

TSP Ref: 20-20

26th September, 2023

Chief Executive Officer
Central Coast Council
PO Box 20
WYONG NSW 2259

Attention: Ms Salli Pendergast

Dear Salli,

**RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION
S.4.55 APPLICATION TO AMEND DA No. 1260/2021
SENIORS HOUSING DEVELOPMENT COMPRISING
EIGHTY-NINE (89) INDEPENDENT LIVING APARTMENTS
AND STRATA SUBDIVISION
24-26 GALLIPOLI ROAD, LONG JETTY**

INTRODUCTION

The following response has been prepared to address the items identified in Council's letter dated 24th August 2023 in relation to the above S.4.55 application.

This response needs to be read in conjunction with the accompanying updated architectural plans prepared by *ADG Architects* (titled "S.4.55 RFI" Issue 2 all dated 22-9-23) and the following appendices, which are provided as separate attachments:

- Appendix A – Figures 1 – 9 prepared by *ADG Architects*;
- Appendix B – Overlay plans prepared by *ADG Architects* showing the proposed amended layout over the currently approved layout;
- Appendix C – Common Outdoor Area plan prepared by *ADG Architects*;
- Appendix D – Extract from S.4.55 SEPP 65 Report showing storage provision prepared by *ADG Architects*;
- Appendix D – letter from *Progressive Property Solutions* dated 11th September, 2023; and
- Appendix E – letter from *Traffix* dated 15th September, 2023.

RESPONSE TO ISSUES IN LETTER

1. Apartment Design Guide (ADG and Design

To provide context to the issues raised by Council in relation to the ADG and SEPP 65 generally, the view stated in the Statement of Environmental Effects (SoEE) lodged with the original DA that SEPP 65 does not apply to the development is re-iterated. To re-affirm this view, legal advice was obtained during assessment of the original DA addressing the issue of SEPP 65 and it's applicability to the proposed seniors housing development. This advice concluded that the provisions of SEPP 65 did not apply to the development for a number of reasons, including the fact that the proposed development was not a type of development by which clause 4(1) of SEPP 65 is caught. Rather, SEPP 65 and the ADG were being used simply as a guideline to inform the design of the development where relevant and when the more specific provisions the former SEPP Seniors Housing 2004 (SEPP SH) was silent on particular issues, as opposed to a relevant planning control.

In this regard, it has always been understood that the applicable planning control to which the DA (and hence any S.4.55) was to be assessed against was the SEPP SH, given it pertains specifically to seniors housing. In particular, SEPP SH contains a range of requirements and development standards specifically applicable to this form of development that would therefore override (or prevail against) the ADG – such as accessibility, balconies/private open space and landscaped areas – whilst other items flagged in the ADG, such as apartment mix, would be completely impractical to apply given the different form of development seniors housing takes and the different type demographic it is aimed at i.e. housing occupied by 1 or 2 persons at best, thereby negating the need for a specific (or prescribed) apartment mix. SEPP SH also contains a specific reference to another set of design guidelines, being the *Seniors Living Policy: Urban Design Guidelines for Infill Development* under Clause 31, which are both comprehensive and pertain specifically to seniors housing, thereby further entrenching the position that SEPP 65 is not relevant (or superfluous) to the assessment of such developments.

On this basis, both the original DA and the S.4.55 were accompanied by a detailed SEPP 65 Design Excellence Report and ADG Compliance Table demonstrating that the proposed development could (or does) comply with those parts of the ADG not covered (or overridden) by SEPP Seniors Housing and deemed to be of some relevance to a seniors housing development.

Bearing this in mind and for consistency in the application of SEPP 65 to the modified development, the table below provides a response to each of the issues raised by Council with respect to the ADG that fall into one of the following four (4) categories:

1. **Not applicable/overridden by SEPP SH** – these comments refer to those issues that are other not relevant to seniors housing or where they have been overridden by a development standard in SEPP SH.
2. **Incorrect** – these comments refer to those issues that are incorrect i.e. where a dimension or item on the modified has been incorrectly interpreted or been referred to incorrectly. These responses make reference in a number of areas to the overlay plans submitted with this letter, which have been submitted to compare the currently approved layout to the amended layout proposed under the S.4.55 to assist Council in their assessment of same.
3. **No change** – these comments refer to those issues that haven't changed from the previous application and were either deemed satisfactory or not applicable at that time and hence remain so. As a result, these issues are not able to be revisited or reconsidered and as such, do not require any further discussion.
4. **Agreed** – these comments refer to those issues where it is agreed that an improvement could be made and where changes have therefore been made to the plans.

Council Issue	Response
Separation and Setbacks	INCORRECT
a. Building separation between buildings on the site in some areas is less than minimum required. For example, on the level 2 floor plan A102 building separation between unit 37 and unit 50 is only 9.9m (not 12m as required).	Separation has <u>been increased</u> slightly from 9.4m to 9.9m and hence better than current situation. See dimension provided as Figure 1 in Appendix A and as shown on sheet OL112 of Overlay Plans in Appendix B.
b. Further encroachments on rear building setback less than 6 metres in some areas. For example units 33, 39, 56 and 71.	NO CHANGE There has been no change to the building, with the walls of Unit 31 (and the units above on Levels 2 – 4) still at 6.0 and 6.1m. Only the planter box encroaches the 6.0m – and this is only by 660mm and has been added to articulate the corner of the building and soften the appearance from the street. See Figures 2a and 2b in Appendix A.

Council Issue	Response
	<p>With respect to Unit 39 (and 56 and 71 above), there is no change to the setback whatsoever, with the building still at 6.0m and the planter boxes still setback 5.38m but simply moved slightly to the east.</p> <p>See sheet OL113/OL114/OL115 on the Overlay Plans in Appendix B.</p>
<p>c. Separation between habitable and/or non-habitable rooms less than the required minimum in numerous locations and this result in privacy impacts. For example, separation Page 2/4 between the balcony of unit 75 and the bedroom of unit 76 is 1.7m which is much less than the minimum 6m required.</p>	<p>NO CHANGE</p> <p>\$4.55 same as approved DA.</p> <p>See overlay plans in Appendix B (sheet OL114).</p>
<p>d. Direct lines of sight created between windows and balconies across corners that have less than the required minimum separation. For example, the balcony of unit 50 has a direct line of sight to the living area of unit 37 and the separation distance is 9.9m which is less than the required minimum of 12m.</p>	<p>INCORRECT</p> <p>Separation has been increased slightly from 9.4m to 9.9m and hence better than current situation.</p> <p>Point a above.</p>
<p>Open Space</p> <p>e. Calculation of the proposed communal open space area with a minimum dimension of 3m as required under the ADG is 1,698m² which is less than the required minimum of 1,786m².</p>	<p>INCORRECT</p> <p>Proposed communal space is 2416m².</p> <p>See S4.55 Sheet A404 (Appendix C).</p>
<p>f. There are no garden beds provided for community gardens or screened drying areas provided for clothes drying.</p>	<p>NO CHANGE</p> <p>Approved DA without screened drying.</p> <p>Communal gardens/private open space provided on Level 2 and Level 5.</p>
<p>g. Table and chair facilities have been moved away from BBQ areas on the podium level of communal open space.</p>	<p>NOT APPLICABLE</p> <p>Tables & chairs are indicative only and can be placed in front of BBQ area.</p>
<p>h. 36% of units have POS with less than the required minimum dimension or area. For example, unit 55 is a 3 bedroom unit where 7.8m² of the balcony has the minimum dimension of 2.4m, which is less than the required 12m².</p>	<p>INCORRECT/NOT APPLICABLE</p> <p><u>All units</u> have the min. required private open space. See Appendix A Figure 4, which shows Unit 55 with a 13m² balcony as an example.</p> <p>In any event, the required POS for seniors housing on upper floors under SEPP SH is a balcony with an area of 10m² and a minimum dimension of 2m. This requirement overrides the ADG.</p>
<p>Layout and amenity</p> <p>i. A number of units have worsened internal amenity. Floor plans of some units include awkward spaces and angles in layouts created by following opposing site</p>	<p>INCORRECT/NOT APPLICABLE</p> <p>The layouts are compliant and considered acceptable.</p>

Council Issue	Response
geometries. Some units will have larger floor areas however the space is not readily practical, efficient and usable. For example, unit 81.	In any event, all units meet the internal dimensions, circulation space and accessibility requirements of SEPP SH for kitchens, bathrooms, entry foyers, bedrooms, doorways and corridors (as per schedule 3 cross-referenced under Clause 40). This requirement supersedes the ADG.
j. There is an increase in the percentage of units that do not receive any direct sunlight from 15.7% to 17% which does not comply with the ADG or DCP.	<p>INCORRECT</p> <p><u>Situation has been improved as the number of units receiving 0 hours of sun has decreased from 15.8% to 13.7%. See Appendix A Figure 5.</u></p> <p>In addition – and more importantly – solar access meets requirements of SEPP SH, where 76% of living rooms and private open spaces receive a minimum of 3 hours direct sunlight between 9am and 3pm (min. requirement = 70%). See updated SEPP SH compliance table submitted with the S.4.55.</p>
k. Due to the awkward shape and angle within the internal design of some units it will be impractical to accommodate or move furniture into these units (for example- but not confined to - unit 79 as repeated on all levels).	<p>NOT APPLICABLE/SUBJECTIVE.</p> <p>No specific requirement under the ADG or SEPP SH.</p> <p>Layouts have been reviewed by the architect and marketing experts.</p>
l. Showers have been located in middle of bathrooms partially blocking access to baths.	<p>INCORRECT</p> <p>Showers have been specifically placed before the bath as a wet area beyond as a point of difference and do not block access.</p> <p>See Appendix A Figures 6a & 6b.</p>
m. 30% of units have a 2nd or 3rd bedroom that has less than required area of 9m ² .	<p>INCORRECT</p> <p>All bedrooms have the min. 9m² as per ADG requirements.</p> <p>(Refer to unit layouts A150-A173)</p>
n. 72% of units have a 2nd or 3rd bedroom that has less than required dimension of 3m.	<p>INCORRECT</p> <p>All bedrooms have the min. 3m dimensions as ADG per requirements. (Refer to unit layouts A150-A173).</p> <p>In any event, all units meet the internal dimensions and accessibility requirements of SEPP SH.</p>
o. A large number of living rooms have less than the required minimum dimension of 4m. For example, unit 78.	<p>INCORRECT</p> <p>All living rooms comply to the min. 4m as per ADG requirements. See Appendix A: Figure 7 of Unit 78.</p> <p>(Refer to unit layouts A150-A173)</p>

Council Issue	Response
p. There are undersized kitchens without sufficient bench space for the number of bedrooms, or with small island benches with a sink and no bench space.	AGREED Kitchen layouts have been updated and improved.
q. Some study nooks obstruct access to storage. For example, unit 65.	AGREED Layout updated. See Appendix A Figure 8.
r. 48% of units have internal storage much less than the required minimum, with some storage cupboards so narrow they are not usable.	INCORRECT Storage with min. 600mm width provided in all units as per ADG. See dashed red and black lines at eastern end of parking aisles on Overlay Plan Sheet no. OL110.
s. No units have been identified as providing universal design features or as adaptable housing.	NOT APPLICABLE/OVERRIDDEN BY SEPP SH As the project is Senior's housing, all units are designed as possible adaptable units and meet the internal dimensions and accessibility requirements of SEPP SH.
t. Some bedrooms have robes less than the required minimum length or some with no robes at all. For example, main bedroom in unit 64.	AGREED Plans amended such that all units have robes at the min. required lengths. See Appendix A Figure 8.
Basement Level u. The reconfiguration of the basement area and an increase in the number of bedrooms has resulted in a crowded arrangement which does not have sufficient area for the required facilities for the number and size of units. This includes: <ul style="list-style-type: none"> Total number of car parking spaces has been reduced by 4 in the modification. There were 16 visitor spaces originally approved for the development and under the modified development this has been reduced to only 5 visitor spaces being provided. This is an insufficient number of visitor spaces currently being proposed to cater for the likely number of visitors associated with the development. <i>(Noting the SEPP identifies parking standards that cannot be used to refuse consent and does not impose any limitations on the grounds on which a consent authority may grant consent).</i> 	INCORRECT The amended development is required to provide a total of 96 car parking spaces under SEPP SH, with no specific allocation nominated or required for residents or visitors. In response, the development proposes a total parking provision of 101 car parking spaces, which is in excess of that required by SEPP SH. Further on this point and as flagged in Council's response (in italics at the left), this requirement is a non-discretionary standard under Part 7 clause 50 of SEPP SH, meaning that if complied with, it cannot be used as a standard for refusal of the application, nor any parking required in addition to this number. REFER TO RESPONSE FROM TRAFFIX (provided as Appendix E).
<ul style="list-style-type: none"> Storage cages in basement have been reduced in number and a lot are of insufficient size to be usable for storage of bulky items. 	NOT APPLICABLE BUT COMPLIANT ANYWAY

Council Issue	Response
	<p>SEPP SH does not require a specific amount of storage – either in the unit or the garages – in a seniors living development (other than a linen storage in accordance with clause 4.11.5 of AS 4299, which each unit provides).</p> <p><u>Nonetheless, storage has still been provided for each unit as per the ADG (i.e. 8m³ for each 2 bedroom unit and 10m³ for each 3 bedroom unit), as indicated in the table on pages 12 – 14 of the SEPP 65/ADG report submitted with the S.4.55.</u></p> <p>A copy of this table has been duplicated as Appendix D.</p>
<ul style="list-style-type: none"> 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 an alternative – given it was a senior's housing development. However, under the modification there appears to be limited space for storage of any motor scooters within the basement. Clarification is needed regarding the location for the provision of the 43 motor scooter storage spaces with charging stations. 	<p>INCORRECT</p> <p>The original DA <u>did not propose spaces for 43 motor scooters with charging stations, but rather 3</u>. This is a misinterpretation of the plans, which inadvertently/incorrectly identified storage cages as “storage with charger for motor scooter.” This error has now been fixed, with this notation amended to simply read “storage cages.”</p> <p>With respect to scooter parking, the 3 spaces provided in the approved layout has actually <u>been increased to 4 spaces</u> in the S.4.55, all with chargers.</p> <p>REFER TO RESPONSE FROM TRAFFIX</p>
<ul style="list-style-type: none"> If no communal bicycle parking facilities are provided, storage cages should be of sufficient size to accommodate bicycles. 	<p>NOT APPLICABLE & NO CHANGE</p> <p>SEPP SH does not require bicycle parking spaces for a seniors living development.</p> <p>In any event, there is no change from the original DA when no bicycle parking spaces were provided nor required.</p> <p>REFER TO RESPONSE FROM TRAFFIX.</p>
<ul style="list-style-type: none"> Access to unit 7 from the basement is directly adjacent to a car parking space. 	<p>AGREED</p> <p>Access to unit 7 has been updated with entry from pedestrian side.</p> <p>See amended plans.</p>
<ul style="list-style-type: none"> No air locks are provided between basement car park and unit 7 and the offices and meeting rooms. 	<p>AGREED</p> <p>Air lock added to entry point to unit & offices.</p> <p>See amended plans.</p>
<ul style="list-style-type: none"> Waste storage facilities and areas for waste vehicle servicing appear to have been reduced in the 	<p>ESSENTIALLY NO CHANGE</p>

Council Issue	Response
modification.	Waste area has merely been shifted slightly to the west but in principle is the same, inclusive of the same dimensions. See Appendix B, Approved DA & S4.55 Overlay Plans.
Dwelling Mix v. Consideration should be given to an increase in the number of 1 bedroom units to compensate for the proposed increase in the number of 3 bedroom units. This will provide a more diverse dwelling mix within the development and may assist with parking provision and other aspects.	NOT APPLICABLE Unit mix not applicable under Senior Housing SEPP and not relevant to or practical for seniors housing due to specific demographic and development type. In any event, apartment mix is proposed to be changed under S.4.55 to respond to specific market research by proponent's marketing and sales team.
Building entry w. Entry doorway to north-east tower building core has been changed to a window and street level access is no longer possible. This access needs to be reinstated and accessible entry/exit to the street provided.	AGREED This was incorrectly shown on the plans. Amended plans updated to now show the entry on Level 1 and not level 2.

2. Contributions

A detailed response has been prepared by *Progressive Property Solutions* to the resolution of the Council dated 22nd August 2023 in relation to our request to modify the development contributions applicable to the project. A copy of this response is provided as Appendix E. In amongst other details, this response notes that the staff report on which Council based its recommendation contains three statements considered to be incorrect and which, in turn have significantly influenced the resolution of Council with respect to this issue.

On this basis, this response re-iterates our client's "without prejudice" offer to pay a development contribution amount based on the specific nature of the project and further indicates that acceptance of this offer can be done do without a separate resolution of Council.

ADDITIONAL ISSUES

3. Roadworks in Gallipoli Road

The response to the request to delete condition 2.6(b) of the consent in your email dated 3rd September 2023 – wherein you advised that "deletion of the condition is not supported however a modified condition has been proposed to detail the required extent of works more precisely" – is noted.

However, to further assist in your assessment of this request and reconsider this position, it is reiterated that there is unlikely to be a significant increase in the traffic at this intersection, as the amended development – which includes parking for 101 spaces – is taking the place of a 102 space carpark on the same site. As a result, the status quo is essentially remaining, all of which is detailed and justified in the Traffic Report prepared by *Traffix* submitted with the original DA and the further statement by *Traffix* submitted with the S.4.55. This report includes detailed analysis indicating that even when including the new carpark in front of Diggers containing the relocated spaces, the overall increase in traffic would be marginal, with no discernible impact on any intersections (including this one) due to the number of routes available to the site.

As such, it is unclear how Council's engineers have concluded that "significantly more vehicles will use this intersection" and a reconsideration of this request – having regard to the information presented in the Traffic Statement prepared by *Traffix* submitted with the S.4.55 – is requested.

4. Graphic Analysis of Modifications

Your letter notes that the *"Regional Planning Panel will require a graphic analysis of the modification comparing the approved and proposed floor plans and elevations and identifying and justifying the reasons for the modification."*

To this end, Overlay Plans prepared by ADG Architects have been submitted with this response (provided as Appendix B) to better articulate/demonstrate the changes to the layout proposed under the S.4.55 application and assist Council and the Panel with their assessment of same. In this regard, the currently approved layout is shown in red lines, with the proposed amended layout shown in black lines. These plans clearly demonstrate how closely the proposed amended layout mirrors the currently approved layout in terms of size, bulk, footprint and all other physical aspects – noting that the land use or the nature of the development is unchanged – such that the modified development is clearly substantially the same development as that originally/currently approved (as explained in the planning report by *Tim Shelley Planning* submitted with the S4.55 and which we understand not to be in question).

In addition, all changes have been identified in numbered and colour coded "revision clouds" on each of the plans to identify the location of each change. In turn, a cross-reference to each revision cloud has been provided in the planning report, accompanied by detailed discussion of the nature, extent and justification of each proposed change.

We trust this information is satisfactory and adequately allows both Council and the Regional Panel to understand and assess the proposed changes.

5. Suggested Withdrawal of Application

Given all issues have been addressed via the various responses above and/or the amended plans, the overlay plans and the additional information submitted with this letter, the application will not be withdrawn.

SUMMARY AND REQUESTED MEETING

I trust this response and accompanying information have adequately addressed the issues identified in your letter dated 24th August 2023 and provided sufficient justification Council to complete their assessment and refer the application to the Regional Panel recommending approval.

However, to further assist, the proponent seeks an in-person meeting (i.e. at Council) with yourself and other Council officers as necessary to go through these responses and the amended plans prior to the meeting of the Regional Panel to ensure that Council has a thorough understanding of the proposed changes and the justification for same.

We therefore seek a response from Council as to a likely date for this meeting, noting that the proponent, applicant and the project team are able to work flexibly around Council to allow it to be organised as soon as possible.

Yours faithfully,



Tim Shelley
Director – Tim Shelley Planning