



ASSESSMENT REPORT

Section 4.56 Application No. MOD2021/0209

Assessment Officer: Shannon Butler
Report to Manager Assessment: 17 February 2022
Consent Authority functions exercised by: Delegate

EXECUTIVE SUMMARY

Application details

Subject land:	256-258 Victoria Road, Gladesville
Lot and DP Number:	Lot 68-69 DP 10598
Site Area and dimensions:	431.7m ²
Original Proposal:	Demolition and construction of a 7 storey mixed use development comprising of 13 apartments, 1 retail tenancy and 19 car parking spaces.
Modification:	S4.56 modification to LDA2016/0341 including general layout amendments and additional services.
Applicant:	Lichao Pty Ltd
Owner:	Lichao Pty Ltd
Date lodged:	8 September 2021
Date clock stopped:	N/A
Date clock started again:	N/A
No. of days on STC:	N/A
Value of Works:	No change from original
Submissions:	Two (2)
	CM Checked: 17/02/2022
Zoning:	B4 Mixed Use under RLEP 2014
DCP Non-Compliances:	None
Clause 4.6 RLEP 2014 objection required:	No
Report Recommendation:	Approval

REPORT

THE SITE

The site is legally described as Lots 68-69 DP 10598 and is commonly known as 256-258 Victoria Road, Gladesville.

The site is trapezoidal in shape and has a total area of 430.69m². The comprises two allotments and has a frontage to Victoria Road to the east and Gerard Lane to the west.

The site currently contains a two storey commercial building with an at-grade parking area to the rear. The site does not contain any vegetation.



Figure 1 – Aerial photograph of subject site

THE PROPOSAL

Application for a Modification under Section 4.56 of the EP&A Act, 1979 of Local Development Application No. LDA2016/0341 (Section 4.56 Application No. MOD2021/0209)

The proposal involves the modification of Development Consent No. LDA2016/0341 which was granted by the NSW Land and Environment Court as a result of agreement being

reached in a Section 34 Conciliation Conference. The granted consent was for the construction of a part two storey/part six storey mixed use development comprising 11 residential apartments and a ground floor commercial/retail tenancy.

The building footprint and envelope are proposed to remain as approved in the previous Section 4.55 modification (MOD2018/0109).

The proposed modification includes the following design changes based on the respective floors:

Basement 02:

- The fire stairs in the south-western corner of the basement are proposed to be removed.
- The fire stairs in the north-eastern corner of the basement are proposed to be fully enclosed in order to comply with the NCC/BCA.
- The two (2) parking spaces adjacent to the car lift are proposed to be allocated as 'small car' spaces.
- The location of five (5) bicycle parking spaces have been relocated to the south-western corner of the basement where the fire stairs were located.
- The storage area under the fire stairs in the north-eastern corner of the basement is proposed to be removed.

Basement 01:

- The fire stairs in the south-western corner of the basement are proposed to be removed.
- The fire stairs in the north-eastern corner of the basement are proposed to be fully enclosed in order to comply with the NCC/BCA.
- The two (2) parking spaces adjacent to the car lift are proposed to be allocated as 'small car' spaces.
- The location and configuration of the waste room in the south-western corner is proposed to be reconfigured and occupy the space where the fire stairs were.

Lower Ground Floor:

- The fire stairs in the north-eastern corner of the basement are proposed to be fully enclosed in order to comply with the NCC/BCA.
- The residential storage area is proposed to be slightly decreased in size to accommodate the enclosure of the adjacent fire stairs and incorporate a pump room.
- The internal layout of apartments 1 and 2 are proposed to be slightly reconfigured.

Ground Floor:

- The 3 bedroom apartment is proposed to be converted to a commercial tenancy with an area of 91m².

Level 1:

- The landscaped roof is proposed to be slightly reconfigured.
- The size of the fire stairs is proposed to be increased.
- The lobby, service cupboard locations and entries to the apartments is proposed to be slightly reconfigured.

Level 2:

- The size of the fire stairs is proposed to be increased.
- The lobby, service cupboard locations and entries to the apartments is proposed to be slightly reconfigured.

Level 3:

- The size of the fire stairs is proposed to be increased.
- The lobby, service cupboard locations and entries to the apartments is proposed to be slightly reconfigured.

Level 4:

- The size of the fire stairs is proposed to be increased.
- The lobby, service cupboard locations and entries to the apartments is proposed to be slightly reconfigured.
- The layout of the two storey 3 bedroom apartment is proposed to be reconfigured to provide the bedrooms and bathrooms on Level 4 and the living areas on Level 5.

Level 5:

- The size of the fire stairs is proposed to be increased.
- The lobby, service cupboard locations and entries to the apartments is proposed to be slightly reconfigured.
- The layout of the two storey 3 bedroom apartment is proposed to be reconfigured to provide the bedrooms and bathrooms on Level 4 and the living areas on Level 5.

SITE HISTORY

7 March 2017	Development Consent No. LDA2016/0341 was granted by the NSW Land and Environment Court by way of a Section 34 agreement for demolition of existing structures and construction of a part two/part six storey mixed use development comprising 11 residential apartments and one commercial tenancy on the ground floor.
13 July 2018	Section 4.56 Consent No. MOD2018/0109 was granted by Council to add an additional basement level and replace the approved car stacker with a car lift, internal amendments to

	the lower and ground floor levels, re-alignment of lift core and addition of ventilation shaft, amendment to Condition Nos. 1, 29, 58, 136, 138, 139, 153 and deletion of Condition No. 73.
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APPLICATION HISTORY

8 September 2021	Subject Section 4.56 application lodged with Council.
13 September 2021 to 4 October 2021	Subject application notified in accordance with Ryde Community Participation Plan. Two (2) submissions were received as a result.
6 January 2022	A request for additional information letter was sent to the applicant in relation to manoeuvrability issues for some parking spaces, useability of car lift and allocation of car parking spaces.
25 January 2022	Covering letter and amended plans submitted in response to Council's letter.
1 March 2022	An amended BASIX Certificate was requested from the applicant.
10 March 2022	Amended BASIX Certificate submitted by the applicant reflecting the revised unit mix.

REFERRALS

Senior Development Engineer: No objections were raised by Council's Senior Development Engineer subject to condition No. 153 being amended relating to the allocation of car parking spaces within the basement levels.

STATUTORY PROVISIONS

Environmental Planning and Assessment Act, 1979

Section 4.56 – Modification of Consents

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, Council may consider a modification of development consent provided:

- (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)*

Comment:

The development consent approved demolition and construction of a 7 storey mixed use development comprising of 13 apartments, 1 retail tenancy and 19 car parking spaces. The modifications relate to design and detail changes to the approved development. The proposal results in an increase in floor space as a result of the proposed modifications but maintains the key features of the approved development.

Consideration has been given to the authorities of Morris V Leichhardt Council [2008] NSWLEC1106 and Vacik Pty Limited v Penrith City Council (unreported, NSW LEC, Stein J, 18 February 1992) which establishes key questions to be asked to assist in the

determination of the question posed under Section 96 relating to substantially the same development. The questions are:

- (a) In considered that the phrase meant “essentially or having the same essence”.
- (b) The majority of the Court of Appeal in *Sydney City Council v Ilenace Pty Limited* (1984) 3 NSWLR 414, considered the word ‘modify’ meant to “alter without radical transformation”: see 421
- (c) In *North Sydney Council v Michael Standley & Associates Pty Limited* (1998) 97 LGERA 433, Mason P, at 439 adopted the meaning “to alter without radical transformation” although Stein JA adopted the meaning he had used in *Vacik*.
- (d) In *Moto Projects (No 2) Pty Limited v North Sydney Council* (1999) 106 LGERA 298 Bignold J analysed the authorities in relation to s 96(2)(a) and the meaning of ‘substantially the same.’ He said at p 309: “the requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is ‘essentially or materially’ the same as the approved development.” He further explained that the comparative task required comparison both in qualitative as well as quantitative terms.

If the comparative task adopted in the authority of *Moto Projects (No. 2) Pty Ltd v North Sydney Council*, by Bignold J (at 309 [56]) where it is stated “... not merely... a comparison of the physical features or components of the development as currently approved and modified where the comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The development consent issued was for demolition and construction of a 7 storey mixed use development comprising of 13 apartments, 1 retail tenancy and 19 car parking spaces. The modification results in a change in the residential density through the proposed conversion of the ground floor apartment to a commercial tenancy.

The proposal is in essence the same development as the modifications does not alter the use or function of the development as mixed use development. Whilst the external form changes, external changes are acceptable and this does not alter the entity of the development in accordance with *Tipalea Watson Pty Ltd v Ku-Ring-Gai Council* [2003] NSWLEC 253. The proposal reduces the number of residential apartments to 12 and increases the retail tenancies to 2. The car parking is maintained and there is no resultant material impact as a result of the changes.

It is considered the development is essentially the same development as approved and the modification alters and transforms the approved development. The modification does not radically transform the approved development. The development is qualitatively the same development as approved. The development will remain substantially the same as the development for which consent was originally granted.

- (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*

Comment:

The proposed Section 4.55 modification has been notified in accordance with the provisions of the regulations and the Ryde Community Participation Plan. Two (2) submissions were received in response, which are discussed in this report.

- (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*

Comment:

The application has been notified to owners and occupiers of potentially affected land and those who objected to the original Development Application in accordance with the Ryde Community Participation Plan. Two (2) submissions were received in response, which are discussed in this report.

- (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.*

Comment:

The issues raised in the (2) two submissions received against the proposal are discussed later in this report.

Section 4.56(1A): Planning Assessment in accordance with Section 4.15(1) Heads of consideration

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 modifications sought are considered against the relevant environmental planning instruments, proposed instruments and relevant DCP's 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 has been considered in accordance with the relevant regulations (iv).

The modifications sought do not alter the permissibility of the approved development within the B4 Mixed Use zone. The proposal maintains consistency with the zone objectives.

The modifications are detailed below:

1. Internal amendments

Basement 02:

- The fire stairs in the south-western corner of the basement are proposed to be removed.
- The fire stairs in the north-eastern corner of the basement are proposed to be fully enclosed in order to comply with the NCC/BCA.
- The two (2) parking spaces adjacent to the car lift are proposed to be allocated as 'small car' spaces.
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- The size of the fire stairs is proposed to be increased.
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Level 2:

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Level 3:

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Level 4:

- The size of the fire stairs is proposed to be increased.
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Level 5:

- The size of the fire stairs is proposed to be increased.
- The lobby, service cupboard locations and entries to the apartments is proposed to be slightly reconfigured.
- The layout of the two storey 3 bedroom apartment is proposed to be reconfigured to provide the bedrooms and bathrooms on Level 4 and the living areas on Level 5.

Compliance with SEPPs	Compliance with SREPs – now deemed SEPPs	Compliance with RLEP 2014	Compliance with RDCP 2014	Maintains residential amenity	Compliance with s.4.15 EPAA 1979 And Draft LEPs
Yes	Yes	Yes	No	Yes	Yes

Comment:

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

This Policy aims to improve the design quality of a residential flat development. This proposal has been assessed against the following matters relevant to SEPP 65 for consideration:

- The 9 SEPP 65 Design Quality Principles; and
- The NSW Apartment Design Guide (ADG) guidelines.

The proposed modifications are relatively minor and do not diminish the design quality of the building and the application was not required to be referred to Council's Urban Design Review Panel.

The principles and ADG guidelines as originally assessed will not be altered as part of this modification.

Apartment Design Guide

The SEPP also requires the Council to take into consideration the requirements of the Apartment Design Guide. The proposed modifications are predominately internal and do not amend the findings of the original assessment against the ADG.

Ryde Local Environmental Plan 2014

The proposed internal modifications have been assessed against the principal development standards of Ryde Local Environmental Plan 2014 (RLEP) as follows:

a) Building Height

The front portion of the site has a maximum permitted building height of 19m and the rear portion has a maximum permitted height of 12m. The maximum height of the building remains at RL65.77 which is consistent with the originally approved building height and that approved in the previous modification.

b) Floor Space Ratio

The maximum permitted floor space ratio for the site is 2.3:1.

The development was originally approved with a maximum floor space area of 988m², which compared to the site area of 431.7m², equated to 2.29:1. The previously approved modification resulted in a floor area of 983m² which equated to 2.28:1.

The proposed modification results in minor internal re-configurations on all floors and there is a resultant increase in gross floor area to 992m², which equates to an FSR of 2.30:1 and complies with the development standard.

Ryde Development Control Plan 2014

a) Part 4.6 – Gladesville Town Centre and Victoria Road Corridor

Part 4.6 of DCP 2014 is the primary DCP applicable to development within the Gladesville Town Centre and Victoria Road Corridor. This part of the DCP provides a framework to guide future development and specifies built form controls for all development within the Town Centre. The proposed amendments are predominately internal and will not alter the approved building envelope or setbacks, accordingly there are no controls in the DCP applicable to the modifications.

b) Part 9.3 – Parking Controls

Based on the proposed amended unit mix, Council's DCP requires a minimum of 16 to a maximum of 19 on-site car parking spaces, calculated as follows:

	Min	Max
1 bedroom x 2	$0.6 \times 2 = 1.2$	$1 \times 2 = 2$
2 bedroom x 7	$0.9 \times 7 = 6.3$	$1.2 \times 7 = 8.4$
3 bedroom x 2	$1.4 \times 1 = 1.4$	$1.6 \times 1 = 1.6$
	$= 8.9 (9)$	$= (12)$
Visitor /5	$= 2$	$= 2$
Commercial /25m ²	$125/25 = 5$	$= 5$
Total	= 16	= 19

In the previous Section 4.55 modification, there were a total of 15 car parking spaces approved and 16 required (as a minimum) under the DCP parking rates. The proposed modification application also seeks to provide 15 car parking spaces with a total of 16 required (as a minimum) as a result of the deletion of one of the three-bedroom units and re-allocation of the floorspace as a commercial tenancy. Therefore, the proposal results in a shortfall of one (1) car parking space which is consistent with what was approved in the last modification.

It is noted that in the approval of the last modification application, Council charged a car parking contribution for the one (1) parking space shortfall. Council's Contributions Coordinator has advised that the requirement for the parking contribution can be retained and that the amended unit mix and additional commercial floorspace can be used to recalculate the contributions under the Contributions Plan that was applicable at the time of the approval of the original application (as opposed to the current 2020 Contributions Plan). Therefore, it is recommended that Condition No. 29 be amended to reflect the revised calculations. In addition, it is recommended that Condition No. 153 be amended to reflect the revised car parking allocation in accordance with the DCP compliance figures above.

2. External amendments

- Reconfiguration of landscaped roof component on Level 1.

Compliance with SEPPs	Compliance with SREPs – now deemed SEPPS	Compliance with RLEP 2014	Compliance with RDCP 2014	Maintains residential amenity	Compliance with s.4.15 EPAA 1979 And Draft LEPS
Yes	Yes	Yes	Yes	Yes	Yes

Comment:

The proposal includes the reconfiguration of the landscaped roof on Level 1 which is located above the ground floor outdoor area associated with Unit 3. The reconfiguration of this area does not result in any implications on compliance with the Ryde LEP or Ryde DCP controls and is considered to be satisfactory.

3. Amendment to BASIX Certificate

Compliance with SEPPs	Compliance with SREPs – now deemed SEPPS	Compliance with RLEP 2014	Compliance with RDCP 2014	Maintains residential amenity	Compliance with s.4.15 EPAA 1979 And Draft LEPs
Yes	Yes	Yes	Yes	Yes	Yes

Comment: The proposal has been supported by an amended BASIX Certificate 715276M_04, dated 10 March 2022. The amended certificate is referenced on the amended plans. This necessitates Condition 3 to be amended to reference the updated Certificate.

(a) 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.

(b) The suitability of the site for the development

The approved development remains suitable for the site.

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

In accordance with the Ryde Community Participation Plan owners of surrounding properties were given notice of the application. In response, two submissions were received. The issues raised in the submissions are addressed as follows:

- *Does the amended proposal breach the Ryde Local Environmental Plan 2014 controls?*

Comment: The proposal maintains the height approved under MOD2018/0109 at RL65.77 (20.07m) associated with the lift overrun and is non compliant with height. The proposal includes a 9m² increase in floor area but maintains compliance with the FSR of 2.30.

- *\$3.7 million appears to be a lot of money for modifications.*

Comment: The figure of \$3,713,927 represents the full capital investment value (CIV) of the works and not the proposed modifications in isolation.

(d) The public interest

Having regard to the assessment contained in this report, it is considered that approval of the development is not 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 79C (now Section 4.15) of the Environmental Planning and Assessment Act 1979 (as amended), 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.

CONCLUSION

After consideration of the development against section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, the proposal is suitable for the site and is in the public interest. Therefore, it is recommended that the application be approved for the following reasons:

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

RECOMMENDATION

That the Council, as the consent authority, grant development consent to MOD2021/0209 to modify the consent LDA2016/0341 for a mixed-use development on land at 256-258 Victoria Road, Gladesville, as follows:

- a) Condition Nos. 1, 3, 29, 114, 153 to be **amended** as follows (amended components in red 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:

Plan Title and Number	Author	Date & Issue
Basement 1 & 2 GAP	Urban Link	S4.55-101, Rev B
Lower Ground & Ground Floor GAP	Urban Link	S4.55-102, Rev B
Level 1 & 2 GAP	Urban Link	S4.55-103, Rev B
Level 3 & 4 GAP	Urban Link	S4.55-104, Rev B
Level 5 & Roof GAP	Urban Link	S4.55-105, Rev B
North Elevation	Urban Link	S4.55-201, Rev A
South Elevation	Urban Link	S4.55-202, Rev A
East & West Elevations	Urban Link	S4.55-203, Rev A
Section A-A	Urban Link	S4.55-301, Rev A
Section B-B	Urban Link	S4.55-302, Rev A
Sections D&E	Urban Link	S4.55-303, Rev A
Dwgs C1.00,C2.00 to C2.03	John Matheson & Associates Pty Ltd	22/06/16 Rev C & B
VG-DA-L1 Landscape Plan	CAB Consulting P/L	June 2018

Prior to the issue of a **Construction Certificate**, the following amendments shall be made (as marked in red on the approved plans):

- (a) Basix commitments are to be noted on plans as required under the Basix Commitments.

- (b) The approved Stormwater plans are to be amended as indicated on the approved plans and subject to further conditions of this consent.
- (c) The approved Landscape plan shall be amended to provide full details of the proposed landscaping including, but not limited to, the following:
 - i. All landscape areas and their proposed treatment (mass planting beds, paving, lawn etc), planting arrangement, planting schedule, pot size, planting and staking details;
 - ii. Drainage and waterproofing for any podium planters;
 - iii. Soil type selections for any podium planters;
 - iv. Details of irrigation systems, which are to be supplied to all raised planters located within common areas and communal open spaces to ensure adequate water is available to vegetation. Irrigation systems shall be fully automated and capable of seasonal adjustments.
 - v. Details of the landscaped roof outside Unit 1.01 indicated on Plan Number DA3.25. **NOTE:** Should the landscape roof be a green roof full details are to be provided including details of plantings, soil depths, waterproofing membranes, root barriers, drainage provisions, irrigation systems, maintenance access and maintenance schedules.
 - vi. Details are to be provided for the rooftop terrace including bench seating, planter walls, decking, paving and any lighting.

Details are to be submitted prior to the issue of the Construction Certificate

The Development must be carried out in accordance with the amended plans approved under this condition.

- 3. **BASIX.** Compliance with all commitments listed in BASIX Certificate(s) numbered 715276M_04, dated 10 March 2022.
- 29. **Section 7.11** A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council prior to the issue of any **Construction Certificate**:

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$35,510.87
Open Space & Recreation Facilities	\$73,853.01
Civic & Urban Improvements	\$33,880.11
Roads & Traffic Management Facilities	\$4,661.37
Cycleways	\$2,887.82
Stormwater Management Facilities	\$8,509.06
Plan Administration	\$778.23
Transport and Access	\$39,924.95
The total Contribution is	\$200,005.42

These are contributions under the provisions of Section 7.11 of the Environmental Planning and Assessment Act, 1979 as specified in City of Ryde Section 7.11 Development Contributions Plan 2020, effective from 1 July 2020.

The above amounts are current at the date of this consent, and are subject to **quarterly** adjustment for inflation on the basis of the contribution rates that are applicable at time of payment. Such adjustment for inflation is by reference to the

Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) – and may result in contribution amounts that differ from those shown above.

The contribution must be paid **prior to the issue of any Subdivision Works Certificate**. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the **City of Ryde**. Personal or company cheques will not be accepted.

A copy of the Section 7.11 Development Contributions Plan may be inspected at the Ryde Customer Service Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

114. **BASIX**. The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate(s) numbered 715276M_04, dated 10 March 2022.

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

Basement 1

- 4 commercial spaces
- 1 visitor space
- 1 commercial / visitor disabled space (to be utilised by either retail customers or residential visitors)

Basement 2

- 9 residential spaces, with the small space allocated as a second space to the 3 bedroom unit

Small parking spaces shall be clearly signposted and line-marked such there is no misunderstanding related to space dimensions.



Shannon Butler
Senior Town Planner



Kimberley Kavwenje
Senior Coordinator Development
Assessment

Agreed. Application approved.



Sandra Bailey
Manager Development Assessment

Date of Consent: 10 March 2022