

**Submission
No 83**

INQUIRY INTO DEVELOPMENT OF THE TRANSPORT ORIENTED DEVELOPMENT PROGRAM

Name: Mr Chris Bluett

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Mr Chris Bluett

21 February 2024

The Hon. Paul Scully MP
Minister for Planning and Public Spaces

Dear Mr Scully

Submission in regard to Transport-Oriented Development Program and Low-and Mid-Rise Housing planning changes

I am making this submission as a resident and owner of property in Killara, which is located in the Ku-ring-gai LGA, and also, by extension, as a resident of Sydney and NSW. My submission relates to two documents published by the NSW State Government: *Transport-Oriented Development Program, December 2023* (Tod Program) and *Explanation of Intended Effect: changes to create low and mid-rise housing, December 2023* (EIE reforms).

I agree that there is a need for additional housing and housing choice, particularly housing which is affordable to the broader community and housing to meet the needs of very low, low and moderate income households (affordable housing).

Good town planning practice would say that locating new higher density housing in proximity to existing transport infrastructure, services and employment areas is by itself a reasonable proposition. Good town planning practice would also say medium density housing in other areas intermixed with lower density housing is achievable under certain circumstances. However, in both scenarios the qualifying factors are service and infrastructure capacity and environmental impact.

My primary position is that I strongly object to the nature and extent of the planning changes and the process followed thus far. They do not represent good town planning practice.

My position is based on the following points.

- No evidence to support the proposed planning changes as “well-located” housing.
- Lack of consultation with community and local government.
- Detrimental and irreversible impact on heritage conservation.
- Detrimental and irreversible environment impacts.
- Underachieving affordable housing provisions.
- Reckless use of non-refusal standards.
- Inappropriateness of standardised pattern book for heritage conservation areas (HCA) and heritage items.

1. No evidence to support the well-located housing tag

The term well-located has been used freely and loosely to justify the location of additional housing under the TOD Program and the EIE reforms. For example, it is used in documents such as the National Housing Accord 2022, government and ministerial media releases and planning circulars. In many instances it is assigned a simplistic and narrow meaning, namely close to public transport, services and employment. Proper place-based strategic planning for increased housing density is more vigorous and involves broader principles and practices.

The EIE reforms and the TOD Program, to a lesser extent, spruik the way in which strategic planning informs the location for new housing. The EIE reforms even go to the extent of saying:

Decisions about any development and the best use of land must be transparent, clear and fair. The NSW planning system ensures this by setting a clear strategic vision, which in turn informs planning controls that guide decisions. (EIE p.13)

Despite this rhetoric there is an obvious disconnect between this statement and the manner in which the proposed planning changes have been prepared and released.

For both documents no evidence of proper place-based strategic planning which should underpin the recommendations for higher residential density has been released for public information and comment. The decisions regarding the intensity of development and the location of that development as set out in the two documents are not transparent, clear or fair because critical information about those matters has been withheld by the government from the public as “Cabinet in confidence”.

Where are the State Government’s studies and analysis for:

- current and projected public transport capacity,
- data on the capacity of health and education services to accommodate increase population in the selected areas for housing growth,
- built form modelling based on the “non-refusal” standards and other yet to be seen development controls,
- stormwater drainage capacity,
- impact on the significance of heritage conservation areas and heritage items,
- projected vegetation loss, particularly large canopy trees,
- impact on biodiversity,
- economic and real estate evidence for the different markets across Sydney and other localities that housing affordability will improve markedly and that affordable housing will occur in meaningful numbers?

The above studies and analysis are key factors in setting realistic housing growth targets in selected areas.

Well-located housing is not isolated to proximity to transport infrastructure, services and employment. Proper place-based strategic planning will take those factors into consideration and also have regard to matters including but not limited to infrastructure capacity, health services and education facility capacity, road network capacity, urban character, heritage significance and environmental issues. In the past, councils have been able to prepare housing strategies which take these matters into consideration and tailor the quantity and type of increased housing and their location to a local context.

2. Lack of consultation with the community and local government

The program of community consultation carried out by the State Government was extremely thin in the case of the TOD Program and tokenistic in the case of the EIE reforms. For the TOD Program no submissions from individual community members were invited. For the EIE reforms, the majority of the exhibition was conducted over the Christmas, New Year and school holiday period.

Poor consultation by the State Government is also illustrated by:

- An absence during the exhibition period of studies which supposedly support the TOD Program and EIE reforms.
- Suppression of those studies and other documentation under “Cabinet in confidence”.

- The State Government reneging on its commitment under the National Planning Reform Blueprint 2023 to improve consultation process, one of the fundamental principles and actions of the Blueprint.
- The State Government failing to meet its commitment under the National Housing Accord 2022 to work with local governments to deliver planning and land-use reforms that will make housing supply more responsive to demand over time. There is no evidence in the TOD Program and EIE reforms that councils were given a participatory role in developing the new housing proposals.
- The State Government failing to meet one of the cornerstone objects of the *Environmental Planning and Assessment Act 1979* (EPA Act) being object 1.3(j) – *to provide increased opportunity for community participation in environmental planning and assessment*. The process has reduced the opportunity for community participation.

The process has not facilitated consultation with a broad cross-section of the community which would expose the varying opinions and help to inform the content of the intended new legislation and policy.

The process displays an attitude of contempt towards the community which the State Government is supposed to serve. Instead of embracing community participation and working in partnership with citizens, the government has actively encouraged division across Sydney. The government has not conducted an open and transparent process. All of this amounts to irresponsible governing and leads to erosion of trust in the government.

3. Detrimental and irreversible impact on heritage conservation

It is highly regrettable that the State Government is taking such a patronising, disrespectful and dismissive approach to heritage conservation and is facilitating the destruction of some of Australia's oldest and most significant urban areas. The TOD Program acknowledges that the planning reforms "will result in significant change" (TOD Program p.11). But then, the community is expected to "work together to embrace the transition" (TOD Program p.11). That is, the current community is expected to partake in the destruction of legally created HCAs and heritage items and allow the history of Australia to be vandalised and obliterated.

It is important for Australia's identity and history that our historical urban evolution is physically maintained and protected and can be interpreted by current and future generations.

The TOD Program and EIE reforms have the potential to impose devastating impacts on HCAs and heritage items, including items listed on the State Heritage Register.

In the Ku-ring-gai LGA the potential impacts on heritage conservation are staggering as evidenced by the following statistics.

- In Ku-ring-gai more than 4000 properties located in a HCA or listed as a heritage item are open to impact from the TOD Program (Stage 2) and the EIE reforms.
- Nearly 900 of these properties are heritage items.
- More than 530 heritage properties, of which 100 are heritage items, are located within the 400 metres of the four TOD Program (Stage 2) rail stations – Gordon, Killara, Lindfield and Roseville.
- This increases to more than 2,000 heritage properties (both HCA and heritage items) within 880 metres of those four stations under the EIE reforms for low and mid-rise housing.

(Source Ku-ring-gai Council Draft Submission TOD Program, January 2024, p.30)

The character of Ku-ring-gai's HCAs and heritage items is predominantly low scale one and two storey buildings within garden settings on original subdivisions. By contrast, the TOD Program (Stage 2) proposes buildings up to 21m (6-7) storeys and possibly 27.3m (8-9 with the 30% affordable housing bonus). The discrepancy is exacerbated by the absence of a minimum lot size and lot width.

Similar inconsistencies with existing built scale and form arise with the proposed planning changes for low rise housing component in the EIE reforms – multi-dwelling housing (terraces and townhouses) and manor houses. Particular issues here are the small site areas and relatively large associated FSRs which reduce potential for garden settings and larger vegetation thereby creating visually overdeveloped sites.

Whilst the redevelopment take up rate is not known, and is largely subject to market forces and land owner decisions, even a modest change in the HCAs and for land adjoining a heritage item will have dramatic impacts due to the substantial differences in scale and bulk, loss of vegetation and site coverage.

Other issues with the planning changes and processes to date are:

- There is no evidence of architectural modelling to illustrate the impact on heritage buildings, particularly in regard to building height, bulk and site coverage discrepancies.
- There is no economic evidence that increased housing in the HCAs, on land comprising a heritage item or land adjoining a heritage item will improve housing affordability in the variable housing markets affected by the planning changes.
- Councils will be severely restricted in meeting their responsibilities under the *Local Government Act 1993* and the EPA Act in terms of protecting the environment and promoting the sustainable management of built and cultural heritage.
- The proposed planning changes will compromise and possibly dismantle the legally established heritage protection that has been applied to areas and individual properties.
- The proposed planning changes have the potential to critically impact the identification, listing and protection of future HCAs and heritage items. Essentially the heritage process is under sever threat.

A top down, one-size-fits-all planning role out is an appalling way of trying to achieve increased housing in any area, especially in HCAs and with heritage items. There are other proven ways of achieving increased density in a manner that is respectful to heritage significance.

Infill development can occur in HCAs in a respectful way and single dwelling heritage items can be adaptively reused for higher density accommodation. There are many successful examples for these outcomes across Sydney and in other locations, both within Australia and internationally. The NSW Department of Environment's 2019 publication *Design Guide for Heritage* was specifically crafted to provide guidance for integrating new development in a heritage conservation context. The document embraces best practice heritage conservation principles including those set out in the Australia ICOMOS *Burra Charter*, 2013.

Another approach that has been successfully used in HCAs and in association with heritage items to yield increased housing involves a master planning process. A master plan would be particularly appropriate to inform the intensity of new development which forms part of an existing heritage item or which adjoins a heritage item, particularly an item that is on the State Heritage Register.

4. Detrimental and irreversible environment impacts

Because of their blanket application, the TOD Stage 2 and EIE reforms have potential to significantly impact the natural environment. These impacts include:

- Loss of vegetation and tree canopy – particularly the large canopy trees that are characteristic of the Ku-ring-gai LGA.
- Reduction in deep soil landscaped area resulting in the reduction of land on which substantial vegetation and large trees can be planted.
- Impact on the water quality of creeks and rivers – due to increased runoff caused by loss of permeable natural surfaces and more hard surfaces.
- Increased heat island effects – due to more buildings, loss of vegetation, diminished soft surfaces and more hard surfaces.
- Impact on biodiversity – loss of natural habitat, loss of wildlife corridors.
- Encroachment on and consequent degradation of riparian land – due to increased site coverage and overriding of a council's riparian planning controls.

These and other matters would form part of a proper place-based strategic planning exercise. A one-size-fits-all set of planning controls cannot appropriately address the diversity of local areas covered by the proposed planning changes.

5. Underachieving affordable housing provisions

Both the TOD Program Stage 2 and the EIE reforms will be subject to the affordable housing provisions of SEPP (Housing) 2021. Under those provisions a 30% FSR and building height bonus is achievable if a minimum 10% affordable housing component is provided in the development.

There are numerous issues with this arrangement:

- The affordable housing component must only be retained for a minimum of 15 years after which it can be released into the housing market.
- The long-term provision of affordable housing must rely on a steady input of such housing through the private development stream to keep topping up the loss.
- There is an inconsistency between the TOD Program Stage 1 which will be regulated for affordable housing in perpetuity whereas the TOD Program Stage 2 and the EIE reforms will only have the minimum 15 years requirement.
- There is also an inconsistency with the requirement for councils to include affordable housing in perpetuity if they prepare strategic plans to replace the TOD Program Stage 2 controls.

Ideally a sustained and committed government supply of affordable housing would be a tangible response to the current predicament our community is facing. In the absence of direct involvement in supply, the government is in a position to use its policy and legislative powers to facilitate additional, long lasting affordable housing.

There is a substantial opportunity with the current planning changes to lock in a growing supply of affordable housing that is kept in perpetuity. If the community is expected to bear the brunt of increased housing density on its doorstep then one concession would be the provision of affordable housing that is long lasting.

6. Reckless use of non-refusal standards

The use of non-refusal standards in the one-size-fits-all approach proposed in both the TOD Program Stage 2 and EIE reforms ignores place-based planning principles and existing planning controls that reflect and protect local character, heritage significance, biodiversity and other natural and environmental conditions applying in variable ways across LGAs.

Non-refusal standards will have the effect of entrenching a built form and scale outcome despite a merit assessment of a development application which might conclude that the development proposal will be inconsistent with existing development adjoining and in the vicinity and despite other environmental and amenity impacts.

The use of non-refusal standards in the blanket manner proposed in the TOD Program Stage 2 and the EIE reforms, particularly given the intensity of development that potentially may be achieved, is a reckless use of planning provisions.

7. Inappropriateness of standardised pattern book for HCAs and heritage items

The use of a standardised pattern book of endorsed housing designs is a poor tool for guiding development in different settings, particularly large scale buildings in HCAs and for sites adjoining heritage items. A standardised pattern book cannot adequately address the unique significance, conditions and circumstances applying to HCAs and heritage items with their different architectural styles, landscape settings and streetscape contexts. This is another case of promoting economic expediency over proper planning and design.

A standardised pattern book should not apply to HCAs and heritage items nor should it be used to fast track development in those situations. Instead, the NSW Department of Environment's 2019 publication *Design Guide for Heritage* can be revised to provide appropriate context-sensitive guidelines.

Conclusion

I support the provision of housing choice at affordable prices, including housing for low income households. This is a fundamental social and planning objective.

However, I strongly object to the current proposed planning changes which seek to inject higher density housing in a blanket fashion. I also strongly object to the process that has been carried out to prepare planning changes and release them.

My conclusion is based on three interrelated points.

1. The TOD Program and EIE reforms are examples of a reactionary, knee-jerk response to a complex, long-standing housing problem. There is an evident lack of proper place-based strategic planning to underpin the substantial planning changes being foisted on local communities. The starting point for the government's planning changes is a housing target and the means of achieving the target has been crudely compiled with no apparent meaningful consideration of urban context and consequential impacts. This will not achieve new housing in "well-located" areas. It is flawed planning.

Furthermore, the ability for effective development assessment at a later stage in the planning process is curtailed through the use of non-refusal standards which apply to aspects of buildings such as height and FSR that can separately and collectively cause detrimental environmental impacts. Proper place-based planning would provide a much better contextual fit, particularly in regard to HCAs, than the one-size-fits-all approach proposed in the government's changes.

2. As a consequence of the first point there will be irreparable damage to the local character, heritage significance and environmental attributes of Killara and many other parts of the Ku-ring-gai LGA. Similar impacts will occur in other areas to which the planning changes apply.
3. Community consultation has been minimised to the extent that it cannot be seen to satisfy the government's commitments for broad public involvement under the National Housing Accord 2022 and the National Planning Reform Blueprint 2023 nor can it be

seen to meet the fundamental object 1.3(j) of the EPA Act which is “to provide increased opportunity for community participation in environmental planning and assessment.”

I provide for consideration the following set of recommendations which address a range of options for the planning changes.

Recommendations

1. Defer the TOD Program Stage 2 and EIE reforms to allow for proper place-based strategic planning and, in accordance with the National Planning Reform Blueprint 2023 and the objects of the EPA Act, engage local communities in meaningful and active participation, allowing them to contribute to the future of the places they and future generations will live in.

As an alternative to 1

2. Amend the TOD Program Stage 2 and the EIE reforms so they do not apply to -
 - a) HCAs,
 - b) a heritage item, including land on which an item is located,
 - c) properties that are wholly or in part defined as:
 - Biodiversity
 - Riparian
 - Fire prone
 - Flood prone.

As an alternative to 1 and 2

3. Defer the TOD Program Stage 2 and EIE reforms for:
 - a) HCAs,
 - b) a heritage item, including land on which an item is located,
 - c) land adjoining a heritage item and a HCA,
 - d) properties that are wholly or in part defined as:
 - Biodiversity
 - Riparian
 - Fire prone
 - Flood proneand allow place-based strategic planning for all new development on those lands, including community consultation, in order to establish the appropriate scale and bulk of development and the residential density.

As an alternative to 1, 2 and 3

4. Remove heritage items and properties adjoining a heritage item from the TOD Program Stage 2 and the EIE reforms. Require master planning for those sites to establish the appropriate scale and bulk of development and the residential density.

In all cases:

5. Support and provide resources to councils to carry out place-based strategic planning in acceptable and agreed timeframes – this in accordance with the Housing National Planning Reform Blueprint 2023 and the National Housing Accord 2022.
6. Discontinue the pattern book approach to planning.

7. In partnership with the Heritage Council and the broader heritage profession prepare guidelines for the integration of higher density housing within HCAs and for the adaptive reuse of heritage items.
8. Require affordable housing to be provided in perpetuity, that is, without a minimum retention period.
9. Prepare a planning practice note using examples to explain the concept of non-refusal standards. This should be applicable to:
 - merit-based assessment under all types of environmental planning instruments for a range of development types and locations, including development in HCAs and development applying to heritage items; and
 - assessment of heritage significance for identifying potential heritage items and HCAs.
10. In partnership with the Heritage Council and the broader heritage profession, prepare a planning practice note for the future identification and protection of HCAs and heritage items in light of the overriding effects of the proposed planning changes, notably the non-refusal standards.

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