**COUNCIL REPORT**

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| **Panel Reference** | **PPSECC-150** | |
| **DA Number** | **BD.2016.103** | |
| **LGA** | **Burwood** | |
| **Proposed Development** | **Section 4.55 Application to modify Development Consent No. 2016/103 to change Condition No.s 4, 5, 12, 13 & 19 relating to the provision of easement access to 188-192 Burwood Road.** | |
| **Street Address** | **180-186 Burwood Road & 7-9 Burleigh Street, Burwood** | |
| **Applicant** | **Mr P Elias C/o Urbanlink Pty Ltd** | |
| **Owner** | **Giant Project Group Pty Ltd** | |
| **Date of DA lodgement** | **10 August 2021** | |
| **Number of Submissions** | **One (1)** | |
| **Recommendation** | **Approval in part, subject to the attached conditions** | |
| **Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011** | The amended Section 4.55 Application seeks to amend a condition relating to the timing of the creation of an easement for vehicular access over the subject site to the adjoining property No 182 Burwood Rd Burwood, and to delete conditions also relating to this easement creation. In their original determination on 21 December 2017, the Joint Regional Planning Panel (JRPP) imposed a condition requiring such an easement to be created and placed on the title prior to the issue of a Construction Certificate. | |
| **List of all relevant 4.15(1)(a) matters** | * Burwood Local Environmental Plan (LEP) 2012 * Burwood Development Control Plan (DCP) 2013 * The likely social, environmental and economic impacts of the development * The suitability of the site for the development * The Public Interest * Submissions made under the Act and Regulations | |
| **List all documents submitted with this report for the Panel’s consideration** | * Development Application Form * Letter to Council in relation to Section 4.55 Application prepared by Mills Oakley dated 10 June 2021 * Letter to Council in relation to Section 4.55 Application prepared by Mills Oakley dated 19 October 2021 | |
| **Report prepared by** | **Emma Buttress-Grove, Senior Town Planner - Building and Development** | |
| **Report date** | **1 November 2021** | |
| **Summary of s4.15 matters**  Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? | | | **Yes** | |
| **Legislative clauses requiring consent authority satisfaction**  Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?  *e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP* | | | **Yes** | |
| **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? | | | **N/A** | |
| **Special Infrastructure Contributions**  Does the DA require Special Infrastructure Contributions conditions (S94EF)?  *Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions* | | | **No** | |
| **Conditions**  Have draft conditions been provided to the applicant for comment?  *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* | | | **Yes** | |

**(PPSEC-150) BD.2016.103 – Section 4.55 Application to modify Development Consent No. 2016/103 to change Condition No’s 4, 5, 12, 13 & 19 relating to the provision of easement access to 188-192 Burwood Road across the subject site being 180-186 Burwood Road & 7-9 Burleigh Street, Burwood.**

**REPORT BY**: Senior Town Planner

**Owner:** Giant Project Group Pty Ltd

**Applicant:** Mr P Elias C/o Urbanlink Pty Ltd

**Location:** 180-186 Burwood Road & 7-9 Burleigh Street, Burwood

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

## Proposal

Section 4.55 Application No. 2016/103 was lodged with Council on 10 August 2021 to amend Development Consent No. 2016.103 to modify Development Consent No. 2016/103 to change Condition No’s 4, 5, 12, 13 & 19 relating to the provision of easement access to 188-192 Burwood Road across the subject site being 180-186 Burwood Road & 7-9 Burleigh Street, Burwood.

## Regional Planning Panel Referral Criteria

The amended Section 4.55 Application seeks to amend a condition relating to the timing of the creation of an easement for vehicular access over the subject site to the adjoining property No 182 Burwood Rd Burwood, and to delete conditions also relating to this easement creation. In their original determination on 21 December 2017, the Joint Regional Planning Panel (JRPP) imposed a condition requiring such an easement to be created and placed on the title prior to the issue of a Construction Certificate.

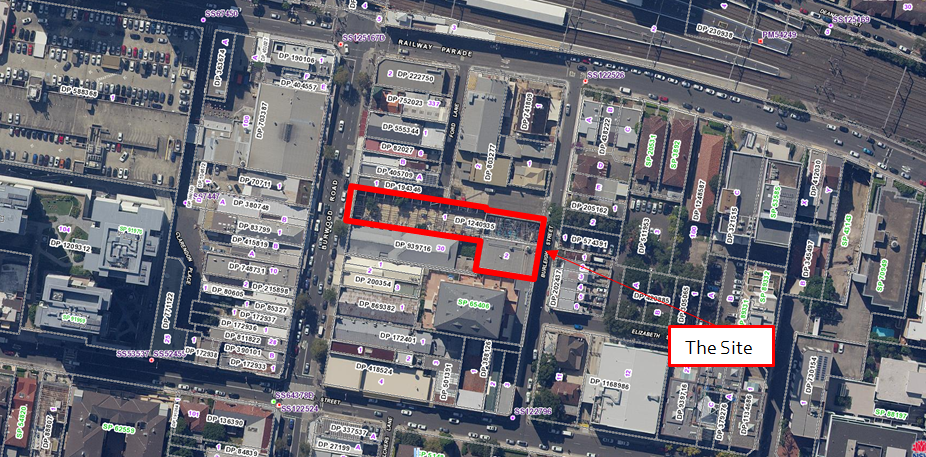
## Locality

The site is located within the B4 Mixed Use zone pursuant to BLEP 2012 and is in the Burwood Town Centre (refer to **Figures 1** and **2**).

The site comprises two allotments known as Nos. 180-186 Burwood Road and 7-9 Burleigh Street. The legal description of the site is Lot 100 in DP 1046417 and Lot 2 in DP 741809.

The site has an area of 1,632.6m², a Burwood Road frontage of 15.295m, a Burleigh Street frontage of 26.74m, and a depth on 100.915m. The site has a fall of approximately 1.7m from the Burwood Road frontage to the Burleigh Street frontage.

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



**Figure 1**: Site Aerial. Courtesy: TURNER

  
**Figure 2**: Burwood Uniting Church. Courtesy: Google Maps

## BACKGROUND

Development Application No. 2016/103

The Sydney Eastern City Planning Panel granted development consent to DA103/2016 on 21 December 2017 for the demolition of existing structures and erection of a 1 x 21 storey commercial tower and 1 x 25 storey tower, above a 3 storey podium containing 12 services apartments, 56 residential apartments, commercial and retail floor space over 5 levels of basement parking for 106 spaces.

As a part of this Development Consent the Panel imposed a specific condition (Condition 14) in relation to an easement for access and servicing benefiting No. 199-192 Burwood Road across the subject site prior to the Issue of a Construction Certificate as follows:

*Prior to the Issue of a Construction Certificate*

*14. An easement for right of access and servicing (including waste collection benefitting 188-192 Burwood Road, Burwood is to be registered on title. The easement is to provide vehicular access to a future basement for 188-192 Burwood Road, Burwood and includes access from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link. A copy of the draft easement instrument is provided to and agreed in writing with Council prior to registration and the issue of any Construction Certificate.*

The following additional Special Conditions were also imposed upon Development Consent 2016/103 specifically in relation to the creation of the access easement:

*Special Conditions*

*4. The proposed development shall include a knock-through wall to Basement Level 1, as identified on plan DA-2000, Issue J, dated 19/04/2017, provided at six (6) metres wide, and at least 2.7 metres high.*

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

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

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

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

Section 4.55 Application approved 2 November 2020

Section 4.55 Application to modify Development Consent No. 103/2016 to amend the development was approved by Council on 2 November 2020 as follows:

* Additional parking level and basement car spaces increased from 106 to 120
* Increased number of podium levels to 6
* Deletion of all 12 services apartments
* Ground Floor internal alterations
* Alterations to external façade
* Level 1 – delete serviced apartments fronting Burleigh Street to create commercial floor space
* Level 2 – delete serviced apartments fronting Burleigh Street to create commercial floor space, plus additional commercial spaces
* Levels 3-15 – numerous internal alterations
* Levels 16-19 – commercial towers have been deleted
* Levels 23 and 24 – residential floor space has been deleted

This resulted in an amendment to the description of the proposed development as follows:

*Demolish existing structures and erect 1 x 16 storey commercial tower and 1 x 23 storey tower above a multi-level podium containing 55 residential apartments, commercial and retail floor space over 5 levels of basement parking for 120 car spaces*.

This also resulted in the imposition of additional Conditions 12 & 13 in relation to the creation of the easement prior to the Issue of a Construction Certificate as follows:

*Prior to the Issue of a Construction Certificate:*

*12. The draft memorandum of understanding submitted is to be amended to include a right of access and easement for servicing (including garbage collection) 188 – 192 Burwood Road from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link. A copy is to be supplied to and agreed in writing with Council prior to signing and the issue of a Construction Certificate.*

*Reason: To ensure adequate servicing arrangements for the adjacent site.*

*13. The draft memorandum of understanding (once amended and agreed with Council to include servicing access to 188 – 192 Burwood Road) is to be entered into and a signed copy supplied to Council prior to the issue of a Construction Certificate.*

*Reason: To ensure the adjacent site is capable of being adequately developed and serviced.*

*19. The easement detailed in the submitted draft memorandum of understanding providing vehicular access to 188-192 Burwood Road is to be registered on the title of the land prior to the issue of an Occupation Certificate.*

Section 4.55 Application approved on 6 October 2021

Section 4.55 Application to modify Development Consent No. 103/2016 to amend the basement car parking and service layouts, modifications to the ground floor level including adjusting the front setback, changes to internal layouts relating to commercial offices, and apartments mixes, an additional level to the building to accommodate a new a two storey penthouse on Level 22-23, changes to the external façade of the development including new balcony, alterations to the location of the communal open space and landscaping was approved by Council on 6 October 2021.

## DESCRIPTION OF SECTION 4.55 APPLICATION

This Section 4.55 Application seeks to amend Development Consent No. 2016/103 by changing the manner of the development’s construction in relation to the requirement for the creation of an easement for vehicular access across the subject site benefiting No. 188-192 Burwood Road.

In summary the Section 4.55 Application seeks to modify the approved development so that it may be carried out without a memorandum of understanding up to the point of the issue of an occupation certificate.

The applicant has also requested to delete the additional conditions 12 & 13 that were imposed Section 4.55 Application approved on 2 November 2020, and to modify Condition No. 19 as follows:

**Delete Special condition 12**

*Condition 12 of the special conditions is presently as follows:*

*The draft memorandum of understanding submitted is to be amended to include a right of access and easement for servicing (including garbage collection) 188– 192 Burwood Road from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link. A copy is to [be] supplied to and agreed in writing with Council prior to signing and the issue of a Construction Certificate. Reason: To ensure adequate servicing arrangements for the adjacent site.*

**Delete Special Condition 13**

*Condition 13 of the special conditions is presently as follows:*

*The draft memorandum of understanding (once amended and agreed with Council to include servicing access to 188 – 192 Burwood Road) is to be entered into and a signed copy supplied to Council prior to the issue of a Construction Certificate. Reason: To ensure the adjacent site is capable of being adequately developed and serviced.*

**Modify Special Condition 19**

*Condition 19 of the special conditions is presently as follows:*

*The easement detailed in the submitted draft memorandum of understanding providing vehicular access to 188-192 Burwood Road is to be registered on the title of the land prior to the issue or (sic) an Occupation certificate.*

*Proposed to be Modified to Read as Follows:*

*The easement detailed in the draft memorandum of understanding submitted to the Council on 31 March 2021 providing for:*

*a. vehicular access to 188-192 Burwood Road; and*

*b. a right of access and easement for servicing (including garbage collection) from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link,*

*is to be registered on the title of the land prior to the issue of an Occupation Certificate.*

The above modification requests are discussed in detail in this report.

**STATUTORY PLANNING FRAMEWORK**

The application is assessed under the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, as amended, which include:

* Burwood Local Environmental Plan (LEP) 2012
* Burwood Development Control Plan (DCP) 2013
* The likely social, environmental and economic impacts of the development
* The suitability of the site for the development
* The Public Interest
* Submissions made under the Act and Regulations

These matters are considered in this report.

**Section 4.55 of the Environmental Planning and Assessment Act 1979**

The applicant proposes to modify the consent pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.

Sub-clause (2) relates to ‘other modifications’ and states the following:

“*(2) Other Modifications*

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

*(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

*(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

*(c) it has notified the application in accordance with:*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be*.

The application has been notified in accordance with Council’s DCP requirements and submissions have been considered under the heading Community Consultation within this report.

Section 4.55(3) of the EP&A Act states that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. Such matters of relevance under section 4.15(1) are considered within the Planning Assessment section of this report.

Substantially the Same Development

The modifications proposed will not change the nature of the development as approved under the original Development Consent and the development is still capable of complying with the majority of the operational conditions imposed under DA103/2016.

Whilst the modifications proposed under this Section 4.55 Application are not supported in their entirety and it is the opinion of Council Officers that in qualitative terms the modified development is substantially for which consent was originally granted, and the application can therefore be supported on these grounds subject to the conditions in the attached schedule.

**MODIFICATION OF SPECIAL CONDITIONS OF DEVELOPMENT CONSENT No. 2016/103**

In a letter to Council dated 10 June 2021 prepared by Mills Oakley Law Firm on behalf of the applicant to accompany the Section 4.55 Application to modify Development Consent No. 2016/103 it was stated that the proposed modifications to the Special Conditions which includes the request to delete some of those conditions for the following reasons:

* *The change will allow the construction program to be carried out continuously (and not cease merely because commercial negotiations have not been completed with the owner of a neighbouring privately-owned site, being 188-192 Burwood Road Burwood).*
* *When the development consent was granted:* 
  + *There was an intention that the owners of the two properties would agree on an access way (an easement) for vehicles — via the basement area of the subject development — for the benefit of 188-192 Burwood Road.*
  + *It was expected that there would be a payment by the owner of 188-192 Burwood Road for the ‘development value of the basement vehicular access way’. This amount was expected to be agreed upon on the basis of a valuation.*
* *Despite the best efforts of the applicant, the applicant and the owner of 188-192 Burwood Road have not yet reached any agreement as to:* 
  + *the terms of the easements; or*
  + *the envisaged payment to the applicant for the easements.*
* *The applicant obtained a formal valuation of the proposed easements. The market value and compensation for loss for the easements was assessed at $6 million. The owner of 188-192 Burwood Road has not yet agreed to pay that sum. It has not supplied its own valuation report to the applicant.*
* *The development is presently under construction. Given that there has been no agreement between the applicant and the owner of 188-192 Burwood Road, it is necessary for a modification application to be lodged now to manage the situation.*
* *No condition of development consent can force the owner of 188-192 Burwood Road to purchase the easement(s). It would also be unreasonable for a development consent to force the applicant to confer a property right on a private party (of some great value) for less than its market value.*
* *Accordingly, the proposed new condition 12 introduces a ‘good faith’ negotiating regime. This regime will compel the applicant (including any successors) to negotiate in good faith to seek to agree on a payment for, and the terms of, the easements. This obligation would be triggered — at any point during the life of the development — on receipt of a proposal from the owner of 188-192 Burwood Road.*
* *The current language of special conditions 4 and 5 assumes that the delivery of the access way is a certainty. Amendments to these conditions are proposed to make it clear that the knock-through wall and associated infrastructure must still be constructed, but are merely to facilitate a future access arrangement (rather than being a guarantee that such an arrangement will be in place).*
* *The ‘good faith’ negotiating regime (together with a requirement that all necessary physical works must still be constructed to make the future access way practicable) is a sufficient and proportionate measure to ensure that the future development of 188-192 Burwood Road would not needless be burdened by a suboptimal access arrangement (to the disbenefit of the community). Anything more than this would be unlawful.*
* *The consent authority does not need to be concerned that the applicant (or any successors-in-title) could ‘sit on their hands’ to avoid providing the easement(s) for 188-192 Burwood Road.*
* *This is because; if the ‘good faith’ negotiations break-down, the owner of 188-192 Burwood Road will have a remedy that sits outside of the development consent.*
* *Section 88K of the Conveyancing Act 1919 allows the Supreme Court to make an order for the grant of an easement. In certain circumstances the Land and Environment Court also has this power.*
* *The consent authority can be satisfied that the owner of 188-192 Burwood Road would very likely be able to obtain a Court-ordered easement, if needed, on the payment of adequate compensation to the applicant (or its successors in title).*
* *If the modification application is refused, there is a real likelihood that the completed buildings will sit idle, for an extended period of time, and not be occupied.*
* *It is contrary to the public interest that significant buildings remain empty and unused at such a significant location any longer than is necessary.*

Council Officers have assessed the application in consideration of the above requests and taking into account the applicant’s further letter dated 19 October 2021 prepared by Mills Oakley Law Firm.

The applicant’s request to change the manner of construction of the development to enable the creation of the easement to be changed from Construction Certificate to Occupation Certificate is acceptable as the creation of the easement prior to the issue of the Occupation Certificate would allow for additional time for the property owner’s to negotiate an agreement and maintains that No. 188-192 Burwood Road can be adequately developed and serviced.

However, the applicant’s request to delete Special Conditions 12 & 13 is not supported. The deletion of Special Conditions 12 & 13 would result in uncertainty in relation to the provision of adequate servicing arrangements to be provided for No. 188-192 Burwood Road.

Council Officers instead make the following recommendation to the Panel in relation to proposed amendments to Special Conditions 12 & 13.

Special Condition No. 12 currently reads as follows:

*12. The draft memorandum of understanding submitted is to be amended to include a right of access and easement for servicing (including garbage collection) 188– 192 Burwood Road from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link. A copy is to [be] supplied to and agreed in writing with Council prior to signing and the issue of a Construction Certificate.*

*Reason: To ensure adequate servicing arrangements for the adjacent site.*

Is amended by this Section 4.55 Application as follows:

*12.* The draft memorandum of understanding submitted is to be amended to include a right of access and easement for servicing (including garbage collection) 188– 192 Burwood Road from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link. A copy is to [be] supplied to and agreed in writing with Council prior to signing and the issue of an **Occupation Certificate**.

Reason: To ensure adequate servicing arrangements for the adjacent site.

Special Condition No. 13 currently reads as follows:

*13. The draft memorandum of understanding (once amended and agreed with Council to include servicing access to 188 – 192 Burwood Road) is to be entered into and a signed copy supplied to Council prior to the issue of a Construction Certificate. Reason: To ensure the adjacent site is capable of being adequately developed and serviced.*

Is amended by this Section 4.55 Application as follows:

13. The draft memorandum of understanding (once amended and agreed with Council to include servicing access to 188 – 192 Burwood Road) is to be entered into and a signed copy supplied to Council prior to the issue of an **Occupation Certificate**. Reason: To ensure the adjacent site is capable of being adequately developed and serviced.

The applicant also requested to modify Special Condition No. 19 which currently reads as follows:

*19. The easement detailed in the submitted draft memorandum of understanding providing vehicular access to 188-192 Burwood Road is to be registered on the title of the land prior to the issue or (sic) an Occupation certificate.*

Proposed to be modified as follows:

19. The easement detailed in the draft memorandum of understanding submitted to the Council on 31 March 2021 providing for:

a. vehicular access to 188-192 Burwood Road; and

b. a right of access and easement for servicing (including garbage collection) from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link,

is to be registered on the title of the land prior to the issue of an Occupation Certificate.

The above request to modify Special Condition 19 is not supported as these arrangements are provided for in Special Conditions 12 & 13 which are recommended by Council Officers to remain unaltered by the Section 4.55 Application.

Summary

It is acknowledged by Council Officers that to date there has been difficulty in the respective property owners reaching an agreement regarding the required easement access details, and the financial repercussions of this agreement.

It is accepted by Council Officers that to facilitate the further construction of the subject site including matter of the easement creation/negotiations does not unduly impede on the ability of any additional Construction Certificates to be issued.

However, there also needs to be assurance that prior to the Occupation of the building, lawful arrangements for access and servicing to No. 188-192 Burwood Road are in place and are registered on the land title, noting that this was a condition imposed upon the original Development Consent by the Joint Regional Planning Panel in its determination of the application.

In this regard, the Section 4.55 Application is supported in part, and not in its entirety in that the creation of the access easement across the subject site to benefit No. 188-192 Burwood Road shall be in place and registered on the title of the land prior to the issue of the Occupation Certificate with the respective conditions modified in the attached schedule.

## 

## CONSULTATION

Community Consultation

The proposed Concept Development Application was placed on public exhibition for a 14 day period from 18 August until 13 September 2021. One (1) submission was received in response to the notification of the Section 4.55 Application.

The submissions raised the following issues:

Issue 1: *The Section 4.55 Application is opposed in that it seeks to extinguish the easement access guaranteed by the Regional Planning Panel development approval. That access is essential to the proper development of 188-192 Burwood Road, Burwood NSW.*

Council Officer Comment: The applicant’s request to extinguish the easement access is not supported. Council Officers support a change to the timing of the creation/registration of this easement from Construction Certificate to Occupation Certificate for reasons outlined in this report.

Issue 2: *That the Owner of No. 188-192 Burwood Road Burwood was not notified of the proposed Section 4.55 Application by Council, that the validity of the service of the notification is open to question, and that Council should accept the notification did not come into possession of the Owner’s of No. 188-192 Burwood Road until 3 September 2021 and thereby an extension of time to enable a submission to be made until 29 October 2021 should be granted.*

Council Officer Comment: In relation to the above matter, Council issued a formal letter of response to the submitter dated 10 September 2021 as follows:

*I refer to your letter dated 8 September 2021 regarding the notification of Section 4.55 modifications lodged to Council for the above development application. As advised to you in my email dated 31 August 2021, Council has received two (2) S4.55 modification applications for this development application in recent times. The modification application you refer to in your letter was lodged to Council on 10 August 2021 and placed on public exhibition from 18 August 2021 to 13 September 2021.*

*The address for notification is taken from records that have been supplied to Council and the address for your client’s property as shown in Council’s Property records and would also include service for rate notices. If these details have changed, notification of any change should have been supplied to Council to update its records. Council is of the view that the modification application has been notified in accordance with its policy and under the circumstances an extension of time for the notification period is not able to be granted.*

*However please note that Council will accept a submission on the modification application up until the time the application is determined. In this case the determination authority is the Sydney Eastern City Planning Panel and Council is bound to work within the timetable set by the Panel. It is therefore suggested that any submission is sent to Council as soon as possible in order for your submission to be considered as part of the assessment report on this application.*

The above issues are thereby considered to have been satisfactorily addressed and resolved in this report.

## CONCLUSION

In light of the matters addressed in this report, the Section 4.55 Application is supported in part, and not in its entirety by Council Officers in that the creation of the access easement across the subject site to benefit No. 188-192 Burwood Road shall be in place and registered on the title of the land prior to the issue of the Occupation Certificate with the respective conditions modified in the attached schedule.

## RECOMMENDATION

That Section 4.55 Application No. 2016/103 be approved, in part, for the modification of Development Consent No. 2016/103 to amend Conditions No. 12 & 13 relating to the timing of the creation and registration of the access easement over No. 180-186 Burwood Road & 7-9 Burleigh Street, benefiting No. 188-192 Burwood Road prior to the issue of the Occupation Certificate is approved subject to the modified conditions in the attached schedule.

**Conditions of Approval**

1. Special Condition No. 12 of Development Consent 2016/103 currently reads as follows:

*12. The draft memorandum of understanding submitted is to be amended to include a right of access and easement for servicing (including garbage collection) 188– 192 Burwood Road from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link. A copy is to [be] supplied to and agreed in writing with Council prior to signing and the issue of a Construction Certificate.*

*Reason: To ensure adequate servicing arrangements for the adjacent site.*

**Shall be amended by this Section 4.55 Application as follows:**

*12.* **The draft memorandum of understanding submitted is to be amended to include a right of access and easement for servicing (including garbage collection) 188– 192 Burwood Road from the proposed truck turntable on the ground floor via double doors with an opening of at least 1840mm on both sides of the proposed through site link. A copy is to [be] supplied to and agreed in writing with Council prior to signing and the issue of an Occupation Certificate.**

**Reason: To ensure adequate servicing arrangements for the adjacent site.**

1. Special Condition No. 13 currently reads as follows:

*13. The draft memorandum of understanding (once amended and agreed with Council to include servicing access to 188 – 192 Burwood Road) is to be entered into and a signed copy supplied to Council prior to the issue of a Construction Certificate.*

*Reason: To ensure the adjacent site is capable of being adequately developed and serviced.*

**Shall be amended by this Section 4.55 Application as follows:**

**13. The draft memorandum of understanding (once amended and agreed with Council to include servicing access to 188 – 192 Burwood Road) is to be entered into and a signed copy supplied to Council prior to the issue of an Occupation Certificate.**

**Reason: To ensure the adjacent site is capable of being adequately developed and serviced.**