



WILLANA  
URBAN

AMENDED  
CLAUSE 4.6  
EXCEPTION-  
HEIGHT OF  
BUILDING

28 LOCKWOOD AVENUE  
BELROSE

AMENDED  
CLAUSE 4.6 EXCEPTION



28 LOCKWOOD AVENUE  
BELROSE

MIXED USE DEVELOPMENT

PREPARED FOR  
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# 1 INTRODUCTION

## 1.1 PURPOSE

This submission has been prepared for Platinum Property Advisors Pty Ltd to accompany a Development Application (DA) to Northern Beaches Council relating to the property known as 28 Lockwood Avenue, Belrose (the Site). It seeks a variation to the building height development standard contained in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

The application is for the construction of a mixed-use development and the proposed design has been revised as part of an appeal process through the Land & Environment Court. The Appeal has been lodged in response to Council's assessment and the subsequent refusal of the application by the Sydney North Planning Panel in their determination of DA2020/0393.

## 1.2 THE AMENDED PROPOSAL

The variation relates to a proposal for a mixed-use development comprising:

- Retail premises,
- Shop top housing with 49 dwellings,
- Basement carparking, and
- Landscaping.

The amended proposal seeks to respond to Council's feedback received during the assessment process. The result has been key changes to the Level 1 layout, particularly in the northern corner of the development. **I**

The following broad changes have been made to the proposal (amended proposal):

- reduction in the GFA from 10675 m<sup>2</sup> to 9003 m<sup>2</sup>
- decrease in height from 12.359m to 12.2m
- decrease in the number of units proposed from 51 to 49;
- removal of gym from basement 3; and
- increased provision of on-site car parking spaces from 190 to 238.

## VARYING A DEVELOPMENT STANDARD

The NSW Department of Planning and Environment's publication "*Varying Development Standards: A Guide*" (August 2011), states that:

*The NSW planning system currently has two mechanisms that provide the ability to vary development standards contained within environmental planning instruments:*

- *Clause 4.6 of the Standard Instrument Local Environment Plan (SI LEP).*
- *State Environment Planning Policy No 1 – Development Standards (SEPP1).*

SEPP 1 no longer applies and WLEP 2011 is a Standard Instrument LEP.

This proposal seeks to vary the Height of Building development standard applicable to the Site in the relevant DA and does not result in the introduction of new controls across an area. Subclause 4.6 (8) of WLEP 2011 also states specifically when this clause is *not* to be used. Neither the Site, nor the proposal, satisfy these criteria. The use of Clause 4.6 to vary the Height of Building is appropriate in this instance.

## 2 NATURE OF THE VARIATION

### 2.1 WHAT IS THE APPLICABLE PLANNING INSTRUMENT AND ZONING?

The WLEP 2011 is the environmental planning instrument that applies to the Site. The Site is zoned B2 Local Centre under WLEP 2011, in accordance with the Land Zoning Map.

FIGURE 1 | ZONING MAP



Source: WLEP 2011 LZN MAP 007

### 2.2 WHAT ARE THE ZONE OBJECTIVES?

The relevant objectives of the B2 Local Centre Zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide an environment for pedestrians that is safe, comfortable and interesting.*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

### 2.3 WHAT IS THE STANDARD BEING VARIED?

The standard being varied is the Height of Buildings development standard contained in Clause 4.3(2) of WLEP 2011.

### 2.4 IS THE STANDARD TO BE VARIED A DEVELOPMENT STANDARD?

Yes, the Height of Building standard is considered to be a development standard in accordance with the definition contained in Section 1.4 of the *Environmental Planning and Assessment Act 1979 (as amended)* (EP&A Act) and not a prohibition.

### 2.5 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?

No, the development standard is a numerical control.

### 2.6 WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE STANDARD?

The objectives of Clause 4.3 of WLEP 2011 are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

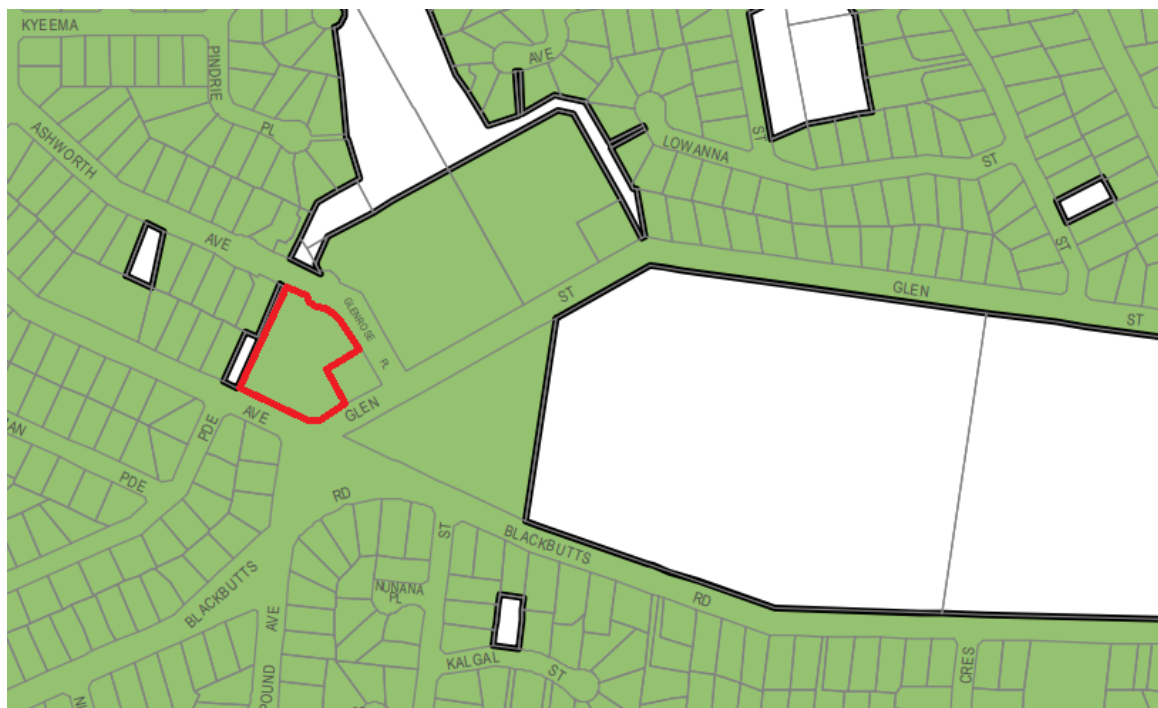
In summary, the underlying purpose of the development standard is to manage the height and scale of any future built form, in order to mitigate any adverse impacts on the character and amenity of the surrounding area.

### 2.7 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

Subclause 4.3 (2), in association with the Height of Buildings Map of the WLEP 2011, establishes a maximum building height of 8.5 metres for the Site, as shown in Figure 2, below.



FIGURE 2: EXCERPT FROM THE HEIGHT OF BUILDINGS MAP 007



Source: WLEP 2011 HOB MAP 007

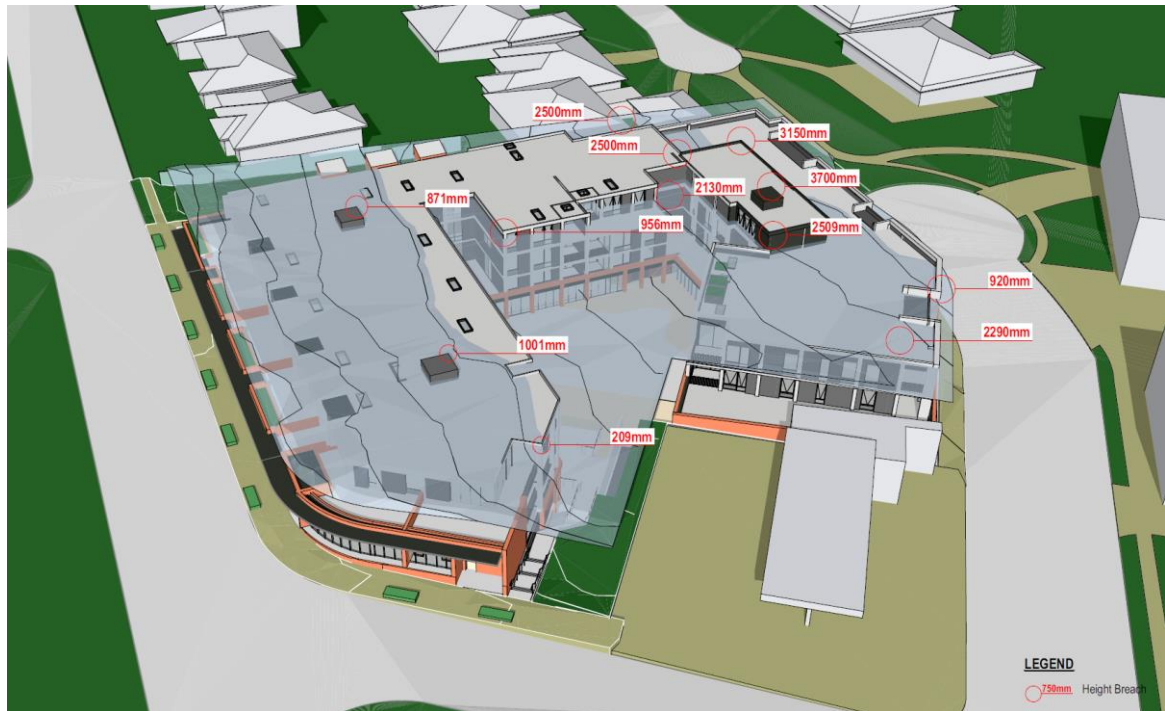
## 2.8 WHAT IS THE PROPOSED NUMERIC VALUE OF THE VARIATION IN THE DEVELOPMENT APPLICATION?

The maximum permitted building height for the Site is 8.5m. The maximum height limit proposed is 12.20m, representing a variation of 3.70 metres (44%). This maximum extent of variation occurs at the lift overrun northern section of Building B. The lift overrun is well recessed in to the building form. There are a few lesser variations across the development given the varied and articulated nature of the design and the slope of the site.

A variation of 3.15m is proposed, on the northern corner of Level 1, towards the Glenrose Place frontage. At this point the building is setback 9.43m from the floor below and 13.495m from the boundary.

In support of the variations, the visual impact and appearance of the building has been modelled from a number of locations. In addition, Figures 3 and 4 over page, demonstrate that proposed variation to the height is predominantly of a lesser nature, and designed to be primarily located in areas which are recessed from street frontages, and oriented to the internal courtyard or to the Glenrose Place/Local Centre frontage to *minimise visual impact, disruption of views, loss of privacy and loss of solar access*

FIGURE 3: AMENDED 3D HEIGHT PLANE PROJECTION – FACING WEST



SOURCE: DKO ARCHITECTURE

FIGURE 4: AMENDED 3D HEIGHT PLANE PROJECTION – FACING EAST



SOURCE: DKO ARCHITECTURE

## 2.9 WHAT IS THE CONTEXT OF THE VARIATION?

The following information outlines the locality context in terms of character and constraints, while also providing the design and planning rationale for the proposed height variation.

### VARIED STREET FRONTAGE CHARACTER AND RESIDENTIAL INTERFACE

The subject site is located on the northern side of Lockwood Avenue. The site slopes significantly down towards Glenrose Place and the Glenrose Village shopping centre, as part of the Belrose Local Centre. The site has two primary street frontages to Lockwood Avenue and Glenrose Place. The fall is approximately 6 metres between the two frontages.

The character of these two frontages varies significantly in terms of visual presentation and land use. The surrounding land use zoning and abovementioned topography also have a significant impact on the visual presence and character of the proposal. The differing character has informed the location of proposed variations to the building height standard, by shifting scale and density across the building form to reflect the change in interface across two different public domains. This is explored in greater detail below.

#### Lockwood Avenue

The Lockwood Avenue frontage provides an interface between the boundary of the B2 Local Centre Zoning and the surrounding R2 Low Density Residential Zone. The frontage to Lockwood Avenue is predominantly characterised by residential development that is generally in the form of large single detached dwellings that front Lockwood Avenue.

Since the inception of the B2 Local Centre zoning there have been several landmark Court cases that have defined the nature of shop top housing. Prior to these decisions many developments were undertaken in mixed use zones where a portion of the residential development was at ground level (generally to the rear of the site) and some of the residential development was above shop/commercial development fronting the public domain. The consequence of these decisions is that all residential development on the subject site must be above shop/commercial development and therefore any development solution will generally require shops/commercial offices to present to both Lockwood Avenue and Glenrose Place. This what has been proposed.

As a result, the B2 Zone does not provide the opportunity for Ground Floor residential on the subject site. Accordingly, the proposal adopts a street level of retail premises with only a single storey of shop top housing above. The proposed design, as amended,

provides a compliant height to this frontage and has set back the Level 1 residential component 6-7 metres from the retail frontage and site boundary.

This results in a design outcome that is significantly reduced in terms of the existing scale and residential nature of the surrounding street frontage, while providing land uses appropriate for a B2 Local Centre zoning and providing street level activation.

### Glenrose Place

The site's frontage to Glenrose Place provides a different character to that of Lockwood Avenue. Glenrose Place is a cul-de-sac that provides vehicular access solely to the site and the neighbouring Glenrose Village Shopping Centre to the north. This frontage extends into the B2 Local Centre zoned area, which provides a commercial and social character in terms of built form and activity. The Glenrose Village Shopping Centre is largely oriented to Glen Street, to the east, with the Glenrose Place frontage predominantly used for parking access and services. It is to this street frontage, with a significant retail/commercial presentation, that a variation to the primarily building height is located.

The Local Centre contains significant built form to cater for the cultural and commercial needs of the surrounding area. These include the Glenrose Village Shopping Centre, Belrose Library and the Glen Street Theatre, as shown in Figure 5 below.

FIGURE 5: SURROUNDING CONTEXT – B2 LOCAL CENTRE



SOURCE: DKO ARCHITECTURE – SEPP 65 DESIGN QUALITY STATEMENT

Despite the proposed building height non-compliance, the proposal will result in a built form that will complement and enhance the current character of the local centre while protecting the character at the residential interface with Lockwood Avenue. The non-compliant components are recessed and do not disrupt any significant or iconic views, nor will it unreasonably intrude on the amenity of adjoining properties or private open spaces. t

### PUBLIC REALM AND DESIGN OUTCOME

The proposed variation to the building height standard is in part attributed to the proposed incorporation of a significant public realm network. The proposal incorporates

landscaped pedestrian links across the site and allows for a generous and active public square, central to the site. This is balanced with the ability to retain a density that would be anticipated from a development that does not provide such a public realm – resulting in a more compliant development, yet a less beneficial planning outcome.

The proposed design retains a similar density to that of a bulkier building with greater site coverage by appropriately locating units near Glenrose Place, which is where the predominant variation to the building height standard is located. Notwithstanding numeric non-compliance, this allows for tangible design and public benefits across the site while retaining a viable density, with no material or unreasonable impact in terms of amenity, character or environmental matters.

As discussed in the Urban Design Report, prepared by Roberts Day submitted with the original DA, the majority of the proposal is perceived as compliant from adjoining streets and neighbouring properties. Where non-compliances do occur, they are the result of a considered design response to the Site's significant change in level and the commercial character at the Glenrose Place street frontage. Any non-compliance visible from adjoining public areas is perceived as a significantly recessed element.

The proposal is not subject to a Floor Space Ratio development standard and the resulting density has been thoroughly considered and supported within the submitted Urban Design Report prepared by Roberts Day. The built form exemplifies 'density done well' by realising a cleverly articulated façade, with a recessed upper level to Lockwood Avenue. The proposal provides communal open space and deep soil areas beyond that legislatively required, to allow generous landscaped pedestrian links and recreation spaces as part of the project. The built form has thoughtfully balanced the desire to provide these additional links and open spaces for enhanced amenity, with a building height that remains compatible with the surrounding streetscapes and results in no material adverse impacts.

FIGURE 6: PHOTOMONTAGE – THE PROPOSAL VIEWED FROM LOCKWOOD AVENUE - DEMONSTRATING RECESSIVE NATURE OF UPPER LEVEL



SOURCE: DKO ARCHITECTURE

FIGURE 7 | PHOTOMONTAGE VIEW ALONG GLENROSE PLACE/ ASHWORTH AVE



SOURCE: DKO ARCHITECTURE

RELATIONSHIP BETWEEN PRESCRIBED BUILDING HEIGHT, ITS HISTORIC RELEVANCE AND THE B2 LOCAL CENTRE ZONE

The site is subject to a maximum height limit of 8.5m under WLEP 2011. The prescribed height of “8.5m” has been employed across the area and throughout planning legislation for decades. In this instance, it is employed for the B2 Local Centre and surrounding R2 Low Density Residential zoned land.

Historically, a figure of 8.5 metres provided for a compliant three-storey building on a site. This accounts for three levels with a floor-to-ceiling height of 2.4m which was, historically, the required ceiling height. In a commercial context, it historically allowed for a commercial ground floor tenancy with a two storey shop top housing component to comfortably fit within this height limit.

Over time, standards have been revised and amended to ensure greater amenity is provided within new developments. This includes greater floor to ceiling heights for both commercial and residential development, as well as additional space between levels to accommodate effective structures, services, set downs and finishes – resulting in a minimum floor to-floor height of 3.1m. While the 8.5m building height standard envisaged three storeys, these amended standards are not reflected in the current height standard. This results in a technical non-compliance, notwithstanding the better planning and amenity outcomes and the retention of a three storey limit.

The scheme proposes a two-storey outcome to the Lockwood Avenue frontage, with the upper residential levels considerably recessed behind the street level retail and the site boundary.

The height limit of 8.5m required by WLEP 2011, significantly hinders the ability to provide a high-quality design for an envisaged three-storey building, that also remains compliant with ADG best practices.

The submitted plans demonstrate that a variation to the height limit, with the greatest variation being predominantly for the corner of a recessed upper level to a commercial street frontage, results in an appropriate and compatible built form outcome for the Belrose Local Centre, which complies with the floor-to-floor requirements of the ADG.

## 3 ASSESSMENT OF VARIATION

### 3.1 OVERVIEW

Clause 4.6 of WLEP 2011 establishes the framework for varying development standards applying under the instrument. Subclause 4.6(3)(a) and 4.6(3)(b) state that Council must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating:

*‘4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

*4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Subclause 4.6(4)(a) mandates that development consent must not be granted for a development that contravenes a development standard unless Council is satisfied:

- (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....’*

An assessment of the Clause 4.6 variation is provided below, in accordance the above requirements.

#### *Relevant Case Law to Clause 4.6 Variation Requests*

This request has been prepared having regard to the principles established by the Court when considering the assessment of Clause 4.6 requests (including applicable principles adopted from consideration of SEPP 1 requests), contained in the following guideline judgments:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130

In summary, the principles adopted and applied in this clause 4.6 request include:



- In *Wehbe V Pittwater Council* (2007) NSWLEC 827 Preston CJ held that, it can be demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard, as below (emphasis added):

*"43 The rationale is that 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)." Wehbe V Pittwater Council (2007) NSWLEC 827 Preston CJ*

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 held (at paragraph 15) that for there to be power to grant development consent for a development that contravenes a development standard, cl 4.6(4)(a) requires that the Court, in exercising the functions of the consent authority, be satisfied that the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)) and adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)). The Court must also be satisfied that the proposed development will be consistent with the objectives of the zone and with the objectives of the standard in question, which is the measure by which the development is said to be in the public interest (cl 4.6(4)(a)(ii)).
- At paragraphs 23 and 24 in *Initial Action*, Preston CJ held that with respect to "environmental planning" grounds, although not defined, the grounds should relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s. 1.3 of the Act. Further, in order that the environmental planning grounds proffered in the written request are "sufficient", firstly the focus should be on the aspect or element of the development that contravenes the development standard, rather than the development as a whole and why the contravention is justified and secondly, the environmental planning grounds must justify the contravention of the development standard, not just promote the benefits of carrying out the development as a whole.
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 the Court, in exercising the functions of the consent authority, must "in fact" be satisfied of the above matters. The state of satisfaction that compliance is

“unreasonable or unnecessary” and that there are “sufficient environmental planning grounds” to justify the contravention must be reached only by reference to the cl 4.6 request. The evidence in the proceedings cannot supplement what is in the request, although the evidence may assist in understanding the request and in considering its adequacy. On the other hand, the state of satisfaction that the proposed development is consistent with the relevant objectives, and is therefore in the public interest, can be reached by considering the evidence before the Court and is not limited to what is contained in the cl 4.6 request.

This variation adopts Method 1 in *Wehbe* which requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

### 3.2 IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Yes - in this instance, the strict numerical compliance with the development standard for Height of Buildings is unreasonable and unnecessary. In determining what constitutes ‘unreasonable or unnecessary’, the following series of questions can assist:

- *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary?*
- *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land? Consequently, compliance with that development standard is unnecessary and unreasonable.*

Strict compliance with the Height of Buildings standard would be unreasonable or unnecessary, in this particular instance, for the following reasons that are specific to this site and proposal:

- The proposed design is the result of well-considered design development. It seeks to provide an integrated public realm network across the site. The proposed design retains a similar density to that of a bulkier, compliant building with greater site coverage for a site that does not have any floor space ratio controls by appropriately locating units near Glenrose Place, away from Lockwood Avenue. This frontage is contextually able to accommodate the additional scale given the compatibility of the proposal with the existing character and Glenrose Shopping Centre located immediately opposite the site on the other side of Glenrose Place. The built form of the existing Shopping Centre essentially turns its back on Glenrose Place. This provides an opportunity for the placement of bulk on the subject site, in this proposed location, so as to provide a transitional interface between these built forms.
- The relocation of Gross floor area away from the Lockwood Avenue frontage allows the bulk and scale of the portion of the building, that presents to Lockwood Avenue, to be reduced to 2 levels where it could have been reasonably expected that a three storey building be provided. Accordingly, the proposed breach to the height control facilitates an appropriate response to the existing built forms on Glenrose Road and Lockwood Avenue.
- The proposed breach to the height control as a result of the distribution of the bulk enables a high quality design to be provided that is restricted as a result of the constrained topography which includes the site's irregular shape, significant fall from Lockwood Avenue to Glenrose Place, with a variation of approximately 6 metres between the two frontages.
- The distribution of the bulk across the site and proposed breach to the height control not only facilitates the provision of mass away from the lower scale development in Lockwood Avenue, but also enables the provision of a high quality open space within the centre of the site that is accessible for all residents, visitors, staff and customers of the retail space. It is a better planning outcome as the bulk is reorientated towards the Glenrose Village Shopping Centre with the purpose of minimising visual impact.
- The proposed breach allows for a tangible design that provides public benefits across the site, while retaining a viable density with no unreasonable impact in terms of amenity, character or environmental matters.

- The proposal is consistent with the relevant environmental and planning objectives being the Height of Buildings development standard and the B2 Local Centre zone (as discussed in greater detail below).
- The variation will still result in a scale and character that is compatible with the surrounding locality and Local Centre context, thereby achieving the relevant objectives. A development compliant with the building height provisions contained in the WLEP 2011 would not achieve a perceivably better planning outcome.
- Surrounding development in the B2 Local Centre exhibits a range of scales and unique designs and includes examples of building height variation.

The proposed variation is well founded, as demonstrated in this submission. Compliance with the standard is unreasonable as the development as proposed achieves the objectives of B2 Local Centre zone and the Building Height standard. A development that strictly complies with the standard is unnecessary in this circumstance as no appreciable benefits would result by restricting the building height, given the satisfactory character achieved by the scale, design and landscaped nature of the proposal.

**THE PROPOSAL REMAINS CONSISTENT WITH THE OBJECTIVES OF THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD:**

The proposal remains consistent with the relevant objectives of the Height of Buildings development standard outlined in subclause 4.3 (1) of the WLEP 2011, despite the numerical non-compliance with subclause 4.3 (2), as demonstrated below:

*Objective: To ensure that buildings are compatible with the height and scale of surrounding and nearby development.*

The proposal adopts a compatible built form to the numerous street frontages and varying surrounding contexts. Buildings are scaled down and set back at more residential interfaces while providing a mix of commercial and residential opportunities as part of the Belrose Local Centre. A reasonable built form, at the local centre, is therefore maintained and provides a successful transition from the residential areas to the Local Centre identity. The design accommodates generous pedestrian links through the Site and considered landscaping, which result in enhanced amenity and permeability.

*Objective: To minimise visual impact, disruption of views, loss of privacy and loss of solar access.*

The proposed development is compliant with the requirements of the ADG in terms of visual privacy and solar access measures. The topography of the Site is significantly sloped, and the proposed development does not disrupt any significant view lines. Landscaped areas and the positioning of the built form has been selectively undertaken to optimise amenity for the site and neighbouring properties.

*Objective: To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.*

The Site is located within the Local Centre and appropriately adopts a mix of commercial and residential uses. Current vegetation on the Site is addressed within the submitted Arborist Report and considered to be a poor selection of species that are inappropriately located, given the residential and commercial context of the locality. The proposal retains a compliant proportion of deep soil and Landscaped Open space, with landscaping thoughtfully located to soften interfaces with adjoining properties and the streetscape. The proposed design does not unreasonably, adversely impact on the scenic quality of coastal or bush environments.

*Objective: To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The development is innovatively designed to manage the visual impact of the development when viewed from the surrounding locality. It presents a compliant two-storey height at the street frontage to Lockwood Avenue, with an upper level significantly recessed. Landscaped private open space areas are provided above this Ground Level element to further soften the built form and allow a level of community interaction and passive surveillance.

The proposal adopts a perimeter courtyard building to resolve a significant change in level. This creates a publicly accessible, enclosed central plaza that is 'not visible' from adjoining properties / streets and therefore minimises visual impact from the public domain. The design accommodates generous pedestrian links through the Site and considered landscaping, which result in enhanced amenity and permeability.

### 3.3 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

Yes. In the circumstances of the case, there are sufficient environmental planning grounds to justify the variation to the development standard, namely:

- The reasons discussed in the sections above regarding the locality and site context, improved urban design outcomes and the discrepancy between the prescribed building height limit.
- The proposal satisfies the objectives of the B2 Local Centre zone and the objectives of the Height of Buildings development standard, having regard to the particular nature of the development and the particular circumstances of the Site. Impacts on adjoining properties, as a result of the variation, would not warrant the refusal of consent.
- The proposed breach to the height control facilitates the orderly and economic development of land for a site that is located within the B2 Local Centre zone that adjoins an existing shopping centre and residential development. The variation will enable the provision of additional retail, housing and landscaped public open space that is currently not provided by the existing development on the site, or in its immediate surrounds.
- Importantly, the proposed breach enables the provision of a high quality centralised, landscaped public open space in the middle of the site. This increases the amenity to the retail spaces which open out onto this central courtyard and improve pedestrian accessibility and thoroughfare to these locations.
- The proposed variation is required in order to maximise the utility of the proposed uses on the site and also enable the development to respond to the varying scale of built forms surrounding the site.
- The proposed variation enables the built form of the proposed development to appropriately respond to the site's constraints which includes the site's irregular shape, significant fall from Lockwood Avenue to Glenrose Place, with a variation of approximately 6 metres between the two frontages.
- The non-compliance with the standard will nevertheless result in a scale of development that is compatible with both the existing and future character of the locality.
- The variation to the building height standard will not have unreasonable visual impact from the public domain, given the topography, redistribution of bulk, existing built form, landscaping and the proposed location of upper levels being adequately setback from the lower levels, particularly to Lockwood Avenue.
- Despite the non-compliance, the proposed development is an appropriate development for the Site. In this instance, the development as proposed is consistent with the provision of orderly and economic development, as required by the EP&A Act and facilitates a positive environmental planning outcome for the Site.

- The non-compliance with the Height of Buildings standard does not contribute to adverse amenity impacts in terms of visual privacy or view loss.

### 3.4 PUBLIC INTEREST

The public involvement in the planning process shapes and endorses the objectives that underpin the relevant development standard. The standards are derived as a means of achieving the public interest in delivering development that meets the objectives. Compliance with the Development Standard is accepted as being one method by which the objectives are met. Equally, the public interest can be served if the objectives are met, notwithstanding a variation to the development standard.

Approval of the variation to the building height, in this proposal, is in the wider public interest as the underlying objectives are met. The variation supports the achievement of the redevelopment of the site to achieve the optimal development capacity and urban design outcomes, without adverse amenity impacts. The variation allows a better design and planning outcome than a bulkier building of greater site coverage that does not provide a public realm network, albeit height compliant. The proposal, as amended, provides a satisfactory response to the land use zoning objectives and improving site aesthetics through a more appropriate, urban design responsive, built form outcome.

THE PROPOSAL REMAINS CONSISTENT WITH THE OBJECTIVES OF THE B2 LOCAL CENTRE ZONE:

The proposal remains consistent with the relevant zone objectives outlined in Clause 2.3 and the Land Use Table of the WLEP 2011, despite the non-compliance, as demonstrated below:

*Objective: To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

The proposal satisfies this objective as the proposal provides a range of new retail and business tenancies to serve the needs of people who live, work and visit the area.

*Objective: To encourage employment opportunities in accessible locations.*

The proposed variety of commercial uses encourage employment in an accessible location.

*Objective: To maximise public transport patronage and encourage walking and cycling.*

The provides additional housing and commercial opportunities in close proximity to public transport options and provides landscaped pedestrian links and bicycle parking.

Currently, no residential dwellings exist within the Local Centre Zone boundary, of approximately 15ha. The proposal will result in a residential density of approximately 3.4 dwellings per hectare. Given the minimum required residential density for a centre to shift from car-centric to people-centric is at least 28dw/ha, the proposal's increase in residential density at this scale is very positive. This fact is heightened by the reality there are currently limited opportunities to introduce residential uses on other sites within the local centre.

*Objective: To provide an environment for pedestrians that is safe, comfortable and interesting.*

The proposal provides landscape pedestrian links through the site that are safe, comfortable and interesting.

*Objective: To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

The proposal adopts a compatible built form to the numerous street frontages and varying surrounding contexts. Buildings are scaled down and set back at more residential interfaces while providing a mix of commercial and residential opportunities as part of the Belrose Local Centre.

*Objective: To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

The proposal incorporates appropriate and permissible land uses and adopts a high-quality design that adheres to the principles and controls of the Apartment Design Guide.

#### WIDER PUBLIC INTEREST

Approval of the variation to the building height is also in the public interest as the concept design provides for innovative architecture that will improve the urban environment and minimise the visual impact of the development from streets and neighbouring properties.

Approval of the variation to the Height of Building development standard is also in the wider public interest. This is because, as held at [26] and [27] in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal and variation are consistent with both the objectives of the particular development standard and the zone in which the proposal is to be carried out.



### 3.5 WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 1.3 OF THE ACT?

The relevant objects set down in Section 1.3 are as follows:

- *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- *to promote the orderly and economic use and development of land,*
- *to promote the delivery and maintenance of affordable housing,*
- *to promote good design and amenity of the built environment,*
- *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

In this instance, strict compliance would unnecessarily limit the opportunity to readily provide additional housing stock with no discernible reduction in environmental impacts. The proposal adopts a perimeter courtyard building to resolve a significant change in level. The proposal and variation satisfy the underlying objectives of both the zone and the development standard, by providing additional residential and commercial development in a form that is consistent with the character of a local centre, without compromising the amenity outcomes of the adjoining properties or surrounding locality

The proposed non-compliance with the development standard would support, rather than hinder the attainment of the objects of the EP&A Act. These objectives are to encourage social and economic welfare of the community, the proper management of built and natural resources, good design and to promote and coordinate orderly and economic use and development of land. The proposal remains consistent with the design criteria of the ADG and is consistent with the objectives of both the land use zone and the development standard.

In this instance, strict compliance with the development standard would not result in any discernible benefits to the amenity of adjoining sites or the public. It therefore stands that the environmental planning grounds and outcomes that are particular to this development and this Site are such, that a departure from the development standard in that context would promote the proper and orderly development of land.

## 4 CONCLUSION

This report accompanies an amended Development Application for a mixed-use development at 28 Lockwood Avenue, Belrose. An exception is sought, pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 to the maximum permissible Height of Building prescribed by Subclause 4.3(2) of the WLEP 2011.

The underlying objective or purpose of the Height of Buildings development standard seeks to ensure compatibility with character of the area. The amended design responds to the differing contextual street frontages by locating the height breach towards the commercial, local centre interface. This allows retention of the significant public realm network without consequent adverse impact. The variation will provide a scale and character that is compatible with the surrounding locality and Local Centre context. The design accommodates generous pedestrian links through the Site and considered landscaping, which result in enhanced amenity and permeability.

The variation will enable a well-considered development to be provided that addresses the site constraints, streetscapes, and relevant objectives of both the standards and the zone. The report finds that the variation will not result in unreasonable environmental impacts. In this case, a variation of the development standard is justified.