



COUNCIL ASSESSMENT REPORT - MODIFICATION APPLICATION

SYNDEY NORTH PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSNH-390 - DA/484/2011/N
PROPOSAL	Section 4.56 - Modification to roadworks and internal driveway
ADDRESS	No.392 Galston Road, Galston
APPLICANT	Vigor Master Pty Ltd
OWNER	392 Galston Investment Pty Ltd
MOD LODGEMENT DATE	13 January 2023
ORIGINAL DA DETERMINATION DATE	20 September 2011
APPLICATION TYPE	Modification Application under Section 4.56
REGIONALLY SIGNIFICANT CRITERIA	Section 4.56 Modification - more than 10 submissions
CIV	No change - original \$23,792,750
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Transport and Infrastructure) 2021 Hornsby Local Environmental Plan 2013
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	19 submissions received
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> Statement of Environmental Effects prepared by Vigor Master Architectural Plans prepared by Vigor Master (as Amended) Civil Plans prepared by Mepstead & Associates Copy of Transport for NSW correspondence dated 19 April 2023
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A

RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	14 June 2023 (TBC)
PLAN VERSION	Revision G
PREPARED BY	Matthew Miles
COI DECLARATION	No conflict of interest declared
DATE OF REPORT	29 May 2023

EXECUTIVE SUMMARY

The application seeks to modify development application DA/484/2011 under Section 4.56 the *Environmental Planning and Assessment Act 1979*.

On 20 September 2011, the Joint Regional Planning Panel resolved to refuse DA/484/2011. The applicant appealed the refusal of the development application and on 12 January 2012 the Land and Environment Court upheld the appeal against the refusal, granting a deferred commencement consent, for a seniors living development comprising 76 self-care dwellings and a community centre.

The original approval included conditions imposed by Roads Traffic Authority (now Transport For NSW) that required Left in/Left out access only to both Galston Road and Mid Dural Road and construction of a central medium to prevent vehicles turning right into the property.

DA/484/2011 has previously been subject to numerous amendments, most of which have been minor and targeted to a specific aspect of the development. Approved modifications of note include,

- On 5 February 2014, modification application (DA/484/2011/B) was approved. Modification 'B' staged the development into three stages and outlined works to be completed in each stage.
- On 17 December 2020, modification application (DA/484/2011/H) was approved. Modification 'H' comprised amendments to facilities provided within the approved community centre, modifications to the building and accessway design for villas in Stage 1.
- On 13 October 2021, modification application (DA/484/2011/I) was approved. Modification 'I' comprised amendments to the staging arrangement.
- On 22 October 2022, modification application (DA/484/2011/M) was approved. Modification 'M' comprised amendments to the internal layout of building types B and C of villas approved in Stage 2.

Most importantly as it relates to the subject modification, On 24 February 2022, modification application DA/484/2011/J was refused by the Sydney North Planning Panel. Modification 'J' sought to redesign the intersection and staging requirements of the intersection with Galston Road, amend the internal design of the approved community centre and erect new signage on site. Modification 'J' was refused as the concurrence of Transport for NSW (TfNSW) was not obtained for the design of the intersection with Galston Road.

The subject modification 'N' seeks to address TNSW reasons for refusal within modification 'J' by providing an amended road design and amended access arrangements as follows:

- Amended Civil Engineering plans that include widening the Galston Rd driveway access to enable Heavy Rigid Vehicles to enter from the slip lane, overlaying the swept paths for Heavy Rigid Vehicles and correcting the date of issue.
- Retaining the requirement for the completion of the final driveway to be a condition of Stage 2 Occupation Certificate.
- Amended Statement of Environmental Effects that includes an assessment on of Biodiversity, Flora and Fauna Impacts and heritage implications as a result of the driveway treatments and footpaths.
- Removal of signage at the Galston Road entrance as a result of the driveway widening.

On 20 April 2023, Transport for New South Wales (TfNSW) reviewed the proposed modifications under Section 138 of the *Roads Act 1993* and provided concurrence to the application.

The constructed interim access on Galston Road for Stage 1 of this development does not comply with TfNSW requirements and is considered unsafe. TfNSW has not provided concurrence under Section 138 of the *Roads Act 1993* to this access and the Applicant has not entered into a Works Authorisation Deed (WAD) with TfNSW for construction of the interim access. Additionally, the Applicant has failed to take into account and to comply with TfNSW previous requirements as set out in its letters dated 5 November 2021 and 17 February 2023.

As set out in TfNSW's letter of 5 November 2021, TfNSW only granted consent to the operation of the interim access on Galston Road for a period of 12 months. This consent lapsed on 4 November 2022. TfNSW considers the interim access as currently constructed on Galston Road is unauthorised and its continued use is against safety and efficiency of the classified road network.

1 THE SITE AND LOCALITY

1.1 The Site

The L shaped site comprises a single allotment of 3.641ha. The site has a frontage of 132m to the southern side of Mid-Dural Road and a frontage of 101m to the western side of Galston Road.

The majority of the site has been previously cleared for agricultural use and is currently a construction site for Stage 1 of the approved residential aged care facility, which comprises 25 of the of 76 approved self-care dwellings. The site is gently sloping and is slightly elevated at the frontages to Galston Road and Mid-Dural Road and through the central part of the site. The majority of the site falls to the western and southern boundaries.



Figure 1: Aerial view of site as of 19 March 2023.

1.2 The Locality

The site forms part of the rural area on the southern side of Galston village. The rural area includes a range of small-scale agricultural enterprises including horticulture and grazing. A number of holdings in the locality are primarily rural/ residential and not used in commercial production. The Galston village is a compact urban area clearly distinct from the surrounding rural area as defined by Galston Road and Mid-Dural Road on the southern side of the village.

The Mid-Dural Road frontage of the subject site is opposite a residential area of Galston.

The site is located 500m west of Galston village shops and 700m north of Galston High School and Galston Park recreation area.

The site includes a small area of remnant bushland along the Mid-Dural Road frontage of the site. The bushland is identified as Sydney Turpentine - Ironbark Forest (STIF) which is an endangered ecological community.

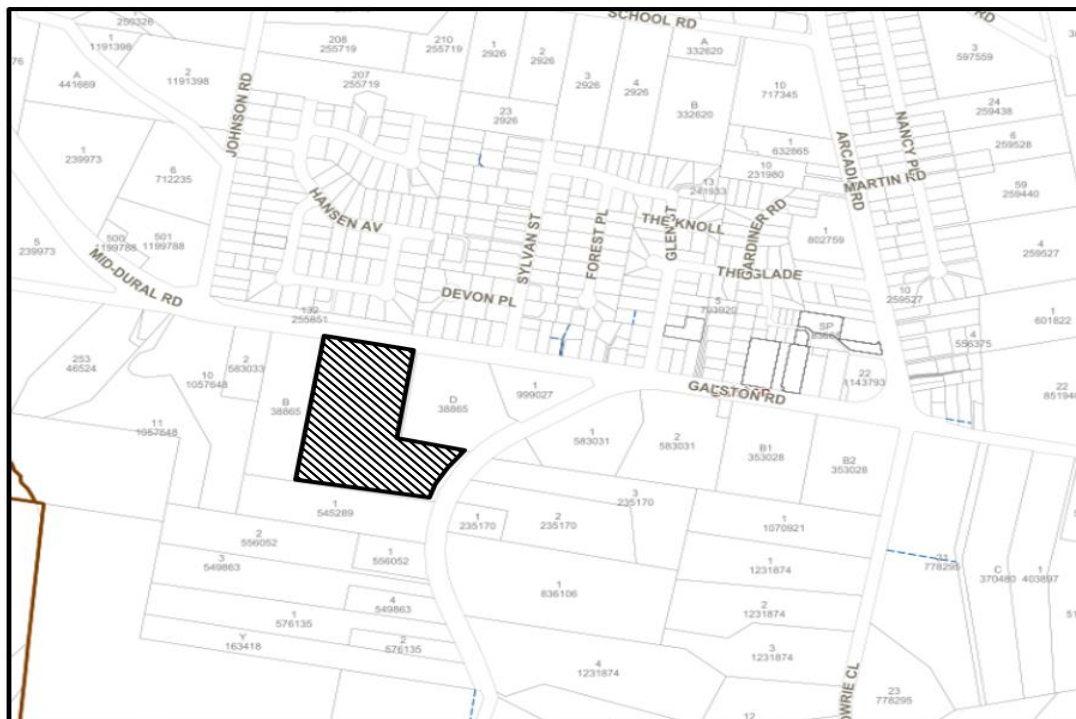


Figure 1: Locality Plan - Site hatched. Note Galston Village to the north of the site, with larger Rural Land holdings to the east, south and west.

2 THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

The proposal seeks consent for a Section 4.56 modification to the development consent comprising:

- Amended Civil Engineering plans that include widening the Galston Rd driveway access to enable Heavy Rigid Vehicles to enter from the slip lane, overlaying the swept paths for Heavy Rigid Vehicles and correcting the date of issue.
- Retaining the Requirement for the Completion of the Final Driveway to be a Condition of Stage 2 Occupation Certificate.
- Removal of signage at the Galston Road entrance as a result of the driveway widening.
- Construction of a footpath to the existing bus stop on Galston Road adjacent to the roundabout.

Further detail regarding these changes is discussed below.

2.1.1 Road Design and Staging

The applicant describes the proposed changes, including the rationale for these changes as follows:

Prior to construction, the project has received complaints from neighbours regarding the proposed centre median islands that only permits LEFT IN/LEFT OUT access to the village. The neighbours expressed a concern they would not be able to access their properties when operating larger vehicles and objected to no longer being able to turn right into their own driveways.

The applicant had two meetings with TfNSW in early 2021 and was advised that the current road design has road safety concerns and is not practical for the community. TfNSW recommended to redesign the road and ancillary works.

Also, upon consultation with the CDCBus they notified us that:

- a) *The road condition has been upgraded in the past 10 years;*
- b) *The existing bus stops are less than 400 metres from the development site;*
- c) *The CDCBus objects the addition or relocation of any bus stops;*
- d) *The proposed locations of bus stops are not safe.*

The proposed changes to the public road works have been made in response to the comments received from TfNSW1. For both Galston Road and Mid Dural Road frontages, a left in/left out vehicle access and deceleration lane will be constructed to TfNSW specifications.

The proposed changes also include removing the requirement for new bus stops and the boardwalk on Mid Dural Rd to the previously approved bus stop.

The applicant seeks to modify the terms of condition Nos. 5, 18, 19, 56, 57, 59, 60, 66-78 and 79 as follows:

Deletion of Condition 5 Boardwalk design

Boardwalk design

A detailed design of the proposed boardwalk to Mid Dural Road is to be submitted to Council prior to the issue of Stage 1 Construction certificate. The boardwalk is to be designed so that there is no adverse impact on existing STIF vegetation and is to include a report from an arborist detailing the materials to be used in constructing the boardwalk and key design features that will be adopted to discourage people leaving the boardwalk and traversing the ground near the STIF vegetation. Lighting is to be designed to ensure there are no adverse impacts to the community and ensure safety by users. The boardwalk shall be completed with Stage 1.

Reason: The approved bus stop which the boardwalk is connected to has been removed from the modified design and access to the existing bus stop on Galston Road would be provided with construction of a new 1.2m wide pathway. This is a consequence of the CDC bus company not agreeing to the provision of new bus stops as they would be located too close to existing stops.

The new footpath along Galston Road connects the village entrance at Galston Road to the existing bus stop near the intersection of Galston Road and Mid Dural Road. Routes 637 and 638 operated by CDCBus service this stop as well as the bus stop on the other side of the Galston Road.

The construction of the footpath would be completed prior to the occupation of the Stage 2 residents.

Modification to Condition 59. Works in Galston Road

Works in Galston Road

Central ~~median~~ islands ~~and pedestrian refuges~~ are to be constructed in the driveways accessing Galston and Mid-Dural Roads subject to detailed design and approval process by the RTA TfNSW and Council and shall be completed prior to the issue of an occupation certificate for Stage 2.

Reason: The Central island design ensures Left-in, Left-out access for the subject site without impacting amenity for neighbouring properties and is the prescribed solution from TfNSW.

Deletion of Condition 60. Works in Mid-Dural Road

Works in Mid-Dural Road

Central median islands and pedestrian refuges are to be constructed in the driveways accessing Galston and Mid-Dural Roads subject to detailed design and approval process by the RTA TfNSW and Council and shall be completed prior to the issue of an occupation certificate for Stage 2.

Reason: The condition duplicates condition 59 and is redundant.

Conditions 66 to 78 (TfNSW conditions)

TfNSW will issue new conditions of concurrence to replace the current conditions 66 to 78.

2.1.2 Details of New Footpath

The applicant provides the following details regarding construction of a new footpath along Galston Road to service existing bus stops.

The proposed new footpath along Galston Road connects the village entrance at Galston Road to the existing bus stop near the intersection of Galston Road and Mid Dural Road. Routes 637 and 638 operated by CDCBus serve this stop and the stop on the other side of the Galston Road past the roundabout.

The construction of the footpath will be completed prior to the occupation of the Stage 2 residents. The long section of the proposed footpath confirms it has a gradient that is no more than 1:14. The residents can access northbound bus routes by walking 243m to the north from Galston Road entrance to catch services to Galston village, Glenorie or Berowra Waters. To access the southbound bus service to castle hill or Pennant Hills, residents can walk 378m to the north along the new pathway and then cross the road safely via the existing pedestrian refuge at the roundabout.

The key development data is provided in Table 1.

Table 1: Key Development Data

Control	Proposal
Site area	N/A - No change proposed
GFA	N/A - No GFA for site and no additional floor space sought under modification
FSR (retail/residential)	N/A - No FSR for site and no additional floor space sought under modification
Clause 4.6 Requests	No
No. of apartments	No change - 76 independent Living Units Approved
Max Height	No change
Landscaped area	N/A - No change sought to landscaped areas/ proposed changes do not decrease landscaped area on site.
Car Parking spaces	N/A - No change sought to approved number of parking spaces
Setbacks	N/A - No change to approved setbacks

2.2 Background

On 20 September 2011, the Joint Regional Planning Panel resolved to refuse DA/484/2011.

On 12 January 2012, the Land and Environment Court upheld the appeal against refusal of DA/484/2011 by the Joint Regional Planning Panel and granted a deferred commencement consent, for a seniors living development comprising 76 self-care dwellings and a community centre.

The original approval included requirements by Roads Traffic Authority (now Transport For NSW) that ensured Left in/ Left out access only to both Galston Road and Mid Dural Road and construction of a central medium to prevent vehicles turning right into the property.

On 27 July 2012, Section 4.56 application (DA/484/2011/A) was lodged to modify conditions relating to wastewater. On 28 August 2012 the application was withdrawn.

On 22 August 2012, Council advised the deferred commencement consent conditions were satisfied and the consent was operative.

On 5 February 2014, Council approved Section 4.56 application (DA/484/2011/B) for staged development. The approved stages are as follows:

Stage 1

- Construction of a community facility and 25 villas, located within the southern half of the site, fronting Galston Road
- Construction of main internal access roads and paths, vehicular driveway crossings to Mid Dural Road and Galston Road and driveways, pathways within Stage 1
- Provision of all visitor parking
- Construction of all trunk services to the site (including water supply, drainage, electricity, telephone and sewer pipes and tanks)
- Construction of the eastern on-site stormwater detention facility
- Internal services reticulated within Stage 1 to each unit in Stage 1
- Landscaping of Stage 1 area, including the restoration of Sydney Turpentine Ironbark Forest (STIF) community fronting Mid Dural Road and landscaping to the Mid Dural and Galston Road front setbacks

Stage 2

- Construction of 21 units, located within the northwest portion of the site, fronting Mid Dural Road
- Construction of internal driveways and pathways within Stage 2
- Internal services reticulated within Stage 2 to each unit in Stage 2
- Landscaping of the Stage 2 area

Stage 3

- Construction of 30 villas, located within the northwest portion of the site, fronting Mid Dural Road
- Construction of the western on-site stormwater detention facility
- Construction of internal driveways and pathways within Stage 3
- Internal services reticulated within Stage 2 to each villa in Stage 3
- Landscaping of the Stage 3 area.

On 3 March 2014, Council approved DA/1021/2013 for the strata subdivision of the approved Seniors Living development as a deferred commencement consent. Additionally, on 3 March 2014 an application under Section 68 of the *Local Government Act 1993* was approved by Council for an onsite sewerage management system (LA/368/22013).

The DA/1021/2013 deferred commencement consent condition is as follows:

Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, this consent does not operate until the following information is submitted to Council:

- a) *Documentation that an occupation certificate has been obtained for all buildings in Stage 1 of the Seniors Living development approved in accordance with the development consent for DA/484/2011 as modified by Council.*

On 30 July 2018, Council approved a Section 4.56 application (DA/484/2011/C) to amend the B1 and B2 Type Dwelling (Stage 1) design and to modify conditions Nos. 8, 12, 17, 19 and 26 relating to site consolidation, services, vehicle crossings and road works.

On 23 August 2018, a Section 4.56 application (DA/484/2011D) was lodged to include an additional community centre. On 17 November 2020, the applicant withdrew that the application.

On 14 February 2019, Council approved a Section 4.56 application (DA/484/2011/E) to amend the B1 and B2 Type Dwelling (Stage 1) design.

On 16 November 2018, a Section 4.56 application (DA/484/2011F) was lodged to amend the design of the approved community centre and arrange a temporary centre (for Stage 1 and 2 residents). On 17 November 2020, the applicant withdrew the application.

On 30 November 2018, a Section 4.56 application (DA/484/2011/G) was lodged to amend B3-B8 type dwellings and construct an additional access road for Stage 1. On 17 November 2020, the applicant withdrew the application.

On 17 December 2020, a Section 4.56 application (DA/484/2011/H) was approved by the Sydney North Planning Panel. Modification 'H' comprised amendments to facilities provided within the approved community centre, an approval to use Villa 1 and 2 and a temporary community centre in Stages 1 and 2, modifications to the building and accessway design for villas in Stage 1. The permanent community centre in the central portion of the site was approved to be constructed under Stage 2 of the development.

On 13 October 2021, a Section 4.56 application (DA/484/2011/I) was approved by the Sydney North Planning Panel. Modification 'I' comprised amendments to the staging arrangement.

On 24 February 2022, a Section 4.56 application (DA/484/2011/J) was refused by the Sydney North Planning Panel. Modification 'J' sought to redesign the intersection and staging requirements of the intersection with Galston Road, amend the internal design of the approved community centre and erect new signage on site. Modification J was refused as the concurrence of Transport for NSW was not obtained for the design of the intersection with Galston Road.

On 15 July 2022, the SNPP delegated its functions to Council to determining applications to modify a consent granted by the Court under s 4.56 of the Act in relation to the property known as Lot 1 DP 1211969, 392 Galston Road Galston, for a period of 5 years excluding applications that:

- propose amendments to a condition of development consent recommended by the Council but which was amended by the Court, or
- propose amendments to a condition of development consent that was not originally recommended by the Council, but which was added by the Court, or
- meet the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 3 to this instrument.

On 5 October 2022, a Section 4.56 modification (DA/484/2011/L) was approved for moving the construction of the community centre from Stage 2 to Stage 1.

On 26 October 2022, a Section 4.56 modification (DA/484/2011/M) was approved for modification of the internal layout of building types B and C of the villas in stage 2.

On 2 December 2022, the applicant filed an appeal in the Land and Environment Court against the decision of the SNPP to refuse DA/484/2011/J for reasons relating to an unsupported intersection design with Galston Road, Galston.

On 13 January 2023, the subject Section 4.56 application (DA/484/2011/N) was lodged to amend the road design on Galston Road, internal access to the site and provide a footpath to the existing bus stop on Galston Road. The application originally proposed to amend the staging of the roads works from Stage 2 to Stage 3, however on 30 March 2023 the applicant provided an amended cover letter that reinstated the staging of the proposed road works to Stage 2.

Table 2: Chronology of the Modification Application

Date	Event
13 January 2023	Modification application 'N' lodged
17 January to 3 February 2023	Exhibition of the application
14 February 2023	Transport for New South Wales (TfNSW) request for information
27 March 2023	Amended Civil plans 'Rev. G' and amended Statement in response to TfNSW request for information
20 April 2023	Transport for New South Wales provided concurrence

On 13 January 2023, a Section 4.56 application (DA/484/2011/O) was lodged to amend the setback of the villas on the western elevation to 0m. On 9 May 2023, the applicant withdrew the application.

3 STATUTORY CONSIDERATIONS

3.1 Section 4.56 of the Environmental Planning and Assessment Act 1979

The proposal constitutes an amendment under Section 4.56 of the EP&A Act', the consent authority may consider an application to amend a development consent provided that:

- (1)(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), and*
- (b) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

- (1A) *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.*

With regard to Section 4.56(1)(a), Council is satisfied that the proposed modification is substantially the same as the development as originally approved. The application as modified would retain the existing 76 dwellings within the approved locations and would result in an improved vehicle access arrangement to the current temporary unauthorized vehicle crossing.

With regard to Section 4.56(1)(b), (c) and (d), the amended application was notified in accordance with Council's Community Engagement Plan and 19 submissions were received from residents living at the subject complex. The matters raised are discussed in Section 4.3 of this report.

With regard to Section 4.56(1A), the matters referred to in Section 4.15(1) of the Act are discussed within the body of this report. With regard to consideration of the reasons provided by the consent authority for the grant of the original consent (DA/484/2011) the original application was approved by a consent order by the Land and Environment Court on 12 January 2012. No reasons were provided.

Section 4.15 of the Environmental Planning and Assessment Act 1979

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:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Requiring concurrence/referral (s4.13)

The proposal is not considered to satisfy the criteria of:

- Integrated Development (s4.46)
- Designated Development (s4.10)
- A Crown DA (s4.33)

3.2 Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations

The relevant provisions under s4.15(1)(a) are considered below.

3.3 Environmental planning instruments (s4.15(1)(a)(i))

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- Hornsby 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 2: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
SRD SEPP	Section 4.56 modification for which the SNPP is the delegated consent authority.	Y
SEPP HSPD	Part 4 - Development Standards to be complied with Part 5 - Development on land adjoining land zoned primarily for urban purposes Clause 50 - Standards that cannot be used to refuse development consent for self-contained dwellings	Y
SEPP Transport and Infrastructure	Section 2.119 - Frontage to a Classified Road	Y

3.3.1 State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) applies to the proposal as it a Section 4.56 modification for which the SNPP is the delegated consent authority.

On 15 July 2022, the SNPP delegated its functions to Council for future modifications to the development for a period of 5 years in accordance with the following:

Determining applications to modify a consent granted by the Court under s 4.56 of the Act in relation to the property known as Lot 1 DP 1211969, 392 Galston Road Galston, excluding applications that:

- *propose amendments to a condition of development consent recommended by the Council but which was amended by the Court, or*
- *propose amendments to a condition of development consent that was not originally recommended by the Council, but which was added by the Court, or*
- *meet the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 3 to this instrument.*

The s 4.56 modification has been subject to more than 10 public submissions and therefore as contentious development, the Sydney North Planning Panel is the consent authority for the application.

3.3.2 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self-contained dwellings and multi-storey buildings.

SEPP HSPD enables development for serviced self-care housing on land that adjoins an urban zone; subject to the site being certified by the Department of Planning as suitable for more intensive development, pursuant to a SCC. The approved development is in accordance with these provisions. An assessment of the modification against relevant provisions of the policy are provided below.

3.3.2.1 Permissibility and Site Compatibility Certificate

Clause 4 of SEPP HSDP lists the circumstances to which the policy applies. As the policy does not directly apply to RU2 zoned land, the original application relied on a site compatibility certificate (SCC) on the basis that the site adjoined land zoned for urban purposes.

Council has previously received legal advice, prepared by Jacinta Reid of Martin Place Chambers regarding whether a consent authority is required to consider the conditions of an SCC as part of a modification application. The advice notes that the effect of Clause 24 and 25 of SEPP HSPD is that once a development consent is issued, the SCC has fulfilled its purpose. Further, it states that there is no requirement for a modification application to refer back to the certificate as Clause 24(2) of SEPP HSPD requires the certificate for permissibility of development in a development application, as distinct from a modification application under the Act.

On this basis, an assessment against the original SCC is not required. Further, the modification relates to changes to the road works and access arrangements only and no modification is sought to the approved built form.

3.3.2.2 Clause 26 - Location and Access to facilities and Clause 43 - Transport services to local centres

Clause 26 and 43 of SEPP HSPD provide requirements for the consideration of the consent authority with regards to location and access to facilities, as well as transport services to local centres.

SEPP HSPD requires a bus service to be provided at least once between 8am and 12pm and also between 12pm and 6pm, Monday to Friday.

The original development application included provision of a new bus stops on Galston Road and one on Mid-Dural Road to satisfy the requirements for accessibility in accordance with Clause 26 of the SEPP.

CDC buses which provide bus services to the Galston Area have since submitted to Council their objection to the new bus stops as they are located too close to existing stops and in relation to the Galston Road bus stop, creates a safety issue as it is located on a dangerous bend in the road.

As a consequence of the correspondence from CDC buses, the modified development proposes to delete the boardwalk to a new bus stop on Mid Dural Road and rely on the existing bus stop on Galston Road in front of the roundabout (approximately 250m from the site entrance). This stop is serviced by bus routes 637 and 638 to Galston shops and the Glenorie Shopping Village and on the opposite side of the road, routes 637 and 638 provide bus services to Castle Hill. In accordance with the requirements of Clause 26 of SEPP HSPD, the application includes documentation that demonstrates buses would service the site at least once between 8am and 12pm and between 12pm and 6pm Monday to Friday.

The modified proposal includes a footpath to the existing bus stop on Galston Road that complies with the required access gradients for pathways from the development to public transport and it is considered the required gradients could be achieved by design.

The construction of the footpath would be completed prior to the occupation of the Stage 2 residents and a long section provided with the application confirms that the pathway would have a gradient that is no more than 1:14.

Accordingly, the proposed modification does not alter the proposal's compliance with the requirements of Clause 26 and Clause 43.

3.3.2.3 Clause 40 - Development Standards

The proposal would maintain compliance with the relevant development standards contained within Clause 40 of SEPP HSPD, for frontages and height.

3.3.2.4 Clause 50 - Standards That Cannot be Used to Refuse Development Consent for Self-Contained Dwellings

The proposal would maintain compliance with the relevant development standards contained within Clause 50 of SEPP HSPD as no changes to the built form, parking arrangements or landscaped area is proposed.

3.3.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

The application has been assessed against the requirements of chapter 2 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).

3.3.3.1 Frontage to a Classified Road

The application is subject to assessment under Section 2.119 of the Transport and Infrastructure SEPP given the proposal has a frontage to classified roads being Mid Dural Road and Galston Road.

Section 2.119(2) of the Policy states:

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The original approval included conditions imposed by Roads and Traffic Authority (now Transport For NSW) that required Left in/ Left out access only to both Galston Road and Mid Dural Road and construction of a central median to prevent vehicles turning right into the property. The modified application retains the Left in/ Left out restriction and removes the central median from the approved plan set.

The application was referred to Transport for New South Wales (TfNSW) for assessment. TfNSW provided its concurrence to the proposed modification under Clause 138 of the *Roads Act 1993* and provided the following comments:

"TfNSW notes that Mod N proposes:

“changes to the public road design to comply with TfNSW requirements, removing the requirement of constructing two bus stops, construction of a footpath from the Galston Road entrance to the existing bus stop at the corner of Mid Dural Rd and Galston Rd and amendment of terms of consent conditions 5, 59, 60, 66-78 to reflect these changes.

It is further noted that whilst Mod N was initially lodged on 13 January 2023, the Applicant has amended Mod N in response to comments from TfNSW. TfNSW understands that Mod N has been modified to remove the previous proposal to:

‘alter the requirement that the roadworks be completed as a condition of receiving Stage 2 Occupation Certificates to a requirement for Stage 3 Occupation Certificates’.”

TfNSW has reviewed the additional information provided by the Applicant and based on the amended material raises no objection to the proposed modifications made to Mod N and provides its ‘in principle’ support to the proposed concept road works for access to the site on both Galston Road and Mid Dural Road (Ref: 5959 Issue G dated 27/03/2023 by Mepstead & Associates).

In regard to Section 2.119(2)a, vehicle access to the site is facilitated via two entries off Mid Dural Road and Galston Road which satisfies this requirement.

In regard to Section 2.119(2)b, TfNSW have provided its concurrence to the proposed modification subject to conditions that include removal of the existing vehicle crossing, restricting access to left in/ left out only and that the access must be fully constructed to TfNSW satisfaction prior to any approval of Stage 2 Occupation Certificate to ensure the ongoing safe operation of the network.

In regard to Section 2.119(2)c, no changes are proposed to the type of development on the site.

In summary, it is considered that the proposal meets the objectives of section 2.119 of the Transport and Infrastructure SEPP and is considered acceptable in this regard.

3.3.4 Hornsby Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the Hornsby Local Environmental Plan 2013 (‘the LEP’). The original development consent was granted by the Land and Environment Court and was subject to a Site Compatibility Certificate (SCC). This matter is addressed in Section 2.4 of this report.

The modification is subject to the provisions of the SEPP HSPD which prevails to the extent of any inconsistency with the HLEP.

The modification relates to road works and access arrangements only and does not require an assessment against the development standards of the LEP.

3.4 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and which may be relevant to the proposal.

It is noted that State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 was repealed and replaced by State Environmental Planning Policy (Housing) 2021 (Housing SEPP) on 26 November 2021.

The Housing SEPP is not considered to apply to the proposed development, as the modification application is assessed under Section 4.56 of the Act, and as such is not a development application to which the Housing SEPP applies.

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

The following Development Control Plan is relevant to this application:

- Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2013 (HDCP). A discussion is provided below regarding relevant sections of the plan.

3.5.1 Vegetation Preservation and Pathway to Bus Stop

The proposed extension of the footpath from the subject site to the existing bus stop at the roundabout would be within close proximity to a number of trees on the road reserve.

The original consent proposed a bus stop in front of the subject site, however CDC buses which services the Galston area have provided a response objecting to the creation of any new bus stops in front of the site as:

- *The proposed bus stops are only 140 metres from existing stops,*
- *The proposed location on Galston Road is unsafe for bus drivers due to a poor line of sight to re-enter the road due to a curve in the road in front of 392 Galston Road.*
- *The current bus stops are in a safe location for passengers and in a convenient location,*
- *The proposed bus bay and stop on Mid Dural Road (on the opposite side of the proposed retirement village) is not reasonable. This is because: The distance between the proposed bus stop and the existing bus stop is only 100 metres and two existing bus stops are only distancing at 500 metres servicing the residential area which are more than sufficient.*

Accordingly, no objections are raised to the deletion of the bus stops and reliance on the existing stop on Galston Road, subject to conditions to protect existing trees on Galston Road.

3.6 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.

3.7 Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. None of the matters prescribed in Section 61 are of relevance to the proposed modification.

3.8 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

Accordingly, it is considered that the proposed modification will not result in any significant adverse impacts in the locality as discussed in the report.

3.9 Section 4.15(1)(c) - Suitability of the site

As discussed in the body of this report, the site was approved for use as a Seniors Living development comprising 76 dwellings. The proposed modifications would not necessitate a re-assessment of the site suitability.

3.10 Section 4.15(1)(d) - Public Submissions

Submissions received are considered in Section 4.3 of this report.

3.11 Section 4.15(1)(e) - Public interest

Section 4.15(1)(e) of the Act requires the consent authority to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed the relevant planning controls, and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed modification would be in the public interest.

4 REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application is:

- Requiring concurrence from Transport for NSW

Accordingly, the modification application was referred to various agencies for concurrence as required by the EP&A Act and Clause 109 of the 2021 EP&A Regulation and outlined in Table 4.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 4: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Transport for NSW	S2.119 of the SEPP (Transport and Infrastructure)	Transport for New South Wales, as the relevant approval body under Section 138 of the Roads Act 1993 provides consent to the amended Road design.	Yes

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined Table 5. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Traffic	<p>Council's Traffic Engineering Team reviewed the proposal and provided conditions as follows:</p> <ul style="list-style-type: none"> • Disabled Discrimination Act compliance pedestrian landing pad for the existing bus stop • Bus zone signage location and distance to existing bus stop • Pedestrian refuge to be built on Galston Road near existing bus stop to allow pedestrians to walk to south bound buses (subject to approval from TfNSW) 	Yes
Engineering	<p>Council's Engineering Team reviewed the proposal and noted the following:</p> <ul style="list-style-type: none"> • The construction of the ultimate access arrangement including the construction of the deceleration lane on Galston Road, will improve road safety • The current access arrangements as built are not suitable for large delivery trucks including waste, removal, furniture and delivery trucks and should be replaced with the proposed civil infrastructure plan 	Yes

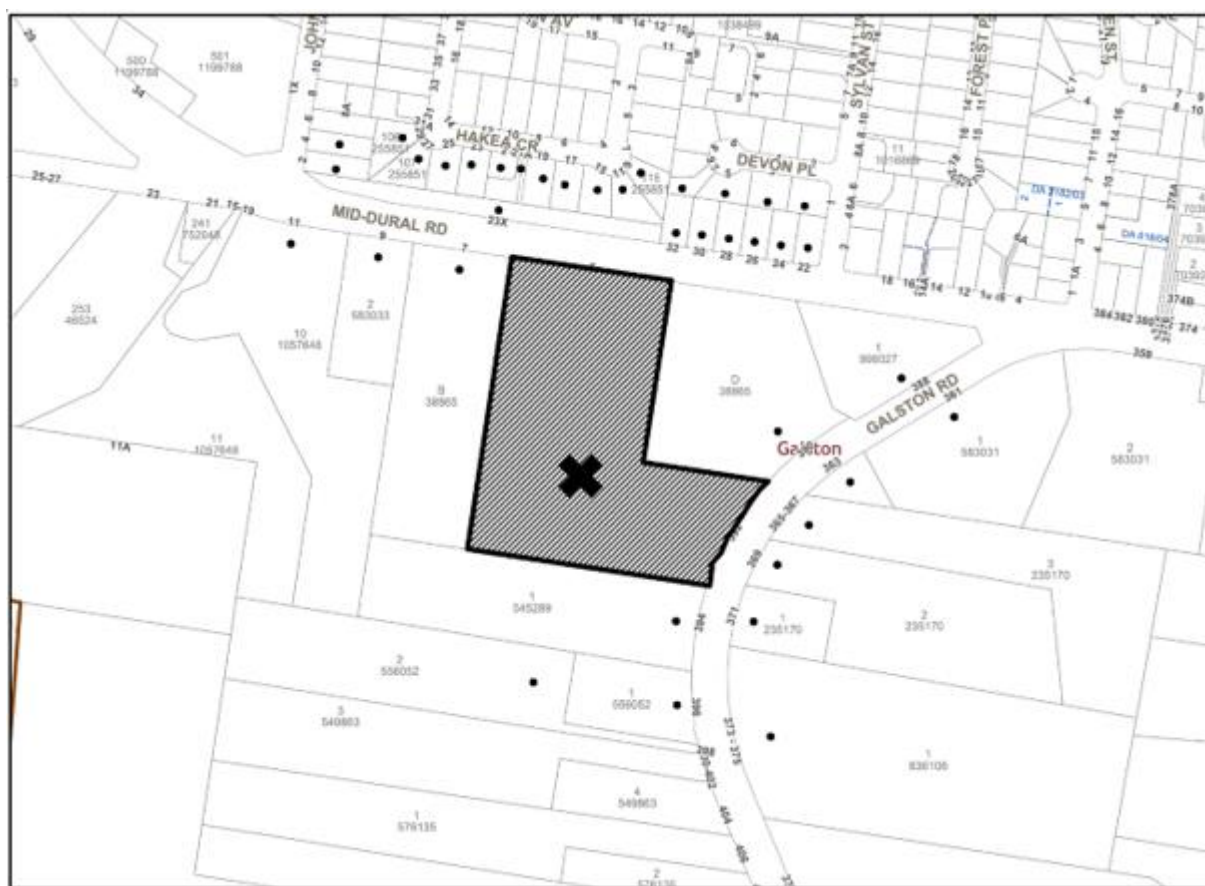
4.3 Notification and Community Consultation

The modification application was notified in accordance with the Council's Community Engagement Plan from 17 January 2023 until 3 February 2023. The notification included the following:

- A sign placed on the site
- Notification letters sent to adjoining and adjacent properties
- Notification on the Council's website

The Council received a total of 19 unique submissions, comprising 19 objections and 0 submissions in support of the proposal. The issues raised in these submissions are considered in Table 6.

The issues raised in the community submissions have been addressed in this report and in the recommended conditions of consent at Attachment A.



NOTIFICATION PLAN


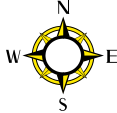
• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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Table 6: Community Submissions

Issue	Council Comments
Removal of right hand access from Galston Road would result in increased internal traffic	<p>The original approved Development Application received concurrence from Roads Traffic Authority (now Transport for NSW) on the basis that Galston Road would be Left in/ Left out only due to vehicle safety concerns due to the bend in the road and speed limit.</p> <p>This aspect of the proposal has not changed as part of the subject modification as TfNSW do not support right hand turn traffic movements from Galston Road due to traffic safety concerns.</p> <p>Residents would still be able to enter the site from Mid-Dural Road which TfNSW consider safe.</p> <p>The central median has been removed from the approved plan set.</p>

Relocation of bus stop	The bus stop location servicing the seniors living complex is proposed to be located from outside the Galston village to approximately 200m further to north-east as a consequence of CDC Bus safety requirements and location between bus stop requirements.
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5 KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Vehicular Access

The applicant seeks to amend the design of the Galston Road driveway access, which is described as follows:

Prior to construction, the project has received complaints from neighbours regarding the proposed centre median islands that only permits LEFT IN/LEFT OUT access to the village. The neighbours expressed a concern they would not be able to access their properties when operating larger vehicles and objected to no longer being able to turn right into their own driveways.

The proposed changes to the public road works have been made in response to the comments received from TfNSW1. For both Galston Road and Mid Dural Road frontages, a left in/left out vehicle access and deceleration lane will be constructed to TfNSW specifications.

Resolution: TfNSW have reviewed the modified designed which includes Left in/ Left out, a triangular median, a pedestrian refuge on the vehicle crossing and construction of a deceleration lane on both entries/ exits. TfNSW and Council's Traffic Engineer raise no objections to the modification and TfNSW has provided concurrence to the modification application.

5.2 Bus stop and pedestrian refuge

The modified proposal removes the proposed bus stops on Mid Dural Road and Galston Road as a result of objections received from the local bus company to the new stops. Instead, the proposal would rely on an existing bus stop on Galston Road located close to the roundabout.

Resolution: Council's Traffic Branch do not raise objections to the removal of the new bus stop locations provided a footpath is constructed to the existing stop on Galston Road in front of the roundabout including a disabled compliant landing pad and bus shelter. In addition, the Traffic Branch recommends the pedestrian refuge on Galston Road is maintained to allow residents to cross Galston Road and access the bus stop servicing the opposite direction to Castle Hill. Currently there is no disabled pedestrian refuge, despite representations from the Applicant that there is.

Accordingly, no objections are raised to the deletion of Condition 60 as it is now redundant, however Council maintains that the pedestrian refuge be maintained in Condition 59 for Galston Road. TfNSW have provided advice to Council that they support the pedestrian refuge on Galston Road.

Applicants suggested wording of Condition 59. Works in Galston Road (new wording provided in red)

Condition 59. Works in Galston Road

Central ~~median~~ islands ~~and pedestrian-refuges~~ are to be constructed in the driveways accessing Galston and Mid-Dural Roads subject to detailed design and approval process by the RTA TfNSW and Council and shall be completed prior to the issue of an occupation certificate for Stage 2.

Councils suggested wording of Condition 59. Works in Galston Road as well as Condition 27 (additional/ new wording provided in red)

Condition 59. Works in Galston Road

- a) A central pedestrian refuge is to be constructed in Galston Road subject to a detailed design and approval process by Transport for NSW and shall be completed prior to the issue of an Occupation Certificate for Stage 2.
- b) The design and approval process for the pedestrian refuge must be in accordance with Condition 27 of this consent.

Condition 27. Galston Road Pedestrian Refuge Island Works (new wording provided in red)

~~A detailed design for the pedestrian refuge island, bus stops, access driveway and median island on Galston Road as shown on plan No. 103976 IE04 H, be provided to council and approved by the RMS prior to a construction certificate for Stage 1. The design of the facilities shall be in accordance with RMS guidelines, technical directions and Austroads standards~~

- a) In order to provide convenience and pedestrian safety, a pedestrian refuge island shall be provided on Galston Road near the location of the existing bus bay that the proposed footpath is to connect to.
- b) The proposed works shall be designed to meet TfNSW requirements and endorsed by a suitably qualified practitioner. The design requirements shall be in accordance with AUSTRADS and other Australian Codes of Practice. The certified copies of the civil design plans shall be submitted to TfNSW for consideration and approval prior to the release of the Construction Certificate by the Principal Certifying Authority and commencement of road works. Please send all documentation to development.sydney@transport.nsw.gov.au
- c) The developer is required to enter into a Works Authorisation Deed (WAD) for the abovementioned works and obtain concurrence from TfNSW in accordance with Section 138 of the Roads Act 1993 (Roads Act). TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.

6 CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through the recommended draft conditions at Attachment A.

7 RECOMMENDATION

It is recommended:

- That the Modification Application (DA/484/011/N) for construction of a Seniors Living Development containing 76 independent living units and an associated community building at Lot 1 DP 1211969, No. 392 Galston Road, Galston be approved pursuant to Section 4.56(1) of the *Environmental Planning and Assessment Act 1979*, subject to the draft conditions of consent attached to this report at Attachment A; and

- Pursuant to Clause 118 of the Environmental Planning and Assessment Regulation 2021, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- *Attachment A: Draft conditions*
- *Attachment B: Civil Plans by Mepstead & Associates*
- *Attachment C: Footpath Plan by Vigor Master*
- *Attachment D: Statement of Environmental Effects by Vigor Master*
- *Attachment E: Transport for NSW concurrence letter*