

**Submission
No 123**

INQUIRY INTO DEVELOPMENT OF THE TRANSPORT ORIENTED DEVELOPMENT PROGRAM

Organisation: Sydney YIMBY

Date Received: 1 April 2024



Submission for Transport Oriented Development Inquiry

Recommendations:

1. Councils should not be permitted to delay the application of the TOD SEPP.
2. A hard cap should be placed on the % of land in a given council subject to heritage conservation due to consistent abuse of this instrument by councils and the heritage industry.
3. Height limits and FSRs for areas affected by Part 2 of the program should be increased to 30m and an FSR of 4, and developers should be able to choose one of these standards to apply, allowing greater architectural flexibility and supporting high-quality development.
4. The government should stick with blanket upzoning policies because they're the only things that actually work to reduce housing costs.
5. Housing delivery should be shifted further east to give residents relief from high temperatures due to climate change.
6. DPHI should use this program to develop capacity to deliver similar rezonings and master-planning on a consistent, rolling basis. To this end, DPHI should shortlist further station and town centre precincts that are suitable for additional development, and work with other agencies to identify priority infrastructure that would unlock additional precincts for development.
7. DPHI should set ambitious, firmly enforced housing targets for councils, adding up to 377,000 dwellings, to ensure that this program leads to additional housing and not a reallocation of development within LGAs.

(e) ongoing opportunities for review and input by councils, joint regional organisations and communities, including consultations with renters, key workers and young people needing affordable housing in relation to the Transport Oriented Development Program State Environmental Planning Policy

Recommendation 1: Councils should not be permitted to delay the application of the TOD SEPP.

Councils' pleas for "place-based strategic planning" are an excuse to delay or blunt application and force new apartment residents away from the highest amenity parts of their LGAs.

Inner West Council

In eight years, Inner West Council has not finalised a single substantial rezoning that delivers more housing supply.

Proclaimed In 2016, the council's first planning decision was to protest against the NSW Government's 2015 Sydenham-Bankstown rezonings . They were successful, as the upzonings were rescinded in 2018, with the State Government returning planning powers to councils so they could conduct place-based strategic planning. As Planning Minister Anthony Roberts put it, the "community will develop the plans, where the buildings will go, where the new homes will go, where the new parks will be."

We are now in 2024 and there are no completed plans, let alone progress.. There was a proposal in late 2022 to upzone Marrickville, Dulwich Hill and North Ashfield, but this lasted less than two weeks before being scrapped due to resident opposition.

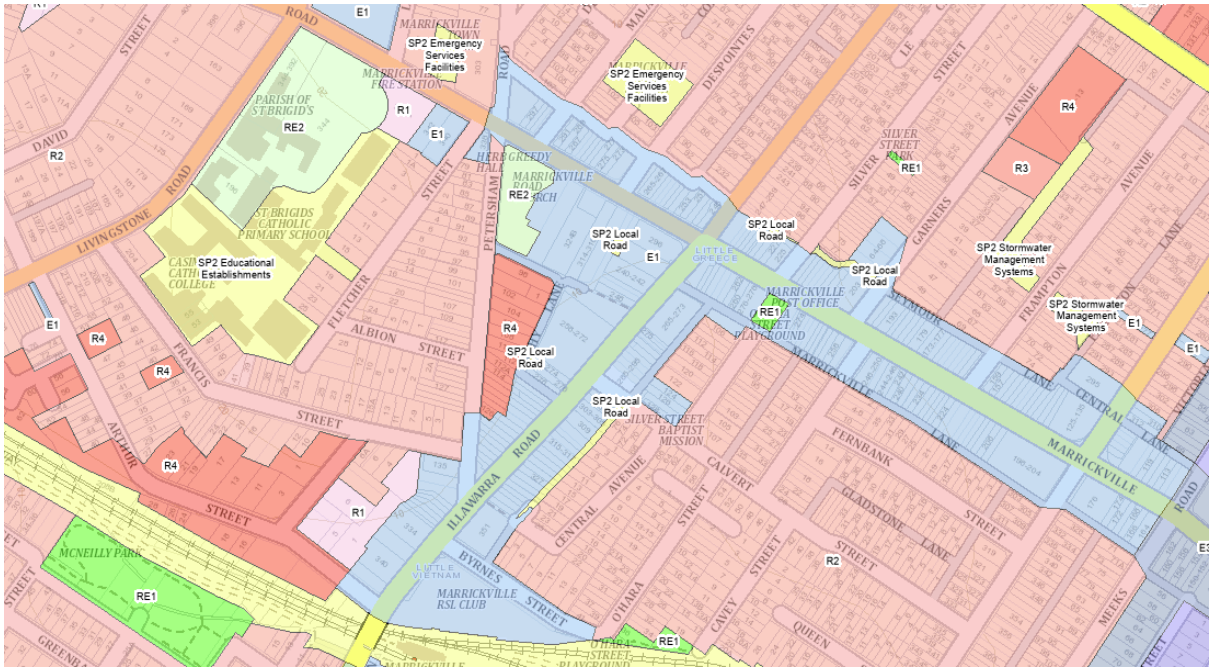
The only precinct rezoning being progressed by Inner West Council is the Parramatta Road Strategy, which has taken 10 years from start to finish to zone for 1600 new homes and is still not complete. As Planning Department Deputy Secretary Marcus Ray points out, "This is the Inner West Council's only substantive planning proposal that unlocks significant housing supply".

The final outcome relies on a feasibility assessment carried out in 2020¹, when both interest rates and construction costs were much lower. Many of these homes are unlikely to be built, as they were at the edge of economic feasibility four years ago and will not stack up in today's market conditions.

Council's previous attempts at "place-based strategic planning" have also generally seen new housing concentrated on loud, polluted main roads. See for instance the blue E1 zone here which covers Marrickville and Illawarra Rds, while quieter sidestreets are mostly reserved for R2 Low Density.

1

<https://www.innerwest.nsw.gov.au/ArticleDocuments/33263/Appendix%204%20-%20Economic%20Feasibility.pdf.aspx>



Similarly the application of heritage conservation areas are targeted to prevent development in the areas where incomes are highest: Balmain, Birchgrove, Haberfield and Annandale are entirely covered by heritage conservation areas.

The common thread here is that new housing is designed to protect the sensibilities of the wealthiest existing residents by pushing it onto busy roads in the poorer suburbs. This is the opposite of strategic planning.

City of Ryde

In 2018 the NSW Government instituted a policy to permit more low impact higher density housing forms like duplexes and manor houses through the Low-Rise Housing Diversity Code. As in the case of the TOD SEPP, they faced a backlash from councils, led by the City of Ryde.

As a result of this backlash, the NSW Government deferred application of the policy for 50 councils for 12 months starting in July 2018. This was to give councils time to rewrite their Local Environment Plans to address the policy. Most of these councils got a further 12-month deferral, two years in total

Ryde used this time to remove multi-dwelling unit types like townhouses and manor houses from the definition of the R2 Low Density Residential zone, effectively preventing any new apartments or townhouses being built under the polic..

This story is typical of the response from many councils - and would be the same if given the chance with the TOD SEPP.

(i) the heritage concerns with the Transport Oriented Development Program including but not limited to the concerns of the Heritage Council

Recommendation 2: A hard cap should be placed on the % of land in a given council subject to heritage conservation due to consistent abuse of this instrument by councils and the heritage industry.

The heritage industry has devalued heritage in Sydney by listing vast amounts of the inner city as a Heritage Conservation Area (HCA). For example, 50% of land in City of Sydney, 43% of Inner West Council , and 70% of Hunters Hill are covered by HCAs. This pattern repeats elsewhere.

These HCA's preserve hundreds of identical, unremarkable California bungalows, without regard for the many other identical examples preserved elsewhere in the city, in many cases within the same suburb. An example of this came when we tweeted out images of 7 typical properties asking our followers to identify which one was from the "unique heritage suburb of Haberfield". We received 30 replies but none of them were correct².

A recent report recommended 1600 new properties be added to HCAs in Marrickville, Dulwich Hill and Lilyfield. This expert report by the heritage industry recommended preservation of houses and landmarks which no longer exist as a justification for blanket heritage protections. It seems that consultants conducting assessments prepared them without walking the streets they were proposing to list to confirm if features of heritage significance actually existed.

Heritage restrictions in Haberfield are so severe that Inner West Council's housing controls "do not contemplate the construction of new housing in the suburb", so are unprepared to regulate any new development that may be enabled by the TOD SEPP.

Retaliatory Heritage Listings

A practice that we call 'retaliatory heritage listing' is also rife among some councils. This is where a Council heritage seeks to list a property with little or no heritage merit, only after a Development Application is submitted. This is often due to pressure from noisy community groups who cynically use "heritage" as their last refuge against a Development Application which they wish would go away.

Randwick Council's conduct in the Berwick Street matter illustrates this practice:

1. A DA was received in 2020 for the development of 3 & 5 Berwick St Coogee into 6 apartments.
2. Council commissioned a heritage study of the buildings, which found that 5 Berwick St met the threshold for listing, while 3 Berwick St did not. A heritage order was placed on 5 Berwick St.
3. In 2022 a DA was received to demolish 3 Berwick St and replace it with two townhouses.
4. Council placed an interim heritage order on 3 Berwick St, which it defended in the Land and Environment Court, despite previously finding it had no heritage value.

²<https://twitter.com/SydneyYIMBY/status/1744879369720574254>

A similar example can be found in the Inner West Council, when acclaimed non-profit developer Nightingale Housing sought to demolish the derelict Marrickville Church of Christ to build 55 units of affordable housing. The land for the project was donated by the church.

Some councillors sought to list the church to prevent the development. This is despite a heritage consultant finding that it was the second-least significant example of Queen Anne architecture among the dozens of churches in the Inner West. The listing was narrowly defeated, and at the time of writing, Nightingale Marrickville will welcome its grateful residents very soon.

It is clear that the heritage industry has a vested interest in performing as many listings as possible. Every new property under heritage rules means another customer who will need to consult them about paint schemes, extensions or even the installation of solar panels. In one case we've been told that a basic extension will cost \$100,000 more due to its location in an HCA.

By setting a limit of the amount of land in a council that can be subjected to heritage listings or HCAs, this will force heritage consultants to carefully rank the most valuable items, conserving truly valuable heritage, without locking up entire suburbs from new housing. This would also prevent heritage policy from worsening affordability.

(j) the enabling infrastructure capacity for every station selected or considered as part of the Transport Oriented Development Program

It is noted that the Department used an evidence-based approach incorporating planning, infrastructure, and spatial data, along with expert input to identify 31 locations suitable for additional housing growth due to their capacity and zoning favourable for residential development.

We would welcome a better understanding of this process, and encourage its ongoing application to upzone additional train stations at least once every two years. For more detail, please see recommendation 6.

Research from the Productivity Commission found that infrastructure for infill in existing suburbs was \$75,000 cheaper to deliver than in new sprawl on the urban fringe.

(k) the impact on localised environment and amenity values caused by the Transport Oriented Development Program

Recommendation 3: Height limits and FSRs for areas affected by Part 2 of the program should be increased to 30m and an FSR of 4, and developers should be able to choose one of these standards to apply, allowing greater architectural flexibility and supporting high-quality development.

As with Part 1 of the program, if the government is to demonstrate that housing truly is its top priority, it should be as ambitious as possible. While the proposed settings for this component of the TOD program are sufficient to deliver low-mid rise apartment

developments, higher limits would deliver more housing more quickly, with a similar built form and impact on streetscapes.

Firstly, denser, larger buildings deliver more homes closer to transport and amenity- a stated aim of the government. Further, ongoing skills shortages and elevated construction costs threaten the financial viability of lower-rise forms of development. Larger developments, particularly in attractive locations, are more likely to be financially viable, as land and fixed construction costs can be spread across a greater volume of units.

In addition, this would also encourage more rapid development and provide greater scope for value-capture provisions such as inclusionary zoning or other affordable housing requirements.

In addition, developers should be given the option of choosing one of height or FSR controls to apply. The tight calibration of FSR and height controls limits the ability for architects to deliver creative, high-quality buildings, without improving streetscapes or urban amenity.

A building that slightly exceeds the height limit but with a smaller footprint, has a similar impact on the streetscape, infrastructure and neighbouring properties as one with a slightly lower height and a larger footprint. Tightly aligning these controls minimises the flexibility of architects to make the most of each specific site, and adds to the difficulty of meeting other controls, such as deep soil requirements.

(l) the existing or potential measures and programs analysed, considered or implemented by all NSW Government agencies to support additional housing density, including the housing series reports published by the NSW Productivity Commissioner

This program places homes in well located suburbs, close to train stations and where infrastructure is cheaper to provide. It aligns well with the principles of recent Productivity Commission reports, with the caveat that it should be followed with targets that reflect the 377K state-wide dwelling target. We commend the Commission on its excellent series of reports which lays out in plain English why we must build more homes where people want to live.

(n) the development of Transport Oriented Development Program planning policies in other Australian state and territory and international jurisdictions

Recommendation 4: The government should stick with a policy of broad upzoning, as they are most effective at delivering new housing in greater volumes, which in turn reduces housing costs.

Auckland performed a broad upzoning covering 75% of the city's area to allow 3 storey missing middle housing forms. Subsequent research has found a significant increase in

dwelling consents and rents for 3 bedroom dwellings being 22-35% lower than the counterfactual³.

There is a growing global body of evidence that these broad upzonings:

- Increase the number of planning permits sought and issued;
- Increase the number of new homes built, and
- Improve housing affordability in terms of both rents and purchase prices

(p) the capability of Greater Sydney to provide for increased residential dwelling where the existing capacity has been diminished due to the effects of climate change

Recommendation 5: Housing delivery should be shifted further east to give residents relief from high temperatures due to climate change.

Existing planning laws see development pushed disproportionately to Sydney's west where temperatures can be up to 10 degrees hotter than in the east⁴.

As a result councils like Wollahra, Mosman, Hunters Hill and Randwick have had negative population growth over the last 10 years, while the fastest growing councils of Hills, Blacktown, Liverpool, Parramatta and Wollondilly are all in the city's west.

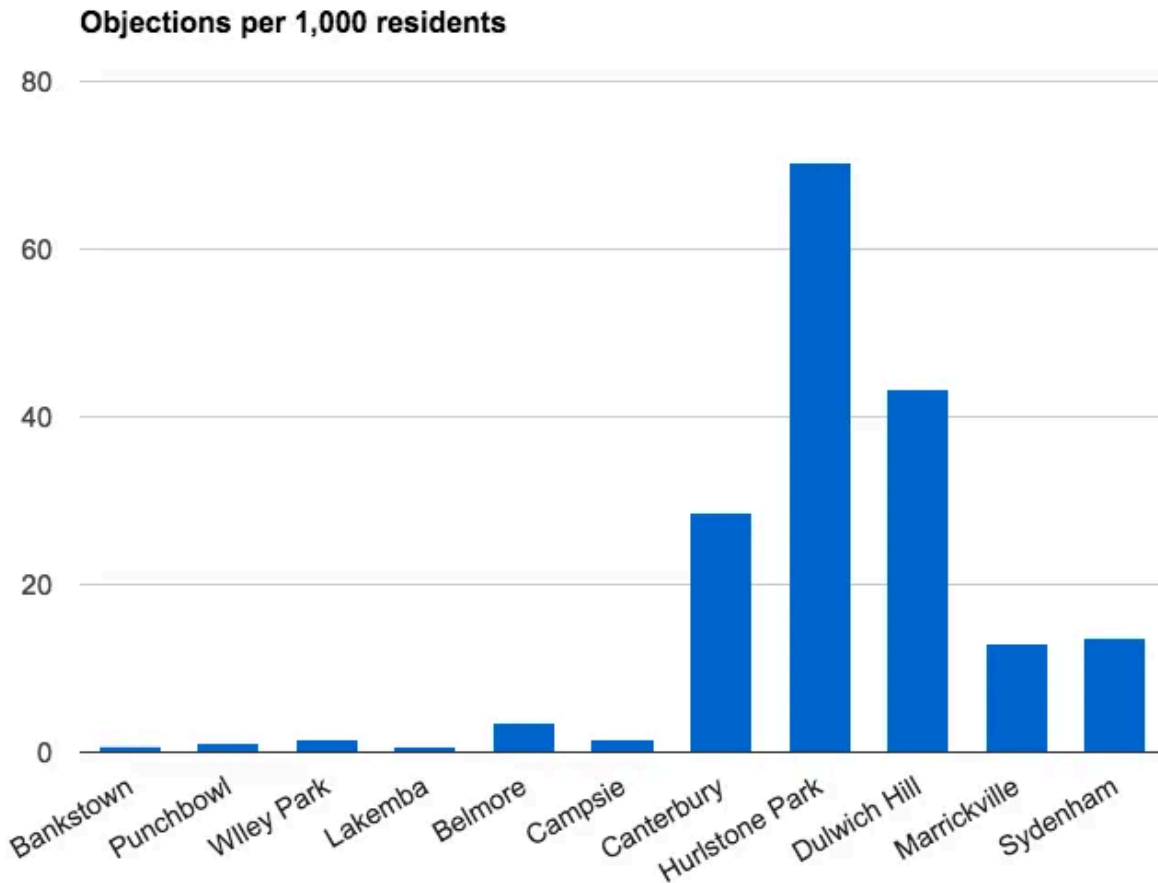
This is because communities in the east organise more effectively against development, as can be seen from the response to the Sydenham-Bankstown strategy in 2016:

3

<https://cdn.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/Economic-Policy-Centre--EPC-/WP016.pdf>

4

<https://www.newscientist.com/article/2273355-sydneys-inland-suburbs-are-10c-warmer-than-the-coast-in-heat-waves/>



Taking climate change seriously means shifting our new housing supply to the east.

Recommendation 6: DPHI should use this program to develop capacity to deliver similar rezonings and master-planning on a consistent, rolling basis. To this end, DPHI should shortlist further station and town centre precincts that are suitable for additional development, and work with other agencies to identify priority infrastructure that would unlock additional precincts for development.

While this program is a positive first step, it will only deliver capacity for a small share of the homes required to address Sydney's housing crisis.

Acknowledging the significant volume of work and resources required to undertake master-planning, technical studies and infrastructure assessments, DPHI should use this program as an opportunity to develop capacity to deliver similar rezonings and master-plans in the future.

DPHI should develop a publicly available shortlist of station and town-centre precincts that may be suitable for future development, and work with other organisations, including Transport for NSW, Infrastructure NSW, Sydney Water and Schools Infrastructure NSW to identify and prioritise the infrastructure and other constraints that need to be addressed in these locations to unlock additional housing capacity.

Upon completion of this program, DPHI should begin work on another round of precincts, and aim to deliver a program of this scale every two years on a rolling basis, aligned with planned infrastructure investments.

Recommendation 7: DPHI should set ambitious, firmly enforced housing targets for councils, adding up to 377,000 dwellings, to ensure that this program leads to additional housing and not a reallocation of development within LGAs.

While the proposed TOD program is a positive step, delivering on NSW's commitment under the Housing Accord will require reforms and changes to planning on a much broader scale. The most simple and transparent way to ensure this occurs is to set ambitious targets for housing delivery that set out a clear path to delivering 377,000 homes over the next five years. These targets should be firmly enforced, with clear, significant consequences for councils that do not deliver.

The methodology for setting targets should be transparent and consistently applied across Sydney, and aim to deliver homes in the most well-located and infrastructure-rich areas, in line with guidance from the NSW Productivity Commission.⁵

This will ensure that housing delivered under the TOD program is truly adding to housing supply, and not simply reallocating development from elsewhere under the existing, too-low targets. DPHI should monitor planning proposals from councils impacted by these changes and reject any that lower housing capacity.

About Sydney YIMBY

Sydney YIMBY is a not-for-profit association that advocates for high-quality, abundant and affordable housing in Sydney.

We are a mix of planners, economists and laypeople who are all committed to a more affordable, sustainable and liveable city through urban consolidation.

We have members and supporters from across Sydney representing a diverse range of views, and do not accept memberships, donations or support of any kind from developers.

Justin Simon
on behalf of Sydney YIMBY

⁵ NSW Productivity Commission, 'Building more homes where infrastructure costs less'
<https://www.productivity.nsw.gov.au/sites/default/files/2023-08/202308_NSW-Productivity-Commission_Building-more-homes-where-infrastructure-costs-less_accessible-v2.pdf>