

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC-137
DA Number	DA.2021.44
LGA	Burwood
Proposed Development	Demolition of the existing structures and the construction of a mixed-use development known as 'Burwood Place' comprising five (5) towers above a three-storey podium with 1,041 residential units, 30,044sqm of non-residential gross floor area for retail, commercial, child care and entertainment/cinema uses, 6-7 levels of basement parking with 1,757 car parking spaces, and public domain areas.
Street Address	42-50 and 52-60 Railway Parade, Wynne Avenue and Clarendon Place, Burwood
Applicant/Owner	Applicant: Burwood Tower Holdings Pty Ltd. Owner: - Wynne Ave Property Pty Limited (42-50 and 52-60 Railway Parade) - Burwood Council (Wynne Avenue and Clarendon Place) - Burwood Council (public road between Wynne Avenue and 42-50 Railway Parade)
Date of DA lodgement	05 May 2021
Number of Submissions	50 and a petition supported by 308 signatures (first exhibition) and 6 (second exhibition)
Recommendation	Approval, subject to conditions
Regional Development Criteria (Schedule 6 of SEPP (Planning Systems) 2021)	Council related development over \$5 million: - Burwood Council is the owner of part of the land on which the development is to be carried out. - The Capital Investment Value of the development is \$658,082,480.
List of all relevant 4.15(1)(a) matters	- The provisions of the following environmental planning instruments: - State Environmental Planning Policy (Planning Systems) 2021 - State Environmental Planning Policy (Biodiversity and Conservation) 2021 - State Environmental Planning Policy (Resilience and Hazards) 2021 - State Environmental Planning Policy (Transport and Infrastructure) 2021 - State Environmental Planning Policy (Industry and Employment) 2021 - State Environmental Planning Policy (Housing) 2021 - State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 - State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development - Burwood Local Environmental Plan (BLEP) 2012 - The provisions of the Burwood Development Control Plan (BDCP) 2013 - The planning agreement entered into between Burwood Council, Burwood Tower Holdings Pty Ltd and Wynne Ave Property Pty Limited atf Wynne Ave Property Trust on 6 August 2020 - The Environmental Planning and Assessment Regulation 2021 - The likely social, environmental and economic impacts of the development in the locality - The suitability of the site for the development - Submissions made under the Environmental Planning and Assessment Act 1979 and Regulations - The public interest
List all documents submitted with this report	- Development application form - Amended Statement of Environmental Effects prepared by Gyde Consulting dated 14 October 2022

for the Panel's consideration	• Amended Survey Plan: 42320DT dated 25 August 2015 • Amended Cost Plan and Estimate Report prepared by Altus Group dated 10 June 2022 • Amended Staging Plan: ND-06 prepared by Cox Architecture dated 3 June 2022 • Architectural Plans prepared by Cox Architecture dated 16 September 2022 • Amended Design Guide Compliance Schedule prepared by Cox Architecture dated 17 June 2022 • Amended Architectural Design Statement and Design Excellence Statement prepared by Cox Architecture dated June 2022 • Amended SEPP No. 65 Design Verification Statement prepared by Cox Architecture dated 17 June 2022 • BASIX Certificate 1131316M_02, 1139367M_03, 11272670M_02, 1156324M_03 dated 23 June 2022 • Amended Sustainability Report (Commercial and Retail) prepared by Cundall Consulting dated 10 June 2022 • Amended Sustainability Report (Residential) prepared by Cundall Consulting dated 10 June 2022 • Amended Lighting Strategy Report prepared by Integrated Group Services dated June 2022 • Amended Signage Wayfinding Strategy prepared by Cox Architecture dated June 2022 • Amended View Impact Assessment and Private Views Analysis prepared by Cox Architecture dated 10 June 2022 • Amended Solar Access Impact Report prepared by BIM Consulting dated 20 May 2022 • Amended Solar Analysis – Tower A, B, C and D prepared by Cox Architecture dated June 2022 • Burwood Grand/Emerald Square Solar Impacts Report prepared by BIM Consulting dated 20 May 2022 • Amended Arboricultural Impact Assessment prepared by Australis Tree Management dated 20 May 2022 • Amended Public Domain and Landscape Design Report prepared by Turf Design Studio dated June 2022 • Amended Preliminary Public Art Strategy for Burwood Plan prepared by Barbara Flynn Pty Ltd dated May 2022 • Transport and Traffic Assessment prepared by Road Delay Solutions Pty Ltd dated June 2022 • Amended Access Review prepared by Morris Goding Access Consulting dated 6 June 2022 • Regulatory Compliance Report prepared by Mckenzie Group dated 10 June 2022 • Amended Fire Safety Design Letter prepared by Stantec Australia dated 1 June 2022 • Amended Acoustic Assessment Report prepared by Wilkinson Murray dated 17 June 2022 • Amended Stormwater Plan: CO2, C12, C13, C25, C40, C45 prepared by Taylor Thomson Whitting Pty Ltd dated 23 May 2021 • Amended Flood Impact Assessment prepared by Taylor Thomson Whitting Pty Ltd dated 14 June 2022 • Amendment Civil Stormwater Report prepared by Taylor Thomson Whitting Pty Ltd dated 14 June 2022 • Amended Structural Details Report prepared by Taylor Thomson Whitting Pty Ltd dated 22 June 2022 • Geotechnical Desktop Assessment Report prepared by Douglas Partners Pty Ltd dated March 2021
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	• Geotechnical Investigation Report prepared by EI Australia dated 15 December 2021 • Detail Site Investigation Report prepared by EI Australia dated 26 October 2021 • Interim Audit Advice Statement prepared by Envirocene Pty Ltd dated 30 October 2021 • Preliminary Site Investigation Report prepared by Douglas Partners Pty Ltd dated March 2021 • Remedial Action Plan prepared by Envirocene Pty Ltd dated 27 October 2021 • Amended Heritage Assessment and Heritage Impact Statement prepared by Tropman and Tropman Architects dated June 2022 • Pedestrian Wind Assessment and Addendum Letter prepared by Wilkinson Murray dated 4 March 2021 • Amended Construction Management Plan prepared by Holdmark Property Group dated June 2022 • Amended Services and Utilities Report prepared Integrated Group Services dated June 2022 • Amended Construction and Demolition Waste Management Plan prepared by Elephants Foot Recycling Solutions dated 3 June 2022 • Amended Operational Waste Management Plan prepared by Elephants Foot Recycling Solutions dated 9 June 2022 • Voluntary Planning Agreement between Burwood Council, Wynne Ave Property Pty Ltd and Burwood Tower Holdings Pty Ltd dated 6 August 2020 • Amended Development Control Plan Compliance Table prepared by Gyde Consulting dated October 2022 • Amended Crime Risk Report prepared by Gyde Consulting dated 19 April 2022 • Roads and Maritime Services Correspondence dated 9 March 2018 • Variation of Easement AK421910H dated 11 May 2016 • Easement Instrument Details for Deposited Plan 643733 dated 20 April 2018 • Amended Natural Ventilation Design Review prepared by RWDI Australia dated 14 June 2022 • Sydney Airport Corporation Limited Crane Operation Approval prepared by Department of Infrastructure, Regional Development and Cities dated 23 April 2018 • Sydney Airport Corporation Limited Construction of a Building – Tower A Approval prepared by Department of Infrastructure, Regional Development and Cities dated 26 August 2020 • Solar Reflection Screening Analysis Report prepared by RWDI Australia dated 15 June 2022 • Economic Impact Assessment Report prepared by AEC Group Ltd dated February 2020 • Amended Retail Impact Assessment Report prepared by Location IQ dated 2 June 2022 • Retail Masterplan Report prepared by Bonnefin Property dated 14 March 2018 • Burwood Place Social Impact Assessment prepared by Hill PDA dated 3 June 2022 • Amended Vertical Transportation Report prepared by Elevator Project Management dated 28 April 2022 • Burwood Market Metro Analysis Report prepared by Colliers International dated 2021
Report prepared by	Ethos Urban (external consultant)
Report date	17 November 2022

Summary of s4.15 matters	Yes
Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	
Legislative clauses requiring consent authority satisfaction	Yes
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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	
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)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	No
Conditions	
Have draft conditions been provided to the applicant for comment? <i>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</i>	Yes

(PPSSEC-137) DA.2021.44 – 42-50 and 52-60 Railway Parade, Wynne Avenue and Clarendon Place, Burwood – demolition of the existing structures and the construction of a mixed-use development known as ‘Burwood Place’ comprising five (5) towers above a three-storey podium with 1,041 residential units, 30,044sqm of non-residential gross floor area for retail, commercial, child care and entertainment/cinema uses, 6-7 levels of basement parking with 1,757 car parking spaces, and public domain areas.

REPORT BY: Ethos Urban (External Consultant)

Owner: Wynne Ave Property Pty Ltd.
Applicant: Burwood Tower Holdings Pty Ltd
Location: 42-50 and 52-60 Railway Parade, Wynne Avenue and Clarendon Place, Burwood
Zoning: B4 Mixed Use

Burwood Council engaged an external assessment team, lead by Ethos Urban, to assess this application on behalf of Council. The assessment team included the following consultants listed in Table 1.

Table 1 Assessment team

Discipline	Consultant
Town planning and project management	Ethos Urban
Surveying	Project Surveyors
Urban design & solar access	Ethos Urban
Architecture	Tzannes
Landscape architecture	Clouston
Structural engineering	Arup
Traffic and parking	Stantec
Compliance, BCA and BASIX, sustainability	Blackett
Services	Arup
Remediation and contamination	EIS
Wind	Arup
Acoustics	Arup
Waste management	LG Consulting
Retail impact assessment	Ethos Urban
Heritage impact assessment	Weir Phillips
Visual impact assessment	Ethos Urban
Stormwater and civil	Arup

1) PROPOSAL

The application proposes the demolition of the existing structures and the construction of a mixed-use development known as ‘Burwood Place’ comprising five (5) towers above a three-storey podium with 1,041 residential units, 30,044sqm of non-residential gross floor area for retail, commercial, child care and entertainment/cinema uses, 6-7 levels of basement parking with 1,757 car parking spaces, and public domain areas.

2) REGIONAL PANEL REFERRAL CRITERIA

The application is referred to the Sydney Eastern City Planning Panel as the proposal is Council related development with a capital investment value of more than \$5 million (see clause 4 of Schedule 7 to *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*).

Specifically:

- The Capital Investment Value of the development is \$658,082,480; and
- Burwood Council is the owner of part of the land on which the development is to be carried out.

It is noted that the SRD SEPP was repealed on 1 March 2022 and its provisions transferred to *State Environmental Planning Policy (Planning Systems) 2022* (the **Planning Systems SEPP**). However, section 1.4 of the Planning Systems SEPP provides as follows:

1.4 Transferred provisions

The Interpretation Act 1987, section 30A is taken to apply to the provisions transferred to this Policy on the commencement of this Policy in the same way as it applies to provisions transferred from a statutory rule to another statutory rule.

The Interpretation Act 1987, section 30A provides—

30A Transferred provisions

(1) *This section applies where a provision is transferred from an Act or statutory rule to another Act or statutory rule and an Act or statutory rule states that the provision is a transferred provision to which this section applies.*

(2) *The transfer does not affect the operation (if any) or meaning of the provision, and accordingly the provision is to be construed as if it had not been so transferred.*

(3) *This section applies whether or not the provision is modified, but has effect subject to any such modification.*

Therefore, the SRD SEPP remains the relevant SEPP for the purposes of determining the consent authority for this application.

3) SUBJECT SITE AND LOCALITY

Site identification

The subject site is known as 42-50 and 52-60 Railway Parade, Wynne Avenue and Clarendon Place, Burwood. 42-50 Railway Parade is known as 'Block 1' and 52-60 Railway Parade is known as 'Block 2' for the purposes of this application (see **Figure 1**). The site is bounded by Railway Parade to the north, Clarendon Place to the east, the Emerald Square development to the south (on the eastern side of Wynne Avenue), Unity Place to the south (on the western side of Wynne Avenue) and Burwood Library and a Council car park to the west.

The Council land identified in blue in **Figure 1** does not form part of this application, but is the subject of a separate application for an urban park and cultural centre that is currently being assessed (DA.2022.44).

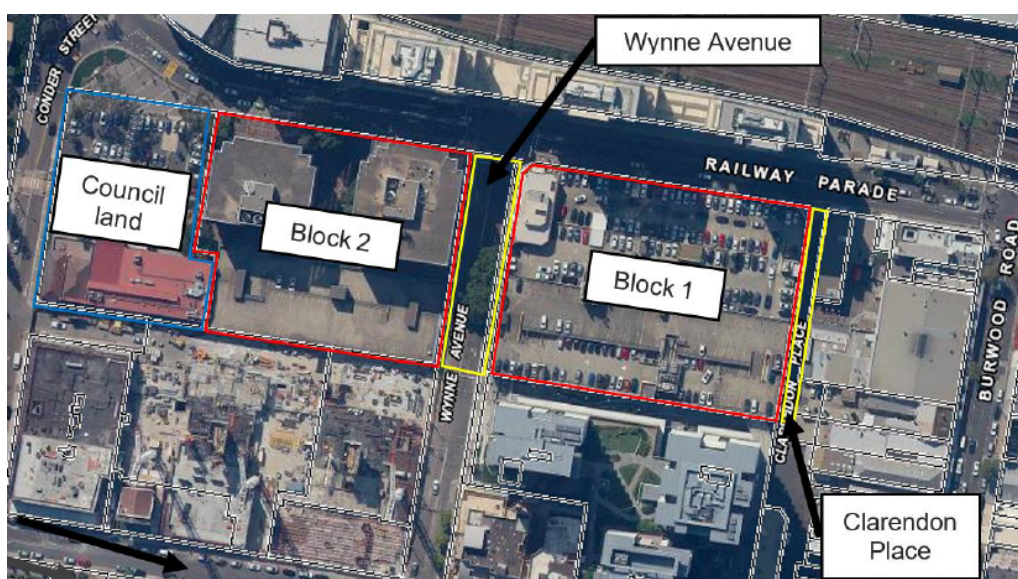


Figure 1 Aerial image of the site

Source: Statement of Environmental Effects prepared by Gyde, dated 24 June 2022

The site comprises a number of legal allotments and parcels, which are detailed in Table 2.

Table 2 Legal description of the site

Address	Lot/DP	Landowner	Site Area
42-50 Railway Parade (Block 1)	Lot 1 DP588368	Burwood Tower Holdings Pty Ltd	7,717m ²
52-60 Railway Parade (Block 2)	Lot 16 DP832440	Burwood Tower Holdings Pty Ltd	6,646m ²
Sub-total			14,363m²
Wynne Avenue (part)	Lot 1 DP1135855	Burwood Council	1,164m ²
Public road between Wynne Avenue and Lot 1 DP 588368	Lot 3 DP588368	Burwood Council	241.7m ²
Total area			15,768.7m²

The lots are shown in **Figure 2** below. The grey shaded area is the relevant part of Wynne Avenue and the blue shaded area is the public road.

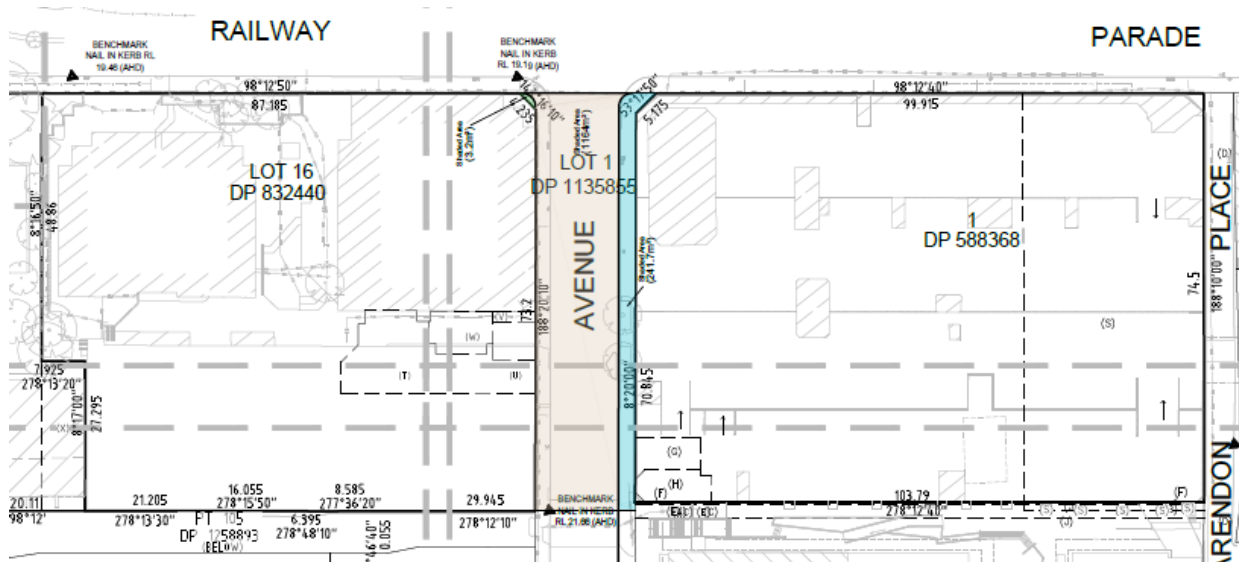


Figure 2 Lot identification plan

Source: Survey plan prepared by LTS, dated 9 February 2021 (Revision D)

Site description

The site is generally flat but gently rises towards the south. 52-60 Railway Parade (Block 2) currently comprises 2 x 8 storey commercial office buildings as well as a 4 storey brick car park, whilst 42-50 Railway Parade (Block 1) currently accommodates the Burwood Plaza Shopping Centre, a 2 storey building with rooftop car parking. A total of eleven (11) trees line the pedestrian walkway on Wynne Avenue, which is a two-way vehicular thoroughfare providing access to both sites. Clarendon Place is a two-way (dead end) street providing service access to properties fronting Burwood Road and Belmore Street. An existing through-site link connects Burwood Plaza, across Clarendon Place through the Burwood Chinatown Mall to Burwood Road to the east.

Existing pedestrian access to the site is from Railway Parade and Clarendon Place. Vehicular access is from Wynne Avenue with an exit provided to Belmore Road. The site benefits from an easement from Emerald Square to the south which provides vehicle access to the site.

Photographs of the site are provided in **Figures 3 to 8**. All photographs were taken by Ethos Urban on 2 November 2020.

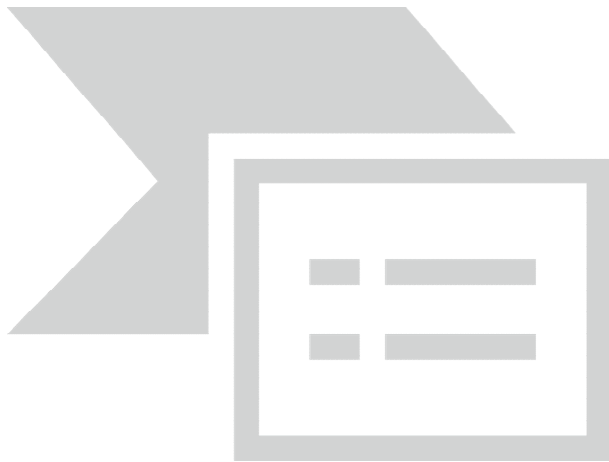


Figure 3 *Burwood Plaza (Block 1), viewed from Railway Parade*



Figure 4 *Burwood Plaza (Block 1), viewed from Wynne Avenue*



Figure 5 *Block 2, viewed from Railway Parade*

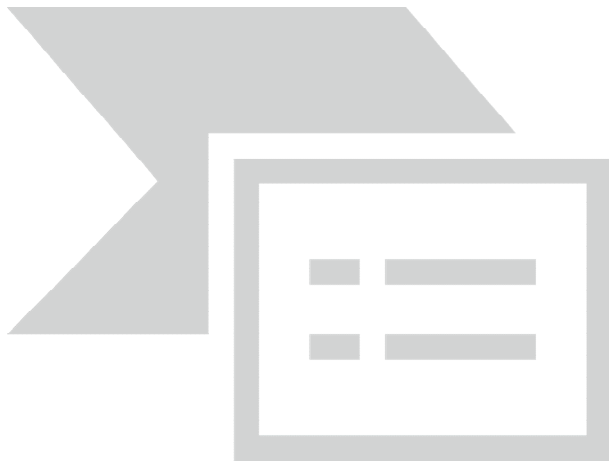


Figure 6 The site as viewed from Clarendon Place, looking north



Figure 7 View of Wynne Avenue looking north (Block 1 on the right, Block 2 on the left)



Figure 8 south View of through-site link and connection between the site and Emerald Square to the south

Surrounding development

The subject site is surrounded by the following development:

- **North:** Railway Parade, Burwood Train Station and '1 Railway Parade', an existing mixed-use development up to 20 storeys. On the northern side of the railway line, is Burwood Park, Westfield Shopping Centre, Parramatta Road and the future location of the Burwood North Metro Station.
- **East:** Low-rise commercial developments fronting Burwood Road, including the Burwood Hotel. This site has a DA approval for 'Burwood Central', a multi storey mixed use development, however this has not been acted upon.
- **South:** Emerald Square on the eastern side of Wynne Avenue, and Burwood Grand on the western side of Wynne Avenue, both multi-storey mixed-use retail and residential developments. Burwood Grand and the subject site are separated by Unity Place.
- **West:** Burwood Council Chambers building (local heritage item), offices, Burwood Library and car park, and Condor Street and Burwood Primary School further to the west.

Photos of the surrounding development are provided in **Figures 9 to 17**.



Figure 9 Development to the north (facing north-east)



Figure 10 Development to the east, viewed from Railway Parade (looking south-east)

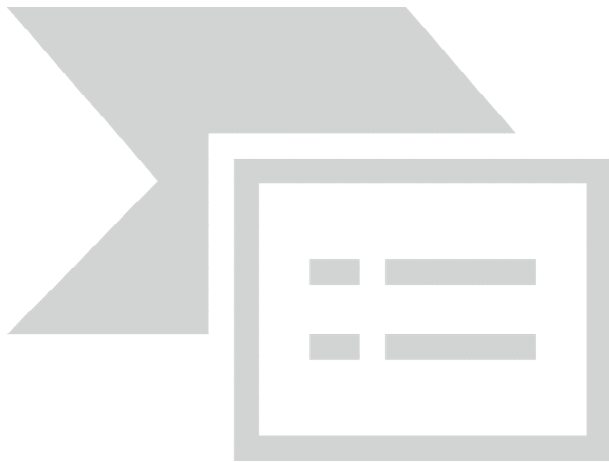


Figure 11 Clarendon Place looking south, with development to the east (on the left)



Figure 12 Emerald Square plaza to the south (eastern side of Wynne Avenue) facing west



Figure 13 Emerald Square (left) and the subject site (right), facing west



Figure 14 Burwood Grand to the south (western side of Wynne Avenue)



Figure 15 Unity Place to the south, looking west (the site is on the right)



Figure 16 Council library and car park to the west, facing south

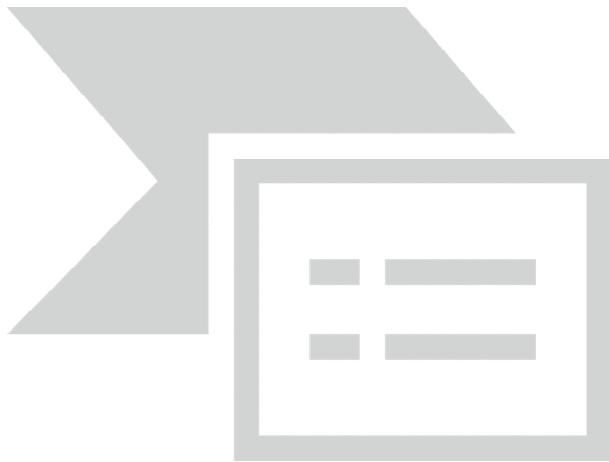


Figure 17 *Burwood Primary School on the western side of Conder Street (from Railway Parade)*

4) DESCRIPTION OF PROPOSED DEVELOPMENT

The application proposes the demolition of the existing structures and the construction of a mixed-use development known as 'Burwood Place' comprising five (5) towers above a three-storey podium with 1,041 residential units, 30,044sqm of non-residential gross floor area for retail, commercial, child care and entertainment/cinema uses, 6-7 levels of basement parking with 1,757 car parking spaces, and public domain areas.

The proposed development is integrated development pursuant to the *Water Management Act 2000* as the proposed basement is likely to extend below the permanent water table. Accordingly, this application was referred to Water NSW for comment and General Terms of Approval were issued.

This application (as amended) seeks consent for the following development:

- The demolition of the existing buildings on the site, including the commercial office buildings and shopping centre.
- Works within the adjacent Emerald Square development, including a new opening for the Wynne Avenue entry point, including partial demolition of an internal ramp and partial demolition of an external ramp.
- Removal of eleven (11) trees on the site and two (2) on the Wynne Avenue nature strip.
- Excavation and construction of a part six (Block 2) and part seven (Block 1) level basement car park, including a total of 1,757 parking spaces and one (1) lower ground level to include retail tenancies and loading dock facilities. The basement levels will extend across Wynne Avenue and a public road.
- Construction of a three (3) level podium, including 25,489m² retail tenancies and a cinema with operating hours of between 9am and 1am, a 2,232m² commercial tenancy base built to accommodate a future medical centre, and a 2,322m² commercial tenancy base built to accommodate a future childcare centre. A mezzanine podium level is also proposed for end of trip facilities.
- Construction of five (5) towers above the podium, including the following:
 - o Tower A (42 storeys and attic) – 346 apartments.
 - o Tower B (21 storeys and attic) – 176 apartments.
 - o Tower C (39 storeys and attic) – 309 apartments.
 - o Tower D (32 storeys and attic) – 210 apartments and 3,888m² of commercial floor space.
 - o Tower E (12 storeys) – 14,243m² of commercial floorspace.
- Reconfiguration and conversion of part of Wynne Avenue.
- Public domain improvements including a Wynne Place, a community plaza, and through site links and 4,913m² of publicly accessible space.
- Widening of road reserves and provision of new bus interchange on Railway Parade.
- Landscaping including 752m² of soft landscaping and a 1,161m² canopy area.

Note: The architectural plans include tenancies for a childcare centre, medical centre, and retail uses. The use, operation and fit out of these tenancies will be subject to future development applications once the end operator of these tenancies is known.

It is also noted that the proposed development does not identify specific proposals for public art within the development, however a Preliminary Public Art Strategy was submitted with the application, which puts forward initial ideas of artists, types of art and artwork locations across the site. If consent is granted, a condition is recommended to require the preparation of a Detailed Public Art Plan prior to the issue of a Construction Certificate.

An extract of the architectural plans is provided in **Figures 18 to 20** and further details of the proposal are provided below.

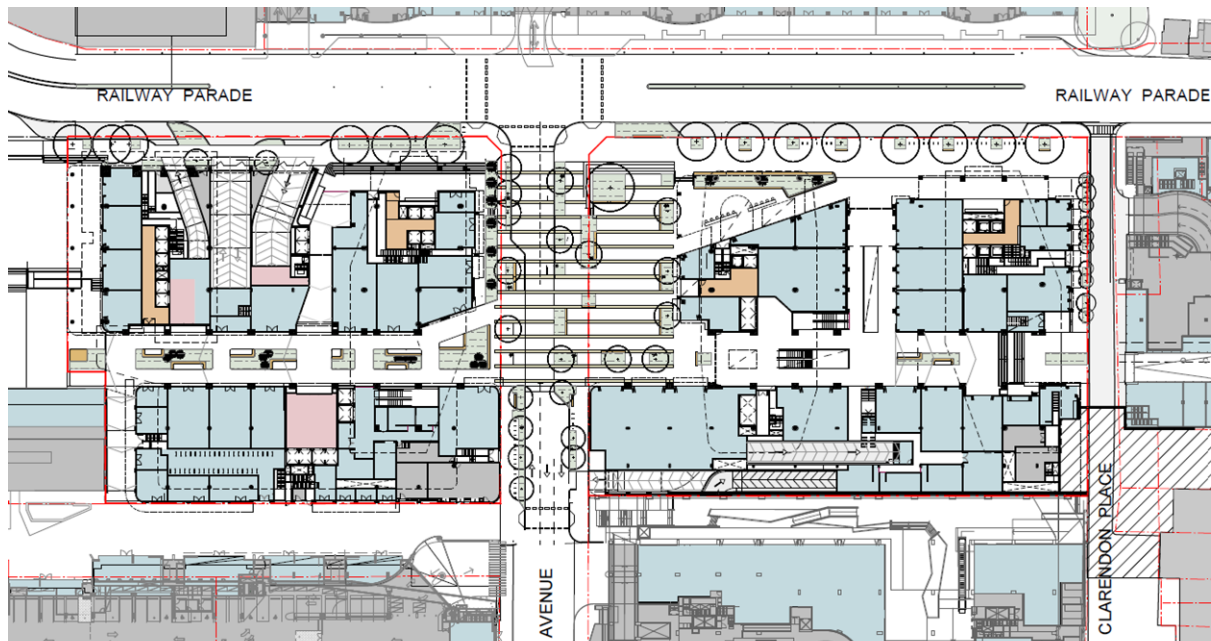


Figure 18 Extract of Proposed Site Plan AR-DA-1107
Source: Cox Architecture



Figure 19 Extract of Street Elevation North AR-DA-1108
Source: Cox Architecture



Figure 20 Extract of Street Elevation South AR-DA-1109

Source: Cox Architecture

Key development statistics

Key statistics for the proposed development are summarised below in Table 3.

Table 3 Key development statistics

Element		Block 1		Block 2			Total
		Tower A	Tower B	Tower C	Tower D	Tower E	
Site area (sqm)		14,363					-
Building height	Metres (from ground level)	144	79	136	116	50.6	-
	RL	163.5	98.5	155.5	135.5	70.1	-
	Storeys	42 + attic	21 + attic	39 + attic	32 + attic	12	-
	Basement levels	7	7	6	6	6	-
Gross floor area (GFA) (sqm)	Residential	33,850	17,711	30,400	20,878	N/A	102,839
	Retail	18,816		6,674			25,490
	Childcare centre	-		2,322			2,322
	Commercial (future medical centre)	-		2,232			2,232
	Office	-			3,777	14,243	18,020
	Total						151,012
Number of dwellings		346	176	309	210	-	1,041
Unit mix	Studio						17
	1 bedroom	80	43	74	69	-	266
	2 bedroom	197	94	187	75	-	553
	3 bedroom	60	37	39	66	-	202
	4 bedroom	0	2	1	0	-	3
Total car parking							1,757

Demolition

To facilitate the redevelopment, it is proposed to demolish all existing buildings on the site, including the Burwood Plaza shopping centre, commercial office buildings and the multi-storey car park.

Works within the adjacent Emerald Square development are also proposed, including a new opening for the Wynne Avenue entry point, including partial demolition of an internal ramp and partial demolition of an external ramp (see **Figure 21**).

However, landowner's consent has not been obtained for these works, therefore a condition of consent is recommended to exclude these works from the consent and requiring separate development consent to be obtained.

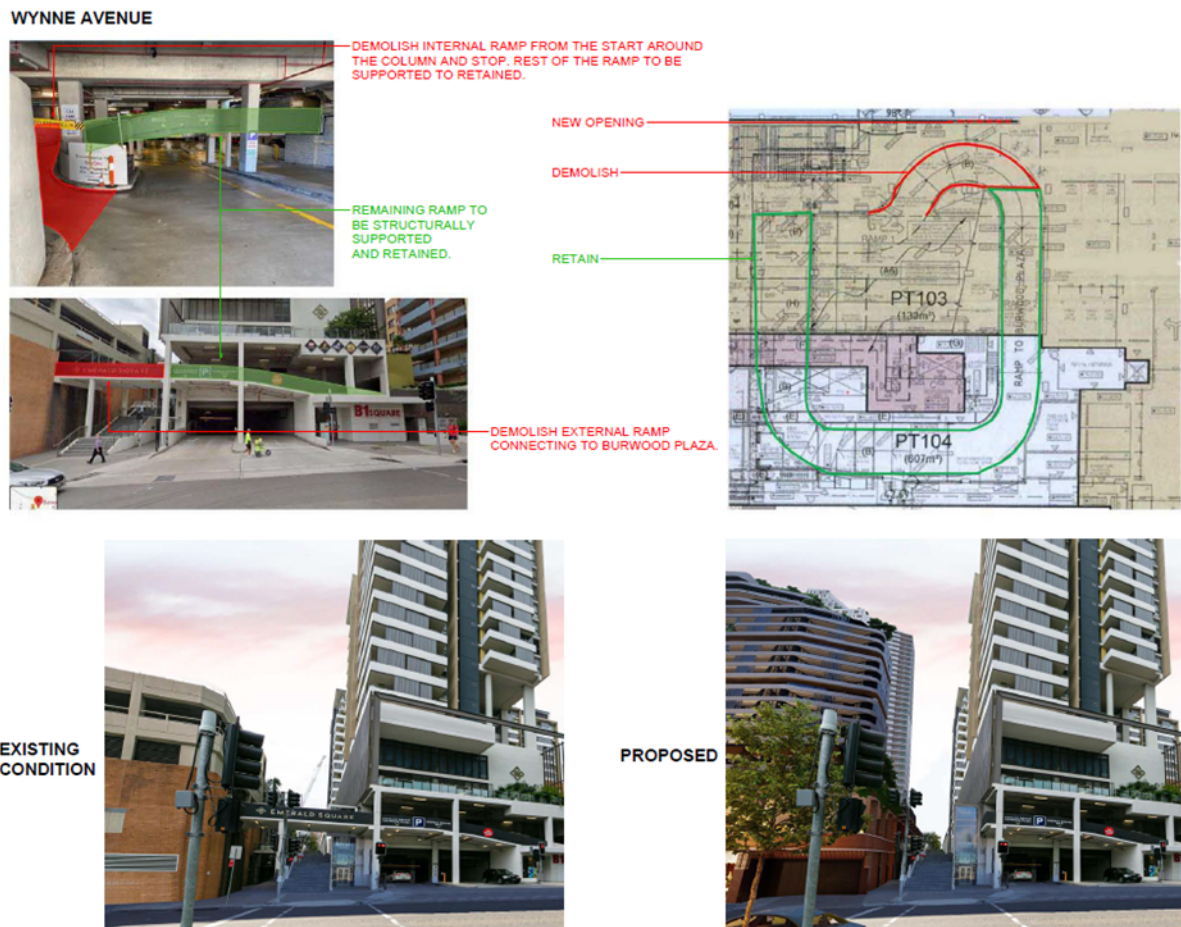


Figure 21 Extract of Wynne Avenue (Retain and Demolition) Plan AR-DA-2117
Source: Cox Architecture

Tree removal and retention

The proposal includes the removal of the following trees:

- Eleven (11) trees on the site which are located within or close to the proposed development envelope. Of these trees, four (4) are classified as high quality and seven (7) are classified as poor quality or young trees.
- Two (2) trees located on the Wynne Avenue nature strip, both of which are classified as high quality.

There are four (4) trees located on the adjoining Council land to the west, which are to be retained and will require protection throughout the demolition and construction process to ensure their long-term survival.

The trees proposed to be removed are shown below.

Tree no.	Species	Location	TPZ
4	<i>Cinnamomum camphora</i> (Camphor Laurel)	on site	2.0m
6	<i>Cinnamomum camphora</i> (Camphor Laurel)	on site	4.8m
7	<i>Ulmus parvifolia</i> (Chinese Elm)	on site	4.8m
8	<i>Leptospermum petersonii</i> (Lemon Scented Tea Tree)	on site	2.0m
9	<i>Eucalyptus microcorys</i> (Tallowwood)	Wynne Ave nature strip	8.4m
10	<i>Eucalyptus microcorys</i> (Tallowwood)	Wynne Ave nature strip	7.2m
11	<i>Schinus molle</i> var. <i>areira</i> (Peppercorn Tree)	on site	8.4m
12	<i>Schinus molle</i> var. <i>areira</i> (Peppercorn Tree)	on site	8.4m
13	<i>Corymbia maculata</i> (Spotted Gum)	on site	5.4m
14	<i>Corymbia maculata</i> (Spotted Gum)	on site	5.4m
15	<i>Schinus molle</i> var. <i>areira</i> (Peppercorn Tree)	on site	6.0m
16	<i>Corymbia maculata</i> (Spotted Gum)	on site	3.0m
17	<i>Casuarina cunninghamiana</i> (River Oak)	on site	5.4m

Table 3. Trees Proposed for Removal

The trees proposed to be retained are as follows:

Tree no.	Species	Location	TPZ
1	<i>Eucalyptus saligna</i> (Sydney Blue Gum)	adjoining	5.4m
2	<i>Corymbia maculata</i> (Spotted Gum)	adjoining	2.4m
3	<i>Eucalyptus sideroxylon</i> (Mugga Ironbark)	adjoining	3.0m
5	<i>Corymbia maculata</i> (Spotted Gum)	adjoining	2.4m

Table 2. Trees Proposed for Retention

These trees are illustrated in the Arboriculture Impact Assessment submitted with the DA, as shown in Figures 22 and 23 below.

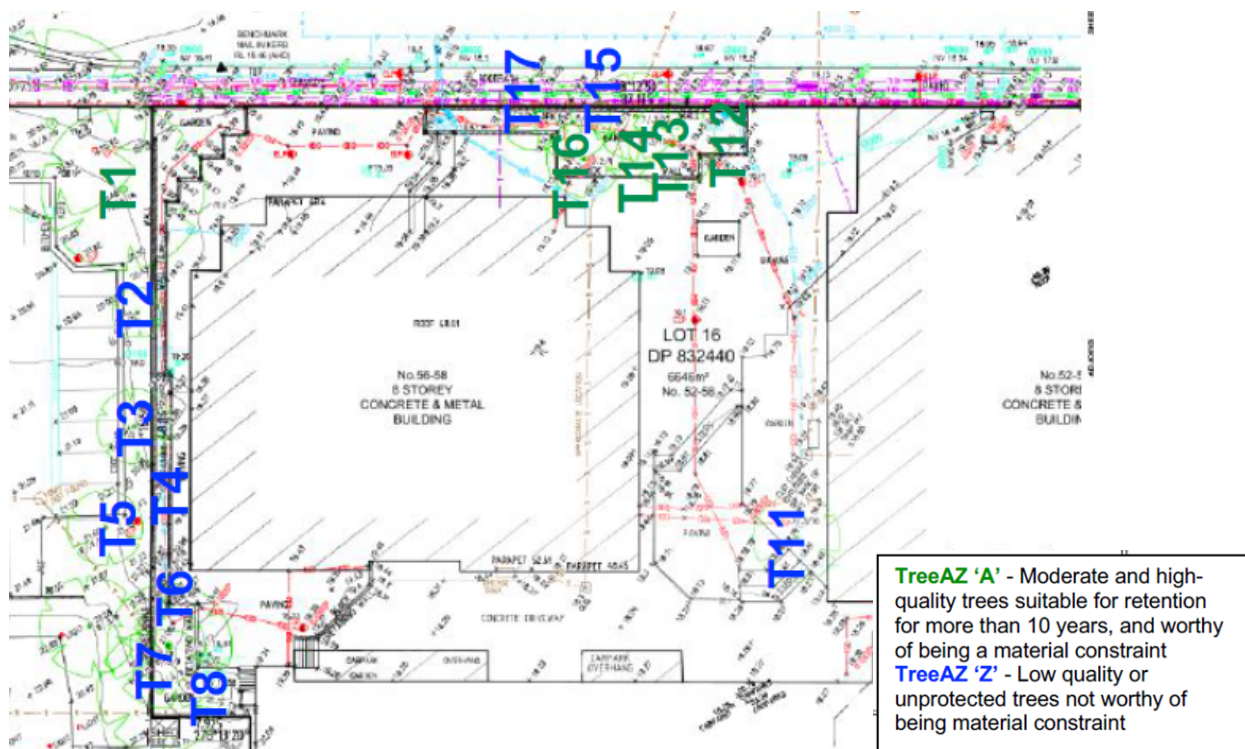


Figure 22 Tree identification plan

Source: Arboriculture Impact Assessment by Australis Tree Management and dated 20 May 2022

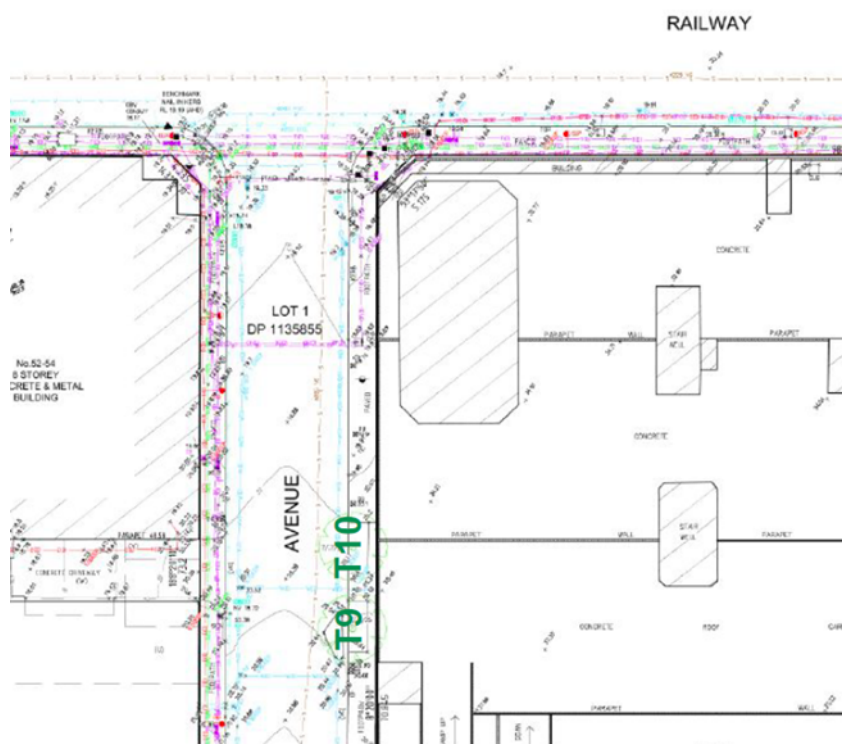


Figure 23 Tree identification plan (Wynne Avenue nature strip)

Source: Arboriculture Impact Assessment by Australis Tree Management and dated 20 May 2022

The basement levels will require excavation over the entire site, with the lowest floor level at approximately RL -6.7m AHD. The proposed basement is likely to extend below the permanent water table. As such, the proposal is integrated development under the *Water Management Act 2000*.

Wynne Avenue

Source: Cox Architecture

Public domain and through site links

The proposal includes new through site links and public domain areas including:

- A community plaza, Wynne Place, at the intersection of Wynne Avenue and Railway Parade.
- One (1) through site link called Burwood Lane providing an east to west link – connecting Burwood Road and Murray's Arcade (Burwood Chinatown), through the development and to the Burwood Library.
- Three (3) through site links providing north to south links:
 - o Block 1: Railway Parade to Hornsey Lane.
 - o Block 2: Railway Parade to Burwood Lane.
 - o Block 2: Railway Parade to Unity Place.

The proposal includes 4,913sqm of publicly accessible space at the ground plane. A condition of consent is recommended that these areas be subject to a public access easement in favour of Council to ensure unrestricted public pedestrian access in perpetuity.

The through-site links labelled “managed access” on the plan below will also be publicly accessible. A condition of consent is recommended that these areas are to be accessible by the general public from at least 6am until 10pm daily, in accordance with the site-specific DCP.

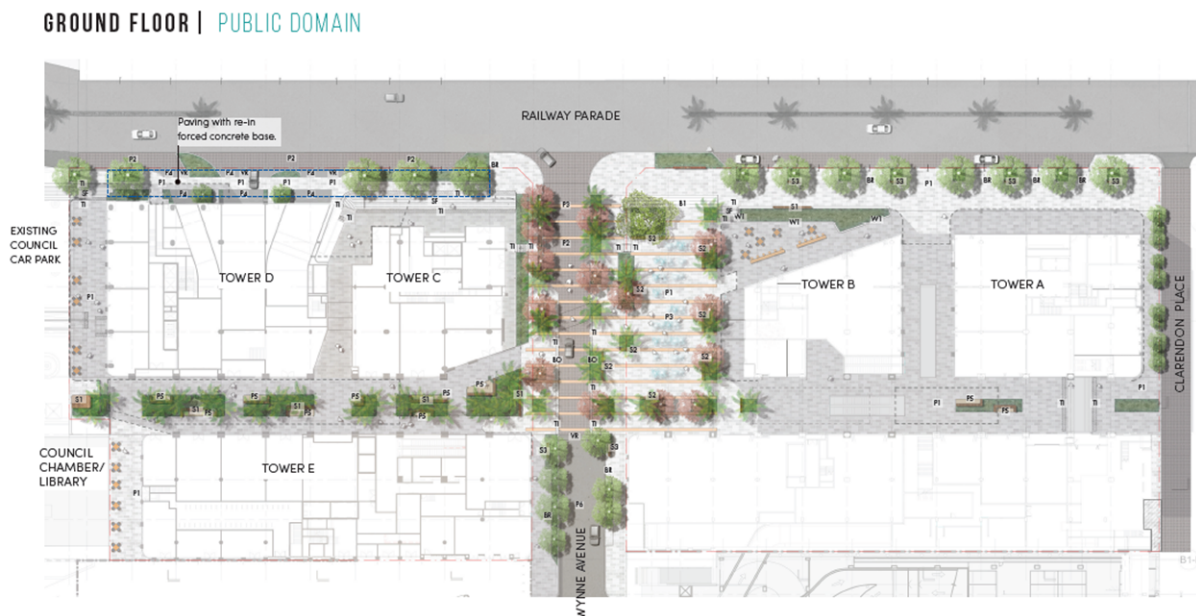


Figure 25 Public domain – ground floor plan
Source: Turf Design Studio

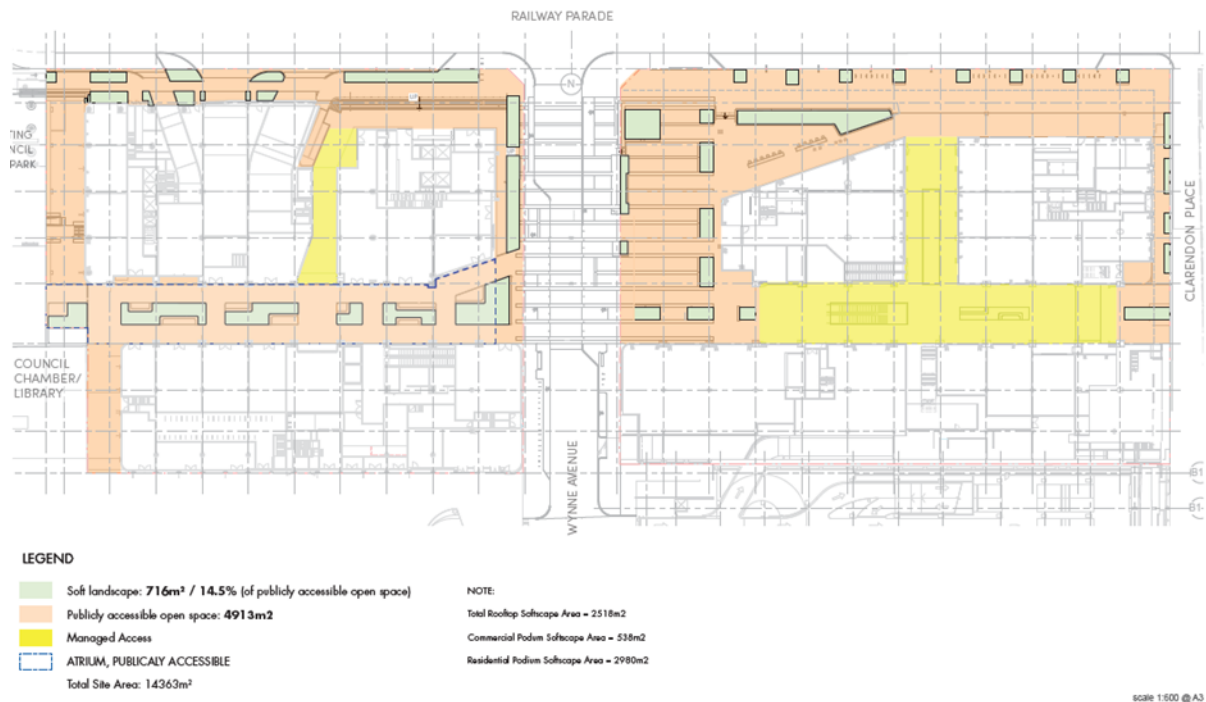


Figure 26 Public domain – private/public access
Source: Turf Design Studio

Landscaping

The proposal includes soft landscaping at the ground plane for public access, as well as on podium levels for residents. Key elements of the landscape design are detailed below:

- Along Railway Parade, street trees are provided which will deliver shade for pedestrians and delivering a soft character to the future bus interchange.
- Along Wynne Avenue, buffer planting will be provided to the road edge and bench seating beneath trees.
- To the north of Block 1, Wynne Place, which will be the primary social hub of Burwood Place, will contain feature planting and street upgrades provide seating opportunities.
- Along Burwood Lane, central landscape nodes featuring seating opportunities and low-level understory planting to ensure sight lines and movement passages are maintained.
- Podium Level 2 provides planted edges which will provide a cascade of greening over the façade.
- Podium Level 4 provides landscaped communal open space area between both the eastern and western towers consisting of BBQ, alfresco and casual lawn areas.
- Tower A, Tower B, Tower C and Tower D provide planted edges to residential towers.
- The roof of Tower E provides 539m² of landscaping which equates to 50.5% of the rooftop.
- The planting of a complementary mix of indigenous and exotic species throughout the site.

The proposal provides 716sqm of soft landscaping across both Blocks 1 and 2 which equals 5% of the Block 1 and 2 site area. In addition, the proposal provides 2,518m² of rooftop softscape area, which equals 17.5% of the site area.

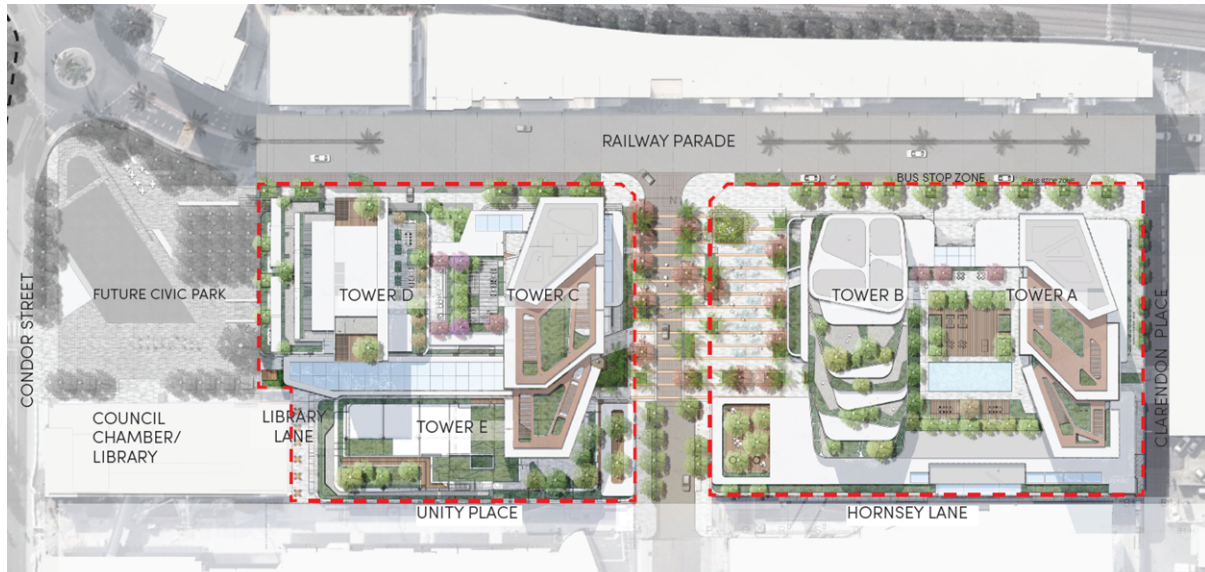


Figure 27 Overall landscaping site plan
Source: Turf Design Studio

Access

The primary vehicular access to the site will be from Railway Parade where three (3) separate driveways are proposed. One (1) driveway provides entry to the car park, which directs vehicles into Basement B1. A second driveway provides entry and exit to and from the loading dock on Lower Ground Level and a third driveway provides exit from the car park directly from Basement B1 level.

A secondary access into the car park is provided on Wynne Avenue, however, this car park entry involves an existing easement within the neighbouring car park, known as Emerald Square. Vehicles will enter the Emerald Square car park from Wynne Avenue and turn slightly left into a dedicated ramp that leads to Basement B1 of Burwood Place and into the car park.

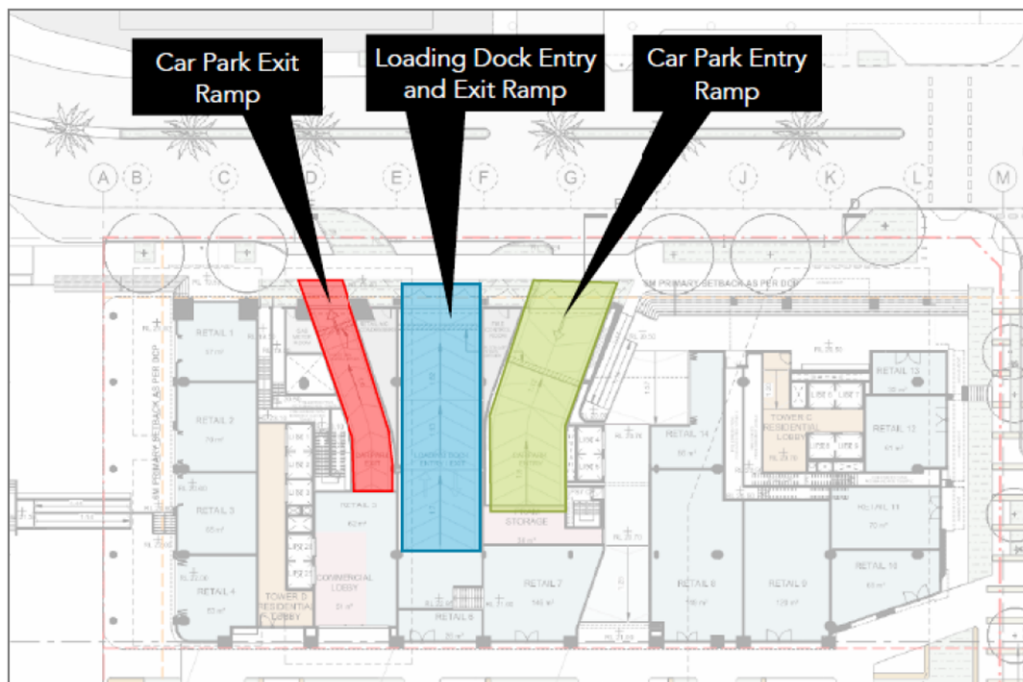


Figure 28 Vehicular access from Railway Parade
Source: PTC

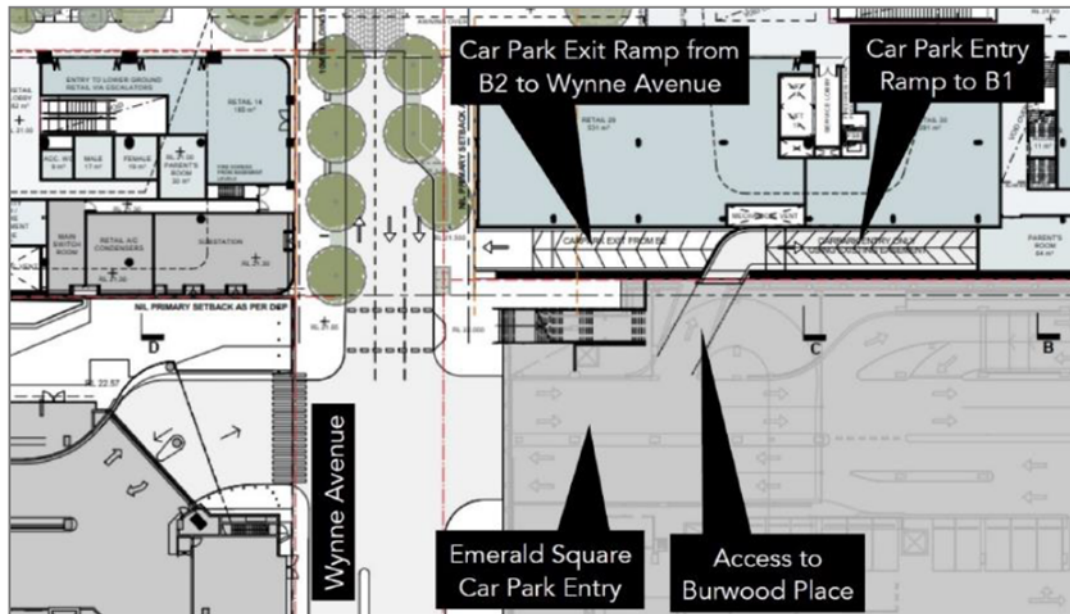


Figure 29 Vehicular access from Wynne Avenue
Source: PTC

Stratum subdivision

The proposed development includes the stratum subdivision of the land along Railway Parade (Block 1) that is identified for acquisition by Burwood Council under the *Burwood Local Environmental Plan 2012* for the purpose of roads. This land has an area of approximately 407.6 sqm. The subdivision broadly comprises the surface of the reserved land, limited in depth to RL 19.3. It is intended that the new lot (Lot 11) is to be dedicated to Council and the land underneath the stratum subdivision (Lot 10) will remain in the ownership of the applicant.

The basement levels of Block 1 have been setback from the acquisition area along Railway Parade in accordance with the LEP.

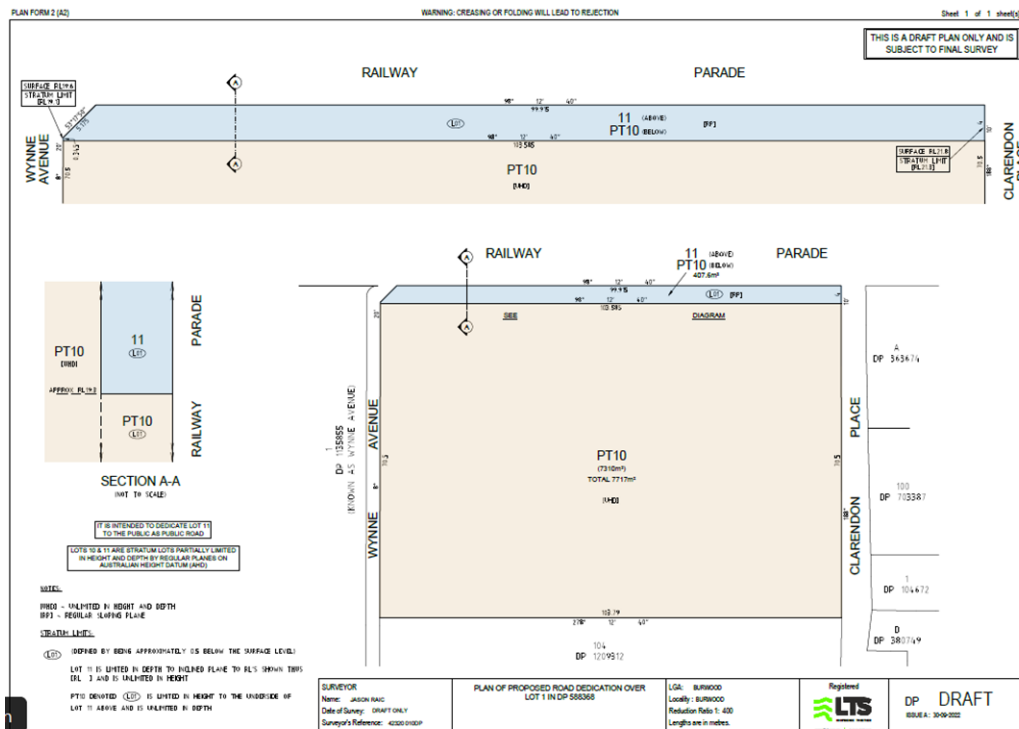


Figure 30 Stratum subdivision of land adjacent to Railway Parade
Source: LTS

Staging

The staging of the development will be in accordance with the Voluntary Planning Agreement, which generally provides for the following:

Stage 1 – Block 2:

- Site establishment and demolition.
- Excavation.
- Basement car park to ground level.
- Utilities.
- Library works and car park (subject to separate application).
- Retail podium.
- Commercial Tower E.
- Residential Tower D.
- Residential Tower C.

Stage 2 – Block 1:

- Site establishment and demolition.
- Excavation.
- Basement car park to ground level.
- Utilities.
- Retail podium.
- Residential Tower A.
- Residential Tower B.

A simplified staging diagram prepared by Cox Architecture is provided below and further detail is provided in the VPA, extracted below that.

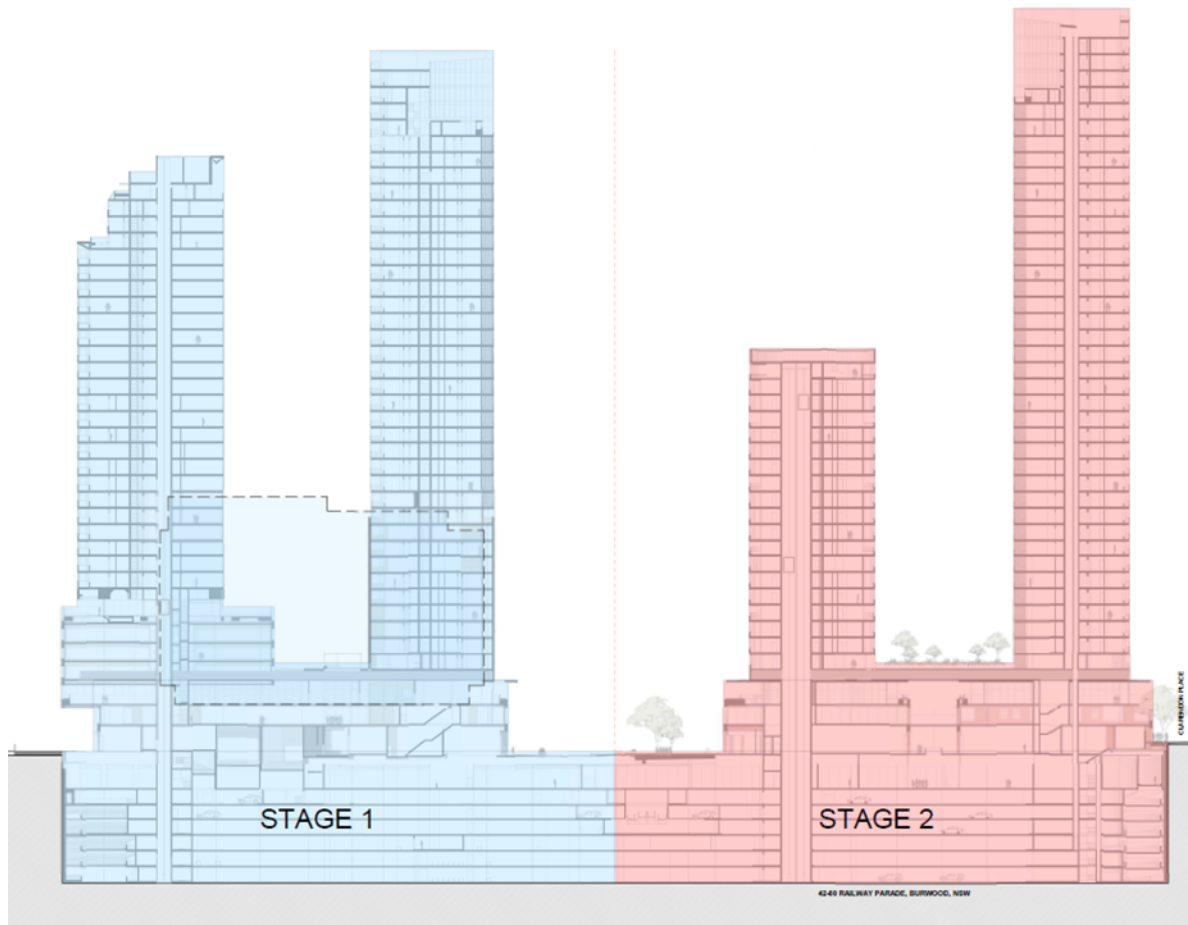
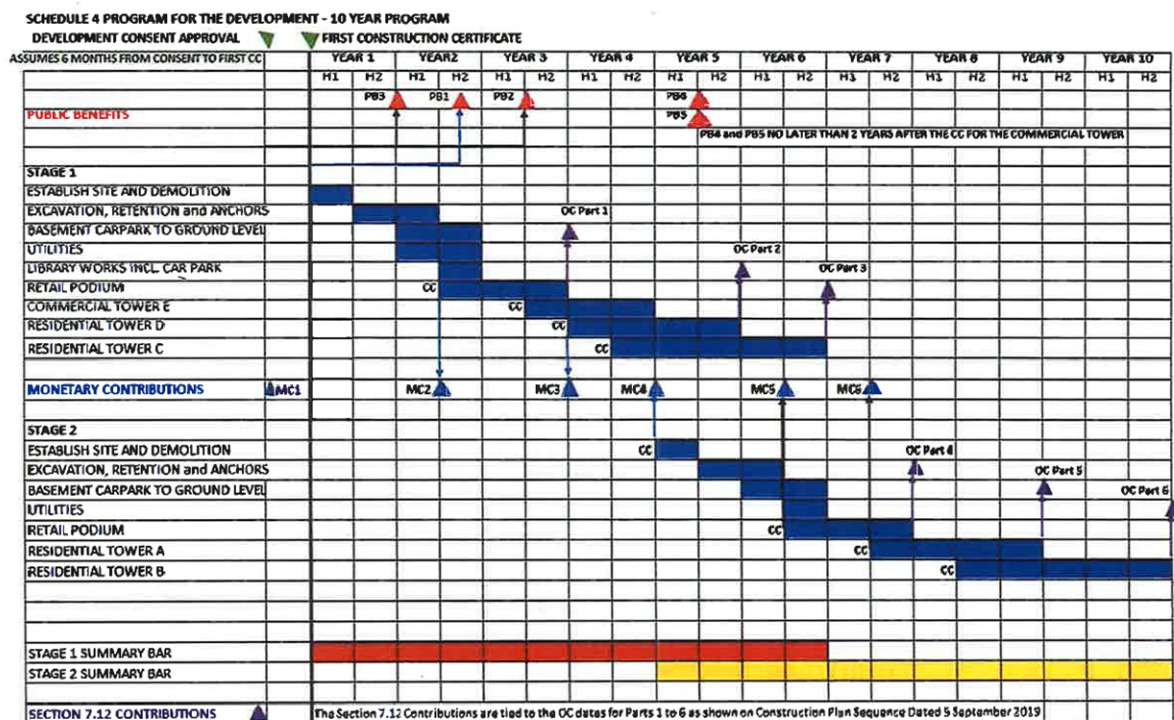


Figure 31 Staging diagram ND-06
Source: Cox Architecture



20 November 2020	New planning controls gazetted
23 December 2020	Correction gazetted.
5 May 2021	This development application was lodged.

Planning Proposal

The initial Planning Proposal submitted to Council in 2015 sought to increase the maximum building height from 60m and 70m to 107m and 144m, and increase the floor space ratio (FSR) from 4.5:1 and 6:1 to a combined FSR of 9.9:1 across the site.

The Gateway determination issued on 26 February 2017 was subject to numerous conditions, including:

- Preparation of the following studies prior to community consultation:
 - o Urban Design Analysis to assess the impact of the development on neighbouring sites, in particular overshadowing on Burwood Public School, surrounding heritage items and open/public spaces;
 - o Updated Traffic Impact Assessment to address any impacts raised during consultation with RMS on the local and wider road network, and outline measures to mitigate these impacts; and
 - o Updated Economic Impact Assessment justifying the proposed increase and demand for the proposal, addressing the effect of the development on the Burwood Town Centre and nearby centres;
- A site specific DCP is to be prepared and exhibited concurrently with the Planning Proposal.

The Planning Proposal was subsequently amended to include additional height on Block 2 to 136m (instead of 107m) and to increase the FSR to 10.54:1 to accommodate an additional 9,000sqm of GFA. The amended Planning Proposal was supported by a draft VPA to provide public benefits such as a new urban park, Council car park and an expanded library for the Burwood Town Centre.

On 13 February 2020, DPIE issued an amended Gateway Determination, which included amended conditions requiring:

- Further urban design analysis to clarify the properties that will be impacted by reduced solar access to less than 2 hours per day;
- An updated Traffic Impact Assessment to clarify/provide an assessment of the total daily and peak hour public transport trips generated by the proposal, and the current infrastructure to meet the likely demand of the proposal;
- An updated Economic Impact Assessment to provide clear strategic justification for the additional quantum of residential development and to clarify the proportion and mix of uses with regard to office, serviced apartments, retail and residential uses;
- Clarify the estimated number of dwellings the revised Planning Proposal will generate; and
- Address and assess the proposal against the Council's Local Strategic Planning Statement.

While the Planning Proposal and VPA included the provision of a new urban park on the Burwood Library site to the west, this is not included in the current DA.

Site specific DCP

On 1 July 2020, the site-specific DCP came into effect. The DCP contains site-specific provisions relating to building height and form, landscaping, public domain, solar access, active frontages, transport, materials and public art.

The DCP varies significantly from the provisions of the SEPP 65 Apartment Design Guide (ADG) with respect to building separation and solar access. Specifically:

- The DCP requires solar access to only 50% of apartments in surrounding developments to be retained in mid-winter, between 9am and 3pm, for at least 2 hours. In contrast, the ADG requires solar access to 70% of apartments.
- The DCP allows bedrooms to be included in the solar access calculation, whereas the ADG only includes primary living areas and balconies.

- The DCP requires building separation and setbacks to be consistent with the image below (see Figure 2). Notably, this requires a 5m setback from the eastern boundary to achieve a 21m separation between Tower A and the approved development to the east, and 3-8m setbacks from the southern boundary to achieve an 18m separation between Towers A, B and C and adjoining sites to the south. In contrast, the ADG requires 12m setbacks to achieve a 24m separation between towers.

We understand that DPIE raised concerns with Council staff in relation to solar access during its final assessment of the Planning Proposal and site-specific DCP. Despite these concerns, the LEP was gazetted on 20 November 2021.

Voluntary Planning Agreement

On 6 August 2020, a Voluntary Planning Agreement (VPA) was entered into between the following parties:

- Burwood Council;
- Burwood Tower Holdings Pty Ltd (the developer); and
- Wynne Ave Property Pty Limited atf Wynne Ave Property Trust (the landowner).

The VPA provides for the following public benefits:

- Monetary contributions totalling \$30 million for the provision of public purposes. The monetary contributions are to be paid in six (6) instalments of \$5 million each. Under the VPA, the developer must not make an application for the issue of any construction certificate until the Monetary Contribution identified as MC1 is paid.
- Public benefits with a combined value of approximately \$50.75 million, including:
 - o Underground car park consisting of 120 spaces over two levels on the adjoining Burwood Library site;
 - o Urban park of approximately 2,200sqm to replace the current Council car park on the Burwood Library site;
 - o Installation of a multi-purpose sports and community facility that integrates with the urban park;
 - o 4,242sqm NLA or approximately 5,300sqm gross A-grade commercial office space, within a contiguous area over a maximum of four levels; and
 - o 40 of the basement car parking spaces on Basement Level 1 or the first level of car parking from the vehicle access point, being reserved for the office space. The commercial floor space and parking spaces shall be transferred to Council as a stratum.

The provision of public benefits and payment of monetary contributions is to be staged, as described in Section 4 of this report (description of proposed development).

The VPA does not exclude the application of sections 7.11 and 7.12 of the EP&A Act, or any affordable housing levy, meaning that development contributions and any applicable affordable housing levy will still be payable.

6) APPLICATION HISTORY

Key dates since the application was lodged on 5 May 2021 are provided below.

- 13 May 2021: The application underwent public exhibition until 11 June 2021.
- 19 June 2021: Additional information letter sent to Applicant raising the following matters:
 - o Clarification of land to which the DA relates, as well as encroachment into land reserved for public acquisition
 - o Integrated Development
 - o Site subdivision
 - o Compliance with Burwood LEP
 - o Compliance with SEPP 65 and NSW ADG
 - o Urban design comments
 - o Landscaping comments
 - o Clarification on development staging
 - o Traffic and transport comments

- o Retail impact comments
- o Contamination comments
- o Waste comments
- o Acoustic comments
- o ESD comments
- o Utilities comments
- o Structural comments
- o Wind comments
- o Flooding and stormwater comments
- 8 July 2021: Briefing of the SECPP.
- 16 September 2021: Briefing of the SECPP.
- 11 November 2021: Design Review Panel (DRP) meeting no. 1.
- 24 November 2021: Package of information received from the Applicant including responses to many items listed in the RFI letter.
- 3 December 2021: DRP meeting no. 2.
- 20 December 2021: DRP meeting no. 3.
- 24 January 2022: DRP meeting no. 4.
- 21 February 2022: DRP meeting no. 5.
- 3 March 2022: Briefing of the SECPP and site visit.
- 21 March 2022: DRP meeting no. 6. The DRP noted that the proposal had significantly improved but that more architectural detail was required in relation to the towers, colonnades and design resolution which was still in concept design stage and not sufficient for DA approval. The DRP expressed reservations regarding the use of colonnades as the major design element to the street, and noted that interface with public domain spaces as being a critical part of this application. The DRP expressed "limited confidence across the panel to be able to endorse current plans as a suitable set of clear and legible for DA drawings that satisfy design excellence expectations."
- 10 May 2022; Application review meeting no. 1 with the applicant, Council staff and assessment team. Addressed non-design issues raised in the first RFI letter dated June 2021. Discussed affordable housing, car parking provision, staging, integrated development, re-exhibition, ownership and management of public space.
- 17 May 2022: Application review meeting no. 2 with the applicant, Council staff and assessment team. Addressed design related RFIs.
- 23 May 2022: DRP meeting no. 7. The DRP said there has been lots of positive work and the applicant design team has responded well to feedback. The DRP is able to support the scheme, but must insist that the design resolution shown be continued through all elements of the scheme and into any revised DA drawings. The DRP also said there are still elements that need review, particularly landscaping and the corner treatment of Clarendon and Railway Parade. The DRP recommended conditions of consent relating to design integrity review, landscape species selection, and a public art strategy. Refer to DRP Report dated 7 September 2022.
- 24 June 2022: Revised DA package submitted by the applicant.
- 15 July to 15 August 2022: Revised DA placed on public exhibition and referred to Government agencies.
- 5 August 2022: Second RFI letter issued to the applicant requesting further information in relation to landowner's consent, future land ownership and management, land acquisition, FSR calculations, various architecture and urban design matters, wind conditions, traffic, landscape and public domain, response to submissions, affordable housing and waste management.
- 15 September 2022: Briefing of the SECPP.
- 5 October 2022: Further RFI issued in relation to solar access calculations.

Design Review Panel

Based on early feedback and request from the Sydney Eastern City Planning Panel, a special Burwood Place Design Review Panel was established to support the assessment of this development application. Whilst the remit of the panel was broad in terms of assessment of urban design and architectural outcomes, the panel was asked to consider two specific elements covering:

- Assessment of the achievement of design excellence as per the criteria contained in clause 6.5 of the Burwood LEP; and

- Ability of the applicant to demonstrate compliance with the SEPP 65 and the ADG.

The panel selected via an invited EOI process comprised the following members:

- Mary-Lynne Taylor –Bartier Perry Lawyers (Chair);
- Jon Johannsen - Architects Johannsen + Associates Architects;
- Matthew Taylor – Taylor Brammer Landscape Architects;
- Paul Walter – Atlas Urban Design & Strategy.

A total of seven Design Review Panel (DRP) meetings were held over an 8 month period. The format of the meetings varied between briefing sessions lead by the applicant, workshop sessions to interrogate specific issues and guided presentations testing responsive changes made based on the DRP feedback.

Some (but not all) meetings were attended by representatives from the Council assessment team.

The seventh and final meeting was held on 7 September 2022. The minutes of the meeting were prepared by Dylan Porter (Director City Strategy of Burwood Council) and summarise the issues raised by the DRP over the seven meetings, their final position and recommended conditions of consent. Below we provide a summary of the final minutes.

The DRP raised a number of feedback points based on the originally submitted scheme. These are outlined in detail in the meeting minutes but in summary include:

- **Contextual Assessment:** The DRP requested a greater degree of detailed contextual analysis to demonstrate that there is a proper understanding, and therefore design response to, the Burwood Town Centre and its immediate and broader surroundings. This was requested to cover both the south and north sides of Burwood as well as more detail on sites to the east and west. This was to ensure that there is an appreciation of this overall character and form of Burwood as a place and the project positively contributes to a strong and unique identity.
- **Built Form:** There was intensive investigation of the built form of the development and the extent to which the design would contribute to a positive public domain was questioned. There were very strong concerns raised in relation to the dominance of the towers into the streetscape and public realm.
 - o The dominance of the towers extending beyond the two storey podium was challenged as a key design issue. In particular, as to whether the view that the appearance and benefit of the podiums was diminished by the tower and supporting structure elements within the public domain.
 - o The use of brick within the podium elements was seen as complementary but the extent to which the design and pattern book for the podium adequately complemented the Burwood built form character or provided sufficient design variety.
 - o The interface between the residential tower and commercial tower was challenged as to whether it represented an acceptable design outcome or outlook for future residents.
 - o While the rationale of the tower forms and their façade detail to improve environmental and visual impacts was appreciated, some refinements were recommended to improve scope for ADG compliance, communal amenities and visual coherence.
- **Wind and Micro Climate:** There were environmental concerns regarding wind effects and solar access that will determine whether the public realm would comprise pleasant, meaningful spaces and connections. There is concern regarding the extensive use of glazed canopies required to mitigate down drafts generated by the towers and the negative effect this would have upon the sense of public space.
- **Public Domain:** A core focus on the assessment by the DRP and topic of consideration through the panel meetings was public domain and the contribution to sense of place. This extended to consideration of both the user experience for pedestrians at street level but also the extent to which the scheme would promote and contribute to the positive identity of the Burwood Town Centre as a unique place.

A particular theme of the panel was to seek the 'gestalt gesture' that would represent the core elements of design excellence and also contribution to a unique sense of place. The areas of focus included:

- o Treatment of Railway Parade must recognise its multiple-roles, at the formal “Avenue of Flags”, also as a primary route and thoroughfare within the town centre and more appropriate treatment of driveway cross overs to manage negative impacts upon the public realm.
- o The extent of grade separation was seen to undermine both the amenity and potential enjoyment of the public space in a number of locations within Railway Parade and Wynne Avenue.
- o Wynne Avenue was seen as the heart of this project by the DRP but did not consider the initial design as acceptable. The role and function of the space was unclear and features such as the escalators reduced the impact of the space and undermined the quality of the environment.
- o Request from the panel to consider the extent of tree canopy in Burwood, the extent to which this contributes to city image and the need to extend that canopy cover through the project, and to help mitigate urban heat island effects.
- o The panel also sought a greater level of acknowledgement of linkages between proposed open spaces and lanes within the scheme with existing external pedestrian links and desire lines to neighbouring sites and destinations beyond.
- o The panel also sought review of the fine grain nature of the proposal, in particular how distinct places would be created throughout the development. Offering contrast between Clarendon Place, Wynne Avenue and the proposed Burwood Lane.
- o There was also considerable testing of a number of key elevations in the scheme. In particular the treatment and design of a colonnade proposed to Railway Parade and the interface between the western elevation and the proposed Burwood Urban Park.
- o There was also continued concern that there was insufficient design resolution to the scheme, which called into question the deliverability of the project as a whole and the intended design outcomes to which the design team was asked to respond.

Following revisions to the design throughout the assessment process, the DRP was able to provide their support to the proposal, subject to conditions of consent which have been incorporated into the amended draft conditions.

Amendments to the application

Since the DA was originally lodged, a number of design and other amendments have been made in response to feedback from the assessment team and the DRP. Details are provided in the applicant's Statement of Environmental Effects and a summary is provided below.

- **Wynne Avenue:** Originally, it was proposed to transform Wynne Avenue into a shared zone. A new public plaza was also proposed fronting Wynne Avenue (along Block 1), and included central escalators to the supermarkets within the Lower Ground Floor. The DA has been amended to include a reconfigured (pedestrian-friendly) Wynne Avenue and an amended civic plaza named Wynne Place, which increased in size (in Block 1) by setting the Block 1 podium back. It has also removed the escalators and provides a reduced area of soft landscaping. This amended layout allows Wynne Place to be used for community events such as community markets.
- **Tower D:** Originally, Tower D was a residential building which was setback from the proposed new urban park to the west. It has since been updated to create more of a civic presence to the new urban park, incorporating 3 floors of commercial uses above the podium level and these commercial levels having a nil setback to the western boundary. The elevation facing the urban park has been given a civic scale colonnade appropriate to the public setting of the adjoining space and return into Burwood Lane. This includes ground plane activation throughout the colonnade and removal of lobby entrances to avoid dead frontages. The entrance to the residential levels of Tower D has been relocated to Burwood Lane, to sit alongside the new commercial lobby. This will enable the new urban park to be activated, creating an improved civic space/precinct.
- **Tower C:** Originally, Tower C was connected to Tower E. Tower C has since been amended to create a separation distance between Tower E, creating two distinct building envelopes whilst creating an expanded vertical void above Burwood Lane.
- **Column structures:** Originally, the tower column structures were separated from the design of the podium and were incorporated into the landscape and public domain areas of the development.

The column structures have since been amended to be included within the design of the podium and separated from the landscaped areas, freeing up more public domain area.

- **Podium articulation:** Greater articulation has been provided along the podium levels of the building, to provide greater visual interest and to break up the massing of the development.
- **Corner of Block 1:** The podium of the development has been amended to create a clear and pronounced entry. This allows the podium to directly respond to the streetscape, whilst allowing for public art opportunities in a highly visible location.
- **Serviced apartments:** Originally, serviced apartments were proposed along the lower levels of Tower A. Tower A has since been amended to replace the serviced apartments with residential apartments. The non-commercial floorspace, in the form of commercial office space, has been relocated to the lower levels of Tower D.
- **Clarendon Place:** The treatment of the Clarendon Place elevation went through a number of iterations responding to changing levels and uses across this elevation and to limit the need for a tiered landscaping design. The DRP requested that the levels along Clarendon Place are retained. The incorporation of the brick arches is a specific reference to local vernacular character found on other shop fronts on the Burwood High Street.
- **Basement levels:** The amended design includes a part six (Block 2) and part seven (Block 1) basement parking levels. The basement of Block 1 has been setback 4 metres from the property boundary along Railway Parade to ensure it does not traverse the land to be acquired as identified under the *Burwood Local Environmental Plan 2012*.
- **Water treatment plant:** A water treatment plant has been included on Basement Level 6. The plant will be used to recycle stormwater and wastewater, for use within the development only and will not be connected to external water networks. This plant is ancillary to the mixed-use development.
- **Materials:** The proposed materials have been amended in accordance with the recommendations of the DRP to take into account more neutral tones (includes a variety of coloured bricks) to respond to the site's heritage significance and to create a more harmonious built form, in particular in relation to the podiums' articulation and relationship with its surrounding context.
- **Vehicular access:** A secondary access and egress is provided along Wynne Avenue, and a third egress point will be provided, exiting onto Belmore Street. The internal arrangement of the development's access point from Wynne Avenue (via Emerald Square) and the exit point onto Belmore Street has been amended through an alternate internal route (consistent with the 2021 route).
- **Building envelopes:** The building envelopes, in particular the envelopes of the podium, have been simplified. Previously a diagonal shaped podium was proposed. This has been simplified which enhances and opens up the public domain, creating a more user-friendly plaza, designed for public events such as community markets.
- **Stratum subdivision:** A stratum subdivision is proposed for the land along Railway Parade (Block 1), which has a size of approximately 407.6 sqm. The subdivision broadly comprises the surface of the reserved land (as outlined in the Burwood LEP's land acquisition map), limited in depth as depicted on the Plan of Subdivision. It is intended that the new lot (Lot 11) be dedicated to Council and the land beneath the stratum subdivision (Lot 10) will remain in the ownership of the applicant.

7) STATUTORY HEADS OF CONSIDERATION

The application is assessed under the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, which include:

- The provisions of the following environmental planning instruments:
 - o State Environmental Planning Policy (Planning Systems) 2021
 - o State Environmental Planning Policy (Transport and Infrastructure) 2021
 - o State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - o State Environmental Planning Policy (Resilience and Hazards) 2021
 - o State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
 - o State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;
 - o Burwood Local Environmental Plan (BLEP) 2012;
- The provisions of the Burwood Development Control Plan (BDCP) 2013
- The planning agreement entered into between Burwood Council, Burwood Tower Holdings Pty Ltd and Wynne Ave Property Pty Limited atf Wynne Ave Property Trust on 6 August 2020;

- The Environmental Planning and Assessment Regulation 2021;
- The likely social, environmental and economic impacts of the development in the locality;
- The suitability of the site for the development;
- Submissions made in accordance with the Act and Regulations; and
- The public interest.

These matters are considered in this report.

Reference is also made in this assessment report to *State Environmental Planning Policy (Affordable Rental Housing) 2009* in relation to the provision of affordable housing, although it is not strictly applicable.

8) **STATE ENVIRONMENTAL PLANNING POLICIES**

This application was originally submitted to Council on 5 May 2021, prior to the repeal of numerous applicable State Environmental Planning Policies (SEPPs). Specifically, the following SEPPs of relevance to this application were repealed on 1 March 2022 and their provisions were (for the most part) transferred into new SEPPs which commenced on 1 March 2022.

REPEALED SEPPs	TRANSFERRED TO
State Environmental Planning Policy (State and Regional Development) 2011	State Environmental Planning Policy (Planning Systems) 2021
State Environmental Planning Policy (Infrastructure) 2007	State Environmental Planning Policy (Transport and Infrastructure) 2021
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	State Environmental Planning Policy (Biodiversity and Conservation) 2021
State Environmental Planning Policy 55 – Remediation of Land	State Environmental Planning Policy (Resilience and Hazards) 2021
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	State Environmental Planning Policy (Biodiversity and Conservation) 2021

The majority of the new SEPPs do not contain any savings and transitional provisions, therefore the new SEPPs apply to the assessment of this application. However, each of the new SEPPs contains a 'transferred provisions' clause (clause 1.4) which states that section 30A of the Interpretation Act 1987 is taken to apply. Section 30A(2) of the *Interpretation Act 1987* provides that "*The transfer does not affect the operation (if any) or meaning of the provision, and accordingly the provision is to be construed as if it had not been so transferred.*"

In other words, the SEPP provisions that have been transferred into the new SEPPs are to be interpreted in the same way as they were under the previous instruments.

Each new SEPP specifies which provisions from the previous SEPPs have been transferred. For the purposes of assessing this application, we have checked all old/new SEPPs and can confirm that all relevant provisions have been transferred.

State Environmental Planning Policy (Planning Systems) 2021

As explained in Section 2 of this report, this application is referred to the Sydney Eastern City Planning Panel as the proposal is Council related development with a capital investment value of more than \$5 million (see clause 3 of Schedule 6 to the Planning Systems SEPP). This provision is identical to clause 3 of Schedule 7 of the now repealed *State Environmental Planning Policy (State and Regional Development) 2011* which was transferred to the Planning Systems SEPP on 1 March 2022.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Division 17 – Roads and traffic

Chapter 2 of the T&I SEPP aims to facilitate the effective delivery of infrastructure across the State and identifies matters to be considered in the assessment of development adjacent to particular types of infrastructure development including roads. The provisions of Chapter 2 were previously in Part 3 of the now repealed Infrastructure SEPP, and were transferred to the new T&I SEPP. Relevant provisions are addressed below.

Section 2.98 – Development adjacent to rail corridors

Section 2.98 (clause 85 of the repealed Infrastructure SEPP) applies to development on land that is in or adjacent to rail corridors. Despite the proximity of the site to a rail corridor, the site is not adjacent to the rail corridor for the purposes of this section. It is noted that Burwood Council referred this application to Sydney Trains. By letter dated 11 June 2021, Sydney Trains requested that Council impose certain conditions of consent to ensure that the proposed development is undertaken in a safe manner, on the basis that the site is adjacent to a rail corridor.

Despite the fact that the site is **not** adjacent to a rail corridor, the draft recommended conditions of consent include Sydney Trains' requested conditions. It is Burwood Council's position that these conditions should be imposed, reflecting the scale of development and size of the construction site and ability for the project to have material impacts outside the immediate site boundaries.

The Panel is requested to decide whether it is appropriate for those conditions to be imposed.

Section 2.99 – Excavation adjacent to rail corridors

Section 2.99 of the T&I SEPP (clause 86 of the now repealed Infrastructure SEPP) applies to development that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land within 25m (measured horizontally) of a rail corridor or of the ground directly below a rail corridor. This section does not apply as the site is at least 34m from a rail corridor.

Section 2.122 – Traffic generating development

Section 2.122 (clause 104 of the repealed Infrastructure SEPP) applies to traffic generating development, including:

- Car parks (whether or not ancillary to other development) with 200 or more car parking spaces;
- Commercial premises of at least 10,000m² in GFA;
- Food and drink premises (other than take away food and drink premises with drive-through facilities) with car parking for 200 or more motor vehicles;
- Residential accommodation comprising 300 or more dwellings;
- Shops of at least 2,000m² in GFA.

Before determining a development application for traffic generating development, the consent authority must:

- (a) *give written notice of the application to TfNSW within 7 days after the application is made, and*
- (b) *take into consideration—*
 - (i) *any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*
 - (ii) *the accessibility of the site concerned, including—*
 - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
 - (iii) *any potential traffic safety, road congestion or parking implications of the development.*

On 19 July 2022, Burwood Council referred the amended DA to TfNSW for comment. On 8 August 2022, TfNSW provided a written response stating that it “*does not support the proposed development in the current form*” and setting out a number of concerns. The applicant responded to each of Transport for NSW's comments.

The assessment team's traffic consultant has concluded that the development application appropriately responds to TfNSW comments, by:

- Removing the proposal for a 30km/h HPAA zone along Wynne Avenue and retaining the existing speed limits, however noting that Wynne Avenue still requires further design resolution to avoid road user confusion and achieve appropriate safety outcomes.
- Completing a safety analysis for the Wynne Avenue exit that illustrates sight lines are available to the traffic signal lanterns from 10 metres within the site.
- Noting any upgrades to existing signalised marked foot crossings along Burwood Road are at TfNSW discretion (which will require further detailed design resolution and [if not implemented] pedestrian assessment).
- Clarifying the infrastructure works to form part of the DA and other works the proponent will contribute funding towards.
- Demonstrating that the proposal has appropriate level of impact on the road network in 2031, with most intersections expected to operate at an acceptable level of service (i.e. LOS D or better). The exception is Wentworth Road/ Railway Parade which would operate at LOS E with/ without the development in the future and during weekday PM and weekend peaks.

The proposal is also considered acceptable in relation to the additional matters for consideration under section 2.11, for the following reasons:

Accessibility

- The site in a prime location, in the core of the Burwood Town Centre and close to major public transport services, presenting the opportunity for a transit-oriented development. The proposal presents a mixed-use offering that can be expected to aide to trip containment and linked trips within the town centre, as well as within the development itself.
- Vehicular access to the development is limited to select consolidated locations allowing most of the frontages to be pedestrian oriented. That said, the main car park and loading access is limited to left turns, and whilst appropriate for the location along Railway Parade and proximity to a key roundabout, it requires additional vehicle circulation through the town centre to navigate around the restricted right turns. Route planning would be necessary by regular users/ drivers to determine the most efficient path to/ from the site.
- The application illustrates and quantitatively assesses the impact of the additional pedestrian movements generated by the proposal on the surrounding footpath network. Clear and defined pedestrian links are provided around and through the development, along with pedestrian and cyclist entrances to the various land uses and end-of-trip facilities within. These pedestrian links provide more direct access to the future Burwood Urban Park and present opportunity to reduce foot traffic along Railway Parade where more vehicle interaction is expected. More detail and authority endorsement is required on the public domain design, midblock crossing and associated pavement treatment for Wynne Avenue to ensure the effectiveness of the through link. This can be addressed via the conditions of consent.

Parking:

- The development application has appropriately responded to feedback to reduce residential/ visitor parking provisions to align with TfNSW/RMS rates for Metropolitan Regional CBD Centres, further promoting transit-oriented development, non-car mode share (particularly for commuter trips) and thus reducing reliance on private vehicles.
- Given the mixed-use nature of the site, the shared basement car park access arrangement for all user groups creates a complex arrangement for drivers to navigate through various levels to access relevant parking areas (e.g. residential and visitors). Although a boom gate and license plate recognition system are proposed to sperate the different user groups, validation of the system is required given the complexity of the environment (which can be addressed via conditions of consent).
- The proposal also includes significantly more bicycle parking than the DCP requirement to promote active travel to/ from the site. Further detail is required on the layout of retail and commercial bicycle parking and other end of trip facilities to ensure it can be accommodated on-site. This bike parking will require promotion and encouragement initiatives to maximise usage

(including funding commitment to some initiatives such as a towel service for non-residential users). This can be addressed via a Green/ Workplace Travel Plan.

- In response to feedback, the development provides visitor parking on higher basement levels (B4 and B5) which is now more logical to avoid unnecessary circulation through additional basement levels.
- The development demonstrates all design vehicles can access the site and loading bays.

Traffic:

- Traffic network modelling has been completed for the project using SIDRA for a sizeable study area, initially for the Planning Proposal and subsequently adopted/ updated for this Development Application.
- The modelling results demonstrate that the proposal has a manageable level of impact on the road network in 2031, with most intersections expected to operate at an acceptable level of service (i.e. LOS D or better). The exception is Wentworth Road/ Railway Parade which would operate at LOS E with/ without the development in the future and during weekday PM and weekend peaks.
- Modelling results for the access points also demonstrate an acceptable level of service (i.e. LOS D or better), with a safety analysis completed for the Wynne Avenue exit in response to TfNSW comments that illustrates sight lines are available to the traffic signal lanterns from 10 metres within the site.

The development is supported from a traffic and transport perspective subject to the proposed consent conditions.

By final letter dated 11 November 2022, TfNSW advised that it raises no further objection to the development, subject to the following requirements being included in any development consent issued:

Concurrence under section 138 (2) of the Roads Act 1993

Railway Parade is a classified regional road under the care and control of Council as the relevant road authority. Under section 138 (2) of the Roads Act, 1993 concurrence is required from the agency regarding all the civil works on Railway Parade.

In this regard, TfNSW advises that the proposed acceleration lane on Railway Parade for the vehicle exit on Railway Parade should be removed on road safety grounds. Acceleration lanes should not be provided in built up urban road environments as it encourages vehicles to exit at speed and leaves no room for the vehicle driver error when the length of the acceleration is short.

TfNSW condition: *Prior to any construction certificate being issued, the applicant shall obtain concurrence under section 138 (2) of the Roads Act 1993 from TfNSW. The proposed vehicle crossovers on Railway Parade shall be designed and constructed in accordance with AS2890.1 and AS2890.2 and Council's requirements as the relevant road authority.*

Approval under section 87 of the Roads Act 1993

TfNSW advises that the proposed modification of the existing traffic control signal (TCS) layout on Wynne Avenue (midway between Railway Parade and Belmore Street) requires TfNSW approval under section 87 (4) of the Roads Act 1993. TfNSW advises that the application is seeking to reduce the carriageway width of Wynne Avenue down to one travel lane commencing approximately 30 metres south of Railway Parade. The Applicant will be required to submit as part of any approval process a revised TCS plan, concept road design plan with road design dimensions and swept paths of the design vehicle for all turn movements along with the electronic copy of SIDRA models for this intersection.

TfNSW Conditions:

- *Prior to the issuing of a construction certificate, an application shall be made to TfNSW under section 87 (4) of the Roads Act 1993 to amend the layout of the existing TCS on Wynne Avenue (midway between Railway Parade and Belmore Street).*

- Subject to the section 87 (4) approval of TfNSW, the developer will be required to enter a Works Authorisation Deed (WAD) with the agency for the changes to the TCS on Wynne Avenue and associated civil works prior to commencing the signal and road works.

General

TfNSW Condition:

A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows within Burwood CBD during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.js>

In addition to the above, TfNSW provides the following advisory comments to Council for consideration in the determination of the application:

1. Given the significant traffic generation of the proposed development and maximise network efficiency, Council as the relevant road authority should consider incorporating a condition requiring the removal of existing on-street parking on both sides of Railway Parade between Wynne Avenue and Condor Street.
2. TfNSW notes that a 30km/h pedestrian thoroughfare is proposed in Wynne Avenue (between the Council car park traffic signals and Railway Parade) and Clarendon Place. As Council would be aware, the Agency is responsible for speed management along all public roads within the state of New South Wales.

Any changes to speed limits within Burwood CBD will require an application to be submitted to the Agency for approval under the Road Transport (Safety and Traffic Management) Act. As part of this application an assessment will need to be undertaken in accordance with the NSW Speed Zone Guidelines.

3. Consideration should be given to reducing the vehicle trip rate by requesting the applicant prepare a Travel Demand Management Plan (TDMP) for review by Council, prior to release of any Construction Certificate for building structures. This TDMP can include, but not be limited to, the following:

- o Decoupling parking spaces from the proposed residential apartments.
- o End of trip facilities for cyclists (employees).

The TDMP should be reviewed upon the construction and occupation of the initial stages of the proposed development to identify whether the objectives are being met and if further measures are required.

4. It is noted that under Council's 7.11 plan, traffic control signals are proposed by Council at the following intersections on the local road network to assist with the planning proposal and wider uplift in the precinct:
 - o Railway Parade/Condor Street,
 - o Belmore Street /Wynne Avenue,
 - o Belmore Street/Condor Street; and
 - o Burwood Road/Victoria Street East.

As Council would be aware, traffic control signals require approval of TfNSW under the Roads Act 1993. TfNSW would only grant approval to traffic control signals at these intersections, subject to the following requirements:

- o Demonstrate that traffic volumes at this intersection satisfy the warrant criteria for traffic control signals as specified in the TfNSW Traffic Signal Design – Section 2 Warrants.
- o Subject to satisfying the above warrant criteria for traffic control signals, further investigations are required to determine whether a signalised intersection can be accommodated within the existing road corridors. This will require in the first instance a geometric road design (illustrating full road design dimensions with swept path of the design vehicle) of the proposed signalised intersection overlaid on an aerial to scale.
- o If approval were granted to the provision of the traffic control signals under the Roads Act, they would need to be installed at no cost to TfNSW and constructed under a 'Works Authorisation Deed' entered into with TfNSW.

Chapter 3 Part 3.3 – Early education and childcare facilities

Chapter 3 of the T&I SEPP aims to facilitate the effective delivery of educational establishments and early education and care facilities across the State. Part 3.3 contains provisions relating specifically to centre-based childcare facilities.

This application seeks consent for the use of the Podium Level within Tower D on Block 2 as a centre-based childcare facility. The proposed indoor area of the childcare centre is 1,387m² and the outdoor terrace is 798m². Access to the centre will be provided from Lifts 4 and 5 which are accessed from the childcare centre parking area on Basement B3 as well as Podium Ground Level.

However, operation and fitout of the childcare centre will be the subject of a future development consent and will not be approved as part of this application. Any consent granted to this application will be for the land use only.

Clause 3.23 of the T&I SEPP requires the consent authority to take into consideration any applicable provisions of the *Child Care Planning Guideline* dated September 2021 before determining a development application for development for the purpose of a centre-based childcare facility. The provisions of that Guideline will be more relevant to a future DA for the detailed operation and fitout of the childcare centre. However, we have reviewed the principles in the Guideline relating to site selection and location and are satisfied that the site is suitable for a childcare centre.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 10 – Sydney Harbour Catchment

Chapter 10 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* details provisions relating to land within the Sydney Harbour Catchment. These provisions were transferred from the now repealed *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

The site is located within the Sydney Harbour Catchment and is therefore subject to section 10.10 of the SEPP which contains principles for the Sydney Harbour Catchment. Pursuant to section 10.9, these principles are to be considered and, where possible, achieved in the preparation of environmental planning instruments and development control plans under Part 3 of the Act, and in the preparation of environmental studies and master plans for the purposes of the Act.

Therefore, these principles do not need to be considered in the assessment and determination of a development application.

There are no other provisions in Chapter 10 of relevance to the assessment of this application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of land

Chapter 4 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* provides a framework for the assessment, management and remediation of contaminated land. Clause 4.6 of the SEPP prevents the consent authority from consenting to development unless:

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

The development application was accompanied by the following reports:

- Douglas Partners report titled 'Preliminary Contamination Investigation' (Report ref: 84968.00, dated 24 August 2015);
- EI Australia report titled 'Detailed Site Investigation' (Report ref: E25334.E02.Rev1, dated 26 October 2021);
- EI Australia report titled 'Remedial Action Plan' (Report ref: E25334.E06.Rev1, dated 27 October 2021); and

- Envirocene Pty Ltd letter titled 'Interim Audit Advice No 1 – 42-60 Railway Parade and Wynne Avenue, Burwood, NSW' (Letter ref: E051, dated 28 October 2021).

The application was referred to JK Environments Pty Ltd who formed part of the assessment team on behalf of Council. JK Environments Pty Ltd has reviewed the documentation and has recommended approval subject to conditions.

The Preliminary Contamination Investigation concluded that the site can be made suitable for the proposed development, subject to the following:

- Appropriate decommission and disposal of existing grease traps, oil and wastewater aboveground tanks prior to demolition of site buildings; and
- Detailed intrusive investigation (including waste classification) following building demolition. The investigation should target the areas of potential contamination identified by the Conceptual Site Model in Section 6.

It also recommended that a Hazardous Building Materials (HBM) survey be undertaken to identify HBM in existing buildings, and removal and clearance of the HBM prior to bulk demolition.

The Detailed Site Investigation concluded that the site can be made suitable for the proposed development, provided the following recommendations are implemented:

- Preparation and implementation of a Remediation Action Plan;
- Preparation of a waste management plan to classify waste material and surplus material including potential virgin excavated natural material to be removed from the site, in accordance with the EPA (2014) Waste Classification Guidelines, Protection of the Environment Operations Act 1997, and Work Health and Safety Regulation 2017;
- Assessment of any soil/fill material imported onto the site. Imported soil must be classified as VENM or have a classification certificate indicating it is suitable for the proposed land use;
- Preparation of a final site validation report by a qualified environmental consultant, certifying site suitability for the proposed development.

The Remedial Action Plan concluded that the site can be made suitable for all future land uses through the implementation of the works described in the RAP.

The conditions of consent recommended by JK Environmental are incorporated into the recommended conditions of consent attached to this report.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of *State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004*. The proposal includes a BASIX Certificate for the residential component of the proposed development which meets the requirements of the SEPP. A condition is recommended requiring the recommendations of the BASIX Certificate be complied with.

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

SEPP 65 applies to the proposed development as it contains residential accommodation and is three or more storeys and contains four or more dwellings. Clause 28(2) stipulates that the consent authority is to take into consideration the advice of a design review panel (if any), the design quality of the development when evaluated in accordance with the design quality principles, and the Apartment Design Guide (ADG).

Design Quality Principles

The amended proposal has been assessed against the Design Quality Principles in SEPP 65. The proposal is considered to be consistent with the Design Quality Principles as outlined in Table 5 below.

Table 5 Assessment against SEPP 65 design quality principles

Principle	Comment	Consistency
Principle 1: Context and neighbourhood character Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.	The proposed development responds to the desired future character and context of the Burwood town centre, as outlined in the Burwood DCP as well as the site-specific DCP. This desired future character of the Burwood town centre is for high-density development consistent with its status as a Strategic Centre under the Eastern City District Plan, while maintaining human-scaled street environments that respect the scale of existing heritage items in the locality. The proposal is consistent with this as it incorporates three-storey podiums to create a human-scaled presence to the street, with towers that are visually recessed when viewed from the street. The proposal also creates a number of through-site links to link the site with surrounding sites and increase pedestrian permeability with the surrounding area. Architectural elements have also been incorporated into the design to respond to context, including the use of brick and arches within the podium, which are design elements within the existing Burwood town centre.	Yes
Principle 2: Built form and scale Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.	The scale, bulk and height of the proposed development is consistent with the height and FSR controls under the Burwood LEP (which were gazetted following a Planning Proposal process) and the provisions of the site-specific DCP relating to height, FSR, building separation and setbacks and general built form. As the proposal complies with the DCP in this regard, more onerous standards cannot be required, pursuant to section 4.15(3A) of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act).	Yes
Principle 3: Density Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.	The density of the proposed development is consistent with the Planning Proposal for the site and the status of Burwood as a Strategic Centre. The site is well serviced by public transport including trains and buses, access to jobs and community facilities. The proposal overall provides an acceptable level of amenity for residents having regard to the design criteria and objectives of the ADG and site-specific DCP relating to solar access, ventilation, number of apartments off a single core, and so on.	Yes
Principle 4: Sustainability Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other	The proposal complies with the requirements of BASIX. As noted in section 8 of the BASIX SEPP, a consent authority cannot require a higher standard of ecologically sustainable design than what is achieved by BASIX in respect of the residential component of a mixed-use development. The proposal also provides a compliant level of solar access in accordance with the ADG. In relation to ventilation, 64% of apartments are naturally cross ventilated in the first nine storeys. Each tower	Yes

Principle	Comment	Consistency
elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	individually achieves >60%. While the applicant relies on the use of plenums to achieve >60%, in most cases, plenums are being used for single aspect apartments. Whilst not the preferred mechanism, the ADG does permit the use of plenums for single aspect apartments. Additionally, the use of plenums was included in the site-specific DCP, which was accepted and adopted.	
Principle 5: Landscape Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.	The finishes and materials of the landscape details are generally of high quality. The publicly accessible private land is designed to create a high-quality address and setting for the proposed buildings, including the provision of a variety of plant types and sizes; trees capable of offering shade to public spaces; a variety of seating options for use by the public (not restricted to outdoor dining); a high quality pavement design, and public art.	Yes
Principle 6: Amenity Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.	The proposal provides an acceptable level of amenity to residents in terms of apartment sizes, solar access to apartments, outlook, privacy, ventilation and so on. While there are some non-compliances with ADG design criteria, these are considered well justified. This is discussed in the ADG compliance table below.	Yes
Principle 7: Safety Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.	The Crime Risk Report submitted with the application outlines how the proposed development addresses the principles of Crime Prevention Through Environmental Design. In summary, the proposed development will provide a high level of safety and security that aligns with the principles of CPTED, subject to compliance with conditions of consent which are included in the recommended conditions.	Yes

Principle	Comment	Consistency
Principle 8: Housing diversity and social interaction Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents	The proposed development achieves a mix of apartment sizes appropriate to the social context of the area, as follows: Studios: 17 (1.63%) 1 bedroom: 266 (25.55%) 2 bedrooms: 553 (53.12%) 3 bedrooms: 202 (19.4%) 4 bedrooms: 3 (0.28%) The Social Impact Statement submitted with the application noted that the locality has a high proportion of couples without children for whom one or two bedroom apartments could provide adequate housing options, and that over half of all households comprise one or two people, demonstrating a strong demand for housing suited to smaller households. The proposed dwelling mix is therefore considered appropriate.	Yes
Principle 9: Aesthetics Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	The proposed development is high quality in terms of its aesthetics, using a diversity of scale, materials, colours and textures and fenestration that provide visual interest and diversity while responding to existing elements within the town centre streetscape. In terms of materiality, the podiums are predominantly brick, responsive to the brick of Burwood Road, and incorporate a number of different elements including hit and miss brickwork, vertical louvres, portal frames, angled windows, corner windows, shopfront awnings, balconies and terraces, brick panels, and brick arches. Different approaches to materiality and fenestration are used for each tower, as outlined in the Architectural Design Statement.	Yes

Apartment Design Guide (ADG)

As the proposed development includes a residential flat building of three or more storeys and four or more dwellings, the provisions of the Apartment Design Guide (ADG) are applicable. Parts 3 and 4 of the ADG contain objectives, design criteria and design guidelines for residential apartment development. The ADG states that:

“The key to working with Parts 3 and 4 is that a development needs to demonstrate how it meets the objective and design criteria. The design criteria set a clear measurable benchmark for how the objective can be practically achieved. If it is not possible to satisfy the design criteria, applications must demonstrate what other design responses are used to achieve the objective and the design guidance can be used to assist in this.”

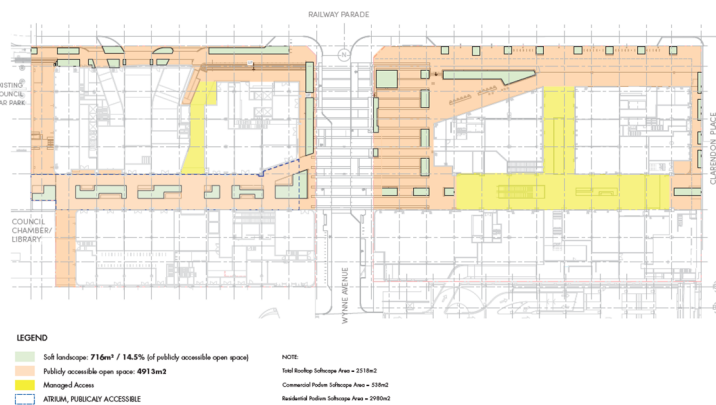
Accordingly, the development has been assessed against the relevant design criteria within Parts 3 and 4 of the ADG in **Table 6** below. Objectives and design guidance have been referred to where necessary.

Table 6 Assessment against the ADG design criteria

Design criteria	Consistency		
3D Communal and public open space			
Communal open space has a minimum area equal to 25% of the site.	No.		
	Site area	Required (25% of site area)	Proposed

Design criteria	Consistency		
Design guidance includes: Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should: - provide communal spaces elsewhere such as a landscaped roof top terrace or a common room - provide larger balconies or increased private open space for apartments - demonstrate good proximity to public open space and facilities and/or provide contributions to public open space	Blocks 1 and 2 combined: 14,363m ²	3,590.75m ²	2,046m ² (14.2%)
	Block 1: 7,717m ²	1,929.25m ²	1,032m ² (13.3%)
	Block 2: 6,646m ²	1,661.5m ²	1,014m ² (15.2%)
	The applicant's SEE states that "the development therefore exceeds the minimum design criteria of the ADG", however the calculations provided include both indoor and outdoor communal space. The ADG criteria relate to communal open space only. If only outdoor/open space is included, then the proposal does not meet the design criteria. The applicant argues that the proposal complies as the ADG does not exclude indoor communal spaces from the calculation, but rather promotes a mix of both indoor and outdoor spaces. We do not agree with this, considering the definition of communal open space in the ADG is "outdoor space located within the site at ground level or on a structure that is within common ownership and for the recreational use of residents of the development. Communal open space may be accessible to residents only, or to the public." Nevertheless, the shortfall in communal open space is considered appropriate having regard to the dense urban context of the site, the provision of publicly accessible space at the ground level, and the provision of internal communal spaces within the development. The applicant provides the following justification for the proposed provision of communal open space: - It is acknowledged that the ADG outlines that 25% of the site area should be used for communal open space purposes. This, however, assumes that a site is wholly being used for a residential flat building. - The proposed development is more than a residential flat building. It is a CBD precinct, including not only residential buildings, but also commercial buildings, cinemas, shops, restaurants and also public domain areas. It is therefore not reasonable to assume that the calculation of the communal open space for the RFB component should include the footprint of non-residential purposes (such as the footprint of the commercial tower), given the ADG doesn't apply to commercial buildings. It is also not reasonable to assume that the calculation should include areas being used for public domain purposes, otherwise it would be "double dipping", as these areas are already being used for communal/public purposes. - This is why specific provisions have been included, agreed and adopted in the site-specific DCP. - In the DCP, the entire proposed building footprint excluding public domain areas has been used to calculate the communal open space area and percentage. - It outlines the following: - Block 1 – - Total Roof Area: 5,879 sqm - Outdoor Communal Space – 1,014 sqm (17.2%) - Outdoor + Indoor Communal Space – 2,026 (34%) - Block 2 – - Total Roof Area: 5,257 sqm - Outdoor Communal Space – 1,014 sqm (19.3%) - Outdoor + Indoor Communal Space – 1,874 (36%) - The proposed development includes a range of spaces, including outdoor landscaped areas and a pool which occupy 17.2% to 19.3% of the development's footprint area. It should be noted that this alone is close to achieving the ADG's 25% design criteria. - Many of the balconies proposed are greater in size than required by the ADG, as outlined below:		

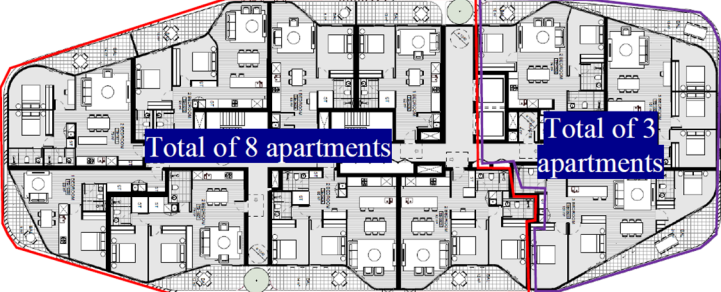
Design criteria	Consistency
	Tower A 267 / 346 (77%) Units Tower B 157 / 176 (89%) Units Tower C 184 / 309 (60%) Units Tower D 155 / 210 (55%) Units In addition to this, over 70-% of the proposed apartments as a whole receive over 2 hours of direct solar access in accordance with the ADG.
Developments 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 3pm on 21 June (mid-winter).	Block 1 – No. 50% of the principal outdoor area of Block 1 gets direct sun for only 1 hour and 30 minutes in the middle of winter. Block 2 – Yes. Block 2 has 3 main outdoor areas, all of them achieve over 2 hours of direct sunlight in 50% of the area. In relation to the Block 1 non-compliance, the applicant provides the following justification which is considered reasonable: - Given the site is surrounded by tall buildings, full compliance is not reasonable. Specifically given there are 3 x 20 storey residential flat buildings to the north of the site, directly opposite the proposed communal areas. Additionally, there is no alternative area to accommodate the communal space. - Given the orientation of the site, shadowing is expected. Additionally, the non-compliance is minor in nature. Block 2 complies with the solar criteria, whilst Block 1 receives 1 hour 30mins, which is only a 30min (or 25% non-compliance). - Ordinarily, communal areas could be provided on the rooftop of buildings, however the proposed buildings are up to 42 stories high, which are not appropriate (from a safety or amenity perspective) for communal areas. - Many of the balconies proposed are greater in size than required by the ADG, as outlined below: Tower A 267 / 346 (77%) Units Tower B 157 / 176 (89%) Units Tower C 184 / 309 (60%) Units Tower D 155 / 210 (55%) Units In addition to this, over 70-% of the proposed apartments as a whole receive over 2 hours of direct solar access in accordance with the ADG. - A new urban park and community centre is proposed, directly adjacent to the site, to the west. The park is approximately 2,200 sqm in size and will provide recreation and cultural opportunities for not only residents of the development but the Burwood LGA as a whole. - Over 4100 sqm of publicly accessible areas are being dedicated for public uses at the ground plane. This will be used for a variety of passive recreational purposes, where people can commune together, either for shopping, dining, the use for markets and general gatherings.
3E Deep Soil Zones On sites with areas >1,500m², 7% of the site area is to be deep soil with minimum 6m dimensions. Design guidance: Achieving the design criteria may not be possible on some sites including where: - The location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres) - There is 100% site coverage or non-residential uses at ground floor level.	No, however this is considered justified due to the site's high-density location. Further, the site-specific DCP states that, given the site's high-density location, "deep soil" planting may be offset by a reasonable component of alternative landscaping being provided. This provision is not overridden by the ADG, therefore both should be considered. The proposal provides 716sqm of soft landscaping across both Blocks 1 and 2 which equals 5% of the Block 1 & 2 site area. See the green shaded areas in the public domain plan below. In addition, the proposal provides 2,518m² of rooftop softscape area, which equals 17.5% of the site area.

Design criteria	Consistency
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.	PRIVATE / PUBLIC ACCESS PLAN PUBLIC DOMAIN 
3F Visual Privacy	
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: - Up to 12m (4 storeys) - 6m (habitable) / 3m (non-habitable) - Up to 25m (5-8 storeys) - 9m (Habitable) / 4.5m (non-habitable) - Over 25m (9+ storeys) - 12m (Habitable) / 6m (non-habitable) No separation is required between blank walls. The objective of this design criteria is as follows: “Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.” Additional design guidance is provided: For residential buildings next to commercial buildings, separation distances should be measured as follows: - For retail, office spaces and commercial balconies use the habitable room distances - For service and plant areas use the non-habitable room distances	No, however the proposed development complies with the site-specific DCP standards in relation to tower siting and envelopes (which provisions are not all overridden by the ADG). Separation distances from side and rear boundaries are as follows: Tower A eastern boundary: 5m setback Tower A southern boundary: 8m setback Tower B southern boundary: 8m setback Tower C southern boundary: 11m setback Tower E southern boundary: 3m setback (commercial building) All of the above-mentioned setbacks relate to facades with habitable rooms and balconies, therefore the 12m control is applicable. The proposal falls short of 12m from all boundaries. These non-compliant setbacks do not satisfy the objective of the design criteria because separation distances from the side and rear boundaries are not “shared equitably” between neighbouring sites. Burwood Grand is set back 15m from its northern boundary, which exceeds the 12m setback under the ADG. Therefore, it is ‘playing its part’ in relation to building separation. Emerald Square is set back 10m from its northern boundary, which is slightly below the 12m requirement. However, this non-compliance is only 2m compared with the non-compliance of Towers A and B which are 4m. Further, the proposal also does not comply with the building separation provisions in Section 2F of the ADG in that: - Tower A is separated by 21m from the existing building to the east of the site (24m suggested); and - Towers A, B and E are separated by 18m from the existing buildings to the south of the site (24m suggested). It is noted that this provision overrides the site-specific DCP (with which the proposal complies) which provides for far lesser setbacks than the ADG. However, the site-specific DCP also includes building separation controls (between buildings) which are not overridden by the building separation provisions in Section 2F of the ADG. Since the proposal complies with those building separation controls, the consent authority cannot require anything more onerous in respect of those matters. Therefore, in a practical sense the

Design criteria	Consistency																																
	consent authority is prevented from requiring greater tower setbacks in accordance with this provision of the ADG. It is noted that the proposal provides privacy screening in the following instances: South façade of Tower A. Building separation between + 18 m. Louvres have been applied to levels 4-19 to provide visual privacy to the neighbours on the south. East façade of Tower A. Building separation between 21-24 m. Perforated panels have being applied to balconies to provide visual privacy to the neighbours on the east. South façade of Tower B. Building separation between 18-24 m. Louvres and planters have being applied to levels 7-20 to provide visual privacy to the neighbours on the south. South façade of Tower E. Building separation between 18 m. Vertical fins have being applied to levels 3-11 to provide visual privacy to the neighbours on the south. South façade of Tower D. Building separation between 12 m distance to Tower E. Louvres and planters have being applied to levels 8-15 to provide visual privacy to the commercial tower.																																
3J Bicycle and car parking																																	
For development on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area, the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The Guide provides parking rates for metropolitan regional (CBD) centres which are lower than those in the DCP. <u>Guide rates</u> • 0.4 spaces per 1 bedroom unit. • 0.7 spaces per 2 bedroom unit. • 1.2 spaces per 3+ bedroom unit. • 1 space per 7 units (visitor parking).	Yes. The Guide rates produce the following minimum parking provision. <table><tr><th>Unit type</th><th>Proposed</th><th>Guide rates / unit</th><th>Parking provision</th></tr><tr><td>Studio</td><td>17</td><td>N/A</td><td>0</td></tr><tr><td>1 bed apartment</td><td>266</td><td>0.4 spaces</td><td>106.4 spaces</td></tr><tr><td>2 bed apartment</td><td>553</td><td>0.7 spaces</td><td>387.1 spaces</td></tr><tr><td>3 bed apartment</td><td>202</td><td>1.2 spaces</td><td>242.4 spaces</td></tr><tr><td>4 bed apartment</td><td>3</td><td>1.2 spaces</td><td>148.7 spaces</td></tr><tr><td>Visitor spaces</td><td>1,041 units</td><td>1 space / 7 units</td><td>148.7 spaces</td></tr><tr><td>TOTAL</td><td></td><td></td><td>888 spaces</td></tr></table> The amended proposal includes 888 spaces for the residential component (including visitor parking), which complies with this provision and is supported. It is noted that this parking provision is far lower than the DCP minimum requirement of 1,343. This is supported given the location of the site in close proximity to public transport.	Unit type	Proposed	Guide rates / unit	Parking provision	Studio	17	N/A	0	1 bed apartment	266	0.4 spaces	106.4 spaces	2 bed apartment	553	0.7 spaces	387.1 spaces	3 bed apartment	202	1.2 spaces	242.4 spaces	4 bed apartment	3	1.2 spaces	148.7 spaces	Visitor spaces	1,041 units	1 space / 7 units	148.7 spaces	TOTAL			888 spaces
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4A Solar and Daylight Access																																	
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	Yes. The proposal achieves the following: <table><tr><th>Tower/block</th><th>2+ hours</th></tr><tr><td>Tower A</td><td>283/346 (81.8%)</td></tr></table>	Tower/block	2+ hours	Tower A	283/346 (81.8%)																												
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Design criteria	Consistency	
Area and in the Newcastle and Wollongong local government areas.	Tower B	90/176 (51.5%)
	Block 1 total	373/522 (71.5%)
	Tower C	207/309 (66.7%)
	Tower D	164/210 (78.1%)
	Block 2 total	371/519 (71.3%)
	Combined development	744/1,041 (71.4%)
	It is noted that this control requires solar access to be achieved to at least 70% of apartments in a "building" (i.e. per building basis), not to be averaged across a whole site. It is noted that Towers B and C do not comply with the 70%. However, as all towers share the same basement, they can be classified as a single 'building', therefore the provision of the requisite solar access to 71.4% of apartments across the whole development is considered to comply with this provision. Irrespective of this, the achievement of 71.4% across the whole site is considered to satisfy the objectives of this design criteria which is "To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space." It could be argued that the location of apartments achieving the requisite solar access within one building or across the whole site is unimportant as long as the 70% is achieved overall.	
A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Yes. 0% of apartments in Towers A, C and D and only 0.6% of apartments in Tower B will receive no direct sunlight between 9am and 3pm in mid-winter.	
4B Natural Ventilation		
At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross- through apartment does not exceed 18m, measured glass line to glass line.	Yes. The applicant states that 64% of apartments are naturally cross ventilated in the first nine storeys. Each tower individually achieves >60%. This is partially achieved through the use of plenums, which are being used for single aspect apartments in most cases. This is acceptable under the ADG which provides design guidance to the effect that natural ventilation to single aspect apartments is achieved through certain design solutions including primary windows being augmented with plenums and light wells (generally not suitable for cross ventilation). Additionally, the use of plenums was included in the site-specific DCP, which was accepted and adopted. While the ADG overrides this DCP provision, it is noted that the ADG is a guide.	
4C Ceiling Heights		
Habitable rooms: 2.7m. Non-habitable: 2.4m. If located in mixed use areas: 3.3m for ground and first floor to promote future flexibility of use.	Yes	
4D Apartment Size and Layout		
Apartments are required to have the following minimum internal areas:	Yes	

Design criteria	Consistency																																																															
Studios: 35m² 1 bedroom: 50m² 2 bedroom: 70m² 3 bedroom: 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m².																																																																
4E Private Open Space and Balconies																																																																
All apartments are required to have primary balconies as follows: Studios: 4m² minimum area. 1 bedroom apartments: 8m² minimum area, 2m minimum depth. 2 bedroom apartments: 10m² minimum area, 2m minimum depth. 3+ bedroom apartments: 12m² minimum area, 2.4m minimum depth. Ground level or podium apartments are to have a minimum POS area of 15sq.m and minimum depth of 3m.	Yes. The proposal provides compliant balconies and in many instances balcony sizes exceed the minimums, as follows: Tower A 267 / 346 (77%) Units Tower B 157 / 176 (89%) Units Tower C 184 / 309 (60%) Units Tower D 155 / 210 (55%) Units																																																															
4F Common Circulation and Spaces																																																																
The maximum number of apartments off a circulation core on a single level is eight. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	No, however the non-compliance is justified. A single central core serves each of the towers. The number of apartments per level varies. The top levels generally only have 2-4 apartments while the typical level generally has 10 or 11, as outlined below. <table><tr><th>Tower</th><th>Level</th><th>Number of apartments</th></tr><tr><td>A</td><td>5-13</td><td>11</td></tr><tr><td></td><td>14-35</td><td>10</td></tr><tr><td></td><td>36</td><td>5</td></tr><tr><td></td><td>37-38</td><td>7</td></tr><tr><td></td><td>39-42</td><td>2</td></tr><tr><td>B</td><td>4, 7, 11, 15</td><td>10</td></tr><tr><td></td><td>5-6, 8-10, 12-14, 16-17</td><td>11</td></tr><tr><td></td><td>18</td><td>8</td></tr><tr><td></td><td>19-20</td><td>6</td></tr><tr><td></td><td>21</td><td>5</td></tr><tr><td>C</td><td>4</td><td>4</td></tr><tr><td></td><td>5-12</td><td>7</td></tr><tr><td></td><td>13</td><td>6</td></tr><tr><td></td><td>14-32</td><td>11</td></tr><tr><td></td><td>33</td><td>6</td></tr><tr><td></td><td>34-36</td><td>7</td></tr><tr><td></td><td>37-39</td><td>2</td></tr><tr><td>D</td><td>9-29 (except for L17)</td><td>9</td></tr><tr><td></td><td>17</td><td>8</td></tr><tr><td></td><td>30-32</td><td>7</td></tr></table>	Tower	Level	Number of apartments	A	5-13	11		14-35	10		36	5		37-38	7		39-42	2	B	4, 7, 11, 15	10		5-6, 8-10, 12-14, 16-17	11		18	8		19-20	6		21	5	C	4	4		5-12	7		13	6		14-32	11		33	6		34-36	7		37-39	2	D	9-29 (except for L17)	9		17	8		30-32	7
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Design criteria	Consistency
	The applicant provides the following justification for non-compliance, which is considered reasonable: • The design guidance states that “where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level”. The proposed development complies with this design guidance, given only 11 apartments at a maximum per core is proposed, (which is less than the 12 apartment maximum). • The purpose of ADG in limiting the number of apartments per level is to ensure that there is appropriate amenity per level, in terms of waiting times per lift, solar access to corridors and avoiding long walking distances to access the lifts. As outlined below, the proposed lift and corridor structure provides an appropriate level of amenity, due to: - o Windows are provided to the corridors to ensure solar access is provided. - o A range of larger corridor widths have proposed to provide articulation (a range of 2.4m, 1.9m, and 1.5m) - o The ADG’s design criteria relates to a single lift core. Each proposed building includes between 2-4 lift in the cores. - o As confirmed by Elevator Project Management (report was submitted as part of the DA material), the proposed lifts are bigger and faster than the average lift, to avoid long queuing times. - o Lift cores are generally located in the centre of each building. Below is an extract of Tower B (Levels 16-17), which shows that the lift core is off-centre. This arrangement allows for 3 of the apartments to access the lift via a short walk. The remaining 8 apartments (which is the maximum under ADG Objective 4F-1) can access the lift from the opposite direction.  The proposal also has more than 40 apartments sharing a single lift. There are between 2 and 4 lifts provided for each tower, which results in up to 80 apartments sharing a single lift. However, As confirmed by Elevator Project Management (report was submitted as part of the DA material), the proposed lifts are bigger and faster than the average lift, to avoid long queuing times.
4G Storage In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Studio: 4m³ 1 bedroom: 6m³ 2 bedroom: 8m³ 3+ bedroom: 10m³	Yes. Storage is provided within apartments and in basement levels adjacent to car parking spaces.

Design criteria	Consistency
At least 50% of the required storage is to be located within the apartment.	

Advice of the Design Review Panel

As discussed above, the DRP was specifically asked to consider whether the application demonstrates compliance with the SEPP 65 and the ADG. The minutes of the final DRP meeting provide as follows:

ADG Compliance Review – Final Comments

The DRP received a specific presentation on matters related to solar access and compliance with ADG standards at several of the DRP workshops. Paul Walter and Jon Johannsen provided further closer assessment of the submitted supporting material in relation to ADG compliance on behalf of the DRP. The further commentary provided the following concluding statements.

Much work has been done to clarify and expand on the DA submission as it has evolved in response to review by Council's independent assessment team, advisors, and the Design Review Panel (DRP). The focus of this input is to give assurance that:

- Appropriate due diligence and process has been applied by the Applicant's team with the aim to achieve a best possible outcome within the ADG and SEPP 65 framework,*
- Amended DA minimises environmental impacts where particular non-compliances occur and with necessary justification for compensation or alternatives available,*
- Based on the information available the DRP members (PW + JJ) are confident that the requisite standard of design excellence can be achieved.*

The DRP accepts that there is justification for the reference to the site-specific DCP on such issues as solar access, and where divergence with ADG guidelines may be appropriate.

ADG p.9

Objectives, design criteria and design guidance in Parts 3 and 4 of this Apartment Design Guide that are referred to in SEPP 65 will prevail over any inconsistent DCP control. Parts 3 and 4 set out objectives, design criteria and design guidance for the siting, design and amenity of residential apartment development.

There are extensive studies referenced in Section 5.0 relating to the extent of solar access compliance and non-compliance, and references to the digital tools and methodology indicate this work has engaged with highly competent consultants and used current best practice approaches. It is assumed these explanatory exercises to support the amended DA have been fully checked and are numerically correct, so the focus is on whether the bases for assessments are valid and whether the areas of non-compliance are reasonable in the dense urban context of the Holdmark development.

As has been clearly detailed in the Amended Statement of Environmental Effects (aSEE) (24 June 2022) there have been extensive amendments made to the original DA that resulted from both DRP and council's independent assessors, and the DRP considers that these changes have resulted in significant improvements to the level of design excellence achieved.

It is also noted that (as per aSEE p.14):

'other developments, such as Emerald Square and Burwood Grand, to the south of the site, were approved without considering the redevelopment likelihood of the subject site. There is, therefore, consequential impact on these buildings in terms of solar access. Such impacts were anticipated prior to the approval of the Planning Proposal and acknowledged and planned for in the Site-Specific DCP. However, design amendments to the project through discussions with the DRP have mitigated as far as possible impacts on adjoining buildings.'

Considering ADG compliance across the whole Burwood Place project shows a high level of compliance (and justification for non-compliances where needed), and for the neighbouring sites of Burwood Grand and Emerald Square where solar access loss occurs there has been impact analysis in detail to clarify the extent (eg. with 15 min interval studies) and show how the amended DA for Burwood Place mitigates adverse outcomes where possible.

With particular focus on solar access issues, it is apparent from the ADG compliance schedule that the amended DA scheme has required substantive further work to clarify ADG target guidelines.

- for units can be met (70% with 2hrs from 9am to 3pm at winter solstice)*
- for overall communal open spaces can be exceeded (based on min 2hrs from 9am to 3pm)*

In the case of solar access impacts on surrounding developments (Burwood Grand and Emerald Square), the intent of ADG objectives are able to be met where the collective communal open spaces and units across all towers on these sites are considered (however taken in isolation there are shortfalls in some instances). Where there are marginal results for some units, inclusion of more detail on floor plans and combined am and pm solar access supports improved outcomes.

Nevertheless based on the following excerpt from the aSEE there is justification to consider alternatives with site specific DCP.

'It is acknowledged that the ADG takes precedence over a Development Control Plan (DCP), however the purpose of the ADG is to guide developments across NSW. The purpose of the Site-Specific DCP, however, was to provide site- specific provisions for this development in its existing context, taking into account site constraints and surrounding context, whilst acknowledging the potential impacts from the development.'

While there are view impacts on both Burwood Grand and Emerald Square clearly identified in the amended SEE, there is a strong case presented for how Burwood Place tower locations and separation would allow reasonable view sharing, and capable of satisfying the Tenacity principles applicable to such cases. There is also potential improvement for outlook to landscaped communal and public open spaces from the affected units that provide some compensation in terms of immediate views and access to a significantly better civic realm.

State Environmental Planning Policy (Housing) 2021

The Housing SEPP enables the development of diverse housing types, including purpose-built rental housing, and encourages the development of housing that will meet the needs of more vulnerable members of the community.

Part 2 Division 1 of the SEPP relates to infill affordable housing. It relevantly applies to permitted residential development within an 'accessible area' (e.g., land within 800m walking distance of a public entrance to a railway station), but only if at least 20% of the gross floor area of the building will be used for the purposes of affordable housing. It incentivises the provision of affordable housing by allowing additional FSR to be granted above the applicable FSR control.

These provisions do not apply to this proposal as it does not propose to allocate at least 20% of GFA to affordable housing and does not seek an FSR bonus.

Nevertheless, in response to a request made by the Sydney Eastern City Planning Panel to consider the provision of affordable housing, the applicant has committed to providing affordable housing within 5% of residential apartments (i.e., 52 apartments) at the lowest levels of one or more buildings, and with no car parking spaces. The proponent will retain ownership, allowing a community housing provider of its choice to run / manage the apartments for a 10-year tenure (maximum). The proponent is currently in discussion with two providers, St George Housing and City West Housing. The location of apartments is being confirmed.

It is noted that section 21 of the Housing SEPP provides as follows:

“21 Must be used for affordable housing for at least 15 years

- (1) *Development consent must not be granted under this Division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued—*
- (a) *the affordable housing component of the residential development will be used for affordable housing, and*
- (b) *the affordable housing component will be managed by a registered community housing provider.”*

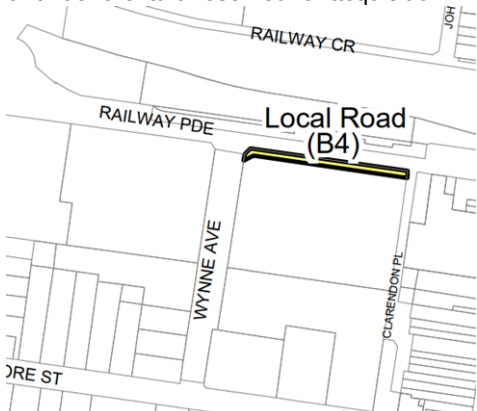
The proponent has offered to provide affordable housing for 10 years, not 15 years as would otherwise be required under this section. It is relevant that there is no obligation on the applicant to provide affordable housing, and Burwood Council does not currently have an affordable housing contributions scheme in place. Nevertheless, it is well recognised in the Eastern City District Plan that housing affordability is an issue in this region. Therefore, it is appropriate from a public interest perspective that additional affordable housing that achieves the current industry standard is provided. A condition of consent is recommended accordingly.

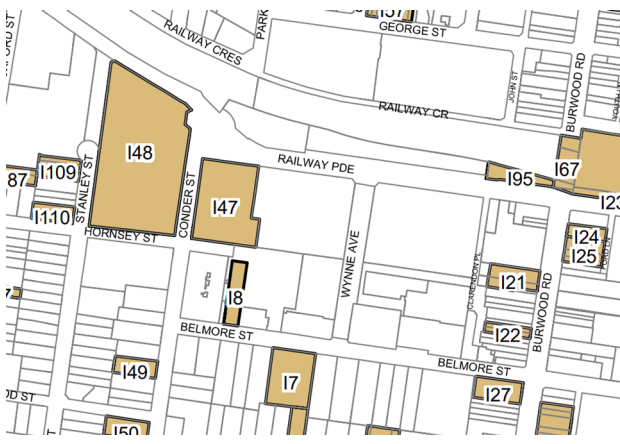
9) BURWOOD LOCAL ENVIRONMENTAL PLAN 2012

The Burwood Local Environmental Plan 2012 came into effect on 9 November 2012. Burwood LEP 2012 contains a number of controls including some numerical development standards which apply to the proposed development. A summary of the assessment of the application against the relevant planning controls within LEP 2012 is shown in **Table 7** below.

Table 7 Assessment of the proposed development against the Burwood LEP 2012

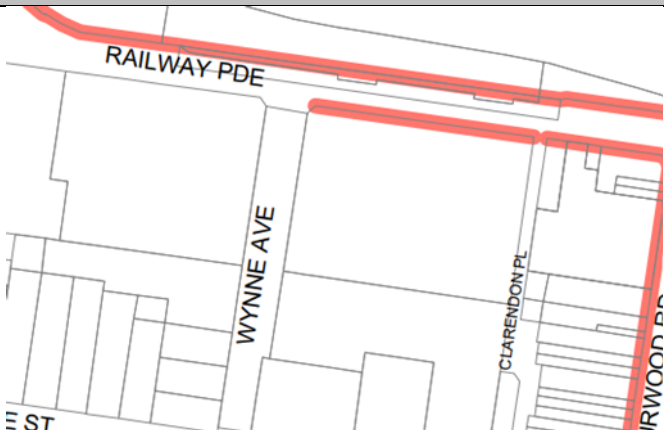
Clause	Assessment of Proposal	Compliance
2.3 Zone objectives and Land Use Table B4 Mixed Use The objectives of the B4 Mixed Use Zone are: <i>To provide a mixture of compatible land uses.</i> <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	The proposed development is permitted with development consent. The proposed land uses include the following, all of which are permitted in the B4 Zone. • Shop top housing; • Commercial premises (including retail premises, food and drink premises and office premises); • Entertainment facilities (e.g., cinema); • Medical centres. The use and fitout of the commercial premises, retail and medical centre tenancies will be the subject of a separate development consent. Should consent be granted, a condition of consent is recommended to this effect. In relation to the zone objectives, it is noted that: • The proposal provides a mixture of compatible land uses including residential and non-residential; • The proposal integrates suitable office, residential, retail and other development in a highly accessible location within the Burwood Town Centre, walking distance from Burwood Train Station. • The proposal provides fewer car parking spaces and additional bicycle spaces than required by the DCP, and therefore seeks to maximise public transport patronage and encourage walking and cycling.	Yes
4.3 Height of Buildings <i>Block 1 – 144m</i> <i>Block 2 and Wynne Avenue – 136m</i>	Block 1: • Tower A: max. height of 144m; • Tower B: max. height of 79m (65m below the height limit). Block 2: • Tower C: max. height of 136m;	Yes

Clause	Assessment of Proposal	Compliance
	- Tower D: max. height of 116m (20m below the height limit); - Tower E: max. height of 50.60m (85.4m below the height limit).	
4.3A Exceptions to height of buildings <i>Height is not to exceed the building height plane in "Area A".</i>	The proposal complies with the building height plane.	Yes
4.4 Floor space ratio <i>Maximum 10.54:1, calculated across the whole site as per clause 4.4A(10).</i>	10.51:1 (combined Lot 1 and Lot 16, including land to be reserved to Council fronting Railway Parade) 0.97:1 (Wynne Avenue)	Yes
4.4A Exceptions to Floor space ratio <i>The site is located in "Area 9", to which the following applies:</i> - Max. FSR for residential accommodation: 7.16:1 - Max. FSR for serviced apartments: 1.054:1	Residential: 7.16:1 Serviced apartments: N/A	Yes
5.1A Development on land intended to be acquired for public purposes	Part of Block 1 is identified for acquisition by Burwood Council for the purpose of a local road. Clause 5.1A(3) states that development consent must not be granted to any development on land to which this clause applies other than development for the purpose of roads. The proposed development as amended has been set back from Railway Parade such that there will be no built form on or under the land reserved for acquisition. 	Yes
5.10 Heritage Conservation Various requirements for development of heritage items, heritage conservation area, or within the vicinity of heritage items.	The subject site does not comprise any heritage items, however it is in the vicinity of a number of heritage items, as shown on the map below. These include: - Item I8: Masonic Temple; - Items I21 and I22: Shops – first floor façades. - Item I47: Burwood Council Office (1887 building only) - Item I48: School of Arts (former) (now Burwood Public School); - I67: Burwood rail underbridge; - I95: Parcels office (former).	Yes

Clause	Assessment of Proposal	Compliance
	 Comments from the heritage assessment team concluded that the proposal is acceptable in relation to heritage impacts. This is considered in more detail below with respect to design excellence.	
5.21 Flood Planning This clause states that development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless it is satisfied of a number of matters set out below.	The flood planning area is not mapped, however Burwood Council has published a map entitled Consolidated Flood Identification Map. This map identifies Block 2 to the west of Wynne Avenue as a Flood Identified Property. Burwood Council engaged ARUP as part of the assessment team to assess the proposal against this clause. ARUP concluded that the proposal is considered acceptable. Each head of consideration is set out below.	Yes
(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—		
(a) is compatible with the flood function and behaviour on the land, and	The proposed development considers the identification of Block 2 as a Flood Identified Property and proposes appropriate flood mitigation measures.	Yes
(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and	Section 5 (Figure 14) of the Flood Impact Assessment, shows a reduction in flood levels along Railway Parade for the 1% AEP. The increase in level shown within the subject site and Wynne Avenue are a function of ground elevation increases, and does not adversely impact other properties. Regarding the raised levels to the north-west on or beside Conder Street, the afflux map in the Flood Impact Assessment does not illustrate whether there would be impacts to existing properties further to the west as the map is cut off. Under Burwood Council's Stormwater Management Code 2004, it is a requirement that the proponent demonstrates no impact (i.e. afflux) to other properties. The Code states: 3.4 On-Site Stormwater Detention (OSD) Facilities <i>Development activities must not cause any adverse impact on adjoining or any other properties. This includes preserving existing surface flow paths and not increasing flood levels in major storms. Where applicable, discharges are to be restricted to pre development discharges using OSD shortages.</i> In demonstrating "no impact" with regards to flood level increases, a development-case scenario should illustrate	Yes, subject to condition of consent

Clause	Assessment of Proposal	Compliance
	flood levels no greater than 10mm compared to the existing scenario. Note that it is important that this impact assessment should be based on flood levels, and not flood depths. A condition of consent is recommended requiring evidence of this be provided prior to issue of a construction certificate, along with certification provided by a suitably qualified flood engineer.  Figure 14: Proposed 1% AEP Flood Impact Results (comparing proposed flood levels against existing)	
(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and	Safe occupation / efficient evacuation is not explicitly discussed in the Flood Impact Assessment, and existing evacuation routes for the surrounding area are not presented either. It is assumed that safe occupation is feasible however, noting that the development proposals entrance thresholds meet the Council's freeboard policy as a minimum. Regarding efficient evacuation, flood depths within the surrounding roads are reduced for the 1% AEP with the current proposals, with no worsening for extreme events. High hazard conditions would exist in Railway Parade for extreme events such as a Probable Maximum Flood (PMF), which is the same for the existing scenario. It is understood that flood mitigation measures have been discussed and agreed with Burwood Council. Noting the increase in occupation compared to the existing scenario, a condition regarding provision of a flood evacuation plan is recommended.	Yes
(d) incorporates appropriate measures to manage risk to life in the event of a flood, and	Flood protection measures such as relevant thresholds for entrances, and flood gates at basement entrances have been included in the development, to prevent PMF inundation of the basement. Stormwater infrastructure upgrades have also been proposed in Railway Parade. These measures are considered suitable for this development. With safe occupation or efficient evacuation as per provision c above not being explicitly discussed, consideration should be given to applying a condition relating to this if deemed appropriate.	Yes
(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in	The development proposes an Onsite Detention Tank (OSD) in accordance with Burwood's Stormwater Management Code. This has assumedly been designed to control stormwater run-off from the development to the Permissible Site Discharge requirements in the Stormwater Management Code. In	Yes

Clause	Assessment of Proposal	Compliance
the stability of river banks or watercourses.	complying with the Permissible Site Discharge requirements, it is assumed that there will be no adverse effect on riparian corridors downstream. Regarding water quality, it is considered that the development will provide a beneficial effect compared to the existing development. For the construction phase, soil erosion and sediment control plans have been provided.	
(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—		
(a) the impact of the development on projected changes to flood behaviour as a result of climate change,	Although climate change scenarios do not appear to have been modelled, discussion regarding potential effects has been provided in Section 6 of the Flood Impact Assessment. The proponent assumes that allowing for a 30% increase in rainfall intensity would result in flood levels below the Flood Planning Level (FPL), which appears to be reasonable.	Yes
(b) the intended design and scale of buildings resulting from the development,	The intended design appears to sufficiently consider the existing flood risk.	Yes
(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,	Appropriate measures have been incorporated such as threshold levels complying with Burwood Council's Stormwater Management Code as a minimum, flood gates to prevent inundation of the basement in a PMF event, along with stormwater infrastructure upgrades within Wynne Avenue and Railway Parade. Although safe evacuation has not been explicitly discussed in the Flood Impact Assessment, it is assumed that safe occupation is feasible with the mitigation measures proposed and scheme proposals overall. It is considered that the risk to life would be minimised on that basis. Consideration should be given to applying a condition relating to this if deemed appropriate.	Yes
(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.	This provision is not relevant as the site is not exposed to coastal erosion or mainstream flooding.	N/A
6.1 Acid Sulfate Soils	The site is classified as "class 5" acid sulfate soils. An Acid Sulfate Soil Management Plan is not required as no Class 1, 2, 3 or 4 land is located within 500m of the site.	Yes
6.3 Active Street Frontages	Under clause 6.3, an active street frontage is required along the Block 1 Railway Parade frontage. In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises. The proposed development provides an active street frontage as all premises on the ground floor of Block 1 facing street will be used for the purposes of retail premises (in addition to residential lobbies).	Yes

Clause	Assessment of Proposal	Compliance
		
6.5 Design Excellence in B2 and B4	The objective of this clause is to deliver the highest standard of architectural, landscape and urban design. It applies to development involving the erection of a new building of 3 or more storeys on land in Zone B2 Local Centre or Zone B4 Mixed Use. It states that development consent must not be granted for development to which this clause applies unless the consent authority is satisfied that the development exhibits design excellence. In deciding whether the development exhibits design excellence, the consent authority must have regard to certain matters. Design excellence is considered in more detail below this LEP compliance table.	Yes

Design excellence

Clause 6.5 of the Burwood LEP states that development consent must not be granted for development to which this clause applies unless the consent authority is satisfied that the development exhibits design excellence. In deciding whether the development exhibits design excellence, the consent authority must have regard to certain matters.

The assessment team engaged by Council included a number of experts in the architectural, urban design and landscape architecture field to provide an opinion on whether the proposal achieves design excellence. While these experts felt that the proposed development had a number of positive elements, on balance it was felt that design excellence had not been achieved, having regard to the various matters in clause 6.5.

Burwood Council, at the request of the SCEPP, also appointed a Design Review Panel (DRP) to assess and guide the design of the proposed development. Following a number of meetings and review workshops with the applicant, the DRP was asked to comment on whether the proposal exhibited design excellence. The DRP's comments are reflected in the minutes of the final meeting, prepared by Dylan Porter (Director City Strategy of Burwood Council). The minutes state:

Achievement of Design Excellence

Based on the design detail provided in the final presentation, the DRP is able to support the scheme, but insisted that the design resolution shown be continued through all elements of the scheme and into any revised DA drawings.

The DRP commented that it was pleasing to see how far the scheme has come – it has elements of joy and architectural fun and place creation that the panel had been advocating from the applicant.

However, the DRP is only able to assess what they can see in the concept drawings presented to them. In offering support to the scheme, the panel is also empowering the Assessment Team to review and ensure the same level of detail resolution is achieved in the re-submitted application for determination.

In addition, the DRP recommend that a Design Integrity Review mechanism should be established to ensure that design excellence is maintained from planning to construction stages of the project. The Assessment Team is requested to research appropriate condition wording, precedent for the use of such a condition and suitable process.

There are still elements that need review. In particular landscaping is an integrated part of the scheme and contributes to the established character of Burwood. The DRP would like to seek a scientific / evidence-based approach to plant and tree selection as well as coordination with a nursery expert to ensure that selected species are able to thrive and survive within the prevailing and anticipated future conditions on the site. This is noting access to sun, shade and climate conditions and is something that the DRP will be requesting via a recommended condition.

There are other architectural elements that need to be settled. The corner of Clarendon and Railway Parade does not have a settled rhythm. This should be part of a final design team review before submission back to Council. Other items which should be reviewed include:

- Review of the awning detail to Unity Lane and creation of a horizontal break or accent device.*
- Review of the corner treatments to ensure the placement of columns is balanced, consistent and well resolved.*
- Review of soffit details and upper-level voids as an opportunity for public art, hanging art or lighting detail.*

The DRP recognises that the potential for urban art is very strong and there is a range of historical, First Nations stories, European and more recent migrants' stories that can be told. Again this is something that needs to be developed with the next level of details as part of the public art plan for public engagement. The panel requested that general locations for public art be highlighted (such as that shown on the laneway between Burwood Lane and Unity Place) as part of the detailed application response. Noting that this will be subject to further refinement.

The DRP recommended specific conditions to ensure a robust public art strategy is curated and delivered.

Overall, the DRP concluded that the proposal strives to balance the competing objectives of density and amenity. The building massing reduces impacts on existing nearby developments by sculpting the forms and creating building separation and thereby achieving a reasonable balance between density and amenity. The design review process has seen very significant improvements in design quality in relation to wayfinding, public/civic character, architectural expression and the quality of the place.

The DRP was therefore able to provide their support to the proposal, subject to conditions relating to:

- **Design integrity review:** Recommended condition to establish a design integrity review process to monitor progress of the project from planning to construction phases. The review process should consider:
 - o Use of the soon to be established Burwood Design Review Panel for the purposes of an integrity review.
 - o Comparison review between approved for DA drawing and construction drawings/specifications.
 - o Review of proposed construction materials, landscape schedules and other comparable technical specifications.
 - o Retaining the project architect (COX) for the duration of the project unless otherwise agreed with the integrity review panel or Burwood Council.

- **Landscape species selection:** Recommended condition requiring scientific and evidence-based reporting on the selection of tree and planting species, taking into account prevailing environmental conditions and access to sunlight in species selection. The report should be prepared in consultation with Nursery providers and a suitably qualified horticulturist.
- **Public art strategy:** Recommended condition for the preparation of a public art strategy for approval by Burwood Council. The opportunity for urban art is very strong and should reference the range of historical, First Nations stories, European and more recent migrants' stories that are unique to Burwood within both the building fabric and landscape/civic realm of the project.

In considering the comments of the various experts, we have formed the opinion that the proposal does exhibit design excellence. Many of the concerns raised by the assessment team related to matters in the site-specific DCP with which the proposal complies, such as the appropriateness of the diagonal orientation of the built form and public domain at the under-croft of Tower B. As the proposal complies with these standards in the site-specific DCP, section 4.15(3A) of the EP&A Act provides that the consent authority cannot require more onerous standards in relation to those matters. Therefore, by complying with the site-specific DCP, the proposal is deemed to exhibit design excellence.

Each matter is considered below.

(a) whether a high standard of architectural, landscape and urban design has been achieved (including in the materials used and in detailing appropriate to the location, building type and surrounding buildings),

The main concerns of the assessment team's architectural, landscape and urban design consultants relate to the design of the public domain. The site-specific DCP states that development is to *"create new high quality public domain areas to address the lack of public open space on the south side of the railway line."* Whilst it is acknowledged that the proposal provides a compliant amount of publicly accessible space in accordance with the site-specific DCP, some members of the assessment team raised concerns with the quality and amenity of the public domain design.

Specifically, the main concerns were:

- Most of the publicly accessible space will serve as a pedestrian thoroughfare rather than as passive recreational open space. The proposal provides 4,900sqm of publicly accessible space which exceeds the 4,000sqm requirement in the DCP. However, the nature and design of that space does not meet best practice with regard to recreational accessibility, connectivity, and diversity. Only approximately 20% of the required publicly accessible space at ground level is not a thoroughfare of some variety. This amounts to approximately 0.1 ha on the site itself.
- The only public open space provided is the largely hardscape Wynne Place. Wynne Place offers limited recreational opportunity or broader greenspace amenity, being a civic plaza-style space (currently proposed for the adjoining Conder Park) with provision for water jets, but with relatively limited shrub/groundcover planting and no lawn or grass terracing.
- The amenity of the publicly accessible private open space at ground level is compromised by inadequate winter solar access and will therefore likely limit leisure, recreational or other use in these months.
- The landscape and urban design for Railway Parade is not conducive to high pedestrian amenity. The diagonal orientation of the built form and public domain at the under-croft of Tower B directs pedestrians away from Railway Parade and continued access to the west, into a privately owned, publicly accessible mall-like environment. This design undermines Railway Parade's civic role as the Avenue of Nations. The pedestrians that do continue to walk west along Railway Parade will experience a degraded and undesirable pedestrian experience due to the extent of vehicular crossings interrupting pedestrian flow.

While these comments are acknowledged, it is noted that the site is located within the Burwood Town Centre, a dense urbanised area surrounded by retail, residential and community uses, as well as a public transport interchange. It is appropriate that the ground level publicly accessible space have a civic plaza style that provides for high levels of pedestrian connectivity between the site and surrounding locality rather than large areas of lawn for passive recreation (particularly on a privately owned site). Furthermore, given that the built form and public domain siting and orientation complies

with the DCP, it is difficult to see where a large lawn area for passive recreation can be provided on the subject site.

Finally, it is noted that a separate DA has been lodged for new public open space on the adjoining site, which includes a lawn area and a diverse range of passive spaces. This will be delivered in accordance with the VPA between the applicants/landowners of the subject DA and Council.

(b) whether the form and external appearance of the proposed building, and ground level detailing, will significantly improve the quality and amenity of the public domain,

The form of the proposed buildings and public domain complies with the site-specific DCP. As discussed above, the consent authority cannot require anything more onerous in respect of an aspect of a proposal that complies with a DCP.

The ground plane will provide an interconnected public domain. Here, active retail frontages are provided along all edges to engage the streets and create better amenity for pedestrians. There is a major East-West pedestrian spine (Burwood Lane) that draws movement in from the Burwood Town Centre, through the reinvigorated laneway of Clarendon Place and the new public domain in Wynne Place, all the way to the Council Library and the civic space in the West.

In relation to ground level detailing, the Landscape DA Report provides sufficient details of the proposed ground level treatments including landscaping and materiality. Different elements of public domain including the water feature and softscape in the heart of Wynne Place emphasise the position of the plaza as the active centre of Burwood. Railway Parade is accentuated with generous street trees providing shade amenity for pedestrians and delivering a soft character. It will support pedestrian movement, through material consideration and a considered selection of furniture and fixtures to ensure pedestrian safety. The retail breakout will provide for a mix of fixed and mobile seating, with planting hubs to create intimate spaces for users.

(c) how any streetscape and heritage issues have been addressed,

Streetscape issues with the original scheme have been improved through the DRP process, particularly in the buildings' addresses to Railway Parade. For example, the DRP criticised the original scheme's use of colonnades and vertical support structures as the major design element to the street, on the eastern side of Railway Parade. The revised design provides a better street address in this regard. The western side of Railway Parade has also been improved through the better integration of driveway entrances into the façade of the building, improved surface treatment giving priority to pedestrians and additional landscaping.

The assessment team's design consultants remain concerned with the pedestrian and cycle amenity and safety of the streetscape on Railway Parade, specifically west of Wynne Avenue, on the basis that it is highly compromised by the multiple vehicle entry and exit crossings. However, through design amendments Transport for NSW and the assessment team's traffic consultant are satisfied in this regard.

The assessment team's heritage consultants felt that the proposal was acceptable. They stated that the proposal will have a visual impact on nearby heritage items, however that impact is largely mitigated by the bulk and scale of the podiums which are designed to draw reference to the proportions of the heritage items. The towers above will appear as background items. Specifically, the heritage consultants stated:

- There are inherent impacts on the smaller one and two storey heritage forms in the vicinity as a result of the proposed intensification of development which creates a disparity in scale between the buildings. The predominant visual impact of the development is the height and scale of the towers compared to the smaller heritage items.
- In some locations part of this impact is mitigated by the bulk of recent development in the surrounding area which screens the proposed development from these items.
- Where visible from these precincts, the design has considered the impact of the scale differentiation and has incorporated a podium to the towers to create a more appropriate relationship with the smaller scale heritage items. The podiums have adopted a brick and

masonry materiality to further reinforce the relationship with the existing urban fabric and heritage items. The fine grain detailing at street level, characterised by small division of tenancies, the mix of materiality and articulation of fenestration and cladding which assists with the integration of the proposal with the urban character of Burwood.

- The pedestrian links at Clarendon Place and Hornsey Lane, integrate the proposal into the existing streetscape pattern. This enhances the historical links with the surrounding precincts, creating a streetscape pattern more consistent with the fine grain nature of the Burwood commercial precinct.
- The western boundary of the proposal adjoins the rear of the Burwood Civic Precinct. Tower D to the northeast of the Burwood Civic Precinct has a significant visual impact on the precinct as it will form an imposing backdrop to the item which was not part of its historic setting. To mitigate some of the visual impact of the Tower D the podium has been inverted to form a colonnade to provide visual relief at ground level and provide a transitional zone for the planned public park to the west.
- Immediately behind the Burwood Council and Library, the scale and setback of Tower E provides enough curtilage for the building to read independently of the development. The podium of this section relates to the height of the Library and Council Chambers, which is an appropriate transition of scale.

In summary, the proposal has considered the impact on heritage items in the vicinity and has adopted appropriate design solutions which help mitigate the impact of the Burwood Plaza redevelopment.

(d) whether the amenity of the surrounding area, including any view corridors, vistas or landmark locations, will be adversely affected,

The proponent has submitted a detailed Visual Impact Assessment that identifies and assesses the visual impact of the proposal on existing views and vistas.

It is not considered that the proposal has an impact on view corridors and vistas obtained from the public domain.

In relation to private views, the DCP provides for further guidance, stating that building location, design and landscaping “encourage view sharing between properties”. Due to the broadness of this test, the planning principles for views established by the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 (Tenacity) is relevant.

Applying this test, it is considered that the impact on some views in the private domain is devastating. For example, existing views to the horizon with the Rhodes skyline as an element in the distance obtained from Level 20, Burwood Grand building C (view 8 of the applicant’s VIA) will be completely replaced with built form. However, it is noted that while these views are undeniably significant for the properties themselves, when assessed against the intent of Tenacity they cannot objectively be considered highly valuable as they do not contain iconic elements.

The next step in this test is whether this impact is reasonable. The proposal complies with the key scale requirements of the Burwood LEP (height and FSR). On this basis, the final test is “whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours”. The proposal complies with location and design criteria the site-specific DCP, taking specific steps such as orientation and separation of buildings to mitigate visual impact.

On this basis, while impact on some views in the private domain is devastating, the proposal complies with key development controls and as such it is difficult to generate grounds for refusal based on this impact. In many respects, consideration of this matter is beholden to decisions made at the early planning proposal stage. In addition, the proposal does take steps to mitigate overall impact. While it cannot be considered to represent design excellence, there is therefore sufficient planning grounds to justify this non-compliance based on a balanced merit assessment.

(e) how traffic circulation and vehicular access will be addressed and whether the proposed development supports the provision of high quality pedestrian, cycle and service access,

(f) whether any adverse effect on pedestrian movement and experience will be avoided (and whether the public transport interchange as the focal point for pedestrian movement in the surrounding area will be reinforced and the ease of pedestrian access to and from that interchange will be facilitated),

The applicant has engaged extensively with Transport for NSW throughout the DA process in relation to traffic circulation, vehicular, cycle and pedestrian access and pedestrian movement and experience. Transport for NSW has provided its support to the proposal, subject to conditions of consent. This is discussed under the Transport and Infrastructure SEPP section of this report. Once the relevant conditions are imposed, the proposal is considered to exhibit design excellence in relation to these matters. Furthermore, it is noted that the proposed vehicular access complies with the site-specific DCP.

(g) whether the development supports an integrated land use mix in Zones B2 and B4, including a diversity of public open spaces at the ground level, as well as the roof and other levels of buildings,

The development supports an integrated land use mix, as discussed above with respect to the objectives of the B4 Zone.

The landscape consultant engaged to assess the proposal felt that the development does not provide a diversity of public open spaces at the ground level, as the majority of publicly accessible open space is principally pedestrian thoroughfare. The resultant useable open space other than pedestrian thoroughfares is limited in size and very limited in recreational opportunity. The only area of clear and relatively level open space at ground level (immediately east of Wynne Avenue) amounts to two small spaces – divided by a throughfare - of approximately 430m² and 480m² (total under 1,000m² which equals approx. 20% of the 4,400m² of publicly accessible private open space).

However, the diversity of public open spaces at ground level is considered sufficient and appropriate for the Burwood Town Centre context of the site. The ground plane provides through-site links providing better connectivity within and between sites, and a variety of seating opportunities and styles as well as a water play element to add vitality to the town centre. This is in addition to the retail and entertainment based amenity on Burwood Road.

(h) how the bulk, mass, modulation, separation, setback and height of buildings have been addressed and whether they are appropriate in the context of existing and proposed buildings,

The proposal is of significantly greater scale (height) than existing development in the Burwood Town Centre. However, it is considered to represent a scale that is consistent with Burwood's intended role as a Strategic Centre under the Eastern City District Plan. In addition, the separation of floor space into multiple, well separated towers mitigates the visual impact of this scale.

The separation and setbacks of the proposed buildings from side boundaries do not comply with the Apartment Design Guide (ADG) and contribute to a significant reduction in solar access to neighbouring apartments to the south. This is not ideal in the context of existing buildings to the south, particularly when those buildings comply or almost comply with the ADG in terms of setbacks and separation (Burwood Grand is set back 15m from the northern boundary which exceeds the 12m ADG criterion, and Emerald Square is set back 10m which, while not compliant, exceeds the 8m setback proposed by Towers A and B within the proposed development). The proposed buildings therefore do not equitably share building separation with existing neighbouring buildings.

However, the bulk, mass, separation, setbacks and height of the proposed buildings have been designed in accordance with the site-specific DCP. Pursuant to section 4.15(3A) of the EP&A Act, where a proposal complies with a particular standard or control in a DCP, the consent authority is not to require anything more onerous.

Therefore, while the proposal does not fully achieve design excellence in respect of criterion (h), this could not be a reason for refusing the application.

(i) whether a high standard of ecologically sustainable design (including low-energy or passive design) will be achieved and overshadowing, wind effects and reflectivity will be minimised.

Ecologically sustainable design

In relation to ecologically sustainable design, the ESD consultants on the Council's assessment team stated that:

- The design does not showcase excellence in terms of sustainable design. Its response is adequate in terms of reaching compliance against the minimum requirements but does not demonstrate innovation and/or sustainability leadership.
- The sustainability reports, BASIX reports and Architectural Design statement appear to meet minimum compliance requirements with appropriate strategies for the proposal associated with building envelope and services strategy. The environmental strategies adopted should deliver minimum compliance, noting the lack of higher aspirational targets set by the site specific DCP or any Council controls.
- None of the sustainability recommendations made by the Council Assessment Team during the preliminary review were incorporated in the design, nor was justification provided as to their omission.
- In relation to the residential towers, even though renewables such as roof photovoltaics are not required for compliance with the development controls and BASIX, planning for flexibility to be able to offer this to future apartment buyers should be considered.

It is noted that section 8 of the BASIX SEPP provides as follows:

8 Other environmental planning instruments do not apply to BASIX commitments

- (1) *The competing provisions of an environmental planning instrument, whenever made, are of no effect to the extent to which they aim:*
- (a) *to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of a building to which this Policy applies or in the use of the land on which such a building is situated, or*
 - (b) *to improve the thermal performance of a building to which this Policy applies.*
- (2) *If the development concerned involves:*
- (a) *the erection of a building for both residential and non-residential purposes, or*
 - (b) *the alteration, enlargement or extension of a building that is intended to be used for both residential and non-residential purposes, or*
 - (c) *the change of use of a building to both residential and non-residential purposes, subclause (1) does not displace the competing provisions to the extent to which they apply to the part of the building that is intended to be used for non-residential purposes.*

The effect of section 8 is that a consent authority cannot require a higher standard of ecologically sustainable design than what is achieved by BASIX in respect of the residential component of a mixed-use development. Therefore, as the proposal complies with BASIX, a higher standard cannot be required.

In relation to the non-residential component, the commercial tower (Tower E) will target a 5-star Green Star rating. In addition, the Environmentally Sustainable Design DA Report for the commercial and retail component of the development provides the following summary of the development's design responses to promote sustainability:

- Building envelope thermal insulation and glazing to meet the minimum NCC section J requirements.
- Minimise energy demand and consumption through passive design techniques including external shading and building fabric thermal mass.
- Investigation and assessment of on-site energy generation (PV) to reduce greenhouse gas emissions and reliance on mains power.
- Reduce potable water consumption by including efficient fixtures and native plants in landscaped areas.
- Include sustainable transport facilities, such as end of trip facilities, to reduce car dependence for all building occupants.

- Enhanced indoor environment quality through optimising the façade design to achieve a good level of natural daylight access.
- Use of sustainable materials and aim to use sustainable materials.

Conditions of consent are recommended to ensure that these recommendations are implemented during detailed design.

Overshadowing

The proposal results in a significant loss of solar access to neighbouring apartments to the south. The SEE prepared by Gyde (page 106) provides the following information with respect to existing and proposed solar access provision to apartments to the south (i.e. the number of apartments achieving 2 hours of solar access in mid-winter):

Burwood Grand:
Existing: 80%
Proposed: 54%

Emerald Square:
Existing: 70%
Proposed: 53%

The solar access impact report prepared by BIM Consulting, dated 20 May 2022, specifies the basis on which the solar access impact analysis was undertaken. It states:

"We note the testing criteria undertaken to prepare this solar analysis is taken from the solar access testing by Architectus in the DA stage. It is represented at the winter solstice (21 June) between the hours of 9:00am and 3:00pm. The results include solar access to private open space and habitable rooms (including Living Rooms & Bedrooms) to which solar access is present for 2 hours or greater."

Therefore, it would appear that the 54% and 53% figures provided above include solar access to bedrooms which is inconsistent with the ADG. The level of solar access to neighbouring apartments measured in accordance with the ADG has not been provided but is expected to be even less than 54%/53% if bedrooms are excluded.

Section 3B Orientation of the ADG provides design guidance with respect to orientation and solar access to neighbouring apartments. Objective 3B-2 is "Overshadowing of neighbouring properties is minimised during mid winter". The corresponding design guidance includes:

"Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access."

"If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy."

Clause 4A solar and daylight access of the ADG states that 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.

The proposal does not achieve the recommendations of the ADG in respect to solar access to neighbouring apartments.

However, the proposal does comply with the site-specific DCP which provides that

*"solar access to existing and any new apartments in surrounding developments... is not to be unreasonably reduced. As a minimum, solar access to **50% of apartments** in a development (including Emerald Square and Burwood Grand developments) is to be retained in mid-winter, between 9am and 3pm for at least 2 hours.*"*

The asterisk refers to a note which states: ***“*Note: Solar access to “apartments” is to be calculated on the basis of considering habitable rooms, bedrooms and adjoining private open space/balconies as a collective space. For clarity, one sqm of direct sunshine is to fall on either a balcony area or a living room/kitchen area or a bedroom area of an apartment.”***

In our view, this provision of the DCP is not overridden by the ADG provisions in Section 3B Orientation of the ADG. That is because the Orientation provisions of the ADG are not listed in section 6A of SEPP 65 which stipulates which provisions of the ADG override provisions relating to the same matters in a DCP.

As the proposal complies with the site-specific DCP standards in relation to overshadowing (as well as built form siting and orientation), and those standards are not overridden by the ADG, the consent authority cannot require anything more onerous of the development in respect to those standards (section 4.15(3A) of the EP&A Act). Therefore, the proposal is deemed to exhibit design excellence in relation to overshadowing.

Wind

The proposal is considered acceptable in relation to wind. The assessment team's wind consultant stated that:

- There were no pedestrian-level safety exceedances measured in the wind-tunnel testing conducted on the site. The measured comfort conditions are appropriate close to a large development. Changes to the development building forms after the wind-tunnel testing was completed would be expected to improve the ground level wind conditions.
- There are no wind assessment criteria in the LEP or DCP. The criteria used in the assessment report are considered appropriate. The geometry of the final DA submission has not been tested, however the changes would be expected to improve the measured wind conditions at ground level compared with the tested scheme.
- The inclusion of a large development generally worsens the local wind conditions, as was presented in the wind assessment report. However, the measured wind conditions at ground level were shown to be appropriate for the intended usage both in terms of comfort and safety.
- The additional directional information provided supplements the information in the report, although it includes existing configuration data for sensor locations that do not occur – such as on the balconies of the towers.

Reflectivity

The applicant's Architectural Design Statement states that glass selection throughout the development maximizes transparency, thermal performance while minimising reflectivity. A condition of consent is recommended to ensure reflectivity is minimised.

10) BURWOOD DEVELOPMENT CONTROL PLAN 2013

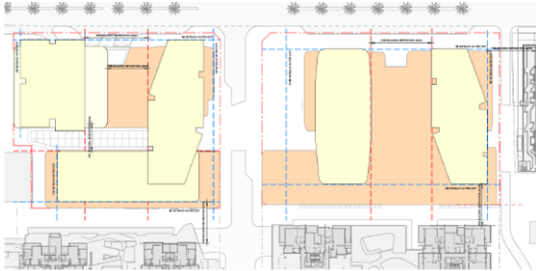
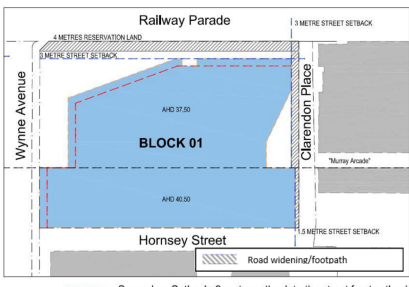
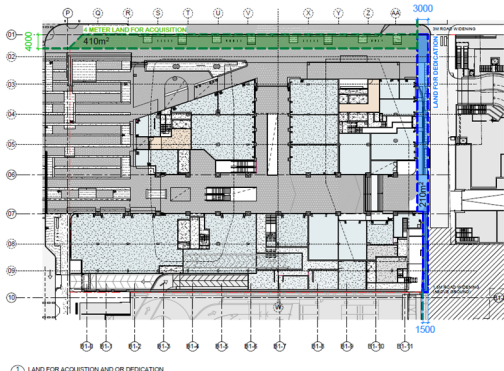
The Burwood Development Control Plan 2013 (BDCP) applies to the proposed development. This includes the site-specific DCP provisions which came into effect on 1 July 2020. The site-specific DCP states that, where there are discrepancies between the controls outlined in the site-specific DCP and the LGA-wide Burwood DCP, the controls in the site-specific DCP take precedence. Accordingly, the site-specific DCP is considered first and then the relevant provisions of the LGA-wide Burwood DCP are considered.

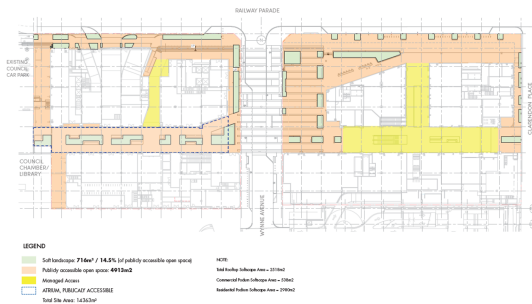
Site-specific DCP

The key provisions of the site-specific DCP are considered below.

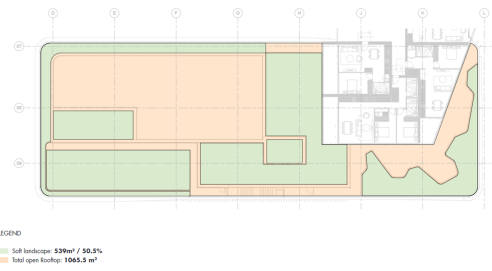
Provision	Assessment of Proposal	Compliance
Part B – Background		

Provision	Assessment of Proposal	Compliance
2.3 Vision The site is strategically located within the core of the Burwood town centre, directly adjacent to the Burwood train station. It has a rectangular shape and occupies the majority of two city street blocks situated in the south-western part of the main commercial and retail area of the town centre. The urban renewal of the site has the potential to significantly enhance and activate the centre, creating a landmark development, supporting Burwood's role as a Strategic Centre, as outlined in the Eastern City District Plan. Development will include a mix of uses to enhance and contribute to the vibrancy of the centre. A highly permeable street level will be activated by retail to all edges. Through site links and public laneways will be integrated within the development, to break up the large block and increase pedestrian permeability with the surrounding area. Development also has the potential to include a wide range of significant public benefits, including new public domain areas, streetscape improvements, public art and a new public park adjacent to the Council library.	The proposal achieves this vision. It includes a mix of uses appropriate for the B4 Zone and will contribute to the vibrancy of the Burwood Town Centre by creating generous public domain areas and through-site links adjacent to retail development. These through-site links and public laneways will also break up the large blocks and increase pedestrian connectivity and permeability to the surrounding area.	Yes
2.4 Development Principles To achieve this vision, development on the site is to: • deliver a landmark development, reinforcing Burwood's role as a "Strategic Centre". • demonstrate design excellence by providing a high-quality development within the heart of the town centre. • deliver publicly accessible, high quality through-site links that provide for a variety of both passive and active uses and responds to community needs. • create new high quality public domain areas to address the lack of public open space on the south side of the railway line. • locate active uses such as retail tenancies and public art along the ground level, to enhance the vibrancy of the streetscape and improve the site's relationship with the train station. • ensure residential dwellings provide a high level of amenity through the design and layout of the built form. • provide a suitable and appropriate mix of apartment sizes, to support the varying needs of the community.	The proposal responds to these development principles as discussed elsewhere within this assessment report in relation to the various matters.	Yes

Provision	Assessment of Proposal	Compliance
- not adversely impact the amenity of the precinct by reason of the scale and bulk of the development. - utilise "Crime Prevention Through Environmental Design" principles to reduce crime and increase perceptions of safety within the town centre.		
Part D – Controls		
2. Site Planning		
P1) Future buildings will generally be located as shown in Figure 2 (subject to detailed design), which includes: (i) Two tower building envelopes on Block 1; (ii) Three tower building envelopes on Block 2.	The proposal is generally consistent with the indicative building locations shown. 	Yes
P2) Development under Wynne Avenue is subject to obtaining owner's consent and an agreement detailing the precise parameters and extent of the Wynne Avenue use. Council shall be satisfied that any use or development of public land serves the wider community interest and/or results in the provision of commensurate public benefits.	Land owner's consent has been obtained for the development under Wynne Avenue. Conditions of consent are recommended to ensure stratum subdivision to enable future strata subdivision of land.	Yes
P3) Development of Block 1 shall facilitate the dedication of a 4 metre strip of land alongside Railway Parade (as shown on the Land Reservation Acquisition Map of the BLEP) to Council.	The proposal complies. This is illustrated in the architectural plans. Should consent be granted, an appropriate condition is recommended to facilitate the dedication of this land.  Figure 3: Public access along Clarendon Place	Yes
P4) Development of Block 1 shall facilitate public access along Clarendon Place for the purpose of a new footpath and road widening in accordance with the locations outlined in Figure 3.	 LAND FOR ACQUISITION AND/OR DEDICATION	Yes
P5) Development is permitted underneath any footpath or area to be used for road widening, only if it is located within the existing site boundary, as illustrated in Figure 1. For avoidance of doubt, development is permitted under Wynne Avenue, subject to obtaining owner's consent and approval from Council.	In response to feedback from the Council assessment team, both Council and the applicant obtained legal advice that confirmed the assessment team's view that development other than for the purpose of "roads" is not permitted underneath the land acquisition area adjacent to Railway Parade pursuant to clause 5.1A of the LEP. Accordingly, the development footprint has	Yes

Provision	Assessment of Proposal	Compliance
	been amended by setting the basement back, away from the acquisition area.	
3. Landscaping and Publicly Accessible Private Land		
P1) Publicly accessible private land shall be provided in accordance with the indicative locations in Figure 4. P2) Publicly accessible private land shall equate to a minimum of 4,000 sqm (excluding Wynne Avenue). P3) Public through site links shall be provided in accordance with the indicative locations detailed in Figure 4. These links shall provide public access 24 hours, 7 days per week. P4) Publicly accessible through site links shall be provided in accordance with the indicative locations detailed in Figure 4. These links take the form of an arcade (but can also be open air), and shall provide public access from at least 6am to 10pm daily. P5) Public through site links shall have a minimum width of 6 metres and publicly accessible through site links shall have a minimum width of 4.5 metres. P6) The through site link running east-west through Block 1 shall align with the existing arcade known as 'Murray Arcade' at 127-133 Burwood Road Burwood and shall facilitate a continuous path of travel for pedestrians.	The DCP includes the following Figure 4. This shows publicly accessible private land (blue), public through site links (solid arrows) and publicly accessible through site links (dotted arrows).  The proposal complies with this. The Landscape Report provides the following public domain plan that illustrates the provision of publicly accessible land. Orange represents publicly accessible private land (4,913m²), yellow represents publicly accessible through-site links with "managed access", and green represents soft landscape (716m²). Should consent be granted, a condition is recommended to ensure that public access is facilitated in the "managed access" areas from at least 6am to 10pm daily. Public through-site links and publicly accessible through-site links all meet the minimum widths required. 	Yes
P7) CCTV cameras and other appropriate security measures shall be installed within the site to ensure the safety of members of the public and residents using the publicly accessible private land, southern pedestrian link, and through-site links.	As recommended in the Amended CPTED Report, surveillance cameras and recorders will be installed and maintained to monitor and record all entrance and exit points to the buildings. CCTV cameras should also cover any common areas (including the retail areas), lifts/escalators and lift lobbies and public spaces. The associated warning signage should also be installed. If consent is granted, a condition is recommended to ensure compliance with this provision.	Capable of compliance, with conditions of consent.
P8) Council may consider an alternative treatment for the Wynne Avenue road reserve (i.e. between Block 1 and Block 2). The desired future character of this section of	Wynne Avenue Road reserve will be reconfigured into a pedestrian friendly area which still allows for vehicular access which links Block 1 and Block 2, with two (2) exit lanes and one (1) entrance lane	Capable of compliance, with

Provision	Assessment of Proposal	Compliance												
Wynne Avenue is that of a road which facilitates the movement of vehicles through the Town Centre, as well as being an attractive place for pedestrians that facilitates movement of pedestrians between Block 1 and Block 2. Surface treatments and public domain works will be considered that enhance the space and connectivity, such as a raised threshold and widened footpath on the eastern side. Notwithstanding, Wynne Avenue (between Block 1 and Block 2) must provide for at least one lane of vehicle traffic in each direction. The remaining portion of Wynne Avenue is anticipated to remain as four trafficable lanes.	from the North and the South. A condition of consent is recommended to ensure that appropriate surface treatments and public domain works are considered in consultation with Council, and submitted to Council for approval prior to the issue of a Construction Certificate.	conditions of consent.												
P9) Landscaping shall be provided within publicly accessible private land. A minimum of 20% of the publicly accessible private land shall comprise 'soft' landscaping. For the avoidance of doubt, planter boxes and raised plant beds shall be included in this landscaping calculation.	The proposal provides 716m ² of 'soft landscaping'. This equates to 14.5% of the publicly accessible private land. The originally lodged DA complied, however, the soft landscaping was reduced in response to comments from the DRP which wanted more open public domain areas, to allow for public events such as community markets.	No, but considered justified as the non-compliance responds to comments from the DRP.												
P10) The publicly accessible private land shall be designed to create a high-quality address and setting for buildings, including the provision of a variety of plant types and sizes; trees capable of offering shade to public spaces; a variety of seating options for use by the public (not restricted to outdoor dining); a high quality pavement design; and public art.	The proposal generally complies with these requirements.	Yes												
P11) Council must be satisfied that a Public Domain and Landscape Plan has been submitted which confirms the nature of the public domain works, their placement within the site, timing for installation, and ongoing management requirements.	Public domain and landscape plans together with the VPA address these requirements.	Yes												
P12) The development shall provide for communal open space and landscaped areas on the top of podium levels.	Communal open space and landscaped areas are provided on the top of the podium levels.	Yes												
P13) Communal open space shall equate to 25% of the area used for the purpose of residential towers and podiums (i.e. the site excluding land dedicated for publicly accessible private land as shown in Figure 4 and commercial development).	The proposal does not comply with this control when only outdoor communal space is included. Calculations are provided below. <table border="1"> <thead> <tr> <th>Area of residential towers and podiums</th><th>Required (25% of area)</th><th>Proposed</th></tr> </thead> <tbody> <tr> <td>Blocks 1 and 2 combined: 11,136m²</td><td>2,784m²</td><td>2,046m² (18.4%)</td></tr> <tr> <td>Block 1: 5,879m²</td><td>1,469.75m²</td><td>1,032m² (17.5%)</td></tr> <tr> <td>Block 2: 5,257m²</td><td>1,314.25m²</td><td>1,014m² (19.3%)</td></tr> </tbody> </table> However, the proposed communal open space is considered appropriate as discussed in the ADG section of this report.	Area of residential towers and podiums	Required (25% of area)	Proposed	Blocks 1 and 2 combined: 11,136m ²	2,784m ²	2,046m ² (18.4%)	Block 1: 5,879m ²	1,469.75m ²	1,032m ² (17.5%)	Block 2: 5,257m ²	1,314.25m ²	1,014m ² (19.3%)	No, but justified
Area of residential towers and podiums	Required (25% of area)	Proposed												
Blocks 1 and 2 combined: 11,136m ²	2,784m ²	2,046m ² (18.4%)												
Block 1: 5,879m ²	1,469.75m ²	1,032m ² (17.5%)												
Block 2: 5,257m ²	1,314.25m ²	1,014m ² (19.3%)												

Provision	Assessment of Proposal	Compliance
P14) At least 50% of the podium and Tower E roof shall be vegetated with grasses, shrubs and trees.	539m² of landscaping is proposed which equates to 50.5% of the Tower E rooftop.  LEGEND Soft landscape: 539m² / 50.5% Total open rooftop: 1065.5 m²	Yes
P15) Public art shall be provided within new publicly accessible private land along ground level.	A Preliminary Public Art Strategy for Burwood Place has been prepared by Barbara Flynn. The strategy puts forward initial ideas of artists, types of art and artwork locations across the site. If consent is granted, a condition is recommended to require the preparation of a Detailed Public Art Plan prior to the issue of a Construction Certificate.	Capable of compliance, subject to compliance with conditions of consent.
P16) Public through site links and publicly accessible through site links shall: (a) Be legible and direct throughways for pedestrians. (b) Have signage at the street entries indicating public accessibility and the street to which the through site link connects.	An Amended Public Domain Plan has been prepared by Turf Design Studio which details how the public through site links and publicly accessible through site links will be legible and direct throughways for pedestrians. An Amended Wayfinding and Signage Strategy has been prepared by Cox Architecture which provides details on signage and wayfinding. If consent is granted, a condition is recommended to ensure implementation of his strategy.	Yes
P17) Given the site's high-density location, "deep soil" planting may be offset by a reasonable component of alternative landscaping being provided, consistent with Objective 3E-1 of the ADG.	Objective 3E-1 of the ADG states that: <i>"Achieving the design criteria may not be possible on some sites including where:</i> <i>- the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres).</i> <i>- there is 100% site coverage or non-residential uses at ground floor level."</i> Consistent with Objective 3E-1 of the ADG, achieving the numerical design criteria of the ADG is not possible in this case, as the site is located within the high-density centre of Burwood, and only non-residential uses are proposed at ground level. The proposal provides 716sqm of soft landscaping across both Blocks 1 and 2 which equals 5% of the Block 1 & 2 site area. See the green shaded areas in the public domain plan below. In addition, the proposal provides 2,518m² of rooftop softscape area, which equals 17.5% of the site area.	Yes

Provision	Assessment of Proposal	Compliance																		
	PRIVATE / PUBLIC ACCESS PLAN PUBLIC DOMAIN LEGEND - Self-landscaped 71 (6m² / 14.5% of publicly accessible open space) - Publicly accessible open space 491 (6m²) - Managed Access - PRIVATE / PUBLIC ACCESSIBLE - Soil Site Area: 143 (6m²) NOTE - Self-landscaped Area: 71 (6m²) - Managed Access Area: 491 (6m²) - Publicly Accessible Open Space: 491 (6m²) - Soil Site Area: 143 (6m²) A Soil Depth Plan has also been prepared which illustrates the minimum soil depths across the site. LEGEND - Min. 500mm - Min. 650mm - Min. 800mm - Min. 1000mm - Min. 1200mm NOTE Diagram Shows the Minimum Soil Depth in Each Zone																			
P18) Publicly accessible private land and public through site links may be partially covered.	The majority of publicly accessible private land and public through site links are open to the elements but parts are partially covered.	Yes																		
4. Height of Buildings																				
P1) Development shall comply with the Building Height Plane as outlined in Clause 4.3A of the Burwood Local Environmental Plan 2012. P2) Development on Block 1 shall not result in a building with a building height that exceeds 144 metres; P3) Development on Block 2 shall not result in a building with a building height that exceeds 136 metres; P4) Architectural roof features, rooftop structures, and mechanical equipment such as lift overruns, shall be accommodated within the maximum building height of buildings. P5) To address the appearance of bulk and to provide articulation to the built form, a variation in height must be provided, in accordance with the minimum heights outlined in Figures 6 and 7.	The proposal complies. <table border="1"> <thead> <tr> <th>Tower</th><th>Max. building height control</th><th>Proposed building height</th></tr> </thead> <tbody> <tr> <td>Tower A</td><td>144m</td><td>144m</td></tr> <tr> <td>Tower B</td><td>79m</td><td>79m</td></tr> <tr> <td>Tower C</td><td>136m</td><td>136m</td></tr> <tr> <td>Tower D</td><td>116m</td><td>116m</td></tr> <tr> <td>Tower E</td><td>52m</td><td>50.6m</td></tr> </tbody> </table>	Tower	Max. building height control	Proposed building height	Tower A	144m	144m	Tower B	79m	79m	Tower C	136m	136m	Tower D	116m	116m	Tower E	52m	50.6m	Yes
Tower	Max. building height control	Proposed building height																		
Tower A	144m	144m																		
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Tower C	136m	136m																		
Tower D	116m	116m																		
Tower E	52m	50.6m																		

Provision	Assessment of Proposal	Compliance
P6) Development shall incorporate the setbacks and secondary setbacks illustrated in Figure 5.	The proposal complies.	Yes
P7) Podiums shall not exceed the heights as detailed in Figure 5. Structures used for landscaping and communal open space such as barbeques, pergolas and planters may exceed these heights.	The proposed podiums do not exceed the heights in Figure 5.	Yes
5. Setbacks separation and cross ventilation		
P1) Building setbacks and separation distances for above ground development, shall be provided generally in accordance with the distances outlined in Figure 8. P2) Setbacks shall be measured from the property boundary after any land acquisition required by the BLEP 2012 has taken place.	The proposal complies.	Yes
P3) Where there is a non-compliance with the ADG, appropriate mitigation measures such as privacy screens, should be implemented if required, to ensure issues such as visual privacy to surrounding residential buildings are reasonably addressed.	Privacy protection has been incorporated in the following instances: South façade of Tower A. Building separation between + 18 m. Louvres have been applied to levels 4-19 to provide visual privacy to the neighbours on the south. East façade of Tower A. Building separation between 21-24 m. Perforated panels have being applied to balconies to provide visual privacy to the neighbours on the east. South façade of Tower B. Building separation between 18-24 m. Louvres and planters have being applied to levels 7-20 to provide visual privacy to the neighbours on the south. South façade of Tower E. Building separation between 18 m. Vertical fins have being applied to levels 3-11 to provide visual privacy to the neighbours on the south. South façade of Tower D. Building separation between 12 m distance to Tower E. Louvres and planters have being applied to levels 8-15 to provide visual privacy to the commercial tower.	Yes
P4) The towers shall be designed to achieve tall, slender profiles and fast-moving shadows. In respect to Towers A, B and C, the east-west width of each tower, at its widest point, shall not exceed 25 metres. Tower D shall not exceed 28 metres.	The towers at the widest point, have building widths as follows: Tower A: 28m Tower B: 24.3m Tower C: 24.3m Tower D: 24.3m.	Yes
P5) Amenity and configuration of apartments shall comply with ADG unless where better amenity can be provided through alternate configurations.	The proposal complies with the ADG in relation to apartment sizes and configuration.	Yes

Provision	Assessment of Proposal	Compliance
P6) Cross ventilation will include (in part) naturally cross ventilated plenums.	Yes, plenums are predominantly used in single aspect apartments.	Yes
6. Façade composition and articulation		
P1) Facades are to incorporate a balance of horizontal and vertical elements, to visually relieve any apparent building bulk. P2) Unrelieved facades, such as those created by curtain walling, large expanses of glass and concrete, are to be avoided. P3) Where the length of a building (other than a podium) exceeds 45 metres, appropriate articulation/modulation shall be implemented to alleviate building mass. P4) Mechanisms which may be employed in the composition of building facades include: - Maintaining a consistent street wall height for the podium. - Clear identification of building entries and through-site links. - The use of architectural features which give pedestrian scale at street level. P5) The dominance of one architectural style shall be avoided. P6) Roof forms are to generate an interesting skyline and minimise view impacts from adjoining developments. P7) Rooftop signage is not permitted, nor signage upon the tower components.	The proposed façades are highly articulated and incorporate both horizontal and vertical elements to reduce the bulk of the development. Each of the towers provides different architectural styles, which will generate an interesting skyline and minimise view impacts from adjoining developments. The proposed development utilises a diversity of scale, materials, colours and textures and fenestration that provide visual interest and diversity while responding to existing elements within the town centre streetscape. In terms of materiality, the podiums are predominantly brick, responsive to the brick of Burwood Road, and incorporate a number of different elements including hit and miss brickwork, vertical louvres, portal frames, angled windows, corner windows, shopfront awnings, balconies and terraces, brick panels, and brick arches. Different approaches to materiality and fenestration are used for each tower, as outlined in the Architectural Design Statement. The design has considered the impact of the scale differentiation and has incorporated a podium to the towers to create a more appropriate relationship with the smaller scale surrounds including heritage items. The podiums have adopted a brick and masonry materiality to further reinforce the relationship with the existing urban fabric and heritage items. The fine grain detailing at street level, characterised by small division of tenancies, the mix of materiality and articulation of fenestration and cladding which assists with the integration of the proposal with the urban character of Burwood.	Yes
7. Solar Access		
<i>External Solar Access – Surrounding Developments</i> P1) Given the dense urban context of the site and surrounds, solar access to existing and any new apartments in surrounding developments (as shown in Figure 9) is not to be unreasonably reduced. As a minimum, solar access to 50% of apartments in a development (including Emerald Square and Burwood Grand developments) is to be retained in midwinter, between 9am and 3pm for at least 2 hours.* <i>Internal Solar Access</i> P2) Living rooms and private open spaces of at least 70% of apartments in Burwood Place shall receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.*	The proposal complies with these provisions, as outlined elsewhere in this report.	Yes

Provision	Assessment of Proposal	Compliance
P3) Internal solar access for any future apartments shall be calculated based on the total number of apartments per Block, as defined in Figure 1 of this DCP. <i>Communal Open Space and Publicly Accessible Land</i> P4) Publicly accessible private land and communal open space for the development and surrounding developments shall be consistent with the solar access design guidelines for “dense urban areas”, as outlined in Section 3D of the ADG. *Note: Solar access to “apartments” is to be calculated on the basis of considering habitable rooms, bedrooms and adjoining private open space/balconies as a collective space. For clarity, one sqm of direct sunshine is to fall on either a balcony area or a living room/kitchen area or a bedroom area of an apartment.		
8. Active Frontages		
P1) “Active uses” shall be provided in accordance with the indicative locations outlined in Figure 12, which includes the following categories: (i) “Key active frontages” – located along Railway Parade and partially along the new public park, Wynne Avenue and Clarendon Place. (ii) “Active street frontages” – located along new publicly accessible private land and street frontages. (iii) “Internal active frontages” – located along new internal through site links. (iv) “Activated elevated frontage/walkway” – located along the southern boundary of Block 1. P2) “Active uses” shall include one or a combination of the following: (i) Entrances to retail. (ii) Shop fronts. (iii) Outdoor dining opportunities. (iv) Glazed entries to commercial and residential lobbies. (v) Active uses such as reception areas, if visible from the street. (vi) Business premises that provide direct overlooking of the street and footpath from windows. P3) The proposed development must have a full active street frontage to land identified as “key active street frontage” in Figure 12. Fire exits are permitted along this frontage, where required.	The development provides for active frontages in accordance with the locations outlined in the DCP. Active frontages are located along the majority of the development's street frontages, specifically along Railway Parade, the new through site links and the new Council car park. Active frontages incorporate uses such as retail and commercial tenancies and lobbies.	Yes

Provision	Assessment of Proposal	Compliance
P4) Other than the key active street frontages, the building facades, where possible, must be treated through public art, feature wall or the like, so that they are sympathetic to the surrounding environment. P5) Building services and utilities shall be screened or otherwise treated to maintain attractive and safe frontages for pedestrians. P6) Footpaths shall be provided along all active street frontages. P7) Separate entrances shall be provided to commercial and residential development. All entrances shall be clearly visible and well lit. P8) Active frontages shall not be obscured by signage (eg. large window decals), treated with opaque or reflective glass, or other treatment which restricts passive surveillance of the street and publicly accessible private land. P9) Awnings or colonnades are encouraged where these would: - Provide all weather protection at street level. - Identify and protect entries to buildings. - Give the development a pedestrian scale. - Contribute to safety and security for pedestrians and people entering buildings. P10) Lighting shall be provided in all publicly accessible private land and through site links. P11) Building entrances must have a direct physical and visual connection with either the street, publicly accessible private land, public through site link or publicly accessible through site link.		
9. Transport		
P1) Vehicular ingress and egress points shall be provided in accordance with the indicative locations outlined in Figure 13. In accordance with the Traffic Impact Assessment 2018, it is anticipated that heavy vehicles (e.g. loading and deliveries) shall utilise the Railway Parade loading dock ingress/egress point. A separate driveway on Railway Parade would serve light vehicles access for residents, visitors and retail/commercial customers. Only light vehicles (e.g. residential, visitor, customer movements) shall utilise the Wynne Avenue ingress/egress point. Egress shall be provided for passenger vehicles onto Conder Street southbound only from the Council and Burwood Place car parks.	The vehicular ingress and egress points are generally consistent with Figure 13, with separated heavy and light vehicle driveways provided along Railway Parade. However, light vehicle egress is not proposed on Conder Street, which is instead via the Burwood Place access points along Railway Parade. Although this strategy is generally supported as it reduces crossovers along the street frontages, a wayfinding strategy is required to advise drivers how to get to the council car parking and best access on-site uses. This can be addressed via condition of consent.	Yes
P2) Vehicle access shall be separated from pedestrian entries to avoid pedestrian and vehicular conflict.	The vehicle ingress and egress points are generally separated from pedestrian entries to reduce conflicts. An entry is located near the Railway Parade light vehicle ingress point, however approaching vehicles should have clear sight lines to pedestrians departing the site when turning left-in.	Yes

Provision	Assessment of Proposal	Compliance
P3) Residential and non-residential land uses may share common vehicular ingress/egress points. However, residential parking areas must be separate and secure from non-residential users.	Boom gates and license plate recognition is proposed to separate residential parking areas and non-residential parking areas, noting residential vehicles are required to circulate through the periphery of the retail and commercial parking levels on approach and departure. There are complexities involved with this system that require further validation, therefore an appropriate condition of consent is recommended.	Yes
P4) Parking and loading facilities shall be located underground.	Parking and loading facilities are located below ground.	Yes
P5) Car parking rates shall be in accordance with the parking requirements in Section 3.7 of the Burwood Development Control Plan.	The TTIA determines that 2,166 car spaces are required to comply with the DCP. 1,757 car spaces are proposed, which is appropriate considering the proximity of the site to public transport.	No, but justified
P6) Appropriate end of trip facilities shall be provided for commercial office uses with high level amenity (e.g. showers, change room facilities and bike storage areas).	The TTIA determines that 534 bicycle spaces are required to comply with the DCP. 734 spaces are proposed.	Yes
P7) The development shall allocate at least six parking spaces for use by a car share provider. The car share spaces shall be within a safe, convenient, and publicly-accessible part of the site. Adequate notices on behalf of the car share company are to be displayed within the development to clearly advise the provision of car share spaces.	Six car share spaces are shown in the retail car park for public use and 14 spaces in the residential car park, with Arc Renewable Group/ GoZero proposed to provide car share vehicles via a partnership agreement.	Yes
10. Building materials, finishes and visual appeal		
P1) The design of each Tower shall provide visual relief elements, having regard to the high visibility of these Towers from the railway line and surrounding precincts. P2) An Architectural Lighting Scheme shall be submitted with any development proposal for above ground work, where relevant. The lighting scheme shall seek to: a) Enhance the safety and security of residents and pedestrians at, and in the vicinity of, the site; b) Enhance the visual appeal and interest of the site at night and twilight hours; c) Minimise light spill to surrounding residents or users; and A management plan is to be included to ensure the lighting scheme is maintained in perpetuity	The design of the building and the selection of materials has taken into consideration its surrounding context. Special consideration has been given to the historical significance of the site, to ensure minimal impact to surrounding heritage items. A high degree of articulation has been provided to the built form, to break up the massing and to encourage a pedestrian scale development. Additionally, each building has a unique design. Towers A and C have been designed as twin towers, when viewed from a distance. Tower B provides for a unique landmark building, incorporate a curved façade. Whilst tower D has been designed to directly respond to its interface with the new public park. An Amended Architectural Lighting Strategy and Management Plan has been prepared by Cox Architecture, which provides details of how lighting will maximise safety and visual appeal, while minimising light spill.	Yes
11. Public Art		
P1) The development must provide public art. The provision of multiple art pieces across the development site is preferred. P2) The public artwork is to be generally located within the development site, within the publicly accessible private land and publicly-accessible through site links; except	A Preliminary Public Art Strategy for Burwood Place has been prepared by Barbara Flynn. The strategy puts forward initial ideas of artists, types of art and artwork locations across the site. If consent is granted, a condition is recommended to require the preparation of a Detailed Public Art	Yes

Provision	Assessment of Proposal	Compliance
where the proponent has entered into a mutual agreement with Council to provide the public artwork on public land. P3) Council must be satisfied that a Public Art Plan has been submitted which confirms the value of the artworks, their placement within the site, timing for installation, and ongoing management requirements. P4) A Public Art Coordinator must be engaged for the planning, management and reporting of the public art.	Plan prior to the issue of a Construction Certificate.	

A summary of the assessment of the application against the relevant planning controls and objectives within the LGA-wide Burwood DCP is shown in **Table 8** below.

Table 8 Assessment of the proposed development against the Burwood DCP 2013

Provision	Assessment of Proposal	Compliance
Part 3 Development in Centres and Corridors		
3.2.19 Access and Mobility P6 At least 10% of dwellings in a development must be provided as adaptable housing to Adaptable House Class A or B standard to cater for ageing in place and mobility impaired residents, in accordance with AS 4299: Adaptable Housing.	It is not clear from our review of documentation how many adaptable dwellings are provided, noting 10% of proposed dwellings would equate to 104 adaptable apartments. An appropriate condition of consent is recommended to ensure compliance.	No – condition of consent
P7 At least one car parking space must be provided and allocated to each dwelling required to be provided as accessible or adaptable housing under this Section and the car parking space must be accessible in accordance with the provisions of AS 1428.2 to facilitate automatic vehicular wheelchair loading and unloading.	A condition of consent is recommended to address this. The Parking Schedule tables provided on the AR-DA-Basement Carpark Plans suggest that 22 accessible parking space are provided for adaptable units. This provision only equates to 2% of dwellings, whereas Provision P6 requires 10% of dwellings to be adaptable housing therefore 104 accessible spaces are required.	No – condition of consent
P9 For development providing between 80 or more dwellings, one accessible visitor car parking space must be provided on site at the rate of one per each 60 dwellings or part of. The spaces must be accessible in accordance with the provisions of AS 1428.2 to facilitate automatic vehicular wheelchair loading and unloading.	P9 Based on 1,041 dwellings, 17 accessible visitor spaces would be required. The Parking Schedule tables provided on the AR-DA-Basement Carpark Plans suggest that two accessible visitor parking spaces are provided on Basement B6, which is below the requirement. It is noted that the plans for B6 do not show any visitor parking on this level, as it has been relocated to levels B4 and B5. Furthermore, it is not clear which accessible spaces on these levels are allocated for visitors.	No – condition of consent
Part 3.4 Transport and Parking in Centres and Corridors		
3.4.2 Burwood Town Centre and Strathfield Town Centre		
<i>Basic parking requirement:</i> Development in the B4 zone in the Burwood and Strathfield Town Centres must provide parking spaces on site for	The TTIA determines that 2,166 car spaces are required to comply with the DCP. 1,757 car spaces are proposed. The reduced parking provisions are supported as this is consistent with the assessment team's recommendation to provide less parking than the DCP (in	No, but justified

Provision	Assessment of Proposal	Compliance
each proposed land use in accordance with Table 2. <u>Requirements:</u> <i>Shop top housing:</i> 1 & 2 bedroom apartments – 1 space 3+ bedroom apartments – 1.5 spaces Visitor: 1 space per 5 apartments <i>Restaurant / Café:</i> 1 space for first 400sq.m plus additional 1 space per 40sq.m or part thereof <i>Retail:</i> 1 space for first 400sq.m plus additional 1 space per 40sq.m or part thereof <i>Office:</i> 1 space for first 400sq.m plus additional 1 space per 120sq.m or part thereof <i>Calculation of the number of parking spaces required for a development is to be determined by rounding up to the nearest whole number where the decimal point is 0.5 and above, or rounded down to the nearest whole number where the decimal point is below 0.5.</i>	compliance with the SEPP) given a development of this size and in this location could be regarded as transit-oriented development, which should be focused on the use of active transport rather than private car parking spaces.	
3.4.6 General Requirements in All Centres and Corridors – B1, B2, B4 and B6 Zones		
<i>P5 Cycling</i> Development of Commercial premises involving the construction of gross floor area in excess of 400 sqm or three dwellings must include facilities for parking of bicycles (racks and lockers) and showers/change rooms for use by bicycle riders.	The TTIA determines that 534 bicycle spaces are required to comply with the DCP. 734 spaces are proposed to reduce the dependency on private vehicle usage and support the use of bicycles. Spatial allocation for retail and commercial end of trip facilities are shown on the AR-DA-Basement Carpark Plans however these areas have not been detailed to show how many lockers, showers/ change rooms are to be provided. This can be addressed via a condition of consent.	No – condition of consent

11) VOLUNTARY PLANNING AGREEMENT

The provisions of the executed VPA have been taken into consideration in the assessment of this application and are set out in Section 5 of this report. A condition of consent is recommended to ensure that the VPA is registered on title and that it is complied with.

12) ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

Clause 61 of the EP&A Regulation prescribes additional matters that a consent authority must consider in determining a development application. Relevantly, clause 61(1) requires a consent authority to consider the *Australian Standard AS 2601—2001: The Demolition of Structures* in determining a development application for the demolition of a building.

If consent is granted to this application, a condition of consent is recommended requiring a detailed demolition work plan designed in accordance with the above Australian Standard to be submitted to and approved by Council prior to the commencement of any works on the site.

13) THE LIKELY SOCIAL IMPACTS OF THE DEVELOPMENT IN THE LOCALITY

A Social Impact Assessment was prepared by Hill PDA in June 2022 and submitted with the application. This report assesses the social impact of the proposed development and also responds to specific matters raised by Burwood Council in relation to the appropriateness of the proposed provision of open space on the site.

Having regard to the context of the site, the likely demographics of the future resident and worker population on the site, and community facilities and open space benchmarks identified in Council strategies, the report identifies the likely social infrastructure needs arising from the proposed development:

- 284 square metres of additional space for community facilities
- 1.18 hectares of passive open space within 200 metres of the site.

The report states that the proposed development will meet these needs through:

- The provision of 3,850 square metres of communal space on the podium levels within the proposed development, which will reduce the demand for open space located outside the site;
- The provision of 4,913 square metres of publicly accessible open space located in the heart of Burwood Town Centre;
- A voluntary planning agreement (VPA) that commits the applicant to works in kind at the Burwood Library site at 2-4 Conder Street Burwood including an urban park of approximately 2,200 square metres and a multipurpose community facility, to be the subject of a separate DA;
- A further VPA commitment of cash contribution of \$30M for public purposes which could include, at Council's discretion, additional open space in the surrounds;
- The establishment of important through-site links which will greatly improve the public domain and provide important connections to future open space planned adjacent to Burwood Library, contributing to the establishment of a potential community hub in that location;
- A childcare centre to be located in the Block 2 podium;
- A VPA commitment to the provision of an underground car park for 120 spaces which will enhance the experience for workers and visitors to the library.

Overall, the report concludes that the need for additional community facilities and open space to arise from the proposed development, is considered to have been met through the DA and the VPA.

The report also identifies the following potential social impacts of the proposed development.

- Without additional provision of community facilities, the proposal will likely add to cumulative need for library space and community space, adding to an existing forecast undersupply. The proposal will assist in addressing this undersupply through the delivery of a multi-purpose community facility as part of the VPA, and through provision of flexible community space on site.
- The proposal will contribute significant economic benefits to the area, adding to the local and regional economies both during construction and operation, while increasing existing retail employment on site and adding other employment.
- The proposal improves provision of passive open space near to and within the site. Some of this will be communal space for residents within the development, however the proposal includes 4,913 square metres of publicly accessible open space. The site and other neighbouring high density developments currently lack access to local open space within 200 metres, the space provided as part of the proposal will assist in meeting this requirement (as specified in the Greener Places Guide), completion of the local park adjacent to the site as part of the VPA will be essential to ensuring that accessible local space is available for this area
- A risk of social dislocation and isolation exists when a new population is introduced into a neighbourhood, which can be combatted through the provision of spaces to meet and initiatives to encourage residents to meet and interact.

It is noted that the community facilities and open space to be delivered under the VPA on the adjoining Council library/car park site do not form part of the subject DA. However, they are identified in the executed VPA, which is a relevant matter for consideration under section 4.15 of the EP&A Act.

The report suggests a number of mitigation measures during the construction and ongoing operational phases of the development to maximise social benefits and minimise negative impacts to the community. Recommended conditions of consent are included which reflect some of the suggested mitigation measures.

In addition to the above, it is noted that the proponent has offered to provide affordable housing for up to 10 years in 5% of the proposed apartments. This will also contribute to the positive social impacts of the proposal. A condition of consent is recommended to this effect.

Having regard to the above, the social impacts of the proposal are considered to be acceptable.

14) THE LIKELY ENVIRONMENTAL IMPACTS OF THE DEVELOPMENT IN THE LOCALITY

The likely environmental impacts of the proposed development have been addressed elsewhere in this assessment report in response to the relevant provisions of environmental planning instruments and development control plans. Additional matters not already addressed elsewhere include tree removal/protection and noise impacts. They are considered below.

Tree removal and protection

The proposal includes the removal of eleven (11) trees within the site and two (2) trees on the Wynne Avenue nature strip, as detailed in the proposal section of this assessment report. Of these trees, four (4) are classified as high quality and seven (7) are classified as poor quality or young trees. Removal of the high quality trees is justified as they are located within the proposed development envelope.

There are four (4) trees located on the adjoining Council land to the west, which are to be retained and will require protection throughout the demolition and construction process to ensure their long-term survival.

Noise impacts

The noise impacts of the proposal have been assessed. The specialist acoustic consultant has recommended approval, subject to conditions that address:

- An acoustic strategy / masterplan that sets criteria for all noise emitters and sensitive uses. This plan should be submitted to Council for review and approval prior to issue of the construction certificate.
- Assessment of building services noise prior to issue of the construction certificate. The assessment should also define allowances for future fitout equipment.
- Noise intrusion requirements to sensitive spaces inclusive of ventilation requirements where windows need to be closed.

15) THE LIKELY ECONOMIC IMPACTS OF THE DEVELOPMENT IN THE LOCALITY

The proposed development will result in numerous positive economic benefits to the local Burwood economy. As outlined in the Economic Impact Assessment (EIA) submitted with the application and provided with the original Planning Proposal, the proposed development will provide contemporary and modern commercial floor space, which will assist in attracting large companies and government agencies to the Burwood Town Centre. Retail floor space will also be provided, which will allow a greater range of local businesses to establish including supermarkets, fresh food markets, cinemas and specialty retail stores. The proposed development is projected to provide a significant investment upside for Burwood, injecting an estimated \$753.7M per annum into the local economy as a result of

the development. The development will also assist in providing more jobs for local residents, by providing approximately 3,299 full-time jobs (direct and indirect) once the development is complete.

A Retail Impact Assessment (RIA) prepared by Location IQ was submitted with the application. The RIA concludes that:

“The combination of several substantial positive economic impacts will more than serve to offset the trading impacts that will be anticipated for existing and proposed retail facilities because of the retail component the Burwood Place mixed-use development... Overall, the retail component of the Development Application scheme is still assessed to be similar to that outlined in the Gateway Determination scheme, at around \$150 million. This reflects a similar composition and the limited change in planned retail floorspace. To this end, the indicative impacts on existing and planned retail floorspace would also be similar as previously outlined for the Gateway Determination scheme. Projected impacts are not likely to threaten the on-going viability of any retailers or shopping centres, or inhibit likely future developments to serve the growing resident and worker populations in Burwood Town Centre and the region. The proposed Burwood Place, on the southern side of the railway line, provides a unique opportunity for a quality of retail and mixed-use development that would form a dumbbell arrangement for retail and complementary facilities in the Burwood Town Centre, with Westfield Burwood anchoring the northern end and Burwood Place anchoring the southern end. This will be to the potential benefit of all existing and proposed retail and complementary facilities throughout the Burwood Town Centre.”

Council's assessment team undertook a peer review of the RIA. It was concluded that the methodology undertaken by Location IQ and assumptions in their modelling and approach were sound. An existing centre currently operates at the subject site, and as such, the proposal considers the anticipated net gain in retail floorspace as a result of the project. A review of the proposal and retail impact assessments outlines that the net increase in retail floorspace is ultimately relatively modest in the context of existing and projected market demand and supply. This includes a replacement of the major anchor tenant (a full-line supermarket), and addition of retail floorspace allocated to convenience based retail operators that will serve the growing local community. Non-retail uses proposed are more significant and include cinemas, childcare and health services, however, would also align to the needs of the growing population with the subject site representing a logical, central location.

The NSW Land and Environment Court has cast doubt on the relevance of considering the competitive impacts of a proposed development on existing businesses of the same type in the locality (e.g., *Australian Turf Club v Liverpool City Council* (No 2) [2014] NSWLEC 1099 citing *Kentucky Fried Chicken v Gantidis* [1979] HCA 20; (1979) 140 CLR 675 and *Randall Pty Ltd v Willoughby City Council* [2005] NSW CA 205; (2005) 144 LGERA 119). That case stated that *“competition is the operation of conventional market forces and is not a proper planning matter. Proper planning matters, however, can arise... when a business or an activity is proposed to be approved and it has unacceptable economic impacts on other activities of an entirely different nature... [I]t is appropriate to have regard to potential economic impacts of a business type A on existing businesses in an area that may be of businesses type B, C, D, or E, but that it is not appropriate to have regard to the impact of a proposed business A on other businesses of business type A in that neighbourhood.”*

Beyond the consideration of retail impacts on existing retail operators in the locality, the EIA and RIA also consider the broader economic benefits and impacts of the proposed development in the locality, and make positive conclusions in this regard.

Accordingly, it is considered that the proposed development is likely to have acceptable economic impacts on the locality.

16) SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Public road – Lot 3 DP588368

The site includes part of Lot 3 DP588368 which is identified on the Deposited Plan as a public road. The proposal includes the construction of seven (7) basement levels below the public road, including private car parking spaces for residential, commercial and retail uses that are to be stratum/strata subdivided in future. The public road is unlimited in height and depth.

We assume that it is intended to strata subdivide and sell the residential parking spaces via the complying development pathway under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. However, the *Roads Act 1993* does not permit the sale of a public road and the current proposal between the applicant and Burwood Council only contemplates the lease of the below ground area, not the sale.

The applicant has not included any form of subdivision nor holdings of tenure in the application, nor provided any evidence of arrangements to effect closure of the public road and its purchase into the development site prior to the creation of a strata scheme. Such a proposal would alleviate many of the matters surrounding the usage of this land. The applicant assumedly intends to move those aspects to a future application centred around subdivision.

The applicant has been asked to explain future titling/management arrangements associated with the private use of the public road, but to date this information has not been forthcoming.

This issue indicates that this part of the site (the public road) is not suitable for the proposed development in its current form. Accordingly, should consent be granted, a deferred commencement consent condition is recommended requiring the applicant to effect the subdivision and closure of the public road to enable its future subdivision and sale.

Wynne Avenue (Lot 1 DP 1135855)

The site includes part of Lot 1 DP 1135855, which is identified as Wynne Avenue and is owned by Burwood Council. There is no proposal to subdivide Lot 1 in DP1135855 (Wynne Ave) notwithstanding that only part of that lot is proposed to become part of the development site. Further, it is unclear how the basement level car parking spaces will be strata subdivided if the land (which is unlimited in height and depth) remains in Council ownership. The DA does not cover any ownership changes or structures around this parcel.

The VPA states that “the development site also includes land below Wynne Avenue which will be the subject of a lease between parties”. However, Wynne Avenue should first be subdivided to enable it to be leased and it is not clear how the car parking spaces could be allocated to strata lots if they are merely leased. This should be clarified in this DA as it will have an impact on any future strata subdivision under a CDC in terms of car parking spaces and allocation capacity.

Accordingly, should consent be granted, a condition is recommended requiring the applicant to obtain development consent for the stratum subdivision of Wynne Avenue and sale of land below ground to enable its future strata subdivision and sale.

17) SUBMISSIONS

Public authorities and agencies

The DA was referred to a number of public authorities and agencies, as set out below.

Water NSW

The proposed development is integrated development pursuant to the *Water Management Act 2000* as the proposed basement is likely to extend below the permanent water table. Accordingly, this application was referred to Water NSW for comment, and by letter dated 15 November 2022, General Terms of Approval were issued.

Sydney Trains

Burwood Council referred this application to Sydney Trains given the proximity of the train line to the subject site. By letter dated 11 June 2021, Sydney Trains requested that Council impose certain conditions of consent to ensure that the proposed development is undertaken in a safe manner, on the basis that the site is adjacent to a rail corridor. Despite the fact that the site is **not** adjacent to a rail corridor, the draft recommended conditions of consent include Sydney Trains' requested conditions. The Panel is requested to decide whether it is appropriate for those conditions to be imposed.

Sydney Water

By letter dated 12 August 2022, Sydney Water advised of its servicing requirements for the development. These are reflected in appropriate conditions of consent.

Transport for NSW

The applicant has liaised extensively with Transport for NSW throughout the assessment of the proposal. By final letter dated 11 November 2022, TfNSW advised that it raises no further objection to the development, subject to certain requirements being included in any development consent issued. These are outlined in the Transport and Infrastructure SEPP section of this report and are reflected in the recommended conditions of consent.

Burwood Police

The application was referred to Burwood Police, however no comments have been provided.

Public submissions

The proposed development was placed on public notification twice, first in June 2021 following the initial DA lodgement and again in August 2022 following lodgement of the amended application. A total of fifty (50) submissions and a petition supported by 308 names were received in response to the first notification and six (6) submissions were raised in response to the second notification.

The key issues raised in the submissions are summarised below, with a response to each issue.

- **Traffic congestion will be exacerbated by the proposal:** Traffic network modelling has been completed for the project using SIDRA for a sizeable study area, initially for the Planning Proposal and subsequently adopted/ updated for this DA. The modelling results demonstrate that the proposal has a manageable level of impact on the road network in 2031, with most intersections expected to operate at an acceptable level of service (i.e. LOS D or better). The exception is Wentworth Road/ Railway Parade which would operate at LOS E with/ without the development in the future and during weekday PM and weekend peaks.
- **Adverse parking impacts on the locality:** The proposal provides fewer parking spaces than required under the Burwood DCP. This is considered appropriate as the site is located in close proximity to public transport. The development application has appropriately responded to feedback to reduce residential/ visitor parking provisions to align with TfNSW/RMS rates for Metropolitan Regional CBD Centres, further promoting transit-oriented development, non-car mode share (particularly for commuter trips) and thus reducing reliance on private vehicles. The proposal also includes significantly more bicycle parking than the DCP requirement to promote active travel to/ from the site.
- **Adverse overshadowing impacts:** The proposal results in a significant loss of solar access to neighbouring apartments to the south, as detailed in this assessment report. However, the proposal complies with the site-specific DCP which provides that solar access to 50% of apartments in a development (including Emerald Square and Burwood Grand developments) is to be retained in mid-winter, between 9am and 3pm for at least 2 hours. As the proposal complies with the site-specific DCP standards for overshadowing, the consent authority is not to require more onerous standards with respect to overshadowing, pursuant to section 4.15(3A) of the EP&A Act.
- **Adverse view impacts:** The proposal has been assessed in accordance with the planning principles for views established by the Land and Environment Court of New South Wales in

Tenacity Consulting v Warringah [2004] NSWLEC 140 (Tenacity). Applying this test, while the proposal will have a significant impact on some private views, those views cannot objectively be considered highly valuable as they do not contain iconic elements. Furthermore, the proposal complies with the key scale requirements of the Burwood LEP (height and FSR) and Burwood DCP (setbacks and separation). AS the proposal complies with key development controls it is difficult to generate grounds for refusal based on this impact.

- **Adverse privacy impacts:** It is acknowledged that the proposal does not comply with the building separation (to boundaries) criteria in the ADG. However, the proposal complies with the building separation (between buildings) standards in the DCP. As the proposal complies with the site-specific DCP standards for building separation, the consent authority is not to require more onerous standards with respect to building separation, pursuant to section 4.15(3A) of the EP&A Act. Furthermore, the proposal incorporates appropriate privacy screening to mitigate adverse privacy impacts on neighbouring apartments.
- **Inappropriate height and scale:** The proposal complies with the height and FSR controls of the Burwood LEP which were recently gazetted following a site-specific Planning Proposal process. The proposal also complies with the building separation provisions of the DCP. It is also noted that the site is in the Burwood Town Centre, which is a Strategic Centre under the Eastern City District Plan and therefore an appropriate location for development of the height and scale proposed.
- **Adverse construction impacts including construction traffic, pollution and noise:** Appropriate conditions of consent are recommended to minimise construction impacts.
- **Insufficient capacity of existing childcare centres and schools:** The proposal provides space for a childcare centre, which will be the subject of a future DA. Provision of schooling capacity is a requirement of the state government.
- **Insufficient capacity of public transport:** The site is well-serviced by public transport including regular bus and train services. Consistent with the principles of transit oriented development and the objectives of the B4 Zone, it is appropriate for more dense urban development to be located close to public transport services so as to reduce reliance on private vehicle usage.
- **Pedestrian overcrowding:** The proposal includes 4,900sqm of additional public domain including through-site links, to provide a highly permeable pedestrian network and better connectivity to the surrounding locality. This additional public domain provision will help to minimise the impacts of additional pedestrians on the surrounding locality.
- **Lack of open space in the local area:** It is acknowledged that the Burwood locality is not well serviced by public open space, particularly south of the railway line. The proposal includes 4,900sqm of public domain space to partially address this issue. It is also relevant that a DA has been lodged to provide additional open space on the adjoining site, which is provided for under the VPA between the developer/landowner and Council.
- **Publicly accessible open space will be an extension of the retail spaces and will not provide any recreational activity or relaxation:** It is acknowledged that most of the publicly accessible space will serve as a pedestrian thoroughfare rather than as passive recreational open space. However, it is noted that the site is located within the Burwood Town Centre, a dense urbanised area surrounded by retail, residential and community uses, as well as a public transport interchange. It is appropriate that the ground level publicly accessible space have a civic plaza style that provides for high levels of pedestrian connectivity between the site and surrounding locality rather than large areas of lawn for passive recreation (particularly on a privately owned site).
- **Solar access non-compliance:** The proposal complies with the ADG with respect to solar access to apartments within the proposed development. While Tower B and Tower C do not comply individually, the proposal as a whole complies.
- **Lack of affordable housing in the proposal:** In response to a request made by the Sydney Eastern City Planning Panel to consider the provision of affordable housing, the applicant has committed to providing affordable housing within 5% of residential apartments (i.e., 52 apartments), with a community housing provider to run / manage the apartments for a 10-year tenure (maximum). A condition of consent is recommended to increase this to 15 years in accordance with the Housing SEPP.
- **Economic/competitive impacts on existing retail businesses:** The NSW Land and Environment Court has cast doubt on the relevance of considering the competitive impacts of a proposed development on existing businesses of the same type in the locality.

- **Adverse wind impacts:** The proposal is considered acceptable in relation to wind. There were no pedestrian-level safety exceedances measured in the wind-tunnel testing conducted on the site. The measured comfort conditions are appropriate close to a large development.
- **Impacts on real estate values in the area:** This is not a relevant matter for consideration in the assessment of a development application.

18) THE PUBLIC INTEREST

In *Ex Gratia Pty Ltd v Dungog Shire Council* [2005] NSWLEC 148, the Land and Environment Court stated that, in considering the public interest, the question that needs to be answered is "Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development".

Given the size of the development and its location within an existing high-density strategic centre, it is acknowledged that there will be impacts associated with the proposed development, such as traffic and solar access. However, those impacts are created as a result of a development that largely complies with the site-specific DCP, which was prepared as part of the Planning Proposal process for the site.

As discussed in this report, the proposed development is likely to provide numerous social and economic benefits for the locality, including the provision of new housing close to public transport, construction and ongoing operational jobs, as well as affordable housing (subject to compliance with a proposed condition of consent). The proposal also offers public benefits in accordance with the executed VPA, and will provide 4,900sqm of publicly accessible land.

Therefore, based on the quantum of residential apartments and employment opportunities being provided, in addition to being the catalyst for urban renewal and the delivery of significant public benefits, the benefits of the development outweigh the impacts and as such the proposed development is considered to be in the public interest.

19) RECOMMENDATION

Accordingly, it is recommended that the application be approved, subject to the recommended conditions attached to this report.