

# ENVIRONMENTAL ASSESSMENT



TOWN PLANNING  
AND URBAN DESIGN

## Major Project Application No. 07\_0076 – 7-17 Elsie Street and 45-49 George Street, Burwood – Modification 1

for Kavlyn Pty Ltd

May 2011

211.082 RPT – Mod 1

[ACN 100 209 265 / ABN 90 100 209 265](#)

**Copyright Notice:** The Planning Group NSW Pty Limited

The copyright in this work is vested in The Planning Group NSW Pty Limited and the document is issued in confidence for the purpose only for which it is supplied. It must not be reproduced in whole or in part except under an agreement with, or with the consent in writing of, The Planning Group NSW Pty Limited and then only on the condition that this notice appears in any such reproduction. No information as to the contents or subject matter of this document or any part thereof may be given orally or in writing or communicated in any manner whatsoever to any third party without prior consent in writing of The Planning Group NSW Pty Limited.

**SYDNEY OFFICE**


Suite 102, 8 West Street PO Box 1612 Telephone +61 2 9925 0444 The Planning Group NSW Pty Ltd  
North Sydney NSW 2060 North Sydney NSW 2059 Facsimile +61 2 9925 0055 ABN 90 100 209 265

[www.tpgnsw.com.au](http://www.tpgnsw.com.au)

Environmental Assessment  
Vincentia District Centre Part 3A Modification

Submission of Environmental Assessment (EA)

Prepared under Part 3A of the *Environmental Planning and Assessment Act (EP&A Act) 1979*.

EA prepared by	
Name	Marian Higgins
Qualifications	Bachelor of Town Planning (UNSW) Master of Environmental and Local Government Law (Mac Uni)
Address	The Planning Group (NSW) Pty Ltd PO Box 1612, North Sydney 2059.
Project to which Part 3A applies	MP 07_0076 (Mod 1)
Proponent name	Kavlyn Pty Limited
Proponent address	
Land on which the development is to be carried out: address	The Land Area subject of this application is illustrated in <b>Figure 1</b> .
Proposed development	Modification of Project Approval for Apartment Building Development in Burwood
Environmental Assessment	An Environmental Assessment (EA) is attached.
Certificate	I certify that I have prepared the contents of this document and to the best of my knowledge: It is in accordance with the requirements of Part 3A, It contains all available information that is relevant to the environmental assessment of the development, and It is true in all material particulars and does not, by its presentation or omission of information, materially mislead.
Signature / Name / Date	 Marian Higgins / 17 May 2011



## TABLE OF CONTENTS

1.	SITE AND CONTEXT .....	1
2.	EXISTING APPROVALS .....	2
2.1	HISTORY OF PLANNING APPROVALS .....	2
3.	THE PROPOSED MODIFICATION .....	9
3.1	DESCRIPTION OF MODIFICATION 3.....	9
3.2	PROPOSED FLOOR AREAS AND CAR PARKING IN MODIFICATION 1.....	9
3.3	CONSISTENCY WITH THE CONCEPT APPROVAL AND PROJECT APPLICATION.....	10
4.	SUMMARY REVIEW OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS AND CONTROLS.....	11
4.1	COMMONWEALTH MATTERS.....	11
4.1.1	Environmental Protection and Biodiversity Conservation Act (EPBC), 1999 .....	11
4.2	STATE LEGISLATION .....	11
4.2.1	Environmental Planning and Assessment Act, 1979 .....	11
4.3	STATE ENVIRONMENTAL PLANNING POLICIES .....	12
4.3.1	State Environmental Planning Policy 2005 (Major Development) .....	12
4.3.2	State Environmental Planning Policy Infrastructure 2007.....	13
4.3.3	State Environmental Planning Policy No. 55 – Remediation of Land ..	13
4.3.4	State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.....	14
4.3.5	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.....	15
4.4	OTHER PLANS .....	16
4.4.1	METROPOLITAN PLAN FOR SYDNEY 2036.....	16



4.4.2	Burwood Local Environmental Plan (Burwood Town Centre) 2010.....	16
	Zoning.....	16
	Permissibility.....	17
	Relevant Clauses .....	18
5.	ENVIRONMENTAL ASSESSMENT .....	28
5.1	CONCEPT PLAN.....	28
5.2	TRAFFIC IMPACTS .....	28
5.3	URBAN DESIGN .....	28
5.4	VISUAL IMPACTS.....	28
5.5	SOCIAL IMPACTS .....	28
5.6	STREETScape AND PUBLIC DOMAIN .....	29
5.7	NOISE AND LIGHT IMPACTS .....	29
5.8	WATER QUALITY AND WASTE MANAGEMENT .....	29
5.9	ADJOINING LAND .....	29
5.10	OTHER ISSUES / CONSIDERATIONS .....	29
5.10.1	Utilities and infrastructure .....	29
5.10.2	Economic Impact .....	29
5.10.3	Heritage .....	29
5.10.4	Landscape Strategy .....	29
5.10.5	Accessibility .....	29
5.10.6	Crime Prevention .....	30
5.10.7	ESD.....	30
6.	DRAFT STATEMENT OF COMMITMENTS .....	34
7.	CONCLUSION.....	35

## APPENDICES



Appendix A: Architectural Drawings

Appendix B: Compliance Tables

Appendix C: BASIX Certificates

## **FIGURES**

Figure 1: Site Location

Figure 2: Extract of Zoning Map - BLEP

Figure 3: Extract of FSR Map - BLEP



## EXECUTIVE SUMMARY

This Environmental Assessment (EA) report has been prepared by The Planning Group NSW Pty Ltd (TPG NSW) on behalf of Kavlyn Pty Ltd as the proponent for the modification, to request under Section 75W of the *Environmental Planning and Assessment Act, 1979* the modification of MP 07\_0076, referred to in this report as Modification 1.

### Existing Approval

The Minister for Planning granted via Instrument of Approval dated 2 March 2009, subject to conditions, the following:

- a) *Construction of three (3) residential apartment buildings over an approved and constructed commercial podium.*
- b) *Alterations to the ground floor.*
- c) *Lift entries and lobbies from residential parking levels through to each tower.*
- d) *A maximum of 210 residential units.*
- e) *Re-organisation of car parking within the existing as built basement level car parking to meet demand generated by the residential component of the application (additional 115 car parking spaces).*

It is noted that the Minister for Planning pursuant to Clause 6 of *State Environmental Planning Policy (Major Development) 2005* (Major Development SEPP) and Part 3A of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) previously accepted the development as a Project to which the provisions of Schedule 1 Part 13 applied via letter dated 9 July 2007 and Director-General's Environmental Assessment Requirements were issued on 12 August 2007.

### The Site and Locality

The site upon which the Project Approval was granted at 7-17 Elsie Street and 45-49 George Street, Burwood is currently under construction.

The site is located within 200m of the Burwood Railway Station within the Burwood Town Centre.

### Proposed Modification

Modification 1 seeks approval for the following:

1. Change on level 3 in Building A to reduce the area approved as plant room and convert the remaining space into a one bedroom apartment A3.02 with an area of 55.5 square metres;
2. Change on level 3 in Building B to reduce the area approved as plant room and convert the remaining space into bedroom 3 of existing apartment B3.01 which



- increases the apartment size to 112 square metres and from 2 bedrooms into 3 bedrooms;
3. Change on level 3 in Building C to reduce the area approved as plant room and convert the remaining space into a one bedroom apartment C3.06 with an area of 70.5 square metres;
  4. Change on level 13 in Building C to reduce the area approved as plant room and convert the remaining space into a one bedroom apartment C13.05 with an area of 50 square metres;
  5. Change to southern elevation of Building C at level 3 podium with the inclusion of glazing;
  6. Change to southern elevation of Building C at level 13 with the inclusion of glazing;
  7. Change to western elevation of Building A at level 3 podium with the inclusion of glazing;
  8. Change to western elevation of Building B at level 3 podium with the inclusion of glazing; and
  9. Change to western elevation of Building C at level 13 with the inclusion of glazing.

The nature of the change increases the number of apartments in the approved development from 210 to 213.

The changes are detailed in Drawings No.s DA11, DA 16, DA20 and DA23 dated 6 May 2011 prepared by Turner and Associates, and are distinguished with “clouding” in elevations or light blue on floor plans which can be found at **Appendix A**.

### **Reasons for this Modification**

The proponent seeks to change the approval based on the following reasons:

- a) At the time the initial architectural design work was being undertaken by Turner and Associates, technical inputs on hydraulic and mechanical services were not available, and therefore areas were set aside for the purposes of plant rooms but the actual size and technical specifications to determine the size of these spaces could not be exactly known.
- b) As a result of work undertaken during the Construction Certificate and Construction stages of the project with the development of technical specifications for hydraulic and mechanical services to support the development, along with improvements in technology, the size of plant rooms as allocated in the originally approved Project Application drawings have not been required.



- c) Given the size of the plant rooms have been reduced, the proponent seeks to enable the parts of the building which already have a floor, ceiling and walls (therefore a volume of built form in each building has been approved and as the building is currently under construction, now exist) to be converted for a more useful purpose.
- d) Therefore, the proponent has prepared this Modification to seek the conversion of the available parts of each building into apartment building floor space as detailed previously.

#### The nature of the changes

The design changes can be managed such that the ESD objectives will be maintained and this is demonstrated in the new BASIX Certificates and report by Vipac which can be found at **Appendices A and C**.

#### **Methodology**

The methodology in the preparation of Modification 1 EA is essentially the same as that undertaken for the original Project Application, and only assesses the new issues arising as a result of the proposed changes.

The previous Part 3A concept and project application, involved input from a range of disciplines including urban design, landscape architecture, heritage, engineering, traffic engineering, environmental/ESD, social planning, acoustics and geotechnical assessment.

Modification 1 of the approved Project Application builds on these previous investigations and addresses additional issues pertaining to the proposal including: FSR, parking, architecture and SEPP 65 considerations.

This Modification will necessitate a change to condition A2.

#### **Consistency with Concept Plan Approval and Project Application**

Modification 1 if approved will be consistent with the original Concept Plan Approval and Project Application, as the overall siting, design and location of each of the buildings and overall development will be the same as that which was originally approved.



## 1. SITE AND CONTEXT

The land is known as 1 – 17 Elsie Street and 45-49 George Street, Burwood and is owned by Burwood Council. The land was originally used as an open car parking area with 191 pay-parking spaces, including three (3) spaces dedicated for people with a disability.

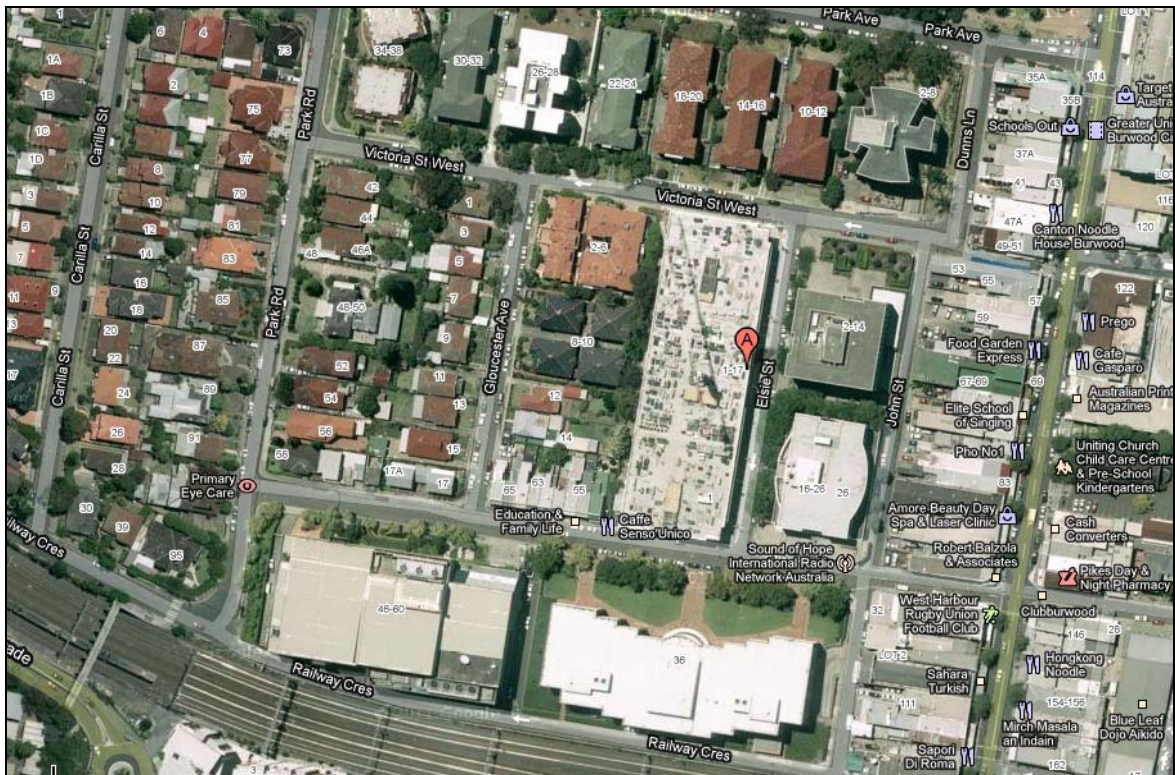
The site has three street frontages being:

- Northern - Victoria Street (45.72 m);
- Eastern - Elsie Street (122.81 m); and
- Southern - George Street (45.72 m).

The property has a total site area of 5,633 square metres and is rectangular in shape.

To understand the development as proposed in the current amended drawings, an overview on the history of the site development has been prepared.

**Figure 1** indicates the site location.



**Figure 1: Site Location**      **Source: Google (Site shown with "A")**

## **2. EXISTING APPROVALS**

### **2.1 HISTORY OF PLANNING APPROVALS**

#### **6 April 1979 until the first application**

Burwood Planning Scheme Ordinance was gazetted on 6 April 1979. The land was shown Reserved for Special Uses – (Parking), under the Burwood Planning Scheme Ordinance Map.

The site was rezoned Business Special (District Centre) 3(c2), by virtue of the Burwood Local Environmental Plan No. 18 (BLEP18), adopted in November, 1988. BLEP 18 incorporated public car parking facilities into any redevelopment of the site.

In order to make better use of the land, while still providing for the public car parking facilities, Council leased the land in April, 1991 to Lucas & Tait (Sales) Pty Ltd for a term of ninety-nine (99) years.

#### **6 December 2002**

Burwood Council grants approval to Development Application No. 379/01 subject to conditions. This approval involves:

- *Excavation of the existing car park site;*
- *Construction of a part two, part five and part seven storey mixed commercial building comprising 17,398 square metres of office space and 125 square metres of retail space comprising three café areas on the ground floor;*
- *240 private car parking spaces on basement levels B2, B3 and part on the ground floor;*
- *Not less than 200 public car parking spaces on basement levels B1 and B2;*
- *Provision of 4 loading docks and 23 bicycle storage spaces as well as amenities and shower facilities at the ground floor;*
- *Two separate ground floor portals, one at each end of the building, for access to the public car park; and*
- *Landscaping of the site including provision of 1,200 square metres of publicly accessible open space principally on the northern side of the proposed building fronting Victoria Street. Part of this area was indicated as a possible outdoor dining area adjacent to one of the proposed cafes.*

#### **14 August 2003**

Burwood Council adopts the Burwood Strategic Planning Review and Town Centre Masterplan.

#### **24 February 2004**

In March 2004, Council commissioned the Neustein Rosenberg Partnership, together with Scott Carver, to prepare a Strategic Planning Review and Town Centre Masterplan for Burwood (Vision Document).

Council also commissioned a strategic planning review for its whole LGA to provide an overall planning and development context with priorities for its future planning work. Council adopted this Vision Document on the 24 February 2004.

The vision for the Elsie Street precinct is to contribute to a vibrant and reinvigorated Burwood Town Centre based on the regeneration of these sites by increasing the commercial and residential components with an improved public domain.

The proposed design being a mixed-use commercial and residential project will positively contribute to the new Town Centre by providing a development that is sympathetic to its heritage neighbourhood, creates a modern visually dominant building, within a sustainable environment for inner city living.

Burwood Council adopted "The Vision Document: The Burwood Strategic Planning Review and Town Centre Masterplan" (Vision Document). An extract of Figure 5 from the Vision Document is included at page 16 of the original Environmental Assessment. This figure indicates heights ranging between 5 and 18 storeys for the subject site and promotes mixed use development outcomes, with lower level commercial/retail and upper levels residential.

An urban design review of the potential development of the site had also been undertaken by Stanisc Associates and advocated an alternative, more vibrant, mixed-use development, to ensure economic viability and substantial community benefit.

### **21 November 2005**

In July, 2005 Architex, was engaged to assist in the preparation of the Construction Certificate documentation for the proposed three (3) basement car parking levels.

On 9 August 2005 an application for Early Works Construction Certificate was made to Barry Johnson and Associates (PCA) for the commencement of piling and excavation of the basement car parking levels.

On the 23 September 2005, Kavlyn Pty Ltd issued a Notice to Vacate to Burwood Council in order to commence construction of the basement car parking.

In late October 2005 a Construction Certificate for Early Works was obtained from Barry Johnson & Associates, the Section 94 Contributions were paid to Council and a Notice to Vacate the site was issued to Burwood Council for construction to commence.

On 21 November 2005, Burwood Council granted approval via Section 96 to modify Development Application No. 379/01. This approval involved:

*Additional parking including additional basement level so as to increase on-site parking to 553 spaces, including not less than 205 public car parking spaces, over four levels of basement car parking.*

On 21 November 2005 a S96 application was approved by Burwood Council for the construction of four (4) basement car parking levels, providing a total of 553 car spaces, of which 205 car spaces were to be dedicated as public car parking. The parking facilities

were to be constructed in accordance with the latest Australian Standard AS2890.1 – 2004 and AS2890.2 – 2002.

This application was independently assessed by Mr Lindsay Fletcher from Planning Ingenuity.

### **26 July 2006**

In order to comply with the Section 96 approval dated the 21 November 2005, a new Section 96 application was lodged to Council on 8 March 2006 for the approval of a fifth basement car parking level, in order to accommodate the required 553 car spaces within sufficient area so that car parking spaces are in accordance with the design standards of AS2890.1 – 2004. Burwood Council on 26 July 2006 granted approval via Section 96 to modify Development Application No. 379/01. The application was described by Council in the assessment report considered by Council at its meeting held on 11 July 2006, as:

*This application proposes to modify DA 379/01, which proposed to erect a part 2/5/7 storey commercial office development with basement parking for 553 car spaces including 200 public car parking spaces. The modifications now proposed include an additional (5<sup>th</sup>) basement level to accommodate the provision of a total of 553 car parking spaces in accordance with the previous consent conditions, design changes to the basement levels that result in a reduction of the setback from the western side boundary from 6m to 4m and therefore a reduction in deep soil planting, predominantly internal alterations to the ground floor level which result in a decrease of floor space of 118 square metres, and a minor increase in gross floor area of 264 square metres which result in an increase in floor space ratio of 0.06:1 (i.e. an increase from 3.25:1 to 3.31:1).*

The application was independently assessed by Mr Lindsay Fletcher from Planning Ingenuity.

It is noted that Council imposed several additional conditions including: amended condition 26 to provide 553 car parking spaces of which 205 as public car parking spaces; new condition 27F vehicular entry from George Street to be widened to 6m; new condition 27G roller shutters to remain open at all times to the basement car park to allow access to the public parking; new condition 27H inclusion of blind aisle as specified; new condition 27I George Street driveway to be widened to 6.5m; new condition 27J car spaces 1 to 3 on the ground level to be maintained as public parking; new condition 27K 2 car wash bays next to the loading docks; new condition 27L maintain a minimum 6m setback from the western boundary; and new condition 27M ground floor layout to be amended to maintain at least 1 car parking space portal to serve future access point and associated service area for the public car park.

The approval enabled a total floor space of 18,916.93 square metres within the approved commercial building with a minimum of 348 car parking spaces.

### **February 2007**

Council commences public exhibition of Draft Burwood Town Centre Local Environmental Plan 2007 (Draft BTCLEP 2007). The Draft BTCLEP 2007 includes a number of maps indicating proposed zoning, FSR, height among other controls. This draft local environmental plan has had a Section 65 Certificate issued and was publicly exhibited, as such the Environmental Assessment dated October 2007 considered the draft controls as

being: Zone change from Commercial 2(b) to Mixed Use; Floor Space Ratio 5:1; and height up to a maximum 17 stories.

**19 April 2007**

Burwood Council granted approval via Section 96 to modify Development Application No. 379/01. The application granted approval for:

*Modification involving relocation of floor space within the building by enlarging the footprint of the commercial floors at Levels 1 and 2 and reducing the footprint of the upper floors to compensate. External changes to approved materials and façade design as well as minor amendments to the approved plans to comply with conditions.*

This application was independently assessed by Mr Lindsay Fletcher from Planning Ingenuity. No change occurred to the overall total floor space or the total number of parking spaces.

**9 May 2007**

Proponent submitted Clause 6 letter for Minister's consideration as to whether the proposed development is acceptable under Part 3A of the *Environmental Planning and Assessment Act, 1979*.

**9 July 2007**

Minister formed opinion that proposal is acceptable under Part 3A of the Act.

**18 July 2007**

Department of Planning informs proponent of Minister's decision.

**20 July 2007**

Order made by Minister for Planning under the *Environmental Planning and Assessment Act, 1979* to appoint the Burwood Town Centre Planning Panel with the following functions:

1. as a consent authority under Part 4 of the Act, but only in relation to development with an estimated cost of more than \$40,000,000,
2. in relation to the making of environmental planning instruments under Part 3 of the Act, but only in relation to the Burwood Town Centre (Burwood Town Centre Map).

**19 August 2007**

The proponent received a letter from the Department of Planning which outlined the Director-General's requirements for the Environmental Assessment.

**25 October 2007**

Preliminary Environmental Assessment submitted to the Department of Planning for the proposal.

**12 December 2007**

Minister authorised that the proposal can be submitted as a Concept Plan under Part 3A for the subject site.

**21 December 2007**

Department of Planning advises the Minister authorised submission of a concept plan under Section 75M of the Act, without any changes to the Director-General's requirements.

**21 January 2008**

Environmental Assessment amended and Concept Plan application submitted to the Department of Planning.

**24 January 2008**

Application placed on public exhibition from 24 January 2008 until 22 February 2008.

**April 2008**

In April 2008, the proponent engaged Turner and Associates to re-evaluate the apartment buildings in order to address a number of issues raised in the submissions.

**16 May 2008**

Proponent advised that an Independent Expert Panel has been appointed under Section 75G of the Act for the concept panel at Elsie and George Streets, Burwood. The Minister's "Terms of Reference" include:

*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; and*
- f) 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 related to the proposal.*

**22 May 2008**

Proponent met with the Independent Expert Panel.

**30 May 2008**

Public hearing on application held by Independent Expert Panel to enable persons who made a submission and other members of the public to make representations.

**19 June 2008**

Proponent received letter requesting additional information from Independent Expert Panel.

**23 June 2008**

Stratum subdivision plan registered at Land and Property Information NSW.

**25 July 2008**

Proponent met with the panel to review the amended design and clarify a number of matters associated with the panel's letter dated 19 June 2008.

**1 August 2008**

Burwood Council grants approval via Section 96 to modify Development Consent No. 379/01 dated 1 August 2008 involving aligning the shop facades of ground floor commercial tenancies 1, 2, 3, 4, 5 and 6 with Elsie Street and slightly increasing the floor space.

**5 August 2008**

Addendum Report, supporting documentation and amended plans submitted.

**19 August 2008**

Additional Information submitted.

**16 September 2008**

Panel complete assessment report

**7 October 2008**

Proponent meets with Department of Planning staff. Panel report made available for viewing and request for hard copy made by proponent.

**21 October 2008**

Copy of Panel report made available to proponent.

**13 November 2008**

Meeting with panel to discuss design changes.

**15 December 2008**

Preferred Project Report submitted.

Environmental Assessment  
Elsie Street, Burwood - Modification 1

**18 December 2008**

IHAP final report.

**2 February 2009**

Director-General's report.

**2 March 2009**

Ministerial Instrument of Approval issued to MP 07\_0076 subject to conditions.



### **3. THE PROPOSED MODIFICATION**

#### **3.1 DESCRIPTION OF MODIFICATION 3**

The amendments sought in Modification 1, include:

1. Change on level 3 in Building A to reduce the area approved as plant room and convert the remaining space into a one bedroom apartment A3.02 with an area of 55.5 square metres;
2. Change on level 3 in Building B to reduce the area approved as plant room and convert the remaining space into bedroom 3 of existing apartment B3.01 which increases the apartment size to 112 square metres (from 2 bedrooms into 3 bedrooms);
3. Change on level 3 in Building C to reduce the area approved as plant room and convert the remaining space into a one bedroom apartment C3.06 with an area of 70.5 square metres;
4. Change on level 13 in Building C to reduce the area approved as plant room and convert the remaining space into a one bedroom apartment C13.05 with an area of 50 square metres;
5. Change to southern elevation of Building C at level 3 podium with the inclusion of glazing;
6. Change to southern elevation of Building C at level 13 with the inclusion of glazing;
7. Change to western elevation of Building A at level 3 podium with the inclusion of glazing;
8. Change to western elevation of Building B at level 3 podium with the inclusion of glazing; and
9. Change to western elevation of Building C at level 13 with the inclusion of glazing.

The number of apartments is proposed to increase from 210 approved to 213 in Modification 1.

The changes are detailed in Drawings No.s DA11, DA 16, DA20 and DA23 dated 6 May 2011 prepared by Turner and Associates, and are distinguished with “clouding” in elevations or light blue on floor plans which can be found at **Appendix A**.

#### **3.2 PROPOSED FLOOR AREAS AND CAR PARKING IN MODIFICATION 1**

Details of the overall floor areas can be found in the information at **Appendix A** prepared by Turner and Associates.

Car parking has also been calculated based on the calculations undertaken in the Revised PPR dated December 2010 by TPG NSW there are 4 “spare” car parking spaces which have been allocated to the proposed new dwellings.

### **3.3 CONSISTENCY WITH THE CONCEPT APPROVAL AND PROJECT APPLICATION**

The principal elements of the apartment buildings development as proposed in Modification 1 are unchanged from that which was approved by the Minister when the Concept Plan and Project Application were granted consent.

## 4. SUMMARY REVIEW OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS AND CONTROLS

This section of the EA considers any relevant statutory and non-statutory provisions and the identification of any non-compliance with such provisions as a result of the proposed modification.

### 4.1 COMMONWEALTH MATTERS

#### 4.1.1 Environmental Protection and Biodiversity Conservation Act (EPBC), 1999

No matters are triggered under the Environment Protection and Biodiversity Conservation Act, 1999 (EPBC) by proposed Mod 1.

### 4.2 STATE LEGISLATION

#### 4.2.1 Environmental Planning and Assessment Act, 1979

The proponent requests that the Minister approve a modification of the approved Concept Plan and approved Project Application under Section 75W of the *Environmental Planning and Assessment Act, 1979*, which states:

##### **75W Modification of Minister's approval**

(1) In this section:

**Minister's approval** means an approval to carry out a project under this Part, and includes an approval of a concept plan.

**modification of approval** means changing the terms of a Minister's approval, including:

(a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and

(b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.

(2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.

(3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

(4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.

(5) The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.

(6) Subsection (5) does not apply to a request to modify:

(a) an approval granted by or as directed by the Court on appeal, or

(b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.

(7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan.

The provisions of Section 75W of the EP&A Act to modify the approved Concept Plan and Project Application are based on the following:

- The modification will not radically alter the development from its approved form; and
- The nature of the proposed changes relate to “areas” within the built form which are no longer entirely required for their original design purpose being “plant rooms”. The site infrastructure will be delivered in the same manner as that originally approved, including roads and pedestrian links so as to maintain legibility. The access points are unchanged from the approval and the architects involved in the project are unchanged. As such, the proposed modifications will deliver the same outcomes anticipated by the existing approvals.

### 4.3 STATE ENVIRONMENTAL PLANNING POLICIES

#### 4.3.1 State Environmental Planning Policy 2005 (Major Development)

Formerly known as *State Environmental Planning Policy (Major Projects) 2005*, *State Environmental Planning Policy (Major Development) 2005 (the Major Development SEPP)* defines certain developments that are major projects under Part 3A of the *Environmental Planning and Assessment Act 1979* and determined by the Minister for Planning. The Major Development SEPP also lists State significant sites. The policy repeals SEPP 34 and SEPP 38, as well as provisions in numerous other planning instruments, declarations and directions.

Clause 6 of the Major Development SEPP enables the Minister to make a declaration with respect to a proposed development under Part 3A of the *Environmental Planning and Assessment Act, 1979* based on the following:

##### **6 Identification of Part 3A projects**

(1) Development that, in the opinion of the Minister, is development of a kind:

(a) that is described in **Schedule 1** or 2, or

(b) that is described in Schedule 3 as a project to which Part 3A of the Act applies, or

(c) to the extent that it is not otherwise described in Schedules 1–3, that is described in Schedule 5, is declared to be a project to which Part 3A of the Act applies.

#### **Schedule 1 of Major Development SEPP**

On 9 July 2007, the site was declared a Major Project under Part 3A by the then Minister for Planning under Schedule 1 of the Major Development SEPP.

On 12 August 2007 the Director-Generals Environmental Assessment Requirements were issued. The original Concept Plan was submitted on 25 January 2008. The original application was exhibited between 24 January 2008 and 22 February 2008. The Minister appointed an IHAP on 12 May 2008.

#### 4.3.2 State Environmental Planning Policy Infrastructure 2007

The proposal involves conversion of plant rooms into residential floor space of some 184.2m<sup>2</sup>.

Under the provisions of State Environmental Planning Policy (Infrastructure) 2007, Mod 1 is not triggered.

It should be noted that the car parking available within the approved development allowed for some 4 car parking spaces in excess of the car parking standard which applied at the time of determination. The proposed changes involve conversion of four plant room areas to create 3 x 1 bedroom apartments and a third bedroom

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

*State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55) relates to the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed.

The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected and requires councils to be notified of all remediation proposals. The *Managing Land Contamination: Planning Guidelines* were prepared to assist determination authorities and developers. The provisions of SEPP 55 state the following at Clause 7:

**7 Contamination and remediation to be considered in determining development application**

(1) A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is:

- (a) land that is within an investigation area,

(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Based on the known recent land use history, the land has not been used for any specifically contaminating activity identified under the Managing Land Contamination guidelines.

The nature of the changes associated with Modification 1 do not change this conclusion.

#### 4.3.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

Pursuant to Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Flat Development (SEPP 65), residential flat development provided within a building in excess of 3 storeys in height and containing more than 4 dwellings (as defined under Clause 3) is required to be assessed under SEPP 65.

Clause 3 of SEPP 65 states:

**residential flat building** means a building that comprises or includes:

(a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and

(b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),

but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.

**Note.** Class 1a and Class 1b buildings are commonly referred to as **town houses** or **villas** where the dwelling units are side by side, rather than on top of each other.

SEPP 65 does not define “dwelling”, but it is noted that dwelling is defined under the Ryde Local Environmental Plan 2010 as follows:

**dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

A portion of the approved development and therefore Mod 1 clearly meets the criteria and this policy therefore applies.

Clause 29(1A) of SEPP 65 states:

(1A) A development application that relates to residential flat development, and that is made on or after 1 December 2003, must be accompanied by a design verification from a qualified designer, being a statement in which the qualified designer verifies:

(a) that he or she designed, or directed the design, of the residential flat development, and

*(b) that the design quality principles set out in Part 2 of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development are achieved for the residential flat development.*

Pursuant to Clause 30, when a consent authority determines a development application it must consider the following:

*(1) After receipt of a development application for consent to carry out residential fl at development and before it determines the application, the consent authority is to obtain the advice of the relevant design review panel (if any) concerning the design quality of the residential fl at development.*

*(2) In determining a development application for consent to carry out residential fl at development, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

*(a) the advice (if any) obtained in accordance with subclause (1), and*

*(b) the design quality of the residential fl at development when evaluated in accordance with the design quality principles, and*

*(c) the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002).*

Turner and Associates prepared a Design Verification Statement as part of the original application, and this section merely summarises the information provided for the SEPP 65 design quality principles below. In summary, Mod 1 and the approved development provide a positive contribution to its locality in terms of its design quality, the internal and external amenity it provides and an increase to housing choice and stock in the area.

**Appendix B** includes compliance tables associated with the requirements of SEPP 65 and the provisions of the rules of thumb as contained in the Residential Flat Design Code.

Mod 1 is considered to be consistent with the aims and provisions of the Residential Flat Design Code and Rules of Thumb.

The subject development as proposed in Mod 1 has been assessed against these ten “design principles” of the SEPP as being acceptable.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, is a web-based planning tool that measures the potential performance of new residential dwellings against sustainability indices. BASIX was introduced on 1 July 2004 and applies to the proposed development. Each development application for a residential dwelling must be submitted with a BASIX Certificate.

A BASIX Certificate and stamped plans are provided at **Appendices A and C** and show that the design of the proposed dwelling meets the NSW Government’s targets of a 40% reduction in water consumption and a 25% reduction in greenhouse gas emissions, compared with the average home.

## 4.4 OTHER PLANS

This Environmental Assessment report has considered the State strategic planning documents, to form an understanding of where the subject land fits with the current State strategic planning framework and determine whether the proposed zoning change is consistent with this framework.

### 4.4.1 METROPOLITAN PLAN FOR SYDNEY 2036

The then Premier released in December 2010 the Metropolitan Plan for Sydney 2036 to update the work completed in December 2005 being Sydney's Metropolitan Strategy known as City of Cities: A Plan for Sydney's Future.

Burwood has been retained as a Major Centre, being the main shopping and business centre for the inner west subregion.

### 4.4.2 Burwood Local Environmental Plan (Burwood Town Centre) 2010

The main environmental planning instrument which affects the proposed development is the Burwood *Local Environmental Plan (Burwood Town Centre) 2010 (BLEP)*. The original Concept Plan was approved as at the time of determination the BLEP was not operational.

The following headings discuss the zoning of the land, permissibility of the conversion of the plant room into apartments, consistency with the zone and aims of the BLEP, along with an assessment against all relevant clauses with reference to applicable technical information.

## Zoning

The subject site is zoned B4 – Mixed Use under the BLEP which states:

### **Zone B4 Mixed Use**

#### **1 Objectives of zone**

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To encourage the provision of affordable housing.*

#### **2 Permitted without consent**

*Home occupations; Roads*

#### **3 Permitted with consent**

*Amusement centres; Boarding houses; Business identification signs; Business premises; Car parks; Child care centres; Community facilities; Educational establishments; Entertainment facilities; Function centres; Funeral chapels; Health services facilities; Home-based child care; Home businesses; Home industries; Hostels; Information and education*



*facilities; Mortuaries; Office premises; Passenger transport facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Retail premises; Seniors housing; Service stations; Shop top housing, Tourist and visitor accommodation; Vehicle sales or hire premises; Veterinary hospitals*

#### **4 Prohibited**

*Any development not specified in item 2 or 3*

The zoning map indicates the land is zoned B4 Mixed Use as follows:



Figure 2: Extract BLEP Zoning Map

Source: NSW Legislation

### **Permissibility**

The proposed development for the purposes of converting approved plant rooms areas on level 3 and 13 into apartments as part of the apartment building complex which is currently under construction which is permitted in the B4 zone.

The proposed conversion is considered to be consistent with the objectives of the zone and in particular, the follow:

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To encourage the provision of affordable housing.*

## Relevant Clauses

A compliance table has been prepared to assess the development against all of the provisions of the BLEP which can be found at **Appendix B**.

The BLEP sets a maximum FSR for residential development as follows:

### **4.4A Maximum residential floor space ratio**

- (1) *The objectives of this clause are as follows:*
  - (a) *to limit the density of residential development in different areas of the Burwood Town Centre,*
  - (b) *to ensure that residential development does not dominate the non-residential development in the inner part of the Burwood Town Centre,*
  - (c) *to facilitate the enhancement of the residential character of development in the transition from the inner part of the Burwood Town Centre towards the boundary of the Burwood Town Centre.*
- (2) *The residential floor space ratio of a building on land shown edged by a thick blue line on the Floor Space Ratio Map is not to exceed the following residential floor space ratio:*
  - (a) *for land identified as Area 1 on that Map—2.0:1,*
  - (b) *for land identified as Area 2 on that Map—3.0:1.*
- (3) *In this clause, **residential floor space ratio** means the ratio of the gross floor area used or proposed to be used for residential purposes of all buildings within the site to the site area.*
- (4) *This clause applies in conjunction with clause 4.4 and does not increase the maximum permissible floor space ratio provided under clause 4.4 for any site.*

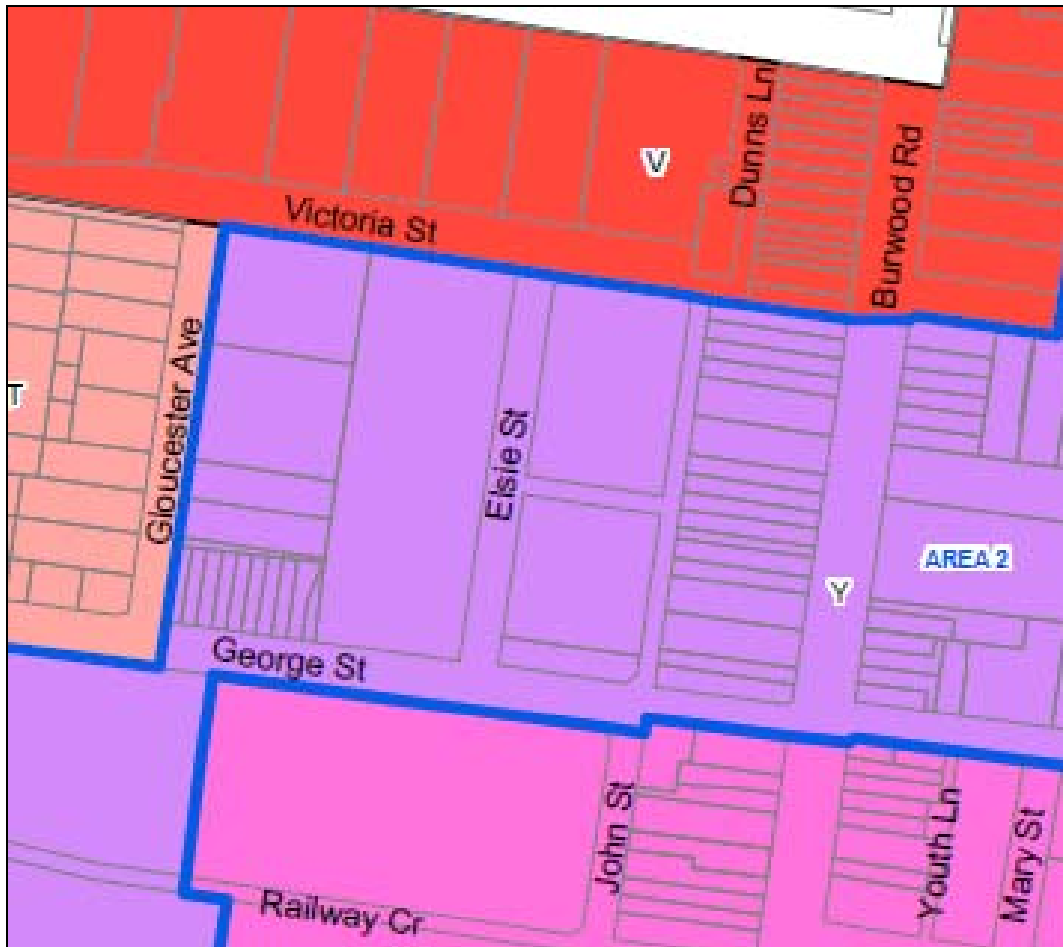


Figure 3: Extract FSR Map – Area 2

Source: NSW Legislation

The approved development has a residential FSR of 3.32:1.

The nature of the proposed change is such that the residential FSR will be 3.34:1.

Clause 4.6 enables a variation to a standard, and states:

#### **4.6 Exceptions to development standards**

- (1) *The objectives of this clause are:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) *Not adopted.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow consent to be granted for development that would contravene any of the following:*
  - (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) *clause 5.4.*

It is noted that the SEPP 1 is not available but the manner in which Clause 4.6 is constructed resembles that in which SEPP 1 Objections should address and as such a similar format is now followed:

**What is the underlying objective or purpose of the standard?**

A numerical requirement may be departed from if the purpose behind the control is achieved and the locality objectives of the relevant planning instruments are satisfied.

The objectives of the standard are as follows:

- (a) *to limit the density of residential development in different areas of the Burwood Town Centre,*
- (b) *to ensure that residential development does not dominate the non-residential development in the inner part of the Burwood Town Centre,*
- (c) *to facilitate the enhancement of the residential character of development in the transition from the inner part of the Burwood Town Centre towards the boundary of the Burwood Town Centre.*

**Is compliance with the development standard consistent with the aims of the plan and in particular does compliance with the development standard tend to hinder the obtainment of the objects specified in s5(a)(i) and (ii) of the EP&A Act?**

The proposed development is consistent with the aims of the Plan which allows flexibility in the application of planning controls.

This development represents an orderly and economic use of the land. The natural environmental qualities of the land are not jeopardised.

It would not be orderly or economic development for the development to provide for absolute compliance given the significant public benefits which will flow from the development.

**Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 at 43 stated:

*“...development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

Strict application of the standard is considered to be unreasonable and unnecessary in the current circumstance for the following reasons:

- The proposed development will be consistent with the stated aims and objectives of the BLEP;

- The proposed development is consistent with the criteria under Clause 4.6 of the BLEP;
- The proposed development is consistent with the objectives of the control; and
- The control has been varied in the past for the subject site and another variation of the same Clause in the BLEP will not undermine the application of the control. The subject site was once considered and approved by the Minister, as a result of the provision of the same public benefits.

Strict compliance of the development standard is unnecessary as the development will still achieve the environmental and planning objectives.

Strict compliance is unreasonable as no environmental or planning purpose would be served by enforcing strict compliance and would not bring about a good planning outcome. The objectives of the controls can be achieved with a departure from the standard as follows:

*(a) to limit the density of residential development in different areas of the Burwood Town Centre,*

- The subject site is located within close proximity of the Burwood Railway Station which will facilitate walking to transport infrastructure by future residents and therefore the provision of the more apartments contained within the “spare” floor space will assist in the promotion of transit orientated development, as such while proposing a greater floor space this will not result in a development which is excessively intense,
- The height, bulk and scale of the proposed development is consistent with already approved development in that the overall scale and size of the development will not be altered,
- The proposed development will not create any unreasonable overshadowing, loss of privacy of views, or adverse visual impact upon the streetscape or the environment, and
- The development will not generate any adverse traffic impacts.

*(b) to ensure that residential development does not dominate the non-residential development in the inner part of the Burwood Town Centre,*

The FSR standard seeks to control the bulk, scale and intensity of the development, and in this instance the conversion of floor area which was originally approved as plant room but is no longer required entirely as plant room can now be considered as dwelling floor space but will not add to the bulk of the approved development or the intensity of the use.

The proposed changes will not result in impacts on the amenity of any existing or potential residential units on neighbouring land or amenity of existing and future residential development

- The subject site adjoins land which has been developed for a residential purpose, and does not seek to change the required, assessed and approved building separation distances (in the current approval) outlined in the NSW Residential Flat Design Code (RFDC) so as to afford adjoining properties a level of amenity suitable for the scale of the development proposed, where the RFDC advises the building separation distance seeks:
  - *To ensure that new development is scaled to support the desired area character with appropriate massing and scapes 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.*
- No change will occur to the building separation distances as a result of the conversion of the existing plant room areas into apartments. The proposed development complies with the building separation distances and as such it is considered that each of the amenity considerations outlined in the objectives have been met.

In response to ensuring the proposed development has been designed to enable sunlight access to surrounding streets, open space and nearby properties can be adequately maintained the RFDC rule of thumb has been considered where solar access should achieve the following:

*Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.*

The proposed development will maintain the approved amount of solar access within the development and to adjoining developments as no change to the overall envelope of the building as approved is proposed.

*(c) to facilitate the enhancement of the residential character of development in the transition from the inner part of the Burwood Town Centre towards the boundary of the Burwood Town Centre.*

The FSR standard seeks outcomes which are compatible with the scale and character of development in the streetscape along Elsie Street:

- The scale of the surrounding development has been previously considered and approved with the original project application, in that the proposed development is considered to be compatible in the streetscape along Elsie Street, no change to the streetscape along Elsie Street is proposed.
- With respect to character, it is noted the buildings opposite in Elsie Street to the east have been developed for the purposes of commercial uses and to the

north east have been developed for mixed use buildings. The approved development includes levels below the podium which promote non-residential uses and are not going to change with this Modification. The Elsie Street frontage under a colonnade which will provide all weather access along the eastern façade. It is considered that these elements of the design are compatible with the character of development in the streetscape of Elsie Street and will not be changed as a result of this modification.

The variation of the development standard will not undermine the application of this development standard in the future as other sites may not afford the public benefits already being implemented by the approved development.

The variation of the development standard will promote the principles outlined in the Sydney Metropolitan Plan by promoting higher residential densities in close proximity to a public transport node. In this regard, the development is consistent with the state and regional objectives for development within the Sydney Metropolitan Area.

Having regard to all of the above, it is requested that the FSR control pursuant to Clause 4.4A of the BLEP, be varied in this instance to permit the proposed development. It is acknowledged that the proposed development seeks a variation to the FSR applying to the site. Notwithstanding the non-compliance, it is considered that the proposal satisfies the underlying objectives of the control.

For these reasons it is considered that strict application of this standard is unreasonable and unnecessary in this circumstance.

**Is the objection well founded?**

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston rephrased the questions as follows:

1. The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy’s aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the *EP&A Act*; and
3. It is also important to consider:
  - (a) whether non-compliance with the development standard raises any matter of significance for State or regional planning; and



- (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

These questions are addressed below:

**QUESTION 1 *Is the objection well founded?***

For the reasons set out in the following responses to questions 2A, 2B and 3, the proposed departure from the development standard is well founded.

As outlined above, the stated objectives of the development standard can be achieved despite non-compliance with the standards. As such, this objection is consistent with the first of the alternative methods outlined by Preston CJ in *Wehbe* to demonstrate that an objection is well founded.

**QUESTION 2(A) *Is the granting of consistent with the policy's aim of providing flexibility in the application of the planning control where strict compliance with the control would be unreasonable and unnecessary?***

Compliance with the development standard is unreasonable and unnecessary as:

- The cause of the non-compliance with the development standard is as a result of no longer requiring all of the "areas" set aside for plant room as the plant room and therefore the remainder of the space is sought to be converted to apartments.
- The development does not adversely impact on the amenity of adjoining properties.
- The matters raised in Section 5 of this objection establish the reasons why compliance is unreasonable and unnecessary

A development which complies with the development standard is unreasonable and unnecessary in the circumstances of this case, in particular, given the topography of the land. Even if it were possible to comply, it would be unfeasible to do so, particularly given the previous approval and that the areas now exist within the building but are not wholly required for plant. The proponent has already provided for a number of public benefits in the development including a public car park and streetscape improvements.

**QUESTION 2(B) *Or hinder the attainment of the objects in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?***

*5 Objects*

*The objects of this Act are:*

*(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,*

...

Compliance with the development standard the subject of this objection would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of the land.

**QUESTION 2(C) *Are the objectives of the standard achieved notwithstanding non-compliance with the standard?***

The provisions of Clause 4.4A of the BLEP include specific objectives. Each of the underlying objectives are addressed previously in this report. Each of the objectives of the control will be achieved by the proposed development despite not having strict compliance with the standard.

**QUESTION 3(A) *Whether non-compliance with the development standard raises any matter of significance for State or regional planning?***

The non-compliance with the development standard as proposed is not considered likely to raise any matters of significance for State or regional planning.

**QUESTION 3(B) *Whether non-compliance with the development standard will undermine the public benefit of maintaining the planning controls adopted by the environmental planning instrument?***

The direct public benefits proposed to be provided by the approved development are considered to outweigh the strict compliance with the standard and as such will not undermine the application of the planning control for future development.

Preston CJ then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

- A. the objectives of the standard are achieved notwithstanding non-compliance with the standard; **[relevant for the reasons outlined above and below]**
- B. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary; **[not applicable]**
- C. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable; **[relevant for the reasons set out above and below]**
- D. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; **[relevant for the reasons set out above and below in that Council has previously departed from the standard]**

- E. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone. **[not applicable]**

It is considered that the strict application of the development standard in this instance has been demonstrated to be both unreasonable and unnecessary given that:

- The height, bulk and scale of the proposed development is consistent with surrounding development and will not be changed as a result of the conversion of the nominated plant rooms into dwellings;
- The proposed development will not create any unreasonable overshadowing, unreasonable loss of privacy or views, or adverse visual impact upon the streetscape or the environment;
- The development will not generate any adverse traffic impacts;
- The development inclusive of the variation sought is consistent with the objectives of the development standard;
- The development is consistent with the scale and character for this portion of streetscape in the Burwood Town Centre;
- The development will result in economic and social benefits to the community of Burwood; and
- The development satisfies the Land and Environment Court's requirements for a well-founded departure from the relevant standard.

For the reasons set out above, refusal of the application on the basis that the development does not comply with the development standard in question is not warranted and a variation can be supported.

## **5. ENVIRONMENTAL ASSESSMENT**

### **5.1 CONCEPT PLAN**

The modified design is consistent with the approved Concept Plan the architects proposing designing the changes are Turner and Associates.

### **5.2 TRAFFIC IMPACTS**

Car parking spaces in excess of the previously assessed standard are available to meet the requirements of the proposed conversion for apartments within the overall development.

This Modification does not seek to change any of the traffic or road related matters already considered and assessed as acceptable in Concept Plan.

### **5.3 URBAN DESIGN**

The amended design as prepared by Turner and Associates includes the same design principles as that which were included within the approved Concept Plan.

1. The changes will not result in an unacceptable level of impact on privacy, views of adjoining neighbours and overshadowing of surrounding areas.
2. The proposed modified design maintains the same provision of publicly accessible open space and recreational areas within and around the site, and provides for terrace/balcony areas to meet the amenity and design requirements for each apartment.
3. The proposed modified design provides for the same footprint of buildings and associated impermeable areas as that shown in the approved layout.

### **5.4 VISUAL IMPACTS**

No changes are proposed in Modification 1 when compared to the approved design in the Concept Plan in relation to visual impacts.

The materials and finishes are the same as that approved and the planting schedule is the same as that in the Concept Plan.

### **5.5 SOCIAL IMPACTS**

The proponent has considered issues associated with the social impacts of the proposed development and the positive flow-on effects being broader than just economic associated with the provision of additional apartments which being one bedroom will cater for more affordable housing. The changes proposed in Modification 1 do not alter the matters which were previously assessed as satisfactory and subject to conditions in the Concept Plan.

## **5.6 STREETScape AND PUBLIC DOMAIN**

The modified project has been accompanied by architectural elevation drawings prepared by Turner and Associates (refer to **Appendix A**) which demonstrate that the design includes the same landscape, ESD and public domain principles as incorporated within the approved project.

## **5.7 NOISE AND LIGHT IMPACTS**

No new noise and lighting matters result in Modification 1 compared to those which have already been assessed in the Concept Plan.

## **5.8 WATER QUALITY AND WASTE MANAGEMENT**

No new water quality or waste matters result in Modification 1 compared to those which have already been assessed in the Concept Plan.

## **5.9 ADJOINING LAND**

Potential impacts on adjoining land were investigated with the original Application. The changes proposed in Modification 1 do not alter the matters which were assessed as acceptable in the previous application.

## **5.10 OTHER ISSUES / CONSIDERATIONS**

### **5.10.1 Utilities and infrastructure**

The proposed modification does not seek to alter the outcomes of the previous investigations and appropriate services and infrastructure have been augmented and provided to service the development.

### **5.10.2 Economic Impact**

No new economic matters result in Modification 1 compared to those which have already been assessed in the Concept Plan.

### **5.10.3 Heritage**

No new heritage matters result in Modification 1 compared to those which have already been assessed in the Concept Plan.

### **5.10.4 Landscape Strategy**

No new landscape matters result in Modification 1 compared to those which have already been assessed in the Concept Plan.

### **5.10.5 Accessibility**

No new accessibility matters result in Modification 1 compared to those which have already been assessed in the Concept Plan.

### **5.10.6 Crime Prevention**

The modification seeks to implement the CPTED principles as demonstrated in the previous approval. As such, it was considered that a new assessment report was not required.

### **5.10.7 ESD**

No new ESD matters result in Modification 1 compared to those which have already been assessed in the Concept Plan.

Revised BASIX Certificates have been obtained – refer to **Appendix C**.

## 6. DRAFT STATEMENT OF COMMITMENTS

The proponent seeks approval for the changes shown in the drawings at **Appendix A** and to this end also requests condition 1 be modified as follows:

1. The project will be carried out generally in accordance with the plans and material submitted as part of the Environmental Assessment for Major Project No. 07\_0076 as described in:

- a. Environmental Assessment Report and associated appendices prepared by Scott Carver dated October 2007;
- b. Addendum Report dated 5 August 2008, additional information dated 19 August 2008, preferred project report dated 1 December 2008 and revised preferred project report dated 15 December 2008 prepared by The Planning Group dated August 2008;
- c. Architectural Drawings for Residential Buildings A, B and C prepared by Turner and Associates;
- d. Landscape Plans prepared by Turf Design Studio;
- e. Amended ground floor plan and basement car parking level drawings prepared by Architex;
- f. Heritage Impact Statement dated August 2008 prepared by Design 5;
- g. Pedestrian Wind Environment Study for the proposed development at 1-17 Elsie Street, Burwood prepared by Windtech dated 12 August 2008;
- h. BASIX Assessment, BASIX Certificates and stamped plans prepared by Vipac dated 10 December 2008;
- i. Amended Traffic Impact Statement prepared by Thompson Stanbury Associates dated 25 August 2008;
- j. Revised Reflectivity Report prepared by Vipac dated December 2008;

***and as modified by the information submitted in Modification 1.***

## 7. CONCLUSION

The subject Modification 1 application to the Concept Plan Approval is submitted to seek approval under the provisions of Section 75W of the EP&A Act based on the following:

- The modification will not radically alter the development from its approved form; and
- The nature of the proposed changes relate to “areas” within the built form which are no longer entirely required for their original design purpose being “plant rooms”. The site infrastructure will be delivered in the same manner as that originally approved, including roads and pedestrian links so as to maintain legibility. The access points are unchanged from the approval and the architects involved in the project are unchanged. As such, the proposed modifications will deliver the same outcomes anticipated by the existing approvals.

It is also noted that the original design meet the criteria specified in Schedule 1 of *State Environmental Planning Policy (Major Development) 2005* and triggered by Clause 6.

The increase in the gross floor area is a technical issue insofar as the overall bulk, scale, height and intensity of the approved buildings and its uses will not be increased as a result of the proposed conversion of plant room as these are enclosed areas, in Modification 1.

As such, the proponent requests that the Department of Planning consider the change on its merits as supported by the various technical reports which accompany this EA report.

Based on the outcomes of these further investigations and having regard to the previous investigations for the proposed development, it is considered that the modification can be supported and we now ask for approval on behalf of the proponent.



**APPENDIX A**  
**Architectural Drawings**

**Environmental Assessment**  
**Elsie Street, Burwood - Modification 1**

**APPENDIX B**  
**Compliance Tables**

**Environmental Assessment**  
**Elsie Street, Burwood - Modification 1**

**APPENDIX C**  
**BASIX Certificates**

**Environmental Assessment**  
**Elsie Street, Burwood - Modification 1**