

Submission  
No 155

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

**Name:** Name suppressed

**Date Received:** 26 March 2024

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Partially  
Confidential

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Ms Sue Higginson MLC  
Committee Chair  
Portfolio Committee No. 7  
Planning and Environment

26 March 2024

Dear Ms Higginson,

**Inquiry into the development of the NSW Government's proposed "Transport Oriented Development" program (TOD)**

I write concerning the inquiry established on 23 February 2024 to inquire into and report on the development of the NSW Government's proposed TOD program, with specific reference to 'Part 2' or the 'TOD SEPP.' I seek to provide constructive feedback for consideration as part of the inquiry. To that end I seek to address the following:

- Application of TOD to Heritage Conservation Areas;
- The consultation process; and
- The Malvern Hill Estate Heritage Conservation Area, Croydon.

**Heritage Conservation Areas under the Environmental Planning and Assessment Act 1979**

When I talk to people, the proposal to override existing heritage protections is typically met with disbelief, and not uncommonly, laughter, before an understanding of the consequences of the proposals are realised.

Not uncommonly, residents of Heritage Conservation Areas (and likely the broader community) assume that heritage protections will continue to apply. Examples exist following the announcement of comments by people residing in Heritage Conservation Areas receiving correspondence from developers and dismissing the proposals contained therein as preposterous, given their confidence in the protections afforded by the Environmental Planning and Assessment Act and Local Environmental Plans.

The 'snap' rezoning of 31 locations across NSW devalues and perhaps destroys entirely the purpose of Heritage Conservation Areas under the Environmental Planning and Assessment Act 1979, including those not presently affected by the current proposal. The uncertainty generated by the power to 'snap' rezone extends beyond the TOD affected stations and 400m distance. There are no limitations or controls preventing the subsequent application to any NSW location through a 'snap' declaration, the progressive widening of a zone beyond 400m, or leveraging instead distance from an alternate point, like a bus stop.

Heritage Conservation Areas will not be ‘changed’ as additional housing is delivered, and their character will not ‘evolve.’<sup>1</sup> Heritage Conservation Areas will cease to exist. The proposition that Heritage Conservation Areas can be replaced with up to six storey buildings sourced from an ‘Apartment Design Guide’ or pattern book to provide what the NSW Heritage Council optimistically refers to as ‘the heritage of the future’<sup>2</sup> defies comprehension, as do assertions from Kiersten Fishburn Department of Planning Secretary that “just because a building is six storeys tall does not mean that it is not appropriate for a Heritage Conservation Area.”<sup>3</sup>

Overriding heritage protections surrounding stations within the Six Cities Region in a uniform way fails to take into consideration where councils are already accommodating higher density. Both the Mayor of North Sydney Zoë Baker and Mayor of Burwood John Faker have expressed their disappointment at the lack of consideration given to their efforts to concentrate developments in Crows Nest and Burwood respectively while seeking to protect the character of highly valued neighbourhoods.<sup>4 5</sup>

Statements by the NSW Premier Chris Minns that “[Councils] don’t have the gumption to come out and say, well, ‘We don’t want anyone else moving into our community and we certainly don’t want any uplift in development.’”<sup>6</sup> are dismissive of these efforts by Local Councils. Likewise, equating the entire purpose of Heritage Conservation Areas being to protect 60 year old electricity substations<sup>7</sup> trivialises the long established and recognised heritage value and protections in place.

Likewise, statements by the NSW Premier Chris Minns that Local Councils have been using heritage preservation listings as a tactic to hide a NIMBY-ist (not in my backyard) motivation against greater development<sup>8</sup> trivialise the objective of Heritage Conservation Areas that are long established and genuinely recognised and valued for their special historical and aesthetic character are grossly insincere.

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<sup>1</sup> Transport Oriented Development (TOD) Program <https://www.planning.nsw.gov.au/sites/default/files/2023-12/transport-oriented-development-program.pdf>

<sup>2</sup> Heritage Council of NSW chair Frank Howarth in ‘Prepare for ‘significant change’: Rezoning will override local heritage rules.’ 9 December 2023 <https://www.smh.com.au/national/nsw/prepare-for-significant-change-rezonings-will-override-local-heritage-rules-20231208-p5eq2j.html>

<sup>3</sup> ‘NSW planning changes to boost housing take effect next month but communities are divided’ 11 March 2024 [https://www.abc.net.au/news/2024-03-11/nsw-rezoning-housing-sydney-suburbs-communities-density-planning/103566510?utm\\_campaign=abc\\_news\\_web&utm\\_content=link&utm\\_medium=content\\_shared&utm\\_source=abc\\_news\\_web](https://www.abc.net.au/news/2024-03-11/nsw-rezoning-housing-sydney-suburbs-communities-density-planning/103566510?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web)

<sup>4</sup> North Sydney mayor says Minns government overriding planning protections like a ‘totalitarian’ regime 11 December 2023 <https://www.theguardian.com/australia-news/2023/dec/11/north-sydney-mayor-nsw-premier-chris-minns-planning-laws>

<sup>5</sup> Burwood Community Update Friday 22 December 2023.

<sup>6</sup> North Sydney mayor says Minns government overriding planning protections like a ‘totalitarian’ regime 11 December 2023 <https://www.theguardian.com/australia-news/2023/dec/11/north-sydney-mayor-nsw-premier-chris-minns-planning-laws>

<sup>7</sup> North Sydney mayor says Minns government overriding planning protections like a ‘totalitarian’ regime 11 December 2023 <https://www.theguardian.com/australia-news/2023/dec/11/north-sydney-mayor-nsw-premier-chris-minns-planning-laws>

<sup>8</sup> North Sydney mayor says Minns government overriding planning protections like a ‘totalitarian’ regime 11 December 2023 <https://www.theguardian.com/australia-news/2023/dec/11/north-sydney-mayor-nsw-premier-chris-minns-planning-laws>

That we will also see the destruction of Heritage Conservation Areas for the purpose of winning a concocted state rivalry with Victoria is shameful.<sup>9</sup>

The NSW Government's announcement retrospectively gives effect to the Environmental Planning and Assessment Act 1979 having operated since inception as a massive land banking scheme for the windfall benefit of developers.

The NSW Government's disregard for Heritage Conservation Areas is in stark contrast to its opposition in 2015 to WestConnex. Of note, Jo Haylen MP Member for Summer Hill and present NSW Minister for Transport stated:

*I support the petition tabled by the member for Newtown on behalf of the many people in the public gallery today and across Sydney who are categorically opposed to the Government's WestConnex project. WestConnex rips a hole through beautiful, vibrant communities and neighbourhoods, including in my electorate of Summer Hill. Of those suburbs most affected, Haberfield is of national heritage significance—it is the world's first. Ashfield is one of the oldest and most multicultural suburbs in our city. These are strong and tight-knit communities where neighbours look out for one another and care for one another...*

*And yet the Baird-Liberal Government is arrogantly pushing ahead... without adequately consulting the community...*

*...the conduct of this Liberal Government has been nothing less than shameful.*

*Residents are furious at the arrogance that comes from destroying heritage items and by the Government's own admission in the environmental impact statement ripping the Haberfield Heritage Conservation Area in two.<sup>10</sup>*

That the NSW Government now seeks to do the same to Heritage Conservation Areas throughout NSW in the absence of council or community consultation before recommending the making of an environmental planning instrument, and on a far greater scale is a disgrace.

Statements made by NSW Premier Chris Minns on ABC radio that it was “not true” that the NSW Government was getting rid of heritage orders<sup>11</sup> and statements from yourself that the rezonings will not be state led<sup>12</sup> are deceptive. Applications will be assessed and determined by relevant Local Councils<sup>13</sup>, with Local Councils only able to apply controls to the extent that they are not inconsistent with the TOD program<sup>14</sup>. Local Councils become responsible for the implementation,

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<sup>9</sup> Premier's Long Game on Housing Goals The Daily Telegraph 18 January 2024

<sup>10</sup> Legislative Assembly Hansard - 19 November 2015

<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-68551/link/82>

<sup>11</sup> North Sydney mayor says Minns government overriding planning protections like a ‘totalitarian’ regime 11 December 2023 <https://www.theguardian.com/australia-news/2023/dec/11/north-sydney-mayor-nsw-premier-chris-minns-planning-laws>

<sup>12</sup> Letter from Jason Yat-sen Li MP to residents 22 December 2023

<sup>13</sup> Transport Oriented Development (TOD) Program

<https://www.planning.nsw.gov.au/sites/default/files/2023-12/transport-oriented-development-program.pdf>

<sup>14</sup> Transport Oriented Development (TOD) Program

<https://www.planning.nsw.gov.au/sites/default/files/2023-12/transport-oriented-development-program.pdf>

the executioners if you like, bearing the brunt of anger and frustration of local residents who will no longer have a say in these matters, with Local Councils powerless to prevent the destruction.

The TOD proposal offers a bonanza to developers, and given the existing and potential city views in parts of the Inner West, will enable the development of extraordinarily high priced ‘luxury’ apartments that will not operate to offer any relief to renters of first home buyers.

To paraphrase the Labor Party’s opposition to the relocation of the Powerhouse Museum to Parramatta - this is little more than a property deal to free up prime real estate.<sup>15</sup>

### **The consultation process**

There was no consultation with Councils and communities prior to the accidental announcement on 5 December 2023<sup>16</sup> <sup>17</sup> of suburbs targeted for high-density housing. Local Councils had only until 29 January 2024 to prepare and provide submissions,<sup>18</sup> a period when there is a likelihood that key staff were already committed to annual leave.

On 7 December 2023 the NSW Government announced via media release ‘A Shared Responsibility: The plan to begin addressing the housing crisis in NSW.’<sup>19</sup> Proper procedure was not followed prior to the publication of the media release.<sup>20</sup>

Subsequently, on or about 18 December 2023 the NSW Government released the 12 page publication ‘Transport Orientated Development Program: December 2023.’<sup>21</sup>

No prior announcements of the NSW Government’s intentions, including the 28 November 2023 announcement of ‘new planning rules to fast track low and mid-rise housing’<sup>22</sup> refer to the impacts upon Heritage Conservation Areas.

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<sup>15</sup> [https://www.nswlabor.org.au/save\\_our\\_powerhouse](https://www.nswlabor.org.au/save_our_powerhouse) See also Media release: ‘PREMIER: WHEN YOU APPOINT A NEW ARTS MINISTER ... ALSO DITCH \$1.5 BILLION POWERHOUSE MUSEUM PROPERTY DEAL 11 April 2020 <https://powerhousemuseumalliance.com/wp-content/uploads/2020/04/labor-media-release-11-april.pdf>

<sup>16</sup> NSW government accidentally publishes list of suburbs targeted for high-density housing 5 December 2023. <https://www.abc.net.au/news/2023-12-05/metro-west-high-population-housing-nsw-government-list/103191524>

<sup>17</sup> NSW government’s plan to address housing crisis by rezoning land around train stations accidentally revealed 5 December 2023 <https://www.theguardian.com/australia-news/2023/dec/05/nsw-government-housing-crisis-plan-leaks-rezoning-land-train-stations>

<sup>18</sup> Cr John Faker correspondence to Burwood residents 19 December 2023

<sup>19</sup> <https://www.nsw.gov.au/media-releases/addressing-housing-crisis-nsw>

<sup>20</sup> Cr John Faker correspondence to Burwood residents 19 December 2023

<sup>21</sup> Transport Orientated Development Program <https://www.planning.nsw.gov.au/policy-and-legislation/housing/transport-oriented-development-program>

<sup>22</sup> New planning rules to fast track low and mid rise housing <https://www.planning.nsw.gov.au/news/new-planning-rules-fast-track-low-and-mid-rise-housing> 28 November 2023

It can be assumed that the NSW Government's intention was to announce the TOD program prior to Christmas, given its inclusion in the 'Department of Planning and Environment | The Planning Group Year in Review 2023' published 18 December 2023.<sup>23</sup>

Subsequent communication from NSW Government MP Jason Yat-sen Li dated 22 December 2023 to residents in the affected area of Croydon did not address a crucial point: snap rezonings will apply to Heritage Conservation Areas.

Personally addressed letters to residents dated 27 December 2023 from developers arrived in letterboxes of Croydon residents prior to the end of 2023.

The timing of the release of the proposed TOD program is consistent with the historical practice that seeks to avoid scrutiny during the Christmas and new year period. Likewise, the absence of community consultation period prior to the implementation of the SEPP by 1 April 2024 is unreasonable, does not facilitate the organisation of a consistent and unified voice of community opinion, and suggests an unwillingness by the NSW government to properly engage or to seek and consider submissions from the public on the matter.

The application of the NSW Government's proposal appears a fait accompli from the outset.

The 'evidenced based' approach using planning, infrastructure, and spatial data, along with expert advice and feasibility analysis<sup>24</sup> by the Department of Planning that informed the identification of the 31 TOD precincts has not been released, but for a four page brochure on or around 22 March 2024.

That such a comprehensive review informing the NSW Government's intent was performed without public communication and presumably over a substantial period is not commensurate with the NSW Government's commitment to the open government principles of transparency, participation, collaboration and innovation.<sup>25</sup> That it has not been developed with input from Local Government contravenes the NSW Government's commitment under the Housing Accord to "Commit to working with local governments to deliver planning and land-use reforms that will make housing supply more responsive to demand over time."<sup>26</sup>

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<sup>23</sup> Department of Planning and Environment | The Planning Group Year in Review 2023  
<https://www.planning.nsw.gov.au/sites/default/files/2023-12/the-planning-group-year-in-review-2023.pdf>  
published 18 December 2023

<sup>24</sup> Transport Oriented Development (TOD) Program  
<https://www.planning.nsw.gov.au/sites/default/files/2023-12/transport-oriented-development-program.pdf>

<sup>25</sup> NSW Productivity Commission - Open Government <https://www.productivity.nsw.gov.au/open-government>  
see also Information and Privacy Commission <https://www.ipc.nsw.gov.au/information-access/open-government-open-data>

<sup>26</sup> National Housing Accord 2022 <https://ministers.treasury.gov.au/sites/ministers.treasury.gov.au/files/2022-10/national-housing-accord-2022.pdf>

Likewise, technical studies are to be undertaken in each accelerated precinct - including relevant environmental studies to make sure that the impacts are understood and addressed through the master planning process.<sup>27</sup> Given the NSW Government's haste in applying the TOD program from 1 April 2024 it is unclear when this will occur, whether it will be completed prior to the first developer lodged Development Application and demolition, or whether Local Council or community input will be sought or considered.

On 26 March 2024, less than one week prior to the implementation of the TOD program on 1 April 2024 there remains only two documents issued by the Department of Planning, Housing and Infrastructure available to the public in relation to the TOD:

- Transport Oriented Development Program (12 pages)
- Transport Oriented Development Program assessment criteria (4 pages)

A draft SEPP remains unpublished and unavailable for comment by the community.

### **Application to the Malvern Hill Estate, Croydon**

A Heritage Conservation Area is an area recognised and valued for its special historical and aesthetic character. Important elements that contribute to the heritage significance of a HCA include the architectural style of buildings, fences, trees and gardens.

The heritage value of the area was first formally recognised by the National Trust of Australia (NSW) on 27 April 1981 when it was classified as an Urban Conservation area with a separate listing for the Croydon Post Office and its adjoining house.<sup>28</sup> Subsequently, in August 1982 in response to the result of a questionnaire of residents and owners in the classified area, Burwood Municipal Council resolved to prepare a Draft Local Environmental Plan (LEP), which was gazetted on 21 February 1986, when Malvern Hill incorporating The Strand, was legally protected.<sup>29</sup>

The Malvern Hill estate is a residential estate of approximately 200 mainly Federation and early post World War I houses, with a defined shopping street called The Strand. The residential and retail precincts of the estate represent an almost intact example of the town planning and architectural trends of the early twentieth century. The Malvern Hill Estate subdivision represents an early application of the Local Government Extension Act 1906 embodying a substantial departure from the haphazard subdivisions and housing of the Victorian era. The Malvern Hill conservation area is considered an excellent example of suburban development inspired by the Garden Suburb movement.

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<sup>27</sup> Transport Oriented Development (TOD) Program

<https://www.planning.nsw.gov.au/sites/default/files/2023-12/transport-oriented-development-program.pdf>

<sup>28</sup> The National Trust of Australia (NSW), 'Malvern Hill Urban Conservation Area', classification listing information sheet

<sup>29</sup> Malvern Hill. Dictionary of Sydney. [https://dictionaryofsydney.org/entry/malvern\\_hill](https://dictionaryofsydney.org/entry/malvern_hill)

A shortcoming in the design of the Malvern Hill Estate was perhaps its reliance on gardens afforded by the setbacks and allotment sizes. There are no substantive public parks in the Malvern Hill Estate, nor within the 400m radius of Croydon train station.<sup>30</sup>

Allotments in the Malvern Hill Estate are subject to covenants and conditions 'for the protection of buyers'<sup>31</sup> with the conditions and covenants incorporated into the Certificates of Title. For example, applicable on Lots 1 to 36 Sec E and 1 to 18 Sec F:

*That no hotels or dairies shall be permitted on the said land. That any building erected on the said land shall be used only as a dwelling house and no building of any kind shall be built within twenty feet of the building line of Dickinson Avenue. That any such buildings shall cost and be of the value of not less than Five hundred pounds and shall be built mainly of brick or stone or both and the roof thereof shall be mainly of slate tiles or shingles. That only one dwelling house shall be erected on each Lot.*

The subsequent sequence of construction still evident in the streetscapes encompass several of the Federation styles and the adoption of the Californian Craftsman bungalow. The streetscapes capture changes in architectural styles and social conditions evident in the use of building materials such as the relative flamboyance of the timber detailing of early façades giving way over time to restraint in housing form and interior and exterior decoration reflecting the rising costs and reduction of manpower following World War I.

Of significance identified in the Dictionary of Sydney from the research of John Johnson<sup>32</sup> includes:

- **15 Malvern Avenue:** One of the oldest Californian Bungalows built in Sydney designed by architects Kent, Budden & Greenwell<sup>33</sup> for Australian geologist and educator Adolph Carl von de Heyde Süssmilch<sup>34</sup> in 1912. It was also home of Sir Bertram Stevens<sup>35</sup> for 25 years, who lived there while he was Premier of NSW (1932-1939). The garden contains remnants of a layout designed by landscape architect Jocelyn Brown<sup>36</sup> c1940.
- **26 Malvern Avenue:** 'Hillcrest' also one time home of Sir Bertram Stevens.
- **24 Malvern Avenue:** an early Californian bungalow style house designed by architects Peddle & Thorpe in 1919.
- **Dickinson Avenue:** 'Wombeyan' c1913. In 1917 the house was featured in the publication 'Where to live : ABC guide to Sydney and suburbs...' The property was photographed and described as: '*one of the finest houses in Croydon, the interior fittings being elaborate*

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<sup>30</sup> See [Reed Reserve](#) Fitzroy Street, [Webb Street Reserve](#), [Froggatt Crescent Reserve](#), and [Bridges Reserve](#) Edwin Street North.

<sup>31</sup> Malvern Estate subdivision plans

<sup>32</sup> Malvern Hill. Dictionary of Sydney. [https://dictionaryofsydney.org/entry/malvern\\_hill](https://dictionaryofsydney.org/entry/malvern_hill)

<sup>33</sup> Kent, Budden & Greenwell [https://en.wikipedia.org/wiki/Kent\\_Budden\\_%26\\_Greenwell](https://en.wikipedia.org/wiki/Kent_Budden_%26_Greenwell)

<sup>34</sup> Adolph Carl von de Heyde Süssmilch [https://en.wikipedia.org/wiki/Carl\\_S%C3%BCssmilch](https://en.wikipedia.org/wiki/Carl_S%C3%BCssmilch)

<sup>35</sup> Sir Bertram Stevens [https://en.wikipedia.org/wiki/Bertram\\_Stevens\\_\(politician\)](https://en.wikipedia.org/wiki/Bertram_Stevens_(politician))

<sup>36</sup> Jocelyn Brown [https://en.wikipedia.org/wiki/Jocelyn\\_Brown\\_\(landscape\\_architect\)](https://en.wikipedia.org/wiki/Jocelyn_Brown_(landscape_architect))



*and costly, [containing] about 8 rooms, including billiard room, large area of land, beautifully laid out, having motor garage etc.<sup>37</sup>*

Also of note:

- **Dickinson Avenue:** ‘Larissa’ (subsequently ‘Llandilo’) designed by architect Donald Esplin<sup>38</sup> for Edwin L. Johnson, Accountant.

Several other houses in the Malvern Hill Estate in addition to 15 Malvern Ave are known to have been designed by Carlyle Greenwell referred to above in partnership as Kent, Budden & Greenwell. These include Malvern Avenue, and ‘Toorak’ at Chelmsford Avenue. Both possess the architect’s distinctive rough-cast stucco columns. Carlyle Greenwell’s houses, designed in the first half of the 20th century, are often heritage-listed<sup>39</sup>.

The above is not in any way exhaustive, and further research is very likely to reveal other properties of heritage significance in terms of their architecture, and prominent associations.

Presently my family’s future in Croydon and that of my home and the Heritage Conservation Area in which I reside is under threat from the proposed changes. The uncertainty generated by the announcement of the NSW State Government’s TOD program has impacted us heavily.

Instead of preserving and maintaining my home with consideration of its context in the Malvern Hill Heritage Conservation Area in the knowledge that it would remain protected in perpetuity I have been rendered little more than a groundskeeper for the developer to come.

I am disgusted by the actions of the NSW Government.

Yours sincerely,

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M. A. Harris (1917) ‘Where to live : ABC guide to Sydney and suburbs, giving particulars of about 100 districts in and around Sydney with numerous illustrations.’

[https://digital.sl.nsw.gov.au/delivery/DeliveryManagerServlet?embedded=true&toolbar=false&dps\\_pid=FL4649840](https://digital.sl.nsw.gov.au/delivery/DeliveryManagerServlet?embedded=true&toolbar=false&dps_pid=FL4649840)

<sup>38</sup> Donald Esplin <https://www.athomeinnorthsydney.com.au/d-esplin.html>

<sup>39</sup> Carlyle Greenwell [https://en.wikipedia.org/wiki/Carlyle\\_Greenwell](https://en.wikipedia.org/wiki/Carlyle_Greenwell)