



WILLANA
URBAN

CLAUSE 4.6
EXCEPTION-
HEIGHT OF
BUILDING

28 LOCKWOOD AVENUE
BELROSE

CLAUSE 4.6 EXCEPTION



28 LOCKWOOD AVENUE
BELROSE

MIXED USE DEVELOPMENT

PREPARED FOR
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PREPARED BY



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TABLE OF CONTENTS

1	INTRODUCTION	1
1.1	PURPOSE	1
1.2	THE PROPOSAL	1
1.3	BACKGROUND	1
2	THE USE OF CLAUSE 4.6	2
2.1	VARYING A DEVELOPMENT STANDARD	2
3	NATURE OF THE VARIATION	3
3.1	WHAT IS THE APPLICABLE PLANNING INSTRUMENT AND ZONING?	3
3.2	WHAT ARE THE ZONE OBJECTIVES?	3
3.3	WHAT IS THE STANDARD BEING VARIED?	3
3.4	IS THE STANDARD TO BE VARIED A DEVELOPMENT STANDARD?	3
3.5	IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?	3
3.6	WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE STANDARD?	3
3.7	WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?	4
3.8	WHAT IS THE PROPOSED NUMERIC VALUE OF THE VARIATION IN THE DEVELOPMENT APPLICATION?	5
3.9	WHAT IS THE CONTEXT OF THE VARIATION?	6
4	ASSESSMENT OF VARIATION	10
4.1	OVERVIEW	10
4.2	IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?	10
4.3	ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?	12
4.4	PUBLIC INTEREST	13
4.5	WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 1.3 OF THE ACT?	16
5	CONCLUSION	18

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 of the development standard pertaining to building height contained in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

1.2 THE PROPOSAL

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

- Retail premises,
- A recreation facility (indoor) (a gym)
- Shop top housing with 51 dwellings,
- Basement carparking, and
- Landscaping.

1.3 BACKGROUND

A pre-DA meeting was attended on 2 June 2019 to discuss the proposed development with Council. The outcomes of that meeting and subsequent correspondence have been considered and reflected in the proposed development as submitted for this Development Application.

2 THE USE OF CLAUSE 4.6

2.1 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).*

In this instance, SEPP 1 does not apply as 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 not introduce new controls across an area. Subclause 4.6 (6) of WLEP 2011 also states specifically when this clause is *not* to be used. Neither the Site, nor the proposal, satisfy these criteria and therefore, the use of Clause 4.6 to vary the Height of Building is appropriate in this instance.

3 NATURE OF THE VARIATION

3.1 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.

3.2 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.*

3.3 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.

3.4 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.

3.5 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?

No, the development standard is a numerical control.

3.6 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,*

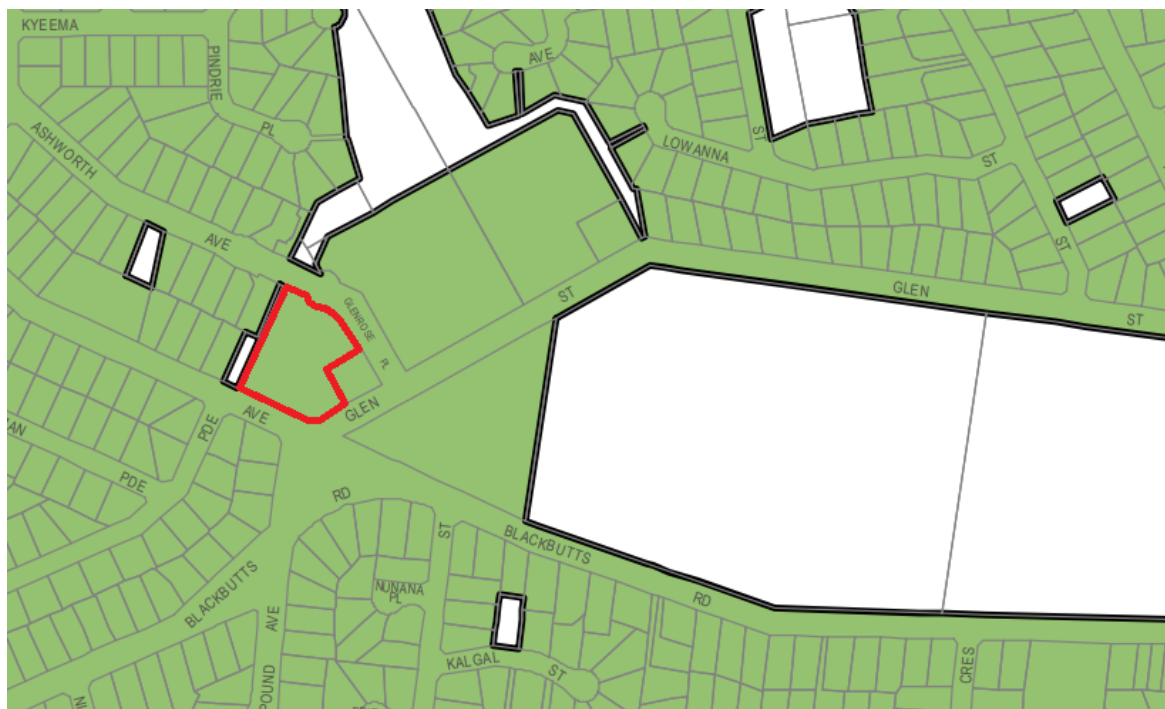
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

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.

3.7 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 1, below.

FIGURE 1: EXCERPT FROM THE HEIGHT OF BUILDINGS MAP 007



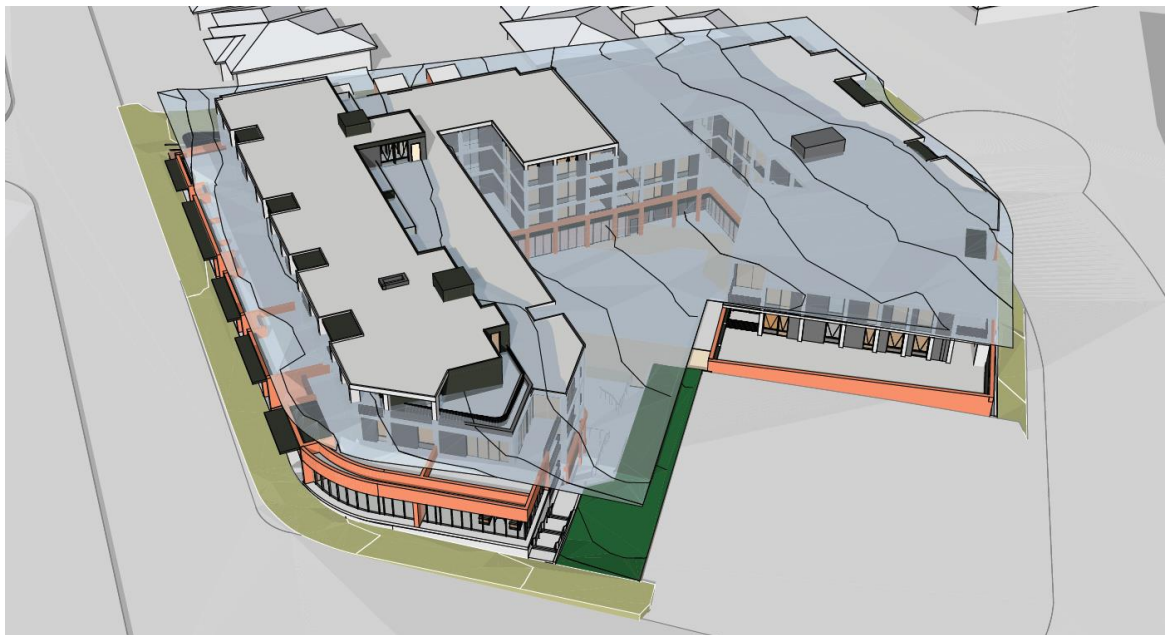
Source: WLEP 2011 HOB MAP 007

3.8 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 variation to the height limit is proposed for the lift overrun for 'Lift A', which is located in Building A, Lobby 1, approximately 16m from both Lockwood Avenue and the western side boundary. This lift overrun has a total height of 12.42 metres, a variation of 3.92m from the numeric development standard.

While this lift overrun represents the maximum proposed variation to the Height of Building development standard, Figures 2 and 3 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 or internal to the Site.

FIGURE 2: 3D HEIGHT PLANE PROJECTION – FACING WEST



SOURCE: DKO ARCHITECTURE

FIGURE 3: 3D HEIGHT PLANE PROJECTION – FACING EAST



SOURCE: DKO ARCHITECTURE

3.9 WHAT IS THE CONTEXT OF THE VARIATION?

The proposal is located on the northern side of Lockwood Avenue, which slopes significantly down towards Glenrose Place and the Glenrose Village shopping centre, as part of the Belrose Local Centre. The built form is entirely compliant with the ADG design criteria and adopts appropriate setbacks to street frontages and adjoining property.

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 4 below.

FIGURE 4: SURROUNDING CONTEXT – B2 LOCAL CENTRE



New Belrose Library/Glen Street Cultural Hub



Glenrose Village/ shopping centre



Glen Street Theatre

SOURCE: DKO ARCHITECTURE – SEPP 65 DESIGN QUALITY STATEMENT

While the proposal results in a maximum building height of 12.42 metres, the majority of the proposed development footprint remains below the 8.5m limit with non-discernible variations to Glenrose Place, particularly when viewed from the streetscape and public domain.

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. The proposal will not disrupt any significant or iconic views, nor will it unreasonably intrude on the amenity of adjoining properties or private open spaces.

PROPOSED SETBACKS AND DESIGN

As discussed in the submitted Urban Design Report, prepared by Roberts Day, the majority of the proposal complies with Council's height control of 8.5m, both numerically and when perceived 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; integration of a significant public realm network, with the built form response; and, respect of neighbouring character. Any non-compliance visible from adjoining public areas is perceived as a recessed 3rd storey 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 recessed upper levels to the residential nature of Lockwood Avenue. The proposal provides communal open space and deep soil areas beyond that legislatively required (an additional 590m²), 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 5: PHOTOMONTAGE – THE PROPOSAL VIEWED FROM LOCKWOOD AVENUE - DEMONSTRATING RECESSIVE NATURE OF UPPER LEVEL



SOURCE: DKO ARCHITECTURE

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



SOURCE: DKO ARCHITECTURE

APARTMENT DESIGN GUIDE COMPLIANCE

There are floor-to-floor heights required within the Apartment Design Guide (ADG), which have recently been enforced by the Land & Environment Court. While habitable rooms have a minimum floor-to-ceiling height of 2.7 metres, the necessity of an additional 0.4 metres per floor for structure, services, set downs and finishes results in an effective minimum floor-to-floor heights of 3.1 metres to meet best practice standards. This means that a three-storey building in a Local Centre Zoning would require a minimum of 8.9 metres to achieve best practice ceiling heights from ground floor to the third level. The height limit of 8.5m required by WLEP 2011, significantly hinders the ability to provide a high-quality design for a three-storey residential flat building, that remains compliant with ADG best practices.

The submitted concept plans demonstrate that a variation to the height limit, with the greatest variation being for central lift overruns, results in an appropriate and compatible built form outcome for the Belrose Local Centre, which comply with the floor-to-floor requirements of the ADG.

The Lockwood Avenue building mass presents as single storey retail shopfronts with the upper levels significantly setback to align with the residential houses and provide an appropriate transition. Conversely, the Glenrose Place building mass presents as a human scale three storey form that integrates successfully into the varied local centre streetscape.

4 ASSESSMENT OF VARIATION

4.1 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. In addition, this variation has also been prepared in accordance with the Guidelines, which identifies matters to be addressed in an application to vary a development standard.

4.2 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:

- (a) Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?

- (b) Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?
- (c) Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?
- (d) 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?
- (e) 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 proposal is consistent with the relevant environmental and planning objectives pertaining to the Height of Buildings development standard and the B2 Local Centre zone (as discussed in greater detail below).
- Although the underlying objectives for the Height of Buildings standard are a valid and relevant matter for consideration, the variation would still result in a scale and character that is compatible with the surrounding locality and Local Centre context. A development compliant with the building height provisions contained in the WLEP 2011 would not necessarily achieve a perceivably different or better planning outcome. The proposed design and associated landscaping provide an appropriate and enhanced setting for the development.
- The underlying objective or purpose of the Height of Buildings development standard seeks to ensure compatibility with character of the area. The emerging character in surrounding streets, in part, is of three storey dwellings. A reasonable built form, at the local centre, must be maintained so as not to thwart the objectives of the height control.
- The variation submission does not seek to rely on the argument that the height standard has been abandoned. Surrounding development exhibits a range of scales including examples of built form within the local centre of comparable building height.

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.

It is also submitted that compliance with the Height of Buildings development standard would be unreasonable and unnecessary for the reasons expanded upon below.

4.3 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 section above.
- The public interest is better served by supporting the variation.
- 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 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, 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.

4.4 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 without adverse amenity impacts. The proposal 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.

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 Lockwood Avenue building mass presents as single storey retail shopfronts with the upper levels significantly setback to align with the residential houses and provide an appropriate transition. Conversely, the Glenrose Place building mass presents as human scale three storey form that integrates successfully into the local centre streetscape. The emerging character in surrounding residential streets, in part, is of three storey dwellings and significant two storey dwellings with pitched roofs. A reasonable built form, at the local centre, is therefore maintained and provides a success 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.

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 single-storey height at the street frontage to Lockwood Avenue, with upper levels 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.

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 is consistent with both the objectives of the particular development standard and the zone in which the proposal is to be carried out.

4.5 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:

- (a) 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,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) ...*
- (f) ...*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) ...*
- (j) ...*

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 satisfies 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 Section 1.3 (a) - (d), (g) and (h) 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.

5 CONCLUSION

This report accompanies the 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 emerging character in surrounding streets, in part, is of three storey dwellings. A reasonable built form, at the local centre, must be maintained so as not to thwart the objectives of the height control. 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.