

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-371
<b>DA Number</b>	<b>MOD2023/0021 to LDA 2019/0149</b>
<b>LGA</b>	City of Ryde
<b>Approved Development</b>	Demolition of structures, excavation, site remediation and construction of a 10 storey (including mezzanine level) mixed use building comprising a supermarket, 5 retail shops, 2 commercial spaces, 43 residential dwellings and 72 serviced apartments over 4 levels of basement parking and associated works.
<b>Proposed Modification</b>	Section 4.56 to NSW Land and Environment Court approval for a mixed-use development. This modification application is for alterations to the pedestrian and vehicular accesses, changes to the internal floor layout and conversion of commercial floor space into additional serviced apartments which will result in an increase of serviced apartments from 72 to 84.
<b>Street Address</b>	155 Church Street, Ryde Lot 100 in DP 851723; Lot 15 in DP 738232; Lot 13 in DP 738232; Lot 14 in DP 738232 and Lot 7 in DP 809282
<b>Applicant &amp; Owner</b>	Church Street Property Investments Pty Ltd
<b>Date of DA lodgement</b>	14 February 2023
<b>Total number of Submissions</b> <b>Number of Unique Objections</b>	<ul style="list-style-type: none"> <li>Eight (8) submission received, seven (7) were unique objections.</li> </ul>
<b>Recommendation</b>	<b>Approval</b>
<b>Regionally significant development (Schedule 6 of the SEPP (Planning Systems) 2021)</b>	4.56 modification application to a development that has a capital investment value of more than \$30 million.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>Environmental Planning and Assessment Act 1979;</li> <li>Environmental Planning and Assessment Regulation 2021;</li> <li>State Environmental Planning Policy (Planning Systems) 2021;</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021;</li> </ul>

	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021; and</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.</li> </ul> <b>Development Control Plans</b> <ul style="list-style-type: none"> <li>• City of Ryde Development Control Plan 2014</li> </ul> <b>Other</b> <ul style="list-style-type: none"> <li>• Section 7.11 Development Contributions Plan 2020</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Attachment 1: Proposed conditions for MOD2023/0021 (this modification)</p> <p>Attachment 2: Letter from United Property Services</p> <p>Attachment 3: Proposed plans</p> <p>Attachment 4: Assessment against SEPP 65 and the ADG</p> <p>Attachment 5: Court judgement for LDA 2019/0149</p> <p>Attachment 6: Concept Plan approval and subsequent approved modifications</p>
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>- Overcrowding and overdevelopment;</li> <li>- Culture and poor quality of community;</li> <li>- Impact on environmental features of the area;</li> <li>- Construction impacts; and</li> <li>- Traffic impacts.</li> </ul>
<b>Report prepared by</b>	<b>Sandra McCarry – Senior Assessment Officer</b>
<b>Report date</b>	16 August 2023

### Summary of s4.15 matters

**Yes**

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

### Legislative clauses requiring consent authority satisfaction

**Yes**

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?

### Clause 4.6 Exceptions to development standards

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?

**Not applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**N/A**

### Conditions

Have draft conditions been provided to the applicant for comment?

**Yes**

## **1. EXECUTIVE SUMMARY**

This report considers a Section 4.56 application under the Environmental Planning and Assessment Act 1979 (EP&A Act) to modify the approved development at 155 Church Street, Ryde.

This application has been referred to the Sydney North Planning Panel for determination, as the cost of works of the original design was greater than \$30 million. The development as amended has a CIV of \$67,430,261, excluding GST and the original DA was approved via a Land and Environment Court appeal.

On 24 December 2019 a Class 1 deemed refusal appeal was lodged with the Land and Environment Court and the matter progressed to a Section 34 conciliation meeting whereby the parties reached an agreement in principle for the granting of consent by the court. On 6 September 2021, the L & E court granted approval to Local Development Application No. LDA2019/0149. The approval is for demolition of the existing structures, excavation, site remediation and construction of a 10 storey (including mezzanine level) mixed use building comprising a supermarket, 5 retail shops, 2 commercial spaces, 43 residential dwellings and 72 serviced apartments over 4 levels of basement parking and associated works.

This modification application is for alterations to the pedestrian and vehicular accesses, changes to the internal floor layout and conversion of commercial floor space into additional serviced apartments which will result in an increase of serviced apartments from 72 to 84.

The applicant has provided a letter from United Property Services advising that demand for commercial offices have continued to decline and for reasons stated in their letter, commercial/office use at 155 Church Street is not considered viable. Letter attached at **Attachment 2**.

This application was advertised and notified between the period of 21 February 2023 until 21 March 2023, in accordance with Council's Community Participation Plan. Eight submissions were received (7 unique letters). The concerns raised in the submissions are discussed below in **Section 12** of this report.

The proposed modifications will not increase the bulk and scale of the building and will maintain the built form and envelope. The resulting design is considered to maintain a good level of internal amenity to the service apartments, be appropriately proportioned and sit within an appropriate landscape setting. Accordingly, it is recommended that the Sydney North Planning Panel, as the determining authority, approve the application subject to the amended conditions provided at **Attachment 1**.

## **2      APPLICATION DETAILS**

<b>Applicant &amp; Owner:</b>	Church Street Property Investments Pty Ltd
<b>Estimated value of works:</b>	\$67,430,261 excluding GST
<b>Disclosures:</b>	No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by any persons.

## **3.      THE PROPOSED MODIFICATION**

This Section 4.56 modification application seeks to amend the mixed use development as follows:

- Conversion of the commercial floor space on Levels 1 and 2 to provide 12 additional serviced apartments (increase from 72 to 84);
- The provision of 40m<sup>2</sup> of additional retail floor space;
- The reduction of supermarket floor space by 20m<sup>2</sup>. The detailed supermarket floor plan is to be amended to be indicative only. The floorplan will be the subject of a separate approval by the future operator to allow flexibility;
- 26 additional bicycle parking spaces;
- Minor reconfiguration of the Lower Ground Level driveway and accessible path to satisfy Australian Standard ramp gradient requirements and minor reconfiguration of the driveway 'islands' to satisfy technical design standards;
- The addition of a service cupboard (water and gas metres) at the western corner of the site;
- Reconfiguration of the basement fire exits;
- Reconfiguration of the basement parking layout, location and/or positioning of air supply vents, pump rooms, car spaces, storage areas and vehicular ramps.
- Internal reconfigurations of the ground level loading dock;
- Increase to the provision of landscaping on structure, communal open space on podiums and publicly accessible open space at ground level.
- Reconfiguration of the fire stairs, fire corridors, bathrooms, waste storage rooms, access ramps, vertical mechanical shafts, communication cupboards and waste storage rooms. The revised services also result in the reconfiguration of the layout of the serviced apartments (being the kitchens, kitchenettes, bathrooms, laundry cupboards, or entry areas. The living rooms, bedrooms and balconies are unchanged);
- Increase the depth of the terrace of 'The Shed' at Ground Level by 1m to improve accessibility;
- Reconfiguration of the Ground level outdoor 'Plaza' including amendments to pedestrian access arrangements to satisfy accessibility standards;
- Relocation of the onsite storage detention tanks from the western corner of the courtyard to the eastern corner;
- Replacing the bifold doors on Levels 1, 2 and 3 to balconies with sliding doors to address acoustic requirements associated with Conditions 12 and 71;

- Replacing the Church Street and Well Street facing balconies to wintergardens on Levels 4 to 9 to address acoustic requirements associated with Conditions 12 and 71. These winter gardens are included in gross floor area;
- Reconfiguration of the Level 7 outdoor communal open space to satisfy accessibility standards;
- Line up the edges along the Church Street elevation and
- Enclosure of a rooftop open air mechanical equipment space (to match 3 other plant room enclosures which also function as roof top architectural features).

The applicant states that whilst some modifications are proposed at ground level, the vast majority are proposed within the approved building envelope. Many internal and external proposed modifications are for the purpose of satisfying Construction Certificate related technical matters. For example, various minor amendments are proposed to satisfy accessibility standards or acoustic standards, as referenced in conditions of consent. Some modifications are also structural engineering related.

The commercial floor area on Levels 1 and 2 are sought to be deleted as it is no longer found to be viable due to its quantity or location.

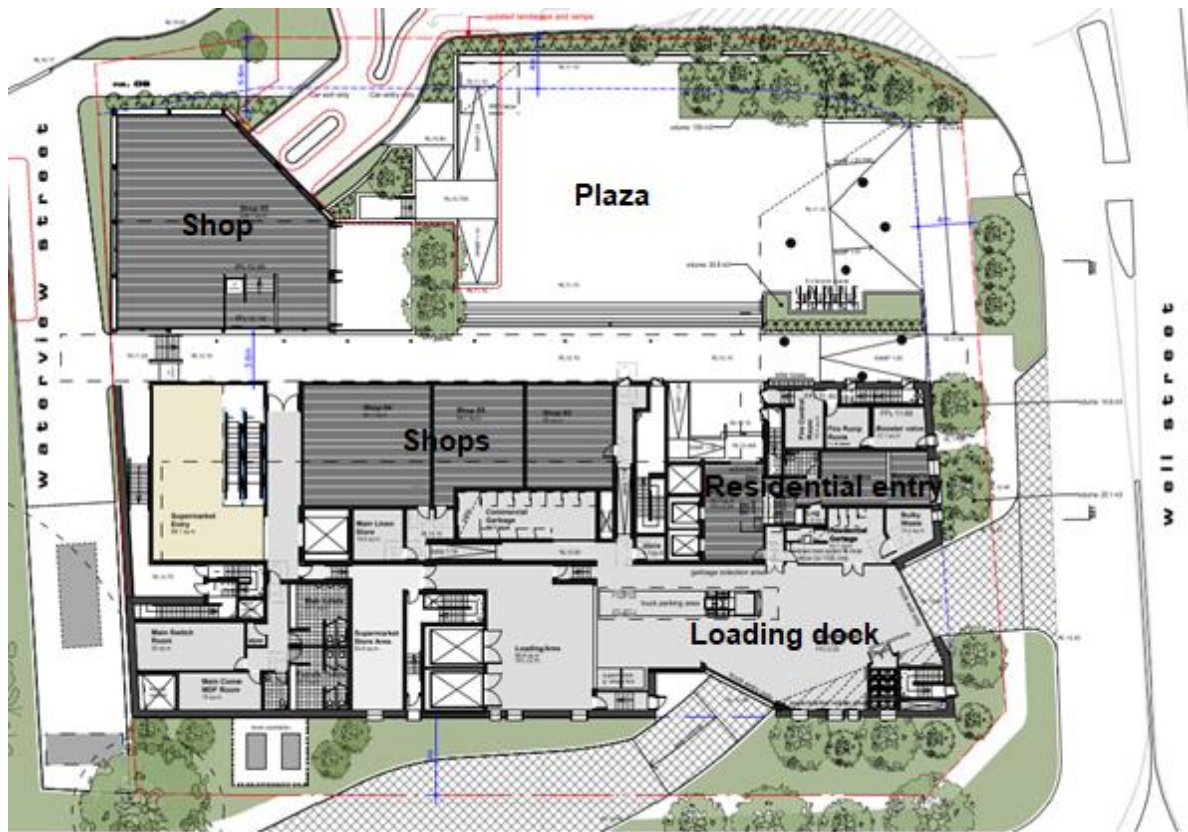


Figure 1: Approved ground floor plan

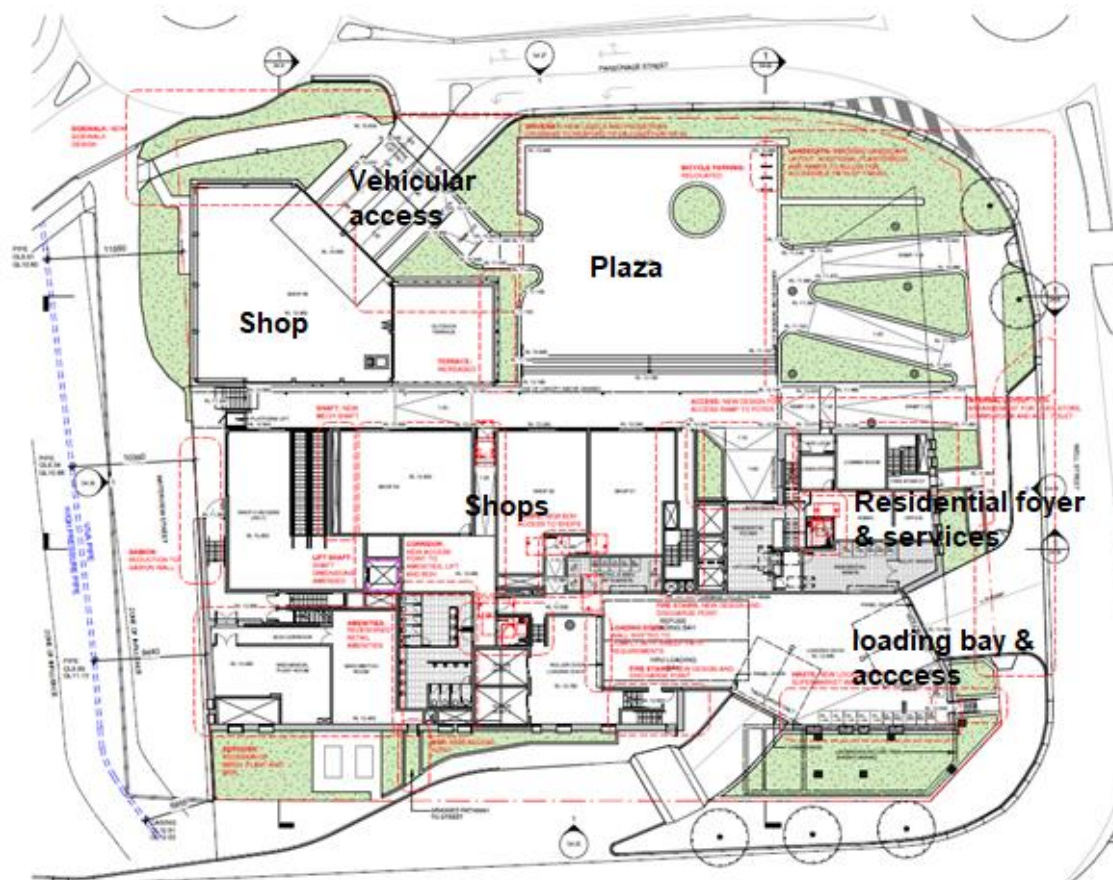
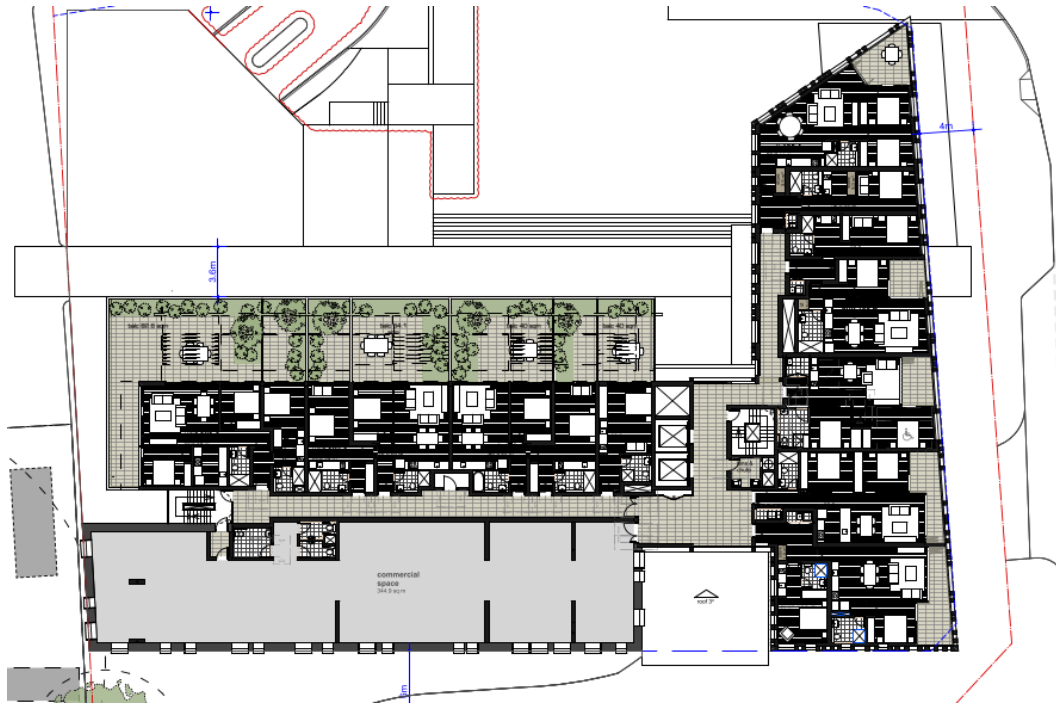
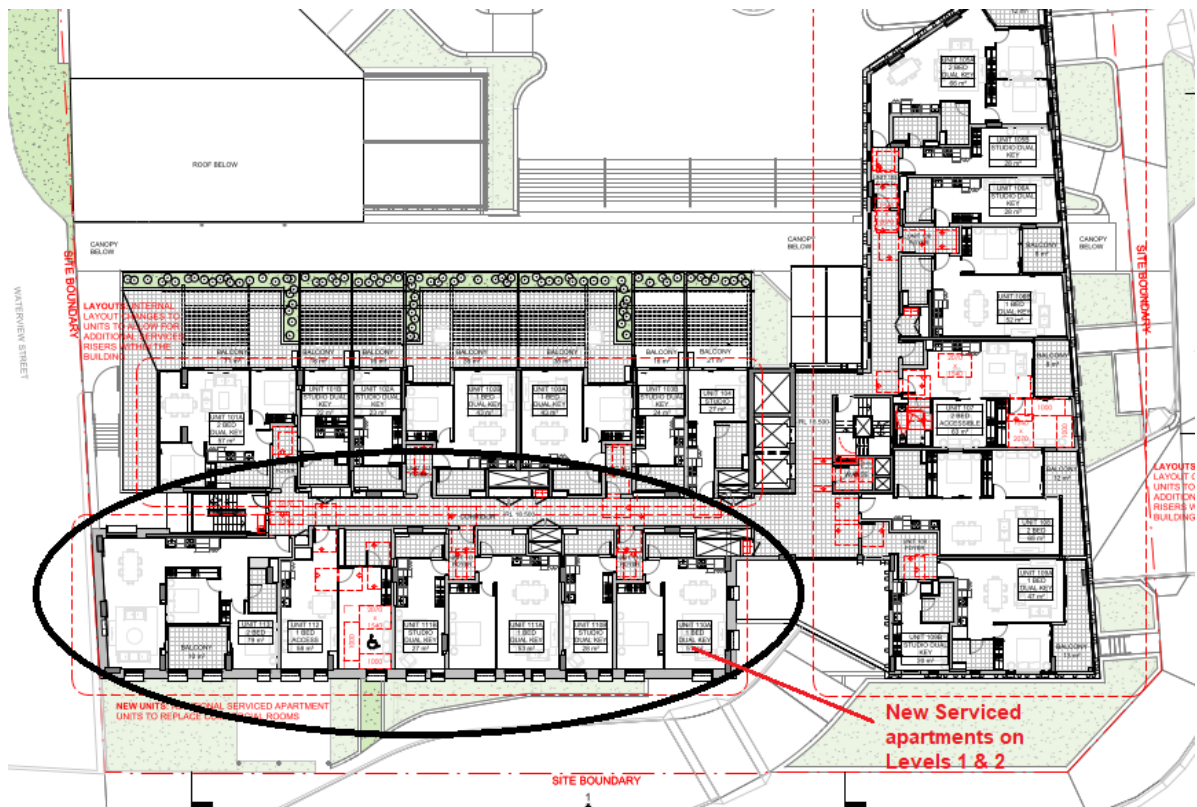


Figure 2: Proposed amended Ground Floor Plan showing the site layout.





**Figure 3: Approved Level 1 plan with commercial space (denoted as grey) and serviced apartments.**



**Figure 4: Proposed modification showing proposed conversion of the commercial space to serviced apartments. This is the same for Level 2.**

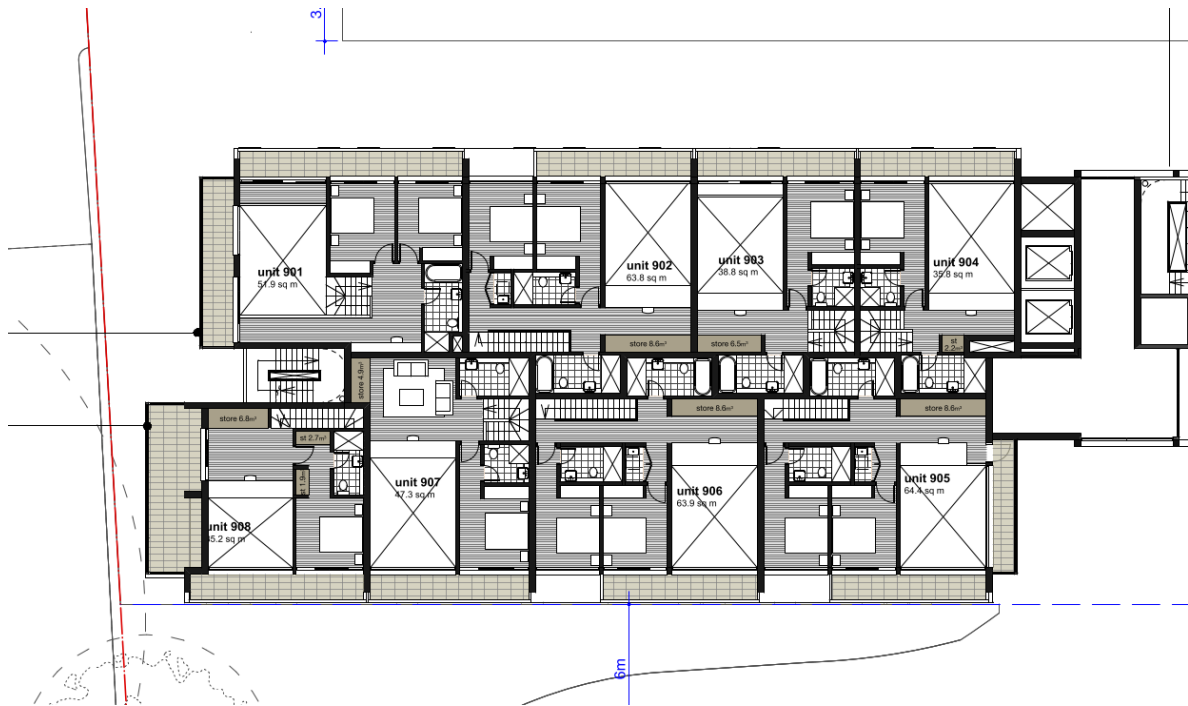


Figure 5: Approved Level Mezzanine (2 storey component of the residential apartments).

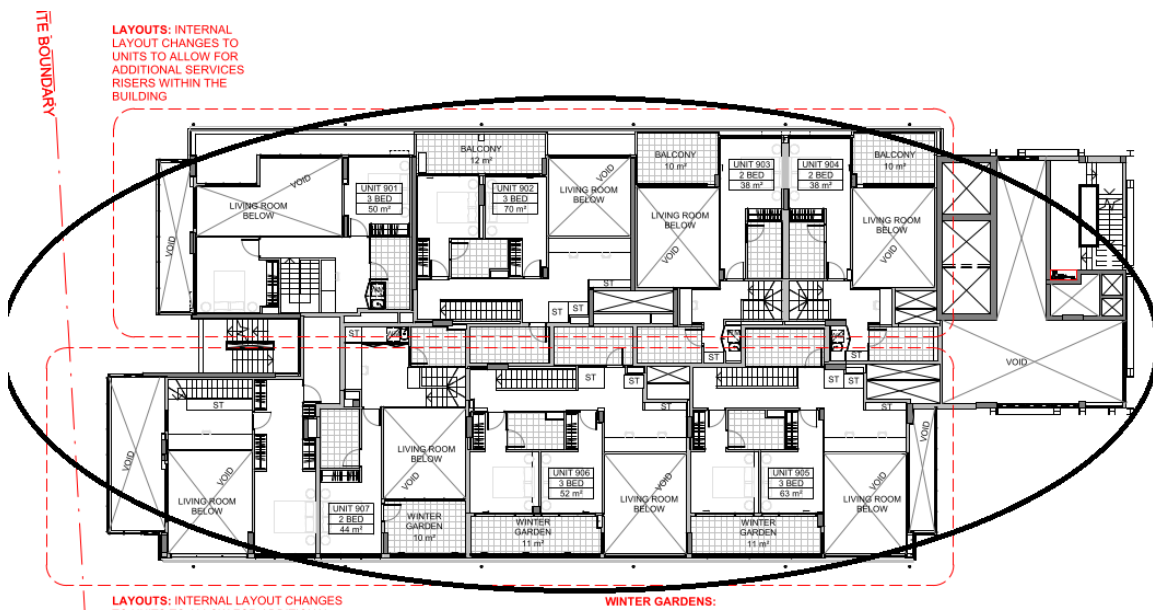


Figure 6: Proposed modification to the Mezzanine Level – comprising changes to the balconies along the Church Street and Well Street elevations





Figure 7: Approved Church Street elevation.

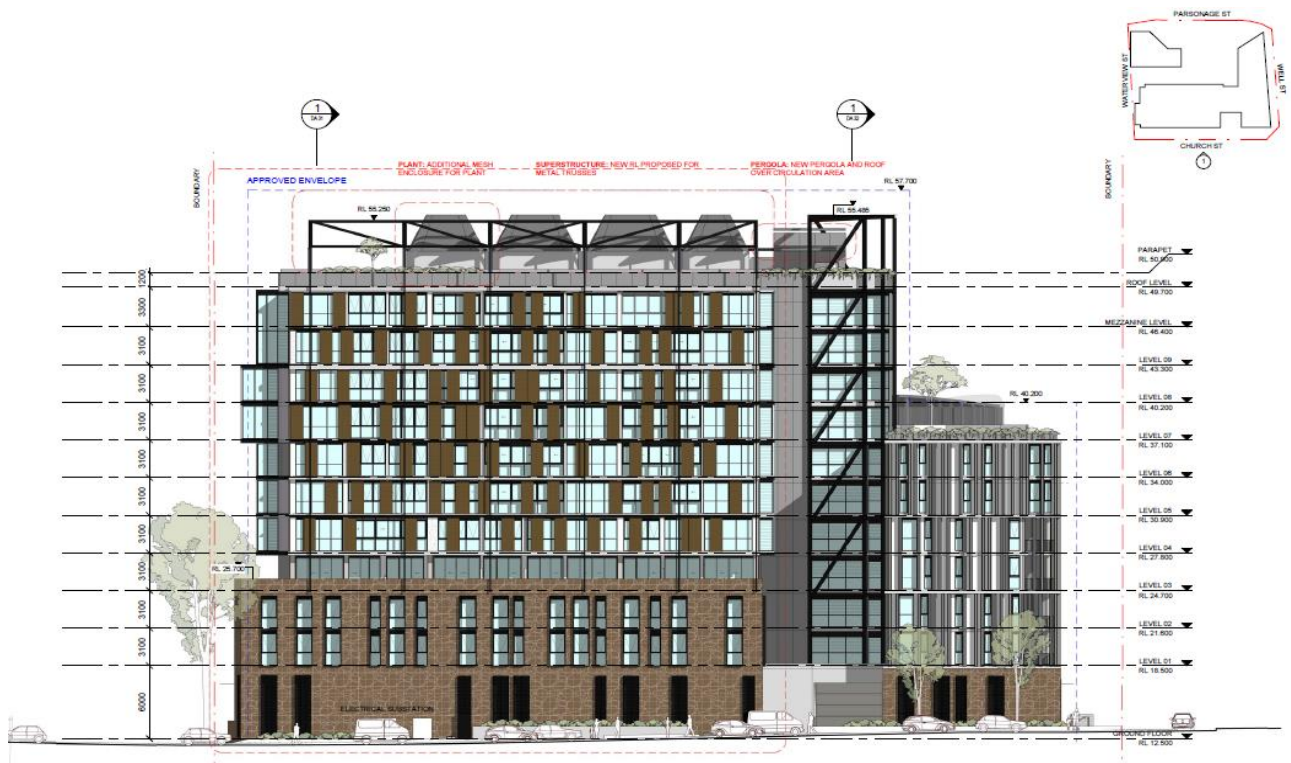


Figure 8: Proposed Elevation Plan as viewed from Church Street.  
The Level 1 & 2 Commercial floor space proposed to be replaced with serviced apartments can be seen on this elevation.



**Figure 9: Proposed Photomontage as viewed from the corner of Well Street and Parsonage Street showing 'The Plaza' at the ground level.**

The proposal will amend the description of the development as follows:

Demolition of structures, excavation, site remediation and construction of a 10 storey (including mezzanine level) mixed use building comprising a supermarket, 5 retail shops, 43 residential dwellings and 84 serviced apartments over four levels of basement parking and associated works.

The application proposes to amend the following conditions:

- Condition 1 – relating to the approved plans
- Conditions 4 & 162 – relating to updated BASIX
- Condition 14 – relating to construction requirements associated with the updated Acoustic Report
- Condition 57 – relating to the updated Acoustic Report
- Condition 58 – relating to the updated Environmental Sustainability and Energy Efficiency Report
- Condition 61 – relating to the updated Access Report
- Condition 84 – relating to the changes in stormwater design
- Condition 121 – relating to the requirements of Viva Energy
- Condition 170 – relating to the updated Acoustic Report
- Condition 197 – relating to updates to the public access easement plan
- Condition 212 – relating to the updated Acoustic Report
- Condition 236 – to reflect the new parking allocation.

See **Attachment 1** Amended Conditions table detailing proposed changes.



#### 4. THE SITE AND SURROUNDS

The site is located within the Shepherd's Bay Precinct and is referred to as Stage A in the Concept Approval for the Precinct (MP09\_0216). The site fronts Church Street, Well Street, Parsonage Street and Waterview Street (the loop road). A roundabout connecting Waterview Street and Parsonage Street is located adjacent to the western corner of the site and a roundabout connecting Parsonage Street, Well Street and Porter Street is located adjacent to the northern corner of the site.

The site is generally rectangular in shape with a site area of 3,906m<sup>2</sup>. The site falls by approximately 1.8m from the eastern corner to the western corner. The site previously accommodated industrial warehouse buildings and associated parking areas which were accessed via Well Street. The buildings and vegetation have been removed as shown in **Figure 10** below.



**Figure 10: Aerial photo of the site and surrounds.  
The structures on site have recently been demolished.**

The locality is characterised by mixed use development and residential flat buildings to the north and west on land zoned MU Mixed Use, and low density residential development on the eastern side of Church Street on land zoned R2 Low Density Residential. Church Street is a Classified Road zoned SP2 Infrastructure. Settlers Park is zoned RE1 Public Recreation and is located to the south-west fronting the Parramatta River foreshore. Ryde Bridge adjoins the south-east boundary of the site and is a local heritage item (No. 33).

The Shepherds Bay Precinct has undergone significant transformation from former industrial uses into a high density area reflective of the MU Mixed Use zoning. Most

of the sites within the Precinct have either already been completed and this is the last stage of the Concept Approval.

The surrounding locality to the west of Church Road comprises 4-6 storey residential flat buildings. Other stages of the Shepherds Bay Precinct further to the north-west are up to 10 storeys in height.

## 5. HISTORY

- The Site is part of a larger area of land which is the subject of a Concept Plan approval granted under the former Division 3 of Part 3A of EP&A Act 1979 (now repealed). Concept Approval MP09\_0216 was granted by the Planning Assessment Commission (PAC) on 6 March 2013 for 12 buildings known as the 'Shepherds Bay Concept Area.' The proposal approved a staged development of a mixed use residential and retail development including building envelopes, car parking and associated infrastructure works to support the development, publicly accessible open space and through site links as shown in **Figure 11** below.

Three subsequent modifications were made to the Concept Plan Approval:

- Mod 1: On 16 October 2014, the PAC approved an application to modify the Concept Approval MP09\_0216. Some of the key modifications were as follows:
  - Additional storeys to Stages 1 to 3.
  - Additional storey to the building approved on the corner of Belmore Street and Constitution Road.
  - Flexible application of the then RFDC solar access requirements.
  - Introduction of a 2005 dwelling cap for the entire precinct.
  - Introduction of a 2,976 car parking cap for the entire precinct.
  - Requirement for a 1,000m<sup>2</sup> community facility within the Stage 2 and 3, fully dedicated to Council.
- Mod 2: On 16 January 2017, the PAC approved an application to modify the Concept Approval MP09\_0216. The approved modifications include:
  - Additional storeys to Stages 2 and 3.
  - Deletion of part of Future Environmental Assessment Requirement (FEAR) of 3A to allow additional storeys within Stage 2 and 3.
  - 300mm height increase to Stage 2 building envelope.
  - Updating FEAR 21 to reflect current guidelines.
  - Increasing the dwelling cap from 2005 to 2033 to accommodate additional 28 dwellings within Stages 2 and 3.
- Mod 3: On 31 August 2018, the PAC approved an application to modify the Concept Approval MP09\_0216. The approved modifications include:
  - Introduction of 'serviced apartment' use
  - Increase of 1,300m<sup>2</sup> non-residential GFA.



**Figure 11: Concept Approval with the staging of the development. Subject site show in red.**

- 6 September 2021: Consent issued by the NSW Land and Environment Court for LDA2019/0149 for demolition of structures, excavation, site remediation and construction of a 10 storey (including mezzanine level) mixed use building comprising a supermarket, 5 retail shops, 2 commercial spaces, 43 residential dwellings and 72 serviced apartments over 4 levels of basement parking and associated works.
- 7 February 2023: Subject modification application lodged.
- 21 March 2023: Request for additional information sent to the applicant requiring a current Land Boundary/Cadastral Survey, clarification of the engineering plans referenced in Condition 197 Public Access, submission of plans in 'final' form with corrected plan references, and a request to provide 4 food organics bins.
- 22 March 2023: Request for additional information sent to the applicant to prepare a revised Safety Management Study for Viva Energy.
- June 2023: Request for clarification of the gross floor area calculation to include some of the winter gardens and documentation substantiating why the commercial area is not viable.
- 11 July 2023: Response received from the applicant.

## **6. APPLICABLE PLANNING CONTROLS**

The following planning policies and controls are of relevance to the development:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- State Environmental Planning Policy (Planning Systems) 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Sydney Regional Environmental Plan (Biodiversity and Conservation) 2021
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;



- Ryde Local Environmental Plan 2014;
- Ryde Development Control Plan 2014; and
- S7.11 Contribution Plan.

## **7. PLANNING ASSESSMENT**

### **7.1 Environmental Planning & Assessment Act 1979**

#### **(a) Matters for consideration pursuant to Section 4.56 EP&A Act**

This section of the Act provides that:

*“(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*

- (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*
- (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*
- (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*
- (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.*

#### **Section 4.56(1)(a)**

Under Section 4.56 1(a) the consent authority must be satisfied that the development as modified is substantially the same as was approved in the original consent.

In arriving at this determination there should be no consideration of the merits of the proposal but rather a straight before and after comparison of the original approval against the proposed modified development. If it is determined to be substantially the same, then the proposed modifications need to be assessed on their merits having regard to submissions received and any relevant council planning controls.

The proposed amendments result in maintaining the approved built form of the building, and the proposed change in the use of the commercial component to “serviced apartments” is consistent with the existing serviced apartment component of the approved development. It is also noted that serviced apartments are an approved use via MOD 3 of the Concept Approval.

The amendments result in a development which is in keeping with the original approval and do not adversely impact the adjoining properties or streetscape.

The number of residential dwellings remains as originally approved. However, the number of serviced apartments will increase from 72 approved to 84, all of which are located within the approved building envelope. The overall height changes are minimal (i.e. RL 55.70 as approved compared to RL 55.485 as proposed) with the amended height remaining below the maximum height specified by the Modified Concept Approval (RL 57.7). The landscaping provisions, including deep soil landscaping, remains substantially the same as originally approved.

For the reasons outlined above the development application is considered to be substantially the same.

#### Section 4.56.1(b) and (c)

The Section 4.56 application was advertised and notified in accordance with Ryde Community Participation Plan 2019. The application was notified from 21 February 2023 to 21 March 2023, the notification area is the same as the original DA application (LDA2019/0149) and the original objectors were also notified.

#### Section 4.56.1(d)

In response to the notification of the DA completed in respect of (b) & (c) eight (8) submissions were received, 7 of which were unique.

The issues raised in the submission have been adequately addressed (see discussion later in this report in **Section 12** under Public Notification and Submissions) and do not warrant the refusal of the DA.

#### Section (1A)

Section (1A) also provides that:

*“In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.”*

An assessment of the proposed modified development against the provisions of Section 4.15, is provided in further detail in the report below.

The judgement of LDA2019/0149 issued by the Land and Environment Court (**Attachment 5**) provided general justifications for the issuing of consent. There are references to the development remaining generally consistent with the Concept Approval (as modified), retaining design integrity, not exceeding relevant caps such as dwelling yield, floor space or parking spaces, as well as providing open space as required by the modified Concept Approval.

The following extract from the judgement in regards to the reasons given by the court to approve the DA:

23 *In relation to the Concept Plan:*

- (1) The Concept Plan, despite the repeal of Part 3A, continues to have effect, and the DA is to be determined under Part 4 of the EPA Act within the frame work under cl 3B of Schedule 2 to the Environmental Planning and Assessment(Savings, Transitional and Other Provisions) Regulation 2017 (Transition Regulation).*
- (2) The terms of the Concept Plan, as modified, prevail over any environmental planning instrument and any development control plan to the extent of any inconsistency (cl 3B(2)(f) of Schedule 2 of the Transition Regulation).*

*The DA needs to be “generally consistent” with the terms of the Concept Plan (cl3B(2)(d) of Schedule 2 of the Transition Regulation). I am satisfied that it is generally consistent with the terms of the Concept Plan, as modified, for the reasons set out in the Joint Submission and summarised in the Table at pages5 to 9 of that submission. That table is reproduced below. \* Note: Table not reproduced here, can be found on pages 6 – 8 of the judgement in **Attachment 5**.*

- (3) The proposal has been the subject of a Design Excellence Competition and has been designed to fit within the approved building envelopes (height and setbacks) for Stage A.*
- (4) The proposal does not result in the caps, combined for all stages of the Concept Plan, being exceeded for the maximum gross floor area (GFA) of non-residential uses, maximum number of dwellings or maximum number of car parking spaces.*
- (5) The proposal provides a quantum of publicly accessible open space that brings the total provision for all stages to the amount generally consistent with that required under the Concept Plan. The publicly accessible open space, in the form of a plaza, is provided at the location which is generally consistent with the Concept Plan for Stage A, and public access is ensured by the required easement referred to in Condition 197 of the DA consent.*
- (6) With respect to Condition 26 of the Concept Plan, an agreement has been reached between the parties in relation to the signalisation of the Constitution Road / Bowden Street intersection (the Intersection Agreement) a copy of which is located at Tab 17 of Council’s Bundle. The Intersection Agreement provides that the Council will carry out the signalisation and associated public domain works in the vicinity of the intersection; that the works will be carried out within 18 months of the date of the DA approval and that the Applicant will pay the Council for the cost of these works.*
- (7) I am satisfied, for the reasons set out in the Joint Submission, that the Intersection Agreement provides a mechanism to ensure that the signalisation works are funded and occur in a timely manner. I therefore agree with the parties that the Intersection Agreement provides a mechanism*

for the delivery of these works that is a “better outcome” than that afforded by a condition of consent, and is not inconsistent with the Concept Plan.

24. *In relation to the Ryde Local Environmental Plan 2014 (RLEP), the site is zoned B4Mixed Use (B4 Zone), the proposed uses are permissible with consent and the development is consistent with the objectives of the B4 Zone. For the reasons set out in[23(2)] above the Concept Plan Approval prevails over any development standards in the RLEP to the extent of any inconsistency. Other provisions of the RLEP that are relevant to this proposal are addressed in paragraphs 26 to 30 of the Joint Submission, and where relevant the recommendations of supporting technical reports are picked up in various conditions of the development consent.*
25. *In relation to State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and associated Apartment Design Guide (ADG), the design quality principles of SEPP 65 and the relevant provisions of the ADG have been taken into consideration and adequate regard has been given to them, as required under cl 30(2) of SEPP 65. These matters are addressed in the DA documentation as set out in paragraph 34 of the Joint Submission. A Design Verification Statement prepared by Cox Richardson and Kennedy Associates has been submitted in satisfaction of cl 50(1A) of the EPA Regulation.*
26. *In relation to State Environmental Planning Policy No 55—Remediation of Land (SEPP55), an Environmental Site Assessment prepared by Environment Investigations Australia (EIA) dated 7 November 2017 and a Remedial Action Plan (RAP) prepared by EIA dated 14 November 2018, have been lodged in support of the DA, and compliance with the RAP is required by Condition 49 of the DA consent. I am therefore satisfied, as required by cl 7 of SEPP 55, that the land is suitable, or will be suitable after remediation, for the proposed use.*
27. *In relation to the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (the BASIX SEPP), an updated BASIX Certificate number 702957M\_07dated 15 April 2021 has been provided demonstrating the development, as amended, satisfies the requirements of the BASIX SEPP, and the certificate is referenced in the conditions of consent (Conditions 4 and 162).*
28. *State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) applies as the Site has a frontage to a classified road (Church Street). Development consent can not be granted unless the consent authority is satisfied with respect to the matters listed in cl 101 of the SEPP Infrastructure. Traffic and access arrangements have been considered previously by both the NSW Roads and Maritime Services (RMS) and Transport for NSW (TfNSW), and the DA was referred to the RMS for concurrence. The matters for consideration in cll 101 and 104 of the SEPP Infrastructure have been addressed in the documents referred in paragraph 42 of the Joint Submission. Where relevant the recommendations of supporting technical reports are picked up in various conditions of the*

*development consent and the works required by the RMS, as set out in its concurrence letter dated 25 July 2019, have been included in Condition 2.*

The modified application is considered to be consistent with the matters referenced in the judgement. As such, the modified development does not raise any concerns with regards to the original justification for the issuing of consent.

### **Compliance with Concept Plan Approval MP09 0216**

The Concept Plan Approval and subsequent modifications (**Attachment 6**) provides for certain specific matters in respect of Stage A. The table below illustrate the relevant conditions with regards to the modifications, which is “generally consistent” with the Concept Plan Approval and the subsequent modifications.

<b>Requirement</b>	<b>Provision</b>	<b>Response</b>
Mod 3 Schedule 2 Part A – Terms of Approval  A5	<b>Maximum Gross Floor Area (GFA)</b> A5  1. The maximum GFA for commercial, retail, serviced apartment or community uses shall not exceed 11,300m <sup>2</sup> .  2. The maximum number of dwellings shall not exceed 2,033.	1. This proposal will have 4,668m <sup>2</sup> of serviced apts, 3,941m <sup>2</sup> of retail = 8609m <sup>2</sup> .  The applicant has advised that 2,595m <sup>2</sup> of commercial has been previously approved.  Accordingly, 8,609m <sup>2</sup> + 2,595m <sup>2</sup> = 11,204m <sup>2</sup> . This is under the maximum of 11,300m <sup>2</sup> .  *The maximum commercial GFA is confirmed in the previous assessment report for the last LDA2018/168 at 6-18 Nancarrow Avenue, 9-11 Rothesay Avenue, and 41 Belmore Road, Ryde (referred to as Stage 2 & 3 – 2,521m <sup>2</sup> .  2. The modifications do not increase residential dwellings as “service apartments” are not residential and is not subject to the dwelling cap of 2,033.  * The 43 apartments approved under the original LDA2019/149 brings the dwelling total to 2033. No more apartments are allowed.
Mod 3 Schedule 3 Future Environmental Assessment Requirements	<b>Stage A Open Space/Plaza</b>  15C Future development application(s) for Stage A shall include the provision of a publicly accessible open space/plaza,	An open space/plaza has been approved as part of the original approval.



	<p>which shall be completed prior to the issue of the first Occupation Certificate.</p>	<p>The modification involves reconfiguration of the plaza including amendments to pedestrian access arrangements to satisfy accessibility standards.</p> <p>LDA2019/0149 approved 1,266m2 of publicly accessible open space at ground level, the amendment will increase this to 1,495.7m2 of publicly accessible open space at ground level. The amendments are considered satisfactory as it will provide improved pedestrian access.</p> <p>Condition 197 stipulate that all public spaces within the site are to be publicly accessible and sets out the terms of the public access easement. Condition 197 have been updated to reflect the updated plan.</p>
<p>Mod 2</p> <p>Schedule 3 Part B - modifications</p>	<p><b>Maximum Storeys</b></p> <p>Future Development Applications shall satisfy the 'Maximum number of Storeys above Ground Level (Finished) Plan'</p>	<p>The relevant plan requires the development to be 10 storeys. The development as approved was 11 storeys due to the mezzanine level however it was submitted that this is <i>"generally consistent" with the Concept Plan Approval as:</i></p> <ul style="list-style-type: none"> <li>- <i>This part of the building is within the height limit and</i></li> <li>- <i>Other numerical controls relating to GFA, dwelling yield and number of carspaces are met both by the Stage A development and the Shepherd Bay proposed as a whole.</i></li> </ul> <p>The L&amp; E Court was satisfied that the DA was generally consistent with the terms of the Concept Plan.</p> <p>The approved LDA has been designed to fit within the approved building envelope and is consistent with the Concept Plan Approval.</p> <p>This modification does not alter the number of storeys, only slightly decreasing the overall height of the outer metal trusses from RL 55.7 to RL 55.485.</p>

Mod 1 Schedule 3 Future Environmental Assessment Requirements.	<p><b>(m) 23 Car Parking</b></p> <p>Future Development Applications shall provide on-site car parking in accordance with Council's relevant DCP, up to a maximum of 2,976 spaces across the concept plan site.</p> <p>Future development Applications shall provide:</p> <p>(a) A car parking rate which relates to the site-wide car parking provision and demonstrates that car parking may be provided for future stages within the total car parking figure of 2,976; and</p> <p>(b) A projected car parking for forecast for each remaining stage demonstrating that the total car parking provision can be adhered to.</p> <p>Provision shall also be made for adequate loading and unloading facilities for service vehicles, suitably sized and design for the proposed use.</p>	<p>LDA2019/149 Stage A approved 295 spaces. This modification will not alter the number of spaces to be provided. A redistribution of car spaces from "staff" parking to the service apartments is proposed.</p> <p>Overall, the total number of car spaces for the concept approval is 2,934*<sup>1</sup> spaces which is within the maximum 2,976 spaces permitted for the Concept Plan site.</p> <p>*<sup>1</sup> This figure is calculated from the previous LDA2018/168 approval for the concept site (2,629 car spaces + 295 for Stage A).</p>
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## 7.2 State Environmental Planning Policy (Planning Systems) 2021

This proposal is a Section 4.56 modification as it was approved by LEC. As this application is a Section 4.56 modification of the originally approved development and has a CIV of more than \$30 million, the Sydney North Planning Panel is the consent authority for the determination of this proposed development.

## 7.3 State Environmental Planning Policy (Resilience and Hazards) 2021

This SEPP aims to 'provide a State-wide planning approach to the remediation of contamination of land.' Clause 4.6 of this SEPP requires Council to consider whether the site is contaminated, and if so whether it is suitable for the proposed development purpose.

The original proposal was assessed under the applicable SEPP at that time (State Environmental Planning Policy No. 55 – Remediation of Contaminated Lands). An Environmental Site Assessment prepared by EI Australia was submitted at the time of the proposal. The report concluded that the site contained "*localised contamination, however, can be made suitable for residential purposes upon implementation of the recommendations provided, including the removal of two in-situ underground storage tanks (USTs) and associated infrastructure, and the preparation of a Remediation Action Plan (RAP).*" Conditions were imposed requiring such and this modification will not alter these conditions or require further investigation.

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

An amended BASIX Certificate and cover sheets have been submitted with the subject modification with the proposal complying with the required targets. **Conditions 4 & 162** will be amended to reflect the new Certificate number.

#### **7.5 State Environmental Planning Policy (Transport and Infrastructure) 2021**

The original proposal was assessed under the applicable SEPP at the time (State Environmental Planning Policy (Infrastructure) 2007) and in accordance with Schedule 3 of the SEPP, as the proposed development includes construction of a deceleration lane along Church Street (which is a Classified State Road), it was referred to RMS (now known as Transport for NSW (TfNSW)).

This modification was referred to TfNSW who has raised no objections to the proposal.

Clause 2.77 of this SEPP states:

- 1) *Before determining a development application for development adjacent to land in a pipeline corridor, the consent authority must—*
  - (a) *be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development to which the application relates have been identified, and*
  - (b) *take those risks into consideration, and*
  - (c) *give written notice of the application to the pipeline operator concerned within 7 days after the application is made, and*
  - (d) *take into consideration any response to the notice that is received from the pipeline operator within 21 days after the notice is given.*

The modifications were referred to Viva Energy Australia who has raised no objections. See discussion under **Section 8** Referrals.

#### **7.6 State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The proposal was found to be acceptable with regard to ecology during the course of the original DA. The proposed modifications do not amend the development's outcomes in relation to ecology. As such, the modified development will remain consistent with the objectives and intent of this SEPP.

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

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) was considered during the assessment of the original development application (LDA2019/149) and considered satisfactory subject to conditions of consent.

In accordance with Clause 102 of the Environmental Planning and Assessment Regulation 2021 (Regulation), a design verification statement prepared by the architect has been submitted verifying “*that design quality principles and objectives as set out in the NSW Department of Planning and Environment publication “Apartment Design Guide dated July 2015” are achieved*”.

The proposed changes to the residential component of the building are internal changes such as:

- Apartment layouts i.e. changes to doors and cupboards, location of the 2<sup>nd</sup> bathrooms and other minor changes for rationalising services risers along the common corridors
- Some of the two storey apartments void areas on Level 9 have changed in shape or partially filled in
- Small sections of floor plate along the edges facing Church Street, which were previously recessive, have now been filled in
- Enclosure to balconies facing Church Street and Well Street.

Council’s Urban Design Officer has reviewed the modification drawings and supports the proposal from a design perspective given the modifications are generally within the building envelope and relate to minor internal layout adjustments.

Note: The proposal seeks to convert commercial space to “serviced apartments” and under Clause 4(4) of this SEPP serviced apartments do not apply, unless a local environmental plan states otherwise. For this reason the service apartments have not been assessed under the SEPP.

The proposed internal modifications demonstrate consistency with the SEPP 65 Design Quality Principles and ADG as discussed in **Attachment 4**.

## **7.8 Ryde Local Environmental Plan 2014**

Concept Approval MP09\_0216 was approved pursuant to Part 3A of the EP&A Act 1979 and remains the relevant Instrument for this site. In this case, the Ryde Local Environmental Plan (LEP) 2014 is of limited weight, and where there are any inconsistencies, the Concept Approval shall prevail.

Notwithstanding this, the relevant requirements of the LEP, are addressed below:

### Clause 2.3 - Zone Objectives

The land is zoned MU1 Mixed Use under Ryde LEP 2014.

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives for the MU1 Mixed Use are as follows:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses in the Macquarie Park corridor.*

The proposed modifications do not change the approved land use. Serviced apartments were approved as part of Mod 3 of MP09\_0216 and the proposed modifications, will continue to satisfy the above objectives.

On the ground floor there are shops with one large retail space facing Waterview Street and a supermarket on the lower ground floor. The uses will generate employment and activate the street, plus the public plaza area facing Parsonage Street and Well Street will add to the activation of the area.

Whilst the modification will delete the commercial component, the applicant has provided supporting document from United Property Services advising that commercial component on this site is not viable (as it will be isolated from surrounding support and allied services and uses) but the site provide good potential for servicing local retail uses, as currently approved.

The last two objectives relates to sites in Macquarie Park and in close proximity to Macquarie University and is not applicable to this site.

#### ***Part 4 – Principal Development Standards***

##### **Clause 4.3 - Height of Buildings**

A 15.5m height limit applies to the Site under Clause 4.3 of Ryde LEP 2014. LDA 2019/0149 approved a maximum RL 55.70 for the outer metal trusses (below max concept approval of RL57.7). The height does not comply with Clause 4.3 but is consistent with the Concept Plan Approval which prevails.

The proposed modification has lowered the metal trusses to RL 55.485.

##### **Clause 4.4 - Floor Space Ratio**

A maximum Floor Space Ratio (FSR) of 2.7:1 applies to the site under Clause 4.4 of the RLEP. The site has an area of 3,953m<sup>2</sup>, which compared to the approved gross floor area (GFA) of 13,591m<sup>2</sup> equates to 3.4:1. This does not comply with Clause 4.4 but is consistent with the Concept Plan Approval which prevails.

Whilst this modification has increased the total GFA for the subject site by 279m<sup>2</sup>, there is no changes to the building footprint as the increase is due to:

- Enclosure of balconies – winter gardens included as floor space



- Small sections of floor plate along the edges, which were previously recessive, have now been filled in with apartments
- Some voids in the 2 storey apartments on L9, have changed shape or been partially filled in
- The balance of GA increases appear small wall tweaks as a result of rationalising services risers and apartment layouts along the common corridors.

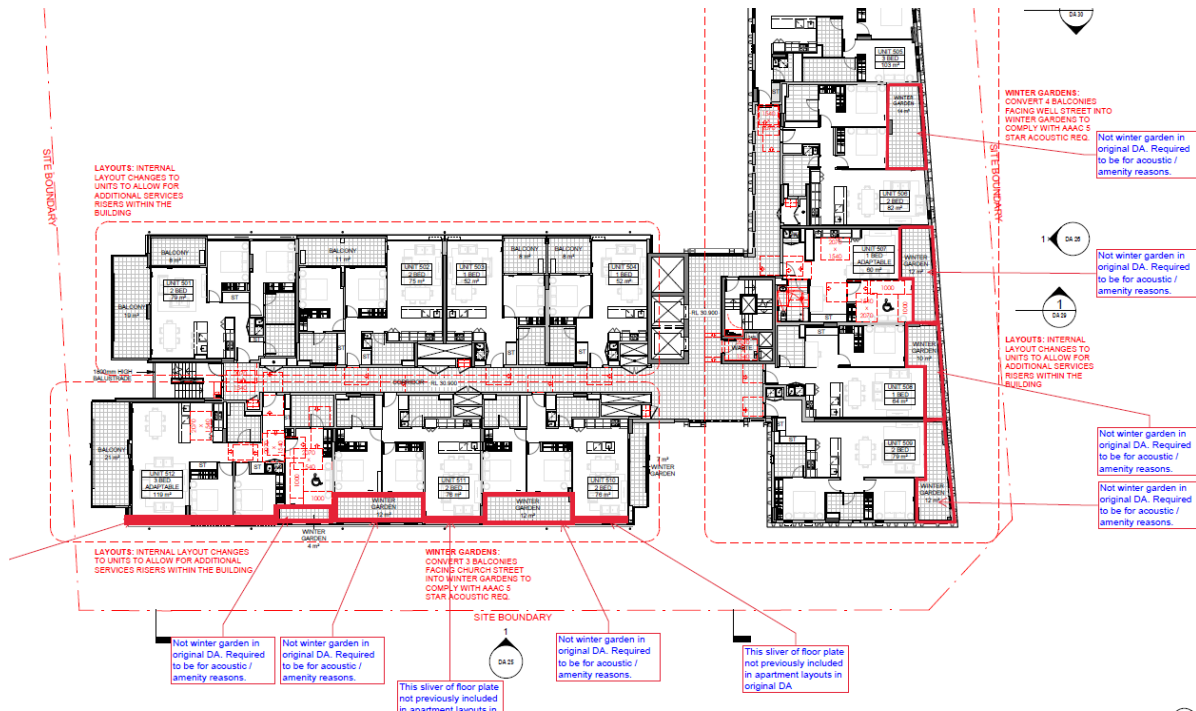


Figure 12: Red bold outline show where increase in floor space is from, Levels 5 & above.

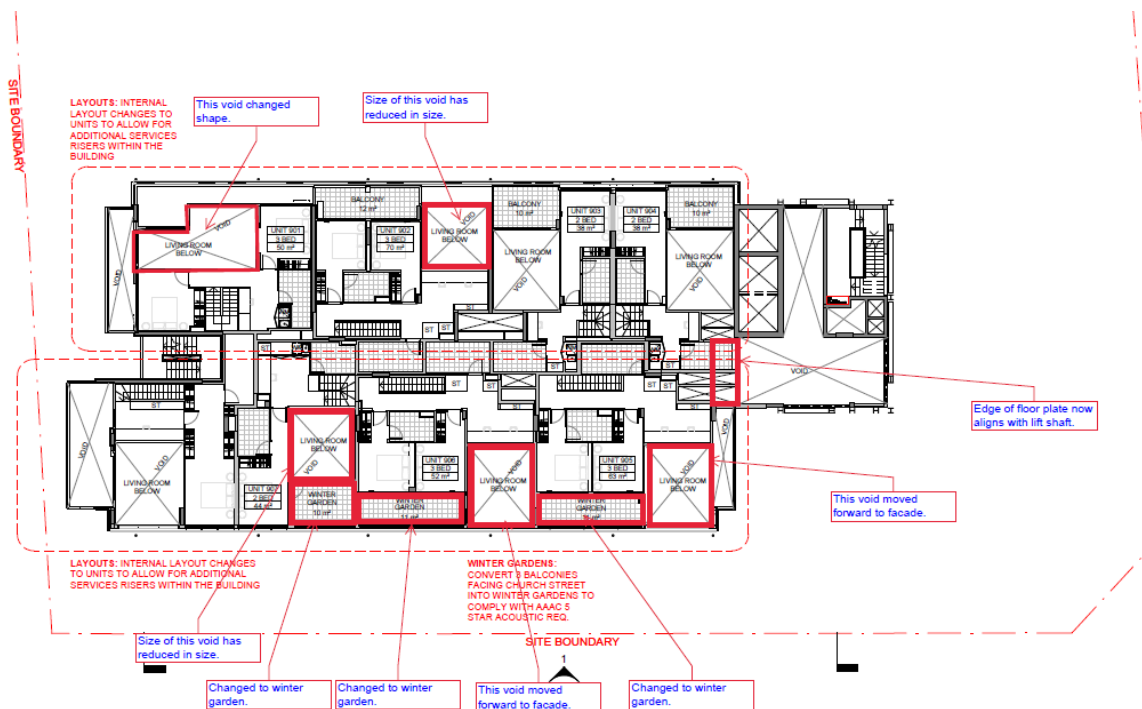


Figure 13: Changes in voids in the 2 storey apartments on L9.

The Concept Approval stipulates a maximum GFA for commercial, retail, serviced apartment or community uses (not to exceed 11,300m<sup>2</sup>) and number of dwellings (not to exceed 2,033). The proposal complies with the Concept Approval and the subsequent modifications in that the total commercial GFA is 11,204m<sup>2</sup> (8,609m<sup>2</sup> + 2,595m<sup>2</sup>).

#### Clause 6.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land.

The original development consisted of a significant amount of excavation to accommodate basement parking. The proposed modifications do not alter the proposed excavation as such the original assessment under Clause 6.2 Earthworks is not altered.

#### Clause 6.4 Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and the water system. Amended stormwater plans have been submitted and reviewed by Council's Development Engineer who advised that the onsite detention system is proposed to be relocated to the corner Church St and Well Street and maintain the approved onsite detention storage volume. Council's Development Engineer raised no objections to the proposed changes.

The proposal is consistent with the provisions of Clause 6.4(3) in that the proposal has been designed to maximum the use of permeable surfaces allowing for water filtration and avoids adverse impacts of stormwater runoff on adjoining properties.

#### Clause 6.6 - Environmental Sustainability

The objective of this clause is to ensure that development on land in a business or industrial zone exceeding 1,500m<sup>2</sup> in GFA embraces principles of quality urban design and is consistent with principles of best practice environmentally sensitive design. The original approval contained Condition 58 which requires compliance with the Environmental Sustainability and Energy Efficiency Report. An updated BASIX Certificate has been submitted **Condition 58** has been amended to comply with the updated report Environmental Sustainability and Energy Efficiency Report which include ESD initiatives such as:

- *Very water-efficient fixtures (5 star taps, 4 star toilets and 3 star showers).*
- *Very water-efficient whitegoods (most 3.5-5.0 stars, as listed later)*
- *Rainwater or recycled water reticulation for irrigation of landscaping*
- *Recycling or reuse (closed loops) of water from fire pump testing.*
- *Efficient irrigation such as drip irrigation, timers and rain-sensors for planters and gardens*
- *At least 50% use by area of locally indigenous or "one-drop" water-efficient plants*
- *Generous deep-soil allocation and roof-top gardens*
- *Recycling of construction waste, where possible.*
- *The extensive use of precast concrete walls*

- The use of re-usable formwork where possible, for internal floors and core walls on site.
- Water-based and low-emission paints for all internal 'low-sheen' areas.
- Low-emission and (where feasible) water-based paints for internal gloss or semi-gloss finishes.
- Specification of sustainably sourced timber (for elements such as skirtings, architraves and the like).
- BMS ("building management systems" for some items such as energy, water, HVAC, etc)
- Motion sensors and time-based controllers (time clocks) for lights, ventilation, etc
- Air quality (CO/CO2) monitors for the carpark ventilation system control and efficient, variable-speed fans
- Encouragement of public transportation with easy access to rail, bus and ferry transport (and an extensive network of bike paths).
- Generous Bicycle Parking
- Encouragement of "Carshare" schemes and other private-vehicle-alternative schemes for the benefit of residents
- Reduced Living and Operating Costs (water, gas and electricity bills will be reduced due to the good BASIX and NatHERS scores).

## 7.9 Ryde Development Control Plan 2014

The following sections of the Ryde DCP 2014 are of relevance:

- Part 9.2 – Access for People with Disabilities; and
- Part 9.3 – Parking Controls

### Part 9.2 - Access for People with Disabilities.

The original application was supported with an Access Design Assessment Report P218\_427-2 (Access) JLS prepared by Design Confidence dated 8 February 2019 concluding that the development demonstrates an appropriate degree of accessibility and compliance with statutory requirements. An updated report has been submitted and in this regard **Condition 61** is proposed to be updated accordingly. This report confirms that the amended development will still comply with the statutory requirements.

### Part 9.3 – Parking Controls

Condition 236 requires parking to be allocated as:

**Parking Allocation.** *Both the owner and occupier of the development must provide and maintain the minimum parking allocation as follows;*

- Min. of 44 and max. 56 residential spaces
- Min 9 visitor spaces
- Min. 18 Commercial spaces
- 48 Serviced Apartments
- Min. 160 retail spaces,
- 3 Car Share spaces, and,
- 81 bicycle parking spaces and 6 motorcycle spaces.

The modifications propose:

- Provision of 12 additional serviced apartments, resulting in a total of 84 serviced apartments;
- Removal of commercial floor space (converted to serviced apartments);
- Provision of 20m<sup>2</sup> of additional retail floor space, resulting in a proposed collective retail tenancy floor area of 3,941m<sup>2</sup>;
- Reduction of supermarket floor space by 20m<sup>2</sup>, resulting in a proposed total supermarket floor area of 3,305m<sup>2</sup>, resulting in total retail area (shops and supermarket) being 3941m<sup>2</sup>.

Note: the number of residential apartments is not altered.

It is proposed to amend the condition as follow:

***Parking Allocation.*** *Both the owner and occupier of the development must provide and maintain the minimum parking allocation as follows;*

- *Min. of 44 and max. 56 residential spaces*
- *Min 9 visitor spaces*
- ~~*Min. 18 Commercial spaces,*~~
- ~~*48*~~ **56** *Serviced Apartments*
- ~~*Min. 160*~~ **158** *retail spaces,*
- *3 Car Share spaces, and,*
- *81 bicycle parking spaces and 6 motorcycle spaces.*

The DCP requires parking at the following rates:

Hotel and Motel Accommodation, and Serviced Apartments

- 1 space / 1.5 units.

Retail Premises and Industrial Retail Outlet

- 1 space / 25 m<sup>2</sup> GFA.

Bicycle spaces - 10% of the required car spaces or part thereof.

Based on the above, 84 serviced apartments and 3,941m<sup>2</sup> of retails will require **56** and **158** car spaces, respectively, and 29 bicycle parking space.

The amendment to the condition satisfies the DCP in terms of the required parking spaces. **Condition 236** will be amended accordingly.

## **7.10 City of Ryde Section 7.11 Development Contributions Plan 2020**

Condition 40 of the consent required a monetary contribution pursuant to Section 7.11 of the Environmental Planning and Assessment Act, 1979 as specified in City of Ryde Development Contributions Plan 2020.

Condition 40 required a payment of \$728,199.86 based on the residential component of:

- 6 x 1 bedroom/studio
- 24 x 2 bedroom

- 13 x 3 bedroom

43

The applicant paid the contribution on 15 June 2023 with CPI increases calculated at the time of payment.

The proposed modification does not alter the number and mix of residential apartments (43). As there are no changes to the number of residential apartments and the serviced apartments are not counted as residential; no further contribution is required. Condition 40 is not required to be amended.

## 8. **EXTERNAL REFERRALS**

### Transport for NSW (TfNSW)

The application was referred to TfNSW in accordance with State Environmental Planning Policy (Transport and Infrastructure) 2021 and Section 138 of the Roads Act 1993 as the proposed development includes construction of a deceleration lane along Church Street (which is a Classified State Road).

TfNSW advises that *“all works pertain wholly within the site and there are no proposed changes to access. As such, TfNSW raises no objections to the modification applications.”*

No alterations to any TfNSW conditions are required.

### Viva Energy Australia

The application was referred to Viva Energy Australia in accordance with Clause 2.77 of State Environmental Planning Policy (Transport and Infrastructure) 2021 as part of the development site is located within the pipeline corridor.

The original consent included the following conditions:

**89. Viva Energy.** *A Viva Energy Recoverable Works Agreement covering all Viva Energy costs must be signed by the Property owner.*

**90. Viva Energy.** *A deed for future access to the Pipeline for any extra works elated to any installed structure(s) to be completed at cost to the applicable Property owner or the applicable body corporation (if any). This will also apply to any reinstatement costs.*

**91. Viva Energy.** *Contact Viva Entergy Pipeline Coordinator before any work commences at the Property and ‘Viva Energy Right of Way’ permit must be issued.*

**121. Viva Energy.** *The applicant / landowner must at no cost to Viva Energy Australia Pty Ltd, carry out the works (whether or not within the pipeline easement) for the development to meet the requirements of:*

- Australian Standard AS2885 Pipelines – Gas and Liquid Petroleum, and*
- NSW Pipelines Act 1967 and Pipeline Regulations 2013 and*



- c. *The Applicant shall cooperate with Viva Energy to enable Viva Energy to undertake a Safety Management Study and complete any works or safety measures required by the Safety Management Study.*

**122. Viva Energy.** *The Applicant must engage in only 'Non-Destructive-Digging' and mark out the Pipeline to ensure its integrity during construction.*

**161. Viva Energy.** *The applicant prior to the occupation, must submit documentary evidence of compliance to the Safety Management Study, as referred to in Condition 121(c), to Ryde Council before any occupation certificate is issued.*

The modifications were referred to Viva Energy and on 21 March 2023, concern was raised that “Any change to the site DA after the Safety Management Study would need to be reviewed and assessed accordingly and further engineering assessment (proponent/applicant engages the approved external engineering company to provide Viva energy with the project brief change from original scope, etc.).”

In consultation with the applicant, Viva Energy Australia provided a further letter dated 26 May 2023 advising they do not object to the modifications, subject to the granting of a permit in line with the following conditions:

1. *Complete a Safety Management Study – As Per Australian Standard AS2885 Pipelines – Gas and Liquid Petroleum.*
2. *The land owner must at no cost to Viva Energy Australia Pty Ltd, carry out the works (whether or not within the pipeline easement) for the development to meet the requirements of:*
  - a) *Actions as required by the completed Safety Management Study.*
  - b) *The land owner must at no cost to Viva Energy Australia Pty Ltd, carry out the works (whether or not within the pipeline easement) for the development to meet the requirements of:*
    - i. *Australian Standard AS2885 Pipelines – Gas and Liquid Petroleum;*
    - ii. *NSW Pipelines Act 1967; and*
    - iii. *NSW Pipeline Regulations 2013.*
3. *Viva Energy, Recoverable works agreement to be signed and returned prior to the Safety Management Study.*

Planner's comment:

The original Condition 121(c) requires the applicant to cooperate with Viva Energy to enable Viva Energy to undertake a Safety Management Study and complete any works or safety measures required by that Study.

Viva Energy now require the applicant (not Viva) to complete a Safety Management Study.

**121. Viva Energy.** *The applicant / landowner must at no cost to Viva Energy Australia Pty Ltd, carry out the works (whether or not within the pipeline easement) for the development to meet the requirements of:*

- a) Australian Standard AS2885 Pipelines – Gas and Liquid Petroleum, and
- b) NSW Pipelines Act 1967 and Pipeline Regulations 2013 and
- c) ~~The Applicant shall cooperate with Viva Energy to enable Viva Energy to undertake a Safety Management Study~~ **complete a Safety Management Study as per Australian Standard AS2885 Pipelines – Gas and Liquid Petroleum Study** and complete any works or safety measures required by the Safety Management

Condition 2 is the same as original Condition 121.

Condition 3 is the same as original Condition 89.

Note: The applicant has already completed the Safety Management Study and has been corresponding with Viva Energy.

## 9. **INTERNAL REFERRALS**

### ***Senior Development Engineer***

Amended stormwater plans was submitted with the modification and referred to Council's Senior Development Engineer for review. Council's Senior Development has amended **Conditions 1, 84 and 129.**

### ***City Works – Traffic***

The proposal was referred to Council's Traffic Engineer for review and advised that the proposal is not expected to result in any significant traffic impacts beyond what has been previously assessed as part of the current consent.

No additional or changes to the original conditions.

### ***City Works – Waste***

The proposal was referred to Council's Waste Team who raised no objections subject to an additional operational condition due to the door to the bulky waste room being accessed from the waste storage room. **Condition 230A** is added as follows:

230A. **Waste Collection.** Residents are required to organise with the Building Manager to dispose of unwanted household items in the Bulky Waste Room as access is through the Waste Storage Room.

The applicant has reviewed the amended conditions has agreed to the extra condition.

No concerns raised by Council's City Works Drainage or Public Domain sections.

## 10. **LIKELY IMPACTS OF THE DEVELOPMENT**

All relevant issues regarding environmental impacts of the proposed development are discussed throughout this report. The development is considered satisfactory in terms of environmental impacts.

## **11. SUITABILITY OF THE SITE**

The proposed modification substantially relates to changes within the approved building envelope. Many internal and external proposed modifications are for the purpose of satisfying Construction Certificate related technical matters such as internal changes to layout to allow for additional service risers within the building or to satisfy acoustic conditions (i.e. winter gardens).

The modifications do not increase the overall scale of the development to what was originally approved. As such, the site is considered to continue to be suitable for the development as amended.

## **12. PUBLIC NOTIFICATION & SUBMISSIONS**

In accordance with Council's Community Participation Plan, adjoining property owners was notified of the application and given between 21 February 2023 and 21 March 2023 to make a submission.

Eight (8) submissions, comprising seven (7) unique submissions were received during this time, raising the following concerns:

- *Overcrowding and overdevelopment*
  - *Objection to increasing the size of the development, reducing floor space and increasing serviced apartments, poor apartment sizes and layouts.*

### **Planner's comments:**

LDA2019/0149 approved a 11 storey (including mezzanine level) mixed use building comprising a supermarket, 5 retail shops, 2 commercial spaces, 43 residential dwellings and 72 serviced apartments.

This modification, whilst changing the commercial space to serviced apartments will not result in increased density or bulk and scale of building. Concept Approval MP09\_0216 (as modified) approved the redevelopment of Shepherds Bay, prescribing a maximum of 2,033 dwellings and maximum non-residential gross floor area (GFA) of 11,300m<sup>2</sup>. Existing LDA2019/0149 granted approval for 43 dwellings, which brings the total number of approved dwellings in the precinct to 2,033, the maximum allowed. The modification does not seek to change the approved number of dwellings and the development will remain consistent with the residential density allowed in the precinct by Concept Approval MP09\_0216 (as modified). Note: Serviced apartments are not considered residential apartments but are included as commercial floor space.

Similarly, Concept Approval MP09\_216 (as modified) allows for a total of 11,300m<sup>2</sup> of non-residential GFA throughout the precinct. The approved quantity of commercial GFA throughout the precinct to date, inclusive LDA2019/0149, is 11,210.3m<sup>2</sup>. As such, the proposal complies with overall density caps and commercial GFA for the precinct. The modified development is consistent with overall expectations as prescribed by Concept Approval MP09\_216(as modified).

This application is accompanied by a Design Verification Statement submitted by a licensed architect confirming that the proposal continues to comply with State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development and the associated Apartment Design Guide. The approved residential apartments will continue to satisfy amenity related controls such as solar access, ventilation, internal room dimensions, as well as access to private open space and communal open space. On this basis, the proposal will provide a continued acceptable level of residential amenity.

- *Culture and poor quality of community*
  - *Short term stay = poor quality community.*
  - *Loss of a small shopping centre and facilities which is important for this area. Reducing commercial premises provides poorer facilities.*

Planner's comments:

Serviced apartments were approved as a permissible use via MP09\_0216 Mod 3, noting that it is permissible with the Mixed Use zone and will provide accommodation for tourist/visitors to the area.

There is no empirical evidence to support the objection that short term stay will result in a less meaningful community and is not a planning ground for refusal.

Whilst the proposal will convert the commercial floor space to serviced apartments, the retail component of 3,941m<sup>2</sup> will remain. This includes basement retail floor space for a supermarket (subject to separate approval for fitout). The modified proposal will continue to provide the large ground level, publicly accessible plaza approved as part of the original DA. Given the above, the proposal continues to deliver facilities which address the demands of the precinct's residential population.

- *Impact on environmental features of the area*
  - *Issues with water ingress problems which causes great difficulty and expenses for the eventual owners of the buildings.*
  - *Illegal dumping of furniture and waste on the footpath. The addition of 12 units will worsen this issue.*

Planner's comments:

The modified development remains entirely within the previously approved building envelope and footprint. Its character and operational nature will not be altered as a result of the proposed modifications.

The modifications do not involve any changes to the level of excavation and conditions relating to public utilities (i.e. Sydney Water), compliance with Ground Water Impact report, site dewatering plan and waste water control, which are still applicable and have not been altered.

The issue of illegal dumping of furniture is not a matter of consideration for this modification. The original consent has suitable conditions for collection of bulky goods. Serviced apartments are for short term tenants and are generally furnished and will not have a high turnover of furniture.

- *Construction Impacts:*
  - *Well Street will be unusable during 18-24 months of construction and will be blocked by construction vehicles creating a dangerous environment.*
  - *The construction period and occupation of the building should provide on-site parking to avoid loss of parking in the area, which adds to the existing congestion of units, TAFE and the new Meadowbank School.*

Planner's comments:

It is acknowledged that any development will result in some construction traffic related impacts. The modified development's construction methodology, however, is the same as that which was approved as part of the original DA. LDA2019/0149 imposed conditions relating to Traffic Management procedures which sought to minimise construction traffic impacts. This includes a Construction Pedestrian and Traffic Management Plan (CPTMP), prepared by a Transport for NSW (TfNSW) accredited person to be submitted and approved by Council. To address potential traffic congestion within Church Street in the immediate vicinity of the site, truck movements will be restricted during the major commuter peak times being 7am - 9am and 4pm - 6pm. Truck movements are to be agreed with Council's Traffic and Development Engineer prior to submission of a demolition pedestrian and traffic management plan.

- *Traffic impacts:*
  - *Transport impacts/congestions due to a high number of apartments and surrounding roads are not made for heavy vehicles.*
  - *Lack of resident and visitor parking.*
  - *Well Street and Parsonage Street are insufficient to cater for the needs of serviced apartments, including for passenger vehicles, service vehicles, and food and beverage vehicles entering and leaving this site.*
  - *Thousands of vehicles will be pushed further up Church Street into Morrison Road and Victoria Road. These vehicles will have to find another way to enter this area.*
  - *Upon completion Well Street will become unusable as an exit off Church Street.*
  - *Onsite construction related parking should be provided*
  - *Surrounding road network not adequate for the proposal*

Planner's comments:

The modification application was referred to Council's Senior Traffic Engineer who advised that the modifications are not expected to result in any significant variations to the traffic generation assessed as part of the previously approved development application (LDA2019/149) and raised no objections to the modification.

The proposal complies with non-residential GFA and dwelling caps prescribed by Concept Approval MP09\_216 (as modified). Therefore, the modified development's traffic generation is consistent with the traffic outcomes anticipated as part of Concept Approval MP09\_216 (as modified).

This application is accompanied by a Parking and Traffic Impact Assessment which advises that the modified development will result in a minor reduction of traffic generation during the afternoon period because serviced apartments typically generate fewer vehicle related trips compared to commercial floor space. Council's Senior Traffic Engineer raised no objections as the modifications are not expected to result in any significant variations to traffic generation.

The modification complies with the parking controls prescribed in the Concept Approval and Council's DCP 2014, with the total number of car parking being maintained (the allocation of spaces to the appropriate uses is being adjusted). In this case, the proposal provides a satisfactory number of parking spaces for residents and visitors. In addition to onsite vehicle parking provisions, the modified development includes 81 onsite bicycle parking spaces, as well as parking for 6 motor cycles.

Conditions 28 and 75 of LDA2019/0149 prescribe requirements for traffic and construction management. These conditions generally prescribe that all construction related vehicles shall park on the subject site where possible, or at least when the proposal's basement has been completed. It is acknowledged that the proposal will generate construction related traffic impacts. However, these conditions, and the temporary nature of the impacts, will help minimise any impacts.

The proposed modifications are relatively minor and are not considered to have any impact on traffic and parking. The assessment of the original application was found to be suitable in relation to the surrounding road network. The submitted Traffic report, concludes that the proposal will result in an overall reduction in traffic generation in the afternoon period.

### **13. CONCLUSION**

This report considers a Section 4.56 modification application to amend the approved development for demolition of structures, excavation, site remediation and construction of a 10 storey (including mezzanine level) mixed use building comprising a supermarket, 5 retail shops, 2 commercial spaces, 43 residential dwellings and 72 serviced apartments over four levels of basement parking and associated works.

The proposal retains substantially the same built form, scale and architectural design as the original development and is considered to be substantially the same development as originally approved. As such, the proposal satisfies the provisions under Section 4.56 of the EP&A Act 1979.

The proposal maintains consistency with the Concept Approval MP09\_216 (Mod 3) for the Shepherds Bay Precinct. Controls relating to dwelling caps, commercial floor space caps, parking caps, building heights, and landscaping will continue to be complied with. The development will continue to maintain the integrity of the approved development and the intent of the original consent's conditions, as amended. Accordingly, the modifications are within the ambit of Section 4.56 of the EP&A Act 1979.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979, the application is considered to be reasonable in the context of the site and is recommended for approval subject to amended conditions of consent provided in **Attachment 1** of this report.

#### **14. RECOMMENDATION**

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 the following is recommended:

- A. That the Sydney North Planning Panel grant consent to the Section 4.56 Modification Application No. MOD2023/0021 to modify Local Development Application No. LDA2019/0149 at 155 Church Street, Ryde, subject to the conditions of consent in **Attachment 1** of this report.
- B. That a copy of the development consent be forwarded to TfNSW and Viva Energy.
- C. That the objectors be advised of the decision.

#### **Report prepared by:**

Sandra McCarry  
Senior Town Planner

#### **Report approved by:**

Holly Charalambous  
Senior Coordinator – Development Assessment

Carine Elias  
Manager - Development Assessment

Sandra Bailey  
Executive Manager City Development