

STATEMENT OF ENVIRONMENTAL EFFECTS

DEMOLITION OF ALL EXISTING STRUCTURES, CONSTRUCTION OF A MIXED-USE DEVELOPMENT COMPRISING COMMERCIAL FLOOR SPACE, RESIDENTIAL APARTMENTS AND SERVICED APARTMENTS

NO. 180-186 BURWOOD ROAD & 7-9 BURLEIGH STREET | BURWOOD

CLIENT: GIANT PROJECT GROUP PTY LTD

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CONTENTS

1	INTRODUCTION.....	3
2	SITE ANALYSIS AND CONTEXT	4
2.1	The Site.....	4
2.2	Surrounding Development	5
3	DESCRIPTION OF THE PROPOSAL.....	10
3.1	Amendments to plans	10
3.2	Voluntary Planning Agreement.....	10
3.3	Proposed Building.....	11
3.4	Landscaping.....	13
3.5	Waste Management.....	13
4	ENVIRONMENTAL PLANNING ASSESSMENT.....	15
4.1	Preamble.....	15
4.2	Statutory and Policy Compliance	15
4.2.1	SEPP No.55 – Remediation of Land	15
4.2.2	SEPP No. 65 – Design Quality of Residential Apartment Development.....	16
4.2.3	SEPP Building Sustainability Index: BASIX 2004.....	21
4.2.4	Burwood Local Environmental Plan 2012.....	21
4.2.5	Draft Amendment to Burwood LEP 2012	22
4.2.6	Burwood Development Control Plan 2012	22
4.3	Impacts on Natural & Built Environment.....	23
4.3.1	Topography & Scenic Impacts	23
4.3.2	Micro-climate Impacts	23
4.3.3	Water & Air Quality Impacts	23
4.3.4	Flora & Fauna Impacts.....	24
4.3.5	External Appearance & Design	24
4.3.6	Heritage.....	25
4.3.7	Relationship to Neighbouring Properties	26
4.4	Economic & Social Impacts.....	27
4.5	The Suitability of the Site	27
4.6	The Public Interest	28
5	CONCLUSION	29

FIGURES

Figure 1: Aerial photograph of subject site (source SixMaps).....	4
Figure 2: Subject site looking east from Burwood Road	5
Figure 3: Subject site looking west from Burleigh Street.....	5
Figure 4: Looking south along Burwood Road towards the subject site (yellow building)	6
Figure 5: Looking north along Burwood Road with Burwood Post Office in shot (clock tower) and new tower development in the distance	7
Figure 6: Public car park on Burleigh Street to the east of the subject site	7
Figure 7: Heritage listed terrace houses on Burleigh Street to the east of subject site	8
Figure 8: The northern wall of existing structures on subject site, with adjacent private car park and high rise development in background	8
Figure 9: Subject site in middle distance with adjacent residential flat building to left of shot and tower development in distance	9
Figure 10: Anticipated massing of nearby development	17
Figure 11: Plan demonstrating proposed building setbacks.....	20
Figure 12: Perspectives from street (left) and from rear (right)	25

TABLES

Table 1: Car parking allocation	11
Table 2: Apartment types - serviced apartments.....	11
Table 3: Apartment types - residential apartments.....	12
Table 4: Section 79C matters for consideration	15
Table 5: ADG deep soil zone requirements	18
Table 6: Setback distances prescribed by ADG.....	19
Table 7: Proposed separation distances.....	19

ANNEXURES

A	Apartment Design Guide – Compliance Table
B	Burwood LEP 2012 – Compliance Table
C	Cl. 4.6 Variation – Height of Buildings
D	Cl. 4.6 Variation – Floor Space Ratio
E	Cl. 4.6 Variation – Residential Floor Space
F	Burwood DCP 2012 – Compliance Table

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1 INTRODUCTION

This Statement of Environmental Effects has been prepared for the applicant of the proposed development. The report is to accompany a development application to Burwood Council seeking consent to demolish all existing structures and the construction of a mixed-use development comprising commercial floor space, residential apartments and serviced apartments at 180-186 Burwood Road, Burwood.

More specifically, the proposed development involves the construction of two multi storey towers above a podium base over shared basement car parking. One tower will contain commercial floor space and will present to Burwood Road while the other tower will contain 57 residential apartments and 15 serviced apartments and will present to Burleigh Street. Communal open space at podium level will be situated between the two towers.

A variation is sought to the building height and floor space ratio (FSR) standards contained in the Burwood Local Environmental Plan 2012 (BLEP 2012) and a request for variations to the standards pursuant to Clause 4.6 of BLEP 2012 is provided with this Statement at Annexures C, D and E. The FSR variation seeks approval for an additional 10% of gross floor area which will be provided as residential floor space. In accordance with Council's Policy '*Carrying out bonus development in the public interest*' a letter of offer to enter into a Voluntary Planning Agreement (VPA) is submitted to Council.

Aspects of the proposed development have been amended in response to matters raised by council staff during the course of the assessment. Core amendments include increased separation distance to the existing residential flat building at No. 11-17 Burleigh Street, Burwood, an additional level at each tower relating to redistributed floor space and a pedestrian through-link between the Burwood Road and Burleigh Street frontage. Clause 4.6 variation requests have been updated accordingly.

The proposed development is a contemporary mixed-use building which is compatible with the high density form of development anticipated in the Burwood Town Centre. This Statement demonstrates that the development is largely compliant with the relevant planning controls and, in the case of the proposed building height and FSR, the development meets the objectives of the controls and the land use zone.

The project has an estimated capital investment value of \$27,564,471.00 and the Sydney East Joint Regional Planning Panel is therefore the relevant consent authority.

The purpose of this Statement is to address the planning issues associated with the development proposal and specifically to assess the likely impact of the development on the environment in accordance with the requirements of S.79C of the *Environmental Planning & Assessment Act, 1979* (EP&A Act).

This Statement has been divided into five sections. The remaining sections include a locality and site analysis; a description of the proposal; an environmental planning assessment; and a conclusion.

2 SITE ANALYSIS AND CONTEXT

2.1 The Site

The subject site is located between Burwood Road and Burleigh Street within the Burwood Town Centre and 100m from Burwood Station. The site comprises two allotments known as Nos. 180-186 Burwood Road and 7-9 Burleigh Street with respective legal descriptions of Lot 100 in DP 1046417 and Lot 2 in DP 741809. The location of the subject site is shown edged red and shaded yellow in the aerial image provided at Figure 1.



Figure 1: Aerial photograph of subject site (source SixMaps)

The subject site is an irregular shape and has a frontage to both Burwood Road and Burleigh Street. A detailed Land Survey has been submitted with the development application and indicates boundary lengths, site area and the location of existing structures on each allotment. The Burwood Road frontage has a width of 15.295m, the Burleigh Street frontage a width of 26.74m and the total site area of the two allotments is 1,632.6m².

A two storey disused brick commercial building presently occupies Nos. 180-186 Burwood Road. A multi-storey brick building, most recently used as a conference centre, occupies Nos. 7-9 Burleigh Street. Existing structures occupy 100% of the site and therefore no vegetation exists with the exception of a number self-seeded shrubs. Vehicular access to the site is via Burleigh Street.

Photographs of the subject site depicting the existing buildings from Burwood Road and Burleigh Street respectively are provided at Figures 2 and 3.



Figure 2: Subject site looking east from Burwood Road



Figure 3: Subject site looking west from Burleigh Street

2.2 Surrounding Development

The subject site is located within the Burwood Town Centre in an area undergoing significant transformation as a result of new controls introduced by BLEP 2012. As such, the locality includes a mix of buildings including low-rise commercial development, typically with retail and business premises at street level and shop top housing above, interspersed with community

buildings, dated low density housing stock, older residential flat buildings and more recent high rise mixed-use buildings.

Adjoining the site to the north is No. 178 Burwood Road which contains a two storey brick commercial building built to the street edge and side boundaries. Similar commercial development occurs further north of the subject site. Also to the north of the subject site, with a frontage to Burleigh Street, is a private car park with electricity substations at the rear.

Adjoining the site to the south is No. 188 Burwood Road which also contains a brick commercial building tenanted by a pharmacy. Similar commercial buildings occur further south of the site along Burwood Road. Also to the south of the subject site, with a frontage to Burleigh Street, is No. 17 Burleigh Street which contains a nine storey residential flat building.

To the east, on the opposite side of Burleigh Street is a public car park and south of the car park at Nos. 12-22 Burleigh Street is a group of Victoria Terraces identified in Schedule 5 of the BLEP 2012 as items of environmental heritage.

It is anticipated that, given the significant uplift in permitted building height and floor space ratio allowed by the current LEP, these surrounding sites will be redeveloped in the short to medium term for the purposes of higher density mixed use developments. An analysis of anticipated built form has been undertaken and is depicted within the Urban Design Analysis submitted with the development application.

Figures 4 through 10 indicate the nature and configuration of development in the immediate locality.



Figure 4: Looking south along Burwood Road towards the subject site (yellow building)



Figure 5: Looking north along Burwood Road with Burwood Post Office in shot (clock tower) and new tower development in the distance



Figure 6: Public car park on Burleigh Street to the east of the subject site



Figure 7: Heritage listed terrace houses on Burleigh Street to the east of subject site



Figure 8: The northern wall of existing structures on subject site, with adjacent private car park and high rise development in background



Figure 9: Subject site in middle distance with adjacent residential flat building to left of shot and tower development in distance

3 DESCRIPTION OF THE PROPOSAL

3.1 *Amendments to plans*

Aspects of the proposed development have been amended in response to matters raised by council staff during the course of the assessment. Proposed adjustments are indicated on the revised architectural plan set prepared by UrbanLink Architects and dated 30 June 2017. The adjustments are proposed as follows:

- Provide a building setback to the southern property boundary adjacent to Nos.11-17 Burleigh Street, Burwood to allow for a building separation of 12.6m between non-habitable and habitable spaces, thus improving solar access to the existing residential flat building on this site.
- Adjustments to building envelope, specifically the setback to the southern property boundary, has necessitated subsequent adjustments to floor plans of levels within the residential tower presenting to Burleigh Street, including the introduction of serviced apartments at Level 1.
- The proposed residential tower has increased in height and now measures 81.55m in height whereas previously the maximum building height of the residential tower equated to 66.53m. The additional height is a result of a redistribution of the floor space situated adjacent to the southern property boundary.
- The proposed commercial tower has also increased in height by a single storey and now has a maximum building height of 80.6m. The additional level of commercial floor space equates to the area that has been 'displaced' from Level 1 of the Burleigh Street tower as a result of the introduction of additional serviced apartments.
- A pedestrian through-link has been proposed at ground level which will connect the Burwood Street and Burleigh Street frontages and be open to the public. The link is situated along the southern boundary of the site.

The above amendments will result in an improved amenity outcome for existing residential development of the south and the pedestrian through-link aligns with council strategic approach to improving the pedestrian permeability of the town centre. Where necessary, the description of the proposal contained within this section has been updated to reflect proposed amendments.

3.2 *Voluntary Planning Agreement*

A letter of offer has been submitted to Council proposing a monetary contribution to Council in accordance with Council's Policy '*Carrying out bonus development in the public interest*'. This Policy has been in effect since 1 May 2015. The Policy applies to the Commercial Core and Middle Ring Areas of the Burwood Town Centre. The allotments comprising the subject site are within the Commercial Core Area.

The letter of offer proposes that the developer and Council enter into a Voluntary Planning Agreement (VPA). The letter of offer details the proposed terms of the agreement and total value of the monetary contribution and is consistent with Council's Policy. Notwithstanding the consistency with Council's Policy, this Statement also contains requests for variation to the controls in BLEP 2012 for FSR and the proportion of gross floor area (GFA) that is residential floor space.

3.3 Proposed Building

It is proposed to demolish all existing structures and construct a twenty-one (21) storey commercial tower and a twenty-six (26) storey mixed-use tower comprising commercial floor space, serviced apartments and residential apartments. The towers are to be positioned above a podium containing lobbies and commercial tenancies sleeving service space and parking. The shared basement is to contain four (4) basement levels. The commercial tower will present to Burwood Road while the residential tower will present to Burleigh Street. The towers will be connected by a podium 'base' above which is located an area of communal open space in the centre of the site.

Detailed architectural plans have been prepared by Urban Link Architecture and are included as part of the development application documentation. The details of the main aspects of the proposal are summarised below.

Car Parking and Access

The proposal includes five levels of parking, four of which are basement levels. Vehicular access and egress for the parking area is via Burleigh Street. The development contains a total of 106 car parking spaces, 10 of which are accessible spaces. In addition to car parking, 70 spaces are provided for bicycle parking and 5 spaces are provided for motorcycle parking. Car parking spaces are to be allocated as per Table 1.

Table 1: Car parking allocation

Component	Parking allocation
Commercial	46 spaces
Residential apartments	46 spaces
Serviced apartments	14 spaces

Access from the car parking levels to the levels above is via a lift core and stair well provided for each tower. The parking areas have been designed to comply with AS2890.1 in relation to manoeuvring and parking space dimensions as verified in the submitted Traffic and Parking Assessment.

Serviced Apartments

Twelve (12) serviced apartments are proposed over Levels 1-4 within the 'residential' tower fronting Burleigh Street. The breakdown of apartment types is shown at Table 2. Each serviced apartment has an area of private open space and occupants will have access to podium level communal open space.

Table 2: Apartment types - serviced apartments

Apartment type	No. of apartments
1 bedroom	2
1 bedroom + study	7
2 bedroom + study	3

The serviced apartments will have a common lobby separated from the lobby associated with residential apartments and pedestrian access to the lobby will be via the proposed pedestrian through-link, accessible from both Burwood Road and Burleigh Street. A concierge desk will be situated within the lobby and access to the apartments will be via restricted electronic key access.

Details regarding the function and management of the serviced apartments will be refined once an operator has been engaged. A Plan of Management for the operation of the serviced apartments is anticipated to be made available prior to the issue of an Occupation Certificate and Council may impose appropriate conditions to ensure that this occurs.

Residential Apartments

59 residential apartments are proposed over levels 5-25 within the residential tower fronting Burleigh Street. The breakdown of apartment types is shown at Table 3. Each apartment has an area of private open space and occupants will have access to podium level and upper level areas of communal open space.

Table 3: Apartment types - residential apartments

Apartment type	No. of apartments
Studio	1
1 bedroom	18
2 bedrooms	38
3 bedrooms	2

There are no single aspect south facing apartments proposed and a sufficient proportion of apartments satisfy the solar access and cross ventilation requirements prescribed in the Apartment Design Guideline (ADG). Refer to the data sheet within the set of architectural plans and Annexures A, B and F submitted with the development application for further information.

Each apartment is provided with generous storage space which is supplemented by allocated storage within the basement.

Commercial Floor Space

The development provides for 5,422m² of commercial floor space (excluding the floor area associated with serviced apartments). The majority of commercial floor space is contained within the 'commercial' tower fronting Burwood Road. With the exception of a series of serviced apartments facing Burleigh Street, Level 1 is dedicated to commercial floor space, as are portions of the ground floor street frontages.

Each level of the commercial tower is provided with the necessary sanitary facilities, including accessible facilities. An area of open space in the form of a 'winter garden' or balcony is also provided at most levels of the commercial tower to enhance the amenity of these spaces and also to achieve a suitable degree of façade articulation. Occupants will also have access to podium level communal open space.

Pedestrian entry to the commercial tower is via the commercial lobby area at the Burwood Road frontage. The lobby space and adjacent ground floor commercial premises (identified

on the plans as potential retail space) is built to the boundary to align with street front development in Burwood Road and will ensure a continuous active street frontage.

Pedestrian through-link

The amended plans show a pedestrian through-link connecting Burwood Road to Burleigh Street thus improving pedestrian permeability through the site, and more broadly the town centre, as encouraged by the Development Control Plan.

The DCP indicates that the through-link should be contained within the adjacent property to the south at No. 188 Burwood Road, Burwood. Conversely, Council's independent Urban Design Consultant has indicated that a superior outcome would be to provide the through-link on an amalgamated site i.e. the subject site combined with No. 188 Burwood Road, however has also suggested that there would be merit in providing a link to the Ford Lane to the north.

Evidently there is no obvious superior location for a through-link, hence the variety of suggestions and strategies put forward by Council's Urban Design consultant and the DCP.

The proposed pedestrian through-link straddles the common boundary between Nos.180-186 Burwood Road and No.188 Burwood Road and bisects No. 7-9 Burleigh Street to provide pedestrian access to the east. This is considered to be a sensible location for the pedestrian through link as it will provide direct pedestrian access from Burwood Road to the public car park at Burleigh Street. The proposed link achieves the DCP objective of improving the pedestrian network in Burwood Town Centre.

3.4 Landscaping

Extensive landscaping is proposed to be provided throughout the communal open space area at podium level as well as the communal open space area at Level 18 of the residential tower. Landscaping is provided in raised planter beds that are generally situated at the perimeter of communal open space areas. Planter beds have sufficient soil depth (ranging from 0.6m to 1m) to facilitate the growth of a range of tree and plant species.

Bench seating is integrated into the landscape design to encourage social interaction thus contributing to the amenity of these spaces. Outdoor furniture and BBQ areas are also proposed to be provided. Details of proposed landscaping are shown on the Landscape Plans prepared by Zenith Landscape Designs, which are submitted with the development application.

3.5 Waste Management

Separate residential and commercial garbage rooms are proposed at ground level and will contain bins that are sufficient in volume to accommodate the weekly waste and recycling generated by the proposed residential apartments, serviced apartments and commercial floor space.

A dedicated garbage collection area is provided within the ground level car park adjacent to the commercial garbage room to enable collection to occur on site. Swept path diagrams

demonstrate that a small rigid vehicle is capable of accessing the space and egressing the car park.

Waste collection for the residential and serviced apartments will occur at the Burleigh Street kerb. As such, the residential waste room and associated bulky waste storage is positioned in close proximity to the vehicular entrance to allow for the safe and efficient manoeuvring of bins to the kerb by a building maintenance manager. Early discussions with Council indicate this arrangement is adequate in principal.

4 ENVIRONMENTAL PLANNING ASSESSMENT

4.1 Preamble

This section of the Statement provides a planning assessment of the proposed development covering all relevant heads of consideration under Section 79C of the EP&A Act, 1979.

4.2 Statutory and Policy Compliance

The relevant matters for consideration under Section 79C(1)(a) of the EP&A Act, 1979, are identified in Table 4:

Table 4: Section 79C matters for consideration

EP & A Act, 1979.	Matters for Consideration	OK	See Comments
S.79C(1)(a)(i)	SEPP No.55 – Remediation of Land	✓	✓
"	SEPP No. 65 – Design Quality of Residential Apartment Development	✓	✓
"	SEPP (BASIX) 2004	✓	✓
"	Burwood LEP 2012	✓	✓
S.79C(1)(a)(ii)	Draft LEP amending Burwood LEP 2012	✓	✓
S.79C(1)(a)(iii)	Burwood DCP 2012	✓	✓
S.79C(1)(a)(iv)	Any other prescribed matter: ▪ AS 2601-1991: Demolition of structures.	✓	

The matters identified in the above Table as requiring specific comment are discussed below. The primary statutory documents that relate to the subject site and the proposed development are *SEPP No. 65* and *Burwood Local Environmental Plan 2012 (BLEP 2012)*.

The primary non-statutory plan relating to the subject site and proposed development is *Burwood Development Control Plan (DCP) 2012*. An assessment of the applicable provisions of these documents and other relevant planning controls is provided below.

4.2.1 SEPP No.55 – Remediation of Land

This State Environmental Planning Policy (SEPP) was gazetted on 28 August 1989 and applies to the whole State. It introduces planning controls for the remediation of contaminated land and requires an investigation to be made if land contamination is suspected.

Based on an investigation of application history, perusal of historic aerial imagery and the findings of a site walk over, it is considered that there is no reason to suspect that this property is contaminated. The works proposed include demolition of all existing structures and major excavation of the entire site. All material removed from demolition and excavation processes will be disposed at a licensed facility. No further investigation or remedial action is required in relation to contamination.

4.2.2 SEPP No. 65 – Design Quality of Residential Apartment Development

SEPP No.65 – Design Quality of Residential Flat Buildings was gazetted on 26 July 2002 and applies to the assessment of development applications for residential flat developments of three or more storeys in height and containing at least (4) dwellings. Amendment 3 to the SEPP commenced on 17 July 2015 and it introduced various changes to the SEPP including the introduction of the *Apartment Design Guide* to replace the *Residential Flat Design Code*.

Schedule 1 of the Policy sets out the 9 'Design Quality Principles' and Clause 28(2) requires that the consent authority takes into consideration the following when determining an application:

- (a) The advice (if any) of a relevant design review panel;
- (b) The design quality of the residential flat development when evaluated in accordance with the design quality principles; and
- (c) The Apartment Design Guide.

In relation to cl. 28(2)(b), and in order to satisfy cl. 50 of the *Environmental Planning and Assessment Regulation 2000*, a Design Verification Statement has been prepared by Urban Link Architecture and submitted with the application detailing compliance with the design quality principles. In relation to cl. 28(c) an ADG compliance table has been prepared and is provided at Annexure A.

Clause 30(1) of the SEPP states that a development application cannot be refused for reasons relating to ceiling heights, parking and internal apartment sizes if it complies with the prescribed criteria for these matters as specified in the Apartment Design Guide (ADG). The proposal satisfies these controls, as outlined in the compliance table.

The proposal is generally consistent with ADG design criteria with the exception of deep soil and separation distance requirements prescribed in sections 3E Deep soil zones and 3F Visual privacy, respectively. A justification for the proposed variation is provided below. Discussion regarding compliance with design criteria is contained within the ADG compliance table included at Annexure A.

Building Separation

Part 2F of the ADG introduces the concept of building separation and contains considerations for establishing an appropriate degree of building separation to achieve acceptable levels of visual privacy. The aims of Part 2F are to ensure new development is scaled to support the desired future character of a locality and achieving visual privacy with appropriate massing and spaces between buildings, balconies and windows and suitable layouts for communal open spaces, deep soil and landscaping.

The applicable building height and floor space ratio standards, in conjunction with building setback controls, determine the desired future character of a locality in terms of scale and massing. Site constraints such as allotment width and configuration, the presence of heritage buildings and the nature of existing development may preclude a site achieving its maximum development potential. It is therefore necessary to understand the likely development potential of neighbouring and nearby sites when determining an appropriate separation distance.

An Urban Design Study of the subject site and its immediate locality has been undertaken by Urban Link and is submitted with the development application. The Urban Design Study informed the design of the proposal in terms of massing and configuration and considered the development potential of adjacent allotments with regard to core development standards and site constraints. Figure 10 demonstrates anticipated massing of development in the locality.

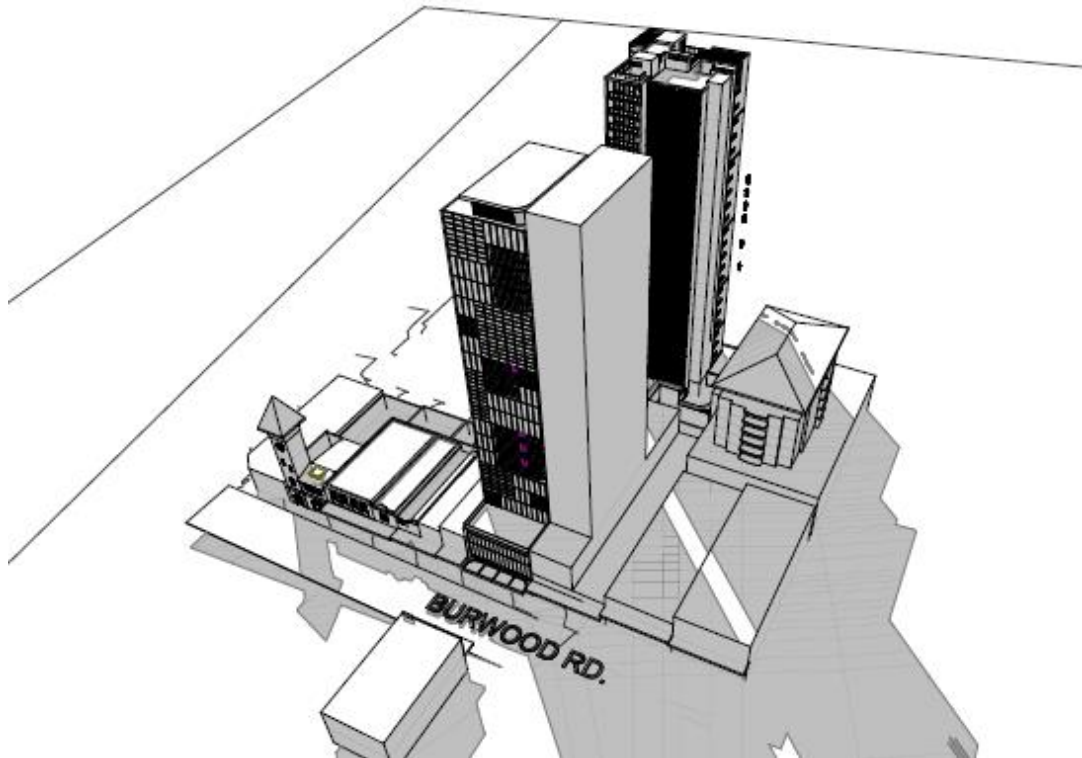


Figure 10: Anticipated massing of nearby development

As illustrated in the massing diagrams, it is envisaged that development in the locality will typically take the form of tower development above a podium base. Given block width and orientation, the most likely and optimum building arrangement will comprise two towers, each with separate street frontage and a central corridor of open space.

To accord with building setback requirements and maintain the continuous frontage of commercial development to Burwood Road, redevelopment of sites in the locality will incorporate a podium base constructed to the street and side boundaries. Towers will be situated above the podium level and setback 8m from the street edge consistent with the DCP requirements. Given the narrow width of both the subject site and sites adjacent, it is envisaged that towers will, for the most part, be built to the side boundaries. Breaks in tower development are likely to be provided where heritage items occur and also at the interface between the *commercial core* and *middle ring* areas.

The proposal has been designed to reflect the desired future character of the Burwood Commercial Core, as illustrated in the massing diagrams developed through the Urban Design Study and with consideration to the objectives and controls of Burwood DCP 2012. Building separation between the proposed towers on the subject site is 35m thus allowing for a suitable area of communal open space through the central part of the site. Both the commercial tower and the residential tower are proposed to be built to side boundaries.

It is envisaged that development of neighbouring allotments will 'follow suit' with this massing arrangement due to the benefits to be gained in sharing the natural ventilation and solar access attributes of the central open space. The overall pattern will result in a visually integrated built form with active frontages and slender towers which are desirable in a high density mixed use location.

In response to council feedback in relation to building separation and overshadowing impacts on the existing residential flat building at Nos. 11-17 Burleigh Street, the residential tower has been setback from the southern property boundary. This arrangement does not strictly correspond with the anticipated massing arrangement modelled in Figure 10 however it is noted that a setback will allow for improved solar access to existing and future dwellings to the south.

Deep Soil Zones

Design Criteria 1 of Part 3E of the ADG prescribes minimum requirements for the provision of deep soil zones, which are reproduced at Table 5. The objective of the design criteria is to ensure adequate areas are provided on site that allow for and support healthy long term plant and tree growth, improve residential amenity and promote management of water and air quality.

Table 5: ADG deep soil zone requirements

Site area	Minimum dimensions	Deep soil zone (% of site area)
Greater than 1,500m ²	6m	7%

Part 3E to the ADG also states the following:

"Achieving the design criteria may not be possible on some sites including where:

- the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)*
- there is 100% site coverage or non-residential uses at ground floor level*

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 subject site is presently developed boundary to boundary and contains no deep soil areas. The site is part of the commercial core of Burwood town centre and therefore is anticipated to accommodate high density development, typically with 100% site coverage and non-residential uses at ground floor level. Therefore the proposal is consistent with the circumstances in the ADG where it is acknowledged that the minimum percentage of deep soil planting may not be achievable.

The proposed development incorporates a basement car park built to all site boundaries which precludes the provision of deep soil zones. The proposal meets the objective of the design criteria, as described below:

- A large communal open space area is provided through the central part of the site at podium level. This communal area contains raised planter beds with soil depth of at least 0.6m and will allow for and support the growth of trees, shrubs and groundcovers. Landscape Plans have been prepared by Zenith Landscape Design and have been submitted with this development application to demonstrate the form of future planting.

- The communal open space incorporates seating that is integrated with the planter beds and will allow for occupants of the residential apartments, serviced apartments and commercial floor space to enjoy the landscaped outdoor space, thus contributing to the amenity and utility value of the development.
- Despite the absence of deep soil zones, it has been demonstrated that stormwater can be appropriately managed on site without adversely affecting neighbouring properties, council infrastructure or receiving catchments. The Stormwater Concept Plan prepared by SGC Engineering and submitted with this development application indicates that on site detention will be utilised to manage drainage flows.

Given the circumstances of the site, and the reasons provided above, it is considered that the proposal achieves the objectives of Part 3E by incorporating planting on structures and provides landscaping appropriate to the context and setting in this instance.

Visual Privacy

Design Criteria 1 of Part 3F of the ADG prescribes setback requirements between proposed buildings and the side or rear boundaries of an allotment and are reproduced at Table 6. The objective of the design criteria is to ensure adequate separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal visual privacy. It is pertinent to note that the objective relates solely to visual amenity.

Table 6: Setback distances prescribed by ADG

Building height	Habitable rooms & balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

The ADG states that separation distances between buildings on the same site should combine required building separations prescribed in Table 6 depending on the type of room. That is, the separation distance between the habitable rooms contained in the residential tower and the habitable spaces contained in the commercial tower is to be 12m, 18m or 24m depending on building height. The separation distance between the commercial tower and the residential tower is greater than 34m and complies with the ADG requirement.

Part 3F to the ADG states that no building separation is necessary where building types incorporate blank party walls to site boundaries where this building form is typical or anticipated along a main street or at podium levels within centres. Continuous street walls are anticipated for both street frontages of the subject site.

The boundary setbacks proposed for the development are summarised in Table 7.

Table 7: Proposed separation distances

Building height	Habitable rooms & balconies				
	North (side)	South (commercial)	South (residential)	West (inner side)	Internal separation

Up to 12m (4 storeys)	0m	0m	0m (ground & level 1)	3.3m	≥34m
Up to 25m (5-8 storeys)	0m	0m	5.3m	3.3m	≥34m
Over 25m (9+ storeys)	0m	0m	5.3m	3.3m	≥34m

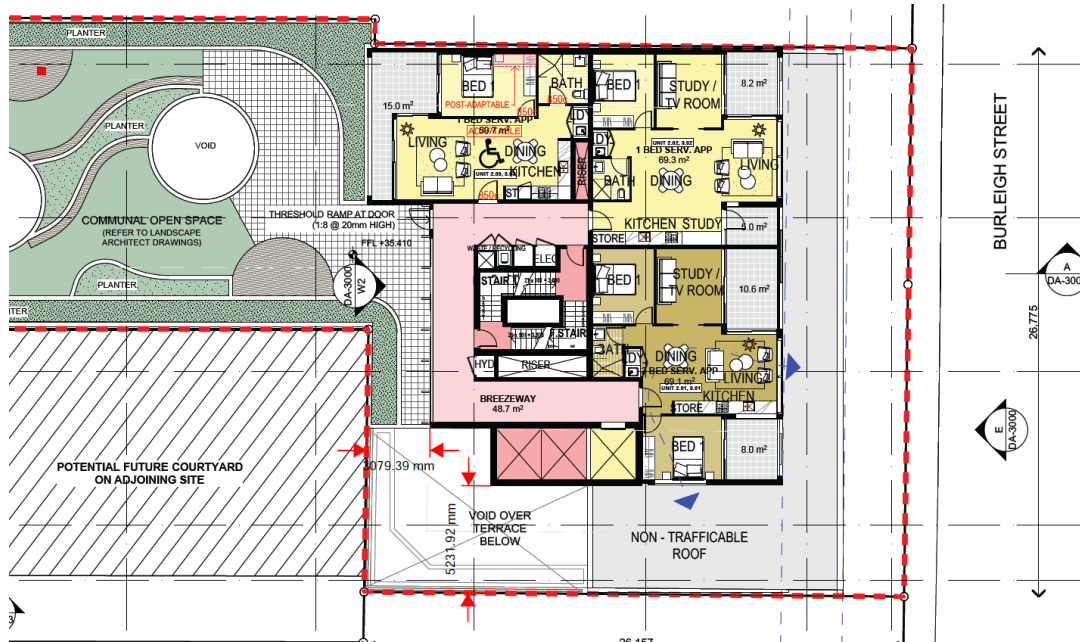


Figure 11: Plan demonstrating proposed building setbacks

The proposal is considered to achieve the objective of the design criteria for the reasons provided below:

- With the exception of the adjusted residential tower element, the proposal is to be built to the northern (side) boundary and southern (side) boundary with the intent that future redevelopment of the sites to the north and to the south will ultimately integrate with the proposal (refer to Urban Design Study submitted with the development application which considers likely form of development within the street block).
- Where the two towers are to be constructed to the boundary, no windows are proposed on these elevations, thus eliminating the potential for overlooking of development to the north and south. Where a setback to the southern boundary is proposed, windows on this elevation will have high sills and are associated with bedrooms which are infrequently used spaces, mitigating overlooking potential.
- Raised planter beds are proposed at the perimeter of the communal open space areas at podium level and also at Level 18 and will therefore mitigate potential overlooking of the adjoining allotments. Upper level balconies are recessed and have blade walls or privacy screening on side elevations, thus mitigating the potential for overlooking from these spaces.

- Although the setback provided to the western (inner side) boundary is non-compliant with the numeric controls, it is envisaged that future development of the site at No. 188 Burwood Road will take a similar form to what is proposed on the subject site with a central open space area, thus achieving an appropriate degree of separation for visual privacy
- To the west of the inner west site boundary at No. 178 Burwood Road is a single storey brick building presently occupied by a pharmacy. The ridge height of the roof of the pharmacy building is at RL 35.22. The height of the proposed podium level i.e. the first of the upper levels with a west facing window, is RL 35.43. As such, the outlook from west facing windows adjacent the inner west site boundary will be over the roof of the adjoining building rather than into any west facing windows.

In summary, despite non-compliance with the separation distance requirements from shared boundaries at the inner-western and southern site boundary, the layout and design of the proposed apartments, balconies and windows will ensure the visual privacy of neighbouring dwellings is not unreasonably compromised. As such, the proposal achieves the objective of the design criteria and a variation to the separation requirement is considered appropriate.

4.2.3 SEPP Building Sustainability Index: BASIX 2004

SEPP (Building Sustainability Index: BASIX) 2004 commenced on 1 July 2004 and applies to the proposed development. In accordance with the provisions of the SEPP, a BASIX Certificate is submitted with the application and confirms that the proposal (once operational) will comply with the water, thermal comfort and energy efficiency requirements of the policy.

4.2.4 Burwood Local Environmental Plan 2012

The *Burwood Local Environmental Plan 2012* (Burwood LEP 2012) applies to the subject site. Under the LEP the subject site is within Zone B4 - *Mixed Use*. The proposed development is best characterised as a mixed-use development comprising *shop top housing, serviced apartments* and *commercial premises*, which are all permissible with consent in Zone B4.

The objectives of Zone B4 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 proposed development is consistent with the objectives of the zone as it incorporates a combination of commercial and residential floor space and the layout of different uses and ancillary facilities is configured to permit a mixture of compatible land uses. Furthermore, the development is located within the Burwood Commercial Core and is 100m walk form Burwood Station therefore offering easy access to services and public transport.

Annexure B provides a compliance table which considers the proposal with respect to the relevant provisions of the LEP. The proposal seeks a variation to the building height control as well as floor space ratio control and the proportion of the gross floor area to be used for

residential purposes. Written requests to vary these development standards pursuant to clause 4.6 of BLEP 2012 are included at Annexures C, D and E.

4.2.5 Draft Amendment to Burwood LEP 2012

A draft amendment to BLEP 2012 seeking to limit the proportion of floor space available for serviced apartments in Zone B4 Mixed Use was exhibited in March 2016. Section 79C(1)(a)(2) requires that draft plans are taken into consideration where that plan is or has been the subject of public consultation.

Among other things, the amendment involves inserting the following clause after Clause 4.4A(3) of BLEP 2012 (only relevant components of the draft clause have been included hereunder):

(4) Despite clause 4.4, the ratio of the gross floor area of any part of a building used for the purpose of serviced apartments to the site area must not exceed:

(a) 0.6:1—if the building is on land identified as “Area 1” on the Floor Space Ratio Map,

The site is within Area 1 on the Floor Space Ratio Map and the proposal accords with the limitation prescribed by the draft clause in respect of serviced apartments. Specifically, the gross floor area of the proposed serviced apartments is 815m² which equates to 0.5:1 when expressed as a ratio of gross floor area to site area.

It is noted that this draft amendment came into effect on 16 September 2016. The development application was made prior to the making of Burwood LEP 2012, as amended, and therefore will be determined as if the Amending Plan had not been made, as per Clause 1.8A of the Plan.

4.2.6 Burwood Development Control Plan 2012

Burwood Development Control Plan (DCP) applies to all land in the Burwood LGA and took effect on 1 March 2013. The site is within the Burwood Commercial Core area and the provisions of the DCP that apply to the proposal are addressed in the DCP compliance table at Annexure F. The compliance table demonstrates that the proposal is largely consistent with relevant DCP controls. Areas of non-compliance are discussed and justified below.

Dwelling sizes (serviced apartments)

Section 3.2.8 of Burwood DCP 2013 contains controls relating to the apartment composition and size in a residential flat building development. An advisory note specifies that the controls are also applicable to serviced apartments. The objective of the controls is to provide housing choice to meet the socio economic needs of the population. It is submitted that this objective is not applicable to the serviced apartment component of a proposal as serviced apartments are not a form of residential development.

Control P2 of the DCP states that all residential developments must provide the following minimum apartments sizes; studio apartments are to have a minimum area of 40m², single bedroom apartments are to have a minimum area of 50m², two bedroom apartments are to have a minimum area of 70m² and so on.

The proposed residential apartments comply with the numeric requirements of control P2, which are equivalent to those contained in the ADG. The proposed single bedroom and single bedroom + study serviced apartments are also compliant with the minimum area requirement. However three x two bedroom serviced apartments are 69.1m² in area and therefore fall marginally short of the numeric requirement.

A variation to the minimum apartment size requirement is considered appropriate in this instance as the marginal shortfall in area will not substantially impact the functionality or utility value of the proposed serviced apartments. The furniture layouts indicated on the architectural plan set demonstrate that each apartment is capable of accommodating all necessary furnishings and circulation space that are expected to be provided within a serviced apartment.

The minimum area controls are specific to dwellings contained within residential flat buildings where larger spaces are required for living and storage and long term amenity is paramount. In contrast, serviced apartments require space for essential furnishings only that are provided specific to the apartment layout and dimensions and storage space is not critical. Occupants of serviced apartments place less importance on the added amenity more space affords to accommodate personal furniture and other items given temporary nature of accommodation.

For the reasons discussed above, and noting the minor degree of non-compliance proposed in numeric and percentage terms, it is considered that a variation to minimum apartment size for three serviced apartments is appropriate in this instance and is worthy of Council's support.

It is also noted that similar variations have been granted in the past in respect of proposals for serviced apartments. One recent example being the development at 36-38 Victoria Road, Burwood where single bedroom apartments with an area of 49m² were approved.

4.3 Impacts on Natural & Built Environment

4.3.1 Topography & Scenic Impacts

The proposal requires site excavation to accommodate four basement levels, and this is a typical approach to providing on-site parking for a town centre site. Changes to site topography will not be readily apparent from the street or surrounds as finished floor levels will be compatible with the established floor levels within the streetscape. Excavation will not result in any adverse impact to the amenity of neighbouring sites or the structural integrity of nearby buildings. The proposal will therefore have no adverse impact on local topography.

The site contains no significant scenic features and therefore the proposal will have no impact in this regard.

4.3.2 Micro-climate Impacts

The proposed development involves no tree removal and will have no significant adverse impact on surface or ground water regimes. Therefore no notable impact on local micro-climate is anticipated.

4.3.3 Water & Air Quality Impacts

During construction, appropriate sediment and erosion controls will be installed and maintained to prevent migration of sediment from the site. Once constructed, roof and surface

water from the development will be captured for retention or reuse where possible, or appropriately discharged to the street. A Stormwater Drainage Concept prepared by SGC Engineering has been submitted with the development application. The proposal is unlikely to have any notable impact on water quality.

In terms of air quality, the site will be managed during construction to mitigate potential for dust generation. During operation, proposed uses are not anticipated to generate any unusual odour or fumes. Air quality impacts associated with potential future commercial uses will be considered during the development application process. The proposal is unlikely to have any notable impact on air quality.

4.3.4 Flora & Fauna Impacts

Existing vegetation on the site is limited to a small number of self-seeded trees that will be removed as part of the proposal. Suitable new landscaping will be provided through the middle of the site to enhance resident amenity and balance built form. The proposal is demonstrably consistent with its urban setting and anticipated building form which is characterised by nil side setbacks and high density tower form development.

4.3.5 External Appearance & Design

The proposed development represents a suitable response to the allocation of the permitted density at the site. The proposal involves demolition of existing buildings and structures and construction of a contemporary mixed use development that is consistent with the future built form anticipated by the applicable planning controls and the objectives of Zone B4.

The building mass has been arranged on site to mitigate perceived bulk and scale of the proposal, particularly when viewed at street level. Specifically, tower elements are set back from the edge of the podium and this ensures that the building retains a 'human' scale at the street edge.

In addition to building setbacks, physical articulation is incorporated into building facades to ameliorate perceived bulk and scale of the development. Recessed balconies are provided at each level of the residential tower on both eastern and western elevations. Similarly, balconies and 'winter gardens' are provided at a number of levels of the commercial tower. These features serve to break up the verticality of each tower and adds visual interest.

The combination of materials proposed on each elevation are detailed on the elevations contained within the architectural plan set and submitted with the development application. These materials complement the physical articulation incorporated into the building design and helps to achieve a fine-grained presentation that is sympathetic to existing development in the immediate locality.

It is noted that the Burleigh Street tower will be adjusted as a result of the amendments now proposed. The south-facing elevation of the residential tower will be setback from the southern boundary with a degree of articulation designed into the building in the form of physical projections, window openings and material combinations. The setback will improve the outlook from north-facing openings of the residential flat building at Nos. 11-17 Burleigh Street.



Figure 12: Perspectives from Burleigh Street (left) and Burwood Road (right)

4.3.6 Heritage

The Heritage Map to BLEP 2012 indicates that a number of items of environmental heritage are in proximity to the subject site. Items include the Burwood Post Office (I24) at 168A Burwood Road, Shops (I25) at 170-174 Burwood Road, Shops (I22) at 157-159 Burwood Road, Federation Shops (I21) at 135-139 Burwood Road and Victorian Terraces (I14) at 12-22 Burleigh Street. A Heritage Impact Statement (HIS) prepared by Urbis addresses the impact of the proposal on the significance of these items and is submitted with this application.

The HIS indicates that the Burwood Post Office is considered to be of State and Regional Significance because of its long association with the area, its association with the Government Architect Walter Liberty Vernon and the quality of its design and construction such as the tower element which is a landmark in the region. The HIS also notes that the facades of the various heritage listed shops have local significance as they illustrate the variety of early retail development in the local area. The Victorian Terraces have local significance as they are representative of workers housing close to the railway.

In brief, the HIS concludes that the proposal, which maintains the same setback at ground floor as the buildings adjacent, will not obscure significant views to the primary facades of the Burwood Post Office or locally listed items along Burwood Road from ground level. The HIS explains that the setback above podium level serves to mitigate the impact of the scale of the proposal by creating a street edge scale that is comparable with heritage items and the streetscape generally. The proposed ground floor retail and cantilevered awning is in keeping with both sides of Burwood Road and also improves continuity with locally listed shop facades.

4.3.7 Relationship to Neighbouring Properties

Solar Access

Shadow diagrams demonstrating the extent of overshadowing associated with the proposed development have been prepared and are submitted with the development application. These diagrams indicate shadow cast at 9am, 12 noon and 3pm on the winter solstice (21st June). The amended diagrams are presented in plan, elevation and three dimensional form.

Given site orientation and scale of development, some degree of overshadowing is expected and is unavoidable. Nonetheless, building mass has been arranged to mitigate the extent of overshadowing and limit adverse impacts on neighbouring and nearby premises, particularly the residential flat building at Nos. 11-17 Burleigh Street, which has to date enjoyed excellent northern exposure.

Specifically, the two slender towers have been arranged at either end of the site with a generous courtyard provided through the centre of the site. This arrangement permits sunlight to pass through the site towards the premises to the south for a substantial portion of the day. The proposal represents a form of development that is reasonably anticipated on the subject site. The impacts of overshadowing arising from the proposal are therefore reasonable in the circumstances.

In response to feedback from council in relation to the overshadowing impacts of the development on the existing residential flat building at Nos. 11-17 Burleigh Street, the southern elevation of the residential tower has been setback almost 6m from the southern boundary for Levels 2 and above. The result is a vastly improved solar access outcome for development to the south, and this has been documented in the additional solar access diagrams presented with this amended proposal.

The solar access diagrams are presented in plan, elevation and three dimensional form and indicate the room type associated with each north-facing window. The analysis provided on the plan quantifies the degree of solar access presently achieved and the degree of solar access achieved post-development. Clearly the numbers vary dramatically as the building presently enjoys unobstructed northern exposure, however the analysis confirms that living rooms windows will continue to receive at least 2 hours of direct solar access on the winter solstice.

Views

Due to the gentle topography of the locality and the existing height of original buildings in the locality there are no significant views obtained from neighbouring properties through the subject site that are likely to be unreasonably obscured by the development. As multi-storey buildings are constructed throughout the Burwood town centre the notable regional views surrounding Burwood are being recognised and appreciated.

The proposed building massing as described in the Urban Design Analysis submitted with this development application is considered the most appropriate arrangement of built form within the context of neighbouring and nearby properties and the applicable height and FSR controls and setbacks.

The slender towers proposed by the development and the potential for future breaks in the building massing surrounding the site due to compatibility with heritage items and street layout will create view opportunities between future towers as the built form of the town centre evolves.

Aural & Visual Privacy

Visual and acoustic privacy is achieved by orienting balconies and habitable room windows to the street or to the internal communal open space. With the exception of the southern façade of the residential tower, the development is proposed to be built to the northern and southern side boundaries with blank walls and fin walls therefore negating any potential for overlooking in a northerly or southerly direction.

The southern elevation of the residential tower is almost 6m from the southern property boundary and over 12m from the existing residential flat building to the south. Windows on the southern elevation are limited to one high sill bedroom window on each level and this arrangement, in conjunction with building separation, will mitigate potential for overlooking. Further discussion in relation to visual privacy as a result of reduced setback is discussed at Section 4.2.2 of this Statement.

In addition to careful building location and orientation, various building elements and design features have been incorporated to ensure visual and acoustic privacy is optimised. Features include raised planter boxes at the perimeter of communal open spaces and blade walls associated with balconies. The proposal is considered acceptable in terms of aural and visual privacy impacts.

4.4 Economic & Social Impacts

The subject site is situated within the Burwood Town Centre and enjoys good access to commercial services, community facilities and public transport routes and is a short walk from Burwood Station. The mixed use development is an efficient use of established infrastructure and utilities. The density of commercial and residential floor space will accommodate residents and commercial tenants in a manner which will enhance the dynamic economic and social vibrancy of the town centre.

The proposed development will result in an increase in the available housing stock in the locality through the provision of high quality residential apartments while the commercial floor space provided will cater for a range of retail and office premises which will add to the variety of available commercial premises in the town centre.

Undertaking the demolition and construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects. Once constructed, it is anticipated that the commercial floor space and serviced apartments will also generate considerable economic activity and employment opportunities.

Accordingly, it is considered that the proposed development is likely to have only positive social and economic impacts in the locality.

4.5 The Suitability of the Site

Access to Services

The site is located within the Burwood Town Centre and has good access to services and facilities as well as public transport. Electricity, sewer, telephone, and water services are readily available to the subject site.

Parking and Access

The proposed on-site parking complies with the requirements of the Apartment Design Guide which defers to the RMS Guide to Traffic Generating Development for the residential component and to the DCP for the commercial and serviced apartment components of the development. The design and layout of the on-site parking and vehicular access / egress is compliant with relevant Australian Standards as verified in the Traffic and Parking Assessment prepared by Traffic Solutions and submitted with the development application.

Hazards

The site is not in an area recognised by Council as being subject to landslip, flooding, bushfire or any other particular hazards. The proposed development is not likely to increase the likelihood of such hazards occurring and is considered appropriate in this instance.

4.6 The Public Interest

The proposed development has been designed to relate to the size, shape and context of the site and has been designed in accordance with the desired future character of development in the area, as anticipated by the permitted building height and density controls.

The proposal will provide high quality residential accommodation and commercial floor space within the Burwood Town Centre and has been designed to minimise or mitigate any adverse impact on existing and future development on adjoining allotments. The proposal is largely consistent with the applicable ADG, LEP and DCP provisions, except where identified and justified within this Statement.

Accordingly, the proposed development is considered to be in the public interest.

5 CONCLUSION

This Statement accompanies a development application for the demolition of existing structures and the construction of a mixed-use development comprising commercial floor space and residential apartments at 180-186 Burwood Road, Burwood. The proposed development has been assessed in light of Section 79C of the Environmental Planning & Assessment Act, 1979 and Council's planning Guidelines and Policies.

The proposal is permissible with Council consent within the zone and meets the relevant requirements of the BLEP 2012, with the exception of the building height, floor space ratio and residential specific floor space ratio standards. Written requests to support the departure from these standards pursuant to clause 4.6 of the LEP are included at Annexures C, D and E.

In relation to the floor space ratio variation, the Applicant has made a letter of offer to the Council consistent with Council's Policy entitled '*Carrying out Bonus Development in the Public Interest*'. The letter of offer details the proposed terms of the agreement to make a monetary contributions to public benefits.

The proposal is also generally consistent with the Design Criteria prescribed in the Apartment Design Guide, and with the majority of controls contained in Burwood DCP 2012. Where variations to controls are proposed, a justification is provided to demonstrate the merits of the non-compliance.

In response to council feedback, the proposal has been amended by providing a setback between the residential tower and the southern property boundary, and by introducing a pedestrian through-link between Burwood Road and Burleigh Street. The result is an improved solar access outcome for development to the south, and greater pedestrian permeability through the town centre.

The siting, design and external appearance of the proposal is considered to be appropriate and consistent with the desired future character of the locality, as evidenced in the detailed Urban Design analysis submitted with the development application. The proposal will not result in any significant loss of privacy to adjoining or nearby residents and will offer high levels of amenity for the future residential and commercial occupants.

The proposal is consistent with the objectives for development in Zone B4. The development will positively contribute to the quantum and diversity of housing stock and commercial floor space in a key Strategic Centre and will have manageable impacts on both the environment and the amenity of the locality. Accordingly the proposal is considered to be in the public interest and worthy of Council's support.

ANNEXURE A

ADG COMPLIANCE TABLE

SEPP No. 65 - Apartment Design Guide Compliance Table					
Section	Design Criteria		Proposal	Complies	
Part 3 Siting the development					
3D Communal and Public Open Space	1. Communal open space has a minimum area equal to 25% of the site.		Two areas of communal open space are provided. One is located between the two proposed towers at podium level and the other at Level 20. The combined area of these spaces is 450m ² and equates to 27.6% of the site area.	✓	
	2. 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)		The proposed podium level communal open space area has northern aspect and a sufficient portion of the space will receive sunlight throughout the day on the winter solstice, as demonstrated by solar access diagram submitted with the development application.	✓	
3E Deep Soil Zones	1. Deep soil zones are to meet the following minimum requirements:		The site presently has 100% site coverage and therefore no deep soil zones. The proposed redevelopment incorporates basement car parking which is constructed to all site boundaries and precludes provision of deep soil zones. The DCP permits nil setbacks to all boundaries. The site is within the commercial core which, as noted in the ADG is a high density area in a commercial centre with 100% site coverage and therefore alternative planting arrangements on structures is acceptable. It is proposed to provide a substantial area of podium level landscaping for the enjoyment of residents and it is submitted that the objective of the deep soil zone design criteria for commercial centres is achieved as a result. Further discussion is provided at section 4.2.2 of the SEE.	On merit	
	Site Area	Minimum Dimension			Deep Soil Zone
	Less than 650m ²	-			7% of the site area
	650m ² to 1,500m ²	3m			
	Above 1,500m ²	6m			
Achieving the design criteria may not be possible on some sites including where: • the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres) • there is 100% site coverage or non-residential uses at ground floor level 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					

SEPP No. 65 - Apartment Design Guide Compliance Table															
Section	Design Criteria	Proposal	Complies												
3F Visual Privacy	1. 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:	The separation distance between the two proposed towers is 34m and therefore comfortably satisfies the numeric requirements of the ADG for separation between buildings on the same site. Given the relatively narrow width of the site and the anticipated form of development on neighbouring sites, both towers are proposed to be built to the side boundaries with blank walls, with the exception of the residential townhouse which is setback from the southern property boundary. The ADG permits no separation where building types include blank party walls as is the case for development in the Burwood Commercial Core. Detailed discussion is provided at section 4.2.2 of the SEE.	On merit												
	<table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>			Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m
	Building height			Habitable rooms and balconies	Non-habitable rooms										
	Up to 12m (4 storeys)			6m	3m										
	Up to 25m (5-8 storeys)			9m	4.5m										
Over 25m (9+ storeys)	12m	6m													
No building separation is necessary where building types incorporate blank party walls. Typically this occurs along a main street or at podium levels within centres															
3J Bicycle and Car Parking	<p>1. For development in the following locations:</p> <ul style="list-style-type: none">on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; oron land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments (GTTGD), or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p>	<p>The GTTGD requires the following rates of parking provision for high density RFBs in the Metro Regional Centres.</p> <p>0.4 spaces per 1 bedroom unit. 0.7 spaces per 2 bedroom unit. 1.20 spaces per 3 bedroom unit. 1 space per 7 units (visitor parking).</p> <p>The proposal comprises 19 x single bedroom apartments (including 1 studio apartment) [requires 7.6 spaces], 38 x 2 bedroom apartments [requires 26.6 spaces] and 2 x 3 bedroom apartments [requires 2.45 spaces] which equates to a parking requirement of 36.65 (37 when rounded) spaces for residents. 8.4 (8 when rounded)</p>	✓												

SEPP No. 65 - Apartment Design Guide Compliance Table				
Section	Design Criteria		Proposal	Complies
			spaces are required for visitors based on a total of 57 apartments. For the residential component of the building a total of 45 spaces are required under the RMS GTTGD. The proposal allocates 47 spaces to the proposed apartments including 10 visitor spaces and is therefore compliant with the on-site parking requirements for the residential component of the development.	
Part 4 Designing the building				
4A Solar Access and Daylight	1. 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		100% of apartments receive requisite degree of solar access as per the ADG. Refer to solar access diagrams included with plan set.	✓
4B Natural Ventilation	1. 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		80.3% of apartments satisfy cross ventilation requirements and therefore the proposal is marginally non-compliant with ADG. Refer to cross ventilation diagrams submitted with plan set.	✓
	2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line		Maximum depth of dual aspect apartments is 14.15m.	✓
4C Ceiling Height	1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:		Floor to ceiling heights of both residential and commercial floors comply with the requirements prescribed by the ADG. Refer to sections provided with plan set.	✓
	Minimum ceiling height			
	Habitable rooms	2.7m		
	Non-habitable rooms	2.4m		
Mixed use areas	3.3 for ground and first floor			
4D Apartment Layout	1. Apartments are required to have the following minimum internal areas:		The proposal comprises a combination of single, 2 bedroom and 3 bedroom apartments and each complies	✓

SEPP No. 65 - Apartment Design Guide Compliance Table														
Section	Design Criteria		Proposal	Complies										
	<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table>		Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 Bedroom	70m ²	3 Bedroom	90m ²	with the relevant minimum internal area requirements prescribed. Refer to data sheet and dimensions provided on plan set.	
	Apartment type	Minimum internal area												
	Studio	35m ²												
	1 bedroom	50m ²												
	2 Bedroom	70m ²												
	3 Bedroom	90m ²												
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.													
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.														
2. 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														
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.														
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.														
1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)														
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)														

SEPP No. 65 - Apartment Design Guide Compliance Table																		
Section	Design Criteria	Proposal	Complies															
	3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Each living room has a minmum dimension which accords with the ADG (however are generally larger than this) to allow for varied furniture layouts.	✓															
	4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Cross-through apartments have a minimum width of 4m as per ADG requirement and thus avoid elongated spaces with poor utility value and internal amenity.	✓															
4E Open Space	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 Bedroom +</td><td>12m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 Bedroom	10m ²	2m	3 Bedroom +	12m ²	2.4m	Each apartment is provided with an area of private open space in the form of a baloncy that is directly accessible from a primary living area and complies with the minimum area and depth requirements of the ADG. Refer to unit calculations table provided with plan set.	✓
	Dwelling type	Minimum area	Minimum depth															
Studio	4m ²	-																
1 bedroom	8m ²	2m																
2 Bedroom	10m ²	2m																
3 Bedroom +	12m ²	2.4m																
	2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m	<p>Serviced apartments are provided at podium level and it is noted that the ADG applies specifically to residential flat buildings, shop top housing and the residential component of mixed used developments. As such the requirments of the ADG are not applicable to the serviced apartments. Notwithstanding, a discussion is provided in respect of the the ground floor private open space areas given the residential nature of this use.</p> <p>There are 2 x 1 bedroom serviced apartments and 1 x 2 bedroom serviced apartment located at podium level adjacent to the common open space. The common open space is to be available for use by the permanent</p>	n/a															

SEPP No. 65 - Apartment Design Guide Compliance Table													
Section	Design Criteria	Proposal	Complies										
		<p>residents of the development. Two of the three serviced apartments are oriented to the street with no physical connection to the common open space. Balconies are suitable for these serviced apartments.</p> <p>The serviced apartment oriented to the common open space has a private courtyard space of 15m² in area and complies with the numeric requirements of the ADG.</p>											
4F Common Circulation Space	1. The maximum number of apartments off a circulation core on a single level is 8.	The circulation core on each level provides access to no more than 4 apartments and therefore complies with the ADG.	✓										
	2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	57 residential apartments (and 12 serviced apartments) will be serviced by 3 lifts.	✓										
4G Storage	1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:		✓										
	<table><tr><th>Dwelling type</th><th>Storage volume</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 Bedroom</td><td>8m³</td></tr><tr><td>3+ Bedroom</td><td>10m³</td></tr></table>			Dwelling type	Storage volume	Studio	4m ³	1 bedroom	6m ³	2 Bedroom	8m ³	3+ Bedroom	10m ³
	Dwelling type	Storage volume											
	Studio	4m ³											
	1 bedroom	6m ³											
	2 Bedroom	8m ³											
	3+ Bedroom	10m ³											
At least 50% of the required storage is to be located within the apartment.													
Each apartment is provided with sufficient storage within both the apartment and basement. Refer to unit calculations provided within plan set.													

ANNEXURE B

LEP COMPLIANCE TABLE

Burwood Local Environmental Plan 2012 – Compliance Table			
Clause	Requirement	Proposal	Complies
Part 2 Permitted or prohibited development			
2.3 Zone objectives and Land Use Table	Zone B4 Mixed Use		
	<ul style="list-style-type: none"> To provide a mixture of compatible land uses. 	The proposal incorporates a combination of commercial and residential floor space. The floor space and ancillary facilities and services is configured to support the ongoing function of the uses in a compatible manner.	✓
	<ul style="list-style-type: none"> 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 proposed mixed-use development is located within the Burwood Commercial Core and is 100m walk form Burwood Station and therefore offers easy access to services and public transport. The commercial floor space can accommodate a variety of uses including retail, offices and serviced apartments.	✓
Part 4 Principal development standards			
4.3 Height of buildings	(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.	The <i>Height of Building Map</i> indicates that the maximum building height for the site is 70m. The maximum height of the proposal is 81.55m and therefore non-compliant. Refer to height lines marked on architectural plan set submitted with application.	See Cl. 4.6 variation request provided at Annexure C
4.3A Exceptions to height of buildings	(2) Despite clause 4.3, the height of a building on land marked “Area A” on the Height of Buildings Map is not to exceed the building height plane for that land.	The building complies with the applicable building height plane.	✓
4.4 Floor space ratio	(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.	A survey plan of the site indicates that the site area is 1,632.60m ² . The <i>Floor Space Ratio Map</i> indicates that the maximum floor space ratio for the site is 6:1. The proposed GFA is 10,770m ² , which equates to an FSR of 6.60:1 and is therefore non-compliant.	See Cl. 4.6 variation request provided at Annexure D

Burwood Local Environmental Plan 2012 – Compliance Table							
Clause	Requirement	Proposal	Complies				
4.4A Exceptions to floor space ratio	(3) Despite clause 4.4, the ratio of the gross floor area of any part of a building used for the purpose of residential accommodation to the site area must not exceed: (b) 2.0:1—if the building is on land identified as “Area 1” on the Floor Space Ratio Map.	The proposed GFA associated with the residential component of the building is 4,245m ² which equates to an FSR of 2.6:1 and is therefore non-compliant with clause 4.4A.	See Cl. 4.6 variation request provided at Annexure E				
Part 5 Miscellaneous provisions							
5.10 Heritage conservation	(5) The consent authority may, before granting consent to any development: (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.	The Heritage Map to BLEP 2012 indicates that a number of items of environmental heritage are in proximity to the subject site. Items include the Burwood Post Office (I24) at 168A Burwood Road, Shops (I25) at 170-174 Burwood Road, Shops (I22) at 157-159 Burwood Road, Federation Shops (I21) at 135-139 Burwood Road and Victorian Terraces (I14) at 12-22 Burleigh Street. A Heritage Impact Statement (HIS) prepared by Urbis addresses the impact of the proposal on the significance of these items and is submitted with this application.	✓				
Part 6 Local Provisions							
6.1 Acid sulfate soils	(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. <table><tr><th>Class of land</th><th>Works</th></tr><tr><td>5</td><td>Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1</td></tr></table>	Class of land	Works	5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1	The site is not within 500m of class 1, 2, 3 or 4 land that is below 5m AHD. An Acid Sulfate Soils Management Plan is not required for this development application.	✓
Class of land	Works						
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1						

Burwood Local Environmental Plan 2012 – Compliance Table			
Clause	Requirement		Complies
		metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	
6.3 Active street frontages	<p>(3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.</p> <p>(4) Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following:</p> <p>(a) entrances and lobbies (including as part of mixed use development),</p> <p>(b) access for fire services,</p> <p>(c) vehicular access.</p> <p>(5) In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.</p>		<p>The Burwood Road frontage is identified as an 'active street frontage' on the <i>Active Street Frontages Map</i>. The ground floor contains retail floor space and the commercial lobby which satisfies the definition of active street frontage under the LEP. Access for fires stairs is also contained on the Burwood Road frontage and this is permitted by the clause.</p> <p>✓</p>

ANNEXURE C

Clause 4.6 Variation Request: Height of Buildings

Clause 4.6 Variation Request
Nos. 180-186 Burwood Road, Burwood
Clause 4.3 – Height of buildings

1. Height of buildings control

Clause 4.3 (2) of Burwood Local Environmental Plan 2012 (BLEP 2012) relates to maximum permitted building height for a site and refers to the *Height of Buildings Map*. The relevant map identifies the building height controls that apply to the site as shown in the extract of the map in Figure 1 (with the subject site outlined in red). A maximum building height of 70m applies to the site.

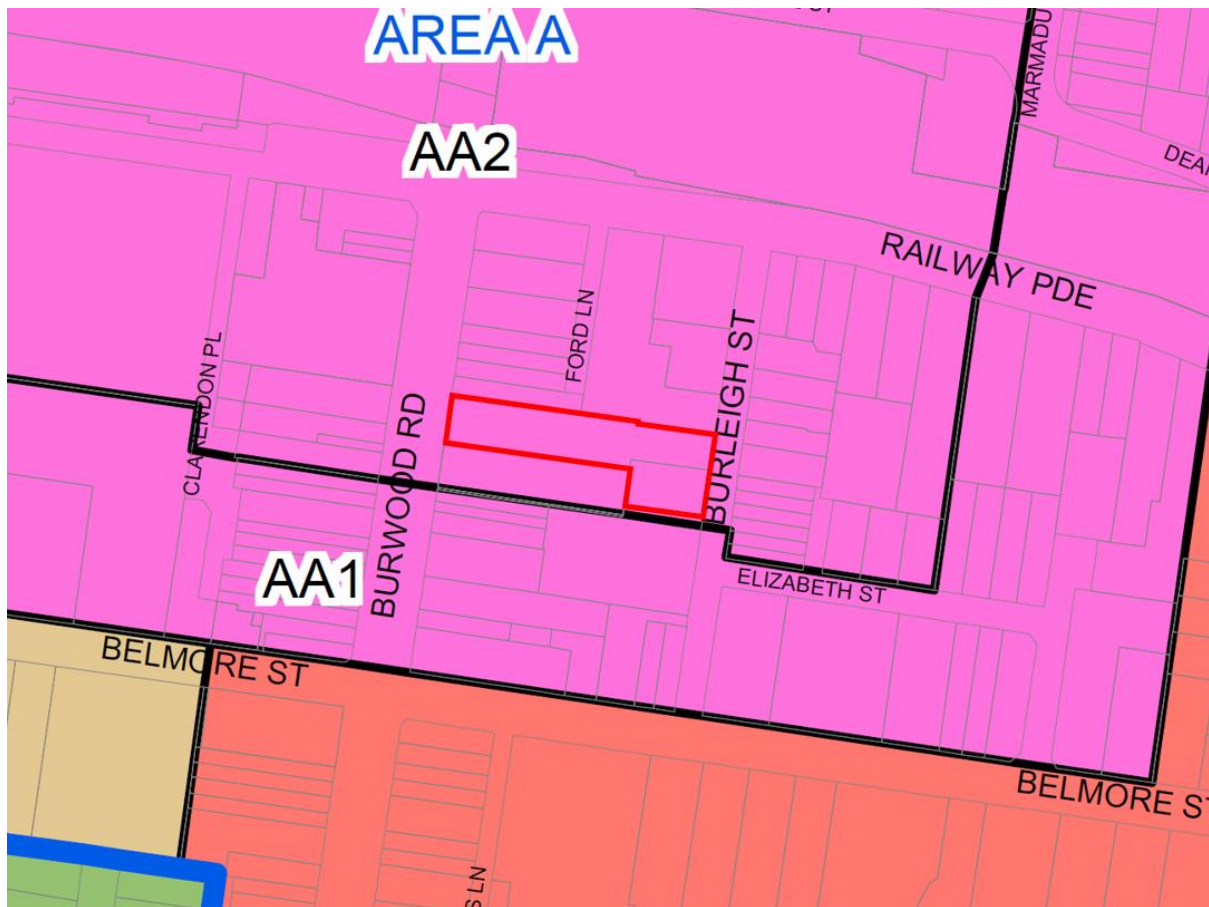


Figure 1: Extract from Building Height Map to BLEP 2012 (AA2 = 70m)

Building height is defined in BLEP 2012 as:

“building height (or height of building) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

The floor space ratio control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

2. Proposed variation to height of building requirement

The maximum height of the commercial tower is 80.6m and therefore exceeds the maximum building height control by 10.6m which equates to a percentage variation of 15%. The maximum height of the residential tower is 81.55m and therefore exceeds the maximum building height control by 11.55m which equates to a percentage variation of 16.5%.

3. Clause 4.6 to BLEP 2012

The objectives and provisions of clause 4.6 to BLEP 2012 are as follows:

“4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows:*

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(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.

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) the consent authority 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

(b) the concurrence of the Secretary has been obtained.

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 4.3A(2)."

The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This request addresses the requirements of subclauses 4.6(3) and 4.6(4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives of clause 4.3 height of buildings are as follows, inter alia:

"(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,

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

As previously noted, the *Height of Buildings Map* nominates a maximum building height of 70m for the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum building height of 76.8m, as described in Section 2.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.3 are addressed in turn below.

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 subject site is within the Burwood Commercial Core and the core planning controls for height of buildings and floor space ratio encourage high density development. Objective (a) refers specifically to medium and low density development and as such is not relevant to the subject site.

Objective (b): "to control the potentially adverse impacts of building height on adjoining areas."

Despite non-compliance with the numeric standard, the proposed building height will have no adverse impact on adjoining areas within the Commercial Core or Middle Ring Areas of Burwood, as described below:

- The proposed height of the commercial tower equates to an additional three levels above the height control but is below the building height plane. The proposed height of the residential tower equates to an additional four levels above the height control, however is also below the building height plane. The external walls of the upper most level of both the towers are recessed from levels below, and as such will be visually recessive when viewed from neighbouring properties. It is submitted that there is no substantive difference between a compliant scheme and the proposed scheme in terms of scale and streetscape presentation.
- The Burwood LEP employs a secondary height control referred to as the building height plane. The objectives of the building height plane are to focus greater building height in the inner part of the Burwood Town Centre and to facilitate adequate solar access to land adjoining the Burwood Town Centre. The proposed scheme is compliant with the building height plane, despite non-compliance with building height. This implies that the degree of overshadowing associated with the proposal is acceptable and consistent with the built form pattern anticipated by the building height plane.
- The overshadowing impact of the proposed residential tower has been mitigated by providing a setback to the southern property boundary, thus increasing the separation distance between the tower and the existing residential flat building at No.11-17 Burleigh Street.
- There are no significant views obtained through the site from adjoining properties that are likely to be obscured by the non-compliant element of the building. The impact of the additional levels of the commercial and residential towers on potential views from adjoining land area, to some degree, anticipated by the building height plane standard and the emerging high density built form within the Burwood Commercial Core.

As described above, despite minor non-compliance with the height of buildings development standard, the proposal is consistent with the relevant objectives for building height. The proposed top two levels of the commercial tower will have no adverse impacts on adjoining areas in the Burwood Town Centre. Accordingly, the proposal satisfies Objective (b) of the height of buildings standard.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of Zone B4 Mixed use 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 proposed development is demonstrably consistent with the relevant zone objectives in that:

- The proposal replaces a large disused warehouse space and dated multi-storey function centre with a significant mixed-use development comprising high quality residential apartments and a large proportion of commercial floor space suitable for a range of office, business and retail uses and is therefore consistent with the zone objective to provide a mixture of compatible land uses.
- The site is well located in relation to public transport services being within 100m of Burwood Railway Station, less than 100m to high frequency bus stops and within the commercial core of the Burwood

Commercial Centre. The site is therefore highly suitable for the proposed mixed-use development with access to public transport and walking opportunities potentially benefitting commercial tenants and customers as well as residents and their visitors.

For these reasons the development proposal meets the objectives for development in Zone B4.

4. Sufficient environmental planning grounds

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, as discussed above it is considered that, despite non-compliance with the height of buildings standard, the proposed scale and form of the development is compatible with the emerging character of the locality and is also consistent with the desired transitional arrangement of development in the Burwood Town Centre.

On “planning grounds” and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve “*a better outcome for and from development*”, it is considered that:

- The floor space proposed within that part of the building that breaches the height limit could be distributed elsewhere on site however this would necessitate building upon part of the central courtyard area. This courtyard area is considered to be a highly desirable feature of the proposal in terms of its functionality and amenity value. Furthermore, the proposed built form (i.e. towers at the edges of the site with central courtyard) serves to reduce impacts on neighbouring properties associated with overshadowing and visual bulk.
- The proposal has been adjusted to incorporate a setback to the southern property boundary, thus improving the solar access and outlook outcomes for the existing residential flat building at Nos.11-17 Burleigh Street. The floor space taken from the southern elevation has been provided as additional building levels and this is considered to be an appropriate distribution of permitted floor space. The earlier iteration of the development proposed a nil side setback for the residential tower, and this was considered to be consistent with desired urban form and massing, though it is evident that the setback now proposed will result in some benefits for existing development to the south.
- The building height breach is associated with additional floor space proposed as part of voluntary planning agreement in accordance with the Council’s VPA Policy whereby additional floor space may be permitted subject to a monetary contribution to the Council which is used for public infrastructure works. There is a clear a direct public benefit associated with the monetary contribution provided as a result of the development.

For the reasons listed above, it is considered that there are sufficient environmental planning grounds to support a variation to the height of buildings standard, particularly when one considers that breach is directly associated with the ‘bonus’ floor space permitted under Council’s VPA Policy and the proposed distribution of floor space is the most appropriate means of managing bulk and scale and impacts on adjoining areas.

5. Insistence on compliance is unreasonable and unnecessary

In regards to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“ An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“ The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Having regard to all of the above, it is our opinion that compliance with the height of buildings development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied and Council has the power to grant variation to the FSR development standard.

ANNEXURE D

Clause 4.6 Variation Request: Floor Space Ratio

Clause 4.6 Variation Request
Nos. 180-186 Burwood Road, Burwood
Clause 4.4 – Floor space ratio

1. Floor space ratio control

Clause 4.4 (2) of Burwood Local Environmental Plan 2012 (BLEP 2012) relates to maximum permitted floor space ratio for a site and refers to the *Floor Space Ratio Map*. The relevant map identifies the floor space ratio controls that apply to the site as shown in the extract of the map in Figure 1 (with the subject site outlined in red). A maximum floor space ratio of 6:1 applies to the site.

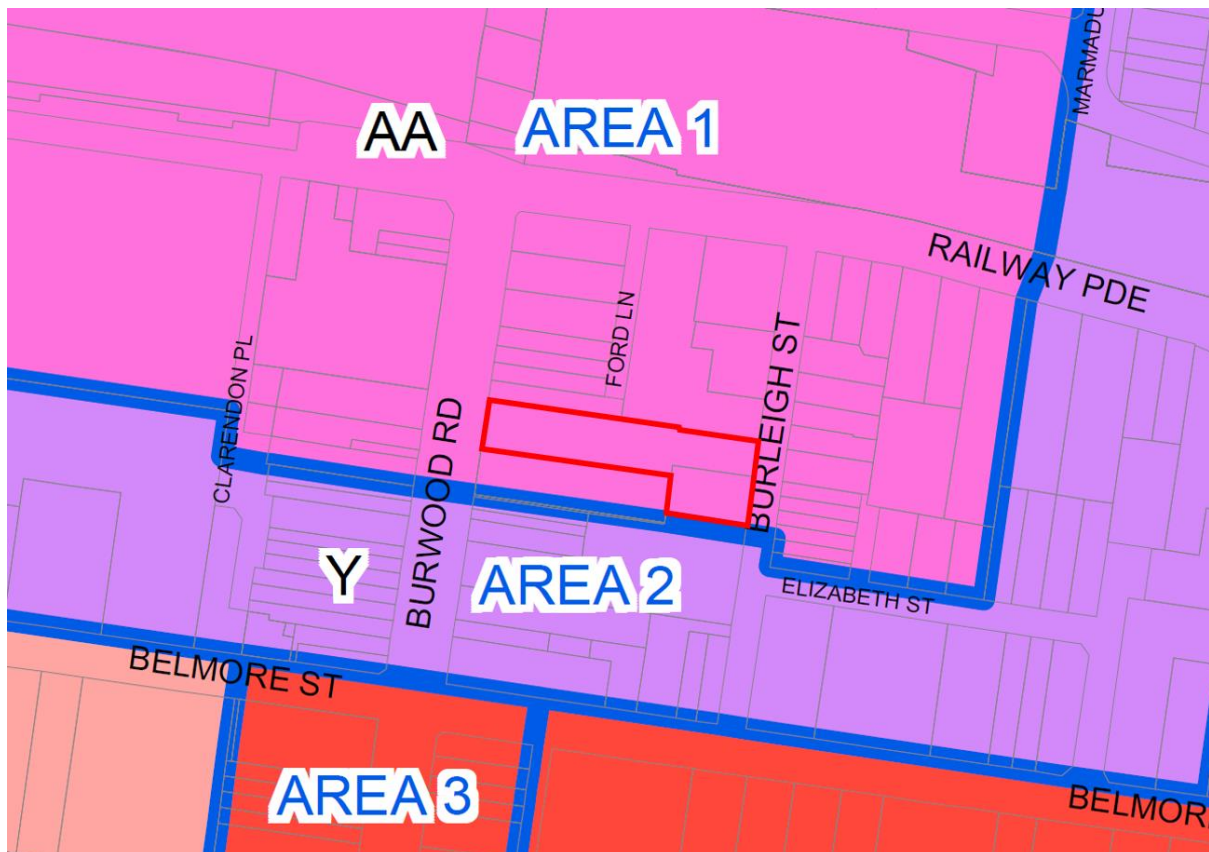


Figure 1: Extract from Floor Space Ratio Map to BLEP 2012 (AA = 6:1)

Floor space ratio is defined in BLEP 2012 as:

*“(2) Definition of “**floor space ratio**”*

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area”

The floor space ratio control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

2. Proposed variation to height of building requirement

A survey plan of the site indicates that the site area is 1,632.60m². The proposed GFA is 10,770m² which equates to an FSR of 6.6:1 and is therefore non-compliant. The additional 0.6:1 FSR equates to a variation of 10%.

3. Clause 4.6 to BLEP 2012

The objectives and provisions of clause 4.6 to BLEP 2012 are as follows:

“4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(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.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority 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

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (ca) clause 4.3A(2)."*

The development standards in clause 4.4 are not “expressly excluded” from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This request addresses the requirements of subclauses 4.6(3) and 4.6(4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives of clause 4.4 floor space ratio are as follows, inter alia:

- “(a) to enable development density and intensity of land use to achieve an appropriate urban form,*
- (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.”*

As previously noted, the *Floor Space Ratio Map* nominates a maximum floor space ratio of 6:1 on the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a floor space ratio of 6.6:1, as described in Section 2.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.4 are addressed in turn below.

Objective (a): “to enable development density and intensity of land use to achieve an appropriate urban form”

Despite non-compliance with the numeric standard, the additional density has been arranged and configured within the site to achieve an urban form that is appropriate to the emerging context, as described below:

- The numeric non-compliance is relatively minor in percentage terms and therefore the visual bulk of the proposal is not substantively different to a compliant development. Indeed, it is submitted that the difference in visual bulk between a compliant development and the building proposed would be largely imperceptible when viewed in the streetscape and context of the anticipated building form throughout the Burwood Commercial Centre.
- The streetscape analysis prepared by UrbanLink Architecture and submitted with the application considers the likely nature and configuration of future development on adjoining sites, taking into account applicable planning controls, lot sizes, ownerships patterns and the like. The analysis

demonstrates that the proposal will achieve a density and scale that is characteristic of the anticipated urban form, despite numeric non-compliance with the FSR control.

- An important factor that determines the apparent density of a development is the degree of façade articulation and the quality and arrangement of external treatments. Both the commercial tower and the residential tower incorporate recessed balconies at street facing elevations which serve to ameliorate the visual bulk of the development. Further façade articulation is achieved via appropriately proportioned window openings and by ‘framing’ portions of the façade to break up the verticality of the building. Solid to void ratios and the combination of external materials achieves a fine grained appearance applies to the slender towers to reduce the overall perception of bulk.
- The intensity of land use anticipated from the proposal will have no detrimental impacts to the function and form of the urban environment in which it is located. The proposal provides active frontages to both streets which are compatible with the level of streetscape activity in the Burwood Commercial Centre. Vehicle access and egress is confined to the Burleigh Street frontage to optimise pedestrian activity in the main street of Burwood Road. All necessary parking and servicing space as well as plant, equipment and storage required by the development can be accommodated within the basement without substantially adding to the bulk and scale of the building overall. Adequate common open space areas are provided for the future building occupants including a central courtyard space which creates opportunities for natural ventilation and solar access within the site as well as for future redevelopment projects on neighbouring sites.
- The overall form of the development as two slender towers creating a street wall to each street and a central space for natural ventilation and solar access sets a highly functional, practical and desirable precedent for the redevelopment of neighbouring sites and will fit within the existing and desired future streetscape and high density urban environment envisaged by planning controls for the commercial core.

In summary, the proposal is considered to represent a development density that will achieve an appropriate urban form for the site context within the commercial core of the evolving city centre, despite numeric non-compliance with the floor space ratio development standard. Accordingly, the proposal satisfies Objective (a) of the floor space ratio standard.

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.”

Despite minor non-compliance with the numeric control, the proposal will achieve a development density and intensity that is appropriate within the Commercial Core Area of Burwood. The subject site is situated within the area identified in the Burwood Development Control Plan 2012 (DCP 2012) as the Burwood *Commercial Core Area*. To the south of the site is land identified as the *Middle Ring Area* and further south the land is identified as the *Perimeter Area*. The permitted FSR and building height within each of these areas differs to achieve a transition in height and scale that is progressively reduced moving outwards from the commercial core. Although marginally non-compliant with FSR, the proposal will contribute to this desired transitional arrangement as it will have a density appropriate to the commercial core and a higher density and scale than anticipated by future development to the south.

As described above, the proposal will achieve a scale and density that is consistent with the desired density and intensity of development in the Burwood Commercial Core, despite minor non-compliance

with the floor space ratio standard. Accordingly, the proposal satisfies Objective (b) of the floor space ratio standard.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of Zone B4 Mixed use 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 proposed development is demonstrably consistent with the relevant zone objectives in that:

- The proposal replaces a large disused warehouse space and dated multi-storey function centre with a significant mixed-use development comprising high quality residential apartments and a large area of commercial floor space suitable for a range of office, business and retail uses and is therefore consistent with the zone objective to provide a mixture of compatible land uses.
- The site is well located in relation to public transport services being within 100m of Burwood Railway Station, less than 100m to high frequency bus stops and within the Commercial Core of the Burwood Commercial Centre. The site is therefore highly suitable for the proposed mixed-use development with access to public transport and walking opportunities potentially benefitting the commercial tenants and their customers as well as residents and their visitors.

For these reasons the development proposal meets the relevant objectives for development in Zone B4.

4. Sufficient environmental planning grounds

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, as discussed above it is considered that, despite non-compliance with the floor space ratio standard, the proposed density and subsequent urban form are compatible with the emerging character of the locality and also consistent with the desired transitional arrangement of development in the Burwood Town Centre. The intensity of development will be compatible with the capacity of established infrastructure and utilities and optimises efficient use of established services and facilities in the commercial centre.

On “planning grounds” and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve “*a better outcome for and from development*”, it is considered that:

- The variation specifically relates to additional residential floor space (as explained in more detail in Annexure E). The proposed variation allows for additional residential floor space in a well-established Key Strategic Centre which is consistent with the strategic goals of *A Plan for Growing Sydney*. Additional housing, particularly housing that contributes to the quantity of affordable housing stock in key Strategic Centres, is a positive planning outcome and one that is consistent with the State Government’s strategic direction.
- As previously noted the bulk and scale of the proposal is demonstrated to be compatible with, and sensitive to, both existing and likely future development in the streetscape. In this regard, it is submitted that the additional floor space proposed is a superior planning outcome with significant benefits associated with the provision of additional housing and no significant adverse impacts in

terms of visual bulk, streetscape character, traffic and parking and the provision of ancillary plant and equipment for both residential and commercial uses.

- The additional floor space is proposed in conjunction with a voluntary planning agreement in accordance with the Council's Policy 'Carrying out bonus development in the public interest' whereby additional residential floor space may be granted subject to a monetary contribution to the Council which is used for public infrastructure works. There is a clear and direct public benefit associated with the monetary contribution proposed in conjunction with the development.

For the reasons listed above, it is considered that there are sufficient environmental planning grounds to support a variation to the floor space ratio standard, particularly when one considers that the bulk and scale of a strictly compliant development is not substantively different to that which is proposed and the benefits associated with the additional housing is consistent with the State Government's strategic direction for Burwood. In addition, there is a significant public benefit connected with the monetary contribution made through the proposed VPA.

5. Insistence on compliance is unreasonable and unnecessary

In regards to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

" An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

" The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Having regard to all of the above, it is our opinion that compliance with the floor space ratio development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone.

On environmental planning grounds and in addition to the relevant LEP objectives, the proposal will result in a high quality mixed use development with no adverse impacts on the amenity of nearby properties and demonstrating design excellence. The proposal will result in improvements to the streetscapes and function of both Burwood Road and Burleigh Street and provides an improved setting and layout for the potential redevelopment of adjoining sites through establishing a central courtyard space which enhances natural ventilation and solar access.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied and Council has the power to grant variation to the FSR development standard.

ANNEXURE E

Clause 4.6 Variation Request: Floor Space Ratio (Residential Floor Space)

Clause 4.6 Variation Request
Nos. 180-186 Burwood Road, Burwood
Clause 4.4A – Exceptions to floor space ratio

1. Floor space ratio control

Clause 4.4A(3) of Burwood Local Environmental Plan 2012 (BLEP 2012) prescribes the maximum permitted floor space ratio of residential accommodation for the site and refers to the *Floor Space Ratio Map*. The relevant map identifies areas subject to specific floor space ratio controls as shown in the extract of the map in Figure 1 (with the subject site outlined in red). The map indicates that the subject site is within 'Area 1'. BLEP 2012 requires the ratio of the gross floor area (GFA) of any part of a building used for the purpose of residential accommodation to the site area must not exceed 2:1.

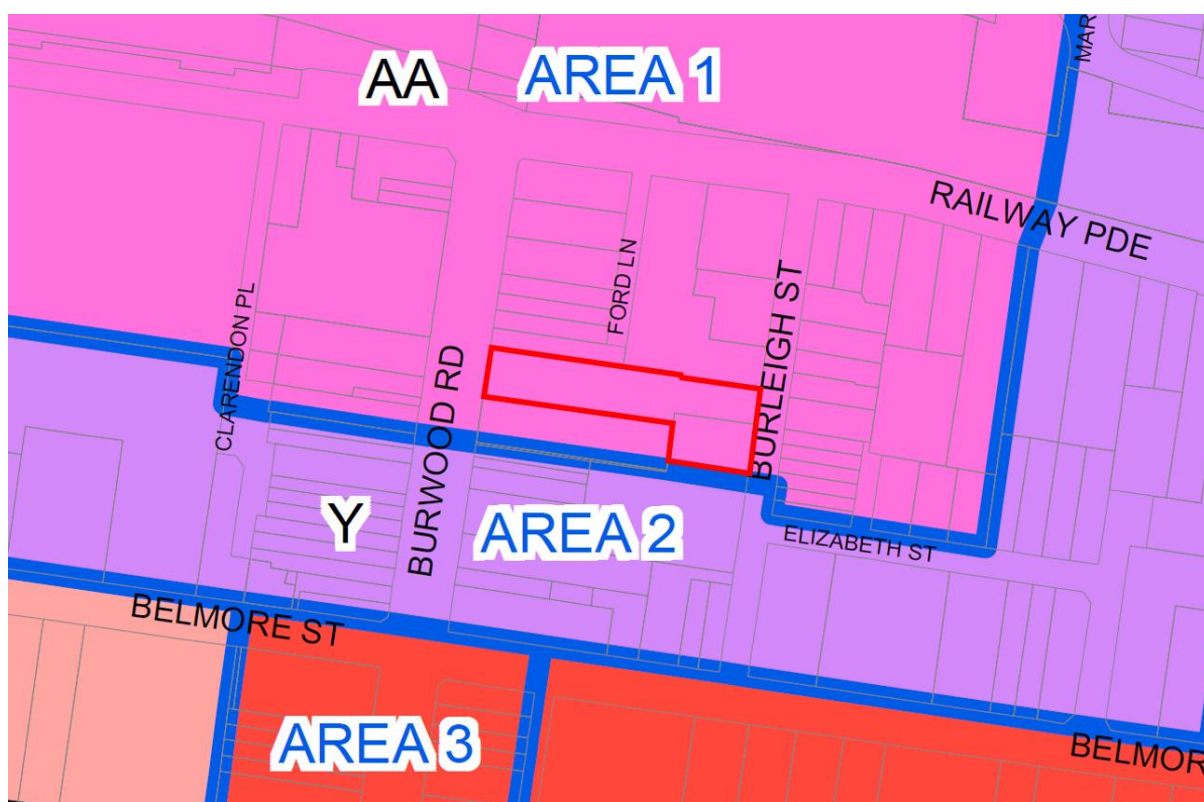


Figure 1: Extract from Floor Space Ratio Map to BLEP 2012 (site identified as Area 1)

2. Proposed variation to floor space ratio requirement

A survey plan of the site indicates that the site area is 1,632.60m². The proposed GFA associated with residential accommodation is 4,245m² which equates to a floor space ratio (FSR) of 2.6:1. The proposed FSR is therefore non-compliant with the development standard in Clause 4.4A(3) to BLEP 2012. The additional FSR of 0.6:1 equates to a variation of 30%.

3. Clause 4.6 to BLEP 2012

The objectives and provisions of clause 4.6 to BLEP 2012 are as follows:

“4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (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.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority 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*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (ca) *clause 4.3A(2)."*

The development standards in clause 4.4A are not “expressly excluded” from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This request addresses the requirements of subclauses 4.6(3) and 4.6(4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objective of clause 4.4A Exceptions to floor space ratio are as follows, inter alia:

“(1) The objective of this clause is to limit the density of residential development in certain business zones to ensure it does not dominate non-residential development in those zones.”

As previously noted, the ratio of the gross floor area of any part of a building used for the purpose of residential accommodation to the site area must not exceed 2:1. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a residential floor space ratio of 2.59:1, as described in Section 2.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.4 are addressed in turn below

Objective (1): “The objective of this clause is to limit the density of residential development in certain business zones to ensure it does not dominate non-residential development in those zones.”

Despite non-compliance with the numeric standard, it is considered that the additional density associated with proposed residential accommodation will compliment, rather than dominate, the non-residential component of the subject development and non-residential development in the locality more broadly, as described below:

- The subject proposal seeks a departure from the floor space ratio development standard by utilising a voluntary planning agreement to obtain an additional 10% of floor space. This is consistent with Council’s Policy ‘Carrying out bonus development in the public interest’ (effective from 1 May 2015). The maximum residential GFA permitted under Clause 4.4A excluding the bonus policy is 3,265.2m² which is equivalent to 2:1. The proposed residential component has a GFA of 4,237.2m² which is equivalent to 2.59:1. The additional 0.59:1 FSR is less than the equivalent of 10% of the maximum overall FSR of 6:1.
- Despite non-compliance with the FSR standard for the residential component of the development as prescribed in BLEP 2012, the area of non-residential floor space is compliant with Clause 4.4. A total of 6,538.15m² of non-residential floor space is proposed which equates to a non-residential FSR of 4:1.
- There are a number of ways of interpreting the term ‘dominate’ in the context of this objective. The objective may be seeking to ensure that residential floor space does not visually dominate non-residential floor space in terms of its built form and appearance. Alternatively, and perhaps more likely, the objective is geared towards ensuring residential floor space does not overwhelm or

preclude opportunities for non-residential floor space and subsequently undermine the function and vitality of the Burwood commercial core. Each aspect is considered in turn below:

- The commercial (or non-residential) floor space is provided within a 19 storey tower fronting Burwood Road and also within the first 5 levels of the tower fronting Burleigh Street. At street level on Burleigh Street and Burwood Road, the portion of the building containing commercial floor space will be visually prominent and make a more significant contribution to streetscape character than the portion of the residential tower above.
- Ground level retail spaces are proposed to front Burleigh Street and Burwood Road and will create vibrant and active street frontages. The frontage to Burwood Road is exclusively commercial and provides a continuous active frontage enhancing street-front activity along this main street façade. The vehicle crossing for the development is located in the Burleigh Street frontage to optimise street-level activity and pedestrian amenity in the main street of Burwood Road. For these reasons it is submitted that the residential floor space will not visually or functionally dominate the non-residential floor space at street level.
- As noted previously, the extent of non-residential floor space provided when expressed as a ratio of non-residential floor space to site area is 4:1 and this is compliant with the extent of non-residential floor space anticipated by the development standard. The proposal contributes an appropriate area of non-residential floor space to the Burwood Commercial Core. The non-residential floor space provided within the development will be suitable for a variety of business, office, retail and food and drink premises and will integrate well with existing commercial space provided on adjacent sites and the likely redevelopment patterns for neighbouring and nearby sites in the commercial core. For these reasons it is submitted that the residential floor space does not overwhelm or preclude the provision of non-residential floor space as anticipated by the LEP controls.
- The ancillary facilities of waste management, plant and equipment and servicing are entirely contained within the basement and functionally separated between residential use and commercial use where appropriate. Adequate space is available in the basement to accommodate the necessary ancillary features of both the commercial and residential components of the development. Therefore the additional residential floor space will not compromise the ancillary services and functions required to support the commercial component.
- It is considered that the additional residential floor space will compliment rather than dominate the proposed non-residential floor space. It is anticipated that the non-residential floor space will be tenanted by a variety of business, office, retail and food and drink premises and these commercial premises will benefit from residents living on-site such as residents who may potentially become tenants of the non-residential floor space and residents who may also be customers and employees of those businesses. A greater number of residents will translate to additional social interactions and activity in and around the development site. Such activity is positive for mixed land uses and creating and sustaining a vibrant and safe city centre. For these reasons it is evident that the additional residential floor space will support and enhance future non-residential land uses, rather than dominate non-residential development.

In summary, the proposal contributes an equivalent degree of non-residential floor space as a compliant development with a non-commercial FSR of 4:1. As detailed above, the additional residential floor space will compliment rather than dominate the non-residential floor space in terms of physical appearance,

functionality and enhancing viability and safety of non-residential land uses. Accordingly, the proposal satisfies Objective (1) of the residential floor space ratio standard.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of Zone B4 Mixed use 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 proposed development is demonstrably consistent with the relevant zone objectives in that:

- The proposal replaces a large disused warehouse space and dated multi-storey function centre with a significant mixed-use development comprising high quality residential apartments and a large proportion of commercial floor space suitable for a range of office, business and retail uses and is therefore consistent with the zone objective to provide a mixture of compatible land uses.
- The site is well located in relation to public transport services being within 100m of Burwood Railway Station, less than 100m to high frequency bus stops and within the commercial core of the Burwood Commercial Centre. The site is therefore highly suitable for the proposed mixed-use development with access to public transport and walking opportunities potentially benefitting commercial tenants and customers as well as residents and their visitors.

For these reasons the development proposal meets the objectives for development in Zone B4.

4. Sufficient environmental planning grounds

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, as discussed above it is considered that, despite numeric non-compliance, the additional residential floor space will compliment rather than dominate the non-residential floor space. In this regard the proposal is consistent with the objectives of the BLEP 2012. Furthermore, the additional residential floor space will contribute to the overall vibrancy and activity of the Burwood Town Centre and optimise potential use of infrastructure, services and facilities.

On “planning grounds” and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve “*a better outcome for and from development*”, it is considered that:

- The non-residential floor space provided in the proposed scheme is compliant with Clause 4.4 to BLEP 2012 and therefore the proposal makes an appropriate contribution of non-residential floor space to the Burwood Commercial Core;
- The additional residential floor space (in conjunction with the VPA) is consistent with the 10% bonus sought by Council’s Policy ‘*Carrying out bonus development in the public interest*’;
- The additional residential floor space is functionally compatible with the efficient operation of the commercial floor space in that a continuous active frontage is achieved to Burwood Road, adequate space is available within the basement for the separation of parking, waste management, access and servicing vehicles ancillary to the commercial and the residential uses;

- The bulk and scale of the building will be compatible with that anticipated with redevelopment of sites and new buildings within the Commercial Core and the additional residential floor space will not detract from the streetscape or visual appearance of the commercial core built landscape;
- The residential floor space is appropriately separated from the commercial floor space such that there will be no detrimental impacts on the amenity of the residential apartments within the site;
- The additional residential floor space will not compromise the future development potential of neighbouring sites;
- Rather than dominating non-residential floor space, the additional residential floor space provided in accordance with Council's Policy will enhance the viability of the non-residential floor space as residents are likely to become customers, employees or tenants of future office, business, retail and food and drink premises; and
- The additional residential floor space translates to a greater number of residential apartments, many of which are single and two bedroom dwellings and will thus contribute to affordable housing supply in an area identified in the Plan for Growing Sydney as a key Strategic Centre.

For the reasons listed above, it is considered that there are sufficient environmental planning grounds to support a variation to the residential floor space ratio standard. The scheme provides a compliant amount of non-residential floor space and the proposed residential floor space is consistent with Council's Policy for 'Carrying out bonus development in the public interest'.

5. Insistence on compliance is unreasonable and unnecessary

In regards to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

" An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

" The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Having regard to all of the above, it is our opinion that compliance with the residential floor space ratio development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives.

On environmental planning grounds in addition to the relevant LEP objectives, the proposal will result in a high quality mixed use development with no adverse impacts on the amenity of adjoining properties and improvements to the aesthetics and functionality of the streetscape and both street frontages. The proposal is exemplary of the character and scale for mixed use buildings anticipated by the planning controls for the Burwood Commercial Core.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied and Council has the power to grant variation to the FSR development standard and Council has the power to grant variation to the FSR development standard.

ANNEXURE F

DCP COMPLIANCE TABLE

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
Part 2 – Site and Environmental Planning			
2.3 Views and vistas	P1 Development applications must identify existing views and vistas significant to the proposal, assess the impacts of the development and demonstrate how significant views and vistas are to be protected and enhanced.	Due to the gentle topography of the locality, in combination with the low scale nature of older building stock, there are no significant views from neighbouring properties through the subject site that are likely to be unreasonably obscured by the development. There are no specific view corridors identified in the DCP which require consideration with this development application.	✓
	P2 Development applications must demonstrate how building design, location and landscaping will encourage view sharing between properties.	The proposed towers are relatively narrow in width and depth and will permit view sharing between buildings through the central portion of the site. Landscaping will not result in view loss.	✓
2.4 Streetscapes	P1 Development applications must identify streetscape characteristics, assess the impacts of the development and demonstrate how significant streetscape qualities are to be protected and enhanced.	A comprehensive streetscape analysis has been undertaken which considers potential building form on adjoining premises and along both street frontages. The analysis has informed the building design including the location of the vehicle access in Burleigh Street, the continuous active street frontage along Burwood Road and the design of awnings. Refer to architectural plan set.	✓
	P2 Development applications must demonstrate how building design, location and landscaping will encourage the protection and enhancements of streetscapes.	The streetscape, along with most of the Burwood Town Centre is undergoing, or expected to experience, a period of significant transformation in terms of built form and urban context. In this regard, the proposal is consistent with the anticipated future character of the area and will therefore enhance the streetscape.	✓
Part 3 – Development in Centres and Corridors (Burwood Town Centre & Burwood Road North)			
3.2.1 Design Excellence	<p>P1 Building design must represent architectural design excellence in the following ways:</p> <ul style="list-style-type: none"> The form and external appearance of any development should significantly improve the quality and amenity of the public domain. 	<p>The proposal demonstrates design excellence.</p> <p>Articulation of the street façade and proposed external treatments are both compatible with desired future character and sensitive to existing low density development in the locality.</p> <p>Analysis of the streetscape has been undertaken and considers both the existing and likely potential development of adjoining sites. The analysis</p>	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	<ul style="list-style-type: none"> • An appropriate composition of building elements, textures, materials and colours should reflect the use, internal design and structure of the development. • The development should respond positively to the environment and context. • Appropriate consideration must be given to the existing or likely potential development of adjoining sites. 	<p>demonstrates that the Burwood Town Centre is experiencing a period of significant transformation as a result of zoning uplift that has occurred with the introduction of the new LEP.</p> <p>It is therefore anticipated that the streetscape and locality more broadly will change significantly in the short to medium term. As such, the development has been sited, configured and designed to respond to and complement the likely future character of the area. For example, the buildings are proposed to be built to the southern and northern boundaries to integrate with development on neighbouring allotments which are subject to similar height and density controls.</p>	
3.2.2 Materials and Finishes	<p>P1 Building exteriors must be designed with regard to the following criteria:</p> <ul style="list-style-type: none"> • Use of high quality finishes. • Avoidance of extensive expanses of blank glass or solid walls. • Encouragement of visually interesting building treatments. • Integration of building elements to conceal from public view, areas and equipment such as aerials, antennae, clothes drying, instantaneous water heaters, washing machines, air conditioners, plant equipment or the like. • Incorporation of external lighting where appropriate. • Avoidance of excessive light spillage. • Use of translucent or opaque materials for balustrades is encouraged. No clear glass balustrades will be permitted. 	<p>A schedule of materials and finishes has been submitted with the development application. The schedule demonstrates that the selected external materials and finishes will provide for a high quality finish and one that is appropriate for in a high density urban context.</p> <p>External materials and architectural features, in combination with street facing balconies, ensure the street elevation is well articulated and provides a high degree of visual interest.</p> <p>Building features such as lift overruns and the like are integrated within the building design so as not to compromise the external appearance of the building. Communal open space is well separated from public spaces for enhanced privacy.</p> <p>Details of lighting will be submitted with the Construction Certificate.</p>	✓
	<p>P2 Building entrances must be visible from the street.</p>	<p>The residential and commercial lobbies are visible from the street.</p>	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	P3 Painted finishes to materials are not desirable. Pre-coated factory applied finishes such as powder coating are encouraged.	Painted concrete finishes are proposed as indicated in the schedule of materials and finishes however these areas are relatively accessible and can be maintained to ensure the building retains a high quality appearance and continues to make a positive streetscape contribution.	✓
	P4 Walls of development must be articulated and designed to provide visual interest when viewed from the street. Material selection, treatment, proportion and pattern of wall surfaces must be considered.	Substantial articulation is provided at the street and internal elevations in the form of recessed balconies, a suitable ratio of solid to void, vertical architectural features and material combinations. Physical articulation of the building and thoughtful external material combinations are considered to generate significant visual interest when viewed from various positions in the locality.	✓
	P5 Low maintenance and graffiti resistant materials must be used wherever possible on surfaces susceptible to graffiti.	The inclusion of specific materials can be conditioned if considered necessary. It is submitted that the design and configuration of the proposal, in combination with appropriate lighting and security measures, will discourage anti-social behaviours that may lead to graffiti.	✓
3.2.3 Roofs and Roof Tops	P1 Roof designs must have regard for, and be integrated into the overall design of the development and its role in the skyline of the centre or corridor.	The roof form is designed to comply with the building height plane requirement and is visually consistent with the building form anticipated by the planning instruments.	✓
	P2 Roofs must respond to the orientation of the site. For example, the use of eaves and skillion roofs to facilitate to solar access.	The roof form will provide adequate protection from northern sun without compromising solar access.	✓
	P3 The visual impact of service elements must be minimised by integrating them into the roof design. These elements include lift over-runs, service plant rooms, vent stacks, telecommunication infrastructures, gutters and downpipes.	Lift and service overruns are integrated into the roof form thus avoiding undesirable visual impacts.	✓
	P4 Development must be designed with regard to how it is observed from the street, from adjacent development and as part of a larger skyline. Opportunities for sculptural expression to create a varied skyline must be considered.	Upper levels, including plant rooms, lift overruns and the like are generally setback from the side and street facing elevations to provide articulation and create visual interest at the uppermost levels. It is submitted that the upper level will not be readily visible from the street	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
		network immediately surrounding the development. The uppermost levels have been designed to make a positive contribution to the skyline when viewed from the locality.	
3.2.4 Street-front Activities and Building Access	P1 Where, as a result of the nature of the development, there are specific security requirements, security measures must form an integral part of the building design. Roller shutters are not permitted but retractable open security grilles may be considered.	Security features such as the basement ramp shutter will be designed to reduce visual impact and integrate with the overall building design.	✓
	P2 Ground floor level development must: <ul style="list-style-type: none"> • Promote quality non-residential activities in accordance with the zone. • Minimise the number of service doors. • Encourage visual interest on service doors with displays etc. • Provide access points to and from the public domain at not more than 20 metre intervals. • Provide at-grade access at entry points. • Incorporate visually interesting streetscape frontages at ground level with attractive entries, clear glazed windows and window displays, artworks, articulated architecture and facade modulation. 	Proposed ground floor commercial space will facilitate a range of commercial activities that are permissible in the B4 zone and consistent with zone objectives. Entry to the ground floor is centralised and at grade to both street frontages.	✓
	P3 Separate and clearly identifiable entrances must be provided from the street for pedestrians and cars, and different uses (residential and non-residential).	Lobby areas for the residential and commercial components of the building are provided at the Burleigh Street and Burwood Road frontages, respectively. The entrances are clearly defined and readily visible from the street. Vehicular access to the basement car park is via Burleigh Street, is adjacent to the northern boundary and separated from pedestrian entry.	✓
	P4 Building entrances must have a direct physical and visual connection with the street.	Building entrances have direct visual and physical connection with the street, particularly the commercial and retail spaces provided at each street frontage. Similarly, lobby entrances are clearly defined and readily visible from the street.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	P5 Residential component of any development must have a clear street address and a separate entry.	The lobby area for the residential component of the development is centrally located on the Burleigh Street frontage with a clear street address and is separate from the entry to commercial components of the proposal.	✓
	P6 Outdoor dining is generally encouraged on the footpath of commercially active street frontages, subject to compliance with Council's Outdoor Eating Area Policy.	Outdoor dining is not proposed by this application however the footpath adjacent to floor space identified for retail / commercial use is seen to offer opportunities for formal dining areas, which would be subject to future DA.	✓
	P7 All commercial components must have a clear street address.	Commercial and retail components at ground level will have a street address and will thus generate activity and provide visual interest along street frontages.	✓
	P8 All mail box and postal facilities shall be incorporated into the building in accordance with the requirements of Australia Post. Mail boxes shall be sited and designed for attractive visual appearance and function, as well as to complement the architecture and environs. Where located externally in the case of a residential building, the mail boxes shall be located at right angles to the street boundary on either or both sides of the main access walkway. It is not permitted to locate mail boxes that are accessible only from the footpath outside a development.	There is sufficient space in the residential and commercial lobby areas to provide mail boxes such that they are conveniently accessible for residents, tenants and Australia Post. It is anticipated that a condition of consent will be imposed in this regard.	✓
3.2.6 Site Isolation	P1 The creation of isolated sites is discouraged.	The development will not result in the creation of an isolated site given that properties either side of the subject site will be capable of being redeveloped independently. In fact, the proposal involves blank walls with nil setbacks to the northern and southern boundaries in order to integrate with future tower development that is likely to occur on neighbouring sites.	✓
3.2.7 Residential Flat Buildings and Shop Top Housing	P1 In the B4 Mixed Use zone development comprising residential flat buildings or shop top housing will be subject to the same provisions of Part 3 of this DCP,	Noted. See Annexure A for ADG compliance table.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	together with SEPP 65 and the Residential Flat Design Code (RFDC).		
3.2.8 Apartment Mix and Minimum Dwelling Sizes	P1 Residential development in excess of 20 dwellings must provide a mix of dwellings containing 1, 2 or more bedrooms.	The proposal comprises a combination of single, two and three bedroom apartments.	✓
	P2 All residential developments must provide the following minimum apartment sizes: <ul style="list-style-type: none"> - studio apartments – 40m². - 1 bedroom apartments – 50m². - 2 bedroom apartments – 70m². - 3+ bedroom apartments – 95m². 	Apartment sizes are prescribed by the ADG which prevails over the requirements of a DCP to the extent of any inconsistency. Refer to Annexure A for ADG compliance table. The ADG does not apply to serviced apartments and therefore the DCP controls apply to this component of the proposal. Serviced apartments include 9 x single bedroom apartments with study and 6 x single bedroom apartments. Three (3) of the proposed single bedroom apartments have an area of 45.6m ² and are therefore marginally non-compliant with apartment size requirements of the DCP.	On merit
	P3 Calculation of the apartment size must be the net area and is exclusive of the apartment's perimeter walls, balconies and excessive internal circulation of the dwellings. The storage areas required to be provided within each dwelling by Section 3.2.16 of this DCP section may be included in the calculation of the net area.	Apartment calculations exclude balconies and perimeter walls as per DCP requirement.	✓
3.2.10 Building depth	P1 For development including multi dwelling housing refer to the building amenity provisions of the RFDC (RFDC) which supplements SEPP 65 – Design Quality of Residential Flat Development.	Proposal complies with building depth requirements prescribed in the ADG. Refer to Annexure A for ADG compliance table.	✓
3.2.11 Ceiling	P1 Development must provide the following minimum ceiling heights. Dimensions are expressed from finished floor levels to finished ceiling levels: <ul style="list-style-type: none"> • Ground level of all development (commercial and residential): 3.3 metres. • Non-residential floors above ground level: 3.0 metres. 	Proposal complies with floor to ceiling heights prescribed in the ADG which differ from those contained in the DCP. The ADG provisions prevail. Refer to Annexure A for ADG compliance table.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	<ul style="list-style-type: none"> Residential floors above ground level: 2.7 metres for habitable rooms and 2.4 metres for non-habitable rooms. 		
3.2.12 Natural Ventilation	P1 For development including multi dwelling housing refer to the building amenity provisions of the RFDC which supplements SEPP 65 - Design Quality of Residential Flat Development.	Proposal complies with cross ventilation requirements prescribed by the ADG which prevail over the DCP. Refer to Annexure A for ADG compliance table.	✓
3.2.13 Daylight Access	P1 For development including multi dwelling housing refer to the building amenity provisions of the RFDC which supplements SEPP 65 - Design Quality of Residential Flat Development.	Proposal complies with solar access requirements prescribed by the ADG which prevail over the DCP. Refer to Annexure A for ADG compliance table.	✓
3.2.14 Visual and Acoustic Privacy	<p>P1 Development must be located and orientated to maximise visual privacy between development on the site and adjacent development by:</p> <ul style="list-style-type: none"> Providing adequate rear and side setbacks. Utilising the site layout to increase building separation. For example, orientation of buildings on narrow sites to the front and rear of the lot, thereby utilising the street width and rear garden depth to increase the apparent building separation distance. 	Visual and acoustic privacy is optimised by orienting balconies and habitable room windows to the street or to the central courtyard space. The buildings are proposed to be built to the northern and southern boundaries therefore negating any potential for overlooking in a northerly or southerly direction. Refer to Annexure A for discussion in relation to privacy and visual separation requirements of the ADG.	✓
	<p>P2 Detailed site and building design elements may be incorporated to increase privacy without compromising access to light and air. Design detailing may include:</p> <ul style="list-style-type: none"> Solid or semi-solid balustrades to balconies. Offset windows of dwellings. Recessed balconies and/or vertical fins. Louvres or screen panels to windows and/or balconies. Fencing. Vegetation as a screen between spaces. Pergolas or shading devices to limit overlooking. 	In addition to careful building location and orientation, various building elements have been incorporated to ensure visual and acoustic privacy is optimised. Features include recessed balconies, blade walls and decorative screens.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
3.2.15 Private Open Space	P1 All dwellings must have direct access to one primary open space from the main living area.	All dwellings have direct access to an area of private open space from the main living area.	✓
	P2 The primary open space must be dimensioned to promote indoor/outdoor living. A dining table and two chairs (small apartment, i.e. 1 bedroom) or four chairs (large apartment, i.e. 2 or more bedrooms) should fit on the primary open space. The following minimum dimensions, clear of balustrades, must be achieved: • Minimum depth - 2 metres (up to 1 bedroom). • Minimum depth - 2.5 metres (2 or more bedrooms). • Minimum area - 8 sq metres (1 and 2 bedrooms). • Minimum area - 10 sq metres (3 bedrooms or larger).	Private open space areas and dimensions are prescribed by the ADG which prevails over the requirements of a DCP to the extent of any inconsistency. Refer to Annexure A for ADG compliance table.	✓
	P3 Private open space must respond to site conditions including sun, noise, wind and privacy. Sun screens, pergolas, shutters and openable walls are to be used to increase amenity where appropriate.	Private open space areas will benefit from either an eastern or western aspect (and in some cases both) and are oriented to the street or the central courtyard thus mitigating overlooking to adjoining properties.	✓
	P4 Private open space must form an integral part of the development's design.	The proposed areas of private open space are integral to the layout of each apartment and, more broadly, the architectural expression of the building.	✓
3.2.16 Lobbies and Internal Circulation	P1 Entry lobbies to provide seating, mail delivery and collection and space for supervising personnel	The residential lobby has an area of 22.2m ² and there is sufficient space to provide mail boxes and facilitate mail delivery, as indicated on the ground floor plan.	✓
	P2 Lift lobbies to have natural ventilation and natural light	A west facing breezeway ensures common circulation space has access to both natural ventilation and natural light.	✓
	P3 Common area corridors must be designed to facilitate easy movement of people and furniture. Corridors must incorporate varied surfaces, textured and materials, and clearly identified apartment numbers.	Common spaces and corridors are configured to permit the efficient movement of people and furniture throughout the building. Surfaces in these areas will be appropriately finished and apartment numbers clearly identified. A condition of consent is anticipated.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	P4 Common area corridors minimum 2m wide	Corridor width will comply with the BCA and permit efficient movement of people and furniture through corridors.	✓
	P6 Name and number of development clearly displayed at the entry and suitably illuminated	A condition of consent is anticipated. There are a number of appropriate locations for identification signage that will be clearly visible from the street.	✓
3.2.17 Storage for apartments	P1 For development including multi dwelling housing refer to the building configuration provisions of the RFDC which supplements SEPP 65 - Design Quality of Residential Flat Development.	Each apartment is provided with sufficient storage space including storage both within the dwelling and in the basement. Refer to Annexure A for ADG compliance table and to the unit calculations table provided in plan set.	✓
3.2.18 Safety and Security	P1 The routes between a development's entrance and its dwellings must be designed to maximise occupant safety. The routes from car parking areas to the lift lobby are particularly important in this regard. Clear sight lines and well-lit routes must be provided.	Pedestrian routes between the lobby area / car park as well as dwelling thresholds are a relatively short and direct distance. As such, sight lines are optimised and opportunities for concealment are reduced.	✓
	P2 Development must comply with Council's Burwood Community Crime Prevention and Safety Plan.	The proposal supports the crime prevention priorities described in the Community Crime Prevention and Safety Plan in that the building is designed to permit passive surveillance and optimise security thus mitigating potential robberies, car theft, malicious damage and break and enters.	✓
	P3 Development must be provided with clearly defined site boundaries to strengthen the distinction between public and private space.	The shop fronts and lobby entries provide a clear distinction between the public and private domains.	✓
	P4 Facades at ground level must be activated by locating after hours uses so they are visible from the publicly accessible areas.	Ground floor commercial and retail uses are proposed and will be readily visible and publicly accessible from the street.	✓
	P5 Development access must be controlled by: • Restricting access from balconies, roofs and windows of neighbouring development.	Access for residents is separate from access to commercial areas. Appropriate security measures can be installed such as intercom and keyed security access. A condition of consent is anticipated in this regard.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	<ul style="list-style-type: none"> • Providing separate access from public and common areas. • Providing separate access for residents in mixed-use developments. • Providing an audio or video intercom system at the pedestrian or vehicular entrance or in the lobby for visitors to communicate with residents. • Providing secure keyed or electronic access for residents. 		
	P6 Concealment opportunities must be minimised from development by: <ul style="list-style-type: none"> • Eliminating blind or dark alcoves near lifts and stairwells. • Providing clear sight lines and well-lit routes throughout the development. • Providing appropriate levels of illumination for all common areas. 	Routes between lobby and dwelling thresholds are direct and there are few opportunities for concealment. Appropriate lighting will be installed throughout the development to ensure visibility.	✓
	P7 Residential development must be oriented so that primary windows and private open space address the street and publicly accessible areas.	Balconies and primary living areas address the street.	✓
	P8 Where, as a result of the nature of the development, there are specific security requirements, security measures must form an integral part of the building design. Roller shutters are not permitted but retractable open security grilles may be considered.	Security measures at entry thresholds e.g. intercom, keyed access etc. can be incorporated for resident safety and to discourage criminal activity. A condition of consent is anticipated in this regard.	✓
3.2.19 Access and Mobility	P1 The main entry of development must be designed and identified for use by persons with a mobility impairment.	The lobby entry will comply with the applicable access requirements such as door widths, manoeuvring space and provision of tactile indicators.	✓
	P2 The main entry must be accessible from the street footpath in accordance with Australian Standard (AS) 1428: Design for Access and Mobility.	The main entry and the entry of each dwelling is accessible from the street footpath via a continuous accessible path of travel with minimal change in grade.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	P3 Safe and convenient access must be provided in all development, car parks and communal facilities.	A lift core situated in the centre of each tower allows for safe and convenient access throughout all levels of the development, including those levels containing communal open space areas.	✓
	P4 Compliance with AS 1428.1 is required with respect to access requirements on new building work.	The proposal complies with relevant aspects of AS 1428.1 in relation to provision of an accessible path of travel from footpath to thresholds of dwellings and throughout common spaces. Refer to plans for corridor widths and path grades.	✓
	P5 Tactile indicators must be provided on the ground immediately adjacent to the approach and departure sides of any changes in floor levels in the public domain which incorporate a step, ramp, stepped ramp or the like in accordance with AS 1428.4.	Tactile indicators will be provided as per AS1428.4.	✓
	P6 At least 10% of dwellings in a development must be provided as adaptable housing to Adaptable House Class A or B standard to cater for ageing in place and mobility impaired residents, in accordance with AS 4299: Adaptable Housing.	6 dwellings (or 10%) of the proposed dwellings are adaptable. Refer to architectural set for further information including location and configuration of adaptable apartments.	✓
	P7 At least one car parking space must be provided and allocated to each dwelling required to be provided as accessible or adaptable housing under this Section and the car parking space must be accessible in accordance with the provisions of AS 1428.2 to facilitate automatic vehicular wheelchair loading and unloading.	10 accessible parking spaces are provided within the basement level car park and the spaces are configured to comply with AS 1428.2.	✓
	P9 For development providing 80 or more dwellings, additional accessible visitor car parking spaces must be provided on-site which are accessible, as per P8 above, at the rate of one per each 60 dwellings or part thereof.	10 accessible parking spaces are provided.	✓
3.2.20.1 Awning style	P1 Awnings must be provided above the public domain (i.e. footpath) for buildings built to the street front boundary, where awnings are part of the streetscape character.	A continuous awning is proposed above the footpath at the Burwood St frontage.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	P2 Where development has a setback from the street boundary, and there is formal pedestrian access from that street, provision of an awning over the access to the building is encouraged.	A 3m setback is provided at the Burleigh Street frontage and an awning is provided above this setback area.	✓
	P3 New awnings must be of the traditional steel box design, in a straight form, supported from above, or cantilevered. Glass awnings may be considered where these do not adversely impact the streetscape consistency and visual continuity.	A traditional box design is proposed for awnings at both street frontages. Schedule of Materials and Finishes submitted with the development application indicates the materials proposed which are considered to be compatible with awnings in the locality.	✓
	P4 New awnings must be integrated and compatible with the adjacent awnings that are consistent with this DCP.	As above.	✓
	P5 Change in height of the awning is not permitted unless it steps down or up to follow the terrain/ level of the street.	Awnings are to have a consistent height across the site frontage as there is no significant change in level to be account for.	✓
	P6 Awning length must extend across the entire street front and connect with the adjoining awnings, except above vehicle entry points or service entrances.	Proposed awnings comply with this requirement i.e. single, unbroken awning for weather protection.	✓
3.2.20.2 Awning dimensions	P1 Awning height measured from the footpath to the underside of the awning must be a minimum of 3.2 metres and a maximum of 3.5 metres. If signs are incorporated under the awning, they must allow a minimum clearance of 2.6 metres above the footpath.	Awning clearance is 3.5m.	✓
	P2 The height of the awning fascia must be between 0.4 metres and 0.6 metres.	Awning height at Burwood Road frontage is no greater than 0.6m as per DCP requirement.	✓
	P4 For footpaths that are wider than 3 metres, new awnings must be setback from the edge of the kerb by a minimum of 1.2 metres to avoid conflict with parked vehicles and street trees. For footpaths less than 3 metre wide, new awnings must be setback from the edge of the kerb by a minimum of 0.6 metres.	The footpath along Burwood Road is wider than 3m and therefore the awning will be offset from the kerb a distance of at least 1.2m as shown in plan set.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
3.2.20.3 Materials and colours of awnings	P1 Awnings, including their underside, must be constructed with high quality and low maintenance materials with simple detailing to reduce visual clutter.	A simple, low maintenance soffit will be utilised.	✓
	P2 Under awning supporting structures, ducts, cables and wiring must be concealed from view. Lights should be integrated within the awning, e.g. LED down-lights.	Lighting will be integrated with awning as per DCP requirement.	✓
	P3 Artificial lighting must be installed in awnings at no greater than 6 metre centres and enable face recognition.	Lighting will be installed as per DCP requirement.	✓
	P4 Awnings must adopt a coordinated colour scheme that is compatible with the building. Multiple, bright, and rainbow colours are discouraged.	Schedule of Materials and Finishes submitted with the development application indicates proposed colour scheme which will be consistent with that adopted for the rest of the building.	✓
	P5 Awnings must be regularly maintained to ensure ongoing structural adequacy and weather protection.	Noted. A condition of consent can be imposed accordingly.	✓
3.3 Area Based Controls – Burwood Town Centre and Burwood Road North			
3.3.2.1 Building Height Plane Map	P1 The height of buildings on land within the BTC is not to project above the BHP as identified in Clause 4.3A and on the map marked - "Building Height Plane Map in the BLEP 2012.	The proposal complies with the building height plane. Refer to LEP compliance table at Annexure C.	✓
3.3.2.3 Commercial Core and Middle Ring Areas	<i>Podium height</i> P2 Development along Burwood Road built to the street front must not be greater than 13 metres in height.	Sections demonstrate that the podium height of the development is 12.6m when measured to the top of the feature panel at the perimeter of the street façade.	✓
	P3 Street front development along Burwood Road must enhance the existing streetscape and be of a similar scale, form, bulk, placement and character to adjoining and nearby street front development.	Burwood Road and the Burwood Commercial Centre is undergoing a period of significant transformation as sites are redeveloped to accord with height and density controls introduced by the new LEP. While the proposal will have a larger scale at the street front in comparison to existing neighbouring properties, the development achieves a scale and form that is consistent with the desired future character of Burwood Road and the Commercial Core, as anticipated by LEP and DCP controls.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	<p>Street Front Setbacks P1 Development must be built to the street front boundary except where a minimum of 3 metre, 6 metre or 8 metre setback is required as indicated in Figure 4. These measurements are taken from the street boundary after any land acquisition required by BLEP 2012 has been completed.</p>	The DCP stipulates a 3m setback from the Burleigh Street boundary and the proposal complies with this requirement.	✓
	P2 Setback areas must be free of any projections or encroachments, except for approved awnings (provided in accordance with Section 3.2.19 of this DCP) and at-grade landscaping.	The 3m setback area is free of encroachments.	✓
	P3 All ground level setbacks are to be finished at-grade with Council's footpath and finished with materials to match Council's current public domain requirements.	The setback area will be finished at-grade with the Burleigh Street footpath and will be finished with appropriate materials.	✓
	P4 Development on Burwood Road must be built to the street front boundary.	Podium level fronting Burwood Road has a nil setback to the front boundary.	✓
	<p>Secondary Setbacks P1 Where development in the Commercial Core and Middle Ring Areas exceed 15 metres in height, the part of the development above 15 metres must be set back a minimum of 6 metres from the street front boundary, unless otherwise specified in P3 and Figure 6. Refer to Figures 5(a) and 5(b).</p>	The residential tower presents to the Burleigh Street frontage and is setback 6m for levels 2 and above as per the DCP.	✓
	P2 Setback areas must be free of any projections or encroachments, except for lightweight balconies on the front façade.	The setback area contains no encroachments or projections.	✓
	P3 Where development along Burwood Road exceeds 13 metres in height, the part of the development above 13 metres must be set back a minimum of 8 metres from the street front boundary. Refer to Figure 5(a).	The commercial tower presents to the Burwood Road frontage and is setback 8m for levels 3 and above as per the DCP.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	<p><i>Side and Rear Setbacks</i></p> <p>P1 For residential development refer to the building separation setback provisions of the RFDC which supplements SEPP 65 - Design Quality of Residential Flat Development.</p>	Separation requirements are prescribed by the ADG (formerly the RFDC) prevail over the DCP and are addressed in Annexure A. In summary, the numeric requirements of the DCP are not strictly adhered to however proposed setbacks are appropriate in the context of the development site and will not compromise the development potential of neighbouring properties. A more detailed discussion in relation to this aspect of non-compliance is provided at section 4.2.2 of this SEE.	On merit
	P2 Other street front development up to 15 metres in height must be built to the side boundary and may be built to the rear boundary. Refer to Figure 7.	The podium level of the proposal and the tower above is to be built to the side boundaries as per the diagram contained in the DCP. This arrangement is consistent with the continuous street edge sought by the Council in the commercial core and middle ring areas.	✓
	<p><i>Building Separation/Frontage</i></p> <p>P1 For all development refer to the building separation provisions of the RFDC which supplements SEPP 65 - Design Quality of Residential Flat Development.</p>	Separation requirements are prescribed by the ADG (formerly the RFDC) which are addressed in Annexure A. The separation distance between the proposed towers is comfortably compliant with numeric requirements prescribed in the ADG. Separation distance between the proposed towers and existing and future development on neighbouring allotments does not comply however is suitable given likely pattern of future development. Following council feedback, an increased setback to the southern property boundary is proposed in relation to the residential tower. More detailed discussion provided at section 4.2.2 of this SEE.	On merit
	P2 The building separation requirements established under P1 must be shared equally with adjoining development across a boundary (refer to Figure 8). The applicant must demonstrate that daylight access, urban form, open space and visual and acoustic privacy can be satisfactorily achieved.	As above. Despite non-compliance the proposal performs well in respect of solar access and privacy impacts on adjoining properties.	On merit
	P3 The maximum length in any direction of any part of a building parallel to the street above 15 metres in height is 45m (refer to Figure 9). This portion of the building must be	The parts of the proposed buildings above podium level will not exceed 45m in length. Importantly, the combined length of the proposed building and likely future development on the adjacent sites to the north and south will not exceed the 45m limitation.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	suitably articulated to alleviate building mass and improve building appearance.		
	<i>Communal Open Space</i> P1 Podium areas must be made accessible as communal open space.	The podium area on proposed Level 1 and on Level 20 is provided as communal open space and is accessible via lift and stair access.	✓
	P2 Landscaping must be provided in communal open space. A minimum 0.6 metre soil depth must be provided over 50% of the area to support planting or soft landscaping.	Planter beds with a minimum soil depth of 0.6m are provided to substantial portion of the communal open space area to support planting. Although marginally non-compliant, it is considered that an appropriate degree of landscaping is provided on the podium level, particularly around the perimeter of the communal open space. The percentage of the podium level communal open space that is planted is appropriate to optimise the utility value and functionality of the communal open space by balancing the area that can be utilised by occupants for passive recreation. For the above reasons the proposal satisfies the objectives of the communal open space controls.	On merit
	P5 For residential development refer to the communal open space provisions of the RFDC which supplements SEPP 65 – Design Quality of Residential Flat Development.	Refer to Annexure A for ADG compliance table. In brief, the proposal provides a total area of communal open space which is equivalent to 35.1% of the allotment area and therefore is compliant with numeric requirements.	✓
3.7 Transport and Parking in Centres and Corridors			
3.7.2 Burwood Town Centre and Strathfield Town Centre	P1 Basic parking requirement: Development in the B4 Mixed Use zone in the Burwood and Strathfield Town Centres must provide parking spaces on site for each proposed land use in accordance with the Table 2 (extract provided below).	Based on rates provided in the DCP, the parking requirement for the proposal is as follows:	✓

Burwood Development Control Plan - Compliance Table						
Section	Control		Proposal			Complies
	Land use	Parking requirement	Component	Proposed	Requirement	<p>It is noted that the parking requirement for the residential component of the proposal is calculated as per the ADG (which prevails over the DCP).</p> <p>Using the ADG parking requirement for the residential component (46 spaces) and combining with the parking requirement for commercial uses and serviced apartments prescribed by the DCP, a total of 106 spaces is required.</p> <p>The four proposed levels of basement parking contain a total of 106 spaces. 46 spaces are allocated to dwellings (including 10 visitor spaces), 14 are allocated to serviced apartments (including 2 spaces for employees), and 46 are allocated to commercial uses.</p>
	Residential flat buildings	0.5 space per studio	Apartments	1 x studio	0.5 spaces	
		1 space per 1 and 2 beds		18 x 1 bed	18 spaces	
		1.5 spaces per 3 beds		38 x 2 bed	38 spaces	
		1 space per 5 dwellings for visitor parking		2 x 3 bed	3 spaces	
	Serviced apartments	1 space per unit		59 apartments	11.8 visitor spaces (12 spaces)	
		2 spaces for employees	Serviced apartments	12 units	12 spaces	
	Office / business premises	1 space for the first 400m ² of commercial floor space and 1 space per 120m ² of commercial floor space thereafter.		2 spaces for employees	2 spaces	
		Office / business premises	5,710m ²	45.25 spaces (45 spaces)		
	Retail (shops)	1 space for first 400m ² of retail and 1 space per 40m ² thereafter.	Retail (shops)	159.2m ²	1 space	
			Total		132 spaces	

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
3.7.6 General Requirements in All Centres and Corridors – B1, B2, B4 and B6 Zones	<p>P1 Compliance with Australian Standards: The design and construction of on-site:</p> <ul style="list-style-type: none"> • parking areas and parking spaces; • service and loading/unloading areas; • access to, from and within these facilities; <p>is to comply with the applicable Australian Standards. These Standards cover a range of technical requirements including design elements, dimensions, gradients, headroom, curves, delivery and service areas, and special requirements for people with disabilities.</p>	The proposed basement car park and access and egress from the basement complies with applicable Australian Standards as described in the Traffic and Parking report submitted with this application.	✓
	<p>P2 Other general compliance matters:</p> <ul style="list-style-type: none"> • The provision of on-site parking areas, and loading and servicing facilities, must contribute to the retention and enhancement of the quality and integrity of the streetscape and integrate with surrounding development. • A loading dock and servicing facilities for developments must be provided as required by AS 2890.2 Part 2: Off-street commercial vehicle facilities, or in any case for all developments erected on land having an area greater than 1500 sq m. 	Loading / unloading facility is proposed within the basement carpark. Sections have been provided to demonstrate that clearances are adequate. Refer to Traffic and Parking Assessment for further information.	✓
	<p>P3 Vehicular Access and Footpath Crossings</p> <ul style="list-style-type: none"> • All vehicles must be able to leave on-site parking and service areas in a forward direction; • Loading dock and other service functions must not interfere with vehicular access to parking areas. • Openings in buildings that provide vehicular access must have automatic closing doors to conceal the opening from any public place. • Separated and clearly differentiated pedestrian and vehicular access must be provided, with vehicular access a minimum of 3m from pedestrian access. 	Basement parking area is configured to enable the forward entry and exit of vehicles from the site. The loading areas are positioned so as not to interfere with the manoeuvring or sight lines of vehicles using the parking facility. Automatic closing door can be provided at the ramp entry / exit as per the DCP. The vehicular entry / exit point is appropriately separated from the pedestrian entry.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	P4 Plans and reports on transport, traffic and parking to support Development Applications: To provide adequate information for the assessment of proposals, Development Applications are to be supported by one of the following reports, depending on the scale and impact of the proposal.	The proposal is classified by the DCP as a major development for the purposes of traffic and parking and therefore a Traffic and Parking Assessment addressing the details stipulated in the DCP has been prepared and is provided with the application.	✓
	P5 Cycling The following requirements apply: Development of Commercial premises involving the construction of gross floor area in excess of 400 sq m or three dwellings must include facilities for parking of bicycles (racks and lockers) and showers/change rooms for use by bicycle riders.	70 bicycle spaces are provided within the development. No shower or change rooms are proposed at this stage however it is envisaged that end of trip facilities will be provided during future fitouts of commercial floor space.	✓
3.9.5 Treatment of street front setbacks	P1 In the Commercial Core and Middle Ring Areas, where a street front setback of development is required in Figure 6, the setback area is to be treated and upgraded in a manner consistent with the requirements for the public domain immediately in front of the development. A right of pedestrian and vehicle movement by way of an easement in Council's favour in accordance with a Section 88B Instrument under the Conveyancing Act 1919 over the setback area is to be placed on the title of the land.	Figure 6 of the DCP indicates that a street front setback of 3m is required for development on Burleigh Street. A 3m setback has been provided and is to be finished to match adjacent pavements as per Council specification. It is anticipated that a condition of consent will be imposed in relation to the provision of an easement.	✓
	P3 Where a street front setback is required and the development is for non-residential purposes at ground level, the provision of cantilevered awnings over the setback area is encouraged.	An awning is to be provided over setback area for weather protection.	✓
3.8 Heritage in Centres and Corridors			

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
3.8.1 General Provisions	P1 Development Applications that propose works to, or demolition of, a heritage property are required to submit a heritage report, known as a Heritage Impact Statement (HIS), prepared by a qualified and recognised heritage professional as part of the application to Council. This report shall detail the impacts of the proposed development on the heritage significance of the property. Council may, at its discretion, require a Conservation Management Plan (CMP), instead of a HIS.	A Heritage Impact Statement (HIS) has been prepared by Urbis and submitted with the development application. The HIS describes the significance of heritage items in the vicinity of the subject site and considers the impact of the development on the significance of those items.	✓
3.8.2 Sight Lines	P11 Development adjacent to a heritage property must incorporate front and/or side setbacks to achieve sight lines to the significant building in accordance with Figure 22.	The subject site is situated on the opposite side of the road to nearby heritage items. As such, Burwood Road and Burleigh Street provide a sufficient buffer between the development sites and the heritage items to ensure sight lines to and from the item are not compromised to any significant degree.	✓
3.8.5 Views and Vistas	P12 Development of a heritage property, or development in its vicinity, must: <ul style="list-style-type: none"> - Provide an adequate area of land around the development to allow interpretation of the significant building or place. - Not detract from the setting of the heritage property. - Retain and respect significant views/vistas from the public domain to a heritage property, as well as the views/vistas originating from the heritage property itself. 	The proposed development would maintain the same setback from the street at ground floor as the buildings adjacent. As such, it is considered that it would not obscure significant views to the primary façade of the state listed heritage item from ground level. For more detailed discussion concerning impact of the proposed development on significant views and vistas, refer to HIS submitted with the DA.	✓
Part 5 – Other Development Provisions			
5.5 Serviced Apartments	P1 The serviced apartments in an approved serviced apartments development are to be maintained and operated as a single entity.	Noted.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	<p>P2 An operational Management Plan is to be submitted with each DA for a serviced apartment development to ensure that the proposed premises operate in a manner consistent with the definition of serviced apartments.</p>	<p>At this stage, the owner has not reached an agreement with an operator to run the serviced apartment component of the proposal. As such, it is premature to devise a management plan until such time as an operator has been identified and management aspects of the serviced apartments are determined. It is considered that the most appropriate way of addressing this DCP requirement is by condition of consent that will require the preparation and submission of a Management Plan prior to occupation of the serviced apartments.</p>	On merit
	<p>P3 The Management Plan must provide satisfactory details on the following matters:</p> <ul style="list-style-type: none"> • Provision of a manager or an agent of the manager within the serviced apartment premises, the hours of the manager's availability and contact details 24 hours per day, 7 days a week. • Details of the Emergency Management and Evacuation Plan for the premises • The on-site management is responsible for operation, administration, cleanliness and fire safety of the premises including compliance with the Management Plan and Emergency Management and Evacuation Plan • Provision of a "front desk" where keys are made available to clients and that also deals with other relevant matters such as the provision of information on the use of common areas and facilities, car parking and house rules. • Details of the regular servicing and cleaning of the serviced apartments, and details of the permanent furnishing of the apartments. 	<p>Each aspect will be addressed in the Management Plan which will be prepared in consultation with the designated operator, prior to occupation of the serviced apartments.</p>	On merit

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
	<ul style="list-style-type: none"> Details of the letting arrangements, with a provision to be included that limits the stay of tenant(s) to a maximum of three months. 		
	P4 A clearly visible sign with the name and telephone number of the on-site manager must be displayed externally at the front entrance of the serviced apartments.	It is anticipated that this requirement will be imposed as a condition of consent.	✓
	P5 Consents issued for serviced apartments developments will be conditioned to the effect that the maximum length of stay of a client is not to exceed three months to ensure that developments comply with the relevant definitions in the BLEP 2012.	Noted.	✓
	P6 All serviced apartments must be furnished prior to occupation.	It is anticipated that this requirement will be imposed as a condition of consent.	✓
	P7 Strata subdivision may be approved where all of the units in a development are a group in a strata plan. Parking for the serviced apartments also must be grouped together with the serviced apartment units in the strata plan.	Serviced apartments will be grouped in a single strata lot with allocated parking (i.e. 14 car parking spaces) forming part of said lot.	✓
	P9 In both cases the bylaws of the final strata plan are to include a provision requiring the ongoing management of the lots in the strata plan that comprise the serviced apartments complex as a joint entity.	Noted. It is anticipated that his requirement will be imposed as a condition of consent.	✓
Part 6 – Environmental Management			
6.5 Stormwater Management	To meet these aims Council requires that all developments/building works within the Burwood LGA incorporate stormwater drainage facilities to collect and convey stormwater runoff to Council's system in accordance with the Code.	A Stormwater Drainage Plan has been submitted with the application and provides details of the proposed stormwater management approach for the development as per the Council's Stormwater Management Code.	✓

Burwood Development Control Plan - Compliance Table			
Section	Control	Proposal	Complies
6.6 Landscaping for Development	The Landscaping Code has been prepared to raise awareness of the aesthetic, functional and environmental benefits of landscaping. It aims to maintain and enhance existing themes and elements of the BTC and streetscapes of Burwood. The guidelines in the Code provide scope for creative design solutions for landscaping consistent with the intent of this Code.	<p>A Landscape Plan has been prepared by Urban Link Architecture and includes relevant features and details as prescribed in the Burwood Landscaping Code.</p> <p>The Landscape Plan indicates that a number of substantial trees and shrubs are proposed to be planted in the podium area which is located in the middle of the site.</p> <p>There are no substantial trees on site.</p>	✓
6.7 Energy Efficiency and Sustainability	P1 Where applicable, development is to demonstrate compliance with the design principles embodied in the Building Sustainability Index (BASIX). All commitments listed on a BASIX certificate must be marked on all relevant plans and specifications.	A BASIX certificate for the proposal has been submitted with the application with relevant commitments indicated on the plans.	✓