

DETERMINATION AND STATEMENT OF REASONS

SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	24 February 2022
DATE OF PANEL DECISION	23 February 2022
PANEL MEMBERS	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Ross Walker and David White
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 22 February 2022.

MATTER DETERMINED

PPSSNH-242 – Hornsby - DA/484/2011/J, 392 Galston Road, (Lot 1 DP 1211969) Galston, Section 4.56 Modifications to internal road design, community centre design, signage and conditions of development consent (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

MODIFICATION APPLICATION

The Panel determined to **refuse** the application for modification of consent pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Panel's decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the modification application for the reasons set out below.

The Panel considered the comprehensive Assessment Report, heard from both the Applicant and the Council and discussed relevant letters from Transport for NSW at length.

The Panel concurs with Council that the application was assessed in accordance with the requirements of the EP&A Act and the relevant planning controls and the modification application cannot be supported.

The application failed to achieve the concurrence of Transport for New South Wales with respect to the amended intersection design with Galston Road. As per Section 138 of the *Roads Act 1993*, and Section 4.47(4) of the *Environmental Planning and Assessment Act 1979*, the consent authority cannot provide consent to the proposed changes. Further, the proposed amended intersection design fails to satisfy Clause 101(2)(b)(i) of *State Environmental Planning Policy (Infrastructure) 2007* which requires development to demonstrate that the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of the design of the vehicular access to the land.






After considering the responses from Transport for New South Wales and the advice from Council with regard to the nature and extent of unauthorised, previously approved and proposed modifications, the Panel is of the view that pursuant to the provisions of Section 4.56 (1)(a) of the EP&A Act the Panel was not able to be satisfied the development to which the consent as modified is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified. Notwithstanding this, the modification application also fails on a merits assessment in the context of the relevant planning framework.

Additionally, the Panel understands from the discussions with the Applicant and Council that the Temporary Construction Access put in place last year is now being used by members of the public and has become an unauthorised Interim Access Point for the public. The assessment and necessary approval of that access point needs to be urgently addressed by the Applicant and Council.

Finally, the Panel notes the protracted and unproductive communication relating to this modification application between the Applicant, Council and Transport for NSW has frustrated the orderly assessment of the application. The way forward may be for the three parties to meet as soon as possible to reach agreement on proposed solutions to the traffic issues, which do not appear insurmountable.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered one written submission made during the public exhibition of the proposal. The concern was for front fencing and signage and the Panel considers that concern has been adequately addressed in Council's Assessment Report.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Julie Savet Ward
 Brian Kirk	 Ross Walker OAM
 David White	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-242 – Hornsby - DA/484/2011/J
2	PROPOSED DEVELOPMENT	Section 4.56 Modifications to internal road design, community centre design, signage and conditions of development consent
3	STREET ADDRESS	392 Galston Road, (Lot 1 DP 1211969) Galston
4	APPLICANT/OWNER	Applicant – Vigor Master Owner - 392 Galston Investment Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Over \$20 Million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No. 55 Remediation of Land State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 State Environmental Planning Policy (Infrastructure) 2007 Hornsby Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: Nil Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 22 February 2022 Statement of Environmental Effects prepared by Vigor Master. Architectural Plans prepared by Vigor Master (as Amended). Copy of Transport for NSW correspondence dated 22 February 2022 and 23 December 2021. Written submissions during public exhibition: 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Kick off briefing – 10 August 2021 Assessment Briefing – 10 September 2021 Final briefing to discuss council's recommendation: 23 February 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, David White and Ross Walker <u>Council assessment staff</u>: Benjamin Jones, Cassandra Williams and Rodney Pickles <u>Applicant representatives</u>: Ivy Wang and Michael Wu
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A