

## COUNCIL ASSESSMENT REPORT

### SYDNEY EASTERN CITY PLANNING PANEL

|                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PANEL REFERENCE &amp; DA NUMBER</b>                                      | PPSSEC-295 – DA2023.79                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>PROPOSAL</b>                                                             | Demolition of the existing building and construction of an 18 storey mixed use development containing 49 residential units, 9 serviced apartments, 9 commercial tenancies and 2 retail tenancies, above basement parking and landscaping and site works.                                                                                                                                                                                                                                                                                                           |
| <b>ADDRESS</b>                                                              | Lot 1 DP 730154 – 5 Belmore Street, Burwood                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>APPLICANT</b>                                                            | Daniel Barber                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>OWNER</b>                                                                | Australia International Properties Holdings Pty Ltd                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>DA LODGEMENT DATE</b>                                                    | 20 September 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>APPLICATION TYPE</b>                                                     | Development Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>REGIONALLY SIGNIFICANT CRITERIA</b>                                      | Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: General development over \$30 million                                                                                                                                                                                                                                                                                                                                                |
| <b>CIV</b>                                                                  | \$41,017,160 (including GST)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>CLAUSE 4.6 REQUESTS</b>                                                  | Clause 4.3 Height of Buildings                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&amp;A ACT)</b> | <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy (Housing) 2021 — Chapter 4 Design of Residential Apartment Development</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• Burwood Local Environmental Plan 2012</li> </ul> |
| <b>TOTAL &amp; UNIQUE SUBMISSIONS &amp; KEY &amp; ISSUES IN SUBMISSIONS</b> | <p>27 submissions (objections)<br/>16 unique submissions and 11 duplicates</p> <ul style="list-style-type: none"> <li>• Impact on 1-3 Belmore Street (visual and acoustic privacy, overshadowing).</li> <li>• Building separation.</li> <li>• Inconsistency with the DCP setbacks</li> </ul>                                                                                                                                                                                                                                                                       |

|                                                     |                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                     | <ul style="list-style-type: none"> <li>• Safety regarding serviced apartment uses</li> <li>• Structural integrity of adjoining development</li> <li>• Traffic impacts (congestion, noise)</li> <li>• Density and height</li> </ul>                                   |
| <b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>        | <ul style="list-style-type: none"> <li>• Architectural plans</li> <li>• Landscape Plans</li> <li>• Clause 4.6 Variation – Height</li> <li>• Statement of Environmental Effects</li> <li>• Plan of Management – Serviced Apartments</li> <li>• Survey Plan</li> </ul> |
| <b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b> | No                                                                                                                                                                                                                                                                   |
| <b>RECOMMENDATION</b>                               | Deferred Commencement Consent                                                                                                                                                                                                                                        |
| <b>DRAFT CONDITIONS TO APPLICANT</b>                | No                                                                                                                                                                                                                                                                   |
| <b>SCHEDULED MEETING DATE</b>                       | 1 August 2024                                                                                                                                                                                                                                                        |
| <b>PLAN VERSION</b>                                 | 2 May 2024                                                                                                                                                                                                                                                           |
| <b>PREPARED BY</b>                                  | GAT & Associates (External Planning Consultant)                                                                                                                                                                                                                      |
| <b>DATE OF REPORT</b>                               | 25 July 2024                                                                                                                                                                                                                                                         |

## EXECUTIVE SUMMARY

Council is in receipt of a Development Application (DA2023.79) seeking consent for the demolition of the existing commercial building and construction of an 18 storey mixed use development containing 49 residential units, 9 serviced apartments, 9 commercial tenancies and 2 retail tenancies, above basement parking with landscaping and site works at 5 Belmore Street, Burwood.

The application also involves two (2) proposed Voluntary Planning Agreements (VPA). The first is to permit additional floor area utilising the provisions of Clause 4.4A of the Burwood Local Environmental Plan 2012. The second is to provide a monetary contribution in lieu of the full provision of car parking as required by the Burwood Development Control Plan.

The land is zoned MU1 Mixed Use under the LEP and is defined as commercial premises, serviced apartments and shop top housing under the Standard Instrument definitions. The proposal is permissible with consent.

The principal planning controls relevant to the proposal are contained in State Environmental Planning Policy (Housing) 2021 Chapter 4 Design of Residential Apartment Development, Burwood Local Environmental Plan 2012, and the Burwood Development Control Plan.

The site consists of a single L shaped corner allotment on the northern side of Belmore Street and the eastern side of Elizabeth Street. The existing improvements are a five storey commercial building with semi-basement car parking and a substation. The land is 1,261.3m<sup>2</sup> in area.

The development application was lodged on 20 September 2023 and notified from 5 October to 26 October 2023. A total of 28 submissions were received: all objections. The objections primarily related to the overshadowing and visual and acoustic privacy impact on the neighbouring units (mostly at 1-3 Belmore Street), building separation, and structural integrity of adjoining development. These and all submission matters are discussed throughout this assessment and in Section 4.3 Community Consultation.

The applicant was issued a formal additional information request on 19 December 2023 following a preliminary assessment and a referral to the Burwood Design Review Panel. A meeting was held to discuss design amendments and a formal additional information package was received on 23 February 2024. A second Design Review Panel was held on 29 February 2024. A subsequent request for additional information was issued on outstanding matters and a final submission was made on 5 May 2024. The application is determined in the information submitted to date.

The application is referred to the Sydney Eastern City Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 as the proposal is development with a CIV over \$30 million.

A kick-off briefing with the Panel was held on 16 November 2023 and a formal briefing on 27 February 2024 where key issues were discussed.

The key issues associated with the proposal included:

1. *Floor Space Ratio* – A number of omissions from the calculations were observed during the initial assessment of the application, including waste rooms, certain enclosed corridors on the ground floor, Level 1 and 4 and a commercial tea room. These matters were resolved through the assessment process. The applicant included additional areas of the ground floor waste rooms and all of the common corridors and tea room.
2. *Solar Access* – The architectural plans and Statement of Environmental Effects claimed compliance with solar access to living rooms and private open spaces with the 70% requirement under Objective 4A-1 of the Apartment Design Guide. However, an assessment of the sun-eye diagrams indicated the development did not comply. The development is not able to utilise a northerly orientation due to the approved 19 storey boarding house that abuts the northern boundary, reducing the potential to achieve 2 hours of solar access. The proposal has been amended throughout the assessment to optimise the number of units that receive solar access, notwithstanding that compliance is not achieved.
3. *Building separation* – Several encroachments are proposed for building separation. The L shaped site, the narrow width and the nil setback to the northern boundary limit the potential locations for a tower form on this site. The pressure points in the envelope occur between the site and 1-3 Belmore Street to the southeast, particularly at the corner, resulting in several windows within the separation distance. This relationship has been managed through a redesign of the internal layout to limit outlook east and south, and not directly southeast to balconies and habitable rooms. Further, a visual privacy analysis was explored to minimise potential overlooking of the communal open space of 1-3 Belmore Street. Building separation over Elizabeth Street is also marginally non-compliant for the tower, however, no visual privacy concerns are raised.
4. *Waste Collection Location* – The waste collection area is proposed within the site at ground level. However, this location was questioned due to the potential blockage of Elizabeth Street during collection and on pedestrian safety. The applicant submitted

additional information confirming that the waste truck will be sufficiently off Elizabeth Street to prevent any blocking of through traffic and a demonstration that pedestrians can safely walk within the site around the waste collection location to avoid vehicle/pedestrian conflict.

5. *Car Parking* – A shortfall in car parking is proposed, for one residential visitor space and 4 serviced apartment spaces. The shortfall was assessed as acceptable subject to entering into a Voluntary Planning Agreement for a monetary contribution to address the shortfall in accordance with Council's policies.
6. *Overshadowing* – Further detail was required to assess the overshadowing impact on 1-3 Belmore Street, for units and the communal open space. Additional information supplied illustrated that 4 units would technically retain an hour of solar access though the degree of solar access would be reduced substantially. This assessment has considered the approved 19 storey development on 4 Railway Parade, which reduced solar access below 2 hours. The communal open space would also see an impact but retain 2 hours to one communal open space and 5 hours to the second, eastern open space area.

Following a detailed assessment of the proposal, pursuant to Section 4.16(3) of the *EP&A Act*, DA2023.79 is recommended for a deferred commencement consent subject to the conditions contained in **Attachment A** of this report.

## 1. THE SITE AND LOCALITY

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### 1.1 The Site

The site is located at 5 Belmore Street, Burwood and is legally defined as Lot 1 in Deposited Plan 730154. The site is L shaped with a primary frontage measuring 13.895m to Belmore Street, 4.245m corner splay and a secondary frontage measuring 55.685m to Elizabeth Street. The overall site area is 1,261.3m<sup>2</sup>. Refer to Figure 1 Site Aerial.

The site is located at the southeastern fringe of the Burwood Town Centre, specifically near the edge of the Middle Ring, and is on the broader block bounded by Shaftesbury Road in the east, Railway Parade in the north and Burleigh Street to the west.

The existing improvements include a 5 storey concrete and glass building with a flat roof and partly below-ground car parking. A substation is present on the Belmore Street frontage. Vehicle access is provided from the northern end of the Elizabeth Street frontage to a part basement, part at-grade parking area.

The site slopes downward from Belmore Street between 2.5m-3m. The existing building has an elevated ground level with steps and a ramp from Belmore Street. Several palm trees are present as on-structure planting along the Elizabeth Street frontage. The existing building has a nil setback with the eastern boundary and mixed use building at 1-3 Belmore Street.

Refer to the photos on the following pages.

The site is not identified as an item of heritage, nor is it within a heritage conservation area. The site is not affected by any environmental constraint (e.g. flooding).





**Figure 1:** Site Aerial (Source: SIX Maps)



**Figure 2:** View of the existing building from the corner of Belmore and Elizabeth Streets





**Figure 3:** Eastern neighbouring mixed use development at 1-3 Belmore Street



**Figure 4:** View of Elizabeth Street from Belmore Street (site to the right of image)





**Figure 5:** View of the site from Elizabeth Street



**Figure 6:** View of existing developments nearby to the north (left) and northwest (right)





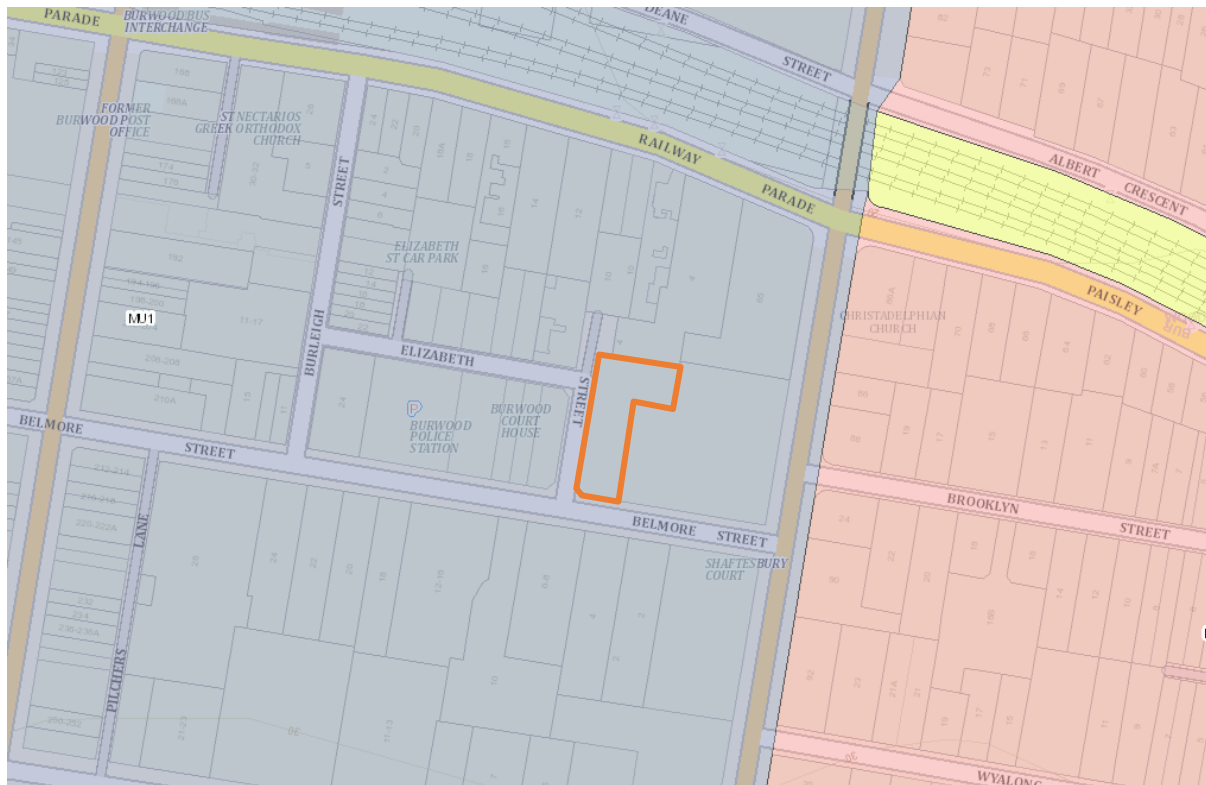
**Figure 7:** View of the northern elevation of 1-3 Belmore Street from the rear of Elizabeth Street



**Figure 8:** Existing residential flat buildings to the south of the site



The site is zoned MU1 Mixed Use pursuant to Clause 2.3 of the Burwood Local Environmental Plan 2012. Refer to Figure 9 illustrating the site in orange outline.



**Figure 9:** Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

## 1.2 The Locality

The site is located at the southeastern fringe of the Burwood Town Centre.

The site is adjoined by the following development:

- East: A nine (9) storey shop top housing/mixed use development at 1-3 Belmore Street (also sometimes referred to as 69-71 Shaftesbury Road but will be solely referred to as 1-3 Belmore Street in this report).
- West: The two (2) storey Burwood Court House at 7 Belmore Street.
- North: Five (5) storey commercial with approved 19 storey boarding house at the rear at 4 Railway Parade.
- Northwest: Sixteen (16) storey mixed use development at 1-3 Elizabeth Street.
- South: Four (4) storey older stock residential flat buildings at 2, 4 and 6-8 Belmore Street.

Properties to the north and northwest are either current or future high density development. Belmore Street serves as a transition point to a lower future density to the south. Refer also to the earlier site photos.

The site is 400m walking distance to Burwood Train Station and 250m to bus stops on Burwood Road.

## **2. THE PROPOSAL AND BACKGROUND**

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### **2.1 The Proposal**

The development application (DA2023.79) seeks consent for the demolition of the existing commercial building and construction of an 18 storey mixed use development containing 49 residential units, 9 serviced apartments, 9 commercial tenancies and 2 retail tenancies, above basement parking with landscaping and site works.

The proposal provides for a total of 71 car parking spaces across three basement levels with the following allocation:

- 50 x residential spaces
- 9 x residential visitor spaces
- 4 x commercial spaces
- 2 x retail space
- 1 x shared accessible commercial/retail space
- 7 x serviced apartment spaces

The proposed residential unit mix is:

- 3 x 1 bedroom units
- 44 x 2 bedroom units
- 1 x 3 bedroom unit
- 1 x 4 bedroom unit

Specifically, the proposal seeks:

#### Demolition

- Demolition of all existing structures.

#### Basement 3

- 19 x residential car parking spaces
- Two (2) lifts and fire stairs
- Residential storage cages
- 5 bicycle spaces

#### Basement 2

- 28 x residential car parking spaces
- Storage cages
- 13 bicycle spaces

#### Basement 1

- A total of 24 car parking spaces, including:
  - 3 x residential car parking spaces
  - 9 x residential visitor spaces
  - 4 x commercial spaces
  - 1 x retail space
  - 7 x serviced apartment spaces



- 18 bicycle spaces
- Residential storage cages
- A commercial lift.
- Plant rooms including grease arrestor, fire and sprinkler pump room, main switch room.
- End of trip accessible toilet.

#### Ground Floor

- A 175.2m<sup>2</sup> food and drink premises fronting Belmore Street and the Elizabeth Street corner.
- A 52.6m<sup>2</sup> retail tenancy.
- Residential and commercial waste rooms, including a bulky waste room.
- Separate commercial and residential lobbies fronting Elizabeth Street.
- A substation within the building envelope fronting Belmore Street.
- Vehicle access is from the northern end of Elizabeth Street frontage with a double width driveway at the street front narrowing to single car width after a waiting bay.
- Landscaping and paving within the street setbacks.
- Fire and sprinkler tank and other services/plant rooms.

#### Level 1

- Four (4) commercial tenancies ranging from 61.6m<sup>2</sup> to 84.7m<sup>2</sup>, three with balconies.
- Shared tea room and toilets.
- Plant areas, including an OSD and rainwater tank.

#### Level 2

- Five (5) commercial tenancies ranging from 67.3m<sup>2</sup> to 118.1m<sup>2</sup>, four with balconies.
- Shared tea room and toilets.

#### Level 3

- 9 x 1 bedroom serviced apartments ranging from 49.9m<sup>2</sup> to 55.8m<sup>2</sup>.

#### Level 4

- 3 x 1 bedroom units.
  - Unit 403 is an adaptable unit.
- A 315.5m<sup>2</sup> communal open space including landscaping, fixtures, and an accessible toilet.
- Plant rooms.

#### Levels 5-15

- 4 x 2 bedroom units per floor.
  - Units 504, 604 and 704 are adaptable units.
- Waste chutes are proposed for each residential floor.

#### Level 16

- 1 x 3 bedroom adaptable unit.
- Ground floor of 1 x 4 bedroom unit consisting of the living room and one bedroom.

### Level 17

- Top floor of 1 x 4 bedroom unit, consisting of 3 bedrooms.
- PV panels.

### Roof

- Mechanical plant, including screening.

### General

- Waste will be collected on the ground floor adjacent to the bin rooms.
- The basement will operate with a single width ramp controlled by a traffic light system.

The key development data is provided in **Table 1**.

The photomontage prepared for the development is provided below.



**Figure 10:** Photomontage of the development viewed from the southern side of Belmore Street opposite Elizabeth Street

A VPA is submitted in association with this application to allow for a bonus 0.45:1 FSR over the prescribed maximum in accordance with Clause 4.4A of the Burwood Local Environmental Plan 2012. The total FSR permitted on the land may increase from 4.5:1 to 4.95:1 through the VPA.

A VPA is also submitted to provide a monetary contribution in lieu of the required car parking provision.

The table below provides key data points for the proposed.



**Table 1: Development Data**

| <b>Control</b>           | <b>Proposal</b>                                                                                                                                           |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Site area                | 1,261.3m <sup>2</sup>                                                                                                                                     |
| GFA                      | Total: 6,243.3m <sup>2</sup><br>Residential: 4,370.4m <sup>2</sup><br>Serviced apartment: 567.5m <sup>2</sup><br>Commercial/retail: 1,305.4m <sup>2</sup> |
| FSR                      | Total: 4.95:1<br>Residential: 3.46:1<br>Serviced apartment: 0.45:1<br>Commercial/retail: 1.04:1                                                           |
| Height                   | 61.24m                                                                                                                                                    |
| Clause 4.6 Requests      | Yes – Clause 4.3 Height of Buildings                                                                                                                      |
| No. of units / tenancies | Residential: 49 units<br>Commercial: 9 tenancies<br>Retail: 2 tenancies<br>Serviced apartments: 9 units                                                   |
| Car Parking spaces       | 71 car parking spaces                                                                                                                                     |

## 2.2 Background

The development application was lodged on **19 September 2023**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc.) with the application:

**Table 2: Chronology of the DA**

| <b>Date</b>              | <b>Event</b>                                                                       |
|--------------------------|------------------------------------------------------------------------------------|
| <b>19 September 2023</b> | DA lodged.                                                                         |
| <b>5 October 2023</b>    | Exhibition of the application for 21 days.                                         |
| <b>16 November 2023</b>  | Panel briefing (kick-off meeting).                                                 |
| <b>30 November 2023</b>  | First Burwood Design Review Panel Meeting                                          |
| <b>19 December 2023</b>  | Formal Request for Additional Information (RFI) letter was issued to the Applicant |
| <b>8 February 2024</b>   | Meeting with the applicant to discuss RFI                                          |
| <b>23 February 2024</b>  | Amended information submitted                                                      |

|                         |                                            |
|-------------------------|--------------------------------------------|
| <b>27 February 2024</b> | Panel Briefing                             |
| <b>29 February 2024</b> | Second Burwood Design Review Panel Meeting |
| <b>14 March 2024</b>    | Meeting with the applicant to discuss GFA  |
| <b>5 May 2024</b>       | Final additional information submission    |

A Request for Information was issued to the applicant on 19 December 2023 in response to key concerns raised by the planning assessment, internal referrals and the Burwood Design Review Panel (DRP), which consisted of the following aspects:

- The Design Review Panel advice including:
  - Resolve a misalignment of the nil setback wall on the northern boundary with the approved boarding house.
  - Further detail on the relationship of the proposed development to the units on 1-3 Belmore Street.
  - Preference to relocate the waste room to the basement or further obscuring its visibility.
  - Concern over the single lift for the commercial component.
  - Concern over sizeable storage rooms in the serviced apartment rooms resembling bedrooms.
  - Detail roof access.
  - GFA calculation to be reviewed.
  - Additional sustainability measures to be detailed including ceiling fans, rainwater tank, PV systems, and EV charging points in the basement.
  - Further addition of canopy trees along the Elizabeth Street frontage is desirable, potentially as deep soil pockets or as deeper on-structure planters.
  - A bathroom for the COS should be added.
  - Consider a rooftop COS to achieve the solar access requirements as the podium space does not receive the minimum expected solar access at mid-winter.
  - The greatest possible solar access consistency with Objective 4A-1 design criteria is expected. Further information is required to demonstrate the current proposal achieves 2 hours of solar access to 70% of units.
  - Enclosed study rooms compromise the remaining internal configuration of units and should be removed.
  - Cross-ventilation confirmation of Unit 401 and similar units above.
  - Dimensioned plans for unit/room size confirmation.
- Further information on the elements contravening with the height of buildings.
- Omissions from the GFA calculation plan, resulting in a contravention of the FSR development standard.
- Solar access to the proposal is not compliant and further information is requested to demonstrate that solar access has been optimised for the development.
- Insufficient information on overshadowing impacts, particularly to 1-3 Belmore Street.
- Communal open space solar access.
- Further information on the building separation and visual privacy relationship between the development and 1-3 Belmore Street.
- Clarification on natural ventilation of Units 502 and equivalents.
- Non-compliance with ADG room size for some bedrooms.
- AC units on balconies are not to be included in the minimum POS size.
- Storage schedule to be submitted.



- Visual and acoustic privacy relationship of the COS and Unit 402 to be further considered.
- Car parking non-compliance is not supported.
- Traffic and waste referral comments to be considered, including the size of the waste truck considered in the swept paths was a MRV not a HRV, safety of the collection arrangement and traffic signals are required for the single width basement ramp operation.

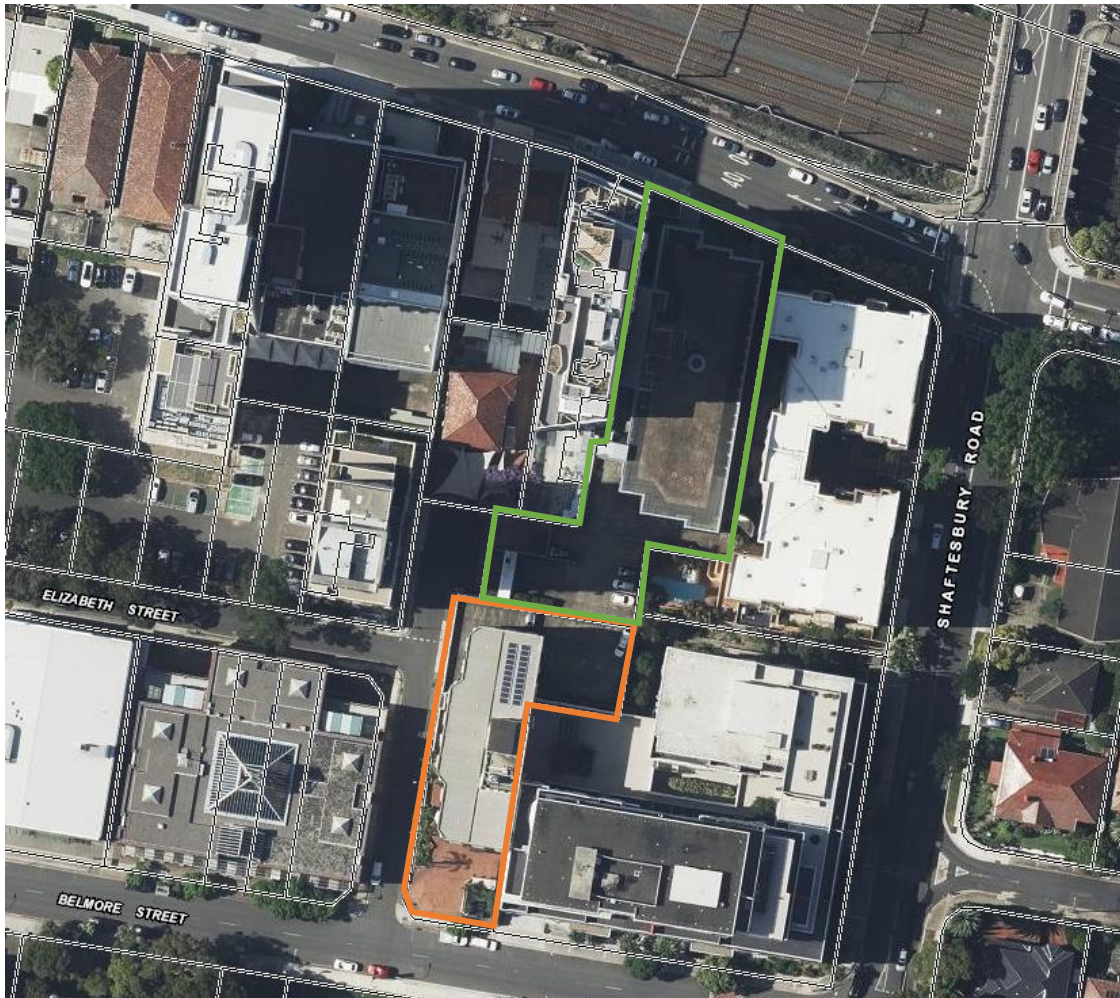
Following a meeting to discuss proposed resolutions to the additional information request, a second meeting was held with the DRP where support was given to the proposal. A second meeting was held to discuss outstanding matters of visual privacy and FSR. Final plans were submitted on 5 May 2024 and form the basis of this report.

### **2.3 Site History**

There are no applications of note on the subject site relating to or affecting the proposed development.

A 19 storey boarding house with three levels of above ground car parking has been approved on 4 Railway Parade, Burwood. The application (DA/2019/68) was approved in the Land and Environment Court on 26 November 2020 under *Mars City Pty Ltd v Burwood Council [2020] NSWLEC 1585*.

With reference to the below extracts of the approved plans, it is noted that the boarding house development was approved with a nil setback to the subject site. The proposal has been designed in response to this operative but not yet actioned development consent.



**Figure 11:** Context of the site (orange outline) and 4 Railway Parade (green outline)



**Figure 12:** Photomontage (DA lodgement design) including nil setback/massing of No. 4



**Figure 13:** Approved western elevation of 4 Railway Parade with nil setback southern wall

### 3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
    - (i) *any environmental planning instrument, and*
    - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
    - (iii) *any development control plan, and*
    - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
    - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- that apply to the land to which the development application relates,*



- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Integrated Development (s4.46)
- Requiring concurrence/referral (s4.13)

### **3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations**

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

#### **(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning (Housing) 2021*
- *Burwood Local Environmental Plan 2012*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 3: Summary of Applicable Environmental Planning Instruments**

| <b>EPI</b>                                                                      | <b>Matters for Consideration</b>                                        | <b>Comply (Y/N)</b> |
|---------------------------------------------------------------------------------|-------------------------------------------------------------------------|---------------------|
| State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 | BASIX Certificate                                                       | Y                   |
| State Environmental Planning Policy (Biodiversity & Conservation) 2021          | Chapter 2: Vegetation in non-rural areas<br>Chapter 6: Water Catchments | Y                   |

|                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                          |   |
|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| State Environmental Planning Policy (Housing) 2021                      | Chapter 4: Design Quality of Residential Apartment Development                                                                                                                                                                                                                                                                                                                                           | Y |
| State Environmental Planning Policy (Planning Systems) 2021             | Chapter 2: State and Regional Development <ul style="list-style-type: none"> <li>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises development that has a capital investment value of more than \$30 million.</li> </ul>                                                                                                       | Y |
| SEPP (Resilience & Hazards) 2021                                        | Chapter 4: Remediation of Land <ul style="list-style-type: none"> <li>Section 4.6 – Contamination and remediation to the considered in determining development applications.</li> </ul>                                                                                                                                                                                                                  | Y |
| State Environmental Planning Policy (Transport and Infrastructure) 2021 | Chapter 2: Infrastructure <ul style="list-style-type: none"> <li>Section 2.48 – Determination of development applications—other</li> </ul>                                                                                                                                                                                                                                                               | Y |
| Proposed Instruments                                                    | No compliance issues were identified.                                                                                                                                                                                                                                                                                                                                                                    | Y |
| Burwood Local Environmental Plan 2012                                   | <ul style="list-style-type: none"> <li>Clause 2.3 – Permissibility and zone objectives</li> <li>Clause 4.3 – Height of buildings</li> <li>Clause 4.3A – Exceptions to Height of Buildings</li> <li>Clause 4.4 – Floor Space Ratio</li> <li>Clause 4.4A – Exceptions to Floor Space Ratio</li> <li>Clause 6.1 – Acid Sulfate Soils</li> <li>Clause 6.5 – Design Excellence in Zones E1 and MU1</li> </ul> | Y |

Consideration of the relevant SEPPs is outlined below.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposal as the residential portion is a BASIX affected development. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No. 1418135M prepared by LC Consulting Engineers dated 14 September 2023. The Certificate demonstrates that the proposed development satisfies the relevant water, thermal and energy commitments.

- **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the proposal. The objectives of this Policy are to protect the biodiversity values of trees and other vegetation in non-rural areas of the state and preserve the amenity of non-rural areas through the preservation of trees and other vegetation.

All existing vegetation on the site is sought for removal. An Arboricultural Impact Assessment prepared by H2O Consulting Group was submitted which stated that all trees on adjoining

properties and a street tree on Belmore Street that are within the sphere of influence of the development could be retained subject to recommendations.

Council's Tree Management Officer reviewed the report and provided conditions of consent.

The extent of tree removal sought does not trigger the biodiversity offset threshold. The proposed tree removal is acceptable subject to recommended conditions of consent.

#### Chapter 6 Water Catchments

Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the proposal for it is on land within the Sydney Harbour Catchment. The site eventually drains into the Sydney Harbour however it is outside the Foreshores and Waterways Area. Therefore, only Part 6.2 of the SEPP applies.

Part 6.2 requires the consent authority to consider the impact of a development on the water quality of the waterway. The proposed development was accompanied by a stormwater concept plan prepared by JCO Consultants. The plans as reviewed by Council's engineer and were supported subject to conditions of consent.

The proposed development is therefore consistent with Chapter 6 and can be supported.

- **State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')**

#### Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it meets the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development with a capital investment value of more than \$30 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

- **State Environmental Planning Policy (Resilience and Hazards) 2021**

#### Chapter 4: Remediation of Land

The provisions of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and 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.

A Preliminary Site Investigation (PSI) was prepared by Tetra Tech Coffey which concluded that:

*"Based on the desktop review and site walkover, Coffey considers there is a low likelihood for contamination associated with past site activities, to present an unacceptable risk to the proposed commercial/residential site users. As such, Coffey considers that the site is suitable for the proposed commercial/residential development, subject to:*

- *Appropriate waste management, including waste classification to facilitate spoil management and offsite disposal of excavated materials; and*



- *Implementation of an unexpected finds protocol during the site redevelopment.*
- *The waste classification could be completed in conjunction with the detailed geotechnical investigation which was recommended in the geotechnical desktop study report which was prepared separately by Coffey.*

*It is recommended that a hazardous building materials survey be completed prior to demolition.”*

The PSI will form part of the conditions of consent including the recommendation for a hazardous building materials survey to be completed prior to demolition and for waste classification to occur in conjunction with the detailed geotechnical investigation prepared by the Geotechnical Assessment also prepared by Tetra Tech Coffey. Consequently, subject to conditions of consent, Section 4.6 has been adequately addressed.

- ***State Environmental Planning Policy (Transport and Infrastructure) 2021***

#### Chapter 2 Infrastructure

The provisions of Chapter 2 of State Environmental Planning Policy (Transport and Infrastructure) 2021 have been considered in the development application assessment.

Section 2.48 Determination of development applications—other development applies to the development per subclause (1)(b)(ii) due to the presence and removal of the existing substation on the site. A replacement chamber substation is proposed on the Belmore Street frontage.

A referral to Ausgrid was undertaken which consented to the development subject to conditions of consent.

- ***State Environmental Planning Policy (Housing) 2021***

#### Chapter 4 Design Quality of Residential Apartment Development

Chapter 4 of State Environmental Planning Policy (Housing) 2021 aims to improve the design of residential apartment development. The residential component of the proposed development is defined as shop top housing and is a residential apartment development.

Per Section 147(1), a development under Chapter 4 is required to be considered through 9 key design quality principles, the guidelines and objectives of the Apartment Design Guide (ADG) that support the implementation of the principles, and any advice received from a design review panel.

#### ***Section 147(1)(a) – 9 Design Quality Principles***

In accordance with Section 147(1)(a), the following is a table summarising the assessment of the development with the nine design quality principles.

**Table 4: 9 Design Quality Principles Assessment**

| Design Quality Principle                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Principle One – Context and Neighbourhood Character</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>(1) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.</p> <p>(2) Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>(3) Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>(4) Consideration of local context is important for all sites, including sites in the following areas—</p> <ul style="list-style-type: none"> <li>(a) established areas,</li> <li>(b) areas undergoing change,</li> <li>(c) areas identified for change.</li> </ul> | <p>The Burwood Town Centre is well progressed in its transformation to high-rise mixed use commercial/retail and residential land uses. The locality may be defined as an area undergoing change, with many established redevelopments.</p> <p>The site is a L shaped corner allotment bounded to the east by an established redeveloped shop top housing building at 1-3 Belmore Street and an approved but not constructed nil setback boarding house on 4 Railway Parade. The secondary street, Elizabeth Street, is a narrow one-way road, over which is a 16 storey shop top housing building to the northwest and the court house to the immediate west.</p> <p>The proposed development has responded to its surroundings by integrating with the nil northern setback and orienting views east over 1-3 Belmore Street, west over Elizabeth Street and south over Belmore Street. The design addresses and activates Belmore Street and Elizabeth Street frontages while working within the narrow site width constraint, incorporating landscaping and seating in the secondary street setback for a positive street relationship.</p> |
| <b>Design Principle 2 – Built Form and Scale</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>(1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>(2) Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following—</p> <ul style="list-style-type: none"> <li>(a) building alignments and proportions,</li> <li>(b) building type,</li> <li>(c) building articulation,</li> <li>(d) the manipulation of building elements.</li> </ul> <p>(3) Appropriate built form—</p> <ul style="list-style-type: none"> <li>(a) defines the public domain, and</li> <li>(b) contributes to the character of streetscapes and parks, including their views and vistas, and</li> <li>(c) provides internal amenity and outlook.</li> </ul>                              | <p>The proposed built form and scale are reflective of the controls that apply to the middle ring of the town centre. The proposal is compliant with the building height plane under Clause 4.3A of the LEP and is compliant with the bonus FSR under Clause 4.4. The 18 storey building will integrate with the 16-19 storey buildings to the north and northwest of the site.</p> <p>The podium height aligns with the maximum 15m permitted by the DCP. The large setback of the tower from Belmore Street will assist in the transition to the lower density outer ring to the south.</p> <p>The podium and tower design have responded to the constrained site and positively present to the east, west and south. The northern blank elevation has been improved throughout the assessment process to provide visual interest in the event the proposed development is constructed first and the wall is exposed long-term. The articulation of both the podium and tower is deemed skilful and will provide for visual interest while managing building separation, visual privacy, amenity and outlook.</p>                             |
| <b>Design Principle 3 – Density</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>(1) Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>(2) Appropriate densities are consistent with the area's existing or projected population.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>The proposal provides for retail and business/office floor space that is capable of being used for different purposes, serviced apartments and residential units of a suitably high level of amenity within the context of a major centre environment.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

| Design Quality Principle                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(3) Appropriate densities are sustained by the following—</p> <ul style="list-style-type: none"> <li>(a) existing or proposed infrastructure,</li> <li>(b) public transport,</li> <li>(c) access to jobs,</li> <li>(d) community facilities,</li> <li>(e) the environment.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>The site has or will construct infrastructure to support the development, is proximate to public transport, employment and community facilities.</p> <p>The density sought is directly informed by the planning controls, in particular the bonus FSR permitted under Clause 4.4A. The development has massaged this bonus floor area into the design without compromising articulation or internal or external amenity.</p>                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Design Principle 4 – Sustainability</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>(1) Good design combines positive environmental, social and economic outcomes.</p> <p>(2) Good sustainable design includes—</p> <ul style="list-style-type: none"> <li>(a) use of natural cross ventilation and sunlight for the amenity and liveability of residents, and</li> <li>(b) passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs.</li> </ul> <p>(3) Good sustainable design also includes the following—</p> <ul style="list-style-type: none"> <li>(a) recycling and reuse of materials and waste,</li> <li>(b) use of sustainable materials,</li> <li>(c) deep soil zones for groundwater recharge and vegetation.</li> </ul>                                           | <p>The design has been amended throughout the assessment to reasonably maximise solar access to the proposed units within the context of the northern orientation not available for use. Where direct solar access is not achieved, natural light has similarly been reasonably maximised. Cross-ventilation is compliant with the design criteria in Objective 4B-3 and continues to be achieved above the ninth storey to over half the units.</p> <p>Solar panels are proposed on the Level 17 roof. A rainwater tank is proposed. All car spaces in the basement car park will have EV charging provisions.</p> <p>A BASIX Certificate has been submitted which shows compliance with the energy and water targets.</p>                                                                                                                      |
| <b>Design Principle 5 – Landscape</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>(1) Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity.</p> <p>(2) A positive image and contextual fit of well designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>(3) Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—</p> <ul style="list-style-type: none"> <li>(a) the local context,</li> <li>(b) co-ordinating water and soil management,</li> <li>(c) solar access,</li> <li>(d) micro-climate,</li> <li>(e) tree canopy,</li> <li>(f) habitat values,</li> </ul> | <p>A landscape plan has been prepared by Land and Form. The plan details at-grade and podium communal open space landscaping. Through the assessment of the application, the depth of ground floor plants was increased to enable medium to tall trees to assist in softening the built form and improving the public domain.</p> <p>The site is constrained by its narrow width and L shape, resulting in no deep soil zones. The additional depth of planting in the setback areas serves to achieve the greening and tree canopy outcomes.</p> <p>The podium communal open space has been well designed and landscaped to create a useable and high quality space. Landscaping assists in preserving privacy to the adjoining unit and creating separate spaces within the communal open space for different types of social interaction,</p> |



| Design Quality Principle                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(g) preserving green networks.</p> <p>(4) Good landscape design optimises the following—</p> <p>(a) usability,</p> <p>(b) privacy and opportunities for social interaction,</p> <p>(c) equitable access,</p> <p>(d) respect for neighbours' amenity.</p> <p>(5) Good landscape design provides for practical establishment and long term management.</p>                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Design Principle 6 – Amenity</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>(1) Good design positively influences internal and external amenity for residents and neighbours.</p> <p>(2) Good amenity contributes to positive living environments and resident well-being.</p> <p>(3) Good amenity combines the following—</p> <p>(a) appropriate room dimensions and shapes,</p> <p>(b) access to sunlight,</p> <p>(c) natural ventilation,</p> <p>(d) outlook,</p> <p>(e) visual and acoustic privacy,</p> <p>(f) storage,</p> <p>(g) indoor and outdoor space,</p> <p>(h) efficient layouts and service areas,</p> <p>(i) ease of access for all age groups and degrees of mobility.</p> | <p>The proposal provides good amenity for the future residents within a constrained, high density urban environment. The layout of the units and window placement achieves good natural light, ventilation and has overall internal planning. Outlook has been prioritised and optimised to the east, west and south, while balancing visual and acoustic privacy to adjoining properties. Suitable and sufficient indoor and outdoor space is proposed.</p> <p>Barring a minor non-compliance with the master bedroom size on one unit type, the units have been designed in compliance with the ADG.</p> |
| <b>Design Principle 7 – Safety</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>(1) Good design optimises safety and security within the development and the public domain.</p> <p>(2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose.</p> <p>(3) Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>(4) A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>                                    | <p>The ground floor has reasonably maximised street activation, noting the site is constrained to reduce the waste infrastructure at ground level. Ample glazing is oriented to the street frontages within the podium and again on the tower, ensuring casual surveillance of the public domain.</p> <p>Secure access to the basement and residential and commercial lobby areas is proposed.</p> <p>The development will be well lit in accordance with the standard conditions of consent.</p> <p>The development is deemed to have aligned with CPTED principles.</p>                                  |

| Design Quality Principle                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Comment                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Design Principle 8 – Housing Diversity and Social Interaction</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                |
| <p>(1) Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>(2) Well designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>(3) Good design involves practical and flexible features, including—</p> <p style="padding-left: 40px;">(a) different types of communal spaces for a broad range of people, and</p> <p style="padding-left: 40px;">(b) opportunities for social interaction among residents.</p> | <p>The development provides a mixture of 1 bedroom (3), 2 bedroom (44) and 3 or more bedrooms (2), facilitating housing choice in the locality. Many units are also supplied with dedicated study nooks.</p> <p>A well designed communal open space will afford opportunities for social interaction across the proposed different spaces.</p> |
| <b>Design Principle 9 – Aesthetics</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                |
| <p>(1) Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure.</p> <p>(2) Good design uses a variety of materials, colours and textures.</p> <p>(3) The visual appearance of well designed residential apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>                                                                                                                                                             | <p>The materials and finishes proposed and the broader design of the podium and tower have been endorsed by the Burwood Design Review Panel and is supported.</p>                                                                                                                                                                              |

### **Section 147(1)(b) – Apartment Design Guide**

Further to the above design quality principles, Section 147(1)(b) requires consideration of the ADG for residential apartment development. The following table provides an assessment of the development against the relevant provisions of the ADG.

Where required, further comment is provided below the table.

**Table 5: Apartment Design Guide Assessment**

| Objective              | Design Guidance                                                                                                                                                                                                       | Proposed                                                                                                                                                                                                                                         | Compliance                            |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| 3D Communal Open Space | <p>Communal open space has a minimum area equal to 25% of the site.</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours</p> | <p>The site has an area of 1,261.32m<sup>2</sup>. 25% of the site area is 315.33m<sup>2</sup>.</p> <p>The development provides for 315.5m<sup>2</sup> (25%) of communal open space on Level 4.</p> <p>Refer to the comments below the table.</p> | <p>Yes</p> <p>Acceptable on Merit</p> |

| Objective                  | Design Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Proposed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Compliance          |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
|                            | between 9 am and 3pm on 21 June (mid-winter).                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |
| 3E<br>Deep Soil Zones      | On sites with areas 650m <sup>2</sup> - 1,500m <sup>2</sup> , 7% of the site area is to be deep soil with a minimum 3m dimension.                                                                                                                                                                                                                                                                                                                               | <p>No deep soil is proposed.</p> <p>The design guidance acknowledges that the design criteria may not be possible on some sites including those in a CBD or centre and where there are non-residential uses at ground floor. The site falls within these parameters, and it is reasonable to provide no deep soil.</p> <p>In place of deep soil, and as developed through the DRP process, the setback areas to Belmore Street and Elizabeth Street include planter boxes that are capable of accommodating trees. In particular, the landscape pockets in the portion of Elizabeth Street near the corner with Belmore Street provide for 2.1m to 2.6m soil depths which can support medium sized trees that will contribute to the amenity of the area.</p> <p>The building density and site coverage are typical for the envisioned character of the Burwood town centre and the proposed outcome is acceptable in this context.</p> | Yes                 |
| 3F<br>Visual Privacy       | <p>The ADG prescribes minimum separation distances between buildings:</p> <ul style="list-style-type: none"> <li>Up to 12m (4 storeys) - 6m (habitable) / 3m (non-habitable)</li> <li>Up to 25m (5-8 storeys) - 9m (Habitable) / 4.5m (non-habitable)</li> <li>Over 25m (9+ storeys) - 12m (Habitable) / 6m (non-habitable)</li> </ul> <p>No separation is required between blank walls.</p>                                                                    | Refer to discussion below this table.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Acceptable on Merit |
| 3J Bicycle and car parking | <p>1. For development in the following locations:</p> <ul style="list-style-type: none"> <li>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area</li> </ul> <p><u>GTTGD rates</u></p> <ul style="list-style-type: none"> <li>0.6 spaces per 1 bedroom unit.</li> <li>0.9 spaces per 2 bedroom unit.</li> <li>1.40 spaces per 3 bedroom unit.</li> <li>1 space per 5 units (visitor parking).</li> </ul> | <p>The applicant has sought to rely upon the Burwood DCP car parking rates, which exceed that of the GTTGD rates.</p> <p>The proposal requires the following under the GTTGD:</p> <ul style="list-style-type: none"> <li>3 x 1 bed = 1.8</li> <li>44 x 2 bed = 39.6</li> <li>2 x 3 bed = 2.8</li> <li>Visitor = 9.8</li> </ul> <p><b>Total required</b> = 44.2 (i.e. 44) residential and 9.8 (i.e. 10) visitor spaces</p> <p><b>Proposed</b> = 50 residential and 9 visitor spaces.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Acceptable on Merit |



| Objective                       | Design Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Proposed                                                                                                                                                                                                                                                                                                                                | Compliance                       |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Refer also to the discussion on the DCP rates later in this report.                                                                                                                                                                                                                                                                     |                                  |
| 4A<br>Solar and Daylight Access | <p>Living rooms and private open space areas of at least 70% of apartments receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.</p>                                                                                                                                                                                                                                                                                                                                     | Refer to the discussion below this table.                                                                                                                                                                                                                                                                                               | Acceptable on Merit              |
| 4B<br>Natural Ventilation       | <p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m measured glass line to glass line.</p>                                                                                                                                                                                                                                                                                                           | <p>There are 19 apartments on the first nine storeys of the development. 14 of 19 (or 73.7%) of apartments in the first nine storeys are naturally cross ventilated.</p> <p>The Unit 601 typology measures 18m from glass to glass line, though the balcony is a wintergarden. The objective of the maximum unit depth is achieved.</p> | <p>Yes</p> <p>Yes</p>            |
| 4C<br>Ceiling Heights           | <p>Habitable rooms: 2.7m.</p> <p>Non-habitable: 2.4m.</p> <p>If located in mixed use areas: 3.3m for ground and first floor to promote future flexibility of use.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>The following floor to ceiling heights are proposed:</p> <ul style="list-style-type: none"> <li>Ground Level = 4m (retail)</li> <li>Levels 1-3 = 3.3m</li> <li>Level 4 and above = 2.7m (habitable)</li> </ul>                                                                                                                       | Yes                              |
| 4D<br>Apartment Size and Layout | <p>Apartments are required to have the following minimum internal areas:</p> <p>Studios: 35m<sup>2</sup><br/>1 bedroom: 50m<sup>2</sup><br/>2 bedroom: 70m<sup>2</sup><br/>3 bedroom: 90m<sup>2</sup></p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup>.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room</p> | <p>All unit sizes meet their ADG minimums including the additional 5m<sup>2</sup> for second bathrooms.</p> <p>Each habitable room has a window that complies with this requirement.</p> <p>Open plan kitchen, living and dining areas are proposed for all apartments. All depths from a window are less than 8m.</p>                  | <p>Yes</p> <p>Yes</p> <p>Yes</p> |

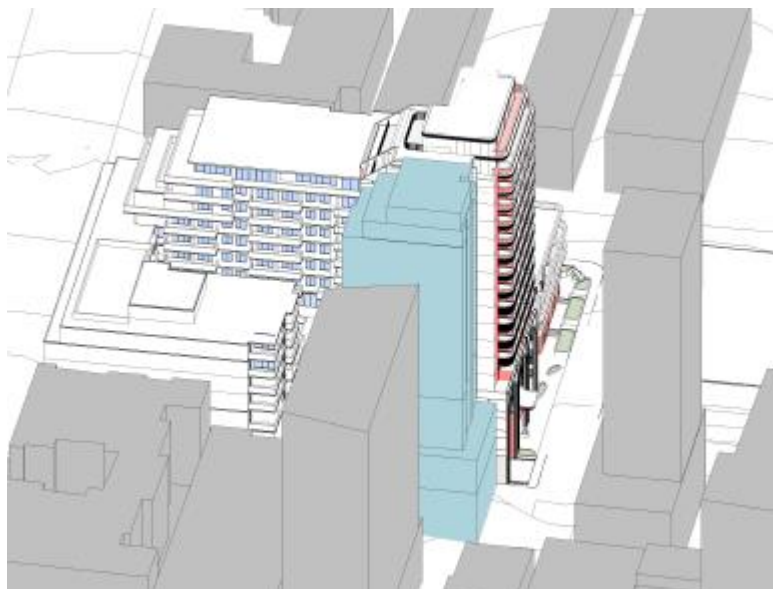
| Objective                              | Design Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Proposed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Compliance                                       |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
|                                        | <p>depth is 8 metres from a window.</p> <p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space). Bedrooms are to have a minimum dimension of 3m.</p> <p>Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments, 4m for 2 and 3 bedroom apartments.</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p> | <p>The Unit 601 typology master bedrooms are 9.6m<sup>2</sup> excluding the wardrobe space. While marginally short, the unit size and design are otherwise supported, and the Bed 2 exceeds 10m<sup>2</sup>. These variations are supported.</p> <p>All other units are compliant.</p> <p>All units comply.</p> <p>The cross-through units are a minimum of 4m wide internally.</p>                                                                                                                                                                                                                                                                                                                     | <p>Acceptable on Merit</p> <p>Yes</p> <p>Yes</p> |
| 4E<br>Private Open Space and Balconies | <p>All apartments are required to have primary balconies as follows:</p> <p>Studios: 4m<sup>2</sup> minimum area.</p> <p>1 bedroom apartments: 8m<sup>2</sup> minimum area, 2m minimum depth.</p> <p>2 bedroom apartments: 10m<sup>2</sup> minimum area, 2m minimum depth.</p> <p>3+ bedroom apartments: 12m<sup>2</sup> minimum area, 2.4m minimum depth.</p> <p>Ground level or podium apartments are to have a minimum POS area of 15sq.m and minimum depth of 3m.</p>                                   | <p>All non-podium level apartments are provided with primary balconies that comply with the minimum area and minimum depth as per the requirements.</p> <p>The measurements have excluded AC units which are proposed on the balconies.</p> <p>Of the Level 4 podium units:<br/>401: 30.3m<sup>2</sup> with a minimum 3m depth<br/>402: 14.6m<sup>2</sup> with a 2.38m depth<br/>403: 30.5m<sup>2</sup> with a 3m depth minimum</p> <p>While Unit 402 is 0.4m<sup>2</sup> and marginally below the 3m depth, it remains well above the minimum requirement for a 1 bedroom unit located on the level above (8m<sup>2</sup> / 2m depth). The size is more than appropriate for the size of the unit.</p> | <p>Yes</p> <p>Acceptable on Merit</p>            |
| 4F<br>Common Circulation and Spaces    | <p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>                                                                                                                                                                                                                                                                                                       | <p>Two lifts are proposed for 49 apartments.</p> <p>The maximum number of apartments off a circulation core on a single level is four.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>Yes</p>                                       |

| Objective           | Design Guidance                                                                                                                                                                                                                                                                                                       | Proposed                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Compliance            |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 4G<br>Storage       | <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>Studio: 4m<sup>3</sup><br/> 1 bedroom: 6m<sup>3</sup><br/> 2 bedroom: 8m<sup>3</sup><br/> 3+ bedroom: 10m<sup>3</sup></p> <p>At least 50% of the required storage is to be located within the apartment.</p> | <p>The storage schedule is provided on each floor plan and largely indicates compliance with the minimum storage area and 50% requirement to be within units.</p> <p>The .03 unit type on Level 5 and above is short 0.2m<sup>3</sup> for internal storage. A total of 7.8m<sup>3</sup> of storage is proposed with 3.8m<sup>3</sup> in the unit, where a minimum of 4m<sup>3</sup> would be required for a 2 bedroom unit. A condition of consent will secure compliance.</p> | Subject to conditions |
| 4K<br>Apartment Mix | A variety of apartment types are provided.                                                                                                                                                                                                                                                                            | <p>A mixture of 1, 2, 3 and 4 bedrooms are proposed as follows:</p> <ul style="list-style-type: none"> <li>• 3 x 1 bedroom apartments;</li> <li>• 44 x 2 bedroom apartments;</li> <li>• 1 x 3 bedroom apartment; and</li> <li>• 1 x 4 bedroom apartment.</li> </ul>                                                                                                                                                                                                            | Yes                   |

#### Communal Open Space – Solar Access

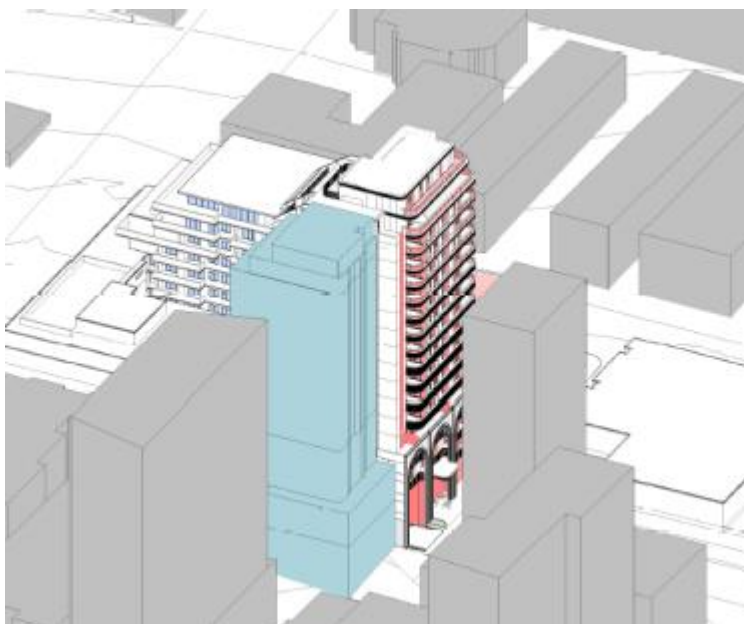
The design criteria of Objective 3D-1 also require the principal usable part of the communal open space to achieve a minimum of 2 hours of solar access between 9am and 3pm on June 21.

The communal open space is located on the southern side of the podium on Level 4 as a single consolidated space. This area of the building will be overshadowed by the approved boarding house on No. 4 Railway Parade to the north of the site. The approved massing is illustrated in the sun-eye diagram extract below and the photomontage in Figure 12 earlier in the report.



**Figure 14:** Extract of the 12pm sun-eye diagram illustrating No. 4 Railway Parade in blue

The podium area is also partly overshadowed by the built development at 1-3 Elizabeth Street to the northwest. Refer to the extract of the 1pm sun-eye diagram below.



**Figure 15:** Extract of the 1pm sun-eye diagram illustrating 1-3 Elizabeth Street overshadowing the podium

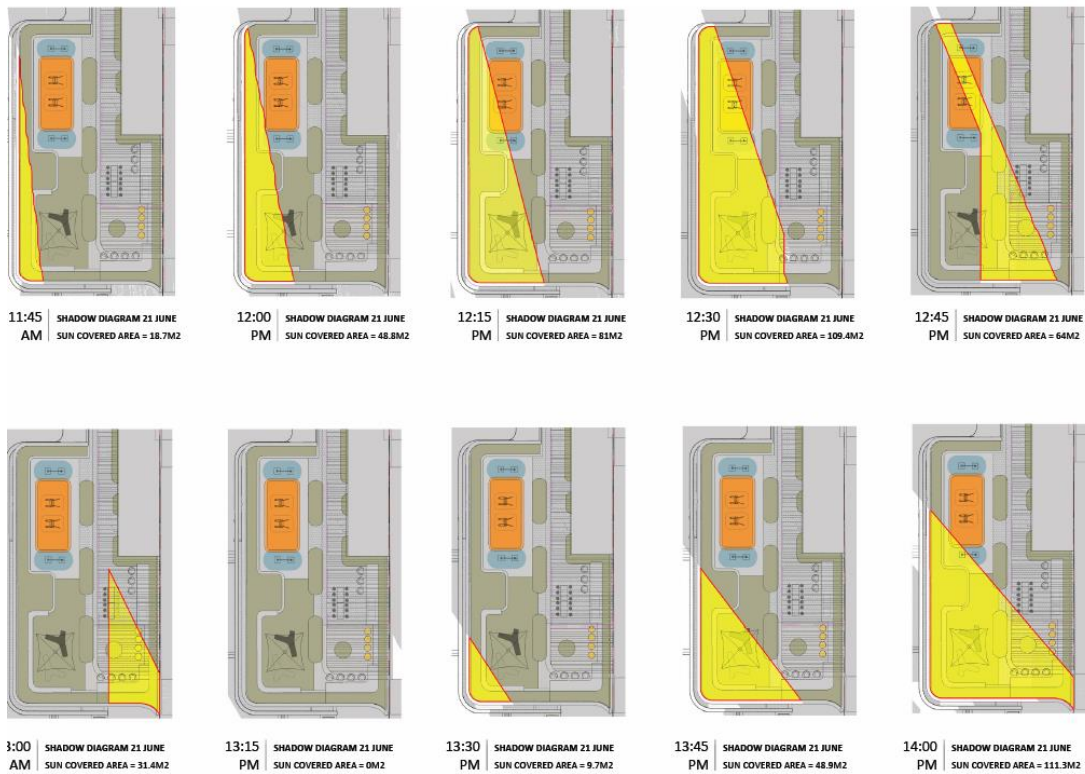
Concern over the solar amenity to the communal open space was raised to the applicant by the DRP and in the initial request for additional information. The applicant responded that a relocation or supplementary provision of the communal open space to the rooftop would encounter difficulties in accommodating a suitable size given the modest footprint of the tower portion of the building. Further, the applicant articulated the challenge in complying with Clause 4.3A of the LEP which prescribes a maximum building height plane.

The site dimensions and constraints lend the tower portion of the development to be modest in footprint, similar to other podium and tower typology developments in the area. It is recognised that a communal open space on the tower portion would not solely achieve 25% of the site area.

The building height plane is a development standard that cannot be contravened utilising the provisions of Clause 4.6 of the LEP and thus presents as a fixed maximum height for the building. As discussed in more detail later in this report, the proposal has hit its threshold on the building height plane and cannot accommodate a communal open space above the current top floor without encroaching. This constraint is recognised.

The submission of additional information by the applicant reinforced the optimal location for the communal open space was the larger podium area. Further, solar access diagram information was provided to illustrate the amount of solar access available at mid-winter. Refer to Figures 14 and 15 below. The extracts illustrate the level of solar access available to the communal open space from 11:45am (when it starts receiving solar access) until 4pm.





**Figure 16:** Extract of the communal open space solar access (PTW Architects)



**Figure 17:** Extract of the communal open space solar access (Drawing No. PTW-DA-Q14A520)

The communal open space will receive solar access to 50% of the communal open space for 45min when considering the 9am to 3pm window.

However, the information supplied indicates that from 2pm to 4pm, 50% of the principal useable communal open space will receive solar access (and 50% of the entire communal open space from 2:15pm to 4pm). At 2pm, the sun hits a significant portion of the main usable area of the communal open space thus contributing meaningful solar access.

The stated objective of 3D-1 is “an adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.” The proposed communal open space is of a high quality in terms of its overall design, landscaping treatment and seating and fixtures. The space will positively contribute to the amenity of the residents.

Though not consistent with the design criteria, ultimately, it is expected that properties in the Burwood Town Centre on the southern end of a block will be overshadowed by other developments of a similar scale as is the case here. Council’s Design Review Panel has also indicated their support for the communal open space in its location and design.

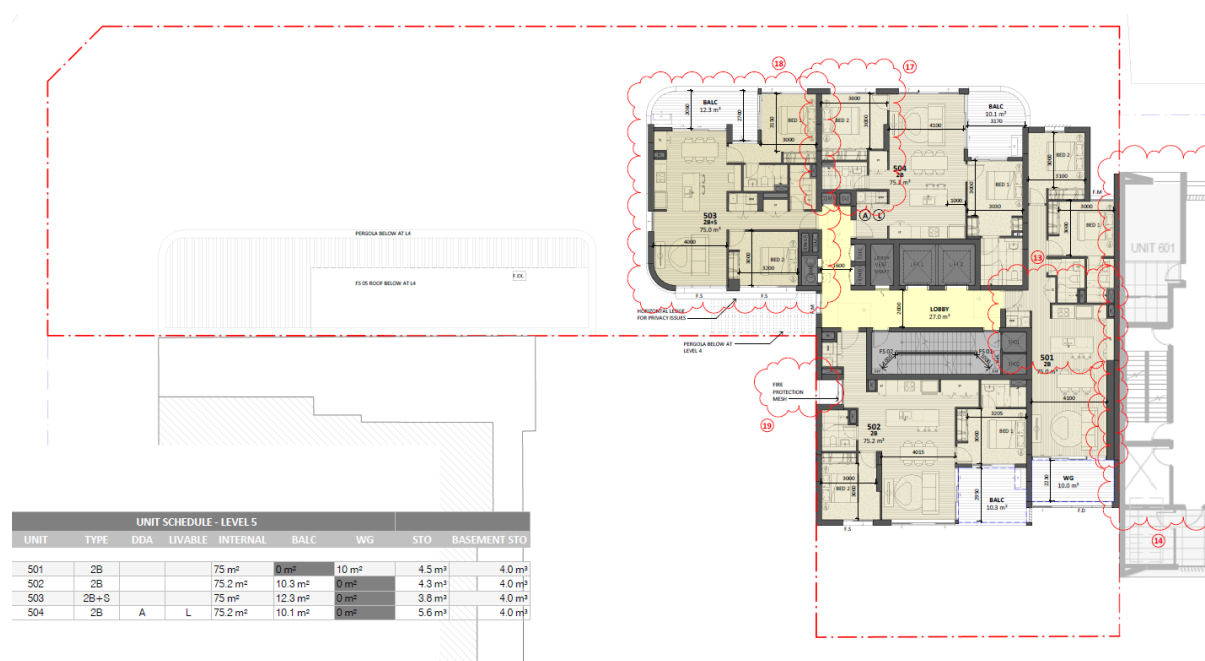
For these reasons, the variation to the solar access portion of the design criteria is considered acceptable noting the objective has been achieved.

### Building Separation

A number of encroachments are proposed within the building separation under Objective 3F-1. The specific objective states: “Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.”

The main pressure points for building separation for the proposed development was the relationship to 1-3 Belmore Street.

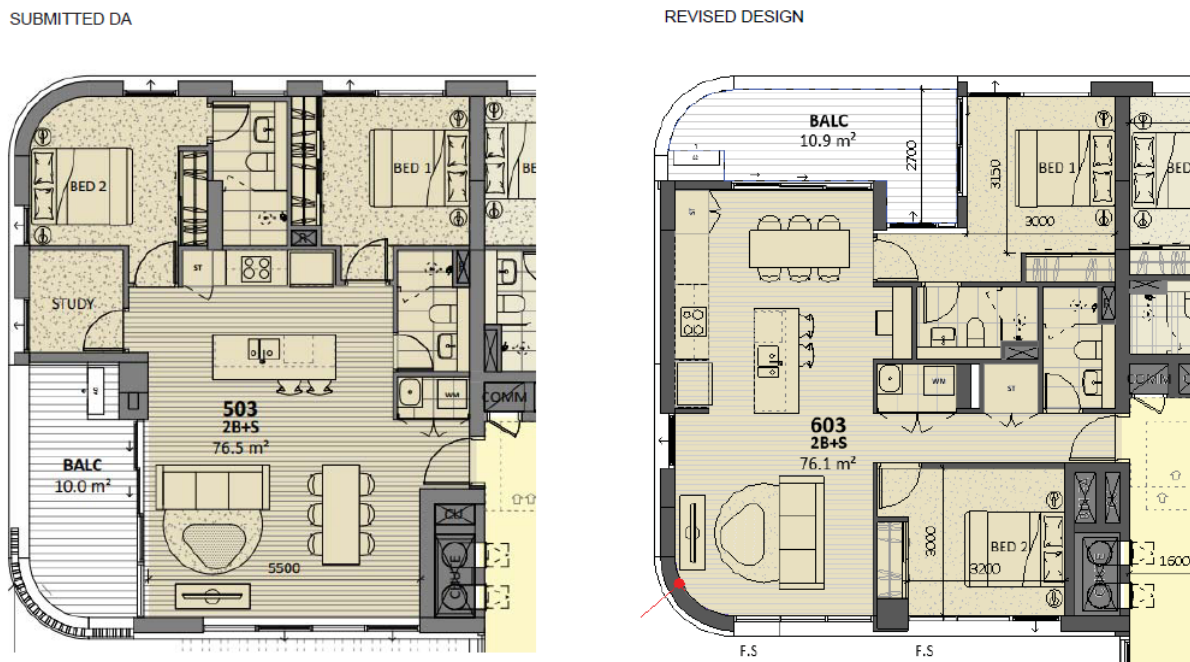
An extract of a typical floor (in this case Level 5) is provided below.



**Figure 18:** Extract of Level 5 Plan

The adjoining property, 1-3 Belmore Street, is located at the bottom left of the image. A separation distance of 11.7m is proposed between external walls for the full height of the tower and 9.65m to the balcony.

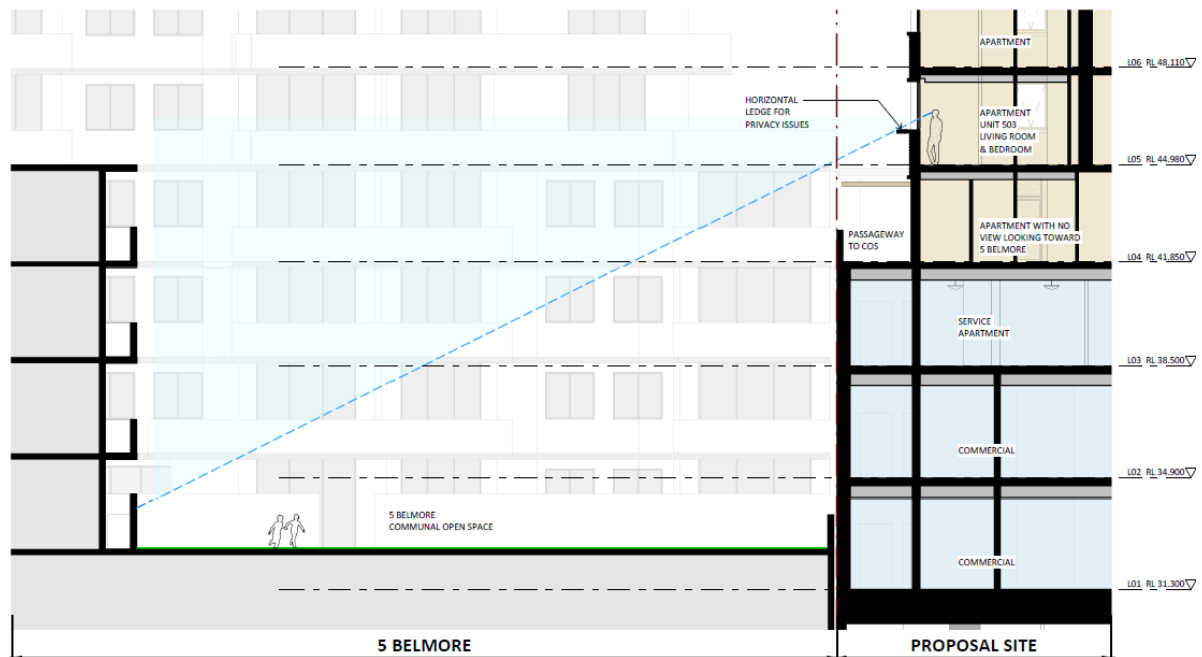
The planning of the southern unit has been revised through the assessment to deliver an improved visual privacy outcome. Refer to the floor plan comparison below in Figure 19. The original design proposed the balcony (with privacy screens) in the southeastern corner which interfaces with 1-3 Belmore Street. The revised design has improved solar access to this unit by relocating the balcony to the west elevation but has resolved a visual privacy concern by creating a blank wall at the corner.



**Figure 19:** Comparison between the submitted and revised Unit .03 typology layouts

For the same unit type, the eastern windows (shown on the bottom of the above floor plans) also face 1-3 Belmore Street over their northern setback. These windows are only 2.6m from the boundary and thus within the building separation. One of the two communal open spaces for 1-3 Belmore Street is situated within the northern setback. A downward sightline from the Unit 503 window could overlook the open space. A request of the applicant was made to provide a sightline analysis to determine if privacy measures were warranted. The sightline analysis in Figure 20 was produced.

A horizontal ledge was introduced below the two windows to prevent the downward view angle to the communal open space of 1-3 Belmore Street. A direct view over the communal space to the eastern portion of 1-3 Belmore Street exceeds 24m and is compliant with the building separation.



**Figure 20:** Sightline analysis from Unit 503

The .02 unit typology and Unit 401 propose a secondary window to the primary living space (the kitchen) 1.4m from the boundary. Though it is within the separation distance between habitable rooms and balconies (which is 17.35m to the balcony), due to the proximity to the boundary, the window will also require a fire protection mesh. A total of 18m of separation is required at Levels 4-7, creating a marginal overall separation non-compliance. The window is a secondary window, modest in width, and the outlook will be screened in part by the fire protection mesh. This is deemed sufficient to have addressed the visual privacy aspect of the building separation objective.

The separation between the proposed building and 1-3 Elizabeth Street to the northwest is approximately 15m-18m. While this isn't fully compliant, the separation is over Elizabeth Street which is of a fixed width. No direct outlook or sightlines are creating visual privacy concerns between the two properties and thus is acceptable.

It should be acknowledged that strict compliance is not feasible due to the modest site width and overall dimensions. The resultant available building envelope once taking a 6m, 9m and 12m separation from 1-3 Belmore Street would leave an extremely limited footprint to develop. Consequently, the encroachments proposed have been assessed on how they address visual privacy.

It is noted that the Design Review Panel has endorsed the design, including its massing and setbacks, in recognition of the tight, constrained site and pressures imposed by this and the surrounding developments.

For the reasons above, the development is acceptable regarding its building separation.

#### Solar Access (Units)

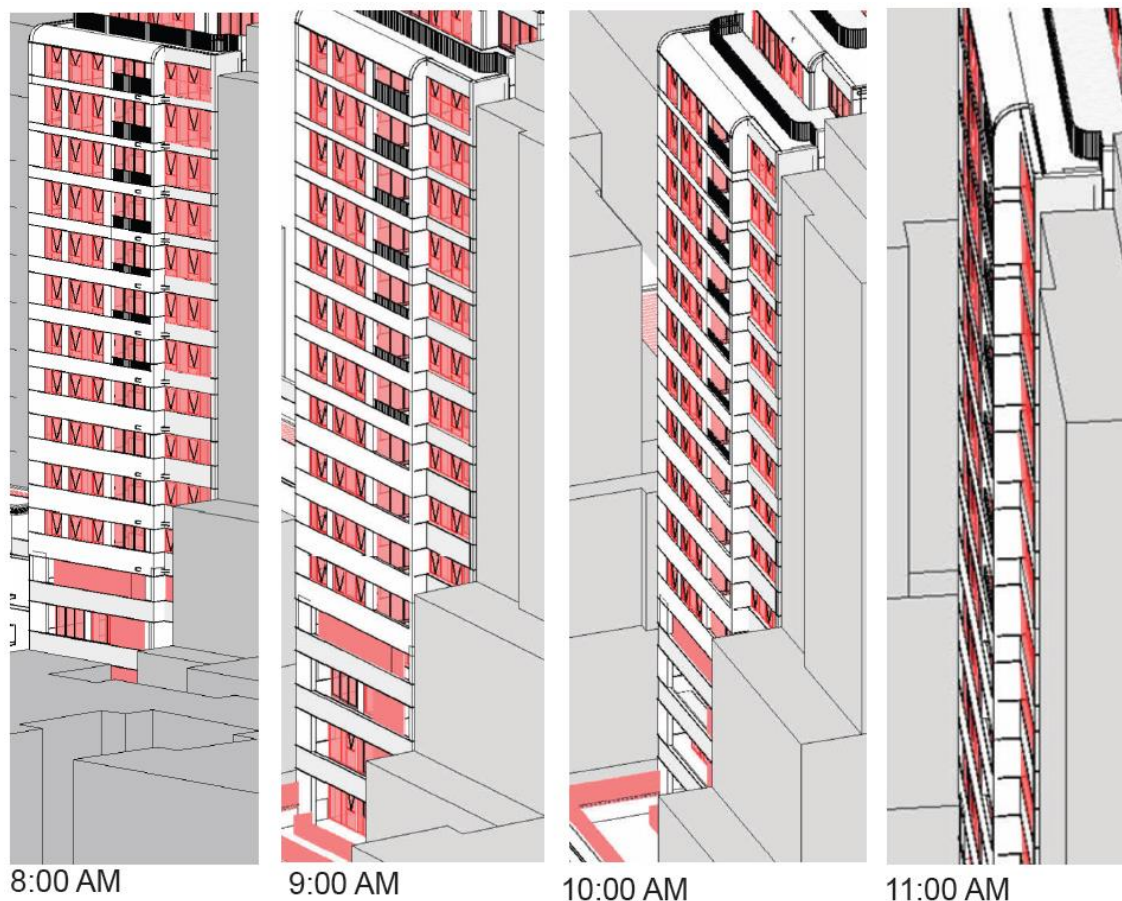
The design guidance under Objective 4A-1 requires 70% of units to receive 2 hours of solar access to living rooms and private open spaces. For 49 units, 70% of units equates to 35 units (as rounded from 34.3 units).

The proposal does not achieve strict compliance. A total of 11 units receive 2 hours of solar access to both the living rooms and private open spaces, equating to 22% of the units



proposed. One (1) unit receives no solar access (2%), while the remaining 37 units receive some solar access.

The applicant has claimed 35 units (71%) achieve 2 hours of solar access. However, based on the sun-eye diagrams submitted, it is not likely that solar access to units at 11am achieves the design guidance which states “to maximise the benefit to residents of direct sunlight within living rooms and private open spaces, a minimum of 1m<sup>2</sup> of direct sunlight, measured at 1m above floor level, is achieved for at least 15 minutes.” The 9am to 11am sun-eye diagrams as relevant to the eastern elevation of the building are illustrated below.



**Figure 21:** Extract of 8am to 11am sun-eye diagrams

The red outline indicates all glazing, not only the living rooms.

The angle of the sun at 11am is notably oblique and it is unlikely (and has not been demonstrated) that meaningful solar access penetrates into the units to achieve the 1m<sup>2</sup> as measured at 1m above floor level portion of the design guidance. Furthermore, the northernmost unit (right of image) proposes a wintergarden with the living room set 2.4m behind the glass line of wintergarden. The living rooms of these units do not achieve solar access after 9am.

Excluding these units results in a clear shortfall in the 70% solar access design criteria.

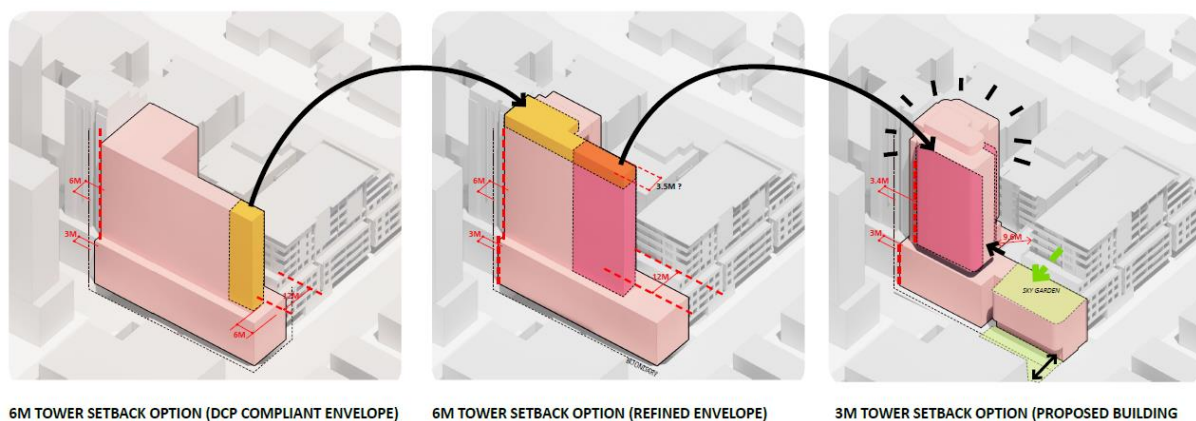
A variation of the design criteria for solar access was the subject of a recent court decision – *Construction Development Management Services Pty Ltd v City of Sydney [2023] NSW LEC 1620*. The matter made clear several aspects including, crucially, that the design criteria is not, of itself, a development standard but one means of achieving the objective at 4A-1 of the ADG.

The objective of 4A-1 is “to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.” It is agreed that the applicant has sufficiently optimised the number of apartments receiving sunlight.

In determining this, the primary building envelope constraints must be recognised. Specifically, the massing of development has been informed by the approval of the boarding house development at 4 Railway Parade that abutted the northern boundary of the site with a nil setback. This relationship has been illustrated earlier in this report in Figures 12-13.

While this development consent is understood to not yet be acted upon, it remains a valid consent. The proposed development must respond to nil setback to the north which has removed a logical orientation of units. The resultant outcome is the proposed tower that abuts this nil setback and orients units to the east and west.

The alternative option of setting the tower further south to maintain north facing units was considered. The site is also constrained by the modest width on the southern portion of the site, being approximately 16.85m wide. A tower form in this portion of the site is realistically unachievable or, at best, a poor urban design outcome due to the width and setback and separation required to both Elizabeth Street to the existing development at 1-3 Belmore Street. This was explored through the applicant’s submission to the Design Review Panel and the proposed tower was endorsed. The submission included the following massing analysis, illustrating the narrowness of a tower shape in the southern section of the site.



**Figure 22:** Applicant’s massing study

Consequently, setting the tower further south would not be feasible to allow for a northern elevation comprising windows and private open spaces.

The tower is then reliant on its eastern and western elevations for solar access. As illustrated above, the 11am angle is sufficiently oblique that compliance with the design guidance is not demonstrated. On the western side, the elevation is overshadowed by the existing tower on 1-3 Elizabeth Street at 2pm. Refer to the 2pm sun-eye diagram.



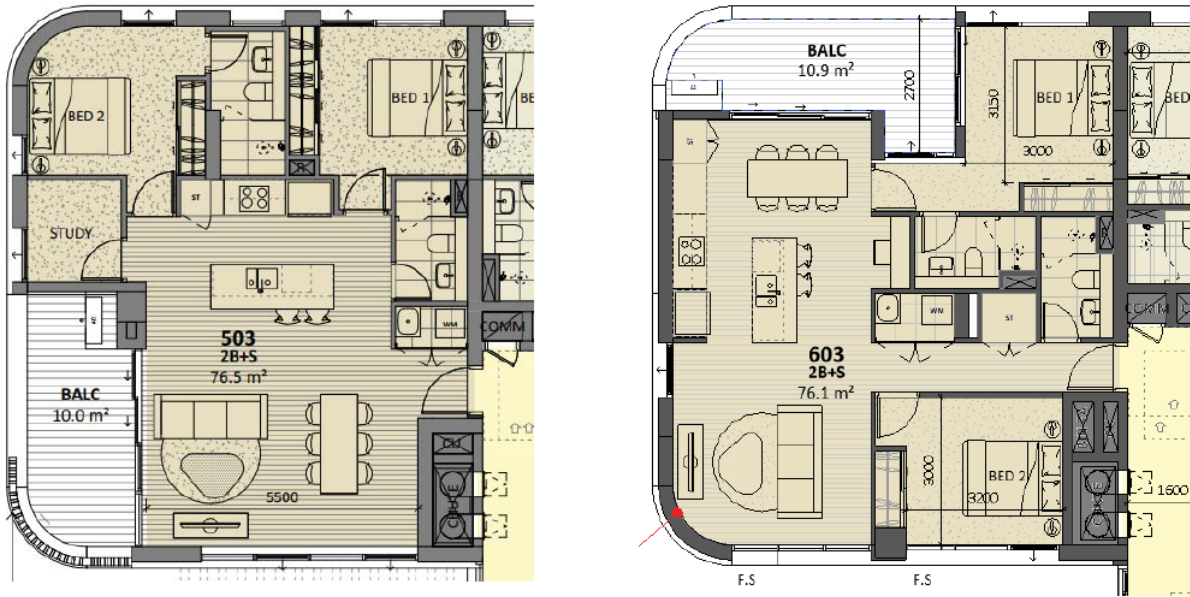
**Figure 23:** Extract of 2pm sun-eye diagrams (Drawing No. PTW-DA-Q14A220)

The above demonstrates that the site is restricted in its ability to achieve strict compliance due to the site constraints and the approved and built developments around it.

The eastern elevation does receive solar access at 8am (see Figure 21), ensuring a complete 2 hours at the minimum between 8am and 10am. While 8am is not part of technical compliance, it does demonstrate that meaningful sunlight and natural light will be still available to these units. Further, all living rooms and private open spaces enjoy east and west orientations and there are no single aspect south facing units. Glazing is proposed in good proportions to maximise natural light.

Further to the above, in achieving the optimisation of the solar access, the lodged design also varied the maximum 15% of units to achieve no solar access. The living room or private open spaces for the Unit 503 typology located on the southern side of the building were not visible in the sun-eye diagrams due to being recessed behind Unit 502.

The applicant explained their unit design philosophy for Unit 503 was to create opportunities for views to the east toward the city. However, in recognition of the non-compliance to solar access and the aforementioned court decision, a revised unit layout was prepared. A comparison between the submitted and revised design is provided below.



**Figure 24:** Comparison between the submitted and revised Unit 503 typology layouts

The original design proposed both the balcony and living room solely on the eastern side of the site. As mentioned, the unit would receive no solar access in the AM as it is set behind Unit 502 which extends further east. The units do, however, receive some solar access in the afternoon, including 2 hours of solar access to private open spaces on Levels 13 and above. The redesigned unit takes advantage of this by relocating the private open space to the western elevation and reconfiguring the living room to capture both the desired views to the east and connect to the balcony to the west.

The redesign results in a number of units now achieving solar access to the balcony and no longer being considered units with no solar access. Only one unit receives no solar access (Unit 501) equating to 2% of the units proposed.

The development is deemed to have optimised solar access. All living rooms and private open spaces are oriented to the east and west. The resultant level of solar access is a product of the orientation, other buildings overshadowing the site, and the site being to the south of a CBD environment. The proposal has been amended to improve solar access through the amendments to the floor planning of the Unit 503 typology. The development is supported.

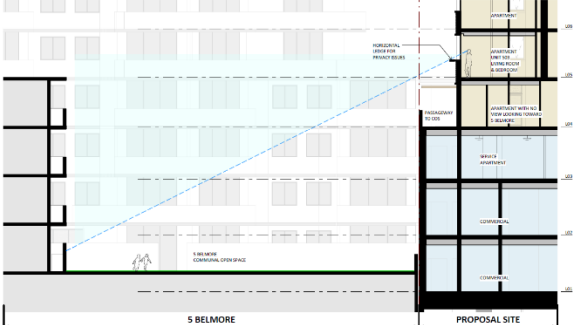
### **Section 17(1)(c) – Design Review Panel**


Section 147(1)(c) requires any advice from a design review panel to be considered. The table below provides the feedback from the design review panel and a comment on how the application has responded.



**Table 6: Design Review Panel Advice**

| <b>Design Review Panel</b><br><b>Meeting 30 November 2023</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Principle One – Context and Neighbourhood Character</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1. The Panel commends the quality of documentation provided by the applicant's team, particularly the architectural drawings and 3D views provided as part of the DA submission.</p> <p>2. The Panel continues to offer in-principle support to the overarching urban design aspects such as – the site planning diagram, and the massing considered by the applicant, subject to further resolution of the proposal in line with the recommendations made in this report. The urban design strategy positively responds to the site location by creating a 4 storey podium that relates well to the surrounding streets and a residential tower sited above.</p> <p>3. Although it was not discussed at the meeting, the Panel offers support for the proposed additional height (through a clause 4.6 or a similar variation) considering there are no negative impacts on the neighbouring properties, and if the applicant demonstrates consistency with the recommendations made in this report. Additionally, Council's expectations regarding the 'community facility' and its compliance with the LEP should be resolved as part of a separate statutory planning discussion with Council's officers.</p> | <p>The Panel's comments were noted. The additional height above the LEP maximum through the Clause 4.6 is supported, as discussed in the relevant section of this report below.</p>                                                                                                                                                                                                                                                    |
| <b>Design Principle 2 – Built Form and Scale</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b><i>Built form alignment with the adjoining property:</i></b></p> <p>1. The Panel discussed that the adjoining property to north of the subject site (4 Railway Parade) currently has consent for a 19 storey boarding house approved by the NSW Land &amp; Environment Court. The court-approved built form is anticipated to be built to its southern boundary. Therefore, the Panel supports the applicant's strategy to abut from the built form alignment of the future 19 storey building built to the boundary, however, notes a mis-alignment between the massing of both buildings.</p> <p>2. The applicant should show corresponding floor plans (for example – ground, first, second, etc) and elevations of the adjoining building to the north on their relevant architectural drawings, to allow a ensure a coordinated built form response that minimises the extent of mis-alignment.</p> <p><b>South eastern site corner:</b></p> <p>3. The Panel identifies pressure points in terms of the ADG building separation distance compliance at the south eastern corner of the site. Given the</p>                                                                                                | <p>The applicant amended their proposal to provide the corresponding floor plans and resolve the misalignment.</p> <p>Further information was provided by the applicant regarding the relationship to 1-3 Belmore Street in addressing cross-view impacts.</p> <p>Firstly, Unit 503 proposes a living room and bedroom windows on the eastern elevation 2.5m from the boundary capable of overlooking the communal open space. The</p> |

| <p><b>Design Review Panel</b><br/><b>Meeting 30 November 2023</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p><b>Comment</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <p>challenges presented by the site due to the 'L' shaped configuration, the Panel would offer support to the applicant's strategy subject to a further review – Revised architectural drawings should include corresponding floor plans of the existing residential flat buildings to the east of the subject site (including both buildings at – 3 Belmore Street and 69-71 Shaftesbury Road) to confirm locations and potential cross viewing impacts from the habitable areas and balconies within the existing adjoining buildings. The applicant should also demonstrate that the access to the communal open space on L04 does not compromise privacy of the residents on the adjoining property to the east.</p> <p>4. The Panel further recognises that there are following potential fire separation issues along the property boundary which should be resolved by/with a suitably qualified certifier/NCC specialist:</p> <ul style="list-style-type: none"> <li>a. Open louvered door to the common corridor adjacent to the property boundary on Level 4 (located less than 3m from the boundary), and</li> <li>b. Windows to the common corridors located in close proximity (less than 3m) to the side boundary on Levels 5-16.</li> </ul> <p><b>Ground floor configuration:</b></p> <p>5. The Panel considers the full allocation of a waste storage and collection area on ground floor to be contrary to current urban design principles expected within an urban centre. The Panel prefers such areas should be relocated to the basement, and only collection or loading/unloading to occur from the ground floor level with a goods lift. Reconfiguration of the basement to accommodate waste storage may also present opportunities for deep soil pockets referred to in Principle 5 – Landscape 3, below.</p> <p>6. If the above mentioned recommendation is not achievable then the Panel recommends 'sleeving' of the waste holding area behind approximately 6m deep retail space that addresses the street and maximises activation, as shown in the figure below.</p> | <p>applicant was requested to provide a sight line diagram to assess the impact, which was provided in Drawing No. PTW-DA-D110030 and shown below.</p>  <p>The horizontal ledge is sufficient to minimise overlooking to the communal open space.</p> <p>Remaining unit design affecting visual privacy to 1-3 Belmore Street is resolved in the amended design illustrated earlier as Figure 16. The southwestern corner of Unit 503 and its equivalents is now a blank wall, with the outlook oriented east (and resolved as above), directly south over the site, or west over Elizabeth Street.</p> <p>The fire safety matters will be managed through conditions of consent.</p> <p>The L shaped nature of the site and its modest width renders relocation of the waste rooms to the basement difficult to unrealistic. The site simply does not have the dimensions to achieve forward entry and egress to a waste truck, and reverse entry to a loading bay is not deemed an improved outcome over the existing collection location for safety and operation of Elizabeth Street. The proposal as is balances the efficiency of the basement, waste collection, ground floor activation and aesthetics.</p> <p>The option of sleeving the waste room behind retail was explored but not adopted due to the need for the fire boosters at the front façade of the building. Relocating part of the retail behind the fire booster would not positively impact retail activation due to the fire boosters.</p> |

| <p align="center"><b>Design Review Panel</b><br/><b>Meeting 30 November 2023</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p align="center"><b>Comment</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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|  <p><b>Vertical Circulation:</b></p> <p>7. The Panel considers the proposed vertical circulation strategy for the non-residential component to be problematic, with only one lift and fire stair provided to serve the – retail tenancies (approximate GFA 252m<sup>2</sup>), commercial tenancies (approximate GFA 1050m<sup>2</sup>), and 9 serviced apartments (approximate GFA 567m<sup>2</sup>).</p> <p>8. The applicant should provide at least 2 lifts (in addition to the 2 residential lifts) for the non-residential component considering a redundancy scenario where 1 lift is out-of-order, used by removalists, for loading/unloading or maintenance purpose.</p> <p>9. It is also the Panel's recommendation that residential lifts numbered 1 and 2 should remain exclusive to the residents, to ensure their amenity is well-maintained in a high-rise development scenario. The Panel does not support a strategy where residential lift/s are shared with non-residential users (such as commercial, retail, or serviced apartment patrons) as such strategy diminishes the quality of amenity and could result in compromised security for the residents.</p> <p>10. The fire egress for the non-residential component needs to be reviewed by/with a suitably qualified certifier/NCC specialist in terms of maximum egress distances and number of exits per level.</p> <p><b>Serviced apartments:</b></p> <p>11. The Panel notes that serviced apartments – 304, 305, and 306 have a 'storage room' provided without an external window, and could be potentially used as a habitable area raising potential health and amenity issues. The Panel considers such rooms/enclosed areas without an external window to be problematic and should be eliminated from the proposal, to avoid potential NCC compliance issues, and the floor area should be redistributed to contribute to the spatial planning of these apartments.</p> <p><b>Other:</b></p> <p>12. The Panel recommends the applicant should review the cross sectional arrangement of the</p> | <p>In response, a louvred screen was added at ground level to enhance the façade and further screen the waste room and fire boosters to achieve the same outcome. This has been supported.</p> <p>The provision of redundancy of lifts is not a requirement of the ADG, LEP or DCP. The single lift for the extent of commercial and serviced apartment use is considered acceptable. The plans were amended to allow for the utilisation of the residential lifts only in the case of a failure of the commercial lift. The frequency of such an event is sufficiently low to be acceptable.</p> <p>A BCA Assessment Report was submitted with the development application and has determined that the development is compliant with egress distances and the number of exits subject to performance solutions. Compliance with the NCC will be conditioned with any approval.</p> <p>The storage rooms were deleted and the unit layouts reconfigured to suit.</p> |


| Design Review Panel<br>Meeting 30 November 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Comment                                                                                                                                                                                                                                                                                                                         |
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| <p>proposal and confirm whether a floor-to-floor height of 3,130mm is sufficient to allow transfer of building services (from the residential levels to commercial levels to the ground floor below). If required, the Panel would offer support for a greater floor-to-floor height on Level 4 to ensure effective transfer of building services.</p> <p>13. The applicant should demonstrate how the roof would be accessed for repairs or maintenance.</p> <p>14. The Panel recommends that Council's assessment officer should review gross floor area calculation method considered by the applicant, whether the waste storage on ground floor and common corridor area on Level 4 should be included in calculations.</p>                                                                                          | <p>The applicant responded to confirm the floor to floor height proposed would be sufficient to allow for the transfer of services.</p> <p>An access hatch was introduced on Level 16 and a ladder on Level 17 to enable access to the roof.</p> <p>The GFA calculation has been reviewed and is acceptable.</p>                |
| Design Principle 3 – Density                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                 |
| <p>1. <i>Principle 3 – Density</i> was not particularly discussed at the meeting, however, the Panel would offer support to the proposed density if the bonus GFA being sought is acceptable and the proposal demonstrates improvements and consistency with the recommendations made in this report.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>The proposal is considered to have resolved the matters raised within the report and is acceptable on the grounds of density.</p>                                                                                                                                                                                            |
| Design Principle 4 – Sustainability                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                 |
| <p>1. The Panel expects use of ceiling fans within all bedrooms and living areas as a low energy alternative/augmentation to mechanical A/C systems. Details should be confirmed in the revised architectural drawings.</p> <p>2. Provision of rainwater tanks should be made for collection, storage, and reuse within the subject site for landscape irrigation and other suitable purposes.</p> <p>3. The applicant should include details of the noted roof level photovoltaic system on all architectural drawings and 3D views.</p> <p>4. Full building electrification is encouraged along with the inclusion of EV charging points within the basement carpark, and exclusion of any gas appliances.</p> <p>5. Consideration should be given to the embodied carbon of the materials proposed for the facade.</p> | <p>The applicant has stated that their BASIX Certificate has not required the use of ceiling fans.</p> <p>A rainwater tank has been provided in the final scheme.</p> <p>A PV location has been illustrated on the Level 17 rooftop.</p> <p>All car spaces are now identified to have EV charging provisions.</p> <p>Noted.</p> |
| Design Principle 5 – Landscape                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                 |
| <p>1. The Panel appreciates refinement and resolution of the ground floor interface of the proposal following the previous Pre-DA meeting and recommends further addition of trees along the Elizabeth Street interface. The landscape architect should nominate trees which could achieve much</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>The applicant increased the soil depth of planters along the Elizabeth Street frontage, particularly those closer to Belmore Street, to allow for a more significant tree canopy. The amended proposal is acceptable.</p>                                                                                                    |



| <b>Design Review Panel</b><br><b>Meeting 30 November 2023</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>larger canopies, in order to appropriately correspond with the proposed built form scale of the podium.</p> <p>2. Furthermore, the landscape drawings should confirm that the ADG Part 4P recommended planting depths for planting on structures 4 soil depths are achievable to support healthy growth for the tree root zone. Plans and 1:50 cross sections across the ground floor planting areas should be provided to confirm soil depths, top of walls and any planting on structure arrangements.</p> <p>3. The Panel suggests reconfiguration of the basement levels to include deep soil pocket/s for environmental benefits, and whether this could be possibly achieved by eliminating car spaces from Basement Level 1, since the proposal exceeds the required car parking rates. Alternatively, the tree root zones and/or planter boxes should be suspended below the ground floor slab (and over Basement Level 1) to achieve the desired soil depths flush with the ground floor plane. The recommendation would avoid visual clutter in the public domain design and allow for more generously sized planting.</p> <p>4. The Panel appreciates that numerical compliance with the ADG is achieved in terms of the quantum of communal open space provided on Level 4, however, a unisex accessible toilet should be provided for amenity of the residents.</p> <p>5. The Panel was informed at the deliberation, and it is also the Panel's observation that the communal open space does not receive the minimum expected solar access at mid-winter (to establish consistency with Objective 3D-1). As a recommended strategy to maximise consistency with the ADG, the roof top open space (on the topmost level) should be offered as a secondary supplementary communal open space. The Panel notes that the rooftop currently offers limited value as a private open space, and would offer much greater benefits if accessible to all residents. The Panel considers that the proposed height exceedance would be more justifiable based on the rationale that the rooftop provides solar amenity benefits to several residents.</p> | <p>The landscape plans were amended to provide cross-sections of ground floor planters.</p> <p>Deep soil pockets were not adopted. ADG does not require deep soil within high density areas or where non-residential uses are required at ground level. The Burwood Town Centre is one such location. In lieu of the deep soil pockets, the depths of planters at ground level was increased to achieve the desired intensification of planting.</p> <p>The accessible toilet was introduced to the COS.</p> <p>The solar access to the communal open space was discussed earlier in this report.</p> |
| <b>Design Principle 6 – Amenity</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1. The Panel appreciates that 3D views from sun angle are provided at an hourly interval by the applicant as part of this DA submission. It is noted that these images were not available as part of the Pre-DA discussion, therefore below comments on solar access are offered as part of this DA review.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>Solar access was discussed in detail earlier in this report.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

| <p><b>Design Review Panel</b><br/><b>Meeting 30 November 2023</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p><b>Comment</b></p>                                                                                        |
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| <p>2. The Panel expects the applicant demonstrates the greatest possible solar access consistency with Objective 4A-1 design criteria 1 of the ADG. As part of the de-briefing and also as the Panel's observation, direct mid-winter solar access to the eastern apartments (Typical Apartments 501 and 502) appears to be below the minimum ADG criteria (for example – 10am and 11am views). The Panel expects that Council's assessment officer should further consider a detailed assessment of the solar access to ensure consistency with the guidance offered by the ADG Part 4A Solar access. Typically, views from angle of sun should be reviewed as part of the planning assessment at 15-minute interval for every apartment.</p> <p>3. The Panel acknowledges that the site is already subject to overshadowing which may make compliance with ADG Part 4A challenging. An accurate analysis/break-down of compliance should be provided for further consideration. In the case that ADG compliance does not result in the best design outcome then this should be demonstrated in the applicant's documentation. As a balance to ADG compliance, the Panel would offer support for greater than minimum provision in other amenity targets and higher levels of design excellence.</p> <p>4. There was a discussion regarding Typical Apartment 501 in terms of departure from Objective 4A-1 design criteria 3 (a 15% maximum apartments without solar access), and whether the applicant's strategy of maximising eastern views (to the City) should be supported as a balance of complying with the ADG. It is the Panel's view that the strict compliance with the ADG is not always warranted and current configuration for the Typical Apartment 503 should be supported if the proposal demonstrates consistency with the recommendations in this report, particularly review of the cross viewing impacts discussed earlier in Principle 2 Built Form and Scale of this report should be considered as part of any subsequent review.</p> <p>5. The Panel recommends refinement of Apartment layouts 401, 403, and Typical Apartment 503, to ensure consistency with the guidance offered under Part 4G Storage of the ADG, to ensure provision of internal storage. If the study room is to be offer internal storage then the storage location capacities should be shown on the plans.</p> <p>6. In the Panel's view, inclusion of enclosed 'study rooms' in some apartment layouts, for example – 401, 402, and Typical Apartment 503 adds avoidable pressure on the internal configuration of</p> | <p>Study rooms were removed and more typical storage cupboards were introduced in lieu.</p> <p>As above.</p> |

| Design Review Panel<br>Meeting 30 November 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p>these apartments. The internal living, dining and kitchen areas of these apartments would significantly improve if the study rooms were eliminated and the floor area is redistributed to the remaining spaces.</p> <p>7. The wall-kitchens in apartment 401, 402 and 403 should be avoided due to their constrained size and limited amenity. Furthermore, the kitchen aisles overlap with the main internal circulation corridors and the configuration is problematic. Overall, these apartment layouts require greater appreciation from the applicant to create 'home-like' qualities for individuals and families.</p> <p>8. The applicant should provide documentation from a suitably qualified specialist demonstrating that apartment 401 and the apartments similarly located on levels above achieve natural cross ventilation consistent with the guidance offered by the ADG. The current configuration appears challenging for natural cross ventilation through a small external building indent with privacy louvres and within close proximity to the boundary.</p> <p>9. The applicant should provide dimensioned plans of the typical apartment layouts to confirm consistency with the minimum bedrooms, balconies and living rooms sizes with the guidance provided by Part 4D Apartment size and layout of the ADG.</p> | <p>Unit 402 was amended to propose an island bench. Units 401 and 403 remain as a wall kitchen. Considered acceptable, as wall kitchens relate solely to two units in the building and the unit layouts are overall satisfactory.</p> <p>The applicant has stated the fire screens that replace the privacy louvres on the external side of the operable windows allow for air flow to achieve cross-ventilation.</p> <p>The applicant supplied the request dimensioned plans.</p> |
| <b>Design Principle 7 – Safety</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| No discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Design Principle 8 – Housing Diversity and Social Interaction</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| No discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Design Principle 9 – Aesthetics</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1. The applicant should provide design intent through 1:20 sections and details of primary facade types to clearly show materials, balustrade design, balcony edges, junctions, integration of rainwater drainage including any downpipes and similar details within the proposal. The Panel appreciates the 1:100 and 1:50 sections provided as part of the submission, however, these drawings do not show sufficient details.</p> <p>2. Revised architectural drawings and 3D views should confirm location of A/C condensers and other mechanical equipment. The Panel recommends these should not be located within the balconies unless thoughtfully screened, and the balcony areas should ensure consistency with the ADG Part 4E Private open space and balconies</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>The final submission of plans provided additional sections and details of the primary façade.</p> <p>AC units have been positioned primarily on balconies. These have not been considered as part of the balcony private open space to meet the design criteria of Objective 4E-1.</p>                                                                                                                                                                                          |

| <p><b>Design Review Panel</b><br/><b>Meeting 30 November 2023</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p><b>Comment</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <p>should exclude the area used for the purpose of mechanical equipment and screening. The Panel does not support provision of condensers or mechanical equipment on the rooftops (unless thoughtfully screened), front landscaped setbacks, or anywhere apparent from the public domain.</p> <p>3. Potential for inclusion of some urban art input into building and/or landscape design such as with 'connection to country' is recommended within the ground floor plane for increasing – liveliness, public interaction, and for enhancement of public domain interface.</p> <p>4. The Panel notes that the northern side boundary wall will be highly visible from the surrounding public domain until the adjoining property to the north is redeveloped in future. Likewise, the southern side wall built to the boundary will be highly visible from the Belmore Street and Shaftesbury Road public domain. In both instances, the Panel recommends much greater resolution and refinement of these boundary walls in terms of design treatment, composition, and material selection.</p> <p>5. The Panel considers the west and east facing openings should incorporate effective measures for weather protection such as shading and sun management. Particularly, the glazed openings to the west should be provided with a combination of sun-hoods, vertical louvres and/or operable external shades. Addition of weather protection elements will provide a further layer for the architectural expression of the tower.</p> | <p>A location for public art was added to Belmore Street front façade as indicated below in the section identified in orange. The details of the public art are addressed post-consent.</p>  <p>The proposal was amended to incorporate variations in the panel design on the northern elevation. For maintenance purposes, the applicant has stated this will be a mineral stain finish. The amendment is acceptable.</p> <p>Screening devices were introduced to the western elevation. The BASIX Certificate otherwise resolves the matters of thermal performance.</p> |

A second DRP meeting was held on 29 February 2024 and provided only modest additional comments, provided below.

**Table 7: Design Review Panel Advice – Second Meeting**

| <b>Design Review Panel<br/>Meeting 29 February 2024</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <ul style="list-style-type: none"> <li>Waste room on the ground: screening is a nice element; it will be calculated in GFA. The argument about the booster assembly location is accepted.</li> <li>The additional deep soil and trees are an improvement to the street frontage.</li> <li>The apartment planning has responded to the comments of the previous panel and has been improved. All rooms should show the minimum ADG room sizes are achieved with clear dimensioning.</li> <li>The booster will need to be protected and fire-resistant.</li> <li>The panel considered the additional information provided by the applicant regarding solar access to the Communal open space. The opinion of the panel is that although there might be technical non-compliance in solar access this is a result of the constraints of the site and the space is considered to offer an outdoor space with good amenity to the residents.</li> <li>The additional information provided by the applicant about the use of the adjacent area as the neighbour's communal open space raised concerns about overlooking from the east-facing apartments. The applicant agreed to provide a shelf to ensure that privacy in the open space will be maintained.</li> <li>Why have you placed a planter in front of the lobby? Visibility of the pedestrian entry and its location is important to wayfinding and CPTED.</li> <li>Fire escape stair: why is the fire stair so deep? This creates a vague area.</li> <li>The Panel supports the Level 4 rooftop communal open space. However, notes that the smaller northern area has a close relationship with unit 402. Special consideration should be given to resolving this area (extent of common access, setbacks, screening, planter beds), such as an appropriate level of connection and privacy.</li> <li>The rooftop plant must be contained within the indicated screens.</li> <li>The Panel supports the use of bricks including light and dark colours for composition and contrast. The panel also notes the two precedent images, illustrating brick workmanship and details such as stack bond, stretcher bond, hit and miss and corbel arches. This material is appropriate to Burwood and these details are appropriate in this civic setting.</li> <li>The Panel supports the applicant's proposed location for artwork.</li> <li>This is a tight infill site in a constrained and high-density urban environment. The panel commends the sophisticated design response embodied in the scheme.</li> <li>This relates to the site master planning (servicing, access, and engaging street</li> </ul> | <ul style="list-style-type: none"> <li>The matter of waste room GFA has been resolved through the applicant's amendment to the waste room calculation. The remaining portion not included is deemed sufficiently open to not be deemed GFA.</li> <li>Noted.</li> <li>A couple of master bedrooms do not achieve the minimum 10m<sup>2</sup> under the design guidance of Objective 4D-1, however, the second bedrooms do. There is no unreasonable reduction in unit amenity by the non-adherence to the design guidance. Acceptable.</li> <li>A matter for conditions and the requirements of the relevant authority.</li> <li>This position is agreed as discussed earlier in the assessment report.</li> <li>The shelf has been provided to Unit 503 as illustrated in Drawing No. PTW-DA-D110030.</li> <li>The planter was proposed as a measure of safety for pedestrians from the waste collection truck. Its positioning is acceptable for this purpose.</li> <li>The applicant confirmed this was the requirement of the fire engineer. Considered acceptable.</li> <li>Deemed acceptable as discussed earlier in the assessment report.</li> <li>Complies.</li> <li>Noted.</li> <li>The public art location on the front façade is supported.</li> <li>The Panels concluding comments are agreed and the application is supported subject to deferred commencement.</li> </ul> |



| Design Review Panel<br>Meeting 29 February 2024                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Comment |
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| <p>frontages), massing (especially the response to the existing and future buildings that surround the site), layouts (integrating different uses and optimising internal amenity), and architectural expression to create a building that skilfully uses materials and form to create a coherent composition.</p> <ul style="list-style-type: none"> <li>• The Panel encourages the applicant to carry the design quality of the DA through to project delivery, construction, and completion.</li> </ul> |         |

Given the above, the application is deemed to have taken into consideration the DRP advice and is supported in this regard.

- ***Burwood Local Environmental Plan 2012***

- (i) *Zoning and Permissibility*

The site is zoned MU1 Mixed Use pursuant to Clause 2.3 of the Burwood Local Environmental Plan (LEP) 2012 per the extract of the Land Zoning Map in Figure 9.

The proposed development is a mixed use development comprising commercial premises in the form of retail, food and drink premises and business/office premises, serviced apartments and shop top housing. The proposal meets the Standard Instrument definitions of these land uses. Consequently, the proposal is permissible with consent.

- (ii) *Zone Objectives*

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

MU1 Mixed Use

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

The following comments are provided in response to the objectives:

- The proposed development seeks a mixture of retail and commercial tenancies of varying sizes which will generate employment opportunities.
- The proposed frontages to Belmore Street and Elizabeth Street have been designed with due consideration to the constraints (e.g. the slope, and need for a substation) and positively respond to the location with landscaping, seating and an active street frontage to contribute to a vibrant, diverse and functional street.
- The development has minimised conflict between land uses within the zone and those adjoining, as this report outlines.

- The ground level is proposed as non-residential land use – a retail and a food and drink tenancy- meeting the objective of the zone.

Given the above, the proposal is deemed to meet the objectives of the zone.

(iii) *General Controls and Development Standards (Part 2, 4, 5 and 6)*

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 8** below.

**Table 8: Consideration of the LEP Controls**

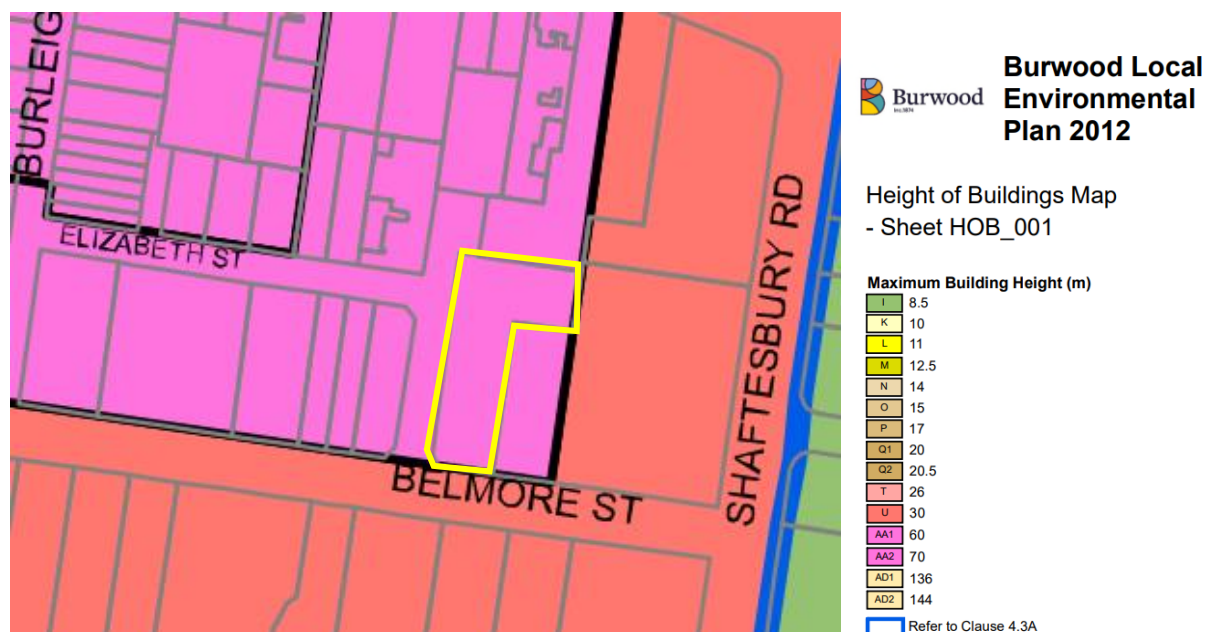
| Control                                        | Requirement                                                                                                                                             | Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Comply                                             |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| Height of buildings (CI 4.3(2))                | 60m                                                                                                                                                     | 61.24m                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | No. Refer to the discussion below this table.      |
| Exceptions to Height of Buildings (CI 4.3A(2)) | The height of a building must not exceed the building height plane for the land marked Area A.                                                          | The building height plane diagrams submitted illustrate the development is compliant.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Yes. Refer to the discussion below this table.     |
| FSR (CI 4.4(2))                                | 4.5:1                                                                                                                                                   | 4.95:1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Refer to the clause below.                         |
| Exceptions to Floor Space Ratio (CI 4.4A)      | <p>4.95:1 (4.4.A(5)(a)(ii))</p> <p>Residential maximum 70% of FSR – 3.465:1 (4.4A(5)(b)(ii))</p> <p>Serviced apartments maximum 0.45:1 (4.4A(4)(b))</p> | <p>Site area: 1.261.3m<sup>2</sup></p> <p>Maximum GFA permitted: 6,243.4m<sup>2</sup></p> <p>Proposed GFA/FSR: 6,243.3m<sup>2</sup> / 4.95:1</p> <p>Maximum residential permitted: 4,370.4m<sup>2</sup> (70%)</p> <p>Proposed residential GFA/FSR: 4,370.4m<sup>2</sup> / 3.465:1</p> <p>Maximum serviced apartments permitted: 567.6m<sup>2</sup></p> <p>Proposed serviced apartments GFA/FSR: 567.5m<sup>2</sup></p> <p>Commercial GFA/FSR: 1,305.4m<sup>2</sup> / 1.035:1</p> <p>The applicant has submitted a GFA plan as Drawing Nos. PTW-DA-Q12D010 and Q12D020.</p> | Yes. Refer also to the discussion below the table. |

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                         |                                                |
|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| Exceptions to Development Standards (CI 4.6) | Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—<br>(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and<br>(b) there are sufficient environmental planning grounds to justify the contravention of the development standard. | A Clause 4.6 Variation Request has been submitted concerning the contravention of the height of buildings development standard. Refer to the discussion below the table.                                                                                                | Yes. Refer to the discussion below this table. |
| Relevant Acquisition Authority (CI 5.1)      | N/A                                                                                                                                                                                                                                                                                                                                                                                                         | N/A                                                                                                                                                                                                                                                                     | N/A                                            |
| Heritage Conservation (CI 5.10)              | Council must consider the impact on heritage.                                                                                                                                                                                                                                                                                                                                                               | The site does not contain an item of heritage nor is the site within a heritage conservation area. The site is within a block of several heritage items.<br><br>The development was referred to Council's Heritage Officer who raised no objections to the development. | Yes                                            |
| Flood Planning (CI 5.21)                     | Council must consider the effect of flooding on development.                                                                                                                                                                                                                                                                                                                                                | The site is not identified as flood affected.                                                                                                                                                                                                                           | N/A                                            |
| Acid Sulfate Soils (CI 6.1)                  | Class 5                                                                                                                                                                                                                                                                                                                                                                                                     | The site is not located within 500m of Class 1, 2, 3 or 4 ASS or likely to lower the watertable below 1m AHD on such land. No acid sulfate soil management plan is required.                                                                                            | Yes                                            |
| Active Street Frontage (CI 6.3)              | Development to which this clause applies must provide an active street frontage.                                                                                                                                                                                                                                                                                                                            | The site is not mapped as requiring an active street frontage.                                                                                                                                                                                                          | N/A                                            |

|                                                |                                                                                      |                                           |     |
|------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------|-----|
| Design Excellence in Zones E1 and MU1 (CI 6.5) | Development three or more storeys in Zones E1 or MU1 must exhibit design excellence. | Refer to the discussion below this table. | Yes |
|------------------------------------------------|--------------------------------------------------------------------------------------|-------------------------------------------|-----|

#### Clause 4.3 Height of Buildings

The LEP prescribes a maximum building height of 60m. Refer to the relevant map below.



**Figure 25:** Height of Buildings Map (Source: NSW legislation website)

The proposed development seeks a building height of 61.24m. A variation of 1.24m (2%) is sought.

The elements contravening the development standard are portions of the rooftop plant and the screening used to conceal these elements.

A Clause 4.6 Variation Request has been submitted. The variation is discussed under the Clause 4.6 section below.

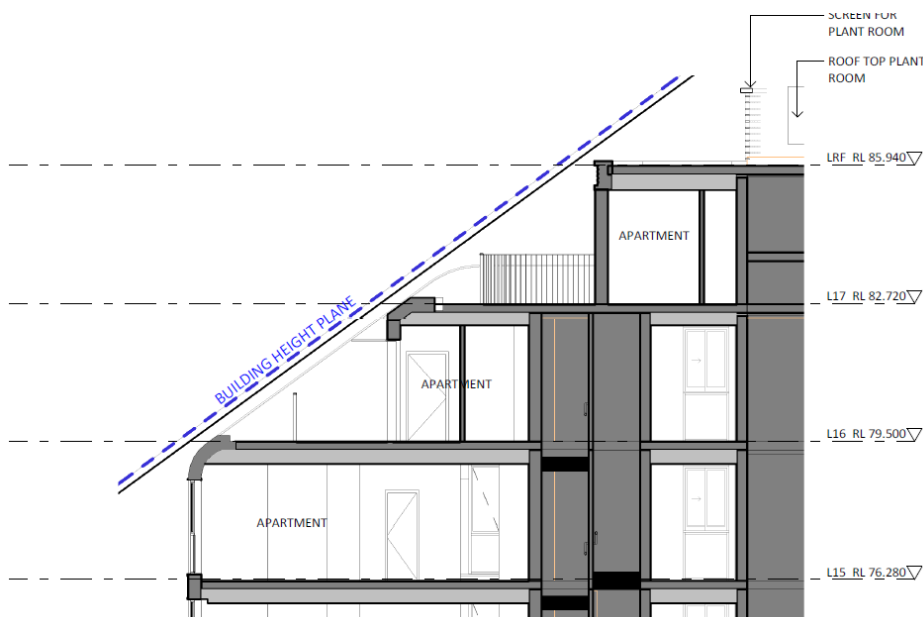
#### Clause 4.3A Exceptions to Height of Buildings

The site is identified within Area A on the Height of Buildings Map and therefore must not exceed the building height plane (BHP) for that land. The relevant BHP is 'C', as measured west from Shaftesbury Road at a 36 degree angle measured at 1m above ground level.

The BHP has been modelled on the architectural plans and is illustrated below.



**Figure 26:** Building Height Plane Diagram (Source: Drawing No. PTW-DA-Q12C010)



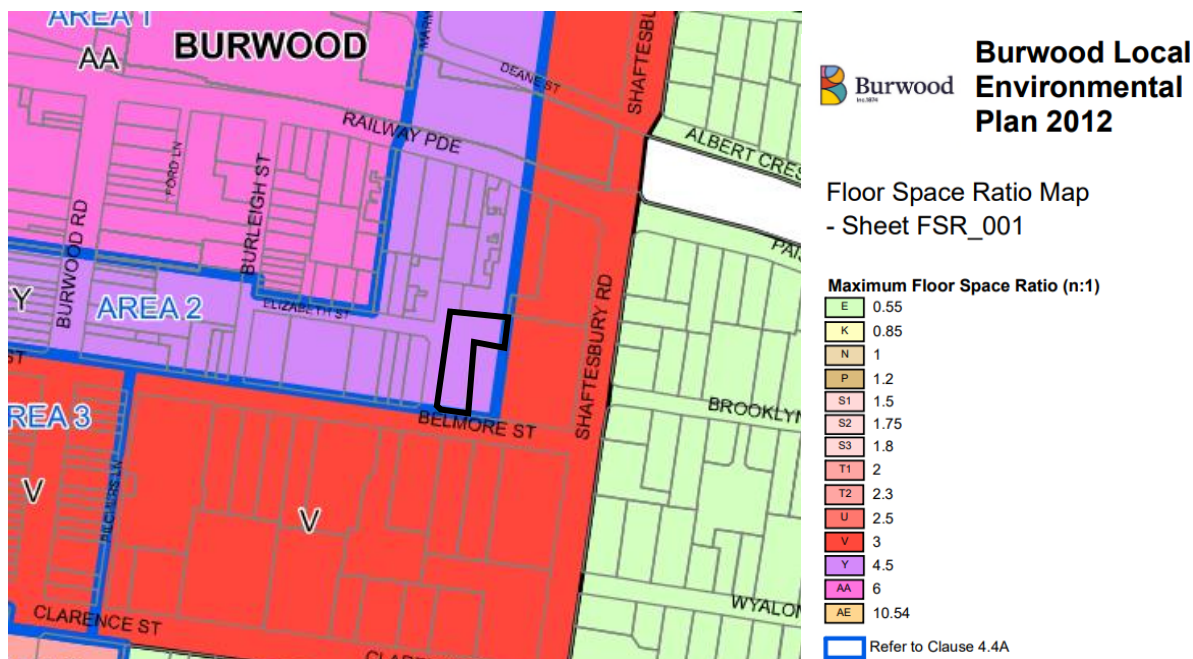
**Figure 27:** Section illustrating BHP compliance (Source: Drawing No. PTW-DA-C210030)

As the above illustrates, the building height stepped on its upper levels to ensure compliance with the BHP. The development is compliant with this clause.

#### Clause 4.4A Exceptions to Floor Space Ratio

Under Clause 4.4(2), the site is prescribed a maximum FSR of 4.5:1 as illustrated in the map extract below. However, as the site is within Area 2 on the Floor Space Ratio Map (as illustrated below), Clause 4.4A(5) and (6) allow an exceedance to Clause 4.4 if the FSR for the building does not exceed 4.95:1 and the GFA of the part of the building used for the purpose of residential accommodation does not exceed 70% of the development.





**Figure 28:** Floor Space Ratio Map (Source: NSW legislation website)

Subclause (6) states that the bonus FSR under subclause (5) applies in relation to proposed development only if the proposed development includes development resulting in community infrastructure or the use of land as community infrastructure, and the consent authority is satisfied that the community infrastructure is appropriate for the Burwood Town Centre, taking into account the nature of the community infrastructure and its value to the community working or residing in the Burwood Town Centre.

The FSR proposed is 4.95:1 and is compliant overall, and compliant with the maximum 70% (3.465:1) residential FSR permitted as outlined in the LEP assessment table above.

The applicant submitted a letter of offer to enter into a VPA in connection with the application to either dedicate a commercial tenancy to Council for community purposes or provide a monetary contribution. The assessment of the VPA is a separate process from the development application. However, the VPA is sufficiently progressed to give a measure of certainty to its support. Consequently, the development may be determined subject to the completion of the VPA process.

#### Clause 4.6 Exceptions to Development Standards

A Clause 4.6 Variation Request has been submitted for the proposed contravention of the height of buildings development standard.

Clause 4.6 of LEP 2012 provides powers and procedures for consent authorities to consider, and where appropriate, grant consent to development even though the development would contravene a particular development standard. The objectives of this clause are:

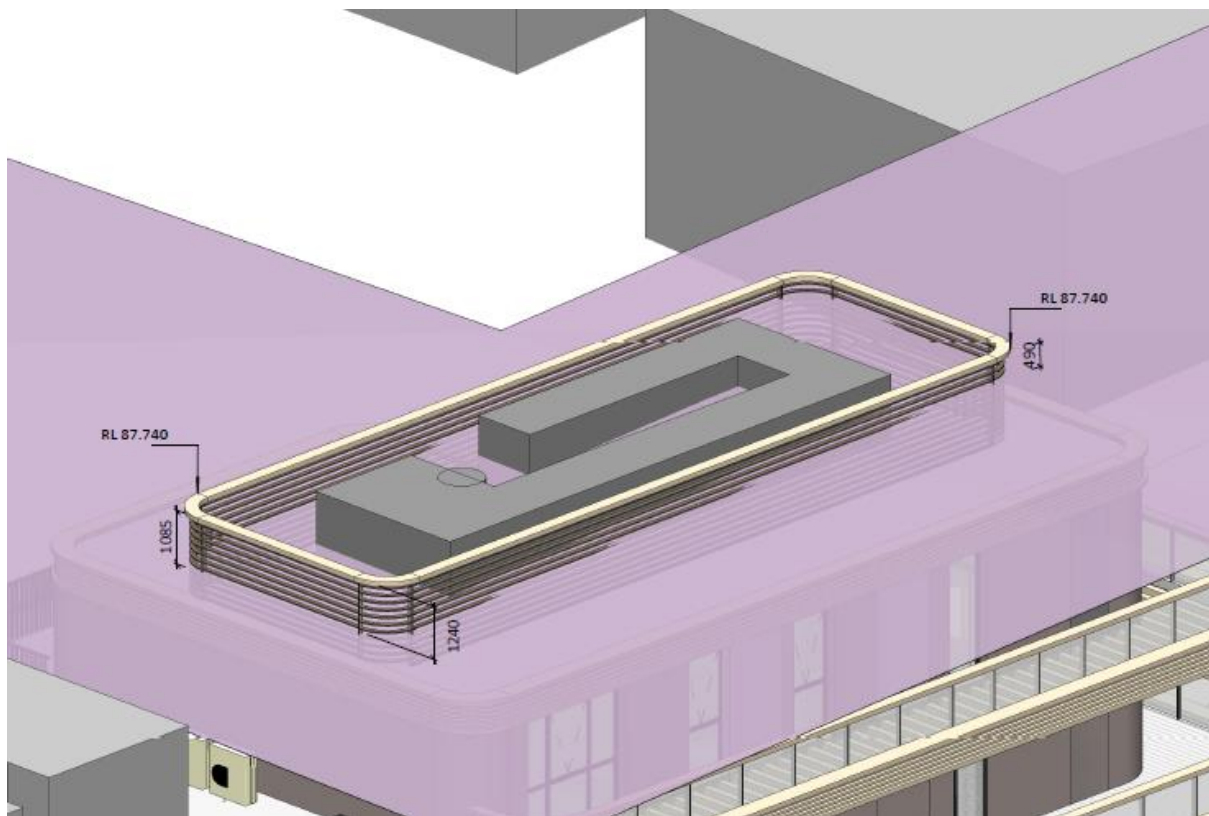
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The provisions of Clause 4.6 in the LEP may be used for the maximum height of buildings standard under Clause 4.3(2).

For Council to consent to an exception to a development standard it must have considered a written request from the applicant that seeks to demonstrate that compliance is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the departure. Consent cannot be granted unless Council is satisfied that these matters are adequately addressed and that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone objectives.

#### *Extent of the Variation*

The extent of the variation is 1.24m (2%) and is limited to mechanical plant and the screening used to conceal these elements. Refer to the building height plane diagram below.



**Figure 29:** Height Blanket (Source: Drawing No. PTW-DA-Q12C010)

Clause 4.6 of the LEP states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.*

#### *Unreasonable and Unnecessary*

The applicant's written justification for the height of buildings development standard outlines that an exception should be granted as compliance with the development standard is unreasonable or unnecessary for the following reasons:

- *The objectives of the height development standard are achieved notwithstanding the proposed variation.*

The first objective of Clause 4.3 Height of buildings is:

- (a) *to establish the maximum height of buildings to encourage medium density development in specified areas and maintain Burwood's low-density character in other areas*

In response, the written justification has stated:

- *The proposed height standard variation is minor (2%) and just relates to an architectural roof feature which crowns the building and includes a screen which obscures the rooftop plant, solar and ventilation shaft which and will not be readily discernable from the public domain, with the exception of the decorative batten screen.*
- *The architectural roof does not include advertising, does not include floor area space area, will result in minimal overshadowing as illustrated by the shadow diagrams prepared by PTW Architects. A 4.6 Variation Request has been submitted in relation to the architectural roof feature for abundant caution notwithstanding Clause 5.6 of the Burwood LEP permitting architectural roof features to exceed the statutory height standard.*
- *The proposed screen is recessed from the edge of the roof to minimize its bulk and scale and ensure the 60m height standard will not appear to be eroded.*
- *In the recent case of Sioud v Canterbury-Bankstown Council [2023] NSWLEC the definition of an architectural roof feature was given consideration by Senior Commissioner. In this case the Seniors Commissioner provided a practical approach of permitting a portion of the building exceeding the height standard being considered an architectural roof feature on the basis of the element being located to the upper portion of the roof and an decorative element and noted there is no definition of architectural roof feature in the standard instrument.*
- *The proposal is compatible with existing tower development in the Burwood Town Centre and will be consistent with the anticipated character given the recent approvals granted for similar style developments throughout the town centre including adjoining the site at 4 Railway Parade, with the rooftop screening not readily discernable.*

Assessing Officer Comment:

In principle, the justification used to align with the first objective is agreed.

The extent of the variation being only 2%, being limited to modest elements and set in from the roof perimeter does ensure that the extent of the variation will not be readily discernable from the public domain. The overshadowing created by these amendments is negligible in the context of the overall built form. The overall massing is compatible with existing tower development in Burwood.

It is not agreed that the screening around the perimeter of the mechanical plant constitutes an architectural roof feature. Clause 5.6 does not specifically define an architectural roof feature but it does provide some guidance under 5.6(3):

*“(3) Development consent must not be granted to any such development unless the consent authority is satisfied that—*

*(a) the architectural roof feature—*

*(i) comprises a decorative element on the uppermost portion of a building, and*

*(ii) is not an advertising structure, and*

*(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and*

*(iv) will cause minimal overshadowing, and*

*(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.”*

An architectural roof feature is a decorative element. The screening that is proposed is a relatively common aluminum louvre which is not uncharacteristic of standard screening for mechanical plant, as illustrated in the materials and finishes extract below. Though the powdercoat finish is bronze and white gold and integrates well within the broader overall building, it is not agreed that in of itself it is a decorative architectural element.



Natural bronze powder coated aluminium louvre

**Figure 30:** Roof Screening Material (Source: PTW Architects)

Further to the above, (b) requires any equipment for servicing the building contained in the roof feature to be fully integrated into the design of the roof feature. The proposed aluminium louvres surround the mechanical plant and are designed as a separate screening function, rather than an integrated feature. Therefore, it is not agreed that the height variation is captured by Clause 5.6 Architectural roof features.

Notwithstanding this, the contravention is independently considered acceptable under Clause 4.6, as discussed in this section.

The first objective is deemed to be achieved notwithstanding the variation.

The second objective of Clause 4.3 is:

*(b) to control the potentially adverse impacts of building height on adjoining areas.*

The written justification states in response:

- *The form of the proposal incorporates a tall, slender tower which is designed to reduce the bulk and associated visual impact to Elizabeth Street and reduces overshadowing to the north and west facing habitable room windows of the apartments at 3 Belmore Street, as compared to a shorter more 'squat' building which may comply with the height standard and permitted floor space ratio (FSR);*
- *The minor element which exceeds the statutory height standard does not result in any additional overshadowing to either habitable room windows or private open space areas of nearby apartment compared to that of a compliant building envelope as identified in the overshadowing analysis prepared by PTW Architects;*
- *The potential adverse impacts of the proposed height are controlled through the following design features:*
  - *The screen to the roof includes a height of 1.24m above the height of the building and from the edge of the roof which reduces its bulk, scale and visual impact and presence within the skyline; and*
  - *The proposed screen reads an architectural expression of the building and considered to be integrated within the building form which incorporates significant articulation, suitable composition and high-quality finishes such that it is visually interesting.*
- *The proposed tower's slender nature creates shadows that are narrow which enables shadows to 'move' quickly, ensuring shadows do not concentrate on particular neighbouring lots nor on areas outside the town centre;*
- *The slender nature of the building maximises preservation of views from adjacent buildings and the appearance of tower bulkiness;*
- *The use of a taller tower form creates enhanced separation between buildings, providing high quality amenity through visual and acoustic privacy and outlook for both proposed and existing apartments;*
- *The proposed design increases residential amenity, as the smaller floorplates achieve superior solar access and ventilation compared to a shorter/squat scheme; and*
- *The proposal and adjoining sites benefit from a generous 32.75m setback to Belmore Street. This assists with reducing visual bulk, adequate privacy and visual separation, as well as solar access to the apartments at 4 Railway Parade.*

*It is therefore considered that the proposal's design attributes mitigate potentially adverse impacts on adjoining lands, as sought by the objective compared to a compliant building envelope.*



Assessing Officer Comment:

The reasons used to claim consistency with the second objective are supported.

The development with a marginal encroachment into the building height is not deemed to create adverse impacts on adjoining areas. The envisioned density on the land as defined by the development standards (60m HOB, 4.5:1 FSR) is met and not thwarted by the contravention to the building height. The challenges involved in developing the site discussed earlier in this assessment report are recognised and the location of the tower and its floor plate are inextricably tied to and resulted from managing the relationships to the adjoining properties. The extension of the floor plate further south or west would worsen building separation for the negligible benefit of strict compliance with the building height but would lead to a worse overall outcome for amenity of adjoining properties by compromising solar access, outlook, visual privacy and natural light, among others, 1-3 Belmore Street.

The second objective is deemed to be achieved notwithstanding the variation.

*The Development Standard Has been Virtually Abandoned*

The applicant has contended that the development standard has been abandoned. The written justification cites the following four development applications in this position.

- *A Clause 4.6 exception request was supported by the Sydney Eastern City Planning Panel on 25 February 2019 on similar grounds, for development at the 'Burwood RSL site'. The Burwood RSL site is bounded by Deane Street, George Street, Shaftesbury Road and Marmaduke Street and is approximately 200m south east of the subject site. DA 85/2017 was lodged on 29 June 2017 and proposed a "RSL Club, hotel, entertainment and recreation facilities, over basement car parking." The proposal had a maximum building height of 94.6m and an FSR of 4:1.*
- *A Clause 4.6 exception request was supported by Burwood Council on 16 August 2018 on similar grounds, for development at 23-27 George Street, immediately south of the subject site. DA 82016/179 was lodged on 16 December 2016 and proposed a 21-storey mixed use commercial/ residential development, over basement car parking. The proposal had a maximum building height of 70.15m and an FSR of 4.95:1.*
- *The Sydney Eastern City Planning Panel issued Development Consent 2019/091 for a proposal which breached Clause 4.3(2) at 28 Victoria Street on 11 August 2020 on similar grounds. The height standard in this case was 60m, however, consent was issued for a height up to 100.98m in accordance with Clause 4.6 and Clause 4.3A.*
- *The Sydney Eastern City Planning Panel issued Development Consent 2020/110 for a proposal which breached Clause 4.3(2) at 17 George Street, Burwood on 12 April 2022 on similar grounds. The height standard in this case was 60m, however, consent was issued for a height up to 94.6m in accordance with Clause 4.6 and Clause 4.3A.*

Assessing Officer Comment:

Firstly, in response to the applications referenced, the following comments are made:

- The Burwood RSL application was predicated on legal advice that saw Clause 4.3A Exceptions to the height of buildings as overriding Clause 4.3 if compliance with the prescribed building height plane was achieved. The development did comply with the building height plane. Further, the FSR was compliant with its applicable standard.
- The 23-27 George Street application shares similar circumstances to the subject site where a 10% bonus FSR is proposed and through refinement of the building envelope with the additional floor area, a resultant height variation was proposed and supported.

- The application at 28 Victoria Street acknowledges that Clause 4.3A Exceptions to height of buildings effectively permits a greater building height than prescribed under Clause 4.3 if the building height plane is not exceeded. The proposal did comply with the building height plane under Clause 4.3A and, notably, the 10% bonus FSR permitted by way of a VPA.
- The approved height for DA2020/110 was 77.26m, not 94.6m. The development complied with the maximum 4.95:1 FSR through the 10% bonus and VPA pathway.

The structure of the LEP is such that the 60m (as applicable to the site) height under Clause 4.3 is the base maximum height. The bonus permitted by Clause 4.4A(5)-(6) likely would result in a breach of the development standard as it exceeds the mapped FSR serving as the 'base' rate (in this case 4.5:1). This bonus floor area is only acceptable when delivering the community outcome typically by way of a VPA. Clause 4.3A further may permit additional height subject to compliance with the building height plane. Further, a development application must also exhibit design excellence to satisfy the objectives of the zone and clause. Through this, the LEP is operating as constructed through the abovementioned applications.

In all instances, the development applications have been required to and have been compliant with the 10% bonus FSR. An application not seeking this bonus and community outcome would be assessed as appropriate to the defined height cap under Clause 4.3 (and/or pending site circumstances that trigger Clause 4.3A).

Therefore, it is not deemed that the development standard has been virtually abandoned.

#### *Sufficient Environmental Planning Grounds*

Subclause (3)(b) of Clause 4.6 requires consideration of if there are sufficient environmental planning grounds to justify contravening the development standard.

In response to this point, the written justification has argued:

*Triggering Clause 4.3A(2) of the Burwood LEP 2012, in conjunction with the floor space ratio permitted by Clause 4.4(5)(A), encourages a notably different envelope compared to any envelope allowed by 4.3(2). That is, it results in a taller and more slender building envelope. An envelope strictly compliant with Clause 4.3(2) is likely to be wider and bulkier resulting in less communal open space to the podium. As a result, amenity impacts to immediately adjoining dwellings would be potentially worse, particularly in relation to overshadowing, overlooking and general outlook. Further, a bulkier envelope also compromises amenity for residents on the subject site as it results in decreased solar access.*

*In this case, Clause 4.3(A)(2) and the resultant contravention to Clause 4.3(2) achieves good design and amenity in the built environment, which are objectives of the EP&A Act. The additional height also achieves the economic use of the land and assists with the delivery of affordable housing, which are also objects of the EP&A Act. Further, as mentioned above, arguably the standard in Clause 4.3(2) has been abandoned.*

#### **Assessing Officer Comment:**

The first position taken by the applicant is agreed.

The 60m height of buildings development standard is informed by the base 4.5:1 FSR development standard that the site is mapped. Clause 4.4A(5)-(6) permits a 10% bonus FSR subject to certain requirements including that of the provision of community infrastructure

(which is met via the VPA, as is standard practice). This bonus FSR inevitably results in an expansion of the anticipated building envelope – in this instance, by the creation of additional storeys that result in a protrusion for mechanical plant on the rooftop. Notably, no floor area exceeds the building height.

The benefit that will be locked in by the VPA is the intended positive outcome the clause allows. A similar result has occurred from the approved developments mentioned earlier in this section.

For the reasons outlined throughout this section, it is deemed that there are sufficient environmental planning grounds to permit the variation.

As noted previously, it is not agreed that the development standard has been abandoned.

### *Public Interest*

Subclause (4)(a)(ii) requires the consent authority to be satisfied that the development is in the public interest because it is consistent with the objectives of the development standard and the zone.

The above commentary serves to confirm the development is consistent with the objectives of Clause 4.3, notwithstanding the points of disagreement.

The table below summarises the zone objectives position from the applicant.

**Table 9: Assessment of MU1 Mixed Use Zone Objectives**

| <b>Zone Objectives</b>                                                                                                                                                                    | <b>Written Justification</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.                                                               | <p><i>The proposal is for a mixed-use development and provides a mix of commercial, retail and residential uses.</i></p> <p><i>The commercial/retail and serviced apartment uses are located on the podium floors of the development. There are no residential uses located on the same floor as commercial uses. This reduces the impacts of visual and acoustic privacy within the building, as well as adjoining developments, thereby rendering such uses compatible.</i></p> <p><i>The Burwood Town Centre has a mixture of commercial, retail and café/ restaurant uses and the proposed development is compatible with the existing and expected land uses in the Burwood Town Centre and the B4 Mixed Use zone.</i></p> <p><i>The proposal achieves the requirement to provide no more than 70% of GFA for residential uses as required by Clause 4.4A(5). The variation in height does not impact on compliance with this development standard.</i></p> |
| To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces. | <i>The proposed mixed-use development provides a mix of retail, commercial, serviced apartment and residential uses. The layout of the commercial floors above ground floor retail and restaurants/cafes and serviced apartments transitioning into the remainder of</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                | <p><i>the building above with residential apartments, is logical.</i></p> <p><i>The proposal is also located in a highly accessible area of Burwood and Greater Sydney which encourages public transport usage. The site is located within the Burwood Town Centre approximately 200m to the east of Burwood Road and 250m to the south-east of Burwood railway station, an interchange station on the T1 Western Line, T2 Inner West and Leppington Line and T9 Northern Line.</i></p> <p><i>Burwood is an interchange for numerous bus services which link the site with Parramatta, Ryde, Bankstown, Campsie and the Inner West. Further, the site is located south of the Burwood Westfield shopping centre and 400m from Burwood Plaza, both of which, along with Burwood Road shops, contain a range of retail offerings. As such, the proposal encourages the integration of commercial, retail and residential uses in an accessible area, as sought by the objective.</i></p> <p><i>Further, the proposal provides for bicycle parking in compliance with the requirements for the proposed apartments and non-residential uses.</i></p> <p><i>The variation to the height maintains this objective. It allows for suitable commercial and residential uses in an accessible location which will encourage the use of public transport and walking and cycling.</i></p> |
| To minimise conflict between land uses within this zone and land uses within adjoining zones.                  | <p><i>The site only adjoins land zoned MU1 Mixed use and therefore there is no other different adjoining land use zones.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| To encourage business, retail, community and other non-residential land uses on the ground floor of buildings. | <p><i>The proposal includes retail shop and restaurant/café at the ground level including the entry foyer of serviced apartments, residential apartments and commercial floor area fronting Elizabeth Street. No non-residential uses are proposed on the ground level.</i></p> <p><i>As demonstrated above, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

**Assessing Officer Comment:**

The justification provided by the applicant for the zone objectives is agreed.

The contravention of the building height is modest, contributed to by the bonus floor area achieved through the VPA and is of limited to no consequence on achieving the objectives of the height of buildings development standard and MU1 Mixed Use zone.

Given the above, the contravention is supported.

#### Clause 6.5 Design Excellence in Zones E1 and MU1

All development involving the erection of a new building of 3 or more storeys on land in Zone E1 Local Centre or Zone MU1 Mixed Use is required to exhibit design excellence.

The clause provides a number of matters to assess how a development achieves design excellence. These are discussed below.

The design excellence process has been informed by Council's Design Review Panel who, as discussed earlier, has determined the design exhibits design excellence.

- (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),*

For the reasons outlined within this assessment report, the proposal has achieved a high standard of architectural, landscape and urban design taking into consideration the site constraints (i.e. dimensions, shape). The architectural language, materials and detailing demonstrate a high quality outcome that will positively contribute to the surrounding area. The proposed landscaping treatment will provide for additional tree canopy and high amenity ground level and podium spaces.

- (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 ground level and podium interface with the public domain is of a high quality. The streetscape activation proposed for both street frontages, coupled with the planting outcomes at ground level will enhance open space within the setbacks and the interface with the public domain. Further, the proposed resolution to the site slope (steps with landscaping and seating) will be a vast improvement over the existing relationship.

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

The primary streetscape issues that have arisen are the management of the replacement of the existing substation, the site sloping away from Belmore Street and waste rooms. The substation is a requirement of the development. The proposal has sought to retain the substation on the Belmore Street frontage but encapsulate it within the building envelope. The application also seeks to introduce public art on the Belmore Street frontage including over the substation location, allowing for the minimisation of the presence of services along a key façade.

The existing building managed the slope of the land by building up to the ground floor, with a ramp and stairs required to access the entry. The proposal will marry the levels of the entry to the retail tenancy with the Belmore Street footpath and slope and step along Elizabeth Street. Multiple points of entry to the corner tenancy and the landscaping and seating proposed will improve this portion of semi-public domain space.

The waste rooms are located at ground level. It is typically preferred to locate waste within a basement when possible. The site constraints render it challenging to impossible to accommodate a waste truck within the basement or on site where it can enter and leave in a forward direction. Consequently, waste is collected from within the site in front of the waste rooms.

A high level of regard has been given to the presentation of the Elizabeth Street façade including the waste room area. Screening will mask the visibility of the waste room, which is furthered by the fire booster (a necessary front façade element) blocking part of the view of



the space. Options were explored to increase retail presence and further minimise the visibility of the waste room, however, due to service requirements there would be no meaningful improvement. The current form is an acceptable outcome.

There are no heritage issues relevant to this proposal.

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

The amenity of the Belmore Street and Elizabeth Street public domain areas will be improved through the provision of a superior streetscape presentation, the semi-public domain area within the street setbacks (e.g. pavement, landscaping and seating) and a high quality street level and podium presentation.

There are no specific view loss concerns with the proposal.

*(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,*

The vehicle access has been logically positioned at the northernmost, widest section of the site to facilitate the movements required to access lower levels. The site constraints do necessitate single width ramps. This will be managed by a traffic signal system with details to be provided to Council for assessment as a condition of consent.

The pedestrian movement in front of the site is acceptable. Though the waste truck will be parked partially within the pedestrian walkway, planters have been strategically positioned to direct pedestrians around this area while in use and minimise pedestrian and vehicle conflict.

Movement within the site is direct and clear.

*(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),*

Pedestrian movement may only be disrupted during waste collection. However, a dedicated pedestrian movement area has been accommodated within the site while collection is ongoing to minimise potential conflict and avoid a need to walk on Elizabeth Street.

Access to Burwood Train Station and the bus network will not be disrupted. The proximate location to both transport options will encourage use.

*(g) whether the development supports an integrated land use mix in Zones E1 and MU1, including a diversity of public open spaces at the ground level, as well as the roof and other levels of buildings,*

The site is zoned MU1 Mixed Use and proposes an integrated land use mix of retail, commercial, serviced apartment and residential apartments. The uses are vertically delineated between the podium and tower components.

The ground level setback area is used for public space and is suitably landscaped to provide tree canopy cover, greening of the space and seating. The podium roof will be used for communal open space and offers a diversity of spaces within the area for different use cases.

- (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,*

These matters are addressed through the broad assessment of the proposal in this report. The bulk, massing, modulation, separation, setbacks and height are responsive to the planning controls and the site circumstances. The proposed density is appropriate in the context of approved and built developments around the site.

- (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.*

The proposal is satisfactory with regard to water, energy and thermal provisions via the BASIX Certificate. Additionally, solar panels, EV provision, a rainwater tank for water reuse and passive solar management have been considered and adopted in the proposal.

The overshadowing of the proposal is deemed acceptable in view of the CBD environment. The tower form also abuts the approved boarding house on 4 Railway Parade and has an overall insignificant additional overshadowing impact. Further to the full discussion later in this report.

A Wind Impact Assessment was submitted with the application. No specific concerns were raised that required amelioration.

The reflectivity of windows will be capped at 20% per the conditions of consent.

## **2. Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

The below proposed instruments have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

- *Draft Remediation of Land SEPP*
- *Draft SEPP (Environment)*
- *Sustainable Buildings SEPP*

The assessment of this application is not affected by the draft exhibited provisions of the aforementioned proposed (at the time of lodgement) instruments.

## **3. Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

- ***Burwood Development Control Plan ('the DCP')***

The relevant sections of the DCP that apply to the development application are:

- Part 2 – Site and Environmental Planning
- Part 3 – Development in Centres and Corridors
- Part 5 – Other Development Provisions
- Part 6 – Environmental Management
- Part 8 – Appendices

The key controls of each part are assessed in the tables below.

**Table 10: Consideration of the DCP Controls**

| Provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Proposal/Comment                                                                                                                                                                                                                                                                                                                                                     | Compliance                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <b>Part 3 – Development in Centres and Corridors</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                      |                            |
| <b>3.2.1 Building Design</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                      |                            |
| <b>P1</b> Architectural design excellence is to be achieved in the following ways: <ul style="list-style-type: none"> <li>The form and external appearance of any development should significantly improve the quality and amenity of the public domain.</li> <li>Cohesive design and visual interest should be provided by articulation, modulation and fenestration as well as textures, materials and colours.</li> <li>The development should respond positively to its context, environment and function.</li> </ul> | As discussed under SEPP (Housing) 2021 and Clause 6.5 Design Excellence in the LEP, the development is considered to have achieved design excellence.                                                                                                                                                                                                                | Yes                        |
| <b>3.2.2 Materials and Finishes</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                      |                            |
| <b>O1</b> To ensure that the use of superior quality external materials and finishes: <ul style="list-style-type: none"> <li>Contributes to architectural and urban design excellence.</li> <li>Provides cohesive and visually interesting building appearance.</li> <li>Responds to surrounding notable buildings and enhances the streetscape.</li> <li>Provides longevity in external materials and finishes that are of superior quality.</li> </ul>                                                                  | The proposed materials and finishes are deemed to positively contribute to the Burwood Town Centre and create a high quality visual appearance. The northern elevation that may be exposed, should the approved development on 4 Railway Parade never be constructed, has been improved through the process to provide a visual interesting, low maintenance façade. | Yes                        |
| <b>3.2.3 Lighting and Signage</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                      |                            |
| <b>P1</b> The size of the street address sign on the main facade is to be legible for pedestrians walking in the public domain                                                                                                                                                                                                                                                                                                                                                                                            | Conditions of consent will be imposed to control street address signage.                                                                                                                                                                                                                                                                                             | Yes, subject to conditions |
| <b>P3</b> External lighting to enhance the details of facade and character of the surrounding context is to be incorporated. Use of indirect lighting is encouraged.                                                                                                                                                                                                                                                                                                                                                      | Conditions of consent will be imposed to control external lighting.                                                                                                                                                                                                                                                                                                  | Yes, subject to conditions |
| <b>3.2.4 Street-Front Activities and Building Access</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                      |                            |
| <b>P1</b> Where, as a result of the nature of the development, there are specific security requirements, security measures must form an integral part of the building design. Roller shutters are not permitted but retractable open security grilles may be considered                                                                                                                                                                                                                                                   | No roller shutters are proposed for the retail premises.                                                                                                                                                                                                                                                                                                             | Yes                        |
| <b>P2</b> Ground floor level development must: <ul style="list-style-type: none"> <li>Promote quality non-residential activities in accordance with the zone.</li> <li>Minimise the number of service doors.</li> <li>Encourage visual interest on service doors with displays etc.</li> <li>Provide access points to and from the public domain at not more than 20 metre intervals.</li> </ul>                                                                                                                          | The ground floor is primarily for non-residential activities. At-grade entry has been provided, including multiple points of entry to the corner retail tenancy in managing the level changes.                                                                                                                                                                       | Yes                        |

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| <ul style="list-style-type: none"> <li>• Provide at-grade access at entry points.</li> <li>• Incorporate visually interesting streetscape frontages at ground level with attractive entries, clear glazed windows and window displays, artworks, articulated architecture and facade modulation.</li> </ul>                                                                                                                                                                                    |                                                                                 |                            |
| <b>P3</b> Separate and clearly identifiable entrances must be provided from the street for pedestrians and cars, and different uses (residential and non-residential).                                                                                                                                                                                                                                                                                                                         | The vehicle access and pedestrian access points are separated and identifiable. | Yes                        |
| <b>P4</b> Building entrances must have a direct physical and visual connection with the street.                                                                                                                                                                                                                                                                                                                                                                                                | Achieved.                                                                       | Yes                        |
| <b>P5</b> Residential component of any development must have a clear street address and a separate entry.                                                                                                                                                                                                                                                                                                                                                                                      | Achieved.                                                                       | Yes                        |
| <b>P6</b> Outdoor dining is generally encouraged on the footpath of commercially active street frontages, subject to compliance with Council's Outdoor Eating Area Policy                                                                                                                                                                                                                                                                                                                      | Not proposed in this application.                                               | N/A                        |
| <b>P7</b> All commercial components must have a clear street address.                                                                                                                                                                                                                                                                                                                                                                                                                          | Achieved.                                                                       | Yes                        |
| <b>P8</b> CCTV cameras shall be installed over any entrance points (including car parking entrance) for residential flat buildings and major developments. The CCTV system shall provide a quality image that can assist with the detection of crime and be used by the NSW Police in any investigation (preferably a quality digital system). CCTV system footage shall be retained for a period of no less than fourteen days and be available upon request by the NSW Police when required. | Conditions of consent will be imposed regarding CCTV.                           | Yes, subject to conditions |
| <b>P9</b> All mail box and postal facilities shall be incorporated into the building in accordance with the requirements of Australia Post. Mail boxes shall be sited and designed for attractive visual appearance and function, as well as to complement the architecture and environs.                                                                                                                                                                                                      | The mailboxes have been incorporated into the entry vestibule/lobby.            | Yes                        |
| <b>P10</b> A locking device shall be installed to all mailboxes.                                                                                                                                                                                                                                                                                                                                                                                                                               | Conditions will be imposed.                                                     | Yes, subject to conditions |
| <b>P11</b> Mailboxes must be integrated into the front wall such that residents collect mail from a secured internal foyer.                                                                                                                                                                                                                                                                                                                                                                    | Achieved.                                                                       | Yes                        |
| <b>P12</b> Development Application documentation must show all required mechanical/functional installations for utilities such as fire hydrant boosters and electrical substations. These must have coverings or shielding to screen their setting so as to minimise their visual impacts.                                                                                                                                                                                                     | Achieved. Screening is employed to obscure the substation and hydrant boosters. | Yes                        |
| <b>P13</b> Fire safety utilities such as fire hydrant boosters must be screened, accessible at all times and integrated within the overall architectural design of the building.                                                                                                                                                                                                                                                                                                               | As above.                                                                       | Yes                        |
| <b>P14</b> Large power supply utilities such as electrical substations must be shielded from public view or encapsulated within the building envelope.                                                                                                                                                                                                                                                                                                                                         | As above.                                                                       | Yes                        |
| <b>P15</b> Mechanical ventilation and plant equipment must not be visible from the public domain, or be                                                                                                                                                                                                                                                                                                                                                                                        | Achieved. Plant is located behind the building line and                         | Yes                        |

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| attached to the external façades or elevations. It must be located within a central plant area and screened from public view.                                                                                                                                                                                                                                                                                                                                                                                            | screened or in the basement. AC units where located on balconies are screened from public view.                                                                                                                                                                              |                            |
| <b>3.2.8 Apartment Mix and Minimum Dwelling Sizes</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                              |                            |
| <b>P1</b> Residential development in excess of 20 dwellings must provide a mix of dwellings containing 1, 2 or more bedrooms.                                                                                                                                                                                                                                                                                                                                                                                            | Complies. A mixture of 1, 2, 3 and 4 bedroom units are proposed.                                                                                                                                                                                                             | Yes                        |
| <b>3.2.9 Minimum Site Area</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                              |                            |
| <b>P1</b> Any development with a height over 10m is generally required to have a minimum site area of 500sqm.                                                                                                                                                                                                                                                                                                                                                                                                            | Site area is 1,261.3m <sup>2</sup> .                                                                                                                                                                                                                                         | Yes                        |
| <b>3.2.14 Visual and Acoustic Privacy</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                              |                            |
| <b>P1</b> Development must be located and orientated to maximise visual privacy between development on the site and adjacent development by <ul style="list-style-type: none"> <li>• Providing adequate rear and side setbacks.</li> <li>• Utilising the site layout to increase building separation. For example, orientation of buildings on narrow sites to the front and rear of the lot, thereby utilising the street width and rear garden depth to increase the apparent building separation distance.</li> </ul> | Visual and acoustic privacy has been considered in the design of the development and is considered to be achieved through window placement and screens.                                                                                                                      | Yes                        |
| <b>3.2.16 Lobbies and Internal Calculation – All Development</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                              |                            |
| <b>P1</b> Entry lobbies must be redesigned to provide facilities for seating, mail delivery and collection, and supervising personnel wherever possible.                                                                                                                                                                                                                                                                                                                                                                 | The entry lobbies include the mailboxes and are sized appropriately to accommodate seating.                                                                                                                                                                                  | Yes                        |
| <b>P2</b> Lift lobbies must be naturally ventilated. Daylight is to enter all residential lift lobbies.                                                                                                                                                                                                                                                                                                                                                                                                                  | All lift lobbies have access to daylight and most are naturally ventilated.                                                                                                                                                                                                  | Yes                        |
| <b>P3</b> Common area corridors must be designed to facilitate easy movement of people and furniture. Corridors must incorporate varied surfaces, textured and materials, and clearly identified apartment numbers.                                                                                                                                                                                                                                                                                                      | Achieved.                                                                                                                                                                                                                                                                    | Yes                        |
| <b>P4</b> Common area corridors must be a minimum 2 metres in width.                                                                                                                                                                                                                                                                                                                                                                                                                                                     | The majority of common corridors are 2m in width. Portions of the common corridors are less than 2m. where services are provided. There is sufficient space for the number of units per floor to allow for passing, maneuvering of furniture and accessibility requirements. | Yes                        |
| <b>P5</b> The name and number of a development must be clearly displayed at the entry outside the development. Suitable illumination for after hours recognition must be provided.                                                                                                                                                                                                                                                                                                                                       | Conditions will be imposed.                                                                                                                                                                                                                                                  | Yes, subject to conditions |
| <b>3.2.18 Safety and Security</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                              |                            |
| <b>P1</b> The routes between a development's entrance and its dwellings must be designed to maximise occupant safety. The routes from car parking areas to the lift lobby are particularly important in this regard. Clear sight lines and well-lit routes must be provided.                                                                                                                                                                                                                                             | Achieved.                                                                                                                                                                                                                                                                    | Yes                        |



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| <b>P2</b> Development must comply with Council's Burwood Community Crime Prevention and Safety Plan.                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Achieved.                                                                                                                                                                                     | Yes                        |
| <b>P3</b> Development must be provided with clearly defined site boundaries to strengthen the distinction between public and private space.                                                                                                                                                                                                                                                                                                                                                                                                                       | The public and private areas of the development are clearly defined.                                                                                                                          | Yes                        |
| <b>P4</b> Facades at ground level must be activated by locating after hours uses so they are visible from the publicly accessible areas.                                                                                                                                                                                                                                                                                                                                                                                                                          | Achieved.                                                                                                                                                                                     | Yes                        |
| <b>P5</b> Development access must be controlled by: <ul style="list-style-type: none"> <li>Restricting access from balconies, roofs and windows of neighbouring development.</li> <li>Providing separate access from public and common areas.</li> <li>Providing separate access for residents in mixed-use developments.</li> <li>Providing an audio or video intercom system at the pedestrian or vehicular entrance or in the lobby for visitors to communicate with residents.</li> <li>Providing secure keyed or electronic access for residents.</li> </ul> | Achieved.                                                                                                                                                                                     | Yes                        |
| <b>P6</b> Concealment opportunities must be minimized by: <ul style="list-style-type: none"> <li>Eliminating blind or dark alcoves near lifts and stairwells.</li> <li>Providing clear sight lines and well lit routes throughout the development.</li> <li>Providing appropriate levels of illumination for all common areas</li> </ul>                                                                                                                                                                                                                          | Achieved.                                                                                                                                                                                     | Yes                        |
| <b>P7</b> Residential development must be oriented so that primary windows and private open space address the street and publicly accessible areas.                                                                                                                                                                                                                                                                                                                                                                                                               | Achieved.                                                                                                                                                                                     | Yes                        |
| <b>P8</b> Where, as a result of the nature of the development, there are specific security requirements, security measures must form an integral part of the building design.                                                                                                                                                                                                                                                                                                                                                                                     | Achieved. Vestibules are integral to the building design.                                                                                                                                     | Yes                        |
| <b>P9</b> Fully enclosed roller shutters are not permitted to shop fronts or other business premises. Retractable open security grilles may be considered.                                                                                                                                                                                                                                                                                                                                                                                                        | None proposed.                                                                                                                                                                                | N/A                        |
| <b>P10</b> Security bars, roller shutters or fixed grilles visible from the public domain on any commercial, retail or business premises are prohibited.                                                                                                                                                                                                                                                                                                                                                                                                          | None proposed.                                                                                                                                                                                | N/A                        |
| <b>3.2.19 Access and Mobility</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                               |                            |
| <b>P1</b> The main entry of development must be designed and identified for use by persons with a mobility impairment.                                                                                                                                                                                                                                                                                                                                                                                                                                            | Achieved.                                                                                                                                                                                     | Yes                        |
| <b>P2</b> The main entry must be accessible from the street or footpath in accordance with Australian Standard (AS) 1428: Design for Access and Mobility.                                                                                                                                                                                                                                                                                                                                                                                                         | A Disability Access Report was submitted with the development application confirming the design was consistent with AS1428. Compliance will be further ensured through conditions of consent. | Yes, subject to conditions |

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| <b>P3</b> Safe and convenient access must be provided in all development, car parks and communal facilities.                                                                                                                                                                                                                           | Achieved.                                                                                                                                                                                                                                                                  | Yes                        |
| <b>P4</b> Compliance with AS 1428.1 is required with respect to access requirements on new building work.                                                                                                                                                                                                                              | Compliance with AS1428.1 will be secured through conditions of consent.                                                                                                                                                                                                    | Yes, subject to conditions |
| <b>P5</b> Tactile indicators must be provided on the ground immediately adjacent to the approach and departure sides of any changes in floor levels in the public domain which incorporate a step, ramp, stepped ramp or the like in accordance with AS 1428.4.                                                                        | Compliance with AS1428.1 will be secured through conditions of consent.                                                                                                                                                                                                    | Yes, subject to conditions |
| <b>P6</b> 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.                                                                                       | Five (5) units, equating to 10% of the dwellings in the proposal, are adaptable units. These are Units 403, 504, 604, 704 and 1601.                                                                                                                                        | Yes                        |
| <b>P7</b> 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. | Five (5) accessible car spaces are provided for allocation to the relevant units.                                                                                                                                                                                          | Yes                        |
| <b>P8</b> For development providing between 20 to 79 dwellings, one accessible visitor car parking space must be provided on site must be accessible in accordance with the provisions of AS 1428.2 to facilitate automatic vehicular wheelchair loading and unloading.                                                                | An accessible visitor space is proposed.                                                                                                                                                                                                                                   | Yes                        |
| <b>3.2.20 Awnings and Associated Structures</b>                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                            |                            |
| <b>3.2.20.1 Awning Style</b>                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                            |                            |
| <b>P1</b> Awnings must be provided above the public domain (i.e. footpath) for buildings built to the street front boundary, where awnings are part of the streetscape character.                                                                                                                                                      | An awning is not specifically required for the site in the DCP. Notwithstanding this, Level 1 has been designed to overhang portions of the ground floor to effectively create an awning for weather protection of ground level openings and potential for outdoor dining. | Yes                        |
| <b>3.3.1 Burwood Town Centre</b>                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                            |                            |
| <b>Building Height Plane</b><br><b>P1</b> The height of buildings on land within the BTC is not to project above the BHP as identified in Clause 4.3A and on the map marked - "Building Height Plane Map in the BLEP 2012.                                                                                                             | Achieved, as discussed earlier in this report.                                                                                                                                                                                                                             | Yes                        |
| <b>3.3.2 Burwood Town Centre Areas</b>                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                            |                            |
| <b>Commercial Core and Middle Ring Areas</b>                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                            |                            |
| <b>Podium Height</b><br><b>P1</b> Development in the Commercial Core and Middle Ring Areas built to the street front must not have a podium height greater than 15 metres.                                                                                                                                                             | The podium is not built to the street front. Notwithstanding this, the podium is generally 13m-16m from the south to the north, with the portion exceeding 15m due to the slope of the land.                                                                               | N/A                        |

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| <p><b>Street Front Setbacks</b></p> <p><b>P1</b> Development must be built to the street front boundary except where a minimum of <b>3 metre</b>, 6 metre or 8 metre setback is required as indicated in Figure 25. These measurements are taken from the street boundary after any land acquisition required by BLEP 2012 has been completed.</p> <p><b>P2</b> Setback areas must be free of any projections or encroachments, except for approved awnings (provided in accordance with Section 3.2.19 of this DCP) and at grade landscaping.</p> <p><b>P3</b> All ground level setbacks are to be finished at-grade with Council's footpath and finished with materials to match Council's current public domain requirements.</p> | <p>Figure 25 prescribes a 3m streetfront setback. A 3m minimum is proposed.</p> <p>Achieved.</p> <p>Achieved.</p> | <p>Yes</p> <p>Yes</p> <p>Yes.</p> |
| <p><b>Secondary Setbacks</b></p> <p><b>P1</b> Where development in the Commercial Core and Middle Ring Areas exceed 15 metres in height, the part of the development above 15 metres must be set back a minimum of 6 metres from the street front boundary, unless otherwise specified in P3 and Figure 28.</p> <p><b>P2</b> Setback areas must be free of any projections or encroachments.</p>                                                                                                                                                                                                                                                                                                                                     | <p>Refer to discussion under this table.</p>                                                                      | <p>Considered acceptable</p>      |
| <p><b>Side and Rear Setbacks</b></p> <p><b>P1</b> For residential development refer to the building separation setback provisions of the ADG which supplements SEPP 65 - Design Quality of Residential Apartment Development.</p> <p><b>P2</b> Other street front development up to 15 metres in height must be built to the side boundary and may be built to the rear boundary. Refer to Figure 29.</p>                                                                                                                                                                                                                                                                                                                            | <p>Discussed under the ADG section earlier in this report.</p>                                                    | <p>Considered acceptable</p>      |
| <p><b>Building Separation/Frontage</b></p> <p><b>P3</b> The maximum length in any direction of any part of a building parallel to the street above 15 metres in height is 45m (refer to Figure 9). This portion of the building must be suitably articulated to alleviate building mass and improve building appearance.</p>                                                                                                                                                                                                                                                                                                                                                                                                         | <p>Achieved.</p>                                                                                                  | <p>Yes</p>                        |
| <p><b>Communal Open Space</b></p> <p><b>Podium Areas</b></p> <p><b>P1</b> Podium areas must be made accessible as communal open space.</p> <p><b>P2</b> Landscaping must be provided in communal open space. A minimum 0.6 metre soil depth must be provided over 50% of the area to support planting or soft landscaping.</p>                                                                                                                                                                                                                                                                                                                                                                                                       | <p>Achieved.</p>                                                                                                  | <p>Yes</p>                        |
| <p><b>3.9 Transport and Parking in Centres and Corridors</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                   |                                   |
| <p><b>3.9.2 Burwood Town Centre and Strathfield Town Centre</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                   |                                   |
| <p><b>P1 Basic parking requirement:</b> Development in the B4 Mixed Use zone in the Burwood and Strathfield Town Centres must provide parking</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>The provision of car parking has been sought under the DCP.</p>                                                | <p>Acceptable on Merit</p>        |

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| <p>spaces on site for each proposed land use in accordance with the Table 2.</p> <p>Residential flat buildings:<br/>Parking for residents</p> <ul style="list-style-type: none"> <li>• 0.5 spaces per studio or bed-sitter unit.</li> <li>• 1 space per 1 and 2 bedroom unit.</li> <li>• 1.5 spaces per 3 bedroom unit.</li> </ul> <p>Parking for visitors to residents of the development (Visitors Parking)</p> <ul style="list-style-type: none"> <li>• 1 space per 5 units</li> </ul> <p>Tourist and visitor accommodation<br/>Serviced apartments</p> <ul style="list-style-type: none"> <li>• 1 space per accommodation unit</li> <li>• 2 spaces for employees involved in the tourist and visitor accommodation business</li> </ul> <p>Office/business premises<br/>On land zoned B4 Mixed Use in the BTC<br/>In Commercial Core or Middle Ring Areas</p> <ul style="list-style-type: none"> <li>• 1 space for the first 400sqm or part thereof, plus</li> <li>• 1 space per 120sqm or part thereof additional to the first 400sqm. Up to 20% of this can be regarded as parking for visitors to the office or business premises (Visitors Parking).</li> </ul> <p>Cafés<br/>On land zoned B4 Mixed Use</p> <ul style="list-style-type: none"> <li>• 1 space for the first 400sqm or part thereof, plus</li> <li>• 1 space per 40 sqm or part thereof additional to the first 400 sqm.</li> </ul> | <p><u>Residential Requirements</u><br/>1 bedroom – <math>3 \times 1 = 3</math> spaces<br/>2 bedroom – <math>44 \times 1 = 44</math> spaces<br/>3 or more bedrooms – <math>2 \times 1.5 = 3</math> spaces<br/>Visitors – <math>49 / 5 = 9.8</math> (10) spaces</p> <p>Total required = 50 residential spaces and 10 visitors<br/>Total proposed: 50 residential spaces and 9 visitors</p> <p><u>Serviced Apartments</u><br/>9 units = 9 spaces<br/>2 spaces for employees = 2 spaces</p> <p>Total required: 11 spaces<br/>Total proposed: 7 spaces</p> <p><u>Non-Residential Requirements</u><br/>Retail = <math>227.8\text{m}^2 - 1</math> space<br/>Commercial = <math>795.4\text{m}^2 = 4</math> spaces</p> <p>Total required: 5 spaces<br/>Total proposed: 5 spaces</p> <p>A variation of 1 visitor space and 4 serviced apartment spaces is proposed.</p> <p>Refer to the discussion below this table.</p> |                     |
| <p><b>P2</b> Parking for visitors to the Burwood Town Centre and the Strathfield Town Centre: Notwithstanding P1, in the B4 Mixed Use zone, Council may consider and accept an offer from an applicant of a monetary contribution for Visitors Parking in lieu of the provision on-site of all or part of the parking requirement. Such an offer is voluntary and subject to Council's agreement at its discretion. If approved, it will be administered through a Voluntary Planning Agreement under the Environmental Planning and Assessment Act 1979.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>A VPA is in the process of being entered to account for the 1 visitor car space shortfall. This is discussed further in the car parking section below this table.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Acceptable on Merit |
| <p><b>P3</b> In the B4 zone in the Burwood and Strathfield Town Centres, and along Burwood Road North, if an applicant for development is unable to provide the on-site parking spaces as determined under P1 from the Table (other than Visitors Parking spaces agreed in accordance with P2 above) because it is a difficult site, Council may consider an offer of a monetary contribution in lieu of the</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>The site is constrained in its size and does not provide the full requirement for serviced apartment car spaces. A VPA is in the process of being entered to account for the shortfall. This is discussed</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Acceptable on Merit |

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| on-site provision of the parking spaces. Such an offer is voluntary and will be accepted solely at Council's discretion. If approved by Council, it will be administered through a Voluntary Planning Agreement under the Environmental Planning and Assessment Act 1979.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | further in the car parking section below this table.                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                |
| <b>3.9.6 General Requirements in All Centres and Corridors – B1, B2, B4 &amp; B6 Zones</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                |
| <b>P1</b> Compliance with Australian Standards: The design and construction of on-site: <ul style="list-style-type: none"> <li>• Parking areas and parking spaces;</li> <li>• Service and loading/unloading areas;</li> <li>• Access to, from and within these facilities;</li> </ul> Is to comply with the applicable Australian Standards.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Council's Traffic Engineer has reviewed the proposal and has provided conditions of consent.<br><br>The development requires traffic signals to navigate the single width basement ramps. Though the location of the traffic signals was requested, this information was not supplied for assessment.<br><br>Consequently, a condition of consent is recommended to be imposed to ensure the traffic signal system is installed.                                                                            | Yes, subject to conditions                                                                     |
| <b>P2</b> Other general compliance matters: <ul style="list-style-type: none"> <li>• The provision of on-site parking areas, and loading and servicing facilities, must contribute to the retention and enhancement of the quality and integrity of the streetscape and integrate with surrounding development.</li> <li>• A loading dock and servicing facilities for developments must be provided as required by AS 2890.2 Part 2: Off-street commercial vehicle facilities, or in any case for all developments erected on land having an area greater than 1500 sqm.</li> <li>• Where parking is provided for development that includes Retail premises and Business premises, and all of the required parking is provided on-site (i.e. the development has not made a substantial voluntary contribution for parking in lieu of on-site provision), the following additional requirements apply: <ul style="list-style-type: none"> <li>○ the parking area must be open for public use within the normal trading and operating hours of the site;</li> <li>○ the parking area must be accessible with appropriate directional signage, and must be clearly marked and signposted as public parking;</li> <li>○ within the building where the parking is located, there must be clear, signposted and safe access between the parking area</li> </ul> </li> </ul> | All car parking is located in the basement. Waste collection does occur at grade within the site and is necessary due to the narrow site dimensions not facilitating<br><br>The site is not over 1500m <sup>2</sup> .<br><br>All required retail and business car parking is provided on the site.<br><br>The first basement level is accessible. A separate door prevents access to the strictly residential lower levels.<br><br>Signposting will be required as a condition of consent.<br><br>As above. | Yes.<br><br>N/A<br><br>Yes<br><br>Yes, subject to conditions<br><br>Yes, subject to conditions |





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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| <p>Service ducts or pipes must not be visible from the street.</p> <ul style="list-style-type: none"> <li>Separated and clearly differentiated pedestrian and vehicular access must be provided, with vehicular access a minimum of 3m from pedestrian access.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Achieved.                                                                                                                                                                          | Yes                               |
| <p><b>P5 Cycling</b></p> <ul style="list-style-type: none"> <li>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.</li> <li>Standards for the number of bicycle parking facilities and number of showers/lockers for different land uses are provided in Cycling Aspects of Austroads Guides (Austroads and Standards Australia 1999) and Planning Guidelines for Walking and Cycling (Department of Planning and the Roads and Traffic Authority 2004); developments must demonstrate compliance with the requirements of either of these publications.</li> </ul> | <p>Bicycle parking and end of trip facilities are located on Basement 1.</p> <p>Council's Traffic referral supports the provision.</p>                                             | <p>Yes</p> <p>Yes</p>             |
| <b>3.10 Heritage in Centres and Corridors</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                    |                                   |
| <p><b>Objectives</b></p> <p><b>O1</b> To support the retention of heritage properties and maintain their heritage significance.</p> <p><b>O2</b> To ensure that alterations or additions to heritage properties are sympathetic to the heritage significance of the property and in keeping with its character.</p> <p><b>O3</b> To ensure that development located in the vicinity of a heritage item is designed and sited in a manner sympathetic to the significance of the heritage property and its setting.</p> <p><b>O4</b> To facilitate adaptive re-use of heritage properties where such a use would contribute to the ongoing maintenance and viability of that item or place.</p>                                                                     | <p>Though the site is proximate to several items of heritage, it does not adjoin any directly. Council's Heritage Officer reviewed the proposal and supported the application.</p> |                                   |
| <b>3.11 Public Domain and Amenity</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                    |                                   |
| <b>3.11.5 Treatment of Street Front Setbacks</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                    |                                   |
| <p><b>P1</b> In the Commercial Core and Middle Ring Areas, where a street front setback of development is required in Figure 28, the setback area is to be treated and upgraded in a manner consistent with the requirements for the public domain immediately in front of the development. A right of pedestrian and vehicle movement by way of an easement in Council's favour in accordance with a Section 88B Instrument under the Conveyancing Act 1919 over the setback area is to be placed on the title of the land.</p>                                                                                                                                                                                                                                   | <p>This will be secured by conditions of consent.</p>                                                                                                                              | <p>Yes, subject to conditions</p> |

**5.5A Serviced Apartments***Operation and Management*

**P1** The serviced apartments in an approved serviced apartments development are to be maintained and operated as a single entity.

**P2** An operational Management Plan is to be submitted with each DA for a serviced apartment development to ensure that the proposed premises operate in a manner consistent with the definition of serviced apartments.

**P3** The Management Plan must provide satisfactory details on the following matters:  
Provision of a manager or an agent of the manager within the serviced apartment premises, the hours of the manager's availability and contact details 24 hours per day, 7 days a week.

- Details of the Emergency Management and Evacuation Plan for the premises
- The on-site management is responsible for operation, administration, cleanliness and fire safety of the premises including compliance with the Management Plan and Emergency Management and Evacuation Plan
- Provision of a "front desk" where keys are made available to clients and that also deals with other relevant matters such as the provision of information on the use of common areas and facilities, car parking and house rules.
- Details of the regular servicing and cleaning of the serviced apartments, and details of the permanent furnishing of the apartments.
- Details of the letting arrangements, with a provision to be included that limits the stay of tenant(s) to a maximum of three months.

**P4** A clearly visible sign with the name and telephone number of the on-site manager must be displayed externally at the front entrance of the serviced apartments.

**P5** Consents issued for serviced apartments developments will be conditioned to the effect that the maximum length of stay of a client is not to exceed three months to ensure that developments comply with the relevant definitions in the BLEP 2012.

**P6** All serviced apartments must be furnished prior to occupation.

This will be conditioned.

A Plan of Management was submitted and will be conditioned with any consent.

The Plan of Management is satisfactory.

Required through the Plan of Management.

Required through the Plan of Management.

Achieved.

No subdivision has been sought.

Yes, subject to conditions

Yes

Yes

Yes

Yes

Yes

N/A

*Strata Ownership*

**P7** Strata subdivision may be approved where all of the units in a development are a group in a strata plan. Parking for the serviced apartments also must be grouped together with the serviced apartment units in the strata plan.

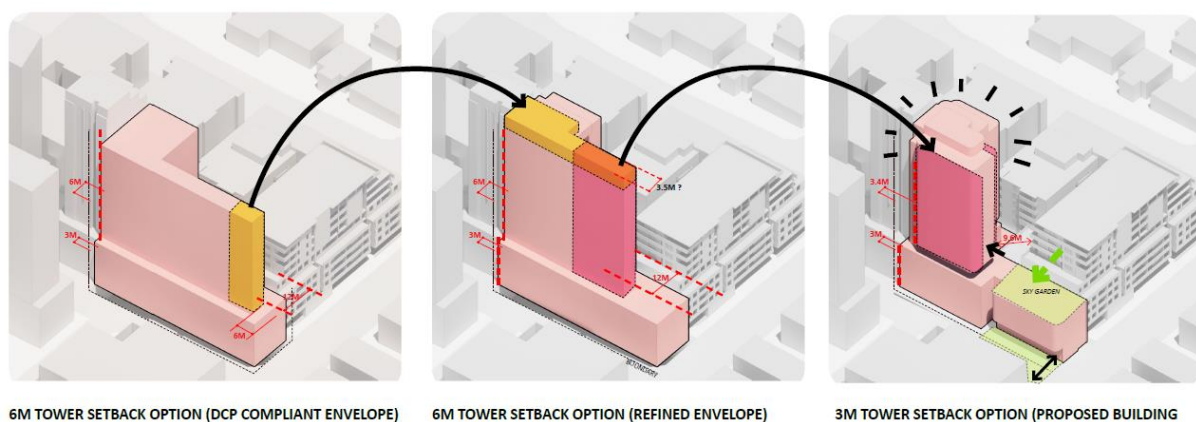
**6 Environmental Management**

|                                          |                                                                                                                                                                                                                        |                            |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 6.1 Preservation of Trees and Vegetation | Discussed under SEPP (Biodiversity and Conservation) 2021 earlier in this report.                                                                                                                                      | Yes                        |
| 6.2 Waste Management                     | Refer to discussion below this table.                                                                                                                                                                                  | Yes                        |
| 6.3 Acid Sulfate Soils                   | Though the site is identified as Class 5, it does not require an acid sulfate soils management plan.                                                                                                                   | N/A                        |
| 6.4 Flood Planning                       | The site is not identified as flood affected.                                                                                                                                                                          | N/A                        |
| 6.5 Stormwater Management                | Council's engineer has reviewed the stormwater concept plan and provided conditions of consent.                                                                                                                        | Yes                        |
| 6.6 Landscaping                          | A Landscape Plan has been submitted with the application that, through amendments and discussions with the Design Review Panel, has delivered a high quality landscaping outcome for a high density urban development. | Yes                        |
| 6.7 Energy Efficiency and Sustainability | A BASIX Certificate has been submitted with the development application.<br><br>A condition of consent will be imposed to ensure an updated certificate is prepared to align with the final unit designs.              | Yes, subject to conditions |

### Secondary Street Setback

A 6m secondary street setback for the tower portion of the building is prescribed in Figure 28. The proposal provides for a 3.4m minimum setback.

As mentioned earlier in this report, the applicant undertook an urban design analysis to inform the proposed tower location and the setbacks. The image below formed part of this analysis.



**Figure 31:** Applicant's massing study

A strictly compliant 6m secondary street setback would leave a tower width of approximately 3.5m once a setback to the east was also considered. A nil setback to the east (and the

established unit block of 1-3 Belmore Street) would be a poor outcome for visual bulk and natural light, particularly for the units that have balconies and windows on the western elevation. Accordingly, the tower was shifted from near Belmore Street to the northern, wider portion of the site. To enable the use of the floor area permitted on the site, this necessitated in-filling part of the 6m secondary street setback.

The resultant setback of 3.4m at the minimum has been endorsed by the Design Review Panel and is of sufficient merit to be supported. The strictly compliant scenario results in a fundamentally unusable tower width. On constrained sites, a certain flexibility can be adopted to deliver a superior outcome. In this instance, the tower portion located at the northern extent of the site delivers a sensible floor plate for the site and a better amenity outcome for 1-3 Belmore Street through retention of natural light and less visual bulk.

Future development to the west on the Burwood Court House site will not be unreasonably restricted by the proposed reduced secondary street setback, as the tower portion is largely located opposite the T-intersection portion of Elizabeth Street rather than directly opposite, reducing potential visual privacy concerns into the future.

#### Car Parking

A variation of one (1) residential visitor car space and 4 serviced apartment car spaces is proposed per the assessment of car parking in the table above.

While Council's DCP includes provision for a residential visitor or other car parking shortfall to be offset by a monetary contribution through a VPA, it is firstly determined whether the variation can be supported.

The site is located 350m walking distance from the Burwood Train Station. Further, numerous bus services are available within 300m walking distance from the site. Consequently, the site is well serviced by public transportation.

A shortfall of one residential visitor car space is not deemed a significant variation given the high level of connectivity, even within the Burwood Town Centre. There remain nine visitor spaces proposed to service guests not arriving by public transportation or alternative transportation methods.

The serviced apartment car parking rate is shared with other tourist and visitor accommodation uses such as hotels or motels, backpacker's accommodation, bed and breakfasts, etc. The rate is for 1 space per unit and 2 spaces for employees involved in the business.

The proposed 7 car spaces result in a shortfall of 4 spaces for the 9 serviced apartments. As currently allocated, this is a shortfall of 2 spaces per unit and 2 spaces for employees.

For the units, it is not expected for all tourists or visitors to have a car. Similar to contemporary hotel development, a booking system can be implemented to ensure guests inform the company that a car space is requested. If a car space is not available, the guest may then elect to stay elsewhere that suits their needs.

Given the well connected and high frequency public transportation available, the shortfall of car parking spaces for the serviced apartments is deemed acceptable.

Unlike a hotel or motel development, serviced apartments typically do not have a counter staff or receptionist to greet guests. The proposed serviced apartment arrangement is the same. The staff requiring access to the property are cleaners and maintenance staff on a day-to-day basis. Consequently, two car spaces for staff are not required. However, one car space is considered warranted for cleaning and maintenance staff. A condition of consent will be



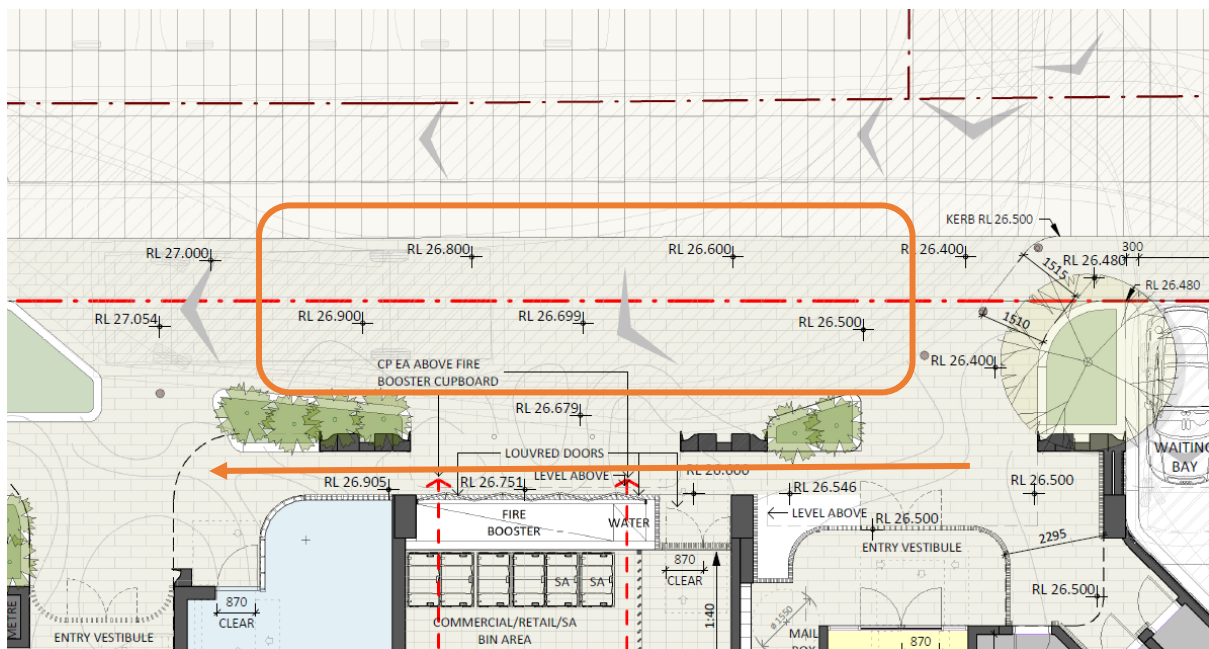
imposed to require one of the proposed serviced apartment car spaces to be allocated for staff.

The above car parking assessment has determined that the variation is of itself supported. Accordingly, the pursuit of a VPA for a monetary contribution to be paid to Council in place of the required on-site car spaces is supported in this instance. This VPA is on exhibition at the time of writing, from 2 July to 31 July 2024. The requirement for the monetary contribution is to be paid prior to the construction certificate is to be secured through conditions by way of a deferred commencement consent.

### Waste Management

A Waste Management Plan was submitted with the application.

The initial submission sought for waste collection to occur at ground level and within the setback area of the site. No dedicated 'loading bay' was proposed within the building envelope. The location of the waste collection area is illustrated below.



**Figure 32:** Waste Collection Area and Pedestrian Route

The initial referral from Council's Traffic and Waste officers raised concerns over the waste collection location. The main concerns raised were:

- The vehicle modelled was a MRV and Council's collection vehicle is a HRV.
- The location sought may block vehicles using the one-way Elizabeth Street.
- The collection should occur within the site and allow forward entry and egress.
- The proposed location may create a risk for pedestrians.

The applicant has submitted additional information in the form of swept paths demonstrating a HRV can use the proposed location and can park in a location that does not conflict with other vehicle movements on Elizabeth Street. Additionally, it was discussed that the site does not have the dimensions to facilitate a forward entry and egress loading bay in the basement and would take substantial space away from ground level retail otherwise. The site, while adequate in site area, is narrow and constrained by its L shape. Finally, it was discussed how planters would provide a barrier at ground level between the truck parking area and where

pedestrians can walk within the site, ensuring the safety of pedestrians and avoiding a case where pedestrians will be encouraged to walk on Elizabeth Street.

These matters were considered and supported by Council's Traffic and Waste officers subject to conditions.

The development is found to be consistent with the key provisions of the DCP or is otherwise acceptable with their objectives and is supported.

#### **4. Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

The development application was accompanied by a request to enter into a Voluntary Planning Agreement (VPA). The VPA serves to allow for the additional 10% FSR under Clause 4.4A Exceptions to floor space ratio under the LEP. The specific offer to meet those requirements was either through a monetary contribution toward the provision of community infrastructure or the dedication of a commercial tenancy to Burwood Council to be used as community floor space.

The assessment of the VPA request has progressed separately and concurrently with the assessment of the development application. The progressed offer is a monetary contribution toward the provision of community infrastructure. This approach has been undertaken on a number of other development applications in the Burwood Town Centre under Clause 4.4A to grant the additional floor area.

The draft VPA is on exhibition at the time of the preparation of this report, from 2 July to 31 July 2024.

The VPA is sufficiently progressed to enable support of the development application subject to the endorsement and completion of the VPA.

Additionally, a second VPA is also part of the application and is currently on exhibition in the same period of 2 July to 31 July 2024. The second VPA is a monetary contribution to be paid to Council in lieu of the full provision of the required residential visitor car parking and serviced apartment car parking. The monetary contribution mechanism is permitted by Section 3.9.2 of the Burwood DCP 2013 where Council may consider and accept an offer from the applicant of a monetary contribution for car parking at its discretion. In the circumstances of this case, the VPA is accepted.

This VPA is also sufficiently progressed to enable support of the development application subject to the endorsement and completion of the VPA.

The recommendation of the report is for a deferred commencement consent to be issued that will ensure the VPAs are endorsed, completed and paid prior to the issue of a construction certificate to secure an acceptable outcome.

#### **5. Section 4.15(1)(a)(iv) - Provisions of Regulations**

The Environmental Planning and Assessment Regulation 2021 requires the consent authority to consider the provisions of the NCC, which have been taken into account in the assessment of the application.

### **3.2 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

#### **(a) Natural and Built Environment**

The proposed development will have a negligible impact on the natural environment. The site is already developed with a commercial building occupying much of the site with few trees and none identified of significance. The removal of the vegetation to facilitate the development is acceptable and consistent with the similar development types in the Burwood Town Centre.

The proposed landscape plan prepared by Land and Form illustrates a positive planting outcome for a high density environment, including the provisions trees in the street setbacks.

The proposed development is of a size and scale consistent with the desired future character of the area. The built form has been well crafted and has achieved design excellence. It will not have a negative impact on the built environment.

#### **(b) Social Impacts and Economic Impacts**

There are no negative social impacts created by the proposal. The site is zoned for the use and scale of development and has satisfactorily resolved the key concerns.

The proposal will provide for new commercial floor area, delivering employment opportunities for the life of the development.

### **3.3 Section 4.15(1)(c) - Suitability of the site**

The proposed development is permissible with consent and, as detailed within this report, capable of being accommodated on the land. The site is suitable for the redevelopment proposed.

### **3.4 Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 5 of this report.

### **3.5 Section 4.15(1)(e) - Public interest**

For the reasons set out within this assessment report, the proposal is recommended for a deferred commencement consent. Therefore, the development is in the public interest.

## **4. REFERRALS AND SUBMISSIONS**

### **4.1 Agency Referrals and Concurrence**

The development application has been referred to various agencies for comment / concurrence / referral as required by the EP&A Act and outlined below in **Table 11**.

**Table 11: Concurrence and Referrals to Agencies**

| Agency                       | Concurrence/<br>referral trigger                                                                                                            | Comments<br>(Issue, resolution, conditions)                                                                                                                                                              | Resolved |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Electricity supply authority | Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i><br>Development near electrical infrastructure | Ausgrid was referred the application and has provided support subject to conditions.                                                                                                                     | Yes      |
| Design Review Panel          | Section 145(2) – <i>State Environmental Planning Policy (Housing) 2021</i><br>Advice of the Design Review Panel ('DRP')                     | The advice of Council's Design Review Panel has been considered in the assessment and is further discussed under the SEPP (Housing) 2021 section.                                                        | Yes      |
| Water NSW                    | Section 90(2) – <i>Water Management Act 2000</i>                                                                                            | The Geotechnical Investigation submitted with the application indicates that groundwater seepage is likely to occur. A referral to Water NSW was undertaken and General Terms of Approval were provided. | Yes      |

#### 4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 12**.

**Table 12: Consideration of Council Referrals**

| Officer     | Comments                                                                                                                                                                                                                                                                                                                                    | Resolved |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Engineering | Supported subject to conditions.                                                                                                                                                                                                                                                                                                            | Yes      |
| Traffic     | Initial concern was raised regarding the shortfall of car parking, that the basement design would need traffic signals and the potential for the waste truck collection location to block vehicles and pedestrian movement.<br><br>Following the submission of additional information, the application was supported subject to conditions. | Yes      |
| Landscape   | Supported subject to conditions.                                                                                                                                                                                                                                                                                                            | Yes      |
| Heritage    | Supported.                                                                                                                                                                                                                                                                                                                                  | Yes      |
| Waste       | Initial concern was raised regarding the waste collection location and that it was designed for a MRV not a HRV, which is Council's waste vehicle.                                                                                                                                                                                          | Yes      |

|  |                                                                                                          |  |
|--|----------------------------------------------------------------------------------------------------------|--|
|  | Following the submission of additional information, the application was supported subject to conditions. |  |
|--|----------------------------------------------------------------------------------------------------------|--|

### 4.3 Community Consultation

The proposal was notified for a period of 21 days in accordance with the Burwood Council's Community Engagement Strategy 2023-2026, from 5 October 2023 until 26 October 2023.

The Council received a total of 28 submissions, all objections. The issues raised in these submissions are considered in the table below.

**Table 13: Community Submissions**

| Issue                                                            | No of submissions | Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Inconsistency with the Building Envelopes in the DCP ("L" shape) | 15                | <p>The variation to the DCP envelope is discussed earlier in the BDCP section of this report.</p> <p>Several submissions note the height of the development. The application is compliant with the building height except for plant and associated screening, which is considered an acceptable variation as discussed earlier in the report.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Overshadowing of 1-3 Belmore Street                              | 25                | <p>Overshadowing is discussed earlier in this assessment report. However, in brief, the development does not reduce solar access to a unit on 1-3 Belmore Street below 2 hours, the minimum requirement under ADG. Consequently, the level of retained solar access is acceptable.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Acoustic Impacts of Cars, Retail and Mechanical Plant            | 16                | <p>The waste collection is occurring at-street level due to the site not being capable of accommodating Council's waste truck entry and egress in a forward direction. Given site constraints, the arrangement is satisfactory.</p> <p>The impact of vehicles arriving at the site on surrounding properties was assessed in the acoustic report and it was determined that the noise levels would remain compliant with the noise criteria (&lt; 1dB increase).</p> <p>The retail tenancies are part of the intended land use mix in the CBD and are necessary for permissibility development. No hours of operation have been sought as part of this application, nor any specific use beyond the serviced apartments. Hours of operation for the retail and business tenancies will be assessed as part of individual fit-out applications in accordance with Council's policies.</p> <p>Mechanical plant noise impacts are typically assessed at the construction certificate stage. The development will be required to comply with the relevant amenity criteria as part of conditions of consent.</p> <p>Compliance with all noise criteria is required through condition of consent.</p> |
| Visual Privacy / Overlooking on 1-3 Belmore Street               | 16                | <p>Amendments have been made throughout the assessment to improve visual privacy. Particularly, the southern units which originally created an overlooking concern to 1-3 Belmore Street have been redesigned to orient the views over the building or to</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

|                                                        |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                        |    | the south, as illustrated in Figure 21. A privacy shelf has been introduced to Unit 501, the most susceptible to creating an overlooking concern of the COS on 1-3 Belmore Street – discussed (where).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Foundations and Structural Integrity                   | 12 | A Geotechnical Assessment was submitted with the application. The recommendations of the report will be conditioned in the event of an approval to ensure the groundwork is undertaken to ensure the structural integrity of the building.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Safety and Security due to Serviced Apartments         | 3  | <p>One concern centred on guests may enter 1-3 Belmore Street thinking it is the serviced apartment building. Conditions of consent would be imposed in the event of an approval to require street numbering consistent with Council's policies to ensure the development on 5 Belmore Street is clearly separate.</p> <p>There are no safety or security concerns created by tourist and visitor accommodation otherwise. The land use is permissible. There is no reasonable expectation that guests in the serviced apartment units would affect the amenity of those in neighbouring residential developments. Notwithstanding this, any complaints will be required to be managed appropriately in accordance with the Plan of Management for the serviced apartments which will be conditioned with any approval.</p> |
| Traffic Impact                                         | 4  | The impact of the additional vehicles on the traffic network were assessed in the applicant's Traffic Impact Assessment and considered by the Council's Traffic officer and considered acceptable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Wind Assessment was Inadequate                         | 1  | The Wind Impact Assessment submitted by the applicant is consistent with the level of information typically required for developments of this scale in the Burwood CBD.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Emergency Evacuation                                   | 2  | It is outside of the scope of a development application to consider evacuation for any development except the individual site. An evacuation plan is legislatively required for this building.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Density and Height                                     | 5  | <p>The density of the development is compliant in terms of FSR through the VPA, consistent with other mixed use development in the Burwood CBD. While a modest variation in building height has been created, it has a negligible additional impact and is not sufficient cause to request a reduction in density.</p> <p>A submission noted the height in comparison to 1-3 Belmore Street as too divergent. The development at 1-3 Belmore Street is essentially at its development capacity due to Clause 4.3A imposing a building height plane measured from Shaftesbury Road west to scale down development to the fringes of the town centre. The proposal is compliant with Clause 4.3A as it affects the site and thus the scale, density and height transition is as envisaged by the planning controls.</p>       |
| Deep Soil Non-Compliance                               | 1  | Deep soil is not proposed for this development. ADG allows no deep soil in high density areas with non-residential ground floors, such as this site. The proposal is consistent with ADG in this regard.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Building Separation Non-Compliance                     | 1  | Discussed earlier in this report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Stormwater and Sewage Design & Infrastructure Capacity | 2  | Concern was raised regarding infrastructure upgrades. These have been assessed by Council's engineer and are acceptable to conditions of consent.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

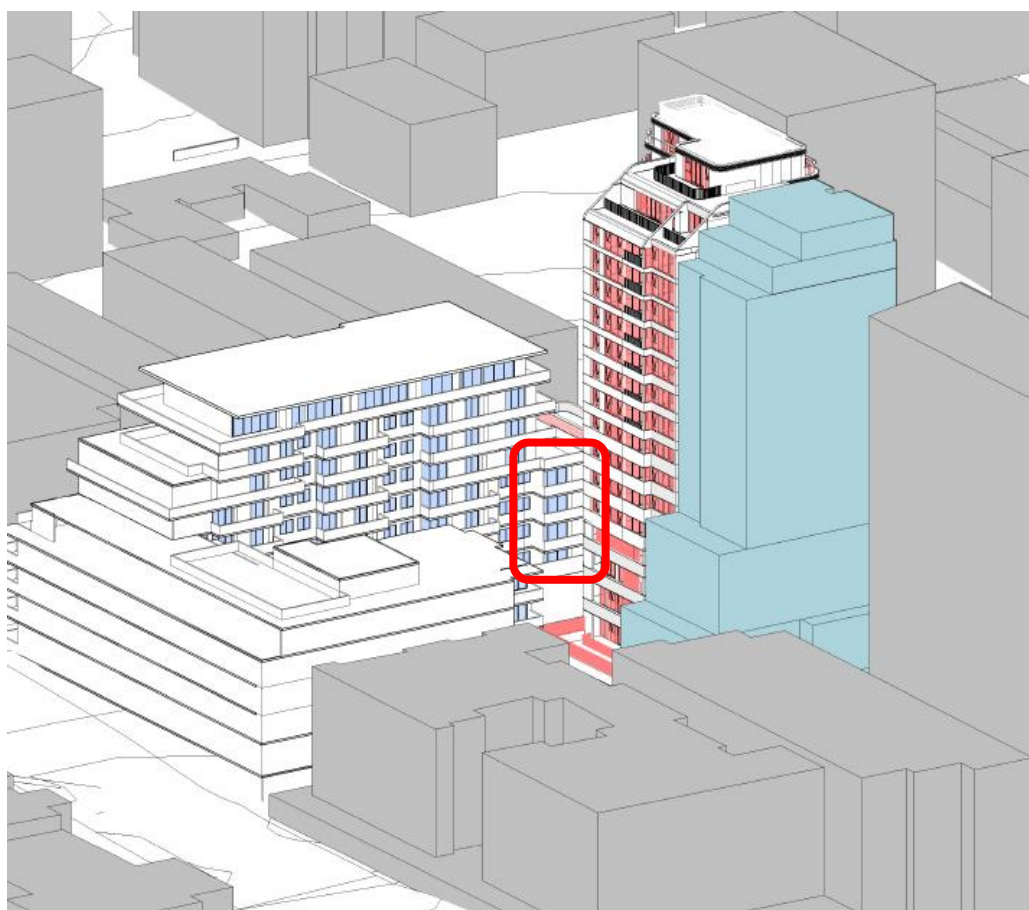


|                                            |   |                                                                                                                                      |
|--------------------------------------------|---|--------------------------------------------------------------------------------------------------------------------------------------|
| Construction Noise, Dust and other Impacts | 2 | Matters of construction impacts will be addressed through conditions of consent typical for construction in the Burwood Town Centre. |
| Property Value                             | 1 | The potential for a decrease in property value is not a consideration under the EP&A Act.                                            |

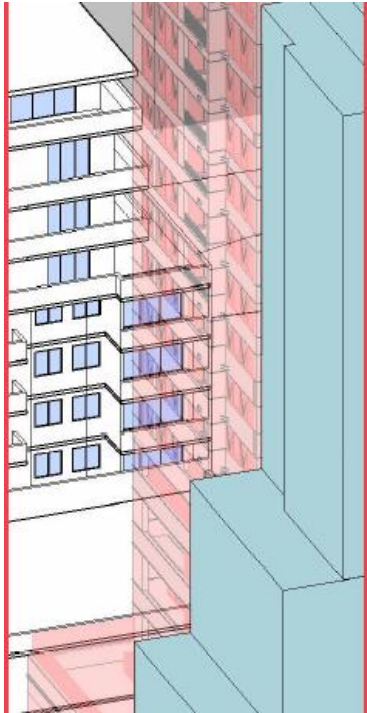
### **Overshadowing**

A concern was raised in the submissions regarding the overshadowing of the adjoining shop top housing building at 1-3 Belmore Street. The initial submission did not provide sufficient information to assess the impact on the north facing units. Consequently, a request for additional information was issued requiring an assessment of the impact.

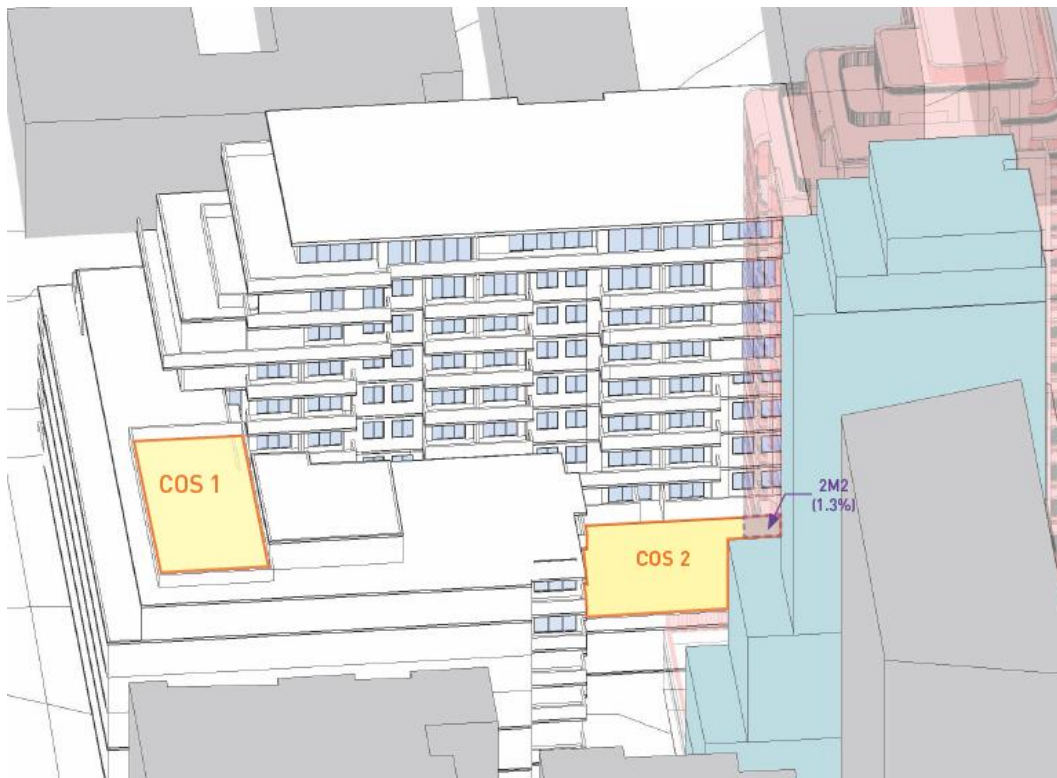
A sun-eye diagram analysis illustrated that, when factoring in the approved boarding house at 4 Railway Parade, the westernmost units of 1-3 Belmore Street (those most vulnerable to overshadowing) received solar access at 9am and 10am but would be overshadowed at 11am. Refer to the images below.



**Figure 33:** 9am Sun-Eye Diagram (Source: PTW Architects)



**Figure 34:** Inset of 10am Sun-Eye Diagram (Source: PTW Architects)



**Figure 35:** 11am Sun-Eye Diagram (Source: PTW Architects)

As the above illustrates, the western four units have solar access at 9am to 10am but not at 11am when considering the approved boarding house.

There are no overshadowing controls in the Burwood DCP for Centres and Corridor development, including the Burwood Town Centre. The ADG requirement of 2 hours of solar

access to living rooms and private open spaces is instead referred to as part of the merit assessment of overshadowing.

As shown in Figures 33-35, the boarding house approved already removes solar access at 11am, thus less than 2 hours is achieved in the current scenario. The 10am sun-eye diagram shows overshadowing of the living room windows but retains a portion in sun that would achieve a 1m<sup>2</sup> internal area measured at 1m above the floor level, satisfying the test of meaningful solar access under ADG. Consequently, 1 hour of solar access is maintained in the period between 9am and 10am.

The applicant also supplied 8am and 8:30am sun-eye diagrams to illustrate that 2 hours of solar access is still achieved for the top two of the four units and 1.5 hours for the lower two units when considering an hour earlier than the strict 9am to 3pm period usually assessed on June 21. This is shown below.



**Figure 36:** 8am and 8:30am Sun-Eye Diagram (Source: PTW Architects)

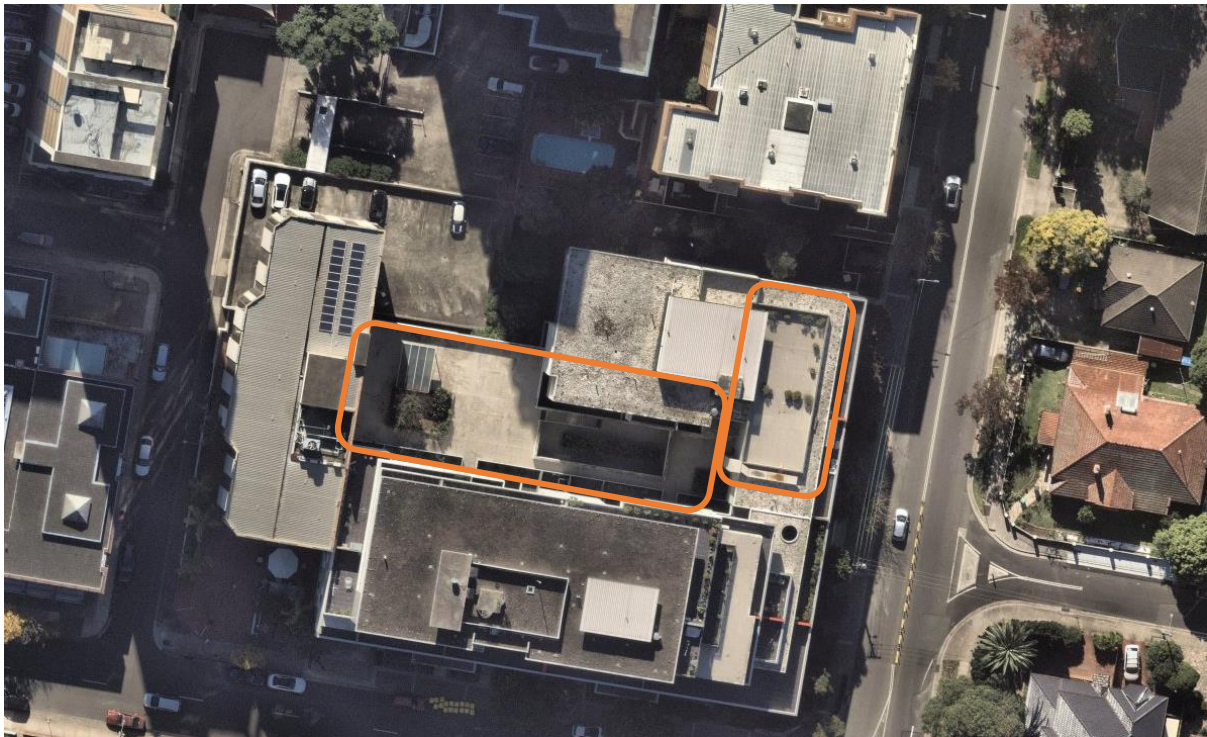
The access to sunlight planning principle in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 acknowledges that “The ease with which sunlight access can be protected is inversely proportional to the density of development” and “At higher densities sunlight is harder to protect and the claim to retain it is not as strong.” A CBD level density where 60m height and 4.5:1 FSR development standards are prescribed to the site is such a higher density area where the ability to protect solar access is difficult. In this instance, with a portion of the site located to the north of 1-3 Belmore Street, it is not possible to develop the site without some impact.



The level of impact is deemed acceptable given the density of development anticipated on the site and the desired future character of the area, the orientation and continued availability of natural light in the 8am to 9am period.

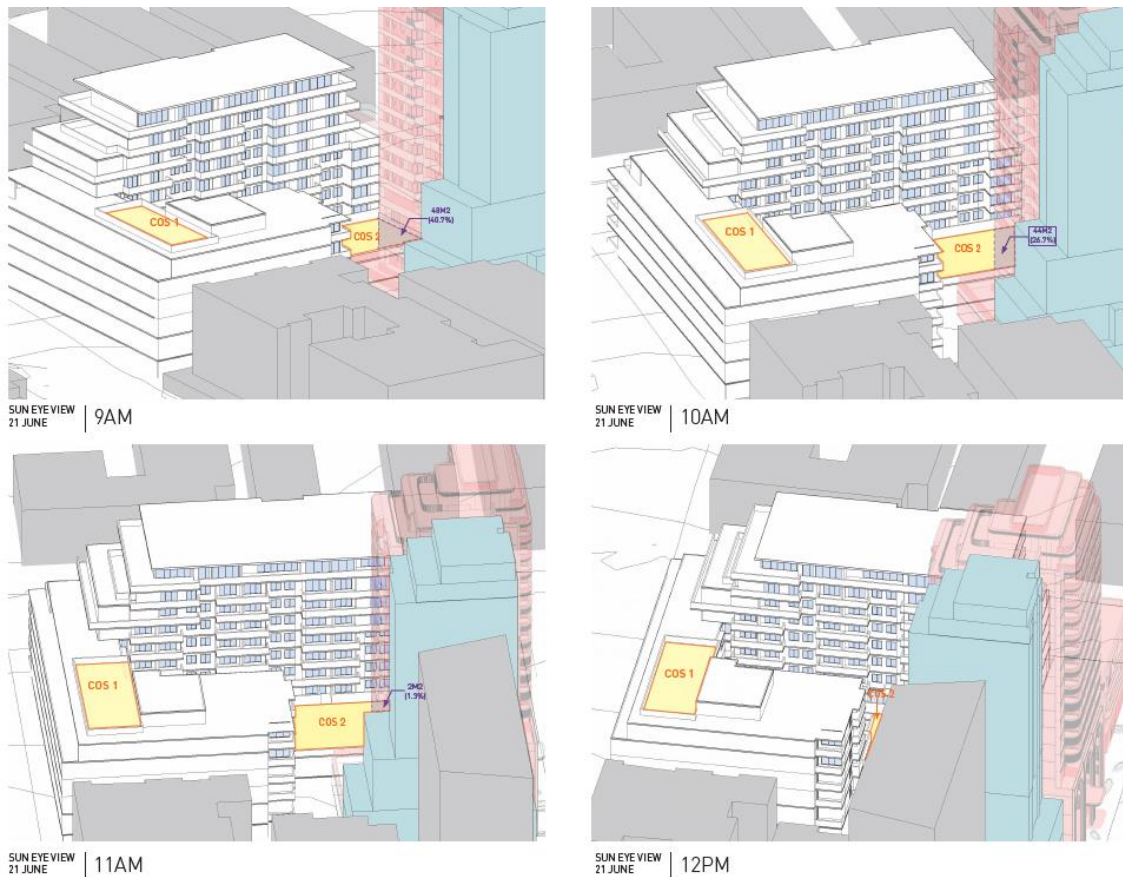
All other units retain 2 hours of solar access, where currently achieved inclusive of the approval on 4 Railway Parade.

A second consideration was the impact on the communal open space on 1-3 Belmore Street. Two areas of communal open space were identified. Refer to the aerial below.



**Figure 37:** Aerial of 1-3 Belmore Street identifying communal open space locations

The western area sits at a lower level and is susceptible to overshadowing by the development. An assessment was undertaken of the impact.



**Figure 38:** Communal open space impact assessment

The assessment showed that 2 hours of solar access would continue to be achieved to the lower communal open space between 9am and 11am, though the extent would be reduced particularly at 9am. Notwithstanding this, the impact is acceptable in that 2 hours is maintained.

The second communal open space area continues to achieve solar access until 2pm, where other buildings overshadow it.

The development is acceptable in its overshadowing impact on 1-3 Belmore Street.

The broader overshadowing impact on properties on the southern of Belmore Street is similarly acceptable in view of the density of development envisioned for the Middle Ring.

## 5. KEY ISSUES

The key issues associated with the proposal included:

1. *Floor Space Ratio* – A number of omissions from the calculations were observed during the initial assessment of the application, including waste rooms, certain enclosed corridors on the ground floor, Level 1 and 4 and a commercial tea room. These matters were resolved through the assessment process. The applicant included additional areas of the ground floor waste rooms and all of the common corridors and tea room.

2. *Solar Access* – The architectural plans and Statement of Environmental Effects claimed compliance with solar access to living rooms and private open spaces with the 70% requirement under Objective 4A-1 of the Apartment Design Guide. However, an assessment of the sun-eye diagrams indicated the development did not comply. The development is not able to utilise a northerly orientation due to the approved 19 storey boarding house that abuts the northern boundary, reducing the potential to achieve 2 hours of solar access. The proposal has been amended throughout the assessment to optimise the number of units that receive solar access, notwithstanding that compliance is not achieved.
3. *Building separation* – Several encroachments are proposed for building separation. The L shaped site and the nil setback to the northern boundary limit the potential locations for a tower form on this site. The pressure points in the envelope occur between the site and 1-3 Belmore Street to the southeast, particularly at the corner, resulting in several windows within the separation distance. This relationship has been managed through a redesign of the internal layout to limit outlook east and south, and not directly southeast to balconies and habitable rooms. Further, a visual privacy analysis was explored to minimise potential overlooking of the communal open space of 1-3 Belmore Street. Building separation over Elizabeth Street is also marginally non-compliant for the tower, however, no visual privacy concerns are raised.
4. *Waste Collection Location* – The waste collection area is proposed within the site at ground level. However, this location was questioned due to potential blockage of Elizabeth Street during collection and on pedestrian safety. The applicant submitted additional information confirming that the waste truck will be sufficiently off Elizabeth Street to prevent any blocking of through traffic and a demonstration that pedestrians can safely walk within the site around the waste collection location to avoid vehicle/pedestrian conflict.
5. *Car Parking* – A shortfall in car parking is proposed, for one residential visitor space and 4 serviced apartment spaces. The shortfall was assessed as acceptable subject to entering into a Voluntary Planning Agreement for a monetary contribution to address the shortfall in accordance with Council's policies.
6. *Overshadowing* – Further detail was required to assess the overshadowing impact on 1-3 Belmore Street, for units and the communal open space. Additional information supplied illustrated that 4 units would technically retain an hour of solar access though the degree of solar access would be reduced substantially. This assessment has considered the approved 19 storey development on 4 Railway Parade, which reduced solar access below 2 hours. The communal open space would also see an impact but retain 2 hours to one communal open space and 5 hours to the second, eastern open space area.

## 6. CONCLUSION

The proposal is for the demolition of the existing building and construction of an 18 storey mixed use development containing 49 residential units, 9 serviced apartments, 9 commercial tenancies and 2 retail tenancies, above basement parking and landscaping and site works at 5 Belmore Street, Burwood. Following a detailed assessment of the application, the proposal is generally consistent with the relevant planning instruments including SEPP (Housing) 2021, the Apartment Design Guide, Burwood LEP 2012 and the Burwood DCP. The development is permissible with consent and is consistent with the objectives of the zone and those of the relevant development standards.

The proposed design is deemed to have exhibited design excellence in accordance with Clause 6.5 of the LEP. The design has had due regard to its constraints, neighbouring



property relationships and delivered a positive outcome through the level of amenity achieved to its units and retained to adjoining properties, its overall appearance and streetscape presentation.

It is considered that the key issues in the application have been satisfactorily resolved and the application is recommended for a deferred commencement consent.

## **7. RECOMMENDATION**

The Development Application DA2023.79 for the demolition of the existing building and construction of an 18 storey mixed use development containing 49 residential units, 9 serviced apartments, 9 commercial tenancies and 2 retail tenancies, above basement parking and landscaping and site works at 5 Belmore Street, Burwood be issued a DEFERRED COMMENCEMENT CONSENT pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- Attachment A: Draft Notice of Determination/Conditions of Consent
- Attachment B: Architectural Plans
- Attachment C: Landscape Plans
- Attachment D: Statement of Environmental Effects
- Attachment E: Clause 4.6 Variation to Clause 4.3 Height of Buildings
- Attachment F: Plan of Management (Serviced Apartments)
- Attachment G: Survey Plan