



NOTICE OF BURWOOD LOCAL PLANNING PANEL MEETING

The meeting of the Burwood Local Planning Panel will be held on Wednesday 28 May 2025 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 Wednesday 28 May 2025 at 6.00pm.

Welcome to the meeting of the Burwood Local Planning Panel

I declare the Meeting opened at

1. Acknowledgement of Country

Burwood Council acknowledges the Wangal Peoples who are the traditional custodians of the area. We pay our respects to their elders past and present.

2. Introduction of Panel Members

3. Recording of 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.

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.

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.

5. Apologies/Leave of Absences

6. Declarations of Interest by Panel Members

7. Chair introduction of Agenda Item

8. Development Applications

(Item DA5/25)	DA.2024.67 - Alterations and additions to the existing dwelling, construction of a new studio and garage on land at No. 23 Chelmsford Avenue, Croydon 3
(Item DA6/25)	Section 4.56 Modification of development application no. DA.2021.88 for a centre-based Child Care Centre (approved by the NSW Land & Environment Court on 10 November 2022)..... 20

Development Applications

(Item DA5/25) DA.2024.67 - Alterations and additions to the existing dwelling, construction of a new studio and garage on land at No. 23 Chelmsford Avenue, Croydon

File No: 25/17746

Report by Senior Assessment Planner

Owner: Mrs Lucy Herriet Cooper
Applicant: Anthony Charbel
Location: 23 Chelmsford Avenue, Croydon
Zoning: R2 Low Density Residential

BLPP Referral Criteria

Pursuant to the Ministerial direction dated 30 June 2020, under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, the DA is to be determined by the Burwood Local Planning Panel for the following reasons:

1. The application is considered to be in the public interest to be heard in a public forum by an independent body and determined by the Burwood Local Planning Panel in accordance with the delegations issued 14 May 2024.

Proposal

The application seeks alterations and additions to the existing dwelling house and a new studio on the site located at 23 Chelmsford Avenue, Croydon.

The specifics of the proposal are as follows:

- Demolition of selected internal and external building elements
- New external deck and BBQ area
- Conversion of carport to garage with bathroom
- New studio adjoining garage
- Extension of first floor level

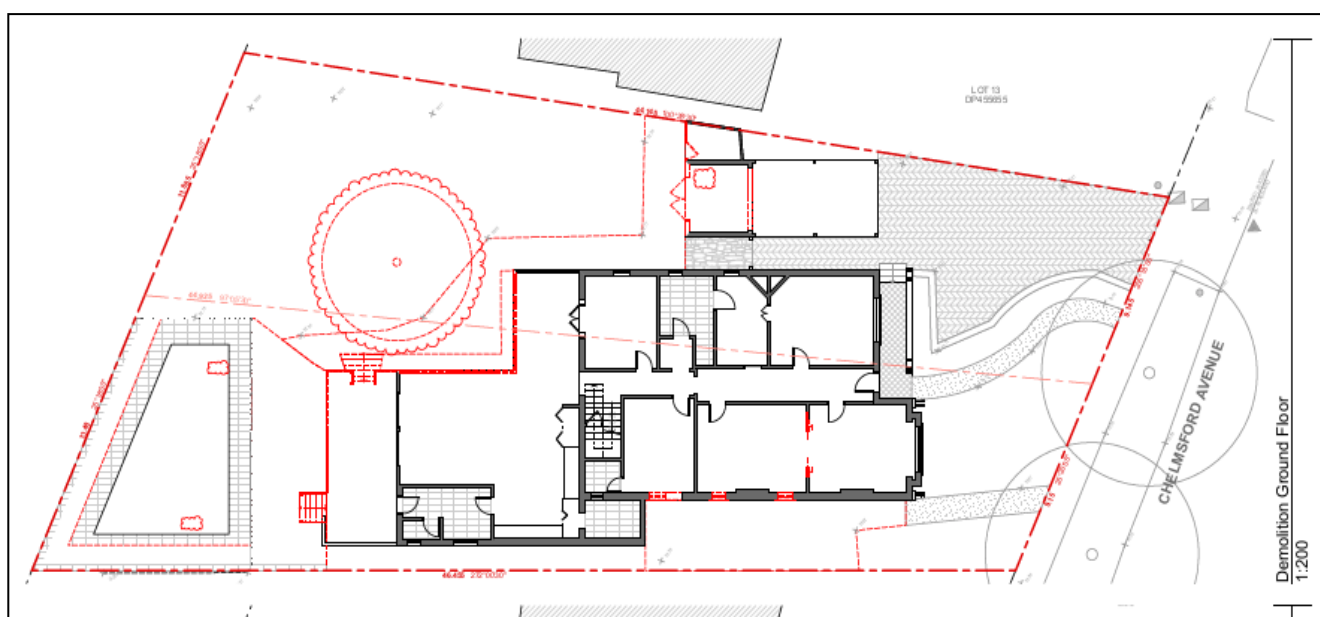


Figure 1 – Extract of applicant's demolition plan.

Source: (Blu Print Designs)

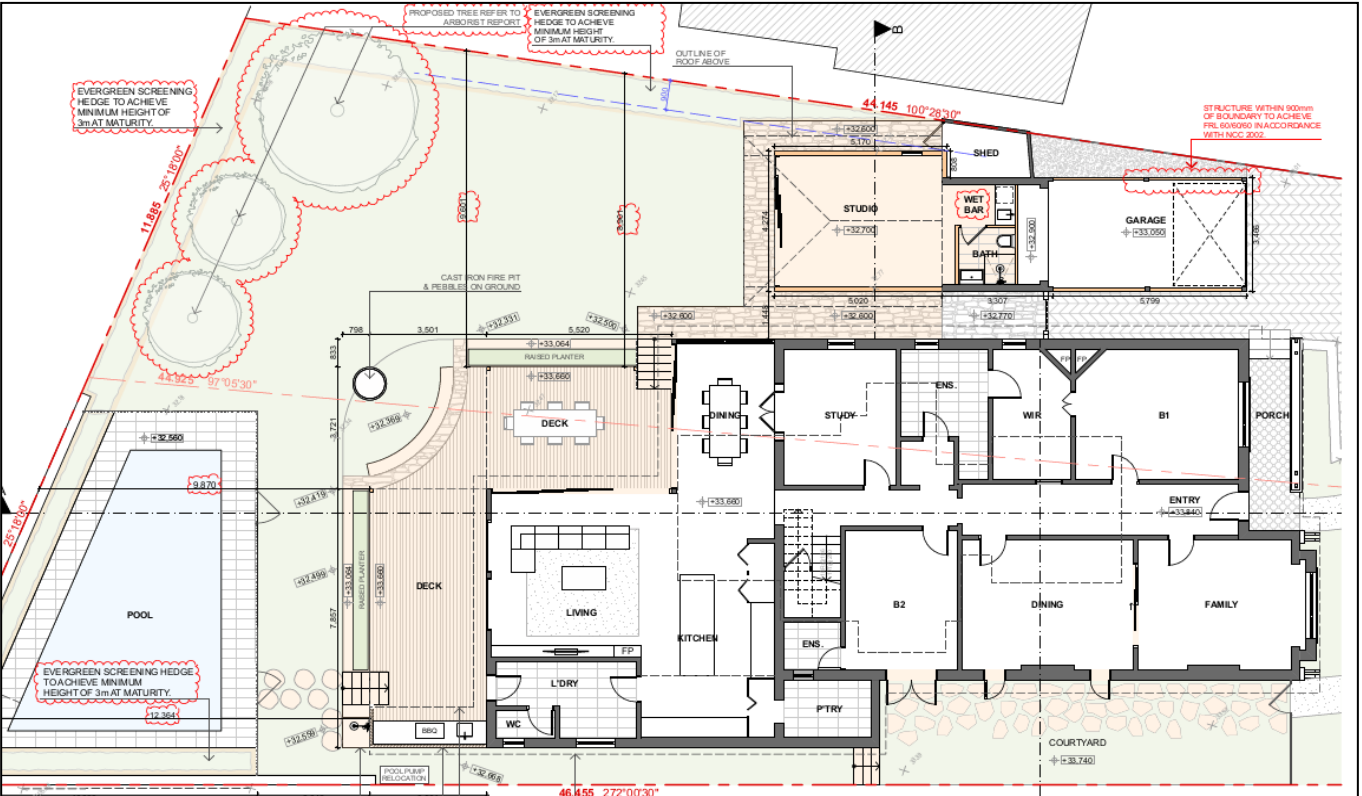


Figure 2 – Extract of applicant's amended proposed ground floor plan.
Source: (Blu Print Designs)

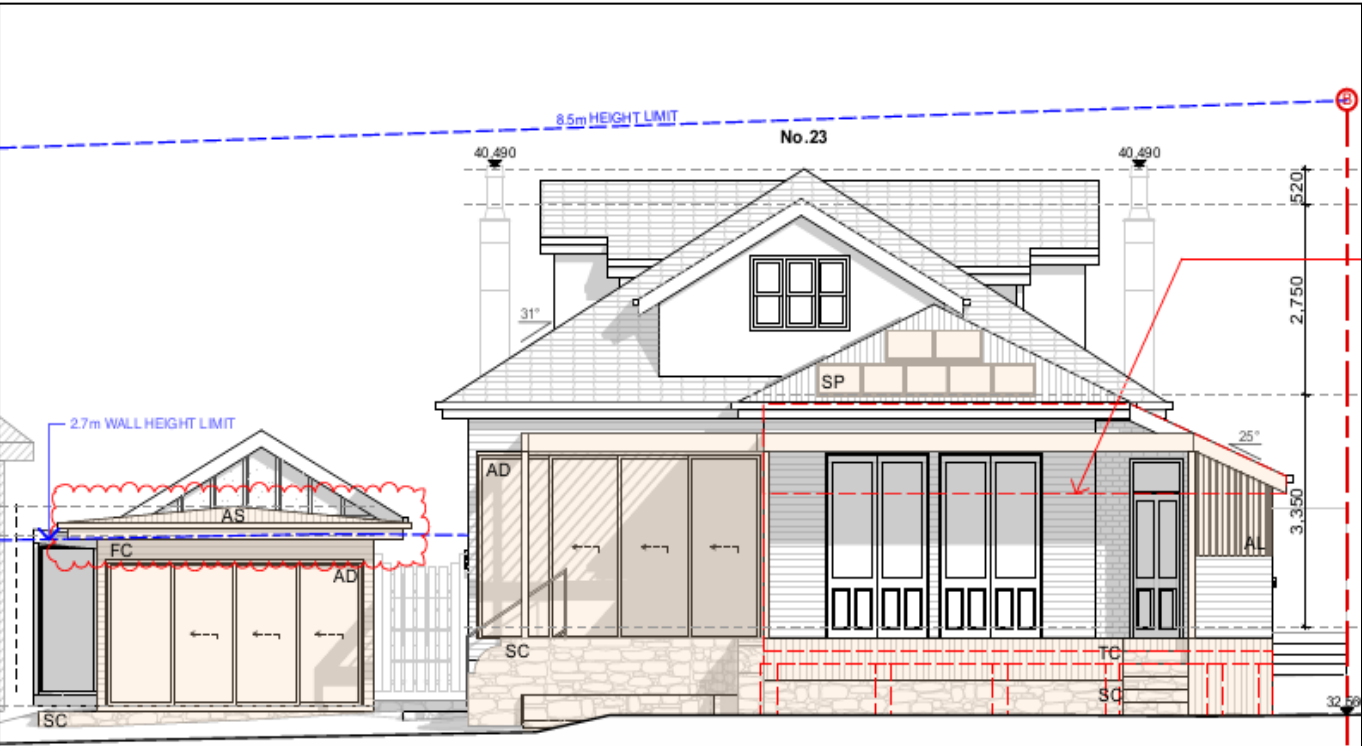


Figure 3 – Extract of applicant's proposed western elevation plan.
Source: (Blu Print Designs)

Background

Application History

There is no previous development application history attributed to the subject site.

Current Application History

On 28 November 2024, the development application (DA.2024.67) was lodged.

The application was referred to the following internal Council departments:

- Development Engineer;
- Heritage Officer;
- Tree Management Officer.

The application did not require any external referrals.

In accordance with the Burwood Community Participation Plan, the owners of surrounding properties were given notice of the application on 4 December 2024, with the notification period for submissions closing on 18 December 2024. In response to the public notification of the DA, one (1) unique submission was received. Issues raised within the submission, are detailed later within this report under Community Consultation.

On 23 January 2025, following a preliminary assessment of the DA, a request for information (RFI) was issued to the applicant identify the following concerns:

- Elevated Floor Levels – The proposed rear deck included an approximate elevation of 1.19m above existing ground level, which Council considered excessive. This was calculated between the finished floor level of the deck at RL:33.66 and existing ground level at RL:32.47. The elevated nature of the rear deck was not supported due to the potential of overlooking and subsequent loss of visual privacy to adjoining properties.
- Visual Privacy – The development proposed a dormer style window on the rumpus room on the southern elevation of the site, which did not include any form of translucent glazing. The applicant was advised that BDCP 2013 prescribes that living areas at the first floor level must have raised sill heights and/or translucent glazing to minimise loss of privacy to adjoining single dwellings.
- Front Setback – Insufficient information was depicted on the submitted plans to enable Council to ascertain the front setback to the first floor level. Specifically, the first floor plan did not show the relationship between the new first floor addition component and the street front boundary.
- Ancillary Structures/Garages – Insufficient information was provided on submitted plans to ascertain the height of the garage door, floor to ceiling heights and dimensions of the garage/studio outbuilding structure. The southern elevation of the garage/studio structure has a total wall length of approximately 14.126m and has a setback of less than 900mm from the northern side boundary. The minimum setback from the garage component of the outbuilding structure to the northern side boundary is 200mm, which was not supported.

The proposed studio structure included amenities and cooking facilities which were not supported, and was considered a defacto secondary dwelling. In addition, the roof plan indicated that the garage roof projected over the adjoining property boundary, which was not supported.

- Development Engineer – Council's Development Engineer requested that all pipe networks and sizes be specified and for a pump-free charge system to be considered to manage site stormwater.
- Tree Management Officer – Council's Tree Management Officer advised that following a site inspection all trees appeared to be in good health and should be retained and that the submitted Arborist Report is required to assess all three (3) existing trees and provide tree sensitive construction solutions.
- Heritage Officer: Council's Heritage Officer advised that the proposed new dormers are not supported and are to be deleted. It was advised that the dormers are not characteristic to contributory development in the conservation area, and the house already benefits from dormers on each roof plane. The additional larger dormers were proposed in a location where they would be highly visible and will alter the roof form and scale of the building, with unacceptable heritage impacts. It was further advised that the dormers be deleted and an alternate location found for the bedroom.

On 19 March 2025, the applicant submitted amended plans and documentation in response to Council's RFI letter. Council undertook a preliminary assessment of the amended plans and no objections were raised on heritage grounds, given the new dormers were deleted. In addition, a site inspection was undertaken on 13 February 2025, which determined, the elevated nature of the rear deck would not result in any overlooking or loss of visual privacy to adjoining dwellings.

Notwithstanding the updated information, additional information was requested with a second RFI letter issued on 7 April 2025, to resolve the following outstanding issues:

- Tree Management Officer – Council's Tree Management Officer requested updated architectural plans, landscape plans and Arborist Report with regard to the maintenance of Tree 1 & 2 (*Lophostemon confertus*) and retention of Tree 3 (*Cedrus deodara*).
- Development Engineer – Council's Development Engineer requested that all pipe networks and sizes be specified and for a pump-free charge system to be considered to manage site stormwater. Additionally, Council advised that the use of pumps are not supported, with the suggestion of a revised stormwater design that discharged to the street gutter.
- Ancillary Structures – The proposed new studio retained internal access to the bathroom, which was not supported.

On 16 April 2025, the applicant submitted amended plans in response to Council's RFI which were referred back to Council's Tree Management Officer and Development Engineer for comment.

No objections were raised by Council's Senior Development Engineer, however the following concerns were raised by Council's Tree Management Officer and included within the third RFI letter issued to the applicant on 23 April 2025:

- Trees 1 and 2 (*Lophostemon confertus*) Street Trees: These trees appear to be impacted by the proposed stormwater alignment within the site, which extends into the Council nature strip. In particular, Tree 2, located adjacent to the driveway—as identified in the Arborist Report (AIA) for 23 Chelmsford Avenue, Croydon, prepared by DJD Tree Consultancy, Revision A, dated 10 February 2025. The stormwater infrastructure requires further review by the consulting arborist. Targeted recommendations should be made to reduce the impact of the proposed works on this tree.

- Tree 3 (*Cedrus deodara*): The proposed removal of this mature tree is not supported, especially given the opportunity to explore design modifications and implement tree-sensitive construction methods (e.g. pier or post footings) to limit encroachment into the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ). The current design does not sufficiently justify the removal of this significant tree. Retention should be prioritised through appropriate design and construction option responses.
- Ancillary Structures – The proposed new studio retained internal access to the bathroom, which was not supported. Council has imposed a condition requiring the bathroom within the proposed studio to be accessed via an externally accessed door only. Refer below for more details.

On 1 May 2025, the applicant submitted amended plans and documentation in response to Council's RFI. The amended plans included revised stormwater drawings, architectural plans and a revised Arborist Report. The amended plans and documentation was referred back to Council's Tree Management Officer and Development Engineer for comment. In their latest referral responses, no objections were raised, subject to the imposition of consent conditions.

Subsequently the application is now recommended for approval.

Statutory Requirements

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 (Biodiversity and Conservation) 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.

Locality

The subject site is legally described as (Lot 1 in Deposited Plan 936736 and Lot 2 in Deposited Plan 936736) and is known as No. 23 Chelmsford Avenue, Croydon. The site is generally rectangular in shape with an 18.295m frontage to Chelmsford Avenue and total site area of 931.6m². The site is arranged on an east-west tangent and is orientated to address the site frontage of Chelmsford Avenue to the east. The site is adjoined by detached dwelling houses to the north, south, east and west with a distinguishable federation-style streetscape.

The site presently contains an original single storey brick dwelling house with a tiled roof, projecting brick verandah with timber posts, a gable end and traditional awning to the façade. Refer to **Figure 8** below. There is a single carport within the site frontage, driveway access from Chelmsford Avenue and a swimming pool at the rear of the site. The subject site is located within the R2 Low Density Residential Zone in accordance with BLEP 2012. Refer to **Figure 4** below.

Notably, the subject site is located within the Malvern Hill Heritage Conservation Area listed within Schedule 5 of the BLEP 2012. Refer to **Figure 6** below. The site is also subject to the building appearance and streetscape provisions. Refer to **Figure 7** below.

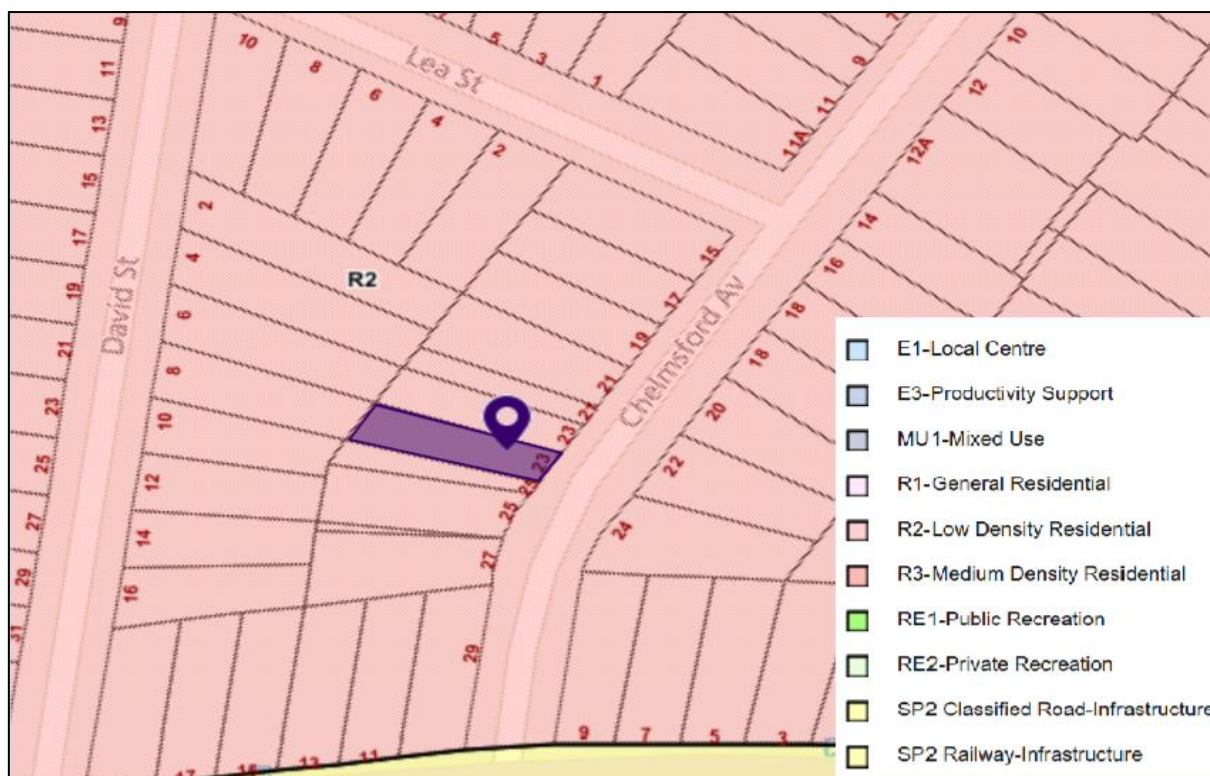


Figure 4 – Subject site located within the R2 Low Density Residential Zone.

Source: (Spatial Spectrum)

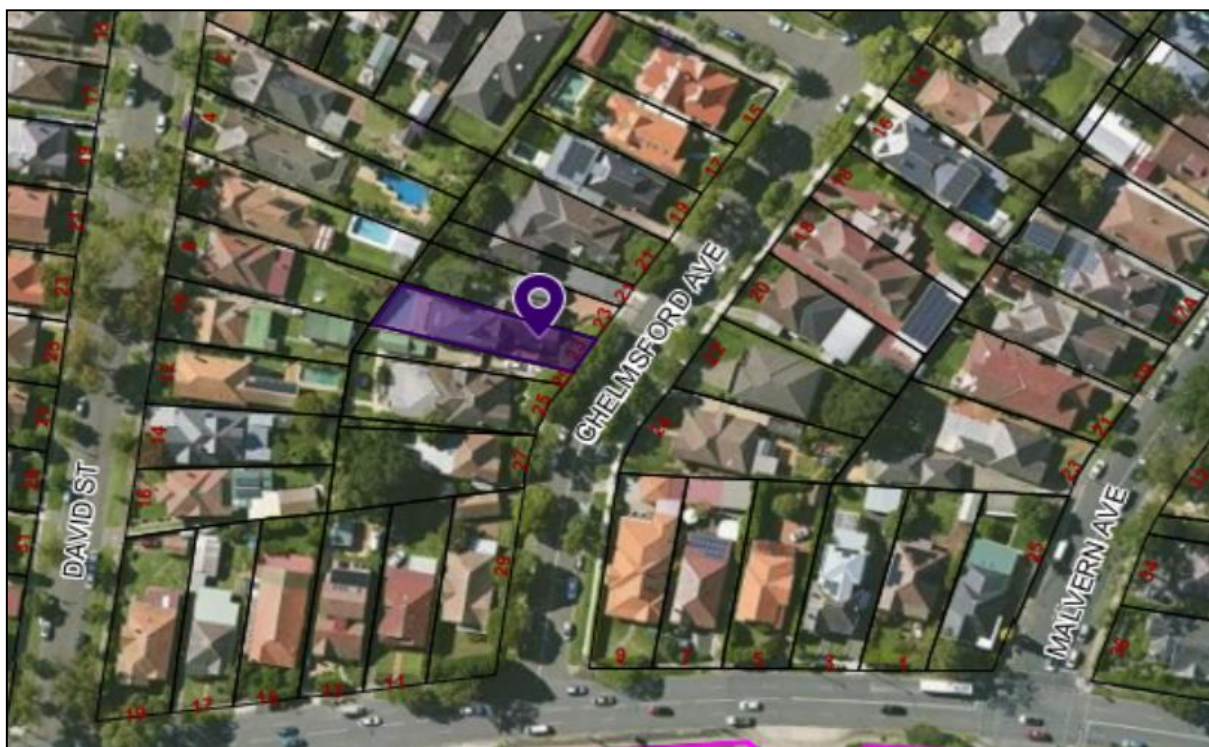


Figure 5 – Aerial image of the subject site and surrounds.

Source: (Spatial Spectrum)

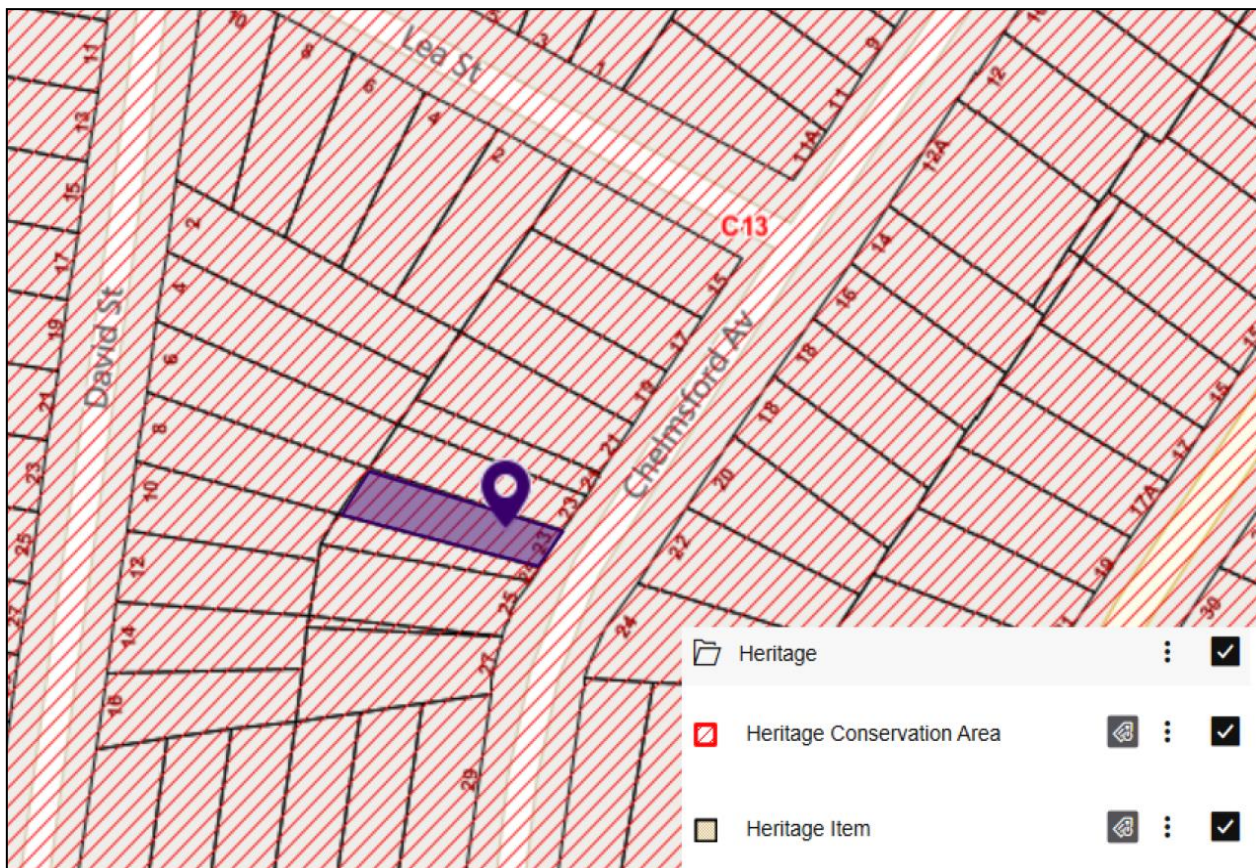


Figure 6 – Subject site located within the Malvern Hill Heritage Conservation Area.
Source: (Spatial Spectrum)

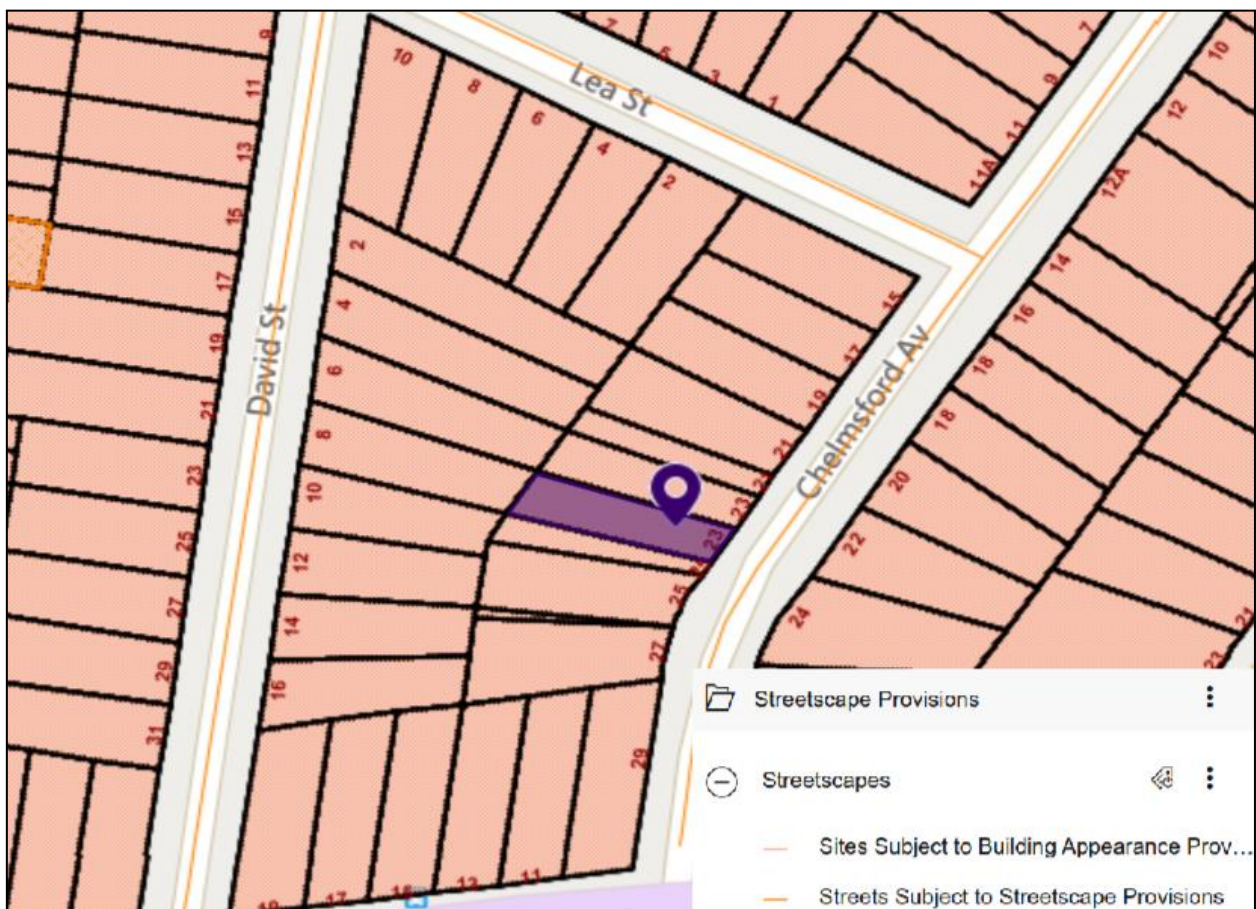


Figure 7 – Site is subject to the building appearance and streetscape provisions
Source: (Spatial Spectrum)



Figure 8 – Site photograph of 23 Chelmsford Avenue Croydon, taken from Chelmsford Avenue facing westward.

Source: (Council Site Inspection)

Surrounding Development

The subject site is located within a residential zone with a distinct and established heritage character, identifiable by well-maintained federation dwelling houses. The Malvern Hill Heritage Conservation Area extends from David Street to the west of the site, Lea Street to the north and Malvern Avenue to the east of the site. Liverpool Road, a classified road, is located to the south of the site. To the immediate north of the site is 21 Chelmsford Avenue, Croydon which consists of a single storey federation dwelling house of brick construction with a pitched and tiled roof form and a double car garage (refer **Figure 9**). To the immediate south of the site is 25 Chelmsford Avenue, Croydon that consists of a single storey federation dwelling house of brick construction with a pitched and tiled roof form and a double car garage (refer **Figure 10**). Access to the site is via Chelmsford Avenue

The subject site is in close proximity to two religiously affiliated centres, one being the All Saints of Russia Orthodox Church to the northeast of the site on Chelmsford Avenue (refer **Figure 12**). Catholic Healthcare Holy Spirit Croydon is located on Liverpool Road to the southeast of the site (refer **Figure 13**).



Figure 9 – No. 21 Chelmsford Avenue, Croydon located to the immediate north of the subject site.
Source: (Council Site Inspection)



Figure 10 – No. 25 Chelmsford Avenue, Croydon located to the immediate south of the subject site.
Source: (Council Site Inspection)



Figure 11 – No. 22 (left) and no.24 (right) Chelmsford Avenue, Croydon located to the immediate east of the subject site.

Source: (Council Site Inspection)



Figure 12 – No. 18 Chelmsford Avenue, Croydon (All Saints of Russia Orthodox Church) located to the northeast of the subject site.

Source: (Council Site Inspection)



Figure 13 – Intersection of Liverpool Road and Chelmsford Avenue Croydon, facing southward.

Source: (Council Site Inspection)

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 subject site has been historically used for residential purposes. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The Vegetation SEPP commenced on 25 August 2017 and replaced clause 5.9 of BLEP 2012, which related to the preservation of trees and vegetation. The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation.

The proposal seeks the removal of two (2) trees on the subject site. As part of the assessment of the subject DA, the proposal was referred to Council's Tree Management Officer for comment. In their latest referral response issued on 12 May 2025, no objections were raised, subject to the imposition of consent conditions.

Burwood Local Environmental Plan 2012

Under Burwood LEP 2012, the property is zoned R2 Low Density Residential, and alterations and additions are permitted with Council's consent.

Objectives of the R2 Low Density Residential Zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is considered to satisfy the objectives for residential development as it will provide for the needs of the community within a low density residential environment.

The second objective is not of relevance to the proposed development. The proposed satisfies the relevant objectives for residential developments in the R2 zone.

The Burwood Local Environmental Plan 2012 came into effect on 9 November 2012. Burwood LEP 2012 contains a number of controls including some numerical development standards which apply to the proposed development. A summary of the assessment of the application against the relevant planning controls within LEP 2012 is shown in **Table 1** below.

Table 1: Assessment of the proposed development against Burwood LEP 2012

Burwood LEP 2012	Proposal	Compliance
4.1 Minimum Subdivision Size		
400m ²	No subdivision proposed as part of this application. However the subject site does include two (2) separate lots: Lot 1 – 448.8m ² Lot 2 – 482.8m ²	N/A
4.1A(1) & (2) Minimum lot sizes for dual occupancies		
Dual Oc (attached) – Zone R1 – 500m ² Dual Oc (attached) – Zone R2 – 500m ² Dual Oc (attached) – Zone R3 – 500m ² Dual Oc (detached) – Zone R1 – 600m ² Dual Oc (detached) – Zone R2 – 600m ² Dual Oc (detached) – Zone R3 – 600m ²	The proposal seeks alterations and additions to an existing dwelling and a new studio.	N/A
4.3(2) Height		
8.5m	Roof Ridge RL:40.460 EGL (interpreted) under: RL:33.6 Max Height of proposed Dwelling: 6.86m	Yes
4.3A(2) Exceptions to height of buildings		
Despite clause 4.3, the height of a building on land marked "Area A" on the Height of Buildings Map is not to	The subject site is not marked "Area A" on the height of buildings map.	N/A

Burwood LEP 2012	Proposal	Compliance
exceed the building height plane for that land.		
4.4(2) FSR		
0.55:1	Studio/outbuilding: 33m ² Ground Floor: 223.9m ² First Floor: 65.4m ² Total GFA: 322.3m ² Lot 1 Site Area: 448.8m ² Lot 2 Site Area: 482.8m ² Total Site Area: 931.6m ² FSR: 0.34:1	Yes
4.4A(2) FSR		
Despite clause 4.4, the floor space ratio for a dwelling house on land in Zone R2 Low Density Residential with a site area of more than 500 square metres is not to exceed 0.52:1 .	Subject site is less than 500m ² . Refer to Clause 4.4(2) above.	N/A
4.6 Exceptions to Development Standards		
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard.	The proposal does not seek any variations to development standards.	N/A
5.10 Heritage Conservation		
(1) Objectives The objectives of this clause are as follows— (a) to conserve the environmental heritage of Burwood, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.	As part of the assessment of the subject DA, the proposal was referred to Council's Heritage Officer for comment, given the subject site is located within the Malvern Hill Heritage Conservation Area listed within Schedule 5 of the BLEP 2012. In their latest referral response issued on 7 April 2025, no objections were raised, and the application was now supported on heritage grounds.	Yes
6.1 Acid Sulfate Soils		
(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	The subject site is affected by Class 5 Acid Sulfate Soils. However, there are no works proposed within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and	Yes

Burwood LEP 2012	Proposal	Compliance
	by which the water table is likely to be lowered below 1 metre Australian height Datum.	
6.2 Flood Planning		
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p>	The subject site is not affected by overland flow.	Yes
6.3 Active street frontages		
The objectives of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B4 Mixed Use identified as "Active street frontage" on the Active Street Frontages Map"	The subject site is not identified as "Active street frontage" on the Active Street Frontages Map.	N/A

Burwood Development Control Plan 2013 (BDCP 2013)

The development is subject to the provisions outlined within the table above. The provisions of BDCP have been considered in this assessment and it is concluded that the proposal is consistent with the aims and objectives of BDCP 2013. The proposed alterations and additions to the existing dwelling house and a new studio complies with the controls contained within BDCP 2013. However, where strict compliance has not been achieved, in accordance with Section 4.15(3A)(b), flexibility has been sought to allow a reasonable alternative solution that achieves the objects of the standard. These matters are discussed below:

Ancillary Structures

Section 4.5 of BDCP 2013 prescribes that amenities such as a shower, toilet or hand-wash basin will only be permitted to be installed within an outbuilding under specific circumstances, and at Council's discretion. Access to these amenities shall be by an externally accessed door (e.g. opening onto the rear yard), as opposed to being accessed from the interior space, such to discourage use of the structure as a secondary dwelling.

The proposed new studio structure includes access to a bathroom via an internal access door, which is directly contrary to the above mentioned control. The current arrangement is considered a defacto secondary dwelling.

In order to discourage the use of the proposed studio structure as a secondary dwelling, the following condition is imposed:

1. The bathroom within the proposed studio is to be accessed via an externally-accessed door only. No cooking facilities are to be installed within the studio structure. Details of the method of complying with this requirement must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate**. (Refer to **Figure 14** below).

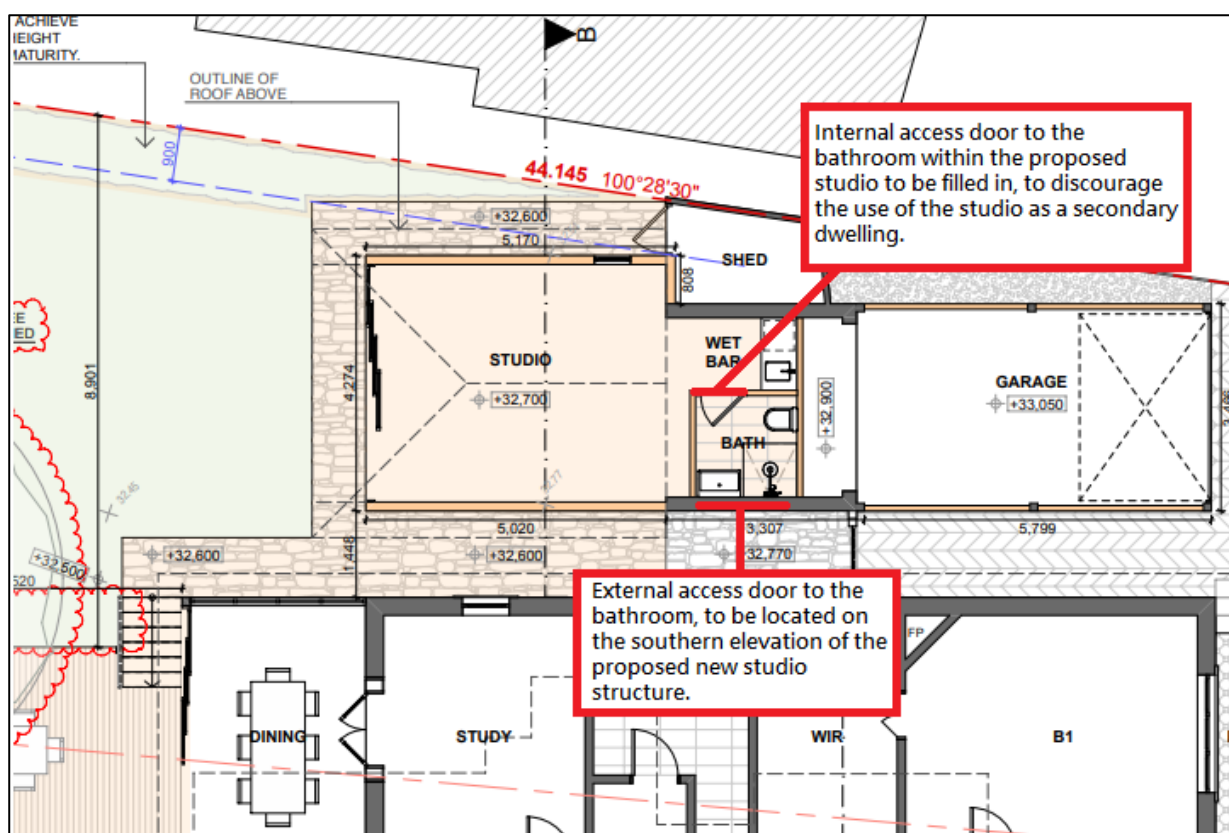


Figure 14 – Extract of the applicants submitted proposed ground floor plan indicating the bathroom within the proposed studio, to be accessed via an externally accessed door only.

Source: (Blu Print Designs)

Community Consultation

Internal Referrals

The application was referred to the following internal Council departments. The below summarises their referral comments on the latest plans:

Development Engineer: As part of the assessment of the subject DA, the proposal was referred to Council's Senior Development Engineer for comment. In their latest referral response issued on 7 May 2025, no objections were raised, subject to the imposition of consent conditions.

Heritage Officer: As part of the assessment of the subject DA, the proposal was referred to Council's Heritage Officer for comment. In their referral response issued on 7 May 2025, no objections were raised.

Tree Management Officer: As part of the assessment of the subject DA, the proposal was referred to Council's Tree Management Officer for comment. In their latest referral response issued on 12 May 2025, no objections were raised, subject to conditions.

External Referrals

The application did not require any external referrals.

Neighbour Notification

In accordance with Burwood Community Participation plan, the owners of surrounding properties were given notice of the application on 4 December 2024, with the notification period for submissions closing on 18 December 2024. In response to the public notification of the DA, one (1) unique submission was received

The matters raised within the submission is summarised below, followed by a comment from the assessing planner:

- Concerns regarding the applicants proposed stormwater arrangements, particularly the absorption pit to collect all rainwater from the stormwater pipes.

Planner Comment: As part of the original assessment of the subject DA, the proposal was referred to Council's Senior Development Engineer for comment. In their initial referral response issued on 18 December 2025, the following information was requested to be submitted:

- Stormwater design engineer to specify all pipe networks including existing and proposed pipes on the plan with their sizes.
- Stormwater design engineer to specify whether they are using eco sac bladder rainwater and if so how/where the water will be discharged to.
- Managing stormwater using abortion pits should be avoided where possible unless geotechnical investigation reports demonstrate presence of appropriate soil for draining water.
- Use of pumps to discharge stormwater should be avoided.
- Designers may considered pump-free charged system to manage site stormwater.

On 19 March 2025, the applicant submitted stormwater plans which were referred back to Council's Senior Development Engineer for comment. In their referral response the following was advised:

- All pipe networks and sizes be specified and for a pump-free charge system to be considered to manage site stormwater. Additionally, Council advised that the use of pumps are not supported, with the suggestion of a revised stormwater design that discharged to the street gutter.

On 1 May 2025, the applicant submitted an additional set of revised stormwater plans which were referred back to Council's Senior Development Engineer for comment. In their latest referral response issued on 7 May 2025, it was advised that the stormwater plans were supported, subject to the imposition of consent conditions.

Conclusion

After consideration of the development against section 4.15 of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposal is satisfactory for the site and in the public interest. Therefore, it is recommended that the application be approved, subject to conditions.

Recommendation(s)

That Development Application DA.2024.67 which seeks consent for DA.2024.67 - Alterations and additions to the existing dwelling, construction of a new studio and garage on land at No. 23 Chelmsford Avenue, Croydon, be approved, subject to the conditions provided within **Attachment 1** of this report.

Attachments

- 1 Conditions of Consent - 23 Chelmsford Avenue, Croydon - DA.2024.67
- 2 Architectural Plans - 23 Chelmsford Avenue, Croydon - DA.2024.67
- 3 Revised Arborist Report - 23 Chelmsford Avenue, Croydon - DA.2024.67
- 4 Revised Stormwater Plans REV E - 23 Chelmsford Avenue, Croydon

(Item DA6/25) Section 4.56 Modification of development application no. DA.2021.88 for a centre-based Child Care Centre (approved by the NSW Land & Environment Court on 10 November 2022).

File No: 25/24411

Report by Manager City Development

Owner: APPIAN CCC PTY LTD
Applicant: Tony Geagea
Location: 18 Appian Way, Burwood 2134
Zoning: R2 Low Density Residential under Burwood Local Environmental Plan 2012

Proposal

Modification Application (under s.4.56 of the Environmental Planning & Assessment Act 1979) to a centre-based Child Care Centre – approved by the NSW Land & Environment Court on 10 November 2022.

The modifications also include various internal and external design changes to the building, to the basement and lower basement levels (including relocated plant room, updated car parking space layout, widening of fire exit stairs etc); and also design changes to the child care centre overall (such as relocating infants from first floor to ground floor, administration areas moved to first floor, changing the rooms adjacent to external play areas). There are also a range of internal and external modifications including design changes to window size and location.

One of the central issues of this application relates to the retention of an existing electrical substation (in Appian Way) in its current location, instead of relocating it to the south-western corner of the site (as per the originally approved DA plans). The applicant has identified several issues and reasons why it is preferable to retain the substation in its current location.

However, retaining the substation in its current location would require an amended driveway design that would involve removal of a street tree in Appian Way (ie within the footpath/road reserve area) – identified as Tree No 5.

The Site is listed as a heritage item under Burwood LEP 2012, and is within a Heritage Conservation Area (Appian Way HCA).

A full description of all design changes proposed in this modification application is provided in the body of this report. The applicant has also provided details of the consent conditions proposed to be modified.

Strong concerns are raised regarding the proposed modifications, but particularly regarding removal of Tree No 5 from the footpath in Appian Way. One of the key features of the Appian Way HCA is its landscaped setting (both within individual properties, but also the street trees in the footpath/road reserve area), and the proposed tree removal would cause significant adverse impacts on the streetscape.

Summary Recommendation

Refusal, for the reasons outlined in the Recommendation to this Report.

BLPP Referral Criteria

The application has received more than 10 unique objection submissions.

Background

Subject Site and Existing Development

The Heritage Impact Assessment submitted with the DA (by Weir Phillips Heritage) outlines the Site History, and states that the dwelling on the Site was constructed c.1905, and has since been used as mostly a private residence and (for part of its history) as a reception centre.

Generally, the structure/fabric of the existing building has been extensively altered over its history.

The building was constructed as one of the first dwellings in Appian Way, a model housing estate in what has now become the Appian Way HCA. Many of the immediately adjoining dwellings are 1-2 storeys high, and were constructed around the same time (early 1900s), in the Federation architectural style. Appian Way has many distinguishing features including the landscaped setting of the dwellings, large trees in the footpaths and low front fencing.

Burwood DCP 2013 contains particular provisions relating to the Appian Way HCA, including a Description, a Statement of Significance, and also particular development controls. The following is a brief description (from p.345 in Burwood DCP 2013):

The Conservation Area is one of the finest examples of intact Federation Queen Anne housing and streetscape, listed by the National Trust of Australia (NSW) as:

"Probably the finest Edwardian bungalow precinct in Sydney. By virtue of its architectural cohesiveness, idyllic landscaped environment of street and allotment alike with community related sports reserve, this development sets a high standard by today's criteria". (National Trust, 1977)

The Site has had 2 DAs submitted as outlined in the table below:

a. Development	b. Determination
<p>c. DA2021.88.1</p> <p>d.</p> <p>e. Alterations and additions to an existing dwelling house, and change of use to a centre-based child care facility</p>	<ul style="list-style-type: none"> • DA refused by Council. • Later approved on appeal to the NSW Land & Environment Court on 10 November 2022.
<p>f. DA2021.88.2</p> <p>g.</p> <p>h. Modification of approved centre-based child care facility – including various internal and external design changes.</p>	<p>i. (Current s4.56 application)</p>

Source: Burwood Council DA tracker

Current Application – DA2021.88.2

The current application seeks approval to modify DA2021.88, approved by the NSW Land & Environment Court and is therefore made under s.4.56 of the Environmental Planning & Assessment Act 1979, which deals with *Modification by consent authorities of consents granted by the Court*. A full assessment of the application against the matters listed in s.4.56 of the Act is provided later in this report.

The key dates and events regarding this application are summarised as follows (full details also provided later in this report):

1. 13 November 2024 – Pre-Lodgement meeting held with Council Officers. This Pre-Lodgement meeting identified several significant issues of concern:

- **Traffic and Driveway Access:** The skewed alignment of the driveway (ie not 90° with kerb line) is not acceptable as it contradicts the DCP and the Appian Way HCA; and is an undesirable outcome for the Appian Way streetscape.

Driveway clearance from the substation (5.5m) needs to be specified on the plans.
Swept paths to be shown on the plans.

New driveway orientation will intrude into the pedestrian pathway.

- **Tree Removal:** The (initial) suggestion to relocate the substation (to Burwood Rd) may involve removal of a brush box along the Burwood Rd frontage and therefore concerns were raised.

Removal of a street tree (in Appian Way) is not acceptable given the high heritage significance of the Appian Way HCA. In particular, there is already a large gap between the tree (identified to be removed) and the tree to the west, and removing the identified tree would widen this gap.

Although the Burwood Road frontage is also within a HCA, it is less significant and sensitive than the Appian Way HCA – and therefore removal of a tree from the Burwood Road frontage to accommodate a new substation location would be the preferred outcome.

- **Substation Relocation:** The existing substation detracts from the character of the Appian Way and its relocation to Burwood Road is a positive heritage outcome.

2. 12 March 2025 – Subject Application lodged with Council.
3. 18 March 2025 – Internal Referrals and Neighbour Notification undertaken. The internal referrals were sent to Council's Heritage Advisor, Tree Management Officer and Development Engineer.
4. 18 March 2025 – Neighbour notification and advertising – Letters sent to adjoining/nearby properties for a minimum period ending 4 April 2025.

Ten (10) unique submissions were received following the neighbour notification process, as discussed later in this report.

5. There have been no requests for information/amended plans from the applicant during the processing of the current application.

Full Details of Proposed Development

General

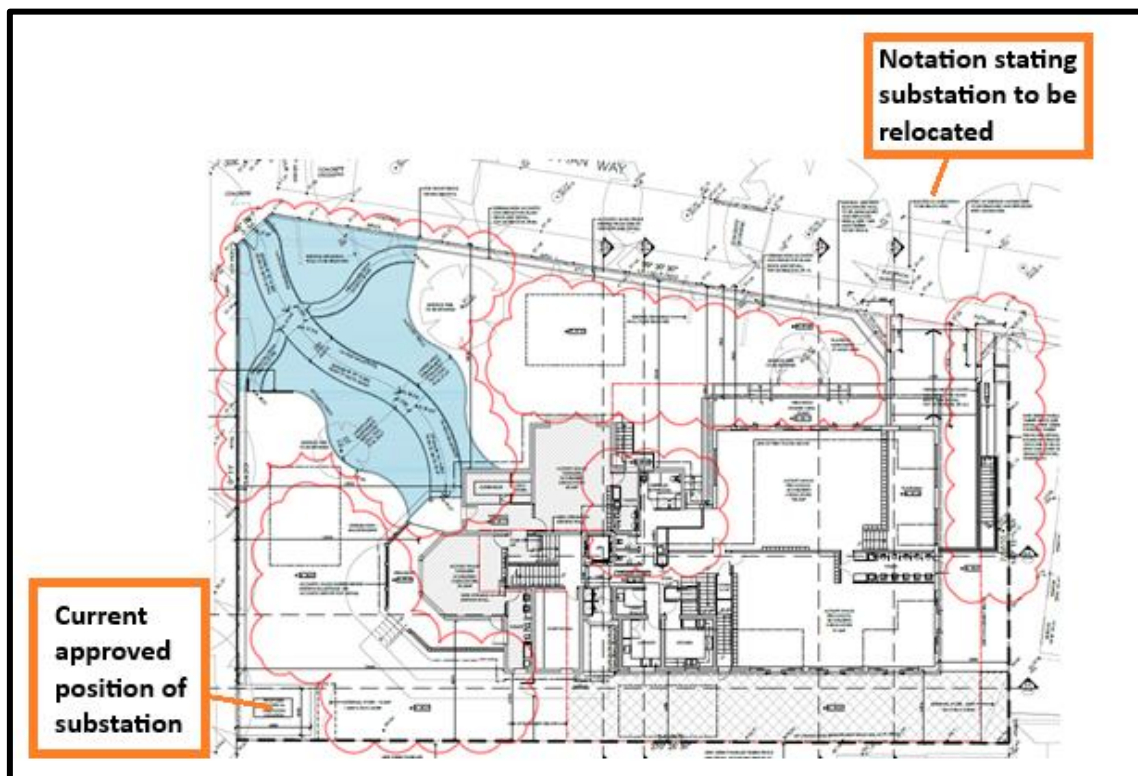
The submitted Statement of Environmental Effects provides details of both the proposed modifications, and the consent conditions proposed to be modified. These are outlined in the "*Detailed Description of Proposed Modifications*" section below.

One of the central issues of the modifications relates to the retention of an existing electrical substation (in Appian Way) in its current location, instead of relocating it to the south-western corner of the site (as per the originally approved DA plans). The applicant has identified several issues and reasons why it is preferable to retain the substation in its current location.

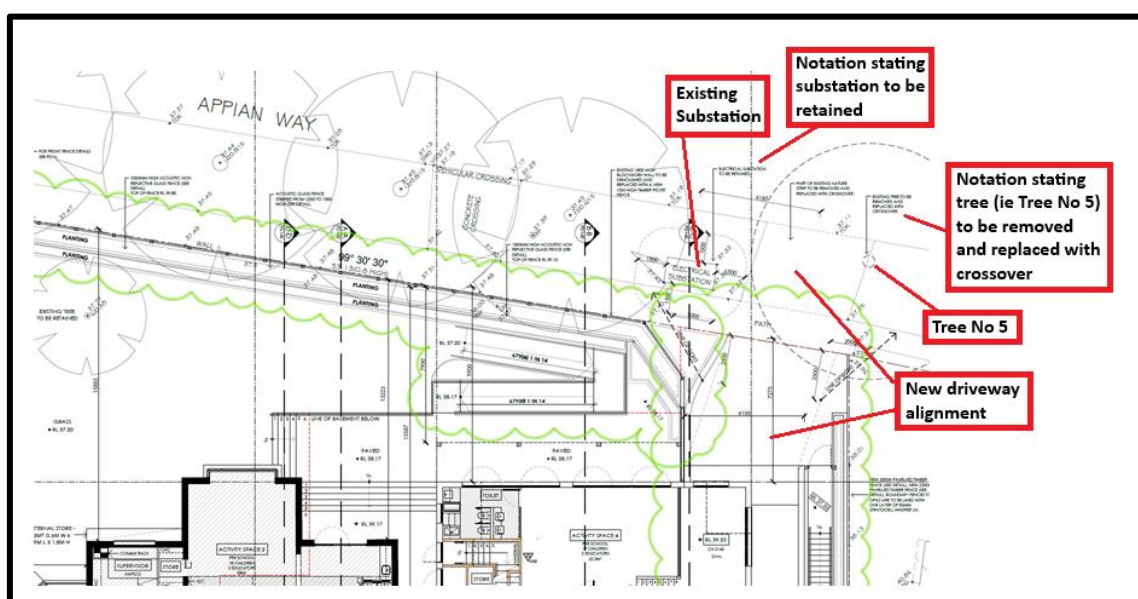
Retaining the substation in its current location would require an amended driveway design that would involve removal of a street tree in Appian Way (ie within the footpath/road reserve area) – identified as Tree No 5.

For comparison, the following drawings (the Site Plan in the original DA approval, and Site Plan in the Current Modifications) are provided below, and marked-up to show:

- the position of the existing substation
- the position of the relocated substation (as per the original DA approved plans)
- the location of Tree No 5 (which would need to be removed if the substation is retained in its current location).



Approved DA Plans Site Plan (Extract) – Showing the notation stating existing substation to be relocated, the current approved position of the new substation.



Current Modification Site Plan (Extract) – Showing the existing substation, and the proposal to remove Tree No 5 for the amended driveway design as part of retaining the existing substation in its location.

The modifications also include various internal and external design changes to the building, to the basement and lower basement levels (including relocated plant room, updated car parking space layout, widening of fire exit stairs etc); and also design changes to the child care centre overall (such as relocating infants from first floor to ground floor, administration areas moved to first floor,

changing the rooms adjacent to external play areas). There are also a range of internal and external modifications including design changes to window size and location.

Detailed Description of Proposed Modifications

Below is a Schedule of the Proposed Modifications and the reasons for the modifications, as provided by the applicant in their Statement of Environmental Effects and Architectural Plans:

Description of Proposed Modifications	Reasons
Lower Basement Level	
Plant room located in Southeast corner of the basement.	Provide a safe location for Fire Pumpsets whilst and allow for direct access from the street via basement egress stair.
2. Carparking layout updated to accommodate plant room and additional columns.	Ensure basement parking complies with Traffic conditions & regulations.
3. Bin room and store increased in width.	To allow for a disabled entrance into the foyer to prevent the need to manoeuvre over a ramp.
4. Basement plant and exhaust room added behind Lift	To safely house mechanical unit for both lift and basement exhaust.
5. Laundry & waste chute removed.	Not needed in the centre and allows for a buffer zone for safe pedestrian entrance to the basement foyer.
6. Basement secondary exit stair widen.	To allow for compliant handrails and additional storage space below.
7. Sub-basement lowered to RL 29.97 from RL 31.17	To increase ceiling height of basement level to house all mechanical ventilation and service.
Basement Level	
8. Basement secondary exit stair widen.	To allow for compliant handrails and additional storage space below.
9. Carparking layout updated to accommodate plant room and additional columns.	To ensure basement parking complies with Traffic conditions & regulations.
10. Laundry & waste chute removed.	Not needed in the centre and allows for a buffer zone for safe pedestrian entrance to the basement foyer.
11. Driveway & entrance ramp updated.	Allow for vehicle access whilst retaining the existing substation location.
Ground Floor	
12. Infants moved from First floor to Ground floor.	To prevent the need of educators to carry infants down the stairs to external play areas & provide easier evacuation in emergency.
13. Administration areas moved to first floor.	To allow access to the Burwood external play space from toddler activity space 3.
14. Rooms adjacent to Appian Way external play space changed to pre-school.	To allow better separation by making specific external area for different aged groups that can be accessed from each internal play space.
15. Main & secondary stair relocated because of PD10 changes.	To reflect same change at first floor level
16. Windows reconfigured to suit updated layout on Southern & Eastern Wall.	As a consequence of adding the infant rooms to the ground floor.
17. View corridor removed and Front fence plan & materials updated.	A painted acoustic timber fence behind a hedge in lieu of glass to aesthetically fit better into the streetscape.
18. Pedestrian entrance path updated.	Entrance path made compliant with BCA regulations.
First Floor	
19. Staff room, Laundry, Kitchen & Programme Room moved to First floor.	To allow the relocation of Infant & cot rooms on the Ground floor.

Description of Proposed Modifications	Reasons
20. Both stairs relocated.	To create two fire compartments and ensure 9m separation between the top of each staircase.
21. Kitchen & Laundry layouts updated.	To show location of appliances and fixtures.
External	
22. Removal of Tree No. 5	Allow for retention of substation without relocating and causing impact to Tree No.4 and No.10 (This should state Tree No.14 and No.10).

Assessment – Removal of Tree No. 5

The applicant has proposed that the modified driveway location in response to retaining the existing substation would require removal of Tree No 5 (which is a *Lophostemon confertus* "Brush Box). To support their request for removal, the applicant has stated that allowing the substation to remain in its location would prevent removal of 2 other trees (No 10 and 14) that would be associated with the current approved location of the substation (ie on the south-western side of the site).

To support their request, the applicant has provided:

- Letter from their Arborist/Tree & Landscape Consultant – regarding the health of Tree No 4
- Letter from their Electrical Engineer – regarding the construction issues and costs associated with relocating the substation.

The applicant's comments and letters of support are noted but are not supported in relation to the proposed removal of Tree No 5. The retention of this Tree No 5 is recommended given its contribution to the avenue of street trees in Appian Way, and the contribution that these make to the landscaped setting and heritage significance of the Appian Way HCA.

Further, there is no evidence submitted to indicate that the new position of the substation (as per the current approval, see Approved Plan extract above) would result in removal of Tree No 10 and No 14 as stated by the applicant.

Description of Modified Consent Conditions

The modifications (outlined above) propose to change conditions 1, 4, 77-78, 121 and 122 of the Consent. These are outlined as follows (proposed changes in red print, where applicable):

- Condition 1: Contains details of the approved plans and support documents. These would be required to be updated if the modification application is to be approved.
- Condition 4: This condition is proposed to be deleted as the fencing adjacent to the front entry walkway is to be amended to be lapped and capped timber instead of glass.
- Condition 77-78: These conditions refer to the number of parking spaces required. The modifications propose to amend the basement parking layout/s which include reduction in the number of spaces (from 31 to 30). The exact nature of the modifications proposed to these conditions are outlined below:

*77. A total of ~~31~~ **30** off-street car 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.*

78. 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) ~~13~~ **12** pick-up/drop-off parking spaces on level B1.
- (b) 18 staff parking spaces on level B2.

- **Condition 121:** This condition relates to Landscape Plans – and is proposed to be amended to refer to the revised Landscape Plan as submitted with the current application.
- **Condition 122:** This condition refers to the trees required to be protected and/or removed on site. This application proposes to allow for the removal of Tree No 5 (as referenced in the Arborist Report and Tree Protection Plan (Appendix D) of that Report. The exact nature of the modifications proposed to Condition 122 are outlined below:

122. Tree Protection

- a. Tree protection measures to be implemented for Tree Numbers 1, 2, 3, 4, **5**, 6, 7, 8, 9, 10 and 11 in accordance with sections 4.5, 4.6, 4.7 and 4.8, and the Tree Protection Plan (Appendix D) of the Arboricultural Impact Assessment report by TALC dated 3 February 2022.
- b. Tree numbers **5**, ~~12~~, ~~13~~, 14, 15, ~~16~~ and 17 may be removed from the site.

Statutory Requirements

This application is assessed under the provisions of s.4.56 of the Environmental Planning & Assessment Act 1979, as amended, which include:

- Assessment under the heads of consideration in s.4.15 of the Act [required under s.4.56(1A)]
- Burwood Local Environmental Plan (LEP) 2012
- Burwood Development Control Plan (DCP) 2013
- The likely social, environmental and economic impacts of the development
- The suitability of the site for the development
- Submissions received from the neighbour notification/advertising process
- The Public Interest

These matters are considered in this report.

Locality

The Site

The subject site has a legal description of Lot 1 DP12249, and a street address of No 18 Appian Way, Burwood. It is on the south-eastern corner of Appian Way and Burwood Rd, and is approximately 1km south of Burwood railway station.

The site is an irregular-shaped lot with a frontage of 53.13m to Appian Way, 34.99m to Burwood Rd and total site area of 1822m².

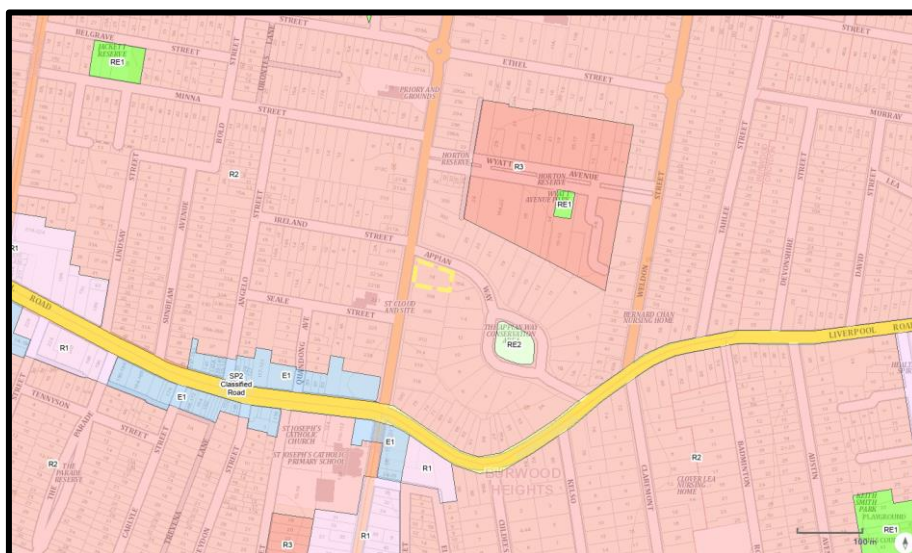
The site contains one residential building (former dwelling house) that has been approved to be used as a child care centre, and this building is located in the centre and southern side of the site. The building is one storey high and is constructed of face brick with terracotta roof tiles.

There is a circular driveway hard-stand area with two driveway crossings from Appian Way. Most of the site (not occupied by the building and hard-stand areas) has established landscaped areas of turf and small shrubs, and there are numerous mature trees in the footpath area at the front and side of the site.

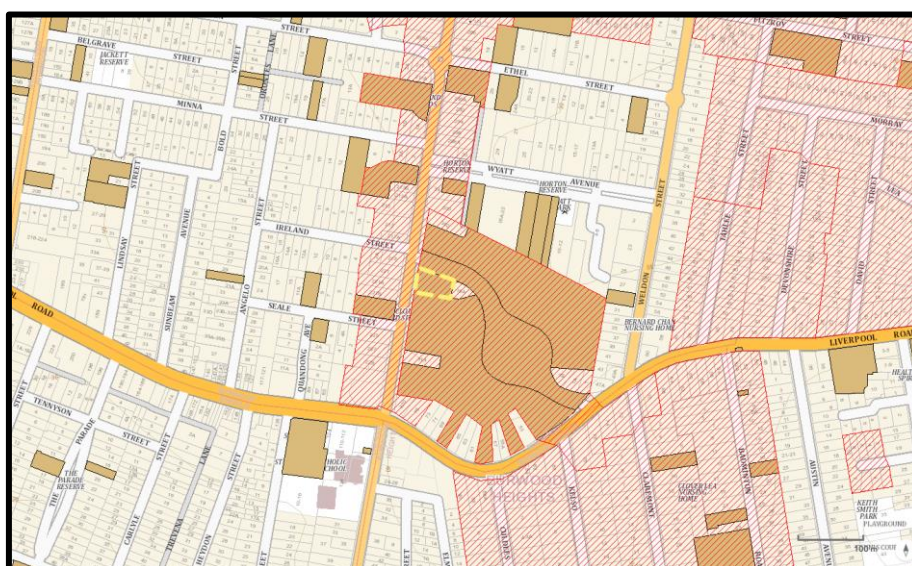
The site has a gentle slope from the southern boundary (approx. RL38.6) down towards the northern boundary (Appian Way frontage, approx. RL37.6).

Surrounding development consists of mostly detached dwelling houses (single-storey in height), consistent with the R2 Low Density Residential zoning of this location under Burwood LEP 2012. The site is in a Heritage Conservation Area (Appian Way HCA), and is listed as a Heritage Item under Burwood LEP 2012. Many properties in Appian Way and other adjoining streets are also listed as heritage items.

The following is a visual presentation of the site and its surrounds – including the Burwood LEP 2012 Zoning and Heritage Maps, air photo, and street-view images of the Site.



Burwood LEP 2012 Zoning Map. Subject Site No 18 Appian Way Burwood shown by yellow outline (Source: NSW Planning Portal Spatial Viewer)



Burwood LEP 2012 Heritage Map. Subject Site No 18 Appian Way Burwood shown by yellow outline; Heritage Items shown coloured brown, Heritage Conservation Areas shown with diagonal red lines (Source: NSW Planning Portal Spatial Viewer)



Air Photo – No 18 Appian Way Burwood (shown shaded yellow with blue outline)
(Source: maps.six.nsw.gov.au)



Subject Site No 18 Appian Way Burwood, viewed from the north (Appian Way)
(Source: Google Street View)



Subject Site No 18 Appian Way Burwood, viewed from the west (Burwood Rd)
(Source: Google Street View)

Planning Assessment

The current application is for modifications to a consent issued by the NSW Land & Environment Court. Such modifications are covered by s4.56 of the Environmental Planning & Assessment Act 1979. An assessment against the provisions of s.4.56 is provided in the following Table:

4.56 Modification by consent authorities of consents granted by the Court (cf previous s 96AA)

Section 4.56 Requirement	Comments
<p>(1) <i>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—</i></p> <p>(a) <i>it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and</i></p>	<p><u>Comment:</u> The development description (in DA2021.88.1 dated 10 November 2022 issued by the NSW Land & Environment Court) is: "... for alterations and additions to an existing dwelling house and change of use to a centre based child care facility at 18 Appian Way, Burwood, is determined by the grant of consent, subject to conditions of consent at Annexure 'A'."</p> <p>The current application seeks to proceed with the overall concept of a "centre-based child care facility" at the site, but with a range of internal and external design changes as described previously in this Report.</p> <p>Therefore the current application is "substantially the same development" and is therefore able to be considered as a modification to the consent under s.4.56(1)(a).</p>
<p>(b) <i>it has notified the application in accordance with—</i></p> <p>(i) <i>the regulations, if the regulations so require, and</i></p> <p>(ii) <i>a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i></p>	<p><u>Comment:</u> The current modification application has been notified to neighbours as per Council's Neighbour Notification DCP – see "Community Consultation" section of this report, below.</p>
<p>(c) <i>it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</i></p>	<p><u>Comment:</u> Council has made reasonable attempts to notify previous submitters to the original DA.</p>
<p>(d) <i>it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</i></p>	<p><u>Comment:</u> The "Community Consultation" section of this report (below) summarises the submissions received from neighbours, and provides a planning response.</p>

Section 4.56 Requirement	Comments
<i>(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.</i>	<u>Comment:</u> Assessment in terms of the heads of consideration in s.4.15(1) of the Environmental Planning & Assessment Act 1979 is undertaken below.
<i>(1B) (Repealed)</i>	
<i>(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.</i>	<u>Comment:</u> Noted.
<i>(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.</i>	<u>Comment:</u> Noted, Council's standard administrative processes will ensure that all submitters receive the Notice of Determination (ie made available via Council's DA tracker).
<i>(3) The regulations may make provision for or with respect to the following—</i> <ul style="list-style-type: none"> <i>(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,</i> <i>(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,</i> <i>(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.</i> 	<u>Comment:</u> Noted.
<i>(4) (Repealed)</i>	

Conclusion re s.4.56 Assessment:

This application (and Council's assessment thereof) satisfies the requirements of s.4.56 of the Environmental Planning & Assessment Act to enable it to be assessed and determined as a modification application to DA2019/28.

As noted above, s.4.56(1A) requires Council to assess the proposal in terms of the heads of consideration in s.4.15(1). This s.4.15(1) Assessment is undertaken as follows:

4.15 Evaluation (cf previous s 79C)

Section 4.15 Requirement	Comments
(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—	
(a) the provisions of—	
(i) any environmental planning instrument, and	<p>The Site is in Zone R2 Low Density Residential under Burwood LEP 2012.</p> <p>The Development falls under the definition of “<i>Centre-Based child care facilities</i>”, which is a land-use listed as “Permitted with Consent” in the R2 zone.</p> <p>Burwood LEP 2012 contains various additional development controls relevant to the current proposed modifications, in Clause 5.10 – Heritage Conservation.</p> <p>Refer to the <u>Detailed Assessment – Clause 5.10</u> Section of this Report (see below).</p>
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	<p>No draft environmental planning instruments apply to the site or development.</p>
(iii) any development control plan, and	<p>Burwood DCP 2013 provides the detailed development controls for the site/proposed development.</p> <p>Refer to the <u>Burwood DCP 2013 – Assessment</u> Section of this Report (see below).</p>
(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	<p>None applicable.</p>
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	<p>None relevant.</p>
(v) (Repealed)	<p>–</p>

that apply to the land to which the development

Section 4.15 Requirement	Comments
application relates,	
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	<p>The likely impacts of the proposed modifications (as distinct from the original DA approval) primarily relate to the retention of the substation in its current location in Appian Way instead of the original approval which located it in the south-west corner of the site.</p> <p>The impacts arising from retention of the substation (namely amended driveway design and removal of a tree from Council's footpath area) will have significant impacts on the landscaped streetscape of Appian Way and therefore it is unsatisfactory.</p>
(c) the suitability of the site for the development,	<p>Overall, matters relating to site suitability (eg natural constraints eg bushfire, flooding etc) have been addressed in the previous approval of a centre-based child care facility at this Site.</p> <p>The key issues with the current modification application (in terms of site suitability) are the retention of the substation in Appian Way, and the associated changes to the driveway design and removal of a tree from the footpath area in Appian Way – and the impacts that these changes will have on the heritage significance of the Appian Way HCA.</p> <p>These issues are discussed in full detail in the "Likely Impacts of Development" section immediately following in this report.</p>
(d) any submissions made in accordance with this Act or the regulations,	The " <i>Community Consultation</i> " section of this report, below, gives consideration to the submissions received following neighbour notification.
(e) the public interest.	Overall, in the circumstances of the case, approval of this application is not considered to be in the public interest.

Detailed Assessment: Clause 5.10 – Heritage Conservation

The Site is a Heritage Item, and is also within the Appian Way HCA, listed under Burwood LEP 2012 (refer to Heritage Map, earlier in this report).

As the current modifications include additional tree removal in the footpath/road reserve area (associated with retention of the substation in its current location), and the existing vegetation is a significant component of the Appian Way HCA, a detailed assessment of the requirements in Clause 5.10 – Heritage Conservation under Burwood LEP 2012 is warranted.

Such assessment is undertaken as follows:

Clause 5.10 (1) – Objectives:

The objectives of Clause 5.10 are:

- (a) to conserve the environmental heritage of Burwood,

- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Comments: The development is unsatisfactory in terms of objectives (a) and (b) above. The proposal includes removal of an established tree from the footpath/road reserve area in Appian Way. These established street trees are a significant component of the setting in the Appian Way HCA, and the proposed tree removal is not supported.

Overall the proposal is unsatisfactory and it conflicts with the objectives of Clause 5.10(1).

Clause 5.10(2) – Requirement for Development Consent

Comments: Sub-clause (2) requires development consent for various works, including those proposed in this application. The submission of the original DA has satisfied the requirement to obtain development consent.

Clause 5.10(3) – When Consent is Not Required

Comments: Not applicable, consent is required for the proposed works.

Clause 5.10(4) – Effect of Proposed Development on Heritage Significance

Comments: This clause requires the consent authority to consider the effect of the proposed development on the heritage significance of the item or area concerned.

As discussed throughout this report, the development will have an unsatisfactory impact on the heritage significance of the Appian Way HCA.

Clause 5.10(5) – Heritage Assessment

Comments: This clause states that the consent authority may require submission of a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

A Statement of Heritage Impact (by Weir Phillips Heritage) has been submitted as part of the DA documents.

Clause 5.10(6) – Heritage Conservation Management Plans

Comments: This clause states that the consent authority may require the submission of a heritage conservation management plan before granting consent under this clause.

The nature of the proposed development would not require such a heritage conservation management plan to be submitted.

Clause 5.10 (7) – Archaeological Sites

Comments: Not applicable, as the site does not contain any known archaeological sites.

Clause 5.10 (8) – Aboriginal Places of Heritage Significance

Comments: Not applicable, as the site does not contain any known Aboriginal places of heritage significance.

Clause 5.10 (9) – Demolition of Nominated State Heritage Items

Comments: Not applicable, as the site does not contain any Nominated State Heritage Items.

Clause 5.10 (10) – Conservation Incentives

Comments: This clause allows the consent authority to grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan – if it is satisfied of various matters including that the conservation of the Item would be facilitated by granting of such consent.

The development does not seek to rely on the provisions of Clause 5.10(10).

Detailed Assessment – Burwood DCP 2013

Burwood DCP 2013 contains Objectives and Development Controls regarding various development types and locations.

The requirements in Part 4.8 (Special Residential Precincts – Appian Way) and Part 5.3 (Child Care Centres) apply to this Site/Proposed Development.

Whilst it is noted that the original/overall development concept of a child care centre has already been approved for the site, it is necessary to apply the Burwood DCP 2013 controls to the current modification proposal, where relevant.

An assessment in terms of the relevant requirements of Burwood DCP 2013 is undertaken in the Table below.

Burwood DCP 2013 Requirement	Development	Compliance
Part 4 – Development in Residential Areas		
Part 4.8 – Special Residential Precincts		
4.8.1 – Appian Way		
<i>Demolition (Partial or Total)</i>		
<p>P1 Buildings or works which are considered, in the opinion of the Council, to contribute to the significance of the conservation area or its streetscape should not be demolished.</p> <p>P2 Non-contributory buildings or works may only be demolished with Council approval, where their removal is supported through appropriate analysis as part of a Heritage Impact Statement</p> <p>P3 Notwithstanding Provisions D1 and D2, demolition of an existing structure will not be permitted unless development approval has been achieved for a replacement structure, or for appropriate restoration, renovation or repair of the building, works or site.</p>	<p>Development proposes some (part) demolition works to accommodate the new use as an approved child care centre.</p> <p>In this sense, the proposed modifications are generally consistent with the original DA and satisfy these DCP requirements.</p>	Yes (consistent with original DA)
<i>Ground and First Floor Works</i>		
P4 Architectural design elements shall be incorporated/integrated to	Current modifications are generally consistent with the original DA and	Yes

avoid the creation of large plain wall surface areas. P5 Alterations and additions shall be designed to complement the style of the existing dwelling and its setting, and not detract from the original and/or existing relationship of the building or works to the street. P6 Alterations and additions that engulf the existing dwelling in terms of floor space are not appropriate in the Appian Way Conservation Area.	these DCP requirements in terms of the nature of works proposed to the Ground Floor of the building.	
Roof Details		
P7 to P18 contain various requirements regarding Roof Details.	No changes proposed in terms of roof details.	Yes
Chimney Details		
P19 to P21 contain various requirements regarding Chimney Details.	No changes proposed in terms of chimney details.	Yes
Verandah Details		
P22 to P23 contains requirements for verandah details.	No changes proposed in terms of verandahs	Yes
Façade Details		
P24 The external wall finish of a new addition to a dwelling should match that of the existing dwelling or be appropriate to that of original dwellings in the area. Note that the rear portions of buildings usually have less elaborate materials and details.	The modifications are modifications are generally consistent with the original DA and these DCP requirements in terms of these façade details.	Yes
Window and Sunhood Details		
P25 to P27 contain various requirements for windows and sunhoods	No significant changes proposed in terms of verandahs	Yes
Door Details		
P28 to P30 contain various requirements for door details.	No changes proposed in terms of door details.	Yes
Details of Material for Residential Dwellings and Associated Structures		
P31-32 contain requirements for detail of residential dwellings	Modifications are consistent with the original DA approval and these requirements in terms of materials.	Yes
Garage and Carport Details		
P33 to P39 contain requirements for garages and carports	Not applicable, no new garage/carport proposed.	NA
Garden Shed and other Utility Building Details		
P40-41 contain requirements for garden sheds/utility buildings.	Not applicable, no such new buildings proposed.	NA
Fence and Gate Details		
P42 Properties which have full or partial (plinth and/or piers) brick front fencing should retain such elements. P43 All other properties not subject to FG1 should incorporate timber	The original DA approval included details of new fencing – which (in summary) were for 1.03m high timber posts with 100mm timber pickets at 150mm centres.	Yes

<p>picket front fencing, painted white or other appropriate light colour, on the front boundary as a feature of the Conservation Area.</p> <p>P44 The style, height and material of fencing should reflect the original details predominant within the Conservation Area.</p> <p>P45 Side path gates, letterboxes, lych gates, lighting and other street furniture or site facilities, visible from the street, should be appropriately styled to reflect original details relevant to the Conservation Area and not to detract from the heritage significance of the particular dwelling.</p> <p>P46 Side fences to establish property boundaries are to be appropriately understated post and rail with wire mesh infill (no brick fences or any other structures are considered appropriate on or within 900mm of a common boundary including a rear boundary).</p>	<p>There was also approval for 2.2m high acoustic non-reflective glass fencing set just inside the front fencing (within the site).</p> <p>The current modifications propose minor changes to the approved fencing, but are generally consistent in terms of the DCP controls.</p>	
<i>Landscaping/Garden Details</i>		
<p>P47 A semi-formal design is generally appropriate for front and side gardens viewed from the street, with landscape plans to demonstrate:</p> <ul style="list-style-type: none"> • Well defined boundaries. • Trimmed lawns (buffalo or couch). • Edges and planting in neat beds. • Shrubs and nominated shade trees located to complement the house. • Appropriate plant material reflecting the species commonly available between 1900 and 1920 in the area. <p>P48 Pathways may divide the lawn area, lined with flowerbeds that should also line inside the front fence.</p> <p>P49 Rear gardens may be more informal and functional to individual use with the planting of larger trees at the rear of the dwellings.</p> <p>P50 A landscape plan shall be</p>	<p>The proposed modifications propose additional tree removal in the footpath/road reserve area compared to the original DA.</p> <p>Specifically, this is in response to the proposed retention of the existing substation in its current location in Appian Way (the original approved DA plans showed it being relocated to the south-western corner of the site).</p> <p>As per Controls P51 and P53 – The trees in the nature strips form a significant visual element in the Conservation Area.</p> <p>The proposed tree removal associated with the retention of the substation in Appian Way would create a large gap in the footpath/road reserve.</p> <p>This would cause significant visual impact upon the streetscape in Appian Way and would be unsatisfactory.</p>	<p>No</p>

<p>provided where alterations or additions to existing garden layouts or content are proposed. New planting shall correspond with details of original plant species and garden layouts typical of the period garden setting of the dwelling or, where more appropriate, the Conservation Area.</p> <p>P51 Existing contributory trees, plants, garden layouts and garden features should be retained and incorporated within any development proposal.</p> <p>P52 Not more than 30% of the site area should be built upon, hard paved etc.</p> <p>P53 The trees in the nature strips form a significant visual element in the Conservation Area and should be properly protected and maintained appropriately.</p>		
Central Recreation Area and Pavilion Details		
P54-55 contain controls relating to the Central Recreation Area and Pavilion	Not applicable, this development has no impact on the Central Recreation Area/Pavilion.	NA
Colours, External Finishes and other Decoration Details		
P56 to P59 contain controls regarding colours and finishes	The current modifications are generally consistent with the original DA in terms of colours and external finishes	Yes
Subdivision Details		
P60 contains controls for subdivision	No subdivision proposed	NA
Dual Occupancy		
P61 to P62 contains controls regarding dual occupancy	No dual occupancy proposed	NA
Additional Controls for New Development		
P63 to P71 contains various additional controls for new development	The modifications are modifications are generally consistent with the original DA and these DCP requirements in terms of these additional controls requirements.	Yes
Part 5 – Other Development Provisions		
Part 5.3 – Child Care Centres		
5.3.1 - Introduction		
This BDCP section provides guidance for development of child care centres by the establishment of additional provisions required by Council. This section applied to child care activities that are covered by the definitions of a centre-based child care facility, school-based child care, and home-based child care	The requirements of this Part of the DCP were required to be considered as part of the original approval for the child care centre	Yes

under the BLEP 2012.		
5.3.2 - Aims		
<p>The overall aims are:</p> <ul style="list-style-type: none"> • To promote excellence and best practice in the design and operation of child care centres. • To promote the establishment of child care centres that meet the needs of the community. • To ensure that proposals for new or enlarged child care centres respond positively to their context and setting, have minimal environmental impact are compatible with neighbouring land uses and integrate into existing residential environments. • To provide child care centres that will support the effective implementation of an early childhood teaching program and assist staff in providing essential support, supervision, care and education of young children. • To encourage the development of child care centres that maximise the health, safety and well-being of children and staff in child care centres. 	<p>Although concerns were raised by Council in relation to the original DA for the child care centre, development consent was granted by the NSW Land & Environment Court (10 November 2022).</p> <p>k.</p> <p>l. The current modifications raise additional concerns regarding tree removal (associated with retention of the substation in its current location).</p> <p>m.</p> <p>n. It is generally considered that the current modifications will be contrary to the Aims of this Part of the DCP.</p>	No
5.3.3 – Relationship with Other Legislation, Plans and Policies		
<p>This Part of the DCP states that it should be read in conjunction with other relevant legislation, plans or policies including:</p> <ul style="list-style-type: none"> • SEPP (Education Establishments and Child Care Facilities) 2017 – now SEPP (Transport & Infrastructure) 2021 Chapter 3 Education establishments and child care facilities. • Child Care Planning Guideline 2017 – Delivering quality child care for NSW • Building Code of Australia (BCA) • Food Act 2003 • The Road Hierarchy Plan 	<p>The original DA was assessed in terms of the relevant applicable planning controls at the time of the original approval.</p> <p>The current modifications are mostly of a nature which does not require further full assessment in terms of the requirements.</p> <p>It is noted that the modifications seek to reduce the number of parking spaces (from 31 to 30 parking spaces), which requires re-assessment in terms of compliance with car parking requirements.</p> <p>In this regard, the car parking requirement is 1 space per 4 children.</p> <p>The centre proposes to accommodate 120 children which requires a minimum 30 spaces.</p> <p>The modifications will provide 30</p>	Yes

	parking spaces to comply numerically with the car parking requirements	
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Detailed Assessment – Likely Impacts of the Development

Section 4.15(1)(b) requires Council to consider “the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”

Overall, the development is considered to have unacceptable impacts, in particular upon the Built Environment of Croydon Park (ie the occupants of adjoining and nearby residential dwellings) through adverse amenity impacts.

The Likely Impacts are considered in more detail as follows:

A. Natural environment:

The development will have potential impacts (resulting from demolition, tree removal, construction, etc), on the natural environment. However these could generally be addressed via standard consent conditions including hours of construction, noise controls, soil erosion and sediment controls, shoring/support for adjoining properties etc.

In terms of tree removal, in summary and as discussed throughout this report, the removal of Tree No 5 from Appian Way to enable the modified driveway design associated with retention of the substation is not supported, as it will cause significant impacts on the landscaped setting in Appian Way.

The proposed modifications will therefore have an unacceptable impact in terms of the natural environment.

B. Built environment:

The impacts of the proposed modifications on the Built Environment will generally be similar to those of the original DA approval, except for the removal of Tree No 5 as discussed throughout this report.

C. Social impacts:

Overall, the proposed modifications would also generally be similar in terms of social impacts as the original DA.

D. Economic impacts:

The proposed modifications would also generally be similar in terms of economic impacts as the original DA.

Community Consultation

The issues of concern raised in the submissions are summarised and discussed in the following table:

Concern	Response
1. Removal of Tree No 5. <i>Strong concerns are raised in most of the submissions regarding removal of Tree No 5, as it is one of the</i>	<u>Comment:</u> Noted and agreed.

Concern	Response
<p><i>original brush box trees in The Appian Way precinct, and all original street trees contribute to the significance of the Appian Way Conservation Area and should be retained</i></p>	
<p>2. Concerns regarding the original DA Approval. <i>Many of the submissions have raised concerns about the original DA approval, including the nature, extent and amount of excavation; the suitability of the site for a child care centre; traffic and parking impacts; noise, privacy and amenity impacts; the Plan of Management (eg garbage truck collection arrangements); and impacts on the HCA</i></p>	<p><u>Comment:</u> Although these concerns are understandable, the existing consent granted by the NSW Land & Environment consent is in place, lawful and valid. The current assessment in this report must only focus on the nature of modifications currently proposed.</p> <p>As discussed throughout this report, the proposal is unsatisfactory in terms of tree removal in Appian Way and the impacts that this will have on the significance of the HCA.</p>
<p>3. Fencing. <i>Concern is raised regarding the proposed change to fencing – ie replacement of glass acoustic fence with a timber fence.</i></p>	<p><u>Comment:</u> The DA documents are inconsistent regarding modifications to fencing.</p> <p>The modification architectural plans still contain notations for “2200mm high acoustic non-reflective glass fence” (inside the property boundary).</p> <p>However, in contrast, the Statement of Environmental Effects states that:</p> <p><i>“the street front acoustic fencing is to be amended, as per Council’s heritage consultant advice following the approval. As requested by Council, the 2200mm high glass acoustic fence is to be replaced with a 1200mm high timber lapped and capped fence, a 1500mm high hedge, 700mm excavation and 700mm wide planting bed to reduce the impact of the additional wall height. This change gives a similar effect to the 2200mm high acoustic glass fence without the visual impact on the streetscape.”</i></p> <p>This matter would need to be clarified prior to any approval for the current modifications.</p> <p>It is noted that such clarification has not been sought, because the fundamental nature of the modification is unsatisfactory in other aspects (ie tree removal).</p>
<p>4. Driveway configuration/alignment. 1. Concerns have been raised regarding the</p>	<p><u>Comment:</u> Noted and agreed. Council’s Development Engineers have raised concerns about the skewed/angled driveway alignment which has been designed to avoid the substation in Appian Way).</p>

Concern	Response
<i>amended driveway configuration and alignment which is not consistent with the alignment of driveways in Appian Way and does not comply with the DCP.</i>	Driveways are required to be at a 90° angle to the kerb line as per the Burwood DCP. The uniformity of the driveway design is another key feature of the Appian Way DCP, and therefore the proposed modified driveway design, will be inconsistent with the Burwood DCP requirements and the Appian Way Streetscape.

Referral Comments

The application was referred to the following Internal Referral Officers:

Executive Building Surveyor: Has reviewed the application and raised several concerns regarding the development's compliance with the National Construction Code (Building Code of Australia) including extent of excavation, lack of information regarding essential safety (eg fire safety), pedestrian entrance paths, and exit travel distances.

Heritage Advisor: Has reviewed the application and advised that the proposal is not supported on Heritage grounds for the following reasons:

- The extent of changes is unclear and inadequately described and explained in the documentation, and there appears to be inconsistencies between the SEE, HIS and architectural drawings. The general clouding on the architectural drawings does not allow for a proposed assessment of the proposed modifications.*
- The changes to verandahs, steps and paths and introduction of new ramps are significant and have not been explained or addressed within the SEE or HIS. The impacts of these works are unacceptable.*
- The removal of a street tree within the highly significant Appian Way HCA is not acceptable. In this case, it has greater impact because there is already a large gap between the tree to be removed and the existing tree to the west, and this would widen this gap. Although the tree is also located in an HCA, the Burwood Road HCA is considered less significance and less sensitive than the Appian Way HCA.*
- The retention of the existing substation is not supported as it detracts from the character of the Appian Way and its relocation to Burwood Road is a positive heritage outcome of the original approval. Insufficient explanation has been provided to support the statements about removal of street trees required for excavation has been provided.*
- The changes to fencing are unclear. It is unclear which fence is referred to as being timber (Section 10.2 of the HIS) and the full extent of proposed changes to fencing.*

It is requested that further information, clearer documentation of the proposed changes and amendments to the proposal are made in response to these comments.

Traffic & Transport Engineer: Has reviewed the application and raised no objection in terms of traffic generation, to the proposed modifications to conditions 77 and 78.

Tree Management Officer: Does not support the removal of Tree No 5 from Appian Way given the high heritage significance of this street, and the contribution that the street trees make to this heritage significance.

Conclusion

The proposed modifications have been assessed against the requirements of s.4.56, and the heads of consideration in s.4.15 of the Environmental Planning & Assessment Act 1979.

Strong concerns are raised regarding the modifications that involve retention of the substation in Appian Way (ie associated with the amended driveway design). This would involve removal of a tree (Tree No 5) from the footpath/road reserve area in Appian Way, and would cause significant streetscape impacts.

The landscaped setting and the corridor of trees within the footpath area is one of the key characteristics which define the Appian Way HCA.

The proposed tree removal would have significant unacceptable streetscape impacts and is therefore not supported.

Recommendation(s)

That Application No 2021.88.02 for modifications to an approved Child Care Centre at Lot 1 DP12249, No 18 Appian Way be refused for the following reasons:

1. Pursuant to Section 4.56 and 4.15(1)(a)(i) and (iii) of the Environmental Planning & Assessment Act 1979, the proposed modifications are unsatisfactory when assessed in terms of the environmental planning instrument (Burwood LEP 2012) and development control plan (Burwood DCP 2013) which apply to the Site.

In particular, the proposal is unsatisfactory when assessed under Burwood LEP 2012 Clause 5.10 (Heritage Conservation); and also Burwood DCP 2013 (Part 4.8 – Special Development Precincts, Part 4.8.1 Appian Way Area.

2. Pursuant to Section 4.56 and 4.15(1)(b) of the Environmental Planning & Assessment Act 1979, the proposed modifications will have excessive and unacceptable impacts on the amenity of the neighbourhood.

In particular, the proposed modifications to the driveway design would require removal of a tree from the footpath/road reserve area (ie Tree No 5, a *Lophostemon confertus* “Brush Box) – which will cause significant street impacts.

This is one of many trees in the footpath/road reserve area in Appian Way, and this avenue of trees makes a significant contribution to the streetscape. The proposed removal of Tree No 5 is unacceptable.

3. Pursuant to Section 4.56 and 4.15(1)(d) and (e) of the Environmental Planning & Assessment Act 1979, in the circumstances of the case, approval of the proposed modifications would not be in the Public Interest.

In particular, this is demonstrated in the number of submissions received from adjoining/nearby neighbours, and the nature of issues of concern raised in those submissions.

Attachments

- 1 Aboricultural Report (*Excluded from agenda*)
- 2 Architectural Plans (*Excluded from agenda*)
- 3 Electrical Engineering Letter (*Excluded from agenda*)
- 4 SEE (*Excluded from agenda*)
- 5 HIS (*Excluded from agenda*)