

SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-503
DA Number	Mod2024/0079
LGA	Northern Beaches
Proposed Development	Modification of Development Consent DA2020/0393 granted for Demolition works and construction of a shop top housing development comprising retail premises, 49 dwellings, basement carparking and landscaping
Street Address	Lot 1 DP 1199795, 28 Lockwood Avenue BELROSE NSW 2085
Applicant	Mario Mourad
Date of DA lodgement	18/03/2024
Number of Submissions	2
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	S4.56 modification to general development exceeding \$30,000,000.00
List of all relevant s4.15(1) (a) matters	
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Plans - Master Set • Report - Statement of Environmental Effects • Report - SEPP 65 Assessment
Clause 4.6 requests	
Summary of key submissions	<ul style="list-style-type: none"> • Retail 03 Windows • Additional Building Height
Report prepared by	Adam Croft, Planner
Responsible officer	Louise Kerr Director - Planning and Place
Report date	

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **YES**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **YES**

Clause 4.6 Exceptions to development standards **N/A**

If a written request for a contravention to a development standard (clause 4.6 of the

LEP) has been received, has it been attached to the assessment report?

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **N/A**

Conditions

Have draft conditions been provided to the applicant for comment? Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report **YES**

EXECUTIVE SUMMARY

This Section 4.56 Modification Application seeks to amend the approved shop-top housing development, DA2020/0393, which was granted by the Land and Environment Court of NSW on 8 November 2021.

The application is referred to the Sydney North Planning Panel (SNPP) for determination as it is a Section 4.56 Modification Application to a consent "*granted by the Court to general development with a capital investment value of more than \$30 million*" (SEPP (Planning Systems) 2021 Schedule 6 (2)).

The changes proposed in the modification application include minor internal and external changes to the building. The modified development is found to be substantially the same as the approved development and the modifications sought do not significantly alter the built form, appearance or environmental impacts of the approved development.

The proposal involves a minor breach of the building height development standard under WLEP 2011. Clause 4.6 is not applicable to a modification application, nevertheless the height breach has been assessed against the relevant requirements of Clause 4.6 and is found to be acceptable given the nature and location of the breach.

Two (2) submissions were received in response to Council's notification and advertising of the application. The matters raised in the submission are addressed in this report and do not warrant the refusal of the application.

This report concludes with a recommendation that the SNPP should **APPROVE** the Modification Application.

PROPOSED DEVELOPMENT IN DETAIL

The proposed Section 4.56 application seeks to modify Development Consent No. DA2020/0393, which was granted by the Land and Environment Court of NSW on 8 November 2021.

Specifically, the proposed modifications are as follows:

Basement 02, 03 & 04

- No changes proposed.

Lower Ground Floor

- Retail 03 and 05 – Add new highlight windows W66, W67 and W68.
- Unit LG.01 – Extend external northern wall by 500mm and reconfigure bedroom to enlarge living room.
- Unit LG.04 – Add third bedroom, enlarge balcony and store and re-locate entry.
- Units LG.12 and LG.13 – Reconfigure internal layouts and add new powder room.

Ground Floor

- Electrical substation – Add second substation and reconfigure layout.
- Retail 03 – Removal void and allocate additional floor area to retail premises.
- Retail 05 – Relocate entry ramp internally and reduce width.
- Unit G.04 – Add third bedroom and enlarge balcony.

Level 1

- Unit L1.04 – Reconfigure and extend internal layout and add new balcony and study.
- L1.11 – Reconfigure internal layout of bedrooms, bathrooms, robe and store
- Unit L1.12 – Extend external western wall by 2.3m to increase internal floor area.

External

- Units L1.04 and L1.12 – Extend roof over additional areas.
- External finishes – Replace painted concrete with painted render.
- New 1.2m high louvre screen to southern roof.

The proposal increases the gross floor area of the development by 166m², from 18,879m² to 19,045m², representing a 0.88% increase.

The proposal does not increase the overall height of the approved building (with the exception of a new louvre screen) or alter the footprint, landscaped area or parking provision.

The subject modification application is not Nominated Integrated Development as no further approval is required under the Water Management Act 2000. The General Terms of Approval issued by WaterNSW on 21 September 2021 remain applicable to the development as proposed to be modified.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 (minor)

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - C7 Excavation and Landfill

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 1 DP 1199795 , 28 Lockwood Avenue BELROSE NSW 2085
Detailed Site Description:	<p>The site is an irregular shaped allotment. It has a frontage of 61.785m to Lockwood Avenue to the south, 27.945m to Glen Street to the south-east and 75.7m to Glenrose Place to the north and north-east. The site area is 5,322m² (by Title).</p> <p>The site slopes gently from its southern boundary (Lockwood Avenue) down to its northern boundary (Glenrose Place). The total fall is approximately 6.1m, representing an average gradient of 1 in 9.3 (7.2% or 4.1°).</p> <p>The site was previously used for many years as the Belrose Library which has since been demolished to make way for the approved construction.</p> <p>Adjoining the site to the south-east is a service station. Adjoining the site to the west is an area of public open space and a public pathway. On the opposite side of the public pathway is a dwelling house and childcare centre.</p> <p>To the south, west and north-west of the site, the area has been developed primarily for residential development with the predominant form being single dwelling houses in landscaped settings.</p>

To the north-east of the site, on the opposite side of Glenrose Place, is the Glenrose Shopping Centre, particularly the loading areas and vehicular access from Glenrose Place.

To the east of the site, on the opposite side of Glen Street, is the Glen Street Community Hub including library, theatre, and gymnasium.

Map:



SITE HISTORY

- **Development Application - DA2020/0393** - Demolition works and construction of a shop top housing development - Refused by the Sydney North Planning Panel (SNPP) on 19 October 2020, which concurred with the Council's recommendation.

The Applicant appealed the SNPP's determination, and the Land and Environment Court of NSW subsequently upheld the Appeal (8 November 2021) and development consent was granted. The LEC judgement noted that the amended plans filed with the Court on 9 July 2021 (and ultimately approved by the Court) included the following notable changes relative to the scheme that was refused by the SNPP:

1. Approximately 1600m² reduction in the floor area of the development;
2. Modest reduction in the overall height of the development;
3. Reduction in the number of residential units from 51 to 49 and removal of a proposed gymnasium; and
4. Increased provision of on-site car parking spaces from 190 to 238.

- **Modification Application - Mod2022/0559** - Modification of Development Consent DA2020/0393 granted for Demolition works and construction of a shop top housing development comprising retail premises, 49 dwellings, basement carparking and landscaping - Approved 3 March 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0393, in full, with amendments detailed and assessed as follows:

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 18/06/2024 to 09/07/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Arthur Thomas Moreland	27 Lowanna Street BELROSE NSW 2085
Lawrence Morris	14 Beckman Parade FRENCHS FOREST NSW 2086

The issues raised in the submissions are addressed as follows:

- **Retail 03 Highlight Windows**

The submission queried the impact of the proposed highlight windows at the western elevation of Retail 03 in relation to pedestrian view lines between the retail tenancy and the adjacent pedestrian walkway.

Comment:

The proposed windows are located effectively at the external ground level and are set back 6.0m from the site boundary. The proposed windows are to commercial premises and are not considered to result in any adverse impacts given that the adjoining land is a public reserve.

This matter does not warrant refusal of the application.

- **Additional Building Height**

The submissions raised concerns regarding the proposed height increases sought under the proposed modification.

Comment:

The proposed height breach above the prescribed building height limit is centrally located and will not cause any adverse visual or amenity impacts. Further assessment of the building height breach is included in this report under Clause 4.3 Height of Buildings.

This matter does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Development Engineering)	<p>Supported without conditions.</p> <p>I have reviewed the Statement Of Environmental Effects and there are no changes that impact the stormwater drianage/OSD or vehicle assess requirements of the development . No objections to the modification ,there are no additional conditions required.</p>
Strategic and Place Planning (Urban Design)	<p>Supported without conditions.</p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent to modify the internal layouts of various retail shops and residential units, and other minor changes.</p>

Internal Referral Body	Comments
	<p>There are no changes proposed to the approved building height setbacks or landscaped area. As such, the proposed modifications are minor internal and external changes.</p> <p>Urban Design raises no objection to the proposed development.</p> <p>Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officer, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officer.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1061176M_05 dated 22 February 2024).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	46

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing) 2021

Application of Chapter

Clause 144 of State Environmental Planning Policy Housing 2021 (SEPP Housing) stipulates that:

(1) This chapter applies to development only if:

(a) the development consists of:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building, or
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys, not including underground car parking storeys, and

(c) the building contains at least 4 dwellings.

As per the provisions of Clause 144 outlining the application of the policy, the provisions of Chapter 4 SEPP Housing are applicable to the assessment of this application.

Clause 102 of the Environmental Planning and Assessment Regulation 2021 requires the submission of a Design Verification Statement from the qualified designer at lodgement of the modification application. This documentation has been submitted with the application.

Determination of development applications and modification applications for residential apartment development

Clause 147 of SEPP Housing requires that:

(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—

(a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,

(b) the Apartment Design Guide,

(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.

Comment: The below part of the report makes an assessment against the design quality principles contained within Schedule 9 (a) and an assessment is carried out against the ADG below (b).

(a) The assessment undertaken in relation to the original development application included detailed consideration of the design quality principles contained within Schedule 9. Given the nature and minor extent of the proposed changes, it is considered that the proposal continues to meet the design quality principles and no further assessment is warranted.

(b) The assessment undertaken in relation to the original development application included detailed consideration of the applicable provisions of the ADG. A further assessment of the ADG provisions relevant to the proposed modification is undertaken below.

(c) Given the nature and minor extent of the proposed changes, referral of the modification application to Council's Design and Sustainability Advisory Panel is not warranted in this case.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP Housing.

Development Control	Criteria / Guideline	Comments												
Part 3 Siting the Development														
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Complies
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Part 4 Designing the Building														
Amenity														
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	Complies												
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	Complies												
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a	Complies												

	<p>comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 											
	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	Complies										
<p>Apartment Size and Layout</p>	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="480 1066 1035 1368"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Complies
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	Complies except for U1.04, which is amended to provide a study with no window. Based on the proposed room use this is considered acceptable										
	<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	Complies										
	<p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding</p>	Complies										

	wardrobe space).																
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Complies															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments 	Complies															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies.															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Complies
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Configuration																	
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Complies															
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Complies															

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or

an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated.

The potential contamination of the site was considered in the assessment of the original development application with suitable conditions of consent imposed.

Given the nature and extent of the proposed modifications, it is considered that the land is suitable for the proposed residential land use and no further assessment is required under sub-section 4.6 (1) of this Chapter.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	8.5m	Max.: 12.2m (Roof RL 164.9 and lift overrun RL 166.1)	Unchanged	N/A	No (as approved)
			Louvre screen: 9.5m	11.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

Description of Non-compliance

Development Standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.5m
Percentage Variation to Requirement:	11.8%

Assessment of Request to vary a Development Standard

Whilst the modification application will result in a building height (related to the louvre screen) that exceeds the maximum permitted by Clause 4.3 of the Warringah LEP 2011, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard. The assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

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.

Clause 4.3 - Height of Buildings

(1) The objectives of this clause are as follows—

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The non-compliant louvre screen does not increase the maximum RL of the approved development or the height of the building as measured to the ground levels of the site. The inclusion of the proposed screen does not cause the development to be incompatible with the height and scale of surrounding development.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The proposed screen is located centrally within the roof form and will not cause any adverse visual impact or loss of views, privacy or solar access.

c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The proposed screen element will not be visually prominent when viewed from surrounding properties or the public domain and will not cause adverse impacts upon the scenic quality of the locality.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The visual impact of the proposed screen when viewed from surrounding public places is appropriately managed by its siting and limited additional height.

Conclusion

The proposal is found to achieve consistency with the height of buildings objectives and is **supported**, notwithstanding the minor departure from the development standard.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B5 Side Boundary Setbacks	Merit assessment	NW: 1.1 - 5.9m	Unchanged	Yes
		E (service station): Nil - 6.5m	Unchanged	Yes
B7 Front Boundary Setbacks	Merit assessment	Lockwood Ave (SW): Nil - 6m	Unchanged	Yes
		Glenrose PI (NE): Nil - 4m	Unchanged	Yes
		Glen St (SE): Nil - 6m	Unchanged	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B8 Merit assessment of front boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C7 Excavation and Landfill

The proposal does not involve any additional excavation or fill works beyond those previously approved.

D6 Access to Sunlight

The proposed modification will not cause any material additional overshadowing impacts relative to the approved development.

D7 Views

No significant view corridors are identified in the vicinity of the site and the proposed changes will not cause any unreasonable view impacts.

D8 Privacy

The proposed modification does not materially alter the privacy outcome of the approved development.

D9 Building Bulk

The proposed modification does not result in any substantial additional bulk when viewed from surrounding residential properties or the public domain.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

The assessment of the application finds that the proposed modified development is substantially the same as the approved development, and that the development as modified is reasonable in its context.

The proposed modifications are entirely within the approved building footprint and do not significantly alter the built form, appearance or density relative to the approved development.

The modifications are generally a refinement of the approved development and will not result in additional adverse visual, amenity or environmental impacts.

The minor breach of the building height development standard is found to be acceptable given the location and nature of the breach, and technically a Clause 4.6 variation is not required.

The matters raised in the submission are addressed in the report and do not warrant the refusal of the application.

Based on the assessment undertaken, the proposed modifications are considered to be worthy of support.

Accordingly, it is recommended that the SNPP, as the consent authority, **APPROVE** the application.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Sydney North Planning Panel as the consent authority grant approval to Modification Application No. Mod2024/0079 for Modification of Development Consent DA2020/0393 granted for Demolition works and construction of a shop top housing development comprising retail premises, 49 dwellings, basement carparking and landscaping on land at Lot 1 DP 1199795, 28 Lockwood Avenue, BELROSE, subject to the conditions outlined in Attachment 1.

ATTACHMENT 1

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN 414260 Mod2024/0079	The date of this notice of determination	Modification of Development Consent DA2020/0393 granted for Demolition works and construction of a shop top housing development comprising retail premises, 49 dwellings, basement carparking and landscaping. Add Condition 1B Add Condition 10B Add Condition 11B Modify Condition 54
PAN 268808 Mod2022/0559	3 March 2023	Modification of Development Consent DA2020/0393 granted for Demolition works and construction of a shop top housing development comprising retail premises, 49 dwellings, basement carparking and landscaping. Add Condition 1A Add Condition 10A Add Condition 11A Modify Condition 30 Add Condition 35A Add Condition 35B Modify Condition 74

Modified conditions

A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-104	4	Lower Ground Floor Plan	Urbana Corp	March 2024
DA-105	4	Ground Floor Plan	Urbana Corp	March 2024
DA-106	4	Level 01 Plan	Urbana Corp	March 2024
DA-107	4	Roof Plan	Urbana Corp	March 2024
DA-201	4	Elevations	Urbana Corp	March 2024

DA-202	4	Elevations	Urbana Corp	March 2024
DA-301	4	Sections	Urbana Corp	March 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BCA Assessment Report C21844-BCA 2022-r1.2	-	Credwell	6 March 2024
Access Report C21844-Access 2022-r1.1	-	Credwell	6 March 2024
BASIX Certificate No. 1061176M_05	-	Ecoplus Consultants Pty Ltd	22 February 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition 10B. Building Code of Australia Requirements and Fire Safety Matters to read as follows:

10B. Building Code of Australia Requirements and Fire Safety Matters

The Building Code of Australia works and fire upgrading measures to upgrade the building as detailed and recommended in the Building Code of Australia Audit Report prepared by Credwell, dated 6/3/2024, Report Ref No. C2/844-BCA 2022-r1.2 are to be considered as part of the assessment of the Construction Certificate.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

C. Add Condition 11B. Building Code of Australia Access Requirements to read as follows:

11B. Building Code of Australia Access Requirements

The Building Code of Australia works and access measures to the building as detailed and recommended in the Access Report prepared by Credwell, dated 6/3/2024, Report Ref No. C21844-Access 2022-r1.1DRAFT are to be considered as part of the assessment of the Construction Certificate.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Access for building occupant safety.

D. Modify Condition 54. Fire Safety Matters to read as follows:

54. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.