

**Submission
No 180**

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

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1. TOD Inquiry flaws

Thank you for the opportunity to comment on the Transport Oriented Development Program.

Unfortunately, the existence of this Inquiry and its deadline for submissions have not been widely communicated compared with the public exhibition of the Explanation of Intended Effect: Changes to create low- and mid-rise housing (EIE). I believe that the submissions to the EIE consultation should also be read in relation to the TOD Inquiry – it would be reasonable to assume that many of the EIE submissions refer to the TOD and its process since, at the time, there was no ability to make any comment on the TOD.

I also query the ability of this Inquiry to have an impact when the TOD will commence on 1 April, without waiting for the Inquiry's final report.

2. Democratic rights not respected

Timing of disclosure - The TOD was released shortly before the Christmas holiday period. It is well known that everyone is busy gearing up for the festive season, dealing with end of year matters and going on holiday. It was unreasonable to release it at that time.

Insufficient information - There was insufficient disclosure on the impacts. I have met many people who simply can't believe that the TOD is even possible. It so fundamentally affects their property values and amenities that it cannot be true. This is why a lot of people have not complained. They do not believe that their lifestyle, culture, heritage and properties could be compromised in such a devastating way – and this position is perfectly justifiable because we live in a democracy based on the premise that a government cannot interfere with our lives in such a drastic manner. That premise is proving to be fragile.

Confusing information - Our local council (Ku-ring-gai) did an excellent job, working through the January break, to provide a comprehensive presentation to the public. However, it seems that the EIE and the TOD do not meld together – were they drafted by separate groups?

Another example is the 400m radius concept – there was no clarification whether it was as the crow flies or walking distance and from what part of the railway station – these questions may seem minor but they are not – they dictate whether or not a home may be impacted.

Lack of consultation - I am not aware of any consultation taking place. I understand that when council representatives reached out to the NSW government officials, they did not receive adequate information.

I refer you to the presentation by Ku-ring-gai Council. The extraordinary impact on the environment and heritage indicates that there was no consultation. For example:

- Controls over tree canopies, tree felling and the environment will be overridden. The carbon sinks will not be protected. Hundred year old trees will be killed. Exposure to heat will increase.
- With that will come the decimation of animal life. In Ku-ring-gai, we live with many species of birds, reptiles, insects, not to mention possums, echidnas and wallabies. These animals will die.

- There will be strain on the population as the infrastructure collapses – already in Kuring-gai, we have 100 year old sewerage and water pipes, the schools are at capacity and hospitals are overloaded.
- Historical houses that are over 100 years old will be demolished – such a loss of our heritage and culture.
- There are no proposed standards to combat climate change and promote energy efficiency (with energy efficiency comes lower household bills).
- With worker and construction material limitations, it is impossible for developers to meet the quantity projections of government.

Non disclosure - There is an insidious lack of transparency – the cabinet-in-confidence analysis that apparently underpins the proposals must be released. For example, apparently Gordon, Killara, Lindfield and Roseville have been chosen for the TOD because they are close to the city. Why is that relevant? What is the basis for assuming that journeys to the city are the criteria? Not everyone works in the city and indeed there should be proposals to support other areas as hubs to take the load off the city. Where is the modelling done to ensure that the train line can cope with the increase in users?

The submissions to this Inquiry and the EIE should be made public.

Inability to comment - The public was not allowed to comment on the impact of the TOD.

Misinformation by Ministers - Chris Minns and other ministers continue to say in public that heritage will be protected. This is untrue. This sort of lying should be prohibited.

3. SEPPs should be subject to parliamentary scrutiny

The TOD will be implemented by way of a state environmental planning policy (SEPP). SEPPs are not subject to parliamentary scrutiny. This means that the TOD SEPP will not be subject to parliamentary scrutiny even though it will have far reaching effect - socially, environmentally and economically. Clearly the TOD SEPP will be legislative in character and for that reason should be subject to parliamentary scrutiny, including the power of disallowance.

A simple solution to this is to amend the Interpretation Act 1987 NSW to include SEPPs within the category of "statutory rule" and therefore subject to review.

This is not a new argument and I refer you to the 2020 Report of the Legislative Review Committee of NSW Parliament on the making of delegated legislation. It overwhelmingly validates the proposal to amend the Interpretation Act 1987. That Committee proposes abandoning definitions as the required criterion for tabling in both Houses of Parliament and substituting as the relevant criterion, the substance of the statutory instrument as legislative in character (rather than administrative).

If the TOD SEPP is approved before this amendment, then it will be too late but government has shown the lengths to which it will go to impose policies. This will be a protective factor for NSW citizens going forward.

4. Judicial review

The TOD is so far reaching that it may be susceptible to judicial review. Will the TOD SEPP meet the objects of Environmental Planning and Assessment Act 1979? Could the TOD SEPP be struck down on the grounds of unreasonableness? Does it go against the presumption of non-interference with fundamental common law rights – property and contract rights?

Has government considered these risks of litigation?

5. Conclusion

I would like to conclude by saying that this lack of disclosure and consultation has resulted in a lot of anxiety in the community. Residents are being approached by developers and agents to enter into option agreements. It is causing neighbours to have difficult conversations with each other and is not good for social cohesion. There are very real risks that people will be scammed.

The lack of disclosure, consultation, information and the quick timing of the commencement date show not only a complete disregard for the rights of the public but there is nothing to validate that what is being proposed will meet the objectives.

This is unfortunate – more and affordable housing is achievable without destroying the environment and heritage and, if done in a considered way, could be well built, climate sensitive and creatively pleasing.