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**Property:** 17 Deane Street, Burwood  
 Lot 1 DP 1215989  
**DA No:** BD 27/2017  
**Date Lodged:** 28 February 2017  
**Cost of Work:** \$31,431,597.00  
**Owners:** Citypark Properties Pty Ltd  
**Applicant:** Urbis Pty Ltd


<b>PROPOSAL</b>	<p>Mixed Use development comprising:</p> <ul style="list-style-type: none"> <li>- Three (3) levels and one half level of basement extending across the entire site with capacity for 92 car parking spaces, back of house, storage, plant and service equipment</li> <li>- Two (2) retail tenancies on the ground floor fronting George Street and Mary Street and a hotel shop fronting Deane Street</li> <li>- Three (3) ground floor (separate) dedicated lobbies for services relating to residential units, hotel and child care;</li> <li>- Child care centre on Levels 2 and 3;</li> <li>- 101 hotel rooms located on Level 1 and Levels 5 – 12;</li> <li>- 36 residential apartments from Levels 14 – 23.</li> </ul> <p>The application has been submitted with a voluntary planning agreement.</p>
<b>ZONE</b>	<i>B4 – Mixed Use zones.</i>
<b>IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE</b>	Yes – the proposal is best described as a mixed use development which comprises commercial premises, office premises and a residential flat building. Each use is permissible with consent from Council.
<b>IS THE PROPERTY A HERITAGE ITEM</b>	No
<b>BCA CLASSIFICATION</b>	Classes 2, 3, 6, 7a, 7b, 9b
<b>NOTIFICATION</b>	Notified 16 March 2017 to 6 April 2017 – No submissions were received.

## EXECUTIVE SUMMARY

This report considers a proposal to construct a 23 storey mixed use development described in brief as follows:

- Three (3) levels of basement and one half level of basement extending across the entire site with capacity for 92 car parking spaces (utilising mechanical car stacking system); 20 bicycle spaces, storage, back of house, plant and servicing equipment, accessed via Youth Lane;
- Two (2) retail tenancies at ground floor with pedestrian access via George Street;
- A hotel shop fronting Deane Street;
- Three separate lobbies at ground floor:
  - o Child care centre lobby with pedestrian access via Mary Street;
  - o Residential lobby with pedestrian access via Mary Street;
  - o Hotel reception and lobby with pedestrian access via Deane Street and Youth Lane.
- Child care centre at Level 2 (indoor and outdoor) and Level 3 (outdoor space);
- Hotel amenities including business lounge, kitchen, gym, rooftop bar and outdoor seating on Levels 3 and 4;
- Hotel rooms on Level 1 (21 rooms) and levels 5 – 12 (80 rooms);
- Residential amenities on Level 13;
- 36 residential units on Levels 14 – 23, comprising 6 studios, 12 x 1 bedroom, 9 x 2 bedroom and 9 x 3 bedroom units.

The application has been submitted with an offer to enter into a voluntary planning agreement.



The site is known as No. 17 Dean Street, Burwood and has a legal description of Lot 1 in DP 1215989.

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

From an urban design point of view the application is generally considered to be acceptable. However, non-compliances with floor space ratio and the required parking provision are not considered reasonable nor acceptable in the circumstances as analysed in this report. Additionally, Council's Traffic and Transport assessment does not support the non-compliance with parking provision and use of the proposed mechanical car parking system and cannot support the proposed application.

Accordingly, given these fundamental issues in relation to floor space ratio and car parking, the application is not supportable and in the circumstances and refusal of the application is recommended subject to the Refusal Notice.

## **BACKGROUND AND ASSESSMENT HISTORY**

Development Application BD27/2017 was lodged on 28 February 2017. The application was notified between 16 March and 6 April 2017. No submissions were received.

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

On 7 April 2017, Sydney Trains sent a "Stop the Clock" letter due to inadequate information. The required information was submitted by the applicant on 9 June 2017.

In May 2017, GMU prepared a letter raising concerns with regards to the need for further vertical articulation of the proposal, the vehicle dominance/lack of activation on the ground floor and aspects of building layout. A response to the issues raised was received by Council on 14 June, 2017.

A briefing note regarding the application was considered by the Sydney Eastern City Planning Panel on 13 July 2017.

A meeting was held at Council on 7 September with Council staff, the applicant, GMU and Planning Ingenuity to primarily discuss the urban design issues, stormwater and traffic and parking issues and in particular Council's dissatisfaction with the proposed mechanical system for parking.

As a result of the meeting additional information was submitted by the applicant on 17 October 2017. The additional information included amended architectural plans, public domain plan, a traffic impact assessment, a report on the proposed mechanical parking system, a waste management plan and an on-site stormwater addendum report.

On 8 November 2017, the applicant was provided with comments from Council's Traffic and Transport Manager which advised that the proposed mechanical car parking system was not supported. Council's Traffic and Transport Manager also required the widening of Youth Lane to 6m to permit two way traffic flow. On 6 December, 2017 the applicant agreed to widen Youth Lane to 6m for two-way traffic flow.

The applicant has been made aware by various email and telephone communications that the proposed mechanical parking system will not be supported by Council's Traffic and Transport Manager. In response, the applicant has advised that a conventional ramp arrangement has been explored, however, was dismissed as 7 levels of basement car parking are required to accommodate the 92 car spaces proposed, which was considered by the applicant to be an excessive amount of excavation.

GMU reviewed the amended plans (October 2017 plans) and public domain plan and provided comments to Council on 6 November, 2017. Issues remaining included the ground floor layout bulk and scale and architectural expression. Following receipt of these comments, the applicant submitted further amended plans on 13 February 2018.

On 13 March, 2018 GMU met with the applicants architect to discuss the remaining urban design issues. Following on from the meeting the final set of amended plans were received on 22 March, 2018. GMU advised on 29 March,

2018 that all remaining issues were resolved and recommended a condition of consent requiring the provision of a holistic landscape plan for the ground floor.

In April 2017, the applicant was again advised that Council does not support the mechanical parking system and the application could not be supported.

In accordance with Council's adoption of the "Carrying out Bonus Development in Exchange for Public Benefits Policy", the proposal was submitted in conjunction with an offer to enter into a Voluntary Planning Agreement ("VPA") to secure various public benefits to offset the increase in FSR and building height. Notably, since the application was lodged the Burwood LEP has been amended to permit an FSR up to 6.6:1 on the site provided the proposed development on the land includes development resulting in community infrastructure or the use of land as community infrastructure. The application does not include land resulting in community infrastructure and therefore does not satisfy the relevant provisions of the LEP for additional floor space (Clause 4.4A of BLEP 2012).

## THE SUBJECT SITE AND CONTEXT

The subject site is located within the Burwood Town Centre. The site is bounded by George Street to the north, Mary Street to the east, Deane Street to the south and Youth Lane to the west. The site has a street address of No.17 Deane Street, and is legally described as Lot 1 in DP1215989. The site is almost rectangular in shape and has a total area of 1,151m<sup>2</sup>. The site is highlighted in Figure 1 below.

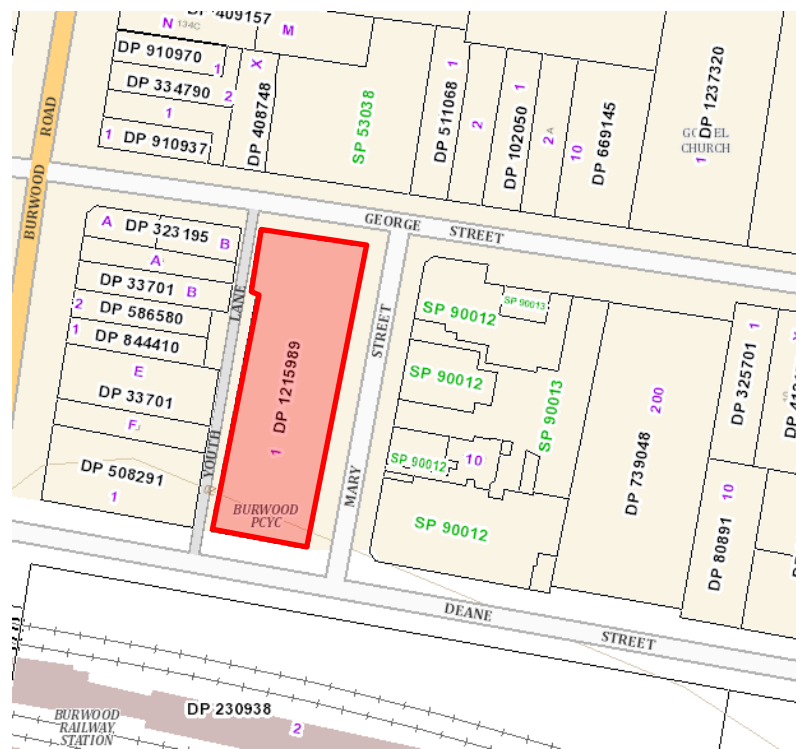


Figure 1 Site Location Plan

The site currently contains a one and two storey building that was previously utilised by the Police Citizens Youth Club (PCYC) (Figures 2 and 3). The site slopes down from south to north by approximately 2.9m.



**Figure 2** Site viewed from Deane Street (existing southern elevation)



**Figure 3** Site viewed from George Street looking west (existing northern and eastern elevation)

The subject site is located in Burwood Town Centre as shown in Figure 4 below. Burwood Railway Station is approximately 200m walking distance to the south-west. The site is in close proximity to a variety of established retail facilities within Burwood Town Centre and is within safe, convenient, mostly level and reasonable level walking distance to these facilities along formed footpaths. Public transport is available by bus and train and the site is within 30 minutes travelling time to Sydney CBD by private and public transport.

The Burwood Town Centre is undergoing significant transformation to taller and more dense built forms under the planning controls introduced with Burwood LEP 2012 and the Burwood DCP.



**Figure 4** Location of subject site within Burwood Town Centre (Source: Burwood DCP)

To the north of the site is a mix of low to medium residential development comprising of single storey detached dwellings, a 3 storey residential flat building and 2 storey retail premises fronting George Street. To the north east at Nos 23 – 27 George Street is a 21 storey mixed use development currently under construction.

To the east is Nos. 9 -15 Deane Street and No.18-20 George Street, a recently constructed 22 storey mixed use development comprising retail, commercial and residential uses.

To the south is the railway reservation and Burwood Railway Station.

To the west are a number of 2 storey retail premises fronting Burwood Road with servicing access from Youth Lane.

## THE PROPOSAL

The proposal involves demolition of the existing buildings at the site to enable the construction of a 23 storey mixed use building comprising 3 and a half basement levels, ground floor retail premises, 101 hotel rooms, a child care centre and 36 residential apartments.





The extent of the proposed works is described as follows:

#### Demolition

The proposal involves demolishing the existing building at the site.

#### Basement Levels

The proposal includes three and a half levels of basement. Basement levels 2 and 3 are accessed via two separate car lifts (one lift for residential units and one lift for the hotel and child care staff).

Basement level 3 contains 43 spaces consisting of 22 residential spaces, 4 child care spaces, 16 hotel spaces and 1 retail space.

Basement level 2 contains 41 spaces consisting of 22 residential and 19 hotel spaces.

Basement level 1 is accessed via a ramp down from the ground floor level and contains 8 child care spaces, separate access to the 2 car lifts and associated lift lobbies, 2 waiting bays for cars waiting to use the car lifts and 20 bicycle spaces.

Basement level 1 (half) is located at the southern end of the site and does not include vehicle access. This level is accessed via 2 residential lifts, 3 hotel lifts (including 1 service lift), and a child care lift. This level contains residential storage cages, hotel back of house, service good storage, hydrant pump room, luggage and lines room for the hotel, and the OSD/rainwater tank.

#### Ground Floor

The ground floor contains 2 separate retail premises fronting George Street and vehicular access to the basement levels via a driveway off Youth Lane. Youth Lane, which is proposed to be widened to 6 metres, is the subject of a public domain plan that identifies the lane as a shared zone for pedestrian and vehicles. Youth Lane is also to be utilised for loading and a drop off zone for the hotel. Pedestrian access to the hotel lobby is also provided off Youth Lane with the main pedestrian access to the hotel lobby being off Deane Street. The hotel reception/lounge area fronts both Deane Street and Mary Street. A small hotel shop is located on the corner of Youth Lane and Deane Street.

The ground floor also contains the waste and recycling room for the residential apartments, commercial waste, bulky waste rooms and goods lift. These rooms are accessed via a central doorway off Youth Lane. This portion of the façade is to be appropriately treated with a green wall.

Pedestrian access to the residential apartment lobby which contains the mail boxes and 2 residential lifts is provided off Mary Street. A separate lobby is provided for the child care centre which is also accessed off Mary Street.

#### Level 1

Level 1 contains 21 hotel rooms consisting of a number of various room sizes and configurations.

#### Level 2

Level 2 contains the child care centre. The use and fitout is to be the subject of a separate development application. Notably, the submitted traffic impact assessment has limited the centre to 50 children. The indoor space for the child care centre is 612m<sup>2</sup>, an outdoor space fronting Deane Street is 81m<sup>2</sup> and a further outdoor space to the north of 50m<sup>2</sup> which links into the outdoor space above on Level 3 (355m<sup>2</sup>) via an elevated walkway and platform lift.

#### Level 3

The rear (northern) portion of Level 3 contains the outdoor space for the child care centre. The southern portion of Level 3, fronting Deane Street contains the hotel's business lounge and outdoor seating, hotel kitchen as well as services and meter room.

#### Level 4

Level 4 contains the hotel amenities including a rooftop bar (semi-outdoor), gym, decking to the east and west as well as services and a meter room.

#### Levels 5 to 12

Levels 5 to 12 contain a total of 80 hotel rooms (10 on each floor) consisting of various room sizes and configurations.

#### Level 13

Level 13 contains the residential amenities for the apartments including 2 separate communal open space areas. A residential courtyard fronts Deane Street (146m<sup>2</sup>) and a roof garden is located to the north of the building (133m<sup>2</sup>). This level also contains plant services and the lift overrun for the hotel lifts.

#### Levels 14 to 23

Levels 14 to 23 contain 36 residential apartments, comprising 6 x studio apartments, 12 x 1 bedroom apartments, 9 x 2 bedroom apartments and 9 x 3 bedroom apartments.

#### Mechanical Parking System

The mechanical parking system includes two separate vehicle lifts (1 for residents and resident visitors and 1 for hotel guests/child care staff). The lifts provide automated access to basement levels 2 and 3. The system works by guiding a user into the entry room (lift) using sensor and display directions on a heads up display visible to the driver. Once the vehicle is in the correct position indicated by the system, the user leaves the vehicle and enters the lobby. In the lobby the driver swipes their parking card and the system automatically parks their vehicle. The lift is high speed travelling at 1 metre per second and vertically transports the vehicle to the parking level. The vehicle is then shuttled horizontally on a car picker into a parking bay.

To retrieve their vehicle the user swipes the parking code (or enters 4 digit code) allowing the system to automatically return their vehicle and rotate it 180 degrees so the user does not need to reverse.

The Traffic Impact Assessment prepared by Bitzios Consulting states that the calculations show a parking rate of 31 vehicles per hour and retrieval rate of 36.4 vehicles per hour. With 2 lifts the proposed system will be capable of parking 62 vehicles per hour and retrieving 73. The proposed system has a capacity of 84. The Traffic Impact Assessment states that:

*“it is unlikely that demand will exceed the parking and retrieval rates of the system. In the unlikely event that the parking rate is exceeded, it is proposed to include two waiting bays in the basement level. The waiting bays will be allocated as the parallel parking bays, opposite the residential lobby.”*

The Traffic Impact Assessment cites two examples of fully automated systems:



*“•Commonwealth Street, Surry Hills: System was installed in 2004 and still operates with its original motor in place. No failures have occurred in the 13 years of operation; and  
•Hampton Court, Kings Cross: System was installed in 2006 and still operates with its original motor in place. No failures have occurred in the 11 years of operation.*

#### Signage and Commercial Operations

There are no signage details provided with this application and no operational details for the commercial premises. Were the application to be approved it is recommended that a condition of consent should require future DAs for use of the non-residential components of the development and signage.

#### **VOLUNTARY PLANNING AGREEMENT (VPA)**





The proposal is accompanied by a VPA pursuant to Section 7.4 of the Environmental Planning and Assessment Act, 1979. The VPA seeks additional floor space (10% variation) on the basis of providing additional contributions towards public facilities over and above those set out in Council's adopted Section 94 and Section 94A Contributions Plan.

The offer of a VPA aligns with Council's policy titled '*Carrying out Bonus Development in the Public Interest*' (the 'Bonus Policy') adopted by Council on 27 April 2015 and effective from 1 May 2015. The VPA has not been finalised and in fact now needs to be reviewed by the applicant in light of the recently gazetted amendments to BLEP 2012 and the requirement for developments to include provisions for community infrastructure where an exceedance in floor space is proposed.

## **STATUTORY PLANNING FRAMEWORK**

The proposed development is subject to the following Environmental Planning Instruments (EPIs), Development Control Plans (DCPs), Codes and Policies and Draft EPIs and DCPs:

- State Environmental Planning Policy No. 55 – Remediation of Contaminated Land;
- State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (State & Regional Development) 2011;
- Burwood Local Environmental Plan 2012; and
- Burwood Development Control Plan.

## **STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF CONTAMINATED LAND**

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

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

A Stage 1 Preliminary Environmental Site Assessment prepared by Environmental Investigation Services (Reference: E29874KHrpt and dated 30 November 2016) was submitted with the development application. The report concludes that there is low to moderate potential for site contamination. The report recommends a preliminary intrusive investigation to make an assessment of the soil and groundwater contamination condition and that a hazardous building materials survey be undertaken prior to demolition and following demolition (and preferably prior to removal of the hardstand) that an asbestos clearance certificate should be provided. Additionally, that a waste classification be undertaken to classify material to be excavated for the proposed basement. This could be dealt with by condition were the application to be approved.

## **STATE ENVIRONMENTAL PLANNING POLICY NO. 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT**

### Design Quality Principles

Part 2 of the Policy sets out 'Design Quality Principles' and Clause 30(2) requires the consent authority, in determining a development application to take into consideration the design quality of the residential flat development when evaluated in accordance with these design quality principles.

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

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

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

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

Planning Principle	Comment
<p><b>Context and Neighbourhood Character</b></p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The redevelopment of this site will be consistent with the desired future character for the Burwood Town Centre's commercial core as identified in BDCP 2013. The desired future character for this precinct is to incorporate mixed, higher density residential and commercial/retail development. The proposal includes the widening and upgrade of Youth Lane as a shared zone which will improve pedestrian amenity and town centre permeability. The proposal activates all street frontages and provides a variety of commercial premises to add to the range of uses in the town centre.</p>
<p><b>Built Form and Scale</b></p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The scale is reasonably consistent with the anticipated future form of development within the Burwood Town Centre. The proposed additional height is not visually prominent in comparison to the height of the adjoining building at No.9 – 15 Deane Street (which also exceeds the maximum height limit). The additional height will not detract from the streetscape as the built form is broken up by architectural features and vertical articulation.</p> <p>The landscaping works at the ground floor (in particular Youth Lane) will enhance the public domain surrounding the site and improve the interface with adjoining streets and nearby buildings.</p> <p>The bulk of the development is considered acceptable given that the development achieves compliance with most ADG and DCP requirements for setback, separation and apartment depth. The treatment, dimensions and arrangement of balconies and architectural features including recesses and changes in materials and colours are considered to be appropriate as assessed by the independent Urban Design review undertaken by GMU as detailed in this assessment report.</p> <p>The proposal has been modulated and articulated to provide interest in the design and assist in providing the development with acceptable bulk. The public domain along the street frontages of the site will be upgraded and activated by commercial tenancies, the ground floor reception/lounge area of the hotel and the residential and child care lobbies.</p>
<p><b>Density</b></p> <p>Good design has a density appropriate for a site and its context, in terms of the number of units or residents.</p> <p>Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access</p>	<p>The density, bulk and scale of the proposal has been assessed in relation to the requests for variation to height and FSR controls below.</p> <p>The mix of uses is consistent with the anticipated form of development in Burwood Town Centre.</p> <p>However, the proposed density is not considered appropriate given the non-compliance with the parking requirements and lack of demonstrated public benefit from the exceedance in floor space.</p>

Planning Principle	Comment
to jobs, community facilities and the environment.	
<b>Sustainability</b> <p>Good design involves design features that provide positive environmental and social outcomes. Good sustainable design includes use of natural cross breezes and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The applicant has provided a BASIX Certificate which indicates that the residential component of the buildings will meet the energy and water use targets set by the BASIX SEPP. A revised BASIX statement is now required due to the time elapsed since lodgement of the application.</p> <p>The design has also ensured the development will comply with the passive solar design principles, soil depth and cross ventilation as required by the Apartment Design Guide.</p>
<b>Landscape</b> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>The building takes up 100% of the ground floor. Landscaping is therefore provided above structure within the private domain (Level 2/3, 4 and 13) and within the public domain including street trees along George Street. Green walls and planters are also proposed as part of the public domain plan for Youth Lane.</p> <p>GMU have reviewed the public domain plan and requested that any approval include a condition of consent requiring a holistic landscape plan at the ground level, which incorporates dual purpose bollards (lighting feature and impact protection to pedestrians) on segments of the lane that will experience heavier pedestrian flows such as the entry points to the hotel and ground level shops. Other areas where servicing will take precedence should be equipped with imbedded ground level lighting features.</p> <p>Each unit is also provided with a private balcony area sufficient for recreational use and amenity benefit.</p>
<b>Amenity</b> <p>Good design positively influences internal amenity for residents and external amenity for neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.</p>	<p>The design of the units allows for sufficient levels of amenity for occupants of the buildings and residents of surrounding properties.</p> <p>The development complies with the controls contained in the Apartment Design Guide in respect to apartment sizes, apartment depth, access to sunlight, ventilation, visual and acoustic privacy and access requirements.</p> <p>All apartments are visitable and accessible in accordance with the ADG.</p>
<b>Safety</b> <p>Good design optimises safety and security, within the development and the public domain.</p> <p>It provides for quality public and private spaces that are clearly defined and fit for purpose.</p> <p>Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The development is consistent with CPTED principles as follows:</p> <ul style="list-style-type: none"> <li>• The entrance to each use within the building will be clearly legible, signposted and well lit;</li> <li>• Each residential entry is designed to provide a clear threshold between public and private space and secured gate and door access points and intercoms;</li> <li>• Lighting, both internal and external, will be provided in accordance with Australian Standards;</li> <li>• Surveillance opportunities are created throughout the site via residential and commercial premises, clear lines of sight and permeable pedestrian movement routes throughout the site.</li> </ul>
<b>Housing Diversity and Social Interaction</b> <p>Good design achieves a mix of apartment sizes,</p>	<p>The proposed unit mix will result in an affordable range of housing</p>



Planning Principle	Comment
<p>providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.</p>	<p>which is highly accessible to public transport and nearby shops.</p> <p>As a guide, the Housing NSW Centre for Affordable Housing suggests 1 and 2 bedroom apartments contribute towards achieving housing affordability. 1 &amp; 2 bedroom apartments are well represented in this proposal.</p> <p>Communal private open spaces are provided at Level 13 and will be accessible only to residents and their visitors.</p>
<p><b>Architectural Expression</b></p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of well-designed apartment buildings responds to the existing or future local context, particularly desirable elements and rhythms of the streetscape.</p>	<p>The development has incorporated a variety of materials and finishes to assist in modulating the massing of the building. The sculpting of the roof form assists in giving Burwood a more distinguishable skyline. The proposed materials effectively divided the tower vertically to emphasise the vertically of the proposal.</p> <p>The architectural expression of the development has been subject to independent urban design and architectural review by GMU as detailed below and has been determined to be satisfactory.</p>

### Design Criteria

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

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

These specific matters are examined below.

### *On-site Parking*

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

Table 4: Comparison of on-site parking requirements under RMS Guide

Parking Spaces	Quantity	Parking Rate	Required Spaces	Proposed
<b>Resident parking spaces</b> <i>(based on RMS Guide to Traffic Generating Development)</i>				
<b>Studio</b>	6	0.6 per unit	3.6	36
<b>1 bedroom</b>	12	0.6 per unit	7.2	
<b>2 bedroom</b>	9	0.9 per unit	8.1	
<b>3 bedroom</b>	9	1.4 per unit	12.6	





Parking Spaces	Quantity	Parking Rate	Required Spaces	Proposed
Visitor parking spaces	-	1 space per 5 units	7.2	8
Total			39	44

The car parking provision complies with the RMS requirements. However, the resident and visitor spaces are provided by way of a mechanical parking system which has been assessed by Council's Traffic and Transport Manager and is considered to be unacceptable.

#### *Internal Floor Area of Apartments*

The internal floor area for each apartment is equal to or greater than the recommended minimum internal areas for the respective studio, one, two and three-bedroom apartments as listed in Part 4D of the ADG. Additional 5m<sup>2</sup> of floor space is provided where apartments have more than one bathroom. The additional bathrooms are ensuite sizes and appropriate for the size of the apartments.

#### *Minimum floor to ceiling heights*

Section details accompanying the application show that the minimum floor to floor heights of the proposal are a minimum of 4.5m for ground floor level and 3.1m for the remaining levels.

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

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

DESIGN CRITERIA	PROPOSAL	COMPLIES
<b>Part 3 Siting the development Design criteria/guidance</b>		
<u>Communal and Public Open Space</u>  Communal open space has a minimum area equal to 25% of the site.  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 proposal provides a total of 24% (279m <sup>2</sup> ) of the site area as common open space.  More than 50% of the communal open spaces receive >2hours sunlight in mid-winter.	No, refer to discussion below.  Yes
<u>Deep Soil Zones</u>  Deep soil zones are to meet the following minimum requirements:  Site area between 650 - 1,500m <sup>2</sup> = 7%  Part 3E to the ADG states "Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure."	The proposal has close to 100% site coverage. Alternative forms of planting include planter beds on the Level 3 (child care centre) and Level 13 podium level will contain soil depths of up to 0.6m and will be capable of supporting the long term growth of small canopy trees. Street trees are also proposed along the George Street frontage.	Yes  (subject to in-built flexibility of Part 3E of the ADG)





DESIGN CRITERIA	PROPOSAL	COMPLIES
<p><u>Visual Privacy</u></p> <p>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:</p> <ul style="list-style-type: none"><li>Up to 12m (4 storeys) 6m (habitable) / 3m (non-habitable)</li><li>Up to 25m (5-8 storeys) 9m (Habitable) / 4.5m (non-habitable)</li></ul> <p>No separation is required between blank walls.</p> <p>Apartment buildings should have an increased separation distance of 3m when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping.</p>	<p>The proposed building has the following setbacks at 9 storeys:</p> <p>North: 19.7m</p> <p>East: 3m</p> <p>South: 6m</p> <p>West: 3m</p>	<p>Acceptable on merit, refer to discussion below</p>
<p><u>Car parking</u></p> <p>For development in the following locations:</p> <ul style="list-style-type: none"><li>on sites that are within 800 metres of a railway station; or</li><li>within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre,</li></ul> <p>The minimum parking for residents and visitors to be as per RMS Guide to Traffic Generating Developments, or Council's car parking requirement, whichever is less.</p>	<p>See assessment comments on on-site car parking above.</p>	<p>See above.</p>
<p><b>Solar Access and Daylight</b></p> <p>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</p> <p>No more than 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>The proposed percentage of apartments that receive at least the minimum 2 hours of solar access to living room windows and private open space during mid-winter is 72%.</p>	<p>Yes</p>
<p><b>Natural Ventilation</b></p> <p>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</p>	<p>100% of apartments naturally cross ventilated:</p>	<p>Yes</p>







DESIGN CRITERIA	PROPOSAL	COMPLIES
<b>Ceiling Height</b> Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> <li>Habitable Rooms – 2.7m</li> <li>Non-habitable rooms – 2.4m</li> </ul> <ul style="list-style-type: none"> <li>If located in a mixed use area - 3.3m for ground and first floor to promote future flexibility</li> </ul>	All habitable rooms have minimum 2.7m ceiling heights. Non-habitable rooms contain ceiling heights that are at least 2.4m  Ground floor height is 4.5m	Yes  Yes
<b>Apartment Layout</b> Apartments are required to have the following minimum internal areas: <ul style="list-style-type: none"> <li>Studio - 35m<sup>2</sup></li> <li>1 Bedroom - 50m<sup>2</sup></li> <li>2 Bedroom - 70m<sup>2</sup></li> <li>3 Bedroom - 90m<sup>2</sup></li> </ul> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each  Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms  Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)  Bedrooms have a minimum dimension of 3m (excluding wardrobe space) Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>3.6m for studio and 1 bedroom apartments</li> <li>4m for 2 and 3 bedroom apartments</li> </ul>	Studio – min.35sqm 1B – min. 50sqm 2B – min. 75sqm 3B – min 98sqm  Units with 2 bathrooms have additional floor space suitable to the scale of an ensuite bathroom.  Every habitable room has a window.  Complies  Complies  Complies	Yes Yes Yes Yes  Yes  Yes  Yes  Yes
<b>Private Open Space</b> All apartments are required to have primary balconies as follows: <ul style="list-style-type: none"> <li>Studio - 4m<sup>2</sup></li> <li>1 Bedroom - 8m<sup>2</sup> (Minimum depth of 2m)</li> <li>2 Bedroom - 10m<sup>2</sup> (Minimum depth of 2m)</li> <li>3 Bedroom - 12m<sup>2</sup> (Minimum depth of 2.4m)</li> </ul>	Compliant or exceed minimum.	Yes
<b>Common Circulation Space</b> The maximum number of apartments off a circulation core on a single level is 8.	There is a maximum of 4 units per level in Building A that share a circulation core consisting of two lifts.	Yes
<b>Storage</b> In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <ul style="list-style-type: none"> <li>Studio - 4m<sup>2</sup></li> <li>1 Bedroom - 6m<sup>2</sup></li> <li>2 Bedroom - 8m<sup>2</sup></li> <li>3 Bedroom - 10m<sup>2</sup></li> </ul>	The apartments have compliant storage within the apartments and within basement storage units.	Yes





DESIGN CRITERIA	PROPOSAL	COMPLIES
At least 50% of the required storage is to be located within the apartment		

As indicated by the above ADG table, the proposed development meets the ADG design criteria with the exception of total area of communal open space and visual privacy. The variations to these design criteria are discussed in detail as follows.

#### *Communal Open Space Area*

The total area of communal open space is deficient by less than 1% of the site area (or 8.75m<sup>2</sup>). Residents will have shared access to Level 13 which contains two large consolidated areas of common open space. The quality of the communal open space adequately offsets the numeric deficiency and will provide appropriate recreational and social interaction space for future residents and their visitors.

#### *Separation for Visual Privacy*

The proposed building varies the design criteria for building separation distances under Part 3F of the ADG's. The setbacks are consistent with the pre-DA advice given to the applicant by GMU. The submitted Statement of Environmental Effects includes the following reasons for the proposed setbacks:

*“The site is relatively small and located within a future high density mixed use area;*

*•The site is relatively narrow, comprising a width of 19m as measured at the Deane Street boundary. The requirement for a 9m setback to habitable rooms from the site boundaries would reduce the building width to approximately 1m. Similarly, a 12m setback cannot be accommodated on the upper levels.*

*•The site is the entirety of a block and has additional separation from surrounding buildings with surrounding streets and lanes.*

The architectural drawings submitted with the application include a “Privacy Sightline Diagram” (DWG No.55) which provides details of the setbacks between the proposed development and the recently constructed tower development at Nos 9 -15 Deane Street. Specifically, the proposal will result in a 12.5m setback podium to podium and a minimum 22.3m setback window to window. Additionally, fixed angle screens are proposed along the eastern (and western elevation) to direct views to the north east and away from the habitable windows of the adjoining building to the east. The proposed building separations are considered an appropriate outcome for the site.

### **STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

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

A BASIX Certificate has been submitted for the residential flat building aspects of the development which demonstrate compliance with the requirements of the Policy. Due to the time elapsed since lodgement of the application the BASIX certificate has lapsed.

### **STATE ENVIRONMENTAL PLANNING POLICY (STATE & REGIONAL DEVELOPMENT) 2011**

The proposal is development nominated in Part 4 of this Policy, being development that has a capital investment value exceeding \$30 million. Consequently the Sydney Eastern City Planning Panel is the consent authority for this application.

### **BURWOOD LOCAL ENVIRONMENTAL PLAN 2012**

The Burwood Local Environmental Plan 2012 came into effect on 9 November 2012. It replaced (and consolidated) the Burwood Planning Scheme Ordinance (BPSO) and the Burwood Town Centre (BTC) LEP 2010.



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

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

The proposal provides a range of appropriate land uses comprising retail, hotel, child care and high density residential uses that are compatible with the location of the site within the Burwood Town Centre.

#### Clause 4.3 Height of Buildings

A maximum building height of 70m applies to the site pursuant to Clause 4.3 and the Height of Buildings Map of BLEP 2012. The proposal has a maximum height of 80.55m at George Street and 77.85m at Deanne Street. The proposal therefore involves a variation of up to 15.1% and fails to comply with the height of buildings development standard of BLEP 2012.

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

#### Clause 4.4 – Floor Space Ratio (FSR) and Clause 4.4A Exceptions to Floor Space Ratio

Clause 4.4 to BLEP 2012 prescribes maximum floor space ratios of 6:1 for the site. However, Clause 4.4A (5)-(9) (inserted into BLEP by Amendment No 12 gazetted 17 November 2017) provides that:

- “ (5) Despite clause 4.4, the floor space ratio for a building on land in Area 1 or Area 2 may exceed the floor space ratio shown for the land on the Floor Space Ratio Map if:*
- (a) the floor space ratio for the building does not exceed:*
    - (i) 6.6:1—if the building is in Area 1, or*
    - (ii) 4.95:1—if the building is in Area 2, and*
  - (b) the gross floor area of the part of the building used for the purpose of residential accommodation does not exceed the following percentage of the gross floor area of the building:*
    - (i) 40 percent—if the building is in Area 1, or*
    - (ii) 70 percent—if the building is in Area 2.*
- (6) Subclause (5) applies in relation to proposed development only if:*
- (a) the proposed development on the land includes development resulting in community infrastructure or the use of land as community infrastructure, and*
  - (b) the consent authority is satisfied that the community infrastructure is appropriate for the Burwood Town Centre, taking into account the nature of the community infrastructure and its value to the community working or residing in the Burwood Town Centre.*
- (7) Subclause (3) does not apply in relation to a building in Area 1 or Area 2 if subclause (5) is applied to the building.*
- (8) For the purposes of this clause, land is in Area 1, Area 2, Area 3, Area 4, Area 5, Area 6, Area 7 or Area 8 if the land is identified as “Area 1”, “Area 2”, “Area 3”, “Area 4”, “Area 5”, “Area 6”, “Area 7” or “Area 8”, respectively, on the Floor Space Ratio Map.*
- (9) In this clause, community infrastructure means any of the following:*
- (a) a recreation area,*
  - (b) a community facility,*
  - (c) an information and education facility.*

The proposed development has an FSR of 6.6:1 and includes 39% of the gross floor area as residential accommodation and is thus consistent with subclause (5). However, as noted by subclause (6), subclause (5) only

applies in relation to proposed development if the proposed development includes development resulting in community infrastructure or the use of land as community infrastructure and the consent authority is satisfied that the community infrastructure is appropriate for the Burwood Town Centre. In this regards, at Council's meeting on 28 April 2018, Council resolved to place the draft amended Policy "Carrying Out Bonus Development in the Public Interest" on public exhibition (which has yet to occur). The amendments to the Policy were required as a result of Amendment No. 12 which now provides a statutory mechanism for consideration and approval of bonus development. The Policy is required to be amended to be made clear that the Policy does not apply in these areas. However the report to Council noted that:

*"..it is appropriate for the Policy to provide guidance on how Council may be satisfied that a development will provide community infrastructure for the Middle Ring and Commercial Core areas of the BTC to meet the requirements of Clause 4.4A. This includes by way of a voluntary offer of a monetary contribution in terms of dollars per square of additional floor space. Appropriate wording is included in the amended Policy."*

The amended Policy appended to the Council report now includes a "Part B" to the policy which "provides guidance on how Council may be satisfied that a development will provide community infrastructure in the Commercial Core and Middle Ring areas of the BTC".

Section 3 of Part B is entitled "What is satisfactory community infrastructure" and provides:

*Under the policy, Council may determine at its absolute discretion that subclause (6) and (9) of Clause 4.4A have been satisfied for a development having regard to whether:*

- *Community infrastructure of the kind(s) specified in subclause (9) of Clause 4.4A is provided on site as part of the development or on another site within the Burwood Town Centre free of cost to Council. Also that infrastructure has to be assessed as appropriate for the Burwood Town Centre, taking into account the nature of the community infrastructure and its value to the community working or residing in the Burwood Town Centre or*
- *Land is dedicated free of cost to Council for the provision of community infrastructure within the Burwood Town Centre of the kind(s) specified in subclause (9) of Clause 4.4A. Also that land has been assessed and determined as appropriate for the Burwood Town Centre, taking into account the nature of the community infrastructure and its value to the community working or residing in the Burwood Town Centre or*
- *Any combination of the above or*
- *A monetary contribution is voluntarily offered and accepted by Council for the provision of community infrastructure within the Burwood Town Centre of the kind(s) specified in subclause (9) of Clause 4.4A*

Part B, Section 4 of the draft amended Policy (as presented to Council) states:

*"Where a monetary contribution is offered, the amount will be determined in accordance with the dollar rate per square metre of GFA that is approved as additional development under BLEP Clause 4.4A(5). The dollar rate per square metre for bonus development in the Commercial Core and Middle Ring areas will be determined from time to time by Council resolutions."*

The proposed development was accompanied by a letter of offer to enter into a Voluntary Planning Agreement offering to pay a monetary contribution to Council in relation to the 10% increase in FSR. The VPA has not progressed to be adopted by Council at this stage primarily due to the impasse regarding the proposed parking provision. Should the application progress to a favourable determination, an amended letter of offer would be required to be submitted detailing how the contribution is consistent with subclause (6) of Clause 4.4A and the (yet to be exhibited) draft amended Policy.

Notably, whilst the subject application was submitted prior to the gazettal of Amendment No.12, there are no savings or transitional provisions applying to the amendment and thus the above clauses (4.4A(5)-(9)) now apply to the application.

As subclause (6) has not been satisfied by the application a consent authority is unable to grant consent to the proposed exceedance in floor space.

#### Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the BLEP 2012 provides authority and procedures for consent authorities to consider, and where appropriate grant consent to, development even though the development would contravene a particular development standard. The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards, and to provide better outcomes for and from development by allowing flexibility. The provisions of Clause 4.6 may be applied to the maximum building height development standard of BLEP 2012 pursuant to Clause 4.6(6)&(8).

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

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

The applicant has submitted a written variation request under Clause 4.6 which forms part of the Statement of Environmental Effects submitted with the development application. It is noted that the submitted Clause 4.6 variation request seeks to jointly address variations to a number of development standards which include Clause 4.3 – Height of Buildings, Clause 4.4 – Floor Space Ratio and Clause 4.4A – Exceptions to Floor Space Ratio. As detailed above, as BLEP 2012 (as amended by Amendment No.12) which now provides a statutory mechanism for consideration and approval of bonus development in terms of FSR and maximum residential floor space, an assessment of the variation request in regards to Clause 4.4 – Floor Space Ratio and Clause 4.4A (3) is no longer required.

#### **Request to vary Maximum Height of Buildings Development Standard**

The submitted request presents an adequate justification that has regard to the objectives of the height limit standard in BLEP 2012, and the objectives of the B4 zone. It also addresses relevant 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 increase in building height provides for a taller, slender tower element that has the effect of minimising the overall massing and building bulk of the development and result in shadows that move more quickly across the surrounding context.
- Compliance by the proposal with the height limit has the potential result of creating homogenous heights along Deane Street and therefore erodes the opportunity to create an interesting and diverse skyline.
- The proposal is a high quality urban design outcome that aligns with the strategic importance of the Burwood Town Centre as a “district centre”.
- The proposal provides for the efficient and viable redevelopment of a small, island site adjacent to the Burwood train station.
- The variation in building height is also proposed to achieve an exemplary form of high quality amenity for future occupants by providing greater access to light, outlook and ventilation opportunities.

It is accepted that the building height exceedance as proposed will not result in a development that is visually out of character and scale with what is reasonably anticipated in the town centre. In addition, the height exceedance in itself does not result in any unreasonable amenity impacts on the adjoining properties in comparison to a compliant scheme.

The assessment argues that the non-compliant height is acceptable in the circumstance as the building will accommodate commercial and residential space in a location that is well served by urban infrastructure with access to retail, employment, and support services. Insisting on strict compliance would not yield an improved building outcome. Tall, slender towers with a longer north-south axis are more appropriate for the site than lower, broader towers. The outcome is better than a lower building with larger floorplate that could achieve the same FSR. This assessment concurs with those arguments.

However, whilst the applicant has demonstrated that the proposed height of the building results in a building which is appropriate in terms of the urban design outcome, the exceedance in density associated with the exceedance in height is not supported. As discussed above, the exceedance in floor space ratio is not supported as the proposal is not associated with the provision of community infrastructure. Furthermore, the shortage in parking provision and mechanical parking system is not supported and an exceedance in height and density under this circumstances cannot be justified. In the circumstance of the case, the Clause 4.6 variation request to the height is not supported.

#### Clause 5.10 – Heritage Conservation

The subject site does not contain a heritage item nor is it located within a heritage conservation zone. However, the site is within the vicinity and visual catchment of items of environmental heritage (being Burwood Railway Station Complex and the Burwood Uniting Congressional Church listed under BLEP 2012).

A Statement of Heritage Impact prepared by Heritage21, dated February 2017 was submitted with the development application and has been reviewed by Council's Heritage Advisor along with the development.

Council's Heritage Advisor has advised that the likely visual impact of the proposed development is considered minimal and raises no objection to the proposal on heritage grounds subject to an interpretation of the Police Citizens Boys Club being prepared and incorporated into the new building. Conditions of consent have been provided as part of the referral response in the event that the application was approved.

#### Clause 6.1 Acid Sulfate Soils

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

#### Clause 6.5 Design Excellence in Zones B2 and B4

Clause 6.5 of BLEP 2012 was inserted into the LEP as part of Amendment No.12 (gazetted 17 November 2017). The clause applies to the erection of a new building of 3 or more storeys on land in Zone B2 Local Centre or Zone B4 Mixed Use and the objective of the clause is to deliver the highest standard of architectural, landscape and urban design. Clause 6.5(3) provides:

*“(3) Development consent must not be granted for development to which this clause applies unless the consent authority is satisfied that the development exhibits design excellence.”*

And subclause (4) sets out the matters which the consent authority must have regard to in deciding whether the development exhibits design excellence. These matters and a response are set out on the table below.

Table 8: Design Excellence Provisions

Clause	Response	Complies
a) whether a high standard of architectural, landscape and urban design has been achieved (including in the materials used and in detailing appropriate to the location, building type and surrounding buildings)	The proposal has been assessed by GMU and after undergoing a number of redesign iterations, the final plans have been found to achieve a high standard of architectural, landscape and urban design (subject to a holistic landscape plan being provided for the public domain).	Yes
(b) whether the form and external appearance of the proposed building, and ground level detailing, will significantly improve the quality and amenity of the public domain,	The proposed form and external appearance of the proposed development will improve the quality and amenity of the public domain, in particular the works proposed to Youth Lane.	Yes
(c) how any streetscape and heritage issues have been addressed,	The proposal provides a well considered and activated streetscape for all four frontages. Heritage issues are deemed to be appropriate as discussed in relation to Clause 5.10 of the BLEP 2012.	Yes
(d) whether the amenity of the surrounding area, including any view corridors, vistas or landmark locations, will be adversely affected,	The amenity of the surrounding area is not adversely affected by the proposal. The proposed widening of Youth Lane enables ground level view corridors to be maintained.	Yes
(e) how traffic circulation and vehicular access will be addressed and whether the proposed	The proposed vehicle access off Youth Lane is the most efficient location and enables pedestrian movements to be	Partly



Clause	Response	Complies
development supports the provision of high quality pedestrian, cycle and service access,	maintained on all other frontages. The provision of bicycle stands for the public adjoining Youth Lane encourages cycle access. The servicing of the site through the dedicated loading bay in Youth Lane is also a logical location for servicing. However, the design of the "parent parking" for the child care centre within Basement 1 of the car park is considered to be unsatisfactory as it requires parents to walk through the car park aisles to access the child care lobby, placing pedestrians in direct conflict with moving traffic	
(f) whether any adverse effect on pedestrian movement and experience will be avoided (and whether the public transport interchange as the focal point for pedestrian movement in the surrounding area will be reinforced and the ease of pedestrian access to and from that interchange will be facilitated),	The proposal avoids conflict between pedestrian movements and vehicle movements by locating the vehicle access point off Youth Lane. The site is located within 200m walking distance from Burwood Train Station. The proposed public domain works reinforce the pedestrian pathways and ease of access to the train station.	Yes
(g) whether the development supports an integrated land use mix in Zones B2 and B4, including a diversity of public open spaces at the ground level, as well as the roof and other levels of buildings,	The proposal supports a mix of retail, hotel, residential and child care uses. The widening of Youth Lane and use as a shared zone enhances the public space at ground level. The proposal includes community open space for the residential units at Level 13 and community facilities for hotel guests at Level 4.	Yes
(h) how the bulk, mass, modulation, separation, setback and height of buildings have been addressed and whether they are appropriate in the context of existing and proposed buildings,	As discussed throughout the report and in particular in regards to the submitted Clause 4.6 variation request for the maximum height variation the proposed building is appropriate in its context in relation to urban design requirements (scale, setbacks and modulation). However, the exceedance in density of the proposal and consequential relationship with exceedance in height is not supported due to the lack of public benefit been demonstrated by the proposal and the provision and design of the parking been unsatisfactory.	Partly
(i) whether a high standard of ecologically sustainable design (including low-energy or passive design) will be achieved and overshadowing, wind effects and reflectivity will be minimised.	<p>The qualitative wind assessment undertaken by Parsons Brinkerhoff concludes that the proposed development will not impact adversely on safety and comfort in the public realm and other open spaces within and adjacent to the development.</p> <p>A reflectivity assessment prepared by Parsons Brickerhoff found that the schedule of finishes generally indicates a material and colours achieving less than 20% reflectivity. The proposal has demonstrated that selection of finish materials reduce the potential for reflectivity related glare resulting from the external surfaces of the proposed building.</p> <p>In relation to overshadowing, the proposed building envelope maintains a compliant level of solar access to surrounding residential properties in accordance with the Burwood DCP 2012. The overshadowing caused by this development is predominantly over the Burwood railway station, local commercial premises and roads.</p>	Yes

## BURWOOD DEVELOPMENT CONTROL PLAN 2013

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

Table 9: Relevant provisions of Burwood Development Control Plan

Control	Requirement	Proposed	Complies
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Control	Requirement	Proposed	Complies
2.2 Site Analysis	To be submitted with Development Application	Provided within submitted DA drawing package (DWG DA02)	Yes
2.3 Views and vistas	Identify significant views and vistas and demonstrate how they are to be improved and enhanced  Encourage view sharing  Have regard to high priority views and vistas identified in the DCP	The proposal is a responsive design to the site, is located and designed in scale with Burwood's cityscape and the exceedance to the building height under the BLEP will not result in adverse impacts on view sharing (when compared to a complaint building height). The widening of Youth Lane also maintains and widens the existing view line.	Yes
2.4 Streetscapes	Identify streetscape characteristics  Demonstrate how building design, location and landscaping will enhance and protect streetscapes	The proposed development has proposed a 3 storey podium to the street block with retail tenancies at the ground floor fronting George Street, the hotel reception at Deane Street and Mary Street and access to the residential and child care lobby off Mary Street. The widening and public domain treatment of Youth Lane will enhance this streetscape. The proposed development characteristics will complement the streetscape, providing a contemporary activated façade to all streets.	Yes
3.2.1 Design Excellence	Represent architectural design excellence by: <ul style="list-style-type: none"> <li>- Form and external appearance to improve the quality and amenity of the public domain</li> <li>- building elements and finishes to reflect use and structure</li> <li>- Respond positively to the environmental context</li> <li>- Considering development potential for adjoining sites</li> </ul>	The Design Excellence has been assessed by GMU and found to be satisfactory subject to the provision of a holistic landscape plan for the public domain.	Yes
3.2.2 Materials and Finishes	Building exteriors to have high quality finishes	Materials, colours and finishes proposed are of a high quality finish	Yes
	Avoid extensive expanses of blank glass or solid walls	External lighting details required to be submitted for assessment by Council.	Yes
	Visually interesting treatments	Each building and each retail premises is provided with an entry that is visible from the adjoining street.	Yes
	Conceal equipment and machinery from public view		
	Incorporate external lighting (avoid excessive light spillage)	Walls are well articulated adopting a range of finishes to add visual interest.	Yes
	Translucent or opaque materials for balustrades		
	Building entrances visible from the		

Control	Requirement	Proposed	Complies
	<p>street</p> <p>Discourage painted finishes</p> <p>Walls to be articulated and designed for visual interest when viewed from the street</p> <p>Low maintenance and graffiti resistant materials used</p>		
3.2.3 Roofs and Roof Tops	<p>Roof design to be integrated with the overall building and its role in the Burwood Town Centre skyline</p> <p>Roofs to respond to site orientation</p> <p>Service elements screened and integrated with the roof design</p> <p>Design to have regard to the view from the street, from adjacent development and as part of the skyline</p>	The roof design has been assessed by GMU and is determined to be satisfactory.	Yes
3.2.4 Street-front Activities and Building Access	<p>Security measures to be integrated with building design</p> <p>Ground floor development must:</p> <ul style="list-style-type: none"> <li>- promote quality non-residential activity in accordance with the zone</li> <li>- minimise the number of service doors</li> <li>- encourage visual interest with clear glazed windows, artwork and articulated architecture</li> <li>- provide access points to the public domain at no more than 20m intervals</li> <li>- provide at grade access points</li> </ul> <p>Provide separate, clearly identifiable entrances from the street for pedestrians and cars, residential and non-residential uses</p> <p>Building entrances must have a direct physical and visual connection to the street</p> <p>Residential components shall have a clear street address and a separate entry</p> <p>All commercial components must have a clear street address</p>	<p>Non-residential uses are proposed to address all street frontages. All entry/exit points are to be accessible.</p> <p>The vehicle entry/exit point is well separated from pedestrian entry/exit points.</p> <p>Separate entrances are provided for the retail tenancies, child care centre, residential apartments and hotel accommodation.</p> <p>All building entrances (including lobbies) are directly connected to the street and clearly visible.</p> <p>A separate lobby is provided for the residential apartments.</p> <p>The commercial tenancies directly front the street and are capable of having a clear street address.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

Control	Requirement	Proposed	Complies
	All mail boxes in accordance with requirements of Australia Post. Where located externally for residential buildings the mail boxes should be at right angles to the street boundary on either or both sides of the main access walkway.	Mail boxes are proposed within the residential lobby.	Yes
3.2.7 Residential Flat Buildings and Shop Top Housing	In the B4 Zone, a mixed development comprising three or more dwellings will be regarded as a residential flat building	Noted.	Noted.
3.2.8 Apartment Mix and Minimum Dwelling Sizes	Residential development in excess of 20 dwellings must provide a mix of dwellings containing 1, 2 or more bedrooms  All residential developments must provide the following minimum apartment sizes: Studio 40m <sup>2</sup> One bedroom apartment 50m <sup>2</sup> Two bedroom apartment 70m <sup>2</sup> 3+ bedroom apartment 95m <sup>2</sup>	Mix of one, two and three bedroom apartments are provided.  Complies.	Yes  Yes
3.2.11 Ceiling Height	Ground level 3.3m Residential floors above ground level 2.7m habitable rooms and 2.4m non-habitable rooms	Minimum 4.5m.  Minimum 2.7m.	Yes  Yes
3.2.14 Visual and Acoustic Privacy	Maximise visual privacy between the development and adjacent sites  Privacy provisions should not compromise natural light and air	Refer to ADG Compliance table above regarding apartment separation.	Yes
3.2.16 Lobbies and Internal Circulation	Entry lobbies to provide seating, mail delivery and collection and space for supervising personnel  Lift lobbies to have natural ventilation and natural light  Corridors to facilitate movement of furniture and people and have interest in surface materials and finishes with clearly identified apartment numbers  Common area corridors minimum 2m wide  Name and number of development clearly displayed at the entry and suitably illuminated	The building has a residential lobby internal to the building of sufficient dimensions for facilities and mail.  All lift lobbies have a source to natural light direct to or in close proximity to the lift waiting area.  Corridor lengths and dimensions determined to be satisfactory.  Conditions can be include (should the application be approved) to ensure finished interior materials, unit numbering and building identification comply with the DCP requirements.	Yes  Yes  Yes  Yes subject to conditions.
3.2.18 Safety and Security	Route between shared entrance and each dwelling to maximise safety including from car parking  Comply with Burwood Community	Pedestrian movement paths are considered safe.  Site boundaries are to be clearly defined and a large proportion of the	Yes  Yes

Control	Requirement	Proposed	Complies
	<p>Crime Prevention and Safety Plan</p> <p>Clearly defined boundaries to distinguish between private and public space</p> <p>Facades at ground level shall be activated with after-hours uses so they are visible from public places</p> <p>Separate accesses for public and common areas</p> <p>Separate access for residents in mixed use developments</p> <p>Intercom systems at pedestrian and vehicle entrances or in lobbies</p> <p>Provide secured key or card access for residents</p> <p>Minimise concealment opportunities.</p> <p>No blind or dark alcoves near lifts and stairwells.</p> <p>Clear lines of sight on routes through the development.</p> <p>Appropriate illumination of common areas</p> <p>Security measures to be compatible with building design</p>	<p>site perimeter is to be provided with activated commercial frontages, lobbies and the hotel reception/lounge area as well as casual upper level surveillance from hotel rooms and residential apartments.</p> <p>Public access points to be clearly separated from private.</p> <p>A CPTED Statement submitted with the Development Application demonstrates that the development complies with the CPTED requirements.</p>	<p>Yes</p> <p>Yes</p>
3.2.19 Access and Mobility	<p>Main entry accessible from the street footpath and common accesses in accordance with AS 1428: Design for Access and Mobility</p> <p>Safe and convenient access throughout the development, car parks and communal facilities</p> <p>Tactile indicators for changes in floor levels in the public domain</p> <p>Minimum 10% of dwellings as Adaptable Housing Class A or B</p> <p>At least one car space for each accessible or adaptable dwelling to comply with AS1428.2</p> <p>Development of 80+ dwellings accessible visitor car parking to be provided at the rate of one per each 60 dwellings or part thereof.</p>	<p>An Accessibility Report submitted with the Development Application demonstrates compliance.</p>	<p>Yes</p>

Control	Requirement	Proposed	Complies
3.2.20 Awnings	To be provided above the public domain in B4 Zone	Awnings are provided along all street frontages and cover all access points to the building.	Yes
	Awnings to cover the street setback and the access point to a building		
	Awning to be between 3.2m and 5.5m from the finished ground level of the public domain	Awnings are approximately 3.5m from finished ground level.	Yes
	Artificial lighting beneath awnings not to exceed 6m separation for face recognition	A condition requiring further details to be submitted to and agreed by Council prior to the issue of a Construction Certificate can be included as part of any determination for approval.	Yes
	Awnings set back a minimum 600mm from kerbline		
	Awnings cut out to facilitate street trees and street lighting	Awnings are setback to avoid conflict with vehicles.	Yes
	Regular maintenance for structural adequacy and weather protection		
3.3.2. Burwood Town Centre 3.3.2.3 Middle Ring	Podium Height 15m	Podium height is a maximum of 15m.	Yes
	Street front setbacks <ul style="list-style-type: none"> <li>- Deane Street - 0m</li> <li>- Mary Street - 0m</li> <li>- George Street - 0m</li> <li>- Youth Lane – not specified</li> </ul>	Deane Street – 0m Mary Street – 0m George Street – 3.5m (to support road widening) Youth Lane – 0m	Yes
	Ground level setbacks to be finished at grade with Council's footpath and finishes and materials to match Council's Public Domain Requirements	Plans indicate ground surface levels of setback areas are to be integrated with the levels of the adjoining public footpath and finished floor levels of adjoining commercial tenancies and lobbies to achieve accessible paths of travel.	Yes
	Secondary setbacks – the part of the development above 15m to be set back at least 6m from the street front boundary	Proposed setbacks: Youth Lane: 3m Mary Street: 3m George Street: 16.2m Deane Street: 6m  The setbacks are considered to be appropriate as evaluated and supported by GMU.	Yes, on merit
	Residential building separations refer to the ADG's.	Refer to SEPP 65/ADG table above.	
	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.	The development is built to the side boundaries at Youth Lane and Mary Street	Yes
	Communal open space accessible on podium level	Communal open space for the residential apartments is provided at	Yes



Control	Requirement	Proposed	Complies
	A minimum 50% of the communal open space to have minimum 600mm soil depth	Level 13. Communal facilities for the hotel component are provided at level 4.  Approximately 19% of the rooftop landscaped area is a minimum depth of 0.6m.	No – refer to discussion below
3.7 Transport and Parking in Centres  3.7.2 Burwood Town Centre	See parking discussion below  All vehicles to be capable of entering and leaving the site in a forward direction.  Vehicle access to be provided by secondary streets in preference to major roads.  Minimise vehicle crossings of footpaths  No impacts on bus operations  Openings must be screened with automatic closing doors  Vehicle access to be separated from pedestrian access  Major development to be accompanied by a Transport, Traffic and Parking Impact Assessment and Management Plans including a Travel Demand Management section  Bicycle parking facilities in accordance with AS 2890.3  Loading and servicing areas to maintain and enhance the integrity of the streetscape	See assessment comments under the subheading of Parking below.  Council's Traffic and Parking Officer recommends refusal of the application due to use of mechanical parking system.  Access is provided off Youth Lane.  Proposal does not impact on bus operations. Roller door proposed  The vehicle access point from Youth Lane is safely separated from pedestrian movements.  Report prepared by Bitzios Consulting and assessed by Council's Traffic and Parking Officer. See further discussion below.  Bicycle parking is to be provided within the basement and ground floor (adjoining Youth Lane).  Loading and servicing bays are provided along Youth Lane and are to be available for commercial tenancies and waste management. .	No – refer to discussion below.  Yes  Yes Yes Yes Yes Yes
3.8 Heritage in Centres and Corridors	Heritage Impact Statement required  Adaptive re-use to retain significant internal and external fabric  Retain appropriate setting for continued appreciation of integrity  Ensure heritage item is not visually obscured or adversely altered  Setbacks to achieve sight lines for significant buildings	The Heritage Impact Assessment submitted with the development application has been assessed by Council's Heritage Officer and determined to be satisfactory.	Yes



Control	Requirement	Proposed	Complies
3.9 Public Domain and Amenity	Deane Street and Mary Street shared zone	No works are proposed to change traffic arrangements in Deane Street and Mary Street.	Yes
3.9.1 Public Domain – Burwood Town Centre	Existing lanes to be maintained.	Youth Lane is maintained.	Yes
3.9.5 Treatment of Street Front Setbacks – Commercial Core	Street front setbacks to be treated consistent with the adjoining public domain and a right of pedestrian way and vehicle movement created by way of easement in accordance with Section 88B to the <i>Conveyancing Act 1919</i> placed on the title of the land	Conditions of consent are able to be included as part of any determination for approval.	Yes, subject to conditions.
3.9.6 Public Domain Finishes and Elements within Development	Lighting to be provided appropriate to the setting  Publicly accessible areas provided with paving, street furniture, planting, fences, kerbs and drainage to a standard not less than Council's Public Works Elements Manual (June 2006)	Conditions of consent are able to be included as part of any determination for approval.	Yes, subject to conditions.
3.9.9 Access and Mobility for the Public Domain	The public domain immediately adjacent to any development must be upgraded to Council's standards at the applicant's cost  Where the pedestrian way meets a public road and pedestrians are to cross the roadway, laybacks shall be provided in the kerb line of gradients suitable for people with a mobility impairment  Tactile indicators in accordance with AS1428.4 are to be installed where there is a change of floor surface level	Conditions of consent are able to be included as part of any determination for approval.	Yes, subject to conditions.
<b>5.3 Child Care Centres</b> <b>Note:</b> As the use and fitout of the proposed child care centre is to be the subject of a separate development application a detailed assessment of this component has not been undertaken. However, the primary controls relating to site selection and location is provided below)			
5.3.5.1 Site Selection and Location	P3 A site for a child care centre must not be located within 100 metres, or within sight, of land used for Sex Services Premises or Restricted Premises.  Accessibility P5 Child care centres must be located close to, or adjacent to community focal points such as local shopping centres, schools, community buildings, sports facilities, or public transport.	The application does not address this provision of the DCP.  The site is within walking distance of Burwood Train Station, Burwood Town Centre and Burwood Westfield shopping centre.	Not satisfied by application.  Yes
5.3.5.2 General Provisions	Environmental Hazards P4 A child care centre must not be	The application does not address this provision of the DCP. Notably, the site	Not satisfied by



Control	Requirement	Proposed	Complies
Applicable to Child Care Centres in All Zones	located within 30 metres of an electricity transmission line carrying a load equal to or greater than 132kV. P5 Council may refuse a child care centre that is located within 300m of a mobile phone tower.	is opposite the railway line which may include electricity transmission lines carrying a load equal to or greater than 132kV.	application
5.3.5.4 Special Provisions in All Non-Residential Land Use Zones	P2 A site used for a child care centre must not be used for residential purposes. P3 Applicants must demonstrate that the surrounding locality and land uses on adjoining land will not impact adversely on the amenity of children, staff and others occupying the child care centre. Minimum Site Area P4 The minimum site area for a child care centre on a non residential zoned land is 700 square metres excluding Rights of Way and access handles.	The proposed child care centre is within a mixed use development. The proposed use is considered appropriate in the context of the proposed development. It is noted there are other child care centres in the Burwood Town Centre which are located within mixed use development (e.g. No.9-15 Deane Street contains "ToBeMe Early Learning Centre".  The site has an area of 1151m <sup>2</sup> .	Yes  Yes
5.3.5.9 Traffic, Parking and Access	P1 Car parking must be provided in accordance with the requirements for child care centre in Table 5, including the provisions dealing with parking spaces for people with disabilities. All spaces must be clearly labelled as either "reserved for staff" or "reserved for parents".  Basement Car Parking Provisions for All Child Care Centres  P21 Where a basement car park for child care centres is permitted, and is for use by parents delivering or collecting children, the design of the car park must include a pedestrian access path that removes the need to cross the path of moving vehicles (including parking manoeuvres) when entering or leaving the child care centre.	Refer to parking discussion below table.          The location of the proposed parking spaces at B1 is considered unsafe. Refer to discussion below.	No - Refer to discussion below.          No - Refer to discussion below.
5.3.5.12 Sunlight Access and Ventilation	P3 All the playground area of a new child care centre must receive at least 3 hours of sunlight between 9am and 3pm on June 21. P4 Child care centres must be designed to maximise natural ventilation of internal spaces	The proposed outdoor space (level 2 and 3) will receive at least 3 hours of sunlight in midwinter.  The proposed child care centre is able to be natural ventilated through openings to the outdoor play space.	Yes  Yes

The proposal complies with most of the relevant provisions of Burwood DCP and where minor departures to numerical controls result, sufficient justification has been provided in the table above. Detailed discussion on the proposed parking provision and compliance is provided below.

### Parking



The table below sets out the required and proposed parking spaces in accordance with the Burwood DCP. For completeness the required and proposed parking for the residential apartments is also included in the table (as assessed under the RMS Guide).

Parking Spaces	Quantity	Parking Rate	Required Spaces	Proposed
<b>Resident parking spaces</b> <i>(based on RMS Guide to Traffic Generating Development)</i>				
<b>Total Residential</b>	-		31.5	36
<b>Visitor Parking Spaces</b>		1 space per 5 units	7.2	8
			38.7	44
<b>Hotel (Rooms)</b> <i>Burwood DCP 2013</i>				
Room	101	1 space per room	101	33
Employees	-	2 spaces per employee	2	2
<b>Total</b>			<b>103</b>	<b>35</b>
<b>Hotel (Rooms)</b> <i>Utilising rate of 0.3 parking space per room (see discussion below)</i>				
Room	101	0.3 space per room	30.3	33
Employees	-	2 spaces per employee	2	2
<b>Total</b>			<b>32.3</b>	<b>35</b>
<b>Retail</b> <i>Burwood DCP 2013</i>				
152m <sup>2</sup>	-	1 space per 400m <sup>2</sup>	1	1
<b>Total</b>			<b>1</b>	<b>1</b>
<b>Child Care Centre</b>	50	1 space per 4 children	15	8
<b>Staff</b>	4	1 space per staff member	4	4
<b>Total</b>			<b>19</b>	<b>12</b>

The proposed development is compliant with parking spaces for the residential apartment (as per RMS Guide) and the provision of parking spaces for the retail use under the BDCP 2013. However, the proposed mechanical parking system is not supported by Council's Manager Traffic and Transport, in addition to other issues raised in assessment of the application (see Internal Referrals below). The proposal includes residential visitor parking and hotel guest parking within the automated parking system which is considered unacceptable as these users would not have received any training in the use of the system and are therefore likely to default to on-street parking.

The proposal is deficient in regards to hotel parking (68 spaces) and the child care centre (7 spaces) when assessed under the rates provided in BDCP 2013.

In regard to the hotel parking provision, the applicant proposes a rate of 0.3 parking space per room rather than the Burwood DCP rate of 1 space per room citing that the reduction in parking for the hotel component is comparable to the Marrickville DCP which requires 0.2-0.5 spaces per hotel room in their town centres. However, Council's Manager Traffic and Transport has advised that Marrickville may not be the most suitable LGA to compare to Burwood based on its proximity to the City only. Other comparable DCPs such as Willoughby, which is a strategic centre like Burwood, and Strathfield each require 1 space per room.

In terms of the parking provision for the child care centre, the Traffic Impact Assessment provided with the application argues for a parking provision in accordance with a study conducted by the Roads and Traffic Authority (now RMS) in 1992, *RTA Traffic Generation Surveys and Analysis – Child Care Centres 1992*. The study developed a peak parking rate formula based on the capacity of the child care centre as follows:

Peak Parking Accumulation (LDC) =  $1.198 + 0.205C$   
C- capacity of child care Centre



Based on this formula the proposed child care centre with 50 children would require 12 parking spaces.

The proposal provides 12 parking spaces, including 8 within Basement 1 and 4 within Basement 3 which would be for staff and accessible via the mechanical car lift.

Council's Traffic and Transport assessment has found that whilst a shortfall in parking for the child care centre may be acceptable, the mechanical parking system is not supported. Additionally, the design of the "parent parking" for the child care centre within Basement 1 of the car park is considered to be unsatisfactory as it requires parents to walk through the car park aisles to access the child care lobby, placing pedestrians in direct conflict with moving traffic.

### **Overshadowing**

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

To assess the potential impacts of overshadowing, the applicant has provided shadow diagrams and elevations. The applicant has provided the following analysis of overshadowing:

*"..it is considered that the impacts of the proposed building envelope maintain a compliant level of solar access to surrounding residential properties in accordance with the Burwood DCP 2012. The overshadowing caused by this development is predominantly over the Burwood railway station, local commercial premises and roads. Having regard to the above assessment, the overshadowing impacts as a result of the proposed building are considered to be acceptable and very similar to what would be expected for a development that strictly complies with the Height of Building and FSR standards."*

The analysis by the applicant is supported. Overall, the shadow created by the proposal is considered reasonable for a high density mixed use environment on the edge of the town centre. Of relevance, in the Land & Environment Court case *The Benevolent Society v Waverley Council [2010] NSWLEC 1082*, Senior Commissioner Moore commented that the protection of sunlight is made more difficult as densities increase and that the expectation to retain it in a dense urban environment should not be as strong.

In this respect it must be recognised that in light of Council's Town Centre controls, the height and density proposed reflects the scale of built form anticipated and encouraged by Council. Therefore, in line with the above planning principle, the expectation that existing solar access would be fully protected is unrealistic and the difference between the schematic shadow of a compliant building envelope and the proposal is considered minor and reasonable.

## **CONSULTATION**

### **External Referrals**

#### **Sydney Trains – NSW Government**

The application was referred to Sydney Trains for concurrence in accordance with Clause 86 of the Infrastructure SEPP as the proposal involves excavation to a depth greater than 2m within 25m of a rail corridor. Additional information was requested by Sydney Trains by letter received on 7 April 2017 which included Geotechnical and structural report/drawings and Construction methodology. The applicant submitted the requested information to Sydney Trains on 9 June 2017. Sydney Trains has advised Council that a concurrence letter will be issued on 7 June 2018.

#### **GM Urban Design and Architecture**

GMU's Urban Design Assessment (undated but issued in May 2017) concludes that:

*"Based on GMU's urban design assessment, the proposal has improved significantly with regards to the overall bulk and scale. The two outstanding issues that need further considerations include a stylistic consideration on the application of materials, in order to further emphasise the vertically of the proposal instead of the depth and width."*

*Further resolution of the ground floor interface with the lane is required in order to mitigate the over dominance of the vehicular movement arrangements on the public domain.”*

As detailed in the background section of this report, there was ongoing discussion between the applicant, Council and GMU and various iterations of plans prepared to address the above two remaining issues. On 29 March 2018 GMU advised that all remaining issues were resolved and recommended a condition of consent, were approval to be granted, requiring:

*“...a holistic landscape plan at the ground level, which incorporates dual purpose bollards (lighting feature and impact protection to pedestrians) on segments of the lane that will experience heavier pedestrian flows such as the entry points to the hotel and ground level shops. Other areas where servicing will take precedence should be equipped with imbedded ground level lighting features.”*

## **Internal Referrals**

### Parking & Traffic

In regards to the parking provision, Council's Manager of Traffic & Transport provided the following comments:

*“The reduction in parking for the hotel component is comparable to the Marrickville DCP which requires 0.2-0.5 spaces per hotel room in their town centres. Marrickville may not be the most suitable LGA to compare to Burwood based on its proximity to the City only. Other comparable DCPs such as Willoughby, which is a strategic centre like Burwood, and Strathfield each require 1 space per room. The provision of 33 spaces for guests plus 2 for staff may be considered to be acceptable provided that the applicant is willing to address other design issues specified below.*

*Similarly a shortfall of 1 parking space for the child care component may also be deemed acceptable. The placement of the child care centre parking on Basement 1 which is intended for use by parents dropping off and picking up their children (and not for staff) requires pedestrians to walk through the car park to access the lobby area for 5 out of the 8 parking spaces. This design increases potential for conflict between pedestrians and vehicles and is not considered to be acceptable.*

*The design proposes that the retail parking space is provided within the automated parking system. Retail parking is provided to visitors to the development, and not intended for exclusive use by the retail owner/tenant. Placing the retail parking within the automated system would prevent access by the general public. The retail parking space should therefore be relocated to the more accessible Basement 1 level.”*

In regards to the proposed mechanical parking system, the application is unable to be supported with the following specific comments been provided by Council's Manager of Traffic & Transport:

*“Council does not support the use of the proposed mechanical car parking system. These types of automated systems are not supported based on the following reasons:*

- *Potential for adverse impacts arising from slow operation causing vehicle queuing.*
- *Vehicle size constraints.*
- *Unreliability in cases of mechanical, hydraulic or electrical failure.*
- *Potential for increased impact on on-street parking resulting from non-use due to user's lack of familiarity and/or confidence in the system.*
- *Users not being able to access their vehicle for activates such as minor maintenance, cleaning interiors, etc. again potentially impacting upon on-street parking.*

*In addition to the above issues this proposal includes residential visitor parking and hotel guest parking within the automated parking system which is considered unacceptable as these users would not have received any training in the use of the system and are therefore likely to default to on-street parking. If residents/hotel staff are expected to meet visitors/guests within the basement to operate the system for their visitors this will only add to the delays and queuing for other users.*

*Residential visitor parking spaces within a mechanical parking system are unable to be monitored for abuse by residents who may want to park their second or third additional vehicles within the*



*development removing the ability for visitors to the site to park on-site. Additionally residents visitors are unable to identify if visitor parking spaces are available for use.*

*The design of the parents parking for the childcare centre within Basement 1 of car park is also considered to be unsatisfactory as it requires parents to walk through the car park isles to access the child care lobby, placing pedestrians in direct conflict with moving traffic."*

Throughout the assessment period, the applicant was made aware that the proposed mechanical parking system will not be supported by Council's Traffic and Transport Manager. In response, the applicant has advised that a conventional ramp arrangement has been explored, however, was dismissed as 7 levels of basement car parking are required to accommodate the 92 car spaces proposed. It has not been demonstrated that a conventional ramp system could not be provided, other than further excavation would be needed for the development. As the site is not constrained there is no reason why a conventional ramp parking system could not be provided.

Given this fundamental issue, the application is not supportable and refusal of the application is recommended.

#### Stormwater

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

*"Reference is made to the above DA and the Applicant's submitted stormwater drainage and public domain plans. Council's comments (can be treated as conditions of consents prior to Construction Certificate) are as follows:*

#### **A. Stormwater Drainage Concept Plan; SK01-10004542 – P1**

*The plan shall include basement stormwater drainage that comprises a stormwater pit and two pumps in alternate operation to cater for seepage around basement walls and stormwater runoff from the open ramp access to the basement.*

*The plan shall include a Council standard kerb inlet pit and 1.8m lintel on Marry Street to connect property stormwater drainage into it and a Ø375mm class 4 reinforced concrete pipe line under the street gutter to the existing pit at the corner of Marry Street and George Street.*

*Long section of the pipeline, cross section of pipe trench, details of the new pit and lintel and the connecting pit together with their invert levels, surface levels etc. shall be provided. Where the top cover of the pipe < 500mm under road surface it shall be encased in mass concrete. Cross section of concrete encasement of pipe shall be provided.*

*The depth and location of all services within the area that would be affected by the construction of the stormwater pipe (i.e. gas, water, sewer, electricity, telephone, traffic lights etc.) shall be confirmed by the applicant on site and are to be included on the design drawings with their chainages and elevations.*

*Any adjustment required will be at the applicant's expense. The relevant authority's written consent for any adjustments or works affecting their services shall be obtained and submitted to the principal Certifying Authority, prior to construction commencing.*

*The stormwater works described above shall be constructed at applicant's expense. The applicant shall pay Council a stormwater works bond as listed in the Table of Fees (\*). The bond shall be refunded after completion of the stormwater works described above as per Council's satisfaction.*

*A sediment and erosion control plan shall be prepared in accordance with Supplement 10 of Council's Stormwater Management Code following guidelines from "Urban Erosion and Sediment Control Handbook.*

#### **B. Public Domain Plan; LA 0.1.01 – Issue C**

*The applicant shall update the public domain plan in accordance with Council's standard drawings and specification and Public Works Elements Manual.*

*Long sections and cross sections shall be provided adequately across the whole public domain area including Youth Lane, considered under the development program.*

Council's Senior Development Engineer has also reviewed the application in regards to earthworks, bulk earthworks and shoring and deemed the application to be satisfactory subject to conditions of consent (provided within referral).

#### Heritage Advisor

The application has been reviewed by Council's Heritage Advisor who raised no objection to the proposal on heritage grounds subject to conditions of consent (provided within referral).

#### Tree Management

Council's Tree Management officer reviewed the application and found the landscape plans supportable. There are no existing trees within the site or within the public domain surrounding the site.

#### Health

The application has been reviewed by Council's Health Officer and found to be acceptable subject to suitable conditions of consent.

#### Neighbour notification

The subject development application was notified under Council's Notification Policy. No submissions were received in response to the notification.

### **CONCLUSION**

This application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of SEPP 55 (Remediation of Contaminated Land); SEPP 65 (Design Quality of Residential Flat Development), SEPP (Building Sustainability Index: BASIX) 2004, Burwood LEP 2012 and all relevant Council DCPs, Codes and Policies. The proposed development is generally considered to display a high quality of architectural design and consistency with the design principles and criteria of the ADG.

However, the proposed development does not demonstrate compliance with Clause 4.4A of the Burwood LEP 2012 in regards to the proposed exceedance in floor space ratio. Specifically, subclause (6) which requires an application for exceedance in floor space ratio to include development resulting in community infrastructure or the use of land as community infrastructure. The application does not result in the provision of community infrastructure. An increase in development above the development standards in the Burwood LEP 2012 (both in terms of floor space ratio and height) cannot be supported where there is no demonstrated public benefit. Furthermore, as detailed in this report Council's Traffic and Transport assessment does not support the parking provision shortfall or the use of the proposed mechanical car parking system and cannot support the application.

Accordingly, given the floor space ratio and parking provision are not supported and are fundamental to the proposal, refusal of the application is recommended subject to the Refusal Notice provided at Attachment 2.

#### Recommendation

That DA 27/2017 that proposes demolish the existing building and erect a 23 storey mixed development consisting of commercial suites, retail shops, child care centre, restaurant, hotel rooms, conference facilities, and residential units over basement car parking at 17 Deane St Burwood be **REFUSED** for the following reasons:

- a) The proposal is unsatisfactory pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979 in that the proposed development does not satisfy Clause 4.4A(5) and (6) of Burwood LEP 2012.
- b) The proposal is unsatisfactory pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development does not comply with the parking requirements of Burwood DCP 2013. In particular the proposed mechanical parking system is not supported by Council for the following reasons:



- i. Adverse impacts arising from slow operation causing vehicle queuing.
  - ii. Vehicle size constraints.
  - iii. Unreliability in cases of mechanical, hydraulic or electrical failure.
  - iv. Potential for increased impact on on-street parking resulting from non-use due to user's lack of familiarity and/or confidence in the system.
  - v. Users not being able to access their vehicle for activates such as minor maintenance, cleaning interiors, etc. again potentially impacting upon on-street parking
  - vi. Residential visitor parking and hotel guest parking within the automated parking system which is considered unacceptable as these users would not have received any training in the use of the system and are therefore likely to default to on-street parking. If residents/hotel staff are expected to meet visitors/guests within the basement to operate the system for their visitors this will only add to the delays and queuing for other users.
  - vii. Residential visitor parking spaces within a mechanical parking system are unable to be monitored for abuse by residents who may want to park their second or third additional vehicles within the development removing the ability for visitors to the site to park on-site. Additionally residents visitors are unable to identify if visitor parking spaces are available for use.
- c) The proposal is unsatisfactory pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development does not provide sufficient parking in accordance with Burwood DCP 2013.
- d) The proposal is unsatisfactory pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning & Assessment Act 1979 in that the proposed development does not provide safe pedestrian access for parents and children for utilising the parking spaces within Basement 1.
- e) The proposed development is not in the public interest.

