

**Submission  
No 44**

**INQUIRY INTO DEVELOPMENT OF THE TRANSPORT  
ORIENTED DEVELOPMENT PROGRAM**

**Name:** David Kitson  
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# **SUBMISSION TO LEGISLATIVE COUNCIL ENQUIRY TRANSPORT ORIENTED DEVELOPMENT PROGRAM (TOD)**

David Kitson –18 March 2024

## **OVERVIEW**

The TOD is knee-jerk political reaction to the housing crisis that is being proposed behind medium density ideologists in the Administration.

The TOD is premised on number of false assumptions, including that there is an inadequate supply of existing urban land available for redevelopment at higher densities.

I provide the reasons in the following discussion, as to why the Government should not proceed with this indiscriminate planning approach.

## **1. INCONSISTENT WITH THE OBJECTS OF THE ACT**

The TOD and the foreshadowed State Environmental Planning Policy are fundamentally inconsistent with the objects of the *Environmental Planning & Assessment Act 1979*, in that it does not

- (a) promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) promote the orderly and economic use and development of land,
- (d) promote the delivery and maintenance of affordable housing,
- (e) protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) promote good design and amenity of the built environment,
- (h) promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) provide increased opportunity for community participation in environmental planning and assessment.

In the circumstances, any *State Environmental Planning Policy* implemented based on the TOD has every prospect of being successfully challenged in the Land & Environment Court.

The following discussion details some of the reason why the skater-gun approach of the TOD is contrary to the objects of the Act and good planning.

## **2. INSUFFICIENT INFORMATION**

The TOD document is basically a promotional document that is short on detailed analysis to justify this major departure from the traditional planning process.

Where are all the planning and infrastructure studies that should accompany any major change to permissible densities to ensure that:

- Land is suitable for medium density.
- Land is capable of being adequately serviced.
- The developments will fund the necessary infrastructure upgrades to address their impacts.

There are many assertions made that are not “evidenced based” as is claimed.

The TOD document is completely inadequate, in that, it fails to even show the rail network and the mapping of the proposed medium density areas.

## **3. INADEQUATE PUBLIC CONSULTATION**

The TOD is being rushed through without proper consideration and local community engagement. The proposed “public consultation” is disingenuous given that

- The name “*Transport Oriented Development Program*” implies improvements to the transportation system.
- The document is very difficult to find on the planning website, being hidden at the end of a number of links.
- The period of public consultation commenced 23 December 2023 prior to the Xmas-New Year period when the public is really not paying attention and is contrary to the principle espoused by the Department in numerous guidelines about not exhibiting a planning proposal or major development over this period.

Public consultation for such major changes should be undertaken via the LEP rezoning process such that local communities can provide meaningful input about local circumstances.

## **4. CORRUPTION**

The TOD will result in a major change in land values and there is every probability that many with inside knowledge either in the administration or at the political level are supportive of this policy change based on personal gain.

It is unfortunate that within the State Government Administration there are significant ties and crossovers between departmental officers and the development industry that have developed over many years through exchange of staff. There is little doubt that this is on the scale that has been discovered and widely publicised recently in relation

to accounting firms, which have development undue influence within Federal Government agencies for personal gain.

## **5. FALSE UNDERLYING PREMISE**

The TOD is premised on a number of fundamentally incorrect assumptions.

### ***5.1. Reason for Housing Shortage***

The reason for the housing shortage has very little to do with land supply but has everything to do with:

- Cumulative population growth primarily via immigration.
- Capacity constraints in the building industry related to a generational decline in the number of builders and unprecedented bankruptcies of building companies.
- The cost of building exacerbated by current high interest rates.
- Complexity of the building regulations and approval processes.
- The lack of funding of infrastructure in regional areas.

The TOD will not address the failure of private industry to supply dwellings that are property construction at an affordable price. Past governments have been responsible the evolution of a dis-functional approval framework that is not orientated to good planning and proper oversight.

While the Building Commission is a welcome initiative, it is an unsustainable approach that will drive building costs up. Unfortunately, the ultimate solution to the housing crisis is for the government to intervene and start providing supply. There is also a need to actively fund infrastructure in regional areas to facilitate housing supply where there is land availability and where the Government already has significant under-utilised social infrastructure.

### ***5.2. Population Growth***

The underlying premise of increasing densities is that Australian Federal Government will continue to ramp up immigration rates, which is the over-whelming contribution to population growth.

Rather than a choice between going up or going out, the Governments of all persuasions fail to consider “ecologically sustainable population” principles of stable growth.

Unfortunately, the continued growth of Sydney cannot be sustained in a manner that protects urban landscapes, the environment, existing communities and a more human scale of living. This is widely recognised, as well as the need to fund housing and associated infrastructure in regional areas.

### ***5.3. Medium Density Opportunities***

There are sufficient areas capable of being development for medium density in Sydney. Local Councils have generally been working with the State Government in ear-marking appropriate land for medium density.

Many of the areas which have been identified as TOD precincts already have substantial existing and proposed medium density developments, that has been the subject of planning studies and local community engagement.

### ***5.4. Spare Capacity in Railway Transport***

While the TOD document asserts that 8 areas have been identified as having enabling infrastructure capacity near the transport stations to support additional housing growth. Many of these TOD accelerated Precincts already have significant medium and high density. While some of these locations are clearly suited to further increases in density, there are others for which the assertion that there is additional capacity in the transport network is unsubstantiated or even false.

A notable example is Crow Nest that is not have its own station, the closest station being St Leonards Station. This station is located on the North Shore line that is widely acknowledged as being at capacity due to the inability to duplicate the lines across the Harbour Bridge. The TOD would appear not to provide any evidence that refutes this position and also does not provide any statement about the cumulative impact of other medium density areas proposed along this train line.

### ***5.5. Traffic Generation Assumption***

There is an underlying assumption that the future residents of high-density areas adjacent to railway station will not own or use vehicles.

Unless there is a ban on carparking spaces in such developments, these developments will result in more traffic congestions and limit the opportunity for residents driving from further afield to access car parking at no cost.

There are a number of stations that really should not be on the list and the lack of real assessment or evidence-based support provided as part of the exhibition, will inevitably cause community anger and confrontation.

## **6. IMPACT OF TOD**

The proposal to provide developers with an open slather approach to land around railway stations and via dual occupancy development will in no way solve the housing problems and potentially exacerbate it.

The reactionary policies like the TOD will cause immense social harm, dislocation to existing communities, destruction of environmental and heritage values and ultimately generate demand in the future for extremely costly infrastructure upgrades.

It is the antithesis of good planning.

An adoption of the TOD SEPP will likely lead to an increase in unproductive litigation, which may be a boon for lawyers, but will ultimately just add to the cost of development.

Ultimately, urban renewal should be taking place on large former industrial /commercial sites where property master planning can be undertaken to provide good design and amenity, and not on postage sized hand holdings.

The idea that there will be no minimum lot size is poor planning and will inevitably lead to poor development and community opposition. There should be no medium density envisage on any lot under 3,000m<sup>2</sup>, which is vital to encourage amalgamation and the opportunity for decent design.

## **7. ALTERNATIVE PLANNING APPROACH TO TOD**

The alternative planning approach to the TOD is the traditional planning approach that provides for active local participation via the Local Environmental Plan Process.

### **7.1. Local Environmental Plan**

Any proposal to increase the density of land should be pursued via a Local Environmental Plan supported by infrastructure planning and environmental studies that justify the locations as the optimum locations for medium density.

### **7.2. Infrastructure Funding**

It is essential that future infrastructure upgrades required are identified and costed in a contribution plan for each of the identified areas, that can be used as the basis for determining the apportioned contributions per unit.

There is a need for a satisfactory arrangements provision under which a medium density cannot be approved unless the Minister for Planning is satisfied with the provision of low-cost housing and infrastructure funding. This is the model that currently exists in the case with urban release areas under the standard Part 6 provisions of the Standard Instrument.

## **8. AFFORDABLE HOUSING**

The proposal to make up to 15% of housing for affordable housing is probably too low and should be in the order of 30% given the uplift in land values associated with the increase in the permissible density. I note that this is the percentage that is being envisaged for the redevelopment of surplus government land.

Affordable housing should be in perpetuity and not for a token 10-15 years as is often the case.

It is of concern that there is some equivocation on the percentage of a development that is reserved for affordable housing, which should have more prescription as a policy position prior to any rezoning and be subject to a Planning Agreement in exchange for rezoning. The percentage of low-cost housing should not be determined on the cost and return of a proposed development but should be a determinant of the value of the land.

## **9. NORTH SHORE RAILWAY CORRIDOR**

The stations of Gordon, Killara, Lindfield and Roseville along the North Shore Railway corridor have been identified as TOD Precincts. While there are significant areas on the western side of this railway line identified and being developed for medium density, the areas on the eastern side are highly constrained and not suitable for further density increases without significant upgrade of infrastructure.

The fundamental topographical reality of this area of Sydney, is that, it is an area of ridgelines with deep gullies and thus the road network is very constraint.

The limited number of access points over the railway line between the eastern side of the railway line and the Pacific Highway is already the subject of significant traffic congestion. There are currently no investigations or plans to solve this issue.

The eastern side of the railway line of these four stations service as a commuter hub to the wider suburban hinterland, even attracting commuters from the Northern Beaches via Mona Vale Road.

Any increase of density in this area will significantly increase congestion and limit parking options for existing commuters. It is not an exaggeration to say that at some access points traffic will just come to a standstill during peak periods.

The solution to solving traffic congestion around these stations will likely require a number of extremely costly underpasses of both the railway line and the Pacific Highway.

The topographical of this area also means that there are extremely limited areas for active public open space, which is already at capacity. Will the Developers and Governments be purchasing and or supplying more active open space land?

## **CONCLUSION**

The TOD is an unacceptable planning initiative that is directed towards a serious problem that is being exacerbated by Federal Governments unsustainable immigration policy and the current economic environment.

The policy seeks to over-ride local communities and Local Councils with a policy that does not address the actual reasons for the current housing crisis.

The idea that you just make more land available may be a great sound-bit, but is hollow, and ignores the real unintended consequences.

**David Kitson**

BTP (UNSW), Grad Law (SCU), MBA(UNE)