



Statement of Environmental Effects

Proposed Section 4.56 Modification to Approved Mixed Use Development at 28 Lockwood Avenue, Belrose

February 2024

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Introduction

This report has been prepared by Navon Planning on behalf of Platinum Property Advisors No 1 c/- Momentum Project Group Pty Ltd in relation to the proposed Section 4.56 modification to the approved mixed use development at 28 Lockwood Avenue, Belrose. On 8 November 2021 the NSW Land and Environment Court upheld the decision to approve the DA for the demolition of existing structures and construction of a mixed use development comprising of retail uses and shoptop housing containing 49 dwellings, basement car parking for 238 vehicle spaces, landscaping, and a central public square (DA2020/0393).

Since the approval of a previous Section 4.56 Modification on 3 March 2023 (Mod2022/0559), further modifications of the building are now being sought to improve the internal layouts of various retail shops and residential units, and other minor changes. There are no changes proposed to the approved building height setbacks or landscaped area. As such, the proposed modifications sought under this application primarily relate to various minor internal and external changes. The proposal has been assessed against relevant State and Council planning controls and is considered satisfactory and worthy of Council approval.

This application is supported by the following documents:

- Architectural Plans prepared by Urbanacorp
- Statement of Environmental Effects prepared by Navon Planning
- BASIX Certificate prepared by Ecoplus Consultants

The Site and Surrounding Area

The subject site known as 28 Lockwood Avenue, Belrose and is legally identified as Lot 1 in DP 1199795. It is located at the intersection of Lockwood Avenue and Glen Street, with Glenrose Place adjoining the site to the east. The site has an irregular shape with a total site area of 5,322sqm. The site slopes from south to north by approximately 3.8m. Construction of the approved development is currently in progress on the site.

Adjoining the site to the south-east is a petrol station, across the road to the south are residential dwellings, to the west are also dwellings with a pedestrian walkway in between, to the north are also dwellings and towards the east is the Glenrose Village shopping centre.



Figure 1: The site and surrounding area (Prior to demolition)



Figure 2: The site looking to the north-east (Prior to demolition)



Figure 3: The site looking to the south-west (Prior to demolition)



Figure 4: View of the site from Lockwood Avenue (Prior to demolition)



Figure 5: Building from Lockwood Avenue side (Prior to demolition)



Figure 6: Dwellings to the west on Lockwood Avenue



Figure 7: View of the site from the walkway (Prior to demolition)



Figure 8: Child care centre and walkway to the west



Figure 9: The site from Glenrose Place (Prior to demolition)



Figure 10: Car park entrance to Glenrose Village



Figure 11: Glenrose Village further east from the site



Figure 12: Petrol station to adjoining the site to the east

Background

On 8 November 2021 the NSW Land and Environment Court upheld the decision to approve the DA for the demolition of existing structures and construction of a mixed use development comprising of retail uses and shoptop housing containing 49 dwellings, basement car parking for 238 vehicle spaces, landscaping, and a central public square (DA2020/0393).

On 3 March 2023 Northern Beaches Council approved a Section 4.56 seeking various internal and external changes to improve the internal layout and to comply with the NCC (Mod2022/0559).

The Proposal

This Section 4.56 Modification seeks various changes to the approved mixed use development at 28 Lockwood Avenue, Belrose (DA2020/0393). The modifications sought under this application are summarised below:

Basements 2, 3 and 4

- No changes

Lower Ground Floor

- Space for a second electrical substation located above on ground level. This is proposed due to the electrical requirements of the building, requested by the electrical engineer.
- Highlight windows W66, W67 and W68 have been added to retail 03 and retail 05 on lower ground floor to provide additional natural light into these shops.
- Unit LG12: The internal storage has been relocated to either side of the TV unit, replaced with a powder room with minor adjustments to the layout of the unit.
- Unit LG13: The internal storage has been relocated to one side of the TV unit and replaced with a powder room.
- Unit LG04: A third bedroom and a balcony has been added to this unit and the area of this unit has increased by 20.58sqm. The entry to this unit has been shifted away from lift 05 overrun, since the lift overrun extends 600 mm over the SSL of lower ground floor. This change is important for lift 05 to work.
- Unit LG01: The external wall of the living room has been pushed out 500mm to improve the internal layout of the unit.

Ground Floor

- Second electrical substation
- Retail 05: The external wide entry ramp has been enclosed to be an internal space within the shop with a narrower internal ramp.
- The void space adjacent to retail 03 on ground floor level has been removed and that space has been allocated to retail 03.
- Unit G04: A third bedroom and balcony has been added to this unit and the area of this unit has increased by 20.73sqm.

Level 1 Plan

- Unit 1.12: The external north facing wall has been pushed out 2300mm to improve the internal layout of the unit and increase the area by 18.6sqm.
- Unit L1.04: The area of this unit has increased by 18.63sqm. The internal layout has been amended and an additional balcony is proposed.

Roof Plan

- The roof is extended over the new extension of unit L1.04.
- Unit L1.11: internal amendments to floor plan to avoid drainage of bathrooms inside lift 01 overrun below.

Other Changes

- EF-04, EF-05 & EF-06: the "painted concrete" is replaced with "render paint" as specified in the legend of the schedule of finishes shown on the elevation plans.
- While there is no maximum FSR applicable to the site, the proposal seeks an increase to GFA by 166sqm, from 18,879sqm to 19,045sqm.

No other changes are proposed to the approved DA and refer to the submitted plans prepared by Urbana Corp for further details.

Assessment of Planning Controls

Below is an assessment of the relevant State and Council planning controls applicable to the site and proposal.

Section 4.56 Modification by Consent Authorities of Consents Granted by the Court

This application is made under Section 4.56 of the Environmental Planning and Assessment Act 1979 which allows Council to modify a development consent issued by the NSW Land and Environment Court if the following conditions have been satisfied:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: This application seeks to modify the approved mixed use development at 28 Lockwood Avenue DA2020/0393 by various minor internal and external alterations within the existing building envelope.

The extent of the proposed modification has been reviewed in consideration of what constitutes the “substantially the same development” test in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 where at paragraphs 55 and 56, Bignold J described the process for consideration of a proposed modification of development as follows:

"55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the approved development.

56. The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

In relation to paragraph 55, the proposed modifications retain the approved uses with no addition to the approved building height and setbacks. The density remains the same and the building envelope is substantially the same as the approved DA. The submitted architectural plans demonstrate the modified design is virtually identical similar to the approved design in terms of footprint, height, setbacks and landscaping.

The proposed modifications can satisfy the principle under paragraph 56 given the changes do not constitute a deviation from the approved DA. Rather, the changes relate to enhancing the development through various minor internal and external modifications. As such, the proposal is substantially the same development as the approved DA.

(b) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, and*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

It is Council's responsibility to notify this application to the neighbours and it is expected that this is undertaken in accordance with their relevant procedures.

- (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

It is expected that reasonable attempts are made by Council.

- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Council will need to consider any submissions as part of their assessment of this application.

Draft Instruments

There are no relevant draft instruments associated with the proposal.

State Environmental Planning Policy (Resilience and Hazards) 2021

The site has been zoned for commercial uses for many years and is unlikely to have been affected by contamination. Notwithstanding this, the previous DA was approved via the LEC and therefore satisfied this SEPP. As such, there are no additional impacts expected as a result of the proposed modifications.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The removal of on-site trees and impact upon street trees was considered as part of the previously approved DA. There are no additional changes to approved trees or landscaping and therefore the proposed modifications comply with this SEPP.

State Environmental Planning Policy (Sustainable Buildings) 2022

The application is accompanied by a BASIX Certificate which satisfies the required environmental outcomes.

State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development

There are no substantial changes to the layout of the apartments that require a SEPP 65 Assessment as all changes are very minor. Subsequently, the proposed modifications maintain compliance with SEPP 65 and the NSW ADG.

Warringah Local Environmental Plan 2011

The site is zoned E1 Local Centre under the Warringah LEP 2011. The proposed modifications are permitted, subject to Council approval. The table below summarised how the proposal complies with the relevant LEP provisions.

Control	Proposal	Complies
B2 Local Centre	The proposed modifications are permissible within the E1 zone.	Yes
4.3 Height of buildings Max height of buildings 8.5m	The proposed modifications do not seek to increase the approved height.	Yes
4.4 Floor Space Ratio	Not applicable to the site.	N/A

Control	Proposal	Complies
5.10 Heritage conservation	The site is not heritage listed or located within a heritage conservation area.	Yes
6.4 Development on sloping land	The impact of the development on landslip and the implications of the development on adjoining land were fully considered as part of the original DA. As such, the proposed modifications do not impact this Clause.	Yes

Warringah Development Control Plan 2011

An assessment of the relevant DCP provisions in relation to the proposed alterations additions appears below.

Control	Proposal	Complies
Part C		
C2 Traffic, Access, and Safety Vehicular Access	There are no changes to the approved basement parking.	Yes
C3 Parking Facilities	As above.	Yes
C4 Stormwater	Due to the minor nature of the proposed changes, no changes are required to the approved stormwater plan.	Yes
C7 Excavation and Landfill	No change.	Yes
C9 Waste Management	No change.	Yes

Control	Proposal	Complies
D10 Building Colours and Materials	Maintained as demonstrated in the plans, although the "painted concrete" is replaced with "render paint" as specified in the legend on the elevation plans.	Yes

Section 4.15 Considerations

Natural Environment

The proposal is in an established mixed use environment. The modifications are minor in nature and do not result in any additional adverse impacts to the site or surrounding area. The proposal will therefore not impact the general natural environment of Belrose.

Built Environment

The scale of the proposed modifications area consistent with the built form and streetscape of the surrounding area. The modifications are generally confined to the approved building envelope and do not require any changes to the approved building height or setbacks. An increase to GFA is proposed, although this is generally contained to the approved building envelope. Potential impacts of the proposal have been considered in accordance with the relevant planning controls and the proposed external changes are very minor in relation to the overall approved DA.

Social and Economic Impacts

There are no social or economic impacts as a result of the proposed modifications.

Suitability of the site

The site is considered suitable for the proposed modifications.

Public Interest

The proposal is in the public interest.

Conclusion

This Section 4.56 modification to the approved mixed use development at 28 Lockwood Avenue, Belrose has been assessed against the relevant State and Council planning controls and complies. The proposed modifications are generally confined to the approved building envelope and improve the internal amenity and function for future users. The changes are substantially the same as the approved DA and they will provide an enhancement to the originally approved design. There are no additional amenity or other impacts upon the amenity of adjoining or properties. As such, the proposal is considered to be worthy of development consent.