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Property: 39-47 Belmore Street, Burwood
Lot 100 DP 1185255
DA No: BD 193/2015
Date Lodged: 22 December 2015
Cost of Work: \$166,938,000
Owners: Kapau Holdings Pty Limited
Applicant: Kapau Holdings Pty Limited

PROPOSAL	Mixed Use development comprising: - Four (4) levels of basement extending across the entire site with capacity for 679 car parking spaces, waste and recyclables management rooms, building manager's office and a loading dock on the uppermost basement level; - Sixteen (16) commercial tenancies at ground floor level fronting a new public laneway, Wynne Avenue and Belmore Street; - Building A - being 11 storeys in total to contain office space at lower ground, ground and first floor levels with a total office floor space of 4,036m² and apartments from Level 02 to Level 10 (eight levels of apartments in total containing 88 apartments); - Building B - being 22 storeys in total containing 218 apartments; - Building C - being 19 storeys in total containing 185 apartments; - A gymnasium and associated amenities within Basement Level B2 for the exclusive use of, and ancillary to, the office premises within Building A; - Alterations and landscaping works to the former Masonic Temple and surrounds; - Landscaping and works for the creation of a publicly accessible through link between Conder and Wynne Streets and dedication of the through link to Council. The application has been submitted with a voluntary planning agreement.
ZONE	<i>B4 – Mixed Use zones.</i>
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE	Yes – the proposal is best described as a mixed use development which comprises commercial premises,

	office premises and residential flat buildings. Each use is permissible with consent from Council.
IS THE PROPERTY A HERITAGE ITEM	The site contains a Heritage Item being the former Masonic Temple at No.47 Belmore Street listed as Item 18 in Schedule 5 to Burwood Local Environmental Plan 2012.
BCA CLASSIFICATION	Classes 2, 5, 6, 7a and 9b.
NOTIFICATION	Notified 18 January 2015 to 8 February 2015 – One (1) submission was received.

EXECUTIVE SUMMARY

This report considers a proposal to construct a mixed use development described in brief as follows:

- Four (4) levels of basement extending across the entire site with capacity for 679 car parking spaces. Waste and recyclables management rooms, building manager's office and a loading dock are to be located on the uppermost basement level;
- Sixteen (16) commercial tenancies at ground floor level fronting a new public laneway, Wynne Avenue and Belmore Street;
- Building A - being 11 storeys in total to contain office space at Lower Ground, Ground and first floor levels with a total office floor space of 4,036m² and apartments from Level 02 to Level 10 (eight levels of apartments in total containing 88 apartments)'
- Building B - being 22 storeys in total containing 218 apartments;
- Building C - being 19 storeys in total to containing 185 apartments;
- A gymnasium and associated amenities within Basement Level B2 for the exclusive use of, and ancillary to, the office premises within Building A;
- Alterations and landscaping works to the former Masonic Temple and surrounds; and
- Landscaping and works for the creation of a publicly accessible through link between Conder and Wynne Streets and dedication of the through link to Council.

The application has been submitted with a voluntary planning agreement.

The site is known as Nos. 39-47 Belmore Street, Burwood and has a legal description of Lot 100 in DP 1185255.

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

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

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

One (1) written submission was received by Council in response to the notification process. The issues raised in this submission that are relevant to the assessment of the proposal have been considered in the assessment process and responded to in this report. Where appropriate, issues can be addressed through recommended conditions of development consent.

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

BACKGROUND AND ASSESSMENT HISTORY

Previous Approvals

On 2 October 2013, the Sydney East Joint Regional Planning Panel (JRPP) granted Development Consent BD31/2013 for demolition of all structures except the former Masonic Temple and construction of a mixed use development containing ground floor retail premises totalling 2,185m², three (3) towers being Building A at 10 storeys and containing 90 services apartments and Buildings B and C being 19 storeys and containing 332 apartments and 530 basement parking spaces.

Development Consent BD31/2013 has since been subject to several modifications as follows:

- 2 September 2014, modification approved for the provision of additional (fourth) basement parking level and adjustment to approved parking layout;
- 18 July 2014, modification approved for changes to the basement and ground floor approved plans to comply with conditions 1, 4 and 8 of DA31/2013;
- 18 March 2015, modification approved for changes to the forecourt works proposed for the former Masonic Temple;
- 24 August 2015, modification approved for changes to Building C, the description of the development, adjustment to approved plans and modification to planning condition 1 of DA31/2013; and
- 9 June 2016 modification approved for changes to the floor layout of Building B to increase the number of apartments by 19 x 1-bedroom apartments and add 60 car parking spaces within a fourth basement level plus minor adjustments to the façade of Building B.

The most recent application for a modification of consent initially proposed changes to the setbacks and siting of Building A. However, on 11 May 2016 the applicant gave written notice to Council that this current application was to relate to modifications to Building B only. This adjustment to the application was based on unresolved matters relating to the potential heritage impacts of Building A on the former Masonic Temple and the streetscape.

Current Application

Development Application BD193/2015 was lodged on 22 December 2015. The application was notified between 18 January 2016 and 8 February 2016. One (1) submission was received.

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

A briefing note regarding the application was considered by the JRPP on 20 April 2016.

A letter dated 26 April 2016 requesting additional information was provided to the applicant which requested attention be given to the following matters:

- Building Height Plane – The proposal must comply with the building height plane controls specified in Clause 4.3A(2) to Burwood Local Environmental Plan 2012 (BLEP 2012);

- Height and Floor Space Ratio Variations – Requests for variation to the development standards for height of buildings and floor space ratio (FSR) addressing the requirements of Clause 4.6 to BLEP 2012 are required to be submitted for assessment;
- Non-compliances with the Apartment Design Guide (ADG) – The applicant was requested to revise the proposal or provide grounds to seek a variation to the ADG requirements for common open space, deep soil provision, cross ventilation and ground floor open space per apartment;

The applicant had been made aware by various email and telephone communications with Council's Heritage Advisor that the proposed setbacks of Building A as well as the proposed building separation and the interface between Building A and the former Masonic Temple were considered detrimental to the character, curtilage and setting of the heritage item.

The applicant submitted several iterations of amended plans and supporting details responding to the letter dated 26 April 2016 and various meetings, discussions and emails conducted with Council's Heritage Advisor and staff of Planning Ingenuity and GMU.

As a result of these discussions and communications, the applicant submitted a final set of plans and supporting documents to Council on 11 August 2016. It is these plans and supporting documents that form the final version of the development application and are the subject of this assessment report.

In accordance with Council's adoption of the "Carrying out Bonus Development in Exchange for Public Benefits Policy", the proposal was submitted in conjunction with an offer to enter into a Voluntary Planning Agreement ("VPA") to secure various public benefits to offset the increase in FSR and building height. The VPA was considered at Council's meeting on 24 May 2016 where it was resolved to enter into a VPA with Anson City Developments 2 (Australia) Pty Limited and Kapau Holdings Pty Limited.

THE SUBJECT SITE AND CONTEXT

The subject site is located within the Burwood Town Centre. The site is bounded by Belmore Street to the south, Wynne Avenue to the east and Conder Street to the west. The site has a street address of Nos. 39-47 Belmore Street, and is legally described as Lot 100 in DP1185255. The site is a mostly rectangular shape and has a total area of 10,150 m². The site is outlined in green in Figure 1.

Adjoining the northern-western corner of the site is a public laneway known as Hornsey Lane. The public laneway is 12.195m wide and approximately 50m long extending eastward from Conder Street.

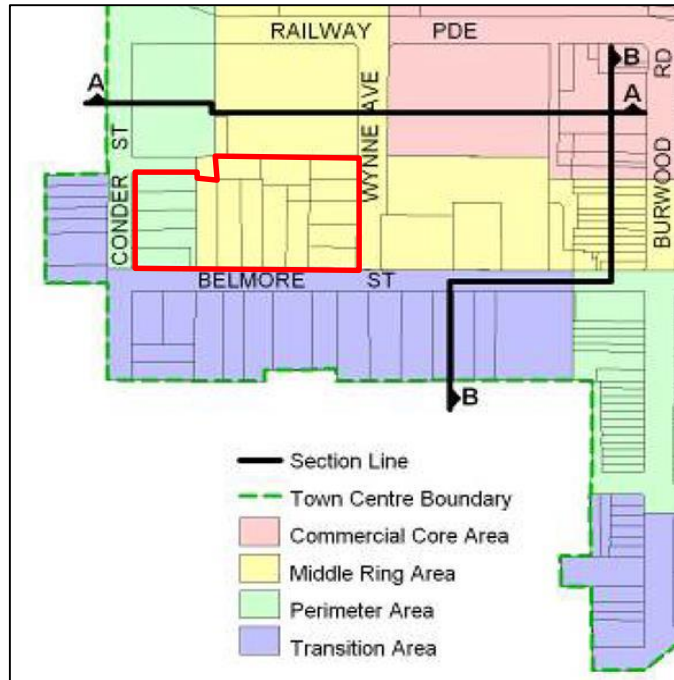
The subject site is located in the south-western corner of Burwood Town Centre as shown in Figure 1 below. Burwood Railway Station is approximately 300m walking distance to the north-east. The site is in close proximity to a variety of established retail facilities within Burwood Town Centre and is within safe, convenient, mostly level and reasonable 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.

The western portion of the site, being an area of 2,586m², is within the “perimeter area” to the Burwood Town Centre as described in the Burwood DCP. The remaining 7,563m² of the site is within the “Middle Ring Area” of Burwood Town Centre (as shown in Figure 2). The Burwood Town Centre is undergoing significant transformation to taller and more dense built forms under the planning controls introduced with Burwood LEP 2012 and the Burwood DCP. The height and density controls aim to achieve a transition from the perimeter to the middle ring area. The planning controls intend to achieve decreasing height and density towards the perimeter so as to be compatible with lower scale development outside the town centre and to efficiently use the land within the centre.

The existing structures, with the exception of the heritage item I8 (the former Masonic Temple) have been demolished as shown in the photographs of the site in Figures 4 and 5.



Figure 1: Location of subject site within Burwood Town Centre (Source: Burwood DCP)



**Figure 2: Portions of the site within “perimeter” and “middle ring” areas (site outlined in red)
(Source: Burwood DCP)**



Figure 3: Eastern portion of the site looking east towards Wynne Avenue



Figure 4: Western portion of the site looking north east from Conder Street

East of the site, at the intersection of Wynne Avenue and Belmore Street is Nos. 33-35 Belmore Street. On this site is a seven (7) storey mixed use development with retail uses at ground floor, residential uses above and a basement car park (see Figure 3). Adjoining this land is Nos. 27-31 Belmore Street to which Development Consent D89/2012 exists for a large scale, multi-storey mixed use development (see Figure 3).

On the southern side of Belmore Street are two and three storey buildings predominantly residential flat buildings, a church and church hall, and a vehicle repair centre near the south-eastern corner of the site. Construction of a mixed use development is almost complete at Nos. 44 Belmore Street. Further east along Belmore Street, the built form includes mixed uses with ground floor commercial uses and residential units above and building heights up to six (6) storeys. This area is identified as a 'Transition Area' under the Burwood DCP with a height limit of 15m. A panoramic photograph of buildings along the southern side of Belmore Street is included in Figure 5 below.



Figure 5: Panoramic view of the southern side of Belmore Street – south of the site

To the west of the site in Conder Street is a church, a five (5) storey residential flat building, several three (3) storey mixed use buildings, and a detached dwelling. On the north-western corner of the intersection of Conder and Hornsey Streets is Burwood Public School. A panoramic view of buildings in Conder Street is included in Figure 6 below.



Figure 6: Panoramic view of development opposite the site in Conder Street

North of the subject site is a public laneway known as Hornsey Lane which extends from Conder Street. On the northern side of the public laneway is the former Burwood Council Chambers building which is listed as Heritage Item I47 in Burwood LEP 2012 and now used as a public library (see Figure 7).



Figure 7: Hornsey Lane and Burwood library building adjacent to the north-western corner of the site

THE PROPOSAL

The proposed works are described as follows:

Basement Levels

The proposed development comprises four (4) basement levels, providing parking for a total of 679 vehicles. Parking for each aspect of the development is to be structurally separated as described below.

Basement Levels B2, B3 and B4 provide parking spaces for residents and visitors, and secure storage spaces ancillary to the residential apartments. There are no physical barriers proposed to separate

visitor parking from resident parking. Vehicle access to, and egress from all parking within Basement Levels B2, B3 and B4 is via Conder Street. Pedestrian access from parking spaces within Basement Levels B2, B3 and B4 to the apartment buildings above is via lift cores. Building A apartments have two (2) lifts and apartments in Buildings B and C each have three (3) lifts.

Basement Level B2 contains a small gymnasium in the north-western corner for use ancillary to the office premises within Building A. The two (2) lifts servicing Building A (Lifts labelled L11 and L12) will provide access between the office premises in Building A and Basement Level B2.

Basement Level B2 contains a rainwater storage tank, a pump room and stormwater on-site detention (OSD) in the north-eastern corner.

Basement Level B1 is sleeved by commercial premises on the northern, eastern and western edges and on the south-western corner. These commercial premises are described in the section below titled 'Lower Ground Level'. Basement Level B1 has vehicle access only from Wynne Avenue. Basement Level B1 contains 55 car parking spaces ancillary to the office premises in Building A and these spaces are separated from other car parking by a boom-gate inside the basement. Pedestrian access between car parking spaces at Basement Level B1 and the office premises is proposed to be via the 'back of house' past switch rooms and garage storage rooms and toilets to the office foyer area. This route includes a 'platform lift' which makes the route accessible.

Basement Level B1 contains 39 parking spaces ancillary to the commercial premises. Pedestrian access for staff of the retail tenancies between the commercial parking spaces and retail tenancies is via 'back doors' (including steps) to Tenancies LG.02, LG.03, LG.05, LG.06, LG.07, LG.09 and LG.11. Retail tenancies LG.01, LG.08, LG.10 and G.01 to G.07 do not have direct pedestrian access to Basement Level B1. Retail tenancies LG.01, LG.08, LG.10, G.01 and G.02 have pedestrian access only via the shop fronts. Retail tenancies G.03, G.05, G.06 and G.07 have 'back doors' to a shared service corridor which links to a goods lift. The goods lift will travel between the ground level corridor and Basement Level B1.

Pedestrian access for customers to the retail tenancies is via a retail lift to a lobby opening onto Belmore Street.

Basement Level B1 contains two groups of WCs (including two accessible WCs) for use ancillary to the commercial tenancies.

Two (2) parking spaces are allocated to car share spaces within Basement Level B1.

Basement Level B1 contains a loading dock and truck turning area adjacent to the entry/exit ramp. The loading dock is to be available for vehicle deliveries ancillary to the commercial and residential uses as well as waste servicing.

Basement Level B1 contains separate waste management and storage rooms as described in the 'Waste Management' section below and an office for the Building Manager.

Lower Ground Level

Hornsey Lane is adjacent to the north-western corner of the site and extends approximately 50m eastward from Conder Street. This development application proposes to undertake landscaping works within Hornsey Lane and within the setback area to the northern boundary to create a publicly accessible through-link between the eastern end of Hornsey Lane and Wynne Avenue. Hornsey Lane is currently approximately 12m wide. The majority of the setback to the northern boundary is 10m narrowing to 7m within 18m of Wynne Avenue to allow for the angled vehicle access point. Landscaping details for Hornsey Lane and the through-link are provided in the Landscape Concept Plan prepared by Sturt Noble and Associates.

Due to the slope of the site, Basement Level B1 is partly sleeved by commercial premises on the northern, eastern and western edges and on the south west corner.

Along the northern edge of the proposed building at lower ground level are seven (7) retail tenancies ranging in size from 44m² to 151m² with frontages to Hornsey Lane and the proposed publicly accessible through-link. Each retail tenancy has a full glass frontage with double opening glass doors and a metal sheet awning approximately 2m wide for the full frontage of each tenancy. The awning is discontinuous.

Between the tenancies are three (3) enclosed electricity substations, one for each of Building A, B and C. Each substation is proposed to be slightly recessed and provided with aluminium louvred panel doors. Several fire exit doors are also located between the retail tenancies.

At the north-eastern corner of the site is the combined vehicle entry and exit to Basement Level B1. The vehicle access is to be separated from the pedestrian through-link by a glass balustrade in order to physically separate pedestrian and vehicle movements in a safe manner.

Along the eastern edge of the building at lower ground level are retail tenancies LG.09, LG.10 and LG.11. Each retail tenancy is to have a 2m wide metal awning extending across the shop front. The awning for tenancy LG.10 also spans across the pedestrian lobby to Building C. A secondary pedestrian lobby for the residential apartments in Building C is proposed to Wynne Avenue. The lobby has a direct and accessible route between the public footpath and the bank of three (3) lifts, and is located between retail premises with frontages to Wynne Avenue. The main pedestrian entry and egress route for Building C is located adjacent to Belmore Street.

Due to the slope along Wynne Avenue, the footpath area is required to be reconstructed to ensure accessible entry/egress to the retail tenancies and the secondary lobby to Building C.

At lower ground level on the south-western corner of the site is the lowest floor level of the office premises pertaining to Building A. There is proposed to be a substantial difference between the finished floor level of the office premises at RL23.58 and the existing level of the footpath in Belmore Street at RL23.78 to RL24.73. The change in level varies from 200mm to 1.15m. Landscaping works including planter beds, retaining walls, steps and paved areas are proposed along the footpath and setback area to Belmore Street and in the area between the office premises and the former Masonic Temple. These works enable the space to be used as upper and lower level pedestrian movement

routes and an informal seating area as shown in the Landscape Concept Plans prepared by Sturt Noble and Associates.

Along the western edge of Building A, at lower ground is the primary frontage of the office premises, the residential lobby to Building A, the combined vehicle entry/exit for Basements Levels B2, B3 and B4, and the secondary frontage to Retail Tenancy LG.01.

Ground Level

Due to the slope of the site, the existing footpath levels in Belmore Street range from RL23.69 in the south-western corner to RL26.15 in the south-eastern corner and the 'ground level' within the development site is to be raised moving north through the site. The finished floor levels of the six (6) retail tenancies facing Belmore Street are RL25.74 to RL26.21 and the footpath levels will be reconstructed to ensure each tenancy has universal access.

The shared main residential entry/exit colonnade for Buildings B and C is located in the Belmore Street frontage and rises from the Belmore Street footpath with ramps and steps to the shared communal open space area over the basement and between the two tower buildings. The finished pavement level within the communal open space area is RL27.17 with raised grassed mounds and planter beds throughout the courtyard space. Buildings B and C have main lobbies leading from the shared common open space area between the buildings. This configuration is similar to that approved with Development Consent BD31/2013.

Building A at ground level contains the second level of open plan office space with staff amenities, lift and stair core and a small kitchen space in the centre of the floor area. The plans show an elevated pedestrian bridge linking this level of the office space with the Council library across Hornsey Lane.

The communal open space area for Building A is located between Buildings A and B and can be accessed from both buildings. An accessible path of travel between the residential component of Building A and the communal open space requires residents and their visitors to take the lift to Basement Level B1, travel through the office car parking area to the lift core of Building B and up one (1) level to exit through Building B or alternatively to travel via the public footpath in Conder Street and Belmore Street.

Upper Levels

The remaining levels are summarised in Table 1 below.

Table 1: Proposed unit provisions

Level	Building A	Building B	Building C	Total
1	Open plan office space with a small balcony area (7m x 5.5m) in the north east corner.	13 apartments - 3 x 1 bedroom - 10 x 2 bedroom	14 apartments - 3 x 1 bedroom - 11 x 2 bedroom	27 apartments
2	11 apartments - 3 x 1 bedroom - 8 x 2 bedroom	11 apartments - 1 x 1 bedroom - 10 x 2 bedroom	11 apartments - 2 x 1 bedroom - 9 x 2 bedroom	33 apartments
3, 5 and 6	11 apartments/level - 2 x 1 bedroom	11 apartments/level - 1 x 1 bedroom	11 apartments/level - 2 x 1 bedroom	99 apartments

(no Level 4)	- 9 x 2 bedroom	- 10 x 2 bedroom	- 9 x 2 bedroom	
7	11 apartments - 2 x 1 bedroom - 9 x 2 bedroom	11 apartments - 1 x 1 bedroom - 10 x 2 bedroom	11 apartments - 2 x 1 bedroom - 9 x 2 bedroom	33 apartments
8	11 apartments - 2 x 1 bedroom - 9 x 2 bedroom	11 apartments - 1 x 1 bedroom - 10 x 2 bedroom	9 apartments - 1 x 1 bedroom - 8 x 2 bedroom	31 apartments
9 and 10	11 apartments/level - 2 x 1 bedroom - 9 x 2 bedroom	11 apartments/level - 1 x 1 bedroom - 10 x 2 bedroom	9 apartments/level - 1 x 1 bedroom - 8 x 2 bedroom	62 apartments
11	N/A	11 apartments - 1 x 1 bedroom - 10 x 2 bedroom	9 apartments - 1 x 1 bedroom - 8 x 2 bedroom	20 apartments
12, 13 and 15 (No Level 14)	N/A	11 apartments/level - 1 x 1 bedroom - 10 x 2 bedroom	9 apartments/level - 1 x 1 bedroom - 8 x 2 bedroom	60 apartments
16 & 17	N/A	10 apartments/level - 8 x 2 bedroom - 2 x 3 bedroom	9 apartments/level - 1 x 1 bedroom - 8 x 2 bedroom	38 apartments
18 & 19	N/A	8 apartments/level - 6 x 2 bedroom - 2 x 3 bedroom	9 apartments/level - 1 x 1 bedroom - 8 x 2 bedroom	34 apartments
20	N/A	8 apartments - 6 x 2 bedroom - 2 x 3 bedroom	8 apartments - 8 x 2 bedroom	16 apartments
21	N/A	8 apartments - 6 x 2 bedroom - 2 x 3 bedroom	N/A	8 apartments
22 and 23	N/A	6 apartments/level - 4 x 2 bedroom - 2 x 3 bedroom	N/A	12 apartments
TOTAL UNITS	88	218	185	491

The Former Masonic temple is to be converted to commercial floor space and provided with a landscaped forecourt and rear courtyard space in the same manner as previously approved with Development Consent BD31/2013.

Waste Management

Separate waste storage and management rooms are located within Basement Level B1 for each of the following:

- the residential component of Building A located near the lift core for Building A and accessed from the ground floor residential foyer of Building A;
- the office premises within Building A located in the 'back of house' area;
- the residential apartments of Building B adjacent to the lift core for Building B;
- the residential apartments of Building C adjacent to the lift core for Building C; and

- the 16 commercial tenancies located in the south-eastern corner and accessible via a goods lift and service corridor opening to Belmore Street.

Compacting mechanisms are to be installed for the residential waste storage rooms. Each residential level includes a waste and recyclables storage room and waste chute adjacent to the lift core. The Building Manager will be responsible for monitoring and managing waste and recyclables separation and waste compaction.

Signage and Commercial Operations

There are no signage details with this application and no operational details for the commercial premises.

VOLUNTARY PLANNING AGREEMENT (VPA)

The proposal is accompanied by a VPA pursuant to Section 93F of the Environmental Planning and Assessment Act, 1979. The VPA seeks additional floor space (14.8% variation) on the basis of providing additional contributions towards public facilities over and above those set out in Council's adopted Section 94 and Section 94A Contributions Plan.

The offer of a VPA aligns with Council's policy titled '*Carrying out Bonus Development in the Public Interest*' (the 'Bonus Policy') adopted by Council on 27 April 2015 and effective from 1 May 2015.

The purpose of the Bonus Policy is to provide guidance to applicants, Council officers and experts appointed by Council to assess development applications or modifications to consents which involve bonus development (being floor space in excess of BLEP 2012) in the public interest. The Bonus Policy applies to the Commercial Core and Middle Ring areas of Burwood Town Centre (and therefore applies to the subject site). The Policy requires that Council be satisfied that:

"bonus development is carried out in the public interest and will help meet the demand for open space, community facilities or other public infrastructure (the Public Interest Requirement), before development consent can be granted."

The Bonus Policy states that the public interest is met if the developer voluntarily offers to:

- *"dedicate land free of costs; or*
 - *pay a monetary contribution to Council; or*
 - *provide any other public benefit; or*
 - *any combination of the above.*
- To be used for or applies towards a public purpose."*

The Bonus Policy also states:

"Discretion as to whether the Public Interest Requirement is met will be at the absolute discretion of Council."

Matters which will not be considered a Public Interest Requirement include:

- public open spaces, publicly accessible spaces and pedestrian links identified in Section 3.9 of Burwood DCP;
- requirements identified in the adopted Section 94A Contributions Plan.

The Bonus Policy states:

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

The site is partly within the Middle Ring and partly within the Perimeter areas of Burwood Town Centre. The eastern portion of the site is within the Middle Ring area and is 7,563m². The FSR that applies to the Middle Ring portion is 4.5:1 of which the residential component cannot exceed 3:1. A bonus density of 10% allows a maximum residential FSR of 3.3:1 which is equivalent to a maximum bonus residential floor space for the site of 2,268.9m².

The VPA was considered by Council on 24 May 2016 and a copy of the Agenda Item is included as Attachment 2 to this report. This report noted that BD193/2015 seeks 6,199m² of floor space in excess of the maximum gross floor area of the residential component of the development compared to that permitted under BLEP 2012. The report from the agenda of 24 May 2016 breaks down the floor space (FS) data of the proposal as detailed in Table 2. Note that the actual figures in Table 2 have been revised with adjustments to the architectural plans submitted with additional information supporting the development application.

Table 2: Floor space breakdown

Area of site within Perimeter Area	2,586m ²
Area of site within Middle Ring Area	7,563m ²
Maximum FSR in BLEP 2012 for Perimeter Area	3:1 (equivalent to 7,758m ² FS)
Maximum FSR in BLEP 2012 for Middle Ring Area	4.5:1 (equivalent to 34,033.5m ² FS)
Total maximum FS under BLEP 2012 for entire site	41,792m ²
Maximum bonus FSR under Bonus Policy for Middle Ring Area	10% of 4.5:1 = 0.45:1
Maximum total FS BLEP 2012 plus Bonus Policy for Middle Ring Area	4.95:1 (equivalent to 37,437m ² FS)
Total maximum FS under BLEP 2012 for entire site	41,792m ²
Maximum total FS BLEP 2012 plus Bonus Policy for entire site	45,195m ²
Maximum Proposed FS	47,990m ²
Proposed FS exceedance to the BLEP 2012 FS	6,198m ² (variation of 14.83%)
Proposed FS exceedance to the the BLEP 2012 FS plus Bonus Policy	2,795m ² (variation of 6.2%)

In summary, the proposal seeks a variation to Council's maximum overall FSR control of 14.83% and a variation to the 10% FS bonus by 6.2%. The 6.2% variation to the Bonus Policy was supported by Council's Resolution 50/16 (see below).

Furthermore, the proposal seeks a variation to the proportion of floor space dedicated to residential use. This variation and the FSR variation are the subject of requests to vary the development standard in accordance with Clause 4.6 to BLEP 2012. This request is assessed in detail later in this report.

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

“50/16 RESOLVED (Carried Unanimously)

1. That Council enter into the Voluntary Planning Agreement (VPA) for Nos. 39-47 Belmore Street, 6-14 Conder Street and 11-19 Wynne Avenue, Burwood for the provision of commercial office space, car parking spaces and a linking bridge after the granting of consent for the Development Application, which would include a condition requiring that the VPA be entered into.
2. That Council authorise the General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse revisions of the VPA documents prior to execution.
4. That Council, in principal, supports a FSR variation of 14.8% (approximately 6,199 sqm of FSR) for this proposal in light of the public benefit of approximately 3,962 sqm of office space, 55 council car parking spaces, a bridge linking the proposed buildings and our Library & Community Hub, the possible location of the new Council Chambers.
5. That Council forward a submission in support of the proposal and the 14.8% FSR variation to the Joint Regional Planning Panel."

The Council Agenda Item of 24 May 2016 states the following under "Financial Implications":

"The VPA provides that Council would not seek any Section 94 or Section 94A contributions, nor other monetary developer contribution."

Therefore, Council has resolved to support the VPA (and the variation to the 10% bonus provision) and for the VPA to replace any other developer contribution for the proposed development.

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 Apartment Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (State & Regional Development) 2011;
- Burwood Local Environmental Plan 2012; and
- Burwood Development Control Plan.

As stated above in the Section titled 'Voluntary Planning Agreement', Council has resolved that BD193/2015 is exempt from Council's adopted Section 94 and Section 94A Contributions Plan.

State Environmental Planning Policy No 55 – Remediation of Contaminated Land

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

- a. It has considered whether the land is contaminated, and

- b. If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- c. If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The site has been subject to demolition in accordance with Development Consent BD31/2013 which included a Phase 1 investigation plan and identification and removal of demolition waste. Development Application BD193/2015 includes the same supporting reports submitted with BD31/2012 being the Geotechnical Investigations Report (Reference No.73183 dated December 2012) and Phase 1 Contamination Assessment (Reference No.73183 dated December 2012) prepared by Douglas Partners. Both reports conclude that the site is suitable for the proposed works and that demolition and excavation are likely to remove any potential contaminants. Further, it states that site works will cover the entire site and eliminate any risk of exposure to humans and the environment. Conditions are recommended for both reports to be revised to account for the additional excavation works prior to the issue of a Construction Certificate.

This is consistent with the intentions of the SEPP in ensuring that a site is suitable for its intended use.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

Design Quality Principles

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.

SEPP 65 prescribes 9 design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

A *Design Verification* has been submitted with the application and therefore the development application meets the requirements of Clause 50 of the EP&A Act. The development is generally acceptable having regard to the 9 design quality principles identified within SEPP 65. The following table provides an assessment of the development proposed against the 9 design principles of the SEPP.

Table 3: SEPP No. 65 Apartment Design Guide - Design Quality Principles

Planning Principle	Comment
Context and Neighbourhood Character Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.	The redevelopment of this site will be consistent with the desired future character for the Periphery and Middle Ring Areas of Burwood Town Centre as identified in BDCP 2013. The desired future character for this precinct is to incorporate mixed, higher density residential and commercial/retail development. The proposal includes a new publicly accessible through-link to improve pedestrian amenity and town centre permeability. The proposal activates all street frontages and provides a variety of commercial premises to add to the range of uses in the town centre.
Built Form and Scale Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.	The scale is reasonably consistent with the anticipated future form of development within the Burwood Town Centre in being compliant with the building height plane limits to create a transition in building height from the periphery to the centre. The proposed additional height to Buildings B and C are not visually prominent in comparison to the height of buildings B and C as approved under BD31/2013. The additional height of Building A will not detract from the streetscape as the built form is broken up by architectural features and a distinct change in the building appearance between the commercial office component and the residential component. The landscaping works within building setbacks will enhance the public domain surrounding the site and improve the interface with adjoining streets and nearby buildings. The bulk of the development is considered acceptable given that the development achieves compliance with most ADG and DCP requirements for setback, separation and apartment depth. The treatment, dimensions and arrangement of balconies and architectural features including recesses and changes in materials and colours are consistent with the resolution of fine grain urban design resolved in the assessment and determination of BD31/2013 and are considered satisfactory by the independent Urban Design review by GMU as detailed in this assessment report. The proposal has been modulated and articulated to provide interest in the design and assist in providing the development with acceptable bulk. The public domain along the street frontages of the site will be upgraded and activated by commercial tenancies and residential lobbies.

Planning Principle	Comment
Density Good design has a density appropriate for a site and its context, in terms of the number of units or residents. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.	The density, bulk and scale of the proposal has been assessed in relation to the requests for variation to height and FSR controls below. The high density nature of the residential component and the mix of uses is consistent with the anticipated form of development in Burwood Town Centre. The transition in scale through the site from larger buildings to the east and lower buildings to the west is also consistent with the objectives to achieve a transition in built form towards the periphery of the town centre. The proposed density is considered appropriate given proximity to the train station, high frequency bus routes and established commercial premises, community facilities and public open space.
Sustainability Good design involves design features that provide positive environmental and social outcomes. Good sustainable design includes use of natural cross breezes and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	The applicant has provided BASIX Certificate which indicates that the residential component of the buildings will meet the energy and water use targets set by the BASIX SEPP. A revised BASIX statement will be required prior to the issue of a Construction Certificate due to the time elapsed since lodgement of the application. A Waste Management Plan for the demolition of the existing buildings was submitted and approved with BD31/2013. The design has also ensured the development will comply with the passive solar design principles, soil depth and cross ventilation as required by the Apartment Design Guide.
Landscape Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.	The development makes provision for deep soil planting within constructed landscaping beds over the podium surface. Street tree planting is proposed throughout the public footpath area. The landscaping of the communal open spaces, street setbacks and the publicly accessible through-link will ensure that these spaces provide useable areas for the residents and for other users of the site. Each unit is also provided with a private balcony area sufficient for recreational use and amenity benefit.
Amenity Good design positively influences internal amenity for residents and external amenity for neighbours. Achieving	

Planning Principle	Comment
good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.	The design of the units allows for sufficient level of amenity for occupants of the buildings and residents of surrounding properties. The development complies with the controls contained in the Apartment Design Guide in respect to apartment sizes, apartment depth, access to sunlight, ventilation, visual and acoustic privacy and access requirements. All apartments are visitable and accessible in accordance with the ADG.
Safety Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.	The development is consistent with CPTED principles as follows: • The entrance to each apartment building will be clearly legible, signposted and well lit; • Each residential entry is designed to provide a clear threshold between public and private space and secured gate and door access points and intercoms; • Lighting, both internal and external, will be provided in accordance with Australian Standards; • Surveillance opportunities are created throughout the site via residential and commercial premises, clear lines of sight and permeable pedestrian movement routes throughout the site.
Housing Diversity and Social Interaction Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.	The proposed unit mix will result in an affordable range of housing which is highly accessible to public transport and nearby shops. As a guide, the Housing NSW Centre for Affordable Housing suggests 1 and 2 bedroom apartments contribute towards achieving housing affordability. 1 & 2 bedroom apartments are well represented in this proposal. Communal private open spaces are to be shared between the buildings and will be accessible only to residents and their visitors.
Architectural Expression Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of well-designed apartment buildings responds to the existing or future local context, particularly desirable elements and rhythms of the streetscape.	The development has incorporated a variety of materials and finishes to assist in modulating the massing of the buildings as well as providing differentiation between the uses and rhythmic elements within the development. The architectural expression of the development has been subject to independent urban design and architectural review by GMU as detailed below and has been determined to be satisfactory.

Design Criteria

In accordance with Clause 30 of the SEPP, if the development satisfies the following design criteria, the consent authority must not refuse the application on the following matters:

- if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the ADG;
- if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the ADG;
- if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the ADG.

These specific matters are examined below.

On-site Parking

The minimum on-site parking requirements specified in Part 3J of the ADG and Council's DCP are summarised in the following table:

Table 4: Comparison of on-site parking requirements RMS Guide and Burwood DCP

Parking Spaces	RMS Guide	Burwood DCP	Proposed
Resident parking spaces	334	499	499
Visitor parking spaces	71	98	84
Office parking spaces	Refer to DCP	55* (VPA Resolution)	55
Retail/commercial spaces (total 1,813m ² of retail tenancy space)	110	36	41* (including two car share spaces)

The car parking proposed is deficient in comparison to the RMS requirements and the DCP requirements. On-site parking has been assessed by Council's Traffic and Transport Officer which has recommended a condition be imposed to ensure that on-site parking meet Council's requirements as follows:

"The approved parking spaces must be allocated as detailed below. All spaces must be appropriately line-marked and labelled according to this requirement prior to the issue of an Occupation Certificate. If the development is to be strata subdivided, the car park layout must respect the required allocation:

- (a) 499 residential parking spaces.*
- (b) 98 visitor parking spaces.*
- (c) 55 commercial parking spaces.*
- (d) 36 retail parking spaces."*

As compliance with this condition will require adjustments to the design and layout of the basement, as such this condition has been included as a Deferred Commencement condition.

Internal Floor Area of Apartments

The internal floor area for each apartment is equal to or greater than the recommended minimum internal areas for the respective studio, one, two and three-bedroom apartments as listed in Part 4D of

the ADG. Additional 5m² of floor space is provided where apartments have more than one bathroom. The additional bathrooms are ensuite sizes and appropriate for the size of the apartments.

Minimum floor to ceiling heights

Section details accompanying the application show that the minimum floor to ceiling heights of the proposal are 3.4m for Level 01 and 3m for the remaining levels.

The development has been assessed against the relevant design criteria within Part 3 and 4 of the ADG as detailed in Table 5 below.

Table 5: SEPP No. 65 Apartment Design Guide (Design Criteria) - Compliance Table

DESIGN CRITERIA	PROPOSAL	COMPLIES
Part 2: Development Controls		
Building Depth Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line	<u>North-South dimensions</u> Building A - 53.5m Building B - Level 2 to Level 17 52m - Levels 18 to 21 45m - Levels 22 and 23 33m Building C - To level 7 52m - Level 8 to Level 20 47.5m <u>East-West Dimensions</u> Building A - 19m to 22m Building B - 19m to 27m Building C - 19m to 22m	On merit. Assessed to be satisfactory by Urban Design and Architectural review and compliant with solar access and ventilation requirements.
Building Separation Minimum separation distances for buildings are: Up to 4 storeys: 12m (Habitable) 9m (habitable/non-habitable) 6m (non-habitable) No separation is required between blank walls.	Building A to Building B - Minimum 20.5m - Maximum 26m Building B to Building C - Minimum 24m - Maximum 28m	Yes

Part 3 Siting the development Design criteria/guidance		
<u>Communal and Public Open Space</u>		
Communal open space has a minimum area equal to 25% of the site.	The proposal provides a total of 22.66% (2,300m ²) of the site area as common open space.	No, refer to discussion below.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	More than 50% of the two principle areas of communal open space receive >2hours sunlight in mid-winter due to its northerly aspect and building separation being greater at the northern edge of the communal open space areas.	Yes
<u>Deep Soil Zones</u>		
Deep soil zones are to meet the following minimum requirements:		
Site area greater than 1,500m ² = 7%		
Part 3E to the ADG states “Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.”	The proposal has close to 100% site coverage. Alternative forms of planting include deep planter beds on the podium level will contain soil depths of between 0.6m and 1.2m and will be capable of supporting the long term growth of small canopy trees. Street trees are also proposed along the Conder and Belmore Street frontages. Planter beds along the northern pedestrian through link will include small canopy trees.	Yes (subject to in-built flexibility of Part 3E of the ADG)
<u>Visual Privacy</u>		
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	All separation distances between apartments are compliant with the exception of the separation between the north-eastern corner of Building A and north-western corner of Building B.	Acceptable on merit, refer to discussion below
- Up to 12m (4 storeys) 6m (habitable) / 3m (non-habitable) - Up to 25m (5-8 storeys) 9m (Habitable) / 4.5m (non-habitable)	The building separation distances between Buildings A and B vary from 20.4m to 25.1m.	
No separation is required between blank walls.	The distance between the north-eastern corner of Building A and north-western corner of Building B is 20.4m. However, the interface between the buildings is a predominantly blank wall of Building A facing a part of the wall in Building B with small, high sill windows to a bedroom and bathroom in Building B at each level. The primary orientation of rooms at these corners is to the north and not towards each other and for these reasons the proposed separation is acceptable.	
Apartment buildings should have an increased separation distance of 3m when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping.	The distance between the mid-section of the articulated western elevation of Building B and the eastern elevation of Building B ranges from 23.2m and 25.1m.	

<u>Car parking</u> For development in the following locations: • on sites that are within 800 metres of a railway station; or • within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre, The minimum parking for residents and visitors to be as per RMS Guide to Traffic Generating Developments, or Council's car parking requirement, whichever is less.	See assessment comments on on-site car parking above.	See above.
Solar Access and Daylight Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas No more than 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid- winter.	The proposed percentage of apartments that receive at least the minimum 2 hours of solar access to living room windows and private open space during mid-winter is as follows: Building A = 72% Building B = 70% Building C = 71% Single southerly aspect apartments: Building A = 0% Building B = 2% Building C = 9%	Yes
Natural Ventilation At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	% of apartments naturally cross ventilated: Building A = 65% Building B = 78% Building C = 67%	Yes
Ceiling Height Measured from finished floor level to finished ceiling level, minimum ceiling heights are: • Habitable Rooms – 2.7m • Non-habitable rooms – 2.4m • If located in a mixed use area - 3.3m for ground and first floor to promote future flexibility	All habitable rooms have minimum 2.7m ceiling heights. Non-habitable rooms contain ceiling heights that are at least 2.4m Ground floor height is 3.4m	Yes Yes

Apartment Layout Apartments are required to have the following minimum internal areas: • Studio - 35m² • 1 Bedroom - 50m² • 2 Bedroom - 70m² • 3 Bedroom - 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space) Bedrooms have a minimum dimension of 3m (excluding wardrobe space) Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	Studio – min.45sqm 1B – min. 50sqm 2B – min. 70sqm 3B – min 90sqm Units with 2 bathrooms have additional floor space suitable to the scale of an ensuite bathroom. Every habitable room has a window. Complies Complies Complies	Yes Yes Yes Yes Yes Yes Yes Yes Yes
Private Open Space All apartments are required to have primary balconies as follows: • Studio - 4m² • 1 Bedroom - 8m² (Minimum depth of 2m) • 2 Bedroom - 10m² (Minimum depth of 2m) • 3 Bedroom - 12m² (Minimum depth of 2.4m)	Compliant or exceed minimum.	Yes
Common Circulation Space The maximum number of apartments off a circulation core on a single level is 8.	There is a maximum of 11 units per level in Building A that share a circulation core consisting of two lifts. There is a maximum of 13 units on Level 1 of Building B that share a circulation core consisting of 3 lifts. This is reduced to 11 units from level 2 and above. There is a maximum of 14 units on Level 1 in Building C that share a circulation core consisting of 3 lifts. This is reduced to 11 units from level 2 and above.	No

	The ratio of units to lifts is appropriate to the scale of the development and will not be detrimental to the accessibility, function and amenity provided by the common circulation space.	
Storage In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • Studio - 4m² • 1 Bedroom - 6m² • 2 Bedroom - 8m² • 3 Bedroom - 10m² At least 50% of the required storage is to be located within the apartment	The majority of apartments have compliant storage within the apartments and within basement storage units. All apartments have some storage. The capacity of storage space within the basement can be increased. Conditions are recommended for a detailed schedule of storage capacity per unit be submitted with the Construction Certificate to verify compliance with the ADG requirements.	Subject to recommended conditions.

As indicated by the above ADG table, the proposed development meets the ADG design criteria with the exception of building depth, total area of communal open space, separation between the north-eastern corner of Building A and the north-western corner of Building B, number of apartments sharing common circulation space and the amount of storage. The variations to these design criteria are discussed in detail as follows.

Building Depth

In regard to building depth, the apartments perform well in compliance with the ADG requirements for solar access and natural ventilation which are the reasons for controlling overall building depth. The building dimensions are similar to those approved with BD31/2013 and finer grain architectural treatments have been provided to the exterior of the building and the building modulation to ensure that the external appearance of the buildings are acceptable. For these reasons the variation to building dimensions is supported.

Communal Open Space Area

The total area of communal open space is deficient by less than 8% of the site area. Residents will have shared access to the two large consolidated areas of common open space at podium level and will also have access to the through site link along the northern site boundary. The quality of the communal open space adequately offsets the spatial deficiency and will provide appropriate recreational and social interaction space for future residents and their visitors.

Separation for Visual Privacy

As discussed in the compliance table above the proposed separation between the north-eastern corner of Building A and the north-western corner of Building B will not result in detrimental impacts to visual and aural privacy as careful attention has been paid to the layout of apartments and orientation and size of windows on both buildings to prevent direct lines of sight between living rooms and balconies. The variation is acceptable for this reason.

Apartments sharing common circulation space

The number of apartments on each of the lower levels within each building exceeds the maximum of 8 apartments sharing a common circulation space. However, the ratio of apartments to the number of lifts in each case is considered appropriate to the scale of the development and the width of the common corridor particularly adjacent to the lift openings is considered suitable to the amount of pedestrian movement anticipated. It is considered that the proposed arrangements will not be detrimental to the amenity of residents and visitors in terms of accessibility, function and level of service. For these reasons the variation to the design criteria is acceptable.

Storage

The amount of storage allocated to individual apartments can be increased with adjustments to the basement and design amendments as recommended in the conditions of consent.

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

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

BASIX Certificates have been submitted for the residential flat building aspects of the development which demonstrate compliance with the requirements of the Policy. Due to the time elapsed since lodgement of the application the BASIX certificate has lapsed and conditions are recommended for a new BASIX certificate to be submitted with the Construction Certificate.

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 replaced (and consolidated) the Burwood Planning Scheme Ordinance (BPSO) and the Burwood Town Centre (BTC) LEP 2010.

The subject site is located in the *B4 – Mixed Use* zone under the Burwood Local Environmental Plan 2012. The proposed development is best described as a mixed use development with commercial and shop top housing components which are permissible with consent in the zone. The objectives for development in *Zone B4* are as follows:

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

The proposal provides a range of appropriate land uses comprising office and commercial uses and high density residential uses that are compatible with the location of the site within the Burwood Town Centre.

Clause 4.3 Height of Buildings

Clause 4.3 prescribes a maximum building height of 30m for the western portion of the site and 60m for the eastern portion of the site as shown in Figure 8. The proposed building heights and proposed variations to the LEP height controls are summarised as follows:

Table 6: Required building height and proposed variations

Building	LEP Height Control	Maximum Proposed Building Height	Exceedence	Variation to Control
Building A	30m	37m	7m	23.3%
Building B	60m	72m	12m	20%
Building C	60m	64m	4m	6.7%

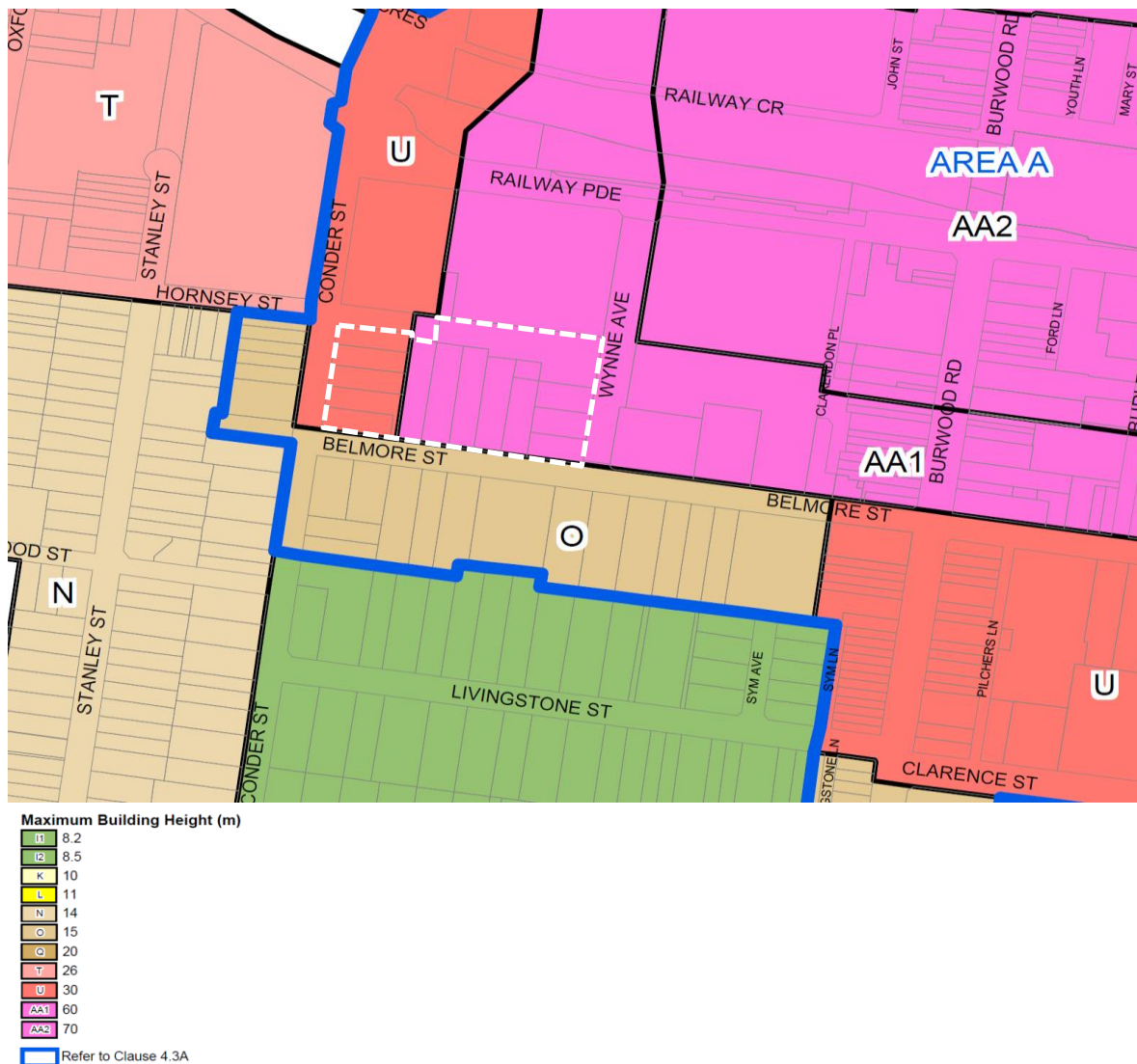


Figure 8: Extract from the BLEP 2012 Height of Buildings Map

The site is also subject to a building height plane control in accordance with Clause 4.3A. All proposed buildings are fully compliant with the building height plane controls as confirmed by additional information submitted to Council on 31 August 2016, which commits to deleting the uppermost level of the proposed 'hood' feature to the Conder Street façade of Building A.

A written request, in relation to the development's non-compliance with the maximum height development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of BLEP 2012, was submitted with the application. That request is discussed below under the heading "Clause 4.6 - Exceptions to Development Standards – Height of Buildings".

Clause 4.4 – Floor Space Ratio (FSR)

Clause 4.4 to BLEP 2012 prescribes maximum floor space ratios of 3:1 for the western portion of the site and 4.5:1 for the eastern portion of the site as shown in Figure 9. In addition to the total FSR control in Clause 4.4, Clause 4.4A prescribes a maximum proportion of floor space to be used for residential accommodation within the Core and Middle Ring of the town centre. The maximum portion of floor space for residential use in the eastern portion of the site (within Area 2) is 3:1.

The proposed FSR and proposed variations to the LEP FSR controls are summarised as follows:

Table 7: Summary of LEP Floor Space Ratio controls

CONTROL / PROVISION	NUMERICAL REQUIREMENT / PROVISION
Area of site within Perimeter Area	2,586m ²
Area of site within Middle Ring Area	7,563m ²
Maximum FSR in BLEP 2012 for Perimeter Area	3:1 (equivalent to 7,758m ² FS)
Maximum FSR in BLEP 2012 for Middle Ring Area	4.5:1 (equivalent to 34,033.5m ² FS)
Maximum FSR for residential use in Middle Ring Area	3:1 (equivalent to 22,689m ² FS)
Total maximum FS under BLEP 2012 for entire site	41,792m ²
Maximum bonus FSR under Bonus Policy for Middle Ring Area	10% of 4.5:1 = 0.45:1 (equivalent to 3,403m ² FS)
Maximum FS for residential use in Middle Ring Area under BLEP plus Bonus Policy	22,689m ² + 3,403m ² = 26,092m ²
Maximum total FSR under BLEP 2012 plus Bonus Policy for Middle Ring Area	4.95:1 (equivalent to 37,437m ² FS)
Maximum total FS under BLEP 2012 plus Bonus Policy for entire site	45,195m ²
Proposed FS - entire site	48,461m ²
Proposed FSR - entire site	4.77:1
Proposed FS exceedance to the BLEP 2012 FS	6,669m ² (variation of 15.96%)
Proposed FS exceedance to the BLEP 2012 FS plus Bonus Policy	3,266m ² (variation of 7.23%)
Proposed FS within Perimeter Area	11,821m ² (exceedance to BLEP 2012 of 4,063m ² and variation of 52.37%)
Proposed FSR within Perimeter Area	4.57:1 (exceedance of 1.57:1 and variation of 52.3%)
Proposed FS within Middle Ring Area	36,640m ² (exceedance to BLEP 2012 of 2,607m ² and variation of 7.6%)
Proposed FSR within Middle Ring Area	4.84:1 (exceedance to BLEP 2012 of 0.34:1 and variation of 7.6%)
Proposed FSR for residential use within Middle Ring Area	4.62:1 (exceedance to BLEP 2012 of 1.62:1 and variation of 54%)

The total permissible FS under BLEP 2012 over the entire site is 41,792m². The proposed total FS for the entire site is 48,461m². The difference between these two FS amounts is 6,669m². The exceedance as a percentage of the maximum permitted FS for the entire site is equivalent to 15.96%.

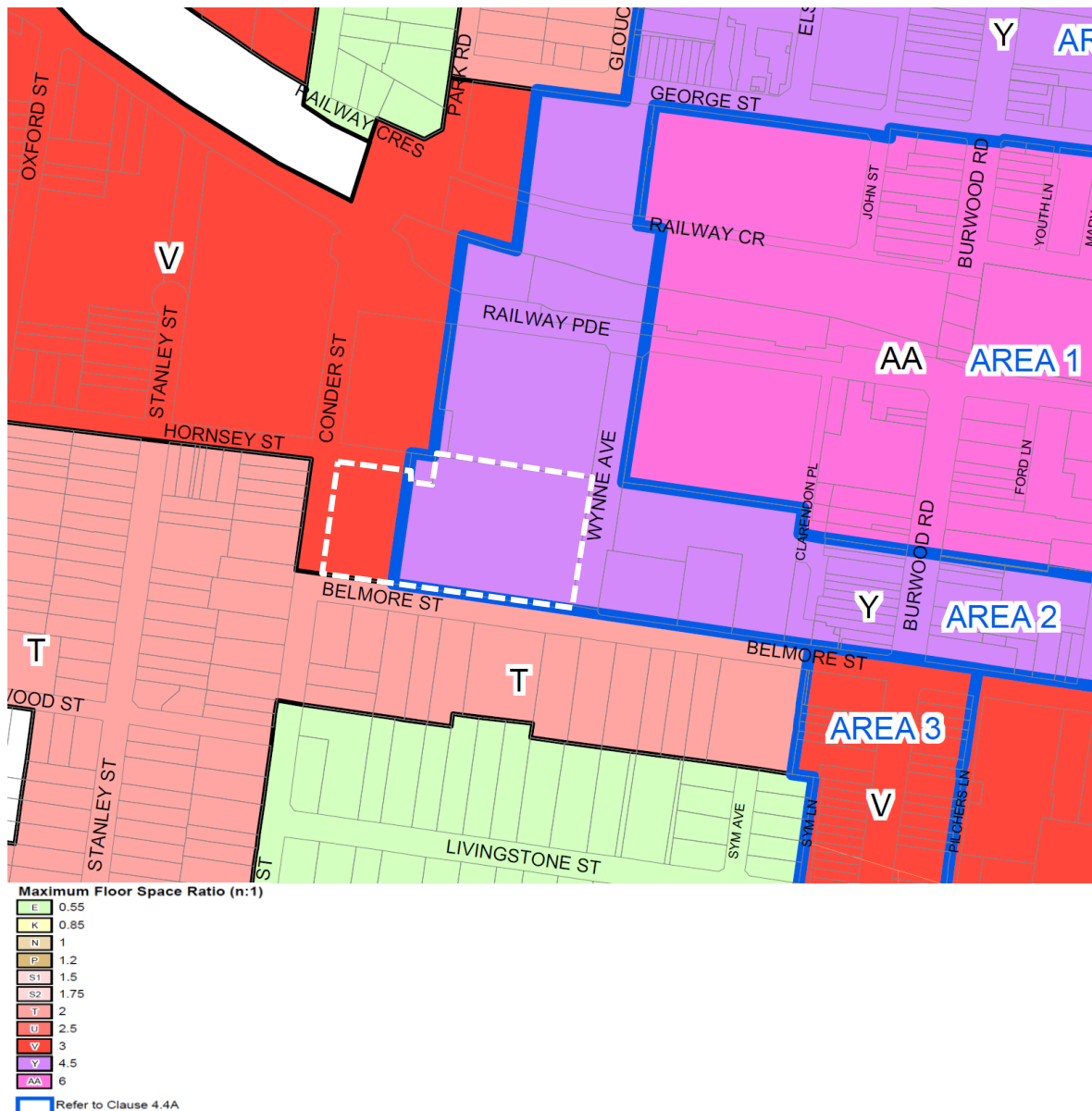


Figure 9: Extract from BLEP 2012 Floor Space Ratio Map

The applicant has submitted a variation request pursuant to Clause 4.6 in respect of this non-compliance with FSR controls. That request is discussed below under the heading “Clause 4.6 - Exceptions to Development Standards – Floor Space Ratios”.

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the BLEP 2012 provides authority and procedures for consent authorities to consider, and where appropriate grant consent to, development even though the development would contravene a particular development standard. The objectives of Clause 4.6 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 of BLEP 2012 pursuant to Clause 4.6(6)&(8).

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

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

The applicant has submitted a written variation request under Clause 4.6 which forms part of the Statement of Environmental Effects submitted with the development application. It is noted that the submitted Clause 4.6 variation request seeks to jointly address variations to a number of development standards which include Clause 4.3 – Height of Buildings, Clause 4.4 – Floor Space Ratio and Clause 4.4A – Exceptions to Floor Space Ratio. This assessment report addresses each development standard and its respective variation separately. However, in citing and extracting the applicant's justifications, reference may be made to other development standards which are requested to be varied.

Request to vary Maximum Height of Buildings Development Standard

As detailed under sub-heading Clause 4.3 above, each building exceeds the applicable height of building control.

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

“The building heights have been developed and modelled based on an analysis of the most effective built form outcome for the Town Centre utilising the opportunities offered by the large consolidated site.

It is noted that while the proposed design includes minor height non-compliances the overall design of the buildings have been modelled to minimise any adverse impacts in relation to the additional height on adjoining areas and mitigate potential adverse effects on the amenity of existing and future residents in the vicinity of the site.

In particular, it is noted that the shadow profile of the proposed building has a minor additional shadow impact than that generated by the permissible and currently approved building envelopes for the site (refer to the comparative shadow analysis in Section 3.7 of the Design Report). An analysis of this shadow impact in Section 3.7 of the Design Report indicates that the minor additional shadow will not have any significant adverse impacts on the surrounding buildings as it generally falls onto existing roofs or within existing building shadow profiles. In addition, it is noted that any minor additional overshadowing will impact for a limited period allowing good levels of solar access throughout the day in midwinter.

Compliance with the development standard for height is considered unnecessary and unreasonable in the circumstances of this case on the following grounds:

Clause 4.3(1)(a)(b) of the BLEP 2012 set out the objectives for building height as:

- (a) To establish the maximum height of buildings to encourage medium density development in specific areas and maintain Burwood's low density character in other areas;*
- (b) To control the potential adverse impacts of building height on adjoining areas.*

The proposed design provides a medium density development in the Burwood Town Centre, one of the key areas medium density zones in the Burwood Council area. The large development site provides unique opportunities to master plan the site and model the proposed tower building to minimise potential impacts of overlooking and overshadowing.

Clause 4.3A(1)(a)(b) sets out the objectives for the clause as follows:

- (a) To focus greater building height in the inner part of the Burwood Town Centre and to provide a transition in heights towards the edge of the Burwood Town Centre,*
- (b) To mitigate any adverse effects on the amenity of existing and future residents living adjacent to the Burwood Town Centre*
- (c) To limit building heights to facilitate adequate solar access to land adjoining the Burwood Town Centre*

As a result of the proposed additional setbacks from the boundary of Building A and Building B it is noted that while the building exceeds the permissible 30 and 60 metres height control, they do not encroach into the Building Height Plane (BHP) for Conder Street and Belmore Street.

The southern roof parapet of Building C does encroach into the BHP by approximately 3 metres. However, given the minor nature of the proposed non compliances in relation to the BHP for Building C in Belmore Street, it is considered that the proposed development meets the primary objectives of this clause with the shadow analysis indicating that the proposed building heights will facilitate adequate solar access to land adjoining the Burwood Town Centre.

The proposed development in its uses, bulk and form is considered to give rise to no significant environmental impacts as detailed throughout this report. The master planning of this significant city block has been developed with buildings further modelled to minimise potential impacts in relation to the building scale, visual impact, overlooking and environmental impacts related to overshadowing.

The matters under subclause (3) have been addressed in this section. The assessment of the proposed non-compliances in relation to building height and FSR have included consistency with the objectives of the particular standards and the objectives of the B4 Zone. In all cases it is considered that the proposed development meets the objectives of the height and FSR standards and supports the objectives of the B4 Zone.

The proposed minor variation to the height and FSR controls related to a large scale site that incorporates a city block in Burwood Town Centre are not considered to raise any matters of significance for State and Regional environmental planning.

As discussed above the proposed non-compliances are considered to support a development outcome for a consolidated Town Centre development site that will provide a more efficient and effective use of land and support a range of outcomes in terms of land use and improvements to the public domain. On this basis it is considered that there is no public benefit of maintaining the development standards in this case."

The arguments advanced by the applicant are agreed with in relation to:

- The master planning opportunities provided by the consolidated site which allows for more appropriate massing of floor space within the site unconstrained by property boundaries and siting of buildings with a north-south axis to allow solar penetration and rapid transition of narrow shadows;
- Meeting the objectives for height controls in Clause 4.3 and the objectives for development in Zone B4 Mixed use;
- Compliance with the building height plane development standard;
- Appropriate setbacks;
- Minimal visual impact of the portion of the buildings exceeding the height control as viewed within the context and scale of surrounding existing and future multi-storey buildings and the separation achieved between buildings within the site; and

- Improvements to the public domain.

The applicant has demonstrated that there are sufficient environmental planning grounds to justify the non-compliance with the building height control in that the development optimises the provision of residential and commercial land uses in a manner anticipated by the planning controls for Burwood Town Centre to encourage redevelopment to higher densities and to create a transition in scale from the Core, through the Middle Ring and to the Perimeter locations. The heights of Buildings B and C are similar to the height of newer buildings in the Middle Ring and Core locations and the height of Building A creates a transition to the edge of the Town Centre. The application includes new landscaping works within Hornsey Lane and the provision of a publicly accessible right of way linking Hornsey Lane with Wynne Avenue. This landscaped through-link and works within the setbacks to Conder Street and Belmore Street will widen the area available for pedestrian movement and enhance the quality of the streetscapes.

Insisting on strict compliance would not yield an improved building outcome. Tall, slender towers with a longer north-south axis are more appropriate for the site than lower, broader towers and facilitating this massing through increased building height which is also compliant with the building height plane control is considered acceptable in the circumstances.

The site has suitable dimensions and is in an appropriate location as part of the Town Centre for additional height. Therefore on environmental planning grounds, the development has responded to the circumstances that are specific to the site and has accommodated the additional height within a form that is appropriately massed and compatible with the desired scale and presentation at each street frontage.

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 provision of additional height and density within the Town Centre enables orderly redevelopment of land in close proximity to a variety of established services and facilities and public transport networks.

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

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

The applicant's Clause 4.6 variation request refers to the shadow impacts of the proposal which is shown to have minimal additional impacts on nearby and surrounding properties in comparison to a compliant scheme and in comparison to the buildings approved with BD31/2013.

The proposed building separation achieved over the consolidated site in combination with layouts and fine-grain consideration of window and balcony siting and orientation in a master planned approach enables a high degree of control over the potential impacts of the proposed building height. The additional storeys are proposed to be recessed from the floor plates below to decrease the visual impacts and increase separation.

It is accepted that the building height exceedance as proposed will not result in a development that is visually out of character and scale with what is reasonably anticipated in the town centre or inconsistent with the strategic intention of the transitional building height and the maximum building height plane. Development Consent BD31/2013 granted consent for the following building heights within the site: Building A (10 storeys), Building B (19 storeys) and Building C (19 storeys). The building heights proposed with this application are: Building A (11 storeys), Building B (22 storeys) and Building C (part 19 and part 20 storeys).

In addition, the height exceedance in itself does not result in any unreasonable amenity impacts on the adjoining properties in comparison to a compliant scheme. The previously submitted shadow diagrams (which demonstrate a compliant scheme) and the shadow diagrams of the previously approved and proposed development have been examined and show minor additional overshadowing impacts as a result of the additional height. Shadows are transient due to the narrow east-west dimension of the buildings and the impacts on nearby properties are temporary and not unreasonable for the south-west corner of the Town Centre interface during midwinter.

The Clause 4.6 variation request is supported.

Objectives of the Zone

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

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

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

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

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

Request to vary Maximum Floor Space Ratio

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

"It is considered that compliance with the FSR development standard is unreasonable in the circumstances associated with the subject development for the following reasons:

- i. *The subject development site contains 2 FSR zones, one with a maximum FSR of 3:1 and a second with a maximum FSR of 4.5:1. The architects, in developing the most appropriate massing of the development with regard to urban design considerations, have taken a global approach on the site in terms of distribution of FSA across the entire site. This fluid distribution of FSA across FSR boundaries has given rise to the non-compliance with FSR development standard on Site A.*

This global distribution of FSA across the site was supported by Council and the Joint Regional Planning Panel (JRPP) in the assessment and subsequent approval of the original development application.

A Voluntary Planning Agreement has been discussed with Council which provides at no cost to Council 3 floors of offices for Council use, 55 basement car spaces and a bridge connecting the offices to Council's library; totalling 3,944 sqm of FSA which do not give rise to any ongoing financial return to the developer but contribute to the development's FSA.

The location of the proposed Council offices is best suited in its current location within the subject site as it is directly adjacent to Council's library; albeit that the building attracts the lowest FSR and height within the site.

Strict compliance with the development standard will require either the removal of the offices or removal of residential floor space; the latter jeopardises the economic viability of the entire project.

- ii. *The existing consent of the subject site achieved a FSR on Site A of 3.62:1. This represents a departure of 20.67%. It was supported by Council and approved by the Joint Regional Planning Panel. The subject development on Site A contains an additional 1,958 sqm yet it also incorporates 4,036sqm of office floor space for Council use. As stated previously. This floor space provides no return to the developer but must be calculated as floor space for the purpose of FSR calculations.*
- iii. *Council has recently approved variations to development standards varying ranging between 17.5% and 67% at its meeting of 24 August 2015. Both the below developments were associated with a Voluntary Planning Agreement.*
 - *A development in Morwick Street achieved a 67% variation to the height and 43.5% variation to the FSR standards.*
 - *A development in Deane St achieved a variation to the height control by 17.49% and an FSR variation of 30%.*

The exceedance in FSR is 4,063 sqm; representing a departure from the development standard of 3:1 by 1.57:1 (52.33%). It is submitted that the 46% departure from the FSR development standard is not insignificant but the build (sic) form will not give rise to any significant detrimental environmental impacts. As discussed above under 'Height' the siting, setbacks, and modelling of 'Building A' minimises the potential additional overshadowing by the building and allows the building to comply with the Building Height Plane for Conder Street, satisfying the objectives for building height under the BLEP.

- iv. If the combined FSR of the entire development is distributed over the amalgamated site, the non-compliance reduces to 6.2%. A Clause 4.6 submission on this non-compliance with the development standard has been presented above and demonstrates that compliance with the development standard is unreasonable by virtue of:
- The modest (6.46%) departure from the development standard; and
 - The proposed development will not give rise to any significant environmental impact.

The additional FSR is largely due to the provision of works on Site A associated with a Voluntary Planning Agreement which would provide Council with 3 levels of office for its use, underground carparking for 55 cars and a pedestrian bridge. These works are considered to represent an on-going public benefit which is necessary to support justification contravening the FSR development standard.

Moreover the existing consent for the Site A incorporated Serviced Apartments which would have generated a permanent worker population of approx. 6-8 persons; whereas the proposed Council offices of 3,962 sqm will provide permanent employment for approx 300 persons which will give rise to social and economic benefits; as will the additional residential apartments in terms of providing housing in areas in the vicinity of transport hubs and employment opportunities.

The offices and new residential units will also give rise to secondary employment opportunities associated with local retailing and professional services.

The proposed departure from the FSR development standard is therefore considered to be consistent with the Objectives of Clause 4.6 of the Burwood LEP 2012, provides an ongoing public benefit, and does not diminish the environmental quality of the area to any significant degree. It is consequently considered that approval of the departure is in the public interest and should be approved.

- Site B (Site Area: 7,563 sqm)

Development FSA on Site B is 36,640 sqm comprising 34,934 sqm of residential floor space and 1,706 sqm of Retail floorspace. The FSR development on Site B is 4.845:1.

The maximum permissible FSR on Site B under Burwood LEP 2012 is 4.5:1 (Max 3:1 for residential and the residual FSR for Commercial/Retail of 1.5:1 in conjunction with the max 3:1 for Residential use).

Under the provisions of Council's Policy "Carrying Out Bonus Development in the Public Interest", effective as of 1 May 2015, a 10% FSR bonus on the maximum FSR for the site may be applied to residential development for undertaking development in the public interest for sites in the Middle Ring and Town Centre.

Site B is within the Middle Ring. Consequently bonus FSR applying to the Maximum FSR of 4.5:1 for that part of the site would be 0.45:1. The maximum FSR would rise to 4.95:1. The Residential FSR would also rise by 0.45:1 to 3.45:1 and the commercial FSR would be 1.5:1 (ie. 4.95:1 – 3.45:1).

The maximum FSR for commercial development = 11,344.5 sqm (ie. 1.5 x 7563). The proposed FSA for commercial development is 1,706 sqm.

Notwithstanding the existence of the above Bonus Development Policy, Council has prepared a Planning Proposal (PP) for "Bonus Residential Floorspace within Part of Burwood Town Centre and Design Excellence in the Town Centre and Local Centres". This PP provides for bonus Floor Space Ratio (FSR), up to 10% of the maximum FSR, for residential development within the Commercial Core and Middle Ring of the Burwood Town Centre. The PP has been exhibited and referred to the Department of Planning. The Department's report on the PP (Attachment 02) recommends increasing the Commercial FSR as well as the Residential FSR in order to address an unintended consequence of reducing the Commercial FSR as a result of increasing the Residential FSR.

Consequently both the Residential and Commercial FSRs will be increased by 10%. The application of the bonus residential FSR having regard to any Voluntary Planning Agreement between a developer and Council for material public benefit. The subject development is accompanied by a Voluntary Planning Agreement for the dedication, free of cost to Council, of 3 levels of office space, a pedestrian bridge linking the new offices to Council's existing library together with the construction of 55 basement car spaces as well as enhanced public domain to the forecourt of the

office space and Masonic Temple and extension of the landscaped public walkway from Wynne Avenue to Conder Street. This is considered to satisfy the criterion for a public benefit.

In addition the PP proposes to increase the Residential FSR from 3:1 to 3.45:1.

The maximum FSR for Residential development would then be 3.90:1 (ie. 3.45:1 plus 0.45:1). This would equate to a maximum permissible FSA of 29,495.7 (ie. 3.9×7563). The proposed development incorporates 34,934 sqm of Residential floorspace. The extent of non-compliance is 5,438.3 sqm; equivalent to an FSR of 0.718:1 (18.43% variation from the development standard).

The maximum Commercial FSR would also increase by 10% from 1.5:1 to 1.65:1. The maximum permissible FSA is 12,478 sqm. The proposed Commercial FSA in Site B is only 1,706 sqm. Consequently the development, in this respect, complies.

Site B therefore requires a variation of the Residential FSR development standard under Clause 4.6 of the Burwood LEP 2012.

It is considered that the exercising flexibility with the FSR development standard for the subject development will satisfy the objectives of Section 4.6 of the Burwood LEP by achieving social and economic benefits that are unable to be achieved in its absence by virtue of:

- The dedication, free of cost to Council, of 3 levels of office space, a pedestrian bridge linking the new offices to Council's existing library together with the construction of 55 basement car spaces; and
- An associated residential and retail development that will not give rise to any significant detrimental environmental effects.

The matters under subclause (3) have been addressed in this section. The assessment of the proposed non-compliances in relation to building height and FSR have included consistency with the objectives of the particular standards and the objectives of the B4 Zone. In all cases it is considered that the proposed development meets the objectives of the height and FSR standards and supports the objectives of the B4 Zone.

The proposed minor variation to the height and FSR controls related to a large scale site that incorporates a city block in Burwood Town Centre are not considered to raise any matters of significance for State and Regional environmental planning.

As discussed above the proposed non-compliances are considered to support a development outcome for a consolidated Town Centre development site that will provide a more efficient and effective use of land and support a range of outcomes in terms of land use and improvements to the public domain. On this basis it is considered that there is no public benefit of maintaining the development standards in this case."

The arguments advanced by the applicant are agreed with in relation to:

- The master planning opportunities provided by the consolidated site which allows for more appropriate massing of floor space within the site unconstrained by property boundaries as well as the siting of multiple towers with a north-south axis to allow solar penetration and rapid transition of narrow shadows across the ground surface;
- Meeting the objectives for FSR controls in Clause 4.4 to focus increased density within the Burwood Town Centre and the objectives for development in Zone B4 Mixed use;
- Appropriate setbacks and building separation and tower dimensions that are similar to those approved with BD31/2013;
- Building scale and mass which is consistent with the context and scale of surrounding existing and future multi-storey buildings in the town centre;

- Additional floor space consistent with the intentions of Council's "Bonus Policy" and Council's intentions demonstrated by the Draft Planning Proposal for Bonus Density and Design Excellence;
- Social, environmental and economic benefits from increased density of employment generating land use; and
- Improvements to the public domain.

The applicant's reference to the VPA supported by Council at its Ordinary Meeting of 24 May 2016 and the provision of office floor space, car parking and a pedestrian bridge has been excluded from consideration in the assessment of this request to vary the development standards for FSR contained in Clauses 4.4 and 4.4A to BLEP 2012.

The applicant has demonstrated that there are sufficient environmental planning grounds to justify the non-compliance with the FSR control in that the development optimises the provision of residential and commercial land uses in a manner anticipated by the planning controls for Burwood Town Centre to encourage redevelopment to higher densities and to create a transition in scale from the Core, through the Middle Ring and to the Perimeter locations. The distribution of floor space has been modelled in a master planning approach with consideration to creating a transition in building density and scale from the Middle Ring area of the site to the Perimeter area to the west.

The bulk and scale of Buildings B and C are similar to the height of newer buildings in the Middle Ring and Core locations and the bulk and scale of Building A creates a transition to the edge of the Town Centre.

The public benefits of the proposal include new landscaping works within Hornsey Lane, the retention and re-use of the former Masonic Temple and creation of a curtilage around this building which requires some redistribution of floor space away from the former Masonic Temple building. Other public benefits include the provision of a publicly accessible right-of-way linking Hornsey Lane with Wynne Avenue. This landscaped through-link and works within the setbacks to Conder Street and Belmore Street will widen the area available for pedestrian movement and enhance the quality of the streetscapes.

Insisting on strict compliance would not yield an improved building outcome. The lower ground and ground floor footprint will result in commercial tenancies activating the street for the majority of the perimeter of the building. Therefore, at street level the building form and site coverage is consistent with the character, setbacks and intensity of development which is part of the Town Centre. The setback areas along Conder Street and Belmore Street are to be reconstructed along with the public footpath reserve to increase the capacity of the publicly accessible space surrounding the new building. The majority of the site perimeter will have active frontages which will enhance the pedestrian environment and the streetscape. The height of the podium is a maximum of 10m with the exception of the three (3) level office tenancy within Building A. The scale of the podium and the office tenancy are considered to be compatible with the streetscapes and will clearly define this corner of the Burwood Town Centre as distinct from the mixed uses and residential uses to the south and west of the site.

The dimensions of the towers to Buildings B and C as tall slender towers with a longer north-south axis are more appropriate within the site than lower, broader towers. The external dimensions of Building A create a transition in built form that is intended by the transition in FSR controls in BLEP 2012.

The site has suitable dimensions and is in an appropriate location as part of the Town Centre for additional FSR and increased density and intensity of development. Future users of the site will include residents and their visitors as well as staff and customers to the commercial premises. These users of the site will benefit from its close proximity to established public transport and the variety of land uses in the town centre. The location is well serviced by established utilities and can accommodate increased capacity of utility infrastructure. Adequate on-site parking will be provided.

Therefore, on environmental planning grounds, the development has responded to the circumstances that are specific to the site and can accommodate the additional FSR and associated intensity of land use within a building 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 Floor Space Ratio Standard

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

The applicant's Clause 4.6 variation request has made reference to the anticipated intensity of development and noted that the scale is appropriate for the site location and capacity of public infrastructure and utilities along with the potential improvements to the public domain and public domain interface.

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

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

The applicant's Clause 4.6 variation request has made reference to the transition in FSR distribution from west to east through the site which reflects the intentions of the FSR controls that apply to the site.

It is accepted that the additional FSR is consistent with objective (b).

Objectives of the Zone

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

In light of the above, the applicant has submitted a variation request in relation to the FSR controls in Clause 4.4 to BLEP 2012 that demonstrates that there are sufficient environmental planning grounds to justify contravening the FSR standard and that compliance with the FSR standard is unreasonable or unnecessary in the circumstances of the case, as required by Clause 4.6(4) of the LEP.

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

Request to vary Exceptions to Floor Space Ratio

Clause 4.4A requires that the ratio of the gross floor area of any part of a building used for the purpose of residential accommodation within the portion of the site in the Middle Ring area must not exceed 3:1. The residential component of the floor space within the eastern portion of the site (within the Middle Ring) is 4.62:1 and requires a variation to the development standard of Clause 4.4A of 54%.

In relation to subclause 4.6(3)(a), the submitted variation request included the reasons outlined above under the discussion of a variation to Clause 4.4. The reasons presented by the applicant are based on the master planning opportunities presented by the consolidated site. Also, the location of the majority of commercial space on the western portion of the site physically adjacent to improvements in the public domain. Furthermore, publicly accessible space along Conder Street and Belmore Street including high quality landscaping works linked to the forecourt and curtilage of the former Masonic Temple.

The arguments advanced by the applicant are agreed with in relation to the exceptions to the distribution of residential floor space in comparison to commercial floor space throughout the site.

Insisting on strict compliance would not yield an improved building outcome or improvements to the function and utility of publicly accessible space. The proposed distribution of commercial floor space in comparison to residential floor space it is accordingly acceptable in the circumstances.

Furthermore, in relation to subclause 4.6(3)(b), which requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify the non-compliance, the applicants planning grounds were previously summarised above (under the variation to Clause 4.4). The planning grounds presented by the applicant are justified in the circumstances. As per the variation to the height and density standards, it is accepted that the site is the optimum location for additional residential density, being located in the town centre and within walking distance to Burwood railway station and high frequency bus routes. Additionally, it is agreed that the spatial arrangement of commercial and residential floor space are appropriate for the site and the relationship with surrounding land uses.

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

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

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

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

Objectives of the Exception to Floor Space Ratio Standard

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

The applicant's Clause 4.6 variation request states that residential floor space does not dominate commercial floor space provisions when considered in the context of the entire site.

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

Objectives of the Zone

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

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

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

Clause 5.10 – Heritage Conservation

The subject site contains a heritage item being the former Masonic Temple. Demolition and alteration works approved under a separate development consent have been completed for the former Masonic Temple.

A Statement of Heritage Impact prepared by NBRS + Partners, dated 11 December 2015 was submitted with the development application and has been reviewed by Council's Heritage Advisor

along with the development application and in conjunction with a Section 96 application to modify Development Consent BD31/2013.

Council's Heritage Advisor required notable design changes particularly in relation to the separation between the former Masonic Temple and Building A, the setback of Building A from Belmore Street and the landscaping works within the setback to Belmore Street and within the separation area between the two buildings.

Council's Heritage Advisor is satisfied that design changes have been achieved which are sympathetic to, and compatible with, the heritage item and its setting and curtilage.

Clause 6.1 Acid Sulfate Soils

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

Amendment No.9 to Burwood Local Environmental Plan 2012

Since the date of lodgement of Development Application BD193/2015, Amendment No.9 the BLEP 2012 became effective on 16 September, 2016. This amendment introduces provisions to the LEP which limit the proportion of floor space that can be used for serviced apartments within any development in nominated mapped locations. The amendment does not apply to the assessment of this application.

Draft Burwood Local Environmental Plan 2012 – Bonus Residential Floor Space and Design Excellence in the Town Centre

A Draft LEP Amendment proposing additional clauses related to bonus floor space and design excellence has been publicly exhibited during August and September 2015. The draft provisions have been mentioned in the assessment of the Clause 4.6 variation request with regard to the non-compliance with the FSR control.

Burwood Development Control Plan 2013

Burwood Development Control Plan (DCP) was adopted by Council on 12 February 2013 and came into effect on 1 March 2013. Compliance with the relevant DCP controls is summarised in Table 6.

Table 8: Relevant provisions of Burwood Development Control Plan

Control	Requirement	Proposed	Complies
2.2 Site Analysis	To be submitted with Development Application	Provided within Section 2 to the Architectural Design Report	Yes
2.3 Views and vistas	Identify significant views and vistas and demonstrate how they are to be improved and enhanced Encourage view sharing	View lines are to be achieved across the site through provision of building separation between Buildings A, B and C as well as along the streetscapes. Particularly, the setbacks to Belmore and Conder Streets which exceed Council's	Yes

Control	Requirement	Proposed	Complies
	Have regard to high priority views and vistas identified in the DCP	requirements. The publicly accessible through-link adjacent to the northern boundary also establishes a view line.	
2.4 Streetscapes	Identify streetscape characteristics Demonstrate how building design, location and landscaping will enhance and protect streetscapes	Streetscapes have been examined in the Architectural Design Report which supports an increased setback to Belmore Street. The Landscape Plan includes works within street setbacks and public footpath areas to all site perimeters	Yes
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	The Design Excellence has been assessed by GMU and found to be satisfactory subject to design amendments which have been addressed in recommended conditions of consent.	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 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	Materials, colours and finishes proposed with the Development Application are consistent with those approved with BD31/2013 and are acceptable. Conditions are recommended to require details of external lighting to be submitted with an application for a Construction Certificate for assessment by Council. Each building and each retail premises is provided with an entry that is visible from the adjoining street.	Yes Yes subject to conditions. Yes.

Control	Requirement	Proposed	Complies
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 each building has been assessed by GMU and determined to be satisfactory.	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 and non-residential uses Building entrances must have a direct physical and visual connection to the street Residential components shall have a clear street address and a separate entry All commercial components must have a clear street address	Conditions are recommended for the details of all security screens, automated doors, service doors and the like to be included with the schedule and plans of colours, materials and finishes to be submitted with the application for a Construction Certificate. Non-residential uses are proposed to address all street frontages and the new publicly accessible through link at ground level. All entry/exit points are to be accessible. Vehicle entry/exit points are well separated from pedestrian entry/exit points. Conditions are recommended for additional low planters or decorative fixed structures to separate and control pedestrian movements in the vicinity on the vehicle crossing in Conder Street. Building entrances for Building A have direct physical and visual connection to Conder Street. The shared residential access for Buildings B and C is clearly legible within the street frontage to Belmore Street. The secondary access to Building C from Wynne Avenue is suitably located between retail tenancies.	Yes Yes Yes subject to conditions. Yes. Yes

Control	Requirement	Proposed	Complies
	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.	All commercial premises address the adjoining publicly accessible space. Conditions of consent are recommended to ensure mail boxes comply.	Yes subject to conditions.
3.2.7 Residential Flat Buildings and Shop Top Housing	In the B4 Zone, a mixed development comprising three or more dwellings will be regarded as a residential flat building	Noted.	Noted.
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 All residential developments must provide the following minimum apartment sizes: Studio 40m ² One bedroom apartment 50m ² Two bedroom apartment 70m ² 3+ bedroom apartment 95m ²	Mix of one, two and three bedroom apartments are provided. Complies.	Yes Yes
3.2.9 Building depth	Refer to ADG compliance table above.	Assessment by GMU supports the proposed building depth and building depth is similar to that approved with BD31/2013.	Yes
3.2.10 Ceiling Height	Ground level 3.3m Residential floors above ground level 2.7m habitable rooms and 2.4m non-habitable rooms	Minimum 3.4m. Minimum 2.7m.	Yes Yes
3.2.11 Natural Ventilation	Refer to ADG compliance table above.	Complies.	Yes
3.2.12 Daylight Access	Refer to ADG Compliance table above.	Complies.	Yes
3.2.13 Visual and Acoustic Privacy	Maximise visual privacy between the development and adjacent sites Privacy provisions should not compromise natural light and air	Refer to ADG Compliance table above regarding apartment separation.	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 Primary open space of dimensions to promote outdoor living suitable for outdoor table and chairs Minimum dimensions: 1 bedroom – minimum depth 2m and minimum area 8m ²	All dwellings have private open space directly accessible from the open plan living room. Private open space areas are suitable for outdoor tables and chairs proportional to the size of each apartment. Complies.	Yes Yes Yes

Control	Requirement	Proposed	Complies
	2 bedrooms – minimum depth 2.5m a minimum area 8m² 3 or more bedrooms – minimum depth 2.5m and minimum area 10m² Private open space which responds to site conditions and integrated with the building design		
3.2.15 Lobbies and Internal Circulation	Entry lobbies to provide seating, mail delivery and collection and space for supervising personnel Lift lobbies to have natural ventilation and natural light Corridors to facilitate movement of furniture and people and have interest in surface materials and finishes with clearly identified apartment numbers Common area corridors minimum 2m wide Name and number of development clearly displayed at the entry and suitably illuminated	Buildings A, B and C have residential lobbies internal to the buildings of sufficient dimensions for seating and mail. All lift lobbies have a source to natural light direct to or in close proximity to the lift waiting area. Corridor lengths and dimensions determined to be satisfactory. Conditions are recommended to ensure finished interior materials, unit numbering and building identification comply with the DCP requirements.	Yes Yes Yes Yes subject to conditions.
3.2.16 Storage for apartments	Refer to ADG compliance table above. At least 50% of the storage area to be provided within the dwelling At least 25% of storage area accessible from active areas	Storage provisions have been assessed in accordance with the Design Criteria of the ADG and conditions are recommended for adjustments to storage provisions to be verified with the Construction Certificate.	Yes subject to conditions.
3.2.17 Safety and Security	Route between shared entrance and each dwelling to maximise safety including from car parking Comply with Burwood Community Crime Prevention and Safety Plan Clearly defined boundaries to distinguish between private and public space Facades at ground level shall be activated with after-hours uses so they are visible from public places Separate accesses for public and common areas	Pedestrian movement paths are considered safe subject to conditions for details of lighting, pavement marking and directional signage submitted with the Construction Certificate application. Site boundaries are to be clearly defined and a large proportion of the site perimeter is to be provided with activated commercial frontages and casual upper level surveillance. Public access points to be clearly separated from private accesses	Yes Yes Yes

Control	Requirement	Proposed	Complies
	Separate access for residents in mixed use developments Intercom systems at pedestrian and vehicle entrances or in lobbies Provide secured key or card access for residents Minimise concealment opportunities. No blind or dark alcoves near lifts and stairwells. Clear lines of sight on routes through the development. Appropriate illumination of common areas Security measures to be compatible with building design	subject to design amendments for the access area in Belmore Street as discussed in this report and included in conditions of consent. A CPTED Statement submitted with the Development Application demonstrates that the development complies with the CPTED 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 Safe and convenient access throughout the development, car parks and communal facilities Tactile indicators for changes in floor levels in the public domain Minimum 10% of dwellings as Adaptable Housing Class A or B At least one car space for each accessible or adaptable dwelling to comply with AS1428.2 Development of 80+ dwellings accessible visitor car parking to be provided at the rate of one per each 60 dwellings or part thereof.	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. Access for residential and visitors between the residential component of Building A and the communal open space areas must be redesigned to achieve a path of travel which does not rely on entering the public domain or the interior space used by other land uses. Deferred commencement conditions are recommended to resolve this matter.	Yes Yes subject to Deferred Commencement conditions.
3.2.19 Awnings	To be provided above the public domain in B4 Zone Awnings to cover the street setback and the access point to a building	Awnings can be provided to comply with the requirements of the DCP subject to conditions of development consent for detailed awning design to be included in plans submitted with an application for a Construction Certificate and for	Yes subject to conditions.

Control	Requirement	Proposed	Complies
	Awning to be between 3.2m and 5.5m from the finished ground level of the public domain Artificial lighting beneath awnings not to exceed 6m separation for face recognition Awnings set back a minimum 600mm from kerbline Awnings cut out to facilitate street trees and street lighting Regular maintenance for structural adequacy and weather protection	continuity in awning coverage to improve pedestrian amenity and encourage walking.	
3.3.2. Burwood Town Centre 3.3.2.1 Building Height Plane	Height of buildings not to exceed the building height plane	The proposal complies with the Building Height Plane and the proposed variations to building height controls pursuant to Clause 4.6 to the BLEP 2012 have been evaluated in this report.	Yes
3.3.2. Burwood Town Centre 3.3.2.3 Middle Ring	Podium Height 15m Street front setbacks - Belmore Street 3m - Wynne Avenue 0m Ground level setbacks to be finished at grade with Council's footpath and finishes and materials to match Council's Public Domain Requirements Secondary setbacks – the part of the development above 15m to be set back at least 6m from the street front boundary Residential building separations refer to the RFDC Maximum length of any part of a building parallel to the street and above 15m in height is 45m and suitably articulated Communal open space accessible on podium level	Podium height is a maximum of 10m. Belmore Street 3+m. Wynne Avenue 0m Plans indicate ground surface levels of setback areas are to be integrated with the levels of the adjoining public footpath and finished floor levels of adjoining commercial tenancies and residential lobbies to achieve accessible paths of travel. Average secondary setback is 10+m and building length and setbacks are considered to be proportional to the overall scale of each building as evaluated by GMU. Access to communal open space is available from main lobbies and smaller corridors in both Building B and C. Access arrangements for the residential component of Building A is to be subject to a Deferred Commencement condition.	Yes Yes Yes Yes Yes subject to recommended conditions.

Control	Requirement	Proposed	Complies
	A minimum 50% of the communal open space to have minimum 600mm soil depth	The landscaping of the podium complies.	Yes
3.3.2. Burwood Town Centre 3.3.2.2 Perimeter	Street setback requirements		
	- Belmore Street (west) 6m	Belmore Street – 6+m.	Yes
	- Conder Street	Conder Street - 4m	Yes
	- consistent with the heritage Item 47 in Schedule 5 to the LEP former Burwood Council office building	Setbacks to both Belmore and Conder Streets have been addressed in the Statement of Heritage Impact and determined to be satisfactory with respect to the former Masonic Temple and Heritage Item 147 as determined by Council's Heritage Advisor.	Yes
	Building separation refer to the requirements of the ADG.	Building separation has been assessed in the ADG Compliance table above and determined to be satisfactory.	Yes
	Where the ground floor uses are commercial, fencing of the street front setback is prohibited	Commercial shop fronts do not have fencing between the shopfront and the public footpath.	Yes
	Existing mature trees to be retained wherever possible	There are two mature eucalypts which have been removed from the site in accordance with Development Consent BD31/2013.	Yes
	Where existing trees are removed they must be replaced at a ratio of two new trees for each tree removed.	Compensatory planting of canopy trees is indicated in the Landscape Plan submitted with the development application.	
	At least 50% of the street front setback must be provided as planting or soft landscaping	Landscaping shall be in accordance with these requirements of the DCP subject to conditions of development consent to include these details in the Landscape Plans to be submitted with the application for a Construction Certificate.	Satisfactory subject to conditions
	Canopy trees to be provided at the rate of 1 per 30m2 of landscaped area within the street front setback		
	Development requiring a 6m setback from the street front boundary is to provide deep soil zones and trees selected from Council's Street Tree Management Strategy.		
	Development set back from the street front boundary less than 6m is to provide trees as specified in the DCP		

Control	Requirement	Proposed	Complies
3.7 Transport and Parking in Centres	(1) 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 Requires 499 spaces	See assessment comments under the subheading of On Site Parking above.	Satisfactory subject to conditions.
3.7.2 Burwood Town Centre	1 space per 5 units Requires 41 spaces	Council's Traffic and Parking Officer recommends conditions of consent to ensure a satisfactory number of on-site parking spaces.	
	Retail in Zone B4 in Burwood Town Centre: 1 space per first 400m ² 1 space per 40m ² above the first 400m ² <u>Requires 38 Spaces</u> Office space within former Masonic Temple: 1 space for first 400m ² <u>Requires 1 space</u>		
	Office spaces = 55 spaces in accordance with VPA		
	All parking associated with retail premises to be provided on site must:	All retail and commercial car parking to be accessed via Wynne Avenue and will be accessible and suitably signposted for public use.	Yes
	- Be open for public use during normal trading hours for premises on the site - Accessible and marked for public use with clear directional signage - Clear, signposted and safe access between parking and retail premises - Management of signage, fees, access permission and time limits are to be subject to Development Consent	Access points from Wynne Avenue are safely separated from pedestrian movements along the northern site boundary by a glazed balustrade on the northern side of the driveway crossing.	Yes
	All vehicles to be capable of entering and leaving the site in a forward direction.	Council's Traffic and Parking Assessment has determined vehicle entry and exit arrangements are satisfactory.	Yes
	Vehicle access to be provided by secondary streets in preference to major roads.	As above.	Yes
	Minimise vehicle crossings of footpaths	Minimal number of vehicle crossings to separate residential and commercial traffic movements.	Yes

Control	Requirement	Proposed	Complies
	No impacts on bus operations Openings must be screened with automatic closing doors Vehicle access to be separated from pedestrian access Major development to be accompanied by a Transport, Traffic and Parking Impact Assessment and Management Plans including a Travel Demand Management section Bicycle parking facilities in accordance with AS 2890.3 Loading and servicing areas to maintain and enhance the integrity of the streetscape	No impact. Security doors are to be provided. Conditions of consent are recommended for further details on the separation of pedestrians and vehicles for the Conder Street vehicle crossing. Traffic and Transport Impact Assessment was submitted with the application and assessed by Council's Traffic and Parking Officer. Conditions are recommended regarding Travelsmart Plans to be submitted with the Construction Certificate. Bicycle parking is to be provided within the basement and appropriate conditions are recommended regarding the design and installation of secured parking facilities. Loading and servicing bays are contained within the Basement Level B1 and are to be available for commercial tenancies and waste management. Conditions are recommended for the Building Manager to coordinate access to the loading bay for residents on an as-needs basis.	Yes Yes Yes , subject to conditions. Yes, subject to conditions. Yes, subject to conditions. Yes, subject to conditions.
3.8 Heritage in Centres and Corridors	Heritage Impact Statement required Adaptive re-use to retain significant internal and external fabric Retain appropriate setting for continued appreciation of integrity Ensure heritage item is not visually obscured or adversely altered Setbacks to achieve sight lines for significant buildings	The Heritage Impact Assessment submitted with the development application has been assessed by Council's Heritage Officer and determined to be satisfactory in conjunction with amended architectural and landscape plans as received by Council on 11 August 2016.	Yes
3.9 Public Domain and Amenity	Conder Street public bus route	Public bus route and shared zone in Conder Street to be maintained.	Yes

Control	Requirement	Proposed	Complies
3.9.1 Public Domain – Burwood Town Centre	Conder Street shared zone between Hornsey Lane and Railway Parade		
	Hornsey Lane to be a public square / forecourt.	Hornsey Lane will be retained and landscaped.	Yes
	Pedestrian link between Wynne Ave and Hornsey Lane minimum 9m width, unobstructed and open to the sky unless awnings are cantilevered and extend over not more than 30% of the width, activated by entrances to adjoining land uses and in accordance with AS1428.1-2009 and landscaped in accordance with Council's Public Domain Plans	The pedestrian link is to be created as a public right of way in accordance with the DCP requirements as included in recommended conditions of consent.	Yes
	Ground level with frontage to designated public squares and forecourts must provide active uses which address and define the edges of the forecourt and square and upper levels must allow for casual surveillance	Active commercial frontages are proposed to all site boundaries and casual surveillance is available from the upper levels of Buildings A, B and C and from the ground level commercial premises to each frontage.	Yes
	Access to public squares and forecourts suitable for people with a mobility impairment	Conditions of consent are recommended to ensure that pedestrian links and accesses to the publicly accessible areas comply with the requirements of the DCP.	Yes
	Squares and forecourts to be unobstructed by buildings, open to the sky and have direct linkages	The new public through-link will be partly provided with an awning extending 2m from the building façade and the remainder open to the sky.	Yes
	Existing pedestrian links maintained and enhanced	The pedestrian movement route along the northern site boundary is to be enhanced.	Yes
	Pedestrian links to have: - Interactive uses - casual surveillance - Minimal barriers - A width of at least 4.5m clear of obstruction and where possible 6m width - signage at street entries indicating public accessibility and the name of the street with which it connects	Complies.	Yes

Control	Requirement	Proposed	Complies
3.9.5 Treatment of Street Front Setbacks – Middle Ring	Street front setbacks to be treated consistent with the adjoining public domain and a right of pedestrian way and vehicle movement created by way of easement in accordance with Section 88B to the <i>Conveyancing Act 1919</i> placed on the title of the land Cantilevered awnings are encouraged over the setback area fronting non-residential uses to a maximum width of 3m	Conditions of consent are recommended to achieve compliance with these requirements.	Yes, subject to conditions.
3.9.5 Treatment of Street Front Setbacks - Perimeter	For mixed use and non-residential uses at street level where the setback is 3m or more the setback is to be treated consistent with the adjoining public domain and a right of pedestrian way and vehicle movement created by way of easement in accordance with Section 88B to the <i>Conveyancing Act 1919</i> placed on the title of the land Cantilevered awnings are encouraged over the setback area fronting non-residential uses to a maximum width of 3m	Conditions of consent are recommended to achieve compliance with these requirements.	Yes, subject to conditions.
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)	Conditions of consent are recommended to achieve compliance with these requirements.	Yes, subject to conditions.
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	Conditions of consent are recommended to achieve compliance with these requirements.	Yes, subject to conditions.

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 in the table above and with regards to on-site parking within the Section of the report dealing with the Design Criteria of the ADG.

Overshadowing

It is noted that Council's DCP does not include a control in relation to overshadowing of nearby properties in the Burwood Town Centre, nor does the ADG.

To assess the potential impacts of overshadowing, the applicant has provided shadow diagrams and elevations to make a comparison between shadows potentially cast by the development approved with BD31/2013, the shadow cast by a compliant building envelope and shadows anticipated from the proposal. The applicant has provided the following analysis of overshadowing:

"due to the increase in the number of levels there is a small increase in the extent of the shadows affecting properties along Conder Street in the early morning in midwinter. However, by 10.00am the additional shadow impact is negligible, similarly the additional shadow impact at other times of the year is also negligible.."

The analysis by the applicant is supported. Overall, the shadow created by the proposal is considered reasonable for a high density mixed use environment on the edge of the town centre. 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 Town Centre controls, the height and density proposed reflects the scale of built form anticipated and encouraged by Council. The siting and dimensions of the towers allows for solar penetration between the buildings and for the rapid transition of the shadows across the terrain such that the impact of shadows in midwinter is considered reasonable. Therefore, in line with the above planning principle, the expectation that existing solar access would be fully protected is unrealistic and the difference between the schematic shadow of a compliant building envelope and the proposal is considered reasonable.

CONSULTATION

External Referrals

GM Urban Design and Architecture

GMU's Urban Design Assessment dated 6 September 2016 concludes that:

Tower proportion due to the additional height:

"Due to the additional height on Building A, the additional bulk on Building B is not perceivable from the western end of Belmore Street as it hides behind the additional height of Building A. The adding of height to both buildings has maintained the same relationship from the common vantage points ... where views are available from that end of the street. While a further carving of the forms would have been ideal, this is not possible due to the height planes. However, in light of the

minor perceivable changes from the most common vantage points the additional height has not exacerbated the bulk in an adverse way. There is, in fact, an improvement to the proportions of Building B as seen from the northeast."

Overshadowing due to additional height:

"The difference in the overshadowing has increased compared to that of the approval (BD31/2013). While the impact can be considered nominal, the point is that before some units were being overshadowed only at the rear setback, but still retained the solar access partially to the sides and no additional overshadowing to the front e.g. Nos. 16, 18, 20 and 25 Conder St. This provided a choice as at least one of the open spaces was not overshadowed. The additional height has removed this choice as the overshadowing falls over both areas and in some cases the towers' overshadowing covers far more of the front setback compared to that of the self-overshadowing by the dwelling itself as in the example of No. 25 Livingstone Street at 9:30 AM (refer to page 2 of the attachment titled Combined Shadow Studies).

Regarding the self-overshadowing of Building A by building B; the sun-eye diagrams show that this is not due to the additional height."

Activation of Building A to Belmore St at the ground floor:

"The additional door on the southern elevation of Building A assists, but it seems tokenistic. It would be ideal that each of the bays on that elevation gets a set of doors. they will further reinforce the perception of activation along that elevation. If possible, two more door sets should be added and this can be a condition of consent."

Pedestrians exiting /entering the residential lobby (Building A):

"a better separation i.e. artistic bollard, low planter, or low artistic wall can be added to the area next to the pedestrian entry of Building A without obstructing site lines instead of the proposed simple bollards."

Summary

GMU's comments have been addressed in recommended conditions of development consent for additional door openings along the façade of the Lower Ground level of the office component of Building A and a low planter and/or public art feature to enhance safety and separate pedestrians from vehicles in the Conder Street footpath.

Regarding shadow impacts, the buildings on the western side of Conder Street are free of shadow from the development after 10am in midwinter. The additional shadow to be cast by the proposal is considered acceptable in the context of a site on the edge of the town centre. For further comments on shadow impacts see the above section regarding Burwood DCP.

Internal Referrals

Stormwater

The application was reviewed by Council's Stormwater Engineer and found to be acceptable subject to conditions for additional information to be submitted with a Construction Certificate. The following specific assessment comments and conditions have been provided:

*"Reference is made to the above DA and the stormwater drainage plans Job No. 4191003 prepared by Warren Smith & Partners P/L. The plans are considered to be okay for concept design stage. However the following issues shall be addressed by the applicant prior to **issuing of the construction certificate**.*

1. Provide details of On- Site – Detention (OSD) storage including the discharge control pit, orifice, overflow weir etc. Also show the sectional view of OSD, base slope, TWL including all inlets and outlets pipe inverts.
2. The discharge control pit of the OSD system shall be designed to control outflow for all storm events from 2, to 100 years ARI. Accordingly detailed calculations shall be provided for orifices diameter.
3. A sediment and erosion control plan shall be prepared in accordance with Council's Stormwater Management Code following the details in 'Urban Erosion and Sediment Control' hand book by Department of Conservation and Land Management.
4. A new Council standard pit and lintel shall be constructed on Wynne Avenue for storm pipe connection should the existing Council pit rendered unsuitable for that purpose.

Engineering drawings addressing the above issues shall be provided for Council's review."

Health

The application has been reviewed by Council's Health Officer and found to be acceptable. The following specific assessment comments and conditions have been provided:

"The plans have been reviewed and the following comments made;

Potential Site Contamination - A preliminary site investigation was conducted by Douglas Partners (project 73183 dated December 2012) to determine if there was any site contamination and whether the site was suitable for the intended use. The Investigation revealed that there was not any significant site contamination and that the site was suitable for the proposed use.

The application has been considered and the following conditions are to be included in any development consent that is issued.

Environmental Management:

1. The environmental management of the site and surrounds during the excavation and construction phases is to comply with the Construction Management Plan as prepared by the Caverstock Group and dated June 2015 and submitted as part of the development application.
2. Mechanical ventilation and or air conditioning systems and equipment are to be designed and installed in locations that do not cause any noise nuisance or disturbance to nearby residential or commercial premises. Details of the type of equipment locations and any noise attenuation treatment are to be submitted to Council for approval prior to the issue of the Construction Certificate.
3. The construction of windows / sliders, doors, external walls and roofs are to be comply with the recommendations listed at Part 4.3 External Noise Intrusion Assessment of the Acoustic Report (Ref:20130284.4/0912A/RO/OF dated 9/12/15) prepared by Acoustic Logic. Certification as to the compliance of the acoustic treatments are to be submitted to Council for approval **prior to the issue of an Occupation Certificate**
4. Mechanical Ventilation is to be provided that complies with the Building Code of Australia and Australian Standard A.S.1668 & A.S.3666 in order to achieve the necessary noise reductions as per the assessment and recommendations of the Acoustic Report (Ref:20130284.4/0912A/RO/OF dated 9/12/15) prepared by Acoustic Logic.
5. Separate development application(s) are to be submitted for the fit out of any part of the premises as a commercial use.

6. A car wash area / bay is to be provided at the basement car park level and be graded and drained to a waste water disposal system in accordance with the requirements of Sydney Water.

Waste Management:

1. All waste and recycling material generated in the development is to be managed in accordance with the Waste Management Plan prepared by Elephants Foot Revision C Dated 16/12/15.
2. All garbage shall be stored in the designated garbage area, which includes provision for the storage of all putrescible waste and recyclable material emanating from the premises. Adequate natural or mechanical ventilation is required where bins are stored in an enclosed area and meet fire safety standards in accordance with the Building Code of Australia.
3. The separate commercial and residential garbage and recycling storage areas are to be:
 - a. Supplied with both **hot and cold** water;
 - b. Paved with impervious floor materials;
 - c. Coved at the intersection of the floor and the walls;
 - d. Graded and drained to a floor waste which is connected to the sewer in accordance with the requirements of Sydney Water;
 - e. Adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour as defined by the Protection of the Environment Operations Act 1997;
 - f. Fitted with appropriate interventions to meet fire safety standards in accordance with the Building Code of Australia.
4. A waste cupboard or other storage area is to be provided within each dwelling which is of sufficient size to hold a single day's waste and to enable source separation of general waste, recyclables and compostable materials.
5. The waste / recycling chute room at each level is to be of sufficient size to accommodate sufficient mobile bins (MGB'S) / crates to store recyclable material generated over the entire period between collection days.
6. Suitable signage is to be installed in each level of the chute waste service rooms encouraging the separation of recyclables from the general waste stream.
7. Certification is to be provided by the installer of the chute system **prior to the issue of an occupation certificate** certifying that the chute has been installed in accordance with the manufacturer's specification.
8. A Caretaker is to be appointed for the development who will have ongoing responsibility for the proper management of the waste and recycling services.
9. All waste collections are to be carried out from within the building.
10. The applicant shall provide to Council a legally drafted agreement at their own expense in the form approved by Council which gives right of access to Council and its contractors for the collection of waste and recyclable material **prior to the issue of an Occupation Certificate**
11. The vehicular access to the waste storage area is to be designed to allow for access including forward driving and reversing into the collection bay by a fully laden waste and / or recycle collection vehicle.
12. The building access road and loading dock is to be designed to enable a fully laden waste collection vehicle to be able to access the site and carry out collections within the building.

13. Waste and recycling bins shall be kept in a clean and hygienic condition. Bins are to be washed regularly within the garbage storage room with any waste water being discharged to the sewer by way of the grated drain.
14. **Prior to the issue of the Occupation Certificate**, the applicant is to arrange with Council's Environment and Health Section the issue of the appropriate number of garbage and recycling bins and payment of the necessary fees to enable commencement of the waste and recycling service."

Building

The application has been reviewed by Council's Building Surveyor and found to be acceptable subject to conditions as included in Annexure A. The development has been categorised as BCA Classifications 2, 5, 6 and 7a.

Traffic

Council's Traffic and Transport officer has provided the following assessment comments and recommended conditions of development consent:

"The previous approved development provided parking per the table below.

	BD.2013.031	Parking	BD.2013.031 Section 96	Parking
Retail	1956	46	1956	46
Commercial	180	1	180	1
Serviced Apartments	90	92	109	111
Residential	332	335	368	370
Visitor	-	56	-	63
Total Parking		530		591

The new development proposes a total of 1795m² retail space, 4197m² commercial space, and 492 units broken down to 67 x 1 bedroom, 408 x 2 bedroom and 16 x 3 bedroom. The proposed development is located within a B4 Mixed Use zone, therefore under Council's DCP, the parking requirements are as follows:

		Rate	Requirement	Provided
Retail	1795m ²	1 for first 400m ²	1	41
		1 space per 40m ²	35	
Commercial	4197m ²	Per Planning Agreement	55	55
Residential	67 x 1 bed	1 per unit	67	499
	408 x 2 bed		408	
	16 x 3 bed	1.5 per unit	24	
	Visitors	1 per 5 units	98	84
TOTAL			688	679

The development's proposed off street parking provisions do not satisfy Council's requirements, with a shortfall of 9 parking spaces. Per the table above the proposal has a surplus of retail parking spaces with 41 provided but only 36 required.

The visitor parking component has incorrectly been calculated as on space per six units whereas the DCP requires one space per five units. This will increase the visitor parking component from the 84 stated to 98.

The 55 commercial parking spaces to be provided to Council as commercial parking spaces under the Planning Agreement will be required to be made secure and not accessible to the general public or the adjacent retail parking area. This will therefore require the area to be located behind security gates. The design of the Level B1/Lower Ground level will need to be reconfigured to facilitate this.

It is also required that a pedestrian link be provided from the retail parking on this level directly to the retail areas without requiring pedestrians to walk along the entry/exit isles. The pedestrian link must be linemarked to provide a clear pathway for pedestrians.

Lift access is not shown as being provided from the office lobby area on Level B1/Lower Ground to the office levels above on Ground Level and Level 1. The elevators labelled as L11 and L12 must be accessible from Level B1/Lower Ground.

Conditions

1. All owners, tenants and occupiers of this building are not eligible to participate in any existing or proposed Council on-street resident parking schemes.
2. Signs reading 'all owners, tenants and occupiers of this building are advised that they are not eligible to obtain an on-street resident parking permit from Council' must **be permanently displayed and located** in prominent places such as at display apartments and on all directory boards or notice boards, where they can easily be observed and read by people entering the building. The signs must be erected prior to an Occupation Certificate being issued and must be maintained in good order at all times **by the Owners Corporation**.
3. A minimum of 688 off-street car parking spaces must be provided on-site. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Council's Development Control Plan.
4. The approved parking spaces must be allocated as detailed below. All spaces must be appropriately line-marked and labelled according to this requirement prior to the issue of an Occupation Certificate. If the development is to be strata subdivided, the car park layout must respect the required allocation:
 - (a) 499 residential parking spaces.
 - (b) 98 visitor parking spaces.
 - (c) 55 commercial parking spaces.
 - (d) 36 retail parking spaces.
5. Courier spaces and loading docks must be located close to the service entrance and away from other parking areas.
6. Adequate space must be provided to allow manoeuvring and turning of the different sized vehicles. The design, layout, signage, line marking, lighting and physical controls for all service vehicles must comply with the minimum requirements of 'Australian Standard AS 2890.2 – 2002 Off-Street Parking Part 2: Commercial vehicle facilities'.
7. No part of the common property, apart from the visitor vehicle spaces which are to be used only by visitors to the building, and service vehicle spaces which are to be used only by service vehicles, is to be used for the parking or storage of vehicles or trailers. The strata subdivision of the building is to include an appropriate documentary restriction pursuant to Section 88B of the Conveyancing Act 1919, so burdening common property, with the Council being the authority to release, vary or modify the restriction.
8. Any stacked parking spaces (maximum 2 spaces, nose to tail) must be attached to the same strata title comprising a single dwelling unit or commercial/retail tenancy, subject to the maximum parking limit applying. The stacked parking spaces must be designated (with appropriate signage) for employee or tenant parking only (not visitor parking).

9. *Visitor parking spaces must not at any time be allocated, sold or leased to an individual owner/occupier and must be strictly retained as common property by the Owners Corporation for use by building visitors.*
10. *All visitor parking spaces must be grouped together, and located at the most convenient location to the car parking entrance. All spaces must be clearly marked 'visitor' prior to the issue of an Occupation Certificate. All signs must be maintained in good order at all times.*
11. *Where a boomgate or barrier control is in place, the visitor spaces must be accessible to visitors by the location of an intercom (or card controller system) at the car park entry and at least 6m clear of the property boundary, wired to all units. The intercom must comply with 'Australian Standard AS 1428.2-1992: Design for access and mobility - Enhance and additional requirements - Building and facilities Sections 22 and 23'.*
12. *Of the required car parking spaces, at least 64 must be designed and provided for accessible car parking for people with mobility impairment in accordance with Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking. Accessible car parking spaces must have a minimum headroom of 2.5m and must be clearly marked and appropriately located as accessible parking for people with mobility impairment.*
13. *Where a car park is serviced by lifts, accessible spaces for people with mobility impairment are to be located close to lifts. Where a car park is not serviced by lifts, accessible spaces for people with mobility impairment are to be located at ground level, or accessible to ground level by a continually accessible path of travel, preferably under cover.*
14. *The layout, design and security of bicycle facilities either on-street or off-street must comply with the minimum requirements of Australian Standard AS 2890.3 - 1993 Parking Facilities Part 3: Bicycle Parking Facilities.*
15. *The site must be configured to allow a vehicle to be driven onto and off the site in a forward direction.*
16. *The following signs must be provided and maintained within the site at the point(s) of vehicle egress:*
 - (a) *Compelling drivers to stop before proceeding onto the public way*
 - (b) *Compelling drivers to "Give Way to Pedestrians" before crossing the footway.*
17. *Solid walls immediately adjacent to the basement entry and exit must not exceed 0.6m in height for the first 2.5m within the boundary so as to ensure adequate sight lines for motorists and pedestrians.*
18. *All loading and unloading operations associated with servicing the site must be carried out within the confines of the site, at all times and must not obstruct other properties/units or the public way.*
19. *At all times the service vehicle docks, car parking spaces and access driveways must be kept clear of goods and must not be used for storage purposes, including garbage storage.*
20. *The size of vehicles servicing the property must be a maximum length of 9 metres.*
21. *Any proposals for alterations to the public road, involving traffic and parking arrangements, must be designed in accordance with RMS Technical Directives and must be referred to and agreed to by the Traffic Committee prior to any work commencing on site.*
22. *All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway shall be borne by the developer. The new road works must be designed and constructed in accordance with any relevant Australian Standards, Austroads Guides and RMS Technical Directions.*

23. *All costs associated with signposting for any kerbside parking restrictions and traffic management measures, including any relocation of parking meters, associated with the development shall be borne by the developer.*
24. *A Construction Traffic Management Plan must be submitted and approved by Council prior to the commencement of the works associated with such activity or the Construction Certificate (whichever occurs first). The following matters should be addressed in the plan (where applicable):*
- a) A plan view of the entire site and frontage roadways indicating:*
- i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.*
 - ii) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site.*
 - iii) The proposed locations of work zones where it is not possible for loading/unloading to occur on the site in the frontage roadways (which will require separate approval by Council).*
 - iv) Location of any proposed crane and concrete pump and truck standing areas on and off the site (which will require separate approval by Council).*
 - v) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries.*
 - vi) Details of vertical and horizontal material handling and deliveries.*
 - vii) Any on-site parking area for employees, tradespersons and construction vehicles where possible.*
 - viii) Traffic routes to and from the site from the closest arterial road in all directions.*
- b) Traffic control plan(s) for the site must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual" and prepared by a suitably qualified person. The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.*
25. *Should works require any of the following on public property (footpaths, roads, reserves), an application shall be submitted and approved by Council prior to the commencement of the works associated with such activity or the Construction Certificate (whichever occurs first)*
- i) Work zone.*
 - ii) Temporary closure of roadway/footpath.*
 - iii) Mobile crane or any standing plant*
 - iv) Scaffolding/Hoardings (fencing on public land)*
 - v) Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc.*
 - vi) Installation or replacement of private stormwater drain, utility service or water supply."*

Heritage Advisor

The application has been reviewed by Council's Heritage Advisor who met with the applicant regarding this application and a concurrent application to modify Development Consent BD31/2013. As a result of these meetings and comments from Council's Heritage Advisor, amended architectural plans and landscape plans were submitted to Council on 11 August 2016 and found to be satisfactory by Council's Heritage Advisor.

Neighbour notification

The subject development application was notified under Council's Notification Policy. One (1) submission was received in response to the notification. A summary of the issues raised in that submission is provided below along with assessment comments.

Issue: Insufficient articulation and excessive height of walls addressing Hornsey Lane, Conder Street and part of Belmore Street. Visually imposing. Suggest reduced wall height and a green wall.

Assessment Comment: The external walls oriented to Hornsey Lane are well articulated with shop fronts and recessed terraces with planter beds above. The dimensions of the external walls and materials and finishes of the office component have been assessed and determined to be appropriate to the character of the building, its siting at the perimeter of the Burwood Town Centre and its contribution to the variety and scale of buildings in the streetscape. The visual impact of the external walls is considered appropriate in conjunction with footpath widening and the planting of street trees and additional setbacks from the Masonic Temple (as indicated in revised plans in response to assessment by Council's Heritage Advisor).

Issue: Request pedestrian path between Wynne Avenue and Hornsey Lane to remain open during 2+ year construction period for pedestrian access to Burwood Public School.

Assessment Comment: Construction works will require the entire site to be secured as excavation and construction includes substantial works to sewerage infrastructure and close to the northern boundary of the site and excavation of the basement which extends to part of the northern boundary at Levels B2 and B3. It is not possible to maintain a publicly accessible pedestrian through link along the northern boundary of the site for these reasons. There are alternative pedestrian routes available within the surrounding footpath network.

Issue: Inadequate on-street parking is available for construction workers. Suggest providing subsidised parking in paid parking spaces for construction workers to reduce demands for on-street parking by construction workers.

Assessment Comment: The surrounding streets are subject to timed metered parking and a resident parking permit scheme which is intended to make parking equitably available to residents and visitors (including construction workers). No changes to the current parking scheme are considered necessary as a consequence of the parking demands likely to be generated by construction workers.

Issue: Construction zone in Belmore Street will eliminate 25 on-street parking spaces.

Assessment Comment: The location of hoardings and any temporary use of the adjoining public road reserve for construction activities will be subject to separate assessment of a future Construction Management Plan and applications for hoardings or other uses of the public road and/or footpath in accordance with Section 68 to the Local Government Act, 1993.

Issue: Request the developer pay for new street linemarking during construction.

Assessment Comment: Appropriate conditions of consent are recommended for the restoration of the public road and footpath to Council's standards prior to the completion of the development.

Issue: Concern as to the impacts of heavy vehicles on local traffic movements during construction.

Assessment Comment: Appropriate conditions are recommended with regard to the implementation of a Construction Traffic Management Plan.

Issue: *Traffic and Parking Assessment submitted with the Development Application is outdated.*

Assessment Comment: Appropriate conditions are recommended for updated information to be included in a Construction Traffic Management Plan to be submitted prior to the issue of a Construction Certificate. Council's Development Engineer has assessed the application and determined that the proposal is acceptable subject to recommended conditions.

Issue: *The proposed TravelSmart Plan submitted with the development application is ineffective and should include electronic signage with livestreamed data from TfNSW.*

Assessment Comment: The 'Assessment of Traffic and Parking Implications' dated December 2015 prepared by Transport and Traffic Planning Associates (Ref. 12039) submitted with the application contains adequate information for DA Assessment purposes. Appropriate conditions of consent are recommended for TravelSmart Plans for future users of the building to be approved prior to the issue of a Construction Certificate. Livestreamed data from TfNSW is best accessed by personal means such as internet access and apps rather than the ongoing maintenance and upgrading implications for a fixed installation on site.

Issue: *Request livestream monitoring of energy consumption for various building functions*

Assessment Comment: This is not a requirement of Burwood DCP or BASIX.

Issue: *Incorporate installation of solar electricity generation to roof tops*

Assessment Comment: This is not a requirement of Burwood DCP or BASIX commitments.

Issue: *Rainwater to be re-used in WCs throughout the development*

Assessment Comment: A rainwater reuse tank and pump room are proposed within Basement Level B2. The draft BASIX commitments submitted with the development application will need to be updated to reflect the final approved plans and appropriate conditions are recommended that full details of the methods for re-use of rainwater be indicated on the plans and BASIX certificate and stormwater and hydraulic plans submitted with the Construction Certificate.

Issue: *No landscape concept design plans were submitted with the development application*

Assessment Comments: Landscape Concept Plans prepared by Sturt Noble and Associates Drawing Nos. DA-1225 01 (Issue G), 02 (Issue H), 03 (Issues F and G) and 05 (Issue A) dated 5 August 2016 have been submitted in response to requested for additional information and adjustments to the design and layout of the development. These plans have been assessed and determined to be satisfactory and are recommended for inclusion in conditions of consent in the list of approved plans.

Issue: *No Voluntary Planning Agreement has been submitted addressing the dedication of a public laneway along the northern boundary (between Conder and Wynne Streets).*

Assessment Comment: The land adjacent to the northern boundary which is to be publicly accessible cannot be dedicated to Council as part of the basement extends beneath the laneway.

Public access along the northern boundary between Wynne Avenue and Hornsey Lane is to be achieved through recommended conditions of consent for the creation of an easement for public access 9.5m wide. The land is to be publicly accessible at all times and is to be landscaped and maintained suitable for universal access. The easement is to be registered on the Deposited Plan for the lot and identified in a Section 88B Instrument in accordance with the requirements of the Conveyancing Act, 1919. The Section 88B instrument is to nominate Burwood City Council as an interested Party to the terms of the easement. The easement is to be registered with NSW Land and Property Information Systems prior to the issue of an Occupation Certificate for any buildings on the site except for the former Masonic Temple.

Issue: The BASIX report submitted with the development application is not valid.

Assessment Comment: Due to the time elapsed between the lodgement and determination of the development application the BASIX certificate is not valid. However, conditions of consent are recommended for a revised BASIX certificate to be submitted with the application for a Construction Certificate.

Issue: No car wash bays have been proposed.

Assessment Comment: A car wash bay is located on each of Basement levels B2, B3 and B4 and are considered satisfactory. Conditions of consent are recommended regarding installation and maintenance of signage for use and availability of the car wash bays.

Issue: Building Code of Australia alternative solutions are required and information is required for assessment with the development application.

Assessment Comment: A BCA Assessment report prepared by Building Code Assistance dated 15 December 2015 concludes that the development can achieve satisfactory compliance with all relevant standards and requirements with the inclusion of some alternative solutions and minor adjustments for compliance with Australian Standards for access for persons with a disability AS1428.1 – 2009 and AS2890.6. The Access Report prepared by PSE Access Consulting dated 10 December 2015 submitted with the development application concludes that the proposal is compliant with all relevant requirements. Both these reports are recommended for inclusion with the list of documents that will form part of the development consent to ensure all recommendations are implemented.

Issue: No NABERS assessment for the non-residential component of the development has been submitted with the development application (a minimum 4.5 star rating under the National Australian Built Environment Rating is a requirement of Section 6.7 to Burwood Development Control Plan).

Assessment Comment: A NABERS assessment was not submitted with the development application. Conditions are recommended for a NABERS assessment to be submitted with the application for a Construction Certificate for all non-residential components of the development demonstrating a minimum 4.5 star rating.

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.

Notwithstanding proposed variation to Height and FSR and provisions pursuant to Clause 4.6 of BLEP 2012, the proposed development is consistent with the objectives for building height and density of development envisaged by the controls that apply to the Burwood Town Centre and is generally considered to display a high quality of architectural design and consistency with the design principles and criteria of the ADG.

The office component of Building A has been assessed as generic office space and not with the expectation that the premises may be used as Council premises. Conditions are recommended for the pedestrian bridge linking the office space to the library to be deleted. Minor design details including the path of travel between the residential component of Building A and the shared communal open space, the number of on-site parking space and the capacity for storage ancillary to the apartments will be addressed through deferred commencement conditions and general conditions of consent.

Accordingly it is recommended that the application be granted deferred development consent subject to the conditions contained in Attachment A.