



BUSINESS PAPER

GENERAL MEETING

**Wednesday 13 December 2023
at 6:30PM**



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AGENDA AND SUMMARY OF RECOMMENDATIONS

ACKNOWLEDGEMENT OF COUNTRY

Statement by the Chairperson:

"Council recognises the Traditional Owners of the lands of Hornsby Shire, the Darug and GuriNgai peoples, and pays respect to their Ancestors and Elders past and present and to their Heritage. We acknowledge and uphold their intrinsic connections and continuing relationships to Country."

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

Reverend Andrew Kyrios of Cherrybrook Anglican Church, Cherrybrook will open the Meeting In Prayer.

ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY

Statement by the Chairperson:

"We recognise our Shire's rich cultural and religious diversity and we acknowledge and pay respect to the beliefs of all members of our community, regardless of creed or faith."

VIDEO AND AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

"I advise all present that tonight's meeting is being video streamed live via Council's website and also audio recorded for the purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The audio and video recordings of the non-confidential parts of the meeting will be made available on Council's website once the Minutes have been finalised. All speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms. No other persons are permitted to record the Meeting, unless specifically authorised by Council to do so."

APOLOGIES / LEAVE OF ABSENCE

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

"In accordance with Section 10.4 of the Environmental Planning and Assessment Act 1979, any person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, and who has made a reportable political donation or gift to a Councillor or employee of the Council, must make a Political Donations Disclosure Statement.

If a Councillor or employee has received a reportable political donation or gift from a person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, they must declare a non-pecuniary conflict of interests to the meeting, disclose the nature of the interest and manage the conflict of interests in accordance with Council's Code of Conduct."

DECLARATIONS OF INTEREST

Councillors are reminded of their Oath or Affirmation of Office made under section 233A of the Act and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

Clause 4.16 and 4.17 of Council's Code of Conduct for Councillors requires that a councillor or a member of a Council committee who has a pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

- 4.16 *A councillor who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.*
- 4.17 *The councillor must not be present at, or in sight of, the meeting of the council or committee:*
- a) *at any time during which the matter is being considered or discussed by the council or committee, or*
 - b) *at any time during which the council or committee is voting on any question in relation to the matter.*

Clause 5.10 and 5.11 of Council's Code of Conduct for Councillors requires that a councillor or a member of a Council committee who has a non pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

- 5.10 *Significant non-pecuniary conflict of interests must be managed in one of two ways:*
- a) *by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or*
 - b) *if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest*

as if you had a pecuniary interest in the matter by complying with clauses 4.16 and 4.17.

- 5.11 *If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.*

CONFIRMATION OF MINUTES

THAT the Minutes of the General Meeting held on 8 November, 2023 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

PRESENTATIONS

RESCISSION MOTIONS

MAYORAL MINUTES

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

Note:

Persons wishing to address Council on matters which are on the Agenda are permitted to speak, prior to the item being discussed, and their names will be recorded in the Minutes in respect of that particular item.

*Persons wishing to address Council on **non agenda matters**, are permitted to speak after all items on the agenda in respect of which there is a speaker from the public have been finalised by Council. Their names will be recorded in the Minutes under the heading "Public Forum for Non Agenda Items".*

GENERAL BUSINESS

- *Items for which there is a Public Forum Speaker*
- *Public Forum for non agenda items*
- *Balance of General Business items*

OFFICE OF THE GENERAL MANAGER

Page Number 1

Item 1 GM42/23 CODE OF CONDUCT COMPLAINTS - ANNUAL REPORT

RECOMMENDATION

THAT the contents of General Manager's Report No. GM42/23 be received and noted.

CORPORATE SUPPORT DIVISION

Page Number 4

Item 2 CS73/23 CLASSIFICATION OF PUBLIC LAND AT MYRA STREET, WAHROONGA

RECOMMENDATION

THAT pursuant to Section 31 of the Local Government Act 1993, Lots 3, 4 and 5 DP1298140 adjoining 55 – 57 Myra Street, Wahroonga be classified as "Operational Land".

Page Number 7

Item 3 CS76/23 INVESTMENTS AND BORROWINGS FOR 2023/2024 - STATUS FOR THE PERIOD ENDING 31 OCTOBER 2023

RECOMMENDATION

THAT the contents of Director's Report No. CS76/23 be received and noted.

COMMUNITY AND ENVIRONMENT DIVISION

Page Number 10

Item 4 CE13/23 COUNCIL MANAGED CROWN LAND - DEVOLVED LAND

RECOMMENDATION

THAT Council:

1. Endorse the Crown Land Manager request for the nine sites, as shown in Attachment 1 to Director's Report No. CE13/23.
2. Request approval from the Minister administering the Crown Land Management Act to accept Council's request to become Crown Land Manager, as shown in Attachment 1 to Director's Report No. CE13/23.
3. Authorise the General Manager to approve the provision of any documentation required to support Council's request to become Crown Land Manager.

PLANNING AND COMPLIANCE DIVISION

Page Number 15

Item 5 PC29/23 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

RECOMMENDATION

THAT the contents of Director's Report No. PC29/23 be received and noted.

Page Number 19**Item 6 PC30/23 REPORT ON SUBMISSIONS – 7 CITY VIEW ROAD PLANNING PROPOSAL
AND VOLUNTARY PLANNING AGREEMENT****RECOMMENDATION**

THAT:

1. Council endorse the 7 City View Road, Pennant Hills Planning Proposal as exhibited (attached to Director's Report No. PC30/23) and progress with finalisation of amendments to the *Hornsby Local Environmental Plan 2013*.
2. Council endorse the Voluntary Planning Agreement attached to Director's Report No. PC30/23 to facilitate dedication of four affordable housing units, an easement for public access and a monetary contribution of \$450,000 towards improvements in the Pennant Hills Town Centre.
3. Submitters be advised of Council's decision.

Page Number 27**Item 7 PC31/23 REPORT ON SUBMISSIONS – SENIORS HOUSING IN HERITAGE
CONSERVATION AREAS – DRAFT DEVELOPMENT CONTROL PLAN
AMENDMENTS****RECOMMENDATION**

THAT:

1. Council approve the Hornsby Development Control Plan amendments for Seniors Housing in Heritage Conservation Areas attached to Director's Report No. PC31/23.
2. Notification of the approval of the amendments be published on Council's website.
3. Submitters be advised of Council's decision.

Page Number 33**Item 8 PC32/23 REPORT ON SUBMISSIONS – ELECTRIC VEHICLE CHARGING –
DEVELOPMENT CONTROL PLAN AMENDMENTS****RECOMMENDATION**

THAT:

1. Council approve the draft Electric Vehicle Charging amendments to the Hornsby Development Control Plan 2013 attached to Director's Report No. PC32/23.
2. Notification of the approval of the amendments be published on Council's website.
3. Submitters be advised of Council's decision.

Page Number 38**Item 9 PC33/23 LETTER FROM PLANNING MINISTER - HOUSING DELIVERY****RECOMMENDATION****THAT:**

1. Council note the letter from the Minister for Planning and Public Spaces requesting councils review their planning policies to increase housing supply and diversity.
2. Council write to the Minister for Planning and Public Spaces outlining Council's:
 - Current medium density housing project.
 - Proven track record of housing delivery via strategic planning initiatives and the timely assessment of planning applications.
 - Commitment to facilitate housing provision in accordance with the initiatives outline in the Hornsby Local Housing Strategy 2020.
 - Willingness to continue to investigate opportunities for appropriate housing delivery in the future in accordance with any revised housing targets.
 - Observation that the housing crisis is not limited to council zoning and application determination timeframes but that macro-economic factors also need to be addressed.
3. Council's letter to the Minister also note the recent announcement of planning reforms by the State Government appears to conflict with his request that councils plan for medium density housing locally and raise concerns that such an approach may not appropriately respond to constraints such as bushfire, flooding, vegetation and infrastructure capacity.

INFRASTRUCTURE AND MAJOR PROJECTS DIVISION

Nil

PUBLIC FORUM – NON AGENDA ITEMS**QUESTIONS WITH NOTICE****MAYOR'S NOTES****Page Number 46****Item 10 MN13/23 MAYOR'S NOTES 01 NOVEMBER 2023 TO 30 NOVEMBER 2023**

NOTICES OF MOTION**Page Number 48****Item 11 NOM11/23 PROPOSAL TO CHANGE BROOKLYN PARKING RESTRICTIONS**

COUNCILLOR SALITRA TO MOVE

THAT Council:

1. Identify improvements to lighting, security and access to the Upper McKell carpark at Brooklyn for all users.
2. Discuss improvement options, including financial implications, at an informal workshop in early 2024.
3. Consider options for seeking grants to fund identified improvements.
4. In collaboration with river communities, develop an exceptional circumstances permit that allows qualified residents to park in 4P spaces under an Authorised Vehicle Excepted permit.
5. That Council seek any approvals possible from Crown Lands to enable these permits to be issued.
6. Roll back 4P timed parking spaces within the foreshore parking areas to a total of 30 spaces until viable alternative parking is implemented.
7. That approval for the roll-back of 4P parking space be sought via Council's Traffic Committee without delay.

Page Number 50**Item 12 NOM12/23 PAVED FOOTPATH CONSTRUCTION NEW LINE ROAD,
CHERRYBROOK**

COUNCILLOR GREENWOOD TO MOVE

That Council:

1. Acknowledges the need for a safe, reliable and connected paved footpath for the public to access the western side of New Line Road between County Drive and Franklin Road, Cherrybrook.
2. Investigates the construction of a paved footpath along the western side of New Line Road between County Drive and Franklin Road, Cherrybrook.
3. Reports the outcomes of this investigation and discussions with Transport for NSW at an Informal workshop for consideration of inclusion in Councils Delivery Program/Operational Plan 2024/25.

Page Number 52

Item 13 NOM13/23 VETERAN EMPLOYMENT SERVICES

COUNCILLOR GREENWOOD TO MOVE

That Council:

1. Make contact with the Veteran Employment Program (VEP) and investigate the opportunities for Council to have a collaborative relationship with VEP by linking, supporting and employing veterans within its Hornsby local government area.
2. Report back the outcome of this contact to an Informal Workshop of Council prior to the end of March 2024.

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

7 REPORT ON SUBMISSIONS – SENIORS HOUSING IN HERITAGE CONSERVATION AREAS – DRAFT DEVELOPMENT CONTROL PLAN AMENDMENTS

EXECUTIVE SUMMARY

- At its meeting on 11 October 2023, Council resolved to exhibit draft amendments to the Hornsby Development Control Plan 2013 to introduce new controls to require seniors housing developments to contribute positively to the significance and character of heritage conservation areas.
- The amendments were exhibited from 16 October 2023 to 6 November 2023 and seven submissions were received. The submissions are generally supportive or provide suggestions to strengthen the DCP amendments such as climate-sensitive building features, avoiding loss of vegetation, limiting the scale of development and stronger wording.
- Minor changes to the exhibited amendments are recommended in response to submissions.
- It is recommended that Council approve the amendments to the Hornsby DCP.

RECOMMENDATION

THAT:

1. Council approve the Hornsby Development Control Plan amendments for Seniors Housing in Heritage Conservation Areas attached to Director's Report No. PC31/23.
2. Notification of the approval of the amendments be published on Council's website.
3. Submitters be advised of Council's decision.

PURPOSE

The purpose of this report is to address matters raised in submissions received during the exhibition of draft amendments to the Hornsby Development Control Plan 2013 (Hornsby DCP). The amendments would introduce new controls to guide the development of seniors housing within heritage conservation areas (HCAs).

BACKGROUND

At its meeting on 11 October 2023, Council considered Director's Report No. PC26/23 seeking endorsement to exhibit draft amendments to the Hornsby DCP that would, in summary:

- Introduce new desired outcomes and prescriptive measures requiring seniors housing in HCAs to contribute positively to the significance and character of HCAs and be consistent with controls set out in Part 9 Heritage.
- Require development applications for seniors housing to include a detailed Heritage Impact Assessment.
- Introduce new prescriptive measures to guide the streetscape presentation, location of car parking and landscaping of seniors housing developments in HCAs.

Council resolved (in part) 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.*

In accordance with Council's resolution, the draft Hornsby DCP amendments were exhibited from 16 October 2023 to 6 November 2023. This report addresses the submissions received during the public exhibition.

DISCUSSION

The draft DCP amendments were exhibited from 16 October 2023 to 6 November 2023 via Council's 'Your Say Hornsby' website. During the exhibition, seven submissions were received. The submissions are generally supportive or provide suggestions to strengthen the DCP amendments such as climate-sensitive building features, loss of vegetation, limiting the scale of development and stronger wording.

Key matters raised in submissions are addressed below.

Climate-sensitive building features

One submission suggests the draft DCP amendments should include climate-sensitive features such as solar power generation, double glazing and sealed doors.

Comment

The draft DCP amendments have been prepared in response to the impending expiration of the State Government's moratorium on seniors housing in HCAs on 31 December 2023.

The State Government has prepared a draft Seniors Housing Design Guide to help inform design and assessment of seniors housing proposals. The design guide identifies objectives and design guidance for delivery of climate-appropriate seniors housing buildings. Once finalised, the draft Design Guide

will replace the existing Seniors Living: Urban Design Guidelines for Infill Development 2004 and will need to be considered for seniors housing developments prescribed in the Housing SEPP.

Further, Section 1C.2.8 Building Sustainability of the Hornsby DCP includes existing provisions for residential and non-residential buildings to meet State requirements for building sustainability which measures a development's energy and water usage, and thermal performance.

Recommendation

That no changes be made to the exhibited draft DCP amendments in response to the submission commenting on climate-sensitive building features.

Loss of vegetation

One submission suggests the DCP controls should include a mechanism to prevent the loss of existing tree canopy.

Comment

The Hornsby DCP has existing provisions that separately address preservation of trees and biodiversity, tree removal and vegetation on heritage items and within HCAs.

Section 1B.6 Tree and Vegetation Preservation and Section 1C.1.1 Biodiversity of the Hornsby DCP contain existing prescriptive measures for the preservation of trees and biodiversity on private properties. All development applications that include tree removal must demonstrate why removal is necessary and that any trees that cannot be retained are compensated with adequate replacement tree planting and landscaping.

Section 9.2.3 Gardens, Tree and Landscaping and Section 9.3.3 Gardens, Fences and Gates contains existing provisions to be considered when a development impacts existing trees and gardens located on heritage items or in HCAs.

Recommendation

That no changes be made to the exhibited draft DCP amendments in response to the submission commenting on the loss of tree canopy due to redevelopment of heritage properties.

Limits to density and height of seniors housing developments

Some submissions suggest various limitations to density and height for seniors housing developments including that:

- Building height controls should be strictly observed and applicable to the entirety of a property.
- There should be a limit to the number of dwellings within a seniors housing development and to the number of seniors housing developments within any HCA.

Comment

With the expiry of the State Government's moratorium, *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) would no longer exclude seniors housing developments from being located in HCAs.

The Housing SEPP is the prevailing planning instrument for the development of housing for the elderly and people with a disability in NSW. The Housing SEPP includes development standards and design principles specific to meeting the housing needs of the elderly and people with a disability.

Of these development standards, specific requirements for minimum site area, building height and setbacks provide the framework for which a seniors development may be constructed. The draft DCP amendments seek to strengthen consideration of the character and context of Hornsby's HCAs.

However, in situations where there is an inconsistency between the Housing SEPP and local controls in terms of density or height, the provisions of the Housing SEPP prevail. Consequently, introducing local controls that further limit height, limit the number of dwellings within a seniors housing development or to exclude such developments from an HCA would have no effect.

Recommendation

That no changes be made to the exhibited draft DCP amendments in response to submissions suggesting further density and height limitations for seniors housing developments within HCAs.

Changes to language in the DCP controls

A submission from the Byles Creek Valley Union suggests the use of 'must' rather than 'should' to enforce compliance with the controls.

Comment

Council has previously considered and obtained advice on the terminology within the Hornsby DCP including the use of the term 'should' and 'must'. The *Environmental Planning and Assessment Act 1979* identifies that development controls in DCPs are not statutory requirements and they should provide guidance only and allow flexibly for reasonable alternative solutions that achieve the objectives of the controls. Therefore, it is appropriate to use the term 'should' instead of 'must' to reflect the status of DCPs and to ensure consistency with wording used throughout all chapters in the Hornsby DCP.

Recommendation

That no changes be made to the exhibited draft DCP amendments in response to the submission to strengthen the language used for seniors housing provisions within HCAs.

Additional wording in controls

A submission from the Beecroft Cheltenham Civic Trust suggests the desired outcomes and prescriptive measures should specify that intrusive elements are avoided or neutralised.

Comment

The existing prescriptive controls in Part 9 of the DCP arguably should already ensure the avoidance of intrusive elements for any type of development in Heritage Conservation Areas. The additional prescriptive measures proposed for Part 9 seek to ensure they apply specifically to seniors housing. 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.

A new desired outcome and prescriptive measure is also proposed in Part 7.2 Community Housing of the DCP. It would be appropriate that the additional desired outcome Part 7.2.1 b. be amended as suggested in the submission to specify that intrusive elements are avoided.

Recommendation

That the following change be made to the exhibited DCP amendments for desired outcome Part 7.2.1 b. to read (additional text in bold):

Development in heritage conservation areas that contributes positively to the area's heritage significance **and avoids intrusive elements.**

CONSULTATION

In accordance with the consultation strategy outlined in Director's Report No. PC26/23, the draft DCP amendments were exhibited from 16 October 2023 to 6 November 2023 through advertisement on Council's 'Your Say Hornsby' website, and notification letters were sent to relevant historical societies and civic trusts. Seven submissions were received and have been addressed in this report.

BUDGET

There are no budgetary implications associated with this report.

POLICY

The State Government's Housing SEPP facilitates the development of seniors housing on a range of land use zones, including the R2 Low Density Residential zone. The R2 Low Density Residential zone is present in the majority of Hornsby Shire's HCAs.

The State Government's moratorium on the application of the Housing SEPP's seniors housing provisions in HCAs is due to expire on 31 December 2023. Consequently, the proposed draft amendments to the Hornsby DCP have been prepared to seek to minimise the impact of seniors housing development in HCAs.

Subject to Council's endorsement, the draft amendments would be incorporated into the Hornsby DCP and come into force once published on Council's website.

CONCLUSION

Amendments to the Hornsby DCP were exhibited between 16 October 2023 and 6 November 2023 to introduce new controls for seniors housing development in HCAs. A total of seven submissions have been received which are generally supportive or provide suggestions to strengthen the DCP amendments such as climate-sensitive building features, loss of vegetation, limiting the scale of development and stronger wording.

The matters raised have been addressed in this report and minor changes to the DCP amendments are recommended in response to submissions.

It is recommended that Council approve the Seniors Housing in Heritage Conservation Area DCP controls (as amended) attached to this report.

RESPONSIBLE OFFICER

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

KATHERINE VICKERY
Manager - Strategic Landuse Planning
Planning and Compliance Division

JAMES FARRINGTON
Director - Planning and Compliance
Planning and Compliance Division

Attachments:

1.  Seniors Housing in Heritage Conservation Areas - DCP Amendments

File Reference: F2004/09011

Document Number: D08770231

ITEM 7