



BUSINESS PAPER

GENERAL MEETING

**Wednesday 11 October 2023
at 6:30PM**



TABLE OF CONTENTS

AGENDA AND SUMMARY OF RECOMMENDATIONS

RESCISSION MOTIONS

Item 1	RM1/23 Motion to Alter a Resolution – 13 September 2023 General Meeting – Director's Report No. CS50/23 - Local Government NSW - 2023 Annual Conference - Submission of Motions and Determination of Voting Delegates	1
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MAYORAL MINUTES

Item 2	MM9/23 The Passing of Cate Newman.....	5
Item 3	MM10/23 The Passing of Jenifer Lewis	7

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

GENERAL BUSINESS

Office of the General Manager

Nil

Corporate Support Division

Item 4	CS55/23 Pecuniary Interest and Other Matters Returns - Disclosures by Councillors and Designated Persons	9
Item 5	CS66/23 Investments and Borrowings For 2023/2024 - Status for the Period Ending 31 August 2023	12
Item 6	CS68/23 Councillor Numbers - Section 224 of the Local Government Act.....	15

Community and Environment Division

Item 7	CE12/23 Council Managed Crown Land - Operational Land	18
--------	---	----

Planning and Compliance Division

Item 8	PC24/23 Report on Submissions - Agritourism Development Control Plan Amendments.....	23
Item 9	PC25/23 Electric Vehicle Charging - Draft Development Control Plan Amendments.....	33
Item 10	PC26/23 Draft Seniors Housing Development Control Plan Amendments.....	37

Infrastructure and Major Projects Division

Nil

PUBLIC FORUM – NON AGENDA ITEMS

QUESTIONS WITH NOTICE

MAYOR'S NOTES

Item 11 MN11/23 Mayor's Notes 01 September 2023 to 30 September 2023	43
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NOTICES OF MOTION

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

10 DRAFT SENIORS HOUSING DEVELOPMENT CONTROL PLAN AMENDMENTS

EXECUTIVE SUMMARY

- State Environmental Planning Policy (SEPP) seniors housing provisions override Council's local planning controls and allow seniors housing in certain zones, including the R2 Low Density Residential zone.
- Seniors Housing in the R2 zone is permissible in the form of low rise apartments with building heights up to 11.5m or villas with a height of 8.5m. These land uses are not otherwise permissible in the zone under the Hornsby Local Environmental Plan.
- A moratorium on the application of SEPP seniors housing provisions in Heritage Conservation Areas (HCAs) has been in place since 2019. It will expire on 31 December 2023.
- Council has made numerous representations to the Department of Planning and Environment (DPE) seeking an extension of the moratorium or a permanent exemption from the State Policy. Council prepared a Seniors Housing Demand and Supply Review to support its request which indicated that, if Council was provided time to prepare its own local strategy for seniors housing it would not be detrimental to supply.
- Despite ongoing communication and submissions to the DPE, it has been indicated that a permanent exemption from the State Policy is unlikely to be supported.
- In anticipation of the end of the moratorium in December, draft amendments to the Hornsby Development Control Plan (HDCP) have been prepared to assist minimise the impact of development allowed under the Housing SEPP on HCAs within the Shire.
- The draft controls require that proposals for Seniors Housing contribute positively to the heritage significance and character of HCAs. It is recommended that the draft amendments to the HDCP for Seniors Housing in HCAs be exhibited for public comment.

RECOMMENDATION

THAT:

1. The draft Development Control Plan amendments for Seniors Housing in Heritage Conservation Areas attached to Director's Report No. PC26/23 be exhibited for a period of 28 days and in accordance with Council's Community Engagement Plan.
2. Following the exhibition, a report on submissions be presented to Council for consideration.
3. Council write to the Minister for Planning and Public Spaces reiterating its request for a permanent exclusion from the application of the seniors housing provision of the Housing SEPP in Heritage Conservation Areas.

PURPOSE

The purpose of this report is to present draft amendments to the Hornsby Development Control Plan for Seniors Housing in Heritage Conservation Areas for public exhibition.

BACKGROUND

For more than a decade, Council has raised concerns that State Environmental Planning Policy provisions for Seniors Housing override Council's local planning controls and permit seniors housing developments in various locations, including heritage conservation areas and rural areas.

In response to the representations by Council concerning the impacts of seniors housing developments in rural areas, in 2018 the Greater Sydney Commission commenced an investigation into the planning challenges being experienced.

The resulting report titled, *Investigation into the cumulative impacts of Seniors Housing in the rural areas of The Hills and Hornsby local government areas*, was presented to Council at its meeting on 8 April 2020 (Directors Report No. PL7/20). Council resolved that:

"a submission be sent to the Secretary of the Department of Planning, Industry and Environment and the Minister for Planning and Public Spaces, urging that State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 be reviewed in light of the recommendations within the GSC report and that (at minimum) an immediate temporary suspension of the Seniors Housing SEPP from the rural areas of Hornsby and The Hills local government areas be granted. assisted Council with further advocacy seeking that Seniors Housing state policy provisions be reviewed and that (at minimum) a temporary suspension of the seniors housing from rural areas be granted".

In July 2020, the State provisions for seniors housing were amended to prevent new proposals for seniors housing on land within the Metropolitan Rural Area of Greater Sydney, including the rural areas of Hornsby Shire.

In regard to seniors housing in heritage conservation areas, in February 2019, the State Government introduced a temporary moratorium on the application of State wide seniors housing provisions in Heritage Conservation Areas in Greater Sydney until 2020.

At its meeting on 8 July 2020, Council considered Director's Report PL 16/20, presenting a Seniors Housing Demand and Supply Review. The Review was prepared to support Council's request for an extension of the temporary moratorium and indicated that, if Council was provided time to prepare its own local strategy for seniors housing it would not be detrimental to supply.

Council resolved that:

1. *The draft Seniors Housing Demand and Supply Review attached to Director's Report PL16/20 be submitted to the Department of Planning, Industry and Environment to support Council's requests concerning the application of State Environmental Planning Policy (Housing for Seniors or People with Disability) 2004 to rural land and Heritage Conservation Areas within Hornsby Shire.*
2. *The draft Seniors Housing Demand and Supply Review be placed on public exhibition after being reformatted and designed in accordance with Council's style guide.*
3. *Consultation with seniors housing providers be undertaken on supply and demand generally as outlined in the Review and on demand for different levels of care in aged care facilities.*

4. *A further report be prepared for Council's consideration concerning the response from Department of Planning, Industry and Environment, the community, and seniors housing providers.*

In accordance with Council's resolution, the draft Review was publicly exhibited, a copy was forwarded to the Department of Planning and consultation with seniors housing providers was undertaken.

At its meeting on 12 May 2021, Council considered Director's Report No. PC9/21 concerning the exhibition of the Seniors Housing Demand and Supply Review. The submissions received were generally supportive of the review. The consultation with seniors housing providers identified two sites acquired by Twilight Aged Care and Link Wentworth Housing to provide seniors housing prior to the introduction of the temporary moratorium of the application Seniors SEPP in HCAs. In consideration of how far the concept proposals had been progressed by the not-for-profit community housing providers, Council resolved to allow the opportunity for seniors housing developments on these two sites only within the HCA.

It was resolved that:

1. *Council endorse the Seniors Demand and Supply Review.*
2. *Council request the Department of Planning, Industry and Environment continue the moratorium on the application of the Seniors SEPP on land within Heritage Conservation Areas in Hornby Shire, with the exception of two sites being Property Nos. 46-50 Hannah Street, Beecroft and No. 17 Killaloe Avenue, Pennant Hills.*
3. *A local Seniors Housing Strategy be prepared, subject to staff resources and funding.*
4. *Submitters be notified of Council's decision.*

In accordance with Council's resolution, a request for continuation of the moratorium was submitted, with the exemption of the two nominated sites. The State policy provisions were subsequently amended by the Department of Planning to exclude the sites and otherwise continue the temporary moratorium which is now due expire on 31 December 2023.

DISCUSSION

This report seeks Council endorsement to exhibit draft amendments to the Hornsby DCP for seniors housing in HCAs to supplement the Department's draft Seniors Housing Design Guide.

The Housing SEPP – permissibility and heritage conservation areas

The State provisions for seniors housing are now contained in State Environmental Planning Policy (Housing) 2021 (the Housing SEPP). The Housing SEPP facilitates the development of a range of affordable and diverse housing including seniors housing. The SEPP overrides local planning controls and permits seniors housing defined as residential care facilities (nursing homes or aged care homes), seniors independent living units, and hostels for seniors or people with a disability in various land use zones, including the R2 Low Density Residential zone.

Most Heritage Conservation Areas (HCAs) in Hornsby Shire are zoned R2 Low Density Residential where seniors housing, residential flat buildings (apartments) and villas are not permitted in the *Hornsby Local Environmental Plan 2013* (Hornsby LEP), and the maximum building height is 8.5m.

Under the Housing SEPP, Seniors housing is permissible with consent in the R2 Low Density Residential zone on sites over 1,000sqm and development is permitted in the form of low rise apartments and villas with building heights of up to 11.5m.

Despite Council's numerous representations seeking a permanent exemption to the permissibility of seniors housing in HCAs, the DPE has indicated that an exemption is unlikely to be supported as State and local controls can deliver appropriate outcomes for seniors housing. In this regard, a draft Seniors Housing Design Guide has been released by the Department.

The recently released draft Seniors Housing Design Guide, when finalised, would replace the *Seniors Living Policy Urban design guidelines for infill development, 2004*. Review of the draft Guide indicates that it is informative rather than prescriptive and does not consider HCAs, landscape conservation, or contain prescriptive heritage development controls.

Stronger local provisions for seniors housing developments within and near heritage items and HCAs would be appropriate to supplement the Guide, assist minimise the impact of building form, height and setbacks allowed through the SEPP on HCAs within the Shire. Further additional controls would assist applicants design proposals to respond to heritage considerations and the determining authority in evaluating applications.

Draft Hornsby DCP Amendments for Seniors Housing in Heritage Conservation Areas

Council's planning policies aim to encourage high quality development, while respecting, managing and preserving our HCAs. This balanced approach seeks to ensure development is appropriate in its context and character and protects our valued heritage precincts.

The existing DCP controls for seniors housing (Part 7 – Community) and heritage (Part 9) do not include specific desired outcomes or controls for the housing forms and building heights to be enabled through the Housing SEPP that will soon apply to HCAs.

Accordingly, draft amendments to Part 7 and Part 9 have been prepared to require that the built forms allowed through the Housing SEPP contribute positively to the heritage significance and character of heritage conservation areas. Further, proposals should be consistent with key applicable desired outcomes and development controls in Part 9.3 – Heritage Conservation Areas. Specifically, draft amendments have been prepared as outlined below.

Draft amendments in Part 7 – Community:

- Requirements for Seniors Housing in Heritage Conservation Areas to contribute positively to the heritage significance and character of heritage conservation areas and be consistent with the applicable desired outcomes and development controls in Hornsby DCP Part 9 – Heritage.

Draft amendments in Part 9 – Heritage:

- Adding to HCA development application submission requirements that development applications for Seniors Housing should include a detailed Heritage Impact Assessment demonstrating how the proposal complements the heritage significance and character of the heritage conservation area and justifying any proposed demolition.
- Adding to the General Design Provisions and Prescriptive Measures for HCAs that:
 - Two or more storey Seniors Housing proposals should be located within streetscapes that are predominantly two or more storeys.
 - Garages, carports and resident car-parking spaces in Seniors Housing developments should not be visible from the public domain.
 - Basement garage openings may be visible from the public domain.

- The landscaped front setbacks of Seniors Housing developments and side setbacks visible from the public domain should not be divided into, or form part of, private open space.
- Communal open space in the landscaped front setbacks or side setbacks of Seniors Housing developments visible from the public domain should be open and not fenced, walled, or hard screened. Plantings may be used to establish boundaries and achieve privacy.

Although local controls cannot override State planning controls, the proposed combination of draft DCP amendments outlined above would require seniors housing development in HCAs to generally comply with the HCA provisions. This would mean dwelling forms and heights enabled through the Housing SEPP, would be required to demonstrate how they avoid design and landscape elements that may adversely affect the character and significance of an HCA.

It is recommended that Council endorse the draft DCP amendments for Seniors Housing in Heritage Conservation Areas attached to this report for public exhibition.

Preparation of a local Seniors Housing Policy

As discussed above, Council's Seniors Demand and Supply Review indicates that a permanent exemption from the application of the Housing SEPP for heritage conservation areas would not be detrimental to supply. It shows there is currently sufficient supply for projected demand for both seniors housing (independent living units) and residential aged care facilities.

At its meeting on 12 May 2021, Council endorsed the Seniors Housing Demand and Supply Review and resolved to prepare a Local Seniors Housing Strategy. Confirmation was subsequently sought from the Department that preparation of a Local Strategy would be appropriate to support consideration of a permanent exemption from the State Policy. However, a confirmed position has not been received from the DPE.

A Local Seniors Housing Strategy will look more closely at the size, type and levels of care that people are able to access and waiting times. The Strategy will also look at qualitative aspects of housing supply including the preferences of our residents for different housing types and housing options outside of age-segregated seniors living, and appropriate locations for the same.

In addition, Council's Local Housing Strategy and implementation plan demonstrate Council's commitment to identifying future locations for medium density dwellings such as townhouses and terraces, which would increase seniors housing capacity in more appropriate locations than HCAs

Therefore, notwithstanding the proposed DCP amendments, it is also recommended that Council continue its advocacy to seek a permanent exclusion from the application of the State planning controls for seniors housing in Heritage Conservation Areas.

CONSULTATION

It is recommended that the draft DCP amendments for seniors housing be exhibited for public comment for 28 days in accordance with Council's Community Engagement Plan.

The consultation should include advertisement on Council's website under 'Your Say Hornsby' and letters to historical societies and civic trusts.

Following exhibition, a report would be presented to Council summarising the feedback received.

BUDGET

There are no budgetary implications associated with the exhibition of the draft DCP amendments for Seniors Housing in Heritage Conservation Areas.

POLICY

Local controls cannot override State planning controls. However, the proposed amendments to the HDCP aim to ensure that dwelling forms and heights enabled through the Housing SEPP are designed and landscaped to complement the character and significance of an HCA.

A more thorough review of the heritage elements of the Hornsby DCP is scheduled to commence in the coming months as part of the Comprehensive Heritage Review. The amendments attached to this report are being brought forward ahead of the wider review given the upcoming expiry of the seniors housing moratorium in HCAs.

Following the exhibition of the draft amendments, a report would be presented to Council for consideration of submissions. Subject to Council's endorsement, the draft amendments would be incorporated into the HDCP and come into force once published on Council's website.

CONCLUSION

It is recommended that draft amendments to the Hornsby DCP for draft Seniors Housing in Heritage Conservation Areas be placed on public exhibition for at least 28 days to seek community feedback. It is also recommended that Council write to the Minister for Planning and Public Spaces reiterating its request for a permanent exclusion from the application of the State planning controls for seniors housing in Heritage Conservation Areas.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Strategic Landuse Planning – Katherine Vickery - who can be contacted on 9847 6744.

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Attachments:

1.  Attachment - Seniors Housing in Heritage Conservation Areas - DCP amendments

File Reference: F2004/09011
Document Number: D08732830