



**Burwood** Inc.1874  
Burwood . Burwood Heights . Croydon . Croydon Park . Enfield . Strathfield

## **NOTICE OF BURWOOD LOCAL PLANNING PANEL MEETING**

The meeting of the Burwood Local Planning Panel will be held electronically on Thursday 27 June 2024 at 6:00 PM to consider the matters contained in the attached Agenda.

Tommaso Briscese  
**General Manager**

# Agenda

**For a Notice of Burwood Local Planning Panel Meeting of Burwood Council to be held in the Conference Room, Level 1, 2 Conder Street, Burwood on Thursday 27 June 2024 immediately after the Public Forum commencing at 6.00pm.**

**Welcome to the meeting of the Burwood Local Planning Panel**

**I declare the Meeting opened at**

**1. Acknowledgement of Country**

*I would like to acknowledge the Wangal people of the Eora Nation who are the traditional custodians of this land. I would also like to pay respect to their elders, both past and present, and extend that respect to other First Nations People who may be present.*

**2. Introduction of Panel Members**

**3. Recording of Meeting**

**4. Explanation of how the panel will operate**

*The Panel has undertaken site investigations and we have before us reports provided by Burwood Council officers on the matters for consideration.*

*For each matter, the Council officer will briefly give an overview.*

*All members of the public who have registered to speak will have the opportunity to address the panel. I will invite you to speak and commence by stating your name and address or whom you represent.*

*After all speakers have been heard, the panel will adjourn to deliberate on the matter.*

*The Panel will make determinations on the matters before it. Each determination will include reasons for the determination, and all such details will be included in the official record of the meeting.*

*Members of the public are advised that Meetings of the Panel are audio recorded for the purpose of assisting with the preparation of Minutes and the recording of the public part of the meeting will be published on Council’s website.*

**5. Apologies/Leave of Absences**

**6. Declarations of Interest by Panel Members**

**7. Chair introduction of Agenda Item**

**8. Council Officer Overview**

**9. Development Applications**

(Item DA2/24)	DA No. 2023/45, 3-7 Lyons Street & 18 Parnell Street, Strathfield. Proposed Alterations and Additions to a Previously Approved Nine Storey Mixed Use Building to Create an Additional Two Levels (6 Residential Units) Producing an Overall Total of 77 Residential Units. Adjustments to Carparking Arrangements on Basement Level 3 are also Proposed.....	3
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## Development Applications

**(Item DA2/24) DA No. 2023/45, 3-7 Lyons Street & 18 Parnell Street, Strathfield. Proposed Alterations and Additions to a Previously Approved Nine Storey Mixed Use Building to Create an Additional Two Levels (6 Residential Units) Producing an Overall Total of 77 Residential Units. Adjustments to Carparking Arrangements on Basement Level 3 are also Proposed.**

File No: 24/20327

Report by Executive Planner

**Owner:** Joseph Georges, Michael Tannous, Milan Kalina & John Georges  
**Applicant:** Georges Jreige C/- Urbanlink  
**Location:** Northern Side of Lyons Street and Southern side of Parnell Street  
**Zoning:** MU1 – Mixed Use, Burwood Local Environmental Plan (LEP) 2012

### Proposal

The Development Application (DA) seeks consent for alterations and additions to an approved DA (DA2021.79).

DA 2021.79 was approved by the Sydney Eastern City Planning Panel (SECPP) on 28 June 2022. The DA approved the following:

- demolition of all existing structures
- construction of 1 x three (3) and 1 x nine (9) storey residential flat building comprising a total of seventy-one (71) apartments and two (2) retail tenancies with three (3) levels of basement parking, communal open spaces and associated landscaping

The proposed DA seeks consent for alterations and additions to the approved DA to create an additional two (2) levels to the larger mixed use building fronting Lyons Street. The DA would result in a total of 77 residential units on the site (comprising 12 x studios, 18 x 1 bedroom units, 39 x 2 bedroom units and 8 x 3 bedroom units) and 90m<sup>2</sup> of retail premises floor space at ground level.

The DA also involves consequential amendments to other levels of the approved development including changes to Basement Level 3 to provide an additional 9 car parking spaces, 1 motorcycle parking space and 2 bicycle parking spaces, such that the proposal would result in a total of 93 car parking spaces at the site, 6 motorcycle spaces and 20 bicycle spaces.

No change is proposed to the smaller 3 storey building, which has frontage to Parnell Street, or the location of the vehicular and pedestrian access to the site as approved.

The proposed DA would require the modification of DA 2021.79 in accordance with the provisions of Section 4.17(b) of the *Environmental Planning and Assessment Act 1979*.

It is noted that the applicant has proposed a monetary contribution be made to Council through a formal Voluntary Planning Agreement (VPA) as permitted by the provisions of Council's Policy entitled 'Carrying out Bonus Development in the Public Interest'.

The Policy applies to the Commercial Core and Perimeter and Transition areas of the Burwood Town Centre, as well as land within the MU1 Mixed use zone in the Burwood Road North and Strathfield Town Centre and Land in the E1 Local Centre zone on the northern side of Liverpool Road, Burwood and Strathfield.

The subject site is within the MU1 Mixed Use zone in the Strathfield Town Centre and therefore the Policy applies to development at the site.

The VPA seeks an additional 557m<sup>2</sup> of floor space (total proposed 6,128m<sup>2</sup> and FSR of 3.3:1) which equates to 10% of the allowable gross floor area / floor space ratio for the site, as prescribed by Clause 4.4 of BLEP 2012.

A draft Planning Agreement and Explanatory Note have been submitted by the Applicant as part of the Development Application process. The letter to Council detailing the proposed terms of the agreement and total value of the monetary contribution were placed on Public Exhibition for the period 05/06/24 to 04/07/24. At the time of preparing this report no submissions had been received. Council is responsible for progressing the VPA which requires referral to a Council meeting for determination. The Panel does not play a role in the determination of the VPA rather it is mentioned here for information purposes and for the Panel to be aware that one has been lodged.

## **Background**

Under the provisions of Council's Policy – *Carrying Out Bonus Development in the Public Interest* an independent Planning Consultant was required to be engaged to assess the Development Application. In this regard SJB Planning was appointed to undertake the assessment.

DA.2015.121 was approved for a residential flat building development at 7 Lyons Street and 18 Parnell Street on 14 July 2016 by way of a Deferred Commencement Consent. The deferred commencement conditions were satisfied, and the consent commenced on 08 May 2017. The approved works were not undertaken and the consent lapsed.

DA 2021.79 was subsequently lodged on 10 August 2021 and approved by the SECPP on 28 June 2022.

The DA approved the demolition of all existing structures and the construction of 1 x three (3) and 1 x nine (9) storey mixed use and residential flat development comprising a total of seventy-one (71) apartments and two (2) retail tenancies with three (3) levels of basement parking, communal open spaces and associated landscaping.

The current application (DA 2023.45) seeks consent to create two additional levels on the approved (yet to be built) 9 storey mixed use building and associated reconfiguration of the ground floor and Basement 3.

The application was considered by the Burwood Design Review Panel on 29 June 2023 who advised that:

*“the Panel considers that the additional height to the development can be supported from a design perspective...”*

SJB Planning Consultants conducted an assessment of the application in October 2023. The applicant was issued with a Request for Additional Information letter dated 11 January 2024 seeking amended plans relating to the deletion of the eastern 'wing' element of the proposed two storey addition, consistent with the recommendation of the Design Review Panel.

A meeting was held with the applicant on 30 January 2024 and design amendments were discussed, including the potential for the redesign of the eastern wing element of the proposed two storey addition (i.e. without the need for its complete deletion – while addressing the concerns raised by the Design Review Panel).

A detailed response to the issues raised was received by Council on 2 February 2024, including amended architectural drawings prepared by Urban Link (Revision G, dated 31 January 2024).

The amended architectural drawings were supported with the following updated documents:

- Letter of Response prepare by Planning Ingenuity
- Design Verification Statement
- BASIX Certificate & NatHERS Certificate
- Letter from Urban Link
- Clause 4.6 Statement to FSR
- Clause 4.6 Statement to Height of Buildings

The following assessment relates to the amended plans.

### **BLPP Referral Criteria**

This application is referred to the BLPP in response to a number of “criteria” as stated below:

- Development which contravenes a Development Standard by more than 10%
- Development to which SEPP 65 – Design Quality of Residential Apartments, the provisions of which are now incorporated under SEPP (Housing) 2021, and
- Applications where the Developer has offered to enter into a Planning Agreement

### **Locality**

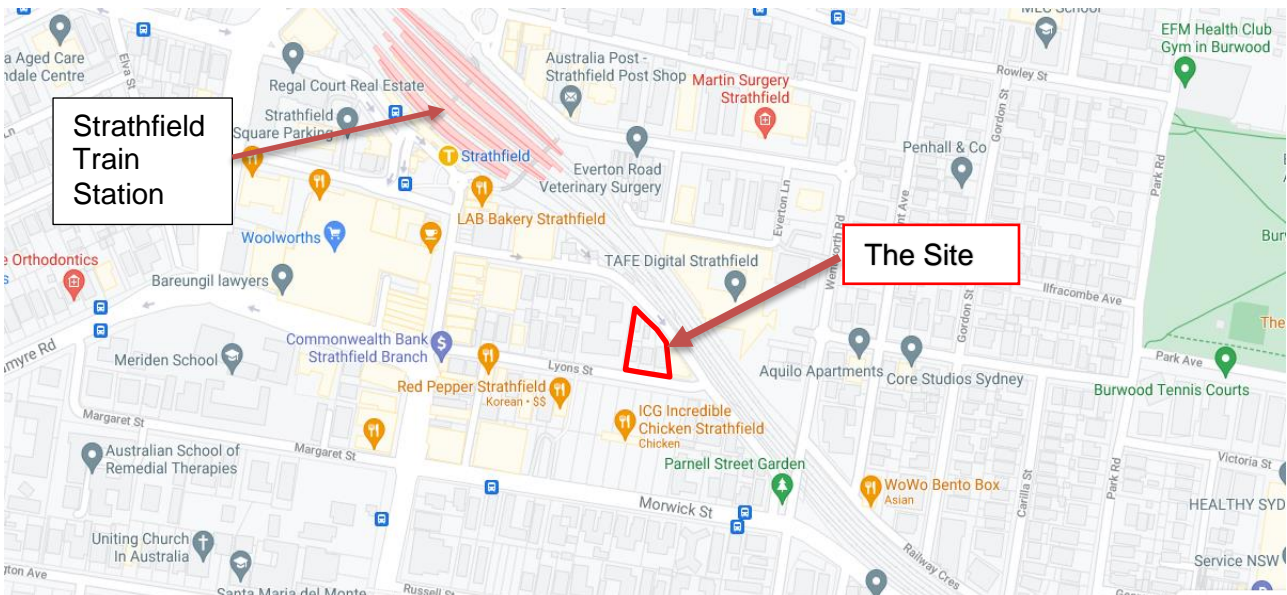
The subject site is located at 3-7 Lyons Street and 18 Parnell Street, Strathfield and comprises four (4) adjoining lots that are legally described as Lots 2-5 in DP 17433.

The site’s location is indicated in Figures 1 and 2.



**Figure 1:** Aerial image of site and locality (Source: MetroMap)





**Figure 2:** Location plan (Source: Google Maps)

The site has an area of 1,857m<sup>2</sup> and is irregular in shape. The site has a 44m frontage to Lyons Street and a 46m frontage to Parnell Street. The site falls slightly from north to south (i.e. from Parnell Street to Lyons Street) by approximately 1.3m.

The site is currently occupied by four (4) single storey detached dwellings and ancillary outbuildings. There are no significant trees or vegetation on the site.

Photographs of the site and existing buildings are shown in Figures 3-5.



**Figure 3:** Existing dwellings on subject site, viewed to north from Lyons St





**Figure 4:** Existing dwellings on subject site, viewed to south from Parnell St



**Figure 5:** Existing dwellings on subject site, viewed to south from Parnell St (Source: Google Maps)

### **Surrounding Development**

The site is located within the Strathfield Town Centre and is in proximity to the Strathfield Railway Station. Surrounding development within the immediate locality comprises a mix of residential and recreational uses. Nearby residential development includes two (2) to three (3) storey residential flat buildings, inter-war brick cottages, and contemporary higher density flat buildings.



Land to the north of the site (i.e. on the opposite side of Parnell Street) forms part of the railway corridor servicing the T1 North Shore & Western Line, T2 Inner West & Leppington Line, and T9 Northern Line. Refer to Figure 6.



**Figure 6:** Railway line to north of site, viewed to north east from Parnell St

Development to the south of the site, on the opposite side of Lyons Street, comprises sporting facilities (i.e. tennis courts) and a car park which form part of Strathfield Sports Club (refer Figure 7).

It is noted that construction works are currently being undertaken at this site.



**Figure 7:** Tennis court car park, viewed to south from Lyons St

Adjoining the site to the west is a part three (3) part four (4) storey residential flat building (refer to Figure 8). The building, at 11-15 Lyons Street and 20-24 Parnell Street, has an 'H' shaped built



form and includes large areas of open space and landscaping. The building is of brick construction and contains several window openings and balconies oriented towards the subject site.



**Figure 8:** RFB at 11-15 Lyons St & 20-24 Parnell St, viewed to north from Lyons St



**Figure 9:** Nine (9) storey building at 1 Lyons St, viewed to north from Lyons St

To the east of the site, at 1 Lyons Street, is a recently completed nine (9) storey building. The construction and use of this building as a boarding house was approved by Council on 12 May 2016 under DA10.2015.1.

As shown in Figure 9, the building has a three (3) storey podium with the upper storeys set back and articulated by way of the balcony design. The building has a nil setback blank wall adjoining the subject site.

### **Description of Development**

The application proposes alterations and additions to the approved DA 2021.79 to add an additional two (2) levels to the larger residential flat building fronting Lyons Street.

The DA would result in a total of 77 residential units on the site (comprising 12 x studios, 18 x 1 bedroom units, 39 x 2 bedroom units and 8 x 3 bedroom units).

No change is proposed to the smaller three storey residential flat building fronting Parnell Street.

The specifics of the proposal are as follows:

#### **Basement**

##### **Basement 3**

- Removal of excess plant room and internal reconfiguration to accommodate an additional nine (9) car parking spaces and one (1) motorcycle space;
- Relocation of storage and additional storage provided; and
- Removal of eight (8) bicycle parking spaces.

##### **Basement 2**

- No Change - Basement 2 will remain as approved under DA 2021.79.

##### **Basement 1**

- No Change - Basement 1 will remain as approved under DA 2021.79

#### **Larger Residential Flat Building (fronting Lyons Street)**

##### **Ground Level**

- Reconfiguration and extension of the driveway ramp section off Lyons Street;
- Extension of the bulky waste storage by 8m<sup>2</sup>; and
- Provision of ten (10) bicycle parking spaces along the pathway to the communal open space.

##### **Levels 1-8**

- No Change - Levels 1-9 will remain as approved under DA2021.79.

##### **Level 9**

- Addition of a new level to accommodate six (6) new residential units including:
  - 1 x one bedroom unit
  - 1 x two bedroom unit
  - 3 x three bedroom units which extend to Level 10
  - 1 x 2 bedroom unit which extends to Level 10
  - Services, lift and stair access
  - Level 9 GFA = 418m<sup>2</sup>

##### **Level 10**

- Addition of a new level to accommodate the second storey of 3 x three bedroom units and 1 x 2-bedroom unit
- Lift overrun
- Level 10 GFA = 217m<sup>2</sup>

### Roof

- The roof includes solar panels, air conditioning units and low screening to cover services (consistent with the roof design approved under DA2021.79)

### Unit Mix

Approved under DA 2021.79		Proposed	
<b>Residential</b>			
12	(17%) x studio apartments	12	(15.6%) x studio apartments
17	(24%) x one (1) bed apartments	18	(23.4) x one (1) bed apartments
37	(52%) x two (2) bed apartments	39	(51%) x two (2) bed apartments
5	(7%) x three (3) bed apartment	8	(10%) x three (3) bed apartment
Total – 71 apartments		Total – 77 apartments	
<b>Commercial</b>			
Commercial – 90m <sup>2</sup>		Commercial – 90m <sup>2</sup>	

**Table 1:** Unit Mix Comparison

### Other Proposed Development Statistics

Element	Approved (DA 2021.79)	Proposed (DA2023.45)
Gross Floor Area	3:1 (5,493m <sup>2</sup> )	3.3:1 (6,128m <sup>2</sup> )
Building Height	29.4m	35.8m
Deep Soil	7.1% (132m <sup>2</sup> )	7.1% (132m <sup>2</sup> )
Communal Open Space	25.1% (466m <sup>2</sup> )	25.1% (466m <sup>2</sup> )
Car Parking	84	93
Motorcycle Parking	5	6
Bicycle Parking	18	20

**Table 2:** Development Statistic Comparison

The following Figures illustrate the extent of the proposal and are extracts from the architectural drawings submitted with the application.



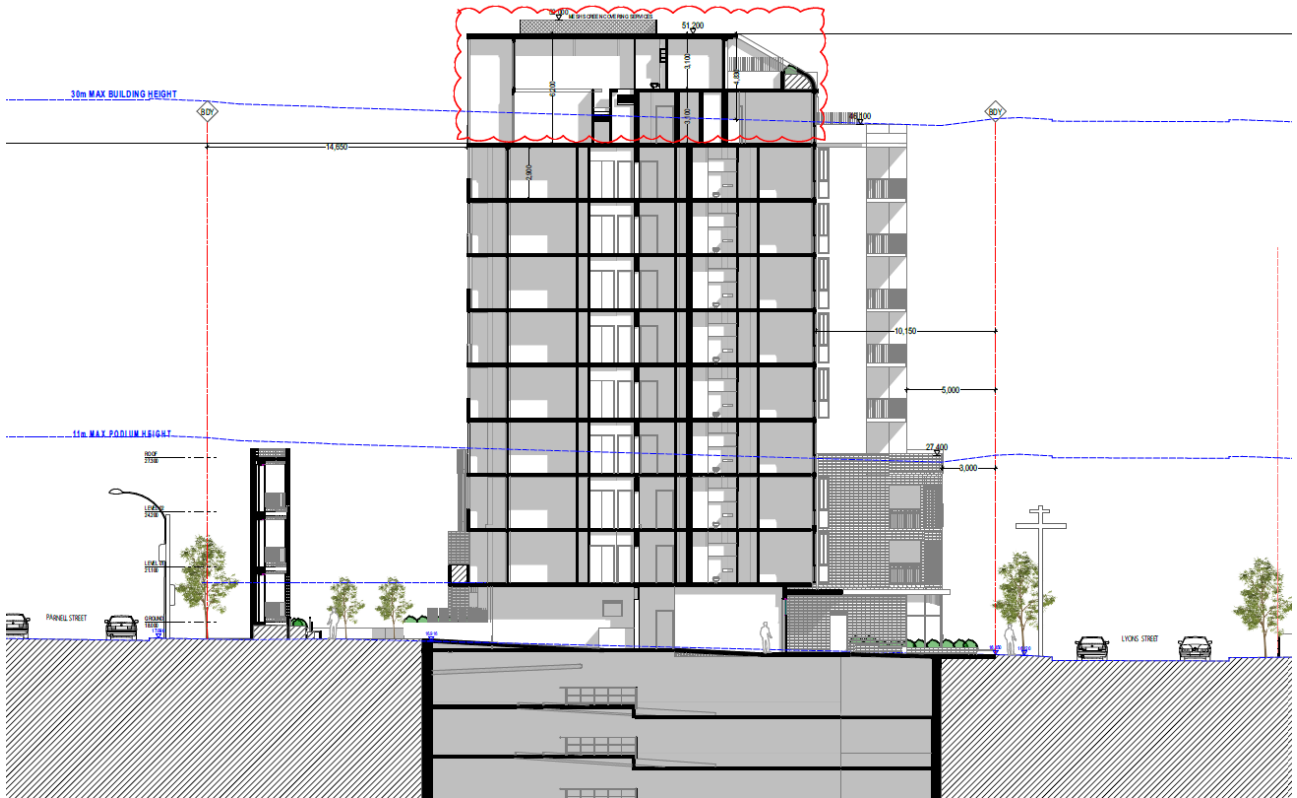


Figure 10: Extract from submitted plans – Dwg DA-302 Section BB

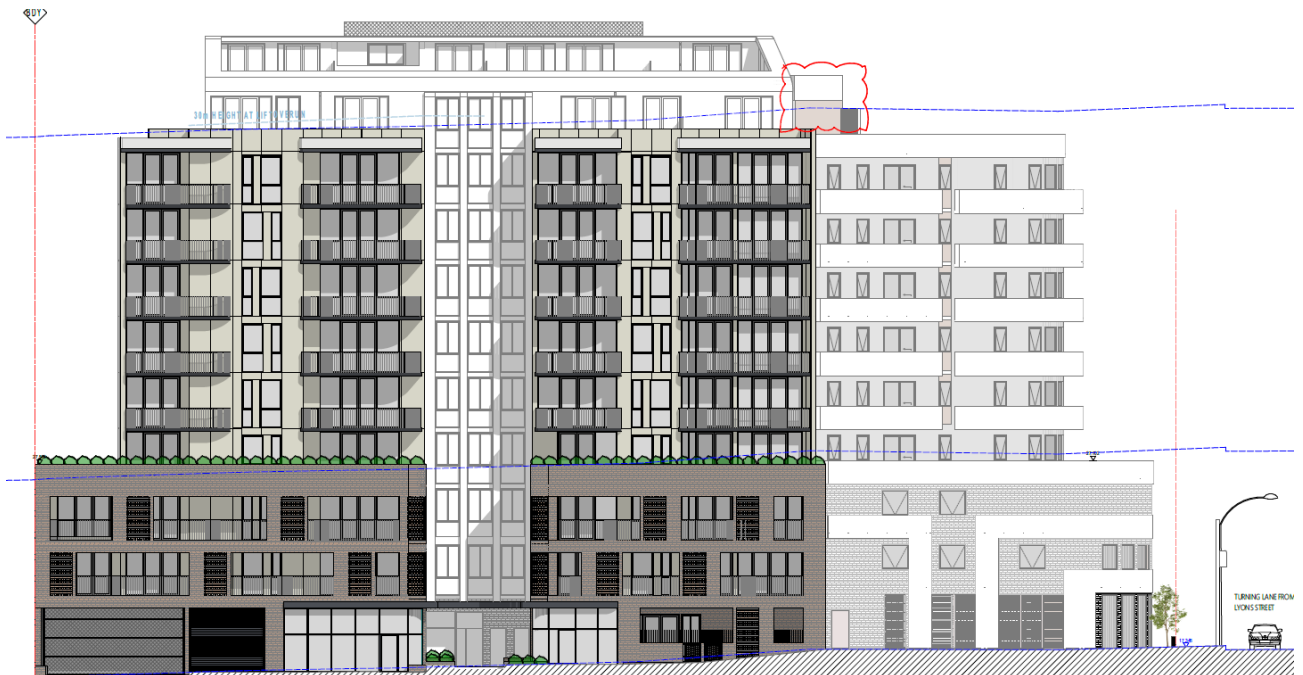


Figure 11: Extract from submitted plans – Dwg DA-207 Streetscapes – Lyons Street (Note: The two upper levels are proposed, while the element outlined in red is the eastern end of the two upper levels is the area that was amended by the applicant in response to the Design Review Panel comments)



Figure 12: Extract from submitted plans – Dwg DA-111 – Basement 03

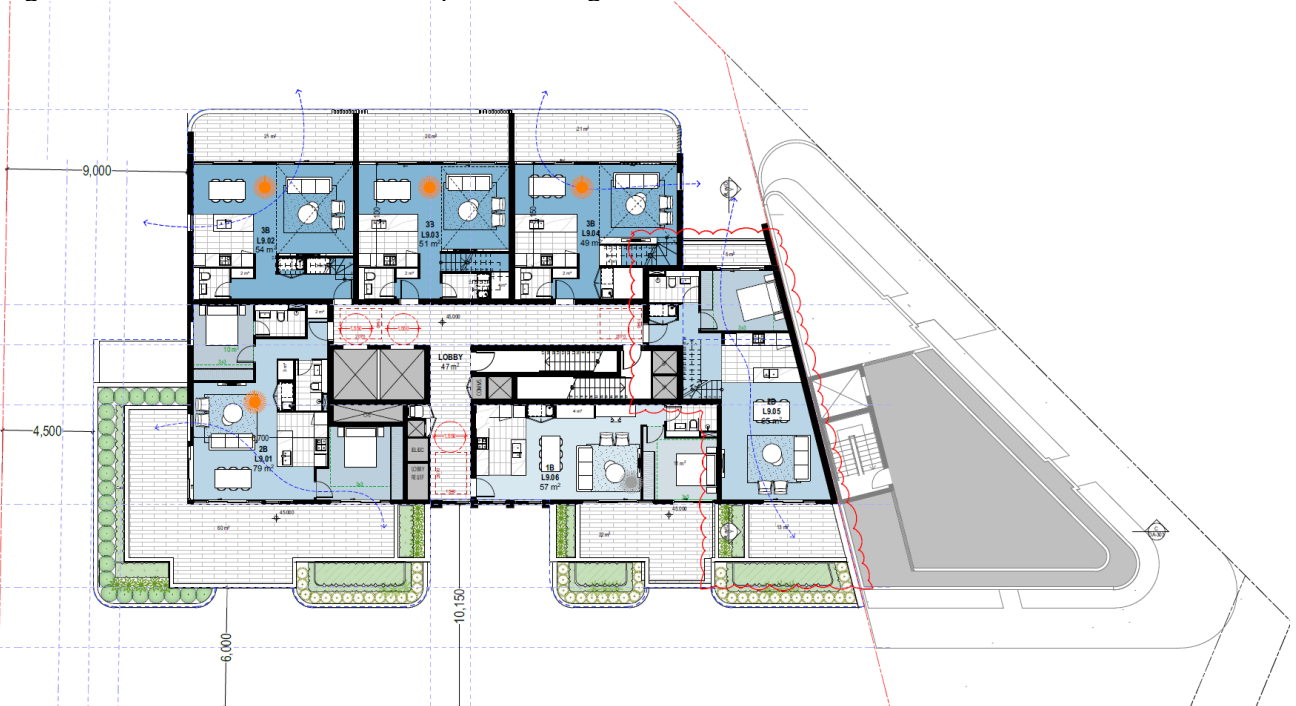


Figure 13: Extract from submitted plans – Dwg DA-106 - Floor Plans Level 09

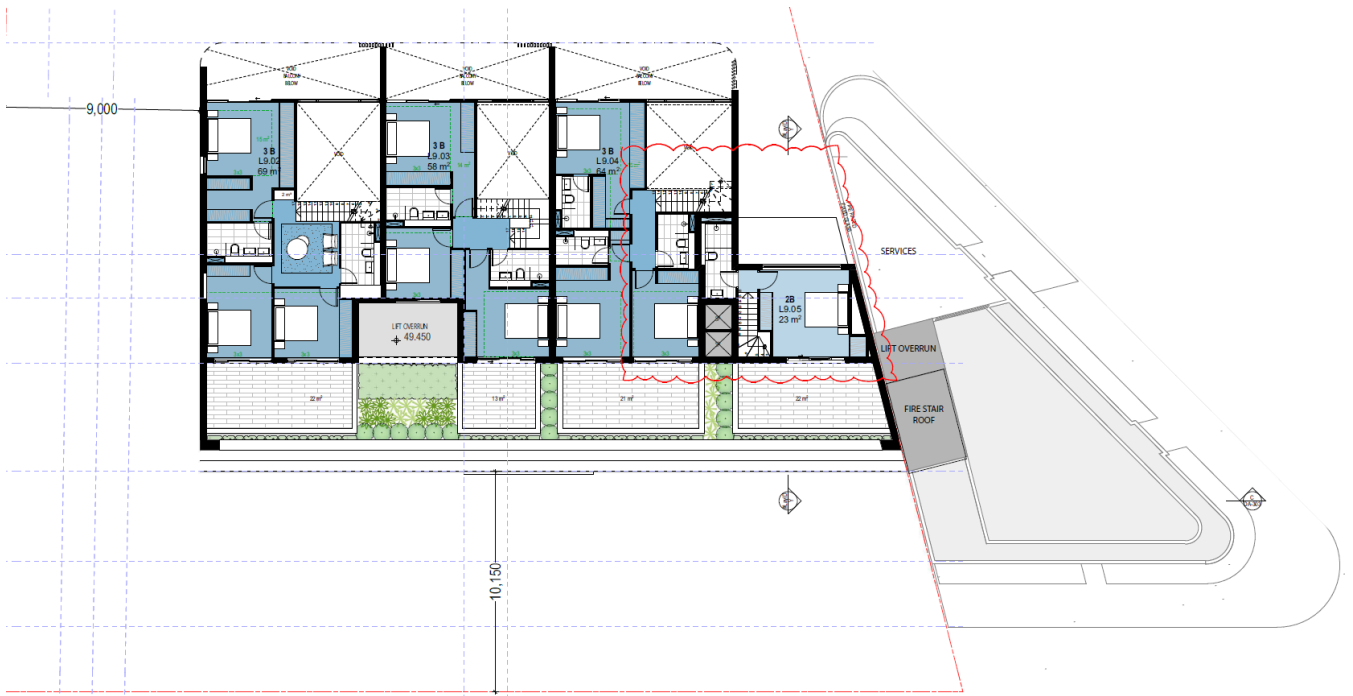


Figure 14: Extract from submitted plans – Dwg DA-107 - Floor Plans Level 10



Figure 15: Extract from submitted plans – Dwg DA-902 External Finishes Photomontage





Figure 16: Extract from submitted plans – Dwg DA-1409 Height Plane

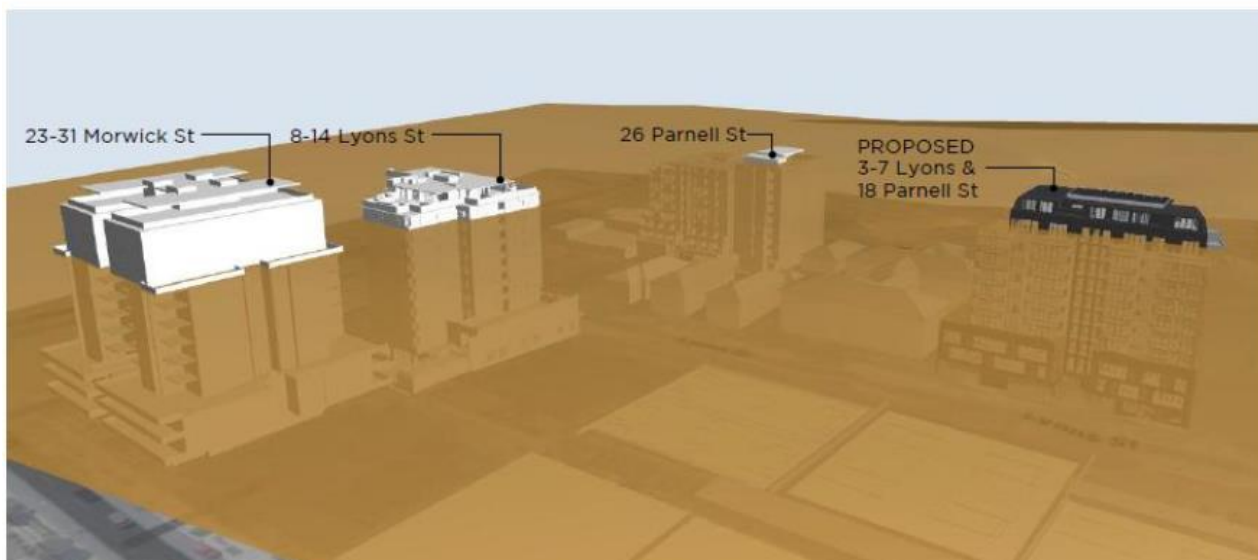


Figure 17: Extract from submitted plans – Dwg DA-1411 Contextual Analysis – Height Comparison (Note: this diagram is from the unamended drawing set, the amended drawings are the same height but have a reduced form at eastern edge of the proposed building compared to the above image).



Figure 18: Extract from submitted plans – Dwg DA-1411 Contextual Analysis – Height Comparison (Note: This diagram is from the unamended drawing set, the amended drawings are the same height but have a reduced form at eastern edge of the proposed building compared to the above image).

### Modification of DA2021.79

Development consent was granted to DA2021.79 for:

*“demolition of all existing structures and construction of 1 x three (3) and 1 x nine (9) storey residential flat building comprising a total of seventy-one (71) apartments and two (2) retail tenancies with three (3) levels of basement parking, communal open spaces and associated landscaping”*

The proposed development application seeks to formally modify DA2021.79 in accordance with the provisions of Section 4.17(b) of the *Environmental Planning and Assessment Act 1979*, which states the following:

*“(1) Conditions—generally A condition of development consent may be imposed if—*  
*(a) ..*  
*(b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 4.11 in relation to the land to which the development application relates, or...”*

Additionally, Section 4.17(5) states the following:

*“(5) Modification or surrender of consents or existing use rights*  
*If a consent authority imposes (as referred to in subsection (1)(b)) a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 4.11, the consent or right may be modified or surrendered subject to and in accordance with the regulations”*

Further, Section 67 of the *Environmental Planning and Assessment Regulation 2021* states the following:

*“67 Modification or surrender of development consent or existing use right—the Act, s 4.17(5)*  
*(1) A development consent or existing use right may be modified or surrendered by written notice to the consent authority.*  
*(2) The notice must contain the following information—*  
*(a) the name and address of the person giving the notice,*

- (b) the address and folio identifier of the land to which the consent or right relates,  
 (c) a description of the consent or right to be modified or surrendered,  
 (d) whether the consent or right will be modified, including details of the modification, or surrendered,

*Statement of Environmental Effects*

*Planning Ingenuity Pty Ltd REF: M210015 9*

- (e) if the person giving the notice is not the owner of the land—a statement signed by the owner of the land that the owner consents to the modification or surrender of the consent or right.

(3) The notice takes effect when the consent authority gives written notice to the person giving the notice that the consent authority received the notice.

(4) The notice operates, according to its terms, to modify or surrender the development consent or existing use right to which it relates.

(5) The consent of the owner is not required under subsection (2)(e) if the consent of the owner of the land was not required under section 23 to make the application for the development consent.

(6) In this section—

*existing use right means a right conferred by the Act, Division 4.11.”*

The proposed Development Application requests that DA2021.79 be modified through the above mechanisms. The modifications required include reference to the approved plans and documents as outlined in Condition 1 of DA2021.79.

## **Statutory Requirements**

### **Heads of Consideration**

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

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Sustainable Buildings) 2022;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
- State Environmental Planning Policy (Housing) 2021;
- Burwood Local Environmental Plan 2012 (BLEP 2012);
- Burwood Development Control Plan 2013 (BDGP 2013);
- The likely social, environmental and economic impacts of the development;
- The suitability of the site for the development;
- The public interest, and
- Submissions made under the Act and Regulations.

These matters are considered in this report.

## **Planning Assessment**

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

The provisions of SEPP (Resilience and Hazards) 2021 are required to be considered for any development application. Consideration must be made if the land is suitable for the proposed development, if it is contaminated, if it is suitable for the proposed use, and/or if the contamination is required to be remediated before the land is used for that purpose.

The condition of the site was assessed during the development assessment and subsequent approval of DA 2021.79.



The site has historically been used for residential purposes and the proposal seeks approval for the construction of alterations and additions to an approved mixed use development. On this basis, the proposal is consistent with the provisions of the SEPP.

No further action is considered necessary in relation to contamination.

### **State Environmental Planning Policy (Sustainable Buildings) 2022**

The proposed development includes BASIX affected buildings. A BASIX Certificate has been prepared and submitted with this application. An amended BAXIS Certificate was submitted with the amended drawings. The certificate demonstrates compliance with the thermal comfort, energy efficiency and water efficiency requirements of the SEPP BASIX.

Commitments made under the BASIX Certificate are detailed on the submitted architectural plans.

A condition of consent is recommended requiring the recommendations of the BASIX Certificate to be complied with.

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

*State Environmental Planning Policy (Biodiversity and Conservation) 2021* aims to protect the biodiversity and amenity values of trees and vegetation.

The proposed development does not seek to remove any existing trees from the subject site and as such, further consideration of the SEPP is not necessary.

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

The subject site is located within 25m of a rail corridor, however the development does not involve excavation of more than 2m depth.

Accordingly, the application has been referred to Sydney Trains pursuant to the requirements of clause 2.99.

By letter dated 11 August 2023 Sydney Trains has provided its concurrence, subject to conditions being imposed on the consent.

It is noted that application was amended in January/February 2024, however the amendments relate to a reduction in the bulk and scale of the proposed upper levels and further referral was therefore considered unnecessary.

Clause 2.100 of the SEPP requires the consent authority to consider whether the development is likely to be adversely affected by rail noise or vibration.

These matters have been previously addressed in the Acoustic Noise and Vibration Report that was prepared and submitted with the original development application under DA2021.79. That Report made recommendations with regard to mechanical plant and equipment and concluded that the development as proposed will meet the noise reduction levels as required by Clause 2.100 and the NSW Department of Planning Guideline "Development Near Rail Corridors and Busy Roads".

In accordance with the review and comments from Council's Environmental Health Officer, DA2021.79 includes conditions of consent that require the implementation of the recommendations Acoustic Noise and Vibration Report.

It is considered that the additional units proposed under the current DA will not affect the conclusions of the Acoustic Noise and Vibration Report and the same recommendations can be implemented to ensure the overall development, as modified by this DA, continues to meet the appropriated acoustic requirements.

Subject to inclusion of the recommendations made, the proposed development can comply with the relevant criteria and is acceptable with regard to rail noise and vibration impacts.

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

### Chapter 4 - Design of residential apartment development

The provisions of Chapter 4 of the Housing SEPP have effectively been transferred from the now repealed State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65).

In accordance with Section 144 of the Housing SEPP, Chapter 4 (Design of residential apartment development) applies to the following forms of development:

- development for the purposes of residential flat buildings,
- development for the purposes of shop top housing,
- mixed use development with a residential accommodation component that does not include boarding houses or co-living housing, unless a local environmental plan provides that mixed use development including boarding houses or co-living housing is residential apartment development for this chapter.

The proposed development as can be characterised as a mixed use development comprising a residential component and the provisions apply.

Section 145 of the SEPP stipulates that before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development.

Section 147 of the SEPP outlines the following:

- (1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—
  - (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
  - (b) the Apartment Design Guide,*
  - (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.**
- (2) The 14-day period referred to in subsection (1)(c) does not increase or otherwise affect the period in which a development application or modification application must be determined by the consent authority.*
- (3) To avoid doubt, subsection (1)(b) does not require a consent authority to require compliance with design criteria specified in the Apartment Design Guide.*
- (4) Subsection (1)(c) does not apply to State significant development.*

Section 148 of the SEPP outlines non-discretionary development standards for residential apartment development as follows:

- (1) The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*
- (2) The following are non-discretionary development standards—*

- (a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

The above provisions of the Housing SEPP apply to the development application.

In regard to Section 148, the proposed development complies with the car parking requirements at Part 3J of the ADG, the internal area of each proposed unit complies with Part 4D of the ADG, and the ceiling heights comply with the ceiling heights specified in Part 4C.

In regard to Section 147, the following sections of this Report demonstrate that the proposal has been considered against the:

- (a) the design principles for residential apartment development set out in Schedule 9,*
- (b) the Apartment Design Guide,*
- (c) advice received from the Burwood Design Review Panel.*

#### Burwood Design Review Panel

The DA was considered by the Burwood Design Review Panel on 29 June 2023. A summary of the Panel's comments and conclusions are provided below:

#### ***“Discussion***

- The panel can see that there is well-resolved design for the existing DA and it is well considered, materials work well and generally offers a good outcome. The smaller building to the Parnell Street frontage is very crisp, considered and has a clear design.*
- The panel asked whether modelling has been completed for the re-development of the apartment building adjoining the site, which was confirmed by the Urban link team*
- The consideration would relate to the top floor corner private open space and the intrusion into the side setback. The panel has not necessarily resolved as to whether this an issue in terms of non-compliance within the 12m side setback requirements.*
- A similar issue arises with the eastern unit on the top floor and windows overlooking the roof communal areas of the adjoining boarding house.*
- After discussion the panel resolved that the private open space element is a supportable outcome. It is a better use of the space as additional POS rather than as non-trafficable roof space.*
- The panel made comments in relation to the relationship between the top two additional floors and the angular boundary line with the adjoining boarding house. The upper floor addition feels quite jarring in comparison to the resolved design for the balance of the project. The portion of the building adjoining the boarding house is very angular and does not relate well to the balance of the two storey additional or tower. In particular, the apartment to the eastern elevation.*
- In comparison the balance of the addition feels balanced and resolved and has the appearance of a clean simple addition to the top of the tower. The eastern corner element*



*detracts from the overall simplicity of the tower form. It is recommended that this element be removed potentially offset with a modest increase in the size of the other units.*

- *The advice from the panel is to ensure that the overall tower form remains crisp and consistent and the additional two floors should reflect this.*

### **Conclusion**

- *The panel considers that the additional height to the development can be supported from a design perspective, noting that further planning assessment of the application is also necessary.*
- *However, it is recommended that the additional element to the eastern side of the two storey addition be deleted. This will likely mean removing one unit however, this might be reasonably offset with a minor increase in the size of other apartments. Noting that panels request that the two storey addition should appear consistent with the relatively clean and simple appearance of the overall tower design.”*

The applicant was issued with a Request for Additional Information seeking the deletion of part of the eastern side of the two storey addition (i.e. Unit L9.05). A meeting was held with the applicant on 30 January 2024 and alternative design responses were discussed, including the reduction and reconfiguration of the eastern wing of the proposed upper two levels.

The applicant subsequently submitted amended architectural drawings (and associated updated supporting documentation) which reduced and reconfigured the eastern wing of the upper two levels.

Specifically, Unit L9.05 has been reduced at both levels (i.e. Level 9 and at Level 10) and has been reconfigured from a 3-bedroom unit to a 2-bedroom unit. It has been reduced so that it now effectively aligns with the position of the rooftop plant, lift overrun and stairwell of the constructed tower at 1 Lyons Street.

The applicant has provided the following response:

*The objective of the above recommendation is noted and acknowledged. The eastern portion of the proposed DA, when viewed from Parnell St, appeared to be an excessive addition to the approved form.*

*Upon closer examination, the existing lift overrun and staircase roof at 1 Lyons St are constructed higher than the drawings previously presented. After the modelling was corrected to represent the true form of what has been constructed, a proposal at nil boundary on Level 10 is a better outcome than completely deleting L9.05 and creating a 5m open area that is unlikely to be utilised and looks over the services of the neighbouring property. This has been demonstrated by testing both options as shown below:*



*In saying that, the proposed unit has been reconfigured and further setback from the north to become well integrated as part of the building. This is evident in the below snips showing a comparison between issue E and issue G:*



The proposed amendments to the eastern wing of the upper two levels has addressed the basis of the concerns raised by the Design Review Panel, in that the amendments have improved the relationship between the top two additional floors and the angular boundary line with the adjoining boarding house at 1 Lyons Street.

The eastern end of the proposed upper two levels aligns with the lift overrun, the stairwell and roof top plant of the building to the east, such that the upper floor addition has been reduced (particularly to the north) along the eastern boundary and provides a better balance with the constructed building to the east.

The eastern corner element has been simplified and better responds to the adjacent building as demonstrated in the amended plans and in the images above.

Design Quality Principles

The amended application is also supported by a Design Verification Statement prepared by Urban Link Architects which satisfies the requirements at clause 29 of the Environmental Planning and Assessment Regulation 2021. The Design Verification Statement includes detailed consideration of the application against the Design Principles for Residential Development as set out in Schedule 9 of the Housing SEPP.

The proposal as amended is considered to be consistent with the Design Quality Principles as outlined in Table 3 below.

<b>Principles</b>	<b>Comments</b>
<i>Principle 1: Context and Neighbourhood Character</i>	The proposed development is consistent with the desired future character of Strathfield Town Centre and is permissible in the MU1 Mixed Use zone. The development is consistent with the objectives of development controls contained in BLEP 2012 and BDCP 2013.
<i>Principle 2: Built Form and Scale</i>	Notwithstanding that the proposal involves a request for a variation to the maximum building height development standard, the proposed built form and scale of the building is appropriate for this site. The proposed building façades are articulated and comprise a mix of materials/finishes, so as to minimise the perceived bulk and scale of the development. The overall scale of the development, though higher than the maximum building height control, is nonetheless consistent with the height of emerging buildings and recent approvals in the locality.
<i>Principle 3: Density</i>	Notwithstanding that the proposal involves a request for a variation to the maximum floor space ratio development standard, the density and massing of the proposed development is an appropriate response to the desired future character of the site and surrounding locality.
<i>Principle 4: Sustainability</i>	A BASIX Certificate has been submitted with the development application and demonstrates that sustainable development features can be installed. The development achieves a good level of natural light and cross ventilation. The proposed development also includes bicycle parking for both visitors and residents and is in a location well served by public transport.
<i>Principle 5: Landscape</i>	A landscape scheme has been prepared by a qualified Landscape Architect which provides appropriate planting to the private open spaces of the proposed two additional levels. The landscaping theme and quality is consistent with the landscaping approved under DA 2021.79.
<i>Principle 6: Amenity</i>	<p>The proposal is considered to achieve good amenity for the development itself, contributing to the positive living environment of residents, optimising internal amenity through complying room dimensions and efficient layouts, access to sunlight, natural ventilation, visual and acoustic privacy, storage, and indoor and outdoor space. The proposal will result in a good mix of units at the site, with good to high residential amenity.</p> <p>The proposal does not alter the approved amount of 339m<sup>2</sup> of communal open space provided at ground level and 127m<sup>2</sup> provided at level 1 as part of DA 2021.79. This equates to a total of 466m<sup>2</sup> (i.e. 25.1%), which complies with the ADG requirement of a minimum area equal to 25% of the site.</p> <p>It also noted that 235m<sup>2</sup> (50.4%) of the communal open space achieves direct sunlight for a minimum of 2 hours between 9am and 3pm at mid-winter.</p>
<i>Principle 7: Safety</i>	The proposal is considered to provide appropriate safety for occupants and the public as it allows for the passive surveillance of private and public communal open spaces from residential windows and balconies. Retail and residential lobby activation at ground level also provides for passive surveillance of the public domain.
<i>Principle 8: Housing Diversity and Social Interaction</i>	The proposal seeks to increase the provision of housing to suit local needs, delivering additional residential accommodation (above that previously approved for the site) and retail uses in a location close to public transport links and other services and facilities.
<i>Principle 9: Aesthetics</i>	The composition of building textures, materials, and colours reflect the use, internal design, and structure of the proposed buildings.

	<p>Consistent with the comments of the Burwood Design Review Panel, the eastern corner element of the proposed upper two levels has been amended to better reflect the overall simplicity of the approved tower form.</p> <p>The proposed development (as amended) aesthetically responds to the environment and context of the site, and appropriately contributes to the desired future character of the area. The proposed dark recessive material finishes for the proposed additional two upper levels will result in a visually appealing external appearance.</p>
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**Table 3:** Assessment against SEPP (Housing) Design Quality Principles

### Apartment Design Guide

The development has been assessed against the relevant key Design Criteria within Parts 3 and 4 of the ADG as demonstrated in Table 4. It is noted that the assessment is for the entire development, i.e. assessment of the total 77 apartments within the mixed use development that would result as an outcome of the proposed additional two levels to the taller of the two approved buildings.

TABLE 4

Design Criteria	Consistency / Compliance
<b>Part 3 Siting the Development</b>	
<b>3D Communal &amp; Public Open Space</b>	
Communal open space has a minimum area equal to 25% of the site.	<p>Complies.</p> <p>The quantum of communal open space (466m<sup>2</sup>) will not change and equates to 25.1% of the site area.</p>
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (midwinter)	<p>Complies.</p> <p>The submitted shadow diagrams demonstrate that 235m<sup>2</sup> (50.4%) of the communal open space will receive at least two (2) hours of direct sunlight between 9am and 3pm midwinter.</p>
<b>3E Deep Soil Zones</b>	
<p>Deep soil zones for sites over 1500m<sup>2</sup> are to meet the following minimum requirements:</p> <ul style="list-style-type: none"> <li>• Minimum Dimension: 6m</li> <li>• Percentage of site area: 7%</li> </ul>	<p>Complies.</p> <p>The quantum of deep soil area remains unchanged from that approved under DA 2021.79 at 132m<sup>2</sup> which equates to 7.1% of the site area and dimensions of at least 6m are provided.</p>
<b>3F Visual Privacy</b>	
<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <ul style="list-style-type: none"> <li>• Buildings up to 12m (4 storeys): <ul style="list-style-type: none"> <li>– Habitable rooms &amp; balconies: 6m</li> <li>– Non-habitable rooms: 3m</li> </ul> </li> <li>• Buildings up to 25m (5-8 storeys): <ul style="list-style-type: none"> <li>– Habitable rooms &amp; balconies: 9m</li> <li>– Non-habitable rooms: 4.5m</li> </ul> </li> <li>• Buildings over 25m (9+ storeys): <ul style="list-style-type: none"> <li>– Habitable rooms &amp; balconies: 12m</li> <li>– Non-habitable rooms: 6m</li> </ul> </li> </ul>	<p>Partially complies.</p> <p>The proposed DA for two additional levels to the top of the approved 9 storey building does not alter the approved building separation from the Ground Level to Level 8.</p> <p>Having regard to the proposed two additional levels, the proposal does not comply with the 12m separation distances set out in the ADG for buildings that are 9 plus storeys. This is the case for the western and eastern side boundaries of the proposed additional levels.</p> <p>Specifically, the western building wall for the proposed</p>



upper two levels is setback 9m from the western side boundary, with the western edge of the private open space terrace at level 9 (i.e. the 10th storey) being setback by 4.5m from the western boundary.

The eastern building wall of the two storey addition (as amended) has nil setback (consistent with the nil setback of the approved and constructed building to the east).

When considering the separation distances it is pertinent to consider the objective of the Design Criteria which relates to visual privacy as follows:

*“Adequate building separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal visual privacy.”*

It is considered that the western setback is acceptable given the 9m setback for openings in the western wall will not result in direct overlooking of the openings in the lower existing building to the west. Further, any future development at that site (of a similar height to that proposed at the subject site) could reasonably be expected to apply a similar 9m setback, thereby creating a 18m building separation.

With regard to the 2 bedroom unit in the south west corner of Level 9, i.e. Unit L9.01, it is noted that the western edge of the balcony extends past the western building wall of the Unit so that it is setback by 4.5m to the western boundary.

The proposed balcony is located in this way as it seeks to utilise the roof area of the unit below on Level 8. It is noted that the western edge of the balcony includes a 1.5m wide landscape planter along its entire length. The proposed planter is to be planted with Cascade Lillypilly trees that grow to 2m upon maturity. In this instance it is considered that the balcony and landscaping arrangements are such that there will be no direct overlooking of openings or private open space of the adjacent property resulting from the use of the balcony and the proposed setback is acceptable.

With regard to the eastern building wall, it is considered that the proposed arrangement as amended is acceptable given it can be reasonably expected that the building to the east will not to be built up any further for a considerable time.

The eastern wall of the upper two levels does not include any openings. It is also noted that the western wall of the building at 1 Lyons Street (which abuts the common boundary) does not have any openings.

Further, the balconies proposed to the eastern most

	unit at Level 9 and 10 of the proposed addition (being Unit L9.05) will address a blank wall (at Level 9) and is adjacent the lift overrun and fire stair wall of 1 Lyons Street (at Level 10). There will therefore be no direct overlooking resulting between the properties as a result of the nil setback to the eastern boundary.
<b>3J Bicycle &amp; Car parking</b>	
<p>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; or</li> <li>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</p> <p>The car parking needs for development must be provided off street.</p>	<p>Can comply:</p> <ul style="list-style-type: none"> <li>Required (Council): 92 car parking spaces (75 residential spaces, 15 visitor spaces, 2 retail space)</li> <li>Required (RMS): The minimum off street parking requirement is 81 spaces under the RMS rates.</li> <li>Proposed: 93 car parking spaces</li> </ul> <p>Council's DCP requires bicycle parking to be provided in line with the provisions within Cycling Aspects of Austroad Guides for any development with gross floor area in excess of 400m<sup>2</sup> or three dwellings.</p> <p>The total bicycle parking required is 32 spaces (to service the entire development with the proposed two additional levels). The proposal includes 20 bike parking spaces. The proposed bike parking does not satisfy Council's DCP. A condition of consent has been recommended which requires the provision of an additional 12 spaces.</p>
<b>Part 4 – Designing the Building</b>	
<b>4A Solar &amp; Daylight Access*</b>	
Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in Sydney Metro Area and Newcastle and Wollongong LGAs.	Complies.  78% of apartments (60 out of 77) will receive at least 2 hours direct sunlight between 9am and 3pm midwinter.
A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3pm at mid-winter	Complies.  14% of apartments (11 out of 77) will receive no direct sunlight between 9am and 3pm midwinter.
<b>4B Natural Ventilation*</b>	
At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Complies.  64% of apartments (49 out of 77) are naturally ventilated.  Noting that of the proposed additional 6 units, 5 are naturally cross ventilated.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	Complies.  Apartments do not exceed 18m in depth.
<b>4C Ceiling Heights</b>	
<ul style="list-style-type: none"> <li>Habitable rooms 2.7m</li> <li>Non-habitable 2.4m</li> </ul>	Complies.  <ul style="list-style-type: none"> <li>Habitable rooms: 2.7m (minimum)</li> </ul>

	· Non-habitable rooms: 2.4m (minimum)
<b>4D Apartment Size &amp; Layout *</b>	
<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> <li>· Studio: 35m<sup>2</sup></li> <li>· 1 bedroom: 50m<sup>2</sup></li> <li>· 2 bedroom: 70m<sup>2</sup></li> <li>· 3 bedroom: 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p>	<p>Complies.</p> <p>All apartments have an internal area equal to or above the minimum required sizes.</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. Daylight and air may not be borrowed from other rooms.</p>	<p>Complies.</p> <p>All habitable rooms have access to a window with an area less than 10% of the floor area of the room.</p>
<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>Complies.</p> <p>All habitable rooms have a depth of less than 6.75m (i.e. 2.5 x ceiling height).</p>
<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>Complies.</p> <p>All habitable rooms within an open plan layout have a depth of less than 8m.</p>
<p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</p>	<p>Complies.</p> <p>All bedrooms have a size of at least 9sqm (10sqm for master bedrooms).</p>
<p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p>	<p>Complies.</p> <p>All bedrooms have dimensions equal to 3m or greater.</p>
<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>· 3.6m for studio and 1 bedroom apartments</li> <li>· 4m for 2 and 3 bedroom apartments</li> </ul>	<p>Complies.</p> <p>All living rooms have a width equal to or greater than 3.6m (for studio and 1 bed apartments) or 4m (2 and 3 bed 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>Complies.</p> <p>Apartments are greater than 4m in width.</p>
<b>4E Private Open Space &amp; Balconies*</b>	
<p>All apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> <li>· Studio: 4m<sup>2</sup> area</li> <li>· 1 bedroom apartments: 8m<sup>2</sup> area, minimum 2m depth</li> <li>· 2 bedroom apartments: 10m<sup>2</sup> area, minimum depth 2m</li> <li>· 3+ bedroom apartments: 12m<sup>2</sup> area, minimum depth 2.4m</li> </ul>	<p>Complies.</p> <p>All apartments are provided with private open space equal to or above the minimum required sizes.</p>

For apartments at ground level or on a podium or similar structure, private open space is to be a minimum depth of 3m and area of 15m <sup>2</sup> .	
<b>4F Common Circulation &amp; Spaces*</b>	
The maximum apartments off a circulation core on a single level is eight	Complies.  A maximum of seven (7) apartments at each level are accessible off a circulation core, noting that the larger tower (subject of the proposed additions) has two lifts servicing it.
<b>4G Storage*</b>	
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bedroom apartments: 6m<sup>3</sup></li> <li>• 2 bedroom apartments: 8m<sup>3</sup></li> <li>• 3+ bedroom apartments: 10m<sup>3</sup></li> </ul> At least 50% of the required storage is to be located within the apartment	Complies.  All apartments are provided with storage equal to or above the minimum required sizes. At least 50% of the required storage is located within the apartments.
* <i>Equivalent provisions in any Council DCP are not to apply.</i>	

**Table 4:** Assessment against ADG Design Criteria**Burwood Local Environmental Plan (BLEP) 2012**

BLEP 2012 contains several development standards which apply to the proposed development. An assessment of the application against the relevant planning controls within BLEP 2012 is shown in Table 4 below.

Development Standard	Proposal	Compliance
<b>2.3 Zone objectives and Land Use Table</b>  MU1 Mixed Use	The proposed land use is a 'residential flat building' and 'commercial premises', which are permitted with consent in the MU1 zone.  The development, when considered holistically, satisfies the objectives of the zone in that it will provide a mix of compatible uses, including 77 residential apartments of various sizes and layouts, as well as two (2) retail units at ground floor.  The development will encourage active transport as it will provide high-quality residential accommodation within walking distance of Strathfield Station and with access to the wide range of services and facilities within the Strathfield Town Centre.	Yes
<b>4.1 Minimum subdivision lot size</b>  Minimum 500sqm	The proposed alterations and additions does not include subdivision.	Yes
<b>4.3 Height of Buildings</b>	The proposed development will have a maximum height of 35.8m which exceeds the maximum building height. The application is supported with a Clause 4.6 Variation Statement	No. Acceptable on merit.



Maximum 30m	which seeks to justify a variation to the development standard.	Refer to discussion below after Table 4.
<b>4.4 Floor space ratio</b>  Maximum 3:1	The development proposes a gross floor area (GFA) of 6,128m <sup>2</sup> and FSR of 3.3:1 which exceeds the maximum FSR. The application is supported with a Clause 4.6 variation statement which seeks to justify the variation.	No. Acceptable on merit. Refer to discussion below after Table 4.
<b>4.6 Exceptions to Development Standards</b>  <b>Exceptions to Development Standards</b>	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) the 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	Yes.  The applicant has submitted formal written requests addressing the provisions of Clause 4.6 and seeking variations to the FSR and the Height of Buildings development standards.  Refer to discussion below after Table 4.
<b>6.1 Acid Sulphate Soils</b>	The site is identified as Class 5 Acid Sulphate Soils. The subject site is not located within 500m of Class 1, 2, 3 and 4 land. The proposed development will not affect the water table in areas with Class 1 to 4 Acid Sulphate Soils.	Yes
<b>6.5 Design Excellence in B2 and B4</b>	It is considered that the proposal, as amended, demonstrates design excellence and satisfies the provisions of clause 6.5, as summarised below: <ul style="list-style-type: none"> <li>• The proposed built form massing and architectural design is appropriate to the context of the site and its mixed use locality. The architectural style, articulation, materials and configuration of the proposed two upper levels are consistent and complementary with the design and architectural style of the development as approved at the site.</li> <li>• The proposed landscape and urban design demonstrates a high quality and amenity for users of the building and creates an active frontage;</li> <li>• The two (2) ground floor retail tenancies (unchanged from the original approval) will activate the streetscape at Lyons Street;</li> <li>• The podium element (unchanged from the original</li> </ul>	Yes

	<p>approval) appropriately references the pattern and modulation of surrounding development and minimises the perceived bulk and scale of the building to achieve a human scale;</p> <ul style="list-style-type: none"> <li>• The proposed vehicular access driveway at the south-western corner of the site is located away from pedestrian movement pathways and has been designed with regard to maximising traffic safety;</li> <li>• The provision of diverse communal open spaces (unchanged from the original approval) at ground floor and Level 1 supports the flexibility of use of the development;</li> <li>• The proposed upper two levels of the taller tower (subject of this application), are recessed from the western, northern and southern boundaries. The eastern boundary of the taller building has nil setback, and responds appropriately to the alignment and height of the tower building at 1 Lyons Street which also has a nil setback to the common side boundary. The eastern edge of the proposed upper two levels has been configured to respond and align to the position of the lift core, fire stairs and roof plant equipment located on the roof of 1 Lyons Street, thereby reducing the visual bulk of the eastern edge of the building. Overall the proposal has been designed to minimise overshadowing impacts and reduce the perceived building bulk; and</li> <li>• Sustainable design elements were incorporated into the building design of the development as approved including provision of solar panels and passive solar shading devices and these are maintained within the proposal.</li> </ul>	
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**Table 4:** Assessment against BLEP 2012

**Non-compliance with Clause 4.3 – Height of Buildings and Clause 4.6 Exceptions to Development Standards.**

Clause 4.3(2) of BLEP 2012 prescribes the maximum building height for the site and refers to the Height of Buildings Map. The relevant BLEP Height of Building map identifies the subject site as having a maximum permitted height of 30m.

The proposed development has a maximum building height of 35.8m and exceeds the 30m height of buildings development standard by 5.8m, which is equivalent to a variation of 19.3%. The extent of the non-compliance is shown in Figures 19 -21 below.

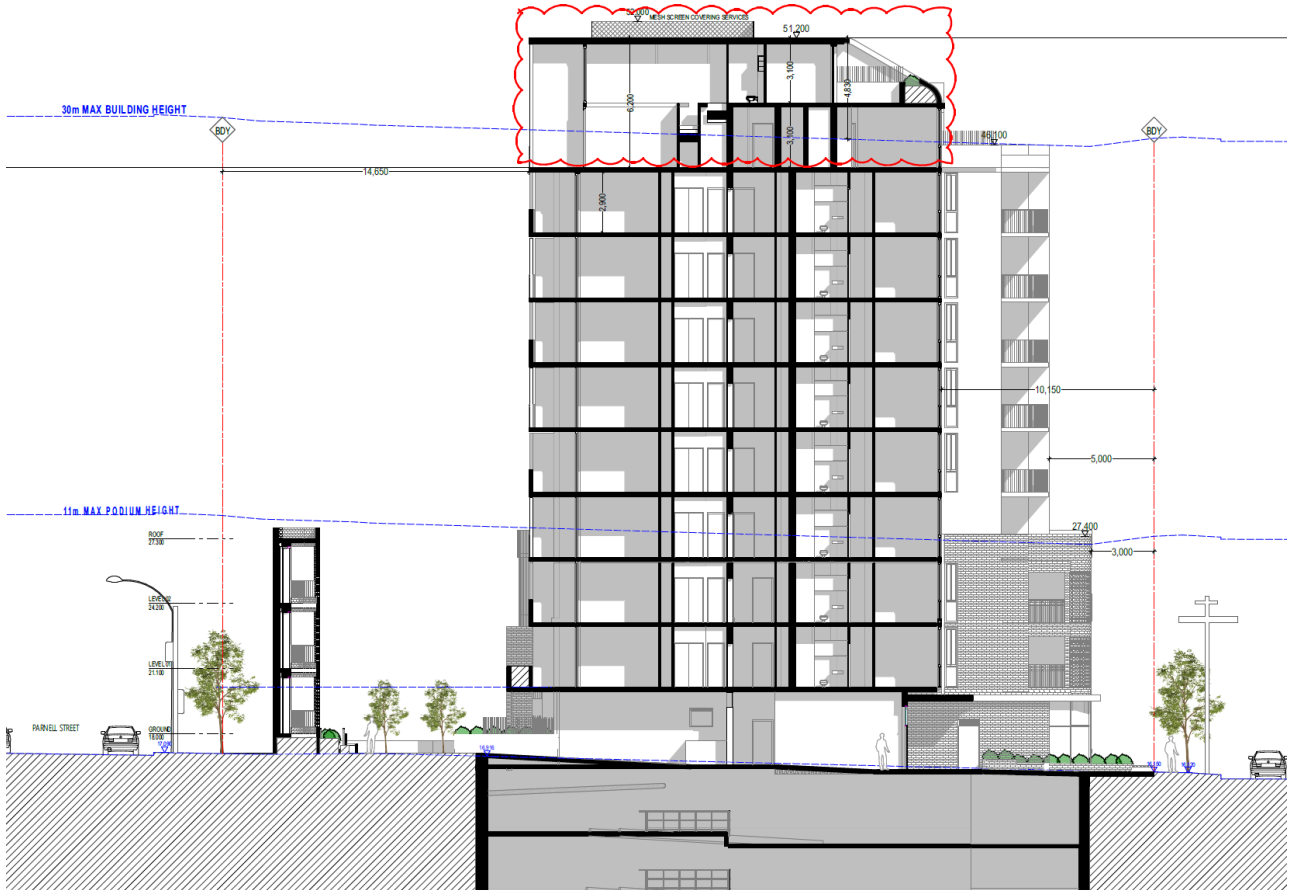


Figure 19: Extract from submitted plans – Dwg DA-302 Section BB

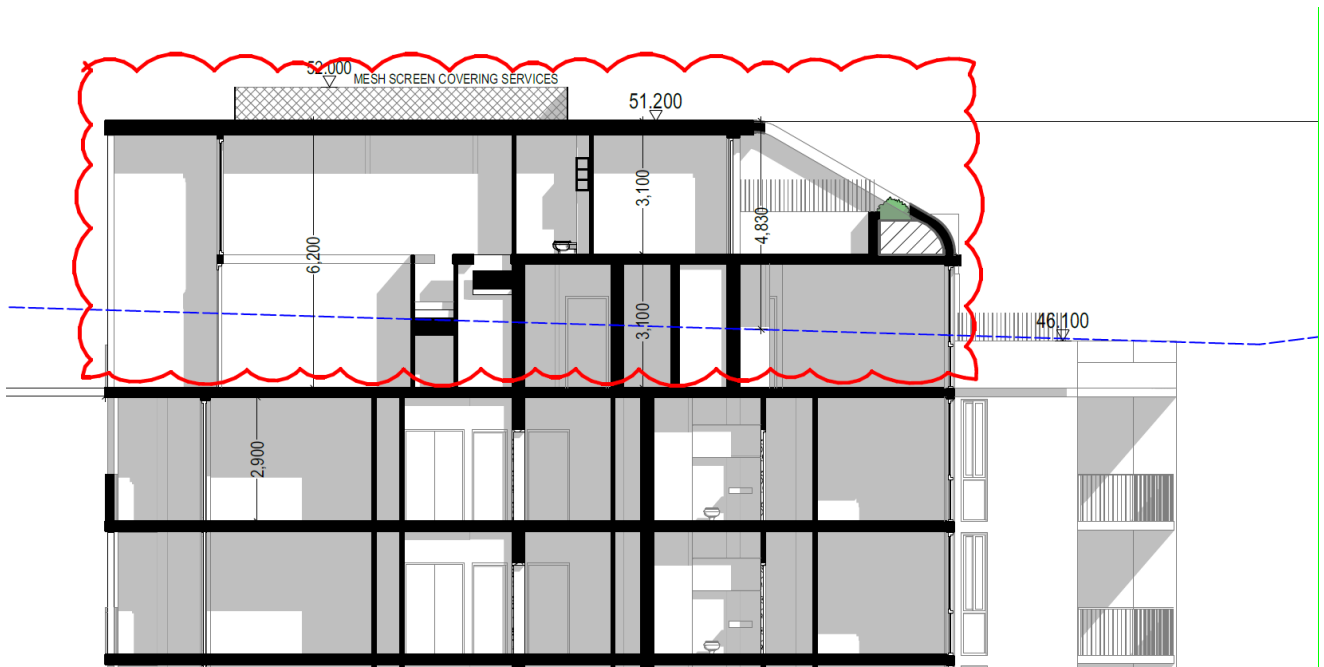


Figure 20: Extract from submitted plans – Dwg DA-302 Section BB

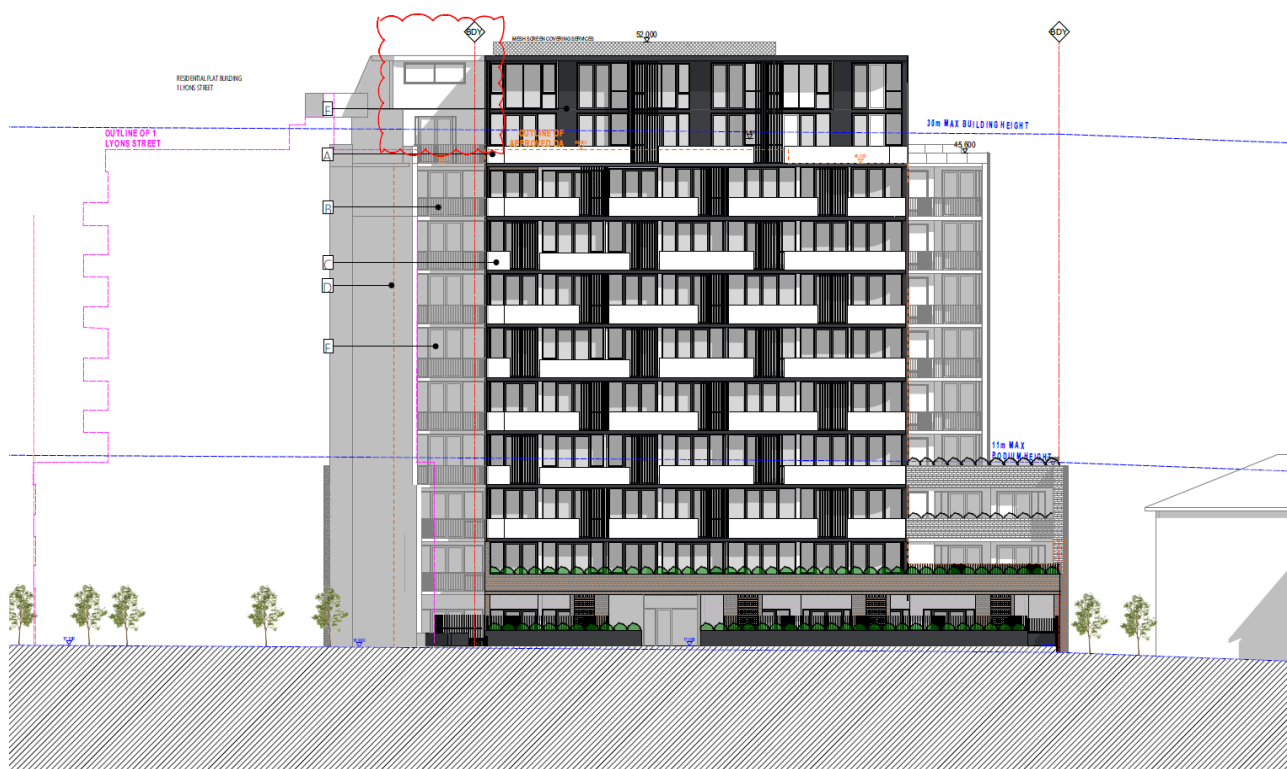


Figure 21: Extract from submitted plans – Dwg DA-203 North Internal Elevation (Note: The upper two levels are proposed – the red highlight in this diagram shows the eastern edge of the upper two levels that has been amended in response to the Design Review Panel comments)

Clause 4.6 of the BLEP 2012 provides authority and procedures for consent authorities to consider, and where appropriate grant consent, even though the development would contravene a particular development standard. The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards, and to provide better outcomes for and from development by allowing flexibility.

The provisions of Clause 4.6 may be applied to the maximum building height development standard of BLEP 2012. In accordance with Clause 4.6(3), 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:

- 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.” Request to vary Maximum Height of Buildings Development Standard

### **Applicant’s Justification**

- ***Clause 4.6(3)(a)***

The applicant has submitted a Clause 4.6 written variation request pursuant to Clause 4.6, with respect to the amended plans. Having regard to Clause 4.6(3)(a), the applicant has provided the following justification:



**“Compliance with the standard is unreasonable or unnecessary**

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- the development is consistent with the standard and zone objectives, even with the proposed variation (as set out in Section 7 below);
- there are no significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are better achieved by the approval of the variation.

In terms of the last point, the relevant planning goals are set out below.

Clause 1.2(2) of BLEP 2012 sets out the plan’s aims. Clause 1.2(2)(c) and (d) says that it is an aim of the plan:

(c) to encourage provision of a range of housing types,

The proposal is consistent with the above stated objective as it provides high quality accommodation across a range of dwelling compositions. The new upper levels provide maisonette apartments which further contribute to the mix of apartment types within the approved development.

The MU1 zone objectives are better achieved by allowing the variation (as set out in section 7 below).

Approval of the variation will give better effect to the aims of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65). In particular:

- The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i)).
- Approval of the proposed variation will provide a better mix of dwelling types to meet population growth (clause 2(3)(f)).

On this basis, the requirements of clause 4.6(3)(a) are satisfied.”

Having regard to the reference to the satisfaction of the standard and zone objectives, the following is an extract from the written Clause 4.6 statement:

**“Height of Buildings Objectives**

The objectives and relevant provisions of clause 4.3 of BLEP 2012 are as follows, inter alia:

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

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

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of clause 4.3 are addressed in turn below.

*Objective (a):*

*This objective articulates the ultimate function of the height of buildings development standard. The maximum height for buildings on land within the Burwood Local Government Area is identified in the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 30m and the maximum height of the proposal is 35.8m. The development will retain the nine storey built form fronting Lyons Street, with the non-compliance created by the additional floors located towards the centre of the site.*

*The proposal achieves the objective of establishing a maximum building height for the site, using the Height of Buildings Map as a mechanism to do so. This written request identifies the extent of variation proposed and explains why the variation is acceptable in the circumstances.*

*Objective (a) also refers to encouraging medium density development in specified areas and low density in other areas. The proposal provides a development which is consistent with the scale of development anticipated within the Strathfield Town Centre and on land within the MU1 zoning. The proposed development will provide an increase of housing diversity within a highly accessible location in close proximity to various land uses, public transport and open spaces as is encouraged by the inherent location of the site. Indeed, the site is a desirable location for high density residential development as stated within the Burwood Local Housing Strategy, and the provision of additional residential units on the site aligns with Councils vision for the site.*

*Despite height non-compliance, the proposed non-compliant levels will reflect the desired increase of density whilst minimising the impacts to the streetscape character and amenity of neighbouring properties. The height, form and scale of the proposal is entirely compatible with that of recently approved buildings, noting that compatible does not mean "sameness" (Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191). The proposed development satisfies objective (a).*

*Objective (b):*

*Objective (b) refers to controlling potentially adverse impacts of building height on adjoining areas.*

*The size of the subject site provides an opportunity to allow for a larger scale development which can accommodate the setbacks and building separation of the approved development whilst minimising potential impacts of overlooking, overshadowing and view loss to the adjoining properties. The proposed height breach will not adversely compromise the use and enjoyment of neighbouring properties and is considered to retain the high quality built form fronting Lyons Street. The proposal will not alter the approved building setbacks of the site and continues to provide a massing that responds to the context of the site and surrounding properties, in particular the building at No. 1 Lyons Street to the east. The height, bulk and scale of the proposed upper levels has been architecturally treated with high quality materials and finishes to ensure visual impacts are not significant and the design ensures that the approved and compliant portion of the building remains the dominant feature within the streetscape.*

*In terms of privacy, the elements of the building above the 30m height limit pertain to the proposed levels 9 and 10 which are mainly the larger three bedroom maisonette style apartments. These apartments have limited side facing windows and have generally been designed with the habitable rooms and balconies orientated towards the street frontages. The building maintains a nil setback to No. 1 Lyons Street to the east where a similar built form exists and achieves a 9m setback to the west in accordance with the ADG separation distances. The balcony provided at Level 9 which provides a non-compliant setback to the western boundary is appropriately screened with landscape planters, and given it is substantially oriented towards the street, is not considered to introduce any adverse privacy impacts.*

*In relation to solar access, the elements of the building above the 30m height do not create any significant additional overshadowing to adjoining properties when considering the extent of overshadowing against the backdrop of applicable planning controls and the approved development. That is, the height breach is located towards the centre of the site and the additional overshadowing is cast almost entirely within the shadowing cast by the approved development. Accordingly, the elements of the building that breach the height do not have significant adverse impacts on the overshadowing of adjoining properties between 9am and 3pm in midwinter.*

*In terms of view loss, the proposed variation will not result in any significant loss of views or outlook when compared to a compliant building or the approved development. It is reasonably anticipated that any loss of views from neighbouring properties would be expected due to the increased height and density permitted on the MU1 zoned land. In this case the property to the south is zoned R2 Private Recreation and is therefore unlikely to be affected by any variation in maximum building height at the subject site.*

*Therefore, the proposed development satisfies objective (b)*

#### *Zone Objectives*

*Clause 4.6 (4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the MU1 – Mixed Use Zone are as follows:*

- *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.*

*Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The proposed development is consistent with the relevant zone objectives in that it will:*

- *The proposal will retain the approved retail tenancies on the site which will generate employment opportunities;*
- *The proposal will retain the approved retail tenancies on the site which provide activation to the street frontage;*
- *The proposal relates to additional residential units within the approved development which will add any conflict with the development or with any adjoining properties due to the careful design and siting of the new units; and*
- *The proposal will retain the approved retail tenancies on the site which are located on the ground floor.”*

- **Clause 4.6(3)(b)**

Having regard to Clause 4.6(3)(b), the applicant has provided the following justification:

*“The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson.*

*The following planning grounds are submitted to justify contravening the maximum building height:*



1. *The height breach is greatest for the upper floor of the roof top apartments which are set in from the external face of the building and are therefore visually subservient. The maximum non-compliance (5.8m) occurs at the centre of the building away from the site boundaries. This ensures that the proposed upper levels will be recessive and not visually jarring to the casual observer on Lyons Street or Parnell Street.*
2. *The proposed increase in GFA and subsequent increase of building height is a result of the 10% bonus FSR anticipated under Council's Policy entitled 'Carrying out Bonus Development in the Public Interest'. Given the subject site is situated within the MU1 zone in the Strathfield Town Centre under the BLEP 2012, additional FSR bonus is anticipated per a Voluntary Planning Agreement (VPA). That is, when considering potential built form and desired future character, potential take up of this policy must be contemplated.*

*Accordingly, it is considered that the additional bulk and scale created by the proposed development is reasonably anticipated within the locality. Notwithstanding, the proposed development is considered acceptable on its own merit as is discussed in this variation request. The proposed setbacks to the upper levels and the resultant built form will ensure that the non-compliant portions of building are not visually dominant and as demonstrated through the architectural plans submitted will not raise any significant issues in terms of privacy or overshadowing.*

3. *The proposed upper levels and the subsequent height non-compliance will not add any significant bulk when compared to the scale of the approved development and the scale of the adjoining development at No. 1 Lyons Street. Visually, the proposed bulk of development will be similar to that approved on the site and is not considered to be excessive for the site or the locality.*
4. *In accordance with the Burwood Local Housing Strategy, the site is ideally located for higher density residential development due to its location to public transport, shops, open space and educational establishments. The proposed height non-compliance will allow for additional residential apartments to be provided within the approved development with an absence of amenity impacts on the surrounding locality. Since the proposal aligns with the strategic vision for the locality without adversely impacting any neighbouring sites, the proposal is considered a positive planning outcome, encouraged by Council's strategic plans for the future.*
5. *As mentioned, the height breach of the proposed upper level is greatest at the centre of the site. When viewed from the public domain, the 30m setback from the rear boundary (Parnell Street) and 10m from the front boundary (Lyons Street) ensures that the proposal will be predominantly perceived as nine storeys from the public domain and not eleven storeys, similar to the approved development. To the casual observer, the proposed additional floor levels will appear compliant with the development in the locality given the increasing density permitted under the relevant development standards.*
6. *The proposed development provides the additional height through a design which will provide superior amenity for internal occupants without adversely impacting the amenity of adjoining property owners. The proposed envelope of the upper levels has been carefully considered with greater front and rear setbacks. The maisonette style apartments provide occupants with generous living areas and private terraces which will not impact upon the privacy of neighbouring properties.*
7. *The proposed development is entirely compatible with the height of development within the immediate locality. Indeed, development within the vicinity of the subject site consists of multi storey residential flat buildings and mixed use developments reaching up to 13 storeys in height, despite the 30m height limit. As shown in Figure 18 and 19*

below, a number of these developments extend above the building height plane, with height variations greater than that proposed on the subject site. In this context, the proposed height variation is considered appropriate and represents a scale of development which is compatible with development within the locality.

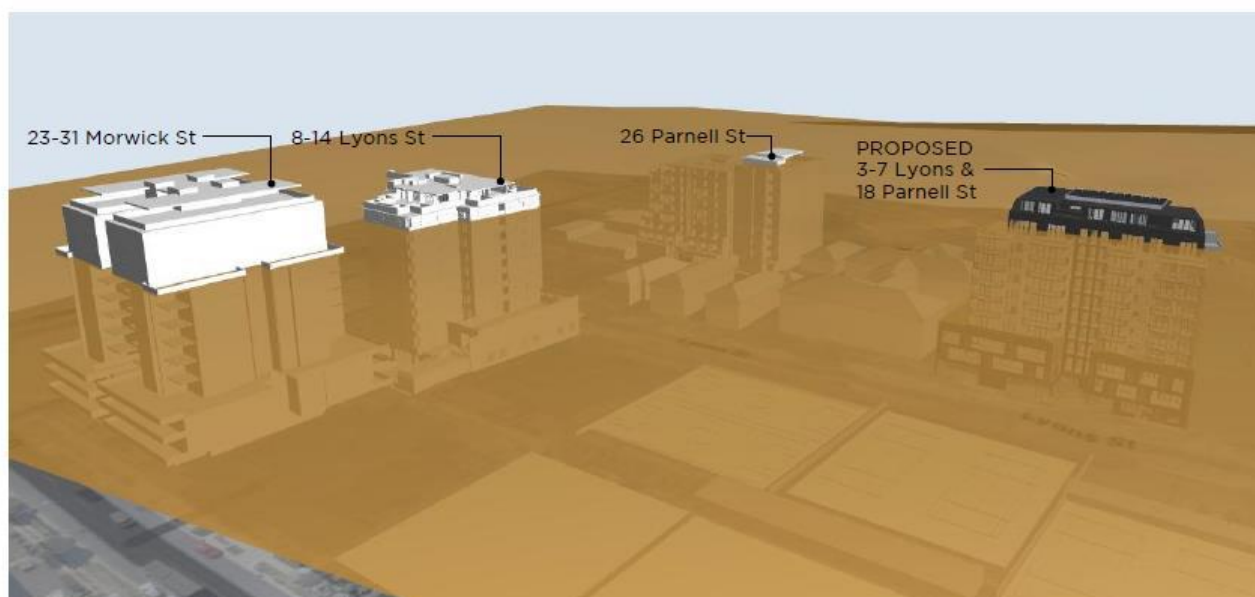


Figure 18 Height blanket diagram of the locality, looking north west.



Figure 19 Height blanket diagram of the locality, looking south east.

8. *The social benefits of providing additional housing stock within a highly sought after location should be given weight in consideration of the variation request. The additional distribution of floor space necessitates a form and scale that breaches the height limit. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of apartments within a well located and well-designed development.*
9. *It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:*
  - a. *The extent of the additional height creates no significant additional overshadowing impacts to adjoining properties when compared to a compliant building envelope, and more specifically, the approved building envelope. As*

- shown on the shadow diagrams submitted with this application, the shadowing which results from the proposed upper levels and subsequent height non-compliance, will substantially fall within the shadow of the approved DA due to the centralised location and recessive design of the upper levels. The proposal will continue to provide 3 hours of solar access on 21 June to all of the apartments within the neighbouring property as originally approved, despite the height non-compliance. The extent of additional impact from the increased building height would be insignificant and would not be noticeable to the owners of adjoining property at No. 1 Lyon Street, particularly as there are no openings on the western façade closest to the non-compliant building height.*
- b. The height breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy to the adjoining properties. The proposed additional levels are setback 9m from the western boundary and has a nil setback to the eastern boundary adjoining No. 1 Lyons Street where there is a blank party wall. As such, the loss of privacy caused by the non-compliant elements would be insignificant or nil; and*
  - c. The height breach will not result in any significant view loss. It is not anticipated that the proposed additional levels will result in any further loss of views over the approved development given any incidental view loss is anticipated by the approved built form. The land to the south along Lyons Street is zoned RE2 Private Recreation and is not zoned for high density residential development. The increased height will not impact upon views for any future development.*
- 10. The height breach facilitates an arrangement of floor space on the site in a manner that is effective in providing high levels of amenity to occupants of the development. The portion of the building above 30m is setback considerably from the compliant lower levels and is setback a sufficient distance from neighbouring development to the west to allow a high level of amenity and suitable separation distances between both properties.*
- 11. Insistence on compliance with the height control would result in the removal of levels 9 and 10 and the loss of six (6) apartments, including four (4) three bedroom maisonette apartments. This loss would be a disproportionate response to the impacts created by the proposal. The social benefits of providing additional dwelling stock, including adaptable dwellings and large family apartments, within a highly sought after location should be given substantial weight in the consideration of the variation request. The proposed upper levels achieve an environmental planning outcome by providing additional dwelling stock without having an adverse impact on the amenity of adjoining properties and being compatible with the character and built form of the locality. The additional FSR will also be offset via the proposed VPA (submitted with this application) which will also provide further benefits to the Burwood locality.*
- 12. The proposed development meets the objectives of the development standards and meets the objectives of the MU1 Mixed Use zone (as further detailed in Section 7 below);*
- 13. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
- a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilise site for residential uses (1.3(c));*
  - b. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*

14. *The variation to the height of buildings development standard will give better effect to the aims of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65). In particular:*
- a. *The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i));*
  - b. *Approval of the proposed variation will allow for a variation of building height and scale across the locality which is commonly accepted urban design approach instead of buildings with consistent height; and*
  - c. *Approval of the proposed variation will support a variety of housing types by providing a well-located and compact development that will be a better choice for families (clause 2(3)(g)).*

*The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly given the location of the site within Strathfield Town Centre, surrounding context and increase in FSR permitted per Council Policy. The additional height does not significantly alter the approved bulk of the development or impact the amenity of the neighbouring properties and has been designed in such a way to ensure the additional height is compatible with the public domain. The additional height also provides for improved amenity to Levels 9 and 10 and therefore benefits the future occupants whilst limiting surrounding impacts.*

.....

*As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.”*

### **Response to Applicant’s Justification to Height of Buildings Variation**

#### **Does the written request adequately address those issues at clause 4.6(3)(a)?**

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) to establish that the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and*
- (e) to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) outlined above to address clause 4.6(3)(a) of Burwood LEP 2012.

It is agreed that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.



It is considered that the proposed two upper levels, as amended, will provide additional residential accommodation (6 additional apartments), contributing to the mix of apartment types within the approved development, in a location that is identified for high density residential accommodation within the Burwood Housing Strategy, on the periphery of the Strathfield Town Centre precinct and with walking distance to 2 train stations (i.e. approximately 300m to Strathfield Train Station and approximately 800m to Burwood Train Station).

It is agreed that the variation will give better effect to the aims of Chapter 4 of the State Environmental Planning Policy (Housing) (previously held in SEPP No 65—Design Quality of Residential Apartment Development (SEPP 65)). In particular:

- The proposed variation will provide well located additional sustainable housing in social and environmental terms and better achieve urban planning policies
- Approval of the proposed variation will provide a better mix of dwelling types to meet population growth

It is agreed that the proposed additional two levels will not result in significant adverse impacts to the subject site or the amenity of surrounding properties.

It is also agreed that the additional height is required in the circumstances to accommodate an additional 10% FSR bonus that is able to be realised under Council's Policy entitled 'Carrying out Bonus Development in the Public Interest'.

Specifically, the site is situated within the MU1 zone in the Strathfield Town Centre under the BLEP 2012, and additional FSR bonus is anticipated per a Voluntary Planning Agreement (VPA) for such sites under Council's Policy. It is not unreasonable to expect that some built form outcomes that seek to include or adopt the GFA bonus under this Council Policy may not comply with existing development standards (i.e. maximum height of buildings) and therefore it follows that it is not unreasonable to apply the provisions of Clause 4.6 of BLEP 2012 to allow some flexibility where it is warranted in those circumstances.

***Does the written request adequately address those issues at clause 4.6(3)(b)?***

The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposal is of appropriate scale with regard to the specific circumstances of the site and has been designed to limit amenity impacts to surrounding properties, in relation to visual bulk, view impacts and overshadowing.

The development is suitable within its location on the periphery of the Strathfield Town Centre and within a recognised and emerging high density area in close proximity to Strathfield Train Station.

The height variation does not set a precedent in the locality, noting that sites in the vicinity, also the subject to a 30m maximum height standard, have also been approved for development with variations to the maximum building height (i.e. 23-31 Morwick Street at approximately 41.9m, 1 Lyons Street at 31.5m, 8-14 Lyons Street at 37.63m, and 26 Parnell Street at 32.17m in height).

It is also accepted that some additional social benefits will be achieved through the provision of additional dwelling stock, including adaptable dwellings and large family apartments, within a highly accessible location.

It is also noted, though not determinative, that additional public benefit will be achieved through the 10% FSR bonus which is subject to a VPA (submitted with this application), submitted under the provisions of Council's Policy titled 'Carrying out Bonus Development in the Public Interest'. In this regard, the additional 10% FSR bonus results in the proposed height variation, such that the GFA of the proposed upper two levels is 635m<sup>2</sup>.

For the reasons discussed above and those outlined within the Applicant's Clause 4.6 Statement, it is considered that the request to vary Clause 4.3 of BLEP 2012, as it applies to the site, adequately addresses the provisions of Clause 4.6(3)(a) and (b) of BLEP 2012.

### **Non-compliance with Clause 4.4(2) – Floor Space Ratio and Clause 4.6 Exception to Development Standards**

Clause 4.4A(2) of the BLEP 2012, prescribes the floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The site is mapped with a maximum floor space ratio of 3.0:1.

The architectural plans indicate that the proposed development has a Gross Floor Area (GFA) of 6,128m<sup>2</sup> which equates to a maximum FSR of 3.3:1 and is therefore non-compliant. The extent of non-compliance is 557m<sup>2</sup> in GFA which equates to a 10% variation.

Clause 4.6 of the BLEP 2012 provides authority 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 Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards, and to provide better outcomes for and from development by allowing flexibility.

The provisions of Clause 4.6 may be applied to the maximum building height development standard of BLEP 2012. In accordance with Clause 4.6(3), 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:

- 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.” Request to vary Maximum Height of Buildings Development Standard

### **Applicant's Justification**

The applicant has submitted a Clause 4.6 written variation request pursuant to Clause 4.6, with respect to the amended plans. Having regard to Clause 4.6(3)(a), the applicant has provided the following justification:

*Requiring strict compliance with the standard is unreasonable or unnecessary because:*

- *the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);*
- *there are no additional significant adverse impacts arising from the proposed non-compliance; and*
- *important planning goals are achieved by the approval of the variation.*

*In terms of the last point, the relevant planning goals are set out below.*

*Clause 1.2(2) of BLEP 2012 sets out the plan's aims. Clause 1.2(2)(c) says that it is an aim of the plan:*

- (c) to encourage provision of a range of housing types,*

*The proposal is consistent with the above objective as it provides additional high quality residential accommodation in a highly accessible location. The new upper levels provide maisonette apartments which further contribute to the mix of apartment types within the approved development.*

*Additionally, approval of the variation will give better effect to the aims of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65). In particular:*

- *The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i)).*
- *Approval of the proposed variation will provide a better mix of dwelling types to meet population growth (clause 2(3)(f)).*
- *Approval of the proposed variation will support housing affordability by providing a well-located compact housing that will be a better choice for families (clause 2(3)(g)).*

*On this basis, the requirements of clause 4.6(3)(a) are satisfied.”*

Having regard to the reference for satisfaction of the standard and zone objectives, the following is an extract from the written Clause 4.6 statement:

#### **“Floor Space Ratio Objectives**

*The objectives and relevant provisions of Clause 4.4 of BLEP 2012 are as follows, inter alia:*

*(a) to enable development density and intensity of land use to achieve an appropriate urban form,*

*(b) to focus higher development density and intensity of land use in the inner part of the Burwood Town Centre and to provide a transition in development density and intensity of land use towards the edge of the Burwood Town Centre.*

*In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of Clause 4.4 are addressed in turn below.*

*Objective (a):*

*Objective a) seeks to enable development density and intensity to provide an appropriate urban form.*

*The proposed development has been designed to ensure that the development density and intensity will not be significantly different from the previously approved residential flat building on the subject site. The non-compliant FSR has been designed to retain the bulk and scale of the approved built form (particularly when fronting Lyons Street), through the provision of consistent setbacks with the neighbouring building at No. 1 Lyons Street while providing additional FSR discreetly within smaller, recessed floor levels.*

*The subject site is situated within the MU1 Mixed Use Zone which anticipates an increased density which is reflected by the height of buildings and FSR development standards. The non-compliant FSR does not arise from an inappropriate building envelope but rather the proposal is considered to sit comfortably within the locality and provide an appropriate urban form which is recessed from the public domain. To the casual observer, the bulk and scale of the development will relate to the contemporary residential flat buildings located along Lyons Street and Parnell Street and the non-compliant FSR will be appropriately obscured from the public domain given the proposed setbacks. As discussed under Section 5 of this Variation, the proposed non-compliance will not result in any adverse impacts arising with regards to the amenity of adjoining properties, character of the area or bulk and scale of the development, particularly in comparison to the approved development on the site.*

*When considering the intensity of development, the non-compliant FSR will result in the provision of 6 additional residential dwellings (on levels 9 and 10), including four three-bedroom maisonette apartments. The additional units are not considered to unreasonably*

*increase the intensity of the site and result in an urban form which impacts the amenity of the neighbouring properties or streetscape character of the locality given positioning and design measures implemented. The proposed increase of 6 residential units over two levels will be comfortably situated on the subject site and will not produce adverse additional impacts to the loss of privacy, solar access or views from the neighbouring sites or public domain when compared to the approved development on the site. The provision of four x three bedroom apartments with excellent solar access and private open space will meet the requirements of families often not met in apartment development.*

*On balance, the proposal is considered to achieve a planning purpose by providing additional high quality residential dwellings within a previously approved but significantly improved residential flat building development in a suitable locality in close proximity to services and transport. The burden on insisting on strict compliance would result in the removal of the proposed upper levels and would be an unreasonable and unnecessary planning outcome given the absence of significant additional adverse streetscape or amenity impacts. Importantly, the removal of the proposed units will directly undermine the objective of the MU1 Mixed Use zone which is to provide additional development within close proximity to public transport. Furthermore, the removal of these units would be inconsistent with the Burwood Local Housing Strategy, as well as recent media releases in relation to the NSW Labour Government's commitment to delivering higher density housing where there is transport capacity.*

*Therefore, the proposal will be consistent with the desired development density and intensity anticipated for the subject site and locality. The proposal will certainly not be visually "jarring" in the streetscape or as viewed from any surrounding properties and will not have an adverse impact to the amenity of surrounding properties. The proposal satisfies objective (a).*

*Objective (b):*

*Objective (b) seeks to focus high density development in the Burwood Town Centre and provide a transition in development density and intensity of land use towards its edges.*

*The subject site is identified as falling within the Strathfield Town Centre and is centrally located within a mixed use environment. The proposed development has been specifically designed to respond to the desired increase of bulk and scale whilst providing an appropriate transition of density and intensity. The non-compliant FSR has been designed with significant setbacks to both street frontages and is located centrally within the larger approved building envelope.*

*The increased FSR will not generate any unreasonable increase of intensity or density which will adversely impact the streetscape character or amenity of adjoining properties. To the casual observer along Lyons Street, the proposal will appear generally as a compliant building, and will not appear dramatically different from the development approved on the site. That is, the additional FSR is largely located at the centre of the building and is setback considerably from both street frontages. The bulk (FSR) and scale (height) of the proposal will not be visually "jarring" when compared to the approved development, which is a compliant built form as it retains a nine storey structure fronting the public domain consistent with the built form at No. 1 Lyons Street.*

*Furthermore, the additional FSR can be reasonably anticipated given the sites capacity to accommodate a maximum bonus 10% FSR under Council's Policy, 'Carrying Out Bonus Development in the Public Interest'. Despite the anticipated increase of density subject to a VPA, as identified in this Variation the proposed development has been designed in order to limit the potential impact to the amenity of neighbouring development and achieves a better streetscape outcome.*

*Accordingly, the proposed development is considered to provide an appropriate relationship to existing development within the Strathfield Town Centre and achieves an intensity and density of development appropriate to its mixed use location. Accordingly, despite non-*

compliance with the FSR development standard, the proposal is considered to achieve objective b).

#### Zone Objectives

Clause 4.6 (4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the MU1 – Mixed Use Zone are as follows:

- 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.

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The proposed development is consistent with the relevant zone objectives in that it will:

- The proposal will retain the approved retail tenancies on the site which will generate employment opportunities;
- The proposal will retain the approved retail tenancies on the site which provide activation to the street frontage;
- The proposal relates to additional residential units within the approved development which will add any conflict with the development or with any adjoining properties due to the careful design and siting of the new units; and
- The proposal will retain the approved retail tenancies on the site which are located on the ground floor.

### **Response to Applicant's Justification to FSR Variation**

#### ***Does the written request adequately address those issues at clause 4.6(3)(a)?***

It is considered that the applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
- (d) to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary."

The applicant specifically relies upon justification (a) outlined above to address clause 4.6(3)(a) of Burwood LEP 2012.

It is agreed that the objectives of the FSR development standard are achieved notwithstanding the non-compliance with the standard.



It is considered that the proposed two upper levels, as amended, will provide additional residential accommodation (6 additional apartments), contributing to the mix of apartment types within the approved development, in a location that is identified for high density residential accommodation within the Burwood Housing Strategy, on the periphery of the Strathfield Town Centre precinct and with walking distance to 2 train stations (i.e. approximately 300m to Strathfield Train Station and approximately 800m to Burwood Train Station).

It is agreed that the variation will give better effect to the aims of Chapter 4 of the State Environmental Planning Policy (Housing), (previously held in the Policy No 65—Design Quality of Residential Apartment Development (SEPP 65)). In particular:

- The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies
- Approval of the proposed variation will provide a better mix of dwelling types to meet population growth

It is believed that the proposed additional two levels will not result in significant adverse impacts to the subject site or the amenity of surrounding properties.

***Does the written request adequately address those issues at clause 4.6(3)(b)?***

The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposal is of an appropriate scale with regard to the specific circumstances of the site and has been designed to limit amenity impacts to surrounding properties, in relation to visual bulk, view impacts and overshadowing.

The development is suitable within its location on the periphery of the Strathfield Town Centre and within a recognised and emerging high density area in close proximity to Strathfield Train Station.

It is also accepted that some additional social benefits will be achieved through the provision of additional dwelling stock, including adaptable dwellings and large family apartments, within a highly accessible location.

It is also noted, though not determinative, that additional public benefit will be achieved through the 10% FSR (which also results in the proposed variation to the height standard) which is subject to a proposed VPA (submitted with this application).

Specifically, the proposal is accompanied by a draft planning agreement which includes additional monetary contributions in return for the proposed additional 10% bonus FSR which is anticipated under Council's Policy entitled 'Carrying out Bonus Development in the Public Interest'.

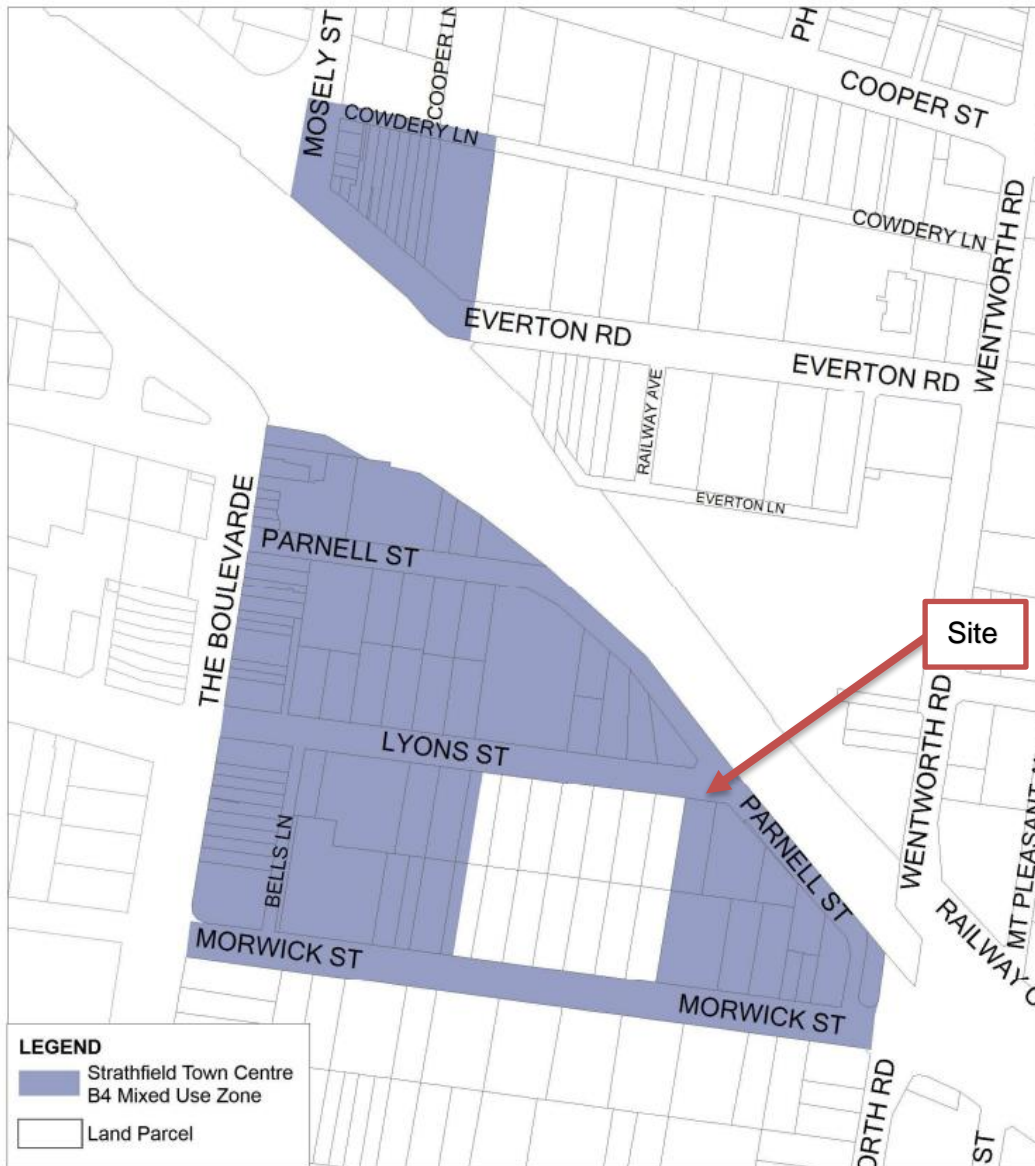
The Policy was adopted by Council on 21 August 2018 and became effective from 1 September 2018 and its stated purpose is to provide guidance on carrying out bonus development in the public interest in certain commercial centre areas of the Burwood LGA and within the "Middle Ring" and Commercial Core areas of the Burwood Town Centre under the provisions of the Burwood Local Environmental Plan (BLEP) 2012

The Policy informs developers and applicants where and how bonus development may be approved. The Policy identifies specific areas to which it applies. The site is within the area identified on Map 3 of the Policy as the Strathfield Town Centre B4 Mixed Use Zone as shown in Figure 20 below.

The Policy outlines that bonus development may be possible within the identified areas and states the following:

“bonus development refers to development involving additional floor space, which results in the Floor Space Ratio (FSR) of the entire development being over and above the maximum FSR and/or the maximum Residential FSR stipulated for the site in the BLEP 2012.

The maximum FSR bonus that may be accepted in these centres is 10% of the applicable maximum FSR development standards in the BLEP. The floor space resulting from the bonus may fully apply to the residential component of a development.”



Map 3

Figure 22: Extract of Map 3 from the Burwood Council policy titled “Carrying out Bonus Development in the Public Interest”.

The site is located within the Strathfield Town Centre, and it is therefore reasonable to conclude that additional FSR, or bonus FSR, is anticipated by Council for this location.

It is noted that the proposed variation within the subject DA is equivalent to the maximum 10% bonus FSR anticipated under the “Carrying out Bonus Development in the Public Interest” policy.

It reasonably follows that any additional height and or bulk and scale associated with the realisation of the 10% bonus FSR could also reasonably be anticipated, where the impacts of the additional development have been minimised and or mitigated.

In this regard it is considered that the proposal accords with the Policy and that the written request to vary the provisions of Clause 4.4(2) of the BLEP 2012 adequately addresses the provisions of Clause 4.6(3)(a) and (b).

### Burwood Development Control Plan (BDCP) 2013

An assessment of the application has been made against the provisions of BDCP 2013, as detailed in Table 5 below.

BDCP 2013 Provision	Proposal	Compliance
<b>Part 2 Site and Environmental Planning</b>		
2.3 Views and vistas	<p>The proposal does not alter the siting of the approved two buildings. The proposed two additional levels (as amended) upon the tallest of the approved buildings are set back from the west, north and south boundaries. To the east the additions are positioned to align with the adjacent building at 1 Lyons Street which has nil setback to the common boundary.</p> <p>The proposal is unlikely to adversely impact significant views to or from private properties and to or from public places.</p>	Yes
2.4 Streetscapes	<p>The proposed alterations and additions (as amended) as consistent with the design of the approved buildings in terms of external finishes and building articulation. The additions are well modulated and are setback from the side, front and rear boundaries as well as the side walls of the approved building.</p> <p>The proposed upper levels are of darker colours, which, combined with the building setbacks, assists in rendering the additions as visually recessive with minimal bulk and scale impacts.</p> <p>The buildings have previously been assessed as compatible with the existing and emerging character of the locality.</p> <p>The streetscape, and wider locality in the vicinity of Strathfield Town Centre, is undergoing a relatively significant change in terms of built form and urban context, with taller buildings of contemporary architecture emerging. In this regard, the proposal is consistent with the approved building and the emerging and future character of the locality.</p>	Yes
<b>Part 3 – Development in Centres and Corridors</b>		
<b>Section 3.2 – General Building Design Controls in Centres and Corridors</b>		
3.2.1 Building Design	<p>The proposed development is considered to demonstrate architectural design excellence, as detailed in Table 4 of this report.</p> <p>The proposed two upper levels to the taller of the two approved buildings is of a design that is commensurate with the architectural design (i.e. materials, façade treatment, modulation, etc) as the approved buildings. In this regard the proposed alterations and additions are considered to result in a cohesive and visually interesting building</p>	Yes

	<p>appearance.</p> <p>The design, as amended, is considered to respond to surrounding notable buildings and generally enhances the streetscape.</p> <p>The proposal does not seek changes to the podium level or the middle section of the approved building and these elements have been previously assessed as well designed and appropriately articulated.</p> <p>The proposed upper levels and roof design are well integrated with the character of the approved building on the site and enhances the skyline.</p> <p>The proposal includes materials that are consistent and complementary to the approved mix of external materials and colours, as well as the articulation of the building façades. The proposal overall enhances the visual interest of the streetscape and is compatible with recent approvals of contemporary buildings within the locality.</p>							
3.2.2 Materials and Finishes	The proposed materials, modulation and façade design ensure of the upper two levels are consistent and complementary to the external character of the approved buildings and will have a positive visual impact on the streetscape and is compatible with the character of development envisaged within the Strathfield Town Centre.	Yes						
3.2.3 Lighting and Signage	The proposal relates primarily to alterations and addition of two levels and no changes are proposed to lighting or signage arrangements.	N/A						
3.2.4 Street-Front Activities and Building Access	<p>The approved development at the site incorporates opportunities for street-front activation, including the two (2) retail units at ground floor which address Lyons Street and the through-site pedestrian link. There are no changes proposed to these aspects.</p> <p>No change is proposed to the location of the approved pedestrian and vehicular access points, to the building entry points or the approved mailbox and postal arrangements.</p>	Yes						
3.2.6 Site Isolation	As with the approved development, the proposed alterations and additions will not result in the creation of an isolated site.	Yes						
3.2.7 Residential Flat Buildings and Shop Top Housing	The proposal will result in a development that comprises 77 residential apartments and two (2) ground floor retail units. Sufficient communal area, in the form of communal open space, is provided for use by residents. Further it is noted that proposal has been assessed as satisfying the requirements of the ADG – refer to Table 4 of this report.	Yes						
3.2.8 Apartment Mix and Minimum Dwelling Sizes	<p>The proposed apartment mix is as follows:</p> <table border="1" data-bbox="491 1989 1136 2089"> <tr> <td>12</td> <td>(15.6%) x studio apartments</td> </tr> <tr> <td>18</td> <td>(23.4%) x one (1) bed apartments</td> </tr> <tr> <td>39</td> <td>(51%) x two (2) bed apartments</td> </tr> </table>	12	(15.6%) x studio apartments	18	(23.4%) x one (1) bed apartments	39	(51%) x two (2) bed apartments	Yes
12	(15.6%) x studio apartments							
18	(23.4%) x one (1) bed apartments							
39	(51%) x two (2) bed apartments							

	<table border="1"> <tr> <td>8 (10%) x three (3) bed apartment</td> </tr> <tr> <td>Total – 77 apartments</td> </tr> </table> <p>The proposed dwelling accord with the relevant provisions of the ADG, which prevail to the extent of any inconsistency with a DCP.</p>	8 (10%) x three (3) bed apartment	Total – 77 apartments	
8 (10%) x three (3) bed apartment				
Total – 77 apartments				
3.2.9 Minimum Site Area	The subject site has an area of 1,857m <sup>2</sup> .	Yes		
3.2.11 Ceiling Height	Floor to floor levels of 3.1m and floor to ceiling heights of 2.7m are proposed for the two additional upper levels subject of the application.	Yes		
3.2.12 Natural Ventilation	Refer ADG compliance table.	Yes		
3.2.13 Daylight Access	Refer ADG compliance table.	Yes		
3.2.14 Visual and Acoustic Privacy	The proposal does not alter the siting of the approved development and retains the approved building setbacks from the Ground Floor to Level 8. The proposed upper levels are recessed from the southern, northern and western boundaries to maximise visual privacy, and despite non-compliances with the ADG, the proposed building separation in conjunction with window and balcony placement and screening elements, ensures adequate visual privacy is achieved between developments.	Generally, and acceptable		
3.2.15 Private Open Space	No change is proposed to the private open space of approved units from ground Level to Level 8. All new dwellings are provided with private open space of a suitable size and dimension (i.e. greater than 2m width) capable of accommodating outdoor dining furniture.	Yes		
3.2.16 Lobbies and Internal Circulation	No changes are proposed to the approved development in this regard. The ground floor lobby area will receive suitable natural ventilation and natural light. Common area corridors are of a suitable size and design for the efficient movement of people and furniture.	Yes		
3.2.18 Safety and Security	The development as approved under DA 2021.79 incorporated activation at street level and above, promoting passive surveillance. Pedestrian and vehicular entries are separated and secure. The proposed additions do not alter the approved arrangements.	Yes		
3.2.19 Access and Mobility	Equitable and safe access is provided to the development in accordance with the relevant Australian Standards. Eight (8) out of the proposed 77 units are adaptable, equating to 10.4% of the development.	Yes		
<b>Section 3.3 – Area Based Controls</b>				
<b>Chapter 3.3.3 – Strathfield Town Centre</b>				
Desired Future Character	<p>The development as approved under DA 2021.79 was assessed as satisfying the objectives for desired future character for the Strathfield Town Centre area.</p> <p>The architectural design and general overall bulk and scale of the proposed additions is commensurate with that of the approved buildings.</p>	Yes		



	<p>The additional height and FSR proposed will not result in a building that is out of context with the emerging character in the Strathfield Town Centre area.</p> <p>The proposal is consistent with the mixed use development approved at the site, and at nearby sites, in terms of land uses.</p> <p>The proposal does not alter the approved development in terms of podium heights, building setbacks and landscaping.</p>	
3.4.3. Street Front Setbacks	<p>No change is proposed to the approved street front setback.</p> <p>No changes are proposed to the ground level setbacks as approved under DA 2021.79.</p>	Yes
3.4.3. Podium Height	No change is proposed to the podium levels setbacks or height.	Yes
3.4.3. Secondary Setbacks	The proposed two additional levels are setback 10.15m to the building façade and 6m to balconies. Planter boxes accommodating landscaping are proposed to extend into the 6m balcony setback, and this is considered acceptable as it improves the articulation and visual amenity of the building.	Yes
3.4.3. Side and Rear Setbacks	Refer ADG compliance table.	
3.4.3. Building Separation/Frontage	Refer ADG compliance table.	
3.4.3. Communal Open Space	<p>The development as approved under DA 2021.79 was assessed as satisfying the objectives for communal open space.</p> <p>Consistent with the approved development, the street front setback areas remain as landscaped area, while communal open space has been provided at the centre of the site and at Level 1.</p>	Yes
3.4.3. Rooftops	As outlined above, no change is proposed to the approved communal open spaces. These spaces are accessible, including the space on Level 1.	Yes
<b>Section 3.4 – Transport and Parking in Centres and Corridors</b>		
<b>Chapter 3.4.2 – Burwood Town Centre, Burwood Road North and Strathfield Town Centre</b>		
<p>Car parking rates:</p> <ul style="list-style-type: none"> <li>• 0.5 spaces per studio</li> <li>• 1 space per 1 and 2 bed unit</li> <li>• 1.5 space per 3 bed unit</li> <li>• 1 visitor space per 5 units</li> <li>• Shops: 1 space for first 400sqm</li> </ul>	<p>In accordance with the DCP provisions 92 car spaces are required.</p> <p>The proposal includes 93 car spaces and complies.</p> <p>It is also note that ADG parking requirements are less than those required under Chapter 3.4.2 of the DCP.</p> <p>Having regard to bicycle parking it is noted that a total of 32 spaces are required. The proposal includes 20 bike parking spaces. The proposed bike parking does not satisfy Council's DCP however Council's engineer as recommended a condition of consent requiring the provision of 32 spaces and subject to the imposition of that condition the proposal is deemed satisfactory.</p>	Yes – subject to recommended condition of consent relating to bicycle parking.

<b>Part 6 – Environmental Management</b>		
6.1 Preservation of Trees or Vegetation	The proposed development does not seek to remove any trees from the site.	Yes
6.2 Waste Management	A Waste Management Plan was submitted with the DA and the waste management details were further amended in the amended drawing package. The proposed waste management arrangements are considered acceptable, subject to standard conditions of consent.	Yes
6.5 Stormwater Management	The stormwater system approved in accordance with per DA 2021.79 remains acceptable, subject to standard conditions of consent.	Yes
6.6 Landscaping for Development	The proposed landscape scheme has been reviewed and is considered acceptable, subject to standard conditions of consent.	Yes
6.7 Energy Efficiency and Sustainability	A BASIX Certificate was submitted with the amended DA. The proposed development is considered acceptable with regard to sustainability.	Yes

**Table 5:** Assessment against BDCP 2013

## **Impacts of the Development**

### **Social, Environmental, and Economic Impacts**

All likely impacts of the proposed development have been considered within the context of this report and are deemed acceptable.

### **Suitability of the Site**

As demonstrated in this report, the site is suitable for the proposed development. The proposal is permissible in the MU1 Mixed Use zone and is consistent with the objectives of the zone.

### **The Public Interest**

The application satisfactorily addresses Council's criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Approval of the proposal would be in the public interest.

## **Consultation**

### **Referrals**

The application was referred to the following internal Council departments:

- Development Engineer – no objections, subject to conditions of consent being maintained as per DA 2021.79;
- Traffic Engineer – no objections, subject to conditions of consent;
- Waste Officer – no objections, subject to conditions of consent;
- Building Officer – no objections, subject to conditions of consent;
- Design Review Panel – refer to comments and response above in this Report under the heading Burwood Design Review Panel.

The following external referral comments were received:

- Sydney Trains: The application was referred to Sydney Trains and concurrence was provided in a letter dated 11 August 2023.

## **Neighbour Notification**

The proposed development was placed on public exhibition from 16 June 2023 until 10 July 2023. No submissions were received in response to the notification of the plans.

## **Conclusion**

The proposed development, as amended, seeks consent for alterations and additions to an approved DA (DA2021.79). Specifically, the proposed DA seeks consent to add an additional two (2) levels to the larger residential flat building fronting Lyons Street that was approved under DA2021.79.

DA 2021.79 was approved by the Sydney East City Planning Panel (SECPP) on 28 June 2022.

The DA approved the following:

- demolition of all existing structures
- construction of 1 x three (3) and 1 x nine (9) storey residential flat building comprising a total of seventy-one (71) apartments and two (2) retail tenancies with three (3) levels of basement parking, communal open spaces and associated landscaping

The proposed alterations and additions would result in a total of 77 residential units on the site (comprising 12 x studios, 18 x 1 bedroom units, 39 x 2 bedroom units and 8 x 3 bedroom units) and 90m<sup>2</sup> of retail premises floor space at ground level.

The DA involves consequential amendments to other levels of the approved development, including changes to Basement Level 3 to provide an additional 9 x car parking spaces, 1 x motorcycle parking space and 2 x bicycle parking spaces, such that the proposal would result in a total of 93 car parking spaces at the site.

The proposed DA also seeks the formal modification of DA 2021.79 in accordance with the provisions of Section 4.17 of the EP&A Act to in order that DA 2021.79 make reference to the approved plans and documents.

The proposal is consistent with the relevant planning instruments including the Housing SEPP, the Apartment Design Guide, BLEP 2012, and BDCP 2013. The development is permissible in the MU1 zone.

The proposal does not comply with the FSR and building height development standards and formal written submissions seeking to vary the standards have been provided in accordance with the provisions of Clause 4.6 of the BLEP 2012.

The proposed two additional levels are of a design and architectural style that accords with the approved development which were previously determined to be of a high-quality design that would achieve a good level of internal amenity for future occupants and which minimised adverse impacts on the amenity of neighbouring properties.

The site is located in an area with excellent access to public transport, retail shops, services, and local recreation facilities. The proposal maintains the approved non-residential floor space (i.e. two (2) retail units) at ground level which will contribute to the vibrancy and vitality of the Strathfield Town Centre.

The applicant has responded with an amended design to the Design Review Panel comments received as part of the assessment process.

The applicant has demonstrated with regard to the FSR and building height non-compliances that the objectives of the development standards are achieved notwithstanding the non-compliance with the standards.

It is considered that the proposed two upper levels, as amended, will provide additional residential accommodation, contributing to the mix of apartment types within the approved development, in a location that is identified for high density residential accommodation within the Burwood Housing Strategy, on the periphery of the Strathfield Town Centre precinct and with walking distance to 2 train stations (i.e. approximately 300m to Strathfield Train Station and approximately 800m to Burwood Train Station).

It is agreed that the proposed variation will give better effect to the aims of Housing SEPP, in particular the aims of Chapter 4 “Design of residential apartment development” (previously SEPP No 65—Design Quality of Residential Apartment Development (SEPP 65)).

The proposed additional two levels will not result in significant adverse impacts to the subject site or the amenity of surrounding properties.

In the circumstances it is appropriate to apply the provisions of Clause 4.6 of BLEP 2012 to allow some flexibility having regard to the FSR and building height development standards and the proposed variations are supported in this instance.

On this basis, the proposal is recommended for approval.

### ***Recommendation(s)***

It is recommended that the Burwood Local Planning Panel approve Development Application No. DA.2023.45 which proposes alterations and additions to a mixed use development (which was approved under DA2021.79) at 3-7 Lyons Street & 18 Parnell Street, Strathfield on the basis of a “Deferred Commencement Consent” subject to the requirements of Schedules A & B below:

The following deferred commencement conditions must be satisfied prior to the consent becoming operative:

#### **SCHEDULE A –DEFERRED COMMENCEMENT CONDITIONS**

The consent is not to operate until the following condition is satisfied, with **24 months** of the date of this determination:

- 1) This consent is subject to a Voluntary Planning Agreement (VPA) with Council. The VPA shall be executed, and the monetary contribution paid to Council on or before the date of execution of the VPA, prior to the commencement of any work on site including demolition, excavation or site works and **prior to the issue of any Construction Certificate** for the development.

Evidence that will sufficiently enable Council to be satisfied as to those matters identified in the deferred commencement conditions, as indicated above, must be submitted to Council within 24 months of the date of determination of this deferred commencement consent failing which, this deferred development consent will lapse pursuant to section 4.53(6A) of the *Environmental Planning and Assessment Act 1979*.

The consent will not operate until such time that the Council notified the Applicant in writing that deferred commencement consent conditions as indicated above, have been satisfied.

Upon Council giving written notification to the Applicant that the deferred commencement conditions have been satisfied, the consent will become operative from the date of the written notification, subject to the conditions of consent, as detailed in **Schedule B - Conditions of Consent**.

### **Attachments**

There are no attachments for this report.



**SCHEDULE B – CONDITIONS OF CONSENT**

1. The development to be carried out in accordance with following plans prepared by UrbanLink (Project No. 2018.099) and documentation submitted to Council as set out in the table below, except where amended by conditions of this consent.

Drawing No.	Drawing Title	Rev No.	Date
DA-002	Site-Project Information	G	31/01/24
DA-003	Site-Context Plan	G	31/01/24
DA-004	Site-Location Analysis	G	31/01/24
DA-101	Ground Floor Plans	G	31/01/24
DA-102	Floor Plans – Level 1	G	31/01/24
DA-103	Floor Plans – Level 2	G	31/01/24
DA-104	Floor Plans – Level 3	G	31/01/24
DA-105	Floor Plans – Levels 4-8	G	31/01/24
DA-106	Floor Plans – Level 9	G	31/01/24
DA-107	Floor Plans – Level 10	G	31/01/24
DA-108	Floor Plans – Roof Plan	G	31/01/24
DA-109	Floor Plans – Basement 01	G	31/01/24
DA-110	Floor Plans – Basement 02	G	31/01/24
DA-111	Floor Plans – Basement 03	G	31/01/24
DA-201	Elevations – South Elevation	G	31/01/24
DA-202	Elevations – West Elevation	G	31/01/24
DA-203	Elevations – North Internal Elevation	G	31/01/24
DA-204	Elevations – East Elevation	G	31/01/24
DA-205	Elevations – North Elevation	G	31/01/24
DA-206	Elevations – South Internal Elevation	G	31/01/24
DA-207	Elevations – Streetscape Lyons Street	G	31/01/24
DA-208	Elevations - Streetscape Parnell Street	G	31/01/24
DA-301	Sections – Section AA	G	31/01/24
DA-302	Sections – Section BB	G	31/01/24
DA-303	Sections – Section CC	G	31/01/24
DA-901	External Finishes – Finishes Schedule	G	31/01/24
DA-902	External Finishes - Photomontage	G	31/01/24

2. The development approved under this Development Consent (No. 45/2023) shall be carried out in accordance with all conditions of the “parent” Development Consent No. 79/2021 issued on 12 July, 2022 which approved “*Demolition of all existing structures and construction of 1 x three (3) storey and 1 x nine (9) storey residential flat building comprising a total of seventy-one (71) apartments and two (2) retail tenancies with three (3) levels of basement parking, communal open spaces and associated landscaping*”.
3. The conditions applied under this Development Consent No. 045/2023 are additional to those imposed under DC No. 79/2021 and both sets of conditions shall be complied with fully prior to the issuing of an Occupation Certificate.
4. The fees and/or bonds shown in the Table of Fees, are to be paid to Council or another approved collection agency (the Long Service Levy Corporation and its agents and an approved insurer under the *Home Building Act 1989*) and suitable evidence of payment is to

be provided to the Principal Certifying Authority **prior to the issuing of a Construction Certificate.**

**TABLE OF FEES**

**FEES/BONDS TO BE PAID TO COUNCIL OR TO THE NOMINATED BODY PRIOR TO ISSUING A CONSTRUCTION CERTIFICATE**

- 5. Building and Construction Industry Long Service Corporation levy **\$ 5,825.89**  
(Payment to be made to Council, the Corporation or its Agent)
- 6. Section 7.12 Contribution: **\$93,214.36 (Payment to be made to Council).**

Note: the contribution amount will be adjusted at the time of payment. **See Planning Condition 7 below** for more details.

**PLANNING**

- 7. Pursuant to Section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Section 7.12 Contributions Plan for the Burwood Local Government Area the following monetary contribution towards public services and amenities is required:

Contribution Element		Contribution
A levy of 4% of the cost of carrying out the development, where the cost calculated and agreed by Council is <b>\$2,330,350.00</b>		<b>\$93,214.36</b>
Index Period	<b>Dec 2023</b>	CP <sub>1</sub>
		<b>136.4</b>

Office Use: T56

**The above contribution will be adjusted at the time of payment. Applicants are advised to contact Council for the adjusted amount immediately prior to arranging payment.**

The contribution will be adjusted in accordance with the following formula:

$$\text{Contribution (at time of payment)} = \frac{C \times \text{CPI}_2}{\text{CPI}_1}$$

Where:

- C: the original contributions amount as shown in the development consent
- CPI<sub>2</sub> the Consumer Price Index: All Groups Index for Sydney, for the immediate past quarter (available from the Australian Bureau of Statistics at the time of payment)
- CPI<sub>1</sub> the Consumer Price Index: All Groups Index for Sydney, applied at the time of granting the development consent as shown on the development consent.

**Note:** The minimum payment will not be less than the contribution amount stated on the consent.

The contribution is to be paid to Council, or evidence that payment has been made is to be submitted to the Principal Certifying Authority, **prior to the issuing of a Construction Certificate.**

Council may accept works in kind or other material public benefits in lieu of the contribution required by this condition subject to and in accordance with the

requirements specified in the Section 7.12 Contributions Plan for the Burwood Local Government Area.

**Note:** The payment of a Section 7.12 contribution over an amount of \$5,000.00 may only be paid by Bank Cheque (i.e. personal or company cheques will not be accepted). Contributions of \$5,000.00 or less may be paid by cash, EFTPOS, cheque or credit card. Payments by credit card may be subject to a surcharge.

8. Glazed balcony balustrades shall be constructed of opaque materials in lieu of clear glazing.
9. External gas water heaters are to be located in recessed enclosures within external walls and are to be located so as to be not visible from a public road or place or adjoining property. Similarly, air conditioning units and plant are to be located so as not to be visible from a public road or place or adjoining property.
10. A separate application shall be lodged for any proposed subdivision of the site. Such subdivision shall designate all car parking spaces attached to a lot with the exception of visitor parking which shall be designated as common property. No car parking spaces shall be created as a separate lot. The drainage system for the site including basement pit and pumps and on site detention shall be designated as common property.
11. Lockable Mail boxes shall be provided which comply with the requirements of Australia Post. Details to be submitted **prior to the issue of a Construction Certificate** for above ground works.
12. Clothes drying areas or facilities shall be provided within an area of communal open space or provided within each residential unit. If provided on the balconies of individual units, the drying facilities must be screened from exterior view, and be designed in such a way that they do not detract from the building's appearance from the public domain.
13. Provision of storage space in each unit and in the basement is to comply with the recommendations of the Apartment Design Guide. A schedule shall be submitted to the Principal Certifying Authority demonstrating compliance are to be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate for above ground works.
14. All external lighting is to be designed and installed in a manner which prevents glare and/or spillage having an adverse impact on occupants of adjacent properties.

## **BUILDING**

15. Where residential building work (within the meaning of the *Home Building Act 1989*) is proposed to be carried out, either of the following is to be provided to the Principal Certifier **prior to the issuing of a Construction Certificate**:-
  - a. Where work is carried out by a Principal Contractor:
    - (i) written advice of the Principal Contractor's name and licence number, and
    - (ii) a certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* to the effect that a person is the holder of an insurance contract issued for the purposes of that Part.
  - OR
  - b. Where work is carried out by an owner-builder:-
    - (i) written advice of the person's name and Owner-Builder Permit number, or

- (ii) a signed declaration from the owner of the land that states the reasonable market cost of the labour and materials involved in the work is not high enough for the owner to need an Owner-Builder's Permit to do the work.

- 16 Toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided:
- a. must be a standard flushing toilet, and
  - b. must be connected:
    - (i) to a public sewer, or
    - (ii) to an approved chemical closet facility.

The toilet facilities are to be completed before any other work is commenced.

17. Hours of work shall be from 7:00am to 7:00pm Mondays to Fridays inclusive (**during daylight savings period**), 7:00am to 6:00pm Mondays to Fridays inclusive (**outside daylight savings period**) and from 7:00am to 4:00pm on Saturdays. No work shall be carried out on Sundays or Public Holidays. The owner/builder shall be responsible for the compliance of this condition by all sub-contractors, including demolishers.

This condition may be modified by an approval of an application to Council in accordance with Council's Out of Hours Construction Policy.

18. The approved structure shall not be used or occupied unless an Occupation Certificate as referred to in Section 6.4 (c) of the *Environmental Planning & Assessment Act 1979* has been issued.

(Vide Section 6.9 *Environmental Planning & Assessment Act 1979*)

19. An application for a Construction Certificate is to be made to Council or an Accredited Certifier. The NSW Planning Portal is to be used. A Construction Certificate must be obtained **prior to the commencement of any building work**.

20. The noise emitted by any air-conditioning equipment being inaudible in your neighbours' homes between 10:00pm and 7:00am weekdays and 10:00pm and 8:00am on weekends and public holidays. Council is to be consulted prior to the installation of any air-conditioning equipment.

21. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

22. Prior to the commencement of any works, the following is to be carried out: -

- a. Submit to Council a "Notice of Intention to Commence Building Work and Appointment of a Principal Certifier" via the NSW Planning Portal. The NSW Planning Portal is to be used.
- b. Ensure detailed plans and specifications of the building are endorsed with a Construction Certificate by Council or an Accredited Certifier. The NSW Planning Portal is to be used.

(Vide Section 6.6 *Environmental Planning & Assessment Act 1979*)

23. A Fire Safety Certificate is to be given to the Principal Certifier prior to applying for an Occupation Certificate and thereafter once in every 12 month period an Annual Fire Safety

Statement is to be given to Council. The certificate and statement attest to both the inspection of all essential fire safety measures by a suitably qualified person and to the regular maintenance of the fire safety measures. A copy of the Fire Safety Certificate and the Fire Safety Schedule are to be given to the Commissioner of Fire and Rescue NSW **by the building owner** and copies of these documents are to be prominently displayed in the building. Similarly copies of Annual Fire Safety Statements are also to be given to the Commissioner and displayed in the building.

(Vide Clause 84 & Part 11 of the *Environmental Planning & Assessment (Development Certification and Fire Safety) Regulation 2021*)

24. Noise transmission and insulation ratings for building elements being in accordance with Specification 28 of the Building Code of Australia.

Details of the method of satisfying this requirement must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**

25. Mechanical ventilation and or air conditioning systems and equipment are to be designed and installed in locations that do not cause any visual impacts from the public domain, noise nuisance or disturbance to near-by residential or commercial premises. Details of the type of equipment locations and any noise attenuation treatment are to be submitted to Principal Certifying Authority **prior to the issue of the Construction Certificate.**

## WASTE MANAGEMENT

26. All building work, construction and demolition activities are to be conducted in accordance with the approved Waste Management Plan
27. Upon disposal of any waste, the applicant is to compile and provide records of the disposal to the principal certifier, detailing the following:
- The contact details of the person(s) who removed the waste
  - The waste carrier vehicle registration
  - The date and time of waste collection
  - A description of the waste (type of waste and estimated quantity) and whether the waste is expected to be reused, recycled or go to landfill
  - The address of the disposal location(s) where the waste was taken
  - The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste.

Note: If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, the applicant is to maintain all records in relation to that Order or Exemption and provide the records to the principal certifier and Council.

28. All operational and ongoing waste management is to be conducted in accordance with the approved Waste Management Plan
29. All waste collection vehicle approaches are to provide for a minimum clearance height of 3.5m, including clearance of all roller door equipment, fittings and pipes.
30. A waste cupboard or other storage area is to be provided within each dwelling which is of sufficient size to hold a single day's waste and to enable source separation of general waste, recyclables and compostable materials.



31. All waste shall be stored in the designated areas only.
32. Suitable signage is to be installed in each level of the chute waste service rooms encouraging the separation of recyclables from the general waste stream.
33. Waste and recycling bins shall be kept in a clean and hygienic condition. Bins are to be washed regularly within the garbage storage room with any waste water being discharged to the sewer by way of the grated drain
34. The following matters shall apply to the damage deposit listed in the Table of Fees:
  - a. This deposit is refundable if no damage occurs. Any damage caused will be repaired at Council's restoration rates, at the applicant's expense. All or part of the deposit will be forfeited to cover damage to Council's property during the course of demolition and/or construction.
  - b. Council will carry out two inspections of the Council's footpath, kerb and gutter, stormwater drainage system and roadway, prior to works commencing and at the completion of all work covered by this consent. Council is aware that damage may be caused by individual contractors that culminate in the damage inspected at Council's final inspection. The applicant is responsible for attributing any part of the damage to their individual contractors. Council will not refund any part of a damage deposit until the completion of the work covered by this consent.
  - c. The applicant shall lodge an application to Council for refund of damage deposit after obtaining an occupation certificate (OC). The OC must be formally submitted to Council prior to lodging the application for refund of damage deposit.

## TRAFFIC AND PARKING

35. All owners, tenants and occupiers of this building are not eligible to participate in any existing or proposed Council on-street resident parking schemes.
36. Signs reading 'all owners, tenants and occupiers of this building are advised that they are not eligible to obtain an on-street resident parking permit from Council' must **be permanently displayed and located** in prominent places such as at display apartments and on all directory boards or notice boards, where they can easily be observed and read by people entering the building. The signs must be erected prior to an Occupation Certificate being issued and must be maintained in good order at all times **by the Owners Corporation**.
37. A total of 93 off-street car parking spaces, 6 Motorbike parking spaces and 32 bicycle parking spaces must be provided on-site. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Council's Development Control Plan. The layout, design and security of bicycle facilities either on-street or off-street must comply with the minimum requirements of Australian Standard AS 2890.3 – 1993 Parking Facilities Part 3: Bicycle Parking Facilities.
38. The approved parking spaces must be allocated as detailed below. All spaces must be appropriately line-marked and labelled according to this requirement prior to the issue of an Occupation Certificate. If the development is to be strata subdivided, the car park layout must respect the required allocation:
  - (a) 75 residential parking spaces.

- (b) 15 residential Visitor Parking Spaces (including 1 Car Wash Bay)
- (c) 2 retail parking spaces
- (d) 6 motorcycle spaces

39. Of the required car parking spaces, at least 8 must be designed and provided for accessible car parking for people with mobility impairment in accordance with Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking. Accessible car parking spaces must have a minimum headroom of 2.5m and must be clearly marked and appropriately located as accessible parking for people with mobility impairment. The car park must respect the following allocation:

- (a) 8 Residential Spaces
- (b) 1 Visitor Space