

Submission
No 130

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

Name: Name suppressed

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SUBMISSION ON PC7 LC TOD SEPP INQUIRY

The State government's TOD program is a simplistic and blunt instrument undeserving of its SEPP title as it is devoid of detail and has been conceived expressly to conjure dwelling numbers for the National Housing Accord with complete disregard for differing LGAs and locales across NSW. These numbers will not be realised as they are based purely on acquisition. The program supplants local government planning controls and consists purely of blanket concentric rezoning throughout LGAs to alter permissible ("expected") building types and allows for maximum density specifically in existing low density areas, simultaneously overriding and undermining councils' authority and existing planning controls. State has specifically included HCAs and listed items, redefining heritage compatibility to suit its aims. The program has been met with universal opposition from councils of all political persuasions, numerous MPs, independent organisations including LGNSW, the Heritage Council, the National Trust and the affected public across all demographics and tellingly a significant majority of existing young apartment dwellers who have been the obvious primary target demographic from whom the government wishes to garner support. The manner in which it was formulated and imposed on constituents was undemocratic, calculated and deceitful and appears to have contravened many fundamental principles of governance. Many wish to know if the program is legally able to proceed uncontested as devised, regardless of the protests made by councils, organisations and constituents. Divisive and pejorative terms (NIMBY/YIMBY/recalcitrant etc) have been employed by government ministers including Scully himself to denigrate those who have voiced their concerns and opposition to the program. This reflects poorly on the NSW government's attitude towards its people and is quite un-Australian.

TIMING: The program was intentionally released 14 December 2023 immediately prior to the end of year break, with cursory council briefings, specifically excluding public submissions and set an unreasonably short deadline for council submissions (23 January 2024). The stipulation that the program will be in effect from 1 April 2024 until such time councils can provide alternative plans to meet/exceed targets which remain undefined and are possibly unachievable, is equivalent to coercion by State, designed to instil urgency but resulting in planning disorder and potential for inappropriate development to proceed in the interim.

DETAIL: Available detail in the TOD program is scant and completely unsatisfactory, comprising a 12 page brochure in its entirety. Relative to the scale and breadth of the proposal, the paucity of specific information provided to date is extremely concerning and frustrating for councils and residents affected, as the program has profound implications on many levels - its opacity is indicative of the government's contempt for its constituents and their efforts made to conceal the void behind the plan.

Evidence requested from the government justifying the selection of areas and feasibility studies regarding capacity for increased density and supporting infrastructure was initially suppressed and then revealed under duress in the LC under Standing Order 52 as wholly inadequate and in most instances absent, foiling attempts to conceal these glaring deficiencies.

Density targets are yet to be revealed, indicative of the DPFI's disorganisation - councils cannot formulate strategic planning if these are not defined or even validated as achievable in the context of remaining capacity.

Definitions of zoning boundaries have not been elucidated, consisting merely of coloured radii on maps labelled "indicative only", with the central point seemingly positioned on the train station. There has been various talk of 10 minute walkability, distance from the nearest entrance to the

train station, “not white lines” and so on, demonstrating the confusion created in the vacuum of detail behind the program. To date it is still unclear whether our property and the adjacent lots are included/excluded/affected by the program given the depicted radius may include some or all of our lot (depending on which map is referred to). What percentage of a lot is required to qualify as included/excluded remains undefined which has been unsettling for us. Developers were first to know of the program with Scully holding multiple meetings with them in 2023, a clear indication that it favours their interests above all others. Unsolicited, repeated and intrusive canvassing from opportunistic developers circling TOD sites hoping to capitalise on upzoning has been most unwelcome and constitutes harassment.

FUNDING: Despite assurances from Jackson and the DPHI, no additional infrastructure funding has been allocated to councils excepting those with Master Planning already in place, resulting in unachievable objectives and substandard services for any new residential buildings that may be constructed under the program, and for existing residents living with infrastructure already beyond capacity and plagued by failures which will be further strained.

HERITAGE: The program represents the greatest risk to built heritage in NSW history as described by the National Trust, and the government has clearly expressed its intention to proceed regardless. The TOD is by definition diametrically opposed and fundamentally incompatible with HCAs, as it represents precisely the form of inappropriate density that these were created to protect against. The special character and fabric of an area consists of the individual items of significance, contributory items and their settings - all this will be vandalised forever by the program. Fishburn and Gibson conveniently and stubbornly insist that their density is compatible with heritage, forcing it to fit their objectives by replacing contributory/local items (within/outside the 400m zone - conflicting rulings per Gibson at Budget Estimates) or sited directly adjacent to and surrounding single residences of State/local or contributory significance. RFBs are not “expected” building forms in HCAs or low density R2 areas. Additionally the rezoning in the 800m zone and beyond this R2 dual density under the separate Low to Mid Rise SEPP will irreversibly change the character of all HCAs (and also all suburbs across greater Sydney). Minns/Scully/Sharpe/Fishburn & Gibson have all openly and repeatedly scoffed at these statements, condescendingly labelling legitimate concerns as “preposterous” and “scaremongering”, but in its present form the program allows for and actively encourages demolition of existing residences within HCAs to enable replacement with RFBs allowing for maximum density at FSR 3:1 and heights of 21 - 27 metres which are antipathetic and inconsistent with the character of HCAs. Both the National Trust and Heritage Council have called for HCAs, State and local listed items to be retained and respected and for councils to be the certifying authorities regarding development. Disappointingly but unsurprisingly, Sharpe does not appear to have any genuine interest in heritage as it conflicts with the program, and further has made it clear that local heritage does not constitute part of her portfolio. Simply stating that State listed items retain their status is beside the point as the adjacent lots can all be rezoned for unsuitable and inappropriate density. Currently local items outside the 400m zone are included in the program and so are readily erasable. Claims by the government that council DCPs remain unchanged are irrelevant as they will be crippled/redundant in the context of non refusal standards - the program has created interface sites where there were none previously - single residences within R2 HCAs will be directly adjacent lots zoned R4 for multi-storey density which can only be refused on other grounds. Protracted conflicts will ensue - if the housing crisis is to be remedied there are less contentious and far more efficient options to achieve density targets.

ENVIRONMENTAL: Significant tree canopy will be sacrificed under the program as in addition to felling on sites, the FSRs do not allow for adequate deep soil planting and there is no reason to believe that developers will not seek to maximise profits over landscaping. This achieves the exact opposite to previous government commitments for increased canopy. Estimated figures have been described as “wild” by Sharpe and summarily dismissed. Trees contribute not only to the environment and provide habitat for wildlife but also to streetscapes, so the effects will be profound and permanent.

PERSONAL SITUATION: Our home at [redacted] was designed by prominent architect John R. Brogan (Wyldefel Gardens, Baha'i Temple) and built in 1938. It is an Art Deco/Georgian Revival property, listed as a local heritage item [redacted] and is also listed on the Australian Institute of Architects Register of Significant Buildings NSW [redacted]. The two adjacent properties at [redacted] and [redacted] (former home of Douglas S. Agnew, architect for Mahratta, Wahroonga, recommended but as yet unlisted as a local item) were purchased in 2013 by developers seeking to capitalise on their existing 2(d3) high density zoning by amalgamating the lots and constructing a multi-storey 25 apartment RFB. The property adjacent at [redacted] is also a local heritage item [redacted] as are properties across the road at [redacted] (respectively). This DA was refused by KRG Council and ultimately at the LEC (Tuor [redacted], 2015) as the bulk and imposition of the built form being inconsistent with the current and desired future character of the area, with downzoning of the lots to R2 low density under both the imminent KLEP 2015 and HCA which were subsequently gazetted. We have recently completed an extensive and sympathetic renovation in accordance with heritage guidelines with the surety afforded by the HCA and adjacent low density R2 lot zonings. Overnight the TOD program has resurrected the threat of adjacent high density of an even higher FSR and bulkier built form - advice provided to us by a professional developer estimates a 92 apartment building at maximum allowable height/density. If high density in this form is made permissible our privacy and amenity will be erased. Depending on the zoning boundaries/definitions we may potentially be sandwiched between high density on both or all three sides. The two properties are still owned by the same developers, have been untenanted for many months. There is a genuine and imminent threat of adjacent development under the TOD program and the uncertainty is directly affecting our lives.

ALTERNATIVES:

Transport oriented development is not novel. It is a global principle and is central to all council planned density delivered to date in NSW. Density in proximity to transport is naturally advantageous in urban settings and is already abundant and the need for further increases is recognised.

The majority of mid to high density dwellings in our LGA have been carefully located and well designed with recessed top levels, adequate setbacks and deep soil planting to integrate as best as possible with the surrounding area.

Councils are drafting alternative plans which allow for density uplift/infill in appropriate locations throughout their LGAs, with naturally varying existing infrastructure levels and potential sites distributed accordingly. Density targets cannot be identical across different suburbs within an LGA, or between different LGAs for that matter as each location has unique attributes and capacity for further development.

The TOD program is completely reliant on private acquisitions and is private developer centric which will be a slow process and will result in piecemeal densification presenting as a chaotic, unplanned city. Certainly not Minns' Paris. Neither will it deliver significant levels of affordable housing given the absence of State owned construction. There are government owned spaces immediately available to deliver density located directly at transport sites. Medium to high density apartment blocks could be built on existing open commuter car park spaces incorporating underground mixed residential & commuter car spaces. Over rail residential apartments are another possibility, with FSRs appropriate to the suburb as already completed at several sites in Sydney and Melbourne, consisting of a blend of private and State owned affordable housing as described by Bates Smart. Neither of these options have been properly considered by DPHI (Gibson, Budget Estimates) but realistically will deliver more residential accommodation in a shorter time frame and without demolition or destruction of existing homes/heritage/green space/tree canopy. What are the specific reasons why these options have not been explored by State in their push for density, particularly as they are government owned sites?

Fast rail to regional centres is another frequently discussed topic but has yet to be implemented.

Increasing density alone will not solve the housing crisis as it is multi-factorial and issues such as immigration need to be addressed.

The TOD program represents State's lazy attempt at fabricating quick, baseless density statistics and should be abandoned altogether as it is completely unsound as a planning instrument. Its implementation is highly unorthodox and legality questionable. The potential damage it will permit across NSW is enormous in scale, and in the case of built heritage and environment will be permanent. Many alternatives are available and these need to be explored by State in collaboration and cooperation with councils so that the resulting density will be strategically planned, well designed and built, appropriately located and sensitive to its surrounds and existing heritage, thus providing the liveable housing, amenity, tree canopy and green space which the people of NSW deserve for now and the future.