

COUNCIL ASSESSMENT REPORT

Panel Reference	2016SYE097
DA Number	103/2016
LGA	Burwood
Proposed Development	Demolish existing structures and construct 1 x 21 storey commercial tower and 1 x 26 storey mixed use tower (comprising commercial floor space, serviced apartments and residential apartments) over 5 levels of basement parking for 106 spaces
Street Address	180-186 Burwood Rd & 7-9 Burleigh St Burwood
Applicant/Owner	Applicant: Tony Jreige Urban Apartments
Date of DA lodgement	28 July 2016
Number of Submissions	16
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	N/A
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> Burwood Local Environmental Plan 2012, State Environmental Planning Policy No. 65 Burwood DCP, Apartment Design Guidelines Draft Voluntary Planning Agreement lodged pursuant to Council's Policy for Carrying Out Bonus Development in Exchange for Public Benefits
List all documents submitted with this report for the Panel's consideration	Assessment Report & Special Conditions Clause 4.6 Objections Standard Council Conditions
Report prepared by	SJB
Report date	5 October 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **No**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Property: 7–9 Burleigh Street and 180–186 Burwood Road, Burwood.

Application: **DA 103/2016** – Demolition of all existing structures and erection of two (2) towers over a two (2) storey podium – a 21 storey commercial tower on the Burwood Road frontage, and a 26 storey mixed use tower along the Burleigh Street frontage, over a two (2) storey podium, and five (5) basement parking levels. The Burleigh Street tower consists of twelve (12) serviced apartments on Levels 1 to 4, and 59 residential apartments on Levels 5 to 25. The Burwood Road tower consists of 20 commercial tenancies, with 5436.3m² of commercial floor space to the commercial tower, one (1) commercial premises to the Burleigh Road frontage of 50m², and one (1) retail premises of 159.2m² to the Burwood Road Frontage.

An offer to enter into a VPA has been lodged with the Development Application and has been separately reported to council.

Applicant: Urban Apartments PTY LTD

Location: 7–9 Burleigh Street and 180–186 Burwood Road, Burwood

Zoning: B4 Mixed Use – Burwood Local Environmental Plan (BLEP) 2012

Proposal

The application site comprises of two (2) allotments (Lot 100 DP1046417, and Lot 2 DP741809), and has frontages to Burleigh Street and Burwood Road. The proposal is to demolish the existing structure on the land, and erect a new building on the land comprising:

- Five (5) basement levels containing at total of 106 parking spaces:
 - 37 residential parking spaces (accessed via a secure access gate);
 - 9 residential visitor parking spaces;
 - 46 commercial parking spaces;
 - 12 serviced apartment parking spaces;
 - 2 serviced apartment staff parking spaces;
 - 5 motorcycle spaces;
 - 70 bicycle spaces; and
 - Residential storage cages.
- Ground floor containing retail unit (159.2m²), commercial tenancy (50m²), residential lobby, commercial lobby, allowance for a through site link, fire control room, fire booster, residential waste room, commercial waste room, bulky waste storage, substation, 14 visitor bicycle spaces, and one (1) truck dock for a small ridged vehicle;
- Level 1 containing commercial tenancy (922.6m²), three (3) x one (1) bedroom serviced apartments, and roof terrace with landscaping; and
- Level 2 containing commercial tenancy (375.3m²), one (1) x one (1) bedroom serviced apartment, one (1) x one (1) bedroom plus study serviced apartment, and one (1) x two (2) bedroom plus study serviced apartments, 385.3m² of residential communal open space, and 59.7m² of commercial communal open space.

- Commercial Tower
 - Level 3 containing commercial tenancy (248m²), winter garden, and roof terrace;
 - Level 4 containing commercial tenancy (247.8m²) and winter garden;
 - Levels 5,9,10,13,15, and 19 containing commercial tenancy (259.7m²);
 - Levels 6, 7, and 8 containing commercial tenancy (225.3m²) and balcony;
 - Levels 11 and 12 containing commercial tenancy (225.3m²) and balcony;
 - Level 14 containing commercial tenancy (248m²) and winter garden; and
 - Levels 16, 17, and 18 containing commercial tenancy (236.7m²) and balcony.
- Residential Tower
 - Levels 3, and 4 containing one (1) x one (1) bedroom serviced apartment, one (1) x one (1) bedroom plus study serviced apartment, and one (1) x two (2) bedroom plus study serviced apartments;
 - Level 5 containing two (2) x two (2) bedroom apartments, and one (1) studio apartment;
 - Levels 6 to 23 containing two (2) x two (2) bedroom apartments, and one (1) x one (1) bedroom apartment;
 - Level 24 containing two (2) x three (3) bedroom apartments, and 64.7m² communal open space; and
 - Level 25 containing bedrooms of apartment below and additional private open space in the form of terrace/balconies.

The towers are of contemporary appearance. The residential tower fronting Burleigh Street is setback at least 6m, and has a modulated, boxed façade, creating visual interest with setbacks created by balconies and terraces. The commercial tower façade to Burwood Road is setback 8m and is formed of blue glass panels of differing colours with recesses for balconies and winter gardens.

The podiums are differing materials to the towers above, with a nil setback to Burwood Road, and 3m to Burleigh Street, providing a visual separation to the vertical bulk. A nil setback is provided to the north side site boundary and the southern boundary of the commercial tower. A 12m separation is provided between the residential tower and the existing apartment building to the south.

Background

The current Development Application (DA) No. 103/2016 was lodged 28 July 2016. As well as architectural, landscape, and stormwater concept plans, it was accompanied by supporting documentation, including a Statement of Environmental Effects (SEE), Transport and Parking Assessment, Quantity Surveyor Report, Heritage Impact Statement, Basix Certificate, Geotechnical Desk Top Study, Waste Management Plan, Access Compliance report, Acoustic Report (Traffic Noise), A State Environmental Planning Policy (SEPP) 65 (Design Quality of Residential Apartments) Compliance Table, Burwood Local Environmental Plan (LEP) 2012 Compliance Table, Burwood Development Control Plan (DCP) 2012 Compliance Table, Clause 4.6 Variation to Height of Buildings, Clause 4.6 Variation to Floor Space Ratio, and Clause 4.6 Variation to Residential Floor Space.

Given the cost of the development proposal is in excess of \$20 Million, the Sydney Planning Panel for the Central District is the consent Authority.

Roads and Maritime Services (RMS) were forwarded documentation of the application, and response/concurrence sought. Council also engaged an independent urban design consultant, GM Urban Design & Architects (GMU) to provide advice to Council on this development.

The application was placed on public notification on 6 September 2016, closing on 27 September 2016 in accordance with the Burwood Development Control Plan (BDCP) 2013.

GMU provided an Urban Design Assessment of the application on 10 October 2016.

Formal responses on the application were received from Council's Development Engineer on the 23 September 2016, Council's Environment and Health Manager on 28 October 2016, Council's Heritage Advisor on 8 November 2016, and Council's Traffic and Transport Manager on 15 November 2016.

Subsequent revised submissions were submitted on 19 April 2017 and 6 July 2017, which revised the proposal, increasing the maximum building height by 15.02m, providing a setback to the southern boundary of the residential tower, partial provision of a through-site link between Burwood and Burleigh Roads. The height was increased to relocate residential

This revised applications were placed on public notification on 2 June 2017 closing 23 June 2017 and 20 July 2017, closing on 10 August 2017 in accordance with BDCP 2013. Additional comments were also sort from the statutory consultees.

A panel briefing was undertaken 13 July 2017, and subsequently, the Applicant submitted a direct request to the Planning Panel seeking extra time to allow an additional revision of the DA submission. Further revised plans were received by Council on 19 September 2017, these plans have not been the subject of further notification.

This report is based on the plans and details submitted with the application on 19 September 2017.

Statutory Requirements

Heads of Consideration

The Application is assessed under the provisions of Section 79C of the *Environmental Planning and Assessment (EP&A) Act 1979*, as amended Key planning instruments and considerations include:

- The provisions of the Burwood Local Environmental Plan (BLEP) 2012;
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65);
- State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55);
- The provisions of Burwood Development Control Plan (BDCP) 2013;
- The impact of the development;
- The suitability of the site for development;
- The public interest; and
- Social and economic impact.

These matters are considered in this Report.

Locality

The sites location is indicated in Figure 1 below.

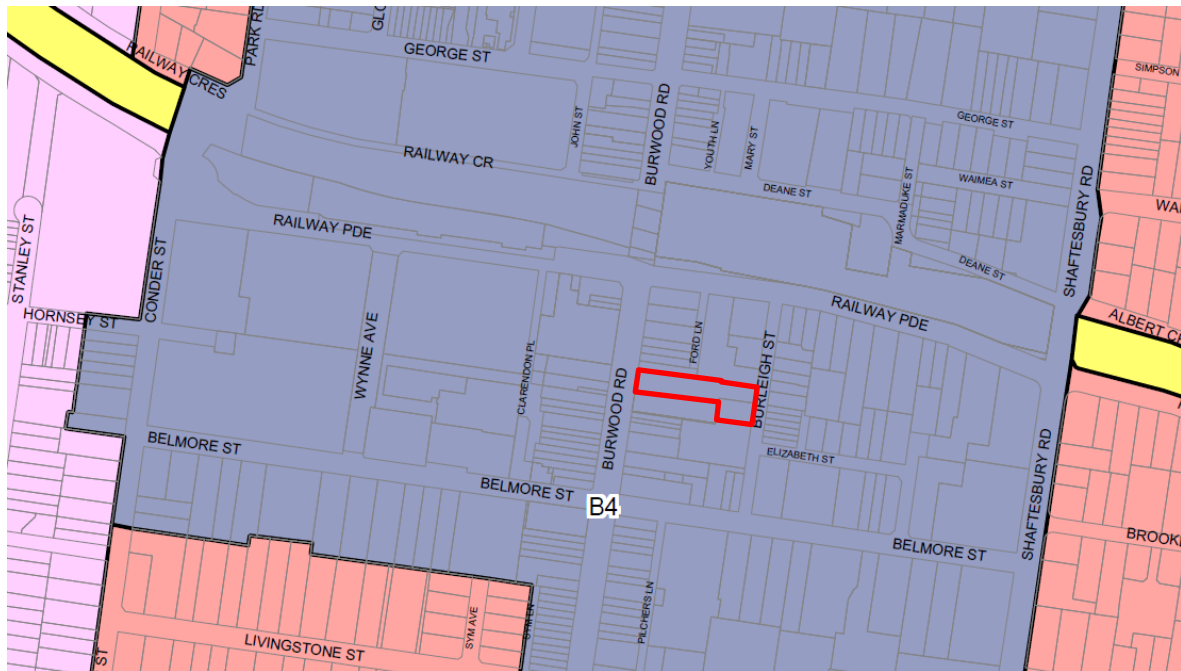


Figure 1: Site location and zoning

Site and Surrounding Area

The site has street frontages to Burwood Road and Burleigh Street, is within the Burwood Town Centre Commercial Core, and is approximately 100m from Burwood Railway Station. The site has an area of 1,632.6m², a Burwood Road frontage of 15.295m, a Burleigh Street frontage of 26.74m, and a depth on 100.915m. The site has a fall of approximately 1.7m from its Burwood Road frontage to its Burleigh frontage.

A disused commercial building occupies 180-186 Burwood Road, and a three (3) storey conference centre occupies 7-9 Burleigh Street. One (1) and two (2) storey commercial buildings are located to the north and south of 180-186 Burwood Road. A nine (9) storey mixed use development occupies 11-17 Burleigh Street (south of the site), and Telstra car parking is located to the north, along Burleigh Street. Council's car park, two (2) storey terraces, former Burwood Police Station and Court House are located across Burleigh Street. These properties are identified as heritage items.

Planning Assessment

State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development) (SEPP 65)

SEPP 65 applies to the development as the proposal is for a new building of more than three (3) storeys in height, and will have more than four (4) units. SEPP 65 requires that residential flat buildings satisfactorily address nine (9) design quality principles, and consider the recommendations in the (ADG).

Design Quality Principles

A design statement addressing the quality principles prescribed by SEPP 65 was prepared by the project architect, and submitted with the application. The proposal is considered to be consistent with the design principles for the reasons outlined below:

Requirement	Council Officer Comments
<i>Principle 1: Context and Neighbourhood Character</i>	<p>The proposed development is consistent with the desired future character of Burwood Town Centre.</p> <p>The development is consistent with the objective of the controls contained in BLEP 2012 and BDCP 2013.</p>
<i>Principle 2: Built Form and Scale</i>	<p>The height of the proposed development is considered to be an acceptable approach, consistent with the desired future character of Burwood Town Centre.</p> <p>The scale is appropriate, and directly responds to the site constraints, which includes the residential flat building to the southern boundary, surrounding heritage items, and existing development within the central commercial core.</p>
<i>Principle 3: Density</i>	<p>The proposal contains an FSR variation of 10%, which is consistent with Council's <i>Carrying out Bonus Development in the Public Interest</i> policy, and the increased floor space does not lead to any additional adverse impacts. As such, is considered to provide a density which is in keeping with the desired future character.</p>
<i>Principle 4: Sustainability</i>	<p>A BASIX Certificate and relevant reports have been submitted with the development application. The certificates require sustainable development features to be installed into the development.</p> <p>The development achieves a good level of natural light and cross ventilation, with many of the proposed units having dual aspects or diagonal cross ventilation.</p> <p>The proposed development includes suitable provision of bicycle parking for both visitors and residents (provided in secure areas), and is in a location well served by public transport.</p>
<i>Principle 5: Landscape</i>	<p>A landscaping scheme has been prepared by a qualified Landscape Architect which provides appropriate planting to the communal open space creating a high quality landscape setting.</p>

Requirement	Council Officer Comments
<i>Principle 6: Amenity</i>	<p>The proposal is considered to achieve good amenity, contributing to the positive living environment of residents, optimising internal amenity through complying room dimensions and efficient layouts, access to sunlight, natural ventilation, visual and acoustic privacy, storage, and indoor and outdoor space.</p> <p>385.3m² of communal residential open space is provided to Level 2, and 64.7m² at Level 24. This is in excess of the ADG requirement for a space equivalent to 25% of the site, providing a space equivalent to 27.6% of the site.</p>
<i>Principle 7: Safety</i>	<p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p> <ul style="list-style-type: none"> ▪ Surveillance of the private and public communal open spaces from residential balconies and windows above; ▪ Retail and residential lobby activation; and ▪ Clear sight lines and activation of the proposed through site link.
<i>Principle 8: Housing Diversity and Social Interaction</i>	<p>The design responds to the social context and needs of the local community in terms of lifestyle, affordability, and access to social facilities.</p> <p>The proposal optimises the provision of housing to suit the local need, delivering residential and commercial accommodation close to public transport links, services, and facilities.</p>
<i>Principle 9: Aesthetics</i>	<p>The composition of building textures, materials, and colours reflect the use, internal design, and structure of the resultant buildings.</p> <p>The proposed towers are considered to aesthetically respond to the environment and context, contributing in an appropriate manner to the desired future character of the area.</p>

Table 1: Assessment of the proposal against the Design Quality Principles

Apartment Design Guide

The relevant provisions of the ADG are considered within the following assessment table:

Standard	Requirement	Proposal	Compliance
Part 3			
<i>3B-1: Orientation</i>	<p>The proposed towers adequately respond to the site constraints, presenting a development which addresses both Burwood Road and Burleigh Street. A through-site link is provided as part of the development, which will link Burleigh Street and Burwood Road once the adjoining site is redeveloped.</p> <p>A retail premises and communal lobby for the commercial premises located in the tower above fronts Burwood Road, and a commercial premises and vehicular access front Burleigh Street. The residential dwellings and serviced apartments are accessed via lobbies fronting the through-site link.</p>		

Standard	Requirement	Proposal	Compliance
	The two (2) towers above have been designed and orientated to the street frontages surrounding them. With both the residential dwelling and commercial tenancies looking out onto the street or onto the centrally located communal open space.		
<i>3B-2: Overshadowing</i>	The overshadowing of the adjacent apartment building reduces solar access, but still allows the habitable rooms of the impacted apartments to receive over two (2) hours solar access on 21 June, as recommended by the ADG.		
<i>3C: Public Domain Interface</i>	<p>The relationship between the ground floor podium, towers above, and public domain of Burwood Road and Burleigh Street is considered acceptable with suitable setbacks to the tower elements provided.</p> <p>A partial pedestrian link is proposed as part of this development. The link will be completed when the development of the adjacent site at 188-192 Burwood Road is undertaken. When completed, this will provide a positive enhancement to the public domain of both Burwood Road and Burleigh Street.</p> <p>Until the link is completed, however, the section of the link which does not provide access to the lobbies or stair wells will have restricted access, and the areas that do provide links to the lobbies will be separated from the public domain, restricting public access, and ensuring the link does not become a space for loitering or antisocial behaviour.</p> <p>Throughout the DA process, GMU urban designers have been consulted on the various iterations of the proposed development. The comments made have been incorporated into Council's advice to the applicant, and the assessment staff believe the proposed scheme now addresses the concerns raised.</p>		
<i>3D: Communal & Public Open Space</i>	Min. 25% of site area (408.15m ²)	450m ² total communal open space area (27.6%)	Yes
	Min. 50% direct sunlight to main communal open space for minimum two (2) hours 9:00am and 3:00pm, 21 June	The communal open space to the centre of the building receives sufficient solar access in excess of the two (2) hours required.	Yes
	Two (2) areas of communal open space have been provided as part of the development, allowing residents a choice of a rooftop terrace, or the central landscaped plaza. Both spaces are of a high quality, and receive good solar access.		
<i>3E: Deep Soil</i>	Min. 7% with min. dimensions of 6m for sites of 1500m ² or greater (114.3m ²)	0m ² (0%) of deep soil provided.	No
	A landscaping scheme has been submitted which provides for planting, including planters and trees to the first floor communal open space. This approach is considered acceptable given the site character and expected pattern of development in the city centre.		

Standard	Requirement	Proposal	Compliance
3F: Visual Privacy	<p>0-4 Storeys:</p> <ul style="list-style-type: none"> 3m (non-habitable) 6m (habitable) <p>5-8 Storeys:</p> <ul style="list-style-type: none"> 4.5m (non-habitable) 9m (habitable) <p>9+ Storeys:</p> <ul style="list-style-type: none"> 6m (non-habitable) 12m (habitable) 	<p>Residential Tower:</p> <ul style="list-style-type: none"> North - 0m East - 6m South (min)- 12m West (min) - 3m <p>Commercial Tower:</p> <ul style="list-style-type: none"> North - 0m East - 38m South - 0m West - 8m 	Yes
	Complying separation distances have been provided for habitable and non-habitable rooms. Where secondary bedroom windows are provided to allow for cross ventilation to the southerly apartments, screening has been provided to ensure visual privacy is maintained.		
3G: Pedestrian Access and Entries	Separate pedestrian and vehicular access is provided from Burleigh Road and separate pedestrian access to the commercial premises is provided from Burwood Road. The pedestrian link provided when complete will provide access from Burwood Road to Burleigh Street, and will also link the commercial, residential and serviced apartment lobbies.		
3H: Vehicle Access	The proposed vehicle access point is considered acceptable, and in an appropriate location. Separation between the differing parking uses has been provided, and residential parking will be accessed via security gates. In addition to this, the proposed development will provide a through-site link to the adjacent site and future development at 188-192 Burwood Road and requires the provision of an easement to allow this site to utilise this vehicular access point.		
3J: Bicycle and car parking	<p><u>Car Parking</u></p> <p>Residential:</p> <ul style="list-style-type: none"> 0.4 per 1 bed (7.6) 0.7 per 2 bed (26.6) 1.2 per 3 bed (2.4) <p>Total 36.6</p> <p>Serviced apartments:</p> <ul style="list-style-type: none"> 1 per apartment (12) 2 Space for employees <p>Total 14</p> <p>Commercial:</p> <ul style="list-style-type: none"> 1 for first 400m² (1) 1 per 120m² (44.9) <p>Total 45.9</p>	<p>Residential: 37</p> <p>Serviced apartments: 14</p> <p>Commercial: 46</p>	Yes

Standard	Requirement	Proposal	Compliance
	<p>Total: 96.5</p> <p>Visitor</p> <ul style="list-style-type: none"> 1 per 7 units 8.4 <p>Total: 105.9 (105)</p> <p>(The site is within 400m of Burwood train station. As such, RMS rates apply to residential parking.)</p>	<p>Total: 97</p> <p>Visitor: 9</p> <p>Total: 106</p>	<p>Yes</p> <p>Yes</p>
The proposed parking is consistent with the requirements of the RMS Guide to Traffic Generating Development rates and BDCP 2013.			
Part 4			
4A: Daylight/Solar Access	Min. two (2) hours for 70% of apartments living & POS 9:00am and 3:00pm in midwinter	71 out of 71 apartments (100%)	Yes
	Max 15% apartments receiving no direct sunlight 9:00am and 3:00pm in midwinter (<69)	0 out of 71 apartments (0%)	Yes
	100% of apartments receive the required amount of solar access.		
4B: Natural Ventilation	Min. 60% of apartments below nine (9) storeys naturally ventilated	Levels 5–9 contain 15 apartments, of which 10 achieve cross ventilation (66%)	Yes
	The proposed development complies with the ADG natural ventilation requirement for the first nine (9) levels.		
4C: Ceiling heights	Min. 2.7m habitable	<p>The applicant confirms that a 2.7m floor to ceiling height is provided, despite a floor to floor height of 3.05m. (The ADG recommends a minimum of 3.1m floor to floor height to enable the provision of 2.7m floor to ceiling height.)</p> <p>A condition has been included requiring survey certification of each level confirming compliance with the approved levels has been achieved and that 2.7 meters from floor to ceiling height are achieved.</p>	Yes

Standard	Requirement	Proposal	Compliance
	Min 2.4m non-habitable	2.4m (confirmed but not demonstrated)	Yes
	Min 3.3m for mixed use	4.6m to commercial tower, and 3.6m to podium level of residential tower.	Yes
<i>4D: Apartment size & layout</i>	Studio – Min 35m ²	48.8m ²	Yes
	1B – Min 50m ²	55.1m ²	Yes
	2B – Min 75m ² (2 baths)	min. 75m ² – max. 77.5m ²	Yes
	3B – Min 95m ² (2 baths)	min. 104m ² – max. 105.2m ²	Yes
	All rooms to have a window in an external wall with a total minimum glass area not less than 10% of the floor area of the room.	This has not been demonstrated, however, it is clear that more than 10% of floor area has been provided in glazing.	Yes
	Habitable room depths max. 2.5 x ceiling height (6.75m)	Up to 3.6m	Yes
	Max. habitable room depth from window for open plan layouts: 8m.	Up to 8.52 m	No
	Min. internal areas: Master Bed - 10m ² Other Bed - 9m ² Min. 3m dimension for bedrooms (excl. wardrobe space).	>9.5m ² >9m ² All bedrooms except have a minimum dimension of 3m.	No Yes Yes
	Min. width living/dining: • Studio – 3.6m • 1B – 3.6m • 2B – 4m • 3B – 4m	>3.9m >3.9m >4m >4m	Yes Yes Yes Yes
	The units all meet the minimum internal dimension requirements.		
<i>4E: Private open space & balconies</i>	Min. area/depth: Studio – 4m ² 1B - 8m ² /2m 2B - 10m ² /2m 3B - 12m ² /2.4m	>8m ² >8m ² /2.5m >14.5m ² /1.32m >10m ² /1.32m	Yes Yes Partial Partial

Standard	Requirement	Proposal	Compliance
	<p>The proposed private open spaces are broadly consistent with the minimum area requirements. Only principle balconies adjacent to living spaces have been counted for the calculations above, and it is confirmed that the total balcony area for each apartment complies with the required private open space.</p> <p>Despite the minimum widths, sufficient space for outdoor entertaining has been provided.</p>		
<i>4F: Common circulation & spaces</i>	Max. apartments –off circulation core on single level: 11-23	3	Yes
	10 storeys or over, max. apartments sharing single lift: 40	59 – 2 lifts	Yes
	Corridors >12m length from lift core to be articulated.	Less than 12m	Yes
	The proposed development complies with the required circulation spaces		
<i>4G: Storage</i>	1B – Min 6m ³ (x142) 852	1B – 6m ³	Yes
	2B – Min 8m ³ (x271) 2168	2B – 8m ³	Yes
	3B – Min 10m ³ (x50) 500	3B – 10m ³	Yes
	Total – 3,520m ³		
	Min. 50% required in Apartment (1,011m ³)	At least 50% of the storage is located within the Apartments.	Yes
	A detailed breakdown of the allocation of storage is not provided. The applicant does, however, indicate that the required storage is provided. As such, a condition is included requiring that this be detailed prior to the issue of a Construction Certificate.		
<i>4H: Acoustic Privacy</i>	Like uses haven't been grouped together, with bedrooms against living rooms. A condition requiring acoustic insulation to the levels required by the BCA of the adjoining walls and demonstration that the required acoustic levels have been achieved has been included.		
<i>4J: Noise and pollution</i>	An Acoustic Report has been included and a condition added requiring the recommendations of the report be adopted.		
<i>4K: Apartment Mix</i>	<p>The development has the following bedroom mix:</p> <ul style="list-style-type: none"> ▪ 1 – Studio apartment (2%) ▪ 18 - 1 bedroom apartments (31%) ▪ 38 - 2 bedroom apartments (64%) ▪ 2 - 3 bedroom apartments (3%) <p>These units vary in size, amenity, orientation. and outlook to provide a mix for future residents. A variety of apartments are provided across all levels of the apartment building.</p>		

Standard	Requirement	Proposal	Compliance
4M: Facades	The proposed facades are suitably detailed and articulated.		
4N: Roof design	The proposed buildings have flat roofs, which are appropriate given the proposed tower designs. Rooftop plant and lift overrun are suitably concealed ensuring they are not visible from the street.		
4O: Landscape Design	The application includes a landscape plan, which demonstrates that the proposed development will be adequately landscaped.		
4P: Planting on structures	The landscape drawings indicate that planting on structures would have adequate soil depth to accommodate good quality planting.		
4Q: Universal Design	20% Liveable Housing Guidelines Silver Level design features	6 adaptable apartments (10%)	No
	Only 10% of the proposed apartments are adaptable and none are confirmed as conforming to the Liveable Housing Guidelines Silver Level.		
4S: Mixed Use	Separation of residential and commercial parking and servicing has been provided and secure access will be provided for the residential parking.		
4T: Awnings and Signage	Insufficient details of the awning to Burwood Road are provided. A condition has been added requiring further details to be submitted prior to the issuing of a Construction Certificate.		
4U: Energy Efficiency	A BASIX Certificate has been provided as part of the Development Application.		
4V: Water management	A BASIX Certificate has been provided as part of the Development Application.		
4W: Waste management	Waste storage has been provided for both the residential and commercial premises on the ground floor. A suitable loading dock has been provided for commercial waste. Residential waste will be collected from Burleigh Road.		
4X: Building maintenance	Large areas of render are proposed which could lead to maintenance issues requiring regular repainting. A condition has been proposed requiring the submission of a maintenance schedule and a condition requiring provision to council certification confirmation that the agreed maintenance has been carried out in accordance with the schedule.		

Table 2: Assessment of the proposal against the ADG

Development permissibility

Burwood Local Environmental Plan (BLEP) 2012

The B4 Mixed Use zone permits a range of uses consistent with a town centre, including residential flat buildings, shop-top housing, and commercial premises. This form of development is consistent with the objectives of the B4 zone in that it provides a mixture of compatible land uses integrating suitable businesses, office, residential, retail, and other development in accessible locations to maximise public transport patronage and to encourage walking and cycling.

BLEP 2012 sets development standards of maximum building height (70m) and maximum FSR (6:1) in this part of the B4 zone.

No part of the site is designated in BLEP 2012 for acquisition for any purpose. It is in a Level 5 area on the Acid Sulfate Soils, map with no Level 4 land in the vicinity, indicating this is not a relevant matter for the proposed development. Flooding has not been identified as an issue for the site pursuant to BLEP 2012 Clause 6.2 Flood Planning.

The site does not contain any designated Heritage items, but is located within the vicinity of designated heritage items I21, I25, I24, I96, I15 and I14. The potential impact are assessed below.

Development standards and requirements

Issue	Requirement/standard	Proposal	Compliance
BLEP 2012			
Clause 4.3 - Height of Buildings	Maximum 70 m – Clause 4.3 and Building Height map	Maximum height is 81.55 meters Variance of 16.5% (11.55m).	No
Clause 4.3A – Exceptions to height of buildings	(2) Building on land parked “Area A” on the height of buildings map is not to exceed the building plane for that land.	The proposed development is within the building height plane	Yes
Clause 4.4 - Floor Space Ratio	Maximum 6:1 – Clause 4.4 and Floor Space Ratio map (Permissible GFA 9795.6m ²)	10770m ² gross floor area FSR is 6.6:1 This exceeds the maximum by 0.6:1 or (974.4m ²) and equates to a variation of 10%. A VPA has been submitted for this addition 10% consistent with Councils policy.	No (consistent with VPA policy)
Clause 4.4A – Exceptions to Floor space ratio	Maximum 2.0:1 for residential accommodation (permissible GFA 3265.2)	Residential FSR of 2.6:1 (4245m ²). This exceeds the maximum by 0.6:1 (979.8m ²) and equates to a variation of 30%. This represents the 10% allowed to be considered by the VPA policy, and is able to be attributed entirely to the residential component of a development.	No

Issue	Requirement/standard	Proposal	Compliance
<p>Clause 5.10 – Heritage Conservation</p>	<p>(5) Heritage assessment</p> <p>The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>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.</p>	<p>The proposed development has been assessed and its impact is considered to be acceptable subject to suitable material colours being agreed with Council.</p> <p>A condition requiring agreement of the material colours with Council prior to the issuing of a Construction Certificate has been included.</p>	<p>Yes</p>
<p>6.1 Acid Sulfate Soils</p>	<p>Class 5 Land</p> <p>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 water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p>	<p>The proposed development is not within 500m of adjacent Class 1,2,3, or 4 land that is below 5m AHD and is not likely to lower the water table below 1m AHD.</p>	<p>Yes</p>

Issue	Requirement/standard	Proposal	Compliance
6.3 Active 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> <ul style="list-style-type: none"> (a) entrances and lobbies (including as part of mixed use development), (b) access for fire services, (c) vehicular access. <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 contains a retail premises, commercial lobby and entrance to the future pedestrian walkway.</p> <p>The Burleigh Street frontage is activated by a commercial unite and the vehicular entry point.</p> <p>The walkway is activated by the serviced apartment and retail lobbies.</p>	Yes

Table 3: Burwood LEP 2012

Provision	Proposal	Compliance
BDCP 2013		
<i>Section 2 Site and Environmental Planning</i>		
<u>2.3 Views and Vistas</u>		
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.	Setback of at least 6m to the residential tower fronting Burleigh Street	Yes

Provision	Proposal	Compliance
P2 Development applications must demonstrate how building design, location and landscaping will encourage view sharing between properties.	The central plaza allows for views from the existing neighbouring residential flat building (RFB) to the south through the site.	Yes
P3 Assessment of views and vistas must take account of other planning policies and development standards in this DCP and BLEP 2012, e.g. building height, setbacks.	The proposed development is consistent with the policies of BLEP and BDCP.	Yes
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.	<p>The proposed development has proposed a podium to Burwood Road with a retail tenancy to the ground floor and access to the commercial lobby.</p> <p>To Burleigh Street, a commercial premise is presented, along with access to the entrance to the future through-site link, which provides access to the residential and service apartment lobbies and vehicular access to the basement.</p> <p>The proposed development characteristics will complement the streetscape, providing a modern activated façade to both streets.</p>	Yes
P2 Development applications must demonstrate how building design, location and landscaping will encourage the protection and enhancements of streetscapes.	The two (2) towers have been designed to provide adequate solar access to the adjacent apartment building and have been positioned to provide setbacks to the streets minimising the impact on the streetscape.	Yes
P3 Developments must have particular regard to high quality streetscapes identified in other parts of this DCP, e.g. in relation to heritage items and conservation areas.	The proposed development has been designed with the tower elements setback from the street frontage minimising the visual impact on the setting of the heritage items within the vicinity.	Yes

Provision	Proposal	Compliance
Section 3.2 General Building Design Controls In Centres		
<u>3.2.1 Design Excellence</u>		
<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. ▪ 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>The proposed development incorporates a high quality of design and varying materials.</p> <p>The streetscape will be enhanced with the provision of a through site link and activation of Burleigh Street.</p>	Yes
<u>3.2.2 Materials and Finishes</u>		
<p>P1 Buildings must be designed with regards 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. 	<p>The proposed development consists of an overall high quality finish.</p> <p>The proposed commercial tower consists of large areas of coloured glazing with winter gardens ensuring the facade does not have large expanses of glazing, and provides visual interest.</p> <p>The residential tower has been designed to appear as separated box elements and does not have a flat façade with staggering of the various elements provided visual interest when observed from the street.</p> <p>No plant or equipment is visible from the street or surrounding development.</p>	Yes

Provision	Proposal	Compliance
<ul style="list-style-type: none"> Avoidance of excessive light spillage. Use of translucent or opaque materials for balustrades is encouraged. No clear glass balustrades will be permitted. 		
P2 Building entrances must be viable from the street.	Building entrances address the street and proposed through site link.	Yes
P3 Painted finishes to materials are not desirable. Pre-coated factory applied finishes such as powder coating are encouraged.	<p>Painted concrete finishes are contained within the proposal</p> <p>A regular maintenance/painting schedule has been required by condition.</p>	Yes
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.	The proposed towers have articulation in the form of balconies, terraces, winter gardens and material combinations.	Yes
P5 Low maintenance and graffiti resistant materials must be used wherever possible on surfaces susceptible to graffiti.	The proposed material at street levels are graffiti resistant.	Yes
3.2.3 Roof Design and Rooftop Gardens		
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 is flat and made up of varying elements consistent with the desired future character of the centre.	Yes
P2 Roofs must respond to the orientation of the site. For example, the use of eaves and skillion roofs to facilitate to solar access.	Sufficient solar access is provided and the roof does not restrict access.	Yes
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.	All service elements have been included within the roof areas and are not visible from outside the site.	Yes

Provision	Proposal	Compliance
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.	The proposed development has been designed to ensure it is of a high quality providing interest to the street scene and skyline.	Yes
P5 Residents shall have access to rooftop and podium gardens wherever possible. At least 50% of the roof area shall be vegetated with grasses, shrubs and trees.	Communal open space is provided to the central plaza which is landscaped. The tower roof levels provide a mixture of access in the form of terraces which include landscaping.	No – 50% of the landscaping to roof levels is not provided, however given the large area of open space to the centre of the building that is landscaped this is considered acceptable.
P6 Planter boxes must be located at the perimeter of rooftop gardens to minimise overlooking of neighbouring dwellings.	A range of planting is proposed including planter boxes to the edge of the open spaces.	Yes
P7 Planting containers must allow sufficient depth and volume, growing medium and irrigation to support the mature size of plants.	Sufficient depth is provided in planters including deep planters suitable of accommodating mature trees.	Yes
P8 All planting areas on structures must be designed by a suitably qualified engineer.	A landscape scheme has been prepared by a qualified Landscape Architect and submitted with the application.	Yes
3.2.4 Street-Frontage 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.	Secure access is provided to the basement in the form of a security shutter which is located within the site allowing vehicles to leave the road before seeking access. Separate secure access to the residential parking is to be provided within the basement and a condition requiring details to be submitted to council has been proposed.	

Provision	Proposal	Compliance
	Secure access is provided to individual access lobbies. A condition requiring details to be submitted has been proposed.	
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 	The ground level contains a retail unit and commercial lobby to Burwood Road, the principle road frontage, and a commercial premise, servicing access points and the vehicular access point to Burleigh Street, the secondary road frontage.	Yes
P3 Separate and clearly identifiable entrances must be provided from the street for pedestrians and cars, and different uses (residential and non-residential).	The entrances are clearly defined.	Yes
P4 Building entrances must have a direct physical and visual connection with the street.	The entrance lobbies either front the street or the future through site link providing it with activation.	Yes
P5 Residential component of any development must have a clear street address and a separate entry.	The residential apartments have an individual lobby accessed from the through site link or via the basement parking.	Yes
P6 Outdoor dining is generally encouraged on the footpath of commercially active street frontages, subject to compliance with Council's Outdoor Eating Area Policy.	No use of the retail unit is proposed as part of this development	Yes
P7 All commercial components must have a clear street address.	The commercial lobby fronts Burwood Road and the serviced apartment lobby is accessed from the future walkway	Yes

Provision	Proposal	Compliance
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.	All mailbox facilities will be provided in accordance with Australia Post Standards. A condition has been added requiring this to be evidenced prior to occupation.	Yes
P10 A locking device shall be installed to all mailboxes	A condition requiring provision of locking mechanism has been included.	Yes
P12 CCTV cameras shall be installed over any entrance points (including car parking entrance) for residential flat buildings and major developments. The CCTV system shall provide a quality image that can assist with the detection of crime and be used by the NSW Police in any investigation (preferably a quality digital system). CCTV system footage shall be retained for a period of no less than fourteen days and be available upon request by the NSW Police when required.	A condition requiring the provision of a CCTV system has been included.	Yes
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.	A mix of 1,2 and three bedroom dwellings are proposed.	Yes
P2 All residential developments must provide the following minimum apartment sizes: <ul style="list-style-type: none"> ▪ Studio apartments - 40 square metres. ▪ 1 bedroom apartments - 50 square metres. ▪ 2 bedroom apartments – 70 square metres. ▪ 3+ bedroom apartments – 95 square metres. 	The proposed apartment sizes are consistent with the requirements of the ADG.	Yes

Provision	Proposal	Compliance
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.	The calculation of Gross Floor Area is consistent with definition contained in the dictionary of the BLEP 2012.	Yes
Advisory Note: These provisions also apply to serviced apartments.		
3.2.11 Ceiling Height		
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. ▪ Residential floors above ground level: 2.7 metres for habitable rooms and 2.4 metres for non-habitable rooms. - 	The proposed development is consistent with guidance on heights contained in the ADG.	Yes
3.2.14 Visual and Acoustic Privacy		
P1 Development must be located and orientated to maximise visual privacy between development on the site and adjacent development by: <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. 	The proposed development is consistent with guidance on privacy and separation contained in the ADG.	Yes

Provision	Proposal	Compliance
<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. 	Where required, screening devices have been included.	Yes
3.2.16 Lobbies and Internal Circulation		
P1 Entry lobbies must be designed to provide facilities for seating, mail delivery and collection, and supervising personnel wherever possible.	The proposed development is consistent with guidance on common circulation and spaces contained in the ADG.	Yes
P2 Lift lobbies must be naturally ventilated. Daylight is to enter all residential lift lobbies.	The proposed development is consistent with guidance on common circulation and spaces contained in the ADG.	Yes
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.	The proposed development is consistent with guidance on common circulation and spaces contained in the ADG.	Yes
P4 Common area corridors must be a minimum of 2 metres in width.	The proposed development is consistent with guidance on common circulation and spaces contained in the ADG.	Yes
P5 The name and number of a development must be clearly displayed at the entry outside the development. Suitable illumination for after hours recognition must be provided.	A condition requiring the provision of street number identification has been proposed.	Yes

Provision	Proposal	Compliance
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.	The routes to and from dwellings are designed for occupant safety. The access lobbies will provide activation to the through site link ensuring it is safe for users.	Yes
P2 Development must comply with Council's Burwood Community Crime Prevention and Safety Plan.	The Applicant has confirmed that the development supports the crime prevention priorities described in the Crime Prevention and Safety Plan	Yes
P3 Development must be provided with clearly defined site boundaries to strengthen the distinction between public and private space.	The development is built to the site boundaries.	Yes
P4 Facades at ground level must be activated by locating after hours uses so they are visible from the publicly accessible areas.	The ground floor facade area is activated by the commercial, residential and serviced apartment lobbies.	Yes
P5 Development access must be controlled by: <ul style="list-style-type: none"> ▪ Restricting access from balconies, roofs and windows of neighbouring development. ▪ 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. 	Separate secure access is provided for the varying uses.	Yes

Provision	Proposal	Compliance
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. 	<p>Each individual lobby will be clearly visible from the public domain and securely accessed.</p> <p>All common areas and the through site link will be appropriately illuminated.</p>	Yes
P7 Residential development must be oriented so that primary windows and private open space address the street and publicly accessible areas.	<p>The development overlooks the streets and centrally located communal open space.</p>	Yes
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.	<p>The Applicant confirms the development will be access compliant for mobility impaired persons.</p>	Yes
P2 The main entry must be accessible from the street footpath in accordance with Australian Standard (AS) 1428: Design for Access and Mobility.	<p>The Applicant confirms the development will be Disabled Access compliant, and is supported by an access compliance report.</p>	Yes
P3 Safe and convenient access must be provided in all development, car parks and communal facilities.	<p>The Applicant confirms the development will be Disabled Access compliant, and is supported by an access compliance report.</p>	Yes
P4 Compliance with AS 1428.1 is required with respect to access requirements on new building work.	<p>The Applicant confirms the development will be Disabled Access compliant, and is supported by an access compliance report.</p>	Yes
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.	<p>The Applicant confirms the development will be Disabled Access compliant, and is supported by an access compliance report.</p>	Yes

Provision	Proposal	Compliance
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.	10% of the proposed apartments are adaptable	Yes
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.	One space is provided for each dwelling	Yes
P8 For development providing between 20 to 79 dwellings, one accessible visitor car parking space must be provided on site must be accessible in accordance with the provisions of AS 1428.2 to facilitate automatic vehicular wheelchair loading and unloading.	Parking has been provided in accordance with the ADG and the RMS Guide to Traffic Generating Development.	Yes
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.	Parking has been provided in accordance with the ADG and the RMS Guide to Traffic Generating Development.	Yes
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.	<p>Awnings have been provided to both Burwood Road and Burleigh Street.</p> <p>A condition is proposed requiring details to be submitted prior to the issuing of a Construction Certificate.</p>	Yes

Provision	Proposal	Compliance
P2 Where development has a set back 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.	Awnings are provided for the length of the building covering the pedestrian entrances.	Yes
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.	The awnings are of a box design. A condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included.	Yes
P4 New awnings must be integrated and compatible with the adjacent awnings that are consistent with this DCP.	The awnings are compatible with the surrounding awning styles.	Yes
P5 Change in height of the awning is not permitted unless it steps down or up to follow the terrain/ level of the street.	The awnings follow the street terrain.	Yes
P6 Awning length must extend across the entire street front and connect with the adjoining awnings, except above vehicle entry points or service entrances.	Awnings are provided for the length of the building including service entrances.	
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.	A condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included	Yes
P2 The height of the awning fascia must be between 0.4 metres and 0.6 metres.	A condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included	Yes

Provision	Proposal	Compliance
P3 Any change in the awning height to accommodate sloping streets must have a maximum step height of 0.6 metres.	A condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included	Yes
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.	A condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included	Yes
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 condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included	Yes
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.	A condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included	Yes
P3 Artificial lighting must be installed in awnings at no greater than 6 metre centres and enable face recognition.	A condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included	Yes
P4 Awnings must adopt a coordinated colour scheme that is compatible with the building. Multiple, bright, and rainbow colours are discouraged.	A condition requiring further details to be submitted to and agreed by Council prior to the issuing of a Construction Certificate has been included	Yes
P5 Awnings must be regularly maintained to ensure ongoing structural adequacy and weather protection.	A condition requiring details of a building maintenance schedule has been included	Yes

Provision	Proposal	Compliance
Section 3.2 General Building Design Controls In Centres		
3.2.1 Design Excellence		
P1 Building design must represent architectural design excellence in the following ways: <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. ▪ 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. 	The proposal demonstrates a high level of design quality that will improve the public domain and positively respond to the surrounding environment.	Yes

Table 4: Burwood DCP 2013

Comments on SEPP 55 Matters

Under Clause 7 of SEPP 55, Council may not consent to development on land unless it considers the matter of contamination. If the land is contaminated, Council must be satisfied that the land is suitable for the development in its contaminated state, or that the necessary remediation will be carried out.

The site is not considered to be contaminated, and the matter of any site contamination identified during the development can be dealt with by consent condition. A condition has been included to this effect.

SEPP 65 – Apartment Design Guide (ADG)

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Development is applicable to the site and the supporting document, the Apartment Design Guide (ADG)

The application includes a Design Verification Statement that addresses the nine (9) principles in SEPP 65. An assessment against the relevant guidelines of the ADG has been carried out in the preceding sections of this report. The development largely complies with the ADG guidelines, and is therefore considered acceptable.

Comments on BLEP 2012 matters

There are three (3) non-compliances with the development standards in BLEP 2012 - the maximum building height, the maximum FSR and the maximum exceptions to floor space ratio (residential accommodation).

Note: the variation to the FSR control for residential accommodation is consistent with Council's Carrying out Bonus Development in the Public Interest policy

Clause 4.6 of BLEP 2012 provides powers and procedures for consent authorities to consider and where appropriate grant consent to development even though the development would contravene a particular development standard. The objectives of this clause are to provide an appropriate degree of flexibility in applying development standards, and to deliver better outcomes for and from development. The provisions of Clause 4.6 may be applied to the development standards for maximum building height and maximum FSR.

For Council to consent to an exception to a development standard it must have considered a written request from the applicant that seeks to demonstrate that compliance is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the departure. Consent cannot be granted unless Council is satisfied that these matters are adequately addressed and that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone objectives.

The SEE includes requests submitted under Clause 4.6 for the maximum building height, the maximum FSR and the exceptions to FSR (residential accommodation) development standards.

Maximum Building Height

This request presents an adequate case that has regard to the objectives of the height limit standard in the BLEP and the objectives of the B4 zone. It also addresses case law concerning variations to development standards, whether non-compliance is reasonable and necessary in the circumstances of the case, the planning grounds to justify the contravention, and the public interest.

Based on the request, the following reasons support approval of the departure from the development standard.

- The proposed development sits below the building height plan set out in clause 4.3A of Burwood LEP 2012 and Part 3.3.2 of the Burwood Development Control Plan (Amendment 3 2016);
- The site responds to its various constraints and has been developed with a large internal plaza at level 1 which provides solar access to the existing residential flat building (RFB) located at 11-17 Burleigh Street; and
- No adverse solar access impacts outside of those consistent with the anticipated built form for the city centre.

Taking all of these factors into account, enforced compliance of the proposal with the maximum building height would be unreasonable or unnecessary in the circumstances of the case and would not serve any public interest. There are sufficient environmental planning grounds to justify the departure from the development standard. Approval of the departure from the development standard does not raise any matters of State or regional planning significance.

Maximum Floor Space Ratio FSR

The case presented in this request has regard to the objectives of the maximum FSR in the BLEP in this location and the objectives of the B4 zone. It also addresses case law concerning departures from development standards, whether non-compliance is reasonable and necessary in the circumstances of the case, the planning grounds to justify the contravention, and the public interest.

Based on the request, the following assessment is made of the proposed departure from the development standard.

- The addition of commercial and residential space close to public transport link and local services and facilities contained in Burwood Town centre can be adequately accommodated without detrimental impact on the surrounding environment or neighbouring properties;
- The development is orderly and economic development which is consistent with the desired future character of Burwood Town Centre; and
- The development satisfies the objectives of the floor space ratio standard.

Maximum Residential Floor space FSR

The case presented in this request has regard to the objectives of the maximum FSR in the BLEP in this location and the objectives of the B4 zone. It also addresses case law concerning departures from development standards, whether non-compliance is reasonable and necessary in the circumstances of the case, the planning grounds to justify the contravention, and the public interest.

Based on the request, the following assessment is made of the proposed departure from the development standard.

- The increased intensity of the land use through the additional residential floor space close to public transport link and local services and facilities contained in Burwood Town centre is appropriate and will not lead to detrimental impact on the surrounding environment or neighbouring properties;
- Adequate opportunities for solar access and natural ventilation are achieved as part of proposed development;
- Provision of housing in a well serviced urban location;
- The urban form proposed is consistent with the desired future character of the area; and
- The development satisfies the objectives of the residential floor space ratio standard.

Heritage

A number of heritage items are within the vicinity of the proposed development, Burwood Post Office (I24) at 170-174 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 has been submitted as part of the application which concludes that the proposed development will not have any significant impacts on the surrounding heritage items.

Council's Heritage Advisor disagrees with this assessment and provides three (3) recommendations to make the scheme acceptable, summarised as follows:

- “- The proposal should be amended to comply with the maximum permissible height control of 70m.*
- The residential tower should be set back an additional three (3) metres to 9 metres.*
- The colours and finishes should be altered to provide a more compatible palate of colours.”*

Having taken the Heritage Officer's comments into consideration, and weighing the proposed development up against the existing development and permissible setbacks, it is considered that the proposed development (including the height and FSR variations) will not have a greater impact upon the heritage items than the existing, recently constructed development of a strictly numerically complying height.

As such, a condition has been included requiring the colour of the materials and finishes to be agreed with Council in writing prior to the issuing of a Construction Certificate to ensure that the development provides a suitable backdrop to the surrounding heritage items.

Comments on key BDCP matters

Boundary Setbacks and Building Separation

The boundary setbacks for the residential tower are consistent with the requirements of the ADG. The setbacks of the commercial tower and podium are consistent with the provisions of BDCP with 3m setback to Burleigh Street and 0m setback to Burwood Road. The towers above are setback 6m to Burleigh Street and 8m to Burwood Road.

The commercial tower is setback 0m to the north and south boundaries and the residential tower is set back 0m to the northern boundary and 5.25m to the southern boundary. This approach is consistent with the BDCP and will allow the adjacent sites to maximise their development potential presenting a continuous built form to Burwood Road and Burleigh Street.

Concerns were raised by GMU that the proposed development did not present an appropriate relationship to the heritage items on Burleigh Street despite complying with the street setbacks required by the DCP. Since these comments the residential tower has been revised to comply with solar access and ADG separation distances now presenting a setback of 6 metres for a small proportion of its eastern façade with a greater setback to the remainder of the façade and 5.25 metres to the southern boundary. Notwithstanding the modification to the residential tower setbacks, it is considered that as the setbacks to Burleigh Street specified within the DCP are appropriate.

Shadowing and Solar Access

Concerns about overshadowing of the existing residential flat building (RFB) at 11-17 Burleigh Street were raised. The proposed development has been altered to ensure that the habitable rooms within the existing RFB receive a compliant 2 hours solar access between 9am and 3pm on the 21st June (winter solstice). However, a degree of impact is inevitable given the building envelopes established by the applicable controls and the adjoining sites will be redeveloped in a similar manner.

Visual Privacy Issues and Apartment Layout

Through the various design revisions undertaken during the application process visual privacy has been achieved. This includes louvered aluminium screens to the southern façade secondary bedroom windows which are required to achieve natural cross ventilation.

The apartment layouts match bedrooms and living spaces on adjoining walls, which is undesirable. This can be satisfactorily dealt with by a condition requiring sound insulation and post construction testing to demonstrate compliance.

Building Design, Materials and Finishes

The centre of Burwood is undergoing transformation with a number of recently completed residential flat buildings and mixed use developments within the vicinity. A varying palate or materials, finishes and architectural design. Burwood Road itself is made up of two and three storey shops with a 0m setback. The palate of materials proposed is appropriate, delivering a high quality design which will fit with the character of the existing surrounding development and is consistent with the desired future character of the Commercial Core Area.

Referrals

The Manager Environmental Health has not raised any objections to the application, but has provided conditions to be included in any positive determination.

The Manager Traffic & Transport identified a shortfall in parking (which has been rectified) and a steeper gradient than is allowed at the vehicular entrance. A condition has been added requiring demonstration to Council prior to the issuing of a construction certificate that a gradient of 2.5% across the footpath can be achieved.

The Senior Development Engineer has provided consent conditions. These include requirements for management of excavation, bulk earthworks and shoring.

Building conditions have been supplied by Council's Special Projects Officer.

Council's Heritage Officer outlined a number of issues regarding the relationship between the proposed development and the surrounding heritage items and made three (3) recommendations. These have been addressed in the preceding sections of this report, and a condition added requiring the colour of the materials to be agreed upon with Council prior to the issuing of a Construction Certificate.

GMU have provided urban design advice to council and raised a number of issues relating to site isolation, streetscape response, amenity issues, building setbacks and the future pattern of development. These issues have been addressed by the Applicant and the scheme presented now provides the required building separation and required solar access. The streetscape issues have been addressed as part of the heritage response.

The RMS have raised no objections to the proposed development and have not submitted any conditions to be included on the decision notice.

Community Consultation

Public notification of the Application resulted in 16 submissions being received. The issues raised in the submission with comment provided are as follows.

1. The building height is excessive. The many new tall buildings are adversely changing the character of Burwood.

Comment: The site is an L shape wrapping round 188-192 Burwood Road and is constrained with an existing RFB located to the south with apartments fronting the southern site boundary. The height variation sought is a direct result of the site constraints in accommodating the permitted FSR and minimising impacts to additional residential development.

2. Solar access and impact on amenity of the existing apartments in the RFB to the south of the proposed residential tower.

Comment: The layout and shape of the residential tower have been amended to ensure that the habitable rooms of the RFB to the south receive at least 2 hours solar access between 9am and 3pm on the winter solstice as required by the ADG.

3. Loss of views from the adjacent existing RFB.

Comment: Whilst some views across the city will be lost view sharing will be maintained with views through the site over the proposed central plaza, and retained views to the east.

4. Loss of ventilation to the adjacent RFB.

Comment: Compliant separation distances have been proposed as part of the development and no impact on the ability of residents to open their windows and ventilate properties will be experienced.

5. Noise levels generated during construction

Comment: Noise levels will be controls by condition as with all development within the Burwood Local Government area. The condition will also limit the hours during which construction can take place.

6. Damage from vibration during construction

Comment: A condition requiring the applicant to undertake a pre-and post-dilapidation report has been included. This will enable the monitoring of any damage caused by vibration during the construction.

7. Lack of compliance with height and FSR controls.

Comment: Compliance and variations to the height and FSR controls has been assessed and found to be acceptable as set out elsewhere in this report.

8. Ability of the adjacent site at 188-192 Burwood Road to be redeveloped and removal of any potential vehicular access.

Comment: The site at 188-192 Burwood Road is capable of being development with suitable setbacks and screening having been applied to the proposed development. The site currently doesn't benefit from vehicular access from Burleigh Street, however, an opportunity

for vehicular access has been provided through the proposed basement and the provision of a breakthrough wall. The applicant will be required to provide an easement to the access point benefiting 188-192 Burwood Road. Any financial remuneration for this arrangement falls outside of the planning process and is for independent negotiation.

9. Unfair sharing of the proposed through site link and its burden on 188-192 Burwood Road.

Comment: The through site link location has been amended and is equally shared between the development site subject of this DA and 188-192 Burwood Road.

Conclusion

The proposed development being the demolition of all existing structures and erection of 2 building towers – a 21 storey commercial tower on the Burwood Road frontage, and a 26 storey mixed use tower along the Burleigh Street frontage, over a part 3 storey podium to Burwood Road and a 1 storey podium to Burleigh Street and five (5) basement parking levels, achieves adequate compliance with the requirements of the applicable planning instruments and the BDCP Amendment No. 3 2013. It is recommended for development consent subject to conditions.

Recommendation

- A. That the proposed development, Development Application DA 103/2016, being the demolition of all existing structures and erection of two (2) building towers – a 21 storey commercial tower on the Burwood Road frontage, and a 26 storey mixed use tower along the Burleigh Street frontage, over a part three (3) storey podium to Burwood Road and a one (1) storey podium to Burleigh Street, and five (5) basement parking levels, be issued with a consent subject to the following Special Conditions below and the conditions contained in the document attached to this report titled “*Council Standard Conditions*”

Special Conditions

General

1. The recommendation of the acoustic report accompanying the DA prepared by Acoustic Noise and Vibrations Solutions P/L are to be adopted as part of the development.

Reason: To ensure adequate amenity for future residents.

2. Upon completion of scheduled maintenance as required by the maintenance schedule required by Condition 16, the body corporate or building owner shall inform Council that the works have been undertaken, and invite them to undertake an inspection.

Reason: To ensure that building maintenance is undertaken in accordance with the building maintenance schedule.

3. A CCTV system is to be installed which provides surveillance of the basement parking and servicing areas, entrance lobbies, and through-site link.

Reason: To ensure safety of residents and users.

4. Should contamination be discovered on-site during construction, all development works are to cease immediately, and Council is to be notified. Investigation and remediation works are to undertaken in accordance with the following:
 - a. A Detailed Stage 2 Site Investigation is to be undertaken;
 - b. Remediation works are to be undertaken in accordance with the recommendations of the Stage 2 report;
 - c. The applicant is to submit to Council, and have acceptance confirmed in writing, a certificate which confirms all contaminants have been removed; and
 - d. Allow inspection by Council as required.

Reason: To ensure public safety.

5. The proposed development shall include a knock-through wall to Basement Level 1, as identified on plan DA-2000, Issue J, dated 19/04/2017, provided at six (6) metres wide, and at least 2.7 metres high, and a permanent right of access is to be afforded by covenant to the owners of 188-192 Burwood Road.

Reason: To ensure future vehicular access to Burleigh Street and redevelopment opportunity of 188-192 Burwood Road.

6. The Applicant must ensure that the infill walls between Basement Level 1 support columns along the southern boundary of the land adjacent to the site of the proposed easement for basement access referred to in Condition 4 is of materials and construction that are capable of being readily removed when access to the land immediately to the south of the site, and adjacent to the easement referred to in Condition 4, is required in order that vehicular access can be obtained.

Reason: To enable the delivery of vehicular access via the removable wall when required.

7. The Applicant must ensure that the infill walls between the podium level support columns along the southern boundary of the land adjacent to the site of the proposed easement for Public Access referred to in Condition 19 is of materials and construction that are capable of being readily removed at such time as Council has obtained the benefit of an Easement for Public Access on the land immediately to the south of the site and adjacent to the easement referred to in Condition 19 in order that the two (2) easements can operate together.

Reason: To ensure the pedestrian through site link can be achieved as desired.

8. The Applicant shall include in the construction of the approved development two (2) permanent skylights of not less than one (1) metre square in the first floor concrete slab above the site of the proposed easement for Public Access referred to in Condition 19, in locations approved by Council, to provide natural light to the easement area during daylight hours.

Reason: To ensure the amenity of the through-site link.

Prior to the issue of a Construction Certificate

9. **Prior to the issue of a Construction Certificate** the Applicant shall submit to Council a plan and schedule demonstrating that the relevant basement storage areas have been allocated to the appropriate apartments.

Reason: To ensure sufficient storage space is provided.

10. Details of the awning to Burwood Road and Burleigh Street are to be submitted to Council, and to be approved in writing prior to the issuing of a Construction Certificate.

Reason: To ensure the proposed awning design complies with Council's DCP.

11. Details of the secure access arrangement to the residential parking area are to be submitted to Council and approved in writing **prior to the issue of a Construction Certificate**.

Reason: To ensure secure residential parking is provided.

12. Details of the secure access arrangements to the building lobbies and basement parking/servicing area are to be submitted to Council and approved in writing prior to the issue of a Construction Certificate.

Reason: To ensure secure access to building is provided.

13. The colour of finishes to the development are to be agreed in writing with Council prior to the issuing of a Construction Certificate.

Reason: To ensure the proposed development is compatible with the surrounding heritage items.

Prior to the issue of an Occupation Certificate

14. Prior to the issue of an Occupation Certificate, the Applicant shall submit to Council and have acceptance confirmed in writing, survey certification confirming compliance with the approved levels has been achieved and that 2.7m floor to ceiling height to all habitable rooms (as defined by the Apartment Design Guide) are achieved.

Reason: To ensure adequate amenity for residents.

15. Acoustic insulation shall be provided where bedrooms share a common wall with a living space of an adjoining apartment, and shall be designed by a registered acoustic specialist, and comply with the requirements of Part F5 of the BCA. Testing is to be submitted to Council demonstrating compliance prior to the issuing of an Occupation Certificate.

Reason: To ensure adequate amenity is provided for future residents.

16. A maintenance schedule for the external building facades is to be submitted to Council and approved in writing prior to the issuing of an Occupation Certificate. The schedule shall include building maintenance for a period of five (5) years and shall remain in place for that period, or until the building is demolished.

Reason: To ensure the building façade is adequately maintained.

17. Lockable mailboxes shall be provided to the residential and commercial lobbies in accordance with Australia Post Standards prior to the issuing of an Occupation Certificate

Reason: To ensure adequate postal facilities are provided.

18. Building numbering is to be provided to Burwood Road, Burleigh Street, and the through-site link prior to the issuing of an Occupation Certificate.

Reason: To ensure the building is identifiable from the public domain.

19. Prior to the issue of an Occupation Certificate, the Applicant shall, at its own expense, procure registration over the title to the land pursuant to Section 88E of the *Conveyancing Act 1919* (or any section replacing or amending that section) of a Public Positive Covenant in favour of the Council in the following terms:

“(1) If requested at any time to do so in writing by the Council, the Applicant shall, within twenty eight (28) days of receipt of such written request, at its own expense create an easement in gross for public access (“the easement”) in favour of the Council with a minimum width of 2.5 metres and a minimum height of 2.7 metres over that part of the land coloured blue linking Burwood Road and Burleigh Street on drawing DA-2002 Issue J Dated 19/04/2017 prepared by Urban Link Architects lodged with the Council in connection with Development Application DA-103/2016, in the following terms:

“(a) Full and free right for the Authority in whose favour this easement is created, and every person authorised by it (which shall include without limitation all members of the public), to go, pass and re-pass on foot 24 hours a day, each day and for all purposes (but without vehicles) over the land indicated herein as the servient tenement. The registered proprietor shall at its own expense and to the satisfaction of the Authority benefitted:

- i. pave and landscape the easement site;*
- ii. maintain such paving and landscaping in good repair, order and condition; and*
- iii. provide and maintain suitable artificial lighting commencing at the southern end of the easement and at 3metre intervals over its length.*

“(b) If so requested at any time by the Council the registered proprietor shall permit the Council, its servants, agents, employees or contractors to take down and remove any infill wall panels between the podium level support columns along the southern boundary of the easement so as to allow persons thereafter lawfully using the easement to access the adjoining land to the west from any point along the western boundary of the easement.”

“(2) Forthwith after creation of the easement the Applicant must at its own expense provide confirmation in a manner satisfactory to Council that the easement has been registered on the land titles in the form approved.”

20. Prior to the issue of an Occupation Certificate for the development the applicant shall create on the title of the development a vehicular Right of Way allowing vehicular

access through the site to Basement 1 and thereby through the 6m wide break through wall to the adjoining property to the south at 188-192 Burwood Rd Burwood.