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| **COUNCIL ASSESSMENT REPORT**  HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL | |

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| PANEL REFERENCE & DA NUMBER | PPSHCC-173  PAN-293107  DA/1260/2021/A |
| PROPOSAL | Section 4.55(2) modification to seniors housing development |
| ADDRESS | 24-26 Gallipoli Road, Long Jetty Lot 4 DP 271196  and 315 The Entrance Road Long Jetty (club) Lot 3 DP.2791196 |
| APPLICANT | Tim Shelly |
| OWNER | HCL1 Pty Ltd  Tuggerah Lakes Memorial Club Ltd |
| DA LODGEMENT DATE | 24 Jan 2023 |
| APPLICATION TYPE | Modification under S4.55(2) (to DA with a CIV >$30million) as specified under Section 275(2) EPAR 2021 |
| REGIONALLY SIGNIFICANT CRITERIA | S4.55(2) to Consent granted for development under Section 2, Schedule 7 of the SRD SEPP: Development Application with a Capital Investment Value > $30 million |
| CIV | $34,301,366 (excluding GST)  (Original DA $32,931,677.00 - excluding GST) |
| CLAUSE 4.6 REQUESTS | No |
| KEY SEPP/LEP | * *State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021* * *SEPP (Industry and Employment) 2021* * *SEPP (Transport and Infrastructure) 2021* * *SEPP (Planning Systems) 2021* * *SEPP No.65 - Design Quality of Residential Apartment Development* * *SEPP (Building Sustainability Index: BASIX)* * *SEPP (Housing for Seniors or People with a Disability) 2004* * *SEPP (Housing) 2021* * *Wyong Local Environmental Plan 2013* * *Central Coast Local Environmental Plan 2022* |
| TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS | None |
| DOCUMENTS SUBMITTED FOR CONSIDERATION | Architectural and Landscape Plans |
| RECOMMENDATION | Refusal |
| DRAFT CONDITIONS TO APPLICANT | N/A |
| SCHEDULED MEETING DATE | 5 December 2023 |
| PLAN VERSION | Amended Architectural Plans Version 2 dated 22.09.23 prepared by ADG Architects.  Amended Layout Plans numbered A100- A105, Version 3 dated 3 Nov 23 prepared by ADG Architects.  Laundry, Robe, and Storage Plans prepared by ADG Architects.  Solar Access diagrams A800, A810-A816, A820- A826, A830- A836, A840-A846, A850- A858, A860-A866, A900-A908 Version 2 dated 22.09.23 prepared by ADG Architects.  Landscape Plan C1 Rev.G, C2-C9 Rev E all dated 25/11/23 and C10-C12 Rev B dated 2/7/23 |
| PREPARED BY | Principal Development Planner - Salli Pendergast |
| DATE OF REPORT | 28 November 2023 |

**EXECUTIVE SUMMARY**

Following a detailed assessment of the proposal, pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, modification application No. DA/1260/2021/A is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

The modified proposal results in proposed changes which are considered to:

* erode the approved level of residential amenity,
* result in non-compliance with planning controls,
* seeks an unreasonable variation to contributions plans, and
* reduce the quality of the housing outcomes associated with the development.

The modification would further exacerbate non-compliance with planning controls and will result in adverse residential amenity impacts for future occupants and result in broader impacts to the provision of future much needed community infrastructure.

Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application cannot be supported.

These matters are further considered below and are discussed later in the report.

**THE SITE AND LOCALITY**

* 1. **The Site**

The site is a large irregularly shaped corner lot with a road frontage on three sides extending between western side of The Entrance Road (Central Coast Highway), the eastern side of Gallipoli Road, and the northern side of Archbold Road. The broader site (including community Lots 2 and 4) accommodates an existing recreational club known as ‘Diggers at The Entrance’ and a multi-level hotel building.

The immediate site area comprising Lot 4 is 7,144m² and is occupied by two dwellings and an at-grade car park (102 spaces) for the Club. Lot 4 has frontage to The Entrance Road to the east of 89.23m, a frontage to Archbold Road to the south of 69.905m, and a frontage to Gallipoli Road to the west of 80.535m. The Site has a cross fall of 8.75m from the lowest point on the south-west corner to the highest point on the north-east corner.

Two single-storey weatherboard cottages are currently located on the two former residential properties on the western side of the site fronting Gallipoli Road. The eastern half of the site is occupied by the southern section of the main carpark for the Diggers Club and comprises an asphalt surface and 102 line-marked car parking spaces.

Surrounding the site on all sides is predominantly residential development including both single dwellings and medium density residential development. There are also varied commercial activities along The Entrance Road in the vicinity of the site. Tuggerah Lake is 170m to the west of the site and there are views from the site across to the lake.

There are scattered trees (approximately 42) along the site frontage (on the adjoining former residential lots) around the perimeter of the carpark, otherwise, vegetation on the site is minimal. The site is not identified as bushfire prone, or flood affected land. The site slopes from where the club is situated down towards Archibald Street.

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Above: Aerial view of site

* 1. **The Locality**

The site is located around 750 metres south of The Entrance Town Centre and 600m north of the Long Jetty local centre. To the west of the site (170m) is Tuggerah Lake and to the east (1.2km) are various beaches including The Entrance, Blue Bay, and Toowoon Bay. The Entrance Road, also known as the Central Coast Highway, is the main road extending north- south on the eastern part of the lake. Regular bus services travel along The Central Coast Highway.

The site is located within an established and well serviced area with various retail and commercial businesses in the surrounding area. The immediately surrounding development in the area comprises one and two storey scale development with mainly low to medium density residential to the north, west and south, and scattered residential and commercial along The Entrance Road.

1. **THE PROPOSAL AND BACKGROUND** 
   1. **The Proposal**

The proposal seeks modification under Section 4.55(2) of the EP&A Act to the consent recently granted for a seniors housing development comprising 89 dwellings, strata subdivision and associated demolition and other works on the subject site.

The modifications include:

* Unit Mix and Number and unit layouts

* An adjustment to the unit configuration as follows:
  + An increase in the number of three-bedroom ILUs from 2 to 17; and
  + A reduction the number of two-bedroom ILUs from 87 to 70.
* The above change has resulted in a reduction in the overall number of dwellings in the development from 89 to 87;
* There has also been a change to the internal layout of apartments to incorporate a bath in the bathroom;

*Applicant’s reason for changes*:

- to diversify the room typology and provide a better and more varied apartment mix;

- to better respond to feedback from the initial marketing campaign of the development;

- to better respond to current gaps in the market and a shortage of 3-bedroom seniors accommodation; and

- to provide greater amenity for residents by including baths in bathrooms.

* Floor Space Ratio
* The total gross floor area (GFA) of the development has increased by 388m² from 9,195m² to 9,583m². In this regard, an additional 398m² of floor area is to be contained within the section of the site covered by the higher FSR – i.e. 0.85:1, which also includes the existing Diggers Club – such that the FSR in this section has increased very slightly from 0.74:1 to 0.75:1. The gross floor area contained within the lower FSR section of 0.5:1 has decreased by 10m² such that the FSR has remained at 0.5:1.
* Parking arrangements
* The provision of enclosed parking spaces (23 spaces) and a reduction of 5 spaces in the overall number of car parking from 106 spaces to 101 spaces as follows:
  + an increase in the amount of resident parking by 6 spaces (from 90 to 96); and
  + a reduction in visitor parking by 11 spaces (from 16 to 5)
  + Clarification that basement scooter parking is limited to 4 spaces (all with chargers).

*Applicant’s reason for changes*:

The inclusion of enclosed car parking spaces in the basement is aimed at providing more secure parking and additional secure storage for residents.

* A new egress path has been provided within the car park.
* The wall adjacent to the egress pathway running parallel to the northern boundary of the site in front of units 9 and 10 in the western building has been changed from timber slat fence to a 1.8m high masonry wall to comply with the National Construction Code.

*Applicant’s reason for changes*:

The inclusion of the new egress path within the carpark and the change to the wall adjacent to the egress pathway in front of units 9 and 10 in the western building is to ensure compliance with the BCA.

* Storage Arrangements

The basement floor plan has been amended to provide an increase in the number of lockable storage cages – either above-ground at the end of individual car parking spaces or in a group at the end of parking aisles. In this regard, 29 x 1m3 cages are provided above parking spaces, in addition to 35 cages varying in size at the end of the aisles – 64 in total.

* External changes
* Changes to the external appearance of the development (i.e., location of windows, and privacy screens and shape of balconies) to accommodate the change in bedroom mix and internal apartment configuration;

*Applicant’s reason for changes*:

The proposed external changes (i.e., changes to window and privacy screen locations and shape of balconies) are simply in response to, or necessitated by, the proposed changes to the internal configurations and inclusion of 3-bedroom apartments.

* Open space, bus stop and landscaping
* An increase in the communal outdoor open space area on level 2 by 14m² and the inclusion of two accessible toilets; and
* Provision of a covered bus stop on The Entrance Road and additional tree planting to address condition 2.6(m) of the consent.
* Additional canopy tree planting is proposed to address condition 2.13 of the consent. The additional trees to be planted (minimum 26) are shown on the amended landscape plan.

*Applicant’s reason for changes*:

The minor change to the layout of landscaping on the ground level is simply in response to, or to match up with, the proposed changes to the configurations of apartments.

The provision of a covered bus shelter on The Entrance Road and the inclusion of additional canopy tree planting are to satisfy conditions 2.6(m) and 2.13 of the consent respectively.

* Contributions

Modifications to the contributions imposed on the consent are sought as part of the application:

* That the “Roads” contributions identified under condition 2.3 be reduced from $600,460.04 to $233,141.24.

*Applicant’s reason for changes*:

The applicant has argued that the applicability of, and the methodology used in the calculation of these contributions in the original development consent was incorrect. The original consent levied the roads and intersection contributions as if the development was for a residential flat building.

The applicant argues that the contributions plan does not specifically identify ‘seniors housing development’ as a type of development that is to contribute towards the Roads and Intersections Works scheme. Council has used the daily vehicle trip rates for a Residential Flat Building. A lesser daily vehicle trip rate should more relevantly be applied than the one identified in the contributions plan.

* That condition 2.4 be deleted. Condition 2.4 requires the payment of contributions of $77,431.96 towards shire-wide infrastructure, services, or facilities.

The applicant argues that these contributions should not be imposed for the following reasons:

* ‘seniors housing’ is not a “Development Type” that is identified in the Contributions Plan and so the proposal does not trigger the application of such contributions under the Shire Wide Contributions Plan (i.e. technically/legally, they are not applicable to the proposed development);
* these contributions relate to facilities that will not be used by residents of a seniors housing development; and
* the approved development is providing its own extensive facilities for residents.
* Civil works

It is requested that condition 2.6(b) be deleted. Condition 2.6(b) requires roadworks be undertaken within Gallipoli Road as follows:

*“Up to full width road reconstruction in Gallipoli Road, comprising new road pavement, for approximately 8m from the intersection with Archbold Road”.*

*Applicant’s reason for change*:

The applicant argues that these works are not generated by, and have no nexus to, the proposed development, and as such are not a reasonable requirement to be imposed on the consent.

The key development data is provided in **Table 1**.

**Table 1: Key Development Data**

|  |  |
| --- | --- |
| **Control** | **Proposal** |
| Site area | The development takes place over 2 lots:   * Lot 4 (24 Gallipoli St) – 7,143m² * Lot 3 (315 The Entrance Rd) – 16,740m²   Total - 21,873m² |
| GFA | Approved  8495m² proposed (Lot 4)  Existing club (Lot 3) GFA 8060m²  Existing hotel (Lot 2) GFA 1999m²  Substation (Lot 1) – no FSR  Proposed  The applicant has argued for an increase of additional 388m² GFA to 9,583m². However, the approved GFA was not 9,195m² as asserted by the applicant but 7,503m² which results in an increase of 2080m².  The increase in GFA for Seniors to 9583m² and existing GFA Club of 8060m² results in a proposed GFA of 17643m². |
| FSR | There are two FSR’s applying to the development:  Approved  0.49:1 (GFA 992m²) was approved, and a max permitted of 0.5:1 (has an area of 2,011m²).  Proposed  The proposal includes a reduction of 10m² GFA which would equate to modified 982m² and a compliant FSR of 0.49:1.  Approved  0.72:1 (approved GFA Seniors is 7,503m² and existing GFA Club of 8060m² which totals approved GFA of 15,734m²) and a max permitted of 0.85:1 (has an area of 21,873m²).  Proposed  Increase in GFA for Seniors to 9583m² and existing GFA Club of 8060m² which totals proposed GFA of 17643m² and a max permitted of 0.80:1 (has an area of 21,873m²).  The modified proposal complies with FSR. |
| No of apartments | Approved:  89 Independent Living Units  The units comprise:   * 87 x two bedroom * 2 x three bedroom   Proposed  87 Independent Living Units  The units comprise:   * 70 x two bedroom * 17 x three bedroom |
| Max Height | There are two height limit controls applying to the development.  Approved  8.5m  16m  There is no change to the approved height. |
| Landscaped area | Approved 3,763m² (52% site area)  Proposed 3,556m² (50% site area) |
| Deep Soil | Approved 1,306m² (18% site area)  Proposed 1371m² (19% site area) |
| Communal Open Space | Approved 2,524m² (35% site area)  Proposed 2,416m² (33% site area) |
| Car Parking spaces | Approved  106 Spaces   * 90 allocated * 16 visitor * No enclosed * 3 motorcycle spaces   Proposed  101 spaces   * 96 allocated * 5 visitor * 23 enclosed spaces * 4 motor scooter spaces |
| Loading | Approved  Waste vehicle loading bay 11m HRV  Proposed  Waste vehicle loading bay 11m HRV |
| Setbacks | Approved  Frontages all levels: 7.5m  Side/Rear (northern): 6m (all storeys)  Complies except that the 5th storey side/rear setback under the DCP requires 9m setback but only 6m proposed. The applicant has argued that the ground level of this part of the building is below the ground level so that there are only 4 levels of the building above ground level.  Proposed  No change to the approved setbacks. |

* 1. **Background**

The development application was lodged on 24 January 2023. A chronology of the development application since lodgement is outlined below including the Panel’s involvement (briefings, deferrals etc) with the application:

**Table 2: Chronology of the application**

|  |  |
| --- | --- |
| **Date** | **Event** |
| 24 January 2023 | DA lodged |
| 3 February 2023 | Exhibition of the application |
| 25 January 2023 | DA referred to external agencies |
| 10 February 2023 | Request for Information from Council to applicant |
| 23 February 2023 | Amended plans and information provided |
| 19 April 2023 | Panel briefing |
| 28 June 2023 | Clearer floor plans provided. |
| 23 August 2023 | Report to Council on applicant’s request to vary the Contributions Plan. Council resolved not to waive the Contributions applicable under the adopted contributions plans. |
| 24 August 2023 | Request for Information from Council to applicant.   * ADG and Design concerns * Advice that the variation proposed to the contributions plan is not supported. * Requested a graphic analysis of the modification comparing the approved and proposed and justifying the reasons. * Requesting consideration for the withdrawal of the application. |
| 3 September 2023 | Update from applicant advising not withdrawing and intend on providing information in 2 weeks and requesting clarification on Condition 2.6(b) |
| 3 September 2023 | Clarification regarding Condition 2.6(b) provided. |
| 27 September 2023 | Amended plans and information provided. |
| 25 October 2023 | Meeting with applicant held to discuss latest plan changes |
| 26 October 2023 | Request for Information from Council to applicant   * ADG and design concerns |
| 13 November 2023 | Amended plans and information provided |
| 5 December 2023 | HCC Regional Planning Panel Determination Meeting |

* 1. **Application History**
* Development Consent No DA/1260/2021 (PPSHCC-91) was granted by The Hunter and Central Coast Regional Planning Panel on 26 September 2022 for a proposed Seniors Housing Development comprising 89 dwellings, strata Subdivision & Associated Demolition and other works at Lots 3 & 4 DP 271196, 24 Gallipoli Road, Long Jetty.

The Panel consideration and decision is provided as an attachment.

* Council considered the matter of the variation to the development contributions levied under *The Entrance District Contributions Plan* and the *Shire wide Infrastructure, Services and Facilities Development Contribution Plan* sought by the applicant in respect of DA/1260/2021/A at its Ordinary meeting of 23 August 2023.

Council resolved at that meeting:

1 *Not support the request to amend the development contributions relating to DA/1260/2021/A at 24 Gallipoli Road, Long Jetty.*

*2 Advise the Hunter and Central Coast Regional Planning Panel of its decision.*

1. **STATUTORY CONSIDERATIONS**

**Modification of Consents- Section 4.55**

In accordance with Section 4.55 (2) of the EP&A Act, a consent authority may modify a consent provided:

1. *it is* *satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
2. *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
3. *it has notified the application in accordance with—*
4. *the regulations, if the regulations so require, or*

*(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*

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

Substantially the same development (s.4.55(2)(a))

A consent authority must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted. This is a necessary jurisdictional position that must be established in the assessment of the proposal.

The proposed modifications to the development as *originally* approved, inclusive of the latest plans are as follows:

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| --- | --- |
| **Modified Development** | **Original Development** |
| **Quantitative Assessment** | |
| 87 units | 89 units |
| 17 x 3 bedroom  70 x 2 bedroom | 2 x 3 bedroom  87 x 3 bedroom |
| GFA - 9,583m² | GFA - 7,503m² |
| FSR - 0.75:1 and 0.5:1 | FSR - 0.74:1 and 0.5:1 |
| Landscaped area 3,556m² (50% site area) | Landscaped area 3,763m² (52% site area) |
| Deep Soil - 1371m² (19% site area) | Deep Soil - 1,306m² (18% site area) |
| COS - 2,416m² (33% site area) | COS - 2,524m² (35% site area) |
| Parking - 101 spaces (96 allocated & 5 visitor & 23 enclosed spaces & 4 motor scooter spaces) | Parking - 106 Spaces (90 allocated & 16 visitor & no enclosed & 3 motorcycle spaces |
| Reduced storage within both the basement and each unit (to accommodate a bath and extra bedroom) but with an increase in unit size results in non-compliance. The proposed modification has reduced storage areas so that 34/87 units (39%) have less storage than the minimum required. | The original proposal complied with the storage provisions of the ADG having storage within units and the remaining shortfall provided in the basement. |
| Private Open Space  34% of units (30/87 units) have POS without the required minimum dimension or area under the ADG.  19/87 units (22%) have POS without the minimum dimension or area under the SEPP Seniors Housing | Private Open Space  The approved scheme had 5/89 units (6%) that did not comply with the ADG or the SEPP Seniors. |

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| **Modified Development** | **Original Development** |
| **Qualitative Assessment** | |
| A change to the internal layout of most apartments to incorporate a bath in the bathroom. | |
| Changes to the external appearance of the development (i.e., location of windows, and privacy screens and shape of balconies) to accommodate the change in bedroom mix and internal apartment configuration | |
| Reduced building separation resulting in privacy impacts. In the proposed modification, revision 2, there are 13 instances of inadequate separation between rooms in 26 separate units. In the approved DA there are 7 instances between 14 units.  The proposed modification has nearly doubled the number of instances of inadequate separation. | |
| Increased direct lines of sight created between windows and balconies across corners that have less than the required minimum separation. In the approved DA there are 3 instances between 6 units. However, there are 8 instances where direct lines of sight are possible between rooms in 16 units under the modified development. | |
| Storage cages in basement have been reduced in number and a lot are of insufficient size to be usable for storage of bulky items.  The latest plan revision includes an arrangement for 29 x 1mᶟ cages to be provided above parking spaces. These areas require you to lift items for storage to above car bonnet height and will be hindered by the occupation of the space by a vehicle.  The quality of the modified storage arrangements when compared with the generous storage originally approved within each unit has been reduced. | |
| There is a reduction in basement storage and a reduction in unit storage but an increase in the number of 3-bedroom units (2 bed units require 8m3 and 3 bedroom units require 10m3). | |
| The increase in number of bedrooms in the development increases the potential demand for car parking including for permanent residents and visitors. | |
| Deletion of condition 2.4 requiring payment of Shire Wide Contributions under the adopted Council Plan and reduction in the applicable ‘roads’ contributions under Condition 2.3 will reduce the funds for much needed community infrastructure for which this development will increase demand. | |

It is considered that the proposed modifications will unreasonably modify the development to which the original consent was granted.

The applicant has argued that the modified development is substantially the same development to that originally approved and that the impacts of the change are minimal.

It is noted that there is no change to the building height or approved boundary setbacks and the development continues to generally comply with relevant planning controls other than those contained under the ADG. The applicant has continued to argue that *SEPP 65 does not apply to the development*. This position is contrary to the one Council formed under the original assessment of the DA wherein legal advice on both sides was obtained. Council’s position remains that SEPP 65 and the ADG do apply to the proposal. The modifications as proposed will result in non-compliances with several ADG planning controls and this aspect of the proposal is not supported.

Although the modified development does not represent a radical change to the form, bulk, and scale of the originally approved development on the site and there is little to no change to the scale and external appearance of the proposal when viewed from surrounding streets, the residential amenity for future residents will be unreasonably and unnecessarily compromised under the modified design.

The development is of a scale and value that will create additional demands on existing community infrastructure. The variations sought to Council’s contributions plans are not supported and will have an adverse impact on the provision of essential community infrastructure.

The proposal does represent a transformation of the qualitative and quantitative elements of the originally approved development and aspects of the modified development could be argued to be not substantially the same development for which consent was originally granted, despite the claim to the contrary by the applicant. However, given the other issues related to the modification, the application is not supported. If the development in its entirety was deemed to be substantially the same development, the proposal is unsatisfactory as it result in a housing outcome of reduced quality with unreasonable and unnecessary adverse amenity impacts for future occupants.

Consultation (s.4.55(2)(b)

The original and modified applications were not required to be referred to any external authorities for comment.

Notification (s.4.55.(2)(c)(d))

The application was notified from 3 February 2023 until 24 February 2023 in accordance with Wyong DCP Chapter 1.2- Notification of Development Proposals. There were no submissions received.

Section 4.55(3)

Section 4.55 (3) reads:

*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.*

Section 4.55(3) requires the consent authority to consider matters referred to in Section 4.15(1) as are relevant to the application for modification of the development consent.

* *Matters for Consideration (Section 4.15(1))*

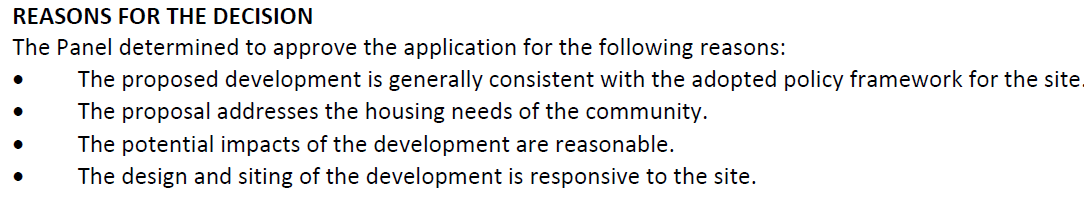
When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (‘EP&A Act’). These matters as are of relevance to the development application include the following:

1. *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
2. *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
3. *the suitability of the site for the development,*
4. *any submissions made in accordance with this Act or the regulations,*
5. *the public interest.*

The modification has been assessed against the matters for consideration under Section 4.15 of the Act and found to be unsatisfactory with regard to impacts upon the residential amenity of future occupants and compliance with the relevant ADG planning controls and the broader public interest concerns, and infrastructure impacts to the local community from the loss of contributions revenue. These matters are further considered below and are discussed later in the report.

* *Reasons for the Decision*

Additionally, under Section 4.55(3) consideration must be given to the reasons for the granting of the original approval as outlined below.



The modified proposal is considered unsatisfactory with regard to the above original reasons for the granting of approval, particularly in relation to the potential impacts of the development.

* 1. **Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

* *State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021*
* *SEPP (Industry and Employment) 2021*
* *SEPP (Transport and Infrastructure) 2021*
* *SEPP (Planning Systems) 2021*
* *SEPP No.65 - Design Quality of Residential Apartment Development*
* *SEPP (Building Sustainability Index: BASIX)*
* *SEPP (Housing for Seniors or People with a Disability) 2004*
* *SEPP (Housing) 2021*
* *Central Coast Local Environmental Plan 2022*
* *Wyong Local Environmental Plan 2013*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 3: Summary of Applicable State Environmental Planning Policies**

|  |  |  |
| --- | --- | --- |
| **EPI** | **Matters for Consideration** | **Comply (Y/N)** |
| SRD SEPP | * Section 2.19 declares the proposal as regionally significant development pursuant to Section 2 (General Development over $30 million) of Schedule 6 of the SEPP (Planning Systems) 2021. The application is a S4.55(2) modification as specified under Section 275(2) EPAR 2021 | Y |
| SEPP 65 | * Clause 30(2) - Design Quality Principles –   The modified proposal results in a worsened outcome (when compared with the earlier approved plans) with regard to a number of the design quality principles and ADG requirements. This is discussed below.  In this regard, the applicant has previously advised (and continues to advise):*SEPP 65 is* ***not*** *applicable to the proposed development. This is indicated under Clause 4 of SEPP as follows:*  *“SEPP 65 and the ADG applies to residential flat buildings, shop top housing and the residential component of mixed-use developments”*  *There is no reference to “seniors housing”, which is separately defined from residential flat buildings under the Standard Instrument and also under Wyong LEP 2013*.  Legal advice was obtained during the original DA which confirmed that the provisions of SEPP 65 apply to the proposal. | N |
| SEPP (Resilience and Hazards) 2021 | Contamination and remediation was considered in the original development application and there is no change to this aspect under the modified proposal.  The site is located within both the Coastal Use Area and Coastal Environment Area, The modified proposal remains consistent with Sections 2.10 and 2.11 of the SEPP. | Y |
| SEPP (Transport and Infrastructure) 2021 | There is no change proposed under the modified development to the original considerations of the development under Sections 2.119, 2.120, and 2.122 of the SEPP at the time at which the consent was granted. The application was referred to Transport for NSW who rejected the referral for both concurrence and a referral under s2.121. | Y |
| Seniors Housing SEPP | The modifications do not result in any non-compliances to the the applicable planning controls under the SEPP (Housing for Seniors or People with a Disability) 2004. It is noted that the original SEE stated that the DA had not been lodged under SEPP (Housing for Seniors or People with a Disability) 2004. | Y |
| BASIX SEPP | An amended Basix Certificate 1358626M was provided for the modified development. | Y |
| SEPP (Housing) 2021 | This SEPP commenced on 26 Nov 2021.The DA was lodged prior to the commencement of this SEPP and the savings provisions apply. | N/A |
| SEPP (Industry and Employment) 2021 | The consent granted included new identification signage assessed as ‘business identification signs’ with regard to Section 3.6 of the SEPP. There is no change proposed to the signage approved under the proposed modification | Y |

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building and the Apartment Design Guideline (ADG)

State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development) (SEPP 65) applies to the development and requires the design quality of the development to be taken into consideration and evaluated against the design quality principles.

The modification results in a number of non-compliances with the ADG whereas the original development generally complied. These issues have been raised with the applicant and amended plans have been provided. Although a number of issues raised have been addressed, some matters remain unsatisfactory. The applicant has responded by advising that SEPP 65 and the ADG are not applicable to the development. This position is contrary to Council’s position taken under the original assessment of the DA which was informed by independent legal advice. Council’s position remains that both SEPP 65 and the ADG do apply to the proposal.

The modifications, as proposed, will result in non-compliances with a number of ADG planning controls and the proposed changes to the plans under the application for modification is not supported.

The non-compliances under the modified development are outlined below.

* *Private Open Space (POS)*

In a seniors living development that is in the form of an RFB with 20% of units having 3 bedrooms, it is unacceptable that 34% of units have less than the minimum POS required under the ADG and 22% of units have less than the minimum under the SEPP. The provision of POS is much worse in the modification.

The previous approved DA complied with the minimum POS required under the ADG for nearly all apartments. It is not satisfactory that the modification proposes units with POS that doesn't comply. The POS needs to be usable and free from obstructions like air conditioning units. The modification should not result in unreasonable amenity impacts.

* *Separation and privacy*

In the proposed modification, revision 2, there are 13 instances of inadequate separation between rooms in 26 separate units: units 38 & 39 (2.9m), units 43 & 46 (4.8m), units 43 & 44 (2.8m), units 55 & 56 (3.2m), units 60 & 63 (5.1m), units 60 & 61 (2.8m), units 62 & 63 (2.2m), units 70 & 71 (3m), units 75 & 76 (2.8m), units 75 & 78 (5.1m), units 77 & 78 (2.8m), units 83 & 84 (3.2m), units 88 & 89 (2.8m). In the approved DA there are 7 instances between 14 units.

The proposed modification has nearly doubled the number of instances of inadequate separation and any amendments to an approved development should not decrease the amenity that was approved under the original granting of consent.

* *Direct Lines of sight*

There are 8 instances where direct lines of sight are possible between rooms in 16 units: units 38 & 39 (study & bedroom), units 43 & 46 (dining & kitchen), units 55 & 56 (study & bedroom), units 60 & 63 (dining & kitchen), units 70 & 71 (study & bedroom), units 75 & 78 (dining & kitchen), units 83 & 84 (study & dining), units 88 & 89 (bedroom & balcony). In the approved DA there are 3 instances between 6 units.

The proposed modification has nearly doubled the number of instances of where direct lines of sight without adequate separation can occur, which results in poor amenity outcomes.

* *Bedroom size*

There are 11% of units in the latest revision that have a second or third bedroom with an area of less than 9m². Additionally, there are 53% of units in the latest revision that have a second or third bedroom with a minimum dimension of less than 3m. This is considered to result in poor amenity for future occupants. Any amendments to an approved development should not result in the reduction of amenity, nor should they create impacts that did not exist in the original approved plans.

* *Storage*

Internal storage areas appear to have been sacrificed to fit a bath into each unit and to provide an additional bedroom for 15 units. The approved DA had larger laundry areas that could accommodate storage, and larger storage areas within units, in addition to more generous storage areas in the basement. The proposed modification has reduced storage areas so that 39% of units do not have adequate internal storage. This is 34 out of 87 units which have internal storage less than the minimum required for compliance. Whereas the original approved development achieved compliance. This is considered unacceptable.

Basement storage in the approved DA was satisfactory and not all units needed to be allocated storage within the basement area, as adequate storage was available wholly within a number of units. However, the proposed modification has reduced the storage both within the basement and within units. Some of this storage shortfall is a direct result of an increase in the number of 3-bedroom units as 2 bed units require 8m3 and 3 bedroom units require 10m3.

Storage cages in the basement have been reduced in number and many are of insufficient size to be usable for storage of bulky items like a bike. The latest plan revision includes an arrangement for 29 x 1m3 cages to be provided above the parking spaces. These areas would appear to require items for storage to be lifted above car bonnet height and access would appear to be hindered when the space is occupied by a vehicle. The modified storage arrangements are unsatisfactory and non-compliant when compared with the generous storage originally approved within each unit.

* *Parking*

The increase in number of bedrooms in the development increases the potential demand for car parking including for permanent residents and visitors. However, parking provision has been reduced under the modified proposal particularly the provision of visitor parking. This is not considered reasonable or warranted in this instance.

* *Scooter parking*

Under the original consent, no bicycle parking facilities were provided with the justification being that the storage spaces for 43 motor scooters with charging stations was to be provided as an alternative, given it was a senior’s housing development. Additionally, if no communal bicycle parking facilities were provided, storage cages would be of sufficient size to accommodate bicycles.

However, under the modification there appears to be limited space for storage of any motor scooters within the basement. The proposed four scooter spots for 87 seniors living units seems to be insufficient. Additionally, many storage cages are insufficient to accommodate a bike.

* *Solar Access*

Under the original proposal 80% of the living areas and POS area of all units within the development were to receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter which complied with the ADG, and SEPP Seniors. The original also included a minor variation (4%) to the ADG criteria as 15.7% of apartments (14 units) were to receive no solar access mid-winter. Although this has increased to 17% (ie. 15 out of 87 units), this is only by virtue of the overall reduction in the development by 2 units and is consistent with the original approval.

*Wyong Local Environmental Plan 2013*

*Permissibility and zone objectives*

The development application was assessed under Wyong Local Environmental Plan (WLEP) 2013 which was in place at the time. The site was zoned RE2 under that Plan.

The proposed modified development continues to be defined as *Seniors Housing* which is prohibited within the RE2 zone under clause 2.3 of WLEP 2013. However, the site is identified as ‘item 4’ under Schedule 1 (Additional Permitted Uses) of WLEP which permits development for the purposes of seniors housing if the development is associated with a registered club in accordance with clause 2.5.

Clause 2.5 of WLEP reads:

*2.5   Additional permitted uses for particular land*

*(1)  Development on particular land that is described or referred to in Schedule 1 may be carried out—*

*(a)   with development consent, or*

*(b)   if the Schedule so provides—without development consent,*

*in accordance with the conditions (if any) specified in that Schedule in relation to that development.*

*(2)  This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.*

Schedule 1 (Additional Permitted Uses) or WLEP reads:

*Use of certain land at Bateau Bay, Canton Beach, Doyalson, Gorokan, Gwandalan, Halekulani, Killarney Vale, Lake Munmorah, Norah Head, Ourimbah, Shelly Beach, The Entrance, Toukley, Tumbi Umbi and Wyong*

*(1)  This clause applies to the land identified as “Item 3”, “Item 4”, “Item 5”, “Item 6”, “Item 7”, “Item 8”, “Item 9”, “Item 10”, “Item 11”, “Item 12”, “Item 13”, “Item 14”, “Item 15”, “Item 16”, “Item 17”, “Item 18”, “Item 19”, “Item 20” and “Item 21”on the*[*Additional Permitted Uses Map*](https://www.planningportal.nsw.gov.au/publications/environmental-planning-instruments/wyong-local-environmental-plan-2013)*.*

*(2)  Development for the purposes of hotel or motel accommodation, residential care facilities, seniors housing and serviced apartments is permitted with development consent if the development is associated with a registered club.*



Above: Extract from the WLEP Additional permitted uses map

The proposed development is to be associated with the existing Diggers RSL club and as such is permissible with development consent if this association can be satisfactorily demonstrated.

The development as proposed to be modified does not alter those aspects of the development upon which the original development relied to demonstrate compliance with Clause 2.5 for permissibility.

The modified proposal continues to be permissible and consistent with the RE2 zone objectives.

*General Controls and Development Standards (Part 2, 4, 5 and 6)*

The LEP also contains controls relating to development standards, miscellaneous provisions, and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

**Table 4: Consideration of the LEP Controls**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Requirement** | **Proposal** | **Comply** |
| Height of buildings  (Cl 4.3) | The WLEP map indicates that there are two height limits apply to the land comprising the site. The building heights are 16m and 8.5m apply to the parts of the site as shown in the map below.    Above: WLEP Height of buildings map | No change to height | Yes |
| FSR  (Cl 4.4(2)) | The WLEP map indicates that there are two FSR limits applying to the land comprising the site. These FSR’s are 0.85:1 and 0.5:1 and apply to the parts of the site as shown in the map below. The proposed FSR is based upon the site area within both Lots 3 and 4 (but not including Lots 1 and 2). The existing GFA for the hotel on Lot 2 predated the community title subdivision of the site and as such was based on a total site area that included the area of current Lot 3 (containing the club) and part of the area known as Lot 4.    Above: WLEP FSR map for the site | The modified development proposal results in additional GFA but continues to comply with the maximum FSR requirements for the relevant part of the site. In this regard a proposed FSR of 0;5:1 for the area shown in blue and 0.80:1 for the remaining area within Lots 3 and 4 combined. | Yes |
| Acid sulphate soils  (Cl 6.1) | The site is mapped as potentially containing acid sulphate soils (Class 5) and under Clause 7.1 and this has been assessed with the original development application. | There are no changes proposed to the approved basement depth or other aspects under the modified proposal | Yes |
| Essential Service (Cl 7.9) | Under the development application, satisfactory servicing was demonstrated for the development in accordance with Clause 7.9 for the supply of water, electricity, the disposal and management of sewer, stormwater drainage and suitable vehicle access. | There are no changes to these aspects of the approved development under the modification. | Yes |

The proposal is consistent with the relevant provisions of the LEP.

**Central Coast Local Environmental Plan 2022**

The Central Coast Local Environmental Plan 2022 (CCLEP) was finalised on 24 June 2022 and came into effect on 1 August 2022. Applications lodged prior to 1 August are subject to the provisions of planning controls that existed at the time of lodgement, being the Wyong Local Environmental Plan 2013. Notwithstanding, the proposed development remains permissible under the CCLEP.

* 1. **Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

* **Wyong Development Control Plan 2013**

The following Chapters of *Wyong Development Control Plan 2013* (‘the DCP’) are relevant to this application:

*-* Chapter 1.2 - Notification of Development Proposals

- Chapter 2.4 - Multiple Dwelling Residential Development

- Chapter 2.6 – Signage

- Chapter 2.11 - Parking and Access

- Chapter 3.1 - Site Waste Management

- Chapter 5.3 – The Entrance Peninsula

The modified proposal remains generally consistent with the relevant parts of the DCP chapters and there are no further variations proposed. Although it is acknowledged that with the proposed increase in the number of 3 bedroom units, the previous areas of compliance (and minor non-compliances) with Council’s DCP (specifically the controls under Chapters 2.4 and 2.11 relating to parking provision, visitor parking, private open space, separation for visual privacy and storage) are now exacerbated under the modified proposal.

* **Central Coast Development Control Plan 2022 (CCDCP 2022)**

The application predates the operation ofCCDCP 2022 and therefore Wyong DCP 2013 applies. There is no significant change in relevant DCP controls for parking or any other matters under CCDCP 2022.

* **Contributions Plans**

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and continue to apply to the development.

* The Entrance District Development Contributions Plan
* Shire wide Infrastructure, Services and Facilities Development Contributions Plan

Conditions 2.3 and 2.4 were imposed on the consent that was granted, requiring payment of a monetary contribution in accordance with the adopted plans.

The modification application seeks to revise the “road” component of the contribution thereby reducing the amount of the overall contribution as follows “… *It is requested that the “Roads” contributions identified under condition 2.3 be reduced from $600,460.04 to $233,141.24, as this figure has been incorrectly calculated...* *The proponent maintains that a contribution by the development for the roads scheme is not authorised by the Contributions Plan.”* The applicant is seeking to use a reduced daily vehicle trip figure for the development than that which has been applied under the Plan.

The application also seeks deletion of condition 2.4 arguing that it is not applicable as:

*• seniors housing is not type of development that triggers the application of such contributions under the Shirewide Plan (i.e. technically/legally, they are not applicable to the proposed development);*

*• these contributions relate to facilities that will not be used by residents of a seniors housing development; and*

*• the approved development is providing its own extensive facilities for residents.* *These facilities include:*

*a. communal open space areas comprising an outdoor kitchen, BBQ and community garden;*

*b. internal meeting/function rooms; and*

*c. a direct link to the Diggers @The Entrance Club to enable the residents to utilise its wide range of recreational, dining and community facilities and services.*

A Council report was prepared in relation to the request by the applicant to vary the development contributions levied under *The Entrance District Contributions Plan* and the *Shire wide Infrastructure, Services and Facilities Development Contribution Plan*. Council considered the report at its Ordinary meeting held 23 August 2023.

The report identified that “*Development contributions have been levied consistently under The Entrance District Contributions Plan and the Shire wide Infrastructure, Services and Facilities Development Contribution Plan and the contributions received have been used to deliver priority community infrastructure included in the plans*.

Council resolved as follows:

1 *Not support the request to amend the development contributions relating to DA/1260/2021/A at 24 Gallipoli Road, Long Jetty.*

*2 Advise the Hunter and Central Coast Regional Planning Panel of its decision.*

The approved and modified development will create additional demands on existing community infrastructure. The reduction sought to the contributions under Council’s adopted contributions plans is not reasonable and will result in adverse impacts to the provision of essential community infrastructure.

The proposed change to condition 2.3 and deletion of condition 2.4 are not in the public interest and are not supported. The full report that was considered by Council is provided in **Attachment 3**.

* 1. **Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

* 1. **Section 4.15(1)(a)(iv) - Provisions of Regulations**

The modification does not affect any considerations under Clause 92(1) of the Regulation.

* 1. **Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality have been considered. In this regard, the application is considered unsatisfactory and will have adverse impacts related to residential amenity for future occupants of the development and to the broader community with the adverse impacts to much needed revenue from contributions for future community infrastructure. The application not supported on various grounds as discussed earlier in the report.

* 1. **Section 4.15(1)(c) - Suitability of the site**

The modified proposal in its current form is considered unsuitable by virtue of the changes proposed which expand and intensify the development within the site in a manner which erodes the approved level of residential amenity and reduces the overall quality of the development and housing outcomes as discussed earlier in the report.

* 1. **Section 4.15(1)(d) - Public Submissions**

There are no submissions associated with the original or modified proposal.

* 1. **Section 4.15(1)(e) - Public interest**

The modified proposal in its current form is not in the public interest and is not supported. The justification for the variation to Council’s contributions plans is not satisfactory and will have an adverse impact on the provision of essential community infrastructure.

1. **REFERRALS AND SUBMISSIONS** 
   1. **Agency Referrals and Concurrence**

The Section 4.55 application was not required to be referred to agencies for comment/concurrence/referral.

* 1. **Council Referrals**

The development application has been referred to various Council officers for technical review as outlined in the table below.

**Table: Consideration of Council Referrals**

|  |  |  |
| --- | --- | --- |
| **Officer** | **Comments** | **Resolved** |
| Senior Development Engineer | Condition 2.6(b) of the DA consent was included to cover reconstruction of the damaged sections of road pavement along the south of Gallipoli Road, approaching the intersection with Archbold Road. The Gallipoli Road half road works, including kerb and guttering and new road pavement extension to adjoin the new kerb alignment, required by DA consent Condition 2.6(a), will extend to approx. 12.7m short of the Gallipoli and Archbold Road intersection. The condition to extend the pavement works “up to full width” was intended to repair the damaged road pavement within and immediately adjacent to the transitional works area of the required road works, to provide a smooth transition between the new works and exiting road infrastructure.  Furthermore, the proposed development will introduce significantly more vehicles to the Gallipoli and Archbold Road intersection daily, in comparison with the existing site usages and access locations. Condition 2.6(b) has been amended to be more precise on the extent of these required pavement reparation works.  It is deemed that the Applicant has provided insufficient information to date to correctly justify a “negligible/minimal” impact on the Gallipoli Rd & Archbold St intersection by the development. No accurate traffic counts/surveys on the existing traffic along Gallipoli Rd and at the Gallipoli Rd & Archbold St intersection to clearly justify that the additional 189 daily vehicle trips for the development will not have a significant numerical impact on the existing traffic along this road / through this intersection. | Y |
| Urban Designer | Concerns raised regarding the ADG non- compliances related to the application. | N |
| Asset Management | No comment |  |
| Environmental Protection Officer | No objection | Y |
| Contributions | Not supported | N |
| Tree Officer | No objection | Y |

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

* 1. **Community Consultation**

The proposal was notified in accordance with Wyong DCP Chapter 1.2 - Notification of Development Proposals from 3 February 2023 until 24 February 2023. No submissions were received. It is noted that no submissions were received for the original development application.

1. **SUMMARY OF CONDITION CHANGES**

The following conditions are the subject of the assessment of this application and having considered the relevant planning controls and the proposal in detail the following changes are recommended:

* Condition 1.1 (approved architectural & landscape plans and documentation).

Comment: Modification not supported, condition to remain unchanged.

* Condition 2.3 (contributions under The Entrance District Contributions Plan)

Comment: Modification not supported, condition to remain unchanged

* Condition 2.4 (contributions under Shire Wide Infrastructure, Services and Facilities Development Contributions Plan)

Comment: Deletion of the condition not supported, condition to remain unchanged

* Condition 2.6(b) (Works in the road reserve)

Comment: Deletion of the condition is not supported, however, a modification to the the wording of the condition to clarify the works required is supported.

Current condition reads:

1. *Up to full width road reconstruction in Gallipoli Road, comprising new road pavement, for approximately 8m from the intersection with Archbold Road.*

Proposed revised wording for condition reads:

*b) Up to full width road pavement reconstruction in Gallipoli Road, within proximity of the intersection with Archbold Road, as required to replace the damaged sections of road pavement approaching the intersection and ensure a smooth transition between the required works and existing road infrastructure.*

However, the application for modification is not supported on various other grounds.

* Condition 2.6(m)– requesting deletion of the condition requiring a bus shelter as has been shown on the plans.

Comment: Deletion of the condition is not supported, condition to remain unchanged. The details shown on the plans for the placement of the proposed bus shelter is not satisfactory.

* Condition 2.13 requiring replacement tree canopy planting in a viable arrangement and placement for a minimum of 26 canopy trees.

Comment: Deletion of the condition not supported condition to remain unchanged. An amended landscape plan has been provided; however, this plan includes the proposed bus stop location which is not satisfactory.

1. **CONCLUSION**

The modified proposal is not supported. The modification would further exacerbate non-compliance with the ADG and will result in adverse residential amenity impacts and broader impacts to the provision of future much needed community infrastructure if the contributions were reduced.

Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application cannot be supported subject to the reasons for refusal at **Attachment A**. The modifications to the approved architectural plans are not supported, and although the modification to the wording of condition 2.6(b) related to road works could be supported in isolation (as it does not rely on any plan details), the application is recommended for refusal on the grounds as discussed above in the report.

1. **RECOMMENDATION**

That the Section 4.55(2) application numbered DA/1260/2021/A for the proposed modification to the approved seniors housing development, associated works and subdivision at 24-26 Gallipoli Road and 315 The Entrance Road Long Jetty be REFUSED pursuant to the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

* Attachment A: Reasons for refusal
* Attachment B: Original Panel Determination PPSHCC-91 with conditions
* Attachment C: Report to Council 23 August 2023 and Resolution
* Attachment D: Architectural Plans and Landscape Plans