



## ASSESSMENT REPORT

### Section 4.56 Application No. MOD2026/0033

Assessment Officer:  
Consent Authority functions  
exercised by:

Shannon Butler  
Senior Coordinator Development Assessment

## EXECUTIVE SUMMARY

### Application details

|                                    |                                                                                                                                                                                                                                                                                                                                |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subject land:                      | 155-157 Church Street, Ryde                                                                                                                                                                                                                                                                                                    |
| Lot and DP Number:                 | Lot 149 DP 1278964                                                                                                                                                                                                                                                                                                             |
| Original Proposal:                 | LDA2019/0149: 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. |
| Modification:                      | Section 4.56 application to modify LDA2019/0149 to replace the approved Gabion Walls to the podium levels with a Fairview "Smart Bric" Brick Facade system.                                                                                                                                                                    |
| Applicant:                         | Rothsay Avenue Developments                                                                                                                                                                                                                                                                                                    |
| Owner:                             | Church Street Property Investments Pty Ltd                                                                                                                                                                                                                                                                                     |
| Date lodged:                       | 23 March 2026                                                                                                                                                                                                                                                                                                                  |
| Estimated Development Cost:        | No change from original CIV                                                                                                                                                                                                                                                                                                    |
| Submissions:                       | None                                                                                                                                                                                                                                                                                                                           |
| Zoning:                            | MU1 Mixed Use under RLEP 2014                                                                                                                                                                                                                                                                                                  |
| DCP non-compliances:               | None                                                                                                                                                                                                                                                                                                                           |
| Variation to Development Standard: | No                                                                                                                                                                                                                                                                                                                             |
| <b>Report Recommendation:</b>      | Approval                                                                                                                                                                                                                                                                                                                       |

## 1. THE PROPOSAL

**Application for a Modification under Section 4.55(1A) of the EP&A Act, 1979 of Local Development Application No. LDA2019/0149 (Section 4.55 Application No. MOD2026/0033)**

The proposal involves the modification of Development Consent No. LDA2019/0149 granted by the NSW Land and Environment Court on 6 September 2021 for the 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.

The subject application is a Section 4.56 modification seeking to modify the Court issued consent seeking to replace the approved external gabion walls to the podium levels with a Fairview “Smart Bric” – brick façade system.

The proposed modification necessitates the amendment of Condition No. 1 to reflect the revised schedule of materials/finishes and elevations.

There are no other changes sought as part of the subject application.



**Figure 1** – Church Street elevation with proposed materials on left and originally approved materials on right

## 2. THE SITE & LOCALITY

The site is located within the Shepherd's Bay locality and is referred to as Stage A in the Concept Approval for the Precinct (MP09\_0216). The site has frontages to 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 approved development is currently under construction as shown in **Figures 2 and 3** below.



**Figure 2** - Aerial photo of the site and surrounds. The development is currently under construction.

The locality is characterised by shop top housing and residential flat buildings to the north, north-east and north-west on land zoned MU1 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. To the south-west of the subject site is Anderson Park, which fronts the Parramatta River foreshore and is zoned RE1 Public Recreation. Ryde Bridge adjoins the south-eastern boundary of the site and is a local heritage item (No. 33 in the Ryde Local Environmental Plan 2014).



**Figure 3** - Subject site as viewed from the corner of Church Street and Well Street



**Figure 4 - Zoning Map**

### 3. APPLICATION HISTORY

#### Background

The site is the subject of the following relevant applications:

- 6 September 2021: Local Development Application LDA2019/0149 was approved by the Land and Environment Court 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.
- 22 August 2023: Section 4.56 modification application MOD2023/0021 for modifications to LDA2019/0149 for alterations to the pedestrian and vehicular accesses, changes to the internal floor layout, and conversion of commercial floor space into additional serviced apartments to increase the serviced apartments from 72 to 84 was approved by the Sydney North Planning Panel.
- 10 April 2025: Local Development Application LDA2025/0011 for a change of use and fitout from a supermarket to a 24-hour indoor recreation facility, and signage was approved by Council.
- 22 July 2025: Section 4.56 modification application MOD2025/0070 was approved by the Sydney North Planning Panel to remove the requirements to achieve Association of Australasian Acoustical Consultants (AAAC) standards for acoustic management and replace them with requirements to satisfy the National Construction Code (NCC).
- 24 February 2026: An amending DA (LDA2026/0031) was lodged seeking consent for the construction of three additional storeys on top of the approved building. The application includes the provision of additional affordable housing units.

#### Application History

| Date          | Event                                    |
|---------------|------------------------------------------|
| 23 March 2026 | Subject modification application lodged. |

|                              |                                                                                                                                   |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| 23 March until 13 April 2026 | Modification application notified to previous objectors in accordance with Section 4.56 of the EP&A Act. No submissions received. |
| 23 March 2026                | An email notification was sent to the NSW Land and Environment Court advising them of the lodgement of the application.           |

#### 4. REFERRALS

Referrals were not required for this application.

#### 5. DETERMINING AUTHORITY

As the original consent was granted by the NSW Land and Environment Court and the development is classified as a Regionally Significant Development, the application would ordinarily need to be referred to the Sydney North Planning Panel (SNPP) for determination. However, Council has received delegation from the SNPP dated 1 April 2026 to make a determination as consent authority for all applications under Section 4.56 of the Act except where the application meets the criteria set out in the *Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consent*. The application does not meet these criteria, therefore, Council staff are able to determine the application under delegated authority.

#### 6. STATUTORY PROVISIONS

##### Environmental Planning and Assessment Act 1979 (The Act) - Section 4.55 Evaluation

Section 4.56 of the Act allows a consent authority to modify a development consent granted by it, if:

- (a) it is satisfied that the development to which the consent as modified relates is the same or 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.*

In considering the above:

- The proposed modified development is considered to be substantially the same development as the development for which consent was originally granted. The modification is limited to the external colours and finishes of the podium levels and does not alter the building footprint, envelope, use of the building, number of units or any other fundamental element.
- The application has been notified to all persons who made a submission on the original application and no submissions were received. Further, the NSW Land and Environment Court were notified of the application via email.

### **Section 4.55(3): Planning Assessment in accordance with Section 4.15(1) Matters for consideration**

The modifications sought are considered against the relevant environmental planning instruments, proposed instruments and relevant parts of the DCP below in accordance with Section 4.15(1)(a)(i), (ii) and (iii). The development consent is not subject to a planning agreement (iiia).

The proposal maintains consistency with the relevant regulations (iv).

### **State Environmental Planning Policies (SEPP)**

This modification remains consistent with the relevant considerations and outcomes of the SEPPs as already assessed under the original development application and the subsequent modifications, including:

- SEPP (Transport and Infrastructure) 2021
- SEPP (Housing) 2021
- SEPP (Sustainable Buildings) 2022, formerly SEPP (BASIX) 2004

### **Ryde Local Environmental Plan 2014 (RLEP)**

#### **Clause 2.3 - Zone Objectives**

The land is zoned MU1 Mixed Use under the RLEP.

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 development, as modified, continues to be permissible in this zone and is considered to maintain consistency with the objectives of the zone.

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

This modification does not affect the considerations and outcomes given the relevant objectives and requirements of the principal development standards continue to be satisfied, as already assessed under the original development application and the subsequent modifications.

### **Parts 5 & 6 – Miscellaneous provisions and Additional local provisions**

The development, as modified, continues to satisfy the relevant objectives and requirements of these clauses as already assessed under the original development application and the subsequent modifications.

### **Ryde Development Control Plan 2014 (RDCP)**

The modification does not result in any further RDCP non-compliances beyond that already considered and approved under the original development application and the subsequent modifications (MOD2023/0021 and MOD2025/0070).

### **Section 7.11 Contributions**

The modification relates to external colours and finishes only and does not result in any implication on the Section 7.11 Contributions conditioned in the original consent.

### **Housing Productivity Contribution (HPC)**

The original Development Consent predates the introduction of the Housing and Productivity Contribution, therefore, it cannot be applied to modification applications.

**(b) *The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

The amended development is considered satisfactory in terms of environmental impacts.

**(c) *The suitability of the site for the development***

The site remains suitable for the development.

**(d) *Any submissions made in accordance with this Act or the regulations***

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, all previous objectors were notified of the application from 23 March to 13 April 2026.

In response, no submissions were received.

**(e) *The public interest***

Having regard to the assessment against the relevant planning instruments, the development is considered to be acceptable as it delivers a suitable built form outcome.

On this basis, the proposal is not considered to raise any issues that would be contrary to the public interest.

**Section 4.55(3): Reasons consent to be modified was originally granted**

The original application was assessed under the requirements of Section 4.15 of the Act, Ryde Local Environmental Plan 2014 and Ryde Development Control Plan 2014. The proposed modifications would not alter any of the reasons why the approval was originally granted.

## **7. CONCLUSION**

After consideration of the development against section 4.56 of the Act and the relevant statutory and policy provisions, it is recommended that the application be approved for the following reasons:

- The modification satisfies the provisions of Section 4.56 and Section 4.15 of the Environmental Planning and Assessment Act 1979.
- The proposal is not contrary to the public interest.

As the original consent was granted by the NSW Land and Environment Court and the development is classified as a Regionally Significant Development, the application would ordinarily need to be referred to the Sydney North Planning Panel (SNPP) for determination. However, Council has received delegation from the SNPP dated 1 April 2026 to make a determination as consent authority for all applications under Section 4.56 of the Act except where the application meets the criteria set out in the *Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consent*. The application does not meet these criteria, therefore, Council staff are able to determine the application under delegated authority.

a) Condition No.1 is to be **amended** as follows (amended elements denoted by bold text):

1. **Approved Plans/Documents.** Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following plans (stamped approved by Council) and support documents:

| Document Description                                                        | Date                                     | Plan Revision/date                                      |
|-----------------------------------------------------------------------------|------------------------------------------|---------------------------------------------------------|
| Architectural Plans by Cox/Kennedy Architects & Design Formation Architects |                                          |                                                         |
| <del>DA00</del> <b>S01</b>                                                  | Cover Page                               | Revision J <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| DA01                                                                        | Introduction                             | Revision P dated 12/12/22                               |
| DA02                                                                        | Location Plan                            | Revision H dated 12/5/21                                |
| DA03                                                                        | Site photo                               | Revision H dated 12/5/21                                |
| <del>DA04</del> <b>S02</b>                                                  | Site plan —existing                      | Revision H <b>2</b> dated 12/5/21<br><b>16/01/2026</b>  |
| DA05                                                                        | Design Analysis                          | Revision H dated 12/5/21                                |
| DA06                                                                        | Demolition Plan                          | Revision H dated 12/5/21                                |
| DA06.1                                                                      | Existing site images                     | Revision H dated 12/5/21                                |
| DA07                                                                        | Basement 05 _residential                 | Revision K dated 12/12/22                               |
| DA08                                                                        | Basement 04 _residential                 | Revision J dated 12/12/22                               |
| DA09                                                                        | Basement 03 _commercial                  | Revision J dated 12/12/22                               |
| DA10                                                                        | Basement 02 _commercial                  | Revision J dated 12/12/22                               |
| DA11                                                                        | Basement 01 _supermarket                 | Revision P dated 12/12/22                               |
| <del>DA12</del> <b>S03</b>                                                  | Lower Ground Levels                      | Revision Q <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| <del>DA13</del> <b>S04</b>                                                  | Ground Level                             | Revision R <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| <del>DA14</del> <b>S05</b>                                                  | Level 01                                 | Revision R <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| <del>DA15</del> <b>S06</b>                                                  | Level 02                                 | Revision R <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| <del>DA16</del> <b>S07</b>                                                  | Level 03                                 | Revision R <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| DA17                                                                        | Level 04                                 | Revision R dated 12/12/22                               |
| DA18                                                                        | Level 05                                 | Revision S dated 12/12/22                               |
| DA19                                                                        | Level 06                                 | Revision S dated 12/12/22                               |
| DA20                                                                        | Level 07                                 | Revision S dated 12/12/22                               |
| DA21                                                                        | Level 08                                 | Revision S dated 12/12/22                               |
| DA22                                                                        | Level 09                                 | Revision R dated 12/12/22                               |
| DA 23                                                                       | Mezzanine Level                          | Revision R dated 12/12/22                               |
| DA24                                                                        | Roof terrace                             | Revision Q dated 12/12/22                               |
| DA24.1                                                                      | Roof                                     | Revision Q dated 12/12/22                               |
| <del>DA25</del> <b>S08</b>                                                  | Church Street elevation                  | Revision J <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| <del>DA26</del> <b>S09</b>                                                  | Well Street Elevation                    | Revision J <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| <del>DA27</del> <b>S10</b>                                                  | Parsonage Street                         | Revision P <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| <del>DA28</del> <b>S11</b>                                                  | The Loop Road Waterview Street Elevation | Revision P <b>2</b> dated 12/12/22<br><b>16/01/2026</b> |
| DA29                                                                        | Section 01                               | Revision J dated 12/12/22                               |
| DA30                                                                        | Section 02                               | Revision J dated 12/12/22                               |

|                                                                            |                                               |                                    |
|----------------------------------------------------------------------------|-----------------------------------------------|------------------------------------|
| DA31                                                                       | Section 03                                    | Revision J dated 12/12/22          |
| DA32                                                                       | Section 04                                    | Revision J dated 12/12/22          |
| <b>S12</b>                                                                 | <b>Section Details</b>                        | <b>Revision 2 dated 16/01/2026</b> |
| DA33                                                                       | 3D Views                                      | Revision J dated 12/12/22          |
| DA34                                                                       | 3D Views                                      | Revision J dated 12/12/22          |
| DA35                                                                       | Finishes                                      | Revision J dated 12/12/22          |
| DA36                                                                       | Finishes                                      | Revision B dated 19/08/22          |
| <b>S13</b>                                                                 | <b>Schedule of Finishes</b>                   | <b>Revision 2 dated 16/01/2026</b> |
| DA37                                                                       | GFA Summary                                   | Revision P & B dated 12/12/22      |
| DA38                                                                       | Adaptable Units                               | Revision J dated 12/12/22          |
| DA39                                                                       | Shadows diagrams _ 21 <sup>st</sup> June 9am  | Revision H dated 12/5/21           |
| DA40                                                                       | Shadows diagrams _ 21 <sup>st</sup> June 12pm | Revision H dated 12/5/21           |
| DA41                                                                       | Shadows diagrams _ 21 <sup>st</sup> June 3pm  | Revision H dated 12/5/21           |
| DA42                                                                       | Cross vent/solar access                       | Revision H dated 12/5/21           |
| DA43                                                                       | Views from the sun 9am – 10am                 | Revision H dated 12/5/21           |
| DA44                                                                       | Views from the sun 11am – 12am                | Revision H dated 12/5/21           |
| DA45                                                                       | Views from the sun 1pm – 2pm                  | Revision H dated 12/5/21           |
| DA46                                                                       | Views from the sun 2.45pm – 3pm               | Revision H dated 12/5/21           |
| DA47                                                                       | BASIX commitments                             | Revision J dated 12/12/22          |
| <b>Landscape Plans prepared by Site Image</b>                              |                                               |                                    |
| 000                                                                        | Cover Sheet                                   | Revision L dated 23/3/21           |
| 001                                                                        | Deep Soil Calculations                        | Revision 04 dated 01/06/23         |
| 101                                                                        | Ground Floor West & East                      | Revision 06 dated 01/06/23         |
| 102                                                                        | Level 1 Landscape Plan                        | Revision 06, Dated 01/06/23        |
| 103                                                                        | Level 7 & Roof Landscape Plan                 | Revision 05 & 06, dated 01/06/23   |
| 501                                                                        | Landscape Details                             | Revision H, dated 4/12/19          |
| 502                                                                        | Landscape Details                             | Revision H, dated 4/12/19          |
| BB-LA-LP-06/04                                                             | Legend Notes/Plant Schedule                   | Revision 04, dated 01/06/23        |
| <b>Stormwater Concept Plan prepared by Australian Consulting Engineers</b> |                                               |                                    |
| 000                                                                        | Cover Sheet Plan, Legend & Notes              | Revision C dated 30/05/22          |
| 101                                                                        | Basement Level 5 Sheet 1 of 2                 | Revision D dated 25/07/22          |
| 102                                                                        | Basement Level 5 Sheet 2 of 2                 | Revision C dated 30/05/22          |
| 103                                                                        | Basement Level 4                              | Revision D dated 25/07/22          |
| 104                                                                        | Basement Level 3                              | Revision D dated 25/07/22          |
| 105                                                                        | Basement Level 2                              | Revision D dated 25/07/22          |
| 106                                                                        | Basement Level 1                              | Revision D dated 25/07/22          |
| 107                                                                        | Lower Ground Level                            | Revision E dated 25/07/22          |
| 108                                                                        | Ground Level                                  | Revision E dated 25/07/22          |
| 120, 121 & 122                                                             | OSD/WDUD Detail Sheets 1 to 3                 | Revision E & D dated 25/07/22      |
| 123                                                                        | Catchment Plan                                | Revision C dated 30/05/22          |

| Traffic Plan prepared by McLaren Traffic Engineering |                          |                           |
|------------------------------------------------------|--------------------------|---------------------------|
| 2020-399-06C                                         | B99 Right Turn Manoeuvre | Revision D, dated 8/4/21  |
| DA 49                                                | Easement Plan            | Revision C Dated 12/12/22 |
| 702957M_10                                           | BASIX Certificate        | 15 December 2022          |

**In signing this report, I declare that I do not have a conflict of interest.**

**Assessment report prepared by:**

**Shannon Butler**  
**Senior Town Planner**

**Date: 14 April 2026**

**This application is determined under the delegated authority of:**

*HC*  
**Holly Charalambous**  
**Senior Coordinator Development Assessment**

**Date: 14 April 2026**