



Burwood Inc.1874

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NOTICE OF BURWOOD LOCAL PLANNING PANEL MEETING

The meeting of the Burwood Local Planning Panel will be held at Conference Room, 2 Conder street Burwood on Wednesday 15 April 2026 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 15 April 2026 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. Council Officer Overview

9. General Business

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10. Development Applications

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General Business

(Item GB1/26) Amendments to BLEP 2012 to include City Activation Exempt Provisions

File No: 25/68633

Report by Assitant Planner; Senior Town Planner; Senior Assessment Planner; Manager City Planning

Summary

Council has prepared a Planning Proposal (Attachment 1) to amend Schedule 2 of the Burwood Local Environmental Plan 2012 (BLEP) by adding new exempt development provisions to reduce red tape and facilitate further city activation initiatives without the need for a development application.

The Planning Proposal is in response to Council's resolution at its meeting on 23 September 2025, which endorsed the preparation of a Council-led Planning Proposal and public exhibition.

This report seeks the Burwood Local Planning Panel's endorsement of the Planning Proposal for its progression to Gateway Determination.

Operational Plan Objective

- C.3 An urban environment that maintains and enhances our sense of identity and place.
- C.3.1 Facilitate well designed, high quality and sustainable land use and development that is appropriately scaled to complement its surroundings.
- C3.2 Protect our unique built heritage and maintain or enhance local character.
- C.4 Sustainable, integrated transport, infrastructure and networks support population growth and improve liveability and productivity.
- C.4.2 Plan for a city that is safe, accessible and easy to get to and move around in.
- C.1.1 Support and deliver initiatives that encourage high-quality design, sustainable development and enhanced urban amenity.
- C.9 Safe, clean and activated streets, centres and public places are enjoyed by people day and night
- C.10 A well informed community active in civic life, local planning and decision making
- C.11.1 Conduct Council business with transparency, accountability, compliance and probity that ensures community confidence in decision making
- A.70 Work with developers to promote sustainable development
- P.38 Deliver attractive, healthy streetscapes and centres that are inviting and foster community pride
- P.34 Facilitate the growth and prosperity of local businesses and target the growth of business sectors and growth industries
- A.79 Undertake activities that support new economic growth in the Burwood North Precinct and Burwood Town Centre
- A.80 Implement activities or initiatives that enhance Burwood's night-time economy

Background

On 23 September 2025 Council resolved to endorse the preparation of a Planning Proposal to amend the *Burwood Local Environmental Plan 2012* (BLEP 2012) by incorporating new exempt development provisions under Schedule 2 of BLEP 2012. The intent of these new provisions is to reduce red tape and facilitate further city activation initiatives without the need for a development application. This is intended to be done whilst still maintaining appropriate governance through Local Government Act, Roads Act, and Crown Land Act legislation, as well as landowner consent where Council is the predominant landholder. These provisions would also support Council initiatives such as *Licence to Play*.

The proposed exempt development provisions would apply to public art on footpaths, including sculptures, murals and pavement installations; street art; the temporary use of Council land or roads for community and fundraising events; the display of goods on footpaths; outdoor dining associated with food and drink premises; mobile food vending vehicles (food trucks); and advertisements, such as bus and taxi rank shelter signs. These provisions are intended to create a more seamless implementation process for applicants seeking to improve the vibrancy of the Local Government Area (LGA), ultimately generating flow-on benefits for local businesses, the community, and visitors to Burwood.

These provisions were previously endorsed by Council in January 2025 as part of the Alternate Croydon Masterplan. However, the Department of Planning, Housing and Infrastructure (DPHI) has since advised that it will not proceed with the adoption of the exempt provisions via the Croydon SEPP as they have LGA-wide implications. As a result, the progress these initiatives, a Council Planning Proposal to amend Schedule 2 of BLEP 2012 is required.

Strategic context and alignment

Burwood Council is committed to delivering a vibrant, accessible, and inclusive city that celebrates diverse cultures and community life. The BLEP 2012 enables a range of land uses and activities that reinforce and enhance Burwood's reputation as a growing hub for entertainment, dining, shopping, placemaking, and activation.

As a designated strategic centre, Council has implemented a variety of strategies and initiatives to bring this vision to life. These include *Licence to Play*, *Permit Plug and Play*, the *Burwood After Dark Strategy*, the *Creative Burwood Strategy*, and the designation of a Special Entertainment Precinct in the Burwood Town Centre as part of a future planning proposal.

Planned future growth through the Burwood North Masterplan and Croydon Masterplan will further support Council's vision to make Burwood a destination of choice to live, visit, and do business. In prioritising liveability and vibrancy, Council is also committed to enhancing public spaces to strengthen community connection and foster a strong sense of place.

The proposal aligns with key strategic objectives outlined in Council's Local Strategic Planning Statement (LSPS), Community Strategic Plan (CSP), After Dark Strategy, and Special Entertainment Precinct. The proposal also supports Council initiatives such as *Licence to Play*, and combined all emphasise vibrancy, accessibility, and public domain activation.

Proposal

The new exempt development provisions under Schedule 2 of BLEP 2012 read as follows;

Table 1: Proposed additional provisions to Schedule 2 of BLEP 2012

Provision	Explanation & Justification
<p>Insert New Provision to: Schedule 2 Exempt development</p> <p>Display of goods on footpath</p> <p>(1) Must be associated with an adjacent or nearby lawfully established commercial premises or industrial retail outlet</p> <p>(2) Must be authorised under Part 9, Division 3 of the <i>Roads Act 1993</i></p> <p>(3) Must be authorised under Part 1 or Part 3 of Chapter 7 of the <i>Local Government Act</i></p>	<p>The proposed amendments to Schedule 2 of BLEP 2012 demonstrate strategic alignment and merit within both the local and regional planning frameworks. The proposal supports key planning principles including placemaking, economic resilience and equitable access to public places and spaces. The additional exempt provisions enable existing and future developments to incorporate elements that can seamlessly be incorporated to create active and vibrant street life and public spaces to benefit the community.</p>

Provision	Explanation & Justification
<p>1993</p>	
<p>(4) Must be authorised Part 5 of the <i>Crown Land Management Act 2016</i></p>	<p>Burwood Council's Local Strategic Planning Statement (LSPS) outlines a 20-year vision for land use planning across the LGA and aligns strategic planning objectives with the Greater Sydney Region Plan and the Eastern City District Plan. This proposal advances those strategic objectives by:</p>
<p>Outdoor dining (associated with food and drink premises)</p>	
<p>(1) Must be associated with an adjacent or nearby lawfully established food and drink premises</p>	<ul style="list-style-type: none"> - Encouraging a diverse night-time economy and cultural vibrancy.
<p>(2) Must be authorised under Part 9, Division 3 of the <i>Roads Act 1993</i></p>	<ul style="list-style-type: none"> - Supporting main streets and town centres as thriving, inclusive, and activated community hubs.
<p>(3) Must be authorised under Part 1 or Part 3 of Chapter 7 of the <i>Local Government Act 1993</i></p>	<ul style="list-style-type: none"> - Reducing regulatory barriers for small-scale interventions that enhance local character and liveability without requiring development consent; and
<p>(4) Must be authorised Part 5 of the <i>Crown Land Management Act 2016</i></p>	<ul style="list-style-type: none"> - Enabling innovation and economic growth through streamlined public domain regulations.
<p>Mobile food vending vehicles (food trucks)</p>	
<p>(1) Must be on land or road owned by, or under the care or control of, the Council</p>	<p>These outcomes reinforce the LSPS's vision for a well-connected, liveable, and resilient city that can adapt to change and remain vibrant over time.</p>
<p>(2) If located on a Council-owned road or car park must be located within lawful car parking spaces</p>	
<p>(3) Must not be for more than 52 days (whether or not consecutive) in any 12 month period</p>	
<p>(4) Must be authorised under Part 9, Division 3 of the <i>Roads Act 1993</i></p>	
<p>(5) Must be authorised under Part 1 or Part 3 of Chapter 7 of the <i>Local Government Act 1993</i></p>	
<p>(6) Must be authorised Part 5 of the <i>Crown Land Management Act 2016</i></p>	
<p>Public art on footpaths, including sculptures, murals and pavement installations</p>	<p>Infrastructure and Collaboration</p>
<p>(1) Must be on land or road owned by, or under the care or control of, the Council</p>	<p>The introduction of additional exempt development provisions such as temporary community events and public art can improve the vibrancy of the existing public domain without placing major pressures on existing infrastructure. By encouraging uses that create attractions while complementing existing infrastructure and local amenities will deliver low-cost and high impact benefits for the area.</p>
<p>(2) Must be installed by or on behalf of Council</p>	
<p>(3) Must be safe and structurally sound</p>	
<p>(4) Must not constitute signage</p>	
<p>Note — Signage includes advertisements and advertising structures.</p>	
<p>(5) Must not be located on a heritage item</p>	
<p>(6) Must be designed, fabricated and installed in accordance with applicable Australian Standards</p>	<p>Co-designing city activation initiatives such as events, public art, and lighting in and around existing and future transport hubs in Burwood and Croydon centres will elevate their attractiveness and accessibility, encouraging more people to visit and contribute to local businesses.</p>
<p>(7) Must allow a minimum 1.5m wide pathway for pedestrians</p>	
<p>(8) Must be authorised under Part 9, Division 3 of the <i>Roads Act 1993</i></p>	
<p>(9) Must be authorised under Part 1 or Part 3</p>	<p>Liveability</p> <p>The proposed additional provisions will facilitate a high-quality of life by enabling street art, murals and footpath activations that reinforce Burwood's identity as a creative, diverse, and walkable city. By making it easier to deliver low-scale and low impact</p>

Provision	Explanation & Justification
<p>of Chapter 7 of the <i>Local Government Act 1993</i></p> <p>(10) Must be authorised Part 5 of the <i>Crown Land Management Act 2016</i></p> <p>Street art (Wall Murals)</p> <p>(1) Street art must only be carried on the land and associated building or structure with the approval of the owner</p> <p>(2) Must not project more than 30mm from a wall or other surface</p> <p>(3) If adjacent to a public place, must not reduce the pedestrian access path to less than 1.5m</p> <p>(4) Must be safe, structurally sound and installed in accordance with applicable Australian Standards</p> <p>(5) Must not constitute signage</p> <p>Note — Signage includes advertisements and advertising structures.</p> <p>(6) Must not be located on a heritage item or within a heritage conservation area or a special character area</p> <p>(7) Must not contain material in the opinion of Council that—</p> <p>(a) discriminates against or vilifies any person or group, or</p> <p>(b) is offensive or sexually explicit.</p> <p>(8) In this clause, street art (wall mural) means art that is painted, marked or otherwise affixed to the outside of a building or structure that is visible from a public place (within the meaning of the <i>Local Government Act 1993</i>)</p> <p>Note — Street art (wall mural) may only be carried out subject to requirements to obtain the approval of the owner of the building on which the street art is located or any statutory authorities (such as Transport for NSW). See also Part 2 of the <i>Graffiti Control Act 2008</i> for graffiti related offences.</p> <p>Advertisements—bus and taxi rank shelter signs</p> <p>1) Must be on land or road owned by, or under the care or control of, the Council</p> <p>2) Must be associated with a lawfully established bus and taxi rank shelter building or structure with the approval of the owner of the land on which it is situated</p> <p>3) Must only be carried with the approval of</p>	<p>placemaking initiatives, this proposal supports a more vibrant public environment that complements residential growth and access to public amenities and services. This aligns with LSPS objectives to enhance the distinct character of local centres, support a diverse and multicultural community, and elevate urban design and placemaking outcomes in strategic locations such as the Croydon and Enfield areas. Furthermore, by reducing regulatory barriers for small-scale activation, the proposal ensures equitable access to the planning system for businesses and community groups and thereby strengthening social inclusion and enhancing liveability.</p> <p>Productivity</p> <p>These low-impact changes have high-benefits for the community and support economic growth and encourage a night-time economy expansion. Implementing these changes enhances the vitality of the local streetscape and attract both residents and visitors to be a part of the night-time economy. This also allows for cost-effective entry points for local entrepreneurs and small businesses by reducing regulatory burdens and support flexible ways of operating and aligns strongly with initiatives proposed for Council’s Special Entertainment Precinct. Initiatives such as food trucks and pop-up events can also attract broader spheres of influence through social media and encourage more people to the area.</p> <p>Overall, this approach promotes centres as mixed-use and people-orientated destinations. By supporting after-hours activities such as outdoor dining and community-centred initiatives, the proposed LEP amendments reinforce the viability of centres beyond business hours and contributes to the development of a safe, lively, and diverse community.</p> <p>Site-Specific Merit</p> <p>The proposed amendments to Schedule 2 of BLEP 2012 demonstrate clear site-specific merit by facilitating interventions in areas within the Burwood LGA that are well-suited to low-impact, activation-based development. These locations include walkable, mixed-use centres with strong pedestrian activity, commercial streets, and access to public transport.</p> <p>In particular, the Burwood Town Centre has</p>

Provision	Explanation & Justification
<p>the owner the land</p> <p>4) Must not extend beyond the perimeter of the shelter</p> <p>5) Must not exceed 1.8metres in height x 1.2metres in width</p> <p>6) Only 1 advertising panel per shelter that may comprise an advertisement on 2 sides</p> <p>7) Must not contain flashing or neon signage</p> <p>8) Must not obstruct pedestrian paths of travel</p> <p>9) Must not obstruct the line of sight of vehicular traffic.</p> <p>10) Must not cause a road safety hazard</p> <p>11) Must comply with AS 4282—1997, Control of the obtrusive effects of outdoor lighting</p> <p>12) Must comply with Part 3 Advertising and road safety of the NSW Government Transport Corridor Outdoor Advertising and Signage Guidelines dated November 2017</p> <p>13) Must be authorised under Part 9, Division 3 of the <i>Roads Act 1993</i></p> <p>Temporary use of council land or road for events</p> <p>(1) Use must be on land or road owned by, or under the care or control of, the Council</p> <p>(2) Must only be carried with the approval of the owner the land</p> <p>(3) Must not be for more than 52 days (whether or not consecutive) in any 12 month period</p> <p>(4) Must be authorised under Part 9, Division 3 of the <i>Roads Act 1993</i></p> <p>(5) Must be authorised under Part 1 or Part 3 of Chapter 7 of the <i>Local Government Act 1993</i></p> <p>(6) Must be authorised Part 5 of the <i>Crown Land Management Act 2016</i></p>	<p>pedestrian-oriented places and streets to introduce initiatives such as outdoor dining, footpath retail, and mobile food vendors. Active streets such as Burwood Road, Deane Street, and Belmore Street consist of wide footpaths, existing public infrastructure, and a high concentration of cafes and retail, making them prime candidates for small-scale, exempt development.</p> <p>Other centres such as The Strand in Croydon and the Enfield retail strip along Liverpool Road also feature active frontages and would benefit from enhanced public life through community events, food trucks, and public art installations. These changes will support economic vitality and community well-being in these local areas.</p> <p>The amendments include clear exclusions for residential zones, heritage conservation areas, and environmentally sensitive sites. This ensures that activation is concentrated in appropriate commercial areas and does not impact amenity of residents or the natural environment.</p> <p>By establishing clear and simple framework for these developments, the proposed Schedule 2 provisions streamline the approval process, allowing Council to focus time and resources on assessing larger, complex development proposals. This planning approach will also provide certainty to the local business community and confidence to align with Council's placemaking and activation vision.</p> <p>Overall, these amendments offer a practical, sustainable, and locally responsive planning solution that builds on Burwood's urban strengths and supports Council's long-term strategic goals.</p> <p>The proposed exempt development controls align with established planning policy and will provide regulatory clarity, reduce assessment time and administrative costs and support Council in delivering its public domain and economic development goals.</p>

Council engaged Marsdens Law Group to prepare the wording of the Schedule 2 development standards, to ensure that they are effectual and consistent with the current planning legislative requirements. The above development standards were referred to the Council at its meeting on September 2025 and no concerns were raised.

Relationship with other Council Initiatives

License to Play

License to Play is a Council Policy which provides the guidance and permissions needed to transform streets, laneways, and vacant shopfronts into vibrant, interactive spaces. The program supports creative activations and streetscape improvements by simplifying the approvals process, fund projects and ensure events are accessible to everyone. For example, “Extended Eats” is an initiative under the License to Play policy that allows food and beverage businesses with an existing outdoor dining approval to extend their outdoor dining areas along adjacent building frontages and expand their business without the need to pay any additional fees.

The City Activation LEP Provisions complements the License to Play policy which aims to create a new era for city-making, fostering opportunities for dynamic partnerships between local government, businesses, property owners, and the community.

The Planning Proposal was also referred to Council’s Place Making team who reviewed the draft Schedule 2 Provisions and confirmed that the provisions align with the License to Play policy.

Consultation

The subject Planning Proposal was publicly exhibited on Council’s Participate Burwood Community Engagement platform from 5 November 2025 to 3 December 2025. During this period, no submissions were received.

Planning or Policy Implications

This report seeks the advice of the Burwood LPP in respect to the Planning Proposal, for endorsement and progression of the planning proposal to Gateway Determination stage.

The key steps in progressing the Planning Proposal are outlined below:

1. Submission of the Planning Proposal to DPHI for Gateway Determination. This step establishes whether the proposal may proceed and sets out the requirements for formal community consultation.
2. Formal public exhibition of the Planning Proposal and consultation with relevant State agencies, consistent with requirements of the *Environmental Planning and Assessment Act*, the *Environmental Planning and Assessment Regulation 2021*, as well as other relevant plans and guidelines including the *Burwood Community Engagement Strategy*, *Local Environmental Plan Making Guideline* and any conditions of the Gateway Determination.
3. Reporting the outcomes of the formal community consultation to Council, at which time Council will determine whether to adopt the Planning Proposal and proceed to plan-making.
4. If adopted, Council will submit relevant documentation to DPHI to amend Schedule 2 of BLEP 2012.
5. Formal amendment to Schedule 2 of the Burwood LEP 2012 completed.

Financial Implications

There are no financial implications with respect to the Planning Proposal.

Conclusion

The Council-led Planning Proposal is referred to the Burwood Local Planning Panel for independent appraisal and advice. Council is seeking feedback on the wording of the development standards, their effectualness and consistency with the desired future character of city centres within Burwood LGA being a destination for culture, nightlife and creativity.

Recommendation(s)

That the Burwood Local Planning Panel:

1. Support the Planning Proposal to amend Schedule 2 of the BLEP 2012.
2. Support the Planning Proposal to proceed to Gateway Determination.
3. Delegate the General Manager to undertake minor modifications to any numerical, typographical, interpretation and formatting errors, or amend any element of the Planning Proposal to meet the requirements for Gateway Determination.

Attachments

- 1 DRAFT Planning Proposal - City Activation LEP Amendment
- 2 Council Meeting Report - 23.09.2025
- 3 Council Meeting Minutes - 23.09.2025

Development Applications

(Item DA6/26) Section 4.55(2) of DA.2025.30 - Suite 3/1, Level 2, 1-17 Elsie St Burwood NSW 2134

File No: 26/3691

Report by Development Assessment Planner; Manager City Development; Executive Assessment Planner

Owner: Burwood Council
Applicant: Mingkang Yang
Location: Suite 3/1, Level 2, 1-17 Elsie St Burwood NSW 2134
Zoning: **MU1 Mixed Use Zone under Burwood Local Environmental Plan 2012**

Proposal

The modification application seeks to adjust the internal layout, install louvres behind the first-floor balcony, reduce the maximum number of occupants, and enlarge the smoking room of the previously approved amusement centre on the commercial tenancy located at Suite 3/1, Level 2, 1-17 Elsie Street, Burwood.

The specifics of the proposed modification are as follows:

- Removal of two (2) toilets from the amusement centre
- Removal of a Mahjong room containing two tables and a dedicated bathroom
- Removal of the display room
- Amend the previously endorsed plan of management
- Increase the size of the smoking room
- Construction of two (2) new Mahjong rooms, each containing a single table
- Enclosing two Billiard rooms with new partition walls
- Revising the layout of the ancillary snack bar
- Construction of a new storage room adjacent to the main entrance
- Construction of a new reception and service counter
- Relocation of the server room
- Construction of a new reception counter
- Installation of louvres on the existing balcony adjacent to the smoking room
- Amend Condition 13 (a) to reduce the maximum number of occupants permitted on the premises from 210 to 145.

13 **MAXIMUM CAPACITY OF PERSONS**

- (a) The maximum number of persons (including staff and patrons) permitted in the premises at any one time is **210 145** persons.
- (b) Notwithstanding (a) above, the maximum number of staff and patrons on the premises must not exceed 110 persons between 1:00 AM and 8:00 AM.
 - (i). The manager is responsible for ensuring that the number of persons in the premises does not exceed that specified above.
 - (ii). A sign in letters not less than 25mm in height must be fixed at the main entry point to the premises stating the maximum number of persons, as specified in the development consent, that are permitted in the premises.

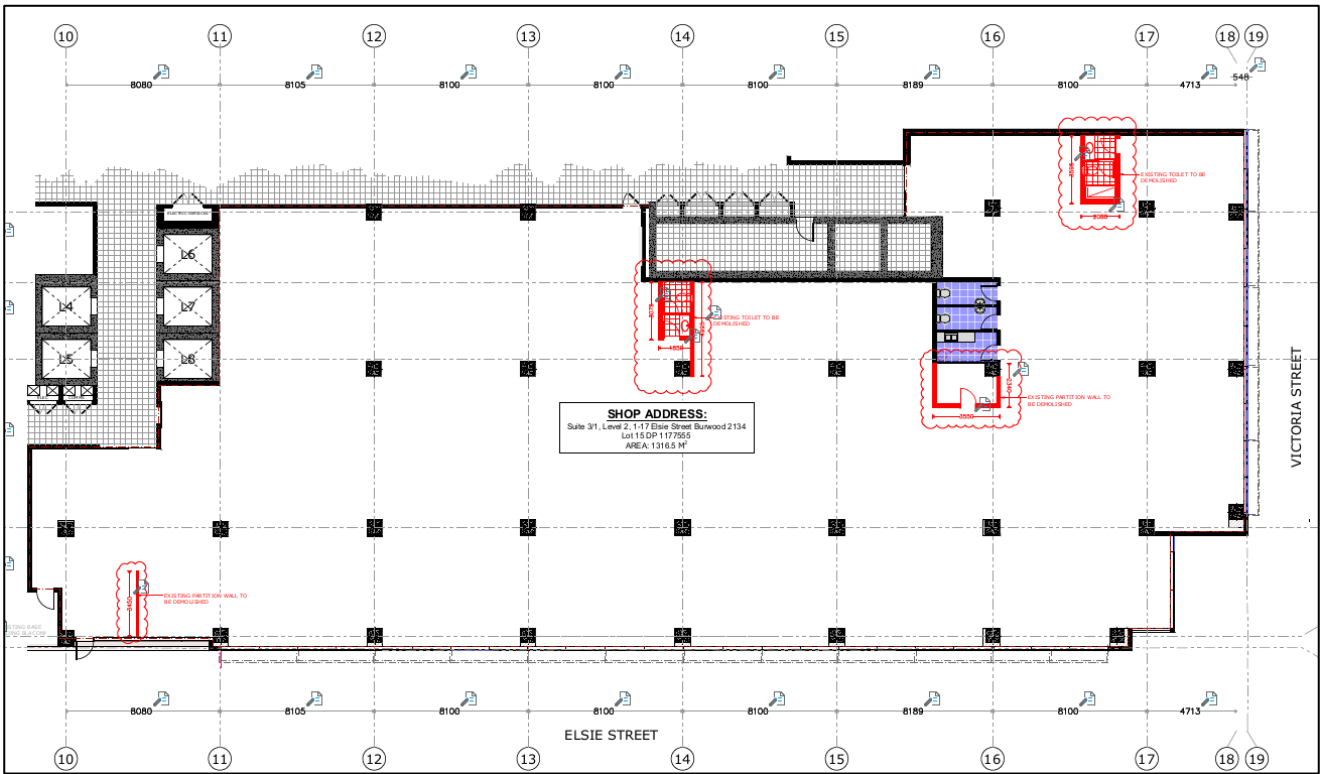


Figure 1 – Extract of applicant's modified demolition plan
Source (Lati Studio)

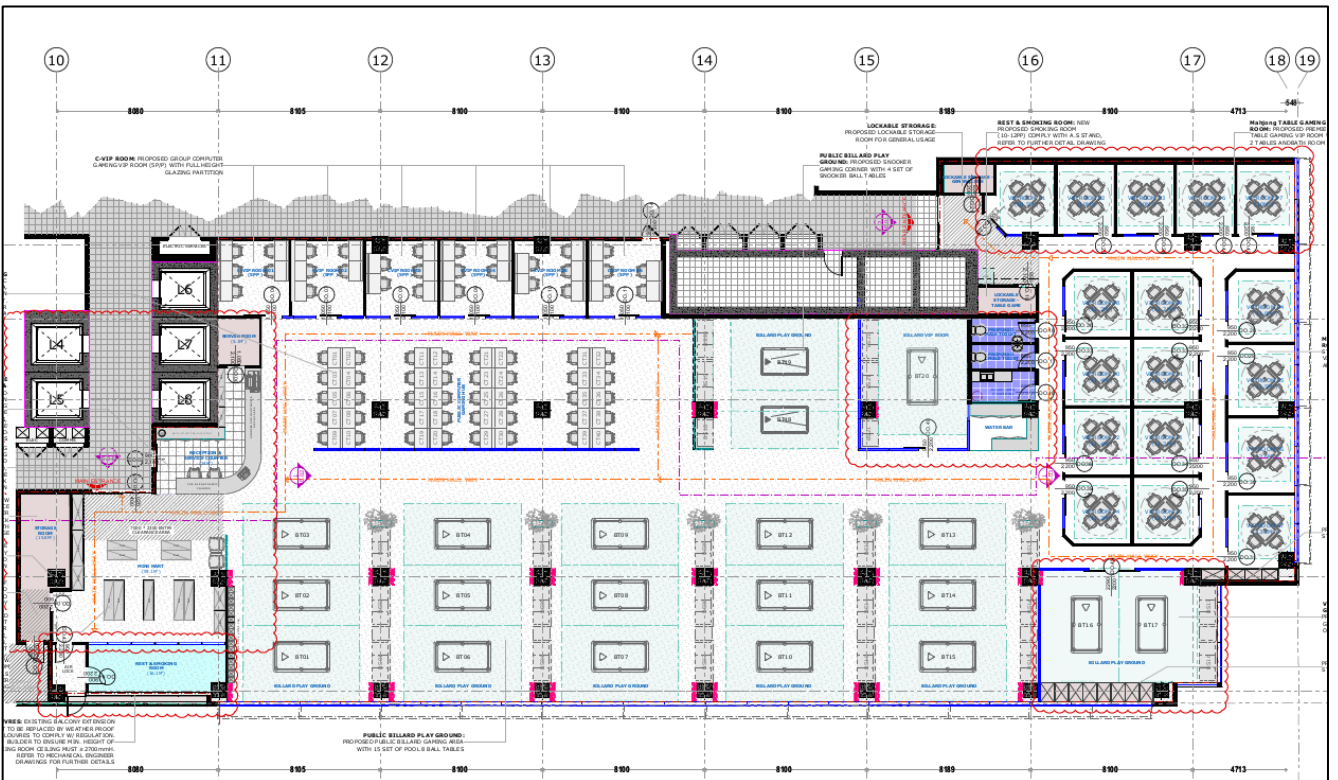


Figure 2 – Extract of applicant's modified ground floor plan
Source (Lati Studio)

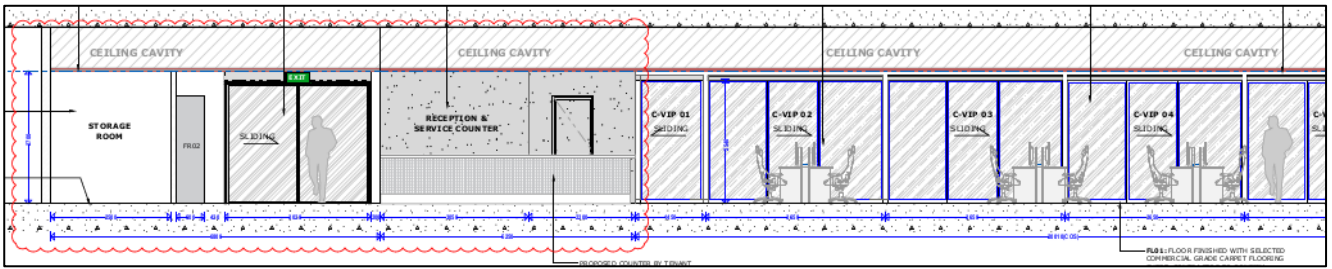


Figure 3 – Extract of applicant's modified sectional drawing
Source (Lati Studio)

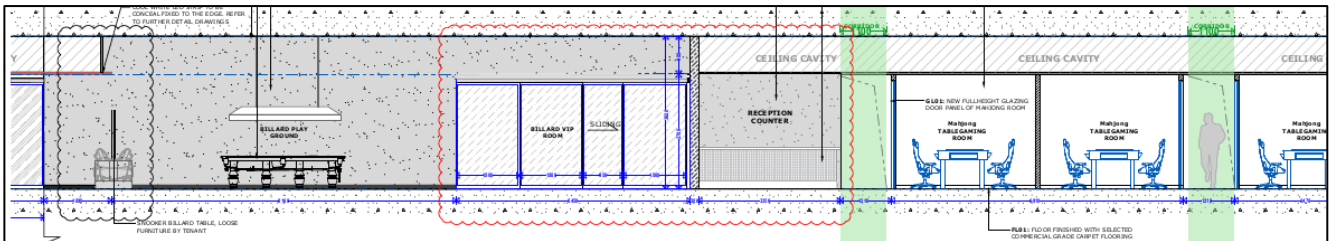


Figure 4 – Extract of applicant's modified sectional drawing
Source (Lati Studio)

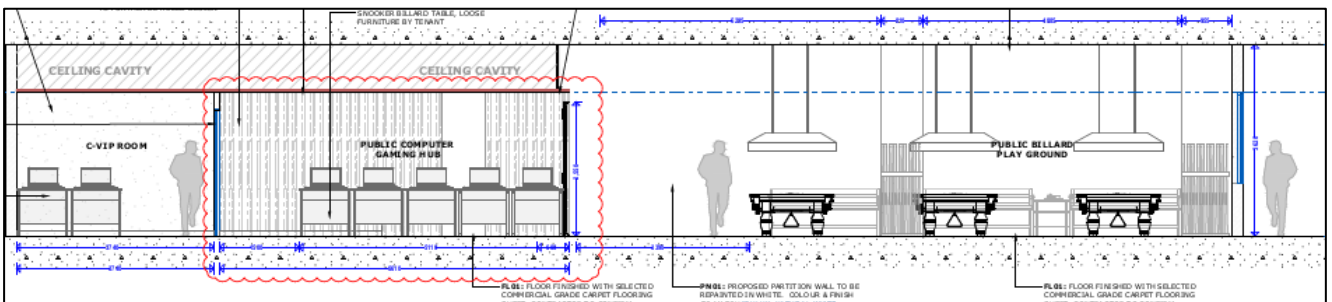


Figure 5 – Extract of applicant's modified sectional drawing
Source (Lati Studio)

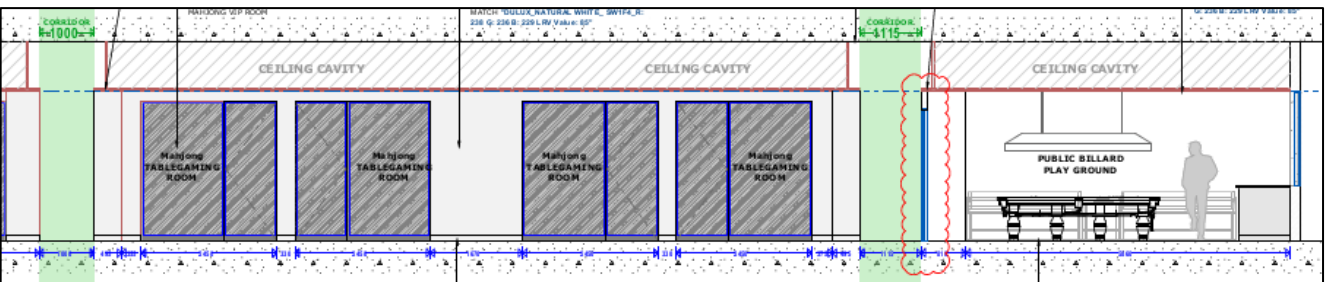


Figure 6 – Extract of applicant's modified sectional drawing
Source (Lati Studio)

Figure 7 – Extract of applicant's modified elevational drawing
Source (Lati Studio)

BLPP Referral Criteria

Pursuant to the Ministerial directions dated 6 May 2024, under Section 9.1 of Environmental Planning and Assessment Act 1979, the DA is to be determined by the Burwood Local Planning Panel for the following reasons:

1. The consent authority, Council, is the landowner of the subject site. In accordance with the Ministerial order issued on 6 May 2024, where a development application or a modification

of development relates to land owned by Council, the application must be referred to the local planning panel for determination.

Background

1. 20 January 2009 – Development Application No. BD.2009.290 at 1-17 Elsie Street, Burwood, was approved by Council staff under delegated authority for the fit-out of an RTA registry.
2. 25 September 2009 – Development Application No. BD.2009.217 at Suite 3/1, Level 2, 1-17 Elsie Street, Burwood, was approved by Council staff under delegated authority for the fit-out of the commercial office space and Council chambers.
3. 5 February 2010 – Development Application No. BD.2009.260 at Shop 7, 1-17 Elsie Street, Burwood, was refused by Council staff under delegated authority for the fit-out and use of the shop as a café/restaurant with outdoor dining.
4. 3 March 2011 – Development Application No. BD.2011.11 at Suite 4, 1-17 Elsie Street, Burwood, was approved by Council staff under delegated authority for the fit-out for use as a software development house.
5. 25 January 2013 – Development Application No. BD.2012.172 at 1-17 Elsie Street, Burwood, was approved by Council staff under delegated authority for the fit-out for a medical centre.
6. 25 January 2013 – Section 96 Modification Application of Development Application No. BD.2012.172 at 1-17 Elsie Street, Burwood, was approved by Council staff under delegated authority for an extension of hours of operation.
7. 21 August 2025 – Development Application No. DA.2025.30 at Suite 3/1, Level 2, 1-17 Elsie Street, Burwood, was approved by the local planning panel for the change of use to operate as an amusement centre (billiard, mahjong, table games, ancillary snack bar and internet gaming services), construction of new signage, internal fit-out and extension to operating hours of the existing commercial tenancy.

Current Application History

1. The subject Modification Application was lodged with Council on 10 December 2025
2. The application was referred to the following internal Council departments:
3. In accordance with the Burwood Community Participation Plan, the owners of surrounding properties were given notice of the application on 10 January 2026, with the notification period for submissions closing on 24 January 2026. In response to the public notification of the DA, no submissions were received.
4. **Request for Further Information:** Following a preliminary assessment of the Development Application, Council has identified that the modification application information package does not contain sufficient information to enable Council to undertake a full assessment.
 - a. **Incorrect use of architectural annotation:** Many building elements that are not proposed to be amended as part of this modification have been incorrectly clouded on the architectural drawings package.
 - b. **Proposed modification:** The submitted Statement of Environmental Effects does not accurately describe the proposed amendments to the previously approved development.

- c. **Reception counter:** The new reception counter has not been accurately annotated on the submitted architectural plan.
- d. **Drawing package:** Drawings that do not depict any amendments are submitted as part of the architectural drawing package.
- e. **Demolition Plan:** The amended demolition plan has been provided to depict the proposed removal of the existing bathrooms inside the commercial tenancies.

Due to insufficient information provided in the information package, Council has requested additional information via the NSW Planning Portal.

5. **Additional information:** In response to the request for additional information issued by Council, the applicant submitted additional information on 4 February 2026 and 25 February 2026. Council's assessment indicates the amended architectural drawings and revised Statement of Environmental Effects accurately depict the proposed demolition works associated with this modification application. No further information is required.

Statutory Requirements

The application is assessed against 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
- Burwood Local Environmental Plan 2012 (BLEP 2012)
- Burwood Development Control Plan 2013 (BDCP 2013)
- The regulations (of the EP&A Act).
- The likely social, environmental and economic impacts of the development.
- The suitability of the site for development.
- Submissions made under the Act and Regulations, and
- The public interest.

These matters are considered in this report.

Locality

The subject site is legally described as Lot 11 in Deposited Plan 1142160 and is known as Suite 3/1, Level 2, 1-17 Elsie Street, Burwood. The site is a regular allotment with a primary street frontage to Elsie Street, a secondary frontage to Victoria Street and another frontage to George Street. The site is arranged on a north–south axis and is oriented to address the Elsie Street elevation. The site is surrounded by dwelling houses, multi-dwelling housing, commercial buildings and residential flat buildings.

The subject site presently contains three (3) residential flat buildings connected by a common ground floor podium. The vehicle access to the basement of the existing development is facilitated by the basement parking driveways on George Street and Victoria Street. The commercial tenancy from which the amusement centre will operate was previously used as the Council office.

The subject site is located within the MU1 Mixed Use Zone in accordance with BLEP 2012. Refer to Figure 5 below.



Figure 8 – Subject site is located within the MU1 Mixed Use Zone
 Source (Spatial Spectrum)



Figure 9 – Aerial View of the subject site and surroundings.
 Source (Spatial Spectrum)

Surrounding development

To the north of the subject site, across Victoria Street, is No. 14-16 Park Avenue, which consists of a four (4) storey residential flat building. Immediately south of the subject site is No. 36-46 George Street, which consists of a five (5) storey commercial building. To the east of the subject site, across Elsie Street, is No. 8 and No. 2A Elsie Street, which comprise a seven (7) storey commercial building and a seventeen (17) storey residential flat building with a ground floor commercial podium, respectively. To the west of the subject site is No. 2-6 Gloucester Avenue, which comprises a three (3) storey apartment building and five (5) two (2) storey attached townhouses. The streetscape along Elsie Street predominantly comprises residential flat buildings and commercial buildings.



Figure 10 – Elsie Street frontage of the subject site.
Source (Council Site Inspection)



Figure 11 – Victoria Street frontage of the subject site.
Source (Council Site Inspection)



Figure 12 – Ground floor entrance of the subject site.
Source (Council Site Inspection)



Figure 13 – Basement parking exists on Victoria Street
Source (Council Site Inspection)



Figure 14 – Basement parking entrance on George Street
Source (Council Site Inspection)

Planning Assessment

Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.

The proposed Section 4.55(2) modification seeks to adjust the internal layout, install louvres behind the first-floor balcony, reduce the maximum number of occupants, and enlarge the smoking room of the previously approved amusement centre.

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

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

Comment: The proposal, as modified, seeks to adjust the internal layout, install louvres behind the first-floor balcony, reduce the maximum number of occupants, and enlarge the smoking room of the previously approved amusement centre, thereby enabling the proposal to achieve compliance with the National Construction Code and allowing the business to adopt a more efficient internal layout. Despite the modifications proposed, the application does not result in radical transformation and is essentially and materially the same development approved under BD.2015.194 for the following reasons:

- The overall bulk, scale and envelope of the building remains consistent with the project as approved.
- Additionally, the proposed as modified will not introduce any unreasonable environmental impacts (including with regard to visual impacts), or substantially alter the environmental impact of the approved development.

For the reasons listed above, the modifications sought are beneficial and facultative and satisfy Section 4.55(2) of the Act.

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

Comment: The proposal, as modified, does not seek to amend any conditions imposed as a requirement of concurrence to the consent, or in accordance with the general terms of an approval granted by an approval body or external agency. Therefore, no external referral or concurrence is required.

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

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

Comment: The subject Section 4.55(2) modification was placed on public notification from 10 January 2026, with the notification period for submission closing on 24 January 2026. In response to the public notification of the DA no submissions were received.

(3) 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.

Comment: An assessment of the proposal having regard to the matters referred to in Section 4.15(1) of the Act is contained below:

Section 4.15 Evaluation

(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 application-

(a) The provision of

(i). Any environmental planning instruments:

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of land

The provisions of Chapter 4 of the 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 commercial purposes. As such, it is unlikely to contain any contamination, and further investigation is not warranted in this case. In addition, a search of Council's digital records, mapping and a site inspection revealed no land contamination.

Burwood Local Environmental Plan 2012 (BLEP)

Under the BLEP the site zoned MU1 Mixed Use Zone, and alterations and additions to a dwelling house are permitted with Council consent.

Objectives of the MU1 Mixed Use Zone

- 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.

Council's Comment: The proposed development is considered to satisfy the objectives of the Mixed-Use zone, as it will cater to the needs of the community within the town centre. Additionally, the modified proposal will retain the previously approved signage at the ground floor level of the building, thereby attracting foot traffic and activating the building frontage.

Furthermore, many existing developments adjacent to the subject site contains businesses within the ground podiums levels, with residential located above. Therefore, the proposed development is considered to be compatible with the surrounding context and will not create significant land-use conflict between land uses with the immediate locality.

Development Standards	Comments	Compliance
4.3(2) Height		
60m	The proposal, as modified, does not seek to change the maximum building height.	Not Applicable
4.4(2) FSR		
4.5:1	The proposal, as modified, only seeks to adjust the previously approved internal layout of the amusement centre. The modification application will not result in any change to the FSR of the existing mixed-use building on the subject site.	Not Applicable
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 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.	The proposal, as modified, does not seek any variations to development standards.	Not Applicable
5.10 Heritage Conservation		
(1) The objectives of this clause are as follows— (a) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views, (c) To conserve archaeological sites, (d) to conserve Aboriginal	The subject site is not located within a heritage conservation area, and does not contain an item of environmental heritage	Not Applicable

objects and Aboriginal places of heritage significance		
6.1 Acid Sulfate Soils		
(1) The objectives 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 by which the water table is likely to be lowered below 1m.	Yes
6.2 Flood Planning		
(1) The objectives of this clause are as follows: (a) to minimise the flood risk to life and property associated with the use of land, (b) to allow development on land that is compatible with the land's flood hazard, taking into account project damages as a result of climate change, (c) to avoid significant adverse impacts on flood behaviour and the environment.	The subject site is located within a flood-prone area; however, the proposal, as modified seeks formal consent only for internal fit out adjustments. Therefore, there are no flood affectations to be considered.	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.	Not Applicable

(ii). Any proposed instrument (Draft LEP etc.)

There are no draft planning instruments for consideration

(iii). Any Development Control Plan**Burwood Development Control Plan 2013 (BDCP 2013)**

Does the development comply with following parts of the BDCP?	Yes	No	N/A
Part 2 – Site and Environmental Planning	✓		
Part 3 – Development in Centres and Corridors	✓		
Part 6.2 – Waste Management	✓		

Part 6.4 – Flood Planning	✓		
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Discussion

The proposal is considered to be consistent with the objectives specified in Part 2 – Site and Environmental Planning (including Parts 2.2 General Site Analysis, 2.3 Views and Vistas and 2.4 Streetscapes). Moreover, the proposal is compatible with the desired character of Council's town centres by operating a new amusement centre in a previously vacant commercial premises and creating additional employment opportunities.

Part 6.2 – Waste Management

Relevant objectives of this BDCP section are:

- 1) To reduce the demand for waste disposal through waste separation and resource recovery in demolition, design, construction and operation of buildings and land use activities.

Comment: A waste management plan was submitted as part of the previously approved Development Application. This modification application does not propose any change to the previously approved Development Application.

Part 6.4 – Flood Planning

The site is identified as flood affected in accordance with Council's flood study.

Comment: Please refer to BLEP Clause 6.2 assessment above regarding flood planning

(iv). The Regulations

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the process, including public consultation, impact assessment and decisions made by local councils, the Department of Planning and others. The proposal is not inconsistent with the Regulation.

(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

The likely impacts of the development, as conditioned, are acceptable considering the site's MU1 Mixed Use zoning and location within the Burwood Town Centre. The proposed use of land is permissible in the zone with consent and is consistent with the desired future character of the area.

(c) The suitability of the site for the development

The application has been reviewed by Council's Building Surveyor and Environmental Health Officer, who have considered the impacts of the proposal on the existing commercial tenancy. The proposal is consistent with the relevant planning controls, as demonstrated in this report. The site is considered suitable for the proposal, subject to conditions.

(d) Any submissions made in accordance with this Act of the regulations

Please refer to the 'Community Consultation' section of this report below.

(e) The public interest

The proposal, as modified, will better facilitate the operation of the new amusement centre within the existing commercial tenancy, providing nearby residents with additional entertainment options

within the town centre. Additionally, the proposal will create additional employment opportunities in the town centre. Overall, the proposal is considered to be in the public interest.

Community Consultation

As noted above the development application was publicly notified in accordance with Burwood Council's Community Engagement Strategy between 10 January 2026 and 24 January 2026. **No submissions were received.**

Referrals

Environmental Health

The application was referred to Council's Environmental Health Officer for review and comment. In the referral comments issued on 19 December 2025, they advised that they do not have the expertise to assess this application and that smoking laws are regulated by NSW Health.

Traffic

The application was referred to Council's Traffic Engineer for review and comment. No objections were raised.

Asset and Property

The application was referred to Council's Property Manager for review and comment. No objections were raised.

Conclusion

The modification application seeks consent to adjust the internal layout, install louvres behind the first-floor balcony, reduce the maximum number of occupants, and enlarge the smoking room of the previously approved amusement centre on the commercial tenancy located at Suite 3/1, Level 2, 1-17 Elise Street, Burwood.

The applicant had undertaken the relevant changes stipulated within Council's RFI letter. The proposal as modified complies with relevant SEPP development controls and the provisions of the Burwood Local Environmental Plan 2012 and Burwood Development Control Plan 2013. It is considered that the proposal is consistent with the desired future character of the Burwood Town Centre and does not result in significant adverse impacts on adjoining properties.

Given the above, the proposal is recommended for approval.

Recommendation(s)

[That Section 4.55\(2\) Modification Application of DA.2025.63 which seeks consent to adjust the internal layout, install louvres behind the first-floor balcony, reduce the maximum number of occupants, and enlarge the smoking room of the previously approved amusement centre on land at 1-17 Elsie Street BURWOOD, be approved, subject to the modified conditions provided within Attachment 1 of this report.](#)

Attachments

- 1 Attachment 1 - Draft Section 4.55 Consent document to a dev. consent to Mr M Yang - 1-17 Elsie Street BURWOOD - DA.2025.30
- 2 Attachment 2 - Amended Drawing Set - 1-17 Elsie Street BURWOOD - DA.2025.30
- 3 Attachment 3 - Amended Plan of Management - 1-17 Elsie Street BURWOOD - DA.2025.30

(Item DA7/26) Section 4.55(2) modification to DA.2018.122 at 106-108 Wentworth Road, Burwood

File No: 26/13980

Report by Senior Assessment Planner

Owner: Ben Saade
Applicant: Kirapat (Nick) Khangrang c/o The Trustee for BCA UNIT TRUST
Location: 106-108 Wentworth Road, Burwood
Zoning: R1 General Residential

Proposal

This section 4.55(2) modification application proposes changes to an approved 5-storey residential flat building containing 19 apartments with basement car parking for 28 vehicles over 2 levels and associated site landscaping.

The development was originally granted consent under DA.2018.122 and later modified through a subsequent section 4.55 modification.

The proposed changes primarily result from Sydney Water requirements and necessary service diversions which have prompted design amendments, particularly to the front of the building. Additional amendments are also proposed with the stated aim of enhancing buildability, functionality, and overall construction efficiency.

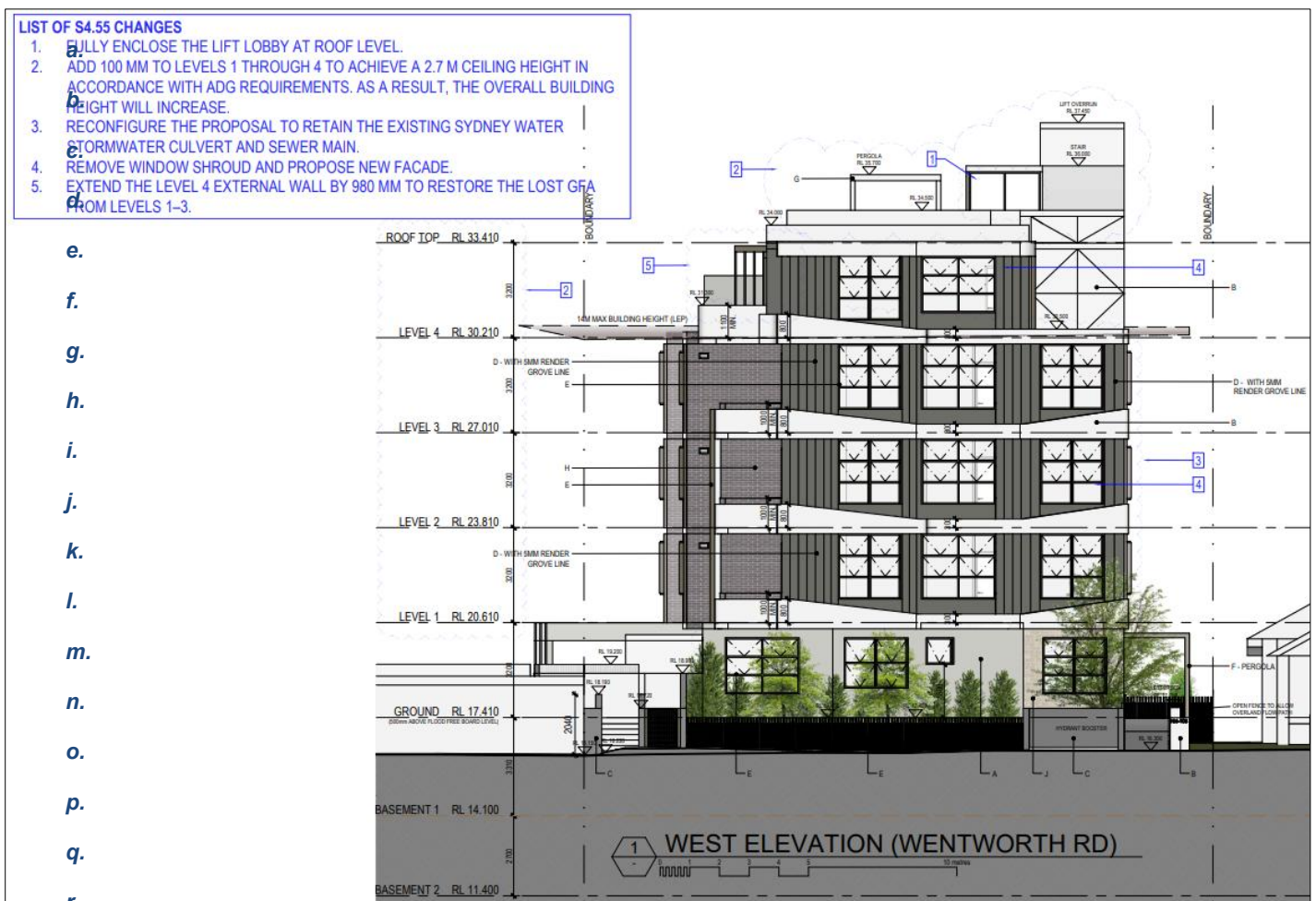


Figure 1: (above) Amended West (Front) Elevation plan submitted by the applicant. Source: Bechara Chan & Associates (March 2026)

The proposed changes are outlined in detail below:

Sydney Water Diversions and Resulting Amendments to Building Footprint and Envelope

The original development application proposed diverting a Sydney Water underground trunk drainage culvert, relying on coordination with adjoining landowners. However, as neighbouring property owners have not granted the necessary consents, the development has been redesigned so that Sydney Water assets are fully contained within the site. Following consultation with Sydney Water, the existing pipelines are now to be retained in situ and concrete-encased.

As a result, amendments to the building footprint and external form are required, including the introduction of a diagonal chamfer front façade, including the basement, to provide the clearances needed for the pipework alignment.

As a result of the changes, the gross floor area of the development has been reduced by 73.01 m², from 1,697.19 m² to 1,624.18 m².

Internal Layout and Apartment Mix Adjustments

Internal reconfiguration across multiple floors **accommodates** the revised service requirements and resulting front façade chamfer, with units (G.01, 1.01, 2.01, and 3.01) having altered layouts.

While the total number of units in the development remains unchanged (19 units), unit G.01 has been reduced from a three-bedroom to two-bedroom layout, and units 1.01, 2.01, and 3.01 have been reduced from three-bedroom to one-bedroom layouts.

Basement levels have reductions in parking and bicycle spaces, reconfigured storage, removal of certain services, and relocation of bulky waste areas.

Reduction in Parking Spaces

Residential car spaces reduced from 24 to 22
Bicycle storage spaces reduced from 10 to 8.

Complete Enclosure of Roof Lift Lobby

The previously open lift lobby canopy is proposed to be replaced with a full enclosure using fixed glazing and a door for improved weather protection.

Increase in Building Height and Adjustments of Floor Levels

Minor adjustments to floor levels are proposed, generally an increase of 100 mm, and a 10 mm increase at Ground Floor level, with the stated aim of improving construction feasibility and services coordination within the building.

As a result, the maximum building height increases from 21.48 m (RL 37.050) to 21.88 m (RL 37.450), an increase of 400 mm.

New façade treatment and extension of side balconies on Level 4

Modifications to the uppermost level (Level 4), including an updated front façade design and the addition of new, larger window openings, to achieve a more cohesive integration with the lower level and reduce the appearance of a “floating” or isolated form.

Northern side balconies have also been pushed out to regularise the form of the uppermost level.

Window and Façade Detailing

Façade window framing has been removed.

Addition of 5mm render groove line to the front façade to improve articulation.

Landscaping and Open Space

The proposal increases open space to 288.99m², incorporating 39.39m² of additional landscaped open space within the front setback area.

Planter boxes have been reduced in size to suit the selected plant species. Moreover, a large canopy Turpentine tree, expected to reach 25 m in height with a 12 m spread, has been added to the southwest corner of the site.

Amendments to conditions of consent

The application also proposes amendments to relevant conditions to reflect the changes proposed under this modification application.

BLPP Referral Criteria

Pursuant to the Ministerial direction, under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, the DA is to be determined by the BLPP for the following reasons:

1. The development contravenes the Height of Buildings development standard imposed by the Burwood Local Environmental Plan by 10%.
2. Development to which State Environmental Planning Policy (Housing) 2021 - Chapter 4 Design of residential apartment development applies.

Background

Below is a timeline of previous applications relevant to the subject application:

DA No.	Description	Determination
Council DA - DA.2018.122	Demolition of all existing structures on site and the construction of a 5-storey residential flat building containing 19 apartments with basement car parking for 28 vehicles over 2 levels and associated site landscaping.	Approved 5 May 2020
Council 4.55 Mod DA.2018.122	Minor modifications to the approved 5-storey residential flat building granted by BD.2018.122. The modifications proposed are to satisfy conditions of DA.2018.122 and achieve compliance with the National Construction Code and Building Code of Australia	Approved 7 September 2023

Current Application

- 1) On **18 June 2025**, this modification application was lodged with Council.
- 2) The application was referred to the following internal Council officers:
 1.
 - Senior Development Engineer;
 - Tree Management Officer;
 - Executive Urban Designer;
 - Senior Heritage Planner
 - Waste Manager;
 - Executive Building Surveyor;
 - Traffic Engineer.

The application did not require any external referrals.

- 3) In accordance with the Burwood Community Participation Plan, the owners of surrounding properties were given notice of the application on **26 June 2025** with the notification period for submissions closing on **6 July 2025**. In response to the public notification of the application, no submissions were received.
- 4) On **23 July 2025**, following a preliminary assessment of the application, Council issued a Request for Information (RFI) to the applicant seeking clarification and amendments regarding the following matters:
 2.
 - Urban design considerations, including built form and natural ventilation;
 - Confirmation of the proposed location of the on-site detention (OSD) tank;
 - Compliance with the relevant Australian Standards in relation to a basement storeroom door; and
 - Landscaping matters.

The applicant subsequently provided satisfactory responses to all matters, except for the urban design concerns relating to built form and design impacts, which remained unresolved.

- 5) On **18 March 2026**, a second Request for Information (RFI) was issued to the applicant, seeking further amendments to resolve the outstanding urban design matters, including built form and design impacts. Although the applicant submitted further amended plans in response, these urban design issues remain unresolved at the time of writing this report.

Statutory Requirements

The application is assessed under the provisions of section 4.55(2), and section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), as amended, which include:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Housing) 2021 - Chapter 4 Design of residential apartment development
- State Environmental Planning Policy (Sustainable Buildings) 2022 – BASIX
- State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 2 Vegetation in non-rural areas
- Burwood Local Environmental Plan (BLEP) 2012.
- Burwood Development Control Plan (BDGP) 2013, as amended.
- The regulations (of the EP&A Act).
- The likely social, environmental and economic impacts of the development.
- The suitability of the site for development.
- Submissions made under the Act and Regulations, and
- The public interest.

Locality

The site was formed through the amalgamation of two lots legally described as Lot 1 and Lot 2 in Deposited Plan 14074. The amalgamation of the two lots resulted in a total site area of 977.10 m². The site currently comprises two (2) single-storey dwelling houses with vehicular access provided to the site from Oxford Street. The site presently contains one (1) single-storey dwelling house on each allotment, both constructed of brick with tile and metal roofs. The dwellings are set within landscaped setbacks of lawn and soft landscaping with covered patio areas located to the rear of each dwelling.

To the north of the subject site is 104 Wentworth Road which comprises a three (3) storey residential flat building with one level of basement car parking constructed of brick with a tile roof.

To the south of the subject site, is 110 Wentworth Road, which comprises a single storey dwelling house of brick construction with a tile and metal roof.

To the west of the site, on the opposite side of Wentworth Road, are sporting fields associated with Santa Sabina College. The entire school site is a local heritage listed item contained within Schedule 5 of the BLEP 2012. To the east of the site, on the opposite side of Oxford Street is a mix of single and two storey dwelling houses generally of brick construction with tiled roofs. This also includes the local heritage listed item at No. 50 Oxford Street which comprises a two storey Victorian terrace house.



Figure 4: (above) Aerial view showing the subject site and the surrounding area. Source: Council mapping.



Figure 5: (above) View of the subject site in March 2026 as viewed from Wentworth Road. The two houses in view are proposed to be demolished for the development. Source: Sim (2026).



Figure 6: (above) View of the subject site in March 2026 as viewed from Wentworth Road. The two houses in view are proposed to be demolished for the development. Source: Sim (2026).



Figure 7: (above) View of the adjoining property to the north, 104 Wentworth Road. Source: Sim (2026)



Figure 8: View of the grounds of Santa Sabina College directly opposite the site, on the opposite side of Wentworth Road. Source: Sim (2026).



Figure 9: View of Oxford Street looking south, at the rear of the site. Source: Sim (2026).

Planning Assessment

Section 4.55(2) of the Environmental Planning and Assessment Act 1979

In order to modify the consent, the consent authority must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

Council Officer Comment: Council is satisfied based on the modified plans and supporting documentation provided by the applicant, including the '*Justification for Section 4.55(2) application - Substantially the same development*' set out on pages 5 & 6 of the applicant's Statement of Environmental Effects, that the proposed modification is 'substantially the same development' as already approved. The application can therefore be assessed and determined by the consent authority as a Section 4.55(2) modification.

SECTION 4.15 EVALUATION

(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:**

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of land

The provisions of Chapter 4 of the 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. Land contamination was considered as part of the original DA and subsequent modification assessments, which raised no concerns. Therefore, it is considered that the land is unlikely to be contaminated, and further investigation is not warranted as part of the subject modification.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in Non-Rural Areas of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 sets the rules for the clearing of vegetation in NSW on land zoned for urban and environmental purposes. 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 planter boxes are proposed to be reduced in size to align with the requirements of the selected plant species. In addition, a large canopy Turpentine tree—anticipated to reach approximately 25 m in height with a 12 m canopy spread—has been introduced to the south-west corner of the site.

Overall, the revised landscaping scheme is considered satisfactory and is not inferior to the landscaping outcomes previously approved. The inclusion of the Turpentine tree is regarded as a positive enhancement to the proposal.

State Environmental Planning Policy (Sustainable Buildings) 2022 - Chapter 2 Standards for residential development—BASIX

BASIX stands for Building Sustainability Index. It is a sustainability assessment tool for residential buildings in NSW. BASIX aims to reduce the environmental impact of new homes by requiring them to meet certain minimum standards (for water and energy efficiency, and thermal performance) and to report on construction materials being used so their embodied energy can be calculated.

The applicant has **not** submitted an amended, valid BASIX certificate to accompany the latest set of amended architectural plans.

State Environmental Planning Policy (Housing) 2021 - Chapter 4 Design of residential apartment development

Chapter 4 Design of residential apartment development of State Environmental Planning Policy (Housing) 2021 applies to the proposal as it is a residential flat building with a residential component that does not include boarding houses or co-living housing, is three or more storeys and contains four or more dwellings.

cl. 146 Referral to design review panel for modification applications

If the statement by the qualified designer required to accompany the modification application under the *Environmental Planning and Assessment Regulation 2021*, section 102(1) does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel for advice before determining the modification application.

The consent authority may also refer a modification application for residential apartment development to the relevant design review panel for advice before determining the modification application.

Council Officer Comment: Council has exercised its discretion not to refer the application to a Design Review Panel. Instead, Council's Executive Urban Designer has provided detailed internal urban design comments on the proposal. The applicant also did not request that the application be referred to a Design Review Panel.

Cl. 147 Determination of development applications and modification applications for residential apartment development

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 [of the SEPP];

Council Officer Comment: An assessment against Schedule 9 of the SEPP is provided below.

- b) the Apartment Design Guide;

Council Officer Comment: An assessment against the Apartment Design Guide is provided below.

- 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.

Council Officer Comment: As noted above, Council has exercised its discretion not to refer the application to a Design Review Panel. Instead, Council's Executive Urban Designer has provided detailed internal urban design comments on the proposal.

Cl. 148 Non-discretionary development standards for residential apartment development—the Act, s 4.15

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.

The following are non-discretionary development standards apply to the proposal:

- 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; and
- 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.

Council Officer Comment: Complies.

Cl. 149 Apartment Design Guide prevails over development control plans

A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—

- a) visual privacy,
- b) solar and daylight access,

- c) common circulation and spaces,
- d) apartment size and layout,
- e) ceiling heights,
- f) private open space and balconies,
- g) natural ventilation,
- h) storage.

Council Officer Comment: Please refer to Apartment Design Guide assessment below in this report.

Assessment - Schedule 9 Design Principles

Council is not satisfied that the proposal achieves the objectives of Schedule 9 of the Housing SEPP, as detailed in the table below:

Principle 1: Context and Neighbourhood Character

The proposed chamfered built form does not respond appropriately to local context, erodes street definition, and does not enhance neighbourhood character. **Unsatisfactory.**

Principle 2: Built Form and Scale

The altered massing reduces the clarity and consistency of the building envelope and weakens the built form's contribution to the street. **Unsatisfactory.**

Principle 3: Density

The modified proposal remains substantially the same as currently approved in terms of density. **Satisfactory.**

Principle 4: Sustainability

It is unknown whether the modified proposal meets BASIX requirements as an amended BASIX certificate has not been provided. **Unsatisfactory.**

Principle 5: Landscape

The revised landscaping scheme, as amended, is considered satisfactory and is not inferior to the landscaping outcomes previously approved. The inclusion of the Turpentine tree is regarded as a positive enhancement to the proposal. **Satisfactory.**

Principle 6: Amenity

The chamfer front façade adversely affects the built form expression and its interface with the public domain, and detracts from public domain amenity. **Unsatisfactory.**

Principle 7: Safety

The modified proposal remains substantially the same as currently approved in terms of Safety. **Satisfactory**

Principle 8: Housing Diversity and Social Interaction

The modified proposal remains substantially the same as currently approved in terms of Housing Diversity and Social Interaction. **Satisfactory**

Principle 9: Aesthetics

The built form lacks visual coherence, architectural resolution, and a positive contribution to the streetscape. **Unsatisfactory.**

Conclusion

The amended design and accompanying justification do not satisfactorily address the issues identified in the two previous sets of referral comments provided by Council's Executive Urban Designer. The proposal prioritises servicing constraints at the expense of achieving a coherent and

contextually appropriate built form. A more resolved and context-responsive architectural solution is required to address site constraints and achieve an improved interface with the street.

Assessment – Apartment Design Guide (ADG)

The modified proposal has been considered against relevant criteria in Parts 3 and 4 of the ADG in the table below:

Relevant ADG Criteria	Consideration										
<p>3A Site Analysis <i>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.</i></p>	<p>The proposed chamfered built form at the front of the building represents a servicing-driven solution rather than a context-responsive architectural approach. As a consequence, the design fails to demonstrate a meaningful or well-resolved response to the surrounding streetscape and broader urban context. Unsatisfactory.</p>										
<p>3C Public Domain Interface <i>Transition between private and public domain is achieved without compromising safety and security.</i></p> <p><i>Amenity of the public domain is retained and enhanced.</i></p>	<p>The modified proposal diminishes the clarity, legibility, and urban presence of the building along the public domain, failing to produce a coherent or supportive streetscape edge. Unsatisfactory.</p>										
<p>4B Natural Ventilation</p> <p><i>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 the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</i></p> <p><i>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</i></p>	<p>Apartments are naturally cross-ventilated through ceiling bulkheads, as approved under the previous Section 4.55 modification on 7 September 2023. Satisfactory.</p>										
<p>4D Apartment Size and Layout</p> <p><i>Apartments are required to have the following minimum internal areas:</i></p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Apartments remain consistent with the minimum internal area requirements of the ADG. Satisfactory.</p>
Apartment type	Minimum internal area										
Studio	35m ²										
1 bedroom	50m ²										
2 bedroom	70m ²										
3 bedroom	90m ²										
<p>4K Apartment Mix</p> <p><i>A range of apartment types and sizes is provided to cater for different household types now and into the future.</i></p> <p><i>The apartment mix is distributed to suitable locations within the building.</i></p>	<p>The apartment mix provides a suitable range of dwelling types and is appropriately distributed throughout the building. The mix remains acceptable in the context of the site and surrounding area. Satisfactory.</p>										
<p>4M Facades</p>	<p>The façade and massing treatment lack</p>										

<p><i>Building facades provide visual interest along the street while respecting the character of the local area.</i></p> <p><i>Building functions are expressed by the façade.</i></p>	<p>coherence and do not achieve a high-quality architectural expression consistent with ADG objectives. Unsatisfactory.</p>
<p>4O Landscape Design and 4P Planting on Structures</p> <p><i>Landscape design is viable and sustainable.</i></p> <p><i>Landscape design contributes to the streetscape and amenity.</i></p> <p><i>Appropriate soil profiles are provided. Plant growth is optimised with appropriate selection and maintenance. Planting on structures contributes to the quality and amenity of communal and public open spaces.</i></p>	<p>The landscaping scheme is considered satisfactory and is not inferior to the landscaping outcomes previously approved. The inclusion of the Turpentine tree is regarded as a positive enhancement to the proposal. Satisfactory.</p>

Burwood Local Environmental Plan 2012 (BLEP)

The BLEP came into effect on 9 November 2012 and contains a number of controls including development standards which apply to the proposed development. An assessment of the application against relevant provisions within the BLEP is provided below.

CI 2.3 Zone objectives and Land Use Table

Land Use Zone: R1 General Residential

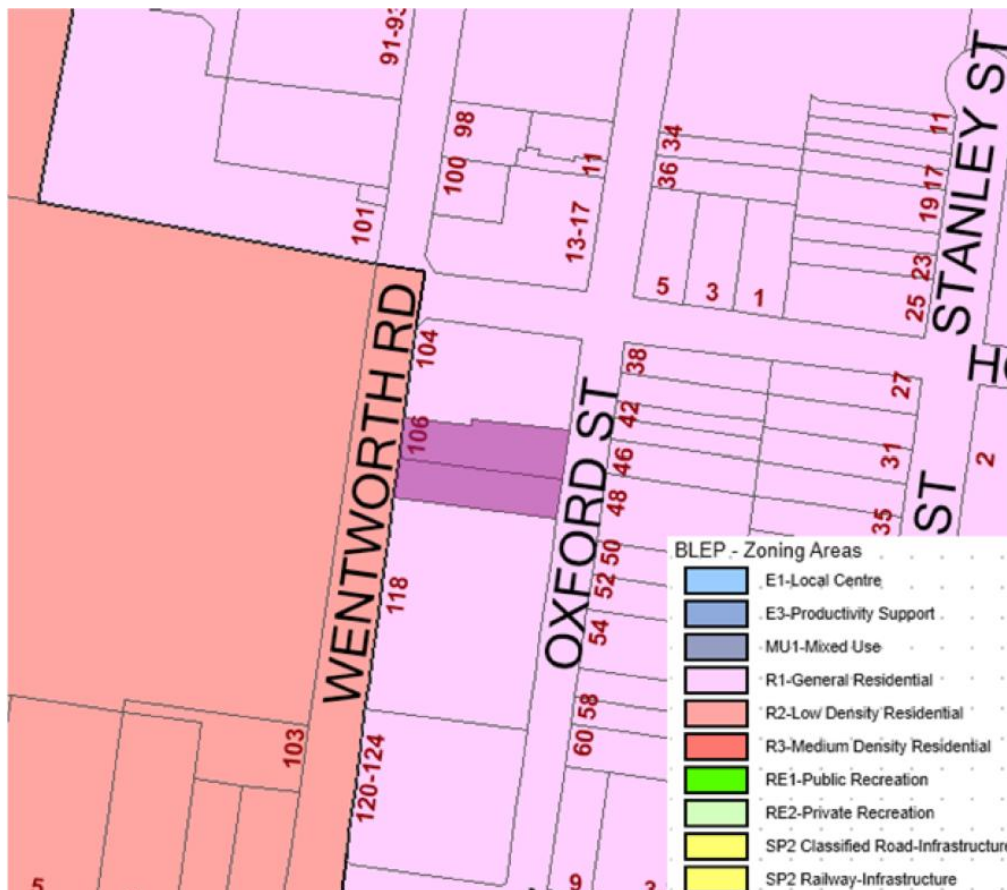


Figure 10: (above) Zoning Map from the BLEP, showing the site within the R1 – General Residential zone.

Objectives of zone:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The proposal is for a *residential flat building*, which is a permitted form of development within the R1 General Residential zone with consent. The modified proposal remains consistent with the objectives of the R1 zone, noting that it continues to facilitate additional housing at an appropriate density for the locality.

Compliance with BLEP development standards

The following table provides an assessment of the application against the relevant development standards contained within the BLEP:

Clause	Proposal	Compliance
Cl. 4.3 Height		
Maximum 14m	<p>The current approved height of the building is 21.48m (RL 37.050) at the lift overrun, representing a 7.48m (53.4%) variation.</p> <p>The subject modification proposes to increase the overall height by a further 400 mm, resulting in a proposed maximum building height of 21.88 m (RL 37.450). This results in a total height variation of 7.88 m (56.3%) above the BLEP development standard.</p> <p>A written request pursuant to cl 4.6 of the BLEP is not required for the contravention of a development standard arising as a result of a modification application <i>SDHA Pty Ltd v Waverley Council</i> [2015] NSWLEC 65 at [34] – [35].</p> <p>Despite this, the applicant has provided justification for the further contravention of the height standard in the Statement of Environmental Effects, as follows:</p> <ul style="list-style-type: none"> • The increase in building height is driven by the need to increase floor-to-ceiling heights, with the modified design adopting a 3.2 m floor-to-floor height (up from 3.1 m) to ensure a compliant 2.7 m floor-to-ceiling height can be achieved during construction in accordance with Part 4C of the ADG. • Sprinkler Systems and Building Services: Since 2019, National Construction Code (NCC) updates mandate the installation of sprinkler systems in all apartments, requiring additional ceiling clearance to accommodate pipework. This is in addition to other services such as air conditioning ducts and electrical 	No, but acceptable

	<p>systems, which require sufficient space to ensure safe and effective operation.</p> <ul style="list-style-type: none"> • The increased ceiling height allows for better coordination of services and reduces the complexity of construction, thereby improving both the efficiency and cost-effectiveness of the project. The increase also ensures the avoidance of dropped ceilings or bulkheads, which can detract from the quality and usability of internal spaces. • The proposed height increase is minimal, with the addition of 400mm to the lift overrun and 510mm to the main roof, resulting in a total height increase that will not significantly affect surrounding properties. The changes will not result in an unreasonable loss of solar access, privacy or visual amenity. The lift overrun is located centrally and will not be prominently visible from the public domain, ensuring that the impact of the increased height on the streetscape and neighbouring properties remains insignificant. • The objectives of the building height standard will continue to be satisfied despite the proposed variation. The development remains consistent with the objectives of the R1 zone, which were previously considered by Council as part of the DA122/2018 assessment. <p>Council Officer Comment: Considering the above, Council considers the applicant's justification for the additional 400 mm height to be well founded, and therefore raises no objections to the proposed additional building height.</p>	
Cl. 4.4 Floor space ratio		
Maximum 2:1	1.66:1	Yes
Cl. 5.1 Relevant acquisition authority		
Land reserved to be acquired for public purposes	The subject site is not identified on the Land Reservation Acquisition Maps.	N/A
Cl. 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	<p>The site does not contain a heritage item and is not within a heritage conservation area. The site is however within the vicinity of the following heritage items (shown below in Figure 11):</p> <ul style="list-style-type: none"> • Santa Sabina College, 90-98 The Boulevard, Strathfield (Item 205); and • Victorian Houses, 34 36 & 50 Oxford Street, Burwood (Item 87). 	Yes

<p>areas, including associated fabric, settings and views,</p> <p>(c) to conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</p>	<p>Council Officer Comment: The application was referred to Council’s Senior Heritage Planner who raised no objections to the modified proposal.</p>	
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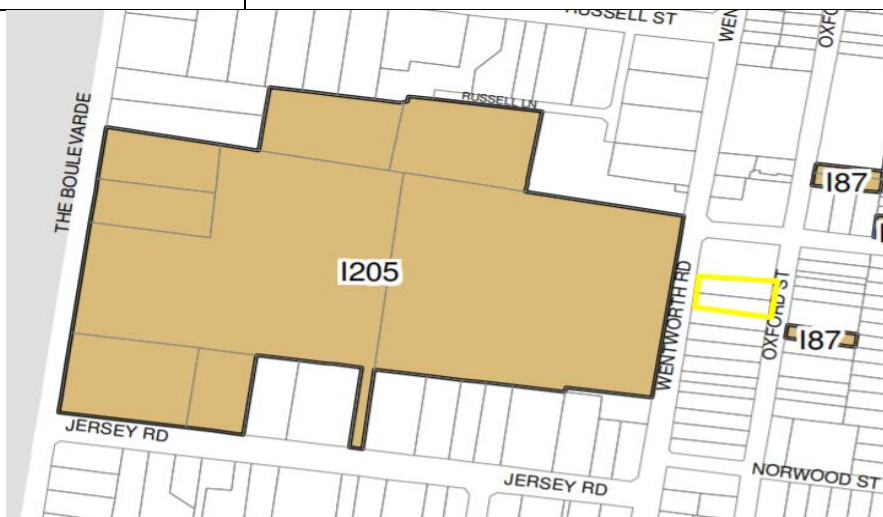


Figure 11: (above) BLEP 2012 Heritage Map showing the subject site in yellow and nearby heritage items.

Cl. 6.1 Acid Sulfate Soils

<p>(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</p>	<p>The subject site is affected by Class 5 Acid Sulfate Soils.</p> <p>However, there are no works proposed within 500 m of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum.</p>	<p>Yes</p>
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Cl. 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>	<p>The subject site is not affected by mainstream flooding but is affected by overland flooding.</p> <p>The original DA, previous modification, and the subject modification were internally referred to Council’s development engineers for comment. No objections were raised, subject to conditions.</p>	<p>Yes</p>
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(ii) Any proposed instrument (Draft LEP etc.)

There are no draft planning instruments for consideration.

(iii) Any development control plan**Burwood Development Control Plan 2013 (BDCP)**

The Burwood Development Control Plan (BDCP) applies to the proposed development. A summary of the assessment of the application against the parts of the BDCP is shown in the table below:

Provision	Proposal	Compliance
Part 4.1 – Residential Flat Buildings in R1 Zone		
Site Planning		
<i>Setbacks</i>		
P2 The front setback of a building is to be a minimum of 6m	No change, minimum front setback remains as approved.	No change
P3 Side and rear setbacks consistent with the ADG provisions.	Proposed side and rear setbacks remain consistent with the ADG provisions.	No change
<i>Length of Building Facades</i>		
P5 The maximum frontage length of a building facing a street is 45m	The frontage length of the building remains less than 45m, noting that the site has a primary street frontage of 21.195m.	Yes
P6 The side façades of buildings are to include articulation elements at least every 10m.	Sufficient articulation and variation is provided on side elevations at least every 10m.	Yes
Building Design		
O1 To ensure the appearance of new development defines and enhances the public domain through modulation, articulation, materials, use of superior external materials and finishes, active ground floor uses and sensitivity to heritage items and conservation areas.	It is considered that the proposal does not satisfy <i>Building Design</i> , Objective 1 for the following reasons: <ul style="list-style-type: none"> The proposed chamfered built form at the front of the building represents a servicing-driven solution rather than a context-responsive architectural approach. As a consequence, the design fails to demonstrate a meaningful or well-resolved response to the surrounding streetscape and broader urban context. The modified proposal diminishes the clarity, legibility, and urban presence of the building along the public domain, failing to produce a coherent or supportive streetscape edge. The façade and massing treatment lack coherence and do not achieve a high-quality architectural expression. 	No
Site and Building Amenity		
<i>Landscaping</i>		
P10 A minimum of 10% of the site area is to be deep soil and have a minimum dimension of 4 metres.	Deep soil remains consistent with the ADG provisions.	Yes
P11 It is expected that 25% - 30% of		

Provision	Proposal	Compliance
the site be landscaped (inclusive of the deep soil zone). Landscaped area includes all pervious surfaces, open space at ground level and open space with a minimum dimension of 1 metre.	Achieved	Yes
<i>Visual Privacy</i>		
P19 Provide adequate building separation in accordance with the building separation requirements in the ADG.	The provisions of the ADG prevail and have been generally complied with.	Yes
<i>Acoustic Amenity</i>		
P21 The internal layout of buildings is to be designed to reduce the effects of noise transmission through building materials and locating noise generating areas together.	The provisions of the ADG prevail and have been complied with	Yes
<i>Safety and Security</i>		
P27 Buildings shall be designed to provide casual surveillance, have appropriate lighting, clearly defined territory and avoid concealed or blind spots.	The building design remains satisfactory in terms of safety and security.	Yes
<i>Adaptable Housing</i>		
P36 All development for residential flat buildings in the R1 zone must provide 10% of dwellings for adaptable housing to cater for ageing in place and/or mobility impaired residents.	10% of 19 apartments = 2 apartments. A total of 2 (ground floor) apartments will remain adaptable	Yes
P37 At least one car parking space must be provided and allocated to each dwelling required to be provided as accessible or adaptable housing under this Section and the car parking space must be accessible in accordance with the provisions of AS 1428.2 to facilitate automatic vehicular wheelchair loading and unloading.	At least 2 car spaces within the basement carpark will remain adaptable	Yes
Part 4.6 Transport and Parking in Residential Development		
The proposed development is located within a R1 General Residential zone and within 800m of the railway station, therefore under Apartment Design Guide, the parking requirements are as follows: 6 x 1 bed = 0.6 spaces per unit = Requirement of 3.6 spaces. 9 x 2 bed = 0.9 spaces per unit = Requirement of 8.1 spaces. 4 x 3 bed = 1.5 per unit = Requirement of 5.6 spaces.	22 residential car parking spaces 4 visitor car parking spaces (including one space which is also designated for car washing) 8 bicycle spaces.	Yes

Provision	Proposal	Compliance
<p>Visitors (for 22 apartments) = 1 per 5 units = Requirement of 3.8 spaces.</p> <p>Total required car parking spaces = 22.</p> <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 400 sq m or three dwellings:</p> <p>19 units = 1 bicycle space per 3 units.</p> <p>Total required bicycle spaces = 7.</p>		
Part 6.5 Stormwater Management		
<p>Council has adopted a separate Stormwater Management Code that aims to:</p> <ul style="list-style-type: none"> • To preserve and protect the amenity and property of existing residents, property owners and the community. • To ensure the safety of residents and the community. • To meet reasonable expectations and statutory requirements for the development of properties. <p>To protect the physical environment and receiving waters of catchments.</p>	<p>Revised stormwater plans were referred to Council's development engineer for review and comment and are considered satisfactory.</p>	Yes
Part 6.6 Landscaping for Development		
<p>Landscaping and Tree Management</p>	<p>The proposal increases open space to 288.99m², incorporating 39.39m² of additional landscaped open space within the front setback area.</p> <p>Planter boxes have been reduced in size to suit the selected plant species. Moreover, a large canopy Turpentine tree, expected to reach 25 m in height with a 12 m spread, has been added to the southwest corner of the site.</p> <p>The revised landscaping scheme, as amended, is considered satisfactory and is not inferior to the landscaping outcomes previously approved</p>	Yes

(iv) The Regulations

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning and others. The application is accompanied by a statement prepared by a suitably qualified designer in accordance with Clause 29 Residential apartment development. The proposal is consistent with the Regulations.

(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

The likely impacts arising from the modified proposal, including built form and design impacts, are considered unacceptable, as outlined in this report. The applicant was given two opportunities to address the matters through the submission of amended plans and supporting documentation; however, the issues remain unresolved.

(c) The suitability of the site for the development

The site is considered suitable for a residential flat building, having regard to its zoning, access to services, and its capacity to accommodate this land use in principle. However, while the site itself is suitable, the likely impacts arising from the modified proposal, including built form and design impacts, are considered to be unacceptable, as detailed in this report.

(d) Any submissions made in accordance with this Act or the regulations

Please refer to the 'Community Consultation' section of this report below.

(e) The public interest

The proposal is not considered to be in the public interest, as the modified design is likely to result in unacceptable built form and design impacts on the streetscape and the locality.

Community Consultation

In accordance with the Burwood Community Participation Plan, the owners of surrounding properties were given notice of the application on **26 June 2025** with the notification period for submissions closing on **6 July 2025**. In response to the public notification of the DA, no submissions were received.

Referrals

The proposal was referred to the following internal Council officers for comment:

Senior Development Engineer - no objections received.

Senior Heritage Planner – no objections received.

Tree Management Officer - no objections received.

Executive Urban Designer – Council's Executive Urban Designer advised that the proposal has unacceptable built form and design impacts, as detailed above in this report.

Waste Manager – Council's Waste Manager reviewed the application and raised the following concerns:

- The waste room space is very small in size and the temporary waste storage area is very small for the number of bins on site
- No bin presentation location or collection area provided.

Council Officer Comment: The modification does not alter the previously approved waste management arrangements, which include an enclosed waste storage and collection area located near Oxford Street. These waste facilities were assessed as part of the original Development Application by Council's Environmental Health team and were found to be satisfactory.

As this application is a modification rather than a new development, the number of dwellings remains unchanged, and no physical amendments are proposed to the approved waste collection facilities. On this basis, the existing, approved arrangements remain acceptable in the circumstances.

Executive Building Surveyor - no objections received.

Traffic Engineer - no objections received.

The proposal was not required to be externally referred.

Conclusion

The proposed development is inconsistent with relevant matters for consideration under clause 4.15 of the *Environmental Planning & Assessment Act 1979*, as detailed above in this report.

The application is therefore recommended for refusal.

Recommendation(s)

That this section 4.55(2) modification to development consent no. **DA.2018.122**, which proposes amendments to an approved 5-storey residential flat building at 106–108 Wentworth Road, Burwood 2134, be refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the modified proposal is inconsistent with clause 147(1)(a) of State Environmental Planning Policy (Housing) 2021, as it is inconsistent with Design Principles 1, 2, 4, 6 and 9 in Schedule 9.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the modified proposal is inconsistent with clause 147(1)(b) of State Environmental Planning Policy (Housing) 2021, as it is inconsistent with Objective 3A-1, Objective 3C-1, Objective 3C-2, Objective 4M-1 and Objective 4M-2 of the Apartment Design Guide.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the modified proposal is inconsistent with Chapter 2 – Standards for Residential Development (BASIX) of the State Environmental Planning Policy (Sustainable Buildings) 2022, as the development constitutes BASIX development and a valid amended BASIX certificate has not been provided.
4. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the modified proposal is inconsistent with Part 4.1 – Residential Flat Buildings in the R1 Zone of the Burwood Development Control Plan, specifically:
 - a. Section 4.1.2 – Development Controls: Building Design, Objective O1.
5. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts arising from the modified proposal, including built form and design impacts, are considered unacceptable. The applicant was provided with two opportunities to satisfactorily address these concerns through the submission of amended plans and supporting documentation; however, the identified issues remain unresolved.

6. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development is not in the public interest having regard to reasons for refusal listed at 1 - 5 above.

Attachments

- 1⇒ Amended Architectural Plans, 3D Montage, and Landscape Plans (*Excluded from agenda*)
- 2⇒ Statement of Environmental Effects & Supporting Letters (*Excluded from agenda*)

(Item GB2/26) Planning Proposal - Planning Agreement Policy BLEP 2012 Amendments

File No: 26/9817

Report by Senior Town Planner; Manager City Planning

Summary

Council at its meeting of 28 October 2025 considered a report (**Attachment 1**) outlining details of a new Draft Burwood Planning Agreement Policy 2025 to align with updated legislation and guidelines. At this meeting Council resolved (**Attachment 2**) to publicly exhibit the Draft Burwood Planning Agreement Policy 2025 (**Attachment 3**) and proposed amendments to the Burwood Local Environmental Plan 2012 (BLEP) to enable the delivery of community infrastructure to a broader catchment of high-density developments within the Burwood local government area.

Council has prepared a Planning Proposal to amend Clause 4.3A (Exceptions to height of buildings) and Clause 4.4A (Exceptions to floor space ratio) of the Burwood Local Environmental Plan (BLEP) 2012, ensuring these provisions are consistent with the Draft Planning Agreement Policy 2025.

The new Draft Planning Agreement Policy 2025 (draft Policy) was prepared to align with updated legislation and best practice, State Government guidelines and ensure public benefits from development are delivered fairly and transparently.

The proposed amendments aim to expand bonus floor space provisions beyond the Burwood Town Centre to higher-density zones including Zone R1 General Residential, Zone R3 Medium Density Residential, Zone E1 Local Centre, and Zone MU1 Mixed Use, support the delivery of community infrastructure more broadly across the LGA, and require developers to achieve design excellence, respond appropriately to the desired local character, and improve sustainability performance.

This report seeks the Burwood Local Planning Panel's endorsement of the Draft Planning Proposal to amend Clauses 4.3A and 4.4A of the BLEP 2012, enabling it to progress to Gateway Determination.

Operational Plan Objective

- C.1.1 Support and deliver initiatives that encourage high-quality design, sustainable development and enhanced urban amenity.
- C.11.1 Conduct Council business with transparency, accountability, compliance and probity that ensures community confidence in decision making.
- C.3.1 Facilitate well designed, high quality and sustainable land use and development that is appropriately scaled to complement its surroundings.

Background

Council currently operates under two Planning Agreement Policies, which sought to align with the provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act) and Clauses 4.3A and 4.4A of the Burwood Local Environmental Plan 2012 (BLEP). These BLEP provisions allow, in certain circumstances, an additional 10% to the base BLEP Floor Space Ratio (FSR) on specific sites within and around the Burwood Town Centre where community infrastructure is provided or where contributions address car parking deficiencies. They also apply to other planning agreements associated with planning proposals and development applications involving variations to development standards under Clause 4.6 of the BLEP.

This Planning Proposal has been prepared as a result of Burwood Council's resolution of 28 October 2025 to publicly exhibit the Draft Burwood Planning Agreement Policy 2025 and the

preparation of a Planning Proposal to amend the BLEP so that Clauses 4.3A and 4.4A can apply more broadly to higher density zones (R1, R3, MU1 and E1).

In line with Council's Operational Plan and updated guidelines issued by DPHI, a review of Council's VPA framework and policies was undertaken, informed by advice from ICAC and specialist consultants. As a result of the review, a new Planning Agreement Policy has been prepared to improve clarity, probity and consistency, and to reflect recent legislative changes. The new VPA Policy will operate alongside other contribution mechanisms established under the EP&A Act, including Section 7.11 and 7.12 development contributions.

The clauses within the BLEP 2012 which govern planning agreements include Clause 4.3A (Exceptions to height of buildings) and 4.4A (Exceptions to floor space ratio) which allow additional building heights and floor space for certain areas within and around the Burwood Town Centre, subject to the delivery of community infrastructure in-kind or payment toward community infrastructure through a VPA.

As the Burwood LGA continues to grow, with its population expected to double over the next decade, demand for supporting public infrastructure will increase significantly. Expanding the application of these planning agreement clauses in higher-density areas will help facilitate the delivery of essential community infrastructure needed to support this growth.

The draft Policy has been reviewed for legal accuracy and to ensure its wording is effective and consistent with current planning legislation.

Proposal

Council proposes to amend Clause 4.3A (Exceptions to height of buildings) and Clause 4.4A (Exceptions to floor space ratio) of the BLEP 2012, ensuring these provisions are consistent with the Draft Planning Agreement Policy 2025. These amendments aim to expand bonus floor space provisions beyond the Burwood Town Centre to higher-density zones such as R1, R3, MU1 and E1, support the delivery of community infrastructure more broadly across the LGA, and require developers to achieve design excellence, respond appropriately to the desired local character, and improve sustainability performance.

The bonus floor space provisions will be facilitated as part of planning agreement where development includes development for a "public purpose" consistent with the VPA provisions of the EP&A Act, rather than referencing only "community infrastructure". Furthermore, development applications seeking to access the bonus provisions through a VPA must satisfy the design excellence requirements in clause 6.5 of the BLEP 2012, be compatible with the character of the local area, and for BASIX-affected development, exceed the BASIX water target by at least 10% and the BASIX energy target by at least 10%.

Specifically, the proposed amendments to BLEP 2012 seek to:

- **Expand the objectives of the clause** to clearly state that its purpose is to increase the provision of community infrastructure across the entire local government area, not only the town centre, through application in Zone R1 General Residential, Zone R3 Medium Density Residential, Zone E1 Local Centre, and Zone MU1 Mixed Use.
- **Update the clause to reflect legislative changes**, adopting the broader definition of "public purpose" consistent with the VPA provisions of the EP&A Act, rather than referencing only community infrastructure.
- **Limit the clause's application in Zones E1 Local Centre and MU1 Mixed Use** to development comprising residential flat buildings, boarding houses, seniors housing, shop top housing, serviced apartments or commercial premises.

- **Limit the clause's application in Zones R1 General Residential and R3 Medium Density Residential** to development comprising multi dwelling housing, boarding houses, residential flat buildings, seniors housing or shop top housing.
- **Introduce a merit test requirement** to ensure high-quality built form outcomes and improved environmental performance, while protecting the amenity of surrounding areas. Development must demonstrate that:
 1. It achieves Design Excellence under Clause 6.5 of the BLEP 2012.
 2. The design is compatible with the desirable elements of the existing local character or, for precincts undergoing transition, aligns with the desired future character of the precinct.
 3. For BASIX-affected development, the project exceeds the BASIX water commitment by at least 10% of the water target score and exceeds the BASIX energy commitment by at least 10% of the energy target score.

Clause 6.5 of BLEP currently mandates design excellence in Zone E1 Local Centre and Zone MU1 Mixed Use. In accordance with Council's resolution of 29 January 2025 relating to Council's Croydon Masterplan, the requirement for design excellence is proposed to be extended to Zone R1 General Residential and Zone R3 Medium Density Residential through a BLEP amendment to be progressed alongside the gazettal of the Croydon SEPP.

Council's request at the time for the Department of Planning, Housing and Infrastructure to also amend Clause 6.5 to enable design competitions for significant developments as part of the Croydon SEPP did not proceed, as the higher-density development controls in Burwood Town Centre and Burwood North were not proposed under the Croydon Masterplan. Consequently, a separate, Council-led planning proposal is being prepared to achieve this outcome and once completed will be applied alongside the proposed BLEP amendments that will operate concurrently with the new Draft Burwood Planning Agreement Policy 2025.

The objective of the new draft Policy and the amended BLEP 2012 provisions is to increase the provision of community infrastructure across the Burwood LGA, while ensuring that future buildings are well designed and deliver a high level of amenity for residents and users.

Consultation

The Draft Burwood Planning Agreement Policy 2025 was publicly exhibited on Council's Participate Burwood online engagement platform for eight (8) weeks in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and Council's *Community Participation Plan*.

The exhibition was extended due to the timing of the notification over the Christmas and New Year period. Members of the public, stakeholders and affected parties were able to view the proposal and provide their comments through the platform. Council received two (2) public submissions, which are summarised below.

Table 1: Summary of public submissions

Submission received	Council's Response
<p>The submission from a private resident raises strong concerns about extending bonus floor space provisions into the R1 General Residential zone, arguing that such areas are intended to maintain Burwood's established suburban character. The author contends that bonus floor space would encourage bulkier developments that are out of scale with existing housing, placing pressure on narrow residential streets with limited parking and already-constrained traffic conditions. They contend that local schools, parks, and utilities are planned around current population levels, and increasing development capacity without parallel infrastructure upgrades could compromise service quality and liveability for existing residents.</p> <p>The submission also asserts that the R1 zone serves as a transition area between higher-density areas and low-density areas, and that extending bonus provisions into these neighbourhoods blurs this zoning hierarchy. The author argues that smaller R1 lots are poorly suited to delivering meaningful affordable housing outcomes, risking added density without corresponding community benefit. They express concern about insufficient community consultation and the potential erosion of trust in Council's planning processes.</p> <p>On this basis, the submission urges Council to restrict bonus floor space provisions to strategic growth areas, specifically the Burwood Town Centre, R3 Medium Density, MU1 Mixed Use, and E1 Local Centre zones.</p>	<p>Council acknowledges that some streets and lots within the R1 General Residential zone have comparatively narrower dimensions, which may limit their capacity to accommodate higher-density development. While the amended LEP development standards under this Planning Proposal are intended to enable additional floor space and height in specific circumstances, Council recognises that not all R1-zoned sites within the Burwood LGA will be suitable or eligible for these incentives.</p> <p>The R1 General Residential zone is not intended to function as a transition zone between higher-density and low-density residential areas. For instance, in the local context, the high-density Burwood Town Centre directly adjoins R2 Low Density Residential zoned areas to its east and south. The R1 zone functions as a distinct residential area, intended to accommodate a diverse range of housing types and densities, consistent with the stated objectives of the zone within the LEP.</p> <p>Future development applications and any associated Planning Agreements will be assessed individually on a case-by-case basis. Consideration will be given to matters such as location, site area, site width, vehicular access, parking provision, traffic impacts, local character and the existing streetscape to determine the suitability of each site for development.</p>

Submission received	Council's Response
<p>Urban Taskforce Australia lodged a submission to Council on 21 January 2026 to the Draft Burwood Planning Agreement Policy 2025 and the proposed amendments to the Burwood Local Environmental Plan 2012. Council notes that the submission primarily focuses on matters concerning details of the exhibited Draft Burwood Planning Agreement Policy 2025, and no commentary on the proposed amendments to clauses 4.3A and 4.4A of BLEP.</p> <p>The submission specifically raises concerns about several operational and legal aspects of the exhibited Draft Burwood Planning Agreement Policy and agreement template, and provides feedback on specific clauses of the exhibited Draft Burwood Planning Agreement Policy 2025 and template, recommending clearer definitions, streamlined land dedication processes, reduced reliance on caveats, capped Council cost recoveries, and the inclusion of appropriate timeframes for approvals, variations, and dispute resolution.</p> <p>Overall, the submission encourages Council to review these matters with legal advisors to ensure the final policy and agreement template are workable, consistent, and aligned with industry practice.</p>	<p>Council notes the submission made by Urban Taskforce Australia in relation to specific parts of the exhibited Draft Burwood Planning Agreement Policy 2025 and is undertaking a review.</p> <p>Council also notes that the submission made by Urban Taskforce Australia does not make any comment in relation to the proposed amendments to clauses 4.3A and 4.4A of BLEP, the subject of the Planning Proposal.</p>

Planning or Policy Implications

The Draft Planning Agreement Policy 2025 aligns with current legislation and guidelines relating to planning agreements.

If adopted, the Draft Burwood Planning Agreement Policy 2025 will replace both the Planning Agreements Policy 2018 and the Policy – *Carrying out Bonus Development in the Public Interest*. This will establish a consolidated and integrated framework for the preparation, negotiation and execution of planning agreements in association with future development applications and Planning Proposals.

Replacing Council's existing policies, which currently facilitate the consideration and delivery of public infrastructure through planning agreements, will require an amendment to the BLEP 2012. These amendments will ensure consistency with the principles and objectives of the Draft Burwood Planning Agreement Policy 2025, which reflects current legislation, guidelines and best-practice approaches to planning agreements.

The development of this policy represents a key step in the broader review of Council's infrastructure contributions framework. During the 2026/27 financial year, Council will commence work to review and refine the infrastructure strategies that underpin its Section 7.11 and 7.12 contributions plans.

If endorsed, the revised VPA Policy will supersede the current VPA Policy (Reference Number 18/48786), adopted by Council on 30 October 2018.

Financial Implications

The new Planning Agreement Policy, in conjunction with the proposed BLEP amendments, is envisaged to increase infrastructure funding across the LGA.

Conclusion

The Draft Planning Agreement Policy 2025 has been prepared to align with updated planning legislation, State Government guidelines and current best practice, ensuring that public benefits arising from development are delivered in a fair, transparent and consistent manner.

To support the implementation of this policy, amendments to Clauses 4.3A and 4.4A of the BLEP 2012 are proposed to enable their broader application within higher-density zones. These changes will facilitate the delivery of essential community infrastructure while ensuring that development demonstrates design excellence, respond appropriately to the desired local character, and improve sustainability performance.

It is recommended that the Burwood Local Planning Panel support the Planning Proposal and provide advice to Council to proceed with the proposed BLEP 2012 amendments.

Recommendation(s)

That the Burwood Local Planning Panel:

1. Considers the Draft Burwood Planning Agreement Policy (Attachment 1)
2. Endorse the preparation of a Planning Proposal to amend the Burwood Local Environmental Plan 2012 (Attachment 2)
3. Delegate the General Manager to undertake minor modifications to any numerical, typographical, interpretation and formatting errors, or amend any element of the Planning Proposal in Attachment 1 to meet the requirements for Gateway Determination
4. Note the submissions received during public exhibition of the Draft Burwood Planning Agreement Policy and BLEP 2012 amendments (Attachment 3)

Attachments

- 1 Council Meeting Report - 28.10.2025
- 2 Council Meeting Minutes - 28.10.2025
- 3 Draft Burwood Planning Agreement Policy - October 2025
- 4 Draft Planning Proposal Report - BLEP Amendment to clauses 4.3A & 4.4A
- 5 Combined Submissions (2 items)

(Item DA8/26) Development Application DA.2025.88 at 63 Conder Street, Burwood

File No: 26/14508

Report by Senior Assessment Planner

Owner: Mr R Ragonese & Mrs P Meduri
Applicant: Glenn McCormack c/o BENSON MCCORMACK PTY LTD
Location: 63 Conder Street, Burwood
Zoning: R1 General Residential

Proposal

The development application, as amended, seeks consent for the demolition of existing structures and construction of a three-storey co-living housing development for a total of 40 residents, comprising 20 self-contained co-living rooms (max. 2 residents per room), communal indoor and outdoor spaces, basement-level amenities, and associated landscaping and stormwater drainage works.

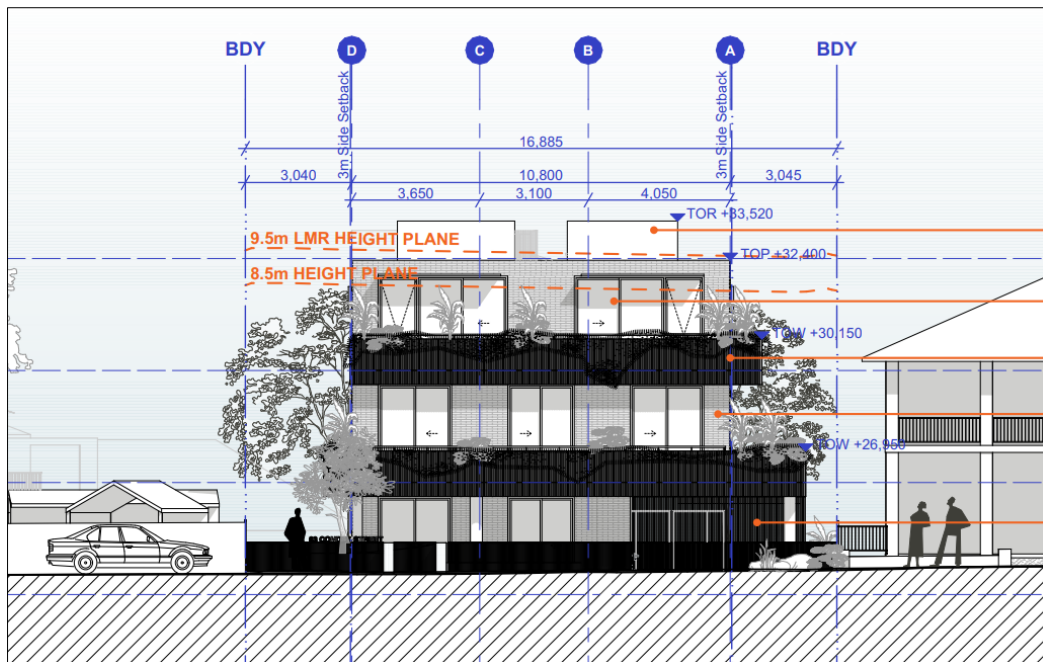


Figure 1: (above) Front Elevation plan submitted by the applicant. Source: Benson McCormack (2026).



Figure 2: (above) 3D render from the Design Report submitted by the applicant. Source: Benson McCormack (2025).

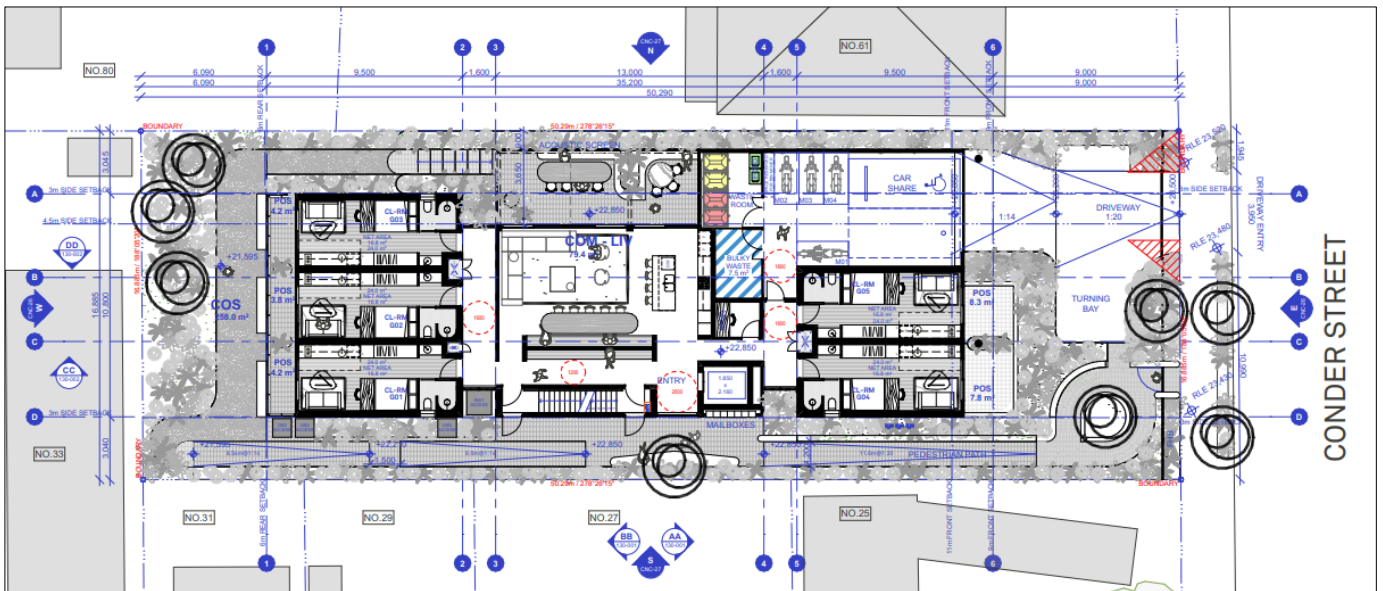


Figure 3: (above) Amended Ground Floor Plan submitted by the applicant. Source: Benson McCormack (2026).

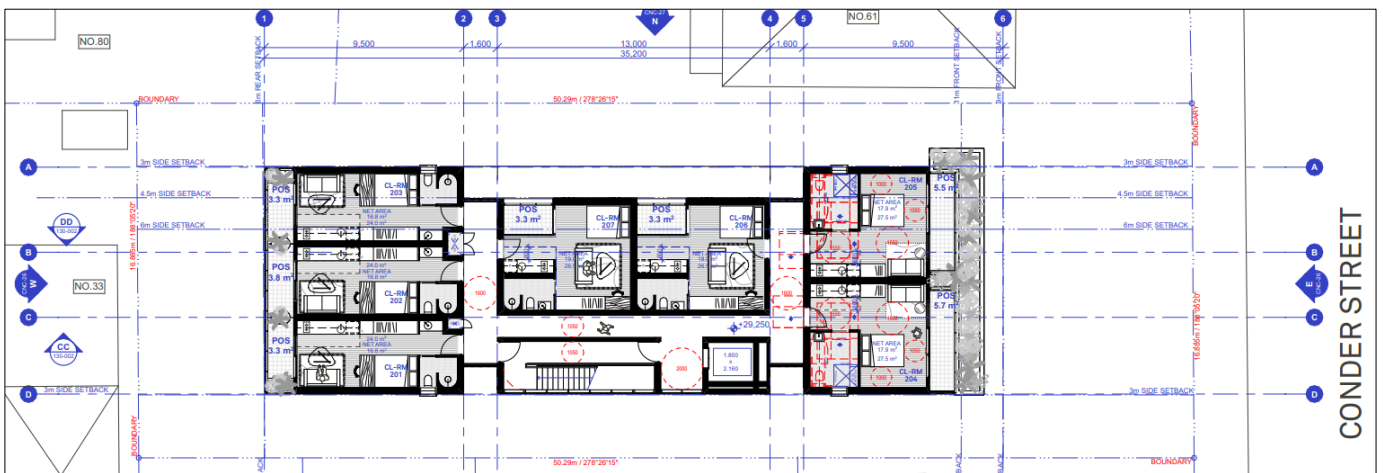


Figure 4: (above) Amended Top floor (Level 2) Plan submitted by the applicant. Source: Benson McCormack (2026).

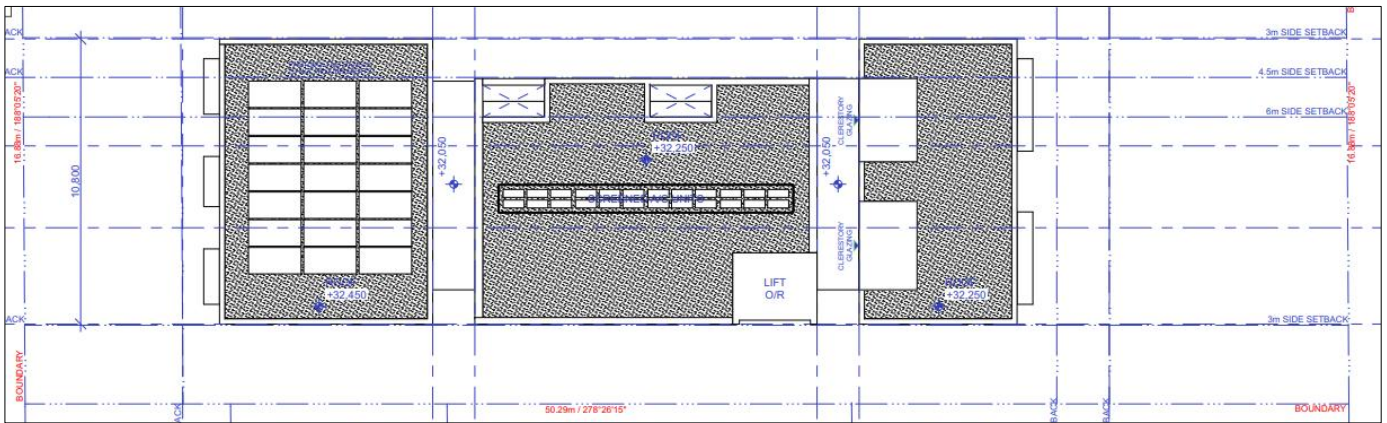


Figure 5: (above) Amended Roof Plan submitted by the applicant. Source: Benson McCormack (2026).

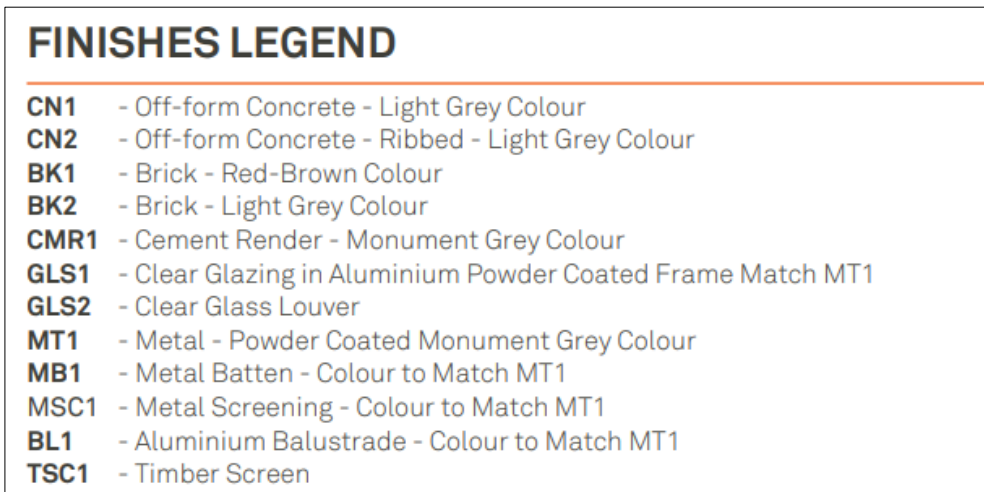


Figure 6: (above) Amended External Finishes legend submitted by the applicant. Source: Benson McCormack (2026).

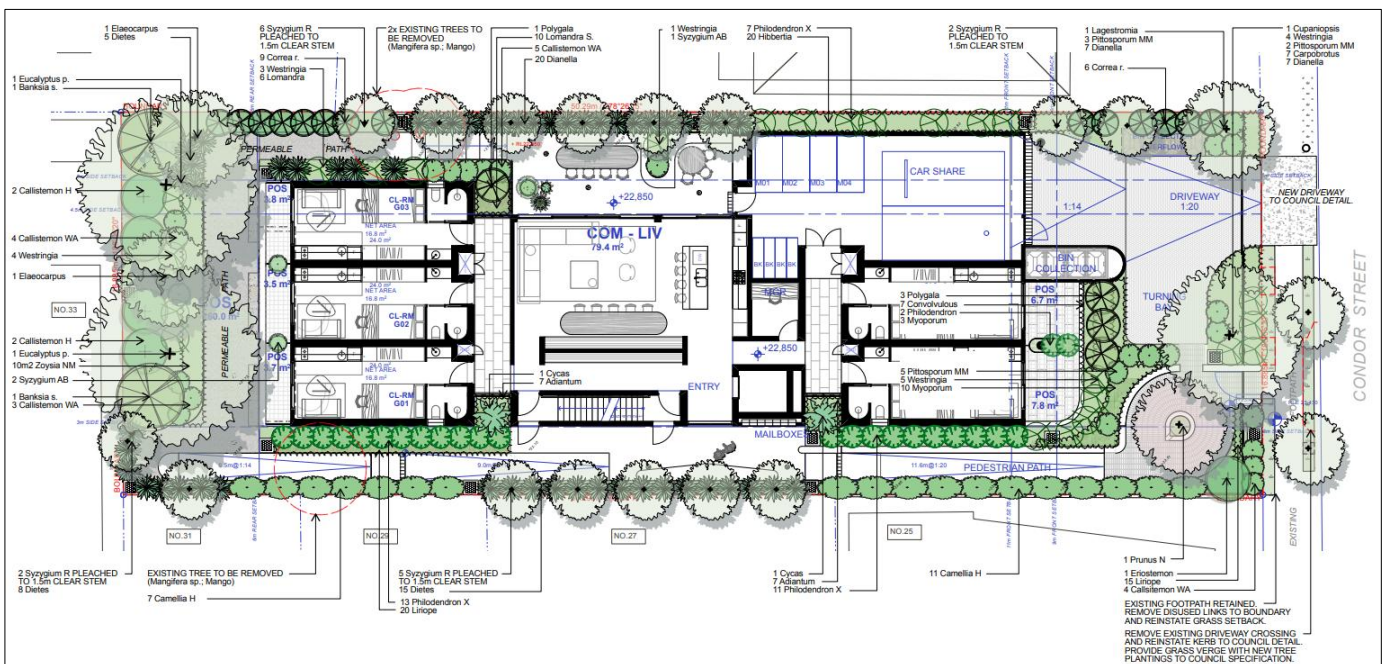


Figure 7: (above) Ground Floor Landscape Plan submitted by the applicant. Source: Matthew Higginson (2025).

The proposal is outlined in detail below:Co-Living Building Overview

- Demolition of the existing detached dwelling house and ancillary structures.
- Construction of a three-storey co-living housing building with a height of 10.813 m, containing twenty (20) co-living rooms, each containing a kitchenette, bathroom, study/workstation and bed. Each room will accommodate a maximum of two (2) residents.
- The building will contain a manager's office located on the ground floor to support on-site management and resident safety.
- A basement level containing a shared laundry room, bathroom, bicycle store room with 25 spaces (amended plans increased bicycle spaces from 3 to 25), on-site detention tank, rainwater tank, building services, accessed via stairs and lift.
- Four motorcycle spaces located at ground level (amended plans repositioned the motorcycle spaces to ensure unobstructed access at all times).
- Waste room area located on the ground floor (amended plans relocated the bulky waste and bin storage from the basement level to the ground floor for simpler and safer access).

Communal Spaces

- The proposal provides 79m² of internal communal space, including shared kitchen, dining, media and lounge areas.
- 260m² of landscaped communal open space, including outdoor cooking facilities, seating and social areas.
- The design of the communal open space incorporates a 2.7 m acoustic barrier set back 900 mm from the northern side boundary, with a 5 metre-high landscaped buffer, and a combination of fixed and retractable roof elements to improve privacy and mitigate noise.

Waste Management

- Bulky waste storage relocated to the ground floor adjacent to the waste room and motorcycle spaces, upon advice from Council.
- Bin storage relocated to ground floor on a level surface, resolving safety and operational concerns, upon advice from Council.
- Dedicated FOGO bins provided and total waste capacity to meet Council's requirements.
- Inclusion of an Operational Waste Management Plan confirming commercial collection (rather than Council collection), on-site bulky waste collection, and procedures for bin movement if the lift is inoperable.

Stormwater Management

- Amended plans have revised the originally proposed pump out drainage system to a gravity-based stormwater drainage system, to meet Council's requirements.
- Stormwater discharge is via a proposed drainage easement over the adjoining property at No. 33 Nicholson Street.

Access, Parking & Transport

- 1 car-share parking space located within the building at ground floor level.
- 4 motorcycle spaces located within the building at ground floor level.
- 25 bicycle spaces located within the basement, increased from 3 to 25 in response to Council's advice.
- Pedestrian access to the building provided along the southern boundary.

Landscaping & Site Works

- Provision of site landscaping, tree planting and deep soil areas across the site, including but not limited to a landscaped buffer adjacent to the northern boundary.

BLPP Referral Criteria

Pursuant to the Ministerial direction dated 6 May 2024, under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, the DA is to be determined by the BLPP for the following reasons:

1. The development contravenes development standards imposed by an environmental planning instrument by 10% or more.
2. Ten (10) or more unique submissions by way of objection. Fifteen (15) unique submissions by way of objection were received by Council.

Background

There are no previous applications relevant to the subject application.

Current Application

- 1) On **25 November 2025**, this development application was lodged with Council.
- 2) The application was referred to the following internal Council officers:
 - Senior Development Engineer;
 - Tree Management Officer;
 - Executive Urban Designer;
 - Senior Heritage Planner;
 - Senior Environmental Health Officer
 - Waste Manager;
 - Executive Building Surveyor;
 - Traffic Engineer.

The application did not require any external referrals.

- 3) In accordance with the Burwood Community Participation Plan, the owners of surrounding properties were given notice of the application on **9 December 2025** with the notification period for submissions closing on **6 January 2026**. In response to the public notification of the application, fifteen (15) unique submissions by way of objection were received.
- 4) On **3 March 2026**, following referrals and a preliminary assessment of the application, Council issued a Request for Information (RFI) to the applicant seeking clarification and amendments regarding the following matters:
 - a. The originally proposed pump drainage system was unsatisfactory and did not comply with Council's Stormwater Management Code, and instead gravity drainage would need to be provided via an easement over an adjoining property (33 Nicholson Street).
 - b. The bulky waste storage area should be moved from the basement to ground floor level, to provide simpler and safer access. The basement is not considered a suitable location for the movement or storage of bulky waste due to operational inefficiencies and safety concerns.
 - c. For safety reasons, the design of the bin collection area must allow bins to be moved first from the bin collection area onto a level, flat surface, to ensure they do not immediately roll down a sloped section of the driveway when removed from the bin collection area.
 - d. The bin collection overflow area should be removed from the front yard area, and any required additional capacity required should be incorporated into the primary bin collection area.

- e. No provision was made for FOGO bins. Once FOGO is introduced, general waste volumes are expected to decrease. However, given the absence of a confirmed FOGO rollout date and service level, Council recommended that an additional 50% storage capacity be incorporated into the design to accommodate future FOGO bins and any transitional service requirements.
 - f. Amendments required to the Operational Waste Management Plan to comply with Council's advice.
 - g. Motorcycle spaces to be reconfigured to ensure motorcycles can safely enter and exit their spaces without being obstructed by vehicles, doorways, or any other built elements.
 - h. Council advised the proposed development would benefit from the provision of additional bicycle parking spaces, preferably located in the basement in place of the relocated bulky waste storage area.
 - i. Council requested that the applicant provide a detailed response to issues raised by objectors, demonstrating how potential amenity impacts arising from the communal open space will be adequately mitigated.
- 5) On **26 March 2026**, the applicant subsequently provided satisfactory responses addressing all matters listed above, which are detailed in the applicant's attached 'Response to RFI' letter.

Statutory Requirements

The application is assessed under the provisions of section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), as amended, which include:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 2 Vegetation in non-rural areas
- State Environmental Planning Policy (Housing) 2021 - Chapter 3 Diverse housing
- Burwood Local Environmental Plan (BLEP) 2012.
- Burwood Development Control Plan (BDGP) 2013, as amended.
- The regulations (of the EP&A Act).
- The likely social, environmental and economic impacts of the development.
- The suitability of the site for development.
- Submissions made under the Act and Regulations, and
- The public interest.

Locality

The Site

The subject site comprises an 841 m rectangular allotment on the western side of Conder Street with a 16.88-metre frontage, currently occupied by a two-storey detached dwelling house and ancillary structures. The site is zoned R1 General Residential and sits within an indicative Low and Mid Rise Housing (LMR) Housing Area, reflecting the State's strategic intent to provide additional housing diversity in well-located areas within 800 metres of centres and railway stations. However, LMR provisions do not directly apply to the proposal, as it constitutes co-living housing. The site directly adjoins local Heritage Item I86 to the south, as listed under Schedule 5 of the BLEP. The site is located approximately 300 metres from Burwood Town Centre, less than 500 metres from bus services, and within 900 metres walking distance of Burwood Railway Station.



Figure 8: (above) View of the subject site (in the centre of photo) as seen from the street. Source: Sim (2026).

The Surrounding Area

The surrounding area is a well-established residential neighbourhood characterised by one and two-storey dwellings. The area is slowly undergoing transition from low-density to medium-density built forms in response to strategic planning directions encouraging additional housing supply in well-serviced areas near town centres and transit corridors. This is typical for areas zoned R1 General Residential within the Burwood local government area, and is guided by local planning controls and recent State planning policy reforms.

Conder Street exhibits a generally consistent residential streetscape with front gardens, established street trees and a mix of older detached and semi-detached dwellings and newer medium housing.



Figure 9: (above) View of the western side of Conder Street looking south-west. Source: Sim (2026).



Figure 10: (above) View of the eastern side of Conder Street looking south-east. Source: Sim (2026).



Figure 11: (above) View of existing development on Conder Street opposite the site. Source: Sim (2026).



Figure 12: (above) View of the southern part of the subject site and rear of the adjoining heritage item at 25 Nicholson Street, looking south-west. Source: Sim (2026).



Figure 13: (above) Existing multi-dwelling housing development at 37 Nicholson Street. Source: Sim (2026).



Figure 14: Existing development immediately south of the site, including 27 Nicholson Street and the adjoining heritage item at 25 Nicholson Street. Source: Sim (2026).



Figure 15: (above) Recently constructed residential flat building on the north-western corner of Woodside Avenue and Conder Street. Source: Sim (2026).

Planning Assessment

SECTION 4.15 EVALUATION

(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:

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of land

The provisions of Chapter 4 of the 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 used for residential purposes for a long period of time, with an existing dwelling house situated on the property. The site is within a well-established residential area. A search of Council's mapping and records suggests no evidence of any land contamination on the site, and a site inspection revealed no obvious contamination. The land is considered suitable for the proposed development.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in Non-Rural Areas of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 sets the rules for the clearing of vegetation in NSW on land zoned for urban and environmental purposes. 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 applicant has submitted a Ground Floor, Level 1 and Level 2 Plans and Landscape Elevation and Schedule, prepared by Matthew Higginson Landscape Architecture Pty Ltd, issue B, dated 12.11.25.

Council's Tree Management Officer has reviewed the proposal and advised that the proposed landscaping represents an improvement on the existing condition and incorporates a sufficient level of vegetation and tree planting. The proposed landscaping is considered satisfactory.

The applicant has made minor amendments to the front of the building and the front setback area in response to Council's Request for Information (RFI). These amendments will result in minor changes to the front yard landscaping, as shown on the amended architectural plans. The proposed landscaping remains satisfactory and continues to meet the relevant controls and design outcomes.

Council therefore recommends that a deferred condition of consent be imposed requiring the landscape plans to be amended to ensure consistency with the amended architectural plans.

State Environmental Planning Policy (Housing) 2021 – Part 3 Co-living housing

The following table provides an assessment of the application against the relevant development standards contained within State Environmental Planning Policy (Housing) 2021 – Part 3 Co-living housing:

Clause	Requirement / Control	Proposal	Compliance
Cl. 67 Permissibility	Co-living housing permitted with consent on land where residential flat buildings are permitted	The site is zoned R1 General Residential under the LEP. Residential flat buildings are permitted with consent in the R1 zone. Co-living housing is therefore permissible in the zone with consent pursuant to Clause 67(b).	Yes
Cl. 68(2)(a) – Floor Space Ratio	Max. FSR = LEP FSR + 10% bonus for co-living	Max. LEP FSR = 0.85:1. With the 10% co-living bonus, the maximum permissible FSR is 0.935:1 . The proposed FSR of 0.914:1 is below the maximum permitted.	Yes
Cl. 68(2)(b)–(c) – Communal Living Area	Minimum 30m ² + 2m ² per room over 6 rooms	For 20 rooms, the minimum required communal living area is 58m² . The proposal provides 79.4m² , exceeding the minimum requirement.	Yes
Cl/ 68(2)(d) – Communal Open Space (COS)	Minimum 20% of site area	Minimum required COS is 168.2m² . The proposal provides 258m² (30.67%) , exceeding the minimum requirement.	Yes
Cl. 68(2)(e) – Car Parking	0.2 spaces per room in accessible areas	The site qualifies as an 'accessible area. A minimum of 4 spaces is required'. The proposal provides 1 car-share space , resulting in a shortfall addressed via a clause 4.6 variation and supporting parking justification. NOTE: The proposal also provides 25 bicycle parking spaces within the basement.	No – however, the variation sought is considered acceptable (refer to Note 1 below).
Cl. 69(1)(a) – Room Size	Minimum 16m ² (double), maximum 25m ² (excluding kitchen/bathroom)	All rooms are between 16m² and 25m² and capable of accommodating up to two occupants.	Yes
Cl. 69(1)(b) – Minimum Lot Size	Minimum 800m ²	The site has an area of 841m² , exceeding the minimum requirement.	Yes
Cl. 69(1)(d) – Manager Workspace	Appropriate manager workspace required	A dedicated manager's office is provided on the ground floor of the building.	Yes
Cl. 69(2)(b) – Building Separation	Must consider Apartment Design Guide (ADG) separation	Building separation distances have been assessed against ADG numerical requirements. Minor	Acceptable on merit, refer to Note 3 below.

	distances	departures are identified but are considered acceptable on merit having regard to the applicant's design response and building orientation	
Cl. 69(2)(c) Solar Access	Minimum 3 hours of direct sunlight to at least one communal living area	The communal living areas receive adequate solar access between 9am and 3pm on 21 June.	Yes
Cl. 70 Subdivision	Co-living housing must not be subdivided	No subdivision is proposed.	N/A

Burwood Local Environmental Plan 2012

The BLEP came into effect on 9 November 2012 and contains a number of controls including development standards which apply to the proposed development. An assessment of the application against relevant provisions within the BLEP is provided below.

Clause 2.3 Zone objectives and Land Use Table

Land Use Zone: R1 General Residential

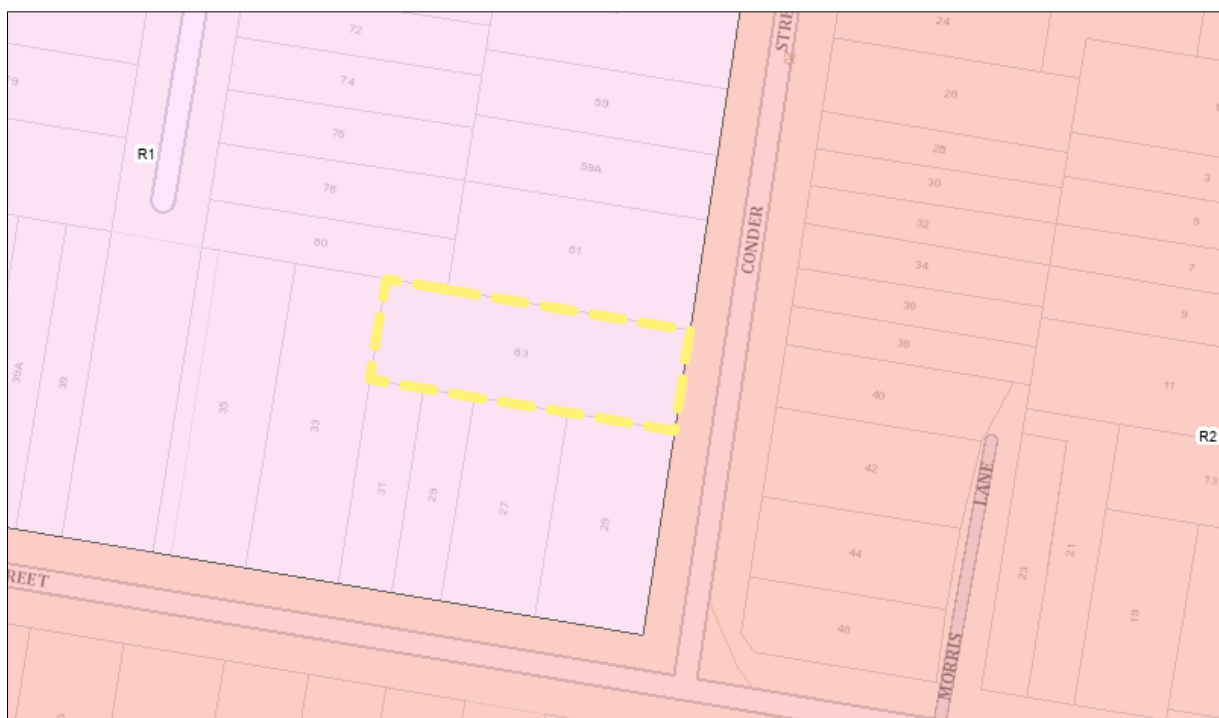


Figure 16: (above) Zoning Map showing the site (in yellow dashed lines) within the R1 General Residential zone. Source: NSW Planning Portal (2026).

Objectives of zone:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Council Officer Comment: The proposal is for a co-living housing development. Co-living housing is permissible where residential flat buildings are permitted with consent. The proposal is consistent with the objectives of the R1 zone, as it facilitates additional housing at a density appropriate for the locality.

The following table provides an assessment of the application against the relevant development standards contained within the BLEP:

Clause	Requirement / Control	Proposal	Compliance
Cl. 4.3 – Height of Buildings	Maximum height 8.5m	A maximum height of 10.813m is proposed, representing a 27.21% exceedance . A Clause 4.6 variation has been submitted addressing planning justification and consistency with the SEPP context.	No, however, the variation sought is considered acceptable (refer to Note 2 below).
Cl. 4.4 – Floor Space Ratio	Maximum FSR 0.85:1	The Housing SEPP bonus applies. The proposed FSR of 0.914:1 is compliant with the SEPP-adjusted maximum.	Yes
Cl. 4.6 – Exceptions to Development Standards	Variations to development standards must be justified	Variations are sought for height and parking. Written Clause 4.6 requests have been provided by the applicant.	Refer to Notes 1 & 2 below.
Cl. 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.	The site does not contain a heritage item and is not located in a heritage conservation area. However, the site adjoins local Heritage Item 186 (25 Nicholson Street). The applicant has submitted Heritage Impact Statement which contends that heritage impacts are mitigated through setbacks, building articulation and landscaping. No Aboriginal objects and Aboriginal places of heritage significance are identified on the site.	Refer to Note 4 below
Cl. 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 by which the water table is likely to be lowered below 1 metre Australian Height Datum.	Yes
Cl. 6.5 Design excellence in Zones R1, R3, E1 and MU1	(1) The objective of this clause is to deliver the highest standard of architectural, landscape and urban design.	The development is subject to this clause and overall is considered consistent with its requirements.	Yes, Refer to Note 3 below

	<p>(2) This clause applies to development involving the erection of a new building of at least 3 storeys, or with a height of at least 12m, on land in the following zones—</p> <p>(a) Zone R1 General Residential,</p> <p>(b) Zone R3 Medium Density Residential,</p> <p>(c) Zone E1 Local Centre,</p> <p>(d) Zone MU1 Mixed Use.</p> <p>(3) Development consent must not be granted for development to which this clause applies unless the consent authority is satisfied that the development exhibits design excellence.</p>		
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Burwood Development Control Plan 2013 (BDCP)

The Burwood Development Control Plan (BDCP) applies to the proposed development. A summary of the assessment of the application against the parts of the BDCP is shown in the table below:

Issue	Requirement / Control	Assessment	Compliance
Site Analysis	Comprehensive site analysis required	A detailed site analysis is provided within the statement of environmental effects addressing context, constraints and opportunities. The applicant has also submitted a comprehensive, well-prepared Design Report.	Yes
Streetscape & Character	Development to respond to local character	The proposed built form is well articulated through the use of various external finishes and incorporates upper-level setbacks and landscaping to reduce visual bulk and mitigate overlooking impacts.	Yes
Setbacks	ADG-based setbacks for 3-storey development	Minor variations to side setbacks are identified and assessed against privacy, overshadowing and visual bulk considerations. No unreasonable impacts are identified.	Acceptable on merit, refer to Note 3 below.
Landscaping / Deep Soil	Minimum 10% of the site area as deep soil	16.9% of deep soil is provided across the site. Proposed landscaping includes boundary buffers to enhance privacy to and from the development. Council's Tree Management Officer has reviewed the proposal and advised that the proposed landscaping represents an improvement on the existing condition and	Yes

		incorporates a sufficient level of vegetation and tree planting. The proposed landscaping is considered satisfactory.	
Parking	DCP parking rates apply unless SEPP overrides	Parking is assessed under the Housing SEPP. The shortfall is addressed via a Clause 4.6 variation and car-share provision.	No, however, the variation sought is considered acceptable (refer to Note 1 below).
Waste Management	Compliant waste storage and collection	Following the RFI, waste storage has been relocated to ground level, FOGO bins included, overflow areas removed and commercial collection confirmed.	Yes
Stormwater Management	Compliance with Council's Stormwater Management Code Pump drainage not permitted.	The original stormwater drainage design has been amended to provide gravity drainage via an easement over the adjoining property at No. 33 Nicholson Street. Council recommends the imposition of a deferred commencement condition requiring the registration of the easement prior to the consent becoming operative.	Yes, subject to a deferred commencement condition.
Amenity (Noise)	Noise impacts to be sufficiently mitigated	<p>The applicant has submitted an Acoustic Design and Construction Advice report, prepared by Acoustic Dynamics, dated 6 November 2025, which provides detailed recommendations and design advice.</p> <p>The applicant has also provided a Plan of Management (PoM) which sets out the proposed arrangements for the ongoing operation, management, and maintenance of the building.</p> <p>Council also requested that the applicant provide a detailed response to issues raised by objectors, demonstrating how potential amenity impacts arising from the communal open space will be adequately mitigated. The applicant subsequently provided a satisfactory response, which is detailed in the applicant's attached 'Response to RFI' letter.</p> <p>Acoustic impacts from communal open space have been addressed through design changes, including a 2.7m acoustic barrier along the northern side boundary, 5m high landscaping buffer and building treatment.</p> <p>The expected acoustic impacts of the proposal are acceptable, subject to conditions requiring the implementation of the recommendations of the acoustic assessment and ongoing adherence to the Plan of Management (PoM) at all times.</p>	Yes

Safety (Crime Prevention Through Environmental Design)	CPTED principles to be addressed	CPTED measures including lighting, access control and passive surveillance are incorporated and considered satisfactory.	Yes
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Note 1 – Variation of the Minimum Car Parking Development Standard

Clause 68(2)(e)(i), State Environmental Planning Policy (Housing) 2021

Clause 68(2)(e)(i) of the Housing SEPP requires 0.2 car parking spaces per private room in accessible areas. For a 20-room co-living development, a minimum of 4 on-site parking spaces is required.

The development provides only 1 (shared) car-parking space, resulting in a shortfall of 3 spaces. The applicant has submitted a written request under Clause 4.6 of the BLEP seeking a variation to the minimum car parking development standard. The applicant's case is set out below:

Compliance with the development standard is unreasonable or unnecessary in the circumstances

The applicant relies on the reasoning established in *Wehbe v Pittwater Council* [2007] NSWLEC 827, which outlines five ways that compliance with a standard may be unreasonable or unnecessary. The applicant relies primarily on the First Test.

First Test – Objectives of the Standard Achieved Despite Non-Compliance

Although clause 68(2)(e)(i) does not contain explicit objectives, its implicit aims are to ensure adequate parking for future residents, and avoid adverse traffic and parking impacts on the surrounding road network.

The applicant has submitted justification that compliance with the development standard would be unreasonable or unnecessary in the circumstances, as summarised below.

- A dedicated car-share space will adequately replace the effective demand for four standard parking spaces.
- The site is located 160m from a regular bus service, satisfying the Housing SEPP definition of an “accessible area.”
- Traffic generation is minimal, with only two additional peak-hour vehicle trips anticipated.
- Adequate bicycle and motorcycle parking is provided.
- Future residents are unlikely to rely on private vehicles due to strong public transport accessibility.

Second, Third, Fourth and Fifth Tests

The applicant does not rely on the Second, Fourth, or Fifth Tests.

The Third Test is referenced by the applicant on the basis that strict compliance would discourage low-impact co-living housing by forcing a car-dependent built form contrary to the objectives of the Housing SEPP.

Council Officer Comment: Based on the above, it is considered that the applicant has adequately demonstrated that strict compliance with the minimum car parking development standard would be unreasonable or unnecessary in the circumstances, in accordance with Clause 4.6(3)(a) of the BLEP.

Sufficient environmental planning grounds to justify the contravention of the development standard

In *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The applicant has submitted justification that there are sufficient environmental planning grounds to justify the contravention of the development standard, as summarised below:

- The car-parking shortfall will not result in adverse traffic or parking impacts.
- The site's proximity to public transport minimises private car reliance.
- Adequate provision of bicycle (25 spaces) and motorcycle spaces (4 spaces) encourages sustainable modes of transport.
- No unreasonable amenity impacts will occur.
- The variation will not inhibit the ability of adjoining land to redevelop.

Council Officer Comment: Based on the above, it is considered that the applicant has provided sufficient environmental planning grounds to justify the contravention of the development standard, in accordance with Clause 4.6(3)(b) of the BLEP. The variation is therefore supported.

Note 2 – Variation of the Maximum Building Height Development Standard

Clause 4.3, Burwood Local Environmental Plan 2012

The Burwood LEP 2012 prescribes a maximum height of 8.5m for the site. The proposal has a height of 10.813m, representing a variation of 2.313m (27.21%). The applicant has submitted a written request under Clause 4.6 of the BLEP seeking a variation to the maximum building height development standard. The applicant's case is set out below:

Compliance with the development standard is unreasonable or unnecessary in the circumstances

The applicant relies on the reasoning established in *Wehbe v Pittwater Council [2007] NSWLEC 827*, which outlines five ways that compliance with a standard may be unreasonable or unnecessary. The applicant relies primarily on the First Test.

First Test – Objectives of the Standard Achieved Despite Non-Compliance

Clause 4.3 seeks to establish maximum building heights to guide future built form and maintain appropriate character; and control adverse amenity impacts (e.g. overshadowing, privacy, visual bulk).

The applicant has submitted justification that there are sufficient environmental planning grounds to justify the contravention of the development standard, as summarised below:

- The site is located within a Low and Mid Rise (LMR) Housing area, where a maximum building height of 9.5 m applies for certain types of residential development, with potential to increase to approximately 12.35 m through the application of affordable housing bonus provisions.
- The proposed built form aligns with the anticipated future character of the locality.
- Height exceedances occur only in minor upper-level areas and rooftop services, reducing perceived bulk.
- Overshadowing and privacy impacts are comparable or superior to a compliant built form due to careful design and high-sill windows.

Second, Third, Fourth and Fifth Tests

The Second and Fourth Tests are not relied upon.

The Third Test is invoked on the basis that strict compliance would prevent utilisation of the Housing SEPP's co-living housing floor space bonus provisions (10% additional FSR), reducing the proposal's capacity to deliver diverse housing.

The Fifth Test is not relied upon.

Council Officer Comment: Based on the above, it is considered that the applicant has provided sufficient environmental planning grounds to justify the contravention of the development standard, in accordance with Clause 4.6(3)(a) of the BLEP.

Sufficient environmental planning grounds to justify the contravention of the development standard

In *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The applicant has submitted justification that there are sufficient environmental planning grounds to justify the contravention of the development standard, as summarised below:

- The variation facilitates the delivery of diverse housing in a strategically located area.
- The height exceedance enables the use of SEPP co-living housing floor space bonus provisions (10% additional FSR) and improves internal amenity and site efficiency.
- Adverse impacts on neighbouring properties are minor and acceptable.
- The development will not inhibit redevelopment of neighbouring sites.
- The proposal aligns with the emerging low and mid-rise character of the locality expected under the Housing SEPP.

Council Officer Comment: Based on the above, it is considered that the applicant has provided sufficient environmental planning grounds to justify the contravention of the development standard, in accordance with Clause 4.6(3)(b) of the BLEP. The variation is therefore supported.

Note 3 – Design excellence in Zones R1, R3, E1 and MU1 of the BLEP

Clause 6.5 was expanded to apply to development in the R1 General Residential zone after this DA was lodged, following the gazettal of the *State Environmental Planning Policy Amendment (Croydon North Masterplan Precinct) 2026* on 6 February 2026, and therefore applies to the determination of this application.

The objective of clause 6.5 of the BLEP is to deliver the highest standard of architectural, landscape and urban design. The proposal is considered to satisfy the requirements of Clause 6.5 for the reasons outlined below:

(a) Architectural, landscape and urban design quality

The amended plans demonstrate a satisfactory standard of architectural, landscape and urban design. The amended design is acceptable as the applicant has addressed issues raised by Council's Executive Urban Designer, including the provision of additional bicycle parking spaces and the relocation of the waste collection area. The proposed landscaping has been reviewed by Council's Tree Management Officer and is considered satisfactory.

(b) Public domain quality and amenity

The revised waste room location and improved ground-floor layout result in an orderly and well-presented interface to Conder Street. The development provides a satisfactory contribution to the public domain. Suitable design responses have been provided to side elevations

(c) Streetscape and heritage

While Council's Heritage Advisor raised concerns in relation to the proposal, these have been carefully considered in the assessment process. On balance, the development is considered acceptable, as the building's scale, articulation and landscape treatment demonstrate sensitivity to the surrounding heritage context and result in an acceptable streetscape outcome. This is discussed in **Note 4** below.

(d) Surrounding amenity impacts

The amended design manages noise, privacy and general amenity impacts to a satisfactory level. An acoustic barrier is provided along the northern boundary adjacent to the communal open space. Landscaping provides additional tree planting, boundary buffering and visual softening.

(e) Traffic, vehicular access, pedestrian and cycle access

Traffic and access arrangements have been assessed as satisfactory by Council's Traffic Engineer. In response to advice from Council's Executive Urban Designer, the amended plans provide for an increase in bicycle parking from 3 to 25 spaces. The revised waste management, servicing and circulation arrangements are considered acceptable, subject to the recommended conditions of consent. While Council's Executive Urban Designer expressed a preference for adaptable rooms to be located at ground level, there is no requirement under the NCC or the relevant Australian Standards for adaptable rooms to be provided exclusively at ground level. In this regard, Council's Executive Building Surveyor has reviewed the proposal against the NCC and applicable Australian Standards and raised no concerns.

(f) Pedestrian movement and access to public transport

Pedestrian movement is not adversely affected. The relocation of waste facilities within the building improves the pedestrian environment, and access to public transport is convenient considering the site location.

(h) Bulk, massing, modulation, separation, setback and height

The built form is acceptable within its local context, being within the R1 General Residential zone and indicative Low and Mid Rise Housing area. Council's Executive Urban Designer has reviewed the proposal and raised no objection to building separation or massing, despite the minor departure from numerical ADG building separation distances. Suitable landscaping, building articulation and setbacks assist in reducing visual bulk.

(i) Ecologically sustainable design and environmental impacts

The proposal incorporates satisfactory passive design and environmental performance measures. Overshadowing and reflectivity impacts are acceptable. Energy efficiency has been addressed in National Construction Code (BCA) report submitted by the applicant.

(j) Development in E1 and MU1 zones

Not applicable as the land is zoned as R1.

Conclusion

The amended plans and supporting documentation provided by the applicant demonstrate that the proposal satisfactorily addresses all relevant matters in Clause 6.5 of the BLEP. Council is satisfied that the development achieves an appropriate standard of design excellence for the site.

Note 4 – Heritage Impacts and Clause 5.10 Assessment

The proposal has been assessed under clause 5.10 of the BLEP, which requires consideration of the impact of development on the setting of nearby heritage items. While the site adjoins a local

heritage item at No. 25 Nicholson Street, it is not itself a heritage item nor within a heritage conservation area.

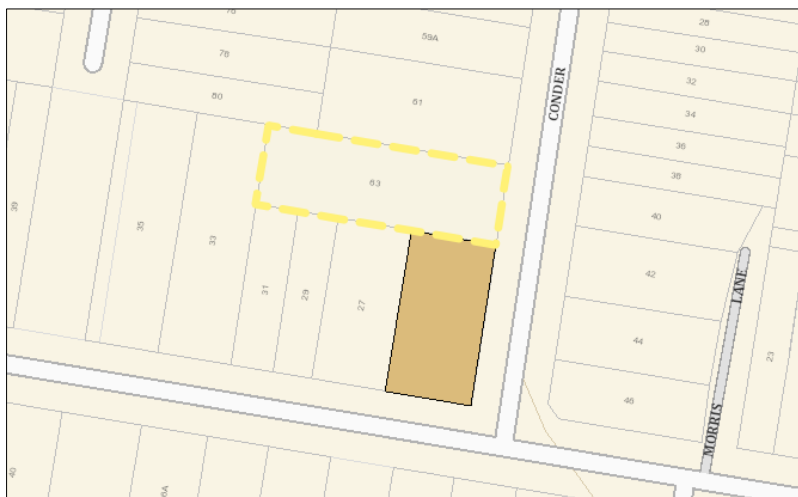


Figure 17 (above): Heritage Map from the BLEP showing the adjacent heritage item in brown. Source: NSW Planning Portal (2026).

The existing built context surrounding the heritage item includes several large post-war and contemporary dwellings that do not contribute to the character of the item, as well as non-original elements such as a modern carport between the site and heritage house and Colourbond fencing along the Conder Street frontage of the item. The proposal replaces a substantial post-war dwelling that does not contribute to heritage character and, having regard to its existing context, does not result in an unreasonable impact on the setting of the adjoining heritage item for the purposes of clause 5.10.

The variation to the 8.5m BLEP height control is supported by a clause 4.6 written request demonstrating that the objectives of the standard are achieved notwithstanding non-compliance. The site's location within an indicative LMR Housing area, close to Burwood Town Centre and public transport, reflects a strategic planning framework that anticipates increased height and density in this locality to support the utilisation of Housing SEPP provisions promoting housing supply and diversity.

Furthermore, the additional height supports the use of co-living housing floor space bonus provisions (10% additional FSR) under the Housing SEPP, with impacts relating to visual bulk, overshadowing and amenity assessed as acceptable and consistent with the transitional character of the locality. On balance, the proposal represents an appropriate contemporary infill outcome that aligns with both heritage conservation intent and broader planning objectives.

(iv) The Regulations

The Regulation underpins the day-to-day operation of the NSW planning system. The regulation guides the processes, plans, public consultation, impact assessment and decisions made by the local councils, the Department of Planning and others. The proposal is not inconsistent with the Regulations.

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality

The proposed development is permissible in the R1 General Residential zone with consent under the provisions of the BLEP. Relevant issues regarding environmental impacts of the development are discussed in detail in this report. The development is considered satisfactory in terms of environmental impacts, subject to the imposition of appropriate conditions of consent.

(c) The suitability of the site for the development

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. The site is neither flood affected or bushfire affected land. Internal referrals, submissions, and previous approvals have been considered as part of this assessment. The planning assessment outlined in this report confirms that the development is appropriate for the site, subject to the imposition of appropriate conditions of consent, including deferred commencement conditions. Furthermore, the assessing officer viewed the site and observed no evidence to suggest the site is unsuitable for the proposed development.

(d) Any submissions made in accordance with this Act or regulations

Please refer to the 'Community Consultation' section of this report below.

(e) The public interest

The proposal will provide 20 co-living rooms in an accessible location close to services and employment. Subject to appropriate conditions of consent, the development is acceptable in planning terms, capable of being carried out in a proper and orderly manner, and is considered to be in the public interest when assessed against section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Community Consultation

In accordance with the Burwood Community Participation Plan, the owners of surrounding properties were given notice of the application on **9 December 2025** with the notification period for submissions closing on **6 January 2026**. In response to the public notification of the application, **fifteen (15)** unique submissions by way of objection were received.

The submissions have been reviewed and carefully considered as part of the assessment process. The submissions identified several significant concerns regarding the DA, summarised below:

1. Building Height, Scale and Bulk

Submissions state the proposed height (10.813m) exceeds the 8.5m LEP height control by 27%, resulting in a building that is substantially larger in scale than surrounding single- and two-storey dwellings. The excessive height is viewed as incompatible with the established low-rise context and a key contributor to overshadowing, visual dominance and loss of amenity.

Council Officer Comment: The proposed height exceeds the LEP standard; however, a supported Clause 4.6 variation demonstrates the objectives of the control are achieved, noting the site's location within an indicative Low and Mid-Rise Housing Area where additional height is anticipated for residential development under State Planning Policy. The articulated building form and setbacks ensure bulk and overshadowing impacts comparable to a compliant envelope.

2. Streetscape Character and Visual Impact

Submitters consider the development inconsistent with the existing character of Conder Street, noting the three-storey form appears visually dominant in a low-density setting. Concerns also relate to the front setback design, which is heavily dominated by vehicle access rather than landscaping, and to perceived impacts on the historic character of the surrounding streets.

Council Officer Comment: While larger than some adjoining dwellings, the development reflects the emerging transition toward medium-density housing near the town centre and public transport. The amended design and landscaping provide a satisfactory streetscape outcome and contribution to the public domain.

3. Inadequate Setbacks and Heritage Impact

The proposal does not meet recommended Apartment Design Guide (ADG) setbacks, with reduced separation contributing to visual bulk, privacy impacts and overshadowing. Concern is also raised about non-compliance with the 5m heritage setback to 25 Nicholson Street and associated impacts on the heritage item's setting.

Council Officer Comment: Minor departures from numerical ADG building separation distances have been assessed and are acceptable on merit, having regard to building orientation, and the applicant's architectural design response including elevation articulation, window placement, screening and landscaping. Council's Executive Urban Designer has reviewed the proposal and raised no objection to building separation or massing, despite the minor departure from numerical ADG building separation distances. The development is considered to not unreasonably impact the heritage item's setting.

4. Overshadowing and Solar Access

Submissions contend that neighbouring properties will be unreasonably overshadowed. The extent of overshadowing is attributed to the proposed height, depth and insufficient setbacks of the building.

Council Officer Comment: Shadow diagrams confirm that surrounding properties retain reasonable sunlight for an established urban setting. Any additional overshadowing is limited and generally comparable to a compliant built form.

5. Privacy Impacts

Residents raise concerns about overlooking from upper-level windows and circulation spaces, inadequate screening, and the proximity of the southern pedestrian access path to private open space. These elements are seen as reducing privacy for adjoining dwellings and backyards.

Council Officer Comment: Potential overlooking has been mitigated through setbacks, high-sill windows and boundary landscaping. The southern access path includes sufficient separation and treatment to maintain acceptable privacy outcomes for adjoining properties.

6. Acoustic and Noise Impacts

Noise concerns relate to the siting of communal open space near sensitive boundaries, late-evening use, and operational noise from doors, intercoms, deliveries and pedestrian movement. Some submitters note the acoustic report assumptions do not reflect likely use patterns.

Council Officer Comment: Acoustic assessment and operational measures demonstrate that noise impacts can be effectively managed through design and management controls. An acoustic barrier and landscape buffering further reduce potential impacts on neighbouring properties.

7. Traffic, Parking Demand and Access

Parking provision is consistently reported as inadequate. Residents anticipate increased on-street parking demand, congestion, and safety impacts, particularly for children and pedestrians. Some submissions also note that access arrangements appear unconventional.

Council Officer Comment: A Clause 4.6 variation supports reduced parking provision, having regard to the site's accessibility, car-share model and increased bicycle parking. Traffic generation is low and access arrangements are considered acceptable without unreasonable safety or congestion impacts. Council's Traffic Engineer has raised no concerns with the proposed car parking provision and access.

8. Waste Management and Maintenance

Submitters question the adequacy of onsite waste storage and note the potential for odour, bin overflow and increased littering based on observations of similar developments. Concerns relate to both amenity and long-term maintenance.

Council Officer Comment: Waste facilities have been relocated to ground level following Council review, resolving safety and operational concerns. The amended Operational Waste Management Plan provides adequate capacity, FOGO provision and compliant collection arrangements.

9. Stormwater and Infrastructure Capacity

Residents highlight concerns about non-compliance with gravity drainage requirements, the capacity of existing sewer and stormwater infrastructure, and increased risk of flooding or surcharge for nearby properties already affected by drainage issues.

Council Officer Comment: The originally proposed pumpout drainage system has been replaced with a gravity-based solution via a proposed easement, consistent with Councils Stormwater Management Code. Drainage impacts can be adequately managed, subject to implementation of the approved design and conditions of consent.

Council recommends the imposition of a deferred commencement condition that an easement be registered over the title to the adjoining site (**Lot 2 DP 908463**) in favour of (the subject site – **Lot 1 DP 121878**) which accords with the location of the easement shown on STORMWATER CONCEPT PLAN GROUND LEVEL, PREPARED BY TELFORD CIVIL, PROJECT NO. 25133, DWG. NO. 103, ISSUE B, DATED 25.03.2026.

10. Safety and Security

Concerns include the potential for unauthorised access to neighbouring yards via the southern pathway, reduced defensible space, and general safety issues associated with increased pedestrian activity and higher-turnover accommodation.

Council Officer Comment: The development incorporates appropriate passive design, access control and on-site management measures to address safety and security. Pedestrian access arrangements do not result in unacceptable risk to adjoining properties.

11. Social Impact and Suitability of Co-Living Use

Submissions suggest that a 20-room co-living development is inconsistent with the area's low-density, family-oriented character. Concerns relate to transience, noise, and loss of community cohesion.

Council Officer Comment: Co-living housing is permissible in the R1 zone and aligns with Housing SEPP 2021 objectives to deliver diverse housing in accessible locations. The scale and ongoing plan of management framework are considered satisfactory.

12. Cumulative Overdevelopment and Infrastructure Strain

Some residents reference broader concerns about increasing density in Burwood, noting cumulative pressure on traffic, parking, footpaths and road conditions. They raise that further intensification should not occur without corresponding infrastructure upgrades.

Council Officer Comment: While concerns regarding cumulative development are noted, the proposal aligns with strategic planning directions for growth and housing diversity in well-serviced locations. Infrastructure and amenity impacts have been assessed and are considered acceptable.

13. Property Values

Several submissions indicate that the scale and nature of the development may detract from neighbourhood desirability and negatively affect surrounding property values.

Council Officer Comment: Potential impacts on property values are noted but are not a material planning consideration under the *Environmental Planning and Assessment Act 1979*.

Referrals

The proposal was referred to the following internal Council officers for comment:

- Senior Development Engineer - no objections, subject to deferred commencement condition.
- Senior Heritage Planner – refer to **Note 4**.

- Tree Management Officer – no objections, subject to conditions.
- Executive Urban Designer – issues raised have been satisfactorily addressed by amended plans.
- Senior Environmental Health Officer – no objections, subject to conditions.
- Waste Manager – issues raised have been satisfactorily addressed by amended plans, subject to conditions.
- Executive Building Surveyor - no objections, subject to conditions.
- Traffic Engineer – no objections received, subject to conditions.
- The proposal was not required to be externally referred.

Deferred Commencement Consent - Conditions

Registration of Drainage Easement

Council recommends the imposition of a deferred commencement condition that an easement be registered over the title to the adjoining site (**Lot 2 DP 908463**) in favour of (the subject site – **Lot 1 DP 121878**) which accords with the location of the easement shown on STORMWATER CONCEPT PLAN GROUND LEVEL, PREPARED BY TELFORD CIVIL, PROJECT NO. 25133, DWG. NO. 103, ISSUE B, DATED 25.03.2026.

Design Changes – Landscape Plans

Council recommends the imposition of a deferred commencement condition requiring the submission of amended plans and documents for Council's approval which provide the following plan amendments:

- The approved landscape plans shall be amended to ensure consistency with approved architectural plans.

Conclusion

The proposed development is consistent with the relevant matters for consideration under clause 4.15 of the *Environmental Planning & Assessment Act 1979*, as detailed above in this report. Therefore, the proposal is recommended for approval (subject to conditions).

Recommendation(s)

That development application no. DA.2025.88, which proposes the demolition of existing structures and construction of a three-storey co-living housing development comprising 20 self-contained co-living rooms, communal indoor and outdoor spaces, basement-level amenities, and associated landscaping and stormwater drainage works, at 63 Conder Street, Burwood, be approved subject to the conditions of approval (including deferred commencement conditions) contained in **Attachment 1**.

Attachments

- 1⇒ Recommended Conditions of Approval (*Excluded from agenda*)
- 2⇒ Amended Architectural Plans and Landscape Plans (*Excluded from agenda*)
- 3⇒ Design Report and 3D Renders (*Excluded from agenda*)
- 4⇒ Statement of Environmental Effects (*Excluded from agenda*)
- 5⇒ Plan of Management (*Excluded from agenda*)
- 6⇒ Heritage Impact Statement (*Excluded from agenda*)
- 7⇒ Clause 4.6 Request - Height of Buildings (*Excluded from agenda*)
- 8⇒ Clause 4.6 Request - Car Parking (*Excluded from agenda*)
- 9⇒ Response Letter to Council RFI (*Excluded from agenda*)

(Item GB3/26) Heritage Delegations Update

File No: 26/14852

Report by Manager City Development; Senior Assessment Planner

Summary

This report seeks to continue delegations that allow Council staff to determine minor works to locally listed heritage items (and certain tree works on heritage-listed sites), rather than requiring determination by the Local Planning Panel.

This will support timely assessment of routine applications (such as homeowner works and trading hours), reduce the number of minor matters reported to the LPP, shorten waiting times for applicants and owners, and allow the LPP to focus on more complex and contentious applications.

Background

Since the introduction of Local Planning Panels under the *Environmental Planning and Assessment Act 1979* (the EPA Act), the NSW Minister for Planning has issued a number of directions and orders under the EPA Act.

Relevant to this report is the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents* dated 6 March 2024 (the Direction).

The Direction identifies (at a minimum) the types of development applications and modification applications that must be determined by Council's Local Planning Panel (LPP). A copy of the Direction is annexed at "**Attachment 1**".

Relevant to this report is the *Environmental Planning and Assessment (Statement of Expectations) Order 2024* dated 1 July 2024 (the Order). The purpose of this Order is to set expectations for councils in relation to their performance of a range of planning and development functions under the *Environmental Planning and Assessment Act 1979*. If a council is found not to be meeting these expectations, the Minister can take these matters into consideration when determining whether it is appropriate to appoint a planning administrator or a Sydney district or regional planning panel to exercise a council's functions.

The Order requires Burwood Council to determine applications for which it is the consent authority (including applications determined by the LPP) as soon as practicable and within an average of 115 days. A copy of the Order is annexed at "**Attachment 2**".

Previous delegations to staff

At its meeting on 14 May 2024, the LPP considered two reports seeking:

- a) Delegation of Functions from the LPP to Council Officers in Planning Appeals, and
- b) Delegation of Functions to the LPP from the General Manager.

These reports sought to ensure appeals could be dealt with efficiently and to enable additional applications to be considered and determined by the LPP when referred by the Director City Strategy or the Manager City Development. The recommendation was supported and the new delegations were adopted. Copies of these reports are annexed at "**Attachment 3**".

At its meeting on 29 October 2024, the LPP considered a report seeking:

- a) Delegation of Functions from LPP to Council Officers in relation to minor works to heritage items.

The intent of this report was to enable minor works to heritage items to be addressed efficiently and in a timely manner. A copy of this report is annexed at “**Attachment 4**”. The recommendation was supported and the new delegations were adopted for a 12-month period.

Review of use of the delegations

Since the introduction of the heritage delegations on 29 October 2024, they have been used for six applications, ranging from minor alterations and additions to dwellings to trading hours.

The delegations have reduced assessment timeframes from around 200 days to around 61 days. Burwood Council is recognised as one of the top three metropolitan councils for determination timeframes, benefiting applicants and the wider community.

Proposed Changes

To improve efficiency, reduce delays for applicants and maintain Council’s strong performance, it is recommended that the current delegations be made permanent. Further refinement is also recommended to provide clarity for applicants and Council staff—specifically, to confirm that references to “heritage sites” mean heritage-listed sites, including conservation areas and individual items.

Current wording

1. Minor alterations and additions to a heritage item, being defined to include:

- a) Maintains at least 90% of the heritage fabric; or
- b) Does not adversely affect the heritage significance of the heritage item; and
- c) Is supported in writing by Council’s appointed heritage advisor/expert.

2. Works to trees that are

- a) Heritage listed; or
- b) On a heritage site;

and that:

1. Affect less than (or equal to) 10% of the tree canopy; and
2. Will not adversely impact upon the health of the tree; and
3. Will not adversely impact upon the heritage significance of the tree or place; and
4. Is supported in writing by Council’s appointed heritage advisor/expert.

Proposed wording

1. Minor alterations and additions to a heritage item, being defined to include:

1. Maintains at least 90% of the heritage fabric; or
2. Does not adversely affect the heritage significance of the heritage item; and
3. Is supported in writing by Council’s appointed heritage advisor/expert.

2. Works to trees that are

1. Heritage listed; or
2. On a heritage **listed** site **including conservation areas and individual items**;

and that:

1. Affect less than (or equal to) 10% of the tree canopy; and
2. Will not adversely impact upon the health of the tree; and
3. Will not adversely impact upon the heritage significance of the tree or place; and
4. Is supported in writing by Council’s appointed heritage advisor/expert.

Existing caveats to be maintained

The existing caveats would continue to apply. In particular, this delegation would only apply where the development application is not required to be determined by the LPP for another reason. For example, where the only reason an application would otherwise go to the LPP is because it relates

to a locally listed heritage item, the delegation would apply. However, if the application also meets another LPP threshold (for example, 10 objections, or the land is Council-owned), it would still be reported to the LPP for determination.

If a Council officer is uncertain whether an application falls within the delegation (for example, where assessment involves subjective considerations such as “adverse impact”), an LPP briefing may be arranged to confirm the application is within the intended scope of the delegation.

Financial Implications

There are no additional financial implications. Assessment costs are met within Council’s existing budget.

Conclusion

Under the EPA Act, the LPP is required to determine applications for locally listed heritage items. It is appropriate for the LPP to continue to delegate its functions under section 2.20(8) of the EPA Act to the General Manager, Director City Strategy and Manager City Development.

Enabling Council staff to determine minor applications for locally listed heritage items to date has resulted in:

- Processing more routine applications, such as homeowner applications and trading hours, more quickly;
- Reducing the volume of minor applications being reported to the LPP;
- Shortening waiting times for applicants and owners; and
- Allowing the LPP to focus on more complex and controversial matters.

Recommendation(s)

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Burwood Local Planning Panel resolves to continue to delegate its determining functions on the following development types to the General Manager, Director City Strategy and Manager City Development:

1. Minor alterations and additions to a heritage item, being defined to include:

1. Maintains at least 90% of the heritage fabric; or
2. Does not adversely affect the heritage significance of the heritage item; and
3. Is supported in writing by Council’s appointed heritage advisor/expert.

2. Works to trees that are

1. Heritage listed; or
2. On a heritage listed site including conservation areas and individual items;

and that:

1. Affect less than (or equal to) 10% of the tree canopy; and
2. Will not adversely impact upon the health of the tree; and
3. Will not adversely impact upon the heritage significance of the tree or place; and
4. Is supported in writing by Council’s appointed heritage advisor/expert.

Attachments

- 1⇒ LPP Direction 6 March 2024 (*Excluded from agenda*)
- 2⇒ EPAA Statement of expectations Order 2024 (*Excluded from agenda*)
- 3⇒ LPP Agenda 14 May 2024 (*Excluded from agenda*)
- 4⇒ LPP agenda 29 September 2024 (*Excluded from agenda*)