



Figure 6: Cross Section (Preferred Project Report)

### 3.5 LOCAL EPI COMPLIANCE

Below is a table examining the key local EPI compliances under the existing and future Burwood town centre controls.

Table 2- Local EPI Compliance

BPSO	Control	PPR	Compliance
<b>Zoning</b>	3(c2) District Centre	Commercial Residential	Yes <b>No*</b>
<b>FSR</b>	2:1	6.95:1 (Including Car Park) 6.28:1 (Excluding Car Park)	<b>No*</b>
<b>Approved Development</b> • Incl public car park • Excl public car park	Approved Develop. 4.03:1 3.36:1		<b>No</b> <b>No</b>
<b>As Built development</b> • Incl public car park • Excl public car park	As Built Develop. 3.0:1 2.33:1		<b>No</b> <b>No</b>
<b>Height</b>	-	<b>17 storeys</b>	-
<b>Draft Town Centre LEP 2007</b> <i>Exhibited</i>	<b>Permitted</b>	<b>PPR</b>	<b>Compliance</b>
<b>Zoning</b>	B4 Mixed Uses	Commercial Residential	Yes Yes
<b>FSR Total</b>	Max 5:1	6.311:1 (Including Car Park) 4.93:1 (Excluding Car Park)	<b>No*</b>
<b>Residential</b>	Max 3.5:1	3.32:1	Yes
<b>Height</b>	<b>62.25m</b>	<b>60m</b>	Yes
<b>Draft Town Centre LEP 2008</b> <i>Exhibited</i>	<b>Permitted</b>	<b>PPR (Panel's report)</b>	<b>Compliance</b>
<b>Zoning</b>	B4 Mixed Uses	Commercial Residential	Yes Yes

<b>FSR Total</b>	Max 4.5:1	6.31:1 (Including Car Park) 4.93:1 (Excluding Car Park)	<b>No*</b>
<b>Residential</b>	Max 3:1	3.32:1	<b>No*</b>
<b>Height</b>	60m	60m	Yes
<b>Minimum allotment size</b>	500sq.m	5,633sq.m	Yes

*\*The non compliances relating to permissibility and FSR identified above are discussed in section 4 of this report*

### 3.6 PROJECT CHRONOLOGY

- On 9 July 2007, the Minister formed the opinion that the proposal was a Major Project.
- On 17 August 2007 DGRs were issued.
- On 25 October 2007 an EA for a project application was submitted.
- On 12 December 2007 the Minister authorised a concept plan for the proposal, which allows the Minister to determine a prohibited project.
- On 10 January 2008 the proponent submitted an amended EA seeking concept plan approval for the proposal.
- The proposal was exhibited from Thursday 24 January 2008 until Friday 22 February 2008.
- In April 2008 the proponent engaged Nick Turner and Associates to revise the proposal to address issues raised in submissions.
- On 12 May 2008 the Minister appointed an Independent Hearing and Assessment Panel (Panel of Experts) to assess the proposal.
- On 30 May 2008 the Panel held a Public Hearing to enable the public to make representation.
- On 16 September 2008 the Panel handed down an assessment report to the Minister including recommendations.
- On 15 December 2008 the proponent submitted a preferred project report (PPR) for the proposal.
- On 19 December 2008 the Panel submitted a final report including recommendation to the Department of Planning.

## 4 STATUTORY CONTEXT

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### 4.1 MAJOR PROJECT DECLARATION

On 9 July 2007 the Minister formed the opinion that the proposal is development of a kind described in Clause 13 Group 5, Schedule 1 "Residential, commercial or retail projects" of the MP SEPP and is project to which Part 3A applies.

The Minister formed the opinion on the basis that the proposal had a CIV greater than \$50 million and the proposal is important in achieving State or regional planning objectives, such as;

- The site is identified as a key site for the re-development of the Burwood Town Centre - nominated as a **Major Centre** within the draft Subregional Strategy for the Inner West Subregion;
- The proposal provides higher housing densities and increased use of public transport infrastructure;
- The proposal will provide greater housing choice, mix and supply within a major centre; and
- The proposal will increase accessibility to public transport services by generating development within a transport corridor or within the vicinity of a transport hub - located in close proximity to Burwood Railway Station.

### 4.2 CONCEPT PLAN AUTHORISATION

On 12 December 2007, the Minister authorised a Concept Plan for the proposal. The proponent requested that no further environmental assessment be required due to the level of detail submitted with the application under Section 75P(1)(c) of the Act. A Concept Plan is considered to be an appropriate mechanism through which the issues associated with the proposal can be addressed including the permissibility of the proposed development.

### 4.3 PERMISSIBILITY

Under the current Burwood Planning Scheme Ordinance 1979 the site is zoned Business Special (District Centre) 3(c2). The zone does not permit residential flat buildings other than those attached to or used in conjunction with shops or

commercial premises). The proposed residential flat buildings are prohibited in the zone as the proposed development is a "residential flat building" not attached to or used in conjunction with shops or commercial premises.

The Minister can however approve prohibited development provided that a Concept Plan is authorised for the proposal. A Concept Plan was authorised for the proposal on 12 December 2007, consequently the proposed residential flat buildings can be considered and a determination made.

From a strategic planning/land use perspective, the proposed residential development is considered to be appropriate at this particular location for the following reasons:

- The proposal will support the objectives of the draft Inner West Sub Regional strategy, particularly those which seek to increase housing mix, choice and supply within Major Centres close to employment opportunities and public transport links;
- The proposal will support the desired future character of Burwood and will be permissible within the draft Burwood Town Centre LEP 2007 and 2008;
- The proposal will support the objectives of the draft Burwood Town Centre LEP 2008; and
- The area surrounding this site, particularly to the north and west is dominated by high density residential development.

For these reasons the proposed residential land use is considered to be acceptable at this site and it is recommended that if the BTCLEP 2008 is not gazetted, the Minister gazette an Order to amend the underlying BPSO to make the additional land use permissible.

#### 4.4 DIRECTOR GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRS)

The DGRs issued on 17 August 2007 (refer to **Appendix A**) required the following issues to be addressed. In summary these are:

- Compliance with EPIs ;
- Built Form, Bulk & Urban Design;
- Environmental & Residential Amenity;
- Public Domain/Pedestrians;
- Heritage;
- Traffic impacts;
- Rail Impacts;
- Social & Economic Impacts;
- Utilities & Waste Management; and
- Public service and infrastructure.

The Department is satisfied that the DGRs have been adequately addressed by the Proponent's EA and PPR.

#### 4.5 INDEPENDENT HEARING AND ASSESSMENT PANEL (PANEL)

Section 75G of the Environmental Planning and Assessment Act provides that the Minister may constitute a panel of experts (independent hearing and assessment panel) to assess any aspect of a project.

On 12 May 2008, the Minister appointed a panel of experts to provide independent, external, and technical expertise on the key issues in the terms of reference. The panel members were Sue Francis (Chair), Alison McCabe (planning expert) and Peter John Cantrill (architect), whom are the same members as the Burwood Planning panel.

The terms of reference for the Panel were to:

1. *Consider and advise on the:*
  - (a) *impacts of the project on the following issues:*
    - *Built form and urban design*
    - *Appropriateness of building heights and envelopes*
    - *Heritage impacts*
    - *Residential amenity (on and off site)*
  - (b) *relevant issues raised in submissions in regard to the above impacts; and*
  - (c) *adequacy of the proponent's response to the issues raised in submissions.*

2. *Identify and comment on any other related significant issues raised in submissions or during the panel hearings.*

A public hearing was held on 30 May 2008 at the Commission of Enquiry Offices in George Street Sydney. A total of 4 individuals and groups presented their views at this hearing. The conduct of the hearing and representation made were summarised in the Panel report dated 18 December 2008.

On 18 September 2008, the Panel requested additional information from the proponent on issues including building separation, building depth, setbacks, FSR, car parking, SEPP 65. These issues were addressed in the PPR submitted to the Panel on 15 December 2008 for consideration.

The Panel's final report was submitted on 19 December 2008 and included a number of recommendations including increasing the building separation distances, to incorporation of landscaping and widening of the Victoria Street footpath. A copy of the report is at **Appendix D**. Section 5 of this report contains a detailed consideration of the Panel's recommendations.

#### **4.6 OBJECTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

The Minister's consideration and determination of an application under Part 3A must be informed by the relevant provisions of the Act, consistent with objects of the Act.

The objects of the Act in section 5 are as follows:

(a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) *the protection, provision and co-ordination of communication and utility services,*
- (iv) *the provision of land for public purposes,*
- (v) *the provision and co-ordination of community services and facilities, and*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *ecologically sustainable development, and*
- (viii) *the provision and maintenance of affordable housing, and*

(b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*

(c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

The Department has considered the Objects of the Act, including the encouragement of ESD in the assessment of the application. The project does not raise significant issues with regards to the Objects under the Act.

#### **4.7 ECOLOGICALLY SUSTAINABLE DEVELOPMENT PRINCIPLES**

The Act adopts the definition of ESD from the *Protection of the Environment Administration Act 1991* including the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and the principle of improved valuation, pricing and incentive mechanisms.

The Department has considered the proposed development in relation to ESD principles and has made the following conclusions:

1. **Integration Principle** – The Department has considered all issues raised in submissions and the proposal does not compromise a particular stakeholder or hinder the opportunities of others. The site is well serviced by existing and proposed infrastructure particularly bus and rail connections. The environmental impacts of the proposal have also been addressed through the proponent's Statement of Commitments and the recommended conditions/modifications of approval.

2. **Precautionary Principle** – It is considered that there is no threat of serious or irreversible environmental damage as a result of the proposal. The site has been developed for some time and is occupied by built structures. The site does not contain any threatened or vulnerable species, populations, communities or significant habitats. The site therefore has a low level of environmental sensitivity. The proposed development is also unlikely to be impacted by potential river or sea level rises as the natural ground level of the site is at RL 15.10m and the site is not subject to flooding.
3. **Inter-Generational Principle** –The proposal represents a sustainable use of the site as the redevelopment will utilise existing infrastructure and make more efficient use of the site. The redevelopment of this site will also have positive social, economic and environmental impacts.
4. **Biodiversity Principle** – Following an assessment of the proponent's EA it is considered with appropriate certainty that there is no threat of serious or irreversible environmental damage as a result of the proposal. As stated earlier, the site has been extensively developed for some time and the site has a low level of environmental sensitivity. There is little to no natural vegetation on the site and the site does not contain any threatened or vulnerable species, populations, communities or significant habitats. Therefore the proposal will not impact upon the conservation of biological diversity or ecological integrity.
5. **Valuation Principle** – The approach taken for this project has been to assess the environmental impacts of the proposal and identify appropriate measures to mitigate adverse environmental effects and maximise energy efficiency through design. The mitigation measures include the cost of implementing these measures in the total project cost. The proponent is committed to ESD principles and has reinforced this through benchmarking buildings against BASIX by maximizing cross ventilation, solar access and natural light through apartments in the modified PPR proposal. The above measures will be included in the total cost of the project and considering greenhouse gas emissions linked to environmental performance, accessibility and travel the proposal is considered to be acceptable.

#### 4.8 SECTION 75I(2) OF THE ACT & CLAUSE 8B OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

The DG's report to the Minister for the proposed project satisfies the relevant criteria under Section 75I of the Act as follows:

Section 75I(2) criteria	Response
Copy of the proponent's environmental assessment and any preferred project report;	The Proponent's EA is located at <b>Appendix B</b> and Preferred Project Report is located at <b>Appendix C</b> .
Any advice provided by public authorities on the project;	A summary of the advice provided by public authorities on the project for the Minister's consideration is set out in Section 6 of this report.
Copy of any report of a panel constituted under Section 75G in respect of the project;	A Copy of the Report is attached at <b>Appendix D</b>
Copy of or reference to the provisions of any State Environmental Planning Policy that substantially govern the carrying out of the project;	Each relevant SEPP that substantially governs the carrying out of the project is identified in Section 4.9, including an assessment of the impact of the SEPP on the development proposal in Sections 4 and 5 of this report
Except in the case of a critical infrastructure project – a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division,	An assessment of the development relative to the prevailing environmental planning instrument is provided in Sections 4 and 5 of this report
Any environmental assessment undertaken by the Director General or other matter the Director General considers appropriate;	The environmental assessment of the project application is this report in its entirety.
A statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.	The environmental assessment of the project application is this report in its entirety. The proposal adequately complies with the DGRs, subject to conditions.



The DG's report to the Minister for the proposed project satisfied the relevant criteria under Clause 8B of the EP&A Regulation as follows:

<b>Clause 8B criteria</b>	<b>Response</b>
An assessment of the environmental impact of the project	An assessment of the environmental impact of the proposal is discussed in sections 4 and 5 of this report.
Any aspect of the public interest that the Director-General considers relevant to the project	The public interest is discussed in section 5 of this report.
The suitability of the site for the project	The site is identified in the Draft Burwood Town Centre LEP 2008 which will permit development of this type and scale.
Copies of submissions received by the Director-General in connection with public consultation under section 75H or a summary of the issues raised in those submissions.	A summary of the issues raised in the submissions is provided in section 6 of this report (attached).

#### 4.9 ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

To satisfy the requirements of section 75(2)(d) and (e) of the Act, this report includes references to the provisions of the environmental planning instruments that govern the carrying out of the project and have been taken into consideration in the environmental assessment of the project.

The primary controls guiding the assessment of the proposal are:

- Burwood Planning Scheme Ordinance 1979;
- Draft Burwood Town Centre LEP 2007 (exhibited March till July 2007);
- Draft Burwood Town Centre LEP 2008 (exhibited October to November 2008);
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

Other controls to be considered in the assessment of the proposal are:

- State Environmental Planning Policy No. 32 – Redevelopment of Urban Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No. 55 – Remediation of Land;

The provisions of development standards of local environmental plans are not required to be strictly applied in the assessment and determination of major projects under Section 75R Part 3A of the Act. Notwithstanding, the objectives of the above EPIs, relevant development standards and other plans and policies that govern the carrying out of the project are appropriate for consideration in this assessment in accordance with the DGRs.

#### 4.10 COMPLIANCE WITH PRIMARY CONTROLS

##### 4.10.1 Burwood EPIs

The proposal has been considered against the Burwood Planning Scheme Ordinance (BPSO) and the Draft Town Centre LEP 2007 and 2008. Two key non compliances arise from these planning controls. The first is permissibility under the BPSO and the second is FSR under the BPSO and the Draft Town Centre LEP 2007 and 2008.

##### Permissibility

As stated earlier in the report, under the current Burwood Planning Scheme Ordinance 1979 the site is zoned Business Special (District Centre) 3(c2) and residential flat buildings are prohibited in the zone. The Minister can however, approve prohibited development provided that a Concept Plan is authorised for the proposal. A Concept Plan was authorised for the proposal on 12 December 2007, consequently the proposed residential flat buildings can be approved.

From a strategic planning/land use perspective, the proposed residential development is considered to be appropriate at this particular location given the surrounding residential land use particularly to the north and west is dominated by high density residential development and as the proposal will support the desired future character of Burwood and will be permissible within the draft Burwood Town Centre LEP 2007 and 2008. This site has good access to public transport.

## FSR

In summary, whilst the proposal exceeds the maximum permissible FSR on this site it is considered to be acceptable for the following reasons;

1. The Panel consider that the proposed FSR is acceptable (provided that building separation is increased);
2. The proposal is consistent with the desired future character envisaged by the draft planning controls in terms of height and increased density (with some non compliance);
3. The proposal complies with the maximum height controls proposed for the site; and
4. Amenity impacts such as overshadowing, view loss and privacy are acceptable.

Given these circumstances the Department considers the proposed FSR is acceptable provided that building separation is increased. FSR is discussed in further detail in section 5 of this report.

### **4.10.2 State Environmental Planning Policy No. 65 (SEPP 65) – Design Quality of Residential Flat Buildings**

The Panel undertook an assessment of the proposal against the SEPP 65 principles and concluded that the proposed development did not comply with the context, scale, built form, density and amenity principles. The Panel's main concerns related to:

- Tower forms being derived from the existing core locations;
- The proposal exceeded the proposed FSR controls for the site; and
- The tower separation and building depths were insufficient.

Despite these concerns the Panel concluded that the proposal was acceptable provided that the tower separation above level 6 be increase to 24m to comply with the Residential flat design code "rule of thumb". The increase separation distance will improve residential amenity, built form and scale. On this basis it is considered that the proposal is acceptable, subject to conditions.

### ***Residential Flat Design Code (RFDC)***

The proposal has also been assessed against the primary development controls contained within the RFDC: The Key non compliances with the code are discussed in detail in Section 5 of this report.

The key non compliances with the RFDC relate to building depth, apartment layout and building separation. In summary, the Department agrees with the Panel's recommendation to increase the building separation between the proposed towers to comply with the 24m separation distance required by the RFDC. Provided that the tower separation is increased other non compliance such as building depth are considered to be reasonable. Accordingly a modification will be imposed requiring amended plan to be submitted demonstrating compliance with the RFDC building separation controls.

### **4.10.3 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

SEPP - BASIX aims to establish a scheme to encourage sustainable residential development across New South Wales. The current targets of BASIX for Residential Flat Buildings commenced on 1 July 2006.

BASIX certificates (227122M, 227038M and 227061M) were submitted for the proposal demonstrating that each building meets the required targets for water, energy and thermal comfort. A condition of approval is recommended which requires demonstration that these measures have been incorporated into the building works prior to issue of a Construction Certificate for each tower.

## **4.11 COMPLIANCE WITH OTHER CONTROLS**

### **4.11.1 State Environmental Planning Policy No. 32 (SEPP 32) – Urban Consolidation (Redevelopment of Urban Land**

SEPP 32 aims to implement a policy of urban consolidation by enabling housing in areas where there is existing infrastructure and facilities and increasing opportunities for people to live in close proximity to employment and leisure opportunities. The application is considered to comply with aims and objectives of the SEPP by providing an additional 210 diverse dwellings in an existing urban area adjacent to transport and other facilities.

### **4.11.2 State Environmental Planning Policy No. 55 – Remediation of Land**

SEPP 55 requires a consent authority to consider whether the land is contaminated, and if so, whether the land will be remediated before the land is used for the intended purpose. As the site has recently been developed and the residential

towers will be erected above an existing podium structure, it is considered that the proposal satisfies SEPP 55 requirements.

#### **5.9.2 State Environmental Planning Policy (Infrastructure) 2007;**

Schedule 3 of the SEPP requires traffic generating development to be referred to the RTA. The proposal was referred to the RTA on 24 January 2008. The RTA has raised no objections but has commented on the proposal raising a number of issues, which are discussed further in section 6 of the report.

## **5 ASSESSMENT OF ENVIRONMENTAL IMPACTS**

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The Independent Hearing and Assessment Panel (IHAP) finalised its report on 18 December 2008, based on the Terms of Reference, the public hearing, submissions, the EA and PPR provided by the proponent. The issues discussed in the report, and response by the Department, are discussed below.

### **5.1 BUILT FORM/URBAN DESIGN**

#### Building Separation

##### **Panel Comment:**

The Panel considered the building separation between the 3 towers to be insufficient as it does not comply with the minimum separation distances prescribed by the Residential Flat Design Code (RFDC) when measured from the ground level. The proponent has designed and measured the tower separation distances from the podium level rather than the ground level. The RFDC requires buildings above 25m in height to have a 24m separation distance and below 25m an 18m separation distance. The control aims to maintain an acceptable level of residential amenity between units.

The PPR proposes the following building separation distances:

- Towers A and B -16m - 25.3m
- Towers B and C -17.9m - 24m

The non compliance with the building separation control occurs above level 6 of Towers B and C above 25m in height. To resolve this issue the Panel recommend that the building separation between Tower A and B and B and C be increased to 24m above level 6. This would improve solar access to approximately 70% of the units and improve building separation when viewed externally from the site.

Further, the Panel advise *"it would appear that by increasing the height of Buildings B and C, east of the cores, by a maximum of 2 levels, without resulting in significant increase of overshadowing to adjoining residential properties, could minimise loss of units"*. A modification is therefore recommended to the Concept Plan approval. Refer to Tag 1 and 2 for plan and elevation of current separation distance.

##### **Department Comment:**

The Department agrees with the Panel's recommendation to increase the separation distances between the Towers . The increased separation distances, involving a loss of 12 units overall (8 from Tower B and 4 units from Tower C), will result in more slender towers improving their visual impact and solar access to individual residential units. Further, no in principle objection is raised to the addition of two residential levels to towers B and C to compensate for units lost, subject to a comprehensive review by the Department. A modification is therefore recommended on the approval requiring amended plans to be submitted to the Director General illustrating a minimum separation distance of 24m above level 6 and a maximum of two additional levels to Towers B and C, subject to details being submitted to the satisfaction of the Director General demonstrating there is no significant overshadowing of surrounding residential properties. A copy of the existing separation distance in plan and elevation is attached in **Tag 4 and 5**.

#### Building Depth

##### **Panel Comment**

The Panel assessed the building depth against the RFDC which, as a rule of thumb requires buildings depth to be no greater than 18m to provide for adequate sunlight access and natural ventilation. The PPR proposes the following building depths.



- Tower A - approx. 30m - 25m
- Tower B - approx. 27m - 20m
- Tower C - approx. 25m - 30m

The Panel noted that there has been an improvement in the proposed building depth and apartment layout from the exhibited proposal and recommends that the proposed building depth is satisfactory despite the non compliance, subject to building separation being increased.

**Department Comment:**

The Department agrees with the Panel's recommendation and considers that despite the non compliance with the building depths prescribed within the RFDC, the PPR amendments have resulted in improved ventilation and sunlight access. Residential amenity will also be improved by the Panel's recommendation to increase the tower separation distances. On this basis the proposed building depth is considered to be acceptable.

Rear Setbacks (West)

**Panel Comment;**

The Panel considered the proposed setbacks against the RFDC which, as a rule of thumb requires buildings at the height proposed to have a building separation of 24m.

The Panel considered that a reasonable expectation across a boundary would be to share a separation distance of 12m. The rear setback of tower A, B and C are as follows:

- Tower A is setback from the rear (western) boundary by approximately 11.4m. Whilst this setback is less than 12m the panel considered the setback to be reasonable given the neighbouring buildings are heritage items which are unlikely to be developed.
- Tower B is setback between 18.25m and 20.68m and is acceptable.
- Tower C is setback 11.4m and the panel considered this setback to be unacceptable.

The Panel recommended the setback of Tower C be increased to 12m to improve urban design and residential amenity particularly privacy. The PPR increased the separation distance of tower C to 12m and is now acceptable.

**Department Comment:**

The Department is satisfied that the proposed setbacks within the PPR are adequate and agrees with the Panel's recommendation.

Setbacks South/East/North

**Panel Comment:**

The proposed towers are setback between 0 and 2.8m from the North South and East Boundary alignments. The Panel noted that the proposed setbacks are contrary to the proposed DCP controls which requires 6m, however compliance would require the towers to be pushed back closer to the surrounding residential properties or towards each other reducing separation distance, neither of which is acceptable. Under the circumstances, the Panel was of the view that the proposed North South and East setbacks are acceptable.

**Department Comment:**

The Department is satisfied that the proposed setbacks are adequate and will minimise amenity impacts (particularly privacy and overshadowing) on surrounding residential properties. The Department agrees with the Panel's recommendation.

## 5.2 FLOOR SPACE RATIO

**Panel Comment**

The following table outlines the relevant FSR controls for the PPR.

Table 3 - FSR compliance

Burwood Planning Scheme Ordinance	Control	Approved development	As built Development	Proposed (Panel's report)	Compliance
Total FSR	2:1	4.03:1 (incl public car park) 3.36:1 (excl public car park)	3.0:1 (incl public car park) 2.33:1 (excl public car park)	6.95:1 (incl public car park) 6.28:1 (excl public car park)	No
DBTCLEP 2007 (exhibited)	Permitted			Proposed	Compliance
Total FSR	Max 5.0:1			6.31:1 (incl car park) 4.93:1 (excl car park)	No
Residential	Max 3.5:1			3.32:1	Yes
DBTCLEP 2008 (exhibited)	Permitted			PPR	Compliance
Total FSR	Max 4.5:1			6.31:1 (incl car park) 4.93:1 (excl car park)	No
Residential	Max 3.0:1			3.32:1	No

Note: The draft LEP requires basement car parking to be included in the FSR calculation

The Panel noted the non compliance with the above planning controls and noted that the DGRs required the proposal to take into consideration the Draft Burwood LEP 2007 which was the instrument that informed the original design. The proponent in their submission has calculated the FSR excluding the underground car park. By excluding the basement car park the proposal complies with the 2007 controls. The Panel also noted the Council approved commercial development has an FSR of 4.03:1 which does not comply with the BPSO control of 2:1.

The Panel is of the view that the proposed FSR is acceptable in the circumstances where building separation, solar access and public domain are acceptable.

#### Department Comment:

The Department agrees with the Panel's view that the proposed FSR is acceptable, provided that building separation is increased. The DBTCLEP 2007 and 2008 which informed the FSR of the proposal seeks to increase building heights and densities within the city centre. Whilst the proposal exceeds the FSR controls, the proposal complies with the maximum height controls proposed for the site and it is considered that amenity impacts such as overshadowing, view loss and privacy are acceptable. In these circumstances the Department concurs with the Panel recommendation and considers the proposed FSR to be acceptable provided that building separation is increased.

### 5.3 HEIGHT

#### Panel Comment:

The Panel considered the proposed building heights against the DBTC LEP 2007 and DBTC LEP 2008. The DBTC LEP 2007 maximum height control for this site is 62.25m while under the DBTC LEP 2008 the maximum height control is 60.00m.

The original proposal as exhibited had heights of:

- Tower A - 56.8m
- Tower B - 40.8m
- Tower C - 52.8m

The preferred project proposes heights of:

- Tower A - 60m
- Tower B - 51.2m
- Tower C - 41m

Despite the minor increase in height under the PPR the Panel noted that the proposed heights comply with the future planning controls for the site and on this basis are acceptable.

The Panel also noted the amended height variation between the exhibited proposal and the PPR. The towers have been rearranged in height so that the highest tower (tower A) is sited on the southern most part of the site while the lowest tower (tower C) is now sited on the northern most part of the site. The Panel considered the amendment to result in a better urban design outcome.

#### Department Comment:

The Department agrees with the Panel's assessment and is satisfied that the proposal complies with the future planning controls for the site which seek to increase height and density within the Burwood Town Centre. Further the Department considers the increase of up to a maximum two (2) additional storeys satisfactory as a better design outcome is achieved while solar access for adjoining residential properties is maintained given that affected properties to the south are commercial.

## 5.4 PARKING

The proponent does not seek approval for the as built and approved 5 level basement car park. Approval is sought for the re-organisation of the existing, as built, basement level car park to cater for 115 additional car parking spaces generated by the residential component. Current capacity allows for **672** car parking spaces via a reorganisation of existing space and comprises 205 spaces dedicated for public car parking, 285 residential spaces, 193 commercial spaces and, as sought by this application, 115 additional spaces.

#### Panel Comment:

The Panel raised concern over the total number of car parking spaces provided on site, given the proximity of public transport in the Burwood Town Centre. The Panel also raised concern over the existing commercial car park rate applied for the approved development and the subsequent S.96 approvals issued by Council which increased the size of the basement car park.

The PPR proposes the following car parking rates;

- Commercial: 230 spaces (previously approved by Council)
- Public car park: 205 spaces (previously approved by Council)
- Residential: 233 spaces.
- **Total: 668 spaces**

The Panel noted that the existing built and approved development (as per DA 379/01 and its subsequent Section 96 approvals) comprised 553 car parking spaces including 205 spaces are for a Council owned public car park. The residential component for this application requires an additional 115 car parking spaces to be provided. The additional car parking spaces are able to be provided within the same physical space as the existing basement car park approved by Council (including subsequent section 96 applications) resulting in a total of 668 car parking spaces on site.

Council's consolidated DCP Part 22 requires the following car parking for the residential component of the proposal:

#### Residential Car Parking

Type of unit	Number of units	Proposed Parking	Compliance
3 bedroom @ 1.5 spaces per unit	45	68	Yes
2 bedroom @ 1 space per unit	89	89	Yes
1 bedroom @ 1 space per unit	76	76	Yes
<b>Sub Total</b>	<b>210</b>	<b>233</b>	
Visitor @ 1 space per 6 units		35	No
<b>Total</b>	<b>210</b>	<b>268</b>	

As indicated above, the proposal complies with the car parking rate for the residential units. However, the proposal has a shortfall of 35 visitor car parking spaces. The Panel noted this shortfall and recommended that no additional car parking should be provided on site due to the existing quantum of car parking already provided and due to a 205 space public car park which can act for visitor parking. The Panel noted this shortfall and recommended that no additional car parking

should be provided on site due to the existing quantum of car parking already provided on site and due to a 205 space car park which can also act as visitor car parking for the proposed development.

**Department Comment:**

The Department shares the concerns raised by the Panel in relation to the quantum of car parking provided on site given the site's proximity to Burwood Train Station. However, in the absence of controls recommending a reduced parking rate and given that Council has approved the constructed 5 level basement containing 553 spaces with the physical space for 115 additional spaces to those already approved, which complies with the current controls, no objection is raised.

The Department also agrees with the Panel with regards to the required 35 visitor spaces given the existing quantum of car parking already provided on site and due to a 205 space car park which can also act as visitor car parking for the proposed development.

It is also noted that the basement can accommodate 672 spaces, 4 more spaces than required. It is considered appropriate that the 4 additional spaces shall be used as car share spaces to reduce private car ownership. The approval will be conditioned accordingly.

## 5.5 TRAFFIC

**Panel Comment:**

The Panel sought further traffic analysis for the proposed development on the basis that existing traffic conditions within the town centre had changed and as the proposed uses had changed from the original approval from commercial to a commercial residential mix. The Panel also requested that the existing and projected function of surrounding streets, the Draft BTCP LEP and the RTA submission also be taken in account.

The updated traffic report prepared by Thompson Stanbury and Associates addresses the issues raised by the Panel. The report concluded that the traffic generation from the proposed 672 car parking spaces (119 more than currently constructed) would be marginally less than that already approved due to the change in land use mix. The Panel indicated that they were satisfied with the conclusion reached within the updated traffic report and considered that as the impact of the proposed development is generally the same as that approved, the traffic impact is acceptable.

**Department Comment:**

The Department is also satisfied with the conclusions reached within the updated traffic report. As the impact of the proposed development is generally the same as that approved the traffic impact is acceptable.

## 5.6 HERITAGE

**Panel Comment:**

The Panel raised concern that the initial Heritage Impact Statement (HIS) accompanying the proposal did not satisfactorily address the visual impact of the proposal having regard to heritage items other than the immediately adjoining terraces. Accordingly an amended HIS was submitted with the Preferred Project which concluded that:

*"The existing impact of the podium and the poorly sited substation already has a substantial negative impact on the Lochiel Terraces and that this impact is greater than the proposed towers."*

The Panel agreed with the conclusion of the HIS and noted that the type of development proposed is anticipated by the draft town centre controls.

**Department Comment:**

The Department agrees with the conclusion reached in the HIS and by the Panel. The setting of the surrounding area has already been altered by the approved commercial podium and to a lesser extent the surrounding commercial/retail development to the east along George Street and the residential development to the north. Given the desired future character envisaged by the new draft LEP 2008, it is considered that the heritage impact is acceptable in this instance.

## 5.7 S.94 CONTRIBUTIONS

**Panel Comment:**

The Panel noted that a section 94 contribution will be required in accordance with Council's current Section 94 contribution plan dated March 2001. The following table calculates the relevant contribution for 210 units proposed in the PPR:

Table 4 Section 94 Contributions

Section 94 Levy	Amount (\$)
Roads and Traffic Facilities	\$49,855.50
Community Facilities	\$921,472.47
Open Space & Recreation	\$1,422,534.53
Plan Preparation and Administration	\$92,966.53
Parking Facilities (35 spaces @ \$28,500)	\$997,500.00
<b>Total</b>	<b>\$3,484,329.03</b>

The Panel noted Council's submission which sought a contribution of \$4,902,891.02. However they noted this calculation was in respect of a larger development in terms of number of residential units.

The proponent has requested a discount for the 35 visitor car space shortfall (\$997,500.00) to be paid due to the provision of the public car park on site which also serves as visitor parking. The Panel is of the view that due to the quantum of car parking already provided on site there would appear to be no basis for seeking a contribution for additional car parking.

**Department Comment:**

The Department agrees with the Panel and considers it reasonable to waive the contribution levy for visitor car parking given the site has a 205 space public car park, currently owned and operated by Burwood Council, constructed at the proponent's expense. A modification condition will therefore be imposed on the approval requiring a total cash contribution for the following:

Total levy \$3,484,329.03 - Parking levy \$997,500.00 = **\$2,486,829.03**

The levy is to be paid to Council prior to the release of the first construction certificate for building works.

## 5.8 OPEN SPACE

**Panel Comment:**

The panel sought clarification on the provision of opens space and landscaping along a redundant strip of land on the ground floor along the western boundary. The status of this strip had been subject to earlier discussions between the Panel and the proponent.

The proponent submitted landscaping plans for this space for the Panel's consideration. The Panel considered the proposed treatment of this space favourably and recommended that a condition be imposed requiring the landscape plans prepared by Turf Designs be incorporated into the project.

**Department Comment:**

The Department is satisfied that the landscape plans prepared for the strip of land along the western boundary is a good outcome and a modification has been recommended on the approval requiring implementation of the proposed landscape works.

## 5.9 WIND

**Panel Comment:**

The Panel requested a further wind study be prepared for the proposal. An amended report was submitted with the PPR which made a number of recommendations in relation to mitigating wind impacts. The Panel recommended that the recommendations be incorporated as modifications of the approval.

**Department Comment:**

The Department concurs with the Panel's recommendation and notes that the suggested modifications detailed within the wind study have been incorporated within the proponent's statement of commitments. On this basis the Department is satisfied that this issue has been adequately addressed.

## 5.10 FOOTPATH/STREET ACCESS

### Panel Comment:

The Panel raised concern that the residential lift lobbies on Victoria and George Street could only be accessed via the public car park lobby. The preferred project has satisfactorily addressed this issue by providing separate access into the lift lobby into Buildings A and C from the public car park lift lobbies.

The Panel also raised concern regarding the existing footpath width along Victoria Street and recommended that the footpath be widened to allow safe access for pedestrians. To address this issue the proponent has entered in to a statement of commitment to extend the Victoria Street footpath width to a minimum of 1.8m. Due to the existing podium the footpath will have to be extended out towards the Victoria Street carriageway.

### Department Comment:

The Department shares the Panel's concern over the current width of the Victoria Street footpath particularly given the proposed increased density associated with the additional 210 residential units. It is therefore recommended that a modification be imposed on the approval requiring that the footpath be extended to have a minimum width of 1.8m. This shall be included in the public domain improvement works required for the development and included in the bond to be paid to Council covering the cost of works.

## 5.11 OVERSHADOWING

### Panel Comment:

The Panel notes the increase in building height of Building A by 2 storeys but does not raise objection on the basis the increased height does not result in an unreasonable increase in overshadowing of adjoining residential properties or detrimental visual impact.

### Department Comment:

Shadow diagrams were prepared for the proposal which included a comparison of the approved commercial development and the proposed residential development at hourly intervals at 22 June. Based on the comparison the impact of the proposed development will be generally similar to the approved commercial development on properties to the west of the site. In both cases no overshadowing occurs past 10:30am which is acceptable. Refer to **Tag 6,7 and 8**.

The impact of the proposed development on properties to the south however is greater than the approved commercial development as a result of the additional height of the proposal. Despite the additional overshadowing it is considered that the impact is reasonable given the properties to the south are commercial properties. It is also considered that the extent of overshadowing is reasonable given the level of permissible development envisaged by the DBTC LEP on this site.

# 6 CONSULTATION AND ISSUES RAISED

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## 6.1 PUBLIC EXHIBITION DETAILS

The environmental assessment (EA) was exhibited for a 30 day period from 24 January 2008 until 22 February 2008 and was published in the Inner West Weekly. The EA was made available to the public via the Department's website, the Department's Information Centre and the Burwood Council. On the 30 May 2008 the Panel also held a Public Hearing to which 4 public representations were made.

## 6.2 SUBMISSIONS RECEIVED ON THE ENVIRONMENTAL ASSESSMENT

The Department received a total of 27 submissions comprising 4 submissions from government agencies, 23 submissions from the public and a 202 signature petition objecting towards the Elsie Street development and LEP amendments.

The public submissions raise various issues, the main being:

- Traffic
- Building height/bulk



- Overshadowing
- Car parking
- Residential amenity

These issues have been discussed in detail in Section 5 of the report. The proponent's response to public submissions is made in Appendix C. It is considered that the Panels recommended changes to the proposal along with the Department's recommended conditions have adequately addressed these issues.

### 6.3 SUBMISSIONS FROM PUBLIC AUTHORITIES

The following submissions were received from public authorities.

#### 6.3.1 Roads and Traffic Authority (RTA)

The RTA did not object to the proposal but did make the following comments;

- The proposal should provide end of trip facilities for bicycle commuters;
- The proposal will increase traffic generation on surrounding streets;
- Compliance with Australian Standards for car parking spaces, queuing etc;
- Operation of public car park; and
- Requirements for cost responsibility, signposting and traffic management.

#### Department Comment

The Department has considered the RTA's comments and has imposed the following modifications:

- Bicycle parking and end of trip facilities to be provided.
- All car parking and queuing areas are to comply with the relevant Australian Standards
- Clear sign posting to be provided
- A construction traffic management plan is to be prepared and approved by Council.
- A parking management plan is to be submitted to Council

With regards to traffic it is noted that the proposal will increase traffic on surrounding streets however, as noted earlier in the report as the traffic impact of the proposed development will be similar to the already approved the traffic impact is acceptable. With regards to the public car park Burwood City Council will be managing the car park and the public car park does not form part of this application. On this basis, together with the above conditions it is considered that issues raised by the RTA have been adequately addressed.

#### 6.3.2 Burwood City Council

Council does not object to the proposal, but raised the following key concerns:

- Side and rear setback
- Building separation distances
- Recommended standard conditions including section 94 contribution and a bond for streetscape improvement works.

The above issues have been discussed earlier in the report. The proposed side and rear setbacks are acceptable and a condition will be imposed requiring the building separation between the towers to be increased to comply with Council and RFDC controls. Section 94 contributions have been calculated in accordance with Council's policy and it is considered appropriate that the section 94 contribution for car parking be waived due to the level of public and visitor car parking already provided on site. The bond for streetscape improvement works will be imposed as a modification on the approval.

Council have recommended a number of conditions to be imposed on the consent. The Department has either applied Council's proposed conditions or used its own conditions where necessary. The exception is the Council recommended Section 94 contribution condition which has been amended to waive the contribution levy for visitor car parking given the site has a 205 space visitor car space that can serve as visitor parking.

### 6.3.3 Ministry of Transport

MoT did not object towards the proposal but did raise the following issues;

- Preparation of a TMAP
- Car parking
- Pedestrian and Cycling accessibility
- Traffic demand management measures

#### Department Comment

In response to the issues raised by MOT the proponent has prepared a TMAP for the proposal. The TMAP made recommendations with regard to pedestrian and cycling accessibility. The TMAP also concluded that car parking provision was satisfactory. The Department has recommended a number of modifications be imposed on the approval including bicycle parking and end of trip facilities to be provided and traffic demand measures be implemented.

## 7 THE PUBLIC INTEREST

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The proposed redevelopment will provide significant benefits to the community, including:

- Provision of housing choice mix and supply with access to public transport and job opportunities.
- Employment opportunities through the construction and on-going phase of the development.

The proposal will also result in an appropriate building form and urban design that ensures that the development will not have unacceptable impacts upon the amenity currently enjoyed by the local community.

Accordingly, the proposal is considered in the public interest for the above reasons.

## 8 NO ADDITIONAL PROJECT APPROVAL SOUGHT

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The Department is satisfied sufficient detail is contained within the amended concept plan drawings submitted with the revised PPR to demonstrate the design detail for each apartment, over each level within each building, more common to a Project application and including vertical circulation and access through the buildings to the ground floor level foyers and the residential levels of the basement car park.

On this basis, the Department will not seek additional project applications where amendments are required, such as the recommended modification seeking details of the 24m separation distance and resolution of the additional storeys to Buildings B and C; these matters have been addressed by Conditions.

All future applications for development on the site will therefore be subject to Part 4.

## 9 CONCLUSION

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The Department has assessed the EA and considered the IHAP report and submissions in response to the proposal. Key issues raised by agencies and in public submissions relate to compliance with the Residential Flat Design Code, height, bulk and scale overshadowing, FSR, heritage, car parking and traffic.

On 15 December 2008 the proponent made amendments to the proposal through the PPR to address issues raised by the Panel, agencies and public submissions. The PPR revised the layout and height of the three residential towers to address the issues raised.

Key recommendations made to the proposal which are included as modifications to the Concept Plan include increasing the building separation distances between towers, incorporation of landscaping along the western boundary of the site and widening the Victoria Street footpath.

The Department is satisfied sufficient detail is contained within the concept plan drawings that no further environmental assessment is necessary and that the Minister determine the concept plan. The exception is the submission of details for approval by the Director General to comply with the 24m building separation above level 6 between the towers and of any additional height to buildings B and C to compensate for lost units, and appropriate conditions are recommended.

The Department has closely considered the Panel's report and recommendations and public and agency submissions. The Department is satisfied that the impacts of the proposed development have been addressed via the proponents Preferred Project Report, the Statement of Commitments and the Department's recommended conditions. These modifications are consistent with the Panel's recommendations. Furthermore, the proposal adequately addresses the Director General environmental assessment requirements for the proposal and issues raised by the Panel.

## 10 RECOMMENDATION

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It is recommended that the Minister:

- (A) Consider all relevant matters prescribed under Section 75O(2) of the *Environmental Planning and Assessment Act, 1979*, including those relevant matters prescribed by Section 75N and 75I(2) as contained in the findings and recommendations of this report;
- (B) Determine that no further environmental assessment is required under Section 75P(1)(c) of the *Environmental Planning and Assessment Act, 1979*;
- (C) Approve the concept plan application, subject to modifications, under section 75O *Environmental Planning and Assessment Act, 1979* having considered all relevant matters in accordance with (A) above; and
- (D) Sign the Instrument of Approval (TAG B).

Prepared by:

Endorsed by:

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9/2



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9/2/09