

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC331 – DA.2022.44.2
PROPOSAL	Modification to the approved Burwood Urban Park and Cultural Centre. Amendments include lowering of finished floor levels, internal reconfiguration, increased gross floor area, expanded theatre, relocation of studio from ground to lower ground, change of use from café to a food and drink premises with extended hours, amendments to design of 'marker' structure and modification to approved landscaping scheme
ADDRESS	<ul style="list-style-type: none"> • Part 2-4 Conder Street, Burwood – Burwood Library and Carpark • Part 52-60 Railway Parade, Burwood – Burwood Place • Part Railway Parade Road Reserve • Part Conder Street Road Reserve
APPLICANT	Mecone NSW Pty Ltd
OWNER	Burwood Council & Wynne Ave Property Pty Ltd
DA LODGEMENT DATE	25 July 2024
APPLICATION TYPE (DA, Concept DA, CROWN DA, INTEGRATED, DESIGNATED)	S4.55 (2) Modification Application
REGIONALLY SIGNIFICANT CRITERIA	The application is referred to the Sydney Eastern City Planning Panel as the proposal is Council related development with a capital investment value of more than \$5 million
CIV	\$44,075,042
CLAUSE 4.6 REQUESTS	Not Applicable
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Burwood Local Environmental Plan (BLEP) 2012
TOTAL & UNIQUE SUBMISSIONS	Nil

DOCUMENTS SUBMITTED FOR CONSIDERATION	<ol style="list-style-type: none"> 1. Revised Architectural Plans 2. Revised Landscape Plans 3. Heritage Statement 4. Revised Waste Management Plan 5. Traffic and Parking Review 6. Civil Engineering Report 7. Civil Plans 8. Acoustic Addendum Letter 9. Section J Report 10. BCA Compliance Report 11. Fire Engineering Compliance Letter 12. Amended Public Art Plan 13. Cost Plan 14. Plan of Management 15. Access Report
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	12 November 2024
PLAN VERSION	D
PREPARED BY	Geraldine Pham – Senior Town Planner (Consultant)
DATE OF REPORT	23 October 2024

EXECUTIVE SUMMARY

The subject S 4.55 (2) Modification Application seeks consent for modifications to the approved Burwood Urban Park and Cultural Centre. Amendments include lowering of finished floor levels, internal reconfiguration, increased gross floor area, expanded theatrette, relocation of studio from ground to lower ground, change of use from café to a food and drink premises with extended hours, amendments to design of 'marker' structure and modification to approved landscaping scheme.

The modifications are sought in order to comply with the BCA and fire engineering requirements and to expand the development by providing additional community floor space below ground floor level.

The subject site is known as No. 2-4 Conder Street and also expands to the Railway Parade Road Reserve located to the north.

The site is located within the MU1 Mixed Use Zone pursuant to the Burwood Local Environmental Plan 2012. The development is characterised as a community facility which is permitted in the zone. As such, the proposed modifications can be considered by the Panel.

The modified development involves an increased building height and increase in gross floor area. Notwithstanding, the development remains compliant with the Burwood LEP 2012 height and FSR development standards.

The application was placed on public exhibition from 13 August to 13 September 2024. No submissions were received.

The application is referred to the Sydney Eastern City Planning Panel as the proposal is Council related development with a capital investment value of more than \$5 million. The updated CIV is \$44,075,042.

A briefing was held with the Panel on 10 October 2024 where key issues were discussed, including access and circulation, site management, insufficient details on plans including location of box office and mechanical ventilation to enable assessment of visual impacts and insufficient details on the Landscape and Stormwater Plans.

A request for Information letter was sent to the applicant on 26 September 2024 outlining these issues. In response, the applicant has submitted updated Architectural Plans, updated Landscape Plans, updated Stormwater Plans, an Access Report and an Operational Plan of Management. These documents have been assessed and adequately addresses and resolves all issues raised in the assessment of the application. Accordingly, the application is considered to be satisfactory and achieves an improved planning outcome.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, The S 4.55 (2) Application is recommended for **approval** subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The main part of the site at 2-4 Conder Street is occupied by an at-grade bitumen car park with 56 spaces, and pedestrian forecourt to the adjoining Burwood Council and Library within the same lot. Vehicle access to the car park is provided from Conder Street via a two-way, left-in/left-out driveway. No vehicle access to the site is permitted from Railway Parade. The site is generally flat, rising to the south via a staircase providing access to the Council/library building. It is landscaped with low-lying gardens generally around the perimeter of the site, as well as various mature trees.

The site is located on the south-western edge of Burwood Town Centre as defined by the Burwood Development Control Plan 2013 (BDCP 2013), adjacent to the Burwood Council Chambers and Library Building, Burwood Place and Burwood Public School.

The site contains multiple lots, including the following:

Address	Lot/DP	Landowner	Site Area
Part 2-4 Conder Street, Burwood	Lot 15 DP 832440	Burwood Council	2,806m ² (total lot area = 4,197m ²)
Part 52-60 Railway Parade, Burwood	Lot 16 DP832440	Wynne Ave Property Pty Ltd	10m ² (total lot area = 6,642m ²)
Part Railway Parade Road Reserve		Burwood Council	492m ²
Part Conder Street Road Reserve		Burwood Council	97m ²

1.2 The Locality

The surrounding development is characterised by high-rise mixed-use residential towers, mid-rise residential buildings, commercial and office buildings, and shopping centres. The subject site is surrounded by the following development:

- **North:** Railway Parade, Burwood Train Station and '1 Railway Parade', an existing mixed-use development up to 20 storeys. On the northern side of the railway line, is Burwood Park, Westfield Shopping Centre, Parramatta Road and the future location of the Burwood North Metro Station.
- **East:** 7-8 storey commercial office buildings and an above-ground car park. This site is currently under construction and will form a part of the redevelopment of Burwood Place.
- **South:** Burwood Council and Library adjoins the development site to the south.
- **West:** Burwood Public School, a two-storey heritage listed building.

The site immediately adjoins the 'Burwood Place' site, for which development consent was granted on 28 November 2022 for redevelopment. The approved development comprises demolition of the existing structures and the construction of a mixed-use development comprising five (5) towers above a three-storey podium with 1,041 residential units, 30,044sqm of non-residential gross floor area for retail, commercial, child care and entertainment/cinema uses, 6-7 levels of basement parking with 1,757 car parking spaces, and public domain areas. This site is currently being demolished and under construction.

Photos of the surrounding development are provided in **Figures 1- 5**.



Figure 1-Railway Parade and high-rise development to the north (facing east)



Figure 2 - Commercial office buildings to the east (currently being demolished to facilitate the Burwood Place redevelopment)



Figure 3- Unity Place and the southern side of the Burwood Council and Library



Figure 4 - Burwood Public School to the west



Figure 5 - Conder Street and Railway Parade intersection, and Burwood Primary School beyond

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for modifications to the approved Burwood Urban Park and Cultural Centre. The amendments primarily involve lowering of the finished floor levels on the basement and lower ground levels resulting in an increased floor area to facilitate a larger theatrette and reconfigured floor layouts.

Specifically, the proposal involves:

- Lower the lower GF level by 1.37m in order to achieve an improved acoustic design and theatre experience.
- Lower the basement level by 1.7m
- Increase the floor area of the theatrette and provide up to 300 seats (previously 210 seats).

- Relocation of studio from Ground level to Lower Ground level
- Change of use from café to food and drink premises and extension of operation hours to allow 24/7 operation
- Reconfigure food and drink premises, back of house and amenities
- Amendments to design of 'Marker' structure containing services risers, resulting in an increased height
- Modifications to landscaping scheme following further detailed design
- The development maintains the physical connection between the basement level 1 car park of the subject development and the basement level 1 car park of the Burwood Place development
- Amending the public art plan (potential public art opportunity zones) to reflect the proposed changes

The modifications are sought in order to comply with the BCA and fire engineering requirements and to expand the development by providing additional community floor space below ground floor level. An additional 736.9m² of floor area is proposed.

Table 1: Key Development Data

Control	Proposal
Site area	3,406m ²
FSR (retail/residential)	Maximum FSR permitted: 3:1 Proposed: 1.10:1 within the site (Lot 15 DP832440) 1:1 within Railway Parade Road Reserve. No floor space approved/proposed to Lot 16 DP832440.
Clause 4.6 Requests	Not applicable
No of apartments	Not applicable
Max Height	11.1m proposed (height of new Marker)
Car Parking spaces	No additional spaces provided under S4.55 Application, 50 spaces will be provided as per the DA.

2.2 Background

The S4.55 Modification Application was lodged on **25 July 2024**. A chronology of the development application since lodgement is outlined in **Table 2**.

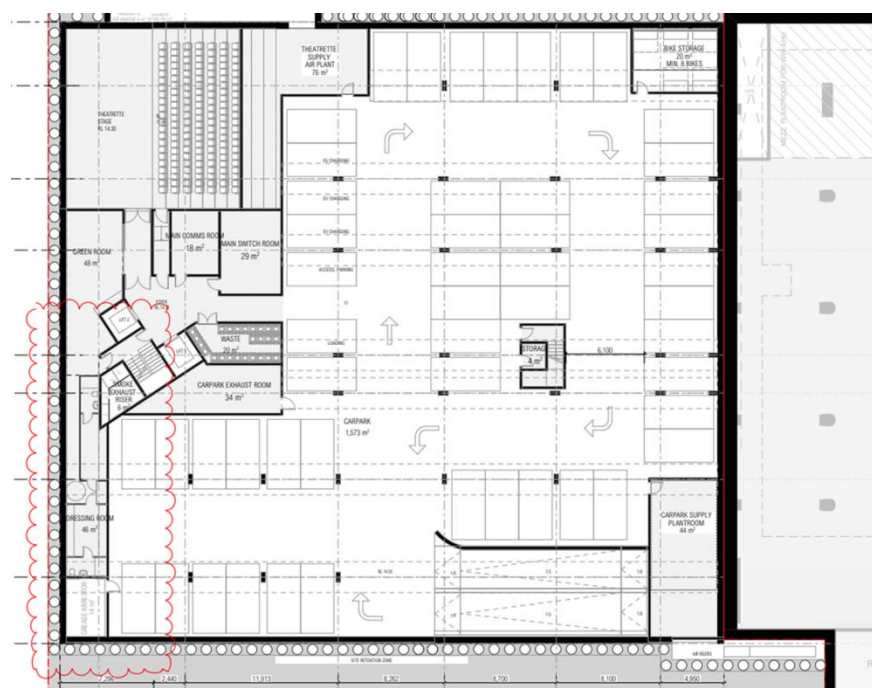
Table 2: Chronology of the DA

Date	Event
13 August to 13 September	Exhibition of the application
14 August 2024	DA referred to external agencies
26 September 2024	Request for Information from Council to applicant
10 October 2024	Panel briefing
16 October	Additional information submitted by the Applicant

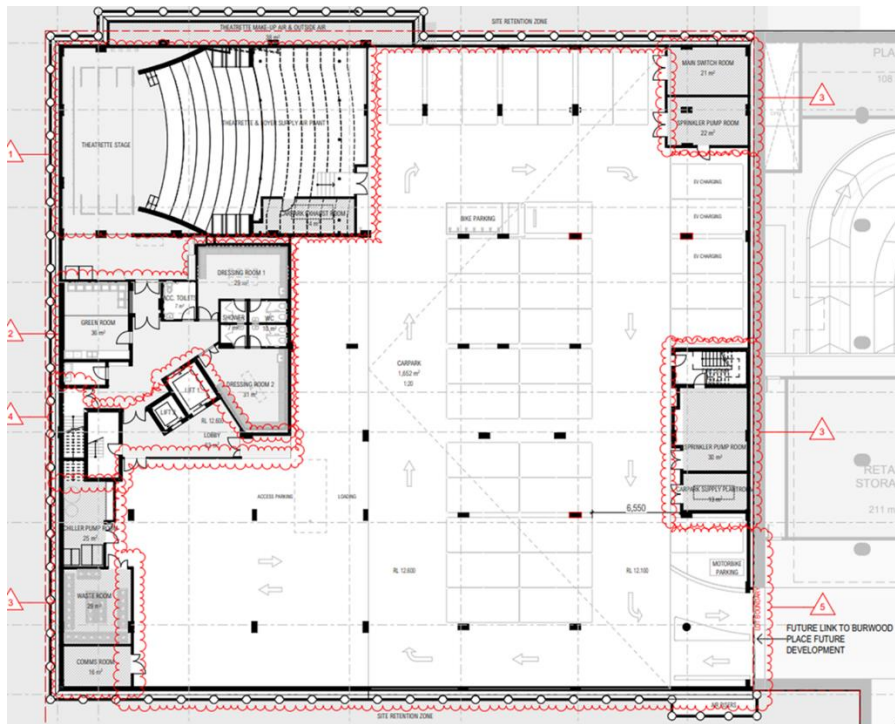
2.3 Site History

On the 16th of March 2023, the Sydney Eastern City Planning Panel granted consent for Development Application No.2022.44 for the development of Burwood Urban Park and Cultural Centre including public plaza, café, landscaping and public domain upgrades, basement car parking and other associated works.

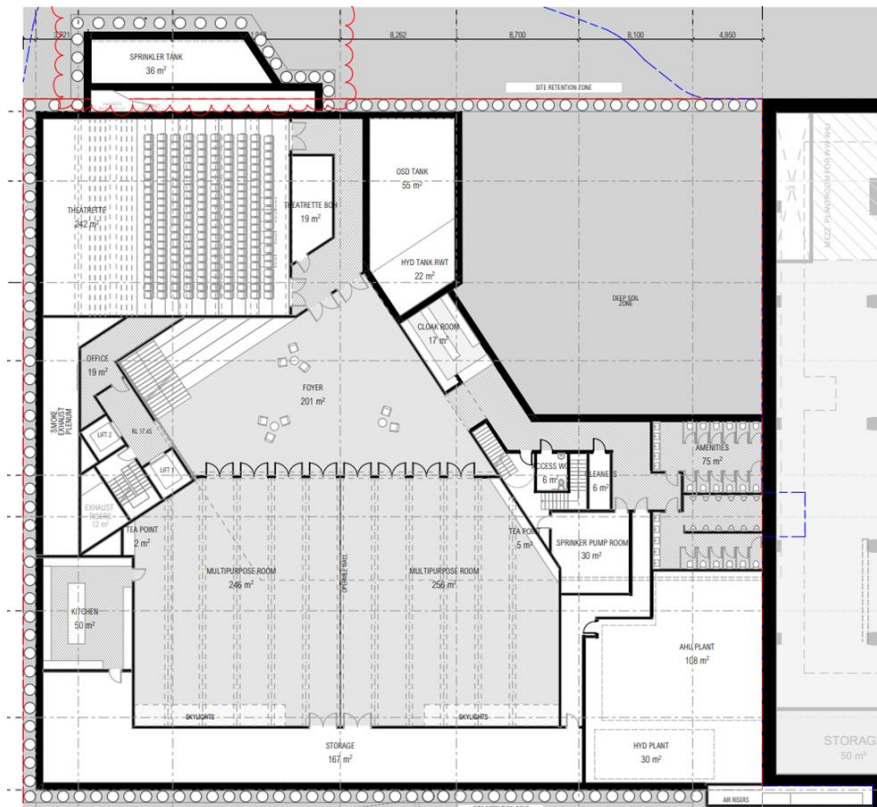
APPROVED AND MODIFIED PLANS – A COMPARISON



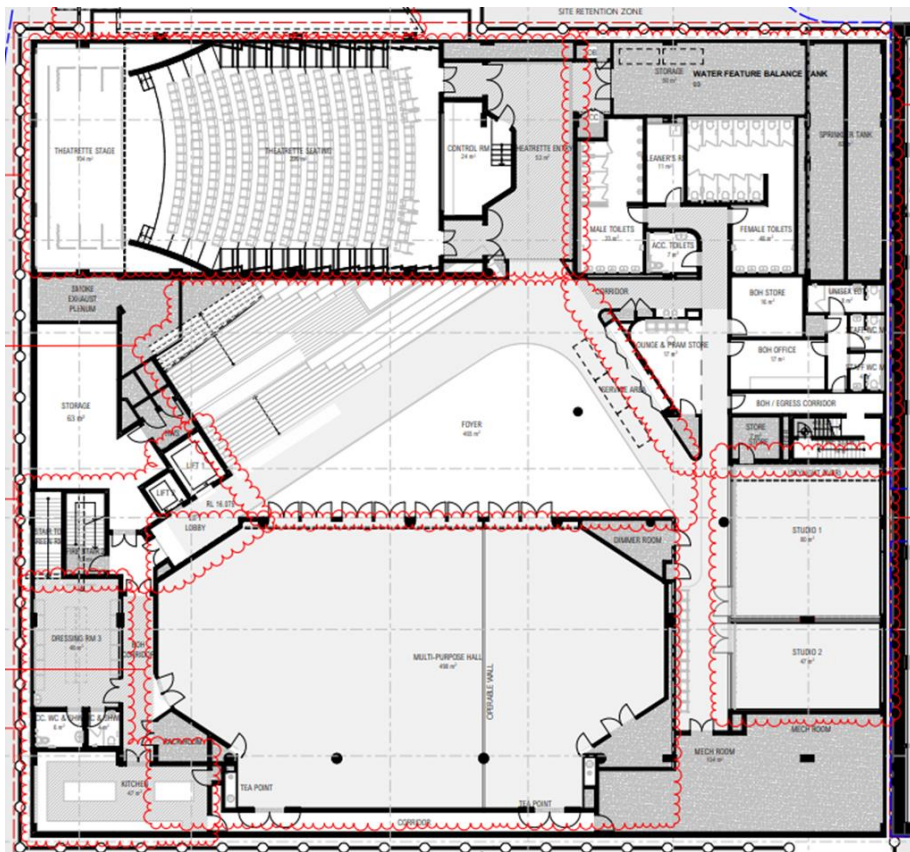
Approved Basement 1



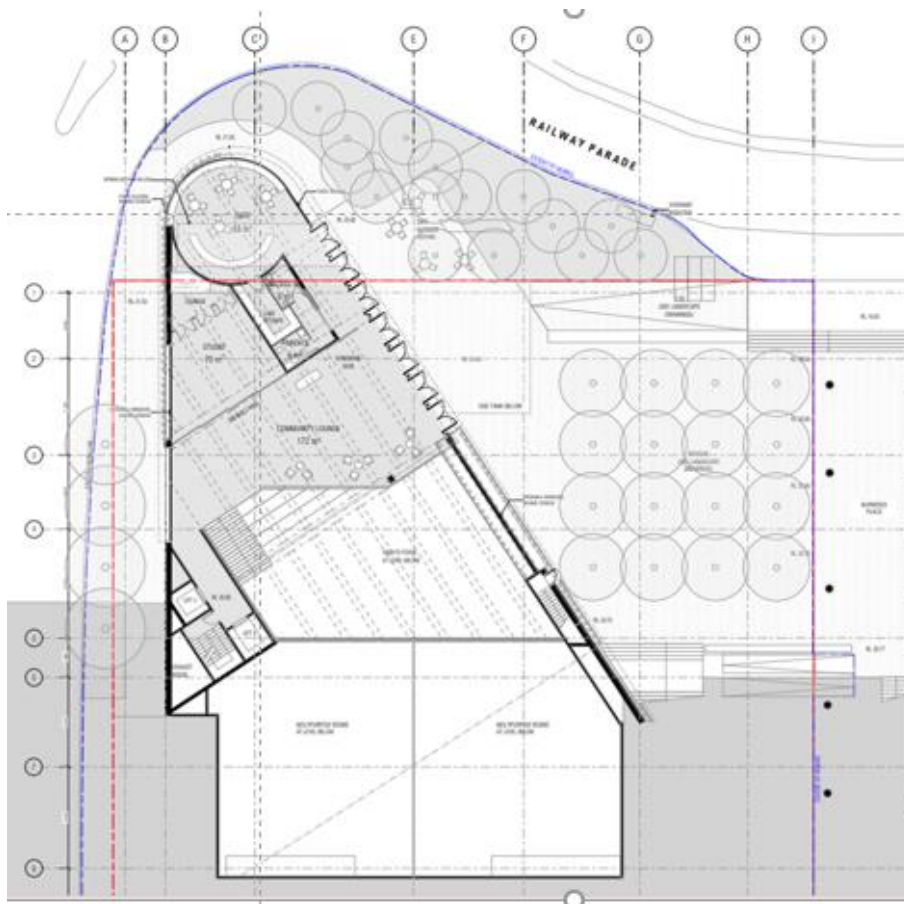
Proposed Modified Basement 1



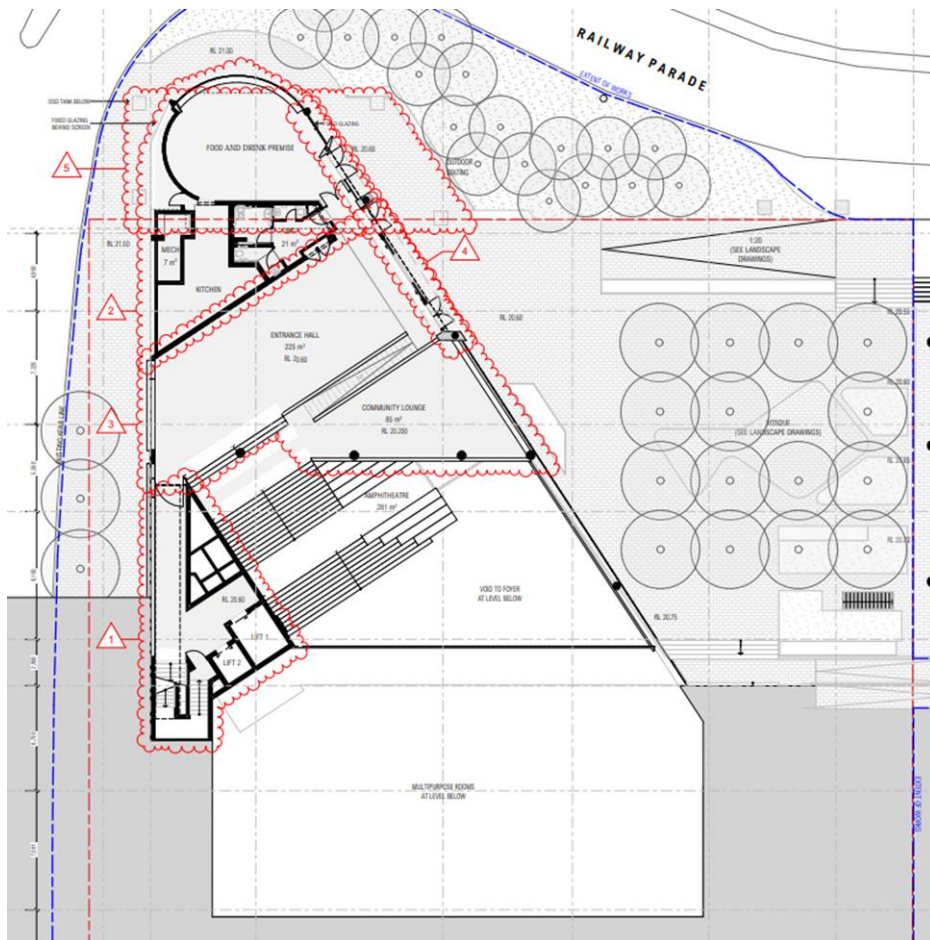
Approved Lower Ground Floor Plan



Proposed Modified Lower Ground Floor Plan



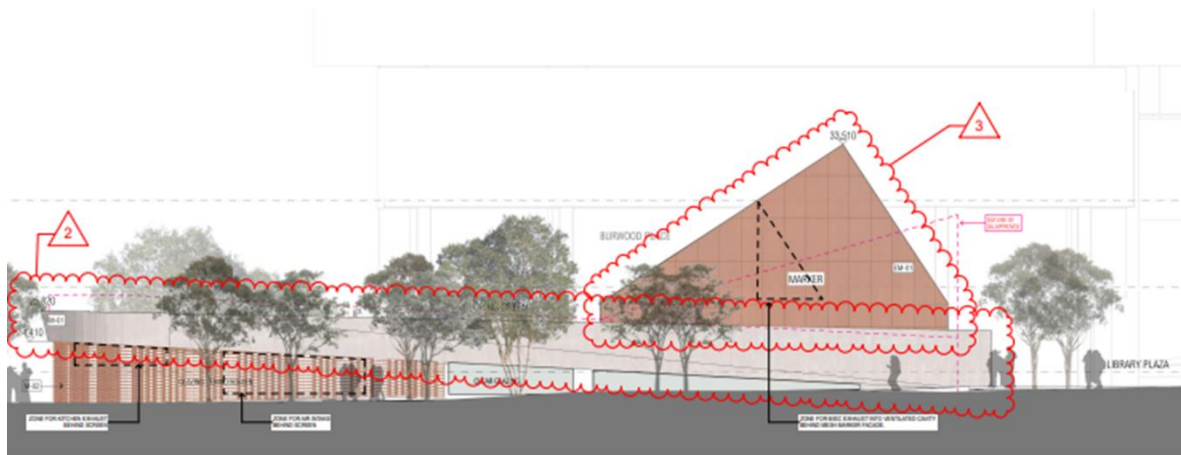
Approved Ground Floor Plan



Proposed Modified Ground Floor Plan



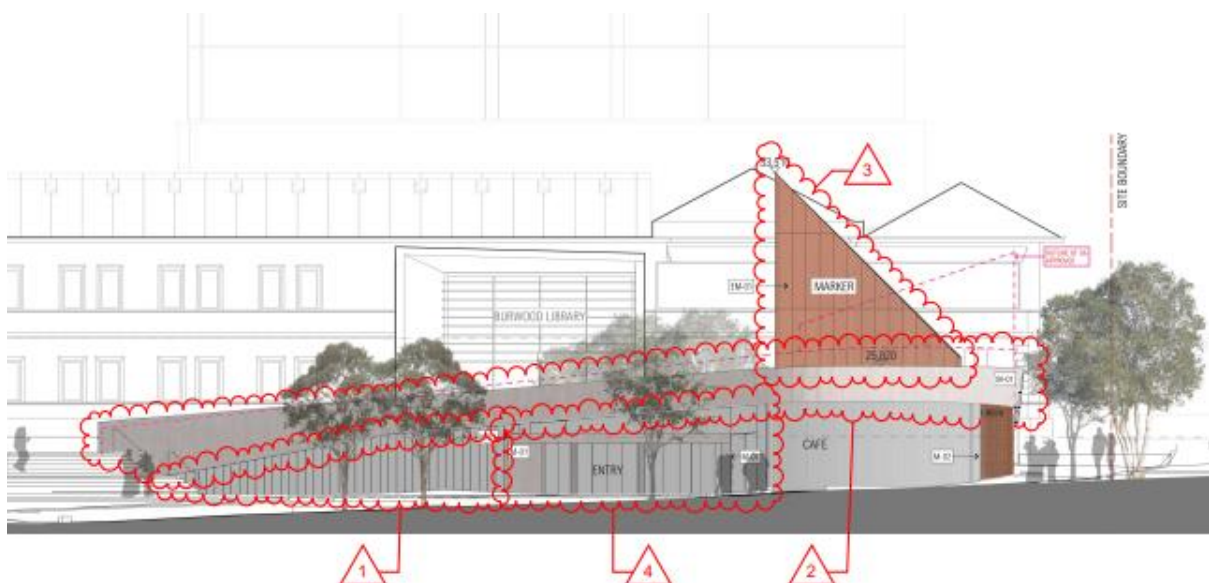
Approved Western Elevation with 'Marker'



Proposed Western Elevation with 'Marker'



Approved Northern Elevation with 'Marker'



Proposed Modified Northern Elevation with 'Marker'

3. STATUTORY CONSIDERATIONS

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 (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 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

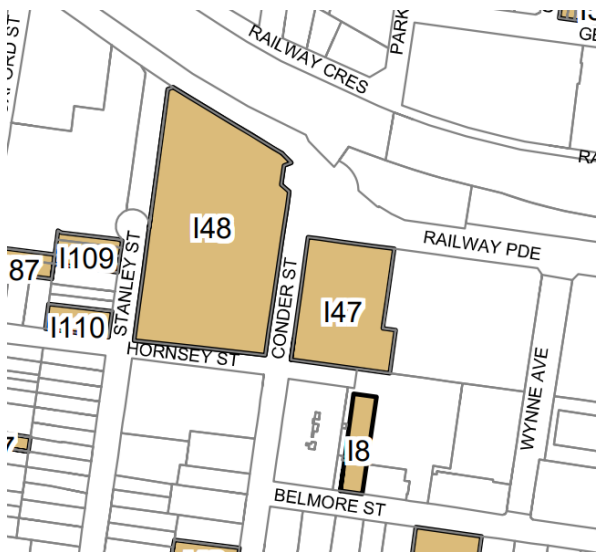
EPI	Matters for Consideration	Comply (Y/N)
SEPP (Resilience & Hazards)	Site Contamination and remediation was addressed and resolved as part of the assessment of the original DA. Conditions of consent in relation to contamination and remediation will remain as part of the development consent	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	The site has a frontage to Railway Parade, which is a classified road under the control of Burwood Council. The proposed development provides vehicular access from the adjacent Burwood Place development, is currently under construction. This provides vehicular access from a classified road, which then provides access to the subject site through the basement. The proposal does not seek to make any changes to the access arrangements or number of parking spaces provided on site. The development also seeks to maintain the physical connection between the basement level 1 car park of the subject development and the basement level 1 car park of the Burwood Place development.	Y

	<p>Council's Traffic Engineers have assessed the proposed modified development and raised no concerns.</p> <p>The application was referred to TfNSW who advised that no concerns are raised in their letter dated 22 August 2024.</p>	
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BURWOOD LOCAL ENVIRONMENTAL PLAN 2012

Assessment of the proposed development against the Burwood LEP 2012

Clause	Assessment of Proposal	Compliance
<p>2.3 Zone objectives and Land Use Table</p> <p>MU1 Mixed Use</p> <p>The objectives of the MU1 Mixed Use Zone are:</p> <ul style="list-style-type: none"> • 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 	<p>The proposed development is permitted with development consent and is consistent with the zone objectives. As such, the proposed modifications can be considered by the Panel.</p>	<p>Yes</p>

Clause	Assessment of Proposal	Compliance
<i>uses on the ground floor of buildings.</i>		
4.3 Height of Buildings <i>Maximum 30m</i>	The proposed 'marker' structure is the tallest structure on the site which is 11.1m in height.	Yes
4.4 Floor space ratio <i>Maximum 3:1</i>	1.10:1 within the site (Lot 15 DP832440) 1:1 within Railway Parade Road Reserve No floor space approved/proposed to Lot 16 DP832440	Yes
5.10 Heritage Conservation Various requirements for development of heritage items, heritage conservation area, or within the vicinity of heritage items.	<p>The subject site includes a heritage item identified in the LEP as Item I47: "Burwood Council Office (1887 building only)". Immediately adjacent heritage items include Item I48: School of Arts (former) (now Burwood Public School).</p>  <p>During the assessment of the original DA, Council's heritage officer concluded that the proposed development is acceptable. However, it was concluded that, given the expected public exposure to this site and that it will form part of the Burwood Civic Precinct (through its location and its role), it is an ideal site for providing the historic story of Burwood. This should be expressed through a Heritage Interpretation Plan which includes:</p> <ul style="list-style-type: none"> • Historic images; • Important narratives and themes of the Burwood area; • Story of Council and its contribution to the area. 	Yes

Clause	Assessment of Proposal	Compliance
	Accordingly, conditions of consent were recommended requiring the submission of a Heritage Interpretation Plan. The recommended conditions will remain as part of the Development Consent.	

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 3 of Schedule 6 of the Planning Systems SEPP as the application is Council related with a CIV of over \$5 million and Burwood Council is the owner of part of the site. Accordingly, the SECPP is the consent authority for the application. The proposal is consistent with this Policy.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

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

Environmental Planning and Assessment Act 1979

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

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

The proposed modifications have been assessed against the original approved development which revealed that the modified development is substantially the same as the DA approved development for the following reasons:

1. The development proposal maintains the same land use with no new additional uses introduced on site. The primary purpose of the modifications is to provide additional floor space for the theatre and achieve acoustic requirements, BCA and fire safety compliance.
2. The conversion of the café to a food and drink premises retains the same land use (group definition) with the same number of people on site. This is to allow a more flexible operation.
3. The floor expansion is concealed from public view and is entirely underground.
4. All activities continue to be internalized to prevent adverse amenity impacts upon the surrounding locality. Accordingly, all impacts from noise, traffic and car parking will occur underground and will unlikely cause an impact upon the surrounding sensitive receivers (residential development).

With regard to the above, the development satisfies the substantially the same test.

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

Not applicable to this application

- (c) *it has notified the application in accordance with—*
(i) *the regulations, if the regulations so require, or*
(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

The proposal was publicly notified from 13 August to 13 September. No submissions were received.

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

The proposal was publicly notified from 13 August to 13 September. No submissions were received.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

Given the nature of the proposed modifications primarily involving internal works and reconfigurations, an assessment of the modified development against the Burwood DCP 2013 controls is considered unnecessary in this circumstance.

In relation to car parking, the DCP stipulates that parking rates for community facilities are determined by Council's Management Plan for the specific facility.

The proposed changes require three additional car parking spaces, while the bicycle parking provision remains unchanged. However, due to site constraints, the BUPACC site cannot expand its car park to accommodate the additional spaces. It is anticipated that parking activities at BUPACC will likely integrate with those in the surrounding Burwood Town Centre, allowing the extra demand to be absorbed by nearby on-street parking and public car parks, such as Burwood Place and Burwood Plaza.

Council's Traffic Engineers have assessed the modification and advised that the off-street car parking spaces satisfies the Council's requirements.

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS 2601

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are relevant to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

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

The applicant has submitted supporting documentation including an Access Report prepared by Philip Chun dated 27 September 2024, Plan of Management (undated), Traffic Report prepared by ptc. dated 17 April 2024, Operational Waste Management Plan prepared by Elephants Foot dated 12 May 2024, Heritage Impact Statement prepared by Jackson-Stepowski dated 20 February 2024 and Acoustic Report prepared by RWDI Australia Pty Ltd dated 25 June 2024 to demonstrate that the modified development can operate in an environmentally satisfactory manner.

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

The site is considered suitable to accommodate the modified development which primarily involves design upgrades to provide an improved planning outcome and to comply with the BCA and fire safety requirements.

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

The proposal was publicly notified from 13 August to 13 September. No submissions were received.

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

It is considered that the modified development is in the public interest as it will deliver an improved planning outcome and no submissions were received during the notification period.

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 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 4: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Transport for NSW	EP&A Regulation 2021, s38 (Amendment of development application)	TfNSW has reviewed the submitted information and advises the Modification will unlikely have a detrimental impact on the surrounding classified road network. As such, TfNSW has no further comments.	Y
Ausgrid	EP&A Regulation 2021, s38 (Amendment of development application)	Conditions of Consent provided.	Y

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 5: Consideration of Council Referrals
Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Amended Stormwater Plans have been submitted and found to be satisfactory.	Yes
Traffic	No concerns raised. Council's Traffic Engineer advised that the off-street car parking spaces & bicycle spaces satisfies the Council's requirements.	Yes
Building	No issues raised.	Yes
Tree Preservation Officer	Amended Landscape Plans have been submitted and found to be satisfactory.	Yes

4.3 Community Consultation

The proposal was publicly notified from 13 August to 13 September. No submissions were received.

KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

4.4 Access and Circulation

Given that the development will be stepped and comprises multiple levels with various uses, an Access Plan is required to be submitted to indicate the path of travel across the site, particularly for those requiring the use of a wheelchair.

Resolution: The Applicant has submitted an Access Report prepared by Philip Chun dated 27 September 2024 which demonstrates that the development complies with the applicable legislation including the National Construction Code (BCA 2022), Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards), relevant Australian Standards, And the Disability Discrimination Act 1992. The report has been reviewed by Council's Building Surveyor who raised no concerns.

4.5 Site Management

Given that the proposal is a significant intensification of the site and involves a multitude of uses, the applicant must demonstrate how the site can operate in a satisfactory manner with minimal amenity impacts upon neighbouring sensitive receivers (residential properties). Information regarding traffic control, crowd management, noise management, special events etc shall be submitted for a comprehensive assessment of the application.

Resolution: The Applicant has submitted an Operational Management Plan which adequately demonstrates that the site can be managed in a satisfactory manner including how after-hours access, activities and programs, visitation, noise control, customer experience and complaints handling, fire safety, cleaning and maintenance, deliveries, parking, waste storage and security arrangements will be managed and operated.

4.6 Details on Plans

The submitted Architectural Plans were found to be deficient in the following details:

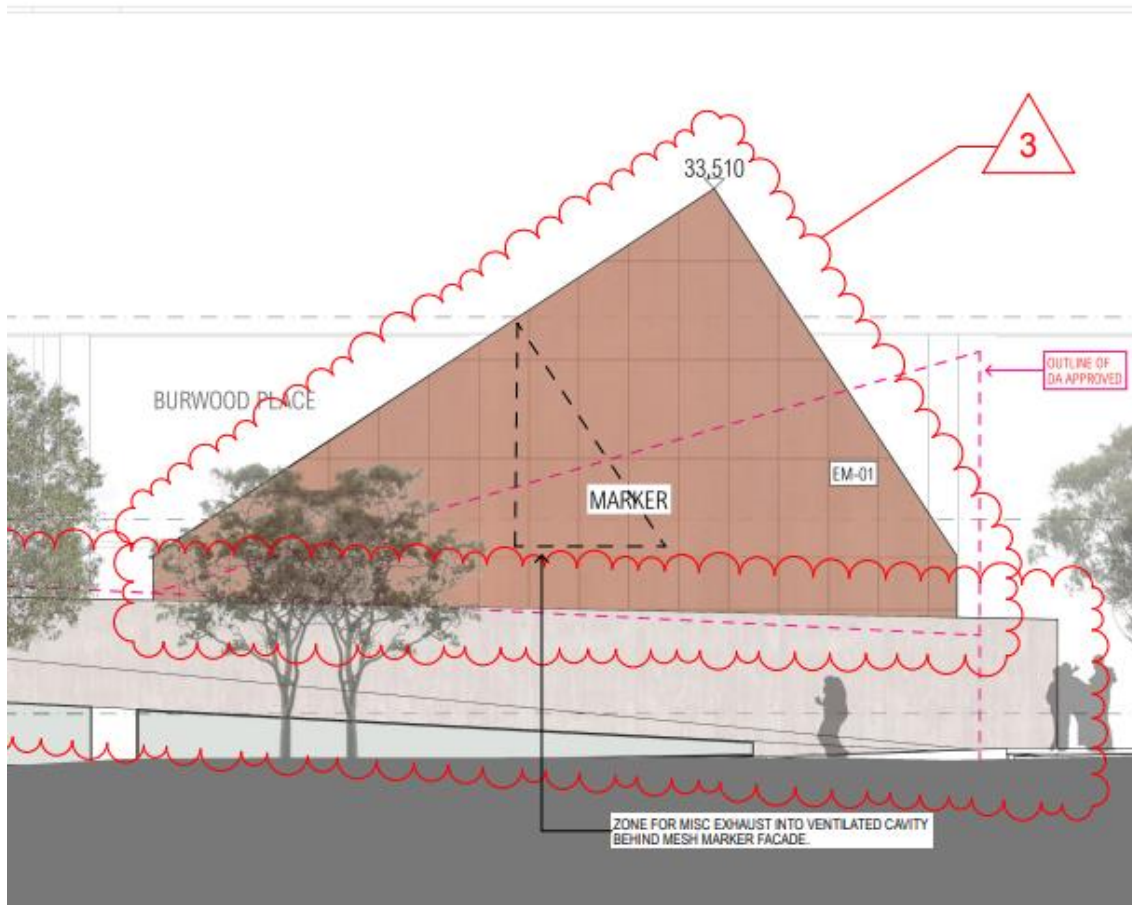
- Details of how box office sales will be conducted
- The mechanical ventilation shall be clearly indicated on the elevation plans to enable an assessment of its visual impacts.

Resolution:

Box Office: The applicant advised that no permanent box office is planned for the facility. Tickets are to be purchased online and scanned on entry. Notwithstanding, it is considered appropriate that a customer service representative/contact person be present on site to attend to any enquiries, ticket changes, last minute ticket purchases etc. Accordingly, a condition of consent will be imposed requiring the provision of a portable customer service desk with a

customer service representative be located in a conspicuous area near the theater at least an hour before each theatre show and events.

Mechanical ventilation: The applicant has submitted additional elevation plans to show the location of the mechanical ventilation within the 'marker' structure. The exhaust and ventilated cavity will be located behind a mesh material on the western elevation of the 'marker' as shown below:



4.7 Landscape and Stormwater Plans

Council's Tree Preservation Officer and Development Engineers requested amended plans to address their concerns.

Resolution: Updated Landscape and Stormwater Plans have been submitted by the applicant and assessed by Council and found to be satisfactory.

5. CONCLUSION

This S 4.55 (2) Application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, the key issues identified in this report, it is considered that the application can be supported.

It is considered that the issues as outlined in Section 4 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

6. RECOMMENDATION

That the S4.55 (2) Modification Application for modifications to the approved Burwood Urban Park and Cultural Centre at No. 2-4 Conder Street, Burwood and the Railway Parade Road Reserve be APPROVED pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent