



SUPPLEMENTARY ASSESSMENT REPORT TO SYDNEY EAST JOINT REGIONAL PLANNING PANEL

Independent Assessment of BD193/2015 for:

- Mixed Use Development comprising four (4) level basement with capacity for 688 parking spaces, sixteen (16) commercial tenancies, Building A (11 storeys containing office floor space of 4,036m² and 88 apartments), Building B (22 storeys containing 218 apartments) and Building C (19 storeys containing 184 apartments), alterations and re-use of the former Masonic Temple, landscaping and dedication of a publicly accessible through link between Hornsey Lane and Wynne Avenue.

39-47 BELMORE STREET | BURWOOD

CLIENT: BURWOOD COUNCIL

PROJECT REF: 0117/16

DATE: 3 OCTOBER 2016

PLANNING
I N G E N U I T Y

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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	<p>Mixed Use development comprising:</p> <ul style="list-style-type: none"> - Four (4) levels of basement extending across the entire site with capacity for 688 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 184 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. <p>The application has been submitted with a voluntary planning agreement.</p>
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.

1. EXECUTIVE SUMMARY

On 12 October 2016 the Sydney East Joint Regional Planning Panel (JRPP) considered an assessment report on Development Application BD 193/2015 (JRPP Ref. 2016SYE043) and draft conditions of development consent. Draft conditions of consent included two matters for deferred commencement and ten (10) design changes.

The Panel deferred the determination of the application in order to allow the applicant to submit the following:

- A valid BASIX Certificate relating to the latest amended drawings;
- Amended drawings responding to the two draft Deferred Commencement conditions; and
- Amended drawings responding to the design changes required in draft conditions numbers 1 to 10 inclusive.

The abovelisted information was provided to Council by the applicant.

This supplementary report assesses the abovelisted information where it is different from the details reported in the original assessment report considered by the JRPP on 12 October 2016 and is to be read in conjunction with that original assessment report. Draft conditions of consent are included in Attachment 1 and have been revised with consideration to the abovelisted information and also revised to provide a more structured sequence of conditions.

2. ADDITIONAL INFORMATION AND REVISED PLANS

The adjustment to the drawings has resulted in a change to the description of the development proposal which reduces the number of apartments in Building C by one (1) and increases the number of on-site parking spaces to 688.

Therefore the description of the proposed development is a mixed use development with:

- Four (4) levels of basement extending across the entire site with capacity for 688 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 and fronting 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 184 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 proposal is fully compliant with the Building Height Plane control of Clause 4.3A(2) of Burwood Local Environmental Plan, 2012 (BLEP 2012). One (1) apartment on the uppermost level of Building C was deleted to reduce the floorplate of this level and achieve compliance with the southern Building Height Plane. The hoods to the uppermost level of balconies on the western façade of Building A were deleted to achieve compliance with the western Building Height Plane (as noted in previous revisions dated 31 August and confirmed in the final set of plans dated 20 October, 2016).

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 still applicable to the assessment and a revised evaluation of these requests has been included in this supplementary report. The assessment of the request for variation to the height and FSR controls is independent of, and does not rely upon, Council's "Carrying out Bonus Development in Exchange for Public Benefits Policy" and the Voluntary Planning Agreement ("VPA").

2.1 Deferred Commencement Matter (1)

Deferred Commencement Matter (1) from the draft conditions states as follows:

“(1) The architectural plans are to be amended to provide an accessible path of travel between the residential component of Building A and the shared communal open space between Buildings A and B which does not require the residents of Building A to traverse the public footpath or traverse areas within the development dedicated to other uses (such as the office car park).”

The revised plans dated 20 October 2016 include a lift to the external façade of Building A to provide access between the lowest residential level of Building A and the shared communal open space area between Building A and Building B. The lift will provide an accessible path of travel for all residents of Building A and their visitors between the apartments of Building A and the communal open space area without the need to traverse the public footpath or areas of the development dedicated to other uses.

The lift is accessible via a partly open pathway between apartments A.2.07 and A.2.08. The new lift results in a minor change to the eastern façade of Building A and will not have an unreasonable detrimental impact to the amenity and function of the commercial office space adjacent to the lift shaft. The lift location provides safe and convenient access for residents of Building A direct to the communal open space area and will not detract from the function and landscaping qualities of the communal open space.

The urban design impacts of the change to accommodate the new lift have been assessed by GM Urban Design (GMU). The comments from GMU acknowledge that the access was not planned in the original scheme and is one of only two practical solutions (the other being an internal lift within the office tenancy). GMU also note that the lift has a small footprint and that the change required should seek to maintain the integrity of the built form.

An internal lift would require an enclosed fire-isolated corridor 14m long through the office tenancy. There are differences in the finished levels of the office floor levels and the communal open space which would require changes in levels to be resolved with a sloping or ramped floor within a corridor link. For these reasons an external lift as proposed has functional and amenity advantages over an internal lift with a corridor link through the office premises.

The new external lift extends for four storeys (including the level of the communal open space). The exterior of the lift shaft can be treated in colours and materials to ensure it is visually recessive in the façade. The eastern façade is an internal elevation within the development site. Landscaping, including small trees, is to be planted close to the eastern façade of the office space. For these reasons the lift as proposed will not visually detract from the overall external appearance of Building A.

The revised plans showing details of a new external lift for Building A are considered to satisfactorily address Deferred Commencement Matter (1).

2.2 Deferred Commencement Matter (2)

Deferred Commencement Matter (2) from the draft conditions states as follows:

“(2) Further details of the Pedestrian access route between the car parking spaces at Basement Level B1 ancillary to the office use and the office premises via the ‘back of house’ (past switch rooms and garage storage rooms and toilets to the office foyer area) are required to be submitted with the Construction Certificate. These details must demonstrate that this route is accessible, safe, legible and attractive as a common entry to the office premises for staff and customers.”

The revised plans Drawing No.DA-109 dated 20 October 2016 indicate a platform lift adjacent to stairs within the pedestrian access route linking the office car parking in Basement B1 to the office foyer area. The route between the platform lift and the car parking area is to be a minimum of 2500mm wide and the route between the platform lift and the office interior is a minimum 1550mm wide. The single door along the route is to be fully transparent glazing to optimise lines of sight. Notations on the plans indicate the passage from the carpark will have appropriate signage, lighting and finishes to make it a safe, legible and attractive entry space. The entry door will have a minimum 850mm wide leaf and give access to a 1550mm wide corridor which is to have the same lighting and finishes as the adjacent office space.

The revised plans including notations for the design, treatment and finishes to the pedestrian route between the office car parking and the office foyer are considered to satisfactorily address Deferred Commencement Matter (2).

2.3 Design Change Condition 1

Condition:

“(1) The door opening to Belmore Street from the retail/visitor lobby shall be auto-opening so that people carrying items do not need to manually operate the door. Signage shall be provided at the basement level and at the Belmore Street frontage directing visitors and retail users of the access link lift between the parking area and Belmore Street.”

Notation #A has been added to Drawing DA-110 dated 20 October 2016 indicating an auto-opening sliding glass door. This design change has been satisfactorily addressed in the final DA plans. Requirements for directional signage details have been included in conditions relating to the layout and finishes within the basement.

2.4 Design Change Condition 2

“(2) All units are to be provided with the minimum secured storage requirements of 6m³, 8m³ and 10m³ for one, two and three or more bedroom units respectively where 50% of that storage space must be within each unit and in addition to kitchen cupboards and wardrobes. This amendment is necessary to achieve security and amenity for residents. Location and dimensions of all internal storage spaces for all units are to be indicated on the plans to

Council's satisfaction prior to the issue of a Construction Certificate."

A revised schedule was submitted to Council on 13 October 2016. This schedule includes a commitment for storage facilities for all apartments and plans showing the location of secured storage areas within the basement levels B2, B3 and B4 ancillary to the apartments. The revised schedule has been included in the list of approved plans in the recommended conditions of consent. This design change has been satisfactorily addressed.

2.5 Design Change Condition 3

"(3) The design and layout of the following apartments is to be amended to ensure that the 'study room' cannot be an enclosed room. That is, the study cannot have four walls and a door. The space must be open to the adjoining interior space to optimise light and ventilation and to prevent the space being used as a separate bedroom. Details of these changes are to be indicated on the plans submitted with the Construction Certificate.

- * B.G.02, B.G.03, B.G. 08, B.G. 09
- * C.G.01, C.G.02, C.G.03, C.G.07, C.G.08, C.G.09
- * B.1.01, B.1.02, B.1.03, B.1.10
- * C.1.01, C.1.07, C.1.08, C.1.09
- * A.2.07, A.2.08, A.2.09
- * B.2.01, B.2.02, B.2.03, B.2.10
- * C.2.07, C.2.08, C.2.09,
- * A.3.07, A5.07, A.6.07,
- * A.3.08, A5.08, A6.08,
- * A.3.09, A5.09, A6.09
- * B.3.01, B5.01, B6.01,
- * B.3.02, B5.02, B6.02,
- * B.3.03, B5.03, B6.03,
- * B.3.10, B5.10, B6.10,
- * C.3.07, C5.07, C6.07,
- * C.3.08, C5.08, C6.08,
- * C.3.09, C5.09, C6.09,
- * A.7.07, A.7.08, A.7.09,
- * B.7.01, B.7.02, B.7.03, B.7.10
- * C.7.07, C.7.08, C.7.09,
- * A.8.07, A.8.08, A.8.09,
- * B.8.01, B.8.02, B.8.03, B.8.10
- * C.8.06, C.8.07
- * A.9.07, A.9.08, A.9.09, A.10.07, A.10.08, A.10.09,
- * B.9.01, B.9.02, B.9.03, B.9.10, B.10.01, B.10.02, B.10.03, B.10.10,
- * C.9.06, C.9.07, C.10.06, C.10.07,
- * B.11.01, B.11.02, B.11.03, B.11.10, B.12.01, B.12.02, B.12.03, B.12.10, B.13.01, B.13.02, B.13.03, B.13.10, B.15.01, B.15.02, B.15.03, B.15.10,
- * C.11.06, C.11.07, C.12.06, C.12.07, C.13.06, C.13.07, C.15.06, C.15.07,
- * B.16.01, B.16.02, B.16.03, B.16.05, B.16.06, B.16.09, B.17.01, B.17.02, B.17.03, B.17.05, B.17.06, B.17.09, B.18.01, B.18.02, B.18.03, B.18.05, B.18.06, B.18.09, B.19.01,

B.19.02, B.19.03, B.19.05, B.19.06, B.19.09, B.20.01, B.20.02, B.20.03, B.20.05, B.20.06, B.20.09,
* C.16.06, C.16.07, C.17.06, C.17.07, C.18.06, C.18.07, C.19.06, C.19.07, C.20.06, C.20.07,
* B.21.01, B.21.02, B.21.03, B.21.05, B.21.06, B.21.09,
* B.22.01, B.22.02, B.22.03, B.22.05, B.23.01, B.23.02, B.23.03, B.23.05.”

Revised sketch floor plans were submitted to Council on 13 October 2016 and a set of revised plans dated 20 October 2016 indicate changes to the floor plans of the abovelisted apartments. Comments from GM Urban Design and Architecture (GMU) note that the space appears ambiguous in its use and has recommended conditions for the installation of fixed, built-in cabinetry in each space for desk space and storage and that details of the fitout be submitted with the Construction Certificate. This design change has been indicated in the plans submitted by the applicant and included in the listed of approved plans in Attachment 1. No additional conditions are required.

This design change has been adequately addressed with revised plans.

2.6 Design Change Condition 4

“(4) The bedroom space to the following apartments is to be separated from the open plan living room space by sliding or folding doors composed of materials which allow natural light and ventilation. This design change is required to optimise natural light and ventilation to the bedroom space and allow for flexible use of the space within these apartments. Both interior ‘walls’ to the bedrooms are to be constructed in this manner to enable the space to be flexible in its use as either open to the living room space or enclosed as a bedroom. Details of these design changes are to be indicated on the plans submitted with the Construction Certificate.

- B.1.06, B.1.12, B.1.13
- C.1.11, C.1.12 (second bedroom), C.1.13 (second bedroom), C.1.15
- A.2.12, A.2.03, A.3.12, A.3.03, A.5.12, A.5.03, A.6.12, A.6.03, A.7.03, A.7.12, A.8.03, A.8.12, A.9.03, A.9.12, A.10.03, A.10.12,
- B.2.06, B.3.06, B.5.06, B.6.06, B.7.06, B.8.06, B.9.06, B.10.06, B.11.06, B.12.06, B.13.06, B.15.06,
- C.2.01, C.2.12, C.3.01, C.3.12, C.5.01, C.5.12, C.6.01, C.6.12, C.7.01, C.7.12, C.8.09, C.9.09, C.10.09, C.11.09, C.12.09, C.13.09, C.15.09, C.16.09, C.17.09, C.18.09.”

Revised architectural plans dated 20 October 2016 indicate this design change has been included in the plan set as #B. A full height sliding glass door is to be installed to the bedrooms which are not provided with an exterior window as listed above. This design change is consistent with other bedroom layouts approved with previous modifications of consent to DA31/2013 for the same site.

This design change has been satisfactorily addressed by notation #B on the submitted plans.

2.7 Design Change Condition 5

“(5) Apartments B.G.01, BG.10, B.1.01, B.1.10, and C.1.10 are to be amended to eliminate the ‘gooseneck’ configuration for the bedroom and provide a full floor to ceiling opening to the external wall to optimise natural light and ventilation. Details of these changes are to be

included in the plans submitted with the Construction Certificate for approval by Council.”

Revised architectural plans dated 20 October 2016 indicate this design change has been included in the plan set as #E. The full external wall to the bedroom is provided with glazing to a surface area of 2700mm x 1400mm and the opening includes a door which allows for maximum air circulation. The area of glazing exceeds the minimum Building Code of Australia requirements for these rooms.

This design change has been satisfactorily addressed by notation #E on the submitted plans.

2.8 Design Change Condition 6

“(6) In order to improve privacy between habitable spaces and communal spaces the following amendments are to be indicated on the plans submitted with the Construction Certificate to the satisfaction of Council:

(i) windows to study areas and bedrooms directly opposite each other and separated by 1.5m or less including those for Units A.2.07 and A.2.08 and typical units directly above, and including those for Units B.1.02 and B.1.03 and typical units at all levels directly above and including Units C.1.07 and C.1.08 and typical units at all levels directly above these units are to be high sill windows with frosted glass and only openable by a base hinge. Alternatively these windows could be staggered or only available to one side;

(ii) the courtyard to Unit B.G.10 is to be provided with a fence of minimum height 1.2m and a landscaped strip suitable to achieve privacy from the adjoining access ramp.”

Revised architectural plans dated 20 October 2016 indicate this design change has been included in the plan set as #C where windows have been provided with frosted glazing and a sill height of 1500mm. GMU has advised this treatment is satisfactory.

This design change has been satisfactorily addressed by notation #C on the submitted plans.

2.9 Design Change Conditions 7 and 8

“(7) The awnings across the frontages to the retail tenancies LG.01 to LG.08 are to form a continuous awning for the full length of the building façade with a minimum width of 2m to enable pedestrians to walk under mostly continuous awning cover between Conder Street and Wynne Avenue. Full details of these awnings are to be included in the plan to be submitted with the Construction Certificate.”

“(8) A continuous awning a minimum 2m wide is to be provided for the full length of the eastern façade (with the exception of the vehicle entry/exit location) and continuing around the south east corner of the building to link with the awning along Belmore Road to provide a continuous undercover route within the footpath reserve for pedestrians. Details of the awning are to be indicated on the plans submitted with the Construction Certificate.”

This matter has been discussed with the applicant since the JRPP meeting of 12 October 2016. It is noted that a completely continuous awning cannot be achieved along the northern façade adjacent to the public through link due to minimum clearances required for maintenance access to the three electricity substations. Minor breaks in the awnings are also required to accommodate the architectural hood features along all facades. The continuity of awnings to all facades has been optimised accounting for the electricity substations, architectural features and separation from the former Masonic Temple and its curtilage.

This design requirement has been satisfactorily resolved.

2.10 Design Change Condition 9

“(9) The landscaped area within the setback between the office premises of Building A and Belmore Street is to be accessible and details of the continuous path of travel are to be included on the plans submitted with the Construction Certificate.”

On 13 October 2016 the applicant provided an email to Council which included a Landscape Concept Plan showing proposed finished levels throughout the setback area to Belmore Street and finished floor levels of the lowest level of Building A. An extract of this Landscape Concept Plan is included in Figure 1 and shows the change in levels across the area adjacent to the southern façade of Building A to be accessible. These details have been included in revised Landscape Concept Plans dated 25 October, 2016. These revised Landscape Concept Plans are included in the list of plans in the recommended conditions of consent in Attachment 1.

This design change has been satisfactorily addressed.

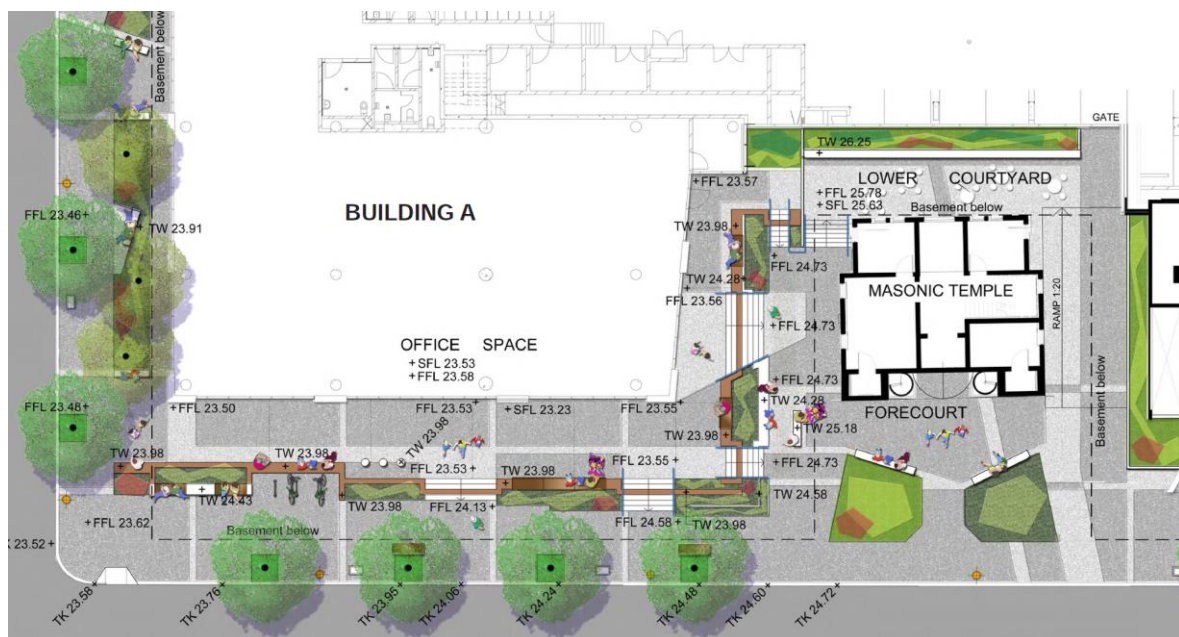


Figure 1: Extract from Concept Landscape Plan – south west corner of the site

2.11 Design Change Condition 10

“(10) The façade of the lower ground level of the office premises in Building A to Belmore Street is to include double-opening glass doors within each of the three (3) sections of glass curtain wall. One double-opening glass door is to be provided within the section of glass curtain wall oriented to the former Masonic Temple. These additional doors are required to provide the opportunity for, and perception of, activation of the building façade at the level at which pedestrians pass the exterior of the building.”

Revised architectural plans dated 20 October 2016 indicate this design change has been included in the Floor Plan Drawing DA-109 and Elevations DA-133 and D-136.

This design change has been satisfactorily addressed on the submitted plans.

2.12 On-site Parking

The revised plans demonstrate the four (4) basement levels will have capacity for a total of 688 parking spaces. Parking for each aspect of the development is to be structurally separated as described in the original assessment report with adjustments as follows:

- Basement Level B1 contains 36 parking spaces ancillary to the commercial premises, three (3) spaces for visitors and two (2) spaces dedicated to car share arrangements; and
- Basements Levels B2, B3 and B4 contain a total of 592 spaces for use by residents and visitors.

The proposed parking provisions in the revised architectural plans dated 20 October 2016 comply with the on-site parking requirements specified by Council's Traffic and Transport Officer as satisfactory. The recommended condition of consent regarding the allocation of parking spaces for any future strata subdivision of the development is recommended to be retained 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.”*

3. STATUTORY PLANNING FRAMEWORK

The changes to the scheme as detailed above do not substantially change the compliance of the proposed development with the relevant Environmental Planning Instruments (EPIs), Development Control Plans (DCPs), Codes and Policies and Draft EPIs and DCPs as previously detailed in the original assessment report to the JRPP meeting agenda of 12 October, 2016. Exceptions to this are:

- demonstrated compliance with the minimum storage requirements specified in Part 4G to the Apartment Design Guide (ADG);
- demonstrated compliance with the Building Height Planes of Clause 4.3A(2) resulting in the reduced footprint or the uppermost level of Building C; and
- the deletion of one apartment from Building C has improved the data for solar access to living rooms and private open space areas for Building C from 71% to 72% and the number of single southerly aspect apartments for Building C is reduced from 9% to 8%.

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

Updated BASIX Certificates have been submitted for the residential flat building aspects of the development which demonstrate compliance with the requirements of the Policy. The reference details of the BASIX Certificate have been listed in the approved plans and documents contained in the recommended conditions of consent.

3.2 Burwood Local Environmental Plan 2012

Non-compliances with the development standards for Height of Buildings and Floor Space Ratio (FSR) are quantitatively and qualitatively substantially the same after the design changes described in Section 2 of this supplementary report. Minor changes to gross floor area (51m² less) have resulted from the deletion of one apartment from Building C. The adjustment is described in the revised table in Section 3.2.2 below. The requests for variation to the development standards for Building Height and FSR have been revised in this supplementary report in light of the design changes and feedback from GMU and to clarify matters from the previous text extracted from the applicant's request for variation as included in the previous assessment report to the JRPP agenda of 12 October, 2016.

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 and the FSR 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:

- “
- (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 applicant's single Clause 4.6 variation request seeks to collectively 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 quoting the applicant's justifications, it was not possible to clearly extract text relating only to each standard.

3.2.1 Request for variation to the development standard in BLEP 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 2. The proposed building heights and proposed variations to the LEP height controls are summarised as follows:

Table 1: 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%

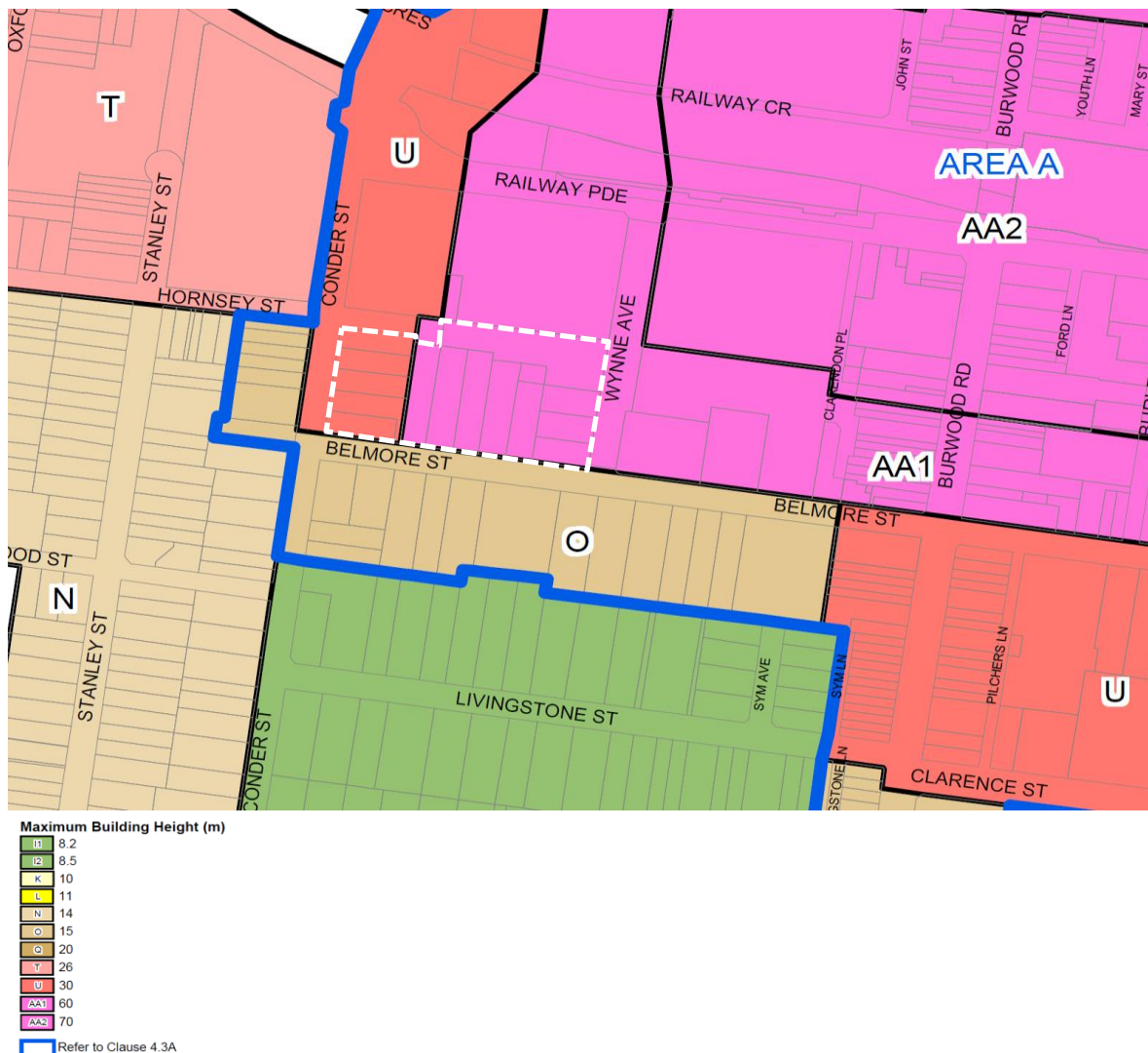


Figure 2: Extract from the BLEP 2012 Height of Buildings Map

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 revised architectural plans Revision "Q" dated 20 October 2016 which deleted the uppermost level of the proposed 'hood' feature to the Conder Street façade of Building A and reduced the floorplate of the uppermost level of Building C including deletion of an apartment on this level.

Applicant's Request to vary Maximum Height of Buildings Development Standard

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.

As detailed in Table 1, each building exceeds the applicable height of building control.

In relation to sub-clause 4.6(3)(a), the variation request submitted by the applicant includes the following reasons as to why compliance with the maximum height development standard is unreasonable and unnecessary. The following text in italics is quoted from the applicant's Statement of Environmental Effects and request for variation:

"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.

(i) 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'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. This merit assessment of this Clause 4.6 variation request does not consider Council's Policy "Carrying out Bonus Development in Exchange for Public Benefits Policy" as conferring a presumption of a bonus height or FSR for the development. This merit assessment does not consider Council's Resolution of 24 May

2016 regarding a Voluntary Planning Agreement (“VPA”) to secure various public benefits as conferring a presumption of a bonus height or FSR to the development.

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 provisions 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. Widening the publicly accessible space surrounding the development will increase the sense of separation and openness provided by the public domain and balance the scale of the built form. New canopy trees along Conder and Belmore Streets will add new planting of a scale which creates a buffer between the lower and upper levels of the building and partly softens the view of the towers as viewed from the adjoining and nearby streets.

Particular effort has been made to achieve building proportions which break the built form into a distinct, consolidated podium level and well-separated towers.

The proportions of the lower levels of the building are considered to respond well to the site and its setting. The basement levels provide appropriate capacity for on-site parking and ancillary features including storage, waste management, loading and separation of commercial parking from residential parking. The capacity of the basement benefits substantially from the dimensions achieved from site consolidation. The podium height is compatible with each streetscape to which it contributes. The three levels of office podium to Building A, combined with the substantial street setbacks and separations, presents an appropriate scale to the height of the adjoining heritage items being the former Masonic Temple and the library building. The interface between the office component of Building A and the adjoining heritage items has been found to be satisfactory by Council’s Heritage Advisor. The two storey podium heights of Buildings B and C are human-scale and include recessed and prominent architectural features to ensure the fine-grained detail is appropriate to an active streetscape defining the edge of the Burwood Town Centre. The podium height is stepped along the Wynne Street façade in response to the slope of the site and public domain.

The scale and proportion of the tower elements and façade treatments are the outcome of detailed discussions with the applicant and independent urban design consultant GMU. The towers have a slender east-west dimension. This results in optimum separation within the site and to neighbouring buildings as well as narrow shadow profiles and solar penetration. The towers demonstrate a high level of design excellence with a combination of recessed and protruding elements achieved with articulation of external walls, notches, protruding and recessed balconies and hoods, solid and transparent balustrades, variations in window sizes and arrangements and combinations of colours, materials and finishes. Treatments and finishes vary between each tower. There are also common structural elements and proportions shared by the towers to achieve aesthetic harmony throughout the

site. At the uppermost levels of Buildings B and C the floorplates are reduced to step the highest portions of the towers away from the southern edge. This results in the uppermost levels of the building making minimal contributions to additional shadow and, as confirmed by GMU, the additional height of Building B will not be perceptible from the public domain to the western end of Belmore Street due to the minor additional height of Building A. GMU also notes that the additional height of all buildings has maintained the overall relationship of building bulk and scale within the site from the common vantage points in the adjoining streets. GMU has also commented that *“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 northwest.”*

Consolidation of this parcel of land has delivered a distinct advantage for the redevelopment of this site and for structurally and functionally defining the edge of the Burwood Town Centre. The proposed building heights create a transition with the lower building to the west of the site (within the Town Centre Perimeter Area) and distinctly higher buildings through the centre and east of the site (within the Middle Ring of the Town Centre). Over a consolidated site, the proposed tower forms can achieve greater separation between the towers as well as greater separation from nearby buildings with a coordinated architectural scheme.

Insisting on strict compliance would not yield an improved building outcome. As described above, a coherent coordinated scheme of compatible towers and podiums will create a harmonious streetscape and an attractive, harmonious rhythm in building proportions on macro and micro scales. Tall, slender towers with a longer north-south axis are more appropriate for the site than multiple lower, broader towers.

Shadow diagrams submitted with the application have been reviewed in comparison to Development Consent DA31/2013 and with a compliant building envelope. The proposed increase in shadow impacts is considered nominal. The most notable differences in the midwinter shadow will be limited to prior to 10am as follows:

- an increase in the shadowing of the front façade of the dwelling at 35 Conder Street at 9am (with no shadow impact from 9.30am onwards);
- an increase in the shadow to the front setbacks of No.s 21, 23A, 23 and 25 Livingstone Street at 9am with the shadow persisting to 9.30am for No.25 Livingstone Street (and no substantial additional shadow beyond self-shadowing from 10am).

There will be no substantial or perceptible additional shadow impacts to other surrounding properties as a result of the additional building height.

The sun-eye diagrams show that the self-overshadowing of Building A by Building B is not due to the additional height.

The site has suitable dimensions and is in an appropriate location as part of the Town Centre to support additional building 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). The arguments that the applicant has advanced are supported in the circumstances. The merit assessment of the matters specific to the site and the proposal concludes that the variation to the development standard for building height is warranted in this case.

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

Objectives of the Building Height Standard

Objective (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). The orderly redevelopment of the site is particularly enhanced by the consolidation of such a large parcel of land on the edge of the Burwood Town Centre. As stated above, consolidated redevelopment results in many advantages including optimising capacity of the basement levels, maximising opportunities to activate the street frontages, creation of a new public through link and a coordinated, well resolved architectural scheme which provides a clear transition in building height towards the town centre and allows spatial separation of the towers and coordination of layouts and building treatments to provide an overall harmonious scheme.

Objective (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 for Building B and C 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. The proposed

building heights are consistent with the strategic intention to achieve a transition in building height and apply maximum building height planes. 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 shadow diagrams show minor additional overshadowing impacts as a result of the additional height. Additional shadow impacts are limited to prior to 10am midwinter and are limited to the front setback areas of five (5) nearby properties. 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. There is no increase in internal shadowing in comparison to the previous scheme approved with DA31/2013.

The proposed building heights are considered to be consistent with the objectives of the development standard for building height.

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. The merit assessment of the matters specific to the site and the proposal concludes that the variation to the development standard for building height is warranted in this case.

3.2.2 Request for variation to the development standard in BLEP Clause 4.4 Floor Space Ratio

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 3. 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 in Table 2 and take into account the reduction in GFA of 51m² as a result of design changes discussed in Section 2.

Table 2: 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
Proposed FS - entire site	48,410m ²
Proposed FSR - entire site	4.77:1
Proposed FS exceedance to the BLEP 2012 FS	6,618m ² (variation of 15.84%)
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	36,589m ² (exceedance to BLEP 2012 of 2,556m ² and variation of 7.5%)
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	4.61:1 (exceedance to BLEP 2012 of 1.61:1 equivalent to 12,194m ² and variation of 53.7%)

The total permissible FS under BLEP 2012 over the entire site is 41,792m². The proposed total FS for the entire site is 48,410m². The difference between these two FS amounts is 6,618m². The exceedance as a percentage of the maximum permitted FS for the entire site is equivalent to 15.84%.

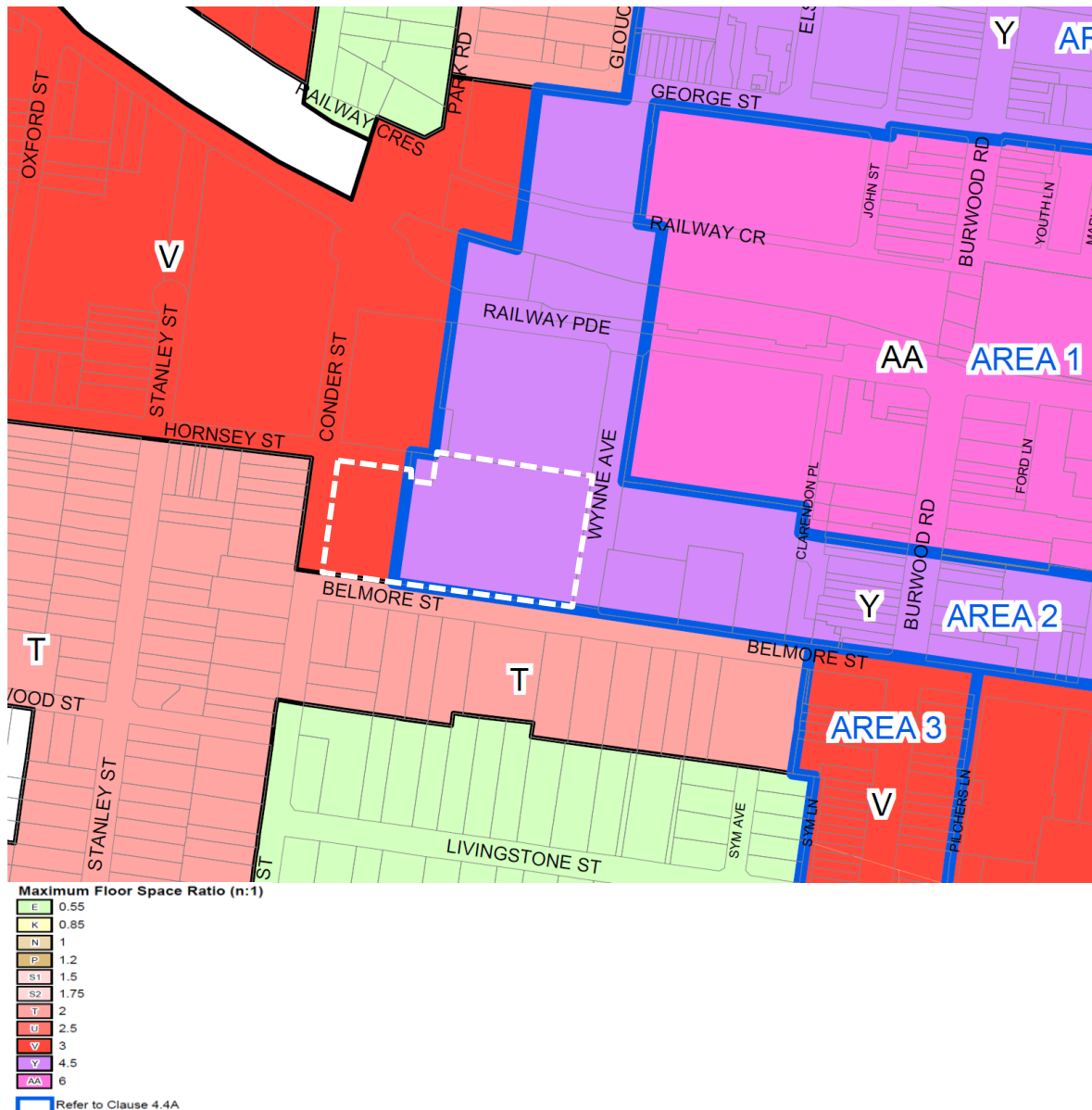


Figure 3: Extract from BLEP 2012 Floor Space Ratio Map

Applicant's Request to vary Maximum Floor Space Ratio Development Standard

A written request, in relation to the development's non-compliance with the maximum FSR development standards in accordance with Clause 4.6 (Exceptions to Development Standards) of BLEP 2012, was submitted with the application.

In relation to sub-clause 4.6(3)(a), the variation request submitted by the applicant includes the following reasons as to why compliance with the maximum FSR development standards is unreasonable and unnecessary. The following text in *italics* is quoted from the applicant's Statement of Environmental Effects and request for variation. As the applicant submitted a single, combined request for variation to building height and FSR standards, the quoted text in some respects addresses multiple standards.

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 x 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;
- 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. This merit assessment of this Clause 4.6 variation request does not consider Council's Policy "Carrying out Bonus Development in Exchange for Public Benefits Policy" as conferring a presumption of a bonus height or FSR for the development. This merit assessment does not consider Council's Resolution of 24 May 2016 regarding a Voluntary Planning Agreement ("VPA") to secure various public benefits as conferring a presumption of a bonus height or FSR to the development.

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. Specifically the planning controls for Burwood Town Centre seek 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.

Consolidation of this parcel of land has delivered distinct advantages for the redevelopment of this site and for structurally and functionally defining the edge of the Burwood Town Centre. The proposed distribution of floor space at ground level creates a cohesive and continuous active façade to Conder Street, Belmore Street, Wynne Avenue and to the new pedestrian link. Continuity in active street frontages is a desirable element for a town centre location. Consolidation of the site also allows floor space distribution into three well-separated tower elements. Tower separation as proposed results in high quality communal open spaces at podium level facilitating solar penetration into and through the site and large spaces for landscaping, passive and active recreation. The setbacks to Conder and Belmore Streets and the large areas of communal open space balance well with the bulk and scale of the proposed towers.

The redevelopment of this consolidated site has also enabled the distribution of floor space in a manner which establishes an appropriate curtilage to the former Masonic Temple.

The public benefits of the proposal include new landscaping works within Hornsey Lane to create a small village square, increased publicly accessible space within Conder and Belmore Streets and the retention and re-use of the former Masonic Temple. Creation of a suitable curtilage for the former Masonic Temple requires some redistribution of floor space away from that building and the proposal is considered to be satisfactory in this regard. Other public benefits include the provision of a publicly accessible right-of-way linking Hornsey Lane with Wynne Avenue. This landscaped through-link as well as 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. The manner in which floor space is proposed to be distributed within the site will enhance the quality and microclimate of the streetscape and public domain.

Insisting on strict compliance would not yield an improved built form or environmental 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 consistent with the aims of creating and sustaining a vibrant 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 to support 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 built 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.

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. The proposed improvements to the public domain and public domain interface, the restoration and adaptive re-use of the former Masonic Temple and the new public through link are improvements to the public domain which impose burdens on the developable area of the site. The proposed FSR and building massing are appropriately balanced with the proposed setbacks, building separation and public domain improvements including works to the former Masonic Temple and its curtilage, the new pedestrian through link, landscaping within Hornsey Lane and integrating publicly accessible space within the setbacks to Belmore and Conder Streets in particular.

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 and the distribution of building mass creates a transition from west to east through the site and 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.

The merit assessment of the matters specific to the site and the proposal concludes that the variation to the development standard for FSR is warranted in this case.

3.2.3 Request to vary the Exception to Floor Space Ratio Standard (ratio of Residential floor space)

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 4.61:1 and requires a variation to the development standard of Clause 4.4A of 53.7%.

In relation to subclause 4.6(3)(a), the submitted variation request included the reasons outlined in Section 3.2.2 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 and the location of the majority of commercial space on the western portion of the site physically adjacent to improvements in the public domain (being 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 to 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 proposal includes a diversity in commercial floor space with sixteen (16) commercial tenancies of various sizes, the adaptive re-use of the former Masonic Temple as a commercial building and a multi-level office premises. The commercial premises are well designed and located with direct frontages to the public domain, shared loading and on-site parking, shared waste management and improvements in the pedestrian environment surrounding the site which will encourage patronage. The adaptive reuse of the former Masonic Temple is supported by Council's Heritage Advisor and the commercial use includes indoor and outdoor spaces. The proposed multi-storey office space within Building A is located on the Town Centre Perimeter. Although this is contrary to the planned distribution of commercial floor space as prescribed in the FSR controls, it will benefit from integration with the widened footpaths along Conder and Belmore Streets, the new village square within Hornsey Lane, the movement of pedestrians along the new through link and proximity to existing civic buildings and the public school.

The proposed proportion of commercial floor space is considered appropriate to the context and setting of the site within the Burwood Town Centre.

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 in Section 3.2.2). 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.

Objectives of the Exception to Floor Space Ratio Standard (ratio of Residential floor space)

Objective *"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 development standard for the exception to floor space ratio. The proposal provides a variety of commercial tenancies which address all street frontages and the new public through link. The office tenancy occupies three levels and has the potential to be used for a single tenancy or multiple tenancies. The former Masonic Temple is a free standing two storey premises with indoor and outdoor spaces which optimise the use of the original building and its curtilage.

The residential component of the development does not adversely interrupt the active frontages. Residential lobbies are suitably integrated with the ground level facades such that they are visually distinct but do not create discontinuity for the active frontages. Basement level B1 distinctly separates commercial parking and loading areas from residential parking and commercial vehicle movements are well separated from residential traffic with two distinctly separate vehicle crossings. Functionally the residential uses within the site do not dominate the commercial uses. For these reasons it is considered that the proposed residential floor space is an appropriate balance to the commercial component within the site and also appropriate to the setting of the site at the edge of the Burwood Town Centre.

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. This merit assessment of the matters specific to the site and the proposal concludes that the variation to

the development standard for the exceptions to FSR and the distribution of residential and commercial floor space is warranted in this case.

3.3 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 LEP (Gateway Reference PP_2014_BURWO_003_00) seeks to insert two new clauses into Part 6 Additional Local Provisions of the BLEP 2012.

The proposed clauses are intended to:

- (i) Provide for bonus FSR, up to 10 per cent of the maximum FSR, for residential development within the Commercial Core and Middle Ring areas of the Burwood Town Centre. The application of bonus FSR is anticipated to be subject to a Voluntary Planning Agreement between a developer and Council for a material public benefit; and
- (ii) Require design excellence for all new buildings of three or more storeys throughout the LGA.

The draft clauses have been referred to in the applicant's request for variation to the FSR development standard. This assessment report acknowledges Council's intention to introduce these amendments to the LEP. However, the assessment of the Clause 4.6 variation requests does not give determinative weight to the draft LEP.

4. CONSULTATION

External Referrals - GM Urban Design and Architecture

GMU's Urban Design Assessment dated 6 September 2016 was reported in the original development assessment report included in the JRPP Agenda of 12 October 2016. The design changes the subject of the previous recommended deferred commencement matters and draft conditions have been reviewed by GMU and the referral comments are summarised as follows:

1. GMU has previously commented on the disadvantages of the enclosed bedrooms for studio units i.e A.2.12, A.02.03 and we maintain our position on this arrangement; however, these unit types have already been approved elsewhere in the proposal.
2. The enclosable areas with no windows such as units A.2.09, which repeat up and down the building are still enclosable. Their use is ambiguous. It will be helpful if a condition is put in place for in-built cabinetry for storage or folding surface (example sketches for potential layouts provided).
3. Regarding the enclosable spaces with a window directly across a similar window i.e. a.2.07 and A.02.08. the addition of a frosted window at 1.5 minimum ceiling height is satisfactory and will assist with privacy issues. However, it will be ideal to place a condition of consent similar

- to point 2 above, but in this case, due to the availability of a window it can also include the inbuilt cabinetry for a study nook (examples for potential layouts provided).
4. Spaces similar to unit B.G.08 can be conditioned as a large walk-in closet in a manner such that the open nature of the storage space will not detract from the dining area. This condition should apply to all units having a similar configuration as this one.
 5. The left over partition in Unit B is to be conditioned for the wall to be removed, which opens the room and gives the opportunity for inbuilt storage on the back wall (*NOTE: This design change has been addressed by the applicant in the final set of plans*).
 6. The issue of the gooseneck windows can only be satisfied if the window opening is at least 2m.
 7. The addition of the lift on the external face of the lower levels for Building A was not planned for in the original planning of the building. This is to solve the unforeseen issue of the lack of access to the communal open space. Various options have been investigated but the only other practical solution is to internalise the lift. In essence, it is a small footprint lift. Whilst neither solution is optimal, an internal lift maintains the integrity of the built form.

Summary

GMU's comments have been addressed in part with revised plans that show:

- maximising the glazing on the gooseneck windows;
- deleting the partition wall in the living room of Apartments B.G.09 and C.G.02; and
- installing fixed cabinetry to the study/storage spaces.

No additional conditions are required. The external lift for Building A has been discussed in Section 2.1.

5. 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, density and distribution of commercial and residential floor space envisaged by the planning provisions that apply to the Burwood Town Centre. The proposal is 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. Additional information and minor

design changes required by previously recommended conditions of consent have been addressed in accordance with the recommendation of the JRPP dated 12 October 2016.

Accordingly it is recommended that the application be granted consent subject to the conditions contained in Attachment 1.