

COUNCIL ASSESSMENT REPORT

Panel Reference	2018SCL070
DA Number	BD.2015.193
LGA	Burwood
Proposed Development	CI 4.55 Modification application for the variation to an existing consent by the addition of an additional 2 stories (895m2 of floor space – 8 units) to the existing approved development under construction.
Street Address	39-47 Belmore St Burwood
Applicant/Owner	Applicant: Tom Hu - Kapau Holdings
Date of DA lodgement	4 June 2018
Number of Submissions	Two (2)
Recommendation	Approval subject to Conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	Original Development Cost Greater than \$30M – CI 4.55 (2) Application
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • BLEP 2012 • BDCP • Existing VPA, not affected • Privacy • Overshadowing
List all documents submitted with this report for the Panel's consideration	Architectural plans Architectural Design Report Waste Management Plan CI 115 Explanation of Amendments and Impacts Traffic & parking Report Section 4.55.Advice
Report prepared by	Planning Ingenuity (on behalf of Burwood Council)
Report date	21 September 2018

Summary of s79C matters

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

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? **Not Applicable**

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

CONTENTS

EXECUTIVE SUMMARY	3
BACKGROUND AND ASSESSMENT HISTORY	5
THE SUBJECT SITE AND CONTEXT	6
THE PROPOSED MODIFICATIONS	10
<i>VOLUNTARY PLANNING AGREEMENT (VPA)</i>	14
STATUTORY PLANNING FRAMEWORK	14
<i>Section 4.55 of the EP&A Act</i>	15
<i>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</i>	17
<i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>	22
<i>Burwood Local Environmental Plan 2012</i>	23
<i>Burwood Development Control Plan 2013</i>	31
CONSULTATION.....	34
<i>Internal Referrals</i>	Error! Bookmark not defined.
CONCLUSION	35

FIGURES

<i>Figure 1: Location of subject site within Burwood Town Centre</i>	6
<i>Figure 2: Portions of the site within “perimeter” and “middle ring” areas (site outlined in red)</i>	7
<i>Figure 3: Eastern portion of the site at corner of Belmore Road and Wynne Avenue</i>	8
<i>Figure 4: Southern part of the site fronting Belmore Street and retained Masonic Temple.</i>	8
<i>Figure 5: No.33-35 Belmore Street, east of the subject site at the corner of Belmore Street and Wynne Avenue</i>	9
<i>Figure 6: Panoramic view of the southern side of Belmore Street – south of the site</i>	9
<i>Figure 7: Panoramic view of development opposite the site in Conder Street</i>	10
<i>Figure 8: Modified east and west elevations (Approved height shown at red line)</i>	11
<i>Figure 9: Modified north elevation (Approved height shown at red line)</i> ..	12
<i>Figure 10: Modified south elevation (Approved height shown at red line)</i>	12
<i>Figure 11: Modified scheme compliant with height plane</i>	16

<i>Figure 12: Extract from approved landscaping plan DA-1225-01 G (Council owned site outlined in red).....</i>	<i>13</i>
<i>Figure 13: Extract from approved Level B1/Lower Ground Plan DA-109 P (Council owned site outlined in blue).....</i>	<i>14</i>
<i>Figure 14: Shadow analysis, 9am Winter Solstice.....</i>	<i>28</i>
<i>Figure 15: Shadow analysis, 9:30am Winter Solstice.....</i>	<i>29</i>
<i>Figure 16: Shadow analysis, 10am Winter Solstice.....</i>	<i>29</i>
<i>Figure 17: Shadow analysis, 12pm Winter Solstice.....</i>	<i>30</i>
<i>Figure 18: Shadow analysis, 3pm Winter Solstice.....</i>	<i>30</i>
<i>Figure 19: Extract from BLEP 2012 Floor Space Ratio Map.....</i>	<i>25</i>

ANNEXURES

Attachment 1 – Draft Conditions of Development Consent for BD193/2015

Property: 39-47 Belmore Street, Burwood
Lot 100 DP 1185255
DA No: BD 2015/193
Date Lodged: 31 May 2018
Cost of Work: \$2,924,463 (\$4.55(2) Works)
Owners: Kapau Holdings Pty Limited
Applicant: Kapau Holdings Pty Limited

APPROVED DEVELOPMENT	Mixed Use Development comprising four (4) level basement with capacity for 688 parking spaces, sixteen (16) commercial tenancies, Building A (11 storeys containing office floor space of 4,036m ² and 88 apartments), Building B (22 storeys containing 218 apartments) and Building C (19 storeys containing 184 apartments), alterations and re-use of the former Masonic Temple, landscaping and dedication of a publicly accessible through link between Hornsey Lane and Wynne Avenue
PROPOSED MODIFICATIONS	S4.55 (2) for the incorporation of an additional lot into the development site and additional 2 levels containing 8 units to the approved 22 storey building above basement parking
ZONE	B4 – Mixed Use zones.
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE	Yes – the proposal is best described as a mixed use development which comprises commercial premises, office premises and residential flat buildings. Each use is permissible with consent from Council.
IS THE PROPERTY A HERITAGE ITEM	The site contains a Heritage Item being the former Masonic Temple at No.47 Belmore Street listed as Item I8 in Schedule 5 to Burwood Local Environmental Plan 2012.
BCA CLASSIFICATION	Classes 2, 5, 6, 7a and 9b.
NOTIFICATION	11 July to 25 July 2018 – 2 submission received

EXECUTIVE SUMMARY

Council is in receipt of a Section 4.55 (2) modification to BD 2015/193 seeking consent for proposed modifications of an approved mixed use development to allow for the incorporation of an additional lot into the development site and additional 2 levels containing 8 units to Building B to provide an additional eight (8) units. The amalgamation of the small parcel of land bounded by the approved development site supplements the site area, such that, whilst there is an increase in gross floor area, the FSR is decreased by 0.01 to 4.76:1.

The site is known as Nos. 39-47 Belmore Street, Burwood and has a legal description of Lot 100 in DP 1185255, the site to be amalgamated is known as 47 Belmore Street and has a legal description of Lot 11, DP790324.

The Section 4.55 (2) modification is referred to the Sydney Eastern City Planning Panel (SECPP) for determination as the original DA was referred to the (former) Joint Regional Planning Panel (JRPP) for determination pursuant to Schedule 4A, of the (former) Environmental Planning and Assessment Act 1979 and Part 4 of the State Environmental Planning Policy (State and Regional Development) 2011, given the development had a capital investment value in excess of \$30 million.

Planning Ingenuity Pty Ltd, has been engaged by Burwood Council to provide the SECPP with an independent town planning assessment of this modification, 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.

The approved development will remain substantially the same development as a result of the proposed modifications in accordance with Section 4.55 of the Environmental Planning and Assessment Act 1979 (as amended) that will not result in adverse impacts on the amenity of neighbouring properties or the character of the area. The proposal does not materially alter the scheme, or introduce unacceptable impacts on amenity beyond those which have been assessed by Council previously.

Assessment of traffic, heritage, stormwater and waste management, public works, BCA Compliance, accessibility and landscaping has previously been carried out under the initial Joint Regional Planning Panel assessment (JRPP), where it was determined that the proposal was acceptable.

Accordingly it is considered that the application can be approved and a conditional development consent be issued in accordance with the draft Conditions included in Annexure A.

BACKGROUND AND ASSESSMENT HISTORY

Application to be amended

Development Application BD193/2015 was lodged on 22 December 2015, approval was granted on 20 November 2016 for:

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

The application has since been subject to the following modifications:

Approved on 12 May 2017: S96 approved for the modification of Building A of the approved development – Internal alterations to B2, B1/Lower Ground, Levels 1 & 11 (roof) extension of plant room to Building A, Alterations to Ground & Level 1 of Buildings B & C.

Approved on 14 May 2018: Modification of Condition 110 – Hours of Work

This current S.4.55 (2) (formerly known as S96(2)) application seeks to amalgamate a small parcel of land bounded by the development site and to allow for the construction of 2 additional levels on Building B to accommodate 8 extra residential units.

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

THE SUBJECT SITE AND CONTEXT

The subject site is located within the Burwood Town Centre. The site is bounded by Belmore Street to the south, Wynne Avenue to the east and Conder Street to the west. The site has a street address of Nos. 39-47 Belmore Street, and is legally described as Lot 100 in DP1185255. The site is a mostly rectangular shape and has a total area of 10,150 m². The lot to be amalgamated with the development site is legally described as 47 Belmore Street and is Lot 11 in DP790324 and has a site area of 213m². The approved development site is outlined in red and the site proposed to be amalgamated is outlined in blue Figure 1.



Figure 1: Location of subject site within Burwood Town Centre

Adjoining the northern-western corner of the site is a public laneway known as Hornsey Lane. The public laneway is 12.195m wide and approximately 50m long extending eastward from Conder Street.

The subject site is located in the south-western corner of Burwood Town Centre. Burwood Railway Station is approximately 300m walking distance to the north-east. 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 western portion of the site, being an area of 2,586m², is within the “perimeter area” to the Burwood Town Centre as described in the Burwood DCP. The remaining 7,563m² of the site is within the “Middle

Ring Area” of Burwood Town Centre (as shown in Figure 2). No.47 (the site to be amalgamated) is 213m² and is within the middle ring area.

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. The height and density controls aim to achieve a transition from the perimeter to the middle ring area. The planning controls intend to achieve decreasing height and density towards the perimeter so as to be compatible with lower scale development outside the town centre and to efficiently use the land within the centre.

The existing structures, with the exception of the heritage item I8 (the former Masonic Temple) have been demolished and construction is well under way as shown in the photographs of the site in Figures 3 and 4.

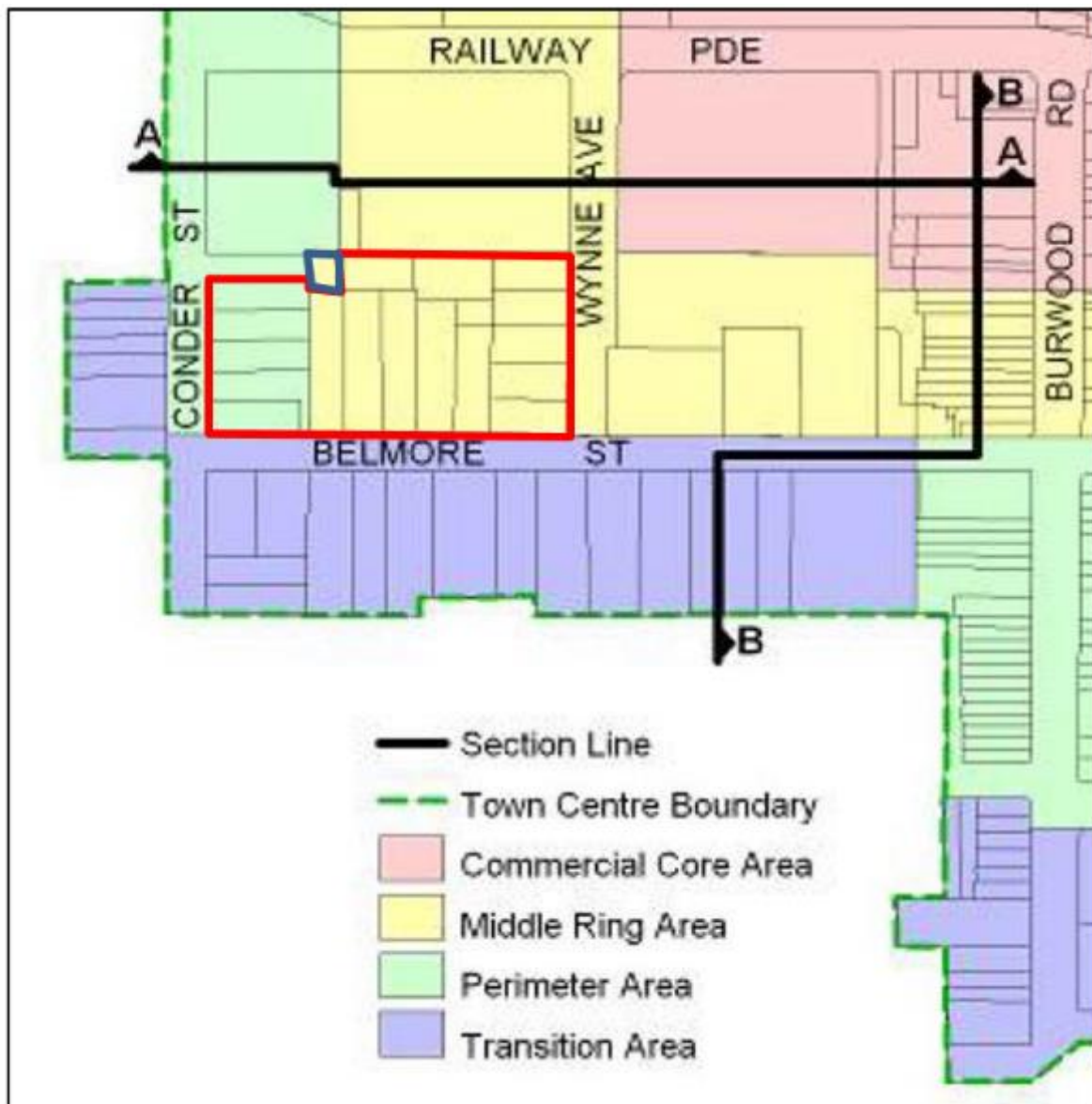


Figure 2: Portions of the site within “perimeter” and “middle ring” areas (site outlined in red)



Figure 3: Eastern portion of the site at corner of Belmore Road and Wynne Avenue



Figure 4: Southern part of the site fronting Belmore Street and retained Masonic Temple.

East of the site, at the intersection of Wynne Avenue and Belmore Street is Nos. 33-35 Belmore Street. On this site is a seven (7) storey mixed use development with retail uses at ground floor, residential uses above and a basement car park (see Figure 5). Adjoining this land is Nos. 27-31 Belmore Street to which Development Consent D89/2012 exists for a large scale, multi-storey mixed use development.



Figure 5: No.33-35 Belmore Street, east of the subject site at the corner of Belmore Street and Wynne Avenue.

On the southern side of Belmore Street are two and three storey buildings predominantly residential flat buildings, a church and church hall, and a vehicle repair centre near the south-eastern corner of the site. Construction of a mixed use development is almost complete at Nos. 44 Belmore Street. Further east along Belmore Street, the built form includes mixed uses with ground floor commercial uses and residential units above and building heights up to six (6) storeys. This area is identified as a 'Transition Area' under the Burwood DCP with a height limit of 15m. A panoramic photograph of buildings along the southern side of Belmore Street is included in Figure 6 below.



Figure 6: Panoramic view of the southern side of Belmore Street – south of the site

To the west of the site in Conder Street is a church, a five (5) storey residential flat building, several three (3) storey mixed use buildings, and a detached dwelling. On the north-western corner of the intersection of Conder and Hornsey Streets is Burwood Public School. A panoramic view of buildings in Conder Street is included in Figure 7 below.



Figure 7: Panoramic view of development opposite the site in Conder Street

North of the subject site is a public laneway known as Hornsey Lane which extends from Conder Street. On the northern side of the public laneway is the former Burwood Council Chambers building which is listed as Heritage Item I47 in Burwood LEP 2012 and now used as a public library.

THE PROPOSED MODIFICATIONS

The proposed modifications relate to the amalgamation of the Council Owned site at Lot 11 into the approved development site, to increase the site area by 213m², to a total site area of 10,362m². Furthermore, it is proposed to add 2 storeys at Building B, to provide 8 additional residential units/ or 895m² of additional GFA. The new units comprise 2 x 2 bedroom and 6 x 3 bedroom units.

Table 1 below provides additional details of the proposed modifications:

Building B	Gross Floor Area (GFA)	Net Change in GFA	Height of Building (HOB)	Net Change in HOB	Site Area	FSR (entire site)
Approved	36640m ²	-	72.37m		10,150 m ²	4.77:1
Proposed	37535m ²	895m ² (1.85%)	78.77m	6.4m (8.84%)	10,363 m ²	4.76:1

The proposed modifications to Building B can be seen at Figures 8 – 10 below.

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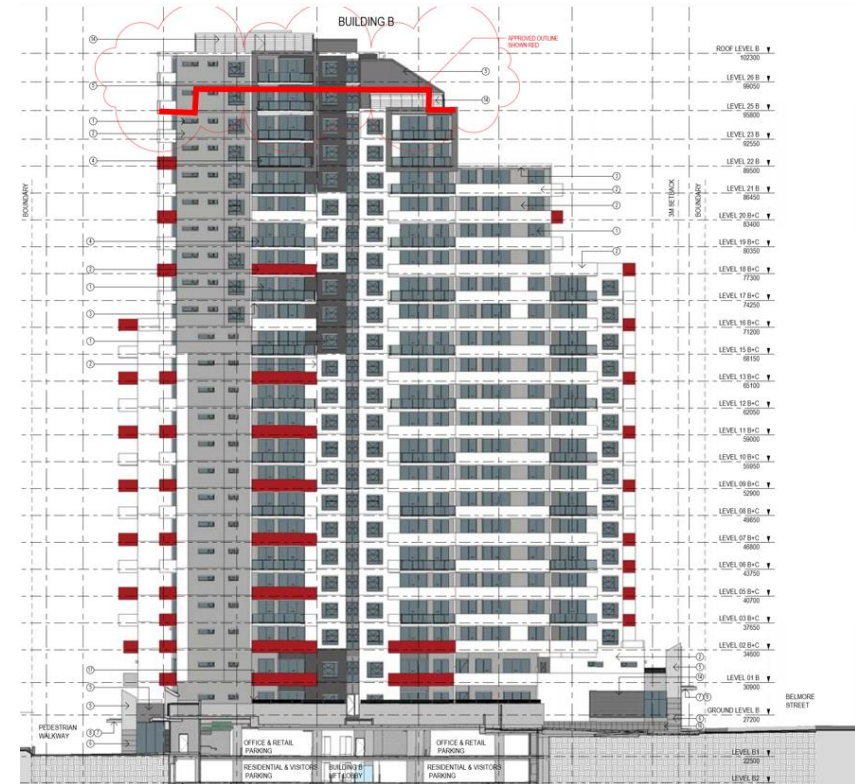
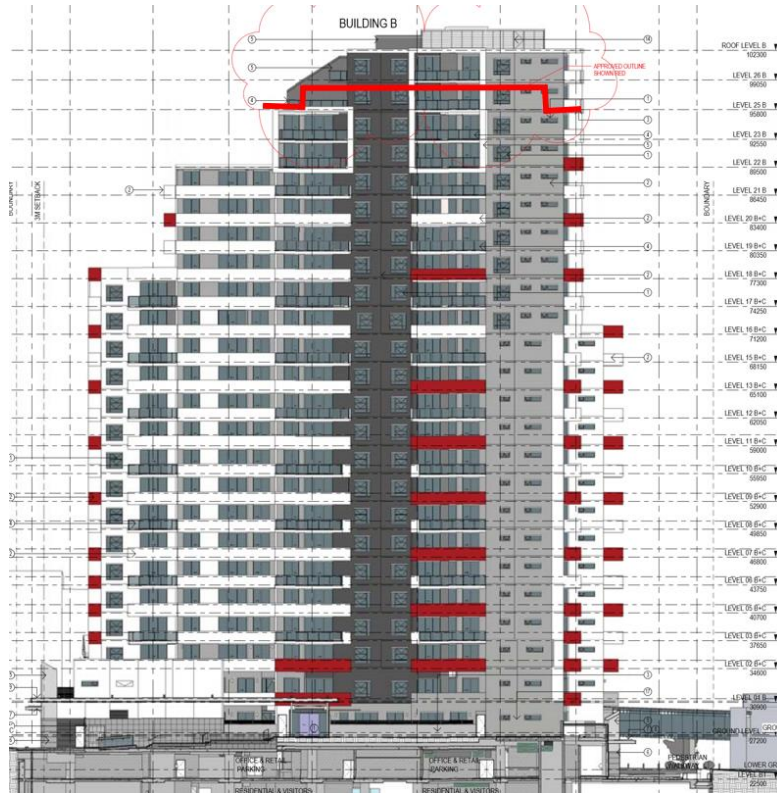


Figure 8: Modified east and west elevations (Approved height shown at red line)

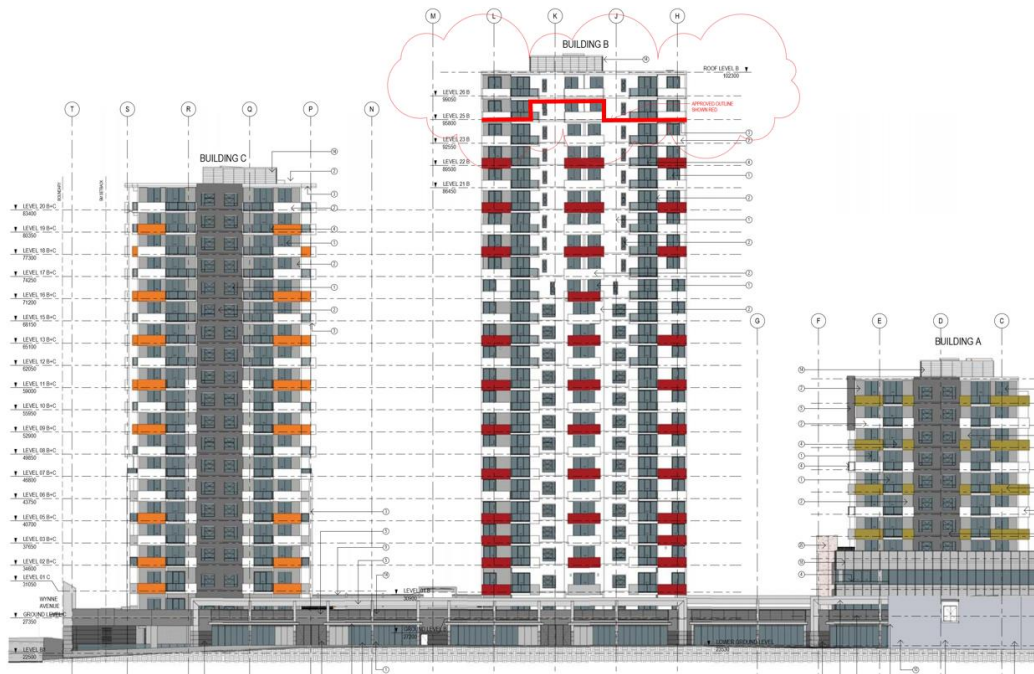


Figure 9: Modified north elevation (Approved height shown at red line)

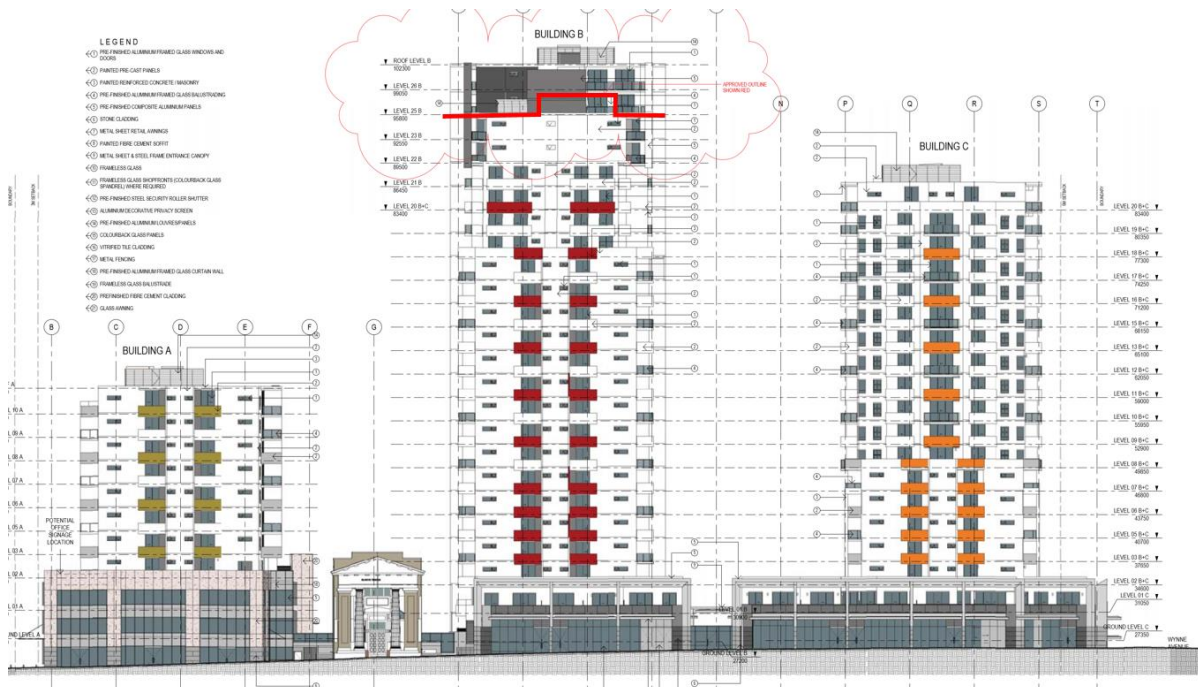


Figure 10: Modified south elevation (Approved height shown at red line)

Council Owned Land Amalgamation

The parcel of Council owned land to be amalgamated into the approved development site (known as 47 Belmore Street, Lot 11 in DP790324) was subject to landscaping works under a an approved modification application (Approved 17 May 2017).

The site is to be subject to simple hardstand and landscaping works as show in Figures 11 and 12 below. This modification does not seek to alter these approved plans.



Figure 11: Extract from approved landscaping plan DA-1225-01 G (Council owned site outlined in red)

VOLUNTARY PLANNING AGREEMENT (VPA)

Council's Contributions Officer has reviewed the proposed modifications and it is considered that although the VPA policy applies to the land, as the applicant is not seeking any floor space other than what would come with the normal controls applicable to the land there is no need for any VPA

STATUTORY PLANNING FRAMEWORK

- Environmental Planning and Assessment Act 1979 – S 4.55(2)
- State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Burwood Local Environmental Plan 2012; and
- Burwood Development Control Plan.

Section 4.55 of the EP&A Act

Under the provisions of Section 4.55 of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, the Consent Authority may only agree to a modification of an existing Development Consent if the following criteria has been complied with:-

- a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- b) it has consulted with any relevant public authorities or approval bodies, and
- c) it has notified the application & considered any submissions made concerning the proposed modification

Substantially the Same Development?

The proposed modifications are considered to result in a development that is substantially the same development as the approved development.

In regard to the amalgamation of Council owned land at Lot 11, 47 Belmore Street, this is capable of being characterised as 'substantially the same development'. In *Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333 (*Scrap Realty*), Preston CJ in the NSWLEC heard a merit appeal in relation to an application to modify a development consent under s 96(2) to expand the development for which consent was originally granted to adjoining land not subject to the original consent.

The commissioner found the following:

18...Development cannot be approved in abstract, isolated from the land to which it relates. The development and the land on which the development is carried out are indivisible. However, this does not preclude the consent being modified to extend the development approved by the consent to other land. This still entails a modification of the consent — it alters the description of the land to which the consent applies so as to permit the carrying out of development on that land as well

19. As far as the condition precedent is concerned, the alteration is of 'the development' — it expands the area on which development is carried out. There obviously will be questions of fact and degree in ascertaining whether the development before and after modification can be said to be substantially the same. Nevertheless, an expansion of the area on which development is carried out by adding land not the subject of the original consent is not inherently outside the concept of modification of the development under s96.

The modification would see the small parcel of Council owned land incorporated into the development site, however, there would be no extension of the footprint of the building. In respect to issue of the amalgamated land, the development remains substantially the same as it does not radically transform or materially alter the original proposal, the footprint will not change and the land will be incorporated onto the development site appropriately (details of which will be conditioned).

With respect to the additional 2 levels on Building B, this is also considered to be substantially the same development as that which has been approved.

Quantitatively, the increased GFA is 895m² which amounts to a 1.85% increase over the approved GFA. The increased HOB is +6.4m or 8.84% over the approved HOB. These numeric changes are,

given the scale of the development, considered to be minor in nature and do not affect the overall impact of the development. Nor does it materially change the land use or intensity of the development beyond what has originally been approved.

Qualitatively, the additional height and bulk has been distributed in a recessive form that is not overly visible from the immediate vicinity of the site, and it is distributed below the 330 DCP southern height plane, as shown in Figure 13 below.

Whilst the 60m height place is breached, the 330 height plane is complied with to step the additional levels back. The 60m height limit breach was considered acceptable under the previous approval and it is considered that the additional 2 storeys does not introduce any additional impacts beyond what was previously assessed.



Figure 08: Building Height Planes - Buildings B



Figure 09: Building Height Planes - 3D Section

Figure 13: Modified scheme compliant with height plane

The objectives of the Height of Building control (Clause 4.3 of Burwood LEP) are:

- (a) to establish the maximum height of buildings to encourage medium density development in specified areas and maintain Burwood's low density character in other areas,
- (b) to control the potentially adverse impacts of building height on adjoining areas.

The modified building height is consistent with these objectives. The assessment of the approved scheme identified that 'Tall, slender towers with a longer north-south axis are more appropriate for the site than lower, broader towers and facilitating this massing through increased building height which is also compliant with the building height plane control is considered acceptable in the circumstances'.

The additional storeys enhance the slenderness of the tower whilst having minimal amenity impacts (see 'Amenity Impacts' section of this report) and complying with the height plane.

The proposed modifications do not alter the staging or construction of the development nor do they affect an aspect of the development that was important, material or essential to the development when it was originally approved.

The development is therefore considered to be substantially the same as that which was approved.

Consultation with Other Approval Bodies or Public Authorities

The development is not integrated development or development where the concurrence of another public authority is required.

Notification and Consideration of Submissions:

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the BDCP. Council received 2 submissions from landowners of properties near the development. The submissions raised issue with further high rise development in the Burwood Town Centre and further development on the site. The lack of greening that needs to go with the additional development and accordingly opposed any additional height and FSR for the development.

In response to the submissions it is sufficient to say that the additional floor space has little, if any impact upon the visual appearance of the building and that development proposes substantial areas of open space between 2 of the towers, preserves the heritage item which is the Masonic Hall and has provided a through site link walkway which is dedicated for public access on the northern side of the building. Additionally the site is now acquiring an additional parcel of land that has its own development potential and the overall FSR is actually being reduced, although marginally.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

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 approved application verifying that they designed, or directed the design of, the development. The statement also provided an explanation that to verify how the design quality principles are achieved within the development and demonstrated, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The proposed modification does not substantially alter the design of the development, however as Design Verification Statement and assessment against the design criteria within the ADG has been included with the application.

The Design Quality Principles as described in SEPP 65 are not impacted by the proposed S4.55 modification application to add 2 additional levels.

The modifications are assessed against the ADG Design Criteria below in Table 2, the majority of criteria are not impacted by the application. However, where changes arise they are referred to.

Table 2: SEPP No. 65 Apartment Design Guide (Design Criteria) - Compliance Table

DESIGN CRITERIA	PROPOSAL	COMPLIES
Part 2: Development Controls		
Building Depth Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line	<u>North-South dimensions</u> Building A - 53.5m Building B - Level 2 to Level 17 52m - Levels 18 to 21 45m - Levels 22 and 23 33m Building C - To level 7 52m - Level 8 to Level 20 47.5m <u>East-West Dimensions</u> Building A - 19m to 22m Building B - 19m to 27m Building C - 19m to 22m	No change to approved, additional levels are set back from the building edges and do not contribute to building depth.
Building Separation		

DESIGN CRITERIA	PROPOSAL	COMPLIES
<p>Minimum separation distances for buildings are:</p> <p>Up to 4 storeys: 12m (Habitable) 9m (habitable/non-habitable) 6m (non-habitable) No separation is required between blank walls.</p>	<p>Building A to Building B</p> <ul style="list-style-type: none"> - Minimum 20.5m - Maximum 26m <p>Building B to Building C</p> <ul style="list-style-type: none"> - Minimum 24m - Maximum 28m 	<p>No change to approved, tower footprint and building separation are not impacted by the additional levels.</p>
Part 3 Siting the development Design criteria/guidance		
<p><u>Communal and Public Open Space</u></p> <p>Communal open space has a minimum area equal to 25% of the site.</p> <p>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)</p>	<p>The proposal provides a total of 22.66% (2,300m²) of the site area as common open space.</p> <p>More than 50% of the two principle areas of communal open space receive >2hours sunlight in mid-winter due to its northerly aspect and building separation being greater at the northern edge of the communal open space areas.</p>	<p>No change to approved development.</p>
<p><u>Deep Soil Zones</u></p> <p>Deep soil zones are to meet the following minimum requirements:</p> <p>Site area greater than 1,500m² = 7%</p> <p>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.”</p>	<p>The proposal has close to 100% site coverage. Alternative forms of planting include deep planter beds on the podium level will contain soil depths of between 0.6m and 1.2m and will be capable of supporting the long term growth of small canopy trees. Street trees are also proposed along the Conder and Belmore Street frontages. Planter beds along the northern pedestrian through link will include small canopy trees.</p>	<p>No change to approved development.</p>

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"> Up to 12m (4 storeys) 6m (habitable) / 3m (non-habitable) Up to 25m (5-8 storeys) 9m (Habitable) / 4.5m (non-habitable) <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>All separation distances between apartments are compliant with the exception of the separation between the north-eastern corner of Building A and north-western corner of Building B.</p> <p>The building separation distances between Buildings A and B vary from 20.4m to 25.1m.</p> <p>The distance between the north-eastern corner of Building A and north-western corner of Building B is 20.4m. However, the interface between the buildings is a predominantly blank wall of Building A facing a part of the wall in Building B with small, high sill windows to a bedroom and bathroom in Building B at each level. The primary orientation of rooms at these corners is to the north and not towards each other and for these reasons the proposed separation is acceptable.</p> <p>The distance between the mid-section of the articulated western elevation of Building B and the eastern elevation of Building B ranges from 23.2m and 25.1m.</p>	<p>No change to approved development. Building separation is unaffected.</p>
<p><u>Car parking</u></p> <p>For development in the following locations:</p> <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station; or within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre, <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>Yes, development provides an excess above the required parking levels.</p>
<p>Solar Access and Daylight</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 as follows:</p> <p>Building A = 72%</p> <p>Building B = 73%</p> <p>Building C = 71%</p> <p>Single southerly aspect apartments:</p>	<p>Yes. Within building B (subject to the modification) 73% of dwellings will received compliant solar access (improvement upon the approved 70%).</p>

DESIGN CRITERIA	PROPOSAL	COMPLIES
<ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 		
<p>Private Open Space</p> <p>All apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> • Studio - 4m² • 1 Bedroom - 8m² (Minimum depth of 2m) • 2 Bedroom - 10m² (Minimum depth of 2m) • 3 Bedroom - 12m² (Minimum depth of 2.4m) 	<p>Compliant or exceed minimum.</p> <p>Additional units provide minimum:</p> <p>2 bedroom – 12m² (minimum depth 2.8m) 3 bedroom – 17m² (minimum depth 2m)</p>	<p>2 bedroom units comply</p> <p>3 bedroom unit's non-compliant depth considered acceptable. This is consistent with the approved scheme, and exceeds the minimum open space area. 2m depth is nonetheless a useable area.</p>
<p>Common Circulation Space</p> <p>The maximum number of apartments off a circulation core on a single level is 8.</p>	<p>There is a maximum of 11 units per level in Building A that share a circulation core consisting of two lifts.</p> <p>There is a maximum of 13 units on Level 1 of Building B that share a circulation core consisting of 3 lifts. This is reduced to 11 units from level 2 and above.</p> <p>There is a maximum of 14 units on Level 1 in Building C that share a circulation core consisting of 3 lifts. This is reduced to 11 units from level 2 and above.</p> <p>The ratio of units to lifts is appropriate to the scale of the development and will not be detrimental to the accessibility, function and amenity provided by the common circulation space.</p>	<p>No change to approved development. The additional levels comprise of 4 units per storey.</p>
<p>Storage</p> <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> • Studio - 4m² • 1 Bedroom - 6m² • 2 Bedroom - 8m² • 3 Bedroom - 10m² <p>At least 50% of the required storage is to be located within the apartment</p>	<p>The majority of apartments have compliant storage within the apartments and within basement storage units. All apartments have some storage. The capacity of storage space within the basement can be increased. Conditions are recommended for a detailed schedule of storage capacity per unit be submitted with the Construction Certificate to verify compliance with the ADG requirements.</p>	<p>Subject to recommended conditions.</p>

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.

BASIX Certificates have been submitted for the additional units which demonstrate compliance with the requirements of the Policy.

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 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 office and commercial uses and high density residential uses that are compatible with the location of the site within the Burwood Town Centre. The proposed modification does not impact upon the proposed land uses and is entirely consistent with the aims of the LEP.

Clause 4.3 Height of Buildings

Clause 4.3 prescribes a maximum building height of 30m for the western portion of the site and 60m for the eastern portion of the site as shown in Figure 13. The approved and modified height of building B in related to LEP height controls is summarised as follows:

Table 3: Required building height and proposed variations

Building	LEP Height Control	Approved Building Height	Approved Variation to Control	Proposed (Modified) building height	Proposed variation to approved height
Building B	60m	72m	20%	78.77m	6.4m (8.12%)

The site is also subject to a building height plane control in accordance with Clause 4.3A. The additional storeys proposed on Building B are fully compliant with the building height plane controls as demonstrated in Figure 11 in the ‘Substantially the Same Development?’ section above.

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 previously approved application. That request was considered to be well founded and acceptable.

A Clause 4.6 variation only applies when a development application is made and not when a S4.55 modification is made. This is established in the Land and Environment Court case: *North Sydney Council v Michael Standley & Associates Pty Ltd [1998]*. Section 4.55(3) of the Environmental Planning and Assessment Act 1979 still requires the consent authority to take into consideration the matters referred to in Section 4.15 (1), which in turn include the provision of any environmental planning instrument. Therefore a merits assessment is made below against Clause 4.3 of the BLEP in relation to the building height development standard

Clause 4.4 – Floor Space Ratio (FSR)

Clause 4.4 to BLEP 2012 prescribes maximum floor space ratios of 3:1 for the western portion of the site and 4.5:1 for the eastern portion of the site as shown in Figure 18. In addition to the total FSR control in Clause 4.4, Clause 4.4A prescribes a maximum proportion of floor space to be used for residential accommodation within the Core and Middle Ring of the town centre. The maximum portion of floor space for residential use in the eastern portion of the site (within Area 2) is 3:1.

The approved FSR and that of the modified scheme calculated in Table 4 below:

Table 4: Summary of LEP Floor Space Ratio controls

CONTROL PROVISION	APPROVED – NUMERICAL REQUIREMENT/PROVISION	MODIFICATION NUMERICAL REQUIREMENT PROVISION	VARIATION ON APPROVED SCHEME
Area of site within Perimeter Area	2,586m ²	2,586m ²	-
Area of site within Middle Ring Area	7,563m ²	7,776m ²	+ 213m ²
Maximum FSR in BLEP 2012 for Perimeter Area	3:1 (equivalent to 7,758m ² GFA)	3:1 (equivalent to 7,758m ² GFA)	-
Maximum FSR in BLEP 2012 for Middle Ring Area	4.5:1 (equivalent to 34,033.5m ² GFA)	4.5:1 (equivalent to 34,992m ² GFA)	+ 959m ²
Maximum FSR for residential use in Middle Ring Area	3:1 (equivalent to 22,689m ² GFA)	3:1 (equivalent to 23,328m ² GFA)	+ 639m ²
Total maximum GFA under BLEP 2012 for entire site	41,792m ²	42,750m ²	+958m ²
Maximum bonus FSR under Bonus Policy for Middle Ring Area	10% of 4.5:1 = 0.45:1 (equivalent to 3,403m ² GFA)	10% of 4.5:1 = 0.45:1 (equivalent to 3,499m ² GFA)	+96m ²
Maximum GFA for residential use in Middle Ring Area under BLEP plus Bonus Policy	22,689m ² + 3,403m ² = 26,092m ²	23,328m ² + 3,499m ² = 26,827m ²	+735m ²
Maximum total FSR under BLEP 2012 plus Bonus Policy for Middle Ring Area	4.95:1 (equivalent to 37,437m ² GFA)	4.95:1 (equivalent to 38,491m ² GFA)	+1054m ²
Maximum total GFA under BLEP 2012 plus Bonus Policy for entire site	45,195m ²	46,249m ²	+1054m ²
Proposed GFA - entire site	48,461m ²	49,356m ²	+895m ²
Proposed FSR - entire site	4.77:1	4.76:1	-0.01:1

CONTROL PROVISION /	APPROVED – NUMERICAL REQUIREMENT/PROVISION	MODIFICATION NUMERICAL REQUIREMENT / PROVISION	VARIATION ON APPROVED SCHEME
Proposed GFA exceedance to the BLEP 2012 GFA	6,669m ² (variation of 15.96%)	6,606m ² (variation of 15.45%)	-63m ² (0.51%)
Proposed GFA exceedance to the BLEP 2012 GFA plus Bonus Policy	3,266m ² (variation of 7.23%)	3,107m ² (variation of 6.7%)	-159m ² (0.53%)
Proposed GFA within Perimeter Area	11,821m ² (exceedance to BLEP 2012 of 4,063m ² and variation of 52.37%)	11,821m ² (exceedance to BLEP 2012 of 4,063m ² and variation of 52.37%)	-
Proposed FSR within Perimeter Area	4.57:1 (exceedance of 1.57:1 and variation of 52.3%)	4.57:1 (exceedance of 1.57:1 and variation of 52.3%)	-
Proposed GFA within Middle Ring Area	36,640m ² (exceedance to BLEP 2012 of 2,607m ² and variation of 7.6%)	37,535m ² (exceedance to BLEP 2012 of 2,543m ² and variation of 7.2%)	+895m ²
Proposed FSR within Middle Ring Area	4.84:1 (exceedance to BLEP 2012 of 0.34:1 and variation of 7.6%)	4.8:1 (exceedance to BLEP 2012 of 0.3:1 and variation of 6.6%)	-0.03:1
Proposed FSR for residential use within Middle Ring Area	4.62:1 (exceedance to BLEP 2012 of 1.62:1 and variation of 54%)	4.74:1 (exceedance to BLEP 2012 of 1.64:1 and variation of 54%)	+0.12:1

The total permissible GFA under BLEP 2012 over the entire site following amalgamation of the additional land is 42,750m². The proposed total GFA for the entire site following the modifications is 49,356m². The difference between these two GFA amounts is 6,606m². The exceedance as a percentage of the maximum permitted GFA for the entire site is equivalent to 15.45%.

This is an improvement on the approved figures as the additional land allows for extra GFA to be attributed the development site. The exceedance therefore reduces from 15.96% to 15.45% under the modified scheme.

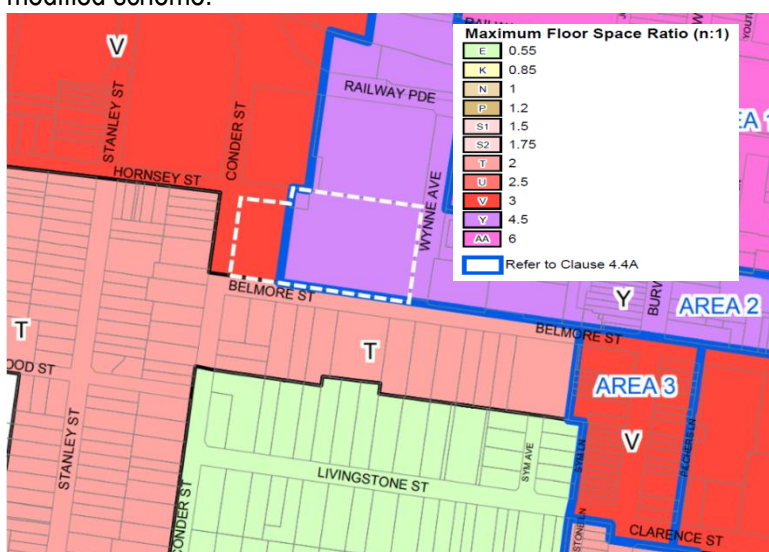


Figure 14: Extract from BLEP 2012 Floor Space Ratio Map

The applicant submitted a variation request pursuant to Clause 4.6 in respect of this non-compliance with FSR controls with the previously approved application. That request was considered to be well founded and was acceptable to Council.

The modified scheme includes additional site area along with additional GFA. Although still an exceedance, the non-compliance is now less than the approved scheme.

Clause 4.6 – Exception to Development Standard

The proposed modifications that will result in a breach to the maximum permitted building height (60m) pursuant to the BLEP and the maximum FSR equivalent to 15.45%. As stated above, a Clause 4.6 variation only applies when a development application is made and not when a S4.55 modification is made. Therefore a merits assessment is made below against Clause 4.3 of the BLEP in relation to the building height.

Variation to Height

The objectives of the height clause are as follows:

- (a) to establish the maximum height of buildings to encourage medium density development in specified areas and maintain Burwood's low density character in other areas,*
- (b) to control the potentially adverse impacts of building height on adjoining areas.*

The proposed design provides a high density development in the Burwood Town Centre. The large development site (now proposed to be increased) has permitted the site to be approved for a high density development whilst minimising potential impacts of overlooking and overshadowing. An assessment of against impacts to neighbouring land in terms of visual bulk, loss of privacy, views, and overshadowing is provided below under separate headings.

Visual Bulk and Urban Design Consideration

GMU architects were engaged to provide independent urban design advice on the proposed modifications. In providing the following advice, they took into consideration the original information provided by the applicant, additional view analysis, meetings with the Applicant and Council's representatives and considered the structural advice provided by Ali Yazici from Van Der Meer Consulting, the Applicant's structural engineer.

GMU's comments on the development are as follows:

GMU consider that the overall massing of the existing approval is already significant. Therefore, an additional two storeys is not considered to alter the nature of the proposal.

Additional information received with regard to the planning proposal for No. 42-60 Railway Parade – Burwood Place suggests that the future desire character of the area is going to undergo a significant

change, especially with regards to height, thus requiring a contextual approach and analysis when assessing the proposed modifications.

Distant views from Conder Street Looking south-east were previously considered to be an important vantage point due to its open nature above the existing heritage library (former town hall), where the current proposal would have featured prominently. Whilst Building B will still be readily visible on approach from this general direction, it will not constitute the most prominent built form in the vicinity of the heritage item. This is confirmed by View Location 32, 33 and 34 of the 'Visual Impact Assessment' by Architectus dated June 2018 included as part of the planning proposal documentation for No. 42-60 Railway Parade – Burwood Place. Whilst, the additional two storeys would still be visible, they will not be seen in contrast to Building C in the background as Building C will be blocked from this vantage point by a much taller tower on the 42-60 Railway Parade site.

The planning proposal for 42-60 Railway Parade is progressing and has been referred for 'gateway determination'. Whilst the Applicant did offer some structural justifications for their inability to move one partial level to Building C, this did not influence the opinion of GMU as the overall future character and scale to the north is a more decisive factor.

The proposal in its current form is acceptable from an urban design point of view and as stated before, the proposal does not present any major issues with regards to internal amenity

Privacy

Given the height of the building and that the proposed units would be set in at high level there are not considered to be any additional overlooking caused by the modification.

Loss of Privacy

There will be no impacts to the privacy of surrounding properties as a result of the proposed height increase.

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. Therefore a merit based assessment was carried out of the approved development and it was found to be acceptable given the dense nature and emerging character of the Burwood Town Centre.

The additional winter shadow impacts for properties to the immediate east, south and west (on Wynne Avenue, Belmore and Conder Streets) are generally negligible; however, in the early morning properties to the further south west along Conder Street will have minor additional shadow impacts. Shadow diagrams have been prepared and demonstrate that at 9:30am on the winter solstice the duration of the additional impact would be less than half an hour for the properties along Conder Street.

The shadow diagrams are shown below at Figures 14 – 18.

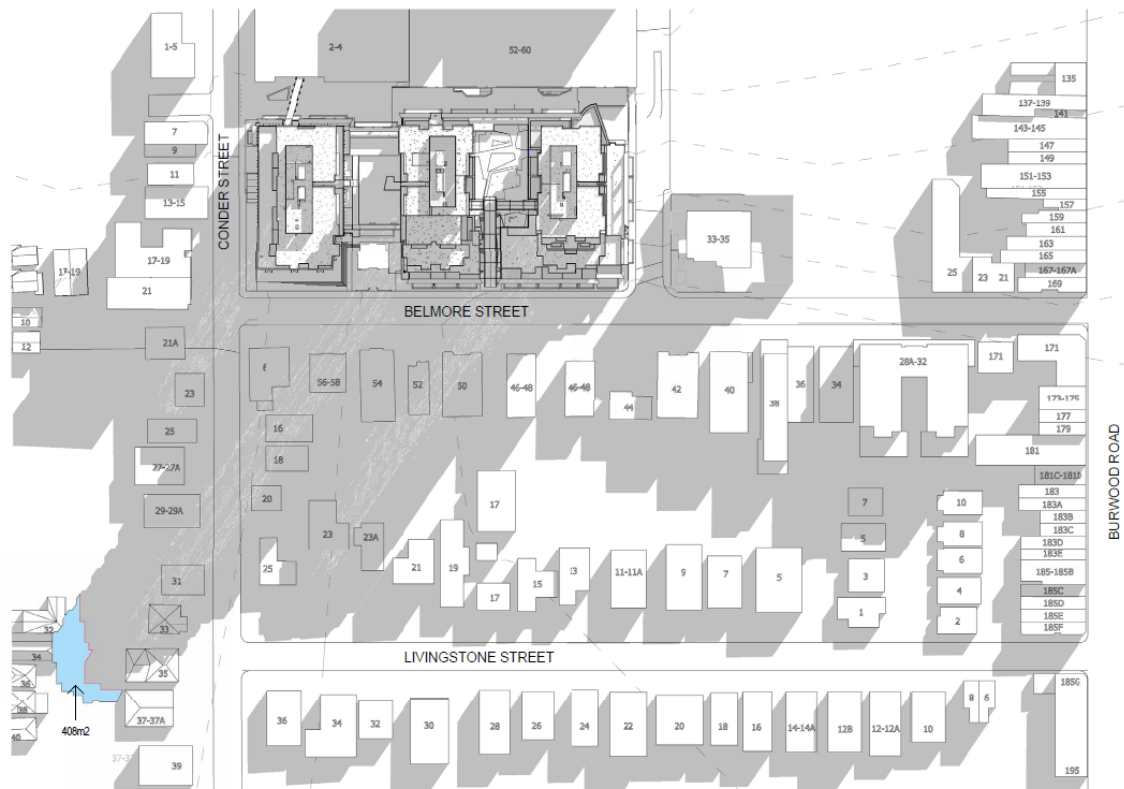


Figure 15: Shadow analysis, 9am Winter Solstice



Figure 16: Shadow analysis, 9:30am Winter Solstice



Figure 17: Shadow analysis, 10am Winter Solstice



Figure 18: Shadow analysis, 12pm Winter Solstice



Figure 19: Shadow analysis, 3pm Winter Solstice

At 9.00am the additional shadow impact of 408m² falls into the backyards of Nos.32, 34, 36, 37 and 37A Stanley Street. Due to the slender form of the proposed additional levels on Building B, the shadows move quickly and by 9.30am have moved clear of these areas.

After 9:30am the previous shadow of 408m² has moved considerably, creating shadows mostly on the roofs of No. 29, 29A and 31 Conder Street. By 9.45 the shadows fall on the street and by 10am are on the opposite side of the street.

At 10am the additional shadow impact is minor as it is predominantly cast on the roof of No. 23 and 25 Livingstone Street, amounting to approximately 63m² of additional shadow falling on the street and various building.

By 12pm the additional shadow impact is very minor as it is mostly cast on the roof of No. 17 Livingstone Street, amounting to approximately 35m² of additional shadow.

By 3pm the additional shadow impact is cast mostly on to the garden and roof of No. 6 and 8 Sym Avenue.

The additional shadow impact is considered negligible and of a similar impact to that which was assessed previously. The shadow is fast-moving through the day with no individual property affected for a significant period of time. Therefore the modification is considered acceptable in terms of overshadowing.

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 for the entire development was thoroughly assessed under the previous approval. Relevant Clauses to the proposed modifications are summarised in Table 5.

Table 5: Relevant provisions of Burwood Development Control Plan

Control	Requirement	Proposed	Complies
2.2 Site Analysis	To be submitted with Development Application	Provided within Section 2 to the Architectural Design Report	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 additional 2 storeys will not impact upon any significant views and vistas too, from, or over the site. They would be setback appropriate to reduce visual impact.	Yes
3.2.1 Design Excellence	Represent architectural design excellence by: <ul style="list-style-type: none"> - Form and external appearance to improve the quality and amenity of the public domain - building elements and finishes to reflect use and structure 	The modified design has been assessed by GMU and found to be satisfactory.	Yes

Control	Requirement	Proposed	Complies
	<ul style="list-style-type: none"> - Respond positively to the environmental context - Considering development potential for adjoining sites 		
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 for each building has been assessed by GMU and determined to be satisfactory.	Yes
3.2.8 Apartment Mix and Minimum Dwelling Sizes	<p>Residential development in excess of 20 dwellings must provide a mix of dwellings containing 1, 2 or more bedrooms</p> <p>All residential developments must provide the following minimum apartment sizes: Studio 40m² One bedroom apartment 50m² Two bedroom apartment 70m² 3+ bedroom apartment 95m²</p>	<p>The additional units comprise: 2 x 2 Bedroom 6 x 3 Bedroom</p> <p>Complies.</p>	<p>Yes</p> <p>Yes</p>
3.2.10 Ceiling Height	Residential floors above ground level 2.7m habitable rooms and 2.4m non-habitable rooms	Minimum 2.7m.	Yes
3.2.11 Natural Ventilation	Refer to ADG compliance table	Complies.	Yes
3.2.12 Daylight Access	Refer to ADG Compliance table	Complies.	Yes
3.2.13 Visual and Acoustic Privacy	<p>Maximise visual privacy between the development and adjacent sites</p> <p>Privacy provisions should not compromise natural light and air</p>	Refer to ADG Compliance table above regarding apartment separation.	Yes
3.2.14 Private Open Space	<p>All dwellings to have direct access to a primary area of private open space from the main living room</p> <p>Primary open space of dimensions to promote outdoor living suitable for outdoor table and chairs</p> <p>Minimum dimensions: 1 bedroom – minimum depth 2m and minimum area 8m²</p>	<p>All dwellings have private open space directly accessible from the open plan living room.</p> <p>Private open space areas are suitable for outdoor tables and chairs proportional to the size of each apartment.</p> <p>Complies.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

Control	Requirement	Proposed	Complies
	<p>2 bedrooms – minimum depth 2.5m a minimum area 8m²</p> <p>3 or more bedrooms – minimum depth 2.5m and minimum area 10m²</p> <p>Private open space which responds to site conditions and integrated with the building design</p>		
3.2.16 Storage for apartments	<p>Refer to ADG compliance table above.</p> <p>At least 50% of the storage area to be provided within the dwelling</p> <p>At least 25% of storage area accessible from active areas</p>	Storage provisions have been assessed in accordance with the Design Criteria of the ADG and conditions are recommended for adjustments to storage provisions to be verified with the Construction Certificate.	Yes subject to conditions.
3.3.2. Burwood Town Centre 3.3.2.1 Building Height Plane	Height of buildings not to exceed the building height plane	The proposal complies with the Building Height Plane and the proposed variations to building height controls pursuant to Clause 4.6 to the BLEP 2012 have been evaluated in the previously approved application. A merit based assessment has been undertaken and no significant adverse impacts have been identified from the additional 2 storeys	On merit
3.7 Transport and Parking in Centres 3.7.2 Burwood Town Centre	The ADG prevails	See assessment comments under the subheading of On Site Parking above.	Yes
3.8 Heritage in Centres and Corridors	<p>Heritage Impact Statement required</p> <p>Adaptive re-use to retain significant internal and external fabric</p> <p>Retain appropriate setting for continued appreciation of integrity</p> <p>Ensure heritage item is not visually obscured or adversely altered</p> <p>Setbacks to achieve sight lines for significant buildings</p>	The Heritage Impact Assessment submitted with the approved development application was assessed by Council's Heritage Officer and determined to be satisfactory. The proposed modification does not impact upon the setting or character of the heritage item.	Yes

The approved development complies with most of the relevant provisions of Burwood DCP and where minor departures to numerical controls result, sufficient justification was provided. The proposed modification has been assessed against relevant DCP controls and is consistent with the objectives of

the DCP. The modified scheme is substantially the same development of that which has been approved.

Traffic and Parking

Transport and Traffic Planning Associates have prepared an Assessment of Traffic and Parking Implications of the proposed modification.

The approved development has regard for Burwood DCP parking rates and provides 688 spaces for the entire development, of which 597 are allocated to residents. However, the Apartment Design Guide now prevails over the DCP and has lower parking requirements for developments of this nature. The ADG itself reverts to parking requirements under the RMS Development Guideline study for 'High density residential apartments'.

When the ADG requirements are applied to the development including the additional 8 units, a requirement of 541 spaces is arrived at:

Minimum Parking Provision:
One Bed - 0.6 spaces
Two Bed - 0.9 spaces
Three Bed - 1.4 spaces
Visitors - 1 space per 5 apartments

63 x Studio/One Bed - 38 spaces
413 x Two Bed - 372 spaces
22 x Three Bed - 31 spaces
Visitors (498) - 100 spaces
Total - 541 spaces

As an excess of spaces are being provided for residential use the proposed modification will have no impacting on parking provision within the development.

The assessment also concludes that the modified scheme will only generate a totally imperceptible quantum of additional traffic movements that will not have adverse traffic impacts.

Both parking provision and traffic generation of the modification are therefore acceptable and result in substantially the same development as approved.

CONSULTATION

Urban Design Consideration

As detailed above GMU architects were engaged to provide independent urban design advice on the proposed modifications. Their comments are provided under the heading “Visual Bulk and Urban Design Consideration.”

CONCLUSION

The proposed modifications will result in a development that is substantially the same as the approved mixed use scheme under BD 2015/193. The amalgamation of a small parcel of land into the main development site results in a better planning outcome, given the site would effectively be isolated. The proposed modification does not result in an enlarged development footprint and the small parcel of land will be incorporated with appropriate landscaping.

The amended variation to the height of the roof to provide two additional storeys and eight more residential units is considered justified due to clear compliance with the objectives of the relevant standard and compliance with the southern height plane. The increased height would not introduce any adverse amenity impacts beyond those already assessed under the approved scheme and would not impacting upon the heritage listed Masonic Temple or the streetscape. The proposal remains consistent with the approval in terms of DCP performance and ADG compliance.

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