate vicinity.*

Possible resolutions may be based on the following guidance:

- *Stepping back of the upper floor and stepping in height to provide a transition of scale along the skyline along Condor Street may reduce the apparent disparity of scales.*
- *Articulation of the building into smaller segments and provision of a finer grain of detailing may further assist in moderating the form towards one that is more sympathetic to the heritage items."*

Comment:

Following on-going discussions with Council's Heritage Advisor, the Horney Street elevation, Conder Street elevation and corner element at the junction of these two streets has been amended by the applicant in response the above review comments. Notable design changes include:

- A single level setback on the corner element of the Conder Street building;
- The former splayed wall has been squared up to the Conder Street elevation;

- Setback to Hornsey Street provided to upper level (Level 5) only to reduce the more bulky appearance of the former 2 level setback (Levels 4 and 5);
- Fin detail has been removed from the Hornsey Street elevation;
- Vertical brickwork bands introduced along the elevation to break up horizontal elements;
- Bagged and white painted brickwork introduced to the Hornsey Street elevation to complement the

The revised plans dated 13 January 2016, that are the subject of this application were referred back to Council's Heritage Advisor and it was concluded in referral advice dated 4 February 2016 that the earlier issues been resolved and the application could be supported on heritage grounds, subject to conditions as included in Annexure A.

Neighbour notification

The subject development application was notified under Council's Notification Policy between 21 July and 18 August 2016. Three (3) submissions were received in response to the notification. A summary of the issues raised in submissions that are relevant to the assessment process and planning assessment comment is provided below.

Issue 1 – Height: Concerns raised in relation to the height of the building with some residents requesting that the building be lower than the maximum building height and others objecting on the basis of the building exceeding the LEP height limit.

Comment:

The proposed building height is considered to be acceptable. Building A is below the applicable 14m LEP height limitation along the Conder and Hornsey Street frontages. Building B primarily complies with the applicable 15m LEP height limitation fronting Conder Street, however exceeds the 15m height limitation where the corner element at the junction of Conder and Hornsey Street and as a result of site topography Level 5 encroaches the height limitation at the centre of the site by 1.298m. In addition, some encroachments will occur as a result of the fire stairs and lift access to the roof top communal terrace.

The height encroachment of Building B is considered acceptable being a minor portion of the building and not visible from the street and not contributing to the shadow to be cast by the development. The applicant's Clause 4.6 variation is supported and it is recognised that the exceedance principally relates to the provision of the roof terrace with planters, shade structures and associated lift and fire stairs access.

Provision of the communal roof terrace with planters has significant benefit for the amenity of future occupants. Planters have been setback from the street frontages and to minimise scale when viewed from street level and will not result a building form that is materially larger than a fully compliant scheme.

Issue 2 – Overshadowing: Concern was raised as to the level of overshadowing resulting from the proposal and the inadequacy of the control to safeguard residential amenity.

Comment:

Shadow impacts resulting from the proposed development are considered acceptable for the scale of development and the urban environment within which it is located.

As discussed above, the proposed development will not reduce solar access beyond that which would be anticipated at the site in light of Councils height and density controls. Whilst the proposal includes a building height exceedance, the non-compliant sections of the building are located within the centre of the building footprint and the planter beds to the edge of the roof top terrace is set back from the southern boundary. A fully compliant building height would not achieve any better solar outcomes for adjoining properties to the south which will inevitably be impacted of by shadows due to orientation. The siting of the proposed development is acceptable and well resolved in relation to adjoining development providing the best opportunity for solar access for a development of the scale permitted at the site.

Issue 3 – Privacy: Privacy impacts on living areas of the adjoining properties.

Comment:

The privacy relationship of the proposed development and adjoining residential uses is considered acceptable.

Issue 4 – Character of the Area: The development is out of character in relation to surrounding properties.

Comment:

The proposed is considered to be acceptable in relation to building character and surrounding development in the immediate locality. Following on-going liaison with Council's Heritage Advisor and incorporation of significant design changes, it is considered that the proposal achieves the intended height, massing and articulation to respond to the prevailing character of each street as well as the adjoining heritage listed properties.

Issue 5 – Pressure on Infrastructure: The development will give rise to pressure on the infrastructure of the area.

Comment:

The proposed development has been thoroughly assessed and considered to incorporate sufficient provision of infrastructure to support intensification at the site by means of onsite stormwater detention, onsite parking and provision for an electricity substation. Suitable private and communal open space is provided across the site and the proposal is entirely consistent with the form and scale of development permitted at the site which is in close proximity to a range of services provided within a Town Centre locality.

Issue 6 – Concerns raised in relation to the validity of the submitted Acoustic Report and reliance of outdated heritage data.

Comment:

Following thorough and detailed assessment of the development application as well as input from Council's Heritage and Environmental specialists, it is considered that sufficient acoustic and heritage data and consideration has been given to the development.

Issue 7 – Parking: The development would result in further pressure on street parking in the area.

Comment:

The proposed provision of parking is acceptable and meets the DCP requirements. A total of 116 parking spaces (including 20 visitor spaces) are provided across 2 basement levels accessed from Stanley Street. The provision of parking is considered sufficient to accommodate the increase in occupation of the site and is supported by Councils Traffic Engineer.

Issue 7 – Noise Impacts from Construction: The development will impact on the pupils of the adjoining school during construction due to noise levels.

Comment:

Approval of the development would be subject to standard conditions of consent limiting permitted demolition and construction hours and noise generation in accordance with the Protection of the Environment Operations Act (POEO Act).

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 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 internal amenity despite numeric non-compliances with the guidelines of the Residential Flat Design Code and a minor non-compliance with the height control to BLEP 2012.

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