

INQUIRY INTO DEVELOPMENT OF THE TRANSPORT ORIENTED DEVELOPMENT PROGRAM

Organisation: Better Planning Network Inc. (BPN)

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Better Planning Network Inc.

Submission to the NSW Parliamentary Inquiry into the development of the Transport Oriented Development Program, March 2024

The Better Planning Network (BPN) appreciates the opportunity to make a submission to the NSW Parliamentary Inquiry into the Transport Oriented Development (TOD) Program.

Better Planning Network (BPN) is a state-wide, volunteer-based, not for profit incorporated community organisation. BPN group and individual members and its supporters strongly advocate for best practices in planning, including authentic community engagement. The aim of Better Planning Network (BPN) is for a robust and visionary planning system for NSW – one that fosters best practice environmental, heritage, social sustainability, and design outcomes.

Under the TOD and Mid-rise and low-rise proposed reforms the NSW government is proposing to implement the largest State-led rezoning in the history of NSW. The TOD has designated fast-tracked rezoning of 8 precincts and introduced new planning standards to areas around 31 other stations. The TOD Program will be implemented as a State Environmental Planning Policy (SEPP).

BPN cannot support the TOD Program as it is inconsistent with its objectives for a planning system that includes community participation and that delivers best planning outcomes. The TOD Program excludes community input or public exhibition. BPN objects to the approach to override councils' LEPs and to implement non-refusal grounds that will in effect override controls that have been implemented to protect and conserve the environment and heritage.

If implemented as proposed, the TOD Program will have adverse outcomes on communities.

BPN calls on the NSW government to defer the TOD Program until the outcomes of the Inquiry are published, and to review the TOD Program in light of the Committee's report. Should the TOD Program progress as a SEPP it must be publicly exhibited in the interest of transparency.

Addressing the Inquiry terms of reference:

(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

There is a lack of transparency and integrity as the NSW government has not released information of evidence-based analysis in determining (i) the eight TOD accelerated precincts and (ii) the 31 other TOD station precincts, claiming “Cabinet-in-confidence”. We understand that 305 train and metro stations were considered however no evidence has been disclosed to support the selection of the target TOD precincts.

The assumptions, data, methodology and modelling used in the analysis of the 305 train and metro stations must be released to the public. This information should include the existing and future capacity of the public transport to accommodate the proposed increased population and consideration of constraints analysis for future development. It should also include studies undertaken to determine the demand for infrastructure and services that the increased density will put on councils and how these will be funded. BPN calls on the government to release all relevant information.

(b) the probity measures put in place by the Government, the Premier's Department, The Cabinet Office and the Department

BPN is unaware of the what if any probity measures will be put in place. However, the extent of value uplift through the relaxation of planning controls will result in the potential for huge windfall profits to be made. Together with the lack of transparency and the discretionary powers this creates a high risk of corruption.

(c) the development of the Transport Oriented Development Program policy approach by the Government

The development of the TOD approach by the government has been top-down, autocratic, and lacking transparency. The policy is rushed, lacks details including housing targets. The policy is driven by the delivery of large volumes of housing. The housing and affordability issues in NSW are complex and to genuinely resolve the problem shortage of housing and affordability must be considered holistically by including factors affecting housing demand, delivery, and other government policies.

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

As part of its response to the Housing Accord, the NSW government committed to work with local government. Contrary to this commitment the government did not develop the TOD Program with councils. Only after the release of the TOD proposals were affected councils given a briefing on the Program.

The proposal was released mid-December and the affected Councils were given only a few weeks to respond. This is inconsistent with the Department’s Community Participation Plan to *“consider holidays and other community events when setting dates for engagement initiatives.”*

Furthermore, the Government did not provide any opportunity for community consultation and engagement. This is inconsistent with the *Environmental Planning and Assessment Act 1979* (the EPBC Act). The Act sets out the importance of community participation in the planning system and the minimum community participation requirements. The NSW

Community Participation Plan also considers the community participation principles in section 2.23 (2) of the EP&A Act.

(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

The TOD Program must be withdrawn or at the very least deferred until the Inquiry is completed. The government must start the process over with release of evidence-based data, collaboration with councils and community participation consistent with the EPBC Act 1979. Community consultation should include all stakeholders.

While public exhibition of a SEPP is discretionary, we submit that based on the scale and significance of the changes proposed under the TOD, it must in this case be exhibited with all evidence-based supporting information.

The TOD program is flawed. Once the program is implemented, any ongoing review and input will be too late. The TOD program would have severe impact on local character, liveability, environment, and heritage. Once development commences in an area, it will be impossible to retrieve what is lost.

(f) information control protocols relating to the Transport Oriented Development Program policy.

(g) property disclosure requirements and disclosure.

(h) the release of information prior to the official publication of the TOD Program policy.

The release of information has led to speculation and reports of developer pressure on residents to sell despite the TOD Program not being in force.

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

The TOD Program SEPP will apply to areas within 1,200 metres of the 8 priority transport hubs and within 400 metres of the other 31 designated train or metro station. It will apply to any Heritage Conservation Areas (HCAs) within the designated areas. The proposal states *‘that the proposed changes will result in significant change in these locations as additional housing is delivered’* and that *‘A merit-based assessment will apply to developments and local heritage controls will apply ‘to the extent that they are not inconsistent with the new standards.’* This caveat effectively dis-applies and negates heritage controls. Listing of heritage items and HCAs undergo rigorous assessment. The provision of housing at the expense of heritage (and environment) is not strategic or sustainable planning.

Clause 5.10 of the standard LEP provides for local heritage controls to protect and conserve heritage buildings and settings. Given the non-refusal grounds imposed by the TOD Program, local heritage controls will be impossible to enforce. The TOD Program will cause irreversible damage and loss of heritage.

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

Details on infrastructure are absent. There is no evidence provided that the existing infrastructure has the capacity to support the proposed increased density. Housing delivery must be accompanied by supporting infrastructure and services, however there is no evidence that analysis has been undertaken to determine capacity of affected precincts to provide new infrastructure or services to satisfy the increased population or how it will be funded.

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

LEPs are developed in consultation with the community and involve months of work and expense by councils. The TOD Program in effect overrides the affected council's LEP and has knock on effects as it impacts on the remainder of the LEP that is based on strategic planning.

Overriding LEPs, implementation of State-imposed controls, and non-refusal grounds together mean that the different local character of each TOD precinct will be lost. The 'one size fits all' approach being taken ignores the constraints and character of individual areas. A new TOD Program SEPP that overrides local planning policies undermines the Regional and Strategic planning required by the EPA Act 1979.

(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.

LEPs are strategically developed to protect environmentally significant land. Given the proposed increases in FSR and height limits and non-refusal grounds, the TOD Program will also potentially impact on precincts that contain significant vegetation.

The intensity of development will likely result in a loss of tree canopy, meaning that Urban Forest targets will not be met. Environment and heritage should not be sacrificed to satisfy housing targets.

The TOD Program is being rushed. It is not clear on housing targets. It proposes to amend the NSW government Apartment Design guide to accommodate the new controls. This puts into question the design quality of the future units and liveability.

BPN has no objection to this submission being made public, in full and unredacted.

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