

**Submission
No 139**

INQUIRY INTO DEVELOPMENT OF THE TRANSPORT ORIENTED DEVELOPMENT PROGRAM

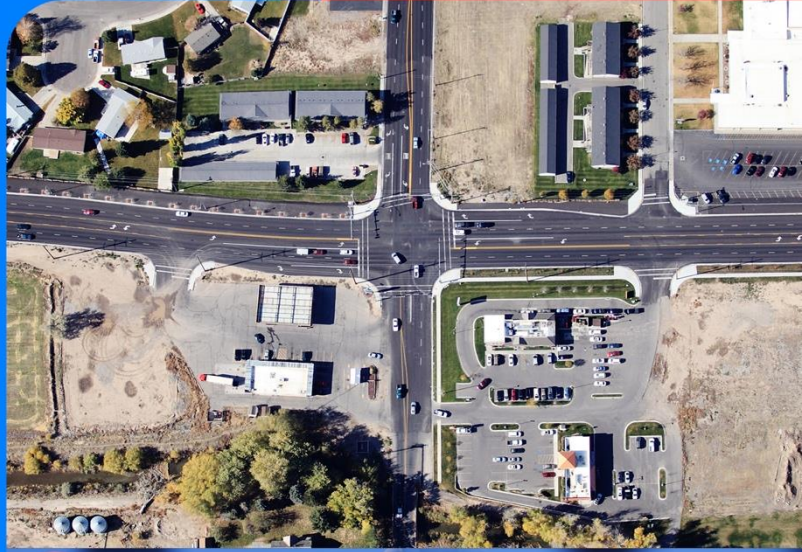
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DRAFT SUBMISSION

Inquiry into the development of the Transport Oriented Development Program

March 2024





Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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Opening

LGNSW welcomes the opportunity to provide its views to Portfolio Committee No. 7 – Planning and Environment on its inquiry into the development of the Transport Oriented Development (TOD) Program.

Councils across the state are unequivocal about the need to address the housing crisis and are committed to working with the state government and other stakeholders in a genuine, collaborative way to deliver more diverse and affordable housing in well-located areas.

LGNSW understands the need for urgency and bold policy reform to help address the housing crisis, but considers further work is required on the TOD Program to ensure increased density is supported by infrastructure, provides an acceptable quality of life for future residents and there is opportune provision of affordable housing. LGNSW therefore welcomes this inquiry and the opportunity it provides to improve the TOD Program and to shape further planning reform.

To assist the Committee’s consideration of this submission, LGNSW has prepared a short briefing document titled *NSW Government Density Reforms: There’s a Better Way*, included at Appendix 1.

This submission is informed by the policy positions of LGNSW and consultation with councils. Please note this submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

Terms of Reference

The Portfolio Committee No.7 – Planning and Environment of the Legislative Council of the NSW Parliament has established the Terms of Reference to inquire into and report on the development of the Transport Oriented Development Program (TOD), and in particular:

- (a) the analysis, identification or selection undertaken by the Government, the Premier’s Department, The Cabinet Office or the Department of Planning, Housing and Infrastructure (Department) into:
 - (i) the eight Transport Oriented Development Program accelerated precincts
 - (ii) the 31 Transport Oriented Development Program precincts where the Transport Oriented Development Program State Environmental Planning Policy (SEPP) applies
 - (iii) any of the 305 Sydney Trains, Sydney Metro and Intercity stations within the Six Cities Region which were considered as part of any of the Transport Oriented Development Program locations

- (b) the probity measures put in place by the Government, the Premier's Department, The Cabinet Office and the Department
- (c) the development of the Transport Oriented Development Program policy approach by the Government
- (d) consultations 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
- (f) information control protocols relating to the Transport Oriented Development Program policy
- (g) property disclosure requirements and management
- (h) the release of information prior to the official publication of the Transport Oriented Development Program policy
- (i) the heritage concerns with the Transport Oriented Development Program including but not limited to the concerns of the Heritage Council
- (j) the enabling infrastructure capacity for every station selected or considered as part of the Transport Oriented Development Program
- (k) the impact on localised environment and amenity values caused by the Transport Oriented Development Program
- (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
- (m) the ten measures outlined in the National Cabinet's National Planning Reform Blueprint
- (n) the development of Transport Oriented Development Program planning policies in other Australian state and territory and international jurisdictions
- (o) the impacts of the proposed Diverse and Well-Located Homes process and program
- (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
- (q) the adequacy of measures to deter and punish the misuse of confidential market sensitive government information and the future processes that should be put in place
- (r) any other related matters.

Background

Of relevance to this inquiry are the following two previous submissions made by LGNSW to the Department of Planning Housing and Infrastructure (DPHI):

- Submission on the TOD Program¹
- Submission on the Explanation of Intended Effect (EIE) – Changes to create low- and mid-rise housing²

While the NSW Government has provided no opportunity for public consultation on its TOD Program, LGNSW elected to make a submission to highlight the headline issues of concern to councils and suggest a way forward that would allow the Department and councils to work constructively towards meeting the State Government's Accord commitments.

LGNSW's TOD Program submission together with our submission on the EIE for low- and mid-rise housing draw heavily on feedback from councils and are both relevant to the terms of reference for this inquiry.

Councils have also made detailed submissions on these reforms which LGNSW commends to the Committee for consideration.

LGNSW Position

LGNSW understands the NSW Government's TOD Program and other proposed planning changes³, including changes to create low- and mid-rise housing, are aimed at addressing the housing crisis and fulfilling its commitments under the National Housing Accord. The NSW Government has set a target of delivering 314,000 new well-located homes by 2029 statewide as part of the Accord.

As a signatory to the Accord, the Australian Local Government Association (ALGA) has committed to collaborate with state and territory associations to advocate for local councils' support in delivering social and affordable housing⁴. LGNSW, having advocated for national and state governments to address the housing crisis, supports the Accord.

Planning systems cannot control the take-up and pace of housing delivery but do play an important role in ensuring housing is provided in the right locations, is safe and well-

¹ [Transport Oriented Development Program.pdf \(lgnsw.org.au\)](#)

² [EIE_Changes_to_create_low_and_mid_rise_housing.pdf \(lgnsw.org.au\)](#)

³ [Transport Oriented Development Program | Planning \(nsw.gov.au\)](#)

⁴ [National Housing Accord 2022 \(treasury.gov.au\)](#) p 3

designed and connected to infrastructure and other services. Local councils have the knowledge and expertise and are best placed to provide this advice.

The NSW Government committed to collaborating with local government as part of its response to the Accord. However, in seeking to respond swiftly to the crisis, it has developed the TOD Program (described as part of the largest planning changes in a generation⁵) with limited input from local government.

While Part 1 of the program is based around 8 precincts⁶ where planning work is generally well-progressed with council input and which will be master-planned, Part 2 of the program proposes a new State Environmental Planning Policy (TOD SEPP)⁷ to be applied to a further 31 locations.

The approach to these 31 locations is very different. It involves imposing standard planning controls on land within 400m of selected stations and town centres with no master planning, effectively enabling an unplanned surge in population density in these areas. Critical components of the approach, particularly provision for affordable housing and infrastructure, are under-developed and the government's pattern book⁸ of endorsed housing designs will not be available when the SEPP is scheduled to commence.

The key risks with the approach in the TOD SEPP are:

- Poor amenity and quality of life for current and future residents
- Strains on existing infrastructure (overcrowding, congestion and service disruption) as well as insufficient and uncertain provision of new infrastructure to support population growth.
- Missed opportunity to provide meaningful and permanent affordable housing in well-located areas.

To address these risks the TOD Program must be reviewed to ensure it makes provision for:

1. Each precinct identified in Part 2 to be master-planned jointly with councils - holistic, locally based planning will allow state and local governments to achieve superior place-based outcomes over a 'one-size fits all' approach.
2. A funded infrastructure delivery plan to be developed jointly by the state and councils with suitable mechanisms to guarantee the provision of supporting infrastructure for each precinct.

⁵ [Biggest planning reforms in a generation to deliver a pipeline of housing supply | NSW Government](#)

⁶ [Transport Oriented Development Program – Accelerated Precincts | Planning \(nsw.gov.au\)](#)

⁷ [Transport Oriented Development Program – SEPP | Planning \(nsw.gov.au\)](#)

⁸ [Pattern book of housing design | Planning \(nsw.gov.au\)](#)

3. An affordable housing contribution scheme with rates appropriate for each precinct.

Recommendations

Recommendation 1: That the Committee recommend the NSW Government make provision in the TOD Program for master planning of precincts identified in Part 2 of the program, that this be undertaken jointly with relevant councils and funding and resourcing for this work be provided.

Recommendation 2: That the Committee recommend the NSW Government develop infrastructure delivery plans for each precinct in Part 2 of the TOD Program. The plans should be developed jointly with councils and identify suitable mechanisms to fund the infrastructure.

Recommendation 3: That the Committee recommend the NSW Government work with local government to urgently establish affordable housing contribution schemes for each precinct in Part 2 of the TOD Program with rates appropriate for each location so that affordable housing contributions are maximised.

Further information in support of these recommendations is set out below.

Master planning of Part 2 Precincts

The TOD SEPP proposes to allow maximum building heights of 21m and a floor space ratio of 3:1 and no minimum lot size or width in all locations. This one-size-fits-all standard is a blunt and generic approach which fails to give regard to the very different planning contexts and urban typologies in each precinct nor to factor in natural hazards such as flooding and bushfire risk. As such, it, is contrary to principles of doing density well.

The City of Canterbury-Bankstown Council, in its submission to the Department of Planning, Housing and Infrastructure⁹, noted some of the challenges presented by a one-size-fits all approach:

... the Draft SEPP's 'one size fits all' approach poses challenges to Council's master planning program:

- It significantly alters Council's housing capacity abruptly, necessitating a reactive response to deal with impacts and retrofitting strategic planning and forward planning functions.
- It lacks a holistic approach to balancing development with infrastructure needs, open spaces, and the capacity of transport networks, potentially compromising Sydney's attractiveness as a global city.
- It necessitates a reassessment of current master plans, disrupting ongoing collaboration with the community and government agencies.
- It may lead to increases in property development capacity, complicating property acquisition, lot amalgamation, or the promotion of through-site links and open spaces on development sites.

To address these challenges, it is recommended that the DPHI supports Council in progressing its place-based Master Plans through a fast-tracked process.

Place-based master plans are undertaken when areas are targeted for renewal or growth¹⁰. The example below of Canterbury-Bankstown City's master-planning is a good illustration:

Canterbury-Bankstown City - Fast-tracked Master Planning and Rezoning Process¹¹

Canterbury-Bankstown Council has a proactive, and ongoing master planning process to ensure planning controls remain relevant, contemporary and continue to meet community aspirations for their local places. Below is an overview of its current and potential future master planning program:

- Stage 1 – Bankstown and Campsie (adopted by Council) • Stage 2 – Canterbury, Belmore, Belfield, Lakemba (underway)
- Stage 3 – Wiley Park and Punchbowl (scheduled to commence in 2024)
- Stage 4 – planning for other centres in eastern half of the city, such as Earlwood, Narwee, Croydon Park
- Stage 5 – Review of centres in western half of the city, commencing with Chester Hill, Sefton, Bass Hill and Villawood.

Following completion of the five stages, Council will then continue to review its planning controls for centres in the above sequence, aiming to review its controls every 5-7 years.

Master plans are critical, place-based strategies that achieve a collective vision for the future. Council undertakes its master plans in consultation with the community, and takes an evidence-based, place-based approach to ensure our centres improve from a liveability, amenity and investment perspective....

⁹ [Canterbury-Bankstown City joint submission on the Low to Mid-Rise Housing and TOD SEPP](#), February 2024

¹⁰ See DPHI website for examples of other master-planned precincts: [Priority growth areas and precincts | Planning \(nsw.gov.au\)](#)

¹¹ [Canterbury-Bankstown City joint submission on the Low to Mid-Rise Housing and TOD SEPP](#), February 2024

Council is willing to work with the DPHI on fast-tracking this process. To do so, this requires collaboration between State and local government from the outset of master planning.

Master planning facilitates improved urban design and amenity, promoting and providing for walkability, connectivity, and green spaces. It allows for neighbourhood reconfiguration to include new streets and parks, coordination and augmentation of infrastructure and public domain improvements. It also considers the optimal mix of land uses to promote employment and viability of centres. Applying standardised controls without considering local contexts stifles these benefits. The proposed floor space ratios (FSRs) and height allowable even on small sites will rule out the possibility of deep soil landscaping (impacting retention or expansion of urban tree canopy) and impact overshadowing and privacy on adjoining properties.

The TOD Program documentation states that '*relevant heritage controls will apply to the extent that they are not inconsistent with the new standards.*' Councils are concerned that applying this approach will have a significant and irreversible impact on heritage protected places.

The NSW Government has continued to dismiss criticisms of its blanket controls stating that councils will still be assessing developments on merit. However, the proposed policies are underpinned by non-refusal standards relating to height, floorspace and other core metrics which applicants will expect to achieve.

The non-refusal standards may offer certainty to the development sector, but they weaken the ability for merit assessment to improve outcomes in terms of relationships between buildings and place-based amenity.

The following extracts from council submissions to the NSW Department of Planning, Housing and Infrastructure on the TOD Program highlight why the blanket controls proposed in the TOD SEPP are problematic.

Lake Macquarie City Council - Teralba¹²

Most of the area around the Teralba train station is located within a heritage conservation area contained in the *Lake Macquarie Local Environmental Plan 2014*. The Teralba Heritage Conservation Area (HCA) is one of only three HCAs in the city.

An amendment to the *Lake Macquarie Local Environmental Plan 2014* has recently been completed (August 2022) in the Teralba area to protect the heritage significance and facilitate appropriate development within the Teralba HCA. This included a change to the HCA boundary, a reduction to the maximum building height

¹² Lake Macquarie City Council staff feedback on the Transport Oriented Development (TOD) Program, 31 January 2024 (Copy provided to LGNSW)

from 10m to 8.5m, controls for properties within this area recognising the contribution they provide to the heritage significance, and protection of significant views and vistas that contribute to the heritage setting.

Proposed changes under the TOD program, especially the proposed introduction of the 21m height limit, are inconsistent with the local context and development of this scale would likely affect the character of the heritage conservation area. The proposed 21m height limit and other changes are inconsistent with recent changes to *Lake Macquarie Local Environmental Plan 2014* which sought to preserve the value of the heritage area (including the reduction of the building height).

While a full merit assessment for each development application would still occur, it would be challenging to undertake a reasonable merit-based assessment given the significant difference between planning controls, including the current permitted building height, and the proposed 21m building height under the TOD Program.

Council staff believe that a lower height provision for this area could still deliver the increased density outcomes desired by the program. There are several examples of this having already been approved/delivered in the R3 zone around Teralba.

Newcastle City Council - Newcastle City Centre¹³

- The *Hunter Region Plan 2041*(HRP 2041) states that Newcastle City Centre is the Hunter's metropolitan capital and economically significant to NSW.
- It is a developing regional commercial centre and (perhaps besides Gosford) has a completely different set of characteristics than other stations selected.
- The Newcastle City Centre needs a commercial core and requires mixed use development to support the growing population in this area and the wider community. The application of the TOD Program will erode this fast-growing commercial centre.

Newcastle City Council - Wickham¹⁴

The planning proposal to implement incentive height and floor space ratio controls for Wickham came into effect in December 2023 following the announcement of the TOD Program.

The controls are supported by the Wickham Community Infrastructure Plan and Newcastle DCP 2023 provisions. The height of building and floor space ration controls are nuanced with heights ranging from 14m to 60m and floor space ratios from 2.5:1 to 7:1.

These sites were carefully selected by City of Newcastle as they are not subject to mine subsidence and flooding constraints like much of the Wickham area. They also do not include the low-rise, fine-grain Wickham Village Hub which is not identified for uplift due to such constraints and the existing low-density residential character.

¹³ Addendum to City of Newcastle Submission – TOD Program, 8 March 2024 (Copy provided to LGNSW)

¹⁴ Ibid.

City of Wollongong Council – Former Coke works site¹⁵

Council and the community spent a number of years preparing and assessing a Planning Proposal for the former heritage listed Coke Works site, which adjoins Corrimal Station. The LEP amendment was finalised in 2022 and Council also adopted a Development Control Plan chapter and Planning Agreement. The site has a range of height limits (11m, 13m, 15m) and floor space ratios (0.75:1, 1.2:1, 1.5:1). The development has been scaled due to heritage, visual amenity, access and transport constraints. Council is currently assessing development applications.

The proposed TOD SEPP would allow for an increase in height, density and dwelling numbers. The increase in dwellings could have an impact on the local road network, and the capacity of the State's rail level crossing. The proposed SEPP should have regard to recently approved LEPs, DCPs and Planning Agreements and establish a process to review site specific controls and a mechanism to require developers to re-negotiate Planning Agreements in response to the uplift of development potential of sites.

Penrith City Council – St Mary's Town Centre¹⁶

- **The proposed one-size fits all approach to Transport Oriented Development does not respond to the specific context of the St Marys Town Centre**

Within the 400m radius, the Historic Living Precinct (as described in the Structure Plan), is the only land where residential flat buildings are not currently permitted. This land is zoned R2 Low Density Residential and as indicated through the Structure Plan, has a strong association with the history of St Marys.

Council staff have considered the applicability of the proposed TOD SEPP controls in this Precinct. Our analysis shows the TOD SEPP controls cannot be achieved due to site constraints. The testing further confirms that medium-high density development is not appropriate for a range of reasons including fragmented land ownership, narrow street widths, shallow lot depths and the Sydney Metro tunnel alignment which prevents basement development. It has also flagged potential interface issues/implications beyond the 400m radius of SEPP influence (infrastructure, servicing, equity, amenity etc.).

The significant fragmentation of small existing lots (<400m²) makes this area difficult to consolidate for residential flat development, potentially leading to poor urban design outcomes or inflated land prices where the density cannot be realised. Concern is raised that if the TOD SEPP removes the permissibility of semi-detached and/or low-rise multi-dwelling housing alternatives, development in this precinct may stagnate over the short-medium term, if not longer, due to the complexity of achieving lot amalgamations for residential flat buildings, coordination/cost of infrastructure upgrades, and overall feasibility of higher density development.

Master planning will not only have the benefit of ensuring development standards are appropriate to the local context but will establish one clear set of planning controls tailored to the local conditions and avoid complexity associated with applicable controls across various planning instruments.

¹⁵ [Agenda of Ordinary Meeting of Council - Monday, 5 February 2024 \(nsw.gov.au\)](#)

¹⁶ [Agenda of Ordinary Meeting - Monday, 26 February 2024 \(infocouncil.biz\)](#) (Attachment to Item 8)

Infrastructure plans and funding mechanisms

The NSW Government has not provided any detailed analysis of infrastructure and service capacity for the 31 precincts in Part 2 of the TOD Program. New housing will require more than access to transport. New housing will increase demand for water and sewerage, schools, hospitals, sports fields and open space and other local services. It will also place cumulative pressure on state road infrastructure as well as specific pressure on local roads traffic and stormwater. In many locations this infrastructure is already at capacity.

The below examples from councils' submissions to the Department of Planning, Housing and Infrastructure on the TOD Program, serve to illustrate concerns regarding the infrastructure capacity implications of the TOD SEPP proposals:

Penrith City Council - St Marys Town Centre¹⁷

The TOD SEPP enables densification without adequate infrastructure (roads, stormwater, amenities, and appropriate funding) to support the proposed densification.

The TOD SEPP is underscored by the assumption that the housing supply will be supported by existing infrastructure already embedded in the town centre.

Council's work on the Structure Plan and Master Plan has highlighted that existing stormwater and wastewater infrastructure does not have any capacity beyond existing zoned land. Significant intersection upgrades would also be required to manage the impacts of the scale of density enabled by the SEPP in the current R2 Zone to the west of the station (Historic Living Precinct). Furthermore, new and upgraded open space and social infrastructure would be required to meet the needs of the additional population, all at a cost.

Council does not currently have a suitable contributions framework in place to support growth in St Marys if the TOD SEPP is successful in generating development.

Council's work towards the Master Plan includes consideration of an Infrastructure Delivery Plan and Funding Strategy that describes the infrastructure requirements to support the planned growth and outlines approaches to funding and sequencing.

Cumberland City Council - Berala and Lidcombe¹⁸

Infrastructure capacity

The information provided under the Transport Oriented Development Program indicates that Berala and Lidcombe were selected in part due to sufficient capacity being available with existing infrastructure in these locations, such as water, power and public transport.

Council has significant concerns that a full analysis of growth infrastructure requirements was not undertaken as part of the Transport Oriented Development Program. Work previously undertaken by Council, as well as

¹⁷ [Agenda of Ordinary Meeting - Monday, 26 February 2024 \(infocouncil.biz\)](#) (Attachment to Item 8)

¹⁸ [Agenda of Council Meeting - Wednesday, 6 March 2024 \(infocouncil.biz\)](#) (Item C03/24-474, Attachment 1)

community feedback over many years, indicates that the following gaps are already occurring in relation to growth infrastructure:

- Local and regional roads: there are existing capacity constraints on the local road network as it approaches the regional road network (i.e. A6 Road), particularly during commuter peak periods. This will be exacerbated should further additional growth occur at Berala and Lidcombe without an appropriate infrastructure response.
- Public transport: there is a need to confirm the timing of the new train timetable, which will provide a direct city service from Berala and Lidcombe. Bus services in these locations also have low frequencies outside of peak periods, and need to be enhanced to allow residence, workers and visitors greater transport choices both now and in the future.
- Schools: previous analysis by Council has indicated capacity constraints at public primary schools at Berala and Lidcombe. No additional infrastructure improvements and/or new schools have been committed to support population growth in these locations.
- Open space and recreation: there is limited open space at Berala and Lidcombe. While Council has undertaken planning work to enhance these open space and recreation facilities, no additional funding commitments have been made to Council to ensure that these spaces can accommodate current and future population growth.
- Community facilities: there are existing community centres at Berala and Lidcombe, as well as a library at Lidcombe and a planned library vending machine at Berala. Additional funding commitments to Council are required to ensure that these facilities can accommodate current and future population growth.

As this work has not been undertaken at Berala and Lidcombe, Council believes it is premature to progress with the Transport Oriented Development Program at these locations.

In planning to accommodate 185,000 new dwellings in the TOD precincts alone, communities cannot afford the consequences of the NSW Government failing to appropriately consider infrastructure planning, sequencing and investment. But as noted in a report on the planning reforms to Canterbury-Bankstown Council¹⁹:

The Draft SEPPs make no commentary on the variety of infrastructure that is needed to support the significant increase in population growth, such as regional transport connections, road and intersection upgrades, open spaces, mid-block connections, laneways, public domain improvements, bridges, cycleways, footpaths, schools, health facilities and transport services.

There are no details in relation to the hierarchy of works for supporting infrastructure (local, district or regional), priority of works, indicative timeframes, or estimated costs of works to confirm whether there is adequate funding and resources to deliver a project of this scale.

There is a need to identify land acquisition sites and appropriate legal/funding mechanisms to resolve how to deliver open spaces and mid-block connections. If the uplift takes place prior to acquisitions, there will be a significant flow on effect in terms of acquisition costs.

¹⁹ [Agenda of Ordinary Meeting of Council - Tuesday, 27 February 2024 \(nsw.gov.au\)](#), p 83

The documentation provides no information about the work required by councils to ensure their local contributions plans are updated and makes only a cursory reference to the Housing and Productivity Contribution (HPC) which commenced on 1 October 2023. As Central Coast Council noted in their submission to DPHI²⁰:

The TOD SEPP and Low- and Mid-Rise Housing changes are happening faster than Council can amend local infrastructure contribution plans. Where the population is proposed to change substantially Council will need to review its forward works program and funding stream (including local infrastructure contribution plans) to ensure adequate funding and resources are available to deliver local infrastructure.

...

Local Infrastructure Framework

Council's existing infrastructure contribution framework is insufficient to address increased demand created by the expected growth. Noting comments in the TOD information package that *'the department will work with councils to identify where further infrastructure planning and funding is required and accelerate that work to ensure it is in place at the right time.'* Further detail on this program for infrastructure acceleration should be provided as part of the reforms as it is a key piece to housing delivery. In addition, given the timing of the reforms identified, it is unlikely that infrastructure can be in place to support these reforms.

Councils are seeking details about the HPC to give them confidence that regional and state infrastructure will be provided for their communities alongside the anticipated growth from the TOD SEPP, as highlighted by Cumberland City Council²¹:

It is also noted by Council that references have been made to the Housing and Productivity Contribution as a funding source for potential growth infrastructure. At this stage, Council has not been provided any specific details on the allocation of these funds by the Department of Planning, Housing and Infrastructure. It is imperative that Cumberland Council is provided with a guaranteed funding allocation under the Housing and Productivity Contribution to enable regionally significant transport and open space growth infrastructure to be delivered in the area.

Councils continue to be restricted by a \$20,000 per dwelling cap on their s 7.11 contributions unless their plan is IPART-approved. There have been no changes to the capped rates since their implementation in 2010, either to reflect indexing or increased land acquisition and construction costs. This impacts councils' ability to deliver much needed infrastructure for their communities in a timely manner and they have had to rely on other sources to plug the infrastructure funding gap. This was highlighted by Central Coast Council in its submission to DPHI²²:

- To remedy the unreasonable expectation that development contributions will be sufficient to meet the demand for delivery of infrastructure, the contribution caps should be lifted or at a minimum reviewed to ensure local infrastructure is able to be funded through local infrastructure contributions.

²⁰ [Attachments of Ordinary Council Meeting – Tuesday, 27 February 2024 \(infocouncil.biz\)](#) (Item 2.8, Attachment 2)

²¹ [Agenda of Council Meeting – Wednesday, 6 March 2024 \(infocouncil.biz\)](#) (Item C03/24-474, Attachment 1)

²² [Attachments of Ordinary Council Meeting – Tuesday, 27 February 2024 \(infocouncil.biz\)](#) (Item 2.8, Attachment 2)

- At a bare minimum, the contributions cap should be indexed annually to provide a slightly more realistic figure. The CPI should apply from 2010, when the cap was introduced.
- The Essential Works List should be expanded to include social infrastructure, in line with previous representations from local government and from the Planning Institute of Australia (PIA).
- It is often argued that the cost to developers of local infrastructure contributions risk making development financially unfeasible, thus limiting the production of new housing. However, numerous IPART determinations have shown that the reasonable infrastructure costs for greenfield development can far exceed the current caps, by three or four times.

With the substantial infrastructure needed to support the anticipated increased density and growth under the TOD Program and the considerable accompanying land value uplift that will flow from this significant reform, it is opportune to remove the contributions caps within areas affected by the TOD Program or at a minimum, to update the IPART trigger thresholds and allow them to be indexed with inflation with a view to making them more reflective of current costs.

The Department's HPC Guideline²³ notes the importance of having "a robust and transparent governance framework" for delivery of infrastructure funds under the HPC. The Department's proposed Infrastructure Opportunities Plan will be critical to the planning, sequencing and investment of infrastructure needed for the TOD Program. Although more details on the HPC governance framework were expected to be published in late 2023, no further details have been made available to date.

Affordable housing contribution schemes

The affordability of housing is at the heart of the housing crisis. While additional supply may improve access to housing for a range of households, it is unlikely that it will place sufficient downward pressure on house prices and rents to improve affordability for many low- and moderate-income households.

The planning system includes provision for affordable housing when development uplift occurs through establishment of affordable housing contribution schemes. Under the current policy framework these are developed by councils and approved by the Department of Planning, Housing and Infrastructure. Councils consider the requirements and process for developing schemes to be overly onerous and disproportionately lengthy.

Under the TOD Program the NSW Government is proposing to establish inclusionary zoning to enable delivery of up to 15% of homes for affordable housing in perpetuity in the 8 precincts in Part 1.

²³ [Housing and Productivity Contribution – Implementation Guideline \(nsw.gov.au\)](https://www.nsw.gov.au/housing-and-productivity-contribution-implementation-guideline)

However, for precincts in Part 2 the TOD Program only commits to establishing inclusionary zoning for a minimum 2% of dwellings. This approach is not supported as it is likely that a higher contribution rate is feasible in many of the precincts given underlying land values and increased density proposed.

Introducing significant “once in a generation” uplift as proposed in the TOD Program without an appropriate affordable housing policy framework to capture the value uplift for affordable housing represents a significant lost opportunity and is at odds with the issue at the heart of the housing crisis.

Conclusion

LGNSW and councils across the state support action to address the housing crisis. Councils recognise the planning system has a role and support new and more diverse housing being built in well-located areas. Councils are pressing for new housing to include a proportion of affordable housing in perpetuity.

Councils also support new housing that is well-designed, safe and with access to infrastructure such as transport, open space and community facilities. They work with their communities to accommodate growth and change that recognises the opportunities and constraints of their local area and promotes liveability for existing and future residents. This is good strategic planning.

The NSW Government’s TOD Program in combination with other proposed planning changes to increase densities presents a risk to the achievement of these outcomes. In a rush to respond to the National Housing Accord the NSW Government appears to have set aside recent progress in strategic planning and dismissed the local knowledge and expertise of councils in planning for their areas.

For the sake of the long-term well-being and liveability of existing and future communities, LGNSW would like to see as an outcome of this inquiry the beginnings of a genuine and respectful partnership between state and local governments, working together to plan for growth in agreed precincts that are appropriately supported by both state and local infrastructure.

**Appendix 1 - LGNSW briefing
NSW Government Density Reforms:
There's a Better Way**

NSW GOVERNMENT DENSITY REFORMS: THERE'S A BETTER WAY

The NSW Government has announced a suite of reforms proposing to dramatically increase density of housing in NSW. The multiple and overlapping announcements have been described as the largest changes to planning in a generation.

Councils across NSW acknowledge and support efforts to meet commitments under the National Housing Accord. They also support the aim of providing density in the right locations and with appropriate infrastructure and services to support population increases.

However, as currently proposed, the NSW Government's reforms risk causing generational impacts on liveability and quality of life for communities. The proposed changes were prepared without genuine collaboration or consultation with local government. As a result, they risk jeopardising the very outcomes they seek to achieve.

As a signatory to the Housing Accord, the NSW Government committed to working with local governments to deliver planning and land-use reforms that will make housing supply more responsive to demand over time. Democratically elected local councils know their communities. They understand where growth can be best supported. They can advise where investment in services and infrastructure is needed to strengthen communities and avoid unnecessary congestion and delays.

The need for greater density and housing diversity is not in dispute. But the desired outcomes of the NSW Government's reforms have a greater chance of success if done in genuine partnership with councils, in the spirit of the Accord.

Councils want to work with NSW Government to understand clear housing targets for their local areas. They already have locally developed strategic and master plans in place or well underway to meet previously agreed housing targets. These local plans are tailored to specific local conditions, factor in how infrastructure will be provided and funded, and importantly have already gained community endorsement.

But planning reforms on their own won't fix the housing crisis. The crisis is one that is the result of multiple factors beyond the control of local government. Councils point to numerous examples of residential approvals that have not translated into dwelling commencements. The current failure to translate the thousands of latent dwelling approvals already in the system is a market one – driven by construction costs, shortages of construction materials and labour and rising interest rates.

The proposed reforms pose significant risks to the quality of life of communities across NSW unless local plans are acknowledged, and councils are listened to. There is a better way forward – if the NSW Government will agree to work in genuine partnership with councils and communities to ensure that density will indeed be 'done well'.

What are the risks of the NSW Government's reforms as proposed?

RISK 1

Harm quality of life with generational implications for congestion, liveability, public safety and strain on public services and infrastructure

These blanket reforms threaten expectations of density-done-well. They disregard strategic planning by councils that determines where greater density is most suitable. Blanket planning standards fail to take account of areas that are disaster-prone or have limited access to the services and infrastructure that makes communities safe and liveable.

- **No analysis of infrastructure and service capacity** – The NSW Government has provided no analysis of the capacity of existing infrastructure and services, including water, sewerage, sports fields and other open space, schools, hospitals, traffic and transport, to cope with the volume of new residents.
- **No plan for infrastructure, employment and liveability** – The NSW Government has not released long overdue housing targets or the plans that align growth with infrastructure, employment and liveability. Without targets to aim for, councils cannot effectively plan for growth nor predict their future communities' infrastructure and service needs.
- **No evidence that concerns about hazards**, evacuation routes and stormwater capacity have been addressed. Blanket planning permissibility without considering these factors will allow population growth to intensify haphazardly, risking public safety.
- **Reduced landscaping and loss of tree canopy**, increasing urban heat and the knock-on effects on community well-being and safety.

As density increases in an unplanned manner, communities will experience harms to liveability and productivity. Some property owners will benefit from windfall gains, while councils and communities are left to reactively deal with the resulting strain as public services, roads and infrastructure struggle to keep up with demand.

Councils have already developed strategic plans backed by the NSW Government. These plans are supported by technical studies and other evidence to plan for tens of thousands of new homes in suitable locations and supported by necessary infrastructure. This important local strategic planning work needs to be upheld and enhanced, not sabotaged and diminished.

BETTER APPROACH

Develop updated housing targets with councils and release a plan for infrastructure

- In line with the Housing Accord, the NSW Government should work with councils to agree on updated housing targets and allow councils to plan for good growth and density done well in locations that can support it. Democratically elected councils are best placed to understand the constraints and opportunities in their local government areas and know how and where growth and density can be most suitably accommodated.
- The NSW Government should release a strategy for how state and local infrastructure will be provided and funded upfront, alongside the modelling and assumptions behind the planning reforms, to build community confidence and the social licence for densification.

 **RISK 2****Fail to meet housing targets by focussing only on changes to planning rules, while ignoring current market constraints and the chronic underinvestment in public and social housing**

The proposed changes will introduce more complexity, confusion and unintended consequences. This risks delays in development approvals and housing delivery, and ultimately, poor outcomes for communities.

An abundance of planned development capacity already exists across NSW that has not resulted in housing completions, despite the approvals and rezonings being in place. Actions are needed to enable and provide incentives for these developments to start construction and to bring new dwellings to the market.

The Government's solutions must be more than a widespread broadening of land use permissibility and increased density. These announcements will do nothing to overcome the barriers preventing already-approved development being brought to the market. Instead they have generated windfall gains for some property owners and introduced greater uncertainty for many.

There is also an urgent need for far greater investment in public and social housing for the most vulnerable members of the community right across NSW, who will not be able to afford market-rate housing.

 **RISK 3****Missed opportunity for affordable housing**

Inconsistent and unclear provisions for affordable housing will hamper the NSW Government's capacity to deliver meaningful long-term affordable housing. The NSW Government is proposing 15% affordable housing in perpetuity in some areas and only 2% affordable housing in others.

A separate NSW Government policy awards permanent height and density bonuses for developments that provide 15% affordable housing for just 15 years, after which market forces would determine the value.

It's a confusing patchwork of different requirements which is a missed opportunity to adequately provide long-term affordable housing.

Affordable housing contribution schemes developed by councils have the potential to deliver more affordable housing in well-located areas. Many councils are committed to developing these schemes.

Unfortunately, the current processes are too complex. These barriers need to be addressed by the NSW Government as a priority, so that these schemes can be in place more quickly. This would help the State move towards introducing inclusionary zoning and planning, which would help deliver permanent affordable housing.

 **BETTER APPROACH****Address market-related constraints, invest in public housing and target actions to activate existing approved developments**

- Address the non-planning, market-related factors that are affecting the translation of planning approvals into dwelling commencements.
- Focus attention on translating the significant existing untapped capacity of rezoning and development approvals into actual housing construction.
- Significantly invest in public and social housing after decades of neglect.

 **BETTER APPROACH****Provide affordable housing in perpetuity**

- Affordable housing should remain affordable in perpetuity when it accompanies increased development uplift. Permanent height and density bonuses should not be awarded for temporary affordable housing.
- In partnership with local government, urgently establish affordable housing contribution schemes to maximise affordable housing contributions and begin a transition towards inclusionary zoning to support delivery of permanent affordable housing.

For further information, email policy@lgnsw.org.au