
Report of Independent Hearing and Assessment Panel

In Respect of a Proposal by Kavlyn Pty Ltd

**For The Concept Plan for a Residential Development at
7-17 Elsie Street & 45-49 George Street, Burwood**

16 September 2008

INTRODUCTION

The Minister declared the project a Major Project under Part 3A of the *EP&A Act 1979* on 9 July 2007. On 12 August 2007 the proponent was issued with the Director Generals Requirements and a Concept Plan was submitted on 25 January 2008. The proposal was placed on exhibition between 24 January 2008 and 22 February 2008.

During the exhibition period some 26 submissions were received from the community raising issues which included:

- Height;
- Bulk and Scale;
- Overdevelopment;
- Heritage Impacts;
- Streetscape/Character;
- Overshadowing;
- Privacy;
- Traffic;
- Noise;
- Inappropriate to consider proposal against DLEP;
- Wind impacts; and
- Lack of open space.

Further a petition was received with 200 signatures addressing many of the above issues.

Following the exhibition of the project the Minister directed the appointment of an Independent Hearing and Assessment Panel (IHAP) to assess and make recommendation on the project, under section 75G of the *EP&A Act 1979*.

APPOINTMENT OF IHAP

The IHAP was appointed by the Minister, in respect of the above mentioned proposal, by direction dated 12 May 2008 for the following purpose:-

“1. Consider and advise on the following impacts of the proposal:

- a) Built form and urban design;*
- b) Appropriateness of building heights and envelopes;*
- c) Heritage Impacts;*
- d) Residential amenity (on and off site);*
- e) Relevant issues raised in submissions;*
- f) Adequacy of the proponents response to the issues raised in submissions*

2. Identify and comment on any other related significant issues raised in submissions or related to the proposal.”

The Panel met with the proponent on 22 May 2008 to be briefed on the proposal as submitted. At the meeting the proponent indicated that amended plans were to be provided which addressed issues previously raised by the Department of Planning such as, reduced height and building separation.

The Panel noted the information and indicated that amended plans should not be submitted until after the Public Hearing, which was scheduled for 30 May 2008.

PUBLIC HEARING

The Public Hearing was held on 30 May 2008 at the Commissioners of Inquiry Offices in George Street Sydney from 2.00pm. **Attachment 1** identifies the parties present. Four (4) parties made representations and raised the following issues:-

Mr Ian Dencker and Mr Brian Olsen for Burwood Council:

- Concern was raised regarding the building separation above 24m;
- Concern was raised regarding the number of pedestrian crossings indicated which would require RTA approval;
- It was considered that the traffic volumes indicated in the proponents EA, with a 1% growth rate was unreasonable and that a 4% growth rate was more appropriate. As a consequence there would likely be a greater impact on intersections than was stated.
- Concern was raised regarding the lack of commitments in respect of S94 contributions or the like. Council sought monies consistent with their current S94 Plan. The Council sought leave to submit details of their expected contribution. Details were handed to the Panel at the meeting. They included suggested conditions of consent (attached as **Attachment 2**). The s94 contribution (at Condition 5) is noted to be \$4,902,891.02. It includes \$2,166,000.00 being a 'forced shortfall' of public parking and \$102,558.16 for road and traffic facilities.

Ms Lesley Furneaux – Cook from the Burwood Voice:

- Concern was raised that this proposal was being considered in advance of the Inner-West Sub-Regional Strategy and the Burwood Town Centre LEP 2008. Accordingly there was no planning strategy framework against which to consider the proposal;
- Considered that the Heritage Impact Statement had not properly considered the visual assessment and impact of the proposal from other heritage items;
- Concern that the proposal provided the lowest amount of open space at 1.2per/ha and that the functionality of that space was poor in that it overshadowed itself;
- Concern that the Wind Impact report was not definitive regarding the future impacts of the proposal;

Ms Katherine Ballard:

- Identified that streetscape is very important with any new development.
- Concern was raised regarding the appearance of the proposal – unattractive and no softness.
- Considered that the proposal should respect the adjoining building lines
- Concern about change from commercial to residential and raised objection to that type of development occurring.
- Concern about the process i.e. not getting honest and up front information about what is happening. Concern that it has not been an enjoyable experience.
- Concern that there should be more respect for streets and suburbs
- Commented that the footpath needs to be improved.

Ms Susan McGrath-Champ:

- Commented that a petition was gathered in 3 weeks. Responses strongly represented north and western parts of the area. Petitioners responded individually and personally. Petitioners indicated they were in objection to high rise development in Burwood.
- Concern that there was a lack of broader planning framework.
- Commented that the process was unusual.
- EA – silent on the houses to the west.
- Concern that the proposal does not blend in with the existing environment, especially concerned regarding the proposed 7 storeys and above.

- Concern about Tulluna Estate maintaining its presence.
- Concern regarding potential wind impacts possibly resulting in a wind swept and desolate terrain.
- Concern regarding the height and bulk of the proposal and that it would be out of context.
- Concern regarding traffic impacts:
 - 2001 traffic volumes have increased
 - Different circumstances should be considered
 - Long stay carparking will use public carpark
 - Public space of 209 spaces currently open
 - Proposal should provide for parking
- Generally the footpath surrounding site was too narrow

Concern regarding the reflectivity due to the western sun and the materials used.

FURTHER INFORMATION AND AMENDMENTS SOUGHT

Following the Public hearing and in response to the Panel's review of the project and issues raised at the hearing, a letter was forwarded to the Department of Planning on 18 June 2008 seeking clarification of the nature of the project inasmuch as the DGRs describe a Project Application for the whole property but the EA refers to a Concept Plan (see **Attachment 3**). Further, a letter was forwarded to the proponent on 19 June 2008 (see **Attachment 3**) seeking clarification and further amendment to the proposal (see **Attachment 3**).

Subsequent to this request for information, the Panel met with the proponent on 25 July 2008 to be briefed on their progress. Amended plans were received from the proponent on 6 August 2008 and the Panel was briefed by the proponent in respect of these plans on 15 August 2008. In so doing further information in relation to the calculation of GFA and FSR and its relationship to the existing approved and built development as well as the calculation of car parking and the provision of the public car park was sought by letter dated 13 August 2008 (See **Attachment 3**).

This report relates to plans and details provided on 6 August 2008 and supplemented by additional information received on 19 August 2008. The documents relied upon are identified at **Attachment 4**.

ASSESSMENT OF IMPACT

Consideration of the project follows the headings established in the Minister's Direction under Section 75G of the Act.

Built Form and Urban Design

The project relates only to a concept for that part of the site where upon the residential towers are to be built. In this regard, and following advice from the Department, that part of the development already existing on the subject site is not a matter for consideration. Unfortunately, this has affected the Panel's ability to address certain built form and urban design issues inasmuch as they relate to the existing building as built and as subsequently amended by the Council through a series of s96 modifications.

Accordingly, the existing 5 level basement, including the public car park, the form and function of the existing 3 storey development and the location of the lift cores within the building are not able to be addressed by the Panel *"excepting those matters that relate directly or indirectly to the proposed three residential towers"*.

This is unfortunate because it limits the ability to adjust the proposed built form and urban design impacts where it is considered that the existing 3 storey podium relates poorly to the existing heritage terraces on George Street and the streetscape of Victoria Street. It has also resulted in poorly designed 'left over space' to the west of the site.

Given the above constraints, amendments to the existing building which relate directly or indirectly to the proposed will be suggested.

Tower setbacks to site boundaries

West – The proposed tower A is setback approx 11.4m. Tower B varies from 18.25m-20.68m. Tower C is setback 12.645m and 11.4m.

In the Residential Flat Design Code (RFDC) the Rule of Thumb for building separation at this height is 24m. A reasonable expectation across a boundary would be to share the separation at 12m.

To the west of Tower A there is unlikely to be a development due to the existence of heritage properties and thus the setback is considered acceptable.

To the west of Tower B is acceptable because it exceeds 12m.

Tower C is not acceptable and where the setback is 11.4m it should be increased to a min of 12m.

South/East/North – Towers A, B and C are setback between nil – 2840mm from these boundary alignments. This is contrary to proposed controls in the DDCP which would require a 6m setback. To conform to the 6m setback the towers would need to be located either closer to the residential properties to the west or closer to each other. Neither is acceptable.

Alternatively a single building form setback 6m from Elsie, George and Victoria Street and maintaining the appropriate western setback of 12m would be required. This is not dissimilar to the form of the original approved commercial building on the site at 5/7 storeys.

This form of residential development would be significantly higher than a commercial building because the depth would be significantly less. This would result in a long visual façade west to east and undesirable visual impact and unrelieved mass. Furthermore, it would not suit the location of the existing built lift cores and therefore would be considered impractical.

Separation of tower elements

Towers A and B are separated between 10.235m-14.660m. Towers B and C are separated by approx. 15m-21m. The RFDC rule of thumb for buildings of this height would require a separation of 24m.

The spatial relationship of buildings is an important determinant of urban form. Building separation relates to urban form because it has to do with the legible scale of an area. Buildings which are too close together also create amenity problems inside the building, for the space between and for neighbouring buildings. These problems include lack of visual and acoustic privacy, loss of daylight access to apartments and to provide shared open spaces.

Building separation controls should be set in conjunction with height controls and with controls for private/communal open space and deep soil zones. They are measured in metres, balcony to balcony or external wall to external wall. The relevant objectives from the RFDC are as follows:

Objectives

- *To ensure that new development is scaled to support the desired area character with appropriate massing and spaces between buildings.*
- *To provide visual and acoustic privacy for existing and new residents.*
- *To control overshadowing of adjacent properties and private or shared open space.*
- *To allow for the provision of open space with appropriate size and proportion for recreational activities for building occupants.*
- *To provide deep soil zones for stormwater management and tree planting, where contextual and site conditions allow.*

In addressing the issues raised by the Panel the proponent has sought to address concerns regarding privacy between buildings through detailed design components such as off set windows and balconies and fixed and moveable louvres. These amendments, while considered reasonable in terms of visual privacy, do not address the objectives of the Rule of Thumb relating to massing, spaces between buildings, acoustic privacy, size and proportion of open space on the podium and visual impact and urban form more generally.

Building depth

The Rule of Thumb of the Residential Flat Design Code (RFDC) establishes a max building depth of 18m. Tower A in the N-S axis is 26m-27m (excl balconies). In the E-W axis 26m-31m.

Tower B in the N-S axis is 28m-34m and the E-W axis 20m-21m.

Tower C in the N-S axis is 23m-27m and in the E-W axis 28m-30m.

The objectives from the RFDC relating to building depth are as follows:

Objectives

- *To ensure that the bulk of the development is in scale with the existing or desired future context.*
- *To provide adequate amenity for building occupants in terms of sun access and natural ventilation.*
- *To provide for dual aspect apartments.*

In addressing the issues raised by the Panel the building depth aspects of the Rule of Thumb have not been addressed other than by suggestions of the inclusion of ceiling fans to address through ventilation. This has resulted in a more bulky building when viewed from the public domain and surrounding lower scale residential properties. This is considered undesirable.

Visual impact

When considering the view studies, the deep bulky buildings and the narrow separation between them means the combined effect of the three buildings is greater than would otherwise be anticipated by the Rule of Thumb in the RFDC.

Summary

In relation to built form and urban design a better form of development would be 3 towers, narrower in width and more widely spaced. The dimensions of building depth and building separation should at least align with those recommended in the RFDC. This would improve the visual impact, building separation and building depth when viewed from the private and public domain.

Appropriateness of Building heights

The amended proposal dated August 2008 provided buildings with a height of:-

- Building A – approx 57.2m
- Building B – approx 51.25m
- Building C – approx 42.25m

The original proposal as submitted to the Panel had heights of:-

- Building A – approx 56.8m
- Building B – approx 40.8m
- Building C – approx 52.8m

The relevant controls for consideration in respect of the appropriateness of height are:-

- Draft Burwood Town Centre LEP 2007 (BTCLEP 2007) which is addressed as a matter for consideration in the DGRs, and
- Draft Town Centre LEP 2008 (DBTCLEP 2008) which was adopted by the Burwood Town Centre Planning Panel on 17 April 2008 and which received a S65 Certificate from the Department of Planning on 18 July 2008.

Under the instrument the relevant controls are:

- DBTCLEP 2007 – max height – 62.25m
- DBTCLEP 2008 – max height – 60.00m

In relation to the likely height controls to be applied to the site (and the town centre as a whole), the proposal is significantly lower in height than could be developed under either draft LEP.

Heights, per se, are considered acceptable. The variation of height between Towers A, B and C is also acceptable and provides a better urban design outcome.

Heritage Impacts

The initial HIS accompanying the project did not satisfactorily address the visual impact of the proposal having regard to heritage items other than the immediately adjoining terraces. Accordingly, a further report was sought and this was provided on 6 August 2008. It concludes that *“the existing impact of the podium and the poorly sited substation already have a substantial negative impact on Lochiel Terraces and that this impact is greater than the proposed towers”*.

The Panel agrees with this conclusion and notes that the scale of the development is one anticipated by the proposed town centre controls.

Residential Amenity (on and off site)

The following table considers the compliance of the development having regard to SEPP 65 and the Rules of Thumb of the RFDC.

Table: State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (Principles)

Principle	Design Quality	Proposal	Compliance
Principle 1	General approach <ul style="list-style-type: none"> Good design is a creative process which, when applied to towns and cities, results in the development of great urban places; buildings, streets, squares and parks. 	The proposal widens the footpath on Victoria Street which is a minor improvement to the local area.	Satisfactory
	<ul style="list-style-type: none"> Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas. 	The proposal as approved does not respond to its locality.	NO
	<ul style="list-style-type: none"> Good design serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges. 	Innovation is not present.	Satisfactory
	<ul style="list-style-type: none"> These design quality principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions. 		Satisfactory
Principle 2	Context <ul style="list-style-type: none"> Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. 	The tower forms are derived from the existing core locations and the programmatic requirements of apartments, They step up in height away from Burwood Park.	NO
	<ul style="list-style-type: none"> Responding to context involves identifying the desirable elements of a location's current character or in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area. 	The proposal exceeds the future floor space requirements of the area and does not meet the amenity requirements for apartment buildings.	NO
Principle 3	Scale <ul style="list-style-type: none"> Good design provides an appropriate scale in terms of bulk and height that suits the scale of the street and the surrounding buildings. 	The heights are appropriate but the depth and lack of separation result in inappropriate bulk.	NO
	<ul style="list-style-type: none"> Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area. 		NO
Principle 4	Built form <ul style="list-style-type: none"> Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and manipulation of building's elements. 	The building alignments have poor separation and the proportion is too squat. The type is appropriate and the manipulation of the building elements is appropriate.	NO

Principle	Design Quality	Proposal	Compliance
	<ul style="list-style-type: none"> Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook. 	N/A	N/A
Principle 5	Density <ul style="list-style-type: none"> Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents). 	The existing and future floor space ratio for the site is exceeded.	NO
	<ul style="list-style-type: none"> Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality. 		NO
Principle 6	Aesthetics <ul style="list-style-type: none"> Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should also relate to the context, particularly responding to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired futures character of the area. 	The composition of building elements, textures, materials and colours reflect the use, internal design and structure of the development.	YES
Principle 7	Amenity <ul style="list-style-type: none"> Good design provides amenity through the physical, spatial and environmental quality of a development. 		NO
	<ul style="list-style-type: none"> Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts, outlook and ease of access for all age groups and degrees of mobility. 	Amenity is compromised due to excessive building depth and poor building separation.	NO
Principle 8	Resource, energy and water efficiency <ul style="list-style-type: none"> Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. 		YES
	<ul style="list-style-type: none"> Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water. 		YES

Principle	Design Quality	Proposal	Compliance
Principle 9	<i>Social dimensions</i> <ul style="list-style-type: none"> Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. 		Satisfactory
	<ul style="list-style-type: none"> New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood, or in the case of precincts undergoing transition, provide for the desired future community. 	There is a limited mix of housing provided.	NO
Principle 10	<i>Safety and security</i> <ul style="list-style-type: none"> Good design optimises safety and security, both internal to the development and for the public domain. 	Improvements to ground level safety is provided.	YES
	<ul style="list-style-type: none"> This is achieved by maximising overlooking of public and communal spaces whilst maintaining internal privacy, avoiding dark and non visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private open space. 	Overlooking of public and communal spaces whilst maintaining internal privacy is achieved. Dark and non visible areas are avoided. Clear, safe access points are provided. Quality public spaces that cater for desired recreational uses are not provided. Clear definition between public and private open space is provided.	YES

State Environmental Planning Policy No 65 - Residential Flat Design Code – Rules of Thumb

Principle	Design Quality	Proposal	Compliance
Building depth	<ul style="list-style-type: none"> In general, an apartment building depth of 10-18 metres is appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory daylighting and natural ventilation are to be achieved. 	The proposal exceeds the 18 metre building depth. In some apartments this results in poor daylighting and natural ventilation.	NO
Building separation	<ul style="list-style-type: none"> For buildings nine storeys and above (over 25 metres): <ul style="list-style-type: none"> 24 metres between habitable rooms/balconies 18 metres between habitable rooms/balconies and non-habitable rooms 12 metres between non-habitable rooms 	Building separation is less than the required 24 metres. Buildings A and C are less than 12 metres from the boundary, this may require future buildings to be further setback to ensure 24 metres separation.	NO
Deep soil zones	<ul style="list-style-type: none"> A minimum of 25 per cent of the open space area of a site should be a deep soil zone; more is desirable. 	More than 25 per cent of the open space area of a site is a deep soil zone	YES

Principle	Design Quality	Proposal	Compliance
Open space	<ul style="list-style-type: none"> The area of communal open space required should generally be at least between 25 - 30 percent of the site area. The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m²; the minimum preferred dimension in one direction is 4 metres. 	<p>The area of communal open space required is be at least 25 - 30 percent of the site area.</p> <p>The area of private open space for each apartment at the podium is at least is 25m² for each apartment and the minimum dimension in one direction is 4 metres.</p>	YES
Safety	<ul style="list-style-type: none"> Carry out a formal crime risk assessment for all residential development of more than 20 new dwellings. 	The CPTED report is inadequate. However measures are proposed to reduce crime risk.	YES
Pedestrian access	<ul style="list-style-type: none"> Follow the accessibility standards set out in Australian Standard AS 1428 as a minimum. Provide barrier free access to at least 20 percent of dwellings in the development. 	Barrier free access is available to a majority of apartments.	YES
Vehicle access	<ul style="list-style-type: none"> Generally limit the width of driveways to a maximum of 6 metres. Locate vehicle entries away from main pedestrian entries and on secondary frontages. 	<p>The width of driveways is more than of 6 metres as the car park is shared with other uses.</p> <p>The vehicle entries are located away from main pedestrian entries and on secondary frontages.</p>	YES
Apartment layout	<ul style="list-style-type: none"> Single-aspect apartments should be limited in depth to 8 metres from a window. The back of a kitchen should be no more than 8 metres from a window. The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts. Buildings not meeting the minimum standards listed above, must demonstrate how satisfactory daylighting and natural ventilation can be achieved, particularly in relation to habitable rooms. As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability: 1 bedroom apartment - 50m² 2 bedroom apartment - 70m² 3 bedroom apartment - 95m² 	<p>Single-aspect apartments are greater in depth to 8 metres from a window.</p> <p>Generally the back of a kitchen is more than 8 metres from a window.</p> <p>N/A.</p> <p>Satisfactory daylighting and natural ventilation is not achieved.</p> <p>These areas are generally exceeded.</p>	<p>NO</p> <p>NO</p> <p>NO</p>

Principle	Design Quality	Proposal	Compliance
Balconies	<ul style="list-style-type: none"> Provide primary balconies for all apartments with a minimum depth of 2 metres. Development which seeks to vary from the minimum standards must demonstrate that negative impact from the context-noise, wind-can not be satisfactorily mitigated with design solutions. Require scale plans of balcony with furniture layout to confirm adequate, useable space when an alternate balcony depth is proposed. 	Balconies for all apartments have a minimum depth of 2 metres.	YES
Ceiling heights	<p>The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.</p> <ul style="list-style-type: none"> In mixed use buildings: 3.3 metre minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use In other residential floors in mixed use buildings In general, 2.7 metre minimum for all habitable rooms on all floors, 2.4 metres is the preferred minimum for all non-habitable rooms, however 2.25 metres is permitted For two storeys units, 2.4 metres minimum for second storey if 50 percent or more of the apartments has a 2.7 metres minimum ceiling heights For two-storey units with a two storey void space, 2.4 metre minimum ceiling heights Developments which seek to vary the recommended ceiling heights must demonstrate that apartment will receive satisfactory daylight. 	A ceiling height of 2.7 metres is shown with a 3 metre floor to floor height.	YES
Ground floor apartments	<ul style="list-style-type: none"> Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site. Provide ground floor apartments with access to private open space, preferably as a terrace or garden. 	N/A	N/A

Principle	Design Quality	Proposal	Compliance
Internal circulation	<ul style="list-style-type: none"> In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to 8. (Exceptions may be allowed for adaptive reuse buildings, where developments can demonstrate the achievement of the desired streetscape character and entry response, where development can demonstrate a high level of amenity for common lobbies, corridors and units.) 	There are generally 7 units/ core.	YES
Storage	<ul style="list-style-type: none"> In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> studio apartments - 6m³ one-bedroom apartments - 6m³ two-bedroom apartments - 8m³ three plus bedroom apartments - 10m³ 	Storage volumes are achieved.	YES
Daylight access	<ul style="list-style-type: none"> Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of 3 hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas, a minimum of 2 hours may be acceptable. Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10 percent of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standard and how energy efficiency is addressed. 	<p>133 of the 209 (less than 70%) apartments living rooms and private open spaces receive a minimum of 2 hours direct sunlight between 9 am and 3 pm in mid winter.</p> <p>202 of the 209 apartments living rooms and private open spaces receive a minimum of 2 hours direct sunlight between 8 am and 3 pm in mid winter.</p> <p>No argument is given to why the additional morning hour should be included.</p>	YES/NO
Natural ventilation	<ul style="list-style-type: none"> Building depths, which support natural ventilation typically, range from 10 – 18 metres. 60 percent of residential units should be naturally cross ventilated. 25 percent of kitchens with in a development should have access to natural ventilation. 	<p>Building depths, are greater than 18 metres.</p> <p>66 percent of residential units are naturally cross ventilated.</p> <p>Less than 25 percent of kitchens with have access to natural ventilation.</p>	<p>NO</p> <p>YES</p> <p>NO</p>
Waste management	<ul style="list-style-type: none"> Supply waste management plans as part of the development application submission as per the NSW Waste Board. 	Not supplied	NO
Water conservation	<ul style="list-style-type: none"> Rainwater is not to be collected from roofs coated with lead – or bitumen-based paints, or from asbestos-cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris. 	N/A	N/A

The above table suggests that as a consequence of exceeding the FSR and the consequent exceeding of building depth and lack of building separation, caused in part by the design derivation coming from the location of the existing lift cores, the proposal results in a lower amenity, both on and off the site, than would be anticipated under the relevant controls.

In respect of overshadowing, the proponent suggest:-

"that on the 22 June while the shadows will be cast longer in the am at 9am over the front yard of the property at Gloucester Ave and George St, and there is a minor increase of overshadowing at the 10am interval on the rear yards of properties to the west, being 2 and 4 Gloucester Ave, overall the shadow impact of the development is similar to that cast by the existing approved development"

The Panel agrees with the above statement and is satisfied with the extent of overshadowing proposed.

Relevant issues raised in submissions

Those issues not addressed by the above headings are considered below:

Wind tunnel – a further wind study was sought from the proponent following the Public Hearing. The results of the study, received on 19 August 2008 prepared by Wind Tech indicate that the wind impact is acceptable for their intended use. Several recommendations are made as follows:

- The addition of two densely foliating trees (capable of growing to approximately 6m tall with a 4m wide canopy) at ground level near the north-western corner of the site.
- The addition of several densely foliating trees (capable of growing to approximately 6m tall with a 4m wide canopy) at ground level on the western edge of site, within the private recreation area.
- The addition of several densely foliating trees (capable of growing to approximately 5m tall with a 4m wide canopy) on the Level 3 podium as indicated in Figure 7b.
- Impermeable full height screens or impermeable operable louvres on the southern edge of the south facing balconies of the southern tower.

These recommendations are considered acceptable and should be incorporated as conditions of any consent. However, these may be contrary to the requirements of the BASIX certificate which says *"that the applicant must plant indigenous low water use species of vegetation...."*

Prior to making any determination in this matter this potential conflict needs to be addressed and vegetation clearly shown on the landscape drawings.

Traffic – Concern was raised regarding the traffic volumes and the efficacy of the data in the reports. The Panel sought further traffic analysis in this regard on the basis that existing traffic conditions in the town centre had changed and were anticipated to change in the future due to station upgrades, changes to the operation of existing parking stations and the fact that the uses within the proposed development have changed from commercial to residential. An amended traffic impact report was received by the Panel on 26 August 2008 from Thompson Stanbury Associates. Of concern to the Panel was the fact that the traffic generation and intersection demands of the residential development as compared to a commercial development had not been considered. It is acknowledged that the number of parking spaces increases by 119 spaces but the uses of the existing spaces changes as a consequence of the proposal and needs to be addressed having regard to:

- the existing and projected function of the surrounding streets,
- the DBTCLEP 2007 and 2008,
- the draft Inner West Subregional Strategy, and
- the submissions by the RTA.

The 26 August 2008 amended report addressed these issues raised by the Panel and identified that the traffic generation from the 672 parking spaces – 119 in excess of that currently constructed, would be marginally less than that already approved due to the changed uses. This, together with the further conclusions of the amended traffic report, satisfy the Panel as to the impact of the proposal when compared to the existing approved and constructed development. That is, that the impact is generally the same.

Parking and Servicing Facilities – Parking provision for this proposal is complicated by the fact that 5 levels of parking already exist on the site – well in excess of what is required for that which has already been constructed (but approved through the original approval and subsequent s96 modifications).

553 spaces were approved of which 205 were to be used as a public car park – already in operation. The proposal requires an additional 119 spaces, which are able to be provided within the same physical space as that which previously provided 553 spaces. The additional ‘physical space’ appears to have been generally created by at least two s96 modifications approved by Council. The exact reason why this additional ‘physical space’ was considered necessary to be approved and constructed remains unclear to the Panel. Nevertheless, it exists.

Based on the relevant parking controls applicable at the time of approval, the number of parking spaces approved – i.e. 553 spaces, was consistent with those controls. The parking provision for commercial floorspace was predicated on a control of 1sp/50sqm. This is the current control, notwithstanding the BTC Planning Panel’s desire to reduce the parking provision in the DDCP to 1sp/120sqm. If this was currently applicable, the proposal would be providing 134 parking spaces in excess of requirements.

However, the DDCP controls are not on exhibition or adopted and thus it is not considered reasonable to apply them to the subject proposal.

The car parking provision for the proposed development is 672 spaces of which 205 remain as a public car park. The Panel accepts that the mix of uses proposed and constructed when assessed under current parking controls requires 467spaces (230 commercial, 237 residential). It is noted that the 16 August 2008 amendment relocated 13 car parking spaces at ground level into the approved basement level. The loss of the accessible parking at this ground level is not considered acceptable. Furthermore, it would appear that loading facilities are restricted to medium rigid truck. This is not acceptable and the loading should be designed to accommodate a large rigid truck. The loading and unloading facilities for residential and commercial should be separated and the residential lifts should have direct access to the loading facility. The current amended plans do not appear to provide for this.

Notwithstanding the above, and the fact that the traffic generation created by the parking provided (and proposed) remains unchanged, the Panel continues to be concerned about the quantum of parking provided on site and its necessity having regard to the site’s location close to the Station and bus routes on Burwood Road.

Footpath/streetscape – The current development on the site provides a desirable streetscape and footpath presentation when viewed from Elsie Street. However, the presentation to both George and Victoria Street is unfortunate due to the conflict with pedestrians and the poor footpath width. Victoria Street is so narrow that wheelchairs and prams could not travel along the path.

The 16 August 2008 amended plans at ground level proposes the extension of commercial spaces 3, 4, 5 & 6 into the colonnade. There should be no change to this frontage.

On George Street, the configuration of the proposed 16 August 2008 amendment to commercial unit 10 is narrow and may restrict visibility to vehicular entry and the loading entry and exit. This is unacceptable.

On Victoria Street, the 16 August 2008 amendments propose widening the footpath – which is critical to providing the appropriate presentation to the public domain when significantly increasing the development on the site – to residential. The realignment of commercial units 7 & 8 is positive but should not result in additional floorspace.

The Panel notes that the placement of the booster valves on Victoria St adjacent to the car park exit provides a poor public domain outcome.

In addition, the Panel notes that the residential lift lobbies on Victoria Street and George Street can only be accessed through the public car park lobby. This is unsafe and not acceptable. Separate lobby access should be provided. This will require a redesign and should also not involve any increase in floor space.

Reflectivity – The Panel consider the reflectivity report acceptable for the original proposal. This report will need to be reviewed and amended to relate to the amended plans.

DBTCLEP2008 and Draft Inner West Subregional Strategy – It is acknowledged that when submitted, the proposal was being considered in advance of the Burwood Town Centre Planning Panel's consideration of the town centre LEP and the draft sub – regional strategy for the inner-west region. However, both these documents are now in the public realm (the former having been adopted at a Panel meeting on 17 April 2008 and having now received a s65 Certificate (18 July 2008) and the latter being on public exhibition. In the circumstances therefore, whilst not certain or necessarily imminent, the general intent of these policy documents is known, and are appropriately matters for consideration.

Lack of open space – The proposal provides private open space in the form of balconies and common open space on the podium. This is considered acceptable in principle. The provision of public open space at ground level, as originally approved with a plaza area fronting Victoria Street was considered desirable by the Panel and a good public domain outcome. However, this was deleted by subsequent s96 modifications approved by Council. These approvals have been acted upon and the space cannot be reasonably recreated.

Adequacy of proponent's response

The proponent has responded to concerns raised by the Department and the public submissions in April 2008, by engaging Turner and Associates who re-evaluated the apartment buildings in order to address a number of issues raised in the submission prior to the Panel's appointment. However, those changes were not formally submitted. Following the Public Hearing and in response to the letter from the Panel dated 18 June 2008, further minor amendments were made to the April 2008 amendments and additional reports provided.

The information provided has been adequate, for the most part, for the Panel to undertake its assessment role.

Any other related or significant issues

Existing basements – the subject proposal relies on the prior existence of a 5 level basement of parking plus 3 levels of above ground commercial development. Of the 5 parking levels, 2 are dedicated to Council as a public car park, which is currently in operation. The 5 basements were constructed in relation to prior approvals by Burwood Council for a part 5/7 commercial development of which only 3 levels have been completed. It is a fundamental presumption of this project that the parking exists. Moreover, the proposal has the ability to provide an additional 119 car parking spaces (total 672 spaces) within an existing area approved for 553 spaces. This is an anomaly created by subsequent s96 modifications approved by Council which approved 2 further basements under consecutive modifications purportedly to allow for the provision of 553 car spaces but which are now proposed to accommodate 672 spaces.

Regardless of the history of the creation of the 5 basements, it is a fact that the Panel cannot ignore, that the parking already exists (below ground) and that it can accommodate the proposed number of parking spaces.

FSR – The following table outlines the existing and proposed FSR relevant to the applicable controls and that time.

FSR Calculation		
1. Instrument	BPSO	DBTCLEP2008
2. Permitted	2:1	4.5:1
3. Approved Development <ul style="list-style-type: none"> Including public carpark Excluding public carpark 	4.03:1 3.36:1	
4. As Built Development <ul style="list-style-type: none"> Including public carpark Excluding public carpark 	3.0:1 2.33:1	3.14:1 -
5. Proposed Development* <ul style="list-style-type: none"> Including public carpark Excluding public carpark 	6.95:1 6.28:1	6.64:1 5.25:1

*Calculations includes existing as built and as proposed by 16 August 2008

The amended plans of 6 August 2008 had a FSR of 5:1 (as calculated under DBTCLEP 2008), excluding the public car park. If the public car park is included in the calculation it would result in a FSR of 6.39:1. The amendments of 16 August 2008, which included changes to the ground level, resulted in an increase in FSR of 0.25:1.

The current applicable FSR under the BPSO is 2:1. The approved development on the site is 3.36:1- this excludes the public car park. The Panel considers that the public car park should have been included as FSR. If included, the FSR for the existing approved development would have been 4.03:1 – approx double the permissible FSR.

The subject proposal seeks to further increase the permissible FSR.

The DBTCLEP 2007, as exhibited, proposed a FSR for the site of 5:1 with a max residential FSR of 3.5:1.

The subject proposal was lodged following exhibition of this document. Subsequent to lodgement, the DBTCLEP 2008 received a s65 certificate on 18 July 2008 and proposes a FSR of 4.5:1 and a 3:1 restriction on residential floorspace.

As proposed, the quantum of residential floor space exceeds the 3:1. Likewise, the overall FSR exceeds 4.5:1 – being 6.64:1 (incl. public car parking) of which 5.25:1 is building above ground level.

The exceedance of the FSR cannot be supported in the light of the issues raised in respect of building bulk, depth and separation. In this respect, the Panel notes that the proposal does not maximise the height limits under the DBTCLEP 2008.

The Panel notes that improvements to the public domain should not result in additional floorspace.

Treatment of the western boundary – The Panel raised issues with the treatment of the “dead space” between the podium building and western boundary. Amended details were submitted. Plans referenced as Ground Floor Level and Site Plan Drawing No. 1665 M01 prepared by Architectex and Ground Floor Landscape Plan No. DAL6A prepared by Turf Designs provide an acceptable solution.

Section 94 – The current S94 Contributions plan being Section 94 Plan for Open Space, Community Facilities and Public Car parking dated February 2006 and Roads and Traffic Facilities dated March 2001 requires the following levy:

Table of s94 Fees		
22.	Section 94 contribution for roads and traffic facilities	\$49,647.95
23a.	Section 94 contribution for community facilities	\$990,168.92
23b.	Section 94 contribution for open space and recreation	\$1,528,585.44
23c.	Section 94 contribution for Plan Preparation and Administration	\$99,897.25
23d.	Section 94 contribution for parking facilities (35 spaces @ \$28,500)	\$997,500.00
Total		\$3,665,799.56

The Council, through its submission in respect of the project, sought \$4,902,891.02. However, this was in respect of a larger development in terms of the number of residential units. The proponent, in response to Council’s claim, commits to paying \$2,668,299.56 and is seeking to discount the 34 visitor car spaces that Council is seeking due to the existence of two levels of public parking available on the site which would also serve as visitor parking.

In the circumstances, where the Panel is concerned as to the existing quantum of parking on the site, there would appear to be no basis for seeking additional parking, forced or otherwise. This being the case, the proponent’s commitments in respect of contributions would appear to be reasonable.

CONCLUSION

The Panel has considered a Concept Plan for three residential towers above a partially complete 5 level basement and 3 level podium, in respect of which approvals already exist and have been enacted.

The form, nature and basis of those prior approvals is not a matter for the Panel although it has been necessary to interrogate those approvals to a degree to establish the true need for car parking, traffic generation the true FSR of the development on the site, and how public domain resolutions have evolved.

It would appear that when considering the prior approvals, Council did not include the area of the public car parking as FSR. It is the Panel's interpretation that this was not consistent with the, then definition of GFA (which is the current definition) or the currently proposed definition under the draft BTCLEP 2008. Accordingly, the existing and proposed FSR is greater than that purported by the Council (in its initial approvals) and the proponent in the subject project.

Notwithstanding this, the car parking and basement exist. Whether GFA or not, they do not have an impact on building mass or visual impact. They do however have an impact on traffic generation and parking provision. However since the number of basements remains unchanged and only an additional number of spaces is provided – within the same physical space – the impact can only be that of traffic generation.

If the 'below ground' areas of the development are excluded from the FSR of the subject development, the proposal seeks a FSR of 5.25:1.

The proponent has suggested that the additional 0.25:1 beyond that originally submitted at 5:1 is as a consequence of the desired changes to the ground levels as requested by the Panel. It is true that the Panel supports the proposed changes to the layout of the ground level in as much as it relates to both Victoria and George Streets, particularly the widening of the footpath to Victoria Street and the use and design of the area to the west. However, such changes do not necessitate an increased floor space.

In the circumstances where the development already exceeds (by more than 100%) the existing FSR controls, and seeks to exceed again the controls promulgated in the DBTCLEP 2008 (max 4.5:1 and max residential 3:1). Accordingly any increase above 5:1 (the max FSR under DBTCLEP 2007) is unable to be supported by the Panel. Further adjustments can be made to the ground level to maintain the existing floor area (reconfigured) or floor area can be reduced in the tower elements to neutralise any floor area adjustment.

Notwithstanding the numerical concerns in relation to floor space, there remains the issue of design in respect of building mass, setback and separation of the tower elements. These matters remain unsatisfactory but are capable of resolution through a redesign of the tower elements. In this respect, using the additional height potential from the site, whilst also retaining the variable heights in the towers, may be a solution to the design as well as the resultant FSR.

RECOMMENDATION

As currently proposed, the FSR beyond the 4.5:1 anticipated by the DBTCLEP 2008 having regard to the massing, setback and separation aspects of the design is unacceptable.

Maximising the 5:1 FSR anticipated by the DBTCLEP 2007 may be acceptable subject to addressing the massing, setback and separation issues whilst not increasing the overshadowing impact of the development, and providing for the public domain improvements outlined in the 16 August 2008 plans.

This being the case, amended plans should be sought to address the design issues of massing, setback and separation. In so doing, the FSR should be reduced and the height may be adjusted.

Panel Chair: Sue Francis:



Panel Member: Peter John Cantrill:



Panel Member: Alison McCabe:



ATTACHMENTS

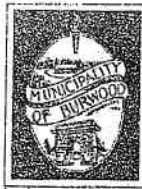
Attachment 1

List of Parties who appeared at the Panel Hearing on 30 May 2008

1. Burwood Council
Mr Ian Dencker
Mr Brian Olsen
2. Burwood Community Voice
Ms Lesley Fureaux-Cook
3. Ms Katherine Ballard
4. Dr Susan McGrath-Champ

Attachment 2

Suggested Conditions of Consent



BURWOOD COUNCIL

heritage ■ progress ■ pride

**URBAN ASSESSMENT
RECEIVED**

11 JUN 2008

12th May
m
n/b

Mr. Michael Woodland
Director, Urban Assessments
Department of Planning
GPO Box 39
SYDNEY NSW 2001

File No: 077.0001.00

6 June 2008

Dear Mr. Woodland

1-17 Elsie Street and 45-49 George Street Burwood
Major Project MP 07-0076

Reference is made to the hearing on 30 May 2008 of Independent Panel of Experts constituted by the Minister for Planning pursuant to Section 75G of the Environmental Planning & Assessment Act 1979 in respect of the assessment of the concept plan application of the above major project.

At the above hearing Council addressed the Panel on the matters raised in letters dated 27 February 2008 and 12 March 2008 relating to the development concept. The Panel subsequently requested clarification on several matters relating to Council's submission and to the inventory of development conditions prepared by Council and sent to the Department of Planning on 10 April 2008. In response to the clarification sought by the Panel I would advise the following:

1. The matters raised in Council's letter dated 12 March 2008 relating to the car parking layout of Council's public car park area on Basement levels 1 & 2 of the site has since been resolved and is no longer at issue.
2. Condition 6 – Public Domain Bond \$157,181.00. This condition is to be read in conjunction with Public Domain condition 1 under the heading Engineering. The figure stated in the draft conditions is the difference between the applicants existing Bond that has been paid to Council and the total value of the streetscape improvement works as required under Part 35 of Burwood Consolidated Development Control Plan No. 35 for the 3 street frontages of the development. The streetscape improvement works and their costs are set out in Public Domain Condition 1. The Bond for the original consent related to footpath, kerb and gutter and road works only. The other items nominated in Public Condition 1 are attributed to the new development.
3. In its submission of 27 February 2008 Council raised issue with 3 pedestrian crossings indicated in Elsie Street on the concept plans. The concern was based on the loss of on street parking in Elsie Street and that the crossings would not meet the warrants of the Roads & Traffic Authority. If there is to be a pedestrian crossing in Elsie Street, Council is of the view that it would be better sited closer to George Street because of the greater number of pedestrian movements in that area.

2 Conder Street Burwood NSW 2134 PO Box 240 Burwood NSW 1805
phone: 9911 9911 facsimile: 9911 9900 email: council@burwood.nsw.gov.au

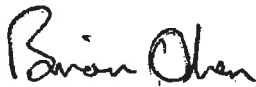
website: www.burwood.nsw.gov.au

4. The Section 94 Contributions indicated on the draft conditions are based on Council's current Section 94 Plan 2006 and Section 94 Contributions Plan No. 1 – Roads & Traffic Facilities. The contributions sought are not based on the draft Contributions Plan 2007 for the Burwood Town Centre. The applicant has paid \$725,326.00 to Council in respect of Section 94 contributions required on the original development consent. Council would expect that credit would be given to the development for the monies already paid to Council.

I would also refer you to Council's letter dated 10 April 2008 where Council requested reimbursement for the resources expended in preparing its submission to the Department of Planning regarding this application as well as preparing the draft conditions. Council has not received a reply to date and Council would appreciate your further consideration of this matter.

I trust that the above information is of sufficient clarification for the independent Panel and should you require further information please contact me on 99119911 during business hours.

Yours faithfully



Brian Olsen
Manager Building & Development

Attachment 3

- Letter seeking further information in relation to the calculation of GFA and FSR dated 13 August 2008.
- Letter to the Department of Planning seeking clarification of the nature of the project dated 18 June 2008.
- Letter to Burwood Council requesting additional information dated 19 June 2008
- Letter to the proponent dated 19 June 2008 seeking clarification and further amendment to the proposal.



INDEPENDENT EXPERT PANEL (s75G EP&A Act)
RESIDENTIAL DEVELOPMENT AT ELSIE & GEORGE STREETS BURWOOD

13 August 2008

Mr Sarkis Nassif
Managing Director
Kavlyn Pty Ltd
19 Victoria Ave
CONCORD WEST NSW 2138

Dear Mr Nassif,

Panel Meeting on Friday, 15 August 2008

The Panel requests additional information be provided in relation to the actual FSR of the proposal having regard to:

- a) the existing definition of GFA under the BPSO ;and
- b) one which may exclude the public car park as GFA.

This calculation should not assume that the existing public car park and the calculations done by Council in its previous decisions are correct. The calculation should be carried out, de novo, having regard to the existing approved uses, the existing car parking rates and the existing definitions. In this respect, the calculation of GFA should have reference to the 'required' parking for the development for the time of approval and the required parking under controls applicable at this time; it will affect what is and what isn't GFA. An alternate calculation should then be provided having regard to the potential new controls/definitions which, at present, do NOT exclude the public car park as GFA.

Please also provide a basis for further exceeding the FSR of 2:1 under the BPSO; the previously advertised max GFA of 5:1 in the BTCLEP 2007; and the currently anticipated max of 4.5:1 under the BTCLEP 2008 where the proposed development has a purported max FSR of 5.28:1 which would appear to **exclude** the public car park component.

In this respect, it should be noted in the amended EA that the variation in the FSR above that indicated by BTCLEP 2008 is due to 'public domain improvements'. Please also explain why these public domain improvements were not the basis for the exceedance of the FSR from 2:1 under BPSO to what was approved by Council at a nominated 3.82:1 (not including the public car park) via a SEPP1.

The Panel would appreciate the information be provided at this Friday's meeting. Thank you for your attention.

Yours sincerely

Paula Poon
Panel Secretariat



INDEPENDENT EXPERT PANEL (s75G EP&A Act)
RESIDENTIAL DEVELOPMENT AT ELSIE & GEORGE STREETS BURWOOD

18 June 08

Mr Sam Haddad
Director-General
Department of Planning
GPO Box 39
Sydney NSW 2000
(Attn Mr Jason Perica)

Dear Mr Haddad,

Clarification of the nature of the application

Following the Panel hearing on 30 May 2008 and a review of all documentations provided to the Panel by the Department, the Panel seeks clarification as to the nature of the application before the Minister.

The Panel notes the DGRs describe a Project Application for the whole property but the EA refers to a Concept Plan Application. The Panel understands that residential development, other than in conjunction with commercial development under the Burwood Planning Scheme Ordinance, is prohibited. To address the issue of permissibility, the proposal would need to be a Concept Plan application. If this is the case, the DGRs do not relate to the proposal sought and should be amended. The question is whether the amendment to the DGRs would require re-notification.

The Panel is of the view that any Concept Plan or Project Application should apply to the whole development on the site, being the existing, approved and proposed. The assessment of the residential component can not be divorced from its integration with the current building and approval. The proposal, as it stands, concerns only the 3 residential towers rather than the whole site.

Your advice on these two issues will be greatly appreciated.

Please also be advised that the Panel's preliminary assessment of the proposal indicated that substantial additional information is required before the Panel can properly assess the proposal. The Panel Secretariat has written to the proponent to seek the requested information.

Yours sincerely



Sue Francis
Panel Chair



INDEPENDENT EXPERT PANEL (s75G EP&A Act)
RESIDENTIAL DEVELOPMENT AT ELSIE & GEORGE STREETS BURWOOD

19 June 08

Mr Pat Romano
General Manager
Burwood Council
PO Box 240
BURWOOD nsw 1805

(Attn Mr Ian Dencker)

Dear Mr Romano,

Request for Additional Information

Following the conclusion of the Panel hearing on 30 May 2008, and a review of documentations provided by the Department including the Concept Plan, EA & associated documents and submissions, the Panel considers it will assist its assessment of the proposal if Council can make available copies of the documents that formed the previous applications on the site. These include:

1. DA379/01 of 6 December 2002;
2. DA379/01 Section 96 modification of 21 November 2005;
3. DA379/01 Section 96 modification of 26 July 2006; and
4. DA379/01 Section 96 modification of 19 April 2007.

The documents required for these applications include the notice of determination, approved plans and council report on each application.

I would appreciate it very much if you can arrange to have 3 hard copies of the documents (for the approved plans 2 sets of A3 and 1 set of A1 size) available for pick-up by the Panel members next Wednesday, 25 June 2008, at the Council Offices, and one electronic copy emailed to me for record purpose. Please send me an invoice for the printing cost of the documents.

If you have any questions, please call me on 9228 6516.

Thank you for your assistance and co-operation.

Yours sincerely

Paula Poon
Panel Secretariat



INDEPENDENT EXPERT PANEL (s75G EP&A Act)
RESIDENTIAL DEVELOPMENT AT ELSIE & GEORGE STREETS BURWOOD

19 June 2008

Mr Sarkis Nassif
Managing Director
Kavlyn Pty Ltd
19 Victoria Ave
CONCORD WEST NSW 2138

Dear Mr Nassif,

Additional Information Required

Following the Panel meeting with you and your consultants on 22 May 2008, the Panel hearing on 30 May 2008 and a review of all documentations including the EA & related documents and submissions made to the EA, the Panel requires the following additional information to assist its assessment of the concept plan:

1. Copies of the documents that formed the previous applications on the site: DA379/01 of 6 December 2002; DA379/01 Section 96 modification of 21 November 2005; DA379/01 Section 96 modification of 26 July 2006; and DA379/01 Section 96 modification of 19 April 2007. The Panel has received the Notice of Determination that was given to each of these applications, but the approved plans are required to assist the Panel in determining the differences between the proposal and the approved development.
2. A table of compliance and discussion of any non-compliance with the Burwood Town Centre Local Environmental Plan 2008 as forwarded to the Department on 17 April 2008. Although this plan was made public following the receipt of the subject application by the Minister, the Panel is of the view that it is now a relevant consideration.
3. The CPTED report is inadequate. For example, the narrow footpath to the north of the site and the dead end landscaped area on the western part of the site are not discussed. The Panel considers that both these areas may present safety issues. Further study may also indicate other areas of concern. Moreover, the report does not cover the issues raised in the Director General's Requirements.
4. The compliance table is inadequate(see 2 above).
5. The Statement of Commitments is inadequate. It makes no commitments in relation to the contributions arrangements through s94 or VPA for the proposed development but rather seeks to rely on the existing lower level development for its contribution. If, as sought, the development seeks to excise itself from the lower, already approved and/or built development, then the proposal cannot seek to benefit from the contributions paid in respect of a separate and approved development. Alternatively, were the two developments on the site integrated not only physically but also from a proposal perspective, more flexible arrangements may be possible – both physically and financially. This aspect of the proposal needs to be reconsidered by the proponent.

6. There is no indication that the car parking arrangements meet the requirements of the relevant Australian Standards. This should be provided. The Panel cannot find any indication of the exact location of the additional car parking spaces described. This needs to be demonstrated and justified.
7. The illustration and description of overshadowing and sun access of the surrounding area is inadequate and is not sufficient for the panel to form an understanding of its extent. The drawings that show the overshadowing should show clearly the extent of any additional loss or gain of sun access to surrounding residential properties at mid winter when compared to the existing situation and the existing approved development.
8. The description and illustration of the compliance to the Residential Flat Building Design Code is inadequate. For example, there does not appear to be any evidence that shows sun access to living rooms, private open space or shared open space. In addition, building separation does not appear to comply yet it is claimed that it does comply. This table should be revised by the proponent and resubmitted.
9. Despite the quantum of development proposed there appears to be no proposal to improve the surrounding public domain. There appears to be reliance on that part of the site already developed and approved for any such upgrades. There is no commitment in the current proposal before the Minister to address further impacts. In particular, the footpath to the north of the site remains unreasonable narrow. There should be an accessible path of travel along Victoria Street both in terms of width and grade. Moreover, pedestrian access should be available to the 'colonnade' from the point of the vehicle entry/exit along Victoria Street – this is currently blocked by a masonry wall and fire services which may be required to be moved.
10. The Wind Effects Statement is an opinion only based on experience and recommends a wind tunnel test to verify its conclusions and requirements for structures to mitigate adverse effects. This should be submitted for consideration prior to any determination of the proposal.
11. The Statement of Heritage Impact does not discuss the impact on the various heritage items in the locality as listed in the Director General's Requirements rather it focuses on the adjoining terraces only. This should be submitted for consideration prior to any determination of the proposal.
12. It appears that the car parking complies with the current controls.. However, given the proximity of the railway station and the co-location of the public car park it maybe a better planning outcome to limit the car parking (particularly visitor parking) to substantially less than the number proposed. This should be considered in light of the responses from the Minister of Transport and the RTA (attached to the DGRs), as well as the expectations of the Burwood Town Centre Panel (expressed in minutes to their meetings last year) to reduce the parking requirements for commercial uses in the town centre from 1 space/50m² to 1 space/120m².
13. Although a visual analysis is provided there is little evidence of how the proposal was formed in order to minimise any adverse effects of the bulk.

Having regard to the above, the Panel finds the proposal, as submitted, inadequate. If a revised proposal is to be prepared to address the Panel's concern, the following planning and design criteria should guide the revised proposal:-

1. Improvements to the Public Domain – in particular, to the footpaths and street planting in the surrounding area. This is likely to extend beyond the areas immediately

adjacent to the site. These should provide a high level of pedestrian amenity connecting the site to Burwood Road and Burwood Station and improving the areas in front of surrounding properties affected by the development.

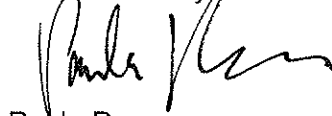
2. Sun access in mid winter between 9am and 3pm to open spaces and living room windows of surrounding affected areas should be improved when compared to the effects of the existing approved development. These improvements need to be shown in a level of detail that clearly illustrates the effects. Diagrams at minimum interval of one hour are required and further intervals may be required depending on the circumstances. Further survey work and expert verification may also be required.
3. The height limited by the requirements of BYCLEP2008 – see report on agenda 17 April 2008.
4. Maximise setbacks from the western boundary and demonstrate measures to minimise overlooking of adjacent residential private open space and windows to habitable rooms. Reduced or zero setbacks to the east may result and this is likely to be considered acceptable.
5. Minimise car parking. The number to be determined by a parking demand and traffic study that considers the proximity and availability of public transport, the co-location of the public car park and the most recent traffic counts.
6. Careful reconsideration and improvement of the western part of the site to improve its use, safety and ameliorate any adverse effects on adjoining properties. This may require relocation and redesign of the substation.
7. Residential accommodation to comply with the Rules of Thumb of the RFDC.
8. An improved relationship to the heritage items to the west of the site on George Street. This may require adjustments to the existing construction.
9. New reports, amendments and compliance summaries where required in relation to the Director General's Requirements and BTCLEP2008.

Furthermore, the Panel is of the view that any increase in FSR above 4.5:1 would not generally be supported in the absence of:-

1. addressing the above planning and design requirements;
2. improvement in the public domain, particularly on George and Victoria Streets;
3. reduction in carparking; and
4. improvement in amenity impacts to adjoining properties when compared to the original approvals.

The Panel is prepared to meet with you and your consultants to clarify the above request for additional information and the planning and design criteria, if required. If you have any questions, please call me on 9228 6516.

Yours sincerely,



Paula Poon
Panel Secretariat

Attachment 4

Documents Relied Upon

List of Submissions Received by Panel

No	Name	Documents
1.	Mr Robert Tartak	a. Undated statement opposing the proposal
2.	Dr Susan McGrath-Champ	a. A set of photographs showing the character of the area
3.	Burwood Council	a. Development Application Assessment report by Planning Ingenuity Pty Ltd, 15 Mar 2002 b. Notice of Determination dated 6 Dec 2002 for D379/01 c. A set of 22 plans da00 to da16, da18 to da19 (all version D), survey plan, sw01 to sw02. d. S96 Modification Application Assessment Report by Planning Ingenuity Pty Ltd, 19 Nov 2005 e. Notice of Determination dated 21 Nov 2005 for s96 Modification to DA No 379/2001 f. A set of 6 plans Dwg Nos CC01(A), CC02(D), CC03(D), CC04(D), CC05(C), and CC06(B) g. S96 Modification Application Assessment Report by Planning Ingenuity Pty Ltd, 19 June 2006 h. Report by Acting Director Planning & Environment for Extraordinary Council Meeting (18 July 2006) i. Notice of Determination dated 26 July 2006 for s96 Modification to DA No 379/2001 j. A set of 9 plans Dwg Nos CC02 TO CC10 all issue B k. S96 Modification Application Assessment Report by Planning Ingenuity Pty Ltd, 19 April 2007 l. Notice of Determination dated 19 April 2007 m. A set of 6 plans Dwg Nos da06 to da08 and da14 to da16 (version F)
3.	Kavlyn Pty Ltd	a. Elsie & George Streets Proposed Residential Development Addendum Report prepared by The Planning Group NSW Pty Ltd, Aug 2008 b. Additional Information prepared by TPG as requested by the Panel (received 19 Aug 2008) c. Pedestrian Wind Environment Study by Windtech, 12 Aug 2008 d. BASIX Assessment prepared by Vipac Engineers & Scientists Ltd, 6 Aug 2008 e. A set of 5 plans lodged with Burwood Council (March 2007) Dwg Nos S96-07(D), S96-08(C), S96-08(C), S96-15(C), S96-16(C)