

## SUPPLEMENTARY COUNCIL ASSESSMENT REPORT

Panel Reference	2017SCL042
DA Number	85/2017
LGA	Burwood
Proposed Development	Concept approval for a building envelope to facilitate a mixed use building comprising registered club, hotel accommodation, commercial premises, entertainment facilities, function centre and indoor recreation facility with basement parking for up to 1250 car spaces
Street Address	2 George Street Burwood
Applicant/Owner	Urbis Pty Ltd/Burwood RSL Limited
Date of DA lodgement	29 June 2017
Number of Submissions	2
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	
List of all relevant s79C(1)(a) matters	<p>i.e. any:</p> <ul style="list-style-type: none"> <li>relevant environmental planning instruments BLEP 2012, SEPP Infrastructure 2007, SEPP State &amp; Regional Development 2011, SEPP 55 Remediation of Contaminated Land.</li> <li>relevant development control plan Burwood Development Control Plan</li> </ul>
List all documents submitted with this report for the Panel's consideration	CI 4.6 Objection – FSR GFA Plans
Report prepared by	Planning Ingenuity on behalf of Burwood Council
Report date	15 February 2019

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

**Not Applicable**

### Legislative clauses requiring consent authority satisfaction

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

**Yes**

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

### Clause 4.6 Exceptions to development standards

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

**Yes**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

**Not Applicable**

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

### Conditions

Have draft conditions been provided to the applicant for comment?

**No**

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

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- Attachment 1 –Conditions of Consent
- Attachment 2 – Applicant’s Additional Information submitted 8 February 2019

**Panel Reference:** 2017SCL042 DA

**Property:** **Shaftesbury Road, George and Deane Streets, Burwood**  
Lot 30 DP 1231727

**DA No:** 85/2017

**Date Lodged:** 29 June 2017

**Cost of Work:** \$228,208,219 (Hotel component: \$61,047,950)

**Owners:** Burwood RSL Club Ltd

**Applicant:** Urbis Pty Ltd

<b>PROPOSAL</b>	<p>Concept Development Application (Concept DA) in accordance with Section 4.22 of the Environmental Planning &amp; Assessment Act 1979 seeking approval for building envelopes to facilitate a future mixed use development comprising:</p> <ul style="list-style-type: none"> <li>- registered club, hotel or motel accommodation, commercial premises, entertainment facilities, function centre and recreation facility (indoor);</li> <li>- basement parking for a maximum of 1,250 car spaces</li> </ul> <p>The proposed building envelope has a tower with a maximum height 94.66m (RL 118.36) and a podium of up to 4 storeys.</p> <p>An indicative scheme provided with the application demonstrates that the envelope is capable of accommodating a gross floor area (GFA) of 37,170m<sup>2</sup></p>
<b>ZONE</b>	B4 – Mixed Use
<b>IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE</b>	Yes – the proposal is best described as a mixed use development which comprises a registered club, hotel or motel accommodation, commercial premises, entertainment facilities, function centre and recreation facilities (indoor). Each use is permissible with consent from Council.
<b>IS THE PROPERTY A HERITAGE ITEM</b>	No
<b>NOTIFICATION</b>	Notified 18 July 2017 to 8 August 2017 – Two submissions were received.
<b>RECOMMENDATION</b>	The concept DA is recommended for approval, subject to conditions of consent

## EXECUTIVE SUMMARY

On 31 January 2019 the Sydney Eastern City Planning Panel considered an assessment report on Development Application DA85/2017 27/2017 (2017SCL042). The assessment report recommended approval of the application.

The Panel deferred the determination of the application, stating that:

*“The Panel agreed to defer the determination of the matter in order to allow the applicant to determine whether a variation to the FSR under cl 4.6 of the Burwood LEP 2012 is required as a result of two separate FSR controls applying to the site.*

*In case the cl4.6 variation is required, the Panel requests the applicant to make its submission to Council by 8 February 2019 and the Council to prepare its assessment by 15 February 2019. In that report Council are to provide a list of revised conditions including the deletion of conditions 1(b) and 2(b) and revised as per memo dated 30 January 2019.”*



The applicant provided Council with additional information (**Attachment 2**) which include GFA Calculation plans which demonstrate that due to two separate FSR controls applying to the site that the proposed development exceeds the 4.5:1 maximum FSR applicable to part of the site (however is well under the 3:1 FSR applying to remainder of site). As such a clause 4.6 variation statement to vary clause 4.4 of the Burwood LEP 2012 has now been submitted by the applicant.

As requested by the Panel, updated conditions of development consent are provided at **Attachment 1**.

This supplementary report assesses the variation to the maximum FSR and is to be read in conjunction with the original assessment report.

### **ADDITIONAL INFORMATION**

The applicant submitted additional information to Council on 8 February 2019 which sought to address the Panel's request for clarification and (if required) submission of a clause 4.6 variation.

The additional information included the following documents:

- GFA calculation plans (dated 1 February 2019) – prepared by The Buchan Group; and
- Clause 4.6 Variation Statement – prepared by Urbis.

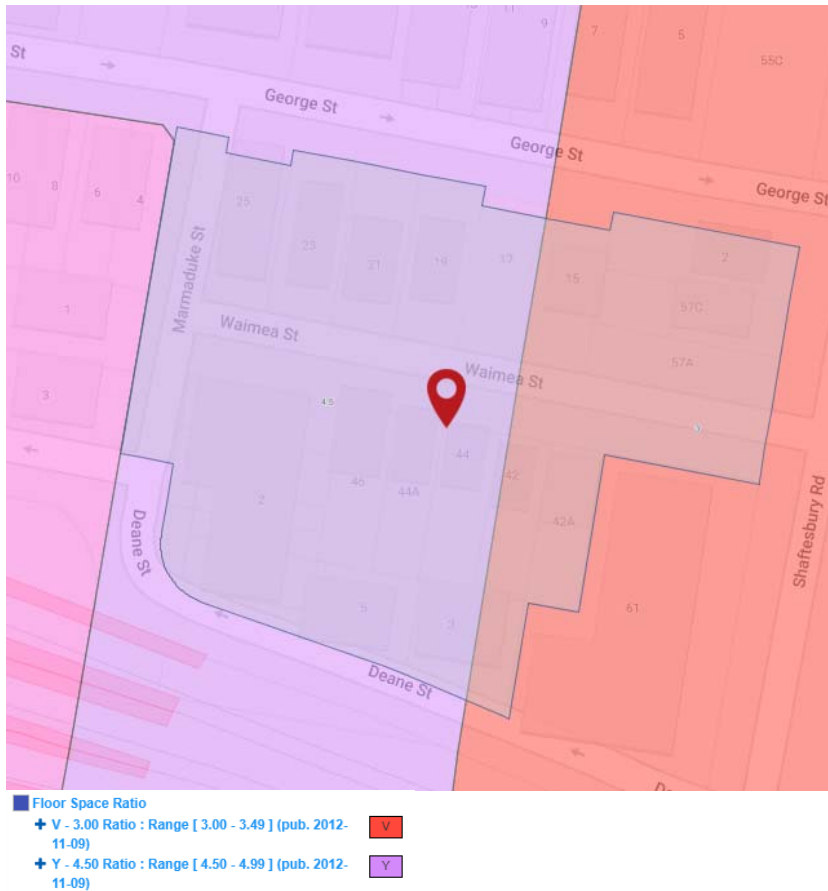
The additional information has been reviewed and an assessment is provided below.

### **ASSESSMENT OF ADDITIONAL INFORMATION**

#### Burwood Local Environmental Plan 2012 – Clause 4.4

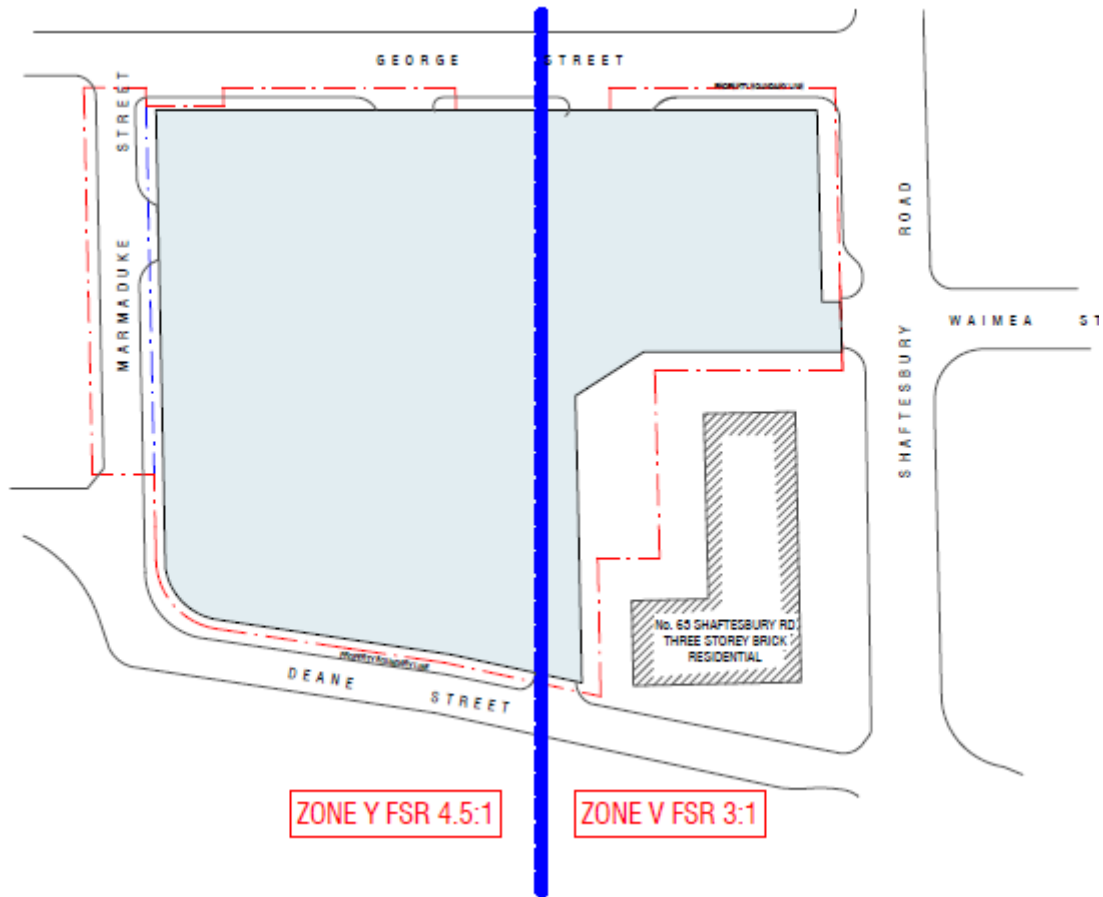
Under the provisions of Burwood Local Environmental Plan 2012 the site is subject to two FSR controls (see Figure 1 below). Clause 4.4 prescribes a maximum floor space ratios of 4.5:1 for the western portion of the site (indicated as "Y" on map) and 3:1 in the eastern portion of the site (indicated as "V" on the map).





**Figure 1** FSR Map Extract BLEP 2012 – site outlined and shaded in blue (Source: [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au))

The applicant's architect has mapped the FSR boundary over the site (see **Attachment 2**) and an extract is provided at Figure 2 below.



**Figure 2** FSR boundary (source: GFA Calculations prepared by The Buchan Group)

The area indicated as Zone Y (FSR 4.5:1) has been calculated as having an area of 6286m<sup>2</sup> and the area identified as Zone V (3:1) has a site area of 2962m<sup>2</sup>.

**Table 1** FSR Calculations

FSR Zone	Maximum FSR under BLEP 2012	Site Area	Maximum Permissible GFA	Proposed GFA	Proposed FSR	Proposed Exceedance
Zone Y	4.5:1	6286m <sup>2</sup>	28,287m <sup>2</sup>	32478m <sup>2</sup>	5.2:1	4191m <sup>2</sup> (14.8%)
Zone V	3:1	2962m <sup>2</sup>	8886m <sup>2</sup>	4459m <sup>2</sup>	1.5:1	Complies
<b>TOTAL (as combined)</b>		<b>9248m<sup>2</sup></b>	<b>37173m<sup>2</sup></b>	<b>36,938m<sup>2</sup></b>	<b>3.99:1</b>	<b>-</b>

As shown above, the proposed development exceeds the maximum FSR for that portion of the site within the Y zone (the 4.51:1 zone) by 4191m<sup>2</sup> or 14.8%. Notably, the portion of proposed development within the V Zone (the 3:1 zone) complies with (and is in fact considerably under) the maximum FSR. The applicant has submitted a written variation request under Clause 4.6 of BLEP 2012 to vary Clause 4.4. That request is discussed below.

## Burwood LEP 2012: 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 FSR development standard of BLEP 2012 pursuant to Clause 4.6(6)&(8).

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

### **Request to vary Maximum FSR Development Standard**

The applicant has submitted a written variation request under Clause 4.6. The submitted request presents an adequate justification that has regard to the objectives of the FSR 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 submitted building envelope accommodates the tower form and the transfer of GFA from the eastern portion of the site to the western portion.
- The total GFA shown in the architectural concept plans demonstrates that the overall site FSR is not exceeded.
- Strict compliance with the floor space ratio development standard in the eastern and western portions of the site would curtail the design vision for the proposed tower form and result in a shorter, squatter building form, with larger floor plates. Alternatively, this GFA could be redistributed within a second tower. However, these outcomes are not considered the optimal outcome for the site as they would increase the overall bulk and scale of the proposal.
- The distribution of GFA across the site maintains compliance with the angled height plane, mitigates potential adverse impacts on residents living adjacent to the Burwood Town Centre and maintain adequate solar access is available to the site and to surrounding properties.
- The Conceptual Architectural Drawings prepared by The Buchan Group (Buchan) demonstrate that the proposed building envelope can accommodate the permissible GFA in a manner that achieves the desired design outcome. The proposed FSR variation allows for a slender tower form on the western part of the site. The proposed envelope also achieves compliance with the overall floor space ratio control when calculated across the consolidated site area.
- The shadow diagrams submitted to support the concept DA demonstrate the additional impacts resulting from the tower component of the building that accommodates the additional GFA. The following observations are made:
  - Between 9am and 11am additional shadow falls on the mixed use/residential buildings to the south-west. However, solar access is available to these properties between 12noon and 3pm.
  - From 12noon to 3pm, most of the additional shadow falls onto the railway corridor or local roads.
- The shadow generated from the portion of the building that accommodates the additional GFA will not significantly impact the amenity of surrounding residential properties. As described previously, compliance with the building height plane is designed to maximise solar access to properties to the east of Shaftesbury Road.

- The proposed development achieves the objectives of the development standard despite non-compliance for the following reasons:
  - High density development has been encouraged in this part of the Burwood Town Centre. The distribution of GFA across the site as proposed by the concept DA is compatible with the scale and character of existing and likely future development in the vicinity of the site;
  - The Burwood Town Centre is transitioning into a high density mixed use area. This proposal is consistent with the desired future character of the area. Sites to the north and west of the site are and will continue to undergo transition to higher density development.
  - The proposed concept DA envelope is contained within the angled height plane established under clause 4.3A of BLEP 2012. The objectives of the angled height plane, as stated in clause 4.3A (1) are to mitigate any adverse impacts on the amenity of residents living adjacent to the Burwood Town Centre and ensure adequate solar access is maintained. The proposed envelope and distribution of GFA is compliant with the angled height plane and this mitigates potential adverse impacts.

It is accepted that the FSR exceedance as proposed will provide a better outcome for the site and will result in a development that is visually consistent with the character and scale with what is reasonably anticipated in the town centre. In addition, the FSR 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 FSR is acceptable in the circumstance as essentially the proposal involves a transfer of GFA from the eastern portion of the site to the western portion of the site. Additionally that the submitted tower form is a more appropriate outcome than a shorter, squatter building form with large floor plates or a second tower on the site. This assessment concurs with those arguments and the applicant has demonstrated that the proposed FSR of the building results in a building which is appropriate in terms of the urban design outcome.

In accordance with Clause 4.6(4)(a)(i), the applicant's written request has satisfactorily addressed the matters required by subclause (3) as the written request seeks to justify the contravention of the development standard by demonstrating:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered that the proposed development will be in the public interest because it is consistent with the objectives of the maximum height standard and the objectives for development within B4 zone.

On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

## 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), Burwood LEP 2012 and all relevant Council DCPs, Codes and Policies.

The proposal generally complies with the Burwood LEP 2012 and Burwood DCP 2012. Proposed variations have been discussed throughout the report and conditions are recommended where required.

## RECOMMENDATION:

It is recommended that the Sydney Eastern City Planning Panel grant consent to concept development application DA (85/2017) made under Section 4.22 of the EP&A Act 1979, subject to the conditions of consent in Attachment 1.





## **ATTACHMENT 1 – CONDITIONS OF CONSENT**

### **CONDITIONS OF CONSENT**

#### **(1) APPROVED DEVELOPMENT**

(a) Development must be in accordance with Development Application No. 87/2015 and the following drawings:

Plan Number	Issue	Prepared by	Date
A-DA1-0000	F	Buchan	12-09-2018
A-DA1-0100	E	Buchan	12-09-2018
A-DA1-1001	E	Buchan	12-09-2018
A-DA1-1002	E	Buchan	12-09-2018
A-DA1-1003	E	Buchan	12-09-2018
A-DA1-1004	E	Buchan	12-09-2018
A-DA1-1005	E	Buchan	12-09-2018
A-DA1-1006	I	Buchan	12-09-2018
A-DA1-1007	H	Buchan	12-09-2018
A-DA1-1008	F	Buchan	12-09-2018
A-DA1-1009	H	Buchan	12-09-2018
A-DA1-1010	F	Buchan	12-09-2018
A-DA1-1011	F	Buchan	12-09-2018
A-DA1-2001	K	Buchan	12-09-2018
A-DA1-3001	K	Buchan	12-09-2018
A-DA1-3002	J	Buchan	12-09-2018
A-DA1-3003	K	Buchan	12-09-2018
A-DA1-3004	K	Buchan	12-09-2018

#### **(2) APPROVAL FOR CONCEPT DEVELOPMENT APPLICATION**

Pursuant to Clause 100 of the Environmental Planning and Assessment Regulation 2000, this Notice of Determination relates to a concept development application. A subsequent development application is required prior to commencement of any work on the site.

The following items are not approved and do not form part of this concept development application Stage 1 development consent:

- Public Domain works along Deane Street, Marmaduke Street, Shaftesbury Road or George Street;
- any demolition, construction, refurbishment and/or excavation; and
- the layout and number of hotel rooms.

#### **(3) BUILDING ENVELOPES**

- Subject to the other conditions of this consent, the building envelope is only approved on the basis that the ultimate building design, including services, balconies, shading devices and the like will be entirely within the approved envelopes.

#### **(4) FLOOR SPACE RATIO –**

The following applies to Floor Space Ratio:

- Precise details of the distribution of floor space shall be provided with the future Stage 2 development applications.

#### **(5) URBAN DESIGN PRINCIPLES**

Subsequent development application/s are to include an assessment against the urban design principles contained within the advisory notes.

#### **(6) CONTAMINATION**



A Detailed Environmental Site Assessment will be required to be carried out in accordance with the NSW EPA Contaminated Sites guidelines, certifying that the site is suitable (or will be suitable, after remediation) for the proposed use and submitted with the relevant Stage 2 Development Application. Note: Where the Detailed Environmental Site Assessment states the site is suitable for the proposed use it is to be peer reviewed by a NSW EPA accredited site auditor and a Site Audit Statement submitted to Council prior to granting any consent, certifying that the site is suitable for the proposed use.

#### (7) PUBLIC DOMAIN PLAN

A Public Domain Plan must be prepared by an architect, urban designer or landscape architect and must be lodged with the relevant Stage 2 development application.

#### (8) SYDNEY TRAINS

Due to the proximity of the works proposed in the Concept Plan to the existing Rail Corridor and its assets, prior to lodgement of future staged work development applications:

- (a) The applicant is requested to consult with Sydney Trains prior to the lodgement of the application.
- (b) As part of the lodgement of any future application, the Applicant shall prepare and submit with the application for concurrence by Sydney Trains the following items:
  - i. Geotechnical and Structural report/drawings that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducted on the site closest to the rail corridor.
  - ii. Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.
  - iii. Cross sectional drawings showing the development relation to the rail corridor and the centre of the closest track; sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.
  - iv. Detailed Survey Plan showing the relationship of the proposed developed with respect to Sydney Trains easement and rail corridor land (including up to the first platform and first track, and including the Shaftsbury Road Bridge).
  - v. A Services Search report establishing the existence and location of any rail services. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling.
  - vi. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.

#### (9) WATER NSW

- (a) A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- (b) An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.
- (c) If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
- (d) WaterNSW prefers "tanking" (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also

advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).

- (e) If the basement is not “tanked”, the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

#### (10) LANDSCAPE PLAN

- (a) A detailed Landscape Plan is required to be submitted for Stage 2 of the Development Application.
- (b) The Landscape Plan must address planting details for the private property and the public domain.
- (c) The Landscape Plan must provide plant species, numbers, and container sizes of all new plants and trees, for the public domain and on site. Street trees must be planted in soil vaults using suspended pavements over non compacted soils incorporating water sensitive urban design and City Green® Strata Vault® modular root cell units, or similar approved by Council.
- (d) The landscape plan must be prepared by a qualified Landscape Architect or Landscape Designer and must satisfy the principles and requirements of Burwood Council’s Landscaping Code and Development Control Plan with consideration of Council’s Public Works Elements Manual.

#### (11) HERITAGE

- (a) Substantiation in a further HIS, by means of 3D or other views analysis, that the proposed development would not impact the visual catchment of the Burwood Railway Station Group (Local and State Heritage Item).
- (b) Mitigation of impacts to the Historical and Social Significance of the Former Burwood Library and Health Centre Buildings by means of:
  - I. photo archival recording;
  - II. further research and an interpretation plan
  - III. preservation of any foundation stones or other memorial features by incorporation into the proposed development.
- (c) In the design development phase, ensure that “the porte cochere will provide for a recessed building form, thereby drawing the immediate building mass away from the heritage item”. This must be demonstrated by drawings and 3D modeling shown street level relationships between the Terraces Item at Nos 9 – 11 George Street within the context of the proposed development and its porte cochere entry area. These must demonstrate that the scale of the proposed porte cochere elements respond sympathetically to the two story form of the terraces item.

#### (12) ACOUSTIC ASSESSMENT

- (a) A detailed Acoustic Assessment is to be undertaken and submitted with the Stage 2 Development Application to quantify the compliance with the NSW noise and vibration legislation, policies and guidelines.

#### (13) WASTE MANAGEMENT

- (a) A detailed Waste Management Plan is to be prepared and submitted to Council for approval with the Stage 2 Development Application.



## ADVISORY NOTES - URBAN DESIGN PRINCIPLES:

### A. Podium/Street Wall Design

- (a) The podium levels will exhibit an innovative design concept that responds to the existing and evolving context and provides a distinct treatment to each segment or elevation i.e. George Street, Marmaduke Street, Deane Street and Shaftesbury Road whilst at the same time achieving an expression for all the elements are identifiable of being of the same family or architectural expression. However, the proposal should attempt to achieve homogeneity but not repetition of elements as to avoid any two elevations being identical, in line with the concept presented as part of the document titled *Design Process & Response – Concept Package* dated June 2018 Rev B pages 23 -24.
- (b) The overall street-wall height will reinforce a 'human scale' with emphasis on vertical and individual elements to create a sense of 'fine grain' rather than emphasising horizontality.
- (c) The street wall height will present a dynamic and sculptural built form with pedestrian entries and vehicular entries being well integrated into the overall design of the elevations.
- (d) The street wall height will present added visibility and legibility to the pedestrian entry points with potential breaks in the overall podium mass in line with the concept presented in the lower (right hand side) vignette of page 25 of the document titled *Design Process & Response – Concept Package* dated June 2018 Rev B (henceforth Design Process & Response Rev B).
- (e) Points of interest of particular angles in the podium elevation should respond to the termination of vistas especially the views shown on pages 41 and 44 of *Design Process & Response Rev B*.
- (f) The materiality of the podium needs to reflect the correct proportions and tectonics as to suggest a part of the building that it is anchoring the tower to the ground. The robust element in the precedent image on page 21 of *Design Process & Response Rev B* should be reflected in the final tectonic quality of the podium elevations.
- (g) Articulated/active frontages will be a continuous characteristic of the lower levels across all areas that interface with the public domain.

### B. Tower Design

- (a) The eastern and western facades are to implement mechanisms by which the overall extent of the façade is broken into two distinguishable treatments and avoid monotonous single plane elevations.
- (b) A high level of sculpting will be introduced to all elevations, but with a particular emphasis on the eastern and western elevations to create the perception of having 2 slender towers joined at the centre rather one single and continuous bulk. The butterfly effect needs to be also emphasised through materiality where one half of the elevation expresses lighter materials and the other the opposite. A single unifying treatment for these elevations will be strongly discouraged. Each half of the tower will present a unique personality.
- (c) The Façade shall be articulated to break up the bulk of the eastern and western tower zones into distinct visually separate forms. The Façade should consider /respond to orientation and strive to provide a variable façade typology to avoid a monotonous consistency
- (d) The centre of the wings or "butterfly" floorplates will be accentuated to assist in creating separation rather than continuation.
- (e) The proposed elevations will use differentiated materials, themes, textures and/or colours to assist in creating a perception of two different halves of each elevation in order to break the extent of the western and eastern facades i.e. recessive/darker colours versus bright/lighter colours, solid vs permeable, fluid vs static, rectilinear vs curvilinear, primary vs secondary, etc.
- (f) The tower will emphasise balance but avoid symmetry.

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- (g) Height at the corner of the tower visible on Perspective 07 shown on page 44 of the Design Process & Response Rev B will attempt to maximise the applicable height to achieve an elegant and slender proportion. The tower as well as the podium need to create a termination to important vistas on this vantage point.
  - (h) Visible areas above podium need to be treated with a comprehensive landscape plan and avoid being cluttered with plant and service equipment. Where this is inevitable, these elements need to be encapsulated and concealed.



## **ATTACHMENT 2 – APPLICANT’S ADDITIONAL INFORMATION**



**CLAUSE 4.6 VARIATION  
REQUEST  
BURWOOD LEP 2012  
CL. 4.4 FLOOR SPACE  
RATIO**

**3 DEANE STREET  
BURWOOD**

**URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:**

Director	Clare Brown
Project Code	SA7321



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# 1. INTRODUCTION

This clause 4.6 variation request has been prepared by Urbis Pty Ltd on behalf of Burwood RSL Club Pty Ltd. This request has been prepared in support of a concept Development Application (DA) for 3 Deane Street, Burwood, being land bound by George Street, Shaftesbury Road, Deane Street and Marmaduke Street, Burwood (the site). The site excludes 63 Shaftesbury Road.

Two floor space ratio controls apply to the site under Burwood Local Environmental Plan 2012 (BLEP 2012), 4.5:1 in the western portion of the site and 3:1 in the eastern portion of the site. Based on the consolidated site area of 9,248sqm a maximum 37,021sqm gross floor area (GFA) is permitted across the site. The proposed building envelope developed with the concept DA seeks to redistribute the permissible GFA across the site such that proposal will result in a theoretical non – compliance with the maximum floor space ratio development standard applying to the different parts of the site.

This written variation request is made pursuant to clause 4.6 of BLEP 2012.

## 2. ASSESSMENT FRAMEWORK

### 2.1. CLAUSE 4.6 OF BURWOOD LOCAL ENVIRONMENTAL PLAN 2012

Clause 4.6 of BLEP 2012 includes provisions that that allows for exceptions to development standards in certain circumstances. The objectives of clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with a development standard, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- (a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary to consider:

- (a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) The public benefit of maintaining the development standard, and*
- (c) Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018.

This written clause 4.6 request seeks to justify the variation of the floor space ratio development standard in clause 4.4 of BLEP 2012.

### 2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements provide direction as to the manner in which variations to development standards are required to be approached. The relevant findings of these cases have been considered in the preparation of this request.

The current approach to preparing and dealing with a request under clause 4.6 is summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

- [13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
- [14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as*

to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

- [15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- [16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.
- [17] The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].
- [18] A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].
- [19] A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].
- [20] A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
- [21] A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
- [22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.
- [23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

- [24] *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*
- [25] *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant’s written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant’s written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].*
- [26] *The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant’s written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*
- [27] *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*
- [28] *The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.*
- [29] *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].*



## 3. SITE AND LOCALITY

### 3.1. SITE ANALYSIS

The site has an area of 9,248sqm and is bound by George Street to the north, Shaftesbury Road to the east, Deane Street to the south and Marmaduke Street to the west. The site includes the area of Waimea Street that is now closed and Marmaduke Street adjacent to the site that has been closed. The site excludes 63 Shaftesbury Road.

The street address and legal description is identified within **Table 1**. An aerial photograph is provided as **Figure 1**

Table 1 – Site Details

Street Address	Legal Description
3 Deane Street Burwood	Lot 30 in DP1231727

Figure 1 – Aerial Photograph of the Subject Site



Source: Nearmap, Urbis

The site is presently occupied by detached dwelling houses and two and three storey residential flat buildings (RFBs). A Scout Hall is located at 17 Waimea Street and a former library is located at 2- 4 Marmaduke Street. The buildings will be demolished to facilitate the future development of the site.

A detailed description of the site is provided in the addendum Statement of Environmental Effects (SEE) prepared by Urbis, accompanying the submitted development application.

## 3.2. SURROUNDING CONTEXT

The surrounding locality is characterised by a mix of land uses and architectural styles. The Burwood Town Centre is currently experiencing significant renewal and redevelopment, predominantly comprising mixed use commercial and high-density residential development.

The site is surrounded by the following:

**To the north** of the site are several medium density residential buildings. Further north is Westfield Burwood.

**To the east** of the site is a low density residential precinct located outside of the Burwood Town Centre. Adjoining to the south east of the site is 63 Shaftesbury Road, which has been developed by a brick and tile three storey RFB.

**To the south** of the site is the railway corridor.

**To the west** of the site is Burwood Railway Station and the Burwood Town Centre, including shop top housing fronting Burwood Road and number of large scale commercial and residential developments.



## 4. THE PROPOSED DEVELOPMENT

### 4.1. DEVELOPMENT OVERVIEW

Pursuant to section 4.22 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the concept DA seeks approval for the mixed-use redevelopment of the site including:

- Uses including registered club, hotel or motel accommodation, commercial premises, entertainment facilities, function centre and recreation facility (indoor);
- Building envelope associated with the podium;
- Building envelope for one tower above the podium, with a maximum height of 94.66 metres;
- Vehicle access points; and
- A maximum of 1,250 car spaces provided within the basement envelope.

The concept DA does not seek approval for:

- Any works, including demolition, excavation, construction and public domain improvements;
- The final arrangement of land uses;
- Layout, mix or number of hotel rooms;
- The design of the building exteriors including facades and roofs; and
- Public domain and landscape design.

Separate detailed DAs will be prepared and submitted to undertake physical works on site.

### 4.2. URBAN DESIGN AND AMENITY

#### 4.2.1. Scale of the Podium and Tower

The Project Team have engaged in extensive consultation with Burwood Council staff and their Urban Design Consultant, GMU. During the pre-lodgement consultation, and in multiple post lodgement discussions, Council staff and GMU have encouraged the delivery of a tall slender tower, as opposed to multiple tower forms or one tower with a large floorplate.

The concept DA seeks consent for a mixed-use development with a maximum building height that exceeds the maximum 60 metre height standard prescribed by clause 4.4 of BLEP 2012. A clause 4.6 variation request for this non-compliance was submitted with the concept DA. The variation to the 60m height of building standard facilitates a tall, slender tower to be provided on the site. The tower form exceeds the height of building control but is below the building height plane established under clause 4.3A of BLEP 2012.

The submitted building envelope accommodates the tower form and the transfer of GFA from the eastern portion of the site to the western portion. The total GFA shown in the architectural concept plans demonstrates that the overall site FSR is not exceeded. Strict compliance with the floor space ratio development standard in the eastern and western portions of the site would curtail the design vision for the proposed tower form and result in a shorter, squatter building form, with larger floor plates. Alternatively, this GFA could be redistributed within a second tower. However, these outcomes are not considered the optimal outcome for the site as they would increase the overall bulk and scale of the proposal.

The distribution of GFA across the site maintains compliance with the angled height plane, mitigates potential adverse impacts on residents living adjacent to the Burwood Town Centre and maintain adequate solar access is available to the site and to adjoining properties.

## 5. EXTENT OF CONTRAVENTION

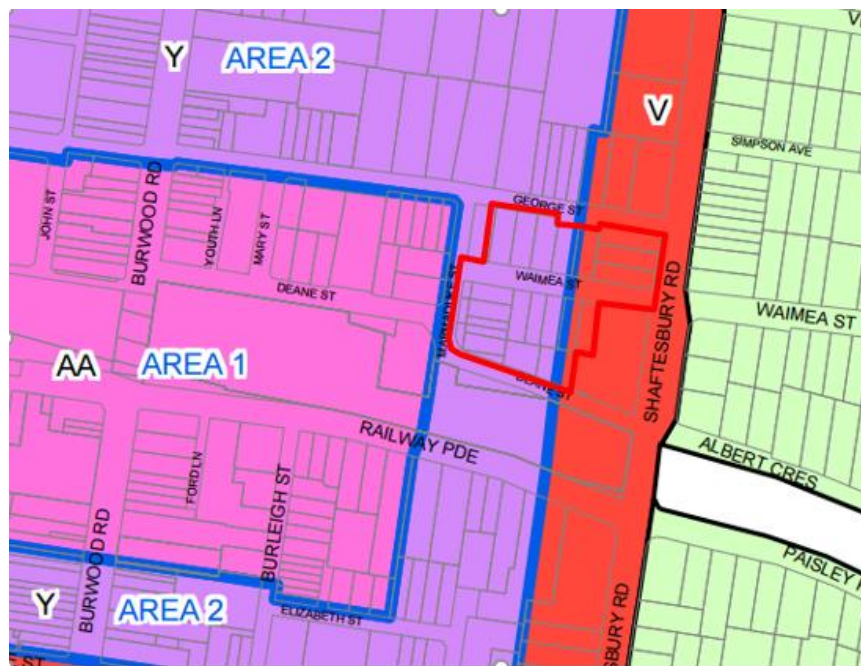
### 5.1. DEVELOPMENT STANDARD

Clause 4.4 (2) of BLEP 2012 states:

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The maximum floor space ratio (FSR) prescribed under clause 4.4(2) of BLEP 2013 is 3:1 in the eastern portion of the site and 4.5:1 in the western portion of the site as shown in **Figure 2** below. These two FSR controls correspond with the two maximum building height controls, being 60m and 30m respectively.

Figure 2 – BLEP 2013 Maximum Floor Space Ratio Map Extract



The Site

#### Maximum Floor Space

E	0.55
K	0.85
N	1
P	1.2
S1	1.5
S2	1.75
T	2
U	2.5
V	3
Y	4.5
AA	6

Refer to Clause 4.4A

Source: BLEP 2012

## 5.2. VARIATION TO MAXIMUM FLOOR SPACE RATIO

For the purposes of this clause 4.6 variation request, the western part of the site has been described as Zone Y (with an applicable FSR of 4.5:1) and the eastern part of the site as Zone V (FSR 3:1).

These zones are shown in **Figure 2**. A breakdown of GFA by zone and floor is included at Appendix A.

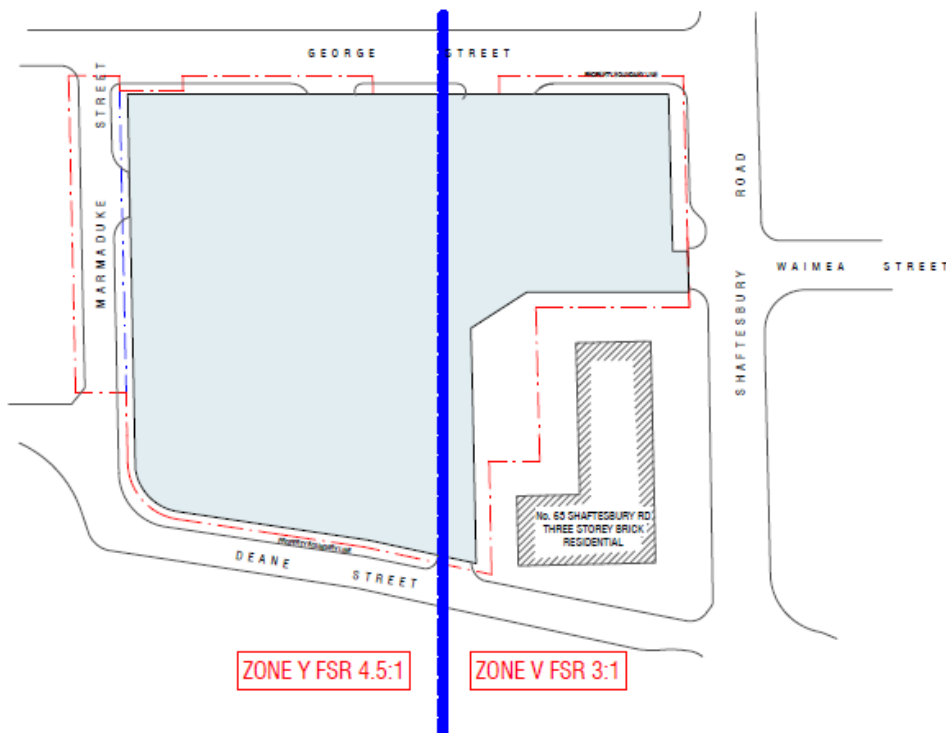
The distribution of GFA within the building envelope is described in **Table 1**.

Table 2 – GFA Summary

Part of site	FSR control	Site area	Maximum GFA <sup>sqm</sup>	Proposed GFA <sup>sqm</sup>	Variation
Zone V	3:1	2,962	8,886	4,459	Complies
Zone Y	4.5:1	6,286	28,287	32,478	4,191sqm or 14.8%
Combined site		9,248	37,173	36,938	Complies

The above table demonstrates that the proposal complies with the 3:1 floor space control that applies to Zone V, however, the potential GFA located in Zone Y exceeds the 4.5:1 control permissible under clause 4.4 of BLEP 2012. When calculated across the consolidated site, the total GFA within the proposed envelope is below the total maximum GFA permissible on the site.

Figure 3 – GFA zones



Source: Buchan Group

## 6. CLAUSE 4.6 VARIATION REQUEST: FLOOR SPACE RATIO

The following sections of the report provide an assessment of the request to vary the development standard relating to the maximum floor space ratio development standard in accordance with Clause 4.6 of BLEP 2012.

### 6.1. CLAUSE 4.4 FLOOR SPACE RATIO CONTROL

The maximum floor space ratio development standard site under BLEP 2012 is 4.5:1 in the western part and 3:1 in the eastern part of the site.

The objectives of the floor space ratio development standard as per subclause 4.4(1) of BLEP 2012 are as follows:

- (a) *to enable development density and intensity of land use to achieve an appropriate urban form,*
- (b) *to focus higher development density and intensity of land use in the inner part of the Burwood Town Centre and to provide a transition in development density and intensity of land use towards the edge of the Burwood Town Centre.*

### 6.2. KEY QUESTIONS

#### Is the Planning Control a Development Standard?

The maximum FSR control prescribed under clause 4.4 of BLEP 2012 is a development standard capable of being varied under clause 4.6 of BLEP 2012.

#### Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of BLEP 2012.

#### What is the Underlying Object or Purpose of the Standard?

The underlying object or purpose of the development standard is to concentrate higher density and development in inner Burwood and encourage built form that provides a suitable transition in density surrounding this area. It is also to ensure that development is compatible with the scale and character of surrounding development and avoids detrimental impacts on the amenity of the locality.

### 6.3. CONSIDERATION

#### 6.3.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827*. These tests are outlined above in Section 2.2 (paragraphs [17]-[21]).

An applicant does not need to establish all of the tests or 'ways'. **It may be sufficient to establish only one way**, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way

The development is justified against two of the Wehbe tests as set out below.

##### ***Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard***

The proposed development achieves the objectives of the development standard despite the non-compliance for the following reasons:

- High density development has been encouraged in this part of the Burwood Town Centre. The distribution of GFA across the site as proposed by the concept DA is compatible with the scale and character of existing and likely future development in the vicinity of the site;
- The Burwood Town Centre is transitioning into a high density mixed use area. This proposal is consistent with the desired future character of the area. Sites to the north and west of the site are and will continue to undergo transition to higher density development.
- The proposed concept DA envelope is contained within the angled height plane established under clause 4.3A of BLEP 2012. The objectives of the angled height plane, as stated in clause 4.3A (1) are to mitigate any adverse impacts on the amenity of residents living adjacent to the Burwood Town Centre and ensure adequate solar access is maintained. The proposed envelope and distribution of GFA is compliant with the angled height plane and this mitigates potential adverse impacts.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard for the western portion of the site. The redistribution of GFA across the site does not result in any greater GFA than would otherwise be available under the FSR control for the site in its entirety.

***Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary***

Not relied upon.

***Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable***

The underlying object or purpose of the development standard is to provide a built form that is compatible with the scale and character of surrounding development and that avoids detrimental impacts on the amenity of the locality.

If strict numerical compliance with clause 4.4 of BLEP 2012 was required, the GFA would be reallocated to the eastern part of the site. This would reduce the height of the tower, and result in an increase in the length and width of the building form and necessitate larger floorplates. This outcome would thwart the objective of the development standard, in that it would increase the bulk and scale of the proposal.

If strict compliance was required the resulting built form outcome would be of a bulk and scale unsympathetic to the site and surrounding area, thereby thwarting the underlying objective of the standard.

***Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable***

Not relied upon.

***Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary***

Not relied upon.

### **6.3.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?**

The proposed variation does not result in any significant adverse environmental impacts. There are sufficient environmental planning grounds to justify the proposed variations to the development standard, including the following:

#### Compliance with Angled Height Plane (Clause 4.3A)

- The GFA contained within the proposed tower and podium envelopes is located below the angled height plane established under clause 4.3A of BLEP 2012. The building height plane identifies an acceptable maximum height limit which may be considered for sites within the Burwood Town Centre.
- The building height plane, as it applies to the site, has been established to protect the amenity of the R2 Low Density Residential properties to the east of Shaftesbury Road. Compliance with the angled height plane will protect the amenity of residents in the lower density residential areas to the east and south (on the opposite side of the railway line).

### Urban Design outcomes

- The Conceptual Architectural Drawings prepared by The Buchan Group (Buchan) demonstrate that the proposed building envelope can accommodate the permissible GFA in a manner that achieves the desired design outcome. The proposed FSR variation allows for a slender tower form on the western part of the site. The proposed envelope also achieves compliance with the overall floor space ratio control when calculated across the consolidated site area.

### Overshadowing

- The shadow diagrams submitted to support the concept DA demonstrate the additional impacts resulting from the tower component of the building that accommodates the additional GFA. The following observations are made:
  - Between 9am and 11am additional shadow falls on the mixed use/residential buildings to the south-west. However, solar access is available to these properties between 12noon and 3pm.
  - From 12noon to 3pm, most of the additional shadow falls onto the railway corridor or local roads.
- The shadow generated from the portion of the building that accommodates the additional GFA will not significantly impact the amenity of surrounding residential properties. As described previously, compliance with the building height plane is designed to maximise solar access to properties to the east of Shaftesbury Road.

### Visual Impact

- As described in section 4.2 the floor FSR variation allows for distribution of GFA into a taller, slender tower. This is an improved urban design outcome than if the proposal were to strictly comply with the floor space ratio development control.

### Traffic

- The proposed envelope achieves compliance with the overall floor space ratio development standard control when calculated across the consolidated site area, therefore there are no additional traffic impacts associated with the variation.

In conclusion, there are sufficient environmental planning grounds to justify the proposed variation to the FSR development standard.

### **6.3.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?**

The proposed development is consistent with the objectives of the development standard as outlined within Table .

**Table 3 – Assessment of Compliance with Building Height Objectives**

Objective	Compliance Assessment
(a) <i>to enable development density and intensity of land use to achieve an appropriate urban form,</i>	<ul style="list-style-type: none"><li>• The proposal provides an appropriate development density and urban form consistent with its location within the Burwood Town Centre.</li></ul>
(b) <i>to focus higher development density and intensity of land use in the inner part of the Burwood Town Centre and to provide a transition in development density and intensity of land use towards the edge of the Burwood Town Centre.</i>	<ul style="list-style-type: none"><li>• The proposal provides for higher density and a variety of land uses including hotel, club and hospitality venues within the Burwood Town Centre.</li><li>• The combination of the slender tower form and podium proposed provides an appropriate transition to the surrounding areas within Burwood Town Centre.</li></ul>



Objective	Compliance Assessment
	<ul style="list-style-type: none"> <li>The building envelopes will facilitate the delivery of high tower form closer to the rail line and Town Centre and a lower scale built form adjacent to the lower density areas to the east of the site.</li> </ul>

The site is located within B4 Mixed Use Zone and is assessed against the zone objectives in in **Table 4**.

Table 4 – Assessment of Compliance with Land Use Zone Objectives

Objective	Compliance Assessment
<ul style="list-style-type: none"> <li><i>To provide a mixture of compatible land uses.</i></li> </ul>	<ul style="list-style-type: none"> <li>The proposal provides a genuine mixed-use development with compatible land uses. Separate entries for the registered club and hotel uses are provided for in the indicative architectural drawings.</li> </ul>
<ul style="list-style-type: none"> <li><i>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.</i></li> </ul>	<ul style="list-style-type: none"> <li>Public transport patronage, walking and cycling will be encouraged through the colocation of employment and entertainment facilities within the Burwood Town Centre</li> <li>The site is located in proximity to the Burwood Train Station and Bus Interchange.</li> </ul>

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

#### 6.3.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The non-compliance with the maximum FSR development standard for the western portion of the site as expressed in the control diagrams and concept architectural plans submitted with the concept DA will not raise any matter of significance for State or regional environmental planning.

It has been demonstrated that the proposed variation to the FSR control is appropriate based on the specific circumstances of the current proposal and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

#### 6.3.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

No public benefit will be achieved by maintaining the FSR development standard. The future development that can be accommodated in the proposed building envelope can achieve the objectives of the FSR development standard and the land use zoning objectives despite the numerical non-compliance.

The proposed distribution of GFA across the site will result in an improved urban design outcome by permitting a slender tower envelope than would otherwise be achieved under a scheme that complied with the maximum floor space ratio controls prescribed for the two different zones of the site. Maintaining the two FSR development standards prescribed for the site would hinder the ability to deliver an integrated development with a design that responds to the urban setting. It has also been demonstrated that the proposed variation will not result in an adverse environmental impact on the neighbourhood amenity.

Overall, it is considered that the proposal will result in a superior outcome for the site and the surrounding land and there would be no public benefit in maintaining the development standard.

**6.3.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed. Nevertheless, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 request and prior to granting concurrence, should it be required.



# DISCLAIMER

This report is dated 8 February 2019 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd's (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Club Burwood RSL (**Instructing Party**) for the purpose of Clause 4.6 Variation Request (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.



# APPENDIX A      GFA PLANS





### **BRISBANE**

Level 7, 123 Albert Street  
Brisbane QLD 4000  
Australia  
T +61 7 3007 3800

### **GOLD COAST**

45 Nerang Street,  
Southport QLD 4215  
Australia  
T +61 7 5600 4900

### **MELBOURNE**

Level 12, 120 Collins Street  
Melbourne VIC 3000  
Australia  
T +61 3 8663 4888

### **PERTH**

Level 14, The Quadrant  
1 William Street  
Perth WA 6000  
Australia  
T +61 8 9346 0500

### **SYDNEY**

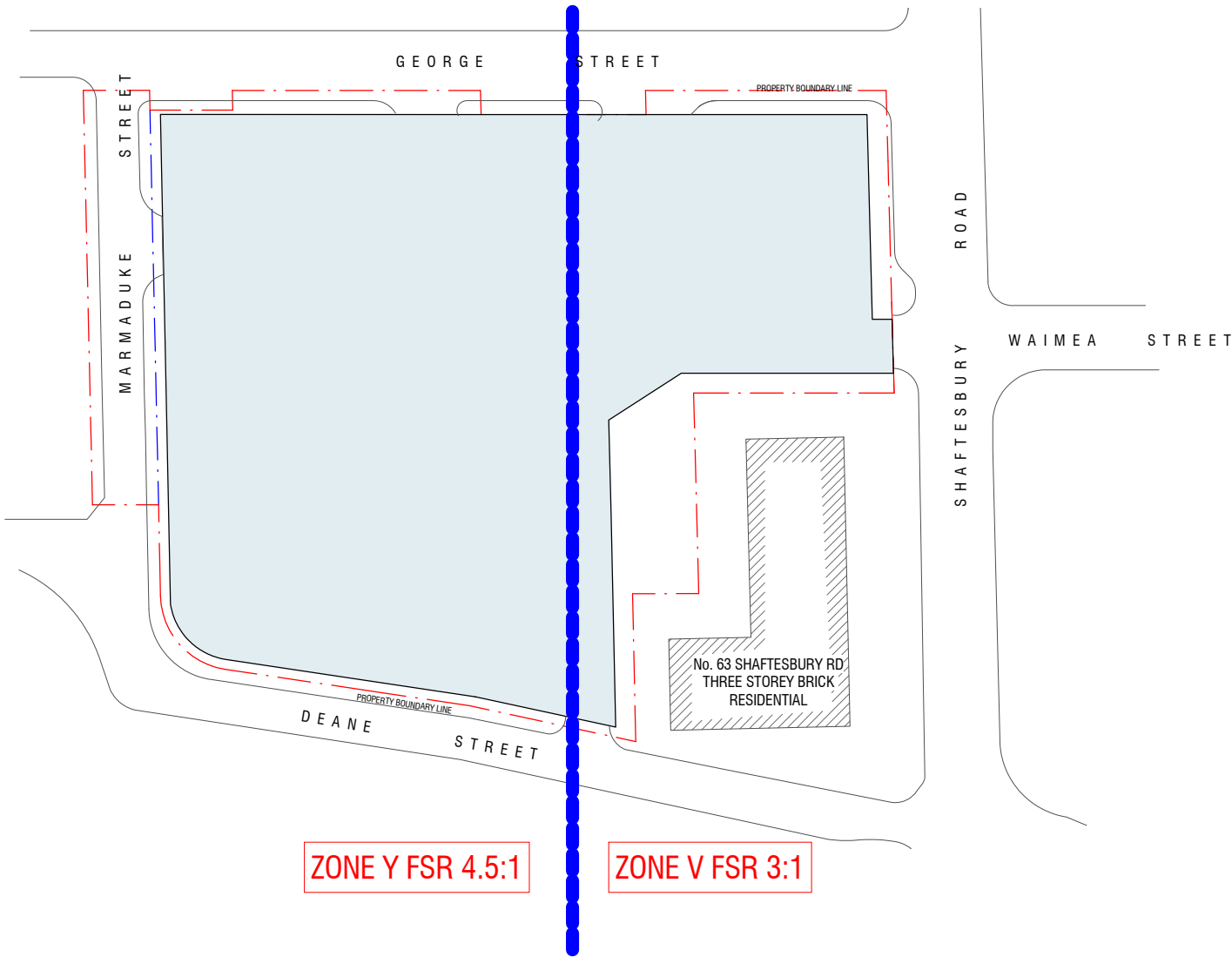
Tower 2, Level 23, Darling Park  
201 Sussex Street  
Sydney NSW 2000  
Australia  
T +61 2 8233 9900

### **CISTRI – SINGAPORE**

*An Urbis Australia company*  
#12 Marina View  
21 Asia Square, Tower 2  
Singapore 018961  
T +65 6653 3424  
W [cistri.com](http://cistri.com)

GFA CALULATIONS

@ A3



ALLOWABLE GFA

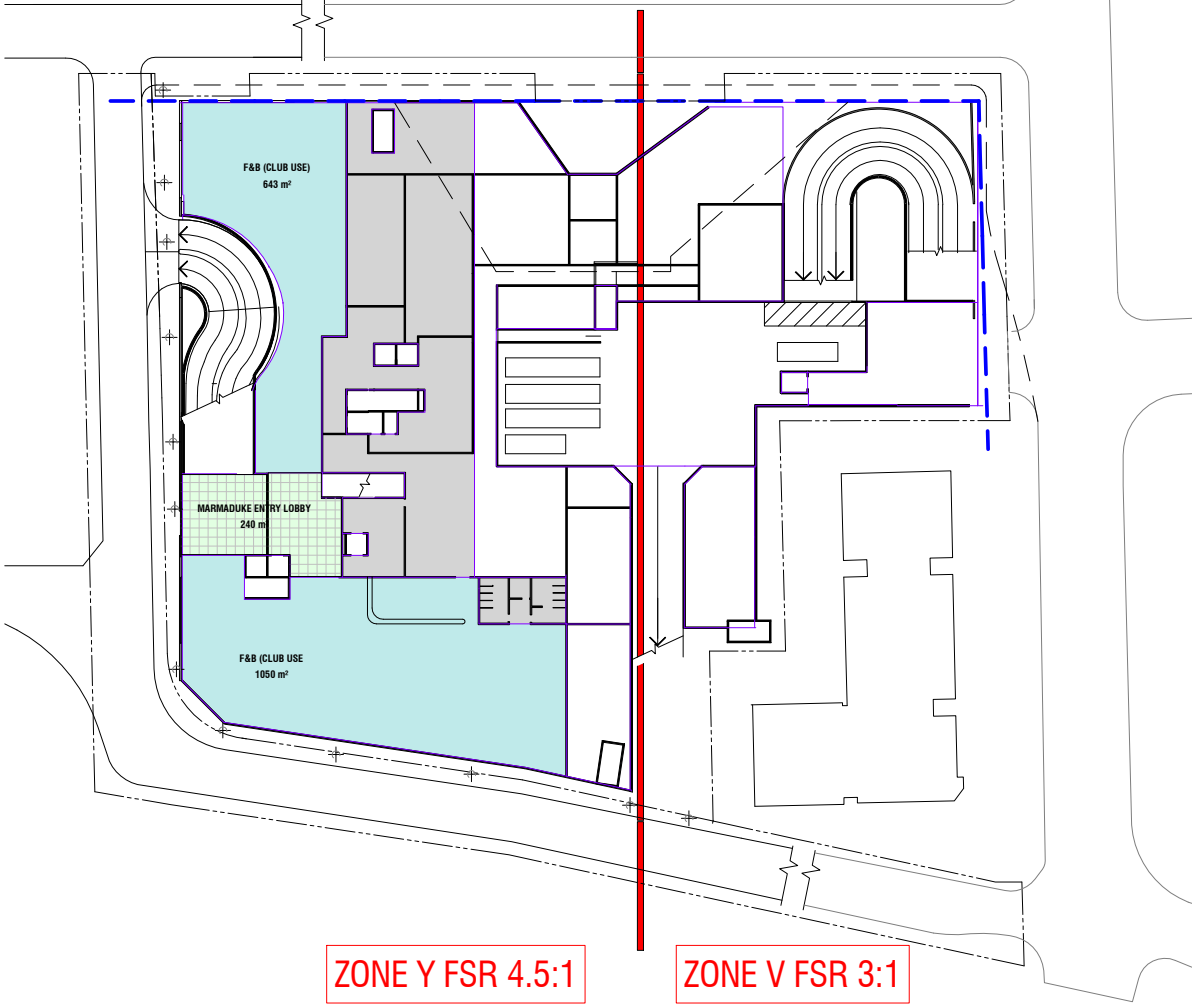
GFA CALCULATIONS				
REF: THE BURWOOD LEP PLAN 2012 - FSR MAP - SHEET 001				
DEPOSITED PLAN REF	CONSOLIDATED LOTS	FSR	SITE AREA m <sup>2</sup>	MAX GFA m <sup>2</sup>
CONSOLIDATED Lot 30 SURVEYORS REF: 34315DP01 (30-09-2016)	ZONE "V"	3 : 1	2962	8886
	ZONE "Y" (INCLUDING MARMADUKE ST)	4.5 : 1	6286	28287
	TOTALS		9248	37173

GFA - INDICATIVE DESIGN TOTAL

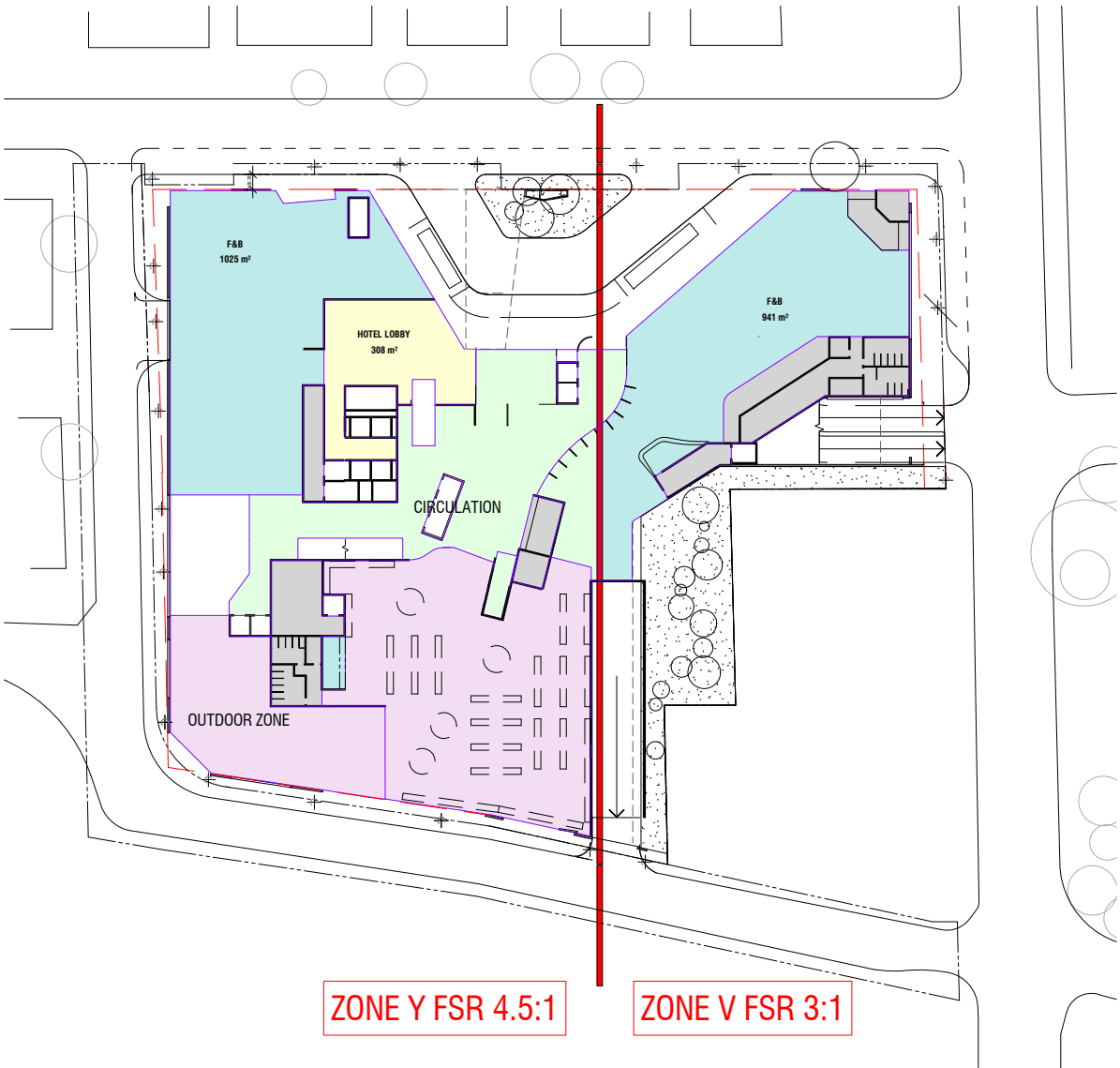
ZONE V - FSR 3-1	4459 m <sup>2</sup>
ZONE Y - FSR 4.5-1	32478 m <sup>2</sup>
TOTAL GFA	36938 m <sup>2</sup>

GFA CALCULATIONS LOADING DOCK & GROUND LEVEL

NTS @ A3



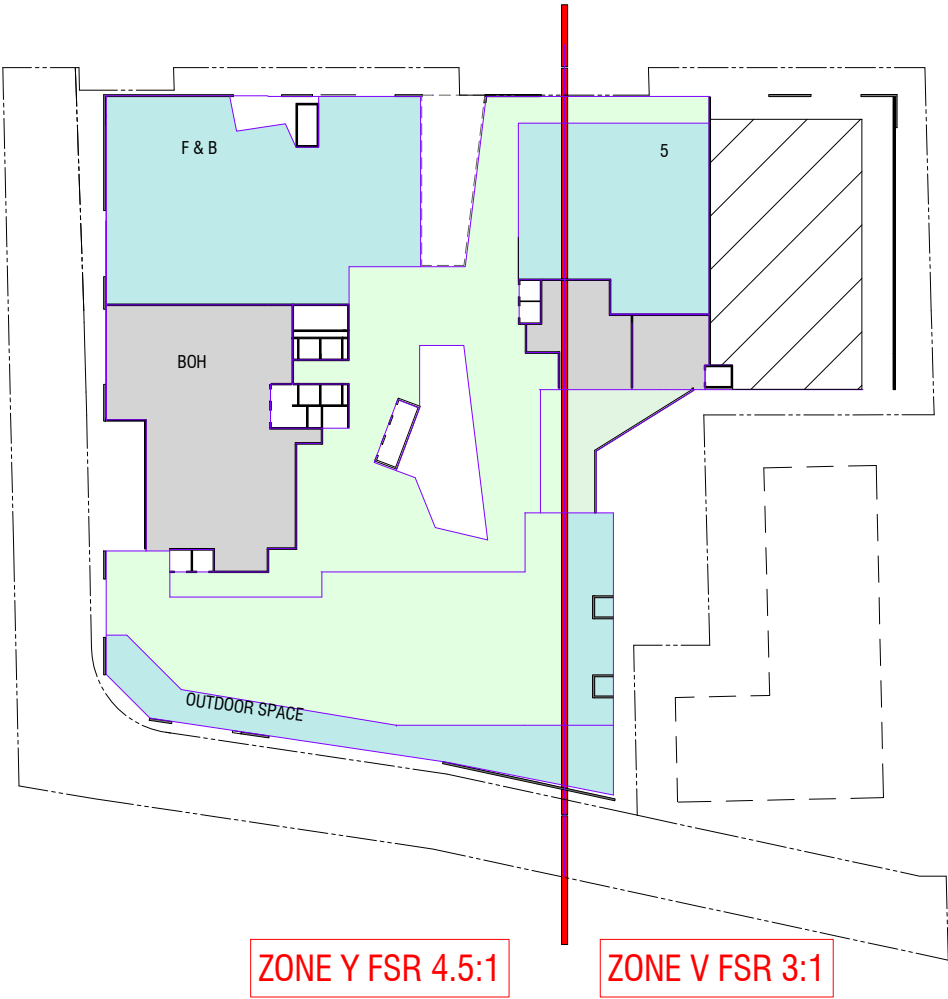
GFA - B1 (LOADING)	
ZONE Y - FSR 4.5-1	
F&B	1693 m²
CIRCULATION	240 m²
B.O.H	1077 m²
	3010 m²
TOTAL	3010 m²



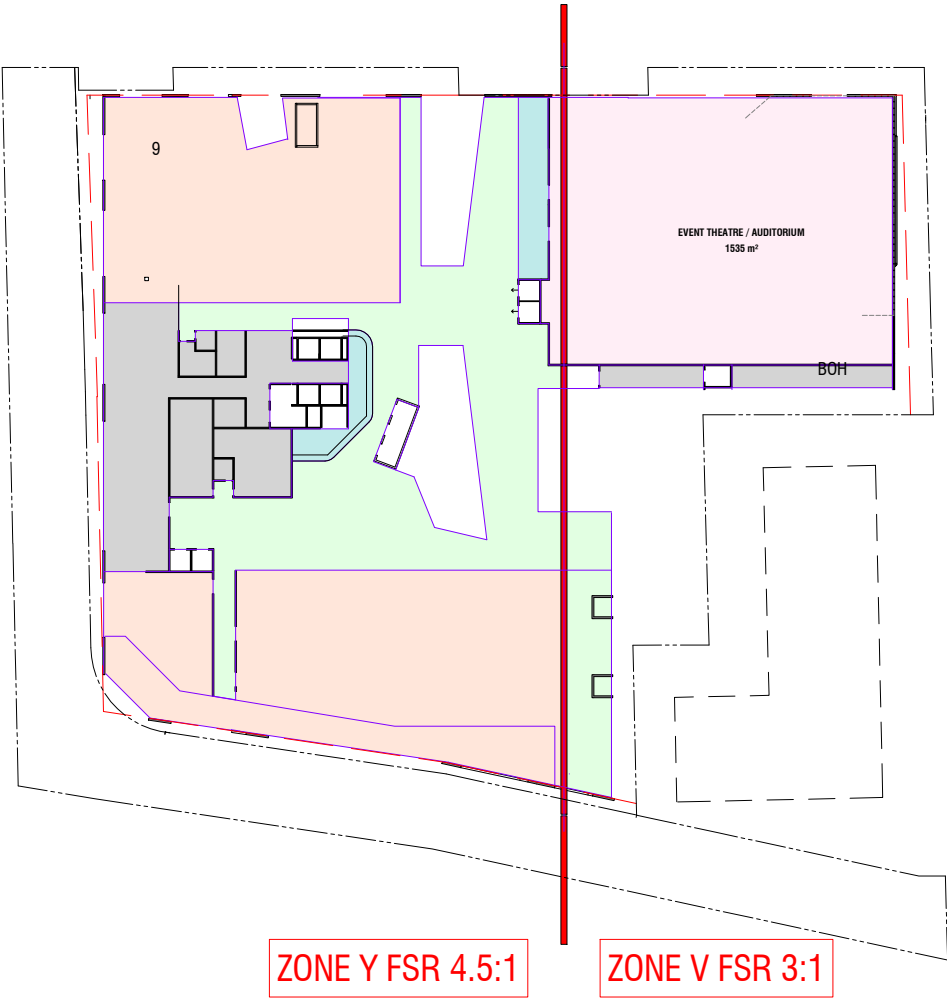
GFA GROUND LEVEL	
ZONE V - FSR 3-1	
CIRCULATION	32 m²
F&B	941 m²
B.O.H	324 m²
	1297 m²
ZONE Y - FSR 4.5-1	
CIRCULATION	115 m²
GAMING	1638 m²
F&B	1050 m²
HOTEL	308 m²
CIRCULATION	724 m²
B.O.H	263 m²
	4098 m²
TOTAL	5395 m²

GFA CALCULATIONS L1 - L2

NTS @ A3



GFA LEVEL 1	
ZONE V - FSR 3-1	
CIRCULATION	68 m²
OUTDOOR AREA	121 m²
F&B	764 m²
B.O.H	257 m²
	1210 m²
ZONE Y - FSR 4.5-1	
CIRCULATION	1120 m²
CIRCULATION	1148 m²
F&B	1044 m²
F&B	370 m²
B.O.H	725 m²
	4407 m²
TOTAL	5617 m²

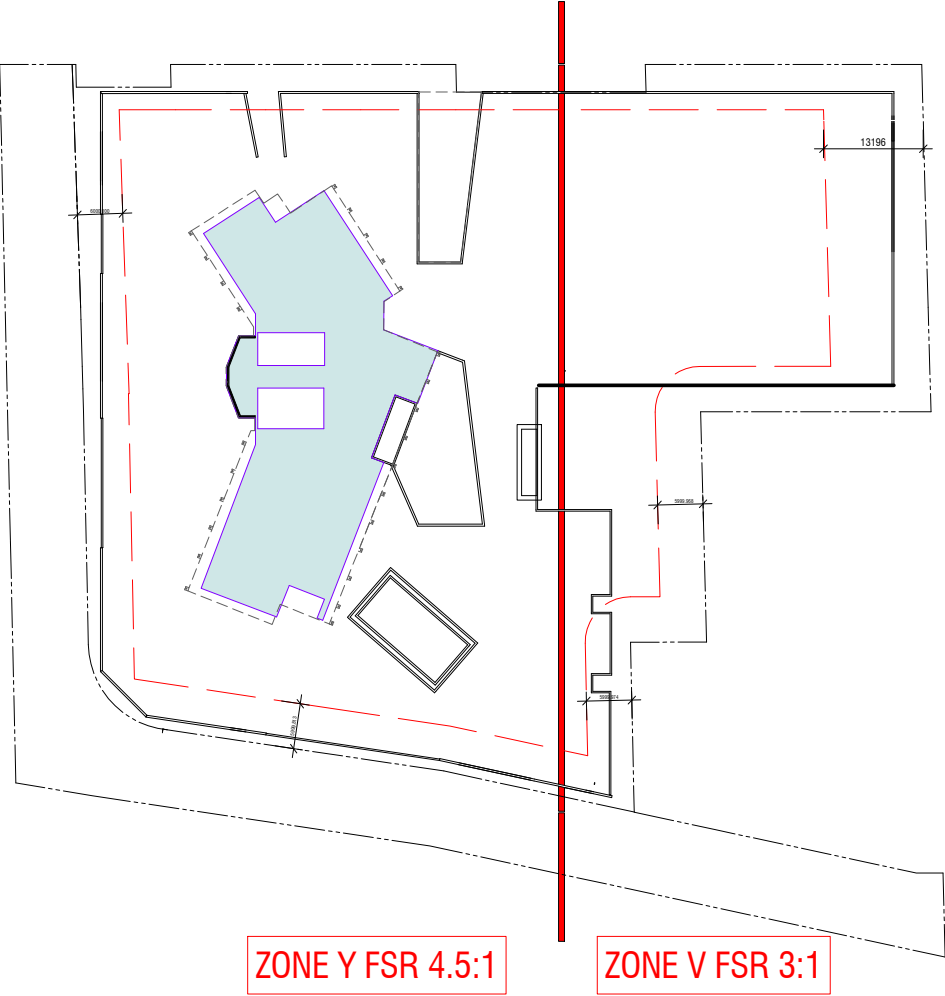


GFA LEVEL 2	
ZONE V - FSR 3-1	
CIRCULATION	234 m²
AUDITORIUM	1613 m²
B.O.H	106 m²
	1952 m²
ZONE Y - FSR 4.5-1	
B.O.H	667 m²
CIRCULATION	1317 m²
CONFERENCE FACILITY	2377 m²
F&B	167 m²
	4527 m²
TOTAL	6479 m²

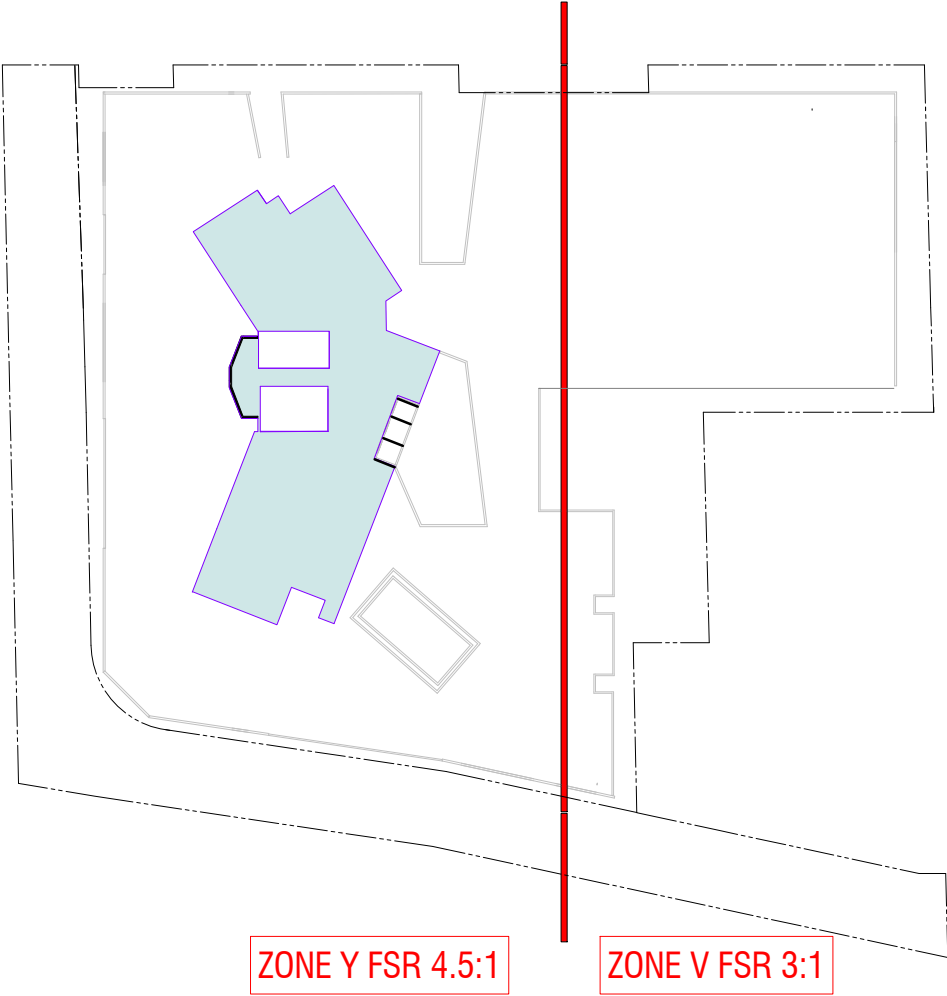


GFA CALCULATIONS L3 - L4

NTS @ A3



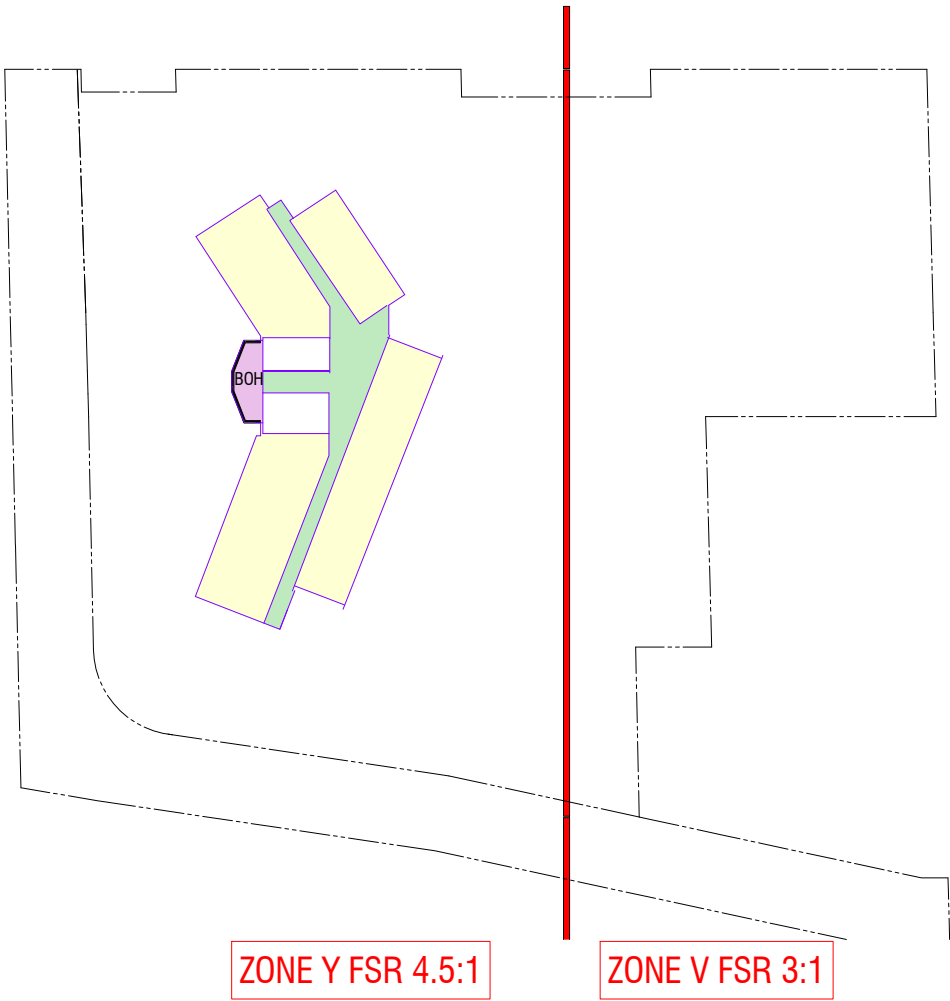
GFA LEVEL 3	
ZONE Y - FSR 4.5-1	
CLUB USE	918 m²



GFA LEVEL 4	
ZONE Y - FSR 4.5-1	
CLUB USE	1023 m²

# GFA CALCULATIONS L5-15

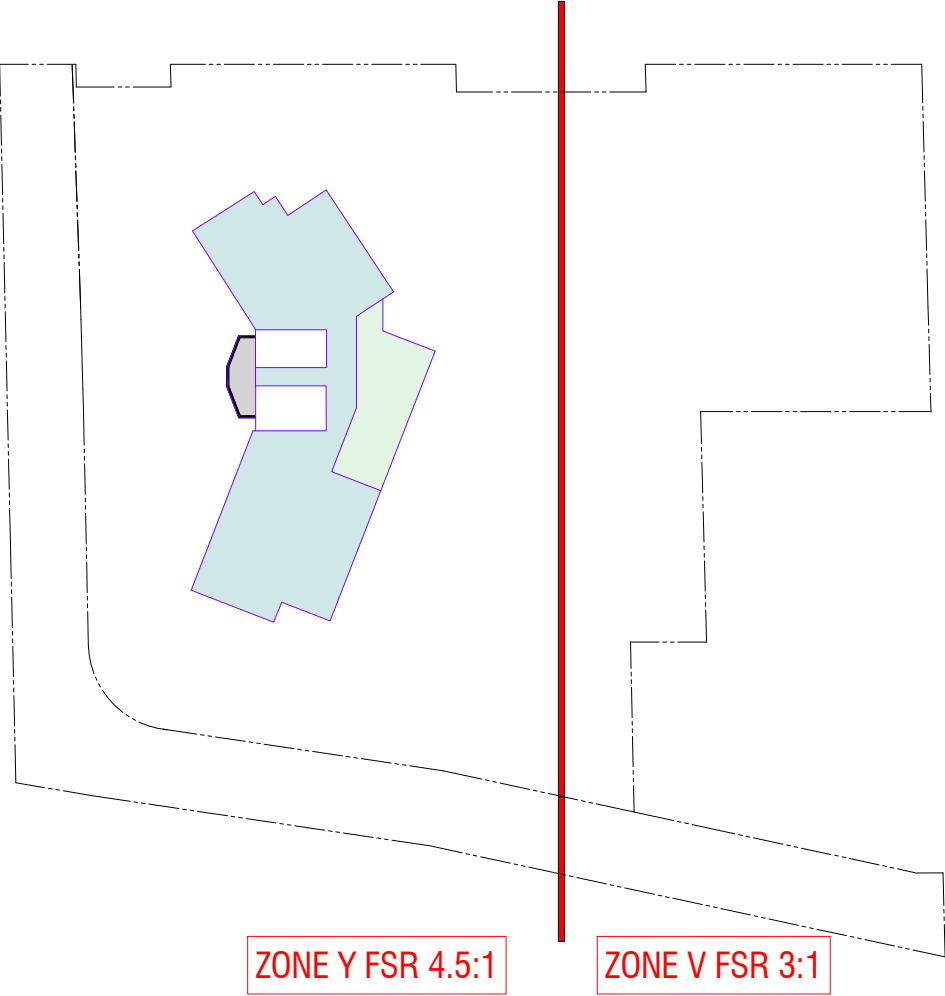
NTS @ A3



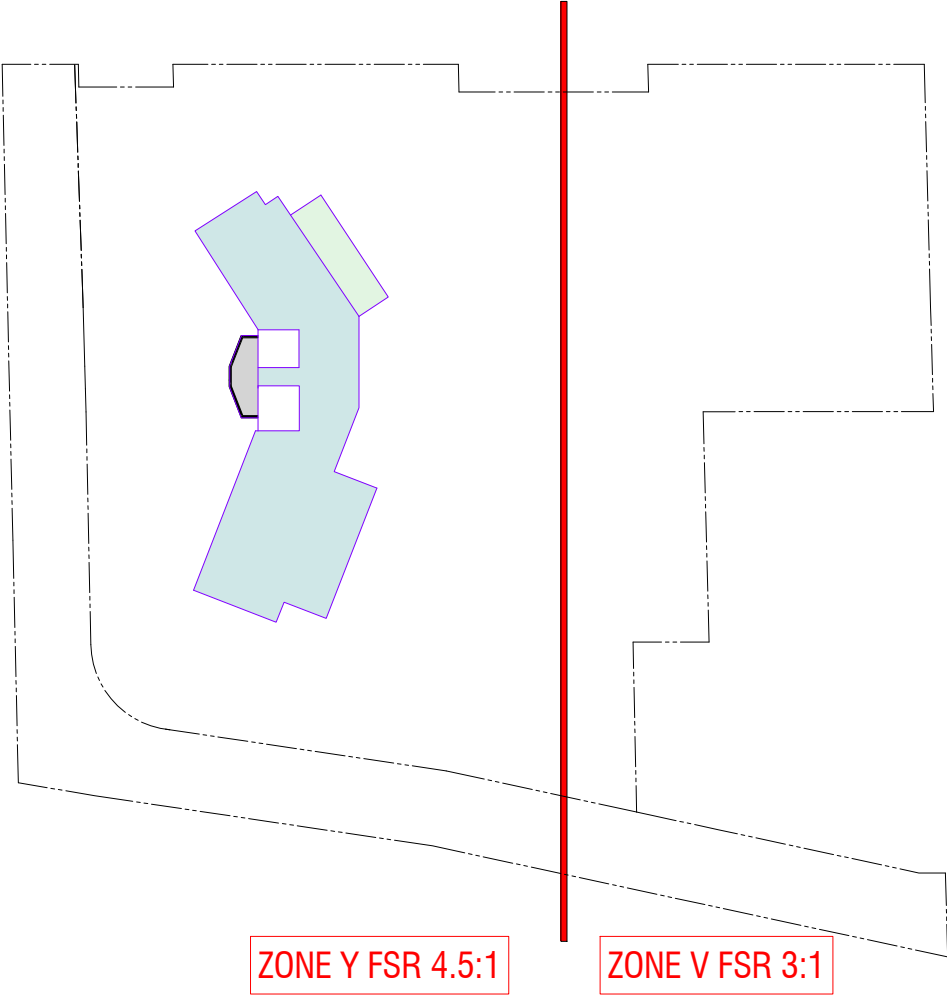
GFA LEVELS 5-15 (11 LEVELS)	
ZONE Y - FSR 4.5-1	
HOTEL	8827 m²
HOTEL B.O.H	420 m²
HOTEL CIRULATION	2281 m²
TOTAL	11528 m²

GFA CALCULATIONS L16 - L17

NTS @ A3



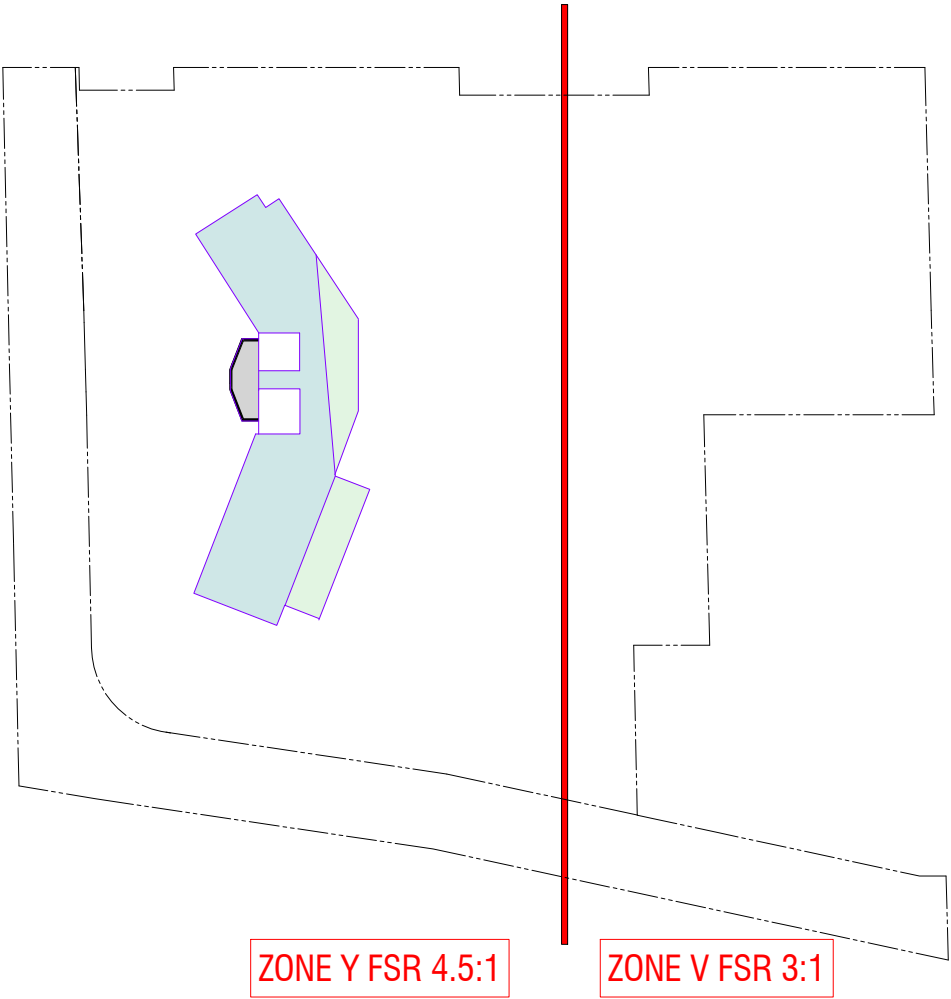
GFA LEVEL 16	
ZONE Y - FSR 4.5-1	
B.O.H	35 m²
CLUB USE	815 m²
OUTDOOR AREA	169 m²
TOTAL	1019 m²



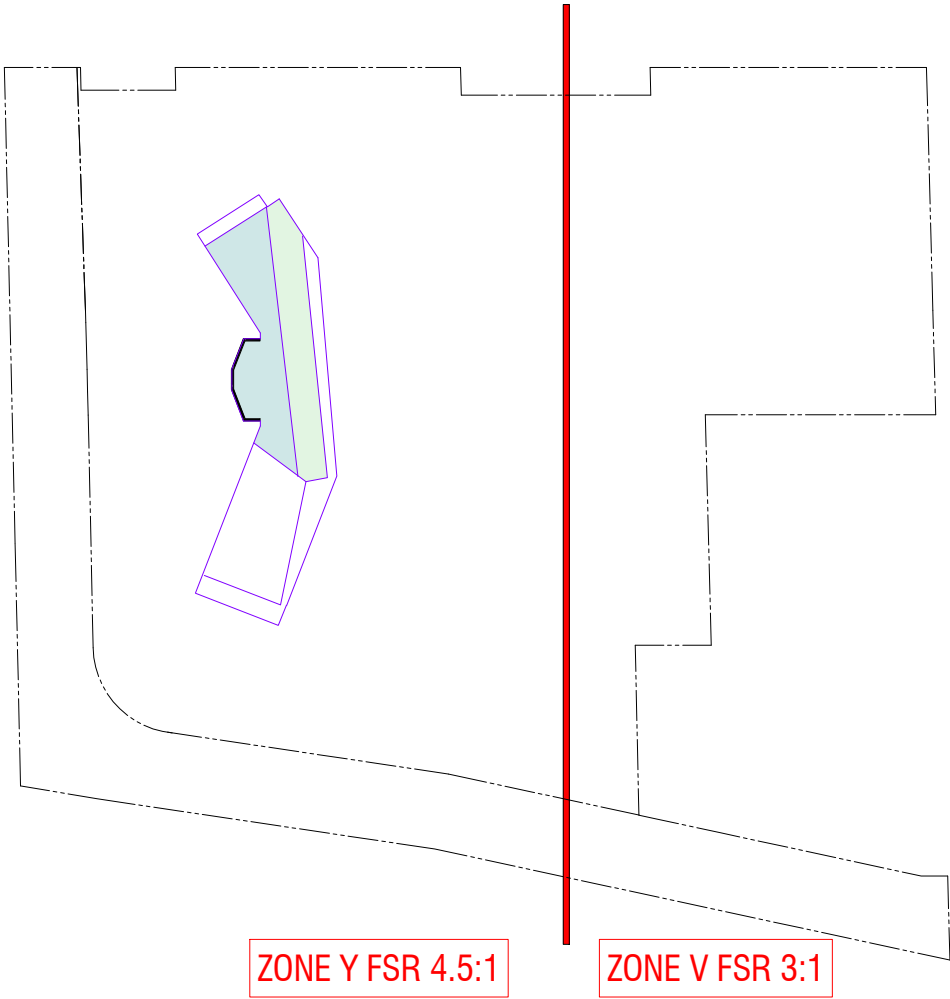
GFA LEVEL 17	
ZONE Y - FSR 4.5-1	
B.O.H	35 m²
CLUB USE	745 m²
OUTDOOR AREA	76 m²
TOTAL	856 m²

GFA CALCULATIONS L18 - L19 ROOF TOP

NTS @ A3



GFA LEVEL 18	
ZONE Y - FSR 4.5-1	
B.O.H	35 m²
CLUB USE	545 m²
OUTDOOR AREA	179 m²
TOTAL	759 m²



SK-02 AREAS LEVEL 19 ROOF...	
CLUB USE	188 m²
OUTDOOR AREA	147 m²
	335 m²