

**Submission
No 170**

INQUIRY INTO DEVELOPMENT OF THE TRANSPORT ORIENTED DEVELOPMENT PROGRAM

Name: Mr Nigel Porter-Dole

Date Received: 28 March 2024

RE: Submission Regarding Transport Oriented Development Program

Responses are keyed to the *Terms of Reference*

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

A. Consultation Requirements

(I) Consultation Requirements at Common Law

At common law consultation is an aspect of procedural fairness and “must be undertaken properly”. This involves four stages:¹

- 1) Consultation to be undertaken at formative stage
- 2) Provision of sufficient reasons and material
- 3) Adequate time to respond; and
- 4) Conscientious taking into account of the product of consultation.

(II) Consultation Requirements Under the *Environmental Planning and Assessment Act (1979) NSW (“EPA Act”)*

(a) Statutory Purpose

The objects of the EPA Act include providing “increased opportunity for community participation in environmental planning and assessment”: s1.3(j).

(b) Community Participation

Under s2.23(2) of the EPA Act one of the principles a planning authority is to have regard to when preparing a Community participation plan is that a community “has a right to be informed about planning matters that affect it”. Under s2.23(3)(a) “a community participation plan prepared by the Planning Secretary applies to the exercise of relevant planning functions by the Minister”.

(c) State Environmental Planning Policy (“SEPP”)

The “Consultation requirements” for the making of a SEPP are included at s3.30 of the EPA Act. That is, “the Minister is to take such steps, if any, as the Minister considers appropriate or necessary (a) to publicise an explanation of the intended effect of the proposed instrument, and (b) to seek and consider submissions from the public on the matter.

B. Consultations Actually Undertaken

There was no consultation undertaken with affected communities in respect of the TOD SEPP. This of course renders “increased opportunity for community participation in environmental planning and assessment” and the “right” of a community to be “informed

¹ See The Hon. Justice Brian J Preston Chief Judge Land and Environment Court of NSW, Consultation: One Aspect Of Procedural Propriety In Administrative Decision-Making, A paper presented to: Australian Institute Of Administrative Law 2008 Seminar Series: Administrative Law: Musings From The Bench, Sydney, 26 June 2008.

about planning matters that affect it” redundant. It also raises a number of concerns, including as regards (1) whether the impact of the decision on those affected by it has actually been understood and taken into account; and (2) the efficacy of the decision-making process itself.

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

(1) The replacement of dwellings in heritage conservation areas with new high density designs adversely impacts local heritage and character. In the medium to long term these areas will likely become unrecognizable, as has already occurred in a number of areas in Sydney.

(2) Heritage conservation areas have been designated by local councils. Local councils operate at the behest of local communities. The Government is overriding these democratically established local planning controls with an executive fiat.

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

(1) Increased density will obviously adversely impact the natural environment including increased urban heat and a reduction in the tree canopy and landscaping.

(2) Increased density necessitates increased infrastructure. It would appear that there is no specific provision for additional schools, parks, and community facilities, or even inquiry as to whether such infrastructure is even feasible in the relevant areas.

(3) There also appears to be no specific consideration for the impacts of increased density on traffic, roads, parking, sewerage, water and hospitals.

(4) Local communities are best positioned to plan in ways that minimise impacts on environment and amenity. That is the democratic bottom-up approach, as opposed to the top-down planning approach adopted by the NSW Government.

(r) any other related matters

(I) Unsustainable Immigration

(1) The net overseas migration (NOM) rate has been consistently above historical rates since the early 2000s. It has recently hit record levels.²

(2) Polls consistently show public opposition to unsustainable (“Big Australia”) immigration levels to be between 58-70%, but governments do it anyway³

(3) Given immigration is a clear driver of housing **demand**,⁴ it is surely a reasonable expectation that it would be addressed in the context of a housing crisis (which is the stated justification for the SEPP).

(II) Does Just Increasing Supply Create Affordable Housing and Lower Rents?

(1) Historically increases in supply have not translated into affordability. During the parliamentary inquiry into housing affordability there was evidence given regarding

² Over the last year Australia’s population was 26,638,544 people at 30 June 2023; annual growth was 624,100 people (2.4%); annual natural increase was 106,100; net overseas migration was 518,100. See, ABS, National, state and territory population, 14 December 2023.

³ See, e.g., Miragenews: *Survey Confirms Majority of Australians Believe Immigration Too High*, 19 July 2023. Polls by ANU, Resolve Strategic, Australian Population Research Institute and Essential Poll.

⁴ See, e.g., Leith van Onselen, *Sydney’s housing crisis is a population crisis*, Macrobusiness, 28 March 2024.

developers rationing supply to maximise profit.⁵ It is totally implausible to suppose that developers would do otherwise.

(2) Rental rates and affordability are tied not just to supply, but to demand. If NOM (demand) remains consistently well above supply how will reductions in rental rates and affordability materialise?

(III) Housing Density

(1) The NSW Government has claimed on a number of occasions that “Sydney is one of the least dense global cities”. However, it is actually “much denser overall than many other cities”.⁶

(2) In any case the fact that Sydney is less dense and less overcrowded than other “global cities” is not a good reason that Sydney needs to be the same. Policy choices as regards housing should be guided by the residents through their local representation, not forced on them through unsustainable NOM rates and undemocratic government directives.

Conclusion.

I note as follows:

(1) If NOM is not matched to housing availability the housing crisis will continue. Demand will run ahead of supply and higher prices and rents will result.

(2) The changes do not appear to take into account local government strategic planning policies.

(3) Modelling as regards likely population increases resulting from the changes is not provided.

(5) A one size fits all planning approach that does not consider local community needs and expectations will almost certainly result in adverse outcomes for local communities.

(6) In the absence of a proper consultation providing sufficient reasons and material there can be no informed response.

(7) A lack of proper consultation will likely give rise to numerous unforeseen consequences.

(8) There appears to be no consideration of the cultural importance of, or the public support for, protection of built and natural heritage.

Yours faithfully,
Nigel Porter-Dole

⁵ See Leith van Onselen, Developers choke supply to drive up house prices, Macrobusiness, 15 August 2022.

⁶ Nigel Gladstone, The truth about how many people are being packed into Sydney, SMH, 22 July 2018.