

Submission
No 121

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

Name: Name suppressed

Date Received: 24 March 2024

Partially
Confidential

Submission to the Legislative Council inquiry into the Development of the Transport-Oriented Development Program

Dear Inquiry chair -

I am writing this submission as a Dulwich Hill resident and landowner, who is located close to Dulwich Hill railway station. The area around this station is earmarked for increased density under the *Transport Oriented Development* program (TOD).

I am also writing with the benefit of having a legal qualification in planning law.

I am very disappointed that, as a landowner who is in a proposed development area, I will not have the opportunity to have my say on changes to zoning and planning controls either on, or around, my property. I believe this decision is not appropriate and is a sharp reversal of many decades of increasing public participation in planning matters.

In 1945, the NSW Local Government Act was amended to introduce comprehensive town planning provisions. This act required a council, when preparing a planning scheme, to notify the scheme and invite submissions from “any person interested in any land affected by the scheme”.¹ The same act also required the Minister to invite and consider objections, before making the scheme.²

This act was replaced by the Environmental Planning and Assessment Act 1979, which included a new object to “provide increased opportunity for public involvement and participation in environmental planning and assessment.”³ While the 1979 legislation did contain a number of new provisions to increase public participation in planning, it did allow the Minister to make a new State Environmental Planning Policy (SEPP) without notifying the SEPP or seeking submissions. To this extent, it undermined the 1945 changes.

The text book *Environmental Law in Australia*, by academic Gerry Bates, suggests there may be occasions where it is appropriate for a Minister to decline to consult before making a SEPP, if the SEPP would result in environmental damage (such as the clearing of native vegetation). However, the textbook also reports that it has been common practice for the relevant Minister to undertake consultation before introducing new SEPPs.⁴

The Department of Planning’s Community Participation Plan (CPP), meanwhile, includes actions to “keep the community informed”, “build strong partnerships with the community” and

¹ See Section 342F of the Local Government (Town and Country Planning) Amendment Act 1945

² See Section 342J of the above act

³ See Section 5 of Environmental Planning and Assessment Act 1979 as made

⁴ See page 271 of Environmental Law in Australia, 6th edition, by Gerry Bates

“ensure as many community members as possible can participate”. It would appear that the Department has abandoned this approach, in regard to the TOD program.⁵

I do not believe that new planning schemes should be made in isolation from the local community, particularly landowners.

The NSW Government has claimed that it consulted with councils, who spoke on behalf of their communities. I would say, in response to this, that 1) Inner West Council does not speak on my behalf and 2) the council did not consult with me before making any comments to the NSW Government.

The government records exposed through the Legislative Council call for papers shows that the briefing note to the Minister (dated December 2023) explicitly stated no consultation would be undertaken with communities, as the SEPP was a “temporary measure”. However, once the zonings are in place, I would imagine they will be very difficult to remove, and additionally will lead to immediate changes to the built-form in my suburb. The call for papers also reveal an email from a Departmental bureaucrat, who says the lack of community consultation can be justified because the TOD is a “time-limited emergency measure”.⁶

In addition, it is concerning that while the government has been consulting with developer groups since mid-2023 (as also shown in the call for papers), it couldn't find the same time to consult with its own voters.

The area in which I am located is a historic and beautiful area, with unique features and requires careful place-based planning. It has a statutory biodiversity corridor, flooding issues, a future open space Greenway and widespread statutory heritage conservation areas, along with a known deficiency of open space and a high school which is over-capacity.

It also has many smaller lots (such as my land) which have the potential to be isolated or otherwise adversely affected as a result of a poorly thought-out planning scheme.

It does not lend itself to a ‘one size fits all’ planning approach. Understanding and planning for such an area requires consultation with the community, alongside place-based research.

Furthermore, as a consequence of the decision to not consult (or even inform) landowners of these changes, many landowners have found out about the changes as a consequence of receiving letters from developers. This has been very distressing and confronting for many landowners. This is particularly the case given there are no maps available to inform the landowners, or specificity as to the development pattern or approach in their street.

⁵ See more information here <https://www.planning.nsw.gov.au/policy-and-legislation/environmental-planning-and-assessment-act-1979/community-participation-plans>

⁶ Email from Hanna Shalhaf to Caitlin Roodenrys 20 December 2023 titled “Tier 2 - Consultation”

Given this, I think the inquiry needs to recommend that the Minister's powers to not consult with the community when making new State planning controls needs to be codified and restricted. For instance, amending legislation could state that a decision to not consult could only be undertaken if there was a concern about environmental damage, or because it was a minor modification or to support an emergency measure. The legislation could then state that such decisions, and the grounds on which they are made, could be subject to a merit appeal in the Land and Environment Court.

I think the decision to not consult in relation to Transport Oriented Development has shown that the powers granted to the Minister are too broad and need to be restricted.