

**Submission
No 128**

INQUIRY INTO DEVELOPMENT OF THE TRANSPORT ORIENTED DEVELOPMENT PROGRAM

Organisation: City of Canada Bay

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21 March 2024

The Hon. Sue Higginson, MLC
Committee Chair
Portfolio Committee No. 7 – Planning and Environment
Legislative Council
Parliament of New South Wales

By online submission

To whom it may concern,

**City of Canada Bay submission to the Inquiry into the development of the
Transport Orientated Development Program**

The City of Canada Bay Council (CCBC) welcomes the NSW Government's inquiry into the development of the Transport Oriented Development Program.

The attached submission summarises Council's concerns in relation to the lack of engagement; the proposal to create two new State Environmental Planning Policies; the impact on heritage buildings and places; the lack of planning for infrastructure; and the potential for unintended amenity impacts.

Should you have any questions in relation to this submission, please contact Monica Cologna, Director, Planning and Environment on _____ or by email to _____

Yours sincerely,

John Clark
General Manager

City of Canada Bay submission to the Inquiry into the development of the Transport Orientated Development Program

Executive Summary

This submission has been prepared by the City of Canada Bay (CCB) in response to the Parliamentary Inquiry into the planning and delivery of the Transport Oriented Development Program (TOD Program).

This submission responds to the following points outlined in the Terms of Reference.

1. Consultation with councils and opportunity for input and review
2. Impacts on heritage
3. Enabling infrastructure
4. Local amenity and the environment
5. Impact of the proposed Diverse and Well-Located Homes process and program
6. Other matters

City of Canada Bay

The City of Canada Bay local government area (LGA) is located approximately 6 kilometres west of the Sydney CBD. It comprises a total land area of 19.82km² and is primarily located on the northern side of Parramatta Road, with the Parramatta River forming its northern boundary.

The City of Canada Bay LGA includes the suburbs of Abbotsford, Breakfast Point, Cabarita, Chiswick, Concord, Concord West, Drummoyne, Five Dock, Liberty Grove, Mortlake, North Strathfield, Rhodes, Rodd Point, Russell Lea, Strathfield and Wareemba. The LGA is bordered by the Councils of Strathfield, Burwood and Inner West to the south and east, the City of Parramatta Council to the west, and Hunters Hills and Ryde Councils to the north.

1. CONSULTATION WITH COUNCILS AND THE COMMUNITY

(d) consultation undertaken with councils, joint regional organisations and communities during the preparation of the Transport Oriented Development Program State Environmental Planning Policy.

(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.

Engagement with Council

No consultation was undertaken with the City of Canada Bay prior to the release of the Transit Orientated Development Program.

Following the release of the Program, the Department of Planning, Housing and Infrastructure invited Council to participate on a Project Working Group and an Executive Working Group in relation to the Accelerated Precinct of Homebush, which is located partly in the City of Canada Bay.

The City of Canada Bay will participate in the Program in good faith, however it is important that local government be afforded an opportunity to make a genuine contribution to the master planning and plan making process. Such consultation will need to allow sufficient time to review draft plans to enable effective feedback to be provided.

Engagement with the Community

Effective and timely consultation allows people to feel they have had a say and been heard. Community engagement also reduces the risks of opposition and conflict later in the development pipeline.

The timing of the release of the TOD Program just prior to Christmas and the deadline to provide feedback by the end of January, has meant that much of the community is unaware of the proposed reforms.

Recommendation

- The NSW Government commit to actively engaging with local government as part of the preparation of any master plan and/or precinct plan for proposed Accelerated Precincts.
- Continued engagement with community occur by exhibiting draft planning instruments relating to the TOD State Environmental Planning Policy and the

TOD Accelerated Precincts Program.

2. IMPACTS ON HERITAGE

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

The TOD Program states that 'relevant heritage controls will apply to the extent that they are not inconsistent with the new standards'. Applying this approach will result in heritage items and buildings in heritage conservation areas being demolished where the conservation of protected buildings and places is inconsistent with the construction of shop top housing or a residential flat building facilitated by the TOD State Environmental Planning Policy (TOD SEPP).

The TOD SEPP will have a significant and irreversible impact on heritage protected places and Council is not aware of any analysis of the impact of such a policy intervention on particular buildings or on the integrity of heritage conservation areas. Numerous historical places will be lost where the protection of a heritage listed place 'is inconsistent with the new standards'. This outcome is contrary to 'Planning Direction 3.2 – Heritage Conservation' that requires the conservation of heritage places.

It is concerning that the implications of the proposed Policy have not been adequately explained to communities in the information released by the Department of Planning, Housing and Infrastructure to date.

Additionally, Clause 5.10 Heritage Conservation in the *Standard Instrument for Local Environmental Plans* will be of no effect as the provisions of an LEP are overridden by SEPPs.

Recommendation

- Heritage items and heritage conservation areas be excluded from the application of the standards and permissibility of residential flat buildings under the proposed TOD SEPP.
- Master planning undertaken for the Accelerated Precinct of Homebush recognise heritage items and heritage conservation areas and ensure that future built form responds sympathetically to the scale and character of these important places.

3. ENABLING INFRASTRUCTURE

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

The scope and extent of the TOD Program will generate significant interest from the development industry resulting in additional housing. This housing will generate a demand for infrastructure that is not planned or assumed by local or state governments. It should be acknowledged that more people than planned will be living in established suburbs and this will require a commensurate increase in infrastructure spending by government.

The Department should acknowledge that Local Infrastructure Contribution Plans do not, in isolation, address all local and community infrastructure needs arising from an increase in density. In this regard, planning instruments often provide an important role in the provision of infrastructure and there are a range of examples where the Department has supported clauses in planning instruments that link increases in density to infrastructure that is to be provided on a development site.

The TOD SEPP, along with the reform for Diverse and Well-Located Homes Program (Low and Mid-Rise Housing Reform), will provide no ability for the value arising from increases to density to be captured for legitimate planning purposes, whether through Voluntary Planning Agreements or through planning mechanisms included within planning instruments.

Unfortunately, the proposed TOD SEPP and Low and Mid-Rise Housing Reform and will apply a 'one size fits all' approach to land use planning with no mechanisms to improve urban design or amenity outcomes for localities impacted. There will be no through site links to encourage walkability and connectivity, no land for public domain improvements such as bicycle lanes, no new local parks and no land for intersection/road upgrades.

Particular concern is raised with respect to public open space. Access to public open space is not equitable throughout CCB, with various suburbs not being located within convenient walking distance of parks and playgrounds. By focusing on access to transport and services alone, the reforms will create an outcome whereby certain new communities will not have access to adequate public open space.

It is necessary for the NSW Government to work with local government to identify the local infrastructure that is necessary to support increases in population prior to permitting an increase in density, noting that the cost of acquiring land for public purposes will be prohibitive due to increasing land values versus the income received from development contributions.

The Department should also acknowledge that there is a significant gap between the cost to deliver local infrastructure and the ability for works arising from population growth to be funded by local infrastructure contribution plans. This gap, if left unaddressed, will lead to new populations being inadequately serviced by necessary infrastructure.

Recommendation

- The State Government communicate how and where additional hospitals, primary and secondary schools, regional open space and public transport will be provided to support the increased population arising from the TOD Program and the Low and Mid-Rise Housing Reform.
- The Department commit to working with local government to plan and provide the public open space necessary to support the additional population arising from the low and mid-rise housing reforms, given the significant cost implications associated with land acquisition.

4. LOCAL AMENITY AND THE ENVIRONMENT

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

It is important that controls are implemented to provide a high level of amenity for the occupants of future buildings.

Housing Diversity

Housing diversity is an important consideration, yet has been seemingly overlooked. It would be beneficial to specify a minimum percentage of studio/one bedroom and three bedroom family sized apartments to be integrated into every new Residential Flat Buildings. Clause 6.11 of the Canada Bay Local Environmental Plan provides an example of how such a requirement can be drafted for inclusion in a SEPP.

Urban Tree Canopy

The Apartment Design Guide requires development sites to provide only 7% of their site area for deep soil but acknowledges that larger sites should provide a larger percentage of up to 15%. The suburb of North Strathfield has low tree canopy coverage and the State Government's target of 40% tree canopy cover will only be achievable where private, as well as public land has the capacity to support mature shade trees. It is recommended that a minimum of 15% deep soil be required on all

sites that are the subject of the TOD SEPP and that planning for the Accelerated Precinct of Homebush include a tree canopy assessment to ensure tree canopy targets can be achieved.

Design Excellence Competition

Council objects to the dilution or removal of design excellence competitions. Design competitions are a well-tested and successful model for delivering a high quality of design and innovation. Competitions generate a range of responses to each design challenge, allowing the comparative evaluation of different approaches. This enables participants to analyse the relative merits of different responses to a brief and builds confidence in the selected design as the best response.

Design quality requirements of PRCUTS

The Planning Direction for the Parramatta Road Corridor Urban Transformation Strategy (PRCUTS) requires development that seeks to depart from the Strategy to demonstrate a better planning outcome. Any master plan prepared for land within the Accelerated Precinct of Homebush should ensure that the minimum design quality requirements of the Parramatta Road Corridor Planning Design Guidelines are satisfied. This includes requirements in relation to the maximum footprint of towers (750m² GFA), building length and podium requirements.

Natural Hazards

In accordance with 'Local Planning Direction 4.1 – Flooding', a planning proposal must not permit a significant increase in the development and/or dwelling density of land in a flood planning area.

The Powells Creek Flood Study identifies certain land within North Strathfield and Concord West as being flood prone.

The draft TOD SEPP should not apply to Flood Planning Areas and the Accelerated Precinct of Homebush should avoid increasing density on land in a Flood Planning Area.

Recommendation:

- The NSW Government implements the following design principles in the TOD SEPP and Program, including:
 - require design excellence competitions for buildings over 8 storeys in height.
 - encourage apartment diversity by mandating a minimum percentage of studio/one bedroom and three-bedroom apartments.
 - mandate a minimum of 15% deep soil area for residential flat buildings.

- all plans to be accompanied by a tree canopy assessment to demonstrate how future development will achieve tree canopy targets.
- Any Master Plan prepared for the Accelerated Precinct of Homebush should demonstrate a better planning outcome than PRCUTS by at least meeting the design quality requirements of the *Parramatta Road Planning and Design Guidelines*, including a maximum tower floorplate of 750m² Gross Floor Area.
- The draft TOD SEPP should not apply to Flood Planning Areas and the Accelerated Precinct of Homebush should avoid increasing density on land in a Flood Planning Area.

5. IMPACT OF THE PROPOSED DIVERSE AND WELL-LOCATED HOMES

(o) the impacts of the proposed Diverse and Well-Located Homes process and program

The proposed reforms undermine strategic planning in New South Wales and erode the role of Local Strategic Planning Statements, Local Housing Strategies and Development Control Plans.

CCB has undertaken extensive engagement with the community on the desired future character of the Local Government Area with land use actions and priorities expressed in Council's adopted *Community Strategic Plan*, the *Canada Bay Local Strategic Planning Statement* (LSPS) endorsed by the former Greater Cities Commission, and the *Canada Bay Local Housing Strategy* (endorsed by the Department of Planning and Environment).

New housing in CCB has and continues to be delivered consistent with adopted strategies and in alignment with endorsed State Government strategies. It is relevant to note that communities throughout CCB have been the subject of extensive development and land use change over the past 20 years. Between 2011-2021, CCB has delivered 7,000 new dwellings within a relatively small land area of 19 square kilometres constrained by foreshore peninsulas.

CCB has also undertaken local studies in recent years to determine thresholds for encouraging the missing middle typologies including dual occupancies, manor houses, terraces and multi-dwelling housing. CCB planning controls permit these typologies throughout the LGA.

To form a baseline understanding of the Low and Mid-Rise Housing Reform, CCB prepared the map at Figure 1, illustrating 400m and 800m distances from E1 Local

Centre zones with a supermarket and 400m and 800m distances from MU1 Mixed Use zones, train and metro stations. The Low and Mid-Rise Housing Reform uses the terminology 'full-line supermarket' which is undefined, implications of this are discussed further below,

As illustrated in Figure 1, there is potential for the majority of CCB to be impacted by the proposed Low and Mid-Rise Housing Reform, with the likelihood that the character of established suburbs will be irrevocably altered over time.

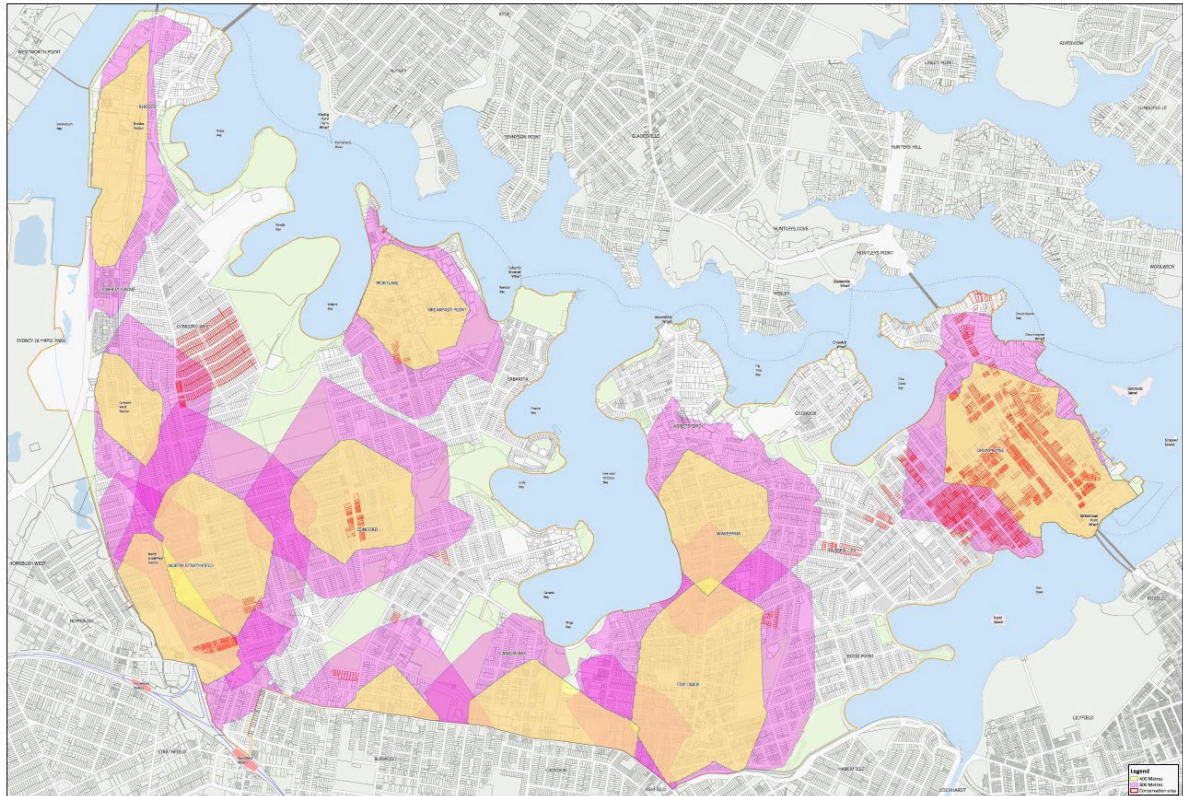


Figure 1. Canada Bay LGA: Indicative walk time maps 400m and 800m from MU1 Zones, selected E1 Zones, train and metro stations - with Heritage Conservation Area overlay.

E1 Local Centre Zones

The Explanation of Intended Effect of the Low and Mid-Rise Housing Reform defines Station and town centre precincts as land within 800m walking distance of land zoned E1 Local Centre but only if the zone contains a wide range of frequently needed goods and services such as full-line supermarkets, shops and restaurants.

There are numerous E1 Local Centre Zones in the City of Canada Bay, with many comprising small groupings of neighbourhood shops. However, there are only three E1 Local Centre Zones in the City of Canada Bay that have a supermarket. Council has not identified any of these Local Centre zones as being suitable or appropriate

for rezoning in any strategy or study. Permitting four to six storey apartment buildings, either within these small neighbourhood centres or within the vicinity of these centres is inconsistent with the existing and desired future character of these places.

Definition of supermarkets

The terminology of 'full line supermarket' is a major consideration in the application of the proposed Low and Mid-Rise Housing State Environmental Planning Policy (Low and Mid-Rise Housing SEPP). A clear definition of what constitutes a 'full line supermarket' is necessary for the consistent application of the Low and Mid-Rise Housing SEPP and to ensure that development has access to the required services and amenities. It is noted that the Australian Competition and Consumer Commission has previously defined a full-line supermarket as a supermarket containing at least 2,500sqm of retail Gross Floor Area (excluding loading docks and storage etc) with a full range of goods including packaged groceries, fresh meat, bakery and deli departments, fresh fruit and vegetables and frozen foods.

Major supermarket operators engage CCB in discussions about new supermarkets across the LGA. Concern is raised that where a new supermarket is constructed, an area within 800m of the new supermarket will become eligible for residential flat buildings and other development types permitted under the proposed Low and Mid-Rise Housing SEPP. To limit the impact of ad-hoc development, it is recommended the draft SEPP specifies centres and station locations that will be subject to the proposed controls.

The EIE and Heritage Conservation Areas

There are only five Heritage Conservation Areas in CCB that are outside of 'station and town centre' catchments and therefore unaffected by the reforms at this stage.

The majority of Heritage Conservation Areas in CCB will be impacted by the reform:

- Birkenhead and Dawson Estates Conservation Area
- Bourketown Conservation Area
- Drummoyne Avenue West Conservation Area
- Drummoyne Park Estate Conservation Area
- Creewood Street Conservation Area
- Gale Street Inter war Californian bungalow Group
- Gale Street Victoria Housing Group
- Majors Bay Road Conservation Area
- Marlborough and Tavistock Street Conservation Area
- Moore Street Conservation Area
- Mortlake Workers Housing Area
- Park Avenue Conservation Area
- Parklands Estate Conservation Area

- Powells Estate Conservation Area
- Salisbury Street Housing Group
- Thompson Street Conservation Area
- Victoria Road Retail Conservation Area
- Yaralla Estate Conservation Area

Recommendation

- The Low and Mid-Rise Housing SEPP not apply to E1 Local Centres or their surrounds in the City of Canada Bay.
- The Low and Mid-Rise Housing SEPP define ‘full line supermarket’ as a supermarket containing at least 2,500sqm of retail Gross Floor Area (excluding loading docks and storage etc).
- The ‘Station and town centre precincts’ that will be subject to the proposed Low and Mid-Rise Housing SEPP be mapped.
- Heritage items and heritage conservation areas be excluded from the application of the proposed Low and Mid-Rise Housing SEPP relating to Low and Mid-rise Housing SEPP.

6. OTHER MATTERS

(r) any other matters

Planning Pathway and role of Development Control Plans

It is noted with concern that the proposed planning reforms will permit more applications to be determined by a new State Significant Development assessment pathway, diminishing the role of local government and planning panels in the decision-making process.

Development Control Plans (DCPs) are the most appropriate plans for place-based planning in the current NSW planning framework. Place-based planning undertaken by the Department of Planning through the preparation of a master plan should be reflected in objectives and controls contained within a DCP. These controls are needed to extend beyond the blunt standards that may be included in an LEP and may include ground and upper-level setbacks, podium and tower design, tree canopy and landscaping requirements as well as ground level interfaces such as street awnings.

However, *SEPP (Planning Systems) 2021* states that DCPs do not apply to state significant development. Given the low threshold for which residential flat buildings will be deemed State Significant, it is requested that consideration be given to removing this provision in the SEPP to give due regard to the importance of DCPs in the NSW planning framework.

Cumulative impact of reforms

It is important that the Department be transparent as to the maximum permitted development facilitated by State-led planning initiatives.

The application of the recently implemented in-fill affordable housing bonus provision of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) will have a profound effect on the scale and height of development facilitated by the TOD SEPP. It is unclear whether this has been taken into consideration in the formulation of the proposed heights and FSRs.

Similarly, any Master Plan prepared for the Accelerated Precinct of Homebush should illustrate the maximum permitted scale of development inclusive of the in-fill affordable housing bonus permitted by the Housing SEPP.

Recommendation

- The Department of Planning, Housing and Infrastructure commit to preparing a Development Control Plan in consultation with affected Councils for the Accelerated Precinct of Homebush.
- SEPP (Planning Systems) 2021 be amended to confirm that Development Control Plans are a relevant consideration in the assessment of State Significant Development Applications involving residential flat buildings and shop top housing.
- The maximum building height and FSR permitted under the TOD SEPP be inclusive of the in-fill affordable housing bonus provision permitted by the Housing SEPP.
- The master plan for the Accelerated Precinct of Homebush illustrates the maximum permitted scale of development inclusive of the in-fill affordable housing bonus permitted by the Housing SEPP.